



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NYERI
CAUSE NO.49 OF 2013
(Meru High Court Civil Case No.34 of 2005)

MISCHECK KIRIMI MWITHIMBU.....1ST CLAIMANT
KITHINJI MBERIA.....2ND CLAIMANT
JUSTUS GIKUNDA.....3RD CLAIMANT
SILAS KINOTI.....4TH CLAIMANT
GEOFFREY KIRIMI.....5TH CLAIMANT
LAWRENCE MAGAJU.....6TH CLAIMANT
JUDITH RIMA.....7TH CLAIMANT
ZACHARIA KIRUKI.....8TH CLAIMANT

VERSUS

THE LIQUIDATOR NKUENE FARMERS

CO-OPERATIVE SOCIETY.....1ST RESPONDENT
COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT..2ND RESPONDENT
KIERU FARMERS CO-OPERATIVE SOCIETY.....3RD RESPONDENT
KAUBAU FARMERS CO-OPERATIVE SOCIETY.....4TH RESPONDENT
KAGURU FARMERS CO-OPERATIVE SOCIETY.....5TH RESPONDENT
TAAU FARMERS CO-OPERATIVE SOCIETY.....6TH RESPONDENT
MUTEGO FARMERS CO-OPERATIVE SOCIETY.....7TH RESPONDENT
MUGURU FARMERS CO-OPERATIVE SOCIETY.....8TH RESPONDENT
MUNANI FARMERS CO-OPERATIVE SOCIETY.....9TH RESPONDENT

NKUMARI FARMERS CO-OPERATIVE SOCIETY.....10TH RESPONDENT
NTEMWENE FARMERS CO-OPERATIVE SOCIETY.....11TH RESPONDENT
KANGURWE FARMERS CO-OPERATIVE SOCIETY.....12TH RESPONDENT
GITUNE FARMERS CO-OPERATIVE SOCIETY.....13TH RESPONDENT
NUGU FARMERS CO-OPERATIVE SOCIETY.....14TH RESPONDENT
NKUNGUGU FARMERS CO-OPERATIVE SOCIETY.....15TH RESPONDENT
KANDIGI FARMERS CO-OPERATIVE SOCIETY.....16TH RESPONDENT
RUGETU FARMERS CO-OPERATIVE SOCIETY.....17TH RESPONDENT

JUDGMENT

1. The plaintiffs in this suit were former employees of the 1st defendant which was placed in liquidation in 1999.
2. The plaintiffs aver that upon the placement of the plaintiff into liquidation, their services were terminated. Their letters of termination informed them that they would be paid one month's salary in lieu of notice and terminal benefits in accordance with the applicable CBA.
3. According to the plaintiffs, their dues were computed and agreed upon yet the 1st defendant failed to pay the plaintiffs their dues prompting the present action.
4. Concerning the 3rd to the 17th defendants, the plaintiffs have averred that they were created upon the placement of the 1st defendant in liquidation and further that they inherited the assets and liabilities of the 1st defendant.
5. The plaintiffs therefore seek from this court a declaration that they are entitled to be paid all their terminal benefits arising out of their employment with the 1st defendant and that all the defendants are liable to pay all such terminal benefits as shall be ordered by the court.
6. All the defendants except the 7th neither entered appearance nor filed defence to the suit. The 7th defendant on its part did not attend court at the hearing despite filing a defence and being served with a hearing notice.
7. At the hearing, the plaintiffs called as witness Mr. Mischeck Mwithimbu who stated he was one of the ex-employees of the defendant as a supervisor and a shop steward for the purposes of the union.
8. It was his evidence that upon placement of the defendant in liquidation a meeting was held with the management committee and it was agreed that all the employees be given termination letters and that they be paid their terminal benefits as per the then CBA. He further testified that they received 1 ½ month's salary and part- payment of their terminal dues. The balance was never paid despite filing a complaint with the Commissioner of Co-operatives and filing the present suit.
9. There seem to be no dispute that the plaintiffs were to be paid their terminal benefits by th defendant. Further these benefits had been computed and partly paid. The only issue and one which prompted the plaintiffs to bring the present suit is that the 1st respondent has failed and or ignored to pay the plaintiffs the balance of their terminal benefits as had been agreed. The court

would not want to speculate but perhaps the placement of the 1st defendant in liquidation and the attendant processes could have had a role in the delay in paying the claimants. However, their claim had been acknowledged by the liquidator and partially settled.

10. As desired by the plaintiffs therefore, the court hereby declares that the plaintiffs be paid their terminal dues as computed and agreed by the management committee, the liquidator and the plaintiffs.

11. The court further directs that this order be served on 1st and 2nd respondents and that the second respondent do inquire into the circumstances that may have led to the delay or non-payment of the plaintiffs terminal benefits and a report thereon be filed in this court within 60 days from the date hereof for the recording of final orders. The matter is therefore set for mention on 1st December, 2014 for that purpose.

12. It is so ordered.

Dated at Nyeri this 30th day of September, 2014.

ABUODHA J. N

JUDGE

Delivered in open Court in the presence of Mr. Wanga h/b for Kariuki Advocate for the Claimant and in absence of Ndorongo Advocate for the 7th Respondent.

ABUODHA J. N

JUDGE