



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA

CAUSE NUMBER 876 OF 2017

BETWEEN

- 1. HEZRON ZIRO**
- 2. SHIRLEY WANGUI**
- 3. ALICE MUENDI**
- 4. AHMED ABUBAKR**
- 5. DAVID MASOMBO**
- 6. DANIEL VAA**
- 7. EVANS MUTHAURA**
- 8. HASSAN VIGODI**
- 9. JARED OGETI**
- 10. MWANGANGI MUTHAMI**
- 11. MILLICENT AOR**
- 12. MWINYI HAMISI**
- 13. REUBEN OSIAKO**
- 14. SAMSON GOR**
- 15. AMINA PROJERAH**
- 16. STEPHEN BAYA**
- 17. JANE MUSYAWA**
- 18. RODGERS MUNYA**

VERSUS

RULING

1. The Claimants are/ were Employees of the Respondent Company. They filed this Claim on 27th November 2017. They state that the Respondent failed to pay them salaries totaled at Kshs. 6,730,700 as of the date of filing the Claim. They pray for Judgment against the Respondent for payment of this amount; declaration that the Respondent has unlawfully withheld their salaries; and that the Respondent pays to the Claimants certain penalties, costs and interest. They pray for any other suitable relief.

2. The Claimants filed an Application on 22nd November 2017, asking the Court to grant an order of mandatory injunction, compelling the Respondent to pay Employees their salaries. The Application is founded on the Affidavit of the 1st Claimant, sworn on 22nd November 2017. He reiterates the Claimants are still in employment, and have gone without their monthly salaries for many months. They have loans with various financial institutions which have fallen in arrears. It is imperative that the Respondent is ordered to release Employees' salaries.

3. The Respondent filed a Replying Affidavit on 28th February 2018, which was sworn by Respondent's General Manager, Fredrick Opot, on 28th February 2018. He states that close to half of the Claimants have written letters to the Respondent, indicating they intend to withdraw their respective Claims against the Respondent, and have resolved the dispute they have with the Respondent. They have been paid salaries up to November 2017. The Application does not disclose that some of the Claimants, Mwinyi Hamisi and Reuben Osiako, voluntarily resigned. The Respondent states that the Claimants have not satisfied the criteria for grant of an order of mandatory injunction.

4. On 22nd November 2017, the Court directed the Labour Officer, Mombasa County, to investigate if the Claimants are owed salaries by the Respondent, for which period and in what amount. The Labour Officer filed a Report in Court on 13th December 2017. The Respondent's Operations Manager did not supply the information required by the Labour Officer, instead advising that Employees' Welfare, is an issue handled by Directors of the Respondent who are based in Kampala, Uganda. The Operations Manager did however inform the Labour Officer that Employees, including the Operations Manager, have not been paid salaries for some time. The Labour Officer was therefore, not able to give details of salary arrears due to the Claimants.

The Court Finds:-

5. Section 17 of the Employment Act 2007 stipulates that an Employer is bound to pay to the Employee, the entire amount of salary earned by, or payable to the Employee, when such salary is due for payment.

6. The Respondent's Operations Manager, in his communication to the Labour Officer, confirms Employees, including himself, are owed salaries by the Respondent. This admission supports the position of the Claimants that they have gone for months without salaries. Details of Respondent's indebtedness to the Claimants are however, given the lack of the Labour Officer's access to employment records, lacking.

7. The Court is unable to issue an order of mandatory injunction. It is not clear which Employee is owed what amount, and with regard to which months. There are letters exhibited by the Respondent showing some of the Claimants to have expressed their desire to withdraw their respective Claims. Others have written letters of resignation. The employment status of the Claimants is not at this time, clear to the Court. The Court is not certain that all the Claimants intend to go on with prosecution of the Claim, or whether they have reached certain compromises with their Employer. The Claimants state they had not been paid salaries from early 2017. They mostly claim arrears of salaries of 10 months, from January 2017 to November 2017 when they filed this Claim. The Respondent has exhibited a document, 'F-2', however, indicating 20 Employees, among them the Claimants, received salaries for the month of October 2017. The facts need to be established through further evidence. These are factors which militate against grant of mandatory injunction. The Court would perhaps grant an order of mandatory injunction if the Report by the Labour Officer contains details of salary arrears, and if the Claimants were clear on their employment status, and clear about the status of their respective claims. Salaries as observed at the outset are protected under Part IV of the Employment Act, and must be paid as, and when, they fall due. The Court must have details of arrears of salary however, to direct that arrears of salaries are paid through an order of mandatory injunction.

8. In the view of the Court, the matter ought to be heard in full, to enable the Court make an informed decision. It would not be in the interest of justice to give a provisional order, that an Employee who has probably compromised his dispute with the Employer, or who has probably resigned, is paid arrears of salary. Employees need to appear before the Court and clarify their employment status and the status of their respective claims.

IT IS ORDERED:-

a. The Application filed by the Claimants on 22nd November 2017 is rejected.

b. No order on the costs.

Dated and delivered at Mombasa this 11th day of July, 2018.

James Rika

Judge