



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

(Before: Stewart M. Madzayo, J.,

P.M. Osero & M. A. Warrakah, Members;

D. Rapando – Court Clerk.)

CAUSE NO.201 OF 2009

**KENYA PLANTATION AND AGRICULTURAL WORKERS
UNION.....CLAIMANT**

VERSUS

K.K. PROMOTE FARM.....RESPONDENT

Issue in Dispute:-

“Refusal by the Management to pay Salary Arrears to Mr. Peter Kariuki Githua, Mr. Elisha Manyenga Wako, Mr. Gideon Munala Atorwa and

Mr. David Kuria Njoki.”

Miss Dalphine Munde, appeared for the Claimants.

Mr. G. Maina, Advocate from the firm of Maina Makome and Company, appeared for the Respondent.

AWARD

The Claimant filed their Memorandum of Claim on 10th June, 2009. The Respondent filed their Respondent’s Memorandum on 26th June, 2009. The matter was fixed for hearing on 21st July, 2009.

On this occasion, Miss Dalphine Munde appeared for the Claimant/Union and Mr. G. Maina represented

the Respondent.

Miss Munde for the Claimant strongly submitted that payment of gratuity as per Clause 31(a) of the Collective Bargaining Agreement was to be earned as and when an employee who resigns or her/his services are terminated on completion of ten (10) years of continuous and meritorious service with the company would be entitled to 21 days pay for each year of completed service.

Miss Munde argued that the four (4) grievants namely; Mr. Peter Kariuki Githua, Elisha Mayenga Wako, Gedion Munala Atorwa and David Kuria Njoki were unfairly excluded from enjoying the salary arrears for October to December, 1999 because they were not Union Members.

In reply, Mr. Maina strongly opposed the demand. He submitted that Mr. Gedion M. Atorwa was not in employment as at 27th April 2000 when the agreement was entered into. The agreement covered only the employees who were in employment at present time. But with regards to the other three (3) grievants, they were not unionisable. He further, stated that the three (3) grievants appeared and received their dues and did sign a discharge acknowledging that they had no further claim against the Respondent. The Learned Counsel for the Respondent prayed that the Claim be dismissed.

The Court note that the parties have a valid Recognition Agreement and have also entered into several collective bargaining agreements which regulate the terms and conditions of service of the employees. This dispute found its way to Court when the Collective Bargaining Agreement covering the period between 1st January, 1998 to 31st December, 1999 was signed but the parties could not agree on some issues. The main disagreement was generated by Clause 31(a) regarding payment of gratuity and C. Appendix B regarding the daily rates with effect from 1st January, 1998.

The Court has perused the file and considered both submissions. First, the Court note that the Claim as framed and argued is fatally defective. The Claimant failed and or neglected to provide substantive information and or documentation to support the authenticity of their demands. Further, three of the grievants are reported to have received the payment of their final dues, a fact that was not disputed by the Claimant.

In the Court's opine, the grievants are personalities trying to make a futile attempt to reap from a Collective Bargaining Agreement they did not support and or were not members.

In the circumstances, the Court find that the demand made by the Claimants has no basis and is, therefore, dismissed for lack of merit.

Costs in cause.

Ordered accordingly.

Dated and Delivered at Nairobi this 11th day of May, 2011.

Stewart M. Madzayo

JUDGE

P.M. Osero

M.A. Warrakah

MEMBER

MEMBER