



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 833 OF 2014

KENYA UNION OF COMMERCIAL, FOOD

AND ALLIED WORKERS.....CLAIMANT

VERSUS

EVEREST ENTERPRISES LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Kenya Union of Commercial, Food and Allied Workers on behalf of its members, Harrison Wambua Muindi, Jeremiah Kioko Wambua and Petronila Mwangeli Musyoki (the Grievants).

2. The Respondent was duly served but did not file a response. The matter therefore proceeded to formal proof, with the three Grievants testifying on their behalf.

The Claimant's Case

3. In its Memorandum of Claim dated 15th May 2014 and filed in Court on 20th May 2014, the Claimant states that the 1st Grievant, Harrison Wambua Muindi was employed by the Respondent as a loader on 1st October 2009. He was paid a daily rate of Kshs. 471 payable on weekly basis. He was declared redundant on 5th August 2013 on the ground that the Respondent was relocating its business from Nairobi to Nanyuki.

4. The 2nd Grievant, Jeremiah Kioko Wambua was employed as a loader on 26th June 2011. He also earned a daily rate of Kshs. 471 payable on weekly basis. He was declared redundant on 21st August 2013 on the ground that the Respondent's business had been relocated to Nanyuki and his services were therefore no longer required.

5. The 3rd Grievant, Petronila Mwangeli Musyoki was employed as a cleaner on 7th January 2006. She was declared redundant on 29th August 2013 on the ground that he Respondent's business was being relocated to Nanyuki and her services were no longer required.

6. None of the Grievants was issued with an appointment letter. They however produced several documents including pay slips, employment card and letters issued by the Respondent as evidence of the existence of an employment relationship between themselves and the Respondent.

7. The Claimant avers that until the year 2013, the Respondent operated its business from Nairobi. Having decided to relocate to Nanyuki, the Respondent failed to inform its employees of the impending changes. In the relocation process some employees were paid their benefits while others, including the Grievants were left out.

8. The Claimant Union reported a trade dispute to the Minister for Labour who appointed a Conciliator on 29th October 2013. The Respondent however failed to attend conciliation meetings and the dispute was therefore unresolved.

9. It is the Claimant's case that the Respondent declared redundancies without observing the law. The Claimant therefore claims the following on behalf of the Grievants:

a) 1st Grievant: Harrison Wambua Muindi

i) days' pay in lieu of notice.....	Kshs. 14,130
ii) Leave pay for 5 years.....	49,455
iii) Severance pay for 5 years.....	35,325
iv) Rest days worked.....	122,460
v) 12 months' salary in compensation.....	169,560

b) 2nd Grievant: Jeremiah Kioko Wambua

i) 30 days' pay in lieu of notice.....	Kshs. 14,130
ii) Leave pay for 2 years.....	19,782
iii) Severance pay for 2 years.....	14,130
iv) Rest days worked.....	48,984
v) 12 months' salary in compensation.....	169,560

c) 3rd Grievant: Petronila Mwangeli Musyoki

i) 30 days' pay in lieu of notice.....	Kshs. 14,130
ii) Leave pay for 7 years.....	69,237
iii) pay for 7 years.....	49,455
iv) Rest days worked.....	171,444
v) 12 months' salary in compensation.....	169,560

Findings and Determination

10. There are two (2) issues for determination in this case:

- a) the termination of the Grievants' employment was lawful and fair;
- b) Whether the Grievants are entitled to the remedies sought.

The Termination

11. In their testimony before the Court, the Grievants consistently testified that their employment was terminated pursuant to relocation of the Respondent's business from Nairobi to Nanyuki. They told the Court that they were not given an opportunity to move to Nanyuki.

12. The Respondent did not adduce any evidence to counter the Grievants' account which the Court found truthful. In the circumstances, I find that the Respondent terminated the Grievants' employment without a valid reason as required under Section 43 of the Employment Act, 2007 and in violation of the mandatory procedural fairness requirements set out under Section 41 of the Act.

Remedies

13. Flowing from the foregoing findings I award the 1st Grievant, Harrison Wambua Muindi eight (8) months' salary, the 2nd Grievant, Jeremiah Kioko Wambua four (4) months' salary and the 3rd Grievant Petronila Mwangeli Musyoki twelve (12) months' salary in compensation for unfair termination of employment. In making this award I have considered the Grievants' length of service as well as the Respondent's conduct in the termination process.

14. I further award each of the Grievants one (1) month's salary in lieu of notice. In the absence of leave records to counter the claims for leave pay, the claims succeed and are allowed.

15. There was no proof that the Grievants were terminated on account of redundancy. The claims for severance pay therefore fail and are dismissed. The Grievants testified that they were each given one rest day per week. The claims for rest days worked are therefore without merit and are dismissed.

16. Ultimately I enter judgment in favour of the Grievants as follows:

a) 1st Grievant: Harrison Wambua Muindi

i) 8 months' salary in compensation.....Kshs. 113,040	
ii) 1 month's salary in lieu of notice.....14,130	
iii) Leave pay for 3 years (14,130/30x21x3).....29,673	
iv) Prorata leave for 7 months (14,130/30x1.75x7)..... <u>5,770</u>	
Total.....162,613	

b) 2nd Grievant: Jeremiah Kioko Wambua

i) 4 months' salary in compensation.....Kshs. 56,520	
ii) 1 month's salary in lieu of notice.....14,130	
iii) Leave pay for 2 years (14,130/30x21x2)..... <u>19,782</u>	
Total.....90,432	

c) 3rd Grievant: Petronila Mwangeli Musyoki

i) 12 months' salary in compensation.....Kshs. 169,560	
ii) 1 month's salary in lieu of notice.....14,130	

iii) Leave pay for 6 years (14,130/30x21x6).....	59,346
iv) Prorata leave for 8 months (14,130/30x1.75x8).....	<u>6,694</u>
Total.....	249,730

17. These amounts will attract interest at court rates from the date of judgment until payment in full.

18. I direct the Respondent to issue the Claimant with certificates of service and to pay the costs of this case.

19. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30TH DAY OF JUNE 2017

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JUDGE

Appearance:

Mr. Dickens Atela (Union Representative) for the Claimant

No appearance for the Respondent