



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1528 OF 2015**

**NICHOLAS MUINDI.....1<sup>ST</sup> CLAIMANT**

**RIC MUNGASI.....2<sup>ND</sup> CLAIMANT**

**EKEVIN O. OYOO.....3<sup>RD</sup> CLAIMANT**

**JOSPAT MUIA.....4<sup>TH</sup> CLAIMANT**

**MORRIS KIPKO.....5<sup>TH</sup> CLAIMANT**

**VERSUS**

**EASTERN MATHS INTERNATIONAL**

**COMPANY LIMITED RESPONDENT.....RESPONDENT**

**JUDGMENT**

1. The suit was filed on 31<sup>st</sup> August, 2015 by the claimants seeking reliefs set out under paragraph 21 of the Statement of Claim which include declaration that the termination of the employment of the claimants by the respondent was unlawful and unfair and that the claimants be granted compensation in respect thereof.
2. That the claimants be paid terminal benefits including notice pay; House allowance; in lieu of Annual leave not taken and service pay.
3. The claimants also pray for costs of the suit.
5. The claim is supported by a verifying affidavit, and list of documents produced and marked as exhibits '1' to 7 attached to the Statement of Claim.
6. The respondent filed a Statement of Response to the claim on 29<sup>th</sup> February, 2016 in which the respondent admits the contents of paragraph 3 and 4 of the Memorandum of Claim. Therefore, it is not in dispute that the claimants were at all material times employees of the respondent working in various positions in Nairobi.
7. That Nicholas Muindi was employed on 9<sup>th</sup> April, 2014 as a driver earning Kshs 20,000 per month.
8. Eric Mungasi was employed by the respondent on 1<sup>st</sup> October, 2013 as a loader/maintenance at a salary of Kshs 12,000 per month.
9. That Kevin O. Oyoo was employed on 15<sup>th</sup> April, 2014 as a loader/pump cleaner at a salary of Kshs 12,000 a month.
10. Josphat Muia was employed on 3<sup>rd</sup> March, 2014 as a loader/cleaner at a salary of Kshs 12,000 a month and Morris Kioko was employed by the respondent on 3<sup>rd</sup> April, 2014 as a loader/maintenance at a salary of Kshs 12,000 per month.
11. That the claimants had no written contract of employment or any other document showing their terms and conditions of service.
12. The claimants tendered affidavit evidence in support of the Statement of Claims and offered themselves for cross-examination by the respondent. The witness affidavit was sworn to on 31<sup>st</sup> May, 2021 by the 1<sup>st</sup> claimant, Nicholas Muindi in which he tendered evidence on behalf of all the claimants.

13. The claimants testified that they were employed as set out under paragraphs 3 and 4 of the Statement of Claim which particulars have been captured in this judgment.
14. That on 10<sup>th</sup> February, 2014, the claimants wrote a letter to the District Labour Officer raising issues concerning the status of their employment including that they had no written contracts of employment and that the respondent deducted but did not remit their statutory deductions as required by law.
15. That on 10<sup>th</sup> December, 2014, another letter was written to National Social Security Fund Registrar raising the issue of non-remittance of statutory deductions.
16. That the respondent subsequently made National Social Security Fund contributions in respect of 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> claimants, but failed to remit for the 1<sup>st</sup> and 2<sup>nd</sup> claimants.
17. That on 1<sup>st</sup> March, 2015, the respondent introduced an outsourcing firm by the name of Flexi Personnel and directed all employees should sign contracts with them.
18. That the claimants enquired about accrued benefits before signing the new contracts but were all summarily dismissed by the respondent upon their refusal to sign the new contracts.
19. The claimants testified that they had for long period served the respondent with diligence and dedication until they were summarily unlawfully, dismissed on 1<sup>st</sup> March, 2015.
20. That they were not given notice, notice to show cause, a hearing or any valid reason for the summary dismissal. That the respondent violated sections 28, 31, 36, 41, 43, and 45 of the Employment Act, 2007. The claimants were not paid in lieu of leave days not taken; were not paid in lieu of notice and were not paid house allowance as set out in the witness statement at paragraph 22.
21. That the claimants pray to be awarded as prayed in the Statement of Claim and supported by the evidence tendered before Court.
22. On 1<sup>st</sup> March, 2021, the Court had given directions on the manner the suit was to proceed in the presence of M/s Mugo, Advocate for the claimants and Mr. Mbogo, Advocate for the respondent.
23. Mr. Mbogo had stated that he intended to file a notice to cease acting for the respondent due to lack of instructions. The suit was then set for hearing on 9<sup>th</sup> June, 2021.
24. On 9<sup>th</sup> June, 2021, the respondent did not appear for the hearing of the suit. The claimant had filed and served sworn testimony and was ready to be cross-examined by the advocate for the respondent.
25. The respondent failed to contest the facts tendered in evidence before Court and the facts as set out in the witness Affidavit remain uncontested. The Court finds that the claimants have proved on a balance of probabilities that they are owed by the respondent and have not been paid the terminal benefits set out under paragraph 22 of the witness Affidavit being notice pay; house allowance; Annual leave and service pay.
26. The Court awards the claimants accordingly.
27. With regard to the summary dismissal of the claimants on 1<sup>st</sup> March, 2015, the Court finds that the same was without notice, notice to show cause, a hearing and any valid reason. The respondent violated Sections 28, 31, 36, 41, 43, and 45 of the Employment Act, 2007 and the summary dismissal of the claimants was unlawful and unfair.
28. The claimants are entitled to compensation in terms of Section 49(1) (c) and (4) of the Employment Act, 2007.
29. It is not disputed that the claimants had served for various periods; that they were dismissed without payment of any compensation or any terminal benefits. That the claimants did not contribute to the dismissal. That the dismissal was summary in nature and thus the claimants were not prepared for the sudden loss of employment and thus suffered loss and damage. That the fact the respondent wished to impose new terms of service on the claimants is an aggravating circumstance in this suit.
30. The Court has considered the Supreme Court case of **Kenfreight [E.A] Limited –vs- Benson Nguti [2019] eKLR** and proceeds to determine compensation in respect of the claimants as follows: -

**(a) 1<sup>st</sup> claimant who had served from 9<sup>th</sup> April, 2014 to**

**1<sup>st</sup> March, 2015, a period of 9 months, is awarded two months' salary in compensation in the sum of Kshs 40,000.**

**(b) 2<sup>nd</sup> claimant who had served from 1<sup>st</sup> October, 2013**

**to 1<sup>st</sup> March, 2015, a period of one year and four (4) months is awarded three (3) months' salary in compensation in the sum**

of Kshs 36,000.

(c) The 3<sup>rd</sup> claimant who had served from 15<sup>th</sup> April,

2014 to 1<sup>st</sup> March, 2015, a period of about 9 months, is awarded two months' compensation in the sum of Kshs 24,000

(d) The 4<sup>th</sup> claimant who had served from 3<sup>rd</sup> March,

2014 to 1<sup>st</sup> March, 2015, a period of one year, is awarded three months' salary in compensation in the sum of 36,000.

(e) The 5<sup>th</sup> respondent who also had served from 3<sup>rd</sup> March, 2014 to 1<sup>st</sup> March, 2015, a period of one year, is awarded three months' salary in compensation in the sum of Kshs 36,000.

31. In the final analysis, judgment is entered in favour of the claimants as against the respondent as follows: -

(a) **Nicholas Muindi**

- (i) Notice pay ..... Kshs 20,000
- (ii) House Allowance ..... Kshs 33,000
- (iii) Annual leave.....Kshs 20,000
- (iv) Service pay..... Kshs 11,500
- (v) Compensation..... Kshs 40,000

(b) **Eric Mungasi**

- (i) Notice pay ..... Kshs 12,000
- (ii) House Allowance ..... Kshs 18,000
- (iii) Annual leave.....Kshs 12,000
- (iv) Service pay..... Kshs 6,000
- (v) Compensation..... Kshs 36,000

(c) **Kevin Oyoo**

- (i) Notice pay ..... Kshs12,000
- (ii) House Allowance ..... Kshs 18,000
- (iii) Annual leave.....Kshs 12,000
- (iv) Compensation..... Kshs 24,000

(d) **Josphat Muia**

- (i) Notice pay ..... Kshs 12,000
- (ii) House Allowance ..... Kshs 18,000
- (iii) Annual leave.....Kshs 12,000
- (iv) Compensation..... Kshs 36,000

(e) **Morris Kioko**

- (i) Notice pay ..... Kshs 12,000

- (ii) House Allowance ..... Kshs 18,000
- (iii) Annual leave.....Kshs 12,000
- (v) Compensation..... Kshs 36,000
- (f) Interest at Court rates from the date of judgment till payment in full.
- (g) Costs of the suit.

**DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF APRIL, 2022.**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of 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, this judgment has been delivered to the parties online with their consent. 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 has 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 18 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.

**Mathews N. Nduma**

**Judge**

**Appearance**

Mr Njiru for claimants

Mr. Mbogo for Respondent

Ekale – Court Assistant