



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO. 175 OF 2017

(Originally Kisumu Cause No. 231 of 2017)

SAMUEL GECHIKO	1st CLAIMANT
STEPHEN KIPRUTO KOSGEI	2nd CLAIMANT
JOSEPHAT KIPKOSGEI KOECH	3rd CLAIMANT
GEDION KIPCHIRCHIR LIMO	4th CLAIMANT
GEOFFREY MUHOMGO KINUTHIA	5th CLAIMANT
GABRIEL GWAYERA	6th CLAIMANT
MATROBA INDUSA WAINI	7th CLAIMANT
KHAEMBA YAMAME ROBERT	8th CLAIMANT
ALEXANDER VUSHULU MADEGWA	9th CLAIMANT
PETER WAMALWA WEKESA	10th CLAIMANT
EDWIN KIPROTICH TENDENEI	11th CLAIMANT
ARON KURA	12th CLAIMANT
SAMSON KIPROP CHERUIYOT	13th CLAIMANT
SIMON SHILAGO KALAKACHA	14th CLAIMANT
ALI KIPKEMBOI CHEPTOT	15th CLAIMANT
PATRICK LINYALI MUHONGO	16th CLAIMANT
SAMWEL K. MASINDE	17th CLAIMANT
EVANS OKIYO EKASETE	18th CLAIMANT

JOHN MBURIKA EHENZO 19th CLAIMANT

RONALD ADIRA ASINGIRA 20th CLAIMANT

LEONARD OTUNDO SANTOS 21st CLAIMANT

JOHN AMUKUNE 22nd CLAIMANT

v

KAPIL BAKERY LIMITED 1st RESPONDENT

KANTILAL V. RABADIYA 2nd RESPONDENT

RULING

1. The 22 Claimants instituted legal proceedings against the Respondents on 25 May 2017 alleging unlawful termination of employment on account of redundancy, underpayment of wages and failure to pay for annual leave and overtime pay.

2. The Memorandum of Claim was accompanied with a chamber summons under certificate of urgency seeking

1. ...

2. THAT the Honourable Court do issue a warrant of arrest against the 2nd Respondent namely KANTILAL V. RABADIYA to be arrested and brought before the Court to show cause why he should not furnish security for his appearance in court pending the hearing and determination of this application inter-parties in the first instance and thereafter pending the hearing and determination of this Cause.

3. THAT the 2nd Respondent do furnish security by way of deposit of the sum of **Kshs** 10,000,000/- or such other sum sufficient to answer the Claimants claims in court pending the hearing and determination of this application inter-parties in the first instance and thereafter pending the hearing and determination of this Cause.

4. THAT the Court do make such other orders as may be fit in the interests of justice.

5. THAT the costs of the application be provided for.

3. The application was placed before Wasilwa J in Nairobi on 29 May 2017 and she certified it as urgent and directed that it be served upon the Respondents for hearing on 30 May 2017.

4. On 30 May 2017, the advocate who held brief for Mr. Omusundi for the Claimants informed the Court that the 2nd Respondent had indicated that he had postponed indefinitely his intention to travel out of the country, and the Court scheduled mention for 6 June 2017.

5. On 6 June 2017, the Court was informed that the application had not been served and the Court directed that service be effected for hearing on 15 June 2017.

6. The Respondents though served did not attend Court on 15 June 2017 and the Court made the following notes

The appl to deposit 10m in Ct as security is unopposed. This is however a Kisumu case and I refer

it back to Kisumu for hg of the appl. Mn before J Onyango on 29/6/17.Mn notice to issue.

7. On 29 June 2017, Onyango J directed the County Labour Officer to confirm whether the computations of dues/benefits sought by the Claimants had been correctly calculated by the Respondents (order appear not to have been complied with).

8. The Court also transferred the Cause to Eldoret sub-registry.

9. On 20 November 2017, the 2nd Respondent filed a replying affidavit in opposition to the application, and arguments were taken on 21 November 2017.

10. According to the Claimants, the interests of justice demanded that the orders sought be granted because the 1st Respondent had wound up its activities and the 2nd Respondent, a director and citizen of India was on the verge of leaving the jurisdiction of the Court, and therefore any eventual decree would remain unsatisfied.

11. The Respondents did not dispute that the redundancy notice(s) to the Claimants (copy was filed in Court) indicated that the main Director was relocating.

12. Instead, they contended that they consulted with the County Labour Office and got its go ahead to make payments of benefits due upon redundancy and that the Claimants acknowledged receipt of the payments and therefore the orders sought were not warranted.

13. The Respondents attached copies of the benefits schedule to the replying affidavit.

14. The Court has looked at the Memorandum of Claim and the benefits sought by the Claimants are *pay in lieu of notice, overtime pay, annual leave, severance pay and compensation for wrongful termination.*

15. In the schedules filed by the Respondents, the Claimants were paid only *severance pay.*

16. Section 40 of the Employment Act, 2007 provides that on termination on account of redundancy, an employee is entitled to pay for *outstanding leave, at least 1 month pay in lieu of notice where notice is not given.*

17. The Claimants admitted that notice(s) of the redundancies was given, and therefore nothing much should turn on this item.

18. Without determining the merits of the heads of claims brought by the Claimants, it appears at the very least that the Respondents did not factor in *pay in lieu of accrued leave*, and that issue of leave and the question of whether the redundancies were unfair remain for the Court's determination.

19. With the admission in the redundancy notice(s) that the Respondents main director was going to relocate, and considering that the average wage of each of the Claimants is about Kshs 16,000/-, the Court is of the view that the Respondents should at least deposit into Court such amount as may cover the pay for the *accrued leave* (terms of order for deposit of Kshs 10,000,000/- made on 15 June 2017 appear not clear).

20. The Court therefore allows the application in the following terms

(i) The Respondents to deposit with the County Labour Office Kshs 400,000/- as security within the next 10 days.

(ii) The County Labour Officer to inspect and examine the Respondents employee records with a view to determining any outstanding leave due.

(iii) The County Labour Officer to file a report with the Court on or before 15 December 2017.

(iv) Respondents to file and serve a Response and other requisite documents before 30 November 2017.

(v) Claimants to take a date in the registry for further directions.

21. Costs in the Cause.

Delivered, dated and signed in Eldoret on this 22nd day of November 2017.

Radido Stephen

Judge

Appearances

For Claimants Mr. Omusundi instructed by Morgan Omusundi, Law Firm Advocates

For Respondents Mr. Mukhabane instructed by Nyairo & Co. Advocates

Court Assistants Etyang/Martin