



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1455 OF 2014**

*(Before Hon. Lady Justice Maureen Onyango)*

CAROLYNE ONDIRI SHEUNDA.....1<sup>ST</sup> CLAIMANT

JANE WAMBUI GACHERU.....2<sup>ND</sup> CLAIMANT

SCHOLA NYAKIO KIGERA.....3<sup>RD</sup> CLAIMANT

MIRIAM WANJIKU MUCHIRI.....4<sup>TH</sup> CLAIMANT

JESINTAH WAITHIRA MWANGI.....5<sup>TH</sup> CLAIMANT

STEPHEN KARANJA MUGERA.....6<sup>TH</sup> CLAIMANT

ESTHER WANJIRU THAIRU.....7<sup>TH</sup> CLAIMANT

AGNES WANJIKU MWEA.....8<sup>TH</sup> CLAIMANT

**VERSUS**

**TOP RANK INDUSTRIES LIMITED ALIAS**

**TOP RANK BREWING COMPANY LIMITED.....RESPONDENT**

**CORRIGENDA**

On 18<sup>th</sup> December 2019, the court’s attention was drawn to an error in the tabulation of the award in respect of Caroline Indira Shendo, 1<sup>st</sup> claimant herein. The correct salary is Kshs.28,000, the pay in lieu of leave due Kshs.113,077 and the total amount due is Kshs.141,077.

For the foregoing reason, the judgment in respect of Caroline Indira Sheundu is reviewed by setting aside the same and substituting it therefore with the following –

<b>NAME</b>	<b>JULY SALARY KSHS.</b>	<b>LEAVE DAYS</b>	<b>LEAVE KSHS.</b>	<b>TOTAL KSHS.</b>
Carolyne Indira Sheunda	28,000	105	113,077	<b>141,077</b>

The rest of the judgment is unaffected.

DATED AND SIGNED AT NAIROBI ON THIS 21<sup>ST</sup> DAY OF JANUARY 2020

MAUREEN ONYANGO

JUDGE

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1455 OF 2016

*(Before Hon. Lady Justice Maureen Onyango)*

CAROLYNE ONDIRI SHEUNDA..... 1<sup>ST</sup> CLAIMANT

JANE WAMBUI GACHERU..... 2<sup>ND</sup> CLAIMANT

SCHOLA NYAKIO KIGERA..... 3<sup>RD</sup> CLAIMANT

MIRIAM WANJIKU MUCHIRI..... 4<sup>TH</sup> CLAIMANT

JESINTAH WAITHIRA MWANGI..... 5<sup>TH</sup> CLAIMANT

STEPHEN KARANJA MUGERA..... 6<sup>TH</sup> CLAIMANT

ESTHER WANJIRU THAIRU..... 7<sup>TH</sup> CLAIMANT

AGNES WANJIKU MWEA..... 8<sup>TH</sup> CLAIMANT

VERSUS

TOP RANK INDUSTRIES LIMITED ALIAS

TOP RANK BREWING COMPANY LIMITED..... RESPONDENT

#### JUDGMENT

The eight Claimants instituted this suit vide a Statement of Claim dated 28<sup>th</sup> August 2014 alleging unfair termination of employment or unlawful redundancies against the Respondent, Top Rank Industries Limited, alias Top Rank Brewing Company Limited. The 1<sup>st</sup> Claimant, Carolyne Ondiri Sheunda annexed in the Verifying Affidavit the written *Authority and Consent* of the other seven claimants marked *COS-1* swearing the affidavit on their behalf.

The Claimants aver that they were employed by the Respondent on diverse dates between the years 1996 and 2011 to perform such duties as allocated to them on a daily basis by the Respondent. That the 1<sup>st</sup> Claimant was engaged from November 2006; the 2<sup>nd</sup>, 5<sup>th</sup> and 8<sup>th</sup> Claimants were engaged from March and October 1996; and the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Claimants were engaged from September 2002. That the 6<sup>th</sup> Claimant had been engaged from July 2011 to work as a Commercial driver holding a “BCE” class driving licence and was underpaid at all material times. That they earned monthly basic salaries exclusive of housing accommodation and/or housing allowances and that they worked continuously until their services were unfairly terminated and/or were unlawfully declared redundant. That in terminating their services, the Respondent did not follow proper procedure or respect the tenets of natural justice and the Employment Act.

They aver that at all material times, they worked extra hours and on rest and public holidays that was to be fully compensated for in terms of overtime, but were not paid despite numerous requests for payment of the same to the Respondent. That they had qualified for annual leave having worked for over 12 consecutive months to the last date they worked and hence demand compensation for the same at the rate of 21 working days per year of service. That the Respondent failed to pay them their due compensation. They pray for payment of their lost income at the rate of the last monthly basic earnings from the date of their stoppage of work to the date of judgment of this suit. They aver that they did not voluntarily leave their employment services but were unfairly dismissed by the Respondent without reasons and/or notification as required by law and pray that the court grants them general damages as compensation for unfair termination.

They pray for judgment against the Respondent for:

1. A declaration that the termination of employment services of M/s Carolyn Ondiri Sheunda, Jane Wambui Gacheru, Scholar Nyakio Kigera, Miriam Wanjiku Muchiri, Jesintah Waithira Mwangi, Stephen Karanja Mugeru, Esther Wanjiru Thairu and Agnes Wanjiku Mwea by the Respondent was wrongful, unlawful, illegal and unfair hence, null and void.
2. A declaration that the Respondent pays the Claimants herein all their terminal benefits as tabulated thereunder sub-clauses A to H. (see tabulations from pages 13 to 22 of the Claim)
3. A declaration that the Respondent herein do pays each of the Claimants herein his/her monthly basic salary at the time of termination for their lost income from 19<sup>th</sup> July 2014, the effective date of their unlawful termination and/or wrongful redundancies, to the date of judgment of this suit.
4. A declaration that the Respondent pays each of the Claimants herein the General Damages Emoluments and/or Contingencies at the discount rate of 15% of the total amount.
5. A twenty (20%) interest be paid on the declared Award and/or Judgment until settlement is cleared.
6. A declaration that the Respondent do issue the Claimants with their Certificate of Service within the meaning of section 51 of the Employment Act, No. 11 of 2007, Laws of Kenya forthwith.
7. Costs of this claim be provided for by the Respondent.
8. Any other relief the Court may deem fit to grant, be granted.

The Respondent filed its Memorandum of Reply on 3<sup>rd</sup> October 2014 admitting that the Claimants were its employees but denies that it unlawfully terminated and/or wrongfully declared them redundant. It avers that the salary paid to the Claimants was inclusive of house allowance as evidenced in the copies of their employment contracts and that they were fully compensated for all work done. That the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Claimants were duly advised to proceed on their annual leave in line with their contracts of employment and that it issued the three with letters dated 18<sup>th</sup> July 2014 notifying them of expiry of their contracts. It avers that the Claimants were not casual employees but were on a yearly contract which provided for monthly pay. It denies that it breached the law. It avers that the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Claimants voluntarily left employment without notice and that all Claimants are not entitled to any of the reliefs sought. It avers that it had been remitting the Claimants' dues to the NSSF and has annexed copies of payment receipts relating thereto marked **MKK3** as proof. It prays that the court dismisses with costs the claim for reason that the alleged dispute is wrongly conceived and does not lie in law.

The Claimants responded by an affidavit filed on 15<sup>th</sup> October 2014 and sworn by the 1<sup>st</sup> Claimant who avers that the Respondent concealed the fact that it orally engaged them prior to introducing the purported intermittent contracts to the employees, which they term illegal as some employees had been in service for more than 17 years. That the Respondent should also explain the purported documents on its Offer of Employment which they allege are questionable for having forged signatures. She annexes documents marked **COS-2** being copies of NSSF, NHIF and bank statements as proof that they had been in employment of the Respondent even earlier than 1<sup>st</sup> August 2013.

## **Evidence**

CAROLYNE SHEUNDA (CW1) testified in court that she worked as a Lab Technician and Assistant Brewer in the fermentation plant of the Respondent and that she used to be paid Kshs.28,000/= gross salary per month. That the 2<sup>nd</sup>, 5<sup>th</sup> and 8<sup>th</sup> Claimants were each paid Kshs.19,000/= per month; 3<sup>rd</sup> and 4<sup>th</sup> Claimants were each paid Kshs.18,000/= per month; 6<sup>th</sup> Claimant's was paid Kshs.20,000/= per month; and the 7<sup>th</sup> Claimant was paid Kshs.26,000/= per month. That the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> Claimants were terminated on 19<sup>th</sup> July 2014. That a Director named Michael Kamau gave them notice letters to go on leave immediately. That he brought security to remove them without giving any reasons. That they were all paid salary for July 2014. That when she and the 6<sup>th</sup> Claimant reported to work on 1<sup>st</sup> August 2014, Mr. Kamau told them to follow the others as their contracts expired on 31<sup>st</sup> July 2014.

CW1 testified that the claimants worked from 1996 without appointment letters which she says were only introduced when they joined the union in 2012. She testified that they were forced to either sign the same or go home. That they were sacked after one year as Mr. Kamau did not want them to join the union. That the contract provided for one month's notice and that if one was absent for sickness, salary would be deducted. That they used to report at 7.30 am and leave work at 5 pm but sometimes worked up to 8 pm depending on the exigencies of work. That they were not paid overtime. That their NSSF was paid from 2004 but from 1996 to 2004 they did not have NSSF.

In cross-examination, CW1 stated that from 1996, they used to be paid cash in an envelope at the end of the month and that salary went through the bank from 2009. She also stated that she was not given a letter of termination.

RW1, MICHAEL KAMAU testified that there was an oral agreement between the Respondent and the Claimants but denied that he forced the Claimants to sign the written contracts. He also denied that the Claimants were not allowed to go on leave stating that the same was provided for in *clause 2 of their contracts*. That when they duly notified the Claimants of expiry of their contracts, none of them stated that they wanted to extend the contracts. That because the contracts were not being automatically extended, they expired. That the Claimants did not make any demands before coming to court and that they did not inform him they were members of a trade union. Further, that no union has contacted the respondent to discuss the dispute. That the Claimants used to break at 10.40 am for tea up to 11.20 am and then break at one o'clock to 2 pm for lunch and leave at 5 pm. That they thus never worked overtime. He denied that the Claimants worked during public holidays. He further denied that the 6<sup>th</sup> Claimant was a driver but stated he was a general worker who occasionally accompanied the driver for deliveries.

In cross-examination, RW1 confirmed he had not produced in court a schedule for reporting and leaving work to prove there was no overtime. He further agreed that he did not give reasons to the Claimants why they were proceeding on leave. He confirmed that he did not write notices to show cause to the claimants. He alleged they absconded duty as they were nowhere to be found. In re-examination, he stated that the contracts did not give any obligation for the Claimants to work beyond 31<sup>st</sup> July 2014.

### **Claimants Submissions**

The Claimants submit that being forced to sign the contracts was contrary to section 9(2) and (3) of the Employment Act in terms of consent and that CW1's testimony was not controverted by RW1 in his evidence or testimony. That under section 74(1) of the Employment Act read together with section 10(7) of the Employment Act, an employer was required to keep a written record of all employees with whom it had entered into a contract with. The employer also has the burden of proving such written particulars in any legal proceedings. That no documentary evidence was tendered by the Respondent to disprove the Claimants' evidence as required while the claimants on the other hand produced documents proving that they were orally employed earlier, before the employment contracts were imposed on them. They submit that this evidence was also not controverted by the Respondent.

