



**Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA
v Board of Management St. Teresa's Special School (Employment and Labour Relations
Cause E001 of 2022) [2022] KEELRC 13125 (KLR) (3 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13125 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
EMPLOYMENT AND LABOUR RELATIONS CAUSE E001 OF 2022**

JW KELL, J

NOVEMBER 3, 2022

BETWEEN

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS (KUDHEIHA CLAIMANT**

AND

BOARD OF MANAGEMENT ST. TERESA'S SPECIAL SCHOOL . RESPONDENT

JUDGMENT

Issue

Unlawful and unfair termination of employment and terminal dues.

1. The Claimant, a trade union registered in the Republic of Kenya to represent Domestic, Hotels, Educational Institutions and Hospital Workers, vide a Memorandum of Claim dated January 7, 2022 against the Respondent and sought for the following reliefs:
 - a. That the Honourable court is pleased to issue orders restraining the Respondent from harassing, suspending, terminating or otherwise preferring disciplinary of any kind on member to the Claimant.
 - b. That the Honourable court orders the Respondent to stop unfair labour practice.
 - c. That in the alternative the court orders the Respondent to pay the employees the components of terminal dues pursuant to their appointment letters and existing Collective Bargaining Agreement between the Ministry of Education Science and Technology on behalf of the Respondent and the Claimant last signed on March 18, 1986 as tabulated in the claim.
 - d. Maximum compensation for loss of employment pursuant to *Employment Act* 2007 Section 49 (1)per employee.



- e. Certificate of service pursuant to Section 51 of the *Employment Act* 2007
 - f. Salary arrears for 15 months per employee,
 - g. Costs be awarded to the claimant
 - h. Any other relief the court deems fit.
2. In addition, the Claimant filed together with the Claim a verifying affidavit of Benjamin Khisa Mutoro the Branch Secretary sworn on the January 7, 2022, the Claimant's list of witnesses, witness statement by Benjamin Khisa Mutoro, the Claimant's list of documents and the bundle of documents. The Claimant further filed witness statements for the 8 grievants.
 3. The Claim is opposed by the Respondent who entered appearance through the office of the Hon Attorney General and filed Respondent's response to the claim dated March 15, 2022, Replying Affidavit by Mrs Ezina Fita sworn on the January 26, 2022 and annexing termination letters of the grievants. The Respondent further filed its list of documents dated February 15, 2022 and the bundle of document and witness statement of Ezina Fita.

Hearing and Evidence

Claimant's evidence

4. The Claimant's case was heard on the July 7, 2022 and on the July 20, 2022 with the following witnesses of fact testifying on oath and adopting their witness statements as evidence and chief for the claimant and being cross examined by Mr Tarus Senior State Counsel for the Respondent.
 - a. CW1 Benjamin Mutoro
 - b. CW2 Isaac Wafula Mwangala
 - c. CW3 Wilstone Wanjala
 - d. CW4 Maltilda Bifwoli
 - e. CW5 Martin Kokonya
 - f. CW6 Elizabeth Wafula
 - g. CW7 Nillah Nekoye Khisa
 - h. CW8 Rose Wamalwa
 - i. CW9 Celestine Nafula

Claimant's exhibits

Documents under list of documents dated January 7, 2022 .

The defense evidence

5. The Respondent's case was heard on the July 20, 2022 with one witness of fact Ezina Fita who adopted her witness statement dated March 22, 2022 as the defence evidence in chief and produced as the respondent's evidence documents under list of documents by the Respondent dated February 15, 2022 as exhibits 1 to 12 for the respondent and was cross-examined by the Claimant's representative.



The Claimant's case in summary

6. The Claimant's case was that the grievants were employed by the Respondent on various dates between 2004 and 2008 and save for 2 were issued with employment letters indicating that the appointment was subject to the terms of agreement between the Ministry of Education, Science and Technology and the Claimant.
7. That the grievants joined the Claimant and reported harassment and intimidation from the Respondent after joining the Claimant union. That while still in employment the respondent advertised their jobs and hired new staff during the school holiday in December. That when the grievants reported to work after the school holiday they were told to go home without proper separation procedures.

The Respondent's case.

8. The Respondent's case was as per witness statement dated March 22, 2022 of Ezina Fita the head teacher and secretary of the Respondent. The witness states that the 8 grievants there were former employees, were unruly and indisciplined which necessitated the school to initiate disciplinary proceedings against them , that the 8 employees were invited to appear before the Board of Management on the July 30, 2021 in which they appeared but refused to be heard individually and stormed out of the meeting. The board then decided to dismiss them summarily for gross misconduct. That the dismissal was lawful and within the provisions of the *Employment Act* and rules of natural justice since all the 8 former employees were given a chance to be heard after being invited before the Board of Management. That the Respondent had valid reasons for dismissing the employees. That the employees are not entitled to gratuity as they were enrolled under NSSF pension scheme and the school used to remit NSSF dues in favour of the 8 employees. That there was no agreement between the school and the Claimant that their members including the 8 employees should be paid gratuity. That the 8 employees were paid all their salaries until January 2022 hence no salary arrears are due to them.
9. After the hearing the court gave directions on filing of written submissions. The parties complied.

Determination

Issues for determination

10. The Claimant submits that they have abandoned prayer 1 of the claim as it is overtaken events.
11. The Claimant then submitted on the question of whether the termination of the grievant from employment was fair, whether the grievant are entitled to unpaid wages, terminal dues under the CBA and their letter of appointment namely gratuity and notice pay and costs of the suit.
12. The Respondent in written submissions identified the following as the issues for determination: -
 - a. Whether the 8 claimant's members were lawfully terminated of their employment
 - b. Whether the respondent is bound by the collective bargaining agreement signed on 18th march 1986
 - c. Whether the claimants' members are entitled to service gratuity
 - d. Whether the claimant's members are entitled to salary arrears of 15 months.



13. The Court having heard the case by both parties and considering the issues addressed by the parties in the written submissions is of the considered view that the issues placed before court by the parties for determination of the dispute as follows:-
- a. Whether the 8 claimant's members were lawfully and fairly terminated from their employment.
 - b. Whether the respondent is bound by the Collective Bargaining Agreement signed on March 18, 1986.
 - c. Whether the Claimant is entitled to the reliefs sought for the 8 members.

The Relevant Law

14. Section 43 of the [Employment Act](#) addresses proof of reasons for termination of employment as follows:-
- ' (a) In any claim arising out of termination of 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.
 - (b) The reasons or reasons for termination of contract are the matters that the employer at the time of termination of the contract genuinely believe to exist and which caused the employer to terminate the services of the employee.'
15. Section 44 (4) of the [Employment Act](#) provides for justifiable and lawful grounds for dismissal from employment, inter alia to be if:-
- a. Without leave or other lawful cause, an employee absents himself from the place appointed for the performance of work,
 - c. An employee willfully neglects to perform any work which it was his duty to perform or if he carelessly and improperly performs any work which was his duty under his contract to have performed.'
16. Section 45 (2) of the [Employment Act](#) provides that a termination of employment by an employer is unfair if the employer fails to prove:-
- 'The reason for the termination is a fair reason:-
- a) Related to the employees conduct, capacity or compatibility or
 - b) Based on the operational requirements of the employer.'
17. Section 46 of the [Employment Act](#) provides for reasons that do not constitute fair reasons for dismissal.
18. Section 47 (5) of the [Employment Act](#) provides for burden of proof in claims for wrongful dismissal as follows:-
- a. '(5) For any complaint of unfair termination of Employment or wrongful dismissal the burden of proving that unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds of the termination of employment or wrongful dismissal shall rest on the employer.'



