



REPUBLIC OF KENYA.

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Coram: Charles P. Chemmutut, J.,

M.A. Warrakah & M.M. Jahazi, Members.)

CAUSE NO.98 OF 2002.

TRANSPORT & ALLIED WORKERS' UNION.....Claimants.

v.

KENYA BUS SERVICES LTD.....Respondents.

Issue in Dispute:-

“Redundancy of 491 employees” (hereinafter called the grievants), namely:-

- | | |
|--------------|-----------------------------|
| 1. 30300538 | Nelson Were. |
| 2. 2121673 | Ephantus Ndung'u. |
| 3. 202011167 | Fredrick Maingi Kinyili. |
| 4. 20200201 | Simon Kabochi Kariuki. |
| 5. 20200244 | Robinson Globber Alumila. |
| 6. 20200417 | Stanslaus Mbai Muya. |
| 7. 20200881 | Boniface Makona Muia. |
| 8. 20200930 | William Odongo. |
| 9. 20200932 | Kirimi Frazer Umanene. |
| 10. 30300541 | Philip Kipngeno Siele. |
| 11. 20200358 | Charles Gioche Muritu. |
| 12. 20200703 | Hudson Mugala. |
| 13. 30300651 | Francis Othieno Oduro. |
| 14. 20200395 | Francis Muteti Ngove. |
| 15. 20201001 | Samuel Ndungu Kigocho. |
| 16. 20201002 | Tom Mboya Kilundo. |
| 17. 20201053 | Francis Muraya Gotonga. |
| 18. 20201061 | Stephen Mutahi Kariuki. |
| 19. 20201160 | John Anyika Shikutwa. |
| 20. 20201170 | Thomas Juma Mutinda. |
| 21. 4120175 | Daniel Gakera Njuguna. |
| 22. 42400423 | Raphael Luvutse Vihembo. |
| 23. 20201009 | Phillip Ikulu Musee. |
| 24. 20201010 | Christopher Mutua Kimanthi. |
| 25. 20202011 | Simeon Juma Asewe. |

26. 20201022 Loyford Kaburu Rachi.
27. 20201027 David Ndolo Mulonzi.
28. 20201028 Sylvester Omondi Onyisi.
29. 20201043 Josephat Kibanya Mbuchi.
30. 20201064 Dickson Mwendwa Kakunyi.
31. 20201066 Fabian Ouma Rabach.
32. 20201068 Titus Tatua Gacuce.
33. 20201069 Tobias Otieno Shem.
34. 21211034 Kenneth Maina Muruiki.
35. 20201075 Joel Nyabuto Michuka.
36. 20201081 Edward Mwangi Wairati.
37. 20201085 Samuel Otieno Odero.
38. 20201087 Christiano Ingati Itiema.
39. 20201093 John Kinyua Mwaniki Njoroge.
40. 41211082 Paulkimani Njoroge.
41. 20201116 Wycliffe Philip Makungu.
42. 20201119 Fredrick Bwire Okome.
43. 20201129 Dan Ashiema.
44. 20201144 Francis Maina Lusala.
45. 20201146 Philip Kangutu Kisuna.
46. 20201147 John Mwaniki Maina.
47. 21211097 Joseph Irungu Mugo.
48. 21211141 Johnstone Luke Okoji.
49. 21211319 Daniel Ochieng Obiero.
50. 21211147 James Mirie Mwenje.
51. 21211157 John Mosoti Orangi.
52. 21211159 Fredrick Njogu Kanja.
53. 20201179 Ngei Kang'we.
54. 20201184 Patrick Lumumba Mejor.
55. 21211174 Fredrick Kakula Kyula.
56. 20201166 Kangethe Karanu.
57. 20201187 William Muendo Mutisya.
58. 20201190 Peter Mulama Liyenga.
59. 20201191 Morrice Muia Makau.
60. 20201194 Aggrey Ikhulu Shisavo.
61. 20201198 Stephen Mugenda Mwangi.
62. 20201200 Carolus Amolo Ochiayo.
63. 20201203 Allani Musanga Kehodo.
64. 30300644 Bernard Kipketer Kemoi.
65. 41211206 Joel Maundu Thambu.
66. 20201210 William Gathu Kurururo.
67. 20201212 Jame Emisico Otenyo.
68. 20201219 Kiema Luma.
69. 20201227 Charles Kamau Njiri.
70. 20201228 Henry Kuria Mwangi.
71. 50201223 Wilson Ouya Midigo.
72. 20201215 Patrick Maina Kimani.
73. 20201232 Silas Aduogo Olweny.
74. 20201223 Peter Maina Ngunjiri.
75. 20201238 Henry Odhiambo Moyi.
76. 20201240 Chrispinus Ochieng Juma.
77. 20201243 Harrison Ngungu Nthenge.
78. 20201247 Barnabas Mutua Wambua.
79. 20201250 Kennedy Nthenge Kisese.
80. 21211247 Livingstone Gachunu Cunji.
81. 21211315 David Nyoro Wamweya.
82. 20201262 Michael Ochieno Osuri.
83. 20201263 Joshua Kisee Nyamai.
84. 30300648 Airam Ngaira Shipendi.
85. 47211273 Martin Ndungu.
86. 21211277 Bonifas Arodi Oliewo.
87. 22211266 Francis Ngigi Njoroge.
88. 20201284 Livingstone Opwondi Kuta.
89. 20201287 Ernest Phili Walieli.
90. 20201292 Cypian Ambani.
91. 21212431 David Wabomba Waswa.
92. 30600356 Aloice Oloo Molla.

93. 30600359 Thomas Kituu.
94. 21211293 John Maina Kariuki.
95. 21211302 Josephat Njau Mungai.
96. 20201317 Fredrick Ojuka Olwalo.
97. 20201321 George Oigo Winde.
98. 20201318 Maurice Yongo Odunga.
99. 2121283 Francis Wamalwa Kibeti.
100. 20201323 Paul Muthama Maingi.
101. 35350487 Susan Wairimu Kimani.
102. 21211337 Ignatius Njagi Munene.
103. 21211343 Samuel Mbugua Njoroge.
104. 21211335 Patterson Mutisya Mathei.
105. 21211336 Francis Nderitu Mariga.
106. 2121344 Samuel Kipkirui Koskei.
107. 20201332 Ishmael Muriithi Ndege.
108. 20201337 Enoch Sambayi Mikabwa.
109. 20201340 Joseph Wambua Musembi.
110. 20201348 Stephen Kitenge Ndangili.
111. 20201348 Ndeto Muli.
112. 20202355 James Kingola Kanungu.
113. 20201358 Collins Okoth Amol.
114. 20201359 Edward Aletso Muanyasi.
115. 21211359 Johanna Njoroge Nganga.
116. 2121353 Charles Monori Mogaka.
117. 20201394 Samson Abuoro Odende.
118. 20201364 Naphtari Ongore Osida.
119. 20201370 Richard Jaoko Odongo.
120. 20201372 Maurice Otieono Olando.
121. 20201380 Wando Joseph Onesmus.
122. 20201384 Ayub Imbirah Osinde.
123. 20201386 Joseph Okone Silvanus.
124. 20201389 Daniel Kamau Njoroge.
125. 21211367 Joseph Muchini Kungu.
126. 21211367 Joseph Kamau Mahui.
127. 30300498 Stephen Ndiritu Irungu.
128. 20201398 Francis Shimoli Alukwe.
129. 20201401 Daniel Sewe Okito.
130. 20201405 Walter Muthenya Munyoki.
131. 20201409 Harrison Okerio.
132. 20201410 Daniel Kioko Kyuli.
133. 20201411 Boniface Wambua Mwangangi.
134. 30300656 Danson Kiambuthe Muiruri.
135. 31211397 Alica Njeru Marete.
136. 21211384 Philip Muchai Kyai.
137. 21211395 John Njenga Kinyanjui.
138. 21211394 William Apili Ondieki.
139. 20201419 Henry Ouma Kola.
140. 20201424 Naboth Absalom Imende.
141. 20201426 Hezron Wango Ndung'u.
142. 20201427 Dennis Mugambi Mutiga.
143. 20201429 Jackson Muli Mwanthi.
144. 20201433 Fredrick Muthe Maguu.
145. 20201434 Boniface Maliti Malungu.
146. 20201438 Richard Ochola Okano.
147. 20201443 Josephat Shikokoti Ongaya.
148. 20201444 Charles Muchiri Kiboru.
149. 20201445 Henry Chege Kimani.
150. 21212676 Paul Muteti Nthei.
151. 20201449 Henry Agesa.
152. 20201452 Michael Mbatha Kimeu.
153. 20201458 Musyoka Mainga.
154. 20201463 John Ngaira Ashimene.
155. 21211434 Samson Gichunge Kamangu.
156. 21211435 Kimondu Munyao Kisuna.
157. 21211429 Bernard Kisilu Kimii.
158. 20201469 Nzambwa Mboya Emmanuel.
159. 20201480 Elijah Kaberia Laichema.

160. 20201481 Paul Ngei Thoka.
161. 20201482 Ondato Ekesa Wilberforce.
162. 20201486 Jeremiah Kilile Mwanthi.
163. 20201464 James Robert Nyanje.
164. 21211425 Stanley Karekethi Marungu.
165. 41211428 Samuel Njenga Githuthu.
166. 20201494 Mutua Nzwili.
167. 20201499 Alfred Onyango Oduol.
168. 21211009 Caleb Kiprof Kiptum.
169. 303000661 Tom Orina Ogalo.
170. 20201501 Jonathan Nthenge Ndolo.
171. 35350144 George Onunga Owino.
172. 21211440 Micah Asiele Etsabo.
173. 21211445 Justus Muchanga Wandiosi.
174. 21211471 Francis Silla Munyoki.
175. 20201509 David Kamande Kabuga.
176. 20201512 Boniface Wanga Muyima.
177. 20201515 Gilbert Oduor Radol.
178. 2020 1520 Robert Gilbert Kadima.
179. 20201525 Chris Luyundi Sahani.
180. 30300665 Caleb Kishia Mujenyi.
181. 20201528 Fredrick Sikhole Siata.
182. 20201530 Peter Mwangi Karanja.
183. 20201531 David Titi Muasya.
184. 20201536 Benjamin Mwongela Mutungi.
185. 20201539 Kennedy Kimanthi Kanadi.
186. 20201541 George Njuguna Karanja.
187. 21211476 John Muthiora Ngombaru.
188. 21211487 Charles Mathi Yumbya.
189. 20201546 Jackson Rosasi Tai.
190. 20201547 Jason Thurania M'limboro.
191. 20201558 George Adhere.
192. 20201563 Justus Mbiti Njuguna.
193. 30200669 Kenneth Njuguna Mwangi.
194. 20-201769 Francis Nganga Wahuria.
195. 20201572 Peter Thuu Mutura.
196. 20201585 Muchui Muiruri.
197. 21211357 Raphael Ndeto Kituku.
198. 21211354 Muthee Njoroge Ngatha.
199. 21211521 Francis Njenga Karanja.
200. 21211525 Wilson Karimi Kaguchia.
201. 31211519 Samuel Onyango Okewe.
202. 20201599 Peter Orungo Okello.
203. 20201600 John Kariuki Muhia.
204. 20201602 Evans Kamau Mutitu.
205. 20201603 David Wainaina Njenga.
206. 21211542 Patrick Gachugu Gitau.
207. 20201606 Francis Kagwija Nyaga.
208. 21211550 William Muchiri Muriuki.
209. 21211552 James Monubi Nyangicha.
210. 21211553 Joseph Liyosi Adam.
211. 30300673 Jeremiah Omwenga Nyamamba.
212. 20201640 James Musui Kinilu.
213. 21211560 Harun Kamau Gacheru Gichuki.
214. 21211562 John Gakure Gichuki.
215. 21211593 Patrick Kiarie Ndegwa.
216. 20201621 Jackson Odera Dimbu.
217. 20201622 Joseph Oyugi Ayoda.
218. 20201628 Bernard Musembi Kiilu.
219. 20201629 Hudson Marino Oyere.
220. 20201631 Musembi Mutie.
221. 20201633 Lazaro Uasya Munyao.
222. 20201634 Bartholomew Mutua Kisio.
223. 21211583 Hezekiah Bunde Yaranga.
224. 21211568 David Mwololo Masya.
225. 20201643 Wycliffe Abdalla Onziru.
226. 20201645 Patrick Lumumba Luyingwa.

227. 20201647 John Mochama Matunduri.
228. 20201649 Lawrence Anthony Mwangi.
229. 20201656 Edward Wamalwa.
230. 20201657 David Wainaina Gichumu.
231. 21211597 Joseph Kimutai Kones.
232. 21211607 Amedias Adeli Mengo.
233. 20201665 Josephat Kitetu Mbulu.
234. 21211606 Wicliffe Nyonges Magari.
235. 20201666 Joseph Kibue Mirie.
236. 30201668 Bernard Otieno Odero.
237. 30300679 Aggrey Makotswe Ainea.
238. 21211616 Abdulahi Yusuf Issa.
239. 21211633 Eliud Asava Loyengwa.
240. 20201676 Tom Bernard Otieno Otung.
241. 20201670 Benjamim Kaleli Ndunda.
242. 20201679 Joseph Kipkorir Langat.
243. 20201671 Fredrick Wambugu Kimita.
244. 20201687 Samuel Ngaruiya Kamau.
245. 20201691 David Wachira Chiuri.
246. 21211645 David Kitavi Lucas.
247. 21211654 Evans Omollo Nono.
248. 21211654 Allan Mugodo Eredi.
250. 21211661 Peter Njuguna Mwangi.
251. 20201682 Francis Maero Chichole.
252. 20201717 Gideon Owuor Ochieng.
253. 21211702 James Kariuki Ngugi.
254. 21211703 Francis Chege Gichuhi.
255. 20201723 Paul Mbuthia Mururia.
256. 20201726 Francis Wanyoike Njiraini.
257. 20201730 Argwings Kodhek Otieno.
258. 20201733 Justus Mutisya David.
259. 20201734 Charles Mwenje Oredi.
260. 21211706 John Ndungu Mburu.
261. 20201736 Geofrey Okoth Onyango.
262. 20201739 Willy Mbaku Kyulu.
263. 20201747 Ronald N. Onyari.
264. 35350150 Jerim Owino Ojuki.
265. 21211733 Samuel Nyamumbo Osere.
266. 21211734 Jamim Alusa Alema.
267. 21211759 Kibe Kamau.
268. 21211749 Edward Kiplangat Maritim.
269. 21211753 Nicholas Maina Karimi.
270. 21211761 John Maina Kamau.
271. 20201753 Thomas Ogwel Nyogam.
272. 20201754 Moses L.O. Oteko.
273. 20201756 Hudson Atsiambo Kiduya.
274. 20201758 Patrick Sila Nduya.
275. 20201761 Joseph M. Kiarie.
276. 20201765 Samuel Waititu Gachuhi.
277. 20201766 Joseph Kisengi Mweu.
278. 21211775 Peter Karanja Mwangi.
279. 20201829 Leonard Kangethe Mulonzi.
280. 20201767 Fredrick Mutuku Yulu.
281. 20201775 Dismas Oruko Mutho.
282. 20201782 Dominic Onyango Okeda.
283. 20201783 Thomas Ouma.
284. 20201786 Mutunga Kitheka.
285. 20201788 Joshua Nyangau Gesengi.
286. 21211785 Josephat Bundi Marete.
287. 20201792 Kennedy Alumada Lamwenya.
288. 20201794 Moses Njue Ngundu.
289. 20201797 Samuel Mbuya Ibanya.
290. 20201798 Raphael Ndonga Okola.
291. 20201803 Edward Otieno Menya.
292. 20201811 Michael Mulwa Mbuvi.
293. 20201812 Julius Marira.
294. 20201814 Alfred Kilonzi.

