



**REPUBLIC OF KENYA**

**AT THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**(Coram: A. C. Mrima, J.)**

**PETITION NO. 494 OF 2019**

ABDIKADIR MOHAMED.....1<sup>ST</sup> PETITIONER  
CAROLINE KAJUJU.....2<sup>ND</sup> PETITIONER  
NANCY SIMIYU.....3<sup>RD</sup> PETITIONER  
MOSES NZOMO.....4<sup>TH</sup> PETITIONER  
MARTIN JAGONGO.....5<sup>TH</sup> PETITIONER  
MOHAMED BIRIK.....6<sup>TH</sup> PETITIONER  
FRANCIS JACKSON.....7<sup>TH</sup> PETITIONER  
STANFORD MWANGI.....8<sup>TH</sup> PETITIONER  
LINDAMARINE OSUNDWA.....9<sup>TH</sup> PETITIONER  
WAIRIMU RWENJI.....10<sup>TH</sup> PETITIONER

**VERSUS**

SANGO MAEWA.....1<sup>ST</sup> RESPONDENT  
MILICENT OWINO.....2<sup>ND</sup> RESPONDENT  
LINET MURUGI.....3<sup>RD</sup> RESPONDENT

*(All respondents being sued in their representative*

*capacity of the executive committee members of Kenya Judicial Staff Association- KJSA)*

**AND**

OSCAR SOI.....1<sup>ST</sup> INTERESTED PARTY  
THE REGISTRAR OF SOCIETIES.....2<sup>ND</sup> INTERESTED PARTY

**JUDGMENT**

**Introduction:**

1. Kenya Judicial Staff Association (hereinafter referred to as 'KJSA') is a Judiciary staff welfare association. It is registered under the Societies Act, Cap. 108 of the Laws of Kenya.
2. KJSA is anchored on the values of independence, professionalism, integrity, democracy, accountability, equity and equality.
3. The Petitioners are members of KJSA who variously challenge the manner in which the affairs of KJSA are conducted by the Respondents and the entire Executive Council.

**The Petition:**

4. The Petitioners filed an evenly dated Petition on 11<sup>th</sup> December, 2019. Contemporaneously with the filing of the Petition, the Petitioners filed a Notice of Motion evenly dated as well. The Notice of Motion sought for several orders against the Respondents including an injunction restraining the Respondents from implementing new election rules in the elections scheduled on 21<sup>st</sup> December, 2019. The Petitioners also sought, *inter alia*, an order on the ineligibility of the Respondents to vie for any office in the said elections.
5. On 18<sup>th</sup> December, 2019, the Petitioners filed another Notion of Motion. It is evenly dated. The application sought to stop the elections scheduled for 21<sup>st</sup> December, 2019.
6. The two applications were heard together on 19<sup>th</sup> December, 2019. In a ruling rendered on the same day, the Court (*Korir, J.*) stayed the elections. The Court also gave directions towards an expeditious hearing of the Petition.
7. On 23<sup>rd</sup> December, 2019, the Petitioners filed, with the leave of the Court, an Amended Petition dated the same day. One of the amendments made were the enjoyment of the Registrar of Societies as the 2<sup>nd</sup> Interested Party.
8. In the main, the amended Petition sought the following prayers: -
  1. *An Order to Declaration do issue against the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are ineligible to contest in the forthcoming election for another term in office, as he has already served two consecutive terms as prescribed by the KJSA Constitution.*
  2. *A Declaration do issue that the rules of election issued vide a notice signed by the 2<sup>nd</sup> Respondent providing for new election rules and dated 26<sup>th</sup> November 2019 and the subsequent rules attached to the notice circulated on 16<sup>th</sup> December, 2019 are illegal and is therefore a nullity for none compliance with the provisions of the Societies Act as well as the Constitution of the Association.*
  3. *This Honourable Court be please to issue a declaration that a member's voluntary withdrawal shall take effect upon receipt by NEC of the member's written notification of withdrawal and that the same shall not be subject to approval by NEC.*
  4. *This Honourable Court be pleased to issue a declaration that the Respondents are liable in criminal proceedings for violation of mandatory sections of the Societies Act, particularly:*
    - i. *Making and amending Rules without the mandatory prior notice to the Registrar of Societies*
    - ii. *Failing to maintain the register of members in the manner prescribed*
    - iii. *Purporting to amend the constitution without prior notice made to and received by the Registrar of Societies*
    - iv. *Impeding members from inspecting the books of account*
    - v. *Failing to invite ALL members of the association and preventing some from participating in the AGM held on 1/12/2018*
  5. *The Honourable Court do find that the Respondent individually and collectively violated the rights of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> Petitioner's rights by using hoodlums to deny them access to the AGM held on 1/12/2018 and a declaration do issue to that effect.*
  6. *The Honourable Court be pleased to assess and award exemplary and aggravated damages to the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> Petitioners for the violation of their right to freedom of association and right to equality and freedom from discrimination by denying them access to the AGM held on 1/12/2018.*
  7. *Costs of this suit.*
  8. *Any other relief that this Honourable Court may deem fit and just.*
9. The Petition is supported by two affidavits. They were respectively sworn by *Abdikadir Mohamed* and *Wairimu Rueni*, the 1<sup>st</sup> and 10<sup>th</sup> Petitioners, on 11<sup>th</sup> December, 2019.
10. The Petitioners further filed written submissions dated 23<sup>rd</sup> December, 2019 on the very day.

11. It is the Petitioners' prayer that the Petition be allowed as prayed.
12. The 1<sup>st</sup> Interested Party, *Oscar Soi*, supports the Petition. He swore a Replying Affidavit on 18<sup>th</sup> December, 2019 which was filed on 19<sup>th</sup> December, 2019. He is the Organizing Secretary of KJSA.
13. On 21<sup>st</sup> October, 2020, the 1<sup>st</sup> Interested Party applied to be, and was so discharged, by an order of this Court, from further participating in the matter.

**The Response:**

14. The Petition is vehemently opposed by the Respondents.
15. The Respondents filed a Notice of Preliminary Objection dated 18<sup>th</sup> December, 2019. It challenged the propriety of the Petition. They also filed a Replying Affidavit. The affidavit is on behalf of all the Respondents. It is sworn by *Linet Murugi*, the 3<sup>rd</sup> Respondent, on 18<sup>th</sup> December, 2019.
16. The Respondents endeavoured to demonstrate how the affairs of KJSA are well managed and vouched for the dismissal of the Petition.
17. The Respondents filed written submissions dated 21<sup>st</sup> September, 2020.
18. The 2<sup>nd</sup> Interested Party did not take part in the matter.

**Issues for Determination:**

19. Having carefully considered the material presented before Court by the parties including the submissions and the decisions referred to, I discern the following areas of discussion: -

- (a) *Whether the Petition attain the threshold of a constitutional Petition;*
- (b) *Whether the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are eligible to vie in the next KJSA elections;*
- (c) *Whether the Election Rules issued vide a notice dated 26<sup>th</sup> November 2019 are valid Election Rules of KJSA;*
- (d) *Whether voluntary withdrawal of members of KJSA is subject to the approval of the National Executive Committee;*
- (e) *Whether the rights of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> Petitioners were violated by the Respondents by locking the said Petitioners out of the KJSA Annual General Meeting held on 1<sup>st</sup> December, 2018;*
- (f) *Whether the Respondents are criminally liable for violation of mandatory provisions of the Societies Act;*
- (g) *Remedies.*

20. I will deal with the issues sequentially.

**(a) Whether the Petition attain the threshold of a Constitutional Petition:**

21. The Respondents' objection to the propriety of the Petition is two-pronged. *First*, it is argued that the Petition is incurably defective for misjoinder and non-joinder. *Second*, it is the Respondents' contention that the Petition falls short of a proper constitutional Petition.

22. On the first limb of the objection, the Respondents posit that KJSA has eleven officials. They are the three Respondents together with *Millicent Owino* (Secretary General), *Gideon Mulwa* (Deputy Secretary General), *Micah Miruka* (Assistant Treasurer), *Oscar James Soi* (Organising Secretary), *Lazaro Mulili* (Assistant Organising Secretary), *Charles Kerage* (Trustee), *Arnold Mutisya* (Trustee) and *James Munga* (Trustee).

23. To the Respondents' utter surprise and shock, and without assigning any reasons, the Petitioners only cherry picked and filed a suit against three officials of KJSA Executive Committee and joined another member as an Interested Party.

24. It is submitted that misjoinder and non-joinder of the parties is an irregularity which goes into the root of the Petition. To that extent, the Petition is rendered incurably defective and bad in law.

25. The Respondents submit on the second limb of the objection that the Petition does not set out the precise articles, clauses and/or paragraphs of the Constitution allegedly violated and the manner in which they have been violated. The decisions in *Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR*, *Anarita Karimi Njeru vs. Attorney General (1979) KLR 154*, *Stanley Njindo Matiba vs. Attorney General (1990) KLR 264*, *Meme vs. Republic & Another (2004) 1 KLR 637* and *Cyprian Kubai vs. Stanley Kanyonga Mwenda, Nairobi High Court Misc. Application No. 612 of 2002* are referred to in support of the submission.

26. The Petitioners did not address any of the limbs of the objection.

27. This Court will, nevertheless, address the objection. I will begin with the issue of misjoinder and non-joinder of parties.

28. *Article 159(2)(d)* of the Constitution commands that while exercising judicial authority, Courts and Tribunals shall render justice without undue regard to procedural technicalities.

29. *Rule 5(b)* of the *Constitution of Kenya (Practice of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* (commonly referred to as '**the Mutunga Rules**') further provides that: -

*A Petition shall not be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every proceeding deal with the matter in dispute.*

30. In this case, the three Respondents are sued in a representative capacity. According to the title of the Petition, they represent the Executive Committee Members of KJSA. As a result, the argument that only three officials were cherry picked out of the eleven cannot hold.

31. Further, according to Rule 5 above, a Petition cannot be defeated on grounds of misjoinder and non-joinder. The Court is given wide powers to deal with such issues including striking out and adding new parties. In this matter, given that the whole Executive Committee of KJSA has been sued through the three Respondents, I find that there was necessarily no need of adding the other members of the Executive Committee as Respondents.

32. Without compromising the essence of rules of procedure, a Court ought to use such rules so as to attain the dictates of the Constitution and the law. Indeed, it is a constitutional and legal imperative that Courts ought to endeavour to determine the real issues in dispute in matters before them. That is rendering substantive justice. In the words of Mativo, J in *D W T v. B N T & 3 others [2018] eKLR*: -

*51. These rules are in accord with the requirements of the Constitution that in exercising judicial authority, the Court should seek to do substantive justice, hence the provisions of Article 159 (2)(d) of the Constitution which provide that "justice shall be administered without undue regard to procedural technicalities." In the circumstances, I find that the objection premised on the alleged misjoinder of Parties fails.*

33. Having said so, I will now deal with the second limb of the objection.

34. Due to the unique nature of Constitutional Petitions, Courts, since the pre-2010 constitutional era, have variously emphasized the need for clarity of pleadings. I echo the position. The Mutunga Rules also provide for the contents of Petitions. Rule 10 thereof provides seven key contents of a Petition as follows: -

*Form of petition.*

*10. (1) An application under rule 4 shall be made by way of a petition as set out in Form A in the Schedule with such alterations as may be necessary.*

*(2) The petition shall disclose the following—*

*(a) the petitioner's name and address;*

*(b) the facts relied upon;*

*(c) the constitutional provision violated;*

*(d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;*

*(e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;*

*(f) the petition shall be signed by the petitioner or the advocate of the petitioner; and*

*(g) the relief sought by the petitioner.*

35. Rule 10(3) and (4) of the Mutunga Rules also have a bearing on the form of petitions. They provide as follows: -

*(3) Subject to rules 9 and 10, the Court may accept an oral application, a letter or any other informal documentation which discloses denial, violation, infringement or threat to a right or fundamental freedom.*

*(4) An oral application entertained under sub rule (3) shall be reduced into writing by the Court.*

36. Rules 9 and 10 are on the place of filing and the Notice of institution of the Petition respectively.

37. The Supreme Court in *Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others [2014] eKLR* had the following on Constitutional Petitions: -

*Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru vs. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.*

38. I have perused the Amended Petition. It is titled as under: -

*In the matter of Contravention or threatened contravention of Rights and Fundamental Freedoms under Articles 27, 29, 35 and 36 of the constitution of Kenya 2010.*

*and*

*In the matter of application and enforcement of the Bill of Rights under Articles 10, 21, 22, 23 and 24 of the Constitution of Kenya, 2010 and*

*In the matter of the Constitution of Kenya (Protection and Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Rules 3(8) and 4(1).*

39. A holistic reading of the Petition unveils that the dispute centres on the Petitioners' right to access information, freedom of association, freedom and security of the Petitioners and equality and freedom from discrimination. These are some of the rights and fundamental freedoms in the Bill of Rights in the Constitution of Kenya.

40. The Petitioners have, as well, pleaded the manner in which said rights and fundamental freedoms are allegedly contravened or threatened with contravention. There is, therefore, no doubt that the Petition, as drafted and presented to Court, fully complies with Rule 10(1) and (2) of the Mutunga Rules as well as the requirements in *Communications Commission case* (supra).

41. It must, however, be understood that the manner in which a constitutional Petition is drafted and presented to Court is different from proof of its contents. Production and proof of evidence in support of the averments in a constitutional Petition remain a complete different area and is governed by the relevant constitutional provisions and laws.

42. I now find and hold, which I hereby do, that the submission that the Amended Petition is devoid of attaining the threshold required for constitutional Petitions cannot be maintained. The same is for rejection.

43. In the end, I find that that the Petition before Court is not defective for misjoinder or non-joinder and that it attains the requisite threshold of a constitutional Petition.

44. The first issue is, hence, answered in the affirmative.

**(b) Whether the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are eligible to vie in the next KJSA elections:**

45. It is the Petitioners' case that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are not eligible to contest in any election of KJSA.

46. Both the Petitioners and the Respondents annexed versions of the constitution of KJSA in their pleadings. The Petitioners assert that the version they presented to Court is the right and genuine one. They urge this Court to instead use the same in its determination of this matter. They fault the version presented by the Respondents as grossly mutilated to favour a pre-desired end.

47. The Petitioners take issue with the minutes of the Annual General Meeting alleged conducted on 1<sup>st</sup> December, 2018. They allege that the minutes are doctored. They posit that going by the contents of the minutes then any resultant change to the original constitution of KJSA could not be what the Respondents presented to Court.

48. It is the Petitioners' further contention that even if it is taken that the minutes were generated from the Annual General Meeting, still the alleged amendments were not presented to the Registrar of Societies (hereinafter referred to as '*the Registrar*') within the required timelines hence they are invalid and the Respondents are guilty of a criminal offence. The decision in *Paul Auma Orwa v. Registrar of Societies & 4 Others (2016) eKLR* was cited in support of the submission.

49. In urging the Court to disregard the version of the constitution presented by the Respondents, the Petitioners made reference to *Kevin Turunga Ithagi v. Fred Ochieng & 5 Others (2015) eKLR*.

50. The Petitioners then hold that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, having served two terms in their respective offices, are expressly barred from vying for any position in the leadership of KJSA in terms of the version of the constitution they presented.

51. The Respondents are not in agreement with the Petitioners' position. They posit that both the versions presented by the parties are

genuine. According to the Respondents, the Petitioners' version is the original constitution of KJSA. It was adopted in 2015. I will hereinafter refer to it as '**the 2015 Constitution**'. It is further posited that the 2015 constitution was amended by resolutions passed at the Annual General Meeting held on 1<sup>st</sup> December, 2018. I will, henceforth, refer to the said meeting as '**the AGM**'.

52. It is the Respondents' further position that the amendments to the 2015 constitution passed at the AGM were duly presented to the Registrar and were approved. They annexed copies of correspondences to that effect from the Registrar of Societies and a certified copy of the amended constitution. I will, henceforth, refer to the amended constitution as '**the 2018 Constitution**'.

53. The Respondents deny that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are barred from vying for any leadership position in KJSA for two reasons. The first one is that the 2015 constitution was clear that an office bearer could run for office for two terms. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents have been in office for only one term hence eligible to run, even on the basis of the 2015 constitution. The second reason is that upon amendment of the 2015 constitution, the restriction on the number of times one may run for any office was scrapped.

54. The 1<sup>st</sup> Interested Party supports the Respondents' position. He confirms that indeed the AGM was conducted and resolutions on amendment of the 2015 constitution made. He, however, contend that the amendments were not approved by the Registrar.

55. I have carefully perused the two versions of the constitutions of KJSA. I have also perused the correspondences exchanged between the Registrar and the Respondents.

56. There is consensus that the 2015 constitution is the original constitution of KJSA. It was adopted in 2015. There is also no doubt that the AGM was conducted. One of the matters discussed at the AGM was the proposed amendments to the 2015 constitution. Resolutions were made. The Respondents and the 1<sup>st</sup> Interested Party are in agreement that the amendments contained in the 2018 constitution are indeed what were passed in the AGM.

57. From the record, there is a letter from the Registrar to KJSA dated 4<sup>th</sup> December, 2019. The letter confirms approval of the amendments from the date of that letter. Apart from the bare denial by the Petitioners that the Registrar did not approve of the amendments passed at the AGM, the Petitioners did not file any disposition to the Replying Affidavit relied upon by the Respondents.

58. All parties in this matter agree on the 2015 constitution. There is also no controversy that the first election under the 2015 constitution was conducted on 10<sup>th</sup> December, 2016. The 1<sup>st</sup> Interested Party annexed a copy of his Certificate of Elections in his pleading confirming his election as the Organizing Secretary. The elections were conducted by the Independent Electoral and Boundaries Commission.

59. Article 13(c) of the 2015 constitution provided as follows: -

***All office bearers shall hold office for a period of 3 years and shall be eligible for re-election only once to the same office.***

60. Article 26(b) of the 2015 constitution provided as follows: -

***Article 13(c) shall take effect from the first election under this constitution.***

61. Without much ado, and even without reference to the 2018 constitution, the answer to the issue under consideration is sufficiently provided for in the 2015 constitution. The Respondents having been elected into office on 10<sup>th</sup> December, 2016 had 3 years to serve. That was the period between December 2016 and December 2019. Further, Article 13(c) of the 2015 constitution accorded the Respondents another term of 3 years. It was to be final term. However, the limit on the number of times one would vie for any office was removed in the amendments passed in the AGM by the General Assembly. The amendments were later sanctioned by the Registrar of Societies.

62. It is, therefore, clear that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are constitutionally qualified to run for the positions they currently hold in the next KJSA elections.

63. The contention by the Petitioners that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents are not eligible to vie in the next elections is baffling. I am at a loss at how the Petitioners settled for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents out of the 11 officials elected on the same day, the 10<sup>th</sup> December, 2016. It appears that the Petitioners have no issue with the rest of the office bearers from taking part in the next elections, but the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

64. Be that as it may, and as demonstrated above, the rights of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to vie in the next elections of KJSA are secured by both the Constitution of Kenya and the constitution of KJSA.

65. The second issue is also answered in the affirmative.

**(c) Whether the Election Rules issued vide a notice dated 26<sup>th</sup> November 2019 are valid Election Rules of KJSA:**

66. The preceding issue has laid a factual basis to the current issue. Further to the Petitioners' position that the amendments made at the AGM are not valid for want of the approval of the Registrar, the Petitioners posit that the National Executive Council of KJSA (hereinafter referred to as '**the NEC**') had no mandate to pass any new election rules.

67. It is the Petitioners' position that the applicable election rules should be the ones which were used during the first elections in 2016. I

will, henceforth, refer to the said rules as '**the 2016 Elections Rules**' and to the new rules as '**the 2019 Election Rules**'.

68. It is contended that the NEC has no mandate to unilaterally change the election rules without the approval of the General Assembly at an Annual General Meeting. The decision in *Macfoy v United Africa Company Ltd [1961] 3 All. E.R 1169* as quoted in *Kevin Turunga Ithagi v Freed Ochieng & 5 others [2015] eKLR* was referred to in buttressing the argument.

69. The 1<sup>st</sup> Interested Party echoes the Petitioners' stand.

70. The Respondents are of the converse position. They depose that Article 15(b) of the 2015 constitution as retained in the 2018 constitution provides that '*the Council shall make rules to provide for vacation of office and filling of vacancies including the procedure on motions for removal of officers of the association*'.

71. The Respondents contend that the 2019 Election Rules are valid and ought to be used in the subsequent elections in KJSA.

72. As a starting point, I must point out that Article 15(b) of the 2015 constitution was truly retained in the 2018 constitution. However, the article has the following proviso: -

***PROVIDED that the rules made under Article 15(b) shall be in tandem with the rules governing elections of the Association.***

73. Article 7 of the 2015 constitution created the organs of the KJSA. They are the General Assembly, the National Executive Council, the National Council, the Secretariat and Committees and sub-committees of the National Executive Council.

74. The article was retained in the 2018 constitution save for the National Council which office was abolished.

75. The functions of the General Assembly remained unchanged in Articles 8 of both constitutions. They are as follows: -

(a) *The General Assembly shall be the Supreme governing organ of the Association and shall be composed of all members;*

(b) *The General Assembly shall be responsible for the general policy and direction of the Association and ensure the proper function of the Association;*

(c) *The General Assembly, notwithstanding and generality of the provisions of paragraph (b) of this Article shall:*

i) *Adopt the Agenda for the General meeting of the Association.*

ii) *Consider the Minutes of the previous General Meeting.*

iii) *Appoint auditors for the next financial year,*

iv) *Consider the Reports on the programs and activities of the Association,*

v) *Consider the Report of the accounts of the Association,*

vi) *Consider the Budget of the Association,*

vii) *Consider the Annual Audit Report of the association,*

viii) *Elect office bearers of the Association, and*

ix) *Consider such other business as may arise or be presented;*

(d) *The General Assembly shall meet at least once every calendar year;*

(e) *The decisions of the General Assembly shall be binding on all the organs of the Association and on all members to whom they are addressed and; and*

(f) *Subject to the provision of this Constitution, the General Assembly shall adopt such rules as may be necessary for the transaction of its business.*

76. It is the responsibility of the General Assembly to accord policy direction and to ensure the proper functioning of KJSA. In discharging that mandate, Article 8(f) of both constitutions provide for the adoption by the General Assembly of '*such rules as may be necessary for the transaction of its business.*'

77. The General Assembly is the supreme organ of and constitutes all members of KJSA.

78. A holistic reading of Article 8 entrenches the position that the General Assembly exercises its supremacy over all the activities of the whole KJSA. In doing so, the General Assembly considers reports from all the other organs. It is the General Assembly which exercise the final decision over such reports.

79. It can, therefore, be the only position that any rules made by any organ must be ratified by the General Assembly.

80. The above is amplified by the Constitution of Kenya. Article 2 *inter alia* declares the Constitution as the supreme law of the land which binds all persons and all State organs at both levels of government. It also provides that the validity or legality of the Constitution is not subject to any kind of challenge and that any law that is inconsistent with it is void to the extent of that inconsistency. Further, any act or omission in contravention of the Constitution is invalid. Article 3 places an obligation upon every person to respect, uphold and defend the Constitution.

81. Article 10 provides for the national values and principles of governance which bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law or makes or implements any public policy decisions.

82. Expounding on Article 10 of the Constitution, the Court of Appeal in ***Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 Others, Civil Appeal No. 224 of 2017; [2017] eKLR*** held that:

*In our view, analysis of the jurisprudence from the Supreme Court leads us to the clear conclusion that Article 10 (2) of the Constitution is justiciable and enforceable immediately. For avoidance of doubt, we find and hold that the values espoused in Article 10 (2) are neither aspirational nor progressive; they are immediate, enforceable and justiciable. The values are not directive principles. Kenyans did not promulgate the 2010 Constitution in order to have devolution, good governance, democracy, rule of law and participation of the people to be realized in a progressive manner in some time in the future; it could never have been the intention of Kenyans to have good governance, transparency and accountability to be realized and enforced gradually. Likewise, the values of human dignity, equity, social justice, inclusiveness and non-discrimination cannot be aspirational and incremental, but are justiciable and immediately enforceable. Our view on this matter is reinforced by Article 259(1) (a) which enjoins all persons to interpret the Constitution in a manner that promotes its values and principles.*

*Consequently, in this appeal, we make a firm determination that Article 10 (2) of the Constitution is justiciable and enforceable and violation of the Article can found a cause of action either on its own or in conjunction with other Constitutional Articles or Statutes as appropriate.*

83. Article 47 of the Constitution of Kenya and the Fair Administrative Actions Act, No. 4 of 2015 of the Laws of Kenya provide for the manner in which entities and persons must undertake decisions that affect the rights of others.

84. As pronounced by a multi-Judge bench in the High Court in ***Mombasa High Court Constitutional Petition No. 159 of 2018 consolidated with Constitutional Petition No. 201 of 2019 William Odhiambo Ramogi & 3 Others vs. The Attorney General & Others (2021) eKLR***: -

160. Addressing itself to these provisions, the Court of Appeal in ***Civil Appeal 52 of 2014 Judicial Service Commission vs. Mbalu Mutava & Another (2015) eKLR*** held that: -

*Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.*

161. The South African Constitutional Court in ***President of the Republic of South Africa and Others vs. South African Rugby Football Union and Others CCT16/98) 2000 (1) SA 1*** ring-fenced the importance of fair administrative action as a constitutional right. The Court while referring to Section 33 of the South African Constitution which is similar to Article 47 of the Kenyan Constitution stated as follows: -

*Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...*

162. The High Court in ***Republic v Fazul Mahamed & 3 Others ex-parte Okiya Omtatah Okoit [2018] eKLR*** had the following to say:

25. In ***John Wachiuri T/A Githakwa Graceland & Wandumbi Bar & 50 Others vs The County Government of Nyeri & Ano***<sup>[39]</sup> the Court emphasized that there are three categories of public law wrongs which are commonly used in cases of

this nature.

These are: -

a. *Illegality- Decision makers must understand the law that regulates them. If they fail to follow the law properly, their decision, action or failure to act will be "illegal". Thus, an action or decision may be illegal on the basis that the public body has no power to take that action or decision, or has acted beyond its powers.*

b. *Fairness- Fairness demands that a public body should never act so unfairly that it amounts to abuse of power. This means that if there are express procedures laid down by legislation that it must follow in order to reach a decision, it must follow them and it must not be in breach of the rules of natural justice. The body must act impartially, there must be fair hearing before a decision is reached.*

c. *Irrationality and proportionality- The Courts must intervene to quash a decision if they consider it to be demonstrably unreasonable as to constitute "irrationality" or 'perversity' on the part of the decision maker. The benchmark decision on this principle of judicial review was made as long ago as 1948 in the celebrated decision of Lord Green in **Associated Provincial Picture Houses Ltd vs Wednesbury Corporation**: -*

*If decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere...but to prove a case of that kind would require something overwhelming...*

85. In this case, the 2019 Election Rules proposed drastic changes to the 2016 Election Rules. One of them was the departure from the eligibility requirement that one may vie if he/she is a member for at least 3 months preceding the election. That rule was replaced with a new rule thus '**a candidate MUST have been an active member for not less than a period of three years and attended the last three AGMs.**'

86. One of the complaints raised by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> Petitioners is that they were unlawfully barred from taking part in the 2018 AGM. If the 2019 Election Rules are allowed to be operational, then it means that such persons, like the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> Petitioners herein, shall not be eligible to offer their candidature in the subsequent election for the reason that they did not take part in the 2018 AGM. Such a decision is an administrative decision as it deeply affects the rights of members on their eligibility to offer their candidature. Such decisions, as translated in the 2019 Election Rules, require compliance with Articles 10 and 47 of the Constitution of Kenya. The 2019 Election Rules must be subjected to the popular vote of the General Assembly.

87. Putting it in other words, even though the NEC has the powers to make rules under Article 15(b) of the constitution, such rules must comply with Articles 10 and 47 of the Constitution of Kenya, the provisions of the Fair Administrative Actions Act and the proviso in Article 15(b) of the KJSA constitutions to the effect that the rules must be in tandem with the rules governing elections of the officials of KJSA. Given that the duty to elect office bearers of KJSA is bestowed upon the General Assembly under Article 8(c)(viii) of the constitutions, it hence means that the 2019 Election Rules made by the NEC were to be, in the first instance, ratified by the General Assembly before they would be applicable. Differently worded, the 2019 Election Rules are inoperational until ratified by the General Assembly.

88. In the end, the issue must be answered in the negative.

**(d) Whether voluntary withdrawal of members of KJSA is subject to the approval of the National Executive Council:**

89. The Respondents contend that any voluntary withdrawal by a member from KJSA must be approved by the NEC.

90. The Petitioners are of the contrary position. They argue that just like the case where a member decides to join KJSA without any conditions attached, then there ought not to be unnecessary conditions attached to a member who voluntarily wishes to exit KJSA. The Petitioners rely in *Kenya Scientific Research International Technical and Allied Institutions Workers Union v Kenya Agricultural Research Institute & another [2013] eKLR* as cited in *Banking, Insurance and Finance Union (Kenya) v Pesa Transact Limited [2018] eKLR*.

91. The *Black's Law Dictionary*, 10<sup>th</sup> Edition, Thomson Reuters at page 1806 defines 'voluntary' as follows: -

1. *Done by design or intention;*
2. *Unconstrained by interference; not impelled by outside influence;*
3. *Without valuable consideration or legal obligation; gratuitous;*
4. *Having merely nominal consideration.*

92. The freedom to join any lawful association is anchored in Article 36 of the Constitution. The article states as follows: -

- (1) *Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.*
- (2) *A person shall not be compelled to join an association of any kind.*

(3) Any legislation that requires registration of an association of any kind shall provide that—

a) registration may not be withheld or withdrawn unreasonably; and

b) there shall be a right to have a fair hearing before a registration is cancelled.

93. The freedom of association under Article 36 of the Constitution can only be limited as provided for in Article 24 of the Constitution.

94. The Court in **Kenya Scientific Research International Technical and Allied Institutions Workers Union v Kenya Agricultural Research Institute & another** case (supra) at paragraph 144, rightly so, posited that: -

*the freedom of association includes the freedom to disassociate or not to associate at all since the right to disassociate is a natural concomitant of the right to associate.*

95. Article 6(a) and (f) of the 2015 and 2018 constitutions provide for withdrawal of membership. They provide as follows: -

(a) *Voluntary withdrawal: Judicial staff who elect not to be members of the association shall do so in writing to the Executive Council;*

(f) *Resignation by submitting a written letter to the Executive Council which will take effect from the date of the receipt by the Secretary of such notice;*

96. The constitution of KJSA is clear on the voluntary withdrawal of a member. A member must formally notify the NEC of his or her intention to withdraw from membership. That formal notification must be delivered to the Secretariat. The notification must also be received by the Secretariat. Once the notification is duly received by the Secretariat, then that is the date the member is deemed to have formally and voluntarily withdrawn from the membership of KJSA.

97. The decision by the Respondents that for such a member's notification to be effective, it must be approved by the NEC is not provided for in the KJSA constitution. As such, there must be a constitutionally sound and legal basis for such a decision.

98. The High Court in **Republic v Fazul Mahamed & 3 Others ex-parte Okiya Omtatah Okoiti** case (supra) dealt with the principles of illegality, unreasonability, fairness, irrationality and proportionality.

99. I will, herewith, deal with the concept of arbitrariness. The Court of Appeal in **Malindi Civil Appeal 56 of 2014 Mtana Lewa v Kahindi Ngala Mwangandi [2015] eKLR** made reference to the **Black's Law Dictionary 8<sup>th</sup> Edition** that defined arbitrariness in the following manner: -

in it connotes a decision or an action that is based on individual discretion, informed by prejudice or preference, rather than reason or facts.

100. The High Court in **Civil Suit No. 3 of 2006 Kasimu Sharifu Mohamed vs. Timbi Limited [2011] eKLR** referred to Oxford Advanced Learner's Dictionary A. S. Horby Sixth Edition Edited by Sally Wehmeiner which defines the term 'arbitrary in the following way: -

the term arbitrary in the ordinary English language means an action or decision not seeming to be based on a reason, system and sometimes, seeming unfair.

101. The Supreme Court of China in **Sharma Transport vs. Government of A. Palso (2002) 2 SCC 188** had the occasion to interrogate the meaning and import of the term 'arbitrarily'. The Court observed as follows: -

The expression 'arbitrarily' means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.

102. The term 'arbitrariness' had earlier on been defined by the Court (Supreme Court of China) in **Shrilekha Vidyarthi vs. State of U.P (1991) 1 SCC 212** when it comprehensively observed as follows;

The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you'. This is what men in power must remember, always.

103. Article 5 of the KJSA constitution provides for membership. A member subscribes to pay Kshs. 200/= as monthly fees. Such fees are deducted directly from one's salary into the account of KJSA. Going by the Respondents' impugned decision, it, therefore, means that if a member notifies the NEC of the intention to withdraw from membership, but the NEC does not hold a meeting to approve of such

withdrawal then the deductions shall continue.

104. The constitution of KJSA does not indicate the number of times the NEC may be convened in a year. A member wishing to withdraw will, hence, be at the discretion of the NEC. What if the NEC does not convene for a couple of months? What if the matter is not discussed at a NEC meeting? What if the NEC declines to approve the withdrawal?

105. In a nutshell, the decision to require the approval of the NEC for a member to withdraw from membership is unconstitutional, unreasonable, irrational, arbitrary and oppressive. The decision variously flouts the members' rights and fundamental freedoms to freedom of association, right to protection of their money (as property), human dignity, equality and freedom from discrimination, among others.

106. NEC is a servant of the members. Like a caged animal, it can move, but just within the cage. It must act within the Constitution and the law. The constitution of KJSA clearly spoke. That is what the members want. Any departure therefrom must be sanctioned by the General Assembly. That can be the only position.

107. Therefore, for clarity and avoidance of doubt, any withdrawal from the membership of KJSA is effective from the date a member's formal notice is received by the Secretariat.

108. The issue is, hence, answered in the negative.

**(e) Whether the rights of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> Petitioners were violated by the Respondents by locking the said Petitioners out of the KJSA Annual General Meeting held on 1<sup>st</sup> December, 2018:**

109. The Petitioners allege that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 10<sup>th</sup> Petitioners were indeed locked out of the AGM held on 1<sup>st</sup> December, 2018 with the direct or indirect instruction of the Respondents. By locking them out of the AGM, their right to freedom of association as well as the right to equality and freedom from discrimination were infringed.

110. The Respondents submit that the allegations are unfounded. The Respondents contend that the AGM was held at the Milimani Law Court's Ceremonial Hall which is a public facility under the normal security of the Judiciary. Furthermore, the 1<sup>st</sup> Respondent who is accused of locking some of the Petitioners out was chairing the meeting and therefore would have been unable to prevent the Petitioners from attending.

111. This issue brings to the fore the manner in which a factual issue in a constitutional Petition ought to be proved. The Courts in *Anarita Karimi Njeru vs Republic (1976- 80) 1 KLR 1272*, *Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others* case (supra) and *Trusted Society of Human Rights Alliance vs Attorney General and Others Petition No.229 of 2012* addressed the issue in detail.

112. Sections 107(1), (2) and 109 of the Evidence Act speak to the manner of discharging burden of proof. The provisions state as follows: -

*107. (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

*(1) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.*

and

*109. Proof of particular fact*

*The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.*

113. For the Petitioners to succeed in this issue, there must be evidence to the effect that they were restrained from attending the AGM and that such acts were occasioned by the Respondents.

114. The Court in *Christian Juma Wabwire v Attorney General [2019] eKLR* expressed itself thus: -

*24. I am alive to the fact, that the petitioner in his petition alluded to various constitutional violation, but without having availed tangible evidence of violation of his rights and freedoms, I find the allegation by mere words without any other evidence, the court cannot find that the petitioner has proved violations of his rights and freedoms. The petitioner herein ought to have produced documentary evidence such as medical reports and called witnesses to ensure court considers the same. The courts of law are deaf to speculations and irregularities as it must always base its decision on evidence. I therefore find and hold that the petitioner failed to discharge the burden of proof to the required standard of proof. I find that the petitioner did not give evidence of probative value to enable this court decide the petition in his favour and grant the orders sought."*

115. And, in *Kiambu County Tenants Welfare Association v. Attorney General & another [2017] eKLR* the Court held that: -

*The alleged violation of right to property is in my view totally unfounded. I find that no contravention of constitutional rights has been proved at all. The evidence tendered on behalf the petitioners in my view does not demonstrate the alleged violation. Courts*

have over the years established that for a party to prove violation of their rights under the various provisions of the Bill of Rights they must not only state the provisions of the Constitution allegedly infringed in relation to them, but also the manner of infringement and the nature and extent of that infringement and the nature and extent of the injury suffered (if any) ...

In my view the petitioner has failed to discharge the burden of prove to the required standard. To my mind the burden of establishing all the allegations rests on the Petitioner who is under an obligation to discharge the burden of proof.

116. Korir, J in his ruling rendered on 19<sup>th</sup> December, 2019 in this matter stated as follows: -

*[...] there is no evidence adduced in support of the allegation that the 1<sup>st</sup> Respondent uses 'men in black' to disrupt and rig elections.*

117. The Petitioners did not tender any further evidence even after the Court had indicated that there was no sufficient on the issue.

118. Having carefully considered the evidence on record, this Court is unable to ascertain any evidence in support of the serious allegations tendered by the Petitioners. The allegations remain unproved and are disregarded.

119. The issue is hereby answered in the negative.

**(f) Whether the Respondents are criminally liable for violation of mandatory provisions of the Societies Act:**

120. The Petitioners allege that the Respondents have, without any lawful cause, failed to comply with the provisions of Section 28(1) of the Societies Act by refusing to allow members to scrutinize books of accounts and documents relating to lists of members. The Petitioners complain that those who have attempted to access these documents were subjected to threats of physical violence or acts of intimidation either by the 1<sup>st</sup> Respondent or by hired goons at the behest of the 1<sup>st</sup> Respondent. Furthermore, members are required to pay fees for inspection of the said records, which amounts to an unreasonable restriction of the members' rights to access to information.

121. The Petitioners further claim that the 2019 Election Rules do not comply with Section 17 of the Societies Act for not having been passed by the General Assembly and approved by the Registrar. The intent on the part of the Respondents to use the said rules in the subsequent election amounts to a criminal offence.

122. The Petitioners further allege that the Respondents actions contravene Sections 20, 25 and 42 of the Societies Act and that the Respondents are criminally liable under the Societies Act. As such, this Court is urged to find the Respondents so criminally liable for their respective acts of commission and omission.

123. The Respondents denied every single allegation. They contend that all their actions remain within the KJSA constitution and the law. The Respondents submit that this Court sitting as a Constitutional Court has no jurisdiction to hold the Respondents liable in criminal proceedings for violation of mandatory provisions of the Societies Act.

124. Sections 38 to 43 of the Societies Act provide for investigation of offences and punishment of offenders.

125. Section 38 is on the **power to investigate**. Sub-section 1 states as follows: -

*(1) The Registrar or any administrative officer or any police officer of or above the rank of Sub-Inspector (in this section referred to as the requiring officer) may, in writing, require any person who he has reason to believe is able to give any information as to the existence or operation of any unlawful society, or suspected unlawful society, or as to the operations of any registered society or exempted society, or as to the operations or property of a society which has been dissolved or has otherwise ceased to exist, to attend before him at a specified time, and such attendance may be required at any police station or police office situated within the district in which that person resides, or for the time being is or is found, or at the office of any administrative officer within such district, or at the office of the Registrar.*

126. When the above provision is invoked and a complaint duly made, a requiring officer must institute investigations. On completion of the investigations, the requiring officer has powers to institute criminal charges if satisfied that certain offences are disclosed.

127. The Societies Act, therefore, provides the manner in which criminal offences under the Societies Act ought to be dealt with. There is no evidence that the Petitioners have laid any complaint to any of the requesting officers or any other investigative and/or law enforcement officers or agencies over the allegations.

128. Nyarangi, JA, in **Owners of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited [1989] KLR 1** expressed himself as follows on the issue of jurisdiction: -

*Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings...*

129. On the source of a Court's jurisdiction, the **Supreme Court of Kenya in Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR** stated as follows: -

*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. We agree with counsels for the first and second respondents in his submission that 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 ... where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.*

130. Further, **the concept of non-justiciability** urge Courts to refrain from dealing with matters under the doctrines of *the political question doctrine, the constitutional avoidance doctrine, the ripeness doctrine* and the *doctrine of exhaustion*.

131. This Court, therefore, sitting as a constitutional Court, lacks the jurisdiction to in anyway manner whatsoever deal with the alleged criminal liability on the part of the Respondents. The Petitioners are at liberty to pursue such matters before the appropriate forum.

132. This Court, therefore, declines to answer the issue on account of lack of jurisdiction.

**(g) Remedies:**

133. The Petition has partly succeeded.

134. While the Petitioners were unable to demonstrate that the Respondents are not eligible to vie in the next KJSA elections, that their rights and fundamental freedoms were infringed when they were barred from attending the 2018 AGM and that the Respondents are criminally liable, they have, nevertheless, proved that the Petition has attained the threshold of a constitutional Petition, that the 2019 Election Rules are invalid unless approved by the General Assembly and that the voluntary withdrawal of members from the membership of KJSA does not require the approval of the NEC.

135. In considering the appropriateness of the remedies, this Court shall remain alive to the truism that the second KJSA elections were to be held in December 2019.

**Disposition:**

136. Flowing from these findings and conclusions, the disposition of the Amended Petition dated 23<sup>rd</sup> December, 2019 is as follows: -

**(a) The Petition has attained the threshold of a constitutional Petition.**

**(b) The 1<sup>st</sup> and 3<sup>rd</sup> Respondents, and by extension all the office bearers who were elected during the first election of Kenya Judiciary Staff Association held on 10<sup>th</sup> December, 2016, are eligible to vie in the next Kenya Judicial Staff Association's elections.**

**(c) The 2019 Election Rules are invalid for want of compliance with Articles 10 and 47 of the Constitution of Kenya, the Fair Administrative Actions Act and the constitution of the Kenya Judiciary Staff Association. The Rules must, at the very least, be approved by the General Assembly. The Rules are hereby quashed. For clarity, the 2019 Election Rules shall not form part of the election rules of Kenya Judiciary Staff Association.**

**(d) The decision by the National Executive Council that the Council must approve any voluntary withdrawal of members from the membership of Kenya Judiciary Staff Association contravenes Articles 27, 28, 36 and 47 of the Constitution, the Fair Administrative Actions Act and the constitution of Kenya Judiciary Staff Association. The Court declares the impugned decision constitutionally infirm. The decision is hereby quashed.**

**(e) A declaration be and hereby issue that voluntary withdrawal of members from the membership of the Kenya Judiciary Staff Association does not require the approval of the National Executive Council.**

**(f) The Respondents shall take steps and ensure that elections for the Kenya Judiciary Staff Association are held within 60 days of this judgment. In default: -**

**(i) The National Executive Council of the Kenya Judiciary Staff Association elected on 10<sup>th</sup> December, 2016 shall stand dissolved; and,**

**(ii) The Registrar of Societies in liaison with the Chief Registrar of the Judiciary shall take steps for elections of the Kenya Judiciary Staff Association to be conducted within 30 days.**

**(g) As the Petition has partly succeeded, each party shall bear its own costs.**

Orders accordingly.

**DELIVERED, DATED and SIGNED at NAIROBI this 18<sup>th</sup> day of March, 2021**

**A. C. MRIMA**

**JUDGE**

**Judgment virtually delivered in the presence of:**

**Mr. Shikuku**, Counsel for the Petitioners.

**Mr. Elisha Ongoya**, Counsel for the Respondents.

**Elizabeth Wambui** – Court Assistant.