



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 201 OF 2012

KENYA UNION OF PRINTING, PUBLISHING

PAPER MANUFACTURERS AND ALLIED

WORKERS.....CLAIMANT

VERSUS

TISSUE KENYA LIMITED.....RESPONDENT

JUDGMENT

1. The Kenya Union of Printing, Publishing, Paper Manufacturers & Allied Workers (Union) instituted legal proceedings against Tissue Kenya Ltd (Respondent) on 9 February 2012 and the Issue in Dispute was stated as Wrongful verbal termination of the employment of:

1. Jane Nyambura
2. Esther Wambui
3. Carolyne Wanyaga
4. Florence Wanjiku (Grievants).

2. In its Response, the Respondent contended that the Grievants were engaged on 1 year contracts and deserted work after declining to acknowledge warning letters issued after reporting to work late.

3. The Respondent also faulted the findings and recommendation of a Conciliator appointed by the Minister for Labour.

4. The Cause was heard on 21 June 2018 and 14 November 2018. The 4 Grievants testified while the Respondent opted not to lead any evidence.

5. The Union filed submissions on 30 November 2018. The Respondent's submissions were not on file by this morning.

6. The Court has considered the pleadings, evidence and submissions on record.

Unfair termination of employment

7. Section 35 of the Employment Act, 2007 envisages written notice of termination of employment while section 41 of the Act contemplates a hearing (oral or through correspondence).

8. All the Grievants testified that they joined the Union and this alarmed the Respondent which then instructed that they resign from the Union.

9. According to the Grievants, when they declined to resign from the Union, the Respondent locked them out on 4 April 2012 allegedly for reporting late to the work. The Grievants denied reporting to work on that date and stated they reported at 7.30 am to start work at 8.00am.

10. The Grievants also stated that a supervisor asked them to leave and return on 6 April 2012 and that on this latter day, they were denied entry and were instead issued with warning letters which they declined to sign after which they were dismissed.

11. The Grievants then reported to the Union which in turn made a formal report of trade dispute to the Cabinet Secretary for Labour.
12. The Conciliator issued a report on 2 August 2011 in which he made a finding that the Grievants were in the workplace by 8.00am and that the termination of the Grievants contracts were unfair.
13. The Grievants were not issued with written notices of termination of employment as required by section 35(1)(c) of the Employment Act, 2007 (they were paid by the month).
14. The Respondent did not prove that hearing(s) as contemplated by section 41(1) & (2) of the Act were conducted.
15. The Court is therefore satisfied that the Grievants have proved that there was unfair termination of employment as demanded by section 47(5) of the Employment Act, 2007.
16. And because the Respondent did not lead any evidence to discharge the burden expected of it by sections 43 and 45 of the Employment Act, 2007, the Court concludes that the termination of the Grievants contracts were not for valid and fair reasons.

Appropriate remedies

Reinstatement

17. Considering the time lapse since separation, the Court is of the view that reinstatement would not be an appropriate remedy.

Compensation

18. 1st Grievant served for about 6 years, the 2nd Grievant for about 5 years, the 3rd Grievant for about 5 years and the 4th Grievant for about 6 years.
19. In light of the length of service, the Court is of the view that the equivalent of 6 months gross wages to each of the Grievants would be appropriate and fair.

Service pay

20. The Grievants were paid severance pay at the end of each contract.

Pay in lieu of notice

21. The Grievants did not produce a copy of any collective bargaining agreement, and the Court will therefore award the default notice in terms of section 35(1)(c) of the Employment Act, 2007.

Leave earned

22. No evidence was led on accrued leave by time of separation.

Days worked

23. The Grievants are entitled to earned wages, but they did not quantify the same. The relief is declined.

Conclusion and Orders

24. The Court finds and holds that the termination of the Grievants contracts were unfair and awards

1st Grievant

(i) Pay in lieu of notice	Kshs 8,500/-
(ii) Compensation	Kshs 51,000/-
TOTAL	Kshs 59,500/-

2nd Grievant

(i) Pay in lieu of notice	Kshs 8,200/-
(ii) Compensation	Kshs 49,200/-

TOTAL **Kshs 57,400/-**

3rd Grievant

(i) Pay in lieu of notice Kshs 8,200/-

(ii) Compensation Kshs 49,200/-

TOTAL **Kshs 57,400/-**

4th Grievant

(i) Pay in lieu of notice Kshs 8,500/-

(ii) Compensation Kshs 51,000/-

TOTAL **Kshs 59,500/-**

25. Each party to bear own costs.

Delivered, dated and signed in Nairobi on this 1st day of February 2019.

Radido Stephen

Judge

Appearances

For Union Mr. Nyumba, Industrial Relations Officer

For Respondent Mr. Swaka instructed by Muchoki Kangata & Co. Advocates

Court Assistant Lindsey