



**REPUBLIC OF KENYA**  
**IN THE EMPLOYEMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**

**CAUSE NUMBER 742 OF 2017**

**[Consolidated with Mombasa E&LRC Cause No.700 of 2017 and Cause Number 756 of 2017]**

**BETWEEN**

- 1. VICENCIA AKOTH AGOLA - [Cause No.742 of 2017]**
- 2. MARY KIPELE -**
- 3. CONSTANCE WALI MOMBO -**
- 4. SAMWEL OCHIENG RAGWARI - [Cause No. 700 of 2017]**
- 5. MILKAH WAMBUI MURAGE -**
- 6. LILY KITALA -**
- 7. REDEMPTEER WANZIA -**
- 8. KALUNDA NGWELE -**
- 9. FLORA MWAWUGHANGA LOMBO -**
- 10. LINNET LUGONZO -**
- 11. FLORENCE OLIMBA -**
- 12. AGNES WANGECH MBAUNI -**
- 13. LUCY WAITHERA MURIUKI -**
- 14. HILTON MAGANDE CHARO -**
- 15. JUDITH KATHINI KIKUYU -**
- 16. GERTRUDE SAMBA MWADOE -**
- 17. ELIZABETH KAMENE NGONDE -**
- 18. JANET JAHENDA KANGAHI -**
- 19. GLADYS MJENI CHIBANDA -**
- 20. SABINA NDUKU MUSANGO -**
- 21. ELINA NGAZO KIRUSA – [Cause No. 756 of 2017]**

22. FRED ODHIAMBO OTIENO

23. LEAH MGHOI MLUNGU

24. BELDINA ANYANGO OSELE.....CLAIMANTS

VERSUS

LEENA APPARELS [EPZ] LIMITED.....RESPONDENT

*Rika J*

*Court Assistant: Benjamin Kombe*

*Munee Katu & Associates, Advocates for the Claimants*

*Ms. Beatrice Opolo Advocate, instructed by the Federation of Kenya Employers [FKE] for the Respondent*

**JUDGMENT**

1. The Claimants filed 3 separate Claims against their former Employer, the Respondent herein, whose registration numbers are indicated above.
2. The files were consolidated on 14<sup>th</sup> December 2017, with file No. 742 of 2017 designated as the reference file.
3. Cause No. 742 of 2017 [1<sup>st</sup> Cause] was filed on 13<sup>th</sup> September 2017, Cause Number 700 of 2017 [2<sup>nd</sup> Cause] on 29<sup>th</sup> August 2017, and Cause No. 756 of 2017 [3<sup>rd</sup> Cause] on 20<sup>th</sup> September 2017.

**The Claims**

4. In the 1<sup>st</sup> Cause the 3 Claimants aver they were employed by the Respondent garment factory, as Helpers on a monthly salary of Kshs. 12,598. They were employed on various dates. They left employment on 30<sup>th</sup> July 2016, on account of redundancy. They allege termination was unfair and unlawful, and seek the following remedies against the Respondent:-

- 1 month salary in lieu of notice.
- Pending annual leave days.
- Severance pay.
- Compensation for unfair termination.
- Certificates of Service

The total amount claimed by the 3 Claimants, is Kshs. 741,392, costs and interest.

5. The 17 Claimants in the 2<sup>nd</sup> Cause aver they were employed by the Respondent on various dates, working in divergent capacities including Store-Keeper, Helper, Machine Operator, Mass Production Machinist, Quality Controller and Assistant Supervisor. Their employment came to an end through redundancy, on 8<sup>th</sup> March 2017. They claim that their salaries were underpaid, and redundancy was unfair and unlawful. They pray for Judgment against the Respondent for:-

- 1 month salary in lieu of notice.
- Underpayment of salary.
- Severance pay.
- Compensation for unfair termination.
- Certificates of Service.

The 17 Claimants in the 2<sup>nd</sup> Cause seek a total of Kshs. 5,459,484, costs and interest.