295. 20201826 Mwambishi Roger Mofat.
296. 20201831 Mathew Muli Wambua.
297. 20201840 Nyanganyi Kennedy.
298. 20201841 Benedict Muia Mbelu.
299. 20201842 Fredrick Mbuvi Sila.
300. 20201850 Festus Mwasolo Mwanza.
301. 20201851 Gregory Mbithi Mutua.
302. 20201855 Elias Mwangi Gitonga
303. 20201859 Wycliffe Shibale Iboshe.
304. 20201865 John Kioko Muindi.
305. 21211794 Francis Mukuria Nganga.
306. 21211834 Peter Muia.
307. 20201887 Japheth Gitonga Kwantat.
308. 20201868 Benjamin Omwari Oluoch.
309. 20201870 Ethali Peter Kirigia.
310. 20201871 George Mwangi Ikenywa.
311. 20201872 Armstrong Kirera.
312. 20201878 Charles Agunda.
313. 20201879 Simon Kinyanjui Kingori.
314. 20201885 Peter Kamau Waweru.
315. 20201886 Fred Kadenge Mbuki.
316. 20201889 William Mwaka David.
317. 20201896 Patrick Ochieng Bilome.
318. 20201904 Samuel Mwangi Njuguna.
319. 20201907 Silas Owiti Kisera.
320. 20201908 Josephat Lumadede Miheso.
321. 20201911 Peter Chege Ngige.
322. 20201913 Philip Bagoge Kimei.
323. 20201915 James Mwangi Ngugi.
324. 20201916 John Kamau Njoroge.
325. 21211815 James Maina Wachira.
326. 21211857 James Gitau Mwangi.
327. 21211855 Dominic Njuguna Mathu.
328. 21211868 John Warutere Muhoro.
329. 21211869 Charles Anyangu Nakaya.
330. 21211879 Peter N. Muigai.
331. 20201970 Charles Makau Mahenga.
332. 21211871 Harun Ngalu Kiviti.
333. 30300544 Geofrey Wambua Lua.
334. 30300698 Wilson Wanyoike Muiruri.
335. 30300474 Jackton Juma Oluoch.
336. 31400284 Joseph Kilewa Muli.
337. 35340353 Valentine Kakayanga Imbaswa.
338. 42400507 George Macharia Ngure.
339. 212119009 Simon Mutisya Ngwili.
340. 35420167 John Arende Ouma.
341. 42400310 Walter Aketch Odote.
342. 30300549 Richard Munyua Njoroge.
343. 48480356 James Njuguna Kariuki.
344. 21211961 Peter Njuguna Kuria.
345. 21211993 Josephat Muanzia Ndolo.
346. 21211951 Patrick Mugo Karugu.
347. 21211988 Bernard Gushu Ngugi.
348. 21211998 Alexander Iganji Igosi.
349. 21212016 Ephantus Kenya Jumba.
350. 21211884 Dominic Wanjeme Mbeere.
351. 21212072 Joseph Nyaga Gichuvi.
352. 21212073 Hassan Marumburu.
353. 21212075 Jackson Komu Theuri.
354. 21212027 Nathan Kasela Musembi.
355. 21212043 Vitalis Oluoch Okoth.
356. 21212069 Daniel Wambua Mwonzu.
357. 21212083 Reuben Wanyika Iruri.
358. 42420170 Isaac Mweu Kinaka.
359. 21212087 Charles Ngare Gitahi.
360. 21212116 Admson Kavithi Kilonzo.
361. 21212114 Erastus Kangethe Karanja.

362. 21212142 Joseph Kania Njoroge.
363. 21212150 Joseph Mugo Maita.
364. 21212165 Charles Waweru Njoroge.
365. 20201712 Julius Makau Wmbua.
366. 20201713 Matunga Matheka.
367. 20201722 George Otieno Oyoo.
368. 21212168 Peter Gichui Gitonga.
369. 21212169 Patrick Mwangi Kariuki.
370. 21212148 Arthur Kariuki Chege.
371. 31410422 Moses Mwasi Masiche.
372. 41410425 David Ndungu Waweru.
373. 41410430 Phaniel Odhiambo Naaman.
374. 30300562 Martin Ndungu Mbugua.
375. 30300564 James Kamau Kabiru.
376. 30300565 Peter Muturi Kinuthia.
377. 30300570 Zacharia Wachira Theuri.
378. 30300572 Esau Okoth Mugamba.
379. 21212207 John Githinji Nduguya.
380. 21212189 Rachael Wanjiku Kigi.
381. 21212212 Bernard Ngugi Kariuki.
382. 21212215 John Njenga Mbara.
383. 21212231 Evanson Mithia Maina.
384. 30300573 Richard Ooko Anyiengo.
385. 30300575 Joseph Sahlogo Mahagai.
386. 30300577 James Maina Wamae.
387. 30300576 Patrick Rassia Mutua.
388. 21212240 Lawrence Mbatia Nganga.
389. 21212251 Moses Kariuki Muhuri.
390. 21213207 Samuel Macharia Kaburu.
391. 42400313 Samson Mbuga Gathura.
392. 21212255 Daniel Kiplangat Koech.
393. 21212575 Johnathan Nundu Oricho.
394. 21212519 Japheth Nikinge Muchiri.
395. 30300581 Paul Kpkoech Kirui.
396. 30600701 James Karanja Mwangi.
397. 30600705 Eric Lamech Okelo.
398. 30600707 Jared Okoth Orinda.
399. 35600700 Terer Bernard Kipkoech.
400. 21212266 James Ndichu Nyoro.
401. 21212300 Kiarie Mwangi.
402. 21212261 Joseph Kamande Kimani.
403. 21212637 Titus Mainga Mbithi.
404. 21212985 Henry Kuria Gichui.
405. 21212293 David Kimutai Langat.
406. 21212310 Elijah Mutunga Musyoki.
407. 21211219 Robert Nyakundi Ondiek.
408. 21212518 David Kioko Ndwiwa.
409. 40400359 John Nganga Mungai.
410. 21212344 Gabriel Musia Mbalwa.
411. 21212305 John Kipserem Kisio.
412. 48480360 Ephanito Misieba Sinzole.
413. 21212352 Joseph Otieno Omollo.
414. 42400316 Nebat Mudavadi.
415. 21212376 Andrew Maina Waweru.
416. 21212410 Paul Macharia Waruingi.
417. 21212411 John Muiti Mathenge.
418. 30300590 Kihara Muita.
419. 21212394 Perterson Ndangira Kimani.
420. 21212406 Wanderi Kamau.
421. 21212371 Frnaxis Karanja Mbugu.
422. 21212427 Timothy Amwayi Anyanda.
423. 30300592 Adamson Ogama Mbithi.
424. 21212419 Peter Njoroge Ndegwa.
425. 30300594 James Kiama Mureithi.
426. 21212433 John Mudasia Ibaya.
427. 21212984 Peter Kimeu Ndivo.
428. 21212451 Tobias Apolo Nyamgonyi.

