



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 876 OF 2017**

**BETWEEN**

1. HEZRON ZIRO
2. SHIRLEY WANGUI
3. ALICE MUENDI
4. HASSAN VIGODI
5. MWANGANGI MUTHAMI
6. MWINYI HAMISI
7. REUBEN OSIAKO
8. SAMSON GOR
9. AMINA PROJERAH.....CLAIMANTS

**VERSUS**

**THREEWAYS SHIPPING SERVICES LIMITED.....RESPONDENT**

*Rika J*

*Munee Katu & Associates, Advocates for the Claimants*

*Respondent in person*

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**JUDGMENT**

1. Originally, there were 18 Claimants in this dispute. Half them withdrew the Claim, through a Notice of Withdrawal of Suit, filed on 1<sup>st</sup> October 2018.

2. The remaining Claimants filed an Amended Statement of Claim on 1<sup>st</sup> October 2018. They aver, they were employed by the Respondent in various positions, ranging from Port Clerks, Administrative Officers, Commercial Officers, Container Control Officers, Principal Officers, House Attendants, Core Operations Officers, and Brokerage Officers. The Respondent is a Shipping Company, based at the Port City of Mombasa.

3. Their Claim is that the Respondent ceased to pay their respective salaries from January 2017 to the time they ceased working. They also seek payment of accrued leave days, bank penalties and interests occasioned by default in their loan obligations to various banks, costs, interest and any other suitable relief.

4. The Court directed the Labour Office Mombasa County, on 22<sup>nd</sup> November 2017, to investigate if the Claimants were owed salaries by the Respondent, and if owed, in what amounts and over which period. The Labour Officer filed a Report in Court on 13<sup>th</sup> December 2017, stating that the Respondent did not supply the information needed. Its Operations Manager advised that the Directors, who had custody of Employees' records, were domiciled in Kampala, Uganda. The Operations Manager informed the Labour Officer however, that the Employees, including the Operations Manager, had not been paid salaries for some time. There was no conclusive Report generated by the Labour Officer, specifying the amount of salaries due to the Claimants. The Respondent opted not to cooperate with the Labour Office.

5. In a Ruling dated 11<sup>th</sup> July 2018, the Court directed that the Claim is heard in full. It was noted that some of the Employees may have compromised their dispute with the Respondent, while others wrote to the Respondent, resigning from their respective positions. The Court needed to hear their evidence.

6. Evidence for the Claimants was given by the 1<sup>st</sup> Claimant, with the authority of his Colleagues, on 25<sup>th</sup> February 2020. He told the Court that he and his Colleagues were employed by the Respondent as set out in their Statements of Claim and Witness. The problem arose when the Respondent stopped paying their salaries. All the existing Claimants were denied their salaries. They worked in different departments. They were not able to pay bank loans as they were not receiving their monthly salaries. Bank Statements on record, evince their indebtedness to their Banks. They handed in resignation letters to the Respondent, and approached the Court for recovery of their arrears of salaries.

7. The Respondent filed a Statement of Response on 30<sup>th</sup> November 2018. It is conceded that the Claimants were employed by the Respondent. The Respondent however denies that it owes any of the Claimants, salary. Although the Respondent endured cash-flow problems in its business, it always managed to pay the Claimants their full salaries. The Claimants in the end deserted, left and/ or resigned their respective positions.

8. The Advocates representing the Respondent withdrew from acting for the Respondent, before hearing of the main dispute took place. The Court directed that Hearing Notice is served upon the Respondent personally. This was, according to the Claimants done, but there was no appearance for the Respondent at the main hearing.

**The Court Finds: -**

9. Although inconclusive, the Report of the Labour Officer confirms that the Respondent, through its Operations Manager, acknowledged owing Employees' salaries. The Operations Manager himself was owed salaries. The Respondent, in its Statement of Response, conceded it had financial constraints which would suggest there was delay or inability to meet financial obligations, including the obligation to pay wages.

10. Coupled with the failure by the Respondent to give employment records, or other evidence to discount the evidence by the Claimants, it is safe to conclude that the 9 Claimants were owed salaries as pleaded.

11. They may have resigned, left employment or deserted to use the words adopted by the Respondent in its Statement of Response. That they did so, does not disentitle them to accrued salaries. They probably left because they were not receiving their hard-earned salaries. The Court is ready to accede to their prayers for arrears of salaries, from the date of default, to the time the Claimants ceased working. Salaries are protected under Part VI of the Employment Act 2007. The Court must enforce this protection. The Respondent and its Directors cannot be allowed to hide in Uganda, with the salaries of Employees who have selflessly rendered their labour to the Respondent, here in Kenya.

12. The Claimants were not able to demonstrate the presence of pending annual leave days. Bank loans, interest and penalties were not shown to be payable by the Respondent. There is no bank loan agreement on record, where the Respondent stood as guarantor to any of the Claimants. These prayers have no foundation.

13. The 9 Claimants are granted respective arrears of salary at ***Kshs. 243,630; Kshs. 349,200; Kshs. 508,000; Kshs. 299,000; Kshs. 666,720; Kshs. 251,458; Kshs. 833,012; Kshs. 974,594; and Kshs. 590,000 – total Kshs. 4,715,614.***

14. ***Costs to the Claimants.***

15. ***Interest allowed at 16% per annum from January 2017 till payment is made in full.***

IN SUM, IT S ORDERED: -

***a. The Respondent shall pay to the Claimants arrears of salary at a total of Kshs. 4,715,614.***

***b. Costs to the Claimants.***

***c. Interest granted at 16% per annum from January 2017, till payment is made in full.***

**Dated, signed and released to the Parties under Ministry of Health and Judiciary Covid-19 Guidelines, at Chaka, Nyeri County, this 28<sup>th</sup> day of August 2020.**

**James Rika**

**Judge**