



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 954 OF 2016**  
**BETWEEN**  
**TAILORS AND TEXTILES WORKERS UNION .....CLAIMANT**  
**VERSUS**  
**SUMMIT FIBRES LIMITED .....RESPONDENT**

Grievants: -

1. Francis Kamanda Chengo
2. Daniel Munguti Mulaki
3. Rajab Musa Katana
4. Wilbrod Mnenwa Ndago
5. Duncan Frank Otieno
6. Tobias Matata Mwasombe
7. Joseph Macharia Wachira
8. George Oduori Alekana
9. Stephen Onyango
10. Jonathan Jimbale Genya
11. Benard Mulwa Kioko
12. Said Juma Hamisi
13. Daniel Emmanuel Opiyo
14. Richard Opondo Lala
15. Pharis Kamau Gitachu
16. Cosmas Muia Kitivi
17. Benard Mutiso
18. John Ngari

Court Assistant: Benjamin Kombe

Wycliffe Omondi, Director of Industrial Relations for the Claimant

Walker Kontos Advocates, for the Respondent

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**JUDGMENT**

1. This Claim, filed on 15<sup>th</sup> December 2016, is brought by the Claimant Union, on behalf of 18 former Employees of the Respondent, who were Members of the Claimant Union. The Parties have a Recognition Agreement and a valid Collective Bargaining Agreement. It is claimed the Grievants were employed by the Respondent on diverse dates, in different roles as Machine Operators, Machine Attendants, and Helpers. The Claimant avers on 16<sup>th</sup> August 2016, Respondent's Accountant ordered all Employees who had reported for duty to get out of the workplace. On 17<sup>th</sup> August 2016, Respondent's Director informed the Claimant that all Employees of the Respondent were being placed under an Outsourcing Company. Those who were not willing to work under this new arrangement were dismissed. The Grievants fell in this group. The Claimant prays the Court to give Judgment in favour of the Grievants against the Respondent for:-

a. Reinstatement without loss of benefits.

Alternatively:-

b. Salaries for days worked in August 2016.

c. House allowance for August 2016.

d. 1 month salary in lieu of notice.

e. Accrued annual leave of 2 years.

f. Severance pay at 15 days' salary for every complete year of service.

g. 12 months' salary in compensation for unfair termination.

h. 12 months' salary in damages for breach of contract.

i. Costs of Kshs. 237,000 to be paid by the Respondent.

j. Interest at 19%.

k. Certificates of Service to issue.

2. The Respondent filed its Statement of Response on 11<sup>th</sup> June 2018. Its position is that the CBA between the Parties lapsed on 1<sup>st</sup> August 2016. The Grievants ceased to be Employees of the Respondent effective 30<sup>th</sup> July 2016. The business experienced financial difficulties in 2014. It was agreed following consultations involving the Respondent, the Claimant and the Labour Office, that the Respondent declares redundancies, settles terminal dues, and re-engages the Grievants on term contracts effective 1<sup>st</sup> August 2014. There was written Agreement to this effect, page 1-2 of the Respondent's documents. The Agreement was shared with the Grievants. The Respondent paid all redundancy dues under the Agreement. The Grievants signed discharge vouchers. Subsequently, the Grievants were engaged on term contracts. The last of these contracts lapsed on 30<sup>th</sup> July 2016. The Respondent notified the Grievants there would be no renewal [notices at page 148- 165 of the Respondent's documents]. The Respondent thereafter decided to outsource labour through Insight Management. Those Employees who signed up with Insight Management are still in employment. The Respondent prays the Court to dismiss the Claim with costs.

3. Grievant Number 13, Daniel Opiyo, gave evidence on behalf of the Grievants. Solomon Munyasya Kitheka, Human Resources Administration Manager, gave evidence for the Respondent. Both gave evidence on 13<sup>th</sup> June 2018, bringing hearing to an end. The dispute was last mentioned in Court on 24<sup>th</sup> September 2018, when Parties confirmed the filing of Submissions.

4. Opiyo testified he worked as a Machine Operator. He was employed on 1<sup>st</sup> December 1991. He later became a Machine Attendant, earning a monthly salary of Kshs. 12,574. The Grievants were his Colleagues. They reported to work on 16<sup>th</sup> August 2016. They were advised by Respondent's Accountant to stay out. They were not given reason why they should stay out. Some Employees were allowed in. 18 Employees, the Grievants herein, were locked out. They were not given reason for the decision. There was no notice. They were not asked to defend themselves. The matter was reported to the Labour Office. There was conciliation, which did not yield settlement. Certificate of Unresolved Dispute issued, as shown at page 30 of Claimant's documents.

5. Cross-examined, Opiyo told the Court that his Witness Statement on record states he was employed on 1<sup>st</sup> August 2014. The Statement of Claim affirms Opiyo was employed on 1<sup>st</sup> August 2014. The Grievants did not understand why the Respondent wanted them to contract through a third party. There were discussions involving the Union. Elizaphan Bwonyonte, Assistant General Secretary of the Union, signed the Agreement at page 1-2 of the Respondent's Documents. The Grievants were notified they would be issued new contracts. The Grievants were paid terminal dues in 2014. Date of new appointment is shown as 1<sup>st</sup> August 2014. There were other term contracts after 1<sup>st</sup> August 2014. The last commenced on 1<sup>st</sup> August 2015, and ended 30<sup>th</sup> July 2016. The Grievants did not have contracts on 16<sup>th</sup> August 2016, when they claim they were locked out. Some Employees were allowed to continue working. They were contracted through Insight Management. Redirected, Opiyo testified he was employed in 1991. He was paid terminal dues for the period before 2014. The Claim relates to the period after 2014. He was locked out and could not reach Insight Management. He continued working up to 16<sup>th</sup> August 2016, although his last contract expired on 30<sup>th</sup> July 2016.

