



Bakery Confectionary Food Manufacturing & Allied Workers Union & 12 others v Monking Bakery Limited (Employment and Labour Relations Petition E190 of 2022) [2024] KEELRC 13294 (KLR) (27 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 13294 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E190 OF 2022
AN MWAURE, J
NOVEMBER 27, 2024**

BETWEEN

- BAKERY CONFECTIONARY FOOD MANUFACTURING & ALLIED WORKERS UNION 1ST PETITIONER**
- DAVID MWOVE MWETHI 2ND PETITIONER**
- JOHN MAUNDU MASISIA 3RD PETITIONER**
- DOMINIC MUINDE 4TH PETITIONER**
- MICHAEL MWANZA 5TH PETITIONER**
- JUSTUS MUTHAMA 6TH PETITIONER**
- CHARLES MULI 7TH PETITIONER**
- BERNARD MUSAU 8TH PETITIONER**
- JOHN NDANO MUTISYA 9TH PETITIONER**
- DANCAN KIMEU 10TH PETITIONER**
- JANET MWIKALI 11TH PETITIONER**
- STANLEY MWANZIA 12TH PETITIONER**
- FELIX MBITI 13TH PETITIONER**

AND

MONKING BAKERY LIMITED RESPONDENT

(Before Hon. Lady Justice Anna Ngibuini Mwaure)



JUDGMENT

Introduction

1. The Petitioner filed a petition dated 4th November 2022.

Petitioners' case

2. The 1st Petitioner is a trade union registered under the *Labour Relations Act* mandated to represent the interest of unionisable employees engaged in bakery, confectionary, food, manufacturing and related industries.
3. The 2nd to 13th Petitioners, the grievants herein, were employed by the Respondent.
4. The 2nd petitioner was employed as a mixer man on 3rd January 2019 earning Kshs.15,000/=. The 3rd Petitioner was employed on even date with the 2nd Petitioner as an oven man earning Kshs.14,000/= . The 4th Petitioner was employed on 9th May 2018 as a salesman earning Kshs. 12,000/=. The 5th Petitioner was employed on 2nd January 2018 as a moulder earning Kshs.14,000/=. The 6th Petitioner was employed on July 2019 as a parker earning Kshs. 10,000/=. The 7th Petitioner was employed on 10th October 2018 as a mixer man earning Kshs.14,300/=. The 8th Petitioner was employed on 24th August 2018 and the 9th Petitioner was employed on 3rd January 2019 as parkers both earning Kshs.10,500/=. The 10th Petitioner was employed on 27th July 2018 and the 11th Petitioner was employed on 3rd July 2017 as parkers both earning Kshs. 13,000/= and Kshs.14,000/= respectively. The 12th Petitioner was employed on 23rd April 2018 as an ovenman earning Kshs.14,000/= and the 13th Petitioner was employed on 4th March 2018 as a salesman earning Kshs.14,500/=.
5. The Petitioners aver that the 2nd to 13th Petitioners were enrolled into membership to the 1st Petitioner union to enjoy the benefit of union membership in the exercise of their constitutional rights under Articles 36 and 41 of *the Constitution*.
6. The Petitioners aver that the 1st Petitioner forwarded the necessary check-off forms with the names and signatures of employees who had joined the union membership vide a letter dated 29th October, 2019, requesting the deduction of trade union dues as per section 48 of the *Labour Relations Act*.
7. The Petitioners aver that after the 1st Petitioner attained a simple majority of the Respondent's total unionisable workforce by complying with section 54 of the *Labour Relations Act*,
8. The Petitioners aver that the 1st Petitioner communicated vide a letter dated 30th October 2019 for a meeting to be held on 7th November 2019 to execute the recognition agreement.
9. The Petitioners aver that one of the respondent's manager called the employees reprimanding them for joining the union and directed them to resign their membership with the 1st Petitioner.
10. The Petitioners stated that on 7th November, 2019, the 2nd to 13th Petitioners reported to work as usual but were instructed to go to the Respondent's headquarters at Brinks Security Services Limited in Lavington/Kileleshwa, Nairobi.
11. The Petitioners aver that when the 2nd to 13th Petitioners reported to the Respondent's offices, they were directed by the Respondent's Human Resource manager to sign a letter resigning from the 1st Petitioner's union or they would not be allowed back to the workplace.



12. The Petitioners aver that the 2nd to 13th Petitioners were not allowed back to work since they failed to resign from the 1st Petitioner's union.
13. The Petitioners aver that the 1st Petitioner filed a suit in ELRC Cause No. 763 of 2019- Bakery Confectionary Food Manufacturing & Allied Workers Union (K) V Monking Bakers Limited on recognition dispute and sought interim orders to restrain the respondent from victimizing employees on account of union membership and affiliation.
14. The Petitioners stated that the court issued interim orders on 12th November 2019, preventing the Respondent from victimizing, intimidating, coercing, harassing, terminating, or dismissing the 1st Petitioner's members until the inter-parties hearing of the filed application.
15. The Petitioners aver despite the Respondent being served with the orders issued on 12th November 2019, the 2nd to 13th Petitioners were not allowed to the workplace to continue working and discharge their employment duties and obligations.
16. The Petitioners aver that the court orders issued on 12th November 2019, were extended to 25th November 2019.
17. In a letter dated 25th November 2019, the Petitioners avers that the 1st Petitioner, through its advocates, informed the Respondent that the 2nd to 13th Petitioners, who had joined the union, should report back to work on 26th November 2019, and be given unrestricted access to perform their duties.
18. The Petitioners claimed that on 3rd December 2019, the Respondent summoned the 2nd to 13th Petitioners and other employees who joined the union to a meeting at Masii Police Station.
19. The Petitioners aver during the meeting, the Respondent continued its efforts to coerce the employees into resigning their union membership with the 1st Petitioner.
20. The Petitioners aver that the Respondent has repeatedly ignored court orders, despite being properly served. As a result, the Respondent has prevented the grievants from accessing the workplace to fulfil their duties. Consequently, the 2nd and 13th Petitioners were terminated from their employment for participating in trade union activities, which violates Articles 36 and 41 of the Constitution.
21. The Petitioners avers that the 2nd to 13th Petitioners were wrongfully and illegally summarily and/or constructively terminated from employment on account of the Respondent's said actions.
22. The Petitioners aver that they are entitled to notice pay, house allowance, unpaid salary, unpaid leave, overtime, underpayment, compensation for unlawful termination of employment and damages for violations of constitutional rights.
23. The Petitioners aver that terminal dues are as follows:
 - i. 2nd petitioner - Kshs.883,250
 - ii. 3rd petitioner - Kshs.832,950
 - iii. 4th petitioner - Kshs.1,555,510
 - iv. 5th petitioner - Kshs.916,978.50
 - v. 6th petitioner - Kshs.792,112
 - vi. 7th petitioner - Kshs.1,180,850
 - vii. 8th petitioner - Kshs.896,181



- viii. 9th petitioner - Kshs.883,958
- ix. 10th petitioner - Kshs.941,248
- x. 11th petitioner - Kshs.972,550
- xi. 12th petitioner - Kshs.994,725
- xii. 13th petitioner - Kshs.1,919,981

24. The Petitioners pray that:

- a. A declaration that the 2nd to 13th petitioners were unlawfully and unfairly terminated from employment through the Respondent's action and omissions herein cited on account of their engaging in trade union activities
- b. A declaration that the actions of the respondent in summarily and/or constructively terminating the 2nd to 13th Petitioner's service on account of their engaging in trade union activities and for their association with the 1st Petitioner violated the Petitioner's Constitutional rights under Article 27(1), (2),(3),(4) and(5), 28, 29(d) and (f), 36 and Article 41 of *the Constitution* and therefore null and void.
- c. A declaration the 2nd to 13th petitioners are entitled to an award on account of notice pay, unpaid salary, unpaid overtime, unpaid leave, underpayment (where applicable), compensation for unlawful termination of employment under section 49 of the *Employment Act* and compensation for violation of their constitutional rights under Article 23 of *the constitution* as pleaded and particularized on remedies sought together with interest at court rates until payment in full.
- d. Any other relief that this Honourable Court may deem just and expedient in the circumstances.
- e. Costs of the suit.

