

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
OF KENYA AT ELDORET

ELRC CAUSE NO. E082 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

DOMINIC CHERUIYOT BUNGEI.....1ST
CLAIMANT

SHARON JEPKOGEI RONO.....2ND
CLAIMANT

KIPCHUMBA BETHWEL RUTO.....3RD
CLAIMANT

BENJAMIN KOECH KORIKO.....4TH
CLAIMANT

ALBATINE JEMUTAI.....5TH
CLAIMANT

GAUDENCIA LAGAT.....6TH
CLAIMANT

JANETH JEPKEMBOI.....7TH CLAIMANT

EUNICE CHERUTO.....8TH
CLAIMANT

HELLEN JELAGAT.....9TH
CLAIMANT

JAVAN KIPLAGAT.....10TH
CLAIMANT

SIMON KIPKOECH MARU.....11TH
CLAIMANT

SALINA JEPTUM MUTOR.....12TH
CLAIMANT

JUDA KIPRONO.....13TH
CLAIMANT

KEN KIPTOO KEMBOI.....14TH
CLAIMANT

VERSUS

COUNTY GOVERNMENT
OF UASIN COUNTY.....1ST
RESPONDENT

CHIEF OFFICER, HEALTH AND CLINICAL SERVICES
UASIN GISHU.....2ND
RESPONDENT

CHAIR, PUBLIC SERVICE BOARD
UASIN GISHU COUNTY.....3RD
RESPONDENT

JUDGMENT

1. The Claimant instituted the suit herein against the Respondents vide the statement of claim dated 28th October 2024 seeking the following orders: -
 - i. A declaration that the Claimants having worked beyond the statutory maximum period for temporary

employment are deemed to have been permanent employees in terms of section 37 of the Employment Act

- ii. A declaration that failure to confirm the Claimants as permanent employees within the meaning of the law was a violation of the Claimants' right to fair labour practices as enshrined in Article 41 of the Constitution.
- iii. A declaration that the termination of the Claimants' service was unlawful and/or unfair.
- iv. An Order that the Respondent issues the Claimants with Certificate of Service forthwith.
- v. An order for payment of salary in lieu of notice and compensation for unfair/unlawful termination for each of the Claimants.
- vi. An order for payment of unpaid house allowances to each of the Claimants as particularised in paragraph 9 of the Claim.
- vii. General damages for violation of the Claimants' rights as employees.
- viii. Costs of the claim and interest at court rates from the date of filing suit.

ix. Any other relief as this Honourable court may deem fit to grant.

2. The Claimants aver that they were employees of the 1st Respondent having been recruited as casual or temporary staff in various positions and posted in various health facilities belonging to the 1st Respondent as enumerated hereunder:-

NAME	DATE EMPLOY-ED	DESIGNATION	STATION POSTED	SALARY PER MONTH (KSHS)
Dominic Cheruiyot Bungei	1 st August 2022	General Clerk	West Maternity Health Center	14,300
Sharon Jepkogei Rono	29 th July 2022	Medical Laboratory technologist	Turbo Sub-County Hospital	26,430
Kipchumba Bethwel Ruto	29 th July 2022	Nurse	Kipkabus Health Center	26,430
Benjamin Koech Koriko	29 th July 2022	Security	Murgusi Dispensary	7,135

Albatine Jemutai	28 th July 2022	Social Worker	Ziwa Sub-County Hospital	26,430
Gaudencia Lagat	1 st October 2017	Grounds person	Ngenyilel Health Center	10,000
Janeth Jepkemboi	29 th July 2022	Registered Clinical Officer	Kapkei Dispensary	26,430
Eunice Cheruto	29 th July 2022	General Clerk	Ngenyilel Health Center	26,430
Hellen Jelagat	29 th July 2022	Cateress	Sosiani Health Center	7,200
Javan Kiplagat	29 th March 2022	General Clerical Officer	Soy Health Center	14,425
Simon Kipkoech Maru	20 th June 2022	Ambulance Driver	Health Headquarters	19,800
Salina Jeptum Mutor	29 th July 2022	Cleaner	Murgusi	5,959
Juda	29 th July	Registered	Kipkabus	26,430

Kiprono	2022	Clinical Officer	Health Center	
Ken Kiptoo Kemboi	29 th July 2022	Ambulance driver	Kapteldon Sub County Hospital	23,000

