



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.46 OF 2016

CHARLES KINYUA.....CLAIMANT

VERSUS

MERU CENTRAL DAIRY CO-OPERATIVE UNION LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 23rd September, 2016)

JUDGMENT

The claimant filed the memorandum of claim on 24.02.2016. The claimant prayed for judgment against the respondent for:

- a) Reinstatement back to employment.
- b) Compensation for loss of employment.
- c) Damages for unlawful termination of his employment on account of redundancy.
- d) Damages for unfair labour practices.
- d) Costs of the suit.

The respondent filed the defence on 06.05.2016 through Mwenda Mwarania, Akwalu & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The claimant was employed by the Meru Central Farmers Co-operative Union Limited as a watchman effective 23.11.2001. On 24.04.2003 he was transferred to serve as an affluent attendant. In June 2005 the Meru Central Farmers Co-operative Union Limited was restructured and one of the new entities created was the respondent. The claimant was absorbed into the service of the respondent on the understanding that his services continued without a break.

On 23.11.2011 the claimant was terminated from employment and that was the dispute in the **ELRC Cause No 144 of 2014 at Nyeri** where the court reengaged the claimant back into the respondent's service effective 3.08.2015. Upon reporting the claimant was asked to apply for leave from 05.08.2015 to 15.09.2015 and the claimant complied. On 16.09.2015 the claimant was served with the letter of termination of employment on grounds of redundancy. The ground for redundancy was that the position for watchman had become redundant because the office had been abolished by reason of respondent's outsourcing of the security services.

The claimant's case was that at the time of termination and ever since his redeployment on 24.04.2003 he was working as effluent treatment attendant and not as a watchman so that the termination of his employment on account of redundancy was unfair and unlawful as it amounted to unfair labour practice. Prior to the redundancy, the claimant was earning Kshs. 17, 144.00 per month.

The respondent's case is that the claimant applied for and was offered the job of a watchman and no other. However, while substantively engaged as a watchman, the claimant would occasionally be deployed to assist or relieve others in areas not requiring any specialised skills like checking the effluent treatment unit and attending to the respondent's pigs amongst other jobs. Such jobs were assigned on temporary basis and the claimant remained a watchman.

The **1st and only main issue** for determination is whether at the time of the redundancy the claimant held the office of a watchman or that of affluent attendant.

In **ELRC Cause No 144 of 2014 at Nyeri** the respondent had alleged that the claimant in the present case had been deployed at the gate as a guard while the claimant stated that he had been deployed as an affluent attendant. The court considers that as per the letter of appointment the claimant's substantive appointment was to the post of watchman. In so far as all the positions of watchman had undoubtedly been abolished following the outsourcing of the security services, the court returns that the termination on account of redundancy was justified.

The respondent submitted that the claimant was severally deployed to various sections including stores, effluent treatment, piggery section, and off-loading and the duties assigned in such deployments were not necessarily duties of a watchman. The court finds that the respondent substantially contributed to the claimant's predicament of thinking that he had left the substantive position of watchman. Accordingly each party shall bear own costs of the suit. As the claimant was paid full redundancy dues as per the respondent's submissions and did not claim redress in that regard, the prayers made by the claimant will fail as unjustified.

In conclusion the claimant's memorandum of claim is hereby dismissed with orders that each party shall bear own costs of the suit.

Signed, dated and delivered in court at **Nyeri** this **Friday, 23rd September, 2016.**

BYRAM ONGAYA

JUDGE