



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 19 OF 2017

STEPHEN MWANGI.....1ST CLAIMANT

SAMMY MAINA.....2ND CLAIMANT

MARTIN OMOSA MONARI.....3RD CLAIMANT

VERSUS

TUSKER MATTRESSES LIMITED.....RESPONDENT

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

JUDGMENT

The claimants filed the memorandum of claim dated 10.11.2016 through Ishmael & Company Advocates. The claimants prayed for judgment against the respondent for:

- a) A declaration that the respondent's action to summarily dismiss the claimants under the guise of redundancy from employment was illegal, unlawful, unfair, wrongful and inhumane.
- b) An order for the respondent to pay the claimants their terminal dues as pleaded in paragraph 9 of the statement of claim totalling to Kshs.3, 551, 562.00 (upon headings of 45 days in lieu of termination notice; gratuity at 20 days salary for every completed year of service and per CBA applicable; and 12 months for each year served being compensation for the unfair termination).
- c) An order for the respondent to pay the claimant's costs of the claim plus interest thereon.

The respondent filed the statement of response on 25.04.2017 through Kanchory & Company Advocates. The respondent prayed that the claimants' claims be dismissed with costs.

The claimants' case is that the redundancy was unlawful.

It is not in dispute that the respondent employed the claimants in various capacities sometimes in 2009. The claimants were promoted to bakery supervisors in 2013. The respondent's case is that it undertook redundancy proceedings in accordance with a restructuring programme as a meeting was held on 23.09.2016 to notify staff about the looming redundancy.

The reply to the response was filed on 17.05.2017.

The **agreed issue** for determination is whether the events of 23.09.2016 amounted to lawful redundancy.

It is not disputed that on 23.09.2016 the respondent convened a meeting and informed the staff including the claimants about the decision to declare them redundant. The respondent served each claimant a letter dated 23.09.2016 declaring the claimants redundant from 23.09.2016. The letter stated that the reason for the redundancy was operational changes in the operations department so as to enhance the respondent's viability. Each claimant was to be paid terminal dues being 45 days' pay in lieu of notice, 15 days' pay for every completed year of service, and to receive a certificate of service. The claimants were aggrieved that the termination was sudden and without due process. The court has considered the material on record and returns that the termination of the claimants' contracts of employment with the respondent was unfair because the respondent failed to comply with the provisions of section 40 of the Employment Act, 2007 as follows:

- a) The claimants were members of a trade union and the union had concluded a recognition agreement and a collective agreement with the respondent but the respondent has not showed that it notified the union and the union about the redundancy one month prior to the termination date, 23.09.2016, as prescribed in section 40 (1) (a) of the Act.
- b) There is no evidence that the claimants were identified or selected for redundancy as envisaged in section 40 (1) (c) with regard to seniority in time, skills, ability and reliability of the employees affected by the redundancy.
- c) It was not established that the respondent had paid the claimants the redundancy dues as promised in the redundancy letter or the severance pay, pay for due leave days and the pay in lieu of notice.

In view of the period served and the consideration that the claimants did not contribute to their termination but desired to continue in employment, each is awarded 6 months compensation at Kshs.61, 932.00 per month making **Kshs.371, 592.00**. Each is awarded gratuity as prayed for and under Article 24 of the CBA **Kshs. 333, 480.00**; and 45 days pay in lieu of notice as prayed for and as redundancy letter **Kshs.107, 190.00**. Thus, the respondent to pay each claimant a sum of **Kshs.812, 262.00** and the respondent will pay accordingly as there was no evidence that any of that money had been paid to the claimants.

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

- a) The declaration that the termination of the claimants' contracts of service by way of redundancy as conveyed in the respective letters dated 23.09.2016 was unfair and unlawful.
- b) The respondent to pay each claimant **Kshs.812, 262.00** by 01.08.2017 failing interest to be payable thereon at court rates from the date of this judgment till full payment.
- c) The respondent to pay the claimants' costs of the suit.

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

BYRAM ONGAYA

JUDGE