

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 279 OF 2003

LAWRENCE NDUTTU & 156 OTHERS..... PLAINTIFFS

- V E R S U S -

KENYA BREWERIES LTD..... DEFENDANT

JUDGEMENT

1) The plaintiffs, numbering 157 filed this representative suit on their behalf and on behalf of former employees of Kenya Breweries Ltd, the defendant herein, whose terms and conditions of employment were governed by a memorandum of agreement dated 5th December 1997 and 29th July 1999 and whose contract of employment were affected by the defendant's re-engineering process which began in 1994. The aforesaid action is by way of the Further Amended plaint dated 2/12/2015 where the plaintiffs sought for judgement as follows:

-
- a) *A declaration that decision to cause their early retirement was unlawful and breached Section 80 and 82 of the Constitution and was wrongful and a nullity.*

- b) A declaration that the defendant's action to cause early retirement of the plaintiffs was unlawful and unfair and amounted to breach of the plaintiffs, contracts of employment.
- c) A declaration that the defendant's calculation of the plaintiffs' terminal benefits were wrong, arbitrary and they helped the defendant to withhold huge sums due to the plaintiffs.
- d) An order that the defendant should pay all the plaintiffs all the outstanding dues and salaries until their retirement age at sixty years.
- e) An order that the defendant do supply to the plaintiffs and each of them audited statement of account detailing their dues.
- f) An order that the plaintiffs and each of them be paid all outstanding dues and other consequential entitlements pursuant to prayer (b) above.
- g) AND or alternatively, general damages for loss of employment being 12 months salary for each and every plaintiff.
- h) Costs of (b) and (c) with interest covers at court rates.
- 2) The defendant on its part, filed a defence dated 8th May 2018, and amended on 12.11.2008 and further amended 6.1.2016 in which it denied violating the plaintiffs' constitutional or other rights. The defendant also stated that the redundancies were declared in accordance with the applicable Labour and Employment laws. The defendant further averred that the

plaintiffs' termination was lawful and that they were paid their dues.

- 3) When the suit came up for hearing, the plaintiffs summoned James Sibili (P.W.1), Michael Kimonyi (P.W.2) and Lawrence Kyalo Ndutu (P.W.3) to testify in support of their case. The defendant on the other hand summoned one Evans Kipngetich Mutai (D.W.1) to testify in support of its defence.
- 4) It is the evidence of James Sibili (PW1) that he together with Michael Kimonyi (P.W.2) and Albanus Ngwiri were appointed to represent over 820 former employees of Kenya Breweries Ltd in this suit. PW1 adopted the contents of his witness statement as his evidence in this suit. He claimed that he together with his colleagues were unfairly sacked by the defendant in contravention of the law through a flawed process known as Early Retirement Scheme which begun in 1994. PW1 further stated that the process for early retirement had conditionalities. PW1 also stated that he did not opt for retirement but he was nevertheless issued with an early retirement letter on 15.6.1998.

P.W.1 further stated that they were retired in breach of the memorandum of agreement between their union and the

employed new employees to replace those who were unlawfully forced to take early retirement and or declared redundant like him. P.W.1 averred that he was claiming for a refund of ksh.50,000/=, an amount which was retained by the defendant when he was forced to leave the defendant's employment. P.W.1 also pointed that there was a schedule showing what was due to each employee as a refund. In his evidence in cross-examination, P.W.1 stated that his contract of employment was based on the memorandum of agreement between their union and their employer, the defendant herein. He also averred that whatever agreement reached between the union and the employer bound them. P.W.1 conceded in cross-examination that they had no evidence that the defendant employed new employees after they were retired. P.W.1 also stated that though he had alleged that the defendant discriminated him he had no evidence to prove the allegation levelled against the defendant.

- 5) Michael Kimonyi (P.W.2) adopted the contents of the witness statement he executed as his evidence. He stated that he worked at the security section having been employed at the age of 24 years. PW2 claimed that he was forced by the defendant to take

up early retirement after working for only 9 years, vide a letter dated 17.8.1999. He alleged that he has never been paid the money the defendant deducted and retained after he left employment. P.W.2 claimed that there was no clause in the contract of employment which provides an early retirement. He also alleged that the defendant employed new employees after retiring them. PW2 stated in cross-examination that he was actually paid ksh.50,000/= but others were not paid. PW2 re-affirmed in his evidence in re-examination that there were no sufficient consultation before the implementation of the early retirement scheme.

6) Lawrence Kyalo Ndutu (P.W.3) also adopted the contents of his witness statement as his evidence in support of his claim and those plaintiffs whom he represented. In cross-examination P.W.3 stated that there was a memorandum of agreement between the union and the defendant which gave rise to the joint Industrial Council where he was a member. P.W.3 pointed out

that the memorandum of agreement set out the amounts payable to him. P.W.3 conceded that he was paid the amount specified. P.W.3 also stated that the memorandum of agreement indicated

that he was to receive computation from the financial accountant which he received but was not paid as was computed therein. P.W.3 was emphatic that the defendant has not paid all the amounts due the plaintiffs.

7) In support of the defence case is the evidence of Evans

Kipngetch Mutai (D.W.1) the defendant's Human Resource Director. D.W.1 adopted the contents of his witness statement as his evidence. He stated that the memorandum of understanding between the defendant and the union was to determine the wages, hours of work and the conditions of employment of unionisable workers. D.W.1 stated that in the year 1997 the defendant underwent a re-engineering process in which a radical review of business to cut costs and improve efficiency by automation. This exercise, D.W. 1 said led to the closure of the defendant's Mombasa and Kisumu plants. D.W.1 stated the employees were allowed to opt for early retirement. This witness denied the allegation that the plaintiffs were discriminated. D.W.1 stated that there was an agreement between plaintiffs' union and the defendant that the defendant would retain ksh.100,000/= to cover debts and or liabilities due

to the defendant or Tembo Cooperative. In cross-examination, D.W.1 stated that the retirement age was set at 60 years. He also stated that the defendant came up with the idea of Voluntary Early Retirement before attaining the age of 60 years. DW1 stated that employees would write to the defendant requesting to take an early retirement. It is the evidence of D.W.1 that the document used to operationalise the early retirement scheme had given the defendant the discretion to reject or accept such requests. DW1 stated that the defendant reviewed its business and found that it had excess employees who needed to be off loaded having invested heavily in technology to improve efficiency. He stated that the Unions were engaged to set up the terms of redundancies and the defendant settled for redundancy and abandoned the Voluntary Early Retirement Scheme. D.W. 1 further stated that the defendant undertook what it called re-engineering to reduce costs of production and improve efficiency.

8) D.W. 1 claimed that there was a joint industrial council who met and agreed on Voluntary Early Retirement Scheme but he failed to tender in evidence the minutes of council meetings held.

D.W.1 also stated that part of the initial payments were retained by the defendant. As for management employees, a sum of ksh.100,000/= was retained while a sum of kshs.50,000/= was retained in respect of unionisable staff. In his evidence in re-examination, D.W1 stated that there was an early retirement package which was voluntary but the same was subsequently there was termination which was not voluntary. D.W.1 denied that the calculations of the exit package were arbitrary. He stated that the defendant used the Kenya Revenue Authority tax calculation guidelines to employers to tabulate what was due to the employees leaving.

- 9) At the close of evidence, parties were invited to file and exchange written submission. Learned counsels appearing in the matter were also allowed to make oral highlights. Having considered the evidence together with the rival submissions, the following issues commend themselves for the determination of this court.

i) *Whether or not the early retirement scheme was*
~~*carried out in contravention of the constitution and*~~
the existing contracts of employment.

ii) Whether or not the plaintiffs are entitled to a refund of the monies allegedly withheld by the defendant.

iii) Whether or not the plaintiffs are entitled to be paid their salaries upto the date of retirement. 777

iv) Whether or not the plaintiffs are entitled to general damages for loss of employment. —

v) Whether or not the terminal benefits claimed by the plaintiffs are properly computed.

10) On the first issue, it is the submission of the plaintiffs that defendant developed a voluntary early retirement scheme in which any employee who desired early retirement had to fill a given form and present it for consideration by the management and there was no guarantee that the request would be accepted by the employer. It was pointed out that some of the conditions which were to be fulfilled before an employee could be allowed to take up a voluntary early retirement included inter alia poor or low productivity, poor disciplinary record, poor health and that one should have attained the age of 50 years. It is also the submission of the plaintiffs that employees who were aged above 50 years would earn his/her salary upto the retirement age of 60

years. The plaintiffs have pointed out that the Voluntary Early Retirement Scheme did not achieve the desired results of getting many employees retire from their service. It is further the submission of the plaintiffs that without consulting their union the defendant unilaterally crafted a scheme to send home a number of employees. It is said that the defendant would send an employee on compulsory leave and upon his/her return, he/she would be issued with a letter of early retirement, letter of service and a schedule of computation of his/her dues and thereafter the employee would be asked to sign documents to clear and leave the company premises. The plaintiffs referred to this latter scheme as Unilateral Forced Early Retirement Scheme. In response to the plaintiffs' submissions, the defendant argued that the plaintiffs' union was consulted and made aware of the intended implementation of the voluntary early retirement scheme. The defendant relied in evidence minutes of a meeting of the Joint Industrial Council held on 11.08.2000. The defendant further stated that in implementing the early retirement scheme it did not discriminate against any employee. The defendant further denied breaching Sections 80 and 82 of

the 1963 constitution. It also denied breaching the terms of the memorandum of understanding entered between it and the plaintiffs' union. I have carefully examined the minutes heavily relied upon by the defendant in respect of the meeting which took place on 11th August 2000. It is apparent that the early retirement scheme took place between the year 1997 and 2001. The minutes relied upon are in respect of a meeting of Joint Industrial Council meeting held on 11.8.2000. It is evident that the early retirement scheme was done more than three(3) years before the consultative meeting was held. The defendant did not tender minutes of any meetings held between the defendant and the plaintiffs' union prior to the commencement of the forced early retirement scheme. A critical examination of the minutes tendered by the defendant will show that the union had clearly stated that it had never been party to the forced early retirement scheme. In fact, the union clearly stated that the defendant had turned the initial voluntary retirement scheme to forced early retirement. After a careful evaluation of the evidence, I am convinced that the plaintiffs have shown that they were forced to take an early retirement without being consulted nor the

participation of their union. The initial scheme was voluntary but the same was later forced through the plaintiffs throats. The documentary evidence presented by both sides show that the plaintiffs' were employed by the defendant on permanent and pensionable terms and were each expected to retire at the age of 60 years. The plaintiffs have complained that their rights as enshrined under Sections 80 and 82 of the constitution (now repealed). The defendant has argued that the plaintiffs have failed to tender evidence showing that they were discriminated in the implementation of the early retirement schemes. It has emerged from the evidence tendered that though there was no open discrimination against the plaintiffs, it was not clear what criteria was applied in identifying those to take up early retirement. In the absence of a clear explanation, this court is entitled to infer that there was subtle discrimination as against the plaintiffs vis-a-vis those who remained in employment. The plaintiffs have also argued that their right to fair labour practices ~~guaranteed under Article 41 of the Constitution of Kenya, 2010~~ were breached. In response to this submission, the defendant cited the case of Alfred Asidaga Mulima and 2 others =vs=

Attorney General and 8 others, Nairobi C.A no. 179 of 2015 in which the Court of Appeal held *inter alia*, that a court cannot enforce rights created under the new constitution unless those rights were recognised and protected under the previous constitution. With respect, I agree with the defendant's latest submission. In the circumstances this court by inference finds that the plaintiffs' right to protection from discrimination under Sections 80 and 82 of the Constitution of Kenya (now repealed) was breached. ✓

11) The other question which is related to the above is whether the implementation of the early retirement scheme was in breach of the contract of employment between the plaintiffs and the defendant. The plaintiffs have argued that the letters sending them home for early retirement cannot be treated as redundancies. They are of the view that the same were unilateral forced early retirement scheme.

