



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 2037 OF 2013**

**BETWEEN**

1. **COROLINE WAMBUI MAINA.....1<sup>ST</sup> CLAIMANT**
2. **MARTIN OTIENO NG'AYO.....2<sup>ND</sup> CLAIMANT**
3. **JAMES MURIITHI NJERU.....3<sup>RD</sup> CLAIMANT**
4. **PETER N. NJOROGE.....4<sup>TH</sup> CLAIMANT**
5. **SAMUEL WAINAINA.....5<sup>TH</sup> CLAIMANT**
6. **CHARLES JOSEPH MAINA THUO.....6<sup>TH</sup> CLAIMANT**
7. **EMMA WANJIRU WANGARI.....7<sup>TH</sup> CLAIMANT**
8. **DANIEL MUSYOKA MASAI.....8<sup>TH</sup> CLAIMANT**

**VERSUS**

**FOCUS CAB SERVICES LIMITED.....RESPONDENT**

**RULING**

The Claimants filed a Statement of Claim against their former Employer, on 19<sup>th</sup> December 2013. They seek the following prayers:-

- (a) Salary arrears
- (b) Unpaid leave days
- (c) One month salary in lieu of notice.
- (d) Unpaid N.S.S.F. amounts deducted but not remitted.
- (e) Costs for each Claimant and Interest

On the same date they filed an Application under Section 12 (1) (2) (3) of the Industrial Court (Procedure) Rules 2010 seeking to be paid salary arrears, pending the hearing of the main Claim. They

also seek to have the Directors of the Respondent held personally liable.

The Respondent filed a Replying Affidavit sworn by its Director David Githaiga, on 17<sup>th</sup> March 2014.

The Advocates filed their respective submissions, and went on to give their highlights on 31<sup>st</sup> March 2014.

Upon careful evaluation of the Application, the Pleadings, Affidavits and Submissions, the *Court Finds and Orders:-*

1. The arrears of salary is a disputed item. It is part of the prayers sought in the Main Claim. The existence of these arrears calls for proof, through evidential material, that should be availed at the full hearing. It would be premature for the Court to find and grant that the Employees are owed arrears of salary on an interlocutory application.

2. The Claimants should endeavor to list their Claim for full hearing, and establish they are owed arrears of salary alongside the other claims contained in their prayers. There is no justification for severing the claim for salary arrears, and seeking to have a determination on this issue singly, on an interlocutory application.

3. As for the lifting of the corporate veil, this Court thinks it is for the Claimants to determine if the Directors of the Respondent, satisfy the definition of the term 'Employer' under Section 2 of the Employment Act 2007, so as to be liable to answer the Claim. Whether the Directors should be held liable, or joined to the Claim as 'Employers', is for the Claimants to determine. The Court would only be in a position to determine if the Directors employed the Claimants, and are liable, upon hearing the Parties in full.

4. In either case the Court is satisfied that the orders sought in the Application dated 18<sup>th</sup> December 2013, are not merited through an interlocutory application and bare affidavit evidence. *IT IS ORDERED:-*

**(a)        *The application is refused.***

**(b)        *The Claimants to list their Claim for hearing at the Court Registry.***

**(c)        *Costs in the clause.***

Dated and delivered at Nairobi this 8<sup>th</sup> day of July 2014

James Rika

Judge