19. Thus, the obligation of the employee is discharged upon proving wrongful dismissal has occurred and the burden then shifts to justify the grounds of termination.
20. Section 41 of the *Employment Act* provides for procedural fairness as follows:- '41. (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.'

a. Whether the 8 Claimant's members were lawfully and fairly terminated from their employment

Claimant's testimony

21. CW1 Benjamin Mutoro was the Claimant's Bungoma Branch Secretary. He told the court that the Claimant recruited members from the Respondent's school and a check off was served on the management. That there was a CBA with the Ministry of Education applicable to school That after the recruitment the members reported victimisation. That the school said the Claimant had not been recognised by the school. That he had seen letters of appointment of the employees making reference to the said CBA. That he attempted to meet the management to discuss the relationship and was informed the school would not meet the obligation and would reduce workers and re-advertise (page 87 of the claimant's bundle is letter dated August 17, 2021 challenging the re-advertisement). That the advertisement was done and there was picketing and their effort to settle the dispute was in vain.
22. On cross-examination CW1 agreed the Claimant had not signed a recognition agreement or CBA with the school and that the CBA they referred to was one of March 18, 1986. CW1 agreed that they had signed CBA with other employers but not the school. CW1 told the court they had served letter of authority and while waiting for response, vacancies were advertised. CW1 agreed the dispute had not been reported to Ministry of Labour hence no conciliation attempt before coming to court. CW1 agreed that the 8 employees had conflict with the school on salary arrears. Agreed that they started picketing. CW1 denied knowledge of the employees having confronted the head teacher. Admitted there was no notice of the picketing. CW1 denied that the employees were issued with dismissal letters. CW1 said he had not perused the dismissal letters annexed by the respondent. CW1 admitted that the relationship between the union and the school was not good. CW1 told the court only the 8 were their members in the school.
23. In re-examination CW1 told the court that the CBA was one signed with the Ministry of Education also referred to in the appointment letters of the grievants(appendix1) . CW1 further told the court the letter of August 17, 2021 was copied to the county labour officer. That he had received any communication from their members on the dismissal letters.
24. CW2 a former employee told the court they worked upto November 2021 and when they resumed to duty after December holiday found they had been replaced by other workers on January 3, 2022. That the school called the area Chief, the Chairman of the Board and the Ministry of Education Sub County Officer and explained to them their jobs were no longer available and that they should go home. He denied having received dismissal letter. On cross examination CW2 told the court he was last paid salary in November 2021. On being asked what months related to the 15 months arrears, CW2 could not substantiate and referred to the 15 months as per his statement, he said they picketed while at work. On whether they picketed at the Principal's office, CW2 told the court they called the principal to come where they were. CW2 told the court they had not written to the school on salary arrears. CW2 agreed that the government did not remit money timely to the school during the COVID period hence salary



- delay and admitted that is when they started having conflicts with the school. On re-examination CW2 told the court the 15 months salary arrears are records with the school bursar.
25. CW3 evidence in chief was similar to CW3. During cross examination CW3 told the court salary delays started in June 2020 which was the COVID period. That they demonstrated for the delayed salary and had meeting with the management for 8 hours then returned to work. CW3 admitted the headteacher called them to her office and they complied. That the discussion was on salary arrears. CW3 told the court they got show cause letters but did not respond as the show cause he got did not have his name.
 26. CW4 evidence in chief was similar to CW2 but added that when they reported to duty in January 2022 they were told they had no jobs as they had not applied for jobs afresh following the re- advertisement and added they did not get dismissal letters.
 27. During cross examination CW4 admitted to have received show cause letter and said she responded but letter was not before court. CW4 admitted they never gave the school notice of the demonstration and admitted that the demonstration without notice affected his work as instructor. CW4 admitted that their issue in relationship with the school was because of salary payment. CW4 told the court besides the 8 of them that were other workers affected by salary delay as a well. CW4 denied only the 8 of them demonstrated stating they all demonstrated but only 8 of them were in court.
 28. On Re-examination CW4 told the court he did not have disciplinary issues before, that they demonstrated in the school, there was no violence, that they were in the union, that those not in the case were in the union and left their jobs earlier.
 29. CW5 evidence in chief was similar to CW4. During cross- examination CW5 on the basis of the 15 months salary arrears told the court he last received salary in December 2021 for the month of September and August . CW5 admitted he demonstrated for salary with his colleagues, that they had informed the union of demonstration, and that after the demonstration she returned to work. On re-examination CW5 told the court the demonstration was for like 2 hours within the school compound.
 30. CW6 told the court she received a show cause letter to explain why she stayed for 2 hours without working of which they were asking for salary arrears. The rest of the evidence in chief was similar to that of CW4.
 31. During cross-examination CW6 admitted she got a show cause letter for not working. CW6 told the court that she responded to the letter but left the letter in office. Not produced in court. On whether they gave notice of demonstration CW6 told the court that they did not demonstrate but sat on the benches near the head teacher's office. On who was doing her work during the demonstration CW6 said that as house keeper when the children are in class they close the dorm.
 32. During re-examination CW6 told the court that when she got the show cause letter she just read and did not sign. That they picketed at the school.
 33. CW7 evidence in chief was similar to that of CW4 save for term of service.
 34. During cross-examination CW7 denied they demonstrated and told the court they sat on the bench asking for salary. CW7 on whether they issued notice picketing said they wrote a letter. CW7 told the court they did not inform the union of the picketing.
 35. In re-examination CW7 told the court they sat for 2 hours picketing to ask for salary payment.
 36. CW8 evidence in chief on events leading to dismissal are similar to other employees.



37. During cross examination CW8 admitted they did not work for 2 hours during the demonstration. CW8 told the court they did not notify the head teacher of the demonstration. That they asked for salary twice and the second time the media were present when they sat at the bench.
38. In re-examination CW8 told the court they did not know who called the media.
39. CW9 evidence in chief was similar to the 7 employees who had testified before on the events leading to their dismissal.
40. During cross examination CW9 admitted they sat at the bench with the colleagues asking the Principal for salary. CW9 told the court she was through with her work of the day. That the Principal explained the salary delay and asked them to be patient. That the media came, the Assistant Chief, head of Ministry of Education came and cautioned them and they continued to work. CW9 admitted to have received show cause letter which stated they had refused to work.
41. On re-examination CW9 told the court they were told by one of them to sit at the bench and that is when the Principal and others came to address them.

Respondents testimony

42. RW 1 Ezina Fita was the school Principal and Secretary of the Respondent. RW1 adopted as evidence in chief for the respondent her witness statement dated March 22, 2022, documents under list of documents dated February 12, 2022 as Respondent's exhibits 1-12. RW1 said the demonstration was not peaceful, they locked the kitchen, the staff did not sit on the benches but came to her office, got her out and locked her out. That she called the area chief, education officers who came accompanied by police to calm the situation. On the disciplinary the BOM summoned all staff for a meeting not just the 8, that the 8 never wanted to be talked to as individual and stormed out of the meeting. That the BOM decided to dismiss the 8 employees for gross misconduct and were issued with termination letters in the presence of CSO Muranga ward, that the 8 were issued with show cause letters because of the demonstrations which involved the mentally challenged and none of them responded. RW1 told the court the school had not agreed on terms with the union.
43. During cross-examination RW1 confirmed she was the principal of the school, RW1 told the court she knew the 8 grievants as former employees whom she found in employment in 2018. RW1 denied knowledge of the 8 grievants being members of the union and denied receipt of letter of authority from the union. RW1 denied knowledge of existence of the CBA between the union and the Ministry of Education. RW1 reiterated the employees dragged her out of office and that Jacob hit her behind. That the police were there and they took record on the material date. RW1 admitted that the branch secretary came to the school and she referred him to the County Director of Education but there was no agreement. RW1 told the court that the Branch Secretary had a letter but she did not receive it.
44. RW1 told the court there was a meeting on July 30, 2021 of full board meeting where the 8 employees were to be heard individually but they stormed out of the meeting necessitating the board to dismiss them summarily. That the dismissal was fair as they were invited to be listened to. RW1 told the court the Branch Secretary was not invited to the meeting as they had no agreement with the school. RW1 told the court that the 8 employees had disciplinary issues before and were issued with warning letters not before court. That the employees were dismissed on the January 4, 2022. That the employees were issued with dismissal letters but refused to acknowledge receipt.
45. During re-examination RW1 told the court they had no recognition agreement with the claimant. That the grievant were dismissed for gross misconduct



The Submissions

46. The Claimant submits that RW admitted that the union was not called to the said disciplinary hearing. The Claimant submits that this was Contrary to Section 41 of the Employment Act and Clause 6 (a) of the CBA and relies on the decision of the court in 156 of 2013 Kudheihia V Sinaga Secondary School where the court held that it was clear the union was expected to attend the board meeting that decided to terminate the service of the grievant and that this was not done. The board also flouted the provisions of Section 41 of the Employments Act. The Claimant submits that the termination was not fair.
47. The Respondent submits the employees waived their right to be heard when they stormed out of the meeting of the principal office. That the dismissal was justified as explained in their letter of dismissal (Respondents exhibits 1-8) and also the testimony of the Respondent who narrated how violent and rude the 8 employees were before being dismissed. That all the 8 employees admitted to have participated in the picketing without notice disrupting school activity and that the special school requires round the clock supervision of the mentally challenged pupils. That the conduct of the 8 employees was so gross as to justify summary dismissal under section 44 of the Employment Act.
48. The Respondent submits that the letters of appointment do not refer to CBA with the Ministry of Education.

Court decision on the issue

49. The Court from the above evidence finds that the 8 employees participated in unprotected demonstration during working hours, that they were issued with show cause letters on the same and none of them responded. The court further finds that the demonstration was informed by failure of the Respondent to pay salaries which was justified as money to pay salaries had not been remitted by government timely. The court further found that the respondent advertised for the jobs of the employees and required them to apply afresh. That when the grievants reported to duty in January they had already been replaced. The evidence of RW1 was to the extent that the employees were dismissed on the January 4, 2022. The court finds that there was no evidence the alleged dismissal letters were issued to the grievants and in any event the Respondent had already replaced them.
50. The Court examined a sample of the letter of appointment of Isaac Mwangala dated July 1, 2008. The relevant clause states:- ' your appointment is subject to terms of any agreement between ST Teresa Special School and The Domestic And Hotel Workers Union for the terms and conditions of service of persons employment by the board of governments of any institution under Education Act Cap 211.'
51. CW1 the Branch Secretary admitted that there was no recognition agreement with the school and no CBA signed with the school. Without a recognition agreement the parties could not have concluded a CBA. The letter of appointment envisaged an agreement between the school and the claimant. The court finds that the said letters of appointment did not incorporate the 1986 CBA between the Ministry of Education and the Claimant.
52. The Court having considered the meeting called for July 30, 2021 found no evidence of protection of the rights of the 8 employees rights under section 41 of the Employment Act of being represented by employee of their choice or union. On the reason of the dismissal the court found all the 8 employees admitted to have participated in unprotected demonstration, however the employer advertised their jobs thereafter. They continued to work and after the Christmas school holiday found new workers who had replaced them. The court then finds and determines the demonstration was not the reason that led to the termination of employment of the employees but the employment of new employees to replace the 8 employees who the school had already determined as unruly for the picketing. The



dismissal letters state that the workers did not appear for the interview and their place had been filled. The court finds and determines that the process of exiting the employees from employment by advertising for their position and replacing them while still holding valid contracts was unlawful and unfair.

Whether the Respondent is bound by the Collective Bargaining Agreement signed on March 18, 1986.

53. The Respondent submits that the school did not exist when the CBA was signed by the parties. This was not in dispute. The claimant relied on the letters of appointment to invoke the application of the said CBA. The court examined a sample of the letter of appointment of Isaac Mwangala dated July 1, 2008. The relevant clause states:- ‘ your appointment is subject to terms of any agreement between St Teresa Special School and the Domestic and Hotel Workers Union for the terms and conditions of service of persons employed by the Board of Governors of any Institutions under Education Act Cap 211.’
54. The Claimant relies on a letter authored by an officer of the Ministry of Labour guiding schools to pay non-teaching staff according to the impugned CBA.
55. The court finds and determines that the letters of appointment did not incorporate 1986 CBA between the Claimant and the Ministry of Education. The letter of appointment envisaged a CBA between the school and the claimant to be signed. CW1 told the court there was neither a CBA or recognition agreement with the school. The court finds and determines the 1986 CBA between the Ministry of Education and Claimant was not applicable in the instant case in the circumstances. The opinion of the said labour officer is not binding on the court. That a CBA is a binding contract between the parties just like an employment letter whose terms are also binding on the parties. The Respondent was not a party to the Impugned CBA and evidence was led that the school did not even exist as at that time. The Claimant had a duty to ensure it signs a CBA with the Respondent as per terms of employment of its members. The court finds and determines that the CBA between the Claimant and Ministry of Education having not been incorporated in the employment contract of the employee was not binding on the Respondent.

Appropriate remedy

56. Having made the above findings the court then considers the appropriate remedy.

Compensation for unfair termination

57. The court having found unlawful and unfair termination awards the members of the Claimant under section 49(1)(c) of the *Employment Act* compensation for unlawful and unfair termination for the 8 employees members of the Claimant at equivalent of 10 months gross salary. The court considered the fact of having participated in unprotected demonstration and of failure to respond to show cause letters on the incident an issues which were one way or another related to their dismissal from service. The grievants are penalised for that misconduct through deduction of 2 months from the maximum compensation. The court further considered the extreme measure by Respondent of advertising grievants’ jobs during the sub existence of their valid contracts as aggravating reasons towards maximum compensation. The employees are each awarded compensation of 10 months wages per last salary as follows:- .

CW2 Isaac Wafula Mwangala 10 months x last monthly salary Kes 9066 total award Kes 90660/= .



CW3 Wilstone Wanjala 10 months x last monthly salary Kes 9331 total award Kes 93310/=

CW4 Maltilda Bifwoli 10 months x last monthly salary Kes 10728 total award Kes 107280/= .

CW5 Martin Kokonya 10 months x last monthly salary Kes 11585 total award Kes 115,850/= .

CW6 Elizabeth Wafula 10 months x last monthly salary Kes 9331 total award Kes 93310/= .

CW7 Nillah Nekoye Khisa 10 months x last monthly salary Kes 9480 total award Kes 94800/= .

CW8 Rose Wamalwa 10 months x last monthly salary Kes 9331 total award Kes 93310/= .

CW9 Celestine Nafula 10 months x last monthly salary Kes 9480 total award Kes 94800/= .

Claim for Notice pay.

58. The 8 employees having been unfairly terminated from employment are granted each notice pay of 1 month salary

CW2 Isaac Wafula Mwangala notice pay as per last monthly salary Kes 9066/-.

CW3 Wilstone Wanjala notice pay as per last monthly Kes 9331/-.

CW4 Maltilda Bifwoli notice pay as per last monthly salary Kes 10728/-.

CW5 Martin Kokonya notice pay as per last monthly salary Kes 11585 /-.

CW6 Elizabeth Wafula notice pay as per last monthly salary Kes 9331/-.

CW7 Nillah Nekoye Khisa notice pay as per last monthly salary Kes 9480/-.

