



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT MOMBASA**

**CAUSE NUMBER 295 OF 2014**

**BETWEEN**

**ELVIS ISANGI MWANDEMBO**

**PAUL KING'UU JOSEPH**

**EMMANUEL MULANDI MUTAVUTA**

**EZEKIEL MUMINA KALEO**

**BONGACE M. AMBULWA**

**MUSA OYIRO MARIKO**

**STEPHEN KITONE MUI**

**THOMAS ELPHAS CHEKATA**

**PATRICK CHIBUYI MAKALE**

**JUSTUS MOI KASINA**

**JAMES MUNUVE DANIEL**

**JOHN NZUVE MANTHI**

**RAMADHAN NZOMBO**

**MUEMA NDETEI**

**DOMINIC MULA MUNGAT**

**NEWTON ALEX MWASI KAFUSI**

**NICKSON KATANA KAFUSI**

**RICHARD SIKU MUTUA**

**PHLIX NGAMBA MCHOMBO**

**HILARY SIO NYAMBU**

**ALEX K. CHEPTOBOT**

**CHARLES KANGATA MUSYOKA**

**JAMLIC MULEI KILONZI**

**SAID BARMWA**

**FULGENCE J SENGUNDO**

**PATRICK MUTUKU MATALI**

**AMANI YUSUF WALE**

**FREDRICK MUTHYA NZOU**

**SALIM NDEGWA NDIMBO**

**ALFRED MWACHITI MGELI**

**PHILIP WANYAMA ALEX**

**FELIX MZUNGU SHOKA**

**MWANZEGELE MWAEGA**

**JOSPHAT MUSYOKA NDETO**

**BONIFACE MUASYA NDETI**

**STEPHEN WAMBUA CHARLES**

**MAINGA NYAMAI**

**DONALD MWAENI MWACHONGO**

**VICTOR MOMANYI**

**CHARLES JUMA SARU**

**HILLARY ATOLA**

**CHRISTOPHER KIWOYI**

**CARREN OCHIENG OGUTU**

**ERIC KYEVA**

**ALEX K. KOMBO**

**SALIM NDEGWA NDIMBO**

**AMANI YUSUF WALE**

**ALBANUS MUSYOKA MATALI**

**HAMISH NYANJE MDOE**

**JOSEPH WAMBUA NGILU**

**GILBERT TITO KEYA**

**RAMADHAN SALIM JUMA**

**ABEDNEGO M. NGHALU**

**DAVID KUKALYA MUTUA**

**BENJAMIN K. MUTISYA**

**MAVINYA MATII**

**JUMA CHIDUNDU JUMA**

**WYCLIFFE LUSECHE SHIMENGA**

**JOHN MUSEMBI**

**WILSON MASAI MASARANJA**

**ALBURNAS MUMO MUTUKU**

**ABEL LUMBASI SHIKUKU**

**HASSAN MWANGANGI**

**NEWTON PETER MUNG'OOTI**

**CLYDE OKWEMBA ANJILWA**

**JOB CHEPTOBOT**

**BENSON MUSYOKA NYAMU**

**PATRICK MADZUNGU DZOGA**

**MACLEX MAKORI MAGABI**

**JUSTUS MUSAU MWEMA**

**MARTIN MUSAU NZAUMI**

**JOSPEPH MUSILU**

**SALEE.....CLAIMANTS**

**VERSUS**

**DEVKI STEEL MILLS LIMITED.....1<sup>ST</sup> RESPONDENT**

*Rika J*

**Court Assistant: Benjamin Kombe**

***Mr. Asewe Advocate instructed by Otieno Asewe & Company Advocates for the Claimants***

***Mr. Matheka Advocate instructed by Maira & Ndegwa Advocates for the 1<sup>st</sup> Respondent***

***Mr. Omolo, Industrial Relations Officer instructed by the 2<sup>nd</sup> Respondent***

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**ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL REDUNDANCY**

**AWARD**

1. The 72 Claimants were employed by the 1<sup>st</sup> Respondent Steel Company on various dates. They worked in various capacities, such as Fitters, Chargers, Billet Cutters, Furnace Chargers, and Electricians. They were Members of the 2<sup>nd</sup> Respondent Trade Union. Some of them, including Claimant Number 62 and 66, were Shopstewards, elected by the rest of their Colleagues to represent their interests at the workplace.

2. The Claimants filed their Statement of Claim dated 25<sup>th</sup> June 2014 against both their Former Employer, and the Trade Union which they still belong to, seeking the following orders:-

[a] against the 1<sup>st</sup> Respondent: salary in lieu of notice; annual leave dues; service pay; public holidays; house allowances; travelling allowances; N.S.S.F contributions; and 12 months' salary for unfair termination- for all the Claimants, computed at a total sum of Kshs. 28,519,987.

[b] against the 2<sup>nd</sup> Respondent: general damages for breach of constitutional, legal and contractual obligations owed to the Claimants.

3. The 1<sup>st</sup> Respondent filed its Statement of Response on the 21<sup>st</sup> August 2014. The 2<sup>nd</sup> Respondent did so on the 28<sup>th</sup> July 2014.

4. The 31<sup>st</sup> Claimant withdrew his Claim against the Respondents on the 24<sup>th</sup> June 2015. The remaining Claimants gave their evidence through their authorized representative Claimant Number 65, Clyde Okwemba Anjilwa, on the 24<sup>th</sup> June 2015. They also called Claimant Number 62 Abel Lumbasi Shikuku the same day, and rested their Case later on the 26<sup>th</sup> October 2015. The 1<sup>st</sup> Respondent called its Human Resource Manager Enoch Kiptum, while the 2<sup>nd</sup> Respondent relied on the evidence of Mombasa County Labour Officer Jeremiah Katana, and its Disputes Officer John Masika. They gave evidence on the 26<sup>th</sup> October 2015 when the hearing closed.

**Claimants' Case**

5. The Claimants' position is that they reported to work on 5<sup>th</sup> May 2014. They found Policemen at the workplace, who prevented them from accessing the premises without any reason. The 1<sup>st</sup> Respondent, Representatives of the 2<sup>nd</sup> Respondent, and the Mombasa County Labour Officer met, and on the same day and without notice to the Claimants, agreed that the Claimants' jobs are declared redundant. The

Claimants were only paid their salaries up to 5<sup>th</sup> May 2014. No other benefits were paid. The Claimants confronted their Union Representatives, demanding the redundancy agreement is rescinded. They were advised by their Union there was going to be no rescission, which compelled the Claimants to approach the Court for orders against both Respondents as set out at the outset.

6. They claim redundancy was unfair and unlawful, and not in conformity with Section 40 of the Employment Act 2007, Article 41 of the Constitution, and International Labour Organization Convention Number 158 of 1982. Their Union failed to act honestly, faithfully and diligently as required by the Union's Constitution and the Law. The Union did not offer the Claimants legal or financial support.

7. Clyde Okwemba Anjilwa was authorized by the remaining 70 Claimants to testify on their behalf. He testified he was employed in September 2007. He was a Furnace Charger, earning Kshs. 12,500 per month. They were locked out on the material day. Administration Police Officers had been called to the workplace. The Claimants called their Trade Union Branch Officials. The Officials came and were also locked out. The Shopstewards were called in by the Management. They consulted. The Shopstewards then came out and informed the waiting Claimants on the outcome of the closed door deliberations: the Respondent would close down for 3 months, rendering the Claimants' positions redundant; and in the same breathe, a Return-to- Work Formula was communicated to the Claimants.

8. The Claimants wrote to the Managing Director of the 1<sup>st</sup> Respondent through Anjilwa on the same day, saying they did not accept the agreement crafted by their Representatives, Management and the Labour Office. They demanded that the process is kept in abeyance, until "*our officials, elected on 28<sup>th</sup> September 2013 are present.*" The Witness received Kshs. 4,000 as terminal benefits. His Colleagues received between Kshs. 4,000- 6,000 as terminal benefits.

9. The Union failed to file a Claim against the Employer. Its Constitution demands the Union must assist its Members in such disputes. The Claimants demand for general damages against their Trade Union. Against the Employer, they seek compensation for unfair redundancy and terminal dues computed in accordance with the CBA concluded between the Respondents. It is not true that the Claimants chased away their Union Representative when he appeared to dialogue with the Management. It is not true that the Claimants had served for less than 1 year as alleged by the 1<sup>st</sup> Respondent. Anjilwa had served from 2007. The Claimants deny that they compromised the position of their Trade Union by engaging the 1<sup>st</sup> Respondent and receiving payments directly.

10. On cross-examination, Anjilwa testified he signed a fixed term contract effective 1<sup>st</sup> August 2013. About 100 Employees were gathered at the factory on 5<sup>th</sup> May 2014. They did not engage in any fracas. Administration Police chased the Claimants away. Shopstewards who included Lumbasi and Cheptombot were present. They signed Return-to Work Formula. It is not true the Claimants chased away their Union Officials to further the ends of their strike action. The Shop stewards did not sign the letter authored by Anjilwa to the Managing Director, although they were available. They signed the Return-to- Work Formula dated the same day. It is not true the Claimants rejected the Return- to- Work Formula leading to redundancy. Redundancy did not follow clause 26 of the CBA. The Company had at some point closed down for lack of raw materials.

11. Questioned by his Union's Industrial Relations Officer, Anjilwa told the Court the Shopstewards called Union Branch Official. The Witness did not agree the person called was an Official of the Union. There was no strike. Administration Police however were there. Anjilwa did not know why or whether Labour Officers were called in. The Claimants were not on strike. Return-to-Work Formula relates to a strike. It was not true that Masika was called. He was not a District Union Official. It is not true the Claimants could have injured Masika. Return- to-Work Formula states the Claimants agreed to be paid terminal dues. It says the Claimants were consulted. Redirected, Anjilwa testified the Shopstewards were elected by the Workers and were known to the Union. They are in this Claim, and their presence is a clear indication that there was injustice at the workplace. The Plant would close and reopen intermittently. The Claimants did not know why Police Officers were called in. There was no strike on the 5<sup>th</sup> May 2014.

12. Abel Lumbasi Shikuku testified he was the Chief Shopsteward. The Return-to- Work Agreement was drawn by Labour Officers Mr. Katana and Mrs. Ronga. Abel attended the meeting leading to the Agreement. There were Administration Police Officers at the premises. Human Resource Manager Mr. Kiptum and Group Human Resource Manager Mr. Kariuki were present. Abel called the Union Branch Officials, who came to the workplace led by Mr. Wanyama. They were locked out by the Management. A Former Branch Official Mr. Masika also came to the premises. He was walked in escorted by the APs. Abel was told by Mr. Kariuki that Mr. Kariuki had been sent from the Head Office to close down the factory for want of raw materials.

13. Abel went outside and talked to the Employees. He advised them the factory would remain closed for 3 months for want of raw materials. The Employees accepted the decision. Abel went back in and found Katana and Ronga had prepared the Return- to-Work Agreement. Abel signed the Agreement, but had not read it well. It had a redundancy clause. He returned to the Employees and told them: ‘*mambo imeenda mrama,*’ [*things have gone haywire*]. There was no strike. The 1<sup>st</sup> Respondent did not close. Abel tried to communicate with the Union General Secretary, ‘who did not respond much.’ Cross-examined by the 1<sup>st</sup> Respondent’s Advocate, the Witness agreed he signed the Return- to- Work Agreement, but was lied to by the other signatories. The letter written by Clyde to the Managing Director was written on behalf of the Employees. He agreed on cross-examination by 2<sup>nd</sup> Respondent’s Representative that there were APs at work on the material day. The Employees were prevented from working. APs were not there daily. Masika had been voted out by the time of the incident. Abel did not tell the General Secretary that Employees were on strike. He told him newly elected Officials led by Wanyama had come and were locked out. Abel found the Return-to- Work Agreement already drafted. The Employees did not agree with the Formula.

### 1<sup>st</sup> Respondent’s Case

14. Human Resource Manager Kiptum, testified he was called by the Supervisors and informed Employees had downed their tools. The Employees had congregated near the main gate. Abel and the General Manager also communicated with Kiptum. They cautioned Kiptum the atmosphere on the ground was charged. He contacted the Head Office in Nairobi and was told to engage the services of the OCS Changamwe. Police Officers were deployed at the workplace. Kiptum arrived there at about 9.00 a.m. Kariuki flew in from Nairobi. When Kiptum and Kariuki arrived, they found Employees chanting they wanted to have audience with the Director. They had not served the 1<sup>st</sup> Respondent with any Strike Notice. Shopstewards were together with the Employees. They informed Kiptum they had sent for Masika. When Masika arrived, they rejected him. Kiptum then called the Labour Office. Katana and Ronga came. There were consultations.

