IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: G.B.M. KARIUKI, SICHALE & KANTAI, JJ.A.)

CIVIL APPEAL NO. 2 OF 2016

BETWEEN

KENYA NATIONAL UNION OF TEACHERS.................APPELLANT

AND

GEORGE WESONGA OJWANG..............................RESPONDENT

(Being an Appeal from the Award and Decree of Employment

and Labour Relations Court of Kenya, Nairobi (Rika, J.)

delivered on 20th day of December 2007

in

Industrial Cause No.282 of 2012)

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JUDGMENT OF THE COURT

1. The appellant, Kenya National Union of Teachers (KNUT), is a Trade Union registered in Kenya under the provisions of the Trade Unions Act and its unionisable members are teachers in the country. The respondent, George Wesonga Ojwang, was an employee of KNUT.

2. On 20th December 2013, the **Employment and Labour Relations Court** ordered KNUT to pay to the respondent Kshs 16,616,209.70 as terminal benefits plus costs, a decision which aggrieved KNUT triggering this appeal.

3. The record of appeal shows that the respondent was initially employed by the appellant in 1986 as the Executive Secretary of KNUT's Branch at Busia and he worked up to 2003. In January 2004, he was elected National Chairperson of KNUT. He retired from office upon attaining the compulsory retirement age of 60 years stipulated in KNUT's Terms and Conditions of Retirement of employees contained in Circular Letter Ref No.KNUT/CIRC/122/2/88 dated 8th February 1988. The record of appeal shows that KNUT wrote to the respondent on 20th January 2011 informing him that he was due to retire and was granted terminal leave with effect from 1st February 2011 to 31st July 2011 which was to be his last day of work.

4. On 25th January 2011, the respondent, while still in office as the National Chairperson of KNUT had a meeting with two officials of KNUT, to wit, the Acting Secretary General (David Okuta Osiany), and the Acting National Treasurer (Albanas Mutisya) in which the trio agreed on payment to the respondent of terminal benefits (calculated based on a period of service of 25 years; salaries for February to July; weekend allowances up to 31st July 2011; gratuity for 2 ½ years totaling to Shs.1,527,606.60; salary in lieu of leave for the year 2011 together with salary for January 2011 and provision for a Volvo motor vehicle of Ksh.6.8 million.

5. On 2nd February 2011, the trio reduced into writing a document titled *"Agreement on Terminal and Other Benefits to the respondent (named)."* The agreement stated that the trio had on 25th January 2011 agreed to make payments to the respondent towards terminal and other benefits and tabulated the same in line with the agreement reached in the meeting held on 25th January 2011.

6. The record of appeal shows that when the respondent was elected 1st National Vice Chairman of KNUT, he moved from and relinquished his position as the Executive Secretary of Busia Branch in which he was a full time employee. Upon being elected as the 1st Vice Chairman of KNUT, the respondent retired as Executive Secretary of Busia Branch of KNUT and demanded his terminal benefits which were paid to him leaving a balance of Kshs.459,852/=. When this balance proved too long in coming, the respondent grew impatient and on 7th December 2004, he filed against KNUT a civil suit No.13491 of 2004 in the Chief Magistrate's Court at Milimani Law Courts, Nairobi, claiming it, that is to say Shs.459,852/=. He averred in paragraph 5 of his plaint in the suit –

> ***"...the defendant (KNUT) paid part of his (respondent's) due entitlements but has refused and neglected to pay the balance of his terminal benefits amounting to Ksh.459,852/=."***

7. There is no dispute that the respondent was paid in that retirement the entire terminal benefits up to the date he retired including the balance of the sum of Shs.459,852/= recovered in the said suit.

8. When the respondent subsequently finally retired from KNUT, after attaining the retirement age of 60 years, KNUT calculated his retirement benefits and after deducting the total sum of taxes payable (amounting to Shs.1,874,617/=), and advance payments made to him (totaling to Shs.5.8 million), the retirement benefits in the sum of Shs.13,656,788.90 suffered considerable diminution and was thus reduced to Shs.270,775/=.

9. The respondent was aggrieved by KNUT's failure to settle the terminal benefits in line with the agreement dated 2nd February 2011 between the respondent and the KNUT Acting Secretary General (Okuta Osiany) and the KNUT Acting National Treasurer (Albanas Mutisya) to the effect that the respondent would be paid a total of Shs.22,347,606.60 in settlement of terminal benefits calculated on the basis of 25 years pursuant to the 'KNUT' (Headquarters) staff terms as at 31st July 2011.

10. The respondent took objection to the deduction of Shs.5.8 million as advance payments. He based his demand of Shs. 22,347,606.60 on the 25th January 2011 agreement in which an undertaking to pay him was made by himself and the Acting Secretary General and the Acting National Treasurer. The appellant refused to budge. A legal tussle ensued which ultimately found its way to the Industrial Court, now Employment and Labour Relations Court where the respondent filed a claim seeking –

> ***(a) Balance of terminal dues amounting to Kshs.16,616,209.70;***
>
> ***(b) Payment of allowances from July 2011 to January 2012 at Kshs.5,981,038;***
>
> ***(c) Organization allowance from January 2011 to January 2012 at Kshs.50,000 per week, totaling Ksh. 2,400,000.***
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> ***(d) Travelling allowances on 30th August 2011 for meeting at Ksh.39.45 996 Km – Ksh.39,292.20;***

(e) Daily allowance for 3 days between 30th August 2011 to 2nd September 2011 at the rate of Kshs.18,300 per day = Kshs.54,000;

(f) Costs of the Claim; Interest on the above sums; and any other relief the Court may find fit to grant.

11. The Industrial Court allowed the claim and awarded the respondent Shs.16,616,209.70 being the balance of terminal dues plus costs. Other prayers were rejected. It is this decision that triggered this appeal.

12. Aggrieved by the decision, KNUT gave notice of appeal on 20th January 2014 in compliance with Rule 75 of the Court of Appeal Rules manifesting its intention to challenge the entire decision by the Industrial Court. On 7th January 2016, KNUT lodged the record of appeal in this Court. The appeal came up for case management on 5th April 2017 when parties undertook to file written submissions and to highlight them during the hearing of the appeal.

13. In its memorandum of appeal, KNUT proffered ten (10) grounds of appeal in which it submitted that –

1. ***THAT it was not open to the learned judge to validate the alleged retirement benefits agreement dated 2nd February, 2011 between the respondent and officials of the appellant in light of the glaring irregularities of procedure and capacity by and of the officials in concluding the same. By elevating the said agreement above the Union's constitution and by-laws the learned judge misapprehended the facts and evidence placed before him and thereby reached a wrong conclusion in law.***

2. ***THAT the learned judge misdirected himself in placing reliance on the alleged agreement of 2nd February, 2011 which was ex-facie prepared and executed by and for the benefit, advantage and/or profit of an official without authorization of and at the expense of the Appellant and by extension its members.***

3. ***THAT the learned judge misdirected himself and thereby erred in law and fact in relying on an unsigned and uncertified copy of minutes to support an alleged amendment of the Appellant's constitution and/or bye-laws.***

4. ***THAT without derogating from the foregoing, the learned judge misdirected himself and thereby erred in law the fact in failing, as required by law, to consider and determine the effect of the ambiguities and inconsistencies appearing in the aforesaid minutes and particularly MIN NEC/2002/2007/17 that allegedly effected amendments to the appellant's constitution to effect a superior retirement package.***

5. ***THAT it was not open to the learned judge to make a determination on an issue pleaded in the pleadings without evidence to support the same. In particular, the learned judge made a fundamental error of law in making a determination regarding the steering committee minutes of 9th July, 2007 without production of the said minutes in evidence.***

6. ***THAT in addition, to the extent that the learned judge made a determination by placing reliance on a document that was not tendered in evidence, the learned judge contravened the appellant's right to a fair hearing and equal benefit of the law.***

7. THAT the learned judge erred in law and fact in ordering payments to the respondent contrary to the provisions of the appellant's constitution and retirement benefits scheme rules which required that the employee has to be in continuous uninterrupted employment of the union, at branch, national or both prior to the date on which the lump sum is due.

8. ***THAT the learned judge erred in law fact by failing to hold to that when the respondent***

received his terminal dues in 2007 and later retired in 2011, he could not be considered to have been in continuous and uninterrupted service for a period of 25 years and so was not entitled to the terminal benefits as ordered.

