



Okindo v Gratify Solutions International Ltd & 3 others; National Employment Authority (Interested Party) (Employment and Labour Relations Petition E105 of 2025) [2025] KEELRC 2929 (KLR) (27 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2929 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E105 OF 2025
HS WASILWA, J
OCTOBER 27, 2025**

BETWEEN

DUNCAN OKINDO PETITIONER

AND

GRATIFY SOLUTIONS INTERNATIONAL LTD 1ST RESPONDENT

VIRGINIA WACHEKE MURIITHI 2ND RESPONDENT

ANN NJERI KIHARA 3RD RESPONDENT

BONIFACE OWINO 4TH RESPONDENT

AND

THE NATIONAL EMPLOYMENT AUTHORITY INTERESTED PARTY

JUDGMENT

Petitioner's Case

1. By a Petition dated 29th May 2025, the Petitioner sought for the following reliefs; -
 - a. A declaration that the Petitioner was subjected to slavery, practices similar to slavery, human trafficking, servitude, forced or compulsory labour and exploitation as perpetrated by the Respondents.
 - b. A declaration that the Petitioner was subjected to inhuman and degrading treatment by the Respondents.
 - c. A declaration that the Petitioner's freedom of movement was infringed upon by the Respondents.



- d. A declaration that the Respondents violated the Petitioner's constitutional rights to privacy and dignity by unlawfully requiring and conducting a mandatory HIV test.
- e. A declaration that the Petitioner's rights and freedoms were thus contravened and grossly violated by respondents.
- f. A permanent injunction restraining the Respondents, whether by themselves, their agents, servants, or any other persons acting under their authority, from recruiting, transporting, harboring, exploiting, facilitating, or engaging in the export or deployment of Kenyan workers to any foreign jurisdiction.
- g. A declaration that the Petitioner is entitled to an award of damages, compensation, restitution and reparation, and such an award be based on the gravity of the violation of Petitioner's rights and freedoms as well as the unjust enrichment by respondents as a result thereof.
- h. Payment of the Petitioner's promised salaries of Kshs 150,000 per month, totalling Kshs. 600,000.
- i. Special damages of Kshs. 45,768.
- j. General damages, exemplary damages, and costs.
- k. Any other relief this Honourable Court may deem fit to grant.

Petitioner's Case

2. It is the Petitioner's case that the Respondents are unlawfully recruiting unsuspecting Kenyan youths by deceitfully promising lucrative employment opportunities in Bangkok, smuggling them to Thailand for non-existent jobs by use of tourist VISAs, and subsequently smuggling them to Myanmar by boat via the Moei River, where they are handed over to criminal syndicates and forcibly exploited in online fraud operations targeting citizens of the United States and other countries.
3. The Petitioner avers that he is one of a multitude of victims of the Respondents' illegal activities, having been deceptively recruited, smuggled, and trafficked by the Respondents to Myanmar, where he was subjected to exploitation and inhumane conditions at the hands of transnational criminal syndicates.
4. The Petitioner avers that upon finalising his diploma in mass communication, he was struggling to make ends meet, engaging in informal and inconsistent jobs called "hustles" to no avail. After failing to secure meaningful employment domestically, he resolved to find employment in foreign labour markets which led him to contact the 1st Respondent through the 2nd Respondent, who facilitated and processed his foreign job placement.
5. The Petitioner avers that he was compelled to undergo an HIV test at the direction and with the full knowledge and sanction of the Respondents, who claimed it was necessary to determine his readiness for work. This test constituted a grave violation of his right to privacy, bodily autonomy, and human dignity.
6. It is the Petitioner's case that on 15th December 2024, he departed for Bangkok, Thailand, where he was to work as a customer service personnel, leveraging his educational background in mass communication. However, upon arrival, he was smuggled into Myanmar, via a boat on the Moei River. While in Myanmar, he was confined within a heavily guarded scamming compound, where he was trafficked into forced labour involving the execution of criminal activities, specifically, online scams contrary to Section 3(1)(d) as read with Section 3(5) of the Counter -Trafficking in Persons Act.



