



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE 84 OF 2016

ISSA HASSAN HAMISI.....CLAIMANT

VERSUS

FAST ENERGY LIMITED.....RESPONDENT

CONSOLIDATED WITH CAUSE 87 OF 2016

HEZRON ONYANGO MASESE.....CLAIMANT

VERSUS

FAST ENERGY LIMITED.....RESPONDENT

CONSOLIDATED WITH CAUSE 90 OF 2016

ROSE A. OWENDA.....CLAIMANT

VERSUS

FAST ENERGY LIMITED.....RESPONDENT

CONSOLIDATED WITH CAUSE 91 OF 2016

RASHID ABDI NURI.....CLAIMANT

VERSUS

FAST ENERGY LIMITED.....RESPONDENT

CONSOLIDATED WITH CAUSE 92 OF 2016

MOSES SAMORA OWEDA.....CLAIMANT

VERSUS

FAST ENERGY LIMITE.....RESPONDENT

JUDGMENT

1. This claim was consolidated with ELRC Cause No. 87 of 2016, ELRC Cause No. 90 of 2016, ELRC Cause No. 91 of 2016 and ELRC No. 92 of 2016. In the suits, the Claimants sued the Respondent for the alleged unfair termination of their employment and each sought the

following reliefs; -

a) Notice

b) seven (7) Months' salary for the year 2015

c) Breach of contract for the year 2016

d) Public Holidays

e) House Allowance

f) Gratuity

g) Compensation under Article 49(1)(c) of the Employment Act no. 11 of 2007

h) Costs.

2. The Claimants herein were employed by the Respondent on diverse dates between 2013 and 2015 in the position of pump attendants, each earning a Salary of Kenya Shillings Sixteen Thousand (Kshs. 16,000/-). The Claimant in ELRC Cause number 84 of 2016 was employed on 1st March 2013, the claimants in ELRC Cause No. 87 of 2016 was employed on 1st September, 2014, the Claimants in ELRC Cause No. 90 of 2016 was employed on 1st March, 2014, the Claimant in ELRC Cause No. 91 of 2016 was employed 1st May, 2013 while the Claimants in ELRC Cause Number 92 of 2016 was employed on 18th November, 2014 all for a renewable contract of one year.

3. On 1st June 2015 the claimants aver that they were all given a day off to enable the Respondent restock fuel which according to the claimants were out of stock and further directed to report back to work on 2nd June 2015. The Claimants state that, they all reported on 2nd June 2015 only for the Respondent to turn them back and instructed them remain at home till they received instructions to report to work.

4. Pursuant to the instructions of the Respondent, the Claimants remained at home for about Eight (8) Months and realized that the respondent was never calling them back to employment and thus moved this Court and instituted their separate suits against the Respondent through the firm of Maragia Ogaro & Company Advocates seeking for their terminal benefits.

5. The Claimants contend that there were never issued with Notices of termination as required by law as such they were unlawfully terminated as no reason was given for their dismissal.

6. It is the claimants case that, the Respondent never remitted the NSSF and NHIF dues despite the fact that the same was deducted from their salaries and have annexed their respective statements to their memorandum of claims.

7. The Claimants further allege that they worked during holidays and were never compensated and that they never took their leave days either. They urged this Court to compel the Respondent to compensate them for leave not taken and Holidays worked during their tenure at the Respondents employ.

8. It's the claimants case that they are entitled to house allowance at the rate of 15% of their basic salary which house allowance according to them was never paid by the respondent.

9. They argued that the Respondent breached sections 35 and 49(1) (c) of the Employment Act as such ought to be compelled by this Honourable Court to pay the claimants for unlawful termination.

10. On 20th September, 2018, the cases proceeded for formal proof hearing where the Claimant in cause number 84 of 2016, Issa Hassan Hamisi testified by adopting his witness statement and basically reiterating the pleadings filed. Counsel agreed to dispense with calling further witnesses and instead adopted the written statements of the other claimants and filed written submissions to dispose of the suits.

11. The claimant testified that he was employed by the Respondent on annual contract which was abruptly terminated on 2nd June 2015 when his employment together with his colleagues was terminated without reason.

12. He avers that they were not paid for the remaining contractual term neither was their June salary paid. He alleges that they were not paid house allowance and never took leave together with holidays.

13. He concluded by urging this court to allow his claim together with the claims of all the other claimants in the series of the causes consolidated herewith.

Parties Submissions

14. The Claimants herein all filed their respective submissions on 24th September, 2018 and reiterated their witness statement and pleadings. They submitted that they were employed by the respondent on various dates between 2013 and 2015 and were all dismissed from employment on 2nd June, 2015.

15. The Claimants submitted that their termination was verbal and was not preceded by any Notice of termination and or were they paid their salary in lieu of notice and the terminal benefits they are entitled to upon termination of employment.

