REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.2465 OF 2012

1. GODFREY IKACHAI OJUMA

2. BENJAMIN MGANGA MWALUMA

3. PAPAPAI MOSES IKACHAI

4. FRANCIS MULI MUSILI

5. FRANCIS MUSYOKI MUTISO

6. ALLUVIN NJAGI DAVID

7. MARTIN MUTUVI

8. RAHAB WAITHERA KAMAU …….....CLAIMANTS

VERSUS

POLYSACK LIMITED …….....RESPONDENT

JUDGEMENT

1. The Claimants filed the Memorandum off Claim on 10th December, 2012 on the basis that they were all employed by the respondent, a private company operating business in Thika. On 1st August, 2013 the defence was filed. An Amended Memorandum of Claim dated 18th August, 2016 was filed but the Respondent did not reply thereto as directed on 3rd March, 2014. At the hearing, the 5th Claimant gave his evidence while the others opted not to call any evidence and rely on the Amended Memorandum of Claim and filed submissions.

Claim

2. The Claimants were employed by the Respondent on different dates and then unlawfully and wrongfully terminated from their employment with the Respondent on 9th August, 2012 as there was no notice, reasons or an opportunity given to them to know their case and give a defence. That the Respondent effected statutory deductions of PAYE and never remitted to the Kenya Revenue Authority (KRA).

3. The claim is also that they were locked out of the workplace without any due cause. While in employment they were underpaid contrary to Act No.12 of 2007 on the Minimum Wage Guidelines, no reasonable accommodation or allowances were given or paid and by the lock out, the Claimants were

denied their right to earn a living to retirement age of 60 years.

4. The Claimants are seeking;

a) Papai Ikachai Kshs.5, 796, 639.00;

b) Mganga Benjamin Kshs.5, 574,034.00;

c) Ikachai Ojuma Kshs.5, 180,307.00;

d) Francis Mutiso Kshs.5, 600,523.00;

e) Alluvin Njagi Kshs.5, 591,523.00;

f) Martin Mutuvia Kshs.5, 252,373.00;

g) Rehab waithera Kshs.4, 355,035.00; and

h) Francis Musilli Kshs.2, 276,905.00.

5. That the Respondent should be directed to refund all the deductions made in relation of PAYE in terms of section 19(6) of the Employment Act as these were not remitted to the KRA. No certificates of service were issued as required; the Respondent should be committed to jail for 2 years for failing to remit the statutory dues and to pay interest at 20% together with costs.

6. In evidence, the 5th claimant, Francis Musyoki Mutiso testified in support of his case that upon his employment by the Respondent in 1998 as a Tailor of polythene bags his salary was Kshs.2, 900.00 per month. This pay was increased over the years with the last salary being Kshs.9, 000.00 per month. He worked throughout without a break from Monday to Saturday and sometimes on Sunday when there was more work the employees were allocated in 3 shifts per day. All the Claimants herein were all employees of the Respondent but the 6th Claimant was located in the Printing department. All others carried similar duties.

7. The Claimants were paid 15% of their salary as house allowance.

8. On 8th August, 2012 all the Claimants were terminated through a lock out.

9. That the employees of the Respondent had complaints about poor work conditions and went on strike. All the employees were locked out and they opted to go to the Labour office. The labour officer invited the employees to pick on their representatives so as to negotiate on the grievances. Upon return to the place of work, the Claimants were locked out.

10. Mr Mutiso also testified that in defence, the respondent's case is that they deserted work but this was not the case. That he had worked for the Respondent for 14 years but was not unionised. When they had complaints, they all went to seek audience with the labour officer, Thika. When they came back to return to work, the Respondent had issued notice giving the shift details but the Claimants were locked out.

11. The Claimant is seeking notice pay; underpayments as his wage was supposed to be Kshs.11, 519.00 and was only paid Kshs.9, 000.00. The 15% house allowance paid was too low and should be enhanced. Leave travel allowance should be paid; certificate of service and costs.

12. The 5th Claimant withdrew his claim for general damages.

13. Upon cross-examination, the Claimant testified that while in the employment of the respondent, he signed contracts of employment at the end of each 3 months or 6 months. His last such contract was for

the period of 21st February, 2012 to 20th August, 2012. He signed the contract every time it was issued. In February 2012, the claimants' 3 months contracts ended at different times. That his last salary was Kshs.9, 046.00 with house allowance at 15%.

