



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 587 OF 2011

TAILORS AND TEXTILES.....CLAIMANTS

VERSUS

GLOBAL APPARELS (EPZ) LIMITED..... RESPONDENTS

M/s Njuguna for Claimants

Mr. Morara for Respondents

JUDGMENT

1. The four Grievants;

Name	Date of Appointment
i. Charles Momanyi	- April 2002
ii. Robert Wambua	- July 2009
iii. Elijah Nchore and	- January 2010
iv. Sylvester Odhiambo	- February 2010

claim to have been locked out of the employer's premises after raising a grievance of underpayment by the Respondent.

2. The four were employed as Cutters on diverse dates set out above and worked continuously until the termination of their employment on 12th July, 2010.

3. The claim states that the employees of the Respondent were paid monthly salary for the month of June, 2010 on 2nd July, 2010.

4. On 1st May, 2010, Government had issued General Wages Order increasing the General Wage of employees by 10%. The increase was gazetted in Legal Notice No. 97 dated 18th June, 2010.

5. It is common cause that the Respondent had implemented the wage increase in the June salaries but had omitted to do so with respect to employees in the Cutting department where the four (4) Grievants worked.

6. On 2nd July, 2010, the Grievants demanded to be paid the arrears and management promised to pay

the same on the same day. However, the payment was not done.

7. The Grievants protested the non-payment of the increase by boycotting work on 2nd July, 2010.

8. On 3rd July, 2010 the Grievants reported on duty as usual but were locked out by management at the main gate.

9. The Claimants state that they had a legitimate expectation to receive a wage increase like the rest of the colleagues. That they raised a lawful grievance in respect of the same but were instead locked out of their employment without following due process.

10. That they were wrongly paid salary for Ksh.7,636.00 and house allowance of Ksh.1,143.00 instead of Ksh.10,366.00 and Ksh.1,558.00 respectively.

11. They claim reinstatement to their employment and in the alternative they be compensated as per Table I attached to the Memorandum of Claim.

Charles Momanyi – had worked for eight (8) years and claims;

- i. Salary arrear - Ksh.10,386.00
- ii. Notice pay - Ksh.10,386.00
- iii. Gratuity - Ksh.51,131.00
- iv. Underpayment for 3 months - Ksh.8,250.00
- v. House allowance underpayment - Ksh.1,674.00
- vi. Overtime - Ksh.8,940.00
- vii. Twelve (12) months compensation for unlawful and unfair termination

Sylvester Odhiambo – worked for five (5) months

- i. Salary arrear - Ksh.10,386.00
- ii. Notice to pay - Ksh.6,391.00
- iii. Gratuity - Ksh.6,391.00
- iv. Underpayment for salary - Ksh.8,250.00
- v. House allowance underpayment- Ksh.1,674.00
- vi. Overtime - Ksh.9,274.00
- vii. Twelve (12) months compensation for unlawful and unfair termination

12. Elijah Nchoe and Robert Wambua have since withdrawn their claims and testified for the Respondent. The claim prays that the two remaining Grievants be awarded as prayed.

Response

13. The Respondent filed a Response to the Memorandum of Claim on 6th June, 2011. The Respondent admits that the Grievants did not receive the salary raise in terms of the General Wage Order for the month on 2nd July, 2010. The payslip was for the salary for June, 2010 and the wage increase was effective 1st May, 2010.

14. That the Respondent when confronted by the Grievants admitted the anomaly and promised to rectify it immediately.

15. RW1 Godwin Sibachi, Human Resource Assistant testified in support of the Respondent's case.

16. RW1 explained that the 10% salary raise was erroneously not effected with respect to Cutters, Mechanics and Supervisors who have a separate payroll form the Machine Operators.

17. The Cutters refused to work demanding payment of the salary raise on 2nd July, 2010. The Mechanics and Supervisors were paid the same day on 2nd July, 2010 but Cutters went on strike before the adjustment could be effected.

18. RW1 told the court that he pleaded with the four (4) Cutters to be patient and await the adjustment in vain. The Cutters matched out of the work place.

19. The salary increase was calculated and Respondent waited for the Cutters to return to work. On 3rd July, 2010, the Cutters reported to work but sat at the Respondent's gate.

20. At 11.00 a.m. they came with the Union representative and the pay increase was effected on 5th July, 2010. RW1 stated that the Grievants received the salary on 2nd and disappeared and therefore did not work on 2nd, 3rd, 4th, 5th, 6th and 7th. They deserted work.

21. Their colleague, Robert Wambua and Elijah Nchore returned to work and are still working to date.

22. RW1 withstood very close cross-examination well and explained the great inconvenience caused by the sudden withdrawal of labour by the Grievants for no good cause.

23. RW1 insisted that he rectified the payment error on 5th July, 2010 but the Grievants failed to return to work.

24. On 12th July, 2010 RW1 wrote dismissal letters to the Grievants for desertion in terms of the Employment Act and Clause 16 of the CBA which provides for summary dismissal for absence from work.

25. RW1 Stated that he called each one of them but they all ignored his plea to return to work.

26. RW2 was Elijah Mochana Nchore, a Cutter. He was a colleague of the Grievants and did not receive the 10% salary increase on 2nd July, 2010 which was the pay day.

27. RW2 and the Grievants complained about the non-payment and the error was rectified about three days later.

28. On 2nd July, 2010, they walked out of the Respondent's premises in protest and came back on 3rd July, 2010 but were locked out at the gate. They reported the matter to the Labour Office. The Respondent met them later and were paid the arrear salary. Once RW2 received the salary increment, he left employment but was re-employed by the Respondent two (2) years later.

29. RW3 was Robert Wambua. He was employed to cut clothes by the Respondent. He did not receive the 10% salary wage increment on 2nd July, 2010. RW3 and the Grievants walked out in protest. The Respondent told them that it was an error and it would be rectified immediately. The difference was paid on 5th July, 2010. RW3 did not return to work but was re-employed one (1) year later by the Respondent. RW3 told the court that the Respondent did not lock them out on 3rd July, 2010. That they brought a Union Representative and were allowed in. RW3 said he has no case against the Respondent. On 12th July, 2010, RW3 and other Cutters got a letter of dismissal. RW3 said that he had already left work voluntarily by that date.

30. Issues for determination

- i. Were the Grievants unlawfully locked out of work or had they deserted work following a payment dispute?
- ii. Are the Grievants entitled to the remedies sought?

Issue I

31. From the evidence before court, it is apparent, that on 2nd July, 2010, the Grievants did not receive the 10% General Wage Increment. This was caused by an error in the payroll. The Respondent met the Grievants and promised to rectify the error. The Grievants walked out of work in protest and came back on 3rd July, 2010. Though they were temporarily locked out at the gate, they were able to meet RW1 together with a Union representative.

32. The Respondent was not able to pay the 10% increment until 5th July, 2010 and the Grievants chose not to work during that period in spite of the plea by RW1 to resume work while the error was being sorted.

33. The court finds that the salary increment was paid on 5th July, 2010 but the Grievants did not return to work until RW1 wrote letters of dismissal after desertion on 12th July, 2010.

34. The court is satisfied that the Respondent had a lawful cause to terminate the employment of the Grievants but not to summarily dismiss them given the circumstances of the case.

35. The Grievants initially had a genuine grievance but dealt with it in an unreasonable manner by boycotting work in spite of a genuine attempt by RW1 to rectify the situation.

36. The court is not satisfied that the Respondent locked out the Grievants as alleged and the claims for unlawful and unfair lock out are dismissed.

37. As stated earlier, the summary dismissal meted out on 12th July, 2010 pursuant to the work boycott and desertion is commuted to a normal termination.

38. Robert Wambua and Elijah Nchore withdrew their claims and testified in support of the Respondent's case. The only remaining claims are for Charles Momanyi and Sylvester Odhiambo.

39. Given the decision by the court to commute the summary dismissal of these two (2) Grievants to normal termination, the court awards the two Grievants as follows;

Charles Momanyi

i. Salary for days worked	-	Ksh.10,386.00
ii. Notice pay	-	Ksh.10,386.00
iii. Gratuity	-	Ksh.51,131.00
iv. Salary and house allowance		
underpayment	-	Ksh.9,924.00
v. Overtime	-	Ksh.8,940.00
vi. Gratuity	-	Ksh.51,131.00

Total - **Ksh.90,767.00**

Sylvester Odhiambo

i. Salary for days worked	-	Ksh.10,386.00
ii. Notice pay	-	Ksh.10,386.00
iii. Gratuity	-	Ksh.6,391.00
iv. Salary and house allowance		
underpayment	-	Ksh.9,274.00

v. Overtime	-	Ksh.9,274.00
vi. Gratuity	-	Ksh.6,391.00
Total	-	Ksh.46,361.00

40. The awards are payable with interest at court rates from date of the Judgment till payment in full.

41. The Respondent is also to pay the costs of the suit.

Dated at Nairobi this 23rd day of April, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE

Delivered by Hon. Hellen Wasilwa on 24th day of April, 2015.

In the presence of