REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT MOMBASA

CAUSE NUMBER 448 OF 2015

BETWEEN

1. MOHAMED YAKUB ATHMAN

2. ABUBAKR MOHAMED ABDILLAHI

3. MARY MNALA

4. ALI ABDALLAH YUNUS

5. JUMA BENSON THOYA

6. EMMANUEL NDORO

7. THONIAS OLWA

8. MJENZI NZILA

9. PAMELA ADHIAMBO

10. JUDITH ABUKA

11. MICHAEL KITUKU

12. CHARLES NYANDUNDO

13. JAMES MUTHONI

14. ALI HAMISI

15. SALILU BADI

16. HAMISI TSORI

17. MICHAEL MKUDI

18. DAUDI ABDI SHAKUR

19. MICHAEL MENJO

20. JACKTON ALAMBO

21. OMAR BAKARI

22. ISMAIL M. NJEU

23. FADHI S. BWANA

24. JUMA JABIR RASHID

25. SAID H. BANZI

26. MWAJEFA HAMISI

27. SAID CHIZONDO

28. KHAMIS K. ALI

29. SELINA SITOTI

30. EDWIN KORIR……..……..CLAIMANTS

VERSUS

KENYA PORTS AUTHORITY…….. RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Aboubacar Advocate, instructed by Aboubacar, Mwanakitina & Company Advocates for the Claimants

Mr. Ondego, Mr. Khangram and Mr. Ojiambo Advocates instructed by A.B. Patel & Patel Advocates for the Respondent

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ISSUE IN DISPUTE: UNFAIR TERMINATION FOR INVOLVEMENT IN AN ILLEGAL STRIKE

AWARD

[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]

1. The Claimants were Employees of the Respondent State Corporation. They are Members, others Officials, of the Dock Workers Union, which represents Unionisable Employees of the Respondent. The

Dock Workers Union is affiliated to the Trade Union Congress of Kenya

[TUC-Ke].

2. The National Hospital Insurance Fund [N.H.I.F] imposed higher rates of monthly contributions payable to the Fund by Employees, through the Kenya Gazette Supplement Number 12 of 6th February 2015. The revised rates have been resisted for sometime by Trade Unions. Several Court Cases on the subject have been filed, and judicial pronouncements made, but the issue keeps resurfacing. TUC- Ke issued a strike notice to the Cabinet Secretary for Labour, dated 19th June 2015. It alleged the decision on revised N.H.I.F rates, was not preceded by adequate social dialogue. The Fund, it was alleged, had implemented its decision, and continued to deduct the new rates, without adequately consulting TUC-Ke and its affiliates.

3. It was demanded by TUC-Ke that the new rates be suspended immediately, and deductions made dating back to 1st April 2015 be refunded to the Employees. The letter to the Cabinet Secretary dated 19th June 2015, served to notify there would be a general strike within 7 days, if the Minister and the N.H.I.F failed to meet the demands of TUC-Ke. The notice expired without reversal of the N.H.I. F Gazette Notice.

4. At paragraph 8 of their Amended Statement of Claim, the Claimants state that ***''the Respondent neglected, ignored and or refused the said notice, hence on 1st and 2nd July 2015, the Claimants went on strike.''*** The Respondent issued letters of summary dismissal to 23 of the Claimants on the ground of ***''participation in an industrial strike, which resulted in stoppage of work.''*** 7 Claimants [21st to 27th], namely Ismail M. Njeu, Saidi H.C. Banzi, Fadhi S. Bwana, Mwajefa Hamisi, Saidi Chizondo, Omar Bakari and Juma J Rashid were dismissed on the ground that ***''on Saturday 27th June 2015, you incited other Employees and showed disrespectful behaviour during Union strike.''***

5. The Claimants consider the decision to terminate their contracts of employment unfair and unlawful, and filed their Amended Statement of Claim on 12th August 2015. They seek the following orders against the Respondent:-

> ***a. A declaration that termination of the Claimant's contracts of employment is unconstitutional, illegal and/ or un-procedural.***
>
> ***b. The Claimants are immediately reinstated and activated to the system to gain access to the Port.***
>
> ***c. The Claimants are reinstated to their Staff Houses from which they were evicted by the Respondent.***
>
> ***d. An order of injunction restraining the Respondent by itself or other Persons, from interfering with the Claimants' occupation of the Staff Houses, or from evicting the Claimants from the Staff House.***
>
> ***e. The Respondent to compensate the Claimants for loss suffered during the illegal eviction.***
>
> ***f. General damages for pain and suffering.***
>
> ***g. Costs of the Claim.***

6. The Respondent filed its Response to the Amended Statement of Claim, on the 11th September 2015. It states the Claimants were its former Employees. It is conceded the Claimants were dismissed by the Respondent on the dates shown in the letters of summary dismissal. It is not disputed they are Members and / or Officials of the Dock Workers Union. The N.H.I.F dues were revised and implementable by law, and the Respondent would have been acting in breach of the law, by acceding to demands of the Union to

suspend implementation. The deductions were not a result of a unilateral decision, or wrongful conduct on the part of the Respondent; they were borne of statute, imposing an obligation on the Respondent to deduct, or be penalized. The constitutionality of the N.H.I.F Gazette Notice is the subject matter of ***Nairobi High Court Petition Number 62 of 2015 between The Public Service Commission of Kenya & 4 Ors v Trade Union Congress of Kenya & 2 Ors,*** and should therefore not be canvassed in the current proceedings. The strike was unlawful and unprotected. There was an injunctive order in Petition Number 62 of 2015, restraining the TUC-Ke from engaging in the strike action over the N.H.I.F. rates. That order bound the Claimants and their Union.

7. On 26th October 2015, Mr. Aboubacar for the Claimants and Mr. Khangram for the Respondent, informed the Court they were ready to proceed by way of written submissions. Parties filed their submissions, and witness statements and were to highlight the submissions, on 1st December 2015. They did not do so because the Respondent's two, out of its three Advocates, were unavailable. Highlighting was rescheduled for 2nd December 2015, when the Respondent had informed the Court its Advocates would be available. On 2nd December 2015 the position changed, with Mr. Ondego for the Respondent informing the Court first that Mr. Ojiambo would be available on 3rd December 2015. This position was changed further on the same date, with Mr. Ondego informing the Court Mr. Ojiambo would now be available the following week, the 8th December 2015. Amidst this pussyfooting, Mr. Ondego alleged he had been physically assaulted by the Claimants, within the Court precincts. The Claim was initiated in Court under Certificate of Urgency, and Parties abandoned their respective applications for provisional measures, to pursue the substantive Claim, in the hope that the Court could make a final determination within a reasonable time, to satisfy the demands of the urgency. The Court ordered proceedings closed, observing that highlighting of closing submissions is not a mandatory procedure. It was directed the Court's decision would be delivered on the strength of the Parties' submissions and the rest of the record, under Rule 21 of the Industrial Court [Procedure] Rules 2010.

The Claim

8. The Claimants state they were employed by the Respondent in various capacities. They availed to the Court their letters of employment. Save for Claimants Number 21-27, all the other Witness Statements filed by the Claimants are uniform narratives.

9. They claim on 6th February 2015, N.H.I.F. unilaterally reviewed monthly contributions to be deducted from the Employees' monthly salaries, from Kshs. 320 to Kshs. 1,700. Through their Union, the Claimants notified the relevant Cabinet Secretary of the existence of a Trade Dispute, in a letter dated 28th April 2015. They gave a 7-day strike notice. On 23rd June 2015, the Claimants' Union wrote to the Respondent reminding the Respondent of its intention to call a strike within 7 days, if its demands were not met. The Umbrella TUC-Ke issued its own strike notice, on 19th June 2015.

10. The Parties held two consultative meetings, without resolving the dispute. The Claimants therefore commenced their strike action on the 1st July 2015. The Respondent issued a circular demanding the Employees report to work on 3rd July 2015 at 7.45 a.m. At the same time, some of the Employees were de-activated from the system, with the result that they could not access the workplace. They received calls from the Administrator to pick their letters of summary dismissal, but because of the inaccessibility of the workplace, were not able to receive those letters until 6th July 2015, through the Security Office. The reason for dismissal was that the Employees boycotted work, which amounted to gross misconduct under the Respondent's Disciplinary Handbook 2015. On 4th July 2015 the Employees were forcibly removed from the Staff Houses.

11. Claimants Number 21-27 state they noticed there was extraordinary delay in remittance of their payslips, on 26th June 2015. Employees' payslips normally issued by the 24th day of the month, with the salaries paid on the 26th day. In the afternoon of 26th June 2015 the payslips were released to the Employees. They realized there were errors in the payslips. There were some unexplained deductions. Almost all Employees gathered at the Head Office to enquire about the errors. There was an engagement

between the Union and the Management, and a return-to- work agreement was signed. It was agreed there would be no victimization. Surprisingly, on 4th July 2015, the 21st to 27th Claimants were advised to pick their letters of summary dismissal from the Management.

12. All the Claimants alleged dismissal was without justification and procedurally flawed. The Managing Director did not initiate proceedings, which would include carrying out investigations; and issue of 72 hour notice to the Claimants, to exculpate themselves. No copies of reports by the Managing Director were forwarded to the Board of Directors. There was no meeting of the Board to deliberate on any report, and decide on the applicable penalties. The Handbook of 2015 did not in any event apply to the Claimants. Their Bundle of Documents includes, among others, letters of employment; pay slips capturing the contentious deductions; the various Circulars issued by either side with regard to the industrial actions; the Constitution of the Dock Workers Union; the Collective Bargaining Agreement in force for the relevant period; newspaper cuttings reporting on the strike action; notices to the Respondent and the Minister of the intended strike action; and letters of summary dismissal.

Claimants' Submissions

13. Article 41 [1] of the Constitution of Kenya guarantees every Person the right to fair labour practices. This right includes the right to fair remuneration, and the right to strike. Section 46 of the Employment Act 2007 stipulates that an Employee's participation in a lawful strike does not constitute fair reason for dismissal. Section 76 of the Labour Relations Act, allows a Person to participate in a strike if the trade dispute that forms the subject of the strike, concerns terms and conditions of employment; the dispute is unresolved after conciliation; and 7 days written notice of the strike has been given to the other Parties, and to the Minister by authorized representative of the Trade Union.

14. The N.H.I.F contributions concerned the terms and conditions of employment, and therefore was a proper subject of an industrial action under section 76 of the Labour Relations Act. The National Hospital Insurance Fund Act requires the N.H.I.F Board to deliberate, consult and agree with Employees and Employers before making such decision as the revision of rates, and therefore, Employees and Employers must be represented at the N.H.I.F. Board. The N.H.I.F Gazette Notice raising the rates did not issue following the participation of the Claimants as contemplated by the law. The Claimants' Union is an affiliate of TUC-Ke, not COTU-Ke, the latter federation being represented in the N.H.I.F. Board.

15. Review of the N.H.I.F rates, should have followed constitutional guidelines, fundamental rights and freedoms, including the principles on national values; and the right of every Person to fair administrative action. The N.H.I.F Board failed to involve the Claimants in revision of the rates. The Claimants'Trade Unions issued the strike notice and had notified the Minister of the existence of a Trade Dispute. The strike action was lawful.

16. The 21st to 27th Claimants were dismissed for participating in an illegal strike, while there was no strike at all. In any event, a return-to-work formula was signed between the Parties with the effect that summary dismissal was rendered unlawful.

17. Even if the Court finds the strike was illegal, the Claimants submit summary dismissal did not observe the requirements of Section 41 of the Employment Act 2007 and was therefore unfair and unlawful. Participation in an illegal strike, does not in any case, constitute an act of gross misconduct under Section 44 [4] of the Employment Act 2007. Further, it is argued for the Claimants, that Section 5 of the Labour Relations Act bars Employers from dismissing Employees, or in any other way, prejudicing such Employees, for exercising any right conferred by the Act.

Claimants' Case-law

18. The Claimants rely on the Industrial Court Cases on ***Mary Chemweno Kiptui v. Kenya Pipeline Company Limited [2014] e-KLR*** [fair termination must be based on the procedure prescribed under Section 41 of the Employment Act]; ***Teachers Service Commission v. KNUT & KUPPET [2012] e-KLR*** and ***P.J. Dave Flowers Limited v. KPAWU & Anor [2014] e-KLR*** [where Employees issue strike notice,

the Employers have to institute Court Proceedings declaring strike illegal or stopping the strike]; ***KUDHEIHA v. Pwani University [2015] e-KLR*** [Workers' Representatives are protected from acts prejudicial to them for activities carried out in their representative capacities, so long as in conformity with the law and the collective agreements]; ***Seth Panyako & 5 Ors. v. The AG & 2 Ors. [2013] e-KLR*** [Employee's right to among other things participate in the activities and programmes of a Trade Union are not limited under Article 24 [1] of the Constitution].

19. The Claimants therefore pray the Court to allow the Claim in terms set out under paragraph 5 of this Award.

The Response

20. The Respondent filed Statements of 5 Witnesses. Patrick Nyoike is the Respondent's Head of Financial Accounting; Tony Leli Kibwana is the Network Administrator, managing Respondent's Integrated Security Systems Infrastructure; Captain Ali Abdille is the Principal Port Security Officer responsible for enforcement; while Salim Chingabwi is the General Manager Human Resources and Administration.

21. Chingabwi explains in his Statement that some Unionisable Staff staged an illegal strike at Respondent's Gates Number 9 and 10 on 15th April 2015, paralyzing port operations for close to 4 hours. Between 27th June 2015 and 2nd July 2015, there was another strike involving the Employees, with the Claimants being the leaders in the strike action. During the strike action, Chingabwi and the Head of Human Resource, Komora, were physically assaulted by the Employees. Komora had to be evacuated to the Hospital, while Chingabwi was barricaded by the Employees and prevented from leaving the premises.

22. The Employees' grievance was that they did not wish to have the biometric clocking system, recently introduced, which monitored staff attendance. They wanted it removed altogether or suspended. They were not comfortable with the system as it captured data on absentees, late-comers and early-leavers. The system assisted Management in deducting from the salary of the Employees, for hours not worked, and increased efficiency at the Port. Chingabwi was held hostage by the Employees from 8.00 a.m. to about 4.00 p.m. and only allowed to leave after he was forced to sign a return-to-work formula, which suspended the biometric clocking system.

23. There was a further strike on 1st and 2nd July 2015 which turned violent, causing immense losses to East and Central Africa Regional Economies which are served by the Port, a situation which compelled the Respondent to call in the Police and the General Service Unit. The strike was illegal, having been called by TUC-Ke, a group which is unknown to the Respondent. The Respondent has a recognition agreement with the Claimants' Dock Workers' Union only. The strike appeared to be a sympathetic one, aimed at preventing the Respondent from implementing revised N.H.I.F contributions. The Claimants were intimidating the Respondent into breaking the law on N.H.I.F revised rates.

24. The striking Claimants were violent and placed at risk, the Respondent's assets. Attempts to engage their Union Leadership in dialogue failed. In the circumstances the Management was unable to call each one of them to defend themselves. They were summarily dismissed, and became disentitled to all benefits including housing. Termination was justifiable and fair. Immediately the termination decision was taken, most of the other Employees started to return to work.

25. Patrick Nyoike states the Respondent suffered potential loss of about Kshs. 800 million, and direct loss of Kshs. 170 million following the industrial action. The Port serves the whole of East and Central Africa, and disruption harms the entire region. It was imperative the Respondent was decisive. Tony Leli Kibwana states he monitored the security situation. The images captured on the centralized system were normally preserved in the database for the next 30 days. Between 27th June 2015 and 7th July 2015, there were incidents captured on camera, involving the Employees and their Union Leaders, which compromised security at the Respondent Port. Captain Abdille prepared a confidential Memo, which he relies on, in his Statement to the Court. He confirms Employees became violent over the biometric

clocking system. They demanded for withdrawal of the system, and the payment of all deductions made on their salaries, which deductions were justified from the data collected under the new biometric clocking system. The Employees were unruly and hurled stones at an ambulance which went to evacuate a stricken Mr. Komora. They hurled insults at the Management, and even manhandled their General Secretary Mr. Sang' chanting vociferously, ''*hatutaki kidole! hatutaki kidole! hatutaki kidole!*'' [Kiswahili for: we do not want the thumb i.e. biometric attendance register]. This was on 27th June 2015. The Union Leaders who addressed the Employees urged them to ensure the biometric system died, and asked the Employees to ready themselves for the nationwide strike called by TUC-Ke, over N.H.I.F contributions, scheduled for 1st July 2015. The angry Employees only dispersed at 4.00 p.m., following the signing of an agreement between the General Secretary, and Group Human Resource Manager under duress. Abdille confirms that he implemented security measures on the advice of Management, to ensure Employees and Union Leaders who were engaged in gross misconduct, were limited in accessing the Port. Finally, Abdille offers the opinion that the frequent confrontations between the Respondent and the Union, is caused by the Union General Secretary's mantra, which he preaches at every gathering, and which is***: KPA has a weak Management, as opposed to a very strong Union.***

26. The Respondent further relies on a series of Circulars issued by the Respondent and the Dock Workers Union. In the Circular dated 22nd June 2015, General Secretary Sang informs Members about the 7 days' strike notice issued by TUC-Ke. Issues on demand are listed as – deduction of N.H.I.F rates based on basic salary rather than gross salary; and governance of the N.HI.I.F. In an undated Circular, the General Secretary informs Members that their strike was legal, and ''***KPA has nothing to do with the strike''***. In the Circular signed on 3rd July 2015, General Secretary advises his Members why the strike is legal. On the other end of the spectrum, the KPA issued a Circular dated 30th June 2015 advising Employees there was no registered dispute between KPA and the Dock Workers Union. The Memorandum of Agreement, the Industrial Relations Machinery 1986 had not been revised to accommodate TUC-Ke. The Recognition Agreement remained between the KPA and the Dock Workers Union only. Employees however went on strike the following day. The Respondent issued another Circular dated 1st July 2015, demanding Employees report back to work immediately. This was not honoured. Another Circular dated 2nd July 2015 issued, calling on Employees to go back to work by 3rd July 2015, failing which they would be deemed to have forfeited their employment. Employees were advised they would check in through the contentious biometric clocking system. The Circular also called on other Kenyans to attend job interviews at Bandari College on Saturday 4th July 2015. The last Circular dated 4th July 2015 from the Respondent seeks to clarify that the Cabinet Secretary for Transport had not rescinded the decision to summarily dismiss the Claimants, contrary to some media reports. The Respondent further relies on among other documents, its Disciplinary Handbook; Minutes of meetings held by its Special Executive Management Committee during the strike; and the Pleadings in ***Industrial Court at Mombasa Cause Number 532 of 2014*** between some of the Dock Workers Union Members and their Union, challenging the Union's affiliation to TUC-Ke.

