Nyaga & 78 others v Barclays Bank of Kenya Limited (Cause 1122 of 2018)
[2024] KEELRC 2766 (KLR) (11 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 2766 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 1122 OF 2018

J RIKA, J

NOVEMBER 11, 2024

BETWEEN

NAZARENE NYAGA ..... 1ST CLAIMANT

RACHEL SHIVERE ..... 2ND CLAIMANT

LEAH MANGURE NYAGA ..... 3RD CLAIMANT

CATHERINE KAMAU ..... 4TH CLAIMANT

ESTHER WANJIRU KARIUKI ..... 5TH CLAIMANT

ROSE MUNYORI ..... 6TH CLAIMANT

ISAAC NJOROGE ..... 7TH CLAIMANT

WILLY KAMAU MACHARIA ..... 8TH CLAIMANT

WINNIE KIONDO ..... 9TH CLAIMANT

LYDIA WAIRIMU GITHINJI ..... 10TH CLAIMANT

MARY MACHARIA ..... 11TH CLAIMANT

GEORGE NJIRU KAMUNYI ..... 12TH CLAIMANT

FLORENCE GICHIMU ..... 13TH CLAIMANT

CHARLES ARIGI ..... 14TH CLAIMANT

STEPHEN WANJAU ..... 15TH CLAIMANT

MARGARET NYAMBURA GATHUNGU GACHANJA ..... 16TH CLAIMANT

GODFREY YEGO ..... 17TH CLAIMANT

FELISTAS MUSYOKI ..... 18TH CLAIMANT

ANNE WANJIRU WAIRIMU ..... 19TH CLAIMANT

ANNE NJENGA ..... 20TH CLAIMANT

WILSON MWIRIGI MANYARA ..... 21ST CLAIMANT

MARY MBUGUA ..... 22ND CLAIMANT

IRENE MUNENE ..... 23RD CLAIMANT

CHARLES MGHENYI MWANGURA ..... 24TH CLAIMANT

SUSAN MUTHEU MUSYOKA MBAVU ..... 25TH CLAIMANT

MICHAEL WALIUBA ..... 26TH CLAIMANT

GERALD MSAGHA ..... 27TH CLAIMANT

PAUL WAMBEDHA ..... 28TH CLAIMANT

ANTHONY MUCHIRI NJOROGE ..... 29TH CLAIMANT

JAMES MALONZA WAMBUA ..... 30TH CLAIMANT

DENNIS KINOTI ..... 31ST CLAIMANT

GEORGE MWANGI ..... 32ND CLAIMANT

RICHARD MUIRURI ..... 33RD CLAIMANT

ELLEN MWAKA MUTEMI MWANYONYO ..... 34TH CLAIMANT

BARRY GITHERE ..... 35TH CLAIMANT

FAITH ADA NDUTA NJUGUNA ..... 36TH CLAIMANT

CHRISTINE MUTHONI NGANGA ..... 37TH CLAIMANT

RACHEL MWAURA NJUGUNA ..... 38TH CLAIMANT

NANCY MWASI ..... 39TH CLAIMANT

ROMAN HINGA KIMUHU ..... 40TH CLAIMANT

GODFREY MUCHIRI MWANGI ..... 41ST CLAIMANT

JOHN GACHIE ..... 42ND CLAIMANT

JANE ODA WAMUKOYA ..... 43RD CLAIMANT

RISPAH KARIUKI ..... 44TH CLAIMANT

JULIAN KEBATI ..... 45TH CLAIMANT

FRED MAGOZI ..... 46TH CLAIMANT

ROSE WAMBUI WANJEMA ..... 47TH CLAIMANT

BERNARD GITHINJI ..... 48TH CLAIMANT

MOHAMED RASHID MWALIZUMA ..... 49TH CLAIMANT

JOE MUIA ..... 50TH CLAIMANT

ROSE KIMANI ..... 51ST CLAIMANT

ANNE MUTHUI ..... 52ND CLAIMANT

GAUDENCIA ADUKA MACHIO ..... 53RD CLAIMANT

REGINA KAMONI ..... 54TH CLAIMANT

JANE NGIGE ..... 55TH CLAIMANT

MELCHIZEDEC ODIYO ..... 56TH CLAIMANT

STELLA GITHINJI GITONGA ..... 57TH CLAIMANT

RUTH MURAGURI GITAU ..... 58TH CLAIMANT

SOPHIE WANJIRU NDUNGU ..... 59TH CLAIMANT

LEAH KAMAU THEURI ..... 60TH CLAIMANT

GODWIN ONUNGA ..... 61ST CLAIMANT

ELIEZER AMBUCHI ..... 62ND CLAIMANT

OBEID MUTHAMA ..... 63RD CLAIMANT

ESTHER WANJIKU NJOROGE SANG ..... 64TH CLAIMANT

MUTWIRI NKOROI ..... 65TH CLAIMANT

PAUL KHADULI ..... 66TH CLAIMANT

67. MICHAEL ODHIAMBO ..... 67TH CLAIMANT

XX ..... 68TH CLAIMANT

LUCY IMINYI ASEKA ..... 69TH CLAIMANT

ESTHER NJENGA ..... 70TH CLAIMANT

ALFRED NGUGI ..... 71ST CLAIMANT

MARGARET WANJIKU MWANGI ..... 72ND CLAIMANT

SUSAN NJOKI KARIUKI ..... 73RD CLAIMANT

HENRY KIOO KIMEU ..... 74TH CLAIMANT

PATTERSON KARIUKI MUTURI ..... 75TH CLAIMANT

ANN GITURU ..... 76TH CLAIMANT

CATHERINE MUDHIUNE ..... 77TH CLAIMANT

FLACIER NGURU ..... 78TH CLAIMANT

ROSEMARY NYAGA NGURU ..... 79TH CLAIMANT

AND

BARCLAYS BANK OF KENYA LIMITED ..... RESPONDENT

JUDGMENT

Pleadings.

1. The Claimants filed their initial Statement of Claim, dated 2nd July 2018. The Statement was first amended on 4th July 2019. The last amended Statement of Claim, is dated 3rd March 2023.

2. The Claimants aver that they are former Employees of the Respondent Bank.

3. It is not clear from the pleadings and evidence before the Court, if the 68th Claimant, named XX, is a natural person.

4. The Claimants aver that they left employment through a mass redundancy, in what they plead was referred to by the Respondent, as Voluntary Exit Scheme [VES].

5. The Scheme was initiated by the Respondent, through 2 e-mails and / or memorandum to all staff, on 19th June 2017 and 18th January 2018.

6. The e-mails invited the Claimants to apply for VES, within 12 and 14 days respectively, from the day communication was received. The terms of VES, were vague.

7. The e-mails contained an exit package. It contained 'frequently asked questions,' which related inter alia, to the following issues: [a] the proposed changes in the loan interest rates; and the terms of the exit pay.

8. After the Claimants yielded to pressure by the Respondent, to accept VES, they were given letters of approval, in response to their applications.

9. The approval letters had fresh fundamental information on VES. They were required to accept the terms on the spot. There was no opportunity for them to consult.

10. The terms included immediate repayment of their outstanding loans. They were required to provide security in the alternative, or merge the loans with existing, secured loans.

11. The notices were extremely short and unreasonable. The process would lead to job losses. Some of the Claimants had worked for very long periods.

12. They aver that they were coerced, and misled by the Respondent, to accept VES. The exercise was malicious and riddled with material non-disclosure.

13. There was no institutional consultation, in violation of the Claimants' rights under Article 27 of *the Constitution*.

14. Claimants Nos. 16, 27, 53 and 58 were members of the Banking, Insurance and Finance Union [BIFU]. Their Union was not consulted, as stipulated under clause 7 of the prevailing CBA, and in accordance with Section 40[1] [a] of the *Employment Act*.

15. The notices were too short, and the Claimants were denied the right of legal representation, granted under Article 48 of *the Constitution*. The Respondent failed to notify the relevant Labour Office, about its VES.

16. The Claimants who applied for VES in 2017, were not advised on their personal loan clearance, before they accepted the VES. Those who applied in 2018 received scanty and incomplete information which was changed mid-air.

17. They were advised that their unsecured loans and credit cards, had to be cleared upfront, or be merged with existing loans.

18. The exit packages were not enough to off-set against existing loans. Most of the Claimants were forced to amalgamate their loans, attracting additional costs and charges.

19. The Respondent changed preferential staff loan interest rate to commercial rate, which became very expensive to the Claimants, and offended their right to protection and benefit of the law, under Article 27 of *the Constitution*. Their standards of living and dignity were lowered.

20. Their credit cards and accounts were blocked by the Respondent without notice or consultation. They were economically crippled. Some were forced to surrender their cars at very short notice.

21. They were forced to meet the legal costs and stamp duty, after they accepted VES.

22. The Respondent did not pay due regard to their seniority, skill, ability and reliability in accordance with Section 40 of the *Employment Act*.

23. They aver that the Respondent violated their right to freedom of expression. They were financially embarrassed, and denied their right to fair administrative action.

24. The Respondent ignored banking traditions, patters and /or standards. No concession, benchmarked at 40-50% in the industry, was given on clearance of loans. VES did not meet existing patterns from other banks such as Kenya Commercial Bank and Standard Chartered Bank. The Respondent, offended the Claimants' legitimate expectation of similar standards in the industry.

25. Those who had not secured their car loans were compelled to repay the loans prematurely, thereby being deprived of their right to property, under Article 40 of *the Constitution*.

26. In flagrant violation of Section 40[1] [c] of the *Employment Act*, the Respondent capped severance at 24 years, instead of a minimum of 15 days' salary, for each complete year of service. Clause A7 [d] of the CBA, granted members of the Union 30 days' salary, for each year of service.

27. The CBA required that the Union is informed of the reasons and extent of redundancy. The Respondent was required to follow the principle of Last-In, First Out [LIFO]. These requirements were not met.

28. The overall business environment was not conducive to exercise of fair administrative action, guaranteed to the Claimants under Article 47 of *the Constitution*. The Claimants accepted VES under fear of victimization and humiliation. They were extremely vulnerable. Some were undergoing disciplinary processes.

29. They were desperate, and accepted VES, without the benefit of legal counsel. The Respondent took unfair advantage over the Claimants. They were denied the right to information, under Article 35 of *the Constitution*. The Respondent attempted to sanitize the process, by offering the Claimants exit trainings.

30. The Respondent did not set up an appeals structure, for use by Employees who were dissatisfied with the exercise.

31. They were discriminated against by the Respondent, contrary to Section 5 of the *Employment Act* and Article 1, The Discrimination [Employment and Occupation] Convention, 1958.

32. They pray for: -

a. Declaration that the Respondent's conduct, acts or omission in the VES, as initiated in the e-mails dated 19th June 2017 and on 18th January 2018, are unlawful, illegal and / or unfair, and the same violate, infringe upon, threaten, or offend the Claimants' rights as guaranteed under Articles 27, 28, 29, 40 and 47 of *the Constitution* and The Banking, Insurance and Finance Union [Kenya] dated 30th August 2017 [CBA?].

b. A declaration that capping of the benefits at 24 years was illegal, discriminatory and contrary to Section 40 [1] [g] of the *Employment Act*.

c. The Respondent is compelled to re-compute the benefits payable for every year worked, in line with Section 40 of the *Employment Act*, and at 30 days' salary for every year worked for Claimants who were unionized.

d. An injunction compelling the Respondent, its agents, employees and / or servants to suspend and / or postpone the crystallization dates for the new loan interest rates and loan security changes, pending settlement of the issues raised in this Claim.

e. An order that the loan interest rates do remain at bank rate, until full settlement of the loans.

f. The Respondent to provide a rebate of 25% to those who would wish to pay off their loans in the alternative.

g. The VES 2017 and 2018 be recalled, reopened and renegotiated within the appropriate environment with the assistance of the Labour Office, within the *Employment Act* and the due process dictates, with full and fair consultation and participation of the Claimants, to the extent of prayer [c] and [d] above.

h. A declaration that the Claimants are entitled to the right of access to information under Articles 35 of *the Constitution* read alongside Section 6 of the *Access to Information Act*.

i. An order that the Respondent furnishes the Claimants with the minutes and resolutions of all the meetings that led to and culminated in the 2017 and 2018 VES.

j. An order that the Respondent to furnish the Claimants with all notices, letters and correspondences sent to the Union or the Labour Office, around VES.

k. Rebate be granted for loan, car lease, and card debit that were settled in full, in line with existing industry collections and recoveries practice.

l. Compensation equivalent of 12 months' salary for each Claimant [not Petitioner] for unfair and unlawful termination of employment, on account of un-procedural redundancy and /or early leaving.

m. General and aggravated damages, including exemplary damages for breach of constitutional rights, including the right to fair administrative action, right to human dignity and self-worth.

n. General and aggravated damages including exemplary damages for discrimination and injury to reputation.

o. Costs.

p. Interest until payment in full.

q. Any other relief.

