



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 897 OF 2016

SHDRACK PHILIP KANYIRI.....1ST CLAIMANT
 MULI NZIVO.....2ND CLAIMANT
 MOHAMED NASSIR KIBWANA.....3RD CLAIMANT
 MWALIMU OMARO KUKUMO.....4TH CLAIMANT
 RASHID MATANO MWAMFUNGA.....5TH CLAIMANT
 WILLIAMSON NEWTON MWENDAMBOA.....6TH CLAIMANT
 JUMA JUMA MRIWA.....7TH CLAIMANT
 PETER MWILU MBINDYO.....8TH CLAIMANT

VS

ME CORPORATION LIMITED.....RESPONDENT

JUDGMENT

Introduction

1. By a Statement of Claim dated 18th November 2016 and filed in court on 22nd November 2016, the Claimants have sued the Respondent for unfair termination of employment and failure to pay terminal dues. The Respondent filed a Memorandum of Response on 29th June 2017.
2. At the trial, the 1st Claimant, Shedrack Philip Kanyiri testified on his own behalf and on behalf of his co-claimants. The Respondent called its Personnel Manager, James Wambugu. Both parties further filed written submissions.

The Claimants’ Case

3. The Claimants state that they were employed by the Respondent on diverse dates. They were all dismissed on 31st May 2016 after refusing to sign new contracts incorporating deconsolidation of their salaries.
4. The Claimants’ case is that the termination of their employment was unlawful and unfair. They therefore claim the following:

1st Claimant: Shedrack Philip Kanyiri

- a. 2 months’ pay in lieu of notice.....Kshs. 27,212
- b. Leave pay for 2 years.....35,828
- c. Gratuity for 8 years.....170,610

- d. House allowance for 25 months.....63,889
e. Underpayment for 25 months.....111,812

2nd Claimant: Muli Nzivo

- a. 2 months' pay in lieu of notice.....Kshs. 27,212
b. Leave pay for 2 years.....21,979
c. Gratuity for 4 years.....31,398
d. House allowance for 33 months.....58,565
e. Underpayment for 33 months.....43,930

3rd Claimant: Mohamed Nassiri Kibwana

- a. 2 months' pay in lieu of notice.....Kshs. 27,212
b. Leave pay for 2 years.....21,971
c. Gratuity for 13 years.....102,044
d. House allowance for 33 months.....58,565
e. Underpayment for 26 months.....34,611

4th Claimant: Mwalimu Omari Kukumo

- a. 2 months' pay in lieu of notice.....Kshs. 27,212
b. Leave pay for 2 years.....21,971
c. Gratuity for 15 years.....31,398
d. House allowance for 33 months.....58,565
e. Underpayment for 33 months.....43,390

5th Claimant: Rashid Matano Mwamfungu

- a. 2 months' pay in lieu of notice.....Kshs. 25,194
b. Leave pay for 2 years.....20,349
c. Gratuity for 9 years.....65,543
d. House allowance for 33 months.....54,222
e. Underpayment for 33 months.....147,304

6th Claimant: Willamson Newton Mwendamboa

- a. 2 months' pay in lieu of notice.....Kshs. 25,194
b. Leave pay for 2 years.....20,349
c. Gratuity for 7 years.....50,978
d. House allowance for 26 months.....42,721

7th Claimant: Juma Juma Mriwa

- a. 2 months' pay in lieu of notice.....Kshs. 25,194
- b. Leave pay for 2 years.....20,349
- c. Gratuity for 16 years.....116,520
- d. House allowance for 26 months.....42,721
- e. Underpayment for 26 months.....115,805

8th Claimant: Peter Mwilu Mbindyo

- a. 2 months' pay in lieu of notice.....Kshs. 25,194
- b. Leave pay for 2 years.....20,349
- c. Gratuity for 8 years.....58,260
- d. House allowance for 26 months.....42,721
- e. Underpayment for 26 months.....115,805

5. The Claimants also ask for certificates of service plus costs of the case.

The Respondent's Case

6. In its Memorandum of Response dated 28th June 2017 and filed in court on 29th June 2017, the Respondent states that the Claimants were employed on fixed term contracts with their respective last contracts running for 5 months from 1st February 2016 up to June 2016. The Respondent adds that upon expiry, the said contracts were not renewed.

7. The Claimants' employment therefore came to an end by effluxion of time at which point their terminal dues were tabulated and paid. The Claimants duly acknowledged receipt of their dues and confirmed that they had no pending claims against the Respondent.

Findings and Determination

8. The Claimants plead that their employment was terminated after they declined to sign new contracts whose effect was to deconsolidate their salaries.

9. However, the 1st Claimant, Shedrack Philip Kanyiri, testifying on his own behalf and on behalf of his co-claimants told the Court that they were all employed on 6 months' fixed term contracts, with the last contracts ending on 31st May 2016. The question then is whether the Claimants are entitled to lay a claim for unfair termination in light of this fact.

10. It is now firmly settled that fixed term contracts carry no automatic expectation for renewal. The only exception to this general rule is where the employee has a demonstrable legitimate expectation that the contract will be renewed.

11. Legitimate expectation may be construed from an express provision in the contract that the employee will be notified of the employer's intention not to renew or where by conduct, the employer allows the employee to continue working after the expiry date. The onus of proving circumstances leading to such expectation is on the employee (see **Margaret A. Ochieng v National Water Conservation & Pipeline Corporation [2014] eKLR** and **Teresa Carlo Omondi v Transparency International Kenya [2017] eKLR**).

12. In support of its case, the Respondent produced fixed term contracts issued to the Claimants on 1st December 2015. All the contracts were to run up to 31st May 2016 which was pleaded by the Claimants as the termination date. The Claimants were clearly on fixed term contracts and the Court did not find evidence of any circumstances that would create a legitimate expectation for renewal.

13. The claims for compensation for unfair termination of employment and notice pay are therefore without basis and are disallowed. From the evidence on record, the Claimants were paid in lieu of their pending leave days alongside their final dues. The claim for leave pay is therefore dismissed.

14. Regarding the claim for house allowance I have this to say; the Claimants' employment contracts provided for monthly gross salaries, which would ordinarily include house allowance. In fact, the Claimants themselves told the Court that they were unhappy with an attempt by the Respondent to deconsolidate their salaries. The claim for house allowance therefore fails and is dismissed.

15. No basis was laid for the claim for gratuity and the claim for underpayment was not proved.

16. In the end, the Claimants' entire claim fails and is dismissed.

17. Each party will bear their own costs.

18. It is so ordered.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 9TH DAY OF APRIL 2019

LINNET NDOLO

JUDGE

Appearance:

Mr. Anaya for the Claimants

Miss Opolo for the Respondent