



**Kalsi & another v Kenya Airways Limited (Cause 1889 of 2017)
[2022] KEELRC 3801 (KLR) (18 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3801 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1889 OF 2017**

**J RIKA, J
JULY 18, 2022**

BETWEEN

CAPTAIN BHUPINDR SINGH KALSI 1ST CLAIMANT

CAPTAIN KENNETH NJAU KIMANI 2ND CLAIMANT

AND

KENYA AIRWAYS LIMITED RESPONDENT

JUDGMENT

1. The claimants were employed by the respondent airline as pilots.
2. The 1st claimant was employed as a 2nd officer on August 4, 1986, while the 2nd claimant joined the respondent on August 18, 1986 as a 2nd officer.
3. The 1st claimant was promoted to the position of captain, Boeing 737- 300 on May 12, 2005, after completion of command training. He continued to gain expertise, and was further promoted as captain, Boeing B767 300 ER, on August 30, 2006. His salary was reviewed to Kshs 367,067 monthly. The 2nd claimant was similarly trained, passed examinations, and was qualified to fly Boeing 777, although he continued to fly the lower level type, Boeing 767.
4. Both claimants were not only promoted, but were also given several commendations. They were garlanded for long and dedicated service. They rose to the rank of B767 Captain, only a few ranks below the epitome of the ranking criteria.
5. These career successes notwithstanding, the claimant's contracts were terminated by the respondent on February 24, 2015, on account of unsatisfactory performance in training.
6. The claimants aver that the respondent was facing financial woes at the time of termination, and had decided to phase out the fleet of aircrafts flown by the claimants, the B767 series.



7. Having phased out the B767, the respondent decided to post the claimants to a different series, B787. They were required to undergo training for B787. They underwent this transitional training overseas, but on coming back to Kenya, were called to a meeting on February 24, 2015, where their respective contracts were terminated.
8. The CBA governing the parties, requires that failure in transitional training, or in the requisite examinations, results in the pilots return to the previous fleet, and not in termination of employment.
9. It is the view of the claimants that termination was unfair and in violation of their right to fair labour practices. They were never issued warning for unsatisfactory performance; there was no valid reason for termination; they were denied the opportunity to defend; the 1st claimant was denied his certificate of service, after serving for over 30 years; and the respondent has since 2014, been involved in a well-planned scheme, aimed at cutting down on operational costs, through downsizing of staff, mostly pilots.
10. By the time of termination, the 1st claimant states that he earned a gross monthly salary of Kshs 1,100,231, while 2nd claimant states that he earned Kshs 1,160,954.
11. The Claimants state that termination of their contracts amounted to unfair redundancy; Section 40 of the *Employment Act*, 2007 was ignored; termination was unfair and unlawful under sections 35, 38, 41, 43 and 45 of the same law; and the respondent did not justify its reasons for termination, under section 47[5] of the Act.
12. Reasons wherefore, the claimants pray for: -
 - 1st claimant
 - a. Declaration that termination was unfair and unlawful.
 - b. Damages as contemplated under section 12 [3] [VI] of the Industrial Court Act.
 - c. 12 months' salary in compensation for unfair termination at Kshs 13,202,772.
 - d. Declaration that termination amounted to redundancy, and award the 1st claimant as per clause 45 [c] of the prevailing CBA.
 - e. Severance pay at 15 days' salary for 31 complete years of service, at Kshs 25,580,371.
 - f. 6 months' salary in lieu of notice at Kshs 6,601,386.
 - g. Pro-rata annual leave of 30 days, at Kshs 1,650,347
 - h. Pending annual leave of 42 days at Kshs 2,310,504.
 - i. Payment of full provident funds in accordance with staff provident fund rules.
 - j. Air passages on company services for the 1st claimant, spouse and children, including freight entitlement up to a maximum of 1,000 Kgs.
 - k. Rebated travel entitlement for the 1st claimant, spouse and children in accordance with staff travel rules.
 - l. Instrument rating renewal check or pay in lieu.
 - m. ESOP shares in accordance with ESOP rules.
 - n. Certificate of service to issue.



- o. Full salary from the date of breach of employment contract, to the intended retirement at 65 years [96 months] at Kshs 105,622, 176.
 - p. Interest at court rates from the date of termination till payment is made in full.
 - q. Costs
- 2nd claimant
- a. [same as 1st claimant's above]
 - b. [same]
 - c. [same, but at Kshs 13,931,448]
 - d. [same]
 - e. [same, but at Kshs 16,833,833]
 - f. [same, but at Kshs 6,965,724]
 - g. [same, but at Kshs 1,160,954]
 - h. [same, but at Kshs 2,321,908]
 - i. [same]
 - j. [same]
 - k. [same]
 - l. [same]
 - m. [same]
 - n. Full salary from the date of breach of employment contract to the date of intended retirement at 65 years [96 months] at Kshs 105,622,176.
 - o. Interest at court rates on all the prayers from the date of termination to the date of payment in full.
 - p. Costs.

13. The Respondent filed its statement of response on February 4, 2017. It is admitted that the claimants worked for the respondent as pilots. The respondent is a decent employer, and treated the claimants well, throughout their employment.
14. The claimants' skills deteriorated and were extremely poor, and termination came as a last resort. Their continued employment was a grave danger to the public. They were unable to perform in accordance with the requisite standards.
15. The respondent adopted a soft approach in terminating the claimants' contract. They were given an opportunity to be heard. They were accorded many chances prior to termination, to redeem themselves. It was all futile. Safety in air travel can only be assured through education, training and continuous assessment of pilots. Pilots who do not meet the industry and airline standards cannot be retained.
16. The respondent was guided by its human resources manual, rules of natural justice, operations manual and the CBA, in terminating the claimants' contracts.



1st Claimant

17. The 1st claimant was employed on August 4, 1986 as a 2nd officer. He became captain of B767 -300ER on August 17, 2006. His growth curve was slow. It normally takes 6 to 9 years to rise to this position. His performance was below average, from as far back as 1992. On May 7, 1992 he was cautioned by the Chief Pilot that his performance was very poor, and was not qualified to fly any aircraft in the respondent's existing fleet. Further training was recommended. Countless remedial trainings were offered without improvement.
18. In 1993 there was no improvement, and the 1st claimant was required to pass company examinations and the Airbus 310 TTR, before proceeding to the next level of training. He was a serial underperformer who was saved by the respondent from loss of employment, while being encouraged continuously to improve. He was unprofessional. In 1994, he absented himself from duty for 43 days without leave or lawful cause. The situation called for recovery of monies from his salary.
19. He failed B737 training in 2002. He was posted to B767 as a co-pilot on account of failure, with an operational restriction of 2 years. He was advised that from then on, his stay with the respondent depended on his suitability and performance.
20. He was involved in a serious incident at Kinshasa, DRC on May 24, 2011, while captaining flight KQ550. He was grounded from flying with effect from May 31, 2011 pending investigations. At the end of the inquiry, he was demoted from the rank of Captain B767 to 1st Officer in B767, with effect from June 24, 2011, for a period of 2 years.
21. His performance was reviewed after 2 years, on April 1, 2014. It was concluded that he would remain a 1st Officer. He would be considered for B777 training, and if he did not make it, would separate from the respondent. He had the option of reverting to a lower fleet; transition to B777 as a 1st Officer; or exit voluntarily. He was placed under the mentorship of Captains Areri and Githuku.
22. The 1st claimant operated B707, Airbus 310, B737 and B767 as captain. He was demoted to 1st Officer due to poor performance. Fleet postings were based on normal progression of fleets as per seniority, and not on merit as pleaded by the 1st claimant. On phasing out of B767, the 1st claimant opted to train for the higher fleet. Training was on B787, as the respondent was considering phasing out B777. It is not true that he was being pushed out because the respondent had excess pilots.
23. On training for B787, different instructors found the 1st claimant was not proficient and made too many errors. He was found to have poor technical knowledge; poor understanding of execution procedures; poor situational awareness, which meant he did not have an idea where his aircraft was during flight; and did not respond to other pilots' calls. Termination was based on 1st claimant's inability to demonstrate proficiency within the safety margins prescribed.
24. Termination was fair. There was poor performance over a long period of time. The 1st claimant was given adequate opportunity to improve. There was no improvement. His performance was reviewed by the Training and Review Board on January 13, 2015 and January 15, 2015. The board consists respondent's management and Kenya Airline Pilots Association [KALPA]. It was agreed, even by the claimant's union, that the claimant's performance was beyond redemption. He could not continue in employment. He was made aware of this conclusion.
25. He was invited by the respondent for a hearing on February 19, 2015. He did not avail himself. He did so on February 24, 2015, during which termination letter issued. He was advised of his right of appeal.



His union appealed on April 13, 2015. Termination decision was upheld, but the claimant was allowed to retain his travel rebated tickets, a benefit not normally extended to respondent's ex-employees.

26. The 1st claimant was at the time of termination serving as a 1st Officer on demotion. His basic salary was Kshs 893,067 monthly. He was paid all his terminal dues, and granted his certificate of service.

2nd Claimant

27. The 2nd claimant was employed by the respondent on August 18, 1986. He rose through the ranks, becoming captain, B767-300ER, with effect from July 7, 2005. He operated Fokker 27, Boeing 707 and Airbus 310 as 1st Officer. His performance as captain was okay at the beginning, except for poor instrument scan.
28. During his conversion training on B737, he was found to have poor technical knowledge; poor aircraft control during engine failure exercises; and poor technical base.
29. He transitioned to B767. He had 5 documented failures on B767, while other areas were marked as marginally passed.
30. He failed the initial examination on B767 with an overall grade of 49%. He resat the examination and passed after a month of extra study. He repeatedly failed Simulator Licence Proficiency Check [LPC] and Simulator Operator Proficiency Check [OPC].
31. Based on natural progression and seniority, the 2nd claimant was posted to B777. He failed conversion examination twice. His performance on resitting the examination, came out worse than the first. He had extra time to study for the second examination. Due to this failure, the 2nd claimant was demoted back to his old fleet- B767. With the phasing out of B767, he was posted to B787. It is not therefore true, to allege that he was being pushed out of the respondent on account of excess number of pilots available at the respondent. The training was conducted by Boeing instructors. Like the 1st claimant, the 2nd claimant was found to suffer poor understanding of execution procedures; poor technical knowledge; poor situational awareness; and poor operational proficiency.
32. He was taken through the Training and Review Board. His union was represented in the board. It was concluded that with aircraft operation becoming more complex and automated, it would pose a major safety risk, to retain the 2nd claimant as a pilot. Termination was based on the 2nd claimant's failure to demonstrate proficiency within the safety margins prescribed.
33. He was invited for a meeting by the respondent before February 19, 2015. He was unavailable. He availed himself on March 3, 2015, when termination letter issued. He was given a chance to defend himself. He defended himself. He was advised of his right of appeal. He appealed through his union. Termination was upheld, but like the 1st claimant, he was allowed to retain rebated travel tickets.
34. His basic salary at the time of termination, was Kshs 913,045. He was issued his certificate of service.
35. The respondent and KALPA have a CBA which contains a pilots' seniority list. Promotion from one fleet to the other, is based on this list, rather than individual merit. The claimants were promoted based on their seniority, not excellent performance.
36. The claimants were not impeccable and outstanding employees. The 1st claimant received only 2 commendations, for over 2 decades he was in employment. Long service awards were issued as a matter of Human Resource Policy.



37. Due process was followed. Rules of natural justice were observed. The claimants were paid notice of 3 months. Sections 35 and 38 of the [Employment Act](#) were not violated. Section 40 was not violated, because redundancy was not the reason for termination.
38. The respondent prays the court to dismiss the claim with costs.

Hearing

39. The claimants gave evidence on July 16, 2021, October 21, 2021 and December 16, 2021 when they rested their claim. Captain Paul Njoroge, respondent's Director of Operations, gave evidence on February 11, 2022, when the hearing closed. The claim was last mentioned on March 30, 2022, when parties confirmed the filing of their closing submissions.

