



REPUBLIC OF KENYA



**Mwaruwa & 4 others v ARM Cement PLC (Cause 248 of 2018)  
[2023] KEELRC 1477 (KLR) (8 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1477 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 248 OF 2018**

**M MBARÚ, J**

**JUNE 8, 2023**

**BETWEEN**

**SILVESTER KAZUNGU MWARUWA ..... 1<sup>ST</sup> CLAIMANT  
OMAR KASSIM NZAI ..... 2<sup>ND</sup> CLAIMANT  
JOSEPH SANITA KITSAO ..... 3<sup>RD</sup> CLAIMANT  
ALLAN VIDZO MWARINGA ..... 4<sup>TH</sup> CLAIMANT  
CHARO JOHN KADENGE ..... 5<sup>TH</sup> CLAIMANT**

**AND**

**ARM CEMENT PLC ..... RESPONDENT**

**JUDGMENT**

1. In a Notice dated October 26, 2022 and filed on equal date, the 1st, 2nd, 4th and 5th claimants withdrew their claims.  
The 3rd claimant is the only claimant part of the judgment herein.
2. The 3rd claimant's (the Claimant) case is that he was employed on November 6, 2010 and worked until a redundancy was declared between 16th August and November 30, 2017 leading to termination of employment. At the time he was earning Ksh 8,160. The claim is that there was no notice issued and the claimant is seeking the following dues;
  - a. One months notice Ksh 12,926.55;
  - b. Underpayments for the years
  - c. 2013 – 2013 Ksh 9,780 – 8,160 x 24 months Ksh 38,902.80;
  - d. 2015 – 2017 Ksh10,954.70 – Ksh8,160 x 24 months Ksh67,072.80;



- e. May 2017 – August Ksh 12,926.55 – Ksh 8,160x4 Ksh 19,066.20
  - f. Days worked up to 17th August 2017  
Ksh498.18 x 17 days at Ksh 8,452.06;
  - g. Severance pay 15 days x 497.18 x 7 years Ksh 52,203.90;
  - f) Compensation for unfair termination of employment; and
  - h) Costs.
3. The claimant testified that he was employed by the respondent for 7 years until April 17, 2017 but his employment was terminated following a redundancy without notice and is seeking his terminal dues.
  4. Upon cross-examination, the claimant testified that he was paid Ksh 86,000 at the end of his employment but this was too low because he was entitled to notice pay at Ksh 12,926 and his last wage was Ksh 8,160 and the underpayments are due.
  5. The response is that the claimant was employed as a casual as a loading operator on November 6, 2010 and his last wage was Ksh 8,640 which was subject to statutory deductions. He was issued with a termination notice on account of redundancy a month prior and that his last working day was August 16, 2017. His final dues were paid at the finance department and the notice terminating employment was also forwarded to the general secretary of the Kenya Quarry and Mine Workers Union. During the notice period, the respondent engaged the claimant and he was taken through the clearance process and was paid his dues through the bank account on September 27, 2017 at Ksh 86,000.
  6. In evidence, the respondent called Nelly Mulewa who formerly worked for the respondent until September 15, 2018 as the human resource assistant and who kept the work records. The claimant was employed as a casual labourer earning Ksh 8,840 per month at the time his employment was terminated. Termination notice was issued and the claimant was allowed to clear and was paid his terminal dues;
    1. 80 leave days Ksh 88,815;
    2. Severance pay at 18 days for 6 years Ksh 36,720;
    3. Notice pay Ksh 8,840;
    4. Baggage allowance Ksh 4,500;
    5. Travelling allowance Ksh 4,500

Total Ksh113,475

Less statutory deductions Ksh 27,366.46

Total paid Ksh 86,108.74
  7. The respondent filed work records.  
Annexure 8 show the claimant was last earning a wage of Ksh 8,840. The statutory deductions for the gross wage is not indicated. The wage paid being monthly and not daily, where the claimant remained in the service of the respondent for the period exceeding a day, his employment converted in terms of Section 37 of the Employment Act, 2007 (the Act). He acquired rights and benefits under the Act.



8. The wage paid over the years 2013 to 2015 the wage paid was Ksh 8,160 and the wage due under the Wage Orders for an employee placed at Kaloleni is Ksh 5,218 and Ksh 5,844.20 and there was no underpayment.
9. In 2015 to 2017 the minimum wage was Ksh 5,844.20 and Ksh 6,896.15 4respectively. There was no underpayment.
10. For the period of May to August, 2017 the wage paid at Ksh8,840 was above the minimum wage.
11. The claim for underpayment is not justified.
12. With regard to the claim for notice pay, the claimant’s case was that he was not issued with notice but he was taken through the clearance process and paid his terminal dues on September 27, 2017 and his union was informed of the reasons and duration of termination of employment in accordance with Section 40 of the *Act*.
13. The reasons for termination of employment is well noted by the claimant himself, that of redundancy. Such operational requirement is a lawful reason to terminate employment and the remedy of notice and compensation are not due. However, on the terminal dues paid, the respondent paid for notice.
14. The claimant worked for 6 full years and his severance pay was assessed according to his last wage and the tabulation is correct.
15. On the claim for 17 days worked in August, 2017 at annexure 8 of the respondent’s records, the claimant was paid for August, 2017 a full pay of Ksh 8,840. Such settled his claim for days worked.
16. The claim assessed as above, the court finds no merit and the same is hereby dismissed in its entirety. Each party shall bear own costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 8<sup>TH</sup> DAY OF JUNE, 2023.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Rahma

..... and .....

