



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 80 OF 2016**

**(Before Hon. Justice Mathews N. Nduma)**

**DICKSON ORUKO NYAKACH.....1<sup>ST</sup> CLAIMANT**

**PATRICK OTIENO MAGANA.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**CHEMELIL SUGAR COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

1. The suit was filed by the 1<sup>st</sup> and 2<sup>nd</sup> claimants on behalf of 26 other claimants listed in an attachment marked annex '1'. From the pleadings in the statement of claim the claimants were employed by the respondent sometimes in the year 1994 and worked continuously until the year 2010.
2. The claim before court is for payment of terminal benefits set out in annexure '1'. The claimants stated that they were partly paid in the year 2011 and tabulations were done by the Ministry of Labour and agreement reached on payments. Counsel for the respondent confirmed that there was indeed such agreement but only objected to new issues brought out in the suit. Counsel submitted that the claimants were estopped from making further claims.
3. Both parties relied on the pleadings and list of documents. The parties wished to file submissions but did not do so as per the court directions. The two claimants filed witness statements stating that all the claimants were employed by the respondent in the year 1994 and they worked continuously until they were abruptly dismissed in the year 2010.
4. The calculated terminal benefits for each employee are set out in Annex 'I' page one to twenty four and the signed consent by the 26 other claimants dated 28<sup>th</sup> December 2014 is attached as annex '2'. The claimants pray that they be awarded terminal benefits in the sum of Kshs. 18,236,583.70 and had requested for judgment in default of defence by a notice dated 28<sup>th</sup> April 2016, filed on 4<sup>th</sup> May 2016.
5. However, the respondents filed a statement of defence on 6<sup>th</sup> July 2016 in which the respondent admitted that the claimants worked for the respondent until the year 2010 but disputed that they all started to work in 1994.
6. The respondent pleaded that the suit was statute barred and it be struck off for want of jurisdiction.
7. In the reply to defence, the claimant stated that leave to file suit out of time was sought and granted vide miscellaneous cause no. 8 of 2015. The issue of limitations appears to be out of our hands therefore, although, the court is aware by dint of the Court of Appeal in Devicon's case, no court has jurisdiction to extend time within which a suit founded on contract may be filed by *dint of Section 90 of the Employment Act, 2007 read with Section 4(1) of the limitation of Actions Act, Cap 22 Laws of Kenya*.
8. This court is apprehensive that by delving on the merits of this case it may be engaged in a futile pursuit. The respondent did not appeal the ruling of the court on the issue of limitation. The respondent has neither preferred any sound defence against the liquidated claim by the 28 claimants comprising terminal benefits due and owing to the claimants following many years of service and eventual termination of employment in the year 2010.
9. The court finds that the claimants have vide the pleadings and documentary evidence not contradicted by the respondent proved on a balance of probabilities that they are owed terminal benefits as set out under annex '1' to the statement of claim and in the final prayers of the claimants in the sum of Kshs. 18,236,583.70.

10. The court enters judgment in favour of the claimants against the respondent in the sum of Kshs. 18,236,583.70.
11. Interest at court rates from date of filing suit till payment in full.
12. Cost of the suit.
13. Both parties had informed court that there was agreement before the labour office for payment of the terminal benefits tabulated by the labour officer and that the respondent had partly paid the terminal benefits.
14. The court does not have the benefit of knowing the extent of part payments already made by the respondents. However, to ensure justice and equity, the amounts already paid be deducted by the respondent from the decretal sum.

**Judgment Dated, Signed and delivered at Nairobi this 13<sup>th</sup> day of May, 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this judgment has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Amondi for claimants

Mr. Oyuko for Respondent

Chrispo – Court Clerk