



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 175 OF 2018**

**(FORMERLY NAIROBI E & LRC CAUSE NO. 641 OF 2010)**

*(Before Hon. Justice Mathews N. Nduma)*

**KENYA UNION OF EMPLOYEES OF VOLUNTARY AND CHARITABLE**

**ORGANISATIONS (KUEVACO).....CLAIMANT**

**VERSUS**

**DE LA RUE CURRENCY & SECURITY PRINT LIMITED.....RESPONDENT**

**J U D G M E N T**

1. Claimant Union brought this suit on behalf of 31 grievants who are said to be contracted players of the Respondent for a continuous period of five (5) years as articulated in the contract of players Appendix 'C' and 'D'. The 1<sup>st</sup> grievant was an employee of the Respondent for six years until December, 2005.
2. In terms of appendix 'F' Grievant 2 to 31, were required to play every week at home and away in the National Wide League Fixtures.
3. During the period of the contract, the players were bonded to compensate the club in the sum of Kshs.45,000 before transferring to another club and were further bonded to give the club three months' notice or pay Kshs.40,000 in lieu of three months' notice.
4. The Respondent paid on behalf of the club sponsorship in August of each year for the season that started in September. However in the year 2005, the Respondent failed or neglected to pay the club's sponsorship and did not terminate the contracts of the grievants.
5. The Union claims on behalf of the 1<sup>st</sup> grievant compensation for breach of contract for the period the grievant did not coach the players and therefore did not receive his weekly allowances of Kshs.2,750 per week for remaining 17 weeks; service pay at the rate of Kshs.100,000 per year for six years and end of contract Honorarium of Kshs.200,000.
6. With regard to 2<sup>nd</sup> to 31<sup>st</sup> grievants, the union claims:-
  - a. Unpaid salaries for the first twenty four (24) months played at the rate of Kshs.13,34 per month.
  - b. Salary for the remaining 36 months of the contract period at the rate of Kshs.13,334 per month.
  - c. Allowances calculated at Kshs.500 per fixture for the remaining 156 fixtures.
  - d. Certificates of service.
7. The total claims are set out in paragraph 21 of the Memorandum of Claim.
8. The Claimant prays the suit to be allowed with costs and interest.

**Defence**

9. The Respondent filed Amended Memorandum of Defence on 29<sup>th</sup> September, 2010 in which it raised two preliminary issues that the Memorandum of Claim disclosed no reasonable cause of action and that the court had no jurisdiction to hear and determine the suit. The two objections were heard and dismissed by Lady Justice Maureen Onyango in a ruling delivered on 15<sup>th</sup> November, 2012 and the matter proceeded to trial. Appeal was noted against the ruling but the court was not informed of the outcome to date.

10. The Respondent admits having supported De la Rue Football Club by providing funds from time to time to facilitate the club's activities. That the club had a distinct legal personality from the Respondent. The Respondent denied being a principal or agent of the club and averred that it had no legal relationship at all with the club.

11. The Respondent denied that it employed the 1<sup>st</sup> grievant as the coach of the club and the 2<sup>nd</sup> to 31<sup>st</sup> grievants as its players. The Respondent denounced the employment contracts produced before court for the coach and the players stating that Appendix 'A' is a false document bearing false signature of Clarice Apiyo. That Appendix 'B' is a false document with forged signature of Clarice Apiyo and Kennedy Makanga. That the two have denied having signed the two documents.

12. Respondent reiterates that it did not conclude a contract with Dela Rue Football Club for the appointment of 1<sup>st</sup> Grievant as a football coach.

13. The Respondent admits that the 1<sup>st</sup> grievant was an employee of the Respondent in a different capacity until 30<sup>th</sup> September 2005 from which job he voluntarily resigned. The resignation itself would have breached the coaching contract, if it was genuine, which is denied and Respondent would not be liable to pay the 1<sup>st</sup> grievant under the said coaching contract.

14. The Respondent relies on a list of club officials prepared by the De la Rue Football Club on 10<sup>th</sup> October, 2003, which does not indicate that the club had a coach as alleged or at all. That a further officials list dated 4<sup>th</sup> March, 2004, shows that Mr. Collins Shikokoti was the coach of the club and not the 1<sup>st</sup> grievant. The Respondent while acknowledging Appendix 'C', the list of players of De La Rue Football Club who were contracted to participate in the Nationwide league organized by FIFA/KFF Normalization Committee during the 2004 – 2005, season distances itself from having employed the said players.

15. The Respondent denies paying match allowances to the football players stating that the club only gave refreshments to the players on match days and provided transport to and from match venues. The Respondent further denied Appendices 'D' and 'E' which purports to be contracts for players stating that the same are false.

16. The Respondent admits that it provided funds to the club from time to time to facilitate the club's activities gratuitously. That the Respondent was not obliged to provide such funds or pay any monies to or on behalf of the club. There was no privity of contract between the Respondent and the grievants and so no obligation lies at all.

17. Respondent acknowledges receipt of demand letters from counsel for the grievants between the years 2006 and 2008.

18. The Respondent admits that, it had decided to settle the demand by the grievants upon representations made by the 1<sup>st</sup> grievant and on the believe that the contracts were genuine on a purely exgratia basis.

19. The Respondent acting on behalf of Dela Rue Football Club drew a cheque number 13111 for Kshs.1,125,000 dated 26<sup>th</sup> October, 2005 in favour of Kenya football Federation. The cheque was collected on 27<sup>th</sup> October, 2005. The officials of KFF who collected the cheques acknowledged receipt of it and bound themselves to pay each player Kshs.37,500. The document was produced before court. The Respondent now denounces the payment to have been made on fraudulent misrepresentation.

20. The Respondent denies the claims in their totality and prays the suit be dismissed with costs. The Respondent did not make any counter claim on the alleged payment.

### **Testimony**

21. The 1<sup>st</sup> grievant Julius Iganji Benson (CW 1) testified on behalf of all the grievants in support of the particulars of claim. He testified that he was employed by the Respondent as a Print Assistant and later as a football manager/coach for the Respondent's football club. That the Respondent supported various sports including football, athletics, badminton and tennis. CW 1 produced Annex 'A', a letter of appointment signed by Human Resource Manager of the Respondent and the patron of the football club dated 10<sup>th</sup> January, 2003. His terms of appointment are contained in appendix 'B' signed by the Chairman of the Club, Kennedy Makanga and the Patron/Human Resource Manager.

22. CW 1 told the court that he was authorized to recruit and employ players who were not employees of the Respondent to improve the team performance in the 2<sup>nd</sup> Division of KFF League. A standard contract was made for the purpose. A list of hired players was produced as appendix 'C'. CW 1 told the court that all payments to KFF and to players were made by the Respondent. The players were contracted for 5 years. Affiliation fees to KFF was paid annually by the Respondent. The last payment was made in 2005. The Respondent then stopped paying. The club could no longer play. The players were still contracted to the club and could not join another club without clearance from the De La Rue Football Club. They suffered loss as a result.

23. CW 1 stated that his contract was for 5 years and was to be paid Kshs.100,000 per year and 200.00 Honorarium.

24. The club was not registered under the Societies Act. It was part and parcel of the Respondent therefore. The club was formed in 1995

and enrolled in the league in 1998. It was disbanded in 2005. All the officials of the club were employees of the Respondent including Senior Manager such as Kennedy Makanga and Martin Solo, Julius and Moses. The club was part of the Respondent's corporate social programme for employees interaction. It was part of the objectives of the company and was a marketing tool also.

25. CW 1 testified that the Respondent supported the club and paid the players for 9 years. There was no other sponsor to the club. It was a marketing arm of the Respondent and club was contracted in that respect. CW 1 was closely cross examined by Mr. Wachira for the Respondent but stood firm in his testimony regarding the obligations by the Respondent and the manner in which the Respondent bleached those obligations in 2005. CW 1 prayed that the suit be allowed and all prayers be granted with interest and costs.

26. RW 1 Claris Ayoma Apiyo retired personnel officer of the Respondent from June 1993 to November 2003 testified in support of the defence case. RW 1 denounced a letter dated 10<sup>th</sup> January, 2000 purportedly written by him appointing the 1<sup>st</sup> grievant as a football coach to be a forgery. RW 1 stated that he saw the letter for the first time in court. RW 1 denounced the contracts produced by the grievants. He stated that players who were not employees of the Respondent were not paid to play. RW 1 stated that only the General Manager of the Respondent could sign contracts with 3<sup>rd</sup> parties. The finance manager acted for the General Manager in his absence. RW 1 stated that the 1<sup>st</sup> grievant was an employee of the Respondent and not other players. RW 1 had left the company when the 1<sup>st</sup> grievant resigned and the club collapsed.

27. RW 2, was Kennedy Makanga, who was operator, production floor of the Respondent. He was a supervisor between the years 2000 and 2005. RW 1 told the court that the club was formed under the sports and social committee of the Respondent. It was meant to motivate staff. RW 1 worked with the team and it was disbanded in 2005, he testified. Initially, players were company employees' later outsiders were hired. The company paid for transport and refreshments. The club was governed by the company rules. RW 2, denied having signed the coaches contract. He stated that he first saw it at the lawyer's office. RW 2 was the Chairman of the club. He now worked for Kisii University. RW 1 denied having signed all the contracts for the 2<sup>nd</sup> to 31<sup>st</sup> grievants. He said players were not paid during his time. He left in October, 2005. He prayed the suit be dismissed with costs.

### **Determination**

28. The issues for determination are:-

- (i) Whether the players of De La Rue Football Club were entitled to payment by the Respondent as claimed.
- (ii) Whether the coach of De La Rue Football Club was entitled to payment by the Respondent as claimed.

### **Issue 1**

29. The Claimant has proved that the 2<sup>nd</sup> to 31<sup>st</sup> grievants played for De La Rue Football Club. It is also established that the club contracted them for a period of five (5) years to play in the nationwide league under the auspices of Kenya Football Federation and FIFA.

30. It has not been contested that the players could not transfer to any other club during the period of the contract without giving the club three (3) months notice or paying Kshs.40,000 in lieu of notice to the club. The players were also to pay Kshs.45,000 compensation to the club before transferring to another club during the period of the contract.

31. It is not in dispute that the club disbanded in the year 2005 during the term of the players contracts. As a result of the disbandment, the players' contracts were prematurely terminated before serving the remaining 36 months of the contract period.

32. The 2<sup>nd</sup> to 31<sup>st</sup> grievants allege that they were entitled and were not paid Kshs.13,334 salary per month. They had already served 24 months and were yet to complete 36 months. The Grievants claim payment for both periods therefore. The players also claim Kshs.500 allowance paid for every game for the remaining 156 fixtures. The grievant also claim 3 months' salary in lieu of notice and certificates of service.

33. Whereas it is not in dispute that the 2<sup>nd</sup> to 31<sup>st</sup> grievants were contracted to the club, the issue in dispute is whether the Respondent is obliged to pay 2<sup>nd</sup> to 31<sup>st</sup> grievants the dues claimed.

34. The evidence by the Claimants is that the club was not a separate registered entity but was part of the sports and social committee of the Respondent and all its officials were employees of the Respondent. The Claimant contend that the Respondent met all financial obligations of the club for the 9 years it was in existence and was obliged to pay the players upon disbandment of the club.

35. Whereas there is no sufficient forensic evidence before court to determine the genuineness or otherwise of the signatures appended on the player's contracts, it is beyond per adventure that indeed the club was part and parcel of the sports and social committee of the Respondent and the Respondent had funded the operations of the club from inception to disbandment.

36. On 9<sup>th</sup> October, 2006 M/s Enonda Makoloo Makori & Co. advocates wrote a demand letter to the Manager Director of the Respondent demanding payment of Kshs.37,500 to each of the 2<sup>nd</sup> to 31<sup>st</sup> grievants, which amounts were payable to each player upon disbandment of the club. It is not in dispute, following this demand, the Respondent paid to Kenya Football Federation (KFF) by a cheque number 13111 in the sum of Kshs.1,125,000 from which amount each of the 2<sup>nd</sup> to 31<sup>st</sup> grievant were to be paid their terminal benefits of Kshs.37,500 as claimed.

37. Although the Respondent purports to have made this payment gratuitously, it is the considered view and finding by the court that the

sum of money was paid out of contractual obligation by the Respondent to the grievants. It is not explained why the amount was not paid to the advocates of the grievants. A reading of Appendix '2' to the statement of claim, a letter by the grievants to one Christine in the Human Resource Department of the Respondent indicates the money was not paid to the players.

38. In the demand letter aforesaid, the grievants did not demand any other payment over and above the 37,500.

39. It is therefore the court's considered view and finding that the claims for unpaid arrear salary in the sum of Kshs.13,334 per month for 24 months and salary for the unserved period of the contract for 36 months at the rate of Kshs.13,334 per month have no basis.

40. The claims for allowances for the remaining 156 fixtures at the rate of Kshs.500 per fixture have equally not been proved.

41. The Claim that led itself to this court and which is consistent with the evidence before court, is that players were obliged to give three months termination notice to the club in the event they wished to transfer. It is the finding by the court, that the club, was also obliged to give three months' notice to a player whose contract was prematurely terminated. This entitled each player Kshs.(13,334 x 3) Kshs.40,002 termination notice. This is consistent with the payment made by the Respondent erroneously to KFF instead of making the payment to the Advocates of the grievants.

42. Accordingly, the court finds that the 2<sup>nd</sup> to 31<sup>st</sup> grievants played for a club owned by the Respondent. That the Respondent all along funded the operations of the club and the Respondent was therefore obliged to pay termination benefits demanded by the grievants in the sum of Kshs.37,500 totaling Kshs.1,200,000.

43. The court awards each of the grievants Kshs.37,500 as against the Respondent accordingly. The Respondent is obliged to give each of the grievants a certificate of service reflecting the period they served a club owned and in the name of the Respondent.

## **Issue II**

44. With regard to the claim by the 1<sup>st</sup> Grievant, the grievant was employed by the Respondent as print assistant. He worked for the Respondent in that capacity until he voluntarily resigned from its employment by a letter dated 30<sup>th</sup> September, 2005.

45. The 1<sup>st</sup> grievant was paid two months' salary in lieu of notice even though he did not give the Respondent notice of resignation. The 1<sup>st</sup> grievant was also paid in lieu of leave days not taken and was also paid his retirement dues from the provident fund.

46. It has been proved that the grievant in addition to his normal employment was contracted as a coach of the De La Rue Football Club.

47. In the letter of demand by advocates for the 1<sup>st</sup> grievant dated 9<sup>th</sup> October, 2006, the advocates demanded payment of Kshs.50,000 comprised of an annual payment of Kshs.100,000 for the five (5) years the 1<sup>st</sup> grievant was contracted to coach the club. The authenticity of the contract produced by the 1<sup>st</sup> grievant was contested by the Respondent. RW 1 and RW 2 were however unable to rebut the evidence that the 1<sup>st</sup> grievant coached De La Rue club from 10<sup>th</sup> January, 2000 up to the date the club was disbanded in August, 2005.

48. The 1<sup>st</sup> grievant also claims that he was to be paid Kshs.200,000 honorarium at the end of the coaching contract. The 1<sup>st</sup> grievant further claims Kshs.2,750 allowance per week for the unserved 17 weeks upon disbandment of the team.

49. It is apparent from the claim made by the 1<sup>st</sup> grievant that during the time he coached the club he was paid and he received Kshs.2,750 per week for coaching services in addition to his monthly salary as a print assistant of the Respondent.

50. The contract titled "De La Rue Football Club – Coache's contract" confirm the testimony by the Claimant that he was to be paid transport allowance of Kshs.500 from Monday to Friday which is Kshs.2,500 plus 250 for every match attended on weekends. This explains the 2,750 per week.

51. This payment according to the Claimant was made by the Respondent and the payment itself is confirmation that the parties performed the contract and was therefore authentic.

52. The next issue is the interpretation of clause 6 and 8 of the contract. Clause 6 provides:-

***"The company will provide a Honorarium as a way of appreciation to the services of the coach at least every year. The coach will receive twenty thousand (20,000) at the end of his contract paid by the company."***

53. The honorarium payable every year whose rate is not stated is not in contention nor has it been claimed. What is in issue is honorarium in the sum of Kshs.20,000 at the end of the contract paid by the company.

54. It is the court's finding that the coaching contract bound the Respondent, and the Respondent was bound to implement the letter and spirit of the contract upon its premature termination. In this respect, the 1<sup>st</sup> grievant is entitled to payment of Kshs.20,000 honorarium and not 200,000 as claimed.

55. Clause 8 reads as follows:-

***“On termination of the contract by way of insolvency or withdrawal of sponsorship , the company will pay the contracted coach a sum of one hundred thousand (100,000) for every year served until the date of termination and all other allowances as shall be described by the contents of this contract.”***

56. A plain interpretation of this clause is that the “company, which is the Respondent was to pay service gratuity to the coach calculated at Kshs.100,000 for every year served.

57. This contract commenced on 10<sup>th</sup> January, 2000. The 1<sup>st</sup> grievant served until August 2005. The 1<sup>st</sup> grievant had served over (5) years and has proved on a balance of probabilities that he is entitled to service gratuity in respect of his coaching position in the sum of Kshs.500,000. The court awards 1<sup>st</sup> grievant accordingly.

58. In the final analysis judgment is entered in favour of the Claimant and the grievants as follows:-

**(i) 1<sup>st</sup> Grievant**

(a) Kshs.20,000 being honorarium.

(b) Kshs.500,000 being service gratuity for the five (5) years served.

**(ii) 2<sup>nd</sup> to 31<sup>st</sup> grievants**

Kshs.37,500 in respect of each grievant totaling Kshs.1,200,000.

(iii) The awards to be paid with interest at court rates from date of filing suit till payment in full.

(iv) Respondent to pay costs of the suit.

**Judgment Dated, Signed and Delivered in Kisumu this 6th day of December, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Janitor Odin Boaz Otieno for Claimant

Mr. Muchiri for Respondent

Chrispo – Court Clerk