



**REPUBLIC OF KENYA**

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

**CAUSE NO.51 OF 2014**

**(Formerly HCCC No. 3 of 2007 at Nyeri)**

DAVID NJOROGE GATHURI.....1ST PLAINTIFF  
SARAH WANJIKU MWANIKI.....2<sup>ND</sup> PLAINTIFF  
AGNES WANJIRU MIANO.....3<sup>RD</sup> PLAINTIFF  
DAVID KAMUNYA KARUIRU.....4<sup>TH</sup> PLAINTIFF  
EPHRAIM KAGOMBE JULIUS.....5<sup>TH</sup> PLAINTIFF  
JAMES MURIUKI MWANGI.....6<sup>TH</sup> PLAINTIFF  
MARGARET WANGUI WARUTERE.....7<sup>TH</sup> PLAINTIFF  
DAVID GATHIRU NDEGWA.....8<sup>TH</sup> PLAINTIFF  
MARTHA MUTHONI FREDRICK.....9<sup>TH</sup> PLAINTIFF  
JOSEPH MATHENGE KIHAGI.....10<sup>TH</sup> PLAINTIFF  
PETER NJOGU KAMAU.....11<sup>TH</sup> PLAINTIFF  
SIMON KAMINDU WAGOGL.....12<sup>TH</sup> PLAINTIFF  
JOSEPHINE MUGURE GEITA.....13<sup>TH</sup> PLAINTIFF  
CATHERINE MURINGI GICHURU.....14<sup>TH</sup> PLAINTIFF  
CHARLES KINGORI GICHUKI.....15<sup>TH</sup> PLAINTIFF  
SAMMY MWANGI RUHARA.....16<sup>TH</sup> PLAINTIFF  
LUCY WANJIRU KINGORI.....17<sup>TH</sup> PLAINTIFF  
PAUL KARUIRU MURAYA.....18<sup>TH</sup> PLAINTIFF

**AMBROSE NGUNJIRI MURAGE.....19<sup>TH</sup> PLAINTIFF**

**SAMSON MURUNGA MUKUNDI.....20<sup>TH</sup> PLAINTIFF**

**BEATRICE W. KIBUE.....21<sup>ST</sup> PLAINTIFF**

**VERSUS**

**NYERI DISTRICT CO-OPERATIVE UNION.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 13<sup>th</sup> November, 2015)

**JUDGMENT**

The plaintiffs filed the plaint on 26.01.2007 through Orowe & Company Advocates. They prayed for judgment against the defendant for:

- a. A declaration that the termination of the plaintiffs' employment amounted to redundancy.
- b. Payment of the redundancy dues pursuant to Cap 229 of the Laws of Kenya and pursuant to Clause 20 of the terms and conditions of service of the defendant and the issuance of certificates of service for all plaintiffs for all the years worked.
- c. Payment of the unpaid leave arrears based on the last salary earned.
- d. Payment of one month salary for the 2<sup>nd</sup>, 3<sup>rd</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 16<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, and 21<sup>st</sup> plaintiffs. For this prayer the amended plaint added 1<sup>st</sup>, 12<sup>th</sup>, 13<sup>th</sup>, and 15<sup>th</sup> plaintiffs.

The defence was filed on 21.02.2007 through Sichangi & Company Advocates. The defendant prayed that the plaintiffs' suit to be dismissed with costs.

The plaintiffs subsequently appointed C.M. King'ori Advocates to act for them and the plaintiffs' list of documents was filed on 18.11.2014. The plaintiffs filed a further amended plaint on 18.11.2014 but retained the prayers as set out earlier in this judgment. The plaintiffs filed supplementary list of documents on 19.06.2015.

By consent of the parties, orders were made in the suit on 28.07.2015 as follows:

- a. Bundle of documents filed for parties is admitted as evidence in the suit.
- b. The claim to be calculated based on the formula of one month salary for each completed year of service and based on the last monthly salary.
- c. Parties to file a joint or several schedule of the computation of the dues in 7 days from 28.07.2015.
- d. Salary to be used to be gross monthly salary less statutory deductions being NHIF, NSSF and PAYE.
- e. Mention on 17.09.2015 to record further orders on the amount of money payable per computations to be filed.

On 17.09.2015 the court did not sit but the parties filed the relevant computations as ordered and the figures were at variance. Thus on 22.10.2015 the court ordered that the parties file written submissions and serve in 7 days to enable the court to resolve the variance.

