



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE 14 OF 2019

JOHN MWANINKI.....1ST CLAIMANT
JAMES WAWERU.....2ND CLAIMANT
EVANS OMBONGLI.....3RD CLAIMANT
MOSES BIWOTT.....4TH CLAIMANT
PETER KANEKENI.....5TH CLAIMANT
JOSEPH DENNIS WAMOTO.....6TH CLAIMANT
EMILY WAMOTO.....7TH CLAIMANT
LUCY ANN KARANI.....8TH CLAIMANT
MARGARET SIELE.....9TH CLAIMANT
WILFRED NYAGAKA MBECHU.....10TH CLAIMANT
JOYCE MUMBI KAMAU.....11TH CLAIMANT

-VERSUS-

KENYA INSTITUTE OF MANAGEMENT.....RESPONDENT

JUDGMENT

1. The Claimants herein filed a Memorandum of Claim dated 8th February, 2016, via the firm of Wachira Wekhomba Aim and Associates Advocates, seeking to compel the respondent to pay them accrued salary arrears amounting to Kshs. 5,020,348 /-.

2. The claimant states that they are employees of the Respondent who were employed at different periods to teach the Respondent's student both diploma and certificate courses together with short term courses and also offer consultancy services. Further that their salaries were based on the number of lessons each claimant taught which claimants would claim via a claim form submitted together with class attendance sheet for all lessons attended each month.

3. It is alleged that the contracts issued to the claimants were renewed periodically with the last contract issued for the year beginning January, 2018 to December, 2018.that prior to the issuance of the contracts, the respondent would create teaching timetables and allocate classes to the claimants.

4. It is stated that sometime in July, 2017 the Respondent failed to pay the claimants their salaries on time and withheld others without any explanation and from thereon payment of salaries became sporadic. Consequently, the claimant sought by a demand letter dated 9th May, 2018, to have their salary arrears paid which the respondent in Response wrote an internal Memo to all regional and branch managers

acknowledging the arrears and promising to make the payment on a month to month basis and further constituted a team to deal with the issue.

5. That the claimants were issued with P9 forms for the purposes of filling KRA returns and it is then that they realized that the respondent had been deducting PAYE regularly without paying them their due.

6. The claimants state that by a letter of 9th July, 2018, the claimants constituted a team that would air out their grievances in the salaries arrears issue which culminated to payment sometimes on 10th September, 2018 however the monies received by the claimants were disputed.

7. That the dispute was referred by the respondent to Nairobi labour officer who heard both parties and delivered its verdict on 12th November, 2018 indicating that he does not have mandate to handle the dispute. subsequently, the claimant sought for redress on the salary arrears with the respondent's CEO to no avail leading to the filing of this case.

8. That the withholding of their salaries by the Respondent has exposed them to embarrassment and humiliation as they are not able to meet their day to day financial obligations.

9. The claimants therefore seeks for reliefs against the Respondent that;

1) This Honourable Court do Order the respondent to pay the claimants accrue arrears amounting to Kshs. 5,020,348 as tabulated in paragraph 20 in the memorandum of claim.

2) The respondent be ordered to bear costs of this suit.

3) That the respondent be ordered to pay the outstanding arrears and costs in prayer 1 and 2 above together with interests.

10. The Respondent upon being served filed a Notice of Appointment by the firm of Muli and Company advocates dated 27th March, 2019 and filed in court on even date however it did not file any response to the memorandum of Claim therefore the cause proceeded as an undefended Claim on 4th May, 2021 with the 3rd Claimant, **Evans Ombongi** testifying on his own behalf and on behalf of the other claimant who adopted his witness statement and adopted the documents filed by the claimants and prayed that the claim be allowed as drawn.

Claimants' submissions.

11. It is submitted on behalf of the claimants that the Respondent should pay the claimants their salaries when they are due as envisaged under section 18 of the Employment Act. He reinforced the said argument by citing the case of **Migotiyo Plantation Limited –v- Kenya Plantation & Agricultural Workers Union [2016] eKLR** where the Court held that;

“The Employment Act, 2007 has as two of its purposes the definition of the fundamental rights of employees and provision of certain basic conditions of employment.16. And it would be germane at this early point to note that the Act provides the essential and irreducible minimum entitlements of employees from which no employer may derogate.17. One of the fundamental rights guaranteed to employees and which is also a basic condition of employment is the payment of wages as contractually agreed (daily, monthly or otherwise).”

12. He further cited the case of **Donald C. Avude –v- Kenya Forest Service [2015] eKLR** where the court was of a similar opinion that;

“withholding salary o exposes the claimant to financial embarrassment that cannot be remedied by mere release to the withheld salary.”

13. It is also submitted that the respondents in total contravention of section 25(1) of the Employment Act, withheld the claimant salaries and have admitted the said arrears in the letter dated 4th July, 2018 to regional managers and the CEO's letter who promised to pay the said arrears month on month basis till the same is cleared to no avail.

14. It is submitted that the actions of the Respondent amounts to unfair labour practices that contravenes the tenets of the Constitution, especially Article 41 and prayed that the claim be allowed as prayed.

15. I have examined the evidence and submissions of the parties herein. As indicated above, this matter proceeded undefended as the respondents failed to file their defence.

16. From the documents submitted by the claimants, they were employed by the respondent and taught at the respondent's institution.

17. The timetables submitted show that the claimants were scheduled to teach on diverse dates and also administered exams to their students.

18. The various claimants claims for payments upon teaching have also been submitted in evidence.

19. There is however no evidence that the claimants were paid for the services rendered.

20. I therefore find that the claimants have established their case as prayed.

21. This case remains uncontroverted. I find for the claimants and enter Judgment as prayed for kshs.5,020,348/= less statutory deduction plus costs and interest at court rates with effect from the date of this Judgment.

Dated and delivered in open Court this **13TH day of JULY, 2021.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Yogo holding brief for Wachira for claimant – present

No appearance for respondents

Court Assistants – Fred and Wanyoike