



**Muthiani & 4 others v Salvation Army Kenya East Territory (Employment and Labour Relations Cause E712 of 2022) [2025] KEELRC 574 (KLR) (26 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 574 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E712 OF 2022**

**HS WASILWA, J  
FEBRUARY 26, 2025**

**BETWEEN**

**FAITH MUKEI MUTHIANI ..... 1<sup>ST</sup> CLAIMANT  
NANCY GATHONI GATHOGO ..... 2<sup>ND</sup> CLAIMANT  
BONIFACE MUSYOKA NZIOKA ..... 3<sup>RD</sup> CLAIMANT  
BENJAMIN NJUKI NYAGA ..... 4<sup>TH</sup> CLAIMANT  
JONATHAN KIBUGA WANGUI ..... 5<sup>TH</sup> CLAIMANT**

**AND**

**THE SALVATION ARMY KENYA EAST TERRITORY ..... RESPONDENT**

**JUDGMENT**

1. The Claimants instituted this suit by a Statement of Claim dated 3<sup>rd</sup> October 2022. The 1<sup>st</sup> Claimant sues on her own behalf and on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Claimants pursuant to Rule 9 of the Employment and Labour Relations (Procedure) Rules, 2016.
2. The Respondent is a Non-Governmental Organization registered under the [Non-Governmental Organizations Co-ordination Act](#) No. 19 of 1990. The Claimants were employees of the Respondent, forming the core team in the delivery of a donor-funded project called the Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project.
3. The 1<sup>st</sup> Claimant, Faith Mukei Muthiani, was the Project Manager earning a consolidated salary of Kshs. 150,000 per month. The 2<sup>nd</sup> Claimant, Nancy Gathoni Gathogo, was the Project Researcher earning Kshs. 88,992 per month. The 3<sup>rd</sup> Claimant, Boniface Musyoka Nzioka, was the Cluster Coordinator for Isiolo/Samburu, earning Kshs. 88,992 per month. The 4<sup>th</sup> Claimant, Benjamin Njuki Nyaga, was the Cluster Coordinator for Highway, earning Kshs. 88,992 per month, while the 5<sup>th</sup> Claimant, Jonathan Kibunga Wangui, was the Project Driver earning Kshs. 33,726 per month.



4. The Claimants played a crucial role in conceptualizing, mobilizing resources for, and implementing the SIMBA Project. They successfully completed Phase 1 of the project and were instrumental in developing Phase 2 and securing its funding from the Respondent's international partners under Project Code CP20 KYE/1539.
5. In November 2021, as their contracts neared expiration, the Respondent requested them to express their interest in continuing employment, which they did by submitting letters dated 30<sup>th</sup> November 2021. However, by a letter dated 18<sup>th</sup> January 2022, the Respondent placed them on an unpaid break for six months from February 2022 to July 2022, during which the Respondent continued to engage their services in supporting resource mobilization for Phase 2 of the project. On 31<sup>st</sup> May 2022, the Respondent, with the Claimants' support, concluded a Memorandum of Understanding with its international donors for Phase 2 of the SIMBA Project, which paved the way for the release of funds beginning in July 2022. The Memorandum of Understanding required the Respondent to disclose the personnel handling the project throughout its duration, and the Respondent listed the Claimants as project personnel for the SIMBA Project, scheduled to end on 31<sup>st</sup> March 2026.
6. In July 2022, instead of ending the unpaid break and resuming salary payments, the Respondent advertised the Claimants' positions and shortlisted candidates for interviews despite having received project funding.
7. The Claimants contend that they had no disciplinary, poor performance, or physical incapacity cases and had consistently discharged their duties with diligence, dedication, and integrity to the Respondent and its local and international partners. They assert that their conduct was beyond reproach, and at no point were they served with show cause letters or given an opportunity to respond to any allegations of gross misconduct. Furthermore, they were never afforded a disciplinary hearing, contrary to Section 41 of the *Employment Act*, 2007, and Article 50(1) of *the Constitution* of Kenya, 2010.
8. The Claimants, therefore, aver that they were not only engaged in work without pay during the unpaid break but were also unfairly and summarily terminated from employment. Despite a demand and notice of intention to sue, the Respondent refused to admit liability.
9. The Claimants pray for judgment against the Respondent as follows: six months' salary arrears—Faith Mukei Muthiani: Kshs. 900,000, Nancy Gathoni Gathogo: Kshs. 533,952, Boniface Musyoka Nzioka: Kshs. 533,952, Benjamin Njuki Nyaga: Kshs. 533,952, and Jonathan Kibunga Wangui: Kshs. 202,356. Three months' payment in lieu of notice—Faith Mukei Muthiani: Kshs. 450,000, Nancy Gathoni Gathogo: Kshs. 266,976, Boniface Musyoka Nzioka: Kshs. 266,976, Benjamin Njuki Nyaga: Kshs. 266,976, and Jonathan Kibunga Wangui: Kshs. 101,178. Four years' salaries representing the amounts they would have earned under Phase 2 of the SIMBA Project until its scheduled end on 31<sup>st</sup> March 2026—Faith Mukei Muthiani: Kshs. 7,200,000, Nancy Gathoni Gathogo: Kshs. 4,271,616, Boniface Musyoka Nzioka: Kshs. 4,271,616, Benjamin Njuki Nyaga: Kshs. 4,271,616, and Jonathan Kibunga Wangui: Kshs. 1,618,848. Payment in lieu of leave days that the Claimants would have taken during the four-year period of Phase 2 of the SIMBA Project, calculated at 26 days per year in accordance with the Respondent's Human Resource Manual—Faith Mukei Muthiani: Kshs. 600,000, Nancy Gathoni Gathogo: Kshs. 355,968, Boniface Musyoka Nzioka: Kshs. 355,968, Benjamin Njuki Nyaga: Kshs. 355,968, and Jonathan Kibunga Wangui: Kshs. 134,904. Twelve months' salary for unfair termination—Faith Mukei Muthiani: Kshs. 1,800,000, Nancy Gathoni Gathogo: Kshs. 1,067,904, Boniface Musyoka Nzioka: Kshs. 1,067,904, Benjamin Njuki Nyaga: Kshs. 1,067,904, and Jonathan Kibunga Wangui: Kshs. 404,712. They also seek certificates of service pursuant to Section 51 of the



