



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 401 2018**

**JOHN MWOVE & 97 OTHERS.....CLAIMANTS**

**VERSUS**

**KENYA MEAT COMMISSION.....RESPONDENT**

**JUDGMENT**

**Introduction**

(1) The Claimant were employed by the respondent in various capacities until July 2016 when they were retired on Voluntarily Early Retirement (VER) basis upon payment of a Voluntary Early Retirement Packages negotiated between the respondent and their Trade Union Kenya Union of Commercial Food and Allied Workers (KUCFAW). On 18.3.2018, the Claimants brought this suit alleging that they had discovered that they were entitled to Golden handshake of **Kshs.480,000** but they were only paid **Kshs.200,000**. They further prayed for some individual pending claims including overtime pay, Acting Allowance, Medical and ex gratia award by the respondents board, lunch and dinner and other benefits from the Collective Bargaining Agreement.

(2) The respondent has admitted that the Claimants were retired under negotiated Voluntary Early Retirement package in 2016 which was fully paid. She however denied the alleged outstanding Golden handshake of **Kshs.280,000** per Claimant or any other claim sought by the suit herein and prayed for the suit to be dismissed with costs.

(3) The suit was heard on 30.5.2018 when Mr. Sugo Adan testified as CW1 on behalf of the other Claimants and M/s. Ann Kamau respondent's Company Secretary testified as RW1. After the hearing both parties filed written submissions which I have carefully considered herein alongside the evidence adduced.

**Claimants' Case**

(4) CW1 testified that he was employed as Security Assistant in 2007 and in 2012 he was appointed Acting Chief Security Officer until June 2016 when he was confirmed as the Chief Security Officer. He further testified that during that year a staff rationalization exercise was going on and a Voluntary Early Retirement Agreement was negotiated between their Trade Union (KUCFAW) and Interministerial Committee drawn from various Ministries and Public Service Commission at Naivasha. That later the respondent met with the Union and came up with a different package of Kshs. 200,000 that was less than the one the committee at Naivasha agreed being golden Handshake of Kshs.480,000 per retiree. That the Claimants were given forms for application for the Voluntary Early Retirement indicating Golden Handshake of **Kshs.200,000** but all the other items were left blank.

(5) CW1 further testified that all the Claimants filled the Voluntary Early Retirement forms and later their dues were wired to their respective bank accounts. In the meanwhile the Claimants were also directed to retain the staff quarters for 2 months to await for tax exemption. CW1 however testified that the said exemption was never granted and their demand letters were ignored. He further contended that the respondent has failed to pay accrued allowances to some of the Claimants and prayed for the same to be granted as pleaded in suit.

(6) On cross examination CW1 contended that as the Chief Security Officer he was no longer unionizable employee. He further stated that all Claimants in job Grade 5 and 6 were not unionizable employees but only employees in Grade 7 and below.

(7) He admitted that he applied for Voluntary Early Retirement offering **Kshs.200,000** as Golden Handshake but later he discovered the Golden Handshake ought to have been **Kshs.480,000**. He contended that in other parastatals like Posta, the Voluntary Early Retirement employees were paid **Kshs.600,000** as Golden Handshake.

**Defence Case**

(8) RW1 testified that in May 2016 the respondent commenced Staff rationalization of its Human Resource workforce funded by the Government. That the Principal Secretary, Ministry of Agriculture Livestock and Fisheries appointed an inter ministerial committee to oversee the exercise. That on 9<sup>th</sup> and 10<sup>th</sup> May 2016, the respondent held meeting with the Claimants' Union (KUCFAW) on the rationalization programme and agreed that it shall be on voluntary basis and package shall be as follows:

- (i) **Golden handshake of Kshs. 200,000.**
- (ii) **Severance pay as per the CBA (Basis + House Allowance)**
- (iii) **Gratuity (31% of the basic pay,)**
- (iv) **Notice as per the CBA.**
- (v) **Transport as per the Government guidelines.**
- (vi) **Pending leave days.**
- (vii) **Accommodation at staff quarters for maximum 2 months.**
- (viii) **Long service as per the CBA 2010.**
- (ix) **Pending overtime arrears subject to documentation.**

(9) RW1 further testified that the Claimants applied for the Voluntary Early Retirement agreeing with the foregoing terms and the respondent accepted their applications and paid said dues full. She denied the allegation that the Claimants were entitled to **Kshs.480,000** handshake and not the **Kshs. 200,000** paid and contended that the National Treasury and the Government only approved Kshs. 200,000. She relied on the letter dated 12.8.2016 to fortify the foregoing contention.

10. She denied the claim for overtime contending that the Claimants have not provided basis and /or particulars for the same. She further denied the claim for benefits accruing from the 2012 Collective Bargaining Agreement and contended that there has never been any other Collecting Bargaining Agreement concluded since the 2010 CBA. She also denied the claims for medical cover, and dinner allowance plus lunch, ex gratia payment and contended that there is no basis or particulars pleaded for the same. She therefore prayed for the suit to be dismissed and the Claimants made to move out of the respondent's staff quarters because they are no longer in employment and they are not paying any more rent.

