



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E050 OF 2021

VGTS COMPANY (HONGKONG) LIMITED.....1ST PETITIONER/APPLICANT

MPGIO (KOREA) LIMITED.....2ND PETITIONER/APPLICANT

VERSUS

JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND

TECHNOLOGY INDUSTRIAL PARK LIMITED.....RESPONDENT

AND

THE HON. ATTORNEY GENERAL.....INTERESTED PARTY

RULING

1. The 1st Petitioner/1st Applicant, VGTS Company (Hongkong) Limited, and the 2nd Petitioner/2nd Applicant, Mpgio (Korea) Limited, by way of a notice of motion application dated 10th February, 2021 orders that:

a) Spent;

b) That this Honourable Court be pleased to issue Orders directing the Respondent to furnish the Petitioner with the minutes of the meeting between the Petitioner and the Respondent held on 29th October, 2020;

c) That this Honourable Court be pleased to issue a Conservatory Order to restrain the Respondent by itself, its officers, servants, agents or anyone acting on its behalf from re-advertising, undertaking any procurement activities or awarding the subject tender for procurement of SKDs, Laptops or Tablets in relation to this Petition pending hearing and determination of this Application;

d) That this Honourable Court be pleased to issue a Conservatory Order to restrain the Respondent by itself, its officers, servants, agents or anyone acting on its behalf from sharing, disseminating, circulating, disclosing to third parties or in whatever manner relying upon the information obtained from the Petitioners in relation to this Petition pending hearing and determination of this Application;

e) That this Honourable Court be pleased to issue a Conservatory Order to restrain the Respondent by itself, its officers, servants, agents or anyone acting on its behalf from re-advertising, undertaking any procurement activities or awarding the subject tender for procurement of SKDs, Laptops or Tablets in relation to this Petition pending hearing and determination of this Petition;

f) That this Honourable Court be pleased to issue a Conservatory Order to restrain the Respondent by itself, its officers, servants, agents or anyone acting on its behalf from sharing, disseminating, circulating, disclosing to third parties or in whatever manner relying upon the information obtained from the Petitioners in relation to this Petition pending hearing and determination of this Petition;

g) This Honourable Court do award any other orders it may deem just, fit and expedient to award in the interests of justice.

h) The costs of this Application be provided for.

2. The application is based on the grounds set out therein and an affidavit sworn on the date of the application by Morgan Keya, a director of the 1st Applicant.
3. The 1st Applicant avers that the procurement department of the Respondent, Jomo Kenyatta University of Agriculture & Technology Industrial Park Limited, invited it through an email dated 29th September, 2020 to submit a quotation for the supply and delivery of 13,105 laptops and 8,280 tablets in parts as Semi Knocked Downs (herein referred to as "SKDs") devices for local assembly in Kenya in line with the provisions of the Public Procurement and Asset Disposal Act, 2015.
4. It is averred that on 14th October, 2020, the 1st Applicant, through a joint venture with the 2nd Applicant, submitted a price quotation and detailed specifications of all the items proposed for supply as per the requirements outlined in the Respondent's request for quotation. The applicants also submitted the documents demanded by the Respondent in its request for quotation.
5. The applicants state that on 27th October, 2020 the Respondent informed them that their bid was successful and invited them to a meeting to negotiate prices. According to the applicants, the meeting to negotiate prices was held on 29th October, 2020 using the Zoom platform.
6. The applicants aver that during the meeting the Respondent informed them that they should negotiate the price for the devices before execution of the contract. According to the applicants, they agreed on the price of USD 200 for each tablet and USD 615 for each laptop bringing the cumulative amount to USD 9,715,575. According to the applicants, the negotiated price was conditional on a contract being signed within the bid validity period which was 14 working days from the date of submission of the bid. They aver that a draft contract was indeed issued on 3rd November, 2020 and signed before the expiry of the bid validity period on 4th November, 2020.
7. The applicants averred that during the negotiations, the Respondent sought from them commercial and intellectual property information pertaining to the bid items which included pictures of the SKDs and tablet covers with qwerty keyboards, and a manufacturing and delivery schedule. It is deposed by the applicants that they gave out the confidential information in good faith having been assured that a contract would issue within the agreed timeline as their consortium was the successful bidder. According to the applicants, this kind of information is not ordinarily disclosed in the absence of a contractual relationship between the parties.
8. The applicants state that during the meeting it was agreed that the Respondent would record the minutes and share them immediately after the meeting. However, the Respondent failed to circulate the minutes despite several reminders. Further, that on 4th November, 2020 the Respondent issued a cancellation notice of the procurement citing the reasons for the decision as inadequate budgetary allocations, material governance issues and *force majeure*.
9. The applicants contend that the Respondent's cancellation of the tender violated their right to fair administrative action as no reason was given for the decision and neither were they involved in the proceedings leading to the decision. According to the applicants, the cancellation was also in direct violation of Section 53(8) of the Public Procurement and Asset Disposal Act, 2015, which stipulates that an accounting officer should not commence a procurement process without first securing or establishing the availability of the requisite funds.
10. The applicants aver that in a bid to safeguard their rights they wrote to the Respondent on 26th January, 2021 demanding a copy of the minutes of the negotiation meeting but the Respondent wrote back on 1st February, 2021 claiming that their letter was unsigned. The applicants state that they replied to the Respondent's letter on 4th February, 2021.
11. The applicants aver that in an attempt to cover up the cancellation of the procurement proceedings the Respondent wrote to the Public Procurement Regulatory Authority to notify them of the cancellation of the procurement proceedings. The applicants read bad faith in the Respondent's action and aver that although the letter is dated 17th November, 2020 the same was received by the Public Procurement Regulatory Authority on 29th January, 2021.
12. The applicants urge this Court to intervene lest the Respondent shares their confidential information with their competitors.
13. The Respondent opposed the application through an affidavit sworn on 10th February, 2021 by its Acting Managing Director, Dr. Kibet Langat. The Respondent's starting point is that the petition does not meet the threshold of a constitutional petition.
14. The Respondent deny ever engaging the applicants in any tendering process whether by way of restricted tender or request for quotation as envisaged under sections 102 and 105 of the Public Procurement and Asset Disposal Act, 2015. Further, that the applicants are not in the list of their pre-qualified suppliers.
15. According to the Respondent, it only requested for general information from the 1st Applicant and other international original device manufacturers with a view to forming a business partnership for the supply and delivery of semi-knockdown devices for laptops and tablets for assembly in Kenya. It is the Respondent's deposition that no confidential information of any commercial value was shared by the applicants during the meeting.
16. The Respondent denies the applicants' claim that it agreed to issue a draft contract and instead state that the agreement was that the applicants would extend the validity period to 4th November, 2020 so as to give time to the Respondent to consider the agreed prices against the budgetary allocation for the project.
17. On the applicants' prayer to be supplied with the minutes of the meeting between the parties, the Respondent aver that it did not comply with the applicants' request for the minutes since they contain sensitive information whose disclosure would be prejudicial to the continuation of the procurement process. The Respondent additionally state that the letter to the Public Procurement Regulatory Authority

was a mere formality. It is the Respondent's case that granting the orders sought by the applicants will be prejudicial to it as the engagement was not a procurement process nor was a tender awarded.

18. The applicants filed a supplementary affidavit sworn on 27th April, 2021 alleging that the Respondent's case is made up of false averments.

19. Through submissions dated 27th April, 2021, the applicants urged that the failure by the Respondent to avail to them the minutes of the meeting of 29th October, 2020 infringed on their constitutional right to information as envisaged in Article 35 of the Constitution and Section 4 of the Access to Information Act, 2016. Reliance was placed on the decisions in **Katiba Institute v Presidents Delivery Unit & 3 others [2017] eKLR** and **Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company & 2 Others [2013] eKLR** as affirming that the right to information imposes a duty to publish information and also provide open access to any specific information as required by the people from the State.

20. The applicants submit that the Constitution does not limit the right to access information. The decision of **Trusted Society of Human Rights Alliance & 3 others v Judicial Service Commission [2016] eKLR** is cited as holding that Article 35(1)(a) of the Constitution does not impose any condition precedent to the disclosure of information by the State. Further, that the right to access information is one of the values of constitutional democracy as observed in the cases of **President of the Republic of South Africa and Others v M & G Media Ltd (CCT 03/11) [2011] ZACC 32** and **Brummer v Minister for Social Development & Others (CCT 25/09) [2009] ZACC 21**.

21. The applicants submit that by virtue of Article 2(5) of the Constitution the general rules of international law and any treaties or conventions ratified by Kenya form part of the law and as such Article 19 of the Universal Declaration of Human Rights, Article 19(2) of the International Convention on Civil and Political Rights, and Article 9(1) of the African Charter on Human and Peoples' Rights which provide for the right to access information are applicable in Kenya.

22. The applicants contend that for Section 6(1)(a) & (2)(1) of the Access to information Act to be invoked the Respondent is required to discharge the burden of proof that the information sought will affect State security, which burden the Respondent has failed to discharge in this case. It is additionally submitted that a party who alleges a limitation of a right pursuant to Article 24(1) of the Constitution has a duty to prove that the purported limitation falls within the ambit of the provision. Reliance is placed on the decision in **Youth Initiative for Human Rights vs. Serbia (Application No. 48135 /06)**, as cited in **Trusted Society of Human Rights Alliance & 3 others v Judicial Service Commission [2016] eKLR**, for the holding that exceptions should only apply where the harm is greater than the overall public interest in having access to the information and that the burden is on the public authority seeking to deny access to show that the information falls within the exceptions.

23. On the issue as to whether they are deserving of conservatory orders, the applicants cite the decisions in **Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General eKLR** and **Platinum Distillers Limited v Kenya Revenue Authority [2019] eKLR** as establishing the conditions to be met by a party seeking conservatory orders.

24. It is the applicants' submission that this matter is premised on the provisions of Articles 10(1), (2) & (3), 27, 31, 35, 40, 47 and 48 of the Constitution and Article 9 of the International Covenant on Civil and Political Rights. According to the applicants, the action of the Respondent in cancelling the award of the tender upon obtaining confidential information from them and the refusal to release the minutes violates their legitimate expectation. To buttress this argument, the applicants relied on the case of **Keroche Industries Limited v Kenya Revenue Authority & 5 others [2007] eKLR** for the proposition that it is in the interest of fairness that public bodies keep their promises.

25. It is further submitted that the Respondent's actions are in breach of the provisions of the Public Procurement and Asset Disposal Act, as read with Article 227(1) of the Constitution, in that they failed to issue notice and reasons for the termination of the procurement proceedings to all bidders within fourteen days as required by Section 63(4) of the Public Procurement and Asset Disposal Act. Further, that the failure to follow the prescribed procedure for termination of procurement proceedings violated principles of public procurement stipulated under Article 227(1) of the Constitution.

26. It is additionally the applicants' contention that the Respondent's failure to abide by the laid down procedure infringed their right to fair administrative action. In support of this argument reliance was placed on the case of **Judicial Service Commission v Mbalu Mutava & another [2014] eKLR** where it was held that Article 47(1) of the Constitution marks an important and transformative development of administrative justice as it lays a constitutional foundation for control of the powers of State organs and other administrative bodies as well as entrenching the right to fair administrative action in the Bill of Rights.

27. As to whether they will suffer any prejudice if orders are not granted, the applicants assert that the Respondent's actions have caused them economic loss and damage as they retain confidential information which may be utilized in a prejudicial manner against them. The applicants are apprehensive that if the orders are not granted the Respondent will eventually share their confidential information with their competitors.

28. It is further the applicants' submission that they have been unfairly denied their right to perform the tender despite having been awarded the same. It is additionally their case that they have lost the right to compete fairly in the tender process.

29. The Respondent filed submissions dated 13th May, 2021. The Respondent reiterated its core defence that it did not engage the applicants within the context of the Public Procurement and Asset Disposal Act. According to the Respondent, what it simply did was to invite business entities with a view to seeking a strategic international partner for the formation of a partnership for the local assembly of laptops and desktops.

30. The Respondent contend that the applicants have not demonstrated how the failure to provide the minutes to them violate any constitutional rights considering that they voluntarily participated in the meeting.

31. The Respondent submit that any attempt by the applicants to rely on an alleged procurement that did not comply with the minimum legal requirement governing public procurement amounts to an illegality which the applicants cannot benefit from. To buttress this argument reliance was placed on the cases of **Heptulla v Noormohamed [1984] eKLR** and **Multi-Line Motors (K) Ltd v Migori County Government [2019] eKLR** where it was held that the plaintiff having willingly and in full knowledge failed to adhere to the laws, the contracts were illegal and not enforceable in law.

32. In opposition to the applicants' contention that their right to access information has been violated, the Respondent contend that the information contemplated is that which is already in the possession of the State or the other person and not where the person seeking the information voluntarily surrendered the information to the State. It is additionally the Respondent's case that the applicants have not demonstrated how the information will be used for the realization of their constitutional rights or how the lack of the information has hindered them from enforcing their constitutional rights.

33. It is the Respondent's submission that the request for information was made by VGTS Company Limited and not VGTS Company (HONGKONG) Limited hence making it impossible to comply as the entity making the request was unknown to them. It is additionally urged that the information required could not be ascertained or availed as it is protected from disclosure under Section 6(1)(g) & (h) of the Access to information Act. In support of this argument the case of **Zebedeo John Opore v The Independent Electoral and Boundaries Commission [2017] eKLR** was cited for the holding that access to information disputes are generally not purely private disputes.

34. Another argument by the Respondent is that the applicants' pleadings do not meet the requirements of a constitutional petition as established in the cases of **Anarita Karimi Njeru v The Republic [1979] eKLR** and **Mumo Matemo v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR**. It is their submission that the application and the grounds in support have not cited with precision the Articles of the Constitution alleged to have been violated and the manner of their violation.

35. According to the Respondent, no identifiable and arguable constitutional issues have been raised to establish a *prima facie* case for grant of conservatory orders.

36. The Respondent contend that this Court lacks jurisdiction to entertain the matter as the issues raised by the applicants are commercial in nature as they are founded on the Public Procurement and Asset Disposal Act.

37. The Respondent submit that the applicants have not shown the prejudice they will suffer if the orders sought are not granted. The Respondent insist that no confidential information of any commercial value was disclosed by the applicants other than information relating to the device specifications, which information is readily available to the Respondent and the general public. The Court is therefore urged to find the application unmerited and dismiss it.

38. In an application for conservatory orders the court is not required to delve into the merits of the petition as this is likely to prejudice the positions of the parties and even cause discomfort to the judge who will eventually hear the petition. What is therefore required of me is to simply make a finding as to whether the applicants have satisfied the set principles for grant of conservatory orders.

39. The applicable principles for grant of conservatory orders are now well settled. Those principles were summarized in **Nubian Rights Forum & 2 others v Attorney-General & 6 others; Child Welfare Society & 8 others (Interested Parties); Centre For Intellectual Property & Information Technology (Proposed Amicus Curiae) [2019] eKLR** as follows:

"92. The applicable principles for the grant of conservatory orders were detailed by Onguto J. in Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR. In summary, the principles are that the Applicant ought to demonstrate an arguable *prima facie* case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice. Further, the Court should decide whether a grant or a denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights, and whether if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. Lastly, that the Court should consider the public interest and relevant material facts in exercising its discretion whether, to grant or deny a conservatory order."

40. Additionally, the Court in the case of **Centre for Rights Education and Awareness (CREAW) & another v Speaker of the National Assembly & 2 others [2017] eKLR** held that:

"A party who moves the Court seeking conservatory orders must show to the satisfaction of the Court that his or her rights are under threat of violation, are being violated or will be violated and that such violation, or threatened violation is likely to continue unless a conservatory order is granted. This is so because the purpose of granting a conservatory order is to prevent violation of rights and fundamental freedom and preserve the subject matter pending the hearing and determination of a pending cause or petition..."

A conservatory order would normally issue where there is real impending danger to violation of the Constitution or fundamental rights and freedoms with a consequence that a petitioner or the public at large would suffer prejudice unless the court intervenes and grants Conservatory orders. In such a situation, the Court would issue a conservatory order for purposes of preserving the subject matter of the dispute."

