



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO. 2449 OF 2012**

**HENRY KAKAI.....1<sup>ST</sup> CLAIMANT**

**ANTHONY PETER.....2<sup>ND</sup> CLAIMANT**

**SAIRUS ZIMULI.....3<sup>RD</sup> CLAIMANT**

**DAN CHOGO.....4<sup>TH</sup> CLAIMANT**

**JUSTINE TIMOTHY MATE .....5<sup>TH</sup> CLAIMANT**

**FRANCIS KITHENDU.....6<sup>TH</sup> CLAIMANT**

**JOHN KAKAI.....7<sup>TH</sup> CLAIMANT**

**JOHN KARANJA.....8<sup>TH</sup> CLAIMANT**

**ROBERT MUTHANGYA.....9<sup>TH</sup> CLAIMANT**

**DICKSON KEVOGO.....10<sup>TH</sup> CLAIMANT**

**BERNARD VUNDI.....11<sup>TH</sup> CLAIMANT**

**VERSUS**

**DEBENDRA KAMAT T/A**

**SWADISH FOODS.....RESPONDENT**

**JUDGEMENT**

1. This is a claim dated 5<sup>th</sup> December 2012 following for unfair termination of the claimant’s employment on account of redundancy by the respondent Debendra Kamat T/A Swadish Foods. The defence was filed and dated 15<sup>th</sup> February 2013 admitting that the claimants were employees of the respondent and that their positions became redundant due to the closure of the respondent business but deny the rest of the claim as outlined for outstanding dues. The claimants gave evidence through claimant No. 2 and 10 Anthony Mulwa Peter and Dickson Kevogo and the respondent called Grace Wairimu Njihia the former Accounts Officer of the respondent. Parties filed their written submissions dated 19<sup>th</sup> June 2013 and 18<sup>th</sup> June 2013 for the claimant and

respondent respectively.

2. In the claim the claimants state that they diligently served the respondent in their different capacities until the 7<sup>th</sup> November 2012 when the respondent issued them with letters stating that their employment would end as of 30<sup>th</sup> November 2012 on account of redundancy. That this declaration was unlawful and unfair since the claimants had not been given notice of the intended redundancy as contemplated under section 40 of the Employment Act or given their redundancy dues or good reasons as to why they had been declared redundant.
3. That by the time the claimants were declared redundant they were owed various dues relating to their annual leave, overtime hours, severance pay, notice pay and compensation. Each claimant had their claims outlined noting that;

1<sup>st</sup> claimant was owed Kshs.320, 338.80;

2<sup>nd</sup> claimant was owed Kshs.426, 306.00;

3<sup>rd</sup> claimant was owed Kshs 282,251.00;

4<sup>th</sup> claimant was owed Kshs 340.106.00;

5<sup>th</sup> claimant was owed Kshs 167,518.00;

6<sup>th</sup> claimant was owed Kshs 281,658.00;

7<sup>th</sup> claimant was owed Kshs 296,277.00;

8<sup>th</sup> claimant was owed Kshs 626,458.00;

9<sup>th</sup> claimant was owed Kshs 398,006.00;

10<sup>th</sup> claimant was owed Kshs 389,161.00; and

11<sup>th</sup> claimant was owed Kshs 623,568.00.

All these amounting to Kshs.4, 151,674.80 which they claim from the respondent together with the costs of the suit.

4. In evidence the of the claimant through the sworn evidence of Anthony Peter Mulwa stated that he was aware of the claims relating to all the claimants as the main witness and having authority to give evidence on their behalf. They were all employed by the respondent at different times but the termination due to redundancy took place against all of them at the same time. That in 7<sup>th</sup> November 2012 they were given letters of termination on account of redundancy due to closure of the respondents business. Before the issuance of these letter no meeting, notice or indication of redundancy had been indicated to them and the same did not indicate the dues payable and those owing. That the Labour Officer was not involved in the decision of the respondent. When they asked for the reasons of the redundancy, no feedback was given.
5. That the witness had worked for the respondents for 3 years and never took leave and would start his work day at 11 a.m. and leave after 10.30p.m which was over 11 hours a day noting that the respondents business was that of a sports club where members would report in the evening and stay until late into the night and the claimants had to attend to them. That on weekends he worked for long hours beyond 12 hours and were not paid for the overtime hours served.

6. The witness further stated that he was not given a letter of appointment indicating his terms and conditions of service nor was he given a pay slip to indicate how his salary was computed. That he earned Kshs.445.00 per day and for every 3 weeks worked there were 4 days of rest. That no house allowance was paid to them nor were they given any accommodation by the respondent.
7. That after the initial notice was issued, another one was given to close the respondents business on 5<sup>th</sup> January 2013 the notice was put on the notice board but the last day of work was on 1<sup>st</sup> January 2013. That despite the claimants making their demands known to the respondent, the same have not been paid.
8. The witness further stated that the claimants worked on weekends on Saturday and Sunday from 10.30a.m to 11.00p.m but were never paid for the extra hours. That no certificate of Service were issued to them and also claimed that they were underpaid as the government guidelines gave more than what the respondent paid them and that it was not until September 2012 when it was increased to the kshs.445.00 paid to them. That they also suffered unlawful deductions where each day the sum of Ksh.60.00 was given as fare but the same was deducted from their daily wages.
9. That they were never casuals as stated by the respondents in their defence as all the claimants herein had served for a period of more than 3 months each.
10. In cross-examination, the witness confirmed that they got two notices of redundancy the last taking effect on 5<sup>th</sup> January 2013 which the claimants refused to sign or accept since their terminal and or redundancy dues were not indicated or paid to them. He admitted that this notice was for one full month.
11. That even though the respondent closed its business at the Gymkhana Club, he has another business in South C where he could have redeployed the claimants. That he worked for 3 weeks continuously and then go on off days for 4 days but was not paid while on off duty. That he was paid various amounts and denied that there was instance when he worked for one day per week noting that before September 2012, he was being underpaid. The witness could however not recall the days on which he worked overtime but acknowledged that for every 3 weeks worked, he got 4 days off duty.
12. That all the claimants reported in shifts, some reported in the morning at 6a.m since some club members took breakfast, took rest within the day but remained in the premises even when the club was closed and then resumed at 6p.m. until 11p.m. when the club would close for the day. That the witness had taken some advance payments and at the time of termination he owed Kshs.2000.00
13. The claimants did not call the proposed claimant number 10 in evidence and hence closed their case at this point.
14. The respondents on the other hand stated that they used to operate a restaurant business on premises granted to them by Gymkhana Club under a license agreement where the claimants were working. That on 30<sup>th</sup> November 2012, Gymkhana Club gave them notice to vacate on or before the 30<sup>th</sup> November 2012 and thus informed their employees and gave them one month notice. That on 30<sup>th</sup> November 2012 the Club extended the notice to the respondent to 5<sup>th</sup> January 2013 and hence the respondent issued new notices to the claimants alerting them that termination of their employment would take effect on 5<sup>th</sup> January 2013. The respondent closed its business on 5<sup>th</sup> January 2013.
15. That this closure was occasioned by factor beyond the respondent control and that all the claimant herein were employed as casual save for Dan Chongo, Zairus Zimuli and Nickson Umbima who were on month to month contracts. That all the claimants got notice of termination in good time dated 1<sup>st</sup> November 2012 and 1<sup>st</sup> December 2012 and when the claimants came to court, it became impossible to have the Labour Officer attend to this matter as the same was already in court.

