



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CASE NO. 356 OF 2017**

**CONSOLIDATED WITH CAUSES 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374 & 375 OF 2017**

**AMINA GUYO DALACHA & 19 OTHERS.....CLAIMANTS**

**VERSUS**

**JIANGXI ZHONGMEI ENGINEERING**

**CONSTRUCTION COMPANY LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimants sued the Respondent in 20 different suits being Cause Nos. 357 of 2017, 358 of 2017, 359 of 2017, 360 of 2017, 361 of 2017, 362 of 2017, 363 of 2017, 364 of 2017, 365 of 2017, 366 of 2017, 367 of 2017, 368 of 2017, 369 of 2017, 370 of 2017, 371 of 2017, 372 of 2017, 373 of 2017, 374 of 2017 & 375 of 2017 which were consolidated prior to hearing with this cause being the lead file. They all alleged unfair labour practices, underpayment and unlawful termination of their contracts of service.

2. The Respondent did not enter appearance nor did the Respondent defend the cause. The matter thus proceeded undefended. The Claimants did not all testify and Amina Guyo Dalacha testified on their behalf. She stated that the Respondent underpaid her and her colleagues. She testified that she was not paid any house allowance or for overtime worked. She 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. She testified that the underpayment was not rectified despite the letter and the agreement reached.

3. The Claimants submitted that the liability against the Respondent was 100% as the Respondent had failed to defend as held in the cases of **Regina Mwikali Wilson v Stephen M. Gichuhi & Another [2015] eKLR** which cited with approval the Court of Appeal decision in the case of **Felix Mathenge v Kenya Power & Lighting Co. Ltd [2008] eKLR** that the question of liability was moot upon entry of interlocutory judgment and only the issue of quantum remained. The Claimant. The Claimants thus prayed for the payment of varied sums per their tabulation for the underpayment and the unpaid house allowance.

4. Though the issue of quantum seems to be the only issue the Claimants assert remains, the issue of proof for the monetary aspects of the claim remain and had to be proved. Indeed, the Claimants assert underpayment for hours worked daily and on Sundays and public holidays but in the absence of factum, the court cannot determine the precise amounts due to each on account of these claims. No computation was given on the actual Sundays and public holidays each Claimant worked at or missed. As for house allowance, the Claimants are entitled to an award on their claims on the unpaid house allowance since this was not factored in their payments, they also entitled to the unpaid leave dues, pay in lieu of notice as well as the underpayments. They are therefore only entitled to the following reliefs:-

**a. Cause 356 of 2017 – Amina Guyo Dalacha**

- i. Underpayment – Kshs. 49,920/-
- ii. Annual leave pay – Kshs. 10,608/-
- iii. Payment in lieu of notice – Kshs. 10,608/-
- iv. Unpaid house allowance – Kshs. 28,875/-

v. Costs of the suit

**b. Cause 357 of 2017 – Ahmed Salesa Kombola**

i. Underpayment – Kshs. 194,688/-

ii. Annual leave pay – Kshs. 17,264/-

iii. Payment in lieu of notice – Kshs. 34,258/-

iv. Unpaid house allowance – Kshs. 62,100/-

v. Costs of the suit

**c. Cause 358 of 2017 – Hassan Halake Wako**

i. Underpayment – Kshs. 262,912/-

ii. Annual leave pay – Kshs. 63,648/-

iii. Payment in lieu of notice – Kshs. 31,824/-

iv. Unpaid house allowance – Kshs. 36,275/-

v. Costs of the suit.

**d. Cause 359 of 2017 – Somo Kanu Guyo**

i. Underpayment – Kshs. 393,120/-

ii. Annual leave pay – Kshs. 39,250/-

iii. Payment in lieu of notice – Kshs. 39,520/-

iv. Unpaid house allowance – Kshs. 72,450/-

v. Costs of the suit

**e. Cause 360 of 2017 – Adano Jarso Elema**

i. Underpayment – Kshs. 69,888/-

ii. Annual leave pay – Kshs. 17,264/-

iii. Payment in lieu of notice – Kshs. 17,264/-

iv. Unpaid house allowance – Kshs. 12,075/-

v. Costs of the suit

**f. Cause 361 of 2017 – Safi Jarso Bonaya**

i. Underpayment – Kshs. 314,496/-

ii. Annual leave pay – Kshs. 57,408/-

iii. Payment in lieu of notice – Kshs. 38,272/-

iv. Unpaid house allowance – Kshs. 62,100/-

v. Costs of the suit

**g. Cause 362 of 2017 – Roba Wario Bonaya**

- i. Underpayment – Kshs. 156,416/-
- ii. Annual leave pay – Kshs. 31,824/-
- iii. Payment in lieu of notice – Kshs. 21,216/-
- iv. Unpaid house allowance – Kshs. 82,800/-
- v. Costs of the suit

