



**Amwoma & 116 others v Orbit Chemical Industries Limited & another (Cause 1324 of 2017) [2025] KEELRC 3025 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3025 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1324 OF 2017  
JW KELI, J  
OCTOBER 30, 2025**

**BETWEEN**

**BERNARD BARONGO AMWOMA & 116 OTHERS & 116 OTHERS & 116 OTHERS ..... CLAIMANT**

**AND**

**ORBIT CHEMICAL INDUSTRIES LIMITED ..... 1<sup>ST</sup> RESPONDENT  
INSIGHT MANAGEMENT CONSULTANTS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. Vide a memorandum of claim dated the 13<sup>th</sup> of July 2017, the Claimants sued the Respondents and sought the following orders:-
  - a. Judgment against the Respondents for the sum of Kshs. 145,3030,353/-.
  - b. Costs of the suit.
  - c. Interest on (a) and (b) above at commercial rates of 20%.
  - d. Any other and/or further relief that this Court may deem fit and just to grant in the circumstances.
2. The Claimants in support of the claim filed their Verifying Affidavit sworn on 13<sup>th</sup> July 2017 by the 1<sup>st</sup> Claimant who was authorized to swear the same by the other Claimants pursuant to a duly filed Authority to Plead dated 13<sup>th</sup> July 2017; list of witnesses of even date; witness statement of the 1<sup>st</sup> Claimant of even date; and list of documents of even date with the bundle of documents attached.
3. The 1<sup>st</sup> Respondent entered appearance through the law firm of Oseko & Ouma Advocates and filed a statement of response dated 12<sup>th</sup> September 2017. In support of the said statement of response, the 1<sup>st</sup> Respondent filed a list of witnesses, witness statement of Romeo Magada Jamoza, and list of



documents with the bundle of documents attached, all dated 17<sup>th</sup> October 2017. The aforesaid list of witnesses and witness statement were substituted with a list of witnesses dated 13<sup>th</sup> March 2023 and a witness statement of Walter Mochoge of even date, which was later replaced with a witness statement of David King'ori of even date.

4. On their part, the 2nd Respondent appeared through the law firm of Mudao & Company Advocates and filed an amended memorandum of reply dated June 18, 2019. To support this amended reply, the 2nd Respondent submitted a list of witnesses, witness statements from David Malago and Jonathan Matata, both dated May 10, 2019, and a list of documents dated May 10, 2019, along with further lists dated September 11, 2017, and September 9, 2018, respectively, as well as the bundle of the documents.
5. In response to the 2<sup>nd</sup> Respondent's amended memorandum of reply, the Claimants filed a Reply dated 21<sup>st</sup> June 2019.
6. The parties jointly filed a statement of agreed issues dated 1<sup>st</sup> April 2019.

### **Hearing and evidence**

7. The claimants' case was heard on February 18, 2025, with Benard Barongo Amwoma as CW1, who testified on oath, adopted his witness statement dated July 13, 2017, as evidence in chief for the claimants, and produced documents under pages 1-359 of the claimants' bundle. He was cross-examined by counsel for the 1st respondent, Ms. Ouma, and by counsel for the 2nd respondent, Ms. Mudao, and re-examined by the claimants' counsel, Ms. Njeri Kariuki. The claimants' case was marked as part heard. On June 5, 2025, Ms. Kariuki informed the court to close the claimants' case without calling more witnesses, and it was closed.
8. The 1st respondent's case was heard on June 5, 2017, with David Kingor'i testifying as RW1. He adopted his witness statement dated March 13, 2023, as his main evidence and presented documents under list dated October 17, 2017, to support the 1st respondent's case. The witness was cross-examined by Ms. Kariuki, counsel for the claimant, and Ms. Mudao, counsel for the 2nd respondent, and was then re-examined. The 1st respondent's case was marked as closed.
9. The 2<sup>nd</sup> respondent's case was heard on the 5<sup>th</sup> June 2017 when David Mulago testified on oath as RW2. He was the managing director of the 2<sup>nd</sup> respondent and adopted his witness statement dated 10<sup>th</sup> May 2019 as his evidence. He produced his as his evidence documents under the list of documents dated 10<sup>th</sup> May 2019 and further lists dated 11<sup>th</sup> September 2017 and 9<sup>th</sup> September 2018 respectively. The witness was cross-examined by counsel for the claimants Ms. Kariuki and Ms Ouma for the 1<sup>st</sup> respondent

### **The Claimants' case in summary**

10. The Claimants' case is that they were employees of the 1st Respondent, Orbit Chemical Industries Limited, who had engaged the services of the 2nd Respondent, a recruitment agency, in or around 2008 to recruit them. The Claimants state that their employer was the 1st Respondent because they offered their services to the 1st Respondent and received their remuneration from it. However, they allege that the 2nd Respondent issued them appointment letters and purported to draw short-term employment contracts between itself and the Claimants for varying periods, including 1 year, 11 months, and 6 months. The Claimants were continuously engaged by the Respondents through successive short-term contracts until they were unlawfully terminated without prior notice, either to them personally, their Union, Kenya Chemical and Allied Workers Union, or the Labour Officer. The Claimants state that following their unlawful termination, they were also denied their terminal dues such as period pay, compensation for loss of employment, and untaken leave.



11. The Claimants state that in an attempt to sanitize their unlawful termination from employment, the 2<sup>nd</sup> Respondent renewed the Claimants' contract for one (1) month after it had already terminated them from employment. On 22<sup>nd</sup> August 2016, following the Claimants' termination from employment a meeting was held between the 1<sup>st</sup> Respondent, the Claimants' employer, and the Claimants' Union's officials where the 1<sup>st</sup> Respondent clarified that the jobs which the Claimants' were engaged in were no longer available, which had forced the 1<sup>st</sup> Respondent to cut down its workforce. It was agreed in the said meeting that the Respondent had terminated the Claimants' employment on grounds of redundancy, and as such the Claimants were to be paid their terminal dues in accordance with the law on redundancy. Unfortunately, these dues were never remitted.
12. The Claimants allege that they were subjected to unfair labor practices through the collusion of the 1st and 2nd Respondents. Specifically, they contend that the 1st Respondent intentionally sought to bypass the provisions of the *Employment Act*, which required it to issue the Claimants contracts of employment, by causing the 2nd Respondent to issue employment contracts to them. Additionally, the Respondents are accused of deliberately granting the Claimants short-term successive contracts. The Claimants also assert that they were unfairly and unlawfully terminated from their jobs, and that their terminal dues continue to be withheld.
13. The Claimants' claim from the Respondents is particularized hereinbelow.
14. The 1st Claimant Bernard Barongo Amwoma claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
  - (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*5years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=

Total Kshs.1,166,782/=
15. The 2<sup>nd</sup> Claimant Jerusa Kemunto Achoki claims compensation from the Respondents for unfair employment practices from year 2008 as follows:-
  - (a) Salary in lieu of notice Kshs10,379/=
  - (b) 12 months compensation for loss of Employment Kshs.124,548/=
  - (c) Severance pay (15 days \* 9 years) Kshs.46,705.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,379/=

Total Kshs.1,192,011.5/=
16. The 3<sup>rd</sup> Claimant Zipporah Muyathi O claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
  - (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=



- (c) Severance pay (15 days\* 5years) Kshs.22,562.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
  - Total Kshs.1,128,606.5/=
17. The 4<sup>th</sup> Claimant Lydiah Maliti claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*9years) Kshs 45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
  - Total Kshs.1,186,998/=
18. The 5<sup>th</sup> Claimant Nathan Machoka Nyangweso claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \*6 years) Kshs.27,075/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
  - Total Kshs.1,153,425/=
19. The 6<sup>th</sup> Claimant Gladys Nyaboke claims compensation from the Respondents for unfair employment practices as from the year 2008 follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*9 years) Kshs.45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
  - Total Kshs.1.186.998/=
20. The 7<sup>th</sup> Claimant Truphena Kerubo Gabriel claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days\*5 years) Kshs.22,562.5/=



- (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
  - Total Kshs.1,148,912.5/=
21. The 8th Claimant Josephat Orenge Momanyi claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- a. Salary in lieu of notice Kshs.11,616/=
  - b. 12 months compensation for loss of Employment Kshs.139,392/=
  - c. Severance pay(15 days\* 4 years) Kshs.23,232/=
  - d. Damages for unfair labour practices Kshs.1,000,000/=
  - e. Untaken leave days Kshs.11,616/=
  - Total Kshs.1,185,856/=
22. The 9<sup>th</sup> Claimant Florence Omoke Nyanchera claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay(15 days years) Kshs.22,562.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
  - Total Kshs.1,148,912.5/=
23. The 10th Claimant Evarlyne Moraa Onditi claims compensation from the Respondents for unfair employment practices as from the year 2013 follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
  - Total Kshs.1,161,728/=
24. The 11th Claimant Janet Kerubo claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.11,554/=
  - (b) 12 months compensation for loss of Employment Kshs.138,648/=
  - (c) Severance pay (15 days \* 4 years) Kshs.23,108/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=



- (e) Untaken leave days Kshs.11,554/=
- Total Kshs.1,184,864/=
25. The 12th Claimant Muindi Consolata claims compensation from the Respondents for unfair employment practices from the year 2004 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
- (b) 12 months compensation for loss of Employment Kshs.121,296/=
- (c) Severance pay (15 days\*13 years) Kshs.65,702/=
- (d) Damages for unfair labour practices Kshs.1,000,000/=
- (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,207,214/=
26. The 13th Claimant Winfridah Basueti claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
- (b) 12 months compensation for loss of Employment Kshs.108,300/=
- (c) Severance pay (15 days \*6 years) Kshs.27,075/=
- (d) Damages for unfair labour practices Kshs.1,000,000/=
- (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,153,425/=
27. The 14th Claimant W. Waithaka Agnes claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
- (b) 12 months compensation for loss of Employment Kshs.121,296/=
- (c) Severance pay (15 days\*9 years) Kshs.45,486/=
- (d) Damages for unfair labour practices Kshs.1,000,000/=
- (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=
28. The 15th Claimant Racheal Mafogo claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
- (b) 12 months compensation for loss of Employment Kshs.121,296/=
- (c) Severance pay (15 days\*5 years) Kshs.25,270/=
- (d) Damages for unfair labour practices Kshs.1,000,000/=
- (e) Untaken leave days Kshs.10,108/=



Total Kshs.1,166,782/=

29. The 16th Claimant Cecilia Nzula Kiiro claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-

- (a) Salary in lieu of notice Kshs.10,108/=
- (b) 12 months compensation for loss of Employment Kshs.121,296/=
- (c) Severance pay (15 days\*4 years) Kshs.20,216/=
- (d) Damages for unfair labour practices Kshs.1,000,000/=
- (e) Untaken leave days Kshs.10,108/=

Total Kshs.1,161,718/=

30. The 17th Claimant Mamuli Everlyne claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-

- (a) Salary in lieu of notice Kshs.10,108/=
- (b) 12 months compensation for loss of Employment Kshs.121,296/=
- (c) Severance pay(15 days \*9 years) Kshs.45,486/=
- (d) Damages for unfair labour practices Kshs.1,000,000/=
- (e) Untaken leave days Kshs.10,108/=

Total Kshs.1.186.998/=

31. The 18th Claimant Irene Owino claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-

- (a) Salary in lieu of notice Kshs.10,108/=
- (b) 12 months compensation for loss of Employment Kshs.121,296/=
- (c) Severance pay (15 days\*9 years) Kshs.45,489/=
- (d) Damages for unfair labour practices Kshs.1,000,000/=
- (e) Untaken leave days Kshs.10.108/=

Total Kshs.1,187,001/=

32. The 19th Claimant Kinya Lilian claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-

- (a) Salary in lieu of notice Kshs.10,108/=
- (b) 12 months compensation for loss of Employment Kshs.121,296/=
- (c) Severance pay (15 days\*5 years) Kshs.25,270/=
- (d) Damages for unfair labour practices Kshs.1,000,000/=
- (e) Untaken leave days Kshs.10,108/=

Total Kshs.1,166,782/=



33. The 20<sup>th</sup> Claimant Phiderima Nthenya claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15days\* 9 years) Kshs.45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=
34. The 21<sup>st</sup> Claimant Peter Ogada Odoyo claims compensation from the Respondents for unfair employment practices from the year 2004 as follows:-
- (a) Salary in lieu of notice Kshs.13,647/=
  - (b) 12 months compensation for loss of Employment Kshs.163,764/=
  - (c) Severance pay (15 days\* 13 years) Kshs.88,705.50
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.13,647/=
- Total Kshs.1,279,763.50
35. The 22<sup>nd</sup> Claimant Angeline Makau claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\* 3 years) Kshs.15,162/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,156,674/=
36. The 23<sup>rd</sup> Claimant Joyce Achieng Miruka claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\* 6 years) Kshs.30,324/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,171,836/=



37. The 24<sup>th</sup> Claimant Rose Mwendu Maithya claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
38. The 25<sup>th</sup> Claimant Albert Agisa claims compensation from the Respondents for unfair employment practices from the year 2007 as follows:-
- (a) Salary in lieu of notice Kshs.10,496/=
  - (b) 12 months compensation for loss of Employment Kshs.125,952/=
  - (c) Severance pay (15 days\* 11 years) Kshs.57,728/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,496/=
- Total Kshs.1,204,672/=
39. The 26<sup>th</sup> Claimant Mercy Kanini claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs 1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
40. The 27<sup>th</sup> Claimant Everline Wambua claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \*6 years) Kshs.27,075/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,153,425/=



41. The 28th Claimant Theresa Nyaboke Neko claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs. 10,108/=
- Total Kshs.1,161,728/=
42. The 29<sup>th</sup> Claimant Mutinda Mutisya Francis claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
43. The 30th Claimant Lydiah Muchiri claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
44. The 31st Claimant Pamela Nafula M. claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*9 years) Kshs.45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=



45. The 32<sup>nd</sup> Claimant Martin Wambua claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs 1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
46. The 33<sup>rd</sup> Claimant Eunice Nthenge Nyamai claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \* 5 years) Kshs.22,562.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,148,921.5/=
47. The 34<sup>th</sup> Claimant Mwikali Mutisya claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*6 years) Kshs 30,324/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,171,836/=
48. The 35<sup>th</sup> Claimant Ann Kanini claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=



49. The 36th Claimant Benard Ogato claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
50. The 37th Claimant William Nyaumbi Minaro claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.15,185/=
  - (b) 12 months compensation for loss of Employment Kshs.182,220/=
  - (c) Severance pay (15 days \*9 years) Kshs.68,332.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.15,185/=
- Total Kshs.1,219,423.5/=
51. The 38th Claimant Wambwire Josephine claims compensation from the Respondents for unfair employment practices from the year 2004 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 13 years) Kshs.65,702/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,207,214/=
52. The 39<sup>th</sup> Claimant M. Mutua Josephine claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*9 years) Kshs.45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=



53. The 40<sup>th</sup> Claimant Samson Kibogo Onseno claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
54. The 41<sup>st</sup> Claimant Flora Kageha Amakabane claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
55. The 42<sup>nd</sup> Claimant Erick Ochieng Obong claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \* 6 years) Kshs. 27,075/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,153,425/=
56. The 43<sup>rd</sup> Claimant Rukia Mbechi claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- a. Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 6 years) Kshs. 30,324/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,171,836/=



57. The 44<sup>th</sup> Claimant Anastasia Ngina Judah claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \*6 years) Kshs. 27,075/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,153,425/=
58. The 45<sup>th</sup> Claimant Philip Maithya claims compensation from the Respondents for unfair employment practices from the year 2010 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*7years) Kshs. 35,378/=
  - (d) Damages for unfair labour practices Kshs.1,000,000)/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,176,890/=
59. The 46<sup>th</sup> Claimant Catherine Munini claims compensation from the Respondents for unfair employment practices from the year 2009 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*8 years) Kshs. 40,432/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,181,944/=
60. The 47<sup>th</sup> Claimant Samuel Mtinda Nzioka claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.11,554/=
  - (b) 12 months compensation for loss of Employment Kshs.138,648/=
  - (c) Severance pay (15 days \* 6 years) Kshs.34,662/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.11,554/=
- Total Kshs.1,196,418/=



61. The 48<sup>th</sup> Claimant Jackson Khatensele claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*3 years) Kshs. 15,162/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,156,674/=
62. The 49<sup>th</sup> Claimant N. George Otieno claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.11,554/=
  - (b) 12 months compensation for loss of Employment Kshs.138,648/=
  - (c) Severance pay(15 days \* 5 years) Kshs.28,885/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.11,554/=
- Total Kshs.1,202,195/=
63. The 50<sup>th</sup> Claimant Christine Mokeria Nchore claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
64. The 51<sup>st</sup> Claimant Mbula Munyau claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*9 years) Kshs.45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=



65. The 52<sup>nd</sup> Claimant Bonface Furi Munasia claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
66. The 53<sup>rd</sup> Claimant Dolphine Chamwanda Mmgoga claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-Kshs.10,108/=
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
67. The 54<sup>th</sup> Claimant Mary Joy Josephat claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*5 years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
68. The 55<sup>th</sup> Claimant Jackline N. Wafula claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=



69. The 56<sup>th</sup> Claimant Lilian Kwamboka Nyandieka claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs. 10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
83. The 57<sup>th</sup> Claimant Clementine Kanali Atamba claims compensation from the Respondents for unfair employment practices from the year 2000 as follows:-
- (a) Salary in lieu of notice Kshs.13,647/=
  - (b) 12 months compensation for loss of Employment Kshs.163,764/=
  - (c) Severance pay (15 days\*17 years) Kshs 115,999.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.13,647/=
- Total Kshs.1,307.057.5/=
84. The 58<sup>th</sup> Claimant Kennedy Omollo claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 3 years) Kshs. 15,162/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,156,674/=
85. The 59<sup>th</sup> Claimant Maria Zighe Kambale claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay(15 days \* 4 years) Kshs 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=



86. The 60<sup>th</sup> Claimant Ann Adeya claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs 10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
87. The 61<sup>st</sup> Claimant Nicholas Mutisya Munyao claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
88. The 62<sup>nd</sup> Claimant James Wanyoike claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
89. The 63<sup>rd</sup> Claimant Rose Nyanchoka claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days+4 years) Kshs.18,050/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,144,400/=



90. The 64<sup>th</sup> Claimant Zipporah Mutathi claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
91. The 65<sup>th</sup> Claimant Everlyne Nyameta claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \*5 years) Kshs.22,562.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,148,921.5/=
92. The 66<sup>th</sup> Claimant Grace Kerubo Aramba claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
93. The 67<sup>th</sup> Claimant Judith Momanyi claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*6 years) Kshs. 30,324/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,171,836/=



94. The 68<sup>th</sup> Claimant Josephine Ondisa claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
95. The 69<sup>th</sup> Claimant Mercy Kavula claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*3years) Kshs. 15,162/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,156,674/=
96. The 70<sup>th</sup> Claimant Maurine Aoko Oliech claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
97. The 71<sup>st</sup> Claimant Elizabeth Mwende Muindi claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days\* 3 years) Kshs.13,537.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,139,887.5/=



98. The 72<sup>nd</sup> Claimant Dorcas Mueni Kilonzo claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
99. The 73<sup>rd</sup> Claimant Pauline Bochere Otworri claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000' =
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
100. The 74<sup>th</sup> Claimant Annastacia Mutio Mutua claims compensation from the Respondents for unfair employment practices from the yea 2013 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \* 4 years) Kshs.18,050/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,144, 400/=
101. The 75<sup>th</sup> Claimant Juma Doris claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (f) Severance pay (15 days\*9 years) Kshs. 40,612.5/=
  - (g) Damages for unfair labour practices Kshs.1,000,000/=
  - (c) Untaken leave days Kshs.9,025/=
- Total Kshs.1,166,962.5/=



102. The 76<sup>th</sup> Claimant Thomas Mutua Mwololo claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*9 years) Kshs. 45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000'=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=
103. The 77<sup>th</sup> Claimant Happiness Kemunto claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*9 years) Kshs.45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=
104. The 78<sup>th</sup> Claimant Lydiah Mulwa claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*9 years) Kshs. 45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=
105. The 79<sup>th</sup> Claimant Judith Wayua Ndwiki claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*9 years) Kshs. 45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000'=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=



106. The 80th Claimant Edinah Kerubo Monda claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 6 years) Kshs. 30,324/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,171,836/=
107. The 81<sup>st</sup> Claimant Callen Otachi Bocheri claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1.000.000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
108. The 82<sup>nd</sup> Claimant Phanice Cherop claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
109. The 83<sup>rd</sup> Claimant Everylne Rutoh claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000' =
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=



110. The 84<sup>th</sup> Claimant Elizabeth Muindi Paul claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
111. The 85<sup>th</sup> Claimant Cliff Nyakundi Nchore claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166.782/=
112. The 86<sup>th</sup> Claimant Devis Nzau Muli claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- (a) Salary in lieu of notice Kshs.13,260/=
  - (b) 12 months compensation for loss of Employment Kshs.159,120/=
  - (c) Severance pay (15 days \* 3 years) Kshs.19,890/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.13,260/=
- Total Kshs.1,205,530/=
113. The 87<sup>th</sup> Claimant Dorcas Ndanu claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=



114. The 88th Claimant Jackline Obati Vudembu claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 9 years) Kshs. 45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=
115. The 89th Claimant Congestina Mwendu claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 9years) Kshs.45,486/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,186,998/=
116. The 90<sup>th</sup> Claimant Erick Muturi Kariuki claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs 20,216/=
  - (d) Damages of unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
117. The 91<sup>st</sup> Claimant Charles Buheri claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay(15 days \*4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs. 1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=



118. The 92<sup>nd</sup> Claimant Fatuma Babiemba Kasimu Claims compensation Musoga from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 5 years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
119. The 93<sup>rd</sup> Claimant Beatrice Nesu Bilachi claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
120. The 94<sup>th</sup> Claimant Monyi Domitila Ndunge claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs. 121,296/=
  - (c) Severance pay(15 days \*3 years) Kshs. 15,162/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,156,674/=
121. The 95<sup>th</sup> Claimant Samuel Mtinda Matheka claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*6 years) Kshs. 30,324/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,171,836/=



122. The 96<sup>th</sup> Claimant Nancy Kerubo Kabinga claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.12,554/=
  - (b) 12 months compensation for loss of Employment Kshs.150,648/=
  - (f) Severance pay (15 days\*9 years) Kshs. 56,493/=
  - (g) Damages for unfair labour practices Kshs.1,000,000/=
  - (c) Untaken leave days Kshs.12,554/=
- Total Kshs.1,232,249/=
123. The 97<sup>th</sup> Claimant Joseph Kikau' Paul claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
124. The 98<sup>th</sup> Claimant Benson Makau Mwangangi claims compensation from the Respondents for unfair employment practices from the year 2011 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*6 years) Kshs.30,324/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,171,836/=
125. The 99<sup>th</sup> Claimant Olivia Talam Chepteek claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- a. Salary in lieu of notice Kshs.10,108/=
  - b. 12 months compensation for loss of Employment Kshs.121,296/=
  - c. Severance pay (15 days \* 3 years) Kshs 15,167/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,156,674/=



126. The 100<sup>th</sup> Claimant Stephen Waweru claims compensation from the Respondents for unfair employment practices from the year 2008 as follows:-
- (a) Salary in lieu of notice Kshs.18,260/=
  - (b) 12 months compensation for loss of Employment Kshs.219,120/=
  - (f) Severance pay (15 days\*9 years) Kshs.82,170/=
  - (g) Damages for unfair labour practices Kshs.1,000,000/=
  - (c) Untaken leave days Kshs.18,260/=
- Total Kshs.1,337,810/=
127. The 101<sup>st</sup> Claimant Carolyn Nabwire Wandera claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.18,260/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*5 years) Kshs. 25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
128. The 102<sup>nd</sup> Claimant Sarah Wambua claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \*5 years) Kshs. 22,562.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,148, 921.5/=
129. The 103<sup>rd</sup> Claimant Arogo Doris Nyabeta claims compensation from the Respondents for unfair employment practices from the year 2014 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 3years) Kshs.15,162/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,156,674/=



130. The 104<sup>th</sup> Claimant Elizabeth Wanza Muinde claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days\*5years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000,000=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=
131. The 105<sup>th</sup> Claimant Denis Kangwana Motanya claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \*5 years) Kshs.22,562.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,148,921.5/=
132. The 106<sup>th</sup> Claimant Syonge Ombe Sharon claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108.300/=
  - (c) Severance pay (15 days \* 5 years) Kshs.22,562.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,148,921.5/=
133. The 107<sup>th</sup> Claimant Lilian Mbinya claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (h) 12 months compensation for loss of Employment Kshs 121,296/=
  - (c) Severance pay (15 days \* 5 years) Kshs.25,270/=
  - (d) Damages for unfair labour practices Kshs.1,000.000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,166,782/=



134. The 108<sup>th</sup> Claimant Veronicah Naliaka Wanyonyi claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \* 5 years) Kshs. 22,562.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs. 9,025/=
- Total Kshs.1,148,921.5/=
135. The 109<sup>th</sup> Claimant Tobias Maruti claims compensation from the Respondents for unfair employment practices from the year 2012 as follows:-
- (a) Salary in lieu of notice Kshs.10,497/=
  - (b) 12 months compensation for loss of Employment Kshs.125,964/=
  - (c) Severance pay (15 days \*5years) Kshs.26,242.5/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,497/=
- Total Kshs.1,173,200.5/=
136. The 110<sup>th</sup> Claimant Robert Ongwenyi Okiro claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.9,025/=
  - (b) 12 months compensation for loss of Employment Kshs.108,300/=
  - (c) Severance pay (15 days \* 4 years) Kshs.18,050/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.9,025/=
- Total Kshs.1,144,400/=
137. The 111<sup>th</sup> Claimant Irene Kasyoka Munyithya claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*4 years) Kshs 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=



138. The 112<sup>th</sup> Claimant Joseph Muindi Munywoki claims compensation from the Respondents for unfair employment practices the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
139. The 113<sup>th</sup> Claimant Richard Ongosi Ombati claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs. 20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
140. The 114<sup>th</sup> Claimant Eunice Nyamai claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000' =
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=
141. The 115<sup>th</sup> Claimant Peter Mwendwa claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-
- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \* 4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000' =
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=



142. The 116<sup>th</sup> Claimant Peter Muthyaka claims compensation from the Respondents for unfair employment practices from the year 2013 as follows:-

- (a) Salary in lieu of notice Kshs.10,108/=
  - (b) 12 months compensation for loss of Employment Kshs.121,296/=
  - (c) Severance pay (15 days \*4 years) Kshs.20,216/=
  - (d) Damages for unfair labour practices Kshs.1,000,000/=
  - (e) Untaken leave days Kshs.10,108/=
- Total Kshs.1,161,728/=

### **1<sup>st</sup> Respondent's case in brief**

143. The 1<sup>st</sup> Respondent explained that it is a contract manufacturing company, involved in the manufacture of cleaning products, soaps, detergents and plastic packaging. At all material times relevant to this suit, the 1st Respondent contracted the 2nd Respondent to provide it with certain manpower services vide various agreements for the provision of personnel ("Outsourcing Agreements") for its manufacturing plant from the year 2008 until the year 2016, with a deed of Novation to transfer the 1st Respondent's rights and obligations to Orbit Products Limited (the successor in title of the 1<sup>st</sup> Respondent) having been executed on 1st July 2016.

144. Some terms of the Outsourcing Agreements were that the 1st Respondent was supplied with seasonal/temporary/casual labourers ("workers") categorized as support staff to perform manual factory jobs within its premises; the 2<sup>nd</sup> Respondent was an independent contractor, and NOT an agent or nominee of the 1st Respondent; and no employment relationships were created between the 1st Respondent and any of the workers. Additionally, the Outsourcing Agreements provided that the workers were agents of the 2nd Respondent, did not receive any payment from the 1<sup>st</sup> Respondent, and did not have or enjoy any rights whatsoever against the 1st Respondent as its employees under the Employment Act or any law relating to employment, save for the Occupational Safety and Health Act, and the Factories and Other Places Work Act, where the 1st Respondent would be described as an Occupier. Consequently, the 1st Respondent's main obligation in the Outsourcing Agreements was to ensure a safe and secure working environment for the workers to be provided by the 2nd Respondent. In fact, the Outsourcing Agreements expressly provided that the workers, including the Claimants herein, were under the 2nd Respondent's management and control.

145. It is the 1<sup>st</sup> Respondent's case that this type of arrangement between it and the 2nd Respondent was intended to reduce the 1st Respondent's workforce requirements and to manage its cyclical resource demands. That this is a globally recognized business strategy for increased efficiency.

146. Sometime in July 2016, the 1st Respondent notified the 2nd Respondent via email correspondence that it was downsizing and would no longer require a supply of the workers.

### **The 2<sup>nd</sup> Respondent's case**

147. The 2<sup>nd</sup> Respondent admitted that the Respondents employed the Claimants on various fixed short-term contracts starting from 2008 to 30th June 2016, which contracts had definite start and end dates with no provision for renewal. Some of the Claimants had directly worked for the 1<sup>st</sup> Respondent before they were transferred to the 2<sup>nd</sup> Respondent's management in 2008. The Claimants were based at the 1<sup>st</sup> Respondent's factories in Machakos County. It is the 2<sup>nd</sup> Respondent's case that the



- Claimants' fixed term contracts of employment. The 2<sup>nd</sup> Respondent states that the Claimants declined to accept the renewals of their contracts on 19th July 2016 and demanded to be paid their terminal dues.
148. During the subsistence of their contracts, the Respondents duly paid the salaries of the Claimants and issued them with pay slips that particularized their individual remunerations into basic pay, house allowance, overtime, union deductions for COTU & Union-Kenya Chemicals & Allied Workers Union, and any advance payments. The 2<sup>nd</sup> Respondent made statutory deductions against the Claimants salaries namely PAYE, NSSF and NHIF and duly remitted the same to the relevant statutory bodies every month. Further, during the pendency of the Claimant's fixed term contracts, the Claimants applied for and were permitted to proceed on leave. Upon termination or the lapse of the fixed term contracts, the 2<sup>nd</sup> Respondent paid the Claimant's terminal dues made up of any days worked, untaken leave days and other legal entitlements.
149. The 2<sup>nd</sup> Respondent acceded to the fact that the Claimants are duly paid up members of the Kenya Chemical & Allied Workers Union, the trade union that represents the interests of the majority of the workers at the 1<sup>st</sup> Respondent's factories. The Respondents have a Recognition Agreement with the said Union as well as a Collective Bargaining Agreement (CBA). The 2<sup>nd</sup> Respondent confirmed that the Trade Union, having recruited the majority of the workers at the 1<sup>st</sup> Respondent's factories including the Claimants herein, forwarded check-off forms to the 2<sup>nd</sup> Respondent. Further, on the strength of a court order in Cause No. 1255 of 2015 issued in 2015, the 2<sup>nd</sup> Respondent deducted and remitted union dues for the Claimants that had signed up for Union membership. The said Trade Union was therefore duly representing the Claimants in any labour disputes between them and the Respondents.
150. On 19<sup>th</sup> July 2017, one hundred and thirty eight (138) employees of Respondents, among them the Claimants, were issued with renewal notices for contracts lasting for a period of one (1) month and three (3) weeks backdated to 1<sup>st</sup> July 2017, following the expiry of their fixed-term contracts on 30<sup>th</sup> June 2017. On receipt of this contract the claimants declined to acknowledge receipt of the same, and instead, together with other employees engaged at the 1<sup>st</sup> Respondent's premises, went on rampage paralyzing the entire operations at the 1<sup>st</sup> Respondent's factories. They demanded to be paid all their terminal benefits and be relieved of their duties from 19<sup>th</sup> July 2017 stating that they were no longer interested in working for the Respondent for the additional one (1) month and three (3) weeks.
151. Following those events, the Trade Union's stewards, majority of whom are the 1<sup>st</sup> Respondent's direct employees, notified the trade union of the disruption of work, as a consequence of which the Union dispatched its representatives who had a meeting with 1<sup>st</sup> and 2<sup>nd</sup> Respondent's representatives together with the nominated representatives of the 138 workers on 22<sup>nd</sup> July 2017. The parties agreed in the meeting that any separation dues would be met by the Respondents subject to a further meeting to be held on 23<sup>rd</sup> July 2016. The workers were requested to, and nominated four (4) employees to attend the meeting of 23<sup>rd</sup> July 2017, and also insisted that the union official and shop stewards based at the 1<sup>st</sup> Respondent's premises attend on their behalf. Since the workers were rowdily unwilling to receive/ accept the fixed term contracts, the Respondents hands were tied in the meeting to only agree on the terms of the workers' exit, especially in light of their expired fixed-term contracts. Despite the agreement reached in the meeting of 23<sup>rd</sup> July 2016, some of the Claimants on 28<sup>th</sup> July 2016 broke into the 1<sup>st</sup> Respondent's premises causing chaos and disrupting the production processes which led to the arrest of some of them.
152. The 2<sup>nd</sup> Respondent was categorical that pursuant to the agreement reached with the Claimants on 23<sup>rd</sup> July 2017, the Claimants and other workers who have not lodged any claim against the Respondents,



received their terminal dues under the following headings through their bank accounts: payment in lieu of notice (the Claimants requested to be paid up front rather than serve the 1 month & 3 weeks contract); days worked in the month of July 2016; untaken leave days earned in the final six (6) months' contract that they were under; and an ex-gratia amount paid as a sign of good faith, despite the Claimants not being entitled to service pay. The 2<sup>nd</sup> Respondent therefore maintains that the tents of both substantial and procedural fairness were adhered to in the separation of the Claimants from the 1<sup>st</sup> Respondent,

153. The 2<sup>nd</sup> Respondent raised a challenge to this suit on the basis that the 1<sup>st</sup> Claimant cannot legally take up the cases of the other employees in a representative capacity, since employment contracts are personal contracts between the employee and the employer, and urged that the suit should be struck out for being fatally incompetent.

## DETERMINATION

### Issues for determination

154. The claimant outlined the following issues for determination in the dispute-
- a. Whether the Claimants were employees of the 1st Respondent notwithstanding the agency arrangement with the 2nd Respondent.
  - b. Whether the contractual relationship between the Claimants and the Respondents amounted to a sham designed to circumvent statutory employment protections.
  - c. Whether the Respondents, jointly or severally, violated the Claimants' rights under the *Employment Act*, 2007 and *the Constitution* of Kenya, 2010.
  - d. Whether the termination of the Claimants' employment was procedurally and substantively unfair and/or unlawful.
  - e. Whether the Respondents complied with the mandatory legal requirements under Sections 35, 41, 43, and 45 of the *Employment Act* prior to effecting the terminations.
  - f. Whether the Respondents violated the Claimants' constitutional rights under Articles 41 (labour relations), 47 (fair administrative action), and 50 (fair hearing) of *the Constitution*.
  - g. Whether the Respondents failed to notify and consult with the Claimants' trade union and the Labour Office as required by law.
  - h. Whether the Claimants are entitled to the remedies sought in their Memorandum of Claim, including compensation, terminal benefits, interest, and costs.
155. The court on perusal of the Case tracking system did not find submissions by the 1<sup>st</sup> respondent.
156. The 2<sup>nd</sup> respondent stated the following as the issues for determination in the suit-
- i. Whether the outsourcing agreement between the 1st and 2nd Respondents affects the Claimants' employment relationship and their claims;
  - ii. Whether the Claimants' contracts were unfairly or unlawfully terminated;
  - iii. Whether 2nd Respondent complied with the Mutual Separation Agreement of 23rd July 2016;



- iv. Whether the Claimants' final dues were paid, subject to statutory deductions and SACCO loan set-offs; and v. Whether the Claimants are entitled to the claimed sums of notice pay, severance pay, leave pay, and compensatory damages.
157. The court, having perused the pleadings and heard the parties, was of the considered opinion that the issues placed before the court for determination in the suit were-
- a. Whether the contractual relationship between the Claimants and the Respondents amounted to a sham designed to circumvent statutory employment protections, and whether the Claimants were employees of the 1st respondent under the agency of the 2<sup>nd</sup> respondent.
  - b. Whether the termination of the employment was unfair.
  - c. Whether the claimants were entitled to relief sought

**Whether the contractual relationship between the Claimants and the Respondents amounted to a sham designed to circumvent statutory employment protections, and whether the Claimants were employees of the 1st respondent under the agency of the 2<sup>nd</sup> respondent.**

158. The claimant alleged they were employees of the 1<sup>st</sup> respondent under agency of the 2<sup>nd</sup> respondent. The claimant's witness of fact, Barongo (CW1) during cross examination admitted that they had held contracts of employment drawn by the 2<sup>nd</sup> respondent who paid their salary and was in charge of their discipline. They worked at the 1<sup>st</sup> respondent premises for several years with individual contracts some issued at different times. RW2 told the court the 2<sup>nd</sup> respondent was the employer of the claimants. CW1 produced his contract of employment dated 1<sup>st</sup> February 2014 which was signed by David Mulago (RW2) and the claimant. The contract stated it was an agreement between Insight Management Consultants Limited (the 2<sup>nd</sup> respondent) referred to as the employer and Benard Amuma Barongo (CW1) as the employee. The contract was for 1 year and 11 months. CW1 was described in the contract as a general worker and his remuneration was stated. The contract stated the employee's place of work shall be advised from time to time and the employee will report to a designated manager or such other authority as be directed by the company from time to time. The court found under the contract between the 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent with the last of July 2014 to 29<sup>th</sup> July 2016 was for supply of labour, this contract for services (see 1<sup>st</sup> respondent's exhibit 3) The Court of Appeal recognized outsourcing as a legitimate business strategy in *Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union* [2016] KECA 510 (KLR) where it adopted the definition of outsourcing as follows-“Outsourcing” as defined by BusinessDictionary.com means,

“The contracting or subcontracting of noncore activities to free up cash, personnel, time, and facilities for activities in which a company holds competitive advantage. Companies having strengths in other areas may contract out data processing, legal, manufacturing, marketing, payroll accounting, or other aspects of their businesses to concentrate on what they do best and thus reduce average unit cost. Outsourcing is often an integral part of downsizing or reengineering. Also called contracting out.” The court then upheld its decision in *Kenya Airways Limited vs Aviation & Allied Workers Union Kenya & 3 Others* [2014] eKLR, where it was satisfied that outsourced services was an accepted business strategy. In the case, Murgor, JA. observed that;

“Outsourced services is one such widely accepted business concept, which enables a company to focus on core business, reduce overheads, increase cost and



efficiency savings, and manage cyclical resource demands. It is not designed to deprive Kenyans of their jobs.”

159. The claimants in the instant case held contracts drawn by the 2<sup>nd</sup> respondent which never disclosed they were to work for the 1<sup>st</sup> respondent but said the place of work was as designated. They were designated to work in the 1st respondent’s premises pursuant to an agreement for contract for services between the 1st respondent dated 23rd July, 2008, 30th July 2012, and 30th July 2014 respectively (1st respondent’s exhibits 1-3). Under the contracts, the 2nd respondent was paid a management fee and was in charge of the statutory obligations of the employees. CW1 admitted that when not at work, his job could be done by another person. RW2 admitted to being the employer. In *Kenya Chemical & Allied Workers Union v. Insight Management Consultancy Limited* [2018] eKLR, the court (Lady Justice Hellen Wasilwa) recognized the 2nd Respondent as an outsourcing company supplying labor to various companies, including Orbit Chemicals Limited as follows- ‘28. I have examined evidence of the parties and submissions filed herein. From the Respondent own description of who they are, they are an outsourcing company with a labour force of over 5,000 workers supplying labour to various companies including Orbit Chemicals who are the company that the Claimant members worker for.
29. The CW2 in her evidence told Court that she actually work for Orbit Chemical Limited and is a member of the Claimant union and that the Respondent supplies labour to Orbit Chemicals. She confirms that she is supervised by a supervisor of Orbit who gives her the work to do and the Respondent pays her her salary.
30. CW1 on the other hand testified that he is employed by the Respondent who has their own independent company that makes soap and chemical sulphuric acid and packaging products for various companies. This evidence corroborates the Respondents own evidence that show that the Respondent is an outsourcing company that supplies labour to various companies including Orbit Chemicals.
33. The Respondents obliged by virtue of this Section to commence deductions of union dues and remit to the Claimant notwithstanding that there is no recognition agreement between the Claimant and the Respondent.
34. I therefore order that the Respondent should henceforth commence union dues deductions as sought by the Claimant from the check off forms submitted and remit immediately.’ I uphold the foregoing decisions of the Court of Appeal and acknowledge the finding by Justice Wasilwa that the 2<sup>nd</sup> respondent was an employer providing labor to the 1st respondent and other companies. Consequently, I hold that nothing was disclosed to this court to warrant a probe beyond the contract of employment as to who was the actual employer of the claimant. The employer was the 2<sup>nd</sup> respondent. Outsourcing of labor is a business strategy by companies, which is lawful unless proved otherwise. The court holds that the business arrangement of the 2<sup>nd</sup> respondent to supply labour to the 1<sup>st</sup> respondent was lawful and that the claimants were employees of the 2<sup>nd</sup> respondent.

### **Whether the claimants’ employment was unfairly terminated**

160. The Claimants’ case is that they were employees of the 1st Respondent, Orbit Chemical Industries Limited, who had engaged the services of the 2nd Respondent, a recruitment agency, in or around 2008 to recruit them. I found they were employees of the 2<sup>nd</sup> respondent. However, they allege that the 2nd Respondent issued them appointment letters and purported to draw short-term employment contracts between itself and the Claimants for varying periods, including 1 year, 11 months, and 6 months. The Claimants were continuously engaged by the Respondents through successive short-term



contracts until they were unlawfully terminated without prior notice, either to them personally, their Union, Kenya Chemical and Allied Workers Union, or the Labour Officer. The Claimants state that following their unlawful termination, they were also denied their terminal dues such as period pay, compensation for loss of employment, and untaken leave.

161. The Claimants state that in an attempt to sanitize their unlawful termination from employment, the 2<sup>nd</sup> Respondent renewed the Claimants' contract for one (1) month after it had already terminated them from employment. On 22<sup>nd</sup> August 2016, following the Claimants' termination from employment a meeting was held between the 1<sup>st</sup> Respondent, the Claimants' employer, and the Claimants' Union's officials where the 1<sup>st</sup> Respondent clarified that the jobs which the Claimants' were engaged in were no longer available, which had forced the 1<sup>st</sup> Respondent to cut down its workforce. It was agreed in the said meeting that the Respondent had terminated the Claimants' employment on grounds of redundancy, and as such the Claimants were to be paid their terminal dues in accordance with the law on redundancy. Unfortunately, these dues were never remitted.
162. The claimants alleged that the termination of their employment by the 2<sup>nd</sup> respondent was illegal and unfair for non-compliance with the redundancy procedure under section 40 of the *Employment Act* to wit- '40. Termination on account of redundancy (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—
- (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
  - (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
  - (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
  - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
  - (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
  - (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
  - (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.'
163. Conversely, the 2<sup>nd</sup> respondent contended that on 19<sup>th</sup> July 2017, one hundred and thirty eight (138) employees of Respondents, among them the Claimants, were issued with renewal notices for contracts lasting for a period of one (1) month and three (3) weeks backdated to 1<sup>st</sup> July 2017, following the expiry of their fixed-term contracts on 30<sup>th</sup> June 2017. On receipt of this contract the claimants declined to acknowledge receipt of the same, and instead, together with other employees engaged at the 1<sup>st</sup> Respondent's premises, went on rampage paralyzing the entire operations at the 1<sup>st</sup> Respondent's factories. They demanded to be paid all their terminal benefits and be relieved of their duties from 19<sup>th</sup>



July 2017 stating that they were no longer interested in working for the Respondent for the additional one (1) month and three (3) weeks. The foregoing was not in dispute.

164. The 2<sup>nd</sup> respondent contended that, following those events, the Trade Union's stewards, majority of whom are the 1<sup>st</sup> Respondent's direct employees, notified the trade union of the disruption of work, as a consequence of which the Union dispatched its representatives who had a meeting with 1<sup>st</sup> and 2<sup>nd</sup> Respondent's representatives together with the nominated representatives of the 138 workers on 22<sup>nd</sup> July 2017. The parties agreed in the meeting that any separation dues would be met by the Respondents subject to a further meeting to be held on 23<sup>rd</sup> July 2016. The workers were requested to, and nominated four (4) employees to attend the meeting of 23<sup>rd</sup> July 2017, and also insisted that the union official and shop stewards based at the 1<sup>st</sup> Respondent's premises attend on their behalf. Since the workers were rowdily unwilling to receive/accept the fixed term contracts, the Respondents hands were tied in the meeting to only agree on the terms of the workers' exit, especially in light of their expired fixed-term contracts. Despite the agreement reached in the meeting of 23<sup>rd</sup> July 2016, some of the Claimants on 28<sup>th</sup> July 2016 broke into the 1<sup>st</sup> Respondent's premises causing chaos and disrupting the production processes which led to the arrest of some of them.
165. The 2<sup>nd</sup> Respondent was categorical that pursuant to the agreement reached with the Claimants on 23<sup>rd</sup> July 2017, the Claimants and other workers who have not lodged any claim against the Respondents, received their terminal dues under the following headings through their bank accounts: payment in lieu of notice (the Claimants requested to be paid up front rather than serve the 1 month & 3 weeks contract); days worked in the month of July 2016; untaken leave days earned in the final six (6) months' contract that they were under; and an ex-gratia amount paid as a sign of good faith, despite the Claimants not being entitled to service pay. The 2<sup>nd</sup> Respondent therefore maintains that the tents of both substantial and procedural fairness were adhered to in the separation of the Claimants from the 1<sup>st</sup> Respondent,
166. The 2<sup>nd</sup> Respondent raised a challenge to this suit on the basis that the 1<sup>st</sup> Claimant cannot legally take up the cases of the other employees in a representative capacity, since employment contracts are personal contracts between the employee and the employer, and urged that the suit should be struck out for being fatally incompetent.
167. The threshold for determination of fairness of termination of employment is according to the provisions of section 45 (2) of the Employment Act to wit:- '45(2) A termination of employment by an employer is unfair if the employer fails to prove—
- (a) that the reason for the termination is valid
  - (b) that the reason for the termination is a fair reason—
    - (i) related to the employees conduct, capacity or compatibility; or
    - (ii) based on the operational requirements of the employer; and
  - (c) that the employment was terminated in accordance with fair procedure.” To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the Employment Act (Walter Ogal Anuro v Teachers Service Commission [2013] eKLR).