16. The Claimants thus submitted that the Respondent breached the laid procedure regarding termination of employees and urged this Court to hold that they were unlawfully terminated and are therefore entitled to compensation.

17. On the quantum, all the Claimants submitted that they are entitled to salary in lieu of Notice, 7 Months' salary compensation for breach of contract for the year 2015, 12 Months' salary for breach of contract for the year 2016, Compensation for public holidays worked, House allowance, Gratuity, Compensation under Article 49 (1) (c) for unlawful termination and costs of these causes.

18. In cause number 84 of 2016 the total amount prayed for is Kshs. 535,564.11/=, Claimant in Cause number 87 of 2016 prayed for Kshs. 555,415.20/-. Claimant in cause number 90 of 2016 prayed for Kshs 583,599.48/-, \Claimant in Cause number. 91 of 2016 prayed for Kshs. 665,099/- and the Claimant in Cause number 92 of 2016 prayed for Kshs. 555, 415.20/-

19. The Claimants in conclusion urged this Court to hold in their favour and compel the respondent to compensate them for unfair termination and all other benefits they have prayed for in their respective claims. Counsels reinforced his submissions by citing the case of **Boniface Nyaga Njiru -versus- Board of Trustee Gichugu water and sanitation Trust [2014] eklr** .

20. I have examined all the evidence and submissions before me. I note that cause 84/2016 was consolidated with Numbers 87/2016, 90/2016, 91/2016 and 92/2016.

21. The respondents though served never entered appearance and never filed any response and therefore this court directed on 30/7/2018 that the matter proceeds ex-parte for formal proof.

22. According to the evidence submitted by the claimant in case No. 84/2016 on behalf of the other claimants the respondent asked them to stay home until he calls them back to work. He never recalled them back.

23. They stayed home for 8 months from 2nd June 2015 until they decided to seek redress from this court on 29/2/2016. There is no evidence presented by the Respondent herein. The claimants proved they were employees of the respondent through their NHIF & NSSF statements and also their employment contracts with the respondent.

a) Hassan Hamisi was employed on 1/3/2015,

b) Hezron Onyango on 1/9/2014,

c) Rose Owenda on 1/3/2014,

d) Rashid Nuri on 1/5/2013 &

e) Moses Owenda on 18/11/2014

24. There was no notice on disciplinary proceedings against the claimants before the respondent terminated their services by asking them to stay at home. No reason is also assigned to their termination.

25. I find that they were terminated unfairly and unjustly as per Section 45 (2) of the Employment Act 2007 which states as follows:-

(2) A termination of employment by an employer is unfair if the employer fails to prove –

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason –

(i) related to the employee's conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure.

26. I find that the claimants are entitled to the remedies sought as follows;

1. 1 month's salary in lieu of notice.

2. Unpaid salary for the remainder of the contract period.

3. 3 months salary as compensation for breach of contract.

4. Costs of interest on above amounts.

27. The total translate as follows;-

ISSA HASSAN

1. 1 month salary lieu of notice = 15,000/=

2. Unpaid salary for remainder of contract period from June 2015 to February, 2016 10 months 150,000/=

3. 3 months salary as compensation = 15,000 x 3 = 45,000/=

TOTAL 210,000/=

HEZRON ONYANGO

1. 1 month salary in lieu of notice = 16,000/=

2. Unpaid salary for remainder of the contract period i.e from June to September 2014 = 4 months

3. 4 x 16,000 = 64,000/=

4. 3 month's salary as compensation for unfair termination

= 3 x 16,000 = 48,000/=

TOTAL.....113, 600/=

ROSE OWENDA

1. 1 month salary in lieu of notice = 15,000/=

2. Unpaid salary from June 2015 to February 2016 = 10 months

= 150,000/=

3. 3 month's salary as compensation

= 3 x 15,000 = 45,000/=

TOTAL..... 210,000/=

RASHID ABDI NURI

1. 1 month salary in lieu of notice = 15,000/=

2. Unpaid salary from June 2015 to February 2016 = 10 months

= 150,000/=

3. 3 month's salary as compensation for unlawful termination

= 3 x 15,000 = 45,000/=

TOTAL.....210,000/=

MOSES OWENDA

1. 1 month salary in lieu of notice = 15,000/=

2. Unpaid salary for remainder of contract period from June 2015 to November 2015 – 6 months

= 15,000 x 6 = 90,000/=

3. 3 month's salary as compensation for unlawful termination

= 3 x 15,000 = 45,000/=

TOTAL..... 150,000/=

28. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.

DATED AND DELIVERED IN OPEN COURT THIS 16TH DAY OF MARCH, 2021.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mr. Maragia for claimant – present

Respondents - absent