6. Kitheka told the Court that in 2014, the Respondent experienced financial constraints. It engaged the Union, and decided to terminate existing employment contracts. Terminal benefits were computed and paid. Employees were to enter into fresh term contracts. They were informed of the changes, received their terminal dues, signed new term contracts, and were happy. The Respondent informed Employees it would not renew the last contracts at the end of July 2016. Cross-examined, Kitheka testified that the old CBA was still in force. The Parties decided to redress the matter the way they did, in the Memorandum of Agreement of 2014. Details of involvement with Insight Management were explained by the Respondent to the Union. Redirected, Kitheka told the Court the Respondent did not terminate Grievants' contracts. The contracts lapsed. Grievants had agreed to sign term contracts.

#### **The Court Finds:-**

7. The Grievants were employed by the Respondent Textiles Company on various dates, as Machine Operators, Machine Attendants, and Helpers. They were Members of the Claimant Union, with whom the Respondent had a Recognition Agreement and a Collective Bargaining Agreement. The Collective Bargaining Agreement, contrary to the submission made by the Respondent, was still valid as at the time Grievants left employment.

8. On 15<sup>th</sup> July 2014, the Parties entered into an Agreement brokered and witnessed by County Labour Officer, Mombasa. It was agreed:-

- a. All Unionisable Workers be paid as per the Redundancy Clause of the CBA.
- b. All willing Employees will be re-employed on term contracts with effect from 1<sup>st</sup> August 2014.
- c. That those so re-engaged, shall be entitled to gratuity after completion of 1 year of service.
- d. That the Management will draft re-engagement contracts and share the same with the Labour Office.
- e. That there shall be no further claim for the past period whose contract is being terminated on payment of redundancy.
- f. That those who are re-engaged shall remain Union Members.
- g. That all payments shall be done by the end of August 2014. The Management to work out a payment schedule and pin the same on the notice board by end of July 2014.

9. The Agreement was signed by Representatives of the Claimant, the Respondent and the Labour Office.

10. Prior to this, the Respondent had issued 3 months' notices of restructuring to the Employees, after consultation with the Union. The notices issued in April 2014, to become effective in July 2014. The Memorandum of Agreement between the Parties was signed at the time notices of restructuring took effect.

11. The Employees were paid terminal dues as agreed in the month of August 2014.

12. They subsequently entered into fresh term contracts. The last such contracts commenced 1<sup>st</sup> August 2015, to run for 1 year, ending 30<sup>th</sup> July 2016. The Respondent did not renew the contracts after 30<sup>th</sup> July 2016. Instead, it outsourced labour from Insight Management Limited. Employees were directed to engage with Insight Management. Those who did were employed by Insight Management, to continue working for the Respondent.

13. There is evidence at page 166 of the Respondent's bundle that at the end of the contract period on 30<sup>th</sup> July 2016, the Grievants were paid arrears of house allowance, leave pay, service pay, transport allowance, overtime and holiday pay. The Employees were paid terminal benefits for the period between their initial dates of employment and July 2014, and secondly, for the period between August 2014 and July 2016. It is not reasonable to badger the Employer for more money, when that Employer has kept its end of the bargain.

14. The Court does not agree with the Grievants and their Union, that the Grievants' contracts were terminated unfairly by the Respondent. The Respondent honoured the Memorandum of Agreement concluded between the Claimant and the Respondent. It ended the old contracts preceding 30<sup>th</sup> July 2014. All Employees were paid terminal dues for service accrued before 30<sup>th</sup> July 2014. Employees were given different term contracts beginning 1<sup>st</sup> August 2014. They accepted these contracts. They signed these contracts. The last contracts expired on 30<sup>th</sup> July 2016. The Respondent did not renew the contracts. It was not bound to renew the contracts. The contracts were clearly indicated to lapse on 30<sup>th</sup> July 2016. At the time the Claimant states its Members were locked out, on 16<sup>th</sup> August 2016, the Grievants were strangers at the

workplace. Their contracts had lapsed, and had not been renewed. An outsourcing Company, was brought in, to begin managing labour, on a *tabula rasa*. The Court is satisfied that the Respondent followed what was agreed between the Respondent and the Claimant in 2014.

15. The Grievants had the opportunity to continue working if they so wished, by enlisting under Insight Management. They refused to do so. Other Employees who enlisted are still working.

16. The Respondent behaved reasonably, and engaged the Claimant's Union fully, right from 2014 when encountered with financial difficulty. The Court does not think that outsourcing was unjustifiable, or in contravention of existing Recognition Agreement and CBA. Parties entered into a Memorandum of Agreement to meet the exigencies of the moment. They were fully aware of the presence of other Labour Agreements subsisting at the workplace. Outsourcing was part of the restructuring process. The Claimant Union was aware of this process from 2014. Employees who were employed through Insight Management did not lose their right to remain Members of the Claimant Union, and to continue enjoying their benefits under the CBA in place. Insight Management was, in the understanding of the Court, an agent of the Respondent, or a Successor Employer, bound to honour existing CBA. The Claimant does not say why Grievants should be paid compensation equivalent of 12 months' salary, and damages equivalent of a similar number of months, for breach of contract. There is no case made out for severance pay. The last contracts lapsed, and were not terminated for redundancy to warrant severance pay. Terminal benefits due, at the end of July 2016, were paid as shown under page 166 of the Respondent's documents. Terminal dues for the period before 30<sup>th</sup> July 2014, were paid, received and acknowledged.

IT IS ORDERED:-

**a. The Claim has no merit and is dismissed.**

**b. No order on the costs.**

**Dated and delivered at Mombasa this 23<sup>rd</sup> day of November, 2018.**

**James Rika**

**Judge**