



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 322 OF 2013
[Consolidated with Cause Number 324 of 2013]

BETWEEN

[cause 322]

1. DENNIS MUTUA SIMON
2. JOEL DZOMBO
3. FREDRICK OWINO OMOLLO
4. MICHAEL SALIM KAZUNGU

[cause 324]

5. JAMES GITOGO MWAKIDA
6. AMOS MUTUNGA
7. KAMWENGA GUNI
8. DOUGLAS MWACHIA
9. GIBSON GOA
10. DAVID MAINGI CLAIMANTS

VERSUS

INSIGHT MANAGEMENT CONSULTANTS LIMITED...RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Asewe Advocate instructed by Otieno Asewe & Company Advocates for the Claimants

Mr. Matheka Advocate instructed by Walker Kontos & Company Advocates for the Respondent

JUDGMENT

1. The 2 Causes 322 and 324 of 2013 were consolidated with the consent of the Parties, on the 13th July 2015. The 1st Claimant Dennis Mutua gave evidence common to all the Claimants, and the Claimants rested their case, on 13th July 2015. Respondent's Operations Manager Isaiah Oderah Mboya, testified for the Respondent, bringing the hearing to a close, on the 16th March 2016. The dispute was last mentioned in Court on the 30th June 2016, when Parties confirmed the filing of their Closing Submissions, and Judgment reserved for 14th October 2016.

2. The consolidated files share a similar history with ***Industrial Court at Mombasa Cause Number 323 of 2013 between Harrison Karani & 19 Others v. Insight Management Consultants Limited***. There are common matters of fact and law in all these files. It will not be necessary therefore, for the Court to go into a detailed narration, analysis and finding on common facts and matters of law in the current files. The Parties are represented by the same Law Firms in all the files. The Pleadings and Evidence are similar. Similar matters of fact and law in all the files are involved. The Court will as far as it is practicable and fair to do so, adopt the findings from Cause 323 of 2013, in the consolidated files.

3. Dennis testified he and his Colleagues were employed by the Respondent from November 2012. They worked as Helpers. They enquired about wage increment from the Respondent, on the 9th September 2013. They were asked by the Management go home and report back on 10th September 2013. On report, they were told their services had been terminated. They seek similar reliefs from the Respondent, as was sought by the Claimants in Cause Number 323 of 2015.

4. Under Cause 322 of 2013, the Claimants seek the following orders against the Respondent:-

- a) 1 month salary in lieu on notice at Kshs. 10,790.
- b) Annual leave pay at Kshs. 8,000.
- c) Underpayments for the period 1st May 2013 to September 2013 at Kshs. 5,720.
- d) 10 days' salary for work done in September 2013 at Kshs. 4,150.
- e) 12 months' salary in compensation for unfair termination at Kshs 129,480.

Total for the 4 Claimants at Kshs. 632, 560

5. Under Cause 324 of 2013, the Claimants seeks:-

- a) 1 month salary in lieu of notice at Kshs. 9,880.
- b) Salary for August 2013 at Kshs. 9,880.
- c) Annual leave pay at Kshs. 4,600.
- d) Underpayments at Kshs. 5,512.
- e) 10 days worked in September 2013 at Kshs. 3,800.
- f) 12 months' salary in compensation for unfair termination at Kshs. 151,872

Total Kshs. 911,232

All the Claimants in the consolidated files also pray for a declaration that termination was unfair; they are

paid costs, interest; and issued Certificates of Service.

6. Oderah gave evidence similar to the one given under the Cause Number 323 of 2013. The bottom line is that the Claimants went on a wildcat strike on 19th September 2013, demanding the Respondent implements the wage increment announced by the Government effective 1st May 2013. The Respondent had intended to pay the increment in arrears, the Wage Order having been published in Kenya Gazette, on 30th August 2013.

The Court Finds:-

7. As in Cause Number 323 of 2013, the Claimants were involved in an illegal strike on 9th September 2013. They did not merely discuss implementation; they concertedly declined to work, demanding immediate implementation. The Respondent had valid reason to terminate the Claimant's contracts of employment, under Section 43, 44 and 45 of the Employment Act 2007, read together with Section 80 [1] of the Labour Relations Act 2007.

8. The procedure leading to termination was flawed. The Respondent closed out the Claimants on 10th September 2013, and engaged other Employees to replace the Claimants. There was no hearing granted to the Claimants. Sections 41 and 45 of the Employment Act were not followed. ***It is declared termination was based on valid ground, but lacking in fairness of procedure.***

9. The Claimants in Cause Number 322 of 2013 are each granted:-

- a) 4 months' salary in compensation for unfair termination at Kshs. 43,160.
- b) 1 month salary in lieu of notice at Kshs. 10,790.
- c) 9 days worked in September 2013 at Kshs. 3,735.
- d) Annual leave pay [10 months] at 17.5 days =Kshs. 7,262.
- e) Underpayments at Kshs. 5,720.

Total.....Kshs. 70, 667

10. Claimants in Cause Number 324 of 2013 are granted:-

- a) 4 months' salary in compensation at Kshs. 39,520.
- b) 1 month salary in lieu of notice at Kshs. 9,880.
- c) 9 days worked in September 2013 at Kshs. 3,420.
- d) Annual leave pay [7 months] at 12.25 days, at Kshs. 4,655.
- e) Underpayments at Kshs. 5,152.

Total....Kshs. 62,627.

There was no evidence on the item claimed as salary for August 2013. The Court is not able to grant this.

11. ***In total the Respondent to pay the Claimants in the consolidated Claims, [Kshs. 70,667 x 4 =Kshs. 282,668] + [Kshs. 62,627 x 6 =Kshs. 375,762] = Kshs. 658,430***

12. The total amount shall be paid within 30 days of the delivery of this Judgment.

13. Interest granted to the Claimants at 14% p.a payable if the full amount is not paid within 30 days, computed from end of the 30 days.

14 Certificates of Service shall be released to the Claimants forthwith.

15. No order on the costs.

IN SUM, IT IS ORDERED:-

a) Termination was based on valid ground, but lacking in fairness of procedure.

b) The Respondent shall pay to the Claimants the total amount of Kshs. 658,430 in compensation and terminal dues as detailed in the body of this Judgment.

c) The full amount shall be paid within 30 days of delivery of this Judgment.

d) Interest granted at 14% p.a, payable if the full amount is not paid within 30 days.

e) Certificates of Service shall be released to the Claimants by the Respondent forthwith.

f) No order on the costs.

Dated and delivered at Mombasa this 14th day of October 2016.

James Rika

Judge