12) The defendant on the other hand is of the view that as ~~unionisable employees, the plaintiffs' terms of employment as per~~ the memorandum of understanding provided for a declaration of redundancies described as loss of employment through no fault

the contract of employment redundancy is stated to be one of the methodology in which an employees' employment could be brought to an end. It is expressly stated that redundancy should be with clearly laid down procedures. The C.B.A and the labour laws are very clear on what conditions must met for redundancy to be applied. First, it must be justified and proven that there is need to reduce the number of employees in order to save the employer from collapse. Secondly, that the redundancy process and package must be negotiated and explained in advance to the persons affected. Thirdly, that there must be a clear criterion as to which employee would exit and why must be laid down. In this case the defendant failed to produce its annual statement of account to show its financial status despite having been served with a notice to produce by the plaintiffs. The plaintiffs' assertion that the defendant was then and has continued to-date on an upward profitability trend remains uncontroverted. There is no evidence that the process was negotiated by the employees affected. In the absence of the above mentioned features, it cannot be said the defendant's early retirement scheme can be treated as redundancy. With respect, I am convinced that the

plaintiffs were justified to plead that the defendant's scheme was left at the whims of sectional head and was imbued with extreme favourism and discrimination. The plaintiffs were therefore right to claim discrimination since there were no guidelines to justify why they were retired while others of similar qualifications were left to continue to work. It is clear in my mind that the plaintiffs were removed from employment whimsically and without following the laid down labour laws and procedures. Consequently, the plaintiffs' termination and or dismissal is declared to be unlawful and therefore the plaintiffs are entitled to be compensated. ✓ 777

14) The second issue to be determined is whether or not the plaintiffs are entitled to be refunded monies withheld by the defendants. It is the submission of the defendant that the plaintiffs are not entitled to be refunded the aforesaid sum because the plaintiffs failed to specifically plead and prove save for the two plaintiffs who testified. The defendant further argued that most of the plaintiffs were paid back the refund after it was established that they did not owe the company money. The defendant also argued that the claim was not similar to each plaintiff. The

defendant further pointed out that the schedules of payments prepared by the learned advocates were never admitted as exhibits in evidence. The defendant also argued that it has set up the defence which is to the effect that the claim for a refund is time-barred therefore the claim for ksh.20,775,152/= is not justified. The plaintiffs have beseeched this court to order the defendant to refund the monies it withheld as security. It is pointed out that the defendant has admitted having deducted the aforementioned amounts from the plaintiffs. The plaintiffs have urged this court to order the defendant to pay the claim as per the schedules provided by two firms of advocates. I have considered the evidence provided by both sides plus the submissions over this claim. There is no doubt that this claim was pleaded in the plaint. The plea may not have been precise due to the numerous number of plaintiffs. It is not in dispute that three plaintiffs testified on behalf of the rest of the plaintiffs and this is not unusual in representative suits like in this case. The defendant has stated that the claim is timebarred. It is

unfortunate that the defendant has failed to lay both the factual and legal basis of this ground but it has instead made a general

submission which did not help its defence. Both the plaintiffs and the defendant concur that the defendant retained from each employee either a sum of ksh.50,000/= or ksh.100,000/= as security for the defendant company liabilities. The plaintiffs provided a full list of names and amounts of refunds due to each plaintiff. I have already stated that defendant has stated that the amounts were repaid to the plaintiffs. The defendant summoned its Human Resource Manager, (DW1), to testify in its defence. Unfortunately, DW1 did not produce in evidence any documents or form of evidence to prove reimbursement or repayment of the amount withheld. The plaintiffs produced in court in compliance with this court's directive two lists of claimants and the pay off schedules to confirm the deductions. The schedule filed by the firm of Namada and Co. Advocates dated 11th day of May 2016 shows that the defendant has withheld a sum of ksh.20,775,152 in respect of the plaintiffs whom the aforesaid firm represents. This document has guided this court to ascertain the amount withheld and not repaid by the defendant. The defendant has not controverted the schedule. It cannot therefore lie in its mouth to deny the same. There is no reason why the plaintiffs

defendant that at the time of plaintiffs' dismissal, the remedy available was damages if a defendant was liable, was limited to the period of notice applicable under the employment contract. The defendant was of the submission that since the plaintiffs' employment was terminated by way of redundancy, they were not entitled to claim damages for loss of employment. It is the submission of the plaintiffs that the entire process they were subjected to was an illegality hence they are entitled to compensation in damages on the basis of a multiplier of their salaries but being capped to 12 months' gross salary. The plaintiffs asked this court to award each plaintiff a sum of Kshs.10,000,000/= on this head. Having considered the rival submissions over this claim, I am satisfied that the plaintiffs' exit from the defendant's employment cannot be treated as redundancy. The defendant simply dismissed the plaintiffs through a process not recognised by the C.B.A and the contracts of employment signed by each plaintiff. In other words, the plaintiffs were unlawfully dismissed. The plaintiffs are therefore entitled to receive damages equivalent to the period of notice stated in the contract or the C.B.A. There is no dispute that the

plaintiffs' employment with the defendant was terminated before the coming into force of the Constitution of Kenya 2010 and the Employment Act, 2007. In the case of Mary Wakhubi British Airways PLC (2015) eKLR the Court of Appeal considered the remedies available to an employee dismissed in 2000. In finding that the remedies in the Constitution of Kenya 2010, and the Employment Act 2007 did not apply in such a case the court held *inter alia*:

"All that said, then is to say that this court only has jurisdiction to award the remedies available at the time of the wrongful dismissal or unfair termination, that is, when the cause of action arose. These are remedies that are provided for under the repealed Employment Act, Cap 226 Laws of Kenya and the repealed Trade Disputes Act, Cap 234 Laws of Kenya." In D.P. Bachhetha =vs= Government of the United States of America (2017) eK.L.R the Court of Appeal held *inter alia*:

~~"That an employee whose dismissal was wrongful was only entitled to damages equivalent to the salary he~~

would have earned during the period of notice applicable in his contract."

18) In this case, it is clear from the contract of employment and the memorandum signed between the plaintiffs' union and the defendant that the defendant was required to pay one month's salary in lieu of notice. I am of the view that the plaintiffs are each entitled to a sum equivalent to one month's salary as at the date of termination as damages for loss of employment. I make the award in favour of the plaintiffs. The plaintiffs and their advocates file and serve the defendant schedules showing the monthly salary each plaintiff was earning as at the time of termination of employment. [Mention on 6/2/2018 to determine the issue]

9) The final issue to be determined is whether or not the defendant's calculation of the plaintiff's terminal benefits were wrong, arbitrary and helped the defendant to withhold huge sums due to the plaintiffs. It is the submission of the defendant that the aforesaid payments were calculated as required under the Regulations of Wages (General) and in accordance with the law governing employees who have been declared redundant.

The plaintiffs are of the view that since they were not consulted, then the defendant's calculations should be treated as arbitrary. I have considered the material placed before this court and it is clear to this court that though the defendant did not consult the plaintiffs on the computation of their terminal benefits, the defendant nevertheless gave a schedule showing how the figures were arrived at. What is clear in my mind is that the defendant proceeded to compute those dues as though the plaintiffs were declared redundant which is not the case here. In the circumstances, I am unable to make a declaration that the process was wrong or arbitrary.]

20) In the final analysis this court enters judgment in favour of the plaintiffs as follows:

It is hereby declared that the decision to cause the plaintiffs to take early retirement was unlawful and in breach of the constitution and the plaintiffs' contract of employment. ✓

b) The defendant is hereby ordered to pay each of the plaintiffs ~~damages for loss of employment~~ a sum equivalent to one (1) month's salary as at the time of termination of employment. ✓ 72

c) The defendant is ordered to refund to the plaintiffs a sum of

ksh.30,180,685/= being the amount withheld in terms of the schedules filed by the firms of advocates of Namada & Co.

Advocates and the firm of J. Harrison Kinyanjui & Co.

Advocates tabulated

1. Ksh.20,775,144

2. Ksh. 9,405,541


Total ksh.30,180,685/=

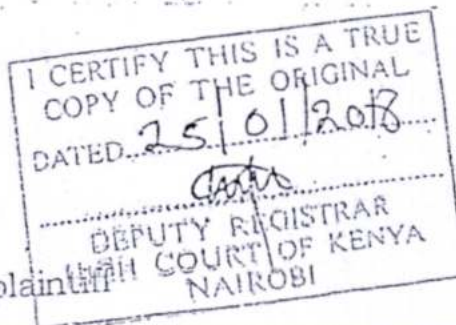
d) The plaintiffs to be paid by the defendants costs of the suit. 27 ✓

e) The defendant to pay interest on (b), (c) and (d) above at . ✓

court rates from the date of judgment until the date of full payment.

Dated, Signed and Delivered in open court this 24th day of January, 2018


J. K. SERGON
JUDGE



In the presence of:

JUMA

for the plaintiff

N LA

FOR KINYANJUI

for the Respondent

GARCHU

for the defendant

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: W. KARANJA, J. MOHAMMED & LAIBUTA, JJ.A.)

CIVIL APPEAL (APPLICATION) NO. E089/2021

BETWEEN

LAWRENCE NDUTU &
OTHERS.....APPELLANTS/RESPONDENTS

AND

KENYA BREWERIES
LIMITED.....RESPONDENT/APPLICANT

*(Being an application for striking out the notice of appeal filed against the
decree and judgment of the High Court of Kenya at Nairobi (J. K. Seron, J.)
dated 24th January 2018*

in

HCCC. No. 279 of 2003)

RULING OF THE COURT

1. All the 6,001 respondents in this motion were former employees of Kenya Breweries Limited (KBL) (the respondent in the appeal and the applicant in this application). They sued their employer vide a plaint which was amended and further amended on 2nd December, 2015 seeking various reliefs on grounds that they had been sent for early retirement which they contended was unlawful and contrary to sections 80 and 82 of the retired Constitution. It was their case that

the record of appeal had not been served on them, and was served on 23rd June, 2021 following reminders from the applicant. * *

5. It is under the above circumstances that the applicant has moved this Court by way of the Notice of Motion dated 15th July 2021, by invoking Rules 83 and 84 of this Court's Rules, Article 159 of the Constitution and sections 3A and 3B of the Appellate Jurisdiction Act seeking orders as follows:

- a) That the Notice of appeal dated 7th February, 2018 be deemed as withdrawn;
- b) That the record of appeal dated 24th February, 2021 be struck out;
- c) That costs of this application and other proceedings taken in the intended appeal be awarded to the respondent.

6. The motion is premised on grounds that judgment at the High Court was delivered on 24th January, 2018; that the notice of appeal was lodged on the 7th February, 2018; that an application seeking for certified copies of proceedings has not been served upon the respondent; that the appellants were required to file a record of appeal within 60 days after lodging the notice, which has not been complied with; that the appeal was to be filed on or before the 8th April, 2018; that the delay in prosecuting the intended appeal is extremely prejudicial to the respondent, and that it is in the interest of justice that the application be allowed.