429. 21212453 Bernard Kituku Wambua.
430. 35350152 Joseph Mburu Mundia.
431. 30300816 Robert Kamau Munyua.
432. 30300597 Chimasia Isitu Niva.
433. 30300596 Henry Otieno Awimbo.
434. 30300818 Albert Kipkimoi Koech.
435. 21212808 Daniel Mutuku Mulwa.
436. 21213071 Richard Maina Gachanja.
437. 30300815 Patrick Mwangi Thuo.
438. 30300822 Agusa Gidei David.
439. 30420505 Robert Kipkemoi Rotu.
440. 30300819 Albert Kawai Jiadevela.
441. 42420503 Joel Kikelo Phaustine.
442. 42500515 Korir Paul Kipkoech.
443. 42420504 Kenneth Kipkeoch Korir.
444. 30300830 Hillary Kimoyi.
445. 30300831 Victor Opondo Onyango.
446. 30300834 Daniel Theuri Wanjiru.
447. 30400520 Charles Abade Ochola.
448. 30300828 Stanley Kipngetich Mutai.
449. 30300835 John Josia Mwangi.
450. 21212645 Julius Kanampuimpwi.
451. 21212646 George Ngugi Mari.
452. 21212648 Joseph Kibandi Wanyoike.
453. 21212649 Musa Shikele Etemesi.
454. 21212650 Jesse Munori Kamau.
455. 21212652 Peter Murithi Gitau.
456. 30600722 Michael Onyango Opondo.
457. 21212657 Anderson Maina Githae.
458. 21212658 John Marira Njoroge.
459. 2121260 Samuel Maina Njoroge.
460. 42420510 Jack Swaga Okoth.
461. 48480362 Edah Wanjiru Mwangi.
462. 21212666 Martin Ishindu Simindi.
463. 21212678 Stanslaus Muthingi.
464. 21212676 Paul Muteti Mbei.
465. 20202184 Nicholas Mureithi.
466. 21212682 Charles Murungi Kirigia.
467. 21212684 Leonard Paul Musau.
468. 42420613 Vincent Kimunyu Munyao.
469. 41410514 Walter Odede Ouko.
470. 20202187 Joseph Mwenga Mutio.
471. 20202188 Antony Mito Orao.
472. 20202189 Patrick Ombaga Onyango.
473. 20202190 Benson Ombaga Onyango.
474. 20202191 George Migwi.
475. 20202194 Josephat Mathenge Nzioki.
476. 21212686 David Agutu.
477. 21212688 Daniel Githiomi Murioki.
478. 21212695 Silus Mutahi.
479. 21212696 Stephen Ngotha Kariuki.
480. 21212698 Godrick Paul Mwacheda.
481. 21212702 Moses Wamwea Kinuthia.
482. 21212713 Simon Ndungu Nyambura.
483. 21212716 Joseph Gitau.
484. 21212785 Peter Maina Waweru.
485. 30600719 Mark Waboye Otieno.
486. 420508 Tobias Nzola Joel.
487. 21212674 Eliud Mwangi Marithi.
488. 48480356 James Njuguna Kariuki.
489. 21211414 Stephen Simon Mwangi.
490. 21211415 Geoffrey Gitari Zephania.
491. 21211107 Samuel Mwangi Macharia.

Union).

Tom M. Macharia, Advocate, of M/S. Ndonge, Mbugwa, Atudo & Macharia, Advocates, for the Respondents (hereinafter called the Company).

A W A R D.

In accordance with the powers vested in him by Section 8 of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter referred to as the Act), the Minister for Labour referred this dispute to the Court for consideration and determination; and his reference, together with the statutory certificates from the Labour Commissioner and the Minister himself under Section 14(9)(e) and (f) of the Act, were received by the Court on 23rd December, 2002. The dispute was then listed for mention on 6th February, 2003, when Messrs. S. Mbusia and F.M. Kalwa, Advocate, who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements by 7th March and 29th April, 2003, and the case was fixed for hearing on 20th May, 2003. The parties submitted their memoranda or statements as directed hereinabove. Consequently, the dispute was, for one reason or another, adjourned on a couple of occasions, and it was eventually heard on 21st July, 24th September, 8th, 22nd and 23rd October, 2003.

The Union did not call any witness to testify on its behalf, but relied on its written memorandum. On the other hand, the Company called and examined Mr. Joseph Wamae Wangai, R.W.I, who is a partner in the firm of M/S Deloitte & Touche, Certified Public Accountants, and Mrs. Winnie Wamboi Muthiga, R.W.2, who was the Human Resource Manager of the Company. She was also a party to the negotiations leading to the subsequent settlements or agreements arrived at between the parties on this matter.

The Company is a limited liability concern incorporated in Kenya under the Companies Act, Cap.486, Laws of Kenya, and its main or principal business or activity is the transportation of passengers and parcels, while the Union is registered as such under Section II of the Trade Unions Act, Cap.233, Laws of Kenya. The parties have a valid recognition agreement and have also entered into several collective agreements which regulate the terms and conditions of service of all the unionisable employees, the latest of which was for the period 1st May 1998 to 30th April, 2000, and registered by the Court under RCA No.172 of 2000. (Union Apps.I and 2).

