



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE 345 OF 2017

(CONSOLIDATED WITH CAUSE NO. 346 OF 2017, 347 OF 2017 & CAUSE NO. 348 OF 2017)

KENNEDY OBUMBA OGUTU.....1ST CLAIMANT

LEAH WANJIRU.....2ND CLAIMANT

CAROL CHEGE WANJIKU.....3RD CLAIMANT

JANET CHEPKOECH.....4TH CLAIMANT

VERSUS

KENYA INSTITUTE OF SECURITY AND CRIMINAL JUSTICE...RESPONDENT

JUDGMENT

1. The 1st Claimant filed his memorandum of claim dated 12th July, 2017 on 13th July, 2017 through the firm of Maragia Ogaro and company Advocates seeking for judgement against the Respondent for payment of the following; -

- a) Notice
- b) Arrears for 4 months less the Kshs 22,500 paid.
- c) House allowance.
- d) Leave.
- e) Refund of the Expected deduction but unpaid
- f) Compensation under section 49(i)(c) of the Employment Act.

2. The 2nd Claimant filed her memorandum of claim dated 12th July, 2017 on 12th July, 2017 also through the firm of Maragia Ogaro and company Advocates and prayed for judgment against the Respondent for; -

- a) Notice
- b) Arrears for 4 months' less the Kshs 22,500 paid.
- c) House allowance.
- d) Leave.
- e) Refund of the Expected deduction but unpaid
- f) Compensation under section 49(i)(c) of the Employment Act.

3. The 3rd Claimant filed her memorandum of claim dated 12th July, 2017 on 13th July, 2017 through the firm of Maragia Ogaro and company Advocates seeking for judgement against the Respondent for payment of the following; -

- a) Notice
- b) Arrears for 4 months' less the Kshs 22,500 paid.
- c) House allowance.
- d) Leave.
- e) Refund of the Expected deduction but unpaid
- f) Compensation under section 49(i)(c) of the Employment Act.

4. The 4th Claimant filed her memorandum of claim dated 12th July, 2017 on 13th July, 2017 through the firm of Maragia Ogaro and company Advocates seeking for judgement against the Respondent for payment of the following; -

- a) Notice
- b) Arrears for 4 months' less the Kshs 22,500 paid.
- c) House allowance.
- d) Leave.
- e) Refund of the Expected deduction but unpaid
- f) Compensation under section 49(i)(c) of the Employment Act.

5. The Four suits herein were consolidated with the cause number 345 of 2017 marked as the lead file.

6. All the Claimants were employed on the 15th April, 2016. The 1st Claimant was employed as a trainer/DLM officer at a salary of Kshs 20,000, the 2nd, and 3rd Claimants were employed as receptionists at a salary of Kshs 12,000 while the 4th Claimant was employed as a Librarian at a salary of Kshs. 15,000.

7. Save for the 4th Claimant who was deducted Kshs 5,000 per month the other Claimants were deducted Kshs. 3000 purportedly for payment of their NSSF and NHIF, which money were never remitted to the said handlers as per the Claimants pleadings.

8. The Claimants aver that as much as their salary was reflected in their respective letter of appointment there was understanding between them and the Respondent that the 1st Claimant was to be paid a salary of Kshs. 28,000, the 2nd and 3rd Claimant were to be paid Kshs15,000 while the 4th Claimant was to be paid Kshs 20,000, which understating was never honoured by the Respondent.

9. None of the Claimants was paid house allowance, neither did they take their annual leave while at the Respondent's employment.

10. The Claimants avers that they were not paid their salary from January, 2017 till, April, 2017 and on inquiring about the delayed salary, the Respondent send officers from Nairobi and instead of answering their concerns they were all dismissed without any notice, nor issuance of certificate of service or payment of their terminal dues.

11. The Claimants through their advocate demanded for their dues in the various demand letters dated 28.6.2017 which never elicited any response. The matter was then escalated to the labour officer and the Respondent failed to hid any of the Summons issued to it.

12. Summons to enter Appearance together with pleadings in these suits were served upon the Respondent on the 23rd August, 2017 as per the Affidavit of service sworn on 22nd November, 2017 and filed in this Court on even date.

13. Despite service of summons and subsequent mention notices, the Respondent did not enter appearance or filed any response to the memorandum of claims by the Claimants herein.

14. The matter was later referred to mediation, however the Respondent became adamant and failed to hid to the summons issued by the mediator. A certificate of non-compliance was issued by the mediator on the 20th October, 2020 and filed in this Court on the 21st October, 2020.

15. This suits therefore proceeded as undefended and the formal proof hearing was slated for 30th November, 2021 where the 1st Claimant, Kennedy Obumba Ogutu, testified as CW-1 on his behalf and on behalf of the other Claimant. He testified that he was employed on the 16th April, 2016 together with the other Claimants, carol, Leah and Janet and were all terminated on the same dated in April, 2017. He then

adopted his witness statement dated 12.7.2017 and produced documents filed in each claim.

Submissions.

16. Each Claimant filed written submissions in respect of their case on 3rd December, 2021. The issues raised in the said submissions are all similar being; **whether the Claimant was employed by the Respondent, whether the Respondent unlawfully terminated the Claimants from employment and what relief does the Claimant deserve upon the said termination.**

17. On the first issue it was submitted for all the Claimants that they were all employed by the Respondent as per the letters of appointment produced before this Court therefore that the issue of whether the Claimant were employed by the Respondent is not in dispute.

18. On the second issue, it was submitted that the Claimants were all terminated from employment in April, 2017 after their salary was withheld by the Respondent for 4 months. It was argued that the withholding of the Claimants' salaries alone amounts to constructive termination and urged this Court to find as such.

19. The Claimants then submitted that having established that the Claimants' were unfairly terminated from the Respondents employment, the claims ought to be allowed as prayed.

20. I have examined the evidence and submissions of the Claimants filed herein. This matter proceeded exparte after the Respondents though served failed to file their defence.

21. The Claimants were able to establish that they were employees of the Respondent through the appointment letters issued to them dated 15/4/2016.

22. Each was entitled to monthly salary of 20,000/=. The Claimants further contended that they were not paid their salary as promised and some unexplained deductions were made from the said salary.

23. The Respondent being absent, the evidence of the Claimants remained uncontroverted leaving the Claimant's case proved as prayed.

24. I find for the Claimants and I accordingly award them as follows;

1ST CLAIMANT

KENNEDY OGUTU

1. 1 month's salary in lieu of notice = 20,000/=

2. Arrears of 4 months salary unpaid less 22,400/=

= 80,000/= less 22,500 = 57,500/=

3. Refund of deductions made from salary 96,000/=

4. Payment of house allowance not paid 36,000/=

5. Prorata leave 14,400/=

6. Compensation equivalent to 6 months salary for unfair termination = 20,000 x 6

= 120,000/=

TOTAL = 343,500/=

Less statutory deduction

2ND CLAIMANT

LEAH WANJIRU

1. 1 month salary in lieu of notice = 20,000/=

2. Arrears not paid = 30,000/=

3. Unpaid deduction = 36,000/=

4. House allowance = 21,000/=

5. Leave pay 8,400/=

6. Compensation equivalent to 6 months salary for unlawful termination

= 6 x 20,000 = 120,000/=

TOTAL = 235,400/=

Less statutory deductions

3RD CLAIMANT

CAROL CHEGE WANJIKU

1. 1 Month salary in lieu of notice = 20,000/=

2. Arrears of salary 30,000/=

3. House allowance = 21,000/=

4. Leave not taken 8,400/=

5. 6 months salary as compensation for unlawful termination = 6 x 20,000 = 120,000/=

TOTAL = 199,400/=

Less statutory deductions

4TH CLAIMANT

JANET CHEPKOECH

1. 1 month salary in lieu of notice = 20,000/=

2. Arrears of salary not paid = 37,000/=

3. Unpaid deduction 60,000/=

4. House allowance 27,000/=

5. Leave pay 10,500/=

6. 6 months salary as compensation for the unlawful and unfair termination

= 6 x 20,000/= = 120,000/=

TOTAL = 275,000/=

Less statutory deductions

The Respondent will pay costs of this suit in respect of all Claimant's plus interest at court rates with effect from the date of this Judgment.

DATED AND DELIVERED IN OPEN COURT THIS 9TH DAY OF MARCH, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for parties

Court Assistant - Fred