



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1304 OF 2015

KUNGU GEORGE KAIRU & 35 OTHERS.....CLAIMANT

VERSUS

KK SECURITY LIMITED.....RESPONDENT

RULING

1. On 29/7/15 the Claimant filed Notice of Motion seeking for orders that;
 - a. Spent.
 - b. *Pending the hearing and determination of this motion inter partes this Honourable Court do issue an Interim Preservatory Orders to stay and / or stop the operation and effect of the Respondent's letters dated 17th July, 2015 giving notice to terminate the Claimants' employment with itself on account of redundancy.*
 - c. *Pending the hearing and determination of this motion and/or the main case herein this honourable Court do issue an order to prohibit the respondents from declaring the Claimants redundant and relieving them from itself.*
 - d. *The Respondents to bear the costs of this application in any event.*
2. This application is supported by the annexed Affidavit of Kungu George Kairu and on the grounds that the intended termination of the Claimant from employment on account of redundancy is false, without legal justification and completely without due process and fairness. Other grounds are that the reasons raised for the claimant termination are an afterthought and do not fall within the reasons which would entitle an employer to terminate employment on account of redundancy. That the Claim to redundancy is a false claim meant to victimize the Claimants for their involvement in the union activities; All the legal requirement as to validity of facts and fairness of any termination process on account of redundancy have been flouted; There is no cause for redundancy in the Respondent's duties service and The services being offered by the Claimants are all necessary and continuing and there are other persons being trained at the Respondent's training school to undertake similar duties, The Union which holds a Recognition Agreement with the Respondent and the Ministry of Labour have not been involved and engaged in the discussions and negotiations leading to a declaration of Redundancy affecting 36 employees.
3. Further grounds are that The Basic Principles guiding Redundancy such as Last-In-First-Out (LIFO) have not been abided to since more recently employed employees are being retained as older and more experienced employees are intended to be declared redundant. The Respondent has not declared any loss or profit or business owing to the continued employment of the Claimants to justify the redundancy declaration. That The Claimants wholly depend on their jobs for their livelihood, children's school fees

and other needs and their unjustified ejection from work will affect them adversely together with their families.

4. In the Affidavit of Mr. Kairu, he avers that he has been an employee of the Respondent as a supervisor since 9/4/06 and the Co-Claimants have been with the Respondent in various departments having joined at different times and served for many years. Over the years the Claimants have raised various grievances with the Respondent which were ignored and therefore decided to join the union – Kenya National Private Security Workers Union (KNPSWU) so as to address the grievances under this union. The Respondent subsequently granted KNPSWU recognition but the Respondent has kept accusing the Claimants of engaging in Union activities and interfering with Respondent affairs and that as a result they would be terminated. The union has been pushing to have a CBA with the Respondent with the Claimants at the forefront as shop stewards or Union representatives at the negotiations committee and the Respondent has stalled the process forcing the Union to issue suit notice.

5. The deponent also avers that the Respondent has since commenced a scheme against the claimant to terminate their employment and on 13/4/15 the Respondent Chairman announced that there would be a restructuring with the intention to reduce some employees. On 17/7/15 the Respondent issued notices to the Claimant on account of redundancy. That the intention here is to mistreat the claimant with termination so that the Respondent can hire employees with lesser salaries and ensure that they do not join the Union. That the criteria used to select employees declared redundant was unfair and unlawful. The Respondent failed to take into account the principles that guide a redundancy process;

- i. *The Respondent did not take into consideration the number of years an employee has served it.*
- ii. *Seniority in time and to the skill*
- iii. *Ability and reliability of the employees of the particular departments to be affected.*
- iv. *Last In First Out.*

It is us who were targeted and therefore the Respondent only wanted to terminate our employment.

6. Mr. Kairu also avers that the Claimants were targeted by the Respondent in the termination for being unionized hence victimization. That this was in violation of the claimant constitutional right and the orders sought herein should be allowed by stopping the Respondent from filling in the claimant jobs or by taking new employees as this will expose the claimant to great leadership. Such orders should be made pending the hearing and determination of the suit herein.

7. In reply, the Respondent filed **Replying Affidavit** of Willis Ayieko – Onyango who avers that he is the Respondent Group Human Resource Manager (HRM) and that the claimant Notice of Motion is made in bad faith and in abuse of the Court process and based on misrepresentation non-disclosure of material facts. The 36 Claimants have individual contract of employment and the claim herein purporting to agitate for a collective action shall have been filed by each claimant over the alleged breach of their contracts.

8. Mr. Ayieko – Onyango also avers that the Respondent has over 11,000 employees in its various departments all over the country and owing to a highly competitive environment and the increased use of technology in many of its customers business operations, the Respondent management undertook a study of its operations with a view to optimizing efficiency. Upon evaluation of the structure, it became evident that there was need to restructure the Respondent organization with the result that some positions merged into one, and others abolished. The number of employees had to reduce and on 13/4/15 all the employees were notified vide notice of intention to declare redundancy. Affected employees were given notice. This affected 141 employees therefore claimant cannot claim that they were the targets.

9. Mr. Ayieko–Otieno also avers that the retrenchment process has been ongoing since May 2015 and the Claimants are among the last group of employees to receive termination notices. On 17/7/15 the Respondent gave notice to KNPSWU, the Labour Officer as per the law. Due process was applied in

identifying the positions to be abolished. The Claimant set out criteria at paragraph 15 of Mr. Kairu Affidavit was not what the Respondent relied upon only as where a long serving employee with a poor attendance or disciplinary record cannot have an advantage over other employees.

10. The Claimants have not met the threshold for the grant of the orders sought; there is no prima facie case with chances of success; the intended action is not unlawful; the Claimants are subject to contract of employment and the law; no loss or damage will be suffered as claimant will be paid their dues as per the law; and claimant have come to Court with unclean hands by failing to disclose material facts to the court. That the claim is defective as Mr. Kairu lacks capacity to agitate claims on behalf of the other alleged claimants.

11. Mr. Ayieko-Otieno also avers that the Respondent does not discriminate against any employee on the basis of being unionized as Respondent has the right to make decisions that suit its business from time to time. That the Respondent entered into a CBA with the claimant with employees at US Embassy which lapsed on 31/5/15 but negotiations collapsed and a dispute was reported. The Respondent has engaged the union for a CBA with regard to employees in the commercial department and when some items were not agreed on, a dispute was reported. The union filed Cause No. 479 of 2014 **KNPSWU Versus Kenya Kazi Security Services Ltd** seeking to compel the Respondent to sign a CBA but on 26/2/15 the suit was withdrawn. On 8/5/15 the claimant filed **Cause No. 769 of 2015 KNPSWU Vs KKSS Ltd** seeking that the Court should arbitrate over the issues not agreed upon in the CBA while the case was pending and on 19/6/2015 the union issued Notice to demonstrate against the Respondent but the Court stopped this action with orders on 8/7/15 but the union and some Claimants held a sit in at the USA Embassy.

12. Mr. Ayieko-Otieno also avers that it is wrong for the claimant to state that they have been the target of termination due to unionization. The Claimants are not the only employees affected by the redundancy and in the interests of justice, the Respondent should be allowed to proceed per the redundancy notices as fair labour relations entitle them to follow the law and lay off staff. That The Claimant application should be dismissed with costs to respondent.

13. On 26/8/15 the Respondent filed a **Further Affidavit** sworn by **Willis Ayieko-Onyango** further to his Affidavit of 5/8/15 and avers that pursuant to the Court orders herein, he informed the claimant that the notice issued on their termination on 17/8/15 would not take effect. That upon this communication some employees stated that they were not aware of the Court orders and that they worked to relieve their redundancy dues and separate with the Respondent on 25/8/15. 24 Claimants presented their letters and the Respondent accepted the same. These Claimants have since commenced clearance with the Respondent so as to receive their redundancy dues. These are:-

1. 2nd Claimant – Richard Kipchumba (Page 1)
2. 3rd Claimant – Oscar M. Makokha (Page 2)
3. 4th Claimant – Ferdinand Wechabe Wanyama (Page 3),
4. 6th Claimant – Gregory Kyengo Muasa (Page 4),
5. 7th Claimant – Leonard Wanyonyi (Page 5),
6. 8th Claimant – Wamachimbo Fredrick Barasa (Page 6),
7. 10th Claimant – Peter Omondi Magero (Page 7-8),
8. 12th Claimant – Peter Omondi Apito (Page 9),
9. 13th Claimant – Linet Khayela (page 10-11),
10. 15th Claimant – Luka Ngoti Kimotho (Page 13-14),
11. 17th Claimant – John Vitalis Odhiambo (Page 13-14),
12. 18th Claimant – Peter Kalawa (Page 15),
13. 21st Claimant – Joseph Itubo (Page 16),
14. 22nd Claimant – Boniface Luvatsa (Page 17),
15. 23rd Claimant – Kennedy Otieno Oito (Page 18),
16. 24th Claimant – Ethuro Gabriel Ekwee (Page 19),

- 17.25th Claimant – Daniel Kipkosgei Sum (page 20),
18.27th Claimant – Vincent Mutiso Mutisya (Page 21),
19.28th Claimant – Job Wanjohi Kimani (Page 22-23),
20.29th Claimant – Nzio Francis Mweu (Page 24),
21.31st Claimant – James Maisima Maera (page 25),
22.32nd Claimant – Gabriel Ouma Oketch (Page 26),
23.33rd Claimant – Abduba Haro Duba (Page 27),
24.36th Claimant – Henry Barasa Okurie (page 28),

14. The application before Court without the authority of the 24 Claimants above is without basis. The application should be dismissed.

SubmissionA

15. Both Parties filed their written submissions on 20/11/15.

16. The Claimants submitted that the termination letters dated 17/7/15 issued to the claimant on account of redundancy lack justification as the Respondent alleged meeting between the Chairman and Claimant on 13/4/15 to share information that there was need for restructuring, no minutes have been attached and the email attached to Mr. Ayieko-Otieno Affidavit does not speak to such a meeting.

17. The Claimants also submitted that the Respondent has not set out the criteria used at arriving on the decision to terminate the claimant as held in **AAWU Vs. Kenya Airways Limited, Cause No. 1616 of 2013** that:

*The Court would not have exercised its mind judiciously, if it concluded that simply because an employer has come to Court with evidence of record financial loss. Its decision to mass-terminate the contracts of its employees, is substantively justifiable. There is evidence that KQ has experienced a downturn and is re-organizing. As stated in the Malaysian decision of **Shaik Daud**, to show evidence of re-organization is not sufficient. The Court must investigate all facts and circumstances of the matter.*

18. The Claimants in relying on the above case submitted that there is no procedural fairness to the redundancy process as stated by the respondent. That fair procedure involves notification to employees, their union and the Government at the intended redundancy. The initial notice is intended to alert the parties of the situation as at this stage no decision to terminate has been reached. This is not the case herein. There was no consultations carried out by the Respondent as held in **David Omutelema et al Vs Thomas De La Rue, Cause No. 390 of 2010.**

Consultations must be held with an open mind. The employee must be encouraged to express his views individually and through his trade union. All feedback from all stakeholders merit careful consideration before a decision is made. The notice of termination comes only after all other processes have been exhausted, and a decision made.

19. The Claimants have met the conditions necessary for the issue of the orders sought. The Claimants said to have accepted their dues should have filed their own Affidavit separate from Mr. Ayieko-Otieno as such letters are prejudicial.

20. That the Claimants shall suffer irreparable loss and damage where orders sought are not granted. Section 43 and 45 Employment Act requires an employer to have valid reason before termination of employment as under Section 45 of the Act. The balance of convenience favours the claimant.

21. The Respondent on their part submitted that the claim is defective as Mr. Kungu George Kairu lacks capacity to agitate claims on behalf of the claimant. In the Affidavit of Mr. Kairu dated 29/7/15 he avers that he was authorized by 35 co-Claimants to swear it on their behalf. Mr. Ayieko-Otieno in his

Affidavit dated 26/8/15 he has produced letters by 24 Claimants who state that they have no knowledge of the claim. The leave granted to Claimants advocate on 31/8/15 to file Supplementary Affidavit to rebut these allegations was not filed. Therefore there is no challenge to what the Respondent has stated and no injunction can issue against the Respondent with regard to the 35 Claimants and as held in the case of **Sebastian Gwada Ogot & 2 Others (Suing for & on behalf of 51 Former Employees of Kenya Power) Vs. Kenya Power (Formerly Kenya Power & Lighting Co. Ltd) (2014) ekr.**

22. The Respondent also submitted that the claimant have not set out a prima facie case to warrant the orders sought. The Respondent followed due procedure in terminating the claimant at the time of filing suit, all Claimants had been issued with individual notices and copied to the union and Labour Officer. 24 Claimants out of the 36 Claimants have since left Respondent employment and upon payment of their redundancy dues. There is no allegation that Section 40 of the Employment Act was breached therefore claimant lack a case that can succeed.

23. The Respondent also submitted that there is no claim that the intended action by the Respondent is unlawful. A redundancy is one of the lawful means of terminating an employment contract. The Claimants are also subject to the terms of their individual contracts and the law. A challenge to a lawful process can only be made by setting out the alleged violations. The Respondent having complied per redundancy procedure the application by claimant must fail as held in **Churchill Ongalo Vs Kenya Kazi Security Services Ltd Cause No. 741 of 2014** and **Mughasia versus Kenya Power & Lighting Co. Ltd, HCCC 620 of 2004.**

24. The Respondent also submitted that the Claimants have not come to Court with clean hands as they have failed to disclose material facts to the court. The Respondent restructuring has affected 141 employees and not 36 employees as set out in the claim. The redundancy process commenced in May 2015 and the listed Claimants are the last such group to be issued with letters of termination. These are facts not disclosed to the Court by the claimants.

Determination

Whether the claim and application filed on 29th July 2015 are fatally defective

Whether the orders sought should issue

25. Section 22 of the Employment and Labour Relations Court Act allow parties to appear in person, through their legal representatives or through their trade union or employer association as the case may be. This is to enable an individual employee or a groups of employees or employer or employees, where they have an employment and labour relations claim to file the same before this Court without undue restrictions. Trade unions by their very nature represent employees' rights and have audience before this Court as well as employer associations. Section 22 thus provides that;

22. In any proceedings before the Court or a subordinate industrial court, a party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee specially authorized for that purpose.

26. Where it concerns individual employees, whether unionised or not, an employee or employees can file their claim or claims before the court. In the case of employees faced with the same cause of action and from one employer, Rule 9 of the Court Rules govern such a situation thus;

9. (1) *In a suit where more than one employee is instituting a claim against one employer in respect of breach of contract, the judge may permit one employee and one statement of claim to be filed by a labour officer or by one of the Claimants in the suit on behalf of all*

other claimants.

(2) The claim filed under paragraph (1) shall be proved by the labour officer or by the claimant authorized by the Court.

(3) The statement of claim shall be accompanied by a schedule of the names of other Claimants in the suit, their address and descriptions and the details of wages due to or the particulars of any other breaches and reliefs sought by each claimant.

(4) All claims referred to in paragraph (1) shall rank equally between the claimants, and shall be paid in full, unless the amount recovered from the Respondent is less than the total amount of the claims with costs.

(5) After payment of the costs, all the claims shall abate in equal proportions among the Claimants and be paid accordingly.

(6) The claimants, or any one of them, shall pay any costs given against them in a proportion as the Court shall direct. Institution of suits by several employees

27. In this case therefore, where there are several employees with similar complaints against one employer, one such claimant is allowed to file suit on behalf of all the other claimants. Such a claim can also be filed by a Labour Officer. the only conditions to the filing of such a suit is that the principal claimant must attach a schedule of the names of the other claimants, note their addresses and descriptions and set out individual claims, breach against which the claim is filed and the reliefs sought. With such a general provision, this thus enables employees who have similar causes of action against one employee to easily access justice and be able to litigate under one claimant.

28. Even where the above is not done, the Court on its own motion can consolidate suits. Rule 23 provides that;

23. Consolidation of cases.

The Court may consolidate suits if it appears that in any number of suits

(a) Some common question of fact or law arises; or

(b) it is practical and appropriate to proceed with the issues raised in the suits simultaneously.

29. Therefore the Court on its own motion can consolidate suits to ensure a practical and appropriate process of trial and direct as appropriate.

30. Before application of the Rules as above, which Rules are subsidiary to the legislation constituting the Court as noted above at section 23 of the Employment and Labour Relations Court Act, parties are bound by the provisions of such statute. Any claimant, can therefore file suit before this court. Such suit can be filed for and on behalf of other claimants. Each claimant set out must be described and the nature of their claim must be set out. Good practice demands that such Claimants should give their approval but this is not mandatory for this Court as in any event each claimant's claim must be outlined and the relief sought also set out. Such are matters that require evidence and where some claimants, during the pendency of their suit/claim in Court opt to settle the same with their employer, such is encouraged. These Rules and practices before this Court are based on the objectives of the Court with set the preamble within which matters before the Court must be addressed. This is to ensure the just, expeditious and fair administration of justice without undue delay. Therefore any rules that create clawbacks in time and procedure so as to impede access to justice must be addressed in view of the provisions under section 3 of the Employment and Labour Relations Court Act. Parties approach this Court because their livelihood in terms of employment is under threat and to require such a party first apply and seek leave of the Court to approach and file required application is a technicality that does not promote the provisions of article 159 of the constitution. See **James Omariba Nyaoga & Another versus the County Assembly of Kisii County & Others, Petition No.18 of 2015.**

31. Before application of the Rules which are subsidiary to the legislation constituting the court, parties are bound by the provisions of statute. The objectives of the Court therefore set the preamble within which matters before the Court must be addressed. This is to ensure the just, expeditious and fair administration of justice without undue delay. Therefore any rules that create clawbacks in time and procedure so as to impede access to justice must be addressed in view of the provisions under section 3 of the Employment and Labour Relations Court Act. Parties approach this Court because their livelihood in terms of employment is under threat and to require such a party first apply and seek leave of the Court to approach and file and required application is a technicality that does not promote the provisions of article 159 of the constitution.

32. I therefore find that the claim is properly filed and the 1st listed claimant, under the provisions of section 22 of the Employment and Labour Relations Court Act and Rules 9 and 23 of the Court Rules. Where some Claimants have since settled their individual claims, such will be put into account as appropriate.

33. With regard to the nature of the claim before court, the Respondent though challenging the claim as filed also lacks clarity as to the entity sued. There are contradictory averments made by Mr Ayieko-Otieno in his Replying Affidavit at paragraphs

14. *The Respondent entered into a collective bargaining agreement with the Claimant on the employees working with the US Embassy department. The term of the CBA lapsed on 31st May 2015 and negotiations on terms of renewal of the collective bargaining agreement reached a deadlock and the parties reported a dispute.*

15. *The Respondent also engaged the Union in negotiations for terms of a collective bargaining agreement for the employees working with Commercial department and both parties reached a consensus on 28 items. The parties could not agree on two items and a dispute was reported. The Union thereafter engaged in conduct that demonstrated that it had no interest in arriving at any consensus or ensuring amiable labour relations.*

34. In this context, who is the claimant? Individual employees or the union? The Respondent must be making reference to the 36 Claimants and not their union as the suit herein is filed by the Claimants in persons and not as grievants under their union. even where the claimant are unionised and such a union enjoy recognition with the respondent, the claim herein is not to be confused as having been filed by the Union as this is not the case. Where the Respondent is engaged in other suits with any trade union, such suits are to be treated separately and distinct from this one.

35. With regard to the orders sought, indeed preservative orders to stay or to stop the respondent's actions of terminating the Claimants on account of redundancy must be addressed as per the principles now set out in the case of **Giella versus Cassman Brown & Co. Ltd (1969) EA**. To determine this the Court must be certified that there is indeed a *prima facie* case with a probability of success Once this is done, the next test is to satisfy that there is a right that has been infringed and such a rights once adjudged there is a high chance of success and that damages would not be an adequate remedy if the claim ultimately succeeds. However in the event that the Court is in doubt concerning the two limbs the Court will decide the matter on a balance of convenience.

36. This Court in **Sita International Networking Computing B.V. & Another versus Transport and Allied Workers Union, Cause No.991 of 2012** made reference to the **American Cyanide case** in an application where the Claimant was seeking to stop its employees from undertaking a strike thus; e

... where an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff's legal right is made upon contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the right or the violation of it, or both is uncertain and will remain uncertain until final judgment is given in the action.

37. Redundancy has its statutory procedures. Such are set out in its definition and procedures under section 2 and 40 of the Employment Act respectively.

“redundancy” means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;

38. A redundancy must be initiated by the employer through abolition of an office, job or occupation which may lead into the loss of employment. As such, to arrive at which office, job or occupation is to be abolished, the employer must undertake an assessment, hold consultations so as to arrive at the ultimate decision as to whether it should be abolition of office, job, occupation and loss of employment. This is not a one-day event. It takes steps hence the *process of redundancy*. And as held in **Aviation and Allied Workers Union versus Kenya Airways Limited, Cause No.1616 of 2012**;

... Positions and not employees, become redundant. When the position becomes redundant, the employee can be re-deployed, which means the employee is given another job, or the employee is retrenched, meaning the employee loses the job altogether.

39. Therefore, even where the employer has the inherent right to declare a redundancy, where brought to bear, the reasons for the same must be justified. With such justification, the process of termination of affected employees must proceed but with a pre-set criteria.

40. The case here is that on 13th April 2015 the Claimants were called by the Respondent chairman and it was announced that there was going to be a restructuring with a view to reduce employees. That prior to this, the Respondent had carried out an evaluation and due to technological changes and changing business environment, there found the need to restructure and lay off some employees. The Respondent however does not state how this restructuring was communicated to the claimants, other than through the announcement made by the chairman on 13th April 2015. It is common cause that the Claimants herein, though acting in person are unionised. The requirements of section 40 are of the nature that, any intended redundancy by the respondent, notice should have issued to the union that enjoys recognition with them. To move one step forward without such due process and issue letters or notices of termination is to act contrary to mandatory provisions of the law as under section 40 of the Employment Act. Such are matters that the Court of Appeal has addressed in the case of **Thomas De La Rue (K) Limited v David Opondo Umutelema Eklr thus**

It is quite clear to us that section 40(a) and 40(b) provide for two different kinds of redundancy notifications depending on whether the employee is or is not a member of a trade union. Where the employee is a member of a union, the notification is to the union and the local labour officer at least one month before the effective redundancy date. Where the employee is not a member of the union, the notification must be in writing to the employee and the local labour officer...

41. The above position is also restated by the same Court of Appeal in **Kenya airways Limited versus Aviation & Allied Workers Union Kenya & 3 Others [2014] eklr**. the emphasis I give here is with regard to the fact that once a claimant has set out that a fundamental process/procedure in the law has not been followed by an employer in the termination of employment, then as it were, that sets in motion a prima facie case, the merits as set out in the **American Cyanamid Case**, are to be canvassed at a full hearing. To go into the merits of the case as set out in the affidavit of Mr Ayieko-Otieno would not suffice at this stage. The issues set out with regard to the reasons as to why the Respondent has to lay off employees, where justified or not, such I find to be matters that can be gone into at a full hearing to enable the Court address all matters on merit.

42. What is also apparent from the Affidavit of Mr Ayieko-Otieno is that matters considered on the employees to be issued with termination notices were that;

11. Due consideration has been given in identifying the positions to be abolished and the employees selected for redundancy. I verily believe that the criteria referred to by the Claimants is not the sole determinant for the redundancy criteria. An employee's skill, ability and reliability are equally critical. A long serving employee with a poor attendance or disciplinary record cannot have an advantage solely on account of his years of service. I verily believe that the Respondent is not in breach of the terms of the claimants' employment or the law.

43. Matters of poor work attendance or disciplinary record are not for a redundancy consideration. Such are matters set out in law as to how they should be addressed, section 35, 41, 43 and 44 of the Employment Act, but cannot form part of section 40 considerations. To do so would be to lose the essence of the redundancy or use the redundancy process as an easier way and without due process to address employment misconduct. This is find is not the purpose of redundancy as set out under section 40 of the Employment Act. Where the Claimants being unionised participated in a prohibited industrial action, such should be addressed separately and outside the considerations to go into the redundancy situation.

In this regard therefore,

- a. the Respondent is hereby restrained from terminating the employment of the Claimants herein pending the hearing of the main suit herein;**
- b. Noting the letters filed from 24 Claimants as set out in the affidavit of Mr Ayieko-Otieno, filed on 26th August 2015, these Claimants are to file their notices of withdrawal of their individual claims or file affidavits indicating their wish to settle the matter or act as appropriate.**
- c. Upon such move by the 24 noted claimants, the Memorandum of Claim shall be amend as appropriate and before taking hearing dates.**
- d. Costs shall be in the motion.**

Orders accordingly.

Delivered in open court at Nairobi and dated this 4th day of December 2015.

M. Mbaru

JUDGE

In the presence of:

Lillian Njenga: Court Assistant

.....

.....