



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 139 OF 2016**

**BETWEEN**

- 1. LEAH NGALA TEWA**
- 2. MARY MUNYAZI CHOGO**
- 3. NIGANDI JULIET ROBERT**
- 4. MASHAKA JOSPHINE JOHNSON**
- 5. FELIX BENJA MUMBA**
- 6. ORLIN MURIRA CHENGO**
- 7. ELVIS MWAMUMBA CHISIWA**
- 8. CHADI RANDU KOMBE**
- 9. MWINYI MWACHINGA BAYA**
- 10. MWATHETHE NGUA KALAMA**
- 11. HAPPY PINGANO CHENGO**
- 12. JACKSON RICO MWINYI**
- 13. BAYA FONDO NDAA**
- 14. DAVID CHIVATSI DZOMBO.....CLAIMANTS**

**VERSUS**

**ARM CEMENT LIMITED [FORMERLY ATHI TIVER MINING  
LIMITED].....RESPONDENT**

*Rika J*

**Court Assistant: Benjamin Kombe**

*No appearance for the Respondent*

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**JUDGMENT**

1. The 14 Claimants filed this Claim on 19<sup>th</sup> February 2016. They also filed their individual Witness Statements on the same date, alongside other documents, which include national Identity Cards and National Hospital Insurance Account Statements.

2. They state they were employed by the Respondent Cement Manufacturer as Quarry Workers. They were employed on diverse dates ranging between January 2000, and October 2009.

3. Their contracts were terminated by the Respondent on the same date, 13<sup>th</sup> March 2013. They allege termination was without notice and just cause. Natural justice and the protections guaranteed to them under Section 41, 43 and 45 of the Employment Act 2007, were denied to them. They each claim against the Respondent for:-

a) 1 month salary in lieu of notice.

b) Annual leave pay for the period served.

c) Service pay.

d) The equivalent of 12 months' salary in compensation for unfair termination.

4. The highest paid Claimant, at the time of termination, was Claimant Number 3, Nigandi Juliet Robert, who earned a salary of Kshs. 7,841. The lowest earner was Claimant Number 6, Orlin Murira Chengo, at Kshs. 4,368. Others earned various figures in between what was paid to these 2 Claimants.

5. The 14 Claimants pray for Judgment against the Respondent for a total amount of Kshs. 2,002,528, comprising terminal dues and compensation. Details for each Claimant are given under paragraph 6, of the Statement of Claim.

6. There is on record an Affidavit of Service, showing the Notice of Summons and the Statement of Claim were served upon the Respondent, on 18<sup>th</sup> February 2016. The Affidavit shows the Respondent receive Court Processes, signed and date stamped copies in acknowledgement, through its Human Resource Manager, at its Offices along Mazeras-Kaloleni Road. Hearing Notice was similarly served. There was nothing filed by the Respondent challenging the Claim. There was no attendance in Court by the Respondent, at any turn. The Claimants applied to the Court on 14<sup>th</sup> November 2016, and were allowed, to have the Claim considered and determined on the strength of the record. They confirmed the filing of their Closing Submissions in Court on the 1<sup>st</sup> December 2016.

**The Court Finds:-**

7. The Claimants have persuaded the Court, through their Pleadings, Documents, Witness Statements and Submissions that they were employed by the Respondent Company as Quarry Workers on the dates indicated in the Statement of Claim.

8. The N.H.I.F Member Data Summaries exhibited by the Claimants confirm they were Employees of the Respondent.

9. Their respective contracts were terminated by the Respondent on 13<sup>th</sup> March 2013. They have shown

termination was without notice and/or just cause. They were not told why the decision to terminate was made. They have shown termination was unfair as required under Section 47 of the Employment Act 2007.

10. The Respondent did not participate in the proceedings at all. The result is that the Respondent did not justify termination at all, as required under Section 47 of the Employment Act 2007.

11. The Claimants are granted the equivalent of 12 months' salary each, as detailed in the Claim.

12. The Court is persuaded, in the absence of employment records from the Employer, that the Claimants are owed terminal dues as pleaded.

IN SUM, IT IS ORDERED:-

***a) It is declared termination was unfair***

***b) The Respondent shall pay to the Claimants the total sum of Kshs. 2,002,528 as detailed at paragraph 6 of the Statement of Claim.***

***c) Certificates of Service to issue.***

***d) Interest granted on the amount above at 14% per annum from the date of termination, 13<sup>th</sup> March 2013, till payment is made in full.***

***e) Costs to the Claimants.***

Dated and delivered at Mombasa this 23<sup>rd</sup> day of June 2017

James Rika

Judge