



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 151 of 2010**

**BENARD KURIA MWANGI AND 2 OTHERS..... CLAIMANT**

**VERSUS**

**KASTURI LIMITED .....RESPONDENT**

**JUDGMENT**

The claimants Benard Kuria Mwangi, Peter Gichangi Wachira and Michael Kaharu Wachira filed the memorandum of claim on 23<sup>rd</sup> February, 2010 in person. Their memorandum of claim is supported by their respective verifying affidavits and annexed documents.

On 13<sup>th</sup> July, 2010 the Respondent Kasturi Limited filed the Memorandum of Defence through Bali-Sharma & Bali Sharma-Sharma Advocates. The memorandum of defence stated that in answer to the memorandum of claim filed by the three claimants in this cause, the Respondent reply to their claim **as follows:**

***“1. Save that three claimants were employed by the Respondent, the Respondent will state as follows; for each claimant.***

- 1. BERNARD KURIA MWANGI**
- 2. MICHAEL KAHURU WACHIRA**
- 3. PETER GICHANGI WACHIRA**

***All the sundry claim for each are denied in toto and will put each of the claimants to full proof each allegations.***

***Reasons wherefore all respdoent denies each and every allegation and request that the claim be dismissed with costs and interest.”***

On the 7<sup>th</sup> March, 2011 the court directed that the hearing would proceed on 18<sup>th</sup> July, 2011. On 18<sup>th</sup> July, 2011 the Respondent was absent and the claimants requested for judgment as prayed for in the memorandum of claim. Award was to be made on 1<sup>st</sup> August, 2011 at 12.00 noon. It has never been delivered hence this judgment.

The court has considered the pleadings, affidavits and makes the following findings.

1. The Claimants made clear pleadings supported with affidavit evidence and which cannot pass

for sundry claim as pleaded by the Respondent. The Respondent was required to traverse each of the allegations as pleaded by each of the claimants including the claimants' respective accounts of the unfair verbal termination by the Respondent. The Court finds that the claimants, on a balance of probabilities and taking into account the affidavit evidence, have proved their cases and the Respondent is liable.

2. That in absence of a notification of misconduct or poor performance as alleged by the Respondent against each of the claimants and in absence of any hearing with regard to the allegations, the court finds that Section 41 of the Employment Act, 207 was breached and the claimants' termination was therefore unfair.

3. That in view of the unfair termination each of the claimants is entitled to twelve months gross salaries compensation especially that the Respondent has not proved the reasons for termination.

4. The court also finds that the claimants have, in absence of any opposing evidence by the Respondent, proved their claims as computed and particularized in annex KL5 to the memorandum of claim.

5. Thus the claimants are entitled to payments by the respondent as follows:

(a) Benard Kuria Mwangi Ksh.507,065/= plus Ksh.156,204/= for unfair termination making a sum of **Ksh.663,269/=**.

(b) Peter Gichangi Wachira Ksh.100,181/= plus Ksh.60,000/= for unfair termination making a sum of **Ksh.160,181/=**.

(c) Michael Kaharu Wachira Ksh.562,701/= plus Ksh.91,632/= for unfair termination making a sum of **Ksh.654,333/=**.

Accordingly, judgment is entered for the claimants against the Respondent for:

- (a) a declaration that the termination of employment of the claimants by the respondent was unfair;
- (b) the respondent to pay the claimants a sum of Ksh.1,477,783/= plus interest at court rates till full payment; and
- (c) the respondent to pay the costs of the case.

Signed, dated and delivered in court at Nairobi this 9<sup>th</sup> November, 2012.

**BYRAM ONGAYA**  
**JUDGE**