



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI

CAUSE NO. 20 OF 2018

CONSOLIDATED WITH CAUSES NOs 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 AND 49 OF 2018

- 1. MERCELLA MURINGI KARIUKI**
- 2. MWANGI MUKUNGUKUNGU JOHN**
- 3. HOSEA MWANGI**
- 4. BENSON MWANGI**
- 5. JULIUS CHEGE MBUTHIA**
- 6. JOHN WACHIRA**
- 7. JOSEPH KARIUKI**
- 8. OLIVA MBORA**
- 9. LUCY WANGUI**
- 10. JOSEPH KIMARU**
- 11. PETER CHEGE**
- 12. JAMES MWANGI KIROKO**
- 13. LUCY WANGARI**
- 14. KAMAU KARURI.....CLAIMANTS**

VERSUS

**KIRU FARMERS CO-OPERATIVE
SOCIETY LIMITED.....1ST RESPONDENT
KENYA UNION OF COMMERCIAL
FOOD AND ALLIED WORKERS.....2ND RESPONDENT**

JUDGMENT

1. The Claimants sued the Respondents for the alleged unfair termination of their services. Each of the named Claimants sued the Respondents in individual suits but subsequently the suits were consolidated for purposes of hearing and determination. Each claim will be particularized and a determination given in each case within this consolidated suit.

2. The 1st Claimant Mercella Muringi Kariuki averred that on 19th December 1995 she was employed as a drier by the 1st Respondent

earning a salary of Kshs. 14,674/-. She averred that during the course of her employment, she was a member of the 2nd Respondent and diligently paid all monthly membership subscriptions. The Claimant averred that the 1st Respondent subjected her to unfair labour practices as it refused to submit her NSSF and NHIF dues in addition to also failing to pay her salary arrears. She averred thereby the 1st Respondent occasioned her great financial loss. She averred that when she sought the payment of the statutory deductions and salary arrears her were met with intimidation from area Sub County Commissioner who eventually chased her out of her working station without being given an opportunity to be heard. The Claimant averred that the 2nd Respondent took up the matter for conciliation but the same took excessively long causing her to express her displeasure to the 2nd Respondent and lose trust with the process as the conciliation process was geared to prejudice her and the 2nd Respondent woefully failed to represent her best interests leading to termination of her membership with the 2nd Respondent. She averred that as such the conciliation process and any resolution thereof could not be binding on her. She averred that her termination was unlawful, unfair and therefore she seeks for judgment against the 1st Respondent for compensation for her unfair termination – Kshs. 176,088/-, three months' salary in lieu of notice – Kshs. 44,022/-, service gratuity for 21 years – Kshs. 924,462/-, unpaid house allowance – Kshs. 60,750/-, underpayments – Kshs. 15,692/-, unpaid overtime – Kshs. 51,195/-, unpaid leave allowance – Kshs. 35,216/-, unpaid NSSF and NHIF dues – Kshs. 14,960/-, a refund of unremitted deductions for Mumathi Sacco, a certificate of service, costs and interests of the suit.

3. The 1st Respondent filed a response to the Claimant's claim and denied having employed the Claimant as a drier as she was employed to perform general duties such as washing offices, maintaining the compound and stores. The 1st Respondent denied that the Claimant was subjected to unfair labour practices and further contended that the salary arrears accrued due to delayed payment of coffee proceeds a fact well within the knowledge of the Claimant and the delay therefore does not amount to refusal to pay the same. The 1st Respondent averred that the Claimant and her colleagues engaged in a strike and threatened to damage the properties of the 1st Respondent which prompted the management of the 1st Respondent to call the Police who dispersed those who were involved. The 1st Respondent denied dismissing the Claimant without a hearing and averred that she was represented by her Union after engaging in a strike that caused loss to the farmers of the 1st Respondent as their coffee got spoilt and wasted. The 1st Respondent averred that the strike was illegal and unprotected as it was not called by the Secretary General of the 2nd Respondent. The 1st Respondent denied that the conciliation process was geared towards prejudicing the Claimant and averred that the 2nd Respondent ably represented the Claimant's interests including talking on her behalf. The 1st Respondent averred that the conciliation process through Murang'a Labour County office established that the Claimant together with 17 others were involved in unprotected strike and the termination of their employment was upheld, the conciliator further concluded that the employees who took part in the strike were only entitled to annual leave, salary arrears, overtime and service gratuity. The conciliator computed all the dues of the employees affected and the claimant was entitled to be paid the total sum of Kshs. 752,035.35 as her terminal benefits, which amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents. The 1st Respondent denied the allegations that the Claimant was unfairly terminated and stated that she has only herself to blame for participating in an illegal strike and reiterated that she is only entitled to Kshs. 752,035.35 and not to any other relief having taken part in an illegal strike for 14 days that resulted in huge losses to the 1st Respondent and its members. The 1st Respondent further averred that the 2nd Respondent participated in all conciliation meetings and the 2nd Respondent did not handle the issue of termination casually as alleged by the Claimant.

4. The 2nd Respondent also filed its response to the claim and averred that it reported the existence of a trade dispute on 1st November 2016 to the Cabinet Secretary responsible for Labour. The 2nd Respondent averred that it believed that the termination meted to the Claimant was unfair and unlawful which was the reason why it reported a trade dispute. It averred that a Labour officer from Murang'a office was appointed to act as a conciliator. The 2nd Respondent averred that it acted expeditiously as by a letter dated 16th November 2016 it forwarded to the Murang'a branch office proposals and directed the officials to attend conciliation meetings. The 2nd Respondent averred that the conciliator convened the 1st meeting on 9th February 2017 and thereafter the 2nd Respondent wrote a letter and another meeting was convened on 25th May 2017. The 2nd Respondent averred that by a letter dated 7th July 2017 three employees wrote a letter to it complaining about the conciliation process and in the letter they concluded that unfair termination, unfair conciliation process and unfair representation equals unfair agreement. They then demanded for a meeting within 7 days failure to which they threatened to lose confidence and assume that the 2nd Respondent has withdrawn from the conciliation process and that they would search for alternative process. The 2nd Respondent averred that it convened a meeting with the Claimants on 10th July 2017 to discuss all the issues raised, however on 27th July 2017, the 2nd Respondent received a letter dated 10th July 2017 from the affected employees declining the invitation to attend the meeting that had been scheduled for 10th July 2017. The 2nd Respondent averred that it further received another letter dated 24th July, 2017 from the Claimant terminating the services of the 2nd Respondent. The 2nd Respondent averred that the conciliator convened another conciliation meeting on 1st August 2017 and on 27th September 2017, the 2nd Respondent received the conciliator's recommendation that the affected workers shall be entitled to payment of annual leaves, salary arrears, overtime and service gratuity. The 2nd Respondent averred that by a letter dated 3rd October 2017 it accepted the recommendation to form the basis of settlement. The 2nd Respondent denied any delay in the process and/or any form of inappropriate action on its part. The 2nd Respondent averred that it tried inhouse settlement a few days after termination of the services of the Claimants but they disagreed on 31st October 2016 and that is when the 2nd Respondent reported a dispute with the Labour office. The 2nd Respondent averred that upon the appointment of a conciliator, the dispute was no longer under the province of the 2nd Respondent as the State Department of Labour had now taken over the conduct of the dispute. The 2nd Respondent averred that it was therefore tied by law and the rules of the Court and could not move to the next level before conciliation was concluded and before a labour report was released. It averred that it however reminded the conciliator of his duty whenever he delayed in concluding the matter. The 2nd Respondent averred that it could not have moved to court before a conciliation report and a certificate of conciliation were released and also because under Rule 6(2) it was not proved that the conciliator had refused to act as required. The 2nd Respondent contended that the issue at hand does not fall within the purview of issues that a Trade Union can refer to court and denied having breached the Laws governing expeditious dispute resolution or any of the rules of the Court. The 2nd Respondent averred that it did not have any power to direct or control the conciliation process other than requesting the conciliator to move an finalize the conciliation process. The 2nd Respondent averred that there was also no proof that the conciliator had abandoned his role. The 2nd Respondent averred that the Claimant did not afford him an environment that would have enabled it to act without accusation and counter-accusations on allegations which the Claimants are unable to prove. The 2nd Respondent averred that it did not abandon its members and that it went ahead to conclude the conciliation process and followed up the dispute to its logical conclusion. The 2nd Respondent averred that the Claimants however failed to follow up the conciliator's

