



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NO 1880 OF 2011**

**JEMMAH AKOTH NYADERA ONYOSI ..... 1<sup>ST</sup> CLAIMANT**  
**GEORGE KARANJA WANGOCHI .....2<sup>ND</sup> CLAIMANT**  
**PAULINE MONTHE MAWEU ..... 3<sup>RD</sup> CLAIMANT**  
**JANE SIANOI NOOSELI .....4<sup>TH</sup> CLAIMANT**  
**SIMON OKWOMI MUKABANE .....5<sup>TH</sup> CLAIMANT**  
**ZACHARIA B MOKAYA .....6<sup>TH</sup> CLAIMANT**  
**DONALD MATANGI .....7<sup>TH</sup> CLAIMANT**

**VERSUS**

**KENYA NATIONAL TRADING CORPORATION ..... RESPONDENT**

**JUDGEMENT**

1. There are 7 claimants who on 10<sup>th</sup> November 2011 filed a claim for unlawful and fraudulent retirement in the guise of voluntary early retirement, wrongful and discriminatory calculations of terminal dues by the respondent herein. A defence was filed on 21<sup>st</sup> January 2012 denying all the claims noting that they underwent a staff evaluation and new strategic planning and put in place appropriate staff where 60 employees lacked basic qualification which affected the claimants. The 1<sup>st</sup> to the 6<sup>th</sup> claimants gave evidence while the respondent called Miriam Wawira Ngare the Human Resource officer for respondent. at the close of the hearing, both parties filed their written submissions dated 13<sup>th</sup> February 2014 and 17<sup>th</sup> March 2014 for the claimant and respondent respectively.

**Claimant’s case**

2. The claimants are all former employees of the respondent, a state corporation formed and regulated under the State Corporation Act. The claimants had worked for the respondent for varying number of years between 22 and 29 years and in 2010 the respondent came up with a Voluntary Retirement Scheme (VERS or scheme) where the employees were to apply by 31<sup>st</sup> December 2011 and those who did were paid and left in January 2011 but the claimants opted to remain in employment but in February 2011 the respondent told all those who remained to re-apply for their jobs where new interviews were to be carried out. The claimants were all called for an interview by the human resource manager and made to sign documents that were pre-prepared and not allowed to read and threatened not to complain or

lose employment. On 30<sup>th</sup> May 2011 the claimants were called to a seminar where they were told that they had signed VERS and told to collect their terminal dues and when they refused, they were forced to accept these dues. That all along the respondent wanted to retrench the claimants without due process and by making them sign documents they had no prior knowledge of and were taken through a fraudulent process noting the respondent had no authority from the minister to VERS them, the law was not followed, the termination of the claimants was illegal and the Union was never involved.

3. The claimants also state that due to the illegalities committed by the respondent in obtaining their signatures for VERS they wish the process to be reopened and scrutinised as it was discriminatory and resulted in non-payment and wrong calculations of their terminal dues and thus claim damages on account of the illegal and unjustified withholding of these dues and the unfair termination of employment and further compensation for the wrongful termination. The claimants were earning Kshs.35,000.00 and seek compensation at 12 months; damages for discrimination at 1 ½ month pay for each year worked; pay for long service; transport allowances; notice pay and for 3 months and underpayment for 38 months; all being a claimant of Kshs.1,290,928.80 for the 1<sup>st</sup> claimant; 374,892.00 for the 2<sup>nd</sup> claimant; Kshs.818,012.00 for the 3<sup>rd</sup> claimant; Kshs.765,293 for 4<sup>th</sup> claimant; 500,489.00 for 5<sup>th</sup> claimant; 299,276.00 for 6<sup>th</sup> claimant and 313,361.00 for the 7<sup>th</sup> claimant.

4. In evidence the 1<sup>st</sup> claimant Jemimah Akoth Onyosi gave her sworn statement that she was employed by the respondent from 31<sup>st</sup> July 1981q until 31<sup>st</sup> May 2011 when she was unfairly terminated before she reached retirement age as her contract gave her retirement age at 60 years and by 2011 she was 53 years and thus had 8 more years remaining. There was a VERS scheme and those who applied for it left in January 2011. The respondent told all those who did not take the VERS to re-apply for their jobs and she did and was called for an interview for the office of personal secretary to the legal officer, a position she was still holding. She was later called by HR officer Nancy Kamwenji for a suitability interview and was given a pre-designed form to sign on some dotted line which the claimant later learnt was an acceptance for VERS. The claimant had not applied for VERS until she was made to sign for it without prior knowledge. She was told to sign or be dismissed. There was no prior briefing of the second VERS or due payments as the first group had been paid as the claimant had rejected the offer to take VERS. The claimant was then paid Kshs.335,996.00 and told to leave. The payment was calculated based on the number of years served being 1 ½ month's salary. The claimant was 52 years then and the respondent had offered that those who were below 50 would be paid for years worked and those above 50 were paid for their remaining years which was discrimination against the old employees. There was no justification to pay those below 50 years more while those above 50 years got less. The claimant was placed at 50 years and above whereas similar colleagues who were younger than the claimant but had served similar number of years got a better package with a big difference to what the claimant got. The claimant had worked for 29 years and if the basis of 1 ½ month's pay was used, the terminal dues would have been more. No explanations were made to this differentiation in treatment. The claimants should have earned kshs.712,005.00 and long service was never paid at kshs.10,000.00; transport allowance was kshs.3,000.00; 3 month's pay was due for notice but was paid using gross salary and thus an underpayment as there had been a salary increase and thus seek kshs.37,262.00 which was adjusted to kshs.19,739.00 and the 50% increase made the salary to be kshs.21,165.00 and all underpayments not remitted amount to kshs.49,010.00. the claimant is also seeking tax waiver to avoid a deduction of kshs.64,622.82 as vide Legal Notice No.131 of 30<sup>th</sup> July 2011, the claimant was tax exempt and that other employees got the waiver. The claimant is seeking these dues together with damages for being forced out of work and compensation for unfair terminations she was terminated before she was ready to leave employment and was forced to re-apply for a job she was already occupying and had no prior disciplinary issue.

5. Upon cross-examination the 1<sup>st</sup> claimant stated that when she was called by the HR for interview, there were no results given to her as to how she performed despite being in her workplace for a long time. That in the VERS memo part of the dues offered there was no offer for long service award and with regard to salary increase there was a 50% increase that was for all employees and thus the claimant was to move from Kshs.19,875.00 which was not effected and despite complaints the respondent refused to increase it. The Legal Notice 131 on exemption related to 32 employees and there is no evidence that the

claimant was one of the 32 exempted from tax payment.

