



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

CAUSE NO.E011 OF 2020

(Before D.K.N.Marete)

KENYA UNION OF COMMERCIAL, FOOD AND

ALLIED WORKERS.....CLAIMANT

VERSUS

NEW GATURI FARMERS COOPERATIVE

SOCIETY LIMITED.....RESPONDENT

JUDGMENT

This matter was originated by a Memorandum of Claim dated 20th November, 2020. The issue in dispute is therein cited as;

“Failure to pay salaries for December upto date to Alice Njoki and Julius Mwangi”

The Respondents in a Response to the Claimant’s Memorandum of Claim dated 23rd December, 2020 denies the claim and prays that the same be dismissed with costs.

The Claimant’s case is that the parties have a valid Recognition Agreement. This was culminated in several Collective Bargaining Agreements have been concluded and registered. The effective one is that for October, 2016.

The Claimant’s further case is that the grievants in this cause were employees of the respondent as variously presented in the claim. This is as follows;

A. ALICE NJOKI NGURE 1ST GRIEVANT

- i) The first grievant herein was employed by the Respondent on 1st June 1994 as a Cherry Recorder. See App 2*
- ii) The grievant was first posted to Muriowanda factory after which she was transferred to Wathege factory. The grievant was later transferred to Ichanjeru factory and then to Gitwa factory.*
- iii) The grievant herein served as the Cherry Recorded up to the year 2013 when she was promoted to the position of Factory Manager. See App 3*
- iv) That the grievant has been serving as a Factory Manager of Gitwa Factory which is one of the factories under new Gaturi Cooperative.*
- v) That on 19th December 2019 a felony happened in the factory where the grievant was serving as a Factory Manager and bags of coffee was stolen.*
- vi) That on the following day 20th December 2019 the grievant and other people were taken by the Director of Criminal Investigation to go and record statement at Muranga police station.*

vii) The grievant upon arriving at Muranga police station was locked in together with the Mr. Francis Karengo the representative of Gitwa factory, the Machine Operator Mr. Julius and five other causal employees who were working at the factory as labourers.

viii) That since it was over the weekend the grievant and the other were taken to Muranga Law court on Monday of 23rd December 2019 where they were charged with failure to prevent felony.

ix) That on the same day the grievant was released on a cash bail of Kshs.100,000 and she went home.

x) That on 24th December, 2019 she went to the head office and she met the Chairman Mr. Gikonyo and the Secretary Manager who told her that she will be on suspension but she was not issued with any letter.

xi) The grievant had served the Respondent for a period of twenty five years of continuous service with clean employment record.

xii) The grievant last basic salary as at the time of the incident was Kshs.16,901.00 house allowance of 3,380.00 and medical allowance of 1000 per month.

B. JULIUS MWANGI 2ND GRIEVANT

i) The second grievant herein was employed by the Respondent on 1st March 2013 as Machine Operator See App 4

ii) The grievant was first posted to Gitwa factory after which he has been working in that factory since then.

iii) That the grievant has been serving as a Machine Operator of Gitwa Factory which is one of the factories under new Gatari Cooperative.

iv) That on 19th December 2019 a felony happened in the factory where the grievant was serving as a Machine Operator and bags of coffee was stolen.

v) That on the following day 20th December 2019 the grievant and other people were taken by the Director of Criminal Investigation to go and record statement at Muranga police station.

xiii) The grievant upon arriving at Muranga police station was locked in together with the Mr. Francis Karengo the representative of Gitwa factory, Alice Njoki the Factory Manager and five other causal employees who were working at the factory as labourers.

vi) That on the same day the grievant was released on a cash bail of Kshs.100,000 and she went home.

vii) That on 24th December, 2019 he together with the 1st grievant went to the head office and they met the Chairman Mr. Gikonyo and the Secretary Manager who told them that they will be on suspension but they were not issued with any letter.

viii) The grievant had served the Respondent for a period of seven years of continuous service with clean employment record.

ix) The grievant last basic salary as at the time of the incident was Kshs.11,000 house allowance of 2200 and medical allowance of 1000 per month.

