



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1687 OF 2011

KENYA UNION OF COMMERCIAL, FOOD

AND ALLIED WORKERS.....CLAIMANT

V

KYAUME FARMERS CO-OP SOCIETY LTD.....1st RESPONDENT

KWA MATINGI FARMERS CO-OPSOCIETY LTD.....2nd RESPONDENT

KATAYA FARMERS CO-OP SOCIETY LTD.....3rd RESPONDENT

KAWATHEI FARMERS CO-OP SOCIETY LTD.....4th RESPONDENT

SENGANI FARMERS CO-OP SOCIETY LTD.....5th RESPONDENT

MWATATI FARMERS CO-OP SOCIETY LTD.....6th RESPONDENT

KABUSU FARMERS CO-OP SOCIETY LTD.....7th RESPONDENT

KINGOTI FARMERS CO-OP SOCIETY LTD.....8th RESPONDENT

JUDGMENT

1. Around 1996, a Matungulu Farmers' Co-Operative Society Ltd was wound up/split and in its place 8 smaller societies were formed. The 8 are the Respondents herein.
2. With the turn of events, employees of Matungulu Farmers' Co-Operative Society Ltd issued notices of termination of contracts to its employees.
3. The notice(s) informed the employees that they would be paid all their terminal dues and that those interested in taking up employment with any of the new societies should express such intention.
4. The employees who opted to sever their contracts were paid by Matungulu Farmers' Co-Operative Society Ltd while those who opted to be absorbed by the Respondents carried forward their benefits.
5. Sometime in 1997, the Respondents agreed that they would contribute towards payment of benefits due to the absorbed employees from Matungulu Farmers Co-Operative Society Ltd. The liquidator computed the benefits.
6. On 9 July 1997, the Liquidator wrote to the Respondents forwarding schedules of terminal benefits owing to the employees who had been absorbed.
7. A meeting held 12 May 1998 and attended by the Ministry of Labour resolved that the Respondents would pay the employees who were not absorbed their terminal benefits.

8. The benefits were not paid and several meetings were held. Later the Kenya Union of Commercial, Food & Allied Workers (Union) joined the fray.
9. The Union and 5th to 8th Respondents entered into agreements before the Ministry of Labour on 8 February 2001 to pay all the accrued benefits owing to the absorbed employees.
10. The payments were not made and on 23 April 2002, the Union reported a trade dispute to the Minister for Labour and an Investigator was appointed.
11. The Investigator released a report in which he recommended that the employees absorbed by the Respondents be deemed to have moved with their periods of service with Matungulu Farmers Co-Operative Society Ltd, and that the Respondents pay the accrued benefits accordingly.
12. On 14 September 2010, the Union accepted the recommendations. The Respondents did not and this prompted the Union to lodge the present proceedings in Court stating the Issue in Dispute as refusal by the management to pay terminal benefits to several employees.
13. The reliefs sought were
- (i) That the Court will uphold the Ministers findings and recommendations and order the societies to pay their workers their benefits.
 - (ii) That given the period this matter has taken, the Court orders the societies to make these payments within 30 days from the date of the Award.
 - (iii) The Court Orders the Respondent to effect statutory deductions including union dues and make payments as appropriate to the Government of Kenya and the Claimant Union.
 - (iv) The Court orders Mike Kiswili and Co. Certified Public Accountants to produce a copy of the liquidation report containing the distribution of assets and liabilities and Bank Accounts.
 - (v) That costs of this dispute be provided for.
14. The 3rd Respondent filed an *Answer to Memorandum of Claim* on 2 February 2012, the 1st Respondent on 14 June 2012 and the 4th Respondent on 19 March 2012.
15. The Union and 5th to 8th Respondents filed consents in Court on 9 May 2012, settling the disputes as between themselves.
16. In the course of the proceedings, the Respondents raised a preliminary objection on limitation, and in a ruling delivered on 15 January 2015, the Court overruled the objection.
17. On 18 July 2017, the Court directed the parties to file and exchange witness statements ahead of trial. The Claimant filed witness statements from 5 Grievants.
18. However, because the Claimant did not serve the witness statements, the hearing aborted on 17 January 2018.
19. Hearing eventually started on 18 April 2018 and proceeded on 3 July 2018 and 26 November 2018. The Union called 3 witnesses while the Respondents did not call any witnesses or lead any evidence.
20. On 23 November 2018, the 1st Respondent's advocate filed an application seeking leave to cease acting but did not prosecute the said application.
21. The Union filed submissions on 14 December 2018 while the 4th Respondent filed its submissions on 22 January 2019.
22. The Court has considered the pleadings, evidence and submissions. There was a lot of incoherence in the way the Union pleaded and set out its case. The Union may be forgiven for its representative has no law school training.
23. None of the participating Respondents denied that Matungulu Farmers' Co-Operative Society Limited was split/liquidated in 1996 or that the Respondents were offshoots of that split/liquidation.
24. It is also not in dispute that in the notices of termination, the employees were informed by Matungulu Farmers Co-Operative Society Ltd that it would pay the terminal benefits up to point of separation.
25. The parties did also not contest that the terminal benefits owing from Matungulu Farmers Co-Operative Society Ltd were computed and that of some of the employees were paid.
26. It is equally not disputed that the liquidator wrote to each of the Respondents on 9 July 1997 advising them of the benefits owed to the employees absorbed from Matungulu Farmers Co-Operative Society Ltd and requesting that payments be made. The payments were not

