



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 149 OF 2014

(Originally Nakuru Chief Magistrate's Court Civil Case No. 1971 of 2003)

CHARLES KARIUKI1ST CLAIMANT
CHARLES ABONYO.....2nd CLAIMANT
JOSHUA OMOLLO.....3RD CLAIMANT
GEORGE OMONDI.....4TH CLAIMANT
THOMAS MBOGOLI.....5TH CLAIMANT
JOSHUA NYAKONI.....6TH CLAIMANT
LUSIA NYAANGA.....7TH CLAIMANT
SADOCK IRAMWENYA.....8TH CLAIMANT
NEHEMIAH NYAKUNDI.....9TH CLAIMANT
ESTHER ASITWA.....10TH CLAIMANT
MARGARET VUTAGWA.....11TH CLAIMANT
ESTHER TANUI.....12TH CLAIMANT

v

KENYA PLANT HEALTH INSPECTORATE
SERVICE (KEPHIS).....1ST RESPONDENT
KENYA AGRICULTURAL & LIVESTOCK
RESEARCH ORGANISATION.....2ND RESPONDENT

JUDGMENT

1. This is one of the oldest cases this Court has dealt with. It has a chequered history.
2. On 19 June 2000, the then Industrial Court entered an award in favour of some of the Claimants against National Seed Quality Control Service (Kenya Plant Health Inspectorate Service) in Cause No. 56 of 2000. The Claimants made an attempt to have the award confirmed through Nairobi Misc Cause No. 1424 of 2002.
3. This Cause started off on 29 August 2003 as Nakuru Chief Magistrate's Court Civil Case No. 1971 of 2003, *Charles Kariuki & Ors v Kenya Plant Health Inspectorate Service (KEPHIS)*.
4. The Claimants were seeking a *declaration* that they were employees of the Respondent, *salary arrears* and *refund of deductions* made towards the National Social Security Fund.
5. The Respondent filed a Defence on 26 September 2003 through Waruinge & Waruinge Advocates.
6. On 27 May 2004, the Claimants filed an Amended Plaintiff in which Kenya Agricultural Research Institute was added as the 2nd Defendant. The Claimants also added a prayer for *one month salary in lieu of notice*.
7. The 1st Respondent filed an Amended Defence on 25 June 2004 while the 2nd Respondent filed a Defence on 21 July 2004, through Wauna Oluoch Advocate.
8. On 16 November 2004, the Claimants filed a Further Amended Plaintiff and on 22 June 2005, the 1st Respondent filed a Notice of Claim against a Co-Defendant.
9. On 2 October 2007, hearing commenced before Hon. Atiang, Acting Resident Magistrate.
10. On 3 November 2009, the Claimants sought further leave to Further Re-Amend the Plaintiff.
11. Hon Atiang, Resident Magistrate disallowed the application in a ruling delivered on 19 May 2010. 7 witnesses had already been heard and cross examined by this time.
12. The Claimants closed their case on 14 September 2011, and the Respondents case commenced on 6 December 2011.
13. On 22 May 2014, the file was placed before Ongaya J and the parties informed the Court that the suit had been transferred to this Court. The Judge directed that the hearing commence *de novo*.
14. On 8 December 2014, the Court granted the Claimants leave to amend the Memorandum of Claim with liberty to the Respondents to amend their pleadings as well.
15. On 17 February 2015, the Claimants filed a Further Further Amended Plaintiff in which Kenya Agricultural and Livestock Research Organisation was substituted as a Defendant and Kenya Agricultural Research Institute removed as a party.
16. On 25 February 2015, the 2nd Respondent filed a Response to Further Further Amended Plaintiff. It denied having any employment relationship with the Claimants but at the same time it was pleaded that the 2nd Respondent was the legal successor to the Kenya Agricultural Research Institute by dint of Act No. 17 of 2013, and only took over the permanent staff.
17. Mr. Bundi for the 2nd Respondent raised issues of representation of the new party and the Court directed that he secures instructions and on 3 March 2015, Mr. Bundi informed the Court he had filed a Notice of Appointment to act for the 2nd Respondent.
18. The Cause was heard on 16 March 2015 and the Claimants filed their submissions on 7 April 2015, while the 2nd Respondent filed its submissions on 20 April 2015.
19. The Court has considered the pleadings, evidence and submissions (1st Respondent regrettably filed its submissions only yesterday), and agree with the 2nd Respondent that the primary issues arising for determination are, *whether the Claimants were employees of KARI and who ought to bear liability for Claimants contractual entitlements*.

Employment status

20. The 1st Respondent issued the Claimants with to Whom It May Concern letters ranging from 1999 to 2001 certifying that they had worked with it for a number of identified years and recommending them to prospective employers (Charles Obuon Abonyo, Charles Muriuki and Joshua Aberi Nyakonu).
21. A Kenya Agricultural Research Institute muster roll for December 1997 show George Omondi, Nehemiah Nyakundi, Charles Muriuki (Kariuki?), Joshua Omollo, Esther Asitwa, Margaret Vutagwa and Tom Mbogoli as employees.
22. A National Social Security Fund Schedule of Payments for the month of December 1997 has the

- names of Charles Obuon, Charles Muriuki, Joshua Omollo, Esther Asitwa, Margaret Vutagwa, Tom Mbogoli and Russiah Nyaanga.
23. Nehemiah Nyakundi produced a Certificate of Registration with NSSF indicating the employer as KARI, Esther C Tanui Beef Research Station, Thomas Mbogoli KARI, Joshua Aberi Nyakonu N.S.Q.C.R.S.
 24. The primary document which demonstrates an employment relationship is a written contract. Many times it is called an appointment letter.
 25. The law both pre 2007 and after recognise oral contracts. The implication being that the existence of a contract can be inferred from secondary sources.
 26. It has always been mandatory to register certain categories of employees with the National Social Security Fund. Enough documentation was produced to show that the Claimants were registered with the Fund and the name of the employer was either KARI or N.S.Q.C.R.S.
 27. The NSSF deductions would not have been made if there was no employment relationship.
 28. Minutes were produced indicating that when the 1st Respondent was established in 1996, it took over some of the functions previously performed by KARI. The MOU must therefore be understood within the context that the 1st Respondent took over not only the functions but even some staff including the Claimants.
 29. The Court is more than satisfied, based on the secondary documentation produced that the Claimants had an employment relationship with either KEPHIS and or Kenya Agricultural Research Institute.
 30. In any case, the 2nd Respondent in its submissions admitted that the Claimants worked for KARI for many years.

Liability for Claimants contractual entitlements

KALRO and KARI

31. The Kenya Agricultural and Livestock Research Organisation was established pursuant to the enactment of the Kenya Agricultural and Livestock Research Act No. 17 of 2013.
32. Section 55 of the KALRO provides that

On or after the appointed day, all actions, suits or legal proceedings whatsoever pending by or against a former institution shall be carried on or be prosecuted by or against the Organisation as the case may be, and no such action, suit or legal proceedings shall in any manner abate or be prejudicially affected by the enactment of this Act.

33. It is therefore necessary for the Court to establish what a former institution is or was. *Former institution* is defined in section 58 of the Act as

the research institutes and advisory committees established under the Science and Technology Act and institutions involved in the conduct of agricultural research established under the Companies Act, the State Corporations Act or such other written law which are specified in the fourth schedule and dissolved or wound up by virtue of this Act.

34. From the foregoing it is necessary to trace the progeny of KARI. KARI is specified in the fourth schedule to the Act and is also listed in the fourth schedule to the Science and Technology Act.
35. The statutory scheme herein above leaves no doubt that KALRO took over the assets and liabilities of KARI, and by dint of section 54(c) of the KALRO Act, the 2nd Respondent cannot escape liability were the Court find KARI is liable to the Claimants.
36. But before that determination, a few words on the relationship between KEPHIS and KARI.

KARI and KEPHIS

37. The Court was not addressed on any statutory linkages between KARI and KEPHIS. But both sides to the litigation here produced a copy of a Memorandum of Understanding Between Kenya Agricultural Research Institute and Kenya Plant Health Inspectorate Service signed on 1

- December 1998 by KARI and on 7 December 1998 by KEPHIS.
38. From the MOU, it turns out that KEPHIS is a creation through Legal Notice No. 305 of 1996 as a body corporate.
39. Under Article 5(a) and (b) of the MOU, KARI transferred named categories of Staff to the 1st Respondent including staff liabilities which were shown in an Annex 1.
40. In my view, the MOU is clear beyond peradventure that the Claimants were transferred to the 1st Respondent and it is the 1st Respondent which should be liable for the heads of claim herein.
41. It was not suggested by any of the parties that KALRO took over the assets and or liabilities of the 1st Respondent or that the 1st Respondent was a former institution. The 1st Respondent did not suggest that it is an institution covered by the fourth schedule to the KALRO Act. The 1st Respondent is still factually and legally alive as evidenced by a very active website it is maintaining.
42. The 1st Respondent is therefore liable to the Claimants.

Appropriate remedies

Salary arrears

43. The Claimants did not quantify the amounts they were seeking as 3 months and 8 days salary arrears in the Complaint but filed an annexure to the Further Further Amended Complaint.
44. The Respondents did not really challenge the computations. Their respective cases were canvassed on the basis of legal liability. The Court would therefore find for the Claimants as computed in the annexure.

One month salary in lieu of Notice

45. The Claimants testified that their employment was unlawfully terminated without notice on 8 March 1999. Apart from pleading their daily wages, the Claimants did not prove their monthly wages.
46. It would be difficult for the Court to determine the exact amount due to each Claimant under this head of relief.

Contributions to National Social Security Fund

47. The National Social Security Fund Act has provided for very robust mechanisms for dealing with deducted but unremitted contributions. There are penalties and even criminal sanctions.
48. Each Claimant is seeking Kshs 240/- under this head and it is part of the computations. To bring to an end to this longstanding litigation, the Court finds for the Claimants.

Declaration

49. The order of declaration is not merited.
50. Before concluding, the Court registers its displeasure at the conduct of the 1st Respondent in filing submissions a day prior to judgment without any explanation for the delay.

Conclusion and Orders

51. The Court finds and holds that the 1st Respondent is legally liable to the Claimants and awards them and orders the 1st Respondent to pay them
- a. Salary arrears and NSSF refunds as per annexure to Further Further Amended Complaint.
52. The Claimants to have costs of the Cause to be borne by the 1st Respondent.
53. 2nd Respondent to bear own costs.

Delivered, dated and signed in Nakuru on this 22nd day of May 2015.

Radido Stephen

Judge

Appearances

For Claimants Mr. Karanja instructed by Mirugi Kariuki & Co. Advocates

For 1st Respondent Mr. Mukele instructed by Wauna Oluoch Advocate

For 2nd Respondent Mr. Bundi instructed by Millimo, Muthomi & Co. Advocates

Court Assistant Nixon