REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

NAKURU HIGH COURT CIVIL SUIT NO. 395 OF 2001

PETER BAIYE GICHOHI & OTHERS::::::::::::::::::::::::::::::::::::PLAINTIFFS

VERSUS

THE HON. ATTORNEY GENERAL

OF THE REPUBLIC OF KENYA::DEFENDANT

AS CONSOLIDATED WITH

CIVIL SUIT NO. 1649 OF 2001

JAMES NYANGIYE & OTHERS::PLAINTIFFS

VERSUS

THE HON. ATTORNEY GENERAL

OF THE REPUBLIC OF KENYA::DEFENDANT

JUDGMENT

The background information to this judgment is that the plaintiffs in Nairobi HCCC NO. 1649/2001 moved to the seat of justice by way of a plaint which has undergone amendments severally culminating in the current operational plaint being the further, further amended plaint further, further amended on the 17th day of March 2010.The salient features of the same for purposes of assessment of liability are as follows:-

- That it is the contention of the plaintiffs that at all material times to this suit each and every one of the plaintiffs was employed and or there existed a contract of service in respect of each of the plaintiffs with the defendant governed by Civil Service Code of Regulation (C.O.R.), Public Service Commission Act Cap 185 of the laws of Kenya. The pensions Act Cap 189, the constitution of Kenya and all the relevant municipal and international laws, convention governing labour and or employment of the plaintiffs with the defendant.

- The course of their grievances arose because in or about October, 2000 the defendants in breach of the various contracts of employment and all the law cited herein, retrenched and or terminated the plaintiffs contracts of service and or forced each of the plaintiffs on early retirement.

- Particulars of breach of contract and or employment are particularized as failure to implement:-

The civil service reforms Retrenchment plan 2000/2002; Civil service Reform Programme sensitization manual on retrenchment of the plaintiffs dated June, 2000; Civil service reforms programme guide lines for the Retrenchment of plaintiffs dated June, 2000. They committed the breach by failing to follow the staff Retrenchment in the civil service circular dated 23rd June 2000 (Ref.op.13/94 and by confirming, and promoting and or dismissing some of the plaintiffs after retrenchment.

- They went on further to content that the entire retrenchment programme subjected to the plaintiffs in the process of terminating their contract of service was characterized by irregularities hence making it null and void; that by reason of lack of a union made the defendants to take advantage of the vulnerable plaintiffs by forcibly retrenching them in breach of the principles of natural justice; that the defendant used re-formulated civil service Reform programme II as medium term strategy (1998-2011) to victimize, stigmatize, traumatize, deamene, humiliate and subject each and everyone of the plaintiffs to in human and degrading treatment; that the retrenchment programme was not transparent and accountable and consequently the funds which were earmarked for the plaintiffs were embezzled and or mismanaged leading to some plaintiffs taking home only meager Kshs. 40,000.00 or thereabout and or none instead of a total package of Kshs. 295,252 and by reason of this default the defendant is liable to pay damages on account of some of the plaintiffs who died or went insane on receiving letters of retrenchment. Majority of plaintiffs were subjected to great financial constrains resulting in the attendant consequence whereby the plaintiffs could not get employment because of the use of the word "**retrenched."** Other plaintiffs had their families disintegrated. The social status of the plaintiffs became irredeemably damaged and became common laughing stock and the public have treated them as rejects, misfits and people not proper to associate with. In retrenching the plaintiffs the defendant retrenched all the plaintiffs and subjected them to perpetual destitution.

Further to the foregoing the plaintiffs claim from the defendant damages for intentional infliction of economic harm because through their agents in charge of the retrenchment programm conspired unjustifiably to inflict loss on the plaintiffs by doing an unlawful act and/or doing a lawful act by unlawful means, agents and servants of the defendants who implemented the civil service reform programe II (1998/2000) deliberately induced breach of contract of service of the plaintiffs with the defendants ministries namely then Education Science and Technology, Energy, Health, Lands and Settlement, local government, labour and Human Resources development, Agriculture and Rural development , office of the President, Finance and Planning, Roads and Public works, Environment and Natural Resources, Information, Transport and Communication, Tourism, Trade and Industry , Foreign Affairs, Heritage and Sports and/or other departments.

In consequence thereof the plaintiffs sought from the defendant the following reliefs:-

(i) A declaration that the civil service Reform Programme II as a medium Term strategy (1998-2002) is illegal unconstitutional and breach of the law, null and void.

(ii) General damages

(iii) Exemplary/aggravated damages

(iv) Payment of full benefits due to each of the plaintiffs amounting to Kshs. 1,575,528,510/=

(v) Costs of the suit.

(vi) Any other or further relief that this court may deem fit and just to grant in the peculiar circumstances of this case.

File number HCCC 1649 of 2001 was consolidated with Nakuru HCCC No. 395 of 2001 affecting a total of 278 plaintiffs also brought against the common defendant the Attorney General. The plaint is dated 20th day of November, 2001 and filed on the 26th day of November, 2001. For purposes of the record only, the averments in the plaint are that the named plaintiffs were variously employed by the

government of Kenya in various Ministries which keep changing titles and names; their condition of service were regulated by the Public Service Commission of Kenya Regulations. The source of grievance like in the case of the plaintiffs in HCCC NO. 1649 of 2001 arises from the fact that sometime on or about August 2000 the government of Kenya in utter disregard of the Public Service Regulations wrote variously to the plaintiffs' notification for early retirement before they had attained the compulsory age of 55 years. The plaint goes on further to state that without prejudice to the afore said unlawful act, it undertook to pay per head Golden hand shake at Kshs.240, 000/=; benefits under the pension Act chapter 189 of the laws of Kenya; additional benefits under the pension Act chapter 189 of the laws of Kenya; two months salary in lieu of notice and unpaid Annuls leave.

The plaintiffs further averred that in breach of its own undertaking, the government had only paid a sum of Kshs. 40,000.00 and as a result of the unlawful retirement, the plaintiffs have been subjected to gross inhuman and degrading treatment and punishment. Their lives had been ruined and seriously disrupted from the normal and they have been exposed to collateral damage due to the breach of their financial obligations to their creditors and those they had stood as guarantors for. In consequence thereof the plaintiffs sought from the defendant the various sum of money indicated against each plaintiff in the plaint and which form the aggregate amount of Kshs. 401,697,705/= with interest from August 2000, to the date of judgment. The plaint also sought a declaration that the notification of early retirement was in breach of the law and contract of service and hence null and void. That the plaintiffs were entitled to general damages and costs of the suit.

The defendant who is the Attorney General filed a common defence in both suits. The one filed in HCCC NO. 1649/01 could not be easily traced from the bulk documents in order to know when it was filed in court. The copy traced in file number HCCC. NO. 395/01 indicates that entry of appearance dated 4th day of December, 2001 was filed on the 7th day of December, 2001. The defence is dated 21st day of December 2001 and filed on the same 21st day of December, 2001. In it the defendant averred that it reserved its right to raise a preliminary issue of law in that the suit does not lie for failure to comply with the provisions of section 13A of the government proceedings Act cap 40 laws of Kenya, denied paragraphs 3,4,5 and 6 of the plaint and put the plaintiffs to strict proof thereof. The defence goes on to contend further that the suit is scandalous, frivolous and vexatious and is otherwise an abuse of the process of the court and fails to disclose a cause of action and should be struck out with costs.

After all the preliminaries necessary for the readying of the suit for trial were completed, parties set down the suit for hearing. On the date fixed for hearing Mr. Kiplenge advocate for the plaintiffs in HCCC Number 1649/01 in his opening remarks informed the court that the suit is not representative in nature. It is filed by the numerous plaintiffs in their own individual capacity; that the suit is anchored on common factors. That the suit had initially been struck out on a point of preliminary objection but then the plaintiffs appealed to the court of appeal which reversed the striking out order which had been granted by the high court paving the way for the trial. It was further agreed that evidence would be tendered by each plaintiff representing himself and a representative of the rest of the plaintiffs both in HCCC NO. 1649/01 and 395/01 followed by the defence evidence and thereafter parties would submit and the court would then rule on the issue of liability before the issue of assessment of quantum of damages if any could be gone into.

The trial commenced on 18/9/2007. A total of nine (9) witnesses gave evidence for the plaintiffs namely (PW1) Hosea Ndwiga, (PW2) James Mwangi Mutuku, (PW3) Christine Wangari Ndegwa, (PW4) Tom Cornel Mukalama, (PW5) Lucy Wairimu Ireri (PW7), Daniel Njogu, (PW8) Damasius Musia and PW9 Joseph Karanja Kimondo. In summary, (Pw1) Hosea Ndwiga informed the court that he is plaintiff No. 2208; before events leading to these proceedings were set in motion he was working as a clerical officer stationed at Embu Ministry of Public Works offices having been appointed to that position effective 1/9/1998 and promoted through the ranks upto the rank of senior clerical officer. His source of complaint is that on 6/10/2000 he was called to the office of his in charge and handed a sealed envelope and then a watchman was told to drive him out of the office. Upon opening the sealed envelope he realized that the envelope contained a document dated 25th day of August, 2000 (25/8/2000) headed "**notification of early retirement"** and which contained a declaration requiring him PW1 not to rejoin the civil service. It is his testimony that he does not know how he was identified as a proper candidate for

early retirement; he was not involved in the selection process. Neither was he involved in the settling of the terms of this early retirement. He concedes to have signed the said form but asserts that this was done under duress. Despite him (PW1) having worked for the government for a period of 21 years he was only given Kshs.52, 000.00 as terminal benefits. It is his testimony that the action complained of caught him unawares and adversely affected his life. He concedes that upon feeling that they had been unfairly treated by the government him and the rest of the plaintiffs came together and filed these two suits and he is in agreement that due to the large numbers involved its only a few of them who have been selected do give evidence on behalf of the rest. He relies on the documents produced in evidence.

When cross –examined PW1 reiterated his evidence in chief and conceded that he was an employee of the Kenya government, that he was given a letter of employment which contained clause 4 and 5 clauses on termination of employment and retirement upon attainment of the retirement age of 55 years, subjection to the terminal conditions of employment Regulations. He also concedes that under the afore mentioned terms, there was a relationship of employment between him and the Kenya government but refuted the allegations that his was a situation of servitude not withstanding that each party to the said letter; of appointment could exercise the same rights. He maintained he was forced to sign the release letter; he received some dues from the defendant comprising Golden hand shake amounting to Kshs. 40,000.00, 2 months salary in lieu of notice and normal pension. Concedes that Golden handshake was not provided for in the then employment Act cap 226. He was firm he was retired prematurely, he was not trained before being retrenched and was not aware that the training of would be retrenchees had been frustrated and stopped by a court order.

(PW2) James Mwangi Mutuku on the other hand testified that he was an employee of Ministry of Works based in Kirinyaga District; he joined the government service on 2/5/86 as an Artisan and then confirmed in employment on 3/11/88 and continued working smoothly until 19/9/2000 when he was confronted with the documentation on early retirement. Like PW1, him PW2 says he was not known in which way identification of him as a proper candidate for early retirement or retrenchment was done. He does not know why he was picked upon for early retrenchment.

When cross-examined, he stated that he was not involved in the process of his identification for retrenchment; concedes that his relationship with his employer was governed by a contract of employment where each party had duties and obligations towards the other and that it was not a situation of servitude.

(PW3) Christine Wangari was an employee in the department of survey effective 10/4/1978 on temporary basis. She received her retrenchment letter in a similar manner as PW1 and 2. She had no hand in her being identified as a proper candidate for retrenchment. She had no prior notice of the retrenchment exercise and concedes to have received Kshs. 40,000.00 as golden handshake, 2 months salary in lieu of notice amounting to Kshs. 54,000.00 and then pension Kshs. 123,000.00.

DW4 Tom Cornel Mukalama had been employed with the Ministry of Agriculture in the department of veterinary services effective 7/3/1968 and rose through the ranks and had reached the rank of executive assistant. He was aged 54 years as at the time he was retrenched. He confirms that he was not involved in his identification for retrenchment. When cross-examined he was firm his lawyers issued a notice of intention to sue the defendant and the same was served onto the office of the Attorney General and acknowledged. The notice of intention to sue had been accompanied by a list of the intending plaintiffs.

(PW5) Francis Ngigi had joined the services of the Ministry of Works at the age of 25 years and underwent a training by the Director of industrial training for a period of 3 years. He was retrenched in similar circumstances as those of PW1, 2, 3 and 4 without him (PW5) involvement, effective 22/9/2000 when he was handed the retrenchment letter. His complaint is that he was retired prematurely and concedes to have received some money; he did not know the formula which was used by the government to identify employees for retrenchment. He was firm that retrenchment and Golden hand shake are not provided for in the regulations but concedes that the letter of employment contained terms and conditions of service which governed his relationship with the employer.

PW6 Lucy Wairimu Ireri had joined the civil service and was working with the Ministry of Health at the time when she was retrenched in October 2000 at the age of 44 years. When cross-examined, she stated that she had no prior notice of her retrenchment, she does not know how she was identified for retrenchment and confirmed that notice of intention to sue containing the names of the intending plaintiffs was issued to the Attorney General and was acknowledged.

PW7 Daniel Njogu on the other hand was at the time working as a civil servant attached to the office of the District Agricultural officer Machakos as a mechanic effective 1978. As at the time of retrenchment, he had served his employer diligently for a period of 22 years. He confirmed the testimony of PW1, 2,3,4,5 and 6 that he was not involved in the process of his identification for purposes of retrenchment and he does not know how he was found suitable for retrenchment. Concede having been served with the letter of retrenchment in the year 2000 which notification came as a surprise to him as he had no prior notice. He concedes to have signed the documentation for retrenchment served on him but he says that this was as s result of coercion. He contends the whole exercise was unlawful as it was allegedly undertaken for purpose of reorganization of the offices but to his surprise the offices held by them then are still in existence and were subsequently filled by new appointees. His major complaint which led to the filing of the suit is because it was selectively done in the first instance, 2ndly the programmes which the government was required to undertaken before embarking on retrenchment were not undertaken.

When cross-examined, he confirmed that he is plaintiff No. 3285 in HCCH NO. 1649/01; concedes the relationship between him and the Kenya government was a contract of service as signified by his letter of employment, concedes the letter of employment contains terms of services and it makes reference to the civil service code of Regulations. He was firm the notice of intention to sue was served on the Attorney General by the advocate and it operates for all plaintiffs. He concedes him PW7 had applied to retire from the civil service in the year 1994 but the same was not approved.

PW8 Damasius Musia Malinda had joined the civil service in the Ministry of Public Works in the year 1977, promoted to the grade of Artisan 1 on 4/1/1982 and continued in the service with them for a period of 23 years up to the time of his retirement in the years 2000 at the age of 45 years having lost 10 years of his service. He had worked well with a good record having risen to the rank of building inspector in the year 1/1/1995 (30/5/1991). He confirmed receipt of the letter of notification of retrenchment dated 31/8/2006 forwarded to him on 19/9/2000. He concedes having signed the said letter because he was informed that he was being retrenched under reorganization of the office but to his knowledge the office previously held by him was not abolished. Like in the case of the co-witnesses he does not know how he was identified for retrenchment, he had no prior knowledge of the exercise, he was not involved in the determination and that the government did not comply with the obligations under the programme.

When cross-examined he concedes he had a letter of appointment which contained the terms of employment, concedes to have received some dues from the government but these were not in terms of the retrenchment plan and that is why he is complaining. His further source of complaint is that he was unprocedurally retrenched at the age of 45 years and in the process he lost 10 years of service.

PW9 Joseph Karanja Kimondo testified that he joined the civil service as a clerical officer in the Ministry of Works on 9/8/1985 and was subsequently confirmed to permanent and pensionable terms and was subsequently promoted to the rank of senior inspector.

Concerning the events leading to these proceedings, he states that, like his co-witnesses he was just served with a letter of retrenchment. He was by then aged 35 years. He was due to retire at the age of 55 years and he therefore suffered a loss of 20 years (twenty years) of service. The source of grievance is that the exercise was carried out in a discriminatory manner, the exercise was meant to be for purposes of reorganization leading to the abolition of some offices but these were not abolished and instead new officers were hired to take over the vacant positions. It was not effected in terms of the policy document. He was not trained before being retrenched. He did not receive all the payments he was expected to receive as per the content of the retrenchment circular.

When cross-examined PW9 confirmed that as an employee of the government there were terms of

engagement binding on both sides; he concedes he received some payments but contends that these were not in line with the circulars issued to govern the retrenchment exercise; maintain the whole exercise was discriminatory.

The defence called two witnesses. The first to take the witness stand was (DW1) Rose Masya who was at the time the Deputy Board Secretary to the Permanent Public Service Remuneration Board formerly Directorate of Personnel. She said she had been with the institution since 1993 and was conversant with the events leading to the initiation of these proceedings. She is aware of the retrenchment programme by which offices in the Public service are abolished. To her, the exercise was lawful as the same was within the provisions of the constitution and the Public Service Commission Act. The programme was resorted to in the year 2000 because at the time the government was grappling with a huge wage bill which was heavy and could not be sustained by the government on the one hand. On the other hand the government was also grappling with the issue of a bloated civil service some of whose officers had no work or if there was work there were no facilities to facilitate the work of those officers and in the process these officers were rendered in effective. This state of affairs forced the government to take steps in the year 1989 to require all government Ministries to carry out a rationalization exercise and identify areas which were over manned by staff, which core functions were to be commercialized and contracted to outsiders using a clear criteria.

It is DW1s evidence that the government Ministries did as directed and came up with the disadvantages of the situation as it was then in the civil service which was that:

(a) By reason of the huge wage bill, the government could not pay its officers well

(b) Productivity was low.

(c) Service delivery was poor

(d) And Kenyans were complaining of poor service delivery.

(e) Morale within the civil service was low

(f) The civil servants themselves were complaining of meager service pay which could not meet their basic needs.

It had been hoped that if the exercise is embarked on, the Kenya government was going to gain by reason of the government being enabled to concentrate on its core functions of service delivery.

(b) The government was going to be enabled to balance between personnel emoluments and operations because as what the government was spending on paying wages was more than what it required to operationalize its services. Improvement in wage earnings would have enabled the government to retain professionalism in its service.

Having laid down the modalities on how the scheme was to be executed the government had to come up with modalities for identifying officers for retrenchment in what came to be known **as civil service retirement plan 2000-2002** which had clear provisions on how to identify officers to be retired.

The body tasked to implement the programme was the Directorate of personnel management leading to the issuance of the DPM circular exhibit D1 and D2. These contained directions on the process to be followed and the resulting send home package, for both the pensionable and non pensionable categories as per the guide lines set out in exhibit D3.

The DPM went further to prepare a sensitization manual on the programme namely exhibit D4 which document gave the background to the retrenchment, why it was being undertaken; the criteria for identification of officers for purposes of retrenchment, contained instructional frame work for undertaking the exercise. It is DW1s evidence that the manual prepared was not meant for only those to be targeted

but for the entire civil service to enable them be appraised of the on goings on the prgramme.

In addition to the manual, the DPM also developed another document on counseling and enterprise development prgrammes meant to assist in the training of retrenchees after being identified. The subject of training was to cover areas of implication of retrenchment and change management, enterprise and self employment; business start process; effective business management, preparation of a business plan, keeping of proper business records, sources of business finance, management of working capital, causes of business successes and or failures.

It is DW1s evidence that she has knowledge that this plan was partly implemented because in some areas the programme was resisted by the identified retrenchees.

In addition to the afore set out documents exhibit D1,2,3,4, and 5 the DPM also developed an accompanying form to be signed by the identified retrenchees as well as communication sent to permanent secretaries, accounting officers in all government ministries giving objectives of the training programmes, information on the location of the training centres. Similar communication was sent to all the provincial commissioners and District Commissioners. Samples of these letters were produced as exhibit D6 and D7.

Turning to the actual plaintiffs before court , it is the stand of the defendant that indeed the plaintiffs before court were employees of the government, that their offices were abolished in the course of restructing government operations and by reason of this the government was acting within the law when it retired the aggrieved officers through the retrenchment exercise. It is DW1s defence of the government exercise that it is not mandatory for the plaintiffs to serve till the age of 55 years as they held office at the pleasure of the president. It is further DW1s stand that the Public Service Act makes provision for abolition of offices and where an office has been abolished any officers holding the abolished offices can be retrenched or be processed out of service through the early retirement scheme.

On payment under the retrenchment scheme DW1, denied the suggestions that the Kenya government had undertaken to pay Golden hand shake at the rate of Kshs. 240,000.00 per head. The retrenchment package is what is contained in the circulars produced in court payable in two categories. Under the non pensionable category these were only entitled to payment of 2½ months salary, current basic salary at the time of retrenchment for each year worked, payment of 2 months salary in lieu of notice, a Golden hand shake of Kshs. 40,000.00, compassionate gratuity for staff employed in the service on 1/4/1960 for male officers and 1/1/1977 for female officers. Whereas those in the pensionable category there is provision for payment of gratuity pension benefits payable under the pensions Act cap 189 to all the officers who had been confirmed in their permanent and pensionable employment; payment of additional pension under the pension Act cap 189 laws of Kenya; payment of 2 months salary in lieu of notice; Golden hand shake of Kshs. 40,000.00.

There was also provision for payment of severance pay at the rate of 15 days for each completed year of service in normal circumstances. But under the retrenchment programme the officers were given 2 ½ months salary for every completed year of service. On notice, the law provided for one months salary in lieu of notice whereas under the retrenchment programme the government gave the retrenched officers 3 months salary in lieu of notice.

With regard to leave earned, it is the stand of DW1 that the government compensated all officers for all leave earned for the year 2000 in cash as it is required by law. When taken through the content of the plaint, DW1 maintained that the plaintiffs' complaints were not justified. The government acted within the law; she is a stranger to allegations that positions vacated by the retrenched officers were advertised and shortly thereafter; she concedes some payments intended for the retrenched officers were delayed but it was because the officers failed to execute the relevant discharge documents; she is a stranger to allegations that some of the retrenched officers were rehired by the same government but if this happened then it is attributed to the affected officers going back to school improving on their academics before coming back to be rehired.

When cross-examined by learned counsel for the plaintiffs in HCCC 395/01, DW1 reiterated her extensive testimony in chief and then stressed that the task of identifying the over manned sections in each ministries was left to the ministries themselves; no names of those to be retrenched were suggested to the ministries. Each ministry acted independently; she had no doubt the officers identified for retrenchment were explained the criteria used to identify them for retrenchment; she also has no doubt that the sensitization exercise was undertaken before identification of the affected officers; confirmed that training was mandatory some were trained while others resisted; conceded that some officers appealed against identification for retrenchment and their appeals were successful not withstanding that the forms provided for filling did not have provision for an appeal.

On further cross-examination by learned counsel for the plaintiffs in HCCC NO. 1649/01, DW1 responded that she was a stranger to the learned counsels assertions that it is world bank and IMF which pressurized the Kenya government to retrench its officers; concedes that she was aware that before the government embarked on the retrenchments exercise budget any allocation to the tune of Kshs. 7,617,021,666.00 was provided for but to her understanding the whole of this amount was not to go to retrenchees but to various components comprised in the retrenchment programme. The targeted group was a total of 25,783 civil servants. She denied any knowledge of embezzlement of funds meant for the retrenchment programme by the implementors of the programme. She concedes there was a budgetary allocation of Kshs. 212,496.796.00 for training of retrenchees. She confirms some were trained while others were not but she does not have a list of those trained and those not trained and how much was spent on the training.

On further cross-examination DW1 concedes that the letter of appointment whose samples were exhibited did not make provision for retrenchment but she is sure that an employer cannot be forced to retain an employee in his service if he does not want to. She does not agree with the suggestion that once retrenched the retrenchees were unemployable elsewhere. Accordingly the retrenchment exercise was a clear government exercise. It is her belief that all those officers who were affected by the retrenchment were sensitized as the sensitization exercise spread from the Ministries up to the District levels.

Lastly she concedes that after the retrenchment exercise, the government embarked on an early retirement scheme in the year 2004 whereby officers were not targeted but they volunteered on their own to leave the civil service. Denied the suggestion that Mr. Muthaura's circular which came into place much later affects the plaintiffs herein. It is her belief that the retrenchment exercise was carried out harmoniously. In a brief re-examination, DW1 stated that sensitization exercise was carried out to each and every civil servant inclusive of those who were not retrenched. Denied allegations of the scheme having been a failure.

(DW2) Mr. Henry Wafula Wesioma gave evidence in his capacity as an accountant attached to the ministry of state for public service formerly Directorate of personnel management. DW2 used to prepare vouchers for payment of safety net packages to those who had been retrenched but he had no details of those who had been paid and those who had not been paid.

At the close of hearing, learned counsels on both sides filed written submissions. Those filed on behalf of the plaintiff in Nakuru HCCC NO. 395/01 were filed on 24th October 2011. While those in Nairobi HCCC NO. 1649/01 were filed on 17th June, 2011. A perusal of both sets reveals that they are almost similar in their material particulars and for this reason they will be assessed as one. In them learned counsels have stressed that both suits were consolidated by an order granted by L. Kimaru J on the 7th day of November, 2006; both suits have a common defendant, who is the Attorney General who is sued on behalf of the government; the suits are anchored on similar set of facts based on the defendants action of retrenching the plaintiffs in the manner done and the reliefs being sought in both suits are more or less similar.

On the back ground information, learned counsels have submitted that the grieving facts have their roots in events which took place in August, 1993 when the government launched the civil service Reform programme (C.S.R.P) strategy focusing on costs containment through staff reduction initiative including the implementation of the voluntary retirement scheme VERS. These initiatives eventually led to the

launching of a comprehensive ministries rationalization and staff right sizing aimed at determination of areas of duplication of functions, functions to be divested, abolished, optional staffing by cadre and work station with the aim that staff holding the affected positions were to be targeted for retrenchment which retrenchment was expected to be carried out in accordance with relevant service regulations and law governing employment that existed then but they contend that the contrary was the position as the exercise was carried out in the most inhuman and barbaric manner where by the ministries were directed to identify officers, serve them with letters and then enforce compliance by force and cruelty. The manner of executing the programme was disapproved leading to the filing of numerous suits among them **Nairobi HC. Misc Application No. 988 of 2000 National Labour Party and Another versus Nairobi HCCC 1512/2002 as consolidated with Nairobi HCCCNO. 8 OF 2003, Nakuru HCCC Misc. application No. 275 of 2001 which eventually culminated in Nakuru HCCC no. 395 of 2001 which was later consolidated with Nairobi HCCC 1649/01.**

On the pleadings of both sides learned counsels submitted that the plaintiffs raised serious factual issues in their paragraphs 4, 5(a) (e) 6 and 7 of their respective plaints to the effect that the defendant moved to serve the plaintiffs with letters of notification for early retirement before attainment of the age of 55 years of age in consideration of the defendant paying the plaintiffs Golden hand shake of kshs.240, 000.00, benefits under the Pensions Act chapter 189 of the laws of Kenya, additional benefits under the pension Act chapter 189 laws of Kenya, two months salary in lieu of notice and unpaid annual leave. In breach of the defendants commitments afore said the defendant had only paid Kshs. 40,000/= resulting in the plaintiffs being exposed to inhuman and degrading treatment and punishment for which they claim the reliefs sought.

On the defendants' defence, it is contended that the same cannot hold as it is a mere denial as the defence has avoided to specify details of the retrenchment, number of individuals retrenched, money paid, the source of the monies paid and how it was disbursed to all the retrenchees. The short comings in the defence not withstanding the plaintiffs concede the retrenchment exercise had been planned and financed by the defendant with the support of the World Bank and IMF and other several Donor Agencies as outlined in the Budget speech made by the Minister for Finance on the 15th day of June, 2000. The objective of this programme was to reform the public service by getting rid of excess civil servants. Each affected civil servant was to get a package of Kshs. 240,000.00 execution of the retrenchment exercise or reform programme was one of the conditions for resumption of financial support.