By a letter Ref: KBS/HRM/Tawu/7/2001, dated 11th May 2001, and titled "RE: NOTICE TO DECLARE REDUNDANCY", R.W.2 notified the Secretary General of the Union of intended redundancy of some employees due to deteriorating or poor business performance of the Company. (Company Ann.I). Consequently, the grievants were identified and offered "early retirement package" under Clause I of the parties' agreement, dated 28th September, 2001, and declared redundant at intervals between September 2001 and June 2002 on account of restructuring or reorganization of the Company (Union App.7). There were three main settlements or agreements entered into by the parties in support thereof, dated 28th September, 30th October and 21st November, 2001 (Union Apps. 3, 5 and 6 and Company Anns. 3,4 and 5). The first settlement or agreement was signed by the Managing Director, Commercial Director and Human Resource Manager, for the Company, and by the Secretary General, Deputy Secretary General, Assistant Secretary General, Branch Secretary and 14 shop stewards, for the Union. The second settlement or agreement was signed "for" the Managing Director by the Human Resource Manager, for the Company, and again by the Secretary General, Deputy Secretary General, Branch Secretary and Chief Shopsteward, for the Union, in the presence of Mr. G.M. Muchai, COTU (K.), Deputy Secretary General and Mr. J.N. Ndiho, Provincial Labour Officer, Nairobi, who appended their signatures thereon. The third settlement or agreement was also signed by the Managing Director and Human Resource Manager, for the Company, and by the Secretary General, Deputy Secretary General, Assistant Secretary General, Branch Secretary, Branch Chairman and Chief Shopsteward, for the Union. It was witnessed by Mr. J.N. Ndiho, Provincial Labour Officer, Nairobi. It is not, however, necessary for the purposes of disposal of this dispute to go into details of or reproduce those settlements or agreements, but the sum total and substantive case of the Union is that the said settlements or agreements are null and void for non-disclosure and misrepresentation of material facts by the Company; whereas the latter has vehemently denied the assertions and maintained that the same are valid, binding and enforceable.

The parties attempted to settle the matter at their own level but failed. On 29th July, 2002, the Union reported a formal trade dispute to the Minister for Labour, who accepted the dispute and appointed Mr. P.N. Macharia of Ministry of Labour Headquarters to act as the Investigator. On the basis of the investigation, the Minister released his report to the parties on 23rd August, 2002, in which he severely castigated and criticised the Union for attempting to repudiate and scuttle the settlements or agreements; and in the circumstances, he recommended that the demands by the Union be rejected as untenable (Union App.12).

The Minister finally appealed to the parties to accept the recommendation as a basis of resolving the matter, but the Union rejected it. Hence, this dispute for consideration and determination.

In his submission, the learned counsel for the Union, Mr. Enonda, stated that, contrary to the provisions of Clause 3.2 of the parties' recognition agreement on Collective Claims, the Company unprocedurally, improperly and unlawfully called upon the Union members to resign or retire on their own accord from employment on payment of 15 days' pay for each completed year

of service, without informing the Union, and also by offering the grievants retirement benefits under Article 14, re: “Compulsory Retirement and Retirement Benefits”, instead of benefits under Article 6, re: “Redundancy”, of the parties’ collective agreement in force at the material time. This, he averred, amounted to coercion and fundamental breach of the provisions of the parties’ recognition and collective agreements. The learned counsel submitted further that when the parties eventually met, the management of the Company misled and misdirected the Union into believing that the Company was indeed facing some economic constraints and could not meet the current payroll; and hence the need to reduce the number of the workforce. He pointed out that the management of the Company went on to give wrong information to the effect that a number of the Company’s buses were parked at its yard at Eastleigh depot, and if the Union did not accept to sign an agreement on early retirement, then the Company would collapse in the next few weeks. This misinformation, he asserted, was a ploy used by the Company to hoodwink the Union to accept its (Company’s) demands or terms on early retirement of the grievants. But when the agreement was signed to lay-off the grievants on early retirement, instead of declaring them redundant, the Company release all the buses, which were parked as aforesaid and also at a rented yard in Thika town, to resume full operations. However, under a Kenya Gazette Notice No.7888 of 16th November, 2001, the Company transferred “a portion of the business of public passenger transport carried on by it within the city of Nairobi and its environs” to Bustrack Ltd. with effect from 30th September, 2001 (Union App.9). On 23rd November, 2001, the Managing Director of the Company, Mr. George Thuo, also confirmed the sale of “only part of its fleet and other assets” to the said concern. Mr. Thuo said “we have sold only the city services, including some 305 buses, to Bustrack, but we still retain the Metro Shuttles and inter-city services” (Union.App.13). The learned counsel argued that all these developments were never disclosed to the Union during the negotiations; and in the circumstances, it is clear that the Company was engaged in “surface bargaining” while keeping the Union completely in the dark on the real intentions for reducing staff. He pointed out that the Company had a direct and implied duty to inform the Union of the impending transfer of the business or part thereof in that good faith and disclosure was a condition precedent for the subsequent negotiations, and the absence of the same vitiated the grievants’ right to rely on the agreements entered into by the parties to this dispute. Thus, the Union negotiated under false representation and assumption on the Company’s financial status while the Company was consciously in breach of Article 7 of ILO Recommendation No.163 on access to information for effective bargaining.

The learned counsel submitted further that the Company is able to pay the grievants their redundancy dues under Article 6 of the parties’ collective agreement or even reinstate them to their former jobs because between November, 2001 and December, 2002 it advertised and employed 38 managers and 168 unionisable drivers and conductors (Union Apps. 15 & 16). Between December, 2001 and January, 2003, the Company also purchased 33 minibuses and 51 buses at a cost of Kshs.3 million and Kshs.11 million each respectively. He said that the purchase of new vehicles and recruitment of employees was conducted immediately after the parties signed the agreement to lay-off the grievants on early retirement. The Company did not also disclose to the Union that it was transferring some business to a sister company known as Bustrack Ltd. Therefore, while the parties were negotiating over the fate of the grievants, the Company was at the same time applying to the Registrar of Companies to transfer part of its business to its aforementioned sister company (Union App.9); and its aim was to have the agreements reached on early retirement validated in order to avoid meeting the terms set under Clause 4 of the Recognition Agreement regarding the modification of the agreement and validity of the collective agreement. Hence, by paying the grievants meagre terminal dues under Article 14 of the parties’ collective agreement on early retirement, the management of the Company saved millions of shillings with which they later bought new vehicles and paid themselves hefty salaries.

