



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 284 CONSOLIDATED WITH CAUSES NO. 277, 278, 281 AND 283 ALL OF 2013

EVANS NYAKERIGA,

CHARLES MWANGI WACHIRA,

SYLVANUS N. NDEGE,

DANIEL NGANGA GIKONYO AND

GEOFFREY M. MATUNDA.....CLAIMANTS

- VERSUS -

PRIMAROSA FLOWERS LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 18th July, 2014)

JUDGMENT

The claimants were respondent's employees. The evidence on record is that on 1.05.2010 at about 5.00 am, the claimants were travelling for duty aboard the respondent's motor vehicle when they were involved in a road traffic accident. Subsequently, they sued the respondent for remedies in view of the injuries they had sustained at the accident. The respondent was not happy with the action the claimants took to sue and the claimants were terminated without any reason but that they had sued the respondent following the injuries sustained at the accident. The claimants filed in the present proceedings their respective pleadings in the relevant suits they instituted following the accident.

The respondent delivered to each of the claimants a termination letter dated 21.07.2011. Each of the letters stated as follows:

“RE: TERMINATION OF EMPLOYMENT

This is to inform you that your contract of employment is terminated from July 31, 2011.

Kindly arrange to hand over all property belonging to the Farm to the stores.

Your terminal dues will be as follows:

Salary for July 2011

(Relevant days of notice pay)

Service pay

Spray allowance

Less loans/ debts owed to the company and taxes.

We thank you for the services you have rendered to the Farm and we wish you the very best in your future endeavors.

Yours faithfully,

FOR PRIMAROSA FLOWERS LTD

Signed

MOMANYI NYABUTO

HUMAN RESOURCE MANAGER”

The claimants were dissatisfied with the termination and they each filed a suit after serving the relevant demand notice. The suits were consolidated and heard together.

Each of the claimants prayed for notice pay, compensation of 12 months' salaries for unfair termination, and service pay for the years served.

The court finds that the respondent did not give any valid reason for terminating the claimants' employment and the claimant's case that the termination was due to the suit they had filed following the accident is found to have been the reason for termination. The finding is more so because the claimant's workmate called David who was involved in the accident but had not sued the respondent was not dismissed.

As submitted for the claimants, under section 46(h) of the Employment Act, 2007, an employee's initiation or proposed initiation of a complaint or other legal proceedings against his employer except where the complaint is shown to be irresponsible and without foundation shall not constitute a fair reason for termination. Accordingly, the court finds that the termination was unfair. The court finds that the claimants were diligent workers who did not contribute to their termination in any way. Accordingly, the court finds that each is entitled to the 12 months' gross salaries as set out in their respective statements of claim.

The evidence shows that the respondent promised to pay service pay as per the termination letters. In the circumstances, that the claimants were members of the National Social Security Fund and were under section 35 (6) of the Employment Act, 2007 not entitled to service pay as a minimum term of service will not apply. The court finds that the one month pay for each year served for service pay is reasonable in the circumstances whereby the termination was grossly unfair in view of the reason and the respondent had promised to pay service pay. The court finds that each claimant is entitled to service pay as prayed for.

The evidence by the claimants show that pay in lieu of notice was made and the court finds that the claimants are not entitled as prayed for.

The court finds that the 1st claimant's witness gave evidence that he worked 10.5 hours per day and the court finds that he is entitled to overtime pay as prayed for.

The court finds that each of the claimants is entitled as follows:

1. Charles Mwangi **Kshs.170,478.00** for 12 months compensation and service pay as prayed for.
2. Sylvanus Nyambane Ndege **Kshs.227,879.00** for 12 months compensation, overtime pay and

- service pay as prayed for.
3. Daniel Nganga Gikonyo **Kshs.127,920.00** for 12 months compensation and service pay as prayed for.
 4. Evans Nyakeriga **Kshs.138,960.00** for 12 months compensation and service pay as prayed for.
 5. Geoffrey Maangi Matunda **Kshs.121,086.00** for 12 months compensation and service pay as prayed for.

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

1. **A declaration that the termination of the claimants' respective employment by the respondent was unfair.**
2. **The respondent to pay each of the claimants the sum as set out in this judgment by 1.09.2014, failing, interest at court rates to be payable from the date of the judgment till the date of full payment.**
3. **The respondent to pay costs of the suit.**

Signed, dated and delivered in court at Nakuru this Friday 18th July, 2014.

BYRAM ONGAYA

JUDGE