9. ***THAT the learned judge misapprehended the evidence placed before him of advance payments made to the respondent and thereby erred in failing to factor them in the determination of the respondent's terminal benefits as is by law required.***

10. ***THAT the learned judge erred in law in making the award as he did.***

14. KNUT prayed that this appeal be allowed and the judgment and Award of the Industrial Court **(Rika, J.)** dated 20th December 2013 be set aside and a consequential order be made for restitution of any sums unlawfully paid to the respondent pursuant to the impugned judgment.

15. When the appeal came up for hearing before us, learned counsel **Mr. John Mbaluto** appeared for KNUT and learned counse**l Ms Belinda Kamar** appeared for the respondent.

16. KNUT had filed its submissions on 12th June 2017 and the respondent filed its submissions on the morning of the hearing on 13th June 2017. Clearly, both parties were in clear breach of the directions given on timelines set during Case Management for filing of submissions. But as the court was intent on hearing the appeal, and as both counsel confirmed they were ready inspite of the late exchange of submissions, the hearing proceeded on 13th June 2016.

17. Mr. Mbaluto adopted the appellant's written submissions and drew our attention to KNUT's Staff Terminal Benefits Scheme (STBS) on the basis of which, he said, the respondent's dues ought to have been calculated. The terms of STBS ought to have governed the computation of the respondent's dues and in particular, he said, as regards the total period of service which was limited to 180 months or 15 years.

18. Under clause 5.3. of STBS, the lump sum payable (LSP) was to be computed from total monthly emoluments and total months of service by multiplying the total monthly emoluments with the total months of service and dividing the resultant figure with ten (10). Mr. Mbaluto contended that this formula governed the respondent's terms of service qua KNUT's Chairman and was in force at the time of retirement of the latter. It was Mr. Mbaluto's contention that the agreement dated 2nd February 2011 made by the respondent and both the Acting Secretary General and the Acting National Treasurer had no validity or propriety nor did it have binding force and that it was self-serving and incapable of amending the terms of the STBS.

19. Moreover, contended counsel for KNUT, the respondent's period of service could not stretch back to the year he was hired in 1988 because when he retired in January 2004 following his election as 1st National Vice Chairman of KNUT, he sought and obtained retirement benefits for the period he had served and even sought enforcement of the payment through court action in Milimani C.M. Court Civil Suit No.13491 of 2004. Accordingly, counsel contended that time had to start to run anew. It was also counsel's contention that estoppel applied so that the respondent could not be heard to deny that he had received terminal benefits when he sued to enforce payment.

20. As regards the sum of Shs.5.8 million paid by KNUT to the respondent which the latter contended was in respect of bonus for work done, KNUT contended that it was in respect of advances that were deductable from the terminal benefits. Our attention was drawn by Mr. Mbaluto to the fact that nowhere in the pleadings had the respondent shown that the sum of Shs.5.8 million was for bonus for work done. It was his submission that the learned trial judge of the Industrial Court relied on submissions of the respondent in which the issue of bonuses for work done was introduced. Counsel urged that the Judge failed to appreciate that statements made in counsel's submissions had no probative or evidential value and could not form the basis of a finding. Our attention in this regard was drawn to the decision in **Daniel Toroitich arap Moi versus Stephen Mwangi Muriithi [2014] eKLR** in which this Court held that submissions cannot take the place of evidence. Mr. Mbaluto urged us to allow the appeal and to make orders as prayed in the memorandum of appeal.

21. Submitting on behalf of the respondent, Mrs. Kamar relied on the respondent's written submissions and contended that the respondent's terminal benefits were to be calculated, not in accordance with the terms of STBS, but rather, in accordance with recommendation of the Ad–Hoc Committee of the appellant (KNUT) which, according to counsel, amended the STBS thus effectively caping the total months of service to a maximum of 25 years by deleting the restrictions to 15 years or 180 months. According to Mrs. Kamar, the Ad Hoc Committee changed the computation of the respondent's retirement benefits from a ceiling of 180 months or 15 years to a ceiling of 25 years. It was counsel's submission that NEC (i.e. National Executive Committee) of KNUT adopted on 5th July 2007 the amendment in its Minute No. NE/2002/2007/17. Mrs. Kamar opined that the agreement of 2nd February 2011 crafted by the respondent and the Acting Secretary General and the Acting National Treasurer was valid and had the effect of amending the STBS.

