



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 56 OF 2018

(CONSOLIDATED WITH CAUSES NO. 55, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 AND 69 OF 2018)

ELEMA GUYO ELEMA & 14 OTHERS.....CLAIMANTS

VERSUS

JIANGXI ZHONGMEI ENGINEERING CONSTRUCTION CO. LTD....RESPONDENT

JUDGMENT

1. The Claimants filed suit against the Respondent alleging wrongful, unprocedural dismissal from employment and failure to pay them terminal benefits. The Claimants filed separate suits which were consolidated for purpose of hearing. In Cause No. 56 of 2018 which was the operating file, the Claimant Elema Guyo Elema averred that he was employed by the Respondent on or about 1st November 2010 as a security guard for the construction of the Marsabit – Turbi Road project until 29th October 2015 when he was allegedly wrongfully/unprocedurally and unfairly dismissed without being paid his terminal dues. The Claimant averred that his employment and the termination/dismissal were marred with gross and/or blatant contravention of the Employment Act and other enabling provisions of the law. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks for a declaration that the termination process carried out by the Respondent was unlawful and seeks two month’s pay in lieu of notice – Kshs. 36,513/-, gratuity/service benefits – Kshs. 37,464/-, maximum compensation for unfair termination for 12 months – Kshs. 208,728/-, underpayment of wages – Kshs. 324,226/-, annual leave dues – Kshs. 71,736/-, unpaid house allowance – Kshs. 81,075/-, overtime for Sundays worked – Kshs. 251,544/- all totaling Kshs. 1,011,286/- plus interest and costs of the suit.

2. In Cause No. 55 of 2018 the Claimant Abdullahi Kusse averred that he was employed on 1st August 2012 as a tipper driver for the Construction of the Marsabit - Turbi Road until 16th December 2017 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant sought a declaration that the termination process carried out by the Respondent was unlawful and seeks two month’s pay in lieu of notice – Kshs. 52,217/-, gratuity/service benefits – Kshs. 67,970/-, maximum compensation for unfair termination for 12 months – Kshs. 302,952/-, underpayment of wages – Kshs. 637,442/-, annual leave dues – Kshs. 125,230/-, unpaid house allowance – Kshs. 93,150/-, overtime for Sundays worked – Kshs. 419,472/- all totaling Kshs. 1,699,073/- plus interest and costs of the suit.

3. The Claimant in Cause No. 57 of 2018 was Abdub Katelo Dacho. The Claimant averred that he was employed on 11th March 2011 as a security guard for the Construction of the Marsabit- Turbi Road until 8th April 2017 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant sought for a declaration that the termination process carried out by the Respondent was unlawful and seeks two month’s pay in lieu of notice – Kshs. 36,513/-,

gratuity/service benefits – Kshs. 56,196/-, maximum compensation for unfair termination for 12 months – Kshs. 208,728/-, underpayment of wages – Kshs. 506,226/-, annual leave dues – Kshs. 104,364/-, unpaid house allowance – Kshs. 124,200/-, overtime for Sundays worked – Kshs. 385,344/- all totaling Kshs. 1,421,571/- plus interest and costs of the suit.

4. The Claimant in Cause No. 58 of 2018 was Wato Guyo Boru. The Claimant averred that he was employed on 8th March 2011 as a security guard in the construction project for the Marsabit – Turbi Road until 13th May 2015 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant sought a declaration that the termination process carried out by the Respondent was unlawful and seeks two month’s pay in lieu of notice – Kshs. 36,513/-, gratuity/service benefits – Kshs. 37,464/-, maximum compensation for unfair termination for 12 months – Kshs. 208,728/-, underpayment of wages – Kshs. 329,226/-, annual leave dues – Kshs. 69,576/-, unpaid house allowance – Kshs. 84,525/-, overtime for Sundays worked – Kshs. 262,248/- making a total of Kshs. 776,132/- plus interest and costs of the suit.

5. The Claimant in Cause No. 59 of 2018 was Qampicha Boru Wako. The Claimant averred that he was employed on 22nd May 2011 as a security guard in the construction project for the Marsabit – Turbi Road until 20th December 2017 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant sought for a declaration that the termination process carried out by the Respondent was unlawful and seeks two month’s pay in lieu of notice – Kshs. 36,513/-, gratuity/service benefits – Kshs. 38,627/-, maximum compensation for unfair termination for 12 months – Kshs. 208,728/-, underpayment of wages – Kshs. 557,186/-, annual leave dues – Kshs. 118,066/-, unpaid house allowance – Kshs. 136,275/-, overtime for Sundays worked – Kshs. 192,672/- all totaling to Kshs. 1,056,195/- plus costs and interests of the suit.

6. The Claimant in Cause No. 60 of 2018 was Dabaso Haro Abudo. The Claimant averred that he was employed on 1st day of March 2011 as a general worker in the project for the construction of the Marsabit – Turbi Road until 27th March 2015 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful, and claims two month’s pay in lieu of notice – Kshs. 22,941/-, gratuity/service benefits – Kshs. 22,848/-, maximum compensation for unfair termination for 12 months – Kshs. 127,296/-, underpayment of wages – Kshs. 338,832/-, annual leave dues – Kshs. 42,432/-, unpaid house allowance – Kshs. 82,800/-, overtime for Sundays worked – Kshs. 156,672/- all totaling Kshs. 793,821/- plus costs and interests of the suit.

7. The Claimant in Cause No. 61 of 2018 was Ibren Bonaya Adano. The Claimant was that he was employed on 1st September 2013 as a Tipper Driver in the construction project for the Marsabit – Turbi Road until 31st August 2017 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful and claims for two month’s pay in lieu of notice – Kshs. 52,217/-, gratuity/service benefits – Kshs. 54,376/-, maximum compensation for unfair termination for 12 months – Kshs. 302,952/-, underpayment of wages – Kshs. 622,752/-, annual leave dues – Kshs. 100,984/-, unpaid house allowance – Kshs. 82,800/-, overtime for Sundays worked – Kshs. 372,864/- all totaling Kshs. 1,588,945/- plus costs and interests of the suit.

8. The Claimant in Cause No. 62 of 2018 was Hasan Halake Wako. The Claimant averred that he was employed on 1st February 2011 as a general worker in project for the construction of the Marsabit – Turbi Road until 30th September 2017 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful and claims for two month’s pay in lieu of notice – Kshs. 22,941/-, gratuity/service benefits – Kshs. 37,608/-, compensation for unfair termination for 12 months – Kshs. 127,296/-, underpayment of wages – Kshs. 564,512/-, annual leave dues – Kshs. 63,648/-, unpaid house allowance – Kshs. 136,275/-, overtime for Sundays worked – Kshs. 257,856/- all totaling to Kshs. 1,210,136/- plus costs and interests of the suit.

9. The Claimant in Cause No. 63 of 2018 was Stephen Boru Aila. He averred that he was employed on 10th February, 2011 as a chain man

for the Construction of the Marsabit – Turbi Road until 4th March 2015 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful and claims two month’s pay in lieu of notice – Kshs. 26,269/-, gratuity/service benefits – Kshs. 26,432/-, maximum compensation for unfair termination for 12 months – Kshs. 147,264/-, underpayment of wages – Kshs. 390,208/-, annual leave dues – Kshs. 49,088/-, unpaid house allowance – Kshs. 82,800/-, overtime for Sundays worked – Kshs. 219,648/- all totaling to Kshs. 941,709/- plus costs and interests of the suit.

10. The Claimant in Cause No. 64 of 2018 was Tadi Halake Boru. The Claimant averred that he was employed on 1st April 2011 as a security guard for the construction project for the Marsabit - Turbi Road until 11th April 2017 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful and claims for two month’s pay in lieu of notice – Kshs. 36,513/-, gratuity/service benefits – Kshs. 56,196/-, maximum compensation for unfair termination for 12 months – Kshs. 208,728/-, underpayment of wages – Kshs. 506,226/-, annual leave dues – Kshs. 104,364/-, unpaid house allowance – Kshs. 124,200/-, overtime for Sundays worked – Kshs. 385,344/- all totaling to Kshs. 1,421,571/- plus costs and interests of the suit.

11. The Claimant in Cause No. 65 of 2018 was Dida Halake Wario. The Claimant averred that he was employed on 1st April 2012 as a security guard for the construction of the Marsabit – Turbi Road project until 2nd April 2015 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful and claims two month’s pay in lieu of notice – Kshs. 36,513/-, gratuity/service benefits – Kshs. 28,098/-, maximum compensation for unfair termination for 12 months – Kshs. 208,728/-, underpayment of wages – Kshs. 244,146/-, annual leave dues – Kshs. 53,802/-, unpaid house allowance – Kshs. 62,100/-, overtime for Sundays worked – Kshs. 192,672/- all totaling Kshs. 826,059/- plus costs and interests of the suit.

12. The Claimant in Cause No. 66 of 2018 was Jillo Jarso Dido. He averred that he was employed on 2nd February 2012 as a general worker for the Construction of the Marsabit – Turbi Road until 27th March 2015 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful and claims for two month’s pay in lieu of notice – Kshs. 22,941/-, gratuity/service benefits – Kshs. 17,136/-, compensation for unfair termination for 12 months – Kshs. 127,296/-, underpayment of wages – Kshs. 251,472/-, annual leave dues – Kshs. 31,824/-, unpaid house allowance – Kshs. 62,100/-, overtime for Sundays worked – Kshs. 116,928/- all totaling to Kshs. 629,697/- plus costs and interests of the suit.

13. The Claimant in Cause No. 67 of 2018 was Jarso Fora Chume. The Claimant averred that he was employed on or about 1st June 2014 as a general worker for the Construction of the Marsabit – Turbi Road until 11th April 2015 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the respondent was unlawful and claims for one month’s pay in lieu of notice – Kshs. 12,333/-, gratuity/service benefits – Kshs. 4,760/-, maximum compensation for unfair termination for 12 months – Kshs. 127,296/-, underpayment of wages – Kshs. 62,192/-, annual leave dues – Kshs. 8,840/-, unpaid house allowance – Kshs. 17,250/-, overtime for Sundays worked – Kshs. 32,640/- all totaling to Kshs. 265,311/- plus costs and interests of the suit.

14. The Claimant in Cause No. 68 of 2018 was Daki Diba Komba. The Claimant averred that he was employed on 1st May 2011 as a cook for the Construction of the Marsabit – Turbi Road until 20th December 2017 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent’s management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter

dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful and claims for two month's pay in lieu of notice – Kshs. 25,749/-, gratuity/service benefits – Kshs. 42,581/-, maximum compensation for unfair termination for 12 months – Kshs. 144,144/-, underpayment of wages – Kshs. 563,108/-, annual leave dues – Kshs. 79,079/-, unpaid house allowance – Kshs. 136,275/-, overtime for Sundays worked – Kshs. 291,984/- all totaling to Kshs. 1,282,920/- plus costs and interests of the suit.

15. The Claimant in Cause No. 69 of 2018 was Jibril Eskon Lumuria. The Claimant averred that he was employed on 22nd May 2011 as a security guard for the Construction of the Marsabit – Turbi Road until 20th December 2017 when he was allegedly wrongfully terminated. The Claimant averred that the Respondent failed to accord him due process and also failed to prove that the reason for dismissal was valid thus violating Sections 41, 43, 44 and 45 of the Employment Act. The Claimant averred that the Respondent breached a Collective Bargaining Agreement entered into between his Union and the Respondent's management. The Claimant averred that he made several oral complaints to the Respondent for his proper working terms and conditions, and sought the collective bargaining agreement and the law to be adhered to but the Respondent gave him a deaf ear necessitating his union to seek the intervention of the Marsabit County Government leading to the letter dated 23rd April 2014 addressed to the Respondent asking it to comply but this again yielded no fruit. The Claimant thus seeks a declaration that the termination process carried out by the Respondent was unlawful and claims for two month's pay in lieu of notice – Kshs. 36,513/-, gratuity/service benefits – Kshs. 61,660/-, maximum compensation for unfair termination for 12 months – Kshs. 208,728/-, underpayment of wages – Kshs. 557,186/-, annual leave dues – Kshs. 114,511/-, unpaid house allowance – Kshs. 136,275/-, overtime for Sundays worked – Kshs. 422,808/- all totaling to Kshs. 1,537,681/- plus costs and interests of the suit.

16. The Respondent filed a response and denied each and every allegation of alleged unfair, wrongful and/or unlawful termination and put the Claimants to strict proof thereof. The Respondent averred that as per the agreement dated 11th October 2010 entered into with Kenya National Highways Authority (KeNHA) the contract for upgrading the Marsabit – Turbi Road was for an initial period of 3 years commencing 5th April 2011 to 5th April 2014 and the Claimants were to serve for the period of the contract. The Respondent averred that consequently, as at April 2014 most of the Claimants had left as part of the works had been finalized and no extension had been granted by KeNHA for the remainder of the works. It averred that however, upon request by the Respondent sometimes in August 2014, the contract was extended by KeNHA for one year from April 2014 to 20th April 2015. The Respondent averred that it was an agreed term between the Respondent and KeNHA that the Respondent would oversee the maintenance of the road for the defects liability period between 20th April 2015 and 20th April 2017. The Respondent averred that following completion of the work, the Claimants' contracts automatically lapsed and this was set out in the recommendation letters issued to the Claimants. The Respondent averred that since the lapse of the Claimant's contracts was a consequence of the completion and handover of the road project with KeNHA, none of the Claimants had a legitimate expectation that they would continue working for the Respondent indefinitely as their contracts automatically lapsed with the completion of the project. The Respondent averred that each of the Claimants' separation with the Respondent was discussed and mutually agreed upon and the Respondent duly paid their lawful dues and issued them with recommendation letters to enable them secure alternative employment. The Respondent averred that it complied with all the provisions of the Employment Act with regard to the issuance of an appointment letter, protective gear, remittance of statutory deductions, adherence to the minimum wage requirement and as such the Claimants' allegations are misconceived and untrue. The Respondent averred that during the tenure of the Claimant's employment, the Claimants did not lodge any complaints with the Respondent and the alleged letter dated 23rd April 2014 alluded to by the Claimants was merely advisory in nature from the Labour Office on the applicable minimum wage order for general workers. The Respondent averred that the Claimants were not entitled to the orders prayed for in their suits and that the Claimants' entire claims lack merit and ought to be dismissed with costs to the Respondent. The Respondent averred that it paid to all the Claimants the accrued benefits upon separation in 2017 and as such all the claims in the memorandums of claim should fall.

17. The Claimants filed their affidavits of evidence and in his affidavit of evidence, the Claimant herein Elema Guyo Elema deponed that he worked diligently and with full commitment until 29th October 2015 when he was wrongfully, unprocedurally, unfairly, unjustifiably and/or unlawfully terminated and was not paid his lawful and/or terminal dues. He deponed that the Respondent never provided him with any reasonable housing and/or paid him any house allowance and that it paid him wages less than what is required by law being Kshs. 35/- per hour instead of Kshs. 51/- per hour, made him work overtime, on public holidays and even on rest days without payment, and that it never allowed him to proceed on annual leave during the subsistence of employment. He deponed that the Respondent never issued him with a notice to terminate his services and/or any warning and that it terminated his services without informing him of the reason for termination, without a notice to show cause and without a hearing. He deponed that despite several complaints to the Respondent about its contravention and/or breach of the law, it never rectified the situation. The Claimant deponed that they were forced to complain to the Kenya Building Construction Timber and Furniture Union (KBCTFU) and the Union approached the Respondent and brokered a collective bargaining on behalf of employees on one side and the Respondent on the other and the agreement was signed on 27th July 2012. The Claimant deponed that despite the existence of the collective bargaining the Respondent failed to comply with the terms therein and the employees reported to the Union which informed the County Government of Marsabit of the Respondent's continued breach of the terms and conditions of the collective bargaining agreement and the contravention of the law. He deponed that the County wrote a letter requiring the Respondent to adhere to the law but again this was not followed. The Claimant thus prayed that the court declares the termination of employment as illegal, unlawful, unfair, unjustified and order the Respondent to pay the dues sought.

18. The Claimant in Cause No. 64 of 2018 Tadi Halake Boru testified on behalf of the Claimants. He stated that he was working as a security guard from 1st April 2011 to 11th April 2017 when he was dismissed. He testified that there was no wrong doing on his part and that he was not issued with notice. He relied on his affidavit of evidence and his list of documents in support of his evidence. He testified that he would at times work at night and at times during the day and that he worked throughout with no rest. He stated that he worked from 6.00a.m to 6.00p.m and during the night shift from 6.00p.m to 6.00a.m. He testified that he worked with no annual leave and/or off days and that there were no public holidays observed. He stated that he stayed at his own house as there were no staff houses and added that no house allowances were paid. He testified that he used to be paid Kshs. 7,280/- a month which was not enough and despite his requests for pay rise it was never done. He stated that they sought help from the Union which informed the Respondent to follow the law but all was in vain. He testified that the construction of the road is still ongoing. In cross-examination the Claimant testified that they were never given pay slips but were paid in cash and that he did not have any letter of appointment. He stated that the records of payment were kept by the Respondent and that the Respondent never produced them in court to controvert the issue of payment. In re-examination he stated that he would receive the payment and sign and the employer kept the record. The Respondent indicated it would not be calling any witness and thus closed the defence case.

19. The parties were to file submissions. The Claimants submitted that they have proved their claims on a balance of probabilities as required by law. The Claimants submitted that the Respondent having failed to file any affidavit of evidence and also having failed to call any witness to testify should be deemed to have had no evidence to tender to controvert the Claimants' evidence. The Claimants' submitted that their claims ought to be granted and the Respondent be held 100% liable. They relied on the case of **Stephen Kamau Wanderi & Another v Gladys Wanjiku Kung'u [2006] eKLR** and submitted that they gave flawless testimony in indubitable honesty and prayed that the court awards them as set out in the memorandum of claim. The Claimants also prayed for costs of the suit separately in each individual cause before consolidation because each claim is diametrically different as each Claimant gave separate instructions, each case involved different causes of actions and each cause arose on a different date. They also prayed for costs on the lead file.

20. The Claimants seeks relief for their alleged dismissal from the Respondent. Their claims were that they were terminated at different times and without notice. They each assert unfair dismissal and underpayment for their service at the project of the construction of the Marsabit – Turbi Road. In the response to the claims the Respondent asserted that the Claimants were engaged in a road construction project and that they knew it was coming to an end in 2014 and the contract for the construction of the project was extended until 20th April 2015 and the defects liability period was until 19th April 2017. Perhaps this is the date the Claimants had in mind when they assert that the project went on until 2017. Section 45(2) of the Employment Act provides that termination by an employer is unfair if the employer fails to prove

- i) That the reason for termination is valid
- ii) That the reason for termination is a fair reason –
 - a. Related to the employee's conduct, capacity, compatibility or
 - b. Based on the operational requirements of the employer and
 - c. That the employment was terminated in accordance with fair procedure.

The completion of the project in 2015 meant that the Respondent had to let go of a number of the staff as they were surplus to requirement. The rest were those who continued maintaining the road upon completion of the project. The reduced compliment of staff during the defects liability period served between 2015 and 2017. None of the Claimants could anticipate working beyond the life of the project and they could not conceivably remain employed on a road construction project indefinitely. The Claimants failed to attach or even produce pay slips showing the underpayments alleged in their respective claims. In the court's view, the Respondent has established that the reason for termination was valid as per Section 45 and 43 of the Employment Act as the project contract extension clearly shows the contract came to an end in April 2015 and there was a defects liability period extending to 2017 during which the Respondent maintained the road. The terminations effected were therefore not unfair as the contracts came to an end on effluxion of time and upon completion of the various stages of the project. The upshot is the claims before me are devoid of merit and are thus dismissed. I order that each party bears their own costs.

It is so ordered.

Dated and delivered at Nyeri this 21st day of November 2019

Nzioki wa Makau

JUDGE