



Nzau & 2 others v Crescent Construction Company Limited (Cause 484 of 2020) [2025] KEELRC 2179 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2179 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 484 OF 2020**

**L NDOLO, J
JULY 24, 2025**

BETWEEN

**SAMUEL KIIO NZAU 1ST CLAIMANT
MAKAU MWANGANGI 2ND CLAIMANT
ALPHONCE MUTUKU MUSEMBI 3RD CLAIMANT**

AND

CRESCENT CONSTRUCTION COMPANY LIMITED RESPONDENT

JUDGMENT

1. This matter was initially filed in the High Court at Milimani as HCCC No 395 of 2008. Pursuant to the Claimants’ Notice of Motion dated 3rd November 2014, it was transferred to this Court, by an order issued by Kasango J on 22nd July 2020.
2. After the transfer of the matter, the Claimants filed a Memorandum of Claim dated 1st March 2023, to replace their Complaint dated 4th July 2008, filed at the High Court. The Respondent filed a Response dated 2nd May 2023.
3. The matter proceeded to trial where the 1st Claimant, Samuel Kiio Nzau testified on his own behalf and on behalf of his co-claimants. The Respondent chose not to call any witness. Only the Respondent filed written submissions.

The Claimants’ Case

4. In their Memorandum of Claim dated 1st March 2023, the Claimants state that they were employed by the Respondent on diverse dates. The 1st Claimant, Samuel Kiio Nzau avers that he was employed as a driver on 10th July 2006 for a renewable term of two years.



5. He claims to have earned a monthly salary of Kshs. 15,938 plus a house allowance of Kshs. 3,180. The 1st Claimant worked for the Respondent until 22nd May 2007, when his employment was terminated.
6. The 2nd Claimant, Makau Mwangangi states that he worked for the Respondent from 19th November 2006 until 25th December 2002 and again from 26th March 2006 until 10th May 2007, when his employment was terminated. As at the date of termination, he earned a monthly salary of Kshs. 15,938 plus a house allowance of Kshs. 3,180.
7. The 3rd Claimant, Alphonse Mutuku Musembi avers that he was employed by the Respondent as a driver, from 10th July 2006 until 10th May 2007, when his employment was terminated. He earned a monthly salary of Kshs. 16,380 plus a house allowance of Kshs. 3,276.
8. The Claimants accuse the Respondent of terminating their employment without notice. They claim that their employment contracts entitled them to housing allowance at the rate of 20% of their basic salary, but they were instead paid a monthly figure of Kshs. 2,000.
9. The Claimants aver that they did not utilise their 21 days' annual leave as provided in their employment contracts. They add that they were grossly underpaid and that their salaries were subjected to unlawful deductions in the name of service charge.
10. The Claimants further accuse the Respondent of failing to remit National Social Security Fund (NSSF) deductions made from their salaries.
11. In addition, they claim to have worked overtime without compensation. Moreover, they complain that they were not issued with certificates of service.
12. The Claimants lay a claim of wrongful dismissal and therefore claim the following:
 1. 1st Claimant: Samuel Kiio Nzau
 - a. Accrued and unpaid housing allowance.....Kshs. 11,800
 - b. Unlawful service charge deductions.....3,200
 - c. Accrued overtime.....16,397
 - d. Unpaid leave days.....3,678
 - e. Unpaid public holidays/Sundays.....11,400
 - f. Accrued salary arrears (underpayment).....57,049
 - g. Payment in lieu of notice.....19,118
 - h. Damages for premature termination (14 months).....267,652
 - i. Unremitted NSSF deductions.....4,000
 2. 2nd Claimant: Makau Mwangangi
 - a. Accrued and unpaid housing allowance.....Kshs. 16,520
 - b. Unlawful service charge deductions.....4,160
 - c. Accrued overtime.....13,794
 - d. Unpaid leave days.....8,085



