

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO.225 OF 2017

(Before Hon. Justice Mathews N. Nduma)

MICHAEL KINYUA MUTUGI.....1ST CLAIMANT
JAMES NGUGI GATANGA.....2ND CLAIMANT
JACKSON MULILU.....3RD CLAIMANT
JONAH MELISI JUMANNE.....4TH CLAIMANT
JUDITH ODIPO.....5TH CLAIMANT
DAVID KAMWANI SIMIYU.....6TH CLAIMANT
JULIUS NYANG'AU BOGONKO.....7TH CLAIMANT
AUGUSTUS MUTIA NDANA.....8TH CLAIMANT

VERSUS

VIL LIMITED.....RESPONDENT

JUDGMENT

1. The suit is based on an amended statement of claim dated 17th December 2018 where the claimants seek:-
 - a. Arrear salaries in the sum of Kshs. 11,700,000
 - b. Payment in lieu of leave Ksh. 980,000.
 - c. Unpaid house allowance kshs. 1,911,000.
 - d. Notice pay Kshs. 490,000
 - e. Damages.
 - f. Interest and costs.
2. The suit proceeded as undefended cause after the claimants sought interlocutory judgement upon making an interlocutory application dated 16th January 2019 to effect service of summons and its amended claim via registered post.
3. Orders were entered on 18th January 2019 accordingly and service was effected through the last known address of the respondent and an affidavit of service filed on 16th September 2019.
4. The 1st claimant testified on behalf of all eight (8) claimants. Authority was duly given vide annex "VKM1" to the 1st claimant's verifying affidavit sworn on 17th December 2018.
5. The 1st claimant adopted a witness statement dated 17/12/2018 as his evidence in chief.
6. The testimony by CW1 was that the claimants were employed by the Respondent in various capacities on permanent basis and were posted in Kakamega County where the Respondent undertook a road construction project
7. CW1 produced employment records for the eight (8) claimants including samples of pay slips. At the time of filing the amended memorandum of claim the Respondent had neglected payment of salaries to the claimants for a period of 24 to 26 months as was demonstrated in exhibits '2' and '3'.

8. The Claimants wrote demand letters for their salaries but the Respondent did not respond. The Respondent also ignored a letter from the Ministry of Labour, Social Security and Services on the claimants' complaint. The letters were produced as exhibit '4'.

9. The Claimants testified that they suffered loss and damage due to the prolonged non- payment of salaries and could not meet their financial obligations. That the claimants endured distress for rent by their landlords and were listed in the Credit Reference Bureau as defaulters.

10. The Court had made an order of attachment of properties in the matter in anticipation of decretal sum in this matter.

11. The claimants pray for payment of terminal benefits as set out in the statement of claim and an award of general damages for failure by the respondent to comply with the provisions of the Employment Act 2007.

12. The 1st Claimant produced a schedule of particulars of employment of each of the claimant as set out in the statement of claim as follows:-

NAME	DATE OF EMPLOYMENT	DESIGNATION	GROSS PAY (KSH)
Michael Mutugi Kinyua	1/1/2014	Laboratory In charge	180,000/-
James Ngugi Gatanga	12/9/2014	Assistant Workshop Manager	65,000/-
Jackson Muliu	05/1/2015	Plant Mechanic	40,000/-
Jonah Melisi Jumanne	10/11/2014	Assistant Plant Operator	50,000/-
Judith Odipo	22/7/2013	Administrative Secretary	40,000/-
David Kamwani Simiyu	3/9/2014	Junior Foreman	50,000/-
Julius Nyang'au Bogonko	8/10/2013	Bridge and Drainage works Supervisor	75,000/-
Augustus Mutia Ndana	1/5/2013	Cook – Guest House	20,000/-

The 1st Claimant also produced a 2nd schedule of particulars of claim by each of the claimants as follows:-

NAME	SALARY ARREARS (24MONTHS)	2 YEARS ANNUAL LEAVE – (2MONTHS)	HOUSE ALLOWANCE (26MONTHS)	NOTICE PAY (1MONTH)	DAMAGES (12 MONTHS)
Michel mutugi Kinyua	3,600,000/-	300,000/-	585,000/-	150,000/-	1,800,000/-
James Ngugi Gatanga	1,560,000/-	130,000/-	253,000/-	65,000/-	780,000/-
Jackson Mulilu	960,000/-	80,000/-	156,000/-	40,000/-	480,000/-
Jonah Melisi Jumanne	1,200,000/-	100,000/-	195,000/-	50,000/-	600,000/-
Judith Odipo	960,000/-	80,000/-	156,000/-	40,000/-	480,000/-
David Kamwani Simiyu	1,200,000/-	100,000/-	195,000/-	50,000/-	600,000/-
Julius Nyang'au Bogonko	1,800,000/-	150,000/-	292,000/-	75,000/-	900,000/-

Augustus Ndana	Mutia	480,000/-	40,000/-	78,000/-	20,000/-	240,000/-
Totals		11,760,000/-	980,000-	1,911,000/-	490,000/-	5,880,000/-
GRAND TOTAL		21,021,000/-				

13. The aforesaid claims for terminal benefits comprising arrear salaries, unpaid leave days, unpaid house allowance and unpaid notice pay have not been defended.

14. The claimants were paid consolidated salary reflected in the sample pay slips produced as exhibits. The claimants were not entitled to payment of a separate house allowance over and above the consolidated pay.

15. The claimants have proved on a balance of probabilities that they are owed and should be paid by the respondent the terminal benefits set out in schedule 2 herein except the claim for house allowance which lacks merit and is dismissed.

DAMAGES

16. Compensation under section 49 of the Employment Act comes into play where an employee proves that the employer terminated his/her employment without a valid reason and that the employer did not follow a fair procedure in terminating the employment of the employee.

17. The claimants in this case have not proved violation of sections 41, 43 and 45 of the Employment Act by the respondent.

18. The claim for 12 months compensation under section 49 of the Employment Act lacks merit and is dismissed

19. In the final analysis Judgment is entered in favour of each claimant against the respondent as follows:-

- a. Michael Kinyua Mutugi – Kshs. 4,050,000
- b. James Ngugi Gatanga – Kshs. 1,755,000
- c. Jackson Mulilu – Kshs. 1,880,000
- d. Jonah Melisi Jumanne – Kshs. 1, 350,000
- e. Judith Odipo – Kshs. 1,080,000
- f. David Simiyu – Kshs. 1,400,000
- g. Julius Nyang’au Bogonko – Kshs. 2, 025,000
- h. Augustus Ndana – Kshs. 540,000
- i. Interest at Court rates form date of filling suit till payment in full.
- j. Costs of suit.

Judgment Dated, Signed and delivered at Nairobi this 28th day of May, 2020

Mathews N. Nduma

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, this ruling has been delivered to the parties online with their consent. 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 18 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.

Mathews N. Nduma

Judge

Appearances

Mom & Co. Advocates for the Claimant

Chrispo – Court Clerk