



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA
AT NAIROBI

CAUSE NO.2001 OF 2015

[Formerly HCCC No.890 of 2004]

JANE NJERI WANYOIKE.....1ST CLAIMANT
JAMES ASTUSHA ANDENYI.....2ND CLAIMANT
GABRIEL OPOT.....3RD CLAIMANT
GIRSON MATUNGA.....4TH CLAIMANT
JULIAN MUIRURI.....5TH CLAIMANT
PETER OLANDO.....6TH CLAIMANT
COSMAS AGO.....7TH CLAIMANT
JEREMIAH ALUGAYA.....8TH CLAIMANT
ELIJAH OTHIAMBO.....9TH CLAIMANT
ANTONY MWANGI.....10TH CLAIMANT
PHILIP DIBA.....11TH CLAIMANT
EDWARD KABAKA.....12TH CLAIMANT
JOHN WAINAINA.....13TH CLAIMANT
JOSAM NDUNDE.....14TH CLAIMANT
JAMES NJOROGI.....15TH CLAIMANT
ERNEST OBIERO.....16TH CLAIMANT
NICHOLAS GICHIRA.....17TH CLAIMANT
JANES ODHIAMBO.....18TH CLAIMANT
JOSEPH KAMAU.....19TH CLAIMANT
NICHOLAS OBUYA OBACH.....20TH CLAIMANT
MARTIN OKELLO.....21ST CLAIMANT
JOEL MACHARIA.....22ND CLAIMANT

SYLESTER ODUOR.....23RD CLAIMANT

JOSEPH PETER NJUGUNA.....24TH CLAIMANT

VERSUS

PAN AFRICA INSURANCE COMPANY LIMITED.....1ST RESPONDENT

MAE PROPERTIES LIMITED.....2ND RESPONDENT

RUNDA WATER LIMITED.....3RD RESPONDENT

JUDGEMENT

1. The Suit herein was initially filed before the High Court under HCCC No. 890 of 2004. The file was transferred to this court on 9th November, 2013. By the time of transfer, 5 claimants had testified before the High Court. Parties opted to reply on the previous proceedings before the High Court as part of the record. Parties took fresh directions based on the Court Rules 9 and agreed to call one claimant to testify for and on behalf of the other claims.

2. The Claimants Amended Claim was filed on 31st May, 2016.

3. On 16th January, 2017 the court allowed the respondent to file an Amended Defence. Such was not filed. The defence on record is dated 24th September, 2004 and list of documents dated 18th November, 2011.

4. Each party filed lists of documents.

5. In the course of time some claimants died and have since been substituted, 23rd claimant substituted with GRACE ACHIENG ODONGO and 21st claimant substituted with COLLETAN ATIENO OKELLO.

Claim

6. The claimants are male and female adults while the 1st respondent is a Limited liability company and incorporated under the Companies Act and the 2nd and 3rd respondents are limited liability companies and subsidiaries of the 1st respondent.

7. The claimants were all employed by the 3rd respondent on various dates and were terminated from their employment from between 18th August, 2003 and 29th November, 2003 by the 3rd respondent. The claim is that the termination of employment was wrongful and unlawful. The termination was malicious and without lawful justification. The particulars of malice are that there was no justification; no notice was issued; and the respondent failed to pay terminal dues of pay in lieu of notice and house allowance.

8. As a result of the malicious termination of the claimants' services the respondents have caused great suffering and humiliation to the claimants and therefore

claim general damages against the 3rd respondent. The claimants also are seeking special damages.

1st claimant

- a) Severance pay at 21 days for 18 years worked Kshs.33,466.50;
- b) 4 months' pay in lieu of notice at Kshs.26,227.00 all being Kshs.104,908.00;
- c) House allowance arrears at 20% Kshs.15,736.20 Total Kshs.451,11.70

2nd claimant

- a) 3 months' salary in lieu of notice 3 x 8,069 = Kshs.24,207.10;
- b) Severance pay at 21 day 9 years = 50,822.10;
- c) Overtime - 1st April 2001 – 30th November, 2003 (2 ½ hours per day
 - i) 2001-275 days-687 ½ hours = Kshs.22,481.25

ii) 2002-366 days -915 hours = Kshs.29, 920;

iii) 2003 – 334 days – 835 hours = Kshs.27,304.50;

Total Kshs.79,706.25

d) Holidays worked and not paid 1st April, 2001 – 30th November, 2003

i) 2001 (10 days x 12 hours) = 120 hours;

ii) 2002 (11 days x 12 hours) = 132 hours

iii) 2003 (8 days x 12 hours) = 96 hours

348 hours x 32.70 Kshs.11,379.60;

e) House allowance unpaid as from 1st February 2002 – 30th November 2003

i) 2002 – 11 x 650 = 7150;

ii) 2003 – 11 x 650 = 7150 Kshs.14,300.00

f) Off days worked and not paid as from 1st January – 30th November 2003

i) 2001 – 52 off days = 13,982.80;

ii) 2002 – 52 off days = 13,982.80;

iii) 2003 – 48 off days = 12,907.20

=Kshs.40,872.80

Total claim Kshs.221,287.75;

3rd claimant

a) One month notice pay Kshs.4,500.00;

b) Severance pay at 21 days for 4 years = Kshs.12,600.00;

c) Holidays worked and not paid for 2 years and 4 months – 25 x 300 = 7,500.00;

d) Leave days not paid (15x150) x 4 years = Kshs.12,600.00;

e) Gratuity for years worked at 18 days per year (150x18) x 4 = Kshs.10,800.00;

f) NSSF deductions not remitted (200x12) x 4 = Kshs.9,500.00;

g) NHIF deducted and not remitted (80x12) x 4 = Kshs,3,840.00;

h) House allowance not paid (550x12) = 26,400.00; Total Kshs.87,840.00;

4th claimant

a) Leave days unpaid (21x178) x 6 = Kshs.22,428.00;

b) Severance pay for years worked 21 days x 6 years (178x21) =Kshs.22,428,00;

c) Gratuity for years worked at 18 days x 6 =Kshs.16,020.00;

d) 2 months' notice pay 5340x2 = Kshs.10,680.00;

e) Holidays worked 2 year and 2 months (25x356) = Kshs.8,900.00;

- f) NSSF dues unremitted $(80 \times 12) = \text{Kshs.}14,400.00$;
- g) NHIF unremitted $(80 \times 12) = \text{Kshs.}5,760.00$;
- h) House allowance not paid/off days $(356 \times 112) = \text{Kshs.}39,872.00$ Total $\text{Kshs.}140,488.00$;

5th claimant

- a) Leave days $(21 \times 178) \times 2 = \text{Kshs.}7,476.00$;
- b) Severance pay for 21 x 2 years $(178 \times 21) = \text{Kshs.}7,476.00$;
- c) Gratuity for years worked 18 days per year $(178 \times 18) = \text{Kshs.}7,476.00$;
- d) One month notice pay = $\text{Kshs.}5,340.00$;
- e) Holidays worked for 2 years $(25 \times 356) = \text{Kshs.}7,832.00$;
- f) NSSF unremitted = $\text{Kshs.}4,800.00$;
- g) NHIF unremitted $\text{Kshs.}1,920.00$;
- h) Off days unpaid $(356 \times 96) = \text{Kshs.}34,175.00$; Total $\text{Kshs.}76,496.00$;

6TH CLAIMANT

- a) Leave days not paid $\text{Kshs.} (21 \times 242) \times 6 = \text{Kshs}30,492/=$
- b) Severance pay for years worked at 21 days per year $\text{Kshs.} (242 \times 21) \times 6$
 $\text{Kshs.} 30,492/=$
- c) Gratuity for years worked at 18 days per year $(242 \times 18) \times 6 = \text{Kshs.} 26,136/=$
- d) Two month's salary in lieu of notice = $\text{Kshs.} 5,340 \times 2 = 10,680$
- e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 484) = \text{Kshs}12,100/=$
- f) N.S.S.F deductions not remitted $(200 \times 12) \times 6 = \text{Kshs.} 14,400/=$
- g) N.H.I.F deductions not remitted $(80 \times 12) \times 6 = \text{Kshs.}5,760/=$
- h) Off days worked and not paid $\text{Kshs.} (484 \times 112) = \text{Kshs.} 54,208/=$

TOTAL KSHS. 184,268

7TH CLAIMANT

- a) Leave days not paid $\text{Kshs.} (21 \times 294) \times 8 = \text{Kshs}49,392/=$
- b) Severance pay for years worked at 21 days per year $\text{Kshs.} (294 \times 21) \times 8$
 $\text{i.} = \text{Kshs.} 49,392/=$
- c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 8 = \text{Kshs.} 42,333/=$
- d) Two month's salary in lieu of notice = $\text{Kshs.} 7,260 \times 2 = 14,520$
- e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) = \text{Kshs}14,700/=$
- f) N.S.S.F deductions not remitted $(200 \times 12) \times 8 = \text{Kshs.} 19,200/=$
- g) N.H.I.F deductions not remitted $(80 \times 12) \times 8 = \text{Kshs.}7,680/=$

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL KSHS. 263,073/=

8TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 8 =$ Kshs.49,392/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 8$

i. = Kshs. 49,392/=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 8 =$ Kshs. 42,336/=

d) Two month's salary in lieu of notice = Kshs. $(8,820 \times 2) =$ 17,640/=

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs. 14,700/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 8 =$ Kshs. 19,200/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 8 =$ Kshs.7,680/=

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL KSHS. 266,196

9TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 8 =$ Kshs.49,392/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 8$

i. = Kshs. 49,392/=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 8 =$ Kshs. 42,336/=

d) Two month's salary in lieu of notice = Kshs. $8,820 \times 2 =$ 17,640

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs.14,700/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 8 =$ Kshs. 19,200/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 8 =$ Kshs.7,680/=

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL KSHS. 266,196

10TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 3 =$ Kshs.18,522/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 4$

i. = Kshs. 24,696/=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 4 =$ Kshs. 15,876/=

d) One month's salary in lieu of notice = Kshs. 8,820/=

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs.14,700/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 3 =$ Kshs. 7,200/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 3 =$ Kshs.2,880/=

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL = KSHS. 158,550/=

11TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 7 =$ Kshs43,218/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 7$

i. = Kshs. 43,218/=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 7 =$ Kshs. 37,044/=

d) Two month's salary in lieu of notice = Kshs. $8,820 \times 2 = 17,640$

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs.14,700/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 7 =$ Kshs. 16,800/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 7 =$ Kshs.6,720/=

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL = KSHS. 245,196/=

12TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 8 =$ Kshs49,392/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 8$

i. = Kshs. 49,392 /=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 8 =$ Kshs. 42,336/=

d) Two month's salary in lieu of notice = Kshs. $8,820 \times 2 = 17,640$

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs14,700/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 8 =$ Kshs19,200/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 8 =$ Kshs7,680/=

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL = KSHS. 266,916/=

13TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 8 =$ Kshs49,392/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 8$

i. = Kshs. 49,392/=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 8 =$ Kshs. 42,336/=

d) Two month's salary in lieu of notice = Kshs. $8,820 \times 2 = 17,640$

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs14,700/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 8 =$ Kshs. 19,200/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 8 =$ Kshs.7,680/=

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL = KSHS. 266,916/=

14TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 4 =$ Kshs24,696/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 4$

i. = Kshs. 24,696/=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 4 =$ Kshs.21,168/=

d) One month's salary in lieu of notice = Kshs.8,820/=

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs14,700/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 4 =$ Kshs. 9,600/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 4 =$ Kshs.3,840/=

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL = KSHS. 173,376/=

15TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 3 =$ Kshs18,522/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 3$

i. = Kshs. 18,522/=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 4 =$ Kshs. 15,876/=

d) One month's salary in lieu of notice = Kshs. 8,820/=

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs.14,700/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 3 =$ Kshs. 7,200/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 3 =$ Kshs.2,880/=

h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=

TOTAL = KSHS. 152,376/=

16TH CLAIMANT

a) Leave days not paid Kshs. $(21 \times 294) \times 3 =$ Kshs18,522/=

b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 3$

i. = Kshs. 18,522/=

c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 4 =$ Kshs. 15,876/=

d) One month's salary in lieu of notice = Kshs. 8,820/=

- e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) = \text{Kshs}14,700/=$
- f) N.S.S.F deductions not remitted $(200 \times 12) \times 3 = \text{Kshs. } 7,200/=$
- g) N.H.I.F deductions not remitted $(80 \times 12) \times 2 = \text{Kshs.}2,880/=$
- h) Off days worked and not paid $\text{Kshs. } (588 \times 112) = \text{Kshs. } 65,856/=$

TOTAL = KSHS. 152,376/=

17TH CLAIMANT

- a) Leave days not paid $\text{Kshs. } (21 \times 294) \times 4 = \text{Kshs}24,696/=$
- b) Severance pay for years worked at 21 days per year $\text{Kshs. } (294 \times 21) \times 4$
i. = $\text{Kshs. } 24,696/=$
- c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 4 = \text{Kshs. } 21,168/=$
- d) One month's salary in lieu of notice = $\text{Kshs. } 8,820/=$
- e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) = \text{Kshs}14,700/=$
- f) N.S.S.F deductions not remitted $(200 \times 12) \times 4 = \text{Kshs. } 9,600/=$
- g) N.H.I.F deductions not remitted $(80 \times 12) \times 2 = \text{Kshs.}3,840/=$
- h) Off days worked and not paid $\text{Kshs. } (588 \times 112) = \text{Kshs. } 65,856/=$

TOTAL = KSHS. 173,376/=

18TH CLAIMANT

- a) Leave days not paid $\text{Kshs. } (21 \times 284) \times 10 = \text{Kshs}61,740/=$
- b) Severance pay for years worked at 21 days per year $\text{Kshs. } (294 \times 21) \times 10$
i. = $\text{Kshs. } 61,740/=$
- c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 10 = \text{Kshs. } 52,920/=$
- d) Four month's salary in lieu of notice = $\text{Kshs. } 8,820 \times 4 = 35,280/=$
- e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) = \text{Kshs}14,700/=$
- f) N.S.S.F deductions not remitted $(200 \times 12) \times 10 = \text{Kshs. } 24,000/=$
- g) N.H.I.F deductions not remitted $(80 \times 12) \times 10 = \text{Kshs.}9,600/=$
- h) Off days worked and not paid $\text{Kshs. } (588 \times 112) = \text{Kshs. } 65,856/=$

TOTAL = KSHS. 325,836/=

19TH CLAIMANT

- a) Leave days not paid $\text{Kshs. } (21 \times 294) \times 3 = \text{Kshs}18,522/=$
- b) Severance pay for years worked at 21 days per year $\text{Kshs. } (294 \times 21) \times 3$
i. = $\text{Kshs. } 18,522/=$

- c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 3 =$ Kshs. 15,876/=
 - d) One month's salary in lieu of notice = Kshs. 8,820/=
 - e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs14,700/=
 - f) N.S.S.F deductions not remitted $(200 \times 12) \times 3 =$ Kshs. 7,200/=
 - g) N.H.I.F deductions not remitted $(80 \times 12) \times 3 =$ Kshs.2,880/=
 - h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=
- TOTAL = KSHS. 152,376/=

20TH CLAIMANT

- a) Leave days not paid Kshs. $(21 \times 294) \times 3 =$ Kshs18,522/=
 - b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 3$
 - i. = Kshs. 18,522/=
 - c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 4 =$ Kshs. 15,876/=
 - d) One month's salary in lieu of notice = Kshs. 8,820/=
 - e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs14,700/=
 - f) N.S.S.F deductions not remitted $(200 \times 12) \times 3 =$ Kshs. 7,200/=
 - g) N.H.I.F deductions not remitted $(80 \times 12) \times 2 =$ Kshs.2,880/=
 - h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=
- TOTAL = KSHS. 152,376/=

21ST CLAIMANT

- a) Leave days not paid Kshs. $(21 \times 294) \times 3 =$ Kshs18,504/=
 - b) Severance pay for years worked at 21 days per year Kshs. $(294 \times 21) \times 4$
 - i. = Kshs. 24,696/=
 - c) Gratuity for years worked at 18 days per year $(294 \times 18) \times 3 =$ Kshs. 15,876/=
 - d) One month's salary in lieu of notice = Kshs. 8,820/=
 - e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 588) =$ Kshs14,700/=
 - f) N.S.S.F deductions not remitted $(200 \times 12) \times 3 =$ Kshs. 7,200/=
 - g) N.H.I.F deductions not remitted $(80 \times 12) \times 3 =$ Kshs.2,820/=
 - h) Off days worked and not paid Kshs. $(588 \times 112) =$ Kshs. 65,856/=
- TOTAL = KSHS. 158,472/=

