



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NUMBER 1089 OF 2014**  
**BAKERY, CONFECTIONERY, FOOD MANUFACTURING AND**  
**ALLIED WORKERS UNION (K).....CLAIMANT**  
**VERSUS**  
**RIARA BAKERY LIMITED.....RESPONDENT**  
**JUDGMENT**

1. The claimant union commenced this action on behalf of 32 of its members who were employees of the respondent. The Union claimed that on 30<sup>th</sup> June, 2012 the grievants reported to work and found the premises locked. The claimant attempted to resolve the dispute amicably but without success prompting them to report a trade dispute to the Minister of Labour. The Minister appointed a conciliator who attempted to resolve the dispute but without success prompting the parties to refer the dispute to the honourable Court for resolution.
2. According to the union, the claimants were rendered jobless by reason of illegal redundancy. The union contends that the alleged redundancy did not conform with the provisions of section 40 of the Employment Act.
3. The union therefore seeks from the Court a declaratory order to the effect that the redundancy declared on 30<sup>th</sup> June, 2012 in respect of the grievants was unlawful, illegal and wrongful. The union further sought a declaration that the grievants are entitled to redundancy entitlements, leave entitlements, severance pay and compensation in the sum of Kshs.5,688,146.35.
4. The respondents in their memorandum of response filed on 6<sup>th</sup> August, 2014, denied that the grievants were its employees and that they were employees of Kiambu Institute of Science and Technology – Bakery Unit which closed due to financial problems and that upon closure, 21 of the grievants were paid their dues as computed by the Ministry of Labour. The respondent further stated that the other 11 grievants were casual workers and were not entitled to any payment. The respondent therefore averred that it does not owe the claimants any money having paid the grievants in full and final settlement.
5. The claimant called two witnesses. The first witness Mr. Stephen Musyoka testified that he was employed as a general worker on 19<sup>th</sup> July, 2011 on a daily wage of Kshs.205/= . He further stated that on 30<sup>th</sup> June, 2012 they were told by the respondent that there was no more work. He and his colleagues lodged a dispute with the Ministry of Labour.

6. The claimant's second witness Mr. Boniface Mutinda stated that he was employed by the respondent in 2002 as a machine operator. He left work in June, 2011 when the manager told him there was no work. The matter was reported to the Labour Office and he was paid Kshs.100,060.75 which he was not satisfied with. It was his evidence that he needed the Court to reassess what was paid to confirm if it was enough.

7. The respondent called only one witness, Ms. Ruth Wamboi who testified that she was working for Kiambu Institute of Science and Technology (KIST) as an accounts officer. She denied knowledge of Riara Bakery but stated that KIST had a bakery unit owned by the Board of Trustees. The Bakery got closed because it was not operating viably.

8. It was her evidence that the workers reported the dispute to the labour office without waiting for communication from the respondent. According to her the respondent paid the figures that were calculated by the Labour Office. She further stated that the casual workers were not paid during redundancy because they were paid daily.

9. The Court had reviewed the pleadings and the evidence tendered before the Court and identifies. Three main issues in dispute. First, were the grievants properly declared redundant? And if so were they paid their proper dues in full and final settlement? Third were the casual workers entitled to payment upon declaration of redundancy?

10. Mr. Boniface Mutinda who gave evidence on behalf of himself and the rest of the grievants stated that they were told that they were being terminated because there was no work. They reported the dispute to the Labour Office which computed their dues and asked the respondent to pay. According to Mr. Mutinda, he was not satisfied with the amount paid to him and wanted the Court to reassess and confirm if it was the correct amount.

11. It is the responsibility of any person who makes a claim against another person to prove their claim. The Court cannot play the role of recomputing for a party his claim to see if the computation was correct and reconfirm to such party that indeed the payment was correct. It is the responsibility of such party to recompute the offer or payment made and show by how much or to what extent it is not the accurate amount due. Neither the claimant nor the grievants have shown to what extent and in what way the payment made to them on account of redundancy was incorrect. All the claimant has sought before the Court was a declaration that the redundancy was contrary to the provisions of the Employment Act hence the grievants should be paid their entitlements as per section 40 of the Employment Act.

12. To this extent the Court is not satisfied that the claimant has made out any case to warrant granting the reliefs sought and hereby dismisses with costs the claims for 21 grievant who were paid by the respondent as per the payment schedule dated 22/8/2012.

13. Concerning the remaining 11 grievants who were not paid their terminal dues, the Court hereby directs that those of them who had continuously served for an aggregate period exceeding one month be paid their redundancy dues, as if they were regular workers as provided by section 37 of the Employment Act. The claimants and the respondent to jointly scrutinize the employment records in respect of the remaining 11 grievants for this purpose and report back to Court within 60 days for purposes of recording final orders in that regard.

14. It is so ordered.

Dated at Nairobi this 12<sup>th</sup> day of February 2016

Abuodha J. N.

Judge

Delivered this 12<sup>th</sup> day of February 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge