



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.156 OF 2017

CAROLINE NYAKERARIO.....CLAIMANT

VERSUS

SEO & SON LIMITED.....RESPONDENT

AND

Cause No. 149 of 2017 – Samuel Wambugu Gitonga Cause No. 150 of 2017 – John Nguyo Kahiga Cause No. 151 of 2017 – David Kisero Otieno Cause No. 152 of 2017 – Dominik Ncunge Karimi Cause No. 153 of 2017 – Elizabeth Wangari Cause No. 154 of 2017 – Wycliffe Ochieng Ogolla Cause No. 155 of 2017 – Jacob Kennedy Odongo Cause No. 157 of 2017 – Wagura Muthoni Gladys Cause No. 158 of 2017 – Belinda Atieno Cause No. 159 of 2017 – Benson Nyamao Okaro Cause No. 162 of 2017 – Christopher O Okwaro Cause No. 163 of 2017 – Emily Imali Onyango Cause No. 164 of 2017 – Ibrahim Ramadhan Jabia

JUDGEMENT

The claimants under the consolidated suits seek that there be assessment of their judgement awards in terms of the judgement in the test, ELRC Cause No.156 of 2017.

Rule 24 of the Employment and Labour Relations Court (Procedure) Rules, 2016 read with section 3 of the Employment and Labour Relations Court Act, 2011 allow the court on its own motion or upon being moved by the parties where more than one party have instituted suit(s) against the same respondent over the same cause of action and where the claims are similar to take one of the suits and be tried as a test case.

Rule 24 provides as follows;

24. Where two or more persons have instituted suits against the same respondents, the Court may, either on its own motion or upon the application of any of the parties with notice to all the affected parties, if satisfied that the issues to be tried in each suit are similar, make an order directing that one of the suits be tried as a test case, and staying all the steps in the other suits until the selected suit is determined, or fails to be a real trial of the issues.

In this regard, Cause No.156 of 2017 was identified as test suit herein. Other matters filed against the respondent were listed as set out above in the preamble.

Judgement in the test suit under Cause No.156 of 2017 was delivered on 14th February, 2019 in the following terms;

Accordingly, this being the test suit under the consolidated files set out above, judgement is hereby entered for the claimant against the respondent in the following terms;

(a) Notice pay Ksh.12,591.80;

(b) Annual leave Ksh.14,036.00;

(c) Underpayment ksh.37,260.60;

(d) House allowance Ksh.17,000.00

(e) Service pay ksh.7,260.0;

(f) Costs.

The issues in dispute thus determined, the findings therefrom apply to other suits stayed pending the determination of the test suit.

Assessment of awarded shall follow the same sequence with the following dues;

Notice pay;

Annual leave;

Underpayments;

House allowance;

Service pay; and

Costs.

Cause No. 149 of 2017 – Samuel Wambugu Gitonga

The claimant was employed on 2nd February, 2015 earning Ksh.400 daily and worked until 19th July, 2016 when his employment was terminated after working for 17 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

(a) Notice Pay Ksh.12,591.80;

(b) Annual leave Ksh.14,206.80;

(c) House allowance for 17 months at 15% basic wage is Ksh.32,109.09;

(d) Underpayment Ksh.37,260;

(e) Service pay Ksh.7,260; and

(f) Costs.

Cause No. 150 of 2017 – John Nguyo Kahiga

The claimant was employed by the respondent in October, 2015 earning Ksh.400 per day until 2nd October, 2016 when his employment was terminated after working for 12 months.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

(a) Notice Pay Ksh.12,591.80;

(b) Annual leave Ksh.12,591.80;

(c) House allowance for 12 months at 15% basic wage is Ksh.22,664;

(d) Underpayment Ksh.26,208;

(e) Service pay Ksh.7,260; and

(f) Costs.

Cause No. 151 of 2017 – David Kisero Otieno

The claimant was employed by the respondent in February, 2015 and worked for 11 months when his employment was terminated.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave pay for 11 months is Ksh.9,075;
- (c) House allowance for 11 months at 15% basic wage is Ksh.20,775;
- (d) Underpayment Ksh.24,024; and
- (e) Costs.

Service pay is not due.

Cause No. 152 of 2017 – Dominik Ncunge Karimi

The claimant was employed on 15th October, 2015 earning Ksh.800 daily and worked until 22nd September, 2016 when his employment was terminated after working for 11 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.20,800;
- (b) Annual leave for 11 months Ksh.16,600;
- (c) House allowance for 11 months at 15% basic wage is Ksh.25,740;
- (d) Costs.

