



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 850 OF 2010**

**RAHAB NJOKI & 10 OTHERS.....CLAIMANT**

**VERSUS**

**MUNICIPAL COUNCIL OF RUIRU.....RESPONDENT**

**JUDGMENT**

1. This suit has a chequered history having been heard on the claimant's side by Hon. Justice Radido and concluded on 23<sup>rd</sup> October, 2012 and the defence hearing proceeded and concluded before me on 2<sup>nd</sup> December, 2012. Inevitably there could be lapses and omissions in considering this judgment but I will endeavour my best to apprehend the facts which to me do not seem complicated.
2. The claimants herein aver that they were employees of the respondents ranging from two to twelve years of service. They state they were casual employees paid on a daily rate of Kshs.229.70 but payable weekly. They claim their services were terminated on or around 26<sup>th</sup> April, 2010 under circumstances they considered illegal and unlawful and without giving them the requisite notice.
3. The claimants further aver that due to the longevity of their service to the respondent they ought to be treated as permanent employees by dint of section 37 of the employment Act.
4. The respondent on its part avers that the claimants were merely casual labourers hired on daily basis and when work was available.
5. From the evidence of Ms. Njoki who testified on behalf of the rest and the testimony of Mr. Nyanjui for the respondent coupled with the pleading and submissions by Counsel in this matter, it would seem the only question to resolve is whether the claimants worked for the respondent for an aggregate period exceeding one month to benefit from the provisions of section 37 of the Employment Act. To this end the claimants have annexed what they considered were copies of muster roll as well as casual wage sheets showing their names and durations they worked.
6. Whereas the respondent disputes the authenticity of these documents, through the testimony of Mr. Nyanjui, no response or reaction to them was made earlier when they were filed as part of the pleadings in the matter. No response to the amended memorandum of claim was filed. The Court is therefore reasonably persuaded that on a balance of probability they exhibit the facts that the claimants were in continuous engagement of the respondent for a period exceeding one month

hence qualify to benefit from the provisions of section 37 of the employment Act.

7. Section 37 of the Employment Act provides that when a casual employee works for a period or a number of continuous working days which amount in aggregate to the equivalent of not less than one month, the contract service of the casual employee shall be one where wages are paid monthly and section 35 (1) (c) of the Act shall apply to that contract of service.

8. Section 35 (1) (c) requires that where the contract is to pay wages or salary periodically at intervals of or exceeding one month, that contract is terminable by either party at the end of the period of 28 days next following the giving of notice in writing. Under subsection (5) of the same section; an employee whose contract of service has been terminated under subsection (1) (c) shall be entitled to service pay for every year worked. The terms of which shall be fixed.

9. The claimants having been in regular engagement of the respondent for periods ranging from two to twelve years shall benefit from these provisions.

10. The Court therefore orders as follows in respect of each claimant.

**Kshs.**

**(a) One month's salary in lieu of notice at the rate of Kshs.229.70 x 30.....6,891.00**

**(b) Service pay at the rate of 15 days' pay for each complete year of service subject to a maximum of 3 years.**

**(c) Costs of the suit.**

11. The parties shall liaise with the Registrar of the Court for purposes of computation of the service pay under (b) above.

12. It is so ordered.

Dated at Nairobi this 7<sup>th</sup> day of May 2015

Abuodha J. N.

Judge

Delivered this 7<sup>th</sup> day of May 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge