



Case Number:	Cause 116 of 2014
Date Delivered:	19 Dec 2014
Case Class:	Civil
Court:	Employment and Labour Relations Court at Mombasa
Case Action:	Judgment
Judge:	Onesmus Ndambuthi Makau
Citation:	Kwekwe Mwakela v Krystalline Salt Ltd [2014] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Industrial Court
History Magistrates:	-
County:	Mombasa
Docket Number:	-
History Docket Number:	-
Case Outcome:	Judgment entered for claimants
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT

AT MOMBASA

CAUSE NO. 116 OF 2014

KWEKWE MWAKELACLAIMANT

VERSUS

KRYSTALLINE SALT LTD RESPONDENT

J U D G M E N T

INTRODUCTION

1. This claim seeks several declaratory Orders plus Ksh.232,512 being dues accruing on termination of claimant's employment by the respondent on 30/3/2013. In the claim filed on 26/3/2014, the claimant has averred that her dismissal was without notice and unfair and has occasioned on her loss and damage.

2. The respondent has denied all the averments in the claim and put the claimant to strict proof. In the alternative, the respondent has averred that the claimant was only employed as a piece-rate worker and paid for all the work done and as such the suit has no basis.

3. The suit was by consent consolidated with 67 other suit being ICC No. 117 of 2014 – ICC No. 162/2014 and ICC NO. 175 of 2014 – ICC NO. 195 of 2014 because all the claimants services were terminated on the same day allegedly by the same employer, under the same circumstances and they are all seek similar orders. This judgment therefore incorporates all the other 67 claims consolidated herewith. The suit was heard on 22/7/2014 and 23/7/2014 when the claimants called 3 witnesses to testify on behalf of all the 68 claimants while the respondent called 2 witnesses.

CLAIMANT'S CASE

4. Kwekwe Mwakale claimant herein testified as CW1. She told the court that she was employed by the respondent in 2008 at the salt manufacturing plant in Mombasa. He duties included packaging, sealing and baling using a machine. She was recruited by a supervisor called Munyao. CW1 contended that she knew all the other 67 claimants because they worked together at the respondent's plant. According to CW1, all the claimants did the same job and were working in groups of 6 machines.

5. She explained that there was no negotiated salary but the pay was according to ones production. The said production on the other had depended on the effort of the group working together and the efficiency of the machine. The money earned was paid weekly in arrears and it was signed for by one of the group members and then shared equally with the others. The mode of payment was Ksh. 2.00 per bale of 40 packets of 500 grams of salt. In a good day she would make 300 bales working with 2 other

colleagues. That figure translated to ksh.600 which was equal to ksh.200 earned by a person in a day after working for a shift of 12 hours. Hence in a week she earned ksh. 1400 which translated to ksh. 5600 per month. According to CW1, the figure could go down if a machine broke down because one was paid according to the production made.

6. CW1 worked continuously from 2008 until 30/3/2013 when she was dismissed by the respondent. On the said day, she went to work as usual with the other claimants but on arrival Mr. Mwanjoha, a manager working as Laboratory Assistant in the respondent's factory told her and the other claimants that there was no work for then and as such they should go away and wait until further notice when work became available. CW1 and her colleagues were never paid any dues on termination of their services and were never called back to work as promised by Mr. Mwanjoha.

7. According to CW1 she never went for any annual leave or holiday just like the other claimants herein during their service and cited these the of her sister, Mariamu who went into labour while on duty and had to be rushed to hospital because there was no maternity leave. She prayed for salary in lieu of notice plus service pay for the 5 years worked.

8. On cross examination by the defence counsel, CW1 maintained that she worked for 12 hours in a day whether in day or night shift. She admitted that the pay depended on the number of bales of packed salt she made. She explained that they used to work in 2 lines per machine whereby each line had 3 persons. One person filled the salt in a packet, the second one sealed it while the third person packed the packets in a bale. At the end of the week one of the 3 received the pay and share with the others equally.

9. CW1 contended that she worked continuously without skipping work and even if a machine broke down she was not free to go away but had to wait until it was repaired and then continue with the work. If one came to work late the gate would not be opened for her. She further explained that if one absented herself without permission from the supervisor, he or she was suspended for 3 days without pay.

10. She denied that all the claimants refused to go on transfer to the respondent's plant at Malindi and maintained that no letters for the transfer were served on them. According to CW1, had she been formally transferred to Malindi she would have gone there. CW1 admitted that after working for 20 consecutive days, she got 2 off days just like the other claimants.

11. Gladys Kaari, the claimant in ICC 195 of 2014 testified herein as CW2. She also worked for the respondent at the Changamwe Salt Plant from 2008. She was recruited by a supervisor called Ogola. Her duties were similar to that of the CW1 and she was working on a machine that served 6 people. The payment was ksh.2.00 per bale of 40 packets of 500 grams of salt. The pay per day depended on production but in a good day her group could make 350 bales and share the pay equally. The money was paid weekly in arrears to one of the group members who shared to the others members. CW2 maintained that the claimants were employed on normal contract of service and not on piece-rate basis.

12. In a week CW1 used to earn ksh.1500 per week and Ksh. 6000 per month in what CW2 confirmed that she knew all the other claimants herein because they used to work together doing similar duties. According to her she was employed by the respondent because if any one absented herself she would be suspended for 3 days without pay. She explained that all the claimants never went for leave but worked continuously for 12 hours per day until 30/3/2013 when after reporting to work as usual the security guards at the gate told her and the other claimants that there was no work. Shortly thereafter Mr. Mwanjoha came out and told the claimants that there was no more work there because production

had been transferred to Malindi. According to CW2, Mr. Mwanjoha told the claimants to go home and wait until they were called back when work became available. No terminal dues were paid to the claimants according to CW2.

13. On cross examination by the defence counsel, CW2 admitted that the more bales she made the higher the pay she earned and vice versa. She admitted that her pay was fluctuating and as such she could not state her any specific figure as her salary. According to her the pay depended on the efficiency of the machines allocated to the group. She however maintained that she was permanently employed because she worked daily except for the 2 off days she rested after every 20 days worked. She admitted that she knew of a sister plant at Malindi but she denied that some of her colleagues at Mombasa were transferred to Malindi after 30/3/2013. She explained that, had she been given a transfer to Malindi and arrangements made, she would have gone there. CW2 denied that the workers refused to work and maintained that it is the security guards and Mr. Mwanjoha who stopped the claimants from going to work. He further maintained that Mr. Mwanjoha told the claimants that there was no work for them but CW2 denied that he told them to go on transfer.

14. Nicholas Muthini, the claimant in ICC No. 152 of 2014 testified as CW3 herein. He was employed by the respondent at Changamwe Salt Plant in 2008 when a supervisor called Adson Kaindi recruited him. CW3 explained that he used to work using machine with other workers in groups of 6 workers per machine. The group used to fill packets, seal and pack them in bales. The pay per bale of 40 packets of 500 grams was Ksh.2.00 while that of 30 packets of 200 grams was ksh.1.90. The pay per bale was shared between 3 persons. In case of machine brake down, the claimants were to wait until it was repaired and if time for the shift lapsed, one was paid only for the bales produced. CW3 worked continuously from 2008 until 30/3/2013 when he was dismissed by the respondent. On the material day, CW3 attended work with the other claimants herein as usual but they were stopped at the gate and Mr. Mwanjoha told them to go home until they were called back when work was available. He, like the other claimants was not paid his benefits.

15. According to CW3, the work at the respondent factory continued after their discharge and it continues to date because as a neighbor to the plant he has evidence that the plant is operating. CW3 denied that he and the other claimants refused to go on transfer to Malindi. According to him if there was a transfer and proper arrangements, he would have gone there. He explained that he never went for any leave during the period of his service although he used to go for 2 days off after every 20 days.

16. On cross examination by the defence counsel, CW3 explained that in a good day he would make 300 bales. He denied ever requesting the supervisor for a transfer to Malindi if there was a vacancy.

DEFENCE CASE

17. Dickson Mwanjoha testified as RW1. He was employed by the respondent as a Lab analyst in 2008. In March 2013, he was acting as the person in charge of the plant after the substantive office holder had been suspended. On 30/3/2013 about 80 workers including the claimants refused to work and remained outside the factory demanding for dues of their services in order for them to go away. RW1 addressed them and asked them to return to work but they refused. He denied ever telling the claimants to go away.

18. RW1 explained that all the claimants were employed on piece-rate contracts whereby their pay per

day depended on the amount of bales of salt they processed. According to RW1, the claimants were paid ksh.3.20 per 20 Kg bale of 40 packets of 500 grams of salt. On the other hand the pay for a 6Kg bale of 200grams salt was ksh.2.30. He explained that the pay depended on ones effort and the efficiency of the machine assigned. He confirmed that the claimants were paid for the bales processed weekly.

