

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 70 OF 2017

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS....CLAIMANT

VERSUS

MBILINI FARMERS CO-OPERATIVE SOCIETY LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday, 20th December, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 09.03.2017 alleging refusal by the respondent to pay redundancy benefits to 84 employees and refusal to pay salary arrears to the 84 employees. At paragraph 4 the claimant states that the issue of refusal to pay redundancy benefits is being handled elsewhere and so the issue for determination in the present suit is about refusal by the respondent to pay salary arrears. The claim is that the respondent was unable to pay full salary for the 84 employees from 1995 to 2007. Further, 55 employees opted out of the present claim so that the listed 29 grievants are the only aggrieved employees in the present suit. The total amount of money claimed is Kshs.6, 834,091.50 in salary arrears. The claimant union and the respondent have held meetings with participation of the Ministry of Labour where the respondent undertook to pay the owed cash. By the letter dated 10.03.2014, the respondent wrote to the Ministry indicating the willingness to settle the dues once some shares had been sold. The Ministry of Labour issued a certificate of unresolved dispute on 04.02.2015. The claimant's case is that the respondent failed to pay the dues as was variously promised using proceeds from cherry intake, sale of its Athi River Plot, and sale of co-operative shares. The prayers are for judgment against the respondent for:

- a. A declaration that the affected employees deserve to be paid their outstanding salary arrears as tabulated by the respondent and given to the affected employees individually in writing.
- b. An order directing the respondent to pay the said outstanding arrears within 14 days from the date of the judgment and in default to earn interest at court rates and execution to ensue.
- c. Any other relief the court finds fit and appropriate to meet ends of justice.

The memorandum of response was filed on 02.05.2017 through Priscillar Kioko & Associates. The respondent prayed that the suit be dismissed with costs and with orders:

- a. The respondent is given time to enable them settle the matter amicably and in instalments once the society is stable as the society is in financial crisis as members are no longer bringing coffee.
- b. Any other relief as the honourable court may deem fit to grant.

The court has considered the response whose effect is that the respondent owes the money as claimed but that it needs time to pay the arrears because it is in a financial crisis. The respondent's prayer is that it be given time to settle the debt as claimed by way of instalments. The court has also considered the correspondence as filed for the claimant and which show that the amount is owed as the respondent has severally admitted the claim. Thus, the court returns that the claimant is entitled as prayed for.

The court has considered the respondent's financial position and returns that each party shall bear own

costs of the suit. Further, the amount claimed will be paid by 01.06.2018 failing interest shall run at court rates from the date of this judgment till full payment.

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

a. The respondent to pay each grievant the salary arrears as listed on the first page of claim and being a sum of **Kshs.6, 834, 091.50** and to pay each by **01.06.2018** failing interest at court rates to be payable thereon from the date of this judgment till full payment.

b. Each party to bear own costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Wednesday, 20th December, 2017.**

BYRAM ONGAYA

JUDGE