



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

CAUSE NO. 53 OF 2018

(Formerly Nyeri ELRC 180 of 2018)

FRANCIS GITONGA MURUCHA & 8 OTHERS.....CLAIMANTS

VERSUS

THE CHAIRMAN & MANAGEMENT COMMITTEE MUIRU

FARMERS CO-OP SOCIETY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants filed suit against the Respondent. They were Francis Gitonga Murucha the factory manager, Jamlick Mbaka Nkuru also a factory manager, Naftary Kirimi Njeru a store keeper, Japhet Mbaka Mboore a machine operator, Peter Murithi, Japhet Ngai, Kinyua Justain all night watchmen, Julius Njagi Nandi a junior clerk and Frankline Mutegi Kanga a cashier. They averred that their salaries had not been paid for 14 months and they thus sought the unpaid salaries, house and medical allowance, annual increments and leave allowance as well as overtime. They also claimed arrears of NSSF dues from November 2016 till February 2018 a total of between 11 and 16 months. They sought damages for the financial embarrassment, costs of the suit plus interest on their dues.

2. The Respondent filed a defence in which it was averred that the Respondent is a co-operative society founded in 1998 and its core business is to receive coffee, pulping, drying and marketing coffee on behalf of its members. The Respondent averred that production has slumped downwards due to a combination of factors such as low rainfall, coffee diseases, low market prices all leading to members opting to grow other crops in place of coffee. It was averred that the low coffee production affected financial operations of the Respondent which also affected the payment of salaries to the employees and their allowances. The Respondent averred that it was Government policy that 80% of the proceeds after the coffee is auctioned to be paid to members and the remaining 20% be applied to the operations of the Respondent which includes the salaries of the employees, the repairs and maintenance of the machinery as well as processing of the coffee, stationery and the training of its members. The Respondent averred that the Claimants were all along aware of the operational challenges the Respondent was facing and that the Respondent had always endeavoured to pay their salary arrears and allowances once the coffee sales are done at the auction. The Respondent averred that it sought the return to work by the Claimants but this was resisted by the Claimants who have not been at work since 15th January 2018. The Respondent urged them to await the sales for the 2017/2018 years to enable it pay their dues and that the suit was filed in bad faith as the parties were negotiating the resolution of the matter. The Respondent also averred that the computations from the muster roll differed with those of the Claimants. The Respondents asserted that the Claimants were in breach of the negotiated agreement between the Respondent and the Claimants' union. The Respondent averred that the Claimants abandoned their employment in contravention of due process and that the claim was thus not merited and that the suit should be dismissed with costs.

3. The Claimants testified through Francis Gitonga Murucha the 1st Claimant herein. He testified that they had not abandoned their work and that they were still on duty. He claimed the dues they were entitled to as per their claim stating that the Respondent had failed to pay their dues. The Respondent presented Edward Muturi Gitari the secretary manager of the Respondent and Japhet Mutegi Nyaga the chairman who stated that the sale of coffee was usually towards the end of the year and the Claimants were well aware of the challenges the Respondent had in coffee sales as well as the imperative that 80% of proceeds must be directed to members while only 20% was available to cover operational costs including the salaries of staff.

4. The parties were to file submissions and the Respondent filed its submissions on 4th December 2018 while the Respondent filed submissions on 11th December 2018 before the file was transmitted to me to pen my decision at Nyeri. The Claimants submitted that the coffee crop is harvested twice a year and therefore there was dishonesty on the part of the Respondent who all along was asserting that the crop is only harvested in November/December season. The Claimants submitted that the policy on the ratio to be applied to salaries and operational expenses could not supersede the law and cited Section 18(2)(c) of the Employment Act on the payment of wages. The Claimants submitted that there was no agreement in the CBA for payment only in the months of November or December.

5. The Respondent submitted that the Claimants were in breach of negotiated terms of a CBA between the Respondent and the Claimants' union. The Respondent submitted that true to their threat to abandon work if their dues remained unpaid within 14 days, the Claimants left their work stations and have never resumed duty to date. The Respondent submitted that if they had intended to issue a strike notice they should have followed the due process as required by law. The Respondent submitted that the Claimants suit should be dismissed and the relief sought ought not be granted.

6. The Claimants abandoned their employ and therefore the issue of termination does not arise. They ought to have given a longer period of notice as the 14 days they gave was inadequate as notice. They therefore did not abide by the law in issuing their notice to quit. However, despite their infraction, the law does not permit an employer to withhold salaries for such a period. In this case, the salaries were withheld for 13 or so months. The payment schedules the Claimants presented indicated a longer period. The Claimants had among their number the factory manager, the cashier and the junior clerk. They should have produced records to show the non-payment for the 16 months they alleged. The Respondent ceded that they were unpaid for roughly one year and availed computations for this. The Respondent dutifully calculated house allowance in the sums due as salary and there were therefore no compounded arrears as suggested in the claim. The issue of overtime and the underpayment to NSSF and NHIF were misapprehended by the Claimants. There is no contribution that the employer is required to make for NHIF or NSSF as the employer makes the deductions and processes the same without adding a cent. The Claimants are entitled to receive salaries for days worked. In the final result, the sums due therefore for each Claimant before the court are as follows:-

a. Francis Gitonga Murucha – Kshs. 297,266.05

b. Jamlick Mbaka Nkuru – Kshs. 303,866/-

c. Naftary Kirimi Njeru – Kshs. 287,470.95

d. Japhet Mbaka Mboore – 270,739.30

e. Peter Murithi – Kshs. 215,687.60

f. Japhet Ngai – Kshs. 215,687.60

g. Kinyua Justain – Kshs. 215,687.60

h. Julius Njagi Nandi – Kshs. 272,797.10

i. Frankline Mutegi Kanga – Kshs. 317,605.05

The Claimants will also have interest on the sums at court rates from the date of judgment till payment in full.

It is so ordered.

Dated and delivered at Meru this 7th day of February 2019

Nzioki wa Makau

JUDGE