



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**  
**CAUSE NUMBER 1936 OF 2015**

MARTIN WAMAE WANGU. ....	1 <sup>ST</sup> CLAIMANT
FRANCIS ANZEZE .....	2 <sup>ND</sup> CLAIMANT
RATIFU OMWANGE .....	3 <sup>RD</sup> CLAIMANT
ALBERT LUKOYE.....	4 <sup>TH</sup> CLAIMANT
WILBERFORCE .....	5 <sup>TH</sup> CLAIMANT
JOSEPH ONDIEKI .....	6 <sup>TH</sup> CLAIMANT
JOSEPH MAINGI .....	7 <sup>TH</sup> CLAIMANT
VINCENT MOMANYI. ....	8 <sup>TH</sup> CLAIMANT
MICAH MAINGI .....	9 <sup>TH</sup> CLAIMANT
ERICK NYARIKI.....	10 <sup>TH</sup> CLAIMANT
ANTONY KITHANDA.....	11 <sup>TH</sup> CLAIMANT
JAMIN OVAMBA.....	12 <sup>TH</sup> CLAIMANT
JACKSON .....	13 <sup>TH</sup> CLAIMANT
JOAB NDEGE.....	14 <sup>TH</sup> CLAIMANT
GEOFREY MOMANYI.....	15 <sup>TH</sup> CLAIMANT
KENNEDY OWINO.....	16 <sup>TH</sup> CLAIMANT
PETER MUTUA.....	17 <sup>TH</sup> CLAIMANT
DANIEL KYULI .....	18 <sup>TH</sup> CLAIMANT
GEORGE MUTUNDA.....	19 <sup>TH</sup> CLAIMANT
FREDRICK JUMA .....	20 <sup>TH</sup> CLAIMANT
JAMES MBUGUA .....	21 <sup>ST</sup> CLAIMANT

DANIEL KIREKI.....	22 <sup>ND</sup> CLAIMANT
DICKSON MACHISU .....	23 <sup>RD</sup> CLAIMANT
FRANCIS MBINDU .....	24 <sup>TH</sup> CLAIMANT
HAMPHREY CHONELWA .....	25 <sup>TH</sup> CLAIMANT
SHADRACK MWANGI.....	26 <sup>TH</sup> CLAIMANT
STEPHENE NDOLO.....	27 <sup>TH</sup> CLAIMANT
BENSON MATHEKA.....	28 <sup>TH</sup> CLAIMANT
DOUGLAS OMIMI.....	29 <sup>TH</sup> CLAIMANT
BENSFORD KIMANI.....	30 <sup>TH</sup> CLAIMANT
VICTOR ABUOR .....	31 <sup>ST</sup> CLAIMANT
COSMOS MBITHI .....	32 <sup>ND</sup> CLAIMANT
DENNIS MANENO .....	33 <sup>RD</sup> CLAIMANT
JAMES NYAKUNDI .....	34 <sup>TH</sup> CLAIMANT
SAMUEL YAA .....	35 <sup>TH</sup> CLAIMANT
JOHN NDUNGU .....	36 <sup>TH</sup> CLAIMANT
SYLVANUS MOGERE.....	37 <sup>TH</sup> CLAIMANT
KENNEDY BARONGO .....	38 <sup>TH</sup> CLAIMANT
GABRIEL SIMASI.....	39 <sup>TH</sup> CLAIMANT
ALFRED OBONYO .....	40 <sup>TH</sup> CLAIMANT
PETER MBUVI .....	41 <sup>ST</sup> CLAIMANT
GEORGE NGUGI .....	42 <sup>ND</sup> CLAIMANT
ROBERT KIVAA .....	43 <sup>RD</sup> CLAIMANT
JULIUS MOSE.....	44 <sup>TH</sup> CLAIMANT
JAMES WACIRA .....	45 <sup>TH</sup> CLAIMANT
PETER MUNYAKA .....	46 <sup>TH</sup> CLAIMANT
PATRICK NDIRANGU.....	47 <sup>TH</sup> CLAIMANT
ANTONY KAMAU.....	48 <sup>TH</sup> CLAIMANT
JAMES MWANGI.....	49 <sup>TH</sup> CLAIMANT
REUBEN MACHUKI.....	50 <sup>TH</sup> CLAIMANT
BONIFACE MUASYA.....	51 <sup>ST</sup> CLAIMANT

JOHN WANJALA .....	52 <sup>ND</sup> CLAIMANT
JAMES MWOSYA .....	53 <sup>RD</sup> CLAIMANT
JUSTUS ISAIAH .....	54 <sup>TH</sup> CLAIMANT
DUNCAN OYARE.....	55 <sup>TH</sup> CLAIMANT
KINYOSI NDEGE.....	56 <sup>TH</sup> CLAIMANT
SIMON NZAMBU .....	57 <sup>TH</sup> CLAIMANT
RAHAB WANJERI .....	58 <sup>TH</sup> CLAIMANT
JOHN GITHINJI.....	59 <sup>TH</sup> CLAIMANT
LAWRENCE MUSAKALE .....	60 <sup>TH</sup> CLAIMANT
PETER MWANZIA.....	61 <sup>ST</sup> CLAIMANT
DANIEL MUTISYA .....	62 <sup>ND</sup> CLAIMANT
NICHOLAS ORWA.....	63 <sup>RD</sup> CLAIMANT
EDWARD MASITSA .....	64 <sup>TH</sup> CLAIMANT
GEOFFREY MACHOKA.....	65 <sup>TH</sup> CLAIMANT
DENNIS MOFFAT.....	66 <sup>TH</sup> CLAIMANT
ALEX KAMONDE.....	67 <sup>TH</sup> CLAIMANT
JOHN MBILA.....	68 <sup>TH</sup> CLAIMANT
RODGERS MULEMA.....	69 <sup>TH</sup> CLAIMANT
FRANCIS MBUVI .....	70 <sup>TH</sup> CLAIMANT
IRERI KARIUKI .....	71 <sup>ST</sup> CLAIMANT
DOUGLAS NYABOGA.....	72 <sup>ND</sup> CLAIMANT
NELSON NYONGESA .....	73 <sup>RD</sup> CLAIMANT
PAUL KATWEI .....	74 <sup>TH</sup> CLAIMANT
MICHAEL EGADWA .....	75 <sup>TH</sup> CLAIMANT
JOSEPH OGUTU.....	76 <sup>TH</sup> CLAIMANT
MUTISYA NYAMAI .....	77 <sup>TH</sup> CLAIMANT
MULI MUTINDA.....	78 <sup>TH</sup> CLAIMANT
PETER RUTEERE.....	79 <sup>TH</sup> CLAIMANT
JOSHUA ODINGA .....	80 <sup>TH</sup> CLAIMANT
JOSEPH NGANGA .....	81 <sup>ST</sup> CLAIMANT

JOHN KIARI .....	82 <sup>ND</sup> CLAIMANT
JEREMIAH OKUMU.....	83 <sup>RD</sup> CLAIMANT
JOHN OKOTH.....	84 <sup>TH</sup> CLAIMANT
DANIEL NAMAGWA .....	85 <sup>TH</sup> CLAIMANT
GRACE MWENDE .....	86 <sup>TH</sup> CLAIMANT
MARY NDUNGU.....	87 <sup>TH</sup> CLAIMANT
STANLEY MBURU.....	88 <sup>TH</sup> CLAIMANT
HASSAN AUSI .....	89 <sup>TH</sup> CLAIMANT
PETER KAMANDE.....	90 <sup>TH</sup> CLAIMANT
BENARD MAUMO.....	91 <sup>ST</sup> CLAIMANT
HENRY NGANGA.....	92 <sup>ND</sup> CLAIMANT
STEPHEN MUGAMBI.....	93 <sup>RD</sup> CLAIMANT
JOHN KIMANI.....	94 <sup>TH</sup> CLAIMANT
JAMES NGUMBI.....	95 <sup>TH</sup> CLAIMANT
STEPHEN KIAMA.....	96 <sup>TH</sup> CLAIMANT
JOHN KAMAU.....	97 <sup>TH</sup> CLAIMANT
THOMAS OMAMO.....	98 <sup>TH</sup> CLAIMANT
AMOS MATHEKA.....	99 <sup>TH</sup> CLAIMANT
RUTH NJERI .....	100 <sup>TH</sup> CLAIMANT
PETER MUTUKU.....	101 <sup>ST</sup> CLAIMANT
EPHANTUS MWANGI.....	102 <sup>ND</sup> CLAIMANT
MICHAEL MUTUKU.....	103 <sup>RD</sup> CLAIMANT
PETER KIMEU.....	104 <sup>TH</sup> CLAIMANT
PETER MIHIU.....	105 <sup>TH</sup> CLAIMANT
JARED GETEMBE.....	106 <sup>TH</sup> CLAIMANT
HEZRON NDEGE .....	107 <sup>TH</sup> CLAIMANT
JOSEPH GITHUA .....	108 <sup>TH</sup> CLAIMANT
STEPHEN NDERI .....	109 <sup>TH</sup> CLAIMANT
EDWARD MUCHENI.....	110 <sup>TH</sup> CLAIMANT
BENJAMIN MUIA.....	111 <sup>TH</sup> CLAIMANT