Employment Act, 2007, costs of the suit, interest on the salary arrears at court rates, and any other relief that the Honourable Court may deem fit and just to grant.

10. The Claimants, through Faith Mukei Muthiani, swore a Verifying Affidavit dated 3<sup>rd</sup> October 2022, stating that she is an adult female of sound mind and the Claimant in this matter, thus competent to swear the affidavit. She confirmed that she had instructed Messrs. Kieme & Company Advocates to file the suit against the Respondent. She further stated that she had read and understood the contents of the Memorandum of Claim and affirmed that the averments contained therein were true and correct. She swore the affidavit to verify the correctness of the facts stated in the Statement of Claim and affirmed that the information deposed was true to the best of her knowledge, information, and belief.

### **The 1st – the 5th Claimants Witness Statements**

11. The 1<sup>st</sup> Claimant filed a Witness Statement dated 3<sup>rd</sup> October 2022, stating that she was an employee of the Respondent, serving as the Project Manager for the donor-funded Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project. In her role, she led a team of seven staff members, including the four co-workers on whose behalf and authority she filed the suit. At the end of their contracts in November 2021, coinciding with the conclusion of Phase 1 of the SIMBA Project, the Respondent requested them to submit written expressions of interest to continue working, which all five Claimants did.
12. The Respondent retained them as employees and paid their salaries for December 2021 and January 2022. On 18<sup>th</sup> January 2022, the Respondent issued letters directing them to proceed on what was termed an "unpaid break" effective 31<sup>st</sup> January 2022, essentially requiring them to work without pay while the Respondent sought funding for Phase 2 of the SIMBA Project.
13. During this unpaid break, the Respondent finalized a Memorandum of Understanding with its international donors on 31<sup>st</sup> May 2022, listing the Claimants as the Respondent's Project Personnel for Phase 2, set to run until 31<sup>st</sup> March 2026. However, in July 2022, when funding began to be released, the Respondent, to their shock and disappointment, advertised their positions. Despite attempts to resolve the matter both directly and through legal representation, the Respondent failed to make amends or admit liability. The 1<sup>st</sup> Claimant stated that the Respondent's actions—advertising their positions, shortlisting candidates for interviews, and disregarding their prior written expressions of interest—demonstrated that they had been summarily and unfairly dismissed from employment.
14. Before their termination, the Claimants had no disciplinary, poor performance, or physical incapacity issues and had always performed their duties with diligence, dedication, and integrity to the Respondent, its projects, and its partners. They were never subjected to a disciplinary hearing, nor were they issued with show cause letters to address any allegations or defend themselves against potential termination. The 1<sup>st</sup> Claimant affirmed that her conduct had always been beyond reproach and humbly prayed for the Honourable Court to award her the dues as pleaded in the Statement of Claim. She concluded by stating that this was all she wished to declare at the moment.
15. The 2<sup>nd</sup> Claimant filed a Witness Statement dated 3<sup>rd</sup> October 2022, stating that she was an employee of the Respondent, serving as a Project Researcher for the donor-funded Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project. At the end of their contracts in November 2021, coinciding with the conclusion of Phase 1 of the SIMBA Project, the Respondent requested them to submit written expressions of interest to continue working, which all five Claimants did.
16. The Respondent retained them as employees and paid their salaries for December 2021 and January 2022. On 18<sup>th</sup> January 2022, the Respondent issued letters directing them to proceed on what was



- termed an "unpaid break" effective 31<sup>st</sup> January 2022, essentially requiring them to work without pay while the Respondent sought funding for Phase 2 of the SIMBA Project. During this period, on 31<sup>st</sup> May 2022, the Respondent finalized a Memorandum of Understanding with its international donors, listing the Claimants as the Respondent's Project Personnel for Phase 2, scheduled to run until 31<sup>st</sup> March 2026. However, in July 2022, when funding began to be released, the Respondent, to their shock and disappointment, advertised their positions. Despite attempts to resolve the matter both directly and through legal representation, the Respondent failed to make amends or admit liability.
17. The 2<sup>nd</sup> Claimant stated that the Respondent's actions—advertising their positions, shortlisting candidates for interviews, and disregarding their prior written expressions of interest—demonstrated that they had been summarily and unfairly dismissed from employment. Before their termination, the Claimants had no disciplinary, poor performance, or physical incapacity issues and had always performed their duties with diligence, dedication, and integrity to the Respondent, its projects, and its partners. They were never subjected to a disciplinary hearing, nor were they issued with show cause letters to address any allegations or defend themselves against potential termination. The 2<sup>nd</sup> Claimant affirmed that her conduct had always been beyond reproach and humbly prayed for the Honourable Court to award her the dues as pleaded in the Statement of Claim. She concluded by stating that this was all she wished to declare at the moment.
  18. The 3<sup>rd</sup> Claimant filed a Witness Statement dated 3<sup>rd</sup> October 2022, stating that he was an employee of the Respondent, serving as the Cluster Coordinator for Isiolo/Samburu in the donor-funded Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project. At the end of their contracts in November 2021, coinciding with the conclusion of Phase 1 of the SIMBA Project, the Respondent requested them to submit written expressions of interest to continue working, which all five Claimants did. The Respondent retained them as employees and paid their salaries for December 2021 and January 2022. On 18<sup>th</sup> January 2022, the Respondent issued letters directing them to proceed on what was termed an "unpaid break" effective 31<sup>st</sup> January 2022, essentially requiring them to work without pay while the Respondent sought funding for Phase 2 of the SIMBA Project.
  19. During this period, on 31<sup>st</sup> May 2022, the Respondent finalized a Memorandum of Understanding with its international donors, listing the Claimants as the Respondent's Project Personnel for Phase 2, scheduled to run until 31<sup>st</sup> March 2026. However, in July 2022, when funding began to be released, the Respondent, to their shock and disappointment, advertised their positions. Despite attempts to resolve the matter both directly and through legal representation, the Respondent failed to make amends or admit liability. The 3<sup>rd</sup> Claimant stated that the Respondent's actions—advertising their positions, shortlisting candidates for interviews, and disregarding their prior written expressions of interest—demonstrated that they had been summarily dismissed from employment. Before their termination, the Claimants had no disciplinary, poor performance, or physical incapacity issues and had always performed their duties with diligence, dedication, and integrity to the Respondent, its projects, and its partners.
  20. They were never subjected to a disciplinary hearing, nor were they issued with show cause letters to address any allegations or defend themselves against potential termination. The 3<sup>rd</sup> Claimant affirmed that his conduct had always been beyond reproach and humbly prayed for the Honourable Court to award him the dues as pleaded in the Statement of Claim. He concluded by stating that this was all he wished to declare at the moment.
  21. The 4<sup>th</sup> Claimant filed a Witness Statement dated 3<sup>rd</sup> October 2022, stating that he was an employee of the Respondent, serving as the Cluster Coordinator for Highway in the donor-funded Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project. At the end of their contracts in



- November 2021, coinciding with the conclusion of Phase 1 of the SIMBA Project, the Respondent requested them to submit written expressions of interest to continue working, which all five Claimants did. The Respondent retained them as employees and paid their salaries for December 2021 and January 2022. On 18<sup>th</sup> January 2022, the Respondent issued letters directing them to proceed on what was termed an "unpaid break" effective 31<sup>st</sup> January 2022, essentially requiring them to work without pay while the Respondent sought funding for Phase 2 of the SIMBA Project.
22. During this period, on 31<sup>st</sup> May 2022, the Respondent finalized a Memorandum of Understanding with its international donors, listing the Claimants as the Respondent's Project Personnel for Phase 2, scheduled to run until 31<sup>st</sup> March 2026. However, in July 2022, when funding began to be released, the Respondent, to their shock and disappointment, advertised their positions. Despite attempts to resolve the matter both directly and through legal representation, the Respondent failed to make amends or admit liability.
  23. The 4<sup>th</sup> Claimant stated that the Respondent's actions—advertising their positions, shortlisting candidates for interviews, and disregarding their prior written expressions of interest—demonstrated that they had been summarily and unfairly dismissed from employment. Before their termination, the Claimants had no disciplinary, poor performance, or physical incapacity issues and had always performed their duties with diligence, dedication, and integrity to the Respondent, its projects, and its partners. They were never subjected to a disciplinary hearing, nor were they issued with show cause letters to address any allegations or defend themselves against potential termination.
  24. The 4<sup>th</sup> Claimant affirmed that his conduct had always been beyond reproach and humbly prayed for the Honourable Court to award him the dues as pleaded in the Statement of Claim. He concluded by stating that this was all he wished to declare at the moment.
  25. The 5<sup>th</sup> Claimant filed a Witness Statement dated 3<sup>rd</sup> October 2022, stating that he was an employee of the Respondent, serving as a Project Driver in the donor-funded Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project. At the end of their contracts in November 2021, coinciding with the conclusion of Phase 1 of the SIMBA Project, the Respondent requested them to submit written expressions of interest to continue working, which all five Claimants did.
  26. The Respondent retained them as employees and paid their salaries for December 2021 and January 2022. On 18<sup>th</sup> January 2022, the Respondent issued letters directing them to proceed on what was termed an "unpaid break" effective 31<sup>st</sup> January 2022, essentially requiring them to work without pay while the Respondent sought funding for Phase 2 of the SIMBA Project. During this period, on 31<sup>st</sup> May 2022, the Respondent finalized a Memorandum of Understanding with its international donors, listing the Claimants as the Respondent's Project Personnel for Phase 2, scheduled to run until 31<sup>st</sup> March 2026.
  27. However, in July 2022, when funding began to be released, the Respondent, to their shock and disappointment, advertised their positions. Despite attempts to resolve the matter both directly and through legal representation, the Respondent failed to make amends or admit liability. The 5<sup>th</sup> Claimant stated that the Respondent's actions—advertising their positions, shortlisting candidates for interviews, and disregarding their prior written expressions of interest—demonstrated that they had been summarily and unfairly dismissed from employment.
  28. Before their termination, the Claimants had no disciplinary, poor performance, or physical incapacity issues and had always performed their duties with diligence, dedication, and integrity to the Respondent, its projects, and its partners. They were never subjected to a disciplinary hearing, nor were