14. Mr Mutiso also testified that in August, 2012 there was a strike involving all employees of the Respondent and all proceeded to attend at the labour office while the Respondent locked its premises. Later some of his colleagues went back to work, some were taken back but the Claimants were locked out. That there was a notice at the gate on 9th August, 2012 directing employees on B and C shifts to report at their places of work at 3 and 11pm. That the Claimant shift was at 3pm but when he reported he was not allowed inside the gate. He only went back to ask for his salary.

15. That at the labour office, it had been agreed that no employee of the Respondent would be victimised due to the strike. Other employees resumed work but he was locked out. He was not pad for the days he had been at work – 9 days in August, 2012. The claim for underpayment was prepared for the Claimants by a labour consultant based on Wage Guidelines.

16. Mr. Mutiso also testified that upon being locked out, After one (1) month he went for his salary.

Defence

17. In defence, the Respondent admits that they had employed the Claimants but such has since ceased as they terminated their contracts. The Claimants remained On specific contracts of employment at all material times which were renewed from time to time as required in the Respondent business. The Claimants breached their contracts when they absconded duty effectively terminating their employment.

18. The claims set out by each Claimant are not due as no proof of the same exists in fact or in law.

19. On 8th August, 2012 all workers of the Respondent went on strike and in order to resolve the dispute the labour officer invited representatives from either side to negotiate. The need for job descriptions was addressed in terms of the applicable Wage Guidelines and the labour officer established that the Respondent had complied with the set Wage Guidelines at the time. A return-to-work-formula was therefore agreed upon for the employees who wished to be re-hired on the new terms and a notice to this effect was placed at the gate of the Respondent informing employees accordingly.

20. The Claimants were aware of the cessation of the strike but intentionally disobeyed the directive to resume work and proceeded to abscond duty without any lawful excuse and contrary to their contract of employment. The Claimants were paid their terminal dues.

21. The Respondent admits they deducted PAYE from each Claimant which was remitted to KRA. The Claimants were paid a consolidated salary inclusive of a house allowance a fact that was addressed in the return-to-work-formula with the labour officer, Thika. The Respondent paid fair wages based on Wage Guidelines per the Regulation of Wages Amendment General Order, 2012.

22. The claims made are not due as compensation is only due where an employer does not follow the wage guidelines which the Respondent did; notice pay is not due as the Claimants absconded work hence breaching their contracts of employment; leave traveling allowance was not payable to the Claimants as not agreed or due; no compensation arise as the Claimants were each on their own contract and there is no case of wrongful termination.

23. In evidence, the Respondent witness was Nicholas Maina, the human resource manager. That he kept all employment records of all employees and the Respondent followed the minimum wage guidelines from May 2011 to May 2012. The minimum wage payable was Kshs.9, 049.00 for a machine operator such as the 5th Claimant and Kshs.7, 960.00 for a general labourer. Each Claimant was on a fixed term contract f 6 months and was paid 15% house allowance. The contract in force at the time was ending on 20th August, 2012 but the Claimants worked until 9th August, 2012.

24. Mr Maina also testified that on 7th August, 2012 there was a strike where employees were demanding salary and house allowance increases and they proceeded to the labour office. On 9th August, 2012 the labour officer was able to arbitrate and a return to work agreement was achieved addressing the salary;

a) Housing;

b) Machine attendants defined;

c) Hours of work agreed;

d) Salary delay addressed;

e) Use of abusive language addressed; and

f) The question of a lunch break was addressed.

25. On the question of salary, it was agreed that the Respondent was paying in accordance with the Wage Guidelines and this would not change. It was also agreed that no employee would be victimised for taking industrial action. There were over 400 employees and all were to return without any victimisation. That the first shift 'A' was to resume work on 10th August, 2012; shift 'B' and 'C' to resume work at 3pm and 11pm on the 9th August, 202. The agreement was signed by employees' representatives, the Respondent officers and the labour officer.

26. No employee was stopped at the gate as the Respondent required labour after closing operation for 2 days. The Claimants must have reported late for their shift. When the Claimant failed to report back, they were paid their dues. All payable dues were subject to taxation. They deserted work without notice and therefore no pay is due. The certificates of service are awaiting collection.

27. Upon cross-examination, the witness testified that when the employees and the Respondent held a meeting with the labour officer, the same ended around 3pm o 9th August, 2012 and the those reporting to their 3pm shift were able to attend as the office and work place were a kilometre away. When the Claimants failed to report back to work, no notice was issued to them.