15. There was a shortage of raw materials. Employees had as a result been working for fewer days in a week, than previously worked. Consultations resulted in the decision to declare redundancy. Employees wanted to be paid their terminal dues. There was a Return-to- Work Agreement which was drafted by Katana.

16. The Claimants had not worked continuously for the periods indicated in their Statement of Claim. The 1<sup>st</sup> Respondent opened in 2004. It was closed in 2008 for 1 ½ years, opening in August 2010. It was closed again in May 2013 due to lack of raw materials, and reopened in August 2013. The Claimants had therefore not worked for more than 1 year from the date the 1<sup>st</sup> Respondent last reopened operations, August 2013. There are different Claims filed by the Employees, arising from redundancy of May 2013. The Claimants were in the present Claim paid their rightful terminal dues.

17. Kiptum told the Court on cross-examination that Masika was chased away by the Claimants. The Claimants were represented by their Shopstewards in the consultative meeting. They were not to return to work; they were to be paid off and leave. Some Claimants had worked from 2005. They would be retained after the 1<sup>st</sup> Respondent re-opened. They were placed on probation after such reopening. It is not true that the 1<sup>st</sup> Respondent pretended not to have raw materials or pretended that there was a strike. Redirected, the Witness confirmed there was a strike, called by the Employees themselves. Work shifts had been

reduced due to insufficiency of raw materials.

### **2<sup>nd</sup> Respondent's Case**

18. Katana testified he was called by the County Labour Officer on the material day, and informed Employees of the 1<sup>st</sup> Respondent had downed their tools. He went to the factory in the company of his Colleague Mrs. Ronga. They found Employees on strike.

19. Police Officers were already at the Site. The Labour Officers wished to be briefed by the Union Shop-floor Representative. Employees rejected Masika's representation.

20. The Shopstewards represented the Employees. Present were Abel Lumbasi Chief Shopsteward, Flugence Jumapili representing the department of Chargers, Newton Mogoti Shopsteward, Job Cheptobot Shopsteward, General Manager Sameer Shah, Group Human Resource Manager Kariuki, and Kiptum the Human Resource Manager.

21. Consultations ensued. It was established the 1<sup>st</sup> Respondent had a problem with raw materials. Employees would work for fewer days. They did less than the previous 26 days a month. They felt this was unfair. They were informed by the 1<sup>st</sup> Respondent they could continue to work for fewer days, or opt for redundancy altogether. They deliberated with their Shopstewards and opted for redundancy. The Parties then prepared the Return-to-Work Agreement.

22. Katana testified on cross-examination that there was a strike at the workplace, occasioned by the Employees, without notice to the 1<sup>st</sup> Respondent. The Shopstewards consulted the other Employees before arriving at the Agreement. Answering questions from the Claimant's Advocates, the Labour Officer testified Employees were on strike but orderly. He did not know who called in Police Officers. Masika was an Employee of the Union. He was called to represent the Union. Employees did not want Union Branch Officials to participate in the consultations. The Labour Office had not been notified about the redundancy. Redundancy was as a result of the strike. The Employer wanted to ensure the Claimants continued to have an income. They were paid terminal dues in accordance with the applicable CBA.

23. John Masika testified he was called by Abel on 5<sup>th</sup> May 2014. He proceeded to the 1<sup>st</sup> Respondent's premises. He found Employees were on strike. The Employees did not want to see or hear from Masika. He was heckled and escorted by the Police Officers to the Personnel Managers' Office. Employees continued to heckle Masika. He was escorted away from the premises by Policemen. He stated on cross-examination that he was employed by the Union; he was not an elected Official. He did not participate in the crafting of the Return-to- Work Agreement.

### **Issues**

24. The Court understands the issues to be:-

- a. *Whether the Claimants' contracts of employment were unfairly and unlawful terminated by the 1<sup>st</sup> Respondent?*
- b. *Whether the 2<sup>nd</sup> Respondent failed in discharge of its obligations to the Claimants?*
- c. *Whether the 1<sup>st</sup> Respondent should pay to the Claimants compensation and terminal benefits aggregated at Kshs. 28,519,987?*
- d. *Whether the 2<sup>nd</sup> Respondent should pay to the Claimants general damages for breach of obligations?*

**The Court Finds:-**

25. The Claimants were employed by the 1<sup>st</sup> Respondent on diverse dates, and in diverse capacities as indicated at paragraph 1. Some were recruited as Casual Workers as early as the year 2005. The 1<sup>st</sup> Respondent started operations in 2004.

