



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 802 OF 2010

**EUNICE MUMO KING'OO, ANNAH MASAA WAMBUA
AND JACINTA NTHILI MALYUNGA..... CLAIMANTS**

VERSUS

MR. FARA MOHAMED IDHOADE.....1ST RESPONDENT

WASAA RESTAURANT 2ND RESPONDENT

Issue in Dispute:-

“Unlawful termination on redundancy of Eunice Mumo King’oo, Annah Masaa Wambua and Jacinta Nthili Malyunga.”

Mr. Kadere, Advocate from the firm of S.K. Opiyo & Company Advocates, appeared for the Claimant .

No appearance for the Respondents.

AWARD

The Memorandum of claim was filed in Court on the 16th July, 2010. The matter was listed for mention on the 11th November, 2010. Mr. Joshua Chama, Advocate held brief for Mr. Kadere, Advocate for the Claimants. There was no appearance for the Respondent. The dispute was listed for hearing on 13th April, 2011 at 11.00 a.m. The Claimants were ordered to serve the Respondents with the hearing notice.

On the 13th April, Mr. Kadere, Advocate appeared for the Claimants. There was no appearance for the Respondents. Mr. Kadere confirmed to the Court that effective service had been effected on 31st March, 2010 by one Mr. Tobias Otieno Owuor a Court Process Server. It was served upon the Director of the Respondents’ business of Wasama Restaurant, Mr. Farah Mohamed. Mr. Kadere Advocate, prayed to the Court to be allowed to proceed with the hearing in the absence of the Respondents who declined and or refused to appear in Court or send a representative for the hearing of the suit. The Court ordered that the matter proceed *ex-parte*.

In his brief submission, Mr. Kadere, Advocate for the Claimants stated that the Memorandum of Claim was duly signed on 5th July, 2010 by the Claimants and prayed that he be allowed to adopt the same for

purposes of submissions. The Court allowed Mr. Kadere's prayer.

The learned Counsel submitted that the Respondents and the Claimants entered into a verbal contractual agreement. The 1st Claimant was employed on 24th February, 2003. The 2nd and 3rd Claimants were employed on 26th May, 2008 respectively. They were employed as "Cooks", and were being paid each a monthly salary of Kshs.7,500/=.

Mr. Kadere, Advocate for the Claimants, argued that the 1st Claimant, Ms. Eunice Mumo King'oo was terminated from service on 26/02/2010 having worked for the Respondents for 7 years. The 2nd and 3rd Claimants i.e. Ms. Annah M. Wambua and Jacinta N. Malyunga were terminated from service on the 20th April, 2010 after having worked for the Respondents for 1 year and 11 months..

In the absence of the Respondents' reply and or any opposition to the claim, Mr. Kadere Advocate prayed that the Claimants' prayers be granted as prayed in their Memorandum of Claim dated 5th July, 2010.

The Court observes that the Respondents are not represented. Further the Respondents have been very reluctant to attend Court to have the matter heard and determined. The Court agrees with the learned Counsel for the Claimants that the Respondents have been reluctant and or refused to attend Court thereby causing unnecessary adjournments and wasting court's valuable time. In the circumstances, and in view of the fact that the matter is uncontested and has been heard '*ex-parte*' the Court has no doubt in its mind to grant the Claimants' demand as prayed in the Memorandum of Claim.

Before the Court parts with the case, it would wish to observe that '*ex-parte*' proceedings are not a new concept of law in Kenya. If the Court find that, as in this instant case, the party against whom certain proceedings have been initiated and is notified to file their Reply Statement and appearance but avoid to do so after repeated opportunities have been given, proceedings have to be conducted in their absence or '*ex-parte*' and in such a case, it would not be a violation of the principles of natural justice. At any rate, a party cannot be allowed to take advantage of its own willful act to avoid service of the notice or willfully neglect to enter or to file its Reply Statement in time as per the Court's order and also fail to attend court on the date of hearing. The court is fortified in this view in the matter of: ***The Supreme Court of India, in Laksmic Devi Sugar Mills Ltd (1959) ILL. J.17 at page 24***, in which it was observed that:-

"If full and free opportunity was given to the Respondent to present themselves at the inquiry and defend themselves, it would not be said that the inquiry was nothing but fair."

Accordingly, the Court find that the termination of services of the Claimants to be wrongful and illegal and therefore null and void.

Therefore, the Court **ORDER** and **AWARD** as follows:-

1. **THAT the termination of services of the Claimants, namely:**
 - (1) **Eunice M. King'oo**
 - (2) **Annah M. Wambua**
 - (3) **Jacinta N. Malyunga be and is hereby declared null and void.**

2. **THAT the Respondents do pay:-**

(a) <u>EUNICE M. KING'OO</u>		
(i)	One Month's Notice	- Kshs. 9,547.50
(ii)	Leave Prorata	- Kshs. 53,460.00
(iii)	Severance payment	- Kshs. 38,190.00
(iv)	Salary Underpayment	- Kshs. 85,175.00
(v)	Twelve (12) months compensation for loss of employment	- Kshs.114,570.00
(vi)	Sundays overtime	- Kshs.414,720.00
(vii)	Public Holiday Overtime	- <u>Kshs. 95,040.00</u>
	TOTAL	= <u>Kshs.810,702.00</u>

(b) ANNAH M. WAMBUA

(i)	One months Notice	- Kshs. 9,547.50
(ii)	Leave Pro-rata	- Kshs. 20,049.75
(iii)	Severance payment	- Kshs. 14,321.25
(iv)	Salary Underpayment	- Kshs. 63,882.00
(v)	Twelve (12) months salary compensation for loss of employment	- Kshs.114,570.00
(vi)	Sundays Overtime	- Kshs.155,520.00
(vii)	Public Holiday overtime	- <u>Kshs. 95,040.00</u>
	TOTAL	= <u>Kshs.472,930.00</u>

(c) JACINTA N. MALYUNGA

(i)	One Month's Notice	- Kshs. 9,547.50
(ii)	Leave Prorata	- Kshs. 20,049.75
(iii)	Severance payment	- Kshs. 14,321.25
(iv)	Salary Underpayment	- Kshs. 63,882.00
(v)	Twelve (12) months compensation for loss of employment	- Kshs.114,570.00
(vi)	Sundays overtime	- Kshs.155,520.00
(vii)	Public Holiday Overtime	- <u>Kshs. 95,040.00</u>
	TOTAL	= <u>Kshs.472,930.00</u>

3. THAT the TOTAL sum of Kshs.1,756,562/= be paid within thirty (30) days from the date of this Award.

DATED, DELIVERED at NAIROBI this 11th DAY OF MAY, 2011.

Stewart M. Madzayo

JUDGE

M.A. Warrakah

P.M. Osero

MEMBER

MEMBER