Respondent's response to petition

- 25. In opposition to the petition, the Respondent filed a response to the petition dated 17th January 2023.
- 26. The Respondent avers that it did not violate the petitioners' constitutional rights while the petitioners worked at the respondent.
- 27. The Respondent avers that on 31st October, 2019, it instructed its employees, including the petitioners, to report to its security service provider for security clearance before reassignment of duties.
- 28. The Respondent avers that the said directive followed employee unrest and lateness on 24th October 2019, which resulted in the lockout of the petitioners from the Respondent's premises.
- 29. The Respondent avers that the petitioners were aggrieved by the respondent's directive which led to inaccessibility to the workplace.
- 30. The Respondent avers that some employees including the petitioners filed a certificate of urgency application accompanied by a notice of motion and memorandum of claim dated 11th November 2019 in ELRC Cause No. 763 of 2019- Bakery Confectionery Food Manufacturing & Allied Workers Union(K) versus Monking Bakers Limited.



31. The respondent avers that court orders were issued on 12th November 2019 restraining it from victimizing, coercing, harassing, terminating or dismissing and denying the petitioners access to the workplace.
32. The Respondent avers that a meeting was called on 25th November 2019 which the petitioners failed to attend as the main purpose of the meeting was to come up with a return to work formula.
33. The Respondent avers that it arranged for another meeting on 3rd December 2019 at Masii Police for the employees including the petitioners to discuss the return formula but it was rejected as the petitioners stated that they wanted to consult with the union representative.
34. The Respondent avers that the court delivered judgment on 27th May 2022 where the petitioners were granted access back to work and paid their full salaries for October 2019 their last working month at the Respondent.
35. The Respondent avers that after the delivery of the judgment, the petitioners failed to return to work.
36. The Respondent avers that the claims for notice pay, compensation for 12 months, house allowance, unpaid salary, unpaid leave overtime and underpayment were not proven and the petitioners are not entitled to them.
37. The Respondent avers that the claim for violation of constitutional rights for an award of punitive damages is res judicata as there is no evidence tendered thus they should be dismissed.
38. The Respondent avers that this Honourable Court does not have jurisdiction as the issues raised were already dealt with in ELRC Cause No. 763 of 2019- Bakery Confectionery Food Manufacturing & Allied Workers Union(K) versus Monking Bakers Limited.
39. The Respondent avers that the suit was filed on 7th November 2022 which is more than three years from the date of termination.
40. The Respondent avers that the petitioners did not pursue to settle the issues raised in the petition through the conciliatory procedure as provided before filing of the suit.
41. The petition was canvassed by way of written submissions.

Petitioners' submissions

42. The Petitioners submitted that the petitioners' dismissal on 3rd December 2019 was unfair in accordance with sections 43(1), 45(1) and (2) and 47(5) of the [Employment Act](#). The Respondent has not demonstrated any valid reasons to terminate their services despite court orders for the Respondent not to coerce, harass, terminate or dismiss them or deny them access to the workplace because of the union membership.
43. The Petitioner submitted that the failure to grant them access to the workplace premises led to constructively terminating the 2nd to 13th Petitioners.
44. The Petitioners relied on the case of Owudu V Digital Sanitation Services Limited [2024] KEERLRC 917(KLR) the court held that when an employee allegedly absconds, they do not terminate their employment themselves. The employer must issue a notice to the employee to explain their absence. If the employee continues to be absent and does not comply, the employer must issue a termination or summary dismissal notice to the employee's last known address. Additionally, under Section 18(5) (b) of the Act, if the employer cannot locate the employee, they must notify the Labour Officer and deposit any terminal dues with the Labour Office to properly end the employment.



