



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1759 OF 2015

GEORGE CHEGE GACHIE

MARGARET WANJIKU MWANGI

JOAN CHEBET KATTAM

SHAKILA SHIHAKU MOMBO

SALLY OKWARO ODHIAMBO

BEDAN MWANGI

CLEAVE ODHIAMBO.....CLAIMANTS

VERSUS

AFRICAN INSTITUTE OF RESEARCH AND DEVELOPMENT

NOAH CHEPKECH

UCHUMI CONTRACTORS INTERNATIONAL AGENCY LIMITED.....RESPONDENTS

RULING

1. The applicant by motion dated 30th September, 2015 sought orders that the first claimant George Chege Gachie be granted leave to sign all the documents and affidavits on behalf of all the claimants and second, that pending the determination of the application and claim the respondents be ordered to pay the claimants salaries for the months of June, July and August, 2015 and pay in lieu of notice. They further sought that they be issued with certificate of service.
2. The application was supported by the affidavit of George Gachie, the first claimant sworn on behalf of all the claimants. He deponed on the main that:-
 - a. That all the claimants were in the employ of the respondents' institution and were holding a two year employment contract until August 2015 when the respondents unlawfully terminated the said contracts on grounds of redundancy.
 - b. That the respondents terminated the said contract through a vague internal memo and so we are

not aware to date on the fate of our employment contracts as we have never received any personal notices or explanation of the said termination.

- c. That the said termination on grounds of redundancy was unlawful as we were never consulted or given an opportunity to settle our lives.
- d. That despite the said termination, the respondents have declined to pay us three months salaries or pay in lieu of notice thus exposing us to unbearable lifestyles for lack of finances and yet we already rendered our services to the institution.

3. The respondent did not file a replying affidavit to the application but filed submissions in opposition.

4. Counsel for the applicants submitted that the claimants were respondent's employees at the time of termination and were thus entitled to salaries for the months of June, July and August 2015. Counsel relied on section 18 of Employment Act in support of his submissions on this point. Counsel further submitted that his client's contracts were not terminated in June, July and August for nonperformance. The reason stated in the termination letter was redundancy.

5. According to counsel the redundancy was to take effect from 31st August, 2015 thus payment of salaries was to be up to the month of August 2015. He further contended that an employer who alleges that an employee has neglected duty or has underperformed must adduce evidence to that effect. He relied on the case of **Abraham Gumba v. KEMSA** in support of this argument. Mr. Kamau further argued that the respondent's allegation that the applicants did work in the months of June, July and August were unsubstantiated and furthermore, the respondents never exercised their right to terminate the claimants.

6. Counsel for the respondents submitted that the application was an abuse of the Court process and should not be granted. According to counsel the 1st claimant had already taken it upon himself and signed the documents on behalf of the claimants hence there was no point in seeking leave to sign the same.

7. On the issue of payment of salary, counsel submitted that the claimants were appointed as lecturers on a two year renewable contract from 1st January, 2015 to 31st December 2016 subject to performance. It was also provided in the said contracts that termination could be by giving 30 days' notice. According to counsel therefore the respondent complied with the provision of the appointment letter and section 40 of the employment Act by issuing a 30 days notice as confirmed by the termination notice dated 1st August, 2015.

8. Counsel further submitted that the claimants were aware that they were the main cause for the redundancy when in the month of May they refused to perform their contractual duties which included admission of students and only agreed to resume duties on 12th May, 2015 after signing a salary payment agreement.

9. The Court has reviewed and carefully considered the application and the arguments advanced by counsel and is of the view that the 1st claimant can validly swear and sign affidavits on behalf of the rest provided the other claimants grant him such authority in writing and filed concurrently with the suit herein. This is common practice of convenience where claimants are many but have a common cause of action founded on same facts. This prayer is therefore harmless and is hereby granted.

10. Concerning certificate of service, an employer is enjoined by section 51(1) to issue an employee with certificate of service upon the termination of such employees services. It should be given as a matter of law and right. It does not have to await the outcome of any dispute or litigation. It must be issued once a termination is done whether the termination is contested or not. The Court also finds this prayer harmless and hereby grant the same to the applicants.

11. Regarding the payment of salaries for the months of June, July and August, 2015, this contestation is the basis of the main suit. Whereas the applicants contend the salary was earned hence should be paid, the respondents have vehemently resisted the obligation to pay the same.

12. According to the respondents, the claimants were responsible for the redundancy and that it was within their right to terminate the claimant's services in the manner they did.

13. These are contested issues which cannot be resolved by way of affidavit evidence and interlocutory submissions by counsel. They require full trial and calling of evidence. In the circumstance the Court declines to allow this prayer and directs that the same be resolved at the main trial.

14. It is so ordered.

Dated at Nairobi this 27th day of May 2016

Abuodha Jorum Nelson

Judge

Delivered this 27th day of May 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha Jorum Nelson

Judge