33. The Respondent filed its Statement of Response on 19th February 2019. It is conceded that all Claimants, save for Claimant No. 68, whose identity is unknown, were employed by the Respondent, and left under VES. The Respondent is not aware about the Claimants' relationship with BIFU.

34. It is denied that termination was on account of redundancy under Section 40 of the *Employment Act*. The Claimants exited under VES.

35. The Respondent advertised VES in June 2017 and January 2018, as an offer to all Employees, to voluntarily exit the Respondent's employment. The terms of exit pay; loan interest rates; and conversion of unsecured loan facilities to secured loan facilities, were clearly communicated.

36. The Claimants were given 14 days to consider VES offer and decide whether to apply, based on the proposed terms. They voluntarily applied for VES. Even those who initially applied unsuccessfully in 2017, reapplied in 2018. All Claimants entered into binding agreements with the Respondent, to exit employment under VES.

37. Although not mandated to do so, the Respondent consulted BIFU, and the process was conducted through the Joint Working Council [JWC], involving the Respondent and BIFU.

38. The legal provisions invoked by the Claimants did not apply to VES. The Respondent did not offend the *Employment Act* or *the Constitution* of Kenya.

39. The terms of the loan repayments were made clear in the offers, and through the mode of 'frequently asked questions,' involving the Claimants. It was open to the Claimants, to decline the VES offer and continue working.

40. Upon their election to exit, they ceased to enjoy benefits due to continuing Employees. They were no longer entitled to company vehicles and credit cards.

41. The Claimants were long-term bankers, and conversant with banking law. The law does not allow banks to advance unsecured loans, to Non-Employees. The Respondent's conversion of unsecured facilities, to secured facilities, was within the law. They selected their preferred loan repayment arrangement.

42. There was no coercion, or misrepresentation by the Respondent. Everything was voluntary. The Respondent is not aware of banking practices, traditions, patters or standards, which were infringed in the VES.

43. There was no statutory obligation on the part of the Respondent, to pay severance. VES was not a redundancy process; it was a voluntary termination of employment.

44. The Claimants are among the few Employees, whose applications for VES, were successful. Some applicants changed their minds, and declined VES. Those who declined continued working. The Claimants fully accepted VES, and were paid exit packages.

45. Many of the Claimants thanked the Respondent for the opportunity they had been offered to serve. Their contracts were not terminated by the Respondent, unfairly or unlawfully.

46. VES was an independent contract, which bound the parties. All other pending internal actions, including disciplinary actions, were halted by this independent contract. There was no victimization, humiliation or unfair administrative action, as pleaded by the Claimants. The Respondent has a grievance handling policy, which the Claimants could have invoked, if they were subjected to hostile work environment.

47. The 3rd Claimant filed another Claim before this Court, Cause No. 1280 of 2018, in respect of the same issues.

48. The Respondent states that by an order, issued by the Court on 18th July 2018, the Claimants continued to repay their loans at a staff concessionary rate of 6% p.a. The Respondent counterclaims that each Claimant, is compelled to pay their loans at commercial rate of 14.5% p.a., as at 18th July 2018. It is proposed that the Counterclaim is allowed, the Claim dismissed, with costs to the Respondent.

49. The Claimants filed their Reply to the Statement of Response, and Response to the Counterclaim, dated 7th May 2019. They restate that they did not apply for VES voluntarily, and the work environment was hostile, with no sufficient notice or consultations, leading to their acceptance of VES offer. They were denied their right to legal counsel. The terms of VES were altered mid-air. The Respondent was restructuring its business, as shown in the Managing Director's circular dated 18th January 2018, and in the 'frequently asked questions.'

50. The redundancy provision in the *Employment Act*, and the clause on redundancy under the CBA were applicable. The Union and the Labour Office were not consulted by the Respondent.

51. The Claimants state that Cause No. 1280 of 2018, raised a different cause of action. In past schemes, banks made full disclosure to their Employees and gave adequate notice. The Respondent's past VES in 2013 and 2017, provided better terms. The Claimants were discriminated against.

52. On the Counterclaim, the Claimants state that the Respondent ought to have filed an appeal, against the orders granted by the Court in favour of the Claimants, on the rate of interest, on 18th July 2018. No appeal was filed.

53. Claimant No. 27 Gerald Msagha, gave evidence on 14th December 2021, 8th March 2022 and 30th March 2022. Claimant No. 1, Nazarene Nyaga, gave evidence on 30th March 2022 and 28th June 2022. Claimant No. 4, Catherine Kamau, gave evidence on 28th June 2022 and 17th January 2023. Claimant No. 7, Issac Njoroge, gave evidence on 8th February 2024. Claimant No. 16, Margaret Nyambura, gave evidence on 8th February 2024 and 14th March 2024. Claimant No. 31, Denis Kinoti, gave evidence on 19th June 2024. Claimant No. 52, Ann [Jackline?] Muthui, gave evidence on 19th June 2024 and 20th June 2024, winding up the Claimants' case.

54. The Respondent's Head of Employment Relations, Vaslas Odhiambo, gave evidence on 20th June 2024, closing the hearing.

55. The Claim was last mentioned on 30th July 2024, when the Parties confirmed filing and exchange of their closing submissions.

Evidence for the Claimants.

56. Msagha [27], adopted his 2 witness statements and documents filed by the Claimants, in his evidence-in-chief. He was employed by the Respondent as a messenger on 7th September 1989. He later on, became a clerk. He received VES offer from the Respondent, on 19th June 2017. He had 11 days to apply. There was no consultation involving the Respondent, and the Labour Office. His branch was closing. There were many changes. Mobile banking was being introduced. Terms of VES were not friendly. The Claimants did not know the details, and the repercussions for accepting VES. He later learnt that his staff loan, was hurriedly converted to commercial loan. He left employment with nothing, after 28 years of service.

57. He was a member of BIFU. The Union did not consult him. Everything was done secretly. A notice of 30 days would have sufficed. He did not have time to consult family and legal advisor. He lived in fear while working. If there was full disclosure by the Respondent, the Claimants would have made informed decisions.

58. Cross-examined, Msagha confirmed that he was initially a messenger, before becoming a clerk. He was an acting branch operations officer at the time of VES. He was a member of BIFU. There was a meeting involving 5 Union Officials and the Respondent on 19th June 2017, on VES [JWC meeting]. Msagha was advised service would be paid based on a limit 24 years of service. He was paid VES package as agreed. He accepted and retained the payment.

59. Redirected, Msagha told the Court that disclosure of the terms, came after the Claimants had accepted VES offer. The meeting between the Respondent and the Union, took place the same date, the offer was made. The Union did not consult him.

60. Nazarene [1] associated herself fully with the evidence given by Msagha. She was employed in 1979 by the Respondent, as a clerk-machine operator. She left under VES, on 20th June 2017. The offer was made at midnight, on 19th June 2017. Employees had only 11 days to apply. The Respondent had completed automation, and was telling Employees, that some had to exit on redundancy. Nazarene did not have time to consult her lawyer or family. The Claimants needed to see the policy which guided VES. The meeting between the Respondent and the Union related to much more than VES. It was not relevant to VES. Minute 02/06 related to VES. Minute 03/06 related to loans. The minutes stated that discussion on loans had taken place exhaustively, and there would be no discount. Nazarene was not able to make a sound decision. She signed acceptance, only to realize there were fresh conditions. Her house was encumbered. She had financial burdens. She could not clear her loan obligations, with the VES package. There were additional costs to the Claimants. There were legal costs and stamp duties involved, with the new transactions. Nazarene's accounts, and credit card were blocked. Her son was using the card for maintenance in Colombia. He could no longer use the card. She had booked a holiday at Diani Cottages through the Respondent. The holiday was cancelled. She was humiliated. Service was based on 24 years, while the Claimant worked for 38 years. The Counterclaim is not justified. The Respondent had already factored in interest at staff rates, in its financials.

61. Cross-examined, Nazarene confirmed that all the Claimants were bankers. She worked for 38 years. She was familiar with the loans structure. She used her matrimonial home, to secure a loan. She was familiar with mortgages. The staff loan terms and conditions provided that preferential interest rate, would be terminated, once the Employee's contract was terminated. It was a staff benefit. The letter of VES offer did not capture preferential interest rate. The Claimants were encouraged to apply for VES, but not forced to. Msagha applied for VES, on 3rd July 2017, 3 days after the closure date. The offer advised the Claimants to direct any queries on VES, to the Head of Human Resources. Nazarene did not make any such queries.

62. Loans would remain at a preferential interest rate, for 12 months. Nazarene agreed to restructure her loans, into secured facility. She did not however, have the time to consult her lawyer and family. She did not consult a lawyer in 1979, when she was employed. Nazarene stated in her VES application, that she was applying voluntarily. She would have been fired, if she declined to apply. It is not pleaded in the Claim that her son was using her credit card in Colombia, or that she had booked a cottage for holidays at Diani. She was 56 years old on VES exit. She was due to retire in 4 years, at the age of 60 years. Loans were to be repaid before retirement. The JWC meeting, between the Respondent and the Union was a consultative forum. Management was represented. Nazarene was in Management.

63. Redirected, she stated that she made an application for VES. She did not know how she was picked.

64. Catherine Kamau [4], similarly relied on her 2 witness statements and bundle of documents filed by the Claimants, in her evidence–in-chief. She restated the evidence of her colleagues above. She was employed by the Respondent on 17th March 1983. She left under VES, on 21st July 2017. She held the position of Country Head, Fraud Operations at the time of exit. She told the Court that VES was not voluntary. She applied on 11th July 2017. It was not clear who was eligible. Her application was declined, then accepted on the same date, 11th July 2017. She recorded her reservations on the acceptance form. She called for audience with the Human Resources Director. Kamau had cancelled all her plans, after her application was initially rejected. She requested for the terms and conditions of VES of 2011. She asked for VES policies. She was told these policies were contained in various circulars.

65. She further asked for notices issued to the Labour Office. She was advised there was no legal requirement to notify the Labour Office. In the JWC meeting between the Respondent and the Union, someone asked, what was the targeted number of Employees to exit under VES. The Respondent answered, that there was no specific number targeted. There was no clarity on eligibility. The issue concerning loan discount was raised. It was one of the issues Kamau had registered reservation about. The rates of notice pay and gratuity, were said to be competitive. Kamau had not been consulted about these benefits. She was not involved in computation of the VES package.

66. Cross-Examined, Kamau told the Court that she did not receive computation of the VES package, before she accepted the offer. The circular from the Managing Director containing the offer however, gave Employees 1-month notice, and interest rate was to remain at the preferential staff rate for 12 months after exit. Other benefits were explained in the offer. Kamau suffered discrimination. She was senior, but was made to sit with a junior. She was not given a shredder. She did not have evidence showing that she raised her grievances with the Respondent. Her application for VES was initially rejected. It was later accepted. She wrote confirming she understood the terms of VES. She was advised on her last working day. She was given options on loan repayment. There was option to accept or decline VES, but the option was given, within a hostile environment. The plans she cancelled when she was told her VES application was rejected, were mental plans. It was about her vision. There was no written contract, which she was compelled to rescind. It was her mental plans that were disrupted. She received the money shown on VES computation.

67. Redirected, Kamau told the Court that she signed acceptance form, under duress. She was not given room to think. She received the offer at midnight of 19th June 2017 / 20th June 2017. She read the offer on the latter date. Her application was first declined, then accepted, on 11th July 2017. She received computation of VES dues, on 19th July 2017. She opted for the scheme, because the work environment was hostile. She did not have the opportunity to consult her family.

68. Isaac Njoroge [7] relied on his witness statement and documents filed by the Claimants, in his evidence-in-chief. He worked for the Respondent for 29 years. He left employment under VES, in 2017. The work environment was hostile. He applied for VES. Many Employees had been discontinued for poor performance. He was paid gratuity based on 24 years of service, while he worked for 29 years.

69. Cross-examined, Njoroge told the Court that many Employees applied for VES. Njoroge considered himself lucky to have been among the successful applicants. He applied within 2 days, but this did not mean that he was given sufficient time, to consider the offer. He could not wait until the offer to apply closed. He received acceptance from the Respondent on 11th July 2017. 13th July 2017 was his last day. He was advised on his terminal benefits and loan obligations. He understood the terms of exit. He opted to settle his loan obligations from his VES package. He was paid his dues in full as agreed.

Redirected, he told the Court that gratuity was capped at 24 years' service, while he worked for 29 years. He was denied 5 years of service.

70. Margaret Nyambura [16], adopted her 2 witness statements and documents filed by the Claimants, in her evidence–in-chief. She worked for the Respondent for 28 years. She worked at the Head Office. She was transferred to a retail branch, as a custodian. She wrote to the Respondent, protesting transfer, because she had a cardiological problem, and had been advised by her doctor to avoid stressful working conditions. Other colleagues had been taken through disciplinary hearing. She therefore applied for VES, against the background of this hostile work environment.

71. Cross-examined, she told the Court that she applied for VES, within 2 days of its being advertised by the Respondent. She did not need the 12 days remaining to closure of VES. She was a member of the Union and was aware about the meeting of the JWC, on the subject. Her Union did not consult her. She did not exhibit her medical records. She told the Respondent that she had asthma. She could not handle cash. She pleads discrimination, based on offers made by the Respondent, in other VES. She seeks compensation and aggravated damages. She did not have evidence to show that her credit card was blocked. She was paid Kshs. 4.5 million in total exit dues. She, like her colleagues, accepted payment.

72. Redirected, Nyambura told the Court that the meeting between the Respondent and the Union, was held on 19th June 2017. The offer was received the following day. There was no consultation. The work environment was hostile. The Claimants accepted VES under duress. Compensatory, general and aggravated damages, are merited.

73. Denis Kinoti [31] similarly relied on his witness statement and documents filed by the Claimants. He was employed by the Respondent on 23rd September 1991. He worked for 25 years and 10 months. He left employment under VES. He joined the Respondent as a clerk, and left as a Project Manager. Like his colleagues, he received VES offer. The Claimants had about 12 days to consider the offer. Other Employees had been censured for poor performance, and he feared his contract would be terminated. The environment was hostile. He had been denied bonus. His ATM card was withheld because he had applied for VES. He had served in the human resource department earlier. VES used to have a notice period of 3 months. The notice issued on this occasion was not adequate. He repeated the evidence by his colleagues, on outstanding loans, interest rates, and other terms of exit.

74. On cross-examination, Denis told the Court that VES was open to all Employees. The Scheme attracted about 50% of the staff. A small number succeeded. Denis said in his application, that it was time for other challenges. He did not state, that there was a hostile work environment. There was a grievance handling procedure, available to the Claimants, at the workplace. His terminal dues were computed and paid at Kshs. 6.13 million. He filed the Claim after payment. He felt that the Respondent was unfair. He wishes that there is a renegotiation of VES, but does not wish to be reinstated, 7 years after he left employment. Renegotiation would include computation of gratuity based on 26 years completed in service, not the 24 years, offered by the Respondent.

75. Redirected, Denis joined his colleagues in characterizing the work environment at the Respondent, as hostile. Employees were victimized on allegations of poor performance. Denis was denied salary increment and bonus. The main reason he applied for VES, was fear and anxiety of unfair termination. He discussed his bonus grievance with his supervisor. He was told the decision was final. The whole exercise of VES was stressful, even if voluntary.

76. Jackline / Anne Muthui [52] told the Court that she is a stay-at-home mother. She adopted her witness statement, and documents filed by the Respondent. She was employed by the Respondent in 1991. She left in 2017, as a Manager, Corporate Section. She too received VES offer, within a hostile work environment. There was a plan to merge corporate services, and she was not sure where merger would

leave her. She feared her position would be rendered redundant. She too had been denied bonus and salary increment. She was told that her salary was way above the market rate. She felt discriminated and demotivated. She was not given an opportunity to consult on VES offer. She did not have a ready security to cover pending loan obligations. She had worked for 26 years, and was paid service based on 24 years.

77. Cross-examined, Muthui told the Court that she was not able to confirm that her salary was above the market rate. She did not talk about malice, during her service. She did not face any disciplinary proceedings. She agreed that her career was successful. Some Employees received VES offer, but did not accept the offer. If Muthui did not apply, she would have gone on working. She stated on her application, that she wished to pursue other developmental interests. She said it was an honour, serving the Respondent. She was not forced to apply. She did not have any communication about redundancy, from the Managing Director, or the Human Resource Director. There was verbal communication about merger of her section. She did not ask for clarification on redundancy, from the Respondent. She has not prayed for any salary arrears or increments. She was paid about Kshs. 5.8 million as terminal benefits. She would like this to be recalculated.

78. Redirected, Muthui told the Court that her complaint was not about the interest rate, but about being compelled to pay outstanding loan obligations, from her terminal benefits. The work environment was uncertain. Her colleagues were getting salary increments. She was compelled to apply for VES, because of the circumstances. The corporate section was later merged with Bishop's Gate Centre. She was apprehensive, that she would be rendered jobless, compelling her to apply for VES.

79. The Court adopted the witness statements filed by the rest of the Claimants, which mirror the evidence of the above Claimants, as part of the evidence by the Claimants.

Evidence for the Respondent.

80. Vaslas Odhiambo relied on his 2 witness statements, and the initial and supplementary bundles of documents, filed by the Respondent, in his evidence-in-chief. He adopted the contents of the Statement of Response, and the Counterclaim, underscoring that the Respondent, seeks payment of loans owed by the Claimants, on commercial interest rates.

81. Cross-examined, he told the Court that he was aware that the Claimants, were to continue paying the preferential staff rates of interest. There was no final decision on the rate payable. There was no plan to close any branch or section. The Respondent was investing in automation and digitization. Mobile-banking was taking root. There were business changes, communicated in the VES offer, but they did not include closing down branches or sections.

82. The Claimants were given up to 14 days, to consider VES offer. There was a meeting of the JWC on the subject. There were consultations, including questions and answers session, with the Employees. All Employees were represented. VES was voluntary. There was no redundancy contemplated by the Respondent. The Respondent wanted to remain relevant and provide efficient banking. VES was not rolled out because of any particular business challenges. Outstanding loans were to attract preferential staff rate of interest for 12 months from the Claimants' exit, and only convert to commercial rate, after the 12 months.

83. Odhiambo did not agree that the Respondent was restructuring. It was more about automation and customer needs. There was no specific number of Employees, targeted by VES. The 79 Claimants were part of the applicants for VES. It was not necessary to notify the Ministry of Labour. The JWC was involved. It met on 19th June 2017, the same day the offer issued. There was no redundancy situation. There was no proposal made to the Claimants for 25% loan rebates. Severance would have been payable

at 1-month salary for each complete year of service, under the redundancy clause in the CBA. It is not true that in all other VES, service was compensated at the rate of 1-month salary, for each complete year of service. Capping of service years, is common practice in the industry. Odhiambo could not say when capping practice started. The Respondent Bank has been in business for over 100 years. Procedure was not wrongful. If it was, the Claimants would be entitled to compensation.

