



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

**CAUSE NO. 561 (N) OF 2009**

FRANCIS MWANGI MAINA .....1<sup>ND</sup> CLAIMANT

DOMINIC VINCENT MAMBE ONYANGO.....2<sup>ND</sup> CLAIMANT

VERSUS

THE CITY COUNCIL OF NAIROBI

THE TOWN CLERK OF .....1<sup>ST</sup> RESPONDENT

THE CITY COUNCIL OF NAIROBI

THE CITY TREASURER OF .....2<sup>ND</sup> RESPONDENT

THE CITY COUNCIL OF NAIROBI

THE LOCAL AUTHORITY PENSION .....3<sup>RD</sup> RESPONDENT

TRUST FUND [LAPTRUST].....4<sup>TH</sup> RESPONDENT

**JUDGMENT**

By a Memorandum of Claim dated 29<sup>th</sup> September 2009 and filed in court on 5<sup>th</sup> October 2009, the Claimants FRANCIS MWANGI MAINA and DOMINIC VINCENT MAMBE ONYANGO filed suit against the Respondents the City Council of Nairobi, the Town Clerk of the City Council of Nairobi, the City Treasurer of the City Council of Nairobi and the Local Authorities Pensions Trust Fund (LAPTRUST).

The Claimants filed the claim in their capacity as Chairman and Treasurer of Nairobi City Council Retirees Welfare Association whose members named at Appendix FMM1 authorized them to file the claim through the letter of Authority. The Retirees Welfare Association is registered under the Societies Act.

The claim against the Respondents is that they defaulted to remit gratuity and terminal benefits and are liable to pay the same together with penalty as stipulated under Section 16A and 19A of the Pensions (Amendment) Act No. 6 of 2003.

The Claimants filed an Amended Memorandum of Claim dated 30th November 2009 and filed in court on the same day. The purpose of the Amendment was to name the claimants so that their claim is direct as opposed to the original claim which was filed by their representatives. In the Amended Claim the Claimants, seek payment of Kshs. 197,983,807.43 made up as follows:-

1. Uniform Allowance

plus Bar soap - Kshs.26,071,432.50

2. Salary Arrears from 30<sup>th</sup> September, 2009

and CBA. - Kshs.55,051,902.00

3. House Allowance from 30<sup>th</sup> September, 2009 - Kshs.28,664,000.00

4. Leave Allowance - Kshs. 1,732,514.75

5. Medallion Long Service - Kshs. 1,103,917.80

6. Provident Fund - Kshs. 10,692,328.18

7. Provident Fund Arrears from 1<sup>st</sup> September

2005 – 31<sup>st</sup> December 2005 - Kshs. 406,086.50

8. Total overtime, Total Leave Day off Duty,

Terminal Leave, P/V, Special Duty Allowance - Kshs. 506,731.70

9. Total accrued compound interests at 15%

On Salary, House allowance, Medallion,

Leave allowance and Provident Fund - Kshs. 73,754,894.00

**Total**

**Kshs.197,983,807.43**

The Claimants seek the following orders:-

- a. A declaration that the Decision by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to remove the Applicants and Retirees from the payroll is illegal and contrary to Government Police as enacted and enshrined under the provisions of Section 16A of the Pensions Act [Chapter 189 of the Laws of Kenya] as amended under Section 2 of the Pensions [Amendment] Act Number 6 of 2003 and the collective Bargaining Agreement dated the 24<sup>th</sup> day of November, 2005.
- b. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents have acted contrary to Section 19A of the Pensions Act [Chapter 189 of the Laws of Kenya] by failing to remit monies payable to the Defendants of each Deceased.
- c. An Order to prohibit or restrain the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents from withholding the Claimants/retirees monthly Salaries until their gratuity and terminal benefits are paid in full.
- d. An award of Kshs. 197,983,807.43 to be remitted, jointly and severally, by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents:-
- e. Costs of this claim/complaint.
- f. Interest on items (c) and (d) above at Commercial bank rates.

The Claimants case is that they are retirees and deceased employees of the 1<sup>st</sup> Respondent. During employment they were members of the retirement benefits schemes of the Respondents or became entitled to retirement gratuities as provided in the law that governed their terms and conditions of employment being the Pensions Act, the Public Service Commission (Local Authority Officers)

Regulations under the Service Commission Act, the Local Authority Provident Trust Fund Act (Cap 272).