22ND CLAIMANT

- a) Leave days not paid Kshs. $(21 \times 294) \times 6 =$ Kshs45,108/=
- b) Severance pay for years worked at 21 days per year Kshs. $(358 \times 21) \times 6$

i. = Kshs. 45,108/=

c) Gratuity for years worked at 18 days per year $(358 \times 18) \times 6 =$ Kshs. 38,664/=

d) Two month's salary in lieu of notice = Kshs. 10,740 $\times 2 =$ Kshs.21,480

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 716) =$ Kshs17,900/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 6 =$ Kshs. 14,400/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 6 =$ Kshs.5,760/=

h) Off days worked and not paid Kshs. $(716 \times 112) =$ Kshs. 80,192/=

TOTAL = KSHS. 268,612/=

23RD CLAIMANT

a) Leave days not paid Kshs. $(21 \times 358) \times 8 =$ Kshs60,144/=

b) Severance pay for years worked at 21 days per year Kshs. $(358 \times 21) \times 8$

i. = Kshs. 60,144/=

c) Gratuity for years worked at 18 days per year $(358 \times 15) \times 8 =$ Kshs. 42,960/=

d) Two month's salary in lieu of notice = Kshs. 10,740 $\times 2 =$ Kshs.21,480

e) Holidays worked and not paid for 2 years and 4 months = $(25 \times 716) \times 2 =$ Kshs17,900/=

f) N.S.S.F deductions not remitted $(200 \times 12) \times 8 =$ Kshs. 19,200/=

g) N.H.I.F deductions not remitted $(80 \times 12) \times 8 =$ Kshs.7,680/=

h) Off days worked and not paid Kshs. $(716 \times 112) =$ Kshs. 80,192/=

TOTAL = KSHS. 309,700/=

24TH CLAIMANT

a) Severance pay calculated at 21 days per year worked Kshs. $(1339.55 \times 21) \times 26$

i. = Kshs. 731,394.30/=

b) Four month's salary in lieu of notice = Kshs. $(4 \times 40,187) =$ Kshs160,748

c) House allowance arrears not paid at 20% of monthly salary = Kshs. 24,112.20

TOTAL = KSHS. 916,254.50

9. The claim is also that the termination of the claimants by the 3rd respondent was in breach of terms of contract entered into between them and the 2nd and 3rd respondents jointly. The respondents and jointly and severally liable to pay compensation to the claimants; special and general damages as claimed.

10. The 2nd and 3rd respondents have since been acquired by the 1st respondent and hence 1st respondent is liable jointly and severally to meet the liabilities of the two respondents.

11. The claimants seek judgement against the respondents for;

a) *General damages for breach of contract of employment and wrongful termination of services*

b) *Terminal benefits as per paragraph 7 of the statement of claim all at Kshs.5,829,663.90;*

c) Interests on (a) and (b) from the date of filing suit until paid in full; and

d) Costs of the suit.

12. In evidence, the claimants witness was the 1st claimant, Jane Njeri Wanyoike who testified that

Defense

13. In defense, the respondents admit the 2nd and 3rd respondents are limited liability companies but deny averment that there is a relationship with the 1st respondent. The claimants are not entitled to any damages as claimed. The respondents were discharged and released from obligations under the claimants' contracts of employment by an accord and the satisfaction thereof. The respondent has evidence to support its case. The suit is therefore an abuse of the court process and should be dismissed with costs.

14. In evidence, the respondents called Cleophus Agingu, the Commercial Manager of the 3rd respondent and testified that he was employed by either the 3rd or 2nd respondents all being subsidiaries of the 1st respondent. He worked with the claimants from 1993 to July, 2003 when they were terminated from their employment due to redundancy and they were paid their terminal dues. There was an agreement between the District Labour Officer and the general manager of the respondents to pay all employees. All permanent employees had a contract with the 2nd or the 3rd respondent. Among the claimants only the 1st claimant, Ms Jane Wanyoike were permanent together with Joseph Peter Njuguna and James Adanyi.

15. Mr Agingu also testified that the CBA produced in this case was not applicable. He had worked with the respondents from 1996 to 2003 and he was also retrenched and the union dues check off system had stopped in 1998. The employees who were unionized had a check off card and paid their union fees. The respondents did not have the list of unionized employees. The documents submitted by the claimants, some belong to Runda Water who did not have a check off system. At the time of termination of employment in 2003, the claimants were no longer unionized.

16. Mr Agingu also testified that their terms and conditions of employment were regulated under a CBA. Such CBA has been referred to by the 1st respondent. Most claimants were employed by the 3rd respondent and the 2nd respondent which are under the 1st respondent. The claimants who did not have written contracts or employed as permanent employees and thus remained casual employees of the respondents.

17. At the close of the hearing, both parties filed written submissions.

Determination

- a) Whether the claimants were causal employees of the respondents
- b) The applicable law
- c) Who is the employer?
- d) Employment status of the claimants at the time of termination
- e) Whether the claimants were covered under a CBA
- f) Whether there are any remedies

18. It is common cause that the claimants were the employees of the respondents. Such employment terminated on 30th November, 2003. At the time, the applicable law in employment was the Employment Act, Cap 226, now repealed. The repeal was in 2007 vide Employment Act, 2007 which came into force on 2nd June, 2008 way after the termination of the claimants took place. The law thus applicable in the instant case is the Employment Act, Cap 226 Laws of Kenya.

19. The question as to who the employer of the claimants was is posed. The pay slips issued to the claimants show they were paid under the name of *Runda Water Ltd*, the 3rd respondent. In the Certificate of Service issued to each claimant, *Runda Water Ltd* has stated the name of employee; date of commencements; date when employment ceased; worked performed; and place of work.

20. In a letter of the 2nd respondent, *MAE Properties LTD* dated 20th March, 2003 the same acknowledges that MAE Properties Ltd had employed the claimants between 1996 to 1999 and then the employment changed to the 3rd respondent.

21. In the same letter attached at page 39 of the Respondent list of Documents dated 18th November, 2011, MAE Properties Ltd admit that;

Runda Water Ltd, which is a subsidiary of Pan Africa Insurance Co. Ltd currently have the following Casual employees.

22. The list of the claimants is attached therein. There is therefore no doubt on the relationship between the parties. The claimants commenced work under MAE Properties Ltd, moved with the change to Runda Water Ltd, which entity is a subsidiary of the 1st respondent.

23. Under this letter by the 3rd respondent, the claimants are stated to be casual employees of the 3rd respondent, Runda Water Ltd. However, MAE Properties Ltd having moved and left the claimants under the employment of the 3rd respondent, the relationship between the parties is clear vide the Certificates of Service issued at the termination of employment. Termination letters were issued by the 3rd respondent and not the 2nd respondent. As such, the last positions held between the claimants and their employer was not on causal basis.

24. The contest is whether the claimants were casual employees or permanent and pensionable and whether they ought to enjoy work benefits as casual employees or as permanent and pensionable employees. The claimants assert that they were not casual employees of the respondents as some had served for long periods of time going above 2 to 12 years and therefore they were not casual employees. The respondent on their part contest that the claimants remained as casual employees and cannot claim benefits of permanent employees or any benefits under any CBA.

25. Under the applicable law, the Employment Act, Cap 226 noted above, a casual employee is defined as;

"casual employee" means an individual the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time:

25. An employee on the other part is defined as;

"Employee" means an individual employed for wages or salary and includes an apprentice and an indentured learner

26. The respondent in the list of documents filed on 18th November, 2011 submitted pay slips issued to the claimants noting payments of;

Basic pay;

Bonus pay;

House allowance;

Gross pay;

Taxed amount

PAYE

NHIF

NSSF

27. It is also not in dispute that upon the termination of the claimants there were dues that were paid and acknowledged by the claimants being payment for;

15 days for every year worked;

21 days' pay in lieu of notice.

28. The respondent also issued a Certificate of Service to each claimant noting;

Name;

Date of employment;

Date when employment ceased;

Duties performed; and

Place of employment.

30. Upon termination of employment, the claimants reported the matter to the Labour officer and at the negotiations were the claimants, a union representative from Kenya Agricultural Workers Union and the respondent.

31. The above facts are not contested. Most of these facts are derived from the respondent work records kept with regard to the claimants. These facts cumulatively do not speak to the claimants as casual employees as defined under the applicable law, the Employment Act, Cap 226.

32. The claimants were therefore not casual employees of the respondents. The nature of employment, status of employment as at the time of termination of their employment effectively was permanent and pensionable as it cannot be described otherwise.

33. It is also not in dispute that the claimants were unionized. The Kenya Agricultural Workers Union and the Kenya Coffee Growers and Employers Association (the Association) that covered the respondents particularly Mae Properties Limited was a member and had a Collective Agreement (CBA) which set out the terms and conditions of employment for the unionized employees.

34. The fact of Mae Properties Limited being a member of Kenya Coffee Growers and Employers Association is not contested. Within the applicable law, a CBA concluded between the association and the trade union binds the parties to it and the members thereof. There is no requirement that the union enjoying recognition by the association should have a Recognition Agreement with each and every member of the Association. The negotiations made and registered in the CBA between the Association and the trade union is binding on all the members of such an association.

35. The involvement of the claimants' trade union is apparent from negotiations held following their termination of employment and with reports to the Labour Officer and the respondents. The presence of the Association in the negotiations is admitted.

36. It is not controverted that the parties had several CBAs negotiated between them. The last such CBA was signed on 21st March 2005 and covered the period of 1st January, 2003 to 31st December, 2004.

37. In the letters terminating the claimant's employment, the respondents stated as follows;

TERMINATION OF EMPLOYMENT WITH RUNDA WATER LIMITED:

REDUNDANCY DUES

We refer to our letter dated 8th August, 2003 giving you one week's notice of termination of your employment with Runda Water Limited with effect from 15th August, 2003.

Please find attached our cheque Being in full and final settlement of all redundancy dues ...

- 1. 15 days' pay for every year worked*
- 2. 21 days' pay in lieu of leave for the past two years.*

38. The reason for termination of employment is due to redundancy. The payments made to each claim related to 15 severance pay and leave pay.

39. Under the Employment Act, Cap 226 as repealed, redundancy provisions was set out under section 16A of the Act as follows;

16A. (1) A contract of service shall not be terminated on account of redundancy unless the following conditions have been complied with -

- a) The union of which the employee is a member and the Labour Officer in charge of the area where the employee is employed shall be notified of the reasons for, and the extent of, the intended redundancy;*
- b) The employer shall have due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;*
- c) No employee shall be placed at a disadvantage for being or not being a member of the trade union;*
- d) Any leave due to any employee who is declared redundant shall be paid off in cash;*
- e) An employee declared redundant shall be entitled to one month's notice or one month's wages in lieu of notice;*
- f) An employee declared redundant shall be entitled to severance pay at the rate of not less than 15 days' pay for each completed year of service as severance pay.*

40. The provisions of section 16A thus apply to all employees without distinction of unionisation or being unionisable. Upon a redundancy, the employer was required to pay each employee affected by the same the leave days due; one months' notice

pay and a minimum of 15 days' pay for each completed year of service as a severance pay. Where there is a CBA that had terms and condition of termination on account of redundancy addressed, the same applied save that even the employees who were not unionized, by application of section 16A(c) they were not to be placed at a disadvantage for not being unionized.

41. In this regard, clause 17 of the applicable CBA addressed a redundancy and termination of employment thereof and based on the history of work for each employee, payments were to be made as follows;

- a) An employee who had worked for one month and more was entitled to notice pay at one (1) month's pay;
- b) An employee who had worked for 5 years and more was entitled to two (2) months' notice pay;
- c) An employee who had worked for eight (8) years and more was entitled to three (3) months' notice pay; and
- d) An employee who had worked for fifteen (15) years and more was entitled to 4 months' notice pay.

42. To thus pay the claimant less than was due was wrongful. The computation of terminal due in the event of the redundancy that was apparent should have been in compliance with the law read together with the applicable CBA and without putting at a disadvantage the employees who were not unionized.

