



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 112 OF 2015

(Before Hon. Lady Justice Maureen Onyango)

LEONARD KILWAKE CHEBUSIRE & 23 OTHERS.....CLAIMANT

VERSUS

JIANGXI ZHONGMEI ENGINEERING

CONSTRUCTION COMPANY LIMITED.....RESPONDENT

JUDGMENT

Introduction

The claimants are all current or former employees of the respondent, a construction company engaged by the Government of Kenya to rehabilitate the Webuye-Kitale Road. According to the claim dated 21st April 2015 and filed on the same day, the claimants seek payment of underpayments, lost hours, house allowance, NSSF/NHIF/PAYE and annual leave. The specific claims of each of the 24 claimants are as set out on the claim. The claimants further seek costs and interest.

The claims by each of the claimants is broken down as follows –

1ST CLAIMANT – LEONARD KILWAKE CHEBUSIRE

Underpayments	Kshs.436,800/=
Lost hours	Kshs.336,000/=
House Allowance	Kshs.100,800/=
NSSF & NHIF Funds	Kshs.8,320/=
PAYE	Kshs.2,708/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.926,628/=

2ND CLAIMANT – DAVID NGIGI MUGO

Underpayments	Kshs.412,800/=
Lost hours	Kshs.357,000/=
House Allowance	Kshs.107,100/=

NSSF & NHIF Funds	Kshs.8,840/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.927,740/=

3RD CLAIMANT – ESAU MUGAMBI MUKHOLA

Underpayments	Kshs.594,000/=
Lost hours	Kshs.462,000/=
House Allowance	Kshs.138,600/=
NSSF & NHIF Funds	Kshs.11,440/=
PAYE	Kshs.9,422/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.1,257,462/=

4TH CLAIMANT – LABAN KASIEVELA

Underpayments	Kshs.656,400/=
Lost hours	Kshs.525,000/=
House Allowance	Kshs.157,500/=
NSSF & NHIF Funds	Kshs.13,000/=
PAYE	Kshs.5,376/=
Annual leave	<u>Kshs.84,000/=</u>
TOTAL	KSHS.1,431,276/=

5TH CLAIMANT – BENSON KITAVI MUTUA

Underpayments	Kshs.564,000/=
Lost hours	Kshs.441,000/=
House Allowance	Kshs.132,300/=
NSSF & NHIF Funds	Kshs.10,920/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.1,190,220/=

6TH CLAIMANT – JOHN MUKOMA ANDANJE

Underpayments	Kshs.602,400/=
Lost hours	Kshs.588,000/=
House Allowance	Kshs.176,400/=
NSSF & NHIF Funds	Kshs.14,560/=
Annual leave	<u>Kshs.84,000/=</u>

