



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 394 OF 2018**

**BETWEEN**

- 1. SALIF MICHAEL NGUNGULI**
- 2. JACOB KATUMO MUSYOKI**
- 3. NZOMO MULUVE FREDRICK**
- 4. PAULINE KHADIORI**
- 5. IBRAHIM ALUMERA AMIMO**
- 6. JOHN NYAGA IRERI**
- 7. SWALEH KIBWANA**
- 8. KELVIN MURITHI NJERU**
- 9. KAVESA MARY MUTUA**
- 10. GLADYS AKINYI ODUOR**
- 11. MILANDI NJOGU**
- 12. ALICE ACHIENG OCHIENG**
- 13. DAVID THOYA NDURYA**
- 14. DENNICE ODWOR ODHIAMBO.....CLAIMANTS**

**VERSUS**

- 1. HUI COMMERCIAL ENTERPRISE [AFRICA]**  
**COMPANY LIMITED AKA HUI COMMERCIAL**
- 2. WRONY WANG.....RESPONDENTS**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Otieno Asewe & Company Advocates for the Claimants*

*No appearance for the Respondent*

## JUDGMENT

1. The 14 Claimants, through their Statement of Claim filed on 12<sup>th</sup> June 2018, aver they were employed by the Respondents on diverse dates. They worked in different positions, which included General Worker, Machine Attendant and Machine Operator. They earned different rates as monthly salary.
2. They were asked by the Respondents to go home on various dates between 15<sup>th</sup> August 2017 and 1<sup>st</sup> January 2018 on the ground that Respondents' business had gone down. They would be recalled once the business improved. They were not recalled and neither were they paid their terminal dues.
3. They ask the Court to find that their contracts were terminated unfairly by the Respondents, on account of redundancy, and order they are paid redundancy benefits. They also seek compensation for unfair termination, equivalent to their respective 12 months' salary. The total Claim is computed at Kshs. 8,206,348. They pray for costs and interest.
4. There is an Affidavit of Service on record, indicating the Notice of Summon, Statement of Claim, Verifying Affidavit, Authority to Act, List of Claimants' Witnesses, and Claimants' Documents, were served upon the 1<sup>st</sup> Respondent's Human Resource Manager a Mr. Babu, Chinese National, on 21<sup>st</sup> June 2018. The Respondents did not enter appearance, or file the Statement of Response. The Claim was set down for formal proof on 19<sup>th</sup> June 2019. The Claimants, though not obligated to notify the Respondents of the hearing date, served a Hearing Notice on the Respondents, on 21<sup>st</sup> June 2018. The Respondents did not attend Court for hearing.
5. The lead Claimant Salif Michael Ndunguli gave evidence for the Claimants on formal proof, on 19<sup>th</sup> June 2019. He adopted the Pleadings and Documents filed by the Claimants in his evidence.

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

6. The Pleadings, Documents and Oral Evidence presented by the Claimants are not contested. The Claimants have presented letters of employment, and N.S.S.F account records, establishing that they were employed by the Respondents on various dates, in various positions and earning different rates of monthly salary. They have demonstrated that they were asked to take indefinite leave, on the ground that business had diminished. They were told by the Respondents that they would be recalled once business improved. They were never recalled. The Court has not been provided with any material by the Respondents, in any way contesting what has been availed by the Claimants. IT IS ORDERED:-

- a) *It is declared that termination was unfair.*
- b) *The Respondents shall pay to the Claimants, jointly and severally, terminal benefits and compensation for unfair termination, as computed and particularized by the Claimants, totaling Kshs. 8,206,348.*
- c) *Costs to the Claimants.*
- d) *Interest granted at 14% per annum from the date of Judgment till payment is made in full.*

Dated and delivered at Mombasa this 26<sup>th</sup> day of September 2019.

**James Rika**

**Judge**