6. In the 3<sup>rd</sup> Cause, Elina and Beldina state they were employed as Cleaners. Leah and Fred worked as Supervisors. They left employment at the same time with the Claimants in the 2<sup>nd</sup> Cause, and for the same reason- redundancy. They ask the Court to grant them Judgment against the Respondent for:-

- 1 month salary in lieu of notice.
- Underpayment of salary.
- Pending annual leave.
- Gratuity.
- Compensation for unfair termination.
- Certificates of Service.

The total amount claimed is Kshs. 1,745,379, costs and interest.

### **Response**

7. Response in the 1<sup>st</sup> Cause was filed on 13<sup>th</sup> December 2017. The 3 Claimants were employed on fixed term contracts of 61 days, 55 days and 57 days respectively. Their contracts expired and were not renewed. They did not leave on redundancy. They are not entitled to the prayers sought, except for Certificates of Service.

8. The 17 Claimants in the 2<sup>nd</sup> Cause were similarly engaged on fixed term contracts. These contracts expired on various dates. The Ministry of Labour carried out an Inspection and confirmed in a Report exhibited by the Respondent, that the Claimants were paid statutory minimum remuneration. They sold their annual leave days to the Respondent. The Respondent has always been willing to release to the Claimants their Certificates of Service.

9. Response to Cause No. 3 was received in Court on 13<sup>th</sup> December 2017. Again the Respondent posits that the Claimants were on fixed term contracts which expired. The contracts did not terminate on account of redundancy. The dispute in this particular Cause was referred to the Labour Officer, who issued a Conciliation Report dated 17<sup>th</sup> September 2017, confirming the Claimants were on fixed term contracts. They were subscribed to N.S.S.F and cannot claim gratuity. The Claim has no merit, in light of the Conciliation Report.

### **Hearing**

10. Mary Kipele [Claimant No. 2 above] and Vecenzia Akoth Agola [Claimant No. 1 above] gave evidence for the Claimants on 19<sup>th</sup> November 2018 and 12<sup>th</sup> February 2019. Respondent's Human Resource Manager, Shadrack Otieno Oruko gave evidence also, on 12<sup>th</sup> February 2019, when hearing closed.

11. Kipele told the Court she was employed as a Helper, earning Kshs. 12,500 monthly. She and her Colleagues signed contracts of 4 months. In July 2016, the Claimants were informed by the Respondent that there was no more work. Kipele denied that she signed a contract for a period of 55 days. Cross-examined, she testified that she worked from 2009 to 2016. She did not know where the orders for garments were placed from. It was indicated in her document VA2, that another Company, Mega Garments Limited, was her Employer in 2009. She did not sign a contract of 55 days with the Respondent. She did not apply for the job. She was told by the Respondent that her contract was terminated on account of redundancy. She was paid Kshs. 12,598 monthly, which she considered too little, given the amount of work she did.

12. Vecenzia Akoth Agola told the Court she was employed as a Helper. She signed contracts, some for a period of 4 months. The Respondent did not give copies to the Employees. She did not sign the contract for 61 days, beginning 2<sup>nd</sup> May 2016 and ending 31<sup>st</sup> July 2016. Cross-examined, Agola stated she was employed in 2012. She did not have documents to this effect. She made an application for the job in 2015. She left on 30<sup>th</sup> July 2016. The contract indicated it would lapse on 31<sup>st</sup> July 2016. This was the last contract. She did not deny signing the contract in her Pleadings. She does not indicate annual leave sought, is with regard to which years. The Claimants were dismissed.

13. Shadrack Otieno Oruko told the Court that the Claimants were employed by the Respondent on divergent dates, in various positions. The Respondent manufactures under bond. EPZ Apparel Companies subcontract the Respondent. The Respondent contracts Employees, whenever it is subcontracted by these Companies. The Employees' engagement depends on the number of days production takes. The Claimants were on fixed term contracts which came to an end. Cross-examined, the Witness told the Court that the Claimants did not work in continuity. They were informed when their contracts would lapse.

### **The Court Finds:-**

14. The Claimants were employed by the Respondent Garment Company in various positions, and on diverse dates.

15. They are shown to have applied for the positions as and when the positions were available. They signed contracts to work for specified number of days. It was explained by the Respondent's Witness that the Respondent manufactures under bond. It was subcontracted by EPZ Apparel Companies, and would engage temporary labour, whenever it procured these subcontracts. Some of the Claimants moved on to other

Apparel industries after the end of their contracts. Agola told the Court she works for Ashton Apparels. The Court accepts that labour in textiles industry, particularly in a business manufacturing under bond, such as the Respondent, would be dynamic.

16. The various contracts have been availed to the Court by the Respondent. There is no doubt in the mind of the Court that the Claimants executed these contracts. They were aware of the period they were contracted. The commencement and end dates, were known to the Claimants.

17. There is no evidence at all that the Claimants left on redundancy. The contracts ended at the end of July 2016 and in January and March 2017. There was no redundancy situation. It was not suggested anywhere on the record, that the Respondent encountered financial constraints, compelling the Respondent to declare the various positions held by the Claimants redundant. There was no obligation on the part of the Respondent to notify the Claimants that their contracts would end on the dates they would expire. The dates were shown in the contracts they executed.

18. The dispute was taken before the Labour Office for investigation and conciliation. The contracts executed by the Parties were confirmed to be valid. It was confirmed by the Labour Office through an inspection of Respondent's records, that the Claimants were paid salaries that were in accordance with the minimum wage law.

19. There was no redundancy situation and the prayer for severance pay lacks merit. Contracts ended on the mutually accepted dates, and there was no need for notice. Notice pay is not merited. There is no evidence at all, to support the allegations about unfair termination. The Respondent was under no obligation to hear the Claimants, or advance to them other reasons for termination, beyond the reason that the contracts had come to end on the mutually agreed dates of termination. There are Annual Leave records exhibited by the Respondent, showing the Claimants received annual leave pay.

20. It is not clear why the Claimants in Cause No. 756 of 2017, seek gratuity. They, like their Colleagues claim termination was through redundancy. There was no contractual clause, wage instrument, policy or legal provision brought to the attention of the Court, which availed gratuity to the Claimants upon termination.

22. The 2 Claimants who gave evidence on behalf of their Colleagues did not give a coherent account that would assist their Colleagues, in pursuing the claims. Kipele and Agola are Claimants in Cause No. 742 of 2017. They do not seek underpayment of salary. They could not attest to the prayer for underpayment of salary made by other Claimants. Kipele nonetheless offered, that she considered Kshs. 12,598 paid to her monthly too little, considering the work she did. This evidence cannot justify a claim for underpayment of salary for any of the Claimants. She testified that she was informed by the Respondent in July 2016, that there was no more work. Agola told the Court that the Claimants left employment through dismissal. She veers off from the line that termination was through redundancy. The 2 Witnesses acknowledged they used to sign fixed term contracts. They are shown to have applied for their respective jobs. They were quick however, to disown the contracts that lapsed on 31<sup>st</sup> July 2016. The 2 Witnesses left employment on 30<sup>th</sup> July 2016. Other Claimants in the other 2 Claims, 21 in all, left employment in January and March of 2017. The 2 Witnesses were not in employment, when a majority of the Claimants left employment. They would not be expected to know how, why and when their 21 colleagues left employment. They pray for a total sum of Kshs. 741, 392. The Other Claimants pursue total sums of Kshs. 1,745,379 and Kshs. 5,459, 484. On the whole there is a Consolidated Claim for an amount of Kshs. 7,946,255. Is the evidence availed to the Court worth this sum? The evidence given by the 2 Claimants is insufficient to sustain their own claims, and completely fails to establish any of the claims made by the other Claimants.

21. The Court is satisfied that the Claimants left employment regularly, at the end of the contracted period, and were paid all their employment benefits, for the duration of their respective contracts. The Consolidated Claims, save for the prayer on Certificate of Service, have no merit.

IT IS ORDERED:-

*a. The Consolidated Claims are rejected with no order on the costs.*

*b. The Respondent to supply each Claimant with the Certificate of Service.*

**Dated and delivered at Mombasa this 29<sup>th</sup> day of July 2019.**

**James Rika**

**Judge**