41. The Supreme Court in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR** while addressing its mind to the principles to be taken into consideration in an application for conservatory orders gave guidance as follows:

"[86] "Conservatory orders" bear a more decided *public-law* connotation: for these are orders to facilitate ordered

functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the *public interest*. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the *inherent merit of a case*, bearing in mind the *public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes*.

[87] The issue before us, therefore, is whether this is a proper case where the interlocutory reliefs sought by the applicant should be granted. The principles to be considered before a Court of law may grant stay of execution have been crystallized through a long line of judicial authorities at the High Court and Court of Appeal. Before a Court grants an order for stay of execution, the appellant, or intending appellant, must satisfy the Court that:

(i) *the appeal or intended appeal is arguable and not frivolous; and that*

(ii) *unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory.*

[88] These principles continue to hold sway not only at the lower Courts, but in this Court as well. However, in the context of the Constitution of Kenya, 2010, a third condition may be added, namely:

(iii) *that it is in the public interest that the order of stay be granted.*

[89] This third condition is dictated by the *expanded scope of the Bill of Rights, and the public-spiritedness that run through the Constitution...*”

42. While drawing from various authorities, the Court in the case of **Law Society of Kenya v Office of the Attorney General & another; Judicial Service Commission (Interested Party) [2020] eKLR** summarized the principles for grant of the conservatory orders as follows:

“24. From various authorities of the Courts the principles required to be satisfied before granting conservatory orders or interim conservatory orders comprises of the following:-

a) *First, an Applicant must demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he/she is likely to suffer prejudice.*

b) *The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.*

c) *Thirdly, the court should consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory.*

d) *The final principle for consideration is whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.”*

43. A perusal of the pleadings and submissions before this Court reveals that the dispute stems from the Respondent’s call on 29th September, 2020 for submissions of bids from potential partners for the supply and delivery of semi-knocked down devices for their assembly in Kenya. The applicants honoured the call and acted upon it. The Respondent in its email of 27th October, 2020 invited the applicants for clarification and price negotiations on their quotation. The meeting was subsequently held on 29th October, 2020 where the deliberations between the parties were captured through minutes recorded by the Respondent.

44. There is evidence on record that on 30th October, 2020 the applicants requested the Respondent for the minutes of the meeting. It is necessary to reproduce the Respondent’s response as follows:

“Good morning,

Noted, however, I kindly request you wait for official communication before your company commit to do anything.

Before we send any bidding business document our legal team has to advise and recommend it to the Board for approval. We noted all your concerns including reviewing the prices at the expiry of validity period on your quotation. All these concerns noted and taken into consideration I still request you give us ample time to fast track our internal processes and procedures.

I will share the minutes on Monday 2nd November 2020.”

45. The applicants’ case is that the Respondent failed to issue them with the minutes of the meeting but instead issued them with a notice 4th November, 2020 cancelling the procurement proceedings. The Respondent on the other hand contend that it only invited the applicants and other entities for a business partnership. It is further the Respondent’s case that it could not avail the record of the meeting as it was an internal document with sensitive information.

46. The core issue in the petition is whether the Respondent engaged the applicants in a procurement process whose termination was effected outside the laws applicable to public procurement. The applicants seek damages among other remedies. Although procurement and asset disposal in the public sector is governed by specific laws and regulations and may not be the subject of constitutional petitions, there are exceptions to this rule. In my view, a public entity which take bidders on a wild goose chase in respect of a sham procurement can be made to pay damages to the bidders drawn to the process. As was held in **Republic v Public Procurement Administrative Review Board & 2 others Ex-parte Coast Water Services Board & another [2016] eKLR**, a public procurement must primarily meet the constitutional threshold of fairness, equity, transparency, competitiveness and cost-effectiveness before other requirements are taken into account. It is therefore reasonable to infer that this petition discloses a *prima facie* case which require further examination at the hearing of the petition.

47. The applicants aver that the Respondent sought confidential information which they would ordinarily not disclose in the absence of a contractual relationship with the other party. The Respondent disputed this averment stating that it only requested general information from the parties engaged in the process. I am inclined to agree with the applicants since as a general rule in business dealings there exists an implied covenant of good faith and fair dealing where it is expected that the parties will engage each other in good faith. The Respondent's action of engaging the applicants and undertaking to supply them with minutes and later failing to do so is against the good faith principle.

48. In view of what I have already stated, I am persuaded that the applicants are indeed not only likely to suffer prejudice as a result of the Respondent's actions but will also have their constitutional rights infringed. Further, failure to grant some of the orders sought in the application would render the petition nugatory. The applicants have a right to protect whatever they gave to the Respondent on the understanding, which has now turned out to be a falsity, that it would be awarded a tender to supply the devices.

49. The applicants aver that the Respondent informed them on 27th October, 2020 that their bid was successful because it was the most responsive. According to them they are entitled to be awarded the tender as provided by Section 89(4) of the Public Procurement and Asset Disposal Act. It is on this ground that they seek an order specifically barring the Respondent from re-advertising and initiating any procurement proceedings in relation to the particular tender until the petition is heard and determined. The Respondent on the other hand contend that it has never engaged the applicants in any tendering process whether by way of restricted tender or request for quotation as envisaged under sections 102 and 105 of the Public Procurement and Asset Disposal Act, 2015 emphasizing that they never guaranteed them a contract. This is an issue that can only be determined once all the parties have been heard.

50. The Supreme Court in the already cited case of **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR** observed that the grant of conservatory orders has a public interest connotation. In considering whether to grant a conservatory order the court has a duty to balance the interests of the applicants and the respondents while firmly keeping its eye on where the public interest lies. The need to defer to the public interest was confirmed in the case of **Martin Nyaga Wambora v Speaker of the County of Assembly of Embu & 3 others [2014] eKLR** as follows:

“Thus, where a conservancy order is sought against a public agency like a legislative assembly that is mandated to carry out certain functions in the normal course of its business, it is only to be granted with due caution. The interruption of the lawful functions of the legislative body should take into account the need to allow for their ordered functioning in the public interest”

51. In deciding whether to grant conservatory orders, the court considers the availability of alternative remedies. The applicants herein seek to stop what they deem an improper termination of a procurement process. On the other hand the Respondent being an educational institution is required to ensure the supply of electronic devices such as laptops to Kenyan students at affordable prices. The mandate of the Respondent is of great public interest and should not be sacrificed so as to protect the interest of a bidder who can always be compensated for any loss incurred as a consequence of its dalliance with the Respondent. It is thus not in the public interest to stop any procurement the Respondent may want to commence in respect of the educational devices.

52. It is additionally observed that there is a specific law and regulations for correcting any errors that may arise in public procurement and the applicants have not stated why they did not resort to that procedure. This statement does not take away the right of the applicants to seek, through this constitutional petition, compensation for any injury sustained through a sham procurement. In the matter before me I am convinced that the mandate of the Respondent to procure SKDs for the purpose of locally assembling laptops and tablets far outweigh the private rights of the applicants to secure the tender.

53. In my view, the prayer by the applicants for an order compelling the release of the minutes to them is not about the enforcement of the right to information. It is in the nature of a notice to produce in civil proceedings and is meant to aid them in the prosecution of their petition. The Respondent cannot be allowed to hold onto the minutes on the ground of their sensitivity and confidentiality considering that the minutes are a record of the meeting between the parties herein. There is nothing unknown to the applicants in those minutes.

54. The upshot of the foregoing and for the reasons set out above, I find that the applicants' notice of motion dated 10th February, 2021 has merit and partially succeeds. As a result, an order is issued directing the Respondent to immediately furnish the applicants with the minutes of the meeting held on 29th October, 2020. This order should be complied with within seven days from the date of this ruling.

55. A further order is issued restraining the Respondent by itself, its officers, servants, agents or anyone acting on its behalf from sharing, disseminating, circulating or disclosing to third parties or in whatever manner relying upon the information obtained from the applicants in relation to semi knocked down tablets and laptops.

56. The costs of the application shall abide the outcome of the petition.

DATED AND SIGNED AT NAIROBI THIS 6TH DAY OF JULY, 2021

W. KORIR,

JUDGE OF THE HIGH COURT

DATED, COUNTERSIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF JULY, 2021

J.A. MAKAU,

JUDGE OF THE HIGH COURT