



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

Karanu v Economic Housing Group & 4 others (Cause 168, 169, 170, 171, 172, 173, 174, 175, 176, 178, 179, 180, 181, 182, 183 & 184 of 2017 (Consolidated)) [2022] KEELRC 13242 (KLR) (17 November 2022) (Judgment)

Neutral citation: [2022] KEELRC 13242 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE 168, 169, 170, 171, 172, 173, 174, 175, 176, 178, 179, 180, 181, 182, 183 & 184 OF 2017 (CONSOLIDATED)

DN NDERITU, J

NOVEMBER 17, 2022

BETWEEN

ROBERT NJUGUNA KARANU CLAIMANT

AND

ECONOMIC HOUSING GROUP 1ST RESPONDENT

RONALD KING'ANG'I 2ND RESPONDENT

KANJA WARURU 3RD RESPONDENT

ANTHONY WAINAINA KAMAU 4TH RESPONDENT

MALI RASILI LIMITED 5TH RESPONDENT

JUDGMENT

I. Introduction

1. Vide an order issued on October 24, 2019 (Mbaru J) this cause No 168 of 2017 was consolidated with causes 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, and 184 all of 2017 and the court ordered that all the said causes proceed to hearing under cause 168 of 2017.
2. Through that order, 1. Robert Njuguna Karanu, 2. Joseph Mugendi Kamundi, 3. Raphael Mwai Muchiri, 4. Moses Kamore Githagui, 5. Amos Nguru Kamau, 6. Francis Kimeli Rop, 7. Andrew Kariuki Kimani, 8. Simon Wambugu Muhoro, 9. James Mwaura Njoroge, 10. Prisca Mumbua Mutiso, 11. Paul Gathara Waihuni, 12. Duncan Kamande Njaramba, 13. Benard Wahome Ndungui, 14. Peter Macharia Thiong'o, 15. Christine Gacheri Nyamu, 16. Gerry Wanjala Khamala, and 17. Martin Waweru Wanjiku all became Claimants in this cause and for ease of reference they shall be referred to as 1st to 17th Claimants, respectively.



3. Initially, all the Claimants had sued the 1st Respondent, Economic Housing Group Limited, as the only Respondent. However, the Claimants subsequently amended their respective claims to include Ronald King'ang'i, Kanja Waruru, Anthony Wainaina Kamau, and Mali Rasili Limited, as 2nd, 3rd, 4th, and 5th Respondents, respectively.
4. Further, on 3rd November, 2021 the Claimants withdrew their claims against the 2nd, 3rd, and 4th Respondents. This was done by consent of Counsel for all the parties.
5. Counsel for the Claimants, Miss Wachira, and Counsel for the 1st and 5th Respondents, Miss Alwala, agreed that the cause be heard by way of written submissions under Rule 21 of the *Employment and Labour Relations Court (Procedure) Rules, 2016*.
6. Counsel for the Claimants filed her written submissions on May 18, 2022 while Counsel for the 1st and 5th Respondents filed on June 10, 2022.

II.1st Claimant's Case

7. The 1st Claimant, Robert Njuguna Karanu, pleads that he was employed by the 1st Respondent on September 1, 1994 as a junior technical assistant trainee and rose to become a supervisor. He has exhibited a letter of employment/appointment dated August 23, 1994.
8. He states that his terms and conditions of employment were reviewed and improved from time to time and that effective from January 1, 2014 his gross monthly salary was Kshs 52,650/=.
9. However, the Claimant states that in October, 2016 the 1st Respondent stopped paying the agreed monthly salary and on December 13, 2016 the 1st Respondent issued a notice of temporary closure of the company premises from December 14, 2016 to January 9, 2017. The company did not re-open on January 9, 2017 as vide a memo of even date the 1st Respondent communicated that the facility had been closed indefinitely.
10. The Claimant pleads that since 2015 the 1st Respondent failed and or refused to remit statutory deductions to relevant bodies including National Social Security Fund (NSSF), National Hospital Insurance Fund (NHIF), Kenya Revenue Authority(KRA), and the voluntary deductions to Economic Housing Group Provident Fund.
11. Despite demand made and notice of intention to sue given the 1st Respondent simply locked out the Claimants out of place of work, failed to pay their salaries, and failed to communicate on the issue hence constructively terminating the Claimants.
12. The salary arrears and terminal dues have not been paid to the Claimants to this day and it is on the basis of the foregoing that the 1st Claimant prays for-
 - a. This Honourable court do order the Respondent(s) to pay to the Claimant his outstanding salary arrears of Kshs 52,650/= for every month from October, 2016 till the date of determination of this suit.
 - b. This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - c. This Honourable court do order the Respondent(s) to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 225,029/= and accruing penalties.



- d. This Honourable court do order the Respondent(s) to remit the deducted dues of Kshs 31,590/= to the Economic Housing Group provident Fund.
 - e. This Honourable court do order Respondent(s) to pay the Claimant 3 months' salary in lieu of notice in the sum of Kshs 157,950/=.
 - f. This Honourable Court do order the Respondent(s) to pay the Claimant severance pay of Kshs 605,475/= for the 23 years worked.
 - g. This Honourable court do order the Respondent(s) to pay the Claimant compensation for unfair and wrongful termination at 12 months salary in Kshs 631,800/=.
 - h. This Honourable Court do order the Respondent(s) to bear the costs for this suit as provided for under Section 12(4) of the *Employment and Labour Relations Act*.
 - i. This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3)(viii) of the *Employment and Labour Relation (Court) Act*.
13. According to the amended memorandum of claim the 1st Respondent is a company engaged in the manufacture of prefabricated buildings and knock-down furniture located at Naivasha within Nakuru County while the 5th Respondent is a holding company of the 1st Respondent.
14. The Claimant prays for judgment against the 1st and 5th Respondents jointly and severally.

III. 2nd Claimant's Case

15. Like the 1st Claimant, the 2nd Claimant, Joseph Mugenda Kamundi, pleads that he was engaged by the 1st Responded on September 1, 1994 as a junior technical assistant vide a contract dated August 23, 1994. He states that as of September, 2016 his monthly salary was Kshs 52,650/=.
16. He pleads that he was unlawfully and unfairly terminated by the first Respondent in the same way and manner that the 1st Claimant was terminated.
17. He prays for the following reliefs –
- (a) This Honourable Court do order the Respondent to pay to the Clamant his outstanding salary arrears of Kshs 52,650/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - (c) This Honourable court to order Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 272,481/= and accruing penalties.
 - (d) This Honourable court do order the Respondents to pay the Claimant 3 months' salary in lieu of notice in the sum of Kshs 157,950/=.



- (e) This Honourable court do order the Respondents to pay the Claimant severance pay of Kshs 588,281.25 for the 20 years and 11 months worked.
- (f) This Honourable court do order the Respondents to pay the Claimant compensation for unfair and wrongful termination at 12 months' salary in the sum of Kshs 631,000/=.
- (g) This Honourable court do order the Respondents to bear the costs for this suit as provided for under Section 12(4) of the *Employment and Labour Relations Act*.
- (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(vii) of the *Employment and Labour Relations Act*.

IV. 3rd Claimant's Case

- 18. The 3rd Claimant's case, Raphael Mwai Muchiri, is an exact replica of that by the 1st and 2nd Claimants.
- 19. He is seeking for judgment against the 1st and 5th Respondents, jointly and severally, for the following –
 - a. This Honourable Court do order the Respondents to pay to the Claimant his outstanding salary arrears of Kshs 52,650/= for every month from October, 2016 till the date of determination of this suit.
 - b. This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - c. This Honourable court to order Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 220,836/= and accruing penalties.
 - d. This Honourable court do order the Respondents to pay the Claimant 3 month's salary in lieu of notice given of Kshs 157,950/=.
 - e. This Honourable court do order the Respondents to pay the Claimant severance pay of Kshs 605,475 for the 23 years worked.
 - f. This Honourable court do order the Respondent to pay the Claimant compensation for unfair and wrongful termination at 12 months salary in the sum of Kshs.631,800/=.
 - g. This Honourable court do order the Respondents to bear the costs for this suit as provided for under Section 12(4) of the *Employment and Labour Relations Act*.
 - h. This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii) of the *Employment and Labour Relations Act*.

V. 4th Claimant's Case

- 20. The 4th Claimant, Moses Kamore Githagui, has pleaded in the same manner as the foregoing Claimants except that he was first engaged as production trainee on August 16, 1994 and issued with a contract on August 16, 2004.



21. He states that his gross monthly salary had improved to Kshs 125,000/= by November, 2016.
22. He prays for the following orders against the 1st and 5th Respondents, jointly and severally –
 - (a) This Honourable Court do order the Respondents to pay to the Claimant his outstanding salary arrears of Kshs 125,000/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues deducted of Kshs 3200 from September, 2015 to December, 2016.
 - (c) This Honourable court do order Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 427,080/= and accruing penalties.
 - (d) This Honourable court do order the Respondent to pay the Claimant 3 month's salary in lieu of notice given in the sum of Kshs 375,000/=.
 - (e) This Honourable court do order the Respondent to pay to the Claimant severance pay of Kshs 812,500/= for the 13 years worked.
 - (f) This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months' salary in the sum of Kshs 1,500,000/=.
 - (g) This Honourable court do order the Respondent to bear the costs for this suit as provided for under Section 12(4) of the *Employment and Labour Relations Act*.
 - (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

VI. 5th Claimant's Case

23. . In terms of the events and circumstances leading to termination the 5th Claimant, Amos Nguru Kamau, pleads in the same manner and style as the foregoing Claimants.
24. He pleads that he was employed by the 1st Respondent as a general driver/garage mechanical worker on November 4, 2004 and issued with a contract on the same date.
25. He states that as at September, 2016 his gross monthly salary was Kshs 39,000/=.
26. It is on the basis of the foregoing that the 5th claimant prays for judgment against the Respondents, jointly and severally, for –
 - (a) This Honourable Court do order the Respondents to pay the Claimant his outstanding salary arrears of Kshs 39,000/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.



- (c) This Honourable court do order the Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 186,915/= and accruing penalties.
- (d) This Honourable court do order the Respondents to pay to the Claimant 3 months' salary in lieu of notice given at Kshs 117,000/=.
- (e) This Honourable court do order the Respondents to pay to the Claimant severance pay of Kshs 234,00/= for the 12 years worked.
- (f) This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months salary in the sum of Kshs 468,000/=.
- (g) This Honourable court do order the Respondents to bear the costs for this suit as provided for under Section 12(4) of the *Employment and Labour Relations Act*.
- (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

VII. 6th Claimant's Case

- 27. The 6th Claimant, Francis Kimeli Rop, pleads that he was engaged by the 1st Respondent as a driver on August 1, 2005 and issued with a contract on August 5, 2005.
- 28. He states that by September, 2016 his gross monthly salary was Kshs 32,500/=.
- 29. On termination he has pleaded exactly the same way as the other foregoing Claimants.
- 30. He prays for judgment against the Respondents jointly and severally, for-
 - (a) This Honourable Court do order the Respondents to pay to Claimant his outstanding salary arrears of Kshs 32,500/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - (c) This Honourable court to order Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 205,198/= and accruing penalties.
 - (d) This Honourable court do order the Respondents to pay to the Claimant 3 months' salary in lieu of notice given in the sum of Kshs 97,500/=.
 - (e) This Honourable court do order the Respondents to pay to the Claimants their Severance pay of Kshs 178,750/= for the 11 years worked.
 - (f) This Honourable court do order the Respondent to pay to the Claimant compensation for unfair and wrongful termination at 12 months salary in the sum of Kshs 390,000/=.



- (g) This Honourable court do order the Respondent to bear the costs for this suit as provided for under Section 12(4) of the *Employment and Labour Relations Act*.
- (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

VIII. 7th Claimant's Case

- 31. The 7th Claimant, Andrew Kariuki Kimani, pleads that he was employed by the 1st Respondent on July 1, 2009 as an accounts assistant and that he was issued with a contract on July 6, 2009.
- 32. He pleads that by September, 2016 his monthly gross salary was Kshs 54,000/=.
- 33. As for the events and circumstances leading to his termination he pleads in exactly the same manner as all the other foregoing Claimants.
- 34. He prays for the following against the Respondents –
 - (a) This Honourable Court do order the Respondent to pay Claimant his outstanding salary arrears of Kshs 54,000/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund to the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - (c) This Honourable court do order the Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 170,737/= and accruing penalties.
 - (d) This Honourable court do order the Respondents to pay the Claimant 3 months' salary in lieu of notice at Kshs 162,000/=.
 - (e) This Honourable court do order the Respondent to pay to the Claimant Severance pay of Kshs 189,000/= for the 7 years worked.
 - (f) This Honourable court do order the Respondent to pay to the Claimant compensation for unfair and wrongful termination at 12 months salary in the sum of Kshs 648,000/=.
 - (g) This Honourable court do order the Respondent to bear the costs for this suit as provided for under Section 12(4) of the *Employment and Labour Relations Act*.
 - (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

IX. 8th Claimant's Case

- 35. The 8th Claimant, Simon Wambugu Muhoro, pleads that he was engaged by the 1st Respondent on 1st March, 2012 as a motor-bike rider, messenger and office helper and that he was issued with a contract on 15th March, 2012.
- 36. He states that as of September, 2016 his monthly gross salary was Kshs 26,600/=.



37. As to the events and circumstances leading to termination of his employment he has pleaded in the exact manner as the other foregoing Claimants.
38. He prays for judgment against the Respondents, jointly and severally, as follows –
- (a) This Honourable Court do order the Respondents to pay to the Claimant his outstanding salary arrears of Kshs 26,600/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs.3200 from September, 2015 to December, 2016.
 - (c) This Honourable court do order Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 96,094/= and accruing penalties.
 - (d) This Honourable court do order the Respondents to pay the Claimant 3 month's salary in lieu of notice at Kshs 79,800/=.
 - (e) This Honourable court do order the Respondents to pay the Claimants their severance pay of Kshs 53,200/= for the 4 years worked.
 - (f) This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months' salary of Kshs 319,200/=.
 - (g) This Honourable court do order the Respondents to bear the costs for this suit as provided for under Section 12(4) of the [Employment and Labour Relations Act](#).
 - (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the [Employment and Labour Relations Act](#).

X. 9th Claimant's Case

39. The 9th Claimant, James Mwaura Njoroge, pleads that he was engaged by the 1st Respondent as a financial accountant on April 1, 2014 and issued with a contract on September 30, 2014.
40. He states that as of September, 2016 his monthly gross salary was Kshs 150,000/=.
41. As to the events and circumstances leading to termination he pleads in the exact manner as the other foregoing Claimants.
42. He prays for judgment against the Respondents, jointly and severally, as follows –
- (a) This Honourable Court do order the Respondents to pay Claimant his outstanding salary arrears of Kshs 150,000/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.



- (c) This Honourable court to order Respondent to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 868,128/= and accruing penalties.
- (d) This Honourable court do order the Respondents to pay to the Claimant 3 months' salary in lieu of notice in the sum of Kshs 450,000/=.
- (e) This Honourable court do order the Respondents to pay to the Claimant severance pay of Kshs.150,000/= for the 2 years worked.
- (f) This Honourable court do order the Respondents to pay the Claimant compensation for unfair and wrongful termination at 12 months salary in the sum of Kshs.1,800,000/=.
- (g) This Honourable court do order the Respondent's to bear the costs for this suit as provided under Section 12(4) of the [Employment and Labour Relations Act](#).
- (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the [Employment and Labour Relations Act](#).

XI. 10th Claimant's Case

- 43. The 10th Claimant, Prisca Mumbua Mutiso, pleads that she was engaged by the 1st Respondent as office cleaner/tea girl on August 1, 2014 and issued with a contract on even date.
- 44. She pleads that by September, 2016 her monthly gross salary stood at Kshs 15,000/=.
- 45. As to the events and circumstances leading to her termination she has pleaded exactly in the same manner as the other foregoing Claimants.
- 46. She prays for judgment against the Respondents, jointly and severally, for the following –
 - a. This Honourable Court do order the Respondents to pay to the Claimant her outstanding salary Arrears of Kshs 15,000/= for every month from October, 2016 till the date of determination of this suit.
 - b. This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - c. This Honourable court to order the Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 13,200/= and accruing penalties.
 - d. This Honourable court do order the Respondents to pay to the Claimant 3 month's salary in lieu of notice in the sum of Kshs 45,000/=.
 - e. This Honourable court do order the Respondents to pay to the Claimant severance pay of Kshs 15,000/= for the 2 years worked.
 - f. This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months salary in the sum of Kshs 180,000/=.



- g. This Honourable court do order the Respondents to bear the costs for this suit as provided under Section 12(4) of the *Employment and Labour Relations Act*.
- h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

XII. 11th Claimant's Case

- 47. The 11th Claimant, Paul Gathara Waihuni, pleads that he was engaged by the 1st Respondent as an office rider/driver with effect from October 1, 2014 based on a contract dated 15th September, 2014.
- 48. He pleads that as of September, 2016 his monthly gross salary stood at Kshs 25,000/=.
- 49. As for the events and circumstances leading to his termination he has pleaded in exactly the same way as the other foregoing Claimants.
- 50. He prays for judgment against the Respondents, jointly and severally, for –
 - a. This Honourable Court do order the Respondents to pay to the Claimant his outstanding salary arrears of Kshs 25,000/= for every month from October, 2016 till the date of determination of this suit.
 - b. This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - c. This Honourable court do order Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 68,070/= and accruing penalties.
 - d. This Honourable court do order the Respondents to pay to the Claimant 3 months' salary in lieu of notice in the sum of Kshs 75,000/=.
 - e. This Honourable court do order the Respondents to pay to the Claimant severance pay of Kshs 25,000/= for the 2 years worked.
 - f. This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months in the sum of Kshs 300,000/=.
 - g. This Honourable court do order the Respondents to bear the costs for this suit as provided under Section 12(4) of the *Employment and Labour Relations Act*.
 - h. This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

XIII. 12th Claimant's Case

- 51. The 12th Claimant, Duncan Kamande Njaramba, pleads that he was employed by the 1st Respondent on May 18, 2015 as an account assistant on internship.
- 52. He states that by September 2016 his gross monthly salary was Kshs 42,000/=.
- 53. As to the events and circumstances leading to his termination he has pleaded in the same terms as the foregoing Claimants.



54. He prays for judgment against the Respondents, jointly and severally for –
- (a) This Honourable Court do order the Respondents to pay to the Claimant his outstanding salary arrears of Kshs 42,000/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - (c) This Honourable court do order Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs.52,681/= and accruing penalties.
 - (d) This Honourable court do order the Respondent to pay the Claimant 3 months' salary in lieu of notice in the sum of Kshs 126,000/=.
 - (e) This Honourable court do order the Respondents to pay the Claimant severance pay of Kshs 21,000/= for the 1 year worked.
 - (f) This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months in the sum of Kshs 504,000/=.
 - (g) This Honourable court do order the Respondents to bear the costs for this suit as provided under Section 12(4) of the [Employment and Labour Relations Act](#).
 - (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3)(viii) of the [Employment and Labour Relations Act](#).

XIV. 13th Claimant's Case

55. The 13th Claimant, Benard Wahome Ndungu, pleads that he was employed by the 1st Respondent service on September 21, 2015 as a CNC supervisor and issued with a contract on the same date.
56. He states that as of September, 2016 he was earning a monthly gross salary of Kshs 100,000/=.
57. As to the events and circumstances leading to his termination he pleads exactly the same way as the other foregoing Claimants.
58. He prays for judgment against the Respondents, jointly and severally, for-
- (a) This Honourable Court do order the Respondents to pay to the Claimant his outstanding salary arrears of Kshs 100,000/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - (c) This Honourable court do order Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 380,037/= and accruing penalties.



- (d) This Honourable court do order the Respondents to pay the Claimant 3 months' salary in lieu of notice in the sum of Kshs 300,000/=.
- (e) This Honourable court do order the Respondents to pay the Claimant severance pay of Kshs 50,000/= for the 1 year worked.
- (f) This Honourable court do order the Respondent to pay to the Claimant compensation for unfair and wrongful termination at 12 months in the sum of Kshs 1,200,000/=.
- (g) This Honourable court do order the Respondents to bear the costs for this suit as provided under Section 12(4) of the *Employment and Labour Relations Act*.
- (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

XV. 14th Claimant's Case

- 59. . The 14th Claimant, Peter Macharia Thiong'o, pleads that he was employed by the 1st Respondent as a sales executive with effect from October 1, 2015 based on a contract issued on September 20, 2015.
- 60. He states that as of September, 2016 his monthly gross salary was Kshs 40,000/=.
- 61. The events and circumstances leading to his termination are exactly as pleaded by the other forgoing Claimants.
- 62. He prays for judgment against the Respondents, jointly and severally, for –
 - (a) This Honourable Court do order the Respondents to pay Claimant his outstanding salary arrears of Kshs 40,000/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 3,200/= from September, 2015 to December, 2016.
 - (c) This Honourable court to order the Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 45,139/= and accruing penalties.
 - (d) This Honourable court do order the Respondents to pay to the Claimant 3 months' salary in lieu of notice in the sum of Kshs 120,000/=.
 - (e) This Honourable court do order the Respondents to pay to the Claimant severance pay of Kshs 20,000/= for the 1 year worked.
 - (f) This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months compensation of Kshs 480,000/=.
 - (g) This Honourable court do order the Respondents to bear the costs for this suit as provided under Section 12(4) of the *Employment and Labour Relations Act*.
 - (h) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.



