



**Wahome & 19 others v Albert Kibera Karume t/a Solar Garden Members Club
(Cause 1397 of 2017) [2024] KEELRC 2154 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2154 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1397 OF 2017**

K OCHARO, J

JULY 26, 2024

BETWEEN

- MAINA BENSON WAHOME 1ST CLAIMANT**
- ERIC MUTHOMI 2ND CLAIMANT**
- JAMES NDIVO 3RD CLAIMANT**
- EGLAH NJOKI 4TH CLAIMANT**
- SAMUEL MUTUKU MAGUTI 5TH CLAIMANT**
- JARED OTIENO OCHIENG' 6TH CLAIMANT**
- BERYL OMONDING' 7TH CLAIMANT**
- JACKLINE MONG'ERI 8TH CLAIMANT**
- GLADYS THIONG'O 9TH CLAIMANT**
- JOHN MULEI 10TH CLAIMANT**
- PENINAH MATHARA 11TH CLAIMANT**
- JUDYCASTER NGINA 12TH CLAIMANT**
- FRANCIS OGOT MARANGO 13TH CLAIMANT**
- FREDRICK KIOKO 14TH CLAIMANT**
- SHADRACK NJENGA 15TH CLAIMANT**
- MICHEAL KIARIE 16TH CLAIMANT**
- GODFREY MAINA 17TH CLAIMANT**
- FRANCIS MAINA 18TH CLAIMANT**
- PAULO WAMALWA 19TH CLAIMANT**



JOSPHAT OSIRI 20TH CLAIMANT

AND

**ALBERT KIBERA KARUME T/A SOLAR GARDEN MEMBERS
CLUB RESPONDENT**

JUDGMENT

1. By a Memorandum of Claim dated 7th July 2017, the Claimants variously sought against the Respondent following reliefs:



No.	Name	Position	Claim	Total Amount Claimed
Maina Benson Wahome	Barman	<p>a. 12 months' salary for wrongful dismissal – Kshs. 144,000/-</p> <p>b. Unpaid leave (Kshs.12,000/- x 5.3) – Kshs.63,600/-</p> <p>c. General damages (Kshs. 12,000/- x 12) – Kshs. 144,000/-</p> <p>d. Overtime:- Saturdays & Sundays (256 days x 200/100 x600 x2) – Kshs. 614,400/-</p> <p>Public Holidays (11 days x200/100x5.3yrsx600) – Kshs. 69,960/-</p> <p>e. Unpaid House Allowance (Kshs. 12,000/- x1/3x64)-Kshs. 25,600/-</p> <p>f. NSSF (Kshs.1440x64) – Kshs. 92,160/-</p> <p>g. NHIF (Kshs. 500x64) – Kshs. 32,000/-</p> <p>h. Paternity (Kshs. 600x14) - Kshs.8,400/-</p> <p>i. Salary in lieu of notice (Kshs.12,000/- x</p>	Kshs. 1,378,720/-	



		1) – Kshs. 12,000/- j. Unpaid salary - Kshs. 172, 600/-	
Eric Muthomi	Cashier	<p>a. 12 months' salary for wrongful dismissal – Kshs. 144,000/-</p> <p>b. Underpayment (Kshs. 12,719.50 x 29) – Kshs. 368,865.50</p> <p>c. Unpaid leave (Kshs.12,000/- x 2.4) – Kshs.28,800/-</p> <p>d. General damages (Kshs. 12,000/- x 12) – Kshs. 144,000/-</p> <p>e. Overtime:- Saturdays & Sundays (116 days x 200/100 x600 x2) – Kshs. 278,400/-</p> <p>Public Holidays (11 days x200/100x2.4yrsx600) – Kshs. 31,680/-</p> <p>f. Unpaid House Allowance (Kshs. 12,000/- x1/3x29)-Kshs. 116,000/-</p> <p>g. NSSF (Kshs.1440x29) – Kshs. 41,760/-</p> <p>h. NHIF (Kshs. 500x64) – Kshs. 14,,500/-</p>	Kshs. 1,294,605.50



		<p>i. Salary in lieu of notice (Kshs.12,000/- x 1) – Kshs. 12,000/-</p> <p>j. Unpaid salary - Kshs. 114, 600/-</p>	
James Ndivo	Barman	<p>a. 12 months' salary for wrongful dismissal – Kshs. 144,000/-</p> <p>b. Unpaid leave (Kshs.12,000/- x 6.2) – Kshs.74,400/-</p> <p>c. General damages (Kshs. 12,000/- x 12) – Kshs. 144,000/-</p> <p>d. Overtime: - Saturdays & Sundays (296 days x 200/100 x600 x2) – Kshs. 710,400/-</p> <p>Public Holidays (11 days x200/100x6.2yrsx600) – Kshs. 81,840/-</p> <p>e. Unpaid House Allowance (Kshs. 12,000/- x1/3x74)-Kshs. 296,000/-</p> <p>f. NSSF (Kshs.1440x74) – Kshs. 106,560/-</p> <p>g. NHIF (Kshs. 500x74) – Kshs. 37,000/-</p>	<p>Kshs. 1,772,470/-</p>