Respondent's Submissions

27. It is submitted by the Respondent that Claimants Number 21 to 27 participated in an unlawful strike on 27th June 2015. Although these Claimants hold there was no strike on this date, they uniformly state in their Witness Statements, that they decided to enquire from Management about pay slip errors on the 27th June 2015. The Respondent through its Witness Statements established the Claimants were engaged in a violent strike on the date, refusing to go back to work as ordered, and physically accosting Chingabwi and Komora. Their conduct on the date fitted the description of a strike under Section 2 of the Labour Relations Act 2007.

28. All the Claimants were involved in the strike action on 1st and 2nd July 2015. This strike was called by TUC-Ke, to interdict implementation of Legal Notice Number 14 of 2015 on enhanced rates of N.H.I.F contributions by Employees. The strike was aimed at compelling the Respondent to suspend or cease deductions.

29. The right to strike is a fundamental right under Article 41 [2] of the Constitution, but a limited right. There was no Trade Dispute between the Claimants or their Union, and the Respondent, a fact which was communicated to the Claimants by the Circular from Chingabwi. A strike can only be in connection to an existing dispute between an Employee and an Employer. Under Section 76 [1] [a] of the Labour Relations Act, a Person may strike if the Trade Dispute concerns terms and conditions of employment. A Trade Dispute does not include a difference or disagreement between an Employer and a Federation of Employees. A strike called by a Federation of Trade Unions cannot be a protected strike under Section 76 of the Labour Relations Act.

30. Rule 25 of the Dock Workers Union Constitution requires a strike to be preceded by the support and approval of a majority of Members. There was no evidence given by the Claimants, showing the call to strike made by TUC-Ke, had the endorsement of Dock Workers Union National Executive Committee. The Claimants engaged in a sympathetic strike, N.H.I.F. enhanced contributions, being an issue between TUC-Ke and the N.H.I.F, and not involving the Dock Workers Union. A sympathetic strike is prohibited under Section 78 [1] [h] of the Labour Relations Act. Legal Notice Number 14 of 2015 was in the nature of legislation, which every Person has an obligation to obey. Section 80 of the Labour Relations Act deems Persons who participate in strikes contrary to the provisions of the Act, to have acted in breach of their contracts of employment, and liable to disciplinary action. Such Persons are not entitled to any benefit under the Employment Act for the period on strike.

31. The Respondent submits it had substantive justification in summarily dismissing the Claimants under Section 80 of the Labour Relations Act, read together with Section 44 [3] of the Employment Act 2007.

32. On the requirements of fair procedure imposed on the Respondent under Section 41 and 45 of the Employment Act 2007, and by the Disciplinary Handbook, the Respondent submits it was impossible to hear the Claimants, as they absented themselves from their appointed place of work. The involved Employees were a large number, and it was not practical to hear each of them. The purpose of Section 41 of the Employment Act is to ensure the Employee is fully informed of the reasons for dismissal. Section 80 of the Labour Relations Act is to the effect that an Employee engaged in a strike contrary to the Act, is ***deemed to have breached the contract of employment***. It would not be necessary to hear such an Employee, as long as it is established the Employee participated in an unlawful strike.

Respondent's Case- Law

33. The Respondent cites the following Industrial Court Judicial Authorities in its Submissions: ***County Government of Uasin Gishu v. Kenya National Union of Nurses [2014] e-KLR*** [The right to strike is not absolute and can be limited under the Constitution, through Legislation]; and ***Kenya Engineering Workers Union v. Narcol Aluminium Rolling Mills Limited [2015] e-KLR*** [Employees who deliberately absent themselves from their workplace, and engage in acts of violent misconduct at the workplace have no justification in expecting reinstatement]

The issues:

34. These, as the Court understands them to be, are:

a. Whether there was a strike on 27th June 2015, in which the 21st to 27th Claimants participated?

b. Whether, if there was such a strike, it was a legal strike?

c. Whether the acknowledged strike of 1st and 2nd July 2015 was a legal strike?

d. Whether the Claimants' summary dismissal following the industrial disturbances was valid and carried out fairly?

e. Whether the Claimants are entitled to the remedies sought?

The Court Finds:-

35. **Strike on 27th June 2015**. The 21st to 27th Claimants state in their Witness Statements that their pay slips for June 2015 were delayed. Employees ordinarily received the pay slips on or before the 24th day of each month. Salaries were received normally on the 26th day of each month. In this case, the pay slips were received in the afternoon of 26th June 2015, which the Claimants considered late receipt. There were errors in the pay slips. There were unexplained deductions. The 7 Claimants and other Employees, decided to enquire about the pay slip errors from the Respondent's Head Office on 27th June 2015. ***Almost all Employees gathered at the Head Office.*** This is in the Witness Statements filed by Claimants 21 to 27. There were consultations between the Union and the Management, culminating in a return-to work formula. It was agreed no Employee would be victimized. This in brief, is the 7 Claimants' witness accounts, of the events of 27th June 2015. They submit there was no strike on the date, and they were victimized on the basis of a non-existent strike.

36. The Respondent avers there was an illegal strike on 27th June 2015. The trigger giving rise to the strike was the introduction of the biometric clocking system. The unexplained deductions contained in Employees' pay slips, resulted from use of data taken from the biometric system in preparing the pay slips. The system was able to capture data on absentees, late-comers and early-leavers. Employees were protesting against deducted wages resulting from their hours of absence. They turned violent, roughing up Management Officers Chingabwi and Komora. They hurled stones at an ambulance which was rushing a stricken Komora to hospital. They barricaded Chingabwi at the workplace from morning until 4.00 p.m. At 4.00 p.m. he was let go, after being coerced into signing a return-to-work formula.

37. From the evidence of the Parties above, it is clear there was an illegal strike on the 27th June 2015, at issue being the implementation of the biometric clocking system. The 7 Claimants confirm they were aggrieved by the new clocking system; the late arrival of pay slips and pay slip errors; and that they and ***almost all Employees*** went to the Head Office to enquire about the pay slip errors. The only divergence in the accounts by the Parties is that the Claimants do not disclose the belligerent nature of their demands on 27th June 2015. Nothing is said about the roughing up of Management Officers, hurling of stones at an ambulance and shouts of *hatutaki kidole!* They do not mention that they were throughout the day, off duty, without the authorization of the Respondent. It is alleged by the Respondents, and this was not disputed by the Claimants, that stones were thrown at Management Officers on that day, and even Dock Workers Union Leaders roughed up, and appeared unable to control their irate Members.

38. It was against the background of this unrest, that the Memorandum of Agreement of Agreement of 27th June 2015 was signed between Chingabwi and General Secretary Sang. This, in the 7 Claimants' Witness Statements, was a Return-to-Work Agreement. A Return-to-Work Agreement in itself is an acknowledgment that there was withdrawal of labour preceding the return to work. It is an admission that there was a strike. It is not likely that there was a Return-to-Work Agreement on 27th June 2015, without a preceding strike.

39. The Agreement was in following terms:-

1. The biometric clocking system will be suspended for at least 3 weeks.

2. Supplementary pay roll will be run to correct the errors cited and payments made within a week.

3. The Management and the Union to come up with strategy to move the system forward within 3 weeks.

4. Both Parties appreciate the adoption of the biometric time recording system and the Management undertakes to attend to correct the errors identified, while every Employee will be required to record his/her timings at the designated place.

5. There will be no victimization.

40. This Return-to-Work Agreement adopts the form of a standard Return-to Work Formula, and there can be no doubt it was based on a strike situation.

41. Section 2 of the Labour Relations Act 2007 defines a *strike* as:

> ‘’***cessation of work by Employees, acting in combination, or a concerted refusal, or a refusal under common understanding of Employees to continue work for the purpose of compelling their Employer, or an Employers’ Organization of which their Employer is a Member, to accede to any demand in respect of a trade dispute.***’’

A *trade dispute* is defined under the same law to consist:

> ‘’ ***a dispute or difference, or an apprehended dispute or difference between Employers and Employees, between Employers and Trade Unions, or between an Employers’ Organization and Employees or Trade Unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of Employees, allocation of work, or the recognition of a Trade Union.’’***

42. On 27th June 2015 the 21st -27th Claimants ceased to work, and acting in combination, commonly and concertedly refused to work. They converged at the Respondent’s Head Office, demanding the recall of the biometric clocking system, and refund of money deducted from their June 2015 salaries. The elements comprising a strike, under Section 2 of the Labour Relations Act 2007, were all present. The particular Claimants were summarily dismissed on the basis that they incited other Employees during the strike; were disrespectful to Management; and manhandled the General Manager Human Resources and Administration.

43. The Court is satisfied Claimants Number 21 to 27 were engaged in a spontaneous, unannounced and illegal industrial action on the 27th June 2015. They did not follow the procedures in place under the law and their Trade Union’s Constitution, before engaging in the wildcat strike of 27th June 2015. The right to strike is not absolute as held in a series of Industrial Court decisions cited by the Parties in their respective submissions. The right to strike under Article 41 of the Constitution, and other associational rights under Articles 36 and 37 are not absolute. The Respondent was justified in summarily dismissing the particular Claimants. Even had the strike of 27th June 2015 conformed to the demands of the law, the conduct of the Claimants in manhandling Management Officers by barricading the Officers and throwing stones during the strike, would justify their dismissal under Section 44 [4] and 45 of the Employment Act 2007.

44. The Court observed in an earlier ruling in this dispute, citing ***KUDHEIHA v. PWANI UNIVERSITY [2015] e-KLR*** that the right to strike given by the Constitution, must not be taken as a licence to engage in acts of lawlessness and gross misconduct. Parties must continue to engage respectfully as demanded by the **Industrial Relations Charter**. The Charter demands Employees and Management shall enjoy adequate protection against acts of intimidation and violence occasioned by each other, or each other’s agents; Unions shall discourage any breach of the peace or civil commotion by their Members; and every Employee has the right to approach Management on grievances, but such grievances should not be communicated violently. Grievances should be handled through the existing industrial relations machinery. Management Officers should not be held hostage, assaulted, intimidated or insulted in order that a collective interest of the Employees is implemented. The instruments which govern industrial relations must be honoured. These instruments have their underpinning in the Constitution of Kenya, which requires rights and freedoms are exercised, within reasonable constraints, permitted in a democratic society. Trade Unions representing Employees must be involved from the beginning, before resort to any industrial action. There is no place in our Constitution for outlaw strikes. The Return- to –Work Agreement was not accepted by the Respondent freely. Chingabwi who signed on behalf of the Respondent was virtually a Prisoner at the time he signed. That Agreement could not prevent the Respondent from subsequently investigating the conduct of the strikers, and taking disciplinary action against those found culpable. The clause against non-victimization in any event, as understood by the

Court, meant no Employee would be selectively and unfairly disciplined for merely participating in the strike action; it did not mean the Respondent would not pursue cases of Employees who acted violently or who disparaged Management.

45. Among the instruments governing industrial relations at the Port is the Dock Workers' Union Constitution. Rule 25 allows the National Executive Committee to call upon all Members or any group of Members of the Union to withdraw their labour in case of a trade dispute arising, providing that such a resolution has received the support and approval of the majority of Members concerned. Individual Members are not allowed to initiate strike actions without involving the Trade Union. The Labour Relations Act similarly contemplates that strike action, is a collective right, exercised through the leadership of the Trade Union. Employees cannot just march to their Employers' Head Office and abandon their workstations, without first resorting to their Trade Unions. The biometric clocking system was being implemented with the participation of the Claimant's Trade Union and the Management. If there were any hitches with its accuracy in terms of data collection, that was an issue which could be resolved through dialogue between the Union and the Management, not through axes and gibbets.

46. The 21st to 27th Claimants were therefore summarily dismissed on justifiable grounds. They were engaged in a violent wildcat strike, during which Management Officers were insulted and assaulted. The Claimants absented themselves from their appointed places of work, and camped at the Head Office from dawn to dusk on the 27th June 2015. They did not have the authorization of their Employer, or have lawful reasons, to be absent from work. The decision to summarily dismiss them was justifiable, under Section 80 of the Labour Relations Act, and Sections 44[4] and 45 of the Employment Act 2007.

47. **The strike action of 1st and 2nd July 2015**: The Parties agree the rest of the Claimants participated in the strike action on 1st and 2nd July 2015. The presence of this particular strike, occurring fast on the heels of the previous strike, and even before the ink on the Return –to –Work Agreement of 27th June 2015 had dried, is not contested. The rest of the Claimants were summarily dismissed for:-

i. Participating in an illegal strike which resulted in stoppage of work.

ii. Defying Management's instructions not to participate in the strike.

48. The issues surrounding the rest of the Claimants' dismissal are therefore largely on the legality of the strike: not whether there was a strike; or whether the particular Claimants were involved in this second strike.