6. The 2<sup>nd</sup> claimant, George Karanja Wagochi gave his evidence that he was employed by the respondent on 1<sup>st</sup> July 1986 and was the Depot Manager in Kisumu until 31<sup>st</sup> May 2011. The respondent asked employees to take the VERS scheme and those willing were to give their applications. The memo was sent all over the offices and the claimant got his at Kisumu depot. Those in his depot who took the offer had their applications consolidated and the 2<sup>nd</sup> claimant took these documents to the respondent office. It was a voluntary process and those who applied were called to the head office and given their dues. The 2<sup>nd</sup> claimant was called to the head office as he had not put in his application for VERS and was asked to re-apply for his job and subjected to an interview. There were no results from the interview, the 2<sup>nd</sup> claimant was called and told to sign some forms but declined as he needed more time to read and understand them. The HR told him to go out and think about the consequences of not signing the forms as instructed and was told not to return to his duty station. He was called again at 4.00p.m and given two options to sign the forms or leave the respondent employment with nothing and in the circumstance and in view of what either provided, he decided to sign the forms instead of losing his benefits. He was later called for an exit interview. He had not been prepared for an early exit and felt justice was not done in his termination and seek damages. He was 52 years old at the time and had served for 25 years and thus was discriminated against due to age as those who were below 50 years had their dues computed well while he was to be paid based on his remaining years. From the time he joined the respondent in 1986, he had colleagues who were below 50 years and they got a better package while there were no good reasons to give him a worse of package due to age difference and this was unfair treatment meant to discriminate against him. The claimant had 9 more years of service before retirement and was only offered Kshs.149,980.00 and had he not been discriminated, he could have been awarded kshs.374,892.00, transport allowance of Kshs.2,000.00 and long service award of Kshs.10,000.00. in 2008 there was a salary review with 50% increase but his salary was not adjusted and thus an underpayment and should have had a net pay of Kshs.31,851.00 and this for the 38 months of underpayment he is seeking total of Kshs.109,744.00. when the VERS scheme was offered there was also offer of tax waiver in Legal Notice No. 131 but this was not applied to him and a deduction of Kshs.46,573.00 should not have been retained by the respondent and seek to have the same. He is also seeking costs and interest of the suit and the amount awarded.

7. On cross-examination the 2<sup>nd</sup> claimant stated that as the Kisumu depot manager, he was aware of the VERS and the terms but did not take it. He was called to the head office on 26<sup>th</sup> April 2011 and given documents to sign but declined and was told to go out and think about the consequences of not signing. He was given two option or sign or loses everything. The form signed indicated that the claimant was acknowledging that he was not competent for his job and was thus accepting the VERS but this was not true as he had served for 25 years.

8. The 3<sup>rd</sup> claimant Pauline Monthe Maweu stated that she was with the respondent for 27 years from 1982 to 2011 and certificate of service noted 1983 to 2011 and was 54 years then. She was taken through the same process as the other claimants, refused the VERS scheme and thus filed the claim with the outlined dues. When the claimant was cross-examined she stated that when the MEMO for VERS was issued by the respondent, Regina a work colleague read it for her. She was later called for an interview and forced to sign a form before reading it and since she did not understand English, Regina read it for her and she signed. She was not told that she had not qualified for her position as the interview was conducted in Kiswahili as being at the reception she was communicating in Kiswahili and English. The VERS notice was placed at the notice board but there was no option given to her at the interview and thus signed the forms given. That she never voluntarily agreed to retire. Regina as the HR called her to the office and read the VERS and told her she had to sign or be terminated with no dues.

9. The 4<sup>th</sup> claimant, Jane Siano Nooseli stated that she did not retire voluntarily and was taken through a similar process like the other claimant and wished to adopt her written statement of claim and seek the same together with costs and interest. She confirmed that she was paid Kshs.400,000.00 and is seeking Kshs.500,000.00 as she was the department manager and can well communicate in Swahili and English but prefers Swahili. She signed the documents given by HR as the consequences of not signing

were dire and took the option that allowed her not to lose her dues.

10. The 5<sup>th</sup> claimant, Simon Mukabane stated that he was the Storekeeper at Industrial Area office of the respondent from 26<sup>th</sup> march 1993 to 31<sup>st</sup> May 2011. He was terminated in the same manner as the other claimants and has his claim outlined and wishes to adopt the same in evidence and seeking dues of Kshs.299, 276.00 together with interest and costs. The claimant also confirmed that he was given by the respondent Kshs.348,000.00 and the current claim is for Kshs.299,274.00 as he was forced to accept what was offered. Some of his former colleagues accepted the VERS but he was forced to reapply for his job, he was interviewed but was never given any results and later called to sign a prepared document with no time to read it. The document stated that he was not qualified for his job and upon termination his terms were not as those of those who took the VERS which was discriminatory.

11. The 6<sup>th</sup> claimant, Zachariah Mokaya stated that he was employed from 1<sup>st</sup> February 2000 to 31<sup>st</sup> May 2011 as the Depot Manager in Meru and subjected to the same termination process like the other claimants. On 26<sup>th</sup> April 2011 the HR called him for an interview but was not given results. He was told to sign some form but asked for the reasons but none were given. He had his dad sick, his wife had just delivered and had many things in his mind and thus decided to sign and leave the office. While at Meru office he was all alone for a year but never complained and when appraised, the directors were happy with his work. The processes of termination was most unfair and thus seek damages and the unpaid dues for long service, transport and thus adopt his claims as pleaded as part of his evidence.