XVI. 15th Claimant's Case

63. The 15th Claimant, Christine Gaceri Nyamu, pleads that she was engaged by the 1st Respondent on December 15, 2015 as an administration and project co-ordinator and was issued with a contract on even date.
64. She pleads that by September, 2016 her monthly gross salary stood at Kshs 45,000/=-.
65. The events and circumstances leading to her termination are exactly the same as pleaded by the other Claimants.
66. She prays for judgment against the Respondents, jointly and severally, for –
 - a. This Honourable Court do order the Respondent to pay Claimant her outstanding salary arrears of Kshs 45,000/= for every month from October, 2016 till the date of determination of this suit.
 - b. This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 2,600/= from December, 2015 to December, 2016.
 - c. This Honourable court do order the Respondents to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 61,062 and accruing penalties.
 - d. This Honourable court do order the Respondents to pay to the Claimant 3 months' salary in lieu of notice in the sum of Kshs 135,000/=.
 - e. This Honourable court do order the Respondents to pay the Claimant severance pay of Kshs 22,500/= for the 1 year worked.
 - f. This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months totalling Kshs 450,000/=.
 - g. This Honourable court do order the Respondents to bear the costs for this suit as provided under Section 12(4) of the *Employment and Labour Relations Act*.
 - h. This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

XVII. 16th Claimant's Case

67. The 16th Claimant, Gerry Wanjala Khamala, without giving particulars, pleads that he was an employee of the 1st Respondent from February 13, 2016.
68. He states that as of September, 2016 his monthly gross salary was Kshs 25,000/=-.
69. On the events and circumstances leading to his termination he pleads on exactly the same way as the other foregoing Claimants.



70. He prays for judgment against the Respondents, jointly and severally for –
- a. This Honourable Court do order the Respondents to pay to Claimant his outstanding salary arrears of Kshs 25,000/= for every month from October, 2016 till the date of determination of this suit.
 - b. This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 1,800/= from March, 2016 to December, 2016.
 - c. This Honourable court do order Respondent to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 48,685/= and accruing penalties.
 - d. This Honourable court do order the Respondent to pay to the Claimant 3 months' salary in lieu of notice totalling Kshs 75,000/=.
 - e. This Honourable court do order the Respondents to pay the Claimant compensation for unfair and wrongful termination at 12 months totalling Kshs 300,000/=.
 - f. This Honourable court do order the Respondent to bear the costs for this suit as provided under Section 12(4) of the [Employment and Labour Relations Act](#).
 - g. This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the [Employment and Labour Relations Act](#).

XVIII. 17th Claimant's Case

71. The 17th Claimant, Martin Waweru Wanjiku, pleads that he was employed by the 1st Respondent on March 1, 2016 as a track driver and was confirmed on August 1, 2016 at a monthly gross salary of Kshs 25,000/= and his salary remained as such by September, 2016.
72. On the events and circumstances leading to his termination he pleads in the same manner as the other Claimants above.
73. He prays for judgment against the Respondents, jointly and severally, for-
- (a) This Honourable Court do order the Respondents to pay to the Claimant his outstanding salary arrears of Kshs 25,000/= for every month from October, 2016 till the date of determination of this suit.
 - (b) This Honourable court do order the Respondents to refund the Claimant's NSSF dues as deducted of Kshs 1,800/= from March, 2016 to December, 2016.
 - (c) This Honourable court to order Respondent to pay the deducted and unremitted PAYE to Kenya Revenue Authority of Kshs 36,652/= and accruing penalties.
 - (d) This Honourable court do order the Respondents to pay to the Claimant 3 months' salary in lieu of notice totalling Kshs 75,000/=.



- (e) This Honourable court do order the Respondents to pay to the Claimant compensation for unfair and wrongful termination at 12 months compensation totalling Kshs 300,000/.
- (f) This Honourable court do order the Respondents to bear the costs for this suit as provided under Section 12(4) of the *Employment and Labour Relations Act*.
- (g) This Honourable court do make further orders as it shall deem fit as provided for under Section 12(3(viii)) of the *Employment and Labour Relations Act*.

XIX. 1st And 5th Respondents' Case

- 74. As stated in an earlier part of this judgment, on November 3, 2021 the Claimants withdrew their case against the 2nd, 3rd, and 4th Respondents leaving the 1st and 5th as the only Respondents. All the Claimants are seeking their respective prayers and reliefs against the 1st and 5th Respondents, jointly and severally.
- 75. The 1st, 2nd, 4th, and 5th Respondents filed a joint response to the claim dated November 28, 2019. The 5th Respondent denied each and every allegation by the Claimants stating that at no time did it enter into contract of employment with any of the Claimants and as such no relief should be granted against it.
- 76. However, the 1st Respondent admitted the allegations by the Claimants, as outlined in earlier parts of this judgment, and pleaded that it had failed to settle the claims by the Claimants due to non-payment from its clients among them the Judiciary which led to the 1st Respondent's plant at Naivasha being auctioned.
- 77. The 1st Respondent alleges that it paid outgoing statutory deductions to the relevant authorities and that if any of such deductions were not remitted the Claimants cannot lay claim on them as the same can only be payable and owing to those authorities or bodies and not to the Claimants.
- 78. In paragraph 13 of the response to the claim the 1st Respondent pleaded that –
 - “in response to the prayers sought the 1st Respondent states that the prayers sought ought not to issue and this suit was not a necessity as the Respondent is keen on settling the Claimants dues.”
- 79. Although the 1st Claimant admits the claims by all the Claimants as alluded to above, it nonetheless pleads that this cause should be dismissed with costs as it denies that it was served with a demand notice and that it is only for lack of funds otherwise it would have settled the claims by the Claimants.
- 80. From the pleadings filed by both sides and all the parties, the 5th Respondent was joined in this cause in its capacity as a holding company of the 1st Respondent.

XX. Submissions By Claimant's Counsel

- 81. The Claimants' Counsel, Miss Wachira, filed her written submissions dated March 4, 2022 on May 18, 2022.
- 82. Counsel for Claimant identified two(2) issues for determination in this cause as follows –
 - (a) Admission of facts by the 1st Respondent



(b) Whether the 5th Respondent (holding company) is liable for the actions of the 1st Respondent (subsidiary company).

83. On the first issue Counsel for the Claimants argues that the 1st Respondent admitted in its response to the claim owing to the Claimants as pleaded in the respective amended statements of claim, and even undertook “to settle all statutory outstanding dues once it receives payment from the judiciary.”
84. Further, Counsel submitted that the 1st Respondent alleged to have submitted all the statutory deductions to the relevant authorities and institutions but without proof thereof.
85. Counsel also submitted that it has been admitted by both the 1st and 5th Respondents that the 5th Respondent is a holding company of the 1st Respondent.
86. Counsel argues that since the Respondents have admitted the foregoing in their respective pleadings then Section 61 of the *Evidence Act* applies and that those facts need no further proof as they are duly admitted. On this preposition Counsel has cited *Isuzu East Africa Limited (formerly General Motors East Africa Limited) v Nairobi City County Government* [2020] eKLR.
87. On the second issue Counsel has submitted that the 1st Respondent is a subsidiary of 5th Respondent and that the 5th Respondent is the holding company of the 1st Respondent.
88. Counsel has relied on Section 2 of the *Companies Act* (Cap 486) in regard to the definition of a holding company. Counsel argues that the 5th Respondent had and continues to enjoy control over the 1st Respondent and as such the 5th Respondent should be held to be an agent of the 1st Respondent in the definition of an employer under Section 2 of the *Employment Act* (the Act).
89. It is on the basis of the foregoing that Counsel for the Claimants prays that judgment be entered against the two Respondents, jointly and severally, as prayed for by the Claimants in their respective amended memoranda of claim.