45. In *Sitima V Jokali Handling Services Limited* [2023] KEELRC 762 (KLR) the court held that the termination or dismissal of an employee due to absconding duty requires the employer to make reasonable attempts to contact the employee and understand their absence, as well as provide an opportunity to explain or show cause for their absence. Although the Respondent's witness claimed such attempts were made, no supporting evidence was provided. Therefore, the court found that the separation occurred as described by the Claimant and ruled that the termination was substantively unfair.
46. The Petitioners submitted that the 2nd to 13th Petitioners were dismissed due to their participation or membership with a trade union and that is not justifiable or valid reasons for termination. The Petitioner relied on section 46 of the *Employment Act* which set out circumstances that do not constitute valid reasons to terminate an employee or institute disciplinary action including but not limited to an employee's membership or proposed trade union.
47. The Petitioners submitted that no disciplinary hearing was held to offer to give an audience to the grievants an opportunity to be heard before termination which is against section 41 of the *Employment Act* which deals with procedural fairness.
48. The Petitioners submitted that the Respondent violated their constitutional rights under Articles 36 and 41 as read with sections 4, 5(2) and (3), 41 and 46(a) of the *Employment Act*.
49. The Petitioners submitted that as per the judgment delivered in ELRC Cause No. 763 of 2019 the court held that:
- “Paragraph 7 to 12 of the Nzioka's Affidavit sworn on 26th November 2019 is proof of the Respondent's coercion and interference with their right to freely associate and participate in activities of the union as enshrined in Articles 36 and 41 of *the Constitution* as well as section 4 and 5 of the *Labour Relations Act* and section 46 of the *Employment Act*.”
50. In *Kenya Ports Authority v Munyao & 4 Others* [2023] KESC 112 (KLR) the Supreme Court held as follows:
- “From the above definition unfair labour practice encompasses all conduct prior to, in the course of employment, during and after termination of employment. The provisions of Article 41 therefore encompass the full spectrum of labour practices. The provisions of article 41 are borne from the realization that employment and/or right to work is a human right. The right is also linked to other rights in the bill of rights more so the protection of life and the dignity of a person. The right is therefore a principle with legal obligations.”
51. The Petitioners submitted that the Respondent violated Article 27(5) of *the Constitution* by denying the 2nd to 13th Petitioners access to the workplace after they refused to renounce their union membership leading to their termination.
52. The Petitioners submitted that the respondent violated Articles 28 and 29 when it withheld their salaries and locked them out of their workplace.
53. The Petitioners submitted that they were not issued a notice pay upon their termination and therefore they are entitled to payment of notice under section 35 of the *Employment Act*.
54. The Petitioners submitted that section 31 of the *Employment Act* provides for housing allowance and as from the payslip of page 18 of the Respondent's list of documents did not include house allowance. Therefore, they are entitled to house allowance.



55. The Petitioners submitted that they are entitled to unpaid salary for December 2019 as they reported to duty but they were denied access to the workplace.
56. The Petitioners submitted that they are entitled to overtime as they have demonstrated that they worked from 7:00 am to 7:00 pm for seven days. Section 74 of the *Employment Act* requires employers to keep employment records, which are usually in their possession. Since the Respondent did not provide any evidence to rebut therefore they are entitled to it.
57. The Petitioners submitted that they are entitled to underpayment in wages as per the Regulation of Wages (General) Order 2018 and the Respondent has not rebutted the same thus the same is to be allowed.
58. The Petitioners submitted that they are entitled to compensation for unfair termination as provided under section 49 of the *Employment Act*. The Court has the discretion to award compensation for unlawful termination awarding up to 12 months' maximum. Since the Petitioners were unfairly terminated, they are entitled to the same.
59. The Petitioner submitted that Article 23 of *the Constitution* allows this Honourable Court to award compensation where constitutional violations are made. In the case of Keith Wright V Kentegra Biotechnology (Epz) Ltd [2021] eKLR the court awarded Kshs.5,000,000 as compensation for discrimination and violation of constitutional rights.
60. In Wilson Macharia V Safaricom Plc [2021] eKLR the court awarded Kshs.6,000,000 as compensation for violation of his constitutional rights.