Some of the Claimants retired upon attaining the mandatory retirement age of 55 while others died in the service of the 1<sup>st</sup> Respondent. Upon retirement or death they expected payment of gratuity/terminal benefits, medallion fund, cash payment in lieu of uniform, leave allowance, accrued basic salary arrears and house allowance. They allege that the 1<sup>st</sup> Respondent through the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who were it's accounting officers failed to remit the monies. That as a result the Claimants were entitled to be retained in employment until the date of payment of pension/gratuities. They therefore claim in addition to pension and terminal benefits, the salary and allowances they would have received from the date of retirement to the date of payment or interest as provided under Section 16A and 19A of the Pensions (Amendment) Act No. 6 of 2003 and the Collective Bargaining Agreement dated 24<sup>th</sup> November 2005. They further seek costs and interest at commercial bank rates.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in their replying affidavit sworn by Daniel Kibet on 10<sup>th</sup> December 2009 and in their defence aver that all the Claimants have been paid and received their entire terminal benefits and have no further claim against them. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents further aver that the issue of uniform allowances has been overtaken by clause 25 of the collective bargaining agreement (CBA) signed 24<sup>th</sup> November 2005 between the Local Government Workers Union and the National Joint Negotiating Council and Association of Local Government Employers incorporating all local authorities. A copy of the CBA is annexed as "FMM4" to the Claimant's Memorandum of Claim.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents further aver that all Claimants who retired before 1<sup>st</sup> January 2004 are not covered by Section 16A of the Pensions Act, and further that the Local Authorities Provident fund Act has no nexus into Section 16A of the Pensions Act. It is further avered for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that since there is a conflict on the application of the Provident Fund Act and the Local Authorities Provident Fund Act it is the later which is applicable to the Claimants having been enacted on 5<sup>th</sup> July 1960 as opposed to the former which was enacted in April 1951. It is further submitted that Section 112 (4) and (5) of the old Kenya Constitution (now repealed) does not apply to the Local Authorities Provident Fund Act.

The said Respondents submit that the Claimants' case is not properly before the court. That some of the claims are made under the Local Authorities Provident Fund Act which provides for appeals against decisions relating to provident fund to be made first to the local authority concerned and if the authority fails to make a decision, then to the Minister whose decision is final. That other claims are made under the Local Authorities Pensions Trust Rules 2007 which provides for disputes between the employer or sponsor, the Board, the members or their dependants or personal representatives to be referred to a single arbitrator to be appointed by the Authority.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have also submitted that Medallion payments were declared illegal in a report of the Extra-Ordinary Inspection of City Council of Nairobi while the Pensions Act does not cover claims for house allowance, leave allowance or any other emolument whatsoever.

For the 4<sup>th</sup> Respondent it is submitted that it's members among the Claimants have been paid lump sum pension and continue to receive their monthly pensions. That those whose payments may have been delayed were given advance payment to enable them attend to their matters while the proper payments were being calculated. The 4<sup>th</sup> Respondent maintains that it has been wrongly sued in these proceedings.

I have considered the voluminous pleadings and submissions of the claimants together with the annexures thereto, the submissions by the Respondents, the legislation and the authorities that have been cited by the parties.

In my opinion the issues for determination are the following:-

1. Whether the Claimants are properly before this court.
2. The legislation applicable to the retirement of the claimants.
3. Whether the Respondents were in default of the provisions of the relevant legislation.
4. Whether the Claimants are entitled to their prayers.

### **1. Whether the Claimants are properly before this court.**

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents submitted that this case is not properly before this court as both the Local Authorities Pensions Trust Rules 2007 and the Local Authorities Provident Fund Act provide for final resolution of disputes without involving the courts.

Rule 130 of the Local Authorities Pension Trust Rules, 2007 provides as follows:-

1. *Save where these Rules provides otherwise, the decision of the sponsors or the Board shall be final and conclusive:*

*Provided that, if any dispute, difference or question shall arise between the employer or sponsor, the Board, the members, the member's defendants or other persons or their personal representatives or any of them, respectively, touching on the construction, meaning or effect of these Rules, or any clause or thing therein contained, or the rights, liabilities of the said parties respectively or nay of them under these Rules, or otherwise however in relation to the Trust, then every such dispute or question shall be referred to arbitration by a single arbitrator to be appointed by or facilitated by the Authority in a accordance with the regulations made under the Act or the Arbitration Act at the instance of the party complaining.*

2. *The decision of the arbitrator shall be binding on all the parties in respect of the issues in dispute.*
3. *An appeal from the decision of the arbitrator shall lie to the High Court.*

Section 23 of the Local Authorities Provident Fund Act provides as follows:-

#### *Decision of questions, and appeals to the Minister*

23. *Any question concerning the rights or liabilities of an employee of a local authority, or of a person claiming to be treated as such an employee, under any of the provisions of this Act or of any regulations made under this Act, shall be decided in the first instance by the authority concerned, and, if the employee or person aforesaid is dissatisfied with any such decision or with the authority's failure to come to a decision, shall be determined by the Minister, and the Minister's determination shall be final.*

As pointed out by Mr. Jaoko for the Claimants, there was no decision by the 1<sup>st</sup> Respondent which was capable of being appealed to the Minister. As relates to the Local Authorities Pensions Trust Rules, 2007, the Trade Disputes Act which was the relevant law for disputes in this court at the time that the Rules were passed specifically provided that the Arbitration Act was not applicable to cases filed in the Industrial Court. In addition, the Respondents did not invoke the Act as provided therein.

Secondly, the claim by the Claimants is not for retirement benefits alone but for terminal benefits. I am also of opinion that this court as currently constituted has power to review the administrative decisions by the Minister. Finally, the Respondents ought to have raised the issue of jurisdiction as a preliminary issue to be dealt with before the hearing which they did not.

For these reasons I find that this case is properly filed in this court.

### **2. The legislation Applicable to this case.**

The Legislation that have been referred to by the parties are the follows:-

1. The Constitution of Kenya (now repealed).
2. The Pensions Act (Cap 189).
3. Service Commissions Act (Cap 185).
4. Local government Act (Cap 265). (Repealed).
5. Arbitration Act.
6. Local Authorities Provident Fund Act (Cap 272).
7. The Provident Fund Act (Cap 191).
8. The employment Act.
9. The Labour Institutions Act.
10. The Societies Act.

I have also been referred to the following authorities.

1. HC.MISC. APP. NO. 246 of 2008.
2. HC.MISC. APP. NO. 234 OF 2004
3. VOI JUA KALI ASSOCIATION V SANGE & OTHERS [2002] 2 KLR 474
4. SIMU VENDORS ASSOCIATION V THE TOWN CLERK, CITY COUNCIL OF NAIROBI & ANOTHER [2005]Eklr
5. LAW SOCIETY OF KENYA V COMMISSIONER OF LAND & 2 OTHERS [2005]Eklr.
6. SONKO & OTHERS V HALUNA & ANOTHER [1971] EA 443.

I have read through all the legislation referred to by the parties. Some of the legislation I was referred for example Local Authorities

Pensions Act are non-existent.

The Claimant alleges that the Pensions Act is applicable to the Claimants and the claim for retention of Claimants in service up to the date of payment of full pension together with interest at compounded bank rates is based on Section 16A and 19A of the Pensions Act.

The Claimants advocate argued that the Claimants retired under the Public Service Commission (Local Authority Officers) Regulations which are subsidiary legislation under the Service Commission Act (Cap 185) . That the Claimants are therefore Public Officers as defined under Section 2 of the Constitution and their service was “Pensionable Service” under the Pensions Act which includes local authority and that “pensionable Office” includes the offices occupied by the Claimants. It is submitted further for the Claimants that the Local Government (Local Authorities Pensions Trust) Rules, 2007 which is applicable to the Claimants defines “former Fund” as the Kenya Local Government Officers Superannuation Fund established under the Kenya Local Government Officers’ Superannuation Fund Rules 1963.

On this basis Mr. Jaoko submitted that Section 16A and 19A of the Pensions Act are applicable to the Claimants .

The two sections read as follows:-

Section 16A

**“A person to whom a pension or other allowance is payable under this Act shall be entitled to be retained in the service until the payment in full of the gratuity payable to him consequent upon the exercise by him of his option to receive such gratuity under the provisions of this Act.”**

Section 19A

**“A dependant’s pension payable under the foregoing section shall be paid to the defendants within a period of ninety (90) days after the death of the Officer concerned, failing which interest shall accrue thereon at bank rates until payment is made in full.”**

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the other hand submit that the Pensions Act and Section 112 of the Constitution (repealed) do not apply to the Claimants. That the Pensions Act applies to Government employees and that the Claimants are covered by the Local Authorities Provident Fund Act (Cap 272) and the Local Authorities Pensions Trust Rules, 2007.

The 4<sup>th</sup> Respondent further submits that the Claimants are covered by the Local Authorities Provident Fund Act which creates the Local Authorities Provident Fund (LAPFUND) an internal organ of the City Council of Nairobi and the Local Authorities Pensions Trust Rules, 2007 (LAPTRUST) which is the 4<sup>th</sup> Respondent.

That the 4<sup>th</sup> Respondent receives contributions of registered members which is paid to members upon retirement. That the 1<sup>st</sup> Respondent was not remitting contributions in time thus frustrating the efforts of the 4<sup>th</sup> Respondent to pay retirees promptly. That the retirees were paid within 3 months of receiving contributions from the 1<sup>st</sup> Respondent which were made after the claimants had retired. That the 4<sup>th</sup> Respondent cushioned the retirees from suffering before payment of pension by paying them a portion of the pension in advance.

Having considered the submissions by parties, the authorities and the law, I find that the Claimants were covered under 2 schemes, the Local Authorities Provident Fund Act (Cap 272) which creates the LAPFUND and the Local Authorities Pensions Trust Rules 2007 made under the Kenya (Local Government) (Pensions) Regulations 1963. The Rules are made under the Retirement Benefits Act, 1997 and create the LAPTRUST.

For these reasons Section 16A and 19A of the Pensions Act are not applicable to the Claimants. The Pensions Act is applicable to Civil Servants whose pension is drawn from the Consolidated Fund while the pensions and provident fund applicable to the Claimants draw funds from contributions of the claimants and the 1<sup>st</sup> Respondent as provided for in Section 8 and 9 of the Local Authorities Provident Fund Act (the Act) and Rule 57 and 58 of the Local Authorities Pensions Trust Rules, 2007 (the Rules).

The provisions of Section 8 and 9 the Act and Rules 57 and 58 of the Rules are reproduced here below: -

#### Section 57

- 1. Except as may otherwise be provided by these Rules, a member employed by a sponsor shall, so long as he remains a member in the service of that sponsor, pay into the Trust, monthly by way of deduction from his salary, an amount equal to twelve per cent (12%) of his salary, or any higher or lower amount as shall be prescribed by the Board on the advise of an actuary from time to time.*
- 2. The sponsor shall make its own contribution on behalf of the member of the Trust who is its employee at the rate of fifteen per cent (15%) of a member’s salary, or any higher or lower amount as may be prescribed by the Board on the advise of an actuary from time to time.*

#### Section 58

- 1. All contributions to the Trust shall be deemed to accrue daily and payment of such contributions shall be made before the tenth day of every month or before any other day which may be notified in writing and approved by the Authority.*
- 2. A sponsor shall, on the last day of each month, and in respect of each member, pay into the Trust the amount deducted from the member’s salary together with the amount which the employer is*

- required to contribute under these Rules.*
3. *A member who is remunerated by salary calculated annually shall contribute each month on one-twelfth (1/12<sup>th</sup>) of the annual salary payable to the member at the date of payment to the Trust.*
  4. *A member who is remunerated at a monthly rate of pay shall contribute on his full monthly salary.*
  5. *Every sponsor shall deduct and remit contributions for and on behalf of the members it has sponsored, and this liability will subsist for so long as a member is employed by such sponsor.*

**3. Whether the Respondents were in default of the relevant legislation.**

Section 8 of the Local Authorities Provident Fund Act provides that

every Local Authority shall contribute to the fund monthly. Rule 57 and 58 of the Local Authority Pensions Trust Rules 2007 also provide for contributions to be made into the fund monthly.

Both the Claimants and the 4<sup>th</sup> Respondent submitted that the 1<sup>st</sup> Respondent made remittances to the Funds long after the due dates. This is not denied by the 1<sup>st</sup> Respondent. Indeed the contributions for the Claimants were remitted in November 2009 and April 2010 while this claim was pending in court.

For these reasons I find that the 1<sup>st</sup> Respondent was in default of the relevant law by failing to remit contributions to the Pension and Provident funds as and when they were due.

**4. Whether the Claimants are entitled to their prayers.**

The Claimants seek the following payments.

- i. Uniform and bar soap allowance
- ii. Salary arrears from 30<sup>th</sup> September 2009 and CBA
- iii. House allowance from 30<sup>th</sup> September 2009
- iv. Leave allowance
- v. Medallion long service
- vi. Provident fund.
- vii. Provident fund Arrears form 1<sup>st</sup> September to 31st December 2005.
- viii. Overtime, leave, off duty, terminal leave, special duty allowance
- ix. Compounded interest at 15% on Salary, house allowance, medallion, leave allowance and Provident Fund.

**i. Uniform and bar soap allowance.**

The uniform and bar soap allowance claims are made on the basis of letters which were written on behalf of the Claimant's by their respective supervisors copies of which have been attached to the Memorandum of Claim as exhibit FMM 8. The memos are supported by minutes attached exhibit as FMM 7 of the Memorandum of Claim. The 1<sup>st</sup> Respondent has not denied the authenticity of the memos and the minutes or that these payments were due to but were not paid to the Claimants .

I find that the Claimants are entitled to the payments for uniforms and bar soap up to the date on which each one of them was retired. For the deceased employees, the payments are due up to the end of the month in which they died.

**ii. Salary arrears from 30<sup>th</sup> September 2009 and CBA.**

Mr. Jaoko submitted that the sums claimed under this head are in respect of payments due to the Claimants under Section 16A and 19A of the Pensions Act. As I have already ruled above, the Pensions Act is not applicable to the Claimants. The relevant legislation as I have stated above, is the Local

Authorities Provident Fund Act and the Local Authorities Pensions Trust Rules.

Under Section 10 (c ) of the Local Authorities Provident Fund Act, contributions are deemed to be credited to the accounts of the members of the fund on the last day of each month in respect of which the deduction is made. The contributions so credited are deemed to attract interest at a minimum rate of 2.5 % per annum. This is credited to the account of each member on 30th June of each year or on the date of cessation of membership (such as upon death or retirement of the member).

Under the Local Authorities Pensions Trust Rules, interest on contributions is payable to the Trust Fund at the rate of 1.25%. However the benefits of members is not affected by late remittance of contributions as the pension is based on a predetermined factor of 1/480<sup>th</sup> for each completed month of service. It is a defined benefit and is not affected by late remittances. The formular for calculation of pension is provided for under rule 89 as follows:-

Rule 89

*A member who retires from the service of a sponsor under these Rules on normal retirement age shall receive a gross pension equal to his average salary for the last three years, multiplied by his contributory service in months multiplied by 1/480, or any other pension factor as may be advised by an actuary from time to time.*

From the foregoing, the Claimants who are members of the Local Authorities Pensions Trust (LAPTRUST) were not affected by the delay in remittance of their contributions and are therefore not entitled to any compensation in respect thereof.

However, the members of the LAPFUND whose retirement benefits are based on contributions made by themselves and the 1<sup>st</sup> Respondent (sponsor) together with interest thereon were adversely affected as no interest was earned by their contributions due to non-remittance by the 1<sup>st</sup> Respondent. Since the law provides for a minimum interest of 2.5% per annum, they are entitled to such interest to be compounded annually.

For the foregoing reasons I order as follows:-

- a. Members of the LAPTRUST who are in receipt of pension are not entitled to any payment as claimed under this head or otherwise and their claim under this head is therefore dismissed.
- b. Members of LAPFUND who were paid under the Provident Fund are entitled to interest at 2.5% on the balance standing on each of their accounts as at 30th June every year from the date of joining the scheme to the date of payment in full.

For the purpose of clarity, the balance standing on the account is deemed to be the amount which was supposed to have been deposited in the account based on Section 12 (a) or (b) (as the case may be) of the Local Authorities Provident Fund Act

**iii. House allowance from 30<sup>th</sup> September 2009.**

This item is based on Section 16A of the Pensions Act. Since the Act is not applicable to the Claimants, the prayer cannot stand. The same is hereby dismissed.

**iv. Leave Allowance.**

This item is also based on Section 16A of the Pensions Act which is not applicable to the claimants.

The prayer is therefore dismissed.

#### **v. Medallion Long Service**

The circumstances under which payment of medallion or long service was payable to the Claimants has not been explained by the claimants satisfactorily. It is not provided for in their terms and conditions of service. The 1<sup>st</sup> respondent does not however deny that the same was paid to employees who retired prior to the retirement of the claimants. The 1<sup>st</sup> Respondents admitted that the medallion allowance was paid from January, 2001. It however states that there was a recommendation that the same be stopped with immediate effect by the Final Report of the Extra-ordinary Inspection of the City Council of Nairobi of July, 2004. As pointed out by the claimants there is no evidence that this report was ever adopted in a full council meeting as required under standing order 4 of the Second Schedule to the Local Government Act (now repealed). The Respondent has further not denied that it paid out medallion long service as late as 5<sup>th</sup> March, 2010 to employees who retired in 2007 and 2008, long after the retirement of the Claimants herein. Denying the Claimants the medallion long service would therefore be discriminatory as their counterparts who retired before and after them were paid the same.

For the foregoing reasons I find that the Claimants who qualified for medallion long service are entitled to payment of the same as was the practice of the 1<sup>st</sup> Respondent and order the 1<sup>st</sup> Respondent to pay them accordingly.

#### **vi) Provident Fund and Provident Fund Arrears**

In their submissions dated 14<sup>th</sup> May, 2010 and filed in court on the same day the Claimants admitted that the 1<sup>st</sup> Respondent had paid the provident fund as well as the arrears as claimed. I therefore make no further orders under this head except the order for calculation of interest already made herein above.

#### **vi. Overtime, leave, off-duty, special duty allowance**

The claims made under this head are based on the provisions of Section 16A of the Pensions Act which I have already stated is not applicable to the claimants.

For this reason the claim under this head is accordingly not due and is hereby dismissed.

#### **viii) Interest on contributions**

The claim for interest is based on the provisions of the Provident Fund Act. As I already ruled above the Act is not applicable to the claimants who were covered by the Local Authorities Provident Fund Act and the Local Authorities Pensions Trust Rules, 2007.

The claim for interest at 15% is therefore dismissed save for interest calculation on provident fund contributions as already made herein above.

#### **ix) Liability of Respondents**

The claim herein is against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in the first instance and against the 4<sup>th</sup> respondents.

I find that the 4<sup>th</sup> Respondents is not liable as the only claim against it is in respect of Section 16A and 19A of the Pensions Act which are not applicable to either the 4<sup>th</sup> Respondent or the Claimants and secondly, the benefits of the Claimants who are their members were not affected by the late remittance or their contributions by the 1<sup>st</sup> Respondent.

The claim against the 4<sup>th</sup> Respondent is therefore dismissed with no order as to costs.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were sued in their capacity as accounting officers of the 1<sup>st</sup> Respondent.

There is therefore no direct liability of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

The Court finds that the liability for payment of the claims herein fall on the 1<sup>st</sup> Respondent but such liability will accrue to the office of the Government of the County of Nairobi as the successor of the City Council of Nairobi, the 1<sup>st</sup> Respondent herein.

**x) Costs and Interest**

The claim by the Claimants is allowed with costs to the extent stated in this judgment with interest at court rates from date of judgment.

The advocates of the claimants and 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are directed to calculate the actual amounts due to each claimant and file a report containing the calculations within 30 days. The case will be mentioned on 15<sup>th</sup> June, 2014 for adoption of report and final judgment or for further directions. The parties may move the court earlier should they finalise the computations and report before the 30 days.

Dated and delivered in Nairobi this 5<sup>th</sup> day of May, 2014.

Read in open court this 5<sup>th</sup> day of May, 2014.

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

Read in the presence of:

Jaoko for Claimants

Ms. Cheruiyot for 4<sup>th</sup> for Respondent

No appearance for 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> Respondent