



**Obuya & 2 others v Valuepak Foods Limited (Cause 1297 of 2016)  
[2024] KEELRC 2402 (KLR) (2 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2402 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1297 OF 2016  
K OCHARO, J  
OCTOBER 2, 2024**

**BETWEEN**

**LEO OTIENO OBUYA ..... 1<sup>ST</sup> CLAIMANT**

**LUCAS K. MWOMOLA ..... 2<sup>ND</sup> CLAIMANT**

**FRANCIS GATU ..... 3<sup>RD</sup> CLAIMANT**

**AND**

**VALUEPAK FOODS LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Suing for themselves and on behalf of 45 other employees whose names appear on the “authority to act”- document dated 20<sup>th</sup> June 2016, the three Claimants abovenamed seek against the Respondent: -
  - a. A declaration that the Respondent’s actions amount to termination and/or constructive termination of the Claimants’ contracts of employment.
  - b. An order that the Respondent pays the Claimants twelve (12) months’ salary as compensation for the unfair termination of their employment amounting to Kshs. 11,873,184/-
  - c. An order that the Respondent pays the Claimants their unpaid salary for October 2015-February 2016, amounting to Kshs. 7,246,023/-
  - d. Severance pay for the Claimants on both permanent and contract terms at the rate of 15 days for each year served, amounting to Kshs. 6,698,120/-
  - e. The Claimants be paid one month’s salary in lieu of notice amounting to Kshs. 1,064,289/-
  - f. Accrued leave days of 21 days for the year 2016 amounting to Kshs. 637,232/-



- g. Issuance of a Certificate of Service
  - h. Costs and interests of this claim.
    - i. Any other and/or further relief that this Honourable Court may deem fit and/or just to grant.
2. Alongside the Statement of Claim dated 20<sup>th</sup> June 2016, the Claimants filed a Verifying Affidavit sworn by the 1<sup>st</sup> Claimant on 20<sup>th</sup> June 2016; Authority to Act duly executed by 45 Claimants dated 20<sup>th</sup> June 2016; 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> Claimants' Statements dated 20<sup>th</sup> June 2016; and Documents under the list dated 20<sup>th</sup> June 2016.
3. Although the Respondent filed a Response to Statement of Claim dated 20<sup>th</sup> July 2016, they failed to present any evidence at the hearing of this matter. Their Counsel on record ceased acting on their behalf on 11<sup>th</sup> February 2021 on the ground that the Respondent had been placed under receivership.
4. The matter proceeded for hearing of the Claimants' case on 8<sup>th</sup> March 2023 and 28<sup>th</sup> September 2023 with the Claimant calling three (3) witnesses. Afterwards, the Claimant filed written submissions dated 7<sup>th</sup> December 2023.

#### **Claimant's case**

5. The Claimants' case is that they were employed by the Respondent on diverse dates between 1997 and 2013 and served in different capacities either on permanent terms or under fixed-term contracts. Nine of its employees fell under the category of those who served under the permanent and pensionable contracts, while 41 served under the fixed term contracts.
6. The Respondent dutifully paid their salaries up to September 2015. Without any justifiable reason, the Respondent ceased paying their salary from October 2015, a situation that persisted up to February 2016 when it closed down its business without notifying the Claimants.
7. The Claimants contend that the Respondent's action of not paying them their salaries for five months, and removing machinery from their premises, therefore rendering them without work amounted to unfair labour practice and unlawful termination or constructive dismissal.
8. Following their unfair dismissal, they are entitled to the cumulative figures sought in their pleadings under the various heads.

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

9. The Claimants identify four issues for determination thus; Whether the Claimants were not paid their salaries between October 2015 to February 2016; whether non-payment of the Claimants' salaries amounts to constructive termination; whether the Claimants are entitled to Severance pay; and whether the Claimant is entitled to the reliefs sought.
10. The 1<sup>st</sup> Claimant was the Respondent's Human Resources Manager at the material time, he testified and his evidence has not been challenged, that they were not paid their salaries totaling to KShs. 7, 246,023. The Court was urged to note that the Respondent, admitted the non-payment in paragraph 6 of its Statement of Response.
11. The Claimants further submitted that the Respondent's conduct of not paying them salaries for five months, and closing down the business without notifying them and thus not supplying them with work amounted to constructive dismissal. By its conduct, the Respondent demonstrated that it no



longer intended to be bound by the essential terms of the contract and they were entitled to treat themselves as discharged. To support this point, reliance was placed on the Court of Appeal decision on Coca-Cola East & Central Africa Limited vs Maria Ligaga [2015] eKLR.

12. Having proved that they were constructively dismissed, and therefore dismissed without notice, the relief sought of notice pay, should be availed to them, in the cumulative sum of KShs. 1,064, 289. Further, a compensatory award under Section 49 of the *Employment Act*, 2007, twelve months gross salary for each, cumulatively, KShs. 11,873,289.
13. The Claimant further submitted that their claim for compensation for earned but unutilized leave days was unchallenged. They should be accorded the compensation, KShs. 637,232

### **Analysis and Determination**

14. I have carefully considered the Claimants' pleadings, oral and documentary evidence, and written submissions, and the following issues emerge for determination; -
  - a. Whether the Claimants were constructively dismissed from employment by the Respondent;
  - b. Whether the Claimants are entitled to the reliefs sought.

### **Whether the Claimants were constructively dismissed from employment by the Respondent**

15. Before I delve further into this issue, I consider it necessary to state that though the Respondent filed a response to the Claimant's statement of claim, it didn't present a witness to testify to prove the averments in response. It is trite law that in a situation where a respondent files a statement of response but calls no evidence to support the same, such a statement of response will remain such a statement without any evidential value.
16. However, time and again I have held that the fact that the Respondent presents no evidence is no automatic pass for the Claimant to a favourable Judgment. He or she must establish her or his case to the requisite standards. I shall interrogate the Claimants' case with this lens.
17. The doctrine of constructive dismissal has not been codified in Kenya. However, constructive dismissal has been accepted by courts to mean actions on the part of the employer which drive the employee to leave [whether or not there is a form of resignation]. Such actions can take a wide variety of forms. The South African Labour Appeal Court held in the case of *Joose v- Transnet*, [1995] 5 BLLR 1 [LAC] 4, and I agree that the circumstances of constructive dismissal are so infinitely various that there can be and is, no rule of law saying what circumstances justify and what do not. It is a question of fact for the Court.
18. The duty to prove constructive dismissal is always on the employee. The factors that need to be considered by the Court in a claim for constructive dismissal were aptly brought forth in the case of *Coca-Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] eKLR, that; -
19.
  - a. "What are the fundamental or essential terms of the contract of employment?"
  - b. Is there a repudiatory breach of the fundamental terms of the contract through the conduct of the employer?
  - c. The conduct of the employer must be a fundamental or significant breach going to the root of the contract of employment or which shows that the



employer no longer intends to be bound by one or more of the essential terms of the contract.

- d. An objective test is to be applied in evaluating the employer's conduct.
- e. There must be a causal link between the employer's conduct and the reason for the employee terminating the contract i.e., causation must be proved.
- f. An employee may leave with or without notice so long as the employer's conduct is the effective reason for termination.
- g. The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach; the employee must within a reasonable time terminate the employment relationship pursuant to the breach.
- h. The burden to prove repudiatory breach or constructive dismissal is on the employee."
- i. Facts giving rise to repudiatory breach or constructive dismissal are varied."

20. The Claimants' claim herein is anchored on the fact that the Respondent suddenly stopped paying their salaries as and when they became due. Further, without notice to the Claimants moved machinery from their workplace, consequently leaving them with no duties to perform. This was a fundamental breach of the contract. In the case of *Stephen Michuki v East African Safari Air Express Limited & another* [2022] eKLR, this court held: -

- 83. The Claimant contended that the 1<sup>st</sup> Respondent did not pay him his salary for a whole six months, commencing the first month of his employment with it till the time he resigned...
- 84. Remuneration is undoubtedly one of the most important terms of an employment contract. In fact, this Court has held before that the right to remuneration is the most important right of an employee, considering the immense protection that the *Employment Act*, 2007 accords, wages and salaries of employees. Where an employer substantially alters [including by a significant reduction, or change of the manner of payment] of an employee's compensation without their consent such alteration may amount to a fundamental breach of the contract. An employee whose compensation has been altered can successfully claim constructive dismissal.
- 85. I have no doubt in my mind that under the terms and conditions of the contract dated 1<sup>st</sup> November 2019, and the provisions of the *Employment Act*, the Claimant's salary was one that was payable at end of every month, without any authority on the part of the 1<sup>st</sup> Respondent to unilaterally depart from this...
- 88. In the upshot and applying the contractual test, I come to the conclusion that by deciding not to pay the Claimant his entitled monthly salary as and when it fell due under the terms of the employment contract and the law, by effecting the non-payment of his salary without first consulting him and or communicating to him amounted to a unilateral act and a breach of the terms of the contract in a substantial manner. There was a repudiatory breach of the contract, therefore.
- 89. The Claimant was constructively dismissed. This places him on the path to entitlement of one or more of those reliefs normally attracted by a wrongful or unfair termination of an employee, recognised by law."



21. There is no denying that the Respondent didn't pay the Claimants their salaries for five months. Further, in contravention of its primary duty as the employer of supplying work to its employees created a situation where it could no longer supply work to the Claimants. In my view, this was a fundamental breach of the contracts between the Claimants and the Respondent. I find that they were constructively dismissed from employment.

**Whether the Claimants are entitled to the reliefs sought.**

22. It follows that, having reached the above conclusions, this Court must now consider whether the Claimants should be awarded the reliefs sought.

23. The Claimants' claim for unpaid salary for October 2015 to February 2016, was not challenged as the Respondent didn't put forth any evidence for that purpose. Further, this Court notes that in paragraph 6 of its response to the memorandum of claim, the Respondent admitted its failure to make the salary payments as and when they fell due. As a result, I hesitate not to grant the relief sought under this head. Each Claimant shall be paid the salary owed for the five months, computed on their respective last salaries.

24. Section 28 of the *Employment Act* bestows upon the employee a statutory right to 21 leave days. In my view, therefore, corresponding statutory obligation on the employer to allow enjoyment of the right. In their pleadings the Claimants sought for compensation 21 days leave days for 2016. I note that the tone of their pleadings is to the effect that the constructive dismissal took place in February 2016, as such there cannot be any justification for an award of compensation to the extent sought. Consequently, I hold that entitlement to the relief sought under this head hasn't been proved. I decline to grant the same.

25. I have carefully considered the contracts of employment that were placed forth by the Claimants and the manner of payment of their salaries and conclude that they were terminable by twenty-eight days' notice under Section 35 (1) of the Act. Undeniably, the termination of their employment having been constructive, the notice was not issued. I have no reason not to direct payment of one month's salary in lieu of notice pursuant to Section 36.

26. Section 49 [1] of the *Employment Act*, bestows on this Court the authority to award a compensatory relief for an employee who has successfully assailed their employer's action of terminating their employment. The award is discretionarily granted depending on the circumstances of each case. I have carefully considered the abrupt manner in which the Claimants' employment came to an end courtesy of the conduct of the Respondent, and the length of service each offered to the Respondent, and conclude that each of them is entitled to the compensatory relief and to the extent set out in the schedule hereunder.

27. In light of the above analysis, Judgment is hereby entered for the Claimants against the Respondent as follows: -

- a. A declaration that they were unfairly constructively dismissed from employment.
- b. The Respondent shall pay them individually, salary for the five months forestated, compensation pursuant to the provisions of section 49[1][c] of the *Employment Act*, and notice pay as set out in the schedule hereunder.



No	Name & Employment Date	Gross Salary p.m.	Award
1.	Leo Otieno Obuya 1997	Kshs. 50,000/-	a) Compensation for unfair termination equivalent to 10 months' gross salary – Kshs. 400,000/- b) One month's salary in lieu of notices – Kshs. 50,000/- c) Unpaid Salary for October 2015-February 2016 – 250,000/- ****
2.	Lucas Kisila Mwomola 2008	Kshs. 16,584/-	a) Compensation for unfair termination equivalent to 8 months' gross salary – Kshs. 132,672/- b) One month's salary in lieu of notices – Kshs. 16,584/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 82,920/- ****
3.	Francis Gatu 1/12/2004	Kshs. 44,120/-	a) Compensation for unfair termination equivalent to 10 months gross salary – Kshs. 441,200/- b) One month's salary in lieu of notice – Kshs. 44,120/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 220,600/- ****



4.	Atanas Kasyoka 1/3/2003	Kshs. 21,647/-	a) Compensation for unfair termination equivalent to 10 months gross salary – Kshs. 216,470/- b) One month's salary in lieu of notice – Kshs. 21,647/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 108,235/- ****
5.	Geoffrey Luhombo 1/7/1998	Kshs. 17,037/-	a) Compensation for unfair termination equivalent to 10 months gross salary – Kshs. 170,370 b) Unpaid Salary for October 2015-February 2016 – Kshs. 85,185/- ****
6.	Joseph Kamau Kangara 1/7/1998	Kshs. 25,948/-	a) Compensation for unfair termination equivalent to 10 months' gross salary – Kshs. 259,480 b) One month's salary in lieu of notice – Kshs. 25,948/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 129,740/- ****
7.	Joseph Chege 5/5/1999	Kshs. 45,000/-	a) Compensation for unfair termination equivalent to 10 months' gross salary – Kshs. 450,000/- b) One month's salary in lieu of



			notice – Kshs. 45,000/- c) Unpaid Salary for October 2015-February 2016 – 225,000/-
8.	Hellen Atieno Aketch 1/12/1997	Kshs. 17,037/-	a) Compensation for unfair termination equivalent to 10 months gross salary – Kshs. 170,370 b) One month's salary in lieu of notice – Kshs. 17,037/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 85,185/-
9.	Mercy Kabutu	29,370/-	a) Compensation for unfair termination equivalent to 5 months gross salary – Kshs. 146,850 b) One month's salary in lieu of notice – Kshs. 29,370/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 146,850/-
10.	Priscillah N. Mungai 15/6/2001	Kshs. 44,120/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 352, 960 b) One month's salary in lieu of notice – Kshs. 44,120/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 220,600/-