49. The Claimants' position is that they were aggrieved over the implementation by N.H.I.F Board, of the revised monthly rates of Employees' contributions to the Fund. TUC-Ke, a federation to which the Claimants' Union is affiliated, wrote to the Cabinet Secretary for Labour on the 19th June 2015, rejecting the new N.H.I.F rates, demanding they are withdrawn and notifying the Cabinet Secretary of a General Strike under Section 76 and 79 of the Labour Relations Act 2007, in case the demands were unmet.

50. The law on the N.H.I.F was not reversed or suspended within 7 days. On 1st and 2nd July 2015, the Claimants went on strike.

51. Earlier on as shown in the Circular dated 28th April 2015 from General Secretary Mr. Sang to Union Members, the Dock Workers Union had issued a 7 day strike Notice to the Respondent over the '*premature gazettment of new N.H.I.F rates.'* The Circular explains the implementation of the rates was premature, because TUC-Ke and the N.H.I.F had met and agreed on keeping on hold implementation of revised rates, until the concerns raised by TUC-Ke and its affiliates were addressed. Upon realizing the N.H.I.F had gone ahead and implemented the legal notice, TUC-Ke filed a Petition in Court for remedial action. In ***Nairobi High Court Petition Number 61 of 2015 between TUC-Ke v. N.H.I.F [2015] e-KLR***, TUC-Ke sought from the Court an order staying implementation of the revised N.H.I.F rates. Hon. Judge Lenaola read a ruling dated 15th June 2015 declining stay. Why would TUC-Ke then ask its affiliates to proceed with a debilitating general strike, affecting national and regional economies, to achieve what the

Court had declined to grant?

52. If TUC-Ke had petitioned the Court on the legality of the revised N.H.I.F rates of contributions, why then call a general strike? What would the Court be left to determine in the end, and in particular, what leverage did the Respondent have on the issue of the N.H.I.F rates? In his Circular to Members persuading them on the legality of the strike action, Mr. Sang states that ***'' KPA has nothing to do with the strike.''*** If this be so, why then would KPA not have the right to take action against Employees who engaged in activities which KPA had nothing to do with? Why call a general strike rather than pursue the judicial recourse to the end?

53. The law regulating strike action in Kenya does not contemplate general strikes, over which Employers have no say. A general strike is an instrument for obtaining concessions, mostly political or socio-economical concessions which the immediate Employer, largely, has nothing to do with. It involves a broad work stoppage across the industries and is aimed at extracting concessions, or bringing structural changes, by paralyzing the economy of a Country or Region. It broadly arises out of disputes between Trade Unions, and Governments and their Institutions, as opposed to disputes between Employees and their Employers over specific employment issues.

54. Our Labour Relations Act concerns itself mainly with specific strikes on tractable disputes between Employers and Employees, not general strikes called by Umbrella Trade Unions over political or socio-economic subjects. The purpose of a strike as defined in Section 2 of the Labour Relations Act is ***''to compel an Employer, or an Employers' Organization, to accede to any demand in respect of a trade dispute***.'' A strike is not aimed at extracting concessions from 3rd Parties, such as the N.H.I.F or the Government. Under our law, a trade dispute involves an Employer and an Employee. The right to strike guaranteed under Article 41 [2] [d] is limitable under 24 [5] [d] of the Constitution. There are provisions in the Labour Relations Act, such as Section 2, which limit the right to strike, by restrictively defining Parties to a strike; the subject matter of a strike; and the purpose of a strike. Participants of a general strike, which an Employer has nothing to do with, cannot therefore seek protection under the Constitution. The Constitution itself empowers legislation to limit the right to strike. This limitation was discussed with approval in the ***County Government of Uasin Gishu v Kenya National Union of Nurses, [2014] e-KLR,*** cited by the Parties in their submissions. If the KPA had nothing to do with the strike as stated by Mr. Sang, then it cannot be that there was a dispute between the KPA on one hand, and the Employees and their Union on the other hand. It was irrelevant that the Minister had accepted the existence of a trade dispute as alleged by the Claimants. There was no dispute, or difference, between an Employer and an Employee, within the meaning of Section 2 of the Labour Relations Act. How would the Respondent be compelled to accede to a demand from the Claimants, yet the Respondent did not have anything to do with the strike? In ***KUDHEIHA v. PWANI UNIVERSITY,*** the Court, borrowing from the South African case ***EPPWAWU v. Metrofile [pty] LIMITED [2002] ZACC 30; [2004] 2 BLLR 103 [LAC]***, stated that ***''the purpose of a protected strike, is to enable Employees engage in a form of power play with the Employer, with a view to influencing the Employer into offering better conditions of employment****…*.'' The Employer ordinarily must have everything to do with a protected strike, and the subject matter capable of being negotiated and resolved between the Employer and the Employee. It is strange for Employees to withdraw their labour, and hold that their Employer, who pays for that labour, has nothing to do with the withdrawal. A general strike would seem to this Court, not to fit within the existing legal framework under the Labour Relations Act, and Employees engaging in such a strike, expose themselves to disciplinary sanctions.

55. This position is given support under Section 76 of the Labour Relations Act, which specifies that a strike action must be about terms and conditions of employment or recognition agreement. The Employer must have some power to affect the terms and conditions of employment, or recognition agreement. Laws, although invariably incorporated in the contract of employment, and therefore read as part of the terms and conditions of employment, are not made or unmade by the Parties. The Court does not think the strike called by the TUC-Ke was a sympathetic strike as suggested by the Respondent. In a sympathetic strike the strikers have no direct grievance against their Employer. The sympathetic strike is normally in aid of another group of Employees. The Claimants were aggrieved by the N.H.I.F rates. Their grievance was not directly against the Employer, but against the N.H.I.F. The strike was not called in

sympathy to other Employees; it was called by TUC-Ke as a general strike, aimed at extracting concessions from the N.H.I.F by reversal of the legal notice.

