



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 119 OF 2017 CONSOLIDATED WITH CAUSE NO.311 OF 2017

JOSEPH GITERU NJOMO.....1ST CLAIMANT
MORRIS MURATHIMI GITHUI.....2ND CLAIMANT
JEMIMAH WANGUI RUHENI.....3RD CLAIMANT
JACKSON KIBUTU THAGANA.....4TH CLAIMANT
PHILIP MBUGUA MUGWIMA.....5TH CLAIMANT
ESTHER WANJIRU GITHAIGA.....6TH CLAIMANT
PATRICK KAMARU MWANGI.....7TH CLAIMANT
STEPHEN WACHIRA NDEGWA.....8TH CLAIMANT
GIBSON KURIA WAHINYA.....9TH CLAIMANT
PATRICK MWANIKI WANJOHI.....10TH CLAIMANT
PETER GICHURU WANG'ONDU.....11TH CLAIMANT
GABRIEL MWANGI WAMUTITU.....12TH CLAIMANT
JANE WANGUI NDIRANGU.....13TH CLAIMANT
PETER NGUNJIRI KARAYA.....14TH CLAIMANT
NAOMI WANJIKU MATHENGE.....15TH CLAIMANT
VIOLET NYAMBURA NDIRANGU.....16TH CLAIMANT
CYRUS NJIGE KAMURI.....17TH CLAIMANT
AGNES WANGECHI KIBOI.....18TH CLAIMANT
JOHN MWANGI MUNYIRI.....19TH CLAIMANT

CATHERINE WAMUYU MWANGI.....20TH CLAIMANT

RICHARD MAINA IRUNGU.....21ST CLAIMANT

PERISTER MURUNGI KIGWA.....22ND CLAIMANT

AND

GEORGE MWANGI MURIITHI.....23RD CLAIMANT

JUSTUS MUNYIRI KIBIRA.....24TH CLAIMANT

JOSEPH WANYANGA THAIRU.....25TH CLAIMANT

JANE WANGUI WACHIRA.....26TH CLAIMANT

PHARES KABUGI NJOGU.....27TH CLAIMANT

VERSUS

NYERI COUNTY GOVERNMENT.....1ST RESPONDENT

NYERI PUBLIC SERVICE BOARD.....2ND RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 13th October, 2017)

JUDGMENT

The claimants filed their respective memoranda of claims on 22.08.2017 and on 11.04.2017 through Warutere & Associates. The claimants prayed for judgment against the respondent for:

1. Absorption of all the claimants herein into permanent and pensionable terms of service.
2. A permanent injunction against both the 1st and 2nd respondents from victimization of the claimants herein by way of sudden transfers or unfair dismissal.
3. Gratuity for all claimants for the duration they have worked for the respondent.
4. Costs of the suit.

The respondents filed a response to the memorandum of claim in each of the suit on 29.09.2017 through Patricks Law Associates. The respondents prayed that the claimants' respective memoranda of claims be dismissed with costs. The suits were consolidated and certified urgent as they were heard on urgency basis.

The facts of the cases are as follows.

On 02.08.2013 the respondents, by an advertisement in the print media, invited suitable candidates to apply for, amongst other positions, 30 vacancies in the office of Ward Administrator Job Group N. The terms of service were stated to be **“Term Contract”** with remunerative terms including **“Service Gratuity of 20% of basic salary on completion of the contract.”** The respondents re-advertised the 30 vacancies as per exhibit GMM1 (b) on the affidavit of George Mwangi Muriithi filed on 28.09.2017. The re-advertisement stated that the terms of service were, **“Contract/Pensionable”** and remuneration and benefits included, **“Service Gratuity of 31% of basic salary on completion of the contract.”** Those

were the terms in the advertisement inviting suitable applicants.

The claimants applied in response to the advertisement and they were amongst the successful applicants. Each claimant was offered appointment as ward administrator upon terms and conditions including the following:

1. The position was graded at Job Group “N” in the Civil Service salary structure.
2. On pension, each claimant was initially appointed on contract terms of service until a county public service staff pension scheme is established and which each claimant would be required to join. For claimants serving under the National Government, they would continue with civil service scheme until such claimants’ pensionable service was transferred to the County Government.
3. On termination, it was stated that either party may terminate by giving a one month notice in writing or paying one month’s basic salary in lieu of notice.
4. The duties were stated to be as stipulated in section 51(3) of the County Governments Act, 2012 and each claimant would be answerable to the Sub-County Administrator. The court has visited the statute to check out the prescribed statutory duties. Section 51 (1) of the Act provides that there is established for each ward in a county the office of the Ward Administrator. Section 51(2) of the Act provides that the Ward Administrator shall have professional qualifications and technical knowledge in administration and shall be competitively appointed by the County Public Service Board in accordance with the provisions of the Act. Section 51(3) provides that the Ward Administrator shall coordinate, manage and supervise the general administrative functions in the Ward unit including:
 - a) the development of policies and plans;
 - b) service delivery;
 - c) developmental activities to empower the community;
 - d) the provision and maintenance of infrastructure and facilities of public services;
 - e) the county public service;
 - f) exercise any functions and powers delegated by the County Public Service Board under section 86; and coordination and facilitation of citizen participation in the development of policies and plans and delivery of service.

Section 51(4) provides that in carrying out the functions and obligations in sub-section (3), the Ward Administrator shall be responsible to the Sub-County Administrator. Under section 86 of the Act, the County Public Service Board may delegate, in writing, any of its functions to any one or more of its members and the county secretary, county chief officer, sub-county or Ward administrator, village administrator, city or municipal manager and town administrators.

The claimants accepted the respective offers of appointment and the respective contracts of service were concluded sometimes in February 2014.

By the letter dated 22.07.2015, the 2nd respondent’s secretary wrote to the 1st respondent’s Chief Officer, Public Administration, Information and Communication thus,

“RE: SUB COUNTY AND WARD ADMINISTRATORS TERMS OF SERVICE

This has reference to your letter Ref.No. NCG/PAIC/CPSB/023/20 dated 10th July 2015 on the above subject.

As you may have noted in these officers letters of appointment, they were to serve initially on contract terms and convert to pensionable status when the County Pension Scheme is in place. The legislation to establish a pension scheme is at an advanced stage and the concerned officers in all cadres should be advised to wait.

In the meantime, you should ensure that budgetary provision is made to cater for these officers gratuities when they mature.

A.N Muriu, CPS (K), CPA (K)

Secretary, CPSB”

By a letter dated 23.01.2017 the claimants wrote to the acting County Secretary seeking clarification on their terms of service. The letter was prompted by the changed date of retirement indicated on the claimants’ payslips and which was stated as 28.02.2017 (per payslips starting November 2016). The request was copied to among others, the 2nd respondent. The claimants had sought an earlier clarification about the same issue by their letter dated 10.01.2017. The claimants continued in employment beyond 28.02.2017 as the respondents appear to have unilaterally decided to extend the expiry of claimants’ service to 30.08.2017.

In the intervening periods the claimants’ predicament had escalated and by the letter dated 14.02.2017 the claimants had appealed to the Public Service Commission under section 77(2) (b) (e) of the County Governments Act, 2012 to intervene and clarify their terms of service. The Commission had replied by the letter dated 01.03.2017 addressed to the County Secretary, Nyeri and stating that the claimants’ complaints had been received by the Commission relating to the terms of service for Sub-County, Ward Administrators and their Staff Pension Scheme. The letter stated that the Commission had considered the appeals as premature because the County Public Service Board had not made a decision in the matter against which the claimants would be deemed to have appealed against. The Commission directed the County Secretary to take appropriate action.

By the letter dated 10.04.2017 (which may be considered to be in line with the Commission’s direction), the 1st respondent’s Acting County Secretary and Head of the County Public Service conveyed to the 2nd respondent as follows:

“MINUTE 320/2017: STAFF ON CONTRACT ENGAGEMENT”

The CEC Special Programs acting for the CECM for Public Administration Information and Communication tabled a request for review of terms of service for various cadres of Public Service Officers to Permanent Establishment in the County Public Service. The request did not however include Officers employed as personal staff to the Governor and Deputy Governor as their term was tied to the term of the County Executive Committee Members.

It was noted that this would help the County save on the cost of recruitment, the amount paid as gratuity and also preserve the capacity of officers who had undergone training. It had also proved very expensive for the county to keep inducting new officers. The casuals matter had been discussed in a previous Executive committee where it had been resolved that they be engaged for one year contract with most of them undertaking works of permanent nature and thus the need to consider engaging them permanently.

