



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT MERU

CAUSE NO. 18 OF 2019

KENYA UNION OF COMMERCIAL,

FOOD & ALLIED WORKERS.....CLAIMANT

AND

NYAMBENE COFFEE MILLS.....RESPONDENT

JUDGMENT

1. The Claimant herein, the Kenya Union of Commercial, Food and Allied Workers instituted this claim vide a Statement of Claim dated 12th April 2016 suing the Respondents, Nyambene Coffee Mills on behalf of the Grievant, one Silas Njeru. It is averred by the Claimant that the Grievant herein was employed by the 1st Respondent verbally on January 2014 as a night watchman at a monthly salary of Kshs. 3,900/- with no house allowance and that the Grievant was not given any appointment letter. That the Grievant was stationed at Nyambene Coffee Factory in Embu County reporting directly to the 2nd Respondent who was the Managing Director of the 1st Respondent. That the Grievant who used to receive his monthly salary through his account in Equity Bank until December 2014 and that he never received his salary at the end of January 2015. That the Grievant severally contacted the factory's manager who told him to wait and he continued working with the said manager, the assistant manager and the day watchman but without being paid. That the manager, the assistant manager and the day watchman continued working without being paid in December 2015 and that the three workers left the employment of the Respondent for non-payment of salaries but the Grievant continued working alone.

2. The Claimant further avers that in March 2016, the Grievant went to the Respondent's head office at Meru to enquire why he had not been paid his salary for such a long period whereat he found the 2nd Respondent who requested for time to look for a replacement and to sort out the unpaid salaries. The Claimant averred that the Grievant thus returned to the factory to wait and on 14th July 2016, the 2nd Respondent sent one Mr. Kinyua to take over from the Grievant all the properties he was guarding. That the said Mr. Kinyua changed all the padlocks in all rooms and offices and paid the Grievant Kshs. 1,500/- only from the 2nd Respondent, after which the Grievant's services were terminated orally without notice and without payment of his salary due for 19 months. The Claimant averred that the Grievant being a member of the Claimant, reported the matter to the union's office on the same day and the union addressed the Respondent proposing a joint meeting to settle the issue of unlawful termination of the Grievant and the Grievant accompanied by a union official went to the proposed meeting but never met the Respondents and that when they finally met the 2nd Respondent on 29th July 2016, the Respondent's representative denied owing the Grievant any dues.

3. It is further averred by the Claimant that parties having disagreed, it reported a Trade Dispute to the Cabinet Secretary, Ministry of Labour whereafter a Ms. L. Mburu of Embu Labour Office was appointed to act as a conciliator but her appointment was however withdrawn and in her place Mr. K.M. Gichohi of Meru Labour Office was then appointed conciliator. The Union averred that it forwarded to him their memorandum in respect of the dispute and that the Conciliator called for several conciliation meetings whereat the Claimant and the Grievant dutifully attended but the Respondents failed to attend all the meetings. The Claimant avers that the Conciliator thus issued the parties with Referral Certificate on 23rd October 2018 properly placing this matter before this Court.

4. The Claimant further avers that the Grievant was not granted annual leave, off days, rest days, public holidays, for overtime and service gratuity throughout his employment with the Respondents as per the law and that he was underpaid far below the then General Order for the years 2014 and 2015 which was offering Kshs. 6,223.60 plus 15% house allowance, making a total of Kshs. 7159.10 for a night watchman. The Claimant prays this Court enters judgment against the Respondents and order the Respondents to pay the terminal benefits of the grievant totalling Kshs. 353,155.01 as enumerated in the Amended Memorandum of Claim.

5. The Claimant also filed an amended Witness Statement from Silas Njeru the Grievant on 12th September 2019. The Grievant stated that for the two years and seven months that he worked for the Respondents he was never issued with any warning whether written or verbal and that his services were terminated on 16th July 2016 after he complained of his unpaid salary to the 2nd Respondent.

6. The case was undefended before the 1st and 3rd Respondents entered appearance on 6th October 2020 through the firm of Charles Kariuki & Kiome Associates and other than file an appearance there was no other pleading filed by the Respondents. The Grievant testified in court that he worked seven days a week with no off days and that the other 3 employees were also not paid. He relied on his statement as his evidence and urged the Court to grant him the reliefs sought.

7. Directions were given for the filing of submissions and the Claimant filed its submissions on 7th October 2020 wherein it submits that the termination was unlawful since the Grievant did not commit any gross misconduct for asking for his unpaid salaries and that the claim ought to be granted as prayed as the matter was undefended by all the Respondents.

8. The Claim was undefended and despite the claim being undefended, it behoves the Court to consider the facts and evidence before it before making a determination. From the evidence adduced and the pleadings herein, it is clear there was no need to enjoin the 2nd and 3rd Respondents as the Claimant's member was an employee of the 1st Respondent as he points out in his statement of claim and evidence. As a result, it is my finding that the suits against the other defendants are superfluous and I hereby strike out the names of the 2nd and 3rd Respondents from this suit.

9. The Respondent, Nyambene Coffee Mills employed the Grievant as a watchman and it is asserted he was underpaid. I have scrutinized the bank statements filed and the deposits at Equity Bank indicate payment by Nyambene Coffee Mills. The Claimant admits in paragraph 5 that the parties have no recognition agreement in place but that the nature of the Respondent's business falls within the purview and province of the Claimant Union representation and as such the Claimant Union has embarked on recruitment drive at the Respondent's establishments.

10. Under the Labour Relations Act, a trade union can be recognised by an employer if the union represents a simple majority of unionisable employees. The Claimant does not even attempt to suggest it has met the threshold and in my finding, the Claimant had no business filing the suit on behalf of the Grievant. In the premises I strike out the name of the Claimant and replace it with the name of Silas Njeru who asserts he was the employee of Nyambene Coffee Mills. Other than attaching some bank statements for 2014 and 2015, the Claimant has not shown the evidence of non-payment as the statement shows salary payment until April 2015 when Caffimax Limited begun paying the Claimant's salary effective May 2015. As such the claim by the Claimant that he was unpaid for much of 2015 is without foundation as he was employed by CAFFIMAX LTD circa April 2015 and received payment of salary from the said company for May and July 2015. He sought underpayments for the period he says he worked for the Respondent but did not attach the relevant Regulation of Wages (Amendment) Order to show the alleged underpayments.

11. In the final analysis I find that the Claimant Silas Njeru failed to prove his case on a balance of probabilities and since the Respondent did not defend the suit I dismiss the Claimant's claim with no orders as to costs.

It is so ordered.

Dated and delivered at Nairobi this 12th day of November 2020

Nzioki wa Makau

JUDGE