7. The Petitioner avers that he was subjected to severe physical abuse, as well as relentless mental and psychological torment, including intimidation, threats, and constant fear for his life contrary to Article 30 and 39 of *the Constitution*.
8. The Petitioner avers that he was rescued from the scam compounds on 4th April 2025 by the military and repatriated to Kenya.
9. It is the Petitioner's case that the 2nd Respondent assured him that Bangkok, Thailand was a lucrative and safe haven for foreign workers. Thereafter, the 2nd Respondent requested for Kshs. 200,000 to facilitate his placement, the Petitioner gathered and paid a deposit of Kshs. 100,000 directly to the 1st Respondent's Mpesa Number +254721xxxxxx registered in the names of the 2nd Respondent.
10. The Petitioner avers that he attempted to get information of the viability of employment in Thailand by going online and making a deeper search. However, he was surprised at first that there were no people posting about their work experience in Thailand but decided to trust the agent for the employment opportunity that had been presented to him.
11. He avers that he found one, Samson at the Respondents' office and engaged him in a discussion to verify the authenticity of the job opportunities in Thailand. Samson confirmed that the jobs were legitimate and assured him that he would be employed as a customer service personnel due to his background in mass communication.
12. The Petitioner avers that the Respondents facilitated the expedient issuance of his VISA through "Emma" at the Embassy of Thailand, after which they took it and informed him that they would give it to him on the day of travel.
13. At the airport, the Petitioner met with six other young men and one lady. The 4th Respondent instructed them to follow every instruction to make his work of processing their departure easier because they had never travelled on a flight to any other country before. Upon boarding the flight, their team leader took pictures and sent them to a WhatsApp group for monitoring their travel progress.
14. The Petitioner avers that he inquired why they had a tourist visa in their passports, to which he was informed by the Respondents that this would be changed into a work permit upon arrival in Bangkok.
15. When they arrived in Bangkok, they found a Thai driver who could not speak English was waiting for them at the airport. The driver confirmed each of their faces against the pictures on their phones, then he took their pictures and sent them to individuals on their phones.
16. The Petitioner avers that at the exit, they were informed that they were being driven to Bangkok. They were asked to board a van and the driver took their passports and kept them in a compartment at the front of the van.
17. He expected to go around two or three blocks to the destination of their work station, but the journey took about four to five hours. They drove into an area, which they thought was a remote part of Thailand. While on the journey, the driver would be seen taking pictures and videos of them, which he kept sending to individuals on his phone.
18. The Petitioner avers that in the evening, they were taken to an upscale hotel that appeared elegant, fancy, and well-maintained where they spent the night. During this time, he felt hopeful and believed that things were getting better and that he was close to getting the job of his dreams and he called his family and informed them that everything was okay.



19. However, at around 4:00 am the following day, some unknown Chinese men came with two double cabins pick-up vehicles, rushed them out of their beds, and drove about one hour with them on board. They drove the Petitioner next to a river, in Mae Sot in western Thailand, near the border with Myanmar (Burma). Three elderly women approached the vans, hurriedly ushered the Petitioner and his colleagues off the vehicle, grabbed their luggage, and quickly loaded it onto a boat that was waiting in the water.
20. The Petitioner avers that after they crossed the river, they were handed over to rebels who drove them for about 30 minutes into Myanmar. The area was heavily guarded by rebel forces and equipped with numerous CCTV cameras, indicating a high level of security and surveillance.
21. Upon arrival in a compound, their passport, which had been returned to them by the drivers, were confiscated again. In the building, a Chinese person walked into the area where they were being held, took photographs of them, and shared them via his phone with other individuals. The Petitioner and his colleagues were escorted out of the building and driven to another large compound, moving from a dry and desolate area to a greener, more luxurious-looking environment.
22. At the house, they searched the Petitioner and his colleagues, confiscated their phones, disassembled them, and kept them in custody. Everyone in the compound was smoking. Syringes were brought in, and the Petitioner's blood, along with that of his colleagues, was drawn into the syringes for unknown reasons. They were then taken to a dormitory resembling a high school dormitory, where the mattresses provided were extremely thin.
23. After offloading their bags in the dormitory, they were led into a hall with many nationalities, including Chinese, Vietnamese, Kenyans, and others. Everyone was focused on their computers, and no one talked to the other person next to them. They were then assigned computers where they would work, as their work stations.
24. The Petitioner avers that they were then informed that they would not be performing the jobs they had originally come to do. Instead, they were given one month to learn and be trained in scamming techniques to perform the criminal activities assigned to them.
25. The Petitioner avers that he worked in a department that targeted real estate agents in the United States; and he was given daily targets to be met by scamming through a seven-day strategy. On the seventh day, the Petitioner was required to swiftly guide the target in installing cryptocurrency applications on their devices. These specific applications had been developed by Chinese operators and were counterfeit clones designed to mimic legitimate cryptocurrency platforms.
26. The Petitioner avers that he was subjected to severe exploitation, coercion, and abuse while under the control of the scam compound's management as his phone and passport were confiscated, stripping him of the ability to freely communicate or leave the premises.
27. When he expressed concerns about the nature of the activities and requested to return to Kenya, the management denied his request, stating that he had been purchased for the purpose of scamming and would not be released unless he paid USD 4,000, which he could not afford.
28. The Petitioner avers that when he contacted the Respondents for help, he was advised to "settle down and learn the job", effectively encouraging him to remain in the exploitative environment. The agents had taken the Petitioner's money prior to departure, and he later learned that they had also received payments from the scam compound's management as well. This made him feel unsafe and as a result, the Petitioner was forced to engage in scamming activities, despite knowing they were criminal in nature.