report having discredited the 2nd Respondent and decided to file the claim without involving the 2nd Respondent. The 2nd Respondent averred that the Claimants had a right to do so under Section 22 of the Employment Act, but not because the 2nd Respondent had shown any reluctance to file their claim. The 2nd Respondent averred that in any event, the 1st Respondent had not indicated their position regarding the conciliator's report after the 2nd Respondent accepted it and the conciliator had not issued a certificate under Section 69(a) of the Labour Relations Act, 2007. The 2nd Respondent therefore averred that it did not show any iota of breach of duty and on the contrary, it was averred that the Claimants have themselves to blame for impatience, baseless suspicion, unfounded allegations and wrong advice to act against their own Union. The 2nd Respondent averred that the Claimant should have involved them as an interested party to help them bring out issues on unlawful termination to support their case and not enjoining it as a Respondent and throwing away the conciliation report that was largely in their favor. Further the 2nd Respondent averred that the Claimants did not have a right to discredit a trade union which acted within the law to address their grievances and to drag it to court unreasonably and unfairly for which the 2nd Respondent has every right to claim heavy costs. The 2nd Respondent contended that there was no delay as far as dispute resolution mechanism is concerned and the Claimants were fully apprised by the letters before the court save that they were impatient and did not wait for the process to finalize. The 2nd Respondent contended that the grounds under which the Claimant's complaints are anchored are baseless without valid proof and deserve to be dismissed in entirety. It prayed that the court declares that the 2nd Respondent acted expeditiously and within the law in declaring the existence of a dispute and followed it to conclusion, that the 2nd Respondent did not abandon its duty and order that the claim against the 2nd Respondent for general damages and interests which is misplaced should be dismissed with costs to the 2nd Respondent.

5. The 2nd Claimant Mwangi Mukungugu John is the Claimant in Cause No. 21 of 2018. He averred that he was employed by the 1st Respondent as a drier on 16th December 1999. He averred that he was unfairly terminated by the Respondent on 7th September 2016 and that at time of the unfair termination he was earning Kshs. 17,063/-. The 2nd Claimant averred that his termination was unlawful, unfair and that he sought for judgment against the 1st Respondent for; compensation for unfair termination of Kshs. 204,756/-, three months' salary in lieu of notice Kshs. 51,192/-, service gratuity for 20 years Kshs. 1,023,840/-, unpaid house allowance Kshs. 82,826/-, unpaid overtime Kshs. 52,211/-, unpaid allowances for acting duties Kshs. 40,951/-, unpaid NHIF and NSSF Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of service, costs and interests of the suit. The 1st Respondent averred in its defence that the conciliator computed all the dues of the employees affected and the Claimant was entitled to the total sum of Kshs. 854,969.70 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

6. The 3rd Claimant was the Claimant in Cause No. 22 of 2018 – Hosea Mwangi. The Claimant averred that he was employed by the 1st Respondent as a night guard on 10th April 1996 and was unfairly terminated by the 1st Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 17,064/- a month. The Claimant averred that the termination was unlawful, unfair and for that he sought judgment against the 1st Respondent for compensation for unfair termination Kshs. 204,768/-, three months' salary in lieu of notice – Kshs. 51,192/-, service gratuity for 20 years Kshs. 1,023,840/-, unpaid house allowance Kshs. 79,736/-, underpayments Kshs. 9,720/-, unpaid overtime Kshs. 64,499/-, unpaid leave allowance Kshs. 32,986/-, unpaid NHIF and NSSF deductions Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. The 1st Respondent in its defence averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled to the total sum of Kshs. 911,868.20 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

7. The 4th Claimant was the Claimant in Cause No. 23 of 2018 – Benson Mwangi. The Claimant averred that he was employed by the 1st Respondent as a drier on 2nd November 2008 and was unfairly terminated by the respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 16,261/- a month. The Claimant averred that the termination was unlawful, unfair and for that he sought for judgment against the 1st Respondent for compensation for unfair termination of Kshs. 195,132/-, three months' salary in lieu of notice Kshs. 48,783/-, service gratuity for 8 years Kshs. 390,264/-, unpaid house allowance Kshs. 79,503/-, unpaid overtime Kshs. 55,096/-, unpaid leave allowance Kshs. 19,513/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. The 1st Respondent in its defence averred that the conciliator computed all the dues of the employees affected and the claimant was entitled to the total sum of Kshs. 291,790.65 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

8. The 5th Claimant was the Claimant in Cause No. 24 of 2018 – Julius Chege Mbutia. The Claimant averred that he was employed by the 1st Respondent as a drier on 1st March 2001 and was unfairly terminated by the 1st Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 14,374/-. The Claimant averred that the termination was unlawful, unfair and for that he sought judgment against the 1st Respondent for compensation for unfair termination – Kshs. 172,488/-, three months' salary in lieu of notice Kshs. 43,122/-, service gratuity for 15 years Kshs. 646,830/-, unpaid house allowance Kshs. 59,508/-, unpaid overtime Kshs. 54,824/-, unpaid leave allowance Kshs. 34,488/-, unpaid NHIF and NSSF deductions Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. In its defence, the 1st Respondent averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled to the total sum of Kshs. 554,291.60 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

9. The 6th Claimant was the Claimant in Cause No. 25 of 2018 – John Wachira. The Claimant was employed by the 1st Respondent as a drier on 13th November 1995 and was unfairly terminated by the 1st Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 16,736/- a month. The Claimant averred that the termination was unlawful, unfair and for that he sought for judgment against the 1st Respondent for compensation for unfair termination – Kshs. 201,156/-, three months' salary in lieu of notice Kshs. 50,208/-, service gratuity for 21 years Kshs. 1,054,368/-, unpaid house allowance Kshs. 69,399/-, unpaid overtime Kshs. 55,168/-, unpaid leave allowance Kshs. 20,116/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. The 1st Respondent in its defence averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled to the total sum of Kshs. 904,142.20 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

10. The 7th Claimant was the Claimant in Cause No. 26 of 2018 – Joseph Kariuki. The Claimant averred that he was employed by the 1st Respondent as a drier in 1996 and was unfairly terminated by the 1st Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 17,064/-. The Claimant averred that the termination was unlawful, unfair and for that he sought for judgment against the 1st Respondent for compensation for unfair termination – Kshs. 204,768/-, three months' salary in lieu of notice Kshs. 51,192/-, service gratuity for 20 years Kshs. 1,023,840/-, unpaid house allowance Kshs. 70,645/-, unpaid overtime Kshs. 56,234/-, unpaid leave allowance Kshs. 40,954/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. In its defence, the 1st Respondent averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled the total sum of Kshs. 882,003.50 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

11. The 8th Claimant was the Claimant in Cause No. 27 of 2018 – Oliva Mboru. The Claimant averred that he was employed by the 1st Respondent as a night guard on 29th April 1999 and was unfairly terminated by the 1st Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 15,961/- a month. The Claimant averred that his termination was unlawful, unfair and for that he sought for judgment against the 1st Respondent for compensation for unfair termination – Kshs. 191,532/-, three months' salary in lieu of notice Kshs. 47,883/-, service gratuity for 17 years Kshs. 814,011/-, unpaid house allowance Kshs. 79,736/-, underpayments Kshs. 10,287/-, unpaid overtime Kshs. 64,499/-, unpaid leave allowance Kshs. 32,986/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. In its defence, the 1st Respondent averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled the total sum of Kshs. 697,610.65 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

12. The 9th Claimant was the Claimant in Cause No. 28 of 2018 – Lucy Wangui. The Claimant averred that she was employed by the 1st Respondent as a drier on 19th January 1995 and was unfairly terminated by the 1st Respondent on 7th September 2016. She averred that at the time of the unfair termination she was earning Kshs. 15,584/- a month. The Claimant averred that her termination was thus unlawful and unfair. She sought for judgment against the 1st Respondent for compensation for unfair termination of Kshs. 172,488/-, salary for July and August 2016 Kshs. 31,168/-, three months' salary in lieu of notice Kshs. 46,752/-, service gratuity for 21 years of service Kshs. 981,792/-, unpaid house allowance Kshs. 59,508/-, unpaid overtime Kshs. 54,824/-, unpaid leave allowance Kshs. 34,488/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. The 1st Respondent in its defence averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled to the total sum of Kshs. 816,828.90 as her terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

13. The 10th Claimant was the Claimant in Cause No. 29 of 2018 – Joseph Kimaru. The Claimant averred that he was employed by the 1st Respondent as a drier on 30th July 1994 and was unfairly terminated by the 1st Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 18,668/- a month. The Claimant averred that his termination was unlawful and unfair and he sought for judgment against the 1st Respondent for compensation for unfair termination – Kshs. 224,016/-, salary for August and July 2016 Kshs. 37,336/-, three months' salary in lieu of notice Kshs. 56,004/-, service gratuity for 21 years Kshs. 1,232,088/-, unpaid house allowance Kshs. 77,286/-, unpaid overtime Kshs. 55,441/-, unpaid leave allowance Kshs. 20,476/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. The 1st Respondent in its defence averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled to the total sum of Kshs. 990,951/- as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

