

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

**PETITION NO. E071 OF 2022**

**DANIEL MOTAUNG.....PETITIONER**

**VERSUS**

**SAMASOURCE KENYA EPZ LIMITED t/a SAMA.....1<sup>ST</sup> RESPONDENT**

**META PLATFORMS, INC.....2<sup>ND</sup> RESPONDENT**

**META PLATFORMS IRELAND LIMITED.....3<sup>RD</sup> RESPONDENT**

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

**AND**

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

**CENTRAL ORGANIZATION OF TRADE  
UNIONS OF KENYA.....2<sup>ND</sup> INTERESTED PARTY**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> INTERESTED PARTY**

**MINISTRY OF LABOUR, SOCIAL SECURITY  
AND SERVICES.....4<sup>TH</sup> INTERESTED PARTY**

**EXPORT PROCESSING ZONE AUTHORITY....5<sup>TH</sup> INTERESTED PARTY**

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

**OFFICE OF THE DATA PROTECTION  
COMMISSIONER.....7<sup>TH</sup> INTERESTED PARTY**

**MINISTRY OF FOREIGN AFFAIRS.....8<sup>TH</sup> INTERESTED PARTY**

**KENYA REVENUE AUTHORITY.....9<sup>TH</sup> INTERESTED PARTY**

**KATIBA INSTITUTE.....10<sup>TH</sup> INTERESTED PARTY**

**TELEPERFORMANCE BUSINESS  
PROCESS OUTSOURCING SEZ LIMITED.....11<sup>TH</sup> INTERESTED PARTY**

**MAJOREL KENYA SOLUTIONS  
EPZ LIMITED.....12<sup>TH</sup> INTERESTED PARTY**

### **RULING**

The 1<sup>st</sup> Respondent filed a Notice of Motion Application dated 24/10/2024, seeking to strike out the Amended Petition dated 14/6/2025 which application is supported by affidavit of Martin Barr sworn on 12/11/2025 pursuant to a correction. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents also filed affidavits in support of the said application which have also been sworn by Mr. Martin Barr, who was identified as a new authorised deponent and already had the authorisation.

The leave sought by the Respondents, for extension of time to file affidavit in relation to the 1<sup>st</sup> Respondent's application dated 24/10/2025 has been granted by this court and the affidavits deemed as duly filed pursuant to consideration of the further affidavit sworn to by counsel for the 1<sup>st</sup> Respondent, Dr. Fred Ojiambo sworn to on 14/11/2025 in which a plea for condonation for the delay in filing of the affidavit was made.

In addition, the 4<sup>th</sup> Respondent, 11<sup>th</sup> and 12<sup>th</sup> Interested Parties filed a Notice of Motion application dated 16/10/2025 supported by affidavits

sworn to by Martin Barr which application also challenges the filing of the Amended Petition.

The applications are premised on grounds set out on the face of the Notices of Motion aforesaid and the supporting affidavits aforesaid sworn to by Martin Barr. The nub of the objection to the Amended Petition is that the Petitioner filed the Amended Petition dated 14/6/2025 together with a supporting affidavit and expert affidavits, which pleadings were filed without leave of the court and after directions were issued for the filing of responses and submissions in relation to the petition dated 9/5/2022.

That the Amended Petition dated 14/6/2025 was then served on the Applicants on 28/7/2025.

That the Petitioner further served the Applicants with additional witness statements and expert affidavits on 4/8/2025 also filed without leave of court.

That the Amended Petition is bad in law as it was filed while there was a pending application by the 1<sup>st</sup> Respondent dated 30/5/2025 objecting to the jurisdiction of the court. That the Amended Petition partly seeks to cure and circumvent the objection by the 1<sup>st</sup> Respondent raised in its application.

That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents support the 4<sup>th</sup> Respondent's Application to the extent that it challenges the filing of the Amended Petition without leave of the court.

The court has taken into consideration, the depositions made in the application by the 4<sup>th</sup> Respondent which matters are said to be exclusively between the Petitioners and the 4<sup>th</sup> Respondent, 11<sup>th</sup> and 12<sup>th</sup> Interested Parties.

The Petitioner filed Replying Affidavit to both applications sworn to by Daniel Motaung on 21/11/2025 in which is admitted that the Petitioner filed amended petition dated 14/6//2025. That the amendment was necessitated by adverse steps taken by the Respondents and named interested parties as a result of the filing of this petition, which action constituted direct retaliation by 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents against former colleagues by declaring mass redundancy and terminating all the employment contracts.

That this mass redundancy is the subject of ELRC Petition. E052 of 2023, Kiana Murighe & 184 others versus Meta & others which is a sister file to this one and which is being heard alongside this petition.

That the 4<sup>th</sup> Respondent herein, Majorel Kenya Limited, also facilitated this mass redundancy upon their taking over the Facebook content moderation partnership for the 1<sup>st</sup> Respondent and continued with Facebook content moderation together with the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents herein.

That thereafter, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents blacklisted the Petitioners in ELRC Pet. E052 of 2023 from gaining employment at the 4<sup>th</sup>

Respondent's content moderation centre, an issue the petitioners have raised in their petition.

That it became necessary therefore to join the 4<sup>th</sup> Respondent, the 11<sup>th</sup> Interested Party and the 12<sup>th</sup> Interested Party to this case as their involvement in Facebook Content Moderation was incidental to the filing of this present petition. That their joinder was necessary in order to give this court a full picture of the various relationships giving rise to the issue raised in two petitions.

**That the Amended Petition is based on same grounds that include: Human trafficking of Facebook content moderators; violation of the right to form, join and participate in the activities of an association or a union by union bursting and failure to provide adequate mental health care which caused the Facebook content moderators to suffer mental health disorders.**

Furthermore on 15/3/2024, the advocates for the Petitioner in this matter, as is evident from the court record, sought leave of court before Hon. Gakeri J. to amend this petition.

That Hon. Gakeri J. granted the Petitioners leave to file an amended petition within 30 days and put in additional affidavits and documentation.

That it is not true that leave of court was not sought to file the Amended Petition.

That on 19/3/2024, 3 days later, the Court of Appeal in Appeal No. E445 of 2023 issued an interim stay of proceedings in this case, E071 of 2022 and in the related case, E052 of 2023 pending the hearing and determination of various interlocutory appeals that had been filed relating to jurisdiction decisions made in the two cases.

That these stay of proceedings orders were in force until 20/9/2024 when the appeals in question were dismissed.

The suit was then transferred by Hon. Gakeri J. to the Principal Judge, who then transferred the matter to Nduma J. so that the same can be heard together with E052 of 2023.

That when the matter was first mentioned before Nduma J. on 3/12/2024, the issue of amendment of pleadings was raised again as leave to amend granted by Hon. Gakeri J. had been interrupted by the stay of proceedings issued by the Court of Appeal.

The court gave direction that: -

- (a) It was not necessary to seek leave to amend the petition as the Respondents had not responded to the petition substantively.
- (b) That the Petitioner had the right to amend the petition at will as pleadings had not closed owing to the protracted interlocutory application and appeals.

(c) The Petitioner had the right to amend the petition to add the 4<sup>th</sup> Respondent and all the related companies as the Petitioner was the *dominus litis*.

That these facts are borne out by the record of proceedings.

That the amendment of the petition was proper in the circumstances and the twin applications are misconceived and should be dismissed with costs.

The Applicants filed supplementary affidavits and submissions joining issue with the Petitioner/Respondent on the grounds of opposition set out in the replying affidavit. The Respondent also filed written submissions.

## **DETERMINATION**

The court has carefully considered all depositions by the parties, written submissions and authorities filed. The court has most importantly checked the record of proceedings and has ascertained the following to be true:

- (i) On 15/3/2024, Advocate for the Petitioner sought leave before court with Hon. Gakeri J. sitting to amend the petition and the Petitioners were granted leave to file and serve amended petition within 30 days.
- (ii) That the Court of Appeal in Appeal No. E445 of 2023 issued an interim order for stay of proceedings in both E071 of 2022 and E052 of 2023 pending the hearing and determination of the interlocutory appeals.
- (iii) That the said appeals were dismissed by a ruling issued by the Court of Appeal on 20/9/2024.

- (iv) That the amended petition is dated 14/6/2025 and was served on the applicant on 14/6/2025.
- (v) That this court per Nduma J. had given *viva voce* direction that the Petitioner was at liberty to amend the petition since the Respondents had not filed substantive replies to the petition and so pleadings had not closed.

The court notes that Rule 18 of Mutunga Rules provide, “18 ***A party that wishes to amend its pleadings at any stage of the pleadings may do so with the leave of the court.***”

In this court, leave was sought twice by the Petitioners and was granted as is evident from the record of proceedings.

The court also notes that Order 8, Rule 1, Civil Procedure Rules, 2010 provides “***(1) A party may without leave of the court, amend any of his pleadings once at any time before the pleadings are closed.***”

Even though constitutional petitions are not strictly speaking civil cases, this rule guiding amendments in civil proceedings is one that is reasonable and lends itself well to the dictates of Article 159 of the constitution not to place legal technicalities on the way of a party especially where no prejudice that cannot be remedied by way of costs has not been demonstrated by the opposing party.

In the present matter, it has not been demonstrated by the Applicants that they would suffer any prejudice that cannot be mitigated by costs if the

applications to strike out the amended petition is not granted. Indeed, the Applicants already had opportunity to fully respond to the amended petition and put in any documents, including deposition necessary to respond to any matter raised in the amended petition.

Allegations that the amendments made seek to circumvent preliminary objections not determined is without basis, this court and the Court of Appeal having determined all preliminary issues raised by the Applicants in this matter.

**The amended petition was properly filed and the consolidated matter to proceed for determination on merits as envisaged**

**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:**

Ms Mercy Mutemi for Petitioners

Mr Omino for 1<sup>st</sup> Respondent

Dr. Fred Ojiambo, SC, for 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Mr Mbatia for 4<sup>th</sup> Respondent, 11<sup>th</sup> and 12<sup>th</sup> Interested Party

Joshua for 10<sup>th</sup> Interested Party.

Akuno for 6<sup>th</sup> and 7<sup>th</sup> Interested Parties

Mr. Kemboi – Court Assistant

ORIGINAL