7. Karen Mate-Gitonga, the applicant's legal manager, swore an affidavit on behalf of the applicant whereby she largely reiterated the said

11. On the striking out of the record of appeal, the applicant urges this Court to find that this motion was filed within the stipulated time as provided under rule 84 of the Court of Appeal Rules, having filed the motion on the 15th July, 2021 upon being served with the record of appeal on the 23rd June, 2021.
12. The applicant further urges that the respondent cannot rely on rule 82 since no application requesting for typed proceedings was ever served on them as provided by the law, and no certificate of delay has been filed by the respondent. The respondents have not given any explanation for the delay, and this Court is, therefore, urged not to indulge them.
13. In their submissions filed in opposition to the motion, the respondents urge the Court to find that, after delivery of the judgment, there were various mentions to ascertain the actual number of respondents involved and this went on till the 26th February, 2019 when the question was settled. Further, that the proceedings were applied for and they were certified on the 29th July, 2019. This was followed up by the filing of the record on the 24th February, 2021 awaiting the delivery of the certificate of delay as a supplementary document.
14. The respondents' urge that rule 77 provides for service of the Notice of appeal on the affected parties within the stipulated time. However, it does not extend to the letter requesting for proceedings, and once a Notice of appeal has been filed and served, there is no rule requiring dismissal on the basis that the letter requesting for proceedings was

appeal. This was not done, and the appellants cannot, therefore, seek solace in the proviso to rule 82(supra). We would respectfully urge counsel for the respondent to familiarise himself with the Court of Appeal Rules because, from the contents of his submissions, it is imperative for him to do so.

19. As was held in Charles Wanjohi Wathuku v. Githinji Nguni & another [2016] eKLR, the intent and purport of rule 82 of this court's rules is as follows:

“that timeline is strict and is meant to achieve the constitutional, statutory and rule-based objective of ensuring that the court processes dispense justice in a timely, just, efficient and cost-effective manner. The rule recognizes however that there could be delays in the typing and availing of the proceedings at the high court necessary for the preparation of the record of appeal. The proviso to the rule accordingly provides that where an appellant has bespoken the proceedings within thirty days and served the letter upon the respondent, then the time taken to prepare the copy of the proceedings, duly certified by the registrar of the high court, shall be excluded in the computation of the 60-day period. A certificate of delay therefore suffices to exclude any delay beyond the prescribed 60 days.” [Emphasis ours]

20. Once a party has failed to file a record within the above stipulated time, then rule 83 of this Court's rules comes into play. It states :

“if a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, he shall

serve the record out of time was ever sought or obtained from this Court. From the foregoing, it is clear that the application before us has merit and the Notice of appeal herein can be either struck out or be deemed as withdrawn. The application dated 15th July 2021 succeeds and is hereby allowed in its entirety with the result that Civil appeal No. E089 of 2021 is hereby struck out with costs to the applicant.

Dated and delivered at Nairobi this 3rd Day of February, 2023.

W. KARANJA

.....
JUDGE OF APPEAL

J. MOHAMMED

.....
JUDGE OF APPEAL

DR. K. I. LAIBUTA

.....
JUDGE OF APPEAL

*I certify that this is a
true copy of the original
Signed*

DEPUTY REGISTRAR

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YOUR REFERENCE:

PMG/RE/10/172

10 April 2018

J. Harrison Kinyanjui & Co. Advocates
~~St. Ellis House~~
4th Floor, Door 416
Wabera Street
NAIROBI

Dear Sirs,

High Court Civil Case No. 279 of 2003
Lawrence Ndutta & Others vs. Kenya Breweries Limited


Thank you for your letter dated 29th March 2018.

We should be grateful if you could please clarify the following;

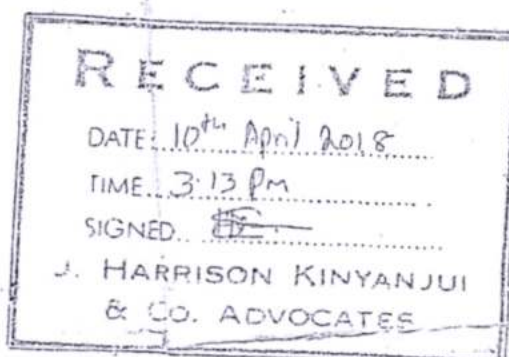
1. Whether the payment of Kshs. 9,405,501 is in full and final settlement of the suit inclusive of the costs.
2. We enclose a template of the discharge voucher for execution by each of the Plaintiffs and return to us.

We shall thereafter request our client to make payment to your account.

Yours faithfully,


P. M. Gachuhi
KAPLAN & STRATTON

Cc: Client



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DISCHARGE VOUCHER

I, GEORGE NDOGE NJIYA, holder of ID no. [10367956] of P. O. Box [55 MARAGWA] do **HEREBY ACKNOWLEDGE RECEIPT** of payment of the sum of Kenya Shillings FIFTY THOUSAND ONLY (Kshs. 50,000) from **Kenya Breweries Limited** (hereinafter "KBL") of P. O. Box 30161-00100, Nairobi.

I **HEREBY ACCEPT** the aforesaid sum in full and final settlement of all sums due to me under the judgement in **High Court Civil Case No 279 of 2003- Lawrence Nduttu and others vs Kenya Breweries Limited** ("the Suit").

IN CONSIDERATION of the aforesaid payment I, my personal representative or any other person as my successor in title hereby release and discharge KBL, all its affiliated entities, directors, officers, employees, agents, successors or assigns from all claims or any further liability to me arising from my former employment with KBL and in the Suit. I hereby waive my right to make any future claims for any amounts, expenses, losses, liabilities, rights, benefits or entitlements (whether known or unknown) that may be due to me from KBL or any such director, officer, employee, agent, successor or assign or otherwise whatsoever.

I further shall not make any demand of any nature whatsoever against KBL, its insurers and or its parent company and its insurers.

DATED this 26th day of April 2018

Signature [Signature]

Passport/I.D Number 10367956
COY 1917

Mobile
Number

0721-366226/0737123775

WITNESS

Signature

Name:

Address

[Signature]

DISCHARGE RECEIPT

6

I, JAMES MURITHI KABU holder of ID no. 1277336 of P. O. Box 5186 MBI do **HEREBY ACKNOWLEDGE RECEIPT** of payment of the sum of Kenya Shillings (Kshs.) 50,000/- [50,000/-] (Kshs.) from **Kenya Breweries Limited** (hereinafter "KBL") of P. O. Box 30161-00100, Nairobi.

I **HEREBY ACCEPT** the aforesaid sum in full and final settlement of all sums due to me under the judgement in **High Court Civil Case No. 279 of 2003- Lawrence Nduttu and others vs Kenya Breweries Limited** ("the Suit").

IN CONSIDERATION of the aforesaid payment I, my personal representative or any other person as my successor in title hereby release and discharge KBL, all its affiliated entities, directors, officers, employees, agents, successors or assigns from all claims or any further liability to me arising from my former employment with KBL and in the Suit. I hereby waive my right to make any future claims for any amounts, expenses, losses, liabilities, rights, benefits or entitlements (whether known or unknown) that may be due to me from KBL or any such director, officer, employee, agent, successor or assign or otherwise whatsoever.

I further shall not make any demand of any nature whatsoever against KBL, its insurers and or its parent company and its insurers.

DATED this 27th day of APRIL 2018 1277336
Signature [Signature] Passport/I.D Number COY NO. 5785
Mobile Number 0736 816446 M 0650298574067 EQUITY

WITNESS

Signature

Name:

Address 59

[Signature]

4th Avenue Ngara
P.O. Box 40111-00100
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00100

PNG/KE/10/172

11 January 2022

The Deputy Registrar
High Court of Kenya
Civil Division
Millimani Law Courts
NAIROBI

Dear Sir,


High Court Civil Case No. 279 of 2003
Lawrence Ndutuu & Others vs. Kenya Breweries Limited


We request you to kindly record the following consent:

"BY CONSENT"

The suit between the Defendant and the Plaintiffs listed in the attached schedule and referred to at paragraph 14 of the judgment delivered on 24th January 2018 is hereby marked as settled."

Yours faithfully,


J. HARRISON KINYANJUI & CO
ADVOCATES FOR THE PLAINTIFFS


KAPLAN & STRATTON
ADVOCATES FOR THE DEFENDANT

F. C/P. (S.
P. ltha: ru
O. Fowler (Consultant)

P. Gachuhi, R. Mb
uis: N. Manga: R.

ate: E. Kin
C. Etyang

C.
g'an

de: J. Muthui

Lex Africa
www.lexafrica.com



DIRECTORATE OF CRIMINAL INVESTIGATIONS

Page No.....

Police case No.....20.....

14/11/2023
St. Ellis House
4th floor
@ 1530hrs

For the 125 people I represented, the amount remitted by KBL to our clients account was as follows:

- 1) Decremental sum of Kes. 9,405,541/=
 - 2) Interest was 4,350,771.35/=
 - 3) Party and party cost was 1,000,000/=
- Totaling to Kes 14,756,312.35/=

After receipt of the said amount into my Client Account, I transferred Ksh. 1,000,000/= to my Office Account as my agreed fees (as stated by M/S Kaplan & Stratton advocates in their communication on the settlement), and left the balance thereof in my said Client Account.

I then requested Mr. Lawrence Nduttu to secure the services of an independent Accountant in order to calculate the netflows and the pro rated sums to the beneficiaries. He in turn stated to me that he would happy to work with my accountant Mr. Lawrence Karogo Thoithi to do all the calculations including the calculation of interest to be distributed pro rata to each person of the 125 I was representing as per the schedule of payment submitted in that regard from KBL Advocates M/S Kaplan & Stratton Advocates. There were other individuals of other Advocates who were not satisfied with the Judgement of Justice Sargon and sought to appeal.

This information was known to my clients and as per the Court of Appeal Rules Rule 77(1) thereof that indicates service of notice of appeal must be effected on every person affected. Accordingly as affected persons they were informed at all times that my law firm would appear in the Court of Appeal on their behalf in regard to the said Appeal.

The payment of one month salary as damages ordered by the Court was not remitted by KBL since there was already an appeal and have to wait till the determination of the appeal which is still pending.

My clients were agreeable with the earlier Court order and signed discharge vouchers from KBL and agreed to all the terms thereof and no further claim upon signing the same so that they could receive their stated dues as per the schedule from KBL.

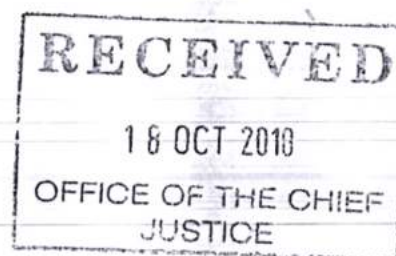
I instructed formally in that regard and each of them processed the Discharge Voucher after explaining to them (through Mr. Lawrence Nduttu) the import thereof.



GEORGE N. NJIGU
P.O. BOX 55
MARAGWA
MURANG'A COUNTY
CELL: 0721 366 226

18th October 2018

P.M. GACHUHI
KAPLAN & STRATTON
WILLIAM SON HOUSE
4TH AVENUE NGONG
P.O. BOX 4011 - 00100
NAIROBI, KENYA



Dear Sir,

REF: HCCC NO. 279 OF 2003

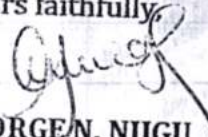
LAWRENCE NDUTTU & OTHERS VS KENYA BREWERIES LIMITED

I refer to the above and your letter dated 29th March paragraph 2, 3 and 4 of the discharge voucher for execution by each one of us the above paragraphs should not affect me. On my side I feel you should return the same to my lawyer Harrison Kinyanjui who is the custodian of my document concerning the matter.

Having received the voucher since 4th of July 2018 I feel time has come for you to return it without any further delay. Bearing in mind that at one point you told the former Chief justices Evans Gicheru that our employment was terminated unlawfully and that the company was willing to pay us and since 2003 you have done nothing to fulfill your words and went further to tell the court that the company was denying you our document.

I feel that you should return the same to my lawyer immediately.

Yours faithfully,


GEORGE N. NJIGU



Cc: Honourable Chief Justice
High court Judge J. Sogon
Managing Director K.B.L
Harrison Kinyanjui & Co. Advocates

Yahoo Mail - FALSE ALLEGATIONS ABOUT PENDING KBL APPEAL

12/13/23 10:58 AM

FALSE ALLEGATIONS ABOUT PENDING KBL APPEAL

From: Harrison Kinyanjui (greatharrison@yahoo.com)

To: njigugeorge291@gmail.com

Date: Wednesday, December 13, 2023 at 10:12 AM GMT+3

Dear Sir,

What are you talking about? You are an AFFECTED person under Rule 71 of the Court of Appeal Rules in the Appeal that was filed by Namada. You know very well i explained to you in detail about it. What is your insult about? Why make false allegations against me?

You have sent me 3 blank Emails. What does that mean?

Has the Appeal been heard and I have failed to attend? Please get the correct information before you falsely accuse me.

You signed the KBL documents AFTER I explained to you everything and the agreement we had with you was that you get what was being sent to you and that we would then wait for the conclusion of the Appeal.

Why are you now writing an email of false accusation as though you did not know this?

Very Kind Regards
J. HARRISON KINYANJUI

On Saturday, December 9, 2023 at 06:16:36 AM GMT-8, George Njigu <njigugeorge291@gmail.com> wrote:

Dear Sir we had very high hopes with you only for Gachuhi to disclose that you didn't file the appeal and you signed the consent that the matter has been settled but there's God in heaven.



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Your Ref: TBA
Our Refs: CC/PE/FEB/23/6

Date: 24th July, 2024

Lawrence Nduttu
George Njigu
James Suiyanka &
Julius Mulwa,
jawilaservices@gmail.com

VIA EMAIL

Dear Sirs,

RE: YOUR COMPLAINTS AGAINST HARRISON KINYANJUI, ADVOCATE

We refer to the above.

The Advocates Complaints Commission is established under section 53 of the Advocates Act (Cap 16) Laws of Kenya to enquire into complaints against advocates, law firms and their employees. After due inquiry, the Commission is mandated to reject the complaint, or promote reconciliation and/or encourage and facilitate an amicable settlement, or if a disciplinary offence that is serious or aggravated is disclosed, to file a formal complaint before the Disciplinary Committee.

A. Vide the Commission's Help Forms dated the 9th February, 2023 you registered your complaints as follows:

- a. That you instructed the above Advocate to represent you in Nairobi HCCC No. 279 of 2003; Lawrence Nduttu & Others vs. Kenya Breweries Limited, which instructions the Advocate accepted and proceeded with your instructions to the suit's logical end. The advocate represented 125 Plaintiffs out of the 6,000 claimants in the suit. Judgement in the matter was delivered in favour of the 125 Plaintiffs represented by the Advocate for a sum of Kshs. 14,756,312/=.

- b. That the said sum of **Kshs. 14,756,312/=** was made up of the decretal sum in terms of the judgment delivered on the 24th January, 2018 being Kshs. 9,405,541/=; Interest up to 31st November, 2021 being Kshs. 4,350,771/= and party and party costs amounting to Kshs. 1,000,000/=.
 - c. Further, you alleged that the Advocate paid you a sum of Kshs. 71,106/=; Kshs. 67,769/=; Kshs. 135,539/= and Kshs. 67,775/= respectively in settlement of the claim with a promise that he would lodge an appeal against the decision of the High Court at the Court of Appeal.
 - d. That you alleged that the Advocate failed to lodge an appeal as promised.
 - e. That thereafter, you noted that the appeal that the advocate was referring to and which was pending in court was filed by the firm of **Namada & Co. Advocates** for and on behalf of his clients and had nothing to do with you.
 - f. That the said Appeal was subsequently dismissed vide a ruling delivered on the 21st March, 2023 and parties applied to have it revived.
- B. On receipt of your complaint, the Commission notified you of its mandate in handling your complaints; **that only possible acts of professional misconduct were to be investigated and addressed.**
- C. Further, you were informed that the Commission in addressing the issues raised in (A) above, **will not seek to reopen the case; act as an appellate body or interrogate court processes and/or address possible criminal acts.** Do note that the offices of the Directorate of Criminal Investigations (DCI) and the Director of Public Prosecutions (ODPP) are mandated with the investigation and prosecution of criminal offences. Complainants on allegations of professional negligence on the other hand should be referred to court for proper action/remedies.
- D. Forming part of the Commission's investigative processes, we made enquiries on the settlement status and proof thereof. The Defendant's advocates – **Kaplan & Stratton Advocates** vide their letter dated the 20th September, 2023 noted that a total sum of **Kshs. 14,756,312/=** being full and final settlement of your claim was remitted to your advocate for his onwards transmission to you. We noted that the Advocate for the Defendant, despite making reference to payment of **one month's salary equivalent for loss of employment** as per the Judgment delivered on the 24th January, 2018 by Hon. Serگون J, provided no evidence in support of the same when furnishing the Commission with proof of settlement of the matter.
- E. On the basis of the above, we made further enquiries with the Defendant's Advocates. **Kaplan & Stratton Advocates** asserted that no further payments were advanced to the Advocate in settlement of the claim since you individually executed Discharge Vouchers with the Defendant accepting the

sums paid to them. In support of the firm's claim that the sum of Kshs. 14,756,312/= was full and final settlement of the claim, copies of the executed Discharge Vouchers were annexed. The said firm further indicated that there was no pending appeal touching on your claims because you discharged the Defendants from all claims or further liability and waived your rights to any entitlement or further claims or any sums whatsoever.

F. On assessment of your complaints and in line with the Commission's mandate, we narrowed down the possible acts of professional misconduct as follows:

- i. *Failing to provide any/adequate professional service despite payment of fees,*
- ii. *Withholding money collected from a client,*
- iii. *Overcharging and claiming costs not justified by circumstances,*
- iv. *Failing to behave with integrity and behaving in a way likely to diminish public trust in the legal profession.*

We invited the Advocate's reply to your complaints and specifically the possible acts of professional misconduct listed above.

G. He responded on the 24th April, 2024 and provided the Commission with background information of the matter from the time he first received instructions to act. He alleged that when he sought to represent you and the other 121 claimants in the matter, another law firm contested the said representation. The issue of representation allegedly proceeded to apex court. He claimed that you did not pay his legal fees at the High Court, the Court of Appeal and the Supreme Court.

H. Further the advocate in his defence alleged that he withheld the sum of Kshs. 1,000,000/= awarded to you as Party and Party Costs from the Defendant on account of his legal fees for both his representation in the substantive suit and the application that proceeded to the supreme court. The Advocate stated that he notified you of his intention withhold the said sum.

I. The Advocate further claimed that it was inconceivable that an appeal could be lodged since you individually and voluntarily accepted the sums received from the Defendant in full and final settlement of the matter.

J. The Advocate further claimed that the Plaintiffs represented by the other Firms of Advocates lodged an appeal against the decision of the Court in the substantive matter in which appeal you were named as the recipients of the Notice of Appeal as per the *Court of Appeal Rules*. The Advocate further reiterated that he was entitled to fees in the subsisting appeal since you did not withdraw instructions from him. The Advocate denied any wrongdoing on his part.

K. We requested you to comment on the Advocate's response vide our letter dated the 30th April, 2024. You responded vide yours received at the Commission on the 8th May, 2024. In your response, you indicated that you did not wish to dwell on the history of the suit.

L. Your response was majored on the contents of the Judgement of Hon. Serгон J. delivered on the 24th January, 2024. Further, you denied understanding the contents of the Discharge Vouchers you executed. You claimed that the Advocate failed to behave with integrity and/or behaved in a manner likely to diminish public trust in the legal profession.

M. On assessment of your complaint, the Advocate's response and the rejoinder thereto, we wish to address you as follows:

- i. Serгон J. in his Judgment dated the 24th April, 2024 declared that the Defendant's act of retiring you was in breach of the Constitution; that you were entitled to one month's salary as damages for loss of employment and the Defendant ordered to refund a sum of Kshs. 9,405,541/= plus costs and interests.
- ii. Fundamentally, you were entitled to enjoy the fruits of the judgment as delivered, we note however that you thereafter proceeded to execute a Discharge Voucher with the Defendant effectively agreeing to receive the sums paid to you as indicated in the voucher in **full and final settlement of your claim**. Please note that a Discharge Voucher has legal contractual implications that the **Commission cannot address/interrogate**.
- iii. Further, you alluded to the Advocate being negligent to wit; *allowing you to sign consent letters to mark your matters settled knowing very well that the judgment had three parts to be executed...* we wish to inform you that such allegations of professional negligence - which is failure by an advocate to offer services with the requisite degree of care or performance of service in a manner that falls short of the norm of that would be expected from a reasonable legal practitioner in the specific field of law; should be referred to court for proper redress.
- iv. That, the background and history of the Advocate's representation is important as it forms the basis for the Advocate's claim for legal fees. We noted that you indicated that you did not wish to address it as raised by the Advocate in his letter to the Commission.
- v. There is a dispute on the amount payable to the Advocate in legal fees. The Advocate admitted to have withheld the sum of Kshs. 1,000,000/= on account of legal fees. He claims that he is entitled to further payment for his participation in the subsisting Appeal. On this specific aspect of your complaint, the proper forum for redress **would be filing an advocate-client bill of costs in Court for it to determine the sum payable to the Advocate on account of fees**.
- vi. In summary, your complaint **has substance but does not disclose disciplinary offence(s) that can be addressed by the Commission**, the issues raised in your complaint, the annexures thereto and the reliefs sought at the Commission cannot be adequately addressed and be granted by the Commission.

N. Section 54(4)(e) of the Advocates' Act provides:

.. It shall be the duty of the Commission to receive and consider a complaint made by any person, regarding the conduct of any advocate, firm of advocates, or any member or employee thereof; and—

if it appears to the Commission that there is substance in a complaint but that the circumstances of the case do not disclose a disciplinary offence with which the Disciplinary Committee can properly deal and that the Commission itself should not deal with the matter but that the proper remedy for the complainant is to refer the matter to the courts for appropriate redress the Commission shall forthwith so advise the complainant.

