



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E490 OF 2020

(Before Hon. Lady Justice Maureen Onyango)

KENYA UNION OF COMMERCIAL AND ALLIED WORKERS.....CLAIMANT

VERSUS

LONDON DISTILLERS (K) LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant, Kenya Union of Commercial, Food and Allied Workers is a Trade Union registered as such within the laws of Kenya.
2. The Respondent is a company incorporated in Kenya and a leading distiller in East Africa licensed to distil and produce branded alcoholic beverages.
3. The parties do have a valid Recognition Agreement pursuant to which parties have negotiated several Collective Bargaining Agreements the last one being effective from 1st May, 2015 for two years, and is still in force pending review.
4. The issues in dispute are –
 - i. Unlawful Redundancy of Ten (10) Employees
 - ii. Unlawful Retirement of Five (5) Employees
5. It is the Claimant's case that on 12th August, 2020 employees of the Respondent arrived for work in the morning for normal duties to find a notice pinned within the Respondent's premises at Athi River factory threatening their continued employment. The said notice communicated that owing to the prevailing conditions of Covid 19, the company would reorganize their operations by taking the following actions: -
 - i. Services of some employees will no longer be required
 - ii. Some of the employees who have attained retirement age will also be released from the company.
 - iii. Employees of over 58 years will stay at home for their own health and safety.
 - iv. The affected employees will be paid in lieu of notice and all other dues.
6. That whereas the said notice was not addressed to any person or group of persons, the communication therein would affect the continued employment of some of the unionisable employees which prompted the Claimant to address the Respondent asking it to be guided by the Law, the parties' Recognition Agreement and the parties' Collective Bargaining Agreement.
7. The Claimant proposed to have a meeting with the Respondent on 24th August, 2020 at their Athi River Plant. That on 24th August, 2020, the Claimant's representatives availed themselves for the meeting on time but were unfortunately locked out of the gate and were not allowed to access the office of the Respondent for the proposed meeting.
8. In an effort to pursue dialogue on this matter, the Claimant wrote again to the Respondent on 26th August, 2020 proposing to have the

aborted meeting rescheduled to a date not later than 28th August, 2020 which gave the Respondent the option to fix a meeting date.

9. That instead of convening a meeting before 28th August 2020 as requested by the Claimant, the Respondent moved on 28th August 2020 and served ten (10) employees with redundancy letters informing them that their services would no longer be required with effect from 1st September, 2020. The said redundancy notices were received by the grievants on 31st August, 2020. The ten (10) employees declared redundant by a three day notice were: -

1. Ezekiel Musembi Musyoki – Kisumu Depot
2. Michael Rapando – Nakuru Depot
3. Fredrick Gwiyyaya Aradi – Nanyuki Depot
4. Titus Mutua – Eldoret Depot
5. Patrick Mwangi Chege – Eldoret Depot
6. Benson Bett – Nanyuki Depot
7. Acquillinah Kaveke Katambo – Headquarters
8. Bernard Mwangi – Kisumu Depot
9. Christopher Mwaura Gathera – Nakuru Depot
10. Judith Sichangi Murumba – Headquarters

10. On the same day, 28th August, 2020, the Respondent served retirement notices to five (5) employees namely: -

1. Juliana Mbaika Kivai
2. Ndagwa Musembi
3. Joseph Amoche Litaba
4. David Ogando
5. Albert M. Libele

11. That in the said retirement notices, the Respondent promised to pay the retirees one month's salary in lieu of notice.

12. It is the Claimant's case that the notice period served upon the fifteen (15) employees, giving them three (3) days to quit employment and promising them one month's salary in lieu of notice was in violation of Clauses 6, 22 and 23 of the Collective Bargaining Agreement and Sections 40 and 41 of the Employment Act, 2007 dealing with procedural fairness in cases of termination of service.

13. The Claimant avers that it was wrong for the Respondent to pay service pay on the basis of fifteen (15) days for each year worked instead of seventy (70) days' pay for each year served for retirees as dictated by Clause 22 (d) of the Collective Bargaining Agreement. That the Respondent paid fifteen (15) days' pay for each year worked instead of between 30 – 60 days for those declared redundant or terminated as spelt out under Clause 6(c) of the Collective Bargaining Agreement. That the Respondent did not observe Clause 22(f) of the Collective Bargaining Agreement with regards to the retirees.

