



**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO.18 OF 2012**

**(Originally Nairobi Cause No. 614 of 2010)**

**KENYA PLANTATION & AGRICULTURAL**

**WORKERS UNION**

**CLAIMANT**

**v**

**RIOKI ESTATES LTD**

**RESPONDENT**

**JUDGMENT**

1. The Kenya Plantation & Agricultural Workers Union (Union) instituted legal proceedings on 4 June 2010 against Rioki Estates Ltd (Respondent) and the issue in dispute was stated as

*refusal to pay terminal benefits to fifteen (15) employees on account of redundancy.*

2. The Respondent filed a defence on 22 March 2012. On or around 4 December 2012 the Cause was transferred to Nakuru for hearing and determination.
3. On 17 March 2013, the Respondent filed documents it sought to rely on while the Union filed a Supplementary List of Documents on 29 July 2013. The Respondent filed further documents on 14 August 2014.
4. After several false starts, hearing commenced before Ongaya J on 3 June 2013 and on which date the Union closed its case.
5. The Respondent severally sought adjournment during dates fixed for hearing its case until 6 October 2014, when I rejected its further application for adjournment. After the rejection of the adjournment, the Respondent disclosed that it did not intend to call any witnesses and that it would rely on the record and written submissions.
6. I therefore directed the Union to file and serve its written submissions before 16 October 2014 and the Respondent to file its submissions before 31 October 2014. The Union filed the submissions on 4 November 2014 while the Respondent filed its submissions on 18 November 2014.

**Union's case/submissions**

7. The Union's case is that the 15 Grievants served the Respondent for periods ranging from 14 to 25 years until they were unlawfully declared redundant on 1 March 2002 without payment of redundancy benefits.
8. On 23 May 2006, the Union reported a trade dispute to the Minister for Labour and the Minister appointed a Conciliator who released a report on 23 September 2008. The Union accepted the recommendations while the Respondent declined to accept the recommendations.
9. The Union submits that the Respondent did not comply with section 40 of the Employment Act,

- 2007 and that the failure rendered the redundancies both procedurally and substantively unfair and illegal.
10. The Union further submitted that the Respondent in paragraph 8 of the Defence admitted that it declared all its workers redundant because it could not afford to pay wages due to mismanagement.
  11. The withholding of redundancy benefits, it was urged was contrary to clause 19 of the Collective Bargaining Agreement signed by the parties.
  12. The Union acknowledged that two of the Grievants Benedietta Njambi Githaiga and Hannah Njoki Njau had been paid.
  13. The Union called Lucy Nyokabi Kangara to testify. She stated that the Grievants and other workers were terminated on 1 March 2002 but no termination letters were issued. The Grievants reported to the Union which in turn reported a trade dispute and conciliation was held and a report made recommending payment.

### **Respondent's case**

14. The Respondent did not call any witnesses but opted to rely on the record and written submissions. In the Defence, the Respondent admitted that it declared all its workers redundant because it could not pay its debts due to mismanagement. It further pleaded it had proposed to pay the workers in instalments.
15. The submissions confirmed the pleadings but it was asserted that the parties disagreed on mode of payment.
16. It was further submitted that the Grievants sued the Respondent in Nairobi High Court Civil Suit No. 200 of 2003, *Grace Nduta Kangere v Rioki Estates Co. 1970 Ltd* and that the suit was transferred to the Industrial Court and registered as Nairobi Cause No. 1054 of 2014.
17. The submissions admitted that the redundancy was in good faith and unavoidable and that the Respondent had attempted to settle outstanding benefits.
18. The Respondent filed its computations of redundancy benefits on 14 August 2014.
19. The Court has considered the parties written submissions.

### **Evaluation**

#### ***Applicable law***

20. The Union predicated its case on the Employment Act, 2007 and more specifically section 40 thereof.
21. But the Union cannot anchor its cause of action on the Employment Act, 2007. The Act came into operation on 2 June 2008. The Grievants were declared redundant in 2002.
22. The applicable law therefore is the Employment Act, cap 226 (repealed) and the Trade Disputes Act (repealed). Apart from these statutes, the Collective Bargaining Agreement between the parties if any, in place in 2002 would be applicable.
23. The Union produced a copy of a Collective Bargaining Agreement signed between it and the Kenya Coffee Growers and Employers Association. This agreement was signed on 21 March 2005 and came into operation on 1 January 2005. It cannot apply to the instant case.

#### ***Whether the redundancies were unlawful***

24. Section 16A of the Employment Act, cap. 226 (repealed) provided for conditions to be complied with by an employer before declaring redundancy.
25. The Respondent has not demonstrated that it complied with the law. On this ground alone the redundancies were unlawful.

#### ***Pendency of parallel legal proceedings***

26. The Respondent asserted that the Grievants commenced legal proceedings against it before the High Court in Nairobi Civil Suit No. 200 of 2003 and which was transferred and registered in the

- Industrial Court as Cause No. 1054 of 2014.
27. However, copies of the pleadings in the suit were not placed before this Court to enable it confirm that the cause of action was the same.
28. Assuming that the cause of action was the same, the current Cause would have been an abuse of court process and amenable to being struck out so that the older suit would be allowed to proceed to determination.

### ***Recommendations by the Conciliator***

29. Prior to institution of legal proceedings, the parties had gone through conciliation and the Conciliator gave a report dated 23 September 2008 recommending that the 15 Grievants be paid terminal benefits.
30. The parties made submissions before the Conciliator. The Conciliator was a Labour Officer and is taken to be well versed with employment and industrial relations issues.
31. The Respondent has not explained whether it rejected the recommendations. The line it has taken was that it sought to pay through instalments.
32. In the circumstances, the Court would adopt and uphold the recommendations by the Conciliator and make appropriate awards.

### **Conclusion and Relief**

33. The Court finds that the Grievants were declared redundant and holds that the redundancies were unlawful and awards the Grievants as follows

i. Rose Mendi Ndirangu	Kshs 182,465/-
ii. Mary Wambui Gathara	Kshs 182,356/-
iii. James Wangengi Njoroge	Kshs 189,258/-
iv. Felista Wanjiru Rubia	Kshs 199,250/-
v. Patricia Muthoni Muchiri	Kshs 196,518/-
vi. Joseph Nduga Ndua	Kshs 195,896/-
vii. Hannah Wanjiru Nduati	Kshs 194,460/-
viii. Esther W Samwel	Kshs 106,340/-
ix. Mary Mumbi	Kshs 199,250/-
x. Stephen Muniu Ngaruiya	Kshs 215,380/-
xi. Jane Njero Njuguna	Kshs 206,180/-
xii. Lucy Nyokabi Kangara	Kshs 190,010/-
xiii. Beatrice Njeri Kibe	Kshs 187,660/-

34. The claims for Benedietta Njambi Githaiga and Hannah Njoki Njau are dismissed on admission they were paid.
35. The record reveals that the Respondent had largely caused the delay of this Cause which arose out of redundancy in 2002. This is a fit case to award costs to the Union which is assessed in the sum of Kshs 35,000/-.
36. For the avoidance of doubt and for information and record purposes, the Court directs the Deputy Registrar of this Court to forward and bring to the attention of the Registrar of the Court a copy of this judgment to be placed in Nairobi Cause No. 1054 of 2014.

**Delivered, dated and signed in open Court in Nakuru on this 5<sup>th</sup> day of December 2014.**

**Radido Stephen**

**Judge**

**Appearances**

For Union Mr. Khisa, Organising Secretary, Kenya Plantation & Agricultural Workers Union

