

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

(Before Hon. Lady Justice Maureen Onyango)

CAUSE NO. 467 OF 2015

SERAH NTHULE MUTHIANI..... CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED..... RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 309 OF 2015

ALEX KISSAH LUCIA..... CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED..... RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 316 OF 2015

RISKY MUHATI SHIOLE..... CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED RESPONDENT CONSOLIDATED WITH

CAUSE NO. 317 OF 2015

ELVIS BARAZA WAMBANI.....CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED.....RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 466 OF 2015

LILIAN NKATHA MUGAMBI.....CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED.....RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 524 OF 2015

ONGERI MAKORI CLIVE..... CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED.....RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 526 OF 2015

BENARD SHITINDO KHAYO..... CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED.....RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 688 OF 2015

NELSON OGOLA MURUBI.....CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED.....RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 690 OF 2015

SIMON NANZAYI ACHIEYA.....CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED..... RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 1347 OF 2015

LINUS OUMA OKONGO.....CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED.....RESPONDENT

CONSOLIDATED WITH

CAUSE NO. 1537 OF 2015

NELSON OKELO ALOO.....CLAIMANT

VERSUS

CHANDARIA INDUSTRIES LIMITED.....RESPONDENT

JUDGMENT

The judgment herein is in respect of Cause Numbers 309 of 2015, 316 of 2015, 317 of 2015, 466 of 2015, 524 of 2015, 526 of 2015, 688 of 2015, 690 of 2015, 1347 of 2015 and 1537 of 2015.

All the claimants in these suits are former employees of the respondent and their services were terminated together under the same circumstances.

Similar suits were filed by claimants in Cause No. 808 of 2015 consolidated with Cause No 312 of 2015 wherein judgment was delivered on 11th October 2019. The court awarded the two claimants therein the following –

“I therefore find that the claimants were not declared redundant but were terminated following their refusal to either relocate to

another department or take leave while the respondent overhauled its machinery and equipment. I further find that the union was fully involved in the exercise.

On remedies, the claimants prayed for notice, severance pay, annual leave and house allowance. They confirmed receipt of Kshs.64,962.30 each made up of service pay, leave and notice less PAYE. I however note that service was paid to both for 6 years' service yet they had each worked for 8 years. I further note that they were each paid notice at Kshs.3,297/= each instead of 2 months' salary as per CBA Clause 20 which provides that an employee who has worked for between 6 and 10 years is entitled to 2 months' notice.

I would therefore calculate the payments due to the claimants as follows –

Immaculate Mbithe Mutunga – 1st Claimant

i. Notice for 2 months at Kshs.11,304 per month

<i>for 2 months</i>	<i>Kshs.22,608</i>
<i>(less paid)</i>	<i>(Kshs.3,297)</i>

Kshs.19,311

ii. Service (balance of 2 years) at 22 days

per year of service *Kshs.19,130*

Total ***Kshs.38,441***

Jackson Muindi Kiilu – 2nd Claimant

i. Notice for 2 months at Kshs.17,304 per month

<i>for 2 months</i>	<i>Kshs.34,608</i>
<i>(less paid)</i>	<i>(Kshs.3,297)</i>

Kshs.31,311

ii. Service (balance of 2 years) at 22 days *per year of service* *Kshs.29,383*

Total ***Kshs. 60,694***

When the parties appeared in court on 12th November 2019, they agreed that the judgment in Cause No. 808 of 2015 be adopted in all the other related suits.

The CBA provides for notice at service at Clauses 20 as follows –

“(20) TERMINATION OF SERVICE

a. After the completion of satisfactory probationary period, service will be terminable by either party giving notice or pay in-lieu thereof as outlined hereunder.

- Employees with 1 to 5 completed years of service – 1 month.
- Employees with 6 to 10 completed years of service – 2 months.
- Employees with over 10 completed years of service – 3 months.

b. Any employee whose termination may be called for on medical grounds (Certified by Registered Medical Practitioner) be permitted in accordance with provisions of Clause 19(a).”

Claimants were paid severance pay in accordance with the redundancy clause of the CBA. Clause 21(e) of the CBA on Entitlement of redundant employees states as follows –

“(e) Entitlement of Redundant Employees

In the event of any employee being declared redundant will be entitled to: -

- The normal notice or pay in lieu of notice as defined in the Agreement.
- Payment of wages, overtime and any other remuneration which may be due to him calculated up to the date on which he/she ceases to work.
- Pro-rata leave and leave allowance entitlement in accordance with the agreement.
- The redundant employee shall be entitled to twenty two (22) days for each completed year of service calculated on basic wages earned at the time of redundancy.”

In line with the judgment in Cause No. 808 of 2015 above, I award each of the claimants as follows –

CAUSE NO./NAME	YEARS OF SERVICE	LAST SALARY	NOTICE PAID	BALANCE NOTICE	BALANCE SERVICE	TOTAL
Cause No. 309 of 2015 Alex Kissah Lucia	6	13,680	3,297	24,063	Paid in full	24,063.00
Cause No. 316 of 2015 Risky Muhati Shiole	9	17,304	3,297	31,311	31,086.00	62,397.00
Cause No. 317 of 2015 Elvis Baraza Wambani	2.4	11,304	3,297	8,007	Paid in full	8,007.00
Cause No. 466 of 2015 Lillian Nkatha Mugambi	4.7	11,304	3,297	8,007	Paid in full	8,007.00
Cause No. 524 of 2015 Ongeri Makori Clive	8	17,304	3,297	31,311	20,724.00	52,035.00
Cause No. 526 of 2015 Benard Shitindo Khayo	8.5	13,680	3,297	24,063	25,905.00	49,968.00
Cause No. 688 of 2015 Nelson Ogola Murubi	8	17,304	3,297	31,311	Paid in full	31,311.00
Cause No. 690 of 2015 Simon Nyanzayi Achieya	6	13,680	3,297	24,063	Paid in full	24,063.00
Cause N`o. 1347 of 2015 Linus Ouma Okongo	8.1	17,304	3,297	31,311	21,760.20	53,071.20
Cause No. 1537 of 2015 Nelson Okelo Aloo	8	17,304	3,297	31,311	20,724.00	52,035.00

The respondent shall pay costs to the claimants.

Instruction fees shall be based on the consolidated judgment as the cases were heard together.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 31ST DAY OF JANUARY 2020

MAUREEN ONYANGO

JUDGE