XXI. Submissions By Counsel For The 1st And 5th Respondents

90. Counsel for the Respondents has identified five (5) issues for determination in his submissions. The said issues may be condensed into two broad issues. The first issue then becomes whether the 5th Respondent is liable, jointly and severally, with the 1st Respondent for the reliefs sought by the Claimants. The second issue is on the remedies and whether the same are awardable as prayed for by the Claimants.
91. Counsel submits that both sides are in agreement that the 5th Respondent is a holding company of the 1st Respondent. Counsel has cited *Hannah Maina t/a Taa Flower v Rift Valley Bottlers Limited* [2016] eKLR wherein the Court of Appeal held that a holding and a subsidiary company are two distinct legal entities and hence one cannot be held liable for the undertakings of the other.
92. For the foregoing reasons Counsel argues that no cause of action has been disclosed against the 5th Respondent by the Claimants.
93. The second issue on whether the Claimants are entitled to the remedies sought shall be dealt with at a later part of this judgment.



XXII. Issues For Determination

94. Flowing from the foregoing analysis of the pleadings filed by the parties and submissions by both Counsel the following issues stand out for determination –
- (a) Are the 1st and 5th Respondents jointly and severally liable for the claims by the Claimants?
 - (b) Are the Claimants entitled to the reliefs sought and to what extent?
 - (c) Costs.

XXIII. Liability

95. In all the amended memoranda of claims filed by the Claimants, the 5th Respondent is mentioned in the terms that it is a holding company of the 1st Respondent.
96. In the prayers or reliefs all the Claimants pleaded that judgment be entered in favour of the Claimant against the 1st and 5th Respondents, jointly and severally.
97. There are no specific allegations made against the 5th Respondent other than that it is the holding company of the 1st Respondent and hence the latter is a subsidiary of the former.
98. The *Black's Law Dictionary*, Tenth Edition defines a holding company as –
- A company formed to control other companies usually confining its role to owning stock and supervising management. It does not participate in making of day-to-day business decisions in those companies.
99. It is elementary law that a company is an independent legal entity distinct from its shareholders, subscribers, directors, management, and staff. A duly incorporated company shall be held liable and accountable for all actions it takes, debts incurred, and other consequences that may be incurred by such a company during its lifetime.
100. However, under some particular instances courts may lift the corporate veil and indeed hold directors or officers of a company liable for actions taken by them in person. This is what the Court of Appeal was restating in *Gilgil Telecoms Industries Limited v Duncan Nderitu & 57 Others* [2016] eKLR. Lord Denning, in his usual flamboyant style, put it even more graphically in *Littlewoods Mail Order Stone Ltd v McGregor* [1969] 2 All ER 855.
101. In the understanding of this court, the corporate veil shall be lifted where it is established that the directors or officers of a company were involved in conduct that led to the company being placed in a precarious or fraudulent position resulting in losses or other unpleasant situations to the detriment of third parties.
102. It is my view that the above principles apply, *mutatis mutandis*, to the relationship between a holding and a subsidiary company. Both are different and distinct legal entities, with their own legal life. One cannot be held liable for the actions of another unless there is clear evidence demonstrating that there was misconduct, fraud, or such other breach that led to the detrimental situation that is complained of.
103. The underlying principle is that companies and other juridical entities cannot act on their own, as much as they are legal entities, and only operate through the actions of those behind the corporate veil, including the shareholders, directors, and management.



104. Flowing from the foregoing, unless there is clear evidence brought forward by the Claimants, which unfortunately I am unable to gather from the pleadings and written submissions as analysed above, there is no way of holding the 5th Respondent (the holding company) liable for the actions of the 1st Respondent (the subsidiary).
105. The 5th Respondent is not party to the various contracts entered into between the 1st Respondent and the Claimants herein. There is no pleading or evidence on how the 5th Respondent or directors or officers thereof contributed to the failure by the 1st Respondent to meet the demands from the Claimants.
106. The Directors of the 5th Respondent are no longer parties to this cause. There is no evidence that the 5th Respondent participated in the recruitment and employment of the Claimants, payment of their salaries and benefits, or their unfortunate termination. In those circumstances this court cannot find the 5th Respondent at fault for the conduct and failures by the 1st Respondent in termination of the Claimants and failure to pay their various claims for terminal dues.
107. Considering all the foregoing, the pleadings, documentary evidence presented to court, along with the written submissions, this court arrives at the inevitable conclusion that the 5th Respondent cannot in the circumstances be held liable for the failure and malfeasance on the part of the 1st Respondent. The first issue for determination is hence resolved that it is only the 1st Respondent who should be held liable and accountable for any claims that may be awardable to the Claimants. It is so held.

XIV. Reliefs

108. It has been held above that the 1st Respondent should be held liable for any reliefs that may be awarded to the Claimants. The 5th Respondent is discharged from any liability. This court shall proceed on this basis in considering the reliefs sought by the Claimants which have been set out and reproduced elsewhere in this judgment.
109. For good order and simplicity the court shall use the reliefs sought by the 1st Claimant as a sample and guide in determining what is awardable to the Claimants and on that basis proceed to award or deny each Claimant as pleaded in the respective amended memorandum of claim.

XXV. Termination

110. Before considering the reliefs let me comment on the mode of termination of the Claimants by the 1st Respondent.
111. Whether casual or permanent the relationship between an employer and an employee is based on the law of contract. It is a contractual relationship. Contracts come to an end based on the agreed terms and conditions as contained in such contracts. The termination of a contract may be by mutual consent/agreement, fundamental breach, effluxion of time, death, or any other manner recognized in law.
112. On the same basis and ratio the *Employment Act* (the Act) recognizes that employment contracts shall come to an end in one way or another and hence provides for the manner, conditions, principles, and procedures applicable in those different scenarios. A contract of employment may be terminated through death of an employee, dismissal, redundancy, or any other lawful manner agreed by and between the parties.
113. However, one thing that is certain, and this court (ELRC) has developed jurisprudence on this issue, is that the employer shall accord the employee both substantive and procedural fairness before, during, and after the termination – See *Mary Chemweno v Kenya Pipeline Company Limited* [2017] eKLR,



Loice Otiemo v Kenya Commercial Bank Limited [2013] eKLR, and *Walter Ogal Anuro v Teachers Service Commission* [2012] eKLR.

