



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 526 OF 2017

BETWEEN

**KENYA BUILDING, CONSTRUCTION, TIMBER & FURNITURE
INDUSTRIES EMPLOYEES UNION.....CLAIMANTS**

VERSUS

GALAXY TIMBER COMPANY LTD.....RESPONDENTS

Rika J

Court Assistant: Benjamin Kombe

Ms Chege, Disputes Officer, for the Claimant Union

No Appearance for the Respondent

JUDGMENT

1. This Claim is brought on behalf of 15 Grievants, whose names are captured in a list contained at page 16 of the Claimant's Documents.
2. The Claimant seeks a total sum of ksh.786,868 from the Respondent, being redundancy benefits.
3. The dispute was reported to the Cabinet Secretary in charge of Labour Social Security and Services, on 1st April 2014, under Section 62 of the Labour Relations Act 2007.
4. The issue in dispute was stated to be:

“Unlawful declaration of redundancy of 15 employees, as per attached list”.
5. The dispute was taken before the Conciliator, Mr. J. K. Katana, Labour Officer Mombasa County.
6. Parties were directed to file their respective proposals, through a letter addressed to them by the Conciliator, on 4th August 2014.
7. Conciliation meeting was scheduled for 22nd August 2014. The Claimant attended the meeting, while the Respondent did not.
8. A second meeting was scheduled for 24th October 2014. The Parties were at some point heard, and a Report dated 20th March 2015, prepared by the Conciliator.
9. The Conciliator made the following observations, *inter alia*:-
 - a) The Respondent did not comply with Section 40 of the Employment Act.
 - b) Redundancy benefits are not negotiable.

c) Payments made to the Employees by the Respondent did not meet the requirements of Section 40 of the Employment Act.

10. He recommended payment to the Employees, of 2 month' salary in lieu of notice for Employees who had worked for more than 4 years, and 1 month salary in lieu of notice for those with less than 4 years of service; 18 months' accrued annual leave at the rate of 2.25 days per each complete month served; leave travelling allowance under Building & Construction Wages Order 2012; severance pay at 16 days' salary for each complete year served; public holidays and rest days; underpayment of salary for Grievant Charles Doloji, a Painter; and service pay for those who were not subscribed to N.S.S.F.

11. The Claimants were agreeable to the recommendations of the Conciliator. The Respondent did not agree necessitating the filing of the Claim herein.

12. The Claim is based on the recommendations of the Conciliator.

13. The Respondent was served with the Notice of Summons and Statement of Claim as shown in the Affidavit of Service on record.

14. Service did not elicit any response from the Respondent.

15. The dispute came up for formal proof on 20th March 2019. The Claimant urges the Court to adopt the Conciliator's Report and allow the Claim.

The Court Finds:-

16. The Claim is uncontested.

17. Parties appeared before the Conciliator, and presented their respective proposals.

18. The Conciliator carefully, weighed the proposals and counterproposals made by the respective Parties, and came up with recommendations.

19. The Court cannot find fault with the conciliation process and outcome, save perhaps for the observation made by the Conciliator, that redundancy benefits under Section 40 are non-negotiable.

20. There are no employment benefits under the Employment Act, which are non-negotiable.

21. Employment contracts are based on negotiations. The only requirement under employment law is that Parties shall not negotiate below certain minimum standards set under the law. Otherwise all employment benefits are negotiable.

22. The Court is satisfied that the total sum of Ksh.786,868 pleaded by the Claimant, reflects the recommendations made by the Conciliator. Particulars of Claim are pleaded at page 16 of the Claimant's documents.

IT IS ORDERED:-

a) It is declared redundancy was unlawful.

b) The Respondent shall pay to the Grievants, through the Claimant Union, a total sum of ksh.786,868 in redundancy benefits

c) Costs to the Claimant.

Dated and delivered at Mombasa this 28th day of March 2019.

James Rika

Judge