



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 14 OF 2007**

**(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 22<sup>ND</sup> JUNE, 2015)**

**KENYA UNION OF EMPLOYEES OF VOLUNTARY AND  
CHARITABLE ORGANIZATIONS (KUEVACO) .....CLAIMANT**

**VERSUS**

**KENYA UNION OF COMMERCIAL FOOD  
AND ALLIED WORKERS (KUCFAW).....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimant herein filed their Memorandum of Claim on 30/3/2007. They stated that the issue in dispute was the unprocedural and wrongful retirement/redundancies of their 28 members.

In their claim, the Claimants aver that they have a recognition agreement and a valid Collective Bargaining Agreement executed on 17/3/3005 with the Respondents effective from 1/1/2002.

2. The Claimants submitted that despite the existence of this Collective Bargaining Agreement, the Respondents discriminatingly continued subjecting the Grievants to underpayments of basic wages plus house allowance upto 1<sup>st</sup> August 2006 when they forced all Grievants to cease work.
3. The Claimants also aver that the Respondents without following the agreed procedure on retirement clause 26 and redundancy clause 23 declared the Grievants redundant and retired others.
4. This caused the Claimants to report the existence of a trade dispute on 30<sup>th</sup> August 2006.
5. The Minister accepted the dispute and endeavored to settle the matter by investigation hence his findings and recommendations given in Appendix G that 2 of the Grievants Mr. B. M. Onyango & Ms. Phanice Okalo be retired after attaining their retirement ages whereas the 26 others be declared redundant on 15/8/2006.
6. The Claimants then submitted to the Respondents calculations of terminal benefits dated 3<sup>rd</sup> August and 15<sup>th</sup> August 2006.

The bone of contention was in the mode of calculations of terminal benefits and not the criteria used to retire/declare employees redundant. Whereas the claimant was demanding both severance

and gratuity payment, each at the rate of 30 days for each year worked, the Respondents were only calculating gratuity payment at the rate of 30 days for each year of service.

7. The Minister made recommendations that the employees be paid:

1. ***Notice payment in accordance with clause 15 of the Collective Bargaining Agreement.***
  2. ***Retired employees be paid both terminal benefits in accordance with clauses 23 and 25 of the Collective Bargaining Agreement.***
  3. ***Redundant employees be paid both terminal benefits in accordance with clauses 23 and 25 of the Collective Bargaining Agreement.***
  4. ***All the accumulated monthly salaries upto 15<sup>th</sup> August 2006.***
8. It is the Claimants position that the Minister omitted in their report to add compensation demanded and medical claims as submitted to him as per clause 12 of the Collective Bargaining Agreement.
9. The Claimants prays that the court finds for them and order the Respondents to pay the Grievants the quantum as per annexed schedule of claim being unpaid wages, leave earned, leave travelling allowance, notice, gratuity, service benefits, severance pay, medical, Collective Bargaining Agreement arrears and compensation. The total amount claimed for the 28 Grievants is 17,069,274/=.

### **Respondents case**

10. The Respondents filed their Memorandum of reply on 25/4/2007 through their Assistant Secretary General. They agreed that the parties have a recognition agreement and a valid Collective Bargaining Agreement effective from 1<sup>st</sup> January 2002 and with provisions as indicated in the Claimants' Memorandum. They also admit that the 28 named former employees are the Grievants in this dispute.
11. They however deny that they forced all the Grievants to cease work and aver that the Claimants were fully informed of the intended redundancy under clause 23 on the 11<sup>th</sup> April 2007 long before they were issued with letters of redundancies. Clause 26 of the Collective Bargaining Agreement gives employees an option to retire after serving for not less than 10 years and their retirement age remain 55 years.
12. The Respondents also admit that the Minister accepted the dispute and appointed a Conciliator who handled the dispute and made recommendations. They however aver that the recommendations made contravenes the parties' Collective Bargaining Agreement for recommending payment of gratuity under clause 25 (Appendix 3) which is paid to an employee terminated under clause 24.
13. They also deny that the Minister omitted compensation demand and medical claims and aver that the issues were not reported in the dispute at any stage.

They however admit that clause 12 of the Collective Bargaining Agreement covers medical treatment and aver that Claimants have not reported a dispute on medical treatment. Their position is that the issue in dispute was not mode of calculation of terminal benefits but on criteria.

14. The Respondents want this court to find that the retirement and redundancies were procedural and lawful and uphold their action of retiring and declaring the Grievants redundant and therefore dismiss this case.

### **Issues of determination**

15. This court has considered the submissions of both parties and the issues for determination are as follows:

1. *What was the bone of contention in the dispute reported to the Minister of Labour on 30/8/2006.*
2. *Based on recommendations given what remedies this court can give in the circumstances.*

16. On the 1<sup>st</sup> issue Appendix G the report of the conciliation stated that the issue in dispute is “unprocedural and wrongful retirement/redundancies of 28 Grievants. The parties agreed that the redundancies/retirements be effected and what remained was the mode of calculation of the benefits for each Grievant. The submissions by Respondent that the issue for determination was criteria for redundancy/retirement is not true. That determines the 1<sup>st</sup> issue.

17. The 2<sup>nd</sup> issue then is determination of the payments for each Grievant. The Respondent had submitted that the calculation done by the Claimants and the report of the conciliation was wrong in stating that calculations for gratuity were only payable on clause 25 based on clause 24.

18. The finding of this court however is that under clause 25:

***“Gratuity: every employee shall be entitled to service gratuity payable at the rate of 30 days wages for each year of service worked”.***

This is not pegged on clause 24 which deals with death.

On the same note for retirement, every employee after serving 10 years was entitled to all terminal benefits and gratuity under clause 26.

19. That being the position, it is the finding of this court that each retired Grievant is entitled to payment of gratuity and termination benefits as per the Collective Bargaining Agreement Clause 26 and for those declared redundant, for payment of their gratuity under clause 25.

20. The mode of redundancy/retirement on criteria used was not in any way unlawful, the requisite notices having been given, therefore, the claim of notice is not tenable.

21. Based on this position of the court, I direct that the parties do resubmit before court a list of gratuity payable in respect of the redundancies and retirements and payment for other dues not paid under the Collective Bargaining Agreement as submitted by the claimants excluding compensation for consideration and/or adoption by this court.

**Read in open Court this 22<sup>nd</sup> day of June, 2015.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Claimant

Otieno for Respondent