



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. E714 OF 2020**

*(Before Hon. Lady Justice Maureen Onyango)*

**KENYA ENGINEERING WORKERS UNION.....CLAIMANT**

VERSUS

**EFIL ENTERPRISES LIMITED.....RESPONDENT**

**RULING**

1. On 13<sup>th</sup> August 2021, this Court delivered judgment in which it awarded each of the grievants compensation equivalent to 6 months' salary.
2. I further awarded the grievants redundancy benefits as provided under Section 40 of the Employment Act for employees declared redundant. The parties were directed to agree on the tabulation and file the same in Court. That failing agreement each party to file its tabulation within 30 days.
3. In the submissions by the Claimant, it has tabulated the award as follows –

**THOMAS LITUVU MUOKI – General Labourer**

(i).. Service.....	Kshs.39,180.00
(ii).. Notice.....	Kshs.16,976.00
(iii). Compensation.....	Kshs.101,868.00
(iv). House allowance.....	<u>Kshs.122,241.00</u>
<b>Total amount.....</b>	<b><u>Kshs.280,267.00</u></b>

**MIKE MWANIKI MUTEMBI – General Labourer**

(i).. Service.....	Kshs.39,180.00
(ii).. Notice.....	Kshs.16,976.00
(iii). Compensation.....	Kshs.101,868.00
(iv). House allowance.....	<u>Kshs.122,241.00</u>
<b>Total amount.....</b>	<b><u>Kshs.280,267.00</u></b>

**TITUS NZIOKI MAINGA – Heavy Vehicle Driver**

(i).. Service.....	Kshs.242,280.00
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(ii).. Notice.....	Kshs.35,000.00
(iii). Compensation.....	Kshs.210,000.00
(iv). House allowance.....	<u>Kshs.756,000.00</u>
<b>Total amount.....</b>	<b><u>Kshs.1,243,280.00</u></b>

**PAUL KILONZO MBUVI – Light Vehicle Driver**

(i).. Service.....	Kshs.56,760.00
(ii).. Notice.....	Kshs.24,600.00
(iii). Compensation.....	Kshs.147,600.00
(iv). House allowance.....	<u>Kshs.117,120.00</u>
<b>Total amount.....</b>	<b><u>Kshs.406,080.00</u></b>

**MICHAEL MAKAU KAVUVI – Light Vehicle Driver**

(i).. Service.....	Kshs.117,540.00
(ii).. Notice.....	Kshs.16,978.00
(iii). Compensation.....	Kshs.366,724.00
(iv). House allowance.....	<u>Kshs.101,868.00</u>
<b>Total amount.....</b>	<b><u>Kshs.603,110.00</u></b>

**SYLIVESTER MWEMA MUTEMI – Heavy Vehicle Driver**

(i).. Service.....	Kshs.242,280.00
(ii).. Notice.....	Kshs.35,000.00
(iii). Compensation.....	Kshs.210,000.00
(iv). House allowance.....	<u>Kshs.756,000.00</u>
<b>Total amount.....</b>	<b><u>Kshs.1,243,280.00</u></b>

4. The Respondent on the other hand did not submit any tabulation. It instead submitted to Court details of service pay made by the Respondent to the Grievants between 2016 and 2019 where relevant.

5. From what has been filed by the parties, it is apparent that no agreement has been reached on the tabulation.

6. Based on the award of the Court, each grievant is entitled to 6 months' salary as compensation in addition to redundancy benefits under Section 40(1) of the Employment Act which provides as follows –

**(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—**

**(a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;**

**(b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;**

**(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and**

to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

(d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

7. Under Section 40(1) each of the Grievants is entitled to the following –

- (i) Pay in lieu of notice
- (ii) Severance pay of 15 days for each year worked
- (iii) Salary to the last day of work
- (iv) Any leave earned but not taken to be paid in cash.

8. The Claimant did not pray for leave which the Court takes to mean that no leave was due to any of the grievants.

9. The Claimant has also prayed for house allowance which was not awarded in the judgment.

10. Each of the grievants is therefore awarded the following –

**MICHAEL MAKAU KAVUVI**

- (i).. Notice..... Kshs.16,980.10
- (ii).. Severance ( x 12)..... Kshs.101,880.60
- (iii). Compensation (16,980.10 x 6)..... Kshs.101,880.60
  
- Total amount..... Kshs.220,741.30**

**SYLIVESTER MWEMA MUTEMI**

- (i).. Notice..... Kshs.35,000.00
- (ii).. Severance ( x 12)..... Kshs.210,000.00
- (iii). Compensation (35,000 x 6)..... Kshs.210,000.00
  
- Total amount..... Kshs.455,000.00**

**MIKE MWANIKI MUTEMI**

- (i).. Notice..... Kshs.16,978.00
- (ii).. Severance ( x 4)..... Kshs.33,956.00
- (iii). Compensation (16,978 x 6).....Kshs.101,868.00
  
- Total amount..... Kshs.152,802.00**

**PAUL KILONZO MBUVI**

- (i).. Notice..... Kshs.22,887.80

(ii).. Service ( x 4)..... Kshs.45,775.60

(iii). Compensation (22,887.80 x 6)..... Kshs.137,326.80

**Total amount..... Kshs.205,990.20**

**THOMAS LITIVU MUOKI**

(i).. Notice..... Kshs.16,980.60

(ii).. Severance ( x 4)..... Kshs.33,961.20

(iii). Compensation (16,980.60 x 6)..... Kshs.101,883.60

**Total amount..... Kshs.152,825.40**

**TITUS NZIOKI MAINGA**

(i).. Notice..... Kshs.38,337.00

(ii).. Severance ( x 12)..... Kshs.230,022.00

(iii). Compensation (38,337 x 6)..... Kshs.230,022.00

**Total amount..... Kshs.498,381.00**

11. In the tabulation, I have used the rates of pay as given by the Respondent in the document dated 6<sup>th</sup> January 2022 titled “*CONSOLIDATED SALARY*”.

12. **Final judgment is thus awarded to the Claimant against the Respondent in the total sum of Kshs.1,685,740/- as more particularly set out in respect of each grievant at paragraph 10 above.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 19<sup>TH</sup> DAY OF JANUARY 2022**

**MAUREEN ONYANGO**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 had 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 Civil 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.

**MAUREEN ONYANGO**

**JUDGE**