



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Njuguna v Kenya Tea Development Agency Limited (Cause 895 of 2013)
[2018] KEELRC 2609 (KLR) (12 October 2018) (Judgment)**

Bedan Muigai Njuguna v Kenya Tea Development Agency Limited [2018] eKLR

Neutral citation: [2018] KEELRC 2609 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

CAUSE 895 OF 2013

ON MAKAU, J

OCTOBER 12, 2018

BETWEEN

BEDAN MUIGAI NJUGUNA CLAIMANT

AND

KENYA TEA DEVELOPMENT AGENCY LIMITED RESPONDENT

JUDGMENT

Introduction

1. This is a claim for:

Kshs.

- (a) 3 years gratuity pay 22,650
- (b) 5 days accrued leave 1,250
- (c) 1 month salary in lieu of Notice 7,550
- (d) Redundancy Package offer..... 80,000
- (e) 12 months' salary for unlawful redundancy..... 90,600
- (f) Costs of the suit

2. The respondent has denied the alleged unlawful redundancy and averred that the claimant was fairly and lawfully laid off by his employer Njunu Tea Factory Limited in strict compliance with the employment laws and the claimant was paid his dues in full on 16.12.2002 including:

- (a) Severance pay..... 19,975.00



- (b) 2 months' salary in lieu of notice 15,980.00
 - (c) Overtime..... 599.00
 - (d) Less tax 1,997.50
- Kshs.34,556.50

She therefore prayed for the suit to be dismissed with costs.

3. The suit was heard on 16.4.2018 when the claimant testified as Cw1 and the respondent called her HR Manager factories Mr. Stephen Ngure who testified as Rw1. Thereafter both parties filed written submissions.

Claimant's Case

4. Cw1 testified that he was employed by the respondent on 30.9.1999 and worked until 24.9.2002 when he was served with letter terminating his services on account of redundancy effective 1.10.2002. That after termination he was paid severance pay for 3 years, leave and one month salary in lieu of notice. He contended that he was denied Kshs.80,000 golden handshake as indicated in the circular on redundancy dated 10.12.2001. That he was also denied accrued pay for overtime worked totaling t Kshs.49,473.30.
5. Cw1 prayed for damages for unlawful redundancy for the reason that the area labour officer was never served with redundancy notice before claimant was terminated on account of redundancy. He further prayed for the Kshs.80,000 golden handshake offered for the redundancy, the Kshs.49,473.30 for the overtime worked and one year severance pay that was left outstanding.
6. On cross examination Cw1 admitted that he joined that respondent in October 1999 and left in October 2002. He further admitted that after the termination he was paid severance pay for 3 years (Kshs.19,975), two months salary in lieu of notice (Kshs.15,980), overtime (Kshs.549) and one month's Basic pay (Kshs.7,990) which he admitted that it was properly computed. He therefore confirmed that he was no longer claiming leave and salary in lieu of notice. He however maintained that both his trade union and the Ministry of Labour were never served with redundancy notice prior to his lay off. He admitted that his termination letter dated 24.10.2002 never indicated that he was to be paid Kshs.80,000 golden handshake and overtime. He further admitted that the Kshs.80,000 golden handshake was also not provided for in the CBA. He however clarified that the said Kshs.80,000 golden handshake was contained in the circular dated 10.12 2001 and that Njunu Tea Factory was part of the respondent herein.

Defence Case

7. Rw1 testified that he came to know the claimant from the Company records. He admitted that the claimant was employed by the respondent on 1.10.1999 at Njunu leave base until July 2002 when the respondent was privatized and the claimant among other employees of the respondent who where attached to the factories were transferred to the individual factories. That as at October 2002 the claimant was employed by Njunu Tea Factory Company Limited from which he drew his salary.
8. Rw1 further testified that due to stiff competition from another new factory Junu Tea Factory declared redundancy and the claimant was laid off. That as at the time of the redundancy in October 2002, the CBA in force was the 1999 – 2000 CBA and it never provided for any golden handshake in case of redundancy. He therefore denied that the claimant was entitled to the said Kshs.80,000 golden handshake. He further contended that the claimant was only entitled to overtime pay of Kshs.599



which was paid to him in addition to other dues which were all paid in Njunu Tea Factory Company Limited. He contended that all the affected employees were served with individual redundancy notice but he could not tell whether the labour officer and the trade union were served.

9. On cross examination, Rw1 confirmed that in the defence, the respondent admitted that she employed the claimant and posted hi to Njunu Tea Factory. He denied knowledge of the circular dated 10.12.2001 that provided for an offer of Kshs.80,000 golden handshake for redundant staff but stated that it was not addressed to the claimant. He maintained that there was no other CBA conclude after the 1999 – 2000 that was in force in 2002 when the claimant was laid off. He however could not produce evidence of the terms under which claimants services were transferred to Njunu Tea Factory Co. Ltd.

Analysis and Determination

10. After careful consideration of evidence and submissions the following issues arose for determination
 - (a) Whether the termination of the claimant on account of redundancy was unlawful.
 - (b) Whether the claimant is entitled to the reliefs sought.

Unlawful Redundancy

11. The relevant law in section 16A of the *Employment Act* (repealed) because the cause of action arose before the 2007 *Employment Act*.

The said act barred termination of employee’s services on account of redundancy unless prior notice was served on the area labour officer and the employee’s trade union, among other requirements. The said notice was supposed to state the reasons for and the extent of, the intended redundancy.

12. In this case, the claimant contended that his trade union and the area labour officer were not served with the said mandatory redundancy notice as provided for under section 16A aforesaid. Rw1 did not adduce any evidence to rebut the foregoing default. It is therefore my finding that the claimant has proved that he was unlawfully laid off.

Reliefs

13. The claims for leave gratuity/severance pay were abandoned by the claimant during his cross examination. The claim for one month salary in lieu of notice fails because the claimant admitted that he was paid 2 months’ salary in lieu of notice which consonated well with the termination notice. Likewise the claim for overtime must fail because the claimant was paid Kshs.599 and he has not adduced evidence to prove that he was entitled to more than sum.
14. The claim for Kshs.80,000 redundancy package must also fail because no evidence was adduced to prove that he was entitled to the same. All what was produced by the claimant was a circular dated 10.12.2001, almost one year before he was served with his own redundancy notice. The circular dated 10.12.2001 was not addressed to the claimant and it talked about Early retirement as opposed to redundancy which are two different concepts of separation in employment.
15. Finally, the claim for 12 months’ salary as damages for unlawful redundancy is not grounded on the law or contract. Consequently, it must fail. The repealed Act unlike the 2007 Act never provided for compensation to remedy unlawful and unfair termination of employment otherwise their by salary in lieu of notice plus severance pay.



Conclusion and Disposition

16. In view of the finding herein that there is no basis for awarding damages to remedy the unlawful redundancy, and that the claimant was paid the dues available to him upon redundancy, I find no merit in the suit and proceed to dismiss it with no order as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF OCTOBER 2018

ONESMUS N. MAKAU

JUDGE

