

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**

**PETITION NO. E052 OF 2023**

**KIANA MONIQUE ARENDSE.....PETITIONER & 184 OTHERS**

**VERSUS**

**META PLATFORMS, INC.....1<sup>ST</sup> RESPONDENT**

**META PLATFORMS IRELAND LIMITED.....2<sup>ND</sup> RESPONDENT**

**SAMASOURCE KENYA EPZ t/a SAMA.....3<sup>RD</sup> RESPONDENT**

**MAJOREL KENYA LIMITED.....4<sup>TH</sup> RESPONDENT**

**MAJOREL KENYA SOLUTIONS  
EPZ LIMITED.....5<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....6<sup>TH</sup> RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF  
LABOUR SOCIAL SECURITY AND SERVICES.....7<sup>TH</sup> RESPONDENT**

**THE DIRECTOR, OCCUPATIONAL SAFETY &  
HEALTH SERVICES.....8<sup>TH</sup> RESPONDENT**

**AND**

**KENYA NATIONAL COMMISSION  
HUMAN RIGHTS.....1<sup>ST</sup> INTERESTED PARTY**

**KATIBA INSTITUTE.....2<sup>ND</sup> INTERESTED PARTY**

**KITUO CHA SHERIA.....3<sup>RD</sup> INTERESTED PARTY**

**KENYA NATIONAL HUMAN RIGHTS  
AND EQUALITY COMMISSION.....4<sup>TH</sup> INTERESTED PARTY**

**CENTRAL ORGANIZATION OF TRADE  
UNIONS OF KENYA.....5<sup>TH</sup> INTERESTED PARTY**

**MINISTRY OF HEALTH.....6<sup>TH</sup> INTERESTED PARTY**

**MINISTRY OF FOREIGN AFFAIRS.....7<sup>TH</sup> INTERESTED PARTY**

**RULING**

The Petitioners filed a Notice of Motion application dated 23/10/2025 seeking an order in the following terms:-

- a. Spent
- b. That this honourable court be pleased to order that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents give to this honourable court a live and forensic demonstration and scrutiny of the Single Review Tool (hereinafter referred to as the SRT) showcasing all the functionalities of the SRT as they were between 2019 and 2023.
- c. That this honourable court be pleased to order that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents produce the documents in the Notice to Produce dated 23<sup>rd</sup> October 2025 for the Petitioners inspection and production as evidence.
- d. That this honourable court be pleased to order that the 3<sup>rd</sup> Respondent produces the documents contained in the Notice to Produce dated 23<sup>rd</sup> October 2025 for the Petitioners' inspection and production as evidence.
- e. That this honourable court be pleased to order that the 4<sup>th</sup> and 5<sup>th</sup> Respondents produce the documents contained in the Notice to

Produce dated 23<sup>rd</sup> October 2025 for the Petitioners' inspection and production as evidence.

- f. That this honourable court be pleased to order that the 8<sup>th</sup> Respondent produces the documents contained in the Notice to Produce to the 8<sup>th</sup> Respondent dated 23<sup>rd</sup> October 2025 for the Petitioners' inspection and production as evidence.
- g. That this honourable court be pleased to issue an order summoning the attendance of the following deponents of Replying Affidavits sworn on behalf of the Respondents for purposes of cross-examination and clarification of several facts in dispute as contained in the notice to cross-examine dated 23<sup>rd</sup> October 2025:-
  1. Laura O'Hanlon; Affidavit sworn on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents sworn on 7<sup>th</sup> August 2025.
  2. Lilian Kiplang'at; Two affidavits sworn on behalf of the 3<sup>rd</sup> Respondent on 18<sup>th</sup> September 2025.
  3. Jenifer Kivuva; Affidavit sworn on behalf of the 3<sup>rd</sup> Respondent on 18<sup>th</sup> September 2025.
  4. Shadrack Kyove; Affidavit sworn on behalf of the 3<sup>rd</sup> Respondent on 18<sup>th</sup> September 2025.
  5. Justus Bosire Nyakego; Affidavit sworn on behalf of the 8<sup>th</sup> Respondent on 12<sup>th</sup> March 2025.
- h. That the costs of this application be in the cause.

The application is premised on grounds '1' to '17' set out on the face of the Notice of Motion the nub of which is that the Respondents have filed their substantive responses and documentation in respect of the amended

petition. The matter is due for directions for hearing and determination of the petition.