- O. In light of the forgoing therefore, your complaint does not disclose any professional misconduct on the part of the Advocate to warrant further investigations and/or action against the Advocate in line with the Commission's mandate. You are therefore advised that you may take action against the parties in the suit and/or the advocate as advised above.
- P. If you are dissatisfied with our decision, you may file your complaint directly to the Advocates Disciplinary Committee as provided under **Section 60(1) of the Advocate's Act, Chapter 16, Laws of Kenya.**
- Q. You may also file an appeal against our decision at the High Court as provided for under **Section 58(8) of the Advocates Act, Chapter 16, Laws of Kenya.**

Yours faithfully,

KK

KIPNG'ENOH K. K
SENIOR STATE COUNSEL,
FOR: COMMISSION SECRETARY
ADVOCATES COMPLAINTS COMMISSION

Subject Fwd: ANSWER TO COMPLAINT BY LAWRENCE NDUTTU & 3 OTHERS (Ref: CC/PE/FEB/23/26)

From acc@ag.go.ke <acc@ag.go.ke>

To kenneth.kikwai <kenneth.kikwai@ag.go.ke>

Date Monday April 29, 2024 8:48:19 AM

Good morning,

Kindly deal.

Regards,

For: Advocates Complaints Commission

From: harrison <greatharrison@yahoo.com>

To: acc <acc@ag.go.ke>

Date: Friday, 26 April 2024 7:29 PM EAT

Subject: RE: ANSWER TO COMPLAINT BY LAWRENCE NDUTTU & 3 OTHERS (Ref: CC/PE/FEB/23/26)

Our Ref: JHK/DM/3005/2012 Your Ref: CC/PE/FEB/23/26

Date: APRIL 24TH, 2024

THE SECRETARY
COMPLAINTS COMMISSION
CO-OPERATIVE BANK HOUSE, 20TH FLOOR
HAILE SELASSIE AVENUE
NAIROBI

Email: acc@ag.go.ke Tel: 0732-529995

Dear Sir./Madam,

RE: ANSWER TO COMPLAINT AGAINST US BY LAWRENCE NDUTTU, JAMES
SUYANGA, JULIUS MULWA & GEORGE NJOROGE

We refer to the above and your letter dated 4th April 2024 (received by us on 8th April 2024), and very much regret to note that we did NOT receive the Complainant's Complaint as made to you, in order for us to see the bases of the allegations leveled against us.

Without prejudice and in order to respond to the specific itemized allegations made against us we state as follows:

In respect of item "a" in your Letter I deny the imputation of ANY wrongdoing and state:-

It is NOT true that the 4 Complainants were the sole Plaintiffs in the Nairobi HCC No. 279 of 2003 Lawrence Nduttu & Others vs. Kenya Breweries Limited. ✕

1. The fact is that there were alleged to be about 6,000 former employees of Kenya Breweries, some represented by Gitobu Imanyara & Co. Advocates, some by Namada & Co. Advocates, and some by O.P. Ngoge & Co. Advocates. Some of the Plaintiffs left Gitobu Imanyara & Co. Advocates and came to seek representation from my law firm. They were in penury and I offered to act for ONLY identifiable Plaintiffs from M/S Gitobu Imanyara Advocate.
2. About 125 of the said individuals approached my law firm through Lawrence Nduttu to so represent them in the cited suit. O.P. Ngoge & Co. Advocates were unhappy about this and when the matter was called before Hon. Lady Justice Ang'awa she listed the said individuals as being aligned under my law firm and those aligned under Namada & Co. Advocates.
3. Unhappy, O.P. Ngoge Advocate sued my law firm as well as Namada & Co. Advocates to appeal against a Ruling of the High Court dated 16th December, 2011 (Ang'awa, J) that had allowed some parties joined in the suit as plaintiffs to be represented by the firm of M/s J. Harrison Kinyanjui & Co. Advocates, instead of M/s O.P. Ngoge & Associates who were representing all the plaintiffs jointly.
4. This was overruled by Hon. Mr. Justice Githinji, Warsame & Musinga (JJA) by an Order dated 19th November, 2013 in Nairobi Court of Appeal Civil Application No. NAI 51 of 2013. NONE of the 4 Complainants herein paid my law firm a SHILLING to defend them in the Court of Appeal in those proceedings. Can the Complainants even allege that we "failed to provide any/adequate professional service" in this instance despite NO fee being remitted?
5. Unhappy with the Court of Appeal's decision against him, O. P. Ngoge Advocate then lodged and Appeal in the Supreme Court, vide Supreme Court Petition No. 13 of 2013. My law firm was sued as the 3rd Respondent therein while the 4 Complainants herein as part of the Respondents No. 4 in the Supreme Court Appeal relied on my representation.
6. The Supreme Court DISMISSED the said appeal entirely. NONE of the Complainants or indeed the rest of the 125 persons under Lawrence Nduttu paid my law firm a SHILLING. To date. Can the Complainants even allege that we "failed to provide any/adequate professional service" in this instance despite NO fee being remitted?
7. The stated decision of the Supreme Court which details the matter in extensor, including our representations before the Apex Court can be found here for verification: Peter Odiwuor Ngoge t/a O P Ngoge & Associates Advocates & 5379 others v J Namada Simoni t/a Namada & Co Advocates & 725 others [2014] eKLR (See Annexure 1)
8. I appeared during the entire Hearing of the High Court trial before the Hon. Mr. Justice Serگون and the 4 Complainants are misrepresenting the facts before this Honourable Commission in alleging that "judgement was delivered in favour of all the Plaintiffs represented by [us] for a sum of Ksh. 14, 756,312/=.

In rejoinder to the breakdown of the sums stated in your Letter's paragraph "b", we DENY the same and respond as follows:-

9. The truth of the matter is that we requested Kaplan & Stratton to pay our legal costs at a fee of Ksh. 1,000,000/= wholly separate from the Ksh.13,756,312/= due to the 125 Plaintiffs we represent, and this was communicated to the Plaintiffs through Mr. Lawrence Nduttu. Already, by misrepresenting that their sums accruing to them is Ksh. 14,756,312/= the Complainants insinuate that we have pilfered their money. We NEVER took and would NEVER take a penny of THEIR dues.

10. On 22nd January 2022 Kaplan & Stratton a sum of Ksh. 14, 756,312/= of our Client Account in furtherance of the Discharge Vouchers executed by each and every one of the 125 individuals. We annex a copy of the said Transmission as Annexure 2.

11. No one compelled ANY of the Claimants to execute the Discharge Vouchers. Mr. Lawrence Nduttu was tasked by the Hon. Lady Justice Ang'awa with representing the Claimants. He thus arranged for each of them to be furnished with a copy of their respective Discharge Voucher from Kenya Breweries' advocates on record M/S. Kaplan & Stratton Advocates, and each of them executed the same.

12. They each voluntarily and without any compulsion executed the same after being informed of the contents and ramifications thereof. Their payments were made by bankers checks. Annexed is each of the said Cheques in proof as Annexure 3.

13. It was on the bases of these Discharge Vouchers that the pro-rated sums were remitted. Note that the individuals were to receive each according to their Discharge Voucher. As a Client binds an Advocate to a commitment made which the Advocate has to abide by, these Discharge Vouchers are categorical and clear in their terms. How could I be accused of overriding the same?

14. The Complainants READ and UNDERSTOOD what the Discharge Vouchers stated BEFORE executing the same. We then forwarded each of the said duly executed Discharge Vouchers to Kaplan & Stratton Advocates by our letter dated June 5th, 2028. They cannot be heard to resile from their own commitments therein contained. Please see Annexure 3 in proof.

On the allegations in paragraph "c" "d", "e", "f", "g", and "h" of your Letter to us, we DENY the same, and state as follows:

15. The cited paragraphs are ALL intertwined on the allegations relating to the Court of Appeal issue hence we have (in saving time) responded at once to avoid jumbling the issues as herein below stated.

16. At NO time did we inform the Complainants or ANY of the Plaintiffs that we were lodging an Appeal on THEIR behalf. Ever. Let them provide the evidence of such, and WHEN we alleged to so do. They NEVER instructed us to Appeal and at any rate we informed them of the contents of their Discharge Voucher, in particular the 4 Complainants.

17. What we informed the Plaintiffs represented by Mr. Lawrence Nduttu immediately we were served with a Notice of Appeal in the Nairobi HCC No. 279 of 2003 Lawrence Nduttu & Others vs. Kenya Breweries Limited matter was that the Plaintiffs represented by Namada & Co. Advocates (and some who had remained with O.P. Ngoge Advocate) elected to appeal against the decision of the Hon. Mr. Justice Serгон.

18. We were named as recipients of the Notice of Appeal and as AFFECTED parties their representation at the Court of Appeal would arise. That was the basis of our reference to them of the Court of Appeal proceedings. As the Court of Appeal Rules demand that ALL AFFECTED PARTIES be served with the Court of Appeal Notice and process, we informed the Complainants that inevitably we would represent them when the pending Appeal arose for adjudication.

19. Was that a misrepresentation from us to the Plaintiffs we represented as well as the Complainants named? NO. Rule 77 (1) of the Court of Appeal Rules states; rule stipulates as follows:

"An intended appellant shall, before or within seven days after lodging notice of appeal, serve copies thereof on all persons directly affected by the appeal." (Emphasis added)

20. We immediately informed the Complainant Lawrence Nduttu representing the rest of the 125 Plaintiffs with us that Namada & Co. Advocates HAD filed a Notice of Appeal and that THEY were DIRECTLY AFFECTED parties under the above Rule. It is therefore a lie for the Complainants to misrepresent that we were filing an Appeal on THEIR behalf, which we neither promised nor did.

21. Rhetorically, was the participation of the 125 Plaintiffs then going to be free-of-charge in the Appeal lodged by their Co-Plaintiffs in the High Court, but in which they stood DIRECTLY affected? Since the Court of Appeal Rules BOUND us to the said Appeal lodged by Namada & Co. Advocate was it a misrepresentation to them that we would HAVE to participate in the Appeal process? NO.

22. For the record, we have NOT expended a SHILLING of their money in the Client's Account No. 2044308773 TO DATE. The Statement of Account (kept in confidentiality of the other 121 Plaintiffs in furtherance of their Data Protection Act rights) is AVAILABLE for scrutiny and inspection to establish if we have DIVERTED a Shilling of the Complainant's monies held therein or pilfered a penny therefrom.

23. As we speak and even as at April 4th 2024, the Pending Appeal lodged by the self-same Plaintiffs represented hitherto by Namada & Co. Advocates issue is STILL ongoing, contrary to the allegations of the Complainants.

24. They failed to disclose to you this fact, that vide NAIROBI COURT OF APPEAL CIVIL APPEAL NO. E069 OF 2024 LAWRENCE NDUTTU & OTHERS vs. KENYA BREWERIES LIMITED is pending and we were served with the annexed application, marked as Annexure 4 in proof.

25. By our Letter dated 4th April 2024 to the 125 Plaintiffs represented by Lawrence Nduttu, we informed them that we had BEEN SERVED on their behalf with the said process in NAIROBI COURT OF APPEAL CIVIL APPEAL NO. E069 OF 2024 LAWRENCE NDUTTU & OTHERS vs. KENYA BREWERIES LIMITED.

26. They acknowledged receipt of our said letter and promised to call on us on April 19th 2024 and on April 22nd 2024. They did not. Please see Annexure No.5 in proof

27. In light of the stated NAIROBI COURT OF APPEAL CIVIL APPEAL NO. E069 OF 2024 LAWRENCE NDUTTU & OTHERS vs. KENYA BREWERIES LIMITED, they have NOT withdrawn instructions from us or appointed ANOTHER Advocate to act in lieu of ourselves.