It was resolved:

i) That the request to review the terms of service for the following cadres of Public Service Officers to Permanent Establishment in the County Public Service be and is hereby approved:

a. Directors who are on contractual terms.

b. Sub-County Administrators.

c. Ward Administrators.

d. Procurement Officers.

e. Accountants (ESP)

f. Drivers (Ambulances)

g. Senior Finance Officers.

h. Casuals (Former defunct local Authorities)

ii) That this review and conversion of the terms of service be based on merit and on the Public Service Commission guidelines on requisite academic qualifications for entry in every Job Group category and the affected persons be informed of the same for acceptance of offer.

iii) That this conversion of terms of service be subject to authentication and verification of all academic and professional certificates for officers and that the certificates be certified by the Kenya National Examinations Council, relevant universities and colleges/ institutions of learning and Commission for University Education to confirm if the institutions are recognised and / or chartered to offer the chartered to offer courses and awards.

iv) County Public Service Board to consider the harmonisation of salaries and remuneration in the Public Service and avoid creating disparities based on qualifications {All persons to be confirmed permanent and pensionable only if they meet the entry qualifications of the Job Groups in accordance with the national norms and standards laid by Public Service Commission.}

v) County Public Service Board to develop the Schemes of Service of the cadres that do not have one especially the Sub-County and Ward Administrators to guide entry into Pensionable and Pensionable terms and career progression.

Certified as true extract of the minutes of the Executive of the County Government of Nyeri duly constituted on 14th March, 2017

Signed

ALICE WACHIRA

Ag. COUNTY SECRETARY/HEAD OF COUNTY PUBLIC SERVICE”

The foregoing communication had been issued prior to the relevant Career Guidelines being issued on the part of the National Government and the Public Service Commission.

The record shows that subsequently the Public Service Commission approved and the Directorate of Public Service Management issued in June 2017 Career Guideline for County Administration Officers. The grading structure provides for a clear career path for administration officers in the county governments’ administration function. The administration function in the county governments as per the Career Guidelines provides for all the administration offices envisaged in Part VI of the County Governments Act, 2012 on decentralised units in the County Governments. The administration offices as established under that Part VI and as provided for in the Career Guidelines include Sub-County Administrator, Ward Administrator, and Village Administrator. The Career Guidelines provided for requirements for appointment, duties and responsibilities at each level, advancement within the career guideline, recognised qualifications, responsibility to administer the guidelines and training. The guidelines, on the responsibility for administration, stated thus, **“The Career Guideline will be**

administered by the County Chief Officer responsible for County Administration Function in conjunction with the County Public Service Board. In administering the Career Guideline, the County Chief Officer will ensure that its provisions are strictly observed for fair and equitable treatment of staff and that officers are confirmed in their appointment on successful completion of their probation period.”

On the training scope, the guidelines provide, “In administering the Career Guideline, the County Chief Officer will ensure that appropriate induction, mentoring, coaching, training opportunities and facilities are provided to assist serving officers acquire the necessary additional qualifications or specialisation and experience required for both efficient performance of their duties and advancement within the Career Guideline. Officers should also be encouraged to undertake training privately for self-development. However, in all matters of training, the County Chief Officer administering the Career Guideline will consult with the County Public Service Board.”

The Principal Secretary, Ministry of Public Service, Youth and Gender Affairs forwarded to the 2nd respondent the Career Guideline by the letter dated 07.07.2017.

By the letter dated 05.09.2016, the Council of Governors had written to all County Public Service Boards, all County Secretaries, County Executive Committee Members for Public Administration, and County Attorneys. The letter is crucial and it stated as follows:

“THE STATUS OF THE COUNTY GOVERNMENT AMENDMENT BILL, 2015

Following a meeting held on 13th July 2016 at the Bomas of Kenya to discuss the County Government (Amendment) Bill, 2015 (herein referred to as the Bill). The Council of Governors hereby communicates the following to the Counties regarding the status of the Bill.

The purpose of the Bill was to amend the County Government Act No. 17 of 2012, sections 50, 51, and 52 in order to bind the County Public Service to employ Sub-County Administrators, Ward Administrators and Village Administrators after every general election and also to include academic qualifications.

On 19th July 2016 at the second reading in the Senate, most Senators were against the provision of the Bill binding the County Public Service to employ the administrators after every general elections sighting the following reasons:

- It is discriminatory in terms of targeting only a particular cadre of the County employees, hence hampering effective devolution.
- The County Governments will have difficulties and challenges in setting up structures and also training staff since they will be required to recruit every 5 years.
- It will impact negatively on the County public service structures since there will be loss of institutional memory.
- There is going to low morale of staff at those levels as there will be no security of tenure and it will also create thousands of jobless people every five years.
- The provision will be unconstitutional as the drafters of the Constitution envisaged a public service in the County Government that is free from the interference of the political force.

In addition, the Senators supported the provision of the Bill introducing academic qualifications and that the administrators are competitively appointed as this ensures that there is effective service delivery hence promoting devolution.

On 18th August, 2016 during a special sitting of the Senate, the Senators voted against the Bill in its entirety. This therefore means that the Bill did not go beyond the second reading stage.

In light of that, the Council of Governors wishes to inform County Governments that the Bill was lost at the second reading stage at the Senate and that the status of employment of the Sub-County

Administrators, Ward Administrators and Village Administrators remains as it was before the introduction of the Bill where the administrators are employed on permanent and pensionable terms.

Signed

Jacqueline Mogeni

Chief Executive Officer”

The respondents by the letter dated 01.09.2017 titled **“EXPIRY OF CONTRACT”** conveyed to the claimants that by a decision Ref. No. NCG/NCPSB/ 1 (a) 976 dated 31.08.2017 the 2nd respondent had decided that the employment of the claimants had ended with effect from 31.08.2017 and that each claimant would be paid one month gross salary in lieu of notice. At the same time the respondents advertised in the print media (on 04.09.2017) vacancies in the office of Sub-County Administrators (8posts) and in the office of Ward Administrators (30 posts). It is the claimant’s case that the advertisement would lead to recruitment and appointment of persons to replace them and that the termination of their contracts of service was unfair and unjustified. They pray as per their respective memoranda of claims.

The **1st issue** for determination is whether the claimants were initially emplaced on permanent and pensionable terms of service or whether they were on fixed term contract with gratuity. As submitted for the respondents, it is true that the advertisement of 02.08.2013 provided for terms of service as term contract but the re-advertisement provided for terms of service as contract or pensionable. The court has considered the individual contracts as issued to the claimants. It is clear that they were appointed upon the civil service salary structure Job Group N and they were to serve 6 months probationary period within which period they would be assessed on suitability for further engagement and confirmation in appointment. It was further stated that the appointment was on contract terms of service until a county public service staff pension scheme was established and which the claimants would be required to join. The court has considered that material on record and returns that it is clear that the claimants were to serve on a term contract which would lapse upon their entry into the county public service staff pension scheme – say get absorbed into the respondents’ permanent and pensionable service. The court returns that it was a clear contract ending in permanent and pensionable service – the term contract lapsing only upon the condition as agreed attaching, namely, entry into a permanent and pensionable scheme of service.

While making that finding, the court has considered the provisions of section 71 of the County Governments Act, 2012 on confirmation of appointment upon lapsing of the period of probationary service. The section provides as follows:

- 1) If the relevant authority fails to confirm an appointment of a public officer initially appointed on probationary terms and the term has lapsed with or without an extension, the officer shall stand confirmed in the appointment on the due date.**
- 2) The period served on probationary terms shall be taken into account when computing the period of service for the purpose of payment of pension benefits, gratuity or any other terminal benefit.**
- 3) A probationary period of service shall not be extended except on account of –**
 - a) affording the public officer further opportunity to pass an examination the passing of which is a condition for the confirmation, the officer’s service otherwise being satisfactory;**
 - b) affording the public officer an opportunity for improvement in any respect, in which the officer’s work or conduct have been adversely reported on.**

In view of that section, the court returns that all the claimants automatically became confirmed in the respondents' permanent and pensionable service once they served the agreed 6 months probationary service. The court returns that the consequence of the automatic confirmation was that they became permanent employees in the respondents' public service establishment. They were not promised gratuity in the letters of appointments but they were to join a pension scheme. Accordingly, they became permanent and pensionable, the pension being reckoned in terms of section 71 of the Act and in accordance with the laws, regulations and agreements governing the pension scheme as was contemplated by the respondents in the respective letters of appointments.