26. There is adequate evidence that the 1<sup>st</sup> Respondent has not been in continuous operations. It was closed in 2008, to reopen in 2010 due to lack of raw materials. It was reopened in August 2010 and closed again in May 2013. It was reopened in August 2013. Every time it was closed and reopened, it took in some of the previous Employees. There are Claims filed by some of the Employees with regard to dues payable at different points of these cyclic closures and reopening. From the outset, it can be safely concluded that the Claimants were not in continuous service for the years given in the present Claim. The interruptions in the operations of the 1<sup>st</sup> Respondent were not pretended. They were real, and should have clearly been accounted for by the Claimants, in computation of their service periods.

27. The evidence on record is persuasive there was a wildcat strike on 5<sup>th</sup> May 2014. There were Police Officers at the workplace. Labour Officers were called. Employees had congregated outside their workstations, demanding to be addressed by their Managing Director. The Employees ceased working. Their conduct fell within the description of a strike under Section 2 of the Labour Relations Act 2007. There was a Return-to- Work Agreement. As observed in **Mohammed Yakub Athman & 29 others v. KPA [2016] e-KLR**, the presence of such an Agreement is indicative of the presence of a strike situation. It is clear to the Court that the Claimants were engaged in an illegal strike, which was not preceded by any notice, and did not involve their Trade Union. They did not engage the grievance and dispute resolution mechanisms available at their workplace.

28. Their grievances were rooted in the 1<sup>st</sup> Respondent's operational difficulties. There was as in the past, shortage of raw materials. The 1<sup>st</sup> Respondent devised shorter working weeks, with reduced shifts, to keep the business running and keep the Claimants in employment. The Claimants were aggrieved because the shortened hours of work, gave them lesser income. They went on strike demanding audience with the Managing Director.

29. There was a consultative tripartite meeting involving the Shopstewards, Management and Labour Office. The result was the muddled Return-to- Work Formula dated 5<sup>th</sup> May 2014. The Court uses the word 'muddled' because the document appears to mix up returning to work and redundancy. The highlights in this confusing Agreement are these:-

- a. The Parties agreed that all Employees [Unionisable] be declared redundant as a result of the strike.
- b. Terminal dues shall be paid on 9<sup>th</sup> May 2014.
- c. Parties agreed the above decision resulted from the shortage of raw materials.
- d. None of the Parties i.e. Management, Employees, shall victimize each other as a result of the strike.

30. This Agreement was ambiguous and poorly written. Employees are not declared redundant; the jobs they hold are. Redundancy is not a sanction meted out on the Employee by the Employer, as a result of the Employee involvement in employment offences; it is as defined in Section 2 of the Labour Relations Act 2007, loss of employment by involuntary means, through no fault of the Employee. It is difficult to see how strike action can result in an employment position being declared redundant. The Employee would not be withdrawing his labour, if there was no existing job where that labour was needed. It is equally difficult to see how Employees would victimize Management after the strike.

31. The top Human Resources Persons in the 1<sup>st</sup> Respondent Company were present and appended their signatures to the document. The Shopstewards, representing the Employees were present. It does not help the Claimants' cause that Abel testified he did not read the document well before signing. He was not alone at the signing. Other Shopstewards signed. It is of great concern to the Court that the authorship of this shoddy document is attributed to the County Labour Office. Certainly the signatories appear to be persons with good knowledge of labour relations. It would be expected they should have crafted a document which is specific on redundancy and return to work. It is not possible that redundancy and return to work go together, or that one is as a result of the other.

32. In the view of the Court however, these defects in the document drawn on 5<sup>th</sup> May 2014, should not serve to confer benefit on any of the Parties. The ambiguities must not be resolved in favour of any of the Parties. The Employees appear to have realized their Representatives had compromised their position, and it is no wonder one of the Employees, Clyde Anjilwa, wrote to the Managing Director on the same day, 5<sup>th</sup> May 2014, alleging the Agreement did not involve elected Union Officials. This letter was of no legal effect to the Agreement signed by the Shopstewards, Management and the Labour Officers. Anjilwa had no capacity to write to the Managing Director on the collective dispute. He held no office. He was not a Shopsteward, Official of the Union, or Employee of the Union.

33. Shopstewards are representatives of the Unionisable Employees in Companies where they are employed. They are elected by their fellow Workers. They can be appointed by the Union, depending on its Constitution. They represent and defend the interest of the Employees. Abel and his fellow Shopstewards therefore had the mandate to represent the Claimants. What Abel and his team of Shopstewards signed bound the Claimants.

34. The Court is therefore not able to agree with the Claimants that their contracts were unfairly terminated. They left employment through a murky, but consensual process, in which they were fully represented. They did not show that their contracts were unfairly terminated, as required under Section 47 of the Employment Act 2007. The claim for compensation for unfair termination has no merit and is rejected.

35. Did the 2<sup>nd</sup> Respondent fail in its obligations to the Claimants? In *Seth Panyako v. KUDHEIHA [2013] e-KLR*, the Court held that Trade Unions recruit Members. They collect membership fees. They profess business capability. They assume the duty of fair representation of their Members in Courts and in Collective Bargaining Platforms. Internal Constitutions may impose on the Trade Union the obligation to render financial and legal support to Members who need such support. The Labour Relations Act and the Constitution of Kenya allow Trade Unions to associate. They can recruit Members and collect subscription fees. The corollary is that Membership creates certain obligations on the Trade Union to its Members. The most fundamental is the duty of the Trade Union to fairly represent its Members. The Trade Union as held in the case of *Panyako* has a contract of mandate with its Members. It can therefore be held liable to pay its Members damages, if this contract of mandate is breached. The Claimants allege they were abandoned by their Union and seek damages for breach.

36. Mr. Masika, Disputes Officer was sent to the workplace by the Union on 5<sup>th</sup> May 2014. The Claimants chased him away, demanding that another person who they recognized as their Branch Official, Mr. Wanyama represents them. They claim the genuine Officials were locked out. Masika was rejected and escorted out by the Police from the irate Claimants.

37. The Union appears to have been experiencing the common leadership wrangles at the Branch. There were certain Officials whose electoral mandate was questionable. It was not necessary however, that the Union Representative be an elected Official. Masika was not an elected Official, but a Disputes Officer, employed by the 2<sup>nd</sup> Respondent, and mandated to speak for the 2<sup>nd</sup> Respondent at the consultation. There was no need for the Claimants to chase him away, in favour of persons they perceived as the duly elected Branch Officials. The 2<sup>nd</sup> Respondent cannot therefore be faulted for failing to lend support, or fairly represent the Claimants. Support came in the form of the Disputes Officer. The Claimants rejected that support. They had in the first place resorted to a wildcat strike, without engaging their Trade Union. They were in the end represented by their Shopstewards. Shopstewards are the shop-floor Representatives of the Union. It was not shown by the Claimants that it was mandatory, that the Union has Officials from the Branch at the consultation. Shopstewards filled the role of representing the Employees. If they fell far short of expectation in resolving the stalemate, that failure would not amount to breach of the contract of mandate on the part of the 2<sup>nd</sup> Respondent; a competent Disputes Officer had been availed by the 2<sup>nd</sup> Respondent to the Claimants. He was chased away by the Claimants. It is very disconcerting that the Shopstewards, who were at the forefront in crafting of the Return-to-Work Agreement, should be Claimants here. The Court is satisfied the Union discharged its obligation to the Claimants. Damages are not payable.

38. The Claimants as concluded above did not have continuity in service. They served under different contracts, which had their own rights and duties, and consequences at every lapse. It is not reasonable therefore to claim service years, annual leave days, public holidays, and house allowances on the assumption that service was uninterrupted. The Claimants failed completely in accounting for the years the Respondent was not in operation. They did not show the exact periods of time upon which these claims should accrue. On the prayer for salary in lieu of notice, the events leading to termination were co-authored by the Claimants. They have no justification in expecting salary in lieu of notice after they had engaged in a strike action, and granted that termination followed an Agreement executed by their Representatives. ***The entire Claim is rejected with no order on the costs.***

**Dated and delivered at Mombasa this 8<sup>th</sup> day of July, 2016**

**James Rika**

**Judge**