



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 650 OF 2015

BETWEEN

- 1. PETER MUTINDA KATUTHI**
- 2. KAHUNDA KALUME MOLE**
- 3. DANIEL KAHINDI MUNGA KATANA**
- 4. SALIM KHAMIS MWALUKUTA**
- 5. HARRISON UNDA RUWA**
- 6. KENGA KAHINDI NYALE**
- 7. CHANGAWA THOMAS NGUMBAO**
- 8. JOSEPH KASHUSHU NZOVU**
- 9. MARY HALAKO KIRIBAI**
- 10. MASHA MUNGA KATANA**
- 11. SHADRACK MAGAMBO TOYA**
- 12. NDORO MALINGI KIDENGE**
- 13. CHANGAWA KAINGU KADENGE**
- 14. NGUMBAO CHARO KALUME**
- 15. SHAURI DZOMBO CHIVATSI**
- 16. SAIDI MWINYI MWINYIHAJI**
- 17. KATANA KOMBO WANJE**
- 18. CHARO KITSAO MWANGO**
- 19. CHENGO KATANA THOYA**

20. KAZUNGU KONDO DUKA
21. KADENGE PAUL KADENGE
22. ENDERSON KARISA BAYA
23. KAINGU BAYA MSANZU
24. NGOME NYALE MWALEWA
25. FAUZ SWALEHE AHMED
26. JULIUS MAGHANGA SHINGYRA
27. PATRICK NGWILI MUNGWANA
28. GEORGE SALIM KAVIHA
29. SADI HARE BISHIKO
30. NICHOLAS CHARO KAHINDI
31. RENSON MWEN MRAMBA
32. JOSPEH BARISA TUTU
33. HABEL MURUU KONDE
34. KABHENGI CHARO KALUGO
35. KAHINDI KARISA KANDILI

VERSUS

MALINDI SALT WORKS LIMITEDRESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Omollo Onyango & Company Advocates for the Claimant

Federation of Kenya Employers for the Respondent

JUDGMENT

1. The Claimants filed their Joint Statement of Claim, on 1st September 2015. They aver they were employed by the Respondent Salt Manufacturer, on diverse dates, between the years 1993 and 2014. Some were on regular terms, while others were in casual employment. They worked in various capacities, earning salaries of between Kshs. 6,535 and Kshs. 24,435 monthly. They claim that their contracts were terminated by the Respondent on diverse dates between 19th April 2014 and 2nd May 2014. They state there were no valid reasons given to them by the Respondent, to justify termination. They pray for 1 month salary in lieu of notice, annual leave pay over the years worked, gratuity over the same period, and

the equivalent of 12 months' salary in compensation for unfair termination.

2. The Respondent filed its Statement of Response on 9th November 2015. Its position is that the Claimants were employed by the Respondent as Casuals and Contract Employees. The Respondent received an unsigned letter on 15th February 2014, purported to be from the Claimants, which threatened that Employees would go on strike if all their demands were not met. They demanded to be paid all their dues before they could sign monthly contracts. The dispute went before the Labour Officer Kilifi County, M.H. Kella where it was agreed by all the Parties that: Respondent pays all Casual and Permanent Employees who were keen on leaving employment, benefits from 1984 to 2014; every Employee submits personal details to the Respondent; the exercise is carried out for 1 month; paperwork is done through the Labour Office; strike is called off; and benefits are paid to Employees who would have finalized with the Employer, on 22nd April 2014. The Claimants were subsequently paid their terminal dues as agreed, before the Labour Office. Termination was by agreement of the Parties. The Claimants acknowledged payments and discharged the Respondent from further liability. The Claim is therefore without merit. The Respondent urges the Court to dismiss the Claim with costs to the Respondent.

3. 1st Claimant, Peter Mutinda Katuthi, gave evidence for the Claimants on 19th July 2016, and 29th September 2016. 11th Claimant closed the evidence for the Claimants on 7th June 2017. Respondent's Human Resource Officer Stanslous Kahindi Baya and retired Kilifi County Labour Officer, Moses Haron Kella, both testified on 7th June 2017 when hearing closed. The dispute was last mentioned in Court on 9th October 2017 when Parties confirmed filing of their Final Arguments.

4. Katuthi testified he was employed on casual terms in 2004. He worked as an electrician. He was employed on contract from the year 2008. He was paid a salary of Kshs. 13,859 monthly. It was agreed terminal dues are paid to the Claimants at the time of changing over to contract terms. They were not availed service pay. Employees' names were taken. They signed against their names, confirming the number of years served. Katuthi signed discharge voucher and was paid Kshs. 25,434 at the Labour Office Kilifi. He was not satisfied with what was paid. He was denied pending leave and notice pay. Claimants did not know their contracts would be terminated. They were not given reasons for the decision. The Claimants sought assistance from their County Assembly. They finally instructed their Advocates to file this Claim.

5. Cross-examined, Katuthi testified Employees did not go on strike. What was paid to the Claimants was described as service pay and annual leave. Employees- Harrison, Raymond, Johnstone and Livingstone – were chosen to represent the Claimants in talks with Management. Respondent was to pay all terminal dues from 1984 to 2014. Paperwork was done with the assistance of the Labour Office. Katuthi accepted an agreement was arrived at in the Labour Office. This agreement is annexure 2 of Respondent's Documents. Some payments were made to the Claimants. The computation of terminal dues paid, was shown in annexure 4 of Respondent's documents. The Claimants did not have their own workings different from this computation. Katuthi was forced to sign the discharge voucher. The Claimants complained before the Labour Office. Redirected, Katuthi stated that Management chose Employees who would represent the Claimants in negotiating with the Management. The Claimants were not consulted on the computation of terminal dues. Their Lawyer was kept out of the negotiations.

6. Toya worked as a Headman. He explained a Headman is the same thing as a Supervisor. He worked for 9 years, from 2003 to 2014. He was on casual terms throughout. Management told Casual Employee they would be placed on contract. The Employees demanded to first be paid for years already served. Toya confirmed Employees met at the Labour Office and were offered terminal dues. They were told to sign discharge upon payment, and leave for good. They had not agreed on termination. They declined to sign discharge vouchers but were advised to sign by their Lawyer. The Lawyer told them to accept the money offered, sign the discharge, because if he was to file Claim in Court, it would take plenty of time before resolution. The Claimant's Member of County Assembly followed up the matter in the County Assembly. The Respondent ignored the dispute process at the County Assembly.

7. Toya told the Court on cross-examination that Employees who engaged the Respondent in negotiation

were not chosen by the Employees. The Respondent did not coerce the Claimants to sign discharge voucher; they were coerced by their own Lawyer. Annexure 4 of Respondent's documents shows Toya was paid service based on 9 complete years of service. He did not say in his Witness Statement that the Claimants signed discharge voucher under duress.

8. Baya testified there was a letter alleged to come from the Employees, threatening the Respondent that Employees would go on strike. Management advised Employees to sign new contracts or take terminal dues and leave.

9. The Respondent consulted the Labour Office Kilifi. It was agreed those who wished to leave should be allowed to do so, and are paid their terminal benefits. Computation of these benefits was done as shown under Respondent's annexure 4. The Claimants had a Lawyer and MCA, representing them at the Labour Office. The Employees who signed new contracts are still working.

10. Baya testified on cross-examination that the Respondent required Employees to execute new contracts. He did not know how Employees selected their Representatives to the negotiations. Baya stated in his Witness Statement that payment would be on 2nd May 2014. There was delay after computation was done. Employees were given the option to stay or leave.

11. Retired Labour Officer Kilifi County, Moses Kella, testified he was informed by the Respondent, in February 2014, that Respondent's Employees had given a strike notice. There was a dispute over the contracts of Casual Employees. He advised that Parties should appear before him for consultation. Parties did so, and reached an agreement. Employees were to be paid for years of service. A list was compiled with details of years served. Employees confirmed these details. Kella asked Employees to pick their Representatives to the consultative meeting. They did so. Some Employees opted to enter into new contracts and continued working. Those who were paid terminal dues signed discharge vouchers. There was no coercion. Payments were made between 24th February 2014 and 2nd May 2014.

12. Kella affirmed on cross-examination that he asked Employees to select their Representatives. They selected Harrison, Raymond, Johnstone, and Livingstone. The meeting was held as a matter of urgency to avert industrial action. The Employees were demanding to be paid terminal dues for the past years before they could enter into fresh contracts. The Employees signed agreement voluntarily.

The Court Finds:-

13. The Claimants were employed by the Respondent in various positions and on diverse dates between 1983 and 2014. They left employment around April 2014.

14. Dispute between the Parties arose in February 2014. The Respondent required Employees to sign new contracts. Initially the requirement was directed at Casual Employees, but according to the evidence of the Respondent, other Employees on regular terms joined the Casual Employees in agitating for terminal dues.

15. They wrote a letter to the Respondent on 15th February 2014. They demanded to be paid terminal dues based on the years worked, before they could enter into new contracts. They objected to being placed on monthly contracts as proposed by the Respondent under the new arrangement. They threatened industrial action if their demands were not met.

16. The Respondent consulted the Labour Office at Kilifi. There is evidence that the Employees appointed 4 of their Colleagues, Harrison, Raymond, Johnstone, and Livingstone to represent them in the talks. They also had a Human Rights Lawyer, and a Member of County Assembly on their side. The meeting at the Labour Office yielded settlement in the terms shown at paragraph 2 of this Judgment.

17. Employees who opted to sign the new contracts went on working. The Claimants opted to be paid terminal benefits and leave employment. They were paid terminal benefits as shown in the discharge vouchers on record, and schedule of computation contained in annexure 4 of Respondent's documents.

18. There is no evidence that the Claimants were coerced into accepting terminal dues and discharging the Respondent. They were not coerced by the Respondent. They claim they were coerced by their Human Rights Lawyer. They cannot blame the Respondent if they were coerced by their Human Rights Lawyer. There is no evidence in any event that this Lawyer coerced the Claimants into accepting the terms of settlement. All he did was to give legal advice. If it was the wrong advice, the Claimants have the option of pursuing their Lawyer for remedy in professional negligence. The Claimants were also represented by their Colleagues. They had the assistance of their MCA. They had multiple intercessors. They resorted to a multiplicity of dispute resolution mechanisms, some conventional, others not conventional. They cannot be said to have suffered coercion or any form of lack of free will, in making the decision to take the money and leave employment.

19. The Claimants did not present their own computation of terminal dues during negotiation, different from what is contained in Respondent's annexure 4. Service pay was based on the exact number of complete years of service. The Claimants testified they were not satisfied with the amounts paid under this head. They do not dispute the formula adopted in calculating service pay. They do not offer an alternative mode of calculating. They simply say they were not satisfied.

20. The Court is satisfied that termination of the Claimants' contracts was through the agreement of the Parties. It did not amount to unfair termination. It was a mutual decision, freely negotiated and arrived at. It was consensual separation. The Claimants made a deliberate choice to take terminal benefits and cease working. Those who made a different choice are still working. The prayer for compensation and notice pay is without merit. Service pay and annual leave pay were paid to the Claimants. The Claimants signed discharge vouchers, confirming they had no further claims then, and in the future, against the Respondent. ***The Claim is hereby dismissed with no order on the costs.***

Dated and delivered at Mombasa this 7th day of December 2017

James Rika

Judge