84. Redirected, Odhiambo told the Court that the JWC, involved the Managing Director, the Human Resource Director, Odhiambo, and Employees' Representatives. It was a consultative forum. The Claimants were advised during questions and answers session, that there were no rebates, the discussion on the subject having been exhausted. The Respondent had carried redundancies in the past. This was not a redundancy exercise.

Issues; -

85. The issues as understood by the Court are: whether the VES carried out by the Respondent in 2017 and 2018, was unfair, unlawful and unconstitutional; whether VES should be recalled and renegotiated; whether the Claimants merit the prayers sought; and whether the Respondent has established its Counterclaim.

The Court Finds: -

86. Rule 7[1] [a] of the E&LRC Procedure Rules, 2024, requires parties who wish to present disputes in this Court, to give their personal details, including their names, physical and mailing addresses. This Rule was preceded by Rule 4, under the 2016 [Procedure] Rules.

87. The Claimant No. 68, who is simply indicated as XX, has not satisfied the demands of this Court's Procedural Rules, on personal details. His name and particulars are not disclosed. He is simply indicated as XX, with the year 2018, shown against the letters XX. Even after the Statement of Claim was amended multiple times, the name and particulars of this man or woman, were not disclosed. This is a most unusual Claimant.

88. The Claim by XX is not sustainable, and is struck off from the outset.

89. It is not disputed that the remaining Claimants were employed by the Respondent in various capacities. Most of those who gave evidence, worked for the Respondent for long years. The 1st Claimant, worked for 38 years. Many worked for over 25 years. It is common ground that they all applied for VES offered by the Respondent. They left after they accepted VES offer, and after they received VES packages.

90. Claimant No. 3 Leah Nyaga, was said by the Respondent, to have brought another Claim before this Court, against the Respondent, in relation to the subject matter. Details of this other Claim were not placed before the Court. The Claimants' position is that, the Claim related to a different cause of action. It has not been established that the Claim by the 3rd Claimant, is res judicata or sub judice, or in any other way relevant to the proceedings herein.

Whether VES was unfair, unlawful, and unconstitutional: -

91. There were 2 Voluntary Exit Schemes, offered to Employees of the Respondent, subject matter of this Claim.

92. The first was open from 19th June 2017, closing on 30th June 2017. This VES was deliberated upon by the Joint Workers Council [JWC], in a meeting held on 19th June 2017.

93. The JWC comprised Managing Director Jeremy Awori, other Directors and Managers for the Respondent, BIFU Chairman Duncan Muthusi accompanied by 3 other Union Officials. It was a top-level social dialogue.

94. A draft circular to be issued by the Managing Director to Employees, was placed before the JWC. The terms of the VES 2017, were tabled and discussed.

95. These terms were: offer was open from 19th June 2017 to 30th June 2017; VES was limited to staff in COO and Head Office; 1-month salary to be paid in lieu of notice; exit pay at 1-month basic pay, for every complete year of service, subject to a maximum of 24 years; medical entitlement will be continued up to 31st December 2017, on existing terms and conditions of any medical scheme applicable to the employee at the date of leaving service; staff loans to remain at staff preferential rate, up to 12 months after exit, thereafter they revert to commercial rate; expected release date -21st July 2017; payment of tax will be the responsibility of the individual employee, in accordance with the *Income Tax Act* and will be deductible at source; and pension dues will be paid in accordance with the pension trust deed and rules.

96. There was a question and answer session, during the JWC meeting. Among the answers given, was that exhaustive discussions had already taken place on discounted loans; there was no target number of VES applicants; VES was not a redundancy process; service capped to 24 years, was competitive, based on recent industry practices; and there were no roles declared redundant, hence no redundancy law applicable. JWC members, including the Employees' representatives, confirmed that all their questions had been answered to their satisfaction.

97. The Managing Director proceeded to disperse a circular dated 19th June 2017, as tabled in draft form at the JWC, to all eligible Employees. The terms and details of VES as discussed at the JWC, were restated in the circular.

98. The Employees applied for VES on various dates, between 19th June 2017 and 30th June 2017. Some even applied after closure.

99. The Respondent wrote to the applicants accepting their applications, and elaborating on the terms of VES. They were further given acceptance forms, which gave them various options, to consummate the VES agreement.

100. With regard to loans, they were required to either – 1] accept the offer with the terms and conditions outlined; or, 2] decline the terms and prefer to continue working, under their existing terms and conditions of service.

101. With regard to loans and credit cards, they were asked to choose 1] settle all loans with my terminal benefits; 2] settle my unsecured loans with terminal benefits and retain the secured facilities; and 3] restructure all my loans into a secured facility.

102. Having made their options in the acceptance form, they consummated the VES agreements. The Respondent went ahead, computed and paid the applicants' final dues.

103. The 1st Claimant Nazarene Nyaga, one of the lead witnesses for the Claimants, was paid 1-month salary in lieu of notice at Kshs. 770,000; pending annual leave at Kshs. 151,890; service based on a maximum of 24 years of service, at Kshs. 18,480,000. After tax, she was paid Kshs. 13,775,585.

104. Other Claimants under VES 2017, were compensated under similar terms.

105. They all signed the computation of their final dues, signifying further their agreement to voluntary exit terms.

106. The VES that followed in 2018, was open for a similar period of 2 weeks, between 18th January 2018 and 31st January 2018. It was open to permanent Employees at the Head Office. It followed a similar pattern to the VES 2017. There was a consultative meeting of the JWC, with the same representatives from the Respondent and BIFU. Similar terms of VES were discussed and communicated to the Employees through the Managing Director. The Employees were taken through similar acceptance processes.

107. It is difficult for any of the Claimants, to justify their argument, that they were forced into accepting VES; that they did not have adequate notice; that there was no consultation; or that they were subjected to a hostile work environment, compelling them to apply for VES.

108. The exercise both in 2017 and 2018 was consultative and consensual. The Claimants had the option to reject VES, and continue serving.

109. They were long-serving Employees of the Respondent, working for as many as 26 to 38 years. They did not give evidence of any hostile work environment, and it is not believable, that they lasted this long in a hostile work environment.

110. Employees exposed to hostile work environment normally resort to the workplace grievance handling procedure, or resign and pursue damages for constructive dismissal, rather than wait for a VES moment.

111. All the evidence given by the Claimants, did not establish that VES was involuntary, imposed on the Claimants by the Respondent, or by any circumstances attributable to the Respondent.

112. Msagha told the Court that he accepted the offer because he thought his branch was going to close. He worked in an atmosphere of fear. There was no evidence of closure of any branch, and Msagha did not establish the source of his fear. He applied for VES, signed acceptance and received VES package voluntarily. Nazarene Nyaga also told the Court that she was serving in a hostile environment. She agreed that she made her application voluntarily, and that the Respondent had advised the applicants, to contact the Head of Human Resource, in event they had any queries on VES. There was no query sent by the Claimants, to the Head of Human Resource on VES. Her application, did not disclose any grievances concerning a hostile work environment. Without substantiation, she said that she thought she would be fired, if she did not apply for VES.

113. Other Claimants told the Court that they were compelled to apply for VES, because they were scared that their contracts would be terminated for poor performance; they had witnessed others being fired over disciplinary issues; they had been denied bonus; they had been denied salary increments; one suffered heart or asthmatic conditions, and was being unfairly transferred to a retail outlet, where she would be required to handle paper currency, her medical problem notwithstanding; and others feared their roles would be rendered redundant. These cannot be reasons to justify the position that VES was involuntary. Why would an Employee apprehend that his / her contract would be terminated on account of redundancy, justifying acceptance of VES, while in the same breath submit that redundancy offered a superior exit package? Why not wait for the apprehended redundancy, which offered superior benefits? Catherine Kamau [4], felt that the work environment was hostile, because as a senior, she was compelled to sit in the same office with a junior, and she was not supplied with a shredder. Denis Kinoti [31], startlingly told the Court on redirection, that even if VES was voluntary, it was stressful. How does the Court intervene, and order the Respondent to recall and renegotiate VES, because the exercise was stressful to the Claimants? This evidence by the Claimants, is untenable.

114. In her application, Nazarene Nyaga [1] stated that she was applying for VES, to allow other colleagues, the opportunity to lead, by taking up her role. She had worked for 38 years. She rightly, wished to hand over her baton, to a younger Employee. According to her evidence, Employees were encouraged by the

Respondent to apply for VES, but were not forced to apply. Rachel Shivere [2], stated in her application that she had worked for 30 years, and needed a well-deserved break. Leah Nyaga [3], stated that she had worked for 23 years, and wished to pursue other interests. Esther Kariuki [5] wished to take a break, to pursue personal interests, and take care for her young babies. Isaac Njoroge [7] considered himself lucky, to have been among the successful VES applicants. Winnie Kiondo [9], stated that she had a sick child, and wished to exit, to take care of the child. Lydia Githinji [10] stated that she had carefully read the circular dated 19th June 2017. She committed to pay her unsecured loans, upon receipt of the VES package. Most Claimants thanked the Respondent for the long years of service, with none expressing any form of grievance. The various reasons given to the Court by the Claimants, as constituting undue influence or duress, compelling them to accept the VES offer, are not supported by the contents of their applications for VES.

115. Work grievances, if any, ought to have been addressed under the grievance handling procedure, or through the Courts, as separate and individual causes of action, at the time they arose, and not belatedly, turned into reasons to justify collective rejection of what in the view of the Court, was a consensual, voluntary exit.

116. In this Court's recent decision, *Banking Insurance and Finance Union [Kenya] v. Access Bank [PLC] Kenya Limited, [Cause E 679 of 2021*] [2024] KEELRC [KLR] [9th August 2024[[Judgment], it was held that letters signed by the Employees, accepting terms and conditions of VERS [Voluntary Early Retirement Scheme] offered by their Employer, constituted separate and binding contracts.

117. In an earlier E&LRC decision, Josephat Kamau & 2 Others v. National Bank of Kenya [2019] e-KLR, the Court gave a slightly different opinion on VERS / VES agreements, holding that the existing contractual terms, cannot automatically be subsumed in VERS / VES agreements, without compliance to Section 10 [5] of the *Employment Act*. This provision requires Employers to revise existing contracts of their Employees, incorporating any changes, and to notify Employees about such changes.

118. The Court does not think that Section 10 [5] of the *Employment Act* is applicable to VES. VES agreements are not ongoing contracts of employment, contemplated by Section 10[5] of the *Employment Act*, where changes are to be incorporated in ongoing contracts. A VES agreement is a separate contract, a special initiative, carried outside the existing contract of employment.

119. In E&LRC Cause No. E 679 of 2021, The VERS terms and conditions executed between the Employees and their Employer, were found to be unrelated to their existing individual employment contracts, the prevailing CBA, and the Human Resource Policy.

120. The Employees in E&LRC Cause E 679 of 2021, were found to have expressed their consent to be bound by the VERS terms and conditions, by executing the letters of offer, as communicated by their Employer. It was the view of the Court, that VERS letters, were separate, and standalone contracts.

121. It was held further that VERS was unlike redundancy, not regulated by the *Employment Act*. It was a voluntary contract executed by the parties, which culminated in consensual termination of employment.

122. Being a separate agreement, the Court held that VERS, superseded all other existing contractual terms. It was not wrongful, that VERS terms, were less favourable than terms ordinarily enjoyed, under other pre-existing employment instruments. Notice period under voluntary exit instruments, may be less than given under previous contracts. Severance pay does not have to match what is given under the prevailing CBA.

123. VERS /VES agreements are contracts for termination of employment, not contracts of employment. They are separate from the contract of employment. If there are benefits to be preserved from existing employment contracts, in VERS/ VES, such benefits are to be expressly included, in the VERS / VES agreement.

124. The decision in E&LRC Cause E 679 of 2021, deferred to the Court Appeal decisions, in National Bank of Kenya v. H.B. & 103 Others [2017] e-KLR, and William Barasa Obutiti v. Mumias Sugar Company Limited [2006] e-KLR, which held that Employers and Employees, are at liberty to contract outside the employment instruments, governing their employment relationship. By the term 'outside,' the Court of Appeal was underlining that VERS / VES are separate agreements from the previous/ pre-existing employment/ labour relations instruments.

125. In National Bank of Kenya Limited v. Pipeplastic Samkolit [K] Limited and Another, [2001] e-KLR, the Court of Appeal, again underlined, that parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. The Court of Appeal in its decision, cited *Fina Bank Limited v. Spares & Industries Limited [Civil Appeal No. 51 of 2000*] [unreported], where the Court held that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily not part of equity's function, to allow a party to escape a bad bargain.