There is no underpayment. Service pay is not due.

Cause No. 153 of 2017 – Elizabeth Wangari

The claimant was employed in February, 2015 earning Ksh.400 daily and worked until 25th July, 2016 when his employment was terminated after working for 17 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.14,206.80;
- (c) House allowance for 17 months at 15% basic wage is Ksh.32,109;
- (d) Underpayment Ksh.37,260;
- (e) Service pay Ksh.7,260; and
- (f) Costs.

Cause No. 154 of 2017 – Wycliffe Ochieng Ogolla

The claimant was employed in February, 2015 earning Ksh.400 daily and worked until 10th January, 2016 when his employment was terminated after working for 11 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave for 11 months Ksh.9,075;
- (c) House allowance for 11 months at 15% basic wage is Ksh.20,775;
- (d) Underpayment Ksh.24,024;
- (e) Costs.

Service pay is not due.

Cause No. 155 of 2017 – Jacob Kennedy Odongo

The claimant was employed in January, 2015 earning Ksh.400 daily and worked until 18th January, 2016 when his employment was terminated after working for 12 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.12,591.80.80;
- (c) House allowance for 12 months at 15% basic wage is Ksh.22,664;
- (d) Service pay Ksh.7,260; and
- (e) Costs.

There was no claim for underpayment. The claim for work during public holidays is without particulars and or details.

Cause No. 157 of 2017 – Wagura Muthoni Gladys

The claimant was employed in April, 2015 earning Ksh.400 daily and worked until 23rd May, 2016 when his employment was terminated after working for 13 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.12,954;
- (c) House allowance for 13 months at 15% basic wage is Ksh.24,552;
- (d) Underpayment Ksh.28,392;
- (e) Service pay Ksh.7,260; and
- (f) Costs.

Cause No. 158 of 2017 – Belinda Atieno

The claimant was employed in February, 2015 earning Ksh.400 daily and worked until 25 February, 2016 when employment was terminated after working for 11 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave pay for 11 months is Ksh.9,075;
- (c) House allowance for 11 months at 15% basic wage is Ksh.20,775;
- (d) Underpayment Ksh.24,024; and
- (e) Costs.

Service pay is not due.

Cause No. 159 of 2017 – Benson Nyamao Okaro

The claimant was employed in February, 2015 earning Ksh.400 daily and worked until 6th June, 2016 when his employment was terminated after working for 17 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.14,206.80;
- (c) House allowance for 17 months at 15% basic wage is Ksh.32,109;
- (d) Underpayment Ksh.37,260;
- (e) Service pay Ksh.7,260; and
- (f) Costs.

Cause No. 162 of 2017 – Christopher O Okwaro

The claimant was employed in February, 2015 earning Ksh.400 daily and worked until 19th December, 2015 when his employment was terminated after working for 10 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.3,630;
- (c) House allowance for 10 months at 15% basic wage is Ksh.18,886.50;
- (d) Underpayment Ksh.4,843;
- (e) Costs.

Service pay is not due in this case. On the claim for 12 sick off days' pay and work during public holidays there are no particulars.

Cause No. 163 of 2017 – Emily Imali Onyango

The claimant was employed in February, 2015 earning Ksh.484 daily and worked until 25th February, 2016 when employment was terminated after working for 12 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.12,591.80;
- (c) House allowance for 12 months at 15% basic wage is Ksh.22,663;
- (d) Service pay Ksh.7,260; and
- (e) Costs.

In this case there was no underpayment. The claim for work on public holidays is not set out and or given particulars. The claim for 12 days sick off days upon alleged electrocution is/are without any evidence. Where there was injury to the claimant on the shop floor such ought to be addressed under the provisions of the Work Injury Benefits Act, 2007.

Cause No. 164 of 2017 – Ibrahim Ramadhan Jabia

The claimant was employed in April, 2015 earning Ksh.400 daily and worked until 19th December, 2015 when his employment was terminated after working for 10 months with the respondent.

On the claims made and the test suit under Cause No.156 of 2017 judgement is hereby entered for the claimant in the following terms;

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.3,630;

(c) House allowance for 10 months at 15% basic wage is Ksh.18,886.50;

(d) Underpayment Ksh.17,534.40;

(e) Costs.

Service pay is not due. The claims with regard to public holidays and 12 sick off days are without particulars and or evidence. Even where the claimant may have been injured while at work with the respondent, such claims should be addressed under the provisions of the Work Benefits Injury Act, 2007 as this court does not have the original jurisdiction to make a determination such injury/injuries alleged to have occurred before employment terminated on 19th December, 2015.

Judgement is hereby entered for the claimants in the following terms:

Cause No. 149 of 2017 – Samuel Wambugu Gitonga

(a) Notice Pay Ksh.12,591.80;

(b) Annual leave Ksh.14,206.80;

(c) House allowance for 17 months at 15% basic wage is Ksh.32,109.09;

(d) Underpayment Ksh.37,260;

(e) Service pay Ksh.7,260; and

(f) Costs.

Cause No. 150 of 2017 – John Nguyo Kahiga

(a) Notice Pay Ksh.12,591.80;

(b) Annual leave Ksh.12,591.80;

(c) House allowance for 12 months at 15% basic wage is Ksh.22,664;

(d) Underpayment Ksh.26,208;

(e) Service pay Ksh.7,260; and

(f) Costs.

Cause No. 151 of 2017 – David Kisero Otieno

(a) Notice Pay Ksh.12,591.80;

(b) Annual leave pay for 11 months is Ksh.9,075;

(c) House allowance for 11 months at 15% basic wage is Ksh.20,775;

(d) Underpayment Ksh.24,024; and

(e) Costs.

Cause No. 152 of 2017 – Dominik Ncunge Karimi

(a) Notice Pay Ksh.20,800;

(b) Annual leave for 11 months Ksh.16,600;

(c) House allowance for 11 months at 15% basic wage is Ksh.25,740;

(d) Costs.

Cause No. 153 of 2017 – Elizabeth Wangari

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.14,206.80;
- (c) House allowance for 17 months at 15% basic wage is Ksh.32,109;
- (d) Underpayment Ksh.37,260;
- (e) Service pay Ksh.7,260; and
- (f) Costs.

Cause No. 154 of 2017 – Wycliffe Ochieng Ogolla

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave for 11 months Ksh.9,075;
- (c) House allowance for 11 months at 15% basic wage is Ksh.20,775;
- (d) Underpayment Ksh.24,024;
- (e) Costs.

Cause No. 155 of 2017 – Jacob Kennedy Odongo

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.12,591.80.80;
- (c) House allowance for 12 months at 15% basic wage is Ksh.22,664;
- (d) Service pay Ksh.7,260; and
- (e) Costs.

Cause No. 157 of 2017 – Wagura Muthoni Gladys

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.12,954;
- (c) House allowance for 13 months at 15% basic wage is Ksh.24,552;
- (d) Underpayment Ksh.28,392;
- (e) Service pay Ksh.7,260; and
- (f) Costs.

Cause No. 158 of 2017 – Belinda Atieno

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave pay for 11 months is Ksh.9,075;
- (c) House allowance for 11 months at 15% basic wage is Ksh.20,775;
- (d) Underpayment Ksh.24,024; and
- (e) Costs.

Cause No. 159 of 2017 – Benson Nyamao Okaro

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.14,206.80;
- (c) House allowance for 17 months at 15% basic wage is Ksh.32,109;
- (d) Underpayment Ksh.37,260;
- (e) Service pay Ksh.7,260; and
- (f) Costs.

Cause No. 162 of 2017 – Christopher O Okwaro

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.3,630;
- (c) House allowance for 10 months at 15% basic wage is Ksh.18,886.50;
- (d) Underpayment Ksh.4,843;
- (e) Costs.

Cause No. 163 of 2017 – Emily Imali Onyango

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.12,591.80;
- (c) House allowance for 12 months at 15% basic wage is Ksh.22,663;
- (d) Service pay Ksh.7,260; and
- (e) Costs.

Cause No. 164 of 2017 – Ibrahim Ramadhan Jabia

- (a) Notice Pay Ksh.12,591.80;
- (b) Annual leave Ksh.3,630;
- (c) House allowance for 10 months at 15% basic wage is Ksh.18,886.50;
- (d) Underpayment Ksh.17,534.40;
- (e) Costs.

Orders accordingly.

Dated and delivered electronically this 4th June, 2020 at 0900 hours

M. MBARU

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 the Order herein shall be delivered to the parties via emails.

this 4th June, 2020 at 0900 hours

M. MBARU

JUDGE