114. Failure to comply with the substantive and procedural requirements as provided for in the law renders an employer amenable and vulnerable to award of the various remedies provided for in the law.
115. All the Claimants have pleaded that the 1st Respondent issued a notice on December 13, 2016 to the effect that the company would be closed from December 14, 2016 to January 9, 2017. The closure was alleged to allow for maintenance of the factory.
116. However, instead of reopening on January 9, 2017 as promised in the said notice the 1st Respondent issued another notice on the said date to the effect that the factory would remain closed indefinitely or until further notice. As it turns out the plant has not reopened ever since and no further notice or communication was issued by the 1st Respondent as to when or if the factory will ever reopen for operations. The Claimants plead that they have not been paid their salary arrears or terminal dues to this day.
117. From the pleadings and written submissions by Counsel the Claimants suggest that they were rendered redundant. However, there is no evidence whatsoever that the 1st Respondent complied or even attempted to comply with Section 40 of the Act on termination on account of redundancy.
118. There are no allegations of misconduct on the part of the Claimants. There is no evidence of termination notices issued and served upon the Claimants to this day.
119. The 1st Respondent has admitted the facts on the events and circumstances leading to the closure of the factory and the termination of the Claimants. The 1st Respondent alleges that their clients failed and or refused to pay for goods and services rendered and as such it had no financial capacity to continue retaining the Claimants as employees yet it could not pay their salaries and allowances. The 1st Respondent pleads that it had to scale down its operations due to financial constraints.
120. No evidence has been adduced or availed as to whether the 1st Respondent is still in business whether at Naivasha or elsewhere in the Republic.
121. In the entire circumstances of this cause, considering the pleadings and submissions by Counsel for both parties, this court is in agreement with Counsel for the Claimants that the 1st Respondent terminated the Claimants on redundancy but failed to comply with Section 40 of the Act. It is so held and declared.

XXVI. Reliefs

122. As stated in the foregoing part of this judgment this court shall use the claim by the 1st Claimant as a sample and set the guidelines and parameters on the reliefs that may be awarded to the Claimants. The reliefs sought by each of the Claimants have been set out and reproduced in an earlier part of this judgment.
123. Although the Claimants have pleaded that the monthly salary stated was basic, none of the Claimants has provided for the gross salary and as such the court shall treat the disclosed monthly salary as gross pay.

XXVII. 1st Claimant

124. The first prayer (a) by the 1st Claimant is for outstanding salary arrears of Kshs 52,650/- per month from October, 2016 till determination of this cause.



125. The court finds that the effective date of redundancy is January 9, 2017 when the 1st Respondent declared that it was closing operations indefinitely and failed to communicate with the Claimants ever since on the date of re-opening.
126. In the circumstances any salary arrears due and payable can only be paid upto and including that date. The salary appears payable to the 1st Claimant is thus –
Kshs 52,650/= x 3 9/30(October, November, December, 2016 and 9 days for January, 2017) = Kshs 173,745/=.
127. Prayer (b) is for NSSF dues that were allegedly deducted but not remitted by the 1st Respondent in the sum of Kshs 3,200/=. It is important to note that what the 1st Claimant is demanding back is alleged statutory deductions that were supposed to be remitted to NSSF and which according to him were not remitted. The 1st Respondent has alleged that the same were remitted. However, no evidence has been availed to confirm such remittance.
128. Be that as it may, statutory deductions once made are not the property of the employee. NSSF is a legal entity that is operational and all the Claimants failed to join NSSF as a party to this cause. This court holds that statutory deductions cannot be refunded to the Claimants as once the deductions were made they became due and payable to the NSSF or such other institutions which have the legal capacity to demand for and follow up on the remittance. This prayer is denied.
129. Prayer(c) is for a sum of Kshs 225,020/= being refund for statutory deductions that was due and payable (PAYE) to Kenya Revenue Authority(KRA) - The same is denied for exactly the same reasons as for prayer (b) above.
130. Prayer (d) is for a refund of funds that were supposed to be remitted to Economic Housing Group Provident Fund in the sum of Kshs 31,950/-. That sum is not a statutory deduction but rather the same was deducted voluntarily on the instructions of the 1st Claimant into the said provident fund. In the circumstances the said sum of Kshs 31,950/= is awarded to the 1st Claimant.
131. Prayer (e) is for a sum of Kshs 157,950/= being three(3) months' salary in lieu of notice. The letter of appointment does not provide for such notice before termination. There is no evidence adduced in support of the three (3) months' pay in lieu of notice. Section 40(1)(f) of the Act provides for a minimum notice of one(1) month before termination on redundancy or one month's salary in lieu of the said notice. This court shall thus grant the 1st Claimant one month's salary in lieu of notice in the sum of Kshs 52,650/=.
132. Prayer (f) is for severance pay of Kshs 605,475/= for the period of 23 years that the 1st Claimant worked for the 1st Respondent. Section 40(1)(g) of the Act provides for payment of severance pay at the rate of 15 days for each completed year of service based on the last gross pay. This claim is granted as follows – Kshs 52,650/= x 23 x 15/30 = Kshs 605,475/=.
133. Prayer (g) is for compensation for unfair and unlawful termination on redundancy. The 1st Claimant is seeking 12 months gross salary in compensation under Section 49 of the Act.
134. No business commences operations with a mission to fail. At its prime, the 1st Respondent offered employment to over 100 Kenyans, as gathered from the materials placed before the court. The 1st Respondent admits that the only reason why it had to cease operations is that the clients failed and or refused to pay and as such it could not continue having the Claimants on the payroll. The 1st Respondent has pleaded that it was always ready and willing to pay all dues to the Claimants once put in funds.



135. Nonetheless, the manner and style that the 1st Respondent applied in terminating the Claimants was completely out of touch with the applicable law on redundancy under Section 40 of the Act and other relevant laws including Articles 41 and 47 of the Constitution.
136. Considering all the factors provided for under Section 49 of the Act this court finds that an award of six(6) months gross salary is reasonable compensation for the unfair and unlawful termination. The same is computed as Kshs.52,650/= x 6 = Kshs 315,900/=.
137. The foregoing criteria shall apply, *mutatis mutandis*, to the assessment of reliefs awardable to the other Claimants as all material facts and circumstances are the same for all the Claimants. The court shall proceed as hereunder.

XXVIII. 2nd Claimant

138. Based on the findings above in respect of 1st Claimant, and using the findings thereof as the criteria for award in this cause, in respect of all the Claimants, the 2nd Claimant is awarded the following–
- Salary arrears for the months of October, November, December, 2016, and 9 days for January, 2017(Kshs 52,650 x 3) +(9/30 x 52,650/=) = Kshs 173,745/=.
 - One month’s salary in lieu of notice Kshs 52,650/=
 - Severance pay for 20 years worked – Kshs 52,650 x 15/30 x 20= Kshs 526,500/=.
 - Compensation for unfair and unlawful termination at six (6) months gross salary - Kshs 52,650/= x 6 = Kshs 315,900/=.

XXIX. 3rd Claimant

139. On the same basis applied above the 3rd Claimant is awarded the following –
- Salary arrears for October, November, and December, 2016 and 9 days worked in January, 2017 – (Kshs 52,650/= x 3) +(9/30 x 526,650/=) = Kshs 173,745/=.
 - One month’s salary in lieu of notice – Kshs 52,650/=.
 - Severance pay for 23 years worked – Kshs.52,650/30 x 23 x 15 = Kshs.605,475/=.
 - Compensation for unfair and unlawful termination at six (6) month’s gross salary- Kshs.52,650/= x 6 =Kshs.315,900/=.

XXX. 4th Claimant

140. The 4th Claimant is awarded the following –
- Salary arrears for October, November, and December, 2016 and 9 days of January, 2017 – (Kshs 125,000/= x 3) + (Kshs 125,000/= x 9/30) = Kshs 412,500/=.
 - One month’s gross salary in lieu of notice – Kshs 125,000/=.
 - Severance pay for 13 years worked Kshs 125,000/30 x 13 =Kshs 812,500/=.
 - Compensation for unfair and unlawful termination at six (6) Months gross salary– Kshs 125,000/= x 6 = Kshs 750,000/=.



XXXI. 5th Claimant

141. The 5th Claimant is awarded the following-

- (a) Salary arrears for October, November, and December, 2016 plus 9 days of January, 2017.
(Kshs 39,000/= x 3) + (Kshs 39,000/= x 9 = Kshs 128,700/=.
- (b) One (1) month's salary in lieu of notice – Kshs 39,000/=.
- (c) Severance pay for 12 years worked – Kshs 39,000/= / 30 x 15 x 12 = Kshs 234,000/=.
- (d) Compensation for unfair and unlawful termination at six month's gross salary – Kshs 39,000 x 6 = Kshs 234,000/=.

XXXII. 6th Claimant

142. The 6th Claimant is awarded as follows-

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January, 2017 at the rate of Kshs 2,500/= per month - (Kshs 32,500/= x 3) + (32,500/30 x 9) = 107,250/=.
- (b) One month's salary in lieu of notice – Kshs 32,500/=.
- (c) Severance pay for 11 years worked – Kshs 32,500/30 x 15 x 11 = Kshs 178,750/=.
- (d) Compensation for unfair and unlawful termination at six (6) months gross salary – Kshs.32,500 x 6 = Kshs.195,000/=.

XXXIII. 7th Claimant

143. The 7th Claimant is awarded the following –

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days for January, 2017 - (Kshs 54,000/= x 3) + (Kshs 54,000/= / 30 x 9) = Kshs 178,200/=.
- (b) One month's salary in lieu of notice – Kshs 54,000/=.
- (c) Severance pay for seven(7) years worked – Kshs 54,000/= / 30 x 7 x 15 = Kshs 189,000/=.
- (d) Compensation for unfair and unlawful termination at six (6) months' gross salary – Kshs 54,000/= x 6 = Kshs 324,000/=.

XXIV. 8th Claimant

144. The 8th Claimant is awarded as follows –

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days for January, 2017 (Kshs = Kshs 26,600/= x 3) + Kshs 26,600/= / 30 x 9) = Kshs 79,780/=
- (b) One months' salary in lieu of notice – Kshs 26,600/=
- (c) Severance pay for four(4) years worked - Kshs.26,600/= / 30 x 4 x 15 = Kshs 53,200/=.
- (d) Compensation for unfair and unlawful termination - equivalent to six(6) months gross salary – Kshs.26,600/- x 6
= Kshs 159,600/=.



XXXV.9th Claimant

145. The 9th Claimant is awarded as follows –

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January, 2017 - $(\text{Kshs } 150,000/= \times 3) + (\text{Kshs } 150,000/= / 30 \times 9) = \text{Kshs } 495,000/=$.
- (b) One month's salary in lieu of notice – $\text{Kshs } 150,000/=$.
- (c) Severance pay for two (2) years worked - $\text{Kshs } 150,000/= / 30 \times 15 \times 2 = \text{Kshs } 150,000/=$.
- (d) Compensation for unfair and unlawful termination at six (6) months gross salary – $\text{Kshs } 150,000/= \times 6 = \text{Kshs } 900,000/=$.

XXXVI. 10th Claimant

146. The 10th Claimant as awarded as follows:-

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January, 2017 - $\text{Kshs } 15,000/= \times 3 + (\text{Kshs } 15,000/= / 30 \times 9) = \text{Kshs } 49,500/=$.
- (b) One month's salary in lieu of notice – $\text{Kshs } 15,000/=$.
- (c) Severance pay for two (2) years worked - $\text{Kshs } 15,000/= / 30 \times 2 \times 15 = \text{Kshs } 15,000/=$.
- (d) Compensation for unfair and unlawful termination at six (6) months gross pay – $\text{Kshs } 15,000/= \times 6 = \text{Kshs } 90,000/=$.

XXXVII. 11th Claimant

147. The 11th Claimant is awarded as follows-

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January, 2017 - $\text{Kshs } 25,000/= \times 3 + (\text{Kshs } 25,000/= / 30 \times 9) = \text{Kshs } 82,500/=$.
- (b) One month's salary in lieu of notice – $\text{Kshs } 25,000/=$.
- (c) Severance pay for two (2) years worked - $\text{Kshs } 25,000/= / 30 \times 2 \times 15 = \text{Kshs } 25,000/=$.
- (d) Compensation for unfair and unlawful termination at six (6) months gross pay - $\text{Kshs } 25,000/= \times 6 = \text{Kshs } 150,000/=$.

XXXVIII. 12th Claimant

148. The 12th Claimant is awarded as follows –

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January, 2017 - $(\text{Kshs } 42,000/= \times 3) + (\text{Kshs } 42,000/= / 30 \times 9) = \text{Kshs } 138,900/=$.
- (b) One month's salary in lieu of notice – $\text{Kshs } 42,000/=$.
- (c) Severance pay for two(2) years completed – $\text{Kshs } 42,000/= / 30 \times 15 \times 2 = \text{Kshs } 42,000/=$.
- (d) Compensation for unfair and unlawful termination at six(6) months gross salary – $\text{Kshs } 42,000 \times 6 = \text{Kshs } = 252,000/=$.



XXXIX. 13th Claimant

149. The 13th Claimant is awarded as follows-

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January, 2017 – $(\text{Kshs } 100,000/= \times 3) + (\text{Kshs } 100,000/= / 30 \times 9) = \text{Kshs } 330,000/=$.
- (b) One month's salary in lieu of notice – $\text{Kshs } 100,000/=$.
- (c) Severance pay for one year completed – $\text{Kshs } 100,000/= / 30 \times 1 \times 15 = \text{Kshs } 50,000/=$.
- (d) Compensation for unfair and unlawful termination at six (6) months gross salary - $\text{Kshs } 100,000/= \times 6 = \text{Kshs } 600,000/=$.

XXXX. 14th Claimant

150. The 14th Claimant is awarded as follows –

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January, 2017 - $(\text{Kshs } 40,000/= \times 3) + (\text{Kshs } 40,000/= / 30 \times 9) = \text{Kshs } 132,000/=$.
- (b) One month's salary in lieu of notice – $\text{Kshs } 40,000/=$.
- (c) Severance pay for one year completed – $\text{Kshs } 40,000/= / 30 \times 15 \times 1 = \text{Kshs } 20,000/=$.
- (d) Compensation for unfair and unlawful termination at six (6) months' gross salary – $\text{Kshs } 40,000/= \times 6 = \text{Kshs } 240,000/=$

XXXXI. 15th Claimant

151. The 15th Claimant is awarded as follows –

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days for January, 2017 – $(\text{Kshs } 45,000/= \times 3) + (\text{Kshs } 45,000 / 30 \times 9) = \text{Kshs } \text{Kshs } 157,500/=$.
- (b) One month's salary in lieu of notice – $\text{Kshs } 45,000/=$.
- (c) Severance pay for one (1) year completed – $\text{Kshs } 45,000 / 30 \times 15 \times 1 = \text{Kshs } 22,500/=$.
- (d) Compensation for unfair and unlawful termination at six (6) months gross salary - $\text{Kshs } 45,000/= \times 6 = \text{Kshs } 225,000/=$.

XXXXII. 16th Claimant

152. The 16th Claimant is awarded as follows –

- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January 2017- $(\text{Kshs } 25,000/= \times 3) + (\text{Kshs } 25,000 / 30 \times 9) = \text{Kshs } 82,500/=$.
- (b) One month's salary in lieu of notice – $\text{Kshs } 25,000/=$.
- (c) Compensation for unfair and unlawful compensation at six (6) months gross salary – $\text{Kshs.}25,000/= \times 6 = \text{Kshs } 150,000/=$.

XXXXIII. 17th Claimant

153. The 17th Claimant is awarded as follows –



- (a) Salary arrears for October, November, and December, 2016 and nine (9) days of January, 2017 (Kshs 25,000/= x 3) + (Kshs 25,000/30 x 9) = Kshs 82,500/=
- (b) One month's salary in lieu of notice – Kshs 25,000/=.
- (c) Compensation for unfair and unlawful termination at six(6) months gross salary –Kshs 25,000/= x 6 = Kshs 150,000/=.

XXXXIV. Costs

154. Costs follow event and there is no reason for this court to depart from this principle in this cause. The Claimants are accordingly awarded costs of this cause.

XXXXV. Orders

155. The court issues the following orders in disposal of this cause –

- (a) An order be and is hereby issued that the termination of the Claimants by the 1st Respondent was unfair and unlawful both in substance and procedure.
- (b) That the 1st Respondent is solely liable for the awards granted to the Claimants and the 5th Respondent is not in any way liable.
- (c) The Claimants are awarded as follows –

1st Claimant

- i. Salary arrears - Kshs 173,745/=
 - ii. Refund of deductions not remitted to provident fund - Kshs 31,950/=
 - iii. One month's salary in lieu of notice - Kshs 52,650/=
 - iv. Severance pay - Ksh 605,475/=
 - v. Compensation for unfair and Unlawful termination - Kshs 315,900/=
- Total - Kshs 1,179,720/=

All the other claims are denied.

2nd Claimant

- i. Salary arrears - Kshs 173,745/=
 - ii. One month's salary in lieu of notice - Kshs 52,650/=
 - iii. Severance pay - Kshs 526,500/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 315,900/=
- Total - Kshs 1.068,795

All other claims are denied.

3rd Claimant

- i. Salary arrears - Kshs 173,745/=
- ii. One month's salary in lieu of notice - Kshs 52,650/=



- iii. Severance pay - Kshs 605,475/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 315,900/=
- Total - Kshs 1,147,770/=

All the other claims are denied.

4th Claimant

- i. Salary arrears - Kshs 412,500/=
 - ii. One month's salary in lieu of notice - Kshs 125, 000/=
 - iii. Severance pay - Kshs 812,500/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 750,000/=
- Total - Kshs 2,100,000/=

All the other claims are denied.

5th Claimant

- i. Salary arrears - Kshs 128,700/=
 - ii. One month's salary in lieu of notice - Kshs 39,000/=
 - iii. Severance pay - Kshs 234,000/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 234,000/=
- Total - Kshs 635,700/=

All the other claims are denied.

6th Claimant

- i. Salary arrears - Kshs 107,250/=
 - ii. One month's salary in lieu of notice - Kshs 32,500/=
 - iii. Severance pay - Kshs 178,750/=
 - iv. Compensation for unfair and Unlawful termination - Kshs.195,000/=
- Total - Kshs 481,000/=

All the other claims are denied.

7th Claimant

- i. Salary arrears - Kshs 178,200/=
 - ii. One month's salary in lieu of notice - Kshs54.000/=
 - iii. Severance pay - Kshs 189,000/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 324,000/=
- Total - Kshs 745,200/=

All the other claims are denied.



8th Claimant

- i. Salary arrears - Kshs 79,780/=
 - ii. One month's salary in lieu of notice - Kshs 26,600/=
 - iii. Severance pay - Kshs 53,200/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 159,600/=
- Total - Kshs 319,180/=

All the other claims are denied.

9th Claimant

- i. Salary arrears - Kshs 495,000/=
 - ii. One month's salary in lieu of notice - Kshs 150,000/=
 - iii. Severance pay - Kshs 150,000/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 900,000/=
- Total - Kshs 1,695,000/=

All the other claims are denied.

10th Claimant

- i. Salary arrears - Kshs 49,500/=
 - ii. One month's salary in lieu of notice - Kshs 15,000/=
 - iii. Severance pay - Kshs 15,000/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 90,000/=
- Total - Kshs 169,500

All the other claims are denied.

11th Claimant

- i. Salary arrears - Kshs 82,500/=
 - ii. One month's salary in lieu of notice - Kshs 25,000/=
 - iii. Severance pay - Kshs 25,000/=
 - iv. Compensation for unfair and Unlawful termination - Kshs 150,000/=
- Total - Kshs 282,500/=

All the other claims are denied

12th Claimant

- i. Salary arrears - Kshs 138,900/=
- ii. One month's salary in lieu of notice - Kshs 42,000/=
- iii. Severance pay - Kshs 42,000/=



v. Compensation for unfair and Unlawful termination - Kshs 252,000/=

Total - Kshs 574,900/=

All the other claims are denied.

13th Claimant

i. Salary arrears - Kshs 330,000/=

ii. One month's salary in lieu of notice - Kshs 100,000/=

iii. Severance pay - Kshs 50,000/=

iv. Compensation for unfair and
Unlawful termination - Kshs 600,000

Total -Kshs 1,080,000/=

All the other claims are denied.

14th Claimant

i. Salary arrears - Kshs 132,000/=

ii. One month's salary in lieu of notice - Kshs 40,000/=

iii. Severance pay - Kshs 20,000/=

iv. Compensation for unfair and Unlawful termination - Kshs 240,000/=

Total - Kshs 432,000/=

All the other claims are denied.

15th Claimant

i. Salary arrears - Kshs 157,500/=

ii. One month's salary in lieu of notice - Kshs 45,000/=

iii. Severance pay - Kshs 22,500/=

iv. Compensation for unfair and Unlawful termination - Kshs 225,000/=

Total - Kshs 450,000/=

All the other claims are denied.

16th Claimant

i. Salary arrears - Kshs 82,500/=

ii. One month's salary in lieu of notice - Kshs 25,000/=

iii. Compensation for unfair and Unlawful termination - Kshs 150,000/=

Total - Kshs 257,500/=

All the other claims are denied.

17th Claimant



- i. Salary arrears - Kshs 82,500/=
- ii. One month's salary in lieu of notice - Kshs 25,000/=
- iii. Compensation for unfair and Unlawful termination - Kshs 150,000/=

Total - Kshs 257,500/=

All the other claims are denied.

- (d) All the above awards are subject to statutory deductions as applicable and shall earn interest at court rates from the date of this judgment till payment in full.
- (e) The Claimants are awarded costs of this cause.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 17TH DAY OF NOVEMBER, 2022.

.....

DAVID NDERITU

JUDGE