### Claimant's submissions

168. The Claimants submitted that the Respondents failed to comply with the express and mandatory legal provisions governing termination of employment as set out in the Employment Act, 2007.



The terminations were effected without adherence to statutory procedure or observance of the fundamental rights of the Claimants, thereby rendering the entire process unlawful and void ab initio. must The *Employment Act*, 2007 codifies the substantive and procedural protections that 'employers observe before terminating any employment contract. In particular, Sections 35, 40, 41, 43, and 45 of the Act impose non-derogable obligations on employers, the breach of which renders a termination both unfair and unlawful. To begin with, Section 35(1) requires that an employer intending to terminate the employment of an employee on a contract without a fixed term must issue a notice of termination of not less than 28 days, or, in the alternative, pay salary in lieu of such notice under Section 35(4). In the present case, the Respondents neither issued written notices to the Claimants, nor did they compensate the Claimants in lieu thereof. This failure is a blatant contravention of the mandatory requirements under the law. Further, Section 41 of the Act provides for the procedure to be followed where termination is on account of misconduct, poor performance or physical incapacity. It mandates that the employer must explain to the employee, in a language the employee understands and in the presence of a fellow employee or union representative, the reasons for the intended termination and afford the employee an opportunity to be heard. The provision is couched in mandatory terms. The jurisprudence of the Employment and Labour Relations Court has consistently emphasized that this is a statutory imperative and not a procedural nicety. In *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, the Court held that: "Section 41 of the *Employment Act* is couched in mandatory terms. An employer must conduct a hearing before termination. Any termination that occurs in breach of this procedure procedurally unfair. In the instant case, the Claimants were terminated without any notice of contemplated disciplinary proceedings, without being informed of any allegations, and without being granted an opportunity to be heard. There was no semblance of a hearing-individual or collective. The Claimants were dismissed summarily and arbitrarily. This was in complete disregard of the minimum procedural requirements under Section 41. Moreover, under Section 43(1) of the Act, the burden of proof lies on the employer to prove the reasons for termination. In the absence of such proof, the termination is deemed unfair within the meaning of Section 45. In the case at hand, the Respondents failed to present any reason for the termination. There is no documentation or witness evidence demonstrating the existence redundancy, misconduct, incapacity, or poor performance. The Claimants were simply rendered jobless without explanation. Such conduct offends the letter and spirit of Sections 43 and 45. In *Kenfreight (EA) Ltd v Benson K. Nguti* [2016] eKLR, the Court of Appeal reiterated that: "A termination of employment is unfair if the employer fails to prove that the reason for termination is valid and fair and that the termination was in accordance with fair procedure." the Further, the *Employment Act*, under Section 40, lays out the strict procedural requirements to be followed in the case of a redundancy, which include: notice to the labour officer and the affected employees, consultation on the selection criteria, payment of all dues including severance, and ensuring non-discrimination. Even if the Respondents were to allege that the terminations arose from redundancy- which they have not-there is no evidence that the provisions of Section 40 were complied with. In *Elizabeth Gicheha v Kaimosi Tea Estates Ltd* [2014] eKLR, the Court found that failure to comply with Section 40 renders a redundancy unlawful. It is also worth noting that Section 10(6) of the *Employment Act* requires employers to keep written records of employment and termination, and to provide written particulars of reasons for termination upon request. No such documentation has been produced in this matter. The absence of termination letters, disciplinary notices, or hearing minutes confirms the Claimants' assertion that due process was ignored. The Respondents' conduct also amounts to a violation of Article 41(1) of *the Constitution* of Kenya, 2010, which guarantees the right to fair labour practices, including fair termination. The terminations further breached Article 47, which guarantees every person the right to administrative action that is lawful, reasonable and procedurally fair. The Honourable Court in *Loice Otieno v Kenya Commercial Bank Ltd* [2013]



eKLR observed that the procedure followed in terminating an employee is as important as the reasons for termination. Where the procedure is flawed or absent, the termination must be set aside as unlawful. In view of the foregoing, it is evident that the Respondents failed to comply with the mandatory legal requirements prescribed under the *Employment Act*, 2007 prior to terminating the services of the Claimants. There was no notice, no hearing, no explanation, and no documentation to Respondents' actions were therefore not only unlawful but also unconstitutional. The Claimants humbly urge this Honourable Court to so find and to hold that the Respondents failure to observe the statutory safeguards under the *Employment Act*, 2007 renders the terminations unlawful, procedurally unfair, and substantively unjustified, and entitles the Claimants to the full reliefs prayed for.

169. The claimant further submitted on violation of article 41 and 50 on fairness which the court finds are well catered for under section 41 and 43 of the *Employment Act*.
170. On redundancy, the claimants submitted as follows- The Claimants submit that the Respondents failed to comply with the mandatory legal obligation to notify and consult both the Claimants' trade union and the relevant Labour Office prior to the termination of the Claimants' employment. This failure rendered the purported terminations not only procedurally defective but patently unlawful, in violation of both statutory and constitutional imperatives. Under Section 40(1)(a) and (b) of the *Employment Act*, 2007, where an employer contemplates terminating employees on account of redundancy, the employer is required to issue, at least one month prior to the intended termination, a written notice to the employee or the employee 'trade union (where applicable) and simultaneously to the local labour officer. The purpose of this notification is to enable consultation and the exploration of alternatives to redundancy, ensure transparency in selection criteria, and safeguard the rights of the affected employees. The section provides:

"An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions:

- a) Where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy;
- b) Where the employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer...

In the present matter, the Claimants aver-and the Respondents have not controverted-that no such notice was issued to the Claimants' trade union, nor was any notification made to the Labour Office. There was no consultation, no engagement on the selection criteria, no justification of economic exigency, and no indication of the scope or timing of the terminations. This omission strikes at the heart of procedural propriety and renders the entire process legally infirm. In *Elizabeth Gicheha v Kaimosi Tea Estates Ltd* [2014] eKLR, the Court held that the requirement to notify both the union and the labour officer is not a formality but a substantive obligation, designed to promote industrial harmony and procedural justice. Similarly, in *KUDHEIHA Workers v Board of Governors Moi High School Kabarak* [2015] eKLR, the Court reiterated that any employer who proceeds to terminate employment on grounds of redundancy without prior consultation and notification acts in breach of the law, and any such termination is ipso facto unlawful. The Respondents' failure to notify the Labour Office also undermined the Ministry of Labour's statutory oversight role in ensuring that employee rights are not violated in restructuring processes. That the Claimants were terminated with no documentary evidence of notice or consultation, points to a deliberate circumvention of legal safeguards. The Claimants submit that the Respondents, in failing to issue the requisite statutory notices and engage



in meaningful consultations, acted in flagrant disregard of Section 40 of the *Employment Act* and the principles of fair labour practice under Article 41 of *the Constitution* of Kenya, 2010. The said terminations were therefore procedurally void and unlawful, and the Respondents must be held liable jointly and severally for the violation of the Claimants' statutory and constitutional rights.

## 2<sup>nd</sup> respondent's submissions

171. The court held that the 2nd Respondent was the employer of the claimants. The 2<sup>nd</sup> respondent submitted that the Claimants' last fixed-term contracts with the 2nd Respondent lapsed on 30th June 2016, with no expectation of renewal, as per the terms of their contracts, clause 1.b and Section 9 of the *Employment Act*, 2007. The Claimants' refusal to accept renewed contracts on 21st July 2016 constituted a voluntary termination of their employment, not a redundancy or unfair termination, as they expressly declined to continue working for the additional one-month-and-three-weeks period but rather, demanded to be paid their final dues and be released from employment. (see Claimants' own bundle of documents on pages 1-216, the expired independent fixed term contracts and pages 355-357, the final fixed term contracts from 1st July to 19th August 2016 that the Claimants declined to accept).
172. The Claimants' fixed term contracts that expired on 30th June 2016 can be found on pages 208-213 among other pages where clause 1 b is categorical that the 2nd Respondent had the sole discretion to decide on whether to renew the fixed term contract upon expiry or otherwise. On page 1-3 of the Claimants' bundle of documents is the Claimants' witness' one year and eleven months' fixed term contract with renewal at the sole discretion of the 2nd Respondent as per clause 1.b. The Claimants' sole witness, Mr. Benard Amwoma confirmed in cross examination that the Claimants including himself were on fixed term contracts of varying lengths with the last of such contracts having automatically lapsed on 30th June 2016. 16. 17. The Claimants' actions on 28th July 2016, including disrupting operations at the 1st Respondent's factories and demanding immediate payment of terminal dues, further confirm the Claimants' intention to end the employment relationship. These actions, which included rowdy behavior leading to police intervention on 28th July 2016, amounted to misconduct, negating any claim of unfair or unlawful termination noting that the parties had already entered a mutual separation agreement dated 23rd July 2016. (see 2nd Respondent's bundle of documents dated 10th May 2019, Volume 3, on pages 105-106, the letters to the labour offices dated 27th July 2016 but received on 28th July 2016). Courts have consistently held that fixed-term contracts carry no expectation of renewal. In *Margaret A. Ochieng v. National Water Conservation & Pipeline Corporation* [2014] eKLR, Justice James Rika observed that: "Automatic renewal would undermine the very purpose of a fixed term contract, and revert to indeterminate contracts of employment... Courts have upheld the principle that fixed term contracts carry no expectancy of renewal... The fixed term contract had its own in-built termination notice, in that the date of termination was advised to the Claimant on the execution of the three-year contract..."he Claimants' contracts had clear expiry dates, and no evidence has been adduced to suggest any legitimate expectation of renewal or improper motive by the 2nd Respondent in not renewing the contracts. Mr. David Malago, the 2nd Respondent's witness did confirm in court that it issued out contracts of employment to its employees based on the work/labour demands by the 1st Respondent, this further informed the length of any contracts issued to the Claimants. This position was also confirmed by the 1st Respondent's witness, the 1st Respondent had the autonomy of requisitioning labourers from the 2nd Respondent premised on their factory requirements as per the seasons, production and sales. 19. The Court of Appeal in *The Registered Trustees of the Presbyterian Church of East Africa & Another v. Ruth Gathoni Ngotho-Kariuki* [2017] eKLR further clarified that: 20. "Fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the respondent's contract ought not to have been maintained... Any claim for wrongful termination



could not be maintained." In *The Registered Trustees of the Presbyterian Church of East Africa & Another v. Ruth Gathoni Ngotho-Kariuki* supra, the Court of Appeal overturned a lower court's finding of unfair termination based on legitimate expectation, emphasizing that post-expiry conduct does not create renewal expectations. This was reaffirmed in *Transparency International Kenya v. Teresa Carlo Omondi* [2023] eKLR, where the Court of Appeal held that nonrenewal of a fixed-term contract does not constitute unfair termination warranting compensation.

173. The Claimants have not pleaded or adduced evidence of any ill or improper motive by the 2nd Respondent in allowing the contracts to lapse. The contracts' express terms indicated automatic expiry, with no proviso for renewal. The Claimants' refusal to accept the offered renewals and their subsequent actions, including disrupting operations at the 1st Respondent's premises on 28th July 2016 and demanding immediate payment of terminal dues, further demonstrate that the termination was a natural consequence of contract expiry and their voluntary actions, not an unfair dismissal. Furthermore, their voluntary refusal to renew contracts precludes any claim of unfair redundancy. The Claimants' witness confirmed that indeed they declined to sign in acceptance the fixed term contracts dated 20th July 2016 as produced in their own bundle of documents, pages 355-357.
174. The Mutual Separation Agreement. Following the Claimants' refusal to accept renewed contracts and their disruption of operations at the 1st Respondent's premises with the support of the 1st Respondent's employees who were members of the Kenya Chemical and Allied Workers Union, meetings were held on 22nd July 2016 in which meeting it was preliminarily agreed that a further meeting would be held on 23rd July 2016 at the 1st Respondent's offices with representatives of the Claimants (Clementine Kanali-, Phillis Ondieki & Gladys Nyaboke, who are all Claimants in this suit), the 1st and 2nd Respondents, and the union officials (including George Gwako, Ian Babu, and Antony Matekwa) to resolve the dispute. (See page 358-359 of the Claimants' bundle of documents, the handwritten minutes dated 22nd July 2016) 23. On 23rd July 2016, a mutual separation agreement was reached, stipulating that the Respondents would pay terminal dues to the Claimants and other employees who refused to continue working. These dues included payment in lieu of notice, days worked in July 2016, untaken leave, and an ex-gratia payment as a gesture of goodwill for the services rendered to the Respondent for the years worked. (See pages 103-105, the Minutes of the Mutual Settlement Agreement dated 23rd July 2016, on the 2nd Respondent's bundle of documents dated 10th May 2019, volume 3). The 2nd Respondent fully complied with the terms of this Mutual Separation Agreement, as evidenced by the payment records and payroll extracts in its Further Supplementary Bundles dated 10th May 2019 pages 107-146, Volume 3. The Claimants, as members of the Kenya Chemical & Allied Workers Union, were represented by the union and their own work representatives, Clementine Kanali-, Phillis Ondieki & Gladys Nyaboke along with Edward Timothy, who did file any suit, during these negotiations. The union's authority to act on their behalf is supported by the principle of majoritarianism, as recognized in *M. Mhlongo & Others v. Food & Allied Workers Union & South African Breweries Limited* (South Africa, Case Nos. D1684/2000, D1214/2002), where the Labour Court held that a registered trade union is entitled to represent its members in disputes and conclude binding collective agreements, even without individual mandates, unless membership is formally terminated. In *M. Mhlongo* supra, the court rejected the applicants' claim that the union lacked a mandate to conclude a settlement agreement, noting that the applicants remained union members and the agreement qualified as a collective agreement binding on all members. Similarly, the Claimants here have not adduced evidence of termination of their union membership prior to the 23rd July 2016 mutual separation agreement, further, their selected representatives' participation in the negotiations confirms the union's mandate. The mutual separation agreement is, therefore, binding on the Claimants, and they cannot repudiate it by alleging lack of consultation or bad faith, as such claims are not supported by evidence. 26.



Furthermore, the Court of Appeal in *Coastal Bottlers Limited v. Kimathi Mithika* [2018] eKLR held that a settlement agreement, voluntarily executed without misrepresentation or incapacity, constitutes a binding contract that absolves the employer from further claims related to the employment relationship. The court emphasized that courts must give effect to the parties' intentions as expressed in such agreements, and employees who accept payments under a settlement agreement are estopped from pursuing further claims. In this case, the Claimants' acceptance of payments under the separation agreement, as evidenced by the payroll extracts and bank records, confirms their agreement to the terms, extinguishing any further claims. The absence of evidence of coercion, misrepresentation, or incapacity in entering the agreement renders it binding. In *Mwangemi v Etihad Airways PJSC* [2023] KEELRC 3317 (KLR), the court found that the claimant's allegation of being forced to sign a settlement agreement was unsupported by evidence of coercion, and the agreement was upheld as valid. However, the court awarded compensation due to the employer's failure to promptly pay the agreed dues and comply with statutory redundancy procedures. In contrast, the 2nd Respondent in this case paid all agreed dues in two batches, as evidenced by the payroll extracts and bank records, and the termination was not a redundancy but a natural expiry of fixed-term contracts, not requiring Section 40 compliance. The Claimants' acceptance of payments and lack of evidence of coercion further affirm the binding nature of the agreement, precluding further claims.

175. The Claimants have not attempted to raise any vitiating factors on the terms of the mutual separation agreement dated 23.7.2016 but only tried to conceal its contents by failing to produce it in court despite the minutes dated 22.07.2016 expressly referring to its existence. All the Claimants' witness stated in court is that he did not know about its existence despite receiving payments in his bank account on 28.07.2016 and 17.11.2016, in payment of his terminal dues and ex-gratia in compliance with the very terms of the mutual separation agreement dated 23.07.2016. 29. The union, acting in the best interests of its members along with the Claimants own selected representatives, negotiated a fair resolution providing compensation rather than reinstatement, a decision within its discretion as per *M. Mhlongo supra*. The Claimants' acceptance of the agreement's benefits, as evidenced by their receipt of payments, further precludes them from challenging its validity. The Claimants' participation in the negotiations, through their nominated representatives and the union, indicates their acceptance of the separation terms, rendering their current claims baseless. That despite the bank payment records on the payment of terminal dues of 28th July 2016 (leave dues, notice and days worked in July) and the 17th November 2026- Ex-gratia payments for every year worked along with the actual calculations having been filed in court on 17th May 2019 and served on the Claimants' advocates, none of the Claimants herein filed any of their bank statements to show that indeed the payments by the 2nd Respondent did not reach their bank accounts. Thus, the court is only left with 1st Respondent's evidence of payments in compliance with the terms of the Mutual Separation Agreement dated 23rd July 2016. The Claimants' witness did confirm in cross examination that none of the Claimants has filed any of their bank statements post 17th November 2016 to contradict the proof of payments by the 2nd Respondent.

## **Decision on issue No. 2**

176. The Court found that after the initial contract of 1 year and 11 months the claimants were issued with shorter contracts continuously with the last one of 20<sup>th</sup> July 2016 which they rejected. The claimants stated that the contract was terminated without notice by the 2<sup>nd</sup> respondent. That in attempt to legalise the action, the 2<sup>nd</sup> respondent renewed contracts for additional 1 month and in same breath terminated the claimants employment. The claimants stated that vide meeting of 22<sup>nd</sup> August 2016 it was agreed between the 1<sup>st</sup> respondent and the union that the work had reduced and there was to be redundancy but payment was not honored.