- e. Unpaid public holidays/Sundays.....11,400
 - f. Accrued salary arrears (underpayment).....6,615
 - g. Payment in lieu of notice.....19,118
 - h. Damages for premature termination (11 months).....210,298
 - i. Unremitted NSSF deductions.....5,200
3. 3rd Claimant: Alphonse Mutuku Musembi
- a. Accrued and unpaid housing allowance.....Kshs. 16,588
 - b. Unlawful service charge deductions.....3,200
 - c. Accrued overtime.....4,400
 - d. Unpaid leave days.....6,300
 - e. Unpaid public holidays/Sundays.....11,400
 - f. Accrued salary arrears (underpayment).....5,670
 - g. Payment in lieu of notice.....19,118
 - h. Damages for premature termination (14 months).....275,184
 - i. Unremitted NSSF deductions.....29,600

13. The Claimants also ask for certificates of service plus costs of the case.

The Respondent's Case

- 14. In its Response dated 2nd May 2023, the Respondent states that the termination of the Claimants' employment was due to completion of work in the project in which they were employed. The Respondent asserts that this was part of the Memoranda of Agreement between itself and the Claimants.
- 15. The Respondent avers that the Claimants were issued with respective one-month termination notices and maintains that due process was observed in terminating the Claimants' employment.
- 16. The Respondent states that all statutory deductions made from the Claimants' salaries were remitted to the relevant statutory institutions.
- 17. The Respondent denies the allegation that the Claimants worked overtime hours, on Sundays or during public holidays.
- 18. The Respondent further denies the allegation of failure to issue certificates of service to the Claimants.
- 19. The Respondent denies the Claimants entire claim and puts them to strict proof.

Findings and Determination

- 20. There are two issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimants are entitled to the remedies sought.



The Termination

21. The Respondent's defence to the Claimants' claim of unlawful termination is that the employment was pegged on specific projects whose completion determined the end date.
22. The termination of the Claimants' employment was communicated by individual notices stating as follows:

“Notice Of Termination

As per the Memorandum of Agreement, you are hereby given one-month notice for the termination of your employment with Crescent Construction Company Ltd with effect from...due to completion of work in your section.

Please initial the space given below as your acceptance of your notice.

We thank you for your contribution to the project and hope we shall require your services in our future projects.”

23. The 1st Claimant, Samuel Kiio Nzau testified before the Court that he was employed on specific projects, which according to him, were still ongoing. His testimony that the projects were ongoing was however not corroborated as his co-claimants did not testify.
24. Employees engaged to work in specific projects are in fact employed on fixed term contracts whose end date would ordinarily coincide with the completion date of the projects.
25. The law is fairly well settled that in the normal scheme of things, fixed term contracts carry no obligation or expectation for renewal. In its decision in Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho Kariuki [2017] eKLR, the Court of Appeal held that fixed term contracts carry no rights, obligations or expectations beyond the date of expiry.
26. This position was affirmed in the subsequent case of Trocaire v Catherine Wambui Karuno [2018] eKLR where the Appellate Court stated the following:

“It is clear from the evidence on record that the respondent's employment was governed by fixed term contracts. As aptly observed by Lord Denning MR in British Broadcasting Corporation vs Ioannou [1975] 2 All ER 999 such a contract binds parties for the term stated in the agreement. “

27. In this case, the Claimants' employment was tied to completion of the projects in which they were employed. This is what was communicated in the notices issued to them. I therefore find nothing to suggest unlawful or unfair termination of employment.
28. The claim for damages for premature termination is therefore without basis and is disallowed.
29. My reading of the notices issued to the Claimants is that they were each given a one-month notice and the claim for payment in lieu thereof is therefore also without basis.
30. The Claimants' claim for house allowance was premised on the averment that the payments made in this regard were below the threshold of 20% set in the employment contracts. The Claimants did not however adduce any evidence to support this entitlement. This claim therefore also fails.
31. The claims for unlawful service charge deductions, accrued overtime, unpaid leave days, unpaid public holidays/Sundays, underpayment and unremitted NSSF deductions were not proved.



32. Overall, the Claimants' entire claim fails and is dismissed with an order that each party will bear their own costs.

33. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Ms. Adongo for the Claimant

Mr. Kangogo for the Respondent