MUSILI MUTISO.....	112 <sup>TH</sup> CLAIMANT
CHARLES KARANJA.....	113 <sup>TH</sup> CLAIMANT
ALPHAYO TIFO.....	114 <sup>TH</sup> CLAIMANT
BONFACE MBILA.....	115 <sup>TH</sup> CLAIMANT
WILLIAM OKOTH.....	116 <sup>TH</sup> CLAIMANT
FIDELIS MULI.....	117 <sup>TH</sup> CLAIMANT
JOHN NGANGA.....	118 <sup>TH</sup> CLAIMANT
MOSES KABIRU.....	119 <sup>TH</sup> CLAIMANT
BENSON MUGUSU.....	120 <sup>TH</sup> CLAIMANT
JAMES WEKESA .....	121 <sup>ST</sup> CLAIMANT
NICHOLAS WAMBUA.....	122 <sup>ND</sup> CLAIMANT
JOSHUA MUSYOKA.....	123 <sup>RD</sup> CLAIMANT
MUSEMBI KAMULA.....	124 <sup>TH</sup> CLAIMANT
KEVIN NYARIKI.....	125 <sup>TH</sup> CLAIMANT
JOHN ODEGA.....	126 <sup>TH</sup> CLAIMANT
DOUGLAS MECHA.....	127 <sup>TH</sup> CLAIMANT
GIBSON MWANGI.....	128 <sup>TH</sup> CLAIMANT
SOLOMON MWANGI.....	129 <sup>TH</sup> CLAIMANT
CHARLSE NGURU.....	130 <sup>TH</sup> CLAIMANT
FRANCIS KIILU.....	131 <sup>ST</sup> CLAIMANT
MICHAEL NGURU.....	132 <sup>ND</sup> CLAIMANT
PATRICK KITHUKA.....	133 <sup>RD</sup> CLAIMANT
SAMUEL KARIUKI.....	134 <sup>TH</sup> CLAIMANT
PATRICK NZULA.....	135 <sup>TH</sup> CLAIMANT
DAVAS MOMANYI.....	136 <sup>TH</sup> CLAIMANT
EDWIN MURIITHI.....	137 <sup>TH</sup> CLAIMANT
FRANCIS OMBURA.....	138 <sup>TH</sup> CLAIMANT
GEOFREY SIMIYU.....	139 <sup>TH</sup> CLAIMANT
WALACE MULI.....	140 <sup>TH</sup> CLAIMANT
JOSEPH KIOKO.....	141 <sup>ST</sup> CLAIMANT

BENARD G. WANJIRU.....	142 <sup>ND</sup> CLAIMANT
DANIEL GACHOKA.....	143 <sup>RD</sup> CLAIMANT
ZACHEUS NYAKWEBA.....	144 <sup>TH</sup> CLAIMANT
KAYO INGATIA.....	145 <sup>TH</sup> CLAIMANT
FREDRICK ODUOR.....	146 <sup>TH</sup> CLAIMANT
ROBINSON MAINA.....	147 <sup>TH</sup> CLAIMANT
SIMON MUTUNGA.....	148 <sup>TH</sup> CLAIMANT
ROBERT MOSETI.....	149 <sup>TH</sup> CLAIMANT
HEBERT KOMENI.....	150 <sup>TH</sup> CLAIMANT
DANIEL MUTUA .....	151 <sup>ST</sup> CLAIMANT
FRANCIS KILONZO.....	152 <sup>ND</sup> CLAIMANT
ABINAH NDEGE.....	153 <sup>RD</sup> CLAIMANT
RUSSEL KIBET.....	154 <sup>TH</sup> CLAIMANT
GEORGE ANYANZWA.....	155 <sup>TH</sup> CLAIMANT
JOHN WAWERU.....	156 <sup>TH</sup> CLAIMANT
STEPHEN IRUNGU.....	157 <sup>TH</sup> CLAIMANT
COSMAS MOSE.....	158 <sup>TH</sup> CLAIMANT
RAPHAEL OCHIENG.....	159 <sup>TH</sup> CLAIMANT
ERIC K OGOT.....	160 <sup>TH</sup> CLAIMANT
MAURICE OLANG.....	161 <sup>ST</sup> CLAIMANT
ERICK NDEMO.....	162 <sup>ND</sup> CLAIMANT
VINCENT KIOKO.....	163 <sup>RD</sup> CLAIMANT
STEPHEN LUVEMBE.....	164 <sup>TH</sup> CLAIMANT
ELKANA GWARO.....	165 <sup>TH</sup> CLAIMANT
BENSON KYALO.....	166 <sup>TH</sup> CLAIMANT
JOHN KINUTHIA.....	167 <sup>TH</sup> CLAIMANT
DAVID MWAKIO .....	168 <sup>TH</sup> CLAIMANT
KENNEDY ODHIAMBO.....	169 <sup>TH</sup> CLAIMANT
NDOO MWINZI.....	170 <sup>TH</sup> CLAIMANT
FRANCIS W. WAWERU.....	171 <sup>ST</sup> CLAIMANT

KENNEDY KASOLO.....	172 <sup>ND</sup> CLAIMANT
VINCENT MABIRIA.....	173 <sup>RD</sup> CLAIMANT
WILSON WAMBUA.....	174 <sup>TH</sup> CLAIMANT
JAMES OBIERO.....	175 <sup>TH</sup> CLAIMANT
MUIMI KYEVA.....	176 <sup>TH</sup> CLAIMANT
DOMINIC MATIVO. ....	177 <sup>TH</sup> CLAIMANT
JOSEPHAT NJENGA.....	178 <sup>TH</sup> CLAIMANT
MICHAEL THUKU.....	179 <sup>TH</sup> CLAIMANT
FRANCIS NJUGUNA.....	180 <sup>TH</sup> CLAIMANT
CHARLES ODUOR.....	181 <sup>ST</sup> CLAIMANT
FREDRICK KURIA.....	182 <sup>ND</sup> CLAIMANT
ERICK MUGAMBI.....	183 <sup>RD</sup> CLAIMANT
SAMUEL KARANJA.....	184 <sup>TH</sup> CLAIMANT
NATHAN GIKUNDI.....	185 <sup>TH</sup> CLAIMANT
JOHN MUTINDA.....	186 <sup>TH</sup> CLAIMANT
BENARD WAWERU.....	187 <sup>TH</sup> CLAIMANT
EVANS WACIRA.....	188 <sup>TH</sup> CLAIMANT
CASPAH KUTEYL.....	189 <sup>TH</sup> CLAIMANT
JOHNSTONE ODANGA.....	190 <sup>TH</sup> CLAIMANT
STEPHEN OMONDI.....	191 <sup>ST</sup> CLAIMANT
POLO WASHINGTON.....	192 <sup>ND</sup> CLAIMANT
GEOFFREY KAMAU.....	193 <sup>RD</sup> CLAIMANT
STEPHEN ODEKA.....	194 <sup>TH</sup> CLAIMANT
DANIEL MOCHAMA.....	195 <sup>TH</sup> CLAIMANT
EVANS TROON.....	196 <sup>TH</sup> CLAIMANT
OLIVER MUTSOTSO. ....	197 <sup>TH</sup> CLAIMANT
JACK ATOLI.....	198 <sup>TH</sup> CLAIMANT
SAMUEL MWAURA.....	199 <sup>TH</sup> CLAIMANT
CHARLES TSUMA.....	200 <sup>TH</sup> CLAIMANT
CALEB ORARO.....	201 <sup>ST</sup> CLAIMANT

ALLAN OMONDI.....	202 <sup>ND</sup> CLAIMANT
PHILIP KURIA.....	203 <sup>RD</sup> CLAIMANT
NICK KUKUBO.....	204 <sup>TH</sup> CLAIMANT
ONESMUS MUTUKU.....	205 <sup>TH</sup> CLAIMANT
DAVID NYAMAI.....	206 <sup>TH</sup> CLAIMANT
JULIUS MOKAYA.....	207 <sup>TH</sup> CLAIMANT
MUTINDA MUTHOKA.....	208 <sup>TH</sup> CLAIMANT
JOSEPH MWANGI.....	209 <sup>TH</sup> CLAIMANT
STANLEY NGATIA.....	210 <sup>TH</sup> CLAIMANT
KYALO.....	211 <sup>TH</sup> CLAIMANT
KIZITO WITABA.....	212 <sup>TH</sup> CLAIMANT
STEPHEN MASILA.....	213 <sup>TH</sup> CLAIMANT
PETER MULEL.....	214 <sup>TH</sup> CLAIMANT
CHARLES MOGENDI.....	215 <sup>TH</sup> CLAIMANT
BENARD MWENZE.....	216 <sup>TH</sup> CLAIMANT
ANTONY MAINA.....	217 <sup>TH</sup> CLAIMANT
FRANCIS KARANJA.....	218 <sup>TH</sup> CLAIMANT
CHARLES KYALO.....	219 <sup>TH</sup> CLAIMANT
FRANCIS KIMANI.....	220 <sup>TH</sup> CLAIMANT
KITHOME ANNAH.....	221 <sup>ST</sup> CLAIMANT
PETER MAKABILA.....	222 <sup>ND</sup> CLAIMANT
FRANCIS KISINGU.....	223 <sup>RD</sup> CLAIMANT
STEPHEN KIMULI.....	224 <sup>TH</sup> CLAIMANT
ROBERT MUNGAI.....	225 <sup>TH</sup> CLAIMANT
RAPHAEL WAMBUA.....	226 <sup>TH</sup> CLAIMANT
BENARD KILONZO.....	227 <sup>TH</sup> CLAIMANT
PATRICK MOTURI.....	228 <sup>TH</sup> CLAIMANT
NICKOLAS AMAYUKU.....	229 <sup>TH</sup> CLAIMANT
PETER MUNGUTI.....	230 <sup>TH</sup> CLAIMANT
JOSHUA OMARE.....	231 <sup>ST</sup> CLAIMANT

ALPHOSE MUTUKU.....	232 <sup>ND</sup> CLAIMANT
JOSEPH CHEGE.....	233 <sup>RD</sup> CLAIMANT
MARTAIN RIUNGU.....	234 <sup>TH</sup> CLAIMANT
BONFACE MUINDUNGO.....	235 <sup>TH</sup> CLAIMANT
STANLEY KIAMA .....	236 <sup>TH</sup> CLAIMANT
PETER WANYOIKE.....	237 <sup>TH</sup> CLAIMANT
JULIUS OUMA.....	238 <sup>TH</sup> CLAIMANT
JOHN M. MUTUA.....	239 <sup>TH</sup> CLAIMANT
STEPHEN MOSOMI.....	240 <sup>TH</sup> CLAIMANT
MICHAEL OOKO.....	241 <sup>ST</sup> CLAIMANT
JOHN WANJIKU.....	242 <sup>ND</sup> CLAIMANT
TIMOTHY ORONGE.....	243 <sup>RD</sup> CLAIMANT
JAMES MWANGI.. ..	244 <sup>TH</sup> CLAIMANT
DAUD VILU.....	245 <sup>TH</sup> CLAIMANT
JAMES NYAWADE.....	246 <sup>TH</sup> CLAIMANT
JAMES ONYANGO.....	247 <sup>TH</sup> CLAIMANT
PATRICK MUTUNGE.....	248 <sup>TH</sup> CLAIMANT
SHADRACK MAINGI.....	249 <sup>TH</sup> CLAIMANT
MALUKI KAVUO. ....	250 <sup>TH</sup> CLAIMANT
TIMOTHY OSALE.....	251 <sup>ST</sup> CLAIMANT
PAUL MWANGI.....	252 <sup>ND</sup> CLAIMANT
MUOKI NDAMBUKI.....	253 <sup>RD</sup> CLAIMANT
LEONARD ABUKI.....	254 <sup>TH</sup> CLAIMANT
JOSEPH MAANGI.....	255 <sup>TH</sup> CLAIMANT
PETER IRUNGU.....	256 <sup>TH</sup> CLAIMANT
JULIUS IBWAKA.....	257 <sup>TH</sup> CLAIMANT
GEORGE OKATCH.....	258 <sup>TH</sup> CLAIMANT
VINCENT MUGUSU.....	259 <sup>TH</sup> CLAIMANT
MICHAEL OWINO.....	260 <sup>TH</sup> CLAIMANT
KAVIVU MWAKAVI. ....	261 <sup>ST</sup> CLAIMANT