28. We remain professionally bound in the matter for the Plaintiffs, under Order 9 Rule 5 of the Civil Procedure Rules. Its states:

Change of advocate [Order 9, rule 5.]

"A party suing or defending by an advocate shall be at liberty to change his advocate in any cause or matter, without an order for that purpose, but unless and until notice of any change of advocate is filed in the Court in which such cause or matter is proceeding and served in accordance with rule 6, the former advocate shall, subject to rules 12 and 13 be considered the advocate of the party until the final conclusion of the cause or matter, including any review or appeal." [emphasis added]

29. Clearly, the Complainants STILL come to my Chambers to date for representation (as you can see from Annexure No. 5 above). On 14th February 2023 we were served with process with M/s OTWAL & MANWA ASSOCIATES ADVOCATES who took over some Plaintiffs from Namada & Co. Advocates and we attended Court on behalf of the very same Complainants when the matter was before the Hon. Lady Justice Onger. Please see Annexure No. 6 in proof.

30. On April 2nd 2024 we received an email disclosing service of the process in NAIROBI COA APPEAL NO E069/2024 LAWRENCE NDUTTU & 156 OTHERS VERSUS KENYA BREWERIES LIMITED served on us on behalf of the Complainants and the 121 Others that we represent. We duly notified the Complainants as indicated above. Please see Annexure No. 7 in proof.

31. All this professional work in perusing communication from the Court of Appeal, attending to respond to the same, attending the Complainants to notify them on the ARISING Appellate proceedings is (rhetorically) for nothing?

32. Rhetorically also, with what do we secure resources to be ONLINE, to print these documents and letters to the Complainants and even maintain an office where THEY show up almost every other week without their remittance even of Consultation fees? Have we even invoiced them fees at all for them to allege that we have pocketed their monies?

33. More fundamentally, it can be asked: Are the proceedings in NAIROBI COA APPEAL NO E069/2024 LAWRENCE NDUTTU & 156 OTHERS VERSUS KENYA BREWERIES LIMITED in actual existence in the Court of Appeal pending adjudication with the Complainants cited to respond? Yes.

34. The said Complainants are to the said extent plainly dishonest and have NOT even cared to state to us that they have lodged a Complaint before you in regard to their Claim.

In specific regard to item d. raised in your letter, we DENY the same and our response is as follows:

35. The Complainants do NOT deny that they were paid what was due to them. The calculations of the respective dues were monitored by none other than Lawrence Nduttu even micro managing the same in the minutest detail. NOT one of the 125 Plaintiffs has been deprived of what was due to them.

36. We attach herewith the bundle of Banker's Cheque signed collected by those Plaintiffs who called on us to collect their Cheques. Those who are deceased we did NOT release their cheques to Lawrence Nduttu as he had DEMANDED. We totally declined to hand them over to him.

37. Indeed, Lawrence Nduttu (apparently keen to pocket the monies of the deceased Plaintiffs) formed a CBO called KENBREX SACCO GROUP to collect the said sums from us and we declined. By our letter to the said persons including Mr. Lawrence Nduttu (Complainant) dated 18th March 2022 we informed them that this was NOT possible. Please see Annexure 8.

38. Accordingly we have continued to pay ONLY the legal representatives of the deceased Plaintiff ONLY. An example is attached Annexure 9. Out of the need to protect the data of the persons NOT part of the 4 Complainants out of the 125, allow us to provide this as an example.

39. Further, when Lawrence Nduttu realized that he could NOT collect from us the deceased persons' cheques, he started calling up the beneficiaries of these deceased persons and would ACCOMPANY them to our Chambers allegedly to "direct them" on how to go about the matter. They would then be extorted sums of money in the process. This was revealed to us by one of the beneficiaries so affected of Mesaidi Juma. Each of the CHANGED cheques drew a Bank charge fee chargeable on THEM as a whole, and the said parties are fully AWARE of this fact.

In response to the allegation that we have "withheld money collected from a Client", we DENY the same and rebut the same as follows:

40. After the unclaimed Bankers Cheques overstayed with us, we did RETURN the same to the ABSA BANK Client's Account and the money is SO HELD there to date. We produce the evidence (verifiable with the Bank) of this as Annexure 10.

41. Rhetorically, how can we possibly be said to withhold sums to persons who are deceased and their representatives are in the process of obtaining Letters of Administration and the Complainants had demanded that we pay THEM the said money "to transmit to the beneficiaries", which we declined as stated.

42. As to the allegation of "overcharging and claiming costs not justified in the circumstances", we vehemently DENY the same and if the Complainants insist on the said totally spurious allegation, we are ready and willing to TAX Advocate-Client Bill of Costs in respect of what we have stated in paragraphs 4, 5, 7, 25, 27, and 29 above. Including the day to day activities that are ongoing with the said Complainants to attend to them as stated in paragraph 25 above.

43. As to the allegation of "failing to behave with integrity and behaving in a way to diminish public trust in the legal profession" we vehemently deny the same. The above explication clearly shows that the Complainants are MALICIOUSLY instigating totally unfounded and spurious allegations because we declined the manoeuvres.

Kaplan Stratton Advocates

Williamson House
4th Avenue Ngong
P.O. Box 40111 - 00100
Nairobi, Kenya

www.kaplanstratton.com
Email: KS@kapstrat.com
VAT No. 00112190 PRL P0096150415

T (0) 20 2841000
(0) 20 2739919
M. (0) 722 205762/3
(0) 733 899012/3
Intl Code: +254
DZ: No. 19

YOUR REFERENCE:

CC/PE/FEB/23/26

OUR REFERENCE:

PMG/KE/10/172

DATE:

20 September 2023

Commission Secretary
Advocates Complaints Commission
Office of the Attorney General &
Department of Justice
20th Floor, Cooperative Bank House
Haile Selassie Avenue
Nairobi

Attn: Kipng'eno K.K.

Dear Sir

HCCC No.279 of 2003

Lawrence Ndutu & Others vs Kenya Breweries Limited



We refer to your letter dated 5th June 2023 (received at our offices on 4th September 2023) seeking information in the above matter in which we act for Kenya Breweries Limited.

By way of background, although the matter was filed in 2003, it was substantially delayed in Court as a result of a representation dispute between some of the plaintiffs and their former advocate, O.P. Ngoge. O.P. Ngoge continued filing interlocutory applications which led to an appeal to the Court of Appeal. The issue was eventually settled by the Supreme Court in the precedent setting decision of **Lawrence Ndutu & 6,000 Others v Kenya Breweries Limited & Another** [2012] eKLR delivered on 4th October 2012.

The matter proceeded for hearing on 3rd October, 22nd November 2016 and 10th July 2017 with the Plaintiffs being represented by three individual law firms – J. Harrison Kinyanjui & Company Advocates, Namada & Company Advocates, and O.P. Ngoge & Company Advocates. After full hearing, the judgment was delivered by the Hon. Justice Serگون on 24th January 2018. In summary, the Court, at paragraph 20, ordered as follows:

- A declaration that the Plaintiffs' early retirement was in breach of the constitution and their terms of employment;
- The Defendant to pay the Plaintiffs one months' salary as damages for loss of employment;
- The Defendant to refund the Plaintiffs the sums of KES 30,180,685 in the following proportions:

Plaintiffs represented by Namada & Company Advocates	KES 20,775,144
--	----------------

F. Ojiambo, SC, MBS P. Hima S. Wainaina P. Gachuihi R. Mbai N. Malik E. Kinyanjui C. Wetende J. Muthui P. Kimire K. Kamaithe
P. Njeru S. Kiaro-Mulia N. Manga R. Kirunga C. Etyang-Hossfeld J. Ng'angira F. Lolwe R. Karau E. Onyango V. Njenga
O. Fowler (Consultant)

Member of
LEX AFRICA
www.lexafrica.com

- d) The above sums to bear interest from the date of judgment till payment in full;
e) The Defendant to bear the costs of the suit.

Following delivery of judgment, Mr. Kinyanjui sent us a letter dated 29th March 2018 demanding payment of the sums awarded to his clients through his client account. Mr. Kinyanjui also sent discharge vouchers signed by all his clients through a letter dated 4th July 2018. Each of the plaintiffs confirmed that receipt of the sums outlined would be in "full and final settlement" of the above matter.

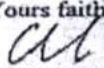
In addition, the firm of HK advocates was paid a sum of KES 1,000,000 being the party and party costs together with interest accrued on the decretal sum up to 31st November 2021. This was confirmed in our letter of 20th December 2021 which also forwarded a consent to mark the suit as settled with regard to Mr. Kinyanjui's clients. Mr. Kinyanjui responded to this letter on 12th January 2022 and forwarded the signed consent. We subsequently paid the sum of KES 14,756,312.35 to Mr. Kinyanjui's account on 21st January 2022 by way of RTGS transfer broken down as follows:

Description	Amount in KES
Decretal Sum in terms of the judgement delivered on 24 th January 2018	9,405,541.00
Interest up to 31 st November 2021	4,350,771.35
Party and party costs	1,000,000.00
Total	KES 14,756,312.35

We have seen a letter from Mr. Kinyanjui to some of his clients dated 10th November 2022 referring to the existence of an appeal by some of Mr. Namada's clients. We note that this appeal did not in any way affect Mr. Kinyanjui's clients. As at this date, we had already paid the decretal sum to Mr. Kinyanjui as outlined above. Additionally, Mr. Kinyanjui's clients accepted the Court's decision and did not file an appeal. The appeal was eventually struck out with costs by a ruling dated 3rd February 2023. Our client has paid the bulk of the decretal sum awarded to Mr. Namada's clients and is working on concluding the balance.

We have enclosed a paginated bundle with all the relevant correspondence and documentation. We are available to make any clarification or provide any additional information or assist the commission in any manner required to resolve this issue.

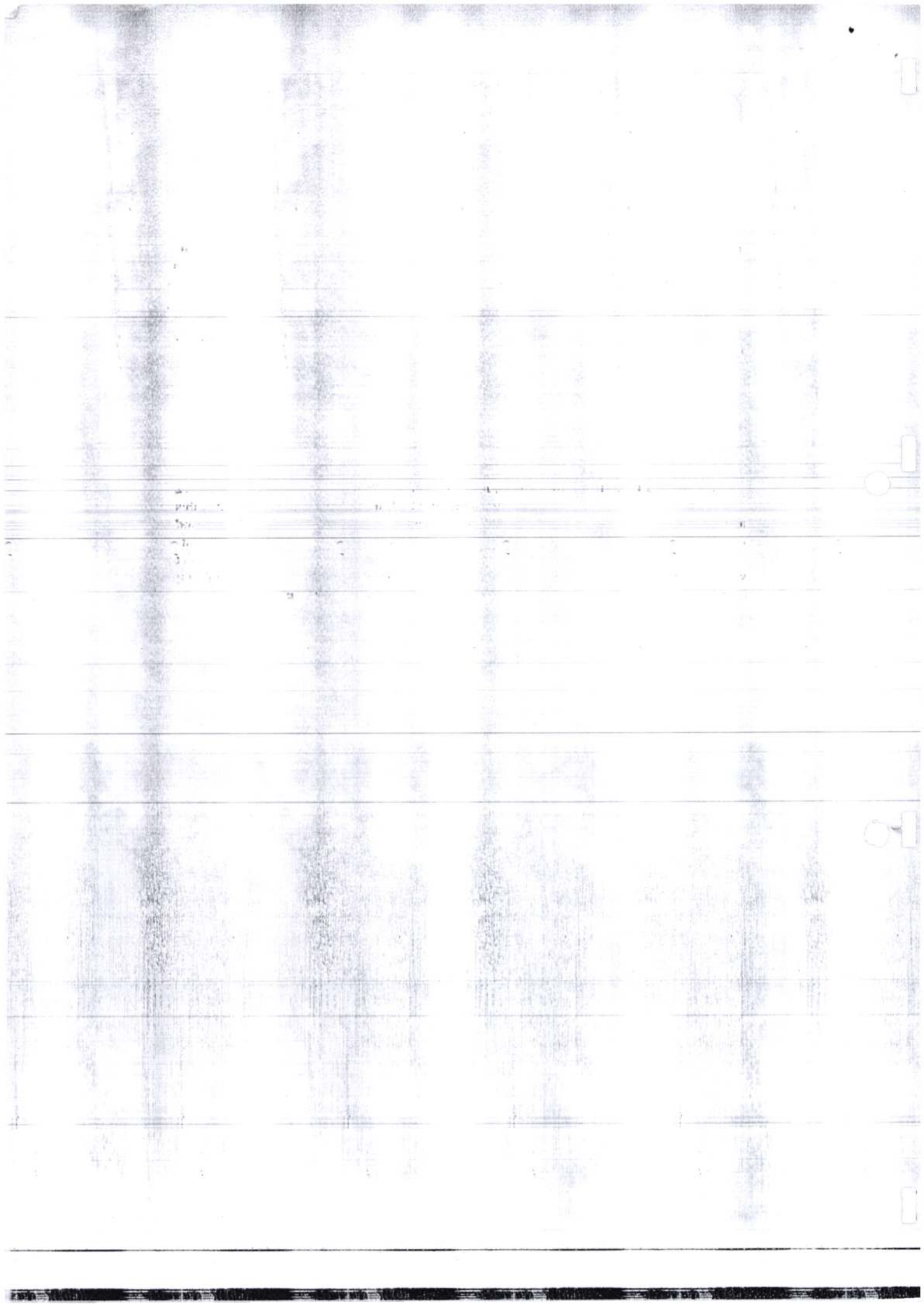
Yours faithfully


for P.M. Gachuhi
KAPLAN & STRATTON

Encl: 1) Letter dated 29th March 2018 from J. Harrison Kinyanjui & Company Advocates [Pages 1 – 8]
2) Letter dated 4th July 2018 from J. Harrison Kinyanjui & Company Advocates forwarding discharge vouchers [Pages 9 – 138]

-
- 3) Letter dated 20th December 2021 from Kaplan & Stratton Advocates [Pages 139 – 148]
4) Letter dated 12th January 2022 from J. Harrison Kinyanjui & Company Advocates attaching signed consent. [Pages 149 – 150]
5) Request for RTGS Transfer dated 21st January 2022 [Page 151].
6) Copy of email from ABSA Bank confirming transaction. [Pages 152 – 153]
7) Letter dated 10th November 2022 from J. Harrison Kinyanjui & Company Advocates. [Page 154]
8) Ruling in Nairobi Civil Application No. E089 of 2021 [Pages 159 – 163]
9) Judgment in Nairobi HCC 279 of 2003 [Pages 164 – 225]

Cc: Client



Kenya Breweries LIMITED



MEMORANDUM

Date: 22nd April, 1998

Ref: KBL/GM-HR

To: MR. GEORGE NJOROGE
COY NO. 1917
CENTRAL REGION

From:
GENERAL MANAGER
HUMAN RESOURCES

Subject: EARLY RETIREMENT

Following the re-engineering process going on within the Company, it has been decided to reduce staff levels further. Accordingly, you will be released to proceed on your outstanding earned leave with effect from 1st May, 1998. Please note that your services with the company will terminate at the end of your leave or on 31st May, 1998 whichever is the earlier. Any outstanding leave after 31 May, 1998 will be paid in lieu thereof.

The following early retirement package shall be applicable to you:-

1. Wages and allowances earned to the last day of service.
2. Pay in lieu of leave on pro-rata basis, where applicable, based on your monthly basic pay.
3. Pay in lieu of 4 month's notice based on your monthly total pay package.
Basic + H/W x 4
4. Compensation for loss of future earnings which will be calculated as follows:-

Your completed number of years service times
 - a) 75% of basic monthly pay plus
 - b) 100% of gross monthly pay + *H/W*
5. Refund of own and company's contribution and interest to Staff Provident Fund, where applicable.
6. Less any money owned to the Company and/or Tembo Savings & Credit Society.

You will receive the details of computation from the Financial Controller.


J. N. MUHOHO (MRS.)

Copy:

Financial Controller
Group Company Secretary
SPF Accountant
Treasurer, Tembo SACCO
Regional Manager, Central Region, Western Region
General Manager, Raw Materials Supply
Commercial Services Managers, Central, Western, and Raw Materials Supplies

sum of ksh.9,405,541/= worked out in the aforesaid schedule as follows:

J. HARRISON KINYANJUI & CO. ADVOCATES - SCHEDULE OF PAYMENT

NO	NAME	COY NO	DATE OF TERMINATION	AMOUNT PAID	AMOUNT TAXED OFF	AMOUNT WITHHELD
1.	LAWRENCE KYALO NDUTU	0542	18/9/1998	891,348.31/=	51,326	50,000/=
2.	GORDON OTOLO NGOLO	4053	11/7/1998	742,255/=	138,000/=	50,000/=
3.	JAMES NGINGA WAIRIOKO	4022	1998	722,000/=	132,000/=	50,000/=
4.	GEORGE NJOROGÉ NJIGU	1917	APRIL 1998	122,911/=	15,132.69	50,000/=
5.	JAMES SAIYALELE SUIYANGA	1740	18/2/1998	327,770.36	2,050.40	50,000/=
6.	PHILIP KINYANJUI GITHI	2575	FEB. 1998	241,298.00/=	111,90.50	50,000/=
7.	CHARLES MWANGI GAKOMO	3837	JUNE 1998	1,039,071.68	278,950.93	50,000/=
8	MARY PHOLOMENA W. WAMBUGU	6322	DEC. 1997	1,327,738.63	373,490/=	100,000/=
	STEPHEN MWANGI WERU	5159	17/10/1994	960,462/=	246,366/=	50,000/=
10	THOMAS O. AMWOMA	3062	FEB. 1998	1,101,150.10	216,686/=	50,000/=
11	ANDREW MONAYO NYARIBO	2242	FEB. 1998	354,367.35	60,910.40	50,000/=
12	DANIEL MUINDUKO MAWATHE	2304	FEB. 1998	785,505.45	212,796.88	50,000/=
13	HILARY FRANCIS MBURU	6004	18/2/1998	1,300,283.22	438,842/=	100,000/=

14	DAVID N. KINUTHIA	6989	1998	960,000/=	248,000/=	100,000/=
15	EDWARD MBUGUA GITAU	7113	18/6/1998	278,702.12	37,831.03	50,000/=
16	SIMON MAINA GATHERU	2213	22/7/2000	703,902.65	134,084/=	50,000/=
17	JULIUS GIKONYO KAMAU	3265	1998	960,000/=	248,000/=	50,000/=
18	JULIUS MWANGI KAMBIA	1643	1998	760,000/=	360,122/=	50,000/=
19	MUIRURI M. KARUGU	510	1995	836,145/=	235,140/=	50,000/=
20	JACOB AGALE OWAK	4610	JUNE 1998	151,710.11	21,999.69	100,000/=
21	ALICE NJERI GATHUNGU	0079	1999	96,257.45	51,151.27	52,650/=
22	JAMES MATUNDA SAISI	7333	27/7/1998	560,135/=	145,000/=	50,000/=
23	MARIETTA N. MUTISYA	240	MAY 1998	416,894.33	49,814.83	50,000/=
24	PETER IRUNGU MWANGI	7236	19/10/1998	171,617.30	16,702/=	50,000/=
25	JUSTUS KAKUSU MATHEKA	0573	1998	860,135/=	335,000/=	50,000/=
26	NZUKI MUTISYA NDOLO	1946	1998	642,138/=	142,000/=	50,000/=
27	PETER MIRINGU MWAURA	5094	18/2/1998	1,010,135/=	464,135/=	50,000/=
28	JULIUS M. MULWA	4557	17/8/1999	501,116.85	96,573.37	100,000/=
29	MOSES M. MACHIRA	5510	18/2/1998	1,210,135/=	363,135/=	100,000/=
30	JERUSHA NYABOKE	869	15/5/1998	964,135/=	241,140/=	100,000/=
31	MAKIMEI WAIGANJO	882	14/2/1995	590,136/=	135,000/=	50,000/=
32	JAMES MWANGI KABUE	5785	1995	1,110,060/=	265,000/=	50,000/=
33	MOSES OTIENO NDOLO	1369	1998	764,130/=	320,135/=	50,000/=
34	JOHN MUTUA	2643	1998	679,760/=	170,000/=	50,000/=

	MUTISYA					
35	FATUMA GATI CHACHA	4288	1995	464,130/=	112,000/=	50,000/=
36	PETER KAROKI WAIRIUKO	7203	30/6/1999	201,907.14	28,135.36	100,000/=
37	DOMINIC NGURE	1159	1998	1,211,552.28	219,943.64	50,000/=
38	TIMOTHY LOKI MATHEA	5197	1998	1,34604.30	360,145/=	100,000/=
39	JOHN KANYI NJOROGE	399	1998	764,135/=	181,132/=	50,000/=
40	THOMAS WAMBUA NGUI	0300	APRIL 1999	1,360,423.85	456,738.65	50,000/=
1	CHRISTINE NDUKU	5404	11/11/1995	980,135/=	265,180/=	100,000/=
42	ALOIS KINGORO GICHANA	1725	MARCH 1998	1,814,639.63	185,329.15	100,000/=
43	MICHAEL K. MUNANDI	4355	1998	794,135/=	295,180/=	100,000/=
44	ROSE MUENI MUTUKU	4091	2/12/1997	863,17.62	176,955/=	100,000/=
45	ROHDA MWIKALI NZOMO	5586	1998	1,622,244.53	289,561/=	100,000/=
46	ANTHONY MWANZIA KILONZO	4120	1998	842,165/=	184,135/=	50,000/=
47	JOSEPH KOKOYO OGWAYO	3087	1999	1,142,564.25	166,404.95	100,000/=
48	ANDREW KAMAU GATETE	5864	1997	764,145/=	136,134/=	100,000/=
49	GEORGE WAWERU MWANGI	6023	1995	968,138/=	264,135/	100,000/=
50	LINUS BIRUNDU OMBUNA	3746	19/10/1998	581,313/=	82,338/=	50,000/=
51	NZIOKA NDUNDA	956	1994	512,796/=	135,640/=	50,000/=
52	DAVID SYANDA KILUNDO	600	2/12/1997	455,777.28	118,460/=	100,000/=
53	GIDEON OMBURA OUMA	3788	31/10/2003	1,692,667.90	647,598/=	100,000/=

54	WAMBUA MBELENZI	2806	1998	964,135/=	135,365/=	50,000/=
55	LAWERENCE MWANGI IRERI	1140	1998	571,527.15	126,574.18	50,000/=
56	SIMON NDUNGU WANYEKI	1885	1998	215,625.75	38,083.75	50,000/=
57	EDWARD MULI	3970	1994	464,135, =	96,135/=	100,000/=
58	PHILIP MUTUKU NYANZI	2326	1994	764,420/=	132,135/=	100,000/=
59	EVELYNE P. A. OYWA	3717	MAY 1999	1,351,944.70	321,561.30	50,000/=
60	NYAMBARIGA SILAS ONGIGE	2674	NOV. 1998	1,356,462.30	318,130/=	50,000/=
61	JOHN KIVULI	7926	DEC. 1997	259,212.14	9,101/=	100,000/=
62	PETER MWENGI NGUNZE	5642	3/12/1997	960,136/=	238,135/=	100,000/=
63	SUSAN RASMAS CHITECH	7986	2/12/1997	176,428.09	14,955/=	100,000/=
64	RASHID KANYAU ABDUL	0950	2/12/1997	462,189/=	38,135/=	100,000/=
65	ROBERT M. NJULU	7950	DEC. 1997	188,707.77	8,398/=	50,000/=
66	DAVID NDALINGA MUTUVI	2846	2/12/1997	834,599.73	236,145/=	50,000/=
67	JUMA MOHAMMED KIDANGA	7932	2/12/1997	251,938.77	15,443/=	100,000/=
68	MOHAMMED SAID BWANA IMANI	7807	2/12/1997	812,025.67	120,587/=	100,000/=
69	GIDEON K. MWENGI	436	2/12/1997	1,385,392/=	252,766/=	100,000/=
70	FRANCIS NGUNZE K	122	2/12/1997	872,150.13	180,135/=	100,000/=
71	DOROTHY MBEKE SHENYE	6307	1998	764,180/=	234,135/=	50,000/=
72	MAURICE SAKWA	4331	JUNE 1998	251,369.95	23,243.34	50,000/=
73	STANLEY G. KENGARA	7132	21/6/2000	864,135/=	231,135/=	50,000/=
74	BARSHORA WACHU BAJARA	1874	2/12/1997	875,748.25	110,777/=	100,000/=
75	GEORGE S. MSHEDI	7761	1997	1,512,458.37	289,767/=	100,000/=

76	DZOMBO CHARLES MBURA	0506	1998	820,558.49	136,626/=	100,000/=
77	JEREMIAH NUNZAA	7964	1997	250,262.47	15,765/=	100,000/=
78	DOUGLAS HARMTON MALINGI	037	27/6/1995	642,180/=	136,190/=	100,000/=
79	HAMAD JUMA MWANGUPU	7726	1994	812,693.55		100,000/=
80	LEONARD DUME MBOGA	7709	2/12/1997	1,087,852.29	157,488/=	100,000/=
81	DAVID MAZERA JOHN	7900	2/12/1997	269,646.03	18,602/=	100,000/=
82	JOSEPHINE CHEZEZ NDOSHO	441	1996	930,165/=	136,142/=	100,000/=
83	SAIDI AWADHI AWAYU	3400	1996	864,135/=	150,165/=	100,000/=
84	DARIUS KILAMBO	7886	1997	391,871.34	44,626/=	50,00/=
85	DONAS KIRICHA LOMBO	2915	2/12/1997	981,135/=	194,132/=	100,000/=
86	RACHEL V. W. KEAR	7839	1997	658,888.82	86,086/=	100,000/=
87	DILTON PASCAL KITATU	0502	1997	579,591/=	69,884/=	100,000/=
88	BONIFACE MUTUKU NDAKA	7868	1997	585,435.60	77,625/=	100,000/=
89	KIMANI NGERE WAITITU	7759	1997	1,114,740.17	158,115/=	100,000/=
90	ZIPPORAH DENA FUKWE	0462	1997	764,138/=	197,432/=	100,000/=
91	KENA H. KOMORA	0648	1997	842,138/=	214,134/=	100,000/=
92	CONSTANTIUS MWAKIO MAGHANGA	4360	1997	288,312/=	20,698/=	50,000/=
93	M. ASHODI M. NGIMI KONGONINGA	7901	1997	246,627.29	13,04/=	50,000/=
94	OCHIENG OMOLLO	5136	1998	1,180,460/=	360,000/=	152,891/=
95	ALPHONCE MWAVULA	0585	1995	564,135/=	96,135/=	100,000/=

	MWAKIZAI					
96	BERNICE WANGECI KINGORI	5658	2002	1,110,000/=	381,142/=	100,000/=
97	GIBSON WANJIHIA M.	3878	1998	764,135/=	184,135/=	50,000/=
98	MWANGI WAMBUGU	1014	1995	465,132/=	96,13/=	50,000/=
99	ANDREW KENGARA MAIGO	724	1995	764,135/=	218,134/=	50,000/=
100	GLORIA AWUOR MANGO	5403	1995	1,164,135/=	348,135/=	100,000/=
101	REUBEN MBIU MWATINGU	696	1998	149,200/=	13,600/=	50,000/=
102	BOOKER AWIMBO OGUTU	2263	1998	663,611.70	101,600/=	50,000/=
103	JECONIAH ORONJE OWUOR	3227	1998	961,135/=	234,180/=	50,000/=
104	BEATRICE M. KILIO	7762	1997	108,882.76	39,995/=	100,000/=
105	ASHFORD MA. AYUBU	7945	1997	250,592.31	18,806/₴	100,000/=
106	VICTOR MTUANGUO	3111	1994	641,132/=	160,145/=	100,000/=
107	NARISIS M. MTULA	7851	1997	414,929.76	35,345/=	100,000/=
108	WILSON NJUKI MAARA	5327	1997	1,231,98.05	388,650/=	100,000/=
109	CHARLES KIMANI KABUGUA	1266	18/2/1998	1,915,696.20	325,813.3.	50,000/=
110	GABRIEL MAINA WAIRE	5119	30/4/1996	1,414,600/=	461,136/=	100,000/=
111	PATRICK NDEGE MUGANE	1694	1995	564,145/=	74,138/=	50,000/=
112	WALLACE SHAKE	4433	1995	484,165/=	65,145/=	100,000/=
113	BENJAMIN MULWA MWANIA	2816	1998	94,030.70	11,296/=	50,000/=
114	ROBERT M. MWAWUGANGA	3998	1995	961,136/=	192,100/=	100,000/=
115	RAU TSUMA	7738	1994	646,145/=	131,640/=	100,000/=

116	HAMISA MOHAMMED KIDANGA	1591	1995	764,164/=	138,142/=	100,000/=
117	ABRAHAM ORINA	3490	2003	1,107,307.20	477,747/=	50,000/=
118	ZACKARIA STANLEY WAMBUGU	2380	JUNE 1998	1,129,981.20	206,202/=	50,000/=
119	PATRICK KAMAU KAGOTHO	5829	2000	1,136,430.10	189,160/=	100,000/=
120	JERUSHA IRNE SUERO	5954	1997	980,14.30	190,135/=	100,000/=
121	DAVID MIRERA WACHI	597	1995	964,138/=	165,134/=	50,000/=
122	PAUL MUTHINI IVUSU	3264	1998	934,135/=	180,140/=	50,000/=
123	ISAACK KARANJA WAMBUGU	5489	1999	1,512,269.75	126,363.62	100,000/=
124	DAVID MYNYWOKI KITISO	3543	1998	717,707.90	9,395/=	50,000/=
125	JOHN KURIANGUMI	1910	1998	646,134/=	98,135/=	50,000/=
TOTAL				93,297,344.44	41,418,429	9,405,541

15) In the end, I find merit in the plaintiffs' claim. Consequently, I issue an order directing the defendant to pay the plaintiffs a sum of ksh.20,775,152 as per the schedule dated 11.5.2016 filed by Namanda & Co. Advocates and kshs.9,405,541/= as per the schedule dated 23.10.2017 and filed by, J. Harrison Kinyanjui & Co. Advocates. ~~The aforesaid amount to attract interest at court~~ rates from the date of judgment until the date of full payment.

16) The third issue which has been identified for determination is

ABSA BANK KENYA PLC

REQUEST FOR RTGS TRANSFER

Kindly make the following transfer on my/our behalf.

Instructions to Customers

1. This form should be filled in CAPITAL LETTERS
2. Beneficiary's account number; bank and branch MUST be quoted
3. RTGS transfer can ONLY be effected if the payment is to be made in Kenya shillings and to a beneficiary's account in a commercial bank within Kenya.

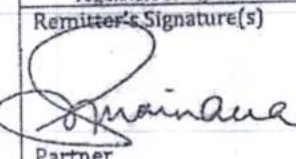

Date: 21/01/2022

Remitter's Details

Name of Account: KAPLAN STRATTON CLIENT	Account Number (include the branch code) 0945022833
Branch Name: QUEENSWAY HOUSE	Telephone Number: 020-2841000
Amount in Figures Kshs. 14,756,312.35	Amount in words: Kenya Shillings: Fourteen million seven hundred fifty six thousand three hundred twelve cents thirty five only

Our cheque no 22580 for above amount in favour of ABSA Bank Kenya PLC herewith attached.

Beneficiary's Details

Name: J. Harrison Kinyanjui & Co. Advocates, Client Account	Account Number: 2044308773
Bank & Branch: Absa Bank Kenya Plc - Queensway House	
Details of Payment: Payment of the decretal sum	
Charges to be paid by:	Remitter/Shared/Beneficiary* <i>(delete the inapplicable choices)</i>
Terms and Conditions 1. Absa Bank Kenya PLC will use discretion in deciding the method of transmission and may opt to use the services of another bank to effect the payment. 2. Absa Bank Kenya PLC will remit the funds to the beneficiary's bank on the date and within reasonable time of receipt of instructions from the customer provided such instructions are received within the cut-off time; otherwise the transfer will be effected the following working day. However, Absa Bank Kenya PLC Ltd gives no commitment on the ability of the beneficiary's bank to pay the beneficiary on that date and/or within a reasonable time. 3. The bank does not accept responsibility for any loss caused by delays, interruptions, misinterpretations or errors in transmission of payments which are not directly due to negligence or default of the bank's own officers. 4. The customer shall be bound and hereby indemnifies the bank against all obligations and the responsibilities imposed by the regulators or any other matters regarding the transfer over which the bank has no control.	
Remitter's Signature(s)  Partner	Signature(s) verified  Partner



To be completed by the Branch	
Amount Remitted	Kshs:
Commission	Kshs -
Other Charges	Kshs.-
Total	Kshs:
Test No.	
Treasury Ref:	
Signature & No.	Signature & No.

To be completed at PAIS	
Test: agreed/disagreed/missing	
Sign	Sign
Branch official's signatures verified	
Sign	Sign

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DZ: No. 19

YOUR REFERENCE:

PMG/KE/10/172

10 April 2018

J. Harrison Kinyanjui & Co. Advocates
~~St Ellis House~~
4th Floor, Door 416
Wabera Street
NAIROBI

Dear Sirs,

High Court Civil Case No. 279 of 2003
Lawrence Nduttu & Others vs. Kenya Breweries Limited


Thank you for your letter dated 29th March 2018.

We should be grateful if you could please clarify the following;

1. Whether the payment of Kshs. 9,405,501 is in full and final settlement of the suit inclusive of the costs.
2. We enclose a template of the discharge voucher for execution by each of the Plaintiffs and return to us.

We shall thereafter request our client to make payment to your account.

Yours faithfully,


P. Gachuhi
KAPLAN & STRATTON

Cc: Client

