



**REPUBLIC OF KENYA**

**THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1087 OF 2011**

**(Before Hon. Justice Hellen S. Wasilwa on 12<sup>th</sup> March, 2018)**

**JOSHUA OORO & OTHERS ..... CLAIMANTS**

**VERSUS**

**COFFEE BOARD OF KENYA ..... RESPONDENT**

**RULING**

1. This claim was initially filed before the High Court in Nairobi on 23/2/1995 as civil case No. 591/1995. The claim was filed by J.A.B Orenge Advocate for the Plaintiff where they sought orders for payment of terminal dues and other benefits. The Plaintiff herein sued on his behalf and on behalf of 204 other former employees of the Respondent.
2. The Plaintiffs had averred that they were unfairly terminated by the Respondents in 1994 and on 10<sup>th</sup> January 1994, it was agreed in writing between the Defendants, the Ministry of Labour representatives and the Plaintiffs' representatives that the Defendants would pay the Plaintiffs payment in lieu of notice, severance pay and prorata leave at the rate of 13 days per month. That it was an express condition of the agreement that the same would be paid on or before the 18<sup>th</sup> January 1994. The Defendants neglected to pay the same.
3. The Plaintiffs also claimed house allowance, night allowance and overtime payments, which totaled to 82,110.55. The Defendants failed to pay hence this claim.
4. The Defendants filed their defence on 24/3/1995 and an Amended Defence on 25/4/1995 through the firm of Mereka & Company Advocates. They averred that the Plaintiffs case was incurably defective lacking in merit. They also averred that the Plaintiffs lacked *locus standi* to sue on behalf of the former employees of Coffee Board.
5. The Defendant also contended that the Plaintiffs were at all material times casual employees and were only entitled to their daily wages for the days employed and hence the allegations of termination by the Defendants was a misnomer and therefore the Plaintiffs were not entitled to prayers sought.
6. The Defendants aver that Plaintiffs had filed a complaint with the Labour Department culminating in criminal case No. 4402/1994 at the Nairobi Chief Magistrate's Court claiming Kshs.679,317/=. That an agreement was then entered between the Plaintiffs and Defendants that he amounts due be paid. That indeed these moneys were paid and the case was marked as settled and withdrawn by the Chief Magistrate Mrs. Kidula on 18/12/2994.
7. The Defendants therefore contend that this claim is *Res judicata*. The Defendants also aver that severance pay is only payable in case of permanent employees in redundancy and that the Plaintiffs are not entitled to prayers sought such as house allowance, night or overtime allowance as claimed or at all. The defendant therefore want this claim dismissed with costs.
8. This case remained pending hearing at the High Court in Nairobi for a long time and went through the hands of a number of my Learned Colleagues.
9. On 1.3.2011 the Parties entered a consent before Hon. Justice Rawal (as she then was) to the effect that the case will proceed as a test suit and that one witness would testify from each of the job groups on behalf of the others and that if the suit was successful, the rest of the Claimants would proceed individually to pursue their claims with the Respondent. The consent still remains.
10. On 16/5/2011, by consent of the Parties, this matter was transferred to the then Industrial Court of Kenya and filed as Case No. 1087/2011. When the Parties appeared before this Court on 4/5/2017 I gave directions that this case proceed through conciliation. I referred

the matter to a conciliator under Section 5 of the Employment and Labour Relations Court Act. I also directed that the Conciliator files a report before this Court within 2 months.

11. The Conciliator indeed met the Parties and tried to reconcile them and filed a report dated 15/10/2017. The Conciliator's report states that the Claimants submitted to him that they were employees of the Respondent and worked 7 days a week with alternating shifts and were paid every Friday. That they worked in groups called gangs, which were 13 in number doing a specific job. Each Claimant was issued with a temporary pass and casual employment card every week on Mondays. The Claimants worked 10 hours a day which translates to 70 hours per week against 52 hours per week as provided in the law. This translates to 18 hours overtime every week.

12. The report further states that the Claimants averred that their services were terminated in 1994 without lawful excuse and without their terminal dues being paid. The report further indicates that on 10<sup>th</sup> January 1994 it was agreed in writing between the Representative of Parties and the Ministry of Labour Representative that the following terminal benefits would be paid by the Respondents:-

**a) Payment in lieu of notice for 6 days.**

**b) Severance pay for each year of service being 10 days per each year of completed service.**

**c) Prorata leave at the rate of 1.75 days per month in applicable and the money were to be paid on or before Tuesday 18<sup>th</sup> January 1994 in the employer's premises.**

13. The Claimants also submitted that they also filed other claims such as house allowance, night allowance and overtime payments totaling Kshs.82,110.55.

14. The Respondents submitted that the claim was filed by 207 former casual employees of the Respondent who also filed a complaint with the Labour Department. That these employees were paid following by a consent of the Parties on 10.1.1994. The Claimants aver that each of the 207 employees were to be paid 82,110.55 by 18/1/1994 but they were never paid.

15. The Conciliator after hearing the Parties made his findings and concluded that due to the length of time that has passed since this claim was filed, the employees records cannot be traced. He further noted that an additional 50 employees were added to the list after payment made to the Labour office and during the filing of Civil Suit HCCC No. 591/1995.

16. He concluded that these 50 if they suffered the same fate should be paid as others were and all the 256 employees issued with a Certificate of service.

17. The Parties have now filed before Court their respective submissions in response to the report filed by the Conciliator.

18. I have considered the submissions of both Parties. I have also considered the documents on record. What emerges is that indeed way back in 1994, the Respondents were charged at Resident Magistrate's Court in Nairobi in criminal case No. 4402/94 over this case for failing to give notice before termination and also failing to grant leave with full pay.

19. Payment in relation of this criminal case was made and Kshs.679,317/= covering notice pay and leave paid out and the criminal case was withdrawn. The Respondents have submitted that the termination of the criminal case settled the entire claim and that this case is therefore subjudice. In relation to this Hon. J.M. Mugo in a ruling on 11/3/2005 considered this agreement and disagreed with the Respondent and found that the payment of 679,317 did not settle the matter wholly. She made a finding that there is no proof that this sum was paid in full and final settlement of the claims made in this suit.

20. Indeed the criminal case concerned prayer for leave and notice pay only. This claim goes before this and also the claims of house allowance, night allowance and overtime payments totaling to 82,110.55. The Respondents referred to an agreement of the parties dated 10.1.1994 which completed the criminal case and by extension this claim.

21. The Respondent exhibited an agreement dated 10.1.1994 which show that the casual employees terminated will be paid their terminal benefits with effect from 2.10.1991 to 7<sup>th</sup> January 1994 as follows:-

**i) 6 days notice.**

**ii) 10 days severance pay for each year worked.**

**iii) Prorata leave at the rate of 1 ¾ days per month as applicable for each employee.**

**iv) That the moneys will be paid on or before Tuesday 18<sup>th</sup> January 1994 in the employer's premises.**

22. The list of employees to be paid show a total of 106 employees and the amount payable is 679,317/=. A cheque was paid to this effect and a receipt issued by the Ministry of Labour

23. That being the position I make a finding that 206 employees were paid their terminal dues amounting to 679,317 and this settled their case. The remainder of the Claimants not included in this list should also be paid in the same manner. An additional 50 claims form part of the claim. I find that these 50 Claimants form part of the claim. I find that these 50 were never paid and their claim was never concluded in the

agreement of 10.1.1994.

**24.** In this case, I find that claim of the 206 employees is settled. The other 50 remaining Claimants should state who they are in this claim and proceed to have their claim resolved in that regard.

**Dated and delivered in open Court this 12<sup>th</sup> day of March, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance the Parties