



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 323 OF 2017

(Before Hon. Justice Mathews N. Nduma)

EVERLYNE ATIENO OWUOR.....1ST CLAIMANT
CHRISTINE ACHIENG.....2ND CLAIMANT
BENTER ATIENO ODIRA.....3RD CLAIMANT
DORINE ACHIENG ONGERA.....4TH CLAIMANT
ROSELYNE ATIENO OTIENO.....5TH CLAIMANT
BENTER AKINYI OLUOCH.....6TH CLAIMANT
DANIEL OCHIENG OPEE.....7TH CLAIMANT
MESHACK KARANJA LICHOGO.....8TH CLAIMANT
SAMWEL OKOTH OUKO.....9TH CLAIMANT
PETER OUMA OMILLO.....10TH CLAIMANT
CYPRIAN OYIER OKODE.....11TH CLAIMANT
ABICH FRED.....12TH CLAIMANT
FIDEL OMONDI.....13TH CLAIMANT
WYCLIFFE OMONDI OTIENO.....14TH CLAIMANT
MICHAEL OLALA AWUOR.....15TH CLAIMANT
RUTH AUMA OTIENO.....16TH CLAIMANT
DOROTHY ADHIAMBO.....17TH CLAIMANT
LORNA AKOTH OLOO.....18TH CLAIMANT
JULIUS OUMA OMBELE.....19TH CLAIMANT
NELLIUCE W. OWUOR.....20TH CLAIMANT
EUNICE A. OMOLLO.....21ST CLAIMANT

MILLICENT AKOTH GOR.....22ND CLAIMANT
EUNICE AWUOR OSUNDUKA.....23RD CLAIMANT
DICKENS OKOTH ODHIAMBO.....24TH CLAIMANT
EDEKIA AKELLO GOR.....25TH CLAIMANT
MAUREEN AMIMO ANYANGO.....26TH CLAIMANT
JACKSON NDUTH M.....27TH CLAIMANT
ELIUD CHAMBE.....28TH CLAIMANT
ABRAHAM OTIENO ALUODO.....29TH CLAIMANT
FRANCIS OKOTH AWITIL.....30TH CLAIMANT
MERCY OGUTU.....31ST CLAIMANT
PHILIP OMONDI.....32ND CLAIMANT
DOROTHY AKOTH OWAKA.....33RD CLAIMANT
BONFACE OCHIENG MIGENDA.....34TH CLAIMANT
TIMOTHY AJOWI OKECH.....35TH CLAIMANT
BENARD OKELLO NYANENGO.....36TH CLAIMANT
ASHA ADHIAMBO ODHIAMBO.....37TH CLAIMANT
BOSS VNCENT ATENDO.....38TH CLAIMANT

VERSUS

MIGORI COUNTY GOVERNMENT.....1ST RESPONDENT
MIGORI COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

JUDGMENT

1. Thirty eight (38) claimants have sued Migori County government and Migori County Public Service Board seeking for orders:

- (a) That the respondents have violated the claimants' right to fair labour practice by employing them as casual workers for over 3 years.
- (b) An order compelling the respondents to employ the claimants on permanent basis.
- (c) Costs of the suit.

2. The respondent filed a statement of defence to the claim indicating that the claimants if at all were employed by respondents were employed as casuals and/or on fixed term contracts and then dues were paid or settled upon expiry of the fixed term contract.

3. That renewals of such contracts are only done upon re-applying. That respondents are currently undergoing feasibility audit on all casual employees with the intention of finding out how many have met the qualification of being employed permanently.

4. CW1 testified that he was employed on 1st November 2012 as a casual office messenger by a letter dated 30th October 2012. That CW1 was still working for the respondent. That CW1 signed a contract for three (3) months on 1st July 2016 earning a monthly salary of Kshs. 6,000. That the contract was renewed for a further three months on 1st October 2014. That CW1 is qualified for permanent employment but has not been confirmed. That CW1 had completed primary and secondary education.

5. That she has a list of casual payment scheme. That they are currently paid Kshs. 10,170 gross salary per month. That NSSF and NHIF is deducted to leave a net salary of Kshs. 9,570 per month. CW1 stated that she testified on behalf of all the 37 casual employees who wished to be confirmed to permanent cadre. That the 37 employees were employed in a similar manner and raise the same issues for determination as CW1.

6. CW1 was cross examined by M/S Aaron for the respondent. CW1 insisted that she is a monthly paid employee from 1st July 2014 when she was employed on contract as a casual. That she is entitled to leave days as per the contract but does not go on leave. That the contracts are renewed every three (3) months. That the relationship between the claimants and respondent is guided by the terms of the contract which include a termination clause. CW1 conceded that she was an employee on fixed term contract but not a casual. CW1 said that they signed the three months contract feely and voluntarily. CW1 said that she has received salary increments and that she had attended primary and secondary school education but had no tertiary skills or certificates. CW1 said all the 37 claimants had signed similar three (3) months contract. That CW1 was not aware of specific terms in each contract. That all the claimants are still working. That they are not union members.

7. Defence hearing was fixed for 23rd October 2018 and directions were given to the respondent to file witness statements. On 23rd October 2018, the counsel for the respondent M/S Aaron was absent without explanation. The court deemed defence case as closed.

8. Meanwhile following an order of the court dated 18th October 2017, referring matter for conciliation, Mr. Charles N. Mwinami, County Labour Officer Homa-bay and Migori filed a report dated 27th February 2018 to which was attached a certificate of Agreement signed by Bakker Ami, of Kirui and Company Advocates and Marvin Omondi, legal Officer Migori County Government in the presence of C.N. Mwinami, County Labour Officer, Homa-Bay and Migori. The Agreement was signed on 23rd November 2017.

9. In terms of the Agreement which followed a joint conciliation meeting held on 23rd November 2017, it was agreed:

“That the claimants should undergo a verification exercise to confirm those suitable for confirmation to permanent employment basing on minimum qualification (form IV Certificate) and also other professional relevant certificates obtained. That the whole exercise should be within thirty (30) working days from the date of this agreement”

10. It would seem to the court that the issues in dispute here were settled by the aforesaid agreement which was duly filed in court.

11. The testimony by CW1 has not added any new dimension to the matter except to confirm that the 38 claimants are still in the employ of the respondents on three (3) months fixed contracts renewable.

12. That all the 38 employees have worked for long period for the respondent and the continued short term contracts place them in difficult and disadvantageous situation as opposed to employees employed on permanent and pensionable basis and/or those on longer fixed term contracts.

13. This court adopts the terms of Agreement between the parties dated 23rd November 2017 and on the basis of the uncontroverted testimony by CW1.

14. The court therefore enters judgment in favour of the 38 claimants as against the respondent as follows:

(a) The 38 claimants undergo a verification exercise to confirm their suitability for confirmation they now serve on three months fixed contracts, and for long period based on minimum qualification (Form IV Certificates) and also other professional relevant certificates obtained.

(b) That the respondent to conduct and complete the exercise within 30 days of this judgment and file a report accordingly, failing which, all the 38 employees shall be deemed to be on permanent and continuous employment of the respondent and are entitled to all minimum benefits provided by the Employment Act, 2007 and any other better benefits already enjoyed by them.

(c) The respondents to pay the costs of the suit.

Judgment Dated, Signed and delivered this 9th day of July, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Kirui for claimants

M/S Aaron for Respondents

Chrispo – Court Clerk