43. The terminal dues owing to the claimants shall be computed based on the applicable CBA.

44. Even where an employee has accepted terminal dues and acknowledged the same as a final and full settlement, such does not negate the payment of any lawful and justified payment that ought to go with such employment. As a right in employment all owing dues in fact and in law cannot be compromised by an employee signing off a payment less what is an entitlement. The rationale is that such dues owing to an employee as of right should be paid as a matter of course when due and owing. To accept less what is due does not affect a claim for the whole.

45. In the claimants' acceptance of terminal dues offered upon their termination of employment by the respondent, such was an acceptance of what was owed to them in redundancy. Such did not stop the claimants from filing suit before the court seeking what is legally due to them.

46. Based on the applicable law, the provisions of the applicable CBA, the claimants are herein entitled to payments due under clause 17 of the CBA covering the period of 1st January, 2003 to 31st December, 2004.

47. The claims for severance pay, gratuity, salary in lieu of notice, house allowance due; pay for holidays worked; off days worked; NSSF and NHIF and leave days' pay where due and not paid are lawful and where earned within the course of employment, such cannot be negated by the claimants having signed an acknowledgement note as having received final payments. Work done and pay due is a matter of right. Where an employee demands for the payment of the same, such is due.

48. In this case, upon the termination of the claimants' employment, efforts were made to negotiate the unpaid terminal dues and meetings held with the Labour Officer. There was part payment of such dues. The claimants have each acknowledged the payment of the same. The unpaid terminal dues upon demand and filing to suit on 17th August, 2004 and by the subsequent amendments are due.

Severance pay

49. This will be computed for each claimant based on the terms and conditions of the CBA

Severance pay and service gratuity

50. Gratuity is negotiated under the CBA and payable upon termination of employment, whichever mode of effecting termination. There are separate clauses with regard to *redundancy* and *severance pay/service gratuity*. In my reading of both clauses, the *redundancy* clause relates to loss of employment in the event there is involuntary loss of the same while the clause on *service gratuity* relates to termination of employment *if an employee is retired or where an employee resigns, on old age or sickness or where services are terminated by the employer other than for gross misconduct*.

51. With redundancy and severance/gratuity terms and conditions set out thus, in view of the applicable law that is clear on what *redundancy* is and severance payment is due thereof, to pay for both severance pay and gratuity in a matter that is apparently a redundancy would be a double payment. Such is not in the interests of justice. Where severance pay is confirmed as due as set out above, service gratuity is not due. This was not ordinary termination of employment by retirement, resignation or due to old age, there was a redundancy.

52. Noting the above, even where gratuity pay is declined herein as a remedy, service pay is due to an employee whose statutory deductions are not deducted and remitted in accordance with the law or such statutory deductions are effected by a deduction but not remitted as required.

53. The case by the claimants is that the respondents made a deduction of statutory dues for NSSF and NHIF but were never

remitted. From the pay slips attached for the claimant's salary statement, there is a statutory deduction. The pay slips attached to the claimants' Amended Statement of Claim and also attached in the Additional List of Documents dated 16th June, 2010 pages 1 to 18 show a record of NSSF and NHIF deduction. There is no record by the respondent that such deductions once made were remitted. On the evidence that such deductions were never remitted to the relevant statutory body(ies) service pay shall be assessed and paid.

54. The payment of severance pay and service pay are therefore distinct and separate as each serves a specific purpose. One for a redundancy pay while the other is for failure to remit statutory deductions.

Salary in lieu of notice

55. Notice pay under redundancy provisions in the CBA were agreed staggered and based on the term and period of service. The payment of one (1) months' pay to each claimant as a general application to the rule should have been done factoring the duration of service for each claimant. Such shall be computed accordingly.

House allowance

56. The respondent has well relied upon the provisions of section 9 of the Employment Act, Cap 226. Indeed the law applicable to the claimants' employment with the respondent required that upon employment, reasonable housing accommodation at the expense of the employer be provided to every employee or make a payment thereof. The law thus places the duty on the employer to give housing or payment thereof. The burden of compliance is thus on the employer and not the employee. Where such housing is provided or a payment in lieu thereof, the employer should submit such a record as otherwise, the payment due in the absence of provision for housing is legally due.

57. In the pay slip statements annexed to the defence and list of documents show gross pay included a sum of Kshs.1,200.00 for the claimants save for Jane Njeri Wanyoike, Gibson Mutunga, James Astuva Andeyi, Joseph Peter Njuguna, Gabriel Opot, Julian Muiruri and Peter Olando. Taking into account the paid house allowances to the other claims, in the computation of what is due, the above shall be taken into account.

Public Holiday and off days

58. The claims for public holiday pay due to the claimants and off days' pay in this case as specific. In the witness statement of the main witness Jane Njeri Wanyoike, these claims are referred to and asserted as claimed under paragraph 7 of the Claim filed on 17th August, 2004. In the Amended Statement of Claim filed on 31st May, 2016 individual claim is particularized under paragraph 7.

59. A good example is the 2nd claimant, James Astusha Andeyi's claims for public holidays worked and not paid. These relates to the years 2001 for 10 days, 2002 for 11 days and 2003 for 8 days. Looking at the published Public holidays for the years set out in the claim, indeed in 2001 there were 10 such days and similarly for 2002 and 2003 for 11 and 8 days respectively.

60. Putting this evidence into account and on the evidence thereto, the same having no challenge as to its application and being owing, such is due.

61. This also relates to the claims for off days due. The 2nd claimant has set out how such off days arose. In the CBA and Employment Act, Cap 226 time worked and not paid for remains an owing item. These claims having been put to the notice of the respondents and there is no settlement with the terminal dues becomes due and owing.

NSSF and NHIF deductions not remitted

62. As analyses above, where the statutory deductions are effected and not remitted, the deductions are not payable back to the claimant. The law provides for a service pay as set out above.

Leave pay

63. In the terminal dues paid to the claimant, parts of such were leave days' pay. In the respondent's list of documents filed on 18th November, 2011 at page 58 is a schedule of payments. This was the *proposed retrenchment package*. There is a general proposal to payment to all claimants for 2 years of leave at 42 days. In the eventual payments only 21 days were paid for.

