



REPUBLIC OF KENYA



**Mwendwa & another v Hui Yi Company Limited (Cause 362 of 2014)
[2023] KEELRC 3256 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3256 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 362 OF 2014
B ONGAYA, J
DECEMBER 7, 2023**

BETWEEN

JOHN MWENDWA 1ST CLAIMANT

ESTHER NTHOKI KAMUNGE 2ND CLAIMANT

AND

HUI YI COMPANY LIMITED RESPONDENT

JUDGMENT

1. The claimants filed the memorandum of claim on 10.03.2014 acting in person and later on 15.01.2015 appointed Wangira Okoba & company. The 1st claimant prayed for judgment against the respondent for:

- a. Notice in lieu of one-month basic salary Kshs.12,450
 - b. Annual leave \times 42 days = Kshs.24,900
 - c. Days worked 15 days = Kshs.7,182
 - d. Severance pay at the rate of 15 days for each completed years of service
 $12450/26 \times 15 \times 3 = 21,548$
 - e. House allowance $1,867 \times 12 \times 3 =$ Kshs.67,212
 - f. 10 public holidays – 5,700/= App 4
- Grand total = 140,092/=

The 2nd claimant prayed for:

- a. Notice in lieu of one-month basic salary = 12,450/=



- b. Annual leave \times 21 days = 12,450/=
 - c. Severance pay of the rate of 15 days for each completed year of service
 - d. $12,450/26 \times 15 \times 1 \frac{1}{2} = 10,774$
 - e. House allowance $1,867 \times 12 \times 3 = \text{Kshs.}67,212$
 - f. 5 public holiday = 2,370
- Grand total = 105,256
2. The Respondent's answer to memorandum of claim was filed on 06.05.2015 through Mwangi Waiganjo & Company Advocates. The respondent prayed that the claim be struck out and/or dismissed with cost.
 3. The claimants' case was that the 1st Claimant was employed by the respondent as a general labourer on 15.12.2011 at a salary of Kshs.12,450 and his employment was terminated on 09.12.2013.
 4. That the 2nd claimant was employed by the respondent as a general labourer on 18.05.2012 at a basic salary of Kshs.12,450 and her employment was terminated on 24.10.2013.
 5. That the respondent did not fulfil its obligation as required under sections 40 and 35(3), 4(b) of the Employment Act 2007.
 6. The claimants' case was that the redundancy was unfair and done contrary to the provisions of section 40 of the Employment Act, 2007.
 7. On the part of the respondent, it is denied that the claimants are entitled to the reliefs sought in the claim.
 8. The respondent states that the services of the claimants were lawfully terminated due to gross misconduct on account of late coming, rudeness, lack of respect to the persons with authority and theft. That the incident of theft was reported to Embakasi Police Station on 17.08.2013 via O.B No. 30/17/08/13.
 9. The respondent states that despite warnings being issued, the claimants without prior notice to the respondent absconded duties and deserted their place of work never to return.
 10. The respondent denies that the claimants are entitled to payment in lieu of notice, annual leave, severance pay, house allowance, public holiday pay and/or any other claim.
 11. The parties did not file their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
 12. The parties did not attend Court to testify and to offer evidence on the manner and circumstances of their separation. The Court returns that the claimants have failed to show by evidence the alleged redundancy. In absence of due evidence, the suit is hereby dismissed with no orders on costs.
 13. In conclusion the suit is hereby dismissed with no orders on costs. The decree to issue accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH DECEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

