REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT AT NAIROBI

CAUSE NO. 433 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 1st March, 2017)

KENYA AIRWAYS LIMITED.....CLAIMANT

VERSUS

KENYA AIRLINE PILOTS ASSOCIATION.....RESPONDENT

JUDGMENT

1. The Claimant filed suit on 23rd March, 2015, through the firm of Gikera & Vadgama under a Certificate of Urgency whereby they sought for orders against the Respondent to be restrained from calling for industrial action against the Claimant without following the procedure pending the hearing and determination of the Application which prayers were granted.

2. Further the Clamant/Applicant sought for orders that the Court be pleased to issue directions on conciliation. In the substantive suit they sought for prayers that:

> ***a. A declaration that any industrial action undertaken whilst the dispute resolution process as prescribed by the law has been initiated and has not been exhausted is illegal and unlawful;***
>
> ***b. A mandatory injunction prohibiting the Respondent either by itself, employee, agent or other person action on its behest from calling for, requesting or giving any directive whatsoever for its members working and being employed by the Claimant to engage in any industrial action and not limited to strike, go-slow, goodwill withdrawal or other industrial action in relation to matters herein determined;***
>
> ***c. A mandatory order requiring the Respondent to retract its call for a strike, go-slow, withdrawal of good will or other form of industrial action in relation to matters herein determined;***
>
> ***d. Compensation for loss of business and income to be tabulated at the hearing;***
>
> ***e. A mandatory order that the Respondent bears all liability for financial loss occasioned due to the engagement of the Claimant's employees in the strike, go-slow, withdrawal of goodwill and/or other industrial action.***

3. The facts leading to the suit are that he Claimant engaged the services of 39 Pilots in total for purposes

of flying the B777 aircraft but as a result of reduced business growth projections, the Claimant made a legal and informed decision to restructure its business operations.

4. On 17th November, 2014, the Claimant disclosed to the Respondent that there was a plan to release its B777 – 200 aircraft. On 14 January, 2015, the Claimant informed the Respondent that there had been adjustments in the network plans which dictated that the B777-200 fleet be exited and there was need for both parties to agree on what to do with the 10 excess B777 Captains. In light of this the Claimant decided to retire 10 pilots in accordance with clause 34(b) of the Collective Bargaining Agreement.

5. Consequently the Claimant offered the option of early retirement of the said ten B777 Pilots and thereby invited the Respondent for meetings wherein the said delegation from the Respondent ignored to hold any discussions concerning the said Pilots thereby wasting time and rendering the meetings unfruitful.

6. The Claimant further avers that they engaged the 10 individual Pilots and as a result of this engagement, the Claimant considered presentations made by two of the Pilots and consequently withdrew their early retirement notices. The eight other Pilots have so far not made any individual presentation for consideration by the Claimant.

7. It is the Claimant's contention that the Respondent failed to give any response on the retirement proposition but challenged the re-deployment decision arguing that Pilots deployed to other fleets should retain their current pay. The Claimant had proposed to peg their salaries on the B787 aircraft which the Respondent completely refused.

8. state that the decision to lower the salaries to the B787 was based on the fact that Pilots' salaries are based on the fleet that a Pilot is operating. In the event of complete exit of the larger fleet (B777) then the Pilots redeployed to the smaller fleets should not maintain the larger B777 salaries.

9. The Claimant contends that it has made all efforts practicable to engage the Respondent, but the Respondent has not responded to the issue in relation to the retirement of the ten Pilots, and has instead jumped the gun and instructed the Pilot Community to withdraw goodwill and called media attention to the issue while disregarding the Claimant's call for dialogue on the issue.

10. The Claimant states that the Respondent made a report of a trade dispute to the Minister, and the Claimant responded. That the Respondent bypassed the process of negotiation and conciliation and called for industrial action before conclusion of due process.

11. hey pray for their claim to be allowed as drawn.

12. The Respondent filed a Memorandum of Response and Counterclaim on 16th June 2015 wherein they deny that there was a genuine, fair, legal and unprejudiced engagement by the Claimant on the fate of the Pilots whose role was declared redundant arising from the phasing out of the B777 planes.

13. They aver that the Claimant made a unilateral decision to retire the ten Pilots operating the B777 planes which was both substantively and procedurally unfair as the situation on the ground was actually a redundancy.

