



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 179 OF 2015

NASONGO WANGILA.....1ST CLAIMANT
ABRAHAM MAINGI KIMANTHI.....2ND CLAIMANT
THOMAS MATU NGOTE.....3RD CLAIMANT
SHADRACK MUNGAI MIRABA.....4TH CLAIMANT
MUTISO MBUVI ALBANUS.....5TH CLAIMANT
STANLEY NDUNGU THUNI.....6TH CLAIMANT
SILAS SHILAGAVA.....7TH CLAIMANT
BENJAMIN WASWA WABOMBA.....8TH CLAIMANT
KEVIN KARANJA WAMBUI.....9TH CLAIMANT
BRIAN ANGAWE ONGALA.....10TH CLAIMANT
EDWIN OCHIENG KWENA.....11TH CLAIMANT
MARWA SAMUEL MWITA.....12TH CLAIMANT
COLLINS NYONGESA SIMIYU.....13TH CLAIMANT
PETER OMULEMA MUNALA.....14TH CLAIMANT
JOHN MATHERI NJENGA.....15TH CLAIMANT
JACK OTIENO WAGAYA.....16TH CLAIMANT

VERSUS

ACME CONTAINERS LIMITED.....1ST RESPONDENT
HOPE PLASTICS LIMITED.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 9th June, 2017)

JUDGMENT

The claimants filed the statement of claim on 06.10.2015 through Namada & Company Advocates. They prayed for judgment against the respondent for:

- a. A declaration that the respondent's action to summarily dismiss the claimants from employment was illegal, unlawful, unfair and inhumane.
- b. An order for the respondent to pay the claimants their terminal dues and compensatory damages as pleaded in paragraph 7 herein totaling to Kshs.5, 879, 960.00.
- c. An order for the respondent to pay the claimants' costs of the claim plus interest thereon.

The statement of claim particularised and computed the dues for each claimant under the headings of one month's pay in lieu of termination notice, overtime, underpayment of wages, and compensation for unfair termination.

The 1st respondent filed the memorandum of response on 27.10.2015 through Ongicho-Ongicho & Company Advocates. The 1st respondent prayed that the suit be dismissed with costs. The 2nd respondent filed a response to the claim on 20.11.2015 through Norman Otieno & Company Advocates. The 2nd claimant prayed that the suit be dismissed with costs. All the claimants filed their respective affidavits to support their individual cases. The parties agreed that the suit be determined on the basis of the pleadings, documents and affidavits on record. The court has considered the material on record and makes findings as follows:

- a. The court finds that the 1st respondent has admitted that it employed the claimants on diverse dates as machine operators and as pleaded in paragraph 5 of the statement of claim.
- b. The 1st respondent states that the 2nd respondent took over the employment of the claimants later on in 2015. The 2nd respondent states that the claimants worked for the 1st respondent at Limuru as 1st respondent's employees. The 2nd respondent was established in May 2015 and the 2nd respondent became the employer of some of the claimants effective May 2015. The court finds as much and in so far as the respondents are limited companies, the court returns that the 2nd respondent was not a department of the 1st respondent as pleaded for the claimants. The material on record shows that the 2nd respondent took over part of the 1st respondent's business under which the claimants were employed. In the court's opinion, the claimants lost the 1st respondent's employment on account of redundancy when the 2nd respondent took up that part of the 1st respondent's undertaking. Nevertheless, each of the claimant's case is considered as follows.
- c. The 1st and 2nd claimants were suddenly terminated from employment of the 1st respondent. The 1st claimant's name was in the list of names of employees whose services were no longer needed as at 15.05.2015. The 1st claimant is awarded as prayed for and to be paid by the 1st respondent as he was rendered redundant without compliance with section 40 of the Employment Act, 2007. He did not contribute to his termination and is entitled to the 12 months compensation for the unlawful and unfair termination. He is awarded **Kshs.260, 000.00** as prayed for.
- d. The 2nd claimant Abraham Maingi Kimathi was verbally terminated on 15.08.2013. His claim for house allowance was a continuous injury and the court returns that the same will fail as it was time barred under section 90 of the Employment Act, 2007. The termination was unfair as it was due to filing of a case to claim injury compensation and the reason was unlawful under section 46 (h) of the Act. The court returns that he is entitled to all other claims as against the 1st respondent

making Kshs.252, 000.00. While awarding maximum 12 months' pay for compensation for unfair termination the court has considered the long service of 16 years, he never contributed to the dismissal and the reason for termination was illegal.

e. The 3rd claimant was verbally declared redundant by the 1st respondent on 19.05.2015. He served the 1st respondent since 2005. The termination was unfair for want of due process under section 40 of the Act on redundancy. The 1st respondent will pay him as prayed except for off days which were not established by way of evidence. Maximum 12 months' compensation is awarded in view of the long service and that he did not contribute to his own termination. He is awarded **Kshs.157, 920.00**.

f. The 4th claimant, Shadrack, was terminated from employment on 02.07.2015 while in the service of the 2nd respondent. He was accused of asking for salary increment and was thereby dismissed verbally. The court returns that the reason for the termination was illegal under section 46 (h) of the Act. The 4th claimant had served the 2nd claimant only for about 2 months. The court has considered that short term of service. He is awarded Kshs.14, 600.00 for unfair termination and Kshs.14, 600.00 being one month pay in lieu of termination notice making **Kshs. 29, 200.00** payable by the 2nd respondent.

g. The 5th claimant Mutiso joined the 2nd respondent and was terminated on 10.04.2015 after a short service with the 2nd respondent. He is awarded a month's pay for unfair termination and one month pay in lieu of termination notice making **Kshs.22, 170.00** at Kshs. 11, 085 .00 per month payable by the 2nd respondent.

h. The 6th claimant Thuni joined the 2nd respondent and was terminated from service on 11.06.2015 on account of a grievance about salary increment. He had been in the 2nd respondent's service for about 2 months. The reason for termination was illegal per section 46(h) of the Act. He is awarded 3 months' pay for the unfair termination and a month's pay for pay in lieu of notice at Kshs.17, 606.00 making **Kshs. 70, 424.00** payable by the 2nd respondent.

i. The 7th claimant Shilagava was terminated on 06.05.2015 by the 1st respondent on account of redundancy. He did not contribute to his termination in any way. He is awarded 12 months' compensation for unfair termination in contravention of section 40 of the Act, and one month pay in lieu of the termination notice at Kshs.9, 000.00 per month making **Kshs.117, 000.00** payable by the 1st respondent. The court returns that the claims for off days, public holidays, and unpaid leave days were not established as no evidence was provided on the alleged claims.

j. The 8th claimant Waswa says he was terminated from employment on 04.08.2014 by the 2nd respondent. It is clear that as at that date the 2nd respondent had not taken up the employees including the said Waswa. The court finds the 6th claimant's claims incredible on that account and the same will fail.

k. The 8th claimant Wambui was terminated from the 2nd respondent's employment on 02.07.2015 on account of a grievance about salary increment. The reason for termination was illegal per section 46(h) of the Act. He is awarded 3 months' pay for the unfair termination and a month's pay for pay in lieu of notice at Kshs.15, 400.00 making **Kshs. 61, 600.00** payable by the 2nd respondent. Claims for unpaid leave and service gratuity were not established and will fail.

l. The 10th claimant Ongala was terminated from employment on 10.05.2015 on account of redundancy He was employed on 10.02.2010. In view of the period of service, he is awarded 6 months' pay for unfair termination as it was in contravention of section 40 of the Act, one month pay in lieu of termination notice, making **Kshs.78, 400.00** at Kshs. 11, 200.00 per month and payable by the 1st respondent. The court returns that the rest of the claims about unpaid days for

allegedly worked days, unpaid leave and off days were not established by way of evidence and they will fail.

m. The 11th claimant Kwena was terminated on 06.05.2015 by the 1st respondent on account of a grievance about the injury he had suffered while on duty. The reason was unlawful under section 46 (h) of the Act. He is awarded 12 months' pay in compensation in view of long service from 2004 and the unlawful and unfair reason for termination. He is awarded a month's pay in lieu of termination notice. The 1st respondent will pay him at Kshs.9, 781.00 per month making **Kshs.127, 153.00** payable by the 1st respondent. The rest of the claims will fail for want of evidence and justification.

n. The 12th claimant Mwita was terminated from employment on 15.05.2015 by the 2nd respondent on account of undisclosed reasons. The termination was unfair for want of a valid reason and due process. As he had served for a short time of about 2 months, the 2nd respondent will pay the 12th claimant one month in lieu of notice and a month's pay for unfair termination at Kshs.10, 406 making **Kshs. 20, 812.00** payable by 2nd respondent. The rest of the claims will fail for want of evidence and justification.

o. The 13th claimant Simiyu was terminated from employment on 18.05.2015 by the 1st respondent on account of sustaining an accident and seeking compensation in that regard. The court the returns the reason was unfair under section 46(h) of the Act. In view of the unlawful reason for termination and service from 01.10.2012, he is awarded 6 months' pay in compensation and a month's pay in lieu of termination notice at Kshs. 11, 200.00 making **Kshs.78, 400.00** payable by the 1st respondent. The rest of the claims will fail for want of evidence and justification.

p. The 14th claimant Munala was unlawfully rendered redundant by the 1st respondent. He had been employed in 2007. The termination contravened section 40 of the Act on procedure for redundancy. He is awarded a month's pay in lieu of termination notice and 6 months' pay for unfair termination making **Kshs.76, 685.00** at Kshs. 10, 955.00 per month. Claim for unpaid public holidays will fail for want of evidence.

q. The 15th claimant Njenga was terminated from employment by the 2nd respondent as his services were no longer required and he was locked out. He had served for about 2 months with the 2nd respondent and he is awarded 2 months' pay, one for compensation and one in lieu of termination notice at Kshs.12, 416.00 making **Kshs. 24, 832.00**. The claims under the other headings by the claimant will fail for want of evidence and justification.

r. The 16th claimant Wagaya was dismissed on 02.07.2015 by the 2nd respondent on account of redundancy. He had served the 2nd respondent for about 2 months. He is awarded 2 months' pay, one for compensation and one in lieu of termination notice at **Kshs.12, 416.00** making Kshs. 19, 562.00 payable by the 2nd respondent.

s. Subject to there being double pay in view of the findings in this judgement, the 1st respondent will pay each of the claimants severance pay being half month salary for each year served in view of the redundancy that took place upon the 2nd respondent taking up the concerned claimants.

In conclusion judgment is hereby entered for the claimants against the respondents for:

1. The respondents to pay the claimants the amount as specified in this judgment by 01.08.2017 failing interest at court rate to be payable thereon from the date of this judgment till full payment.

2. The respondents to pay the claimants' costs of the suit in such proportion as to the total sum payable by each respondent to the claimants per order (1) above.

Signed, dated and delivered in court at Nyeri this Friday, 9th June, 2017.

BYRAM ONGAYA

JUDGE