### **Respondent's case**

12. The respondent on their part pleaded that the allegations by the claimant are misleading as following a staff evaluation done in 2009 it was resolved that a new strategic plan be developed to put in place appropriate human capital systems so as to respond effectively to the respondent's mandate. Respondent therefore conducted a staff rationalisation program in phases since the evaluation exercise found that a total of 33 employees out of the 60 lacked the basic qualifications as demanded of their jobs. Looking at the best interests of the respondent, all resources were to be realigned to be able to address contemporary needs which included rationalisation of human capital, rebranding and increase in market share. The staff rationalisation had two phases, first an offer for VERS and second suitability interviews for all employees for their interested jobs and thus the process started in 2009 and not in 2011 as stated by the claimants. The second phase of staff rationalisation commenced on 7<sup>th</sup> January 2011 and a memo was issued to staff to have the respondent place the right staff at the right job. All processes were to be speeded up all developments and expectations of all processes and were not therefore meant to coerce blackmail, defraud or unfairly terminate the claimants as due process was followed. The claimants failed the suitability interview and were offered VERS which they willingly accepted and signed acceptance and got their dues. The terminal dues were more as against dues that the respondent would have paid in a redundancy process. There was no fraud or illegality in disposing the claimants because there was authority and approval from the relevant ministry to offer VERS to its employees and there was approval for the implementation of the VERS where all employees were offered a fair and equal opportunity and as approved by the ministry. The termination of the claimant was therefore fair and lawful and nothing in dues to the claimants as damages. The VERS offered;

- a. *A golden handshake of Kshs.100,000.*
- b. *Three (3) months basic salary in lieu of notice*
- c. *One and a half (1.5) months basic salary for every year worked (for employees less than fifty (5) years) or one and half (1.5) months basic salary for every remaining year before retirement (for employees over fifty year)*
- d. *Payment of accrued leave if any*
- e. *Pension as per the Corporation existing terms and conditions of service and Retirement Benefits Authority (RBA) Rules and Regulations*
- f. *A training program on enterprise development.*

13. The terms of the VSR were that calculations were based on basic salary and not gross salary; there

was no provision for long service award; and there was no provision for transport allowance. There was application for tax exemption by the Ministry but the funds could not be released to the claimants before approval was granted. Tax due was withheld pending approval as indicated in the final Early Retirement dues letters dated 30<sup>th</sup> May 2011.

14. In evidence the respondent called Miriam Wawira Ngare the HR officer of the respondent who stated that she has been an employee of the respondent since 2009 and is conversant with the case. That events in this case started in 2007 following a 2004 Cabinet memo to the respondent directing them to wind up but in 2007 there was a diagnostic examination and respondent found to be viable. In 2008 the respondent did a new strategic plan to revive it which led to job evaluation and it was discovered that there was need to have the right staff to run the respondent way back in September 2009. There was a recommendation that there should be staff rationalisation programme which had to be approved by the Ministry respondent for the respondent, referred to Minister for Trade and to personnel management and Treasury which was to be carried out in two phases.

First, staff were to apply for VERS and

Second, those who did not apply for VERS were to do a suitability test.

15. A memo that outlined these phases was issued on 10<sup>th</sup> December 2010 and went out to all staff on the VERS in two categories of 50+ year's employees and -50 years employees. For 50-years employees [those who had not attained their 50<sup>th</sup> birthday], they were offered;

Golden handshake of Kshs.100,000.00;

3 months' salary as notice pay;

1.5 months basic salary for every year worked;

Accrued leave; and

Pension due.

16. For 50+years employees [those who were 50 years old and above] were offered;

Golden handshake of Kshs.100,000.00;

3 months' pay as notice pay;

1.5 basic salaries for every year forgone before 60 years retirement age.

17. These phases were approved by the Minister of Trade following a proposal made by the respondent of a golden handshake, 3 months' pay and 1.5 months' pay for each year worked. When consultations were held, there was agreement that there be categorisation between the 50- and 50+ employees. The first phase was to commence in December 2010 when the approval was received and the period to receive VERS was from 10<sup>th</sup> to 31<sup>st</sup> December 2010. At the end, the claimants had not applied and out of that the respondent went into phase two where all staff were to go through suitability interview and all staff were asked to apply for the job they felt they were best suitable for and the claimants applied. There was a time line of 31<sup>st</sup> January to 4<sup>th</sup> February 2011 and the claimants applied. Interviews followed a schedule and the claimants failed the suitability interview and the board of the respondent established that instead of a termination, the VERS be offered to the claimants which they accepted and signed the release forms and were paid. Respondent withheld the tax due pending application to the Minister for approval on exemption by the Ministry for Finance. This approval was granted but the claimants refused to collect their cheques. The respondent sought approvals since this was not an internal issue following each staff being given a fair chance. The witness also stated that the VERS was based on basic salary &

and there was no provision for recognition of transport allowance and the claimants willingly agreed to the VERS.

18. On cross-examination, the witness stated that at the time of implementation of the two phases of VERS Gladys Maina was the Managing Director, Regina Kamwenchi was the Human Resource Manager and she was the Human Resource officer and personally met the claimants during the suitability interviews where she took minutes. When the results of the interviews were given the witness was away on leave and Regina Kamwenchi gave feedback on the interviews to all the claimants. The process had started way back in 2007 when the viability of the respondent was done despite a Ministry memo to wind up and was thus reversed. The staff rationalisation started in 2009 with the result that appropriate people had to be placed in the right job but this report was not submitted in court. 33 employees were found not suitable from the evaluation report.

19. The witness also stated that some employees were unionised and the Union was consulted and Mr Egesa was aware of the consultations but the minutes are not in court. The memo sent to the employees did not mention that the respondent wanted to remove 33 employees established as not suitable in the evaluation report. That the purpose was to get the right staff on the right job. In the first phase 20 employees left under the VERS and after the suitability interview, more staff left including the claimants and only 8 employees were left out of a total 60 employees. The VERS was applied to all staff and the respondent got approval from the Ministry. There were suitability interviews and Jemimah Onyisi, the 1<sup>st</sup> claimant failed the suitability interview and the results are in her file with the respondent and a letter was issued to the claimant to indicate she had failed the interview. She had applied for the position of office assistant; she had held the same for 20 years. There was no record of poor performance as well as all the other claimants. The 1<sup>st</sup> claimant failed suitability as the position required someone with a diploma in secretarial which she did not have. The respondent offered the claimant to apply under VERS though this is not submitted in court.

20. The witness also stated that the 6<sup>th</sup> claimant, Zachariah gave his acceptance form written on respondent letter-head being a release form as all staff applied under the prepared form and the claimant applied for release using this pre-prepared form. On 26<sup>th</sup> April 2014, the entire claimant attended the feedback session and the termination was notified to them later. This was the standard procedure.

21. All the employees below 50 years got 1 ½ months' salary for years worked and those above 50 years were to get 1 ½ years for the remaining years to retirement. There were staff at 50-1 day and those with 50+1 days and the formula was not meant to discriminate against any staff. This proposal was taken by the line Ministry which gave its approval and the respondent implemented what was approved and abided with the authority granted. The only change made by the Minister was the separation of those below 50 and those above 50 years unlike what had been proposed to pay all for years worked, they were now to be paid differently. This was communicated to the staff through a memo. The claim for long service award came from the respondent policy but not under VERS.