14. The Claimant contends that without reason whatsoever, the Respondent initiated a process to terminate the parties Recognition Agreement. That the Respondent also initiated a similar process to terminate the other Recognition Agreement between the Claimant and their sister company, Bounty Limited.

15. The Claimant further contends that while making this unfortunate move: -

- i. The Claimant's membership had not dropped below a level that cannot sustain Recognition Agreement
- ii. There is no rival Trade Union claiming to represent the interest of their employees
- iii. There was no discovery that the Claimant is not the right sector Trade Union.

16. That in the Respondent's letter intending to terminate the Recognition Agreement it is alleged that the Claimant recruited their "*personal and domestic employees*". The Claimant contends and even "*personal and domestic employees*" have labour rights as they were not poached from another union.

17. That apart from their intention to do away with Trade Union representation, the Respondent on 22nd January, 2020, stopped the deduction and remittance of Trade Union dues to the Claimant and COTU (K) without any instruction from any of the Claimant's members to do so.

18. The Claimant avers that the employees at Bounty Limited, their sister company engaged in the bottling of drinking water, suffered the worst form of victimization on account of their Trade Union membership. That their services were terminated, not because the company was closing down or because of inability to sustain staff levels but because they found it easier to engage contract workers who would be dictated on matters concerning Trade Union representation. That the Respondent denied several employees their right to employment only for reason of their Trade Union membership.

19. In the memorandum of claim dated 3rd September 2020 and filed on 4th September 2020, the Claimant prays for the following remedies –

(A) (i) Declare the Notice dated 12th August, 2020 as unlawful, invalid, improper, null and void.

(ii) Order the Respondent to reinstate all the ten (10) employees terminated on account of redundancies by letters dated 28th August 2020 and five (5) employees retired by letters of even date.

(iii) Order the Respondent to pay all the wages and allowances which the said terminated/retired employees would have earned had their services not been unlawfully terminated.

(iv) Award Twelve (12) months gross wages being compensation for wrongful/unlawful termination.

(v) Costs be granted to the claimant.

(B) (i) Where the court upholds the redundancies, the affected employees be paid for appropriate notice and severance (service) pay as per clause 6 and 23 of the parties Collective Bargaining Agreement.

(ii) Any other benefit due and owing to the affected employees.

(iii) The retired employees be paid in accordance with clause 6 and 22 of parties Collective Bargaining Agreement and;

(iv) Award Twelve months gross wages by way of compensation for wrongful retirement.

(v) Costs of the suit to the claimant.

(C) The Respondent to observe clauses 6, 22 and 23 in the event they intend to terminate any of the remaining employees on account of redundancy or retire any of them.

20. In the submissions filed by the Claimant dated 3rd June 2021, it is submitted that the requisite redundancy notice under Section 40(1)(a) of the Employment Act, 2007 and the information to the Claimant under Clause 23(a) of the parties' Collective Bargaining Agreement was not issued to the Claimant. That in effect Section 40(1)(a) and Clause 23 of the Collective Bargaining Agreement were flouted, ignored and breached.

21. That according to Clause 22 of the parties' Collective Bargaining Agreement, retirement from the company is in three forms;

i. Retirement from service at 60 years

ii. An established employee may voluntarily apply for early retirement at the age of 50 years or;

iii. Retirement on medical grounds which is not applicable in this suit.

22. The Claimant submits that in all cases of retirement, be it normal retirement at the age of 60 years or voluntary retirement at the initiative of the employee or retirement on medical grounds, notice of 45 days in writing must be served. There is no provision for payment in lieu of such notice as Clause 22(e) of the Collective Bargaining Agreement does not require pay in lieu of notice.

23. That the letters retiring five employees were dated 28th August, 2020 but received by the grievants on 31st August, 2020. The said letters had a rider that the company shall pay one month's pay in lieu of notice, which was unlawful, because notice as per Clause 22(e) of the Collective Bargaining Agreement was 45 days and not one month and that the said notice is served and not paid for in lieu.

