



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO**

**CAUSE NO 241 OF 2015**

**PAUL KOECH.....1ST CLAIMANT**  
**BERNARD RONO.....2ND CLAIMANT**  
**DAVID BYEGON.....3RD CLAIMANT**  
**PHILEMON LANGAT.....4TH CLAIMANT**  
**PHILEMON CHERUIYOT.....5TH CLAIMANT**  
**VIOLET ROTICH.....6TH CLAIMANT**  
**ROBERT YEGON.....7TH CLAIMANT**  
**BERNARD CHEPKWONY.....8TH CLAIMANT**  
**ALFRED RUTO.....9TH CLAIMANT**  
**DAVID KETER.....10TH CLAIMANT**  
**ERIC TOO.....11TH CLAIMANT**  
**DAVID NJIRU.....12TH CLAIMANT**  
**RICHARD KYALO.....13TH CLAIMANT**

**VS**

**PURECIRCLE (K) LIMITED.....RESPONDENT**

**RULING**

1. This ruling proceeds from the Claimants' urgent application dated 30th October 2015 seeking the following orders:

- a. That the Respondent be ordered to deposit in this Court the sum of Kshs.9,558,642.00 sought by the Claimants in respect of their redundancy benefits;
- b. That the Claimants be granted leave to amend their statement of claim and the attached statement of claim be deemed duly filed and serve.

2. The application which is supported by the affidavit of the 1st Claimant, Paul Koech is based on the following grounds:

- a) The Respondent has purported to declare the Claimants redundant without following the provisions of Section 40 of the Employment Act, 2007;
- b) The Respondent did not issue the mandatory redundancy notice to the Claimants or the County Labour Officer as contemplated under the provisions of the law;
- c) The Respondent is in a difficult financial position and will therefore be unable to pay the Claimants their redundancy dues hence the prayer for deposit of the total amount in Court;
- d) The Claimants seek to amend the statement of claim to particularise and set out the amount of money sought by each Claimant;
- e) The amendments are necessary for effective presentation of the issues in dispute for determination before the Court;
- f) The Respondent will not suffer any prejudice if the orders sought are granted.

3. In the supporting affidavit of Paul Koech, it is deponed that on 16th September 2015 the Respondent issued the Claimants with letters declaring them redundant instantly without issuing the mandatory redundancy notice. Koech further depones that the Claimants are apprehensive that the Respondent may close down before settling their terminal dues.

4. In spite of due service, the Respondent did not respond to the Claimants' application and was not in Court when the application was heard.

5. The Claimants seek two prayers; first that they be allowed to amend their claim and second that the Respondent be ordered to deposit the total sum claimed by the Claimants in Court.

6. The law allows a party to amend pleadings at any time before closure. The Claimants' claim was filed on 21st September 2015 and the Respondent filed a reply on 30th September 2015. This matter is still at the interlocutory stage and evidently pleadings have not been closed.

7. Moreover, the proposed amendments are critical for the just determination of this case. I therefore allow the Claimants' prayer in this regard and direct that the amended Statement of Claim attached to the Notice of Motion dated 30th October 2015 be deemed duly filed.

8. I now turn to the prayer for an order directing the Respondent to deposit the entire sum claimed by the Claimants in Court. The termination letters issued by the Claimants gave the reason for redundancy as restructuring of the Respondent Company. The letters also set out the dues payable to the Claimants as follows:

- a) Days worked in the month of September 2015;
- b) Accrued leave days;
- c) Two (2) months' pay in lieu of notice
- d) Severance pay (15 days for every completed year of service).

9. These dues, which are admitted form part of the Claimants' claim and there is no reason why they have not been settled. It seems to me therefore that the Claimants' apprehension that they may not be paid their rightful dues is well founded.

10. Consequently, I direct the Respondent to deposit in Court the sum of Kshs.4,779,321.00 being 50% of the claimed amount, within the next 30 days from the date of this ruling.

11. The costs of this application will be in the cause.

12. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF NOVEMBER 2015**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Nyabena for the Claimants

No appearance for the Respondent