REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

INDUSTRIAL COURT CAUSE NO.1113 OF 2010

(*Before D.K.N. Marete)*

SAMUEL CHERUIYOT……..….CLAIMANT

Versus

KERICHO MUNICIPAL COUNCIL……..……1ST RESPONDENT

KERICHO WATER & SANITATION

COMPANY LTD……..……..……..…….2ND RESPONDENT

JUDGEMENT

This matter came to court vide a memorandum of claim dated 13th September, 2010 and filed on 23rd instant. It does not project any issue in dispute on its face.

The 1st respondent did not participate in the proceedings whatsoever whereas the 2nd respondent filed his written memorandum dated 18th February, 2012 denying the claim and praying that the same be dismissed with costs.

The claimant's (Cheruiyot's) case is that the 1st respondent engaged him in employment as a Revenue Officer between 1978 and 2002. In 2003 the 1st respondent transferred the claimant to the employment of the 2nd respondent as a Trainee Accountant and thereafter a Payroll Officer under an agency agreement between the respondents.

The claimant further submits that in the year 2009, the 2nd claimant unlawfully terminated the claimant's employment on the premises of the mandatory retirement age of fifty five years. That prior to termination he was earning Kshs. 34.990.00 per month per month.

The claimant further submits that in line with the enhancement of the retirement age to sixty (60) years the claimant is entitled to his full salary till age sixty this aggregate being Kshs. 2,699,400.00. He contends that the termination from employment is unlawful and also offends a mandatory directive issued by the Head of Public Service on 20th March, 2009 raising the retirement age of public servants to sixty (60) years.

He prays for;

a. *A declaration that he was unlawfully terminated from employment by the 2nd Respondent*

b. *Terminal benefits of Ksh.1,496,100/=*
c. *Leave allowance*
d. *Costs and interest*
e. *Any other relief this Honourable Court may deem fit to grant*

The other claimant, Philip Bii, in a statement of claim dated 13th September, 2010 avers that he was employed by the 1st respondent in 1978 and in 2003 the said respondent transferred his employment to the 2nd respondent. That in 2009, the respondent unlawfully retired the claimant from employment on the premise of the prior retirement age of 55 years and this was effective from 31st December, 2009. He contends that in line with the enhancement of the mandatory retirement age for public servants to sixty (60) years, the claimant is entitled to his full pay to this age amounting to Kshs. 1,011,180.00. That the termination from employment was unlawful and negates the principles of natural justice and therefore prays for;

a. *A declaration that he was unlawfully terminated from employment by the 2nd Respondent*

b. *Terminal benefits of Ksh.1,011,180/=*
c. *Leave allowance*
d. *Costs and interest*
e. *Any other relief this Honourable Court may deem fit to grant*

The third and last claim by Willy Kipsang Ngeno is basically on the same cause of action. He avers that he was employed by the 1st respondent in 1976 and like the other two transferred to the employment of the 2nd respondent in 2003. At the time of his unlawful termination he earned Kshs.24, 935.00. His claim which also arises out of similar circumstances, facts and terms like the other two is a sum of Kshs.1,476,100.00 for time lost in the unlawful early retirement. He prays as follows;

a. *A declaration that he was unlawfully terminated from employment by the 2nd Respondent*

b. *Terminal benefits of Ksh.1,496,100/=*
c. *Leave allowance*
d. *Costs and interest*
e. *Any other relief this Honourable Court may deem fit to grant*

When the matter came for mention on 30th November, 2010 the parties through counsel for the claimant, one, Wanjiru Ngige prayed that the matters in cause was 1113/2010, 1112/2010 and 1110/2010 be consolidated and be heard by way of documentary evidence. These orders were granted by court.

The matters came for hearing on 17th May, 2011, 27th October, 2011 and 17th May, 2012 whereby Mr. Cheruiyot, Bii and Ngeno respectively testified in support of their respective cases. They reiterated their cases as presented in their statements of claim with only Mr. Cheruiyot appreciating that he was aware of a Collective Bargaining Agreement between the 2nd respondent and the union.

On 22nd November, 2012 the matter closed and the parties agreed on a case for written submissions which were subsequently filed in court.

The issues for determination in the circumstances of this case are;

1. Whether the claimant(s) were public servant(s).

2. Whether the transfer and an agency agreement between the respondents reviewed and or varied the claimants terms and conditions of service.

3. Whether the claimants are entitled to the reliefs sought.

4. Whether judgment in default of appearance and defense should issue against the 1st respondent in

the circumstances.

The first issue for determination is whether or not the claimants were public servants. A finding on this shall go on in determining whether the Head of Public Service's circular was or was not applicable to them in the circumstances.

The genesis of this claim is that he (Cheruiyot) was employed by the first respondent as a public servant in 1978 as a revenue officer. He was transferred to the 2nd respondent in 2003 as a trainee accountant on the basis of an agency agreement formulated by the respondents, the 2nd respondent being an agent of the first respondent. He submits that his appointment was premised on the terms and conditions of service and without loss of service of the first respondent and that his terms of service were never reviewed or varied by the respondents. That he was unlawfully retired by the 2nd respondent in 2009 without payment of terminal benefits and or gratuity save for one month's salary as token of appreciation. That such termination was premature and illegal or unlawful for reasons that at the material time that the 2nd respondent issued him with a notice of retirement, the Head of Public Service vide a circular dated 20th March, 2009 enhanced the retirement of public officers the claimants included to sixty (60) years.

The claimants submit that they were employed by the first respondent as public servants on permanent and pensionable terms subject to section 107 of the repealed constitution as read with Article 234(5) of the Constitution of Kenya, 2010. This creates the institution of the Public Service and public servants as such. This is subsumed by the Local Government Act, Chapter 265 which by section 112 vests the authority of appointment by local authorities on the Public Service Commission of Kenya.

The claimants further contend that the letter of appointment confirms the existence of an agency agreement between the respondent thereby meaning that the alleged transfer was a temporary one and that the 2nd respondent was only an agency of the 1st respondent. The transfer from the 1st respondent to the 2nd was on the basis of the terms and conditions of the 1st respondent and continued the public service/agency phenomenon.

The claimants sought to rely on the authority of **Republic Vs Eldoret Water and Sanitation Co. Ltd.**, **High Court Civil Application No. 970 of 2003** where the Ibrahim J. held as follows,

> *'I do not see why the applicants should lose their positions or descriptions as public servants in the circumstances. They do not lose any rights they had under the Local Government Act which vested in them or their office (sic). It would amount to discrimination if the Applicants were treated differently from other officers of the Council who remained behind. It should be remembered that the absorption or transfer is not permanent according to the Agency Agreement. What happens to the employees of the Company if there is termination? I do not think that they automatically ceased to be employees of the Council or to be public servants'.*

The court's position was that employees of water companies as established under the Water Act, 2002 or there before were and remained public servants and employees of the local authorities and councils. The distinction between the parent council and the new establishment was only in name and legal regime. Otherwise, these remained the same, the council being the principal owner of the water company.

This position is buttressed in the **Industrial Court CA No. 213 of 2010, Kenya Local Government Workers & Another Vs Water Services Providers Association (WASPA) and 3 others** where Rika, J. made the following findings;

> *'In this dispute, the Water companies though registered as different commercial entities from the local authorities, remain wholly owned by those local authorities. Their relationship is akin to parent subsidiary, principal agent business structure. To this extent, they cannot be said to be independent from their shareholders. The mayors, clerks, heads of water and finance departments from the Local Authorities sit in the boards of these companies. Other board members are drawn from the private sector. The issue is not as simple as argued by Mr. Agwara under Salomon – Vs- Salomon. The question is whether these wholly owned subsidiaries are*

fully, independent from their parent Local Authorities, whether they can be deemed as successor employees…'

Lastly, the authority of **David Mwangi Gioko and 51 Others Vs Nairobi City Water & Sewerage Company Limited**, **Industrial Court Cause No. 1722 of 2011** (unreported) further clarifies the position of workers in these establishments;

3. 'The position of the Claimants, as explained in their pleadings and evidence on record, is this: They were initially employed by the Nairobi City Council, in the Water Department. Following the water reforms under the Water Act Number 8 of 2002, the Nairobi City Water and Sewerage Company was founded in 2004. The Nairobi City Council transferred the services of the Claimants to the new Company on 18th May 2004, by executing a Transfer of Operational Assets, Staff and Operational Liabilities. The Claimants took up employment with the new Company, under the prevailing terms and conditions of employment. The mandatory retirement age, was fixed at 55 years. In January, 2009, they received notices of retirement from the Respondent. They were advised that they would attain the compulsory retirement age by 31st December, 2009. Their contracts of employment with the Respondent would come to an end to this date.

4. Before the notices could take effect, the Permanent Secretary, Secretary to the Cabinet and Head of Public Service, Ambassador Francis Muthaura issued a Circular to all Public Authorities dated 20th March 2009, reviewing the mandatory retirement age of Public Servants from 55 years to 60 years. The Circular explained that this review was necessary, in order to harmonize the retirement age applicable to the East African Community. The change became effective from 1st April 2009. Employees serving on contract, as at 5th March 2009 after the attainment of the age of 55 years, would continue to serve under the respective contracts. Contracts expiring before the age of 60 would be renewed, in accordance with the provisions of the contracts. The circular directed that employees who had already received retirement notices, or had their pension claims already prepared, but not attained the age of 55 as of 5th March 2009, would continue to serve until they attained the age of 60 years if they so wished. The Claimants state further that as of January 2009, the retirement age continued in the Collective Bargaining Agreement concluded between the Respondent and the Kenya Local Government Workers Union [KLGWU] was 55 years. The CBA adopted on 1stAugust, 2009, amended the mandatory retirement age to 60 years. The claimants hold that they were still in employment when the Circular and the CBA both adopted the 60 years mandatory retirement age. The retirement notices issued in January 2009 had not taken effect.

7. Cross-examined by Mr. Kioko, Nyururu testified that his name was added to the list of 2009 retirees by his advocates. The schedule indicating what salaries and allowances were owed to the Claimants from January 2010 to December 2014 bore the names of the same employees contained in the list of retirees. The employees were issued with notices of retirement. Most retired by 31st December 2009. The witness was not able to tell if Jacinta Njagi, Claimant Number 48 retired in 2008. All Claimants had attained the age of 55 by December 2009. They were not retired on diverse dates. The notices issued between January and April 2009. Jacinta's notice of retirement was given in 2008. All the Claimants were covered under Muthaura's Circular. Some employees such as Meshack Omolo were forced to go on voluntary early retirement. The Claimants are not pursuing arrears of salaries; just the salaries and allowances which the Respondent conceded it would pay them. The amounts already paid to some of the employees were not factored in their computation and claim before the Court. The CBA was effective from 1st August2009 and applied to the Claimants. The company adopted the 60 year retirement age. By the time it issued the notices, it was well within its mandate to do so in re-direction, Nyururu testified that the Respondent adopted 60 year retirement age before the Claimants graduated to 55 years. The Respondent's Board undertook to renew the Claimant's forced retirement, but did not do so. The letter from Engineer Gichuki said employees would be compensated for the balance of their years of service. Jane Mwangi told the Court she worked

for the Respondent as a Sewer Operator. She was among employees served with notices of termination in January 2009. She was retired December, 2009, while she correctly would have retired in December, 2014. She has not received her salary and allowances from January 2010. On cross-examination she admitted she has received about Ksh.180,000 from the Respondent. This, she explained, represented arrears of salary predating retirement. Philemon Atik was employed as Water Assistant. He is the Branch Chairman of the currently recognized trade union National Union of Water and Sewerage Employees [NUWASE]. There is a CBA between the Respondent and the Union, effective from 1st August 2009, fixing retirement age at 60 years. The claimants are unionisable employees and covered under the CBA. Answering questions from Mr. Kioko, Atik testified that the current CBA negotiations have not been concluded. The old CBA remains in place until amended by the incoming one. All claimants are members, having joined NUWASE in 2006. Jacinta Njagi enlisted in 2006-2007. Atik did not have a list of his union members. Barack Onyango worked as an Artesan Plumber. He too was retired prematurely, without any compensation for his years left in service, counted up to December 2013. He left on 31st December 2009 and was paid about Ksh.187,000. He was not told what this amount was for.

Mr. Owuor implores the Court to find in favour of the claimants, and assist in terms detailed under paragraph 6 of this Award. He argues that the decision by the Respondent has rendered the Claimants destitute.'

The respondent did not revoke the notices of retirement to the claimants regardless of time being in their favour and also agitation to this extent.

Further Rika, J. finds as follows,

'The Government advised Public Service Employers that the circular took effect from 1st April, 2009. This was a clear 8 months before the notices issued by the Respondent to the Claimants took effect. The communiqué specified that employees who had already received retirement notices, or had their pension claims already prepared, but had not attained the age of 55 years as of 5th March 2009 will continue to serve until they attain the age of 60 years if they so wish'.

It is therefore trite law that employees of water companies like in the instant case are employees of the public service of Kenya and remain public servant regardless of their undertaking and by whatever description of their work relationship with the new enterprise whatsoever. I therefore find that the claimants in this case were public servants and that the circular issued on 20th March, 2009 by the Chief Secretary and Secretary to the Cabinet, Ambassador Muthaura on reorganization of the retirement age affected and applied to them. This settles issue number 1 as aforesaid.

The second issue for determination is whether the transfer and agency agreement between the respondents varied the claimants terms and conditions of service.

The 2nd respondent is a private company limited by shares and incorporated under the Companies Act, Chapter 486, Laws of Kenya. Evidence adduced by the 2nd respondents witness confirmed that the 2nd respondent is an agent and a subsidiary of the first respondent for purposes of undertaking water functions and supply of adequate water and sewerage services to the municipality and its environs. Section 178(i), Local Government Act vests the power to supply water to Municipal councils. Therefore, this act of the agency agreement with the second respondent for purposes of commercializing water services does not in any way amend or review the provisions of the Water Act, No. 48 of 2002 and the Local Government Act and the duties of the 1st respondent cannot be delegated to a private company without the authority and consent of the Minister for Local Government.

It was the intention of the letter of transfer of service that the terms of service of the claimants would remain intact and unaffected by their transfer and on execution of the urgency agreement and I so find. This has the claimants firmly stuck into their initial terms and conditions of service.

The third issue for determination is whether the claimants are entitled to the relief sought. This court has

established that the claimants were at all times during the pendency of their service and retirement on 31st December, 2009, public servants so to speak. It has also established that their transfer and or agency agreement with between the respondents did not in any way affect their terms and conditions of service.

This being the case, the retirement of the claimants at age 55 on the 31st December, 2009 deprived them of the facility to continue service for another five (5) years up to age 60 on the 31st December, 2014. This was through negligence and callousness on the part of the 2nd respondent. The claimants are therefore entitled to compensation for the period of untaken and unused service to which they were in law entitled.

And having established this entitlement the next move is to agree on the amount payable as compensation for loss of service. The claimants submit that they were paid one month's salary in lieu of notice. The 2nd respondent is of the view that the sums paid to the claimant from the Local Authorities Provident Fund were the equivalent of terminal benefits.

The claimants explain and submit that they were employed by the first respondent on a permanent basis and were therefore entitled to the rights and privileges subsequent to the enhancement of the retirement age and a payment of pension and gratuity for the years worked.

Additionally, the claimants place a claim for pay for the balance of unserved period of five years in accordance with their salary of the time of retirement. The respondents deny this and rely on the authority of **Industrial Court Cause No. 213 of 2013** aforecited where Rika J. made the following finding,

> *'The Industrial Court in Cause No. 213 at page 13 last paragraph observed that "The said, we find the water companies are wholly owned by the Local Authorities; though they remain under boards of directors that include local authority representatives and though they retain principal agent, parent-subsidiary relationship, they do not have any functional integration with local authorities. They are managed separately. They are no longer departments of the local authorities. They were intended, through commercialization to be functionally independent from their principles. There is no functional integration, inspite of the public-private partnership in water companies board of directors composition. The transferred staff are no longer managed in any way by local authorities. The staff do not share a community of interests with other unionisable employees in local authorities. They are likely to have "community of interest with employees of other water service providers….."*
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> *From the foregoing, it is evident that the Court directed that the employees in local authorities and those of water companies did not have community of interests since they served as distinct different entities. Therefore the provisions of the Local Authorities Act did not apply to them. Subsequently therefore, the circular from the Head of the Civil Service Ref. No.OP.CAB.2/7A dated 20th March 2009 did not apply to water companies as they were not part of the local authorities.*
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> *The Head of Civil Service circular at APP…(d) was addressed to Permanent Secretaries/Authorized officer, clerks to other authorities and others. 'it was not addressed to water companies. Secondly, the circular addressed the review of the mandatory retirement as for public servant. From the time water management was taken over by the Lake Victoria Water Services board (LVWSB) this marked the exit of Municipal Council of Kericho as the principle agent to Kericho Water and Sanitation Company Ltd.'*

They interpret this to cause and determine on issue of operational separation between the water companies and their parent local authorities and therefore non eligibility and a total denial of the claim. I must admit that this is not only a narrow interpretation but is also self-serving and opportunistic as this appointment confirms the existence of an agency agreement between the respondent thereby meaning that the alleged transfer was a temporary one and that the 2nd respondent was only an agency of the 1st respondent. The transfer from the 1st respondent to the 2nd was on the basis of the terms and conditions

of the 1st respondent and continued the public service agency phenomenon.

The claimants sought to rely on the authority of **Republic Vs Eldoret Water and Sanitation Co. Ltd High Court Misc. Civil Application No. 970 of 2003**(Supra)and other authorities which all point out to the established legal position that water companies and their parent local government councils are one and the same in law.

The court's position was that employees of water companies as established under the Water Act, 2002 or thereto before were and remained public servants and employees of the local authorities and councils. The distinction between the parent council and the new establishment of a water company was only in name and legal regime. Otherwise, those remained the same, the council being the principle owner of the water company.

This position is further buttressed in the **Industrial Court CA No. 213 of 2010, Kenya Local government Workers & Another Vs Water Services Providers Association (WASPA) & Others** where Rika, J. again came up with same finding on law;

Lastly, the authority of **David Mwangi Gioko and 51 Others Vs Nairobi City Water & Sewerage Company Limited, Industrial Court Civil Cause No. 1722 of 2011** further clarified the position of workers in these establishments also ending on the same note. The law on this position is now settled.

Are the claimants therefore entitled to relief as sought? The answer is yes and no. Inasmuch as this dispute arises out of the default of the 2nd respondent to take into account the revised retirement age by the government, the court must be warned that a blanket award of the prayers for relief as sought would be counterproductive. In adopting the principle of a **fair go all round**, Rika J. in David Gioko aforecited refers to **Industrial Court Cause No. 661 (No. of 2009) between Maria Kagai Ligaga Vs Coca Cola East and Central Africa Ltd.**

> *'…this court gave the view that the purpose of any employment compensation is not to unjustly make rich aggrieved employees, but to redress their economic injuries in a proportionate way. The Court went on to say that,* ***"courts, even in advanced economies hardly award compensation based on the remainder of years of service. Compensation must be reasonable and not appear to punish the employer. The law of unfair termination requires that the Court observes the principle of a fair go all round."*** *Employees are paid salaries for contributing their labour. Where there is no contribution, there is no compensation.* ***A fair go all round*** *is based on an employment relationship of equal and reciprocal responsibility. The Claimants did not voluntarily with hold their labour; they were denied the opportunity to continue working for 5 years. It is not their fault, but should they be paid for the entire duration when they have not contributed any labour?*
>
> *[Emphasis added]*

The answer to the last issue is in the negative and the learned judge deems this burdensome and a drawback to expedient public service by the respondent.

Here the emphasis is on employees being paid for work done or their contribution of labour. Where there is a contribution, there is pay. This would be so far so good but can be a ridiculous approach especially in cases where the default of the employer deprives the employee of the opportunity to work like in this instant case. However, it is nevertheless an appropriate principle in the assessment of respondents compensation for the economic injury visited on the claimants. A middle ground must be had to sustain sense and fairness to both employer and employee in the circumstances and appreciation of **a fair go all round** principle.

A **fair go all round** as a principle of adjudication of compensation to injured employees should be exercised most cautiously by our judicial system. It was always intended to have an all round approach in the determination of compensation available to employees who have received the dead end of the

employment contracts. Anything short of this would be calamitous and ebb out injustice to either of the parties. Situations have been had where this principle is applied to favour employers to the detriment of employees. This must be looked into to afford a sustainability of the application of the principle of a fair go all round.

The claimants lost five years of service and it is about one year to the day for their retirement on 31st December, 2014. There is conflicting evidence on the veracity of their claims as one of them had opted for earlier retirement. He was also a member of the NSSF and union and did not in any way contest the retirement. Indeed, he like graciously embraced the same.

The 3rd claimant, Cheruiyot, also accessed his pension and therefore cannot claim that he did not receive his terminal benefits. He had requested for early retirement and was considered hence this eventuality. He cannot therefore, arguably sustain a case against his retirement.

Mr. Bii was employed as a watchman and *o*n 30th June, 2005, he was issued with a letter on his terms and conditions and therefore cannot claim ignorance of the same. He accessed his pension and terminal benefits without raising a finger and therefore cannot be heard to complain at this stage.

