



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 1322 OF 2016**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**JOHN MUKOSI KIOKI..... 1<sup>ST</sup> CLAIMANT**  
**JOSPEH LUSAKA..... 2<sup>ND</sup> CLAIMANT**  
**JANE WANGARI.....3<sup>RD</sup> CLAIMANT**  
**GEOFFREY SAFARI NTHENGE..... 4<sup>TH</sup> CLAIMANT**

**VERSUS**

**PRIMI PIATTI LIMITED..... 1<sup>ST</sup> RESPONDENT**  
**ALEXANDRE CHOCOLATIERS LIMITED..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim dated 1<sup>st</sup> July 2016 and filed in Court on 5<sup>th</sup> July 2017, the Claimants sued the Respondent alleging that they were illegally and unlawfully terminated without terminal dues.

**Claimants’ Case**

2. The Claimants aver that while the 1<sup>st</sup> and 2<sup>nd</sup> Claimants had a monthly salary of Kshs.12,000/- as at the date of termination, the 3<sup>rd</sup> and 4<sup>th</sup> Claimants’ salary was Kshs.12,000/- and Kshs.9,700/- respectively. They allege that they were appointed by word of mouth as waiters and bakery machine operators on diverse days between 19<sup>th</sup> April 2010 and October 2015. That they were wrongly terminated in October 2015 without any warning letter or notice and without payment of terminal dues having served the Respondent for between 1 and 5 years.

3. They aver that they were under paid contrary to the operative Wage Guidelines Legal Notices 117 of 2015 and Legal Notice No. 197 of 2015. That their salaries should have been Kshs.13,606/- and Kshs.17,003/-.

4. It is their case that attempts to resolve the dispute through the Labour Office fell through due to nonattendance of meetings by the Respondent notwithstanding three (3) invitations in writing.

5. It is further averred that the Claimants were not taken through any disciplinary process before termination and their termination on account of redundancy did not comply with the provisions of Section 40 of the Employment Act.

6. The Claimants seek the following reliefs: -

**1<sup>ST</sup> CLAIMANT – JOHN KIOKO MUKOSI**

(i) 12 months’ compensation

(12 x 13,006)..... Kshs.163,272

(ii) Severance pay 5 years (15 x 5 x 454)..... Kshs.34,050

(iii)..... Salary underpayment 5 years

(1,606 x 12 x 5)..... Kshs.96,360

**Total Kshs.293,682**

**2<sup>ND</sup> CLAIMANT – JOSEPH LUSAKA**

(i) 12 months' compensation

(12 x 13,006)..... Kshs.163,272

(ii) Severance pay 3 years (15 x 3 x 454)..... Kshs.20,430

(iii)..... Salary underpayment 3 years

(1,606 x 12 x 3)..... Kshs.57,816

**Total Kshs.241,518**

**3<sup>RD</sup> CLAIMANT – JANE WANGARI**

(i) 12 months' compensation

(12 x 13,006)..... Kshs.163,272

(ii) Severance pay 3 years (15 x 3 x 454)..... Kshs.20,430

(iii)..... Salary underpayment 3 years

(1,606 x 12 x 3)..... Kshs.57,816

**Total Kshs.241,518**

**4<sup>TH</sup> CLAIMANT – GEOFFREY SAFARI NTHENGE**

(i) 12 months' compensation

(12 x 17,003)..... Kshs.204,038

(ii)..... Leave prorata for one year, 24 days

x 567..... Kshs.13,608

(iii) Salary underpayment 7,303 x 12..... Kshs.87,636

(iv) Severance pay for one year (15 days)..... Kshs.8,505

**Total Kshs.313,785**

**Grand total.. Kshs.1,090,503**

**Respondents' Case**

7. The Respondent filed its statement of defence on 25<sup>th</sup> August 2016. The Respondent avers that its description by the Claimant is vague and does not disclose who the Respondent is.

8. The Respondents further denies that the Claimants were appointed by word of mouth or were illegally or unlawfully terminated or underpaid them.

9. It is also averred that the Respondent settled all dues owed to the Claimants. That the dispute reported to the Labour Office was

addressed.

10. It is the Respondent's case that the Claimants were aware of the reason for termination, that is they were declared redundant, a fact that had been communicated to them before they were declared redundant and accepted their dues.

11. The Respondent denies having acted in bad faith or victimised the Claimants and prays for dismissal of the suit with costs.

### **Evidence**

12. Three witnesses testified for the Claimants' case. CW1, JOHN KIOKO testified that he was terminated in October 2015 but was unsure of the actual date, possibly 31<sup>st</sup> October 2015. That no reason was given and no notice was issued but was paid for the month of October 2015 and one other month's salary. He testified that his monthly pay was Kshs.12,000/- with no house allowance. That he was a royal and diligent employee.

13. On cross examination the witness confirmed that he filed a witness statement on 5<sup>th</sup> July 2016. That the Respondents were sister companies but his employer was Primi Piatti Limited and joined on 19<sup>th</sup> April 2010 but had no documentation.

14. The witness confirmed that the employer issued a payslip every month. That he had no evidence to show that he worked for the Respondent for five years and the hotel closed in October 2015.

15. In re-examination, the witness testified that the restaurant sold the other company's products. Had no appointment letter and had not been informed that there would be no work after 31<sup>st</sup> October 2015.

16. CW2, JOSEPH MUSAKA adopted the written statement and testified that he was employed on 1<sup>st</sup> April 2012 by Primi Piatti Limited as a waiter at Kshs.12,000/- per month and was terminated in October 2015 having been a diligent worker. He told the Court that he was unaware that the business would be closing in October 2015. The witness testified that his salary was Kshs.12,000/- per month exclusive of house allowance and was claiming notice pay, overtime and payment for untaken leave days.

17. On cross examination CW2 confirmed that he was employed on 1<sup>st</sup> April 2012 but had not documentary evidence to show. That he was given an appointment letter but had not filed it in Court and filed only one payslip yet had had all of them. The witnesses confirmed that he was paid in lieu of notice and Kshs.6,000/- as redundancy pay. He further confirmed that he was an employee of Primi Piatti Limited based at the pay counter where he served as a waiter.

18. CW3, GEOFFREY SAFARI NTHENGE testified that he was employed on 2<sup>nd</sup> February 2015 and was terminated on October 2015. That he was an employee of the 2<sup>nd</sup> Respondent where he worked as a baker working both day and night and different times. That he was not given the reason(s) for termination and declined the amount paid. His salary was Kshs.9,700/- per month without house allowance.

19. In cross examination, CW3 confirmed that his statement was not signed.

20. That he was employed on 2<sup>nd</sup> February 2015 but had evidence of the contract of employment and was terminated on 31<sup>st</sup> October 2015. The witness further confirmed that he was engaged as a baker at a monthly salary of Kshs.9,700/- and the employer was the 2<sup>nd</sup> Respondent. That according to the letter from the Labour Office dated 16<sup>th</sup> February 2016, he was terminated on 5<sup>th</sup> February 2016.

21. The witness confirmed having given false testimony in Court on the date of termination and filed the payslip for September 2015.

22. Strangely the witness confirmed that he was terminated in October 2015 and did not pick the salary for October 2015.

23. As per the letter from the Labour Office, the witness sought salaries for January and February 2016 and testified that the Labour Office captured wrong information. The witnesses further confirmed that he worked from 2<sup>nd</sup> February 2015 to October 2015 about nine months but sought underpayment for 12 months and severance pay for one (1) year not 9 months and leave pay for one year.

24. He testified that the employer did not attend any meeting at the Labour Office.

25. On re-examination the witness confirmed that he was not paid after the redundancy.

26. The Respondent did not lead any evidence.

### **Claimant's Submissions**

27. The Claimants identified three (3) issues for determination namely whether –

(i) The Claimants were bonafide employees of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents;

(ii) The 1<sup>st</sup> and 2<sup>nd</sup> Respondents unlawfully terminated the services of the Claimants without paying their terminal dues;

(iii) The 4<sup>th</sup> Claimant resigned from the 2<sup>nd</sup> Respondent's employment of his own violation or by absconding duty;

(iv) The Claimants are entitled to the prayers set forth in the memorandum of claim.

