



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 11 OF 2017

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

VERSUS

GURU MECHANICAL ENGINEERS LIMITED.....RESPONDENT

JUDGMENT

1. The suit was filed on 9th January, 2017 by the claimant praying for an order in the following terms:-

1. **THAT** the Honourable Court deem fit to find the action of the Respondent to be unfair/unprocedural and declare it Null and Void.
2. **THAT** in the alternative the Honourable Court do award 12 months' salary as compensation and damages, for wrongful redundancy. The compensation to be additional to Redundancy Benefits as covered in the Parties Collective Bargaining Agreement.
3. **THAT** the cost of this suit be met by the Respondent.
4. **THAT**, any other Order the Honourable Court may deem fit to grant.

2. The claimant union brought the suit on behalf of six (6) named grievants for alleged unlawful termination on grounds of redundancy.

3. The claimant averred that the declaration of the said redundancy did not meet the requirements of the provisions of Section 40 of the Employment Act, 2007.

4. That the respondent has a recognition agreement and a Collective Bargaining Agreement with the claimant union.

6. That the respondent gave the grievants, three months' notice of intended redundancy but before the three months' notice had expired, the Directors of the respondent ordered the grievants to go away without payment.

7. That on 3rd April, 2016, the Respondent started moving her machinery to Mombasa road site and the last machine was moved on 14th April, 2016.

8. That efforts by the union and Labour office to meet the respondent to resolve the matter and get the grievants to be paid terminal benefits were frustrated by failure by the respondent to attend scheduled meetings.

9. That the respondent did not pay severance pay to the workers stating that the National Social Security Fund was paid for them. The respondent ignored letter of demand by the union dated 24th May, 2016 attached to the claim.

10. The claimant union calculated dues owed to each of the grievants in a document dated 16/5/2016 attached to the statement of claim. The particulars of each grievant are set out as follows:-

(i) John Alongo Odera

He was employed in October, 1989 and worked for the respondent until 14th April, 2016. At the time of termination he earned a basic salary of Kshs.16,438.31. He had therefore served the respondent for a period of 26 years and 5 months as a turner. He claims in terms of the Collective Bargaining Agreement as follows:-

· **Three (3) months' notice pay in the sum of - Kshs 49,314.90**

· Severance pay calculated at 18 **days salary for each completed**

year of service - Kshs 295,889.40

· Prorata leave 4 months – **Kshs 5,563.70**

· **Salary underpayment in terms of the Collective Bargaining Agreement**

for August, 2014 to 31st July, 2015

- **Kshs (2,844.30 x 12) = Kshs.34,131.60**

(e) **Underpaid house allowance in terms of the Collective Bargaining Agreement in the sum of Kshs 950 x 12 months totaling Kshs.11,400.**

Total Claim – Kshs.396,299.90

(ii) WYCLIFFE KISSIA

He was employed in October, 1996 and worked until 14th April, 2016. At the time of termination he earned Kshs 16,438.31. He worked as a mechanic. He had served the respondent for a period of 19 years and 8 months. His claim is as follows:-

· **Notice pay – Kshs 49,314.80**

· **Severance pay – Kshs 216,226.90**

· **Prorata leave - Kshs 4,019.60**

· **Salary underpayment and - Kshs 101,259.60**

· **House allowance underpayment Kshs 28,080.00**

Total Claim: Kshs. 398,901

(iii) Philip Maina

He was employed in October, 1974 and worked continuously until the date of termination on 14th April, 2016 as a Machine Operator. At the time of termination he earned a basic salary of Kshs 20,368.00. He served for a period of 42 years and 1 month. The claim by Philip Maina based on similar calculations is as follows:-

· **Notice pay - Kshs 61,104.00**

· **Severance pay – Kshs 592,238.80**

· **Prorata leave - Kshs 15,276.00**

· **House Allowance – Kshs 11,400.00**

Total Claim Kshs 680,018

(iv) Bernard Kioko

He joined the respondent in October, 1991. He worked continuously as a Machine Operator until 14th April, 2016. At the time he earned Kshs 13,594. He served a period of 25 years and 2 months. The claims by Bernard Kioko is as follows:-

· **Notice pay – Kshs 49,314.90**

· **Severance pay – Kshs 284,503.80**

· **Prorata leave - Kshs 2,739.70**

· **House allowance - Kshs.11,400.00**

Total claim: Kshs 347,958.40

(v) Herbert Asamba

He was employed in October, 1986 and worked continuously until 14th April, 2016. At the time of termination he earned a basic salary of Kshs.20,368.00. He worked as a turner for a period of 29 years and 8 months. His claims based on similar calculations are as follows:-

- Notice pay – Kshs 61,104.00
- Severance pay – Kshs 408,926.80
- Prorata leave - Kshs 15,276.00
- House allowance -Kshs 11,400.00

Total Claim Kshs.496,706.80

(vi) Peter Kamau

He was employed in October, 1979 and worked continuously until 14th April, 2016. At the time of termination he earned Kshs 23,786. He served as a Turner for a period of 36 years and 11 months. His claim based on similar calculations is as follows:-

- Notice pay – Kshs 71,358.00
- Severance pay – Kshs 592,820.00
- House allowance - Kshs 11,400.00

Total Claim Kshs.657,578.00

14. The claimant prays that the grievants be awarded as prayed. The claimants did not adduce sufficient evidence to demonstrate that the respondent did not follow the procedures set out under Section 40 of the Employment Act by giving notice to the union and to the Labour office of the intended redundancy clause in the Collective Bargaining Agreement between the parties. The respondent in fact notified the grievants, the claimant and the labour office. The Court finds that the claim for unlawful and unfair termination is without merit and is dismissed.

15. The Court finds that the respondent was contractually bound by the Collective Bargaining Agreement to pay the grievants the terminal benefits set out in the judgment in respect of each grievant and makes judgment in favour of each claimant as set out in the judgment having failed to defend the suit. The respondent is to pay the respective claims to each grievant with interest at Court rates from date of judgment till payment in full. The respondent is to pay the costs of the suit.

DATED AND DELIVERED AT NAIROBI THIS (VIRTUALLY) THIS 16TH DAY OF DECEMBER, 2021

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Haraka for the Union

Ekale – Court clerk