Claimants' evidence

40. The 1st claimant relied on his witness statement and documents on record, in his evidence-in-chief. He retraced his piloting career with the respondent. He had risen through the ranks, and was almost at the apex, at the time of termination in 2015.
41. It was alleged that the respondent had excess pilots. There was a bulletin from the respondent of February 2015, exhibited by the claimants, which disclosed that the respondent felt it had excess pilots, and needed to reduce their number. The respondent was experiencing financial turbulence. Reduction in the number of pilots was part of the general scheme of cost-cutting.
42. The B777 was not operational at the time. Pilots would be required to stay at home. The claimants were set for training for the larger B787. They reported for training in London. The hotel where they were directed was not expecting them. The training institution did not expect them as well. They were given blank tablets for training. On the following day, they were given books.
43. They did not complete training. On return, they were kept in darkness by the respondent. On February 24, 2015, they were summoned by the Human Resource Office, and issued termination letters. The reason given for the decision was that the claimants had unsatisfactory performance on B787 training. There was no hearing. It was just a decision made by the management, which was communicated to the claimants. The claimants were not charged with any disciplinary offences.
44. The prevailing CBA had a clause on failure by a pilot to transition to a larger fleet. Failure did not warrant dismissal. The failed pilot would be reverted to his previous fleet.
45. The 1st claimant told the court that he was not a poor performer. He worked for 29 years. He was captain of B767. It was unfair to brand him poor, after 29 years of service.
46. He was commended to landing a flight safely from Dubai to Nairobi, after engine failure. A poor pilot could not land such a plane. He was commended for professionalism.
47. There were frequent checks on the pilots. Kenya Civil Authority checked. There were routine checks. The 1st claimant always performed well. The 1st claimant saw some of the performance –related documents exhibited in court by the respondent, for the first time in court. The select documents did not represent the 1st claimant's record of 29 years. The respondent wanted to get rid of the pilots by hook or by crook.
48. The 1st claimant told the court that he suffered. He is differently-abled.



49. The 2nd claimant similarly adopted his witness statement and documents on record. He was captain of B767 on termination. He rose through the ranks, becoming a co-pilot in the Airbus. He was promoted through good performance.
50. The respondent was getting rid of B767. There was none of these planes in 2015 and 2016. The 2nd claimant's fleet was phased out. The respondent was making losses. It had a total of 527 pilots. It stated that it needed 515. B777 pilots were grounded. B767 Pilots were moved to B787. They would not have moved, if B767 remained in place.
51. The claimants were taken for B787 training in London. There was 1 instructor. The training institution was not expecting the trainees. The claimants were give tablets and shown how to operate them. The tablets had not been loaded with any training material. The tablets were replaced with new ones later. The new ones were loaded with information. The claimants read the information for about 8 days. They sat examinations. The 2nd claimant scored 98%. They were recalled by the respondent because Christmas was approaching. They were told they would return in January 2015.
52. On return to Nairobi, the respondent summoned the claimants. They were told that their contracts had been terminated due to unsatisfactory performance. The Director of Operations said that there was a cash flow problem. There were no charges presented to the 2nd claimant.
53. The CBA provided that failure in transition, would result in reversion to the former aircraft. It would not result in dismissal. There was no assessment carried out by a panel of 3 instructors, as prescribed by the operations manual. The 2nd claimant did not sign assessment documents exhibited by the respondent. The regulatory authority was not involved. If the 2nd claimant failed transitional training, he should have reverted to his previous aircraft. If the respondent no longer needed him, it should have terminated his contract, through redundancy. The claimant worked for 29 years. If his performance as a Pilot was wanting, he ought to have lost his job earlier. Termination was not on account of his performance as a pilot. He was not heard. Termination was malicious. The respondent merely wanted to reduce the number of Pilots. The 2nd claimant told the court that he did not secure alternative job after termination.
54. Cross-examined, the 1st claimant told the court that he worked impeccably, for 29 years. He was promoted. Long service was considered in promotions. Promotion was based on seniority.
55. On May 11, 1992, the 1st claimant received a letter from the respondent, saying that his performance was very poor. There were similar letters dated June 13, 2002 and June 3, 2011. By the latter date, the 1st claimant was in employment for 25 years.
56. He was grounded pending some investigations. Investigations led to demotion of the 1st claimant from Captain to 1st Officer. He did not challenge demotion in court. There was provision for review in the process of demotion. The 1st claimant was not aware of review done by Training and Review Board. Training records state that the 1st claimant failed proficiency tests. The 1st claimant obtained 92%. His trainer stated that he could not recommend the 1st claimant's transition. The 1st claimant discussed the report with his trainer, and signed the report.
57. Return to the previous fleet was not an option. The previous fleet was being phased out. There would be no B767. The 1st claimant could not be returned to B767.
58. The 1st claimant was informed about the meeting with operations office. He appealed termination through his Union. His union asked that the 1st claimant is retired early, rather than reinstated. The main difference in payment of benefits, was that under early retirement, the 1st claimant would have



- received 6 months' salary, and not 3 months' salary paid as notice. He was paid Kshs 29.5 million from his provident fund and Kshs 3.6 million from the respondent. He received his certificate of service.
59. Redirected, the 1st claimant told the court that promotion was based on existing vacancies. A poor performer would not be eligible for promotion. There were about 4 checks per year. The 1st claimant had accumulated about 120 checks. The respondent only presented about 4 of these. These cannot be enough to conclude that the 1st claimant was a poor performer.
60. Training was handled by a single instructor. He made the recommendations. CBA states 3 instructors, not 1, was required in making recommendations. CBA, not the operations manual, bound the parties. There were other fleets, below B767. The 1st claimant would have been reverted to these. He did not attend the meeting involving the respondent and KALPA. He did not instruct KALPA to propose, that he is retired early.
61. The 2nd claimant confirmed on cross-examination that he was downgraded. His technical and operational proficiency was found wanting. The Instructor explained to the 2nd claimant about this finding. One could re-sit the examination the following day. The 2nd claimant was not given the opportunity to voluntarily retire. He was represented by KALPA. KALPA did not advise him on voluntary retirement. He was paired with the 1st claimant during training. Howard from Boeing, was among the 3 instructors. The claimants had problems with the training material. There were remarks made by the instructors. These were discussed between the instructors and the claimants. The pilots were being trained to convert from one plane to the other. According to the operations manual, if deficiencies were not aircraft- specific, the pilot could not revert to the previous aircraft. The 2nd claimant was called to a meeting on March 3, 2015. He signed the minutes. He was advised of his right of appeal. He appealed through his union KALPA. KALPA did not share the letter of appeal with the 2nd claimant. The 2nd claimant was paid Kshs 24 million from the provident fund and Kshs 3 million from the respondent. He was availed his certificate of service.
62. Redirected, the 2nd claimant told the court that termination was based on specific training, not general performance. There were other remedial checks. The 2nd claimant would not have continued working all those years, if all his checks were negative. The CBA guided transitional training. Pilots who did not pass transitional training, would revert to their previous fleet. If there was conflict between the CBA and the operations manual, the CBA would prevail. The meeting held on March 3, 2015 was not a hearing. Reason for termination was unsatisfactory performance, during training.

