



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO.E003 OF 2020**

***(Before D.K.N.Marete)***

**KENYA UNION OF COMMERCIAL**

**FOOD AND ALLIED WORKERS.....CLAIMANT**

**VERSUS**

**GIKANDA FARMERS COOPERATIVE SOCIETY LIMITED.....RESPONDENT**

**JUDGMENT**

This matter was originated by way of a Memorandum of Claim dated 29th October, 2020. The issue in dispute is therein cited as;

*“Failure to pay Terminal Benefits to Jackson Kanyi Wanjohi, James Wanjohi Kinyua, James Wachira Mwangi and Atanasio Macharia Gichine”*

The Respondent in a Response to Claim dated 15th December, 2020 denies the claim and prays that this be dismissed with costs.

That Claimant’s case is that the parties herein have an mutual agreement through a Recognition Agreement and a registered Collective Bargaining Agreement, the latest being one of 1st October, 2016 to 30th September, 2018.

The Claimant’s further case is that the grievants were employed by the Respondent on diverse and in tandem with their employment history as provided in the Claim. There is no dispute *inter partes* in terms of service and salaries.

The Claimant’s penultimate case is that the grievants left employment at time between 2017, December and June, 2016 and todate remain unpaid in terms of service gratuity. This is expressed thus;

*4. The Respondent avers that since 1<sup>st</sup> January 2009 it has been remitting the employees monthly benefits/gratuity to the CO-OP Trust Investment Retirement Scheme has fully settled the grievant claims herein for the period under cover while the Respondent has also fully settled for the period from the date of employments till 31<sup>st</sup> December 2008.*

*5. The Respondent avers that it has fully settled the grievants claim pleaded in paragraph 6 of the memorandum of claim and specifically pleads settlement as follows:-*

**A. JACKSON KANYI WANJOHI -1<sup>ST</sup> GRIEVANT**

*i) Was employed on 1<sup>st</sup> September 2017 and retired on 31<sup>st</sup> December 2017 after a 20 year service earning a basic salary of Kshs.14,055.00.*

*ii) That for the period between 1<sup>st</sup> September 1997 and 31<sup>st</sup> December 2008 the amount due to him was as follows:*

*Kshs.104,688.75*

*Less society’s liabilities = Kshs. 5,049.90*

Kshs. 99,638.85

iii) Paid by cheque No.009321 of 27<sup>th</sup> April 2018 Kshs.99,638.35.

iv) For the period 1<sup>st</sup> January 2009 to 31<sup>st</sup> December 2017 the respondent had remitted to the trust Kshs.246,330.00

v) By a cheque No.164137 dated 23<sup>rd</sup> May, 2018, the grievant was paid by the Co-op Trust Kshs.265,499.00

vi) Therefore the full payment made to Jackson Kanyi Wanjohi was Kshs.365,499 made up as follows:

Paid by the society - Ksh.104,688.75

Paid by the trust - Ksh.265,499.00

TOTAL Ksh.370,187.75

**B. JAMES WANJOHI KINYUA-2<sup>ND</sup> GRIEVANT**

i) Was employed on 2<sup>nd</sup> January 1997 and retired on 1<sup>st</sup> June 2008 after 21 years service earning a basic salary of Kshs.31,935.00

ii) For the period 2<sup>nd</sup> January 1997 to 31<sup>st</sup> December 2008 the amount due was as follows;-

Kshs.291,110.50

iii) For the period 1<sup>st</sup> January 2009 to 1<sup>st</sup> June 2018 the respondent had remitted to the trust Kshs.585,276

iv) The grievant was paid a total of Kshs.1,094,279.50 made up as follows:

Paid by the society - Ksh.291,110.50

Paid by the trust - Ksh.803,169.00

TOTAL Ksh1,094,279.50

**C. JAMES WACHIRA MWANGI- 3<sup>RD</sup> GRIEVANT**

i) Was employed on 2<sup>nd</sup> January 1997 and retired on 1<sup>st</sup> June 2018 after 21 years service basic salary of Kshs.18,371.00

ii) for the period between 2<sup>nd</sup> January 1997 and 31<sup>st</sup> December 2008 the amount due to him was as follows;-

Kshs.138,836.25

iii) Paid by cheque No.009318 Kshs.138,836.25

iv) For the period 1<sup>st</sup> January 2009 to 1<sup>st</sup> January 2018, the respondent had remitted to the Trust Kshs.306,278.

v) By a cheque No.164140 the grievant was paid Ksh.442,392.

vi) Therefore the full payment made to James Wachira Mwangi was Kshs.581,228.25 made up as follows:-

Paid by the society - Ksh.138,836.25

Paid by the trust - Ksh.442,392.00

TOTAL Ksh. 581,228.25

**D. ANATASIO MACHARIA GICHINE- 4<sup>th</sup> GRIEVANT**

i) Was employed on a three (3) year contract from 1<sup>st</sup> May 2016 which was to expire on 30<sup>th</sup> April 2019.

ii) He voluntarily resigned on 30<sup>th</sup> November 2017 before the contract period expired.

*iii) That under the contract of employment no gratuity was payable in respect of this grievant.*

The respondent case is a sharp denial of the claim. It is her case and submission that the claimants were subjected to a proper and legitimate redundancy and their terminal dues paid.

The issues for determination therefore are;

1. Whether there was a termination of the employment of the grievants?
2. Whether the termination of the grievant's employment, if at all, was wrongful, unfair and unlawful?
3. Whether the claimant is entitled to the relief sought?
4. Who bears the costs of the case?

The claimant's in their written submissions dated 8th April, 2021 merely reiterate their case for unlawful termination of employment.

The respondent in his written submissions presents a case of no liability on their part to the claimant. It is her submission that this whole matter is subjected to an interpretation of Clause 15 (b) of the Collective Bargaining Agreement which in itself can lead to an ambiguity in interpretation. Overall, this entitles the claimants to terminal benefits at the rate of 25% of the basic salary in the last month of employment and for every completed year of service. This having been met by the Respondent, no further claim arises against respondent.

Her further case is as follows;

- That it complied with Section 40 of the Employment Act in regard to redundancy of the claimants.
- That the declarations of redundancy were legally and procedurally fair and lawful.
- That the claimants were paid their rightful dues.
- That the redundancy letters should not be withdrawn.
- That the claimants cannot be absorbed back to their positions as that would defeat the basis of the declarations of redundancy.
- That having paid the claimants upon the declarations of their redundancy, no further benefits are payable.

I agree with the respondent's submission that there is no balance of issues or case for the respondent. A case of lawful redundancy is demonstrated and ensues in the circumstances. I therefore find a case of no termination of employment and hold as such. And this answers the 1st issue for determination.

The 2nd issue for determination is whether the termination of the employment of the claimant by the respondent, if at all, was wrongful, unfair and unlawful. There was no termination of employment whatsoever. This court has no business delving into the legitimacy or otherwise in a case of no termination of employment.

The 3rd issue for determination is whether the claimant is entitled to the relief sought. He is not. Having lost on a case of unlawful termination of employment, he becomes disentitled to the relief sought.

I am therefore inclined to dismiss the claim with orders that each party bears the costs of the claim. And this meets all the issues for determination.

**DATED AND DELIVERED AT NYERI THIS 30<sup>TH</sup> DAY OF JUNE, 2021.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Miss Macharia for the Claimant/Union.
2. Mr. Maina Karingithi instructed by Maina Karingithi & Company Advocates for Respondent