For the foregoing reasons, the learned counsel urged the Court to:-

- (a) declared that all the agreements entered into and signed by the parties on 28th September, 30th October and 21st November, 2001, as null and void and of no legal effect, and
- (b) award that the grievants be paid their terminal benefits under Article 6 of the parties’ collective agreement on redundancy.

In his introductory response, the learned counsel for the Company, Mr. Macharia, submitted that it operated 3 divisions, namely:-

- (a) Bustrack Division – this ran city commuter bus operations from suburb to city centre through to suburb and back to city centre.
- (b) Metro Shuttle Division – this ran the mini bus commuter services between suburbs and the city centre but not beyond.
- (c) Express Division – this ran countrywide operations from Nairobi to other cities or towns in Kenya.

He said that the performance of Bustrack, which was the suburb-city-suburb operation, was steadily declining and making huge losses due to several factors, e.g. poor operating within the city in terms of bad roads, unregulated competition from 'matatus', generally poor economic conditions at the time and old and poorly performing buses. Therefore, the entire Company was being supported by the income generated from the Express and Metro Shuttle Divisions, and specifically largely from the latter; and in order to sustain the Company in the long-term, it was necessary for the management to re-engineer its mode of operation and re-organise it so as to evade insolvency and imminent closure. Meanwhile, the Company could not maintain continued salary payment of all its employees, and by a notice, dated 11th May, 2001, it informed the Union of its intention to declare redundancies. The said notice reads *in extenso* thus:

“RE: NOTICE TO DECLARE REDUNDANCY

The challenges of the business environment in the country have continued to be difficult with the current hard economic situations our clientele are experiencing. The competition in the market has also increased and this has made it necessary to adopt varied approach to operational systems.

The company out sourced the tyre management services, to be handled by experts for professional expertise and efficiency and the vehicle cleaning service for exclusive concentration on bus cleanliness in an effort to meet our customers expectations. This has already proven a better option and has necessitated the review of our staff levels.

The indications are that about ninety (90) members of staff will be declared redundant. Details on the exact number to be affected and the effective date will be communicated to you in due course.

Yours faithfully,
KENYA BUS SERVICES LIMITED
Winnie Muthiga
HUMAN RESOURCE MANAGER”

Therefore, the Union was well aware that the management was re-organising and restructuring the Company (Company Ann.2(iv)); and consequent upon negotiations between the parties, it was agreed that the Company would send not more than 1100 employees on unpaid leave, which would not exceed 1½ years, with effect from 30th September, 2001. It was provided therein that should the business expand, some of the affected employees would be recalled (Company Ann.3). The parties held further negotiations and signed two supplementary agreements on 30th October and 21st November, 2001, which dealt with the financial implementation of the earlier agreements. (Company Anns. 4 and 5).

On redundancy of the grievants, the learned counsel averred that the parties agreed, in their agreement, dated 30th October 2001, that only 522 employees would be affected by the issue of unpaid leave; and out of these 522 employees, 19 of them had resolved their cases directly with the Company, while 12 others were recalled back for normal duty. Therefore, the grievants, who are the subject of this dispute, were to be declared redundant, rather than being sent on unpaid leave. He pointed out that on 21st November, 2001, the parties agreed that the grievants would be paid according to a formula agreed upon on 30th October, 2001, and a further 124 employees proposed by the Company for early retirement were also accepted on the same terms as the grievants. Thus, a total of 615 employees were to be sent on early retirement. Consequently, the Company made payments in terms of the final agreement between the parties, totaling Kshs.17,225,032/= which was acknowledged by the Union; and to-date only 31 out of the 491 grievants have not collected their early retirement dues. Thus, this dispute involves only 31 grievants who have refused to collect their terminal dues and not all the grievants as alleged by the Union.

As regards non-disclosure and misrepresentation of material facts, the learned counsel submitted that the Union was all along aware of the Company's desire to send the employees on unpaid leave in order to expand the Express and Metro Shuttle Divisions services. He said that the Company also made it clear to the Union that once financial conditions improved, some of the affected grievants would be recalled back, and in fact 12 of them were recalled as early as 21st November, 2001.

Mr. Macharia admitted that the Company indeed transferred a portion of its business to its sister company, Bustrack Ltd., on 8th November, 2001; and the fact that the business transfer had been gazetted made it public knowledge. However, the disclosure of this specific fact would have made absolutely no difference to the poor state of the Company's financial affairs, but it was merely to put in place the plans to restructure and re-organise it. (Company Ann.2). The fact that the three divisions of the Company had to be split into two concerns and the business transferred as hereinabove was ample evidence to show that the Company was not in good financial condition, otherwise there would have been no need to split it up. But this was only done to ensure long-term viability of the Bustrack Division and this fact was within the knowledge of the Union and the grievants. In any case, the learned counsel asserted, there was no duty on the part of the Company to disclose information of any nature whatsoever to the employees during negotiations. He pointed out that the contract of employment and the collective

bargaining agreement between the parties are not contracts of utmost good faith (*uberrimae fidei*). Notwithstanding the aforesaid, the learned counsel maintained that the Company negotiated with the Union, on behalf of the grievants, in good faith and in accordance with the provisions of Clause 3.3 of the Recognition Agreement and the parties' collective bargaining agreement in force at the material time (Company Anns.6 and 7).

Mr. Joseph Wamae Wangai, R.W.I, who is a partner in the firm of M/S. Deloitte & Touche, Certified Public Accountants and had worked as an auditor for 20 years, told the Court that his firm provided consultancy services to the Company during its restructuring in 2001. He said that the Company suffered a significant loss of Kshs.355 million from profit of Kshs.117 in 1997. He said the Company incurred further losses of Kshs.186 million, Kshs.211 million and Kshs.140 million in 1999, 2000 and 2001 respectively, and its indebtedness stood at kshs.905 million in 2001. Its equity also declined from Kshs.1360 billion in 1997 to Kshs.405 billion in 2001. Therefore, the financial position of the Company in the year 2001 was weak , and it could not survive any longer unless restructuring was done or carried out. He pointed out that the restructuring was necessitated by aging fleet of buses, poor infrastructure and introduction of unregulated transport system, and the only options open to the Company were either to borrow heavily or to inject more money into the business or be declared insolvent. In this scenario, the Company had to be restructured by separating urban from rural transport, but there was no change of ownership. Therefore, the Company acquired new buses on loan from General Motors Ltd. The firm, therefore, recommended that the Company should be restructured on account of poor business performance.

On cross-examination, Mr. Wangai said that reduction or redundancy of the employees was part of restructuring or re-organisation of the Company.

Mrs. Winnie Wamboi Muthiga, R.W.2, who was the former Human Resource Manager of the Company and also affected by the restructuring or re-organisation, told the Court that she was a party to the negotiations and settlements which were arrived at between the parties due to poor business performance of the Company. For this reason, the Company was restructured so as to improve efficiency and reduce overheads. She strongly denied that the Company hid or misrepresented the facts concerning the redundancy of the grievants and the reasons behind the restructuring of the Company. Mrs. Muthiga deponed further that the staff were aware of the circumstances which led to the restructuring or re-organisation of the Company, and there was no pressure or coercion applied by the management of the Company on the officials of the Union to enter into the said settlements or agreements. Consequently, the Union agreed for an early retirement of the grievants under Article 14, instead of Article 6, of the parties' collective agreement, and almost all of them were paid their terminal dues.

On cross-examination, Mrs. Muthiga maintained that the restructuring or re-organisation arose because of bad economic situation faced by the Company; and in the circumstances, the grievants were laid-off as aforesaid. She said that there was no coercion exerted on the grievants and the Union to enter into the said settlements or agreements for payment of their terminal dues for early retirement under Article 14, instead of Article 6, of the parties' collective agreement in force at the material time. Thus, there was neither non-disclosure nor misrepresentation of material facts to the grievants and the Union as alleged.

In the circumstances, the learned counsel for the Company prayed that:-

- (a) the demand by the Union be rejected as baseless and untenable.
- (b) this Hon. Court do declare that the settlements or agreements entered into and signed by the parties on 28th September, 30th October and 21st November, 2001 as valid, binding and enforceable.

In this case, the main question for consideration is whether or not the Company disclosed and represented the true facts and circumstances which brought about "early retirement" of the grievants under Article 14 of the parties' collective agreement in force at the material time. The learned counsel for the Union, Mr. Enonda, alleged that the management of the Company had an obligation to disclose, which they did not, all the material facts which occasioned "early retirement" of the grievants, and as urged the Court to find that the aforementioned settlements or agreements which were entered into and signed by the parties be declared null and void, and that the grievants be paid their terminal dues in accordance with Article 6, re: Redundancy, of the parties' collective agreement in force at the material time. On the other hand, the learned counsel for the Company, Mr. Macharia, stated that the negotiations and settlements or agreements for an early retirement of the grievants were entered into by the parties freely, without coercion or pressure by the management of the Company on the officials of the Union; and that the grievants received their terminal benefits in accordance with Article 14 re: Compulsory Retirement and Retirement Benefits, of the parties' collective agreement and had finally settled their accounts with the Company. Therefore, the Union had no cause of action or grievance at all to bring this matter to the Court.

It is true that the grievants were laid-off on account of restructuring or re-organisation as a result of recession in or poor

business performance; and ideally the parties to negotiations and settlements arising from such a situation should have come to the negotiating table with open minds. It is also important to recognise that both the management and employees have a stake in the Company, and they should have been able to arrive at an acceptable settlement or agreement. Annexure I of the submission by the learned counsel for the Company, Mr. Macharia, shows clearly that the Company intended to declare some employees redundant; i.e. under Article 6 of the parties' collective agreement. One, therefore, wonders how and why the parties negotiated and settled the matter under Article 14 thereof to the detriment of the grievants and for whom the collective agreement was entered into by the parties.

On the allegations of non-disclosure and misrepresentation of material facts by the Company to the Union, I find that the two parties, either knowingly or unknowingly, committed a grave mistake by entering into the said settlements or agreements without considering the paramount interests of the grievants. In the circumstances, I am firmly satisfied or convinced that the settlements are incapable of implementation as they stand.

Accordingly, I **DECLARE** and **ORDER** as follows:-

(a) that all the settlements or agreements entered into and signed by the parties on 28th September, 30th October and 21st November, 2001 as null and void, and

(b) that the terminal benefits of the grievants be calculated and paid for under Article 6 of the parties' collective agreement in force at the material time, less the amount already paid to them, if any.

I sought for the written opinion of the Members of the Court but they were unable to render any. Hence, I have made this decision under Section 14(8) of the Act, acting with the full powers of an umpire.

DATED, delivered and signed at Nairobi this 18th day of August, 2004.

Charles P. Chemmutter,

JUDGE.