



Chepkoech & 3 others (Suing as former members of the 2nd Respondent, for themselves on behalf of 143 other former members of the Union) v Kenya Plantation and Agriculture Workers Union (KPAWU) & another (Petition E012 of 2024) [2025] KEELRC 2054 (KLR) (11 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2054 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
PETITION E012 OF 2024**

AN MWAURE, J

JULY 11, 2025

BETWEEN

SARAH CHEPKOECH 1ST PETITIONER

GLADYS AYUMA ITABOLWA 2ND PETITIONER

SIMON SIMIYU 3RD PETITIONER

JANES OKETCH 4TH PETITIONER

**SUING AS FORMER MEMBERS OF THE 2ND RESPONDENT, FOR
THEMSELVES ON BEHALF OF 143 OTHER FORMER MEMBERS OF THE
UNION**

AND

**KENYA PLANTATION AND AGRICULTURE WORKERS UNION
(KPAWU) 1ST RESPONDENT**

EASTERN PRODUCE KENYA LIMITED 2ND RESPONDENT

JUDGMENT

Introduction

1. The Petitioners, suing as former members of the 1st Respondent, for themselves on behalf of 143 other former members of the Union, filed a Petition dated 10th December 2024 through the law firm of M/S Mwita and Co. Advocates seeking the following reliefs that:

- a. A declaration does issue that in so far as the Respondents declined to disclose all the information and terms leading to settlement of Kericho ELRC Civil Case No. 170 of 2016 and



until this date have declined to inform the Petitioners who were members, then the Petitioners' rights under Article 35 of the Constitution have been violated.

- b. A declaration does issue that in so far as the 1st Respondent entered into a Settlement consent in Kericho ELRC Civil Case No. 170 of 2016 without the consent of the Petitioners nor their knowledge, the 1st Respondent breached the fiduciary duty and relationship bestowed upon her by virtue of section 57 of the Labour Relations Act.
- c. A declaration does issue that the subsequent reinstatement of some of the members of the 1st Respondent by the 2nd Respondent leaving behind the Petitioners herein without any employment violated the Petitioner's right to protection from any form of discrimination and right to dignity and equal protection of the law hence the Petitioner's right under Article 27 of the Constitution and section 5 of both Employment Act and Labour Relations Act have been violated.
- d. An order of Mandamus does issue compelling the Respondents to disclose the terms of settlement of the Consent recorded on 5th June 2018; and if the terms of settlement included payment, a detailed schedule of payments made to each Petitioner and eventually, payment of the Petitioner's right dues.
- e. An order directing the 1st and 2nd Respondents to pay general damages for the breach of fiducial duty occasioning loss and damages upon the Petitioners.
- f. Costs and interest of this Petition
- g. Any other or such further relief as the court may deem fit and just to grant

Petitioners' case

2. The Petitioners, genuine members of the 1st Respondent. The mandate of the 1st Respondent is not only to advocate for the rights of its members but also to provide them with justice while keeping them informed and consulted about their affairs.
3. The Petitioners aver that they were summarily dismissed from employment in December 2016.
4. The Petitioners aver that on 7th December 2016, the 1st Respondent initiated legal proceedings challenging the dismissal, and on 8th December 2016, interim stay orders were granted in Kericho ELRC Case No. 170 of 2016. The case proceeded until 5th June 2018, when it was withdrawn and marked settled.
5. Despite repeated follow-ups, including registry visits at Kericho ELRC registry and letters dated 2nd May 2020, 3rd July 2020, and 17th August 2020, the Petitioners aver they were misled by the 1st Respondent into believing that the matter was still pending, only to discover a Consent Order dated 17th August 2018 settling the matter without their knowledge or payment.
6. The Petitioners aver that some dismissed employees were secretly reinstated, and that promises of payment were unfulfilled, culminating in their legal demand on 19th October 2023 for disclosure of the settlement's terms, criteria for redeployment, and payment of their dues.
7. The Petitioners aver that the 1st and 2nd Respondents colluded to execute a Consent dated 17th August 2018 without informing or involving them, thereby violating their constitutional right to access information under Article 35 of the Constitution.



