



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 490 OF 2016

BETWEEN

1. MESHACK OMBUI
2. ROSELINE L. WAFULA
3. LUKAS ORWA OSOGE
4. GUYA ALFRED KITI
5. JAMES NYANDORO
6. MAURICE NZANI NGAIRA
7. MOHAMED THADHO
8. JOASH NYAMASI
9. CHRISANTHUS MOMANYI OBONYO
10. WILLIAM OUMA ASIN
11. YUSUF THADHO
12. RASHID LATKA
13. KENNEDY ONGORO.....CLAIMANTS

VERSUS

**HAMISI NJENGA t/a PREMIER TECHNICAL
CONSULTANTS & t/a EMEC SERVICES.....RESPONDENT**

Rika J

Court Assistant: Emmanuel Kiprono

James Nyakundi & Company Advocates for the Claimants

Mbuthia Kinyanjui & Company Advocates for the Respondent

JUDGMENT

1. The Claimants authorized the 1st Claimant to sue, plead and prosecute the Claim on their behalf.
2. In their Amended Statement of Claim, filed on 30th October 2017, they state that they were employed by the Respondent, and assigned duty at the Saudi Arabia Embassy in Nairobi.
3. The Respondent is a business incorporated under the Registration of Business Names Act, carrying on the business of security services and construction in Kenya.
4. They were employed on different dates, receiving different monthly salaries. The Respondent had a contract for provision of private security services at the Saudi Arabia Embassy, Nairobi.
5. They were dismissed by the Respondent in the month of March 2016, without notice or payment of terminal benefits.
6. They pray for payments of terminal benefits including unpaid salaries, gratuity, service charge, N.S.S.F and N.H.I.F contributions, notice, public holidays, compensation for unfair terminations and release of Certificates of Service.
7. Under the above heads they specifically pray for – 1st Claimant- Kshs. 1,659,122; 2nd Claimant- Kshs. 1,606,523; 3rd Claimant- Kshs. 1,741,403; 4th Claimant – Kshs. 1,606,523; 5th Claimant- Kshs. 1,777,957; 6th Claimant- Kshs. 1,602,523; 7th Claimant- Kshs. 1,617,523; 8th Claimant – Kshs. 1,571,625; 9th Claimant- Kshs. 1,617,523; 10th Claimant- Kshs. 1,608,283; 11th Claimant – Kshs. 1,734,757; 12th Claimant- Kshs. 1,617,523; and 13th Claimant- Kshs. 1,606, 523.
8. They ask in addition, for declaration that termination was unfair and unlawful; costs; and interest.
9. The Respondent was granted leave to file his Statement of Response out of time severally, the last leave issued being on the 26th February 2021. The matter was subsequently mentioned on 4th June 2021. There was no Statement of Response on record. Hearing by way of formal proof took place on 14th November 2021. The 1st Claimant gave evidence for all the Claimants. He adopted the Claimants' Pleadings, Witness Statements, and Documents on record.

The Court Finds: -

10. The Claim is uncontested. There is no evidence from the Respondent. There is no Statement of Response or Documents filed by the Respondent.
11. The 13 Claimants have satisfied the Court that they were employed by the Respondent at the Saudi Arabia Embassy in Nairobi, as Guards, on various dates.
12. They were dismissed by the Respondent in the month of March 2016. No valid reason was given for the decision. There was not notice. There was no hearing. They were not paid terminal benefits.
13. The Court is however not convinced on several prayers. The 1st Claimant did not persuade the Court that statutory deductions if made, and unremitted, should revert to the Claimants' pockets. Remittance should be pursued under the respective statutory regimes, so that purpose for which the contributions are made, can be achieved.
14. The prayers for overtime and holiday pay was not established through the evidence of the 1st Claimant. He did not specify the hours worked, and the specific dates, or suggest the formula applied in arriving at pleaded sums.
15. The Claimants pray for severance pay. They do not plead that they left employment on redundancy, for severance to become payable under Section 40 of the Employment Act. They would merit gratuity under the Protective Security [General] [Amendment] Wages Order. But they have not sought gratuity under the Order. They have not given their specific dates of employment and specific period of service is in doubt. The prayer for house allowance is likewise not specific. The 1st Claimant did not assign any number of months over which house allowance is claimed. Some Claimants plead bare house allowance. No months are stated.
16. The Court finds in their favour on other counts. It is the responsibility of an Employer to justify termination, issue notice on termination, and avail annual leave records, whenever required to do so. They are granted equivalent of **5 months' salary in compensation for unfair termination; salary for March 2016; notice of 1 month; annual leave as pleaded; costs; and interest at court rates.**

IN SUM, IT IS ORDERED: -

a. It is declared that termination was unfair.

b. The Respondent shall pay to –

I. 1st Claimant: compensation-Kshs. 77,000; March 2016 salary-Kshs. 15,400; notice- Kshs. 15,400; and 1-month annual leave- Kshs. 15,400- total Kshs. 123,200.

II. 2nd Claimant: compensation- Kshs. 75,000; March 2016 salary- Kshs. 15,000; notice - Kshs. 15,000; and annual leave- Kshs. 30,000 - total Kshs. 135,000.

III. 3rd Claimant: compensation- Kshs. 81,000; March 2016 salary- Kshs. 16,200; notice – Kshs. 16,200; and annual leave at Kshs. 32,400 – total Kshs. 145,800.

IV. 4th Claimant: compensation--Kshs. 75,000; March 2016 salary- Kshs. 15,000; notice- Kshs. 15,000; and annual leave- Kshs. 30,000 – total Kshs. 135,000.

V. 5th Claimant: compensation- Kshs. 81,000; March 2016 salary- Kshs. 16,200; notice- Kshs. 16,200; and annual leave Kshs. 32,400 – total Kshs. 145,800.

VI. 6th Claimant: compensation- Kshs. 75,000; March 2016 salary at Kshs. 15,000; and notice – Kshs. 15,000- total Kshs. 105,000.

VII. 7th Claimant: compensation- Kshs. 75,000; March 2016 salary- Kshs. 15,000; notice – Kshs. 15,000; and annual leave- Kshs. 15,000 – total Kshs. 120,000.

VIII. 8th Claimant: compensation-Kshs. 73,500; March 2016 salary- Kshs. 14,700; and notice-Kshs. 14,700- total Kshs. 102,900.

IX. 9th Claimant: compensation-Kshs. 75,000; March 2016 salary- Kshs. 15,000; notice- Kshs. 15,000; and annual leave- Kshs. 15,000 – total Kshs. 120,000.

X. 10th Claimant: compensation- Kshs. 75,000; March 2016 salary- Kshs. 15,000; and notice- Kshs. 15,000 – total Kshs. 105,000.

XI. 11th Claimant: compensation- Kshs. 81,000; March 2016 salary- Kshs. 16,200; notice- Kshs. 16,200; and annual leave – Kshs. 32,400 – total Kshs. 145,800.

XII. 12th Claimant: compensation- Kshs. 75,000; March 2016 salary- Kshs. 15,000; notice – Kshs. 15,000; and annual leave-Kshs. 15,000 – total Kshs. 120,000.

XIII. 13th Claimant: compensation- Kshs. 75,000; March 2016 salary- Kshs. 15,000; notice- Kshs. 15,000; and annual leave- Kshs. 30,000 – total Kshs. 135,000.

c. *Costs to the Claimants.*

d. *Interest allowed at court rates from the date of Judgment till payment is made in full.*

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 25TH DAY OF FEBRUARY 2022.

James Rika

Judge