



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**PETITION NO. 1 OF 2013**

**STEVEN GEORGE & 64 OTHERS.....PETITIONERS**

**v**

**KAISUGU LIMITED.....1<sup>st</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>nd</sup> RESPONDENT**

**THE MINISTER FOR LABOUR.....3<sup>rd</sup> RESPONDENT**

**RULING**

1. On 4 October 2013, Ongaya J delivered judgment in which he entered judgment for the Petitioners against the Respondents in the following terms

a) a declaration that the 1<sup>st</sup> respondent's conduct, acts and omissions are unlawful, illegal and unfair because the same violated Articles 27,28,29,40,41 and 43 of the Constitution and the same violated section 40 of the Employment Act, 2007;

b) the 1<sup>st</sup> to 64<sup>th</sup> petitioners be paid by the 1<sup>st</sup> respondent as follows:

i twelve months gross salary at rate of last monthly pay for unfair termination and in view of the violations of the fundamental freedoms and rights;

ii one month pay in lieu of the redundancy notice;

iii payment for days worked prior to the termination and not paid;

iv pay for annual leave days due but not taken as at termination; and

v severance pay at 15 days per completed year of service;

c) the petitioners to compute the amount in (b) and serve the computation upon the 1<sup>st</sup> respondent within 14 days from the date of judgment for hearing of any objections on a convenient date;

d) a declaration that the petitioners are entitled to access to information from the 1<sup>st</sup> respondent under Article 35 of the Constitution and as necessary for full realization of this judgment;

e) the 1<sup>st</sup> respondent to pay the amount in (b) by 1.12.2013 in default to pay interest at court rates till full

payment; and

f) the respondent to pay the petitioners' costs of the suit.

2. Pursuant to the judgment, the Petitioners filed their computations on 7 March 2014. According to an affidavit of service filed in Court on 11 March 2014, the computations were served upon the 1<sup>st</sup> Respondent's Advocate on record Kiplenge & Kurgat.

3. On 26 March 2014, the parties agreed by consent that order (b) of the judgment be amended by deleting 64 and inserting 100 Petitioners. The 1<sup>st</sup> Respondent was given up to 3 April 2014, to file its objections. Next mention was fixed for 15 April 2014, to allow the parties agree on the computations.

4. On 4 April 2014, the 1<sup>st</sup> Respondent filed its objections to the Petitioners computations. It contended that *strangers* who were not parties to the suit had been included in the computations.

5. The parties appeared before the Court on 20 May 2014, and they were given time to agree and mention was set for 4 June 2014, but on this day both parties were absent.

6. The parties next appeared before Court on 26 June 2014 and they were allowed more time to agree and mention was set for 16 July 2014. On this date again, both parties did not appear and the Court fixed the matter for mention on 6 October 2014 to confirm agreement on the computations. But there was no agreement and the Court fixed the matter for yet another mention on 5 November 2014.

7. On 5 November 2014, the Court directed the parties to address it on the issue of *strangers* on 4 December 2014.

8. On this day, Ms. Odipo informed the Court that the Petitioners wished to file an Amended List of Computations to reflect the objections by the 1<sup>st</sup> Respondent and the Court allowed her to file the same and fixed the matter for mention on 11 December 2014.

9. On 11 December 2014, the Petitioners filed an Amended Computation but the same had not been served upon the 1<sup>st</sup> Respondent and the Court adjourned the proceedings to 15 January 2015. On 15 January 2015, the Court directed the parties to address it on the Amended Computations on 21 January 2015.

10. On 21 January 2015, Mr. Mangate holding brief for Mr. Kurgat for the 1<sup>st</sup> Respondent sought to be granted leave to file a response to the Amended Computations but the Court declined the invitation and directed that the 1<sup>st</sup> Respondent's counsel appear at 1.00pm for the parties to address it on the Amended Computations.

11. Ms. Odipo, in her submissions stated that the Amended Computations had taken into consideration the objections raised by the 1<sup>st</sup> Respondent on 4 April 2014, and urged the Court to adopt the same in terms of the judgment by Ongaya J.

12. Mr. Cheruiyot for the 1<sup>st</sup> Respondent submitted that it had not been given sufficient time to respond to the Amended Computations and insisted that the list still had names of *strangers*.

13. The Court thereafter directed Mr. Cheruiyot to disclose the names of the *strangers* and he stated that the names appearing at serial numbers 66 to 101 were *strangers*.

14. The Court can state straight away that the 1<sup>st</sup> Respondent was not keen to have the pending issues disposed off. The 1<sup>st</sup> Respondent was served with a list including the additional petitioners on or around 6 March 2014. It had ample time to respond exhaustively. The record also shows that it never complied with timelines as to filing of written submissions before judgment.

15. Now to the *strangers* and the objection on the merits.

16. And to understand how the names of *strangers* were added, it is necessary to set out here in the notes taken by Ongaya J on 26 March 2014

17. The record bears out that on 26 March 2014, the Petitioners were represented by Mr. Kairo holding brief for Mr. Chigiti while Mr. Morintat was present for the 1<sup>st</sup> Respondent.

18. Mr. Kairu addressed the Court thus:

Is for mention to confirm settlement as per the computations made for claimants. No payments have been received. At last mention respondent counsel undertook to clear outstanding payments. I pray for execution to issue.

19. Mr. Morintat on his part informed the Court:

Mention is to confirm computations. We have noted glaring additions. Judgment was for 64 Claimants. Pg 20(b) of the judgment states award is for 1<sup>st</sup> to 64<sup>th</sup> Petitioners. There could be an error in the judgment because the Petition was amended to include 36 Petitioners. I do not object to the Court rectifying error by deleting 64<sup>th</sup> and substituting 100<sup>th</sup> Petitioners.

Computation is for 125 Petitioners when they should be 100 only as named in the Petition. There are errors for gross pay for some Petitioners. I request for mention to confirm figures.

20. Mr. Kairu is then recorded as telling the Court:

I agree the judgment be amended to show Petitioners are 100. I agree need time to iron out the issues.

21. The Court after the addresses by the counsels ruled

1. By consent of the parties order (b) in the judgment is rectified and amended by deleting '64<sup>th</sup>' and substituting thereof '100<sup>th</sup>'

2....

3...

22. It is not within my province to determine whether the course adopted by the parties to add additional Petitioners and acceded to by the Court has sound legal backing after judgment had been pronounced but I need to reiterate that it is the parties who agreed to that course.

23. My duty is to settle the issue of computations after which the parties may perfect the decree. Any other issues may be taken on appeal which, I am told has been preferred by the 1<sup>st</sup> Respondent.

24. The Amended Computations has 101 names as agreed by the parties. The List also has stated the total amounts due to each of the 101 Petitioners (compensation for 12 months based on gross pay, pay in lieu of notice, unpaid days, outstanding leave and severance pay). The 1<sup>st</sup> Respondent did not challenge the amounts indicated against any of the Petitioners names.

25. The Court would therefore adopt the computations as indicated in the Amended Computation filed by the Petitioners on 11 December 2014, pursuant to paragraph c) and e) of the judgment.

26. Costs in the Cause.

**Delivered, dated and signed in Nakuru on this 20<sup>th</sup> day of March 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioners: Ms. Odipo instructed by Chigiti & Co. Advocates

For 1<sup>st</sup> Respondent: Mr. Cheruiyot instructed by Kiplenge & Kurgat Advocates