



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO.E004 OF 2021**

***(Before D.K.N.Marete)***

**KENYA UNION OF COMMERCIAL**

**FOOD AND ALLIED WORKERS.....CLAIMANT**

**VERSUS**

**MURANG'A FARMERS CO-OPERATIVE UNION.....RESPONDENT**

**J U D G M E N T**

This matter was originated by a Memorandum of Claim dated 28th January, 2021. The issue in dispute is therein cited as;

*Failure to pay terminal benefits to Bernard Kungu Maina and Ndungu Joseph Kangethe*

The Respondent in a Respondent's State of Response/Defence dated 25th February, 2021 does not deny the claim but avers that the unpaid balances of terminal dues to the grievants were agreed to be payable when the economic situation, particularly in the coffee sector improved and became sustainable.

The Claimant's case is that the parties relate through a valid Recognition Agreement and Collective Bargaining Agreement all registered in this court.

The Claimant's further case is that Benard Kungu Maina and Joseph Ndungu Kangethe, the grievant were employees of the Respondent having been in employment on diverse dates as provided in this claim.

The Claimant's other case is that the grievant served the Respondent for a continuous period of 32 years until 31st January, 2020 when his services were terminated on grounds of restructuring of operations. His last salary was Kshs.55,753.03 with a house allowance of Kshs.13,938.26 and a medical allowance of Kshs.9,000.00 per month.

The Claimant's other case is that at the time of termination the grievant had an accumulated terminal benefits of Kshs.6,178,923.68 being salary arrears, accrued leave, severance pay and service gratuity. He was part paid Kshs.1,304,528.80 leaving a balance of Kshs.4,874,394.88.

On the case of the 2nd grievant, he had a service stint of 40 years and 9 months continuous service. At the time of his retirement he had a basic salary of Kshs.46,520.35 and house allowance of Kshs.11,630.09 plus a medical allowance of Kshs.6000.00 per month.

It is her case that upon retirement the grievant was paid Ksh.782,230.75 leaving a balance of Kshs.4,534,331.54.

Due to failure of the Respondent in meeting the balances, the matter was referred to a conciliator to no avail.

She therefore prays as follows;

*i) That the Respondent be ordered to pay the two grievants their terminal benefits balances as follows;*

*a) Bernard Kungu Maina the 1st grievant to be paid Kshs.4,874,394 in full.*

b) Joseph Kangethe Ndungu the 2nd grievant to be paid Kshs.4,534,331.54 in full being the balance the Respondent owes him.

ii) Cost of the suit in favour of the Claimant

The Respondent's case is that the 1st grievant was her employee until 31st January, 2020 when his services were terminated on redundancy with effect from 1st February, 2020. His terminal dues were computed at Kshs.6,178,923.68 while upon he was paid a sum of Kshs.1,304,528.80 which was agreed that a balance of Kshs.4,874,394.88 shall be paid gradually subject to the prevailing financial capacity of the Respondent from time to time but within 6 years.

In the case of 2nd grievant, his terminal benefits upon retirement were calculated at Kshs.5,316,582.29 while upon he was paid Kshs.782,230.75 on a similar note it was agreed that a balance of Kshs.4,534,331.54 would be paid on the aforesaid agreed terms.

The Respondent's penultimate case is that she is still committed to the liquidation agreements in respect of the grievants but found it difficult to comply in 2020 due to the economic difficulty occasioned by the outbreak of the Covid-19 pandemic.

The issues for determination therefore are;

1. Whether the Respondent should be compelled to meet and pay the balance of the grievant's terminal benefits?
2. Who bears the costs of the case?

The 1st issue for determination is whether the Respondent should be compelled to meet and pay the balance of the grievant's terminal benefits. The Claimant in her written submissions dated 7th June, 2021 submits *inter alia* as follows;

- That there is no consent or agreement entered inter partes for payment of the grievant's dues in 6 years.
- That any such agreement, if at all would have been signed by the parties before a labour officer.
- That it is not in dispute that the Respondent owes the grievant's the amounts claimed.
- That the Respondent has not filed any evidence of her inability to meet her obligation to the grievant's one year down the line.
- That the Respondent continues to play hide and seek and delayed justice to the grievant's.

She therefore prays as follows;

- i) That the 1st grievant herein Bernard Kungu to be paid his terminal benefit balance of Kshs.4,874,394.88 in full.
- ii) That the 2nd grievant herein Ndungu Joseph Kangethe to be paid his terminal benefit balance of Kshs.4,534,331.54 in full.
- iii) That the Respondent to be pay interest in (i) and (ii) above at court rate from the date of judgment up to the time of full payment.
- iv) That the terminal balances in (i) and (ii) above to be paid in full within thirty days from the date of the judgment.
- v) Cost of the suit in favour of the claimant.

The Respondent's did not file any written submissions on their case.

This to me is a very simple matter, the figures of payment not being in dispute. I agree with the Claimant's case and submissions that the Respondent has not adduced or submitted any evidence of disability to pay the amount owing. I therefore find that the Respondent should be compelled to pay the amount owing. And this answers the 1st issue for determination.

I am therefore inclined to allow the claim and order relief as follows;

- i) Bernard Kungu Maina be paid an amount of Kshs.4,874,394.88 in full.
- ii) Ndungu Joseph Kangethe be paid an amount of Kshs.4,534,331.54 in full.
- iii) That the amounts owing be met within sixty (60) days of this judgment of the court.
- iv) That the amounts payable earn interest at courts rate from the date of judgment of court until payment in full.
- v) That each party shall bear their costs of the claim.

**DATED AND DELIVERED AT NYERI THIS 9TH DAY OF MARCH, 2022.**

**D.K.Njagi Marete**

**JUDGE**

**Appearances**

1. Miss.Macharia for the Claimant Union.
2. Mr.Kirubi instructed by Kirubi Mwangi, Ben & Company Advocates for the Respondent.