



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CASE NO. 412 OF 2017**

**CONSOLIDATED WITH CAUSES 410 OF 2017 & 411 OF 2017**

**1. NORBERT MARETE NGUKI**

**2. JOSEPH KITHISYA MBITHI**

**3. NGULI MULATYA alias NICHOLAS NGULI MULATYA.....CLAIMANTS**

**VERSUS**

**KENYA WATER INSTITUTE.....RESPONDENT**

**JUDGMENT**

1. The Claimants sued the Respondent in 3 different suits being Cause No. 412 of 2017, 410 of 2017 and 411 of 2017 which were consolidated prior to hearing. They alleged unfair labour practices and unlawful termination of their contracts of service. The 1<sup>st</sup> Claimant worked as a cook from 10<sup>th</sup> May 2010 till 23<sup>rd</sup> August 2017 whereas the 2<sup>nd</sup> Claimant was initially engaged as a general labourer from 8<sup>th</sup> January 2007 and thereafter promoted to store clerk and finally worked as a driver till termination on 14<sup>th</sup> July 2017. The 3<sup>rd</sup> Claimant was a general labourer from 3<sup>rd</sup> September 2008 till 23<sup>rd</sup> August 2017 while he was serving as a laundry operator. They used to sign employed contracts every two months for the entire duration of their employ. The Respondent in the defences filed asserts that the Claimants were casual workers who were employed for 2 months and there was a renewal subject to application by the Claimants and acceptance by the Respondent. The Respondent denies that it engaged in any unfair labour practices and avers that the Claimants left employment on their own volition and were paid their dues. The Respondent averred that all statutory dues were deducted and remitted as required and urged the court to dismiss the suits with costs.

2. The 1<sup>st</sup> Claimant testified on behalf of the other 2 Claimants. He reiterated that they were employed on 2 month contracts over their entire duration of service and were dismissed on various dates without any colour of right. At the hearing, of the other 2 Claimants, only the 2<sup>nd</sup> Claimant was present while the 3<sup>rd</sup> Claimant was absent. The Respondent called its Acting HR Manager James Karisa Mweni who testified that the Claimants were employed on casual terms for staggered periods on 2 month contracts and that if the Claimants wished they would be re-employed. He stated that the Respondent had intermittent funding and would not have enough money to pay them on long term contracts until 5<sup>th</sup> May 2017 when funding was availed for their hire. The 3 Claimants declined to sign the new contracts which the other employees signed and the 3 therefore had no contracts and left the Respondent's employ of their own volition.

3. The parties filed submissions in which the Claimants submitted that the Respondent did not give the Claimants notice of the intended termination as required under Section 35 of the Employment Act. The Claimants alleged that they were dismissed without due regard to the law. The Respondent on its part submits that the Claimants were given one year contracts and they declined to sign the contracts to signify acceptance and were therefore deemed to have rejected the offer of employment. The Respondent submitted that the Claimants contracts did not have a provision for giving of notice as the contracts were for 2 months. The Respondent argued that the Claimants were all paid their dues as they received pay for each day worked.

4. It is clear the Claimants were offered long term contracts which they all declined to sign. As a result they ceased being employees of the Respondent out of their own free will. They were not dismissed and were only asked to return the unsigned letters of offer. Their suits were therefore misplaced in as far as termination of employment goes. However, the Respondent had unfair labour practices in that for periods ranging from 7 to 9 years, the Claimants were on short term contracts. Under Article 7 of the ILO Convention 158, the Claimants were entitled to a reasonable period of notice. In view of the fact that they had been on 2 month contracts, a notice period of 2 weeks would have sufficed. As no notice was issued, the fact of termination was not properly communicated and they are therefore each entitled to recover wages for the notice not issued. They were not members of any retirement scheme and therefore they were not entitled to gratuity but can draw from the NSSF dues upon attainment of the mandatory retirement age as per the National Social Security Fund Act. In the final

analysis, the Claimants are only successful to the following extent:-

a. One month notice pay as follows: -

i. Cause 412 of 2017 - Norbert Marete Nguku Kshs. 12,526/-

ii. Cause 410 of 2017 – Joseph Kithisya Mbithi Kshs. 25,516/-

iii. Cause 411 of 2017 – Nguli Mulatya Kshs. 15,678/-

b. Each party to bear their own costs.

It is so ordered.

**Dated and delivered at Nyeri this 21<sup>st</sup> day of January 2019**

**Nzioki wa Makau**

**JUDGE**

I certify that this is a true

copy of the original

**DEPUTY REGISTRAR**