Whereas we appreciate the respondents date and submissions on the above facts, we also appreciate and acknowledge that the review of the retirement age by the Head of Public Service renewed the claimants terms as far as the age of retirement is concerned. Having established and found that the claimants were at all times public servants, the circular effectively put them at parity with its practices. Their retirement age was raised to sixty (60) years and therefore the justification and rationale for this claim. The respondent submissions on this line are therefore preposterous and untenable in the circumstances. They would not hold water, or at all.

The last note, to me, is an assessment of the compensation of the claimants as a consequence of the injured economic rights arising out of their early and undue retirement. This is tricky. Are they entitled to their entire pay for the five years of unserved period? No. This would contradict the principle of fair go all round as enunciated and expressed above. I would in the circumstances order that the claimants be recompensed as follows;

1. **Willy Kipsang Ng'eno**

a. Golden handshake @ Kshs.125,000.00
b. One year gross salary out of the five

years un served period Ksh.24,935.00 x 12 Kshs.299,220.00

TOTAL
Kshs.424,220.00

2. **Philip Bii**

a. Golden handshake @ Kshs.125,000.00
b. One year gross salary out of the five

years un served period Ksh.16,853.00 x 12 Kshs.202,236.00

TOTAL **Kshs.327,236.00**

3. **Samuel Cheruiyot**

a. Golden handshake @ Kshs.125,000.00

b. One year gross salary out of the five

years un served period Ksh.34,990.00 x 12 Kshs.419,880.00

TOTAL Kshs.544,880.00

The 4th and last issue for determination is whether the claimants are entitled to judgement in default against the 1st respondent. Interlocutory judgement is usually a consequence of default of appearance and or defence in a suit by a defendant. This arises when a defendant chooses or is negligent or utterly refuses to procure defense to a suit against himself. The claimant party is entitled to make an application or request for judgement under these circumstances. This is on the basis that the suit must be concluded one way or the other.

In the instant case, the first respondent has totally neglected and or refused to litigate her case. She has not filed any pleadings, or at all. The net effect of this omission would be the entry of judgement on application by the claimant. This has not been done and the issue is only raised at the stage of submissions. Submissions are a penultimate process at the close of proceedings. These are intended to be a summation of the case and facts and with a view to assisting and facilitating the court to come up with a finding. This prayer as appears in the claimants submissions was not addressed during the proceedings. This claim should have been had earlier to enable the parties (read respondents) address the issue and offer their side of the story in opposition or otherwise. This would enable the court to thrash the issue and adjudicate on the same.

Secondly, even if this was permissible and tenable, it would frustrate a fair determination of the issues in dispute by enabling the claimants on entitlement to the entire judgment merely on a technicality. This would be unduly benefitting from a technicality, unjust and unlawful to say the least. It would *in toto* overshadow further determination of the issues in dispute. This would be unfair.

Additionally, the finding of court is that the 1st and 2nd respondents are intertwined and the same. This is the law. A finding or judgement in default against the 1st respondent would automatically oust and frustrate any further defense by the 2nd respondent as a total award and determination would ensue in the circumstances. It would no longer be necessary for the claimants to pursue any other limb of the case as they would have had their day.

On those grounds, I decline to enter judgment in default of appearance and defense as requested by the claimants.

In the premises, I uphold the claims and order redress of the claimants in the following terms as above cited;

Willy Kipsang Ng'eno

a. Golden handshake @ - Kshs.125,000.00
b. One year gross salary out of the five

years un served period Ksh.24,935.00 x 12 - Kshs.299,220.00

TOTAL Kshs.424,220.00

Philip Bii

a. Golden handshake @ - Kshs.125,000.00

b. One year gross salary out of the five

years unserved period Ksh.16,853.00 x 12 - Kshs.202,236.00

TOTAL **Kshs.327,236.00**

Samuel Cheruiyot

a. Golden handshake @ - Kshs.125,000.00
b. One year gross salary out of the five

years un served period Ksh.34,990.00 x 12 - Kshs.419,880.00

TOTAL **Kshs.544,880.00**

2. The costs of this claim shall be borne by the respondent**.**

Dated, delivered and signed this 15th day of May, 2013.

D.K. Njagi Marete

JUDGE

Appearances:

1. Mr. Ombima instructed by Ombima & Company Advocates for the claimant.

2. Mr. Muthanga instructed by the Federation of Kenya Employers for the respondent.