



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 96 OF 2014**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 10<sup>th</sup> February 2016)**

**MRS. PAULINA THAMBI MUNYEKE .....1<sup>ST</sup> CLAIMANT**

**MRS. CELINA KALAYU THAME.....2<sup>ND</sup> CLAIMANT**

**MRS. NJERI MBUTHA KAGAME.....3<sup>RD</sup> CLAIMANT**

**MRS. MONICA WANJA GATHERU .....3<sup>RD</sup> CLAIMANT**

**MRS. HANNAH WANJIRU KAMAU .....4<sup>TH</sup> CLAIMANT**

**MRS. HANNAH WANJIRU BURIA .....5<sup>TH</sup> CLAIMANT**

**MRS. HANNAH WANJUIKU MUIRURI .....6<sup>TH</sup> CLAIMANT**

**VERSUS**

**M/S BARUA ESTATE LIMITED .....RESPONDENT**

**JUDGMENT OF THE COURT**

1. The Claimants filed their Memorandum of Claim on 29.01.2014, seeking damages for unlawful termination. The Claimants state that on or about July 1979, August 1990, July 1992, August 1992, March 2002 and March 2003, the Respondent employed the Claimants at a salary daily rate of Shs. 80/= per day which later increased to Shs. 120/= per day paid monthly.

**CLAIM OF PAULINA THAMBI MUNYEKE**

She states that she was employed in July 1979 as a general labourer at a rate of Shs. 80/= per day upto January 2003 when the daily rate increased to Shs. 120 per day which she continued to receive until 10<sup>th</sup> October, 2012. The Claimant states that her services were unfairly terminated when she asked for salary increment and claims as follows:

- a. *Total of wage underpayments* - *Shs. 343,077.60*
- b. *4 months notice @ 379/30 per day* - *Shs. 45,516.00*
- c. *Annual leave for 35 years 3 months*

*At 27 days a year or pro –rata leave at*

**3 days a month (954 days) @ Shs.**

**379/20 per day - Shs. 361,852.20**

**d. Public holidays for 35 years (385 days)- Shs. 146,030.50**

**e. Weekly resting days for 35 years**

**(1680 days) - Shs. 637,224.00**

**f. 12 months salary compensation @**

**Shs. 379/30 per day - Shs. 138,444.50**

**SUB-TOTAL - Shs. 1,672,144.80**

**LESS AMOUNT PAID - Shs. 42,857.70**

**BALANCE CLAIMED - Shs. 1,629,287.70**

**CLAIM OF MRS CELINA KALAYU THOME**

The Claimant stated that she was employed in August 1990 and was being paid Shs. 80/= per day upto 1.05.2003 when the daily rate increased to Shs. 120 per day which she continued to receive until 10<sup>th</sup> October, 2012 when she was unfairly terminated. The Claimant states that her services were unfairly terminated when she asked for salary increment and claims as follows:

**a. Total of wage underpayments - Shs. 343,077.60**

**b. 4 months notice @ 379/30 per day- Shs. 45,516.00**

**c. Annual leave for 22 years 2 months**

**(600 days) @ Shs.379/20 per day - Shs. 227,580.00**

**d. Public holidays for 22 years 2 months**

**(341 days) - Shs. 129,341.30**

**e. Weekly resting days for 22 years 2**

**months (1064 days) @ Shs. 379/30-Shs. 403,575.00**

**f. 12 months salary compensation @**

**Shs. 379/30 per day - Shs. 138,444.50**

**SUB-TOTAL - Shs. 1,287,534.40**

**LESS AMOUNT PAID - Shs. 42,857.70**

**BALANCE CLAIMED - Shs. 1,244,677.30**

**CLAIM OF MRS NJERI MBUTHIA KAGAME**

The Claimant stated that she was employed in July 1992 and was being paid Shs. 80/= per day upto 1.05.2003 when the daily rate increased to Shs. 120 per day which she continued to receive until 10<sup>th</sup> October, 2012 when she was unfairly terminated. The Claimant states that her services were unfairly

terminated when she asked for salary increment and claims as follows:

a. *Total of wage underpayments* - *Shs. 343,077.60*

b. *3 months' salary in lieu of notice @ 379/30*

*per day* - *Shs. 110,376.30*

c. *Annual leave for 20 years 3 months*

*(549 days) @ Shs.379/30 per day* - *Shs. 208,235.70*

d. *Public holidays for 20 years (220 days) -Shs. 83,446.00*

e. *Weekly resting days for 20 years*

*3 months (972 days)* - *Shs. 368,679.60*

f. *12 months salary compensation @*

*Shs. 379/30 per day* - *Shs. 138,444.50*

**SUB-TOTAL** - **Shs. 1,252,259.70**

**LESS AMOUNT PAID** - **Shs. 42,857.10**

**BALANCE CLAIMED** - **Shs. 1,209,402.60**

#### **CLAIM OF MRS. MONICA WANJA GACHERU**

The Claimant states that she was employed in July 1992 and was being paid Shs. 80/= per day upto 1.05.2003 when the daily rate increased to Shs. 120 per day which she continued to receive until 10<sup>th</sup> October, 2012 when she was unfairly terminated. The Claimant states that her services were unfairly terminated when she asked for salary increment and claims as follows:

a. *Total of wage underpayments* - *Shs. 343,077.60*

b. *3 months' salary in lieu of notice @ 379/30*

*per day* - *Shs. 110,376.30*

c. *Annual leave for 20 years 3 months*

*(549 days) @ Shs.379/30 per day* - *Shs. 208,235.70*

d. *Public holidays for 20 years (220 days)- Shs. 83,446.00*

e. *Weekly resting days for 20 years*

*3 months (972 days)* - *Shs. 368,679.60*

f. *12 months salary compensation @*

*Shs. 379/30 per day* - *Shs. 138,444.50*

**SUB-TOTAL** - **Shs. 1,252,259.70**

**LESS AMOUNT PAID** - **Shs. 42,857.10**

**BALANCE CLAIMED** - **Shs. 1,209,402.60**

### **CLAIM OF MRS. HANNAH WANJIRU KAMAU**

The Claimant states that she was employed in August 1992 and was being paid Shs. 80/= per day upto 1.05.2003 when the daily rate increased to Shs. 120 per day which she continued to receive until 10<sup>th</sup> October, 2012 when she was unfairly terminated. The Claimant states that her services were unfairly terminated when she asked for salary increment and claims as follows:

- a. **Total of wage underpayments** - **Shs. 343,077.60**  
b. **4 months' salary in lieu of notice**

**@ 379/30 per day** - **Shs. 45,516.00**

- c. **Annual leave for 20 years 2 months**

**(546 days) @ Shs.379/30 per day** - **Shs. 207,097.80**

- d. **Public holidays for 20 years (220 days)** - **Shs. 83,446.00**

- e. **Weekly resting days for 20 years**

**2 months (968 days)** - **Shs. 367,162.40**

- f. **12 months salary compensation @**

**Shs. 379/30 per day** - **Shs. 138,444.50**

**SUB-TOTAL** - **Shs. 1,184,74.10**

**LESS AMOUNT PAID** - **Shs. 42,857.10**

**BALANCE CLAIMED** - **Shs. 1,141,887.00**

### **CLAIM OF MRS. HANNAH WANJIRU BURIA**

The Claimant states that she was employed in March 2002 and was being paid Shs. 100/= per day upto 1.05.2003 when the daily rate increased to Shs. 120 per day which she continued to receive until 10<sup>th</sup> October, 2012 when she was unfairly terminated. The Claimant states that her services were unfairly terminated when she asked for salary increment and claims as follows:

- a. **Total of wage underpayments** - **Shs. 343,077.60**

- b. **3 months' salary in lieu of notice @ 379/30**

**per day** - **Shs. 34,137.00**

- c. **Annual leave for 10 years 7 months**

**(291 days) @ Shs.379/30 per day** - **Shs. 110,376.30**

- d. **Public holidays for 10 years 7 months**

**(115 days)** - **Shs. 43,610.50**

- e. **Weekly resting days for 10 years**

**7 months (508 days)** - **Shs. 192,684.40**

f. *12 months salary compensation @*

<i>Shs. 379/30 per day</i>	-	<i>Shs. 138,444.50</i>
<b>SUB-TOTAL</b>	-	<b>Shs. 862,338.80</b>
<b>LESS AMOUNT PAID</b>	-	<b>Shs. 42,857.10</b>
<b>BALANCE CLAIMED</b>	-	<b>Shs. 819,481.70</b>

