



**REPUBLIC OF KENYA**

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

**CONSOLIDATED CAUSES NO.127,128,129,132 AND 133 OF 2013**

**CATHERINE MURIUKI AND 4 OTHERS..... CLAIMANTS**

**VERSUS**

**GUCOKANIRIRIA KIHATO TRADERS & FARMERS COMPANY LIMITED.....  
RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 26<sup>th</sup> June, 2015)

**RULING**

The court delivered judgment in this matter on 6.06.2014 in favour of the claimants for orders as follows:

- a. One month's salary in lieu of notice.
- b. Salary for the period of suspension up to 3/12/2013 when they were unfairly terminated.
- c. Eight months salary as compensation for unfair dismissal.
- d. Costs of the suit.
- e. The respondent to unconditionally issue the claimants with certificate of service.

The judgment sum due to the claimants as computed for the claimants and which is not disputed by the respondent is Kshs.1, 117,566.30.

The respondent filed a notice of motion on 10.03.2015 seeking two substantive orders thus:

- a. Execution in this matter and in the consolidated matters be stayed pending the hearing of the application *inter partes*.
- b. The applicant be allowed to liquidate the decretal sums in monthly installments of not less than Kshs.50, 000.00 till settlement in full.

The respondent's notice of motion invoked sections 1A, 3, & 3A of the Civil Procedure Act, Rule 31(2) of the Industrial Court Rules 2010 and Order 21 Rule 12 (1) and (2), and Order 51 Rule 1 of the Civil Procedure Rules 2010. The application was supported with the affidavit of Joseph Gathura filed together with the application.

It was urged for the respondent that the respondent was willing to liquidate the decretal amounts in monthly installments of not less than Kshs. 50,000.00 and that the respondent had already settled the claims in some of the suits as consolidated. Further, it was submitted for the respondent that the respondent was willing to pay the decretal sum as ordered by the court only that the respondent was currently under financial constraints.

The claimants opposed the application by filing the grounds of opposition on 19.03.2015. It was urged

that the application lacked merits because it had been filed belatedly and the application was calculated to deny the claimants the fruits of the judgment coming after the unlawful termination. Further, it was submitted that the offer to pay monthly installments of Kshs.50, 000.00 per month was too minimal and did not address the costs of the suit. Further the respondent had proceeded to pay the judgment dues to some of the claimants without the knowledge of the claimants' advocates on record. Further, the claimants who might have been paid without knowledge of their advocates might have been paid below the judgment sum. It was submitted that the respondent had not made an offer to settle the judgment sum until the claimants took out the execution process so that the application was belated and an afterthought.

Order 21 Rule 12(2) of the Civil Procedure Rules provides that after passing a decree for payment of money, the court may on the application of the judgment-debtor and with the consent of decree-holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made in installments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.

Some of the claimants being Ferdinard Kilonzo, Mercy Njeru, and David Maina Kahuri appear to have signed acknowledgement of settlement and discharge in favour of the judgment –debtor that the judgment sum had been fully paid to them. The acknowledgments are with respect to causes 133, 129, and 128 of 2013(as per the further supporting affidavit of Joseph Gathura filed on 29.04.2015 and the cash paid in the 3 suits being Kshs. 300,000.00, Kshs.200,000.00 and Kshs.300,000.00 respectively making a total of Kshs. 800,000.00). The respondents have paid a further sum of Kshs. 238, 214.00 through the claimant's advocates. Thus payments in causes 127 and 132 have not been fully settled.

In the opinion of the court the respondent has showed seriousness by paying part of the decretal sum. However that alone is not sufficient reason for the court to order payment of the outstanding judgment sum by installment. In particular the respondent has not showed the financial constraints as alleged in the submissions and the supporting grounds. It is also not clear why the respondent selectively paid some of the claimants fully in exclusion of the others. The court has considered all circumstances of the case and considers that the claimants will be entitled to interest at court rates on the entire judgment sum including on the costs of the suit pending the full payment by the respondent.

In conclusion the application filed on 10.03.2015 is determined with orders as follows:

- a. The respondent shall pay the entire outstanding judgment sum and costs of the suit, once or in installments, by 1.09.2015 in default interest at court rates will be payable thereon from the date of judgment 6.06.2014 till full payment.
- b. There shall be stay of execution till 1.09.2015 thereafter the claimants will be at liberty to execute in full satisfaction of the judgment and decree.
- c. The respondent shall pay costs of the application and the outstanding auctioneers' costs, as the case may be, consequential to the interim stay of execution orders made after the filing of the application.

**Signed, dated and delivered** in court at Nyeri this **Friday, 26<sup>th</sup> June, 2015.**

**BYRAM ONGAYA**

**JUDGE**