



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Okuta & 26 others v Migori County Government & another (Cause
38 of 2018) [2022] KEELRC 1378 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1378 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 38 OF 2018
CN BAARI, J
JUNE 30, 2022**

BETWEEN

JOEL OKUMU OKUTA 1ST CLAIMANT
ELISHA OMOLLO DISI 2ND CLAIMANT
GEORGE OTIENO ACHOLA 3RD CLAIMANT
ROSE ATIENO HEYWOOD 4TH CLAIMANT
CAROLINE ATIENO OSEKI 5TH CLAIMANT
MASESE AKOTH RUTH 6TH CLAIMANT
MELDA ADHIAMBO SEKO 7TH CLAIMANT
PHEOBE ATIENO OPIYO 8TH CLAIMANT
PAMELA ATIENO NGOME 9TH CLAIMANT
MARIA ATIENO BUNGU 10TH CLAIMANT
ROSEA CHIENG MUO 11TH CLAIMANT
WALTER ONYANGO ORIRO 12TH CLAIMANT
BENARD OKOTH OLANG 13TH CLAIMANT
EDWIN ODERO ODIRA 14TH CLAIMANT
TOBIAS ONYANGO OGALO 15TH CLAIMANT
ESTHER ACHIENG OKECH 16TH CLAIMANT
SAMWEL OCHIENG OPIYO 17TH CLAIMANT
MAURICE ODEGO ROBERT 18TH CLAIMANT
PETER OLUOCH OYIER 19TH CLAIMANT



CALVINCE OCHIENG TITO	20 TH CLAIMANT
THADEUS OKOMBO OKETCH	21 ST CLAIMANT
CAROLINE AOKO INDE	22 ND CLAIMANT
CAROLINE ACHIENG ONGALO	23 RD CLAIMANT
NICHOLAS ODOYO ONYANGO	24 TH CLAIMANT
SIMON AYORO MBAJA	25 TH CLAIMANT
PENINA AOKO ADERA	26 TH CLAIMANT
EVERLINE AKINYI PETER	27 TH CLAIMANT

AND

MIGORI COUNTY GOVERNMENT	1 ST RESPONDENT
MIGORI COUNTY SERVICE BOARD	2 ND RESPONDENT

JUDGMENT

Introduction

1. The Claimants' Statement of Claim is dated 12th February, 2018, and filed on 13th February, 2018. They seek a declaration that the Respondents violated their rights to fair labour practices, and further seek an order that the Respondents employ them on permanent terms of service.
2. The Respondents filed a memorandum of reply on 29th March, 2018, wherein, they wholly denied the Claimants claim.
3. The 1st Claimant, Joel Okumu testified during the hearing on behalf of all the Claimants. The Respondents presented one Martin Shikuku Arondo to testify in support of their case.
4. Both parties filed submissions in the matter, and which have been dully considered.

The Claimants' Case

5. The Claimants state that they have worked for the Respondents since the year 2010, having transited from the County Council of Migori. It is their case that they still work for the Respondents.
6. The Claimants avers that for reason of having been retained as casual employees from the year 2010, has denied them benefits and privileges attendant to employees employed on permanent terms of service.
7. On cross-examination, the Claimants' witness (CW1) told the court that they have been working on short term contracts, and that they did re-apply for renewal of their contracts when the ones they had last with the Respondents lapsed.
8. It is the Claimants' case that they have signed a total of three short term contracts with the Respondents, and that the reason they did not re-apply for renewal is because they were used to them being automatically renewed.



9. The Claimants confirmed that they were still receiving salaries from the Respondents as at the time of this hearing. He however told the court on cross-examination, that they did not have pay slips as prove of salary payments.

The Respondents' Case

10. It is the Respondents case that the Claimants were employed by the 1st Respondent on casual and/or fixed term contracts as such their dues were paid/settled as provided for under the terms agreed in their respective fixed term contracts.
11. The Respondents states that the Claimants were employed either on casual basis or under fixed term contracts, and thus had no expectation of renewal of contracts.
12. It is the Respondents' case that renewal of contracts for casual labourers only happened on a need basis, and cannot thus claim to have been employed continuously for 10 years.
13. The Respondents' further case is that they took casual employees through a suitability interview for purposes of confirmation to permanent terms of service. It is their case that communication was sent to all casual employees to attend the suitability exercise, and that those who attended and were recommended for absorption, were only the 1st, 3rd, 5th, 6th, 18th and 22nd Claimants.
14. The Respondents' case is that they are willing to absorb into permanent and pensionable terms the casual employees who qualified after completion of the sustainability exercise.
15. The Respondent states that the casuals who did not meet the minimum requirements for continued engagement were to be considered for payment of severance pay.

Analysis and Determination

16. I have considered the pleadings, the witnesses' oral testimonies and the rival submissions. The issue for determination is whether the Claimants are entitled to the remedies sought.
17. The Claimants' prayers before this court is a declaration that the Respondents violated their right to fair labour practices, and further seek an order that the Respondents employ them on permanent terms of service.
18. The Claimants case is that they have been in the service of the respondent for long enough to have acquired the rights of employees on permanent terms of service, and not casual labourers as the Respondents would like to believe.
19. The appointments letters produced in evidence were all for short term casual service while others, and the last ones given were fixed term contracts. The Claimants have not adduced sufficient evidence to show that they currently are in the Respondents payroll. No pay slips or even bank statements indicating receipt of funds from the Respondents' accounts as evidence of salary payment have been produced before this court.
20. The Respondents though not confirming that the Claimants are still in their service, have told the court that they took the Claimants through suitability interviews, and that only the 1st, 3rd, 5th, 6th, 18th and 22nd Claimants met the minimum requirements for confirmation into their permanent service.
21. The Respondents' witness RW1 confirmed in his testimony that the Respondents are willing to absorb into permanent and pensionable terms the casual employees who qualified upon completion of the sustainability exercise.



22. The Respondents through RW1 and the Casual Suitability Report produced in evidence before this court, indicated that there was a resolution to pay the casuals that did not qualify for confirmation severance pay.
23. This is confirmation that the Claimants have continued to be in the service of the Respondents even after the lapse of their fixed term contracts. Secondly, the Respondents' resolution that employees who did not meet the minimum requirements for absorption into permanent employment would be paid severance pay, again confirms that the Claimants are still in the service of the Respondents.
24. The court notes that the suitability exercise was undertaken during the pendency of this suit, and that this suit could have triggered the exercise.
25. To have arrived at the resolution to pay severance pay, goes to say that the employees who did not meet the minimum requirements, are in the process of being declared redundant.
26. The Respondents told the court that the Claimants were employed on fixed term contracts which did not guarantee renewal, and as such, did not create expectation that the Claimants would continue working for the Respondents.
27. This court will not stand in the way of an institution's administrative process, and will therefore not stop/stall the redundancy process that the Respondents have put in motion.
28. In the circumstances, and to allow the Respondents implement the casual suitability report, the court makes orders as follows: -
 - i. That the 1st, 3rd, 5th, 6th, 18th and 22nd Claimant be absorbed into the Respondents permanent employment.
 - ii. That the Respondents implements the Suitability Report in relation to the rest of the Claimants herein, in full compliance with Section 40 of the *employment Act*, 2007.
 - iii. The Respondents shall bear the costs of the suit.
29. Judgment accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 30TH DAY OF JUNE, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Ms. Twena Present for the Claimants

Ms. Kahiti Present for the Respondent

Christine Omollo- C/A

