



**Kenya Union of Commercial, Food and Allied Workers v Komothai Coffee Growers
(Cause 708 of 2019) [2022] KEELRC 12997 (KLR) (28 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12997 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 708 OF 2019
SC RUTTO, J
OCTOBER 28, 2022**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

KOMOTHAI COFFEE GROWERS RESPONDENT

JUDGMENT

1. The claimant has brought the instant suit on behalf of its members who it avers, were all employees of the respondent, at the material time. The claimant avers through its amended claim dated November 22, 2021, that it has a mutual relationship with the respondent through a recognition agreement. That subsequent to the recognition, the parties have a collective bargaining agreement duly registered before the court.
2. The claimant further avers that at the material time, the respondent had in its employment 37 permanent employees until December 22, 2019 when it unlawfully dismissed 27 employees without paying their salaries for 12 months.
3. The claimant gave a chronology of the dispute as follows; that on July 27, 2018, the affected employees addressed the respondent's chairman in regards to their unpaid salaries. That further, on July 30, 2018, the claimant addressed the respondent in regards to the unpaid salaries and on August 9, 2018, it invoked section 62 of the *Labour Relations Act* and reported a trade dispute to the cabinet secretary, responsible for labour matters and who in turn, appointed a conciliator. That the claimant forwarded their proposals to the conciliator on October 18, 2018. That on October 24, 2018, the conciliator met both parties and the respondent requested for more time to organize themselves.
4. That on November 19, 2018, the parties met and the respondent's chairman stated that he was looking for money to clear the unpaid salaries. That subsequently, the parties yet again met on November 30,



2018 when the respondent's chairman confirmed that he had not paid the salaries but stated that he had sold 40% of the coffee and he was waiting for the miller to deposit the money. He thus requested for a further meeting on December 7, 2018. That however, on December 5, 2018, the respondent called off the meeting slated for December 7, 2018.

5. That the respondent subsequently dismissed 27 employees unlawfully, after they went to its head office to demand their unpaid salaries. That the conciliation was later revived and parties met on February 8, 2019 and the respondent stated that it could only settle the unpaid salaries in bits. That in this regard, the conciliator gave the respondent an opportunity to at least pay part of the salaries to the affected employees. That in another meeting held on February 27, 2018 (sic), the respondent stated that it could only pay the employees one month salary. That it was at that juncture that the parties disagreed and a certificate of disagreement was signed.
6. It is the claimant's case that the respondent owes the affected employees unpaid salaries in the sum of Kshs 13,613,025.00 for 12 months beginning January to December, 2018. It is further averred that the respondent did not remit statutory deductions for all its employees, to the respective institutions.
7. As a result of the foregoing, the claimant prays for payment of the said sum of Kshs 13,613,025.00 and remittance of the unpaid statutory deductions as well as interest and costs of the suit.
8. The respondent did not file a response to the claim despite being given leave to do so on December 15, 2021 and on January 24, 2022.
9. The matter was scheduled for hearing on June 9, 2022 and the respondent was yet to file its response to the claim and was absent from court. Subsequently, the claimant sought to rely on its pleadings and file submissions. The matter was therefore determined by documentary evidence pursuant to rule 21 of the *Employment and Labour Relations Court (Procedure) Rules, 2016*.
10. In its submissions, the claimant reiterated the averments contained in its claim and stated that the actions of the respondent had subjected the affected employees to financial embarrassment.

Analysis and determination

11. Flowing from the record, it is evident that the sole issue for determination is whether the grievants are entitled to the reliefs sought, specifically being payment of the unpaid salaries for the period of January to December, 2018.
12. The crux of the claimant's case is that the respondent has refused to pay the salary of its employees for the period beginning January to December, 2018.
13. As I have stated herein, the respondent did not tender any response to the amended claim hence the claimant's assertions that the affected employees were not paid their salaries, was not controverted.
14. In addition, there is no evidence that the affected employees did not perform their duties as expected and there is indeed no explanation as to why the respondent has failed to remit the said salaries. As it is, no explanation was rendered at all.
15. To this end, I am led to conclude that indeed, the respondent failed to pay the salaries of the affected employees for the period beginning January to December, 2018 and no plausible reason for its actions and omissions has been advanced.



