



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 87 OF 2016

(Before D. K. N. Marete)

KENYA UNION OF COMMERCIAL

FOOD AND ALLIED WORKERSCLAIMANT

VERSUS

KISII BOTTLERS LIMITED.....RESPONDENT

JUDGEMENT

This matter was brought to court vide a Statement of Claim dated 7th April, 2016. The issue in dispute is therein cited as;

“Unprocedural/unjustified and unlawful termination of Mr. Wilfred Abuki Mose, Fredrick Ongeri Osano, Robert Mwebi Moreka, Geoffrey Omurwa Ratemo and Samson Kennedy Maranga.”

The respondent in a Statement of Response dated 25th May, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant’s case is presented as follows;

1.04 Mr. Wilfred Abuki Mose herein after referred to as the 1st grievant in this dispute was employed by the Respondent on 28th February, 2003 as Ice Plant Attendant. He was holding the position of machine operator earning Kshs.41,592.00 as at the time of dismissal.

1.05 Mr. Fredrick Ongeri Osano herein after referred to as the 2nd Greivant in this dispute was employed by the Respondents on 1st May,

2010 as a checker. He was holding the position of a checker earning Kshs.23,563.00 as at the time of termination.

1.06 Mr. Robert Mwebi Moreka herein after referred to as the 3rd grievant in this matter was employed by the Respondents on 1st November, 1989 as a filler operator He was holding the position of senior filler operator earning Kshs.45,763.00 as at the time of termination.

1.07 Mr. Geoffrey Omurwa Ratemo herein after referred to as the 4th grievant in this matter was

employed by the Respondent on **15th April, 2009** as **mechanical technician** He was holding the position of a **mechanical technician** earning **Kshs.47,763.00** as at the time of termination.

1.08 Mr. Samson Kennedy Maranga herein after referred to as the **5th grievant** in this matter was employed by the Respondent on **1st January, 1995** as a **checker**. He was holding the position of **mechanical technician** earning **Kshs.45,763.00** as at the time of termination.

It is the claimant's further case is that the matter in dispute went through a conciliation process but this failed due to the negligence of the respondent and the conciliator ultimately issued a certificate of referral. The respondent neglected attendance of conciliators sessions, or at all.

The claimant's further case is that the grievant were on 9th September, 2015 issued with show cause letter on the basis on 3 allegations as follows;

“-organize and hold illegal meeting with fellow staff and outsiders to plan illegal activities aimed at disrupting company business.

-facilitate the execution of illegal/criminal activities to the extent of harming fellow staff members and disruption of company business by rioting mobs.

-attending illegal meetings purported to cause employment grievances in

disregard to established law and policy in employment grievance handling”

The show cause letters demanded that the grievants make written explanations on the issues therein on the same day. This is as follows;

*i. The same letter demanded for the grievant written explanation the same day of **9th September, 2015**. **Exhibit 4***

*ii. The grievant made a response on the same day and denied all the allegations. **Exhibit 5***

*iii. On **15th September, 2015** the Respondent issued the grievant with a notice to appear before the staff advisory committee which was scheduled for **16th September, 2015** at **9.00am**. **Exhibit 6***

*iv. On **16th September, 2015** the grievant appeared before the staff advisory committee.*

*v. On **17th September 2015** the Respondent issued the grievant with a letter of termination before disclosing to him the report of the staff advisory committee.*

*vi. The **1st** grievant was paid **Kshs.137,219.00** as his terminal benefits which payment was done by way of cheque. **Exhibit 8***

*vii. On **20th September, 2015** the grievant together with the **2nd, 3rd and 4th** grievant made a joint appeal on termination. **Exhibit 9***

*viii. On **5th October, 2015** the grievant together with the **2nd, 3rd and 4th** grievants made a joint reminder to the Respondent on the fate of the appeal. **Exhibit 10***

*ix. On **12th October, 2015** the grievant again together with the **2nd, 3rd and 4th***

*grievant made a **2nd** reminder to the Respondent on the fate of their appeal.*

Exhibit 11

x. On 30th October, 2015 the grievant wrote a letter to the Respondent denying involvement in Petition 43 of 2015 Kisii. **Exhibit 12**

The claimant's other case is that the respondent violated the law for failure to disclose valid reasons for termination. Further;

The employees were subjected to disciplinary proceedings before the termination took place and therefore the Respondents were duty bound to disclose to the grievants the findings of the S.A.C before terminating their services. The termination was therefore unjustified and therefore unlawful.

