



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NUMBER 768 OF 2015**

**BETWEEN**

**1. OLIVER MUTUKU NDUNDA**

**2. JUMA RASHID MWAJAMBALE**

**3. SCOLASTICA ATIENO OPONDO**

**4. LIVISON JEREMIAH NGAO**

**5. PATRICK MZUNGU MWANGOMBE**

**6. BENEDICT MUTEMI MWITHYA.....CLAIMANTS**

**VERSUS**

**HABO GROUP OF COMPANIES.....RESPONDENT**

**Rika J**

**Court Assistant: Andrew Mwabanga**

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**Kitonga Kiiva, Advocate for the Claimants**

**Bosire & Partners, Advocate for the Respondent**

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**JUDGMENT**

1. The Claimants filed their Statement of Claim on 8<sup>th</sup> October 2015. They state, they were employed by the Respondent in various positions as shown below: -

- Oliver Mutuku: employed in May 2011 as a Tour Guide.
- Juma Rashid Mwachambale: employed in August 1994 as a Tour Guide.
- Scolastica Atieno Opondo: employed on 3<sup>rd</sup> November 1999 as Tour Guide.
- Livison Jeremiah Ngao: employed on 1<sup>st</sup> October 2012 as a Chef.
- Patrick Mzungu Mwangombe: employed as a Tour Guide in September 2009.
- Benedict Mutemi Mwithya: employed as a Bar Attendant in April 2014.

2. They were all summarily dismissed by the Respondent on 20<sup>th</sup> December 2014. They claim that termination was unfair and seek Judgment

against the Respondent for: -

**A. OLIVER MUTUKU NDUNDA:** 1- month salary in lieu of notice at Kshs. 10,000; salary arrears for March 2014 at Kshs. 10,000; public holidays at Kshs. 11,999; 16 annual leave days at Kshs. 10,500; in-house savings at Kshs. 25,800; severance pay at 15 days' salary for complete years of service at Kshs. 15,800; 12 months' salary in compensation for unfair termination at Kshs. 120,000; Sacco dues from February to November 2014 at Kshs. 3,000 – **total Kshs. 206,299.**

**B. JUMA RASHID MWANJAMBALE:** 1-month salary in lieu of notice at Kshs. 10,000; salary arrears including 19<sup>th</sup> December 2014 at Kshs. 6,333; severance pay at Kshs. 100,000; pay in lieu of notice [ replicated] at Kshs. 10,000; 109 holiday days at Kshs. 72,666; salary for March 2014 at Kshs. 10,000; leave pay at Kshs. 1,666; in-house savings at Kshs. 40,800; Sacco dues at Kshs. 3,000; and 12 months' salary in compensation for unfair termination at Kshs. 120,000 – **total Kshs. 374,466.**

**C. SCOLASTICA ATIENO OPONDO:** 1-month salary in lieu on notice at Kshs. 10,000; severance at Kshs. 75,000; salary arrears up to 19<sup>th</sup> December 2014 at Kshs. 6,333; pending holidays at Kshs. 27,999; salary for March 2014 at Kshs. 10,000; leave days at Kshs. 28,666; in-house savings at Kshs. 40,800; Sacco dues at Kshs. 10,000; and 12 months' salary in compensation for unfair termination at Kshs. 120,000 – **total Kshs. 327,999.**

**D. LIVISON JEREMIAH NGAO:** salary up to 19<sup>th</sup> December 2014 at Kshs. 12,666; severance for 2 years at Kshs. 20,000; 1-month salary in lieu of notice at Kshs. 20,000; 24.5 annual leave days at Kshs. 16,333; pending holidays at Kshs. 26,666; salary for March 2014 at Kshs. 20,000; in-house savings at Kshs. 15,600; Sacco dues at Kshs. 3,000; and 12 months' salary in compensation for unfair termination at Kshs. 240,000- **total Kshs. 374,266.**

**E. PATRICK MZUNGU MWANGOMBE:** salary up to 19<sup>th</sup> December 2014 at Kshs. 9,500; pay in lieu of notice at Kshs. 15,000; 10 public holidays at Kshs. 10,000; annual leave at Kshs. 7,000; in-house savings at Kshs. 4,800; and Sacco dues at Kshs. 2,400- **total Kshs. 48,500.**

**F. BENEDICT MUTEMI MWITHYA:** salary up to 19<sup>th</sup> December 2014 at Kshs. 9,500; notice pay at Kshs. 15,000; holiday pay at Kshs. 10,000; annual leave at Kshs. 7,000; in-house savings at Kshs. 4,800; Sacco dues at Kshs. 2,400; and 12 months' salary in compensation for unfair termination at Kshs. 180,000 – **total Kshs. 228,700.**

3. The Respondent filed its Statement of Response on 8<sup>th</sup> September 2017. Its position is that the Claimants were employed by different entities with no link to the Respondent. The Claim is mixed-up. Without prejudice to the foregoing, the Respondent pleads that the Claimants left on redundancy. They were consulted in the process. They were heard fairly. The Claim is frivolous and ought to be dismissed with costs.

4. The 1<sup>st</sup> Claimant was given by the Co-Claimants, authority to pursue the Claim on their behalf, filed on 8<sup>th</sup> October 2015.

5. He gave evidence, alongside 3<sup>rd</sup> Claimant and 5<sup>th</sup> Claimant on 8<sup>th</sup> October 2018. The 5<sup>th</sup> Claimant continued with his evidence on 5<sup>th</sup> February 2019, when by consent, the Witness Statements of 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Claimants were adopted as their evidence, and the Claimants' case closed. The Respondent's case was scheduled for hearing on multiple occasions thereafter, to no avail. On 8<sup>th</sup> October 2020, the Respondent's Advocate informed the Court she had failed to secure attendance of Respondent's Witness, and closed Respondent's case.

6. The Claimants adopted their Statement of Claim, Witness Statements and Documents on record, in their evidence. They restated that they were stopped by the Respondent at the gate, on 19<sup>th</sup> December 2014. They were directed from their ordinary place of work at Mamba Village, to proceed to Habo Group Offices. They found the Human Resource Manager there, who informed them that the Group Chief Executive Officer, Awiti Bolo, had directed they are dismissed. There was no warning. They enquired about their terminal dues. They were advised to collect these later. They received tabulation of dues later. Not a singled coin was paid. They sought help from the Labour Office. They were advised to seek legal advice. They approached Kituo Cha Sheria, who initiated the Claim herein.

7. On cross-examination, the Claimants told the Court that the letter of appointment did not indicate Habo Group. Habo Group took over the employing company. The Employer is named as Mamba Village. The Claimants did not have extracts from the Registrar of Companies, showing the status of the various companies. They were not contract workers, engaged depending on tourism seasons. Their performance was good. They were locked out, while some other Employees were let in. They clarified on redirection that Habo Group issued letters of termination.

#### **The Court Finds: -**

8. The Respondent failed, after multiple attempts, to bring any Witness. Its case is unsupported by evidence. The position expressed by the Claimants in their evidence, is uncontested.

9. They have demonstrated that they were employed by the Respondent on diverse dates and positions, shown in their Pleadings. They have sufficiently shown their terms and conditions of service, and established that they were all dismissed on 20<sup>th</sup> December 2014.

10. There is no doubt that they were Employees of Habo Group of Companies. In many other Claims which have been determined by this Court, it has been a consistent finding that the Respondent operates multiple businesses under the wider business vehicle, Habo Group of Companies. The iconic Mamba Village, is just one of these businesses, under the ownership of Awiti Bolo. The letters of appointment bear the signature of Awiti Bolo. The letters of summary dismissal issued under the banner of Habo Group of Companies. They were copied to Awiti Bolo. The letters of recommendation issued in the name of Habo Group of Companies. The letters state, in standard language, that the

Employees worked for Respondent Organization, for the period specified by the Claimants in their Pleadings. The letter addressed to Juma Rashid Mwajambale, dated 23<sup>rd</sup> January 2015, for example, states that, “*he was employed by our organization as from August 1994 to December 2014 as a Tour Guide.*” The business was there from as early as 1994. It is not necessary to demand from the Employees, that they supply extracts from the Registrar of Companies to show which company employed them.

11. The Respondent did not substantiate its claim that there was any redundancy exercise. It is strange to plead that the Claimants were called to meetings preceding ‘*retrenchment / layoffs.*’ This is confusing, as the Respondent issued letters to the Claimants, specifically referenced ‘*Summary Dismissal.*’ Section 44 [4] [c] of the Employment Act was cited. This law does not deal with ‘*retrenchment/layoffs.*’

12. The Respondent has not shown the reason or reasons, justifying termination. The Claimants were simply advised that the Group CEO, had advised they leave. There was no notice, hearing or reason availed to the Claimant. It was an arbitrary decision, communicated to the Claimants in a most cavalier manner.

13. Termination was unfair. In the absence of evidence from the Respondent, the Court grants **compensation for unfair termination, to the Claimants, except the 5<sup>th</sup> Claimant, as prayed.**

**14. Other prayers relating to terminal dues are uncontested and allowed as prayed.**

**15. Certificates of Service to issue.**

**16. Costs to the Claimants.**

**IN SUM, IT IS ORDERED: -**

**a. It is declared that termination was unfair.**

**b. The Respondent shall pay-**

- **1<sup>st</sup> Claimant: Kshs. 206, 299.**
- **2<sup>nd</sup> Claimant: Kshs. 374,466.**
- **3<sup>rd</sup> Claimant: Kshs. 327,999.**
- **4<sup>th</sup> Claimant: Kshs. 374,266.**
- **5<sup>th</sup> Claimant: Kshs. 48,500.**
- **6<sup>th</sup> Claimant: Kshs. 228,700.**

**c. Certificate of Service to issue.**

**d. Costs to the Claimants.**

**Dated, signed and released to the Parties electronically, at Nairobi, under Ministry of Health and Judiciary Covid-19 Guidelines, this 15<sup>th</sup> day of December 2020.**

**James Rika**

**Judge**