TOTAL KSHS.1,465,360/=

7TH CLAIMANT – JOHN WANYONYI KHAMALA

Underpayments Kshs.293,600/=

Lost hours Kshs.231,000/=

House Allowance Kshs.69,300/=

NSSF & NHIF Funds Kshs.5,720/=

TOTAL KSHS.609,620/=

8TH CLAIMANT –KEVIN OMONDI ONGERE

Underpayments Kshs.225,200/=

Lost hours Kshs.160,000/=

House Allowance Kshs.50,400/=

NSSF & NHIF Funds Kshs.4,160/=

TOTAL KSHS.547,760/=

9TH CLAIMANT – PETER NALESO AZENGA

Underpayments Kshs.318,000/=

Lost hours Kshs.252,000/=

House Allowance Kshs.75,600/=

NSSF & NHIF Funds Kshs.6,240/=

Annual leave Kshs.42,000/=

TOTAL KSHS.693,840/=

10TH CLAIMANT – JACOB W. WANYAMA

Underpayments Kshs.180,000/=

Lost hours Kshs.126,000/=

House Allowance Kshs.37,800/=

NSSF & NHIF Funds Kshs.3,120/=

TOTAL KSHS.346,920/=

11TH CLAIMANT – SIMON O. MARIENGA

Underpayments Kshs.452,400/=

Lost hours Kshs.273,000/=

House Allowance Kshs.81,900/=

NSSF & NHIF Funds Kshs.6,760/=

Annual leave Kshs.42,000/=

TOTAL KSHS.856,060/=

12TH CLAIMANT – PETER KIPKESHO MOREY

Underpayments Kshs.392,000/=

Lost hours Kshs.294,000/=

House Allowance Kshs.88,200/=

NSSF & NHIF Funds Kshs.7,280/=

Annual leave Kshs.42,000/=

TOTAL KSHS.823,480/=

13TH CLAIMANT – PETER KIPWAMBOK KEMBOI

Underpayments Kshs.336,000/=

Lost hours Kshs.252,000/=

House Allowance Kshs.75,600/=

NSSF & NHIF Funds Kshs.26,240/=

PAYE Kshs.2,064/=

Annual leave Kshs.42,000/=

TOTAL KSHS.612,904/=

14TH CLAIMANT – ANTHONY UBINDI MUDASIA

Underpayments Kshs.282,000/=

Lost hours Kshs.210,000/=

House Allowance Kshs.63,000/=

NSSF & NHIF Funds Kshs.5,200/=

TOTAL KSHS.612,904/=

15TH CLAIMANT – MOSES KATAMI

Underpayments Kshs.252,000/=

Lost hours Kshs.189,000/=

House Allowance Kshs.56,700/=

NSSF & NHIF Funds Kshs.4,680/=

PAYE Kshs.2,439/=

TOTAL KSHS.504,819/=

16TH CLAIMANT – DAVID CHOMBA GATHONI

Underpayments Kshs.336,000/=

Lost hours Kshs.252,000/=

House Allowance	Kshs.75,600/=
NSSF & NHIF Funds	Kshs.6,240/=
PAYE	Kshs.2,106/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.612,916/=

17TH CLAIMANT – HUMPHREY K. CHEBUYA

Underpayments	Kshs.134,400/=
Lost hours	Kshs.84,000/=
House Allowance	Kshs.25,200/=
NSSF & NHIF Funds	<u>Kshs.2,080/=</u>
TOTAL	KSHS.245,680/=

18TH CLAIMANT – LAWRENCE EDWASI EKOMBE

Underpayments	Kshs.753,200/=
Lost hours	Kshs.462,000/=
House Allowance	Kshs.138,600/=
NSSF & NHIF Funds	Kshs.11,440/=
Annual leave	Kshs.84,000/=
3 months' notice in lieu	<u>Kshs.126,000/=</u>
TOTAL	KSHS.1,575,240/=

19TH CLAIMANT – STEPHEN SIMIYU

Underpayments	Kshs.762,588/=
Lost hours	Kshs.504,400/=
House Allowance	Kshs.151,210/=
NSSF & NHIF Funds	Kshs.12,480/=
Annual leave	<u>Kshs.84,000/=</u>
TOTAL	KSHS.1,514,278/=

20TH CLAIMANT – KEVIN SHIGOLI NGAYIRA

Underpayments	Kshs.570,000/=
Lost hours	Kshs.525,000/=
House Allowance	Kshs.157,500/=
NSSF & NHIF Funds	Kshs.13,000/=
Annual leave	<u>Kshs.84,000/=</u>

TOTAL **KSHS.1,349,500/=**

21ST CLAIMANT – DAVID KIPKETER CHEPKWONY

Underpayments	Kshs.528,240/=
Lost hours	Kshs.443,880/=
House Allowance	Kshs.133,164/=
NSSF & NHIF Funds	Kshs.14,040/=
Annual leave	<u>Kshs.65,760/=</u>
TOTAL	KSHS.1,185,084/=

22ND CLAIMANT – ISAAC MANOS MUCHWENGE

Underpayments	Kshs.626,400/=
Lost hours	Kshs.609,000/=
House Allowance	Kshs.182,700/=
NSSF & NHIF Funds	Kshs.15,080/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.1,517,180/=

23RD CLAIMANT – HILLARY BIRGENT

Underpayments	Kshs.272,400/=
Lost hours	Kshs.219,600/=
House Allowance	Kshs.65,880/=
NSSF & NHIF Funds	Kshs.7,800/=
Annual leave	<u>Kshs.29,280/=</u>
TOTAL	KSHS.594,960/=

24TH CLAIMANT – GABRIEL WANJALA BUNYANYA

Underpayments	Kshs.392,208/=
Lost hours	Kshs.351,360/=
House Allowance	Kshs.105,408/=
NSSF & NHIF Funds	Kshs.12,480/=
Annual leave	<u>Kshs.58,584/=</u>
TOTAL	KSHS.920,140/=

The respondent did not file a defence to the claim or attend court for hearing.