29. The Petitioner avers that he was compelled to sit in a single position for up to 20 hours a day, suffering severe physical discomfort and mental torture. Additionally, the food provided was nutritionally inadequate and included items that his doctors in Kenya had specifically warned him to avoid due to pre-existing health conditions. As a result, his health rapidly deteriorated during the ordeal. He was also forced to eat frogs, snakes, octopus, and other wild animals.
30. It is the Petitioner's case that the Respondents subjected him to inhuman and degrading treatment contrary to Article 28 and Article 29 of *the Constitution*. He was tortured and beaten severely by military personnel; subjected to an electric shock punishment for talking to his neighbour during work hours; locked in isolated dark rooms when he complained about being unable to meet the sales targets due to ill health; subjected to starvation when he failed to meet his daily targets and was denied access to medication.
31. The Petitioner avers that he repeatedly reported his suffering to Virginia, one of the Respondents. However, rather than offering protection or a path to safety, the 2nd Respondent suggested transferring him to another agency or a scamming compound. The Petitioner refused, recognising that such a move would only subject him to similar or potentially worse conditions.
32. Upon his return to Kenya, the Petitioner discovered that the Respondent's employment agency was operating unlawfully. The agency was neither registered with the National Employment Authority nor had it obtained the requisite permits to facilitate the exportation of labour.
33. The Petitioner avers that he was never provided with a written contract of employment prior to his departure for Bangkok, Thailand.
34. It is the Petitioner's case that he is still undergoing counselling to facilitate his full recovery and rehabilitation from the criminal ideas and skills obtained during his enslavement in Myanmar.

Respondents' Case

35. In opposition to the Petition, the Respondents filed a Replying Affidavits dated 25th June 2025.
36. The Respondents aver that the 1st Respondent was formally incorporated by the 2nd and 3rd Respondents on 1st October 2024 for the sole purpose of formalizing and expanding their legitimate cybercafe operations and office stationery business and to bid for office supply tenders.
37. The Respondents aver that the 4th Respondent's relationship with the 2nd Respondent is that of a regular and satisfied client as he frequently visits their cybercafe operated by the 1st Respondent to seek assistance with his own business-related work such as making photocopies, scanning documents for tenders and completing online applications.
38. The Respondents aver that the 4th Respondent's business involves tenders and importation of goods and does not involve escorting individuals through airport clearance for international travel. The 4th Respondent further avers that he was not at JKIA with the Petitioner on 15th December 2024 or any other date for the purpose of his departure.
39. The Respondents deny ever engaging in the business of job placement or labour export, whether locally or internationally. They aver that they never entered into any agreement whether written or oral with the Petitioner to source a job for him in Kenya, Thailand or any other foreign country.
40. It is the Respondents' case that the Petitioner was occasionally engaged by the 1st Respondent as a reliable delivery person for its office stationery supplies when they needed to deliver them. He was never



on the payroll and he would be called when they had a delivery job and would be paid for that specific task.

