



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. 417 OF 2015 CONSOLIDATED WITH CAUSE 427 OF 2015

MARY MORAA GETUNO1ST CLAIMANT

JANE MUTHOKA.....2ND CLAIMANT

ESTHER MUENI.....3RD CLAIMANT

PHILIP PAPOI OMONDI.....4TH CLAIMANT

HILDAH KANINI KANGO'LA.....5TH CLAIMANT

ERICK NYAKUNDI.....6TH CLAIMANT

TORKES ASEYO NDAGWA.....7TH CLAIMANT

VIVIAN APONDI ODERO.....8TH CLAIMANT

SALIM MWANONGO.....9TH CLAIMANT

-VERSUS

MILANGO FINANCIAL SERVICES LTD..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 01st April, 2022)

JUDGMENT

The 1st to 7th claimants filed the statement of claim on 26.06.2017 through Martin Tindi & Company Advocates. Their case is that they were employed by the respondent on diverse dates being as a trainee from 2000 to 2011 and then 5 years' contract effective 01.02.2012 for 1st claimant as micro-finance officer level 3; 17.04.2013 as micro finance officer level 3 for 2nd claimant; on 01.07.2010 as trainee micro finance officer and then 5 years' contract as micro finance officer level 3 effective 01.02.2012 for 3rd claimant; 09.06.2014 as micro finance officer and confirmed on 13.03.2015 for 4th claimant; on 01.09.2011 as micro finance officer on 5 years' contract and promoted senior officer, premium groups effective 2012 to 17.01 2014 when promoted to Business Unit Manager for 5th claimant; for 6th claimant as data clerk from 30.08.2011 on 5 years' contract and in 2012 on permanent service as data clerk ; the 7th claimant employed in 2010 and on 01.09.2010 confirmed as customer service officer and permanently effective 01.02.2012.

The 8th and 9th claimants filed the statement of claim on 30.06.2011 through Martin Tindi & Company Advocates. The 8th claimant pleads she was employed on 25.09.2012 as customer service officer on 5 years' contract; and the 2nd claimant on 28.02.2012 as office assistant on 6 months' contract basis and in September 2012 on one-year contract and then on 15.06.2013 on permanent basis as administration assistant.

The claimants plead that they were given a verbal notice of termination of their respective contracts of service. They further plead that they were not accorded an opportunity to be heard and it was in violation of sections 41, 43, 45, and 49 of the Employment Act, 2007, ILO convention on termination of employment, 1982 and Article 41 (1) of the Constitution of Kenya. They allege they were not accorded leave during their service to the respondent and for three months they were not paid any salaries. The claim terms of service per Employment Act, 2007.

They each claim on headings of accrued salaries for April, May and June 2015; salary in lieu of notice; Severity payment; gratuity; leave days; and share contribution all particularised in the respective statements of claims.

The 1st to 7th claimants claim a sum of Kshs. 2, 508, 484.00. the 8th and 9th claimants claim and pray for a sum of Kshs. 386, 609.00. The claimants also pray for:

- a) Costs and interest at court rates.
- b) A declaration that termination of their respective employment was unfair, unjust and wrongful.
- c) The respondent to issue a certificate of service.
- d) Any other relief the court may deem just and fit to grant.

The claimants changed their advocates to Odhiambo SE & Company Advocates

The respondent appointed Wameyo Onyango & Company Advocates to Act in the suit and who filed a defence in both suits. The defence was silent on all paragraphs of each statement of claim but denied the particularised claims and prayers. The defendant denied liability.

The 4th, 8th, and the 1st claimants testified. The other claimants did not testify. The respondent did not call any witness. Final submissions were filed for the claimant and the respondent filed no submissions. The Court has considered all the material on record and returns as follows.

First, the Court has considered the contracts of service exhibited for the claimants and other documents on record such as the pay slips and returns that parties were in a contract of service as alleged for the claimants.

Second, while alleging a verbal termination, the claimants have not pleaded the date of the alleged termination and the respondent's director, manager or agent that might have terminated them. While claiming full salaries for June 2015, CW3 testified that on 01.06.2015, the respondent's CEO known as Boniface Muthusia summoned the claimants and told them that the respondent was closing in a week's time and the claimants would be paid including salary arrears in a week's time. CW3 testified that they worked in April, May and June 2015 but they were not paid. He then testified, "**If June pay is given then no notice pay is due.**" CW1 testified that the letter of termination was dated 23.06.2015 and the reason was that business was not doing well and that they were given a notice delivered on 29.06.2015, a day before its expiry. CW2 testified thus, "**Respondent terminated our employment and issued letter dated 01.06.2015. We were told the business was shrinking.**" The Court has perused the documents on record and the letters of termination referred by the witnesses are not exhibited. Such letters were not pleaded at all. The Court therefore returns that the claimants have failed to establish the circumstances of their termination and their incoherent testimony which is equally not founded upon pleaded facts cannot be trusted. A case for termination of the contracts of employment as alleged will collapse.

Third, in view that termination has not been established, the prayers and claims on notice pay and severity (severance) pay will fail. The other claims and prayers will as well fail for wasn't of specific pleading and strict proof of the liquidated claims and prayers. For instance, each claimant did not plead the last monthly pay. The Court has found that claimant's evidence was incoherent on whether they worked or did not work in June 2015. The salaries paid or not paid were not specifically pleaded and strictly proved. The Court finds that the claimants have failed to properly plead and establish the claims and prayers by way of sufficient evidence.

In conclusion the claimants' suits as consolidated are hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 01ST APRIL, 2022.

BYRAM ONGAYA

JUDGE