**h. Cause 363 of 2017 – Mio Yuyo Kosi**

- i. Underpayment – Kshs. 449,280/-
- ii. Annual leave pay – Kshs. 79,040/-
- iii. Payment in lieu of notice – Kshs. 39,520/-
- iv. Unpaid house allowance – Kshs. 82,800/-
- v. Costs of the suit

**i. Cause 364 of 2017 – David Kiplangat Mutai**

- i. Underpayment – Kshs. 259,584/-
- ii. Annual leave pay – Kshs. 69,056/-
- iii. Payment in lieu of notice – Kshs. 34,528/-
- iv. Unpaid house allowance – Kshs. 89,700/-
- v. Costs of the suit

**j. Cause 365 of 2017 – Abdi Isaack Gufu**

- i. Underpayment – Kshs. 129,792/-
- ii. Annual leave pay – Kshs. 34,528/-
- iii. Payment in lieu of notice – Kshs. 34,528/-
- iv. Unpaid house allowance – Kshs. 41,400/-
- v. Costs of the suit

**k. Cause 366 of 2017 – Diramu Boru Elema**

- i. Underpayment – Kshs. 297,024/-
- ii. Annual leave pay – Kshs. 38,272/-
- iii. Payment in lieu of notice – Kshs. 38,274/-
- iv. Unpaid house allowance – Kshs. 58,650/-
- v. Costs of the suit

**l. Cause 367 of 2017 – Kadiro Salesa Kombola**

- i. Underpayment – Kshs. 169,728/-
- ii. Annual leave pay – Kshs. 43,432/-

- iii. Payment in lieu of notice – Kshs. 10,608/-
- iv. Unpaid house allowance – Kshs. 13,800/-
- v. Costs of the suit

**m. Cause 368 of 2017 – Boru Waqo Jillo**

- i. Underpayment – Kshs. 49,920/-
- ii. Annual leave pay – Kshs. 10,608/-
- iii. Payment in lieu of notice – Kshs. 10,608/-
- iv. Unpaid house allowance – Kshs. 25,875/-
- v. Costs of the suit

**n. Cause 369 of 2017 – Galgallo Hassan Abdi**

- i. Underpayment – Kshs. 136,448/-
- ii. Annual leave pay – Kshs. 31,824/-
- iii. Payment in lieu of notice – Kshs. 21,216/-
- iv. Unpaid house allowance – Kshs. 70,725/-
- v. Costs of the suit

**o. Cause 370 of 2017 – Jarso Wario Bonaya**

- i. Underpayment – Kshs. 69,888/-
- ii. Annual leave pay – Kshs. 27,040/-
- iii. Payment in lieu of notice – Kshs. 27,040/-
- iv. Unpaid house allowance – Kshs. 41,400/-
- v. Costs of the suit

**p. Cause 371 of 2017 – Tache Jattani Tache**

- i. Underpayment – Kshs. 449,280/-
- ii. Annual leave pay – Kshs. 79,040/-
- iii. Payment in lieu of notice – Kshs. 39,520/-
- iv. Unpaid house allowance – Kshs. 82,800/-
- v. Costs of the suit

**q. Cause 372 of 2017 – Huko Guyo Chita**

- i. Underpayment – Kshs. 73,216/-
- ii. Annual leave pay – Kshs. 21,216/-
- iii. Payment in lieu of notice – Kshs. 21,216/-
- iv. Unpaid house allowance – Kshs. 37,950/-

v. Costs of the suit

**r. Cause 373 of 2017 – Guyo Wario Elema**

i. Underpayment – Kshs. 333,590/-

ii. Annual leave pay – Kshs. 52,166/-

iii. Payment in lieu of notice – Kshs. 34,777/-

iv. Unpaid house allowance – Kshs. 56,925/-

v. Costs of the suit

**s. Cause 374 of 2017 – Boru Guyo Galma**

i. Underpayment – Kshs. 393,120/-

ii. Annual leave pay – Kshs. 59,280/-

iii. Payment in lieu of notice – Kshs. 39,520/-

iv. Unpaid house allowance – Kshs. 72,450/-

v. Costs of the suit

**t. Cause 375 of 2017 – Mou Bidu Tuto**

i. Underpayment – Kshs. 384,134/-

ii. Annual leave pay – Kshs. 52,166/-

iii. Payment in lieu of notice – Kshs. 34,777/-

iv. Unpaid house allowance – Kshs. 65,550/-

v. Costs of the suit

It is so ordered.

**Dated and delivered at Nyeri this 24<sup>th</sup> day of January 2019**

**Nzioki wa Makau**

**JUDGE**