41. The Respondents assert the M-Pesa number +254796876880, belongs to Virginia Muriithi and +254721xxxxxx belongs to the 3rd Respondent, Ann Njeri Kihara, not to me. The Petitioner's characterization of the payments to the 2nd Respondent's M-Pesa number as 'job placement fees' is a grave misrepresentation and a calculated deception on his part, as these funds constituted repayment of personal loans he had advanced to him.
42. The Respondents aver that the 2nd Respondent is personally involved in a small-scale, unregistered informal money lending business, often referred to as a 'shylock' business, where she loan money to individuals with the understanding that it will be repaid with a small profit or interest. My loan arrangements with the Petitioner were primarily made through cash advancements, given our frequent in-person interactions at the cybercafe.
43. The Respondents aver that the 2nd Respondent had advanced various sums of money in cash, in small bits, to the Petitioner on multiple occasions, which accumulated to Kshs. 120,000. However, there is no formal written contracts for these informal loans and their repayment thus creating an opportunity for the Petitioner to maliciously twist the facts and falsely claim these repayments were fees for non-existent job placement services.
44. It is the Respondents' case that they never directed, requested, or mandated the Petitioner to undergo an HIV test or any other medical examination for any purpose related to the legitimate cybercafe and stationery supply business, as they do not engage in activities that would require such assessments.
45. The Respondents aver that the visa issued to him for Thailand was a "TOURIST" (TR) visa, valid from 22nd November 2024 to 21st February 2025, and explicitly stamped with the remark "Employment Prohibited". Therefore, it is inconceivable and utterly illogical that any legitimate recruitment agency would facilitate travel for employment using a visa that explicitly forbids employment.
46. The 2nd Respondent avers that the Petitioner himself initiated conversations about his desire to travel to Thailand with his friends for what he termed a "survey" to find goods to import into Kenya for his own business and that while there he might also look for a job. In reponse, the 2nd Respondent specifically and responsibly warned him against the illegality and severe risks of attempting to work on a tourist visa, stressing that a proper work permit was non-negotiable for legal employment.
47. The Respondents deny having any knowledge of, involvement in, or responsibility for the Petitioner's travel from Thailand into Myanmar, or any subsequent confinement, forced labor, or abuse. The 1st, 2nd and 3rd Respondents assert that they run a cybercafe and stationery supply business, not an international criminal syndicate.
48. The Respondent avers that there is a significant contradiction from the photographs produced by the Petitioner in court as he claims the 'team leader' and 'Thai driver' took these pictures, yet he is the one exhibiting them in his affidavit. This raises serious questions: If these individuals were allegedly acting on our behalf, and he had his phone purportedly confiscated, how did the Petitioner then gain possession of these specific photographs that were supposedly taken and sent by these alleged agents.
49. It is the Respondents' case that the Petitioner's allegations against them are baseless and defamatory and they challenged the Petitioner to provide evidence linking them to any of the individuals or places he mentions.



50. The Respondents contend that they did not facilitate any employment for the Petitioner nor were they involved in his travel to Myanmar, thus, his allegations of being confined, trafficked and subjected to abuse are irrelevant to them.
51. The Respondents aver that they are aware that the Petitioner through various media interviews and his own Youtube and Tiktok channels, has admitted to receiving payment or earnings from the alleged compound, even complaining about deductions made from his pay. This public admission contradicts his claim of being a victim of forced, unpaid slavery and demonstrates a pattern of presenting different narratives to different audiences.
52. The Respondents aver that if the Petitioner genuinely had 10-15 minutes of functioning phone access daily, it raises serious questions as to why he did not use this opportunity to contact the Kenya Embassy, law enforcement, or his own family to report the severe conditions he describes. This omission casts doubt on the veracity of his claim of absolute lack of communication.
53. The Respondent avers a plausible explanation of his return to Kenya, was that his tourist visa expired and consequently deported by the Thai authorities for overstaying his visa and attempting to work illegally rather than escaping from a powerful criminal gang with his passport as there is no credible evidence has been provided.

Petitioner's Submissions

54. The Petitioner submitted that on six issues: whether the elements of human trafficking, namely, recruitment, transportation, harbouring, and exploitation, have been established; whether the Respondents subjected the Petitioner to inhuman and degrading treatment contrary to Articles 28 and 29 of *the Constitution* of Kenya; whether the Petitioner's freedom of movement under to Articles 39 of *the Constitution* was infringed upon by the Respondents; whether the Petitioner's rights to privacy and dignity were violated the Respondents by requiring and performing a mandatory HIV test; whether a permanent injunction should be issued against the Respondents; whether the Petitioner is entitled to unpaid salaries and benefits; and whether the Petitioner is entitled to general damages.
55. On the first issue, the Petitioner submitted that Article 30 of *the Constitution* prohibits holding an individual in slavery or servitude or requiring one to perform forced labour. Additionally, Kenya is bound by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), wherein Article 3(a) defines trafficking in persons to mean the recruitment, transportation, transfer, and harbouring of vulnerable persons by means of fraud, deception, or for exploitation.
56. The Petitioner further cited Section 3 of the *Counter-Trafficking in Persons Act* (CTiP Act), which also outlaws trafficking in persons for forced labour. Reliance was placed on the The definition of human trafficking by the UK Court in *Basfar v Wong* 2022 UKSC 20 where the court held that holding the Claimant in domestic servitude in Saudi Arabia amounted to human trafficking. It stated further that trafficking has three elements:
 - (i) the act: recruitment, transportation, transfer, harboring;
 - (ii) he means by which the act is done: coercion, abduction, fraud, deception, inducement; and
 - (iii) the purpose: exploitation, which includes in forced labour or slavery or servitude.
57. The Petitioner submitted that the constituent elements of human trafficking are evident in his Petition.



58. To prove recruitment, he submitted that he contacted the 1st Respondent through the 2nd Respondent in his quest for employment and was requested for Kshs. 200,000 to facilitate his placement. He paid the required amount to the 2nd Respondent's Mpesa number +254796876880 and undertook a HIV test on 30th November 2024. Thereafter, the Respondents facilitated his travel for work within two weeks, and he left Kenya for Bangkok on 15th December 2024.
59. On transportation, it is the Petitioner's submission that on 15th December 2024, alongside six other young people, they converged at the Jomo Kenyatta International Airport and the 4th Respondent was led them through their clearance process. Upon inquiring as to why their passports were endorsed with tourist visas instead of work permits, they were promised that the same would be converted upon arrival in Bangkok.
60. The Petitioner submitted that their photographs taken and shared at multiple stages of the journey for monitoring, such as upon boarding the flight to Bangkok, upon arrival at the Bangkok airport by a Thai driver who received them, upon boarding a van at the airport, and during the drive from Bangkok.
61. The Petitioner submitted that they were lodged in an upscale hotel to spend the night, at around 4:00 am, strange Chinese men rushed them out of bed, and ushered them into two double-cabin pick-up vehicles and taken to the bank of the Moei River in Mae Sot, Western Thailand, near the border with Myanmar (Burma). Thereafter, they were ushered into a boat and upon crossing the river, they were handed over to armed rebels who drove them for approximately 30 minutes into Myanmar, where they were taken to a heavily guarded scam compound.
62. On harboring, the Petitioner submitted that upon arrival at the compound, their passports, electronic gadgets, passwords, and other effects were confiscated and their blood was drawn for unknown reasons. Thereafter, they were then taken to a dormitory and provided with thin mattresses as the designated sleeping area.
63. The Petitioner submitted that he was exploited within the meaning of Section 2 of the CTiP Act as rather than being given the work he was promised, he went through coerced into one month of training in scamming techniques. After the training, he was coerced into a seven-day scamming scheme targeting real estate agents in the United States on the internet under armed surveillance and constant threats of punishment.
64. The Petitioner further submitted that he was exploited at the hands of his captors at the behest of the Respondents in human trafficking, forced labour, and servitude. The Respondents extracted labour from him in forced criminality in Myanmar, which they did not intend to pay for, and which they did not pay for contrary to Section 17 of the *Employment Act*.
65. It is the Petitioner's submission that the Respondents, who are not registered as an employment agency, charged him to procure employment in Thailand, without being registered as an Employment Agency nor offering a written contract. This was in violation of Section 55 of the *Labour Institutions Act* and Section 85 of the *Employment Act*, and setting the stage for his human trafficking.
66. The Petitioner submitted that Section 5(c) of the Counter Trafficking in Persons Act places liability on anyone who promotes trafficking in persons by managing, running or financing any job recruitment agency. Additionally, Section 13 of the CTiP Act allows the Court to order for restitution or compensation to a human trafficking victim whereas Section 3(5) provides that a person who traffics another person, for the purpose of exploitation, is liable to a fine of not less than Kshs. 30,000,000.



67. It is the Petitioner’s submission that all the Respondents are liable to compensate him jointly and severally for the constitutional breaches occasioned against him. He urged the court to be guided by the provisions of the CTiP Act in making an order for compensation.
68. The Petitioner submitted that he was: severely beaten and tortured by military personnel in Myanmar; subjected to electric shocks for speaking during work hours; locked in dark isolation rooms when he complained of illness or underperformance; routinely beaten for failing to meet scamming targets; punched arbitrarily by supervisors without provocation; forced to carry a 20-litre jerrycan on one shoulder while scamming as punishment; compelled to stand and work for up to 20 hours a day when caught sitting improperly or refusing tasks; denied access to medical care despite visible illness and deterioration; subjected to starvation as a disciplinary measure; and forced to undergo a non-consensual HIV test under the direction of the Respondents, all of which amounted to gross violations of his right to dignity and protection from inhuman and degrading treatment enshrined under Article 28 and 29 of *the Constitution*.
69. The Petitioner submitted that he endured severe psychological and emotional abuse, including
- (a) Being coerced into scamming under threat of disappearance,
 - (b) Hearing disturbing accounts of organ harvesting and sexual abuse within the compound,
 - (c) Suffering panic attacks, sleep disturbances, and nightmares due to trauma and confinement,
 - (d) Being denied access to his phone and closely monitored to prevent any communication,
 - (e) Being pressured to take performance-enhancing drugs to meet targets,
 - (f) Being physically assaulted for refusing the drugs, and
 - (g) Being met with indifference by the Respondents, who instead suggested transferring him to another scam compound.

This was in breach of Article 29 of the Constitution that grants one the right not to be subjected to torture in any cruel manner whether physically or psychologically and not treated in a cruel, inhuman or degrading manner.

70. The Petitioner placed reliance in *M W K & another v Attorney General & 3 others* [2017] eKLR, the Court awarded a total sum of Kshs 4,000,000 after determining that the actions of the Respondents, who were police officers, had infringed upon the Petitioner’s right to human dignity.
71. The Petitioner submitted that her freedom of movement under Article 39 of *the Constitution* was infringed by the Respondents as his passport was confiscated while in Myanmar, where he was forced to work in the scamming compounds against his will. When he requested to be repatriated to Kenya, the managers of the compound demanded a payment of USD 4,000 as the condition for his release an amount he could not afford. The Petitioner was only able to return upon rescue on 4th April 2025 by the military, following which he was repatriated to Kenya.
72. The Petitioner submitted that as a prerequisite for facilitating his travel to Thailand, he undertook a medical examination including a HIV test and his medical report was stamped “Medically Fit to Work”. This was in breach of the *HIV and AIDS Prevention and Control Act* provides that no person shall compel another to undergo an HIV test; and his right to privacy and dignity enshrined under Article 31 of *the Constitution*.



73. On the reliefs, the Petitioner submitted that he is entitled to the prayer for a permanent injunction as the same is unopposed by the Respondent.
74. It is the Petitioner's submission that the Respondents were under the legal obligation to pay him salaries at the rate of Kshs. 150,000 per month. Up to his return to Kenya, the Respondents paid nothing for the four months he was enslaved in Myanmar. Thus, he is entitled to the accumulated salary in the sum of Kshs. 600,000 with interest at court rates until payment in full with costs.
75. The Petitioner submitted that exemplary damages should be awarded to punish and deter human trafficking in Kenya and on the basis that the Respondents made a profit from his enslavement in Myanmar. He urged the Court to apply its discretion in awarding exemplary damages against the Respondents.

Respondents' Submissions

76. The Respondents submitted that the 1st Respondent does not carry out business as an employment agency nor does it charge or recover any payment in connection with the procurement of employment. Its business model is distinct as it provides digital services and sells stationery. Therefore, the provisions of the *National Employment Authority Act*, 2016, and specific foreign contract requirements under the *Employment Act*, 2007 which apply to registered employment agencies, are wholly inapplicable to the Respondents.
77. The Respondents submitted that the relationship between the Petitioner and the 2nd and 3rd Respondents was casual and intermittent. He was known to them as an individual who would occasionally perform freelance, on-call delivery tasks for their office stationery business. These were ad-hoc arrangements, paid per delivery, and did not constitute a permanent or continuous employment relationship.
78. It is the Respondents' submissions that they were not privy to the Petitioner's other employment or his reasons for resigning from any previous work. From the Petitioner's resignation email produced in court, it cites "unanticipated personal circumstances," not a job offer from the Respondents, further undermining his narrative.
79. The Respondents submitted that the petitioner's a transfer of Kshs. 100,000 to the 2nd Respondent's M-Pesa constituted repayment of personal loans extended to the him. The 2nd Respondent is engaged in a small scale, informal money-lending business, a common practice in Kenya that operates without extensive formal documentation or licensing. This was corroborated by the 4th Respondent in his Replying Affidavit, as he witnessed some of these loan transactions and the Petitioner's acknowledgment of his indebtedness.
80. The Respondents submitted that the Petitioner has failed to provide any credible evidence for the remaining Kshs. 100,000 he claims to have paid. Additionally, there is no financial link to the 3rd Respondent as Kshs. 100,000 was sent to the 2nd Respondent's number, not the 3rd Respondent.
81. The Respondents submitted that in *National Union of Metalworkers of South Africa and Others v Bader Bop (Pty) Ltd and Another* (CCT 37/02) [2003] ZACC 6; 2003 (3) SA 513 (CC); 2003 (5) BCLR 505 (CC), the court emphasized that the substance of a relationship, rather than its label determines its legal nature. In the instant suit, the substance of the relationship between the Petitioner and the Respondents was casual delivery work and personal loans, not employment or recruitment.
82. It is the Respondents' submission that the Petitioner has failed to establish a prima facie case of recruitment by the Respondents. His claims are based on unsubstantiated allegations and



misinterpretations of legitimate interactions. They cited Kenya Plantation & Agricultural Workers Union v Kenya Agricultural Research Institute [2012] eKLR where the court held: “An employment relationship is essentially contractual, and the terms and conditions of employment are primarily governed by the contract of employment between the employer and the employee.”

83. The Respondents submitted that the authenticity and origin of the WhatsApp chats relied upon to implicate them are highly questionable. It cannot be proved that they originated from Petitioner's phone or been untampered with. The Petitioner's own narrative of phone confiscation and subsequent recovery after reinstallation raises serious doubts about the integrity of the data.
84. The Respondents submitted that while a Certificate of Electronic Evidence has been filed, its sufficiency in conclusively proving the integrity and original context of the data, especially after such a purported recovery process, is a matter for this Court's rigorous scrutiny. Digital evidence, by its nature, is susceptible to manipulation and alteration, and the Petitioner bears the burden of proving its absolute authenticity and direct relevance beyond reasonable doubt, given the gravity of the allegations.
85. It is the Respondents' submission that the discussions within these chats, do not implicate them but vindicate them as they demonstrate the Petitioner's clear knowledge of potential risks and his proactive engagement in what appears to be a personal endeavor for which he sought informal advice or assistance.
86. The Respondents submitted the 4th Respondent never received any money from the Petitioner and no evidence has been provided to prove the same. Therefore, no money was ever sent as recruitment fee for Gratify Solutions International Limited or any other Respondent as recruitment fees.
87. The Respondents submitted that any action done by any of the them was done in their personal capacity, not in the capacity of Gratify Solutions International Limited or in their capacity as a director (if any). The 1st Respondent's sole purpose was as a cybercafe and stationery supply business, which business is now closed due to this malicious case.
88. It is the Respondents' submission that there is no direct, credible, or admissible evidence linking the 1st Respondent or the 3rd Respondent to the content of these disputed WhatsApp chats or any alleged recruitment or trafficking activities. The Petitioner has failed to prove any agency relationship between the Respondents for the purposes of recruitment or labour export. The 4th Respondent is a general acquaintance to the 2nd and 3rd Respondents at their cybercafe (as a client) does not, by any stretch of legal or factual interpretation, translate into corporate or personal liability for recruitment or trafficking on their part. The Petitioner's attempt to cast a wide net of liability without specific evidence is a fishing expedition.
89. The Respondents submitted that no evidence has been provided to prove the 4th Respondent was physically present at Jomo Kenyatta International Airport. His knowledge of their movements could have been obtained through remote communication.
90. It is the Respondents' submission that they had no knowledge of, or control over, the Petitioner's alleged smuggling into Myanmar or any events that transpired beyond his voluntary arrival in Thailand. The alleged activities in Myanmar were purportedly perpetrated by unknown third parties, for whom the Respondents bear no responsibility whatsoever. The Petitioner has failed to establish any causal link between the Respondents' legitimate activities and the alleged criminal enterprise in Myanmar.
91. The Respondents submitted that in Section 3(1) of the CTiP Act defines human trafficking by requiring three crucial elements: the act (recruitment, transportation, harboring, etc.), the means



- (threat, force, deception, abuse of vulnerability, etc.), and the purpose (exploitation). The Petitioner has failed to establish a prima facie case of human trafficking against the Respondent.
92. The Respondents submitted that the Petitioner has failed to demonstrate that the Respondents had any purpose of exploiting him or knowingly facilitated his exploitation. Their interactions were for legitimate business or personal financial arrangements, entirely disconnected from any alleged criminal enterprise or exploitation in Myanmar.
 93. The Respondents submitted that the Petitioner's reliance on the *Kifano v Loivin Limited & 4 others* (Petition E143 of 2022) [2024] KEELRC 13536 (KLR) is misplaced. In *Kifano*, the 1st Respondent was explicitly found to be running an employment agency, and there was clear evidence of direct involvement and control over the petitioner's travel, work, and release from Saudi Arabia. In contrast, the Respondents in the present case are a cybercafe and stationery business, not an employment agency. There is no evidence of their direct control over Petitioner's alleged experiences in Myanmar, nor any intent to exploit him. The facts are fundamentally distinguishable, rendering the *Kifano* precedent inapplicable to establish a prima facie case against the Respondents.
 94. The Respondents submitted that they were not in any way involved in, or had knowledge of the Petitioner's graphic and horrifying alleged exploitation, inhuman and degrading treatment, and restriction of movement in Myanmar. These acts, if true, were committed by unknown criminal syndicates in a foreign country, for whom the Respondents cannot be held liable.
 95. On the alleged forced HIV test and violation of his right to privacy or dignity, the Respondents submitted that the 2nd Respondent did not mandate an HIV test for employment or travel related to her legitimate business. The disputed WhatsApp message in the Petitioner's Exhibit "DO-15" only states "ufanye medical", which is a general suggestion for someone traveling abroad for personal reasons. It does not specifically mention an HIV test, nor does it constitute a mandatory requirement imposed by the Respondents for a job offer they did not make.
 96. The Respondents submitted that as an adult over 18 years old, the Petitioner is fully capable of independent decision-making and consent. It defies logic and reason to claim that he was compelled into an HIV test without his consent and then willingly provided the results, especially when he simultaneously claims to have been a victim of trafficking. This points to his own agency in undertaking the test for his own, undisclosed reasons.
 97. It is the Respondents' submission that the Petitioner's medical report merely states "Medically Fit to Work" but does not specify who requested the test or under what compulsion. The Respondents did not receive the results or have any knowledge of them beyond what the Petitioner may have voluntarily shown or discussed.
 98. The Respondents submitted that the Petitioner's claims of severe physical and psychological abuse, lack of medical care, forced consumption of unusual food, and detention pertain to events that purportedly occurred in Myanmar, by unknown individuals, and are entirely outside their knowledge, control, or responsibility. The Respondents reiterated that they run a cybercafe and stationery business in Nairobi, Kenya, and have no operational links to alleged scam compounds in Myanmar. Thus, the petition seeks to hold the Respondents accountable for actions they did not commit and had no means to prevent.
 99. The Respondents submitted that the Petitioner's passport stamps show his entry and exit from Thailand, and an exit stamp from Myanmar. While this indicates his presence in these countries, it provides no concrete, independent evidence detailing the alleged rescue operation, specific military involvement, or the precise circumstances of his repatriation from Myanmar.



100. The Respondents submitted that the Petitioner has failed to establish a prima facie case for inhuman and degrading treatment or infringement of freedom of movement directly attributable to them.
101. The Respondents submitted has failed to provide any credible evidence to substantiate his claim for special damages as no employment contract or job offer was ever extended to the Petitioner by the Respondents, no salaries or benefits are owed. The payments made to the 2nd Respondent were personal loan repayments, not remuneration for services.
102. It is the Respondents' submission that damages, whether general or exemplary, are awarded for proven violations or egregious conduct. For such damages to be awarded, the Petitioner must first establish a fundamental breach of his rights directly attributable to the Respondents. The Respondents contend that the committed no constitutional violations, human trafficking, or profitable exploitation of the Petitioner. The alleged atrocities occurred in Myanmar, by third parties, and cannot be attributed to the Respondents' legitimate business activities.
103. I have examined all the evidence and submissions of the parties herein. The petitioner contends that he was subjected to slavery human trafficking, servitude forced and compulsory labour and exploitation in the hands of the respondent. He contends further that he was subjected to in humane, degrading treatment in the hands of the respondents.
104. The petitioner narrated his harrowing ordeals in the hands of the respondents and people he claims were acting under the direction of the respondents in foreign countries.
105. He sought declaratory orders and orders for payment of damages amongst others. The petitioner avers that he was recruited for purposes of employment and that he paid kshs 120,000 to the 2nd respondent which the 2nd respond does not dispute receiving but avers that it was a refund of a soft loan she had given to the petitioner. The 2nd respondent did not provide any evidence that they had issued the petitioner with any soft loan.
106. The 2nd respondent admitted receiving the kshs 120,000 and admits her relationship with the 3rd respondent and admits incorporating the 1st respondent for purposes of cyber café business and supply of office stationery.
107. They aver that the 4th respondent was only doing tenders and importation of goods business. All the respondents deny engaging in labor export business. The 2nd respondent however admits that the petitioner engaged with them and indicated he wanted to travel to Thailand with his friends for jobs survey.
108. The petitioner produced photos the taxi driver in Thailand who took them before they crossed to Mymar. The petitioner has however admitted returning to Kenya upon expiry of his tourist visa and being deported by the Thai authority.
109. The fact of the petitioner exchanging money with the 2nd and 3rd respondent is supported by evidence. The fact of the respondents being solely behind his travel to Thailand and Bangkok for employment purposes and especially on a tourist visa is however not supported by evidence.
110. The petitioner even returned to Kenya on being deported and his movement to Myamar for employment becomes suspect and especially on account of his visa status.
111. The evidence submitted by the petitioner remains largely inconsistent with the documents and hence the prayers sought cannot be granted. The petitioner will fail on that ground. However, due to the serious allegations raised in this petition which allude to commission of a crime. I direct that this issue be investigated by the office of the IG and DCI and culprits if found be charged accordingly. This



judgment will be served upon the Inspector General, Attorney General and DCI accordingly. There will be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

