



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU
CAUSE NO. 352 OF 2013
(Formerly Industrial Court Cause No.525 of 2013 at Nairobi)

**KENYA UNION OF EMPLOYEES OF VOLUNTARY AND CHARITABLE ORGANISATIONS
(KUEVACO)CLAIMANT**

- VERSUS -

**NATIONAL COUNCIL OF CHURCHES OF KENYA
(NCCK).....RESPONDENT**

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

JUDGMENT

The claimant filed the statement of claim on 15.04.2013 with respect to a claim of redundancy of the grievants namely Joseph Emekui Ewoi; John Munyesi; Raphael Lochodo; and John Piarae. The claimant's case is that the respondent terminated the grievants' employment on account of redundancy, un-procedurally and wrongfully; the respondent breached the grievants' rights and privileges as protected by the relevant statutes; and that there was employment relationship between the grievants and the respondent. The claimant prayed that the respondent pays the grievants severance pay, unpaid salary, leave earned, subsistence allowance, reasonable notice, operational costs, and compensation being a sum of Kshs.1,244,400.00, Kshs.424,000.00, Kshs.1,241,8000.00 and Kshs.296,800.00 respectively for the four grievants. The claimant also prayed for interest at 14% from 1.09.2005 when the matter was reported to the Minister; costs of the suit; and any other or further relief as the court deems just to award.

The respondent filed the statement of defence on 17.05.2013 through Soita & Company Advocates. The respondent urged that the claimant was not entitled to file the suit on behalf of the grievants; and that the remedies as prayed for are not available under the applicable statutes being Employment Act, Cap 226 and Employment Act, 2007. The respondent prayed that the claimant's suit be dismissed with costs.

At paragraph 4 of the defence, the respondent admitted to having engaged the services of the four grievants over ten years ago under verbal short term contracts in the respondent's Emergency Famine Relief Project funded by the World Vision and coordinated by the respondent. The respondent's case was that the project was temporal and aimed at alleviating the effects of hunger and drought on the residents of the Turkana County. Further, the grievants were paid allowances and not salary as voluntary workers. The respondent denied that it employed the grievants for a continuous period of 4 years from 1999 to 2002 but admitted at paragraph 6 of the defence that it at last employed the services of the grievants in the distribution of food under the Project in September, 2002 when the Project closed. The respondent's further case was that the cause of action having arisen over ten years ago, the suit was an abuse of court process as it was time barred.

The claimant had reported a dispute to the Minister by the letter dated 1.09.2005 and the conciliator's report is dated 14.07.2011. The conciliator reported that the respondent refused to attend all scheduled meetings and refused to forward to the conciliator a memorandum despite being asked in writing to do so. The conciliator's findings and recommendations were as follows:

1. There was no recognition agreement between the union and the respondent.
2. The union had duly registered its constitution and was entitled to represent the employees of the respondent.
3. The respondent had employed the grievants who had clean records of service and grievants were terminated without valid grounds and without payment of terminal dues.
4. The conciliator then recommended that each of the grievants be paid any unpaid salaries, pending leave, a month's wage in lieu of the termination notice, and 5 months wages in view of the termination.

The court has considered the pleadings, the affidavits, the documents on record and the parties' respective submissions and makes findings as follows:

1. As submitted for the claimant, the grievants being members of the claimant and there being no collective agreement or recognition agreement, the claimant was nevertheless entitled to file the suit for its members and make claims on the basis of the employment contracts between the grievants and the respondent.
2. In view of the conciliator's report made on 14.07.2011, the cause of action accrued effective that date and the suit was not time barred as it was held by *Wasilwa J* in **Kenya Scientific Research International Technical and Allied Institutions Workers Union –Versus- Rainald Schumcher and Another Industrial Cause No. 832N of 2009 at Nairobi** and by *Abuodha J* in **Kenya Plantation & Agricultural Workers Union –Versus- Mununga Leaf Base [2013]eKLR**. In those cases, it was held that where parties have engaged in the conciliation proceedings as prescribed in legislation, time for instituting the suit started to run upon the conclusion of the conciliation proceedings.
3. The court finds that taking into account the material on record the grievants are entitled to reliefs as follows:
 - a. The grievants were entitled to a termination notice but which was not served and the court finds that they are each entitled to one month notice pay at rate of last monthly salary.
 - b. The court finds that the respondent did not accord the grievants the due annual leave entitlements and the grievants are entitled as prayed for.
 - c. There is no doubt that the grievants lost employment on account of redundancy as the respondent stated that the project came to an end. The court finds that the grievants are entitled to redundancy or severance pay as prayed for.
 - d. The court finds that the grievants worked but they were not paid salary as claimed as per the vouchers filed in court. The court finds that the grievants are entitled to the unpaid salary as prayed for.
 - e. The court finds that the grievants did not by evidence establish the justification for safari subsistence allowance because the evidence of the alleged travel far away in the field during employment as assigned was not provided. Further, the operational costs as claimed and prayed for were not established because receipts of the pay for fuel as alleged was not provided.
 - f. As submitted for the respondent, the award for 12 months compensation for unfair termination

would be based on the provisions of section 49 of the Employment Act, 2007 which was not in force at the time of the termination of the grievants. The prayer will therefore fail.

- g. The claimant has substantially succeeded and the court finds that the claimant is entitled to the costs of the suit.

It was submitted that the 1st aggrieved person Joseph Emekui Ewoi was deceased so that the suit for that grievant ought to be dismissed. The court finds that the claimant and not the grievant said to be deceased was the proper party to the suit so that the demise did not cause abatement or any justification to dismiss the suit. The evidence on record entitled the claimant to the remedies as found justified.

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

1. The respondent to pay each of the grievants a month's notice pay at the rate of last monthly salary; due annual leave entitlements as prayed for; redundancy or severance pay as prayed for; and the unpaid salary as prayed for, and, all to be paid by 1.09.2014, failing, interest to be payable on the sum at court rates from the date of filing the suit on 15.04.2013 till full payment.
2. The respondent to pay costs of the suit.

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

BYRAM ONGAYA

JUDGE