22. It was contended by Mrs. Kamar that the respondent was in continuous employment of the appellant and that the fact that the respondent was paid terminal benefits after his election as the 1st National Vice Chairperson of KNUT did not interrupt time. As regards Shs.5.8 million, Mrs. Kamar took the view that there was no evidence that it was terminal benefits and she termed it as strange that terminal benefits could be paid in 2008 when the respondent had not retired. It was Mrs. Kamar's further submission that the appeal lacks merit. She urged us to dismiss it with costs.

23. We have perused the record of appeal and duly considered the rival submissions of the parties. As this is a first appeal, we are enjoined to give the parties a retrial of the case in line with the principles expounded in this court's decision in **Selle v. Associated Motor Boat Co.** [1968] E.A. 123.

24. The respondent's case in the industrial court, now Employment and Labour Relations Court, was for terminal benefits. It was predicated on the period of service and on the document on the basis of which terminal benefits were to be calculated. Related to these are issues whether the respondent's period of service was continuous throughout without any break in 2011 when the respondent collected terminal benefits for the period he had served since inception of his employment in 1986 or whether it was interrupted and came to an end and a new period started after the 2011 retirement, and whether the terms of service, that is to say STBS were amended by the agreement of 2nd February 2011. In addition, there is the question of effect of the suit No. CMCC No.13491 of 2014 (supra) and whether by dint of the monies paid to the respondent (in pursuance of the decree in that suit) towards the terminal benefits claimed by the respondent in the Industrial Court, estoppel ensued distentitling him from claiming again money already paid to him. The issue of the payment of Shs.5.8 million to the respondent which the appellant contends was money advanced to the respondent that was recoverable by way of deduction from the terminal benefits is in contention as the respondent claims that it was bonuses for work done which should not be deducted from the terminal benefits because it was paid to him for a consideration that had been received by the appellant.

25. Counsel for the appellant relied on the doctrine of estoppel in his contention that the respondent cannot be heard to deny that the period in respect of which terminal benefits are payable must run from the date of his second engagement in 2004 when he was elected 1st National Vice Chairman of the appellant after ceasing to be a Branch official when he was paid terminal benefits for the period he had served prior to becoming 1st National Vice Chairman.

26. The evidence before the Industrial Court on the basis of which the impugned decision was made was contained in the documents filed by the parties although a little oral evidence was given on 11th October 2012 by the respondent. In that oral evidence, the respondent stated that he started working for KNUT in 1986 as an Executive Secretary at Busia Branch. He told the Court that with effect from December 2003, he became the 1st Vice National Chairman and later in 2007 became the National Chairman of KNUT. He testified that he retired in 2011 and went on leave from February 2011 to July 2011.

27. The Industrial Court tried to induce the parties to resort to Alternative Dispute Resolution **(ADR)** to settle the dispute out of court, seeing that the respondent was a senior official of KNUT. However, on 31st October 2012, counsel for both parties informed the Industrial Court that negotiations had fallen through and consequently on 21st January 2013 parties recorded a consent that the dispute would proceed

to hearing by way of written submissions and that they would rely on their bundles of documents on record. The respondent was granted leave to file supplementary bundle of documents as well as submissions and the appellant was to similarly file its submissions accordingly.

28. On 20th December 2013, on the basis of the material before him, the learned judge of the Industrial Court **(Rika, J.)** delivered judgment awarding the respondent Shs.16,616,209.70 and costs of the suit. The court declined to grant an application for an order of stay.

29. On the issues of Shs.5.8 million and the agreement dated 2nd February 2011 the learned judge made his findings as follows –

"14. The agreement concluded in 2nd February 2011 between the Claimant on the one part, the Acting Secretary General and the Acting Treasurer of the other part, was binding contract, superseding all the other terms of retirement expressed elsewhere. The Staff Terminal Benefits Retirement Rules, contained the minimum standards of retirement, which like all standards in the employment relationship, can be varied and improved to the benefit of the employee. The Rules at any rate appear to have been amended by NEC, and endorsed the maximum of 25 YRS adopted in the agreement of 2nd February 2011. There was no reason to justify departure from what the Principal Officials of the respondent agreed to pay their former Chairman. The agreement came against the background of NEC meeting at which the Claimant announced his retirement. The Secretary General and the Treasurer acted within their mandate, in committing to pay the Claimant his dues in accordance with the agreement of 2nd February 2011.

15. The Rules, in the original and amended forms did not support the position of the respondent that the terminal benefits paid to the claimant for the period he served in Busia should have any effect on the total years served upon retirement. The period was stated under rule 5.3 to be the time the "employee has been in continuous uninterrupted employment of the union, at branch, national or both, prior to the date on which the lump sum payment is due, including months of terminal leave. The claimant joined the respondent in April 1986 and left on 31st July 2011 – a period of 25 years. The submission that he ought to have been considered for the 7 years only served at the Head Office had no basis under the Rules.

16. There was no material placed before the Court to show that the respondent paid the claimant any of his terminal dues in advance of July 2011. There is no such suggestion in any of the meetings, discussions, letters or agreements leading to the retirement. The agreement of 2nd February 2011 in particular, does not allude to advances made to the claimant in terminal benefits. Why would the claimant have been advanced terminal benefits as early as 2008 when he had just become the Chairman? The claimant submitted the payment of Ksh.5,800,000 was made as bonuses over the years, for work done. The Court finds there was nothing given by the respondent to relate these payments to terminal benefits that became payable only after retirement. The respondent negotiated the terms of the Claimant's retirement with him, and reached an agreement on 2nd February 2011. It was only after he was gone, that the respondent shifted its position and dug out its archival materials to delay meeting its obligations. The claimant was denied the right to have full retirement benefits within a reasonable time of retirement, and has instead been compelled to move from one Advocate to the other, travel, and persistently knock at the doors of the respondent, before finally coming to this Court at a cost. This is a matter that KNUT should have settled voluntarily, involving as it does a top retired and long serving Official. In sum the Court Shall allow the Claim and Award as follows;-

a. ***The remaining balance of terminal dues of Kshs.16,616,209.70 shall be paid by the respondent to the claimant within 30 days of the delivery of this Award.***

b. ***Costs to the Claimant.***

c. ***Other prayers are rejected."***

30. As regards the period of service and whether it started to run anew after the respondent became the 1st

National Vice Chairman of KNUT, the learned judge reasoned as follows –

> ***"15. The Rules, in the original and amended forms did not support the position of the respondent that the terminal benefits paid to the claimant for the period he served in Busia should have any effect on the total years served upon retirement. The period was stated under rule 5.3 to be the time the "employee has been in continuous uninterrupted employment of the union, at branch, national or both, prior to the date on which the lump sum payment is due, including months of terminal leave. The claimant joined the respondent in April 1986 and left on 31st July 2011 – a period of 25 years. The submission that he ought to have been considered for the 7 years only served at the Head Office had no basis under the Rules.***

31. And as regards the validity of the agreement dated 2nd February 2011, the learned Judge expressed the following view –

> **"14*. The agreement concluded in 2nd February 2011 between the Claimant on the one part, the Acting Secretary General and the Acting Treasurer of the other part, was binding contract, superseding all the other terms of retirement expressed elsewhere. The Staff Terminal Benefits Retirement Rules, contained the minimum standards of retirement, which like all standards in the employment relationship, can be varied and improved to the benefit of the employee. The Rules at any rate appear to have been amended by NEC, and endorsed the maximum of 25 TYS adopted in the agreement of 2nd February 2011. There was no reason to justify departure from what the Principal Officials of the respondent agreed to pay their former Chairman. The agreement came against the background of NEC meeting at which the Claimant announced his retirement. The Secretary General and the Treasurer acted within their mandate, in committing to pay the Claimant his dues in accordance with the agreement of 2nd February 2011.***

