



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY- GENERAL
&
DEPARTMENT OF JUSTICE

Your Ref: SEN/DSEC/DISSC/ SCLSW/2025/29
Our Ref: CC/PE/FEB/23/6

1st April, 2025

Mr. J.M Nyengenyne, CBS,
The Clerk of the Senate,
Parliament Buildings,
P.O. Box 41842-00100,
NAIROBI

Email: clerk.senate@parliament.go.ke

ADVANCE COPY VIA EMAIL

Dear Sir,

**INVITATION TO A MEETING ON THE PETITION CONCERNING
THE ALLEGED FAILURE BY KENYA BREWERIES LIMITED,
KAPLAN & STRATTON ADVOCATES AND HARRISON KINYANJUI
ADVOCATES TO PAY COMPENSATION AWARDED TO
PETITIONERS**

Reference is made to your letter dated the 24th March, 2025 and the Petition attached thereto.

The Advocates Complaints Commission (ACC) is established under section 53 of the Advocates Act (Cap 16) Laws of Kenya to receive and enquire into complaints against advocates, law firms and their employees. After due inquiry, the ACC is mandated to reject the complaint, 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 Advocates Disciplinary Committee/Tribunal (ADC). The Committee/Tribunal established under section 57 of the Advocates Act is by law mandated to sanction an advocate for professional misconduct.

The ACC operates as one of the technical departments in the Office of the Attorney General and Department of Justice (OAG& DoJ). It is neither an independent Commission nor a Semi-Autonomous Government Agency (SAGA).

In your referred letter you have requested the ACC to submit a comprehensive response to the issues raised in the petition.

Background of the Complaint lodged by the Petitioners

A. The Petitioners registered their Complaints against Harrison Kinyanjui, advocate at the Commission via a Help Forms dated the 9th February, 2023. The Petitioners made the following allegations against the advocate:

- i. That they instructed the advocate to represent them in Nairobi HCCC No. 279 of 2003; Lawrence Nduttu & Others vs. Kenya Breweries Limited, which instructions the advocate accepted and proceeded with the petitioners' instructions to the suit's logical end.
- ii. That the advocate allegedly represented 125 plaintiffs out of the 6000 plaintiffs in the suit. Judgement in the matter was delivered in favour of the 125 Plaintiffs represented by the Harrison Kinyanjui, advocate for a sum of **Kshs. 14,756,312/=** being the decretal sum plus costs and interest (*Enclosed herewith and marked 'ACC I' is a copy of the Judgment*).
- iii. That the said sum of **Kshs. 14,756,312/=** paid to the advocate by way of RTGS transfer comprised of the following:

Decretal Sum as per the Judgment	-Kshs. 9,4,05,541/=
Interests	-Kshs. 4,350,771/=
<u>Party and Party Costs</u>	<u>-Kshs. 1,000,000/=</u>

Total

-Kshs. 14,756,312/=

- iv. The four Petitioners out of the 125, represented by Harrison Kinyanjui, advocate alleged that he failed to lodge an appeal as promised, overcharged them and/or withheld their money.
- B. In light of the Commission's mandate, the Petitioners were informed that the Commission in addressing their complaints against advocate Harrison Kinyanjui would restrict itself to possible acts of professional misconduct arising from the representation.
- C. The Petitioners were also informed of the mandates of the Directorate of Criminal Investigations (DCI) and the Office of the Director of Public Prosecutions (ODPP) which offices are tasked with the investigation and prosecution of criminal offences respectively. Further, we informed them of the need to seek redress in court for alleged acts of professional negligence for proper action/remedies

Investigations Conducted by the Commission

- D. The Commission commenced enquiries into the settlement status and proof thereof with Kaplan and Stratton Advocates, the firm of advocates that represented Kenya Breweries Limited, the Defendant in Nairobi HCCC No. 279 of 2003; Lawrence Nduttu & Others vs. Kenya Breweries Limited. *(Enclosed herewith and marked 'ACC 2' is a copy of the Commission's letter dated 5th June, 2023)*
- E. Via their letter dated 20th September, 2023, Kaplan & Stratton Advocates confirmed that the case was concluded and a sum of **Kshs. 14,756,312/=** being full and final settlement of the Petitioners claim, remitted to Harrison Kinyanjui & Company Advocates for onwards transmission to the Petitioners. *(Enclosed herewith and marked 'ACC 3' is a copy of the letter)*
- F. The Commission noted that Kaplan & Stratton Advocates, 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 proof of such payment.

- G. On the 9th April, 2024, the Commission made further enquiries with the said firm of advocates on the settlement of the Petitioners' claims. Via their letter dated 9th April, 2024, **Kaplan & Stratton Advocates** asserted that no further payments were advanced to the advocate in settlement of the claim as the Petitioners individually executed Discharge Vouchers accepting the sums paid to them. In support of the firm's claim that the sum of Kshs. **14,756,312/=** was made in full and final settlement of the claim, they furnished the Commission with copies of duly executed Discharge Vouchers. The firm also clarified that there was no pending appeal touching on Petitioners' claims because the Petitioners discharged the Defendants from **all claims or further liability and waived their rights to any entitlement or further claims or any sums whatsoever.** (*Enclosed herewith and marked 'ACC 4' is a copy of the letter*)

Possible Acts of Professional Misconduct arising from the Advocate's representation

- H. On further assessment of the documents provided, the Commission narrowed down possible acts of Professional Misconduct against Harrison Kinyanjui, advocate to the following:
- i. **Failing to provide any/adequate professional service despite payment of fees,**
 - ii. **Withholding money collected on behalf of 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.**

The Commission requested Harrison Kinyanjui, advocate to respond in writing to the Petitioners' claims. (*Enclosed herewith and marked 'ACC 5' is a copy of the Commission's letter dated 4th April, 2024*)

Response to the Complaint by Harrison Kinyanjui, Advocate

- I. The advocate responded to the Petitioners' complaint vide his letter dated the 24th April, 2024. (*Enclosed herewith and marked 'ACC 6' is a copy of the letter*)
- i. He alleged that when he sought to represent the Petitioners and 121 other claimants in the matter, another law firm contested his

representation. The issue of his representation was a subject of a Miscellaneous Cause that proceeded from the High Court to the Supreme Court. He claimed that the Petitioners did not pay his legal fees in the said matter.

- ii. Further the advocate in his defence alleged that he withheld the sum of Kshs. 1,000,000/= awarded to the Petitioners being the assessed Party and Party Costs from the Defendant on account of his legal fees for both his representation in the substantive suit and the Miscellaneous Cause.
- iii. The advocate further claimed that it was inconceivable that an appeal could be lodged after the Petitioners individually and voluntarily accepted the sums received from the Defendant in full and final settlement of the matter.
- iv. The advocate also claimed that the Plaintiffs represented by the other firms of Advocates lodged an appeal against the decision of the High Court. Lawrence Nduttu, a petitioner herein continued to receive court documents through Harrison Kinyanjui, advocate because he was the lead Plaintiff in Nairobi HCCC No. 279 of 2003; Lawrence Nduttu & Others vs. Kenya Breweries Limited.
- v. The advocate also claimed that he was entitled to fees in the subsisting appeal as the Petitioners were yet to withdraw instructions from him. He threatened to refer the dispute on his withholding of the sum of Kshs.1, 000,000/= received on account of Party and Party Costs to court for determination.

The Petitioners' Rejoinder

- J. Responding to the advocate's letter, the Petitioners stated that Harrison Kinyanjui, advocate failed to pay them as per the court judgment. The Petitioners further claimed that they did not understand the contents of the discharge vouchers they executed. *(Enclosed herewith and marked 'ACC 7' is a copy of the Petitioners' letter dated the 30th April, 2024)*
- K. In support of their claims the Petitioners furnished the Commission with a copy of a transcript of an unsigned statement allegedly made by the advocate at the Directorate of Criminal Investigations (DCI) indicating that there was a pending appeal. Further, the complainant availed a copy of a consent dated the 11th January, 2022 filed in court confirming

settlement of the matter. The Petitioners also provided copies of cheques issued to them by the Advocate in settlement of their claims.

Analysis of Possible Acts of Professional Misconduct

L. The Commission proceeded with its analysis of the facts of the complaint as presented by the Petitioners, the response from the advocate and the rejoinder by the Petitioners. The possible acts of Professional Misconduct identified in (H) above were addressed as follows:

i. Failing to provide any or adequate professional service despite payment of fees

The Commission noted that the advocate discharged his professional duties in representing the Petitioners both in the miscellaneous application and the substantive suit.

The advocate had alleged that the Petitioners did not settle his legal fees in both matters and sought to refer the dispute on legal fees for determination by a Taxing Master/court of law.

The Petitioners did not support their claim that they settled the advocate's fees with proof of such payment(s).

ii. Withholding money collected on behalf of a client and Overcharging and claiming costs not justified by circumstances

The Petitioners claimed that the advocate failed to pay them as per the Judgement delivered on the 18th January, 2018. They also claimed that they were overcharged.

As confirmed by the advocates for Kenya Breweries Limited, the matter was subsequently compromised when the Petitioners executed Discharge Vouchers that expressly provided as follows:

“...I HEREBY ACCEPT the aforesaid sum in full and final settlement of all sums due to me under judgment in High Court Civil Case No. 279 of 2003 – Lawrence Nduttu & 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 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 maybe 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 or its parent company and its insurers...”

The wording of the Discharge Voucher explicitly meant any/or further claims against the Defendant were extinguished on their executing and receiving the agreed sums. *(Enclosed herewith and marked 'ACC 8' are copies of the Discharge Vouchers)*

A Discharge Voucher has contractual implications that bind the parties. The purpose of the discharge voucher or settlement agreement is to ensure that a plaintiff relinquishes any claims they may have against the Defendant.

The Petitioners acknowledged receipt of the agreed amount by signing a discharge voucher. In the discharge voucher the Petitioners also waived any further claims against the Defendant. The Commission cannot interfere and/or interrogate the circumstances surrounding the execution nor can it interfere with its contents as this falls out of its mandate. Only a court of law can interrogate and interfere with the contents of a Discharge Voucher.

It is therefore absurd that the Petitioners herein expected the advocate to lodge an appeal against the Judgement dated the 18th January 2018 after having executed Discharge Voucher clearly accepting the amounts paid to them and waiving any right to any further claims against the Defendant, Kenya Breweries Limited.

iii. Failing to behave with integrity and behaving in a way likely to diminish public trust in the legal profession.

The petitioners claimed that the advocate in representing them failed to behave with integrity and behaved in a way likely to diminish public trust in the legal profession. They alleged that the advocate failed to inform them of the contents of the Discharge Voucher that extinguished their claims for further payments from Kenya Breweries. The ACC took the view that this allegation cannot be sustained in that the Petitioners are literate.

M. The Petitioners further claimed that the advocate was negligent in allowing them to execute the Discharge Vouchers, knowing too well that the execution of the same meant that they could not make any

further claims against the Defendant. We informed the Petitioners that claims of professional negligence fall outside the ACC's mandate. They were advised to file suit against the advocate in court for redress and for proper remedies.

Conclusion

In the said Petition before the Senate the petitioners allege that they made efforts to have the claim addressed by the ACC, but the ACC response was unsatisfactory. From the foregoing it is obvious that the Commission has no mandate over employment matters involving Kenya Breweries and its employees. The ACC could only interrogate the professional conduct of the complainants' advocates. This was made clear to the petitioners. Unfortunately, that advice is in the Petitioners' view unsatisfactory.

All the claims of professional misconduct laid against the advocate could not be sustained.

The ACC communicated its decision to reject the Petitioners' claims of professional misconduct against the advocate. *(Enclosed herewith and marked 'ACC 9' is a copy of the Commission's letter to the Petitioners dated the 24th July, 2024).*

In the view of ACC, the circumstances of the complaint, after due enquiry, did not disclose a disciplinary offence with which the Advocates Disciplinary Committee can properly deal.

Further, the Complainants were advised of the options available to them in case they were dissatisfied with the Commission's decision to reject their complaint. The Petitioners could opt to lodge their complaints directly to the Advocates Disciplinary Committee as provided under Section 60(1) of the Advocate's Act, Chapter 16, Laws of Kenya.

The Petitioners were also informed of their right of appeal against the Commission's decision at the High Court as provided for under Section 53(8) of the Advocates Act, Chapter 16, Laws of Kenya.

Yours faithfully,



GEORGE NYAKUNDI
SECRETARY,
ADVOCATES COMPLAINTS COMMISSION

Copy to: Chairman, Advocates Complaints Commission.

ACC

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

defendant. Under the aforesaid agreement, the circumstances under which an employee can be retired and or sacked are specified. P.W.1 further pointed out that under Clauses 25 and 27 of the memorandum of agreement, the employer was allowed to terminate an employee from employment if the employer is making losses by declaring such an employee redundant. The witness also stated that the defendant begun the process of what it called re-engineering without consulting them nor their union. It was pointed out by PW1 that at no time did the defendant make losses, therefore it was not justified to force them into early retirement. It is the evidence of P.W.1 that he proceeded for leave when he received the letter requiring him to take early retirement. He said that when he came back from the forced leave he was issued with a letter showing him his exit package. P.W.1 alleged that the package was prepared by the defendant without prior consultation. He said that the decision to terminate his services took away his expectation to work until retirement. He stated that he together with his colleagues were not given a chance to explain themselves out before being declared redundant. P.W.1 further alleged that the defendant

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 ~~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

Kipngetich 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.*
- 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

of the employee concerned. This court was urged to find that the early retirement scheme was redundancy as defined in the memorandum and the labour laws. The plaintiffs are of the view that the defendant was not justified to declare redundancies because no losses were declared and that the re-engineering process served no other purpose but was meant to increase profitability. The defendant was of the submission that as an employer it was permitted by law to declare a redundancy if the employer decides to reorganize its business to run more efficiently and profitably.

- 13) I have carefully perused the Collective Bargaining Agreement (CBA) executed between the defendant and the plaintiffs' union, the Kenya Union of Commercial Food and Allied Workers (KUCFAW) and the contract of employment. In the aforesaid documents, there is no mention of an early retirement scheme. There is no doubt that the early retirement scheme was a creation of the defendant. It has already been stated that the scheme was meant to be voluntary in the initial states. The plaintiff beseeched this court to treat the early retirement scheme as a form of redundancy. It is not in dispute in the C.B.A and in

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.

- 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

should not be paid this claim. Consequently the plaintiffs who are show in the schedule prepared by the firm of Namada & Co. Advocates dated 11.05.2016 should be paid a sum of ksh.20,775,144/= as shown in the aforesaid list as follows:

NAMADA & CO. ADVOCATES - SCHEDULE OF PAYMENT

NO.	NAME	DATE OF TERMINATIO N	AMOUNT PAID	AMOUNT TAXED OFF	AMOUNT WITHHELD
1.	URBANUS NGWILI	02/12/1997			
2.	MICHAEL KIMUNYI	17/8/1999	175,226/=	66,830/=	100,000/=
3.	JAMES SIBILI	15/6/1999	260,611/=	50,121/=	50,000/=
4.	SOPHIA WAMBUI	18/02/1999	570,743/=	69,321/=	
5.	ZACHARIA KATEE	15/09/2001	1,051,722/=	145,144/=	50,000/=
6.	REUBEN NOKATA	19/10/1998	661,578/=	95,667/=	
7.	JAMES NJOROGI	15/05/1998	370,291/=	65,717/=	15,000/=
8.	JOHN NJENDU KIRUBI	25/04/2003	649,432/=	183,216/=	50,000/=
9.	MICHAEL THINWA KIBUI	01/07/2000	318,104/=	58,573/=	50,000/=
10.	PETER KAGIKA MUTURI	03/04/1998	688,238/=	92,522/=	100,000/=
11.	ATHUMANI OMARI	31/12/1997	584,889/=		
12.	PAUL GATHUKU	15/05/1998	166,148/=	23,743/=	50,000/=
13.					
14.	MOHAMMED SAID ALI	18/06/1998	166,148/=	23,743/=	50,000/=
15.	MATHIAS MUIA MWANTHI	17/08/1999	104,663/=	51,880/=	
16.	HELLEN MWELU JOSEPH	15/05/1998	61,702/=	7,205/=	
17.	TOM SILA MULUNDI	18/06/1998	574,890/=		
18.	WELLINGTON CHAPIA OKUYUMBA	18/06/1998	494,950/=	72,388/=	50,000/=
19.	HANNAH WAITHIRA WANJIRU	15/05/1998	414,429/=	48,107/=	50,000/=
20.	JAMES MUSUNZA MUTHUI	18/02/1998	198,656/=	36,083/=	50,000/=
21.	DAVID NDEGWA WANJOHI	18/06/1998	60,343/=	5,888/=	50,000/=
22.	JOSEPH MELAU TIOYANGA	18/02/1998			

23.	HENRY MBITI MULU	18/06/1998			
24.	SAMMY MADESHE SIMILA	31/10/1999	451,385	59,261	
25.	JULIUS THEURI WARIGU	21/06/2000	218,507/=	49,352/=	148/=
26.	MARY NINGA KAMAU	15/05/1998	515,026/=	65,469/=	50,000/=
27.	BENEDICT MUTIE KATUKU	15/09/2001	1,038,820/=	290/=	
			7,796,501/=	1,270,520/=	765,148/=
28.	HEZRON KABURU BORO	12/07/2000			
29.	JOAN WAIRIMU KIGO	JUNE 1998	640,445/=	80,306/=	100,000/=
30.	DISHON MAINA NJOROGE	01/07/2000	94,999/=	36,125/=	100,000/=
31.	STEPHEN GITAU KIMEMIA	18/02/1998	771,694/=	178,456/=	50,000/=
32.	GAKWIL ERANA				
33.	CHARLES MBUTIA GITAGIA	18/06/1998	195,966/=	26,660/=	25,000/=
34.	MICAH HOSEA AYIECHA	22/04/1998	1,050,221/=	300,333/=	54,909/=
35.	PAUL KARIUKI WAHINGA	26/03/1998	130,625/=	22,507/=	72,000/=
36.	ROSINA TALASI MUIंगा	15/05/1998	188,078/=	19,626/=	50,000/=
37.	JOHN MACHARIA MWARARI	31/03/1998			
38.	JOEL MUTISYA MUIнде	28/06/1995	654,369/=		
39.	JOHN MUNGAI NG'ETHE	31/05/1998	271,837/=	38,787/=	50,000/=
40.	ESHMAEL NG'ETHE MUNGAI	31/07/1996	1,178,854/=	551,782/=	
41.	BENSON BENARD MULAMA MUSONGA	10/07/1998	255,002/=	26,210/=	100,000/=
42.	SIMON MUNYUA KAMANO	21/06/2000	426,148/=	80,151/=	50,000/=
43.	BENARD ANJIRI MAKANGA	17/08/1999	101,918/=	24,135/=	100,000/=
44.	JOSEPH WAMBUGU WAHOME	26/10/2000			
45.	RICHARD NGAO	18/06/1998	1,165,897/=	141,715/=	100,000/=
46.	JAMES MUKUNDI GATHARA	20/08/2002	3,759,951/=	964,401/=	50,000/=
47.	HARUN ISMAIL SEBIT	30/04/1998			
48.	ABDUL ABDALLA MOHAMMED	22/04/1998	354,837/=	66,752/=	21,000/=
49.	DAVID MUTHAMA NDUNDA	31/03/1998	268,381/=	34,740/=	
50.	SEPHEN MWANGI KIAMA	17/08/1999	317,666/=	66,919/=	100,000/=
51.	PAUL JACKTON MALOBA	01/07/1998	215,798/=		
52.	MOHAMMED ABDULLAH KASIGARA	31/12/1995			

53.	EZEKIEL TOCHI MBINDI	10/12/1999	1,131,651/=	154,354/=	
54.	PETER MULI NYALA	30/06/1998	716,106/=	148,273/=	50,000/=
55.	JAMES WACHIRA NJAU	18/02/1998	1,117,400/=	190,250/=	50,000/=
56.	DANIEL KIHICO KIMANI	19/05/1998	623,148/=		50,000/=
57.	ALEX CHEGE MWANGI	27/07/1998			
58.	CHARLES KIVATI NGAU	18/02/1998	15,630,991/=	3,152,482/=	1,172,909/=
59.	PETER OTHIAMBO OCHIENG	17/08/1999	838,597/=	125,227/=	50,000/=
60.	NAPOLEON NATHAN KAMAU	12/05/1995	295,235/=	61,896/=	100,000/=
61.	JAMES WAIGWE MUTURA	10/05/1995	371,865/=		
62.	ABUDU JUMA WAZIRI	31/12/1997	455,454/=	65,133/=	100,000/=
63.	PETER MUNENE NDEGWA	31/03/1998	211,540/=	61,416/=	
64.	CLEMENT NJUNGE NDUNGU	31/10/1994	492,282/=		
65.	JOSHUA NGACHU GILBERT	11/03/1998	458,798/=	69,072/=	50,000/=
66.	SALIM ISMAIL IBRAHIM	30/04/1998	1,083,948/=	227,679/=	50,000/=
67.	MARK MUKOYA ABUOGA	01/05/1998	1,488,533/=	228,034/=	50,000/=
68.	LAIRD MUSHIMBA SAMUEL	15/09/2001	231,077/=	76,377/=	50,000/=
69.	ANN WANJIRU MWANGI	15/05/1998	625,783/=	83,821/=	50,000/=
70.	GODFREY GITHUI WANGIGE	18/06/1998	1,252,685/=	295,941/=	10,000/=
71.	GEORGE GWONDA NYAMARURU	06/09/1999	588,429/=	112,173/=	100,000/=
72.	FRED KIARIE MAINA	18/02/1998	762,170/=	107,624/=	50,000/=
73.	LEWIS WAMBUGU MUGO	31/08/1999	846,797/=	147,013/=	
74.	FRANCIS NGUGI NYARARA	31/03/1998	430,867/=	85,286/=	50,000/=
75.	FRED OSOKO NYASAE	19/01/1998			
76.	JACKSON NULI NZAU	30/06/1996	1,202,654/=		
77.	GEORGE KANTI MITHEKO	15/03/1998	1,372,500/=	625,008/=	50,000/=
78.	JOSEPH ONDURU ODUOR	18/06/1999			
79.	EDWARD MWAURA GACHIE	18/06/1998	50,000/=	34,788/=	
80.	JOEL MURIU KAMAU	31/10/2003	3,177,519/=	1,023,555/=	100,000/=
81.	JEREMIAH RAMBIKI MACHINI	30/06/1998	984,531/=	245,252/=	50,000/=
82.	ERASTUS KARAGO	29/04/1998	457,989/=		
83.	JOHN WABUGA KANGETHE	30/04/1998	561,161/=	79,759/=	50,000/=
84.	WYCLIFF WELINGA KHAYO	06/09/1999			
85.	STEPHEN NJENGA KAHUKU	31/03/1998	113,104/=	29,275/=	

NAIROBI HIGH COURT CIVIL CASE NO. 279 OF 2003 JUDGEMENT

86.	PETER KIRUKU	30/11/2003	809,602/=	429,699/=	50,000/=
87.	JAIRO OKUMU ONYANGOP	12/10/2001			
88.	JOHN KAMAU	18/06/1998	885,154/=	175,358/=	50,000/=
89.	GEOFFREY NJOROGI	03/12/1997			
90.	GEORGE MUNYUA	13/04/1998	181,380/=	250,000/=	50,000/=
			20,229,654/=	4,653,386/=	1,110,000/=
91.	RAYMOND GACHOMBA	21/06/2000	304,632/=	95,262/=	
92.	CHARLES WAMBUGU MANGI	25/04/1996			
93.	JOSEPH OLOO	26/03/1998			
94.	JOSEPH KABOGO KARANJA	31/10/2003	567,224/=	305,700/=	
95.	FRANCIS OMONDI OBURE	24/05/1999	196,633/=	28,537/=	50,000/=
96.	REGINALD NGANGA JAMES	18/06/1998	588,141/=	146,701/=	50,000/=
97.	STEPHEN WAMBURA NJAU	31/03/1998	691,634/=	110,611/=	50,000/=
98.	MATHEW GICHUHI KIRAGO	26/06/1996			
99.	TONKEI OLE MAPI	31/03/1998	516,620/=	81,230/=	10,000/=
100.	JOSEPH MUTINDA	22/04/1998	186,800/=	33,147/=	50,000/=
101.	BENARD MWILU MWOLOLO	27/06/1995	1,104,412		50,000/=
102.	JOYCE NYAWIRA	28/08/1998	570,619/=	94,995/=	50,000/=
103.	LYDIA MWANGI	15/05/1998	63,590/=	11,652/=	
104.	BONIFACE NGUI KIOKO	15/09/2001	1,287,489/=	197,264/=	50,000/=
105.	BENJAMIN MUTISYA	22/04/1998	637,099/=	140,315/=	50,000/=
106.	GRACE LILIAN ATHIANY	02/12/1997			
107.	PETER KIRUMA	19/05/2000			
108.	GEORGE CHARLES KIMOLO	17/08/1999	589,372/=	98,570/=	100,000/=
109.	JOHN MATHINI MWAURA	25/06/1998			
110.	DAVID WACHIRA NDUNGU	31/03/1998	73,512/=	13,478/=	50,000/=
111.	JAMES BEDAN KIGO	31/12/1998			
112.	ANTONY KIOKO	31/01/1998	1,067,107/=	179,425/=	50,000/=
113.	MOSES NJERU MURIUKI	21/06/2000			
114.	MOHAMOOD HAMZA GITAU	30/11/1995			
115.	MAINGI MUNGA KAGIRI	17/07/2000	661,101/=	182,026/=	75/=
116.	DAVID MWANGANG MASYA	31/12/1997	270,613/=	17,668/=	50,000/=
117.	JOSEPH MBOGO MURAGURI	06/09/1999	758,881/=	136,438/=	50,000/=
118.	MBUGUA KIMATU MBUGUA	26/04/1995	458,645/=		
119.	MOSES KURIA MWANGI	18/02/1998	1,037,906/=	235,641/=	50,000/=

NAIROBI HIGH COURT CIVIL CASE NO. 279 OF 2003 JUDGEMENT

120	JOHN RASAKI OYENG	06/09/1999	644,195/=	79,901/=	50,000/=
121	JOSEPH KIMANI	19/10/1998			
122	JOSEPH MWANIKI	27/06/1995	481,897/=	130,371/=	100,000/=
123	HERMAN NJOROGI	22/04/1998	567,788/=	123,624/=	50,000/=
124	DAVID KIMWELE	15/09/2001	450,239/=	116,799/=	
			13,776,059/=	2,559,355/=	960,075/=
125	PETER MYSYOKA MUSESI	30/06/1996			
126	MICHAEL NJOROGI KAMAU	05/07/2000	892,377/=	161,452/=	100,000/=
127	EDWIN RAGAK AWILI	31/10/1998	758,694/=		
128	CALEB OPUKA	25/07/2000	503,328/=	118,886/=	22,198/=
129	JANUARY KAKUI	02/12/1997	245,971/=	27,072/=	
130	ONESMUS KIRAGU	22/04/1998	720,254/=		
131	CHRISTOPHER MWANGI NGOBU				
132	GABRIEL NDUNGU	18/02/1998	197,048/=	34,867/=	50,000/=
133	JAMES NGANDU				
134	JULIUS NDUNI	22/04/1998	322,902/=	35,425/=	50,000/=
135	SAMUEL MBUGUA MWANJI	03/10/2003	1,529,969/=	702,256/=	
136	ZACHARIA KABIRU	22/04/1998	619,285/=	93,476/=	50,000/=
137	EDWARD NDEGWA	31/08/1998	2,220,330/=	537,356/=	
138	J. T. NANDIE	31/12/1997	820,518/=		
139	MWANIKI MUTUNGA NGULA	31/12/1997			
140	MICHAEL NDUTA	19/01/1998	917,485/=	116,351/=	50,000/=
141	JONATHAN NDOLO	31/05/1998	1,230,181/=	314,455/=	50,000/-
142	HARRISON S. MWIKYA	15/05/1998	119,846/=	18,427/=	50,000/=
143	STANLEY M. MWAURA	24/05/199	1,255,215/=	317,343/=	8,330/=
144	JOHN M. NJOROGI	31/10/1994	367,974/=		
145	JOHN NJOROGI GAKURU	03/04/1998	1,236,633/=	245,968/=	
146	CATHERINE WANJIKU KIMANI	24/06/1998	235,569/=	48,654/=	50,000/=
147	PHYLIS WAMBUI	26/04/1995			
148	RICHARD MURIITHI KARIUKI	30/06/1996	844,895/=		
149	DONALD OWINO OKELLO	18/02/1998			
150	ELIEZER ONCHIEKU	22/05/1998	1,257,726/=	153,399/=	50,000/=
151	STEPHEN N. KALII	10/03/1996	985,911/=		

152	DAVID WAWERU KARIUKI	31/07/1999	699,789/=		
153	NANCY E. NYAGA	22/04/1998	11,812/=	16,702/=	
154	ROSEMARY WANJIKU NJOROGI	14/03/1998	153,596/=		
155	JAMES KANGETHE NDAI	31/10/1994			
			18,147,008/=	2,942,125/=	530,528/=
156	JAMES KIHICI KARIUKI	24/06/1998	154,789/=	20,103/=	50,000/=
157	GEORGE MBUGUA NJINO	31/03/1987	346,136/=	75,080/=	
158	ZACKAYO NGIMEI NDUATI	31/03/1998			
159	ERNEST GAKERO NDIRANGU				
160	GEOFFREY MBURU MUNGAI		357,115/=	63,139/=	
161	FELIX KIARIE MWANGI	18/02/1998	1,357,657/=	311,749/=	100,000/=
162	JOHN NJOGU GITONGA				
163	DAVID KIGURU MWANGI	18/02/1998	443,089/=	73,917/=	50,000/=
164	BERNARD MBETU	30/04/1998	1,050,188/=		
165	JOSEPH KEYA	18/06/1998	37,877/=	10,507/=	
166	PETER MAINA KAMAU	31/01/1998	558,630/=	81,876/=	50,000/=
167	FRANCIS K. NUGUNA	15/05/1998	927,936/=	134,036/=	
168	JULIUS NGUNJIRI WANYIRI	18/02/1998			100,000/=
169	EDWARD KARIUKI KAMWANA	31/03/1998	1,271,784/=		
170	JOHN NJOROGI MBAGO	18/06/1998	341,882/=	80,784/=	17,700/=
171	SIMON RUTTOH	31/07/1998	387,796/=	27,763/=	50,000/=
172	ROBERT M. MUTUNGA	17/02/2006	1,096,973/=		
173	ELIUD GITAU CHOMBA	30/06/1998	190,154/=	18,783/=	50,000/=
174	KITHUKA KIOKO	25/04/1995	391,779/=		
175	SOLOMON MUTISYA	15/09/2001	473,790/=	127,587/=	100,000/=
176	WILSON MUTUA MUTUNE	30/06/1998			
177	CHARLES WATHIGA	31/10/1998	1,002,489/=	144,056/=	50,000/=
178	MARCUS MURUBE	31/03/1998			
179	JAMES GITAU	18/06/1998	1,237,574/=		
180	JAMES MWANGI THUO	18/02/1998	2,553,840/=	82,277/=	50,000/=
181	LAWRENCE M. KUBURENDI	31/10/1998	751,217/=		
182	JOSEPH MWANGI KIMANI				
183	GEOFFREY K. MUCHEKE	18/06/1998	669,173/=	77,672/=	50,000/=
184	KEFFARS KARIUKI	30/09/1998	372,756/=		

	KAGUANYU				
185	SAMMY MWANGI	18/02/1998			
186	NANCY MWANGI	15/05/1998	294,725/=	26,912/=	
187	DANIEL MAINA RUTUNU	31/07/1999	154,181/=	41,182/=	
188	ANN KAMBA	30/06/199			
			16,423,530/=	1,397,423/=	717,700/=
189	SAMUEL MUCHIRI MUIRURI	31/12/1997	264,144/=	26,093/=	100,000/=
190	BENSON IRUNGU MWANGI		1,947,067/=	285,158/=	100,000/=
191	JULIUS KARIUKI	02/12/1997	204,648/=	27,072/=	
192	JAMES N. KIRANGI	30/10/1998			
193	EDWIN KABUI KAHARA	31/10/1998	587,770/=	86,776/=	50,000/=
194	EUNICE WANJUGU KAHUIRIA	FEB. 1998	778,885/=	166,348/=	50,000/=
195	EDWARD N. KAIRU	25/04/1998	420,518/=		
196	JOSEPH M. NTHENGE	21/06/2000	406,638/=	80,638/=	50,000/=
197	MUEMA DANIEL	22/01/1998	206,000/=	33,147/=	50,000/=
198	NZIOKA WAMBUA	18/02/1998	1,119,592/=	213,583/=	50,000/=
199	PATRICK N. NDUNDA	22/04/1998	1,182,483/=	251,122/=	50,000/=
200	JONES KISANI NGULI	15/06/1999	269,603/=	51,845/=	
201	FRANCIS MATHEKA MULWA	11/05/1995	604,884/=		
202	DOMINIC NDERO	29/13/1996			
203	GEORGE NUANDIKO KATHISYA	26/03/1998			
204	TOM KABITI VENGE	30/03/1998	1,319,207/=		
205	ROBINSON NDUNGU NGUGI	30/06/1998	1,134,231/=	170,182/=	50,000/=
206	AUGUSTINE MUTEMI	30/06/1998	179,072/=	19,489/=	
207	GEORGE MUIA MUISYA	27/09/1999	169,374/=	25,823/=	100,000/=
208	EVAN NJURI NGANGIRA	09/07/1998	709,130/=	122,624/=	
209	JOHN NGUGI WANJAU	31/03/1998	434,689/=		10,400/=
210	MUSA MBONGO	31/03/1996	890,489/=	229,035/=	10,000/=
211	DUNCAN MWANZIA		80,733/=		
212	DAVID NGUGI				
213	PETRONILLA WANJIRU	25/04/1996	662,952/=	171,872/=	
214	JOSEPH MATATA MUTUA	10/03/1996	595,706/=		
215	KADOGO PASCAL	04/06/1998	871,781/=	117,730/=	100,000/=
216	PATRICK KIBUNJA NDUNGU	18/06/1998	134,334/=	17,738/=	

217	MOSES MWIKYA LELU	18/02/1998	1,778,535/=		
218	EVANS MUROKO MITHAMO	03/12/1997	500,519/=		
219	FRANCIS K. MACHARIA	31/10/1994	629,413/=		
220	STEPHEN GITAU KIMANI	09/09/1998	148,083/=	46,029/=	50,000/=
221	JOSEPH KINYANJUI	22/04/1998	858,603/=	125,280/=	50,000/=
			19,089,083/=	2,267,839/=	920,400/=
222	LABAN GICHARA NJORGE	28/06/1995	920,177/=		
223	JOHN KARANI JURIUKI	01/03/1998	840,040/=	111,611/=	50,000/=
224	JAMES MURIU GICHARU	30/06/1996	932,000/=		
225	STEPHEN WANGOMBE THEURI	15/12/2003			
226	NGUGI KIRAGU	18/06/1998	202,832/=	50,317/=	50,000/=
227	JULIUS N. MULI	31/10/1998	669,330/=	109,278/=	50,000/=
228	STEPHEN MUGO	31/12/1997	741,028/=	138,103/=	50,000/=
229	JAMES MUTHIMA MATHENTE	30/06/1998			
230	ABDALLA A. KIBARABARA	02/12/1997	154,220/=	27,072/=	
231	JOHN MUSERU WATAKO	18/02/1998	1,065,643/=	148,010/=	
232	BENJAMIN KAVOI MWIKYA		1,284,767/=	368,749/=	
233	SAMUEL MUNENE KAGUGANI	31/03/1998	424,524/=	101,888/=	100,000/=
234	BONIFACE WANJEMA NJENGA	30/06/1998	101,026/=	17,201/=	50,000/=
235	ISAAC MAINA	31/07/1998	366,058/=	40,508/=	50,000/=
236	TABITH NYOKABI NJUGUNA	15/05/1998	506,497/=	63,806/=	50,000/=
237	ROSE WANGARI	15/05/1998	535,814/=	67,046/=	50,000/=
238	RITALIND NJERI NJORGE	18/02/1998	497,332/=	83,712/=	50,000/=
239	JOSEPH MUCHEMI MAINGI	18/02/1998	417,181/=	72,674/=	50,000/=
240	REUBEN MURIITHI MUNYIRI	28/02/1995	531,429/=		
241	DICKSON KINULA KITOO	22/04/1998	1,164,785/=	185,710/=	50,000/=
242	MOSES N. NJAGI	22/04/1998	279,985/=	48,995/=	50,000/=
243	TIMOTHY GATHUA				
244	G. M. NGARUIYA	18/06/1998	664,097/=	132,055/=	50,000/=
245	PAUL RIMUI MUHIA	30/04/2003			
246	JOHN KABAA	13/07/1998	705,118/=	14,378/=	
247	HASSAN SORA	18/02/1998	1,450,847/=	17,252/=	50,000/=
248	S. M. MUHIA	18/06/1998	1,596,866/=	59,948/=	50,000/=

249	DAVID MUTIND MWANGAGI	18/06/1996	894,915/=		
250	WILSON MABOI	31/12/1998	547,147/=		
251	JOEL MARIM TOO	31/10/1994			
252	JOHN MWANIKI	23/04/1998	1,040,562/=	190,969/=	50,000/=
253	JACKSON MULONZI	21/06/2000	22,940/=	38,371/=	50,000/=
			17,641,660/=	1,718,904/=	1,000,000/=
254	JOHN GITIRO		97,568/=	14,777/=	50,000/=
255	JAMES AMOLO	17/06/1996			
256	SIMON MUTISYA	30/06/1998	193,392/=	36,107/=	
257	NELSON KINGA	28/06/1995			
258	KENNETH KAGETO				
259	KARIM H. KARIM	31/12/1997	460,155/=	62,059/=	100,000/=
260	SYMON WAIROBI GATUMA	23/04/2003	1,109,363/=	624,183/=	
261	PETERSON AIGURU	22/04/1998	668,587/=		
262	BENJAMIN WAMAI	31/05/1995	607,496/=		
263	JOSEPH MUTHAMA	31/03/1998			
264	WALTER ONG'ANG'O	31/12/1997	301,396/=	44,992/=	100,000/=
265	DANIEL MWAURA	31/03/1998	1,522,797/=	274,111/=	60,000/=
266	DOMINIC MURIU KUNGU	30/06/1998	160,792/=	19,506/=	
267	JOSEPH K. KUNGU	31/10/1998	246,644/=	27,363/=	10,000/=
268	PETER KIGUTA NDIRANGU		1,722,592/=		
269	CLEMENCE WAKESHO MWADIME	21/09/1995	373,448/=		
270	ALBANUS K. NZAU	21/06/2000	307,383/=	62,956/=	259/=
271	BENARD K. SILA	27/03/1995			
272	RAMADHAN NUGHASHE	27/07/1998	296,500/=	25,592/=	
273	YAHYA HUSSEIN GICHURU	11/02/1998			
274	MESHACK MOMANYI	17/08/1999	162,887/=	67,398/=	100,000/=
275	FRANCIS DAVID KIOKO	31/05/1998	1,448,399/=	216,625/=	50,000/=
276	STEPHEN NDERITU	25/04/2003	551,124/=	135,330/=	50,000/=
277	FRANCIS MURI MWANGI	23/04/2003	667,749/=	536,097/=	
278	HENRY SOMBA MAILU	25/04/2003			80/=
279	HUMPHREY REREI MBUGUA	09/03/1998	844,375/=	184,860/=	
280	MICHAEL N. MWANIKI	18/11/1998	678,681/=	109,486/=	50,000/=
281	IRENE NGURE NYAWIRA	31/05/1998	1,876,432/=	544,705/=	

282	BENARD NZIMBA	31/12/1997	647,696/=	88,120/=	100,000/=
283	CHARLES ODINGA	03/12/1997	918,899/=	209,842/=	
284	SILA MUYA	18/06/1998	468,366.86	107,451.50	50,000/=
285	FRED NGENO SOI	15/10/2001	551,503.66		
286	HADIJA NJERI ABDALLAH				
287			16,884,225.2	3,391,560.50	720,339/=
288	MARTIN NJIRAINI MURAGE				
289	FRANCIS KIMOTHO	19/10/1998	947,942.86	46,573.00	50,000/=
290	WILSON MURIITHI	18/09/1998	828,620.98	101,742.92	
291	DANIEL MAGOTHI MUHUYU	18/02/1998	672,349.50	137,712/=	50,000/=
292	GABRIEL M. METHO	21/06/2000	128,304.15	58,326.30	50,000/=
293	SOLOMON K. KARIO	18/06/1998			
294	AUGUSTINE NYAKONDO	23/04/2003	1,688,488.67	500,466.80	
295	CHRISPINE NYAGA	31/03/1998	526,674.90	110,323/=	
296	NICHOLAS MUTEI KIRIMI	25/04/1996			
297	ROBERT MURIUKI	31/10/2003	2,934,237/=	1,334,172/=	
298	PETER M. MBUI	18/02/1998	1,450,227/=	429,828/=	
299	MOHAMMED JOHN SHIKUKU	31/03/1998	995,586/=	169,451/=	
300	JUSTUUS MWANZIA MAITHYA	26/03/1996	715,413/=		
301	MESHACK DERO	4/16/1998	248,171/=	179,209/=	
302	ABDURAHAMAN RAMADHANI	24/10/2001			
303	LAMECH MOGAKA	18/02/1998	190,257/=	32,273/=	
304	RICHARD AGUNDA MASINDA	15/06/1999			
305	PETER MURIU MUIGA	8/02/1998	575,823/=	99,927/=	50,000/=
306	PETER MUTURI NJOGO	25/04/2003	3,407,700/=	607,023/=	100,000/=
307	JAMES KIMANI WAINAINA	31/03/1998	127,142/=	27,964/=	
308	JOSEPH A. BWANA	27/03/1998	1,543,649/=		14,495/=
309	EDWIN NGANGIRA GATEI	18/2/1998			
310	NAHASHON M. KINGI	30/6/1995	452,217/=		
311	DAVID JOE MWANGI KARIU	FEB 1998			
312	SAMUEL NYANGIRA MUTEI	18/2/1998	937,490/=	244,129/=	50,000/=
313	ONESMUS N. NGOILOVOI	18/06/1998	673,236/=	76,995/=	
314	DAVID OLOO OUKO	30/4/2003	3,115,096/=		
315	GABRIEL NJUGUNA KARIUKI	13/3/1998	779,586/=	161,810/=	
316	JOHANA MUCHIMI WACHIRA	26/03/1998			

317	ELIUD OUMA GOME	15/06/1999	1,089,927/=	164,871/=	
318	JOHN BUNYI GICHARU	18/06/1998	882,407/=	126,363/=	50,000/=
319	FRANCIS NJAAGA TIFUS	31/12/1997	151,176/=	22,556/=	
320	STEPHEN K. MUNGAI				
321	MARGARET O. ODHIAMBO	15/05/1998	263,612/=	46,861/=	50,000/=
			25,325,333.06	4,678,572.02	464,495/=
322	GEORGE K. GICHOHI	26/03/1998	1,392,144/=	244,694/=	50,000/=
323	MARGARET W. KINYUA	26/03/1998	542,233/=	79,579/=	50,000/=
324	ROBINSON M. GAKUNJI	19/07/2000	598,906/=	141,114/=	50,000/=
325	JOSEPH MAINA MACHARIA	30/06/1998	641,440/=	61384/=	50,000/=
326	SAMSON ONYANGONGAO	3/10/2000	887,867/=		
327	CHRISTOPHER NDICHU MBOCHE	31/03/1998	478,121/=	87,494/=	50,000/=
328	DANIEL NJOROGGE KAMAU	15/06/1999			
329	JAMES ABUKUSE OCHAMI	31/10/1994	400,137/=	61,690/=	60,000/=
330	KANYA KAMAU	31/10/1994	877,897/=		
331	SAMUEL GACHURI	15/09/2001	1,169,830/=	216,397/=	
332	ROBERT MUCHUNO NJUGUNA	19/05/1999	1,331,781/=	302,665/=	100,000/=
333	PEETR L. OPILI	21/10/1994			
334	EPHRAIM M. NJOROGGE		1,436,118/=	584,266/=	10,000/=
335	PETER MBURU KIBUGI	1995			
336	ROBERT MBUTHIA MUNGAI	18/06/1996	1,833,305/=	153,532/=	
337	MACHARIA MUTURI	30/04/1998	728,690/=	80,619/=	
338	ISAAC NJINE KARIUKI	30/09/1995	928,103/=		
339	FRANCIS M. KANGANGI	18/06/1998			
340	JECONIA O. ANINDO	24/05/1999	436,711/=	55,688/=	50,000/=
341	SOLOMON OTIENO ANINDO	12/06/1998	1,204,466/=	193,295/=	50,000/=
342	JOSPHAT MUKUNDI KINUTHIA	25/04/1996			
343	FREDRICK KIBOI KIHORO	27/09/1999	962,401/=	142,766/=	
344	GEOFFREY WAIYEGO	18/12/1998	432,270/=	43,432/=	50,000/=
345	GORDON MISANGO	31/10/2003	1,429,927/=	579,210/=	
346	JOSEPH K. MAINA	17/07/2000	525,730/=	107,825/=	50,000/=
347	SIMON NJATHI MUTORA	28/02/1998			

348	SAMUEL M. THAIRU	31/07/1998	970,222/=	138,089/=	50,000/=
349	ALLAN KABUGI	31/07/1998	1,149,448/=	238,403/=	
350	JOHN MUTHORERI	22/04/1998	228,199/=	100,235/=	
351	IBRAHIM MURATHA	31/12/1997	874,041/=	201,248/=	
352	JUSTUS MUTEMI WAMBUA	31/05/1998	1,280,834/=	232,986/=	50,000/=
			22,740,911/=	4,04,611/=	720,000/=
353	ALRED KIBE	3/12/1997	1,670,343/=	106,013/=	
354	PETER GICHOB	15/05/1998	761,043/=	136,728/=	50,000/=
355	ROBERT W. NDIANGUI		558,786/=	73,466/=	50,000/=
356	PHILIP KILONZO NWANZIA	30/06/1998	693,287/=	117,036/=	
357	EDWARD K. THAIRU	31/07/1998	244,578/=		
358	JAMIA A. BABALA	18/16/1998	1,309,650/=	174,727/=	100,000/=
359	JOSEPH WAITHAKA MBUGUA	5/05/1998	933,850/=	199,534/=	60,000/=
360	GEORGE M. THUO	31/10/1998			
361	JULIUS MWANGONDI	31/10/2003	1,531,701/=	566,738/=	50,000/=
362	GEOFFREY K. WAKABA	18/02/1998	768,062/=	153,429/=	50,000/=
363	BONIFACE K. MASAI	31/05/1998	1,223,068/=	213,403/=	50,000/=
364	NICHOLAS MACKENZIE	18/9/1998	1,219,092/=	195,994/=	50,000/=
365	DANIEL NGEWA KIOLI	20/09/1995			
366	BENJAMIN W. MATUVA	31/10/2003	1,161,562/=	564,155/=	50,000/=
367	ALEX WAMBANDI	15/05/1998	201,696/=	18,960/=	50,000/=
368	HARRISON AMULI	17/08/1999	284,301/=	50,729/=	100,000/=
369	PETER K. KIMANI	18/02/1998	150,877/=	23,682/=	50,000/=
370	HENRY K. KARANJA	22/04/1998	59,513/=	81,176/=	
371	FRANCIS BWIRE	31/12/1997	1,426,099/=		
372	MARTIN S. MUTUNGI	30/06/1998	195,293/=	18,584/=	50,000/=
373	WANJOHI WACHIRA	28/06/1995			
374	JAMES N. GICHEHA	31/12/1997	524,132/=	79,689/=	100,000/=
375	MICHAEL W. KARIUKI	31/12/1997	300,244/=		
376	HANNINGTON KAVU	18/01/1999			
377	CHARLOTTE MDOE	31/12/1977	26,514/=		
378	RACHAEL KAVU	31/12/1977	35,951/=	8,760/=	
379	LYDIA MBITHI	31/12/1997	549,254/=	86,068/=	100,000/=
380	MR. IRUNGU KAMAU	31/12/1997	286,278/=	42,930/=	100,000/=
381	BARRACK HABWE	28/06/1995	2,227,153/=	21,364/=	

382	JONATHAN M. SUMUNU	31/03/1998	213,719/=	61,700/=	50,000/=
383	ROBERT G. MBOA	31/03/1998	415,927/=	76,355/=	50,000/=
384	LEONARD K. IRUNGU				
385	ANDREW N. KARIUKI	1998			
386	HERMAN G. MBUGUA				
			18,971,973/=	3,071,220/=	1,160,000/=
387	THOMAS M. MUTUKU	31/12/1995	480,966/=		
388	JULIUS G. MACHARIA	31/12/1997			
389	JOSEPH KOROSI	31/12/1997	150,582/=	11,768/=	50,000/=
390	ERNEST KOSKEY	30/06/1998			
391	FREDRICK KIRUGA	31/05/1998	708,553/=		
392	DANIEL MACHARIA	16/11/1994	506,099/=		
393	JIM KABUE	31/03/1998			
394	JOB MWANZIA	30/06/1998	50,436/=	54,935/=	
395	JOHN M. KIILU	28/02/1998	469,032/=	91,056/=	50,000/=
396	CHARLES OUMA	26/03/1998	128,847/=	30,984/=	100,000/=
397	TERRY G. WALKER	28/03/1995			
398	SIMON K. MWANGI	30/05/1998			
399	JOHN C. NDUATI	24/06/1998	517,602/=	72,462/=	50,000/=
400	JONATHAN MUIGAI	6/03/1998	567,644/=	84,070/=	50,000/=
401	LAWRENCE NDUNGU NGUGI	31/05/1995	383,012/=		
402	JOHN M. MALUKI	30/09/1995	367,044/=		
403	DAVID MUNGAI	20/08/2002			
404	WARIO J. BONAYA	24/05/1999	803,229/=	132,938/=	
405	TIMOTHY S. KIILU	3/12/1997	1,758,824/=	381,813/=	
406	ISAACK N. NGUGI	21/06/2000	95,868/=	32,226/=	
407	JULIUS KM MBUTHIA	30/06/1998			
408	RICHARD S. KILONZO	31/12/1997	786,632/=		
409	MARTIN NJOROGE	18/06/1998			
410	GEORGE N. KARIRU	30/04/1996	749,258/=		
411	SIMON K. MBUGUA	31/03/1998	1,155,927/=	149,473/=	
412	DICKSON NJOROGE	13/12/1997	999,241/=		
413	CHRISTANT KINYALE	9/06/1998	260,040/=	48,317/=	
414	PATRICK N. KIMATA	18/06/1998	908,757/=	194,835/=	50,000/=
415	ALFRED B. OBUNGA	15/03/1996	1,249,200/=		

416	JAMES ANGAWA ONYANGO	MAY 2003	135,939/=	140,925/=	100,000/=
417	SAMUEL KAHUNYO	30/06/1995			
418	DAVID KAMANGA	30/04/1998			
419	JOSEPH K. MBUGUA	22/07/200	205,415/=	46,677/=	50,000/=
420	ROBERT M. KITHEKA	31/03/1998	1,211,260/=	280,707/=	60,000/=
421	STEPHEN W. KANYI		14,650,687/=	1,753,176/=	660,000/=
422	LOIS WAMBUI NDIRANGU	18/02/1998	786,645/=	180,858/=	
423	PETER THEURI	1/07/1998	415,881/=	68,325/=	
424	F. M. GATHIRU	3/12/1997			
425	KITEMA KIMULI	31/10/1994			
426	JOSEPH IRUNGU WAHAGI	26/03/1998	401,680/=	73,011/=	50,000/=
427	PETER KIHARO	18/02/1998	1,008,182/=	268,442/=	100,000/=
428	MAHARIA RERA	18/02/1998	633,600/=	83,339/=	50,000/=
429	EDWARD BENSON THAIRU	25/04/2003	1,409,514/=	274,129/=	
430	ELIUD MUCUNU KARIMI	26/07/1994			
431	JOSEPH MUHUNI NJOROGE	22/10/1994	705,214/=		
432	JOSEPH WANYAMA	18/06/1998	231,103/=	44,671/=	
433	LEONARD NDAWA MBULU	1999			
434	JOSEPH KIPNGETICH KIRUI	30/06/1998	361,866/=		
435	CHRISTOPHER MARITIM	20/11/1998	443,257/=	61,094/=	
436	JAMLECK WAMAI NDIRANGU	26/03/1998	177,687/=	35,460/=	
437	MUNENI KIRUBU				
438	PETER MAITHYA MWENGA	30/06/1996	819,236/=		
439	PETER MUCHIRI MWANGI	18/06/1998	519,758/=	72,995/=	50,000/=
440	PETER HUMPHREY KARIUKI				
441	FRANCIS KIMANI	30/06/1998	468,533/=	76,324/=	50,000/=
442	GEORGE KIMANI NUTHONI	12/07/1999	130,014/=	49,586/=	
443	CHARLES MAINA GITHINJI	25/04/2003	1,208,923/=	283,851/=	100,000/=
444	SIMON M. GICHU	22/05/1998	576,526/=		
445	NJAMBI NGAARA				
446	LEONARD KITUMBA KAVULUNZE	21/06/2000	220,258/=	45,938/=	50,000/=
447	JOHN MWANGI MWANIKI	10/12/1999	179,939/=	23,066/=	100,000/=
448	SAMMY KINYUGO KIHUNGU	31/03/1998	390,310/=	63,367/=	
449	PAULINE WAIRIMU	2/12/1997	923,188/=	70,315/=	50,000/=

450	DAVID M. KITAKA	18/06/1998	87,918/=	124,498/=	
451	PETER MUTEI KILONZO	15/06/1999	266,429/=	57,706/=	50,000/=
452	EDWARD MUTHUSI MUSILI	19/10/1998	189,807/=	17,298/=	50,000/=
453	SAMSONM MUASYA MUTUNGU	31/12/1997	319,583/=	37,134/=	100,000/=
			12,875,01/=	2,011,107/=	800,000/=
454	DENNIS KINYUA NYAMU	6/09/1999	329,647/=	81,645/=	100,000/=
455	MICHAEL OKUMU LAZARUS OPATA	23/03/1998	1,230,476/=	226,152/=	50,000/=
456	GERALD KIBUTHU	22/04/1998	304,975/=	51,936/=	50,000/=
457	DANIEL NYOIKE NGANGA				
458	CHRISTOPHER KIBUTHU	22/04/1998	1,131,941/=	276,690/=	50,000/=
459	PATRICK MUNYIRI GICHUKI	20/03/1998	643,836/=	124,417/=	50,000/=
460	DAVID NGANGA WAMAI	30/06/1996	1,016,293/=		
461	PETER KARIUKI NGIGI	26/03/1998	581,056/=		
462	ONESPHOROUS K. KARIANJAH	30/04/1998	1,087,307/=	199,727/=	50,000/=
463	JOHN KAMAU	17/01/2008	1,020,195/=	308,467/=	100,000/=
464	JACKSON KIVIUITU NGUNZE	22/04/1998	694,446/=	144,419/=	50,000/=
465	NELSON MAKUMI MANGI	3/07/2000	682,069/=	140,832/=	50,000/=
466	WILLIM K. MUNGUTI	9/05/1995	3,009,242/=	107,742/=	
467	JOHN BWALA OBWOGO	28/02/1995	677,598/=		
468	SAMMY WANJOHI GITHINJI	31/03/1998			
469	FREDRICK GICHUMA KAGWAINI	31/03/1998			
470	ALBANOS KITAKA MULWA	21/06/2000	883,142/=		
471	MWASYA MULIKO KATHUKU	30/06/1995	622,339/=		
472	CHARLES NJORGE MACHARIA	31/10/1994	672,069/=		
473	JOHN GICHOMO NGIGI	30/03/1998			
474	FESTUS OWINO ODANDO	6/09/1999	99,888/=	16,425/=	
475	BENARD GITHAIGA GITHUI	30/06/1998	345,814/=		
476	BENEDICT MBILO JOHN	31/12/1997	763,155/=	98,339/=	100,000/=
477	RAHAB MUKAMI WANJOHI	18/02/1998	173,056/=	33,728/=	50,000/=
478	GEORGE WAWERU KIMANI	18/06/1998	1,135,309/=	197,216/=	50,000/=

479	DANSON NYAGA NGARI	31/03/1998	265,254/=	29,431/=	
480	CHARLES MBURU KINYANJUI	30/10/1994			
481	DAVID KAHURA KIMOTHO	31/08/1998	352,806/=	183,518/=	
482	ZACHARIA INJELULA	31/12/1997	485,408/=	170,907/=	
483	DANIEL MULWA MUSAU	31/10/1998			
			18,207,321/=	2,601,713/=	750,000/=
484	JAMES MWANGI WAINAINA	31/05/1998	413,689/=		
485	PAUL MUIYA MUIA	19/10/1998	684,013/=	113,732/=	50,000/=
486	BENARD KIMANZI MASILA	25/07/2000	530,482/=		
487	FRANCIS KAIRU THAIRU	18/06/1998	170,220/=	55,511/=	
488	ERNEST IRUNGU WACHIRA	31/03/1998			
489	SAMUEL THUO KIMANI	11/05/1995			
490	JEREMIAH MJLANDI	18/06/1998	724,328/=	131,803/=	
491	MATTHEW KARIUKI MUCEMBI	25/02/1996			
492	PETER THIRIKWA MWANGI				
493	JOHN KINUTHIA MURIUKI	31/10/1994			
494	WILLIAM MUSYOKA MUTUKU	31/12/1997	378,897/=	52,644/=	
495	GEORGE MWATHI	24/05/1999	402,824/=	63,956/=	50,000/=
496	NDUNGU NJOROGI	31/10/1994			
497	JAMES MUIGAI KIRAGURI	30/06/1998	262,446/=	5,034/=	50,000/=
498	STANLEY MBURU NGIGI	26/10/2001	268,026/=	69,135/=	
499	STEPHEN MURIUNGI NCEEENE	20/03/2006	1,196,298/=	573,932/=	50,000/=
500	TITO KAKULI	26/03/1998	433,704/=	74,205/=	
501	KEFAH ANYANJE	18/02/1998	674,118/=	83,289/=	
502	PETER MWANGI KAGWANJA	15/05/1998	123,382/=	7,686/=	
503	STNALEY KIIMU RINGERA	12/02/1996			
504	PETER ANTHONY MUREITHI	21/06/2000	143,809/=	306,442/=	100,000/=
505	MUTHUI MUSYOKA	31/10/1994			
506	NASHON MUIGAI KAGO	20/07/2000	284,309/=	60,205/=	50,000/=
507	JUSTUS MBAYI ABALA	15/06/1999	302,962/=	69,044/=	
508	TAABU ALI GUCHU	2/12/1997			
509	MOHAMMED ALI GODORO	26/13/1998			
510	JOSEPH WANDERE DOTO	15/05/1998	529,111/=	91,635/=	

511	ESTHER KINGESI	30/08/1999	307,699/=	80,677/=	50,000/=
512	FRANCINAH NUGUNA ICHAGICHU	18/02/1998	261,719/=	40,677/=	30,000/=
513	JOSEPH KIIO MUTUNGI	25/04/2003	3,054,647/=	623,001/=	
514	PATRICK MUTUA KILU	30/08/1999	1,422,243/=	158,525/=	
			12,568,926/=	2,661,133/=	430,000/=
515	MWINZI MULI	26/03/1996	513,956/=		
516	DANIEL MUTUA MWANZIA	18/09/1998	238,372/=	19,052/=	50,000/=
517	TITUS MWANGI KAMAU	18/02/1998	1,933,451/=	378,110/=	50,000/=
518	FRANCIS KAPALA	02/06/1995			
519	JULIUS NDUNGU KINYUA	21/06/2000	283,861/=	66,051/=	100,000/=
520	JOSEPH NTHIWA NTHUKU	16/11/1998	285,623/=		50,000/=
521	ROBINSON ODHAMBO	31/10/1998	590,294/=	83,544/=	50,000/=
522	SILAS OKEYO ASKO	09/11/1998	571,627/=	89,349/=	50,000/=
523	FRANCIS MBAI KITELA	31/03/1998			
524	JONATHAN KAMANDE THIRU				
525	PETER WACHRA NJUKI	22/05/1995			
526	BERNADETTE NGUTA MWIKALI	15/05/1996	799,187/=		
527	JOEL MUA ULANGA	30/04/1995	919,659/=		
528	NZUKI MUTUA	30/04/1995	466,285/=		
529	GEORGE MUINDE NYUMU	31/03/1998	442,537/=	80,090/=	50,000/=
530	SEPHEN MWANGI KANYI	15/06/1999	177,810/=	76,198/=	
531	DAVIND KANYI MUNYUNGI	31/10/1994	1,508,162/=		
532	SIMON WACHIRA NDUGIRE	19/10/1998			
533	GODFREY MWANGI MUTHUMBI	08/06/1998	472,194/=		
534	LAWRENCE KINYUA GEORGE	14/02/1995	733,752/=		
535	JOHN GATEI NGANGIRA	31/05/1998	230,522/=	31,258/=	
536	JULIUS MITHYA	18/06/1998	185,170/=	8,201/=	50,000/=
537	MWANZIA MALUTA		174,709/=	36,312/=	
538	BEATRICE KIBE AIGUMO	31/07/2001			
539	JOHNSON KARANJA KAMAU	01/05/1996	1,966,871/=		
540	SWYNNERTON NAZOI	5/02/2001	465,542/=	106,107/=	14,000/=

	ACHALA				
541	LAWRENCE NGUGI NGANGA	19/11/1996	183,284/=		
542	BACHO KIHONO	10/03/1996	857,549/=		
543	STEPHEN GITAKA MWAURA	30/06/1996	1,104,682/=		
544	JOSEPH ABUOGA OKEDAH	13/05/1998	1,070,111/=		
			16,175,210/=	1,172,764/=	514,000/=
545	PETER GICHANGA MUTHUNGU		2,663,046/=		
546	JOHN MWANGANGI MWABU	20/09/1995			
547	SOLOMON SONYI MUTEMI	31/10/1998			
548	SAMUEL NGANGA	28/06/1995			
549	PETER NDETI KITUKU	18/02/1998	625,794/=	89,435/=	50,000/=
550	JOHN NDEGWA NGURIBU	10/03/2006			
551	ANASTASIA NGINA MULWA	17/08/1999	69,285/=	53,502/=	50,000/=
552	CHALES MURIUKI GATHURA	30/06/1996			
553	ADRAIN KANGORO LAIKURU	24/05/1999			
554	NICHOLAS IRUNGU GICHARU	18/02/1998	169,816/=	23,820/=	
555	JOSEPH NYAKUNDI NYANGAU	3/06/1998			
556	DAVID NJOROGI KAMAU	28/06/1995	462,024/=		
557	OMAR ALI	2/12/1997	701,697/=	11,515/=	100,000/=
558	AHMED MOHAMMED KOMBO	31/12/1997	661,610/=	115,221/=	100,000/=
559	PETER NJUGUNA MARARO	31/07/1998	266,236/=	23,845/=	
560	CHARLESTONE MBUVI	30/06/1999			
561	GEORGE KARIUKI KIBE	31/12/1997	1,746,723/=	1,746,723/=	536,808/=
562	JEREMIAH BAIBAYA	28/02/1999	893,822/=		
563	JOHN AUPDO	22/04/1998			
564	CHARLES GATHUTHI	28/02/1998	537,122/=	114,649/=	50,000/=
565	JAMES MWANGI HOROHO	21/10/1994			
566	WYCLIFE GESICHO MOEMI	21/06/2000	31,590/=	78,729/=	
567	ETHAN MURAGE NGECHO	2/16/1995	827,792/=		
568	AHMED KIARIE NJONGE	2/12/1997			
569	MWINYUI JUMA WAZIRI				
570	FRANCIS KASING MASILA	15/07/1999	2,425,111/=	996,778/=	200,000

571	PETER MWALUGA MUYUSA	21/02/2006	2,080,846/=	965,888/=	100,000/=
572	NICHOLAS MGWILI KAVOI	18/06/1998	344,573/=		
573	FLORENCE MUSAU	18/06/1998	150,764/=	160,030/=	200,000/=
574	BENSON WAWERU KIRAGU		582,321/=	145,940/=	7,000/=
575	SAMUEL NJENGA GACHEMI		212,931/=	64,703/=	
			15,453,103/=	4,590,778/=	1,393,808/=
576	LYDIA MENE MUSYOKI	13/05/1998	180,340/=	19,713/=	
577	JAMES MICHINO	09/04/1998			
578	IBRAHIM WACHIRA BILALI	31/07/2000	1,556,354/=		
579	JOHN KINGI	15/05/1998	376,683/=	64,213/=	50,000/=
580	KIMWELE KIMANZI	31/04/1994			
581	PETER KIMANI GICHINGA	18/02/1998	833,390/=	116,680/=	50,000/=
582	JULIUS NDERITY KABUBI	03/07/2000	743,048/=	163,155/=	1,000/=
583	KENNETH GICHINA THOO	31/12/1997	231,695/=	13,805/=	100,000/=
584	NAPHTALY KUNYIHA	3/12/1997	1,569,757/=	493,759/=	
585	FELICITAS NDUNGE SILA	31/12/1997	1,353,878/=	227,757/=	150,000/=
586	PETER KIMATA	30/11/2003			
587	MIRRIAM SIMILA MAYANGA	30/09/1998	297,595/=		
588	RAPHAEL WAINAINA MBOGO	18/06/1998	2,491,197/=	953,287/=	100,000/=
589	FRANCIS MAINA KIEME	30/05/1998			
590	MUTETI NDAVI				
591	PERIS OGANDA	20/06/1998	59,563/=	11,833/=	30,000/=
592	NICHOLAS KARANJA	18/02/1998			
593	MARY KABIRU	31/05/1998	192,730/=		
594	JOHN NGONDU NJERU	18/06/1998	36,856/=	12,340/=	25,000/=
595	MWANDIKWA MUNYASIA	06/03/1996			
596	FRANCIS MUINDI KIOKO	31/10/2003	1,580,949/=	689,054/=	
597	BENSON KABUGI	18/06/1998	738,188/=	196,632/=	50,000/=
598	JOHN KIBE WANJA	28/02/1995			
599	GEORGE MBITHI MUSAU	31/05/1998			
600	HUMPHREY N. KINYUA	15/02/1999	1,037,222/=	290,511/=	50,000/=
601	ALBERT N. KIHARA	31/07/1998	482,686/=	76,034/=	50,000/=
602	DAVID THAIRU GATHECA	18/09/1998			
603	DANIEL NJUGUNA NGANGA				
604	TUGAA IDI	15/05/1998	596,462/=	78,885/=	50,000/=

605	JAMES MURAI KINYANJUI	18/06/1998	390,474/=	83,462/=	50,000/=
606	JOHN MAINA	31/10/1994			
607	COSMAS KIJOKE MASEE	30/06/1998	718,047/=		
608	MUTHUI MULYONGOI	30/04/1996	982,019/=		
609	ELIJAH NJUGUNA	21/06/2000	49,149/=	159,287/=	
			16,498,282/=	3,700,407/=	756,000/=
610	PETER NDUNGU	31/10/1994	720,532/=		
611	JOSEPH MJOMBA MWANYALO	31/12/1997	257,492/=	15,306/=	100,000/=
612	MWAURA WARUA	31/05/1995			
613	JORAM MGANGA MWANJALA				
614	GEORGE H. KATSENGA	2/12/1997			
615	HEZRON NDOKOLANI KITSAU	2/12/1997			
616	GEORGE NZYUKO	2/16/1995			
617	MARY AUMA ODONGO				
618	PETER SHIMBA CHOLA	31/10/1994	426,260/=		
619	MUMBA NZULA MWAGANDI	31/12/1997	874,286/=		
620	MUSILI MANGULU	30/09/1995	627,639/=		
621	PIUS MANYATA WAHOME	17/02/2006	18,862/=	63,359/=	50,000/=
622	ALBERT MURIITHI	3/12/1997			
623	SALIM WAFULE WABWILE		50,000/=		
624	DICKSON NZOMO MUTUA MUSYOKI		452,790/=	72,629/=	60,000/=
625	NASHID DICK JAMES		1,209,341/=	268,531/=	100,000/=
626	JAMES T. CHEGE	31/05/1995	555,050/=		
267	GERALD M. KARIUKI	27/06/1998	171,616/=		
628	FRANCIS M. MBONDO	19/10/1998			
629	JULIUS M. KAMAU	18/06/1998			
630	MBURU NGANGA				
631	GATHIMBA MACHARIA	30/04/1995	1,100,584/=		
632	JOSEPH MWANGI KAMAU				
633	RICHARD KIPLAGAT A. TEGET	31/10/1998	1,194,467/=	341,476/=	
634	KAMBI MWINYI	31/12/1997	637,977/=	90,015/=	100,000/=
635	OMAR MATANO SHABAN	31/12/1997			
636	GERALD G. MAINGI	22/04/1998	156,165/=	16,818/=	

637	VERONICA W. KAAJJA	21/06/2000	1,202,024/=	354,378/=	
638	FRANCIS N. GITAU	15/05/1998	1,018,428/=	232,714/=	10,000/=
639	FLORENCE MUTHONI MAINA	15/05/1995			
640	JOSEPH ONDIEKI	31/10/2003			
			10,673,513/=	1,455,266/=	420,000/=
641	EDWARD MBUTHIA WAITHAKA	3/12/1997	1,270,534/=		
642	PETER MUTUURA KAMAU	18/02/1998			10,000/=
643	JOSEPHAT MUTUKU MWINZI	31/10/1998	945,665/=	140,705/=	50,000/=
644	GEOFFREY MUTUKUMUTISO				
645	JOSEPH WACHIRA MUNENE	18/02/1998	509,149/=	78,241/=	
646	ALICE K. MUNYAO	3/12/1997			50,000/=
647	JUMA ABDALLAH WAZIRI	31/10/1994			
648	JOHN NJOROE	30/06/1995	688,535/=		
649	MELECKI W. ODONGO	18/06/1998	1,381,323/=	218,196/=	50,000/=
650	JEMIMMAH WANJIRA				
651	FELIX MAINA	18/02/1998			
652	OWEN J. MBUGUA	18/06/1998	297,240/=	45,749/=	50,000/=
653	CYRUS MUCHIRI KANYANGO	25/04/2003	1,059,313/=	295,959/=	50,000/=
654	MARY VIOLENTINE ANYANGO	09/06/1998	44,184/=	7,397/=	25,044/=
655	GEOFFREY KINYANJUI MATHEA	18/02/1998	315,632/=	75,531/=	20,000/=
656	LAWRENCE M. MWANGI	18/02/1998			100,000/=
657	IRENEN W. MWANGI	10/12/2014			
658	WILFRED NGETI MANAMBO	31/12/1997	171,459/=		
659	JOAB ATTE OKADA	APRIL 1998			
660	SIMON MAKAU	18/06/1998	34,681/=	24,123/=	10,000/=
661	MAURICE APIYO OJOWI	18/03/1998	1,559,967/=		
662	KARIKI GACHOKA	19/10/1998	539,796/=	74,408/=	50,000/=
663	SAMWEL M. KARANJA	26/03/1998	1,530,368/=	253,208/=	50,000/=
664	LIVINGSTONE ATIATO ASILU	23/07/1998	94,808/=	7,870/=	10,000/=
665	STEPHEN M. GITONGA	18/06/1998	17,893/=	23,306/=	
666	JOSEPH MAINA GITHINJI		113,789/=	15,004/=	10,000/=
667	JONATHAN KENDUIYWA	29/11/1998	1,290,346/=	210,996/=	

668	DAVID KIPLAGAT LABOSO	15/07/1999			
669	KIBUNUS ARAP TANGUS	22/10/1994			
670	SAMWEL R. SUIYON	18/12/1998			
671	RICHARD KIPTOO CHERUIYOT	15/07/1999	28,681/=	59,141/=	
			11,893,363/=	1,528,834/=	535,044/=
672	WILSON CHEPKWONY ARAP RUTO	22/04/1998	1,193,717/=	223,689/=	50,000/=
673	JOEL KIMUTAI SANG	26/03/1998	985,180/=	245,935/=	50,000/=
674	FREDRICK M. SERENGE	17/08/1999	99,830/=	54,357/=	
675	FESTUS LUMITI SERENGE	28/03/2006	1,182,213	327,601/=	50,000/=
676	BRIAN JEROME NGOLO	31/12/1997			
677	PAUL OMBUI RASUGU	31/10/2003	668,183/=	299,699/=	50,000/=
678	PETER N. GICHANGA	17/08/1998			
679	BEN NJOROGI NGUGI	30/09/1995	493,241/=		
680	DANIEL THUO WANJOHI	18/06/1998	714,132/=	165,373/=	50,000/=
681	DOMINIC G. THARAMBA				
682	SIMON PETER GIKONYO	22/05/1995			
683	SIMON KIMANI KAMWEMBU	19/01/1998	188,293/=	21,018/=	50,000/=
684	PAUL SERENGE AMWAYI	31/10/1994	329,043/=		
685	JAMES Z. ITHUMBI	31/12/1997	441,097/=		
686	ABDALLA M. MWAKIDUDU	2/12/1997	284,416/=	23,373/=	
687	ONESMUS M. HEZRON	21/06/2000	502,829/=	94,799/=	50,000/=
688	ZEDI MOHAMMED OMAR	02/12/1997			
689	JOHN MBUI NYAGA	31/07/1998	765,402/=		
690	HENRY PAULO THIONGO	19/01/1998	283,721/=	36,833/=	10,000/=
691	C. K. MBERIA	10/12/1999			
692	JOHN MBUGUA WANYOIKE	31/12/1997	781,888/=	127,544/=	
693	FRANCIS KINYANJUI	17/08/1999	737,564/=	17,955/=	100,000/=
694	KAZUNGU KIANGWA	2/12/1997	287,310/=	23,804/=	
695	DAVID GITHINJI WAWERU	18/02/1998	969,152/=	175,736/=	50,000/=
696	NICHAEL NZEKI MUTNE	30/06/1998			
697	JOSEPH NGUGI NGANGA	31/10/2001	496,972/=	108,856/=	
698	JUMA MZEE ALI	28/10/1994	588,871/=		
699	HARUNMBUGUA MIINGI	2/12/1997	164,887/=	8,396/=	

700	JAMES PAUL OSIDIANA	15/06/1999	815,975/=	152,363/=	60,000/=
701	ISAAC LESEREWAN OLE NAIKUNI		107,392/=	26,185/=	
702	WILLY MBURU THUKU				
703	LUCY WANJA KARIUKI	15/02/1998	672,102/=	88,524/=	50,000/=
			13,753,411/=	2,222,040/=	620,000/=
704	AMOS WATHAKA NOROGE	31/10/1994	866,748/=		
705	SAMWEL MUCHAI NJIRIRI	1/03/1998	1,696,336/=		
706	JOSEPH M. MUTIO	21/04/1975	1,271,373/=	248,344/=	
707	JOHN RIGUGA MUREHIA				
708	GEORGE KURIA GITHINJI	14/07/2000	435,379/=	34,256/=	185/=
709	JOSEH MUSUMBA	31/10/1998	828,417/=		
710	TITUS MUTUA NTHUTI	18/02/1998	1,396,304/=		
711	HUSSEIN HAMISI KIDIWA	29/03/1996	1,278,998/=		
712	ALI SALIM MISUMI	31/12/1997	997,312/=		
713	ROBERT MUSYOKA MBITI	31/10/2003			
714	AMSTRONG KACHUMBO	15/09/2001	671,504/=	127,283/=	
715	PETER WAWERU NDIRANGU	31/03/1999			
716	LAWRENCENGILA KAKIU	26/03/1998			
717	RASHID M. KUSEMA	15/05/1996			
718	THOMAS MAKOKHA	1/04/1998	351,409/=		30,000/=
719	PETER NGOCHI KAMAU				
720	EUSEBIAS MAKUNDA CLEO	31/07/1999	145,888/=	48,442/=	
721	JOSHUA JUMA MUGA	16/04/1998			
722	AHMED MWIRA	31/05/1995			
723	NASIR TIMAMI	DEC. 1997	293,566/=	22,941/=	
724	DUNCAN M. W. KINYEKI	31/10/1998	579,135/=	86,398/=	60,000/=
725	ENOSH KANYARI THIGA	30/06/1998	1,429,787/=	206,603/=	50,000/=
726	STEPHEN MWANGI KAMAU	1/05/1996			
727	TITUS OSUMBA OGURO	31/07/1999			
728	MORRIS ONYANGO OCHOKA	31/16/1998	889,256/=	108,763/=	10,000/=
729	ELIJAH IRUNGU MUKUHA	31/07/1998	680,864/=		
730	TERESIAH MBITH SOO	21/07/1994			
731	JOSEPH NDEGWA NDARATHI	31/10/1998	479,655/=	87,717/=	60,000/=
732	DAVID NGUGI KAMAU	30/04/1998			

733	TIMOTHY MANZI MUTEMI	6/07/1999	518,896/=	102,277/=	8,130/=
734	ALBERT KIHARA MWITHIGA	18/06/1998			
735	JOEL NZIOKA NDAMBUKI	1995			
736	SAUL ODIDA OGANGO	31/12/1997	883,149/=	215,127/=	150,000/=
			15,693,976/=	1,288,151/=	368,315/=
737	MICHAEL MACHARIA MURAGE	30/04/1998			
738	JEREMIAH AYIECHA EKOMBE	31/10/1999	824,267/=	107,784/=	100,000/=
739	JOB KENYASA	31/07/2000			
740	DAVID KAMAU WANJOHI	31/05/1995	415,123/=		
741	PATRICK NJUGUNA NDUNGU	31/05/1995	283,256/=		
742	JAMES KARUE GATHUNGU	31/07/1997	819,707/=	173,674/=	50,000/=
743	ROBERT OTIENO OBONDY	31/12/1997			
744	JOSEPH DEDAN OWENYO	31/12/1997	565,727/=	70,000/=	
745	SIMON KABAGE KARANJA	28/02/1998	416,540/=	26,868/=	
746	MAURICEMAIN BEN	31/07/2000	537,202/=		
747	EDWARD KIBET BULUNGU	30/06/1999	390,769/=	68,287/=	100,000/=
748	GIDEON MBUTHIA NGUGI		58,999/=	11,286/=	20,000/=
749	PETER GITHINJI MAINA	30/04/2003	1,152,484/=	301,778/=	
750	PETER MUNGAI MUIRURI	31/07/1998	317,282/=	61,592/=	50,000/=
751	FREDRICK KIMEU NZIVO	31/07/2000	1,073,149/=	254,043/=	50,000/=
752	BENSON OLOO MUHASA	31/07/1998			
753	CHRISTOPHER KAMTO MWAURA	31/12/1997			
754	SAMMY MUTUNGA KUTU	31/03/1996	1,851,878/=		
755	JAMES MUTUONGA KINUTHIA	30/09/1998	2,078,953/=	744,989/=	100,000/=
756	BONIFACE NZUKI MUASYA	31/05/1998	933,574/=	222,112/=	50,000/=
757	KISWILI NDUNGA	01/05/1996	1,436,129/=		
758	MARTIN NGAIA OAKUYA	16/07/1998	810,262/=	94,574/=	50,000/=
759	HASSAD RASHID MWARANJIRA	31/12/1997	927,168/=		
760	CRISPIN NDEGWA	30/06/1995	652,067/=		

761	JONES MWANZIA MBITI	31/03/1996	910,930/=		
762	JOSEPH MUTHJE KIUGE				
763	FREDRICK GITAU NJOROGE	10/03/1996	1,113,491/=		
764	MATHEW SASAKA INJEMELA	31/10/1999		60,330/=	
765	JONATHAN MUTHYA KILILA	31/03/1998	455,349/=	74,606/=	60,000/=
			18,024,406/=	2,271,923/=	630,000/=
766	JOHN IRUNGU GAKUYA	28/02/1998			
767	PAUL MARTIN OWUOR	31/07/2000	1,588,206/=		
768	HENRY MUASYA MUINDE	31/03/1996			
769	STEPHEN MUSYOKA MWAMBI	31/12/1998	485,006/=	134,620/=	100,000/=
770	BENJAMIN BEDAH OMALLA	10/03/2000	4,621,966/=	2,184,835/=	50,000/=
771	PAUL NJOROGE MWANIKI	31/08/1999			
772	PETER NDETI GATI	31/10/1994	1,585,506/=		
773	EDWARD ISAACK OLAKA	31/12/1997			
774	FRANCIS ALAMISI MWAGAMBILI				
775	PETER RIUNGA NYAGA	30/04/1998	439,227/=	61,655/=	
776	FRANCIS GIKINGU NYAMU	31/11/1998	627,326/=	86,147/=	50,000/=
777	ROBERT ROGERS KABUBA THAIRU		67,149/=	7,683/=	
778	PETER KIMANI MUNGAI	FEB 1998			10,000/=
779	EDAH NAISIANI NAIKONE				
780	JOSEPH NDUNGU GATHARI	31/12/1997			
781	SAMUEL KIPKERER NGETICH	31/03/1998	346,134/=	69,829/=	50,000/=
782	JOHN MUCHIRI NDUATI	31/07/1998	325,963/=	67,194/=	50,000/=
783	WILSON NGANGA WAMUHA	JUNE 1998			
784	MICHAEL MACHARIA MWAI	30/16/1999	814,639/=	143,682/=	60,000/=
785	MWAI MACHARIA	30/04/1995			
786	PAUL MWANGI NGATIA	31/07/1999	446,390/=	79,308/=	50,000/=
787	STEPHEN KIKUMU MUTHUSI	30/11/1995	683,581/=		
788	KIOKO MANANDI				
789	GRACE KAINYU IRERI	31/12/1997			
790	RARCISIUS FRANCIS NDUNGU	31/03/1998	60,782/=	29,490/=	10,000/=

791	JOHN KARANJA GAKUNJA	31/05/1998	281,686/=	43,808/=	60,000/=
792	PETER KANINI NJUGUNA	30/06/1998	1,625,082/=		
793	ABDALLA KIKOZA OMAR	31/10/1994	879,991/=		
794	JORAM KIHARA MUGI	31/12/1997	388,140/=	35,725/=	
795	JUDAH KOVO MWANYINDO				
			15,066,771/=	2,943,976/=	490,000/=
796	DAVID KONANGE MWANGI	08/09/1999			10,000/=
797	PATRICK MUELA MATA	31/12/1997	250,833/=	15,013/=	
798	GABRIEL MWANGEMI MACHIA	30/04/1998	963,092/=	185,345/=	50,000/=
799	AQUISIO GITAU		360,333/=	156,775/=	50,000/=
800	MICHAEL OLUOCH	31/10/1999			
801	PAKTA SALIM MWARANJIRA	31/12/1997	199,936/=	11,248/=	
802	PARID SEIF AHMED	31/07/2000			
803	LAWERENCE KIPSEREM SAWE	31/03/1998	1,118,521/=	308,810/=	
804	EVANS KAHIRA MUCHIRI	31/10/1994	674,228/=		
805	JAMES MWAI KARUGU	30/06/2000	3,258,830/=	1,132,216/=	100,000/=
806	NYENGE NZINZI				
807	MOSES MURIUKI NJENGA	31/05/2000	1,626,913/=	563,904/=	100,000/=
808	CLEMENT OGOLA ORINDA	30/04/1995	461,583/=		
809	STANLEY KIMANI MWANGI	31/10/1998	580,543/=		
810	JOSEPH KAMAI GITAU	31/10/1999	100,000/=	79,112/=	10,000/=
811	ISAAC GITAHU MATU	30/04/2003	2,151,620/=	612,851/=	
812	PETER MURU NJENGA	31/01/1999			
813	JULIUS KAIBUNGA KIREA	21/11/1998	292,416/=		
814	PETER IRUNGU MUIRU		233,641/=	24,984/=	50,000/=
815	DAVID NJOROGE KARANJA	30/04/1998	879,126/=	133,150/=	50,000/=
816	JOHN KANGETHEH NJEHIA	31/03/1998	1,025,304/=	179,095/=	
817	PATRICK LUMUMBA MUSONYE	30/06/2000	443,518/=	223,294/=	100,000/=
818	JOSEPH KARANJA GITHINJI	30/04/2003	456,843/=	127,572/=	551/=
819	MAINA STEPHEN KIURI	31/03/1998			
820	DANIEL MUKWENZE NZUUKO	05/11/1994			
821	CHRISPINUS DOME JOE	MAY 2005	1,745,035/=		

822	MORRIS ORARO LOET	18/06/1998	1,071,405/=	156,307/=	50,000/=
823	ATHANUS NZAU	07/04/1989	149,632/=	21,491/=	
824	JANE NDENGWA MUTHONI	02/12/1997			
825	BENARD GATHU MWANIKI	30/04/2006			
826	NANCY NGANGA WANJIRU	18/06/1998	1,200,460/=	251,132/=	
			19,243,862/=	4,182,299/=	570,551/=
827	ROSE MUNINI NUNYAO		1,074,560/=	162,249/=	
828	GRACE MUMO	18/02/1998	1,575,820/=	267,246/=	50,000/=
829	JUMA A. RAJAB	15/12/1997	769,427/=	126,692/=	
830	STEPHEN KANYINA NDERITU	31/10/1998			
831	JOHN IRUNGU MAINA	20/03/1998	512,766/=	97,437/=	50,000/=
832	COSMUS MBUI KISANGI	21/06/2000	185,462/=	50,288/=	
833	ONCHOKE MAOBE	18/02/1998	653,984/=	143,348/=	
834	M TE DR SAMUEL KARIUKI	14/11/2001			
835	FRANCIS NGOTHO	15/09/2001			
836	JAMES MURAGURI NDEGE	01/05/1998	325,828/=	31,463/=	50,000/=
837	MUNENE MEJA	30/06/1998	256,152/=	25,867/=	50,000/=
838	CHARLES O. OLUOCH	18/06/1998	657,120/=		
839	PATRICK M. MUNGAI	20/09/1995			
840	MICHAEL OWN OKELLO	18/06/1998			
841	SIMON GICHURA WAMANJI	15/12/2003			
842	MUEMBI NDETO DOMNIC	06/02/2015			
843	CHALE KIRAGU MBUGUA	21/06/2000	349,676/=	72,120/=	
844	BOAZ OMOLO	19/07/1998	1,129,417/=	131,025/=	
845	JOSEPH MYUTU MWANGI	18/02/1998	944,994/=		
846	NICHOLAS NGANGA	31/05/1998	233,360/=	27,598/=	
847	STANLEY NGANGA MUNGAI	18/06/1998	1,358,764/=		50,000/=
848	PETER KIANGA	JUNE 1998			
849	JEMIMA KIANGA	30/06/1996	1,126,598/=		
850	CHARLES WASUNGU	27/07/1998	265,876/=		
851	LUCY MUTHONI MATU	31/03/1998			
852	NGARI THIGUKU	26/03/1996			
853	MATHEWS MINIRE WAIRUGU				
854	MAURICE APIYO OJOWI	18/02/1998	1,159,967/=	468,444/=	
855	MICHAEL NJOROGE KARIRU	31/05/1995	394,485/=		

856	JOSEPH NGOVI MASAKU	31/12/1997	696,408/=	16,757/=	
857	BONPHAS MAINA KIAMA				
858	DANIEL KISINGU	02/12/1997	353,810/=	32,957/=	
859	PETER MWANGI CHOMA	31/03/1998	595,694/=	111,344/=	50,000/=
860	BERNARD KHAMALA OMITO	31/12/1997	680,957/=		
			15,301,125/=	1,764,835/=	300,000/=
861	PAUL M. MUJA	19/10/1998	684,013/=	113,732/=	100,000/=
862	CLEMENT O. ORINDA	26/04/1995	867,824/=	215,680/=	
863	JOHN W. WAITHIRA	23/04/2003	607,360/=	83,160/=	50,000/=
864	JACK AGUTU	18/06/1998	1,509,864/=	313,116/=	
865	RUTH NJERI WAIGURU	17/08/1999	658,366/=	152,009/=	
866	KULUMBA NZAU	31/10/1994	1,075,314/=		
867	PATRICK N. NZIMBI	30/06/1998	417,345/=	50,483/=	100,000/=
868	CECILIA B. MUNYAMBU	21/06/2000	617,862/=	153,826/=	
869	ISABELLA W. KAMAU	31/03/2003	3,496,887/=	1,307,009/=	100,000/=
870	DEDAN GICHURU	28/02/2006			
871	JOHN M. MUVALI	20/09/1995	535,054/=		
872	HERMAN O. FRANCIS	02/12/1997			
873	GILBERT K. OHOWA	20/09/1995	606,148/=	87,685/=	
874	SOLOMON MUTHEE WACHRA				
875	ENOCK OWINO				
876	MARY W. HINGA	22/04/1998	586,233/=	48,474/=	
877	NJURU GITHAIYA	03/12/1997			
878	MOSES AMBANI	27/07/1998	660,275/=	89,009/=	
879	ANGELINE OWITI	15/05/1998	748,644/=	91,214/=	65,832/=
880	DAVID G. GATHII	15/07/2003	2,493,362/=	751,938/=	
881	HARRY J. AGUTU	19/10/1998	1,041,469/=		
882	FREDRICK MWAMUYE	02/12/1997			
883	GEORGE NYAWANA	10/05/1995	451,306/=		
884	MUSA A. MBITHI	13/02/1998			
885	SAMUEL MANGI	18/02/1998	1,175,269/=		
886	JOHN M. KIILU	02/06/1995			
887	THOMAS K. MUSANGE	17/01/2000	1,856,244/=	628,105/=	100,000/=
888	JOSEPH A. NYAMIRI				
889	STEPHEN M. WERU				

890	JOSEPH K. GITHINJI	25/04/2003	456,842/=	12,572/=	50,000/=
891	PETER M. MUTURI	22/05/1995			
892	JANE W. MUCHAI		470,550/=	49,014/=	
893	VITALIS A. ABOKA				
894	DAVID W. MUCHERU	18/06/1998	399,224/=	65,612/=	50,000/=
			21,415,455/=	4,327,638/=	615,832/=
895	WILSON N. GATHAMBA	21/10/1994			
896	EDWARD MAKILA	16/06/2003	2,971,349/=	845,921/=	
897	SIMON K. KIRAGU	18/02/1998	558,741/=		
898	ANDRE NDUNGU	31/10/1994	551,431/=		
899	ROSE W. BULIMU	31/03/2009			
900	HENRY J. ATIMA	02/12/1997	210,335/=		
901	TITUS KASWAHILI	22/02/2006	3,120,562/=	932,717/=	50,000/=
902	FINNY CHEMTAI	15/05/1998	76,285/=	12,191/=	30,000/=
903	GEORGE KAMARITI	15/05/1995			
904	JOAN A. ONYANGO	31/03/2009			
905	JAMES N. MWANGI	30/09/1998			
906	PHILOMENA N. GATHURU	22/03/1995			
907	MUASYA MUTEMI	19/10/1998	518,890/=	85,072/=	50,000/=
908	MESHACK O. OPIYO	31/03/1998	1,227,765/=	279,000/=	50,000/=
909	BISHMARK N. NJUE	18/06/1998	1,065,252/=		
910	THOMAS N. MUINDI	02/12/1997	121,259/=	7,405/=	
911	PAUL O. OWINO	30/04/2003	421,410/=	130,497/=	50,000/=
912	STEPHEN M. WERU	31/10/1994	560,209/=		
913	CYRUS K. GITONGA	19/10/1998	820,831/=	177,045/=	
914	MICHAEL A. ASUNA	31/03/1998			
915	ABDUL K. MWINYI	31/12/1997			
916	PHILIP K. MWANZIA	30/06/1998	693,287/=	117,036/=	50,000/=
917	JOHN N. NYAMU	31/07/1998	288,840/=		50,000/=
918	SIMON M. KAMAU	26/03/1998			
919	PETER K. MUCHIRA	30/06/1998			
920	CHRISTINE W. KARURU	30/06/1998	736,168/=	83,021/=	50,000/=
921	TIMOTHY H. KAMAU	15/06/1999	154,888/=	46,402/=	
922	MWAURA MUGO	01/03/1998	1,351,089/=		
923	WILSON N. WAINAINA	31/10/1994	561,249/=		

924	SIMON N. KAMIA	15/06/1999	908,621/=	117,316/=	
925	PETR W. SANDUKA	15/07/1999			
926	NORAH MWABI	22/04/1998	360,833/=	24,365/=	
927	KIMWELE KIMANZI	31/10/1994			
928	DOMINIC C. WANYAMA	22/04/1998			
			17,279,294/=	2,857,988/=	380,000/=
929	HUMPHREY R. MBUGUA	09/03/1998	844,375/=	184,660/=	50,000/=
930	JAMES N. MATHEA	03/12/1997	1,806,392/=	381,825/=	50,000/=
931	JOSEPH K. A. KIRUI	15/05/1998	273,305/=	36,760/=	50,000/=
932	JOSEPH O. NYADENGE	01/02/1993			
933	JUDAH K. MANYINDO	JULY 1998			
934	WILSON RUBAI				
935	NZIOKA WAMBUA	18/02/1998	1,119,502/=	213,583/=	50,000/=
936	MOSES N. MATHEA	21/08/1998	282,435/=	92,818/=	50,000/=
937	GEORGE M. MUIVA	01/04/1998	1,374,327/=	149,812/=	50,000/=
938	ALEX N. WAINAINA	30/11/2003	1,427,704/=		
940	JOMO KASIBWA	27/07/1998			
941	JOYCE K. GICHUIYA	27/11/1995			
942	BENARD MATHEA	06/03/1996			
943	STEPHEN CHEGE				
			7,128,040/=	1,059,458/=	300,000/=
			486,558,724.58	79,543,483.52	20,775,144/=

The firm of J. Harrison Kinyanjui & Co. has also filed another schedule in respect of 125 plaintiffs in which they claim for a refund of ksh.9,405,541/=. Again, the defendant has failed to tender evidence to controvert this claim. No good reason has been advanced as to why the claim should not be paid. Consequently the plaintiffs listed in the schedule prepared by the firm of J. Harrison Kinyanjui & Co. Advocates should be paid a

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 NJOROGE 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/=
9.	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	3079	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/=
41	CHRISTINE NDUKU	5404	11/11/1995	980,135/=	265,180/=	100,000/=
42	ALOIS KINGORO GICHANA	1729	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 WANJHIA 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 OGUU	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

whether or not the plaintiffs are entitled to be paid their salaries upto the date of retirement. It is not in dispute that the plaintiffs were on permanent and pensionable terms of employment with the defendant. It is the submission of the plaintiffs that they had legitimate expectation to work for the defendant until the retirement age of 60 years. The plaintiffs are of the view that they should be paid their salaries upto the age of 60 years since their employment was guaranteed. The defendant is of the contrary view that even in a permanent contract, there is no guarantee of employment until retirement. With respect, I agree with the submissions of the defendant. Despite the fact that a letter of employment states that the contract of employment is on permanent and pensionable terms, still an employer may terminate the same and the affected employee may file an action for damages for the unlawful dismissal. It is therefore not correct that the plaintiffs were entitled to payment of salary upto the age of retirement of 60 years. The prayer is therefore declined.

- 17) The fourth issue is closely related to the third issue. It is the question as to whether or not the plaintiffs are entitled to general damages for loss of employment. It is the submission of the

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~~ 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.

19) 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:

- a) 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.
- 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.
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/A FOR KINYANJUI for the Respondent
GACHU for the defendant



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Your Ref: TBA
Our Ref: CC/PE/FEB/23/26

Date: 5th June, 2023

Kaplan & Stratton.
Advocates,
Williamson House,
P.O. Box 40111 - 00100
NAIROBI

Dear Sirs,

RE: NAIROBI HCCC NO. 279 OF 2003
LAWRENCE NDUTTU & OTHERS VS. KENYA BREWERIES LIMITED

The above matter refers.

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 dismiss 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.

We are investigating a complaint lodged against the conduct of an advocate with regards the above matter in which you acted for the Defendant (KENYA BREWERIES LIMITED).

Kindly let us know if the matter was fully settled and if so, how much and proof of payment(s) to the firm of J. Harrison Kinyanjui & Co. Advocates.

Your quick response will be highly appreciated.

This enquiry is made pursuant to section 53(3) of the Advocates Act.

Yours faithfully,

K.K.

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

ACC3

Advocates Complaints Commission
P.O. Box 40111 - 00100
Nairobi, Kenya

www.kaplanstrat.com
Email: KS@kapstrat.com
Tel: 011 250 2000 PIN 2000155413

01 222 206732/3
01 721 699012/3
Int. Code: +254
DZ: No. 19

YOUR REFERENCE:

CC/PE/FEB/23/26

OUR REFERENCE:

PMG/KE/10/172

3/7/23

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

21 SEP 2023

[Handwritten signature]

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) A declaration that the Plaintiffs' early retirement was in breach of the constitution and their terms of employment;
- * b) The Defendant to pay the Plaintiffs one months' salary as damages for loss of employment;
- * c) 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
--	----------------

Plaintiffs represented by J. Harrison Kinyanjui & Company Advocates KES 9,405,541

- 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.

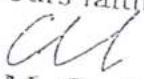
In addition, the firm of HK advocates was paid a sum of KES 1,000,000 being the party and party costs together with interest accrued on the decretal sum up to 31st November 2021. This was confirmed in our letter of 20th December 2021 which also forwarded a consent to mark the suit as settled with regard 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 varied 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


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]

Kaplan

Advocates

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

www.kaplanstratton.com
Email: KS@kapsirat.com
VAT No. 00112190 PIN P000616541S

T: (0) 20 284 1000
(0) 20 2733919
M: (0) 722 205782/3
(0) 733 699012/3
Intl. Code: +254
DZ: No. 19

ACC 4
DATE:

YOUR REFERENCE:

CC/PE/FEB/23/26

OUR REFERENCE:

PMG/KE/10/172

09 April 2024

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.

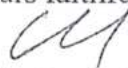
Dear Sir

HCCC No.279 of 2003
Lawrence Nduttu & Others vs Kenya Breweries Limited

We refer to your letter dated 4th April 2024 seeking information in the above matter in which we act for **Kenya Breweries Limited**.

No further sums were paid to J. Harrison Kinyanjui & Co. Advocates on behalf of his clients. Each of the plaintiffs represented by his firm confirmed that receipt of the sums paid would be in "*full and final settlement*" of the above matter and signed discharge vouchers to that effect. This was in consideration of our client not pursuing its appeal as against Mr. Kinyanjui's clients.

Yours faithfully


for **P.M. Gachuhi**
KAPLAN & STRATTON

Cc: Client



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

'ACC 5'

Your Ref: TBA
Our Ref: CC/PE/FEB/23/26

Date: 4th April, 2024

Harrison John Kinyanjui, Advocate

J. Harrison Kinyanjui & Co.
Advocates.

P.O. Box 10024-00100,

NAIROBI

greatharrison@yahoo.com

Advance copy via email

Dear Sir,

RE: **COMPLAINT LODGED AGAINST YOU BY LAWRENCE NDUTTU, JAMES SUIYANGA,
JULIUS MULWA & GEORGE NJOROGE**

The above matter refers.

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 Tribunal.

A complaint has been lodged against you by the above named complainants. Their allegations are as follows:

- a. That they instructed you to represent them in Nairobi HCCC No. 279 of 2003; Lawrence Nduttu & Others vs. Kenya Breweries Limited, which instructions you accepted and proceeded with the matter until when judgement was delivered in favour of all the plaintiffs represented by yourself for a sum of Kshs. 14,756,312/=

- b. That a total sum of Kshs. 14,756,312/= was remitted to you by the Advocates for the Defendants which amount 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. That thereafter, you informed the plaintiffs and specifically the complainants herein that you would lodge an appeal against the decision of the High Court at the Court of appeal.
- d. Further, the complainants allege that you paid them Kshs. 71,106/=; Kshs. 67,769/=; Kshs. 135,539/= and Kshs. 67,775 respectively.
- e. That they further allege that you paid them the sums in (d) above on the basis that you had filed an appeal against the judgment at the Court of appeal and therefore made deductions on account of filing fees for the appellate case.
- f. That the complainants further allege that you failed to file lodge an appeal as promised.
- g. That the appeal that you were 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 the complainants herein.
- h. That the said Appeal was subsequently dismissed vide a ruling delivered on the 21st March, 2023.

From the particulars above, the complainants have identified the following possible acts of professional misconduct on your part arising from the said representation:

- 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.

As part of screening and investigative process, we would like you to submit a written response to the complaint, which should set forth in full an explanation of the facts surrounding the complaint, together with all defences and responses to the claims of possible professional misconduct. This will enable the Commission make a prompt decision.

Kindly note that failure to reply to correspondence from the Commission is by itself professional misconduct.

Please note that the Commission is mandated to subject disputes to In-House Dispute Resolution mechanism as provided under section 53 of the Advocates Act. We urge you to consider this avenue in resolving this complaint.

Kindly take note and let us have your response within 21 days from the date hereof.

Yours faithfully,

KK

KIPNG'ENOH K.

SENIOR STATE COUNSEL,

FOR: COMMISSION SECRETARY

ADVOCATES COMPLAINTS COMMISSION

Cc. Complainants

jawilaservices@gmail.com

ACC 6

J. HARRISON KINYANJUI
& CO. ADVOCATES

J. Harrison Kinyanjui
LLB (NBO) Dip. In Law (KSL)

ST. ELLIS HOUSE
(FORMERLY MITCHELL COTTES HOUSE)
4TH FLOOR, SUITE 416
WABERA STREET
P.O. BOX 10024 GPO, NAIROBI
CELL: 0754-733 659
TEL: 254 2 - 342070
FAX: 254-2-342071
email: greatharrison@yahoo.com

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
NJORGE**

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 Inanyara & Co. Advocates, some by Namada & Co. Advocates, and some by O.P. Ngege & Co. Advocates. Some of the Plaintiffs

When replying to this, Kindly cite our References

- left Gitobu Inyangara & 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 Inyangara 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'wa 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'wa, 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 Serگون.
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 Ongeru. 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 KENBEX 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 Misaadi

Junna. 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.
44. Bitter with us at the pulling of the plugs to deprive the beneficiaries deceased of their dues (retained by the ABSA Bank until the Grants of Letters of Administration as presented in respect of each deceased Plaintiff), the Complainants proceeded to the DCI to report the VERY SAME complaint.
45. On 14th November 2023, 3 Police Officers from the Kiambu DCI called on me and the entire day pored through the documents I have presented above and they also scrutinized the Bank Account details. They directed that I present a Statement of Inquiry to them which I did on the said date which I produce as Annexure 11.

46. It came to my shock and dismay that this Complaint (my 1st and only Allegation of professional misconduct before the Complaints Commission since my Admission as a legal practitioner in the year 1996) was lodged without the Complainants even seeking to terminate instructions with my law firm and CONTINUE to receive legal services at NO COST charged on them by way of an invoice for fees.
47. The foregoing is further buttressed by the shocking revelation that while this Complaint is still before YOU, the very same Complainants stated that they have proceeded to the Senate to lodge a Petition against my law firm and Kaplan & Stratton advocates. I have yet to be served with the said Petition.
48. In sum, the Petitioners have received professional first Class legal representation (basically because of their having suffered penury), and out of which they have failed to appreciate the long standing litigation for close to 20 years cannot be remunerated in the manner they suggest. The Complainants (in my humble rejoinder), out of 121 others are ungrateful, totally inconsiderate and malicious in their Complaint.
49. The said Complaint is frivolous, lacks merit and clearly, I have rendered my professional services beyond my call in this matter. The Complaint ought to be dismissed.

Thank you.

Very Sincerely,



J. HARRISON KINYANJUI & CO. ADVOCATES

Attachments.

Amendment: - 1



REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
AT NAIROBI

(Coram: Rawal, DCJ; Tunoi, Ibrahim, Ojwang & Ndungu, SCJJ)

PETITION NO. 13 OF 2013

-BETWEEN-

1. PETER ODIWUOR NGOGE T/A O.P. NGOGE & ASSOCIATES ADVOCATES
2. MOHAMMED OMAR MUSA & 5378 OTHERS.....APPELLANTS

-AND-

1. J. NAMADA SIMONI T/A NAMADA & CO. ADVOCATES
2. MICHAEL KIMONYI & 596 OTHERS
3. J. HARRISON KINYANJUI T/A J. HARRISON KINYANJUI & CO. ADVOCATES
4. LOURENCE KYALO NDUTTU & 124 OTHERS
5. KAPLAN & STRATTON ADVOCATES
6. KENYA BREWERIES LIMITED.....RESPONDENTS

(Being an Appeal arising from the Ruling and orders of the Court of Appeal at Nairobi (Githinji.

Warsame & Musinga JJA) dated 19th November, 2013 in Civil Application No. NAI 51 of 2013)

RULING

I. INTRODUCTION

[1] This Ruling emanates from two Notices of Preliminary Objection: one filed by the 5th and 6th respondents, and the other by the 1st and 2nd respondents, in objection to the appellants' Petition of Appeal filed on 2nd December, 2013.

[2] The appellants herein filed a petition in the Supreme Court, on 2nd December, 2013 seeking to appeal against the decision of the Court of Appeal.

[3] The ruling of the Court of Appeal which is the subject of this petition emanated from an application for an order that the Notice of Appeal dated 16th December, 2011, filed on the same day, be struck out or be marked as withdrawn. The appellants herein had filed the Notice of Appeal intending 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 Kinyanjui & Co. Advocates, instead of M/s O. P. Ngoge & Associates who were representing all the plaintiffs jointly.

[4] The Court of Appeal in allowing the application for withdrawal observed that this was, "a case where the applicants who filed a notice of appeal and obtained an order for stay of proceedings of their High Court suit had applied for the striking out or withdrawal of the notice of appeal on the ground that they do not intend to appeal against the ruling of the High Court and that the intended appeal is now time barred".

II. BACKGROUND

[5] This matter was first filed in the High Court by the firm of O. P. Ngoge & Associates Advocates in Nairobi H.C.C.C. No. 279 of 2000, on behalf of about 6000 former employees of Kenya Breweries Limited, whose contracts of employment were terminated pursuant to Kenya Breweries' restructuring process.

[6] Due to their large number, and the fact that there existed a community interest in their suit, and for purposes of expediency and practicality, the High Court (*Hon. Waweru, J*) ordered that the matter proceed as a representative suit under Order I, Rule 8 of the Civil Procedure Rules. Four plaintiffs were chosen to prosecute the suit, on behalf of all the others. As at that time, all the plaintiffs were represented by the firm of Ngoge & Associates Advocates, and a notice to all interested parties was issued pursuant to Order I, Rule 8(2) of the Civil Procedure Rules.

[7] Prompted by the notice, some persons who had an interest in the matter, sought to be enjoined as plaintiffs. Some of them appointed M/s J. H. Kinyanjui & Co. Advocates to represent them in the representative suit, while others filed notices to appear in person.

[8] This development aggrieved Mr. Ngoge who was representing all of the "original plaintiffs". He raised an objection against Mr. Kinyanjui's appearance in the matter. The High Court heard the said objection and held thus:

"M/s J.H. Kinyanjui & Co. Advocates are not to file a separate suit because representative action avoids the filing of multiplicity of suits but instead requires one suit to deal with the issue in question for determination..."

I would therefore conclude and state that M/s J. H. Kinyanjui & Co. Advocates are correctly before this Court... I accordingly allow the advocate J. H. Kinyanjui to appear in this matter".

[9] This ruling by the High Court aggrieved Mr. Ngoge and provoked him to file a Notice of Appeal on 16th December, 2011 and a Notice of Motion dated 23rd December, 2011, being an application under Rule 5 (2) (b) of the Court of Appeal Rules, for orders of injunction and stay of execution of the said orders, pending appeal. Rule 5 (2) (b) provides that the Court may:

"in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 75, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just."

[10] The Court of Appeal (*Bosire, Karanja & Maraga, JJA*) considered the grounds applicable to the granting of stay of execution, and held *inter alia*:

"We are satisfied that the issue of the legal representation of the parties herein is a pertinent one and the same ought to be canvassed on appeal. It is regrettable that splitting this matter would defeat the very purpose of a just and expeditious determination of the suit in a manner that will not breed a multiplicity of suits arising from the same cause of action. In our view, however, and given the strong sentiments expressed by counsel, it will not be practically possible for the suit before the High Court to proceed before the issue of representation in this matter is sorted out. So if we do not grant the stay prayed for, there is the risk of the suit in the High Court being concluded without proper representation of some of the parties who have already come on record".

[11] The upshot of the Court's decision was that *the matter was to be stayed until the issue of legal representation would be sorted out*. Mr. Ngoge was further aggrieved by this decision in as far as the Court of Appeal granted only the order for stay of execution and not the other prayers in the Notice of Motion.

[12] Dissatisfied with the decision of the Court of Appeal, Mr. Ngoge filed Supreme Court Petition No. 3 of 2012, *Lawrance Nduttu & 6000 Others v. Kenya Breweries Limited and Another* [2012] eKLR seeking *inter alia*, a declaration that both the High Court and Court of Appeal violated various Articles of the Constitution; and he sought general damages against the respondents. He also sought an Order from this Court allowing his application of 23rd December, 2011 filed in the Court of Appeal, and further directions from this Court to the effect that High Court Civil Suit No. 279 of 2003 should be heard urgently and on a priority basis.

[13] The respondents objected to the appeal by filing two Notices of Preliminary Objection, on grounds *inter alia*, that there was no leave sought and/or granted to appeal to the Supreme Court; and that the Court lacked jurisdiction to entertain the matter.

[14] This Court, in a Ruling delivered on 4th October, 2012 declined to assume jurisdiction and held that:

"In view of the reasons proffered, we decline jurisdiction in respect of this Appeal. The appellants would be well advised to take advantage of the stay granted by the Court of Appeal, which stay they themselves sought. They should seek a quick disposal of the issue of legal representation [as directed] by the Court of Appeal, so that proceedings in the main High Court Case No. 279 of 2003 can commence expeditiously. This is the only logical course of action open to the appellants. We have no doubt in our mind that what all the appellants crave for in this matter is the quick conclusion of the main suit currently stuck at the High Court so that each of them can move on with life".

[15] Meanwhile on 25th January, 2013 the firm of Namada & Co. Advocates filed a notice of change of advocates, so as to assume acting for some of the respondents. Subsequently thereafter, on 28th February, 2013, Namada & Co. Advocates filed a Notice of Motion to strike out the Notice of Appeal that had been filed by O.P. Ngoge & Co. Advocates. This is the application that led to the Court of Appeal's Ruling, striking out the Notice of Appeal dated 16th December, 2011, which forms the substratum of the current Petition before us.

III. THE PETITION

[16] On 2nd December, 2013, the appellants filed their Petition to this Court in which they averred that the learned Judges of the Court of Appeal had contravened the provisions of Articles 10, 19, 20, 21, 25,

27, 28, 42, 43, 47, 48 and 50 of the Constitution, as well as Articles 3, 5, 7, 8, 14 and 22 of the *African Charter on Human and People's Rights*. They cited 22 grounds in support of their Petition, outlining the various ways in which the Judges of Appeal erred in law and fact.

[17] The appellants sought, in summary, the following orders:

(i) that this appeal be allowed, and the Ruling and Orders of the Court of Appeal dated 19th November, 2013 be set aside *ex debito justitiae*;

(ii) that the Deputy Registrar of the High Court be directed to supply the firm of O.P. Ngoge & Associates with certified copies of proceedings and Ruling in Nairobi HCCC No. 279 of 2003, dated 16th December, 2011 to enable him to lodge a Record of Appeal in the Court of Appeal;

(iii) that legal fees be paid to Mr. Ngoge of M/s O.P. Ngoge & Associates for work done;

(iv) that general damages be paid to the appellants, for violation of their fundamental rights, as protected by the provisions of the Constitution; and

(v) that costs be awarded to the appellants.

[18] The respondents filed two notices of preliminary objection. The first one was filed on 17th December, 2013 by the 5th and 6th respondents. Their objection lay on the singular ground that no leave to appeal was applied for, or granted to the appellants by the appellate Court or the Supreme Court. The second one was filed on 13th January, 2014 by the 1st and 2nd respondents, citing three grounds of objection:

(i) that the appellants did not seek and/or obtain leave;

(ii) that the 1st respondent acting in his capacity as advocate for the 2nd respondent, cannot be made party to, and be prosecuted in proceedings to which he was not party in the High Court;

(iii) that the petition does not meet the threshold for a matter to be adjudicated by the Supreme Court.

[19] The matter was mentioned before the Deputy Registrar on the 15th January, 2014 for directions. Mr. Ngoge indicated his intention to move the Court for leave to file further documents, and to request for a full Bench of the Court. The Deputy Registrar indicated that the matter would be heard by a two-Judge Bench on the 23rd January, 2014.

[20] On 23rd January, 2014 the matter was placed before a two-Judge Bench of this Court; but while the other parties were ready to proceed with the prosecution of the preliminary objections on record, Mr. Ngoge asked for more time to file a supplementary Record of Appeal, and that all parties be directed to file written submissions, to which he would respond, before the preliminary objections were heard.

[21] The Court granted Mr. Ngoge's request for additional time, and the preliminary objections were canvassed before the Court on 13th March, 2014.

IV. SUBMISSIONS

(a) *Submissions for the 5th and 6th Respondents*

[22] Learned counsel Mr. Gachuhi, for the 5th and 6th respondents, opposed the petition solely on the ground that leave to appeal was not obtained by the appellant from the Court of Appeal or this Court. He relied on written submissions dated 27th January, 2014 and filed on the same date, and the bundle of authorities filed in Court on the 21st January, 2014.

[23] Counsel submitted that, from the documentation filed in Court, it emerged that the question before the Court of Appeal was unrelated to the *interpretation of the Constitution*, and neither did it raise any *issue of general public importance*. Counsel perceived the motion as just a bare application by the 1st and 2nd respondents, to either strike out or withdraw the notice of appeal.

[24] It was counsel's submission that this Court lacks jurisdiction to entertain the appeal; and he cited Section 15(1) and (2) of the Supreme Court Act, 2011 which requires that leave to appeal be obtained, before a person files an appeal to this Court —*save for matters requiring the interpretation or application of the Constitution*, for which leave is not required.

[25] Counsel cited the decision of this Court in *Lawrence Nduttu & 6000 others v. Kenya Breweries Limited & Another*, Supreme Court Petition 3 of 2012 (paragraph 28):

"The Appeal must originate from a Court of Appeal case where issues of contestation revolved around the interpretation or application of the Constitution. In other words, an appellant must be challenging the interpretation or application of the Constitution which the Court of Appeal used to dispose of the matter in that forum. Such a party must be faulting the Court of Appeal on the basis of such interpretation. Where the case to be appealed from had nothing or little to do with the interpretation or application of the Constitution, it cannot support a further Appeal to the Supreme Court under the provisions of Article 163(4)(a)."

[26] Also cited was the case of *Peter Ngoge v. Honourable Francis Ole Kaparo and 5 Others*, Supreme Court Petition 2 of 2012 (*Peter Ngoge case*) in which the Court held that:

"... the appellate jurisdiction of the Supreme Court is defined clearly enough under Article 163 of the Constitution, and S. 19 of the Supreme Court Act – and that the petitioner's case which has been brought without the leave of the Court of Appeal, falls outside the jurisdiction of this Court. At the preliminary stage, therefore, we dismiss the petition and order that the petitioner shall bear the incidental costs of the other parties."

[27] Learned counsel, Mr. Gachuhi for the 5th and 6th respondents, submitted that no leave to appeal had been granted to the appellant as required under Section 15(1) of the Supreme Court Act, 2011; and he urged that Section 15(2) of the Supreme Court Act, 2011 did not apply, since *the appellant's claim that certain provisions of the Constitution were being violated, had not been raised in the Court of Appeal*. He urged the Court to strike out the petition with costs, for being incompetent.

(b) Submissions for the 1st and 2nd Respondents

[28] Learned counsel, Mr. Namada for the 1st and 2nd respondents, relied on his written submissions filed on 28th January, 2014. He had elaborated two major issues, as the basis for contesting the appeal: first, that leave to appeal was not sought and/or granted; and secondly, that the joinder of J. Namada v/a Namada and Company Advocates as the 1st respondent, is fatal, as it amounts to *enjoining an advocate in an appeal from a decision in respect of which he had not been a party, though he had been counsel for one of the parties*.

[29] Counsel submitted that the central issue in the appellate Court had been, whether the notice of appeal filed should be struck out, or withdrawn. He indicated that the 2nd respondent did not wish to appeal, but only to *proceed with the main suit, pending at the High Court since 2003*. Counsel urged that since an order of stay of proceedings at the High Court was in force, only a *withdrawal or striking out of the appeal*, would allow the High Court case to proceed. Counsel urged that his position was strengthened by the fact that, as of now, *no steps had been taken to lodge an appeal in the Court of Appeal*; and so, the Notice of Motion should not be allowed to stand, well after the 60 days specified in Rule 82 of the Court of Appeal Rules, 2010.

[30] Moreover, learned counsel urged, the appellate Court had already struck out a notice of appeal, after which the applicants reverted to the High Court, seeking a hearing date for their matter.

[31] Learned counsel, for greater effect, urged that the matter before the Court of Appeal was not one dealing with the *interpretation or application of the Constitution*, nor had it been certified as *one of general public importance*—and so it was a matter that, in every respect, did not fall within the Supreme Court's jurisdiction. He urged, besides, that the Court of Appeal could effectively resolve the question with finality. Counsel reinforced his argument with the findings of this Court in the **Lawrence Nduttu** Case, and the **Peter Ngoge** Case.

[32] He submitted that the appeal was based on a matter that was before the Court of Appeal—a matter in which the 1st respondent acted as an advocate for some of the litigants in the matter. It is for this reason, he submitted, that no new action can be founded *against the Advocate in person*, so as to make the advocate a respondent, or party at the Supreme Court, *a material departure from the cause that was litigated at the Court of Appeal*. Learned counsel urged that it was a trite principle, that while advocates are conducting matters lawfully in Court, on behalf of their clients, they are insulated from personal joinder in such proceedings.

[33] It was learned counsel's perception that his denomination as a party was meant to intimidate counsel, hamper their professional actions, and frustrate the cause of justice. Such an endeavour, counsel urged, amounts to abuse of process. He asked this Court to strike out the name of counsel from the proceedings, and to mulct Peter Ngoge (Advocate) in costs personally.

(c) *Submissions for the 3rd and 4th Respondents*

[34] The 3rd and 4th respondents were represented by learned counsel, Mr. Kinyanjui, who supported all the preliminary objections to the petition. Counsel submitted that though he had opted not to file an independent objection, he associated himself fully with the objections pursued by the other respondents; and he prayed that the Petition of Appeal be dismissed with costs.

(d) *Appellants' Response to the Preliminary Objections*

[35] Mr. Ngoge, the 1st appellant and counsel for the 2nd appellant, filed his submissions in response to the preliminary objections on 4th February, 2014 contending that the Supreme Court decisions being relied upon by the respondents (**Lawrence Nduttu**, and **Peter Odiwuor Ngoge v. Francis Ole Kaparo and Five Others**) "are currently under review by the African Commission on Human and People's Rights", as he has contested their validity before that Commission, on the basis that they were delivered by a Bench of two Judges, contrary in his opinion, to the provisions of Article 163(2) of the Constitution. Learned counsel, however, as we would remark, while attributing his contest to the framework of the African Charter on Human and People's Rights, and while averring that the Supreme Court's past Rulings are under review before a supra-national human rights entity, did not address the

structural link between the domestic and the regional arbitral or adjudicatory agencies, such as could bear a hierarchical bond, with its essential operational dynamics, and with the decision-making process of the Kenyan Courts, founded upon the people's sovereignty (Article 1(3) (c) of the Constitution of Kenya, 2010).

[36] Mr. Ngoge submitted that no leave was required for an appeal, since Articles 22 and 258 of the Constitution give every person the right to institute Court proceedings, claiming violation or infringement of a right or fundamental freedom in the Bill of Rights. He urged that under Article 163 (4)(a) of the Constitution, this Court is under an obligation to hear the petition, without any condition regarding the grant of leave. Learned counsel did not, however, demonstrate the manner in which his grievance fell under the rubric "fundamental rights and freedoms," or in which it presented an issue of constitutional interpretation or application falling within the terms of Article 163(4) (a) of the Constitution.

[37] Mr. Ngoge submitted that the respondents' argument that the issues on appeal must also have been issues at the Court of Appeal, and must have revolved around the interpretation or application of the Constitution, for them to be canvassed before this Court in exercise of its jurisdiction under Article 163(4) of the Constitution, was not tenable—for being "unduly narrow", apart from having a "limiting effect on fundamental human rights."

[38] As regards joinder of Mr. Namada Simoni (advocate) as a party, Mr. Ngoge submitted that an advocate is not immune from legal proceedings if, while representing his clients, he violates the fundamental Human Rights of other persons. He contended that Mr. Namada had curtailed the fundamental human rights of the appellants. And he submitted that the law permits any person dissatisfied with the proceedings and Ruling of the Court of Appeal, to apply and have it reviewed, or set aside, by the Supreme Court. He asked this Court to dismiss the preliminary objections with costs, and to grant him leave to lodge a supplementary record of appeal.

V. ISSUES FOR DETERMINATION

[39] The case, as presented by the parties, raises the following issues for determination by this Court:

- (a) whether leave to appeal, as required by Article 163(4)(b) of the Constitution, was necessary;
- (b) whether the matter in issue is one of constitutional interpretation and/or application, hence falling within the jurisdiction of this Court under Article 163(4)(a) of the Constitution;
- (c) what is the implication of joinder of an advocate as a party to a suit in which he is representing a party"
- (d) does this Court have jurisdiction in this matter"

VI. ANALYSIS

(a) *Leave to Appeal: Was it necessary"*

[40] This Court's appellate jurisdiction is provided for in Article 163 (4) of the Constitution thus:

"Appeals shall lie from the Court of Appeal to the Supreme Court—

(a) as of right in any case involving the interpretation or application of this Constitution; and

(b) in any other case in which the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved, subject to clause (5)."

[41] The 5th and 6th respondents objected to the appeal solely on the ground that *leave to appeal* was not sought and/or granted. This was also the ground on which the appeal was contested by the 1st and 2nd respondents.

[42] It is quite apparent that, in their submissions, counsel proceeded on the assumption that, the appellant may have premised his appeal on the argument that it involved a *matter of general public importance*.

[43] It is noteworthy that the appellants have *not indicated under which provision(s) of the law they have sought to move this Court*. Had they indicated this on the face of their pleadings, then the respondents' arguments would have been of focused design, as they would have addressed the specific legal provisions invoked. This Court has held in *Hermanus Phillipus Steyn v. Giovanni Gneccchi-Ruscione*, Supreme Court Application No.4 of 2012, that:

"It is trite law that a Court of law has to be moved under the correct provisions of the law".

[44] The appellants tag their pleading "Petition of Appeal," and indicate that the same is brought under *Rule 32 of the Supreme Court Rules*. This Rule deals with service of appeal, and provides that:

"(1) An appellant shall, within seven days of lodging a notice of appeal, serve copies of the notice of appeal on all persons directly affected by the appeal.

"(2) A person upon whom a notice of appeal is served shall—

(a) within fourteen days of receiving the notice of appeal file a notice of address for service which shall contain that person's contact details including telephone numbers and email address, in the registry and serve the intended appellant with copies of the notice; and

(b) within a further fourteen days serve a copy of the notice of address for service on every other person named in the notice of appeal."

[45] Clearly, this Rule is a *procedural one*. It is not a substantive provision bestowing upon the appellants the *entitlement to move the Court for the orders sought*. A litigant who comes to Court, invokes a specific jurisdiction of that particular Court. It is imperative that he/she indicates the particular provision of the Constitution and/or statute that gives the Court the jurisdiction that he/she invokes. This is a vital foundation of all litigation: *the suitor who seeks the constitutional good of rights-remedy, and considers himself or herself entitled to claim from the people's limited dispute-settlement resources, is under obligation to come in good faith, with a case founded on conviction, and to comply with the law regarding the invocation of jurisdiction.*

[46] Therefore, it was incumbent upon the appellants to indicate in their petition which of the two prongs of this Court's appellate jurisdiction they invoke. Since the petition filed before this Court is titled "Petition of Appeal" we, by virtue of Article 159 of the Constitution, have considered that the failure by the appellants to indicate the provisions of the Constitution relied on, is not, in the circumstances of this case, a fatal omission, because we are aware that it is the *appellate jurisdiction* of the Court that is being invoked. This position, however, is qualified, *insofar as jurisdiction is an integral element in any proceedings*; and thus, the enabling provisions of the law ought to be cited in the pleadings, by the party

moving the Court.

[47] Upon perusal of the petition, there is no indication that the appellants had signalled that their appeal raises a *matter of general public importance*, so as to warrant *grant of leave*, before appealing to this Court. Had such an averment been made, then leave to appeal would have been an imperative condition.

[48] This disposes of the first issue, as to whether or not leave to appeal was necessary. We hold that since the appellants had not pleaded that their appeal involves a matter of general public importance, the preliminary objection made in that regard fails.

(b) Is this a matter of Constitutional Interpretation and/or Application"

[49] Having held that the appellant did not invoke the appellate jurisdiction under Article 163(4)(b) of the Constitution, we have to consider if the matter before us is one "*involving constitutional application and/or application*," such as gives the appellants a right of appeal under Article 163(4)(a) of the Constitution.

[50] Counsel for the 1st and 2nd respondents submitted that it was beyond peradventure, that the question before the Court of Appeal was not one even remotely dealing with the interpretation or application of the Constitution. The question, it was urged, was purely procedural, and resting wholly within the ambit and confines of the mandate of the appellate Court. Counsel submitted that, it was a matter which the Court of Appeal was properly and effectively seized of, and could adjudicate upon with finality.

[51] Counsel cited the decisions of this Court, **Lawrence Nduttu**, and **Peter O. Ngoge v. Hon. Attorney-General & Others**, in support of his argument that no amount of invocation of the Constitution could change the character of the case lodged with the Court of Appeal.

[52] In response, counsel for the appellants submitted that their *fundamental rights* had been breached by the appellate Court, and that, by virtue of Articles 22 and 258 of the Constitution, they required no leave, to ventilate such breaches before the Supreme Court. Counsel contended that the appellants had a right under Article 22 of the Constitution, to institute proceedings at the Supreme Court, claiming that a *right or fundamental freedom in the Bill of rights has been denied, violated, infringed or is threatened*. He submitted that the rights of the appellants having been breached at the Court of appeal itself, he could not then be called upon to revert to that Court, or the High Court which is a lower Court.

[53] The scope of this Court's appellate jurisdiction was considered in the **Lawrance Nduttu** Case in which, coincidentally, the 1st appellant herein, Mr. Ngoge, was counsel on record for the applicants. He raised the same arguments, that he brings up in this matter. We would adopt the holding in the **Nduttu** Case, which we affirm as representing the current state of the law (paragraphs 26-28):

"(26) Mr.Ngoge has urged that whenever a citizen alleges in his pleadings before the Supreme Court that the High Court and Court of Appeal were complicit in facilitating violations of his fundamental Human Rights, the Supreme Court automatically assumes jurisdiction without the necessity of leave in order to uphold the Constitution, human rights and the rule of law. Anything to the Contrary would be unconstitutional and retrogressive. We understand Mr Ngoge to be arguing that a mere allegation of a violation of human rights automatically brings an intended appeal within the ambit of Article 163 (4) (a) of the Constitution hence dispensing with the need for leave under Article 163 (4) (b) of the Constitution.

"(27) With respect, but firm conviction, we disagree with this contention. Such an approach as is urged by counsel if adopted, would completely defeat the true intent of Article 163 (4) (a) of the Constitution. This Article must be seen to be laying down the principle that not all intended appeals lie from the Court of Appeal to the Supreme Court. Only those appeals arising from cases involving the interpretation or application of the Constitution can be entertained by the Supreme Court. The only other instance when an appeal may lie to the Supreme Court is one contemplated under Article 163 (4) (b) of the Constitution. Towards, this end, it is not the mere allegation in pleadings by a party that clothes an appeal with the attributes of constitutional interpretation or application.

"(28) The appeal must originate from a Court of Appeal case where issues of contestation revolved around the interpretation or application of the Constitution. In other words, an appellant must be challenging the interpretation or application of the Constitution which the Court of Appeal used to dispose of the matter in that forum. Such a party must be faulting the Court of Appeal on the basis of such interpretation. Where the case to be appealed from had nothing or little to do with the interpretation or application of the Constitution, it cannot support a further appeal to the Supreme Court under the provisions of Article 163 (4) (a). If an appeal is challenged at a preliminary level on grounds that it does not meet the threshold in Article 163 (4) (a), the Court must determine that challenge before deciding whether to entertain the substantive appeal or not. But the Court need not wait for a preliminary objection before applying the test of admissibility in Article 163 (4) (a). It is the Court's duty as the ultimate custodian of the Constitution to satisfy itself that the intended appeal meets the constitutional threshold" [emphasis supplied].

In arriving at this decision, the Court reaffirmed its earlier decision in the **Peter Ngoge** case.

[54] It is worth noting that these are the same cases that the respondents have cited as authorities in support of their objections, on the issue of jurisdiction. The decision in the **Lawrance Nduttu** case has been mentioned with approval by this Court, in the more recent case, **Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others**, Sup. Court Application No. 5 of 2014, in which the Court stated, (paragraph 69) that:

"The import of the Court's statement in the Ngoge case is that where specific constitutional provisions cannot be identified as having formed the gist of the cause at the Court of Appeal, the very least an appellant should demonstrate is that the Court's reasoning, and the conclusions which led to the determination of the issue, put in context, can properly be said to have taken a trajectory of constitutional interpretation or application".

[55] We agree with counsel for the respondents, since we find no reason not to apply the decisions being thus cited. This matter, we believe, has not taken a trajectory of constitutional interpretation or application. As set out earlier-on, this matter involved the exercise of the appellate Court's discretion under Rule 81 of the Appellate Jurisdiction Rules, to strike out a Notice of Appeal. That issue, clearly, involves no constitutional interpretation and/or application. We are persuaded that the issues raised by the appellants do not meet the constitutional threshold in Article 163(4)(a).

(c) Does the Supreme Court have Jurisdiction in this matter"

[56] This Court has on numerous occasions pronounced itself on the nature of the appellate jurisdiction conferred upon it by the Constitution, which is the only appellate jurisdiction that it may exercise.

[57] The said jurisdiction is enshrined in Article 163(4) of the Constitution, which stipulates that

"Appeals shall lie from the Court of Appeal to the Supreme Court –

(a) as of right in any case involving the interpretation or application of this Constitution; and

(b) in any other case in which the Supreme Court, or the Court of Appeal, certifies that a matter of general public importance is involved, subject to clause (5)."

[58] Section 15 of the Supreme Court Act, 2011 provides that:

"(1) Appeals to the Supreme Court shall be heard only with the leave of the Court.

"(2) Subsection (1) shall only apply to appeals from the Court of Appeal in respect of matters relating to the interpretation or application of the Constitution"

[59] In *Re The Matter of the Interim Independent Electoral Commission*, Supreme Court Constitutional Application 2 of 2011 this Court cited with approval, the decision in *Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited* [1989] KLR 1, that *"jurisdiction is everything. Without it, a Court has no power to make one more step."* It observed that:

"The Lillian 'S' case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution."

[60] Similarly, the Court, in *Samuel Kamau Macharia & Another v. Kenya Commercial Bank Limited & 2 Others*, Supreme Court Application 2 of 2011 remarked (paragraph 68) that:

"A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ... the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings."

[61] It is vital to determine, at this preliminary stage, whether this Court has jurisdiction to entertain the appeal filed. It is clear from Article 163 (4) (b) of the Constitution that, before this Court entertains an appeal from the Court of Appeal, such a matter must have received certification as one that raises an issue of general public importance. However, as stipulated in Article 163 (4)(a) of the Constitution, if an appeal concerns the *interpretation or application of the Constitution*, no certification is required, and the appeal lies to the Supreme Court as of right.

[62] Consequently, it is important for us to determine whether the intended appeal is one that invokes the appellate jurisdiction of this Court as stipulated under Article 163(4)(a), or (b) of the Constitution. Mr. Ngoge urged that the appeal raises constitutional issues, particularly as regards the *rights and fundamental freedoms* of the appellants.

[63] In his response to the preliminary objections raised, Mr. Ngoge cited, albeit at differing moments, Articles 22, 25, 27, 43, 48, 50, 158, 258 of the Constitution, as the provisions contravened, hence giving

rise to the appellants' right to appeal. He contended that it was in view of the alleged constitutional contraventions, that the appellants could appeal as a matter of right under Article 163(4)(a) —and hence leave to appeal was not required

[64] This Court has in the past signalled the need to exercise caution in admitting appeals, as a safeguard for the exercise of their proper jurisdictions by other Courts and tribunals. In the *Peter Ngoge* case, we thus held (paragraphs 29-30):

"The Supreme Court, as the ultimate judicial agency, ought in our opinion, to exercise its powers strictly within the jurisdictional limits prescribed; and it ought to safeguard the autonomous exercise of the respective jurisdictions of the other Courts and tribunals. In the instant case, it will be perverse for this Court to assume a jurisdiction which, by law, is reposed in the Court of Appeal, and which that Court has duly exercised and exhausted."

"In the interpretation of any law touching on the Supreme Court's appellate jurisdiction, the guiding principle is to be that the chain of Courts in the constitutional set-up, running up to the Court of Appeal, have the professional competence, and proper safety designs, to resolve all matters turning on the technical complexity of the law; and only cardinal issues of law or of jurisprudential moment, will deserve the further input of the Supreme Court."

[65] In relation to the proper forum to raise constitutional issues that are integrally linked to the main cause, this Court held in *Erad Supplies & Another v. National Cereals and Produce Board*, Supreme Court Petition 5 of 2012 (paragraph 13A) that:

"In our opinion, a question involving the interpretation or application of the Constitution that is integrally linked to the main cause in a superior Court of first instance, is to be resolved at that forum in the first place, before an appeal can be entertained. Where, before such a Court, parties raise a question of interpretation or application of the Constitution that has only a limited bearing on the merits of the main cause, the Court may decline to determine the secondary claim if in its opinion, this will distract its judicious determination of the main cause; and a collateral cause thus declined, generally falls outside the jurisdiction of the Supreme Court."

[66] We recall also the decision of this Court in *Lawrence Nduttu*, in which we held that only those appeals arising from cases involving the interpretation or application of the Constitution, can be entertained by the Supreme Court under Article 163(4)(a), and "it is not the mere allegation in pleadings by a party that clothes an appeal with the attributes of constitutional interpretation or application." The appeal must have originated from a Court of Appeal matter in which the issues for determination related to the interpretation and application of the Constitution

[67] In the *Peter Ngoge* case, this Court held that, for a matter to be deemed as raising constitutional issues, hence invoking Article 163(4)(a) of the Constitution, the Court needs to satisfy itself that there has not been a transmutation of issues in the intended appeal, from ordinary issues to "weighty issues of constitutional interpretation". The Court thus remarked (paragraph 26):

"In the petitioner's whole argument, we think, he has not rationalised the transmutation of the issue from an ordinary subject of leave-to-appeal, to a meritorious theme involving the interpretation or application of the Constitution – such that it becomes, as of right, a matter falling within the appellate jurisdiction of the Supreme Court. On our own, we have also not appreciated how an interlocutory matter as to the representation of parties, could have prevailed over the petitioner's main cause in the High Court, and assumed the vitality now being ascribed

to it.”

[68] Against such a background of analysis of jurisprudential dimensions, it is apparent to us that the cause does not come within this Court’s appellate jurisdiction: especially as Article 163 (4) of the Constitution contemplates that the issues canvassed on appeal before this Court, will be the same as those that were canvassed at the Court of Appeal— but not *fresh issues* that have not arisen before the Courts below. We have made it clear that if any constitutional questions arise in the course of hearing the matter in the other Courts, they should be raised in those Courts in the first place, before they are referred to this Court on appeal. This principle entails that contested issues properly lodged before lower Courts, under recognized claim-heads, ought not to take on, improperly, new apparel, solely so as to fit them within the category of appealable matters before the Supreme Court.

(c) Joinder of Advocates to their suitor-clients: What Legal Implications”

[69] Mr. Ngoge has enjoined himself, learned counsel Mr. Namada, and learned counsel Mr. Kinyanjui, as parties in this matter, *by virtue of the fact that they were counsel for the parties in the Court of Appeal*: he claims there were breaches of his and his clients’ constitutional rights and fundamental freedoms, and that those in breach included those learned advocates.

[70] Article 163(4) of the Constitution, which provides for the appellate jurisdiction of this Court as regards matters from the Court of Appeal, by no means contemplates “appeals” in the form of *fresh matters*, with *new parties that were not parties at the appellate Court*.

[71] This Court has pronounced itself on what an appeal entails, in the *Samuel Kamau Macharia* case, in which we stated (paragraph 50) as follows:

“(b) An appeal typically lies from a lower to a higher Court, and entails a reconsideration of a decision by the higher Court, with a view to reversing it either in part or in toto, or affirming it, either in part or in toto.

“(c) Depending on the structure of the Courts, appeals can lie in succession from the lowest Court to the highest.

“(d) An appeal against a decision of a lower Court is always commenced by a party who is aggrieved by that decision”.

[72] *Black’s Law Dictionary* 9th Ed. (2009), defines the term “appeal” as “[t]o seek review (from a lower court’s decision) by a higher court.”

[73] It follows, therefore, that a person appeals against a decision of a *lower Court*, and to a *higher Court*. This implies that the matter originating from the lower Court, is precisely the matter that the higher Court is called upon to re-examine— but not a *fresh matter*. It is clear to us that any substantial change to the configuration of the parties at the time of appeal, in effect, alters the design of the cause, thus creating a *fresh matter*, as opposed to an *appeal*. Such a matter, we hold, cannot be regarded as an *appeal*, and is not to be entertained by the Court, to which the purported appeal is preferred. Only in exceptional circumstances, will persons not parties at the appellate Court be parties on an appeal before this Court, and only with the special leave of this Court.

[74] In this matter, not only are *new parties* introduced, but these parties are advocates who represented their clients, the parties, at the Court of Appeal. It is clear to us that, when an advocate

represents his or her client in any matter, his or her position rests on a purely professional platform, and such advocate should not, as a player of a professional role governed by law, be enjoined as litigant, whether in that very matter, or on appeal, in respect of any acts or omissions in the conduct of the cause. The advocate, on the question of such joinder, will benefit from a cover of privilege, even though he or she remains amenable to suit for any professional negligence or malpractice, in a personal capacity, and in separate action, in the relevant trial Court.

[75] In the current matter, the claims by the appellants, of infringement of their constitutional rights and fundamental freedoms by the respondents (their advocates included), have raised no issues of professional negligence or malpractice, and even if they did, this would not be the proper forum for the prosecution of the cause.

[76] It is inapt, in our opinion, for counsel to be enjoined as parties in a case in which they are representing parties, or on appeal in such a matter. Action against an advocate in such a manner, in our perception, would not be tenable in law, nor would it be in the public interest, as it cannot be reconciled with the terms of the Advocates Act (Cap. 16, Laws of Kenya), quite apart from the likelihood that it would tarnish the image of the advocates, and bring disrespect upon the legal profession generally. By Section 55 of the Advocates Act,

"Every advocate and every person otherwise entitled to act as an advocate shall be an officer of the Court and shall be subject to the jurisdiction thereof ..."

Learned counsel, Mr. Ngoge's attempt to transform advocates into litigants, in our opinion, would be harmful not only to the practising Bar, but also to the Courts, before whom such advocates hold their positions as officers.

[77] The status of an advocate as an officer of the Court, is to be accorded high esteem, in view of the practising legal fraternity's special contribution to the course of the administration of justice, by facilitating the processes of dispute settlement in the Courts.

[78] The proper forum for the resolution of the dispute between the parties is the High Court, which should in principle, set it for hearing and disposal on the basis of priority: in view of the fact that it has been pending for many years, and has on this account occasioned prejudice to the parties who had moved that Court.

[79] We have been moved by the complexity of this matter, and by the concern that the innocent parties who had come before the Court have found no solution, for so long. We believe that the processes of the law are not designed merely to settle juristic equations, but to serve as a conveyance-setting for the satisfaction of claims of justice. In that spirit, we advise that counsel involved in this matter should engage one another in good faith, make reasonable concessions, and amicably settle the issue of representation, with a commitment to have the same timeously recorded by the Court, so that the hearing and determination of the case may proceed on the basis of priority.

VII. CONCLUSION

[80] Courts of law are the embodiment of the people's legitimate expectation of access to justice. Parties come to Courts expecting an expeditious and impartial determination of their disputes—such resolution being vital in relation to their rights and obligations. Kenya's Constitution of 2010 embodies access to justice in its Bill of Rights; Article 48 provides:

"The state shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice."

[81] The substantive matter in this suit was filed in the High Court in the year 2000. This was an employment dispute between an employer and its employees. The employees are ordinary citizens in pursuit of their livelihood: they sought what they believe to be their hard-earned income. However, their legitimate expectation of a timely determination turned into a nightmare. It is unfortunate that their cause has degenerated into a legal tussle among advocates.

[82] The judiciary is the ultimate custodian of the Constitution, in which the Bill of Rights is enshrined. This Court, as the apex Court is bound to ensure that the people's right to access to justice is not curtailed. The Supreme Court Act, 2011 in Section 3 (3) provides that—

"The object of this Act is to make further provision with respect to the operation of the Supreme Court as a court of final judicial authority to, among other things—

...

(d) improve access to justice."

[83] The jurisdiction to hear and determine the primary cause in this matter rests with the High Court. We are apprehensive however, that the case may be further protracted, unless counsel commit themselves to the principle of working together for the good of the parties, and in fulfilment of the terms of the Constitution. We do urge all counsel in this matter to work in co-operation, to the intent that the object of the Constitution, in regard to dispute settlement, be fulfilled.

[84] On 17th July, 2014, while this Ruling was pending, this Court invoked Article 159(2) (c) of the Constitution and urged the parties to consider mediation as a last recourse. Article 159(2)(c) provides as follows:

"In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

...

(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3). . . ."

All counsel involved in this matter were present and agreed to the proposal; and on that basis, the Court referred this matter to the Law Society of Kenya (LSK) for mediation, in these terms:

"So we direct that the matter goes to the Law Society for mediation and the Law Society files a report to us on or before 27th August, 2014 . . . and this matter shall be mentioned before this Court on 27th of August at 10.00 a.m."

[85] As a follow-up, on 22nd July, 2014, Rawal, DCJ wrote to the LSK, through its chairman Mr. Mutua, informing him of the Court's proposal for mediation, and requesting the Society to take charge of the matter.

[86] On 21st August, 2014, by letter dated 20th August, 2014, the Society informed the Court of the

progress in the mediation process; and on 19th August, 2014 a meeting was convened, with all counsel present, or represented.

[87] Subsequently, as earlier directed, the matter was mentioned before the *Mutunga, CJ & P*, and *Ibrahim, SCJ* on the 27th of August, 2014. The Court was informed that on the strength of LSK's letter of 20th August, 2014, the mediation process was on course. Parties sought more time to conclude the process, and the Court granted a one-month extension.

[88] Before the lapse of the one-month extension, on 2nd September, 2014 the Court received two letters from the firm of M/s. O.P. Ngoge & Associates, dated 28th August, 2014 and 2nd September, 2014 respectively. In the first letter, Mr. Ngoge expressed his protest and disagreement with the contents of the LSK letter of 20th August, 2014. In particular he stated that at the meeting with the LSK, he had firmly signalled that he would not share the pleadings which he drew with other advocates unless his fee was first paid in full. In the second letter, Mr. Ngoge notified the Deputy Registrar of his intention to withdraw from the mediation process.

[89] The matter was subsequently mentioned on 25th September, 2014, before *Ibrahim, SCJ*. The Court was informed of the deadlock in the mediation process. Mr. Ngoge informed the Court of his withdrawal from the mediation process. After hearing all counsel present *Ibrahim, SCJ* pronounced the mediation process aborted, and directed that the Court would formally deliver its Ruling.

VIII. ORDERS

[90] We will make the following orders:

(a) The preliminary objection by the 5th and 6th respondents filed on the 17th December 2013, and that by the 1st and 2nd respondents, filed on 13th January, 2014 are upheld.

(b) Supreme Court Petition No. 13 of 2013 is dismissed.

(c) The High Court shall schedule the substantive matter pending before it, for hearing on the basis of priority.

(d) The appellants shall bear the cost of this petition.

DATED and DELIVERED at NAIROBI THIS 25th DAY of November 2014

.....

K.H. RAWAL

P.K. TUNOI

DEPUTY CHIEF JUSTICE &

JUSTICE OF THE SUPREME

VICE-PRESIDENT OF THE

COURT

SUPREME COURT

.....

.....

M.K. IBRAHIM

J.B. OJWANG

THE SECRETARY
ADVOCATES COMPLAINS COMMISSION
CO-OPERATIVE BANK HOUSE 20TH FLOOR
HAILE SELASSIE AVENUE
NAIROBI.

ACC 7
30TH APRIL 2024

DEAR SIR/MADAM

**RE: RESPONSE TO A LETTER FROM HARRISON KINYANJUI & CO -
ADVOCATES**

We refer to the above issue case no. HCC 279 / 2023, we were caught by a very big surprise that the above mentioned advocates could lie to a such high office of the government. We will not dwell on the genesis of the case or the history of the same but we will only deal with the parts of the judgement and some few issues that have arised, because that is the main reason we came to your office for assistance.

We would also like you to note that at no any given time we have we ever said we were the only sole plaintiffs in the Nairobi HCC NO. 279 / 2003

2. THAT on 24th January, 2018 Hon Justice Serگون delivered the judgment in favor of Lawrence Nduku and 6,000 other people and ordered as follows

(a) 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 plaintiff's damages for loss of employment of sum equivalent to one month.

(c) The defendant is ordered to refund to the plaintiffs a sum of Ksh 30, 180, 685/= being the amount withheld of the schedule filed by the firms of advocates of Namada & Co.

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

(d) The plaintiffs to be payed by the defendant coursed of the suit

1. Ksh.20, 775,144

2. Ksh.9, 505,541

TOTAL Ksh .30, 180,685

(d) The plaintiffs to be paid by the defendant cost of the suit

(e) The defendant to pay interest on (b) and (d) above at court rates from the date of judgement until the date of full payment Note: the interest was payed up to 31st November and we received the cheques on 21th January 2022 totally disregarding orders of the court as it was very clear until the date of full payments

In part A and B we agreed with the law firm of Harrison Kinyanjui & CO. advocate that we will appeal, unfortunately this did not happen but instead betrayal carried the day. We are organizing with of the rest members who are under 125 to swear an affidavit to file a complaint with LSK on

this issue since the discharge voucher were purely for refundable deposit as per the replying affidavit of Kenya breweries first respondent

James Musyoki second respondent

Jimmy Mwakisha third respondent

Dated 27th November 2003 under a private prosecution No 5 of 2003.

For the law firm to claim that we didn't agree on the issue of appeal, it's unfortunate that he lied to old men and women who some of them are living below the poverty line and desperate in life they trusted him with all their minds and hearts and had faith in him only for him to turn against them, yes its true nobody was forced to sign the discharge vouchers as he argues in paragraph 11, 12, 13, and 14 .but he convinced us and out of the confidence we had in him we all signed the discharge vouchers ,in front of his secretary(witness of what he was saying) in his office encouraging all of us to sign waiting for the appeal . We will demonstrate this through an email we sent to him on Saturday 9th December 2023 at 06:36 AM- GMT -8, One may fail to understand how a professional law firm could have signed **consent** letter to mark the matters as settled knowing very well that the judgement had three parts to be executed.

It is not true as indicated in paragraph 39 that Mesaidi Juma was extorted sums of money by anybody and the beneficiaries are ready to deny the same either in writing or in person if the situation demands.

It is also sad to run from paragraph 42 the lawyer is complaining of some people going to his office to see him when he is aware he is the one causing them to go to his office after giving them false hopes of appeal that never existed in any court. As per the letter from Kaplan Stratton Advocates dated 20th September 2023 to the commission secretary and therefore for him to say that he is willing to tax advocate clients bill it is totally regrettable. We would also like him to produce any letter or any agreement between us and him to prof that we were satisfied with the whole decision of the court as per the latter from Kaplan Stratton dated 20th September 2023

Lastly we disown the discharge voucher in total as we have realized it was full of misleading information from our lawyer as we have learned from different senior counsel from the commission it is on this ground that we feel that the two law firms failed to behave with integrity and behaving in a way to diminish public trust in the legal profession. we are consulting with our members to file a case with the LSK against the two law firms as they have done exactly what we usually see their leaders condemning the government, public service and society in general for injustice , nepotism, evil.doings and lastly disobeying court orders yet their members are also doing the same. On the issue of not having paid him we will produce the receipts if he needs them. On the issue of the appeal he deducted the money from the payments which we are ready to pay for the same calculations to be repeated to prove our case

PRESENTED

LOURENCE K. NDUTTU

GEORGE N. NJIGU

JAMES S. SUIYANKA

10/11/2023
St. Ellis House
4th floor
at 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/-

Totalling 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 Ndutu 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 Serگون 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 Ndutu) the import thereof.

Kenya Law Society
P.O. Box 1000
Nairobi
Kenya
Tel: +254 20 222 2222
Fax: +254 20 222 2222
Email: info@kls.org.ke
Website: www.kls.org.ke

Kenya Law Society
P.O. Box 1000
Nairobi
Kenya
Tel: +254 20 222 2222
Fax: +254 20 222 2222
Email: info@kls.org.ke
Website: www.kls.org.ke

PNK/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 Nduttu & 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. P.
O. Fowler (Consultant)

C. P.
itha

G. P.
ru

P. Gachuhi, R. Mb
ura, N. Manga, R.

abk, E. Kin
C. Eryang

C.
g'an

do, J. Muthui

Kenya Law Society
P.O. Box 1000
Nairobi
Kenya

THE SENATE
COMMISSION ON INVESTIGATIONS
23 MAR 2026
RECEIVED COPY

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.

ABSA BANK KENYA PLC

REQUEST FOR RTGS TRANSFER

Kindly make the following transfer on my/our behalf.

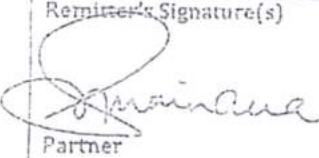

Date: 21/01/2022

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

NO. T

ACC 8

DISCHARGE VOUCHER

I, LAWRENCE K. NDUTTU, holder of ID no. [1454305] of P. O. Box [199-00100] do HEREBY ACKNOWLEDGE RECEIPT of payment of the sum of Kenya Shillings [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 30 day of April 2018

Signature ... [Signature]

Passport/I.D Number 1454305

COY NO. 542

Mobile Number 0721972881

WITNESS

Signature

Name:

Address

PROTAS ...
AD ...
[Signature]

204

DISCHARGE VOUCHER

I, GEORGE NDOBOGE NJIYA, holder of ID no. [10367936] of P. O. Box [45 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 Ndutu 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 10367936
0041917

Mobile Number 0721-366226/0737123775

WITNESS

Signature

Name:

Address

N^o 28

DISCHARGE VOUCHER

I, Julius M. Ndutu, holder of ID no. 3363367 of P. O. Box do HEREBY ACKNOWLEDGE RECEIPT of payment of the sum of Kenya Shillings One hundred thousand only [(Kshs. 100000)] 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 Ndutu 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 30 day of 04 2018

Signature [Signature]

Passport/ID Number 3363367

COY NO. 4557

Mobile Number 0724404002

WITNESS

Signature

Name:

Address

[Signature]

DISCHARGE VOUCHER

N-5

I, James Sanyalal Sanyalal, holder of ID no. [6849078] of P. O. Box [262 Kaven] 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 Ndutu 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 James Sanyalal Sanyalal

Passport/I.D Number 6849078
0041740

Mobile Number 0791 181132

WITNESS

Signature

Name

Address



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

ACC 9

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. Seron 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. Sergon 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. Sergon 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,

XX

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