



**REPUBLIC OF KENYA**

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

**CAUSE NO. 45 OF 2015**

**(Formerly Cause No. 19 of 2015 at Nakuru)**

**KENYA PLANTATION & AGRICULTURAL WORKERS  
UNION.....CLAIMANT**

**VERSUS**

**GREYSTONE FARM (FORMERLY EQUATORIAL NUT)  
LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 4<sup>th</sup> November, 2016)

**JUDGMENT**

The claimant filed the memorandum of claim on 29.01.2015 alleging the unlawful, illegal, wrongful and unfair termination of its members Joseph Maina, Rose Muthoni, Margaret Wambui, Sophie Wanjiru, Mary Nduta, John Mwangi, Zipporah Wanjiru, Julia Wambui, David Mwendu, and Damaris Wambui, hereinafter referred to as the grievants. The claimant prayed for judgment against the respondent for:

- a. Reinstatement without loss of benefits.
- b. Payment of salaries from the date of dismissal up to the date of reinstatement.
- c. In alternative to a and b above the respondent to pay the grievants as follows:
  - i. 12 months' salaries for unfair termination.
  - ii. One month pay in lieu of termination notice.
  - iii. Gratuity or service pay.
  - iv. Outstanding leave days and for leave falling within period of termination.
  - v. Overtime.
  - vi. Costs of the suit.
  - vii. Interest on judgment sum from date of judgment till full payment.

The respondent filed an amended memorandum of claim on 25.11.2015 particularising the claim for each

grievant.

The respondent filed the amended response to the memorandum of claim on 09.12.2015. The respondent prayed that the respondent's suit be dismissed with costs.

The claimant's witness testified that on 23.04.2012 the grievants reported on duty as usual as they were in the respondent's employment. The manager known as Mwangi summoned the grievants and told them that they had been terminated.

The **1<sup>st</sup> issue** is whether the claims for outstanding leave and overtime are time barred. The court returns that the 2 claims are time barred because they were continuing injuries and the suit was filed on 29.01.2015 whereas the prescribed 12 months under section 90 of the Employment Act, 2007 had lapsed on or about 23.04.2013, the date of the alleged termination being 23.04.2012. Even if the conciliator's certificate of a trade dispute dated 23.02.2013 is considered as the date of the cause of action, the 12 months would lapse on or about 23.02.2014 and the suit filed on 29.01.2015 would still be outside the 12 months of limitation for continuing injuries.

The **2<sup>nd</sup> issue** for determination is whether the grievants were the respondent's employees. The respondent's witness RW testified that the respondent could not verify the fact of employment because the respondent's farm was vast and the records had been destroyed in a fire. On the other had the claimant's witness CW testified that she was employed by the respondent on 24.04.2007 and CW together with the other mentioned grievants joined the trade union, the claimant, on 03.12.2012 and on 23.04.2012 the grievants were told not to report on duty the following day. The respondent did not deny existence of its manager one Mwangi who told the grievants not to report on duty. The court returns that the grievants have established that they were in the respondent's employment.

The **3<sup>rd</sup> issue** is whether the termination was unfair. The grievants were not accorded a notice and a hearing as envisaged in section 41 of the Employment Act, 2007. Further the court returns that there is no reason to doubt that the reason for the sudden termination was because the grievants had joined the claimant trade union. The court returns that such reason constituted an unfair reason for termination as envisaged in section 46 (c) of the Employment Act, 2007. Thus, the court finds that the termination was unfair.

The **4<sup>th</sup> issue** is whether the claimants are entitled to the other remedies as prayed for. The reason for termination being unlawful amounted to an aggravating circumstance. The court further considers that the grievants desired to continue in employment and did not contribute to their termination. Thus, each of the grievants is entitled to 12 months' salaries as prayed for. It is not in dispute that NSSF was not remitted and each grievant is entitled to gratuity or service pay at 15 days for each year served and as submitted as due under section 35(5) of the Employment Act, 2007. Each grievant is also entitled to one month pay in lieu of the termination notice under section 35(1) (c) of the Employment Act, 2007.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a. The respondent to pay each grievant 12 months' salaries for unfair termination, one month pay in lieu of termination notice, and gratuity as computed in the amended memorandum of claim filed on 25.11.15.
- b. The amount in (a) to be paid by 15.12.2016 failing interest to be payable at court rates from the date of the judgment till full payment.
- c. The respondent to pay the claimant's costs of the suit.
- d. The decree to issue accordingly.

**Signed, dated and delivered** in court at Nyeri this **Friday, 4<sup>th</sup> November, 2016.**

**BYRAM ONGAYA**

**JUDGE**