



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 660 OF 2017**

**BETWEEN**

1. ERASTUS MUNYWOKI MUTUA
2. KENNETH OCHIENG ORICHO
3. ALEXANDER WAMBUA JOHN
4. ALLAN OTIENO OWINO
5. WILLIAM KALUME KITHI
6. RAJAB SIRYA NGALA
7. RAMA NDURYA MAZERA
8. TITUS MUTHUSI MUTUKU
9. PINTO SALIM KHAMIS
10. RICHARD MUSYOKI KILONZO
11. STEPHEN ONYANGO ODUOR
12. SIMON MWATELA MWAHEE
13. SAMUEL ODHIAMBO
14. SHADRACK MUSYOKA MWANGANGI
15. GOEORGE KAZEE ONUNGA
16. SAIDI MAE KAHINDI
17. VICTOR ONYANGO OTIENO
18. BENSON KILONZO MUTHUI
19. ALPHONSE ODHIAMBO NYANDIKO
20. ALEXANDER SHIFWOKO MATE
21. ABDALLA KASSIM ABDALLA
22. JOACHIM MUTUA MBILA

23. JOEL DAVID MUTUA
24. DOMNIC KAIYONGI ALBEERT
25. FESTUS NYAMAI KATII
26. SAMMY KIMANZI MULTYA
27. PATRICK MUKALA KIMWELE
28. JOSEPH PAWA MANTHI
29. ANDREW WANYONYI SIMIYU
30. GILBERT TOKEY
31. PETER MUSAU MULWA
32. DOMNIC ROTICH
33. PROTUS SITATI LUAMBILA
34. PHILIP BABLY ALEKE
35. MATHEW CHARO KATANA
36. JARED ONKUNDI ASIAGO
37. EDWARD MABISHI MOMBO
38. DAVID ODOYO OTIATO
39. CHRISTOPHER KIPROTICH
40. ELIJAH ODHIAMBO DONGE
41. CHRISPIN KATANI MASHIGADI
42. MARTIN KINYAMASYO MULATYA
43. MUSYOKI NZILU
44. MUTINDA IKUTHU
45. SYLVESTER MUTUA MWANZIA
46. JONATHAN MBAI SHENGA
47. RAMADHAN JUMA DZUYA
48. JOTHAM KUSIENYA
48. COLLINS KAPTUM CHEBOR
49. JUSTUS KYALO MWENDWA
50. CHRISPIN SAIDI MGHANGA
51. CHRISPIN OKOTH JUMA

52. CHRISPINE NYONYI MUNA
53. SAMSON MULE MUTHAMA
54. OROTI NYABARO DAVID
55. DIXON MTUNGU MWANGEJE
56. BENARD CHERUIYOT
57. IVITA MUSAU
58. ZABLON AKUMA BUNDI
59. ANDERSON LUKAS MUTUA
60. MWACHIRO HARO KAI
61. DEXTER KALII ROBERT
62. CHARLES PETER
63. BONIFACE BULUNYA MULAYI
64. THEOPHILUS MUENDO NZIOKA
65. PATRICK INGAYWA KAMITI
66. ALFRED ONYANGO OOKO
67. OGOLLA JOHNSTONE OCHOLA
68. BENARD MUSYOKA NGUTU
69. JEFERSON MUTUKU KALI
70. JOHN ONGUKO ONANGO
71. NICHOLAS ODIWUOR OYOYO
72. DAVID MUIA SINGA
73. KENNEDY CHILANGO JAMBO
74. EVANS MONYENYE NYAMINA
75. JOHN ROLLINGS WANYAMA
76. BENEDICT KOMBE KATEMA
77. GILBERT KIPLANGAT NGENO
78. JOHN WANJALA MUNYALO
79. DANIEL OGOIJA NYAMUNGA
80. ANTONY V. SHALALA
81. AMOS KATUNDU MUNYAO
82. NATHANIEL KARISA KAHINDI
83. CHRISPUS NGANGA MUTUNGA

84. URBANUS MUTUA NZIOKA
85. ANDREW KIMANTHI MUNYALO
86. CHENGO KARISA CHULA
87. SAMUAEL MUSEMBI MUTHAMI
88. ALEX CHIDZIDZINGO JUMAA
89. WILDRED KYALO MBINDYO
90. MICHAEL MWADIME MBALA
91. JOSEPH NJERU PETER
92. ALEX NZUNGI KIINDU
93. EMMANUEL THABU CHENGO
94. MUSEE MUTHUI
95. ELIUD KIPNGETICH KIPKEU
96. CHRISTOPHER ODHIAMBO
97. PHILIP MARUTI FUNDI
98. KENNEDY M. MUTHAMI
99. PATRICK MULEI MULONZI
100. VINCENT MWANGONGO MBOGHO
101. MORRIS BAYA YAA
102. BENJAMIN MWIKYA MUSEVE
103. SHIDA ALI MBARUK
104. YUSUFU KITURI WAUDA
105. NEMUAL KEORO BIKUNDO
106. OMARI SALIM GAVUGA
107. CALVIN KHALEVELE MBISHIA
108. FREDRICK NZUKU MAKAU
110. AUGUSTINE NZUKI KAMITU
111. TIMOTHY MUEMA MUNYI
112. RAYMOND ANGAYA SIOSO
113. GEOFFREY MALUNDI MAKAU
114. ALEX WAMBUA NZOMO
115. JOSIAH KILEI NDIINGILA
116. RUEBEN ONGOSI NYAMBEGERA

117. WYCLIFFE LUMWAJI LUSALA
118. KANYASYA MUNYOKI MWANGI
119. ERICKSON ALUKWE INGANJI
120. DANIEL MWASINGO MWARAMBE
121. JUSTUS MALINDA MAWEU
122. HASSAN KIPKEMBOI BETT
123. DANIEL MWILE KILONZO
124. MOSES COLLINS OKUNGU
125. ERICK MUTIE KILONZI
126. KEVIN MALENJE
127. ELIAS KATANA KAZUNGU
128. MAKAU MALII
129. PETER NZAKWA
130. WILLIAM MUTHOKA WAMBUA
131. SAMMY MUTUA KATHENGE
132. DAVID NUTUA KATHENGE
133. BAKARI KOMBO KIBWANA
134. NICHDEMUS KAMAU KASINA
135. NICOLAS KYALO MAITHA
136. GEORGE KISEMBE MASINDE
137. DOMNIC ROTICH
138. KELVIN MUSEMBI KILUNGU
139. ARNOLD CHAPA KITI
140. JOB WANYONYI BARASA
141. ADAMS KATANA RODGERS
142. KYALO MWANGANGI
143. DANIEL SHIMBE NEMUELA
144. AINEA OMUKA MACHENGO
145. LUDOVICK MICHEL LAWELA.....CLAIMANTS

