



Katumbi v Athi River Marble and Granite Limited (Cause 348, 349, 350, 351, 352, 353, 354, 355, 357, 358, 359, 360, 361, 1018, 1019, 1020, 1022, 1023, 1024, 1025 & 1026 of 2018 (Consolidated)) [2022] KEELRC 1716 (KLR) (26 July 2022) (Judgment)

Neutral citation: [2022] KEELRC 1716 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 348, 349, 350, 351, 352, 353, 354, 355, 357, 358, 359, 360, 361, 1018,
1019, 1020, 1022, 1023, 1024, 1025 & 1026 OF 2018 (CONSOLIDATED)**

MA ONYANGO, J

JULY 26, 2022

BETWEEN

WAMBUA KATUMBI CLAIMANT

AND

ATHI RIVER MARBLE AND GRANITE LIMITED RESPONDENT

JUDGMENT

Corrigenda Ruling

1. In the judgment delivered on July 26, 2022, I stated at paragraph 12 as follows:

12. The total award to all the 21 Claimants is Kshs.1,306,574.96.

2. It has been brought to my attention the judgment contained an arithmetic error in the total award, which was not noted at the time of delivery of judgment. I therefore invoke this court's powers under section 16 of the *Employment and Labour Relations Court Act* and rule 33(1)(b) and rule 34 of the *Employment and Labour Relations Court (Procedure) Rules* 2016 to correct the judgment to read as follows –

12. The total award to all the 21 Claimants is Kshs.5,260,792.06

3. The judgment is amended accordingly.

Dated, Signed and Delivered at Nairobi on This 22nd Day of September 2022

1. The claimant is a former employee of the Respondent, Athi River Marble and Granite. He has attached his letter of appointment dated 1st May 1997. He was employed as a mechanic at a salary of Kshs.15,647/= with house allowance of Kshs.2,000/=.



2. It is the Claimant's case that he worked for the Respondent until 2016 when the company eased operations. By the time it ceases operations in March 2016 the Claimant had not been paid salary for ten months.
3. The Claimant prays for payment of arrears of salary from May 2015 to February 2016 at Kshs.176,470/= and pay in lieu of annual leave at Kshs.12,352.10.
4. The Respondent filed a defence in which it denies that the Claimant was its employee or that it failed to pay salary as prayed. The Respondent further denies terminating the employment of the Claimant.
5. The case was fixed for hearing on 26th May 2022. The Respondent was served through its advocates by both the Court and Counsel for the Claimant. However, the Respondent did not turn up on the date for hearing and the hearing thus proceeded ex parte.
6. The issues for determination are whether the Claimant was an employee of the Respondent, whether he was owed ten months arrears of salary and if he is entitled to the prayers sought.
7. The letter of appointment produced by the Claimant is proof that he was an employee of the Respondent from 1st May 1997.
8. The Claimant has further filed copies of pay slips for the month of January 2015. He further filed an agreement between his union Kenya Quarry and Mine Workers Union and the Respondent dated 13th April 2015 here the Respondent agreed to pay all outstanding salary outstanding as at 15th April 2015 by 16th April 2022.
9. From the foregoing and in the absence of rebuttal by the Respondent, I find that the Claimant has proved his case on a balance of probability and award him Kshs.188,822.90 as prayed.
10. This suit was heard as a test suit for file numbers –
 1. Cause No. 349 of 2018
 2. Cause No. 350 of 2018
 3. Cause No. 351 of 2018
 4. Cause No. 352 of 2018
 5. Cause No. 353 of 2018
 6. Cause No. 354 of 2018
 7. Cause No. 355 of 2018
 8. Cause No. 357 of 2018
 9. Cause No. 358 of 2018
 10. Cause No. 359 of 2018
 11. Cause No. 360 of 2018
 12. Cause No. 361 of 2018
 13. Cause No. 1018 of 2018
 14. Cause No. 1019 of 2018



15. Cause No. 1020 of 2018
 16. Cause No. 1022 of 2018
 17. Cause No. 1023 of 2018
 18. Cause No. 1024 of 2018
 19. Cause No. 1025 of 2018
 20. Cause No. 1026 of 2018
11. I have perused the evidence in the other files and confirmed that in all the files the Claimants have filed letters of appointment as in this case. They have further filed payslips and the agreement between the Respondent and Kenya Quarry and Mine Workers Union. I therefore enter judgment for the Claimants in all the files as prayed as follows: –
1. Cause No. 349 of 2018
Geoffrey K. Mulwa Kshs.307,913.90
 2. Cause No. 350 of 2018
Elisha Ishuga Mugesu Kshs.370,466.10
 3. Cause No. 351 of 2018
Robert Kisui Lukul Kshs.219,328.60
 4. Cause No. 352 of 2018
Paul Kuria Kshs.292,709.20
 5. Cause No. 353 of 2018
Miano Stephen Kanyi Kshs.265,830.80
 6. Cause No. 354 of 2018
Benjamin K. Maluki Kshs.429,605.00
 7. Cause No. 355 of 2018
Joseph Ounda Nyagoi Kshs.265,830.80
 8. Cause No. 357 of 2018
Katei Stanley M. Kshs.265,830.80
 9. Cause No. 358 of 2018
Muiruri John Maina Kshs.387,746.60
 10. Cause No. 359 of 2018
Kimanzi Kilonzi Kshs.325,782.90
 11. Cause No. 360 of 2018
Bernadatte Wanjiru Njoroge Kshs.300,862.60
 12. Cause No. 361 of 2018



- Shimelemente Bentictor Murembe Kshs.224,924.70
13. Cause No. 1018 of 2018
Eric Mulei Kshs.108,562,20
 14. Cause No. 1019 of 2018
John Kiilu Kshs.130,272.43
 15. Cause No. 1020 of 2018
Robert Kieti Kshs.216,675.00
 16. Cause No. 1022 of 2018
Odilia Musonye Kshs.235,399.93
 17. Cause No. 1023 of 2018
Paul Kinyanjui Kshs.199,790.40
 18. Cause No. 1024 of 2018
Nancy Mwega Kshs.128,400.00
 19. Cause No. 1025 of 2018
Justus Muindi Kimeu Kshs.132,145.00
 20. Cause No. 1026 of 2018
Philip Rotich Kshs.263,892.20
12. The total award to all the 21 Claimants is Kshs.1,306,574.96
13. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26TH DAY OF JULY 2022

MAUREEN ONYANGO

JUDGE

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 15th March 2020 and subsequent directions of 21st April 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.

MAUREEN ONYANGO

JUDGE



