



Kenya Union of Commercial, Food and Allied Workers v Komothai Coffee Growers Cooperative Society Ltd (Cause E055 of 2021) [2022] KEELRC 13140 (KLR) (31 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 13140 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E055 OF 2021
DKN MARETE, J
OCTOBER 31, 2022

BETWEEN

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS CLAIMANT

AND

KOMOTHAI COFFEE GROWERS COOPERATIVE SOCIETY LTD RESPONDENT

JUDGMENT

1. This matter was originated by way of a memorandum of claim dated November 17, 2021. The issue in dispute is thereby cited as;
Unlawful summary dismissal of twenty seven (27) employees
2. The matter is not defended, or at all.
3. The claimant's case is that the parties have a mutual relationship through a recognition agreement out of which the parties have had several collective bargaining agreements culminating in the current one dated March 31, 2017 and exhibited as -APP1.
4. The claimant's further case is that the twenty-seven employees (grievants) were employed on diverse dates and in different position as narrated on the face of the claim.
5. The claimant's case is that the genesis of this matter dates back to July 27, 2018 when all thirty seven employees addressed the respondent in regard to their unpaid salaries for seven months as at that time.
6. Her further case is that when she got this brief, she addressed the respondent on the same on July 30, 2019. Such demand for unpaid salaries caused the respondent to lock out her employees from the work place. The twenty seven employees stayed outside the premises of the respondent the whole day of



- December 11, 2018 and after they were denied access and audience they reported the matter to the claimant herein.
7. The claimant further case is that on the same day and due to the urgency of the issue the claimant addressed the respondent on the issue of lockout of the employees and booked a meeting with them on December 13, 2018 since December 12, 2018 was a public holiday. The claimant representative went for the meeting at the respondent's premises on December 13, 2018 but he was denied access and audience by the respondent and he only managed to address the thirty seven workers outside the gate since they were locked out of the premises.
 8. The claimant's other case is that the issue of the lockout was overtaken by events after the issuance of dismissal letters to the twenty seven grievants.
 9. This matter has been referred to conciliation and on May 3, 2019, both parties attended the meeting but after a long deliberation no agreement was recorded by the parties.
 10. The conciliator in the efforts of conciliating the parties convened a third meeting on May 17, 2019 with a view of settling the dispute. See App 33. This was frustrated by the non-attendance of the respondent.
 11. She prays thus;
 - i. All the twenty seven to be reinstated back to their positions which they held prior to the unlawful dismissal unconditionally.
 - ii. That the twenty seven grievant herein to be paid their accrued annual leaves days which were not taken.
 12. In the alternative and in the event that the reinstatement will not be tenable the claimants prays.
 - i. An order of separation commenced on the judgment date.
 - ii. Payment of three months' notice as per the collective bargaining agreement to each of the grievant.
 - iii. Payment of collective bargaining agreement arrears 2015/2017
 - iv. Service gratuity as per the CBA for each grievant years of service.
 - v. Maximum compensation based on gross earning for unlawful dismissal.
 - vi. Interest in (ii) (iii) (iv) and (v) above at the court rates
 - vii. Cost of the suit in favour of the claimant.
 - viii. Any other or further relief the court deem fit and just to grant in the circumstance to meet justice.
 13. This matter is not defended, or at all. This is despite service.
 14. The issues for determination therefore are;
 1. Whether the termination of employment of the grievants was wrongful, unfair and unlawful.
 2. Whether the claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.



15. The 1st issue for determination is whether the termination of employment of the grievants was wrongful, unfair and unlawful. The claimant in her written submission dated July 4, 2022 submits in reiteration of her case as pleaded and presented.
16. It is her case that the 27 grievants were dismissed without being given a fair hearing and in contravention of section 41 (1) of the *Employment Act*, 2007 which comes out as follows;
 1. Subject to section 42(1), an employer shall before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 2. Notwithstanding any other provision of this part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1).”
Emphasis added.
17. The claimants further seeks to rely and submits on article 50 of the *Constitution of Kenya, 2010* which provides thus;

“every person has the right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before court or if appropriate, another independent and impartial tribunal or body”
18. She further seeks to rely on the authority of *Onyango Oloo vs Attorney- General* where the court observed as follows;

...natural justice applied where ordinary people would reasonably expect those making decisions which affects other to act fairly and not act without giving an opportunity to be heard.
19. This matter is not defended, or at all. This is perhaps by choice as all requisite service has been effected on the respondent.
20. I find this a straight forward matter. The respondent dismissed the 27 employees irregularly and without affording them a hearing. This was casual, callous, cunning and a display of impunity-disregard of the law and process.
21. Again, attempts at conciliation were thwarted by the respondent reluctance to co-operate. I therefore find a case for unlawful termination of the employment of the grievants and hold as such.
22. The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.
23. I am therefore inclined to allow the claim and order relief as follows;
 - i. Three (3) months salary in lieu of notice for all the grievants
 - ii. Payment of collective bargaining agreement arrears 2015/2017
 - iii. Service gratuity as per the CBA for each grievant years of service.
 - iv. Six (6) months salary as compensation for unlawful termination of employment for each of the grievants.



- v. The cost of this cause shall be borne by the Respondent.
- vi. The commissioner of labour be and is hereby, with the involvement of the party (ies) ordered to facilitate a computation of dues to the grievants in 120 days.
- vii. Mention on March 6, 2023 for a report on computation and payment.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Miss.Macharia for the Claimant Union.
2. No appearances for the Respondent.