The first issue we wish to deal with is the agreement of 2nd February 2011 made by the respondent and the Acting Secretary General and the Acting Treasurer. It is common ground that an ad hoc committee of KNUT was formed to deal with amendments. Mrs. Kamar, learned counsel for the respondent, submitted that the capping of 15 years was amended by the ad hoc committee on 5th July 2007. Its terms of reference included the circular letter ref. No.KNUT/TERMS/69/2/96 dated February 19th, 1996 and Circular Letter Ref.NO.KNUT/TERMS/69/4/96 dated February 27th, 1996 which was amended by the former circular. The ad hoc committee "noted a lot of anomalies in the KNUT STBS (Staff Terminal Benefits Scheme) and resolved to amend it and propose for discussion and adoption by the Terms and Conditions of Service Committee". No evidence was tendered by the respondent to establish and prove that the Terms and Conditions of Service Committee met, discussed and adopted the proposed amendments by the ad hoc committee. In absence of such evidence, the respondent's claim remains unsupported and not proved. Moreover, the report of the ad-hoc committee does not appear to have been placed before KNUT's relevant committee for approval of the proposed amendments. The agreement of 2nd February 2011, made by the respondent and the Acting Secretary General and the Acting National Treasurer, was not adopted by the Terms and Conditions of Service Committee of KNUT. In effect, there is no proof therefore that the amendment intended to substitute the 25 years of service with the 15 years of service was promulgated.

32. At any rate, the question of 25 years of service could not arise for the simple reason that the principle of estoppel would operate to bar the respondent from claiming that he did not receive terminal benefits for the period spanning 1986 to 2011 when he retired the first time following the issuance of decree and payment to him in Civil Suit No.13491 of 2014 (supra). Estoppel too would operate to bar the respondent from asserting that the period of second retirement in 2008 stretched to before 2011, regard being had to the fact that the appellant was paid terminal benefits for the period 1986 to 2011. In our view, the assertion by the respondent that he would be entitled to terminal benefits for a period of 25 years which would encompass the period before 2011 in respect of which he was paid pursuant to the decree in suit No.CMCC No.13491 of 2014 would be unconscionable. It would amount to unjust enrichment. We so find.

33. It does not require a lot of imagination to see that the agreement of 2nd February 2011 was self-

serving. It is our finding that the respondent could not legitimately rely on the said agreement or claim to be entitled to have his terminal benefits computed on the basis of 25 years. That leaves the issue of Shs. 5.8m deducted from the respondent's terminal benefits. The respondent contended that the payment was for bonuses for work done and the issue of deducting it from the terminal benefits did not arise. On the other hand, the KNUT contended that it was advance payments to the respondent. The onus reposed on the respondent to show that it was not deductible as it was money paid to the respondent for work done. The respondent did not support his claim with evidence. Instead, the respondent relied on a statement in the written submissions of his advocates, Messrs Kounah & Company. In those submissions, the latter submitted –

> ***"Further, the respondents (KNUT) claim that they paid the claimant (respondent) Kshs.5,800,000/= which they have purported to deduct from his terminal dues; it is our submission that the payment was not towards the claimant's terminal dues but monies he was getting as bonuses for work done***."

34. Nowhere in the entire record of appeal is there a shred of evidence to show that the respondent was owed the money for work done. The allegation was made by the respondent's advocates in their submissions. The issue whether a statement in a party's submissions amounts to evidence was addressed in a decision of this Court in the case of **Daniel Toroitich arap Moi versus Stephen Mwangi Muriithi [201] EKLR** in which the Court expressed itself as follows –

> ***"Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties' "marketing language", each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all."***

35. As there is no evidence that the respondent was paid Shs 5.8 million as bonuses for work done, the assertion by the appellant that it made the payments to the respondent as advance payments which are deductible from the terminal benefits holds sway. It has not been dislodged. A look at the manner in which the sum of Shs 5.8 million was disbursed to the respondent in seven installments, five of Shs 500,000/-each and one of Shs 300,000/= between 5th March 2008 and 3rd September 2008 and two other installments of Shs 1.0 million and Shs 2 million on 30th June 2009 and 30th May 2010 respectively does not, *ex facie,* support the submission that it was in respect of bonuses for work done not least because no such allegation was made in the respondent's statement of claim dated 22nd February 2012 filed in the lower court.

36. For these reasons, we are in agreement with the submissions of Mr. Mbaluto, learned counsel for the appellant.

37. We find merit in the appeal. We allow it. We set aside the impugned judgment and the award of the lower court **(Rika, J,)** dated 20th December 2013 and grant an order in terms of prayer (C) of the appellant's memorandum of appeal dated 6th January 2016. As costs normally follow the event, we award the same to the appellant.

Dated and delivered at Nairobi this 28th day of July, 2017.

G. B. M. KARIUKI SC

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR