



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATION COURT OF KENYA

AT MOMBASA

ELRC CAUSE NO. 110 OF 2015

- (1) JACKSON WAMBUA MUKILYA
- (2) STANLEY MUTUA MULATYA
- (3) LUCAS MWAISEKENYI MWAKIO
- (4) BAKARI SAID MWAKALIMA
- (5) JWANINA MWONTUME PATRICK
- (6) ALI MWAITA HASSAN
- (7) MWAKA MATELI TAMA.....CLAIMANTS

VERSUS

ONEWAY CLEANING SERVICES LTD..... RESPONDENT

J U D G M E N T

I N T R O D U C T I O N

1. The Claimant have brought this suit claiming damages for unfair and unjust redundancy declared upon them on 31.7.2014. The Respondent did not file defence to the suit and such it proceeded *ex parte* on 18.6.2015. The first Claimant **Mr.Jackson Wambua Mukilya** testified as Cw1 on behalf of all the Claimants and there after their counsel filed written submissions.

EVIDENCE.

2. Cw1 was employed by the Respondent on 20.10.2005 while the other Claimants were employed on diverse dates between 2005 and 2010. They were all cleaners based at Electricity House and at the Port of Mombasa. Cw1 was however their supervisor. His monthly salary was of kshs.11,000 while the rest earned salaries ranging between kshs.99,00 and kshs.8500 per month. Their employment contract was verbal but the Claimants used to get with staff identity cards and payslips which were produced as exhibits.

3. On 31.7.2013, the Claimants reported to work as usual and continued with work. At 1 pm, the Administrator of Kenya Power called Cw1 as the supervisor and told him that the Respondent's contract at the Electricity House had expired and the Respondent was aware. Shortly thereafter Cw1 received a

call from 4th and 7th Claimants from the Port and informed him that the Respondent's contract at the Port was over.

4. Cw1 and all the Claimants went to the Respondent's Mombasa office at Canon House and met the Zonal Manager **Mr. John Kiio**. The latter called the Head Office at Nairobi and confirmed that the cleaning contract had lapsed. The Manager then told all the Claimants that their employment was over. When the Claimants demanded for their separation dues, the Manager promised them that they will be contacted in due course to collect the same.

5. The Cw1 described the procedure followed to terminate their services as unfair. According to him, the Claimants had served the Respondent for many years and they did not deserve such abrupt termination without any wrong doing. He prayed for Judgment in terms of Paragraphs 5 of the claim including pay in lieu of Notice, service pay, public holidays worked, arrears of house Allowances, compensation for unfair and unjust termination and a refund of welfare contribution at the rate of kshs.50 per month for the entire period of service. Lastly he prayed for accrued leave for the entire period of service.

ANALYSIS & DETERMINATION

6. After considering the pleadings, evidence and submissions, it is clear that the claimants were all employees of the Respondents based at Electricity House and Port of Mombasa. There is no dispute that on 31.7.2014, all the Claimants were laid off on grounds that the Respondent's cleaning contracts at the Electricity house and the port of Mombasa had expired. The issues for determination are whether the termination of the Claimants' employment was unfair, unlawful and unjust and whether the reliefs sought ought to issue.

Unfair, Unlawful and Unjust Termination

7. The reason for the termination of the Claimants' employment was loss of business after the cleaning contracts at Claimants place of assignments expired. The procedure followed was summary termination without payment of any separation dues and after many years of service without any wrong doing. After considering the foregoing matters, the court finds on a balance of probability that the Claimants were unprocedurally laid off.

8. The procedure of declaring employees redundant is provided for under **Section 40** of the E.A. One of the procedural requirements is that the employer must serve a prior notice of one month in writing to the employee and the Labour Officer. In this case the Respondent did not serve one month notice in writing to the Claimants and the Labour Officer. There was no justification for such default because the Respondent was at all material time aware or had the reason to know that the cleaning contracts were going to lapse. She however ignored the obligation of service of redundancy notice established by the law in relations to laying off the Claimants. For reason of that default to serve redundancy notice to the Claimants, the termination of the employment contract became unfair, unjust and unlawful within the meaning of **Section 40** and **45** of the E.A. Consequently the answer to the first issue for determination is in the affirmative.

RELIEFS.

9. Under **Section 49(1)** of the E.A. all the Claimants are entitled to one month salary in lieu of notice, compensation of 6 months salary and arrears of house allowance for 3 years at the rate of 15% of basic salary. The reason for not awarding the maximum compensation is because with due diligence the Claimant can secure alternative employment within 6 months. Likewise the reason for not limiting the leave to 3 months is because of the time bar provided for under **Section 90** of the E.A. The prayer for public holidays worked is however dismissed for lack of evidence and particulars. Likewise the prayer for service pay is dismissed because the Claimants were members of the NSSF and the Respondent contributed towards their social security. Consequently by dint of **Section 35(6)** the Claimants are disqualified from Claiming service pay.

10. The summary of the award for each claimant is summarised as follows:

a. **Jackson Wambua Mukilya**

Salary in lieu of Notice11,000
Arrears of House Allowance.....59,400
Compensation.....66,000
136,400

(b) **Stanley Mutua Mulya**

Salary in lieu of Notice.....9,900
Arrear of House Allowance.....54,460
Compensation59,400
123,760

(c) **Lucas Mwaisakenyi**

Salary in lieu of Notice.....8,500
Arrear of House Allowance.....45,900
Compensation51,000
105,400

(d) **Bakari Said Mwakalima**

Salary in lieu of Notice.....9,000
Arrear of House Allowance.....48,600
Compensation54,000
111,600

(e) **Jwanina Mwontone Patrick**

Salary in lieu of Notice.....8,500
Arrear of House Allowance.....48,900
Compensation51,000
105,400

(f) **Ali Mwaita Hassan**

Salary in lieu of Notice.....8,500

Arrear of House Allowance.....45,900

Compensation51,000

105,400

(g) **Mwaka Maleli Tama**

Salary in lieu of Notice.....9,350

Arrear of House Allowance.....50,490

Compensation55,100

115,940

DISPOSITION

11. For the reasons and findings stated above, Judgment is entered for the Claimants declaring the termination of their employment unfair, unjust and unlawful and awarding them damages in the aggregate sum of **ksh.803,900** in the shares outlined above. They will also have costs plus interest.

It is so ordered.

Dated signed and delivered at Mombasa this 31st day of July 2015.

O. N Makau

JUDGE