they issued with show cause letters to address any allegations or defend themselves against potential termination.

29. The 5<sup>th</sup> Claimant affirmed that his conduct had always been beyond reproach and humbly prayed for the Honourable Court to award him the dues as pleaded in the Statement of Claim. He concluded by stating that this was all he wished to declare at the moment.

### **Claimant's Written Submissions**

30. The Claimants filed written submissions dated 13<sup>th</sup> January 2025, contending that their termination by the Respondent was unlawful, unfair, and contrary to the principles of equity and justice. They argued that their employment relationship with the Respondent, a faith-based NGO, was improperly terminated without due process, leaving them without pay despite their continued engagement in the Respondent's operations.
31. The Claimants, namely Faith Muthiani, Nancy Gathogo, Boniface Musyoki, Benjamin Njuki, and Jonathan Kibuga, were part of the Respondent's core team for the SIMBA Project, a donor-funded initiative focusing on Strengthening and Influencing Behavior and Attitude (SIMBA), including the prevention of human trafficking and exploitation.
32. They held various positions, with Faith Muthiani serving as Project Manager earning Kshs. 150,000 per month, Nancy Gathogo, Boniface Musyoki, and Benjamin Njuki as Project Researcher and Cluster Coordinators, each earning Kshs. 88,992 per month, and Jonathan Kibuga as Project Driver with a monthly salary of Kshs. 33,726. Their engagement with the Respondent began at different times, with Faith Muthiani in October 2016, Nancy Gathogo in March 2020, Boniface Musyoki in June 2018, Benjamin Njuki in May 2018, and Jonathan Kibuga in June 2018.
33. The Claimants averred that in November 2021, the Respondent requested them to express interest in continuing employment, which they did, anticipating the commencement of Phase II of the SIMBA Project. However, in January 2022, the Respondent issued them a letter directing them to proceed on an "unpaid break" from February 2022 to July 2022, with an assurance that salaries and arrears would be settled upon the availability of project funding.
34. Despite this, the Claimants continued working, ensuring the Respondent's operations were uninterrupted and actively participating in securing funding for Phase II. The Respondent listed them as project personnel in its Memorandum of Understanding with international donors dated 31<sup>st</sup> May 2022. Funding was secured between 7<sup>th</sup> and 12<sup>th</sup> July 2022, at which point the Claimants expected salary payments to resume.
35. Instead, the Respondent clandestinely advertised their positions, shortlisted candidates, and proceeded with recruitment without notifying them. The Claimants only learned of these developments belatedly and were never issued with notices of termination, show-cause letters, or subjected to any disciplinary process. They asserted that this was a blatant violation of Kenya's labour laws and the Respondent's internal policies.
36. The Claimants submitted that the letter dated 18<sup>th</sup> January 2022 did not constitute a valid termination notice as required under Section 35 of the *Employment Act*, 2007, and Clause 12 of their employment contracts. They argued that the letter merely referred to an "unpaid break" rather than termination, lacked explicit language to that effect, and was ambiguous. Citing *Adan v. New Kenya Co-operative Creameries Limited* [2012] eKLR, they contended that termination communication must be explicit.
37. They further relied on ILO Convention 158, Article 4, which provides that termination must be based on valid reasons effectively communicated to the employee. Given that the Respondent continued



engaging them, listing them as project personnel, and benefitting from their services, the Claimants argued that the letter could not be construed as a termination notice.

38. The Claimants further asserted that their legitimate expectation of continued employment was violated, citing *Communication Commission of Kenya & 5 Others v. Royal Media Services Limited & 5 Others* [2014] eKLR, which upheld the principle that public or private entities must honour their promises.
39. The Claimants further submitted that their termination was procedurally unfair and in contravention of Section 41 of the *Employment Act*, 2007, which mandates a fair hearing before termination. They relied on *Kenya Union of Commercial Food and Allied Workers v. Meru North Farmers Sacco Limited* [2013] eKLR, where the court held that procedural fairness is a cornerstone of lawful termination.
40. They also cited Article 7 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees fair treatment in employment disputes, and ILO Convention 158, Article 7, which requires that employees be allowed to defend themselves before termination. The Claimants contended that the Respondent failed to conduct a disciplinary hearing or provide any justification for their termination, violating both statutory and international standards.
41. Additionally, they relied on *Kenya Airways Limited v. Aviation & Allied Workers Union Kenya & 3 Others* [No. E079 of 2014] eKLR, where the court emphasized that termination must be based on valid reasons and adhere to the procedures set out in the law. They submitted that the Respondent's failure to follow due process rendered their termination unlawful.
42. The Claimants sought several remedies, including six months' salary arrears for the unpaid break period, arguing that the Respondent actively engaged them during this time and benefited from their services. They also sought three months' payment in lieu of notice per the Respondent's Human Resource Manual, citing Clauses F.9 and F.12.3, which provide for notice or pay in lieu thereof. They further sought salaries for four years, the duration of Phase II of the SIMBA Project, asserting that their listing as project personnel and continued engagement created a legitimate expectation of employment for that period.
43. They also sought compensation for unfair termination, relying on Section 49(1)(c) of the *Employment Act*, 2007, which allows an award of up to twelve months' salary as damages for unlawful termination. They contended that their dismissal was unjustified and that they suffered loss and damage due to the Respondent's actions. The Claimants concluded by urging the Court to grant the prayers sought in their Statement of Claim dated 3<sup>rd</sup> October 2022.

### **Respondent's Case**

44. The Respondent filed a Response to the Statement of Claim dated 16<sup>th</sup> December 2022, denying each and every allegation set out in the Claimants' Statement of Claim, except where specifically admitted, and putting the Claimants to strict proof thereof. The Respondent admitted the contents of paragraphs 1, 2, and 3 of the Statement of Claim in so far as they were mere descriptions of the parties but clarified that its address of service for the purpose of this suit was Messrs. KWEW Advocates LLP.
45. The Respondent asserted that the Claimants were its employees for a fixed term of eleven months, which expired on 31<sup>st</sup> October 2021, and denied all allegations to the contrary. It further denied engaging the Claimants in resource mobilization for the SIMBA Project and put them to strict proof.
46. The Respondent stated that it follows a clearly defined procedure in its decision-making, as demonstrated in 2020 when the Claimants were initially contracted. The recruitment process involved advertising positions, conducting a successful selection process, and issuing contracts. In mid-2022,



- the Respondent advertised positions for one of its projects and invited the Claimants to apply, but they refused or failed to do so.
47. The Respondent further stated that an expression of interest is merely an invitation to treat and not an offer, and even if it were an offer, it would require acceptance by the Respondent's competent organs to be binding. The Respondent denied that it engaged the Claimants after the expiry of their contracts and stated that their employment ended on 31<sup>st</sup> October 2021, after which they were duly paid all their wages.
  48. It reiterated that their contracts were never renewed, and they were not engaged in resource mobilization. The Respondent denied the allegations that the Claimants were placed on an "unpaid break" or listed as Project Personnel for Phase 2 of the SIMBA Project, asserting that it never engaged their services beyond the expiry of their contracts in 2021. It denied that their positions were advertised after the release of funding in July 2022 as a means to unfairly dismiss them, maintaining that they had not been in employment since October 2021.
  49. The Respondent further denied that the Claimants were dismissed unfairly, arguing that their contracts had lapsed by effluxion of time and, therefore, they could not have been summarily dismissed in 2022, as alleged. It reiterated that it never sought their services beyond the expiry of their contracts and never engaged them in any capacity, including resource mobilization.
  50. The Respondent admitted the jurisdiction of the Honourable Court but asserted that the Statement of Claim was bad in law, fatally defective, unsustainable, misconceived, and incompetent, as it raised no cause of action against the Respondent. It prayed for the dismissal of the claim with costs.
  51. The Respondents, through Lt. Col. David Musyoki, filed a Witness Statement dated 27<sup>th</sup> March 2024, stating that he is the Secretary for Business Administration of the Respondent and is conversant with all the facts in issue in this case. He confirmed that the Respondent appointed the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Claimants as employees for the Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project on a fixed-term contract of eleven months from 1<sup>st</sup> December 2020 to 31<sup>st</sup> October 2021.
  52. The 1<sup>st</sup> Claimant was employed as a Field Coordinator, earning a gross salary of Kshs. 88,992 per month. The 2<sup>nd</sup> Claimant was employed as a Researcher, earning Kshs. 88,992 per month. The 3<sup>rd</sup> Claimant was employed as a Field Coordinator, earning Kshs. 88,992 per month. The 4<sup>th</sup> Claimant was employed as a Field Coordinator, earning Kshs. 88,992 per month, and the 5<sup>th</sup> Claimant was employed as a Project Driver, earning Kshs. 33,372 per month.
  53. The 1<sup>st</sup> Claimant was initially employed as a Field Coordinator on 1<sup>st</sup> December 2020, but following a board meeting held on the same day, she was appointed as Project Manager in place of Ann Makumi. She only served as a manager for nine months before the expiry of her contract.
  54. The contract of employment for all five Claimants lapsed by effluxion of time on 31<sup>st</sup> October 2021, and they were duly paid all their wages upon expiry of their contracts. The Respondent never renewed their contracts and did not engage their services in any capacity thereafter, including resource mobilization. The Respondent follows a clearly defined decision-making process, as demonstrated in 2020 when the Claimants were first contracted. The Respondent advertises for various positions, conducts a competitive recruitment process, and contracts the successful applicants for the designated tasks.
  55. In July 2022, the Respondent advertised positions for one of its projects and invited the Claimants to apply. However, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Claimants refused, ignored, or failed to apply for



- the positions. The renewal of their contracts was dependent on following the application process, yet instead of applying, they wrote a protest letter to the Director of the Respondent against the advertisements.
56. The Respondent maintained that the Claimants were neither dismissed nor unfairly terminated from employment, as their contracts had lapsed by effluxion of time on 31<sup>st</sup> October 2021. The Respondent never renewed their contracts and does not owe them any money, as they were paid all their dues upon expiry of their employment contracts. However, as a Christian organization and out of charity, the Respondent continued to pay their salaries from November 2021 to January 2022 to help them adjust to the tough economic conditions since they had no other source of income. The Respondent concluded.
  57. The Respondents, further through Captain Isaac Kyale Wambua, filed a Witness Statement dated 27<sup>th</sup> March 2024, stating that he is the Assistant Development Officer overseeing the implementation of the Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project and is conversant with all the facts in issue in this case.
  58. He confirmed that the Respondent appointed the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Claimants as employees for the SIMBA Project on a fixed-term contract of eleven months from 1<sup>st</sup> December 2020 to 31<sup>st</sup> October 2021. The 1<sup>st</sup> Claimant was employed as a Field Coordinator earning a gross salary of Kshs. 88,992 per month, the 2<sup>nd</sup> Claimant as a Researcher earning Kshs. 88,992 per month, the 3<sup>rd</sup> Claimant as a Field Coordinator earning Kshs. 88,992 per month, the 4<sup>th</sup> Claimant as a Field Coordinator earning Kshs. 88,992 per month, and the 5<sup>th</sup> Claimant as a Project Driver earning Kshs. 33,372 per month.
  59. The 1<sup>st</sup> Claimant was initially employed as a Field Coordinator on 1st December 2020, but following a board meeting held on the same day, she was appointed as Project Manager in place of Ann Makumi and served in that capacity for nine months before her contract expired.
  60. The contract of employment for all five Claimants lapsed by effluxion of time on 31<sup>st</sup> October 2021, and they were duly paid all their wages upon expiry of their contracts. The Respondent never renewed their contracts and did not engage their services in any capacity thereafter, including resource mobilization. On 31<sup>st</sup> January 2022, after the expiry of the Claimants' employment contracts, the witness informed the 1<sup>st</sup> Claimant to clear with the Respondent. Since she had been the Project Manager before the expiry of her contract, she was requested to notify the other Claimants and ask them to also clear with the Respondent.
  61. The clearance process required them to return all Respondent property in their possession, including laptops, a motorcycle, car keys for the project vehicle, and an internet router. However, the Claimants refused, ignored, or neglected to comply. As a follow-up, the witness attempted to contact the 1<sup>st</sup> Claimant on 31<sup>st</sup> January 2022 via phone, but she did not respond, and to date, the Claimants have not returned the Respondent's property.
  62. The Respondent follows a clearly defined decision-making process, as demonstrated in 2020 when the Claimants were first contracted. The Respondent advertises for various positions, conducts a competitive recruitment process, and contracts the successful applicants for the designated tasks. In July 2022, the Respondent advertised positions for one of its projects and invited the Claimants to apply.
  63. However, they refused, ignored, or failed to do so, despite the fact that the renewal of their contracts was dependent on them following the procedure and applying. Instead of applying, they wrote a protest letter to the Respondent's Director against the advertisements. The witness maintained that



the Claimants were neither dismissed nor unfairly terminated from employment, as their contracts had lapsed by effluxion of time on 31<sup>st</sup> October 2021.

64. The Respondent never renewed their contracts and does not owe them any money, as they were paid all their dues upon expiry of their employment contracts. However, as a Christian organization and out of charity, the Respondent continued to pay their salaries from November 2021 to January 2022 to help them adjust to the tough economic conditions since they had no other source of income. The witness concluded.

