



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 24 OF 2014

PETER CHEGE KANJA.....1ST CLAIMANT
EDWARD MWAURA..... 2ND CLAIMANT
SIMON NGUGI MBURU.....3RD CLAIMANT
SAMSON KAROKI NDUNG’U.....4TH CLAIMANT
PAUL NZIOKA NDALI..... 5TH CLAIMANT
PETER KARANJA KIMOTHO.....6TH CLAIMANT
JOSEPH KURIA MBURU.....7TH CLAIMANT

AND

CHINA WU-YI COMPANY LTD.....RESPONDENT

Claimant in person

Mr. Muindi for respondent

JUDGMENT

1. The seven claimants were employed by the respondent as heavy motor vehicle drivers while constructing the Thika Highway. The claimants were paid an hourly rate of Kshs.69. This was paid at the end of the month. The claimants were employed on diverse dates set out in the statement of claim.
2. The claimants separated with the respondent on different dates also set out in the statement of claim.
3. The claimants reported to work and were informed that construction work was over and that they should go to the office to be paid terminal benefits. They were not given letters of termination and were not paid notice pay.
4. The claimants allege that the termination was unlawful. They seek various reliefs including;
 - a. compensation for unlawful termination;

b. payment in lieu of notice;

c. underpayments as set out in Appendix 'A' to the claim. They claim they ought to have been paid Kshs.124.60 per hour with effect from January to April 2010, Kshs. 137.05 for May 2010 to May 2011, Kshs. 150 per hour from May 2011 to April 2012 and Kshs. 174.40 from May 2012 to September 2013.

5. They all got the same wages as heavy commercial vehicles drivers.

6. The claims are based on general wage Gazette notices for the respective period.

7. Peter Chege Kanja testified on behalf of all the claimants. He conceded that construction of Thika Super Highway, ended in 2012. That at the time their employment was terminated, only maintenance work remained.

8. CW1 also conceded that they agreed to work at Kshs.69 per hour although they knew it was below the minimum wage for heavy commercial drivers.

9. CW1 denied that they worked in Machakos insisting that Thika Road where they worked is in Nairobi for purposes of minimum wage. It is the respondent's office which was at Machakos, near the Airport.

10. They drove two (2) axle tipper which were heavy commercial vehicles.

11. The claim is opposed and RW1, Martin Mugambi testified on behalf of the respondent. RW1 worked in the Human Resource Department. He told the court that the claimants worked as heavy commercial drivers on the Thika Super Highway. They worked under contract. The Road was complete in September 2012 and was handed over to Government. The vehicles were returned to China. The claimant's employment was terminated at the end of works. There was no more work to be done.

12. RW1 told the court that the wage for the claimant was agreed upon and not in terms of minimum statutory wage order for Nairobi. That the claimants accepted the same and did not complain until they left. The respondent prays that the suit be dismissed with costs.

Determination

13. The issues for determination are;

i. whether the termination of employment of the claimants was lawful;

ii. whether the claimants were underpaid;

iii. what remedies, if any the claimants are entitled to.

Issue i

14. The first claimant testified on behalf of all the claimants and all of them filed written statements in support of their case.

15. The claimants admit that the Thika Super Highway was completed and this was the reason why their employment came to an end.

16. This testimony by the claimants coupled with the testimony by the RW1 leads the court to the inescapable conclusion that the employment of the claimants came to an end lawfully, as is the practice in the construction industry upon completion of works. The claimants were aware of this eventuality when they were employed by the respondent and cannot be heard to complain in this regard.

Issue ii

17. With regard to the issue of underpayments the respondent via RW1 admitted that the hourly wages paid to the claimants were below those provided under legal notices No. 70/2009, 98/2000, 98/2010, 64/2011, 171/2012, 179/2013 on regulation of wages (General amendments) orders of 2009, 2010, 2011, 2012 and 2013 respectively.

18. It is not in dispute that the claimants were for the entire period of their employment with the respondent paid an hourly rate of Kshs. 69.21. This was below the minimum wage payable in terms of the aforesaid Regulations for heavy commercial vehicles.

19. Accordingly, the court finds that the claimants were underpaid throughout their employment period and enters judgment in their favour as claimed.

Notice pay

20. The claimants lost their employment on account of completion of works. They were entitled to one month notice or payment in lieu of one month notice.

21. The court awards the claimants accordingly.

22. In the final analysis the court enters judgment in favour of the claimants as against the respondent as follows;

A.

1st claimant

Peter Chege Kanja

i. Underpayment Kshs.	-	851,885.10
ii. Notice pay	-	36,275.20
Total Kshs.	-	888,160.30

2nd claimant

Edward Mwaura Karanja

i. Underpayment Kshs.	-	956,023.20
ii. Notice pay	-	36,275.20
Total Kshs.	-	992,298.40

3rd claimant

Simon Ngugi Mburu

i. Underpayment Kshs.	-	868,319.10
ii. Notice pay Kshs.	-	36,275.20
Total Kshs.	-	904,594.30

4th claimant

Samson Karoki ndung'u

i. Underpayment Kshs.	-	1,159,537.50
ii. Notice pay Kshs.	-	36,275.20
Total Kshs.	-	1,195,812.70

5th claimant

Paul Nzioki Ndali

i. Under payment Kshs.	-	1,276,231.10
ii. Notice pay Kshs.	-	41,350.00
Total Kshs.	-	1,317,581.10

6th claimant

Peter Karanja Kimotho

i. Underpayment Kshs.	-	907,813.50
ii. Notice pay Kshs.	-	41,350.00
Total Kshs.	-	949,163.50

7th claimant

Joseph Kuria Mburu

i. Underpayment Kshs.	-	1,187,036.40
ii. Notice pay Kshs.	-	41,350.00
Total Kshs.	-	1,228,386.40

B.

i. The award is payable with interest at court rates from date of filing suit till payment in full.

ii. Costs to follow the outcome.

Dated and delivered at Nairobi this 28th day of July, 2017.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE