



**REPUBLIC OF KENYA**

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

**CAUSE NO. 20 OF 2014**

**(Formerly High Court Civil Suit No.1450 of 1996 at Nairobi)**

**EDWARD MUGO.....1<sup>ST</sup> CLAIMANT**

**SYMON MWANIKI.....2<sup>ND</sup> CLAIMANT**

**DANIEL NJERU.....3<sup>RD</sup> CLAIMANT**

**ERASTUS GICHOBI.....4<sup>TH</sup> CLAIMANT**

**PATRICK M. MURANI.....5<sup>TH</sup> CLAIMANT**

**-VERSUS-**

**BARAGWI FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 20<sup>th</sup> March, 2015)

**JUDGMENT**

The claimants filed the plaint on 14.06.1996 through Amingo Opiyo Masese & Company Advocates. The respondent filed the statement of defence on 11.07.1996 through J.K. Kibicho & Company Advocates. The claimants filed the amended plaint on 04.04.2011 and, with respect to the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> claimants, prayed for judgment against the respondent for:

- a) A declaration that the summary dismissal of the claimants' employment by the respondent was unlawful and unprocedural without regard to due process and fairness.
- b) Compensation to the claimants to maximum of 12 months' salary to meet the ends of employment at Kshs.121, 980.00 for 12 months.
- c) One month's salary in lieu of notice Kshs. 10, 165.00.
- d) Kshs.198, 878.00 being claimants' severance pay entitlements.
- e) An order for payment of costs of the suit by the defendant on account of the mala fides displayed through the unlawful summary dismissal of the plaintiffs.
- f) Interest at court rates from the date of filing of the suit.

g) Any other relief this honourable court may deem fit to grant.

The 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> claimants (hereafter referred to as the claimants) testified to support their respective cases. They worked for the respondent from 1982 until their termination by the letter of summary dismissal dated 16.02.1989. They were each terminated on the ground that on 10<sup>th</sup> and 11<sup>th</sup> December 1988 they each refused to obey a lawful order issued by the respondent's management committee that they were to start calculation of payments due to the respondent's members.

The plaint was filed on 14.06.1996. The respondent has submitted that the suit was filed after lapsing of the 6 years for suits based on contract as prescribed under the then applicable section 4(1) of the Limitation of Actions Act, Cap. 22. The respondent has submitted that the conciliatory proceedings between the parties under the Ministry of Labour concluded when the Ministry issued its report of 15.05.1990 so that the period of 6 years lapsed on or about 15.05.1996, long before 14.06.1996 when the suit was filed. It was submitted that the suit was therefore a non-starter and is time barred.

For the claimants it was submitted that under the then applicable Trade Disputes Act, Cap. 234 Laws of Kenya, section 7 provided for investigation of the dispute and section 6(3) for the endorsement of written settlement by the parties to the conciliation proceedings and the conciliator to file the same with the labour office. It was the claimant's case that such endorsed settlement did not exist as shown in the letter of 21.01.1991; so that the suit was filed at most 5 years and 4 months after 21.01.1991.

The court has considered the letter dated 21.01.1991 being exhibit P5. The letter is clear that the Ministry rendered its report by the letter of 15.05.1990. The claimants appear not to have taken expeditious steps by themselves or through their union to file the relevant suit. The material on record is scanty but the court considers that between 21.01.1991 and 15.05.1990 is over 8 months and the claimants have not provided the evidence on the date of endorsement by the union and employer as well as the subsequent filing at the labour office by the conciliator. The court finds that the claimants' line of submission lacks proper grounding for want of relevant evidence and in a situation whereby the claimants, and not their union that was party to the conciliation proceedings, are personally party to the present suit. In the circumstances, the court finds that the conciliation proceedings ended by 15.05.1990. The court upholds the submission made for the respondent and finds that the suit was time barred.

In conclusion, the suit is dismissed with costs.

**Signed, dated and delivered in court at Nyeri this Friday, 20<sup>th</sup> March, 2015.**

**BYRAM ONGAYA**

**JUDGE**