She prays thus;

i) Pay the two grievant their full salaries for December 2019 to July 2020 since all this period they had no letters for suspension.

ii) Pay the grievant their half salary from August 2020 when they were issued with suspension letters up until when the Case No.1061 of 2019 will be determined.

iii) That the respondent to continue paying the two grievant half basic salary plus house and medical allowance until the case is determined.

iv) That the Respondent to be restrained from terminating the services of the two grievants when the case in Muranga, Law Court will be proceeding.

v) That the unpaid salaries of the two grievant to be paid as follows

ALICE NJOKI

a) Salary for December 2019 to July 2020= 21,281x8=170,248.00

b) Half basic salary plus allowances from August September and October=12,830.50x3=38,491.50

Total amount=208,739.50

JULIUS MWANGI

a) Salary for December 2019 to July 2020= 14,200x8=113,600.00

b) Half basic salary plus allowances from August September and October=8700x3=26,100

Total amount=139,700

The Respondent's case is a denial of the claim.

It is her further case that the Claimant made the demand whereas she responded and asked for a round table conference *inter partes*.

The Respondents other case is that the claim is based on half-truths as there is a concrete disagreement on the amount owed. This is because clause 7 (b) of the subsisting CBA provides for payment of half salary for ninety (90) consecutive days and is silent on the remainder thereafter. The claimant in this case makes a claim for longer periods.

She only admits the claim to the extent of payments for the first ninety (90) days per the Collective Bargaining Agreement.

The Claimant in a Claimant's rebuttal dated 15th February, 2021 reiterates his case. She avers that the grievants are entitled to payment of half basic salary, full house allowance and medical allowance until the investigations in Criminal Case No.1061 of 2019 are completed.

Further, that the collective bargaining agreement Clause No.7 is very clear in regards to suspension and it states:

- i) *An employee may be suspended from duty to enable investigations into a matter related to misconduct.*
- ii) *The suspension shall be on half monthly salary for a period of not exceeding ninety consecutive days, during which period the investigation or enquiry should have been completed.*
- iii) *The Employee shall be informed in writing by the cooperative as to the reasons of such suspension.*
- iv) *Where the investigation exonerates the employee of the perceived misconduct, he/she shall be reinstated back without loss of pay and other benefits from the date of suspension.*
- v) *The Branch Secretary of the Union shall be given a copy of the suspension letter.*

The issues for determination therefore are;

1. Whether the claimant is entitled to the relief sought?
2. Who bears the cost of this cause?

The 1st issue for determination is whether the claimant is entitled to the relief sought. The parties hold diametrically opposed positions on this.

The Claimant in a written submissions dated 8th April, 2021 submits a case of entitlement to the relief sought. In so doing, the Claimant further buttresses her case by relying on the witness statements of the grievants Alice Njoki and Julius Mwangi filed on 27th November, 2020.

The Respondent in rebuttal and through her written submissions dated 10th May, 2021 denies the claim. It is her case and submission that the grievants were, after investigations found to be suspects in the disappearance or stealing of coffee at Gaitwa coffee factory and they were accordingly charged in Criminal case No.1061 of 2019 at Muranga Law Courts.

The Respondent's further submits that, in the interest of justice and good conscious, it would be unjustifiable to continue paying the grievants their full salary, or at all during the pendency of the criminal trial. This would be incomprehensible to the society members, or any other sensible person.

The Respondent further submit and reiterates their case that the grievants are only entitled to half salary for ninety (90) days as provided for under the CBA. The CBA is silent on any longer payments as it did not envisaged a situation where suspects would earn from the Respondent without any work during the pendency of a protracted court case of which they have no control.

The Respondent further reiterates and submits his case and sequence of events in this matter through the witness statement of Johnson Gichoya Mwangi the acting secretary of Gaturi farmers' co-operative Limited which narrates the events belying this claim. These are known and understood by the grievants.

The Respondent's case overwhelms that of the claimant. It is all telling.

The Respondent have adduced compelling evidence against the case of award of the claim as set out. This is because it would not make sense in the circumstances of the case. The grievants were involved and implicated in a case of theft of the Respondent's produce to her detriment. They cannot be heard to want to benefit from their own misdeeds. This matter must await the full determination of the issues involved before the issues now in dispute are placed on the table for resolution.

She submits thus;

The Collective Bargaining Agreement stipulates that the respondents shall be paid half monthly salary for a period not exceeding 90 days. We submit the interpretation on this section is that investigations are legally or exhaustively supposed to be carried out within ninety days and if the suspended party is found innocent then he or she shall be re-instated.

This is the ideal situation. She could not be overburdened with any different scenario.

I am therefore inclined to dismiss the claim with orders that each party bears the costs of the same.

DATED AND DELIVERED AT NYERI THIS 19TH DAY OF JULY, 2021.

D.K.Njagi Marete

JUDGE

Appearances

1. Miss Macharia for the Claimant Union.
2. Mr. Kimwere instructed by Kimwere Josphat & Company advocates for the Respondent.