22. That the claimants were not declared redundant but VERS was applied. On 17<sup>th</sup> January 2011 the Managing Director did a memo and thanked those who had applied for VERS and told those who did not to continue offering dedicated service. There was no travel allowance due to the claimants. Basic pay was the basis of all calculations. The respondent omitted to offer allowances and there was no justification for the omission. There was salary adjustment by 50% but this had not been computed for the claimants thus an underpayment and this because the claimants had reached their salary limits and could not go beyond what was provided.

23. Tax exemption came in September 2011 and all the cheques due to the claimants are available for collection. However, the claimants have not been advised of this and may not be aware.

24. The witness confirmed to the court that the claimants were members of the Commercial Food and Allied Workers Union and was supposed to participate at the VERS process but there is no such record. At the time of termination the claimants were;

1<sup>st</sup> claimant was Secretary to legal officer;

2<sup>nd</sup> claimant was depot manager Kisumu;

3<sup>rd</sup> claimant was a receptionist;

4<sup>th</sup> claimant was acting Depot manager;

5<sup>th</sup> claimant was store keeper at Nairobi; and

6<sup>th</sup> claimant was store keeper at Meru.

25. Currently the respondent has a new depot manager in Kisumu, a receptionist from the old staff, a new manager was appointed to replace the 4<sup>th</sup> claimant, there is a new store keeper in Nairobi depot and there is a new manager in Meru.

### **Submissions**

26. The claimant submitted that the respondent well aware that they needed a staff rationalisation and with knowledge that they needed to lay off a substantial number of staff took the option of VERS and when the claimants did not apply for the same, a new process of interviews was commenced to lay off the predetermined number of employees to ensure they left and soon after this was done, new employees were taken to replace them. The suitability interviews were all predesigned with a result that of lay off target employees. That the reality of this rationalisation was a retrenchment or redundancy which undermined the provisions of Article 41 and 2(5) and (6) of the Constitution on labour practices that are fair and the application of international labour provisions with regard to termination of employees all buttressed by section 45 of the Employment Act that demand fair labour practice. That fair labour standards require non-discrimination. In this case, there was discrimination where some employees employed at the same time and with similar terms were treated differently at the time of termination due to their age differences without any justification that is valid in law. All the claimants were over 50 years of age and did not receive terminal dues commensurate to the number of years they had served the respondent.

27. The claimant also submitted that they should be paid damages for unfair termination as the process of termination was predetermined and due process was not followed. The union was not involved and the respondent took unilateral decisions, the claimants were made to re-apply for their jobs and go through suitability interviews and were never given results for the same and only made to sign predetermined acceptance forms. In *Cause No. 811 of 2011, Joseph Omwenga versus Kenya Revenue Authority* the court awarded damages in a case where the affected employee had no chance of getting new jobs due to their ages that was near retirement.

28. That an employee cannot lose whatever is an entitlement at the time of termination and thus should be awarded for long service, transport allowance, underpayments and non-increments due. The tax waiver has been approved and this should be granted with interest and costs of the suit.

29. The respondent on their part submitted that in 2008 the Office of the President came up with a strategic plan that was to ensure that government corporations had the appropriate human capital resource systems for effectiveness in their mandate and the respondent was expected to realign all its resources. With regard to human resource the respondent carried out a job evaluation and analysis completed in 2009 and which determined the ideal staff levels in terms of numbers, knowledge, skills and abilities so as to drive the new strategic plan. The Office of the President on 24<sup>th</sup> November 2010 approved the respondent staff rationalisation programme which the respondent had to implement with an offer for VERS, suitability interviews for all staff and by a memo dated 10<sup>th</sup> December 2010. The VERS commenced but the claimants failed to apply. Those who applied were paid and left. On 16<sup>th</sup> January

2011 a new memo was issued to staff on the requirement that they should all reapply for their jobs and suitability interview conducted where the claimants failed and accepted the VERS. The termination of the claimant was followed diligently with proper guidelines. The decision by the claimants not to take the VERS in December 2010 undercuts their claims that they were coerced into retirement. Courts have no power to rewrite contracts of parties and for this reason the court should not rewrite the contract between the claimants and the respondent noting what was held in *Shah versus Guiders international Bank Ltd [2003] eKLR*. The claimants signed the VERS forms and agreed to be released by the respondent and have no further claims. The claims should be dismissed.

### **Determination of the issues**

30. It is not in dispute that the claimants were all the employees of the respondent from divers' dates ranging from 22 to 29 years where they gave continuous service up to and until the events leading to 31<sup>st</sup> May 2011 when they were terminated. It was also not disputed that the claimants were members of the Union, Kenya Commercial Food and Allied Workers union. There was however no letters of employment produced or a Collective Bargaining Agreement (CBA) that spell out the terms and conditions of work but in the letter of *Final Early Retirement Dues* issued to the claimants on 30<sup>th</sup> May 2011, the respondent does acknowledge the grade of the claimants was that of *Union*.

The Question herein for determination are;

#### **Whether the termination was fair**

#### **Whether there was discrimination against the claimants**

#### **Whether there are any remedies due to the claimants**

31. Where any employer contemplates any form of rationalisation at the workplace the same must involve all the parties concerned without removal of the trade Union representing the employees. This involves consultations that facilitate the understating by all parties especially for the employees that may be affected so as to support the process and inherently, rationalisations result in lay off, redundancies or retrenchment. Such Consultation involves the right to be heard; is part of the right to fair labour practices under Article 41 of the Constitution of Kenya; and a main principle encompassed in the Labour Relations Act 2007.

32. Although not expressly defined under the Employment Act 2007, 'rationalisation' or 'restructuring' is contemplated by section 45 [2] as a fair termination reason. The provision refers to *operational requirements of the employer*.

45. (1) *No employer shall terminate the employment of an employee unfairly.*

(2) *A termination of employment by an employer is unfair if the employer fails to prove?*

(a) *That the reason for the termination is valid;*

(b) *That the reason for the termination is a fair reason?*

(i) *related to the employees conduct, capacity or compatibility; or*

**(ii) Based on the operational requirements of the employer;**  
*[emphasis added].*

33. Companies restructure not necessarily because they are in financial distress, but for such other reasons as mechanization, streamlining, reorganisation of the modes of operation and o production. The terms *redundancy, retrenchment and restructuring* are largely related to this rationalisation and restructuring, but can be separable. These are terms used in different context and jurisdictions, to denote

this form of employment termination. These include *downsizing, rightsizing, and de-layering or lay-off*. Whatever term is used, the decision results in the dissolution of an employment agreement.

34. Drawing from the pleadings, the evidence and submissions of both parties, I note events herein commenced around 2007 when it became apparent that the respondent business was not doing well and there was a decision to wind up but this was revised to allow the respondent undertake internal assessments and realignments to viability that included staff rationalisation. This was followed by various processes seeking approvals from line ministry and by a memo dated 3<sup>rd</sup> December 2010, the respondent wrote to all staff indicting that;

*Subject: Voluntary Early Retirement Scheme*

...

*As you are aware the Corporation has been carrying out an organisation realignment exercise that commenced in 2008 and is now coming to its close. As part of the implementation process, the Board approved a Voluntary Early Retirement Scheme for staff who wishes to make an early exit from the Corporation's service. While developing this package, the Board and management took into account the market offerings and the Corporation's ability to pay among other things.*

*I take this opportunity to assure you that provisions of the Terms and Conditions of service and Labour Laws will be complied with while implementing this program.*

*The details on the Voluntary Early Retirement Scheme will be communicated within the next week and staff will be given ample time to apply however, the Corporation will exercise discretion to/or not to accept individual applications depending on the needs of the organisation.*

35. This memo went out to all staff as the 2<sup>nd</sup> claimant noted in his evidence, that he got all these communications from the head office and shared with his staff in the Kisumu depot. This was followed by the memo dated 10<sup>th</sup> December 2010 noting;

*Subject: Voluntary Early Retirement Scheme*

...

*Further to our circular dated 3<sup>rd</sup> December 2010; this circular gives details for the VERS.*

*The scheme is available to all employees serving as permanent a pensionable who are willing to apply for the scheme voluntarily. However, all employees should note that the Corporation will exercise its discretion to/or not to accept individuals application depending on the needs of the Corporation.*

36. The memo/circular goes further to outline the terms under which the VERS will apply to employees aged 50 years and below and those aged 50 years and above. What is strikingly clear from both memos and or circulars of 3<sup>rd</sup> and 21<sup>th</sup> December is that this was a voluntary exercise that all employees were to apply for and those who applied for the VERS could have their applications accepted or rejected based on the respondent needs.

37. However things do not end here, on 6<sup>th</sup> January 2011, the respondent in another memo to all staff, thanked those who had applied for the VERS and wished them well as they exited the respondent employment and went on to note;

*... for the colleagues left behind, we have customers to serve and work to do. Let us rally*

*together and move forward with optimism and indeed make KNTC the distributor of choice for all Kenyans. We have capacity and indeed the ability to take the Corporation to the next level and make a positive difference for Kenya. ...*

38. On 7<sup>th</sup> January 2011, the respondent issued another memo to all staff;

*Subject: Job Applications*

...

*In order to ensure job efficiency and improve the corporation's performance, it's important to place employees in the right jobs with the right qualifications.*

*Therefore a copy of the job descriptions will be availed to all employees (i.e. permanent and pensionable as well as employees on contract) for people to apply for positions they feel are best suited. The applications will then be used to guide management in the final placement. Ensure you attach copies of certificates. Do not hesitate to contact the Human Resource Department for any clarifications.*

39. So at what point was the decision to carry out suitability interviews made? Was this decision meant to remove the claimants from employment and was it done fairly with regard to claimants expectations?

40. In the memo dated 3<sup>rd</sup> December 2010 and the memo issued on 10<sup>th</sup> December 2010, a close perusal and assessment of the same does not raise the issue of suitability interviews. The memo dated 6<sup>th</sup> January 2011 does not raise the same as well. So why were the suitability interviews done by the respondent?

41. The respondent has submitted *Employee Release Acceptance Form* with regard to each claimant. these forms are all identical and the respondent admitted that they had prepared them and each claimant did sign each in acceptance that they had failed the suitability interview and were ready to accept a release under the VERS. This form reads in part;

*Further to the suitability interview conducted in February 2011 and subsequent feedback communicated to me on 26/4/11, I agree that I do not qualify for the job applied for or any other job in the corporation as stipulated in the Job Descriptions circulated on 7/01/2011.*

*Based on information presented to me, I (fill name) ... Therefore agree to be released from employment of KNTC. I am hence requesting the management to consider my release under the Voluntary Early Retirement Scheme.*

42. All the claimants contested this form noting that the form was pre-designed and given to them to sign before reading or being given a chance to read and understand it; each was forced to sign it under condition that they either take the offer or lose employment with nothing and that there was no feedback given from the suitability interview to enable each claimant appreciate the next applicable procedure as undertaken by the respondent.

43. I note all the forms are similar, which was admitted by the respondent and that apart from the difference in each claimant details, all the rest is the same. There is no record of the feedback given to each claimant after the suitability interview and indeed the respondent witness, Miriam Ngare admitted that this feedback record was never sent to each claimant, this was left in the files in the custody of the respondent. that aside, it is worth noting that the *Employee Release Acceptance Form* as designed by the respondent was giving various rights away. By each claimant being made to sign this form or accepting to sign this form, in essence it was an acceptance that each had not;

*... qualified for the job applied for or any other job in the respondent as stipulated in the*

*Job Description circulated on 7/01/2011 ... and ... that each was requesting the respondent to be released under the VERS.*

44. None of the parties have attached the Job Descriptions said to have been circulated on 7<sup>th</sup> January 2011. Even the respondent who heavily relied on this process failed to avail this record to the court. The importance of each and every document under reference in this matter cannot be overemphasised. Without each and every record, the Court is denied vital evidence that would be used in the arbitration of the matter. These are record in the possession of the respondent as the employer and under the provisions of section 74 of the Employment Act, the duty and responsibility to produce these records to Court rest with the Respondent. As the authors and the party issuing these documents to the employees and the claimants herein, the respondent should have availed to the Court these documents. The absence therefore is to sway the contents to the advantage of the claimants.

45. By the time the claimants are said to have signed the *Employee Release Acceptance Form* on 26<sup>th</sup> April 2011, the claimants had served the respondent for period between 22 and 29 years. The claimants had a job to do at the respondent Corporation. Following staff rationalisation, some employees left under the VERS and the claimants, who did not volunteer to take the offer, remained to serve in their positions. However, the respondent was not done with the staff rationalisation, and hence invited the employees to submit job applications in the memo dated 7<sup>th</sup> January 2011. This memo has no conditions and stated in part;

*In order to ensure job efficiency and improve the corporation's performance, it's important to place employees in the right jobs with the right qualifications.*

*Therefore a copy of the job descriptions will be availed to all employees (i.e. permanent and pensionable as well as employees on contract) for people to apply for positions they feel are best suited. The applications will then be used to guide management in the final placement. Ensure you attach copies of certificates. Do not hesitate to contact the Human Resource Department for any clarifications.*

46. The employees were to apply for positions they felt they were best suited for. This was the key condition. There is no condition in the memo that those who failed to apply for any position or those who submitted an application for any job, would as a result lose the job and or position they held with the respondent. the memo was an invitation to all staff to apply for position that may have been outlined in the job description that was to be issued by the respondent. this would be a scenario where an employee like the 1<sup>st</sup> claimant, having served the respondent for 29 years and being the secretary to the Legal Officer and keen to be a messenger or store keeper or depot manager like the 2<sup>nd</sup> claimant would apply to be the depot manager and where she failed in the interview for the position of depot manager she would still remain the Secretary to the Legal Officer. Nothing in the memo stated that those who failed the interview for the job applied for would be terminated or made to take the VERS. In any event, those who had been keen to take the VERS had already done so in January 2011 and left. This was a voluntary process that each employee was to apply for and in the case of the claimants being made to sign pre-designed forms that followed suitability interview was nothing short of what each claimant stated to have been done under duress, coerced and fraudulently obtained. Nothing prevented the claimant from applying for VERS when it was first announced if indeed this was voluntary and required of them. For the respondents to state in their submission that 'no force' was applied is to diminish the evidence of the claimants that they were all called to the office and told to sign a pre-designed form that had the effect of what they had not volunteered to do when the memo of 10<sup>th</sup> December 2010 was issued to them. Force used here need not have been direct force, as the force applied by the respondent was that of power over the claimants, who being the employees and with the risk of losing it all in the vent they refused to sign the pre-designed forms, would lose everything. All the claimants had been in long service of the respondent, these are people who signed their Verifying Affidavits in support of each claim and none said they could not read or write and therefore there was no need for the respondent to pre-design a form that had adverse effects on the claimant's employment. Further to all this, the respondent on 11<sup>th</sup> May 2010 had already written to the Minister for Trade with the proposed VERS and in this letter at paragraph 5 and

6 noted that they had already identified 33 employees who lacked basic qualifications, and thus needed to have a staff rationalisation programme in phases the first being the VERS, which was outlined. However, no other phase was outlined or mentioned in this letter to the Minister for Trade. The claimants were not copied to this mail and even in the response from the Minister, the outlined details were between the respondent and the Minister. What was approved was only within the knowledge of the respondent and not to the claimants. It is therefore not rational for the respondent to state that there were two phases to the staff rationalisation programme as these were never shared with the claimants and the purpose of the suitability interviews were not within the claimant's knowledge and cannot be used as a defence herein. On this basis, I find the claimants were subjected by the respondent to an unfair process, this unfair process led to the termination of the claimants' employment with the respondent and this is contrary to laid procedures and thus an unfair labour practice.

47. The claimants also stated that they were discriminated against by the respondent. that after their unfair termination, they were released on less favourable terms as against other employees who had served the respondent with them as the same time but since they were all above 50 years, their release package was based on the remainder of their terms unlike those who were paid based on the number of years served and being below 50 years old. That had the claimants been released and paid for years served; their terminal dues and package would have been a better package.

48. Discrimination at the workplace is now an outlawed practice under the provisions of section 5(3) (b);

*(3) No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee?*

*(a)...*

*(b) in respect of recruitment, training, promotion, **terms and conditions of employment, termination of employment or other matters arising out of the employment.** [emphasis added].*

49. Therefore Where a person is treated differently from others similarly situated like him, this amounts to discrimination. If this treatment in differentiation is on a specified ground, then whether there is discrimination will depend upon whether, objectively, the ground is based on reasons which have the potential to impair the fundamental rights of a person or to affect them adversely in a comparably serious manner. If there is a specified ground for discrimination, then unfairness will be presumed. If on unspecified ground, unfairness will have to be established by the claimant. In this case, the test of unfairness focuses primarily on the impact of the discrimination on the claimant and others in their situation. Where differentiation is found to be unjustified, the same is discriminatory and unfair and not justified. This was emphasised by this Court in **Industrial Cause No. 60 of 2013, Hesbon Ngaruiya versus Equatorial Bank [2013] eKLR.**

50. In this case, the respondent made an offer to all its employees for VERS and gave two categories within which each employee was to fall under. These categories were that those who had attained 50 year and 1 day [50+1] would receive a package based on the remainder of their terms to retirement being 60 years and the other was that those had were 1 day less 50 years (50-1) would be paid based on the number of years served. The claimants contested this noting that some had been employed together with colleagues who as at the VERS were less than 50 years old and based on the VERS package would receive a better terminal package than them despite having been employed at the same time and serving under similar circumstances and therefore the VERS was applied unfairly to them.

51. The respondent does not offer the reasons for the differentiation of the employees, those less than 50 year and those above 50 years. The only explanation given by the Respondent witness was that when the respondent made their proposal to the Minister, all employees were to be released on the same terms that of a payment based on the number of years served. That this would have applied to all but the Minister in return, gave out the two categories for those below 50 years and those above 50 years. In the

letters exchanged between the respondent and the Minister for Trade seeking to approve and VERS, there is no reason outlined as to why there were two categories set out for the VERS. The initial proposal for VERS was by the respondent Board and the reply by the Minister is silent. Quite bizarre, the respondent omitted some pages of the letter from the Minister! Respondent Annexure at page 20 and 21 of the Respondent bundle of documents is quite telling. Page 20 comprise a letter dated 24<sup>th</sup> November 2010 written to the respondent Managing Director Ms Gladys Maina and signed by Eng. Abdulrazaq Adan Ali, the Permanent Secretary, Ministry of Trade with reference to letter *Ref. NO.OP/CAB/£! Dated 17<sup>th</sup> November 2010, from the Permanent Secretary/Secretary to the Cabinet and Head of the Public Service.* The next page 21 in an annexure with no heading or without an indication as to whether this was the letter dated 17<sup>th</sup> November 2010 referenced to and which starts as;

*(ii) three (3) months basic salary in lieu of notice*

*(iii) one and a half (1.5) month's basic salary ...*

52. This annexure is signed by Amb. Francis Muthaura, Permanent Secretary, Secretary to the Cabinet and head of Public Service. There is however no heading to link this letter to the supposed author and the background of it is lost and or not related to the issues at hand. This omission is serious and cannot be said to have been undertaken in good faith by the respondent.

