



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 96B OF 2018

CHARLES MIRAMBO.....1st CLAIMANT
MARY RORI.....2nd CLAIMANT
JASHON MACHORA.....3rd CLAIMANT
JULIUS ONYANCHA.....4th CLAIMANT
MELDY MAKORI5th CLAIMANT
OYAGI ONTOMA.....6th CLAIMANT
DORCA MRAMSO.....7th CLAIMANT
HELLEN MOGOKO.....8th CLAIMANT
CONSOLATA OMBACHI.....9th CLAIMANT
MONREEN MOCHECHE.....10th CLAIMANT
JACKLINE ABERE.....11th CLAIMANT
EVERLINE BOSIRE.....12th CLAIMANT
JERUSA ABERE.....13th CLAIMANT
ANASTACIA ONGERA.....14th CLAIMANT
HELLEN SABUNI.....15th CLAIMANT
CALVIN MOMANYI.....16th CLAIMANT
EVANS MOBE.....17th CLAIMANT
OLPHA OMARIBA.....18th CLAIMANT
THOMAS NYAKUNDI.....19th CLAIMANT
JEPHITER BUNDI.....20th CLAIMANT
GEORGE RODGERS.....21st CLAIMANT

JONES MOINORE.....22nd CLAIMANT
GEOFFFEY ONYANCHA.....23rd CLAIMANT
ROBERT AKUMA.....24th CLAIMANT
JOHN NYAMONGO.....25th CLAIMANT
LISPHER IKOBE.....26th CLAIMANT
MORAA ONDOGO.....27th CLAIMANT
PAUL ONTITA.....28th CLAIMANT
BENSON NYAKER.....29th CLAIMANT
WINYSIDA KWAMBOKA.....30th CLAIMANT
BENARD NYAMWAYA.....31st CLAIMANT
JOHN NYAMONGO.....32nd CLAIMANT
CONSOLATA OMBACHI.....33rd CLAIMANT
OLPHA OMARIBA.....34th CLAIMANT
GEORGE NYANGAU.....35th CLAIMANT

VERSUS

CHIEF OFFICER, HEALTHNYAMIRA COUNTY.....1st RESPONDENT
COUNTY GOVERNMENT OF NYAMIRA.....2nd RESPONDENT

JUDGMENT

1. The Claimants instituted these proceedings against the Respondents on 13 April 2018, alleging breach of contract.
2. The Claimants sought the following remedies:
 - (i) THAT the terms of employment of the Claimants be in tandem with employment laws, especially with regard to the minimum wage payable.
 - (ii) THAT all amounts deducted from the Claimants wages in respect of NSSF and NHIF be remitted forthwith, including arrears that have never been remitted even after deductions.
 - (iii) THAT all wages due to the Claimants be paid as when they are due without any delay unless with the written consent of the Claimants.
 - (iv) THAT steps be taken for the immediate admission of the Claimants into permanent and pensionable ranks.
 - (v) General damages.
 - (vi) Costs of this suit.
 - (vii) Any other relief that this Honourable Court may deem fit and just to grant.
3. The Respondents filed a Response on 2 May 2018, and the Cause was heard on 1 December 2020 when the first Claimant testified on behalf of all the Claimants.
4. Despite acknowledging the service of hearing notice on 2 November 2020, the Respondents did not attend the hearing.

5. The Claimants filed their submissions on 27 January 2021 in which they identified 3 Issues being:

(i) Whether the Respondents herein are capable of being sued?

(ii) Whether the Claimants are entitled to the reliefs sought?

(iii) Whether the Claimants are entitled to the costs of the cause?

The locus/Joinder of the Respondents

6. Section 57 of the County Governments Act establishes an organ known as the County Public Service Board as a body corporate with perpetual succession capable of being sued.

7. Under section 59 of the Act, the county's human resource function has been bestowed in the County Public Service Board.

8. In terms of the County Governments Act, the County Public Service Board should have been sued and/or joined as a necessary party and not the current Respondents.

9. On that ground, the Cause herein is incompetent and fatally defective.

Breach of contract on statutory deductions

10. Amongst the grievances raised by the Claimants was that deductions were made from their salaries towards contributions to the National Social Security Fund and the National Hospital Insurance Fund, but the deductions were not remitted to the respective Funds.

11. However, the Claimants did not file and/or produce copies of their pays lips to demonstrate that deductions were made.

12. Further, the Claimants did not exhibit any formal Statements of Account from the 2 Funds to show that any deductions were not remitted.

13. This head of the claim was not provided.

Minimum wage

14. The Claimants did not disclose the prescribed minimum wages, which applied in their case, nor prove that the wages they were receiving were below the prescribed minimum wage.

Permanent and pensionable terms

15. The general law of employment envisages contracts of definite duration and contracts of indefinite duration.

16. The agreement as to which type of contract is appropriate for each particular employer is left to the parties' autonomy.

17. Therefore, it is not the Court's role to prescribe to the contracting parties what type of contract to execute.

18. The Claimants herein did not prove any breach of contract or that any of their rights were violated either by the Respondents or any other person.

Conclusion and Orders

19. The Cause herein was legally a non-starter and without any merit. Further, the wrong persons had been sued.

20. The Cause is dismissed with costs to the Respondents.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 10TH DAY OF MARCH 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimants Mr Bunde instructed by Ochoki & Co. Advocates

For Respondents E. Asati, Advocate, Nyamira County Law Office