126. The Claimants herein, allege that they received a bad bargain from the Respondent. There is no evidence that they received a bad bargain. They were well-compensated, in accordance with the agreed VES terms. If there was a bad bargain, it is not for the Court to enable the Claimants, escape a bad bargain.

127. VERS / VES agreements, constitute special initiatives, offered by Employers to Employees, intended to lead to voluntary termination of employment. In accepting these special initiatives, Employees relinquish any claims to other benefits payable under their existing individual contracts, collective agreements, and any other provisions of the applicable employment law. If such benefits are to be paid under these special initiatives, they must be specifically incorporated in the VERS /VES agreement. But there is no legal obligation to carry any pre-existing benefit forward, in VERS / VES agreements. So long as the exit agreement meets the minimum terms and conditions, contemplated under Section 27 of the *Employment Act*, the Court does not see any other obligations, which should be imposed upon the parties, in order for their exit agreement to be deemed to be valid and binding.

128. The submissions by the Claimants that the Respondent did not meet the requirements of the prevailing CBA, is flawed. The CBA did not apply to VES. Section 40 of the *Employment Act* had no application at all. VES had nothing to do with Employees' seniority, skills, abilities and reliability. There was no requirement for the Respondent to inform BIFU, about the reasons and extent of VES. The principle of Last In, First Out [LIFO], invoked by the Claimants, had no relevance at all. The Respondent went out of its way, in engaging BIFU, even though not legally required to do so. The JWC was engaged. The Union representatives endorsed the exercise. There was no requirement to notify the Labour Office, about a voluntary termination exercise.

129. The Court does not think that because the Respondent was automating its systems, and unfurling mobile banking, that the Claimants would be justified in concluding that the Respondent experienced a redundancy situation, calling for the application of Section 40 of the *Employment Act*.

130. Vaslas Odhiambo, the witness for the Respondent, explained to the Court that there were no roles declared redundant, and no branches or departments were merged. VES was aimed at improving the Respondent's business efficiency, without declaring positions redundant.

131. Not every business restructuring, involves redundancy. A business can restructure for various reasons. It can right-size its labour force, without declaring redundancies, by adopting other restructuring tools, such as VES and VERS. The *Employment Act* recognizes termination for operational reasons, which is not synonymous, with termination on account of redundancy. The Act also recognizes that parties to a contract of employment, may terminate the relationship voluntarily, through notice. At common law, a party to a contract may offer to the other, that they terminate their contract by agreement. VES is a corporate management tool, and can be an alternative to redundancy, but should never be mistaken, to be the same concept as redundancy.

132. The submissions by the Claimants, that they were not consulted by their Union, even as the Union was consulting the Respondent on VES, is not a grievance, which can be placed at the doorstep of the Respondent. If their Union was in breach of any duty to the Claimants, the remedy should be pursued against the Union, not the Respondent. The Court does not find merit in the submission that other banks offered better VES, or that the Respondent had offered superior VES terms in the past. Different voluntary exit contracts, offer different benefits, and there is nothing like industry-wide VES standards, or precedent. Every VES, must be assessed as a separate contract of termination of employment. The Court is only concerned with the VES agreements, executed by the Parties, in 2017 and 2018.

133. The submission by the Claimants that they were prejudiced, by receiving computation of their exit dues only after they had accepted the offer, does not rest on sound legal ground. They were advised in the offer about what benefits were payable. Computation would not precede acceptance of the offer. The exit agreement had not taken effect. A contractual offer becomes effective, only after it has been accepted by the offeree, and acceptance conveyed to the offeror [Bloom v. The American Swiss Watch Company, 1915 AD 100 at 102-3; Amcoal Collieries Limited v. Truter 1990 [1] SA 1 [A] at 4D]. Until the Respondent received the Claimants' acceptance of its VES offer, it was not required in law, to compute the benefits payable. VES had not become effective. The Court does not think that the Respondent acted unlawfully, by computing the Claimants' dues, only after receiving their acceptance of offer.

134. The Court is satisfied that VES in 2017/ 2018, was fair and lawful. The Respondent acted in accordance with the VES agreement, and the Claimants have not established any constitutional violations.

Recall and renegotiation of VES?

135. There is no foundation for recall and renegotiation of VES. The Claimants did not offer to refund what they received in VES packages, to lay a foundation for recall and renegotiations of VES. They cannot have their cake and eat it. A recall of the exercise would necessarily, take the parties back to 19th June 2017. They would have to reset, on a tabula rasa. The Claimants would be compelled to pay back to the Respondent, what they received, under what they consider to be a flawed VES.

136. The Claimants do not merit any of their prayers.

Counterclaim: -

137. The Court gave orders on 18th July 2018, that the Claimants continue to repay their loans, at the staff preferential interest rate.

138. The Court gave the orders upon hearing arguments from both parties. There was no appeal made by the Respondent against the orders. The orders were executed.

139. Both parties accepted the orders of the Court, and outstanding loans continued to be paid at the preferential interest rate, even after the 12 months' moratorium given by the Respondent to the Claimants, under VES had expired.

140. There is no basis for the Court to revisit this issue. The outstanding loans in question were not particularized in the Counterclaim. What are the specific figures, the revised interest rates accumulated over the years, and which of the Claimants, has outstanding loan, about 7 years after they left employment?

141. The Counterclaim is declined, with no order on the costs.

142. The Claim overall, does not seem to the Court, to have been well-founded, in fact and law. The Claimants entered into valid and binding agreements, to exit employment, after long years of service. They were well compensated under the VES terms. They accepted what was paid. They returned to Court, seeking more from the Respondent. They made several amendments to their Claim, bringing in lengthy constitutional arguments, with no bearing on VES, with the effect that the hearing and disposal of the Claim was prolonged. Their evidence concerning the reasons they accepted VES offer, was extremely wanting.

143. There is no doubt that the Respondent incurred substantial costs, in responding to a Claim, filed by 79 bankers, which appears to have been mounted on a very shaky, factual and legal foundation. The Respondent told the Court, that some of the unsuccessful applicants under the 2017 VES, indeed reapplied for VES in 2018. The Claimants are bankers, white collar Employees, who did not act from a position of ignorance, inadequate notice, or lack of consultations in applying for VES. The Claimants even included a Claimant they named XX, in their joint Claim, underlying lack of seriousness to the Claim.

144. The Claimants shall pay costs of the Claim to the Respondent.

In sum it is ordered: -

a. The Claim is declined with costs to the Respondent.

b. The Counterclaim is declined with no order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 12TH DAY OF NOVEMBER 2024.

James Rika

Judge