Respondent's Evidence

63. Captain Paul Njoroge had worked for the respondent for 19 years, as of the date he gave evidence before the court.
64. He adopted his witness statement and documents filed by the respondent, in his evidence-in-chief. Promotion of pilots at the respondent, is based on seniority and performance. There are 2 standards. One joins as a 2nd officer in the lowest flight. He /she becomes 1st officer without performance being considered, because there is a captain in their respective fleets. From 1st officer to captain, performance is considered.
65. This is the career paths the claimants took in double normal time. It took them 16 years to become captains. There were many failures in those 16 years.
66. Awards are normally given when one completes training. Commendation letter issues when one does a particular task. Reviews are done every 6 months. It normally involves a check on performance, carried out on a simulator.



67. The 1st claimant was operating a flight from Kinshasa on November 24, 2011. He got completely disoriented, nearly crashing on the hills. He was demoted for no less than 2 years. He continued to fly as a co-pilot.
68. The 2nd claimant joined in 1986. He was promoted in 2005, faster than the 1st claimant. But he too endured several failures. He did not demonstrate technical knowledge and aircraft control. He struggled with automation.
69. He was trained and retrained. The respondent was replacing old fleet with modern ones. Pilots in B767 were given priority to transition to B787 and B777 which were bigger fleets. They were given 3 weeks of computer-based training and 2 weeks of simulator training. Most pilots successfully transitioned from B767 to B787.
70. The 2nd claimant suffered poor technical knowledge especially on automation. He had poor execution of procedures, and poor situational awareness. The 1st claimant had similar weaknesses. He was found lacking in proficiency. He had poor crew management, that is, he did not communicate well with his colleagues. The claimants went through trainings by different instructors, who came up with these assessments. They failed examinations on training, even when given adequate time to prepare on resit.
71. The decision made against the claimants was reached by the Training and Review Board, which is made up of representatives from the respondent and the claimant's union KALPA.
72. Pilots did not attend the meetings between the respondent and the union, because their performance was being discussed. The convenors did not wish to damage the claimants' reputation. Interview would be held with a pilot, where unsatisfactory performance was detected. The pilot would have a discussion with the Head of Training. In case of unspecific poor areas such as lack of situational awareness, retraining was not an option.
73. CBA states failure in transitional training would result in the pilot reverting to the previous fleet. KALPA is part of the Review Board. The CBA recognizes professional inefficiency is a ground for termination.
74. The claimants appealed, asking to be retrained on previous flights. They also proposed that they are retired, rather than exit through termination. The respondent was benevolent, considering the claimants' long service. They were offered a soft landing. The Reviews Board was reminded it could only recommend termination. The Chief Human Resource Officer rejected the proposal on voluntary retirement, holding that the respondent was bound by termination. When the respondent phased out B767, it had capacity to transition all pilots.
75. Cross-examined, Captain Njoroge told the court that the reason cited in justifying termination, was unsatisfactory performance in B787 training. The respondent did not mention poor performance in general.
76. The claimants attended training to move up the larger fleet. They failed.
77. The 1st Claimant's score on a scale of 5-1, 5 being excellent, was 4,4,2,4,3. It does not show that he performed well. The 2nd claimant's scores were not exhibited.
78. There was a written examination and a simulator. One had to be proficient on the simulator, to advance to the written examination. The instructor states that the 1st claimant exerted himself fully. This was quantifiable. Termination was in February 2015. All documents by the respondent were stamped in 2015. There is no document which was prepared in afterthought.



79. Failure on training, is a ground for dismissal. Clause 30 [d] of the CBA relates to professional inefficiency. Page 72 relates to failure to transition. It states that, the pilot shall revert to previous fleet. It requires deliberation by 3 instructors. Howard was the lone Instructor who gave an assessment of the claimants. He was the only trainer.
80. Captain Njoroge told the court that if he applied to lead the respondent Airline, as its CEO, and was unsuccessful in that endeavour, he would not be dismissed as the Director of Operations, for failure to clinch the CEO position. He would continue serving as the Director of Operations.
81. The claimants were invited to a meeting after the recommendations were made by the Training and Review Board. It was a meeting intended to convey the decision to terminate their contracts. The claimants did not attend the Training and Review Board meeting. Their union was there. Captain Njoroge confirmed that the claimants did not leave on disciplinary ground. The minutes of the meeting, at bullet number 5, state the respondent resorted to termination, because of cash flow problems.
82. The claimants were serial underperformers. Being a pilot is sensitive. The claimants were retained for decades. They had recurrent issues. The Kinshasa incident involving the 1st claimant was dealt with by the respondent. He was demoted and retrained. He continued working.
83. There was no inflight incident, involving the 2nd claimant.
84. Both had commendations and promotions. They were commended for high degree of professionalism. The 1st claimant successfully landed a flight, which had experienced engine failure.
85. The respondent did not pick a few bad incidents in the long careers of the claimants, to condemn them. The respondent did not exhibit all examinations the claimants sat, in their entire period of employment. It is not true that the respondent selected only a few instances where the claimants allegedly failed, to condemn them. Other pilots did not fail even once.
86. The respondent incurred losses. It was said that in 2015, it had excess pilots. Certain fleets were exiting. Captain Njoroge did not remember when other pilots were retired. There was a procedure on retraining and exit. There was no interview of the claimants made, during transitional training, and before their exit.
87. Redirected, Captain Njoroge told the court that the 1st claimant failed in the assessment of November 25, 2014. On a scale of 5 to 1, 5 was excellent. 3 instructors were not required for training. The respondent differentiates performance from disciplinary process. Systems' knowledge examination, could be retaken. Cognitive areas such as situational awareness could not be retested. Such areas were not re-trainable. KALPA represented the claimants' interest at the meeting. It appealed on their behalf. The claimants were not impeccable employees.

Issues

88. The respondent lists issues in dispute to be: -
 - I. Were claimants' skills and output on the job unsatisfactory?
 - II. Were they given opportunity to redeem themselves?
 - III. Was termination the last resort?
 - IV. Would the continued employment of the claimants, have posed grave danger to the public?