24. That in any event, it is notice for normal termination of service which can be served or paid for in lieu and not retirement notice. That the redundancy law at Section 40(1)(f) of the Employment Act, 2007, demands that notice of redundancy is paid and not otherwise.

25. That the Respondent's intention was to engage in unfair labour practice in the hope that it would do away with Trade Union

representation. That the Respondent made attempts on 19th June, 2017 and on 22nd June, 2017 to terminate the parties' Recognition Agreement without any reason to do so. That the Respondent without reason, stopped deduction and remittance of union dues to cause financial suffering to the Claimant and to COTU(K).

26. The Claimant submits that the onslaught was even more severe for employees of Bounty Limited, their sister company, where the Respondent managed to terminate the services of all union members to defeat Trade Union representation.

27. The Claimant submits that the Respondent was hiding behind Covid 19 pandemic, as an opportunity for them to accomplish their anti-union activities.

28. The Claimant submitted that it had seen a notice in the Respondent's Reply to claim at page 37 (annexure 8). That this notice was allegedly addressed to the Sub- County Labour officer, Industrial Area, Nairobi. That the employees declared redundancy were from various counties such as Nakuru, Nanyuki, Kisumu and Eldoret. That notices to those County Labour officers were not served which further confirm the unlawfulness of the action.

29. The Claimant submits that the Respondent has;

i. Disobeyed the redundancy law

ii. Violated clause 6, 22 and 23 of the parties' Collective Bargaining Agreement in terms of the period of notice and service, of such notice.

iii. Provoked the union beyond measure with the hope that such action will lead to industrial strife to be used to discipline union members but on this, the Union acted with restraint and has all the way maintained industrial peace.

30. The Claimant submitted that the Respondent was using Trade Union membership of employees at Galot – Estate, Kiambu to launch a war against it. That employees have a right of Union representation and the Respondent cannot dictate to its employees on which union to join.

Respondent's Case

31. The Respondent filed a reply to the claim dated 4th May 2021 together with witness statement of Peter Nzioka Muli of even date.

32. It is the Respondent's case that redundancy is a statutory procedure set out at sections 2 and 40 of the Employment Act. Redundancy is the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.

33. It is further the Respondent's case that with the current predicament of the Covid-19, the Respondent has not been spared. As a result, the Respondent has been compelled to consider options to adopt so as to ensure that the company still stands despite the financial difficulties. That with the advice from its financial advisor, the best option is scaling down its employees in order to reduce the wage bill.

34. The Respondent relies on the decision in **Mornach Insurance Co. Ltd v Industrial Court & Another [2015] eKLR** where the Court stated:

"There comes a time when an enterprise is compelled by adverse economic conditions to resort to redundancy, usually after all other cost saving measures have proved insufficient to meet prevailing realities."

35. The Respondent submits that it complied with the provisions of Section 40 of the Employment Act. It is the Respondent's case that there is no place for consultation between the employer and employees and further that it has no obligation to negotiate redundancy with the Claimant relying on the decision of the Court of Appeal in **Kenya Airways Limited v Aviation & Allied Workers Union of Kenya & 3 Others** where the Court stated:

"The law of Kenya does not provide for pre-redundancy consultation but only post redundancy dispute resolution."

36. The Respondent submits that there is no provision in law for consultation with the Claimants when the Respondent has opted for redundancy during these hard times. They rely on the case of **Aoraki Corporations Limited v Collin Keithmcgavin CA 2 OF 1997 [1988] 2 NZLR**, where it was held:

"... It cannot be mandatory for the employer to consult with all potentially affected employees in making any redundancy decision. To impose an absolute requirement of that kind would be inconsistent with the employer's prima facie right to organize and run its business operation as it sees fit. And consultation would often be impracticable, particularly where circumstances are seen to require mass redundancies ..."

