



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

**CAUSE NO. 197 OF 2015 CONSOLIDATED WITH CAUSES 199, 201, 203, 206, 209 AND 211
ALL OF 2015**

JOHN NDUGIRE NG'ANG'A.....1ST CLAIMANT

MICAH KAREITHI.....2ND CLAIMANT

ISAAC WAMBUGU NGARIA.....3RD CLAIMANT

HARON NDUNG'U NDERITU.....4TH CLAIMANT

KENNEDY MUCHINA MURIITHI.....5TH CLAIMANT

FLORENCE WANJIKU NDONO.....6TH CLAIMANT

CYRUS MACHARIA MWANGI.....7TH CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF LAIKIPIA.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 21st July, 2017)

JUDGMENT

The suits as consolidated are part of 14 suits all of which were consolidated and parties recorded a consent in court on 09.12.2016 whereby judgment by consent was entered in favour of the claimants in suits not being subject to the present judgment. The consent as recorded in court was as follows:

1) That by consent judgment is hereby entered against the respondent in favour of the claimants as follows:

- a) That in cause 200/2015 for Kshs.400, 920.00.
- b) That in cause 202/2015 for Kshs. 400, 920.00.
- c) That in cause 204/2015 for Kshs.522, 600.00.
- d) That in cause 205/2015 for Kshs.399, 720.00.
- e) That in cause 207/2015 for Kshs.522, 600.00.

That in cause 208/2015 for Kshs.477, 000.00.

That in cause 210/2015 for Kshs.410, 520.00.

- 2) That causes 197, 199, 201 and 206 and 203, 209 and 211 all of 2015 to proceed to full hearing.
- 3) That decretal sum in causes where judgment has been entered to be paid within 90 days from today(09.12.2016)
- 4) That costs of the suit where judgment has been entered to be agreed upon the parties and agreements filed in court.

The present judgment is with respect to order 2. In the compromised suits, the respondent agreed to pay the claimants therein 12 months' pay in compensation for the otherwise unfair termination. In the pending suits the claimants declined to accept the 12 months' pay which is the available maximum compensation under section 49 (1) (c) of the Employment Act, 2007.

The court has perused the claimants' respective statements of claims filed through Abwuor & Company Advocates. Each of them has prayed for a declaration that the termination was unfair, compensation for the unfair termination, costs and interest. The claimants then filed amended statements of claims on 26.05.2016 introducing further prayers for reinstatement effective the date of termination being 27.02.2015; payment for remainder of the period of service to attainment of 60years of age, the expected age of retirement; payment of unpaid leave and off days; and deducted but not remitted NHIF and NSSF.

The respondent filed the statements of defence on 23.06.2016 through Bwonwonga & Company Advocates and prayed that the claimants' suit be dismissed with costs.

The parties opted to rely on the material on record and pleadings without calling witnesses.

The following facts are not in dispute:

- 1) The claimants were employed to work for the defunct County Council of Laikipia and effective 06.09.2012.3
- 2) The respondent took up all assets, liabilities and absorbed all staff of the County Council following the Constitution of Kenya 2010 and the enactment of the County Governments Act. The claimants by absorption became staff of the respondent accordingly.
- 3) The respondent terminated the claimant's services effective 27.02.2015 after a continuous service of 36 months.

The court has considered the material on record and makes findings as follows:

- 1) The respondent has conceded that the claimants' otherwise casual employment converted to one subject to minimum terms of service under the Employment Act, 2007 and as per section 37 of the Act.
- 2) The respondent conceded that the claimants' termination from employment was therefore unfair and agreed to pay each of them 12 months' pay in compensation. The court returns that they are entitled accordingly.
- 3) The court has considered the period the claimants had served being 36 months and the need to facilitate smooth constitutional transition to the devolved system of government and returns that the compensation as offered by the respondent would meet the ends of justice in the circumstances of the cases. Thus, the court returns that the prayer for reinstatement, in the circumstances of the cases, would not be justified as the purpose to be served has not been established; especially that

reinstatement will invariably render unjustified inconveniences to the respondent towards alignment to the emerged devolved system of governance. As submitted for the respondent, there is no established bar to the claimants moving on and mitigating their circumstances by taking on other gainful engagements. Upon the same consideration that the claimants should be able to take up alternative gainful employment, the court returns that the prayer for pay for remainder of period of service up to retirement age of 60 years was unjustified.

4) The amount of alleged deductions for NHIF and NSSF and not remitted have not been disclosed at all and there being no submissions in that regard, the prayer is deemed abandoned.

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

- a) The declaration that the termination of the claimants' employment was unfair.
- b) The respondent to pay each of the claimants 12 months' pay as at the rate of monthly pay at termination being compensation for unfair termination; and the relevant computation to be agreed between the parties in 14 days and filed in court accordingly.
- c) The respondent to pay the compensation in (b) by 01.10.2017 failing interest to be payable at court rates from the date of this judgment till full payment.
- d) The respondent to pay claimants' costs of the suit to be agreed upon or taxed in the usual manner.

Signed, dated and delivered in court at **Nyeri** this **Friday, 21st July, 2017**.

BYRAM ONGAYA

JUDGE