



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI

CAUSE NO 28 OF 2017

KIBONI KAZUNGU.....1ST CLAIMANT

KELVIN CHANGAWA.....2ND CLAIMANT

ALFONCE EDWARD KAZUNGU.....3RD CLAIMANT

VERSUS

RIZIKI ENTERPRISES.....RESPONDENT

JUDGMENT

Introduction

1. This claim is brought by Kiboni Kazungu, Kelvin Changawa and Alfonse Edward Kazungu against Riziki Enterprises. The claim is documented by a Memorandum of Claim dated 21st July 2017 and filed in court on the same date. The Respondent responded by a Statement of Defence dated 14th August 2017 and filed in court on even date.

2. When the matter came up for hearing, the three Claimants testified on their own behalf. The Respondent called its Managing Director, Gillaume Joannes Rene De Leeuw.

The Claimants' Case

3. The 1st Claimant, Kiboni Kazungu and the 3rd Claimant, Alfonse Edward Kazungu state that they were employed by the Respondent as masons on 13th May 2013. The 2nd Claimant, Kelvin Changawa states that he was employed in May 2014 also in the position of mason.

4. At employment, each of the Claimants earned a weekly salary of Kshs. 3,350. The 1st and 2nd Claimants' salary was later increased to Kshs. 3,600 but the 3rd Claimant's salary remained at Kshs. 3,350.

5. The 1st and 2nd Claimants state that their employment was terminated 18th November 2016 without any justifiable cause and in violation of due procedure. On his part, the 3rd Claimant states that his employment was terminated on 8th August 2015.

6. The Claimants claim that there was no justifiable cause for the termination of their employment and that in effecting the termination, the Respondent ignored due procedure. They add that they were not paid house allowance, travelling and lunch allowances.

7. The Claimants' claim is as follows:

1st Claimant: Kiboni Kazungu

- a) 3 months' salary in lieu of notice.....Kshs. 46,260
- b) NSSF contribution.....16,800
- c) NHIF contribution.....21,000
- d) House allowance.....97,314

e) Travelling allowance.....	50,400
f) Lunch allowance.....	27,720
g) Leave allowance.....	32,445
h) Service fees.....	23,175
i) Damages for unfair dismissal.....	92,700

2nd Claimant: Kelvin Changawa

a) 3 months' salary in lieu of notice.....	Kshs. 46,260
b) NSSF contribution.....	11,600
c) NHIF contribution.....	14,500
d) House allowance.....	67,193
e) Travelling allowance.....	34,800
f) Lunch allowance.....	19,140
g) Leave allowance.....	21,630
h) Service fees.....	15,450
i) Damages for unfair dismissal.....	92,700

3rd Claimant: Alfonse Edward Kazungu

a) 3 months' salary in lieu of notice.....	Kshs. 43,020
b) NSSF contribution.....	10,800
c) NHIF contribution.....	13,500
d) House allowance.....	58,077
e) Travelling allowance.....	32,400
f) Lunch allowance.....	17,140
g) Leave allowance.....	20,076
h) Underpayment.....	999
i) Service fees.....	14,340
j) Damages for unfair dismissal.....	86,040

8. The Claimants also claim costs plus interest.

The Respondent's Case

9. In its Statement of Defence dated 14th August 2017 and filed in court on even date, the Respondent states that it is wrongly impleaded and puts the Claimants to strict proof.

10. The Respondent denies ever employing the Claimants or terminating their employment. The Respondent maintains that it is a stranger to the Claimants.

Findings and Determination

11. There are three (3) issues for determination in this case:

- a) Whether there was an employment relationship between the Claimants and Respondent capable of enforcement by the Court;
- b) Whether the Claimants have established a case of unlawful termination of employment;
- c) Whether the Claimants are entitled to the remedies sought.

Employment Relationship?

12. In its Statement of Defence, the Respondent denies ever employing the Claimants. In their respective witness statements filed in court, the Claimants state that they were verbally employed by a Netherlands National who was a Manager of the Respondent. In their testimony before the Court, the Claimants identified this person as Jerome Jones.

13. The Respondent's Managing Director, Gillaume Joannes Rene De Leeuw told the Court that the Claimants were casual employees of Philip Masudi who was an independent contractor. The 1st Claimant, Kiboni Kazungu and the 2nd Claimant, Kelvin Changawa described Masudi as their supervisor.

14. In adjudicating employment matters brought before it, the Employment and Labour Relations Court must first establish the existence of an employment relationship between the parties.

15. Both in their pleadings and testimony before the Court, the Claimants failed to show any form of employment relationship between them and the Respondent. For this reason, the Court finds and holds that their claim is without basis.

16. The result is that the entire claim fails and is dismissed.

17. Each party will bear their own costs

18. It is so ordered.

DATED SIGNED AND DELIVERED AT MALINDI THIS 13TH DAY OF MAY 2019

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JUDGE

Appearance:

Mr. Karita for the Claimant

Mr. Mbura for the Respondent