28. As to whether the Claimants were employees of the Respondents, it is submitted that CW1, CW2 and CW3 were employed by the Respondents on 19<sup>th</sup> April 2010, 1<sup>st</sup> April 2012 and 2<sup>nd</sup> February 2015 respectively and no evidence was led to the contrary.

29. It was submitted that the Respondents were sister companies, a fact the Respondents did not deny and the Claimants would be assigned roles in the 2<sup>nd</sup> Respondent as well.

30. It is submitted that the Claimants were employees of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

31. As regards termination, without payment of terminal dues, it is submitted that the Claimants were unlawfully terminated in October 2015, when they were notified that they would no longer be working for the 1<sup>st</sup> Respondent as waiters and there was no redundancy notice to the Claimants or the Labour officer or that Section 40 of the Employment Act was complied with.

32. It is submitted that the termination of the Claimants was unlawful and illegal.

33. Further it is also contended that the 4<sup>th</sup> Respondent was terminated by the 2<sup>nd</sup> Respondent in October 2015.

34. It is urged that CW3 sought assistance of the Labour Officer who invited the Respondent by letter indicating that CW3 was terminated on 1<sup>st</sup> March 2016 and the 2<sup>nd</sup> Respondent did not respond, pushing the case further.

35. Pushing the case further, the Claimants submit that they were not taken through any disciplinary hearing before termination.

36. As to whether the 4<sup>th</sup> Claimant resigned from the 2<sup>nd</sup> Respondent or abandoned duty, it submitted that the 4<sup>th</sup> Claimant was unlawfully terminated. The Court is urged to find that the testimony adduced by the 4<sup>th</sup> Claimant was true, that he was terminated by the 2<sup>nd</sup> Respondent.

37. The 2<sup>nd</sup> Respondent did not issue a notice to show cause if the 4<sup>th</sup> Claimant had absconded duty. It is also submitted that the 2<sup>nd</sup> Respondent did not pay the 4<sup>th</sup> Claimants dues in full.

38. As regards reliefs, it is submitted that the Claimants are entitled to the reliefs sought as follows –

i) Unpaid leave for one year due and owing to the 4<sup>th</sup> Claimant. That he did not take leave since employment.

ii) Severance pay

The claim is founded on Section 40(1) of the Employment Act.

iii) 12 months' salary for wrongful termination

The remedy is grounded on the premise that the termination was unlawful.

iv) Salary underpayment

That by virtue of Regulation of Wages Order 2013 and 2015, the Claimants were underpaid as follows –

1<sup>st</sup> Claimant – Kshs.148.14 per month

2<sup>nd</sup> Claimant – Kshs.148.14 per month

3<sup>rd</sup> Claimant – Kshs.148.14 per month

4<sup>th</sup> Claimant – Kshs.7,303.50 per month

39. It is submitted the claim for underpayment should be allowed as of right.

### **Respondent's Submissions**

40. The Respondent identified one issue for determination namely, whether the termination of the Claimants' employment on account of redundancy was fair and if not what remedies are available to the Claimants for unfair termination.

41. Reliance is made on the decision in **Kenya Airways Corporation Ltd v Tobias Oganya Auma & 5 Others [2007] eKLR** for the definition of redundancy and to urge that since the Respondent's hotel business was closed down in October 2015, owing to severe financial hardships, and is no longer in business, the Respondents were entitled to retrench the Claimants and other members of staff by declaring them redundant.

42. It is also submitted that the Claimants were aware of the impending redundancy and negotiated with the Respondent on their final dues which they accepted. That all had agreed that redundancy was inevitable and consented to the process.

43. It is further submitted that the Court should address the question whether the reason(s) for termination were genuine and that in this case the Respondents had genuine reasons since the business was no longer sustainable. The decision in **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR**, is relied upon to urge that unlike South Africa where the law provides for consultations before termination on account of redundancy, the law in Kenya did not require any consultations prior to declaration of redundancy. Counsel relies exclusively on the dissenting judgment in this case.

