



**REPUBLIC OF KENYA**

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

**CAUSE NO. 137 OF 2014 CONSOLIDATED WITH CAUSES 138 AND 139 BOTH OF 2014**

**EDITH K. MUNENE..... 1<sup>ST</sup> CLAIMANT**

**ROBERT NJIRAINI KIBARA.....2<sup>ND</sup> CLAIMANT**

**KENNEDY MURIMI MURIITHI.....3<sup>RD</sup> CLAIMANT**

**VERSUS**

**MUTIRA FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 30<sup>th</sup> October, 2015)

**JUDGMENT**

The claimants filed their respective memoranda of claims against the respondent. Ndata Mugo & Company Advocates acted for the claimants. The respondent filed the respective responses to the claims through J.K. Kibicho & Company Advocates and prayed that each of the suits be dismissed with costs. The 1<sup>st</sup> claimant prayed for judgment against the respondent for:

- a) General damages for unlawful and unfair dismissal from employment.
- b) In alternative special damages of Kshs. 186, 948.00.
- c) Overtime hours worked amounting to 1308 hours being Kshs. 195, 935.00.
- d) Costs of the suit.
- e) Interest on a, b, and c.
- f) Any other remedy that the honourable court may deem just and expeditious to grant.

The 2<sup>nd</sup> claimant prayed for judgment against the respondent for:

- a) General damages for unlawful and unfair dismissal from employment, in alternative, special damages of Kshs. 186, 948.00.
- b) Overtime hours worked amounting to 2108 hours being Kshs. 315, 774.00.
- c) Costs of the suit.

d) Interest on a, b, and c.

e) Any other remedy that the honourable court may deem just and expeditious to grant.

The 3<sup>rd</sup> claimant prayed for judgment against the respondent for:

a) General damages for unlawful and unfair dismissal from employment.

b) In alternative special damages of Kshs. 88,320.00.

c) Kshs. 23, 661.

d) Overtime hours worked amounting to 2021 hours being Kshs. 143, 024.00.

e) Costs of the suit.

f) Interest on a, b, c, d and e.

g) Any other remedy that the honourable court may deem just and expeditious to grant.

The 1<sup>st</sup> claimant was employed by the respondent effective 1.07.1980 as an assistant cherry recorder and was at time of termination deployed to serve as a storekeeper. At termination she was paid Kshs. 15, 579.00 per month. The claimant's employment was terminated with effect from **10.07.2010** on account of the 1<sup>st</sup> claimant issuing over-limit debt on 29.04.2010 to respondent's member No. 8688 through CRJ No. 77768 while the claimant knew that the member had another debt at Mugaya advanced on 23.03.2010 through CRJ No. 65836. It was stated in the termination letter that the member belonged to Mutitu factory but the 1<sup>st</sup> claimant had issued the farm inputs beyond the limit to that member at Kagumo factory. Further the termination letter stated that the member had not applied for the inputs the 1<sup>st</sup> claimant had issued to that member. The 2<sup>nd</sup> claimant was employed by the respondent in 1988. He was terminated from employment by the undated letter on record with effect from **1.09.2011** and upon being found guilty of the allegations set out in the termination letter. The 3<sup>rd</sup> claimant was employed in 1995 and was terminated from employment by the letter dated **10.07.2010** on account of issuing farm inputs beyond the respondent's members' limits.

The court has considered the pleadings, evidence and the submissions on record. Under section 90 of the Employment Act, 2007 the claimants were required to file their respective suits way before lapsing of 3 years from the date of the cause of action. The court finds that the cause of action in each case accrued on the date each claimant was terminated from employment.

The claimants filed the suits on **28.10.2014** long after lapsing of the 3 years and as submitted for the respondent, the suits were time barred. They are liable to dismissal. As the respondent urged the otherwise preliminary point belatedly in the final submissions, each party shall bear own costs of the suit.

In conclusion, each of the suits as filed for the claimants is dismissed with orders that each party shall meet own costs of the suit.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 30th October, 2015.**

**BYRAM ONGAYA**

**JUDGE**