



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1672 OF 2013

BEATRICE OSEBE JOSHUA AND 5 OTHERS.....CLAIMANT

VERSUS

MILLS INDUSTRIES LIMITED.....RESPONDENT

JUDGMENT

1. This cause was consolidated with cause numbers 1670-1675 all of 2013. The same proceeded therefore proceeded in respect of the others under this cause.
2. According to Ms. Osebe who gave evidence on behalf of the rest of the claimants they were working for the claimant as machine operators. They used to report to work at 8.00 a.m and leave at 5.00 p.m. She stated that she used to go on leave but had not taken her current leave by the time she was terminated.
3. On 10th July 2013 she worked until 3.00 p.m. but was asked to continue until 6.30 p.m. After 6.30 p.m. Jackie asked her to go and see her. When she went, she was given a letter. It was a termination letter. Her colleagues were given similar letters. The termination letters accused them of non-cooperation with the supervisor and bad attitude towards work. According to her, no warning was issued to them prior to the termination.
4. The matter was reported to their union who tried to resolve the matter on their behalf. The union asked them to collect their dues but they felt the union was not helpful so they hired a lawyer.
5. In cross-examination she stated that they did not agree with the calculation in that the 10 days worked was not included and the money offered was little.
6. The respondent on the other hand called as witness, on Patrick Matheka who stated he worked for the respondent as a supervisor. According to him there was pay delay and the workers wanted to go on strike but told those under his supervision to continue working. According to him. It was Jackie, the Human Resource Officer who dismissed the claimants.
7. In cross-examination he stated that he had no knowledge of a letter written to the respondent by the Labour Officer. He was not called when the claimants were dismissed and that they had never been given any warning letters.
8. The respondent's second witness Mr. Wilson Ayoti testified that he also worked for the

respondent as a supervisor. He was also confirmed that there was salary delay and the claimants refused to work unless paid.

9. In cross-examination he stated that the termination letters did not make any reference to a strike and further that he was not aware if the claimants were issued with any warning letters and further that he was not called for any disciplinary hearing before the dismissal of the claimants.

10. It is not disputed that the claimant's services were terminated by the respondent. The respondent on its part maintained that it had justifiable reason to terminate the claimant services in that they had wrong work attitude and were not cooperative with the supervisors. The wrong attitude was argued by Counsel for the respondent to include going on strike over delayed pay.

11. The Court further notes that upon termination of services the respondent offered to pay the claimants their terminal dues which they disputed and refused to take claiming it was little.

12. As has been stated severally by this Court, termination of employment is a two pronged process. There must first of all be a justifiable or valid reasons for termination and the termination must be carried out through a proper procedure. The claimants were accused of going on strike over delayed pay. The respondent's own witnesses admitted that there was delay in payment of salaries for June. A worker is entitled to remuneration for work done, so the exercise of a right to withdraw Labour where payment is not made for work done cannot generally be regarded as a valid reason for terminating such worker's services. The respondent's witnesses further admitted that no disciplinary process was conducted prior to terminating the claimants' services. The Court therefore reaches the inevitable conclusion that that the claimants' services were terminated for invalid and unjustifiable reasons and further that the termination was conducted without following a fair procedure. The Court therefore award them as follows:-

- One month's salary in lieu of notice.
- Leave and pro rata leave as admitted by the respondent in its schedule of terminal benefits offered to each of the claimants.
- Service pay at the rate of 15 days' pay for each complete year of service.
- Seven month's salary as compensation for unfair termination of services.
- Cost of the suit.

13. The parties herein to liaise with Deputy Registrar of the Court for computation of the heads of the award.

14. It is so ordered.

Dated at Nairobi this 19th day of February 2016

Abuodha J. N.

Judge

Delivered this 19th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge