



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**  
**HIGH COURT OF KENYA AT NAIROBI**  
**PETITION NO. 39 OF 2012**

**BETWEEN**

**IN THE MATTER OF ARTICLES 20(1), 23(1), 41(1), 42(2) (A) (B)**

**AND**

**IN THE MATTER OF JOSEPH MBURU KAHINGA AND EDWARD GITHUNWA**

**AND**

**IN THE MATTER OF KENATCO TAXIS LIMITED (FORMERLY KENATCO COMPANY LIMITED)**

**BETWEEN**

**JOSEPH MBURU KAHIGA ..... 1ST PETITIONER**

**EDWARD GITHUNWA ..... 2ND PETITIONER**

**AGAINST**

**KENATCO TAXIS LIMITED ..... 1ST RESPONDENT**

**RECIEVER MANAGER**

**APPOINTED BY ICDC LIMITED ..... 2ND RESPONDENT**

**JUDGMENT**

**Introduction**

1. This matter commenced at the High Court Human Rights Division as Petition Number 150 of 2012 and was transferred to High Court Industrial Court Division on the 15<sup>th</sup> October 2012 due to the nature of the claim and reliefs sought being based on employer and employees relationship within the jurisdiction of this court.
2. This matter concerns the rights of employees whose employment upon their employer being placed under receivership were terminated without payment of their benefits or the successive receivers failed to wind up or declare profits to be able to pay the Petitioners as former employees.
3. The Petitioners contend that upon their employer being placed under receivership they became creditors and that the receiver has paid all the other creditors but failed to address the plight of workers.
4. The petitioner's fundamental rights and freedoms as workers as enshrined under the Constitution have been contravened, the respondents have violated their fair labour practices as against **Article 41(1) and (2)** since their terminal dues and retirement benefits have not been paid.
5. The respondents filed a Replying Affidavit dated 25<sup>th</sup> June 2012 and made their written submissions which was highlighted in open court on 7<sup>th</sup> may 2013.

### **Case against the Respondents**

6. By this Petition dated the 3<sup>rd</sup> April 2012, the petitioners moved the court for the following orders:
  - i. *That the Petitioners be paid their retirement and all due payments per the recommendation of the reconciliatory in the Trade Dispute ML/IR/68/7/2010*
  - ii. *A declaration that the harassment of the employees of Kenatco Taxi Limited by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and their termination is unlawful*
  - iii. *Any other relief that this court may deem fit to frame under Article 23 of the Constitution*
  - iv. *Costs of the Petition*
7. The Petition is supported by the affidavit of Joseph Mburu Kahiga the 1<sup>st</sup> Petitioner herein, in which he deponed that he was employed by Kenatco Transport Limited on 5<sup>th</sup> July 1973 as a Taxi Driver and issued with a letter of appointment and that this company collapsed in 1987 and Kenatco Taxis Limited was incorporated by the government of Kenya through ICDC investment and the new company confirmed his appointment on 30 June 1987 and he was issued with a letter to this effect.
8. That events leading to this petition relate to the fact that on 11<sup>th</sup> April 2010 he was working at outside Hilton Hotel when he handed over his motor vehicle to his co-driver and when he reported back on duty on 13<sup>th</sup> April 2010 he found all drivers were at Kenatco headquarters since there was a misunderstanding between the drivers and management and at 10.00pm there was intervention from the office of the Prime Minister directing that the matters should be handled by the Ministry of Labour and on 14<sup>th</sup> April the ministry of Labour sent two officers Mr. Robert Ngugi and Sammy Mwaniki but the receiver manager refused to meet them citing the fact that the intervention of the Ministry of Labour had not been requested for.

9. That on the same day of 14<sup>th</sup> April 2010 there were 95 names on the Notice Board telling the drivers that they had been summarily dismissed and directed to pick their dismissal letters at the home address. The matter was however handled by the Ministry of Labour with Mr. Mbae as the Conciliator who made his report on 11<sup>th</sup> November 2010 and certificate to take the matter to the Industrial Court on 10<sup>th</sup> December 2010.

10. It was the Petitioner's case That the Union and ICDC are deliberately delaying this as a company cannot be on receivership forever on the basis that the ICDC and Kenatco Taxis Limited are deliberately refusing to pay the petitioners their retirement benefits since the purpose of receiver manager is to turn around the company or wind it up but the receivership situation has been going on since 1986.

11. That in October 1995 to January 1996, the company refused to certain deductions to Uchumi Sacco by Kenatco Taxis Limited.

### **The Petition**

12. petitioners seeks the following reliefs in the Petition dated the 3<sup>rd</sup> April 2012:-

- i. *That the Petitioners be paid their retirement and all due payments per the recommendation of the reconciliatory in the Trade Dispute ML/IR/68/7/2010*
- ii. *A declaration that the harassment of the employees of Kenatco Taxi Limited by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and their termination is unlawful*
- iii. *Any other relief that this court may deem fit to frame under Article 23 of the Constitution*
- iv. *Costs of the Petition*

### **Hearing of the Petition**

13. The Petition came for hearing on several dates, on 7<sup>th</sup> February 2013 court noted that the Petitioners were acting in persons despite the technical issues raised by the Respondents and advised them to seek legal representation. The matter came up again for mention to ascertain the status and on 14<sup>th</sup> March 2013 the petitioners indicated that they would act in person as they were conversant with their case, the 2<sup>nd</sup> Petitioner would give his evidence and both Petitioners would make their written submissions. Court directed both parties to file their written submissions and the same be highlighted in open court. Written submission was filed by the Petitioners and respondents dated 13<sup>th</sup> March 2013 and 26<sup>th</sup> March 2013 respectively. These submissions were mentioned for highlighting on 7<sup>th</sup> May 2013.

### **Petitioners' Case**

14. The petition was heard and 2<sup>nd</sup> petitioner testified that he was employed by Kenatco in 1974, but it collapsed in 1986 and the government through ICDC took over by appointing a receiver manager and since then several managers have been appointed about 10 of them and all those who

- had debts with ICDC have been paid. That the Petition is on the basis that their rights were violated and seek the court to use labour laws to protect petitioner's rights as per Article 41 of the Constitution in that the petitioners terminal due and retirement benefits were not paid since their date of termination on the 14<sup>th</sup> of April 2010. That there was a lockout and not a strike where the Minister for Labour intervened and parties went for arbitration and a reconciliatory was appointed who filed a report and referred the matter to the Industrial Court.
15. In submissions, the petitioners stated that the basis of their claim is **Articles 20(1), 23(1), 41(1), 42(2)(a) and (b) of the Constitution** on the basis that the petitioners were employed by the 1<sup>st</sup> respondent in 1973 and 1974 respectively as taxi drivers and 1<sup>st</sup> respondent was placed under receivership in 1986 with the 2<sup>nd</sup> respondent appointed to run it but on 14<sup>th</sup> April 2010 the petitioners were terminated after a lockout by the respondents and through the intervention of the Minister for Labour, a conciliator was appointed and made a report after conciliation failed and a certificate was issued referring the matter to the Industrial Court on 10<sup>th</sup> December 2010. That the dismissal of the petitioners was therefore unfair since the dispute leading to the issuance of the dismissal letter was not due to acts of gross misconduct as alleged but due to lock out by the respondents and this was the dispute before the conciliator.
16. The Petitioners submitted That the respondents acted contrary to the provisions of the **Labour Relations Act, the Employment Act and Article 41 of the Constitution on fair labour practices and as under Article 41(2)** where every persons has a right to fair remuneration and reasonable working conditions which right was not guaranteed to the petitioners by the respondents.
17. That the summary dismissal as issued through internal memos by the respondents was contrary to written law and contrary to **section 78 of the Employment Act** which require that an employer shall notify the termination of every employment and of each lay-off of a person in writing to the nearest employment service office within two weeks and in the petitioners case this was not done. that in insolvency is not an excuse not to pay terminal dues or retirement benefits as under section 66 of the Employment Act where the Minister for Labour is authorised to act in the case of insolvency and made directions on an employer winding up or a receiver appointed and there is a debt relating to wages that an employer has not paid or notice pay not paid as under **section 36 of the Employment Act**. That under these provisions the receiver manager was under a duty to bring to the attention of the Minister for Labour relevant information to enable the NSSF to act in their case and therefore their case is based on the violation of the Constitution that guarantee fair labour practices and the Bill of Rights and the case before the industrial Court was withdrawn as the petitioners had not instructed the advocate appearing in that case.