made.

27. On 12 May 1998, the Respondents were present in a meeting coordinated by the Ministry of Labour. The Respondents did not dispute liability over the benefits, rather the contested issue was which entity should be held liable for the benefits.

28. The minutes of the meeting suggest that the Respondents agreed that each of them was to shoulder the benefits due to the employees they had absorbed, and that the amount each was to contribute was agreed on.

29. On 29 July 1999, the Respondents in the presence of an Assistant Labour Commissioner agreed that the services of the absorbed employees would be treated as continuous.

30. In another meeting held on 24 January 2000, it was agreed that the Respondents would sign an agreement on the modalities of payment of outstanding dues to the absorbed employees.

31. The Ministry of Labour followed with a letter on 27 March 2000 urging the Respondents to deposit their shares of the contributions with the bank.

32. On 8 February 2001, the Union agreed with 5 of the Respondents on payment of the benefits. Still not all of the Respondents were ready to pay the agreed contributions hence the report to the Minister.

33. The Trade Disputes Act (repealed) which was in operation when the dispute herein accrued had elaborate provisions on the role of the Minister and Investigators appointed to assist him.

34. The Investigator heard submissions from both the Union and the Respondents and made certain findings. He also made recommendations.

35. The parties have not produced any facts to make this Court depart from the findings and recommendations of the Investigator.

36. It is regrettable that most of the Respondents saw no need to participate in the hearing and/or to appear and advance the defences set out in their pleadings.

37. The Union did not lead any evidence or make out a case against the liability of the 4th Respondent. The 5th to 8th Respondents settled their liabilities before trial. Nothing therefore turns on the cases against these Respondents.

Conclusion and Orders

38. The Court in effect will find for the Union as against the 1st to 3rd Respondents in terms of prayers (i), (ii) and (iii) of the Memorandum of Claim.

39. For clarity, the benefits payable to the former employees shall be as computed by the Liquidator.

40. Claims against the 4th to 8th Respondents are declined.

41. Each party to bear own costs.

Delivered, dated and signed in Nairobi on this 8th day of February 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Nyumba, Industrial Relations Officer

For 1st Respondent Muriungi & Co. Advocates

For 2nd Respondent Maithya Mutisya & Co. Advocates

For 3rd Respondent A.M. Mbindyo & Co. Advocates

For 4th Respondent Mrs. Nzei instructed by Nzei & Co. Advocates

Court Assistant Lindsey