



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2575 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

RNM.....1<sup>ST</sup> CLAIMANT  
SMT.....2<sup>ND</sup> CLAIMANT  
MWW.....3<sup>RD</sup> CLAIMANT  
AEO.....4<sup>TH</sup> CLAIMANT  
CLO.....5<sup>TH</sup> CLAIMANT  
CTM.....6<sup>TH</sup> CLAIMANT  
CSW.....7<sup>TH</sup> CLAIMANT  
FKO.....8<sup>TH</sup> CLAIMANT  
GKG.....9<sup>TH</sup> CLAIMANT  
JNN.....10<sup>TH</sup> CLAIMANT  
JKM.....11<sup>TH</sup> CLAIMANT  
NWW.....12<sup>TH</sup> CLAIMANT  
SNN.....13<sup>TH</sup> CLAIMANT

VERSUS

KENYA POWER AND LIGHTING COMPANY LIMITED.....RESPONDENT

RULING

Judgment in this matter was delivered on 27<sup>th</sup> February 2020 by my Sister Wasilwa J. as follows –

“67. The Claimants were paid only 15 months’ salary for each year worked.

68. In view of this fact, I agree with the Claimants that they are entitled to constructive redundancy package of 2 months’ salary for each year worked less what was paid to them of 15 days, which is equivalent to 45 days’ salary for each year worked.

69. This amount shall be computed at a later stage and adopted as a judgement of this Court.

70. The Respondent will pay costs of this suit.

Parties were unable to agree on computation and by an application dated 8<sup>th</sup> June 2020, the claimants filed an application seeking the following orders –

1. That the court be pleased to approve and/or adopt the sums payable to the claimants/applicants as set out in schedule A attached thereto as the judgment sum of this court.

2. That pursuant to order 1 above the respondent be ordered to pay the applicants the judgment sums within the next 10 days from the date of the court order.

3. That the respondents be condemned to pay the costs of this application.

In the ruling the Judge directed as follows –

39. In the circumstances, the amounts payable will be for 45 days for each year worked, less 8 months advanced basic pay and less tax.

40. Based on this, the payable amounts are as in the following illustration: -

a) Raphael Njoroge Mwaura is entitled to  $\times 812,105 \times 35 \text{ years} = 42,635,512.50$  less 8 months' basic pay advanced and total is subject to tax.

41. The issue of any outstanding liabilities from the applicants is a new matter not raised as a counter claim and in any case it cannot be raised now, the same having not been pleaded.

42. Given that these figures as submitted by the applicants have included figures not payable, i will direct that the applicant computes the amounts payable as illustrated above and exchanges the computation with the respondents for reply or concurrence and then have the figures as agreed or disagreed upon submitted for court's further direction/adoption as the case may be.

43. Costs in the cause.

Parties yet again disagreed on the computation of the decretal sum. Since Wasilwa J. has been transferred from this station, it fell upon me to conclude the issue of computation. When parties appeared before me on 25<sup>th</sup> November 2020 and on 9<sup>th</sup> December 2020, they agreed that each party files its own computation and let the court determine which of the two should be adopted. That is the subject of this ruling.

The claimant filed computation as shown on **Table 1**. The Respondent's computation is shown as **Table 2**.

The redundancy clause in the Respondent's Staff Regulations and Procedures provides for redundancy as follows –

#### **4. Severance Pay**

**(a) Union Represented Staff:-** Redundancy terms offered would be as set out in the current Agreement with the Trade Union.

**(b) Employees on Senior Standard, Standard and Permanent & Pensionable Expatriate Terms of Service.**

Where an employee is made redundant after the completion of one year, he shall be entitled to redundancy pay at the following rates of a month's pay and personal allowances, for each complete year of service, based on his current rate of pay: -

(i) 1 to 5 years – 1 month's salary for each complete year of service.

(ii) 6 to 10 years - 1¼ months' salary for each complete year of service.

(iii) 11 to 15 years – 1½ months' salary for each complete year of service.

(iv) 16 and more years – 2 months' salary for each complete year of service.

In addition, he will receive his benefits as prescribed in the Company's Provident Fund Scheme & Retirement Benefit Scheme.

#### **Employees of 50 years and above**

Employees from 50 years and above may be retired early on the following conditions: -

1. For the purpose of facilitating improvement of the organization of the department to which he belongs, by which greater efficiency of economy may be effected.

