



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 72 OF 2013

JOSEPH MWALA & 414 OTHERSCLAIMANTS

VERSUS

SIN LANE KENYA EPZ LTDRESPONDENT

J U D G M E N T

INTRODUCTION

The 415 plaintiffs brought this suit seeking terminal dues following verbal redundancy by the respondent on 14/11/2006. They claimed one month salary in lieu of notice plus severance pay on the rate of 15 days per year of service. The defendant file defence on 3/12/2006 admitting that all the plaintiffs were her employees working under one category and earning equal salary of ksh.5888. The defendant however denied ever declaring the plaintiffs redundant and instead averred that she dismissed them summarily on 20/11/2006 for neglect and or failing to report to their respective duties.

On 25/7/2013 the plaintiffs successfully sought leave to file a schedule of claims for each plaintiff which was amended on 13/11/2013 with a further leave. The said schedule paved the way for only first plaintiff to testify on behalf of the rest of the plaintiffs. He testified on 13/2/2014 and 27/2/2014 as CW1. No evidence was called for the defence due to persistent non-attendance to hearing.

PLAINTIFF'S CASE

CW1, Mr. Joseph Katindia Mweke stated that he worked for the defendant from 27/1/2003 as supervisor Quality Check Department. He produced appointment letters and payslips to show that his basic salary was ksh.5988 plus house allowance of ksh.883. According to the appointment letter he was entitled to one months notice or salary in lieu before termination. In the event of redundancy one month notice was to be served on the employee or his union and the labour officer in the jurisdiction, the employee was entitled to cash pay in lieu of accrued leave plus wages in lieu of notice. In breach of the aforesaid contract terms the respondents manager one Chen Maelilen called all the workers to the assembly point and told them that the company was closing down. The workers were only paid for the days worked for in that month. They brought this suit to recover other accrued dues namely one month salary in lieu of notice, severance and leave days not utilized. According to him he never went for leave during his 3 years service for which he claimed one month leave per year.

He claimed ksh.5888 being salary in lieu of notice, ksh.23552 as cash in lieu of leave for 3 months plus ksh.13587 as severance pay at the rate of 15 days per year for 3 years. His personal total claim was worked to ksh.43,027. He produced the amended schedule of claims for the respective plaintiffs filed on

13/11/2013 as exhibit 5. The aggregate sum for all the 415 plaintiffs was calculated at ksh.9,114,533.80/. After the hearing, the plaintiffs counsel filed written submissions which the court has considered in this judgment.

ANALYSIS AND DETERMINATION

The issues for determination arising from the pleadings, evidence and submissions are;

- 1. whether the claimants were lawfully declared redundant**
- 2. whether the relief sought ought to issue.**

Redundancy

The court has no hesitation in finding and holding that the verbal declaration by the respondent that she was closing down and failing to pay the plaintiffs their rightful dues was not a lawful redundancy within the meaning of the employment Act Cap 26 repealed. It was also a breach of express terms of the contract of employment. The court without any other evidence to the contrary finds that the plaintiffs were not dismissed summarily as alleged in the defence, but were declared redundant unlawfully and in breach of contract.

Relief Sought.

In view of the foregoing finding, the court declares that the plaintiffs are entitled to their respective accrued terminal dues as per the schedule produced as exhibit 5. The said dues are in respect of one month salary in lieu of notice being ksh.5888, severance pay at the rate of 15 days per year of service plus leave as particularized and calculated under the said schedule produced as exhibit 5. The aggregate award is ksh 9,114,533.80 for all the plaintiffs.

DISPOSITION

Judgment is entered for the plaintiffs against the defendant at ksh.9,114,533.80 in the aggregate. The plaintiffs will also have certificate of service, costs and interest from date of filing the suit.

Dated, Signed and delivered this 25th day of April 2014.

O. N. Makau

Judge