



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. 344 OF 2018

ATHUMAN KHAMISI MZEE..... 1ST CLAIMANT

MBARAKA BEREK MBARAK.....2ND CLAIMANT

**MGENDI SAID RASHID (SUIING ON BEHALF OF THE ESTATE OF
MAPINGA MWALIMU KHAMISI-DECEASED)3RD CLAIMANT**

NOAH OTIENO OGADA.....4TH CLAIMANT

YUSUF OMAR RAGUNDA.....5TH CLAIMANT

TELEA HAMISI JUMA.....6TH CLAIMANT

AGGREY IMBUGA DIEDIE.....7TH CLAIMANT

JOSEPH MUTHAMA MUSAU.....8TH CLAIMANT

- VERSUS -

DICH TRADING LIMITED.....1ST RESPONDENT

DIEGO ABRAHAM RAFIKI.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 18th March, 2022)

JUDGMENT

The claimants filed the memorandum of claim on 22.05.2018 through G.A. Okumu & Company Advocates. The claimants' case is that the respondents employed them effective January 2016 as Master, Chief Officer, Chief Engineer, 2nd Engineer, Greaser, Cook, AB Sosun, and Electrician respectively. The contracts were entered into with the 2nd respondent to work as seafarers on motor vessel MV. Queen Bihanga then stationed in Manila Port, Philippines. The 1st respondent applied for visas on 13.01.2016 for all the claimants to travel to Manila Port, Philippines as were assigned. The agreed wages for claimants for a single voyage from Manila to Mombasa or Zanzibar was USD 3000, USD 2000, USD 500, USD 2000, USD 500, USD 500, USD 1300, and USD 2500 respectively. The claimant's case is that on arrival in Manila they found MV. Queen Bihanga unseaworthy and were not able to commence their duties as agreed as the ship was under repair with the contractor based in Manila. The repairs took long with the consequence that the claimants entered new contracts with the 2nd respondent while in Manila. The further case is that the respondents abandoned some of the claimants in Manila for 6 days and others in Jakarta for 11 days resulting in their being arrested, charged and some deported back in Kenya.

The claimants' further case is that they contacted Kenya Marine Authority and International Transport Workers Federation (ITF) which engaged the 2nd respondent who then facilitated travel back to Kenya. Their case is that while they were on board MV Queen Bihanga the respondents failed to pay their wages and they suffered untold anguish when they were arrested and charged in Jakarta for lacking visas. The claimants' further case is that the respondents have failed or refused to honour the agreement of the tripartite meeting held on 11.10.2017 between the 2nd respondent, Kenya Marine Authority and International Transport Workers Federation (ITF). They claim payment of their dues tabulated as follows:

a) Athman Khamisi Mzee USD 16, 500.00.

- b) Mbarak Berek Mbarak USD 15, 500.00.
- c) Mapinga Malimu Khamisi (deceased) USD 5, 950.00.
- d) Noah Otieno Ogada USD 12, 650.00.
- e) Yusuf Omar Ragunda USD 6, 000.00.
- f) Tela Hamisi Juma USD 5, 950.00.
- g) Aggrey Imbuga Diedie USD 6, 000.00.
- h) Joseph Muthama Musau USD 8, 900.00.
- i) Total claim USD 77, 450.00.

The claimants plead that despite demand the respondents have refused to pay the agreed amounts. They prayed for judgment against the respondents jointly and severally for:

- a) Wages and salaries in the sum of USD 77, 450.00.
- b) Damages for detention.
- c) Costs and interest on (a) and (b) above until payment in full.
- d) Any other or further relief the Honourable Court may consider just.

Despite service of the memorandum of claim and notice of summons to enter appearance, the respondents failed to enter appearance or to file a statement of response. They were served to attend the hearing but failed to do so.

Each claimant testified to support the claim. Final submissions were filed for the parties. The Court has considered all the material on record and returns as follows:

- 1) In view of the respective oral testimonies and the exhibited respective contracts of service, the Court finds that there existed the contract of service between each claimant and the respondent as pleaded.
- 2) The Court has considered the exhibits made for the claimants and finds that there is no reason to doubt that the claimants went through the predicament of being arrested and charged as pleaded in the memorandum of claim.
- 3) The correspondence on record shows that a tripartite meeting was indeed held and the minutes of the meeting held on 11.10.2017 at KMA Headquarters (HMS Office) are exhibited. The minutes show that the 2nd respondent was present and he agreed to pay USD 79, 800.00 in lieu of the claimants' accrued wages. As submitted for the claimants, in absence of evidence that they were paid the agreed amount in lieu of their wages, the Court returns that on a balance of probability, the claimants are entitled as prayed for.
- 4) There were no submissions made to guide the Court on the award of damages for detention as was prayed for and the prayer is deemed abandoned or as unjustified.
- 5) The respondents are liable to pay costs of the suit in view of the claimant's success and the suffering they appear to have gone through as pleaded and demonstrated in the exhibited documents and their oral testimony.

In conclusion judgment is hereby entered for the claimants against the respondents, jointly and severally, for:

- 1) The payment of the sum of **USD 77, 450.00** and to each claimant as particularised in the memorandum of claim and to pay by 01.06.2022 failing interest to be payable thereon at Court rates from the date of filing the suit on 22.05.2018 until full payment.
- 2) Payment of the claimants' costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 18TH MARCH, 2022.

BYRAM ONGAYA

JUDGE