8. The Petitioners further aver that their rights under Articles 10(2), 36, and 41(1)(c) of *the Constitution*, as well as sections 4(1), 4(2), and 57 of the *Labour Relations Act*, were breached due to their exclusion from the settlement process.
9. Additionally, the Petitioners accuse the 1st Respondent of deliberately withholding updates on the case despite repeated inquiries, undermining the constitutional principles of integrity, transparency, and accountability under Article 10(2)(c) of *the Constitution*.
10. The Petitioners aver that they were discriminated against when the 1st and 2nd Respondents reinstated other dismissed employees but excluded them, breaching Article 27 of *the Constitution* and key provisions of the Employment and Labour Relations Acts.
11. The Petitioners further aver that the 1st Respondent violated its fiduciary duty by acting in bad faith, thereby infringing their constitutional rights under Articles 10, 19, 40, 41, 48, and 50 of *the Constitution*, and failing to ensure a fair hearing or compensation.
12. The Petitioners aver that they now seek this Honourable Court's intervention to safeguard their rights.

1st Respondent's replying affidavit

13. In opposition to the Petition, the 1st Respondent filed a replying affidavit dated 13th March 2025, sworn by Thomas Kipkemboi, the 1st Respondent's Deputy General Secretary.
14. The 1st Respondent avers that the Petitioners were summarily dismissed from employment on or about 6th December 2016.
15. The 1st Respondent avers, through their advocates, filed a Notice of Motion on 7th December 2016 to stop the Petitioners' dismissal, resulting in interim court orders issued on 9th December 2016 to suspend any disciplinary action.
16. The 1st Respondent avers that after multiple delays, the matter was slated for hearing on 30th May 2018 and on that date, an associate, allegedly without the Claimant's authority, informed the court that a consent had been filed, leading to its adoption as a court order.
17. The 1st Respondent contends that the Petitioners' claim is baseless and an abuse of process of the court asserting that the Petitioners were regularly updated on the case and never denied any information, and thus should be put to strict proof of any such denial.
18. The 1st Respondent contends that it was unaware of the terms of the consent dated 17th August 2018 and only learned of the case's withdrawal after follow-ups with its former counsel, who allegedly acted without authority.
19. The 1st Respondent informed the Petitioners accordingly and took steps to challenge the consent by filing an appeal.
20. The 1st Respondent maintains that the responsibility for terminal dues rests solely with the 2nd Respondent, the Petitioners' employer at the time.
21. As such, the 1st Respondent avers that the petition is baseless, and should be dismissed with costs.

2nd Respondent's replying affidavit

22. The 2nd Respondent opposed the petition through a Replying Affidavit dated 20th December 2024, sworn by Denis Gitakaa, its Legal Manager.



23. The 2nd Respondent avers that the 1st Respondent filed a claim in the Employment and Labour Relations Court on 9th December 2016, alleging unfair termination of its members due to their participation in an unlawful strike.
24. The 2nd Respondent avers that on 5th June 2018, both parties' counsel appeared in court, where the 1st Respondent sought to withdraw the suit. The court allowed the withdrawal, directing that each party bear its own costs, and marking the matter as settled.
25. The 2nd Respondent avers that the claim in Kericho ELRC Case No. 170 of 2016 was openly withdrawn in court without objection, as it reasonably believed the 1st Respondent had the authority to do so.
26. As the withdrawal occurred publicly, the 2nd Respondent avers that the Petitioners' right to access information was not violated, and any grievance should be directed at the 1st Respondent, not the 2nd Respondent.
27. The 2nd Respondent emphasizes it had no obligation or legal basis to contest the withdrawal, nor did the Petitioners challenge it in court.
28. Regarding employment, the 2nd Respondent argues that no discriminatory reinstatement occurred, as fresh recruitment was conducted, which falls under the employer's discretion.
29. The 2nd Respondent denies any breach of the Petitioners' rights under [the Constitution](#) or the [Employment Act](#).

Petitioners' further affidavit

30. The Petitioners' filed a further affidavit dated 9th May, 2025.
31. The Petitioners argue that the 1st Respondent breached its fiduciary duty by withdrawing the claim in Kericho ELRC No. 170 of 2016 without consulting them, and later falsely disowning the consent filed in court.
32. The Petitioners aver that the 1st Respondent's counsel acted on instructions, and any claims to the contrary are dishonest attempts to evade accountability.
33. Despite repeated inquiries, the Petitioners aver that they were denied information about the consent and appeal, which they allege was a cover-up of collusion between the 1st and 2nd Respondents.
34. The Petitioners contend that the 1st Respondent failed to protect their interests, misled the court, and should be held liable for negligence and violation of their rights, thereby justifying the Petition.
35. The Petition was canvassed by way of written submissions.