Submissions

28. The 1st, 2nd, 3rd, 4th, 6th, 7th Claimants submit that on their amended claim, there was no response by the Respondent and they seek reinstatement and in the alternative payment of compensation and damages for unlawful, procedural and wrongful termination of their employment. Those on 9th August, 2012 the Claimants were dismissed without notice or reasons and had never been given letters of employment, only pay slips were issued. The Claimants were locked out of their work place and despite an agreement with the labour officer that no employee would be victimised for engaging in a strike to demand poor work conditions be addressed, the Respondent went ahead and terminated the claimants. The Respondent witness was not able to explain the procedures adopted in employee resuming duty after the agreement was drawn with the labour officer. As such, the resulting dismissal was contrary to fair procedure, the law and the same amounted to unfair termination of employment.

29. That even in a case of summary dismissal, section 44(3) of the Employment Act apply where a notice is required setting out the reasons for dismissal. Where the Claimants were under a contract of employment section 55(1) (c) apply where notice was required or payment in lieu thereof. Upon termination of employment all terminal dues owing should be paid particularly the leave due in accordance with section 28 of the Employment Act.

30. As such, no sufficient reasons have been advanced by the Respondent for the dismissal of the Claimants in accordance with section 43(2), 45(5) and 49 of the employment Act which requires where there are no reasons for termination, the same is unfair and remedies sought are due. The Claimants rely

on the cases of **Frederick Were versus MK Jerrery's Hauliers, Cause No.1985 of 2012; Joseph Sitati Nato versus Kenya Ports Authority [2010] eKLR and UASU versus Masinde Muliro University, Cause No.379 of 2010.**

31. The 5th Claimant submit that there was no valid reason for the termination of the Claimant as both parties admit there was a strike which was resolved by the labour officer on 9th August, 2012 and an agreement to resume work signed. However, when the Claimant reported to work he was locked out. He was never allowed at work again. As such the averment and evidence that the Claimant deserted work was never proved.

32. That in the absence of proof of desertion, the burden is upon the Respondent to prove the reasons for dismissal which was not done. Section 45 of the Employment Act provides that an employer who has failed to prove the reasons for termination of employment the same be found unfair and the remedies due under section 49 become available to the employee.

33. The Claimant was underpaid in terms of the Wage Guidelines. The Respondent witness evidence that they applied the minimum wage order is not correct as the order made provision for Kshs.11, 519.00 whereas the Respondent paid Kshs.9, 046.00 which was less by Kshs.2, 470.00. The due underpayment for the 14 years worked in therefore Kshs.414, 960.00

34. Notice pay is due in a case of unfair termination of employment. The Claimant should be paid Kshs.21, 570.00. Leave travel allowance should be paid as claimed together with comps nation and a certificate of service be issued.

35. The Respondent submit that in defence, they raised objections on a point of law that each Claimant ought to have set out their case as each was under a contract of employment separate from the other. That in **John Maizi & 38 others versus Premier Bag and Cordage Limited, HCCC No.374 of 2000** the court held that where employees were employed on different dates and with different designations, on different salaries, and claims different, this meant the facts were different in each case and thus each had to testify.

36. The Respondent also submits that the Claimants filed an Amended Memorandum of Claim on 18th August, 2016 that is undated.

37. On the remedies sought, the Respondent submit that what is pleaded by the Claimants in the amended memorandum of claim is not due as held in **Maritim & another versus Anjere [1990-1994] EA 312,** that special damages must be pleaded and evidence called to that effect. As much as Rule 24 of the Industrial Court (Procedure) Rules [the Rules changed to the Employment and Labour Relations Court (Procedure) Rules, 2016] requires the court not to apply the Evidence Act, provisions of section 107 to 109 of the Evidence Act apply in this case. The burden of proof is upon the party alleging a violation of a right.

Determination

38. In submissions, the Respondent raised the objections set out in the defence which objections were gone into by the court on 12th May, 2016 with reference to the parties to Rule 9 of the Court Rules, since amended vide Employment and Labour Relations Court (Procedure) Rules, 2016 and published on 5th August, 2016.

39. The substance of Rule 9 which is similar to the amended Rules is that;

A suit may be instituted by one party on behalf of other parties with similar cause of action.

40. The only conditions are that the party filing such suit must have a written authority by the other Claimants similarly situate and in the claim, provide a schedule of claims made by each individual

claimant.

41. In this case, all the Claimants are party to these proceedings and do not require to issue authority to any of the Claimant for the purpose of Rule 9. However, in giving evidence, Rule 21 applies. The court by its own motion may allow or direct or with agreement of the parties have one Claimant proceed in a suit where there are several claims by way of calling evidence, by use of filed proceedings, affidavit, and documents or by filing written submissions. As such, where the court, in the interests of justice and pursuant to section 3 of the Employment and Labour Relations Court Act objectives finds it prudent to proceed as set out above, such directions are issued or allowed between the parties as appropriate.

42. The procedure of hearing adopted by the court before party's herein commenced hearing is therefore in accordance with the Rules of the Court. This position is further reaffirmed under Rule 25 of the Court Rules. Directions on the mode of hearing were not challenged. The finding thus of the court in **Cause No.644 of 2013, Aron Wekesa Wambulwa & 40 Others versus Morris & Company [2004] Limited** must be looked at in terms of the pleadings and directions given by the court before the commencement of the main hearing. The Rules of the Court particularly in addressing the natty gritty matters at the open court cannot all go into the statute. The Rules come to guide and give each patty a fair chance to address their case in the best way possible and in the context of section 20 Employment and Labour Relations Court Act, this court is mandated to proceed without undue regard to procedural technicalities and ensure substantive justice. This is reiterated under article 159 of the constitution. As such, where parties have taken appropriate directions before taking the first witness, in a claim where there are more than one claimant, rule 9 and 25 of the Court Rules becomes important to apply.

43. Where directions are issued by the court to call one witness to set out the Claimants case, where the employer as the Respondent requires the call of each individual Claimant to confirm their case and be cross-examined, such a right is available and has to be stated in advance. Therefore when the court gave directions herein on the mode of hearing, there being no objections, parties were at liberty to proceed.

44. I have gone through the amended memorandum of claim flled on 18th August, 2016. Indeed as submitted by the Respondent such is undated. That aside, the only amendments I find are with regard to change of the filing party. I cannot trace a claim for reinstatement or alternative remedies as set out in the submissions. The claims remain as in the original claim filed by the Claimants in person or through the labour consultant, a matter that the court has since addressed.

45. With regard to the respondent's application of the rules of evidence in accordance with sections 107 to 109 of the Evidence Act, such provisions are specifically ousted by the Employment and Labour Relations Court Act with regard to matters relating to employment and labour relations unless the same relate to criminal proceedings before he court. Section 20(1) of the Employment and Labour Relations Court Act provides;

> *(1) In any proceedings to which this Act applies, the Court shall act without undue regard to technicalities: Provided that the Court may inform it on any matter as it considers just and may take into account opinion evidence and such facts as it considers relevant and material to the proceedings.*

46. In this regard, questions of evidence and the burden of proof in employment and labour relations are regulated by stature – the Employment Act. The burden of providing that a termination of employment was justified is placed upon an employer by virtue of section 43 of the Act;

> *(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.*

47. Section 47(5) of the Employment Act goes further to set out that;

> *(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of*

proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

48. Therefore, the parameters within which the burden of proof in employment and labour relations disputes is to be understood lies within the Employment Act under sections 43 and 47 of the Employment Act. The application of the Evidence Act does serve.

49. On the substantive issues in the claims, section 10 of the Employment Act requires an employer to submit all work records when a claim such as this one has been filed. Section 10(6) and (7) provides;

(6) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.

(7) If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.

50. In this regard, the Respondent has submitted the employment contract of the Claimants under which they were last serving before termination of employment. The contracts are for 6 months ruling from 21st February, 2012 to 20th August, 2012. The 5th Claimant testified to these facts and noted that indeed his contract is annexure at page 15 of the defence dated 30th July, 2013.

51. On this admission, that there existed term contracts of 6 months prior to termination of employment, the Claimants were bound by the terms agreed upon and the last employment relationship was thus regulated within these fixed term contracts. This sorely because, the court will recognise a fixed term contract and the main document that regulates the employment relationship between an employer and employee. Such fixed term contract is lawful and cable of enforcement as held in **Samuel Chacha versus Kenya Medical Research Institute, Cause No.1901 of 2013. This position is further reiterated in Kennedy Ouru Okise v James Finlays (K) Limited [2016] eKLR** and on the finding that where there is a fixed term contract, the court will follow its terms unless there is evidence to the contrary.

52. In this case, I am satisfied that the Claimants enjoyed a fixed term contract that regulated their employment and the last such contract was for 6 months lapsing on 20th August, 2012. The last known lawful relationship between the parties was thus within this last contract of employment. The Claimants did not go into the previous contracts of employment and noting the nature of claims made particular the case of underpayments, on the basis that the Respondent submitted their last fixed term contracts, where there were other forms of employment prior, upon the gnat of time to amend pleadings, the Claimant should have taken the cue and acted accordingly.

52. The Claimants have set out a case that they were wrongfully and procedurally terminated from their employment with the respondent. That on this basis they should be pad underpayment, house allowance, damages, compilation, notice and costs.

53. To restate the relevant facts from the pleadings and the evidence of the 5th claimant, it is that on 8th August, 2012 all the employees of the Respondent went on strike due to poor work conditions. The employees proceeded to the labour office, thika where a meeting was held between some representatives of the employees, the Respondent and the labour officer. On 9th August, 2012 a return-to-work-formula was agreed upon and conditions were set out. Of importance in this regard was that all employees were to resume duty immediately and without victimisation. The employees who were shared in 3 shifts – A, B, and C – were to report on duty as follows;

a) A shift on 10th August, 2012;

b) B shrift on 9th August, 2012 at 3pm; and

c) C shift on 9th August, 2012 at 11pm.

54. That the meeting at the labour officer concluded on or around 3 pm. The office and the Respondent premises are about a kilometre away and the Claimants were to report in the B shift due at 3pm on 9th August, 2012.

55. The respondent's case is that the Claimants absconded duty while the claimants' case is that they were locked out when they reported to work. The Respondent has produced annexure page 20 to the defence, the Notice directing employees to report to work on 9th August, 2012 and noting that;

> *… Shift "B" and "C" should be at their designated work stations by 3pm and 11pm respectively, 9th August 2012.*
>
> *Kindly note the gate leading into the factory will be locked shortly after reporting time(s)*

56. The agreement drawn at the labour office, the return to work formula is attached at pages 18 and 19 of the defence. Of its terms at No.12 is an agreement that;

All workers should resume duties immediately.

57. I take it then, where the meeting ended at 3pm as confirmed by Mr Maina in his evidence for the respondent, and that the labour office is a kilometre from the Respondent premises, it was not humanly possible for the Claimants to walk the route and be at the gate and read the posted notice giving directions on their shifts. In any event, where the meeting ended at 3pm, for he notice to be at the gate at 3pm and require employees on "B" shift to be all at the gate to resume duty is highly impractical.

58. What is clear from the notice is that, the *gate leading into the factor will be locked shortly after reporting time.* This threat is confirmed by the 5th Claimant in his evidence when he testified that he proceeded at the work place from the labour office, he was let inside the main gate but could not be allowed thought he gate leading to his work station as it had been locked and the security officer directed not to allow him inside.

59. I find the evidence of the 5th Claimant in this regard credible and not challenged in any material way. The reason to support this finding is that even where the Claimants are alleged to have absconded duty, the circumstances prevailing at the time of the strike, the procession to the labour office and back to the work station must have taken time to get organised and be at the main gate to be allowed inside the work place. In any event, where the Claimants were under a fixed term contract and absconded duty, and where the Respondent had their details in terms of their contracts, reason demanded that they be summoned to attend work or be issued with notices terminating their employment for breaching their contracts by failing to attend duty. Section 44(3) and (4) allow and employer faced with an absent employee to summarily dismiss such an employee which right the Respondent did not deed it fit to exercise.

60. In the circumstances therefore, I find the Claimants were locked out of the work place on 9th August, 2012, such was contrary to fair labour practice; this was a spite against the return to work agreement just concluded on equal date and thus and unfair victimisation of the claimants.

61. Where an employer terminates the employment of an employee without reasonable cause where such employment if frustrated by an employer for no apparent reason; section 45 of the Employment Act declares the same to be unlawful. I therefore find no justifiable reason for the termination of the Claimants by a lock out and the same is procedurally unfair.

62. Before delving into the remedies available to the claimant, I also find that the Claimants are not without blame despite the conduct of the Respondent in locking them out. The 5th Claimant testified that when he reported back to work on 9th August, 2012 and found that he could not be allowed in, he went away and only came back after one (1) month to demand for his dues. Indeed such dues were paid. The

payment of these dues is apparent from the schedule of claims set out as there is no claim relating to the 8 days worked in August, 2012. This much was confirmed by the 5th Claimant in his sworn testimony. The other Claimants opted to file submissions but failed to go into this issue.

63. Therefore, in assessing the dues payable, section 45(5) (b) and (c) of the Employment Act on the conduct of the Claimants and the payment of the terminal dues by the Respondent will be put into account.

Remedies

64. As set out above, the issue of reinstatement only arose during submissions and was never pleaded and in any event, the amended claim was never signed though filed. Such will not be gone into.

65. On the finding that the Claimants were under a fixed term contract, on the lock out by the respondent, the breach is apparent as the contracts of employment were frustrated by the employer. In this regard, section 49(1) (b) apply;

> *(b) where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or*

66. The full term of the contracts become due as had he Claimant been allowed back at work without victimisation, they were ready to serve their contracts to term. For the 12 days of contracts not served, the due salary is payable.

67. Damages in employment and labour relations must be looked at in terms of remedies available under section 49 of the Employment Act. Where damages are sought, this must specifically be gone into and evidence called to this effect. In **JANE I KHALECHI v OXFORD UNIVERSITY PRESS E.A. LTD [2013] eKLR**

> *… Damages are punitive in nature and generally intended to teach the defendant that tort does not pay. They are awarded in addition to compensatory damages. However damages may not be awarded in actions for breach of contracts as was held in* ***Kenny-v-Preen [1962] 3 All ER 814, CA****.*

68. The 5th Claimant withdrew his claim for damages while the other Claimants did not go into this claim. No damages are payable.

69. The remedies available under section 49 of the Employment Act on the finding that an employee has been unfairly terminated can be granted singly or in multiple forms thus;

(1) Where … summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee <u>any or all of the following</u>— [emphasis added].

Under Section 49(1) of the Act, compensation to the Claimants is payable noting the unfair circumstances leading to the loss of employment. In this case, one month gross pay is appropriate.

70. On the claim for underpayments, as set out above, the last known lawful relationship between the parties relate to the fixed term contract that had a last date. With the payment for the duration due and not served, the terms of employment having been agreed upon. I find the claim for underpayment not justified. I have taken a look at the Wage Guidelines, 2012 applicable to the Claimants as Machine Operators and find he Respondent paid within the issued guidelines.

71. Notice pay is claimed under the provisions of section 35 of the Employment Act. On the fixed term contract that were due to lapse in 12 days, having been paid for the same, notice pay does not arise. The Claimants have in essence served their full term fixed contracts. On the finding that the Claimants were not without blame in their conduct and manner of dealing with their lock out, to pay for notice would be to credit such blame.

72. Claim for house allowance is declined on the reasons that The 5th Claimant testified that he was paid 15% as a house allowance. What is sought over and above this limit was not articulated. Where the same is premised on the rationale and claim for underpayment, such goes with the decline for the same.

73. Leave travelling allowance is not premised on any law, agreement or practice of the respondent. Such is declined.

73. On the claim for PAYE not remitted to the KRA, all statutory dues deducted in terms of PAYE are payable to the relevant statutory body and not to the claimants. The reliance on section 19 of the Employment Act does not aid the Claimants as PAYE deducted from their wages is a lawful deduction regulated by statute and payable to KRA. Where the employer fails to pay, which is not the case here as the Respondent submitted evidence to this fact of remittance; the Claimants can only seek service pay which was not part of the claims set out. This claim is declined.

In conclusion therefore, the Claimant are awarded pay for 12 days being the reminder term of their fixed term contracts ending 20th August, 2012;

(1) Papai Moses Ikachai awarded Kshs.2,999.00;

Compensation at Kshs.6, 999.00

(2) Benjamin Mganga awarded Kshs.3,166.40;

Compensation at Kshs.7,916.00

(3) Ikachai Goeorge Ojuma awarded Kshs.3,166.40;

Compensation at Kshs.7, 916.00;

(4) Francis Musyoki Mutiso awarded Kshs.3,619.60;

Compensation at Kshs.9, 049.00;

(5) Alluvin Njagi David awarded Kshs.4,267.20;

Compensation at Kshs.10, 668.00;

(6) Martin Mutuvi awarded Kshs.3,619.00;

Compensation at Kshs.9, 049.00

(7) Kamau Rahab waithera awarded Kshs.3,619.60;

Compensation at Kshs.9, 049.00; and

(8) Francis Muli Musili awarded Kshs.3, 619.60;

Compensation at Kshs.9, 049.00

The dues above will be paid with interest computed from 20th August, 2012 until paid in full;

Certificates of Service shall be issued unconditionally.

Costs awarded to the Claimants at 50%.

Orders accordingly.

Delivered in open court at Nairobi this 31st day of January, 2017.

M. MBARU

JUDGE

In the presence of:

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