14. The Respondent state that they have always been ready to engage openly and honestly with the Claimant on the issue of the intended termination of the B777 plane Pilots but its efforts were frustrated at every turn through the Claimant's hard stance on the fate of the said B777 Pilots.

15. That the insistence by the Claimant to sever its relationship with the B777 Pilots by way of the provisions of Clause 34(b) of the applicable Collective Bargaining Agreement was not acceptable to the Respondent as the situation called for a declaration as provided for under the Employment Act No. 11 of 2007 and Clause 45 of the Collective Bargaining Agreement.

16. They further state that vide the letters of termination dated 9/03/2015 which were issued on the same date or soon thereafter, ten Pilots working for the Respondent were notified of the termination of their contracts of service for the reason of early retirement pursuant to Clause 34(b) of the Collective Bargaining Agreement.

17. The Respondent states that two out of the ten Pilots in unclear circumstances had their letters of early retirement withdrawn. The remaining eight Pilots who were members of the Respondent are: Captain C.M.Sharma (Staff No. 03757) terminated on 18.6.2015, captain N.H.Jiwa (Staff No. 03766) terminated on 3.7.2015, Captain G.I. Areri (Staff No. 02633) terminated on 29.8.2015, Captain P.M. Kanyagia (Staff No. 04141) terminated on 23.7.2015, Captain Abdi Ali (Staff No. 02636) terminated on 31.3.2015, Captain H.K. Ithongo (Staff No. 04839) terminated on 9.9.2015, Captain J. Nyamor (Staff No. 05000) terminated on 15.4.2015, and Captain J.C. Agola (Staff No. 06026) terminated on 14.7.2015. Two of the Pilots Jorim Owino Nyamor and Abdi Ali Idle have since withdrawn from the suit

18. The Respondent admit that a meeting did take place between them and the Claimant whereby they were informed of the unilateral decision to retire the eight aforementioned pilots contrary to the law and the Collective Bargaining Agreement which the Respondent was opposed to.

19. They further admit that they opposed the redeployment of the B777 Pilots in circumstances that would impact negatively on their then prevailing employment terms and conditions. They aver that this retirement and redeployment proposal of the Claimant was an attempt to evade the provisions of the Employment Act pertaining to redundancy.

20. It is their contention that the affected pilots had been in the service of the Claimant Company for periods ranging between 27 and 37 years at the time of issuance of the early retirement letters earning basic salaries ranging between 1,000,000 and 1,400,000 which may have informed the irregular and illegal choice by the Claimant to terminate them.

21. The Claimant denies ever calling its members to undertake industrial action and put the Respondent to strict proof. They further deny that they refused to engage in negotiations with the Claimant and further deny that the Respondent shared its views relating to termination of the affected pilots.

22. The Respondent prays for the Claim to be dismissed with costs.

23. The Respondent have also filed a Counterclaim wherein they state that vide letters of termination dated 9.3.2015, eight of their member Pilots working for the Respondent were notified of the termination of their contracts of service on grounds of early retirement.

24. They state that by the time of filing this counterclaim two of the Pilots namely, Captain Abdi Ali Staff No. 02636 and Captain J. Nyamor, staff No. 05000 had already been terminated. Further that the termination of the two Pilots and the intended termination of the 6 other Pilots by the Claimant pursuant to the provisions of Clause 34(b) of the Collective Bargaining Agreement was substantively and procedurally unfair as the substantive reason for termination was the phasing out of B777 planes.

25. It is their contention that the terminations/intended terminations were to be by way of declaration of redundancy as provided for under the Employment Act and Clause 45 of the Collective Bargaining Agreement.

26. They state that the reason advanced by the Respondent for terminating employment of the affected Pilots by virtue of their age is not genuine and is a cover up of the real situation obtaining on the ground.

27. They therefore pray for the reinstatement of the two terminated Pilots and for a permanent injunction preventing termination of the other six pilots. In the alternative they pray for damages for unfair termination.

28. In evidence CW1 stated that they offered early retirement to some of the Pilots of B777 fleet which

led to the withdrawal of goodwill by the Respondent. The decision to retire the Pilots was based on Clause 34(b) of the CBA which provides for retirement of Pilots to be 65 years but an employee or employer can opt for early retirement with full benefits after being in the service for 10 years or more and has attained the age of 50 years and above.

29. CW1 stated that they identified the 777 Pilots who were over 50 years old infact, they were between 62 to 65 years of age and the decision was made to retire them. They were paid all their dues as provided under Clause 35 of the CBA.

30. She stated that the decision was explained to the Pilots through individual meetings and they were given an opportunity to be heard on the issue. That 2 of the 10 Pilots presented their circumstances to the Respondent who in turn revoked the retirement letters. The other 8 Pilots never came back to the Respondent to respond to the retirement letters.

31. The Respondent communicated to the Claimant and a meeting was scheduled but the Respondent allegedly failed to turn up and that is when they took the decision to terminate the 8 Pilots. The Claimant witness stated that had the Respondent been cooperative and attended the meetings they would have learnt that the Respondent had even arranged for alternative employment for the pilots with key partners.

32. CW1 stated that on 18.3.2015, the Respondent called for withdrawal of goodwill from all Pilots which led to delay or cancellation of flights leading to immense loss as the actions of the Respondent lasted for 10 days. The Claimant prays for the Respondent to bear the loss incurred by the Claimant during that period.

33. According to CW1 negotiations failed as a result of the combative attitude of the Respondent and that they have always been willing to settle the dispute out of Court. That the pilots were paid all their dues and as a result the Counterclaim should fail and the Claim to be allowed as drawn.

34. The Respondent put up two witnesses; RW1 was one Harry Kinuthia Ithongo as one of the affected pilots. He stated that he was terminated in March 2015 when he was working as a B777 pilot, the Respondent citing the reason of early retirement.

35. He stated that he was given 6 months' notice and his retirement was effective 9.9.2015. The retirement was stopped by the Court when orders of injunction were granted but the same were lifted on 3.2.2016.

36. He states that he was dismissed alongside 7 other Pilots on the same grounds. He stated that the decision to retire them early was not genuine as the real reason was that they were phasing out B777 planes and as such the captains of the said planes would be rendered redundant.

37. He states that they were never invited for any hearing and the decision to retire them was made unilaterally without involving the Respondent union. He states that he was never given the option of flying B787 planes and as at the time of termination there were unpaid salaries the Claimant was yet to pay. He prayed for the Claim to be dismissed and the Counterclaim to be allowed as drawn.

38.RW2 similarly led evidence of his termination alongside other Pilots. He stated that his termination was contrary to the law and the CBA Clause 45 thereof which provided for redundancy. That the action by the Respondent of instructing its members to withdraw goodwill did not paralyse the Claimant's work as the Pilots were to continue working in accordance with the work schedule. No Pilot was called in by the Claimant to explain why a flight did not take off going to show that there has never been any industrial action.

39. RW2 stated that no notices of redundancy were issued and neither were they called for a meeting to discuss the redundancy. The redundancy was therefore an unlawful termination and the Court should allow the Counterclaim as drawn.

40. The Claimant filed submissions wherein they state that they suffered loss to the tune of Kshs. 49,024,649.00 as a result of the Respondent's call for industrial action. The Respondent did not follow the due process set out in the law pertaining to calling for industrial action and refused to engage in any form of negotiation with the Claimant despite being ordered by the Court to do so.

41. It is the Claimant's submission that they suffered loss as a result of Court Orders of 16th September, 2015, which had the effect of retaining six pilots who had been given retirement notices.

42. The Claimant states that they continued to pay salaries to the Pilots despite the fact that they were not rendering any services to the Claimant. They seek to collect the sum of Kshs. 47,958,818.00 being the sum paid to the pilots over and above their retirement notices.

43. On the issue of redundancy the Claimant submits that the Pilots issued with retirement notices were not eligible for redundancy for the reason that redundancy could only apply to employees who had served the Respondent for less than ten years and were yet to attain the age of 50 years. Further, that they were not eligible for redundancy because the Claimant offered alternative employment which the Pilots declined and as such they cannot claim to have been declared redundant.

44. The Claimant submits that the affected Pilots were eligible for early retirement according to Clause 34(b) of the CBA. They state that this concept is recognized by the National Social Security Fund Act at Section 36(1) which provides that a retirement pension shall be payable to a member who has opted for premature retirement before they have attained the pensionable age but have reached the age of 50 years.

45. They submit that although the law does not set out the specific requirements for premature retirement, this is evidence that it is an acceptable and lawful practice in employment relations.

46. The Claimant states that the separation of the 8 Pilots from its employment was not a redundancy but early retirement agreed between the parties in the CBA in Clause 34(b).

47. They state that evidence was led that the Pilots were given retirement letters and were offered alternative employment within and outside the Company but they declined to take up the jobs. They submit that there is no specific provision of the law that governs early retirement and as such the CBA applies.

48. The Claimant calls upon the Court to award Kshs. 97,916,413/= being the monies lost as a result of withdrawal of goodwill which the Honourable Court already declared as illegal and monies paid to the retired Pilots after the notice period had lapsed.

49. The Claimant relies on the South African case of **Daniel Johannes De Wet vs. Government Employees Pension Fund**, where the employee gave notice of intention to prematurely retire. The applicable rules at the time were that the compulsory age of retirement was 65 years, with the option of either the employer or employees exercising the right to prematurely retire at 50.

50. The Court was faced with a determination as to what benefits were applicable to such an employee upon premature retirement. The Court relied on the letter of the applicable laws and held that:

> ***"the particular law shall be taken in its natural language, in so far as the language is unambiguous within the provisions relied upon."***

51. The Court emphasized that the provisions of the regulatory rules between the employer and the employee should be applied across the board, and an employee cannot seek to avoid the rules because they do not suit him at that particular time.

52. The Claimant prays for the Claim to be allowed and the Court and the Defence and Counterclaim be dismissed with costs.

53. In submissions the Respondents submit that the eight Pilots were unfairly and illegally terminated from employment. They stated that the termination was substantively unfair as the procedure set out in Sections 43 and 45(2) of the Employment Act, Cap 226 of the Laws of Kenya was not followed. They also cite the case of **Moses Kaunda Moro vs. CMC Motors Group Ltd (2013) eKLR** wherein it was held:

> ***"In the case of Walter Ogal Anuro Vs. Teachers Service Commission (2013)eKLR this Court held that for a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination."***

54. They submit that the reason of early retirement cited by the Respondent was not genuine as it was unilaterally invoked by the Claimant vide letters dated 9.3.2015. Clause of 34(b) of the CBA is to the effect that:

> ***"Retirement age for pilots will be 65 years.***
>
> ***An employee may opt to retire prematurely or he/she may be retired by the Company prematurely with full retirement benefits after he/she has been in the service for continuous period of ten (10) years or more provided that he/she has attained the age of not less than 50 years."***

55. However, from the pleadings and evidence of both the Claimant and the Respondent the real reason for termination was phasing out of B777 planes which would normally lead to a redundancy situation but the Claimant chose to hide behind the reason of early retirement.

56. Parties are bound by their pleadings and as such the Court should be led by the same in making a decision.

57. The Respondents submit that they had been in service of the Claimant for more than ten years and the Claimant chose to retire them at the exact same time as when the B777 planes were sold off. This was a redundancy as set out in section 2 of the Labour Relations Act, 2007 which defines redundancy as:

> ***"Redundancy" means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment as the initiative of the employer, where the services of an employee are superfluous and the practice commonly known as abolition of office, job or occupation and loss of employment.***

58. The Respondents submit that the dismissal fails the test of substantive fairness and equally fails the procedural fairness test. The Pilots were in essence declared redundant but the procedure set out in Section 40 of the Employment Act and Clause 45 of the CBA was not followed.

59. They state that no notices of redundancy were issued, no genuine engagement between the Claimant and Respondent took place, the labour officer was not part of any purported negotiations between the Claimant Company and the Respondent Association. Further the selection criteria envisioned in Section 40 of the Employment Act was not adhered to, the Pilots were not paid severance and neither were the Pilots offered alternative employment.

60. They further submit that even if the Claimant had the right to invoke the provisions on early retirement under Clause 34(b) then the same ought to have been consensual. They cite the case of **Kenya Plantation and Agricultural Workers Union vs. Bamburi Cement Limited & Another (2015) eKLR** where it was held:

> ***"The Court is not able to agree with the Claimant that VER must, like redundancy, follow section 40 of the Employment Act, 2007. Redundancy is involuntary, while VER is voluntary.***

The employees have the leeway to take it or leave it. It is not termination initiated by the Employer; it is a consensual termination, proposed by the Employer. In redundancy, the employee has no choice. Termination is involuntary. The terms of VER are entirely contractual terms, which are not subject to the redundancy law under section 40. The term VER does not appear in the Employment Act 2007, this being a consensual form of termination, regulated through the terms agreed upon by the offeror and offeree."

61. The Respondent submits that they are entitled to remedies provided under Section 40 of the Employment Act and Clause 45 of the CBA which include severance pay, leave days accrued but not paid, 6 months' pay in lieu of notice, 12 months' salary as compensation for unlawful termination.

62. The Respondent submits that the Claim must fail for the reason the Respondent did not instruct its members to withdraw goodwill. The goodwill envisaged by CBA is working for more hours than those set out in the fleet arrangement which arrangement was consensual, temporary and not a unilateral one.

63. That goodwill is a contractual arrangement that cannot be imposed on either of the parties. By calling on the Court to declare the withdrawal of goodwill as a call by the Respondent to Industrial Action by its members would be interfering with the privity of contact. They cite the case of **Patricia Bini vs. Melina Investments Limited & 3 Others (2015) eKLR** where Justice O.A. Angote stated:

"It is trite law that Courts cannot re-write contracts for parties, neither can they imply terms that were not part of the contract. In the case of Rufale vs. Umon Manufacturing Company (Ramsboltom)(1918) L.R. 1KB 592, Scrutton L.J. held:

"The First thing to see what the parties have expressed in the contract and then an implied term is not to be added because the Court thinks it would have been reasonable to have inserted it in the contract."

64. In the case of **Attorney General of Belize et al vs Belize Telecom Limited & Another (2009), 1 WLR 1980 at page 1993, citing Lord Person in Trollope Colls Limited vs. North West Metropolitan Regional Hospital Board (1973) 1 WLR 601 at 609** held as follows:

"The Court does not make a contract for the parties. The Court will not even improve the contract which the parties have made for themselves. If the express terms are perfectly clear and from ambiguity, there is no choice to be made between different meanings. The clear terms must be applied even if the Court thinks some other terms could have been more suitable."

65. It is the Respondent's submission that the evidence led on the loss suffered by the Claimant as a result of purported withdrawal of goodwill does not hold water. From the documents produced in Court it was clear that they were not under a particular letter head, were unsigned, and that the purported cancellation of flights could not be solely attributed to the withdrawal of goodwill. The Claim for Shs. 49,024,649/= should not be allowed as it was not proved.

66. The Claimant in their submissions seek reimbursement of monies the Pilots were paid from the time of the letters of termination were issued to the time they actually left employment.

67. The Respondent state that the Claimant cannot make prayers in the submissions and as such attempt to sneak in a relief should not be allowed. Further that in seeking reimbursement for the said salaries amounts to asking the Court to sit on its own appeal which should not be allowed.

68. The Respondent pray for the Claim to be dismissed and the Counter claim to be allowed as drawn.

69. Having considered the evidence and submissions of both parties, the issues for determination by this Court are as follows:

1. Whether the Respondents were retired or declared redundant by the Claimants.

2. Whether the Respondents can force an employer (Claimant) to declare them redundant as opposed to early retirement.

3. Whether the Respondents led to the losses incurred by the Claimants to the tune of 97,916,413/= as submitted by the Claimants.

4. Whether the Respondents can be ordered to refund moneys paid to them above the period of retirement.

5. What orders are appropriate in the circumstances?

70. On the 1st issue, the Claimant have submitted that they retired the Respondents after invoking Clause 34(b) of the CBA which states as follows:

> ***"An employee may opt to retire prematurely or he/she may be retired by the Company prematurely with full retirement benefits after he/she has been in the service for continuous period of ten (10) years or more provided he/she has attained the age of not less than 50 years".***

71. The Respondent have submitted that this was a VER (Voluntary Early Retirement) and by virtue of the **Kenya Plantation and Agricultural Workers Union vs Bamburi Cement Limited and Another (2015) eKLR** there was need to have consensus and consultation on the same.

72. They submit that given that the Respondents were not consulted on the retirement, this was an unfair termination.

73. I would not equate VER (Voluntary Early Retirement) to early retirement stated under Clause 34(b) of the Respondents CBA. VER (Voluntary Early Retirement) is materially different as it is elective based on parameters set out by the employer. The employee may opt for it or chose not to.