3. While the Claimants were casual/temporary staff, the 1st Respondent chose to aggregate and pay their wages at the end of each month as tabulated above.
4. The Claimants aver that they were engaged on casual/temporary terms continuously for periods that ran for more than 3 months, and as such, their engagement was by dint of section 37 of the Employment Act, deemed to have been converted to regular employment contracts, and as such, they became entitled to the safeguards due to such employees including protection from unfair termination and payment of benefits including paid leave and house allowances.
5. Vide an Internal Memo dated 29th June 2023, the 1st Respondent, through its Chief Officer Health and Clinical Service, the 2nd Respondent herein, purported to effect a

blanket termination of employment for "all casual/temporary staff" with effect from t" July 2023.

6. The Claimants were all dismissed from employment as from the said date without notice, and without payment of their terminal dues or issuance of certificates of service despite the fact that they had all served diligently without any disciplinary issues being raised against them.
7. The Claimant particularized the Respondent's illegality as follows:-
 - i. Dismissing the claimants without any reason.
 - ii. Failure to serve any notices upon the claimants.
 - iii. Failure to conduct a hearing
 - iv. Breach of the Claimants' right to be subjected to a fair administrative process.
 - v. Failure to pay the Claimants terminal dues upon dismissal.
 - vi. Failure to issue certificates of service
8. The Claimants further aver that during their employment the
1st Respondent underpaid them by not factoring house

allowance into their pay which should have been paid at the rate of 15% of their monthly pay.

9. The Claimants contend that by the 1st Respondent maintaining the Claimant in a temporary capacity despite working beyond the statutorily imposed time limits for casual employment, the Respondent violated the Claimants' right as set out in section 37 of the Employment Act and also violated the Claimants' right to fair labour practices as set out in Article 41 of the Constitution.
10. In response, the Respondents filed a Response to Claim dated 29th December 2024 in which they denied the allegation that the termination of the employment of the Claimants was illegal, unfair and/or unlawful.
11. The Respondents asserted that for it to carry out the various functions as set out in Schedule 4 of the Constitution, it depends on the funds it has raised internally and appropriations from the national exchequer.
12. It is the Respondents case that from time to time, while undertaking its core Constitutional mandate, it requires

extra support in terms of human resources to undertake specific tasks within a limited period.

13. According to the Respondent, this support is normally seasonal and of a non- permanent nature and the Respondents usually employ temporary staff on short or fixed term contracts to offer the said support within its departments.
14. The Respondents aver that in the financial year ending 30th June 2023, they determined that within the said financial year, the departments of revenue, health services, enforcement, agriculture and municipality would require extra human resource support but of a temporary nature.
15. The Respondents aver that the Public Service Board recruited temporary staff on 3 months contracts running for diverse periods between 1st April 2023 and 30th June 2023 and that as fate would have it, the lapse of the fixed term contracts of the temporary staff coincided with the lapse of the 2022/ 2023 Respondent's financial year.
16. It is the Respondent's case that their Annual Budget estimates for the financial year 2023/2024 did not include

an appropriation for extension and/or renewal of the fixed term contracts for the temporary staff because they had completed the work they were to perform. Further, the Respondents had determined that they would not require the support of the Claimants in the next financial year and their contracts were therefore not renewed.

17. The Respondents maintained that the Claimants are therefore not entitled to terminal benefits and urged the court to dismiss the Claimants' suit with costs
18. The Claim was disposed of by way of written submissions. The Claimants submissions are dated 17th July 2025 while the Respondents' submissions are dated 29th September 2025.

The Claimant's submissions

19. In their submissions, the Claimants identified the issues for determination to be:-
 - i. Whether the Claimants, having initially been engaged by the Respondents, for continuous periods that ran

more than 3 months had accordingly earned the right to be converted into regular employees under Section 37 of the Employment Act, 2007 and thus claim safeguards due to permanent employees including protection from unfair termination and payment of benefits including leave and house allowances.

ii. Whether the Claimants thereby unlawfully or unfairly dismissed from employment.

20. On the first issue, the Claimants submitted that they pleaded and proved that they were initially engaged as casual employees, but the Respondents aggregated and paid them wages monthly. They further submitted that they worked for various uninterrupted periods exceeding three months.

21. It is the Claimants' case that the Respondents subjected them to unfair labour practices by failing to comply with Section 37 of the Act and subsequently terminating their services without adhering to the requirements of Section 35.