### **Respondent's Written Submissions**

65. The Respondent filed written submissions dated 5<sup>th</sup> February 2025, stating that the Claimants instituted the suit by filing a Statement of Claim, Verifying Affidavit, Claimants' list of witnesses, witness statements, and Claimants' list of documents, all dated 3<sup>rd</sup> October 2019. In response, the Respondent filed its Response to the Statement of Claim dated 16<sup>th</sup> December 2022. Further, on 4<sup>th</sup> April 2024, the Respondent filed the Respondent's list of witnesses, witness statements by Lt. Col. David Musyoki and Captain Isaac Kyale Wambua, and a list of documents, all dated 27<sup>th</sup> March 2024.
66. The suit came up for hearing on 3<sup>rd</sup> October 2022 and further hearing on 18<sup>th</sup> November 2024, during which the Claimants and the Respondent gave sworn evidence and were cross-examined. After the closure of the hearing, the court granted the parties time to file and exchange written submissions. The Claimants filed their written submissions and served the Respondent on 23<sup>rd</sup> December 2024. The Respondent submitted on the issues emanating from the pleadings and hearings on 3<sup>rd</sup> October 2024 and 18<sup>th</sup> November 2024.
67. The Respondent stated that the Claimants were employed under the Strengthening and Influencing Mankind's Behaviour and Attitude (SIMBA) Project, Phase 1, on fixed-term contracts of eleven months from 1<sup>st</sup> December 2020 to 31<sup>st</sup> October 2021. Upon expiry of these contracts, the Claimants were paid all their wages. Out of charity, the Respondent, being a Christian organization, continued to pay the Claimants' salaries from November 2021 to January 2022 to help them adjust to the economic situation and complete their work for the SIMBA Project Phase 1.
68. The Claimants were later advised not to report to work and to wait for funding for SIMBA Project Phase II. Once funding was secured, the Respondent advertised for positions in July 2022 and invited the Claimants to apply. However, they refused, ignored, or failed to apply, despite the renewal of their contracts being dependent on following the application process. The Respondent emphasized that the Claimants had fixed-term contracts that expired on 31<sup>st</sup> October 2021 and were never renewed, nor were new contracts entered into.
69. The Claimants had not cleared with the Respondent as required under its Human Resource Policy and remained in possession of the Respondent's property, including laptops, Wi-Fi routers, and a motorcycle.
70. The Respondent argued that failure to renew a fixed-term contract does not amount to unfair termination. The Claimants had expressed interest in renewal, but SIMBA Project Phase II was a new project, and the Respondent's policies required them to apply for the positions, which they failed to do. The Respondent produced documentary evidence showing that the Claimants were to be given priority as former employees, as evidenced in meeting minutes dated 19<sup>th</sup> August 2022, contained in the Respondent's bundle of documents dated 27<sup>th</sup> March 2024.
71. The Respondent asserted that the Claimants could not claim legitimate expectation when there was no employment contract, nor any express or implied intention to renew the same. It was not obligated



- to provide reasons for declining to renew their contracts. The Respondent cited H.W.R. Wade & C.F. Forsyth on Administrative Law (Oxford University Press, 2000) at pages 449-450, stating that an expectation must be based on a promise or practice and cannot override clear statutory provisions. The Court in Samuel Chacha Mwita v Kenya Medical Research Institute [2014] eKLR held that a fixed-term contract expires automatically upon reaching the termination date and does not necessarily constitute dismissal.
72. The Respondent also relied on Rajah Barasa & 4 Others v Kenya Meat Commission [2016] eKLR, which held that a fixed contract does not renew automatically, and Trocaire v Catherine Wambui Karuno [2018] eKLR, where the Court of Appeal ruled that once a fixed-term contract ends, the employer has no obligation to justify termination beyond the lapse of time. Additionally, the Court of Appeal in Registered Trustees of the Presbyterian Church of East Africa & Another v Ruth Gathoni Ngotho Kariuki [2017] eKLR set aside a High Court ruling that had implied renewal of a contract, affirming that renewal must be based on mutual consent.
73. The Respondent argued that the Claimants had not demonstrated legitimate expectation, nor had they established a basis for their claim. They were notified in good time to apply for SIMBA Project Phase II but failed to follow the renewal process. Furthermore, the Claimants had not cleared with the Respondent. Regarding reliefs sought, the Claimants had not provided sufficient evidence to justify their claims.
74. The 1<sup>st</sup> Claimant admitted during cross-examination that she was merely copied in emails produced as proof of work between February and July 2022. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Claimants did not produce any evidence proving they worked for the Respondent during this period. On notice pay, their contracts only provided for one month's salary, and since their contracts lapsed by effluxion of time, they were not entitled to this relief. The Respondent contended that the Claim was baseless and an abuse of the court process.
75. The Respondent submitted that the Claimants had failed to prove their case and that the Claim lacked merit. It urged the court to dismiss the Claim with costs, as the Claimants had approached the court with distorted information and half-truths. The Respondent concluded that the Claim had no justiciable issues and prayed that the Honourable Court dismiss the Claim with costs.
76. I have examined the evidence and submissions of the parties herein. From the facts of this case, the claimants were indeed employed by the respondents in the capacities indicated and at salaries shown in this judgment.
77. The claimant's letters of appointment show that they were each employed vide contracts signed on 14/12/2020. They were to serve on an eleven month's contract w.e.f 1<sup>st</sup> December 2020 to 31<sup>st</sup> October 2021.
78. Given that the claimant served on a fixed term contract which was ending on 31/10/21 it would have sufficed to say that the contracts ended by affluxion of time. However, the claimants contends that as their contracts were ending they were asked to proceed on unpaid six months contract as they were awaiting the next phase of the project dubbed Simba phase 2.
79. The claimants have produced some email communication between themselves and the respondents during the intervening period to show that the claimants were indeed working.
80. On 17/3/2022 at 6.42 am Moses Njagi wrote to Faith Muthoni as follows:-

