



**Chigua & 11 others v County Public Service Board of Kiambu (Cause  
2291 of 2017) [2023] KEELRC 1645 (KLR) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1645 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 2291 OF 2017**  
**MN NDUMA, J**  
**JUNE 15, 2023**

**BETWEEN**

**TABITHA NJAMBI CHIGUA ..... 1<sup>ST</sup> CLAIMANT**  
**EPHANTUS KAGO MAINA ..... 2<sup>ND</sup> CLAIMANT**  
**SUSAN WANJIKU ..... 3<sup>RD</sup> CLAIMANT**  
**SALOME WAMAITHA NG'ANG'A ..... 4<sup>TH</sup> CLAIMANT**  
**BEAUT'TAR NJIGI KAIGI ..... 5<sup>TH</sup> CLAIMANT**  
**DOMINIC MWAURA NJORONGE ..... 6<sup>TH</sup> CLAIMANT**  
**BEATRICE NJAHIRA KURIA ..... 7<sup>TH</sup> CLAIMANT**  
**MARGARET WANGUI MBUGUA ..... 8<sup>TH</sup> CLAIMANT**  
**PAULINA WAHU MUHIA ..... 9<sup>TH</sup> CLAIMANT**  
**SAMUEL WAINAINA KIBUCHA ..... 10<sup>TH</sup> CLAIMANT**  
**MICHAEL MWANGI KARAGO ..... 11<sup>TH</sup> CLAIMANT**  
**REGINA WAIRIMU NJUNGUNA ..... 12<sup>TH</sup> CLAIMANT**

**AND**

**COUNTY PUBLIC SERVICE BOARD OF KIAMBU ..... RESPONDENT**



## JUDGMENT

1. The suit was filed by the claimants on 10<sup>th</sup> November, 2017, seeking the following reliefs:-
  1. A declaration that the employment contract of the claimant is of permanent nature by virtue of Section 37 of the Employment Act, 2007, the manner in which the claimants were terminated was unfair and unprocedural.
  2. An Order declaring that the 3 months short term contracts issued by the Respondent to the Claimants are unfair, null and void.
  3. That the claimants be reinstated to their employment without loss of benefits, back salary and allowances and continuity of service.
  4. An award of all the Claimants' terminal dues/benefits as set out in paragraph 15 totaling to Kshs.14,006,752.8.
  5. The Respondent be ordered to calculate and pay the Claimants all their employment benefits like leave, leave allowance, house allowance, gratuity and other emoluments before engaging in fresh contracts, interest of the said payments at Court rates.
  6. The Respondent's action against the Claimants is a manifestation of unfair labour practices which is contrary to the provisions of Article 41 of the Constitution and consequently the claimant are entitled to damages.
  7. The Honourable Court do issue such orders and give such directions as it may deem fit and just to grant in the circumstances.
  8. Costs of the suit to be granted to the Claimant.
  9. Interest on the above at Court rates.
2. The suit is opposed vide a response to the Statement of Claim filed on 8<sup>th</sup> September, 2015.
3. The claimant authorized the 1<sup>st</sup> claimant to sue on their behalf by a document dated 14<sup>th</sup> November, 2017. C.W.1, Tabitha Njambi Chigua testified on behalf of the claimants that she is the first claimant and know other claimants as they were her co-workers. That the 9<sup>th</sup> claimant has since died and her claim was abated. That the claimants were employed by the defunct Ruiru Municipal Council and later by County Government of Kiambu, based at Ruiru Sub-county. That the claimants were employed on diverse dates as set out in paragraph 15 of the Statement of Claim. That they worked at different posts and had no written contract of employment. That the claimants were treated as casuals during their respective tenure of service. That they were therefore never granted annual leave despite serving continuously for the respondent. That they were never paid house allowance and were remunerated as set out in the Memorandum of Claim and in the witness statement of C.W.1 dated 14<sup>th</sup> November, 2017 and adopted as the evidence in Chief by C.W.1.
4. That the respondent introduced three (3) months contracts and forced the claimants to sign when they complained about the unfair treatment meted on them by the respondent by keeping them as casuals for inordinate prolonged period. That the three months' contracts were aimed to pre-empt payment of accrued terminal benefits to each claimant over the period served.



5. That on 19<sup>th</sup> December, 2015, the respondent terminated the employment of the claimants while the suit was before Court. That the termination was not preceded by a notice to show cause nor was a disciplinary hearing commenced against the claimants before the termination. That the initial suit was struck out on a technicality having sued the County Government of Kiambu instead of County Public Service Board of Kiambu. That the termination was unlawful and unfair. That the respondent underpaid the claimants in that they were paid a daily wage of Kshs.400 instead of the minimum wage of Kshs.509 they were entitled to. That the period of service by the claimants is as set out in the witness statement.
6. That the claimants are entitled to award of terminal benefits as set out under paragraph 15 of the Statement of Claim including notice pay; in lieu of leave days not taken; 15% house allowance; underpayment for the respective period served by each claimant; service pay; compensation for the unfair termination and provision of Certificate of Service to each claimant.
7. C.W.1 was cross-examined by Counsel for the respondent and stated that each of the claimants were employed through their respective councilors at construction sites. That initially, each one of them was to work for a period of 3 months but they continued working for long periods. That they asked for letters of employment but were not given. That initially, they were paid forthrightly. C.W.1 stated that he did not know if the other claimants had signed written contracts. C.W.1 admitted that some of the claimants still work for the respondent. C.W.1 admitted that the claimants were employed as casuals and were paid daily wage and were only paid for days worked.
8. C.W.1 however, under re-examination clarified that though they were termed casual workers, by and large, they worked continuously for the periods served as indicated in the statement of claim. That they were not at work only on Sundays and worked full day.
9. R.W.1 Richard Irungu testified that he was an Environment officer working for the respondent and that he was aware of this case. That he worked for Ruiru Sub-County. That none of the claimants are in the employment of the respondent from 17<sup>th</sup> January, 2016. That the respondent did not take over the claimants or its employees from the defunct Ruiru Municipal Council
10. That the claimants were engaged on casual basis from time to time and all the claimants have at one time or the other worked for the respondents Ruiru Sub-county. That the 10<sup>th</sup> claimants, Samuel Wainaina Kibuche worked for the respondent last on 30<sup>th</sup> April, 2015. That the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> claimants last worked for the respondent on 18<sup>th</sup> April, 2019. That the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup>, and 12<sup>th</sup> claimants worked for the respondent on temporary basis for 3 months with effect from 5<sup>th</sup> October, 2015 until 31<sup>st</sup> December, 2015 as per the 3 months contract of employment produced before Court.
11. That the terms of the contract of engagement for Beatrice Njahira Kuria , Salome Wamaitha Nyangi , and Pauline Wahu Muhia were terminated on 18<sup>th</sup> December, 2019, 15<sup>th</sup> December, 2015 and 3<sup>rd</sup> December, 2015 respectively before expiry of their contract for failure to perform their duties.
12. That the engagement of Beuttar Njagi Kaigi was terminated on 19<sup>th</sup> December, 2015 after absconding duties without informing the office.
13. That the termination of the contracts were in terms of the contracts signed by the parties.
14. That all claimants have at all material times been engaged on casual basis and never on permanent basis as alleged or at all. That Section 37 of the Employment Act is not applicable to any of the claimants. That the respondent did not violate the rights of the claimants under Article 41 of the Constitution. That the suit be dismissed with costs.



## Determination

15. The parties filed written submissions and the issues for determination are as follows:-
- a. Whether the claimants were employed as casuals and or their employment was permanent and therefore in terms of Section 37 of the *Employment Act*.
  - b. Whether the claimants are entitled to the reliefs sought.
16. C.W.1, testified candidly that the claimants worked continuously until the year 2015 when the respondent started forcing them to sign 3 months contracts after asking questions. That their employment was subsequently terminated without notice, notice to show cause or a disciplinary hearing. That the claimant worked for six (6) days a week. That they did not go on leave and were not registered with National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF). That their wages were paid twice a month and was deposited in their bank accounts. That those who refused to sign the three months contract were sacked. C.W.1 was sacked for that reason. That the claimants asked to be paid terminal benefits for period worked before they could sign the contract. C.W.1 was candid and consistent during cross-examination by Counsel for the respondent except that she lacked specific information as to whether all claimants signed or did not sign the 3 months contracts after the year 2015.
17. The testimony by R.W.1 did not address employment of the claimants for the respective periods worked before 2015 when they were asked to sign 3 months contract. The testimony by C.W.1 that the claimant had worked continuously on oral contracts was not adequately rebutted by R.W.1. The Court finds that C.W.1 has proved that the claimants had worked for the following periods continuously for the respondent:-
- (i) Tabitha Njambi – 9 years.
  - (ii) Ephantus Kago Maina – 8 years.
  - (iii) Susan Wanjiku - 6 years.
  - (iv) Salome Wamaitha Nyangi – 17 years.
  - (v) Beattar Njagi Koigi – 8 years.
  - (vi) Domenic Mwaura Njoroge – - 4 y4ars
  - (vii) Beatrice Njahira Kuria – 17 years.
  - (viii) Margaret Wangui Mbugua - 18 years
  - (ix) Pauline Wahu Muhia - 17 years
  - (x) Samwel Wainaina Kibuche – 14 years
  - (xi) Michael Mwangi Karago – 14 years  
and
  - (xii) Regina Wairimu Nuguna – 17 years.
18. The Court is satisfied that the claimants were taken over by the respondent from the erstwhile Municipal Council of Ruiru and their services are deemed continuous in terms of Section 37 of the *Employment Act* as they transited to the employment of the respondent.



19. The Court is satisfied that the claimants were treated as casuals unlawfully during their respective tenure of employment with the respondent and therefore were never granted leave nor paid in lieu thereof; were never housed or paid 15% house allowance of their basic pay. That they were underpaid as demonstrated in the testimony of C.W.1 and were entitled to service pay since they were not registered with NSSF nor did the respondent make any contribution on their behalf in this respect.
20. Accordingly, the claim as set out in the Statement of Claim and in the witness statement of C.W.1 have been proved on a balance of probability. R.W.1 have failed to adequately rebut the same.
21. The Court grants each of the claimants except the 9<sup>th</sup> claimant (Deceased) terminal benefits aforesaid as set out in the testimony of C.W.1 and in the Statement of Claim.

### Compensation

22. The testimony by C.W.1 as to the manner the employment of each of the claimants came to an end did not suffice to satisfy the Court that the employment of any of the claimants was unlawfully terminated by the respondent. C.W.1 evidently had no details of how each of the respective contracts of employment came to an end. The Court finds that there is no sufficient prove that the employment of the claimants was terminated without any valid reason and that the respondent did not follow a fair procedure with respect to any of the terminations.
23. The claim for compensation is therefore dismissed in respect of all claimants.
24. In the final analysis judgment is entered in favour of the claimants as against the respondents as follows:-
  - A. Tabitha Njambi (9 years)
    - i. One month's salary in lieu of notice (509x26 days) = 13,234
    - ii. Annual leave 21 days x 9 years = 189 x 509 = 96,201
    - iii. House Allowance 15% at 13.234= 1985.1 x 12x9 years = 214,390.80
    - iv. Underpayments (509 – 400) 26x12x9=306,072
    - v. Service pay 15 days x 9 years (509 x 15 x 9) = 68,715
    - vi. A certificate of service

Total claim = 698,612.8/=
  - B. Ephantus Kago Maina (8 years)
    - i. One month's salary in lieu of notice (509x26 days) = 13,234
    - ii. (Annual leave 21 days x 8 years = 168 x 509 = 85,512
    - ii. House Allowance 15% at 13.234= 1985.1 x 12x8 years = 190,569.6
    - ii. Underpayments (509 – 400) 26x12x9 years =306,072
    - iii. Service pay 15 days x 8 years (509 x 15 x 8) = 61,080
    - iv. A certificate of service

Total claim = 656,467.6
  - C. Susan Wanjiku (16 Years)



- (i) One month's salary in lieu of notice  $(509 \times 26 \text{ days}) = 13,234$
  - (ii) Annual leave 21 days x 13 years  $= 273 \times 509 = 138,957$
  - ii. House allowance 15% of 13,234  $= 1985.1 \times 12 \times 16 \text{ years} = 381,139.2$
  - ii. Underpayments  $(509 - 400) 26 \times 12 \times 13 = 442,104$
  - iii. Service pay 15 days x 16 years  $(509 \times 15 \times 16) = 122,160$
  - iv. A certificate of service
- Total claim = 1,097,594.2

D. Salome Wamaitha Nyangi (17 Years)

- (i) One month's salary in lieu of notice  $(509 \times 26 \text{ days}) = 13,234$
  - ii. Annual leave 21 days x 17 years  $= 357 \times 509 = 181,713$
  - iii. House allowance 15% of 13,234  $= 1985.1 \times 12 \times 17 \text{ years} = 404,960.4$
  - iv. Underpayments  $(509 - 400) 26 \times 12 \times 17 = 578,136$
  - v. Service pay 15 days x 17 years  $(509 \times 15 \times 17) = 129,795$
  - vi. A certificate of service
- Total claim = 1,307,838.4/=

E. Beattar Njagi Koigi (8 Years)

- (i) One month's salary in lieu of notice  $(509 \times 26 \text{ days}) = 13,234$
  - ii. Annual leave 21 days x 8 years  $= 168 \times 509 = 85,512$
  - iii. House allowance 15% of 13,234  $= 1985.1 \times 12 \times 8 \text{ years} = 190,569.6$
  - iv. Underpayments  $(509 - 400) 26 \times 12 \times 8 = 272,064$
  - v. Service pay 15 days x 8 years  $(509 \times 15 \times 8) = 61,080$
  - vi. A certificate of service
- Total claim = 622,459.6=

F. Dominic Mwaura Njoroge (4 Years)

- i. One month's salary in lieu of notice  $(509 \times 26 \text{ days}) = 13,234$ .
  - ii. Annual leave 21 days x 4 years  $= 84 \times 509 = 42,756$ .
  - iii. House allowance 15% of 13,234  $= 1985.1 \times 12 \times 4 \text{ years} = 95,284.8$
  - iv. Underpayments  $(509 - 400) 26 \times 12 \times 4 = 136,032$ .
  - v. Service pay 15 days x 4 years  $(509 \times 15 \times 4) = 30,540$
  - vi. A certificate of service
- Total claim = 317,846.8/=

G. Beatrice Njahira Kuria (17 Years)



- i. One month's salary in lieu of notice (509x26days)= 13,234
  - ii. Annual leave 21 days x 17 years=357x509=181,713
  - iii. House allowance 15% of 13,234= 1985.1x12x17years=404,960.4
  - iv. Underpayments (509-400) 26x12x17=578,136
  - v. Service pay 15 daysx17 years (509x15x17)= 129,795
  - vi. A certificate of service
- Total claim = 1,307,838.4/=

H. Margaret Wangui Mbugua (18 Years)

- i. One month's salary in lieu of notice (509x26days)= 13,234.
  - ii. Annual leave 21 days x 18 years=378x509=192,402.
  - iii. House allowance 15% of 13,234= 1985.1x12x18years=428,781.6.
  - iv. Underpayments (509-400) 26x12x18= 612,144.
  - v. Service pay 15 daysx18 years (509x15x18)= 137,430.
  - vi. A certificate of service
- Total claim = 1,383,991.6/=

I. Samwel Wainaina Kibucha (14 Years)

- i. One month's salary in lieu of notice (509x26days)= 13,234.
  - ii. Annual leave 21 days x 14 years=294x509=149,646.
  - iii. House allowance 15% of 13,234= 1985.1x12x14years=333,496.8.
  - iv. Underpayments (509-400) 26x12x14= 476,112
  - v. Service pay 15 daysx14 years (509x15x14)= 106,890.
  - vi. A certificate of service
- Total claim = 1,079,378.8/=

J. Michael Mwangi Karago (14 Years)

- i. One month's salary in lieu of notice (509x26days)= 13,234
  - ii. Annual leave 21 days x 14 years=294x509=149,646
  - iii. House allowance 15% of 13,234= 1985.1x12x14years=333,496.8
  - iv. Underpayments (509-400) 26x12x14= 476,112
  - v. Service pay 15 daysx14 years (509x15x14)= 106,890
  - vi. A certificate of service
- Total claim = 1,079,378.8/=

K. Regina Wairimu Njuguna (17 Years)



- i. One month's salary in lieu of notice  $(509 \times 26 \text{ days}) = 13,234$
  - ii. Annual leave 21 days x 17 years  $= 357 \times 509 = 181,713$
  - iii. House allowance 15% of 13,234  $= 1985.1 \times 12 \times 17 \text{ years} = 404,960.4$
  - iv. Underpayments  $(509 - 400) 26 \times 12 \times 17 = 578,136$
  - v. Service pay 15 days x 17 years  $(509 \times 15 \times 17) = 129,795$
  - vi. A certificate of service
- Total claim = 1,307,838.4/=

25. The Court awards interest on the respective awards at Court rates from date of judgment till payment in full.

26. Costs follow the outcome.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 15<sup>TH</sup> DAY OF JUNE, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

Appearances

Mr. Nyabena Claimants

M/s Mbugua for Respondent

Mr. Ekale – Court Assistant

