

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 15/2013

(BEFORE HON. JUSTICE HELLEN WASILWA ON 30TH APRIL, 2014)

EBRAHIM OCHIENG OTHUON & 2 OTHERS CLAIMANTS

-VERSUS-

CHEMILIL SUGAR CO. LTD RESPONDENTS

RULING

The claimants and respondents recorded a consent before this court on 28.2.2014 which consent was endorsed by the court. One issue however remained pending, the issue of payment house allowance to the claimants herein. The parties agreed that they would submit on this issue and this court will make a determination. The parties have now filed their submissions. The issue of house allowance is in this court's view already determined by law under Section 31 of the Employment Act 2007 which states that:-

“An employer shall at all times, at his own expense provide reasonable housing accommodation for each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum as rent, in addition to the wages or salary of the employees, as will enable the employee to obtain reasonable accommodation”.

The exception is where the contract of service contains a provision which consolidates as part of the basic wage on salary of the employee, an element intended to be used by the employee to provide himself with housing accommodation---”

In this current case, the contracts of service of the claimants did not provide a consolidated sum as part of the basic wage or salary as an element intended to be used by the employee as rent.

That being the case, it is the finding of this court that each claimant is entitled to payment of house allowance. Practice has over the years had courts calculate house allowance at 15% of the salary or wage of an employee. The claimants have made their submissions based on the years each claimant worked. The respondents submitted that this should be limited to three years which is the basic period an employer is required to keep records of employee under the Employment Act.

The argument by the respondent cannot suffice here because it is due to their omission to pay house allowance to the claimants that this matter is under adjudication by court. Moreover when calculating terminal dues, this is based on all years worked.

I find that the claimants are entitled to payment of their house allowance at 15% for each month for all the time they have worked. The parties have already agreed on the period during which each claimant worked and this was the basis upon which the consent of 28.2.2014 was made. Based on this calculation, I allow and order that the claimants be paid house allowance as per the Scheduled prepared by the claimants and filed in court on 25.3.2014 as follows:-

<u>No.</u>	<u>Name</u>	<u>House Allowance</u>
1.	Dan Ouma Ogombi	169,951.22

2.	Kennedy Sera	141,765.72
3.	Robert Ogero Nyakundi	189,858.24
4.	Amos Kipngetich Kirui	61,925.76
5.	Joash O. Samo	161,511.48
6.	Joshua O. Rabel	163,823.40
7.	Philip A. Gaya	72,039.24
8.	Dan O. Ouma	136,646.64
9.	Daniel O. Khabera	97,152.12
10.	William O. Muga	132,331.68
11	Francis O. Ong'owo	180,399.96
12	Elly O. Odeny	167,963.96
13	Reagan O. Aguta	58,125.60
14	Hezekiah P. Angana	204,352.20
15	Daniel O. Owino	52,846.56
16	Nicson Kiplagat	92,936.14
17	Reuben A. Akunga	109,636.02
18	Isaiah M. Nyangau	42,906.24
19	Kefa M. Onyoni	52,846.56
20	Kelvin O. Nunda	162,138.60
21	Antony O. Ogodu	201,272.76
22	Caleb O. Olweny	116,176.32
23	Biguti Josephat	98,574.84
24	Ebrahim Othuon	159,564.60
25	George O. Omino	110,054.88
26	Maurice O. Auma	52,846.56
27	Charles O. Wagonga	172,455.66
28	Duncan O. Menya	134,049.24
29	Stephen O. Obunga	106,989.48

30	Edwin O. Omollo	97,152.12
31	Irene K. Oggere	108,791.28
32	George O. Ochieng	152,085.96
33	James O. witi	93,492.36
34	Raphael O. Olango	134,334.72
35	John O. Tinga	115,174.80
36	James O. Opondo	161,811.00
37	Fredrick Opata	121,268.16
38	William O. Otieno	132,331.68
39	George A. Magero	72,039.24
40	Godfrey K. Adie	150,529.86
41	Kennedy M. O. O. Omollo	164,429.46
42	Rasto O. Ojowi	70,462.08
43	Pilip A. Ingati	134,058.60
44	Carren A. Odhiambo	81,722.16
45	Pacifica Mary Aluoch	208,650.78
46	Joseph Njoroge	130,134.42
47	Caleb O. Osiko	111,444.84
48	Millicent A. Ombetle	53,801.28
	TOTAL	5,896,617.48

Costs be borne by the respondents.

HELLEN WASILWA

JUDGE

30/4/2014

Appearances:-

Amondi for Claimants present

Muasya for respondents present

