



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

Cause No. 1241 Of 2011

(Before Hon. Justice Hellen S. Wasilwa On 13th July, 2015)

- SOPHIA KERRE1ST CLAIMANT**
- MARION KARUIRU.....2ND CLAIMANT**
- JANE MULEKYE USWII3RD CLAIMANT**
- ANNE JEPKORIOR KOTUT4TH CLAIMANT**
- EUDIAH CHERUIYOT5TH CLAIMANT**
- MARTIN OGOLLA ADADA.....6TH CLAIMANT**
- ZACHARY KIRORI7TH CLAIMANT**
- MOSES OTIENO ODONGO8TH CLAIMANT**
- EVERLYNE AKOTH9TH CLAIMANT**
- EVERLYNE ATIENO ODENY10TH CLAIMANT**
- OSCAR IVALI11TH CLAIMANT**

VERSUS

AUGUSTANA COLLEGE LIMITEDRESPONDENT

JUDGMENT OF THE COURT

1. The Claimants herein filed their Memorandum of Claim on 25/7/2011 through the firm of K. A. Nyachoti & Company Advocates. The issue in dispute is termination of the Claimants’ services and failure to pay their terminal benefits.
2. It is the Claimants’ case that they all worked for the Respondent in different capacities and having been employed at different times as per their letter of contract as follows:
 1. *1st Claimant – Sophia Kerre – employed on 3/1/1996 as a Secretary earning a salary of 46,800/= gross as at February 2012.*

2. *2nd Claimant – Marion Karuiru - employed on 28/2/2010 earning a salary of 39,000/= gross.*
3. *3rd Claimant – Jane Mulekye Uswii – employed on 27/1/2000 as a Secretary and last pay being 33,000/= gross on 31/11/2009.*
4. *4th Claimant – Anne Jepkorior Kotut earning 43,230 as at 31/3/2010.*
5. *5th Claimant – Eudiah Cheruiyot – employed on 8/5/2000 as a Service Library Assistant and earning 34,900/= as at 31/01/2010.*
6. *6th Claimant – Martin Ogolla Adada – employed on 1/9/2005 as a Lecturer in Information Technology and earning Kshs.55,100/= gross as at 31/3/2010.*
7. *7th Claimant – Zachary Kirori earning 98,300/= gross as at 31/02/2010.*
8. *8th Claimant – Moses Otieno Odongo – employed on 14/10/2009 as a Lecturer in Business and related units and earning Kshs.45,000/ gross as at 28/2/2010.*
9. *9th Claimant – Everlyne Akoth– employed on 1/3/2007 as a Library Assistant and earning 17,600/= gross as at 31/3/2010.*
10. *10th Claimant – Everlyne Atieno Odeny – employed on 7/10/2004 as a Security Guard and earning Kshs,12,100 gross as at 28/2/2010.*
11. *11th Claimant – Oscar Ivali – employed on 1/3/2004 as a Security Guard and earning Kshs.9,100/= gross as at 28/2/2010.*

3. The Claimants exhibited either their letters of employment their pay slips or both as evidence before this court.

4. It is the Claimants case that in April 2010, the Respondent terminated their services without paying each of them their lawful terminal benefits and without any justifiable reason. The termination was verbal and the Grievant aver that they were not given a chance to be heard on their case contrary to the principles of natural justice, equity and fair play.

The Claimants therefore seek a declaration that their termination was unlawful and null and void and therefore seek payment of their terminal dues as enumerated in their claim all totaling 1,891,977/= plus interest and costs. They also seek to be issued with Certificates of Service.

5. The Respondents though served never filed any defence. The Respondents appeared in court severally and had an opportunity to put in their documents but never sought to do the same. They were even given an opportunity to file their submissions and this they also didn't do.

6. From the documents on record, the Claimants were properly employed by the Respondents and they exhibited their respective employment contracts/pay slips to attest to this. The manner of their termination is explained to be verbal. There was no evidence to counter their evidence.

7. They were not given any hearing before the verbal termination and neither were they given reasons for the same. This is contrary to the law as espoused under Section 41 of Employment Act 2007 and Section 35, Section 43 and Section 45(1) and (2) of the Employment Act. The law requires that before termination, proper reasons must be given to the employee and then a hearing.

8. The Respondent having failed to adhere to the law, I find the termination unfair as provided for under Section 45(1) and (2) of Employment Act which states as follows:

1. ***“No employer shall terminate the employment of an employee unfairly.***
2. ***A termination of employment by an employer is unfair if the employer fails to prove:***
 - a. ***that the reason for the termination is valid;***
 - b. ***that the reason for the termination is a fair reason:-***

- i. *related to the employee's conduct, capacity or compatibility; or*
 - ii. *based on the operational requirements of the employer; and*
- c. *that the employment was terminated in accordance with fair procedure."*

9. I therefore find for the Claimants as prayed and award them as follows:

1st Claimant – Sophia Kerre

One month salary in lieu of notice	38,367/=
Salary arrears	52,013/=
Gratuity	<u>327,600/=</u>
Sub total	<u>417,980/=</u>

2nd Claimant – Marion Karuiru

One month salary in lieu of notice	33,047/=
Salary arrears	42,920/=
Unremitted deducted bank loan	21,484/=
Gratuity	<u>78,000/=</u>
Sub total	<u>175,451/=</u>

3rd Claimant – Jane Mulekye Uswii

One month salary in lieu of notice	28,403/=
Salary arrears	37,612/=
Gratuity	<u>148,500/=</u>
Sub total	<u>214,515/=</u>

4th Claimant – Anne Jepkorior Kotut

One month salary in lieu of notice	26,153/=
Salary arrears	31,016/=
Gratuity	<u>15,000/=</u>
Sub total	<u>72,169/=</u>

5th Claimant – Eudiah Cheruiyot

One month salary in lieu of notice	29,828/=
Salary arrears	32,451/=

Gratuity 139,600/=

Sub total **201,879/=**

6th Claimant – Martin Ogolla Adada

One month salary in lieu of notice 44,177/=

Salary arrears 31,992/=

Unremitted deducted bank loan 67,539/=

Gratuity 110,200/=

Sub total **253,908/=**

7th Claimant – Zachary Kirori

One month salary in lieu of notice 43,127/=

Salary arrears 86,590/=

Unremitted deducted bank loan 16,068/=

Unremitted deducted HELB loan 30,880/=

Gratuity 133,250/=

Sub total **309,915/=**

8th Claimant – Moses Otieno Odongo

One month salary in lieu of notice 37,107/=

Gratuity 50,214/=

Sub total **87,321/=**

9th Claimant – Everlyne Akoth

One month salary in lieu of notice 16,141/=

Salary arrears 17,923/=

Gratuity 26,400/=

Sub total **60,464/=**

10th Claimant – Everlyne Atieno Odeny

One month salary in lieu of notice 11,525/=

Salary arrears 12,200/=

Gratuity 30,250/=

Sub total 53,975/=

11th Claimant – Oscar Ivali

One month salary in lieu of notice 8,700/=

Salary arrears 8,400/=

Gratuity 27,300/=

Sub total 44,400/=

Each Claimant shall be issued with a Certificate of Service.

The Respondent will also pay costs of this suit.

Read in open Court this 13th day of July, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Nyachoti for Claimant

No appearance for Respondent