



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 91 OF 2015**

*(Before Hon. Justice Mathews N. Nduma)*

**SHADRACK MUJISI.....CLAIMANT**

**VERSUS**

**KAIMOSI TEA ESTATES LTD.....RESPONDENT**

**JUDGMENT**

1. The suit was brought by the claimant on 24<sup>th</sup> March 2015 seeking a declaration that the termination of his employment was unlawful and that he was underpaid during the tenure of his employment and that he be paid benefits set out under paragraph 8 of the memorandum of claim, including two months salary in lieu of notice, overtime for 156 months, gratuity and house allowance for the 31 years worked.

2. The suit was defended vide a memorandum of defence filed on 22<sup>nd</sup> May 2015 in which the respondent pleads that the claimant was retired upon attaining the age of 55 years; was given two months' notice from 1<sup>st</sup> November 2012 effective 31<sup>st</sup> December 2012. That the claimant was paid retirement benefits in the sum of Kshs. 98,727, less loan deduction of Kshs. 58,029 and he received net payment of Kshs. 40,695. That the claimant acknowledged receipt of the final benefits. That the claimant was retired with 17 others. That the claimant has no valid claim against the respondent and the claim be dismissed with costs.

3. The claimant testified as CW1 that he was employed by the respondent in 1999 until he was retired in the year 2012. That he was underpaid and was not paid house allowance and overtime. That he worked as a Tea Picker and his last salary was Kshs. 1,100 per month. CW1 produced his pay slip for November 2012. That he plucked tea from 7 am until 6p.m. There was no lunch break. That they were paid according to the quantity of tea plucked. That he was paid Kshs. 40,000 upon retirement. That he was born in the year 1957 and was retired in December 2012 at the age of 55 years. That he was given two months' notice of retirement. He was not a union member. That he was paid during leave. CW1 stated under cross examination that he did not know that the minimum quantity of a tea picker was supposed to achieve was 840 Kg. That he worked for 13 years. CW1 acknowledged that he was paid gratuity of Kshs. 98,724 and that he had a loan of Kshs. 58,029 which was deducted from the terminal dues. CW1 stated that he paid for his house because he could not get company houses which had been fully occupied. CW1 said he did not see notices by the respondent that no house allowance was payable because the company had adequate houses. CW1 said he asked for a house but was not given. CW1 said that he was not paid bonus and overtime for hours exceeding 8 hours per day for 5 days and 6<sup>1/2</sup> hours on the 6<sup>th</sup> day provided in the CBA. That he was forced to work until 6 pm. That the union did not assist him.

4. RW1 Dan Kipchirchir Kepene told the court that he was a manager of the respondent in the field Division from 2008. That CW1 retired upon attaining retirement age as a picker. That CW1 was a union member. That retirement age as per the CBA was 55 years. That the claimant was lawfully retired and paid all terminal benefits. That CW1 never raised any complaint whilst he worked. That he was paid on piece rate basis. That CW1 chose not to stay in company houses that were available for tea pickers.

5. That workers paid on piece rate are not entitled to overtime. He was paid per month as per the CBA Kshs. 8,975 per month. This was the minimum target per month which is equivalent to 863 kilograms of Green Tea Leaves. If the target was not reached payment was less. That the claim is misconceived. That Gratuity was calculated at the rate of 22 days salary for every completed year of service. That the suit be dismissed.

**Determination**

6. The issues for determination are:

(a) Whether the claimant has made out a case of wrongful termination of service.

(b) Whether the claimant is entitled to the reliefs sought.

7. In answer to issues (a) and (b) above, the court has carefully analyzed the facts before court and has come to the conclusion that the claimant served the respondent as a Tea Picker for 13 years. That the claimant was paid at piece rate based on a monthly target of 863 kilograms of Green Tea Leaves picked. That in terms of the CBA between the respondent and the union, the retirement age of Tea Pickers was 55 years. That the claimant was retired with effect from 30<sup>th</sup> December 2012. That at the time he had attained 55 years having been born in 1957. That the claimant had not raised any complaint on the terms and conditions of work during the period he worked for the respondent. That the claimant had the option to stay in company house but had decided not to. The claimant was not paid house allowance therefore since employees had been informed accordingly by a notice. The claimant has not proved that he was entitled to payment of overtime. He was employed on piece rate basis and was up to him to meet the target set to achieve full pay. These are negotiated terms with the union. The claimant was indeed a unionsable worker and his terms of service were regulated by the CBA.

8. The court is satisfied that the claimant received full terminal benefits upon retirement and is not entitled to the terminal benefits claimed in the suit all at all.

9. The claims for two months salary in lieu of notice; gratuity; overtime and house allowance are therefore misconceived, and without merit and same are dismissed.

10. The claimant having been paid full terminal benefits ought not to have brought this suit. The claimant is an aged person without any further source of income upon being retired on a fixed gratuity.

11. The court will in the circumstances dismiss this suit with no order as to costs.

**Judgment Dated, Signed and delivered this 9<sup>th</sup> day of July, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Osodo for claimant

Mr. Ouma for Respondent

Chrispo – Court Clerk