37. The Respondent further relies on the case of **G. N. Hale & Son Ltd v Wellington Caretakers IUA** cited with approval in **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR** wherein the Court stated:

"... a worker does not have the right to continue employment if the business can run more efficiently without him. So long as the employer genuinely believed that there was a redundancy situation, then any dismissal was justified, and it was not for the court, or the union, to substitute their business judgment with that of the employer..."

38. That the Respondent only acted in good faith and thus the claim before this Court that the redundancy was not valid and had no merit. That the Claimant was questioning the Respondent's business sustainable mechanisms and by allowing the Claimant's claim, the Court would be interfering with the daily running of the Respondent's Company.

39. The Respondent also relied on the case of **Kenya Airways Limited v Aviation & Allied Workers Union of Kenya & 3 Others [2014] eKLR** where the court was of the view that as long as the employer believes that there is a genuine redundancy situation, it is not for the Court or the union to question the employer's business decision.

40. It was the Respondent's submission that the notice issued to the Claimant's members dated 12th August, 2020 was in accordance with Section 40 of the Employment Act which provided the conditions under which an employer can terminate an employee on account of redundancy.

41. The Respondent invited the Court to take judicial notice that on the 6th of April 2020, His Excellency, The President addressed the Republic Kenya, by issuing directives that employees who are above the age of 58 should stay at home. That the Respondent relied on the Government directives when issuing the notice dated 12th August 2020.

42. The Respondent submits that it was unfair and uncouth for the Claimant to question the decision of the Respondent. That all that the Respondent did was to secure the safety of its employees and to try its level best to fight the spread of Covid 19.

43. The Respondent urged the Court to dismiss the claim before it as the Respondent only acted with the best interest of the Company in mind.

44. The Respondent contended that if the Claimant's member employees were reinstated, the Court would be going beyond their scope and interfering with the running of the Company. To buttress this position, the Respondent relied on the case of **David Magoti v Kenya Tea Development Authority, Civil Appeal No. 165 of 1997** where it was stated:

"... It is settled law that if an employer does not wish to continue with the services of an employee the employee cannot seek reinstatement to his job. Such relief as sought by the appellant for reinstatement cannot be granted..."

45. It is the Respondent's submission that the notice issued to the Claimant's members dated 12th August, 2020 was in accordance with Section 40 of the Employment Act which provided the conditions under which an employer can terminate an employee on account of redundancy. That in any event, the Employees terminal benefits were computed and paid out to them but on the Claimant's advice a number of them refused and/or declined to pick their terminal payments.

46. It is the Respondent's submissions that the claim lacks merit, and that the same be dismissed or struck out. The Respondent relies on the decision in **Kenya Plantation & Agricultural Workers Union v James Finley (K) Limited [2013] eKLR**, where the Court held that;

"An employer would be entitled to undertake redundancy just like that employer would be entitled to undertake the other human resource functions like recruitment and selection, appointment and promotion, training and development and termination of the contract of service including dismissal on disciplinary grounds."

49. The Respondent further submits that the Collective Bargaining Agreement been referred to by the Claimant has been constructively vitiated by the continuous neglect and violation of the same by the Claimant and the Claimant's plea that this Court to compel the Respondent to observe Clause 6, 22 and 23 of the Collective Bargaining Agreement bears no merit.

Analysis and Determination

48. Having considered the pleadings and submissions on record, the issues for determination are whether the redundancies and retirements by the Respondent were in compliance with the law and whether the Claimant is entitled to the orders sought.

49. Redundancy is provided for under Section 40(1) of the Employment Act as follows –

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.

50. Further the CBA between the Claimant and the Respondent provides for redundancy, termination and retirement as follows –

"23. Redundancy

In the event of redundancy, the following principles shall apply: -

- a. The union shall be informed by the employer the reasons for the extent of the intended redundancy.
- b. The principle shall be adopted of "LAST IN, FIRST OUT in the particular category of employees affected, subject to all other factors such as skills, relative merit, ability and reliability being equal.
- c. The redundant employees will be entitled to the appropriate period of notice or pay in lieu as per Clause No. 6(b) of this CBA.
- d. The redundant employee will be entitled to a service pay as per Clause No. 6(c) of this CBA.