56. The Respondent had good reason to feel it was not bound to engage with TUC-Ke. It has no recognition agreement with TUC-Ke, and would not be expected to have such an agreement under the law, TUC-Ke being an umbrella body. Granted that the Dock Workers Union has the freedom of association under the Constitution and the Labour Relations Act, and therefore free to affiliate with any Federation of Trade Unions, it was imperative that before calling on the Employees to go on strike, the Dock Workers Union presented its deeds of affiliation with TUC-Ke, to the Respondent. It was not necessary and it is not a requirement of the law, that the Respondent grants recognition to TUC-Ke; it was however necessary, that the affiliation between the Dock Workers Union and TUC-Ke was clearly known to the Respondent, and the structures of industrial relations through which the Respondent could reach and engage TUC-Ke, made manifest to the Respondent. A good number of Employees' pay slips, for the relevant period, show trade union fees continued to be paid to COTU-Ke rather than TUC-Ke. The pay slip of lead Claimant Mohamed Yakubu Athman dated 26th June 2015 indicates COTU-Ke subscription fees, rather than TUC-Ke subscription fees, were deducted from the Claimants' June 2015 salaries. The change in affiliation was not a settled issue, at the time TUC-Ke issued the strike notice. Affiliation was at the time the subject matter of a dispute between the Dock Workers Union and some of its Members in ***Mombasa Industrial Court Cause Number 532 of 2014 [Geoffrey Mareko & Others v. General Secretary Dock Workers Union & Another [2015] e-KLR***]. If the Respondent wished to engage TUC-Ke in dialogue to avert the strike, what tools of industrial relations would the Respondent rely on to reach out to TUC-Ke? The instruments through which the change in affiliation is written, ought to have been well communicated to the Respondent, and the contours of rights and obligations between the Respondent and TUC-Ke and its Affiliate clearly drawn, before TUC-Ke could call a strike at the Port which ***'KPA has nothing do with.'***

57. The Court finds the strike called by TUC-Ke had no legal basis, or in any way justifiable. The Employees placed themselves beyond the protection of the law. The Court is sympathetic to the Employees, who seem to have followed the wrong advice of their Trade Unions, with the result that the Employees placed themselves beyond the protection of the Court. It ought to have been communicated to the Employees in the Circular by Mr. Sang that TUC-Ke had been to the High Court and failed to get orders stopping implementation of the legal notice, 4 days before issuing of the general strike notice. Previous decisions of the Court on the N.H.I.F. rates ought to have been made known to the Employees. The strike notice issued by TUC-Ke was not a proper notice. The affiliation with the Dock Workers Union was still in a grey zone. The legal instruments of TUC-Ke's affiliation to the Dock Workers Union were not shown to have been communicated to the Respondent. The subject matter of the strike action was something the Employer could not influence. The Respondent would not suspend or cease implementation of the law, without exposure to penal consequence. If the subject matter of the strike action was something the Respondent could negotiate, it would probably have been joined to the grievance over the biometric clocking system, and dealt with on the 27th June 2015. The particular Federation of Trade Unions had petitioned the Courts over the N.H.I.F rates, and reversal of the law on those rates, ought to have been pursued in the Courts, not through strike action.

58. A prayer for provisional stay of implementation of the legal notice revising N.H.I.F rates had been rejected by the High Court preceding the call to a general strike. The Court is aware there were several other suits filed at the Industrial Court by Trade Unions over the N.H.I.F revised rates. The extensive submission by the Claimants, on their constitutional right in public participation before the N.H.I.F rates were adopted, are properly to be made in the Petition where reversal of the legal notice has been sought. This Court however started by observing that the issue has been the subject matter of various Court adjudications. Without going into the merits of cases on the subject matter pending in other Courts, the Court notes: on 27th September 2010, this Court gave a decision in a dispute filed by ***COTU-Ke and the Federation of Kenya Employers against the N.H.I.F on the same subject [Industrial Court at Nairobi Cause Number 887 of 2010]***; it was the finding of the Court that the N.H.I.F revised rates were arrived at after extensive consultations involving the Social Partners; COTU-Ke fully participated in the social dialogue; and broadly, as the history of the labour movement in Kenya would show, COTU-Ke represented the Workers of this Country in the N.H.I.F Board. The Dock Workers Union was an affiliate

of COTU-Ke, until mid-2015, when it registered an amended Constitution affiliating with TUC-Ke, so that the Dock Workers Union Members' submission, that their Union was not consulted before the N.H.I.F rates were revised, appears to this Court, not entirely correct. The Dock Workers Union was represented by its then affiliate COTU-Ke.

59. Exacerbating the negative effects of the strike of 1st July 2015 and 2nd July 2015 is that it was preceded by other strikes. There was the strike of 27th June 2015. The Witness Statement filed by Chingabwi states on 15th April 2015, some of the Unionisable Employees and their Leaders staged a strike which paralyzed work for 4 hours. There is evidence there were 3 separate incidents of industrial unrest, within a period of less than 3 months. In resolving the strike of 27th June 2015, the Union urged its Members to come out in large numbers and participate in the general strike set for the following week. Why return to work today and tomorrow go back to striking? How will production be sustained? Potential loss following the strike is quantified at Kshs. 800 million, and direct loss to KPA at Kshs. 170 million. The Respondent was faced with legal actions by Importers for the loss. The strike was a total waste and uncalled for, particularly as the judicial mechanism had been invoked by TUC-Ke in seeking to redress the collective grievance over N.H.I.F rates, and it was known to the Parties, KPA had no power to reverse, or suspend, the implementation of the new law. Not every grievance is redressed through strikes. The Respondent wrote to all the Employees expressing this view and requiring the Employees to return to work. They Claimants went on with their action for 2 days. The right to strike created under our Constitution should be exercised responsibly and within the confines of the law. Constant resort to strike actions, even when disputes have been submitted to judicial adjudication; when internal dispute resolution mechanisms have not been exhausted; or when the subject matter of strike is not capable of being directly negotiated and resolved between the Employer and the Employee, is purposeless. It blunts the objective of a strike. This right must not be allowed to evolve into anarcho-syndicalism, where workplaces become war zones and Employers become helpless bystanders. A general strike called with the purpose of changing the law, and in disregard of the judicial process, is essentially a call against legal order. It is revolutionary, aimed at overthrowing a legal order. It does not have protection under the Constitution and the Labour Relations Act.

60. The strike of 1st July 2015 and 2nd July 2015 did not conform to the provisions of the Labour Relations Act 2007. Placed in its proper context, the strike notice issued on 19th June 2015, 4 days after the High Court ruling of 15th June 2015, issued in disregard of the judicial process. The Court said there would be no interim order, suspending implementation of the N.H.I.F legal notice. 4 days later, the same Petitioner was out in the field, asking affiliates and their Members to go on strike, to press for a demand which the Court had in the interim, declined. There is no material on record showing the Dock Workers complied with its own Constitution on strike action. It focused the minds of its Members on the actions of TUC-Ke, without bringing those actions within the industrial relations machinery, regulating the Respondent and the Dock Workers Union. The Respondent correctly felt it was being compelled to engage a stranger. There is no evidence of balloting showing a majority of Members of the Dock Workers Union, were in favour of the strike called by TUC-Ke. The Court is satisfied the strike was not a protected strike, within the meaning of Section 79 of the Labour Relations Act, and the Respondent had substantive ground in summarily dismissing the rest of the Claimants, for their participation in the general strike under Section 80 of the Labour Relations Act, Sections 44[4] and 45 of the Employment Act and the Respondent's Disciplinary Handbook.

