



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2019 OF 2011**  
**KENYA UNION OF DOMESTIC, HOTELS, EDUCATION INSTITUTIONS**  
**HOSPITALS AND ALLIED WORKERS KUDHEIHA.....CLAIMANT**  
**VERSUS**  
**BOARD OF GOVERNORS WANGUNYU HIGH SCHOOL...RESPONDENT**  
**Mr. Walter Siembo for claimant**

**JUDGMENT**

1. The suit was filed on 30<sup>th</sup> October 2011 by a memorandum of claim by the claimant on behalf of the four grievants Paul Kanyoro, a cook; Antony Thairu, gatekeeper; Michael Mutua Matheka and John Jaaga, Lab assistant.
2. On 4<sup>th</sup> December 2009, the four grievants were given a letter of termination for refusing to sign a contract. This was said to be insubordination and they were all sent home.
3. They had served six (6) months probation and expected to be confirmed in their positions.
4. The grievants were not registered with NSSF and seek payment of gratuity for the period served.
5. They also claim payment of arrear salary in respect of underpayments contrary to the general wage order for the period they served.
6. They also seek payment in lieu of notice and compensation for unlawful termination of employment.
7. This respondent did not file a memorandum of response to the claim.
8. The claims remain uncontroverted therefore.
9. Mr. John Jaaga Chege testified under oath in support of the claims for the four grievants.
10. The court finds that the claims for payment of terminal benefits have been proved on a balance of probability and enters judgment in favour of the grievants as prayed except that the award in lieu of notice is limited to the statutory one month.

11. With regard to the claim for compensation in terms of section 49 (1) (c) of the Employment Act, 2007, claimant has established on a balance of probability that the grievants were wrongly and unfairly terminated from employment for refusing to sign short term contracts.

12. This was not a valid reason to terminate their employment. The termination did not follow a fair procedure also. The termination violated sections 41, 43 and 45 of the Employment Act, 2007.

13. Paul Kanyoro had served one year and the court awards him one (1) month's salary as compensation. Michael Mutua Matheka had served one year and the court awards him one month's salary as compensation. Antony Thairu Kamau had served three years and the court awards him three (3) months salary as compensation.

14. John Jaaga Chege had served one year and the court awards him one month's salary compensation.

15. In granting the compensation, the court has considered that the four lost their job under similar circumstances and were not paid any terminal benefits. They suffered loss and damage pursuant to the loss of job. They intended to continue working but the employment was prematurely curtailed to their loss and detriment. The court has also considered their period of service.

16. In the final analysis judgment is entered in favour of the claimants as follows;

(i) Michael Mutua Matheka - Kshs.58,959

(ii) John Jaaga Chege - Kshs.64,399

(iii) Antony Thairu Kamau - Kshs.77,108

(iv) Paul Kanyoro - Kshs.58,959

Total award - Kshs.259,425

(v) Interest at court rates from date of filing suit till payment in full except award of compensation in respect of which interest is from date of judgment.

(vi) Costs to follow the outcome.

**Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of September 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**