



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 224 OF 2015

KENYA PETROLEUM OIL WORKERS UNION..... CLAIMANT

-VERSUS-

SOLOMON MBUTHIA KIMANI..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 29th July, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 08.12.2015 claiming the unlawful redundancy of its members John M. Kamau, Antony N. Nyoike, and Peter M. Mugwiri, the grievants in the case.

The claimants prayed for judgment against the respondent for the respondent to pay the grievants their redundancy dues as tabulated and provided for in section 40 of the Employment Act, 2007 and as particularly computed in the claimant's exhibit 11 filed together with the memorandum of claim.

The respondent filed the response to the memorandum of claims on 15.12.2015 through Waiganjo Wachira & Company Advocates. The respondent prayed that the memorandum of claims be dismissed with costs. The respondent also filed on 15.12.2015 a notice of preliminary objection on the grounds that the respondent was not an employer to the grievants herein and was therefore wrongly sued in the matter; and the claim herein is time barred in light of the provisions of section 90 of the Employment Act, 2007. The court directed that the preliminary objection be taken up as substantive issues at the full hearing and in the final submissions.

The claimant has pleaded in the memorandum of claim that each of the grievants was employed by the respondent company and worked tirelessly and diligently from December 2009 until April 2012 when each of the grievants was unlawfully declared redundant by the respondent's Station Manager one Margaret Wambui due to low business and eminent takeover of the station by another dealer.

The parties testified to support their respective cases. The court has considered the evidence on record and makes the following pertinent findings of facts:

1. The respondent was at all material times the managing director of Wajibu Ventures Limited which operated some petrol station at Embu Town on Kumbukumbu Road.
2. The grievants were employed at the petrol station sometimes in December 2009 to April 2012 when the petrol station closed.
3. Upon the closure of the petrol station each of the grievants lost employment and each was not paid the terminal dues in view of the redundancy.

4. A conciliation proceeding initiated by the claimant did not yield amicable resolution towards payment of the grievants' terminal dues and the claimant filed the present suit. Throughout the conciliation proceedings, the claimant and the grievants addressed the managing director of Wajibu Ventures Limited.

5. The court finds that the proper employer of the grievants was Wajibu Ventures Limited and the respondent was not the proper party to the suit. The court finds that after the termination the claimants knew that the grievant's employer was the company as shown by their own pleadings and the conciliation proceedings which were directed at the company. There was no reason for the grievants through the claimant to file the suit against the respondent in his personal capacity. As was held in **Litein Tea Factory Company Limited & Another –Versus- Davis Kiplangat Mutai & 5 Others [2015]eKLR** and in **Kuldeep Singh Sehra & Another –Versus- Bullion Bank Ltd & 2 Others [2014]eKLR** and upholding **Solomon –Versus- Solomon & Company Limited (1897) A.C 51**, a company is at law a different person and altogether separate from the subscribers to the memorandum and the company's directors or managers are not liable in any shape or form for the liability of the company except to the extent as may be provided by the relevant legislation. In this case the claimant has not showed a legislative provision under which the respondent would become personally liable for the liability of the company that employed the grievants to pay the due terminal dues in view of the redundancy that ensued.

6. The memorandum of claim was filed on 08.12.2015 and the grievants having been terminated from employment sometimes in April 2012, the 3 years of limitation for filing the suit as provided in section 90 of the Employment Act, 2007 lapsed sometimes in April, 2015 and the court returns that the suit was time barred.

In conclusion the preliminary objection filed for the respondent on 15.12.2015 is hereby upheld and the memorandum of claim filed on 08.12.2015 is hereby dismissed with costs.

Signed, dated and delivered in court at **Nyeri** this **Friday, 29th July, 2016**.

BYRAM ONGAYA

JUDGE