Respondent's submissions

61. The Respondent submitted that it did not terminate the Petitioners' employment as the judgment in ELRC Cause No. 763 of 2019- Bakery Confectionary Food Manufacturing & Allied Workers Union (K) V Monking Bakers Limited directing the Respondent remit the union dues to the 1st petitioner and allow the petitioners to work.
62. The Respondent submitted that it wrote letters to the claimant's advocates requesting the petitioners to report back to work, the petitioners failed to report back to work thus the claim for unfair termination should fail.
63. In the case of Nzeve V Ancarta Construction Company Limited (2023) KEELRC 366 (KLR) the court held that the claimant failed to prove complete severance of the employment relationship between the claimant and the respondent therein as per section 47(5) of the *Employment Act*.
64. The Respondent relied on the case of Nzuki V Protech Industrial Equipment Limited (2024) KEELRC 674 (KLR) the court held that the claimant failed to prove constructive dismissal as the claimant did not avail resignation letter or any complaint letter regarding the alleged mistreatment by the respondent and deserted duty with no notice. In Simon Ngugi Kamau V Silpack Industries Limited (2015) eKLR the court dismissed the claim for constructive dismissal for reasons that the claimant failed to report to work as required and later claimed constructive dismissal when the respondent summarily dismissed the claimant.
65. The Respondent submitted that since the Petitioners failed to return to work following the court order reinstating them, they are not entitled to one month's notice pay in lieu of termination and 12 months' compensation for unfair termination. In Nzeve V Ancarta Construction Company Limited(supra) the court dismissed the claims for compensatory damages and one month's notice pay in lieu of



- termination as the claimants were not unfairly terminated and/or constructively dismissed from employment.
66. The Respondent submitted that the petitioners should not be compensated for violation of their constitutional rights as they failed to return to work and relied on the case of *Mberia & 3 Others V County Government of Meru & 2 Others* (2024) KEELRC 1190 (KLR) where the court held that the 4th Petitioner was not entitled to general damages for breach of constitutional rights for reasons that the 4th Petitioner did not report back to work as per the Court order given earlier therein pending hearing of the suit and the 4th Petitioner was found to be without clean hands.
 67. The Respondent submitted that the Petitioners have not provided any proof of unpaid housing allowance, unpaid November 2019 salaries, unpaid leave and underpayment as they are claimed as special damages.
 68. The Respondent submitted that the unpaid housing allowance, unpaid November 2019 salaries, unpaid leave and underpayment are also time-barred as the petition herein was filed on 7th November 2022, a period of more than 12 months.
 69. Section 90 of the *Employment Act* provides as follows:

“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”
 70. In *Okere V County Government of Kakamega & Another* (2023) KEELRC 2523 (KLR) the court held that claims for underpaid basic salary, unpaid leave, and unpaid housing allowance made after 31st December, 2020, were time-barred. Since the claims were filed more than 12 months after the claimant’s retirement, the court had no jurisdiction to hear them.
 71. In *Obatta V Radar Limited* (2024) KEELRC 64 (KLR) the court declined the award of the Appellant’s unpaid leave days and housing allowance for reasons that the claims were not filed within 12 months from the date of termination of the Appellant on 1st November 2018 and the claim was filed on 4th February 2021, a period over two years from the date of cessation thus the claims were time barred.
 72. Regarding the claim for November 2019 salaries, the respondent relied on the case of *Thufila V Dedan Kimathi University of Technology* (2024) KEELRC 208 (KLR) the court held that the claim for unpaid salary is a claim for continuing wrong and was time-barred under section 90 of the *Employment Act*.
 73. The Respondent relied on the case of *Nzuki Protech Industrial Equipment* (supra) the court dismissed the claim for underpayment for reasons that the claimant did not avail tangible evidence that he was underpaid by the respondent.
 74. The Respondent submitted that the petitioners did not prove they worked overtime and relied on the case of *Nzuki Protech Industrial Equipment* (supra) the court held that there was no evidence that the claimant demanded to be paid overtime and therefore the claim failed.



75. In *Edward Ochieng V Dan Okumu (2022)* eKLR the court stated that:

“if the claimant had in mind specific days when he worked overtime, he ought to have issued a notice of production to the Respondent requiring him to produce documents that are related to the specific aspects of his claim.”

76. In *Nyairo V Maasai Flowers Limited A.T Asian Roses (2023)* KEELRC 579(KLR) the court held that the claim for unpaid overtime was dismissed as it was time barred under section 90 of the [Employment Act](#).

Analysis And Determination

Issues for determination

77. The court has carefully considered the pleadings and the rival submissions in the case. The issues which arise for determination are the following:

- a. Whether the instant Petition is res judicata
- b. Whether the Petition is merited
- c. Whether the Petitioners entitled to the relief sought

Whether the instant Petition is res judicata

78. The Respondent in its response stated that the petition is res judicata as the issues raised were already determined in ELRC Cause No. 763 of 2019- Bakery Confectionary Food Manufacturing & Allied Workers Union(K) versus Monking Baker Limited.

79. Section 7 of the [Civil Procedure Act](#) provides as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

80. In *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017]* eKLR the Court of Appeal held that:

“For the bar of res-judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

- a. The suit or issue was directly and substantially in issue in the former suit.
- b. That former suit was between the same parties or parties under whom they or any of them claim.
- c. Those parties were litigating under the same title.
- d. The issue was heard and finally determined in the former suit.



- e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”
81. The issues in ELRC 763/2019 were on access to work place and prayers for orders for respondents was not to victimise or coerce the Petitioners and not to refuse them access to their respective work station. The orders were granted on 13th November 2019.
82. In this instant case, the prayers are that the Petitioners were wrongfully and illegally dismissed and seek various remedies to deal with termination and violation of constitutional rights which are two different issues. The court holds and finds that the principal of res-judicata has not been established between the two suits
83. Section 45(1) and (2) of the *Employment Act* provides as follows:
- (1) 1) No employer shall terminate the employment of an employee unfairly.
 - (2) A termination of employment by an employer is unfair if the employer fails to prove—
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - (i) related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.
84. In Pius Machafu Isindu V Lavington Security Guards Limited [2017] KECA 225 (KLR) the Court of Appeal cited section 47(5) of the *Employment Act* which provides as follows:
- “(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds of the termination of employment or wrongful dismissal shall rest on the employer.” [Emphasis added]
85. In CMC Aviation Limited v Mohammed Noor [2015] KECA 775 (KLR) the Court of Appeal held:
- “Unfair termination involves breach of statutory law. Where there is a fair reason for terminating an employee’s service but the employer does it in a procedure that does not conform with the provisions of a statute that still amounts to unfair termination.”
86. The Petitioners in this case were not provided with a valid reason for their termination. The Respondent had intentionally obstructed them from their work station because they joined the 1st Petitioners’ union. The Petitioners have the right to join an association, as stated under Article 36 of *the Constitution*.
87. The Petitioners went to court vide ELRC Cause No. 763 of 2019 and the court held that the respondent execute the recognition agreement with the 1st Petitioner and remit union dues. An injunction was also issued restraining the respondent from victimizing, intimidating and unlawful termination of employment of employees on account of their union membership.



88. The respondent did not produce any correspondence with the petitioners' advocates requesting the employees' return to work formula and went against the court orders issued in ELRC Cause No. 763 of 2019. The respondents claim they wrote to them to resume work and that they declined to do so but as earlier said there is no proof of those allegations.
89. The Petitioners cannot be said they absconded work. Abscondment requires employer to tender evidence that they reached out to the employee and informed them they would constitute disciplinary proceedings on the basis of such abscondment, otherwise it is not enough just for an employer to claim abscondment.
90. The court has found that the petitioners were unfairly terminated on issues to do with joining the union. The court therefore enters judgment in favour of the Petitioners. As for the reliefs, the court will award the underlisted:-
- 91.
- A. David Mwoye Mwehi - employed on 3rd January 2019
- i. Notice pay - Kshs.17,250/=
 - ii. Unpaid salary for November 2019 Kshs.17,250/=
 - iii. Compensation for unlawful termination @ 4 months equivalent pay - Kshs.69,000/=
- Total - Kshs.103,500/=
- iv. Costs are awarded to the 2nd Petitioner
 - v. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - vi. The 2nd Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- 92.
- B. John Maundu Masisia – employed on 3rd January 2019
- i. Notice pay - Kshs.16,100/=
 - (ii) Unpaid salary for November 2019 Kshs.16,100/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.64,400/=
- Total - Kshs.96,600/=
- iv. Costs are awarded to the 3rd Petitioner.
 - iv. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - iv. The 3rd Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- C. Dominic Muinde - employed on 9th May 2018
- (i) Notice pay - Kshs.27,296/=
 - (ii) Unpaid salary for November 2019 Kshs.27,296/=



