



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 286 OF 2016

(Before Hon. Justice Mathews N. Nduma)

ALFRED OGINGA IGONY.....1ST CLAIMANT
ARATI OMWANGE.....2ND CLAIMANT
BONFACE OBIERO.....3RD CLAIMANT
CLEMENT AYIENDA.....4TH CLAIMANT
DAVID MOSOBA.....5TH CLAIMANT
DISMAS OMWOYO.....6TH CLAIMANT
EVANS ORANGL.....7TH CLAIMANT
FRANCIS KEBWAGE.....8TH CLAIMANT
GRACE NYABOKE.....9TH CLAIMANT
HANDSON OGANGA.....10TH CLAIMANT
HELLEN OYUNGE.....11TH CLAIMANT
HENRY OMBOGO.....12TH CLAIMANT
IBRAHIM ONDARA.....13TH CLAIMANT
ISAC OSORO.....14TH CLAIMANT
JAMES ONYAMBU.....15TH CLAIMANT
JAMES SIBWOGA.....16TH CLAIMANT
JENEPHER NYABERI.....17TH CLAIMANT
JANET ORINA.....18TH CLAIMANT
JERUSA ONCHARI.....19TH CLAIMANT
JOWL MOCHUMA OKERO.....20TH CLAIMANT

JOEL NYAKORA.....	21 ST CLAIMANT
JOHN BONGOYE.....	22 ND CLAIMANT
JOHN NYABOGA.....	23 RD CLAIMANT
JOSEPH ONDARI.....	24 TH CLAIMANT
JOSEPHINE NYAMORI.....	25 TH CLAIMANT
LUCY BARONGO.....	26 TH CLAIMANT
MARCELLA MACHOMA.....	27 TH CLAIMANT
NATHAN OSORO.....	28 TH CLAIMANT
PETER OKWENDA.....	29 TH CLAIMANT
RICHARD OBONYO.....	30 TH CLAIMANT
RICHARD TANL.....	31 ST CLAIMANT
SIMION OYONGO.....	32 ND CLAIMANT
SIMON MOKAYA.....	33 RD CLAIMANT
ZIPORAH MATUNDRA.....	34 TH CLAIMANT
JANE NYAMBANE.....	35 TH CLAIMANT
AMOS MAGEMBE.....	36 TH CLAIMANT
ELIZABETH MORAA.....	37 TH CLAIMANT
DOMNIC ONYUOKI.....	38 TH CLAIMANT
EVALINE OSEKO.....	39 TH CLAIMANT
IBRAHIM NYAMGARESI.....	40 TH CLAIMANT
JULIANA ORINA.....	41 ST CLAIMANT
RHODA KWAMBOKA.....	42 ND CLAIMANT
SELINA NYABONYI.....	43 RD CLAIMANT
MESHACK KEINDA ONDARI.....	44 TH CLAIMANT
NEMWEL OGECHI.....	45 TH CLAIMANT
JAMES NYABWANGA.....	46 TH CLAIMANT
RAEL OTWEKA.....	47 TH CLAIMANT
LABAN NYANDEGE.....	48 TH CLAIMANT
NELSON MOGENI.....	49 TH CLAIMANT
HANNINGTON MARUBE AKUNA.....	50 TH CLAIMANT

MISHAEL OMWENO.....	51 ST CLAIMANT
PENINA OSEKO.....	52 ND CLAIMANT
DISHON MAKORI.....	53 RD CLAIMANT
GLADYS MIRUKA.....	54 TH CLAIMANT
JOSEPH MOMANYI.....	55 TH CLAIMANT
JOYCE KEREBI.....	56 TH CLAIMANT
JOYCE OGECHI.....	57 TH CLAIMANT
MARGARET ORINA.....	58 TH CLAIMANT
MARY MAOBE.....	59 TH CLAIMANT
MARY MAYAKA.....	60 TH CLAIMANT
ONDIEKI NYANDIRI.....	61 ST CLAIMANT
ELIJAH KERONGO.....	62 ND CLAIMANT
ONCHWERI OYARO.....	63 RD CLAIMANT
HESBON ONCHARI.....	64 TH CLAIMANT
NATHAN ONYANGO.....	65 TH CLAIMANT
SAMSON MOSONGO.....	66 TH CLAIMANT
HEZRON MOTARO ONWONG'A.....	67 TH CLAIMANT

VERSUS

OGEMBO TEA FACTORY LIMITED.....RESPONDENT

JUDGMENT

1. On 22nd October 2010, a consent judgment of Kshs. 4,181,720 was entered into in favour of the plaintiffs being terminal benefits arrears which amount has already been paid.
2. A further consent on salary and house allowance arrears was recorded on 4th November 2011, when the claimants were paid the balance of terminal benefits due to the remaining plaintiffs of Kshs. 265,349.00 together with accrued interest of Kshs. 157,885.55 making it total payment of Kshs. 423,331.59.
3. The said consents were based on CBA for the year 2001-2002.
4. The issue in dispute is whether there were further payments of arrear salary and house allowances based on subsequent CBA's for the period 2003-2004 and 2005-2006. These were signed on 3rd August 2006 and were registered on 10th August 2006.
5. Were these two CBA's in place at the time of retrenchment and if not could their terms apply to the retrenchees retroactively for the years 2003 to 2006?
6. That is the issue to be answered from the evidence before court.
7. The documentation upon which the 67 claimants rely is dated 7th August 2018 and filed on 9th August 2018 after RW1 had testified and closed the claimant's case.
8. Whereas the claimants argue that the subsequent CBA's though not registered at the time of retrenchment are applicable to them. The respondent argue to the contrary and prays the court to find that the claims by the claimants were fully settled and no further claims are

subsequently permissible.

Determination

9. The issue for determination is whether the claimants have proved their claims under 2003-2004 and 2005-2006 CBA's signed on 3rd August 2006 and registered on 10th August 2006.

10. Claimants argue that CBA arrangement does not allow for a vacuum in terms of *Section 59 of LRA* and whether or not the subsequent CBA's had been registered at the time of retrenchment. Though this has not been proved by the respondents could not negate the negotiated terms for the period not covered by 2001-2002 CBA prior to the retrenchment.

11. The claimants further submit that the compensation filed by Maina Gachari, Accountant on 9th August 2018 was not controverted at all by the respondent and so the amount claimed have been proved on a balance of probabilities. The claimants rely on **ELRC. NKR Petition No. 1 of 2013: Stephen George and 64 others vs Kaisuru Limited and 2 others.**

12. From the uncontroverted evidence by George Nyangweso, the retrenchment of 67 claimants was on 30th June 2006 and the CBA's covering the periods 2003-2004 and 2005-2006 respectively were signed on 3rd August 2006 and registered on 10th August 2006.

13. It is common cause that CBA's in most cases are negotiated, signed and registered after the period covered have passed. The reasons for the delay in concluding the CBA's earlier have not been canvassed in this case. What is beyond peradventure is that the two documents cover period when the 67 claimants were in employment and are entitled to backdated payment of the terms and condition covered in the two documents whether or not they were still in employment when the CBA's were signed and registered.

14. The case between KNUT, KUPPET and TSC on backdated retirement benefit well illustrate this fact. The two CBA's for the period 2003-2004 and 2005-2006 speak clearly on the period covered that those period cover terms and conditions of employment of the 67 claimants before they were retrenched.

15. Accordingly, the court finds on the facts of this case and the law applicable that the CBA's for the period 2003-2004 and 2005-2006 cover the 67 claimants from the date each document became effective up to and including 30th June 2006 when the claimants were retrenched notwithstanding that the two documents were subsequently signed on 3rd August 2006 and registered on 10th August 2006.

16. The claimants and the respondent to file computation of arrear salary and allowances accordingly. The claimant to file within 14 days of this judgment and the respondent to file within 14 days of service for final confirmation by the court the amounts due and owing to the claimants regarding the period covered by 2003-2004 and 2005-2006 CBA's.

17. Parties to bear their own costs of the suit.

Judgment Dated, Signed and delivered this 9th day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Ondabu for claimants

Mr. Nyachiro for Respondent

Chrispo – Court Clerk