



Kasera & 10 others v Bidco Africa Limited (Cause 2147 of 2016)
[2022] KEELRC 1566 (KLR) (4 August 2022) (Judgment)
 Neutral citation: [2022] KEELRC 1566 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2147 OF 2016
AN MWAURE, J
AUGUST 4, 2022

BETWEEN

- ISAAC JUMA KASERA 1ST CLAIMANT**
- CHARLES ATEMU 2ND CLAIMANT**
- SETH NUZAMI 3RD CLAIMANT**
- PAUL MUTISYA 4TH CLAIMANT**
- JARED MISULA 5TH CLAIMANT**
- DANIEL OTIENO NDIRE 6TH CLAIMANT**
- NAHASHON NJAGI 7TH CLAIMANT**
- PETER OCHIENG OLOO 8TH CLAIMANT**
- CHARLES P. OTIENO 9TH CLAIMANT**
- RAPHAEL OUMA 10TH CLAIMANT**
- PETER OCHOLA 11TH CLAIMANT**

AND

- BIDCO AFRICA LIMITED RESPONDENT**

JUDGMENT

1. The Claimants filed their amended memorandum of claim dated 12th June 2020 and the Respondent filed its response dated 6th July 2020.



Claimant's Case

2. The Claimants in their amended claim states that on diverse dates from 1996 the Claimants were employed by the Respondent in various capacities until 12th March 2015 when they were terminated from employment.
3. They say on 12th March 2018 the Respondent through their Mr. Paul Omondi terminated the services of 11 Claimants employees without notice or reason at all.
4. They say their efforts to know their fate bore no fruits even after the Union wrote a demand letter to the respondents.
5. The Claimants reiterates that at the time of termination of their employment there were no notices or letters issued as per section 40 of the *Employment Act* neither was the labour officer informed of any intended redundancy. The Claimants claim they were simply informed their services were no longer required and they should stop working forthwith. They sate their termination was both unfair and unprocedural.
6. They claim they were never summoned for consultative meeting and the due process was not followed in declaring them redundant.
7. The Claimants therefore demand terminal benefits as their termination was unfair and unlawful. They also pray to be issued with a certificate of service.
8. Furthermore the Claimants claim the Respondents did not comply with NSSF requirements, and were not given leave. They also aver they were not given house allowance neither were they given house facility.
9. Further they say they usually reported to work at 8 am and left at 8p.m if not later and so claim overtime.
10. The claimant also says that their baggage and luggage claims when relocating home together with their families should have been provided for.
11. The Claimants say that the termination and or redundancy was un procedural and unlawful. They pray the Respondent be compelled to pay them dues totaling Kshs 43,750,672/-They also pray for costs and interests at court rates.

Respondent's case

12. The Respondents avers that the Claimants were employed as casual labourers who worked in a shift system which entailed working two days in a shift, two nights and two days off.
13. The respondent also states that the Mr Omondi who is referred in the Claimant's evidence as the one who terminated the claimants from employment was a clerk who used to recruit casual labourers. The respondent say Mr. Paul Omondi had no mandate or authority to terminate any employee and therefore could not have terminated the Claimants and the other employees.
14. The Respondent further states they responded to the Kenya Chemical and Allied Workers Union letter and clarified they were their casual employees.
15. The Respondent goes further to state that the Claimants were not terminated or declared redundant but actually failed to turn up to be selected for further work once their shifts came to an end. They say section 40 of the *Employment Act* does not therefore apply and neither did the Respondents contravene any law or the provisions of *the Constitution* of Kenya.



16. The Respondents state they did not fail to pay the Claimants their dues and to issue them with their certificates of service but on the contrary the Claimants left employment and did not go back.
17. The Respondent has indicated the dates the Claimants allegedly left employment as follows:-
 - a. Isaac Juma Kasera 13/3/2015
 - b. Charles Atemo 13/3/2015
 - c. Seth Nuzami 14/3/2015
 - d. Paul Mutisya 3/3/2015
 - e. Jared Misula 26/3/2015
 - f. Daniel Otieno Ndire 13/3/2015
 - g. Nahashon Njagi 14/3/2015
 - h. Peter Ochieng Oloo 27/3/2015
 - i. Charles P. Otieno 13/3/2015
 - j. Raphael Ouma 13/3/2015
 - k. Peter Ochola 3/3/2015
18. The Benefits claimed in paragraph 6 of the claim are therefore denied.
19. The Respondent aver that the Claimants were casual labourers and were paid their wages on weekly basis at their request into the Claimant's respective bank accounts. They say the payment slips were signed by the Claimants and the Respondents and it evidenced that they were casual labourers.
20. The Respondent went further to state that they operated automated payroll system where all statutory declarations of all employees were deducted.
21. The Respondent says Claimants worked for two shifts and never more than four days a week or twenty days a month.
22. They further state that Claimant's wages were inclusive of house allowance as provided under the regulation of wages order and so claim for house allowance is denied.
23. Respondent also states they used to pay Claimants for overtime worked at a rate of 1.5 times the daily rate and double for public holidays.
24. The Respondents claim that the Claimants failed to go for their certificate of service.
25. The Respondents say they had no contractual or legal obligation to provide baggage and luggage allowance to the Claimants to ferry their families home when they voluntarily leave employment.
26. In their skeletal submissions the Respondents say they had employed the Claimants as casual works at daily wages of Kshs 432/- as provided in regulation of wages order and so were not entitled to house allowance.
27. Respondents state they paid statutory deduction and Claimants were registered with NSSF and so were not entitled to service pay.



28. It is the Respondent's contention that the Claimants were their casual workers until 15th march 2015 when they failed to turn up for work for selection as casual workers after their shift ended. Hence they are not entitled to notice pay or any compensation for wrongful termination.
29. The Respondent submits that the issue of redundancy or the application of section 40 of Employment Act is not relevant to the claimant's claim since there was no declaration of redundancy. The Claimant's left work at their own volition.
30. The Respondent says the Claimants case is frivolous and therefore prays the same be dismissed with costs.

Submissions

Claimant's submissions

31. The Claimants submissions are that the Claimants were the Respondent's employees. In particular the 3rd and 4th Claimant's commenced employment way back in 1996 and all at least worked for the Respondent for more than 10 years each.
32. The Claimants are referencing Section 37 of the employment act which provides that where an employee works for an employer for more than 3 months continuously the employment converts from casual employment to full time employment and it does not matter if the employee is referred as casual or not or whether he is paid on daily or monthly basis.
33. The Claimants submit that it is unfair and in contravention of Section 37 and 41 of Employment Act for a person who has been employed from 1996 to 2015 continuously to be at the end of the day be referred as a casual worker. The Claimant's submits there was no evidence adduced to prove the Claimant's employment was interrupted during the years they worked for the Respondent.
34. The Claimant say the Respondent's witness confirmed the Claimant were Respondent's employees. They had service/payroll numbers. They say that no records were produced to rebut the claim that the Claimants were employees of the respondent.
35. The Claimant also states that the allegation that the claimants deserted their employment is false as they would not have worked for so many years and then wake up one day and desert their employment.
36. The Claimant further says that if all the Claimants had deserted employment the Respondent should have taken disciplinary measures as per law provided. The Claimant says that the fact that on one hand the Respondents allege the Claimants were casual workers and on the other hand allege they absconded from work is contradictory and depicts Respondent as dishonest. The Claimants submit that in view of the inhuman way in which their employment was terminated the same calls for compensation of salary equivalent to 12 months per person.

Respondent's submissions.

37. The Respondents submissions are that the Claimants were casual labourers and that Claimants worked alternatively and not throughout as alleged.
38. The Respondents say the Claimants have a duty to prove they were full time employees and not casuals.
39. The Respondent state that the records show the Claimant's worked part time as in pages 2-31 of Respondent's list of documents. The Respondent says some of the records show some of the Claimants



worked even after 12th March 2015. This therefore shows the Claimants were not turned away but they failed to turn up to work.

40. As for the reliance of the Claimant on the CBA between the Respondent and Kenya Chemical and Allied Workers Union the Respondent says the Claimant did not pay their Union dues constantly. The Respondent depends on the case of *East Africa Portland Cement Company Limited vs Kenya Chemical and Allied Workers Union* Civil appeal No 14 of 2016 (2017) eKLR where Court of Appeal held:

“Payment of union dues is a condition for membership in a Union. As the CBA applies to Members, it goes without saying that non members of a Union cannot be beneficiaries of negotiations for wages and conditions of service negotiated for members of a Union. Section 48 of the *Labour Relations Act* deals with the issue of payment of Union dues and membership in a Trade Union and it is implicit that terms negotiated by a Union on behalf of its member’s benefit all members on whose behalf the Union has negotiated. Can non-members on whose behalf the Union may negotiate legitimately claim benefit from such terms? (Emphasis added)

The Respondent also says the Union was registered on 5th June 2015 and claimant’s had left employment on 12th March 2015.

41. The Respondent says that the Claimant’s prayers in their claim are not justified as they have not proved that they were unfairly terminated. In the case of *Zelpha Khaqoitsi Lucialia vs Aga Khan University Hospital* (2019) eKLR the Court concluded that the Claimant has not proved her case on a balance of probability and so proceeded to dismiss it with costs.
42. The Respondent in his submissions says the Claimant does not deserve to be paid the dues claimed and so is fit for dismissal. He also prays for costs be awarded to the Respondent.

Decision

43. The issues for determination as the Court would conceive them are four fold as follows:-
- i. Are Claimant’s employees of the Respondent and if so what were the terms and status of their employment.
 - ii. Did Claimants desert duty or were they locked out.
 - iii. Were Claimant’s entitled to benefit from the CBA.
 - iv. Are Claimants entitled to the reliefs prayed.
44. The Court considered carefully the vice voce evidence adduced by the Claimant in Court and by Zipporah Mburu the Respondent’s witness.
45. The Respondent claims the Claimants were casual labourers who used to work if and when work was available. They insist they used to work for two days and nights and then take two days off. However looking at the claimant’s documents especially the NSSF statements of the Claimants the same together with the Claimant’s pay slips show the claimant’s had more permanent relationship than mere casual employment of two days per week.
46. Actually the NSSF statements which have BIDCO name show continuous remittances of NSSF dues to NSSF as follows:
1. Philip Otieno Onyango 1/7/2011-31/3/2015



2. Oloo Ochieng 1/7/2011-3/3/2015
3. Gatenja Njagi 1/5/2007-2016
4. Kasera 1/1/2011-31/3/2015
5. Otieno Charles 1/9/2009-31/3/2015
6. Mogololo 1/1/2011-2015
7. Mutisya 1/7/2011-31/3/2015
8. Musula 1/7/2011-31/3/2015
9. Ndire 1/7/2011-31/5/2016
10. Muzumo hogo 1/7/2011-31/3/2015
11. Atieno Charles 1/9/2009- 31/3/2015
12. Akumu Ochole 1/2/2011-30/6/2015

This data goes to clearly show the Claimants had a long lasting relationship with the Respondent. The Respondent also had pay slip for each Claimant where they also deducted their NHIF/NSSF dues and PAYE. These are not documents which are consistent with casual workers.

47. In Tandem with Section 37 of the [Employment Act](#) provides “notwithstanding any provisions of this Act where a casual employees-
- (a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or
 - (b) performs work which cannot reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months or more, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1) (c) shall apply to that contract of service.”

The information given and the evidence adduced by the Claimants prove more that the Claimants worked consistently for the Respondents at differing years. The first issue for determination therefore the Court is persuaded to find the Claimants were regular employees of the Respondent as well articulated in Section 37 of [Employment Act](#) 2007.

48. As for the issue of whether the Claimants were terminated or absconded from duty, the Respondent averment is that the Claimants being casual labourers absconded from employment when their casual work came to an end. Respondent says they were asked to avail themselves for redeployment but they never turned up to work.
49. Why this seems unbelievable is because the Claimants had all worked for the respondents for varying number of years. There was no reason to warrant them all downing tools and leaving with no provocation. They then rush to report termination to labor office and their union. This does not seem to add up.
50. The Respondents seem to have locked out the Claimants from their premises for reasons best known to them. When the Union wrote to them to ask them about the unlawful termination they said the Claimants were not their employees. They did not tell them that the Claimants absconded from work but instead told them the Claimants were not their employees. But in their pleadings in the amended memorandum of response dated 6th July 2020 in paragraph 14 the respondent said the claimant did not turn up to work.



51. Usually the law requires that if employees abscond from work the employer should reach out and find out the reason for absconding. In the case of *Daudi Ronald Nyambu vs Tornado Carriers limited* Cause 236 of 2016 the Court held:-

“Desertion of duty is a give administrative offence which if proved would render an employee liable to summary dismissal. However it is not enough for an employer to simply state an employee deserted duty. The law is that an employer alleging desertion against an employee must show efforts made towards reaching out to the employee and putting them on notice that termination of employment is under consideration on that ground.

52. The employer should also give the employee notice that they intend to terminate their services on account of desertion. There is no effort that the Respondents made to comply with these legal requirements. The Court finds it is unlikely the Claimants absconded from duty under the circumstances.

53. The third issue was whether the Claimants were entitled to benefits of the CBA. On this the records show the Claimants were members of Kenya Chemicals and Allied Workers Union at least going by the receipts of the subscription fees paid by the Claimants at diverse times to the Union. In any event the Union wrote a letter to Bidco Company Limited dated 26th March 2015 where the Union affirmed the Claimants were their members. Going by those records I affirm the Claimants were members of the Union.

54. Having concluded that the Claimants were employees for all practical purposes of the Respondent and that they were unlawfully and unfairly terminated, I enter judgment in their favour accordingly.

55. Having found the termination of the Claimants was unlawful, unfair and un procedural I will award the various reliefs for each of the Claimants who were all represented by Charles P. Otieno by their letter dated 8th September 2015 signed by all the Claimants as set out hereunder:-

(1) Isaack Juma Kasera (D.O.E. 2/10/2011-D.O.D 12/3/2015 (4 Years)

(i) One month’s salary in lieu of notice.....Kshs 26,340

(ii) Accrued and unpaid leave due (special damages must be very specific and that is not specified and or so proved and is disallowed.

(iii) Unpaid house allowance for the whole duration of service being $15/100 \times 26340 \times 41 =$ Kshs 161,991.

Respondents never demonstrated they paid house allowance even though they claimed was included in the regulations of wages order which was not provided to court.

(iv) Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed as in reasons (ii) above.

(v) Unpaid overtime at 2 (being double rate) as in reasons ii above per hour for 6 hours for nightshift is disallowed.

(vi) Service gratuity calculated at the rate of 18 day’s salary for every completed year of service being Kshs 26,340 x 18/30 x 3 years.....Kshs 47,412/-.

There is no proof that NSSF dues were not remitted and so will disallow service charge.



- (vii) Baggage and Luggage Allowance, as per the CBA. Even if Claimants were members of Union it is not specified baggage to where and when and Court finds it is too general and is disallowed.
- (viii) Compensatory damages for wrongful and unlawful dismissal calculated at 5 months gross salary being Kshs 26,340 x 4 months..... Kshs 105,360
Total Claim 293,691