		<p>h. Salary in lieu of notice (Kshs.12,000/- x 1) – Kshs. 12,000/-</p> <p>i. Unpaid salary - Kshs. 166,270/-</p>
Eglah Njoki	Cashier	<p>a. 12 months' salary for wrongful dismissal – Kshs. 144,000/-</p> <p>b. Underpayment (Kshs. 12,719.50 x 36) – Kshs. 457,902/-</p> <p>c. Unpaid leave (Kshs.12,000/- x 3yrs) – Kshs.36,000/-</p> <p>d. General damages (Kshs. 12,000/- x 12) – Kshs. 144,000/-</p> <p>e. Overtime:- Saturdays & Sundays (144 days x 200/100 x600 x2) – Kshs. 345,600/-</p> <p>Public Holidays (11 days x200/100x3yrsx600) – Kshs. 39,600/-</p> <p>f. Unpaid House Allowance (Kshs. 12,000/- x1/3x36)-Kshs. 144,000/-</p> <p>g. NSSF (Kshs.1440x36) – Kshs. 51,840/-</p>



		<p>h. NHIF (Kshs. 500x36) – Kshs. 18,000/-</p> <p>i. Salary in lieu of notice (Kshs.12,000/- x 1) – Kshs. 12,000/-</p> <p>j. Unpaid salary - Kshs. 129, 800/-</p>	
Samuel Mutuku	Gardener	<p>a. 12 months' salary for wrongful dismissal – Kshs. 144,000/-</p> <p>b. Unpaid leave (Kshs.12,000/- x 3.3) – Kshs.36,000/-</p> <p>c. General damages (Kshs. 12,000/- x 12) – Kshs. 144,000/-</p> <p>d. Overtime:- Saturdays & Sundays (156 days x 200/100 x600 x2) – Kshs. 374,400/-</p> <p>Public Holidays (11 days x200/100x3.3yrsx600) – Kshs. 39,600/-</p> <p>e. Unpaid House Allowance (Kshs. 12,000/- x1/3x39)-Kshs. 156,000/-</p> <p>f. NSSF (Kshs.1440x39) – Kshs. 56,160/-</p>	Kshs. 1,082,023/-



		<p>g. NHIF (Kshs. 500x39) – Kshs. 19,500/-</p> <p>h. Salary in lieu of notice (Kshs.12,000/- x 1) – Kshs. 12,000/-</p> <p>i. Unpaid salary - Kshs. 136,363/-</p>
Ochieng Jared Otieno	Waiter	<p>a. 12 months' salary for wrongful dismissal – Kshs. 108,000/-</p> <p>b. Underpayment (Kshs. 2,831.20 x 43) – Kshs. 368,865.50</p> <p>c. Unpaid leave (Kshs.9,000/- x 3.6yrs) – Kshs.32,400/-</p> <p>d. General damages (Kshs. 9,000/- x 12) – Kshs. 108,000/-</p> <p>e. Overtime:- Saturdays & Sundays (172 days x 200/100 x450 x2) – Kshs. 309,600/-</p> <p>Public Holidays (11 days x200/100x3.6yrsx450) – Kshs. 35,640/-</p> <p>f. Unpaid House Allowance (Kshs. 9,000/- x1/3x43)-Kshs. 129,000/-</p>



		<p>g. NSSF (Kshs.1080x43) – Kshs. 46,440/-</p> <p>h. NHIF (Kshs. 400x43) – Kshs. 17,200/-</p> <p>i. Maternity (Kshs. 450x14) - Kshs.6,300/-</p> <p>j. Salary in lieu of notice (Kshs.9,000/- x 1) – Kshs. 9,000/-</p> <p>k. Unpaid salary - Kshs. 72,450/-</p>	
Beryl Omondong'	Cleaner	<p>a. 12 months' salary for wrongful dismissal – Kshs. 108,000/-</p> <p>b. Underpayment (Kshs. 1954.70 x 35) – Kshs. 68,414.50</p> <p>c. Unpaid leave (Kshs.9,000/- x 2.9yrs) – Kshs.26,100/-</p> <p>d. General damages (Kshs. 9,000/- x 12) – Kshs. 108,000/-</p> <p>e. Overtime:- Saturdays & Sundays (140 days x 200/100 x450 x2) – Kshs. 252,000/-</p> <p>Public Holidays (11 days</p>	Kshs. 829,474.50



		<p>x200/100x2.9yrsx450) – Kshs. 28,710/-</p> <p>f. Unpaid House Allowance (Kshs. 9,000/- x1/3x35)-Kshs. 105,000/-</p> <p>g. NSSF (Kshs.1080x35) – Kshs. 37,800/-</p> <p>h. NHIF (Kshs. 400x35) – Kshs. 14,000/-</p> <p>i. Salary in lieu of notice (Kshs.9,000/- x 1) – Kshs. 9,000/-</p> <p>j. Unpaid salary - Kshs. 72,450/-</p>	
Jackline Mong'eri	Waiter	<p>a. 12 months' salary for wrongful dismissal – Kshs. 108,000/-</p> <p>b. Underpayment (Kshs. 2,831.20 x 24) – Kshs. 67,948.80</p> <p>c. Unpaid leave (Kshs.9,000/- x 2yrs) – Kshs.18,000/-</p> <p>d. General damages (Kshs. 9,000/- x 12) – Kshs. 108,000/-</p> <p>e. Overtime:- Saturdays & Sundays (96 days x 200/100 x450 x2) – Kshs. 172,800/-</p>	Kshs. 683,518.80



		<p>Public Holidays (11 days x200/100x2yrsx450) – Kshs. 19,800/-</p> <p>f. Unpaid House Allowance (Kshs. 9,000/- x1/3x24)-Kshs. 72,000/-</p> <p>g. NSSF (Kshs.1080x24) – Kshs. 25,920/-</p> <p>h. NHIF (Kshs. 400x24) – Kshs. 9,600/-</p> <p>i. Salary in lieu of notice (Kshs.9,000/- x 1) Kshs. 9,000/-</p> <p>a. Unpaid salary - Kshs. 72,450/-</p>	
Gladys Thiong'o	Waiter	<p>b. 12 months' salary for wrongful dismissal – Kshs. 108,000/-</p> <p>c. Underpayment (Kshs. 2,831.20 x 55) – Kshs. 155,716/-</p> <p>d. Unpaid leave (Kshs.9,000/- x 4.6yrs) – Kshs.41,400/-</p> <p>e. General damages (Kshs. 9,000/- x 12) – Kshs. 108,000/-</p> <p>f. Overtime:- Saturdays & Sundays (220 days x 200/100</p>	Kshs. 1,190,796/-



		<p>x450 x2) – Kshs. 396,000/-</p> <p>Public Holidays (11 days x200/100x4.6yrsx450) – Kshs. 45,540/-</p> <p>g. Unpaid House Allowance (Kshs. 9,000/- x1/3x55)-Kshs. 165,000/-</p> <p>h. NSSF (Kshs.1080x55) – Kshs. 59,400/-</p> <p>i. NHIF (Kshs. 400x55) – Kshs. 22,000/-</p> <p>j. Salary in lieu of notice (Kshs.9,000/- x 1) – Kshs. 9,000/-</p> <p>a. Unpaid salary - Kshs. 80,740/-</p>	
John Mulei	Waiter	<p>b. 12 months' salary for wrongful dismissal – Kshs. 108,000/-</p> <p>c. Underpayment (Kshs. 2,831.20 x 55) – Kshs. 155,716/-</p> <p>d. Unpaid leave (Kshs.9,000/- x 4.6yrs) – Kshs.41,400/-</p> <p>e. General damages (Kshs. 9,000/- x 12) – Kshs. 108,000/-</p>	<p>Kshs. 1,188,809/-</p>



		<p>f. Overtime:- Saturdays & Sundays (220 days x 200/100 x450 x2) – Kshs. 396,000/-</p> <p>Public Holidays (11 days x200/100x4.6yrsx450) – Kshs. 45,540/-</p> <p>g. Unpaid House Allowance (Kshs. 9,000/- x1/3x55)-Kshs. 165,000/-</p> <p>h. NSSF (Kshs.1080x55) – Kshs. 59,400/-</p> <p>i. NHIF (Kshs. 400x55) – Kshs. 22,000/-</p> <p>j. Salary in lieu of notice (Kshs.9,000/- x 1) – Kshs. 9,000/-</p> <p>a. Unpaid salary - Kshs. 78,753/-</p>	
Penina Mathara	Waitress	<p>b. 12 months’ salary for wrongful dismissal – Kshs. 108,000/-</p> <p>c. Underpayment (Kshs. 2,831.20 x 37) – Kshs. 104,754.40</p> <p>d. Unpaid leave (Kshs.9,000/- x 3.1yrs) – Kshs.27,900/-</p>	<p>Kshs. 939,827.40</p>



		<p>e. General damages (Kshs. 9,000/- x 12) – Kshs. 108,000/-</p> <p>f. Overtime:- Saturdays & Sundays (148 days x 200/100 x 450 x 2) – Kshs. 266,400/-</p> <p>Public Holidays (11 days x 200/100 x 3.1 yrs x 450) – Kshs. 30,690/-</p> <p>g. Unpaid House Allowance (Kshs. 9,000/- x 1/3 x 37) – Kshs. 111,000/-</p> <p>h. NSSF (Kshs. 1080 x 37) – Kshs. 39,960/-</p> <p>i. NHIF (Kshs. 400 x 37) – Kshs. 14,800/-</p> <p>j. Maternity (Kshs. 9,000/- x 3) – Kshs. 27,000/-</p> <p>k. Salary in lieu of notice (Kshs. 9,000/- x 1) – Kshs. 9,000/-</p> <p>a. Unpaid salary - Kshs. 92,323/-</p>	
Judycaster Ngina	Waitress	<p>b. 12 months' salary for wrongful dismissal – Kshs. 108,000/-</p> <p>c. Underpayment</p>	Kshs. 686,517.60



		<p>(Kshs. 2,831.20 x 23) – Kshs. 65,117.60</p> <p>d. Unpaid leave (Kshs.9,000/- x 1.9yrs) – Kshs.17,100/-</p> <p>e. General damages (Kshs. 9,000/- x 12) – Kshs. 108,000/-</p> <p>f. Overtime:- Saturdays & Sundays (92 days x 200/100 x450 x2) – Kshs. 165,600/-</p> <p>Public Holidays (11 days x200/100x1.9yrsx450) – Kshs. 18,810/-</p> <p>g. Unpaid House Allowance (Kshs. 9,000/- x1/3x23)-Kshs. 69,000/-</p> <p>h. NSSF (Kshs.1080x23) – Kshs. 24,840/-</p> <p>i. NHIF (Kshs. 400x23) – Kshs. 9,200/-</p> <p>j. Salary in lieu of notice (Kshs.9,000/- x 1) – Kshs. 9,000/-</p> <p>a. Unpaid salary - Kshs. 91,850/-</p>	
Marango Francis Ogot	Bouncer	<p>a. 12 months' salary for wrongful dismissal – Kshs. 180,000/-</p>	<p>Kshs. 1,740,620/-</p>