22. The Claimants argued that the defence filed by the Respondents' failed to respond to the substantive issues raised and instead consisted of mere and unsubstantiated denials. Additionally, they averred that the Respondents produced, within their own list of documents, all the documents relied upon by the Claimants, an implicit admission of the Claimants' assertions.
23. The Claimants maintained that their Contracts of Service assumed permanency and were deemed monthly contracts within the meaning of Section 37, thereby attracting the application of Section 35(1)(c) of the Act.
24. Regarding the second issue, the Claimants submitted that upon establishment that their employment had been converted from casual to term contracts, the Respondents were bound to follow the lawful procedures for termination. The Claimants maintained that if indeed their positions had become untenable, the Respondents should have invoked redundancy procedures.
25. The Claimants argued that termination by effluxion of time did not apply as no written contracts existed beyond the casual engagement.

26. The Claimants further relied on an internal memo dated 29th June 2023, in which the 1st Respondent, through its Chief Officer, Health and Clinical Services (the 2nd Respondent), purported to implement a blanket termination of all casual workers with effect from 1st July 2023.
27. The Claimants contended that the termination was effected without notice, without payment of terminal dues and without issuance of Certificates of Service.
28. It is the Claimants' submissions that the Respondents failed to demonstrate substantive justification for the terminations or to show that procedural fairness was observed.
29. The Claimants therefore submitted that their termination was unlawful and unfair within the meaning of Sections 41, 43 and 45 of the Employment Act.

The Respondent's submissions

30. The Respondents on their part identified the issues for determination to be:-

- i. Whether the 1st Respondent can be sued in employment matters?
 - ii. Whether the 2nd Respondent can be sued in its own name?
 - iii. Are the Claimants employees of the Respondents?
 - iv. If (a) is in the affirmative, what is the nature of that employment relationship?
 - v. Depending on the outcome of (a) & (b) above, are the claimants entitled to the reliefs sought?
 - vi. Who should bear the costs of the cause?
31. On the first issue, the Respondents submitted that the 1st Respondent was improperly joined in the proceedings. They argued that Article 235 of the Constitution and Section 56 of the County Governments Act vest the mandate of county staffing in the County Public Service Board (CPSB), which in this case is the Uasin Gishu County Public Service Board.
32. The Respondents argued that only the CPSB had the mandate to hire the Claimants or to take any of the actions sought. On this basis, the Court was urged the

court to dismiss the Claimants' case against the 1st Respondent with costs.

33. On the second issue, the Respondents submitted that the Claimants were engaged by the 2nd and 3rd Respondents on a casual basis until 29th June 2023 and that at the time of filing suit they were no longer employees following the notice of 29th June 2023.
34. The Respondents submitted that the assertion by the Claimants that their casual employment had been converted under Section 37 was unfounded. They argued that the Claimants were engaged on a seasonal and temporary basis consistent with the operational needs of county health services.
35. It is the Respondents' submission that payment of wages monthly was merely an administrative convenience and did not convert the nature of the contracts. In addition, the Respondent argued that no written contracts were issued and no evidence was provided showing a promise of permanent employment.
36. On whether the Claimants were entitled to reliefs, the Respondents asserted that there was no evidence showing

that the Claimants were engaged for periods extending beyond three months, as no proof of payment was attached as at the time of filing the instant suit.

37. As to the claim of house allowance, the Respondents argued that the Claimants had not proved entitlement, particularly because no evidence was led to show that the wages paid excluded house allowance. On the claim for general damages, the Respondents submitted that the said award cannot issue in employment matters.
38. The Respondents also contended that the Claimants are not entitled to certificates of service under Section 51 of the Act, unless they were employees under a contract of service.
39. In the end, the Respondents urged the Court to dismiss the Claimants' suit with costs

Determination

40. Having considered the pleadings and the submissions on record, the issues that fall for determination by this court are:-

- i. Whether the Claimants were engaged as casual employees or their employment had, by operation of Section 37 of the Employment Act, converted into term contracts of service, and if so,
 - ii. Whether the termination of the Claimants' employment on 1st July 2023 was substantively justified and procedurally fair.
 - iii. Whether the Claimants are entitled to the remedies sought in their Statement of Claim, and if so, the appropriate reliefs.
41. From the pleadings on record and the submissions of the parties, it is not in dispute that the Claimants were working for the Respondents until 1st July 2023 when their services were terminated vide an internal memo dated 29th June 2023.
42. The Claimants' aver that although they were initially classified as casual or temporary workers, the nature of their duties and the continuity of their service went well beyond the boundaries of casual employment. The Claimants maintained that they worked regular daily schedules, performed duties integral to the Respondents'

core operations and were under the Respondents' continuous control and supervision. On this basis, the Claimants asserted that their employment met the statutory thresholds for conversion under Section 37(1) of the Act.