The application is further supported by supporting affidavit of 77<sup>th</sup> Petitioner Naftali Andati Wandabo who deposes that all Petitioners have filed and served all the necessary pleadings and supporting affidavits upon the respondents and interested parties. That there are evidentially documents in possession of the Respondents needed for the court to better appreciate the issues for determination and same have been sought vide notices to produce filed and served on the Respondents.

That the Petitioners wish to cross-examine the deponents of the affidavits sworn on behalf of the Respondents because they contain disputed, denied and misleading facts. The Petitioners have pointed out the disputed, denied and misrepresented facts by the Respondents in their replying affidavits, matters which the Petitioners need to be clarified by production of relevant documents and cross-examination of the deponents of the replying affidavits.

The notices to produce to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents are attached in support of the application. Further notice of intention to cross-examine named deponents in terms of Articles 22(3)(d) and 50(1) of the constitution; Rule 20 and 25 of the ELRC Rules and Order 19 Rule 2 of Civil Procedure Rules is attached to this application.

That the application is in support of the notices to produce in terms of section 68 and 69 of the Evidence Act Cap 80 Laws of Kenya, whereas this application is brought under Articles 10, 35(1)(b), 50(1) and 159(2) of the Constitution of Kenya 2010; section 1A, 1B and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya; Rules 20 & 25 of the Employment and Labour Relations Court (procedure) Rules 2024, sections 48, 64, 65, 69 and 106B of the Evidence Act, Cap 80; Order 16 Rule 1, Order 19 Rule 2, Order 40 Rule 10, Order 51 Rule 1 and Order 11 Rule 3(6) of the Civil Procedure Rules, 2010, and Rules 3(8), 15, 16, 19 and 20 of the Constitution of Kenya(Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013).

That the documents sought by the Petitioners are in the control and custody of Respondents.

That the Petitioners' wish to cross-examine the deponents of the affidavits sworn on behalf of the Respondents because they contain disputed, denied and misleading facts. That Sections 68 and 69 of the Evidence Act mandate the production of the documents named in the notices to produce aforesaid.

That the deponents have specifically denied the contents of the further amended petition and several supporting affidavits to the Further Amended Petition.

That Rule 20 of ELRC (Procedure) Rules provide that the court has power to summon a person who has information relevant to the issues before

court and the Petitioners' intent to cross-examine the named persons on the matters raised in the petition and responses by the Respondents.

That Order 19 Rule 2 of the Civil Procedure Rules give the court the discretion to allow a party to apply to the court to cross-examine a deponent of an affidavit on the content thereof to help the court determine the veracity of the contents and credibility of the deponents. That the application be granted.

## **Responses**

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents filed replying affidavits and grounds of opposition to the Petitioners' notice of motion dated 23/10/2025 expressing their objection to the 'live' and 'forensic' demonstration; requested production of documents listed in the notice of produce and summon of named persons for cross examination.

The focus of the objection by the Respondents is well captured in the grounds of opposition dated 24/9/2025 by the 3<sup>rd</sup> Respondents which are as follows: -

1. The Notice of Motion application does not meet the required threshold for the grant of the orders sought therein.
2. The Notice to produce dated 23<sup>rd</sup> October 2025 is patently defective and deficient.
3. The Evidence Act already provides for an inbuilt mechanism for the consequences of failure to comply with a Notice to Produce and the orders sought are therefore incompetent and not contemplated in law.

4. The application and attendant Notice to Produce constitute a generalized demand and is a fishing expedition.
5. The application does not demonstrate the relevance of the various generalized documents and information sought in the Notice to Produce to the individual claims by the Petitioners.
6. No proof of individual waiver of confidentiality has been presented by the Petitioners Advocates as alleged.

The grounds are restated in the various replying affidavits filed by the Respondents and in particular the 1<sup>st</sup> and 2<sup>nd</sup> Respondents depose that the Petitioners have not demonstrated how the SRT was used as a surveillance tool to warrant production before court. That if the SRT is central to the Petition, it beggars' believe why the notice to produce was made 3 years after the suit was filed. That the notice to produce is a fishing expedition to enable the petitioners to create a new cause of action as they have failed to establish a legal basis for the production of what they call 'live' and 'forensic' demonstration of the SRT.

That the notice to produce is bad in law since section 67 of the Evidence Act mandates that documents in civil proceedings must be proved by primary evidence, except in circumstances set out under sections 69(a) to (g) of the Act where a party is allowed to rely on secondary evidence in special circumstances set out therein. Furthermore section 70 of the Act permits a party to rely on secondary evidence of documents not excepted under section 69 where a party has issued a notice to produce to the adverse party and the adverse party has failed to produce the documents

within reasonable time. That clearly the notice to produce by the petitioners is based on a misunderstanding of the law.

That the Petitioners do not provide sufficient grounds to cross examination the deponent of the Replying affidavit of 1<sup>st</sup> and 2<sup>nd</sup> Respondents and the matters in the Replying affidavit can be responded to by way of further affidavit and the court has already granted leave to the Petitioners in that respect. That if the court is minded to order cross examination of the deponent of the Replying affidavit, then it is in the interest of fairness that the court directs that the matter be heard by way of viva-voce evidence and all deponents of affidavits be called for cross examination. That the application be dismissed in its entirety.

The 4<sup>th</sup> and 5<sup>th</sup> Respondents dispose in the replying affidavit dated 1/11/2025 sworn to by Sven Alfons De Canter that they have been notified to produce eight (8) sets of documents. That as extensively set out in the 5<sup>th</sup> Respondent's Replying Affidavit to the Amended Petition dated 16/10/2025, the 5<sup>th</sup> Respondent was not operational at the times material to this suit and only became operational in October 2023 well after this suit was commenced, has had no interaction with any of the Petitioners and has therefore not engaged in outsourced context moderation services for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Therefore, the 5<sup>th</sup> Respondent has no record of the kind related to those requested for by the Petitioners.

That being the case, the documents requested have either been produced as annexures through the 4<sup>th</sup> Respondent's replying affidavit to the amended petition or are in the possession of the Petitioner's themselves

and have been produced or do not exist or violate the privacy of individuals not party to the suit amongst other reasons that are set out in this affidavit. That sections 68 and 69 of the Evidence Act is intended to allow a party to produce secondary evidence of documents following the issuance of a notice to produce to the adverse party.

That the requests by the Petitioners is a fishing expedition and the Petitioners have not demonstrated at all whether the documentation sought is relevant to their claims or is necessary to prove the same.

That documents sought are intended to support conspiracy allegations between the Respondents made in the petition which have been denounced by the Respondents vehemently in the replying affidavits to the amended petition.

That it is for the Petitioners to prove their claims rather than to enjoin the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents to support their petition.

The Respondents speak to specific documents sought to be produced including, all professional service agreements, contracts and Scopes of Work(SOW) between the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents for content moderation which they claim the Petitioners have not demonstrated the necessity of the documents and in any event the 1<sup>st</sup> and 2<sup>nd</sup> respondents did not provide any employment agreements to the Petitioners; the original and unredacted contracts of employment signed by Wendy Conzalez and Tommer Leyland and all correspondence between the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>

and 8<sup>th</sup> Respondents related to content moderation services in Kenya from 2019 to present and all documents, emails and reports discussing the Petitioners in ELRC Petition E052 of 2023 and ELRC Petition E071 of 2022 and those related to recruitment of Facebook content moderations in Kenya.

Other documents sought are with regard to the internal workings of the Respondents including work performance and the Single Review Tool (SRT) and specifically all documents that relate to the Petitioners work, at the 3<sup>rd</sup> Respondents centre. The internal documents requested for specifically include recruitment and onboarding; payroll, wellness, and performance records for the Petitioners held by the 3<sup>rd</sup> Respondent.

Further records sought are professional service agreements and scope of work (SoW) between the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents for content moderation work from the 4<sup>th</sup> and 5<sup>th</sup> Respondents. The 4<sup>th</sup> and 5<sup>th</sup> Respondents are also notified to produce all records for job advertisements issued in Kenya for Facebook content moderation positions; job applications submitted; screening forms and all internal communication with regard to the recruitment exercise including policy documents; directives made and all records with regard to the hiring of content moderators in Kenya.

The 8<sup>th</sup> Respondent is requested specifically to produce all reports noted, correspondence and findings from any inspections conducted by the 8<sup>th</sup> Respondent in the premises of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. Any reports

related to the working conditions of content moderation and all records of any complaints, reports or notification received by the 8<sup>th</sup> Respondent regarding the working condition at the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents.

The Respondents in the replying affidavits and grounds of opposite state that they are not willing, in a position and or supposed to produce the said documents to augment the petition which has no basis and ought to be dismissed with costs for being based on false information and premise.

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents state that they have already provided all that is necessary to help the court ascertain the facts in issue. **That the Petitioners are at liberty to produce secondary evidence of the documents they have requested that have not already been produced by the Respondents.**

### **DETERMINATION**

The parties filed written submissions which the court has carefully considered together with the depositions and notices issued by the parties. The issues for determination are:-

- (a) Whether the Petitioners have satisfied the requirements for production of documents sought and live and forensic demonstration; and the need for orders to cross-examine deponents of the replying affidavits.
- (b) What other orders render themselves for issuance by the court.

Rule 40(c) of the ELRC (Procedure) Rules, 2024, provide,

***“(1) The parties to a suit shall within fourteen days after the close of pleadings or such other period as the court may on application, direct, move the court to hold a pretrial conference to ascertain-***

***(a)Points of agreement and disagreement.***

***(b)The possibility of alternative dispute resolution or any other form of settlement;***

***(c)Whether evidence is to be oral or by affidavit.***

***(d)The discovery and the existence of documents and the preparation of a paginated bundle of documentation in chronological order;***

***(e)Whether evidence on affidavit will be admitted with or without the right of any party to cross-examine the deponent.***

***(f) The manner in which documentary evidence is to be dealt with including any agreement on the status of documents and whether documents, or parts of documents will serve as evidence of what they purport to be.***

***(g)Securing the presence at court of any witness.”***

The pre-trial conference is held before a judge, who has the authority to record agreements of the parties on the aforesaid matters and/or give directions/orders on any matters which the parties are unable to agree upon.

Order 19 Rule 2 of the Civil Procedure Rules 2010 provide:-

***“2(1) upon any application, evidence may be given by affidavit, but the court may at the instance of either party, order the attendance for cross-examination of the deponent.”***

Again, this is a matter to be canvassed and agreed upon or orders issued during the pre-trial conference before a judge.

Mutunga Rules of 2013 on the other hand provide:-

***“20(1) The hearing of the petition shall, unless the court otherwise directs, be by way of –***

***(a) Affidavits***

***(b) Written submissions; or***

***(c) Oral evidence***

***20(3) The court may upon application on or on its own motion direct that the Petition or part thereof be heard by oral evidence.***

***(4) The court may on its own motion, examine any witness or call and examine or recall any witness if the court is of the opinion that the evidence is likely to assist the court to arrive at a decision.***

***(5) A person summoned as a witness by the court may be cross-examined by the parties to the petition.***

***21(1) In giving directions on the hearing of the case, a judge may require that parties file and serve written submissions within fourteen days of such direction or such other time as the judge may direct.”***

It is clear that by and large, the matters sought by the Applicant in this application are matters reserved for directions during pre-trial conference either on application by any party or at the court's own motion. Other than the issue of production of documents under section 68 and 69 of the Evidence Act, all other matters would have comfortably been handled by agreement and/or direction of the court using its judicial discretion to attain the overriding objective of the court to achieve a fair, just, expedient and affordable trial for the parties in this matter.

The prayers for summoning for cross-examination the deponents of the replying affidavits to the amended petition, need not be contentious since the Mutunga Rules; ELRC Rules and Civil Procedure Rules are clear on this matter and orders will be given as a matter of course to help the court better understand the suit before it upon application by any party or on its own motion.

In the present matter, which presents very complex issues, the court would have during a properly convened pre-trial conference readily on application or on its own motion directed that the deponents of certain affidavits with facts common to all petitioners and the deponents of the replying affidavits appear before court for cross examination. The applicants seek for an order summoning all the deponents of the replying affidavits to be summoned to appear before court for cross-examination during the hearing of the Petition. The Respondents in the Replying affidavits have expressed a desire to cross-examine key deponents of the supporting affidavits to the petition.

The order that renders itself to the court to engender fairness is to direct that a limited number of Petitioners (not exceeding 4) who are deponents of key Supporting affidavits, if requested by the Respondents, and the deponents of all Replying affidavits appear in court for cross examination as sought for by the Petitioners in this application.

**Notices to produce under section 68 and 69 of the Evidence Act Cap 80 Laws of Kenya.**

The 4<sup>th</sup> and 5<sup>th</sup> Respondents herein have stated in their Replying affidavits that the Petitioners may produce any original or copies they have of relevant documents and that the Respondents have already produced all relevant documents to help the court determine this case.

The court has considered all the notices to produce issued to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents and the depositions and submissions by the parties in respect thereof.

In the **New Zealand case of Kim Margret Van Gog v Owen Grauman [2013] NZHC 406**, as relied on by the High Court in **Crown Paints (Kenya) Limited (KLR) v Dry Associates Limited (Civil Case 289 of 2013) [2015] KEHC 566 (Commercial and Tax) (30 October 2015) (Ruling)**, the court held as follows with respect to lack of particulars in a claim for discovery:

“ For the purposes of discovery, the particulars must be sufficient detail to allow particular documents to be identified. The authorities are quite clear that in the absence of such particulars, the defendant is not entitled to

discovery----the defendant is not entitled to discovery for the purpose of finding out whether he has a defence or not”

With regard to the notices to produce, the court considers the documents sought sufficiently clear for the purposes of identification by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> Respondents for purposes of production of Originals in their custody. The court deems the documents sought relevant and helpful to the court to determine the issues in dispute in this matter. If the documents are not provided by the Respondents, that will constitute sufficient justification for the Petitioners to produce at the trial any secondary documents they have in their possession relevant to the issues in dispute.

Accordingly, the Petitioners have leave to produce secondary evidence of the existence, condition or contents of the documents set out in the notices to produce filed before court, if the Respondents do not produce the originals which have been demonstrated by the Applicants to be in their possession in the application and in the notices before court and in terms of the provisions of sections 68(1) (a) to (g) read with 68(2) (a) to (d) of the Evidence Act cap 80 laws of Kenya.

The court is persuaded by the decision of the court in the case of Concord Insurance Limited (under statutory management) versus NIC Bank Limited [202] KEHC 8080 (KLR) where the court held as follows regarding a notice to produce.

***“As would be explicit its intent and purpose is to enable a party in possession of secondary evidence to rely on it as an***

***exception to the general rule of section 67 of the Evidence Act that documents must be proved by primary evidence. The provision presupposes that the person issuing the notice is in possession of the secondary evidence and the recipient of the notice is in possession or control of the primary evidence.”***

Accordingly, the Petitioners are entitled to the orders sought to the extent that they have in their possession secondary evidence of the documents they seek in the notices to produce only.

Secondly, the petitioners have demanded that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents conduct a ‘live’ and ‘forensic’ demonstration and scrutiny of Single Review Tool (SRT) used by the Respondents and or their agents which violated their rights as set out in the Petition in the period 2019 and 2023. Sufficient evidence must be in the knowledge and grasp of the applicants by the time of filing this suit which if not rebutted by the respondents would lead to a finding in their favour. It is not for the Respondents to provide evidence to support or augment the case by the Petitioners. The petitioners have not in this application adduced such evidence. The applicants herein therefore are not entitled to the ‘live’ and ‘forensic’ demonstration sought in this application and the prayer is refused.

**In the final analysis the application dated 23/10/2025 is granted in terms of prayers (c), (d), (e), (f), (g) (1 to 5) in the notice of motion as follows:**

- (a) a limited number of Petitioners (not exceeding 4) who are deponents of key Supporting affidavits, if requested by the**

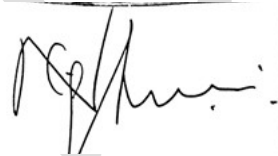
Respondents, and the deponents of all Replying affidavits are summoned to appear in court for cross examination as and when required by the parties.

(b) The Respondents to produce the originals sought in the notices to produce which have been demonstrated by the Applicants to be in their possession in the application and in the notices before court.

(c) In terms of the provisions of sections 68(1) (a) to (g) read with 68(2) (a) to (d) of the Evidence Act cap 80 laws of Kenya, the Petitioners are granted leave to produce secondary evidence of the existence, condition or contents of the documents set out in the notices to produce filed before court.

(d) Costs of the application to abide the outcome of the suit.

Dated at Nairobi this 14th day of April 2026



**Mathews Nduma**

**JUDGE**

Dated, signed and delivered in open court at Nairobi this 22<sup>nd</sup> day of April 2026

**Dr. Gakeri J.**

**JUDGE**

**Appearances:**

Mercy Mutemi for Petitioners

Mr. Ojiambo, SC and M/s Onyango for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Mr. Omino for 3<sup>rd</sup> Respondent

Mr. Mbatia for 4<sup>th</sup> and 5<sup>th</sup> Respondents

Mr. Orao for 1<sup>st</sup> Interested Party

Mr. Mahidzo for 2<sup>nd</sup> Interested Party

M/s. Akuno for Attorney General

Mr. Kemboi – Court Assistant

ORIGINAL