



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.72 OF 2015

JOHN IRUNGU MUNGAICLAIMANT

VERSUS

MUGOIRI FIVE FARMERS CO-OPERATIVE UNIONRESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 20th November, 2015)

JUDGMENT

The claimant filed the memorandum of claim on 05.05.2015 through Kirubi, Mwangi Ben & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Payment of Kshs. 664,290.50 being terminal benefits.
- b. Interest from 19.03.2013 at court rates until payment in full.
- c. Costs and interest of the suit.
- d. Any other or better relief the honourable court may deem fit to grant.

The amended memorandum of claim was filed on 16.06.2015.

The respondent failed to file the memorandum of response and the hearing proceeded ex-parte and the claimant filed the final submissions on 26. 06.2015. Upon the service of the submissions, the respondent filed on 10.07.2015 the Notice of Motion dated 6.07.2015 through Amuga & Company Advocates. The respondent prayed that the time for filing the response to the claim be extended to 03.07.2015 and the respondent's response to the claim filed on 3.07.2015 be treated as properly filed and served.

Parties were given an opportunity to compromise the application and the suit and they failed to agree and the respondent's application was subsequently fixed for hearing on 12.11.2015. Despite service of the relevant hearing notice, the respondent failed to attend court for hearing of the application as scheduled and the application was dismissed for failure to attend on 12.11.2015. The claimant having filed and served the final submissions, the suit was scheduled for judgment.

The claimant's case is that on or about 30.06.2005 the respondent employed him as a machine operator until 19.03.2013 when his services were terminated following the claimant's request to retire from the employment. The parties held a conciliation meeting at the Labour office at Murang'a and the claimant's retirement dues were agreed at Kshs. 664, 290.50 payable in installments from 13.03.2014 to 31.12.2017; the first installment being payable on or before 30.12.2014. The respondent failed to honour the agreement hence the filing of the suit.

The claimant has exhibited the agreement of 13.03.2014 and the court finds that the claimant has established his case as prayed for.

In conclusion, judgment is entered for the claimant against the respondent for:

- a. The respondent to pay the claimant a sum of **Kshs. 664,290.50** and all due installments to be paid by 1.12.2015 and the rest of installments as per the agreement dated on 13.03.2014 and in default of any one payment as now ordered the respondent to pay interest at court rates from the date of the suit being 05.05.2015 and be at liberty to take out execution proceedings for all unpaid judgment sum.
- b. The respondent to pay costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 20th November, 2015.

BYRAM ONGAYA

JUDGE