		<p>b. Unpaid leave (Kshs.15,000/- x 4.5) – Kshs.67,500/-</p> <p>c. General damages (Kshs. 15,000/- x 12) – Kshs. 180,000/-</p> <p>d. Overtime:- Saturdays & Sundays (216 days x 200/100 x750 x2) – Kshs. 648,000/-</p> <p>Public Holidays (11 days x200/100x4.5yrsx750) – Kshs. 74,250/-</p> <p>e. Unpaid House Allowance (Kshs. 15,000/- x1/3x54)-Kshs. 270,000/-</p> <p>f. NSSF (Kshs.1800x54) – Kshs. 97,200/-</p> <p>g. NHIF (Kshs. 600x54) – Kshs. 32,400/-</p> <p>h. Salary in lieu of notice (Kshs.15,000/- x 1) – Kshs. 15,000/-</p> <p>i. Unpaid salary - Kshs. 176,270/-</p>	
Fredrick Kioko Muia	Grill Cook	<p>a. 12 months' salary for wrongful dismissal – Kshs. 180,000/-</p> <p>b. Unpaid leave (Kshs.15,000/- x</p>	<p>Kshs. 2,169,670/-</p>



		<p>6.2) – Kshs.93,000/-</p> <p>c. General damages (Kshs. 15,000/- x 12) – Kshs. 180,000/-</p> <p>d. Overtime:- Saturdays & Sundays (296 days x 200/100 x750 x2) – Kshs. 888,000/-</p> <p>Public Holidays (11 days x200/100x6.2yrsx750) – Kshs. 102,300/-</p> <p>e. Unpaid House Allowance (Kshs. 15,000/- x1/3x74)-Kshs. 370,000/-</p> <p>f. NSSF (Kshs.1800x74) – Kshs. 133,200/-</p> <p>g. NHIF (Kshs. 600x74) – Kshs. 44,400/-</p> <p>h. Salary in lieu of notice (Kshs.15,000/- x 1) – Kshs. 15,000/-</p> <p>a. Unpaid salary - Kshs. 163,770/-</p>	
Shadrack Njenga	Grill Cook	<p>b. 12 months’ salary for wrongful dismissal – Kshs. 180,000/-</p> <p>c. Unpaid leave (Kshs.15,000/- x</p>	<p>Kshs. 1,872,470/-</p>



		<p>5.1) – Kshs.76,500/-</p> <p>d. General damages (Kshs. 15,000/- x 12) – Kshs. 180,000/-</p> <p>e. Overtime:- Saturdays & Sundays (241 days x 200/100 x750 x2) – Kshs. 723,000/-</p> <p>Public Holidays (11 days x200/100x5.1yrx750) – Kshs. 84,150/-</p> <p>f. Unpaid House Allowance (Kshs. 15,000/- x1/3x61)-Kshs. 305,000/-</p> <p>g. NSSF (Kshs.1800x61) – Kshs. 109,800/-</p> <p>h. NHIF (Kshs. 600x) –61 Kshs. 36,600/-</p> <p>i. Salary in lieu of notice (Kshs.15,000/- x 1) – Kshs. 15,000/-</p> <p>a. Unpaid salary - Kshs. 162,420/-</p>	
Michael Kiarie	Grill Cook	<p>b. 12 months' salary for wrongful dismissal – Kshs. 180,000/-</p> <p>c. Unpaid leave (Kshs.15,000/- x 6.2) – Kshs.93,000/-</p>	<p>Kshs. 2,223,210/-</p>



		<p>d. General damages (Kshs. 15,000/- x 12) – Kshs. 180,000/-</p> <p>e. Overtime:- Saturdays & Sundays (296 days x 200/100 x 750 x 2) – Kshs. 888,000/-</p> <p>Public Holidays (11 days x 200/100 x 6.2 yrs x 750) – Kshs. 102,300/-</p> <p>f. Unpaid House Allowance (Kshs. 15,000/- x 1/3 x 74) - Kshs. 370,000/-</p> <p>g. NSSF (Kshs. 1800 x 74) – Kshs. 133,200/-</p> <p>h. NHIF (Kshs. 600 x 74) – Kshs. 44,400/-</p> <p>i. Paternity (Kshs. 750 x 14) - Kshs. 10,500/-</p> <p>j. Salary in lieu of notice (Kshs. 15,000/- x 1) – Kshs. 15,000/-</p> <p>a. Unpaid salary - Kshs. 207,310/-</p>	
Godfrey Maina	General Manager	<p>a. 12 months' salary for wrongful dismissal – Kshs. 720,000/-</p>	<p>Kshs. 4,502,572/-</p>



		<p>b. Unpaid leave (Kshs.60,000/- x 3.5) – Kshs.210,000/-</p> <p>c. General damages (Kshs. 60,000/- x 12) – Kshs. 720,000/-</p> <p>d. Overtime:- Saturdays & Sundays (168 days x 200/100 x3000 x2) – Kshs. 888,000/-</p> <p>Public Holidays (11 days x200/100x3.5yrsx3000) – Kshs. 102,300/-</p> <p>e. Unpaid House Allowance (Kshs. 60,000/- x1/3x42)-Kshs. 840,000/-</p> <p>f. NSSF (Kshs.2520x42) – Kshs. 105,840/-</p> <p>g. NHIF (Kshs. 1300x42) – Kshs. 54,600/-</p> <p>h. Salary in lieu of notice (Kshs.60,000/- x 1) – Kshs. 60,000/-</p> <p>i. Unpaid salary - Kshs. 801,832/-</p>	
Muthee Francis Maina	Supervisor	<p>a. 12 months' salary for wrongful dismissal – Kshs. 420,000/-</p>	<p>Kshs. 3,868,369/-</p>



