

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS  
COURT AT NAIROBI  
CAUSE NO. 2463 OF 2012**

**PAULINE WANGARE NG'ANG'A** 1<sup>st</sup>  
**CLAIMANT**

**MOSES NDOHO NJENGA** 2<sup>nd</sup>  
**CLAIMANT**

**SIMON KIOKO MULE** 3<sup>rd</sup>  
**CLAIMANT**

**JONATHAN MWAKO** 4<sup>th</sup>  
**CLAIMANT**

**JAMES MUNGAI KUNGU** 5<sup>th</sup>  
**CLAIMANT**

**COUNTY GOVERNMENT OF KAJIADO** 1<sup>st</sup>  
**RESPONDENT**

**MINISTRY OF DEVOLUTION & PLANNING**  
**THROUGH HON ATTORNEY GENERAL** 2<sup>nd</sup>  
**RESPONDENT**



1. Sometime in 2010, the County Council of Kajiado requested the Ministry of Local Government to assist in conducting a staff audit. The audit was conducted from 26 April 2010 to 7 May 2010.
2. The staff audit report was tabled before the Council's Finance and General Purposes

Committee and adopted on 16 September 2010.

3. On or around 23 February 2011, the Ministry of Local Government instructed the Council to terminate the contracts of casual employees and on 21 April 2011, the Council notified all Heads of Sections and Administrative Officers of the decision. The terminations were to be effective on 30 April 2011.

4. On or around 28 April 2011, the Council advertised vacancies for 50 casual employees, and the minimum qualification was KCPE (30 employees) and KCSE (20 employees). The vacancies were open to internal and external persons.

5. On 23 August 2011, the Council sought the approval of the Ministry to absorb 10 casual employees involved in garbage collection into permanent establishment as cleaners.

6. The Council later sought another approval to engage 50 casual employees on 3-month contracts to assist in garbage collection in trading centres around Nairobi city.
7. The Ministry approved the request on 26 October 2011.
8. On 16 January 2012, the Council published a score sheet of applicants. The Claimants were not successful.
9. The 5 Claimants sued the Respondents on or around 7 December 2012, alleging violation of their fair labour rights and breach of contract.
10. The Respondents filed a Memorandum of Response on 5 February 2013.
11. On 6 February 2018, the Court granted leave to the Claimants to file an Amended Memorandum of Claim, and it was filed on 8 February 2018.
12. The remedies sought in the Amended Statement of Claim were:

(i) Protection against discrimination, casual treatment and denial of proper contracts of service.

(ii) A declaration that, having worked for more than 24 hours

enabling them to be permanent and pensionable employees and not casual employees.

(iii) A declaration that the years they have worked be treated as their service in permanent and pensionable employment.

(iv) An order compelling the

Respondent to comply with law relating to occupational safety and

health for the Claimants.

(v) Damages for discrimination.

(vi) Costs of the suit.

13. The County Government filed a Response to the Amended Memorandum of Claim on 2 June

2018, in which it contended that the Claimants did not possess the minimum qualifications to be employed or absorbed.

14. On 2 May 2018, the Court adopted the Issues as proposed by the Claimants, to wit:

(i) Whether the Claimants are employees of the 1<sup>st</sup> Respondent, which falls under the National supervision of the 2<sup>nd</sup> Respondent?

(ii) Whether, as at the time of filing this suit, the Claimants had been in the employment of the 1<sup>st</sup> Respondent continually for the

following number of years:-

**NAIROBI**

1<sup>st</sup> Claimant - 8 years

2<sup>nd</sup> Claimant - 6 years

3<sup>rd</sup> Claimant - 7 years

4<sup>th</sup> Claimant - 2 years

5<sup>th</sup> Claimant - 10 years

(iii) Whether by operation of the law, the Claimants are permanent employees or term contract employees in terms of section 37 of the Employment Act, 2007.

(iv) Whether if the answer to 3 above is in the affirmative, the job description and service terms of

the Claimants ought to be reduced into writing in terms of section 35 of the Employment Act, 2007?

(v) Whether the Claimants have been discriminated against and deserve

protection and compensation, and

**NAIROBI**

if so, what should be the quantum of compensation?

(vi) Whether the years worked by the Claimants should be treated as their service years in contract term or permanent employment,

and whether they should be awarded pension and or other emoluments as required by law, and if so, which emoluments?

(vii) Whether the Respondent should be compelled to comply with laws relating to occupational safety and health for the Claimants?

(viii) What order should be made as regards costs for this suit?

15. The Cause was heard on 17 March 2025. Pauline Wangare Ng'ang'a (the 1<sup>st</sup> Claimant) and James Mungai Kungu (the 5<sup>th</sup> Claimant) testified. The Respondents did not present evidence.

16. The Claimants filed their submissions on 8 April 2025, and the 1<sup>st</sup> Respondent on 11 April 2025.

17. The Court has considered the pleadings, evidence and submissions.

### **Employment relationship**

18. The 1<sup>st</sup> Claimant stated in her testimony that she was employed by the County Government in 2003 until dismissal through a phone call in 2018. She stated that she was paid per day. In cross-examination, she testified that she was not issued a formal contract.

19. The 5<sup>th</sup> Claimant's testimony was that he was employed by the County Government in 2000 and was dismissed through a phone call in 2018. He also stated that he was not given a formal contract.

20. The County Government denied in its Response that the Claimants were its employees.

21. The Employment Act, 2007, contemplates oral contracts as well as casual employment. In case of an oral contract, an employee would not have primary evidence of the contract, i.e, a letter of appointment.

22. In such cases, it is open to the employee to rely on secondary evidence to prove that an

employment relationship existed. The secondary evidence can be in the form of payroll schedules, job identity cards or statutory records kept by institutions such as the National Social Security Fund or the National Hospital Insurance Fund.

23. An employee may also rely on the oral testimony of a colleague or supervisor.

24. The Claimants herein did not place before the Court any type of evidence to show that they were in an employment relationship with the County Government.

### **Orders**

25. Arising from the above, the Court finds no merit in the Cause and it is dismissed with no order on costs.

**Delivered virtually, dated and signed in Nairobi on this 8<sup>th</sup> day of May 2025.**

**Radido Stephen, MCI Arb**

## **Judge**

### **Appearances**

For Claimants

Waiswa Abed & Co.  
Advocates

For 1<sup>st</sup> Respondent

Katunga Mbuvi &  
Co. Advocates

For 2<sup>nd</sup> Respondent

Office of the Hon  
Attorney General

Court Assistant

Wangu



# **NAIROBI**