### **Analysis and Determination**

(11) There is no dispute that the Claimants were employed by the respondent until their services were terminated through Voluntary Early Retirement on 1.7.2016. There is further no dispute that the Voluntary Early Retirement was done upon terms negotiated between the Claimants Union (KUCFAW) and the respondent which package was accepted by the Claimants by filling the application form for the Voluntary Early Retirement. There is also no dispute that the said Voluntary Early Retirement Package was paid to all the Claimants in full. The issue for determination herein is therefore whether the reliefs sought should be granted.

### **Reliefs**

(12) The respondent has submitted that the reliefs sought should not be granted because first and foremost, the Claimants lack the **locus standi** to bring to bring this suit without coming through their Trade Union. Secondly the respondent submitted that the Voluntary Early Retirement package was negotiated by their union which was clothed with the mandate to do so by the majority of the unionizable staff of the respondent. Third, the first Claimant, John Mwove was not duly authorized by the other Claimants to institute the suit as it was admitted by the CW1 during cross examination that he never signed the authority to act dated 203.2018.

(13) After careful consideration of the material presented to the court , I agree with the defence that the Voluntary Early Retirement package negotiated between the respondent and (KUCFAW) on behalf of the Claimants was valid and binding on them. It is trite law that when employees join a trade union which enjoys Recognition from the employer under section 54 (1) of the Labour Relations Act, the employees are deemed to have surrendered their right to negotiate their terms of employment directly with the employer. They are indeed deemed to have surrendered the said right to the trade union and they cannot therefore reject agreements negotiated by their union in good faith just because, according to them the bargain was not good.

(14) The foregoing notwithstanding, it is my considered view that the suit herein was brought as an afterthought allegedly after a discovery that the Claimants Golden Handshake ought to have been **Kshs.480,000** and not **Kshs.200,000** which was paid. However the suit is devoid of any merits because the Voluntary Early Retirement package was not forced on any one. As the term goes, Voluntary Early Retirement was a voluntary exercise . All what the union did was to negotiate the best possible package after which the Claimants were invited to apply for the Voluntary Early Retirement. They voluntarily filled the forms for the Voluntary Early Retirement application, conscious of the terms and benefits payable, and the applications were accepted by the respondent who promptly paid the Voluntary Early Retirement package and graciously offered 2 months accommodation to the Claimants after the termination.

(15) Flowing from the foregoing the Claimants cannot succeed in setting aside that voluntary retirement agreement made between each of them individually and the respondent unless they can demonstrate that the agreements were vitiated by misrepresentation, mistake undue

influence or duress. Unfortunately none of the said vitiating factors were proved herein. Consequently I return that the Voluntary Early Retirement package was a valid and competent bargain made on the Claimants' behalf by a competent trade union, and that the Voluntary Early Retirement agreements entered into between the respondent and the individual Claimants are binding on them all and there are no more dues owing to the Claimants from the respondents. The foregoing finding answers the allegation by CW1 that he was no longer a unionized employee when the Voluntary Early Retirement was done because what is material to me is the final Voluntary Early Retirement agreement signed between the employer and the individual employee.

(16) The Claimants have alleged that there are some dues still outstanding for some of the Claimants under the Collective Bargaining Agreement or awarded *ex gratia* by the respondent's Board. The said claims must however fail for want of particulars, legal basis and evidence to justify the same.

### **Conclusion and Disposition**

(17) I have found that the Voluntary Early Retirement was a voluntary termination requested by the Claimants and accepted by the respondent. That Voluntary Early Retirement agreement was between the respondent and the individual Claimant and it cannot be set aside except if there is evidence that the Voluntary Early Retirement agreement was vitiated by factors like duress, undue influence, mistake or misrepresentation. I have also found that the agreed Voluntary Early Retirement package due to each Claimant was promptly paid by the respondent. Finally I have found that the suit as filed is incompetent because not all the Claimants signed the Authority to act in favour of the first Claimant, and also because the suit ought to have been brought through their trade union which represented them in negotiating the 2010 Collective Bargaining Agreement which governed their contract with the respondent. Consequently, I dismiss the suit with no order as to costs.

(18) The consequence of foregoing verdict is that the interlocutory injunction restraining the respondent from evicting the Claimants from staff quarters is recalled and set aside and the Claimants give upto **30.11.2018** to vacate the respondent's staff quarters. The new directions is meant to protect any candidate currently sitting for their KSCE while resident in the said staff quarters.

**Dated, Signed and Delivered in**

**Open Court at Nairobi this 2<sup>nd</sup> day of November, 2018**

**ONESMUS N. MAKAU**

**JUDGE**

**JUDGE**