



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 229 OF 2018

(Consolidated with Cause No. 222, 223, 224, 225, 226, 227, 228, 230 & 231 all of 2017

JACKLINE MUMBI MURATHIMI & OTHERS.....CLAIMANTS

VERSUS

HIGHLANDS MINERAL WATER LIMITED.....RESPONDENT

JUDGMENT

1. The Claimants sought relief for their dismissal from employment by the Respondent. They sued in the 10 causes being 222 of 2018 – Bernard Rumbere Muringi, 223 of 2018 – Rose Wangui Gachira, 224 of 2018 – Daisy Mukami Ndwiga, 225 of 2018 – Zoppirah Wangui Njine, 226 of 2018 - , 227 of 2018 – Jane Wambui Kariuki, 228 of 2018 – Rose Wairimu Mina, 229 of 2018 – Jackline Mumbi Murathimi, 230 of 2018 – Nancy Wakonyo Githinji, 231 of 2018 – Caroline Purity Wanja Kagina all consolidated for purposes of hearing. They averred that they were all terminated on 6<sup>th</sup> November 2017 by the Human Resource manager Anthony Mwangi via text message. They averred that they were not given any advance notification that they would be dismissed from employment prior to receiving the terse message that stated “no job tomorrow”. The Claimants were paid Kshs. 61/- per hour and that they were not involved in any misconduct and neither were they accused of poor performance. The Claimants thus sought payment of one month’s salary as notice pay, leave dues, service pay, compensation for unlawful dismissal and costs of the suit plus interest thereon. They attached copies of their bank statements which showed payment from the Respondent, the letters of demand and their witness statements. The Respondent did not enter appearance nor file defence. The cause thus proceeded as an undefended cause.

2. One Claimant, Jackline Mumbi Murathimi testified on her own behalf and on behalf of all the other Claimants. She testified that they used to work for the Respondent but were terminated on 6<sup>th</sup> November 2017 by SMS without prior notification of the intent to terminate. They all went to the Respondent to see the HR manager the very next day and he did not give them any reasons for the dismissal.

3. The Claimants submitted that having failed to give notice the dismissal was unlawful. They placed reliance on the case of **Wilfred Bukachi Opwaka v Ready Consultancy Company [2012] eKLR** where Onyango J. dealt with issues concerning casual employees and their dismissal where they have worked continuously for more than one month. They submitted that they were not given a hearing in terms of Section 41 of the Employment Act. They thus urged the grant of orders sought.

4. The Claimants in their testimony adverted to the payments they would receive whenever they worked for the Respondent. The evidence they brought forth being bank statements showed that they would get payment every few days and the payment was dependent on the hours and days worked from the close scrutiny of the payments from the bank statements. In each individual file, the statement does not indicate a uniform figure and the same varies from a few hundred shillings to slightly over Kshs. 2,600/- showing disparity in period and hours worked. This does not accord with a continuous monthly service. It would therefore seem the Claimants were engaged in shift work or piece rate work which was intermittent. The nature of the payments made to them removes them from the presumption that would fall under Section 35 of the Employment Act and therefore they were not entitled to notice under Section 37 of the Act for a longer period than a day. They assert dismissal without notice. Having distilled that they were not contract employees, they were not entitled to the benefit of notice as they could be told not to report to work the next day or opt not to come to work the next day. In my view, they were not entitled to leave dues, the notice period or any compensation for the alleged dismissal as they were not well suited. The case of **Wilfred Bukachi Opwaka v Ready Consultancy Company (Supra)** cited in support of their case is not applicable. The Claimants suits are all for dismissal. As each suit was undefended, there will be no order as to costs in respect of all the suits.

It is so ordered.

Dated and delivered at Nyeri this 18<sup>th</sup> day of February 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar