

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 284 OF 2017

CONSOLIDATED WITH CAUSES 282, 283, 285, 286, 287, 288, 289 & 290 OF 2017

CHEGE JEREMIAH & 9 OTHERS.....CLAIMANTS

VERSUS

JIANGXI ZHONGMEI ENGINEERING

CONSTRUCTION COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants sued the Respondent in 10 different suits being Cause Nos. 282, 283, 285, 286, 287, 288, 289 & 290 of 2017 which were consolidated prior to hearing with this cause being the lead file. The Claimants all alleged unfair labour practices, underpayment and unlawful termination of their contracts of service.

2. The Respondent entered appearance and filed a defence in which it averred the Claimants had been engaged in various capacities in the upgrading of the Marsabit-Turbi (A2) Road. It averred that the Claimants served during the period of the contract and as at April 2014, the major part of the works were complete and the Claimants were relied from employment depending on when the Claimants finalized their respective assignments. The Respondent averred that only the Claimants whose services were needed were retained when the contract was extended for one year and the 8 had already completed the sections for which there was no extension. The Respondent thus asserted that the Claimants were employed for a fixed term which they served to the end. The Respondent indicated the periods of service for the Claimants being up till July 2014 for some and September 2014 for others. Wario Jarso Wario's contract extended up until November 2014. The Respondent thus averred that the Claimants were duly paid all their dues and that the letters from the Ministry of Labour on wages were merely advisory and therefore not applicable. The Respondent averred that the Claimants were given accommodation as they were engaged in an area that was a jungle. The Respondent sought the dismissal of the claims with costs.

3. The Claimant in this cause, Chege Jeremiah testified on behalf of all the Claimants. He testified that they were not paid any house allowance or for overtime worked. He produced an agreement reached between the Kenya Building Construction Timbers and Furniture Union (KBCTFU) and the Respondent, and a letter from the Deputy County Commissioner Marsabit Central Sub County to the site manager of the Respondent on the Marsabit Turbi Road project. He testified that the underpayment was not rectified despite the letter and the agreement reached. He was cross-examined and he stated that they did not make a written follow up on the alleged agreement between the Union and the employer. He stated they followed up verbally. He said that once they had the agreement there was no other document that was needed. That marked the end of the Claimant's testimony. The Respondent however did not avail a witness despite being given an opportunity to do so.

4. The parties were to file submissions and the Claimants submitted that the Respondent did not dispute their other claims except for the one on unlawful termination. The Claimants submitted that the construction of the road ended on 19th April 2017 and the contention that the road project came to an end in 2014 was therefore a lie. The Claimants submitted that the Respondent did not avail a witness and there was no statement filed in respect of the expected witness and that they had proved their case on a balance of probabilities. The Claimants submitted that they were entitled to the remedies they had sought and urged the grant of costs in all the separate causes and costs after consolidation to be on the lead file. They also sought interest as well.

5. The Respondent on its part submitted that the road project was under a contract issued by KeNHA which was for 3 years and was from 2011 to 2014. The Respondent submitted that the project was completed in 2014 albeit after an extension to 2015 after the extension for one year. The defects liability period was until 2017 and the Respondent maintained a lean team for maintenance and repairs. It was submitted that the contracts expired and therefore the Claimants were not entitled to the dues sought.

6. The Claimants stated that they were not paid their dues and that they were not given housing. The evidence adduced however was that there was an agreement on payment made at the Ministry of Labour. The Claimants failed to attach or even produce a payslip showing the underpayment alleged. The fact that there was an agreement at the Ministry was not disputed. However, the Claimants had a burden to prove that agreement was not honoured. Other than their statements there is nothing to point that there was a breach of the agreement. There was no follow up and therefore it may well have been implemented. The contract for the road project was indeed extended but there was nothing shown to the court by the Claimants that they were entitled to an automatic extension of their contracts. The Claimants were not candid as the area the project was sited is remote and there was no evidence that they had accommodation other than at the Respondent's camp. In the final analysis, I dismiss the claims as they were unproved and order each party to bear their own costs.

It is so ordered.

Dated and delivered at Nyeri this 30th day of January 2019

Nzioki wa Makau

JUDGE

I certify that this is a true

copy of the original

DEPUTY REGISTRAR