2. Abolition of office.

#### **TERMS OF PAYMENT**

##### **OPTION I**

1. Notice payment of three months last gross salary (basic salary plus House Allowance).

2. Pension at current age plus lump sum payment.

3. 15 days' salary for every year worked.

**OPTION II**

1. Notice payment of three months last gross salary (basic salary plus house allowance).

2. Refund of both employee's and employer's contributions plus accrued interest.

3. 15 days' salary for every year worked.

**c. Staff on Contract**

Compensation will be paid in accordance with the terms of the contract applicable.

In the tabulation submitted by the parties, they agree on the following: -

(i) Gross salary (inclusive of all allowances)

(ii) 2 months' salary (gross for every year worked)

Going by the formula given by the Judge in the ruling dated 11<sup>th</sup> November 2020, each of the Applicants is entitled to a gross payment as per Respondent's tabulation column on total pay. From this amount, the Respondent is entitled to recover 8 months' salary and tax on the total amount.

The amount payable to each of the employees is therefore the total payable as per Respondent's tabulation, less 30% income tax, less VER and notice package paid earlier.

The tax on VER borne by the Respondent is recoverable from the 30% income tax as the taxation is based on the total amount before tax. Recovering of VER tax from the net payable to the employee as has been done in the Respondent's tabulation would constitute double taxation.

Each of the employees is therefore entitled to payment as follows: -

| <b>COURT'S AWARD</b> |      |               |                |                             |  |                      |  |
|----------------------|------|---------------|----------------|-----------------------------|--|----------------------|--|
| S/N                  | Name | Total payable | Less Tax @ 30% | Net Total payable after tax | Less total VER and notice package paid earlier | AMOUNT TO BE PAID    |  |
| 14x                  | RNM  | 50,507,786.00 | 15,152,335.80  | 35,355,450.20               | 17,069,764.86                                  | <b>18,285,685.34</b> |  |
| 12xxx                | SMT  | 28,547,134.00 | 8,564,140.20   | 19,982,993.80               | 11,052,446.33                                  | <b>8,930,547.47</b>  |  |
| 46xx                 | MWW  | 38,295,339.00 | 11,488,601.70  | 26,806,737.30               | 14,284,149.31                                  | <b>12,522,587.99</b> |  |
| 12xxx                | AEO  | 32,548,053.00 | 9,764,415.90   | 22,783,637.10               | 12,143,718.67                                  | <b>10,639,918.43</b> |  |
| 47xx                 | CLO  | 29,105,133.00 | 8,731,539.90   | 20,373,593.10               | 10,098,227.00                                  | <b>10,275,366.10</b> |  |
| 49xx                 | CTM  | 35,033,370.00 | 10,510,011.00  | 24,523,359.00               | 12,738,233.10                                  | <b>11,785,125.90</b> |  |
| 12xxx                | CSW  | 20,268,939.00 | 6,080,681.70   | 14,188,257.30               | 8,328,589.05                                   | <b>5,859,668.25</b>  |  |
| 49xx                 | FKO  | 23,495,723.00 | 7,048,716.90   | 16,447,006.10               | 9,788,535.50                                   | <b>6,658,470.60</b>  |  |
| 48xx                 | GKG  | 27,236,089.00 | 8,170,826.70   | 19,065,262.30               | 9,912,302.29                                   | <b>9,152,960.01</b>  |  |
| 12xxx                | JNN  | 33,147,738.00 | 9,944,321.40   | 23,203,416.60               | 12,139,651.86                                  | <b>11,063,764.74</b> |  |
| 48xx                 | JKM  | 41,962,830.00 | 12,588,849.00  | 29,373,981.00               | 14,979,564.86                                  | <b>14,394,416.14</b> |  |

|              |     |               |              |               |              |                       |
|--------------|-----|---------------|--------------|---------------|--------------|-----------------------|
| 49xx         | NWW | 26,301,567.00 | 7,890,470.10 | 18,411,096.90 | 8,938,080.79 | <b>9,473,016.11</b>   |
| 13xxx        | SNN | 20,843,888.00 | 6,253,166.40 | 14,590,721.60 | 8,333,314.57 | <b>6,257,407.03</b>   |
| <b>TOTAL</b> |     |               |              |               |              | <b>135,298,934.11</b> |

Judgment is therefore entered for the claimant in the total sum of **Kshs.135,298,934.11** as more specifically set out in the tabulation above in respect of each claimant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF APRIL 2021**

**MAUREEN ONYANGO**

**JUDGE**

**ORDER**

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

**MAUREEN ONYANGO**

**JUDGE**