Petitioners' written submissions

36. The Petitioners submitted that the 1st Respondent, despite admitting in its Replying Affidavit of 13th March 2025 that the Petitioners were union members, failed to uphold its duty to protect their interests. The Petitioners also submitted that they reasonably expected the Union to safeguard their rights in Kericho ELRC No. 170 of 2016, but were left uninformed until the present Petition.
37. The Petitioners relied on the case of Elias Kiplagat Chemweno & 77 others V Zena Roses Company Limited [2018] KEELRC 2587 (KLR) where the court stated the Claimants' union membership with the Kenya Plantations and Agricultural Workers Union does not cease upon termination of



employment, as the primary purpose of unionisation is to safeguard members' employment rights, including in cases of dismissal. Under section 39 of the [Labour Relations Act](#), a trade union retains the mandate to pursue disputes or legal action on behalf of its members. Courts, including in *Seth Panyako V KUDHEIHA* [2013] eKLR, have affirmed that unions owe a fiduciary duty to represent members diligently and are legally accountable for breaches of that duty, even after employment ends.

38. In *Otieno & 37 Others V Union of Kenya Civil Servants & 3 others* [2024] KEELRC 99 (KLR) where the court held that the 2nd to 4th Respondents violated both their fiduciary duties and the Union's Constitution by failing to provide the Petitioners with full access to the Union's books of accounts. This failure also breached statutory obligations under the [Labour Relations Act](#), entitling the Petitioners to relief. Consequently, the Court issued a declaration confirming the Respondents' contravention of their legal and constitutional responsibilities.
39. The Petitioners submitted that the 1st Respondent admitted to instructing counsel to enter into an unfavourable consent despite having a duty to protect their interests. The Petitioners assert that this action, coupled with the continued use of the same counsel to file an appeal, demonstrates a breach of fiduciary duty and lack of accountability, as no evidence has been provided to show the Respondent's dissatisfaction with counsel's conduct. The Petitioner relied on the case of *Kuwinda Rurinja Co. Limited V Andikuwinda Holdings Limited & 13 others* [2019] eKLR, where the Court held that the 3rd Respondent's claim, that the consent recorded on 2nd October 1996 was invalid due to lack of authority by its advocate, lacked merit. This was because the 3rd Respondent had never previously challenged the advocate's authority and only did so through submissions without providing supporting evidence.
40. The Petitioners submitted that the consent order entered in Kericho ELRC Civil Case No. 170 of 2016 was made without their knowledge or approval, violating their rights under Article 35 of [the Constitution](#). In *Kuwinda Rurinja Co. Limited V Andikuwinda Holdings Limited & 13 others* (supra) cited the cases, including *Hirani V Kassam* (1952) 19 EACA 131 and *Kenya Commercial Bank Ltd V Specialized Engineering Co. Ltd* [1982] KLR 485, where the courts held that while advocates generally have authority to settle cases, consent orders made against a client's express instructions or without their awareness may be set aside for fraud, collusion, or misrepresentation. The Petitioners maintain that the Respondents failed to disclose the settlement terms, reinforcing their claim of a rights violation and procedural irregularity.
41. The Petitioners also relied on Article 41 of [the Constitution](#) which provides that every individual has the right to fair labour practices, including fair pay, safe working conditions, union participation, and the right to strike while section 57 of the [Labour Relations Act](#) provides that once a trade union is recognized, the employer must negotiate and conclude a collective agreement with it, disclosing all relevant information necessary for fair bargaining. Such disclosures are confidential and may not be shared outside the negotiation process, unless legally permitted or consented to. Unauthorized disclosure of this information is strictly prohibited.
42. The Petitioners submitted that, as affirmed in *Nairobi Constitutional Petition No. 179 of 2022*, *Kenya Human Rights Commission & Wanjiru Gikonyo V CS National Treasury & Attorney General*, information relating to a person's fundamental rights cannot be concealed. The Petitioners argue that the denial of crucial information, particularly regarding the consent entered on 17th August 2018, violated their rights under Article 35 of [the Constitution](#) and hindered their participation in union affairs. Despite the 1st Respondent's claim that its counsel acted ultra vires, it failed to inform the Petitioners of the consent's contents. Additionally, the selective reinstatement of other members by the 2nd Respondent, excluding the Petitioners, constitutes discrimination and a violation of their rights



to dignity and equal protection under Article 27 of *the Constitution* and section 5 of the Employment and *Labour Relations Act*.

43. In Republic V Rosemary Wairimu Munene Ex-parte Applicant V Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No. 6 of 2014, the court held as follows:

“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather, it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”

44. The Petitioners urged that this Honourable court find that the suit is meritorious, and award costs and interest of the suit.

1st Respondent’s written submissions

45. The 1st Respondent relied on the case of Seth Panyako V Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers [2013] KEELRC 27 (KLR) where the court stated that when a trade union legally recruits members and is granted organizational rights, it assumes a fiduciary duty to act in the best interests of its members. This duty requires the union to protect its rights and to conduct its affairs with diligence, honesty, and integrity.

46. The 1st Respondent defined fiduciary duty as set out in Black’s Law Dictionary as follows:

“.... A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such a lawyer’s client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interest of the other person (such as the duty that one partner owes to another).”

47. The 1st Respondent also defined good faith under the Black’s Law Dictionary as:

“..... A state of mind consisting in honesty in belief or purpose, faithfulness to one’s duty or obligation, observance of reasonable commercial standards of fair dealings in a given trade or business, or absence on intent to defraud or to seek unconscionable advantage.”

48. The 1st Respondent relied on the case of Bellevue Development Company Ltd V Gikonyo & 3 others [2020] KESC 43 (KLR), where the Supreme Court addressed the concept of bad faith within judicial conduct. While *the Constitution* does not explicitly define bad faith, the Court emphasized that its antithesis is good faith, and acting in bad faith involves willful dishonesty or disloyalty in carrying out judicial duties. Drawing from the South African case Public Protector v South African Reserve Bank [2019] ZACC 29, Chief Justice Mogoeng clarified that bad faith encompasses malicious, fraudulent, dishonest, or perverse conduct, as well as gross illegality. It can be presumed that there is a serious or reckless abuse of authority so severe that it reflects a breakdown in lawful conduct. Essentially, the Court underscored that bad faith is not merely poor judgment, but a deliberate or dangerously negligent misuse of power that undermines justice.

49. The 1st Respondent submitted that it acted in good faith and without intent to defraud when representing the Petitioners in Kericho ELRC Case No. 170 of 2016, having appointed counsel to act in its members’ best interests. The 1st Respondent argued that it only became aware of the consent belatedly and sought remedies thereafter. However, having failed in its fiduciary duty, the 1st



Respondent cannot deflect responsibility and must comply with sections 107, 108, and 109 of the Evidence Act, which place the burden of proof on the party asserting facts to justify legal claims or defences.

50. In *Kenya Ports Authority V Munyao & 4 others* [2023] KESC 112 (KLR) the Supreme Court held that Article 41 of the Constitution recognizes labour rights as fundamental human rights, covering all stages of employment, including before, during, and after termination, and linking them to dignity and the right to life. While the Employment Act operationalizes these rights, constitutional claims under Article 41 must be specifically pleaded and proved, as they are distinct from claims under sections 49 and 50 of the Employment Act, which apply only to termination-related disputes.
51. The 1st Respondent argues, relying on the case of *Edney Adaka Ismail V Equity Bank Ltd* [2014] eKLR, that any errors by its counsel should not be held against it if they can be remedied by costs. The 1st Respondent maintains that liability for terminal dues rests solely with the 2nd Respondent and insists it was unaware of the terms of the consent filed in Kericho ELRC Case No. 170 of 2016, claiming its advocate acted beyond authority.
52. The 1st Respondent urged this Honourable Court to dismiss the Petition with costs.

2nd Respondent's written submissions

53. The 2nd Respondent submitted that the Petition raises an employment dispute between the Petitioners and their trade union, not a constitutional matter, and should have been pursued under section 12 of the Employment and Labour Relations Court Act rather than as a constitutional petition. Relying on the doctrines of constitutional avoidance and exhaustion, the 2nd Respondent cited the cases of *Communications Commission V Royal Media* [2014] eKLR and *Sumayya Hassan V Simidi* [2019] eKLR to stress that where statutory remedies exist, constitutional claims should not be entertained. The 2nd Respondent further submitted that the Petitioners failed to exhaust the Access to Information Act, particularly section 14, before invoking Article 35 of the Constitution, and relied on the case of *NGOs Coordination Board V EG* [2023] KESC 17 (KLR) to reinforce that courts must defer to statutory dispute resolution mechanisms where available.
54. The 2nd Respondent submitted that it denies violating the Petitioners' constitutional or legal rights, specifically rejecting claims that it conspired with the 1st Respondent to withdraw Kericho ELRC Case No. 170 of 2016. The 2nd Respondent states that no consent or settlement agreement existed, and there was no collusion with the union. According to the 2nd Respondent's affidavit, during a court appearance on 5th June 2018, the 1st Respondent requested to withdraw the suit, which the court allowed without objection from the 2nd Respondent. The court then ordered the claim marked as withdrawn and settled, with each party to bear its own costs.
55. The 2nd Respondent submitted that it did not violate any constitutional rights, emphasizing that no consent or settlement was reached with the 1st Respondent in the withdrawal of Kericho ELRC Case No. 170 of 2016. The withdrawal, made in open court by the advocate holding brief, was presumed lawful, with both Respondents confirming no consent existed. The 2nd Respondent relied on *Patrick Kenneth Muthuri V Nderitu* [2015] KEHC 3796 and section 107(1) of the Evidence Act, where it argued that the Petitioners' claim of collusion lacks proof and remains a bare allegation. The Supreme Court in *Dari Ltd V EADB* [2024] KESC 18 reinforced that unsubstantiated claims fail. The 2nd Respondent concludes it had no fiduciary duty to the Petitioners and that the case should have been filed against the union instead, rendering the Petition unmeritorious and an abuse of court process.



56. The 2nd Respondent submitted by denying discriminating against the Petitioners and asserts that no reinstatement occurred, only a lawful, open recruitment exercise. The 2nd Respondent cited the cases of *Gwer V KEMRI* [2020] KESC 66 and *Mwamanzi V CS, Ministry of ICT* [2023] KEELRC 1102, it emphasizes that the Petitioners bear the burden under Article 27(4) of *the Constitution* and sections 107, 108 and 109 of the *Evidence Act* to prove discrimination, which they failed to do. Since the Petitioners were neither employees nor applicants, section 5 of the *Employment Act* and the *Labour Relations Act* do not apply. Additionally, in *Mativa V Aga Khan University Hospital* [2025] KEELRC 1310, hiring is a core management prerogative. The 2nd Respondent argued that the Petitioners presented no evidence of differential treatment or violation of protected grounds and that the attempt to relitigate matters already settled amounts to an abuse of court process.
57. The 2nd Respondent submitted that the Petitioners are not entitled to any of the reliefs sought, having failed to prove any breach of their constitutional rights or provide evidence of a consent or discriminatory rehiring. The 2nd Respondent cited the case of *Gwer & 5 others V Kenya Medical Research Institute & 3 others*(supra) and *D. P. Bachheta v Government of the United States of America* [2011] KECA 204 (KLR), it contended that no declaratory orders, mandamus, or general damages should issue. The 2nd Respondent argued that the Petitioners were neither employees nor applicants, and the alleged discrimination lacked evidentiary support. Under Rule 68(1)(e) of the Employment and Labour Relations Court (Procedure) Rules, 2024, the Respondent seeks costs and dismissal, asserting the Petition targets the wrong party and constitutes an abuse of court process.

Analysis and determination

58. The court has considered the petition, pleadings by all the parties together with the rival submissions of all the counsels; the issues for determination are -
- a. Whether the Petitioners' rights were violated contrary to *the Constitution*.
 - b. Whether the Respondents had a fiduciary duty towards the Petitioners.
 - c. Is the petition meritorious
 - d. Who bears the costs of the suit.
59. Section 44(4) of the *Employment Act* provides that an employee may be lawfully dismissed without notice for gross misconduct, including being absent from work without permission, being intoxicated during working hours, willfully neglecting or carelessly performing duties, using abusive language or behaving disrespectfully toward the employer or supervisors, disobeying lawful instructions, being arrested for a serious offence and not released within 14 days, or committing (or being reasonably suspected of committing) a criminal offence that harms the employer or their property. However, the legitimacy of such dismissal can still be disputed by either party.
60. In this instant petition, the Petitioners herein were members of the 1st Respondent union, and the 1st Respondent had entered into a collective bargaining agreement in accordance with section 57 of the *Labour Relations Act*, which is the governing law that emanates from this Petition. The Petitioners went ahead and filed a claim in Kericho ELRC No. 170 of 2016 seeking orders that their termination vide letter dated 7th December 2016 was unfair and unlawful and they sought reinstatement back to their jobs and compensation to that effect.
61. The Petitioner, through the 1st Respondent, filed an application vide a Notice of Motion dated 7th December 2016 whereby orders were issued by Marete J, issuing interim stay of any implementation of any disciplinary measures against the Petitioner.



They say the matter was mentioned in court on diverse dates and on 7th June 2018 the same was apparently withdrawn and was marked as settled.

62. Looking at the documentations presented before this court, the law as per sections 107, 108 and 109 of the Evidence Act provides that he who alleges must prove. The 2nd Respondent has produced an order dated 5th June 2018 and issued on 17th August 2018, where the claim was withdrawn and the matter was marked as settled. Looking at the wording of the order by Justice Njagi Marete the Counsel for the Applicant was clearly responsible and accountable to his clients the union members. It is not clear why he withdrew the claim and what were the conditions of that withdrawal. There is no evidence whether the counsel acted on his own or was instructed by the 1st Respondent the union. The 1st Respondent claims in his submissions that their advocate at the time acted beyond his powers and so 1st Respondent was totally oblivious of the terms, of the consent if any. At the onset the court is seized of the court order issued by Justice Marete but not the consent.
63. In any event the 1st Respondent as the instructing client cannot claim that they were not interested to know the outcome of the case from their Counsel. In several authorities courts have ruled that unions owe fiduciary duty to represent their members diligently and are legally accountable for breaches of that duty even after employment ends.

In the case of Seth Panyako -vs- Kudheihia Supra and already cited hereinbefore the court affirmed the fiduciary duty of a union towards its members.
64. In the case of Kuwinda Rurinja Co Limited -vs- Andikuwinda Holdings Limited & 13 Others the court held that allegation that a consent recorded on 2nd October 1996 was invalid due to lack of authority by its advocate lacked merit. The 3rd Respondent had never previously challenged the authority of the Advocate and only did so through submission without providing supporting evidence.
65. On the issue of the fiduciary duty of the 1st Respondent the court finds in the affirmative.
66. As for the 2nd Respondent, the Petitioners were terminated way back on 6th December 2016. The 2nd Respondents were not the ones who withdrew the claim as the same could only be withdrawn by the Claimant or the Claimant's counsel. In this case the claim was withdrawn by the Claimant's Counsel who is the First Respondent in this case.
67. The court finds there was no more employer/employee relationships once their contracts were terminated on 6th December 2016 with the 2nd Respondent. In view of the foregoing. the court finds there is no fiduciary relationships between the Petitioners and the 2nd Respondent. The employer/employee relationship terminated when the letter of dismissal was issued on 6th December 2016. The court releases the 2nd Respondents from any liability.
68. The Petitioners filed their claim on 7th December 2016 and so were within the 3 years provisions of filing suits in the Employment and Labour Relations Court under Section 89 of the Employment Act.
69. The court therefore finds that the Petitioners deserved to be informed of the gist and content of the consent and or context and reasons under which the 1st Respondent who was the Petitioner's representative, then in Cause 170/2016 withdrew the suit with no orders as to costs. The Petitioners were members of the union (1st Respondent) and it was wrongful of the 1st Respondent whom they had mandated to represent them to terminate their case and not upraise them as to the outcome and reasons of the said termination.



70. The court therefore makes the following orders as pertains to the 1st Respondent

Prayer No. d of the Petition that a mandamus order to issue compelling the first Respondents to disclose the terms of settlement of consent recorded on 5th June 2018 and if terms of settlement included payment a detailed schedule of payments made to each Petitioner and eventually payment of the Petitioner's rightful dues.

71. The court however finds no constitutional violations of the Petitioners rights by the Respondents. In particular the 2nd Respondent had a right to recruit employees after he dismissed the Petitioners and the others. Prayers a, b, and c of the petition are not merited and are not granted.

72. The 1st Respondents is ordered to pay Kshs.400,000/= individuals figure to each of the Petitioners as compensation for breach of fiduciary duty occasioning loss and damage upon the Petitioners.

73. The Petitioners are awarded costs of this petition.

74. Interest will accrue on the above damages from date of this judgment until full payment at 14% per annum till full payment.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11TH DAY OF JULY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

