



Kenya Union of Hair and Beauty Workers v Trenz Kenya Limited (Cause 2188 of 2016) [2022] KEELRC 1482 (KLR) (26 May 2022) (Judgment)

Neutral citation: [2022] KEELRC 1482 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2188 OF 2016**

K OCHARO, J

MAY 26, 2022

BETWEEN

KENYA UNION OF HAIR AND BEAUTY WORKERS CLAIMANT

AND

TRENZ KENYA LIMITED RESPONDENT

JUDGMENT

1. Through an amended statement of claim herein dated April 13, 2018, the claimant, a registered trade union, stated to be representing all the employees engaged in hair and beauty industry in the Republic of Kenya, sued the respondents on behalf of 42 [forty two] of its members [the grievants] seeking for the following orders and reliefs:
 - a) A declaration that the termination of the claimant's members' employment was unfair, wrongful and unlawful.
 - b) That the respondent be ordered to reinstate all terminated workers unconditionally without loss of benefits.
 - c) That in the alternative to [b] above the respondent be ordered to compensate the terminated employees for unfair termination as per section 49 [1] [c] of the *Employment Act*.
 - d) That the respondent be ordered not to engage new employees until the suit is heard and determined.
 - e) That the respondent be ordered to enter and sign the pending recognition agreement with the claimant.
 - f) That the respondent be ordered to respect the rights of workers in regard to freedom of association and right to collective bargaining.



- g) That the respondent be ordered to immediately effect trade union dues deductions as required by the law.
 - h) That the respondent pay the costs of this suit.
2. The claimant averred that it was a registered trade union representing all employees engaged in the hair and beauty industry in the Republic of Kenya.
 3. Upon attaining the simple majority membership, it wrote to the respondent on the October 6, 2016, seeking for a meeting on the October 14, 2016 for signing of a recognition agreement.
 4. It was further averred that the Respondent got uncooperative, the matter ended up at the labour officer's desk for a resolution, nothing came to fruition. The officer issued a certificate of disagreement.
 5. The claimant contended that upon attaining the members required within the law, it served the respondent with four [4] check off forms duly signed by the forty two [42] employees as a sign of membership to the claimant union.
 6. The respondent knew that the contracts of its members were set to expire on October 31, 2016, it deliberately avoided any meeting with the claimant union's officers on any day earlier than the October 31, 2016. It insisted that any meeting was only possible on the November 4, 2016.
 7. The process that had been initiated by the claimant to have a recognition agreement signed, was frustrated by the respondent, when it en mass terminated services of the workers/members. The reason for the termination was to frustrate union membership. This amounted to unfair labour practices.
 8. All the employees who were dismissed were neither given a notice to show cause nor subjected to a disciplinary hearing. They were not heard therefore.

Respondent's Reply to Amended Memorandum of Claim

9. The respondent filed a reply to the amended memorandum of claim, dated May 2, 2018, on the May 8, 2018. The respondent averred that it only became aware in September 2016 that there was an unknown union recruiting employees. That it received a letter dated October 6, 2016 calling for a meeting on the October 14, 2016. It denied that as at this time the claimant had attained a simple majority.
10. It contended that upon receipt of the letter dated October 6, 2016, it wrote back to the claimant indicating the unsuitability of the date [October 14, 2016], and proposed 4th November for the meeting.
11. Further that on October 13, 2016 without following due process the employees participated in an unlawful strike, leading to their summary dismissal.
12. The respondent denied that it in any manner frustrated the claimant's activities.

The Claimant's Reply to Respondent's Statement of Response

13. The claimant asserted that the allegation that the date that had been proposed by the claimant was inconvenient, was ill motivated, it was aimed at ensuring that a meeting date was set after the expiry of the contractual periods for the grievants.
14. It contended that placing the grievants on perpetual fixed term contracts was inter alia meant to defeat union membership and defeat the grievants' employment rights enjoyed by those on open ended contracts.



The Claimant's Evidence

15. When this matter came up for hearing on the November 1, 2021 two witnesses testified on behalf of the claimant, their behalf and that of the other grievants. The two were Jackline Kisilu [CWI] and Vincent Omatustso [CW2].
16. CWI testified that she had the blessings of the other grievants to testify on their behalf as exhibited by the various affidavits herein filed and sworn by them.
17. The witness stated that she was employed by the respondent as a mass production mechanist on November 2, 2006. That for the entire duration of her employment which was 10 years, she was employed on fixed term contracts of 3 to 6 months each which were always renewed. However, in some instances the contracts were never given to her.
18. She stated that some times in 2016, they heard from the management that long serving employees like her were going to be terminated. This prompted her and her colleagues to join the claimant union as a way of ensuring that their rights and interests were firmly protected.
19. She contended that at all material times she was an official of the union, chief shop steward. The respondent company had a total of 70 employees. By September 2016, the claimant had recruited 42 employees.
20. That upon joining the union, the relationship between the employer [respondent] and the grievants turned sour. The grievants started getting and continued being under constant, threats, they had to leave the union or they continue being on fixed term contracts indefinitely.
21. The witness contended that the claimant made several attempts to have the Respondent execute a recognition agreement but it did not.
22. On the October 6, 2016 the claimant wrote to the respondent requiring that it signs the recognition agreement, and set the date for the same for the October 14, 2016. The Respondent responded to the letter stating that the date- October 14, 2016, was inconvenient and suggested meeting to be rescheduled to the November 4, 2016. The witness stated that her then contract of employment and those of those of most of her colleagues were set to lapse on the October 31, 2016.
23. On the October 13, 2016, the witness and CW2 approached the management seeking to know why they were unwilling to have a meeting with the union before the October 31, 2016. The director Mr Derdat, told them that it would not be imposed on him to do what he didn't want to. He swore to ensure that the membership of the union would not benefit the grievants.
24. Later the grievants were called to the director's office one by one to collect their summary dismissal letters. Those called included those who had open ended contracts. The dismissal letters were dated October 13, 2016.
25. As at the time of dismissal the claimant was earning Kshs 12,406 and a house allowance of Kshs 1,863 per a month.
26. The witness stated that prior to the dismissal the grievants were not given any notice to show cause, and/or heard by the respondent.
27. The summary dismissal was ill prompted to defeat union membership.



28. Cross examined by counsel for the respondent, the witness reiterated that the matter herein was filed by the grievants' union, she was a member of the union and its chief shop steward. She took this position in September 2016.
29. The respondent in its production relied on imported materials, materials which sometimes would not be available.
30. The letter dated October 6, 2016 from the union was seeking a meeting with the respondent. The employer had a right to propose a convenient date for the meeting.
31. The employer [respondent] responded to the letter promptly. The letter gives a clear impression that the respondent was not opposed to the meeting. It gave the reason why the respondent would not be able to meet the union officials on the date that was suggested in the letter dated October 6, 2016.
32. The witness stated that the respondent wrote a letter dated October 13, 2016, seeking for check off forms.
33. Contrary to what the respondent asserts, the grievants did not refuse to work. The Ministry wrote a letter dated October 14, 2016. According to the Ministry there was a dispute.
34. On October 14, 2016, when the grievants reported for work they were refused entry into the work place.
35. The witness stated that there was a conciliation meeting, the employer attended, but the process did not yield any fruits. A certificate of disagreement was issued. The respondent was not blamed by the Ministry for this result.
36. The witness stated that her contract was set to terminate on the October 31, 2016, however, was terminated 17 days. Notwithstanding, the respondent paid salary for the entire month.
37. Vincent Omusotsi [CW2], testified for the claimant as a second witness. He stated that he had sworn an affidavit donating authority to CWI.
38. Cross examined by counsel for the respondent, the witness stated that before the union's letter dated October 6, 2016, they had informed the respondent though informally about the union activities. The letter by the union was seeking for a meeting date between the union and the respondent. The respondent had a right to propose a convenient date. In its response letter, the union did not suggest that it was opposed to union activities.
39. His contract was to lapse on the October 31, 2016; however, it was terminated earlier by 13 days. Notwithstanding, the respondent paid him for the entire month.

Respondent's Evidence.