6. Termination of service

- a. After the completion of the probationary period in employment, an employee may be terminated by giving one month's notice or one month's salary in lieu of notice.
- b. An employee with the service of between one (1) year - 4 years shall be given 1 (one) months' notice or salary in lieu of the one month notice. 5-9 years, shall be given 4 months' notice or salary in lieu of four months. An employee who is above 9 years in employment shall be paid 5 months' notice or salary in lieu of five months' salary.
- c. the affected employee will be entitled to service pay of: -
 - i. 1 year - 4 years (30 days)
 - ii. 5 years to 8 years (50 days)
 - iii. 9 years and above (60 days) "

22. Retirement

- a. The normal age at which an establishment employee will be required to retire from the service will be 60 years.
- b. An established employee may voluntarily apply for early retirement at the age of 50 years. Such application will be considered on merit and acceptance or otherwise will be subject to exigencies of service.
- c. An employee who disputes his age according to records will be referred to a government hospital or private hospital (as will be agreed by both parties) for the age of such an employee to be determined. On engagement, every employee shall give his age supported by documentary evidence.
- d. An employee who retires or is retired including medical retirement he/she will be entitled to 70 days of service pay for each completed year of service.
- e. An employee may be retired or may retire voluntarily or on medical grounds
- f. by receiving from the employer or he/she giving forty five (45) days' notice in writing.

g. An employee who retires or is retired will be given Kshs.27,000.00 (twenty seven thousand shillings only) lumpsum by the management. See exhibit 2 attached to the claim at pages 37- 49."

51. The Respondent has submitted that the CBA between the parties has been constructively vitiated by the continuous neglect and violation of the same by the Claimant. The Respondent has however not given the particulars of the alleged violations of the CBA by the Claimant. This notwithstanding, a CBA is a document that is provided for by law. It cannot be vitiated constructively. It cannot even be terminated as the terms of a CBA once registered by the Court become subsumed into the terms of employment of an employee.

52. Section 59 of the Labour Relations Act provides that –

59. Effect of collective agreements

1. A collective agreement binds for the period of the agreement—

a. the parties to the agreement;

b. all unionisable employees employed by the employer, group of employers or members of the employers' organisation party to the agreement; or

c. the employers who are or become members of an employers' organisation party to the agreement, to the extent that the agreement relates to their employees.

2. A collective agreement shall continue to be binding on an employer or employees who were parties to the agreement at the time of its commencement and includes members who have resigned from that trade union or employers' association.

3. The terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.

4. A collective agreement shall be in writing and shall be signed by—

a. the chief executive officer of any employer, the chief executive or national secretary of an employers' organisation that is a party to the agreement or a representative designated by that person; and

b. the general secretary of any trade union that is a party to the agreement or a representative designated by the general secretary.

5. A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial Court and shall be effective from the date agreed upon by the parties.

53. The CBA between the parties is therefore valid and binding upon the Respondent. The letter dated 22nd June 2017 which expressed the intention of the Respondent to terminate the Recognition Agreement did not therefore have any effect on the CBA.

54. It is not disputed that on 12th August 2020 the Respondent put up a notice on its notice board as reproduced below –

“12th August 2020

NOTICE

We wish to inform that owing to the prevailing conditions of covid 19 in the country, which has drastically affected our operations, resulting to low sales, the management is planning to reorganize its operations. As a result, services of some employees will no longer be required. Likewise, some of the employees who have attained retirement age will be — also be released from the company. This is also as per the government covid 19 guidelines that employees over 58 years, should stay at home for their own health and safety.

Regards

SIGNED

P. S. MANN

G. M. ADMINISTRATION”

55. On 13th August 2020 the Respondent sent a Redundancy Notice to the Sub County Labour Officer, Industrial Area as reproduced below –

“13th August 2020,

Sub-county Labour officer

INDUSTRIAL AREA

Ministry of Labour & Social Protection

STATE DEPARTMENT OF LABOUR

P. O Box 18183 – 00600

NAIROBI

Dear Sir

RE: REDUNDANCY NOTICE

The above refers.