14. The 11th Claimant was the Claimant in Cause No. 30 of 2018 – Peter Chege. The Claimant averred that he was employed by the 1st Respondent as a drier on 30th July 1994 and was unfairly terminated by the 1st Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 17,064/- a month. The Claimant averred that his termination was unlawful and unfair. He sought for judgment against the 1st Respondent for compensation for unfair termination of Kshs. 204,768/-, three months' salary in lieu of notice Kshs. 51,192/-, service gratuity for 22 years Kshs. 1,126,224/-, unpaid house allowance Kshs. 77,268/-, unpaid overtime Kshs. 55,441/-, unpaid leave allowance Kshs. 20,476/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. The 1st Respondent in its defence averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled to the total sum of Kshs. 949,208.35 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

15. The 12th Claimant was the Claimant in Cause No. 31 of 2018 – James Mwangi Kiroko. The Claimant averred that he was employed by the 1st Respondent as a night watchman on 30th July 1994 and was unfairly terminated by the Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 14,374/- a month. The Claimant averred that his termination was unlawful and unfair. He sought for judgment against the 1st Respondent for compensation for unfair termination of Kshs. 172,488/-, three months' salary in lieu of notice Kshs. 43,122/-, service gratuity for 21 years Kshs. 733,074/-, unpaid house allowance Kshs. 73,165/-, unpaid overtime Kshs. 64,112/-, unpaid leave allowance Kshs. 17,249/-, underpayment January to September 2014 Kshs. 16,353/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. In its defence, the 1st Respondent averred that the conciliator computed all the dues of the employees affected and the Claimant was entitled the total sum of Kshs. 608,038.25 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

16. The 13th Claimant was the Claimant in Cause No. 32 of 2018 – Lucy Wangari. The Claimant averred that she was employed by the 1st Respondent as a drier on 30th July 1994 and was unfairly terminated by the 1st Respondent on 7th September 2016. He averred that at the time of her unfair termination she was earning Kshs. 17,063/- a month. The Claimant averred that her termination was unlawful and unfair. She sought for judgment against the 1st Respondent for compensation for unfair termination of Kshs. 172,488/-, three months' salary in lieu of notice Kshs. 51,189/-, service gratuity for 22 years Kshs. 1,126,158/-, unpaid house allowance Kshs. 59,508/-, unpaid overtime Kshs. 54,824/-, unpaid leave allowance Kshs. 34,488/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. The 1st Respondent averred that the conciliator computed all the dues of the

employees affected and the claimant was entitled the total sum of Kshs. 809,060.45 as her terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

17. The 14th Claimant was the Claimant in Cause No. 49 of 2018 – Kamau Karuri. The Claimant averred that he was employed by the 1st Respondent as a drier on 30th July 1994 and was unfairly terminated by the Respondent on 7th September 2016. He averred that at the time of the unfair termination he was earning Kshs. 15,961/- a month. The Claimant averred that his termination was unlawful and unfair. He sought for judgment against the 1st Respondent for compensation for unfair termination – Kshs. 191,532/-, three months' salary in lieu of notice Kshs. 47,883/-, service gratuity for 22 years Kshs. 1,053,426/-, unpaid house allowance Kshs. 79,736/-, unpaid overtime Kshs. 64,340/-, unpaid leave allowance Kshs. 32,986/-, underpayments Kshs. 14,430/-, unpaid NHIF and NSSF dues Kshs. 14,960/-, refund of unremitted deductions for Mumathi Sacco, Certificate of Service, costs and interests of the suit. In its defence, the 1st Respondent averred that the conciliator computed all the dues of the employees affected and the claimant was entitled to the total sum of Kshs. 873,008.40 as his terminal benefits, an amount which was to be paid in 3 installments as agreed between the conciliator and the Respondents.

18. All the Claimants before the Court sought for general damages against the 2nd Respondent for breach of duty during the conciliation process plus interests on general damages at court rates. As noted at the beginning of this judgment, Cause No. 20 of 2018 was picked as the lead file and the Claimant in Cause No. 21 of 2018 gave testimony on behalf of all the Claimants herein. The 1st Respondent's witness and the conciliator from Murang'a Labour Office also testified.