VERSUS

READY CONSULTANTS CO. LTD

PACKAGING MANUFACTURERS (1976) LTD..... RESPONDENTS

**Rika J.**

**Court Assistant: Benjamin Kombe**

***M/S J.A Abuodha & Company Advocates for the Claimant***

***Marend Necheza & Company Advocates for the 1<sup>st</sup> Respondent***

***Daly & Inamdar Advocates for the 2<sup>nd</sup> Respondent***

**RULING**

1. The Claimants listed above, filed their Joint Statement of Claim on 16<sup>th</sup> August 2017. They state they were employed by the 2<sup>nd</sup> Respondent at all material times, through the 1<sup>st</sup> Respondent, a Labour Outsourcing Company.
2. They state they were locked out, and their respective contracts of employment terminated by the 2<sup>nd</sup> Respondent on 9<sup>th</sup> June 2017. They claim against both Respondents:-
  - a) Declaration that termination of Claimant's contracts was unlawful and unfair.
  - b) Terminal benefits and compensation for unfair termination.
  - c) Costs.
  - d) Interest
3. On 7<sup>th</sup> November 2017, the Claimants filed an Application under Certificate of Urgency, for among others, orders that:-
  - a) 2<sup>nd</sup> Respondent is restrained by way of temporary injunction from moving out, carrying away, vacating, transferring, relocating, selling and/or advertising for sale or in any way dealing with the tools of trade and other machinery from the 2<sup>nd</sup> Respondent, pending hearing and determination of the Application.
  - b) Similar order as in (a) above, pending hearing and determination of the Claim.
  - c) The 2<sup>nd</sup> Respondent deposits security for its appearance in Court, in the sum of Kshs. 44,741,828.
  - d) Alternatively, the 2<sup>nd</sup> Respondent's Directors are summoned before the Court to give their personal undertaking to settle any Judgment that may be entered against the 2<sup>nd</sup> Respondent.
4. Supported by the Affidavit of the 1<sup>st</sup> Claimant Erastus Munyoki Mutua, sworn on 7<sup>th</sup> November 2017, the Application was granted in terms of prayer (a) above in the interim, on 8<sup>th</sup> November 2017.
5. The 2<sup>nd</sup> Respondent filed a Replying Affidavit sworn by its Human Resources Manager Adams Olweny, on 23<sup>rd</sup> November 2017. The 1<sup>st</sup> Respondent appears not to have filed a Replying Affidavit, but filed a Statement of Response on 30<sup>th</sup> October 2017.
6. On 15<sup>th</sup> February 2018, the Parties' Advocates agreed in Court that the Application is heard *inter partes*, on 22<sup>nd</sup> February 2018.
7. The Claimants' Advocates did not attend Court to prosecute Claimants' Application. Ms. Onyango for the 2<sup>nd</sup> Respondent made her Submissions. Ms. Maina for the 1<sup>st</sup> Respondent informed the Court that the Application does not touch on the 1<sup>st</sup> Respondent.
8. It was after Respondents' Advocates had finished addressing the Court, that Mr. Gikandi stood up. He told the Court that he had been asked by a Legal Assistant from Claimants' Advocates' chambers, to hold Ms. Abuodha's brief. The Court was told that Ms. Abuodha entered the wrong hearing date in her diary. She asked to be allowed another date to present her Submissions. The Court declined adjournment.
9. The 2<sup>nd</sup> Respondent submits that the Application is made under the Civil Procedure Rules. This Court is not regulated by the Civil Procedure Rules.
10. Rule 17 of the Employment & Labour Relations Court Rules, states an *ex parte* order shall be valid for only 14 days. The order as it stands is unlawful, and should be discharged.
11. No evidence has been provided by the Claimants to show that the 2<sup>nd</sup> Respondent is moving out of premises. The Application is speculative.

12. Directors of the 2<sup>nd</sup> Respondent, as shown in the Affidavit of Adams Olweny, are all Kenyans. The 2<sup>nd</sup> Respondent is a Kenyan Company. The Directors and their Company, are not foreigners. The Claimants have not established that the Directors are about to leave the jurisdiction of the Court. The Directors can only be held personally liable, and summoned to account personally, if the Court is shown they are involved in fraud.

**The Court Finds:-**

13. First, the Claimants filed their Application under Certificate of Urgency. The Court granted their prayer to certify the Application urgent, and granted interim relief. When the Application came up for the *inter parte* hearing, the Claimants were not ready to argue their Application. Parties who approach the Court to be heard as a matter of urgency, must not be allowed to delay hearing, of their Applications at the *inter partes* stage.

14. Second, the 2<sup>nd</sup> Respondent is a Company registered and domiciled in Kenya. Its Directors are Kenyans. It has not been shown that the 2<sup>nd</sup> Respondent and its Directors, intend to change this status, and place themselves beyond the jurisdiction of the Court, to defeat the process of this Court.

15. Third, the Claim is made jointly, against 2 Employers. It is not likely that if the Claimants are successful, they will not be able to execute against either Respondent. Their prayers for terminal dues and compensation are made against both Respondents.

IT IS ORDERED:-

***a) The Application by the Claimants filed 7<sup>th</sup> November 2017 is declined.***

***b) Costs in the cause.***

**Dated and delivered at Mombasa this 20<sup>th</sup> day of March 2018.**

**James Rika**

**Judge**