



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**  
**(BIMA TOWERS)**  
**CAUSE NO.282 OF 2013**

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL**

**INSTITUTIONS & HOSPITAL WORKERS**

**CLAIMANT**

v

**THE FLORIMON LTD**

**RESPONDENT**

**JUDGMENT**

1. The Kenya Union of Domestic, Hotels, Educational Institutions & Hospital Workers (KUDHEIHA) filed a Memorandum of Claim against the Flomiron Ltd (Respondent) on 10 September 2013 and the issue in dispute was stated as the *unfair termination of 27 employees in the service of the Flomiron ltd and refusal by the Respondent to pay final dues to the following 27 employees on termination date;*...
2. Together with the Memorandum of Claim was a motion application under certificate of urgency seeking immediate payment of final dues, consultation/involvement of KUDHEIHA in computing the final dues and, an order restraining the Respondent from harassing, intimidating or victimizing members/workers in the Respondent's service.
3. On 16 September 2013 the Court certified the motion application as urgent and directed that it be served for inter partes hearing on 24 September 2013.
4. On 24 September 2013, the Respondent sought more time to file its Response and reply to the application. (from the record, the Respondent did not file any Response/reply except a Memorandum of Appearance).
5. Because of the nature of the application, and issue in dispute, the Court ordered that the dispute be placed before the County Labour Officer for conciliation/resolution.
6. On 11 November 2013, the parties informed the Court they had the report by the Conciliator but KUDHEIHA did not agree with the mode of settlement, in 6 installments as suggested by the Respondent. The Court therefore requested the parties to address it on the question of settlement of terminal dues on 9 December 2013.
7. On 9 December 2013, KUDHEIHA submitted that it agreed with the Conciliator's report that the issue was one of redundancy but added that the terminal dues should have been paid before declaring the workers redundant in compliance with section 40(1)(e) of the Employment Act. In summary, KUDHEIHA wanted terminal dues paid immediately.
8. Mr. Mwakireti for the Respondent submitted that the Respondent agreed with the Conciliator's

report and that the Respondent had not refused to pay the terminal dues but that the dues were nearly Kshs 5,000,000/-, and because the Respondent's business had not been doing well sought therefore payment in 3 equal monthly installments beginning November 2013. This, it was submitted would be reasonable and balance the interest of both the parties.

9. The Respondent also submitted that all the employees, save for 3 had been taken on board by a new investor.

## **Evaluation**

10. The conciliation report by the County Labour Officer was clear that the Respondent's business closed down/ceased to operate and the workers were declared redundant.
11. Further, the report made reference to clause 13 of the parties Collective Bargaining Agreement on redundancy and clause 27 on retirement and termination gratuity, and observed that the employees were declared redundant and therefore should be paid severance gratuity under clause 13, and not retirement gratuity under clause 27.
12. KUDHEIHA had also sought that the employees who had been declared redundant be paid salaries until the payment of severance pay.
13. In the view of the Court, it is not prudent to decide on this question in the circumstances of this case because it is apparent that all the 27 employees who had been declared redundant save for 3 had been taken on board by the Investor to whom the Respondent had sold the business.
14. The Respondent informed the Court that it was agreeable to the recommendation that the terminal dues be paid in 3 equal monthly installments starting November 2013. 3 months have since elapsed before the rendering of this ruling. This is partly because the Court was on vacation.
15. By default the Respondent has had more than the three months it sought to pay the severance pay to the employees declared redundant. The Court is still of the considered view that the recommendation to pay the terminal dues in 3 equal monthly installments was reasonable.
16. For avoidance of doubt, KUDHEIHA did not pursue the claim for compensation for unfair termination and harassment and intimidation.

## **Conclusion and Orders**

17. The Respondent has had the 3 months it had sought to pay the redundancy dues and the order which therefore commends itself to the Court is to order the Respondent to pay the final dues as tabulated in the letters exhibited as annexures FL-2(I) to the Memorandum of Claim within the next 10 (ten) days from today.
18. There will be no order as to costs.

**Delivered, dated and signed in open Court in Mombasa on this 21<sup>st</sup> day of March 2014.**

**Radido Stephen**

**Judge**

**Appearances**

**Mr. Alex Thuita, Industrial Relations Officer KUDHEIHA for Union**

**Mr. Mwakireti instructed by Mwakireti Ndumia & Co. Advocates for Respondent**