19. The Claimants' case was given by the sole witness John Mwangi Mukungugu who testified that they had been issued with a suspension letter on 26th August 2016 and that on 7th September 2016, they received termination letters from the Respondent. He testified that they had no disputes prior and they did not know why they were suspended. He stated that it was said they had signed a strike notice but he denied signing or issuing a strike notice. He testified that they sued the 2nd Respondent for assuring them that it would represent them but did not inform them of what was happening for 8 months. He stated that they would ask the 2nd Respondent what was going on and the Union would tell them that they were preparing to go to court. He stated that he did not have knowledge of the meetings between the 2nd Respondent and the 1st Respondent as the Union failed to keep them abreast and that is why they terminated their representation by the 2nd Respondent. He stated that they did not have a problem with the computation shown to them at the lawyers office but contended that they were not involved. He testified that they were not shown the conciliation report before and blamed the Union for failing to do what was necessary to resolve the dispute. He stated that their dismissal was without a hearing and with no explanation. He said that the suspension was against the CBA as they did not destroy the property of the 1st Respondent as alleged. He stated that they do not know about the strike and that they did not circulate any notice to the four factories to ensure there was no work. He stated that they did not destroy any weighing machine as no one had been charged with destruction of property. He testified that they were dismissed through a letter and that they did not see the Sub-County Commissioner. He testified that they informed the 2nd Respondent of non-payment and the Union would write letters to the 1st Respondent. In re-examination the 2nd Claimant confirmed that the strike notice was shown to him but he maintained that the signatures were taken from files they used to sign when they attended meetings and that the list would have been from those meetings.

20. The 1st Claimant Marcelina Murigi Kariuki also testified and stated that she was employed at the 1st Respondent. She stated that she did not understand why she was in court. She testified that she never went to the Labour Office and did not know who went there.

21. The 1st Respondent's witness was Mr. Ephantus Maina Githu the chairman of the 1st Respondent. He relied on his statement and stated that a notice to go on strike after 14 days was sent to them on 4th August 2016 by the Claimants. He said that the notice was taken to his shop by Mr. Benson Mwangi one of the employee at the society and the 4th Claimant herein. He stated that he was called and informed to go and collect it. He testified that the 1st Respondent did not receive a notice of strike from the 2nd Respondent. He stated that the list of employees accompanied the notice Benson Mwangi was No. 27 in the list. He testified that he represented Kora Factory and that he saw the procession of the employees at Kora but when he went to Kiruru Factory they had dispersed. He testified that the next day they went to Kiruru Factory, the chairlady tried to negotiate with the Claimants but they were adamant and that thereafter the Claimants were sent away by the AP Commandant in Mathioya Sub County. He stated that the Claimants had closed the door where the indicator of the weighing machine is kept and destroyed the weighing machine of Karuru Factory and that they also threatened farmers and coffee went to waste. He testified that the Claimants were terminated before the union came on board and that the Union participated at the conciliation process and the Claimants' representatives were present at the meetings but they stopped attending meetings at the time the Conciliator told the 1st Respondent what to pay and it agreed with the figures. He stated that the Claimants rejected the conciliation because they came to court. He said he did not have evidence of the Claimants attendance to those meetings. In cross-examination he confirmed that there was no received stamp on the letters and that the letters were not signed. He stated that the strike took place on 23rd August 2016 and the Claimants never came back to work and were suspended on 26th August 2016.

22. The 2nd Respondent's witness was Mr. Edward Mwangudza who was the conciliator in the dispute stated that he called parties after appointment and the conciliation meetings commenced on 13th December 2016. He stated that another meeting was scheduled for 9th February 2017 and he stated that John Mukungukungu, Olivia Mhora, Joseph Kimaru and Julius Chege were some of the Claimants who attended. He stated that 3 union officials also attended. He testified that every time there was a meeting the employees were represented even though it took time for them to agree. He stated that they agreed on overtime and the CBA was to apply to gratuity. He said that in regard to notice and compensation that these were however were left out as the strike was against the law. He testified that the last meeting took place on 1st August 2017 when the calculation was approved by both parties and witnessed by himself. He stated that he prepared the report and the 1st Respondent adopted it and there was no complaint by the employees on the report. He stated that even though he received a letter from the employees terminating their membership from the union, he proceeded with the conciliation process because there was no letter terminating his services as a conciliator. He testified that there were about 18 employees who were involved in the unprotected strike and that the issues that were isolated for conciliation were annual leave, salary arrears, overtime and terminal benefits. He testified that parties agreed on an amount of over Kshs. 15 million that was to be paid in three installments since the societies were going through financial difficulties and that the 2nd Respondent being the representative of the employees agreed to the said proposal.

