



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NUMBER 42 OF 2013

BETWEEN

JAMES H. MUDANYA

ADHAN KUMBI GODHANA

KATANA KALUME KOTOLE

ELLI ASONGA HEZRON

BERNARD GAMBO MUYE

ABDULAY GABABA

ABSALOM KAFUNA

CHIZI E. MBURA

CHARLE K. CHARO

BAKERO WRAMADA

REHEMA DECHE

FATUMA M. KITI

GODRED IDALIA

CHRISTINE KAMBI

MUNGA M. NZOVU

DAMA N. KALUMBE

KAREMBO KOMBO

MUNGA K. MUNGA

ALIMASI M. GONA

BAKARI K BORU

EMMANUEL KAHINDI

DZAME BAHATI

LILIANI NYAMBU

MERCY MWANYAMBA

WASHE MDENDE

KAREMBO B. KAINIU

KATAHAK NGALA CLAIMANTS

VERSUS

FLECH VIEH CATTLE BREEDERS LIMITED..... RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Asena Advocate instructed by Aziz & Associates, Advocates for the Claimants

Ms. Ndeto Advocate instructed by Mulwa Ndunya & Company Advocates for the Respondent

ISSUE IN DISPUTE: REDUNDANCY

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Claimants filed a very brief Statement of Claim, on the 26th February 2013. They state the Respondent Company was their Employer and that on 15th February 2013, the Respondent terminated their respective contracts of employment. They allege this was done without adequate notice, and on the ground that the Respondent was restructuring its business. They seek:-

- a. A declaration that the Claimants' contracts were unfairly and wrongfully terminated.
- b. They are reinstated.
- c. They are paid compensation for lost earnings from the date of termination.
- d. General damages for breach of contract.
- e. Costs.
- f. Interest.
- g. Any other relief the Court deems suitable to grant.

2. The 1st Claimant was authorized by his Colleagues, to pursue the case on their behalf. He swore similarly sketchy Affidavits on 26th February 2013, in verification of the Claim and in support of an Application for interim measures.

3. The Respondent filed its Bundle of Documents on 21st August 2013 and 2nd July 2015. Thereafter Parties were engaged in negotiations which ended in deadlock. They reverted to Court on the 27th May 2014, when the Claimants James Mudanya, Elli Asango Hezron, and Washe Chizemo, gave evidence bringing the Claimants' case to a close. Kilifi Limited Manager Evans Onzore testified for the Respondent on the 15th May 2015 when the hearing closed. The Claimants filed their Closing Submissions on the 8th June 2015, while the Respondent filed its Closing Submissions on the 28th July

2015.

4. James testified he was at the time of giving evidence, working for Kilifi Limited. Previously he worked for the Respondent as a Guard. He explained that the 2 Companies split as a result of differences amongst the Directors. He did not go on annual leave; worked overtime without compensation; and received no termination letter or notice. He however testified on cross-examination that he received a termination letter. The letter stated business had diminished. Employees refused to sign the letters of termination. They had wished to join the Trade Union, and informed their Employer of their wish. They understood termination to have been occasioned by their wish to belong to the Trade Union. They were not paid overtime. The Respondent was still in business at the time James testified.

5. Hezron told the Court he too worked for the Respondent as a Guard. The Respondent was in livestock business. Employees were not given the reason for termination. Termination was communicated verbally. The Respondent changed its name. The Witness testified he seeks his dues such as overtime, annual leave, house allowance and notice pay. He conceded on cross-examination that he received a letter from the Accountant. There were no details in the letter. The Respondent changed its name to Kilifi Hills.

6. Washe testified he worked as a Guard for Kilifi Hills Limited, as at the time of testifying. He previously worked in the same position for the Respondent. His contract was terminated in 2013 without reasons. He was not paid his dues. He was dismissed by the Manager verbally. Letters issued later. He started working in October 2012. He told the Court on cross-examination that he saw the letter of termination. The letter of termination issued after the Employees initiated proceedings in Court.

7. Evans testified he was the Manager of the Respondent between the years 2011 and 2013. He later became the Manager, Kilifi Limited. He confirmed the Claimants were employed by the Respondent. The Directors of the Respondent declared redundancies. There was a dispute on the packages payable to the Claimants. The Respondent sought the assistance of the Federation of Kenya Employers, who computed respective packages, amounting to Kshs. 444,666. This was forwarded to the Claimants' Advocates.

8. Answering questions from the Counsel for the Claimants, Evans testified the Respondent informed the Labour Office about the redundancies. The sum of Kshs. 444,666 was paid before Parties had engaged in negotiation. The total amount was paid. The Employees were Members of the Plantations Union. They were not victimized for being Members. The Witness was not able to say if the Company changed name after termination.

9. The Claimants submit it is not disputed that they were Employees of the Respondent. There were orders issued by Justices Muya and Mwongo restraining the Respondent from selling its Cattle. The Respondent ignored the orders, sold the Cattle and rendered the Claimants redundant. The Claimants were not issued with redundancy notices in accordance with the Employment Act 2007. The Parties were engaged in negotiations. The sum of Kshs. 444,666 was paid to the Claimants. The Claimants proposed to be paid the sum of Kshs. 1,310,896 before the negotiations broke down. They submit they should be paid the difference, suggesting this had been the view of the Court expressed on the 21st August 2013.

10. The Respondent submits it was encumbered with many financial burdens and on the advice of the Federation of Kenya Employers, declared redundancies. Employees, as confirmed by James Mudanya, were notified about the redundancy. The Labour Office Kilifi County was notified. The Respondent is no longer in business and cannot reinstate the Claimants. The Claimants were paid overtime as evinced in the Respondents' Overtime Payment Schedules. The Claimants were paid Kshs. 444,666 through their Advocates and have suffered no loss of earnings.

The Court Finds:-

11. As pointed out at the outset, the Statement of Claim on record is extremely sketchy. It does not give details of terminal dues sought. The Claimants seek reinstatement in their Statement of Claim; compensation; and general damages. These are the main prayers apparent on the face of the Statement of Claim. It was not made clear how the specified amount of Kshs. 1,310,896 less the sum paid of Kshs.

444,666, fits within the Statement of Claim.

12. The Claimants filed a document in Court, titled 'Demands for Terminal Dues' where an amount of Kshs. 3,079,916 is claimed. This was followed up with another document titled 'Last and Final Dues as suggested by the Industrial Court at Mombasa, on the 21st August 2013.' The amount claimed in this document is Kshs. 1,310,896. A review of the Court Record does not show that on 21st August 2013, the Court suggested any sum as last and final dues. All the Court did was order the Parties ' to continue with negotiations, and report back to the Court on the 29th September 2013.'

13. The Statement of Claim and the evidence given by the select Claimants appear disjointed and not clear in what way the assistance of the Court is required. At least 2 of the Witness testified they still worked, like the Manager Evans Onzore, for Kilifi Limited, which is a company that seems to have taken over the business from the Respondent. They testified the Company changed name, which makes it difficult to understand how they were lost earnings, while they continue to serve the same Employer, albeit differently named. They were not straightforward Witnesses.

14. They stated they were not given letters of termination. They explained later that they received these letters, but received much later, and with no explanation on the contents. They stated they were not given reasons for termination, while testifying elsewhere, that they were told business had diminished. Alternatively, they testified termination was on account of their joining the Trade Union. They allege they worked excess hours without compensation. They said nothing of the documents filed by the Respondent indicating they received overtime pay.

15. The Claimants attempted to spruce up their case in their Closing Submissions, by introducing new matters. They submit the business was restructuring in line with 'Vision 2030.' The Court was unable to find such a position in the Pleadings and Evidence. No Witness mentioned such a vision. The evidence suggests business had diminished, compelling the Directors to pursue new ventures. There was reference to orders issued by Judges from the High Court against sale of the Respondent's Cattle. It is submitted that the Respondent disobeyed these orders, rendering the Claimants jobless, and must ' live with the consequence of disobeying lawful orders.' The handwritten proceedings do not capture such orders, and it was unclear in which context, the High Court would be issuing orders, in this exclusive employment dispute. They submit the amount paid of Kshs. 444,666 'grossly undervalued the Applicants.' No details supporting this statement can be seen in the Pleadings and the Evidence.

16. The letters of termination indicated the Claimants were to be paid days' worked; accrued annual leave; 1 month salary in lieu of notice; and severance pay pegged on 15 days' for each completed year of service. This would meet the minimum redundancy packages available under Section 40 of the Employment Act 2007. The Claimants have not demonstrated they were entitled to other benefits which have remained unpaid. As shown in the evidence of 2 of the Respondent's Witness, some of the Employees were taken in by the Company after it changed name and line of business. There is no good ground to claim compensation. There is no ground at all to seek reinstatement to a Company which is no more. Some of the Claimants indicated to the Court on 9th July 2013 that they intended to withdraw their claims. Withdrawal of the Claim would have served the Parties and the Court well, considering the weaknesses in the Claim, pointed out above. ***In sum, the Claim is hereby dismissed with no order on the costs.***

Dated and delivered at Mombasa this 25th day of **September**, 2015

James Rika

Judge