43. The Respondents dispute this claim and maintain that the Claimants were engaged strictly as casuals for daily tasks, and that any breaks between assignments prevented accrual of continuous service.
44. The Respondents asserted that no automatic conversion occurred and that the Claimants were paid and treated as casuals at all material times.
45. Section 37 of the Employment Act further provides for conversion of casual employment to regular contracts as follows:

(1) Notwithstanding any provisions of this Act, where a casual employee

- a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or*

b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service.

(2) In calculating wages and the continuous working days under subsection (1), a casual employee shall be deemed to be entitled to one paid rest day after a continuous six days working period and such rest day or any public holiday which falls during the period under consideration shall be counted as part of continuous working days.

(3) An employee whose contract of service has been converted in accordance with subsection (1), and who works continuously for two months or more from the date of employment as a casual employee shall be entitled to such terms and conditions of service as he would have been entitled to under this Act had he not initially been employed as a casual employee.

(4) Notwithstanding any provisions of this Act, in any dispute before the Industrial Court on the terms and conditions of service of a casual employee, the Industrial Court shall have the power to vary the terms of service of the casual employee and may in so doing declare the employee to be employed on terms and conditions of service consistent with this Act.

(5) A casual employee who is aggrieved by the treatment of his employer under the terms and conditions of his employment may file a complaint with the labour officer and section 87 of this Act shall apply.

46. In the instant case all the Claimants have letters of posting indicating that they were engaged on temporary basis. None of them was employed as a casual as their letters are specific and explicit that their employment was on temporary basis.

47. A casual employee is defined in section 2 of the Employment Act as *a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time.*

48. The Claimants were neither paid daily nor did their employment last for a day. The wording of their letters implied that they were engaged for periods longer than one day. The fact that they were paid wages monthly fortifies the position that they were engaged on monthly contracts.
49. Section 37 of the Act which provides for conversion of casual contracts into monthly contracts therefore does not apply to the Claimants as they were not casual employees.
50. Since the Claimants were employed on temporary terms of employment, the section that applied to them was section 35 of the Employment Act which provides for termination notice. The Respondents ought to have notified them of the intention to terminate their employment or paid them in lieu of notice. In view of the fact that their letters indicated that they were temporary employees but were engaged for more than a year, they were regular employees on monthly contracts. Their contracts had become open ended and if the Respondents

wished to terminate the contracts they were entitled to be given adequate notice and reasons for the same.

Whether the termination of the Claimants' employment on 1st July 2023 was substantively justified and procedurally fair

51. Having established that the Claimants were engaged on open ended contracts they were entitled to be treated like any other employee and in view of the fact that the termination of their employment was not based on disciplinary issues, they were entitled to reasonable notification of the intention to terminate the same. In view of the fact that they were not given notice, the termination of their employment was to that extent, unfair.

Whether the Claimants are entitled to the remedies sought in their Statement of Claim, and if so, the appropriate reliefs.

52. Having found that the Claimants were not casual employees and that the termination of their employment

was unfair, the Court now turns to the prayers sought by the Claimants in their statement of claim.

- i. A declaration that the Claimants having worked beyond the statutory maximum period for temporary employment are deemed to have been permanent employees in terms of section 37 of the Employment Act*

As already stated above the Claimants were all employed on temporary terms of service as clearly stated in their letters. Section 37 of the Employment Act which provides for conversion of casual employment to monthly contract does not apply to them as they were on temporary monthly contracts. The Claimants are thus not entitled to this prayer.

- ii. A declaration that failure to confirm the Claimants as permanent employees within the meaning of the law was a violation of the Claimants' right to fair labour practices as enshrined in Article 41 of the Constitution.*

The Court has already found that the Claimants were not casual employees and section 37 of the Act does

not apply to them. The court however finds that the Claimants were treated unfairly by being retained on temporary terms of employment without clear terms of service. I therefore declare that the Claimants right to fair labour practice was violated by the Respondents.