The court has considered the clear resolution by the County Executive Committee directed to the 2nd respondent. The 2nd respondent has not placed before the court any material to show the action it may have taken in view of that resolution. It has not also placed before the court any reasonable grounds to show why it would not implement that resolution. Instead the 2nd respondent has submitted that it was independent and not bound by decisions, guidance and requests by other governmental authorities such as the County Executive Committee, the Public Service Commission, the Council of Governors and others. Indeed section 57 of the County Governments Act, 2012 establishes the 2nd respondent as a body corporate. Section 59(1) of the Act then vests in the 2nd respondent specified human resource functions to be undertaken by the 2nd respondent on behalf of the 1st respondent, the County Government. The court therefore returns that the 2nd respondent performs its functions in the best interest of the County Government and except for good reasons to be stated in the Board's decisions, the County Public Service Board would be expected to satisfy the legitimate human resource needs of the County Government based upon the justified requests it would receive from the Government.

It was submitted that the career guidelines approved by the Public Service Commission and issued by the National Government were not binding upon the 2nd respondent. However, it was clear that the resolution by the Executive County Committee attached great seriousness to such guidelines by the Commission. At the time of the resolution, the Commission's Career Guidelines on the County Administration Function had not been issued and the resolution was that the 2nd respondent develops such guidelines by way of a relevant scheme of service. The 2nd respondent did not, by way of evidence, show that it had implemented the resolution and considering the seriousness with which the resolution attached upon guidance by the Commission and in absence of a scheme of service by the 2nd respondent per the resolution, the court returns that the 2nd respondent was bound to follow and implement the Commission's Career Guidelines for County Administration Officers.

To answer the 1st issue for determination, the court returns that the claimants were initially emplaced on permanent and pensionable terms of service and they were not emplaced upon a fixed term contract with gratuity.

The **2nd issue** for determination is whether the establishment of the County Administrative Cadre is part of the permanent county public service. The court has considered the law and the material on record and returns that the law and the policy pronouncements by all relevant state organs and agencies establish that the County Administrative Cadre is a permanent establishment in the county public service ranging from the offices of the Sub-County Administrator, the Ward Administrator and the Village Administrator. First, the permanency of that establishment is enshrined in the statutory provisions as per Part VI of the County Governments Act, 2012 on decentralised units. The court holds that the establishment is statutory and the role of the respective County Public Service Boards is to implement the statutory provisions in strict compliance with the provisions of the Act. Secondly, the Commission's Career Guidelines on the County Administration Function clearly give emphasis to the need to establish a professional administration cadre for county governments founded upon competent persons with requisite qualifications at entry, clear training and development, and motivated through proper remuneration and promotions. That goal is attainable through permanency of the officers appointed to that important cadre. Needless to state, the individual officers duly prepared at the expense of resources provided by tax-payers would enjoy mobility horizontally across the county governments and vertically to the national government. It is the opinion of the court that once the sound career path is implemented across the

county governments and the national government, the administrators at the two levels of government should be of equal professionalism, competence and qualifications – they should therefore be readily available for service as need arises in the public service at national or county government levels. It is this court's advisory that no county government should disadvantage itself or its officers by failing to implement a career path like the one in the guidelines offered by the Commission.

The court has noted the progressive reasons advanced by the Senate in advocating for a permanent administrative cadre in the county governments' public service and as communicated by the Council of Governors in the letter or circular quoted earlier in this judgment. Throughout the hearing of the case, the parties, and more specifically the respondents advanced no grounds to discredit the Senate's well grounded case towards a permanent and professional administration cadre in the county governments' public service. The court holds that a permanent administration cadre in the county governments' public service is clearly consistent with the values and principles of public service as provided for in Article 232 of the Constitution. The court further returns that the respondents must therefore be bound by that communication by the Council of Governors.

The Court of Appeal's judgment in **Narok County Government & Another –Versus- Richard Bwogo Birir & Another [2015]eKLR (Waki, Nambuye, Kiage JJ.A)** found and held that the pleasure doctrine is not applicable in Kenya under the Constitution of Kenya, 2010. As the pleasure doctrine withered in our new Republic under the Constitution of Kenya, 2010, the Constitution nevertheless preserves the permanency of the public or civil service as inherited from the Crown's civil service. Thus Article 236 of the Constitution provides that a public officer shall not be victimised or discriminated against for having performed the functions of office in accordance with the Constitution or any other law; or dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law. Section 76(1) of the County Governments Act, 2012 provides that in exercising disciplinary powers, the County Public Service Board shall observe the principles of natural justice. Section 76 (2) of the Act provides that no public officer may be punished in a manner contrary to any provision of the Constitution or any Act of Parliament. The court considers such to be constitutional and statutory provisions that protect the permanency of the public service.