- V. Were rules of natural justice adhered to?
89. The claimants list 3 issues: -
- I. Whether termination of the claimants' contracts was procedurally and substantively fair.
 - II. Whether termination was redundancy, disguised as termination.
 - III. Whether the court should grant the prayers sought.
90. The issues listed above may be merged and condensed to be: -
- I. Whether termination was procedurally fair.
 - II. Whether it was substantively fair.
 - III. Whether the claimants merit the remedies sought

The Court Finds: -

91. The 1st claimant was employed by the respondent as 2nd officer, with effect from August 4, 1986.
92. The 2nd claimant was employed by the respondent as 2nd officer, with effect from August 18, 1986.
93. Both claimants' contracts of employment, were terminated on February 24, 2015, on the same ground - unsatisfactory performance while in B787 training.
94. The 1st claimant pleads that he earned a gross monthly salary of Kshs 1,100,231, while the 2nd claimant pleads a gross monthly salary of Kshs 1,160,954, as of the time of termination. But, as the court shall explain at the end of this judgment, these rates are incorrect.
95. The claimants had scaled the piloting ladder, from 2nd officer to 1st officer, and then captain. They told the court that they were just a few ranks from the apex of the pilots command structure. Unfortunately, they did not educate the court on what the apex is. The 1st claimant had been demoted to 1st officer by the time of termination.
96. They each worked for 29 years, uninterruptedly.

Procedure [Section 41 and 45 of the Employment Act]

97. It is common ground that the claimant's contracts were not terminated on disciplinary grounds; they were terminated for unsatisfactory performance while in B787 training.
98. It needs to be stated from the inception that unsatisfactory performance was not attributed to the Claimants in general, that is to say, it was not on their ordinary daily duty as pilots that they were judged, warranting termination; it was on specific unsatisfactory performance in B787 training.
99. The 1st claimant became captain in 2005 in Boeing 737. He was posted to B767. It is agreed that the respondent was phasing out B767, and Pilots were to transition to B787. It was on training for this transition, to B787, that the 1st claimant was adjudged to have failed his examination. An Instructor from the Manufacturer, Boeing Airplane Company, carried out the training. It was concluded that the 1st claimant had poor technical knowledge especially in relation to automation; he had poor understanding and execution of procedures; he was poor at situational awareness; and had poor communication with other crew.



100. The 2nd claimant transitioned for his first command position [became captain] in 1992 on Boeing 737. He subsequently transitioned to B767, and like the 1st claimant, was required to transition to B787, when the respondent determined to phase out B767. His instructor concluded that the 2nd claimant had poor technical knowledge regarding automation; poor understanding and execution of procedures; and also had poor situational awareness.
101. The claimants having failed, in the eyes of the respondent, to transition to B787, a Training and Review Board [TRB] was constituted. The TRB is recorded to have convened on 13th/January 15, 2015. Management and KALPA representatives, comprised TRB. KALPA objected to the exclusion of Human Resource Department, observing that the TRB process, could lead to termination of the claimants' contract, hence the need to engage Human Resource Department.
102. In the end, the TRB recommended that both claimants are retired. In the case of the 2nd claimant, it was recommended that he could also be demoted to B737.
103. There are a lot of issues raised by the parties, regarding the overall performance and careers of the claimants, which spanned 29 years. The issue which led to termination of their contracts is a single issue - unsatisfactory performance, while in B787 training.
104. Training of pilots at all relevant times, was governed by the Operations Manual, and the CBA executed between the respondent and KALPA.
105. The Operations Manual, under chapter 9 on Training and Testing, states that a Pilot, would go through various forms of training. These have been identified as: initial conversion course; post- initial course; unsatisfactory recurrent training or line performance; and unsatisfactory ground school performance.
106. The claimants were involved in post-initial conversion course. They had both been converted from their first fleets, and become Captains in B767. The 1st claimant had at the time of post-initial course however, been demoted on July 4, 2011 following an incident in the skies of Kinshasa, from Captain to First Officer in B767.
107. The procedure under post-initial conversion course requires the pilot to be interviewed by Head of Flight Operations.
108. On cross-examination, Captain Njoroge, Head of Operations told the court that the Claimants were not interviewed, in accordance with clause 9.11.3 of the Operations Manual, at page 27 of the respondent's bundle of documents. The interviewees would subsequently be sent formal letters, summarizing the contents of the interview.
109. The Head of Flight Operations, who does the interviews, is required to inform the Director of Flight Operations, of any decisions. Particular attention is given to extenuating circumstances.
110. Should unsatisfactory progress occur, the matter is escalated to TRB. The TRB comprises Director of Flight Operations, Head of Flight Operations Training, and the Training Captains involved. It is not clear from the manual, how KALPA became involved. It is not stated, that the union shall be part of the TRB. It seems that KALPA was an invitee in the TRB under the operations manual, perhaps in keeping with good industrial relations. It was also not clarified by the disputants, whether the training captains were part of the TRB, which dealt with the claimants. Who were the training captains?
111. Where unsatisfactory performance relates to areas that are aircraft-specific like poor systems knowledge, the TRB may recommend retraining on the previous fleet. Where unsatisfactory performance includes, or is in areas which are non-aircraft-specific like general aircraft handling or situational awareness, retraining on a previous fleet is not an option.