Accordingly, the only issue for determination in this suit is for the court to resolve the variance in the computed sums as filed for the parties and taking into account the consent orders and the submissions on record. The court makes findings as follows:

1. On the completed years of service the plaintiffs have submitted that the defendant's computation is correct for all the plaintiffs. The court finds that the number of completed years of service for each of the plaintiff shall be as per the computation filed for the defendant on 22.10.2015.

2. The defendant submitted that the gratuity should not be included in computing the last applicable salary for each employee just like NSSF, NHIF, and PAYE. On that submission, the consent order was clear that the applicable salary shall be gross monthly salary less NSSF, NHIF and PAYE. Parties are bound with their agreement as set out in the consent order and the court returns that the respondent was not entitled to deduct gratuity contributions from the gross salary. Allowing the defendant to go back on that point will, in the opinion of the court, undermine the consent order voluntarily made by the parties and as recorded in court.
3. As submitted for the plaintiffs, for plaintiffs 9, 16, and 19 their pay slips were missing on record and the applicable salary should be the salary as computed by the defendant but without deduction of gratuity component so that as submitted for the plaintiffs the applicable multiplier salary for the three plaintiffs shall be **Kshs.13, 293.00; Kshs.10, 843.00; and Kshs. 11, 496.00** respectively. For the three plaintiffs the final pay will be varied accordingly.
4. For plaintiffs 5, 7, 17 and 18 the pay will be varied so that applicable years will be as per defendant's computation but the multiplier salary shall be as per plaintiffs' computation.

Thus the pay due to the plaintiffs will be as follows:

- Plaintiff No. 1 Kshs. 407,300.00.
- Plaintiff No. 2 Kshs. 143, 745.00.
- Plaintiff No. 3 Kshs. 153, 328.00.
- Plaintiff No. 4 Kshs. 195, 300.00.
- Plaintiff No. 5 Kshs. 232, 344.00.
- Plaintiff No. 6 Kshs. 151, 648.00.
- Plaintiff No. 7 Kshs. 442, 959.00
- Plaintiff No. 8 Kshs. 230, 428.00.
- Plaintiff No. 9 Kshs. 305, 739.00.
- Plaintiff No. 10 Kshs.42, 955.00.
- Plaintiff No. 11 Kshs. 227, 140.00.
- Plaintiff No. 12 Kshs. 288, 775.00.
- Plaintiff No. 13 Kshs. 269, 676.00.
- Plaintiff No. 15 Kshs. 107, 000.00.
- Plaintiff No. 16 Kshs. 249, 389.00.
- Plaintiff No. 17 Kshs.127, 575.00.
- Plaintiff No.18 Kshs. 466, 776.00.
- Plaintiff No. 19 Kshs. 287, 400.00.
- Plaintiff No. 20 Kshs.64, 200.00.
- Plaintiff No. 21 Kshs.43, 670.00.
- Total payable to all plaintiffs **Kshs.4, 437,347.00.**

The court has considered the defendant's submission that interest should not be allowed from redundancy date because the parties had a mutual agreement that the present suit would be stayed pending the outcome in **Nyeri Farmers Sacco Society Limited-Versus-Rosalinda Nyachomba and 39 Others Civil Appeal No. 65 of 2008** which was determined on 13.12.2012. The court has also considered the justice in the case that the plaintiffs would otherwise be entitled to the redundancy dues as at termination on account of the redundancy. In the circumstances the court finds that the defendant will pay the amount found due by 1.01.2016 and in default interest at court rates will be payable thereon from the date of this judgment till full payment. Costs follow the event and as the plaintiffs have substantially succeeded in their claims, the defendant will pay the costs of the suit to be agreed between the parties in 14 days from the date of this judgment or to be taxed in the usual manner. While making the findings on interest and costs the court has considered that the same is discretionary and may be awarded by the court in line with the established principles and towards ends of justice.

In conclusion judgment is entered for the plaintiffs against the defendant for:

1. The defendant to pay the plaintiffs a sum of **Kshs.4, 437,347.00** and to each plaintiff the amount thereof as found payable in this judgment by 1.01.2016 in default interest at court rates to be

- payable thereon from the date of this judgment till full payment.
2. The defendant to pay the costs of the suit to be agreed between the parties in 14 days from the date of this judgment or to be taxed in the usual manner.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 13<sup>th</sup> November, 2015.**

**BYRAM ONGAYA**

**JUDGE**