40. The respondent presented one Devut Hana, to testify in its case. The witness urged the court to adopt his witness statement that was filed herein as his evidence in chief, and the documents that the respondent filed as its documentary evidence.
41. The witness stated that the respondent company was incorporated on or about the year 2005, with its principal business being production of synthetic hair additions. Further that since the company started its operations, it had never posted any profit, it had been a loss-making enterprise. To keep it afloat, the owners always got constrained to borrow from outside sources to avoid it closing down the enterprise.
42. The witness stated that on the October 6, 2016, the respondent received a letter from the union, seeking an appointment for the October 14, 2016 for signing of a recognition agreement. On the October



- 10, 2016, the witness wrote to the union indicating that the suggested date was not convenient and proposed November 4, 2016.
43. The witness stated that on the October 13, 2016 he was informed by the respondent's Human Resource Manager, Ezekiel Mutuku that the workers had refused to work until the respondent confirmed the meeting for 14th October. The Human Resource Manager wrote to the claimant requesting for details of check off forms to enable the respondent verify as the union was unknown to the respondent.
 44. The date October 14, 2016 was not convenient to the respondent as he was set to travel to the UK. His request for the November 4, 2016 was informed of the fact that by that time he would have returned to the country.
 45. The witness stated that he tried to persuade the employees to get back to work but they refused, vowing not to, until the meeting took place on October 14, 2016.
 46. The Human Resource Manager informed them that if they did not get to work disciplinary action would be taken against them, but they heard none of that. They insisted not to get back to work. On the same day at 3.000 p.m., the employees were served with termination letters, and the labour officer was duly notified.
 47. The witness contended that whereas the contracts of the grievants were set to expire on the October 30, 2016, the respondent had committed to renew the contracts for a further term as there was sufficient raw material.
 48. The illegal strike was not justified under the circumstances of the matter. the claim herein is unjustified as the contracts of employment came to an end by effluxion of time
 49. On the short-term contracts, the witness testified that this was informed by the fact that raw material for the production were not available throughout the year, month to month.
 50. Cross examined by counsel for the claimant the witness stated that the last contracts of employment for the grievants ran from August 2016 – October 2016. The witness on admission, stated that some of the employees had worked under short term contracts for a period of more than 16 years.
 51. The witness stated that prior to the events the subject matter herein, he had not had any encounter with a union.
 52. The witness contended that he travelled to the UK on the October 14, 2016, however he did not have any travel documents placed before court to establish this.
 53. The reason for dismissal was a disciplinary issue. The grievants were not given any notice to show cause. The respondent does not have any minutes to demonstrate that disciplinary proceedings were undertaken.
 54. The meeting with the employer was at the witnesses' office. At his office there were CCTV cameras.

The Claimant's Submissions

55. Counsel for the claimant submitted that there was no evidence placed before this court from which it can be discerned that the grievants engaged in a strike. No witness was presented to corroborate the assertions by RWI. The services of employment of the grievants were terminated to ensure that the union lost its membership and hence defeat the recognition agreement.



56. The alleged non-availability of the RWI for the meeting that the claimant proposed for the October 14, 2016, was not a genuine reason. If it were nothing would have been easier for the witness to tender travel documents to demonstrate that he exited the country and got back at any time.
57. The grievants were not terminated on a fair and valid reason and therefore unfair in terms of section 45 [2] of the *Employment Act*.
58. That contrary to the provisions of section 41 of the *Employment Act*, the respondent did not adhere to procedural fairness and this rendered the dismissal unfair pursuant to the provisions of section 45 [2] [c]. The grievants were summarily dismissed before the contracts would lapse, they were still entitled to a hearing. Payment to end of contract does not convert a summary dismissal to an ordinary expiry of a fixed term contract. Counsel placed reliance in the holding in *Teresa Carlo Emondi v Transparency International* [2007] eKLR, thus:
- “ 112. The respondent had an obligation to respect the claimant’s right to serve her full term, in accordance with the terms and conditions agreed between the parties, and with due regard to the law governing the contracts. There was an obligation to treat the claimant fairly up to the very end. Fair dealing between employers and employee is not to be ignored on the ground that a fixed term contract is any way coming to an end.”
59. On the reliefs sought, counsel for the claimant submitted that the employees having been terminated and due to passage of time, the claimant lost a simple majority, hence prayers [b], [d], [e], [f] and [g] of the amended claim are no longer sustainable, leaving prayers [a], [c] and [h] for consideration by this court.
60. Counsel submitted that the court should award the grievants compensatory awards to the maximum extent grantable under law considering the cumulative periods they had been in employment, legitimate expectation that renewal of the contracts would have taken place due to the previous multiple renewals, and the callous conduct by the respondent which violated the constitutional right to freedom of association and led to loss of livelihoods.