**CLAIM OF HANNAH WANJIKU MUIRURI**

The Claimant states that she was employed on 16<sup>th</sup> March 2003 and was being paid Shs. 120/= per day upto 10<sup>th</sup> October, 2012 when she was unfairly terminated. The Claimant states that her services were unfairly terminated when she asked for salary increment and claims as follows:

- a. *Total of wage underpayments* - *Shs. 343,077.60*  
b. *3 months' salary in lieu of notice @ 379/30*

*per day* - *Shs. 34,137.00*

- c. *Annual leave for 9 years 6 months*

*(247.5 days) @ Shs.379/30 per day* - *Shs. 93,876.75*

- d. *Public holidays for 9 years 6 months*

*(98 days) @ Shs. 379/30* - *Shs. 37,171.40*

- e. *Weekly resting days for 9 years*

*6 months (456 days) @ Shs. 379/30* - *Shs. 172,960.80*

- f. *12 months salary compensation @*

<i>Shs. 379/30 per day</i>	-	<i>Shs. 138,444.50</i>
<b>SUB-TOTAL</b>	-	<b>Shs. 819,667.85</b>
<b>LESS AMOUNT PAID</b>	-	<b>Shs. 42,857.10</b>
<b>BALANCE CLAIMED</b>	-	<b>Shs. 776,810.75</b>

2. The Claimants further state that there was a written agreement with the Respondent's agent known as Mr. Anthony Gacheru dated 27.06.2013, that the amount should be paid as agreed mutually between the parties as indicated in Appendix v of the documents filed in Court but the management violated the agreement after paying Shs. 300,000.00 prompting the Claimants to file the instant suit in Court.

3. The Claimants therefore pray for:

- a. *A sum of Kenya Shillings Eight Million and Thirty Thousand Nine Hundred and Forty Nine and Sixty Cents (Shs. 8,030,949.60) only as contained in the Memorandum of Claim.*

- b. *Cost of action.*

c. ***Interest at Court's rate.***

d. ***Any other relief the Court may deem fit to grant.***

4. In the Claimants' submissions, they state that their entire claims are based on underpaid wages against relevant legal notices, compensation for unfair termination, public holidays worked and not paid and annual leave not paid. The Claimants also state that the respondent did not adhere to the Collective Bargaining agreements which were in place.
5. The Claimants further submit that at termination the Respondent did not accord the claimants any opportunity to be heard and did not give any reasons for their dismissal. The Claimants pray for the Claim to be allowed as drawn.
6. The Respondents were served with Memorandum of Claim and summons in this case on 4/2/2014. They never entered any appearance and neither did they file any defence on time, they were also served with mention notices and hearing notices but they never appeared. This case therefore proceeded exparte.
7. The claimants established that they worked for Respondent though no appointment letters were issued. The terms of engagement are also not clear.
8. From the evidence submitted by the Claimants, they were being paid 120/= daily from 2003 to October 2012.

From May 2003 the daily rate was 172.70/=.

In 2004, the rate increased to 191.70/=.

In 2005, the rate was 205.10/=.

In 2006, the rate rose to 229.70/=.

In 2009, the rate moved to 271.05/=

In 2010, it was 298.15/=.

In 2011, it rose to 335.40/= and

In 2012, the daily rate became 379.30/=.

9. The payments are as per the various wages order gazette over the said period. It is clear that the Claimants were therefore underpaid as they have submitted.
10. During the said period, it is not clear whether they proceeded for leave or not or whether they worked during public holidays as the muster rolls were not part of the Court's proceedings.
11. I however find that the Claimants having served the Respondent all the period they worked, they ceased to be casual laborers and should have been considered permanent employees for purposes of calculating their terminal dues and even in the way they were dismissed.
12. I therefore find for each of the Claimants and enter judgment for each as follows:

1. ***Salary underpayments = 343,077.40/=***

2. ***1 months salary in lieu of notice = 11,379/=***

3. ***12 months salary as compensation for unlawful termination = 11,379 x 12 = 136,548/=***

**TOTAL FOR EACH = 491,004/=**

4. *For all the Claimants = 491,004 x 7 = 3,437,028/=*

5. *Plus costs of this suit.*

Read in open Court this 10<sup>th</sup> day of February, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Claimants – Absent

No appearance for Respondent – Absent