44. Finally, it is submitted that the Respondents had a valid and fair reason to declare the Claimants redundant since the hotel business ceased operation in October 2015 and the termination was justified. That the Respondents conducted a genuine redundancy and a fair procedure was employed.

#### **Analysis and Determination**

45. Having carefully considered the pleadings, documentary and oral evidence, submissions by the Counsel and the relevant law, the issues for determination are whether: -

- a) The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants were declared redundant by the 1<sup>st</sup> Respondent or unlawfully terminated;
- b) The 4<sup>th</sup> Respondent was terminated or absconded duty;
- c) The Claimants are entitled to the remedies sought.

46. As regards employment of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants, it is common ground that all were employees of the 1<sup>st</sup> Respondent employed as waiters and waitress on diverse days between 2010 and 2012, at a gross monthly salary of Kshs.12,000/-. The 4<sup>th</sup> Claimant was employed by the 2<sup>nd</sup> Respondent as a baker in February 2015. The 3<sup>rd</sup> Claimant made a witness statement and executed authority to the 1<sup>st</sup> Claimant to act on her behalf.

47. As to whether the Claimants were declared redundant by the 1<sup>st</sup> Respondent or unlawfully terminated, the first point of call is Section 2 of the Employment Act, 2007 which provides that; -

***“redundancy” means 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;***

48. As correctly submitted by the Respondent, the reason(s) for redundancy are legion and generally relate to operational requirements of the business and the end game is that employees loose employment. As explained by the Court in **Cause No. 94 of 1993 Kenya Airline Pilots Association and Kenya Airways Limited**; cited by the Respondent –

*“The situation can be brought about by many factors, such as change in the method of working, reorganisation and technological changes due to economic conditions, etc. Although redundancy moves are generally made by the employer, it is a method of determining the employment contract.”*

49. Invariably, redundancy is a termination of employment at the instance of the employer and since the law contemplates such occurrences, it provides the attendant legal framework. Section 40 the Employment Act provides the gamut of the provisions to be complied with by an employer in conducting a lawful redundancy.

50. In **Freight In Time Limited v Rosebell Wambui Munene [2018] eKLR** the Court of Appeal stated as follows:

*“In addition, Section 40 (1)of the Employment Act prohibits, in mandatory tone, the termination of a contract of service on account of redundancy unless the employer complies with the following seven conditions, namely:*

- a. *if the employee to be declared redundant is a member of a union, the employer must notify the union and the local labour officer of the reasons and the extent of the redundancy at least one month before the date when the redundancy is to take effect;*
- b. *if the employee is not a member of the union, the employer must notify the employee personally in writing together with the labour officer;*
- c. *in determining the employees to be declared redundant, the employer must consider seniority in time, skill, ability, reliability of the employees;*

- d. where the terminal benefits payable upon redundancy are set under a collective agreement, the employer shall not place an employee at a disadvantage on account of the employee being or not being a member of a trade union;
- e. the employer must pay the employee any leave due in cash;
- f. the employer must pay the employee at least one month's notice or one month's wages in lieu of notice; and
- g. the employer must pay the employee severance pay at the rate of not less than 15 days for each completed year of service."

51. In **Kenafri Industries Limited v John Gitonga Njeru [2016] eKLR** the Court of Appeal stated that –

*“The adherence to the above conditions by the employer is mandatory and not left to its whims.”*

52. In **Barclays Bank of Kenya Ltd & another v Gladys Muthoni & 20 others [2018] eKLR**, the Court of Appeal stated that

*“There is a heavy burden of proof placed upon the employer to justify any termination of employment. As stated earlier, the appellants here ought to have given the "the reasons and the extent of the redundancy" but there is no evidence on record sufficient to discharge that burden. ...”*

53. The Court is bound by these pronouncements.

54. I will now proceed to apply the foregoing principles to the facts of the instant case. As mentioned elsewhere in this judgement, the Respondents adduced neither documentary nor oral evidence in support of their averments in the statement of defence dated 26<sup>th</sup> August 2016 and filed in Court on even date.

55. Although paragraph 10 of the statement of defence states that the Claimants were aware that they were being declared redundant, and the same had been communicated to them, no evidence to that effect was adduced before the Court. The singular reference to the term redundancy is the payslips of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants which shows that a payment of Kshs.6,000/- designated as redundancy.

56. Without a scintilla of evidence that the 1<sup>st</sup> Respondent was undergoing a restructuring or re-organization or other circumstance which necessitated redundancy of the Claimants or compliance with the provisions of Section 41 of the Employment Act, 2007, the Court is satisfied that the Respondent has not discharged the heavy burden of proof to justify any termination of employment. The 1<sup>st</sup> Respondent ought to have led evidence on the reasons and extend of the purported redundancy and its compliance with the law.

57. There is no evidence on record to discharge the burden of proof.

58. Similarly, the Respondents' submission that the its restaurant business closed possibly due to severe financial hardship was not supported by any evidence.

59. Relatedly, the Respondents' submission that the law of Kenya does not provide for pre-redundancy consultation, is not supported by any judicial authority.

60. The majority judgment in **Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others (supra)** held otherwise and the holding was reinforced in **Barclays Bank of Kenya Ltd & another v Gladys Muthoni & 20 (supra)** where the Court of Appeal stated that: -

*“We respectfully agree with the views expressed by the two learned Judges. The Constitution in Article 41 is fairly loud on the rights to fair labour practices and we think it accords with the Constitution and international best practices that meaningful consultations be held pre-redundancy. We agree with the trial court that redundancy notices are not mechanical so as to satisfy the motions of the law, and that fair labour practice requires the employer to act in good faith.”*

61. In the instant case there is no iota of evidence of consultation or notice to the Claimants or the Labour Officer.

62. The words of the Court of Appeal in **Kenafri Industries Limited v John Gitonga Njeru (supra)** are instructive –

*“... the appellant never adduced any evidence to show that it had adhered to the rest of the statutory conditions regarding due process in redundancy. Without any proof that the termination was procedurally fair and in the face of the respondent's apparent redundancy, the Judge was right in finding that the respondent was entitled to compensation and the awards made cannot be faulted.”*

63. In the instant case the apparent redundancy was not conducted in accordance with the provisions of the Employment Act and was neither substantively justified nor procedurally fair.

64. The third issue is whether the 4<sup>th</sup> Respondent was terminated or absconded duty.
65. From the evidence on record, it is unclear how and when the 4<sup>th</sup> Claimant left employment of the 2<sup>nd</sup> Respondent. His evidence in Court was not only contradictory but cyclical and unconvincing. On cross examination he admitted giving false testimony in Court. He told the Court that the 2<sup>nd</sup> Respondent was still in business at the Yaya Centre. He confirmed on cross examination that he was terminated on 31<sup>st</sup> October 2015 but had no evidence in support. He alleged that he declined the amount paid by the 2<sup>nd</sup> Respondent.
66. Further, on cross examination, the 4<sup>th</sup> Claimant stated that he was dismissed on 5<sup>th</sup> February 2016 as per the letter from the Ministry of Labour, Social Security and Services dated 16<sup>th</sup> February 2016 but immediately thereafter changed the story and stated that the letter had an incorrect date of termination.
67. The witness statement states that the 4<sup>th</sup> Claimant was terminated in October 2015 as his evidence in chief. The evidence changed during cross examination. Relatedly, a summary of the particulars of all the Claimant's prepared by their Counsel and filed together with the memorandum of claim, indicate that the 4<sup>th</sup> Claimant was terminated on 2<sup>nd</sup> February 2016.
68. The letter from the Ministry of Labour Social Security and Services to the 2<sup>nd</sup> Respondent, dated 16<sup>th</sup> February 2016 indicate that the 4<sup>th</sup> Claimant was terminated on 5<sup>th</sup> February 2016.
69. In total, the 4<sup>th</sup> Claimant has three (3) dates of termination and tactfully only filed the payslip for the month of September 2015 perhaps to wish away any developments after October 2015.
70. The 4<sup>th</sup> Claimant did not deny that he had given his Counsel incorrect information though he attempted to do so in the case of the Ministry's letter.
71. In any event, his Counsel and the Ministry got the particulars from him and he ought to have protested the incorrect dates, if any. He did not. The dates are unchangeable in Court.
72. The Respondent led no evidence that the 4<sup>th</sup> Claimant absconded duty.
73. Section 47(5) of the Employment Act provides that –
- “For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”*
74. It was the duty of the 4<sup>th</sup> Claimant to prove that an unfair termination of employment had occurred. The 4<sup>th</sup> Claimant is unsure of the date of termination or the reason.
75. Owing to the contradictory nature of the 4<sup>th</sup> Claimant's evidence on termination and his admission of giving false testimony, the Court is satisfied that it would be unsafe to rely on such evidence.
76. For the above reasons, the Court is satisfied that the 4<sup>th</sup> Claimant has on a balance of probabilities established that an unfair termination took place in October 2015 or at any other time as alleged.
77. As to whether the Claimants are entitled to the reliefs sought, the Court proceeds as follows:
78. On the alleged underpayment, the Claimants produced copies of the Regulation of Wages (General) (Amendment) Order 2013 operational from 1<sup>st</sup> May 2013 and the Regulation of Wages (General) (Amendment) Order 2015 operational from 1<sup>st</sup> May 2015 in support of the claim. The Court is satisfied that the Claimants' salary was below the prescribed minimum and no house allowance was being paid. Instructively, the alleged underpayment for the duration before May 2013, has not been established. No Regulation of Wages Order was provided. It is thus not available to the Claimants.
79. The Court is satisfied that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants are entitled to the amount by which they were underpaid from 2013 to 2015 and the same is awarded.
80. It is noteworthy that the Respondent did not evidentiary challenge any of the figures relied upon by the Claimants.
81. Second, having found that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants were unfairly terminated they are illegible for the remedy provided by Section 49(1)(c) of the Employment Act. The Court has taken the following into account –
- i) The Claimants did not contribute to the termination and wished to continue.
  - ii) The Claimants had served for a duration of about five and three years.

iii) The Respondents filed a statement of defence but tendered no evidence at all.

82. The Court is satisfied that for the 1<sup>st</sup> Claimant the equivalent of 5 months' gross salary is fair. For the 2<sup>nd</sup> Claimant the equivalent of three months' gross salary. For the 3<sup>rd</sup> Claimant the equivalent of three months' gross salary.

83. Third, the prayer for severance pay is unsustainable since the apparent redundancy was substantively and procedurally unfair for noncompliance with the provisions of Section 40 of the Employment Act.

84. More significantly, the Claimants were members of the National Social Security Fund (NSSF) and deductions by the employer appear on their respective payslips.

85. The claim for severance pay under Section 40(1)(g) of the Employment Act is **declined**.

**1<sup>ST</sup> CLAIMANT – JOHN KIOKO MUKOSI**

(i) Compensation for unfair termination ..... Kshs.68,030

(ii) Salary underpayment May 2013 to October 2015 (30 months).....Kshs.48,180

**Total Kshs.108,210**

**2<sup>ND</sup> CLAIMANT – JOSEPH LUSAKA**

(i) Compensation for unfair termination ..... Kshs.40,818

(ii) Salary underpayment May 2013 to October 2015 (30 months)..... Kshs.48,180

**Total .. Kshs.88,998**

**3<sup>RD</sup> CLAIMANT – JANE WANGARI**

(i) Compensation for unfair termination ..... Kshs.40,818

(ii) Salary underpayment May 2013 to October 2015 (30 months)..... Kshs.48,180

**Total .. Kshs.88,998**

**4<sup>TH</sup> CLAIMANT – GEOFFREY SAFARI NTHENGE**

86. **The claim by the 4<sup>th</sup> Claimant is dismissed.**

87. **In conclusion, judgment is entered in favour of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimants against the 1<sup>st</sup> Respondent with costs and interest at Court rates from the date of judgment till payment in full**

88. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 24<sup>TH</sup> DAY OF FEBRUARY 2022**

**DR. JACOB GAKERI**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

**DR. JACOB GAKERI**

**JUDGE**