General damages

64. On the claim for general damages, the termination of employment with regard to all the claimants arose in the year 2003. The analysis above confirms the same arose out of a redundancy within the respondents. There was great effort to address the same through negotiations between the trade union representing the claimant, the Labour officer and the respondent officers. Part of the terminal dues were paid including leave days and severance pay. The outstanding dues have been assessed and shall be computed for each claimant.

65. With regard to the mode of termination of the claimants' engagement with the respondent, the claimants' witness Ms.

Wanyoike testified that between August, 2003 to November, 2003 the claimants were dismissed from their employment. They had no choice than to sign the acknowledgement in receipt of payments made by the respondents. By this time their houses had been demolished and the police were present to ensure there was no chaos. The claimants had no choice but to take the payments made and vacate the respondent premises.

66. All the claimants have a claim for unpaid house allowance(s). Those not paid such an allowance, such is confirmed as due. On the face of redundancy that resulted in the termination of the claimants' employment with the respondents, save for the manner of eviction from the allocated housing which is addressed herein, I find no sufficient evidence for the grant of general damages. On the award to severance pay for the unprocedural redundancy procedures adopted by the respondent, there is no material evidence for wrongful termination of employment.

67. The payment of 21 days for leave and the total claim shall be put into account in computing what is claimed and what is due.

Accordingly, judgement is hereby entered for the claimants against the respondents jointly and severally in the following terms;

1st claimant, Jane Njeri Wanyoike;

The claimant was earning a gross wage of Kshs.26,227.00 after working for 18 years.

- a) Severance pay at 21 days for 18 years Kshs. 330,466.50**
- b) 4 months' salary in lieu of notice Kshs. 104, 908.00**
- c) Unpaid House allowance Kshs. 15,736.20**

2nd claimant James Astusha Andeyi

The claimant was earning a gross wage of Kshs.8, 069.00 after working for 21 years.

- a) 4 months' salary in lieu of notice Kshs.32,276.00**
- b) Severance pay at 21 days for 21 years Kshs. 50,822.10**
- c) Unpaid Overtime 1st April 2001 – 30th November 2003 all at Kshs.79,706.25**
- d) Unpaid Holidays 1st April 2001 – 30th November, 2003 all at Kshs.11,379.60**
- e) Unpaid House allowance 1st February, 2002 – 30th November, 2003 at Kshs.14,300.00**
- f) Unpaid Off days 1st January, 2001 – 30th November, 2003 at Kshs.221,287.75**

The 3rd claimant Gabriel Opot

The claimant was earning a gross wage of Kshs.8,100.00¹ after working for 21 years

- a) 4 months' notice pay Kshs.32,400.00**
- b) Severance pay at 21 for 21 years Kshs. 12,600.00**
- c) Unpaid Holidays Kshs. 7,500.00**
- d) Unpaid Leave days Kshs.12,600.00**
- e) Service pay at 15 days for 21 years Kshs.85,050.00**

The 4th claimant, Gibson Matunga

Last pay slip for December, 2003 the claimant earned a gross wage of Kshs.8, 100.00.

The claimant was earning a gross wage of Kshs.9, 000.00 after working for 6 years.

- a) Unpaid Leave days Kshs.22,428/=**

- b) Severance pay at 21 days for 6 years Kshs. 22,428/=
- c) 2 months' notice pay Kshs. 10,680
- d) Unpaid Holidays Kshs. 8,900/=
- e) Service pay Kshs.27,000.00
- f) Unpaid House allowance Kshs. 39,872.00

5th claimant, Julian Muiruri

The claimant was earning a gross wage of Kshs.6,300.00 after working for 2 years.

- a) Severance pay for 2 years Kshs. 7,476.00
- b) One month's salary in lieu of notice Kshs. 6,300.00
- c) Unpaid Holidays Kshs7,832.00
- d) Service pay Kshs.6,300.00
- e) Unpaid Off days Kshs. 34,176.00
- f) House allowance Kshs.12,600.00

6th claimant, Peter Olando

The claimant was earning a gross wage of Kshs.11,850.00 after working for 6 year.

- a) Unpaid Leave days Kshs30,492/=
- b) Severance pay at 21 days for 6 years Kshs. 30,492/=
- c) 2 months' notice pay Kshs.10,680
- d) Unpaid Holidays worked Kshs12,100/=
- e) Service pay Kshs.35,550.00
- (f) Unpaid off days Kshs. 54,208/=
- g) House allowance though due, the duration of non-payment not stated.

The 7th claimant, Cosmas Ago.

The claimant was earning a gross wage of Kshs.9,262.50 after working for 8 years.

- a) Unpaid Leave days Kshs.49,392/=
- b) Severance pay at 21 days for 8 years= Kshs. 49,392/=
- c) 2 months' notice pay Kshs.14,520
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.37,048.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 8th claimant, Jeremiah Alugaya.

The claimant was earning a gross wage of Kshs.8,400.00 after working for 8 years.

- a) Unpaid Leave days Kshs.49,392/=
- b) Severance pay at 21 days for 8 years Kshs. 49,392/=
- c) 2 months' notice pay Kshs. 17,640/=
- d) Unpaid Holidays worked Kshs. 14,700/=
- e) Service pay Kshs. 33,600.00
- f) Unpaid Off days Kshs. 65,856/=

The 9th claimant, Elijah Odhiambo.

The claimant was earning a gross wage of Kshs.9,300.00 after working for 8 years.

- a) Unpaid Leave days Kshs.49,392/=
- b) Severance pay at 21 days for 8 years Kshs. 49,392/=
- c) 2 months' notice pay Kshs.17,640
- d) Unpaid Holidays worked Kshs.14,700/=
- e) Service pay Kshs.37,200.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 10th claimant, Anthony Mwangi.

