



**REPUBLIC OF KENYA**

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

**AT NYERI**

**CAUSE NO.134 OF 2015**

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

**KENYA COUNTY GOVERNMENT WORKERS UNION .....CLAIMANT**

**VERSUS**

**MURANGA COUNTY GOVERNMENT .....1ST RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD, MURANGA COUNTY .....2ND RESPONDENT**

**RULING**

This matter came to court by way of a Claimants Amended statement of claim dated 11th March 2015. It does not disclose or issue in dispute on its force.

The Respondent in a Response to claimant statement of claim (DEFENCE) by the Respondent dated 27th May 2015 denies the claim and prays that the same be dismissed with costs.

The Claimant's case is that at all material times to this cause, she read a recognition agreement with the Association of Local Government Employers and read a negotiated Collective Bargaining Agreement with herself entered into on 25th March 1994 and Registered by this court under reference known as RCA No.134/1994.

The Claimant's further case is that pursuant to sections 55, 57, 58 and 59 of the Urban Areas and Cities Act, and Section 33 of the Six Schedule of the Constitution of Kenya, 2010, the respondents herein are the legal successors of the defunct Local Government Employees Association.

Her other case as premised on the claim is as follows

*iii) The Claimant prefers this suit on behalf of its members numbering One Hundred and Sixty (166), and who are former employees of the Respondent.*

*(Attached and marked "RD2" is a schedule of all persons represented by the Claimant and their designations.)*

*iv) By letters of appointment bearing different dates, the members of the Claimant were separately engaged in the employ of the Respondent serving in their respective capacities and designations.*

*(Attached and marked "RD3" are sample copies of letters of appointment).*

*v) The Respondent, by various letters addressed to each of the members of the Claimant communicated its intention to downsize its establishment in a redundancy arrangement that would take the forms of: termination, abolition of office and voluntary/age.*

*(Attached and marked "RD4" are sample copies of letters of termination of employment)*

*vi) In the aforementioned letter, the Respondent also outlined the dues that would be payable to the Claimant members upon their termination of employment. The Respondent restricted his payment to the following items:*

*a) Salary arrears; and*

b) *Three months in lieu of notice*

vii) *By reason of the Respondent's failure to adhere to the legal requirements for declaration of redundancy, the Claimant herein in its representative capacity of the Respondent's employee, reported a labour dispute to the Ministry of Labour and Human Resource Development pursuant to Section 62(1) of the Labour Relations Act vide a letter dated 21<sup>st</sup> February, 2013.*

viii) *The Aforesaid Ministry of Labour and Human Resource Development in a letter dated 25<sup>th</sup> February, 2013, accepted the report of the dispute, and as is its mandate, the said Ministry appointed a conciliator for the purposes of resolving the dispute and reaching settlement by conciliation.*

*(Attached and marked "RD6" is a true copy of the said letter.)*

ix) *The conciliator Mr.B.M.Mbuvi convened a conciliation meeting on 6<sup>th</sup> June, 2013 vide his letter dated 10<sup>th</sup> May, 2013 and whereas the Claimant herein communicated in advance his inability to attend the conciliation meeting, (Attached and marked "RD7" is a true copy of the said letter), the Respondent remained unresponsive to this invitation for conciliation and to subsequent invitations.*

x) *Whereas the Claimant submitted its claims against the Respondent to the conciliator by its letter dated 24<sup>th</sup> July, 2013, the Respondent made no step to defend itself.*

*(Attached and marked "RD8" is a copy of the Memorandum submitted to the conciliator by the Claimant.)*

xi) *The Respondent's conduct of failing to attend the conciliation meetings and failing to give any or valid reason for the failure is a clear manifestation of an employer that does not uphold goodlabour relations and an affront to labour relations laws. Indeed by a letter dated 30<sup>th</sup> May, 2014, the Ministry of Labour and Human Resource Development communicated to both the Claimant and the Respondent the difficulty in resolving the dispute and issued a certificate declaring the dispute unresolved pursuant to Section 69 (a) of the Labour Relations Act, reason whereof this matter has escalated to an industrial action.*

*(Attached and marked "RD9" is a true copy of the said certificate.)*

xii) *The Claimant avers that Respondent, by the unlawful and wrongful redundancy of the members of the Claimant's union, has breached the law and the parties' collective bargaining Agreement.*

#### *Particulars of the breach*

a) *Failure to disclose the full details of the redundancy to the Claimant union and to involve the Claimant union in the redundancy arrangements.*

b) *Failing to have due regard to seniority in time and skill, ability and reliability of each employee of the particular class of its employees before declaring them redundant.*

c) *Failure to determine and to pay all leave due to the Claimant's members.*

d) *Failure to have due regard of the collective Bargaining Agreement between the Claimant and the Respondent with regard to terminal payments payable upon redundancy and upholding its terms.*

e) *Failure to determine and to pay all severance pay due to the claimant's members.*

#### *P 2-4 –CLAIM*

##### *Submissions on Laws*

a) *By failing to notify the union to which the employee is a member and the labour officer in charge of the area where the employees were employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy, the Respondent is in breach of Section 40 of the Employment Act.*

b) *By failing to determine and pay the claimant's members severance pay, the Respondent actions are in breach of Section 40 of the Employment Act.*

*She prays as follows;*

a) *Declare that the members of the claimant have suffered unfair and wrongful redundancy.*

b) *An order directing that the respondent to unconditionally reinstate the claimant to their employment services and former position with the respondent without any loss of benefits or seniority and without any conditionality.*

- c) *In the alternative and without any prejudice to the forgoing, the employees be paid actual pecuniary loss suffered since the date of termination, including salary and allowances as would have been earned, housing allowance and all accruing allowances.*
- d) *Interest at court rates on the above prayers.*
- e) *The costs of this suit.*
- f) *Any other award that this Honourable Court deems fit.*

The Respondents case is a total denial of the Claim.

4. *The respondent deny the content of paragraph 2 (iv) (vii) of the claim and avers that*

a) *All the claimant cited in the claim chose to be awarded benefits popularly known as “Golden handshake” and we paid all their dues.*

b) *Those who refused or denied to take the golden hand shake filed a civil case which decided their dues and they were settled.*

6. *The respondent denies the contents of paragraph 2 (xii) of the claim and avers that the said sendoff was voluntarily by the claimants without any undue influence or pressure and the claimant cannot now turn back on their own consents.*

7. *The respondent further in response state that consents between the parties overrides any other Agreements representative or otherwise.*

8. *The respondent in reply to paragraph 3 of the claim aver that there was no breach of section 40 of the Employment act as the said act was not in force at the material time.*

Again, the Respondents in a Reply to Claimants further Amended statement of claim deny the claim in toto.

The matter came to court variously until the 16<sup>th</sup> February 2020 when in the absence of the Respondent, albeit served, it was ordered that a disposal be read on written submission.

The issues for determination therefore are;

1. Whether the termination of the employment of the grievant was unlawful, unfair and unprocedural.
2. Whether the termination of the employment of the grievants set the content of a termination on redundancy.
3. Whether the claimant is entitled to the relief sought.
4. Who bears the costs of the claim?

The first issue for determination is whether the termination of the employment of the grievant was unlawful, unfair and unprocedural.

**DATED AND DELIVERED AT NYERI THIS 16TH DAY OF JUNE, 2021.**

**D.K. Njagi Marete**

**JUDGE**

**Appearances**

- 1.
- 2.