BENARD MATHEKA .....	262 <sup>ND</sup> CLAIMANT
SAMSON MUKALA.....	263 <sup>RD</sup> CLAIMANT
SAMUEL KIVAYA.....	264 <sup>TH</sup> CLAIMANT
MICHAEL MBINDU.....	265 <sup>TH</sup> CLAIMANT
DAVID MUINDI.....	266 <sup>TH</sup> CLAIMANT
NICOLAS SAMBA.....	267 <sup>TH</sup> CLAIMANT
EVANS NYACHAE.....	268 <sup>TH</sup> CLAIMANT
BENSON NJUGUNA.....	269 <sup>TH</sup> CLAIMANT
NAFTAL K. MASINDE.....	270 <sup>TH</sup> CLAIMANT
PATRICK JOSECK.....	271 <sup>ST</sup> CLAIMANT
JAVEL WAMBUA.....	272 <sup>ND</sup> CLAIMANT
KENNETH NGUGI.....	273 <sup>RD</sup> CLAIMANT
FIDELIS OUKO.....	274 <sup>TH</sup> CLAIMANT
MWENDWA MUTUNGA.....	275 <sup>TH</sup> CLAIMANT
PAUL NGIGE.....	276 <sup>TH</sup> CLAIMANT
WILLIS WATA.....	277 <sup>TH</sup> CLAIMANT
BONFACE MUTUA.....	278 <sup>TH</sup> CLAIMANT
BENARD KIYONDI.....	279 <sup>TH</sup> CLAIMANT
MESHACK MUOKI.....	280 <sup>TH</sup> CLAIMANT
FRANCIS MWENDIA.....	281 <sup>ST</sup> CLAIMANT
PETER SAMBA.....	282 <sup>ND</sup> CLAIMANT
JAMES NJOROGE.....	283 <sup>RD</sup> CLAIMANT
JACTON GUMBA.....	284 <sup>TH</sup> CLAIMANT
JOSEPH MWANGANGI.....	285 <sup>TH</sup> CLAIMANT
JOYCE KIHONGE.....	286 <sup>TH</sup> CLAIMANT
ANDREW NJOROGE.....	287 <sup>TH</sup> CLAIMANT
CLEOPAS ODONGO.....	288 <sup>TH</sup> CLAIMANT
GEORGE NGANGA.....	289 <sup>TH</sup> CLAIMANT
VINCENT MOMANYI.....	290 <sup>TH</sup> CLAIMANT
BONIFACE ODHIAMBO.....	291 <sup>ST</sup> CLAIMANT

**JOSEPH KULUMBA.....292<sup>ND</sup> CLAIMANT**  
**DANIEL KIOKO.....293<sup>RD</sup> CLAIMANT**  
**ROBERT KIREKI.....294<sup>TH</sup> CLAIMANT**  
**JOSEPH MWANGU.....295<sup>TH</sup> CLAIMANT**  
**GEORGE WAWERU.....296<sup>TH</sup> CLAIMANT**

**VERSUS**

**BIDCO AFRICA LTD.....RESPONDENT**

**JUDGEMENT**

1. The parties in this matter agreed to proceed by way of written submissions upon direction by the court. As at 26<sup>th</sup> June, 2017 the respondent had not filed their submissions however the court directed that the same could be filed by the respondent despite the fact that the court had retired to consider the judgement. The claimants herein were initially employed by the respondent as casuals for various durations of time.
2. The dispute arose when the respondent did not recognize the claimants as permanent employees despite working for long periods. The dispute was further compounded when the respondent asked the claimants to sign new contracts without taking into account the claimants had previously served. The claimants protested this and went on strike. The dispute was resolved and return to work formula negotiated through Ministry of Labour and Social Security. The claimants contended that, despite the agreement reached the respondent still demanded that the claimants sign new contracts which they refused leading to what the claimant's claim was a lockout by the respondents.
3. The claimants further complained that they were underpaid by the respondent and never received any termination notice or termination letters. The respondent however contended that it did not lock out the claimants but that the claimants left work on their own volition. The respondent further averred that the claimants were casuals and were working on a shift system where they would work two day shifts, then two night shifts followed by two days off. The respondent further averred that based on the claimant's work schedule and the nature of their engagement with the respondent they were for all intents and purposes, casual employees.
4. On the issue of new written contracts, the respondent stated that the decision was made to remodel the structure of the organization to end casual employee policy and instead make all employees permanent by offering each and every one of the casual employees a contract but which was rejected by the claimants. The respondent further stated that pursuant to the claimants' demands, it ended its casual worker policy and therefore anyone who had not formally applied for a job and who had not signed a contract with the respondent did not have a right of entry to respondent's premises.
5. It was common ground that the claimants and the respondent wanted to end the casual employees status. The claimants however were not agreeable to signing new contracts without clarification over their previous years of service. The claimants as ably demonstrated by the respondent were registered with NSSF and their dues regularly remitted to the Fund. Under Section 35(6) of Employment Act and employees registered with NSSF or other pension or provident fund are not entitled to service pay. This claim is therefore unsustainable with regard to the claimants.
6. The respondent contends that the claimants were casual workers hence suggesting they may not have been entitled to make the claims they were making. However, under section 37 of the Employment Act, a casual employee who has worked for an aggregate period of not less than one month shall be deemed to be an employee whose wages are payable monthly and section 35(1) (c) shall apply to the contract of service of such employee. Further, section 37(3) provides that a casual employee whose contract has been converted by virtue of section 37(1) and has worked continuously for two months or more from the date of employment as a casual employee shall be entitled to such terms and conditions of service as he would have been entitled to under the Act had he not initially been employed as a casual employee.
7. The claimant's complaint is that the respondent locked them out over refusal to sign new contracts. According to them, they felt justified not signing the contracts without clarification over their previous service. The claimants however, do not object and in fact this was the cause of their unrest, that they had been casual workers for too long.
8. The respondent however had taken the stand that any person who did not apply for a job and sign a contract under the new policy would not be allowed into its premises. Considering the number of claimants and the fact that the events herein took place way back in 2015 the court is of the view that the most appropriate order to make would be to declare the claimants employees of the respondent by virtue of section 37(1) and (3) of the Employment Act whose services could only be terminated in accordance with the procedure provided for under the Employment Act for termination of employment contracts.
9. The claimants on their part admit refusal to sign new contracts unless their previous service was clarified. Further, their long remainder as casual workers was the cause of their concern and unrest. The respondent on its part had insisted that they sign new contracts under the new policy of elimination of causal workers in its work force. This policy was in principle with what the claimants wanted.
10. In the circumstances, the court would not make a finding on the issue of unfair termination of service. The court will in the circumstances order that each of the claimants be compensated as follows:

- a. One month's salary in lieu of notice on termination of service.
- b. One month's salary in lieu of leave for each complete year of service from 2009 to 2013 for those in service during this period.
- c. Counsel for the parties liase with their respective clients for computation of orders (a) and (b) are return to Court on 11/10/2018 for recording of final orders.
- d. Costs of the suit.

11. It is so ordered.

**Dated at Nairobi this 13<sup>th</sup> day of July, 2018**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 13<sup>th</sup> day of July, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.