		<p>b. Unpaid leave (Kshs.35,000/- x 4.5) – Kshs.157,500/-</p> <p>c. General damages (Kshs. 35,000/- x 12) – Kshs. 420,000/-</p> <p>d. Overtime:- Saturdays & Sundays (216 days x 200/100 x1750 x2) – Kshs. 1,512,000/-</p> <p>Public Holidays (11 days x200/100x4.5yrsx1750) – Kshs. 173,250/-</p> <p>e. Unpaid House Allowance (Kshs. 35,000/- x1/3x54)-Kshs. 630,000/-</p> <p>f. NSSF (Kshs.2,520x54) – Kshs. 136,080/-</p> <p>g. NHIF (Kshs. 950x54) – Kshs. 51,300/-</p> <p>h. Paternity (Kshs. 1750x14) -Kshs.24,500/-</p> <p>i. Salary in lieu of notice (Kshs.35,000/- x 1) – Kshs. 35,000/-</p> <p>j. Unpaid salary - Kshs. 308,739/-</p>	
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Wafula Paulo Wamalwa	Chef	<p>a. 12 months' salary for wrongful dismissal – Kshs. 216,000/-</p> <p>b. Unpaid leave (Kshs.18,000/- x 3.8) – Kshs.68,400/-</p> <p>c. General damages (Kshs. 82,000/- x 12) – Kshs. 216,000/-</p> <p>d. Overtime:- Saturdays & Sundays (184 days x 200/100 x900 x2) – Kshs. 662,400/-</p> <p>Public Holidays (11 days x200/100x3.8yrsx900) – Kshs. 75,240/-</p> <p>e. Unpaid House Allowance (Kshs. 18,000/- x1/3x46)-Kshs. 276,000/-</p> <p>f. NSSF (Kshs.2160x46) – Kshs. 99,360/-</p> <p>g. NHIF (Kshs. 600x46) – Kshs. 27,600/-</p> <p>h. Salary in lieu of notice (Kshs.18,000/- x 3) – Kshs. 54,000/-</p> <p>i. Unpaid salary - Kshs. 227,630/-</p>	Kshs. 1,992,360/-
Josphat Osiri	Accountant	a. 12 months' salary for	Kshs. 3,703,200/-



		<p>wrongful dismissal – Kshs. 600,000/-</p> <p>b. Unpaid leave (Kshs.50,000/- x 2.5) – Kshs.125,000/-</p> <p>c. General damages (Kshs. 50,000/- x 12) – Kshs. 600,000/-</p> <p>d. Overtime:- Saturdays & Sundays (120 days x 200/100 x2500 x2) – Kshs. 1,200,000/-</p> <p>Public Holidays (11 days x200/100x2.5yrsx2500) – Kshs. 137,500/-</p> <p>e. Unpaid House Allowance (Kshs. 50,000/- x1/3x30)-Kshs. 500,000/-</p> <p>f. NSSF (Kshs.2520x30) – Kshs. 75,600/-</p> <p>g. NHIF (Kshs. 1200x30) – Kshs. 36,000/-</p> <p>h. Salary in lieu of notice (Kshs.50,000/- x 1) – Kshs. 50,000/-</p> <p>i. Unpaid salary - Kshs. 379,100/-</p>	
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2. Alongside the Memorandum of Claim dated 7th July 2017, the Claimants filed a Verifying Affidavit sworn by the 17th Claimant on 7th July 2017; Documents under a list of documents dated 7th July 2017; and their respective Witnesses Statements dated 7th July 2017.
3. The Respondent filed a Reply to the Memorandum of Claim dated 14th August 2017, denying the Claimants' cause of action and entitlement to the reliefs sought. However, it is important to state that the Respondent failed to present any witness to testify herein in support of their defence.
4. The matter proceeded for hearing of the Claimants' case on 27th July 2023 with the Claimants calling one (1) witness. Afterwards, the Claimant filed written submissions dated 21st September 2023.

Claimant's case

5. The Claimants' case is that they were employed by the Respondent on diverse dates as follows: -
 - a. The 1st claimant was employed as a barman vide a letter of appointment dated 11th October 2011 earning a salary of Kshs. 12,000/- per month;
 - b. The 2nd claimant was employed as a cashier vide a letter of appointment dated 5th September 2014 earning a salary of Kshs. 12,000/- per month;
 - c. The 3rd claimant was employed as a barman vide a letter of appointment dated 23rd December 2010 as a barman earning a salary of Kshs. 12,000/- per month;
 - d. The 4th claimant was employed as a cashier vide a letter of appointment dated 2nd February 2013 earning a salary of Kshs. 12,000/- per month;
 - e. The 5th claimant was employed as a gardener vide a letter of appointment dated 5th November 2013 earning a salary of Kshs. 12,000/- per month;
 - f. The 6th claimant was employed as a waiter vide a letter of appointment dated 8th July 2013 earning a salary of Kshs. 9,000/- per month;
 - g. The 7th claimant was employed as a cleaner vide a letter of appointment dated 7th March 2014 earning a salary of Kshs. 9,000/- per month;
 - h. The 8th claimant was employed as a waiter vide a letter of appointment dated 2nd February 2015 earning a salary of Kshs. 9,000/- per month;
 - i. The 9th claimant was employed as a waiter vide a letter of appointment dated 8th July 2012 earning a salary of Kshs. 9,000/- per month;
 - j. The 10th claimant was employed as a waiter vide a letter of appointment dated 15th July 2012 earning a salary of Kshs. 9,000/- per month;
 - k. The 11th claimant was employed as a waitress vide a letter of appointment dated 5th January 2013 earning a salary of Kshs. 9,000/- per month;
 - l. The 12th claimant was employed as a waitress vide a letter of appointment dated 29th March 2015 earning a salary of Kshs. 9,000/- per month;
 - m. The 13th claimant was employed as a bouncer vide a letter of appointment dated 24th August 2012 earning a salary of Kshs. 15,000/- per month;
 - n. The 14th claimant was employed as a grill cook vide a letter of appointment dated 28th December 2010 earning a salary of Kshs. 15,000/- per month;