Procedural Fairness

61. The Court disagrees with the Respondent's submission that summary dismissal pursuant to Section 80 of the Labour Relations Act, does not call in the application of Section 41 of the Employment Act on procedural fairness. An Employee participating in an unprotected strike is deemed to have acted in breach of his contract. This is similar to Section 44 [3] where an Employee may be deemed to have, by his conduct, acted in fundamental breach of obligations under the contract of employment. In either case the apparent breach of the contract of employment does not disentitle the Employee the procedural protections under Section 41 and 45 of the Employment Act. Section 44[4] states, and this may be true under Section 80 of the Labour Relations Act as well, that the Employee is not precluded from alleging or

disputing, whether the facts constitute justifiable grounds in terminating his contract of employment. The right to be heard is to be found in more than one legal provision. Section 80 allows the Employer to take disciplinary action, but such action must be in accordance with Section 41 and 45 of the Employment Act, and any procedural clauses contained in a Disciplinary Handbook. The decision of the Court in ***Kenya Plantation and Agricultural Workers Union v. Roseto Flowers,*** that Section 80 of the Labour Relations Act does not exclude the application of Section 41 of the Employment Act on procedural fairness, is the correct position. Even where there is reason to deem the conduct of the Employee to amount to fundamental breach of his contract of employment, there is always an obligation on the part of the Employer to hear the Employee, before termination.

62. The number of Employees involved in an employment offence, subject matter of disciplinary sanction, does not in any way absolve the Employer from meeting the demand of procedural fairness under the law. The Employer and the Union must devise a mechanism which would enable a collective disciplinary process to take place, without violating the substantive and procedural rights of the individual Employee.

63. The Respondent submits that the Employees involved in the strike were a large number, who could not practicably be heard before the dismissal. It acknowledges not to have heard the Claimants. Section K [a] of the Disciplinary Handbook states that the disciplinary process shall be guided by natural justice as enshrined under Article 47 of the Constitution, and Part V1 of the Employment Act 2007. It requires any Person charged with an employment offence, must be given an opportunity to defend himself before an impartial adjudicator. The employment offences are listed under Section K4, and include the offences contained in Section 44[4] of the Employment Act 2007. Section K4 [d] of the Disciplinary Handbook, clarifies that the offences listed in the Handbook are not exclusive or exhaustive, and the Board of Directors may direct that any other improper or undesirable behaviour or conduct is deemed an act of misconduct deserving disciplinary action. The Claimants submission that participation in an unprotected strike does not amount to an act of gross misconduct which the Employer may summarily dismiss under the Employment Act 2007, is flawed. The Disciplinary Handbook allows the Employer to expand the range of employment offences adopted from the Employment Act 2007. The Claimants furthermore were engaged on both strikes, in activities which comprise employment offences under Section 44[4]. While the Respondent therefore had adequate substantive justification in summarily dismissing the Claimants, it was important that the high procedural fairness standards, adopted in the Disciplinary Handbook, were fully observed.

64. The Respondent did not seek guidance from the Constitution of Kenya, the Disciplinary Handbook, the Employment Act and Rules of Natural Justice, before arriving at the summary dismissal decision. It was bound to do this. Its internal disciplinary mechanisms adopt very high procedural standards. It is not true that Employees absented themselves and placed themselves beyond the reach of the Respondent in a way they could not be heard. The Court's opinion in ***Kenya Engineering Workers Union v. Narcol Aluminium Rolling Mills Limited*** was made in the context of Employees who desert their workplaces and make it impossible for the Employer to hear them before dismissal. In the present case, there is evidence the Employees were available for disciplinary hearing after the storm at the Port had calmed. The Respondent de-activated the Claimants from its access system. They were not allowed entry to the Port after 2nd July 2015. This is confirmed by the Statement of Captain Ali Abdille, that he was instructed by Management to ensure the Claimants' right to access the Port was limited. Furthermore the Respondent went ahead to invite job applicants to fill in the vacancies alleged to have been created by the Claimants' absence, even before hearing out the Claimants. Dismissal for majority of the Claimants was on 3rd July 2015, a day after the strike action petered out. The Industrial Court has held in many decisions that even in cases where it is obvious an employment offence has taken place, procedural requirements must be met before termination. The Court is in agreement with the Claimants' submission that they were denied procedural fairness. In this respect, termination of their contracts of employment was unfair.

Remedies

65. The Claimants have shown that the Respondent did not accord them an opportunity to be heard. A declaration that termination was unfair on procedural grounds is merited. There were valid grounds

justifying summary dismissal. An order for reinstatement is not merited. An order for continued occupation of staff houses is likewise unmerited, as is an order of injunction barring the Respondent from having vacant possession of those staff houses. Employees cannot continue to indefinitely enjoy employment benefits, after the cessation of their engagement with the Employer. The removal of the Claimants from the staff houses should however, be undertaken with sufficient notice to the Claimants, in a peaceful and humane way. There is no merit in the prayer for damages for pain and suffering. Compensation for unfair termination, for reasons given above is merited, and granted at 6 months' gross salary for each of the Claimants. The Court orders also, that all the Claimants shall be paid their terminal benefits in accordance with Section 18 [4] of the Employment Act 2007, which states that, where an Employee is summarily dismissed for lawful cause, the Employer shall pay to the Employee all moneys, allowances and benefits due to the Employee up to the date of the dismissal. Parties shall meet their costs of this litigation. **IN SUM, IT IS ORDERED:-**

a. It declared termination of the Claimants' contracts of employment was based on valid grounds, but did not follow a fair procedure, and was therefore unfair.

b. The Respondent shall pay to the Claimants 6 months' gross salary each, in compensation for unfair termination.

c. The Respondent shall pay to the Claimants all their terminal benefits.

d. The Respondent shall issue to the Claimants at least 30 days' notice, if it intends to have the Claimants vacate the staff houses, and both Parties shall ensure such a process is carried out humanely and without resort to violence.

e. All terminal benefits and compensation shall in any event, be paid to the Claimants, before they are removed from the staff houses

f. Parties shall meet their costs of this litigation.

Dated and delivered at Mombasa this 29th day of February, 2016

James **Rika**
Judge