- iii. A declaration that the termination of the Claimants' service was unlawful and/or unfair.*

The Court finds that the termination of the Claimants' employment on 1st July 2023 through a circular addressed to their supervisors, was unfair. Further, although each of the Claimants were employed vide a letter of posting, they were not issued with letters of termination. The termination of their employment was therefore both procedurally and substantively unjustified under Sections 41, 43, and 45 of the Employment Act. Accordingly, the Court declares the termination unlawful and unfair.

- iv. An Order that the Respondent issues the Claimants with Certificate of Service forthwith.*

The Claimants having worked for more than four consecutive weeks, they are entitled to certificates of service in terms of Section 51 of the Employment Act. The Respondents are ordered to issue certificates of service to all Claimants within thirty (30) days of this judgment.

v. An order for payment of salary in lieu of notice

The Respondents shall pay each Claimant one month's salary in lieu of notice. The court has noted that some of the Claimants were underpaid. The pay in lieu of notice should therefore be based on the gross statutory minimum wage of each of the Claimants..

vi. An order for compensation for unfair/unlawful termination for each of the Claimants.

The Respondents shall pay each Claimant three (3) months' gross salary as compensation for unfair termination in accordance with Section 49 of the Employment Act.

Gaudencia Lagat will however be paid compensation of **10 months** salary in view of the

fact that she started working for the Respondents in October, 2027 and was kept on temporary terms of employment up to June, 2023.

The rate of pay for **Gaudencia Lagat** was below statutory minimum which at the time of termination in 2023 was 14,025.40 +15% house allowance making a total of Kshs. 16,129.20. The same salary should apply to **Benjamin Koech Koriko** and **Salina Jeptum Mutor. Hellen Jelagat** who was a cateress should be paid in the same category as a general clerk based on the grading in the Regulation of Wages (General) Order 2022 which was applicable at the time relevant to this suit at Kshs.21,405.50 plus 15% house allowance making a total of Kshs. 25,183. The same rate is applicable to **Dominic Cheruiyot Bungei, Eunice Cheruto** and **Javan Kiplagat**. The nurses, Medical Laboratory technicians, social workers, clinical officer, will be paid at the rate of 280.75 plus 15% house allowance making a total of Kshs. 32,37,123, being the rate for Artisan Grade 1 based on their training and qualifications. They

include **Sharon Jepkosgei, Kipchumba bethwel Ruto, Albertine Jemutai, Janeth Jepkemboi,** and **Juda Kiprono**. The ambulance drivers will be paid at the rate for driver cars and light vans which was Kshs. 18936.85 plus 15% house allowance giving a gross of Kshs. 22,279. They are **Simon Kipkoech Maru** and **Ken Kiptoo Kemboi**. Cheruto was paid kshs. 26,430 as a general clerk yet the other general clerks were paid Kshs. 14,300 and 14,425 respectively for Dominic Cheruiyot Bungei and Javan Kiplagat, proof of discriminative remuneration. She was not underpaid and the rate she was earning should be used for tabulation of her notice pay and compensation.

The forgoing is pursuant to the provisions of sections 3(6) and 26 of the Employment Act as read with section 48(1) of the Labour Institutions Act which provide:

vii. An order for payment of unpaid house allowances to each of the Claimants as particularised in paragraph 9 of the Claim.

The Respondents shall pay each Claimant house allowance at 15% of their monthly salary for the entire period of their employment, based on the appropriate minimum rate of pay as per General Order.

viii. General damages for violation of the Claimants' rights as employees.

It is settled law that where statutory remedies under the Employment Act such as salary in lieu of notice, compensation for unfair termination, payment of allowances and issuance of certificates of service adequately redress the wrongs suffered by an employee, separate general damages are not ordinarily awarded, unless there are exceptional circumstances warranting additional compensation.

This prayer is therefore declined.

53. The Claimants shall have the costs of the suit.

54. Interest shall accrue at court rates from date of judgement at court rates.
55. In view of the fact that the actual amount payable to each of the Claimants has yet to be tabulated, the suit will be fixed for mention to confirm the amounts payable. Both the Claimants and Respondents to tabulate the amount payable according to this Judgment and file in court within 30 days.
56. Orders accordingly.

**DATED, DELIVERED AND SIGNED
THIS 4TH DAY OF DECEMBER, 2025.**

**M. ONYANGO
JUDGE**