23. The Claimants' submitted that the 1st Respondent through its witness averred that the Claimant had engaged in an illegal strike yet the witness produced a notice of strike which he confirmed had no receipt stamp on its face. It was submitted that the witness confirmed that the Claimants had no authority to issue strike notices. The Claimants submitted that the Respondent had failed to show how they could have issued the strike notice. The Claimants submitted that the 1st Respondent had failed to call any farmer who had not taken coffee to the factory because the Claimants had told them not to make deliveries of coffee. The Claimants submitted that the 1st Respondent violated Section 41 of the Employment Act by failing to take them through a disciplinary process before terminating their services and that this amounted to unlawful termination. The Claimants urged the court to hold as such. The Claimants submitted that the conciliator indicated to the court that some of the Claimants had attended the conciliation meeting and had agreed to its findings, he however, failed to produce any formal minutes of the meeting nor did he have any certified records from Murang'a Labour Office since he was retired. The Claimants submitted that the bundle of documents relied upon by the 1st Respondent were not official documents and the same could have been prepared in order to defeat the course of justice for the Claimants. The Claimants submitted that the conciliator proceeded with the conciliation process even after being advised that the Claimants had withdrawn from the 2nd Respondent and finally got into an agreement binding the Claimants despite the clear advice to him that the Claimants had terminated the 2nd Respondent's services. The Claimants further submitted that the conciliator supported the 1st Respondent's allegation that it was going through financial difficulties without ascertaining the impecuniness of the 1st Respondent, hence occasioning the Claimants great loss. The Claimants urged the court to find the conciliator was not neutral as required by law and that the 2nd Respondent due to its failure to aid the Claimants it failed in its duty. The Claimants submitted that the 2nd Respondent did not rebut the allegation of misrepresentation nor did it demonstrate to court the action it took in its efforts to regain the confidence of the Claimants or how best it sought to help them. The Claimants submitted that it was on account of this failure in duty that they had sued the 2nd Respondent. They urged the court to order a payment on a one-off basis in the event the court is inclined to consider the conciliators award. They sought the costs and interests of the suit from the date of filing.

24. The 1st Respondent submitted that the Claimants stated that they were terminated but they did not indicate the reason for their termination. It submitted that it was as if the employer woke up on 7th September 2016 and decided that a good number of employees including the Claimants had to be sent home without any reason whatsoever. The 1st Respondent submitted that its witness explained that the Claimants had issued a strike notice that was accompanied by the names and signatures of 35 employees including the 14 Claimants. The 1st Respondent submitted that it served all the Claimants who were among the striking workers with suspension letters. After the management met, it was resolved that their services be terminated. The 1st Respondent submitted that the Claimants denied being the authors of the notice dated 4th August 2016 because it was not signed and it did not have a receiving stamp and they also claimed that the sheet with their signatures was for another meeting. The Respondent pointed out the Claimants however failed to notice that on top of the document there was a title "staff meeting 4.8.2016" which the 1st Respondent submitted showed that it was in their so called staff meeting that they made a resolution to go on strike and they appended their signatures. The Respondent submitted that the Claimants did not file any document to deny that they were engaged in the strike. The 1st Respondent relying on the case of **Inter-Public Universities Council Consultative Forum of Federation of Kenya Employers v Universities Academic Staff Union and 5 Others [2018] eKLR** submitted that the Claimants failed to inform the 2nd Respondent about the strike despite them being its members. It submitted that the strike was therefore illegal and unprotected as it was not called by the secretary general of the 2nd Respondent. Further, it was submitted, there was no evidence that they sought audience with the employer before they went on strike. They therefore acted in a high-handed manner. The 1st Respondent submitted that it satisfied the requirements under Sections 45(2)(a) and (b)(i) as well as Section 44(3) as the Claimants' summary dismissal was warranted and they were lawfully terminated since they took part in an unprotected strike, threatened farmers not to pick coffee, for closing Kiru Factory, damaging the coffee weighing machine and for willfully neglecting to perform their duties. The Respondent submitted that the court should not adopt the conciliators award which included terminal benefits which the Claimants are not entitled to. It relied on the case of **Kenya Union of Commercial Food and Allied Workers v Kapa Oil Refineries Ltd [2018] eKLR** where the dismissal of the grievant was warranted and it resulted in the loss of benefits as no basis was laid for an award of any relief. The 1st Respondent submitted that the Claimants were not truthful as they also lied that they never attended any conciliatory meetings despite the conciliator giving a list of those who attended and the dates they attended. It was submitted that their evidence is therefore of no probative value. The 1st Respondent urged the court to be guided by the case of **Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Ltd [2014] eKLR** in the event the court awards the Claimants relief for the alleged failure of the 1st Respondent to comply with Section 41 of the Employment Act. It was submitted that in the case the court found the claimant had contributed to the termination of his employment and despite his long service with the respondent for 22 years the court awarded him one month's salary and ordered each party to pay its own costs.