On the ideals for the execution of the retrenchment exercise, both learned counsels have contended that these were set out in the fore word to the retrenchment plan, namely to deal with a civil service which had grown to an un manageable level and despite this growth, quality of service had declined to depressing levels" The growth of the service to an un manageable level had resulted in an increased wage bill which had made it difficult for the government to sustain public expenditure hence there was need for a learner well equipped and qualified public service to play an effective role of supporting the private sector as an engine of growth. The exercise was said to have been a culmination of the civil service reform programme commenced in 1993 with the aim of improving efficiency and proficiency in the civil service through the ministries rationalization and staff tight-sizing. The aim of the exercise was further to divert from non core functions, eliminate overlaps, address duplication and determine optimal staffing levels necessary for quality service delivery. All these made it imperative on the government to off-load excess staff from the civil service. It was thought these could be achieved through the retrenchment exercise. The success of the programme called for concerted effort, ownership, commitment in its implementation. This required every permanent secretary, Authorized officer with the support of ministerial civil service Reform committees and ministerial improvement teams to take direct control and management of the process in order to ensure that its implementation go along way to contribute to the overall goals of national development and poverty reduction in the country.

It is further submitted that the forward outlining the ideals in the retrenchment exercise were fortified further by the content of the practice note under the hand of one J.E. O. Ongwae Directorate personnel management confirming that the civil service reforms programme was launched in 1993 to improve efficiency and productivity with the first phase running from 1993-1998 through voluntary early retirement scheme which offloaded 64,155 civil servants from the payroll. This was later reformulated as

a medium term strategy running from 1998-2001 which saw each Ministry setting its core functions and determining optimam staff levels at work stations which rationalization and staff right sizing exercises had been carried out and reports submitted to the Directorate and personnel management indicating the optimal staff required by each Ministry and those to be retrenched and made an assurance that the retrenchment was going to be carried out in accordance with existing service and relevant laws governing employment. The plan included a component of training to ensure that the retrenchees were adequately prepared for post retirement life.

Learned counsel went on to state that by reason of the existence of the afore mentioned policy documents the court is invited to note that they go to demonstrate that the defendant had a noble project to reduce the civil servants in accordance with the law which depended on a reform plan agreed on by it, the IMF, World Bank and other Donor Agencies but apparently it became flawed by the withdrawal of the Donor support and in the process making the plaintiffs to be victims evidenced by the fact that chapter 1-7 of the reforms plan was not implemented.

With regard to the overall general conduct of the retrenchments process as far as the plaintiffs are concerned, learned counsels contended that the defendant's ministries and departments provided lists of staff to be retrenched including the plaintiffs but without ensuring that the process was inline with the constitution and the relevant laws. To them the exercise was conducted hurriedly and not in accordance with the plan.

Learned counsels contended further that the exercise is further faulted for the reason that the defendant tended to copy the practice from other countries where the exercise had been carried out without taking into consideration factors such as the fact that the civil service salary levels in Kenya were very low meaning that any statutory payment as a take home hand shake in the absence of any additional payment was dismal considering that the system had no backup social welfare packages. It is therefore their stand that payment of Kshs. 40,000 instead of the proposed Ksh.240, 000.00 was tragic.

It is their stand further that the defendants conduct instead of fighting poverty levels went a long way to reduce the plaintiffs to the status of destitutes by paying them meager packages. Also content that the defendant agents who were executing the retrenchment programme namely the public service Reforms, co-ordination committees and Directorate of personnel management failed to follow the criteria to identify those to be retrenched, age , personal files indicating disciplinary cases, inability to discharge duty, ill health etc. They did not use merit, service regulations, transparency. It can be said it was hurried, not transparent, a witch hunt and not objective, equitable and well coordinated.

While still on the preparatory part, the plaintiffs still contend that sensitization was an integral part of the psychological preparation of those to be retrenched which was necessary to facilitate understanding, acceptance and implementation, facilitate the implementation of the programme in time, eliminate fears and uncertainty associated with reposition, partiallity and witch-hunting. Failure to carry out this exercise left the plaintiffs traumatized and psychologically tortured upon being identified and forced out of work.

To fortify their stand learned counsels for the plaintiffs contended that the meetings and workshops never took place and the money set aside for the meetings was not accounted for. Failure to carry out this exercise disadvantaged the plaintiffs as it had hoped the exercise would have helped the plaintiffs to be easily absorbed into public life embark on more fulfilling engagement in the private sector and family life.

It is their stand that the defendant was aware of the inadequacy of the amount of Kshs.225, 252 proposed per retrenchee and yet it did nothing to ameliorate that thus abandoning the plaintiffs to fate. There was also failure to provide for the technical assistance for the plaintiffs as planned as no technical experts were engaged to train the retrenchees and were engaged to train and place retrenchees in gainful economic activities or assist the plaintiffs with counseling; resettlement or placement.

On the overall execution of the exercise, the court was invited to take note that the defence has not accounted for the money which was budgeted for the implementation of the exercise namely (a) Kshs.

7,284,021,666 for payment of Golden hand shake, Kshs. 212,491,766.00 for trainings of the covering accommodation needs, stationary, from port to training venues and fees for resource power, Kshs.104,183,404 for sensitization covering production of brochure, payments of resource persons accommodation allowance per plaintiffs, transport to and from the venues of workshops, mass media publicity (2 years) stationary and hiring of workshop venues and facilities Kshs 16,324,900, for administration of the programme i.e equipment for use at the secretariat making a total of 7,617,021,660.

On the impact the exercise had on the plaintiffs, the learned counsels submitted that the framing of the discharge forms stigmatized the plaintiffs as it created an impression that the civil service was offloading its useless staff and for this reason getting employment even in the private sector was difficult.

Turning to the evidence, it is the stand of the plaintiffs counsels that the afore set out assessment of the documentary exhibits assessed above have gone along way to confirm the plaintiffs evidence that all plaintiffs were at the material time in the service of the defendant in various ministries and cadre; that the retrenchment exercise caught them by surprise on 1st October, 2000 when they were all served with retrenchment letters terminating their services and requiring them to hand over offices and vacate government houses; that the exercise was done in a hurry and by force as they were harassed and beaten by the defendants agents if they tried to resist and were not given time to prepare; they had no trade union to voice their concerns and were treated like animals; they were not prepared for retrenchment as they diligently executed their duties awaiting retirement as most of them had loans secured by their pay slips, the packages they were being forced to take home was too little to support their families. They were traumatized and stigmatized by reason of the manner in which they were ejected and mistreated by the defendant which conduct made the public believe they were an incompetent and lazy lot who could not be employed in the private sector; that without employment and benefits most resorted to anti social behavior leading to broken families, becoming mad, committing suicide, and death; they received no training by the defendant and were not sensitized to help them to psychologically adjust to the harsh reality that the defendant had subjected them to; the money earmarked for them was embezzled by those who were charged with the execution of the process as there was no sensitization and training as budgeted; that the defendant had budgeted Kshs. 240,000.00 per retrenchee yet the defendant later proposed a payment of kshs.40,000.00; that the process was illegal, irregular and unconstitutional and ought to be declared null and void and lastly that the defendants action amounted to inducement of breach of contract and intentional infliction of economic harm hence the plaintiffs prayers as pleaded in the plaint.

Turning to the defence evidence, learned counsel invited the court to note that the defence evidence goes to demonstrate that indeed the plaintiffs were all employees of the defendant and were retrenched on 1st October, 2000; that the exercise was necessary for the defendant since the civil service had bloated and attracted a huge wage bill creating a budget deficit, the scheme was well intentional and the process was fairly done by the defendants agents, the defendant initially conducted trainings, that, there were difficulties because the plaintiffs did not cooperate and instead went to court; that funds meant for retrenchment were not embezzled as it was properly accounted for; that the plaintiffs claims are unmerited.

Further that since the defendant has custody of all the records pertaining to the retrenchment exercise with regard to the employees who were paid, and if paid what was paid but they chose not to tender them in evidence which conduct should give rise to an inference that if produced these would be against the interests of the defendant. Also contends that the defendant failed to explain why the plaintiffs were paid Kshs. 40,000.00 instead of 240,000.00. Also failed to demonstrate to court how the amount budgeted of 7.6 billion which had been budgeted for the exercise was utilized.

Lastly that the afore stated factors go along way to place doubt on the constitutionality and the legality of the entire process as they evidently show that the defendant failed to protect the rights of the plaintiffs and instead subjected them to inhuman and degrading treatment against express provisions of the constitution considering that the plaintiffs who had no trade union were vulnerable employees against the force and might of the defendant. It is clearly a case where the defendant sacrificed the plaintiffs at the Alter of Foreign aid and financial assistance from IMF, World Bank and aid Agencies. The court to find that the

financial and economic hardship that the defendant was undergoing not withstanding the plaintiffs were entitled to dignified termination of employment and for this reason the plaintiffs are entitled to exemplary and aggravated damages.

Turning to the law, the court was invited to take note of the fact that the defendant did not pay attention to the provisions of regulations 15 of the Regulation of wages (general) which provides that in case of redundancy the employer had to pay attention to sensitivity in time, the skill, ability and reliability of each employee instead, the defendant had gone to retrench the young and low income earners in its establishment;

(ii) the plaintiffs were not paid severance pay of not less than 15 days pay per each completed year of service contrary to section 40(1) (g) of the employment Act; the defendant breached section 35(1) (c) of the then employment Act by giving the plaintiffs less than 30 days notice stipulated in the said Act; the defendant breached section 35(5) of the employment Act as it failed to pay the plaintiffs service pay for every year worked; the unlawfulness of the retrenchment exercise is further informed by the fact that the defendant did not retrench the plaintiffs in line with the guidelines laid down in the retrenchment plan; they breached section 51(2) of the employment Act by failing to give each employee a testimonial upon retirement.

On the constitutional provisions, it is contended that the retrenchment exercise breached the constitutional provisions relating to the requirement that the government of the date should be one which espouses the essential value of human rights, equality, freedom, democracy, social justice and the rule of law and one committed to the protection of the nurturing and protecting the well being of individuals, the family, community and the nation; they contend that the plaintiffs were discriminated against by reason of being singled out for retrenchment; the government failed to protect their dignity and the right to that dignity more particularly when they were made to sign not to apply to be employed again in the civil service; since the decision to retrench was one sided, and the plaintiffs placed at the mercy of the defendant, this was a breach on their inviolable human rights; they are not accorded fair labour practices as they were not paid in terms of the labour law; the administrative action of the defendant taken against the plaintiffs was not fair, inherently breached the fundamental and constitutional rights of the plaintiffs.

At the international level it is contended the defendant breached Articles 4,7,9,10,11,12,13,14 of the termination of employment convention 1982 (no. 158 International labour organization) by terminating the employment contracts without following the due process of law which demands that there would be prior consultation between the employer and the employee; lack of discrimination, valid reason, consideration in terms of capacity, conduct, competence, justification and prompt payment of benefits. They also breached employment and occupation convention 1958 (No 111) which enjoins the state parties to it to promote by methods appropriate to national conditions and practice equality of opportunity and treatment in respect of employment and occupation with a view to eliminating discrimination thereof.

With regard to defamation, they contended the words contained in the notification to retire letters of "**You have been identified along with others to be retired**" are defamatory and were calculated to lower the plaintiffs in the estimation of right thinking members of society generally. This exposed them to hatred, contempt, ridicule as they were viewed as persons who were in competent and unable to work. The fact that they were required not to access employment service seriously injured their reputation and character and hampered their prospects of future employment and were calculated to lower the plaintiffs in the estimation of right thinking members of society generally; then exposed them to hatred, contempt, ridicule as they were viewed as persons who were in competent and unable to work. The fact that they were not required to access employment in the civil service seriously infringed their reputation and character and hampered their prospects of future employment.

There were also submissions from plaintiffs, who were appearing in person namely Damsius Musya Malinda filed on the 5th July, 2011, Joseph Karanja Kimando filed on the 13th July, 2011 and Daniel Njogu Mwangi filed on 5th July, 2011. The court has perused the same and concerns high lighted by them are similar to those highlighted by counsel for the represented plaintiffs. They simply reiterate

that they were not trained, sensitized, offices held by them were not abolished as alleged, they were not paid their dues promptly, and were not compensated for the period they took to wait for their dues, they were prematurely retired, they were not involved in the identification exercise, they urge the court to grant them the reliefs they are seeking.

In response to all the plaintiffs submissions learned counsels for the state revisited the pleadings filed by each side of the devide, the evidence adduced by each side of the devide both of which have already been assessed when dealing with the submissions of learned counsels for the plaintiffs and as such there is no need to duplicate them.

On the merits of the assessment of the facts on liability, learned counsel for the state urged the court not to find the government liable to the plaintiffs because of the following reasons:-

(i) The action is well backed up by the agreed background information that at independence as at 1963 the government had a lean civil services of about 60,300 officers, which number grew at an alarming rate necessitated by demand for public services occasioned by rapid population growth and political and socio-economic considerations which forced the civil service to grow at an alarming rate of 65% per year culminating to the figure reaching 274,000 officers as at the time the remedial action leading to the initiation of these proceedings were set in motion.

(ii) The government was compelled to take the remedial action because the bloating of the civil service had serious repercussions on its budget allocation leading to budgetary deficits as its revenue could not sustain publicexpenditure a situation contributed to by a low economic growth which impacted negatively on service delivery and over all governments ability to provide improved standard of living for its citizens.

(iii) The sole purpose for the government taking remedial measures was solely for purposes of improving efficiency and productivity within the civil service.

On proof of the plaintiffs' case against the defence, it is contended that the plaintiffs had not discharged this burden because of the following reasons:-

(i) The plaintiffs have failed to prove that at all material times they were employed or that there existed a contract of service between them and the government.

(ii) Most of the plaintiffs are strangers to the suit and they stand none suited because they failed to provide their personal numbers, identity card numbers and ministry under which they worked.

(iii) Some of those listed are deceased and can only be represented through personal representatives.

(iv) Some were procedurally processed out of the civil service.

(v) Some were fully paid their rightful entitlements and are drawing their pensions.

On breach of contract between the plaintiffs and the government, the state contends that this has not been established because the retrenchment exercise was carried out in line with the provisions of the constitution, the service commission Act cap 185, Regulation 20, the regulation of wages and condition of employment Act cap 229, the pension Act cap 189 and the employment Act cap 226 because:-

(i) Section 24 and 25 of the repealed retired constitution empowers the president to abolish or re-organize offices when need arises.

(ii) Section 13 of the service commission Act (cap185) on operationalization of the government allows termination of appointment, also when there is abolition of offices.

(iii) Cap 226 of the employment Act then was followed in regard to the provisions of the notice where the officers were given three months salary in lieu of notice paid for in cash.

(iv) Section 15 of the Regulation of wages and conditions of employments Act cap 229 on payment of severance pay was complied with. Instead of paying 15 days pay for each year worked the government paid 45 days or 2 ½ months pay for every year worked.

(v) The government generously in addition to the legal entitlements the government paid a golden hand shake of kshs.40, 000.00.

(vi) Section 7 of the pensions Act cap 189 was also complied with on calculation of the pension payable and the correct assessment done is still being drawn by the plaintiffs throughout their lives.

Turning to the background information on the justification for the initiation of the retrenchment programme, the background on the justification outlined by the learned state counsel are similar to those already outlined by the plaintiffs counsels and for this reason they will not be reproduced herein save that only high lights will be given thus:-

(i) The programme was operationalized by the Directorate of personnel, head of civil service No. Op 13/19A dated 23rd June, 2000.

(ii) The programme was introduced to tackle a bloated civil service and huge wage bill whose revenue could not sustain due to low income returns.

(iii) Before embarking on the exercise, the government consulted widely, analyzed available data drew inspiration from experience in similar programmes in other countries i.e. Uganda (1992-94) Algeria (1994) Argentina and Ghana. Also from the private sector within the country namely Kenya Breweries, smith Kline Beaches, Unga limited, BAT, Kenya Industrial estates, Kenya Sugar Authority, Kenya Airport Authority.

(iv) The results of the survey showed that the scheme provided by the Kenya government was more attractive and sufficient to invest in liable enterprises so as to avoid being rendered destitute.

(v) Maintain the sensitization programme targeted all civil servants for preparedness and training before identification for retirement. These were meant to enable the members fully embrace the socio-economic implication expected.

On the claims that the plaintiffs were paid reduced benefits the state contends that this does not hold because:-

(i) The benefits paid were far beyond statutory requirements.

(ii) The reforms plan was followed diligently.

(iii) Guidelines contained in the D.P.M. circular were strictly adhered to.

(iv) No irregularities were committed by the state and none has been demonstrated to have been committed.

(v) The exercise was not forceful neither was it in breach of the rules of natural justice.

(vi) Criteria used to select the officers to be retrenched as outlined in the retrenchment plan were adhered to.

(vii) Sensitization was carried out to enable the affected officer adjust and settle down comfortably in their retirement.

(viii) Identification took into consideration meritocracy, transparency ability and reliability, affirmative action for gender, disability and persons from marginalized groups and they also applied the method of first in and first out (FIFO) and last in last out (LILO).

(ix) By reason of the afore said there is demonstration that they followed the guidelines laid down by the circulars and for this reason they deny the alleged victimization, stigmatization, defamation, humiliation or subjection to inhuman treatment not withstanding that the plaintiffs failed to prove the same.

(x) The exercise was transparent and there was no embezzlement or misappropriation of funds budgeted for the programme. It was accountable.

(xi) They are strangers to allegations of death, insanity, disintergration of families, plaintiffs becoming laughing stocks, rejection or misfits.

(xii) Maintains the exercise was not unlawful nor carried out by unlawful means.

(xiii) Dispute the plaintiffs' assertions that some retrenched officers were rehired.

(xiv) They agree that the government had set aside a figure of Kshs. 225,252/= per head but this was just a working figure as each retrenched benefits were worked out using their basic salaries with only interim figure being the Golden hand shake of Kshs.40,000.00.

Turning to the actual reliefs sought, they contend these are not awardable because:-

(i) The total aggregate of the sums prayed for have not been established.

(ii) General damages are not available because the retirement exercise was lawful and valid.

(iii) Exemplary/aggravated damages are not available because the plaintiffs failed to prove defamation, victimization, stigmatization, humiliation and or degrading treatment.

(iv) They are not responsible for the plaintiffs' lack of representation by a union. They still contend that even if the plaintiffs had representations from a union, they would not have stopped the exercise as in other jurisdiction the exercise was carried out.

Parties referred the court to case law for the courts guidance. The plaintiffs' counsels referred the court to the case of **TOBIAS OGANYA AUMA AND OTHERS VERSUS KENYA AIRWAYS CO-OPERATION NAIROBI HCCC NO. 4434 OF 1992** decided by A. Mbogholi Msagha on the 23rd day of February, 2001 in which the learned judge declined to uphold a redundancy arrangement initiated by the defendants against the plaintiffs because:-

(a) The reasons for declaring the plaintiffs redundant were said to be financial constraints and over employment a situation the affected plaintiffs had not contributed to; the scheme had been done in a hurry and the principle of last come first go was not accepted; managers were given one weak to provide a list of those to be declared redundant or else they would go home.

The case of **KENYA AIRWAYS CORPORATION LIMITED VERSUS TOBIAS OGANYA AUMA AND FIVE OTHERS NAIROBI CA 350 OF 2002** decided by the court of appeal on the 23rd day of

November, 2007 which was an appeal from the decision of Mbogholi Musagha in which the high court decision was upset because the unions of the respondents were involved in the exercise of redundancy and that the appellant had observed all relevant law and regulations governing redundancy of the respondents.

The case of **ROSA A.M. AND 17 OTHERS VERSUIS INVESTMENTS AND MORGAGES AND ANOTHER NAIROBI HCCC NO. 223 OF 2003** decided by J.B. Ojwang as he then was now judge of the Supreme Court in which the learned judge ruled inter alia that:-

"**The construction is the very remedial within which all courts in Kenya operates and this court must be ready to address any constitutional question in the course of all such litigation as may come before it whenever its jurisdiction is invoked. From this position it must follow that certain judgmental rights issues could come before the court alone, or in combination with general issues of law which stand to be resolved by the normal mode of litigation by way of plaint"**

The case of **MUIA KISEE VERSUS SINOTA MBUSI MACHAKOS HCCA NO. 53 OF 1999** decided by Sitati J on the 8th day of February, 2008 wherein the learned trial judge drawing inspiration from case law cited reiterated that the correct position in law is that any imputation which may tend to lower the plaintiffs in the estimation of right thinking members of society generally to cut him off from society, or to expose him to hatred, contempt or ridicule is defamatory of him, then went further to hold that when a man is falsely accused of conduct which tends to lower him in the estimation of a substantial number of persons, there can be no doubt that the door has been opened to business or social injury or both it will not wait for right thinking members of society generally.

The case of **OCHIENG & 8 OTHERS VERSUS STANDARD LIMITED (2004) IKLR 225** decided by Lenaola J wherein the learned trial judge held inter alia that defamation is a publication without justice from or lawful exercise which is calculated to injure the reputation of another by exposing him to hatred contempt or ridicule.

(2) the law recognizes in every man a right to have the estimation in which he stands in the opinion of other unaffected by false statements to his credit and if such false statements are made without lawful excuse and damage results to the person of whom they are made he had a right of action.

The case of **EAST AFRICAN PORTLAND CEMENT COMPANY LIMITED VERSUS KOM STOCKIST LIMITED NAIROBI HCCCNO. 267 OF 2008** decided on the 24th day of October, 2008 wherein the learned judge held that **a mere denial is not a sufficient defence and a defendant has to show action by affidavit and evidence or otherwise that there is a good defence"**

In addition to authorities cited by learned counsel for the plaintiffs in Nakuru HCCC 395/01 learned counsel for the plaintiffs in Nairobi HCCC NO. 1649/01 added the case of **RAY BIR SINGH CHATTE VERSUS NATIONAL BANK OF KENYA LIMITED KISUMU CA NO. 50 OF 1996** where in the defence was rejected because the defence as put had not put up a positive defence.

The defence on the other hand referred the court to the case of **KENYA PORTS AUTHORITY VERSUS EDWARD OTIENO MOMBASA CA NO.120 OF 1997**. In this case the respondent who had been retired from the appellants' service had moved to the court seeking damages for premature retirement alleging that as per the content of his letter of appointment and the applicable regulations he had been employed to work until the compulsory retirement age of 55 years. The appellant denied that claim and relied on regulations 6(1) of the Kenya Ports Authority Revised Regulations 1983 which made provisions that "**the Authority may require an officer to retire from the service of the Authority at any time After he attains the age of fifty years"**

The high court found for the respondents holding that the termination letter which purported to retire the respondent at the age of 51 years was null and void and the Board had acted in breach of the rules of natural justice.

On appeal, the learned law lords of the court of appeal drew inspiration from the decision of the house of Lords in the case of **ADDIS VERSUS GRAMOPHONE COMPNY (1909) A.C. 488** wherein it had been held that **" where a servant is wrongfully dismissed from his employment the damages for the dismissal cannot include compensation for his injured feelings, or for the loss he may sustain from the fact that the dismissal of itself makes it more difficult for him to obtain fresh employments**" Also drew inspiration from the case of **SHARE VERSUS DOWNS SURGICAL (1984) IAIIER 7** where in the court refused to award damages for distress caused by a brisque and un civilized dismissal.

The case of **RIFT VALLEY TEXTILES LIMITED VERSUS EDWARD ONYANGO OGENDA NAKURU CA NO. 27 OF 1992** wherein there is observation that the agreement forming the contract of employment made provision for a termination notice and what was to be done by either party in the event of none compliance with the issuance of the termination notice. The court held inter alia that:- **The rules of natural justice have no application to a simple contract of employment unless the parties themselves have specifically provided in their contract that such rules shall apply. Where a notice period is provided in the contract of employments as was the case here, then an employer need not assign any reason for giving the notice to terminate the contract and if the employee is not obliged to assign a reason the question of offering to the employer a chance to be heard before giving the notice does not and cannot arise. Again if the employee were to be minded to leave his employment say for a better paid job and he gives notice of his intention to leave, the employee is not obliged to a sign any reason for his intention to terminate the contract…"**

The case of **CHARLES KIMANI NG'ANGA VERSUS TELKOM KENYA LIMITED NAIROBI HCCC NO. 329 OF 1997** decided by J.B. Ojwang J as he then was on the 15th day of July, 2005. Wherein the plaintiff sought general damages for wrongful dismissal. There is observation made to the effect that:- "**the court disallowed the claim for general damages and only allowed the claim for payment of terminal benefits and pension**.

The case of **JOHNSON B. WAIROMA VERSUS SECURICOR KENYA LIMITED NAIORBI HCCC NO. 2838OF 1996** decided by Okubasu JA on the 10th day of November, 2000 wherein it was held inter alia that:-

(i) It is not mandatory that the reasons for such termination be given. Once notice is given or salary in lieu of notice paid then the issue of reasons for termination does not arise.

(ii) The relationship between the defendant and the plaintiffs was that of master and servant and since the plaintiff was paid all that he was entitled to under the employment agreement he was not entitled to any further payment.

(iii) Unless if the contract so stipulate the rules of natural justice have no application to a simple contract of employment.

(iv) After due payment to him of all that which was due to him the plaintiff was not entitled to any other dues.

(v) Once employment is terminated all fringe benefits disappear"

The case of **ROSE NJIRE VERSUS SONY AICO SACCO SOCIETY LIMITED KISII HCCC NO. 14 OF 2002** decided by Kaburu Buini J as he then was on the 12th day of October, 2004 wherein the plaintiff had been retrenched due to economic hardship and lost 17 years to the retirement age of 55 years and was also subjected to pecuniary embarrassment, mental torture and anxiety. The defence denied the claim alleging that the retrenchment was legal and lawful.

The court found as a fact that the plaintiffs had been retrenched on account of Economic hardship. The court also found that the contract of employment did not produce a notice period for termination and

the court drew inspiration from the decision in the case of **C.P.C. INDUSTRIAL PRODUCTS K. LIMITED VERSUS OMWERI AGINA C.A.** civil appeal No. 197 of 1992 wherein it had been held that where no notice of termination has been provided, there should be provision for a reasonable notice.

The court then declined to allow damages for pecuniary embarrassment, mental torture and anxiety but allowed claim for terminal dues and pension.

The case of **JOSEPH KIPKOECH KOGO VERSUS KENYA FLOUSPER COMPANY LIMITED ELDORET HCCCNO. 104 OF 2000** decided by Jeanne Gacheche on the 5th day of October, 2005 where the plaintiffs claim was declined because it fell into the bracket of special damages which the plaintiff had not specifically quantified, pleaded and strictly proved.

This court has given due consideration to the afore set out rival pleadings and submissions and applied to them the principles of case law cited to court for guidance by either side and in this courts opinion, the following are the undisputed facts of the case which are to form the anchor for this courts assessment on the issue as to whether liability has been established by the plaintiffs as against the defendant or not and then give reasons either way:-

1. The plaintiffs have pleaded and their representatives who gave evidence have asserted that all those listed were employees of the defendant. The defendant in their submissions have sought to negative this fact by submitting that they plaintiffs did not furnish their personal numbers, ID. Card numbers and the respective ministries where they were working before being retrenched.

In response to this assertion, the plaintiffs counsels on the other hand submitted that these could have been satisfied by the defendants asking for particulars in the normal way. This court has weighed these two competing interests and it is of the opinion that since it is the defendant who was challenging the legal status of the plaintiffs as former employees of the defendant they should have taken the initiative to seek those particulars from the plaintiffs. In their failure of doing so, this court draws an inference that they were satisfied that the plaintiffs listed were indeed employees of the defendant as at the time they were allegedly retrenched. Secondly this could also have been satisfied by the defendant furnishing to court as part of their defence evidence a list of all their employees who were retrenched at the material time to demonstrate that the listed plaintiffs were not among those listed as having been retrenched by the defendant. The court therefore makes a finding that the listed plaintiffs were employees of the defendant and were retrenched under circumstances leading to these proceedings.

2. Although it is on record that the plaintiffs were employees in various government ministries, it is now trite that the office of the Attorney General is the constitutional office vested with legal personality of suing and being sued for and on behalf of the Kenya government. The court therefore makes a finding that the plaintiffs have brought on board the right party as a defendant in these proceedings.

3. Issue of competence and or legality of the suit cannot be interrogated at this stage because it is on record that there had been a preliminary objection raised by the defence with regard to the legality and or the procedurality of the plaintiffs suit culminating in the suit being struck out at the high court level, leading to an appeal being filed to the court of appeal which court of Appeal reversed the high court decision striking out the plaintiffs suit and ordered that the matter be heard on merit. It is therefore the finding of the court that the suit is properly before this court and the same is entitled to be ruled upon on its own merits.

4. It is common to the back ground information set out in the submissions of both sides of the devide that the circumstances leading to events which led to the retrenchment of the plaintiffs stem from a need arising in the mind of the World Bank, International Monetary Fund and other Donor Agencies with the approval and or agreement of the Kenya government that in order t o spur economic growth, improve on civil service delivery and improve on wage earnings for civil servants as well as retain professionals on the local job market, it was necessary to rationalize and Right size the then bloated civil service.

5. The common interests are alleged to have sat in board rooms, allegedly carried out feasibility studies,

collected data and then come up with the down sizing programme in phases. The first phase carried out around 1993-1995 or thereabout involved providing of incentives to civil servants as an inducement to make them to voluntarily retire from the service. This first phase is alleged to have seen at least sixty eight thousand 68,000 civil servants leave the service. The programme was however halted because it was allegedly abused, making the civil servants to decline to volunteer to retire. Since there was still a need to size down the civil service, the defendant and its like minded interested parties came up with the second phase termed retrenchment, an exercise which affected the plaintiffs' subject of these proceedings.

6. The ideals underlying this phase II exercise were the same namely reduction of the still bloated civil service, facilitation of officers in their discharge of their civil service duties, ensuring good pay for the balance of the civil service, improvement on productivity within the civil service, ensure good service delivery to civil service consumers and boost morale of those civil servants who were to remain by giving them good pay to improve on their living standards and also facilitating their efficient discharge of their duties.

(b) To fruitfy these ideals, the respective government ministries were directed to carry out Reationalization exercises of identifying their staff needs, core services they can offer, services they can commercialize and here out, identify offices to be abolished and come up with it. It was asserted in the evidence of DW1 that this exercise was indeed carried out and relevant information to that effect filed with the Directorate of personal management as it was then known.

(c) Although the plaintiffs do not dispute that the exercise afore stated in 6(b) above was carried out by the defendant, they dispute that offices they held were indeed identified for abolition in order to expose them to the risk of being victims of retrenchment. Although the defendant through the testimony of DW1, testimony was given that the exercise was carried out, they have not tendered in evidence these documents in court in order to confirm that indeed the exercise though not disputed by the plaintiffs was carried out and the positions then held by the plaintiffs were indeed earmarked for abolition and were abolished as such. In the absence of production of such documentary proof it is the finding of this court that the defendant has not ousted the plaintiffs assertions that their offices were never abolished in the exercise and that plaintiffs were not supposed to be retrenched and that their inclusion in the retrenchment exercise was on account of some other factors.

7. It is on record that the directorate of personnel management as it was then known came up with a retrenchement plan and policy guide lines produced herein as exhibits D1,2,3,4 on how the said exercise was to be carried out. It was the evidence of DW1 that indeed the identification exercise was executed according to plan. It is however on record from her own evidence that she DW1 and DW2 did not carry out the identification exercise themselves. This was allegedly done by the designated officers in the ministries, provinces and Districts. None of those officers who identified the plaintiffs for retrenchment and why they identified them so came to testify. It is therefore the finding of this court that there is nothing tendered in evidence by the defendants to show that indeed the plaintiffs were identified for retrenchment and why in the first instance. In the second instance the non production of evidence on this aspect goes along way to confirm the plaintiffs' assertions that they were victimized for some other reasons.

8. It is on record that the only legal relationship that could possibly exist between the plaintiffs and the defendant is one known in law as a contract of employment giving rise to the plaintiffs being vested with the vesture of employees and the defendant on behalf of the various ministries being vested with the vesture of employer. Although the defendant disputed this in their submissions, the plaintiffs who gave evidence tendered in court their letters of employment on their own behalf. The court had been informed earlier on that this was not a representative suit and this being the case the plaintiffs who gave sample evidence could not produce letters of appointment for each participating plaintiffs. These can be produced in evidence at the time of assessment of damages should the plaintiffs succeed on liability. The defendant did not dispute the legality of the sample letters of employment produced in evidence. It is the finding of this court that the letters of appointment produced by the plaintiffs who gave evidence are authentic.

Further that the defendant could have been furnished the rest through a request for supply of particulars

which they did not. Further in the 3rd instance that failure to produce letters of appointment for the rest of the plaintiffs does not prejudice these plaintiffs as these can be tendered at the assessment of damages.

9. Being a contract of employment, there are clear principles of law governing this relationship as demonstrated by principles of case law cited to court by both sides of the devide among them the following:-

(i) The relationship may be temporary meaning that either side could bring it to an end at will.

(ii) It may be for a definite period. Herein the plaintiffs asserted and it was not disputed by the defence that they were engaged to retire at the age at 55 years but with an option to retire at the age of 50 years with retirement at the age of 50 years being voluntary while that of 55 years being compulsory.

(iii) That even where there is employment for a specific period, there is room to bring it to an end in terms of the contract, and where no such provisions is made and a dispute arises the parties can fix the terms at the time of termination failing which the same can be fixed by a court of law.

(iv) That even where the terms of employment are permanent and pensionable it does not mean the employment is for life. It can be brought to an end by either side but within the terms of the contract.

(v) The employee has a right to leave the employment by way of giving the requisite notice or by resignation. Where as the employer can terminate the service in any one of these ways:-

(a) By way of giving the requisite notice.

(b) By way of dismissal.

(c) By way of either voluntary or compulsory retirement.

9. That in the case of normal termination the employee is entitled to the value of the notice and terminal benefits accrued as well as pension or gratuity where one had been earned.

10. That in the case of the plaintiffs herein no notice was given, no retirement was effected either under voluntarily arrangement or under compulsory retirement. The plaintiffs left the defendants services under what has become to be popularly known as retrenchment.

It is common ground that even under this retrenchment, the plaintiffs were not to go home empty handed. It is conceded by the defence that the details of what each retrenchees was to take home with was specified in the retrenchment plan and in fact a specific amount was budgeted for. Although the defence has not disputed the budgetary allocation of around 7.6. billion Kenyan shillings for this programme, and specific allocations having been provided for, the plaintiffs have stated that they were not paid according to the said plan. They received meager payments.

(b) The defendant through the testimony of DW1 defended the defendant's action of down sizing the amount which was ultimately paid out to the retrenchees by saying that the budget had other components to be catered for in the said budget. DW1 went further to state that the defendant complied with all the relevant provisions of the law namely the employment Act, the public service commission Act, the employment and wages regulations Act and the pensions Act a matter disputed by the plaintiffs. It is undisputed that the defence has not tendered in evidence as details on how the dues of each retrenchee was worked out and how much each was paid. There is therefore nothing to counter the plaintiffs' assertions that their dues were not properly worked out according to the approved plan.

11. It is common ground that the employment letters tendered in evidence by the plaintiffs who gave evidence make no provision for retrenchment. It is also agreed by both sides of the devide that even the employment laws then in operation did not make provision for retrenchment. Retrenchment was initiated by the government in the manner afore said.

(b) It has come out clearly from the evidence and the submissions that the exercise had been carried out in other countries and that the same is not unique to the plaintiffs. The plaintiffs have countered this by stating that the peculiar circumstances of the plaintiffs and the prevailing economic situation in Kenya then made it imperative for the defendant to take into account the plaintiffs' welfare when exercising its right to terminate their services.

From the assessment done in number 1-11 above, the plaintiffs have sought to pin liability on the defendant along the following lines:-

(i) Breach of rules of natural justice.

(ii) Breach of their constitutional right to work.

(iii) Breach of municipal employment laws.

(iv) Infringement of their rights under intentional human rights instruments and international conventions governing employment.

With regard to breach of rules of natural justice case law assessed herein namely **Johnson B. Wairoma versus Securicor Kenya limited (supra)** the guiding principle is that an employer is entitled to accord an employee respect of his/her natural rights if the contract of employment says so. The employment letter produced in evidence exhibit 1(a) dated 1st April, 1982 for Mr. H.N. Ernest PW1, Exhibit 1 for PW7 Daniel Mwangi, exhibit 1 for PW5 F.N. Ndungu, exhibit 3(a) for Ndegwa Christine Wangari, PW3, Exhibit 4(a) for PW4 Mr. Tom Cornel Mkalama, exhibit 1 for PW9 for Mr. J.K. Kimondo etc. These are in two categories. Those dealing with temporary employment like exhibit 3(a) for PW3 which could be terminated with one months notice on either side or payment of equivalent salary in lieu of notice. And one on permanent terms like exhibit 1 for PW5 which makes provision for probation for two years with provision for termination before the expiry of the said period. But if confirmed the officers would be eligible for retirement benefits in accordance with the provisions of the pension legislation of the Public Service of Kenyan. They have a common regulation 4 for those on temporary terms and regulation 5 for those on permanent terms indicating that the officers will be subject to all regulations for officers of the Public Service of Kenya which are in force or may be promulgated from time to time. These letters in themselves do not give a right to being heard.

The code of regulations was produced as exhibit 2(f) by PW2 James M. Mutitu. Terms and condition of employment are contained in section E. They are silent on according of rules of natural justice. These will not however be dealt with in depth because the plaintiffs were not terminated in accordance with these regulations.

The letters of retrenchment exhibit 3C for PW3, 4(b) for PW4, 2 for PW5, 2 for PW6, 4 for PW7 and 1 (e) for PW1 etc are all framed in similar content. They simply indicate that the addressee had been identified for early retirement. It is correctly contended by the plaintiffs that they were not consulted. Although DW1 asserted consultation was done in general, this court has already ruled that there was no proof of consultation.

From the evidence tendered by the defence itself ,this termination was not the normal termination under the regulation mentioned but under the retrenchment law exhibit 1(h) for PW1. A perusal of the documental pages 51-53 is found modality of identification of staff. The target groups were officers who are above 53 years, those with pending disciplinary cases, those unable to discharge duties due to ill health lasting 3 months, those holding abolished offices, resignation, those holding functions for

divesture. At page 53 paragraphs 164 there is mention of cases for appeal. Under paragraph 165 there is indication that the process was expected to be objective, transparent, equitable and well co-ordinated. These parameters do not lock out dialogue with the officers concerned. It is therefore safe to rule that rules of natural justice were implied in those parameters and were therefore breached by the defendant's failure to involve the participation of the plaintiffs in the identification of officers for retirement.

With regard to breach of constitutional right to employment, this is not explicitly set out in the retired constitution. There is no provision for specific protection of the right to work but the right to protection by law under section 82(1) and (2) which prohibited any forms of discrimination. This relates to the plaintiffs assertion that they were discriminated against when it came to identification of those who were to be identified for retirement under the retrenchment plan and those who were not. This assertion has been demonstrated by the defendants own failure to produce evidence to show how the plaintiffs were identified on the ground for retrenchment as opposed to their colleagues who were not identified.

The defendant relied on sections 24 and 25 of the constitution where the president has power to abolish offices and designate officers to those offices. When construed this court is of the opinion that sections 24 and 25 relate to constitutional offices. It does not therefore refer or affect officers whose offices were abolished under the 2000-2002 retrenchment plan. This is so because the officers mandated to carry out the exercise were not carrying them out in behalf of the president but the government. In the premises, the court finds that in the absence of proof of a clear criteria on how the plaintiffs offices were identified for abolition and they themselves identified for retrenchment, the court has no alternative but to find that there was an element of discrimination in so far as the plaintiffs were concerned in comparison to the other officers affected but not identified for retrenchment.

With regard to breaches of Municipal law, mention was made of the code of regulations, the then employment Act cap 226 section 14, on general provisions, section 16 on payment of wages, in lieu of notice, 49 certificate of appointment. There is provision for termination which would apply to normal termination which was not the case herein. It is however clear that retrenchment is not provided for in the Regulations as well as the defunct employment Act. But the court agrees with the plaintiffs' contention that a certificate of employment ought to have been issued.

The Public Service Act cap 185 is only relevant in so far as it goes to show that the code of regulations afore mentioned are made under this Act. Whereas the pensions Act deals with payment of pensions. It is to be noted that payment of pension was approved under the retrenchment plan and if not properly worked out this will be addressed at the time of assessment of damages.

Under the international human rights instruments Article 23 of the "**universal declaration of human rights"** guarantees the right to work, free choice of employment, just and favourable conditions of work and the protection of employment, right to equal pay and equal remuneration. "**International covenant on Economic, Social and Cultural Rights"** makes provision for self-determination, state responsibility to guarantee the rights to its citizenry. The right to work, favourable conditions of work, decent living, safe healthy working conditions and equal opportunity. There was also reference to the termination of employment convention 1982 (No.158) of international labour organization. It was submitted that Kenya is a party to these conventions a position not contested by the defence. These human rights instruments enjoin the state to make parties to them provision for their citizenry to enjoy and practice the right to work. When applied to the rival argument herein, it means that the defendant was under a duty or obligation to shield the plaintiffs against the side effects of retrenchment complained of which was not done evidenced by the fact that it was admitted in the testimony of DW1 that the retrenchment plan was not fully implemented.

As for the current constitution Kenya 2010 there was stressed the right not to be subjected to inhuman and degrading treatment also provided for in the retired constitution. As submitted by the plaintiffs, counsels, inability to match Economic growth to the labour force was a state responsibility and not for the employees. It is therefore correct as submitted by the plaintiffs counsels that the state was enjoined to ensure smooth transition from employment to unemployment in the case of the plaintiffs. It is noted the 2010 constitution was introduced long after the initiation of these proceedings. That provision can only be

enjoyed if it can pass the test in section 25 of the interpretation and general provisions Act cap 2. It provides:-

"When one written law amends another written law, the amending written law shall, so far as it is consistent with the tenor thereof and unless a contrary intention appears be construed as one with the amended written law" A plea of in human treatment is not alien as it was provided for in the (defunct) retired constitution. The plaintiffs were entitled to plead it with regard to the issuance of the statutory notice produced exhibit 1(a) (b) (c) (d) and (e) confirm that these were issued. As for the budget speech exhibit D7 and 1(c) for PW1 they go to confirm that indeed the retrenchment exercise was being undertaken as a government policy and where the exercise undertaken tends to infringe the officers targeted like in the circumstances of this case the affected parties have a right of redress against the government.

With regard to the ministerial circular which came out in the year 2004, the court agrees with the defence's contention that this does not affect the plaintiffs as it was not meant to operate retrospectively.

For the reasons given in the assessment, the court proceeds to make findings that the defendant is liable to make good damages suffered by the plaintiffs in the course of the defendants execution of the retrenchment plan because of the following reasons:-

(i) As a state party the defendant bears responsibility to protect, safeguard and ensure enjoyment of economic rights of its citizenry.

(ii) Although the defendant as a government was entitled to carry out the retrenchment exercise as per the content of the retrenchment plan, it was duty bound to take measures to cushion the plaintiffs against harsh economic conditions that were bound to affect the plaintiffs in the process of being retrenched.

(iii) The defendant was duty bound to ensure that the retrenchment exercise had been executed in accordance with the guide lines set by them namely to show that indeed the plaintiffs had been identified for retrenchment, that they had been paid their full dues in accordance with the guidelines set by the government.

In line with the afore set out findings the court proceeds to grant the following reliefs:-

1. A declaration be and is hereby made and declared that the civil service Reform Programme II though an approved government policy programme, was not executed in accordance with the approved plan and for this reason the plaintiffs who suffered as a result of the said exercise are entitled to redress.

2. An order be and is made that it is the finding of this court that the exercise did not conform to approved international standards and human rights standards governing termination of contract by reason of the plaintiffs being discriminated against by reason of the defendant not showing the criteria how the plaintiffs were identified for retrenchment.

3. The defendants' exercise of retrenching the plaintiffs was not carried out in accordance with the approved plans not withstanding, this court will not order reinstatement of the plaintiffs to their former positions of employment.

4. In lieu of reinstatement, the defendant is ordered and directed to pay to the plaintiffs in monetary terms the equivalent of money which was to be spent on transport, training and sensitization finds.

5. The assessment of the amounts payables in number 4 above to be carried out by the court at an appropriate time and on a date to be fixed by the court.

6. The assessment of the amount payable in number 4 above will also include assessment of other under paid benefits payable under the approved retrenchment plan like the pensions, notice period and the

would have been proper payment of Golden handshake.

7. The amount assessed in number 6 above in favour of the plaintiffs will reflect a deduction of what the plaintiffs had already been under paid if any.

8. There is liberty to both sides to exchange documents on workings of the dues payable for ease of reference and to quicken the process.

9. At the time of assessment, each plaintiff will appear before the court for the court to verify that particular plaintiffs documents of entitlement.

10. Only verified plaintiffs will receive their entitlements.

11. The claim for general damages is disallowed because this head of damages is not usually payable in an employment contract as per the principles of case law assessed.

12. Exemplary and aggravated damages are payable because the defendant did not tender evidence to show that they complied fully with the guidelines laid down for the identification of the would be retrenchees. They therefore acted in a highhanded, oppressive and an unfair manner towards its own citizens.

13. Damages for economic embarrassment are not allowed because case law on employment contracts clearly states that these are not payable where an employee had been terminated.

14. The amount assessed under the specified claims will carry interests at court rates from the date of retrenchment till payment in full.

15. The amount under exemplary and aggravated general damages will carry interest at court rates from the date of assessment.

16. Under any other relief that the court may deem fit to grant the plaintiffs who had attained the age of 50 years and above to have their retrenchment converted into normal voluntary retirement and their benefits to be adjusted accordingly.

17. Also under any other relief that the court may deem fit to grant the plaintiffs who had not yet attained the age of 50 years to have their retrenchment to be converted into normal employment termination of employment and their dues entitlement to be adjusted accordingly.

18. There is liberty to apply granted to either party.

DATED, READ AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE, 2012.

R.N. NAMBUYE

JUDGE OF APPEAL

Present:

R.N. Nambuye JA

Court clerk Catherine

Mr. Ombwayo for Kiplenge for the plaintiff

Mr. Karanja for Mr. Macharia Karanja for the plaintiffs

Nguyo for the state present

Daniel Njogu –present in person

Damasius Musya Malindi-absent

Joseph Karanja Kimani-absent

R.N. NAMBUYE

JUDGE OF APPEAL

27/06/2012