



**Muturi & 10 others v Nganga t/a Mochah Transmotors Company (Cause
603 of 2017) [2023] KEELRC 907 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 907 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 603 OF 2017
L NDOLO, J
APRIL 20, 2023**

BETWEEN

**BENARD M MUTURI 1ST CLAIMANT
JORAM G MUGAI 2ND CLAIMANT
THOMAS O OKETCH 3RD CLAIMANT
JACOB A ODINGA 4TH CLAIMANT
MIKE A MWASHI 5TH CLAIMANT
KELVIN N MBUGUA 6TH CLAIMANT
BRIAN C KARIUKI 7TH CLAIMANT
MAURICE O OMWA 8TH CLAIMANT
MUTURI H MAINA 9TH CLAIMANT
PATRICK GATEHI 10TH CLAIMANT
MICHAEL MUTUKU 11TH CLAIMANT**

AND

**MOSES CHEGE NGANGA T/A MOCHAH TRANSMOTORS
COMPANY RESPONDENT**

JUDGMENT

1. By a Memorandum of Claim as amended on November 6, 2017, the Claimants sued the Respondent for unlawful termination of employment. The Respondent's defence is by way of a Reply dated July 14, 2017 and amended on September 10, 2021.



2. The Claimants subsequently filed a Reply to Memorandum of Response dated January 17, 2022.
3. The matter went to full trial where the 1st Claimant, Benard M Muturi and the 9th Claimant, Muturi H Maina testified on their own behalf and on behalf of their co-claimants.
4. In spite of due notification, the Respondent did not attend court to testify. This judgment however takes into account the Respondent's pleadings on record.

The Claimants' Case

5. The Claimants state that they were employed by the Respondent on diverse dates between 1998 and 2015. They claim to have worked in various positions in petrol stations operated by the Respondent under the Shell franchise.
6. The Claimants aver that they worked until November 12, 2016 when the Respondent stopped running the petrol stations. They state that the Respondent undertook to pay their redundancy dues once he received his deposit from Shell.
7. The Claimants further state that no redundancy notice was issued to them or to the Labour Officer as required. In addition, they claim that they were not paid their terminal dues.
8. The Claimants' case is that the Respondent terminated their employment on account of redundancy without observing the requirements of Section 40 of the Employment Act.
9. The Claimants tabulate their respective claims as follows:

1st Claimant: Benard M Muturi

a.	1 month's pay in lieu of notice.....	Kshs 20,140
b.	Leave pay for 1 year.....	20,140
c.	Salary for 12 days in November 2016.....	9,295
d.	Overtime compensation.....	850,714
e.	12 months' salary in compensation.....	241,680
f.	Unremitted NSSF dues.....	2,990
g.	Refund of costs and expenses incurred.....	50,000
h.	Severance pay.....	197,527

2nd Claimant: Joram G Mugai

a.	1 month's pay in lieu of notice.....	Kshs 17,455
b.	Leave pay for 2 years.....	34,910
c.	Salary for 12 days in November 2016.....	8,056
d.	Overtime compensation.....	327,689
e.	12 months' salary in compensation.....	209,460
f.	Refund of costs and expenses incurred.....	50,000



g. Severance pay.....80,562

3rd Claimant: Thomas O Oketch

a. 1 month's pay in lieu of notice.....Kshs 16,306
b. Leave pay for 2 years.....32,612
c. Salary for 12 days in November 2016.....7,526
d. Overtime compensation.....688,765
e. 12 months' salary in compensation.....195,672
f. Refund of costs and expenses incurred.....50,000
g. Severance pay.....75,272

4th Claimant: Jacob A Odinga

a. 1 month's pay in lieu of notice.....Kshs 16,306
b. Leave pay for 1 year.....16,306
c. Salary for 12 days in November 2016.....7,526
d. Overtime compensation.....688,765
e. 12 months' salary in compensation.....195,672
f. Refund of costs and expenses incurred.....50,000
g. Severance pay.....9,409

5th Claimant: Mike A Mwash

a. 1 month's pay in lieu of notice.....Kshs 17,456
b. Leave pay for 1 year.....17,456
c. Salary for 12 days in November 2016.....8,057
d. Overtime compensation.....737,320
e. 12 months' salary in compensation.....209,472
f. Refund of costs and expenses incurred.....50,000
g. Severance pay.....80,566

6th Claimant: Kelvin N Mbugua

a. 1 month's pay in lieu of notice.....Kshs 16,306
b. Salary for 12 days in November 2016.....7,526
c. Overtime compensation.....688,470
d. 12 months' salary in compensation.....195,588



- e. Refund of costs and expenses incurred.....50,000
- f. Severance pay.....75,226

7th Claimant: Brian C Kariuki

- a. 1 month’s pay in lieu of notice.....Kshs 16,306
- b. Salary for 12 days in November 2016.....7,525
- c. Overtime compensation.....688,892
- d. 12 months’ salary in compensation.....195,672
- e. Refund of costs and expenses incurred.....50,000
- f. Severance pay.....65,850

8th Claimant: Maurice O Omwa

- a. 1 month’s pay in lieu of notice.....Kshs 16,229
- b. Leave pay for 1 year.....16,229
- c. Overtime compensation.....688,470
- d. 12 months’ salary in compensation.....195,588
- e. Refund of costs and expenses incurred.....50,000
- f. Severance pay.....75,226

9th Claimant: Muturi H Maina

- a. 1 month’s pay in lieu of notice.....Kshs 17,891
- b. Salary for 25 days in February 2017.....17,203
- c. Overtime compensation.....503,811
- d. 12 months’ salary in compensation.....375,711
- e. Refund of costs and expenses incurred.....50,000
- f. Severance pay.....278,687

10. There was no tabulation of the claims by the 10th and 11th Claimants.

The Respondent’s Case

- 11. In his Reply as amended on September 10, 2021, the Respondent denies having employed the Claimants as alleged in the amended Memorandum of Claim.
- 12. The Respondent further denies the averment that his dealership of petrol stations was revoked by Shell. He also denies ever promising to pay the Claimants redundancy dues after receiving his deposit from Shell.
- 13. The Respondent concedes that no redundancy notice was issued either to the Claimants or to the Labour Office, stating that there was in fact no redundancy.



14. The Respondent denies the Claimants' entire claim and puts them to strict proof.

Determination

15. The Claimants' claim is premised on an alleged redundancy following discontinuation of the Respondent's business under the Shell franchise. The Respondent's defence is that there was in fact no redundancy.

16. Section 47(5) of the *Employment Act* 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 for the termination of employment or wrongful dismissal shall rest on the employer."

17. The Claimants' witnesses, Benard M Muturi and Muturi H Maina testified that after the Respondent ceased to operate the petrol stations under the Shell franchise, the employees were taken over by a new operator for whom they worked until sometime in 2017. The Claimants did not adduce any evidence to support their allegation that the Respondent terminated their employment on account of redundancy.

18. Further the Claimants' witnesses gave conflicting testimonies regarding important details such as their monthly salary, effective date of employment and termination date.

19. In light of this, I find and hold that the Claimants failed to discharge their obligation under Section 47(5) of the *Employment Act*.

20. In the result, the Claimants' entire claim, which is based on an alleged redundancy that was not proved, fails and is dismissed.

21. Each party will bear their own costs.

22. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF APRIL 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Koganga h/b for Mr. Onyony for the Claimants

Mr. Ombati for the Respondent

