



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.796 OF 2013

OBWARE GEORGIADIS OCHIENG

GEORGE NGUGI NDUNGU

SIMON MUCHEMI MBUTHIA

SAMUEL NDEGWA MUTHONI

STEPHEN GAITA MUTABARI

[Suing on their behalf and on behalf

Of 56 other employees as per attached list] CLAIMANT

VERSUS

KENYA WILDLIFE SERVICE RESPONDENT

JUDGEMENT

1. By Memorandum of Claim filed on 24th may, 2013, the Claimants aver that they worked for the respondent, a government parastatal and registered under the Kenya Wildlife Service Act, at its Aberdare National Park for between 4 to 10 years without confirmation. That the Respondent has been acting illegally and unfairly making wage deductions from the claimant's wages and then later refused to pay the due wages. That there has been discrimination against the Claimants and an infringement of their constitutional rights as under article 41 of the constitution.

2. That after every 3 months, the claimants' salaries have been deducted a sum of Kshs.2, 156.00. The wages paid are below the minimum wage contrary to fair remuneration and pensionable working conditions. The Claimants have no letters of appointment on permanent and pensionable terms despite working for the Respondent for unreasonable working conditions and risky circumstances and without risk allowance. They worked for 30 days per month and only paid for 22 days. No annual leave was given or payment in lieu thereof. The Claimants worked for over 8 hours and no overtime was paid.

3. The claim is also that the Respondent pinned a circular announcing the board decision to pay them Kshs.420.00 per day but were paid less at kshs.9, 240.00 instead of kshs.12, and 600.00 per month. No NSSF dues were remitted. There were verbal threats of dismissal with no excuse or reasons being given. No terminal dues have been paid.

4. The Claimants are seeking for a declaration that the Respondent has infringed on their rights under article 41 of the constitution; the Claimants be confirmed into permanent and pensionable employment

terms; the Claimants be issued with employment letters; a payment of benefits and allowances due, payment of reasonable remuneration based on the respondent's pay structure; a refund of deducted amounts of Kshs.1,156.00 for every 3 months deducted; payment of unremitted NSSF contributions and payment for leave not taken; the Respondent be ordered to commence a medical scheme for the Claimants and payment of a risk allowance; payment of salary arrears and costs of the suit.

5. In evidence, the Claimants witness Mr Obware Ochieng testified that upon employment by the respondent, he resides at Kimende within the Aberdare National Park under the Respondent management. He has served for 6 years upon employment on 21st January, 2009. He has remained in the continuous employment of the Respondent but has no contract of employment.

6. The Claimants helped with the putting up of the electric fence around the park to prevent rhinos going out and after 8 months, they were told to go back and protect the fence from being vandalised. The Claimants were also promised of getting better working terms.

7. That for every 3 months work, the Claimants are deducted Kshs.2, 156.00. The salaries are paid through the bank. There is also a deduction of NSSF and NHIF but in some months, the Respondent has not remitted these deductions.

8. That the claimants' rights have not been protected and the Respondent has treated them in an inhumane manner. After every 3 months they are forced to go on leave for 7 days. They work for 24 hours for 7 days with no rest day. Though the Claimant resides at Kimende outpost, his work station is at Karagita Forest station.

9. That the Claimants have been treated as 'permanent casuals'. This is despite service for periods of 4 to 10 years. On 27th June, 2012, one Claimant Samuel Ndegwa Muthoni was terminated from his employment.

10. While in employment, the Claimants are not given tools of work and they are expected to protect the fence so that animals cannot leave. They have to prune weeds to avoid electrification. The fence is also vandalised by people getting firewood, loggers or grazers and there is no protective mechanisms for the claimants. The Claimants also have to protect animals within the park like elephants and are constantly injured but there is no risk allowance or protection. Those employees of the Respondent on permanent basis have weapons, written contract and tools of work.

11. Mr Ochieng also testified that the Respondent gave the Claimant an offer and contract employment but they rejected it. The pay was unfair. The payment was too low to support the family.

12. That the Respondent recruited 572 officers to do the same job as the claimants. The Respondent did not consider the employment of the Claimants despite the work experience over the same duties taken up by the officers. That the Claimants have been the employees of the Respondent and not Rhino Ark.

13. The other witness for the Claimant was **Stephen Gaita Mutabari** who testified that he has worked for the Respondent for 12 years and other Claimants have been in service for over 15 years. That the Claimants are in Court due to discrimination against them by the respondent. They asked to be employed on permanent and pensionable terms but the Respondent refused. They have low pay despite working for 24 hours a day. During the day the Claimants guard the electric fence and at night guard the respondent's property as they are resident within the park.

14. That the Respondent has issued the Claimants with 3 months contracts despite their long service. All wages were paid through the bank with an NSSF and NHIF deductions but such were not remitted.

15. The witness also supported the claims made in the memorandum of claim.

Defence

16. In defence, the Respondent admit that the Claimants were engaged as casual workers as fence attendants and mainly drawn from communities living alongside the respondent's fence in the Aberdare National Park. To conserve the park, the sponsors and benefactors, Rhino Charge Challenge, agreed to raise funds to erect an electric fence running 400 kilometres around the park. Contributors to the funds were well-wishers and conservationists from Rhino Ark, an annual motor competition sponsored by participants. The funds raised are used to erect and maintain the fence to keep the wildlife inside the park.

17. That the fence was initially meant to cover vulnerable areas where there were human and wildlife conflicts. The workers engaged to erect the fence were issued 3 months contracts. The maintenance budget was given to the respondents under the Aberdare Trust which was launched on 11th May, 2012. The Trust is not fully operational as Rhino Ark is only able to remit Kshs.400, 000.00 per month for fence maintenance and not for salaries for the claimants.

18. The Respondent has discussed the matter within government ranks to make budget provision but treasury has not approved. It has been proposed that the Claimants be released and paid terminal dues and can apply for employment once the Trust is operational.

19. That it is for the above reasons that the Claimants have been kept on 3 months contract and not been absorbed into full time employment. To take the Claimants on permanent employment will not be sustainable as the Respondent is without a budget approved or allocated for that purpose.

20. The Respondent pays the Claimants a consolidated sum of Kshs.9, 240.00 per month in accordance with legal wages. No risk allowance is due to the claimants; all NSSF and NHIF dues have been remitted; no Claimant has been dismissed unless over unresolved issues. That the Claimants are housed in units within the park and provided with what is required of their engagement. The Claimants not paid is due to non-attendance at work and many Claimants have become rowdy and unruly and refused to work or obey lawful orders from senior officers. There is therefore no breach of the law and the Respondent is willing to settle the terminal dues the Claimants so as to release them.

21. In evidence, the Respondent witness was **Catherine Wambani** who testified that she is with the Respondent at the Aberdare National Park from 17th May, 2014 as a Senior Warden in charge of the park. Her main duties are management and administration of the park. At the park, the Respondent has engaged Fence Attendants with duties to construct and maintain the fence and game proof barriers; clearing of fence line; monitor fence voltage; and report security incidents.

22. That the Fence Attendants start work at 6am by taking fence reading; they are provided with tools of work; and each attendant has to cover his/her allocated area. All attendants are back at their residences by 3pm because they are not armed. At 6pm the attendants provide end of day fence reading by radio call.

23. The attendants are not called any time and not at night to attend work as they are no uniformed officers. There are rangers for this task. There is not work by the Claimants on Saturdays and Sunday unless they are attending to issues at their posts.

24. The wages payable to the Claimant is by government circular stipulated at kshs.9, 240.00. Some attendants have attained retirement age at 60 years and been cleared with payment of terminal dues, like the 41 Claimant – Murathi Geoffrey Nyaga. Other Claimants have since left the employment of the respondent.

25. The other witness was Elizabeth Njeri Mwangi, the Senior Human Capital Officer of the respondent. The Aberdare National park is sponsored by sponsors and benefactors who raise funds to support the maintenance of the electric fence. The Claimants were engaged for the fence maintenance on 3 months contracts for work from 6am and paid Kshs.9, 240.00 per government minimum wage. The budget for the maintenance work is from the Trust and not from government. The Respondent is not able to employ the Claimants on permanent basis as by an executive Order of 16th December, 2013 the Respondent was directed to freeze all recruitments of permanent employees. All the duties now undertaken by the Claimant have been taken over by rangers.