- (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.109,184/=
 - Total - Kshs.163,776/=
 - iv. Costs are awarded to the 4th Petitioner.
 - v. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - (vi) The 4th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- D. Michael Mwanza - employed on 2nd January 2019
- (i) Notice pay - Kshs.16,462/=
 - (ii) Unpaid salary for November 2019 Kshs.16,462/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.65,848/=
 - Total - Kshs.98,772/=
 - (iv) Costs are awarded to the 5th Petitioner.
 - (v) The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - (vi) The 5th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- E. Justus Muthama - employed in July 2019
- (i) Notice pay - Kshs.14,400/=
 - (ii) Unpaid salary for November 2019 Kshs.14,400/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.57,600/=
 - Total - Kshs.86,400/=
 - iv. Costs are awarded to the 6th Petitioner.
 - iv. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - iv. The 6th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- F. Charles Muli – employed on 24th August 2018
- i. Notice pay - Kshs.14,400/=
 - (ii) Unpaid salary for November 2019 Kshs.14,400/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.57,600/=
 - Total - Kshs.86,400/=
 - (iv) Costs are awarded to the 7th Petitioner.



- iv. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - (v) The 7th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- G. Benard Musau – employed on 10th November, 2018
- i. Notice pay - Kshs.16,445/=
 - (ii) Unpaid salary for November 2019 Kshs.16,445/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.65780/=
 - Total - Kshs.98,670/=
 - (iv) Costs are awarded to the 8th Petitioner.
 - v. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - (vi) The 8th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- H. John Ndano Mutiso – employed on 3rd January 2019
- (i) Notice pay - Kshs.14,400/=
 - (ii) Unpaid salary for November 2019 Kshs.14,400/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.57,600/=
 - Total - Kshs.86,400/=
 - iv. Costs are awarded to the 9th Petitioner.
 - iv. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - (vi) The 9th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- I. Dancan Kimeu – employed on 27th July 2018
- i. Notice pay - Kshs.14,400/=
 - (ii) Unpaid salary for November 2019 Kshs.14,400/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.57,600/=
 - Total - Kshs.86,400/=
 - iv. Costs are awarded to the 10th Petitioner.
 - iv. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - iv. The 10th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.



- J. Jackline Mwikali – employed on 3rd April 2018
- i. Notice pay - Kshs.14,950/=
 - (ii) Unpaid salary for November 2019 Kshs.14,950/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.59,800/=
- Total - Kshs.89,700/=
- iv. Costs are awarded to the 11th Petitioner.
 - iv. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - iv. The 11th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- K. Stanley Mwanzia – employed on 23rd April 2018
- i. Notice pay - Kshs.16,100/=
 - (ii) Unpaid salary for November 2019 Kshs.16,100/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.64,400/=
- Total - Kshs.96,600/=
- iv. Costs are awarded to the 12th Petitioner.
 - iv. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - iv. The 12th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.
- L. Dominic Muinde – employed on 4th April 2018
- (i) Notice pay - Kshs.27,296/=
 - (ii) Unpaid salary for November 2019 Kshs.27,296/=
 - (iii) Compensation for unlawful termination @ 4 months equivalent pay - Kshs.109,184/=
- Total - Kshs.163,776/=
- (iv) Costs are awarded to the 13th Petitioner.
 - v. The prayers for housing allowance and overtime and damages for violation of constitutional rights are not proved and are all declined.
 - (vi) The 13th Petitioner is awarded interest at 14% per annum from date of judgment until full payment.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 27TH DAY OF NOVEMBER, 2024.

ANNA NGIBUINI MWAURE

JUDGE



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 15th March 2020 and subsequent directions of 21st 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.

