



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 289 of 2010

KENYA GAME HUNTING AND SAFARIS WORKERS UNION.....CLAIMANT

-VERSUS-

GALAXY CROCODILE FARM LTD..... RESPONDENT

JUDGMENT

1. The claimant Kenya Game Hunting & Safaris Workers Union filed the memorandum of claim on 22.03.2010 on behalf of its eight members, the grievants in this case namely; John Ngatia, Alois Odhiambo, Elly Otuoma, Simon Maina, Caleb Otieno, Onesmus Mutio Mutua, Cavine Ochieng and Alex Mwangi.
2. The respondent Galaxy Crocodile Farm Ltd. filed the statement of defence on 20.05.2010 through M/S Wambui Ngugi and Company Advocates. The respondent's submissions were filed on 21.09.2010.
3. The claimant has averred that the grievants are its members who at all material times were employees of the respondent having been employed on diverse dates. Further, the respondent declared the grievants redundant in circumstances whereby the true purpose was to defeat the process of concluding a recognition agreement between the parties. The matter was reported to the Minister of Labour but the appointed conciliator did not arrive at an amicable settlement. Thus, the claimant filed this case praying for the grievants to be reinstated and to be paid for the period they have been out of employment due to such wrongful redundancy.
4. The respondent stated as follows in the statement of defence:
 - a. That the claimants were employed under their respective contracts of service. The court has perused the various contracts and observed that the termination provision stated thus, ***“each party can terminate this agreement by giving seven days (7) days notice upon which all dues under the contract will be settled. If you commit any offence which amounts to gross misconduct you will be liable for summarily dismissal.”***
 - b. The respondent further pleaded that the grievants were properly served with termination letters as provided for in the contract of service as signed between the parties. The court has perused the termination letters dated 11.06.2009 as attached on the respondent's submissions. Each of the letters states as follows:

“DEAR SIR,

RE: A NOTICE OF TERMINATION

AS YOU ARE AWARE THAT WE HAD UNEXPECTED MORTALITIES AND FAILURE OF CROC EGGS COLLECTION DURING LAST SEASON.

THE HEADQUARTER IN KOREA FORCED US TO REDUCE THE COST OF THE MANAGEMENT OF THIS FARM.

YOU HAVE, OF COURSE, AN OPPORTUNITY TO WORK TOGETHER SHOULD WE SUCCEED EGG COLLECTION COMING SEASON.

THANKS FOR YOUR SERVICES WHILE YOU ARE WITH US, THIS LETTER WILL SERVE AS A ONE MONTH NOTICE,

**YOURS FAITHFULLY,
SIGNED
KIM MIN JUN
MANAGING DIRECTOR.”**

c. That the respondent through its lawyer attended the conciliation meeting but the grievants were adamant and refused any settlement except for John Ngatia who accepted his dues as per the acknowledgement marked C1 on the respondent's submissions. The grievants had insisted that they be reinstated before they could explore any settlement.

d. The respondent's computed proposals for the settlement are marked D1 on the respondent's submissions. They included, for each grievant, payment for severance pay at 15 days salary for every year worked, payment for annual leave due but not taken, and salary for July and August 2009. The amount due to each of the grievants was as follows:

- i. John Ngatia – Ksh.27,049.30
- ii. Alois Odhiambo – Ksh. 26,795.00
- iii. Elly Otuoma – no computation because his term contract was coming to an end and was therefore not renewed as per the letter marked B8 on the submissions.
- iv. Simon Maina – Ksh.28,310.80
- v. Caleb Otieno – Ksh. 20,019.80
- vi. Onesmus Mutio Mutua – Ksh.13,080.00
- vii. Cavine Ochieng – Ksh. 13,080.00
- viii. Alex Mwangi – Ksh. 32,267.20

e. The claimant has not disputed the correctness of the computation save for the dispute that the redundancy was wrongful.

5. The only issues for determination are whether the grievants should be reinstated and whether the redundancy was unfair.

6. As for reinstatement the court finds that it would be unfair to rejoin the parties in the relationship of employment in circumstances where the respondent appears to lack the capacity to provide the grievants work to perform. The court has taken into account the respondent's good will that it may reengage the grievants if its performance will improve. Further reinstating the grievants would subject the respondent to paying them all the remuneration from the date of the termination to the date of the reinstatement which in this case, the court considers would be unfair because the grievants were engaged on renewable

short periodic contracts of between one to six months.

7. The court has considered the manner in which the respondent proceeded to terminate the grievants on that account of redundancy and finds that the respondent did not follow the due process as provided for in the Employment Act, 2007. To compensate the grievants for that unfair termination, the respondent shall pay each of them the gross salary of one month as stated in the memorandum of claim and except for Elly Otuoma whose fixed term contract had lapsed. The other grievants will be paid the dues as computed by the respondent plus one month gross salary as awarded except for John Ngatia who received the amount as computed by the respondent. In that case the grievants will be paid as follows:

- i. John Ngatia – Ksh. 7,000.00
- ii. Alois Odhiambo – Ksh. 33,295.00
- iii. Simon Maina – Ksh.34,810.80
- iv. Caleb Otieno – Ksh. 28,019.80
- v. Onesmus Mutio Mutua – Ksh. 20,080.00
- vi. Cavine Ochieng – Ksh. 20,080.00
- vii. Alex Mwangi – Ksh. 38,767.20

Totaling Ksh. 182,052.80

8. In conclusion judgment is entered for the claimant against the respondent for:

- a. the respondent to pay the grievants a sum of **Ksh. 182,052.80** plus interest at court rates from the date of judgment till full payment; and
- b. the respondent to pay fifty per cent of the costs of the case.

Signed, dated and delivered in court at Nairobi this 2nd November, 2012.

Byram Ongaya
JUDGE