In view of the sketchy information in the file, the nature of prayers sought and the number of employees involved, this claim together with several other related filed we referred to the County Labour officer Kitale to investigate and prepare a report to assist the court in arriving at a fair and just determination of the claim.

The County Labour Officer filed his report in court on 24th February 2017. The findings in the County Labour Officer's report are reproduced below –

“In pursuance to the court's directive that the above matter be investigated and report submitted to the court on or before 28th February 2017. The following are the findings of each claimant: -

1. Jacob Wamalwa Wanyama

Mr. Wamalwa Wanyama was employed in May 2014 as a mechanic and left employment in July 2015. He was paid his dues of prorata leave amounting to Kshs.3,100/=.

2. David Ngigi Mugo

Mr. Ngigi was employed in June 2013 as a plant mechanic and left on 06/05/2016. He was paid all terminal benefits as shown here below:-

- Wages	-	20,223.00
- House Allowance	-	3,033.00
- Overtime	-	16,360.00
- Accrued leave	-	15,167.00
- Service gratuity	-	<u>20,972.00</u>
Total		<u>75,755.00</u>

Mr. Mugo was paid Kshs.75,800/= in full and final settlement.

3. Benson K. Mutua

Mr. Benson Mutua fought his supervisor and ran away. He did not go back to collect his dues.

4. Laban Kasievela

Has instituted private case in Bungoma Law Courts.

5. David Chomba

Mr. Chomba was employed in December 2013 as a plant mechanic and left in January 2015. He was paid all his terminal dues which constitute of wages for days worked Kshs.10,458/= and one month wage in lieu of notice Kshs.10,071/= all totalling to Kshs.20,500/=.

6. Leonard K. Chebusire

Mr. Chebusire was employed July 2013 as a welder earning Kshs.15,434/=. He was paid all terminal dues: -

- Wages	-	11,278.00
- House Allowance	-	1,692.00
- Overtime	-	4,656.00
- Accrued leave	-	13,356.00
- Service gratuity	-	<u>16,621.00</u>
Total		<u>47,603.00</u>

7. John Mukoma Andanje

Mr. Mukoma Andanje was employed in September 2012 as a welder and resigned on 5th December 2014. He was paid his terminal dues amounting to Kshs.37,800/=.

8. Esau Mugambi Mukhola

Mr. Esau Mukhola was employed as a mechanic in 2012 and left employment on 04/04/2016. He was paid his terminal dues in full as shown here below: -

- Wages	-	13,846.00
- House Allowance	-	2,077.00
- Overtime	-	11,041.00
- Leave	-	4,673.00
- Service gratuity	-	<u>29,077.00</u>
Total		<u>60,714.00</u>

9. Gabriel Wanjala Bunyira

Mr. Gabriel Wanjala was employed in December 2012 as a welder and left employment on 07/12/2016. He was paid the following as *terminal dues*: -

- Wages	-	7,312.00
- House Allowance	-	1,097.00
- Overtime	-	5,676.00
- Service gratuity	-	<u>29,249.00</u>
Total		<u>43,334.00</u>

10. Simon O. Marienga

Mr. Marienga was employed in November 2013 and resigned in December 2014. He was paid terminal dues amounting to Kshs.15,350/=.

11. Isaac Monos Muchewenge

Mr. Muchewenge was employed in September 2012 and deserted duty in June 2014 and he was eventually removed from the payroll.

12. Peter Kipkesho Murey

Mr. Murey was employed as a mechanic in September 2013 and left without informing anyone therefore was treated a deserter.

The following employees are still working–

1. Kevin Omondi Ongere
2. Moses W. Katami
3. Humphrey K. Chebuya
4. Stephen Simiyu
5. Kevin Shigoli Ngaira
6. David Kipketer Chepkwony
7. Hillary Birgen
8. Anthony Obindi Mudasia

9. Peter Naleso Azenga

10. Peter Kemboi

NOTES

Note I – Underpayment

The underpayments arrears as demanded by claimants is outrageous in the sense that the counsel calculated it basing on hourly rate which is not provided for in the Building and Construction Industry Wages Order. This order provides that employees in the category of drivers, artisans, general workers be paid on daily rate only. There is no provision for payment of wages on hourly rate.

Note II – Lost hours

Lost hours cannot be explained but it is assumed to be the overtime. This claim is not valid in the sense that all employees who worked extra hours were paid overtime and this can be validated through the records presented by the counsel to the court.

Note III – N.S.S.F AND N.H.I.F Refunds

N.S.S.F and N.H.I.F are statutory deductions which claimants cannot ask for refunds from employer. If the claimants have any sufficient reason to believe these deductions were not remitted then they can contact these organisations.

Note IV – House Allowance

This issue can be considered after verification of records. Where it is found that some of these claimants were not paid house allowance, then the claimants can claim for the same to a maximum of 12 months.”

The claimant’s counsel was directed to file written submissions as a basis for the preparation of judgment. In the submissions filed on behalf of the claimants on 19th May 2017, counsel for the claimants states that they were grossly underpaid in contravention of the Regulation of Wages (General) (Amendment) Order, 2013. It is further submitted that the claims are secured by an agreement reached between the respondent and its employees at Kitable-Webuye Road Project in a Return Work Formula executed on 13th September 2014 and witnessed by the County Labour Officer, Bungoma. It is submitted that under the agreement remuneration would be guided by column 4 of the Wages Order. It was further agreed that employees would be paid overtime promptly and house allowance as provided by law.

On overtime it is submitted that the employees worked for 12 hours daily from 7 a.m. to 7 p.m. thus putting in 14 hours of overtime daily that they worked for 7 days a week without a day off as provided in Section 27 of the Employment Act.

On the prayer for annual leave it is submitted that the claimants were neither allowed time to take their annual leave nor compensated for forfeiting the same.

The payers in respect of House Allowance, NSSF, NHIF deductions and PAYE were abandoned. The revised claims for each claimants is as summarised below –

1ST CLAIMANT – LEONARD KILWAKE CHEBUSIRE

Underpayments	Kshs.436,800/=
Lost hours	Kshs.336,000/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.814,800/=

2ND CLAIMANT – DAVID NGIGI MUGO

Underpayments	Kshs.412,800/=
Lost hours	Kshs.357,000/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.811,800/=

3RD CLAIMANT – ESAU MUGAMBI MUKHOLA

Underpayments	Kshs.594,000/=
Lost hours	Kshs.462,000/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.1,098,000/=

4TH CLAIMANT – LABAN KASIEVELA

Underpayments	Kshs.656,400/=
Lost hours	Kshs.525,000/=
Annual leave	<u>Kshs.84,000/=</u>
TOTAL	KSHS.1,265,400/=

5TH CLAIMANT – BENSON KITAVI MUTUA

Underpayments	Kshs.564,000/=
Lost hours	Kshs.441,000/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.1,047,000/=

6TH CLAIMANT – JOHN MUKOMA ANDANJE

Underpayments	Kshs.602,400/=
Lost hours	Kshs.588,000/=
Annual leave	<u>Kshs.84,000/=</u>
TOTAL	KSHS.1,274,440/=

7TH CLAIMANT – JOHN WANYONYI KHAMALA

Underpayments	Kshs.293,600/=
Lost hours	<u>Kshs.231,000/=</u>
TOTAL	KSHS.524,600/=

8TH CLAIMANT –KEVIN OMONDI ONGERE

Underpayments	Kshs.225,200/=
Lost hours	<u>Kshs.160,000/=</u>
TOTAL	KSHS.385,200/=

9TH CLAIMANT – PETER NALESO AZENGA

Underpayments	Kshs.318,000/=
Lost hours	Kshs.252,000/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.612,000/=

10TH CLAIMANT – JACOB W. WANYAMA

Underpayments	Kshs.180,000/=
Lost hours	<u>Kshs.126,000/=</u>
TOTAL	KSHS.346,920/=

11TH CLAIMANT – SIMON O. MARIENGA

Underpayments	Kshs.452,400/=
Lost hours	Kshs.273,000/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.767,400/=

12TH CLAIMANT – PETER KIPKESHO MOREY

Underpayments	Kshs.392,000/=
Lost hours	Kshs.294,000/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.728,000/=

13TH CLAIMANT – PETER KIPWAMBOK KEMBOI

Underpayments	Kshs.336,000/=
Lost hours/overtime	Kshs.252,000/=
Annual leave	<u>Kshs.42,000/=</u>
TOTAL	KSHS.630,000/=

14TH CLAIMANT – ANTHONY UBINDI MUDASIA

Underpayments	Kshs.282,000/=
Lost hours/overtime	Kshs.210,000/=
TOTAL	KSHS.492,000/=

15TH CLAIMANT – MOSES KATAMI

Underpayments	Kshs.252,000/=
Lost hours/overtime	<u>Kshs.189,000/=</u>
TOTAL	KSHS.441,000/=

16TH CLAIMANT – DAVID CHOMBA GATHONI

Underpayments	Kshs.336,000/=
Lost hours/overtime	Kshs.252,000/=
House Allowance	Kshs.75,600/=

Annual leave Kshs.42,000/=

TOTAL KSHS.630,000/=

17TH CLAIMANT – HUMPHREY K. CHEBUYA

Underpayments Kshs.134,400/=

Lost hours/overtime Kshs.84,000/=

TOTAL KSHS.218,400/=

18TH CLAIMANT – LAWRENCE EDWASI EKOMBE

Underpayments Kshs.753,200/=

Lost hours/overtime Kshs.462,000/=

Annual leave Kshs.84,000/=

Pay in lieu of notice Kshs.126,000/=

TOTAL KSHS.1,425,400/=

19TH CLAIMANT – STEPHEN SIMIYU

Underpayments Kshs.762,588/=

Lost hours/overtime Kshs.504,400/=

Annual leave Kshs.84,000/=

TOTAL KSHS.1, 350,988/=

20TH CLAIMANT – KEVIN SHIGOLI NGAYIRA

Underpayments Kshs.570,000/=

Lost hours/overtime Kshs.525,000/=

Annual leave Kshs.84,000/=

TOTAL KSHS.1,179,000/=

21ST CLAIMANT – DAVID KIPKETER CHEPKWONY

Underpayments Kshs.528,240/=

Lost hours/overtime Kshs.443,880/=

Annual leave Kshs.65,760/=

TOTAL KSHS.1,037,880/=

22ND CLAIMANT – ISAAC MANOS MUCHWENGE

Underpayments Kshs.626,400/=

Lost hours/overtime Kshs.609,000/=

Annual leave Kshs.42,000/=

TOTAL **KSHS.1,227,400/=**

23RD CLAIMANT – HILLARY BIRGENT

Underpayments Kshs.272,400/=

Lost hours Kshs.219,600/=

Annual leave Kshs.29,280/=

TOTAL **KSHS.521,280/=**

24TH CLAIMANT – GABRIEL WANJALA BUNYANYA

Underpayments Kshs.392,208/=

Lost hours Kshs.351,360/=

Annual leave Kshs.58,584/=

TOTAL **KSHS.802,152/=**

The claimants relied on the case of –

- 1. Evans Katiezo Aligulah -v- Eldomatt Wholesale and Supermarket Limited [2016] eKLR.**
- 2. John Rioba Maugo -v- Riley Falcon Security Services Limited [2016] eKLR.**
- 3. Kenya Guards and Allied Workers Union -v- Lavington Security Limited [2013] eKLR.**

Determination

I have carefully considered the pleadings, the documents filed therewith, the County Labour Officer's report and the submissions filed on behalf of the claimants. It is not in dispute that all the claimants worked for the respondent at one time or other.

The issues for determination are therefore whether or not the claimants were underpaid and if they are owed any underpayments, overtime and/or annual leave by the respondent.

1. Underpayments

In the claim it is stated that the claimants worked in different capacities as operators, mechanics, machine attendants, artisans, technicians and one as secretary. The County Labour Officer states that the claimants were engaged in the following capacities and were paid as set out in the table below–

	NAME	ID	TRADE	STARTED TIME	ENDED	BEFORE RATE	CURRENT RATE	STATUS
1.	Jacob Wanyama Wamalwa	3808267	Mechanic	05/2014	07/2015	400	13,580	
2.	Kevin Omondi Ongere	25532960	Mechanic	04/2014		520	13,580	Working
3.	David Ngigi Mugo	9026625	Plant Mechanic	06/2013		600	19,474	
4.	Benson Kitavi Mutua	23050393	Plant Mechanic	03/2013		520	13,000	Fought with

5.	David Chomba Gathoni	14569906	Plant Mechanic	12/2013	01/2015	480	10,071	
6.	Leonard Chebusire Kilwake	22442258	Welder	07/2013	06/2016	520	15,434	
7.	Moses W. Katami	11096062	Mechanic	01/2014		480	11,825.50	Working
8.	Peter Kipkesho Murey	28340248	Mechanic	09/2013		480	11,000	
9.	Humphrey K. Chebuya	28219376	Greaser	08/2014		320	9,679.05	Working
10.	Esau Mugambi Mukhola	14461114	Mechanic	12/2012	04/2014	640	15,434	
11.	Laban Kasievela	0845726	Mechanic	11/2012		640	15,434	
12.	Lawrence Edwasi Ekombe	11330115	Mechanic	09/2012		520	12,000	
13.	Stephen Simiyu	9685054	Carpenter	12/2012		480	10,000	Working
14.	Kevin Shigoli Ngayira	30942848	Excavator	12/2012		640	19,474	Working
15.	David Chepkwony Kipketer	8029503	Welder	09/2012		480	15,434	Working
16.	Hillary Birgen	74447488	Com Driver	08/2013		440	16,000	Working
17.	Gabriel Bunyanya Wanjala	10430549	Welder	12/2013		440	13,534	Working
18.	Anthony Ubindi Mudasia	12633181	Mechanic	12/2013		560	13,534	
19.	Isaac Manos Muchwenge			09/2012		640	19,474	
20.	John Mukoma Andanje	10920356	Welder	09/2012		640	15,300	Working
21.	John Wanyonyi Khamala	9043778	Plant Mechanic	12/2013		520	15,434	Working
22.	Peter Kipwambok Kemboi	24507369	Tyreman	11/2013		520	13,000	Working
23.	Peter Naleso Azenga	4161888	Driver	11/2013		520	13,000	Working
24.	Simon O. Marienga	10131507	Greaser	11/2013		320	6,500	

Based on the findings of the Labour Officer which are not contested in the claimant's written submissions, I find that what is recorded as "current pay" is not below the statutory minimum rate of pay relevant to the job in which each of the claimants was engaged.

It is pleaded in the claim that the respondent undertook to pay statutory minimum rates in the Return to Work Formula dated 13th September 2014 and the respondent appears to have complied.

I therefore find no proof of underpayments and dismiss the prayer.

2. Overtime/Lost Hours

The claimants allege that they worked 12 hours each day for 7 days without a break. I have checked the few time sheets that have been filed

in court together with the payslips. The hours worked are clearly recorded. The time sheets even recorded the hours worked as normal overtime paid at 1.5 hourly rates and overtime for public holidays and rest days paid at double (2 times) the normal hourly rates. The same is also reflected in the payslips. This means that all overtime worked was recorded and paid as is reflected in the time sheets and payslips.

The claim for overtime/lost hours accordingly fails and is dismissed.

3. Annual leave

The respondent did not deny that it did not pay the claimants annual leave. Section 28 of the Employment Act provides for payment of annual leave for any employee who has worked for a minimum of two months. None of the claimants worked for less than two months. Each of them is therefore entitled to annual leave at the rate of 1.75 days for each month worked.

The respondent is directed to compute and pay the claimants all leave due from date of recruitment to date of either leaving employment or to date of filing suit being December 2014.

Conclusion

In conclusion judgment is entered for the claimants against the respondent in respect of annual leave only, the claims for underpayments and lost hours/overtime having been dismissed for want of proof.

This will however apply only to those employees who had not left employment of the respondent at the time of preparation of the County Labour Officer's report. This exclude Jacob Wamalwa Wanyama, David Ngigi Mugo, Benison K. Mutua, Laban Kisiekela, David Choruba, Leonard K. Chebusire, John Mukoma Andanje, Esau Mugambi Mukhola, Gabriel Wanjala Bunyira, Simon O. Marienga, Isaac Monos Muchwenge and Peter Kipkesho Murey. All these claimants left the employment of the respondent and were paid full terminal dues as stated in the report of the County Labour Officer which has not been disputed in the respondent's submissions.

The respondent will pay costs of the suit on the lower scale as the bulk of the claim has been dismissed and also taking into account that the case was determined on pleadings and documents without calling evidence.

DATED AND SIGNED AT NAIROBI ON THIS 4TH DAY OF JUNE 2018

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 5TH DAY OF JULY 2018

MATHEWS NDERI NDUMA

JUDGE