11.	Christine Katile Mutunga 1/5/2007	Kshs. 17,037/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 136,296/- b) One month's salary in lieu of notice – Kshs. 17,037/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 85,185/-
12.	Dorcas Mbithe Mwau 1/5/2007	Kshs. 22, 047/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 176,376/- b) One month's salary in lieu of notice – Kshs. 22,047/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 110,235
13.	Mary Muthoni 2/4/2007	Kshs. 17,037/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 136,296/- b) One month's salary in lieu of notice – Kshs. 17,037/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 85,185/- ****
14.	Rosemary Nafula Wabwire 1/5/2009	Kshs. 14,997/-	a) Compensation for unfair termination



			equivalent to 8 months gross salary – Kshs. 119,976/- b) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/- ****
15.	Stephen Mutuku Nyumu 1/5/2007	Kshs. 19,927/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 159,416/- b) One month's salary in lieu of notice – Kshs. 19,927/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 99,635/- ****
16.	Morris Musyoka Mutisya 1/5/2007	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 119,976/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-****
17.	Festus Mutie 1/9/2007	Kshs. 22,725/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 181,800/- b) One month's salary in lieu of notice – Kshs. 22,725/- c) Unpaid Salary for October



			2015-February 2016 – Kshs. 113,625/- ****
18.	Julius Njagi Mitambo 1/9/2009	Kshs. 19,927/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 159,416/- b) One month's salary in lieu of notice – Kshs. 19,927/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 99,635/- ****
19.	Paul Katee Musee 1/3/2009	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 119,976/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/- ****
20.	Grace Mumbi 1/7/2007	Kshs. 17,894/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 143,152/- b) One month's salary in lieu of notice – Kshs. 17,894/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 89,470/-****



21.	Stephen Otieno Oburu 1/6/2010	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 119,976/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
22.	Daniel Otieno 1/6/2010	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 119,976/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
23.	Joseph Mutinda 1/6/2010	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 119,976/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
24.	Patrick Ndiwa 1/6/2010	Kshs. 14,997/-	a) Compensation for unfair termination



			equivalent to 8 months gross salary – Kshs. 119,976/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
25.	Monica Njoki Wairimu 1/6/2007	Kshs. 17,747/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 141,976/- b) One month's salary in lieu of notice – Kshs. 17,747/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 88,735/-
26.	Joseph Kimaili 2/4/2007	Kshs. 18,964/-	a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 151,712/- b) One month's salary in lieu of notice – Kshs. 18,964/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 94,820/-
27.	James Makori Onserio	Kshs. 17,747/-	a) Compensation for unfair termination equivalent to 5 months' gross salary – Kshs. 88,735 /- b) Compensation for



			<p>unutilized leave days – Kshs. 14,197.60 c) One month’s salary in lieu of notice – Kshs. 17,747/- d) Unpaid Salary for October 2015-February 2016 – Kshs. 88,735/-</p>
28.	Virginia Ndinda 2/4/2007	Kshs. 16,259/-	<p>a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 130,072/- b) One month’s salary in lieu of notice – Kshs. 16,259/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 81,295/-</p>
29.	Margaret Wangari 2/4/2007	Kshs. 16,584/-	<p>a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 132,672/- b) One month’s salary in lieu of notice – Kshs. 16,584/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 82,920/-</p>
30.	Pascalina Matheka 2/4/2007	Kshs. 16,584/-	<p>a) Compensation for unfair termination equivalent to 8 months gross salary – Kshs. 132,672/- b) One month’s salary in lieu of notice – Kshs.</p>



			16,584/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 82,920/-
31.	Ann Nkirote 16/5/2013	Kshs. 25,500/-	a) Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 76,500/- b) One month's salary in lieu of notice – Kshs. 25,500- c) Unpaid Salary for October 2015-February 2016 – Kshs. 127,500/-
32.	Diana Kalekye 16/5/2013	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 44,991/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
33.	Dorcas N. Wambua 1/12/2012	Kshs. 16,584/-	a) Compensation for unfair termination equivalent to 3 months' gross salary – Kshs. 49,752/- b) One month's salary in lieu of notice – Kshs. 16,584/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 82,920/-



