



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 1722 OF 2011

BETWEEN

1. DAVID MWANGI GIOKO
2. BARACK ONYANGO OKUKU
3. ALOIS JUMA OGOLA
4. MAURICE OGOLA OLOO
5. NJUGUNA EMILY N
6. PAUL OKUMU
7. MESHACK OMOLO
8. SAMUEL KAGIRI
9. MARK KHAYIKA NGARA
10. FELISTAS NEKESA ONGECHI
11. MARGARET W. KIHU
12. EMILY MUMBI KAIRU
13. Z.O. AGENYA
14. MIRIAM MUTUA
15. JOHN K. MBUGUA
16. STEPHEN MWANGANGI SILA
17. JOSEPH N. AUMA
18. GLADYS MUCHUMA
19. JOSEPH MAINA NJAU
20. MATHIAS ASIAMBO
21. ALFRED O. OJWANG
22. CHRISTINA AMBUKI KIMWELE
23. MARGARET NJOKI
24. MICHAEL WANDERI
25. BETHA NDEGI KIURA
26. RICHARD A. DONGO
27. CHARLES OHOKA OGOLA
28. JANE WARIARA MWANGI
29. PATRICK G. NJOROGE
30. RAMJUS OTHIENO OWIDO
31. JAMES KARIUKI WABORO
32. FRANCIS KIHARA
33. SAMUEL MUIRURI NYURURU
34. SAMUEL K. MARAKWEN
35. PHOEE M. MASYOKO
36. MARGARET W. NGOTHO
37. VERONICAH N. NG'ANG'A
38. MWANGI GACHORE
39. LYDIA WANJIRU

40. JACINTA NJAGI
 41. JUSTUSB . MAKWARA
 42. LUCY NJOKI CHEGE
 43. DANIEL W. MUKUA
 44. ISAAC NGUGI.....
- CLAIMANTS

VERSUS

NAIROBI CITY WATER AND SEWERAGE COMPANY.....RESPONDENT

RIKA J

CC. MR. KIDEMI

MR. OWUOR INSTRUCTED BY MICHAEL OWUOR & COMPANY ADVOCATES FOR THE CLAIMANT

MR. BWIRE INSTRUCTED BY OCHIENG', ONYANGO, KIBET & OHAGA ADVOCATES FOR THE RESPONDENT

ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION

FURTHER AWARD

1. In the Award dated 22nd March 2013, the Court Ordered *inter alia*.

- a. The Respondent shall pay to each of the undisputed Claimants 5 months' gross salary in compensation for unfair termination.
- b. The Respondent shall pay to the undisputed Claimants Golden Handshake of Kshs.75,000; 4 months' basic salary for each of the remaining 5 years of service; 1 month basic salary in lieu of notice; and Kshs.75,000 in baggage allowance.

2. The Court directed the Nairobi Provincial Labour Officer to investigate the *bona fides* of the disputed Claimants; any arrears of salaries owed to the employees prior to retirement; any part payments made to the employees; and the nature of those payments.

3. The Nairobi Provincial Labour Officer carried out investigations, and filed a Report dated 25th September 2013, which paved the way for this Further Award. Both Parties were afforded the opportunity to submit on the Report filed by the Labour Office.

Upon review of the existing and additional material, the Court Finds and Further Awards:-

4. It is noted the number of the Claimants in the First Award was not clear. The Claimants have kept shifting the numbers, making the work of the Court considerably untidy. 52 Claimants are listed in that Award. There were originally 64 Claimants in the dispute. 18 Claimants withdrew their claims against the Respondent in Court on 6th November 2012. This left a total of 46 Claimants. Of the 46, 2 names Christine Kimwele and Ramjus Othieno were twice listed as Claimants. With the correction on this duplication, the correct number is 44 Claimants. The record is therefore corrected to show 44 Claimants.

5. For avoidance of doubt, the 44 Claimants are:-

1. David Mwangi Gioko
2. Barack Onyango Okuku
3. Alois Juma Ogola
4. Maurice Ogola Oloo
5. Njuguna Emily N
6. Paul Okumu
7. Meshack Omolo
8. Samuel Kagiri
9. Mark Khayika Ngara
10. Felistas Nekesa Ongechi
11. Margaret W. Kihui
12. Emily Mumbi Kairu
13. Z.O. Agenya
14. Miriam Mutua
15. John K. Mbugua
16. Stephen Mwangangi Sila
17. Joseph N. Auma
18. Gladys Muchuma
19. Joseph Maina Njau
20. Mathias Asiambo
21. Alfred O. Ojwang
22. Christina Ambuki Kimwele
23. Margaret Njoki
24. Michael Wanderi
25. Betha Ndegi Kiura
26. Richard A. Dongo
27. Charles Ohoka Ogola
28. Jane Wariara Mwangi
29. Patrick G. Njoroge
30. Ramjus Othieno Owido
31. James Kariuki Waboro
32. Francis Kihara
33. Samuel Muiruri Nyururu
34. Samuel K. Marakwen
35. Phoebe M. Masyoko
36. Margaret W. Ngotho
37. Veronicah N. Ng'ang'a
38. Mwangi Gachore
39. Lydia Wanjiru
40. Jacinta Njagi
41. Justus B. Makwara
42. Lucy Njoki Chege
43. Daniel W. Mukua

44. Isaac Ngugi

6. The Court has noted the Claimants' Advocates included the name of A. Wairigi Wamburi in the Schedule of Salary and Allowances attached to the document titled 'Clarification on Claimants's Part – Payments and Nature of Payment'. This Claimant was part of the Claimants who withdrew their claims on 6th November 2012. His inclusion on the list raised the number of the Claimants to 45. The correct number should be 44 listed above. This sort of error only serves to delay settlement.

7. Questions were raised on the *bona fides* of Samuel Muiruri Nyururu (No. 33), Jacinta Wanjiku Njagi (No.40) and Lucy Njoki Chege (No. 42). Nyururu accepted the Respondents' offer to move from permanent and pensionable terms, to a 3 year contract. This expired in September 2008 and was extended by 16 months, to end January 2010. He claims the 16 months extension was given to him by the

Respondent unilaterally. He did not decline the offer. He accepted the contractual terms. The Court is convinced his terms and conditions of employment were regulated by, and confined to, the contract he concluded with the Respondent. His terminal benefits, if any, ought therefore to be claimed under the contract. The Court finds he is not a *bona fide* Claimant, and his claim against the Respondent is declined.

Jacinta Wanjiku Njagi attained the age of 55 years in 2008. The extension of retirement age to 60 years was in 2009, and as confirmed by the Labour Office, she was not affected by the extension to 60 years. She is likewise mis-joined to the Claim, as she had properly entered retirement age within the existing CBA and legal framework. Her claim is rejected. Lucy Njoki Chege became 55 years in 2008. However, the Respondent did not retire her, and varied her contract of employment through the notice of retirement dated 16th January 2009. She was informed she would be retired on the ground of attainment of the mandatory retirement age, on 31st December 2009. The Court is inclined to have her claim against the Respondent upheld. The result is that the Court endorses the Claims by the remaining 42 Claimants, while rejecting those of Samuel Muiruri Nyururu and Jacinta Wanjiku Njagi.

8. The Claimants prayed the Court for grant of a total of Kshs.45,242, 786.30, with interest of 14% per annum from 18th May 2004. This included salary and allowances arising from a CBA concluded between the Claimants' predecessor employer, City Council of Nairobi and their Trade Union NUWASE. The Labour Office concluded there existed arrears of salaries and allowances prior to retirement, placing the figure at Kshs.40,319,871.60. Payments made by the Respondents contained benefits unrelated to the arrears. The Labour Office proposes the Respondent be ordered to pay Kshs.40,319,871.60 less any amount paid and acknowledged.

9. The Court is not persuaded this is the best approach. The arrears claimed arise out of a CBA negotiated by a Trade Union which is not party to the Claim and whose officials have not testified. The Court has not been availed sufficient material to support this claim. The figure includes arrears allegedly owed to some employees who are not parties to this Claim. There were half-hearted explanations by the Respondent about payment of the wage increments arising from the CBA. In the view of the Court this is a separable claim that ought to ideally be pursued with the involvement of the concerned Trade Union. The Court has no proper basis in law or fact, to order the Respondent to meet arrears of salaries and allowances amounting to Kshs.40,319,871.60, or indeed Kshs.45,242,786.30.

10. The Claimants concede they received a total of Kshs.4,229,425 in retirement benefits, prior to the first Award. Against this background the Court makes this Further Award.

- a. ***The Record is rectified to show there are 44 Claimants as indicated in paragraph 5 of this Award.***
- b. ***The Claims by Samuel Muiruri Nyururu and Jacinta Wanjiku Njagi are dis-allowed.***
- c. ***The Claim for arrears of salaries and allowance of Kshs.45,242,786.30 is declined, without prejudice to the Claimants initiating a fresh claim for such arrears of salaries and allowances, ideally with the participation of the Trade Union which co-authored the relevant CBA with the Respondent.***
- d. ***The 42 successful Claimants shall be paid the items indicated in paragraphs (b) and (c) of the first Award, less Kshs.4,229,425 already paid and acknowledged.***
- e. ***The Respondent shall pay this amount within 21 days of the delivery of this further Award, in default execution to proceed.***
- f. ***No order on the costs.***

Dated and delivered at Nairobi this 28th day of January 2014

James Rika

Judge