2. Charles Atemo (D.O.E. 21/11/2009 – D.O.D. 12/3/20215) (6 Years)

- (i) One month's salary in lieu of notice.....Kshs 26,340
- (ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.
- (iii) Unpaid house allowance for the whole duration of service being 15/100x26340x63 Kshs 248,913/- .
- (iv) Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed.
- (v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed.
- (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed
There is no proof that NSSF dues were not remitted and so will disallow service charge.
- (vii) Baggage and Luggage Allowance, as per the CBA. Even if were members of Union is not specified baggage to where etc and is disallowed.
- viii. Compensatory damages for wrongful and unlawful dismissal calculated at 4 months gross salary being
Kshs 26,340 x 5 months..... Kshs 131,700
Total Claim 406,953

3. Seth Nuzami (D.O.E: 19/11/1996-D.O.D 12/3/2015) (19 years)

- (i) One month's salary in lieu of notice.....Kshs 26,340
- (ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.
- (iii) Unpaid house allowance for the whole duration of service being 15/100x26340x219 months Kshs 865,269.
- (iv) Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed.
- (v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed.
- (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed
There is no proof that NSSF dues were not remitted and so will disallow service charge.



- (vii) Baggage and Luggage Allowance, as per the CBA. Even if were members of Union is not specified baggage to where etc and is disallowed.
 - (viii) Compensatory damages for wrongful and unlawful dismissal calculated at 11 months gross salary being
Kshs 26,340 x 11 months..... Kshs 289,740/-
Total Claim 1, 181.349
4. Paul Mutisya:- D.O.E 1/8/1996-D.O.D 12/3/2015) (19 years)
- (i) One month's salary in lieu of notice.....Kshs 26,340 is allowed.
 - (ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.
 - (iii) Unpaid house allowance for the whole duration of service being 15/100x26340x223 months 881,073.
 - (iv) (Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed.
 - (v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed.
 - (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed
There is no proof that NSSF dues were not remitted and so will disallow service charge.
 - (vii) Baggage and Luggage Allowance, as per the CBA. Even if were members of Union is not specified baggage to where etc and is disallowed.
 - (viii) Compensatory damages for wrongful and unlawful dismissal calculated at 10 months gross salary being
Kshs 26,340 x 10 months..... Kshs 263,400
Total Claim 1,179,813
5. Jared Misula (DOE 17/2/2003-DOD 12/3/2015 (12 years)
- (i) One month's salary in lieu of notice.....Kshs 26,340 is allowed
 - (ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.
 - (iii) Unpaid house allowance for the whole duration of service being 15/100x26340x144 568,944 is allowed.
 - (iv) (Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed for reason given in II above.
 - (v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed for reason given in II above.
 - (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed



There is no proof that NSSF dues were not remitted and so will disallow service charge.

(vii) Baggage and Luggage Allowance, as per the CBA. Even if were members of Union is not specified baggage to where etc and is disallowed.

(viii) Compensatory damages for wrongful and unlawful dismissal calculated at 8 months gross salary being

Kshs 26,340 x 8 months..... Kshs 210,720/

Total Claim 806,004/-

6. Daniel Otieno Ndire (DOE 28/10/2003- DOD 12/3/2015) (12 years)

(i) One month's salary in lieu of notice Kshs 26,340 is allowed.

(ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.

(iii) Unpaid house allowance for the whole duration of service being 15/100x26340x136 months 537,366.

(iv) (Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed.

(v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed.

(vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed

There is no proof that NSSF dues were not remitted and so will disallow service charge.

(vii) Baggage and Luggage Allowance, as per the CBA. Even if were members of Union is not specified baggage to where etc and is disallowed.

(viii) Compensatory damages for wrongful and unlawful dismissal calculated at 8 months gross salary being

Kshs 26,340 x 8 months..... Kshs 210,720/-

Total Claim 774,426

7. Nahashon Njagi DOE 31/12/2008-DOD 12/3/2015 (7 years)

(i) One month's salary in lieu of notice.....Kshs 26,340 is allowed.

(ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.

(iii) Unpaid house allowance for the whole duration of service being 15/100x26340x75 months =296,325.

(iv) (Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed.

(v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed.



- (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed

There is no proof that NSSF dues were not remitted and so will disallow service charge.

- (vii) Baggage and Luggage Allowance, as per the CBA.

Even if were members of Union is not specified baggage to where etc and is disallowed.

- (viii) Compensatory damages for wrongful and unlawful dismissal calculated at 6 months gross salary being

Kshs 26,340 x 6 months..... Kshs 158,040/-.

Total Claim 480,705

8. Peter Ochieng Oloo DOE 11/10/2010-DOD 12/3/2015 (5 years)

- (i) One month's salary in lieu of notice.....Kshs 26,340 is allowed.

- (ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.

- (iii) Unpaid house allowance for the whole duration of service being 15/100x26340x53 months Kshs 209,403.

- (iv) (Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed.

- (v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed.

- (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed

There is no proof that NSSF dues were not remitted and so will disallow service charge.

- (vii) Baggage and Luggage Allowance, as per the CBA. Even if were members of Union is not specified baggage to where etc and is disallowed.

- (viii) Compensatory damages for wrongful and unlawful dismissal calculated at 5 months gross salary being

Kshs 26,340 x 5 months..... Kshs 131,700

Total Claim 367,443

9. Charles P. Otieno DOE 7/3/2001-DOD 12/3/2015 (14 years)

- (i) One month's salary in lieu of notice.....Kshs 26,340 is allowed.

- (ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.

- (iii) Unpaid house allowance for the whole duration of service being 15/100x26340x168 months Kshs 663,769.

- (iv) (Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed for reason given in II above.



- (v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed for reason given in II above.
- (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being .
There is no proof that NSSF dues were not remitted and so will disallow service charge.
- (vii) Baggage and Luggage Allowance, as per the CBA. Even if were members of Union is not specified baggage to where etc and is disallowed.
- (viii) Compensatory damages for wrongful and unlawful dismissal calculated at 9 months gross salary being
Kshs 26,340 x 9 months..... Kshs 237,060
Total Claim 927,169

10. Raphael Ouna – (15 years)

- (i) One month's salary in lieu of notice.....Kshs 26,340 is allowed.
- (ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.
- (iii) Unpaid house allowance for the whole duration of service being $15/100 \times 26340 \times 187$
Kshs 738,837/-
- (iv) (Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed.
- (v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed.
- (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed
There is no proof that NSSF dues were not remitted and so will disallow service charge.
- (vii) Baggage and Luggage Allowance, as per the CBA.
Even if were members of Union is not specified baggage to where etc and is disallowed.
- (viii) Compensatory damages for wrongful and unlawful dismissal calculated at 10 months gross salary being
Kshs 26,340 x 10 months..... Kshs 263,400
Total Claim 1,028,577/

11. Peter Ochola(3 years)

- (i) One month's salary in lieu of notice.....Kshs 26,340 is allowed.
- (ii) Accrued and unpaid leave due (special damages must be very specific and that is not so proved and is disallowed.
- (iii) Unpaid house allowance for the whole duration of service being $15/100 \times 26340 \times 40$
158,040.



- (iv) (Unpaid overtime at 1.5 rate (being normal rate) per hour for 2 hours for dayshift is disallowed.
- (v) Unpaid overtime at 2 (being double rate) per hour for 6 hours for nightshift disallowed.
- (vi) Service gratuity calculated at the rate of 18 day's salary for every completed year of service being disallowed
There is no proof that NSSF dues were not remitted and so will disallow service charge.
- (vii) Baggage and Luggage Allowance, as per the CBA. Even if were members of Union is not specified baggage to where etc and is disallowed.
- (viii) Compensatory damages for wrongful and unlawful dismissal calculated at 3 months gross salary being
Kshs 26,340 x 3months..... Kshs 79,020/-
Total Claim 263,400

53. Costs follow the event and so the costs are awarded to the Claimants. Interest is awarded also from date of judgment till full payment.

53. Each Claimant to be given certificate of service within 14 days from today's date.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 4TH AUGUST, 2022.

ANNA NGIBUINI MWAURE

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 had 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.

ANNA NGIBUINI MWAURE

JUDGE

