



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**  
**CAUSE NO. 421 OF 2013**  
**(FORMERLY HIGH COURT CIVIL SUIT NO. 255 OF 2002 AT NAKURU)**

**FESTUS MUTUA & 51 OTHERS.....PLAINTIFFS**

**-VERSUS-**

**EVEREADY BATTERIES (K) LIMITED..... DEFENDANT**

(Before Hon. Justice Byram Ongaya on Friday 17<sup>th</sup> October, 2014)

**JUDGMENT**

The suit was initially filed in the High Court at Nakuru and transferred to this court by the order given by the High Court on 21.11.2013. It is submitted for the plaintiffs that the fixing of the case for hearing was complicated with the mysterious disappearance of the court file. By court order, the skeleton court file was constituted.

The plaint was filed on 5.11.2002 and the amended plaint on 16.03.2004 through Musembi Ndolo & Company Advocates. The plaintiffs pleaded at paragraph 5 that in or about January 2002 they were unlawfully terminated from their employment and the respondent denied the plaintiffs the statutory benefits including:

- a. One or two month's salary in lieu of notice.
- b. Unpaid leave and leave allowance.
- c. House allowance.
- d. Arrears of salary.
- e. End of service gratuity.
- f. Overtime.
- g. Training deductions.
- h. Providence fund.
- i. N.S.S.F.

The plaintiffs prayed for reliefs against the defendant including:

- a. General damages for breach of contract.
- b. Claim for 56, 928, 743.30
- c. Costs of the suit.
- d. Any other or further relief the court deems fit to grant.

By a notice of change of advocates dated on 22.02.2011 the plaintiffs appointed B.W.Mathenge & Company Advocates to act for them in the suit.

The amended defence was filed on 17.04.2004 through Sheth & Wathigo Mukite Musangi & Company Advocates. The defendant prayed that the suit be dismissed with costs to the defendant.

It was submitted for the plaintiffs that they were in 3 pay categories being one plaintiff earning Kshs. 14, 106.40; forty three plaintiffs earning 11, 466.50; and three plaintiffs earning 21, 846.80. For each category the plaintiffs called only one witness purportedly testifying on behalf of the others in the category.

It was also submitted that some of the plaintiffs had died after the date of filing of the suit but the evidence and the details were not provided. In the final submissions for the plaintiffs, it was stated thus, **“As stipulated in both the initial plaint and the amended plaint and without calculating the total amount per individual it all zeros down to Kshs. 72, 000, 000.00 as the amount of money claimed by the claimants herein.”**

The court has considered the material on record. The plaintiffs have failed by evidence to establish the contractual basis of the claims they have made in the plaint. The details of the terms and conditions of service that applied to each plaintiff and the particulars that would entitle them to the reliefs as prayed for have not been established. The evidence before court is that some of the plaintiffs died but the particulars are not provided. In the circumstances, the court finds that a blanket urge for relief as stated in the plaint as amended and the submissions as filed for the plaintiffs without the necessary particulars and evidence can only culminate in the dismissal of the plaintiffs’ case.

The court has considered that the court file in this matter got lost and the hearing proceeded on the skeleton file established in accordance with the relevant court order. Thus, the court is of the opinion that there would be practical difficulties in assessing costs in the usual manner. The court has further considered that some of the plaintiffs and whose names have not been disclosed have been said to have died. In the circumstances, each party will bear own costs of the suit.

In conclusion, the plaintiffs’ suit is dismissed for want of evidence and necessary particulars to justify the plaintiffs’ claims and prayers. The suit is dismissed accordingly with orders that each party will bear own costs of the suit.

**Signed, dated and delivered in court at Nakuru this Friday, 17<sup>th</sup> October, 2014.**

**BYRAM ONGAYA**

**JUDGE**