



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT KISUMU  
CAUSE NUMBER 227 OF 2013

**BETWEEN**

1. GILBERT KIPTOO KIPKOECH
2. JOSEPH ORORA AERA
3. NGUI MUINDI
4. FRED G. ONDIEK
5. PETER KYALO
6. PETER KIPLETING SANG
7. JOHN MOTARI OMOSA
8. KENNEDY SIMIYU FWAMBA
9. LAWRENCE BOSIRE
10. GIDEON KEMBOI
11. HARON MONARI TINEGA
12. RAMADHAN KIMUTAI
13. THOMSON AGARI MOKAYA
14. DUKE OMBAKI KIRERA
15. DICKSON KORIR .....CLAIMANTS

**VERSUS**

ELDORET GRAINS LIMITED.....RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

*Mwakio Kirwa & Company Advocates for the Claimants*

*Gicheru & Company Advocates for the Respondent*

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## JUDGMENT

1. In their Amended Statement of Claim filed on 11<sup>th</sup> September 2017, the Claimants state they were employed by the Respondent on various dates. It is not clear in what capacities they were so employed.
2. They state that on various dates between January 2012 and October 2012, the Respondent terminated their respective contracts of employment, on the ground of redundancy.
3. According to them termination was unfair and unlawful because there was no notice of intended redundancy issued upon the Claimants; no notice issued upon their trade union; no notice issued upon the labour office; there was no notice of termination, or pay in lieu of notice; and no consultation preceded redundancy.
4. They pray the Court to grant them Judgment against the Respondent in the following terms:-
  - a) Declaration that termination was unfair and unlawful.
  - b) Salary in lieu of notice; annual leave days; service benefit; rest days; overtime; compensation for unfair termination; and severance pay, all calculated at **Kshs. 9,180,217**.
  - c) Certificates of Service to issue.
  - d) Costs.
  - e) Interest.
  - f) Any other suitable relief.

5. The Respondent's position is captured in a Statement of Response, which is titled 'Respondent's Submissions,' filed on 20<sup>th</sup> September 2012.

6. The Respondent concedes the Claimants were its Employees. They however worked on casual terms. The Respondent did not intend to have them on any other terms, other than casual. They were suspended from duty on account of gross misconduct. They were accorded fair opportunity to defend themselves against misconduct and negligence. The Respondent prays the Court to dismiss the Claim, or make such orders as it deems expedient to meet the ends of justice.

7. Parties agreed on 6<sup>th</sup> November 2018, to have the dispute considered and determined under Rule 21 of the Employment and Labour Relations Court [Procedure] Rules 2016.

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

8. The dispute was referred to the County Labour Officer Kericho, through an order of the Court on 16<sup>th</sup> October 2017, for investigation and conciliation.

9. The Labour Officer scheduled 2 meetings on 1<sup>st</sup> December 2017 and 9<sup>th</sup> February 2018, which were attended by the Claimants. Neither the Respondent, nor its Advocates attended conciliation meetings.

10. The Labour Officer filed a Report in Court on 28<sup>th</sup> May 2018. He confirmed that the Claimants worked for the Respondent, for the periods shown in their Statement of Claim. There was no evidence that any of them left employment through redundancy. The Labour Officer did not find any reason given by the Respondent, to justify termination. There were generalizations made by the Respondent about the Claimants having been involved in negligence and acts of gross misconduct. There was no evidence to show that the Claimants were accorded an opportunity to defend themselves. The Labour Officer concluded that the Claimants' contracts were terminated unfairly.

11. He recommended that the Respondent pays to most of the Claimants 1 month salary in lieu of notice; accrued annual leave; and compensation for unfair termination based on the Claimants' length of service. There were cases where the Claimants were found to have resigned, or retired on medical ground. In these cases the Labour Officer recommended payment of annual pay leave alone.

12. The Court has not found any material on record, to fault the findings and recommendations of the Labour Officer, Kericho. There is no evidence of a redundancy situation, as pleaded by the Claimants. They were not, at any time, informed by the Respondent, that termination was for some economic reasons. The Respondent did not allude to termination for operational reasons.

13. It was fair to conclude, as did the Labour Officer, that the Respondent did not show valid reason, or reasons justifying termination decision. There were allegations that the Claimants were engaged in acts of gross misconduct. It was pleaded separate from acts of gross misconduct, that the Claimants were negligent. These in the view of the Court were empty workplace homiletics, from an Employer who had no valid reason under Section 43 of the Employment Act, to justify termination. The generalizations, as concluded by the Labour Officer, were not substantiated by any evidence at all. They cannot serve as valid termination reasons.

14. There is nothing filed by the Parties, which would persuade the Court to depart from the findings and recommendations of the Labour

Office. The Court shall endorse the Report of the Labour Officer, except on the additional payments the Labour Officer states, would have been payable had the Labour Officer been able to examine employment records in full. Those records were not examined, and it is speculative for the Labour Officer to include in his Report, what additional benefits could have been payable to the Claimants. If he did not examine employment records for whichever reason, how would he form a view on rest days and overtime?

IT IS ORDERED: -

*a) It is declared termination of Claimants' contracts of employment was unfair.*

*b) The Respondent shall pay to the Claimants:*

- Gilbert Kipkoech Kiptoo- notice pay at Kshs. 12,320; accrued annual leave of 63 days at Kshs. 25,870; and 3 months' salary in compensation for unfair termination at Kshs. 36,960- total Kshs. 75,150.*
- Joseph Aera Orora- notice pay at Kshs. 12,000; accrued annual leave of 63 days at Kshs. 25,200; and 3 months' salary in lieu of notice at Kshs. 36,000- total Kshs. 73,200.*
- Ngui Muindi- notice pay at Kshs. 12,000; accrued annual leave of 119 days at Kshs. 47,600; and 5 months' salary in compensation for unfair termination at Kshs. 60,000- total Kshs. 119,600.*
- Fred Ondiek- notice pay at Kshs. 12,350; accrued annual leave of 68.25 days at Kshs. 27,376; and 3 months' salary in compensation for unfair termination at Kshs. 37,050- total Kshs. 76,776.*
- Peter Kyalo- notice pay at Kshs. 12,320; annual leave of 85.75 days at Kshs. 35,215; 4 months' in compensation for unfair termination at Kshs. 49,280- total Kshs. 96,815.*
- Peter Kipleting Sang- accrued annual leave of 56 days at Kshs. 22, 400, less paid Kshs. 14,000- total Kshs. 8,400.*
- John Motari Omosa- notice pay at Kshs. 12,320; accrued annual leave of 210 days at Kshs. 86,240; and 10 months' salary in compensation for unfair termination at Kshs. 123,200- total Kshs. 221,760.*
- Kennedy Simiyu Fwamba- accrued annual leave of 80.5 days at Kshs. 27,376.*
- Lawrence Bosire- notice pay at Kshs. 12,000; accrued annual leave of 63 days at Kshs. 25,200; and 3 months' salary in lieu of notice at Kshs. 36,000- total Kshs. 73,200.*
- Gideon Kemboi- notice pay at Kshs. 12,000; accrued annual leave of 115.5 days at Kshs. 46,200; and 5 months' salary in compensation for unfair termination at Kshs. 60,000- total Kshs. 118,200.*
- Haron Monari Tinaga- notice pay at Kshs. 12,000; accrued annual leave of 26.25 days at Kshs. 10,500; and 1 month salary in compensation for unfair termination at Kshs. 12,000- total at Kshs. 34,500.*
- Ramadhan Kimutai- notice pay at Kshs. 12,320; accrued annual leave of 129.5 days at Kshs. 53,181; and 6 months' salary in compensation for unfair termination at Kshs. 73,920- total Kshs. 139,421.*
- Thomas Agari Mokaya- notice pay at Kshs. 12,320; accrued annual leave of 143.5 days at Kshs. 58,930; and 6 months' salary in compensation for unfair termination at Kshs. 73,920- total Kshs. 139,421.*
- Duke Ombaki Kirera- notice pay at Kshs. 12,000; accrued annual leave at 57.75 days at Kshs. 23,100; and 3 months' salary in compensation for unfair termination at Kshs.24,000 – total Kshs. 59,100.*
- Dickson Korir- notice pay at Kshs. 12,320; accrued annual leave of 68.25 days at Kshs. 28,028; and 3 months' salary in compensation for unfair termination at Kshs. 36,960- total Kshs. 77,308.*

*c) The Respondent shall supply Certificate of Service, to each Claimant.*

*d) No order on the costs.*

*e) Interest allowed at 14% from the date of Judgment till payment is made in full.*

Dated and signed at Mombasa this 22<sup>nd</sup> day of November, 2018

James Rika

Judge

Dated, signed and delivered at Kisumu this 6<sup>th</sup> day of December, 2018

Mathews Nderi Nduma

Judge