### **Respondents' Case**

18. The respondents filed replying affidavit in opposition to the petition and also written submissions dated 26<sup>th</sup> March 2013.
19. The Replying Affidavit was sworn by John M. Ndungu the Receiver and Manager of Kenatco Taxis limited (in Receivership) the 1<sup>st</sup> claimant herein who was appointed on 10 June 2009 hence conversant with the issues before court.
20. Respondent stated that the 1<sup>st</sup> respondent is a parastatal wholly owned by the Government through the Industrial Commercial Development Corporation (ICDC) or the Debenture Holder and following the placing under receivership of the 1<sup>st</sup> respondent it came under the Debenture holder in 1996 with the sole purpose of protecting its assets against creditors and has since then managed it and thus under these proceedings the 1<sup>st</sup> respondent is wrongly suited under this Petition and

should be deleted.

21. He further stated that the Debenture Holder was to turn around the 1<sup>st</sup> respondent to profits but by 2001 this had not been achieved and the receiver manager was advised by the Debenture holder to advertise and sell its assets with tenders being invited for that purpose in 2003 but only one bidder could meet the reserve price and in 2004 there was a re-advertisement for sale and M/S Kienzeco Limited was identified as a successful bidder but before the deal could be concluded a disagreement arose with regard to specific assets with parties reverting to Court and an injunction issued restraining the Receiver manager from disposing of the assets under High Court Case No. 306 of 2005 in the case of Kienzeco Limited versus Kenatco Taxis limited, the suit protracted on until 2010 when settlement was recorded noting that these high Court proceedings interfered with efforts to turn around the 1<sup>st</sup> respondent, and in the end assets went into waste.
22. That To settle debts the Debenture holder advanced the 1<sup>st</sup> respondent a further kshs.14.7 million and by 2011 the 1<sup>st</sup> respondent indebtedness to its creditors was estimated at kshs.611, 574,189.98 and with the High Court case settled attention has now been set on the revival of the 1<sup>st</sup> respondent and with proper operational and financial restructuring there is hope that the receivership will be lifted in 2013.
23. That the 1<sup>st</sup> petitioner was first appointed by the 1<sup>st</sup> respondent in 1986 but was terminated on the receivership in 1996 and then re-appointed by the receivers and manger but in 2006 he was terminated together with other employees and that the employment in 2006 was on temporary terms but on 14<sup>th</sup> April 2010 his services were summarily dismissed for reasons of gross misconduct.
24. That the 2<sup>nd</sup> petitioner was employed by the 1<sup>st</sup> respondent in 1986 but was terminated in 1996 and then re-employed but the Receiver and manager terminated his services in 2006 and again re-employed in 2006 on temporary terms but was summarily dismissed on 14<sup>th</sup> April 2010 for gross misconduct.
25. The petitioner's case does not relate to the violation of their constitutional rights but a claim for terminal benefits arising from an employment contractual relationship and they are among claimants who filed a claim in the Industrial; Court which claim was the right forum to have their employment rights handled and in Industrial Court Cause No. 1524 of 2011 the proceedings are still ongoing and through their Advocates M/s Guserwa and Co. Advocates the petitioners instructed them to file that claim for compensation and loss of terminal benefits by the minister for Labour on account of insolvency as defined under part VIII of the Employment Act and thus this petitioner is an abuse of the court process, duplication of existing judicial and quasi-judicial processes and do not meet the threshold of **Articles 20(1), 23(1), 41(1), 42(2)(a) and (b) of the Constitution** and should be dismissed.

26. It was the respondents' submission that the 1<sup>st</sup> respondent is under receivership following the appointment of receiver by the Debenture Holder the ICDC in 1996 and the petitioner have sued the ICDC as the 2<sup>nd</sup> respondent instead of the agent the Receiver and manager. That this dispute had gone to the Minister for Labour for conciliation as under the Labour Relations Act and parties opted out and instead filed the petition while another case at the Industrial Court was also ongoing and filed by the current petitioners and others and that case was filed under section 67 of the Employment Act with regard to insolvency thus causing a multiplicity of suits after a formal notice was issued to the Minister of Labour and the petition before court is therefore not a violation of constitutional rights or a breach as cited in the case of **Anarita karimi Njeri versus the Attorney General**, that require that a constitutional petition must state the breaches occasioned to the Petitioner. In the case of **Julius Meme versus the Attorney General** and in the case of **Otieno Clifford Richard versus Republic** that the court emphasised in a labour dispute that a breach of contract and should be referred to the Industrial Court instead of a petition to the high Court and in the case of **Methodist Church in Kenya Trustees Registered and Another versus Jeremiah Muku and another (2012) eKLR** where the court noted that the mere allegation of a breach of a constitutional right is not in itself sufficient to entitle an applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court or meant to avoid the appropriate judicial remedy.
27. The respondent further submitted that in the case of **Southern Africa Constitutional Court in Chirwa versus Transnet Limited and Others (2007) ZACC 23**, the court noted that in a labour dispute where parties had filed their claim in the constitutional court instead of the Labour Court was wrong and thus in this case the petitioners were wrong to file a constitutional claim and if the court were to entertain case of breaches of rights without specification or an indication of damages suffered it would arrive at a wrong finding.
28. That the 2<sup>nd</sup> respondent as a company in receivership in wrongly suited and should be deleted from these proceedings as under receivership and not as a going concern as held in the case of Zambian case of **Freshnet Limited versus Kawamwa Tea Company (2008) ZMSC 26** that once there is a receivership a company cannot sue except in a few exceptions.
29. that the suit against the 2<sup>nd</sup> respondent is premature as a receiver is to recover debts and pay secured creditors and the petitioners are not such secured creditors as held in the case of **Michael Oyugi and 181 Others versus Industrial Plant (EA) Limited (in receivership) and another (2006) eKLR** that once receivers are appointed have the primary duty to the secured creditors.
30. that even where the petitioners had a claim that was to be arbitrated in the Industrial Court as under section 67 of the Employment Act relating to insolvency by seeking compensation through the Minister under the Insolvency Fund as they had done in the pending case before the Industrial Court Cause No.1524 of 2011.
31. that there is no conspiracy to defraud the petitioners as indicated in their petition and the delay in lifting the receivership has been occasioned by factors beyond the control of the respondents or the Receiver and manger in the proceedings in the high Court case No. 306 of 2005 where they were restrained from disposing the 1<sup>st</sup> respondent assets and that this case has now been settled and the process of winding up ongoing to be concluded this year, 2013.

32. That the petitioner can therefore be heard in this suit in its current form and should be dismissed with no order as to costs.

### **Determination**

33. I have considered the pleadings, depositions and submissions made for and on behalf of the parties. Several issues were canvassed in both the pleadings and oral submissions. I will first deal with the preliminary issue of jurisdiction.

34. The respondent raised the question of jurisdiction of this court as against filing a constitutional petition instead of an industrial cause and the claim for breaches of constitutional rights and noting this is an employment matter that falls within the jurisdiction of the Industrial Court. The Industrial Court as constituted under the **Industrial Court Act, 2011** is competent to interpret the Constitution and enforce fundamental rights and freedoms in matters arising from disputes falling within the provisions of **Section 12** of the **Industrial Court Act, 2011**. (See **United States International University (USIU) v Attorney General Nairobi Petition 170 of 2012 (Unreported)**, **George Onyango v Board of Directors of Numerical Machining Complex Ltd & 2 others, Petition No. 417 of 2012**).

35. This matter was heard prior to the establishment of the Industrial Court. The judges of the Industrial Court were appointed on the 12<sup>th</sup> of July 2012 as evidenced by a **Gazette Notice No. 9797**. I am therefore inclined to conclude the matter and in this regard adopt Justice Mumbi Ngugi's sentiments in **Kipkurui Langat v The Police Commissioner/Inspector General and Another, Nairobi Constitutional Petition No. 224 of 2011 (Unreported)** where the observed, "[23] *This matter was, however, heard on the 18<sup>th</sup> of July, 2012. The Industrial Court had not yet become operational. It was in my view within the court's jurisdiction and in the interests of justice, particularly bearing in mind the principle contained in Article 159(2) (b) that 'justice shall not be delayed' to hear and determine the matter.*" I therefore find and hold that the Petition was filed before the High Court Human Rights Division was proper and the action to transfer the petition for hearing to the industrial Court once operationalised was proper.

36. The above finding notwithstanding, there are substantive issues pending for determination.

### ***Issues for Determination***

37. I have framed two key issues for determination as follows;

- a. Whether the dismissal of the petitioners from the employment of the 1<sup>st</sup> respondent in breach of petitioners' rights under the Constitution or other relevant laws
- b. What rights exist to an employee when an employer is placed under receivership?
- c. What remedies [if any] exist to the petitioners?

## **Whether there was a violation of the Petitioners' rights**

38. Unlike the former Constitution which did not recognize and protect the rights of workers to fair labour practices, the Constitution now has explicit provisions which provide a foundation for the rights of employees to fair labour practices
39. The preamble and the provisions on national values and principles contained in **Article 19** lays emphasis on dignity, human rights and social justice for all persons. In giving effect to the provisions of the Constitution and the Bill of Rights, the place of workers must be articulated as required by **Articles 19(2), 20 and 21**. **Article 28** protects the right of any person to be treated with dignity and **Article 41** protects the right to fair labour practices. The Constitution also provides a window for enforcement and enrichment of the rights and freedoms of workers through the application of international law principles, treaties and conventions Kenya has ratified. This is through the provisions of **the International Labour Organization Convention 158 of 1982 on Termination of Employment**; provide that an employee shall not have his contract of employment terminated, unless there is a valid reason. **However such claim must be addressed as under the provisions of Article 162 (2) (a)** and based on laws enacted by Parliament to give the courts so effect as under Article 162 (3) where the Employment Act and the Industrial Court Act have been enacted on the mandate of the Industrial Court on employer/employee labour relations and the jurisdiction of the court.
40. Sections 2 of the *Employment Act (No. 11 of 2007)* define 'employee' and 'employer' to mean;

*a person employed for wages or a salary and includes an apprentice and indentured learner and an "employer" means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;*

At the time of termination on 14<sup>th</sup> March 2010, both petitioners were in the employment of the 1<sup>st</sup> respondent under 'temporary Appointment' as from 11<sup>th</sup> January 2006 to the date of termination when they were summarily dismissed for alleged gross misconduct. They were however on terms that indicated their monthly salary of kshs.8, 449.20 was payable monthly and any termination of the 'temporary appointment' was by giving either party one month notice or 1 month salary in lieu of notice hence placing the petitioners on a different relationship with their employer as against that of 'temporary appointment' to an employee as protected under section 37(1) of the employment Act thus;

**37. (1) notwithstanding any provisions of this Act, where a casual employee—**

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

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

**The contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35 (1) (c) shall apply to that contract of service.**

41. Therefore, as at the time of termination, the petitioner were no longer 'temporary' staff as by operation of the law they were employees under term contract with benefits and entitlements as any other employee employed under permanent terms. And thus in a claim for violation of fair labour practices as under the petition seeking payment of retirement benefits and that their harassment by the respondents was unlawful under the ambit of the Industrial Court and on rights as under the Employment Act.
42. Further to the above assessment of the petition, the respondents are sued as under receivership and the rights that ensue in such a situation and the procedure applicable, and in this case the general principle applicable where a company has been placed under receivership even in the case of a corporation like the 1<sup>st</sup> respondent it lacks the legal competence to institute suit or be sued in its own name and can only sue or be sued through the receiver or manager as that is the person/body in law that has taken over the affairs of that entity under receivership. However if in the courts opinion based on the proceeding before it finds that the claims directly touch on the property, assets, actions complained of subject of the receiver's powers or where the receiver's position would be prejudiced by the court decision then a court can direct that proceedings be made jointly with that other entity. This is one such peculiar case with the claim interrelated and one cannot exist without the other and therefore both parties as respondents are properly sued.
43. The claim as framed is against the 1<sup>st</sup> respondent in receivership as managed under the 2<sup>nd</sup> respondent as responsible for the appointment of various Receivers and Managers and that any claims arising from the 1<sup>st</sup> respondent under such receivership is governed as under the Employment Act section 67 and the whole part VIII of the Act which outline what and how to institute proceedings when an employer is insolvent, would up or as the 1<sup>st</sup> respondent came under receivership. There are conditions to enjoying these provisions;
- a. There is a valid claim;
  - b. There is insolvency of an employer;
  - c. An application shall be to the Minister that an employer is insolvent and an employee has been terminated;
  - d. On the insolvency date the employee was entitled to payment; and
  - e. Then the Minister to pay from the Insolvency Fund
44. Therefore for any employee affected by their employer being placed under receivership it goes that such an employee shall lodge any claim before this court, that employee must satisfy several conditions. I find that the 1<sup>st</sup> respondent went under receivership in 1996 and the various Receiver and Managers appointed under the 1<sup>st</sup> respondent receivership by the 2<sup>nd</sup> respondent continued to enjoy the services of the petitioners as taxi drivers under the terms as agreed upon between themselves which I find had conferred rights as under the Employment Act and out of their employ on 14<sup>th</sup> April 2013 were dismissed for gross misconduct after a lock-out and that this dispute was reported to the Minister for labour who placed it for reconciliatory but that the same broke down or was abandoned and the petitioners filed Industrial Cause No. 1524 of 2011 which they later withdrew as they were dissatisfied with their advocate and opted to file this petition.
45. By the Minister being seized of the matter as stated and agreed by the parties herein, I find the big part of Part VIII of the Employment Act had been met even though the claim now should have been as between the contract between the Receiver and Manager of the 2<sup>nd</sup> respondent who had re-employed the petitioners as against the 1<sup>st</sup> respondent. By inviting the Minister to arbitrate as

under the Employment Act, the parties herein assumed that insolvency had occurred then and there was a valid claim and the employee was entitled to payment of wages and that the Minister had established an Insolvency Fund from where such a claim was to be paid.

46. I find at the time of the petitioners' termination, the reasons for termination was gross misconduct after a lock-out, but these are issues for determination by the Industrial Court as to whether the termination was fair or unfair and the payable dues and despite the petitioners stating that their terminal dues and retirement benefits were not paid, these are specific claims that should be outlined in a claim for the court or a Labour Officer to establish from the circumstances of the termination which has been stated to have been unlawful and that claim as under Section 90 of the Employment Act should be lodged within 3 years of the termination.
47. This claim at the time of being referred to the Minister was within the outlined requirements of Part VIII of the Employment Act on Insolvency procedures and with the parties failing to agree before the Minister and by filing the same at the Industrial Court, the court was properly seized of the matters to arbitrate on the terminal benefits owing, the retirement benefits and the circumstances of the termination as being fair or unfair. The act of the petitioners withdrawing from that claim and by filing this Petition even where the court has jurisdiction, this court must put into context other pending suits or claims as against similar parties over the same subject matter or cause of action. This is one such case of duplicity.
48. In proceedings of this nature which are dependent on an operational Insolvency Fund as established by the Minister for Labour it goes without saying that the Minister for Labour would be a worthy respondent to give effect to any orders of the Court granted with regard to withdrawals from the Insolvency Fund, where an employer would up or placed under receivership and there are employees who have valid claims unpaid at the time the employer was would up or placed under receivership. It become a fatal error to sue a party alone that cannot enforce the court orders against or seek to enforce court orders on a third party not party to the court proceedings. The court will have granted ineffective orders and that is not the aim of this court as it should not grant in futility. I reiterate what the Judges in the Case of ***P. Perry versus Secretary of State for Trade and Industries, Appeal No. EAT/1301/98*** at page 11, the Judge note that;

***...The Secretary [Minister] of State as custodian of that Fund is bound to look carefully at the Secretary of State's reasoning. If we think it is wrong, then we shall say so. Equally we must apply the law as we understand it, as having done so, we must dismiss this appeal.***

49. This claim must therefore fail. The petitioners should have pursued their claim before the Court filed in Cause No. 1524 2011. By withdrawing from this Cause, they threw their rights away and cannot redeem the damage by filing this petition as by calling it a Petition, Complaint and not a Cause or Claim does not change the cause of action or the claims before this court. The petitioners by their own admission in this Petition indicate that the dispute was sent to a conciliator by the Minister, negotiations broke down and they came to this Court in a different matter. Their differences with their advocate was not good ground enough to file this petition where they act in person as the right thing to do was to continue with that claim in person and not file more suit as this multiplicity, duplicity and repetitive claim make them vexatious.

**I therefore dismiss the petition was filed. Each party to take their own costs.**

Read in open court this 27<sup>th</sup> day of May 2013

**M. Mbaru**

**Judge**

In the presence of:

Court Clerk: Jacob Kipkirui

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