



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NUMBER 424 OF 2018**

**BETWEEN**

**1. CHARO KITSAO NGOKA**

**2. NDUNE CHIGWADO CHAI**

**3. NDUNDI DISII BURAA**

**4. EMMANUEL KITHI KAYAA**

**5. MATTHIAS CHARO MWALIMU**

**6. MBUI NDANDU CHOME.....CLAIMANTS**

**VERSUS**

**KALU WORKS LIMITED.....RESPONDENT**

*Rika J*

Court Assistant: Benjamin Kombe.

Otieno Asewe & Company Advocates for the Claimants

Anne Wamithi & Company Advocates for the Respondent

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**RULING**

1. The 6 Claimants herein, filed this Claim on 19<sup>th</sup> June 2018. They aver, they were employed by the Respondent Company on various dates as Machine Attendants, Machine Operators, and General Workers. They claim, on diverse dates between 30<sup>th</sup> June 2017 and 30<sup>th</sup> December 2017, the Respondent served them notices of termination. There were no reasons given to the Claimants, to justify termination. They pray for notice pay; compensation for unfair termination; severance pay; underpayment of salary; annual leave pay; declaration that termination was unfair; costs; interest; and any other suitable relief.

2. The Respondent filed its Statement of Response on 2<sup>nd</sup> August 2018. Also on record is a Notice of Preliminary Objection filed by the Respondent on 19<sup>th</sup> June 2019. The Objection relates to 4 of the Claimants- No. 3 to 6, who are said to be Parties to another Cause at this Court, No. 519 of 2016.

3. The Court has looked at both Claims subject matter of the Preliminary Objection.

4. It is correct that Claimants No. 3 to 6 in the Cause herein, are also Claimants in Cause No. 519 of 2016.

5. The Claims are brought against the same Employer, the Respondent herein.

6. Some of the remedies pleaded in the present Claim, are also pleaded in Cause No. 519 of 2016.

7. The Claims are however not based on the same cause of action.

8. Cause No. 519 of 2016 was filed when the employment relationship between the Parties subsisted.

9. The Claimants in Cause No. 519 of 2016 state they were, at the time of filing the Claim, “*currently serving*.” They pray for underpayment of salary, and annual leave, which are benefits they are allowed to seek, during or after the employment contract. The cause in this Claim, No. 519 of 2016, arose when the Respondent failed to pay the benefits sought, and remain live grievances, as no payment was made during or after employment. The Claim involves 22 other Employees.

10. Cause No. 424 of 2018, was filed after the Claimants’ contracts were terminated by the Respondent, between November 2016 and December 2017. The Claimants seek underpayment of salary, annual leave pay and other prayers not contained in the first Claim. They seek notice pay and compensation for unfair termination, which could only be done, after termination. The Claimants in this Cause are “*previously serving*.”

11. The Court does not therefore agree with the Respondent that the second Claim should be struck out for being in abuse of the Court Process. If the Claim herein is struck out on the ground raised by the Respondent, the Claimants would be deprived of their prayers for notice pay and compensation for unfair termination. The first Claim cannot be amended to include the prayer for unfair termination, termination having taken place, after the first Claim was filed. The Claims were filed when the Claimants were in and out of employment. The cause of action is not entirely the same. The Claim herein is not *sub judice*. The first Claim does not relate to termination of employment, but to non-payment of benefits, in an ongoing relationship. The second Claim is based on the same unpaid benefits, together with notice pay and compensation for unfair termination, relating to after employment.

12. An order for consolidation is appropriate in moving the dispute forward.

IT IS ORDERED: -

- a. The 2 Claims are consolidated.**
- b. Hearing to proceed under Cause Number 424 of 2018.**
- c. Parties shall move the Court for other pre-trial directions.**
- d. Costs in the cause.**

**Dated and delivered at Mombasa this 5<sup>th</sup> day of December 2019.**

**James Rika**

**Judge**