34.	Beatrice Khavayi 16/5/2013	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 3 months' gross salary – Kshs. 44,991/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
35.	Debora Bosibori 16/5/2013	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 3 months' gross salary – Kshs. 44,991/- b) One month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
36.	Mercy Miriko 10/10/2011	Kshs. 16,584/-	a) Compensation for unfair termination equivalent to 3 months' gross salary – Kshs. 49,752/- b) One month's salary in lieu of notice – Kshs. 16,584/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 82,920/-
37.	Miriam Kalii	Kshs. 14,997/-	a) Compensation for unfair termination equivalent to 3 months' gross salary – Kshs. b) One



			month's salary in lieu of notice – Kshs. 14,997/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
38.	Vincent Mutiso 14/5/2015	Kshs. 14,997/-	a] Compensation for unfair termination equivalent to 3 months' gross salary – Kshs. b] One month's salary in lieu of notice – Kshs. 14,997/- c] Unpaid Salary for October 2015-February 2016 – Kshs. 74,985/-
39.	Michael Kimanhi Kio	Kshs. 16,584/-	a) Compensation for unfair termination equivalent to 3 months' gross salary – Kshs.119,184 /- b) One month's salary in lieu of notice – Kshs. 39,728/- c) Unpaid Salary for October 2015-February 2016 – Kshs.198,640 /-
40.	Maureen Mueni Wambua 14/6/2015	Kshs. 39,728/-	a] Compensation for unfair termination equivalent to 3 months' gross salary – Kshs.119,184 /- b] One month's salary in lieu of notice – Kshs. 39,728/- c] Unpaid Salary for October 2015-February



			2016 – Kshs.198,640 /-
41.	John Wambua King'oo 16/5/2013	Kshs. 21,647/-	a) Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 64,941/- b) One month's salary in lieu of notice – Kshs. 21,647/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 108,235/-
42.	Josephine N. Kinyanzu 1/7/2013	Kshs. 14,339/-	a] Compensation for unfair termination equivalent to 3 months' gross salary – Kshs.43,017 /- b] One month's salary in lieu of notice – Kshs. 14,339/- c] Unpaid Salary for October 2015-February 2016 – Kshs.71,695/-
43.	Prisca Wanja Gitau 1/7/2013	Kshs. 13,905/-	a) Compensation for unfair termination equivalent to 3 months' gross salary – Kshs. 41,715/- b) One month's salary in lieu of notice – Kshs. 13,905/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 69,525/-
44.	Makena Frida 12/5/2015	Kshs. 21,647/-	a) Compensation for unfair termination equivalent to 3



			months' gross salary Kshs. 64,941 b) One month's salary in lieu of notice – Kshs. 21,647/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 108, 235.
45.	Eliud Munyao Kathenge 14/5/2015	Kshs. 14,925/-	a) Compensation for unfair termination equivalent to 3 months gross salary – Kshs. 44,775/- b) One month's salary in lieu of notice – Kshs. 14,925/- c) Unpaid Salary for October 2015-February 2016 – Kshs. 74,625
46.	Stephen S. Makhatsa 9/6/2014	Kshs. 18,500/-	a) Compensation for unfair termination equivalent to 3 months' gross salary – Kshs. 55,500/- d) One month's salary in lieu of notice – Kshs. 18,500/- e) Unpaid Salary for October 2015-February 2016 – Kshs. 92,500/-
47.	Bernard Gitau 16/3/2006	Kshs. 39,220/-	a) Compensation for unfair termination equivalent to 10 months' gross salary – Kshs. 392,200/- b) One month's salary in lieu of notice – Kshs. 39,220/- c) Unpaid Salary for October



			2015-February 2016 – Kshs. 196,100/-
48.	Benjamin Saima Ndiwa	Kshs. 25,573/-	d) Compensation for unfair termination equivalent to 3 months' gross salary Kshs. 76,719- e) One month's salary in lieu of notice – Kshs. 25,573/- f) Unpaid Salary for October 2015-February 2016 – Kshs. 127,865/

- b. Interest on sums awarded in (a) above at court rates from the date of this Judgment until payment in full.
- c. Costs of the suit. Instructions fee shall be computed on the basis of the total amount awarded to the Claimants.

**READ, DELIVERED AND SIGNED THIS 2<sup>ND</sup> DAY OF OCTOBER, 2024.**

**OCHARO KEBIRA**

**JUDGE**

**In the presence of:**

Mr. Were 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