The claimant was earning a gross wage of Kshs.9,300.00 after working for 4 years.

- a) Unpaid Leave days Kshs18,522/=
- b) Severance pay at 21 for 4 years Kshs. 24,696/=
- c) One month's notice pay Kshs. 8,820/=
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.18,600.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 11th claimant, Philip Diba Duba.

The claimant was earning a gross wage of Kshs.9, 300.00 after working for 7 years.

- a) Unpaid Leave days Kshs43,218/=
- b) Severance pay at 21 days for 7 years Kshs. 43,218/=
- c) 2 months' notice pay Kshs. 8,820×2=17,640
- d) Unpaid Holidays worked Kshs.14,700/=
- e) Service pay Kshs.32,550.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 12th claimant, Edward Kabaka.

The claimant was earning a gross wage of Kshs.8, 820.00 after working for 8 years.

- a) Unpaid Leave days Kshs49,392/=
- b) Severance pay at 21 days Kshs. 49,392
- c) 2 month's salary in notice pay Kshs.17,640
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.35,280.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 13th claimant, John Wainaina.

The claimant was earning a gross wage of kshs.9,300.00 after working for 8 years.

- a) Unpaid Leave days Kshs49,392/=
- b) Severance pay at 21 days for 8 years Kshs. 49,392/=
- c) 2 month's salary in notice pay Kshs. 17,640
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.37,200.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 14th claimant, Josam Ndunde.

The claimant was earning a gross wage of Kshs.9,300.00 after working for 4 years.

- a) Unpaid Leave days Kshs24,696/=
- b) Severance pay at 21 days for 4 years Kshs. 24,696/=
- c) One month's salary in lieu of notice = Kshs.8,820/=
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.18,600.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 15th claimant, James Njoroge.

The claimant was earning a gross wage of Kshs.9,300.00 after working for 3 years.

- a) Unpaid Leave days Kshs.18,522/=
- b) Severance pay at 21 days for 3 years Kshs. 18,522/=
- c) One month's notice pay Kshs. 8,820/=
- d) Unpaid Holidays worked Kshs.14,700/=
- e) Service pay Kshs.13,950.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 16th claimant, Ernest Obiero.

The claimant was earning a gross wage of Kshs.9,300.00 after working for 3 years.

- a) Unpaid Leave days Kshs18,522/=
- b) Severance pay at 21 days for 3 years Kshs. 18,522/=
- c) One month's salary notice pay Kshs. 8,820/=
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.13,950.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 17th claimant, Nicholas Gichira.

The claimant was earning a gross wage of Kshs.10,500.00 after working for 4 years.

- a) Unpaid Leave days Kshs24,696/=
- b) Severance pay at 21 days for 4 years Kshs. 24,696/=
- c) One month's salary in lieu of notice Kshs. 8,820/=
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.21,000.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 18th claimant, James Odhiambo.

The claimant was earning a gross wage of kshs.9,300.00 after working for 10 years.

- a) Unpaid Leave days Kshs.61,740/=
- b) Severance pay at 21 days for 10 years Kshs. 61,740/=
- c) 4 month's salary notice pay Kshs.35,280/=
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.46,500.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 19th claimant, Joseph Kamau.

The claimant was earning a gross wage of Kshs.9, 300.00 after working for 3 years.

- a) Unpaid Leave days Kshs18,522/=
- b) Severance pay at 21 days for 3 years Kshs. 18,522/=
- c) One month's salary notice pay Kshs. 8,820/=
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.13,950.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 20th claimant, Nicholas Obuya Obach.

The claimant was earning a gross wage of Kshs.8, 820.00 after working for 3 years.

- a) Unpaid Leave days Kshs18,522/=
- c) Severance pay at 21 days for 3 years Kshs. 18,522/=
- c) One month's salary in in notice pay Kshs. 8,820/=
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.13,230.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 21st claimant, Martin Okello.

The claimant was earning a gross wage of Kshs.9, 300.00 after working for 4 years.

- a) Unpaid Leave days Kshs18,504/=
- b) Severance pay at 21 days for 4 years Kshs. 24,696/=
- c) One month's salary notice pay Kshs. 8,820/=
- d) Unpaid Holidays worked Kshs14,700/=
- e) Service pay Kshs.18,600.00
- f) Unpaid Off days worked Kshs. 65,856/=

The 22nd claimant, Joel Macharia.

The claimant was earning a gross wage of Kshs.9,300.00 after working for 6 years.

- a) Unpaid Leave days Kshs.45,108/=
- b) Severance pay at 21 days for 6 years Kshs. 45,108/=
- c) 2 month's salary notice pay Kshs.21,480
- d) Unpaid Holidays worked Kshs.17,900/=
- e) Service pay Kshs.27, 900.00.
- f) Unpaid Off days worked Kshs. 80,192/=

The 23rd claimant, Sylevester Oduor.

The claimant was earning a gross wage of Kshs.11,100.00 after working for 8 years.

- a) Unpaid Leave days Kshs.60,144/=
- b) Severance pay at 21 for 8 years Kshs. 60,144/=
- c) 2 month's salary notice pay Kshs.21,480
- d) Unpaid Holidays worked Kshs.17,900/=
- e) Service pay Kshs.44,400.00
- f) Unpaid Off days worked Kshs. 80,192/=

The 24th claimant, Joseph Njuguna.

The claimant was earning a gross wage of Kshs.40,187.00 after working for 26 years.

a) Severance pay at 21 days for 26 years Kshs. 731,394.30/=

b) 4 month's salary notice pay Kshs160,748

c) Unpaid House allowance arrears not paid at 20% of monthly salary Kshs.24,112.20

The above payments and award shall factor the severance and leave pay already acknowledged by each claimant.

The claimants are awarded costs of the suit.

Delivered in open court at Nairobi this 19th day of October, 2017.

M. MBARU JUDGE

In the presence of:

David Muturi & Nancy Bor – Court Assistants

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