74. Early retirement as stated in the CBA Clause 34(b) on other hand is not voluntary. Once an employee choses to take up early retirement, the employer can't force him/her to stay on. When an employer choses to exercise this right, the employee cannot also resist it.

75. The Respondents have argued that they were infact not retired but declared redundant due to the prevailing circumstances in the Claimant's Industry. The Claimants have admitted that they were facing some economic challenges which necessitated facing out of the boeing 777 aircrafts. The Pilots were piloting this aircraft had by virtue of this reason to be considered for early retirement.

76. The Respondents have submitted that this description falls in the description of redundancy and not retirement.

77. Redundancy has been defined under Section 2 of Employment Act 2007:

> ***"as loss of employment, occupation, job or career by involuntary means through no fault of an employee involving termination of employment at the initiative of the employer where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment".***

78. It may be the position that the Respondents would have been declared redundant but the Claimant opted for the early retirement which was also legal and provided for in the CBA.

79. The fact that the Claimant opted to retire the Respondent's Pilots and not declare them redundant brings us to the 2nd issue – whether an employer can be forced to declare an employee redundant as opposed to early retirement.

80. In answering this question, I revert to the CBA between Respondents and the Claimants. I note that the CBA has both provisions for early retirement and redundancy. Early retirement is open to employees who have served for 10 years or more provided they are not less than 50 years. The provision on redundancy does not have a capping or age though. The redundancy will be carried out as envisaged under the Employment Act 2007 Section 2.

81. Can an employer be forced to apply the redundancy provisions as opposed to the early retirement provision? In my view the guiding principle is the law and the CBA. Both are legal and the fact that the Claimant opted for the retirement clause which it was in his capacity to elect does not make the election illegal or unjustified because the Respondents would have had greater benefit if they had been declared redundant.

82. It is my finding that Clause 34(b) of the CBA was rightfully used and the Respondents and indeed this Court cannot force parties to rewrite their contract and employ the redundancy clause as opposed to the early retirement clause.

83. On 3rd issue, the Claimants had prayed to this Court to find judgement against the Respondents for losses incurred during the withdrawal of good will period.

84. From the evidence submitted by the Claimants, they incurred losses due to cancellation and delayed flights during the period. In the same vein, the Respondents have averred that the documents the Claimants submitted did not prove they were the ones responsible for the losses.

85. Indeed the documents produced by the Claimants were some calculations on losses incurred but there is no proof that the Respondents in particular occasioned the said losses.

86. The Respondents led evidence to show that they were not cause of the losses and this in cross examination of CW1 who said:

> ***"I do not have evidence that flights did not fly due to withdrawal of goodwill. Flights can fail to fly for technical reasons even sickness of a pilot……".***

87. I therefore find that the claim by Claimant for reimbursement of losses incurred by them due to withdrawal of goodwill cannot stand.

88. On the 4th issue is the claim that the Respondents be ordered to refund moneys paid to them as salary after the retirement notices. This claim cannot stand as this was ordered by the Court after the Respondents made their application seeking stay on the retirement notice. This order was finally lifted by the Court and they cannot be ordered to refund what they were paid during the subsistence of the orders of stay.

89. The Respondents also claimed that they were forced to proceed on leave during the pendency of their termination notice. This in my view was improper because the leave earned was a separate right from the notice right and one could not be imposed on another.

90. It is therefore my finding that the Respondents were entitled to payments of their pending leave days which the Respondents have submitted they should be paid, I do agree that the Respondents are entitled to payments of these days.

91. However given that they continued working for over 3 months after their retirement notice following the orders of this Court, I would consider that period to cover their leave period for which they were not allocated any duties. The exact number of days were from 14th October 2015 to 3rd February 2016 – an equivalent of 3 months and 20 days = 110 days.

92. In respect of all Respondents, except for Cap Ireri and Cap Ithogo they had leave days of less than 110 days and so they cannot benefit from the period.

93. However for the 2 mentioned Respondents had 122 and 154 leave days due and this comes to 12 days and 44 days not served respectively. I therefore find for the 2 Respondents in terms of leave due which translates to **Kshs.503,816/=** and **1,678,849/=** respectively – less statutory deductions.

Read in open Court this 1st day of March, 2017.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Munyaka for Claimants – Present

Muchiri for Respondent – present