



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 226 OF 2015 CONSOLIDATED WITH CAUSE 134 OF 2016

FLORENCE WANJIRU KINUTHIA.....1ST CLAIMANT

MARY WAMBUI KARANJA.....2ND CLAIMANT

JANE WANJIRU NG'ANG'A.....3RD CLAIMANT

ANN WAINUKU MATHENGE.....4TH CLAIMANT

IRENE WANJIRU NGITHU.....6TH CLAIMANT

LYDIA W. WAMBURU.....7TH CLAIMANT

AND

MARY NJERI MUIRURI.....8TH CLAIMANT

VERSUS

KENYA NUT COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 23rd June, 2017)

JUDGMENT

The 1st to 7th claimant filed the memorandum of claim dated 02.12.2015 through Namada & Company Advocates. The 8th claimant filed the memorandum of claim on 09.06.2016 through the same Advocates. The claimants stated that the issue in dispute is discriminate and unfair payment of retirement or terminal dues. The claimants prayed for judgment against the respondent for:

a) A declaration that the claimants are entitled to payment of their respective terminal dues as calculated and tabulated in paragraph 10 or 9 of the memorandum of claim on the basis of the respondents' established custom and practice and the formula used in calculating the amount paid out initially for the undermined years of service.

b) The respondent do pay each of the claimants balance of retirement or service entitlement as calculated and pleaded in paragraph 10 or 9 totalling to Kshs.3, 714, 047.00 for 1st to 7th claimant and Kshs.531, 886.00 for the 8th respondent.

The claimants claim for unpaid terminal dues for each year of service and long service pay or award.

The claimants were employed by the respondent on diverse dates sometimes in 1980s and the service record of the claimants was not in dispute. On or about March 2014 the respondent notified the claimants to retire effective 31.08.2014 or 31.07.2014 upon expiry of a six months' retirement notice. The claimant's case is that service pay or gratuity and pay for long service award was carried out without a uniform formula. It is their case that they were entitled to 1.5 monthly pay for each completed year of service for service pay or gratuity but not all years served were paid as expected. Their case is that each was entitled to 25 or 30 years' long service award or pay at 1.5 monthly salaries to be paid together with the retirement dues.

The respondent filed the memorandum of defence in both cases through Kaplan & Stratton Advocates. The respondent prayed that the claimants' cases be dismissed with costs. The respondent's case is that upon retirement, the claimants were paid their retirement dues as agreed in the CBA. Thus, the pay was not unfair, discriminatory or involving unfair labour practice. The claimants' retirement dues having been fully paid, the respondent's case is that the claims in the suit must fail.

The only issue for determination is whether the claimants are entitled to the remedies as prayed for. The evidence is clear. In 1989, the National Social Security Fund (NSSF) was introduced and claimants became members of that scheme. Thus, clause 13(c) of the CBA states thus, **"The employee shall be entitled to forty six (46) days for each completed year of unbroken service from 1976 – 1990 when the Company Pension Service Scheme started."** The claimants joined the Scheme being the NSSF. The court returns that they were duly paid per clause 13(c) of the CBA and for years served up to 1990 when they joined the NSSF. The claims for allegedly withheld service pay will therefore fail. While making that finding the court has found that the claimants failed to show by evidence that the respondent had a practice of paying retiring staff, in similar circumstances as the claimants, retirement dues in a manner other than it was paid to the claimants.

The further evidence was that long service pay was paid once upon 20 years' service at one month salary or at 25 years' service at 1.5 months' salary. That was per respondent's policy and not in the CBA. The claimants' witness testified that he had been paid the award. Accordingly, the court returns that the claimants were paid the long service awards per the respondent's policy.

The respondent appears to have failed to explain to the claimants and to sensitise them of the consequences of the cited CBA provision and accordingly, each party shall bear own costs of the suits.

In conclusion, the claimants' respective suits are dismissed with orders that each party shall bear own costs of the suits.

Signed, dated and delivered in court at **Nyeri** this **Friday, 23rd June, 2017.**

BYRAM ONGAYA

JUDGE