

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 247 OF 2014

BETWEEN

1. OSCAR MURIMA TSUMA

2. JULIUS CHIRUNGA MAUNDU CLAIMANTS

VERSUS

M.A. JAGANI AUCTIONEERS.....RESPONDENT

RULING

1. The Claimants filed their Amended Statement of Claim on 13th November 2014. They are seeking certain amounts of money from the Respondent, alleged to be underpayment of wages, going back 1997 to-date. They also seek compensation for work done on rest days.

2. Parties are still in an active employment relationship. They were referred for conciliation before the County Labour Officer by the Court, on 27th July 2015. They were not able to agree. The Conciliator in his Report filed in Court on 25th September 2015, basically found the Claimants were engaged on piece rate work; they had refused to avail their identity cards to the Respondent in order to be formally engaged; and did not wish to negotiate settlement any less than the amounts they are pursuing in Court.

3. The Respondent urges the Court to adopt the Conciliator's Report, and dismiss the Claim. The Claimants charge the Conciliator was not impartial, and wish to continue with the Court Proceedings, in disregard of the Conciliator's Findings.

4. The Court is of the view that the Claimants should be allowed the opportunity to state their case in Court, and persuade the Court why the Conciliator's Report is faulty and inconclusive. They must not be made to feel they came to Court, and were not given the full opportunity to be heard. The Claim for underpayment of wages is based on specific Wage Orders applicable in different years. It is necessary for the Court to have evidence from the Parties on the nature of their engagement, and evidence on the applicable Wage Orders, before giving a final determination.

IT IS ORDERED:-

- a. *The Claimant's shall continue with their evidence from the point at which proceedings were stayed pending conciliation.*
- b. *Costs in the cause.*

Dated and delivered at Mombasa this 11th day of March, 2016

James Rika

Judge