- o. The 15th claimant was employed as a grill cook vide a letter of appointment dated 13th January 2012 earning a salary of Kshs. 15,000/- per month;
 - p. The 16th Claimant was employed as a grill cook vide a letter of appointment dated 28th December 2010 earning a salary of Kshs. 15,000/- per month;
 - q. The 17th claimant was employed as a General Manager vide a letter of appointment dated 15th August 2013 earning a salary of Kshs. 60,000/- per month;
 - r. The 18th claimant was employed as a supervisor vide a letter of appointment dated 1st August 2012 earning a salary of Kshs. 35,000/- per month;
 - s. The 19th claimant was employed as a chef vide a letter of appointment dated 8th April 2013 earning a salary of Kshs. 18,000/- per month;
 - t. The 20th claimant was employed as an accountant vide a letter of appointment dated 17th August 2014 earning a salary of Kshs. 50,000/- per month.
6. Their grievance against the Respondent emanates from the fact that the latter terminated employment on 7th February 2017 without notice or payment in lieu thereof, without giving them a reason for the termination, and without allowing them to be heard. The Respondent verbally dismissed them, informing them they no longer had the resources to pay the Claimants' salary as expected. They were also advised to cease reporting to work. The claimants conclude that the termination of their employment was unlawful and unfair. It was without substantive justification and procedural fairness.
7. The Claimants contend that they were not permitted to proceed for annual leave or paternity leave as provided by law. Too they were not allowed off days. Further, the Respondent persistently breached their respective employment contracts by failing to pay their salaries as and when they fell due and paid them below the minimum wages that were provided at various times under the relevant Minimum Wage Regulations.
8. T asserted that they were not registered as members of NSSF or any pension scheme by the Respondent. As such, they are entitled to service pay.

Analysis and Determination

9. I have reviewed the Claimant's pleadings, oral and documentary evidence, and written submissions, and return that the issues for determination are as follows: -
- a. Whether the Claimants were unfairly terminated from employment by the Respondent;
 - b. Whether the Claimants are entitled to the reliefs sought.

Whether the Claimants were unfairly terminated from employment by the Respondent

10. Preliminarily, it is pertinent for me to point out that where a Respondent files a statement of defence but fails to avail evidence in support of the same at the hearing, the statement remains just that statement without any evidential value, and that is how I shall treat the Respondent's memorandum of reply filed herein. However, it is worth stating that the fact that a Respondent has not placed forth evidence in support of its defence case, doesn't obliterate the adversary's duty to prove matters that the law specifically requires him or her to prove to succeed in his or her claim.



11. In the case of Kenya Power and Lighting Company Limited v Nathan Karanja Gachoka & another [2016] eKLR the Court held that: -

“ 15. I am of the considered view, that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence is unchallenged or not.[emphasis mine]

12. What amounts to unfair termination is defined under Section 45 of the Employment Act 2007 as follows:

“(2) A termination of employment by an employer is unfair if the employer fails to prove—

- (a) that the reason for the termination is valid;
- (b) that the reason for the termination is fair—
 - (i) related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
- (c) that the employment was terminated in accordance with fair procedure.”

13. It is therefore not difficult to conclude that for a termination of an employee's employment to be considered fair in the eyes of the Employment Act, 2007, it must be demonstrated that there is substantive justification and procedural fairness, for the decision and in the process that led to the decision, respectively. Indeed, this is what the Court in Walter Ogal Anuro -v- Teachers Service Commission (2013) eKLR aptly captured thus:

“ For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer to effect the termination.”

14. Under Section 47 (5) of the Act, a burden of proof is imposed both on the employee and the employer, in matters controversies on termination of employment. The Section 47 (5) provides: -

“(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

15. What does the provision require of a Claimant like the Claimants herein? It is now settled law that to satisfy the burden, the employee [read Claimants] has to place forth a prima facie case that the termination was unfair or that the dismissal was wrongful. I have carefully considered the Claimants' uncontroverted evidence on want of substantive justification and procedural fairness in the



termination of their employment, I am satisfied that they have established a prima facie case that the termination was unfair. Hence, discharged their legal burden under the provision.

16. Once a Claimant has discharged his or her burden of proof, Section 47 (5) shifts the burden to the employer to prove the reason for the termination [Sections 43 of the Act] and that the reason[s] was valid and fair [Section 45[2] of the Act]. Section 43 provides that:

“Proof of reason for termination

- (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
- (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.”

17. It has always been this Court’s view that legal burdens imposed on parties by the law are dischargeable by the production of sufficient evidence to enable the discharging of the burden, not unless there is an admission by the rival party on the matters or facts that the other party is bound to prove, or the Court has made judicial notice on those matters or facts. The Respondent was duty-bound to demonstrate on balance of probabilities, the reason for termination. They placed no evidence before this Court to establish that. As a result, I came to the inescapable conclusion that the Respondent didn’t prove the reason[s] for the termination of the Claimants’ employment of the provisions of Section 45 (2), the termination is deemed unfair.
18. Having found as I have, it becomes unnecessary to move to consider whether the reason[s] was valid and fair as required by Section 45[2]. The legal burdens of proof under Sections 43 and 45 are sequential. Therefore, where the employer fails to discharge the first one, it won’t be possible for him or her to prove the second one. The deeming provision under section 43, is informed by this fact.
19. Fair procedure is contextualized under the Section 41 of the Act to mean that the employer must explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation, the employer must hear and consider any representations which the employee make, and the employer must consider those representations while making a final decision.
20. The Respondent as the employer was bound to show that in terminating the Claimants’ employment, the tenets of procedural fairness were adhered to. In the absence of evidence from its side, as was in the instant matter, the Claimants’ evidence that the cannons were breached stood undiscounted.
21. By reason of the premises, I come to the conclusion that the termination of the Claimants’ employment was substantively and procedurally unfair.



Whether the Claimants are entitled to the reliefs sought.

22. In a matter like the instant matter, specificity and clarity of pleadings more particularly, the Claimant's on the reliefs sought is pivotal. I expressed myself on the vitality in the case of *James Orwaru Nyaundi vs Kilgoris Klassic Sacco Limited* [2022] eKLR thus:-
- “78. The Claim for overtime and public holidays worked compensation has just been thrown to Court. This Court has incessantly urged that this practice must come to a stop. It is not enough for a Claimant to just give figures to court, asserting that he or she is entitled to them, cross her or his fingers hoping that the Respondent does not place before Court documents, and as a consequence of the failure say “behold the claim is proved, the employer has not tendered in evidence any documents.” The Claimant must if she or he has to succeed in the Claim, be specific on the days when he worked overtime, the specific public holidays, when he worked and wasn't paid for.
79. Parties often place reliance on Section 74 of Act, and wrong reliance I must say, to assert that whenever an employer does not produce documents in Court where overtime, public holiday worked, untaken unpaid for leave days are alleged, there is an automatic pass to a judgment in favour of the employee. My reading of the provision does not suggest that such an implication is one that follows it. The provision only provides for the record that must be kept by an employer, nothing to do with production of the records in Court.
80. If one wanted to rely on the record[s] which is in the possession and control of the employer to prove and or fortify certain aspects of his or her case, there is a legal avenue available for attainment of that, issuance of as notice to produce under the *Evidence Act*, Cap 80, laws of Kenya. It will be only after the notice has been properly issued, and the employer fails to produce the record, that the default consequence will set in.
81. The Claimant did not tender any specific in the nature mentioned herein above, the Claim for overtime, and public holidays worked compensation are declined.”
23. The Claimants did not specify, in their Memorandum of Claims dated 7th July 2017, the particular Saturdays, Sundays and Public Holidays that they worked overtime. They also failed to specify the dates when they were supposed to take paternity leave and to adduce evidence by way of hospital records or a birth certificate showing that they were indeed entitled to paternity leave. For these reasons, I decline to grant compensation under the head overtime and paternity leave allowance. The claim for unpaid salary fails for the same reason since the period to which it relates is unclear to the Court.
24. Under Section 48 of the *Labour Institutions Act*, an employee can successfully maintain a cause of action against the employer who has for any period, paid him or her, wages below the relevant Regulation of Wages Orders. The claim could be for the difference between what the employee ought to have been paid if the minimum wage set out in the Order [s] was paid, and what he or she was paid. It follows therefore that for an employee to succeed in the claim, he or she must demonstrate that; the Wages Orders applied to him or her; the Regulation of Wages Orders for which period and sector; and the minimum wages that were applicable at the material time[s]. The Claimants did not place evidence of this nature before this Court. Their claim under this head must fail.



25. Concerning the claim for house allowance, I have seen the Claimant's respective Letters of Appointment which make provision for a "monthly gross salary" under the clause headed "Salary". I interpret this to mean that their salary was consolidated. The claim for house allowance therefore fails.
26. On unpaid leave allowance, I note that the Claimants had a leave entitlement of 21 days as per their respective employment contracts. Their entitlement to 21 days of annual leave was consistent with Section 28 of the Act. The Claimants adduced evidence that they were never permitted to take annual leave throughout their period of employment. The Respondent did not challenge this. Consequently, I do not hesitate to grant the relief.
27. No doubt, the Claimants' employment contracts were in nature terminable by a twenty-eight days' notice under Section 35 (1) of the Act or one month's salary in lieu of notice. The Claimants contended that they were not issued with the notice contemplated under the provision, or paid salary in lieu of notice pursuant to the provisions of Section 36. Their evidence was unchallenged. I award them each one month's salary in lieu of notice.
28. The Claimants also sought a compensatory relief under Section 49[1][c] of the *Employment Act*, for unfair termination of employment. Time and again this Court has held that the grant of the relief is discretionary. Its award depends on the circumstances of each case. I have carefully considered that the Claimants' employment contracts were suddenly terminated without due process and substantive justification, and their respective period of service, and hold that each of them is entitled to the relief, to the extent set out in the schedule hereinafter.
29. In light of the above, Judgment is hereby entered for the Claimants as against the Respondent as follows:-
 - a. A declaration that the termination of the Claimants' employment was unfair.
 - b. The Claimants shall be paid;



No	Name	Award
1.	Maina Benson Wahome	<p>a. Compensation for unfair termination equivalent to 5 months gross salary – Kshs. 60,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 44,520/-</p> <p>c. One month’s salary in lieu of notice – Kshs. 12,0000/-</p> <p>Total – Kshs. 116,520/-</p>
2.	Eric Muthomi	<p>a. Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 36,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 19,320/-</p> <p>c. One month’s salary in lieu of notice – Kshs. 12,000/-</p> <p>Total – Kshs. 67,320/-</p>
3.	James Ndivi	<p>a. Compensation for unfair termination equivalent to 6 months gross salary – Kshs. 72,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 51,800/-</p> <p>c. Payment in lieu of notice – Kshs. 12,000/-</p> <p>Total – Kshs. 135,800/-</p>
4.	Eglah Njoki	<p>a. Compensation for unfair termination equivalent to 4 months gross salary – Kshs. 48,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 25,200/-</p>



		<p>c. Payment in lieu of notice – Kshs. 12,000/-</p> <p>Total – Kshs. 85,200/-</p>
5.	Samuel Mutuku	<p>a. Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 36,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 27,300/-</p> <p>c. Payment in lieu of notice – Kshs. 12,000/-</p> <p>Total – Kshs. 75,300/-</p>
6.	Ochieng Jared Otieno	<p>a. Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 27,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 22,575/-</p> <p>c. Payment in lieu of notice – Kshs. 9,000/-</p> <p>Total – Kshs. 58,575/-</p>
7.	Beryl Omondung'	<p>a. Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 27,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 18,375/-</p> <p>c. Payment in lieu of notice – Kshs. 9,000/-</p> <p>Total – Kshs. 54,375/-</p>
8.	Jacklyne Mong'eri	<p>a. Compensation for unfair termination equivalent to 2 months gross salary – Kshs. 18,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 12,600/-</p>



		<p>c. Payment in lieu of notice – Kshs. 9,000/-</p> <p>Total – Kshs. 39,600/-</p>
9.	Gladys Thiong’o	<p>a. Compensation for unfair termination equivalent to 5 months gross salary – Kshs. 45,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 28,875/-</p> <p>c. Payment in lieu of notice – KShs.9,000/-</p> <p>Total – Kshs.82,875/-</p>
10.	John Mulei	<p>a. Compensation for unfair termination equivalent to 5 months gross salary – Kshs. 45,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 28,875/-</p> <p>c. Payment in lieu of notice – Kshs. 9,000/-</p> <p>Total – Kshs. 82,875/-</p>
11.	Peninah Mathara	<p>a. Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 27,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 19,425/-</p> <p>c. Payment in lieu of notice – Kshs. 9,000/-</p> <p>Total – Kshs. 55,425/-</p>
12.	Judycaster Ngina	<p>a. Compensation for unfair termination equivalent to 2 months gross salary – Kshs. 18,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 12,075/-</p>



		<p>c. Payment in lieu of notice – Kshs. 9,000/-</p> <p>Total – Kshs. 39,075/-</p>
13.	Marango Francis Ogot	<p>a. Compensation for unfair termination equivalent to 5 months gross salary – Kshs. 75,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 47,250/=</p> <p>c. Payment in lieu of notice – Kshs. 15,000/-</p> <p>Total – Kshs. 137,250/-</p>
14.	Fredrick Kioko Muia	<p>a. Compensation for unfair termination equivalent to 6 months gross salary – Kshs. 90,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 64,750/-</p> <p>c. Payment in lieu of notice – Kshs. 15,000/-</p> <p>Total – Kshs. 169,750/-</p>
15.	Shadrack Njenga	<p>a. Compensation for unfair termination equivalent to 5 months gross salary – Kshs. 75,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 53,375/-</p> <p>c. Payment in lieu of notice – Kshs. 15,000/-</p> <p>Total – Kshs. 143,375/-</p>
16.	Michael Kiarie	<p>a. Compensation for unfair termination equivalent to 6 months gross salary – Kshs. 90,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 64,750/-</p>



		<p>c. Payment in lieu of notice – Kshs. 15,000/-</p> <p>Total – Kshs. 169,750/-</p>
17.	Godfrey Maina	<p>a. Compensation for unfair termination equivalent to 4 months gross salary – Kshs. 240,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 147,000/-</p> <p>c. Payment in lieu of notice – Kshs. 60,000/-</p> <p>Total – Kshs. 447,000/-</p>
18.	Muthee Francis Maina	<p>a. Compensation for unfair termination equivalent to 5 months gross salary – Kshs.175,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 61,250/-</p> <p>c. Payment in lieu of notice – Kshs. 35,000/-</p> <p>Total – Kshs. 271,250/-</p>
19.	Wafula Paulo Wamalwa	<p>a. Compensation for unfair termination equivalent to 4 months gross salary – Kshs. 72,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 48,300/-</p> <p>c. Payment in lieu of notice – Kshs. 18,0000/-</p> <p>Total – Kshs. 138,300/-</p>
	Joshat Osiri	<p>a. Compensation for unfair termination equivalent to 4 months gross salary – Kshs. 200,000/-</p> <p>b. Compensation for earned unutilized leave days – Kshs. 134,166.60</p>



	c. Payment in lieu of notice – Kshs. 50,000/-
	Total – Kshs. 384,166/-

- c) Interest on (a) above at court rates from the date of judgment until payment in full.
- d) Costs of the suit. Instruction fee to computed on the basis of the total amount awarded to the Claimants.

30. It is so ordered.

READ, DELIVERED AND SIGNED THIS 26th DAY OF JULY, 2024.

OCHARO KEBIRA

JUDGE

In the presence of:

Mr. Ochieng for Mr. Ndegwa for the Claimant

No appearance for the Respondent.

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

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