CW8 Rose Wamalwa notice pay as per last monthly salary Kes 9331/-

CW9 Celestine Nafula notice pay as per last monthly salary Kes 9480/-

Claim for Gratuity

59. The employees where under NSSF The CBA of 1986 having been found not to have been incorporated in terms of employment, then section 35(6) of The *Employment Act* applies. The employees were under NSSF hence the claim of gratuity fails.

Claim for salary arrears for 15 months

60. On cross- examination none of the 8 employees was able to state the actual months not paid. They admitted to being paid salary in December 2021 their last working month having been dismissed on the January 4, 2022. The Respondent submits that the claim did not plead with particularly as the claim was only placed under reliefs. Under all their statements save for Rose Mutenyo who stated she was paid Kes 9300 until January 4, 2022 the other grievants simply stated they have not been paid salaries for 15 months. Section 108 of the *Evidence Act* places obligation on the person who would stand to lose if no defence was offered to prove their case. In this case the employees offered no evidence on the arrears like for which specific months they were not paid having admitted to receiving salaries in December the last month of working. The court finds and determines the the claim for salary arrears was not proved. The burden never shifted to the employer to prove payment for lack of particulars of the exact months not paid salary the grievant having admitted to have been paid for the last month worked. The claim for salary arrears is disallowed.



Costs of the suit

61. The claimant did not first refer the dispute for conciliation and the Ministry of Labour. This was a dispute proper for determination by the labour officer. In the circumstance costs are denied.

Conclusion and disposition

62. The Claimant has substantially succeeded in their claim for the 8 members. The court enters judgment for the Claimant against the Respondent as follows:-
- a. Award of compensation for unlawful and unfair termination equivalence of 10 months last salary of each of the 8 employees as follows:-
CW2 Isaac Wafula Mwangala 10 months x last monthly salary Kes 9066 total award Kes 90660/
=
CW3 Wilstone Wanjala 10 months x last monthly salary Kes 9331 total award Kes 93310/=
 - CW4 Maltilda Bifwoli 10 months x last monthly salary Kes 10728 total award Kes 107280/=
 - CW5 Martin Kokonya 10 months x last monthly salary Kes 11585 total award Kes 115,850/=
 - CW6 Elizabeth Wafula 10 months x last monthly salary Kes 9331 total award Kes 93310/=
 - Nillah Nekoye Khisa 10 months x last monthly salary Kes 9480 total award Kes 94800/=
 - Rose Wamalwa 10 months x last monthly salary Kes 9331 total award Kes 93310/=
 - Celestine Nafula 10 months x last monthly salary Kes 9480 total award Kes 94800/=
- b. Notice pay for 1 month salary for each of the 8 employees as follows;-
CW2 Isaac Wafula Mwangala notice pay as per last monthly salary Kes 9066/-.
 - CW3 Wilstone Wanjala notice pay as per last monthly Kes 9331/-.
 - CW4 Maltilda Bifwoli notice pay as per last monthly salary Kes 10728 /-.
 - CW5 Martin Kokonya notice pay as per last monthly salary Kes 11585/-
 - CW6 Elizabeth Wafula notice pay as per last monthly salary Kes 9331/-.
 - CW7 Nillah Nekoye Khisa notice pay as per last monthly salary Kes 9480/-.
 - CW8 Rose Wamalwa notice pay as per last monthly salary Kes 9331/-
 - CW9 Celestine Nafula notice pay as per last monthly salary Kes 9480/-
 - (award a and b subject to statutory deductions)
- c. Interest is awarded at court rates from date of judgment until payment in full.
 - d. The Respondent to issue the Claimant with the certificate of service for the 8 employees within 14 days of Judgment in terms of section 51 of the Employment Act.
 - e. No order as to costs.
63. It is so ordered.

DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 3RD NOVEMBER 2022.



J. W. KELI,

JUDGE.

In The Presence Of:-

Court Assistant : Brenda

For Claimant:-Mutoro (Union)

For Respondent: Tarus - Senior State Counsel

Court Order:-

Stay of Judgment for 30 days ordered.

J. W KELI,

JUDGE.