16. That the termination of the claimant's employment was not unlawful and that they prematurely rushed to court and the employees who were casuals are not owed any dues as they were on and off basis employment with the respondents.
17. That in the case of the 1<sup>st</sup> claimant Henry Kakai, he was a casual cleaner from March 2010 to December 2011 on a wage of kshs.295 per day, he was also engaged as a cook from January to December 2012 and that for every month worked, he had a one week break and hence not on continuous work with the respondent and his daily wage had improved to kshs.484.16 hence no underpayment and no overtime was owing to him. That the claimant got Kshs.60.00 advance which would be recovered from his weekly wages and this cannot be claimed as an unlawful deduction. As a casual he was not owed a redundancy package and from his dues he owed the respondent Kshs.1000.00
18. That the 2<sup>nd</sup> claimant Francis Kithendu was a casual cook from 2007 on a daily wage of Kshs.484.16 per day and was not underpaid and he would take a break of one week for every three weeks worked and his work was not continuous and no overtime was due as he was paid everything at the end of each week. No unlawful deduction arise to the claimant, the kshs.60.00 was an advance recovered from his weekly wages and he is not entitled to compensation for wrongful termination or a redundancy package as he was a casual. That at the time of termination he owed the respondents kshs.3, 035.00
19. The 3<sup>rd</sup> claimant John Barasa was a casual waiter from 2010 to December 2012 on a daily wage of Kshs.445.00 per day and therefore no underpayment. That he took breaks of one week for every three weeks worked and thus not continuous and cannot claim overtime as he was being paid on a weekly basis and the Kshs.60.00 advanced to him would thus be recovered from his pay and there were no unlawful deductions and he is not entitled to compensation for wrongful termination or a redundancy package as he was a casual employee. The claimant owed the respondent's kshs.1, 950.00 at the time of his termination.
20. The 4<sup>th</sup> claimant Robert Muthangya was a casual waiter since 2008 and that he did not work for the respondents from 2010 to November 2011 thus not on continuous employment with the respondent. That he was re-engaged in November 2011 after 10 months and his daily wage were Kshs.445.00 per day payable each end of week and he took a week break every month and that there is no off duty or public holiday payment that is due to him as he was paid on a weekly basis. No overtime was owing to the claimant nor were his deductions unlawful as the Kshs.60.00 was an advance recovered from the weekly wages. That he is not entitled to compensation for wrongful termination or a redundancy package as he was a casual.
21. That Henry Kakai was employed as a casual cleaner in August 2012 on a daily wage of kshs.484.16 and hence not underpaid and that for every month he took a week break and his work was not continuous and no leave days or overtime was due as he was paid weekly and the advance of kshs.60.00 was recovered from his dues. He is not owed compensation or redundancy dues as he was a casual.
22. Justine Timothy was a casual cook from November 2010 on and off on a daily wage of kshs.484.16 per day and was therefore not underpaid and no off duty or public holiday pay was owing as he was paid on a weekly basis. That no overtime was owing to the claimant or any unlawful deductions made since the kshs.60.00 he got was an advance which would be recovered from his weekly wages. He is not owed any compensation for wrongful termination or redundancy package as he was a casual and by the time of termination he owed the respondent Kshs.2, 650.00.
23. Nickson Kavogo was on a month to month contract of service but had no overtime owing or any unlawful deductions made against him, and all advances would be recovered from his salary. That the claimant was paid his service pay, leave and other dues for each completed year of service until August 2012 and that the only pro-rated leave outstanding relate to the period of August to December 2012 which translate to 8 days. He is not entitled to compensation for wrongful

- termination as he rushed to court to circumvent the redundancy procedure. The respondents admit that he owes the claimant notice pay and pro-rated leave all amounting to Kshs. 13,497.30.
24. Bernard Vundi was a casual waiter from February 2009 on a daily wage of kshs.519.16 per day was not underpaid and for every month he got a week off therefore not owed overtime or off-duty and his wages were paid on a weekly basis not were there any unlawful deductions as the kshs.60.00 he got was an advance recovered from his weekly wages. He is not entitled to compensation or redundancy pay as he was a casual. That he owed the respondents Kshs. 955.00 at the time of his termination.
25. Dan Chongo was on monthly contract from 1<sup>st</sup> July 2011 and was paid his terminal dues on 30<sup>th</sup> June 2012 and his claim from July to December 2012 and his salary was kshs.10, 655.00 there was no underpayment and the only dues not paid are from July to December 2012 and no overtime is owing. He4 was advanced kshs.60.00 which would be recovered from his weekly wages and he is not entitled to compensation for wrongful termination. The respondents admit that they owe the claimant notice pay, pro-rated leave and severance for one year all amounting to Kshs. 29,123.30.
26. Zairus Zimuli was employed as a waiter in 2010 on a monthly contract and he had no outstanding leave, overtime or leaves as he had been paid until August 2012 except for the period of September to December 2012 nothing more is due to him. That the claimant is not owed any compensation for wrongful termination or a redundancy package and the only dues to him relate to notice pay, pro-rated leave for 4 months and service pay for one year all amounting to Kshs. 19,629.80.
27. The respondent thus claims that the claimants came to court prematurely that after issuing notices of closure of their business it was not until December 2012 when the business closed but the claimants prior to their termination came to court. That this suit greatly hindered the respondent in concluding the termination of casual employees and settlement of redundancy package with respect to the three claimants on contract as the matter was pending in court. That this claim should be referred to the Labour officer for purposes of determining the redundancy package entitled to the claimants.
- That this claim should therefore be dismissed with costs.
28. The respondents called Grace Njihia in evidence and confirmed the averments in their defence. That she kept the books and records of accounts for the respondents and made the weekly payments to the claimants and she was conversant with the entire claims. She also confirmed that the claimants would work on varied hours as breakfast was served from 7.30a.m. To 9.30a.m where the 3<sup>rd</sup>, 4<sup>th</sup> claimants reported to work at 7a.m. to prepare. They would take a break and resume at 6p.m. to 10.30p.m.
29. That there was another shift from 11.30a.m. To 3p.m. take a break and resume at 6p.m. to 10.30p.m.
30. That this being a members club, only members were allowed at the premises and that the claimants never worked throughout the day as they had long breaks in between the shifts. They had a master roll for the employees on contract but the others were on and off as casuals. The 3 claimants on contract were number 3, 4 and 10 and the others were casuals.
31. That the claimants would ask to kshs.60.00 as fare which was deducted from their pay and not all the claimant received the kshs.60.00 advance. It was upon personal request especially the 2<sup>nd</sup> claimant never took this advance at all. That all casuals took a week rest each month and resumed while those on contract had 1 ½ days rest and no outstanding overtime. They were not owed the off-duty allowances as they were not on continuous work and for the time the claimants took time off, they were not paid. Those on contract would have them renewed once they expired and before renewal, leave due, service and all dues would be paid and would start on a new contract.

32. That the termination of the respondent license at Gymkhana Club made them loose business and had to close out of necessity, they gave notices to all claimants and copied to the Labour officer but could not advice as the matter was already in court. That no notice pay was due as the notice was issued to all.
33. That the respondents closed operations on 5<sup>th</sup> January 2013 and were always willing to negotiate. That the respondent has no other business as alleged by the claimants and noted that he has a brother with a similar business in South C but that this is a separate entity.

Where redundancy is declared the procedure is very clear and if not followed, any terminations are deemed unprocedural and unfair. Court notes that the provisions of Section 40 of the Employment Act are very clear on the procedure regarding redundancies. Such termination must be based on the law otherwise the same becomes wrong and if the grounds used to identify the affected employees are not as per the law, the same becomes unfair:

**40. (1) an employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—**

- 2. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;**
- 3. Where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;**
- 4. The employer has, in the selection of employees to be declared redundant had 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;**
- 5. Where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;**
- 6. The employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;**
- 7. the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and**
- 8. The employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.**

34. Thus these conditions outlined in the law are mandatory and not left to the choice of an employer. Redundancies affect workers livelihoods and where this must be done by an employer, the same must put into consideration the following:

1. Give notice to the Union or labour officer a month before the process commences
2. For those not unionised, personal letters copied to the labour Officer;
3. Use a criteria of seniority, abilities and reliability of each employee;
4. Where there is a CBA the same should not disadvantage any employee;
5. Leave days due should be paid in cash;
6. One month notice or one month pay in lieu of notice; and
7. Severance pay not less than 15 days for each year of service.

35. These are important steps for each employer wishing to pursue redundancies, layoffs; reorganisation and or restructuring that can be a useful tool.

Did the respondent herein apply these legal guidelines? Was the respondent in a position to comply with these legal guidelines? Were there reasonable steps taken to ensure the respondent took these legal guidelines?

36. From the proceedings, I note that the respondent was under a license to operate a business at the Gymkhana Club and he got notice to vacate which notice should have caused him to put in motion the outline steps as under section 40 of the Employment Act. The alleged notice to the Labour officer was not issued before the notice went to the claimant herein. The Labour Officer was only copied to an already ongoing process. This is not what is envisaged under the Act. It should be the other way round, a notice to the Labour Officer who then should advise the parties on the steps and modalities to be put in place in a case for redundancies. Failure to take this step offends the entire redundancy procedures as in most cases this would result in unfair declarations of redundancy as the case herein.
37. Where there is a Union representing the workers, such union should be involved from the onset and where such a union does not exist or the workers are not unionized or some are unionized and others not, then the unionized member must be personally served with the notice. I note that despite the respondents extending and or re-issuing the notice ending on 5<sup>th</sup> January 2013, the notice issued in November 2012 had already caused a panic amongst the claimants causing them to attend court to protect their interests. The argument by the respondents that the claimants acted in a rush and pre-mature manner is not correct as the respondent acted wrongly by not properly commencing the redundancy process through the involvement of the Labour officer responsible for the areas and thus pushed the claimants in court under Certificate of urgency as by law entitled to do.
38. I note the respondent had to close their entire business for good reasons, no staff was left and the no criteria for selection were relevant in their case. The redundancies were inevitable only the procedure applied was flawed.
39. Upon a declaration of redundancy, an employer must pay in cash for all leave day's dues as well as any other outstanding dues owed to an employee together with one month notice. The drafter of the Employment Act, in their good wisdom crafted this particular section of the law in this manner based on good reasons noting that most employers are forced by factor beyond their control to declare redundancies. But on the other hand noting that innocent employees have to lose their daily income and require immediate cash to help them navigate the job market against looking for new job having lost their previous employment for no fault of their own nor that of the employer. Therefore this notice pay for one month and the payments due in cash, come in handy to such an employee trying to set off in search of new employment. The notice pay herein is therefore unlike the notice pay as envisaged under section 35 of the Employment Act. This is notice pay due in the event of a redundancy.

Were the claimants owed this notice pay and or other dues?

40. From the evidence on record, it was apparent from the respondents that they took the 1<sup>st</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 11<sup>th</sup> claimants as casual. The basis of this was that they worked on and off and their employment was not continuous and further that for every month worked they took a one week off hence they were not in continuous employment and were not owed any overtime or off duty pay. However, as under section 37 of the Employment Act, any employee who;

**(a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or**

**(b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more,**

41. The important part here is being that such an employee who serves on a job that cannot be reasonably be expected to be completed within a period, or a number of working days. Such an employee who continuous to service one employer, take a well deserved rest break to recover the overtime hours served or the rest days dues, is one such envisaged as under section 37(1)(b) and

- properly defines the status of the claimants here stated to have been casuals. In any event, nothing prevented the respondent from contracting the claimants alleged to have been casuals into season's a. Contract, part time, piece-meal or monthly contracts. These are all different types of contract that are allowable in law to ensure the interests of each party to an employment contract are well protected. The continued enjoyment of these claimants labour without offering any protection is tantamount to an unfair labour practice that is outlawed as under Article 41 of the Constitution.
42. I therefore find that at the time the claimants were declared redundant, save for the 3 claimant who were on monthly contract being claimant number 3, 4 and 10, the others were all owed notice pay and any outstanding dues. This is as due under section 40 of the Employment Act.
43. The claim for underpayment was not supported in any material way, though claimed the claimant witness did not address how this arose and in submissions the same is not covered as a major item. It is the duty of the party who claims to prove especially when a particular claim has been contested. The computation of this claim with regard to all the claimants who state underpayment as due was not proved. I will not award.
44. Off duty is a time as envisaged under section 27(2) of the Employment Act a time for the employee to take rest after continuous work for a week. This rest day is paid for. The respondent admitted that for every month, the claimants save for those on contract took a week off. The claimant also confirmed that they would each take several days off then resumes work but were never paid for the days off. Having established that these claimants were not casuals, I find that they were owed pay while they took their off duty rest days.
45. These off duty days taken do factor the long hours that these claimants served per day and cumulatively, where these rests days are compensated then equity demands that no pay should be found as due for overtime hours. I have looked at the hours claimed in overtime, reduced these on the one week off duty rest days and the same balance off. I will therefore not award the claim on overtime claimed. On this basis, I take it the claimant took 7 days rest for each month and for the 12 months in a year they had a total to 84 days. This in essence put all together do compensate for the total annual leave days owed per year at 21 days per year, the rest days and the overtime. This is a generous allocation.
46. Severance pay is due in all case of redundancy. The respondents admitted to having paid service pay to the employees under contract. This is commendable. However I will award to all the claimants severance pay as under the redundancy declaration and package herein. This will be 15 days pay for each completed year served.
47. The claimed unlawful deduction are stated as an advance, not all claimant applied for this deduction and or advance. It is not well outline in the pleadings or in evidence as to whether the same was for fares that was a benefit from the respondent or an actual salary advance. This does not stand out as an entitlement that went to all the claimants. I will not award this head.
48. Compensation is due where there is unfair termination of employment. I have established that this was a case for redundancy, there was a notice issued to this effect, the same though not served on the Labour Officer was issued where the claimants learnt that the respondent business was to wind up due to factor beyond their control. This was not done in any manner to suggest that the claimants were unfairly terminated. Their positions imply did not exist anymore. They were declared redundant. I will not award any compensation for unfair termination. This is not one such case.
49. Of the 3 claimant number 3, 4 and 10 who were under contract; I will first award the admitted parts of the claim. Having established that they were paid service pay and not severance pay, I will award severance pay for the period served.