53. The upshot of this is that there is no ground, reason, justification or provision as to why the claimants, being above 50 years were treated differently as against other employees similarly situated and offered a less favourable VERS package considering the circumstances of their releases. As noted above, the claimants had not volunteered for the VERS and even when they were forced to the same, they were given less favourable terms. This can be demonstrated in the manner that, the 1<sup>st</sup> claimant had served the respondent for over 29 years and was terminated aged 54 years old. Where the claimant was to be paid for the number of years worked, her dues would have been based on a higher scale at 29 years while to base her dues on the remaining years towards the retirement age of 60 and being 54 years old, she only had 6 years to benefit from. This looked at with a view of an employee who had served that long for 29 years is most unfortunate as had such an employee been allowed to retire at 60 years; all terminal dues would have been based on that age. To therefore cut short that time and use a less favourable rate is to apply an unfair rate and thus adversely affect an employee who placed with other employees below 50 years would fall less favourable in terms of getting new employment due to age factor. Where an opportunity arose and the 1<sup>st</sup> claimant called for a job with another candidate aged 45, the 1<sup>st</sup> claimant would be in a less favourable position to get the new job. Hence in labour practice what is called the last-in-first-out formula where an employer should keep the old experienced staff as against the new and less experienced employees.

54. There are now basic provisions that should never be lost with regard to an employee's rights. No employee should be subjected to less favourable terms of work and or conditions that go below the minimum legal provisions. An employer can offer more and better favourable terms and conditions but cannot go below the set legal minimum. any condition of service or employment less favourable to an employee than the like condition of employment provided by the Employment Act is void to the extent that it is so less favourable, and the relevant condition of employment provided by the Employment Act is deemed to have been included in and to form part of such contract of service as the case may be. This is better articulated under section 26 of the Employment Act;

*26.(1) The provisions of this Part and Part VI shall constitute basic minimum terms and conditions of contract of service.*

*(2) Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court **are more favourable to an employee than the terms** provided in this Part and Part VI, then such favourable terms and conditions of service shall apply. [emphasis*

added].

55. Therefore, for the respondent to thus treat the claimants less favourably in the application of the VERS due to their age and offer less benefits is an act in discrimination against them and contrary to the law. This discrimination not only offends the provisions of section 5 of the Employment Act, the same is contrary to constitutional provisions outlined under Article 10 on principles and values that government public officials as the respondent is such an entity is bound, and also contrary to Article 27 that outlaw all forms of discrimination, directly or indirectly and also offends the provisions of Article 41 of the Constitution which prohibit unfair labour practices.

56. Beyond the violations as outlined above, where the claimants were unionised, the staff rationalisation programme failed to include their Union, which is now a requirement as under Article 41 of the Constitution and under the provisions of section 41(2) of the Employment Act. Where an employee is unionised as provided for under the Constitution and that employee is subject to any termination, revision of their employment terms and a process such as staff rationalisation that has the effect of such an employee losing their position, then the Union that represents such an employee must be involved. The respondent witness, Miriam Ngage stated that they informed Mr Egesa the Union representative as to what was happening but there was no such record submitted in court. There is no evidence to link any processes herein with Mr Egesa or any Union. The fact that the claimants opted to be represented by their appointed advocates and not their Union is immaterial in this regards. That should not have stopped the respondent from inviting their Union under which the claimants were members from participating in the processes that led to the termination of the claimants. That was equally a practice that is indicative of the fact that the respondent was not keen to undertake fair labour practices in the termination of the claimants.

57. As stated above, rationalisation of staff is the equivalent of staff re-organisation, restructuring and redundancy process – in whatever name each employer may opt to use – the results of such rationalisation result in the loss of employment for staff. In a case where the respondent used the laid down procedures outline under section 40 of the Employment Act or opted to use their own release programme, the offered scheme should not have gone below the legal minimum contrary to what the respondent should have granted under a redundancy provision. This is where an employer must consider all the number of years each employee has served and the principle of first-in-last-out as against last-in-last-out formula is lyed. Giving due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy. Whatever method was used, this should have been informed by a pre-set criteria and it does not matter in law or under the Constitution that the Minister for Trade gave an approval to any proposed scheme by the respondent. Any approval must conform to the legal minimum. This was in essence a redundancy process that was wrongfully implemented contrary to the provisions of section 40 of the Employment Act and contrary to fair labour practices under Article 41 of the Constitution. Where the Respondent used a higher note on other employees, the note of 1.5 months for each year worked, this principle should have been applied for the claimants. This is the note that this could will adopt.

## **Remedies**

58. The claimants are seeking;

- i. *Damages for unfair, unlawful and forced termination of employment,*
- ii. *Non-payment of long service award,*
- iii. *Non-payment of transport allowance,*
- iv. *underpayment on account of 3 months' notice; and*
- v. *tax waiver on the redundancy*

59. The respondent admitted that the tax exemption was already approved by the minister and this will be awarded as a granted amount ready for collection by the claimants.

60. Each claimant has outlined their individual claims. However on the finding that this should have

been a redundancy process, the court in awarding the claimants based on the assessment and finding above will consider these outlined claims but not restrict the same as calculated by each claimant. the context of the VERS terms offered to the other employees where the same is more favourable to the claimants will be considered as the Court already made a determination that the differentiation in treatment was an act in discrimination against the claimants.