The Claimants submit that they relied on Section 31 of the Act to compute their unpaid housing allowance from 1996 to July 2013 before the alleged contracts were introduced. Further, that based on Section 4 of the Regulation of wages (General) Order, Legal Notice No. 207 of 1990, they were entitled to house allowance in addition to the basic minimum wage where no free housing is provided, equal to 15% of the basic minimum wage.

That section 5, 6, 7, 8 and 9 of the said Regulations support their claims for overtime, weekly rest, holidays with full pay and annual leave and that this court should consider the said sections while reviewing their computation. That they claim severance pay for the period between 1996 and 2004 when the Respondent did not remit NSSF for any of them. That they also claim notice pay under section 36 of the Employment Act. They urge the court to grant each of them the maximum compensation of 12 months gross salary in Section 49(1)(c) taking into account the length of time/service with the Respondent, the circumstances of the termination and conduct of the employer. They rely on the following court decisions in support of their prayers for the award of underpayments, overtime, leave, housing allowance and severance pay: Philemon Oseni Kidavi v Brinks Security Ltd [2018] eKLR; Clifford Sosi Nyabuto v Board of Governors – Singhsaba Nursery Primary [2016] eKLR; and Maureen Atieno Ouma v Njuca Consolidated Co. Ltd [2018] eKLR.

It is submitted by the Claimants that the Respondent's acts and omissions were unlawful and contrary to sections 36, 37, 40 and 43 of the Employment Act and their legitimate expectation. That this court should be guided by section 45 and 49 of the Employment Act in making a finding as to their termination of employment and the claim herein.

### **Respondent's Submissions**

The Respondent submits that the Claimants were not candid on the issue of signing the contracts and they failed to provide any basis for the claim of duress/undue influence, which in the respondent's opinion was an afterthought. That the last salaries of the claimants is what is indicated in the letters of appointment and not what they mention orally without proof. That the letters issued to the claimants dated 18<sup>th</sup> July 2014 could not amount to a letter of termination as it merely confirmed the expiry of their contracts. That expiry of contracts was going to happen by effluxion of time whether it informed the Claimants or not. It cites the case of Registered Trustees De La Salle Christian Brothers t/a St. Mary's Boys Secondary School –v- Julius D. M. Baini [2017] eKLR where the Court of Appeal held that:

“19. In the case of Oshwal Academy (Nairobi) & another v Indu Vishwanath [2015] eKLR, this court differently constituted, cited with approval decisions of the Industrial Court and agreed with the following principles: “Termination of fixed term contracts has received judicial consideration by the Industrial Court. In Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Ltd & another [2012] eKLR, Rika J held as follows:-

“In the view of the Court, there is no obligation on the part of an employer to give reasons to an employee why a fixed-term contract of employment should not be renewed. To require an employer to give reasons why the contract should not be renewed, is the same thing as demanding from an employer to give reasons why, a potential employee should not be employed. The only reason that should be given is that the term has come to an end, and no more. ...Reasons, beyond effluxion of time, are not necessary in termination of fixed-term contracts, unless there is a clause in the contract, calling for additional justification for the termination.”

This position has also been restated in Francis Chire Chachi v Amatsi Water Services Co. Ltd [2012] eKLR ...Section 35(2) of the Act provides for termination of employment by notice and where the notice is greater than one month then the same should be applicable. In Ruth Gathoni Ngotho-Kariuki v Presbyterian Church of East Africa and Presbyterian Foundation [2012] eKLR which was cited by the respondent, failure to give notice led to the judge inferring automatic renewal of the fixed-term contract. Accordingly, the necessary timelines for the communication of the decision not to renew the contract need to be upheld. The trial judge did not inquire as to whether there was any obligation in the contract or the timelines adhered to but nevertheless made a finding to the effect that the claimant was entitled to two months pay in lieu of notice as per the contract of service. We agree with the trial judge in this respect.”

It is our finding that the respondent's contract ended on 31<sup>st</sup> December, 2014. There was no obligation on the appellant to give notice of expiry or information that it would not be renewed. We find no firm evidence that there was either an extension of the expired contract or a commencement of a new one. Nor is there firm evidence that the respondent worked for one week in January 2015. There was therefore no question of unfair termination of employment. The claim had no basis and ought to have been rejected.”

That the reasoning in the case above is applicable herein to the effect that the issue of unfair termination does not arise and that the Claimants did not give any evidence showing they were working for the Respondent in July 2014. It is submitted that since the issue of unfair termination has been found not to arise, there is no basis for damages and salary in lieu of notice.

The Respondent submits that since the Claimants failed to prove or demonstrate the exact time they were employed, the claims prior to 2013 when they signed their appointment letters are baseless and were an afterthought. That the claims for house allowance, overtime, holiday, annual leave, leave travelling allowance, severance pay and underpayments are time barred in so far as they exceed a period of three years. That any claim prior to 2011 which is 3 years prior to the alleged termination in 2014 cannot be sustained pursuant to section 90 of the Employment Act. That in *George Sambumwo Kimengich v Gallant Security Guards Limited* [2017] eKLR, the court found that the claimant had not gone for leave for 29 years but did not grant pay in lieu of leave for that entire period but only for a period of 3 years due to the limitation period. It further submits that in determining claims for unfair termination, the test is different from that of determining housing allowance, overtime, annual leave, leave travelling allowance and severance pay. That once unfair termination is not proved the alternative claim cannot be to determine whether the said claims for housing allowance, overtime, annual leave, leave travelling allowance and severance pay arise.

Without prejudice to the foregoing, the Respondent submits that clause 1 of the Claimants' contracts stated that housing allowance was included in the monthly salary and in the circumstances therefore, the same was duly paid. That since it has also demonstrated that the Claimants were not declared redundant, the claim for severance pay should be dismissed for lacking basis. To support this arguments, it relies on the case of *Michael Kareri Mwangi & 3 others v Apex Steel Limited* [2018] eKLR. That the fact the Claimants did not raise any complaint about housing allowance either personally or through their alleged union before signing the appointment letters shows they had no claim to the same during the period of their oral contract.

That the Claimants did not offer any prima facie evidence with regards to overtime, rest and public holidays to necessitate shifting the burden of proof upon the Respondent to prove the contrary. It relies on the case of *Patrick Lumumba Kimuyu –v- Prime Fuels (K) Limited* [2018] eKLR where the court of appeal observed that the appellant never specified the Sundays or public holidays he was on duty and for which he was not paid and wondered how the respondent was expected to defend such a claim. The court stated at paragraph 14 that:

“Whereas we appreciate that the Employment Act enjoins an employer to keep employment records in respect of an employee, that does not absolve an employee from discharging the burden of proving his/her claim. If anything, that burden weighed more heavily upon the appellant in view of the respondent's categorical denial that the appellant had worked on the days claimed. It behoved the appellant to first discharge the burden by showing that he had indeed worked on the public holidays and Sundays as contended. Only upon such proof would the evidential burden then shift to the respondent to show that she paid the overtime worked...”

That the Claimants also failed to lay any foundation for leave and leave travelling allowance by failing to prove that they never went on leave or explaining why they never demanded to go on leave during the entire period of employment. It relies on the case of *Rogoli Ole Manandiegi v General Cargo Services Limited* [2016] eKLR where the court opined that even though it is the duty of the respondent to keep employment records including annual leave records, the employee must endeavour to prove his case on the balance of probability even where such records are not made available. That the court in *Dorcas Wangari Kamau v Nitin Pandya & another* [2019] eKLR further opined that leave travelling allowance is not a statutory benefit but a negotiated benefit in a contract, wage instrument or workplace instrument.

That severance pay should not be paid to the Claimants as they were pensionable by virtue of the NSSF payment receipts presented to this court. That the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Claimants cannot also claim unpaid salaries after deserting employment. That the other Claimants did not demand for any amounts after receiving the notification of expiry of contract showing they were fully compensated for work done. That the 6<sup>th</sup> Claimant also failed to prove in court that he was a driver and so the claim for underpayments does not arise.

### **Analysis and Determination**

The issues for determination are the following –

1. Whether the claimants started working for the respondent
2. Whether the claimants were unfairly terminated
3. Whether the claimants are entitled to the remedies sought.

### **Commencement of Employment**

The claimants allege that they started working for the respondent as follows –

Carolyn Ondiri Sheunda	November 2006	7 years
Jane Wambui Gacheru	November 1996	17¼ years
Schola Nyakio Kigera	September 2002	11.33 years
Miriam Wanjiku Muchiri	September 2002	11.33 years
Jesintah Waithira Mwangi	October 1996	17 years
Stephen Karanja Mugeru	May 2013	3.17 years
Esther Wanjiru Thairu	September 2002	11.33 years

In her testimony, Carolyne Ondiri who testified on behalf of the claimants confirmed the dates of appointment as pleaded in the memorandum of claim.

Under cross-examination, she stated she could only recall the month and year of employment and not the exact date. She testified that they were paid in cash from 1995 at the end of each month until 2009 when they started receiving salary through bank as the respondent stated it was risky to pay cash. She testified that they signed contracts in 2013 and they were not given letters of termination on 1<sup>st</sup> August 2014.

RW1 conceded that some of the claimants were employed under an oral contract before 2012. He however did not state which of the claimants or the dates when the said claimants started working.

Carolyne Ondiri Sheunda produced her NSSF statement, which reflects payment of NSSF from July 2009 to May 2014.

Miriam Wanjiku Muchuri's NSSF statement was for 2004 May to May 2014.

Esther Wanjiku Thairu's statement was for May 2004 to May 2014.

Schola Nyakio Kigera's statement is from July 2009 to May 2014.

Jane Wambui Gacheru's is from May 2004 to May 2014.

At paragraph 5 of the respondent's memorandum of reply, the respondent admits that the claimants were its employees as contained in paragraph 2.3 of the statement of claim. Paragraph 2.3 of the statement of claim states as follows –

*“The claimants herein this matter were employed by the Respondent on diverse dates as intimated in paragraphs 6, 7, 8 and 9, respectively, on the Supporting Affidavit herein this suit to perform such duties as allocated to them by the Respondent on daily basis within the meaning of the mandatory provisions of Section 9 and 8 of The Employment Act 2007, Laws of Kenya.”*

The supporting affidavit referred to at paragraph 2.3 of claim states at paragraphs 6, 7, 8 and 9 as follows –

*“That the 2<sup>nd</sup>, 5<sup>th</sup> and 8<sup>th</sup> Claimants herein this matter had been employed and diligently working for the Respondent since March and October, 1996 respectively, until they were maliciously, wrongfully and unfair terminated from their employment services without proper recourse and/or redress before their termination from their employment services.*

*That the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> Claimants herein this matter had been employed and diligently working for the Respondent herein since September, 2002 respectively, until maliciously, wrongfully and unfair terminated from their employment services without proper recourse and redress to their termination from employment services.*

*That, the 1<sup>st</sup> Claimant herein this matter had been working for the Respondent herein in November, 2006, until maliciously, wrongfully and unfair terminated from her employment services without proper recourse and redress to her termination from employment services.*

*That the 6<sup>th</sup> Claimant herein this matter had been working for the Respondent herein since July, 2011, until maliciously, wrongfully and unfair terminated from his employment services without proper recourse and redress to his termination from employment services.”*

From the foregoing, I find that there is no dispute that the claimants were employed in the months and years stated in the memorandum of claim as confirmed by CW1 Carolyne Ondiri Sheunda.

The second issue for determination is whether the claimants were unfairly terminated.

From the evidence on record all claimants signed fixed term contracts of one year commencing on 1<sup>st</sup> August 2013 and some of them received notices of expiry of their contracts dated 18<sup>th</sup> July 2014. The expiry notice informed them that the contracts were coming to an end on 31<sup>st</sup> July 2014. These were Jane, Schola, Miriam, Jesintah, Esther and Agnes. There is no notice of expiry of contract for Carolyne and Stephen on record.

The claimants aver that they did not leave their employment procedurally. However, in the face of the fixed term contracts and the notices of expiry of the contracts, the court concludes that there is no evidence of unfair termination of employment but rather that the fixed term contracts came to an end and were not renewed. Refer to **Registered Trustees De La Salle Christen Brothers T/A St. Mary's Boys Secondary School** (supra), **Oshwal Academy, Nairobi and Another** (supra) and **Bernard Wanjohi Muruiki** (supra).

## **Remedies**

The claimants prayed for a host of remedies, which I consider below –

### **Days Worked**

The respondent has not adduced any evidence to prove that the claimants were paid salary in July 2014. The letters notifying them of expiry of contract directed them to proceed on annual leave. They are all therefore entitled to salary for July 2014.

### **Housing Allowances**

The contracts signed by the claimants state that the salaries were consolidated. They are thus not entitled to house allowance.

### **Overtime Hours and Public Holidays**

No evidence was adduced to prove overtime. The same is declined for want of proof.

### **Annual Leave**

Apart from the leave from 19<sup>th</sup> to 31<sup>st</sup> August 2014 as directed in the notices of expiry of contract, the respondent did not prove that the claimants were ever given leave or paid in lieu. They are thus entitled to the same. Section 10(6) requires records of prescribed particulars to be kept for each employee for up to 5 years. I will thus limit leave to 5 years.

### **Leave travelling allowance**

There is no legal or contractual basis for the claim for leave travelling allowance. The same is declined.

### **Severance Pay**

Having not been declared redundant, the claimants are not entitled to severance pay, which is an exclusive benefit for persons declared redundant under Section 40 of the Employment Act. The same is thus not granted.

### **Notice**

The claimants having been on fixed term contract which lapsed, they are not entitled to pay in lieu of notice.

### **Compensation**

Although the termination of the claimant's employment as well as the conversion of their contracts from open ended to fixed term contracts are shrouded in a lot of unclear circumstances, the claimants did not come out candidly on what transpired to enable the court to award them compensation. The prayer is thus declined.

For the foregoing reasons the court awards the claimants only days worked in July 2014 and annual leave as tabulated below –

<b>NAME</b>	<b>JULY SALARY KSHS.</b>	<b>LEAVE DAYS</b>	<b>LEAVE KSHS.</b>	<b>TOTAL KSHS.</b>
Carolyne Ondiri Sheunda	18,000	105	13,077	<b>41,077</b>
Jane Wambui Gacheru	19,000	105	76,731	<b>95,731</b>
Schola Nyakio Kigera	18,000	105	72,693	<b>90,693</b>
Miriam Wanjiku Muchiri	18,000	105	72,693	<b>90,693</b>
Jesintah Waithira Mwangi	19,000	105	76,731	<b>95,731</b>
Stephen Karanja Mugeru	20,000	65	50,000	<b>70,000</b>
Esther Wanjiru Thairu	26,000	105	105,000	<b>131,000</b>

Agnes Wanjiku Mwea	19,000	105	76,731	<b>95,731</b>
<b>TOTAL</b>				<b>810,656</b>

The respondent shall pay costs to the claimants.

Interest shall accrue at court rates from date of filing suit as these payments were due on the date of termination of employment.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22<sup>ND</sup> DAY OF NOVEMBER 2019**

**MAUREEN ONYANGO**

**JUDGE**