112. The TRB may recommend termination of the course. It may recommend further training based on the pilot's previous experience and any extenuating circumstances. The Director of Flight Operations is mandated to interview the pilot. The pilot must be accorded the opportunity to reply. The TRB may recommend termination of training, not termination of employment.
113. Following the interview, decisions taken together with the advice on the right of appeal, should be confirmed to the employee in writing. Appeals against the decision of TRB should conform to the appeal procedure laid out in the staff regulations.
114. The respondent did not demonstrate adherence to this procedure, in the operations manual. The Director of Flight Operations told the court that there were no interviews carried out, initially and at the end of the process, in accordance with the procedure in the Operations Manual. Without interviews of the claimants, without their individual involvement in the process, the procedure adopted by the TRB amounted to an aborted flight.
115. The CBA concluded between the respondent and KALPA also has provisions for transitional training and command qualification.
116. Under schedule VI, seniority and promotions policy, section 4 [a] and [b], it is categorically stated that: a) failure in transitional training or in passing the necessary exams, shall result in automatic return to an employee's previous fleet or position, after consideration by a panel of not less than 3 instructors appointed by the company; and b) a pilot returned to his previous fleet will be restricted for a minimum of 2 years before reconsideration.
117. The CBA does not have any instances, where a pilot who fails transitional training, for whatever reason, is deprived of the opportunity to revert to previous fleet. This is in conflict with the operations manual, which states that a pilot who fails on areas which are non-aircraft-specific such as general aircraft handling and situational awareness, have no option of returning to their previous flight.
118. The CBA supersedes the operations manual. There is no clause in the CBA which defers to the operations manual. CBAs are binding commitments between employers and employees, which supersede unilateral policies and practices originated by employers.
119. In determining what should have happened to the claimants, if they did not succeed in transitional training, recourse should have been to the CBA, not to any other workplace human resource instrument, which abrogated the automatic right of the pilots, to revert to their previous fleet.
120. Captain Njoroge conceded on cross-examination, that if as Director of Flight Operations, he applied to be the CEO and was unsuccessful, he would have reverted to Director of Flight Operations, rather than have his contract terminated. This powerful analogy, and bold admission by Captain Njoroge, read in the context of the CBA, persuades the court that the claimants ought not to have lost employment on account of alleged failure to transition to B787. Failure in a promotion interview, does not warrant dismissal. It can only result in career stagnation.
121. Procedure was deficient mainly on this account. Other than this, the procedures in the operations manual were not adhered to, as conceded by Captain Njoroge. There were no interviews carried out in accordance with the operations manual. There was no consideration by a panel of not less than 3 instructors. The training was carried out by a single instructor, a Mr Howard, from the manufacturer, Boeing Airplane Company. TRB process ought to have been carried out, with the staff regulations and rules in mind. The claimants were never involved in the TRB interviews and other processes.
122. The submission that the claimants were represented by KALPA, and therefore not prejudiced, is misconceived. Section 41 of the *Employment Act*, does not contemplate hearing of cases in the absence



- of the affected employee. If the TRB meetings were meant to be a platform to hear the claimants, it was not adequate, that the trade union representatives were present, without the claimants accompanying them. The operations manual as argued above, is not clear on the role of KALPA in the TRB.
123. The meetings of 13th / January 15, 2015, leading to the recommendations that the claimants are retired, and/or that the 2nd claimant is demoted to B737, did not involve the claimants individually.
 124. Further meetings held on February 24, 2015 and March 3, 2015, indicate that the agenda, was to communicate management's decision to terminate the claimants' respective contracts of employment. There was nothing about hearing them. They were simply told that their contracts had been terminated, and advised about their right of appeal.
 125. In the statement of response, the respondent alleges that it consulted industry experts, and in line with the recommendations of the TRB, concluded that the claimants were safety threats. These industry experts are not named. Their advisory was not exhibited before the court. The respondent states it came to a decision to terminate the claimants' employment, and that the claimants were "unavailable for any hearings." The claimants were not heard in accordance with the basic rules of fair termination. The respondent does not say why the claimants were unavailable, yet they were still in employment on 15th -February 19, 2015, when the respondent purports to have made futile attempts to trace the claimants. It is not explained why, when the claimants finally became available, on February 24, 2015, there was no hearing, but instead, the decision to terminate was communicated, and a termination letter "also read and explained to them." The statement of response concedes that the respondent did not give the claimants a hearing. They were merely informed that their contracts had been terminated.
 126. Contrary to the recommendations of the TRB, the respondent terminated the claimants' contracts, rather than retire them early, or revert the 2nd claimant to B737. There was no clear justification to disregard the recommendation on retirement, and instead terminate with notice of 3 months. Captain Njoroge explained that the Human Resource Office rejected the TRB recommendations, relying on the Operations Manual, which gave two options – retraining or termination.
 127. The court does not think that the Human Resource Office was right in this position because the Operations Manual itself, does not state that TRB recommends termination of the contract of employment; clause 9.11.3 refers to termination of the course or training. The TRB process does not appear to have taken into account the staff regulations and termination procedure under the [Employment Act, 2007](#).
 128. The CBA under clause 34, contemplates retirement before the mandatory age of 65 years. It states that an employee may opt to retire prematurely, or may be retired by the company prematurely, with full retirement benefits, after he/she had been in continuous service for a period of 10 years or more, provided that he/she had attained the age of not less than 59 years.
 129. TRB was composed of Management and KALPA, and its recommendations should have been given weight, in terminating the claimants' contract. Recommendations were made with the participation of Management and KALPA, and presented a negotiated solution, notwithstanding that a clear solution was offered under the CBA, on failure to transition. It was improper, after 29 years of service, to terminate the claimants' contracts under clause 31 of the CBA, which conferred the barest of benefits capable of payment, on separation from the respondent.
 130. KALPA appealed termination decision, in a letter dated September 15, 2015. It proposed, that termination be replaced with early retirement, as had been recommended by TRB.



131. The respondent replied on October 23, 2015, alleging that management, ‘has exceptionally decided to vary the termination terms as per the annexed copies of the letters that have been sent to concerned pilots.’
132. This was an empty variation, because termination decision remained, the only benefit added in the variation, being rebated travel privileges. The benefit is provided under clause 31 of the CBA, and should not have been omitted from the letters of termination in the first place.
133. The respondent did not give serious consideration to the appeal lodged by KALPA, but instead made a useless gesture, purporting to offer a benefit which was already there, under the termination clause.
134. The court is satisfied that termination was not procedurally fair, in accordance with sections 41 and 45 of the *Employment Act*.

Reason or Reasons [sections 43 And 45 of the *Employment Act*]

135. Sections 43 and 45 of the *Employment Act*, demand that an employer provides valid and fair reason or reasons, in justifying termination.
136. The claimants submit that the respondent did not give them valid and fair reason or reasons to justify termination.
137. They hold that the respondent initiated a well-planned scheme of laying off senior pilots in late 2014, in a bid to cut operational costs. The scheme, included the phasing out of B767 and B777 aircrafts.
138. This position has support in the respondent’s Director’s Bulletin, a publication dated February 2015, annexed to the 1st claimant’s affidavit sworn on September 18, 2017. The bulletin states that the total number of pilots was 527, against a total requirement of 515.
139. The transitional training therefore took place, simultaneous with a pilot reduction exercise.
140. The court does not think it was fair for the respondent, in justifying its reason or reasons for termination, to exhume incidents that had mostly taken place, when the claimants were at their formative years.
141. If for instance, below average performance was noted, with respect to the 1st claimant, from as far back as the year 1992, how is it that he lasted 29 years piloting? The respondent states that in 1992, the 1st claimant was cautioned that his performance was ‘very poor.’ The same caution was repeated in 1993. In 1994, he disappeared from work without leave for 43 days. In 2002 his performance was still unsatisfactory. There are other letters exhibited by the respondent, showing that the 1st claimant’s salary was suspended for unreported continuous sickness. This was in 1994, and the 1st claimant was sanctioned, through salary deductions for the days he was away. There is no relevance at all, in these incidents, to the event of February 24, 2015.
142. These are incidents which had long dissipated into the mists of antiquity, by February 24, 2015, when the claimants’ contracts were terminated for a specific reason- unsatisfactory performance while in B787 training.
143. The incident of May 24, 2011, where the 1st claimant was alleged to have failed in command integrity, while in charge of flight KQ 569 in Kinshasa, was dealt with, resulting in the 1st claimant’s demotion to First Officer.
144. He was reviewed after 3 years, on April 1, 2014. Review was about whether the 1st claimant had met requirements for command upgrade, that is, whether he had met the conditions to return to



- his position as captain. The report states that during the 1st claimant's check of March 27, 2014, his performance was acceptable.
145. The review panel went on to conclude that performance requirements for command upgrades had not been met, and that the 1st claimant had 2 options - transition to B777 as a First Officer; or voluntarily exit.
 146. The Kinshasa incident of 2011 was dealt with in 2011 and on review in 2014, and was not related to the transitional training, which related to B787. It is noted that B777, which the panel above was recommending the 1st claimant to transition to, was among the fleets being phased out in April/May 2015.
 147. Although the option of voluntary exit was floated, it again is noteworthy that even after termination for a different reason, on February 24, 2015, the claimants were denied the option of voluntary exit, as recommended by TRB.
 148. The respondent took a similar line of argument, in dealing with justification of the 2nd claimant's termination. It was argued that the 2nd claimant transitioned to his first command position in 1992, but that it was noted he suffered poor technical knowledge; poor aircraft control during engine failure; and poor use of automation. This was way back in 1992.
 149. It is explained that the 2nd claimant failed his initial examination for B767 on May 12, 2006. He was marked poor in simulator license proficiency check, and simulator operator proficiency check, in 2006 and 2008. These failures, if indeed they happened, did not in the view of the court, relate to the reason why the 2nd claimant's contract was terminated on February 24, 2015.
 150. In either case, the CBA as concluded in discussing procedure above, mandated the pilots to be reverted to their previous fleets, if they did not transition to B787.
 151. Because their previous fleet B767 was to be phased out by April/ May 2015 according to the respondent's Director's Bulletin, there was no fallback position.
 152. There is a quite informative letter dated June 13, 2002, from the respondent to the 1st claimant which discloses that the 1st claimant's training was unsatisfactory, and that he would be posted back to his previous fleet, in accordance with the CBA. The letter states, "now that your previous fleet is non-existent, you are therefore posted to B767 fleet as a co-pilot with an operational restriction of 2 years. However, you may choose to remain in the fleet you were being trained on as co-pilot for the same period. Your future promotion in among other things, will depend on suitability."
 153. The claimant opted to remain in the same fleet as a first officer.
 154. This letter confirms the sanctity of the CBA clause on reverting to the previous fleet, in event a pilot failed transitional training. It was an old clause in the CBA, which parties were well-acquainted with. It confirms that failure in transitional training, need not have ended in termination, but in forfeiture of promotion, which under the CBA, was based on a seniority list. The court is not persuaded by respondent's submission, that the claimants' contracts were terminated, because they were a safety threat. Why were they not deemed a safety threat in the past, under similar circumstances? Failure to transition did not make them a safety threat; it just meant they stagnated in the same fleet. They had been pilots for 29 years, so why would the respondent have retained air safety threats, for 29 years? How would a man who has flown KQ Flights for 29 years, be found to have no awareness of where his aircraft is during flight, during a routine check? They had routinely been promoted and passed other transitions which were not highlighted by the respondent. They had routinely, been certified to fly by among others, the Kenya Civil Aviation Authority, over all these years. Why would an employer retain



- an employee for 29 years, and in the last year, selectively gather all manner of employment records against the employee, showing that the employee was unsuitable from the inception? It is illogical. The claimants had received various commendations from the respondent throughout their long careers.
155. On July 17, 1988, the 1st claimant was commended for maintaining a high degree of professionalism. He was lauded for being an example to be emulated. In 2008, he was commended for landing flight KQ310 safely, when the aircraft encountered engine failure. What would the respondent say to pilots, who on respondent's advice, emulated the 1st claimant in their careers with the respondent?
156. On failing to transition to B787, and given that the claimants' previous fleets were being phased out, the court would agree that with regard to the claimants, a redundancy situation had occurred. They could not fly B787, B777 or B767. They were not deemed qualified to fly B787, and could not revert to B777 or B767. The latter fleets were being phased out. In either case, the employees were not at fault. They would be deemed to have involuntarily lost their jobs.
157. Their fleet, B767 was in a manner of speech, their office. That office was abolished by the employer. They were offered alternative office in B787, but were not, in the eyes of the respondent, qualified to assume that office. They were caught between Scylla and Charybdis. In the end, the claimants were rendered jobless by involuntary means, in the words section 2 of the [Labour Relations Act](#), 2007. The respondent was engaged in cost-cutting measures, as disclosed in Director's Bulletin.
158. Clause 45 of the CBA adopts the description of the term 'redundancy' contained in the [Labour Relations Act](#). The claimants were caught up in a redundancy situation, as defined by the [Labour Relations Act](#) and the CBA.
159. In the circumstances, the respondent ought to have released the claimants under clause 45 of the CBA. Other justifications were in the nature of colourable exercises. It was not the fault of the claimants that they could not transition. There was nothing which made it compulsory for any pilot to pass transition examinations, and advance to the next fleet, in order to retain employment. The understanding of the court, is that transitional training was akin to any promotion interview. Failure would not justify termination. It could result in career stagnation or retrogression. Not all would be expected to pass, or to keep abreast of fast-evolving aviation technology. The assertion by the respondent that other pilots transitioned, does not establish, that the claimants were mandated by their contracts or policy, to transition. The claimants were past their 50s and with apology to them, were perhaps considered old fogies, in pilot development. It was not their fault that they could not revert to their previous fleet, as B767 was being phased out.
160. It was not even shown by the respondent with certainty, that the claimants had indeed failed transitional training. The court has proceeded from the premise that, they did not pass transition, on the strength of no-contestation from KALPA, in the process leading to termination. The 1st claimant stated that he scored 92%, the 2nd claimant 98 %, on training. Captain Njoroge conceded that on a scale of 5 to 1, 5 being excellent, the 1st claimant was graded 4, 4, 2, 4, 3. How does this translate to failure? It was not made clear by Captain Njoroge what failure, and passing mark, entailed. There was no clear evidence of failure shown, but perhaps there were other parameters, not made manifest before the court, which would make the pilots' union, to concede that the claimants were transitional failures. The court would go by the presumption that the claimants failed transitional training.
161. The claimants were denied voluntary exit, based on this presumed failure.

Remedies

162. It is declared that termination was unfair and unlawful.



163. It is declared that termination amounted to redundancy and the claimants are entitled to benefits under clause 45 of the CBA.
164. The claimants worked in continuity for 29 years. They did not secure alternative employment on exit. They expected to continue working until retired at the age of 65 years. The CBA allowed them to continue working, even upon failing to transition to B787, but there was no suitable fleet they could revert to, their previous fleet having been phased out, as one of the means adopted by the respondent, in operational cost reduction.
165. In computing their gross monthly salaries, the court is guided by clause 10 [i] of the CBA. Fixed allowances were house allowance, and transport allowance. The gross pay would include the basic salary and the fixed allowances. Other variable allowances, such as a layover, should not be included in computing the gross monthly salary. The claimants should not have included their variable allowances, in their gross monthly pay.
166. The court has examined the last pay slips, exhibited by the parties.
167. The 1st claimant earned basic pay of Kshs 765,486, transport allowance of Kshs. 11,956 and house allowance of Kshs 25, 984. His gross monthly salary on exit was Kshs 803, 426.
168. The 2nd claimant earned a basic pay of Kshs. 913,045, transport allowance of Kshs. 13,946 and owner occupier house allowance of Kshs. 54,960. His gross monthly salary on exit, was Kshs. 981,951.
169. The 1st claimant is granted equivalent of 12 months' salary in compensation for unfair termination at Kshs 9,641,112.
170. The 1st claimant worked from August 4, 1986 to February 24, 2015. He had 28 complete, creditable years of service. He is granted severance pay, at the rate of 15 days' salary for each of the 28 years, based on his exit salary of Kshs 803,426, at Kshs 12,978,420.
171. He is granted 6 months' salary in lieu of notice, at Kshs 4,820,556.
172. The prayer for rebated travel entitlement for the 1st claimant, spouse and children, in accordance with staff travel rules is allowed.
173. The prayer for air passages on respondent's routes, appears too remote in time. The CBA states this benefit should be utilized within 90 days of redundancy. There is no clear evidence before the court on *pro-rata* leave and annual leave. The claimants did not disclose if these items, were part of what they were paid by the respondent. There is no evidence, on instrument rating renewal check or pay in lieu, and ESOP shares. The court has seen a copy of certificate of service on record, and the assumption would be that it has issued, or is ready for collection. There is no justification in payment of salary the claimants expected to have received, until retirement age, which is commonly pleaded, strangely, at a mind-blowing Kshs 105,622,176. They earned different rates of monthly salaries, so that the anticipatory salaries, could never be the same. They have adequately been compensated for loss of employment, and the prayer for anticipatory salaries, is a plea for illicit earnings. They were paid provident funds. The prayer for damages outside the statutory compensation, has no support in law and the evidence placed before the court.
174. Adopting the same reasoning above, the 2nd claimant is granted equivalent of 12 months' salary in compensation for unfair termination, at Kshs 11,783,412.



175. The 2nd claimant was employed on August 18, 1986, and left on February 25, 2015. Like the 1st claimant, he worked for 28 complete years. He is granted severance pay under the CBA, at 15 days' salary, for each of the 28 years, based on his exit salary of Kshs 981,951, at Kshs 15,862,285.
176. He is granted 6 months' salary in lieu of notice at Kshs 5,891,706.
177. The prayer for rebated travel entitlement for the 1st claimant, spouse and children, in accordance with the staff travel rules, is allowed.
178. Other prayers pleaded by the 2nd claimant are declined for the same reasons given at paragraph 169 of this judgment.
179. The claimants are at liberty to collect their certificates of service.
180. They are granted costs of the claim.
181. Interest is granted at court rates, from the date of this judgment, till payment is satisfied in full.
182. Parties told the court that the claimants were paid their dues under the provident fund. The 1st claimant was paid Kshs 29.5 million, and the 2nd claimant Kshs 24 million. Some terminal benefits were paid by the respondent. The court was not given a breakdown of terminal benefits paid by the respondent. The 1st claimant stated that he was paid terminal benefits at Kshs 3.6 million, the 2nd claimant Kshs 3 million. The presumption is that these terminal benefits, details which were not placed before the court, were paid under the termination clause in the CBA. It is always assistive of the court, when parties are candid about what has been paid and received. It does not aid judicial economy, when a party receives certain benefits, but goes on subsequently, to reclaim what has been received. Terminal benefits received by the claimants before this judgment, shall be deducted from the sum awarded. Benefits under the provident fund, received by the claimants, are not disputed, and are not affected by this judgment.

In Sum, it is Ordered: -

- a. It is declared that termination was unfair and unlawful.
- b. It is declared that termination amounted to redundancy and the claimants are entitled to redundancy benefits under clause 45 of the CBA.
- c. The respondent shall pay to the 1st claimant: equivalent of 12 months' gross salary in compensation for unfair termination at Kshs 9,641,112; severance pay at Kshs 12,978,420; 6 months' salary in lieu of notice at Kshs 4,820, 556 – total Kshs 27,440,088.
- d. The respondent shall accord the 1st claimant rebated travel air tickets for Self, spouse and children, in accordance with staff travel rules.
- e. The respondent shall pay to the 2nd claimant: equivalent of 12 months' salary in compensation for unfair termination at Kshs 11,783,412; severance pay at Kshs 15,862,285; and notice of 6 months at Kshs 5,891,706 – total Kshs 33, 537,403.
- f. The respondent shall accord the 2nd claimant rebated travel air tickets for self, spouse and children, in accordance with staff travel rules.
- g. The above amounts shall be paid by the respondent to the claimants, less any terminal dues received before this judgment, except the benefits under the provident fund.
- h. The claimants are at liberty to collect their certificates of service from the respondent.



i. Costs to the claimants.

j. Interest allowed at court rates, from the date of judgment, till payment is satisfied in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 18TH
DAY OF JULY 2022.**

JAMES RIKA

JUDGE