**Henry Kakai**

One month notice pay at Kshs. 10,656.00

Off duty pay at Kshs. 42,779.00

Severance pay at Kshs. 10,656.00

**Total due at Kshs.64, 091.00**

**Francis Kithendu**

One month notice pay 10,656.00

Off duty pay at Kshs.17, 528.00

Severance pay at kshs.26, 640.00

**Total dues at Kshs. 54,824.00**

**John Karanja**

One month notice pay at Kshs. 10,656.00

Off duty pay at Kshs. 37,280.00

Severance pay at Kshs. 10,656.00

**Total dues at Kshs. 58,592.00**

**Robert Muthangya**

One month notice pay at Kshs. 10,656.00

Off duty pay at Kshs. 42,779.00

Severance pay at Kshs. 10,656.00

**Total dues at Kshs.64, 091.00**

**John Kakai**

One month notice pay at Kshs. 10,790.00

Off duty pay at Kshs. 6,640.00

No severance due.

**Total due at Kshs.17,430.00**

**Justine Timothy**

One month notice pay at Kshs. 10,656.00

Off duty pay at Kshs. 37,276.60

Severance pay at Kshs. 10,656.00

**Total due at Kshs.58, 588.00**

**Anthony Peter**

One month notice pay at Kshs. 10,656.00

Off duty pay at Kshs. 47,917.00

Severance pay at Kshs. 10,656.00

**Total due at Kshs. 69,229.00**

**Nickson Kavoko**

Admitted claim amounting to Kshs. 13,497.30

One month notice pay at Kshs. 11,990.00

Off duty pay at Kshs. 42,779.00

Severance pay at Kshs. 47,960.00

**Total due at kshs.116, 226.30**

**Bernard Vundi**

One month notice pay at Kshs. 10,656.00

Off duty pay at Kshs. 67,640.00

Severance pay at Kshs. 14,899.45

**Total due at Kshs. 93,195.45**

**Dan Chogo**

Admitted claimant amounting to Kshs.29, 123.30

One month notice pay at Kshs. 10,656.00

Off duty pay at Kshs. 42,779.00

Severance pay at Kshs. 15,984.00

**Total due at Kshs.98, 542.30**

**Zairus Zimuli**

Admitted claim amounting to Kshs.19, 629.80

One month notice pay at Kshs. 11,800.00

Off duty pay at Kshs. 42,779.00

Severance pay at Kshs. 35,400.00

**All amounting to Kshs.109, 608.80**

50.The total dues owing to the claimants as outlined above paragraph 49 all totals to kshs.804, 417.85. This will be awarded.

**From the above analysis I find that the declaration for redundancy of the positions of the claimants though substantively fair, the same were fundamentally flawed in procedure and thus unfair. I will award notice pay to all the claimants, severance pay and the outstanding dues relating to the off duty claimed on the ground outlined above. The three claimants who had written contracts will be awarded the admitted parts of the claim, notice pay, severance pay and any outstanding off days as outlined above.**

**I therefore enter judgement for the claimants against the respondent in the following terms.**

- 1. A declaration that the declaration of redundancy was procedurally unfair and are therefore owed their redundancy dues as outlined in Paragraph 49 above.**
  - a. An award of notice pay for one month salary to each claimant;**
  - b. Severance pay at 15 days pay for each completed year; and**
  - c. The off duties pay.**

**All amounting to Kshs.804, 417.85 as outlined in Paragraph 50 above.**

- 2. I direct the respondents to issue the all the claimants with a Certificate of Service within 14 day from the dates hereof.**
- 3. Costs awarded to the claimants.**

**Delivered in open court this 5<sup>th</sup> day of July 2013.**

**M. Mbaru**

**Judge**

**In the presence of**

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