19. He contended that the claimants worked from Saturday to Friday but Sunday was an off day for all. He explained that there were two shifts running from 7.00 a.m to 7 pm and the second one from 7pm to 7.00 a.m. He contended that the Raw material was not always available and as such occasionally the piece-rate workers would be stopped from work until the salt was again available. He confirmed that the claimants were not going for leave because they were piece-rate workers. According to him the work in the Changamwe factory never ended because that is where sales are done after the salt is harvested in Malindi. He contended that the claimants left work on 30/3/2013 and never returned and denied any wrong doing by the respondent.

20. On cross examination by the claimant's counsel, RW1 admitted that he was not working in the respondent's HR department. He further admitted that on 27/5/2014 he recorded a statement in ICC 178 of 2014 whereby he stated that on 30/3/2014 he told the claimants that work had reduced and they should go to Malindi if they wished but they refused and left. He further admitted that in the said statement he stated that the claimant's went on strike refusing to continue with piece-rate work.

21. RW1 explained that the respondent had employed permanent, casual and piece-rate workers. According to him the supervisors, drivers and technicians were the permanent workers while 10 cleaners formed the casual cadre of the workers. On the other hand the largest cadre of workers were the piece-rate workers totalling to 240. RW1 admitted that the core business of the respondents was salt making of which the claimants were doing packaging and therefore they were as important as the other workers.

22. Jacob Odimu testified as RW2. He works as store keeper for the respondent since 2008. His duty is to maintain the respondents store by receiving and dispatching goods, on 30/3/2013 he was on duty from 10.00am when he reported to work and found the claimant having refused to work and demanding their pay. He explained that all the claimants were piece-rate workers serving as packers. According to RW2 there is no packaging work going on at the Changamwe factory.

23. On cross examination by the claimant's counsel, RW2 confirmed that he knew all the claimants by name and face. He maintained that the claimants were piece-rate workers who were not entitled to any promotions. He explained that the factory closed down after the claimant's left but a different work from that of claimants is being done there namely packaging of animal salt. According to RW2 it is the claimants who terminated their employment through desertion after refusing to heed to the request by the supervisor to return to work.

24. After the close of the hearing, both parties filed written submissions which the court has carefully read and considered in this judgment.

ANALYSIS AND DETERMINATION

25. There is no dispute that the claimant herein and the other 67 claimants whole suits are consolidated herewith worked as Packers for the respondent at her Changamwe salt factory between

2008 and 30/3/2013. There is no dispute that the claimants were all recruited by the respondents supervisors who took their identification details and issued them with uniform. There is also no dispute that there was no fixed salary but a fluctuating pay depending on the claimant's daily production. There is further no dispute that the claimants worked daily in 2 shifts of 12 hours each. It is also not disputed that all the work was done within the respondents factory under the supervision of the respondent's managers who also trained the claimants. It is also a fact that if the claimants reported late the gate would not be opened for them and in case they absented themselves, they would be suspended for 3 days without pay. It is also a fact that when a machine broke down in cause of the shift, the claimants were not free to go away but they remained on duty until the machine was repaired and resumed working. Lastly it is common knowledge that the work of packaging salt at Changamwe Plant was closed down after the claimants were laid off and the machines transferred to Malindi.

26. The issues for determination are:

- a. **Whether the claimants were employed on regular contract of service or contract for services.**
- b. **Whether the claimants deserted work voluntarily or they were unlawfully declared redundant.**
- c. **Whether the claimants are entitled to the reliefs sought in the suits consolidated herein.**

Contract of Service Vs Contract for Services

27. The claimants believe that they were employees of the respondent engaged under a contract of service because they worked continuously over a long time. According to them they were working under the supervision and time schedules of the respondent and they would be punished in case one came late or absented oneself without permission. The punishment included denial of entry to work in case of late arrival or suspension for 3 days without pay in case of absenteeism. On the other hand the respondent believes that the claimants were not her employees and they were not under any contract of service with her. According to her all the claimants were piece-rate workers hired to provide services as independent contractors whose pay depended on their production.

28. The court has carefully evaluated the two opposing arguments by the parties herein and it is worried that there are some challenges standing on the way of the court in answering the real question in issue. The first challenge is that there is no written contract between the parties herein upon which to refer in arbitrating this dispute. Secondly there are no relevant binding local judicial precedents or at all cited by the parties to guide the court in determining the rights of workers whose remuneration is measured by piece-rate production.

29. This court was recently faced with another similar case but with slightly different facts being MARY KITSAO NGOWA & 37 OTHERS vs KRYSTALLINE SALT (UNREPORTED) in the said case, although the claimants were alleged to be independent contractors for the reason that they were piece-rate work, this court agreed with the claimants that they were employed under a contract of service. In reaching the said decision the court was guided by the Indian jurisprudence in SHRI BIRDHICHAND SHARMA vs

FIRST CIVIL JUDGE NAGPUR AND OTHERS [1961] 2 FLR 557 where the supreme Court of India held:

“the fact that a worker is a piece- rate worker would not necessarily take him out of the category of a worker within the meaning of S.2(1) of the Factories Act. Considering the entire circumstances and particularly the fact that if the worker does not reach the factory before midday he is given no work, he is to work at the factory and cannot work from elsewhere, he can be removed if he is absent for eight days continuously and finally his attendance is noted and the biris prepared by him are liable to rejection if they do not come up to the standard, there can be no doubt that the respondents 2 and 4 worked within the meaning of S.2(1) of the Factories Act. This is also the view taken by the Bombay High Court in states vs Shankar Balaji Waje A.I.R 1960 BOM 296 in similar circumstances and that we think is the right view”.

30. This court remains persuaded by the said Indian precedents and proceeds to find that the claimant herein and all the other claimants whose suits have been consolidated herewith were employed by the respondent under a contract of service on diverse dates between 2008 and 30/3/2013. The reasons for the foregoing being that they were recruited, trained, clothed (uniform), supervised, supplied with production machines and paid by the respondent. In addition, the claimants had no freedom to process the salt from outside the respondent's factory and were subject to disciplinary action for late reporting and absenteeism. In this court's view the denial of such freedom can only be interpreted to mean that the respondent was exercising full control over the work of the claimants who were to do the work personally without delegating. The contrast of the foregoing is an independent contractor who is generally free from the control of the employer. It is trite law that an independent contractor does his work free from his employers supervision and control. He manages his time provided he maintains quality and the deadlines agreed. The claimants were obviously not free independent contractors. The alleged piece-rate pay was in this court's view a formula of calculating the claimants wages intended to motivate high yield but that did not in any way render them independent contractors. Consequently the answer to the first issue for determination is that the claimants were not independent contractors but employees engaged under a contract of service.

Desertion vs unfair termination

31. The claimants worked continuously on diverse dates from 2008 to 2013. According to the schedules filed by the claimants and not contested by the defence the claimants served for continuous periods ranging between 1 and 5 years. Under Section 35(1) of the Employment Act, an employee whose contract provides for payment of wages or salary at intervals of less than one month, the said contract can be terminated with a written notice for a period equal to the payment interval. In this case the claimants were receiving their pay weekly based on their daily piece-rate earnings but according to the defence that followed a request by the claimants. According to the respondent the claimants pay was assessed daily because there was no guarantee of working in the next day. That sounds like a suggestion that the claimants were casual workers.

32. Under Section 37 of the Employment Act, this court has the power to vary the terms and conditions of service of workers and declare that employee are employed in terms and conditions of service

consistent with the said Act. In this case, the claimants worked continuously for days, which in the aggregate was more than a month and as such under Section 37(1) (a) they had become protected by Section 35(1) (c) from arbitrary dismissal. Under Section 35(1) (c) an employee cannot be terminated without a prior written notice of 28 days. In this case therefore, the respondent was barred from terminating the claimants employment without a prior written notice of at least 28 days.

33. On the other hand, if the respondent intended to declare the claimants redundant, she was bound to follow the procedure provided for under Section 40 of the Employment Act. The said provision provides in mandatory terms that before declaring an employee redundant, he shall first serve at least one month written notice on the employee or his trade union and the labour officer. In addition the employer must conduct a fair selection process to identify those affected by the intended redundancy. In this case, the respondent ignored the provision of the Section 40 *supra* and summarily declared the claimants redundant on the mistaken believe that they were piece-rate workers who were not protected by the law.

34. Redundancy has been defined under Section 2 of the Employment Act as

“ the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superflous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

In this case, it is common knowledge that the respondent relocated the salt packaging machines to the sister plant at Malindi after laying off the claimants. According to RW2 the only packing work being done at the respondent's Changamwe salt plant since 30/3/2013 is packaging of animal salt. Therefore it is obvious that the claimants services at Changamwe became superflous and the processing work they were doing plus the machinery were transferred to Malindi. It is now settled in our emerging jurisprudence that when redundancy is done without following the mandatory procedure provided under Section 40 *supra*, the same is deemed to amount to unfair termination within the meaning of Section 45 of the Employment Act. Consequently the answer to the second issue for determination is that the claimants did not desert work but they were indeed unfairly terminated through an unlawful summary redundancy.

Reliefs

35. In view of the findings above this court declares that the claimant herein and all the other claimants whose suit are consolidated herewith were employed on permanent basis for the respective periods they worked for the respondent. The court further declares that the termination of the claimant's employment by the respondent on 30/3/2013 was wrongful and unfair. The respondent should have used the procedure for redundancy provided for under Section 40 *supra* or served one month written notice before terminating the claimants employment under Section 36 of the Act. The court further declares that the claimants were entitled to 21 leave days after every 12 months consecutive service. The claimants are therefore each awarded one month salary in lieu of notice and 21 leave days per year for the period covered by limitation period.

36. According to the schedule filed by the claimants on 21/7/2014, majority of the claimants worked for over 5 years while a few worked for either 1 or 3 years. The court will only award leave served within 3

years immediately before the claimants filed their respective suits. It means therefore that any leave earned before may 2011 is lost due to limitation period. It means therefore that all the claimants who worked for over 3 years before termination will only get paid for 63 leave days plus one month salary in lieu of notice. The rest of claimants worked for about one year 2 months and therefore get only paid for 21 leave days plus one month salary in lieu of notice. The said dues shall be based on the minimum statutory wage for a machine attendant applicable as at 30/3/2013 being Ksh.467.20 per day inclusive of house allowance. That means each claimant will get ksh.14016 as one month gross salary in lieu of notice. 58 claimants including the claimant in this case will get basic pay Ksh.9724.30 for 63 leave days which translates to ksh. 20,421.03 in that cadre. The remaining 9 claimants will get the basic pay for 21 leave days which works to ksh.6,807.01 per person in that cadre. In summary the claimants who worked for over 3 years will each get:

a. salary in lieu of notice14,016

b. 63 leave days20,421.05

34,437.05

The claimants who worked for about 1 year will each get:

a. salary in lieu of notice14,016

b. 21 leave days 6,807

20,823

SCHEDULE

NO	CLAIM NO.	CLAIMANT	PERIOD WORKED	AWARD [KSHS.]
1	116/14	KWEKWE MWAKELA	5.2 YRS	34,437.05
2	117/14	AMANI KARISA	3.2 YRS	34,437.05
3	118/14	PENINA MKAMBURI	1.2 YRS	20,832
4	119/14	MILLICENT JUMBA	1.2 YRS	20,832
5	120/14	RUKIA CHIZI	1.2 YRS	20,832

6	121/1	WNJIRU MWANGI	5.2 YRS	34,437.05
7	122/14	STEVE OMWEGA	5.2 YRS	34,437.05
8	123/14	FRANCIS M. RUWA	5.2 YRS	34,347.05
9	124/14	WILFRED TSUMA	5.2 YRS	34,347.05
10	125/14	ROSELINE AWINO	5.2 YRS	34,347.05
11	126/14	KANGA MRABU	5.2 YRS	34,347.05
12	127/14	MARGARET MASHA	5.2 YRS	34,347.05
13	128/14	MONENI KADENGE	5.2 YRS	34,347.05
14	129/14	NURU JUMA	5.2 YRS	34,347.05
15	130/14	ODILIA WALI	5.2 YRS	34,347.05
16	131/14	FRIDAH KITHI	5.2 YRS	34,347.05
17	132/14	ELIZABETH KALAMA	5.2 YRS	34,347.05
18	133/14	JUDITH MBONE	5.2 YRS	34,347.05
19	134/14	MILKA ACHIENG	5.2 YRS	34,347.05
20	135/14	MARY SAMWEL	5.2 YRS	34,347.05
21	136/14	TABITHA NTHORI	5.2 YRS	34,347.05
22	137/14	MAURINE F. KARISA	5.2 YRS	34,347.05
23	138/14	ZAWADI KAZUNGU	5.2 YRS	34,347.05
24	139/14	TATU HARE	5.2 YRS	34,347.05
25	140/14	BEATRICE OBONYO	1.2 YRS	20,832
26	141/14	JULIANA AKINYI	5.2 YRS	34,347.05
27	142/14	JOSEPH MBILO	3.2 YRS	34,347.05
28	143/14	LUCY ADHIAMBO	5.2 YRS	34,347.05
29	144/14	CARREN NTHAMBI	5.2 YRS	34,347.05
30	145/14	NORRIS THOYA	5.2 YRS	34,347.05
31	146/14	SCOLLA TENGE	5.2 YRS	34,347.05
32	147/14	CHRISTOPHER KINARA	1.6 YRS	20,832
33	148/14	DANIEL KALUME	5.2 YRS	34,347.05
34	149/14	RODGERS OSORE	5.2 YRS	34,347.05
35	150/14	YAA BAYA	5.2 YRS	34,347.05
36	151/14	THOMAS MASAI	5.2 YRS	34,347.05
37	152/14	NICHOLAS MUTHUI	5.2 YRS	34,347.05
38	153/14	MARTIN OYIERA	5.2 YRS	34,347.05
39	154/14	JOSHUA WAMBUA	1.2 YRS	20,832
40	155/14	DANIEL MUSYOKI	5.2 YRS	34,347.05
31	156/14	VITALIS WANYANGU	5.2 YRS	34,347.05
42	157/14	PETER OTIENO	5.2 YRS	34,347.05
43	158/14	FRANCIS KIVUVA	5.2 YRS	34,347.05
44	159/14	PATRICK CHARO	5.2 YRS	34,347.05
45	160/14	FRANCIS MITAU	5.2 YRS	34,347.05
46	161/14	RICHARD MUTHAMI	1.2 YRS	20,832
47	162/14	TATU ALI	5.2 YRS	34,347.05
48	175/14	STEPHEN KATAMA	1.2 YRS	20,832
49	176/14	PATRICK JAOKO	3.2 YRS	34,347.05
50	177/14	FONDO KAHINDI	5.2 YRS	34,347.05
51	178/14	STANLY MAUNDA	3.2 YRS	34,347.05
52	179/14	LILIAN AOKO	3.2 YRS	34,347.05
53	180/14	CHRISTINE N. KITOVA	3.2 YRS	34,347.05
54	181/14	JACKLINE KITAKA	5.2 YRS	34,347.05
55	182/14	SEBASTIAN KATHINA	5.2 YRS	34,347.05

56	183/14	EDWINA OYUGI	5.2 YRS	34,347.05
57	184/14	FLORENCE AKINYI	5.2 YRS	34,347.05
58	185/14	CATHERINE ODONGO	5.2 YRS	34,347.05
59	186/14	MILDRED NANJALA	3.2 YRS	34,347.05
60	187/14	NGINA MAINGI	5.2 YRS	34,347.05
61	188/14	JACKLINE NZILA	1.2 YRS	20,832
62	189/14	TABITHA MUISO	1.2 YRS	20,832
63	190/14	REMY VUNGA	5.2 YRS	34,347.05
64	191/14	MUTHIKE MUNUVE	5.2 YRS	34,346.05
65	192/14	JACKINE NABWIRE	5.2 YRS	34,346.05
66	193/14	EVERLYNE OKENO	5.2 YRS	34,346.05
67	194/14	RAYMOND MWANGATA	5.2 YRS	34,346.05
68	195/14	GLADYS KAARI	5.2 YRS	34,346.05
		TOTAL		2,219,191.77

37 The prayer for severance pay is dismissed because the court has already declared that the claimants were never declared redundant but they were unfairly dismissed. The remedy for unfair termination is compensation by gross salary for upto 12 months but in this case it was not prayed. Consequently the parties shall remain bound by their own pleadings. The claim for underpayment is also dismissed for want of particulars and evidence.

DISPOSITION

For the reasons aforesaid, judgment is entered for each of the 68 claimants whose suits are herein consolidated in the aggregate sum of ksh.**2,219,191.77** to be shared as indicated above.

The claimants will also have costs and interests.

Orders accordingly.

Dated, signed and delivered this 19th December 2014.

O. N. Makau

Judge



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