



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1358 OF 2012

PAUL MBURU KAREMERI.....CLAIMANT

VERSUS

KIKUYU DIARY FARMERS CO-OPERATIVE SOCIETY.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant (now deceased) brought this claim against his former employer seeking damages for wrongful dismissal and payment of final dues. Upon his death on 14th August 2013 his widow, Lucy Wanjiku Mburu was granted letters of administration *ad Colligenda bona* for the purpose of prosecuting the claim.
2. The Claimant's claim is contained in a Memorandum of Claim dated 24th July 2012 and filed in Court on 9th August 2012. The Respondent filed a Reply on 15th October 2012.
3. At the hearing, Lucy Wanjiku Mburu testified for the Claimant and the Respondent called its Assistant Manager, Salome Mwhaki Njoru.

The Claimant's Case

4. The Claimant states that he was employed by the Respondent by letter dated 6th February 1996 at a monthly salary of Kshs. 1,965 which was progressively increased to Kshs. 5,100 as at the time his employment was terminated.
5. By letter dated 8th November 2007, the Claimant's employment was terminated. The Claimant reported the matter to the Kenya Union of Commercial, Food and Allied Workers on 4th September 2007 but there was no response.
6. It is the Claimant's case that the termination of his employment was wrongful and unfair. He states that he was not given notice nor was he paid his terminal dues. Further, in the course of his employment he was not allowed a rest day.
7. The Claimant claims the following:
 - a) Damages for wrongful dismissal
 - b) Interest on Provident Fund for 11 years @ 15% p.a.....Kshs. 54,680.89

- c) 1 month's salary in lieu of notice.....5,658.00
- d) Salary of 111 public holidays worked @ double rate.....41,869.20
- e) Salary for 488 Sundays worked @ double rate.....184,073.06
- f) Salary for 7 months from July to November 2007.....39,606.00
- g) Costs plus interest

The Respondent's Case

- 8. In its Reply dated 11th October 2012 and filed in Court on 15th October 2012, the Respondent admits having employed the Claimant until 10th July 2007 when he retired.
- 9. The Respondent denies breaching any terms of employment between itself and the Claimant.
- 10. Upon termination of the Claimant's employment on 10th July 2007, the Respondent calculated the terminal benefits with the Union and the total sum of Kshs. 124,788 was forwarded to the Labour Office in Kiambu for onward transmission to the Claimant.
- 11. The Respondent states that the Claimant was paid his Provident Fund dues, gratuity for eleven (11) years and two (2) months' pay in lieu of notice.
- 12. According to the Respondent, the Claimant had one (1) rest day on every Friday and he did not work on public holidays.

Findings and Determinations

- 13. There are two issues for determination in this case:
 - a) Whether the Claimant's employment was unlawfully terminated;
 - b) Whether the Claimant is entitled to the remedies sought.

The Termination

- 14. The Claimant claimed that his employment was unlawfully terminated and in response, the Respondent contends that the Claimant retired after attaining the normal retirement age.
- 15. On 3rd May 2007, the Respondent wrote to the Claimant as follows:

"Dear Sir,

REF: RETIREMENT

You have been retired by Kikuyu Dairy Farmers Co-operative Society Limited with effect from 10th July 2007.

The management committee of Kikuyu Dairy wish (sic) to appreciate your work for the time you have been in the society.

Attached see your calculated dues.

Thank you.

Yours faithfully

Jason M. Kihara

K.D.F.C.C”

16. From this letter, it would appear that the Claimant left the Respondent's employment on account of retirement. From the evidence on record, at the time the Claimant was issued with this letter, he was 59 years old.

17. Clause 26 of the obtaining Collective Bargaining Agreement between the Respondent and Kenya Union of Commercial, Food and Allied Workers provided that an employee may be retired after the age of 55 years. Consequently, I find that the Claimant was lawfully retired after attaining the normal retirement age and on due notification. The claim for wrongful dismissal is therefore without basis.

Remedies

18. Having dispensed with the claim for wrongful dismissal, I will now deal with the claims in the nature of special damages. The Claimant claims interest on Provident Fund for eleven (11) years at 15% per annum. The Respondent's witness, Salome Mwhaki Njoru told the Court that by the time the Claimant left employment, the Respondent ran an unregistered Provident Fund.

19. Njoru further testified that the Respondent had been cautioned by the Retirement Benefits Authority against running an unregistered Provident Fund. From the evidence adduced in Court, it is clear that the Respondent's action of running an unregistered Provident Fund denied the Claimant interest on the contributions made on his account and the Respondent must be held accountable for its actions. I therefore award the Claimant interest on Provident Fund at market rates for eleven (11) years.

20. The claims for public holidays and Sundays worked were not proved and are dismissed. Similarly, no basis was laid for the claim for salary for seven (7) months from July to November 2007 which is also dismissed.

21. Finally, I enter judgment in favour of the Claimant for interest on Provident Fund at market rates for 11 years to be tabulated and agreed upon by Counsels for the parties within the next thirty (30) days from the date of this judgment.

22. I award the costs of this case to the Claimant.

23. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30TH DAY OF SEPTEMBER 2016

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JUDGE

Appearance:

Mr. Chigiti for the Petitioner

Mr. Kibatia for the Respondent