



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 1848 OF 2013**

JOSEPH KAMAU MWANGI.....1<sup>ST</sup> CLAIMANT

NANCY WANJIKU KIMONDO.....2<sup>ND</sup> CLAIMANT

MERCY NJOKI CHEGE.....3<sup>RD</sup> CLAIMANT

HUMPHREY LISAMADI EGABA.....4<sup>TH</sup> CLAIMANT

JOB OMWANDO MOEGA.....5<sup>TH</sup> CLAIMANT

RONAH WAWIRA MURITHI.....6<sup>TH</sup> CLAIMANT

MAUREEN AMONDI OMUSI.....7<sup>TH</sup> CLAIMANT

PATRICIA KANINI MULLI.....8<sup>TH</sup> CLAIMANT

EMMA WANJIRU NDUNGU.....9<sup>TH</sup> CLAIMANT

JOSEPH MAINA KARANJA.....10<sup>TH</sup> CLAIMANT

DOUGLAS MURITHI NJERU.....11<sup>TH</sup> CLAIMANT

VS

CLUB CLICK CITY.....1<sup>ST</sup> RESPONDENT

JACKSON MAINA.....2<sup>ND</sup> RESPONDENT

JOHNNJUGUNA.....3<sup>RD</sup> RESPONDENT

GEORGE GITONGA.....4<sup>TH</sup> RESPONDENT

SAMMY GITONGA.....5<sup>TH</sup> RESPONDENT

**JUDGMENT**

**Introduction**

1. By a Memorandum of Claim dated 18<sup>th</sup> November 2013 and filed in court on 20<sup>th</sup> November 2013, the Claimants have sued the Respondents for unlawful termination of employment. Only the 3<sup>rd</sup> Respondent entered appearance and filed a Response. At the hearing, there was no representation for the Respondents. The 1<sup>st</sup> Claimant, Joseph KamauMwangi testified on his own behalf and on behalf of his co-claimants.

**The Claimants' Case**

2. The Claimants state that they were employed by the Respondents verbally as Head Cook, Security Bouncer, Waiters, Waitress and Hygiene from 1<sup>st</sup> July 2009 until 30<sup>th</sup> September 2013 when their employment was terminated verbally on account of redundancy.

3. The Claimants state that the Respondents failed to pay their salaries for the months of August and September 2013 after closing the business and declaring them redundant.

4. The Claimants' case is that the termination of their employment on account of redundancy without notice and without benefits was unlawful and unfair.

5. The Claimants claim the cumulative sum of Kshs. 2,977,879 made up of:

- a. 12 months' salary in compensation;
- b. 1 month's salary in lieu of notice;
- c. Prorata leave for 1 year;
- d. Severance pay for the years worked;
- e. Salary for August and September 2013;
- f. Salary underpayment for the years worked;
- g. House allowance.

6. The Claimants also ask for costs of the case.

### **The 3<sup>rd</sup> Respondent's Case**

7. In his Memorandum of Response dated 27<sup>th</sup> January 2013 and filed in court on 28<sup>th</sup> January 2013, the 3<sup>rd</sup> Respondent denies that he had employed any of the Claimants. He further denies terminating their employment or failing to pay their August and September 2013 salaries.

8. The 3<sup>rd</sup> Respondent therefore avers that he is a stranger to the Claimants' claims.

### **Findings and Determination**

9. In their Memorandum of Claim, the Claimants plead that they were employed by all the five Respondents. However, in his testimony before the Court, the 1<sup>st</sup> Claimant, Joseph Kamau Mwangi stated that they were employed by the 1<sup>st</sup> Respondent in which the 2<sup>nd</sup> – 5<sup>th</sup> Respondents were Directors. Mwangi further testified that by the time of filing suit, the 1<sup>st</sup> Respondent had closed down. They were therefore pursuing their claim against the Directors.

10. In his Memorandum of Response, the 3<sup>rd</sup> Respondent denied having an employment relationship with the Claimants.

11. The Claimants' did not produce any documentary evidence to confirm that the 2<sup>nd</sup> – 5<sup>th</sup> Respondents were indeed Directors of the 1<sup>st</sup> Respondent. The result is that the Claimants failed to establish an employment relationship between themselves and the Respondents.

12. The Claimants' claims are therefore without basis and are dismissed with no order for costs.

13. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 17<sup>TH</sup> DAY OF DECEMBER 2018**

**LINNET NDOLO**

**JUDGE**

**DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER 2018**

**MAUREEN ONYANGO**

**JUDGE**

Appearance:

Mr. Kandere for the Claimant

No appearance for the Respondents