61. Without giving any priority to the outlined claims, it will be necessary to address the claim for underpayment as once this is resolved, the other awards will be based on this computation. The claimants gave evidence that there was a 50% pay increase but this was not awarded to them and seek this payment. Miriam Ngare in her evidence stated that the claimants did not receive the 50% increase as they had reached the maximum bar and could not be paid beyond this level. This position must be correct as submitted by the respondent noting that the claimant had served the respondent for long periods of time but instead of upward progression in terms of grades or salary increase, they became victims of their own long and good service. This bar to a benefit that was notified and due to other employees of the respondent is most absurd and unfair and contrary to laid down labour practices and no employee should be subjected to such unfair measures. The respondent did not contest the amounts claimed in this regard aside from their submissions. This court will therefore award the claimants for any underpayments claimed based on the **gross salary** pursuant to section 49(1)(c) of the Employment Act as outlined below;

1<sup>st</sup> claimant gross salary was supposed to be kshs.21, 165.00 from the 50% increase from 1<sup>st</sup> March 2008 the salary continued to be underpaid by Kshs. 1,290.00 and the claimant is awarded the amount of Kshs. 49,020.00;

2<sup>nd</sup> claimant gross salary was supposed to be Kshs. 20,246.00 from 1<sup>st</sup> March 2008 and was underpaid by kshs.2, 888.00 for 38 months. the claimant is awarded the underpayment all amounting to kshs.109,744.00;

3<sup>rd</sup> claimant gross pay was kshs.19, 519.00 from 50% increase from 1<sup>st</sup> March 2008. There is no claim for underpayment.

4<sup>th</sup> claimant the gross pay was supposed to be kshs.13,977.00 from the 50% increase from 1<sup>st</sup> March 2008 and was thus underpaid by Kshs.2,869.00 for 38 months all amounting to Kshs.109,022.00;

5<sup>th</sup> claimant gross pay was Kshs.15, 927.00. there was no claim for underpayment.

6<sup>th</sup> claimant gross pay was kshs.19,340.00. there was no claim for underpayment.

62. There was no evidence of the 7<sup>th</sup> claimant. there will be award in this respect.

63. On the claim for damages for unfair termination, on the finding by the court that the staff rationalisation programme was an unfair labour practice against the claimants and under the power conferred to this court under section 12 of the Industrial Court Act read together with section 49(1)(c), this court will grant each claimant 6 months **gross monthly** pay in compensation. This award will be based on the gross monthly salary each claimant should have earned at the time of termination on 31<sup>st</sup> May 2011 as outlined below;

1<sup>st</sup> claimant gross pay of kshs.21, 165.00 x 6 months amounts to Kshs. 116,040.00;

2<sup>nd</sup> claimant gross pay of kshs. 20,246.00 x 6 months amounts to Kshs. 121,476.00;

3<sup>rd</sup> claimant gross pay of kshs. 19, 519.00 x 6 months amounts to kshs. 117,114.00;

4<sup>th</sup> claimant gross pay of kshs. 13,977.00 x 6 months amounts to Kshs. 702,684.00;

5<sup>th</sup> claimant gross pay of kshs. 15, 927.00 x 6 months amounts to kshs. 95,562.00; and

6<sup>th</sup> claimant gross pay of kshs. 19,340.00 x 6 months amounts to kshs. 116,040.00.

64. The respondent in the VERS offered one and a half month basic pay for each year served. This same principle will be applied on the claimants less what has already been paid. Each claimant redundancy/rationalisation/retrenchment or reorganisation package will be calculated on the applied rate of years served at 1.5 basic salary for each year served and the basic pay will be on the principle applicable with 50% increase from 1<sup>st</sup> march 2008. This is due and owing.

65. Notice pay under the redundancy provisions is one month gross salary. This will be awarded to each claimant accordingly;

1<sup>st</sup> claimant gross pay of kshs.21, 165.00;

2<sup>nd</sup> claimant gross pay of kshs. 20,246.00;

3<sup>rd</sup> claimant gross pay of kshs. 19, 519.00;

4<sup>th</sup> claimant gross pay of kshs. 13,977.00;

5<sup>th</sup> claimant gross pay of kshs. 15, 927.00; and

6<sup>th</sup> claimant gross pay of kshs. 19,340.00.

66. In the respondent's Code of Rules and Regulations where there was redundancy leave travel allowance was payable. This is outlined under part 4.6.5 but the scale applicable for the claimants is not stated. The claimant seeks payment of Kshs.2,000.00 and this will be granted to each.

67. On the finding by this Court that there was discrimination against the claimants and there was the violation of Article 41 of the Constitution and with regard to the provisions of section 12(3)(viii), this court will grant damages to each claimant. Each claimant is awarded kshs.100, 000.00 as the appropriate relief.

**In conclusion, judgement is hereby entered for the claimants (save for the 7<sup>th</sup> claimant) as against the respondent in the following terms;**

**1. A declaration that The claimants were unfairly taken through a staff rationalisation programme that resulted in their wrongful loss of employment;**

**2. The court finds the claimants were discriminated against contrary their Article 41 of the Constitution and section 5 of the Employment Act;**

**A. The claimants are each awarded six (6) months gross salary as compensation for unfair termination outlined as follows;**

**1<sup>st</sup> claimant Kshs. 116,040.00;**

**2<sup>nd</sup> claimant Kshs. 121,476.00;**

**3<sup>rd</sup> claimant kshs. 117,114.00;**

**4<sup>th</sup> claimant Kshs. 702,684.00;**

**5<sup>th</sup> claimant kshs. 95,562.00; and**

**6<sup>th</sup> claimant kshs. 116,040.00.**

**B. The claimants are each awarded one hundred thousand (Kshs.100, 000.00) in damages;**

**3. The claimants are each awarded one (1) month gross pay in lieu of notice outlined as follows;**

**1<sup>st</sup> claimant kshs.21, 165.00;**

**2<sup>nd</sup> claimant kshs. 20,246.00;**

**3<sup>rd</sup> claimant kshs. 19, 519.00;**

**4<sup>th</sup> claimant kshs. 13,977.00;**

**5<sup>th</sup> claimant kshs. 15, 927.00; and**

**6<sup>th</sup> claimant kshs. 19,340.00.**

**4. Each claimant is to collect their tax exemption dues from the respondent within the next 14 days;**

**5. Each claimant is to receive 1.5 basic salary for each year served and based on the gross pay outlined above at paragraph 65 and the same be computed and paid within 14 days from the date hereof; this amount will be paid less what each claimant has received in this regard;**

**6. The following claimants are awarded the following underpayments;**

**Jemimah Onyisi Kshs. 49,020.00;**

**George Karanja Wagochi kshs.109,744.00; and**

**Jane Siano Nooseli Kshs.109, 022.00.**

**7. Each claimant is awarded kshs.2,000.00 as transport allowance;**

**8. The claimants are awarded costs of the suit.**

Delivered in open Court at Nairobi and dated this 11th Day of June 2014

**Mbaru**

**JUDGE**

In the presence of

Court Assistant: Lilian Njenga

.....

.....