

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 246 OF 2013

BERNARD ASANYA OGEMBO.....1ST CLAIMANT

JAMES MAINA NJUGUNA.....2ND CLAIMANT

MATHIAS NTHIWA WAMBUA.....3RD CLAIMANT

EUNICE WANGARE KUHORA.....4TH CLAIMANT

FRANCISCAH SIROTE SADERA.....5TH CLAIMANT

-VERSUS-

OL NJOROWA LTD.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 19th September, 2014)

JUDGMENT

The cause came up for mention on 24.06.2014 when by consent of the parties, it was ordered that the only issue for determination was the months of gross salaries to be paid for compensation for the unfair termination; the respondent having offered 6 months and the claimant 11 months during the negotiations between the parties. The parties agreed to make final written submissions on that issue. The parties did not call witnesses and opted to rely on the pleadings and documents on record.

As submitted for the parties, the court is guided by the provisions of section 49(4) of the Employment Act, 2007 in determining the pay to be ordered in event of unfair termination. The court has considered the material on record and finds that the parties did not provide evidence to enable the court to make a determination one way or the other in view of the provisions of the section. After the final submissions, the factual issues in dispute remained unresolved for want of evidence.

Nevertheless, the respondent is willing and has submitted that the honourable court be pleased to award each claimant six months' gross salary for compensation. Accordingly, the court finds that the respondent will pay each of the claimants as submitted.

In conclusion, judgment is entered for the claimants against the respondent for:

- a. The respondent to pay each of the claimants six months' gross salary at the rate of the last monthly pay before the termination and the payment to be by 1.11.2014, in default, interest to be payable at court rates till the full payment.
- b. The respondent to pay half the claimants' costs of the suit.

Signed, dated and delivered in court at Nakuru this Friday, 19th September, 2014.

BYRAM ONGAYA

JUDGE