It is her further case that in terminating the employment of the grievants, the respondent did not act within the purview of the parties Collective Bargaining Agreement and Inhouse Disciplinary Procedure Manual. This also flouted the provisions of S.41, 43 and 45 of the Employment Act, 2007 and was punitive.

She prays as follows;

5.01 *It is the Claimants humble prayer to the Hon. Court that the Hon. Court to find the Respondents action unprocedural, unjustified and unlawful.*

5.02 *That the Hon. Court do direct the Respondents to reinstate the grievants unconditionally without loss of benefits and seniority.*

5.03 *That the Respondents do pay costs of the suit.*

5.04 *That the Hon. Court do issue any other order it deem fit to address the case of justice.*

5.05 *Whereas the Hon. Court do not order as prayed 5.0 to 5.04 the*

Claimants prayers are as follows;

a) *That the Hon. Court do declare the Respondents action unprocedural, unjustified and unlawful.*

b) *That the grievant be compensated maximum compensation for unlawful loss of service.*

c) *That the Respondent be directed to pay the grievants salaries for days worked, overtime, leave and any other lawful benefit payable.*

d) *Costs of the suit be quantified by the Hon. Court and award in favour of the Claimant.*

e) *Certificate of service to each employee.*

f) *Any other order the Hon. Court deem fit to address the cause of justice.*

The respondent's case is that the termination of the grievant's services was lawful and fair and was carried out in pursuance of their respective contracts of service. This was also done within the confines of the Collective Bargaining Agreement. It was not on the basis of the Staff Advisory Committee proceedings and therefore any issue of disclosures of the minutes of this committee does not arise.

The respondent also raised an issue of jurisdiction of court but this was not pursued at trial. This is as follows;

The respondent shall at the hearing hereof contend that this honourable court lacks territorial jurisdiction to hear and determine the claims herein.

The issues for determination therefore are;

1. Whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful?
2. Whether the claimant is entitled to the relief sought?
3. Who bears the costs of this claim.

The 1st issue for determination is whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful. The claimant in her written submission dated 6th January, 2017 forments a case of unlawful termination of employment due to the absence of a fair hearing in the cause of the termination of the employment of the grievants. This is not satisfactorily addressed or answered in the respondent's defence or written submissions.

The claimant also raise issue with the non disclosure of the investigation report and also disciplinary proceedings which were the basis of termination thus tainting the entire disciplinary process. Again, there was no disclosure of the reasons for termination in the letter of termination and this maligned the termination.

The respondent, in rebuttal submissions dated 1st February, 2017 attempted to bring out a case of lawful termination but is betrayed by the presentation thereof. It would appear, like is common practice that the respondent was unhappy with the grievants union activities and therefore concocted disciplinary proceedings to justify their termination of employment. This is the reason why the respondents finds it difficult to justify a case of termination. It is not even substantiated in the oral evidence of the respondent's witnesses at trial. I therefore find a case of wrongful, unfair and unlawful termination of employment and hold as such. And this answers the 1st issue for determination.

The 2nd issue for determination is whether claimant is entitled to the relief sought. She is. Having won on the issue of unlawful termination of employment, the claimant is entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- i) The grievants be and are hereby reinstated to employment with the respondent.
- ii) The grievants be and are hereby ordered to report to work on 27th April, 2017 at 800 hours.
- iii) The grievants be and are hereby awarded two (2) months salary as compensation for unlawful termination of employment as follows;

- Wilfred Abuki Mose – Kshs. 41,592.00 x 2 months = Kshs. 83,184.00
- Fredrick Ongeru Osano – Ksh. 23563.00 x 2 months =Kshs.47,126.00
- Robert Mwebi Moreka – Ksh. 45,763.00 x 2 months =Kshs. 91,526.00
- Geoffrey Omurwa Ratemo - Ksh. 45,763.00 x 2 months =Kshs. 91,526.00
- Samson Kennedy Maranga - Ksh. 45,763.00 x 2 months =Kshs. 91,526.00

- iv) The costs of this claim shall be borne by the respondent.

Delivered, dated and signed this 26th day of April 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Dickens Atela for the Claimant Union

2. Mr. Nyamurongi Instructed by Nyamurongi & Company Advocates for the Respondent