



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.103 OF 2017

RICHARD CLIFFORD O AWINO.....CLAIMANT

VERSUS

UNITED MILLERS LIMITED.....RESPONDENT

JUDGEMENT

The claimant was an employee of the respondent as a stores clerk from 3rd January, 2011 until 1st January, 2017 when he was issued with an internal memo on 30th January, 2017 terminating his employment. The respondent offered to pay terminal dues of unpaid wages, untaken leave days, severance pay and notice pay and which has not been paid.

The claim is that the claimant was laid off without due process. At the time he was earning ksh.63, 090 per month.

The claimant is seeking the following dues;

- a. Unpaid salary in lieu of notice Ksh.63, 069;
- b. Unpaid leave days ksh.47, 827.32;
- c. Severance pay for 6 years sh.189, 270;
- d. Compensation for unfair termination of employment Ksh.756, 828.

The claimant testified that on 30th January, 2017 the respondent terminated his employment without giving him any reasons or prior notice. He was only paid Ksh.163, 000 in terminal dues which was too low.

The claimant was cross-examined and testified that before his employment was terminated the respondent called him to the office and told that business was not doing well and therefore unable to sustain employees and to mitigate the losses had to lay off some employees. He is not aware who else was terminated in this regard.

He was paid part of his dues.

Defence

The defence is that they have had operations for over 10 years until the year 2007 when business started experiencing downward trend which necessitated closing some depots and affected areas including Kisii, Busia and Kibuye. Other operations like silos in Webuye and Eldoret had already closed due to poor business and low production at the end of 2013.

By mid-2016 productivity declined by 50% which led to low liquidity and for that reason management decided to downsize number of employees through redundancy.

The respondent had recognition with Bakery, Confectionary, manufacturing and Allied Workers Union and the collective agreement provided for a framework for declaring redundancy and the union was invited on 16th December, 2016 for a discussion on the same.

On 21st December, 2016 the respondent wrote to the union and the County Labour Officer on the intended redundancy pursuant to the CBA

and a meeting with the union was held on 19th January, 2017 and there was agreement to declare 70 employees redundant and notice issued on 30th January, 2017 and the claimant was one of the affected employees.

The respondent followed the due process of the law and the CBA pursuant to section 40 of the Employment Act, 2007. The union was informed and the claimant was paid his terminal dues.

In evidence the respondent called Evans Ondimu the human resources manager and who testified that the respondent had low business leading to reduction of employees. A memo was sent after meetings with the union and notice to the labour officer. Redundancy provisions in the CBA were followed and the claimant was paid terminal dues;

- a. Pay for days worked;
- b. Notice pay;
- c. Severance pay;
- d. Leave days not taken

Total paid ksh.219, 345 and sent to his account at KCB Bank on 1st March, 2017. This was in full payment of terminal dues.

At the close of the hearing both parties agreed to file written submissions.

Only the claimant filed his written submissions.

Determination

A redundancy is defined under section 2 of the Employment Act, 2007 (the Act) as a situation where the employer is forced due to operational requirements to terminate the employment of its employees. Such provisions are subject to the employer following the procedures set out under section 40 of the Act which requires notice to issue with regard to the operational reasons leading to redundancy and notice to the affected employee and payment of terminal dues.

In this case, the respondent issued notice dated 23rd December, 2016 to the union pursuant to section 40(1) of the Act. The notice outlined the prevailing operational reasons leading to redundancy and hence wished to invoke clause 8 of the CBA with regard to laying off some employees.

The union responded 6th January, 2017 and agreed to a meeting with the respondent and upon which the claimant was issued with individual notice dated 30th January, 2017. The list of affected employees is attached. The claimant was not singled out for termination of his employment. The terminal dues paid included;

- a. Pay until 31st January, 2017;
- b. Notice pay;
- c. Accrued leave;
- d. Severance pay for years worked.

The court finds the respondent had a valid reasons leading to termination of employment and the case that there was unfair termination of employment has no basis.

On the terminal dues paid, the claimant was earning ksh.63, 069 per month. On the schedule of payment to the affected employees, it is noted the claimant's dues were;

- a) Pay for work done Ksh.38,587.50;
- b) Leave pay ksh.28,297.50 which is based on the basic wage;
- c) Notice pay ksh.38,587.50;
- d) Severance Ksh.96, 468.75. Total Ksh.163, 353.75.

The claimant testified that he was paid ksh.163, 000 in terminal dues which was too low.

Mr Ondimu testified that the claimant was paid ksh.219, 354 through his account on 1st March, 2017 but there is no evidence with regard to this payment. The records attached to the defence indicate payment of ksh.163, 353.75 only.

On the monthly wage of ksh.63, 066 the terminal dues tabulated should be;

- a. Pay for an until 31st January, 2017 ksh.63,069;
- b. Notice pay Ksh.63,069;
- c. Notice pay ksh.38,587.50;
- d. Severance pay for 6 years at 15 days ksh.96,468.75; Total Ksh.261, 193.75

the claimant is entitled to ksh.261, 193.75 in terminal dues. such global sum should be taxed. There is payment of ksh.163, 353.75 and balance due Ksh.97, 840 and which amount shall be subject to taxation.

Accordingly, judgement hereby entered for the claimant against the respondent for payment of ksh.97, 840 subject to the provisions of section 49(2) of the Employment Act, 2007.

DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF JANUARY, 2021.

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and