25. The 2nd Respondent submitted that it was not informed by the Claimants of their intended strike as they learnt of the strike after the Claimants reported their dismissal to them upon which the 2nd Respondent acted accordingly by reporting the dispute in accordance with Section 62 of the Labour Relations Act after they failed to agree at the shop floor level with the employer (1st Respondent). The 2nd Respondent submitted that it was wrong and dishonest for the Claimants to allege that they were not involved and posted about the progress of the meetings when they used to attend all the meetings in the conciliator's office. It was submitted that despite withdrawal by 14 out of 18 Claimants from the 2nd Respondent, the 2nd Respondent and the conciliator had a duty to conclude the dispute in accordance to Sections 67 and 68 of the Labour Relations Act since there were other Claimants in the dispute. The 2nd Respondent submitted that it was the one that reported the dispute to the Ministry and had a right to follow up the matter to the end even if it was for only one Claimant. The 2nd Respondent submitted that the Claimants were involved in the whole process and that they were informed of the conciliators report and no single Claimant opposed the same. The 2nd Respondent submitted that having accepted the Labour Officer's report it had no reason to seek a referral certificate since it had accepted the findings of the conciliator. The 2nd Respondent submitted that the Claimants never displayed their dissatisfaction but instead dragged the 2nd Respondent to court even after all efforts to save them from losing the service gratuity. The 2nd Respondent submitted that there were no delays in the conciliation process and that the Claimants have themselves to blame for their impatience, baseless suspicion, unfounded allegations and wrong advice to act against their union. The 2nd Respondent submitted that the Claimants did not have any employment relationship with it other than union membership, thus the Claimants had no right to discredit or taint its image and drag it to court unreasonably. The 2nd Respondent submitted that the Claimants should have enjoined it as an interested party instead. The 2nd Respondent submitted that the grounds under which the Claimants' complaints are anchored are baseless without valid proof and they should be dismissed in their entirety.

26. The Claimants were all former employees of the 1st Respondent and former members of the 2nd Respondent which was the union representing them. The Claimants were apparently engaged in a strike which the 1st Respondent asserts was unprotected. They were dismissed for going on an unprotected strike and the 2nd Respondent reported a dispute to the Ministry of Labour after the dismissal. The Minister appointed a conciliator to arbitrate on the dispute in terms of Section 65 of the Labour Relations Act. The act by the Claimants in disowning the conciliation and the part the 2nd Respondent played is incongruent. They were the ones who initiated industrial action that was the unscheduled and unprotected strike. The strike led to dismissal by the 1st Respondent for which they turned to the 2nd Respondent. It was untenable for them to disown the 2nd Respondent without following the laid down procedure which is resignation from the union and a clear communication to the Conciliator that they have withdrawn their membership in the Union. They should also have moved the Minister and advised him that they wished to abandon the conciliation process with a copy to the 1st Respondent. By merely approaching the court they sought to short-circuit a process that they had initiated without adherence to the law. The conciliation thus was binding upon the Claimants. The 2nd Respondent is correct in its surmise that it ought to have been enjoined as an interested party since it was not an employer of the Claimants or a party that would be liable for their terminal benefits. The 1st Respondent was required to make payments to the Claimants as per the conciliation report which proposed the mode of payment as well. Granted that the Claimants had no business coming to court except for legitimate reliefs, the Conciliators report dated 6th September 2017 and signed by Mr. Edward C. Mwangudza the Conciliator is adopted as the finding of the court. Each Claimant is entitled to the sums tabulated by Mr. Mwangudza totaling Kshs. 15,675,676.25 for the 20 members of the 2nd Respondent and all being former employees of the 1st Respondent. The payments cover annual leaves, salary arrears, overtime and service gratuity. As the dispute never required the interposition of the Court each party will bear their own costs.

It is so ordered.

Dated and delivered at Nyeri this 17th day of October 2019

Nzioki wa Makau

JUDGE

I certify that this is a true copy of the Original

Deputy Registrar