The permanency of the civil service or public service and its advantages was well referred to by **Chrimes S.B, English Constitutional History, 4th Edition (London, Oxford University Press, 1938) at page 25 to 26** thus, **“Both Ministers and civil servants are equally servants of the crown, and civil servants are no servants of one another, nor of Ministers. No matter to what lengths hierarchical principles within a Department may be carried and they are necessarily carried very far – the legal principles of individual service of the crown remains unaffected. Civil servants are instantly dismissible by the crown. In practice, however, few things are so permanent as tenure of established posts in the civil service. England has happily avoided the ‘spoils system’, and the personnel of the civil service does not change with every change in government. For all practical purposes, therefore, the establishment is permanent, and instances of dismissal for misconduct or conduct considered to be inappropriate are extremely rare. Normally, the civil servant will enjoy, or at any rate retain, his office and emoluments up to the time of his retirement, and thereafter subsist undisturbed on his pensions. From the national and constitutional point of view, this permanence of the established civil service, although it may in some degree give cover for inefficiency, is of inestimable advantage. Without it, we might have to endure a civil service as amateurish and as transient as many ministers are, not to mention the evils and corruption inseparable from a political civil service. But, like most advantages, it has to be provided at a cost. The principal cost in this case is the sacrifice of personal political opinions by the civil servants, or at any rate the outward expression of them, and this in turn means that some of the more robust minds in each generation will not, on any account, enter or remain in service.... Nor would it be feasible for a government to tolerate public expressions of political opinions and criticisms by civil servants. So that in political questions the civil service is a silent service, and its members are, or should be, doomed to anonymity.”**

To answer the 2nd issue for determination, the court returns that the establishment of the County Administrative Cadre is necessarily part of the permanent county public service.

The **3rd issue** for determination is whether the respondent validly terminated the claimant's contracts of service per the termination clause, namely paying one month basic salary in lieu of notice. First the court returns that the termination letter had been ambiguous in being titled expiry of contract and then purporting to pay one month gross salary in lieu of notice. The court has found that there had been no fixed term contract that was expiring and further finds that the termination was clearly outside the provisions of the letter of appointment. The ambiguous terms of the termination letter did not state the reason for the termination and the termination was clearly unfair for want of valid reason as envisaged in section 43 of the Employment Act, 2007 or section 76 (1) and (2) of the County Governments Act, 2012 as read with Article 236 of the Constitution. Thus, the court returns that the termination clause in the letter of appointment cannot be said to have been invoked validly and legitimately as the termination letter was against the clear permanent and pensionable terms in the letter of appointment and which the court has found had already crystallised by reason of the automatic confirmation. The court holds that the terminations as communicated to the claimants amounted to unlawful punishment and was contrary to section 76 (1) and (2) of the County Governments Act, 2012 as read with Article 236 of the Constitution.

The **4th issue** for determinate is whether the claimants are entitled to the remedies as prayed for. The court has found that the claimants were at all material times automatically confirmed in the respondent's permanent and pensionable service effective their respective dates of appointment. Thus, the court returns that the claimants are entitled to absorption into the respondents' permanent and pensionable service from the effective date of their respective appointment. Consequential to that finding, the letter terminating each of the claimants' contracts of service is liable to being set aside and the claimants will continue in the respondents' employment without break and with full benefits – and for that purpose to report to their respective stations of deployment prior to the termination and not later than 8.00am on Monday, 16.10.2017. The court has found that the appointment was upon pension benefits and not upon gratuity. The prayer for gratuity will therefore fail.

In conclusion, judgment is hereby entered for the claimants against the respondents for:

- a) Absorption into the respondents' permanent and pensionable service from the effective date of appointment of each of the claimant.
- b) Consequential to order (a) above, the letter terminating each of the claimants' contracts of service is hereby set aside and the claimants will continue in the respondents' employment without break and with full benefits – and for that purpose to report to their respective stations of deployment prior to the termination, for assignment of duty, and not later than 8.00am on Monday, 16.10.2017.
- c) The respondent to pay the claimants' costs of the suit.

Signed, dated and delivered in court at Nyeri this Friday, 13th October, 2017.

BYRAM ONGAYA

JUDGE