177. The 2<sup>nd</sup> respondent submitted that the Claimants' last fixed-term contracts with the 2<sup>nd</sup> Respondent lapsed on 30th June 2016, with no expectation of renewal, as per the terms of their contracts, clause 1.b and Section 9 of the *Employment Act*, 2007. The Claimants' refusal to accept renewed contracts on 21st July 2016 constituted a voluntary termination of their employment, not a redundancy or unfair termination, as they expressly declined to continue working for the additional one-month-and-three-weeks period but rather, demanded to be paid their final dues and be released from employment. (see Claimants' own bundle of documents on pages 1-216, the expired independent fixed term contracts and pages 355-357, the final fixed term contracts from 1st July to 19th August 2016 that the Claimants declined to accept).
178. The 2<sup>nd</sup> respondent in amended response to the claimant stated that the fixed terms of contracts were necessitated by the nature of available work. The 2<sup>nd</sup> respondent asserted, and it was not in dispute, that the claimant rejected renewal of the contract in July 2016. The 2<sup>nd</sup> respondent asserted that it paid final dues as agreed with the union representatives and details at paragraph 10(b) of the claim. The 2<sup>nd</sup> respondent produced as its evidence the minutes of the meeting and letter to the Nairobi County labour officer dated 27<sup>th</sup> July 2016 reporting a dispute. The 2<sup>nd</sup> respondent produced its payroll indicating name of the employee, years worked and exgratia paid (pages 108-116 of its bundle), payment records by the 2<sup>nd</sup> respondent to the claimants (pages 117 -122 of its bundle) which the court noted itemized notice pay, leave pay and overtime.
179. During the hearing Barongo (CW1) confirmed the claimants had varied term contracts. He confirmed the claimants refused to sign the contract of 20<sup>th</sup> July 2016. He confirmed to have filed in court unsigned contract of 20<sup>th</sup> July 2016. He confirmed at pages 358-359 of the claimant's bundle was the deliberations on the separation at meeting held on the 22<sup>nd</sup> July 2016. He confirmed he was present under COTU. He confirmed the Kenya Chemical and Allied Workers Union represented at the meeting was under COTU. The representatives drawn from the union included some workers employed directly by the 1<sup>st</sup> respondent. CW1 confirmed the minutes were signed by RW2 and staff represents and those of the 2<sup>nd</sup> respondent. The staff employed by the 1<sup>st</sup> respondent signed as union representatives. He confirmed they agreed on payment of days worked, overtime and prorated leave. He confirmed the staff agreed to the terms of exit as stated in the minutes. The court noted issue of gratuity or severance pay was not agreed on.
180. On severance pay CW1 told the court it was not agreed on as the 2<sup>nd</sup> respondent said the employees were on NSSF. He confirmed that on the 23<sup>rd</sup> July 2019 the parties agreed as per exhibit DM3 produced by the 2<sup>nd</sup> respondent. CW1 told the court no payment was done as per DM3. He was shown DM6 which was final dues tabulation and he confirmed in the tabulation was basic salary, overtime, leave and notice pay stated. There were also deductions. Specifically, CW1 was shown his tabulation and confirmed his net pay was tabulated for Kshs. 12698. CW1 was shown a document at page 136 of the 2<sup>nd</sup> respondent's bundle of documents, which indicated on 28th July 2016 at the Cooperative Bank, he was paid Kshs. 12698. He denied receipt of the money into his account. CW1 confirmed the document was filed in court on 17<sup>th</sup> May 2019 and that he had not produced his bank statement to show the money was not deposited in his bank account. CW1 further admitted the years of work on exgratia and told the court the money paid later was not deposited in his account. He confirmed his advocate had shown him the foregoing documents but he did not file his bank statements to prove he was not paid. At re-examination CW1 reiterated he was not paid as per the produced documents and that during employment he was only paid salary and was not afforded leave.
181. RW2 told the court that they paid leave and days worked on the 28th July 2016 with PAYE and loan deductions and further gratuity on 17<sup>th</sup> November 2016 calculated at 15 days for each year worked.



RW2 told the court he got the bank account details of the employees to pay from the employment records, but had not produced them in court. RW2 told the court there was no redundancy, and that is why they called the meeting to agree on the exit. He said they did not communicate with the Labor office on redundancy as they had not reached that level. He was not aware of a discussion with the union on redundancy.

182. Employment cases are decided on standard of proof of balance of probabilities. The Claimants disputed the payment evidence by the 2<sup>nd</sup> respondent in relation to leave, overtime, and notice pay as well as ex gratia, but failed to file evidence to rebut the filed evidence of payment, which indicated their bank accounts. The claimants were members of the union as per witness statement of CW1. The union filed affidavit of George Gwako, industrial relations officer of the Kenya Chemical and Allied Workers Union which explained in depth the role of the union in the said settlement. The 2<sup>nd</sup> respondent renewed expired contracts of some of the union members sometimes on 21<sup>st</sup> July 2016 which they rejected. (sample of the contracts were at pages 355- 357 of the claimants bundle). The renewal was for 1 month and 3 weeks, and also served as 1-month notice expiring 19<sup>th</sup> August 2016. The contracts were dated 20<sup>th</sup> July 2016 effective 1<sup>st</sup> July 2016. There was a lock out of 136 employees from entering the 1<sup>st</sup> respondent premises as per the notice of 22<sup>nd</sup> July 2016. Gwako was in the said meeting and said they agreed on settlement and payment was done as agreed and further ex gratia was paid. He stated the settlement was on behalf of its members. The court upheld the decision in *M. Mhlongo & Others v. Food & Allied Workers Union & South African Breweries Limited* (South Africa, Case Nos. D1684/2000, D1214/2002), where the Labour Court of South Africa held that a registered trade union is entitled to represent its members in disputes and conclude binding collective agreements, even without individual mandates, unless membership is formally terminated. CW1 admitted that he was shown the said documents by his advocates but failed to provide his bank account statements to controvert the evidence of payment. The court taking into consideration the foregoing evidence of the parties found that this was not a case of redundancy but a mutual termination of employment on refusal of renewal of contracts by the claimants. The claimants negotiated an exit represented by union representatives and the employer paid agreed amounts as per DM3 and ex gratia for 15 days for each year worked.

183. The burden of prove was on the claimant to disprove that they were not paid as demonstrated by the 2<sup>nd</sup> respondent. Section 107 of the *Evidence Act* reads-<sup>c</sup> Burden of proof.

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

"While section 108 on incidence of burden reads-<sup>c</sup> The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

The claimants asserted they were not paid as agreed. The 2<sup>nd</sup> respondent produced evidence of payment. The claimant had ample time to produce bank statements to controvert the evidence of payment but failed to do so. Applying the standard of proof of balance of probabilities, the court held that the it was more probable than not that the claimants were paid.

184. In the upshot, the court found that this was a case of mutual separation following rejection of the terms of the contract's offer dated 20<sup>th</sup> July 2016. The parties agreed on a settlement out of court. The claimants were members of the union, which negotiated a settlement on their behalf, and the same



was honored by the 2<sup>nd</sup> respondent through payment. The union was satisfied with the settlement and some of the employees as only some came to court, which is their right. The court for the foregoing reasons holds the separation was fair.

### **Whether the claimants were entitled to relief sought**

185. On reliefs sought, the court found the claimants were paid all agreed items as per the minutes of the meeting of 22<sup>nd</sup> July 2016(pages 358-359 of the claimants' documents) and further the respondent produced evidence that the claimants were paid exgratia , 15 days for each year worked which was on same terms as severance pay under section 40 of the *Employment Act*. The court found that this was a case of negotiated exit/separation and not redundancy. The 2<sup>nd</sup> respondent was providing labour and the principal no longer had work. A fixed-term contract is lawful. It was rejected, and a settlement was done. The court has no reason to interfere with the settlement as there was no proof of coercion, the claimants being represented by their union. The Court of Appeal in *Coastal Bottlers Limited v. Kimathi Mithika* [2018] eKLR held that a settlement agreement, voluntarily executed without misrepresentation or incapacity, constitutes a binding contract that absolves the employer from further claims related to the employment relationship. The court emphasized that courts must give effect to the parties' intentions as expressed in such agreements, and employees who accept payments under a settlement agreement are estopped from pursuing further claims. The claimants ought to have provided evidence to prove that the bank accounts in which the monies were deposited by the 2<sup>nd</sup> respondent were not theirs. The court finds no merit in the relief sought.

### **Conclusion**

186. The court held that the claim was not proved on a balance of probabilities. The claim is held to lack merit and is dismissed. Taking into account the employment relationship between the parties and to temper justice with mercy, notwithstanding the principle of costs follow the event, the court makes no order as to costs in the suit. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30<sup>TH</sup> OF OCTOBER, 2025.**

**J.W. KELI,**

**JUDGE.**

In the Presence of:

Court Assistant: Otieno

Claimant: Ms. Kariuki h/b for Koceyo

1<sup>st</sup> Respondent: Ms. Ouma

2<sup>nd</sup> Respondent: absent