London Distillers (K) Ltd, which has a factory in Athi River and headquartered in Nairobi County, with depots in Mombasa, Nanyuki, Eldoret, Kisumu, Machakos, Thika and Nakuru has initiated the process of rendering some of its employees redundant. This has been occasioned by the negative impact of covid 19 epidemic. Some of our depots' operations, as well as the factory and head office have negatively been affected resulting to low sales.

We now issue you with a Notice Pursuant to Section 40(1) of the Employment Act, 2007 to proceed with termination on account of Redundancy of 10 – 20 employees.

Please attached, find a notice by our GM – Administration dated 12th August 2020 on the same to all employees.

In view of the above, we assure you that the company will fully comply with all statutory requirements as provided for under the law in payment of terminal benefits of all affected

workers.

Yours Faithfully,

FOR LONDON DISTILLERS (K) LTD.

SIGNED

PETER N. MULI

GROUP HUMAN RESOURCE MANAGER”

56. Both notices do not comply with either the CBA or Section 40 of the Employment Act in respect of the redundancy or the CBA in respect of retirement. Specifically, no notice as issued to any of the employees. The notice of the notice board did not refer to any employee and no notice was issued to any employee individually.

57. There was further no notification to the Union in terms of Section 40(1)(a) of (b). The notice to the Labour Officer was also sent only to Nairobi and not nay of the other stations where some of the employees declared redundant were station being Kisumu, Eldoret, Nakuru and Nanyuki. Further, the notice did not meet the timelines in the Act.

58. The Respondent has further not denied that it did not pay both notice, severance pay and retirement benefits as provided for in the CBA. The Respondent did not submit the tabulation of terminal dues to Court to verify if payment was in accordance with the law and the CBA signed by the parities and registered in Court. The Respondent further did not demonstrate the criteria for selection for redundancy.

59. For the retirements, the Respondent did not demonstrate that the selected employees had attained retirement age as per CBA or comply with the retirements for early retirement.

60. The COVID 19 protocols cited by the Respondent as the basis for redundancy did not provide for either redundancy or retirement of employees but only for safe working conditions to minimise exposure at the workplace.

61. The COVID Protocols did not authorise employers to breach any provisions of the law in laying off workers. The Respondent was thus under obligation to comply fully with both statutory and CBA retirements in releasing workers on either ground of redundancy or retirement.

62. From the foregoing, it is evident that both the redundancies and the retirements by the Respondent amounted to unfair termination of employment of all the affected employees for failure to comply with the statutory and contractual (CBA) provisions. I therefore find and declare both the redundancies and the retirements unfair.

Remedies

63. The Claimant prays for reinstatement of the grievants. Taking into account the very hostile attitude of the Respondent that is so manifest in the pleadings, reinstatement will not be a viable option for the grievants. I will therefore instead award the grievants compensation which was in the alternative prayers of the Claimant.

64. For the employees declared **redundant** I award the following:

- i. Salary up to date of leaving employment being 31st August 2020.**
- ii. Pay lieu of notification of intended redundancy being one month's gross salary as per Section 40(1)(a) of the Employment Act.**
- iii. Pay in lieu of notice as per clause 23(c) as read with Clause 6 of the CBA.**
- iv. Severance pay according to Clause 23(d) as read with Clause 6 of the CBA.**
- v. Any leave due and not taken.**
- vi. Compensation equivalent to 10 months' salary.**

65. For employees **retired** by the Respondent, I award the following: -

- i. Salary up to date of leaving employment being 31st August 2020.**
- ii. Pay lieu of notice of 45 days as per Clause 22(f) of CBA.**
- iii. 70 days service pay per completed year of service as per Clause 22(d) of CBA.**
- iv. Kshs.27,000/- lumpsum as per Clause 22(f) of the CBA.**
- v. Any leave due and not taken.**
- vi. Compensation equivalent to 10 months' salary.**

66. Any payments in relation to any of the above heads already made to the employees shall be deducted from the amount payable.

67. Interest shall accrue from date of filing suit for all items except compensation which will accrue interest from date of judgment.

68. The Claimant is awarded costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 19TH DAY OF JANUARY, 2022

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MAUREEN ONYANGO

JUDGE