



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 129 OF 2015

MICHAEL NG'ANG'A GATUA..... CLAIMANT

-VERSUS-

EQUATORIAL NUT PROCESSORS LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 17th March, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 24.07.2015 through Kamende D.C & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. A declaration that the respondent's action of withholding the claimant's dues and or benefits is unlawful, illegal and without any basis at all.
- b. That the respondent to pay the claimant the following admitted dues and benefits as applicable in line with the respondent's policies:
 - i. Outstanding 115 leave days not taken Kshs. 1, 150, 000.00.
 - ii. Service for 18 years at 15 days' pay per year Kshs. 2, 700,000.00.
 - iii. Less one month salary in lieu of the termination notice upon resignation Kshs.300,000.00.
 - iv. Total payable to the claimant by the respondent Kshs.3, 550,000.00.
- c. Interest at prevailing court rates on (b) above with effect from 03.-01.2015 until payment in full.
- d. Any other relief that the honourable court deems proper and fit to grant in the circumstances.

The response to the memorandum of claim was filed on 21.09.2015 through C.N. Kihara & Company Advocates. The amended response and counterclaim was filed on 06.04.2016. The respondent prayed for judgment against the claimant for:

- a. A declaration that the actions of the claimant to withhold payment of an equivalent of salary of one month and the failure to pay for the properties received from the respondent was unlawful and without any legal basis.
- b. The claimant to pay general damages, Kshs. 300,000.00 being an equivalent of one month's notice, the sum of 33, 060.00 being the three bundles of Carbro blocks taken from the respondent's

company, and making a total of Kshs.333, 060.00.

c. Interest at court rates on (b) from 03.01.2014.

d. Costs of the suit and interest thereon till full payment in full.

e. Any other reliefs the honourable court may deem just and fair.

The response to the amended response and the response to the counterclaim was filed on 05.05.2016. The claimant prayed that the amended response and counterclaim be dismissed with costs and the prayers in the memorandum of claim be granted with costs.

It is not in dispute that on or about 06.11.1995 the respondent employed the claimant as a senior purchaser officer in charge of equatorial nut processors known as Farmnut Multipurpose Limited, at the time, the claimant being in charge of the larger Meru Region. On 26.06.2005 the respondent employed the claimant as a deputy factory manager. The last monthly pay was Kshs. 300,000.00 and the claimant worked until 03.01.2014 when he resigned voluntarily by the letter dated 03.01.2014. RW testified that the last position held by the claimant was that of Factory Manager. The letter states that the claimant was resigning from the respondent's employment effective 03.01.2014 to pursue other interests.

The claimant's case is that subsequent to the resignation the respondent caused his unlawful arrest and the claimant was prosecuted in Criminal Case No. 261 of 2014 in the Magistrate's Court at Murang'a for allegations, the claimant testified, were unfounded as he was acquitted on 19.12.2014 under section 215 of the Criminal Procedure Code, Cap. 75, Laws of Kenya. The claimant's further case is that the respondent acknowledged to owe the dues as claimed and should therefore pay as prayed for.

The **1st issue** for determination is whether the claimant is entitled to the remedies as prayed for in the memorandum of claims. The court finds that the evidence is clear that the claimant resigned voluntarily on 03.01.2014. The issue is whether the claimant was entitled to the terminal dues as claimed and prayed for. The court makes the following pertinent findings.

During cross-examination, RW stated that the only reason why the claimant was not paid his final dues was because he did not carry out his duties as stipulated in the contract of employment. In particular, RW testified that the claimant issued himself Carbro Blocks valued at Kshs.33, 060.00 contrary to the respondent's policies. The evidence is clear that the issue of the Carbro Blocks was subject of the charge in the criminal case that was preferred against the claimant and the claimant was acquitted. Thus the court returns that the reason given by RW for the failure to pay the claimant's terminal dues as claimed and prayed for was an invalid reason. In any event, RW testified that whatever outcome in the criminal case, the liability on the part of the respondent to pay the claimant's terminal benefits would not be varied at all.

The claimant's case is that his claim and prayers for terminal dues was based upon the respondent's policy and as confirmed by the e-mail issued by the respondent's human resource officer. The e-mail by the human resource officer known as Terry set out final dues for 3 officers including the claimant. For the claimant the stated dues included gratuity at the rate of 15 days for every year worked starting from 01.12.1995 to 03.01.2014; less one month's salary in lieu of notice; and encashment of 115 leave days earned and not taken as of 03.01.2014. RW testified that the claimant was entitled to terminal dues as was conveyed in the e-mail and Terry's computation was the exact entitlement. The court finds and returns that the claimant has established his claims and is awarded as prayed for a sum of **Kshs.3, 550,000.00**.

The **4th issue** for determination is whether the respondent is entitled to the prayers in the counterclaim. The counterclaim for Kshs.300, 000.00 was clearly superfluous because the claimant was already willing and ready to pay the amount in lieu of his failure to give a termination notice and as pleaded in the memorandum of claim. The other claims in the counterclaim would fail particularly in view of the acquittal and the fact that there was no attempt by the respondent to undertake a disciplinary process in that regard against the claimant. Accordingly, the court returns that the prayers in the counterclaim were

unjustified and will fail.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

- a. Dismissal of the counterclaim.
- b. The respondent to pay the claimant **Kshs. 3, 550,000.00** by 01.05.2017 failing interest to be payable thereon at court rates from the date of the suit 24.07.2016 till full payment.
- c. The respondent to pay the claimant's costs of the suit including the counterclaim.

Signed, dated and delivered in court at **Nyeri** this **Friday, 17th March, 2017**.

BYRAM ONGAYA

JUDGE