IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 449 OF 2012

WILLIAM NEMBE OBORA AND 73 OTHERS ……CLAIMANTS

VERSUS

RIFT VALLEY RAILWAYS (K) LIMITED ……..….. RESPONDENTS

[Consolidated with Cause No. 956 of 2012, MICHAEL OKORE ONDIEGE versus RIFT VALLEY RAILWAYS (K) LIMITED]

JUDGEMENT

BACKGROUND

1. The claim herein was consolidated with Cause No. 956 of 2012, ***Michael Okore Ondiege versus Rift Valley Railways (K) Limited.*** From the consolidation, there are all **75 claimants** herein. The claimants are all former employees of the respondent, Rift Valley Railways (K) Limited and the suit relate to;

a. Unlawful/unfair termination
b. Unpaid terminal dues
c. Breach of express and implied terms of employment contracts
d. Damages for loss of employment and future earnings.

2. From the large number of claimants, and the nature of the claims herein and the respondent defence and counter-claim, both parties filed a long list of pleadings as outlined herein;

On 26th March 2012, the claimant filed the Statement of Claim in Cause No. 499 of 2012;

On 15th May 2012, the respondent filed the statement of defence and Counter-claim in Cause No 499 of 2012;

On 20th June 2012, the claimants filed a reply to the Defence and Counter-claim in Cause No 499 of 2012;

On 6th June 2012, Cause No.456 of 2012 was filed;

On 16th October 2012 the respondent filed reply to Cause No. 456 of 2012;

On 26th November 2012 the claimants filed their witness statement – William Obora;

On 10th January 2013 the respondent filed their Supplementary List and bundle of documents;

On 11th January the respondent filed their witness statement – Elizabeth Odhiambo;

On 16th January 2013 the respondent filed an Amended Statement of Defence and Counter-Claim from the consolidated claims;

On 25th January 2013, the claimants filed their Amended reply to the Defence and Counter-claim;

On 30th January 2013 the respondents filed further list of documents;

On 30th October 2013 the respondent filed their witness statement – Alban Mwenda;

3. From the large number of claimants in both suit and by the court application of the Provisions of the industrial Court (Procedure) Rules 9 The suits were heard through the evidence of one claimant, William Nembe Obora. At the hearing William Obora testified for and on behalf of all the claimants while the respondent called Anthony Peter Maina, Samuel Nyachio, Ali Nzoka Kitemi, James Siele, and Alban Mwenda. At the close of the hearing both parties filed their written submissions darted 24th march 2014 and 5th May 2014 for the claimant and the respondent respectively. The parties were in court on 4th June 2014 to highlight their submissions.

Claimant's case

4. On 1st November 2006 the Kenya Railways Corporation transferred its services through a concession agreement to the respondent. By standard contracts of employment, all dated 25th October 2006; the respondent employed the claimants up to 55 years and placed in various capacities and under different remuneration packages. In 2007 the claimants complained about their salaries and grading and the respondent issued a circular indicating that this was to be addressed. In 2008 all employees of the respondent went on strike from 1st to 14th July 2008 demanding a review of salaries. The employees appointed 6 representatives who outlined their grievances which included staff grading, salary harmonisation, allowances and consolidation of salaries. The respondent promised to address these grievances but later failed to do so but in later 2008 the respondent issued a memo to all employees that there was going to be a restructuring and on 25th August 2008 through a memo, the respondent revised the terms of all employment contracts and included annual salary increment at 8% to take effect from 1st July 2008. The claimants were placed on probation and were later confirmed on 31st July 2009, the retirement Age was revised from 55 years to 60 years.

5. In 2011 the respondent issued a memo to all its employees that they had recognised the Railways and Allied Workers Union (Union) on 23rd June 2011. The Union wrote to its members indicating that the respondent was not being open with them.

6. On 21st June 2011 the respondent through a memo invited all employees who wished to take early retirement, the Voluntary Early Retirement Programme (VERP) to submit their names and in the same memo indicated that there would be a retrenchment programme to run concurrently with the VERP which was taken by the claimants to mean that despite the VERP one would be subject to retrenchment. Through the Union the claimants sought more engagement with the respondent to clearly elaborate on the parallel issues of VERP and retrenchment as the respondent was non-committal. Due to the ambiguity of the parallel processes, that of VERP and retrenchment and failure by the respondent to clearly articulate the same to the employees or through the Union and with fear of retrenchment, the claimants together with other employees opted to proceed to the respondent head office on 30th June 2011 seeking clarification as to the criteria the said retrenchment was to be effected. Through the Human Resource Officer and the Union, the respondent addressed all employees including the claimants and adviced them to return to work as their grievances and queries in regard to the intended retrenchment programme would

be addressed and there was a memo issued to this effect.

7. Following this meeting between the respondent and its employees, the evening trains were cancelled and when the claimants went to their work places they found the trains cancelled for no apparent reason but the cargo trains were operational. The claimants remained at their work stations on 30th July, 1st to 4th July 2011 as they awaited action by the respondent as indicate don 30th June 2011 following their meeting.

8. On 4th July 2011 the claimants were served with summary dismissal notices for the stated reasons that they engaged in unlawful sit-it, declined to resume duty and disobeying lawful orders to return to work and absenteeism from their work station. That due to the absenteeism, the respondent had been forced to cancel the commuter trains and incurred huge losses. That this summary dismissal was in breach of implied terms of the existing employment contracts and a breach of the agreement of 30th June 2011 when the claimants were asked by the respondent to resume work as their grievances were being addressed only to issue summary dismissal, the dismissal was without notice or hearing and the appeals mechanism was mechanical and did not follow the Code of Conduct or the law and the dismissal was without regard that the respondent business was a monopoly and the claimants could not get any employment anywhere else as there was no market for their skills.

9. On 6th July 2011, after the summary dismissal of the claimant, the respondent issued a memo indicating how they were to address the grievances that had been raised by all the employees when they already knew that the claimants had been dismissed on 4th July 2011. On 27th July 2011, the respondent put an appeals committee where the claimants were invited to make representations on their dismissals which appeals process was tainted and lacked principles no natural justice as it was instituted after the summary dismissal and not before. The claimants were not given a chance to be heard or given representations contrary to section 42(2) of the employment Act.

10. After the appeals were heard, the respondent refused to reinstate the claimants arguing that the summary dismissals were justified. That this process of appeal was an attempt by the respondents to regularise the illegal summary dismissal and meant to address the respondent's intention of retrenchment and thus amounted to unfair termination of the claimants. Before the dismissal the claimant were never invited to a hearing; the dismissals were unprocedural, the claimants had resumed work and the memo of 6th July 2011 addressing the claimants grievances was issued when they had already been dismissed and on 30th June 2011 when the respondent promised the claimants that their grievances would be addressed and thus resumed work, the respondent knew all along that they need time to summarily dismiss them.

11. After the Appeals process, a Conciliator was appointed by the Minister but was unable to resolve the dispute that following the Union and the respondent filing a Memorandum of Disagreement. The claimants were represented by their Union and after the conciliation process failed they realised their union was not keen to protect their interests hence they filed their claim in court.

12. The termination was in frustration of the employment contract that were to last until each claimant was 60 years hence a premature breach and termination which was against the legitimate expectation of gainful employment until the mandatory retirement age envisaged under the employment contract of employment for each claimant. from the nature of their employment and training, it is difficult for the claimant to secure any new employment as there is a monopoly by the respondent consequently, the unlawful action of termination disadvantage them in the employment market.

13. In the respondent human resource manual the same outline the procedure to be taken when an employee is absent from work or is insubordinate. There is provision for verbal warning and no pay and on second offence, written warning n no pay and on third offence, a final written warning and no pay and subsequently upon the fourth offence, a dismissal. In cases of insubordination, there is a written warning and on second offence, a dismissal. Despite these elaborate disciplinary procedures of the respondents, the same were not followed with regard to the claimants before their summary dismissal.

14. The claimants are seeking;

a. *A declaration that the summary dismissal of all the claimants by the respondent was unfair and unlawful.*
b. *A declaration that there was breach of the express terms and conditions of the contracts of employment entered into on the 25th October 2006 and subsequent amendments thereto.*
c. *A declaration that there was a beach of an implied term of trust and confidence between the respondent and the claimants thus denying the claimants any prospects of future employment in the same industry due to the nature of their employment*
d. *General damages for unlawful and unfair dismissal*
e. *Damages for loss of future earning and for breach of implied terms of the employment contracts, full salary and other emoluments from 4th July 2011 to when the employment contract were to terminate upon the attainment of 60 years of age but for the unfair dismissal, inclusive of 8% annual increment aggregating to kshs.1,000,788,987.87.*
f. *Costs of the claim.*
g. *Interest on (d) and (e) above at court rates from the date of filing until payment in full.*
h. *Any other relief this honourable court may deem fit to grant in the circumstances.*

15. In evidence, the claimants called William Nembe Obora as their sole witness. He gave his sworn evidence that his evidence was with regard to the claims lodged by the 74 claimants inclusive of Michael Odienge Okore in Cause No. 956 of 2012, the claimant therein against the respondent. The witness was employed an s Carriage Artisan and worked with the respondent for 5 years. All the claimants were employed by the respondents and after the Concession agreement between KRC and the respondent, on 26th October 2006 they were all issued with letters of appointment, placed on probation for 6 months and later confirmed from 1st may 2007. The employment was permanent until 60 one was years old. The witness was earning kshs.23, 000.00 per month and the initial contract was until he was 55 years but the respondent issued another memo increasing the age of retirement to 60 years. To the letters of employment, the respondent also had the human resource manual and the code of conduct.

16. There was a problem of grading of staff and when this was realised with the respondent, there was an 8% salary increase but it was not effected. The claimants outline their unpaid dues that should have been paid factoring the 8% increase from 25th August 2008 until retirement at 60 years all amounting to kshs.1, 000,788,987.87.

17. On 21st June 2011 there was a memo issued to all employees by the respondent on VERP and retrenchment. In the concession agreement, this had been noted and there was a package but this was not outlined in the memo. The employee went to seek clarification from the human resource officer Mr Alban Mwenda. This involved all the employees of the respondent in Nairobi but the claimants are all 75. The employees all matched to the headquarters and were addressed by respondent in a meeting that was consultative that was done through questions and answers especially the package of retrenchment which was outlined verbally and was to be done in writing clarifying the process.

18. Before this meeting the claimants had sent their Union to seek clarification but the union stated that they were unable to find a solution. The respondent was not willing to negotiate on the issue. The meeting ended at 2.00 pm and all the employees returned to work. Every morning the employees fill into a log which they did on this date as well. Normal work resumed after 2.00 pm. On 4th July 2011 when the claimants reported to work, they found their letters of dismissal. Those dismissed were to hand over all the respondent property and do clearance.

19. The claimants lodged their appeals after the dismissal which appeals were not successful. The dismissal was based on absconding duty which was not correct as all the claimant reported back to work on 30th June 2011 and there is a work long to confirm this. Even in a case of being absent from work the human resource manual has the set procedure that was not followed in this case.

20. After the appeals were rejected, the claimants sought assistance from the Union which reported a

dispute to the Minister and a Conciliator was appointed. There was no agreement. The claimants decided to act separate from the Union and filed their claim through their advocates. Upon dismissal the claimants were only paid for overtime; 4 days, June salary but no damages. The 74 claimants have not been able to get new jobs as they were trained to work on trains, the respondent is the only company that has the monopoly and they cannot get new employment anywhere else with the skills they have. The congestion that the respondent made losses on 30th June 2011 is not true as all the claimants resumed work at 2.00pm after the meeting with the respondent and commuter trains depart from Nairobi at 5.30 pm and the inspection procedure is done 30 minutes in advance which had already been done. The trains commence work from 6.30am and once at the yard all inspections, repairs and done and rhea same reprocess of checks is released 30 minutes in the afternoon in advance to departure. That there cannot have been a loss of 34 million Kenya Shillings as commuter trains charge Khss.50.00 as the highest fare and the number of any stranded commuter could only have been 30,000 and with the highest fare, this amounted to kshs.1, 500,000.00 the claimants are not responsible for the losses as the commuter trains were cancelled without justification. The claimants were all at work and were shocked to hear that the evening trains for 30th June 2011 had been cancelled by the respondents.

21. The respondents witness states from Elizabeth Odhiambo are not correct as she was not the human resource officer at the time the claimants were terminated. Anthony Macharia was the Foreman of the witness section and not true that on 30th June 2011 the staff in his section came back at 5.00 pm to sign off and then left without working. That the trains are run by the drivers and the tickets examiners and train guards are responsible people for the commuter trains. Any artisan work is done well in advance and to state that the trains were cancelled due to the fault of all the claimants is erroneous. Samuel Nyachiro was also dismissed together with the claimants but was recalled in circumstances the claimants cannot understand. Kitemi was in the same department as the witness but he was not at work on 30th June 2011 so as to given evidence as to what transpired on that day with regard to matters at hand.

22. After the claimants were dismissed on 30th June 2011, the respondent issued a memo on 6th July 2011 giving feedback to the issues that had been raised and causing the meeting of 30th June 2011. This was way after the claimants had been dismissed. The dismissal was therefore meant to address the retrenchment in an easier way without paying the claimants their dues and this has caused torture, inhuman and degrading condition to the claimants who have been unable to secure any other employment since they left the respondent.

23. Based on the letters of appointment, the termination was unfair and the claimants should be compensated. There was breach of contract and damages should be paid. There are lost future earning the the respondent should be made to pay together with costs and interest.

24. In cross-examination the witness confirmed that the letter of appointment provided that once could be dismissed for gross misconduct with summary dismissal. The terms of the contract were changed vide memo of 31st July 2009 when the retirement age was increased to 60 years. The VERP was a voluntary process but with it there was to be a retrenchment. The retrenchment package was clarified on 6th July 2011 to include payment for;

- Severance pay
- Golden handshake at kshs.120,000.00
- Pension lump sum
- One month salary
- Transport allowance of Kshs.10,000.00

25. The concession agreement has this outlined indicating that this had already been negotiated but the respondent failed to bring this to the attention of the claimants in their memo of 21st June 2011.That the union officials were at the meeting with the respondent on the 29th June 2011 and were to proceed with another meeting on 30th June 2011. The purpose of the meeting was on VERP and retrenchment. The role of the Union was to represent the employees/members interest as they are officials elected by the

employees and their members. That on 30th June 2011, there was a match to the headquarters by all employees; those who refused to join were forced out of their work places to join in the match. There was however no fracas and if there was any or violence there is a police station adjacent to the respondent offices that could have been called to intervene which was not the case here. When the summary dismissal letters were issued to the claimants there was claim that there was an illegal strike which was not the case.

26. the claimants lodged their appeal even though this was not required of them from the letters of dismissal out of the need to have a hearing. This also followed a pattern where all the Union representatives in Nairobi were all dismissed. Morris Ongoyi, Omondi, Njagi, Nyenze, Everlene and Harrison, all officials of the union were dismissed.

27. The witness in response to the Court replied that he was he Nairobi Branch Secretary of the Union, the link between the employer and employees and the work of the union. There was no official meetings and the individuals held separate meeting with the respondent despite their being union representatives. The union members paid kshs.300.00 per month and when an issue arose this would be reported to the Union. When the claimants learnt to the memo of 21st June 2011 they informed the union but they complained that the respondent was taking them in circles and the branch officials issued a circular to the respondent with regard to their non-commitment in addressing the employee's grievances.

The respondent's case

28. From the defence and the Amended defence and counter-claim, the respondents stated that thee claim stated to be lodged by 73 claimants in Cause No. 499 of 2012 lack authority for the 1st claimant to sue for an on behalf of the other claimants, as the same is not signed by the 73 others on whose behalf the suit is instituted. That the cause not disclose any reasonable cause of action against the respondent as the same is scandalous and frivolous and ought to be struck out and there was no written authority of each alleged claimant on whose behalf this suit has been instituted. The verifying affidavit sworn by William Nembe Obora on behalf of all the claimants is fatally defective and ought to be struck out as the suit is not verified in law as required.

29. The respondent had a concession Agreement with KRC meant to rescue the then ailing KRC and acknowledged that the respondent may not require the services of the KRC employees and made provisions to the effect that the respondent would absorb only those KRC's employees whose services it needed. The Concession Agreement provided for retrenchment of the employees who would be absorbed by the respondent. There was knowledge that termination was a possibility and termination before the claimants was 60 years old. These were the circumstances within which the claimants were employed in various capacities and could be terminated once 55 years old. The employment of the claimants was subject to the Employment Act and could be terminated for neglect of duty or on any grounds of gross misconduct leading to summary dismissal. The letters of employment incorporates the respondent's human resource manual and code of conduct expressly recognising absenteeism and failure to obey lawful orders were grounds for summary dismissal.

30. Following the Concession Agreement with KRC, the respondent noted that there were discrepancies within its work force, they undertook a fair, intensive and consultative exercise aimed at evaluating and harmonising its job grading by hiring International Remuneration Compensation consults who completed this process and issued a report dated 25th August 2008. The respondent was therefore aware of the need to undertake a job harmonisation and put in place a process to address this challenge.

31. In July 2008 there was an illegal strike but was resolved through dialogue and the employees returned to work. The tendency for the claimants to go on illegal strike became the norm and the respondent was always tolerant.

32. In July 2008 the respondent effected 8% incensement, in 2009 increment of 6% and in 2012 increment of 17% which indicated that the respondents was always willing to address the concerns of its work force. Though the claimant's employment was confirmed, there is nothing stating that they would

retire at 60 years.

33. The Union was recognised by the respondent and they remained engaged on all matters at all material times. In this regard the respondents issued a memo on 21st June 2011 on VERP. The employees raised concerns and the union was invited for discussions on how to address the grievances. This was done on 29th June 2011 and was to be followed by another meeting on 30th June 2011 in the afternoon, before the Union meeting on 30th June 2011 the claimants went on illegal strike.

34. The respondent and the Union addressed those who were on strike and told them to go back to work as their grievances were being addressed but they failed to do so. This failure to return to work caused the respondent to cancel all commuter trains from Nairobi to Kahawa, Ruiru, Embakasi (2), Kikuyu and Athi River. Even in a case where the claimants returned to work at 2.00pm the commuter trains would have had to be cancelled as the trains are supposed to be thoroughly and strictly inspected, where necessary carry out repair and maintained before being certified to carry passengers. The respondent therefore incurred and estimated loss of Kshs.43, 200,000.00.

35. The respondents made the decision to terminate the claimants after they failed to heed to the call to return back to work on 30th June 2011, dismissal letters were sent by registered post on 2nd July 2011 and copies hand delivered on 4th July 2011. The claimants did not work from 30th June to 4th July 2011 as these days fell on Friday to Monday and on these days the claimants are not at work. In a good gesture, the respondent paid for the 4 days despite the claimants not having worked.

36. The respondent did not breach any contract of employment to the contrary the claimants were in beach by failing to report back to work to undertake assigned duties and failing to obey lawful orders. The claimants participated in an illegal strike when they knew they were represented by their Union which was in dialogue with the employer. The claimants were given a hearing before dismissal but declined the opportunity. It is not correct that the claimants cannot get employment elsewhere; they have a training and skill that can be employed in many other sectors. After the dismissal, the respondent engaged the claimants in an appeals process and each employee was called for a hearing that was fair. There was no mala fides, the dismissal was procedural, the union was involved and all the grievances raised by the employees were all addressed.

37. On the Counter-Claim, the respondent stated that due to the illegal strike by the claimants, all commuter trains for 30th June 2011 were cancelled and they incurred losses amounting to kshs.42, 300,000.00 and claim the same from the claimants with costs and interests.

38. The first Defence witness **(RWI) was Anthony Peter Maina** a supervisor with the respondent. He is in repair and maintenance section and deal with wagons that require rigorous examination in preparation for marshalling the carriages and wagons. They need 45 minutes before departure and a technician must inspect and attend 30 minutes in advance to departure then a memo is issued to the technician to signify the train is ready for departure. This process takes 1 to45 minutes. The 1st claimants were in the section of RW1 together with 20 others. On 30th June 2011 while he was at work there arose issues with regard to VERP and at 8.00 a.m. he was called to the head office as supervisors to dissuade employees no to engage in a sit-in. before he left at 8.00 a.m. all the section members were present. The briefing ended at 9.00 a.m. but found the place empty and nothing was going on. He remained there until 5.00p.m. The employees returned at 5.00p.m. To log off for the day. The logging off book is kept at the Dept. Clerk office. That due to general rules of safety observed by the respondent and what should be done to trains before transporting human and cargo, the respondent cancelled the commuter trains for the evening schedule. The claimants were dismissed as a result and he was at the appeals committee hearing the claimants together with Elizabeth Odhiambo and Alban Mwenda. The William Obora is one of those employees who appeared and singed off the log at 5.00p.m. On 30th June 2011. In the section he supervises, there are all technicians who deal with wagon and this skill cannot be employed elsewhere unless in a similar company like the respondents.

39. The witness also confirmed that as a supervisor, he did not keep a notebook taking record of the

events of the day. When the employees in his section failed to report to work, he did not take a record to note those present and those absent. On 30th June 2011 the trains came in from the morning duties, were inspected last at 11 a.m. the ones that arrived before he left for the management meeting at 8.00a.m. Were ready for operation. The employees concerns were genuine as he also did not have answers to the grievances being raised. After the management meeting he found his entire section deserted but remained there all day. Trains are repaired in a team and had to be stopped for the day. The trains were cancelled for safety reasons. At the hearing of the appeals, not everything said was recorded by Elizabeth Odhiambo who was taking minutes. He is a trained Artisan and if he lost his job with the respondent, only Magadi soda which has trains can employ him but they are small not like the respondent.

40. The second respondent's witness **(RW2) was Samuel Nyachiro**. He stated that he is a Fitter with the respondent since 2006 based at the Wagons Section that maintains the wagons parts. On 30th june 2011 he was at work at 7a.m., there was tension with regard to VERP and all employees wanted to know more about it and he was also interested to know more about it. He was not interested in the VERP and hence was not bothered. At 7.30a.m. The strike took shape, the workers were not at work, and Wambua the senior supervisor came and told the staff to continue with work, RW2 did not take part in the strike. However those who did not take part in the strike were being threatened and told if they were not men enough to be in the strike they should wear *leso* like women. Nearly all the employees left to the headquarters. They never reported back to work and evening trains were cancelled. The claimants were dismissed as well as RW2 following a misconception that he was part of the protestors but after his case was heard he was reinstated.

41. RW2 also confirmed that the strike was violent and had to hide in the buggies which were 100 metres away to avoid being forced to participate in the strike. The strike involved hundreds of employees but he could not see what was happening from where he was hidden. At his hearing of his appeal, there were many questions asked but he cannot recall all of them as they were not noted in the minutes. After the dismissal on 30th June 2011, he proceeded on leave an only got to learn of the dismissal notice on 4th July 2011. On 30th june 2011 he was at work with Wambua the supervisor and the practice was that one could be away the whole day and return to log off in the evening.

42. The third witness for the respondent was **Ali Nzoka kitemi (RW3**), his department was that of artisans and welders and these are jobs people can do anywhere apart from being at the respondents. All departments in the respondent are interconnected and teams must work together – artisan, welders, and carpenters – all those people placed in his department. The trains must be examined before departure and there is manual in this regard. Each shift has 8 people and RW3 was in the afternoon shift on 30th June 2011 to run from 2.00p.m. To 8.00p.m. But with mutual agreement with colleagues in the same section, he was to report at 4.00p.m. He found the yard deserted at 4.00p.m. He found kabucho and the trains were at the washing bay and did not operate in the evening as when the rains were to take off the concerned staff were still in a strike.

43. James Siele (RW4) was the fourth respondent's witness. He stated that he is the General Manager, passenger Services for the respondents since January 2011. The passenger trains have 5 routes and the long distance routes to Mombasa and Nairobi. In this case on 30th June 2011 there was Nairobi commuter trains affected by the strike but the long distance trains were in operation. On average the commuter trains list 28,000 commuters and the daily revenue from the trains especially in the evening service is kshs.340, 000.00. The cargo trains have provision for daily 80 wagons to Mombasa and Nairobi. Of ultimate concern for the respondent is the safety of the passengers and for endures compliance there is a manual on safety. All trains must be examined before departure and upon arrival for safety. The commuter trains arrive at 6.30am. To 8.30a.m. And they proceed for checks in readiness for the evening service. From morning to evening there are no commuter trains going out in between. There is a schedule for departures from Nairobi from 3.50p.m. To 6.20p.m. being the last train out. These commuter trains were cancelled due to lack if safety checks. There was revenue that was lost due to the strike. There was a loss of over 34 million Kenya shillings due to the cancellation. This loss occurred due to the multiplier effected. To arrive at this amount of 34 million Kenya shillings, the multiplier effect amount to kshs.6, 641,996.00. Due to the strike, the cargo trains from Nairobi to Mombasa did not go. Such trains were expected to

transport empty wagons to Mombasa for loading. The loaded wagons would then be transported to Nairobi on the following day, 1st July 2011. There was expectation by the respondent that 80 wagons would be loaded and another 78 wagons on 2nd July 2011. Due to the unavailability of the empty wagons from Nairobi to Mombasa due to the strike, only 9 wagons were transported and 20 wagons on 1stand 2nd July 2011 respectively. This led to a loss of $315,358.00 converted to kshs.27, 972,254.60 as at June 2011. The total losses incurred by the respondent all amounted to Kshs.43,739,807.16 being the loss on 30th june 2011 due to cancellation of commuter trains at kshs.34,000.00, the loss due to multiplier effect of kshs.6,641,996.00 and the loss due to unavailability of wagons in Mombasa at kshs.27,972,245.60 all total to kshs.34,954,250.60.

44. The respondent should be paid this amount by the claimants as this arose due to the illegal strike on 30th June 2011. This is the amount stated in the counter-claim by the respondent. The passenger trains were the ultimate failure as the respondent could not operate these trains due to the strike.

45. In cross-examination the witness confirmed that there is a record of all trains that arrived in Nairobi on the morning of 30th june 2011 but this record was not submitted and hence not possible to tell how many trains, cargo or commuter were lodged at Nairobi on this day. There is no record as to which trains required repairs or any attention that was not undertaken as at the time of cancellation of commuter trains. Before the trains were cancelled the work supervisors were not consulted to confirm the status of the trains. The figures outlined as losses incurred by the respondent are in a report with the respondent but there is no audit report to confirm these losses. The respondent has the 2011 and 2012 audit report but do not reflect these losses. There are many factors that affect income and losses in a business like that of the respondent like service levels, retrenchment and customer confidence.

46. The fifth witness for the respondents was Alban Munyika Mwendar (RW5). He stated that he was employed by the respondent as Chief human Resource officer to oversee the human resource functions relating to staff matters, their training, welfare, discipline, performance management and other related duties. This was from March to august 2011 for both the Kenyan business and Uganda.

47. On 21st June 2011 he issued a memo on VERP and retrenchment addressed to all employees of the respondent. The respondent wanted to allow the employees keen on an early retirement to take the VERP as the business was not doing very well. The VERP was to run parallel with a retrenchment. In this case the retrenchment involved a selection process with a set criteria noting the few people who drive the company remain while the VERP was purely voluntary exercise for any personal; offer and not compelled to have the business running. The concession Agreement recognised that the respondents could take all former employees but made provision for retrenchment. In VERP no one was to be compelled to apply and the package was to be determined by the management. The offer was set on the concession Agreement as for retrenchment which offer was fair so that there would be no difference where one was superior to the other.

48. The respondents received several applications for VERP and the Union also gave a proposal on 27th June 2011 on how they wished the VERP and retrenchment to be handled. On 29th June 2011 the respondent replied to the union and set out the available package for VERP in compliance with the Concession Agreement. There was a meeting that did not conclude all issues and was to be followed up with another meeting the following day on 30th June 2011.

49. On 30th June 2011 staff congregated at the headquarters. They came in a demonstration all from their work stations, carrying twigs and dancing and made it clear that they would not work and would remain in protest. RW5 got the union representative to advice their members to go back to work, Mr Chummo came on behalf of the union and together they addressed the employees. They noted that the industrial action was unlawful as there were ongo0ign negotiations and the procedure should have been followed by the staff to address their issues through the union and that all staff was to go back to their work stations. It was unlawful to down tools while negotiations were ongoing and if there was need for a strike, the requisite notice must be given and sanctioned appropriately.

50. The claimants failed to also take lawful instructions to return to work which amounted to gross misconduct and the sanction is summary dismissal. The claimants stated that they resumed work but this is not correct as the respondent officials and the union representative spent the whole day pleading with the claimants to go back to work which was rejected. This refusal had consequences as the respondents were forced to cancel the evening trains due to the absence of the claimants from their work stations. 51. Therefore the summary dismissal that followed was justified in this case. A registered mail was sent and a copy hand livered to those dismissed. There were 6 reasons for the dismissal all due to gross misconduct. This was followed by an appeals process where some employees gave evidence that they were forced to participate in the unlawful strike and were reinstated but the claimant's appeals were rejected as they had no merit. Hearings were conducted on a case-by-case basis. The committee on appeal was composed of RW5 and Elizabeth Odhiambo. The witness took the handwritten notes in the proceedings.

52. The claim is filed by the dismissed employees instead of the union that was representing them. Some claimants were welders and artisan who were well trained and can work anywhere and with their skills it would not be hard to get new employment. The termination followed the terms of the contract and the law, the respondent human resource manual and the code of conduct.

53. On cross-examination the witness stated that what the claimants did on 30th june 2011 was both a sit-in and a strike where a sit-in involves employees who are physically at work but no work is done while a strike is where employees leave the work place and therefore no work is done. In this case there were two elements that of a sit-it and a strike as no work were done even when the claimants were present at their stations. However there is nothing to show from the respondents that the claimants did not report back to work as the work logs are singed off. These records are kept by the respondent and the officers who kept these records were to ensure strict compliance but these records were not filed with the witness office. On 30th June 2011, RW5 did not go to the ground to confirm that the claimants were not at work. No notices to show because were issued but the nature of the misconduct did not allow for it. There was no list of names to rely on to issue notices to show cause as the employees on strike were more than one hundred. A memo was done and singed by the Union. The respondent security officers were present at this meeting and it was not necessary to call the police. The dismissal letters were issued on 1st June 2014 without stating the right of appeal but the claimants were paid for the 1st to 4th July 2011. Despite the dismissal taking effect on 1st July 2011

Submissions

54. The claimants submitted that their employment with the respondent was confirmed with their retirement age being 60 years but this employment came under jeopardy after the respondent memo issued on 21st June 2011 on VERP and retrenchment. This memo caused concern leading to events of 30th June 2011 where over 300 employees walked to the head office to seek clarification on the issues raised in the memo. Samuel Nyachiro, the second respondent witness stated that some employees were forced out of their work stations to join in the match to the head office an indication that the employees present at the meeting with the human resource officer and 4th respondent witness had voluntarily or been forced to be at the meeting or to abandon their work stations. The meeting eventually went on well as the human resource officer addressed the employees and stated that all their grievances would be addressed. The meeting was not unruly, there is a police station early and had no reason to intervene as there was no violence and there was no need for victimisation as after the meeting, all the employees went back to work. This can be confirmed by the respondent's memo of 6th July 2011 that did outline the concerns that had been raised by the employees with regard to the VERP and the retrenchment. Had this clarification been given well in advance the employees would not had had to match to the head office. This clarification was part of the concession Agreement of 23rd January 2006 that was already in the possession of the respondent and their failure to give it caused the tension subject of the match on 30th June 2011. The contestation by the respondent that the grievances were being addressed by the Union is not applicable as some employees belonged to the union while other did not and even those who were members of the Union, they had communication problems. The duty remained with the respondent as the employer to effectively communicate their position with regard to the VERP and retrenchment and not be

left to the Union.

55. That despite resuming work on 30th June 2011 as evidenced by the work logs, the claimants were summarily dismissed on the reason that they were absent from work and for holding an unlawful sit-it. There were genuine grievances that were eventually addressed by the respondent in their memo of 6th July 2011. The respondent 4th witness could not state as to whether there was a strike or a sit-it make it difficult to ascertain as to which claimant was in the strike or sit-it and if this was voluntary or forced on them. This was not possible to ascertain as the claimants were dismissed before being given a chance to explain themselves. The claimant relied on the case of ***Kenya Plantation and Agricultural Workers Union versus Roseto Flowers, Cause 44 of 2013*** where the court held that the provisions of section 80 of the labour Relations Act are that when an employee participates in an illegal strike, the employee is not entitled to any payments or benefits for the duration of the strike and that an employee who refuses to participate in an illegal strike should not be victimised for such refusal. In this case it was not possible for the respondent to ascertain which of their employees were in the strike or sit-it if an all such event took place. Even in a case where there was a strike, the punishment is to deny such an employee payment and benefits that could have been paid during the strike but not subject such an employee to summary dismissal. In the case fob ***Tracey and others versus Crossville Ltd [1997] 4 all ER*** the court held that mere participation in a strike or other industrial action could not in itself amount to conduct or action for purposes of reducing any compensation payable to a complainant on the basis of contributory fault since it was not possible to allocate blame for the industrial action to any individual complainant.

56. Section 41 of the Employment Act create mandatory provisions for a hearing before summary dismissal even in a case where the employee appears to be unanswerable as held in ***Mphikeleli Sifani Shongwe versus The Principal Secretary ministry of Education and 3 others, Cause No. 207 of 2006.*** The respondent was going to lay off some of its employees and when they went to seek clarification on the matter, they were told to go back to work only to be served with summary dismissal notices. The appeals process the claimants were taken through was a Shum as this was after they had long been dismissed. The appeals were conducted after the request by the claimants as in their letters of dismissal, this was not provided for contrary to the respondent's human resource manual that detail the termination and dismissal processes. Even in a case where the provisions of section 44(4) apply, the same is subject to section 41(2) of the Employment Act which was not followed by the respondent.

57. The claimants also submitted that their dismissal was unfair as the same was not just as there were alternative disciplinary actions available under the respondent human resource manual that they failed to take before the severe action of summary dismissal. There were no valid reasons for the dismissal and fair procedure was not applied with regard to the claimant's case. A case of misconduct must be preceded with a hearing before any sanction can follow.

58. On the reliefs sought, the claimants submitted that the respondent breached the terms of the contracts issued to the claimants and have failed to proof that the reasons for their termination was valid of followed due process and hence unfair. The claimants were serving in a unique employment and not able to get new employment elsewhere and their prospects for future income are reduced to nothing. The claimants were due to work until the age of 60 but their contracts were prematurely terminated. The claimants are therefore entitled to lost earnings, those that they would have reasonably earned taking into account increments had they not been unfairly terminated and thus seek Damages for loss of future earning and for breach of implied terms of the employment contracts, full salary and other emoluments from 4th July 2011 to when the employment contract were to terminate upon the attainment of 60 years of age but for the unfair dismissal, inclusive of 8% annual increment aggregating to kshs.1,000,788,987.87 and as set out in the claim paragraph 36(e) and (d).

59. On the counter-claim, the respondent failed to prove their allegations on the loss of Kshs.34, 954,250.60. There was no evidence as to why the trains were cancelled so as for the respondent to make any losses there is no justification as to their action to cancel commuter trains while the cargo trains remained operational; and the counter-claim only meant to intimidate the claimants into abandoning their claims. That the cancellation of the trains was a unilateral act of the respondent and the claimants should not be held liable. Mr Siele for the respondent could not produce any report from the filed done by the

supervisors that the matters that arose on 30th June 2011 formed the basis of the cancellation of the trains. There were no audit reports to outline any losses incurred by the respondent with regard to events alleged arising from the claimants when they sought audience with their employer on 30th June 2011. In any event the normal returns for the respondent for the year 2011 recorded a varied changes of passenger even before the events of 30th June 2011, in March 2011 there was a drop, there was a further drop in April and May 2011 while in May and June there was an increase and in September 2011 there was a drop. These fluctuations were not reasonably explained and any losses of revenue therefrom cannot be attributed to the claimants. Some employees who participated in a strike were reinstated but 85 claimants were dismissed. Where there was a collective action, only the claimants got victimised and there being no losses, the counter-claim should be dismissed and judgement entered for the claimants.

60. The respondent on their part submitted that it is confirmed by the claimants that on 21st June 2011 there was a memo issued by the respondent, which indeed is correct, with regard to VERP and that apart from the VERP there was an intimation of a retrenchment that was run concurrently with the VERP and the claimants engaged the respondent through their Union to clearly elaborate on the retrenchment. That as a result of the Union engagement, there was ambiguity and non-committal by the respondent where the claimants together with other employees of the respondent opted to match to the headquarters on 30th June 2011 to seek clarification as tot e criteria the said retrenchment was to be effected. That this action of matching to the respondent headquarters by the claimants was an illegal strike which is defined under section 2 of the Labour Relations Act to mean a cessation of work by employees for purposes of compelling their employer to accede to a demand in respect of a trade dispute which trade dispute is a difference or an apprehended dispute or difference between an employer and an employee.

61. The claimants engaged the respondent through the Union but later decided to take matters into their own hands. Of the 122 employees who were dismissed on 4th July 2011, 76 were union members according to the Conciliator's report. The union members decided not to follow procedure but to go on strike and had this been done properly, there would have been no dismissals. On 30th June 2011, the union and the respondent had held a meeting and all grievances outlined and were going to be addressed save for the sit-it of the claimants that disrupted the negotiations. There was therefore no justification for the claimants to take matters into their own hands as there was a Union representing their interests at the meeting with the respondent. In the unlawful industrial action by the claimant there was use of force, intimidation and coercion to compel some employees to join the strike at the headquarters. Section 76 of the Labour Relations Act provides that a person can only participate in a strike that is lawful but what the claimants did was to attend to an unprotected strike. In interpreting section 80 of the Labour Relations Act, the court in the case of ***Kakuzi Limited versus Kenya Plantations and Agricultural Workers Union, Cause No. 1450 of 2011*** held that since the strike in regard to the case was not protected as defined under the law, there was a breach of contract of service by the employees and were liable to disciplinary action. The dismissal in that case was proper.

62. The respondent appreciated that some terms in the VERP were not clear and therefore invited the Union for a meeting on 29th June and also 30th June 2011. It was therefore illegal for the claimants with knowledge that they were represented by their union to then take matters into their own hands and undertake an unprotected industrial action. As held in ***Kenya Long Distance Truck Drivers & Allied Workers union versus Akamba Public Road Services Limited, Cause No. 813 of 2010,*** a strike is a weapon of the last resort.

63. That the claimants breached their terms of the contract when they took unprotected strike when they had knowledge that the Union was in negotiations with the respondent. This unlawful action cannot be terms as anything else other than a breach of the terms of engagement which was a condition set out in the claimant's contracts at clause 12. The Human Resource manual and the Code of Conduct were breached in a material way by the claimants. By going on strike that was unprotected, this was gross misconduct that warranted summary dismissal. The claims failed to work on 30th June 2011 but were dismissed on 4th July 2011 and paid for these days despite not having given their labour to the respondent. There was no obligation to pay but as an act of good faith, the respondent paid for the time

until summary dismissal took effect on 4th July 2011.

64. With regard to the counter-claim, the respondent submitted that they suffered losses as a result of the illegal strike; there was a cancellation of passenger trains on the evening of 30th June 2011 as a direct result of the claimant's action. The claimants should therefore be held liable.

65. The Carriage and Wagon Manual revised Edition 1998, give details on safety requirements that must be performed before a train is allowed to depart. Safety is crucial to the respondent and where the procedures are not followed, rains are not allowed to depart. These procedures are carried out by the staff to ensure the highest standards of safety and health applicable are rendered. It would have been reckless of the respondents if trains were allowed to carry passengers on the evening of 30th June 2011 before adhering to the safety measures that were to be implemented by the claimants. The decision to cancel trains on 30th June 2011 was arrived at in a meeting between the general manager, chief operations, chief commercial officer and the general manager for passenger services. These were senior managers who from experience made a decision after the claimants failed to report back to work. This caused losses to the respondents and the claimants should be held liable for the payment of Kshs.43, 954,250.60.

66. The summary dismissal was justified as under the provisions of section 44 of the Employment Act. When an employee is absent from work and neglects duty, summary dismissal follows. The claimants had duties of artisans, welders, fitters, operator rails, carpentry, point's man and seal man all as a team to ensure repairs, information, movement and certification of trains. On 30th june 2011 the respondents was forced to cancel commuter trains from Nairobi to Kahawa, Ruiru, Embakasi, Kikuyu and Athi River as inspection, repair and maintenance was not completed by 3.10 pm as a requirement. By the claimants being in a strike, they failed to undertake their assigned duties so as to ensure inspection, repair and maintenance of the trains to depart from Nairobi to various destinations on 30th June 2011. The respondent could not authorise the commuter trains to depart due to the omissions and commissions of the claimants.

67. The respondent also submitted that the claimants were insubordinate. On 30th June 2011 the respondent human resource officer and third union addressed them and adviced that they all go back to work which they failed to hence the summary dismissal. This insubordination further caused the respondent losses for as they were forced to cancel commuter trains and the claimants are liable. The respondent relied on the case of ***Adam versus Maison de Luxe Limited, Isaacs, ACJ [1924] 35 Comm. LR*** where the court held that obedience to lawful orders is, if not expressly, then impliedly, contemplates by the contract creating the relation, and mere disobedience of such orders is a breach of the bargain.

68. The claimants were therefore dismissed for the reasons that on 30th june 2011 they breached their contract by failing to obey lawful orders and commands from their employer, they beached their contracts by engaging in an unprotected strike, they ignored their union, the claimants had an opportunity to be heard before dismissal but declined and that the dismissal was in line to section 44 of the Employment Act. Before the dismissal the claimants were cautioned and told to go back to work which they failed to do. There was show cause issued to the claimants before dismissal and the same was as outlined in the employment contract which was a binding document between the parties herein. The offences committed were of a gross nature, there was a warning prior and the claimants went ahead to engage in unprotected industrial action.

69. On the reliefs sought, the respondent submitted that the claimants are not entitled to demand future earning until they would have retired as they were in breach of a fundamental provision of their contract of employment. To claim payment until retirement is not a fair and reasonable remedy as the Employment Act has already addressed that by making provision for compensation to a maximum 12 month's salary on the finding that there was unfair termination which is denied in this case. Where notice is issued to an employee before terminated, notice that is commensurate to the contract terms, and then no claim for future earnings should arise. The contracts issued to the claimant had a stipulation of notice before termination. The claimants are also in a position to get new employment as artisans, welders and carpenter. The salary increments were at the sole discretion of the respondent and should not be penalised

in this regard.

70. The respondent is entitled to the reliefs set out in the counter-claim as articulated by the witness Mr James Siele. There was an unprotected industrial action which caused the respondent loss and the claimants should be made to pay for the loss of Kshs.34, 954,250.60. The court as established pursuant to Article 162(2) (a) of the Constitution is set to resolve employment and industrial relations disputes and the furtherance, securing and maintenance of good employment and labour relations in Kenya. Employees should not be allowed to take matters into their own hand but to engaged in good labour relations to have their grievances addressed within the realm of constitutionalism and rule of law. The court should therefore dismiss the claims and find for the respondents in terms of the counter-claim.

Determination

I outline the emerging issues in the matter as follows;

Whether the suit is properly instituted for the 73 claimants

Whether the Union is the sole negotiator between an employer and employee

Whether there was a strike or sit-in and the subsequent result of each

Whether the claimants are entitled to any remedies

Whether the respondents is entitled to the counter-claim

71. Though both parties failed to make submission on the issue of one claimant institution suit for and on behalf of the others and then the role of the Union vies-a-vies these claimants lodging their won claim, I find it useful to address these two aspects here. This is so as the objectives of the industrial Court are now set out as under section 3 of the Industrial Court Act;

Principal Objective.

3. (1) the principal objective of this Act is to enable the Court to facilitate the just, expeditious and proportionate resolution of disputes governed by this Act.

(2) The Court shall in the exercise of its powers under this Act or the interpretation of the rights of individuals and parties, seek to give effect to the principle objective in subsection (1).

(3) The parties and their representatives, as the case may be, shall assist the Court to further the principal objective and, to that effect, to participate in the proceedings of the Court and to comply with directions and orders of the Court.

72. To this end, the industrial Court under the provisions of section 20 has the general powers to;

20. (1) in any proceedings to which this Act applies, the Court shall act without undue regard to technicalities and shall not be strictly bound by rules of evidence except in criminal matters:

Provided that the Court may inform it on any matter as it considers just and may take into account opinion evidence and such facts as it considers relevant and material to the proceedings.

73. Therefore where in the interests of justice the court find it necessary to hear a matter, the same is to be done in a matter that is just, expeditiously and fair without undue regard to technicalities so as to address the substantive issues at hand. The Court therefore under the industrial Court Procedure Rules, has made provision under Rule 9 as follows;

9. *Institution of suits of several employees.*

(1) In a suit where more than one employee is instituting a claim against the same employer in respect of the same cause of action, 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 prosecuted and 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.

74. These Rules are to be read together with the Industrial Court Act as well as all the other labour laws with regard to ensuring that where there a many claimants with similar cause of action, the same respondent or the claim forms a series of the same issues, then for the just, expeditious and fair arbitration of the same, this Court, upon application by a party or on its motion, may direct such suits or matters and or suits be filed by one claimants, be proved by one claimant or as the case may be so as to achieve the objectives sect out in section 3 of the Industrial Court Act. The prosecuting of such a claim is to be done by somebody authorised and or approved by the Court in view of avoiding the technicality that each and every claimants should file a Verifying Affidavit or append their signature of hand to the claim. What is required as under the Rules is for the claimants giving evidence or taking the lead to give 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.

75. The other limb to the above issue is on representation. Section 22 of the Industrial Court Act 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' organization and, if the party is a juristic person, by a director or an employee specially authorized for that purpose.

76. Hence an employee, whether unionised or not, retain the primary right to file any proceedings in Court to address the violation and or abuse of any right or rights at the workplace. This right does not end or diminish once unionised and can be enjoyed separately or together with other employees similarly situated, with a claim arising from the same cause of action or with regard to the same fact and against the same employer. Where different and separate claims are filed, the court may make directions for the consolidation of such suit and further direct that hearing proceed by the call of one claimant as each case may require. This was the hold sign of this court in the ***Cause No 2466 of 2012, Patrick Ghalani and Others versus G4S Security Services (Kenya) Limited.***

77. In this case there are 75 claimants from the consolidation of this file with Cause No. 956 of 2012, the cause of action was the same and the respondent is the same. For the just, expeditious and fair arbitration, the claim filed, supported and confirmed by William Nembe Obora has met the set criteria in such suits as before this court. Annexures to the claim is Schedule 1 with a list of all the claimants, noting the name, job description and salary together with a schedule of the names, p/No, the identity number and

signatures. William Nembe Obora has gone further and filed "WNO-1" *Instructions to file suit by 74 former employees of* …the respondent and to the claim there is a Verifying Affidavit.

78. On whether there was a strike or a sit-in on 30th June 2011 that led to the dismissal of the claimants, I wish to go back to the evidence of both parties. The claimants admit that some are members of the union and others are not. This separation was not done by themselves or the respondent who heavily relied on this issue to support their case. Where the claimants were unionised, the duty to give this separation rests with the respondent in confirmation that indeed when the dismissal was effected, the claimants were engaged through their union or through the shop steward at the shop flow. Even in a case where all the claimants were members of the Union, the respondent did not give up their rights and responsibilities to the union to articulate the work requirements, terms and conditions and adherence to these requirement, terms and condition to their own employees. The Industrial Court Act 'Trade Unions' have the role and defined as;

"Trade union" means a registered association of employees whose principal purpose is to regulate relations between employees and employers and includes an employers' organisation.

79. This definition is restated in the same terms and purpose under the Employment Act, the Labour Relations Act and Labour Institutions Act, all being the operational statutes for the industrial Court. With this framework, an 'employer' is also defined to mean;

> *"employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company*

80. This definition is equally restated by statutes as above indicated. Hence with regard to an 'employer' the duty to engage with an employee with whom there is a contract of service is not lost even with the presence of a union whose role is to ensure the regulation of relations between the employee as their member and the employer. The daily engagements as to work instructions, directions and supervision are vested on the employer. Where there is need for a collective action the employer is to recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees. This is not to oust the role of an employer with regard to workplace relations, the supervision, regulation, terms and conditions of work. The supervisory role, the outline of work to be undertaken and the keeping of such records remains the primary duty of the employer and cannot be said to belong to the Union as a Union has its defined mandate to ensure their members enjoy collective bargaining.

81. Where there is a Recognition Agreement, there are rights that flow to the Union that is so recognised by an employer. Where there are industrial negotiations such a union must be involved for an on behalf of its employees/members and the non-member employees who benefit from the subsequent negotiations have their rights protected within the recognition agreement framework. This however does not remove the employer from their responsibility to supervise their work force that may comprise unionised and non-unionised employees. In matters of VERP and retrenchment like the respondent had with its employees, besides having the union involved much care and precaution ought to have been put in place with regard to any communication that went out to the employees before the Union was involved and after it was involved in the negotiations. This and care and precaution was necessary where a large part of the respondent's employees were unionised as indicated from the Conciliator's report but taking into account the rights of that single non-union employee who may not have had a voice on the negotiation table.

82. The respondent heavily relied on the involvement of the union for an on behalf of the claimants and other employees to events leading to the 30th June 2011. Apart from this presentation, the respondents did not submit any Recognition Agreement between themselves and the Union. There was no record of a Collective Bargaining Agreement as well. What the court was left to rely on are the minutes of 29th June 2011 between the Union and themselves. Before these minutes there is no other record of the Union involvements in any negotiations. When the respondents issued their memo dated 21st June 2011, the

memo that caused anxiety and concern from the employees, the Union that ought to have been in negotiations for the collective and responsible for regulating relations between the employer and employees does not seem to have been involved; the result is to have the affected employees address their concerns individually or amongst themselves as they did by what they allege to have been a march to the headquarters. Where a Union is ignored by an employer then the employer had the responsibility to effectively communicate to their employees. Apart from the issued memo of 21st june 2011 that went out to all employees, the memo that RW5 admitted was long and laden with many issues there is no other record of involving the employees who were unionised and worse still for the employees who were not union members. Even as the fifth and last witness for the respondents gave evidence, there was no indication as to how many of the claimants had been unionised and those who were not; there was no evidence as to any existence of a Recognition Agreement with RAWU or a CBA.

83. Labour relations operate in the realm of good faith. The Union as is there as an employee representative to ensure fair labour relations are maintained. In the alternative, individual employees must be engaged in a consultative manner to ensure their Voice is heard in view of ensuring fair labour relations are maintained. Due to the big numbers involved like in this case, the voice of the Union is given much consideration as this is the entity to guarantee the regulation of the fair relations. Where there is no evidence that the individual employees have been consulted and the Union has been ignored, the resultant effect is there the conceptual framework for fair labour relations is not undertaken in good faith and thus an unfair labour practice is bound to be the ultimate option.

84. On this background, was there a strike, a sit-in or a match to headquarters? William Obore's evidence was that on 21st June 2011 when the claimants read the memo issued by the respondents with details of the VERP, there was also referenced retrenchments that they needed clarified. They wrote to the respondent stating their grievances and noting that previously in 2008 there had been a strike, they were keen to have all the issues clarified. The claimants wrote to the Union about the ongoing and their grievances. This evidence is confirmed by RW5 who admitted that indeed the memo of 21st June 2011 required further elaboration and clarification and when the Union became involved, they invited them for a meeting on 29th June 2011 and were in the process of addressing these grievances. The meeting on 29th did not conclude and thus more negotiations were to proceed on the afternoon of 30th June 2011. However, before these negotiations could conclude on 30th, the claimants got information from the Union that the respondent was not cooperative and hence on this morning, they matched to the headquarters to seek audience with their employer. The employees affected by the contents of the memo of 21st June, felt the need to have direct answers from their employer. The respondent on their part stated that this was not a match but a sit-it as the claimants remained at work but never worked and later it degenerated into a strike when after meeting the respondent at headquarter they were told to resume work, they failed to do so.

85. What is clear from the evidence is that, on 30th June 2011, there was an unplanned meeting between the respondent management and the employees; this meeting was addressed by the respondent officers including RW5 and Mr Chumo from the Union. After this meeting, both Mr Mwendar and Chumo did a joint memo and noted;

> …
>
> *<u>Unlawful industrial action</u>*
>
> *The management of RVR and Leadership of RAWU have viewed the industrial action (sit-in) that has been conducted by a section of employees based in Nairobi on 30th June 2011 with deep concern.*
>
> *As a joint Negotiating Council who are in the process of discussing the grievances of all staff, were are disappointed at the non-adherence to procedures in force. The current sit-in by workers is unprocedural. The correct procedure would have been to channel grievances through the elected Union Officials who would then have provided leadership in arriving at the solutions with*

Management that are good for all staff.

We are therefore requesting all employees who are not at their work stations to immediately return to their work stations, in order to create the right atmosphere for continued negotiations.

[Signed by]

Alban Mwendar, Chief Human Resource Officer [RVR] and John T. Chumo, Secretary General [RAWU].

86. The Union together with the respondent in a joint memo talk of a sit-in and advice the employees to go back to work. The following day, 1st of July 2011 the respondent summarily dismissed the claimants and noted;

…

SUMMARY DISMISSAL

The board and management of RVR(K) Ltd has noted that you absented yourself from duty during official working hours on Thursday 30th June 2011, and participated in an unlawful sit-in at the head Office, alongside other employees, claiming to have various collective grievances that you wished to be addressed by management. Your action led to disruption of operations of the company in crucial areas including but not limited to total disruption of evening commuter services affecting over 30,000 members of the public who would be passengers.

As an eligible member of the Union, your action was in contravention of the law and the grievance handling procedures that exist and have been agreed upon by management and the Railways and Allied Workers Union. Despite effort by Management and the Union leadership to make resume duty you adamantly refused to do so thus breaching your contractual relationship with your employer.

87. This summary dismissal is sent to each of the claimants as *eligible member[s] of the Union.* The claimants are stated to have been engaged in a sit-in amongst other employees of the respondent. Was there an enquiry before the summary dismissal to separate the unionised, the non-union employees and amongst the entire employee to attribute blame for the sit-in? Were the claimants adviced on the unlawful industrial action before their dismissal so as to be heard and help the respondent separate those who were forced into the sit-in and those who were there on their own free will? The evidence of RW2 and RW3 is crucial here. Some of the claimants were their colleagues in their department, when the procession to headquarters was taking place; RW2 decided to hide while RW3 only reported o work at 4 pm and found the department deserted. RW1 on his part as the supervisor was at the management meeting and when he came back he was left all alone at the department. None of these witnesses were therefore present at the meeting of the claimants and other employees at the headquarters to succinctly state as to what transpired at the meeting.

88. The law on any industrial action taken by employees or an employee is now set out. An industrial action encompasses what can be called strikes, sit-in, demonstrations and other related action to address any grievance. *Industrial action* has been defined by Act 23 of 1972 of Trinidad and Tobago, Industrial Relations Act to mean;

> *"industrial action" means strikes and lockouts, and any action, including sympathy strikes and secondary boycotts (whether or not done in contemplation of, or in furtherance of, a trade dispute), by an employer or a trade union or other organisation or by any number of workers or other persons to compel any worker, trade union or other organisation, employer or any other person, as the case may be, to agree to terms of employment, or to comply with any demands made by the employer or the trade union or other organisation or by those workers or other persons, and includes action commonly known as a "sit-*

down strike", a "go" or a "sick", except that the expression does not include

89. Part 10 (X) of the Labour Relations Act regulate how strikes and lock-outs are to be carried out by employees, trade unions and the employers. Where such action is lawful, the employees should not be victimised but where such actions are unlawful, there are consequences that flow. Where an employee engages in a **protected strike** or industrial action;

> *An employer is not obliged to remunerate an employee for services that the employee does not render during a protected strike or lock-out.*

90. Despite this being a protected strike under section 79(6) of the Labour relations Act, the employee on strike face the sanction of not getting paid for the duration of the strike or lock-out. Thus there is no remuneration for work not done. Where the strike is **unprotected** section 80 of the Labour Relations Act applies thus;

> ***80****. An employee who takes part in, calls, instigates or incites others to take part in a strike that is not in compliance with this Act is deemed to have breached the employee's contract and –*
>
> *(A) Is liable to disciplinary action; and*
>
> *(b) Is not entitled to any payment or any other benefit under the Employment Act during the period the employee participated in the strike.*

91. The disciplinary action to be taken against an employee who has participated in an unprotected industrial action is regulated by sections 12 of the Employment Act where;

a. *specify the disciplinary rules applicable to the employee or refer the employee to the provisions of a document which is reasonably accessible to the employee which specifies the rules;*

92. the employer is expected to have developed disciplinary proceedings manual, policy or regulations pursuant to section 10 and following the required workplace policies contemplated under section 5 of the Employment Act;

> *"an employment policy or practice" includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, termination of employment on* ***disciplinary measures****. [Emphasis added].*

93. I take it then the respondent Human Resource Manual and Code of Conduct is such document as envisaged under section 12, 10 and 5 of the Employment Act. These documents outline provisions as to how the employees of the respondent once they misconduct themselves, the procedures to be undertaken in that regard. Were the outlined procedures followed before the dismissal of the claimants? Was the respondent capable of following these procedures before the dismissal of the claimants?

94. Annexures "RVR – 3A" and "RVR-3B" to the Statement of Defence and Counter-Claim refers. The Human Resource Policy and Procedures Manual, June 2007 and Rift Valley Railways Kenya and Uganda Code of Conduct from July 2009. At clause 9 the manual provides on work standards/discipline;

> …
>
> *Employees should be self-directing and striving for the highest standards of performance and behaviour in line with RVR missions*

…

Grievance policy

It is the policy of RVR that employees should;

i. *be given a fair hearing by their immediate supervisor or manager concerning any grievances they may wish to raise*
ii. *have the right to appeal to a more senior manager against a decision made by their immediate supervisor or manager*
iii. *have the right to be accompanied by a fellow employee of their own choice when raising a grievance against a decision*

...

Procedure

Steps in the grievance procedure fall into three stages: informal procedure, formal company procedure and third party dispute resolution procedures.

...

Disciplinary policy

i. *The emphasis of the disciplinary procedure is on prevention, justice and rehabilitation. For this reason the Company regards disciplinary action primarily as a means of correcting unacceptable behaviour. Discipline must at all times be corrective and not punitive.*

…

Procedure

Formal procedure - verbal reprimands

- *written warning*
- *Final written warning*
- *Enquiry*
- *Dismissal*
- *appeal*

95. The respondents therefore have an elaborate manual that outline clear guidelines that are to be followed for cases of indiscipline. These procedures are not said to have applied with regard to the claimants before their dismissal. The schedule attached to the respondent's human resource manual is most telling, there is a brief outline as to what steps are to follow in cases of insubordination – on first offence there are provisions for a written final warning and then on second offence, there is a provision for dismissal. The respondent's evidence was that in 2008 the claimants had engaged in another unprotected strike that they were habitual offenders but this record of the claimant's participation in an unprotected industrial action and the warnings pursuant to such illegal action was not made available to court. In any event, beyond the good human resource manual and Code of Conduct by the Respondent that go well beyond the applicable law on summary dismissal, there are basic minimum standards that must be protected by all employers even in the serious cases of gross misconduct. The provisions of section 44 of the Employment Act, provisions that outline the measures to be taken in serious cases of gross misconduct and allow for summary dismissal, the same must be taken in the context of section 42(2) of the Employment Act;

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the

employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.

Section 44(3);

(3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.

96. Even in cases that warrant summary dismissal, where an employee is alleged to have fundamentally acted in breach of their contract of employment, a hearing must be given to such an employee. The hearing must be in the presence of a Union representative and where an employee is not unionised, in the presence of a fellow employee of one's choice;

97. I therefore agree with the respondents submissions with regard to their reference to ***Kenya Long Distance Truck Drivers & Allied Workers union versus Akamba Public Road Services Limited, Cause No. 813 of 2010,*** in that a strike is a weapon of the last resort. Equally, a summary dismissal is the last resort for an employer to issue to an employee when there are other options in sanctions that can address the same issue in a manner that can be said to be fair and just in the circumstances of the case.

98. In this case, whatever industrial action the claimants employed against their employer the respondent, the sanction taken against them was too harsh in the circumstances of the case where the respondents admits that indeed there were valid grievances that were being raised by all employees and to single out the claimants for dismissal without following due process and undertaking the procedures as outlined in the respondent's human resource manual was an unfair labour practice against the claimants. The decision in ***Kakuzi Limited versus Kenya Plantations and Agricultural Workers Union, Cause No. 1450 of 2011*** looked at together with the provisions of section 79 and 80 of the Labour Relations Act with regard to sanctions for unprotected industrial action is that, the salaries and benefits due when there was no labour offered is not payable. Any other disciplinary action that may be followed by an employer must adhere to the set policy guidelines developed by an employer to address disciplinary matters an in compliance with section 12, 10 and 5 of the Employment Act. Even in a case where the employer has taken these measures reference must be given to the provisions section 42 on the hearing process which must meet fair hearing rules that are mandatory.

99. Equally the dismissal of the claimants came before their cases could be heard contrary to the tenets of due process and fair industrial action. The dismissal letters are all authored by Alban Mwendar the 5th respondent witness; he sat at the Appeals committee and dismissed all the appeal. Some employees were reinstated like the RW2, Samuel Nyachiro, but the proceedings taken by Alban Mwendar do not clearly indicate what arose at the hearing and if there were any mitigating factors that arose with regard to Samuel Nyachiro that was contrary to what the claimants stated to warrant a reinstatement and not the others. The appeals processes was therefore already secured towards a particular finding that cannot find justices when assessed for impartiality, fairness and valid. The appeals process was a sham and of no useful value to the case at hand. This was contrary to what fair relations entail and contrary to the respondent human resource manual that outline how appeals are to be conducted and the persons to seat at such panels. Even where the respondent was aware that the some employees were unionised, some *potential union members* there is no evidence that the Union was invited at the hearings or each employee faced with the serious case of dismissal was invited to bring a fellow employee of their choice. What happened to the claimants was an abuse of the very document meant to be implemented in this regard and outrights disregard to the applicable law sect out under section 44 and 42 of the Employment Act and thus an unfair labour practice. The dismissal of the claimants should not have been. This is quashed in their entirety.

Remedies

100. As to whether the claimants are entitled to the remedies sought, on the Court finding that the

dismissals were a sham, the claimants should have remained at work unless terminated or dismissed for any other justifiable cause. The claimants are however not seeking for orders of reinstatement and I take note the grievances the claimants were raising were with regard to the respondent memo of 21st June 2011 that noted business sustainability considerations and therefor offered their employees the VERP and those who did not take the VERP could have been terminated under the retrenchment process. A reinstatement in such circumstances would not make good industrial relations and will not be awarded. However, in the contest that the claimants have been out of employment from 4th July 2011 to date and should have remained at work, and in the interests of justice and in due consideration of section 12(3) of Industrial Court Act on making an appropriate relief, there shall be compensation for that time. The claimants will be paid their full gross salaries from 4th July 2011 to 26th March 2012 when the Court became seized of this matter which comprises a period of eight (8) months that amounts to Kshs.20, 871,664.00 for all the 75 claimants.

101. The claimants are seeking for declarations that their dismissal was unfair; there was a breach of the express and implied terms and conditions of their contracts of employment and further general damages for the unfair dismissal. On the above finding that the claimants ought to have remained in employment until this day, the only other issue the court will factor is the unfair process applied by the respondent in the termination of the claimants, the process which is it had not taken the resultant effect of their loss for employment, they would have been considered for VERP or retrenchment packages. On the basis of section 49 (1) (c) and for the unfair dismissal the clamant will be paid the equivalent of twelve (12) month's salary based on their gross monthly salary at the time of dismissal.

102. Damages for the unlawful and unfair dismissal will not be awarded in the context of the above two awards noting that the there process was unfair within the meaning of section 45 of the Employment Act. Despite evidence that the claimants had skills only applicable to the respondent monopoly business, there was no demonstration as to how they have been able to mitigate their circumstances since leaving employment on 4th July 2011. This should have worked to their advantage in this case as held in **Cause No. 1267 of 2011, Ruth Murage versus the Standard Group Limited.** In this case, a fundamental difficulty presents itself which was not addressed at the hearing or pleaded. The employer varied an agreed retirement age, from 55 years to 60 years as the age for retirement. The resulting loss to the claimants would arise from the reasonably foreseeable losses suffered in consequence of not being employed for the remainder of the period between their current age and actual retirement age as the due date of retirement. In this instance, the claimants did not establish what their due retirement date should be, other than by reference to the financial returns which were premised on a retirement date at age 60. In the absence of a due retirement date, I do not see how it will be possible to determine with any certainty actual damages arising from the claimants unilateral retirement age at 60 years and not at 55 years and accordingly, I cannot hold the respondent liable for damages in this matter. This does not detract from the court finding that there was unfair dismissal of the claimants. With the award for time that should have been served to date, the claims for general damages and future loss of income will be declined.

103. There was provision for notice pay of one month under the VERP and retrenchment packages as well as under the respondent human resource manual. The contracts of employment made provision for one month's notice pay in lieu of notice. There is also a provision for one month's notice pay under section 35 of the Employment Act where an employee has a contract of service. Each claimant will be awarded one month's pay in lieu of notice based on the gross monthly salary at the time of dismissal.

Counter-claim

104. There is a counter-claim by the respondent. The respondents pleaded that due to the illegal strike undertaken by the claimants, they were forced to cancel its passenger and cargo trains resulting in a loss of kshs.42, 300,000.00. This is outlined at paragraph 30 and 31 of the Statement of Response and Counter-Claim. In evidence, RW4, James Siele gave evidence that the respondent made a loss of Kshs.43,739,807.16 being the loss on 30th June 2011 due to cancellation of commuter trains at kshs.34,000.00, the loss due to multiplier effect of kshs.6,641,996.00 and the loss due to unavailability of wagons in Mombasa at kshs.27,972,245.60 all total to kshs.34,954,250.60. This assessment by Mr Siele

was based on facts that;

> *On 30th June 2011, due to the subject strike there were no members of the staff to clean, check, maintain and repair the five (5) locomotives which arrived that morning. The said trains were unattended. As at 1500 hours on that date, they were unattended and their safety highly in doubt. At the same time, the carriage and wagons personnel (CXR) charged with the responsibility of ensuring that the coaches were mechanically fit were absent and the coaches remained unattended and potentially unsafe.*
>
> *Due to the fact that the safety of the trains could not be guaranteed, the respondent made a decision to cancel all the commuter service trains for all the five (5%) Nairobi routes. The decision was arrived at 1500 hours on the same day. The meeting was attended by the following:-*

a. *Myself as General Manager, passenger Services*
b. *Chief Operations officer*
c. *Chief Commercial Officer*
d. *General manager, Safety*

> *However, before executing the decision we did, as we must, consult the Group Chief Executive officer who gave his approval for cancellation of the trains. Therefore, the revenue of kshs.340, 000.00 expected on that day was lost.*

105. Mr Siele as the person responsible for Passenger Services, made his statement on 9th January 2013, way after the events of 30th June 2011. His statement was that the 5 locomotives which arrived in the morning were not cleaned, checked, maintained or repaired by 1500 hours. Mr Siele however does not indicate as to how he arrived at this analysis. RW1, RW2 and RW3, all said they kept no records of the day with regard to their work and even by 9th January 2013, these records which should have been made available to Mr Siele to help in his assessment of the losses incurred by the respondent, the losses were still estimates at kshs.340, 000.00. From the statement, only the 5 Nairobi routes were cancelled as their safety could not be guaranteed. This decision to cancel was done by the managers without consultation with the staff on the ground as RW2 gave evidence. As the supervisor in his section, he was never consulted or asked to do a report. Earlier before he left for the meeting with management at the headquarters, he had left all the trains at the station and work was ongoing. Only later upon his return, he found the place deserted. Did he take stock as to what had been done and by whom? Was it possible for the respondent to carry that audit to ascertain as to whether the trains could run on the evening of 30th June 2011 and therefore avoid the incurred expected revenue? From the evidence of Alban Mwendar, he stated that those who attended the illegal industrial action at the headquarters were in their hundreds, the claimants are all 75 in number. Some of the dismissed employees were reinstated. What method was used to separate the ones to be reinstated as against the claimants is not made clear to the Court.

106. There are 75 claimants out of the hundreds of employees who converged at the headquarters on 30th June 2011. The revenue of Kshs.340, 000.00 expected on this day that was otherwise lost has not been apportioned to the employees present at headquarters so as to objectively say that the 75 claimants who were dismissed are liable for all the work that was not undertaken on the 30th June 2011. Had the respondents taken a record of those who remained at work while the claimant remained engaged in the industrial action that was not sanctioned, then it would have been near possible to apportion to each liable and make a correct finding.

107. The respondent as a public company and as the claimants submitted ought to have their annual financial return and or audits. This is 2014, the court has allowed various records to be admitted in evidence but none relate to the annual financial returns or reports of the respondent. Apart from financial assessments of each department and what Mr Siele did in analysis for the expected revenue lost on 30th June 2011, there is no other independent report as to how and why he arrived at the analysis. Even where Mr Siele has his justifications for the figures indicated at 34,954,250.60, this fundamentally differs from what is pleaded at 42,300,000.00. Coupled with the question as to how this amounts were related to the

actions of the claimants, the counter-claim must fail.

Conclusion

In this regard therefore, the counter-claim herein is dismissed and enter judgement for the claimants against the respondent in the following terms:

1. **A declaration that the summary dismissal of the claimants by the respondent was unfair and unlawful.**
2. **The summary dismissal of the claimants is herein quashed;**

a. **The claimants are awarded compensation equivalent to twelve (12) months gross salary; [find attached Schedule Marked "C"]**
b. **The claimants will be paid their full gross salaries from 4th July 2011 to 26th March 2012 amounting to Kshs.20, 871,664.00;**

c. **Each claimant will be paid one month's gross pay in lieu of notice; [find attached Schedule Marked "A"]**

3. **Amounts payable at (2)(b) above will be paid with interest from the date of dismissal until paid in full; and**
4. **Costs of the suit awarded to the claimants.**

Delivered in open Court at Nairobi and dated this 18th Day of June 2014

Mbaru

JUDGE

In the presence of

Court Assistant: Lilian Njenga

……

…….

Schedule A

NO	**NAME**	**ID NO**	**SALARY**
1.	ABUBAKAR JUMA SULEIMAN	xxxxxx	KSHS. 34,450.00
2.	AGGREY BUKACHI IMBUYE	xxxxxx	KSHS. 34,400.00
3.	ALBERT NGUTUKU NYONGESA	xxxxxx	KSHS. 34,450.00
4.	ALFRED OLOO ODUOL	xxxxxx	KSHS. 34,980.00
5.	AMOS OWOUR ONENE	xxxxxx	KSHS. 34,500.00
6.	BENJAMIN KAVATI MULU	xxxxxx	KSHS. 37,630.00
7.	CHARLES KIHWAGA MWANGI	xxxxxx	KSHS. 30,740.00

8.	CHARLES NYAGA NJAGI	xxxxxx	KSHS 34,450.00
9.	CHARLES WANYANG OMONDI	xxxxxx	KSHS. 37,630.00
10.	CHARLES ONYANGO	xxxxxx	KSHS34,450.00
11.	CHARLES ONYAMGO MBIYE	xxxxxx	KSHS 34,450.00
12.	CHRISTOPHER NYANGO OCHIENG	xxxxxx	KSHS . 34.450.00
13.	CLARKSON ATELA JOSEPH	xxxxxx	KSHS. 34,500.00
14	DANIEL NYAWANGA ONG'OMBE	xxxxxx	KSHS. 37,630.00
15.	DAVID FWAMBA WANYONYI	xxxxxx	KSHS. 34,450.00
16.	DAVID NGAYWA NYANGWESO	xxxxxx	KSHS. 35,500.00
17.	DAVID ONYANGO OKUMU	xxxxxx	KSHS. 34,450.00
18.	DAVIS OWOUR OMBEE	xxxxxx	KSHS 29,680.00
19.	EDWIN CHELOTI MAYEKU	xxxxxx	KSHS 34,450.00
20.	EVERLYNE OKALI AHOLI	xxxxxx	KSHS30,740.00
21.	FRANICS MAINA KARATHI	xxxxxx	KSHS 37,630.00
22.	FRANCIS NDUNG'U KAMAU	xxxxxx	KSHS.34,450.00
23.	FREDRICK NIKOLAUS OHINDO	xxxxxx	KSHS 34,450.00
24.	FREDRICK ODHIAMBO OWOUR	xxxxxx	KSHS. 34,450.00
25.	GEORGE NJUGUNA KAMAU	xxxxxx	KSHS. 30,740.00
26.	GERALD MUTHUURI MAGIRI	xxxxxx	KSHS 30,740.00
27.	GERALD NYAGA NJAGI	xxxxxx	KSHS 37,630.00
28.	HABEL OMURUMBA ALWANGA	xxxxxx	KSHS 34.450.00
29.	HABIL LUBANGA IMBUYE	xxxxxx	KSHS. 34,450.00
30.	HAMISI JUMA KAKI	xxxxxx	KSHS 37,630.00
31.	HARRISON DAVID AMAKOBE NAMALE	xxxxxx	KSHS 34,450.00
32.	JACKSON KIRAGU MARICU	xxxxxx	KSHS. 37,630.00
33.	JACOB MACHOWE	xxxxxx	KSHS 34,450.00
34.	JAMES MAINA GAKUHA	xxxxxx	KSHS.37,630.00
35.	JANE MUTHONI KAGURU	xxxxxx	KSHS. 36,040.00

36.	JASON ZENGE SHAKO	xxxxxx	KSHS. 34,450.00
37.	JEREMIAH MUTUKU	xxxxxx	KSHS. 37,630.00
38.	JOHN KAGAI MWANGI	xxxxxx	KSHS. 34,450.00
39.	JOHN KINUTHIA KIARIE	xxxxxx	KSHS. 34,450.00
40.	JOHN KHUBEDO OJIAMBO	xxxxxx	KSHS. 34,450.00
41.	JOHN NDAMBIRI MUGO	xxxxxx	KSHS. 37,630.00
42.	JOHN OGINGA OCHIENG	xxxxxx	KSHS. 34,450.00
43.	JOHNSON SAMBAYA NGOLOBE	xxxxxx	KSHS. 34,450.00
44.	JOSEPH KARUME KAHURIA	xxxxxx	KSHS.34,450.00
45.	JOSEPH MUNGAI MWANGI	xxxxxx	KSHS. 34,450.00
46	JOSEPH ODERO OWORE	xxxxxx	KSHS. 34.450.00
47.	TUTI OTUNDO	xxxxxx	KSHS. 34.450.00
48.	JOSEPH WACHIRA MUGO	xxxxxx	KSHS. 34,450.00
49.	JULIUS MWAURA KIHARA	xxxxxx	KSHS. 34,450.00
50.	JULIUS MURIUNGI	xxxxxx	KSHS. 37,630.00
51.	KENNEDY OTETE AMWOYI	xxxxxx	KSHS. 34,450.00
52.	LAWRENCE MUTISO MULWA	xxxxxx	KSHS. 34.450.00
53.	MARGERET NJERI MUTUGI	xxxxxx	KSHS. 37,630.00
54.	MAURICE OUMA OGONYI	xxxxxx	KSHS. 30,740.00
55.	MICHAEL MAINA HOSEAH	xxxxxx	KSHS. 34,450.00
56.	MICHAEL OJAY OTIENO	xxxxxx	KSHS. 34,450.00
57.	PATRICK AYUB IMBUGA	xxxxxx	KSHS. 34,450.00
58.	PETER MBURU MWANGI	xxxxxx	KSHS. 34,450.00
59.	PETER INYANGALA KEIZA	xxxxxx	KSHS. 34,450.00
60.	PETER NICOLAS KIBURI KANGETHE	xxxxxx	KSHS. 34,450.00
61.	PETER MAINA NGACHA	xxxxxx	KSHS. 34,450.00
62.	PHILIP EBISIENO	xxxxxx	KSHS. 32,118.00
63.	RICHARD KHAYO	xxxxxx	KSHS. 37,630.00

64.	ROBERT WAMBUA	xxxxxx	KSHS. 30,740.00
65.	SAMSON GATUKUI WAHOME	xxxxxx	KSHS 34,450.00
66.	SYLVESTER OTIENO ALANGA	xxxxxx	KSHS 34,450.00
67.	SIMON KANYI NDERITU	xxxxxx	KSHS. 34,450.00
68.	STANLEY OPAH KHAOYA	xxxxxx	KSHS 30,740.00
69.	TOM OTIENO MBOGO	xxxxxx	KSHS. 37,630.00
70.	VICTOR ONUNGA OBONDI	xxxxxx	KSHS. 34,450.00
71.	VINCENT PAUL ONYANGO	xxxxxx	KSHS. 37,630.00
72.	WILLIAM KARUE	xxxxxx	KSHS. 30,740.00
73.	WILLIAM OLUM MAKOLUNGA	xxxxxx	KSHS 45,520.00
74.	WILLIAM OBORA	xxxxxx	KSHS. 30,740.00
75.	MICHAEL OKORE	xxxxxx	KSHS. 38,160.00

SCHEDULE B

NO	**NAME**	**ID NO**	**SALARY**	
1.	ABUBAKAR JUMA SULEIMAN	xxxxxx	KSHS. 34,450.00	413,400.00
2.	AGGREY BUKACHI IMBUYE	xxxxxx	KSHS. 34,400.00	412,800.00
3.	ALBERT NGUTUKU NYONGESA	xxxxxx	KSHS. 34,450.00	413,400.00
4.	ALFRED OLOO ODUOL	xxxxxx	KSHS. 34,980.00	419,760.00
5.	AMOS OWOUR ONENE	xxxxxx	KSHS. 34,500.00	414,000.00
6.	BENJAMIN KAVATI MULU	xxxxxx	KSHS. 37,630.00	451,560.00
7.	CHARLES KIHWAGA MWANGI	xxxxxx	KSHS. 30,740.00	368,880.00
8.	CHARLES NYAGA NJAGI	xxxxxx	KSHS 34,450.00	413,400.00
9.	CHARLES WANYANG OMONDI	xxxxxx	KSHS. 37,630.00	451,560.00
10.	CHARLES ONYANGO	xxxxxx	KSHS 34,450.00	413,400.00
11.	CHARLES ONYAMGO MBIYE	xxxxxx	KSHS 34,450.00	413,400.00
12.	CHRISTOPHER NYANGO OCHIENG	xxxxxx	KSHS . 34.450.00	413,400.00

13.	CLARKSON ATELA JOSEPH	xxxxxx	KSHS. 34,500.00	414,000.00
14	DANIEL NYAWANGA ONG'OMBE	xxxxxx	KSHS. 37,630.00	451,560.00
15.	DAVID FWAMBA WANYONYI	xxxxxx	KSHS. 34,450.00	413,400.00
16.	DAVID NGAYWA NYANGWESO	xxxxxx	KSHS. 35,500.00	426,000.00
17.	DAVID ONYANGO OKUMU	xxxxxx	KSHS. 34,450.00	413,400.00
18.	DAVIS OWOUR OMBEE	xxxxxx	KSHS 29,680.00	356,160.00
19.	EDWIN CHELOTI MAYEKU	xxxxxx	KSHS 34,450.00	413,400.00
20.	EVERLYNE OKALI AHOLI	xxxxxx	KSHS 30,740.00	368,880.00
21.	FRANICS MAINA KARATHI	xxxxxx	KSHS 37,630.00	451,560.00
22.	FRANCIS NDUNG'U KAMAU	xxxxxx	KSHS.34,450.00	413,400.00
23.	FREDRICK NIKOLAUS OHINDO	xxxxxx	KSHS 34,450.00	413,400.00
24.	FREDRICK ODHIAMBO OWOUR	xxxxxx	KSHS. 34,450.00	413,400.00
25.	GEORGE NJUGUNA KAMAU	xxxxxx	KSHS. 30,740.00	368,880.00
26.	GERALD MUTHUURI MAGIRI	xxxxxx	KSHS 30,740.00	368,880.00
27.	GERALD NYAGA NJAGI	xxxxxx	KSHS 37,630.00	451,560.00
28.	HABEL OMURUMBA ALWANGA	xxxxxx	KSHS 34.450.00	413,400.00
29.	HABIL LUBANGA IMBUYE	xxxxxx	KSHS. 34,450.00	413,400.00
30.	HAMISI JUMA KAKI	xxxxxx	KSHS 37,630.00	451,560.00
31.	HARRISON DAVID AMAKOBE NAMALE	xxxxxx	KSHS 34,450.00	413,400.00
32.	JACKSON KIRAGU MARICU	xxxxxx	KSHS. 37,630.00	451,560.00
33.	JACOB MACHOWE	xxxxxx	KSHS 34,450.00	413,400.00
34.	JAMES MAINA GAKUHA	xxxxxx	KSHS. 37,630.00	451,560.00
35.	JANE MUTHONI KAGURU	xxxxxx	KSHS. 36,040.00	432,489.00
36.	JASON ZENGE SHAKO	xxxxxx	KSHS. 34,450.00	413,400.00
37.	JEREMIAH MUTUKU	xxxxxx	KSHS. 37,630.00	451,560.00
38.	JOHN KAGAI MWANGI	xxxxxx	KSHS. 34,450.00	413,400.00
39.	JOHN KINUTHIA KIARIE	xxxxxx	KSHS. 34,450.00	413,400.00
40.	JOHN KHUBEDO OJIAMBO	xxxxxx	KSHS. 34,450.00	413,400.50

41. JOHN NDAMBIRI MUGO	xxxxxx	KSHS. 37,630.00	451,560.00
42. JOHN OGINGA OCHIENG	xxxxxx	KSHS. 34,450.00	413,400.00
43. JOHNSON SAMBAYA NGOLOBE	xxxxxx	KSHS. 34,450.00	413,400.00
44. JOSEPH KARUME KAHURIA	xxxxxx	KSHS. 34,450.00	413,400.00
45. JOSEPH MUNGAI MWANGI	xxxxxx	KSHS. 34,450.00	413,400.00
46 JOSEPH ODERO OWORE	xxxxxx	KSHS. 34.450.00	413,400.00
47. TUTI OTUNDO	xxxxxx	KSHS. 34.450.00	413,400.00
48. JOSEPH WACHIRA MUGO	xxxxxx	KSHS. 34,450.00	413,400.00
49. JULIUS MWAURA KIHARA	xxxxxx	KSHS. 34,450.00	413,400.00
50. JULIUS MURIUNGI	xxxxxx	KSHS. 37,630.00	451,560.00
51. KENNEDY OTETE AMWOYI	xxxxxx	KSHS. 34,450.00	413,400.00
52. LAWRENCE MUTISO MULWA	xxxxxx	KSHS. 34.450.00	413,400.00
53. MARGERET NJERI MUTUGI	xxxxxx	KSHS. 37,630.00	451,560.00
54. MAURICE OUMA OGONYI	xxxxxx	KSHS. 30,740.00	368,880.00
55. MICHAEL MAINA HOSEAH	xxxxxx	KSHS. 34,450.00	413,400.00
56. MICHAEL OJAY OTIENO	xxxxxx	KSHS. 34,450.00	413,400.00
57. PATRICK AYUB IMBUGA	xxxxxx	KSHS. 34,450.00	413,400.00
58. PETER MBURU MWANGI	xxxxxx	KSHS. 34,450.00	413,400.00
59. PETER INYANGALA KEIZA	xxxxxx	KSHS. 34,450.00	413,400.00
60. PETER NICOLAS KIBURI KANGETHE	xxxxxx	KSHS. 34,450.00	413,400.00
61. PETER MAINA NGACHA	xxxxxx	KSHS. 34,450.00	413,400.00
62. PHILIP EBISIENO	xxxxxx	KSHS. 32,118.00	385,416.00
63. RICHARD KHAYO	xxxxxx	KSHS. 37,630.00	451,560.00
64. ROBERT WAMBUA	xxxxxx	KSHS. 30,740.00	368,880.00
65. SAMSON GATUKUI WAHOME	xxxxxx	KSHS 34,450.00	413,400.00
66. SYLVESTER OTIENO ALANGA	xxxxxx	KSHS 34,450.00	413,400.00
67. SIMON KANYI NDERITU	xxxxxx	KSHS. 34,450.00	413,400.00
68. STANLEY OPAH KHAOYA	xxxxxx	KSHS 30,740.00	368,880.00

69.	TOM OTIENO MBOGO	xxxxxx	KSHS. 37,630.00	451,560.00
70.	VICTOR ONUNGA OBONDI	xxxxxx	KSHS. 34,450.00	413,400.00
71.	VINCENT PAUL ONYANGO	xxxxxx	KSHS. 37,630.00	451,560.00
72.	WILLIAM KARUE	xxxxxx	KSHS. 30,740.00	368,880.00
73.	WILLIAM OLUM MAKOLUNGA	xxxxxx	KSHS 45,520.00	546,240.00
74.	WILLIAM OBORA	xxxxxx	KSHS. 30,740.00	368,880.00
75.	MICHAEL OKORE	xxxxxx	KSHS. 38,160.00	457,920.00