“ dear Faith, Greetings.



Go through the MOU forwarded below and give your input. God bless you.

Yours sincerely,

Moses Njagi

captain...”

Faith indeed did the work and reported back to Moses vide her email of 17<sup>th</sup> March 2022 at 10.45 pm.

81. On 19/5/2022 at 7.34 am, Ann Kiawa wrote to Faith again forwarded a document nominating Faith to represent the territory in the coming conference as they awaited the appraisal. Faith responded agreeing to attend the conference. After the conference, Ann again wrote to Faith, Damaris Glory on 13/6/22 thanking them for attending the conference and requested them to compile a report on the same.
82. On 17/6/22 7.07 am, Moses Njagi wrote to Faith again asking her to look at an attached email and plan when they could meet and discuss it. Faith worked on the document and responded to Moses again on Sunday 19<sup>th</sup> June 2022 at 22.59pm. Her input was received and acknowledged by Moses on 20<sup>th</sup> June 2022 at 6.06 am. On June 23<sup>rd</sup> 2022 at 8.28 am Zoe wrote to Faith thanking her for work that was so urgent and indicated:

“I hated that it was so urgent and couldn’t wait until you had started your contract. So thank you again and I am very much looking forward to working with you again.”

83. Another email of 15<sup>th</sup> July 2022 at 3.35 pm from Zoe Neill to Moses and Faith went as follows:

Dear Captain Moses

I hope you're doing well!

I'm very excited that the SIMBA project has started up again. Please see the confirmation attached that the first tranche was sent last week. Could you kindly confirm that it has been received?

I'll check in with SWI to see when they plan to send theirs. I'm unsure of who will be looking after the project now that Kibrom has left, so will reach out to them to find out.

I also wanted to check in that everything has started okay? Have all of the staff been rehired? Are there any positions that need recruiting?

Would love to speak with yourself and Faith next week to discuss how we can get the project up and running! Would Monday or Tuesday at 9am work for you?

Hope you have a wonderful weekend!

Kind regards,

Zoe

The Salvation Army

International Development Australia

Ms Zoe Neill

Project Coordinator

Salvation army International development (SAID)

The salvation army Australia Territory



84. Another email of 20/7/2022 from Moses shows that the project was now on two and half weeks and there was need to meet and discuss to run it. My reading of these email trails show that despite the claimant's contract having come to an end on 31/10/21 the claimant Faith and team continued to work and were lead to believe that they were going to be absorbed in the next phase. They were asked to write reports and even attended a conference in the period after 31/10/21. The conclusion is that they were still engaged by the respondents and the communication even from Zoe indicated that in the next phase Faith was still on board. She actually had a legitimate expectation that she was part and parcel of the next phase of the project. On 20/7/22 at 2.05 Faith and Moses were even introduced to Annita from SW1 territory who was going to be the new point of contact from then on.
85. It is indeed unfortunate that the claimants were never brought on board the new project despite being held by the respondents for over 6 months and being led on till July 2022 when the respondents advertised for the position previously held by the claimant.
86. In view of the fact that the claimants were made to work with a hope of another contract which never came forth it is my finding that they are entitled to the 6 months' salary not paid during the said period and which translates to:
1. Faith Muthoni Kshs 150,000x6= Kshs 900,000/-
  2. Nancy Gathoni Kshs 88,992x6= Kshs 533,952/-
  3. Boniface Nzioka Kshs 88,992x6= Kshs 533,952/-
  4. Benjamin Nyaga Kshs 88,992x6= Kshs 533,952/-
  5. Jonathan Wangui Kshs 33,726x6= Kshs 202,356/-
  6. Each claimant will also be paid 3 months' salary as compensation for the reason of unfairness they were subjected to which translates to totals:
    1. Kshs 1,350,000/-
    2. Kshs 800,928/-
    3. Kshs 800, 928/-
    4. Kshs 800,928/- and
    5. Kshs 303,534/- respectively.
  7. The respondents will issue the claimants with a certificate of service.
  8. The respondents will pay costs of this suit pus interest at court rates w.e.f the date of this judgement.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF FEBRUARY, 2025.**

**HELLEN WASILWA**

**JUDGE**