The Respondent’s Submissions

61. Counsel for the respondent submitted that the grievants contracts were fixed term contracts that were to expire on October 31, 2016. There cannot be any argument there was on a legitimate expectation that the claimants would continue serving after the expiry of the set date. He relied on the case of *Mombasa Apparels [EPC] Limited v Tailors and Textile Workers Union* [2016] eKLR, thus:
- “ Fixed term contracts are meant to lapse automatically unless parties mutually agree to extend them. The only exception is in the sectors where the law provides for conversion into regular employment contracts after extending the fixed term contracts to a maximum length of term set by the law. There is no legitimate expectation for an employee under a fixed term contract in the textile industry that would continue serving after expiry of that contract.”
62. The employees were paid all their emoluments up to 31st October when their contracts were to come to an end. They suffered no loss at all as the only expectation they had was to remain in service till October 31, 2016.



Analysis and Determination

63. Considering that the reliefs sought have been reduced by the claimant leaving only three for consideration and determination. I am of the view that the following broad issues emerge for determination, thus;
- a) Was the summary dismissal procedurally fair?
 - b) Was the summary dismissal substantively fair?
 - c) Are the grievants entitled to reliefs sought or any of them.
 - d) Who should bear the costs of this suit?

Whether The Summary Dismissal Of The Grievants Was Procedurally Fair

64. There is no doubt that all the grievants' contracts of employment that they were serving under at the material time were fixed term contracts, that had an appointed date for lapse as October 31, 2016, save that of the 1st grievant that was open ended. That for those who had fixed term contracts, their contracts were brought to an end 17 days to the appointed date. Further there is no doubt that all of them were summarily dismissed through summary dismissal letters dated October 13, 2016.
65. Section 41 of the *Employment Act* provides for procedural fairness in matters termination of an employee's contract of service and summary dismissals. Procedural fairness has to be present in the process leading to the termination or summary otherwise the termination or summary dismissal shall be deemed unfair in terms of section 45 [2] [c] of the *Employment Act*.
66. Where an employee intends to terminate an employee's employment procedural fairness requires of him to; notify/inform the employee of its intention and the grounds that form basis thereof; give the employee an opportunity and his witness[s] [if any] to make a representation on the intention and the grounds; consider the representation[s] before making a decision.
67. The grievants asserted that they were not notified of the impending dismissal and the reasons stirring the same. They were not given an opportunity to defend themselves. The respondent was under duty to prove that procedural fairness was embraced in the process leading to the summary dismissal of the grievants. It did not place any evidence to establish that it did. I note that the respondent's witness stated that the respondent's Human Resource Manager urged the employees to cease the alleged strike, with a warning that if they did not disciplinary action could ensue.
68. The court is of the view that such a warning cannot be taken to be equivalent to the notification contemplated in section 41 of the *Employment Act*. The notification under the provision has to be express on the grounds. The notification has to be succeeded by a hearing. In any event the Human Resource Manager did not testify in this matter.
69. In conclusion, the summary dismissal was procedurally unfair.

Whether The Summary Dismissal Was Substantively Fair

70. Section 43, 45 [2] and 47[5] speak to substantive fairness in matters determination of an employee's employment, thus:

“ 43. Proof of reason for termination.



[1] In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

.....

47. Complaint of summary dismissal and unfair termination.

(5) For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of the employment or wrongful dismissal shall rest on the employer”.

See *Muthaiga County Club v Kudheiba workers* [2017] eKLR.

71. There is no doubt, that the grievants’ employment was terminated through summary dismissal. The grievants having contended both in the pleadings and their witness statements, that they were dismissed without any valid fair and justifiable reason, and that the reason for the summary dismissal was camouflaged, discharged their obligation under section 47 [5] of the *Act* by laying basis for their claim that an unfair termination of employment had occurred. As the Court of Appeal stated in the *Muthaiga Club*, case [*supra*] this brought into play section 43 [1] and 47 [5] of the Act that placed the burden upon the respondent to prove the alleged reasons for termination of the grievants’ employment, and justify the grounds for the termination.

72. In my view the burden of proof placed upon an employer is treble, for besides the two obligations bestowed on an employer pursuant to the two provisions the Court of Appeal considered in the above cited matter, there is a further burden under section 45 [2], thus:

“Unfair termination.

2. A termination of employment by an employer is unfair if the employer fails to prove –

a. That the reason for termination is valid.

b. That the reason for termination is fair reason –

c. Related to the employee’s conduct, capacity or compatibility; or

d. Based on the operational requirements of the employer; and

.....”

73. The reason for the summary dismissal was brought forth in the respondent’s letter dated October 13, 2013, to the grievants which read in part;

“The management has noted that you have this day deliberately failed to heed lawful instructions by the management to perform your duties. You chose to engage in an unlawful sit in without prior communication with the management, of your intentions.

.....”



74. The evidence by the respondent on the alleged sit in is too far unsatisfactory, for instance it is not stated by it, when the alleged sit in started and for how long it lasted before the summary dismissal letters were issued, how were the grievants identified as the participants in the sit in. the Human Resource manager in my view dealt more with the alleged situation than the respondent's witness [RWI], yet he was not presented to testify. I note that he is the one who swore a replying affidavit in response to the grievants application October 26, 2016. The affidavit clearly gives the impression, I have mentioned hereinabove.
75. It is by reason of the premises foregoing that I come to a conclusion that the evidence adduced was not sufficient to prove that there was a strike or sit in as was alleged. There is no evidence that can lead to a conclusion that each of the grievants had by their conduct fundamentally breached their obligations under their contract of service in terms of section 44 [3] of the *Employment Act* to attract the sanction of a summary dismissal. The Respondent has not discharged its burden of proving the reasons that justified the dismissal and that the reasons were valid and fair.
76. In the upshot, I find that the summary dismissal was substantively unfair.

Of the reliefs

77. Having found that the dismissal was unfair and wrongful, I now turn to consider the only other outstanding principal relief sought – a compensatory relief pursuant to the provisions of section 49 [1] [c] of the *Employment Act*. The provision donates authority upon court to make a compensatory award, to an employee who has successfully assailed a termination of his or her employment on an account that the same was unfair and or wrongful. Exercise of the authority is discretionary. The grant and the extent thereof depend on the circumstances of each case.
78. In this matter I have considered the fact that the grievants save the 1st grievant had only 17 days remaining for their contracts to lapse. I note that for more than six years their fixed term contracts had in succession been extended, the respondent's evidence that it was to renew their contracts which reinforces their assertion that they had a legitimate expectation for the renewal/extension, the court's view that the summary dismissal was destitute of validity, fairness and justification, and retaliatory, and conclude that the grievants are entitled to a grant of the compensatory relief under section 49 [1] [c] of the *Employment Act*, and to an extent of 3 [three] months gross salary each.
79. I note that the grievants did provide a schedule of their monthly earnings at the time of termination, schedule dated September 9, 2014 which was not challenged in any manner by the respondents. The award above shall be computed on the basis of the gross salary appearing thereon; and as brought forth hereunder.



| NO. | Names of The Employee. | Year of Employment | Job Description | Monthly Salary | House Allowance |
|-----|------------------------|--------------------|---------------------------|----------------|-----------------|
| 1. | Jackline Kisilu | November 2, 2006 | Mass Production Machinist | Ksh 12,406 | Ksh 1,863 |
| 2. | Vincent M. Omusotsi | October 13, 2008 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 3. | Benard Kimanzi | July 1, 2010 | General Labourer | Ksh 10,955 | Ksh 1,643 |
| 4. | Gladys Kiduru | April 3, 2006 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 5. | Caroline N Wanyonyi | May 2, 2007 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 6. | Herzron G. Njuguna | May 13, 2008 | General Labourer | Ksh 10,955 | Ksh 1,643 |
| 7. | Nancy Njeri | March 16, 2010 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 8. | Agatha Wambui | March 7, 2006 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 9. | Eunice N. Kimeu | February 2, 2009 | Head of Machine Operator | Ksh 12,416 | Ksh 1,863 |
| 10. | James A. Achieng | October 16, 2009 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 11. | Redempta M. Lau | February 2, 2006 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |



| | | | | | |
|-----|------------------------------|----------------------|---------------------------------|------------|-----------|
| 12. | Beatrice A. Olando | August 4, 2006 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 13. | Elizabeth K Musyoka | February 17, 2006 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 14. | Taiberious O. Miruka | October 17, 2008 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 15. | Mary M. Mutuku | August 2, 2008 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 16. | Virginia M. Mwevya | April 8, 2006 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 17. | Edward Nyong'a Mweresa | September 2, 2010 | General Labourer | Ksh 10,955 | Ksh 1,643 |



| | | | | | |
|-----|-------------------|-------------------|---------------------------|-------------|------------|
| 18. | Agnes M. Kimeu | September 1, 2006 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 19. | Consolata Naliaka | August 1, 2008 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 20. | Gift Ndau | March 7, 2006 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 21. | Daniel Mutinda | May 3, 2006 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 22. | Mary N. Ndinda | March 10, 2006 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 23. | Peter M Wambua | May 8, 2006 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 24. | Purity Malinda | September 1, 2010 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 25. | Josephat Ogetange | March 2, 2010 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 26. | Ann Matata | February 15, 2010 | General labourer | Ksh 10,955 | Ksh 1,643 |
| 27. | Esther Mogotu | October 22, 2007 | Mass Production Machinist | Kshs 12,416 | Kshs 1,863 |
| 28. | George K Mose | June 2006 | Mass Production Machinist | Kshs 12,416 | Kshs 1,863 |
| 29. | Esther W Maina | March 7, 2006 | Mass Production Machinist | Kshs 12,416 | Kshs 1,863 |
| 30. | Rose M Okenyuri | March 12, 2006 | Mass Production | Kshs 12,416 | Kshs 1,863 |



| | | | | | |
|-----|------------------------|-------------------|------------------------------|-------------|------------|
| | | | Machinist | | |
| 31. | Fredrick T Mbatha | October 2, 2012 | General labourer | Kshs 10,955 | Kshs 1,643 |
| 32. | Alexander M Muli | December 3, 2012 | General labourer | Kshs 10,955 | Kshs 1,643 |
| 33. | Charles Makori | July 18, 2011 | General labourer | Kshs 10,955 | Kshs 1,643 |
| 34. | Kenneth Kigode | December 20, 2010 | General labourer | Kshs 10,955 | Kshs 1,643 |
| 35. | Pacifica Nyambane | June 21, 2013 | Mass Production Machinist | Kshs 12,416 | Kshs 1,863 |
| 36. | Florence Atsali Anyera | April 3, 2006 | Mass Production Machinist | Ksh 12,416 | Ksh 1,863 |
| 37. | John Baraza | July 1, 2008 | General labourer | Kshs 10,955 | Kshs 1,643 |
| 38. | Winfred Mutheu | August 3, 2006 | Mass Production Machinist | Kshs 12,416 | Kshs 1,863 |
| 39. | Judes K Koria | March 5, 2007 | Mass Production Machinist | Kshs 12,416 | Kshs 1,863 |
| 40. | Martin Osendi | October 13, 2008 | General labourer | Kshs 10,955 | Kshs 1,643 |
| 41. | Joanina Wanjiru Gitau | December 2, 2012 | General Labourer | Kshs 10,955 | Kshs 1,643 |
| 42. | Wilfred Orege Akoya | February 2, 2009 | General labourer | Kshs 10,955 | Kshs 1,643 |

80. Costs follow the event and the same is awarded in favour of the claimant.

81. In the upshot judgment is entered in favour of the grievants in the following terms:



- a. A declaration that the summary dismissal of the grievants was unfair.
- b. Compensation pursuant to the provisions of section 49 [1] [c] of the *Employment Act*, 3 [three] gross salary for each, computed in accordance with the schedule hereinabove.
- c. Interest on [b] above from the date of this judgment till full payment.
- d. Costs of the suit.

Read and delivered virtually at Nairobi this 26th day of May, 2022.

Ocharo Kebira

Judge

In presence of

Mr Kamiti holding brief for Macharia for the respondent.

Mr Rutto for Buruga for the claimant.

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 March 15, 2020 and subsequent directions of April 21, 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 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 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.

A signed copy will be availed to each party upon payment of court fees.

OCHARO KEBIRA

JUDGE

