



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**

**CAUSE NUMBER 262 OF 2011**

**BETWEEN**

JUDY WANJIRA MUGO

.....  
 ..... CLAIMANT

**VERSUS**

1. DR. JUDAH GITHINJI MWONGO

2. HAMANI KOOME MWONGO

3. FREDRICK MUGAMBI

t/a KENYA NEEM HEALTH  
 CARE.....  
 .....RESPONDENTS

*Rika J*

*CC. Leah Muthaka*

*Mr. Nyamiaka instructed by Oyugi & Company Advocates for the Claimant*

*Mr. Oronga instructed by Mithega & Company Advocates for the Respondents*

ISSUE IN DISPUTE: UNPAID SALARY

AWARD

1. The Claimant filed her Statement of Claim on 25<sup>th</sup> February 2011. The Respondents filed their Joint Statement of Reply on 4<sup>th</sup> July 2011. The Claimant testified and closed her case on 21<sup>st</sup> January 2013. The evidence for the Respondents was given by Judah Githinji on 15<sup>th</sup> March 2013, when the hearing closed. The dispute was last mentioned in Court on 4<sup>th</sup> June 2013, when Parties confirmed the filing of their submissions, and were advised Award would be delivered on notice.

2. The Claimant told the Court she is a Laboratory Technician, alumni of the Kabete Technical Institute. She was first employed by Gikondi Mission Hospital in Mukurwe-ini Nyeri. In April 2009, she joined the

Kenya Neem Health Care. She worked as a Laboratory Technician. She was employed through an appointment letter dated 1<sup>st</sup> May 2009. Her salary was Kshs. 18,000 per month. She worked for 5 months- April, May, June, July and August 2009. She tendered a notice of resignation in July 2009, which was to take effect on 31<sup>st</sup> August 2009. At the time of leaving, she was owed by the Respondents salary for the months of June, July, and August amounting to Kshs. 54,000. She was owed balance of her salary for May 2009, of Kshs. 2000, bringing the total arrears to Kshs. 56,000. This is the amount the Claimant seeks from the Respondents, with interest from 1<sup>st</sup> September 2009 till payment is met in full.

3. On cross-examination, she stated she was on attachment from 1<sup>st</sup> April 2009, and properly started working from 1<sup>st</sup> May 2009. She did not have records to show she received any money from the Respondents. Kenya Neem Health Care is a Herbal Clinic. Dr. Mwongo, Mugambi and Koome were the shareholders. The Claimant did not have evidence of the registration of the Clinic. She did not avail her letter of resignation to the Court. She did not desert duty. She did not have evidence to show the Respondents received her letter of demand before filing of the Claim. She testified further on redirection that the Clinic operated a Laboratory, where she worked as a Technician. She forwarded her resignation letter to the Human Resource Officer. Her Advocates wrote the letter of demand, which the Respondents did not reply to.

4. The three Respondents concede they were directors of the fourth Respondent Kenya Neem Health Care. They operated under the Registration of Business Names Act Cap 489 the Laws of Kenya in the name Kenya Neem Health Care. They ceased operations and filed a notice of cessation of business with the Registrar General on 4<sup>th</sup> February 2010. They deny each and every allegation made by the Claimant.

5. Judah testified he was one of the Directors in the Business. They had over 400 employees. He did not know the Claimant, and was not aware if she was one of their employees. The appointment letter exhibited by the Claimant was inauthentic. It was not stamped as confirmation of employment. The Respondents did not receive any demand from the Claimant. On cross-examination, the Claimant stated the Business had about 7 Directors. The letter of appointment did not emanate from the Kenya Neem Health Care. It was signed by H.K. Mwongo. Judah never saw the demand letter from the Claimant's Advocates. The Business did not cease operations to avoid meeting this Claim. The Respondents pray the Claim be dismissed with costs.

*The Court Finds and Awards:-*

6. The Court is satisfied with the evidence offered by the Claimant that she was employed by the Respondents Herbalists, as their Laboratory Technician. The letter of appointment dated 1<sup>st</sup> May 2009 is authentic, on the letterhead of Kenya Neem Health Care, signed by one of the Directors Dr. H.K. Mwongo, and copied to all the other Directors and Departments of the Clinic. Judah confirmed Dr. H.K. Mwongo, whom he clarified is named Herman Kithinji Mwongo, not Herman Koome Mwongo as stated in the Claim, was a Director of the Clinic. The obligation to the Claimant arose before the cessation of business. Each one of the 7 Persons who are named as Directors in the Business are liable in any employment claim brought by their employees. The three Respondents were Partners, registered under the Registration of Business Names Act. All the Partners were employers of the Claimant, within the meaning of the term 'employer', under section 2 of the Employment Act 2007. They are jointly and severally liable to pay the Claimant her unpaid salaries. It is not relevant whether the Claimant absconded or resigned; she was entitled to receive her salary for the months worked. The Court has no doubt the Claimant was not paid her salaries for May, June, July and August 2009 amounting to Kshs. 56,000. This amount is due, and claimable from each of the Partners of the defunct Kenya Neem Health Care, regardless of the cessation of the business. IT IS ORDERED:-

***[a] The Respondents shall pay to the Claimant the total amount of Kshs. 56,000 within 30 days of the delivery of this Award;***

***[b] Interest on the Principal Sum allowed at 14 % per annum, starting 1<sup>st</sup> September 2009 till payment in full; and***

***[c] Costs to the Claimant***

Dated and delivered at Nairobi this 17<sup>th</sup> day of January 2014

James Rika

Judge