



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 191N of 2009

**KENYA SCIENTIFIC, RESEARCH INTERNATIONAL,
TECHNICAL & ALLIED INSTITUTIONS WORKERS' UNION.....CLAIMANT**

VS

KENYA SUGAR RESEARCH FOUNDATION.....RESPONDENT

Martin Oduor for the Claimant

Mr. George Korongo for Respondent

AWARD

On 5th May 2009, Kenya Scientific, Research International, Technical and Allied Institutions Workers' Union hereinafter called the Claimant filed a Memorandum of Claim on behalf of 38 grievants, who were allegedly retrenched by Kenya Sugar Research Foundation hereinafter the Respondent.

The issues in dispute were payment of:-

1. Notice pay
2. Accrued leave
3. Severance pay
4. Overtime for weekdays; Saturdays; Sundays and Public Holidays.

The grievants had been retrenched allegedly for joining the Claimant Union. The grievants were employed in various capacities between the year 1980 and 2003. They were not given letters of termination.

By a letter dated 27th May, 2003 the Claimant reported a dispute to the Minister of

Labour and the same was referred to the Provincial Labour Officer, Kisumu for conciliation. A meeting took place before the said Labour Officer and a Memorandum of Agreement marked Appendix "Vb" was entered into by the parties and witnessed by the Provincial Labour Officer, Nyanza.

In terms thereof, it was agreed:-

“Terminal payment of about 35 employees (former casuals) be paid as follows;

Notice of 1 month

Leave for the last two years @ 21 days per year

Public Holidays if any for the last two years

Days worked in May 2002; and

Provision of Certificate of Service.

This agreement is reached on 5th August 2003 and the management is represented by Messrs Morris Mutongi and Chirchir Alexander while the Union was represented by Messrs Martin Oduor, Secretary General, Mark A.W. Omondi and 3 former employee (casuals)”.

It was signed by Mr. Mutongi, Mr. Chirchir, Mr. Oduor and witnessed by the Provincial Labour officer, Nyanza on 5th August, 2003.

On 14th November, 2003 the Chief Shopsteward Mr. Samuel Otieno Sewe wrote Appendix VIII requesting the Secretary General to expedite the computation of the final payments since the Labour Officer had not done so properly.

On 30th June 2006, the Provincial Labour Officer Nyanza wrote to the Respondent to pay the balance to the 35 former employees terminal dues as follows:-

1. Sundays worked and not paid at double rate for 2 years.
2. Public holidays worked and not paid at double rate for 2 years.
3. For hours worked in excess and not paid as overtime at one and a half times hourly rate during normal working days for 2 years.
4. Certificate of Service.

The Respondent appeared not to have honoured the request and Subsequent invitations on 11th July 2007 and 12th November 2008 of the Respondent by the Labour Officer and the Union to meet and resolve the outstanding issues did not bear fruit. A certificate of unresolved dispute was eventually issued on 3rd December, 2008 and the matter came to court.

The Claimant has filed a detailed computation of the claims by the 38 grievants it marked as Appendix ‘XIV’ to the Memorandum of Claim and in its written submissions filed on 16th November 2011 urged the Court to find in favour of the grievants as per the said computation.

The Respondent filed a replying statement dated 15th June 2009 and filed on the same date.

The Respondent concedes that agreement was reached on 5th August 2003 and it approached the Claimant for payment but instead the claimant raised further issues when they met. That the matter was eventually concluded before the Labour Officer and the Respondent issued Certificates of Service to all the grievants.

They allege that the Labour Officer concluded that the union had no claim. This is not borne out by any documentary evidence. Indeed, the Labour Officer issued a certificate of unresolved dispute.

The litany of documentation is consistent with the Claim by the grievants that their terminal dues as outlined in the dispute but not fully computed were not settled by the Respondent.

The Respondent has not placed before court any evidence of such payment but instead has made bare denial. The document the Respondent relies on is an undated letter by the Provincial Labour Officer stamped 23rd August 2006 whereas the Certificate of unresolved dispute was issued by the same office on 3rd November, 2008.

The court concludes therefore that this dispute was never resolved and no payments were made to the grievants.

The Respondent did not respond to the computation filed by the claimant on behalf of the 38 grievants in its final submission, the Respondent states that some of the grievants are dead and were not substituted in the cause. For this reason, it submits that the claims by the grievants should be dismissed.

The Respondent did not identify the alleged deceased grievants but even if that were the case that may be rectified anytime before execution of the award of the court if it is made in favour of the Claimant who has brought the suit on behalf of the named grievants.

The Respondent confirms in its submissions that computation of the specific claims of the grievants was pending and the same should be done. It did not however challenge the computation filed on behalf of the grievants. The bare denial by the Respondent does not suffice and the court on a preponderance of evidence finds that the Respondent is liable to pay the grievants terminal benefits as computed in Appendix 'XIV' to the Statement of Claim.

The said computation is adopted as an order of the court and therefore, the grievants will be paid as follows:-

1. Mr. Willy Kimutai Cheriuyot/Security D/E 1999

ID/No. 115234420 D/E 1999 JANUARY >D/T 23/5/03 = Kshs.358,131.50

2. Wilber Odoyo

ID/No.13053736 D/E2/04/02 D/T23/05/03 = Kshs.156,459.75

3. Mr. James Matara Bosire/Security

ID/No.9315963 D/E/JANUARY 1991 D/T23/5/04 = Kshs.1,373,804.80

4. Mr. Jacob Okal Miruka/Security

ID/No.9418616 D/E1/3/1988/D/T23/5/03 = Kshs.1,569,294.00

5. Mr. Boniface Charles Origa/Security

ID/No.0606595 D/E3/2/01 D/T 23/5/03 = Kshs.256,547.40

6. Mr. Patrick Musundi Kasamba/Security

ID/No.11849884 D/E2/5/1993 D/T 4/3/03 = Kshs.872,342.40

7. Mr. James Ariyo Odero/Security

ID/No.2001869 D/E/24/01/1998 D/T 23/5/03 = Kshs.383,340.00

8. Mr. Joel Onyango Ogada/Security	ID/No.11091992 D/T 1/4/1994 D/T/23/5/03	=	Kshs.923,425.90
9. Mr. Samuel O. Sewe/Security	ID/No. 3065294 D/T 1/10/1996D/T23/5/03	=	Kshs.660,922.20
10. Mr. Bednego Ombwi Amisi/Security	ID/No.11356486 D/T1990/JANUARY D/T 23/5/03	=	Kshs.1,200,061.60
11. Mr. Albert Amoke Onuonga/Security	ID/No.241382 D/T 1986 JAN D/T/23/5/03	=	Kshs.1,670,223.60
12. Mr. Wycliffe Samuel Were/Security	ID/No. 9661665d/D/T1/1/93 D.T 23/05/03	=	Kshs.1,064,643.00
13. Mr. Hezbon Oseya Agiso/Security	ID/No. 12515952 D/E 6/1994 D/T 23/5/03	=	Kshs.963,712.40
14. Mr. Jeconiah Ogendo Onditi/Security	D/E 2/2002 D/T 23/0/03	=	Kshs.256,547.40
15. Mr. Charles Ogul Osege/Security	ID/No.6162985 D/E 9/1993 D/T 32/0/2003	=	Kshs.963,712.80
16. Mr. Ezekiel Otaya/Security	ID/No.7350166 D/E 1990 JAN D/T23/5/2003	=	Kshs.1,266,503.40
17. Mr. Peter Ngoizi Kilwaye/Security	ID/No.1147117 D/E JAN 1997/D/T 23/5/2003	=	Kshs.681,548.40
18. Mr. Charles Otieno Odundo/Security	ID/No.9498275 D/E MAY 1993 D/T 4/3/2003	=	Kshs.932,773.50
19. Mr. Caleb Ong'ala Olando/Security	ID/No. 2781757 D/E 6/1997 D/T 23/5/2003	=	Kshs.691,329.40
20. Mr. Samuel Kipketer Simatwo/Security	ID/No.9461209 D/E1/2001 D/T 23/5/2003	=	Kshs.201,907.90
21. Mr. Mathew Kiiptoo Tanui/Secretary	ID/No.2013790 D/E 1998 JAN D/T 23/5/2003	=	Kshs.1,468,363.80

22.	Mr. Wycliffe Khayeli Matolo/Security		
	ID/No.204140419 D/E 1/3/2002 D/T/23/5/03	=	Kshs.155,944.20
23.	Mr. John Opiyo Olweny/Security		
	ID/No.10035705 D/E 1/11/2002 D/T 23/5/2003	=	Kshs.105,110.40
24.	Mr. Charles Onyango Ogwindi/Security		
	ID/No.14461026 D/E NOV 2002 D/T 23/5/2003	=	Kshs.202,263.40
25.	Mr. Paul Otieno Sawala/Security		
	ID/No. 2807683 D/E2/4/01 D/T 2/5/03	=	Kshs.241,222.20
26.	Mr. Dismas Kodo/Security		
	ID/No. 80174515 D/E 2/4/01 D/T 2/5/03	=	Kshs.256,547.40
27.	Mr. Alfred Busisa/Security		
	ID/No. 20053401 D/E NOV 2002/D/T 23/5/03	=	Kshs.155,944.50
28.	Mrs. Judith Akinyi Weya/Junior Clerk		
	ID/No.22245225 D/E2/2/2/01 D/T 5/5/2003	=	Kshs.233,302.50
29.	Mrs. Eucabeth Akinyi Otieno		
	ID/No.7487041D/E 1993 JAN D/T 10/12/2002	=	Kshs.144,000.60
30.	Martin Ondego		
	D/E 2/04/02 D/T 23/5/03	=	KSHS.155,944.20
31.	Samuel Ndege Maundu		
	D/E 2/04/02 D/T23/05/03	=	Kshs.155,944.20
32.	Joel Mukabi		
	D/E 2/04/02 D/T 23/5/03	=	Kshs.155,944.20
33.	Jeremiah Otieno Osanya		
	D/E 2/04/02 D/T 23/05/03	=	Kshs.155,944.20
34.	George Alaka Odongo		
	D/E 2/04/02/ D/T23/5/03	=	Kshs.155,944.20
35.	Josphat Lukoye Talusi		
	D/E 2/04/20 D/T/23/05/03	=	Kshs.155,944.20

36. John Okal Orwa

D/E 02/04/02 D/T23/05/03 = Kshs.155,944.20

37. Juvenalus Akora Araka

D/E 02/02 D/T/23/05/03 = Kshs.155,944.20

38. Patrick Olusamcha Wakhanu

D/T 2/4/01 D/T 23/05/03 = Kshs.294,458.50

Each party to bear their own costs.

It is so ordered.

DATED and DELIVERED at Nairobi this 10th day of April, 2013.

Mathews N. Nduma

PRINCIPAL JUDGE