16. No doubt, the duty of the employer to compensate an employee for services rendered, is a cardinal rule in any employment relationship. This position is aptly captured under section 17(1) of the *Employment Act* in the following manner: -
- “Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service...”
17. This provision is so significant to the extent that section 17 (10) of the *Employment Act* provides for a penalty in the event an employer fails to make payment of or to tender wages earned or payable to an employee in accordance with section 17 (1).
18. It further bears to note that the respondent’s actions and omissions exposed its employees to unfair labour practices contrary to the provisions of article 41 (1) of the *Constitution*. Needless to say, its actions were not justified at all.
19. In total sum, I find that the claim is merited and the affected employees are therefore entitled to the unpaid salaries for the period January to December, 2018.

Orders

20. In the final analysis, I enter judgment in favour of the claimant against the respondent for payment of withheld salary in the sum of Kshs 13,613,025.00 for the period January to December 2018, due to the following employees:
1. Francis Kinyanjui - 313409/-
 2. Andrew Njuguna Mwaniki - 239524/-
 3. Mary Wanjiru Njuguna - 240130/-
 4. Joseph Mwangi Njuguna - 239524/-
 5. Hannah Wairimu Waweru - 244300/-
 6. Mary Wahu Muthoni - 204196/-
 7. Pauline Wairimu Kariuki - 92696/-
 8. Sarah Njeri Kimani - 204196/-
 9. Beatrice Waniu Mbugua - 92696/-
 10. James Ndungu - 244300/-
 11. Josiah Ngata - 244714/-
 12. Margaret Wanjiru - 109627/-
 13. Nathaniel Kungu Kamau - 240184/-
 14. Naomi Wanjiku Muigai - 234058/-
 15. Penninah Wanjik Githi - 204058/-
 16. Reginah Warima Ndungu - 313579/-
 17. Joshua Mbogo Mwangi - 244714/-



18. Elizabeth Njoki Kariuki - 245728/-
19. Mary Mugure - 205546/-
20. Peris Njoki - 190996/-
21. Nancy Mukuhi - 181852/-
22. Samuel Muhia - 204196/-
23. Lucy Wanjiku Ngaruiya - 204196/-
24. David Kagwi Ndungu - 204196/-
25. Fredrick Waweru - 244306/-
26. Mary Wanjiru Wanganga - 181852/-
27. Peter Chege Waiti - 204196/-
28. Peter Njoroge Kairu - 247522/-
29. Nelly Ngendo Kibunga - 244306/-
30. Lucy Wanjiru Murigi - 275605/-
31. Esther Wanjiku Macharia - 318997/-
32. Silas Nganga Ndabi - 181405/-
33. Jane Wairimu Chege - 109627/-
34. Mary Wairimu Maigua - 313828/-
35. Peter Wanganga Njuguna - 290072/-
36. John Murigi Waweru - 249478/-
37. Hannah Nyambura Gitau - 404745.20/-
38. Wilfred Gitau Njoroge - 343405.80/-
39. Margaret Wanjiru Gicharu - 162150.00/-
40. Lucy Wanjiru Kairu - 266736.60/-
41. Josiah Ngata Waithira - 266736.60/-
42. Samuel Ndungu Kiiru - 266736.60/-
43. Isaac Chege Mguga - 266736.60/-
44. Wilson Kibue Kinuthia - 266736.00/-
45. Joseph Mwangi Nyambura - 266736.60/-
46. Mary Muthoni Kamau - 263,494.20/-
47. Peris Njoki Mbugua - 266736.60/-
48. David Karanja Muraya - 354703.20/-



49. Elijah Gitau Muhia - 137112/-

50. Macharia Githuku - 137112/-

Total Amount 13,613,025/-

21. The respondent is further directed to remit all statutory deductions in respect of the affected employees, to the respective institutions.

22. Interest shall accrue at court rates from date of judgment until payment in full.

23. The respondent shall bear costs of this suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER, 2022.

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STELLA RUTTO

JUDGE

Appearance:

Ms. Macharia for the Claimant

Mr. Lesaigor for the Respondent

Court Assistant Abdimalik Hussein

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