26. The Respondent is willing to pay terminal dues to the Claimants to facilitate their release.

27. The Claimants are housed by the Respondent and do not work overtime. At the residential posts the Claimants are provided with water, electricity and transport. After every 3 months, the Claimant get 7 days of leave. Currently, the claimant's are taking 21 days of annual leave. All NSSF and NHIF dues have been paid and the Respondent has the records.

28. That the Respondent is willing to compensate the claimants. The minimum wage was reviewed in March, 2016 to Kshs.11, 760.00 and as the Court ordered the Respondent to maintain the status quo, this wage has not been reviewed but the Respondent is willing to pay the arrears due. All the Claimants who have since left employment are not currently being paid.

Submissions

29. The Claimants submit that the notices to terminate the employment of the Claimants by the Respondent is unjust and unfair. That the orders sought should issue to protect the Claimants and be paid the due costs.

30. The Claimants rely on the case of **Kenya County Government Workers Union versus County Government of Nyeri, Petition No.10 of 2015 (Nyeri)** where the Court held that 'fair labour practices' is set out under article 41 of the constitution where every employee should have a fair remuneration; reasonable work conditions; and have right to unionise. That the work conditions and rights set out under the law also form fair labour practices guaranteed to an employee. That in **Agatha Bugosi Said versus Vegpro Kenya Limited, Cause No.2074 of 2014** and the Court held that the Employment Act has created a shift within labour sector in Kenya especially the category of workers not adequately protected prior to 2007. Every employee is now recognised as having rights as unlike before where rights were limited. A casual employee is converted to permanent employment pursuant to section 37 of the Employment Act. In this case the Claimant served the Respondent continuously and with no break and therefore warrant application of section 37 of the Act.

31. That the Claimants never got appointment letters and the Respondent has not submitted work records in accordance with section 10 of the Employment Act. That casual employees do not get 2 off days and annual leave unless such employment is converted to permanent. The Claimants are therefore entitled to orders sought.

32. The Respondent submit that there is no violation of the constitutional rights of the Claimants as alleged. The Respondent admit that the Claimants were on 3 months contract due to the nature of work to be undertaken and noting that they were sourced under the Rhino Ark to maintained the electric fence and were never taken on permanent basis. The Claimants were fairly remunerated at a daily wage of Kshs.420.00 amounting to Kshs.9, 240.00 per month paid as per Legal Notice No.71 of 2nd July, 2012.

33. The orders sought are not due. The Claimants are on defined contracts and cannot be taken on permanent basis as the Respondent requires funds form treasury and such have not been allocated. In **Kenya Airways Limited versus Aviation & Allied Workers Union & 3 Others [2014] eKLR**; the Court of Appeal allowed an appeal reversing an order of reinstatement of 447 employees on the basis that the Court ought to have considered the circumstances within which to grant such reinstatement and that the employer was going through economic hardship.

34. The allowances claimed by the Claimants are not due as the risk allowance was not part of the dues and the Claimants were not required to give protection to the animals in the park. The Respondent had rangers for such purpose. The deductions of Kshs.2, 156.00 was done with the knowledge of the Claimants and thus lawful and is not refundable.

Determination

The status of the claimants' employment with the respondent

Whether the remedies sought are due

35. The Claimants have defined themselves as having been employed on casual terms for period of over 4 to 10 years. That the Claimants were issued with contracts of 3 months and taken as 'permanent casuals' which was an unfair labour practice. That such employment converted to permanent employment by application of section 36. of the Employment Act. The defence is that the due to the nature of employment and work undertaken by the Claimants they were retained on 3 months contracts. That the Claimants were paid a minimum wage per the Wage Guidelines.

36. What is not disputed is that the Claimants had 3 months contracts. Such contracts were renewed upon lapse and 7 days leave and or off taken before the next such contract.

37. The Employment Act recognises that parties to an employment relationship have the right to enter into a fixed-term contract of employment. Such a right is secured and safeguarded in law. The Employment Act at section 2 defines a contract to mean;

“contract of service” means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies

38. Therefore, where a contract of employment defines the *period of time* of employment, unless such is obtained by fraud, misrepresentation or through illegal means, the Court will enforce the terms governing such a fixed-term contract of employment. These are matters set out in the case of **George Makau 7 others versus Label Converters ltd, Cause no.931 of 2013** that;

Under these provisions of the law [section 2 of the Employment Act], parties entering into an employment relationship can enter into a written contract that is permanent, fixed term, periodic or seasonal based on the need, purpose or the interests of both parties and the persons involved.

39. In **Chacha Mwita versus KEMRI, Cause No.1901 of 2013** the Court held that;

....Once there is a written contract, the Court will seek to give meaning to such a written contract based on its terms in determining any issue that may arise especially any dispute. The Court as guided by the provisions of section 10 of the Employment Act will give the ordinary meaning to any written agreement between parties unless there is proof that there is ambiguity on the face of the contract.

40. In **Margaret A Achieng versus National Water Conservation Corporation** the rationale being that the purpose of a fixed-term contract is not to renew it automatically. Such a contract (fixed-term) does not carry the expectation for renewal. The exceptions to this general rule are few and limited based on each case and its circumstances where strictly an employer should not act in a manner so as to avoid a legal obligations.

41. In this case, Mr Obware Ochieng testified that the Claimants were on a 3 months contract and in the last contract issued to them they refused to sign as they did not agree with its terms. This was confirmed by Mr Mutabari that the Respondent issued them with 3 months contracts upon the lapse of similar contracts of 3 months. The Claimants refused to sign and accept the terms thereto as these were discriminatory against them.

42. Therefore, based on the applicable law, Employment Act, whether the contracts issued to the Claimants were called 'casual', 'permanent casual' or 'permanent employment' what is crucial for the Court is not the name assigned to the written contract, rather the terms and conditions thereto and the intentions of the parties. In this case, it is clear that the Claimants were on 3 months term contract and

under such contract, the payable wages were set out and upon each lapse of the contract, a new one was issued with the owing dues.

43. Unless the parties agreed to change the terms of employment to new status, such cannot be forced upon the Respondent as to do so would be to interfere with the freedom and rights of the parties herein. The essence of this is that the existing relationship between the parties herein is lawful and governed by agreed terms and indeed where each Claimant is not able to attend work and or take the terms of the 3 months contract, such is not paid for. To court, on its own motion and without any violation of the law, cannot force the Respondent to change the fixed-term contracts issued to the claimants.

44. I therefore find, the Respondent has acted within the law, the Employment Act allow for fixed-term contracts which has been in existence between the parties.

45. The respondents are willing to release the Claimants upon payment of terminal dues. I find this a reasonable offer. As the Court has since directed the parties to maintain the *status quo*, such orders have been adhered to and on the basis of the offer to pay terminal dues, the arrears owing based on the law minimum wage increase for 2016, the Claimants will not suffer any prejudice.

Remedies

46. On the claim that constitutional right to fair labour practice has been violated, on the finding above that the Respondent has acted within the law, the parties maintained fixed-term contract, such violation does not arise. The parties have had the freedom to contract and as there is no finding of an illegality, the remedy sought does not arise.

47. The Claimants set out a case of discrimination against them by the respondent. That the Respondent employed the Claimants in less terms and conditions whereas other permanent employees were engaged on better terms and conditions. I find, the Claimants were employed under set contracts of employment that were fixed, the terms were agreed and acknowledged by the Claimants and for the Claimants to compare themselves with other employees enjoying different contracts and terms is not an appropriate comparison to cite discrimination against them as in discrimination, the party engaging in such must be ought to defeat the cause of justice.

48. In the case of **Christopher Onyango & Others versus Heritage Insurance Company Kenya Limited, Cause No.781 of 2015**, the Court in addressing the question discrimination in employment held that;

The Claimant have pleaded that this [declaration of redundancy] was an act of discrimination against them. indeed where an employer fails to act and promote equality of opportunity in employment; fails to promote and guarantee equality of opportunity; and proceeds to terminate the employment of any employee in a manner that is discriminatory – that is without setting out the reason(s), without justification and in setting out such an employee aside and separate from other employees so as to deny them a legal right without any justification

– such an employer commits discrimination against the employee and such is specifically prohibited under section 5 of the Employment Act, it is unconstitutional practice under article 27 of the constitution and the same is an unfair labour practice under article 41 of the constitution.

49. The Claimants were under a specific contract. Such contracts would be renewed upon lapse. These contracts were undertaken on their terms. Such is lawful. It cannot be the basis of discrimination against the Claimant as the ingredients of section 5 of the Employment Act and article 27 read together with article 41 requires that there be creation of unjustified difference that has no justification. I therefore find no basis for the claim that the Claimants were discriminated against by the respondent.

50. The claim of Kshs.2, 156.00. The basis of this claim is that after every 3 months, the Claimant got a deduction of Kshs.2, 156.00 and that such should be refunded. Though there was no concrete defence on

this claim, I take cognisance of section 49(2) of the Employment Act. All dues payable to an employee are subject of statutory deductions. On the basis that the Claimants were paid a monthly wage of kshs.9,240.00 based on a daily wage of 420.00, a deduction of kshs.2,156.00 in 3 months is on the lower side but commensurate to the provisions of section 49(2) of the Act. This rate of Kshs.2, 156.00 deducted after 3 months should have essentially been deducted on a monthly basis. Where the Respondent has not complied, the penalty/sanction by the Kenya Revenue Authority is severe. I will not pursue this as this is not part of the claim.

51. On the claims for NSSF and NHIF deductions, I find the records submitted by the Respondent are thorough and relate to NSSF and NHIF dues remitted to the relevant bodies. In any case such dues where not paid or remitted by an employer are not due to an employee as these deductions form the statutory requirements of an employer to deduct from source and remit. Where such dues are not paid, a Claimant can only seek for service pay under section 35 of the Employment Act. There is no such claim herein.

52. On the claim for overtime, house allowance, tools allowances and related allowances, Ms Wambani testified that the claimants worked from 6am to 3pm from Monday to Friday with day off on weekends. The only requirement was to read the fence and relay the message to the respondent. That in the evening, the readings would be done and sent via radio. Cumulatively, the work hours were 9 per day. In the terminal dues offered by the respondent, included is an overtime pay. Though not set out as to which period this covers, the Claimants also did not give analysis of how many overtime hours they are claiming. As the respondent is the keeper of all work records in terms fo section 10 of the Employment Act, I take it the records used to compute the overtime and other allowances payable are the correct status as this is not challenged by the claimants in any material way.

53. Thus with housing provided by the employer, the tools of work being machetes that were provided at work, I find no merit in the claims for the same where the employer has confirmed to have offered the same. Where the claimants were required to work until 3pm each work day, the claim for risk allowance for protecting animals during the night I find to be far-fetched. The Claimants' witnesses confirmed that they were not armed and their duties related to clearing grass along the fence; maintain the fence; and ensure no vandalism occurred. As such, where there was work injury due to any Claimant, such should be specifically addressed and cannot form the basis for a general claim for a risk allowance.

54. Based on the above finding, the remedies sought by the Claimants are not due. As part of these proceedings, the Respondent has offered to pay the terminal dues owing to the Claimants by virtue of their employment. Such shall be confirmed as set out as I find not challenge. These dues include notice pay; leave days due; severance pay which should in actual sense be a *service pay*; and all such dues are well computed within the payable minimum wage.

55. However, there are 18 Claimants who have either left the Respondent employment through retirement, resignation or through other means. This was not specifically gone into at all in the Claimants' submissions. The 18 Claimants/employees shall be removed in the computation of the terminal dues where such have since been paid and where still due and owing, the separation is set out hereunder.

Conclusion

In conclusion, the orders sought are not due save that based on the Respondent's offer for release of the Claimants, the offer is herein confirmed for the following Claimants;

1. Ngacha John Mwangi Kshs.134,253.00;
2. Muga Apollo Ngenga Kshs.130,480.00;
3. Njenga Joel Kinuthia kshs.100,835.00;
4. Gitonga Simon Murithi Kshs.93,828.00;

5. Mwangi Isaac Miiri Kshs.95,445.00;
6. Obware Georgiadis Ochieng kshs.95,445.00;
7. Gitonga Daniel Wandari Kshs.86,821.00;
8. Laban kimotho Mwaniki kshs.112,154.00;
9. Muga Peter Ndirangu Kshs.124,551.00;
10. Ndegwa Daniel Ndirangu Kshs.124,551.00
11. Samuel Ndegwa Kshs.130,480.00;
12. Mbuthia Simon Muchemi Kshs.106,225.00
13. Mwanzi Edward Mboti Kshs.133,714.00
14. Stephen Njoroge Kshs.97,062.00
15. ...
16. Muthoni James Mwangi Kshs.104,069.00
17. Ngachure Moses Njuguna Kshs.120,778.00
18. Mwangi Daniel Nganga Kshs.122,154.00
19. Kirema James Ngono Kshs.95,984.00
20. Ng'ang'a Zachariah Muriu Kshs.103,530.00
21. Kahuthu Richard Ngatia Kshs.110,537.00
22. Njuki George Njuguna Kshs.117,005.00
23. Kiio Joseph Mbindiyo Kshs.108,920.00
24. Miano Wilson Gachara Kshs.110,537.00
25. Mutambari Stephen Ngaita Kshs.114,849.00
26. Monor Justin Areri Kshs.104,069.00
27. Thairu Francis Ndiritu Kshs.111,615.00
28. Ndungu George Ngugi Kshs.113,771.00
29. Gitonga James ndiritu Kshs.107,842.00
30. Waithira Peter Wambari Kshs.88,438.00
31. Kihara Samuel Gicheru Kshs.199,700.00
32. Kuria peter Waweru Kshs.107,842.00

33. Gitau Laban Kiarie Kshs.108,381.00
34. Nganga Francis Muhoro Kshs.112,693.00
35. Onyango Julius Ouma Kshs.111,076.00
36. Mburu Stephen Kuria Kshs.131,558.00
37. Ngwasi Christus Kyalo Kshs.117,554.00
38. Kanyora Ephantus Munuhe Kshs.129,402.00
39. Wanjiku joseph maina Kshs.109,459.00
40. Anyeka Martin Chogo Kshs.108,381.00
41. Kiringu john Muya Kshs.105,686.00
42. Murathi Geoffrey Nyaga Kshs.118,622.00
43. Ngaita john Wangombe Kshs.117,005.00
44. Kenyattaa Nicodemus Odeli Kshs.100,296.00
45. Kariuki Richard Mwaniki Kshs.101,913.00
46. Kanari Anthony Kihara Kshs.112,154.00
47. Ndiritu Daniel Mwangi Kshs.110,537.00
48. Mwangi Samuel Maina Kshs.87,899.00
49. Munywira timothy Kimaru Kshs.101,913.00
50. Lmeinyimoi Lemarkat Kshs.105,147.00
51. Ndungu peter Kingori Kshs.125,090.00
52. Maina Jacob Omusula Kshs.92,750.00
53. Kahihia john Murebu Kshs.106,764.00
54. Muthoka Boniface M. Kshs.100,296.00
55. Timothy Waigwa Kshs.118,083.00
56. Kahihia Bernard Muchiri Kshs.111,615.00
57. Muchemi Humphrey Kimanthi Kshs.105,147.00
58. Wamugi joseph Ndungu Kshs.120,778.00
59. Mutegi Eric Muchagi Kshs.92,211.00
60. Wamai Charles Mwangi Kshs.94,906.00

61. Mbengi John Njeru Kshs.92,211.00

62. Nchaga Nathan Gitonga Kshs.89,516.00

The following Claimants have since retired, resigned or left the employment of the Respondent and shall be paid their dues as wet out above if such dues have not yet been paid and or acknowledged. These Claimants are;

1. Peter Kingori Ndungu, date of exit 20th March, 2016;
2. John Wangombe Gaita, date of exit 6th January, 2013;
3. Georgiadis Ochieng, date of exit 27th june, 2015;
4. Nicodemus Odeli Kenyattaa date of exit 5th July, 2014;
5. Anthony Kihara Karari, date of exit 1st July, 2015;
6. Samuel Maina Mwangi, date of exit 1st August, 2015;
7. Laban Mwaniki date of exit 5th July, 2013;
8. Samuel Ndegwa Muthoni date of exit 1st July, 2012;
9. Geoffrey Nyaga Murathi date of exit 31 January, 2016;
10. Stephen Gaita mutambari date of exit 1st July, 2015;
11. Peter Wambari Waithira date of exit 4th July 2016;
12. Eric Muchangi Mutegi date of exit 26th May, 2016;
13. ...
14. ...
15. ...
16. ...
17. ...

Each party shall bear own costs.

Orders accordingly.

Judgement Read in open Court at Nairobi this 19th day of December, 2016.

M. MBARU JUDGE

In the presence of:

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