



**Republic v Odege (Secretary General, Union of Kenya Civil Servants) & 3 others; Odhiambo (Exparte) (Judicial Review E013 of 2023) [2024] KEELRC 2132 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2132 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
JUDICIAL REVIEW E013 OF 2023**

**AN MWAURE, J  
JULY 31, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**TOM MBOYA ODEGE (SECRETARY GENERAL, UNION OF KENYA CIVIL SERVANTS) ..... 1<sup>ST</sup> RESPONDENT**

**THE NATIONAL ADMINISTRATIVE COUNCIL, UNION OF KENYA CIVIL SERVANTS ..... 2<sup>ND</sup> RESPONDENT**

**THE NATIONAL EXECUTIVE BOARD, UNION OF KENYA CIVIL SERVANTS ..... 3<sup>RD</sup> RESPONDENT**

**UNION OF KENYA CIVIL SERVANTS ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**LAMECK ABRAHAMS ODHIAMBO ..... EXPARTE**

**RULING**

1. The Ex-parte Applicant filed a Chamber Summons application dated 27<sup>th</sup> March 2023 seeking orders that:-
  1. Spent
  2. The Applicant be granted leave to apply for Judicial Review Orders of:
    - a. Certiorari to remove into this court and for this court to quash the decision of the 2<sup>nd</sup> Respondent through its Secretary General, the 1<sup>st</sup> Respondent, to suspend the ex parte Applicant from the position of 1<sup>st</sup> Deputy Secretary General of the 4<sup>th</sup> Respondent vide their letter of 14/3/2023.



- b. CERTIORARI remove into this court and for this court to quash the deliberations, resolutions and decisions made in the purported disciplinary hearing of the ex parte applicant of 8<sup>th</sup> March 2023 before the 2<sup>nd</sup> Respondent as well as to quash the decision and import of the follow-up internal memorandum dated 9<sup>th</sup> March 2023 addressed to the staff of the 4<sup>th</sup> Respondent by the 1<sup>st</sup> Respondent.
  - c. CERTIORARI remove into this court and for this court to quash the 1<sup>st</sup> Respondent's notice to show cause letter of 1<sup>st</sup> March 2023 addressed to the ex parte applicant.
  - d. PROHIBITION restraining the 3<sup>rd</sup> Respondent from deliberating, issuing edicts and/or making resolutions and decisions and/or acting in any manner that may limit, curtail or compromise the role, duties, responsibilities, mandate and privileges of the ex parte applicant as the 1<sup>st</sup> Deputy Secretary General of the 4<sup>th</sup> Respondent pursuant to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's letter of suspension of 14<sup>th</sup> March 2023 and the resolutions and proceedings of the purported disciplinary hearing of the ex parte applicant of 8<sup>th</sup> March 2023.
  - e. MANDAMUS directed at the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein to reinstate fully the ex parte applicant to his position as the 1<sup>st</sup> Deputy Secretary General of the 4<sup>th</sup> Respondent with the full duties, responsibilities, mandate and privileges of the position.
  - f. PROHIBITION prohibiting and/or restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from purporting to deliberate, issue edicts and/or make resolutions and decisions, and/or act in any manner that may limit, curtail or compromise the role, duties, responsibilities, mandate and privileges of the ex parte applicant as the 1<sup>st</sup> Deputy Secretary General of the 4<sup>th</sup> Respondent except by strict adherence to the statutory and regulatory provisions of the laws of Kenya and *the Constitution* of the Republic of Kenya and the 4<sup>th</sup> Respondent.
3. leave to apply for Judicial Review Orders as prayed for herein do operate as stay of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's decision and/or resolution to suspend the ex parte Applicant vide its letter of 14/3/2023 as well as a stay of the proceedings and deliberations of the 3<sup>rd</sup> Respondent regarding the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's suspension intended for the 5/4/2023.
  4. this Honourable Court grants a mandatory injunction compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein to reinstate fully the ex parte Applicant to his position as the 1<sup>st</sup> Deputy Secretary General of the 4<sup>th</sup> Respondent with the full duties, responsibilities, mandate and privileges of the position pending hearing and determination of this Application and the substantive judicial review application.
  5. this court grants an injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents from purporting to deliberate, issue edicts and/or make resolution and decisions and/or act in any manner that may limit, curtail or compromise the role, duties, responsibilities, mandate and privileges of the ex parte Applicant as the 1<sup>st</sup> Deputy Secretary General of the 4<sup>th</sup> Respondent pending the hearing and determination of this Application and the substantive judicial review application.
  6. the costs of and incidental to this application be provided for.



## **Ex parte Applicant's Case**

2. The ex parte Applicant avers that he was elected as the 4<sup>th</sup> Respondent's 1<sup>st</sup> Deputy Secretary General on 5/9/2021 and has since discharged his duties diligently and won approval of his peers on account of his exemplary service.
3. The ex parte Applicant avers that on 1/3/2023, he received a notice to show cause letter (NTSC) from the 1<sup>st</sup> Respondent alleging that the deliberately spread untruthful information; disrespecting union officials; sending disrespectful SMSs to the 1st Respondent; and making unreasonable demands on the union national treasurer. However, he was not provided the date, times and specifics of when he did this or given any documents establishing the allegations.
4. The ex parte Applicant avers that Article 15(4) of the union's constitution provides that a NTSC can only emanate from the 2<sup>nd</sup> Respondent. However, it did not convene or deliberate the NTSC as it was unilaterally prompted by the 1<sup>st</sup> Respondent.
5. The ex parte Applicant further avers that article 12 of the union's constitution provides that the National Executive Board (NEB) investigates, summons, hears and resolves disciplinary matters involving national officials and it is the body to issue suspension and not the 1<sup>st</sup> Respondent or National Administrative Council (NAC).
6. That Article 12(3) of the union's constitution provides that no official shall be suspended unless he/she has received notice of not less than 14 days in writing to state his/her case at a NEB meeting with such notice including the details of the allegations. The NTSC gave the ex parte Applicant less than 7 days' notice and had no particulars/
7. The ex parte Applicant avers that he attended the NAC on 8/3/3023 under duress and insisted they read his charges and asked for an explanation on the allegations, however he was told he wasting their time and was being disrespectful. The Applicant states that the proceedings were a sham as he did not know what he was defending and was asked to leave.
8. It's the ex parte Applicant's case that he received no communication on the outcome of the hearing until he came across an internal memo of 9/3/2023 issued by the 1<sup>st</sup> Respondent that informed union staff that he had been made to step aside from discharging official duties.
9. The ex parte Applicant avers that his advocates demanded minutes and resolution of the proceedings of 8/3/20023 within 48 hours on 13/3/2023 and the same was responded by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent vide a letter dated 14/3/3023 that stated NAC approved his suspension after hearing his response.
10. The ex parte Applicant avers that the suspension letter stated that NAC's decision will be presented to NEB at a meeting on 5/4/2023 which he is not invited. Further, there is no provision that NAC presents its disciplinary decisions to NEB for ratification but the applicant can move NEB to appeal NAC's decision.
11. It is the ex parte Applicant's case that the proceedings were midwifed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent which violates the union's constitution as well as his statutory and constitutional rights. Further, the 1<sup>st</sup> Respondent acted as complainant, prosecutor, jury, judge in the disciplinary proceedings.
12. The ex parte Applicant avers that 1<sup>st</sup> and 2<sup>nd</sup> Respondent acted ultra vires as the meeting of 5/4/2023 will be unlawful and malicious as his purported suspension and proceedings of 8/3/2023 was meant to formalize the 1<sup>st</sup> and 2<sup>nd</sup> Respondent's illegalities. Additionally, the 1<sup>st</sup> Respondent also sits at NEB.



13. The ex parte Applicant avers that the minutes of NEB's meeting of 5/4/2023 either are doctored or display significant discrepancies.
14. The ex parte Applicant avers that he is challenging the procedural fairness of the disciplinary process especially the 1<sup>st</sup> Respondent's bias. Further, he was not informed of his right to appeal, date of appeal or materials to appeal.

### **Respondents' Case**

15. In opposition to the Application, the Respondents filed a replying affidavit dated 22/2/2024.
16. The Respondents aver that the ex parte Applicant was suspended under Article 15(4) (d) (iv) of the union's constitution which applies to NAC's power to suspend an official. This decision was forwarded to NEB; any NAC decision must be forwarded to NEB. NAC runs the daily affairs of the union and sits monthly and it can only cause one to be interdicted but not expelled from their office.
17. It's the Respondents' case that a suspended official has an automatic right of appeal to NEB, however, regardless of filing an appeal, once NAC's decision has been laid before NEB, the said organ automatically applies Article 12(3) of the union's constitution and invites the official to a hearing and can either ratify or quash NAC's decision on merit.
18. The Respondents aver that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent fully complied to the above procedures as minutes of NAC's meeting of 8/3/2023 confirm the ex parte Applicant was read the charges, allowed to defend himself and a vote was taken. Subsequently, NAC's decision was communicated to him vide a letter dated 14/3/2023 which invited him for the NEB hearing for 5/4/2023.
19. However, the ex parte Applicant failed to appear before NEB and it proceeded to reach a decision to further suspend him.
20. The Respondents aver that for the ex parte Applicant to claim that he is only subject to Article 12 of the union's constitution would be an attempt to subvert Article 15(4) (iv) and to equally render NAC bogus and cosmetic.
21. The Respondents avers that none of the voices in the ex parte Applicant's audio clips match voice of NAC and NEB members and the court can only authenticate the same through a voice expert or by conducting viva voce hearing with all members present for hearing.
22. It's the Respondents' case that the conduct of meetings of the union's organs do not allow the use of mobile phones and other devices as they may cause a distraction during the proceedings. Further, the ex parte Applicant's and other members' phones were kept in one locker in the 1<sup>st</sup> Respondent's secretary's office, hence he did not record the proceedings at all.
23. The Respondents aver that the recordings have not complied with section 78A and 106B of the Evidence Act. further, they wish the phone be deposited in court for determination of the last modification on the file, path storage, wave forms and identities of the persons in the recordings.
24. The Respondents aver that the disputed minutes are true records of what transpired in the NAC and NEB hearing, therefore, the Applicant cannot purport the meeting never took place when he actually attended.
25. It's the Respondent's case that the ex parte Applicant doesn't deny the fact that the 8 NAC members voted in favour of his suspension whereas 3 members voted for his reinstatement and the 1<sup>st</sup> Respondent did not participate in voting. Further, 16 members of NEB voted for his suspension



and 12 voted for his favour while 1 abstained from voting and the 1<sup>st</sup> Respondent never attended the meeting of 5/4/2023

### **Ex parte Applicant's Submissions**

26. The ex parte Applicant submitted that the NTSC does not cite the provisions of the union's constitution it was based on, however, Article 12 identifies and sets out what amounts to a fair hearing and the same cannot be abrogated by proceedings under Article 15(4)(iv) of the same constitution. Although, the Respondents alleged that his suspension and subject proceedings were initiated under Article 15(4)(iv) of *the constitution*, Article 12 provides the proper ingredients of a fair hearing and the Respondents deliberately fell short of that standard.
27. It's the ex parte Applicant's submission that he was not afforded an opportunity to attend proceedings with representations and witness or furnished with any evidence to defend himself against the charges. Further he was not accorded proper notice and adequate time to prepare for the hearing of 8/3/2023.
28. The ex parte Applicant submitted that the NTSC had no particulars capable of sustaining a charge before any disciplinary hearing. This flouts the provisions of Article 47(2) of *the Constitution* and Section 4 of the *Fair Administrative Action Act*.
29. It is the ex parte Applicant's submission that he was not adequately heard and considered at the disciplinary hearing of 8/3/2023 as he was cut short rudely and often, berated endlessly and not allowed to offer any explanation to defend himself. He was also not allowed to cross examine any of his accusers at the meeting and with lack of particularisation, he did not even know who they are.
30. The ex parte Applicant submitted that the 1<sup>st</sup> Respondent held a grudge and hence acted as complainant, prosecutor and even registrar in the disciplinary hearing against the Applicant. The threshold of bias was set out in *Judicial Service Commission v Gladys Boss Shollei & another* [2014] eKLR.
31. The ex parte Applicant submitted that Article 15(4)(iv) of the union's constitution states suspension shall not exceed 3 months at the first instance and not more than 6 months on aggregate; yet he has been on suspension since 8/3/2023. He is certain that the 1<sup>st</sup> Respondent is orchestrating his removal unlawfully from the union.
32. It's the ex parte Applicant's submission that Article 8(f) of the union's constitution outlines the duty of the Secretary General is to issue notice of meetings and documentation of meetings; this does not mandate him to issue NTSC. NTSC can only emanate from NAC especially since he is not an employee but a national office. The 1<sup>st</sup> Respondent issued the NTSC unilaterally as a complainant against the union's constitution and the right to fair hearing.
33. It's the ex parte Applicant's submission that the 1<sup>st</sup> Respondent acted ultra vires and the above decision was made in breach of the union's constitution hence it is null ab initio.

### **Respondents' Submissions**

34. The Respondents submitted that Min/05/03/2023 of NAC show that the ex parte Applicant was read and explained to the charges in details for the reasons for which he was suspended. He raised the question of lack of enough time to prepare his defense but when asked if he needed more time, he ironically chose to proceed with the hearing "to save NAC's time." Guided by General Standing Order No. 5(ii) of the Union's Constitution, the ex parte Applicant was sent out of the room to allow for members to vote on his case. He was informed of the outcome of the vote and was informed of this decision of NAC. He was categorically informed of his right to appeal to the National Executive Board.



35. The Respondents submitted that the ex parte Applicant was then invited to NEB via a letter dated 14/3/2023, for the NEB hearing scheduled for 5/4/2023. This was under the ambits of Article 12(1) of the Union's Constitution. He failed to attend the NEB hearing. His matter was submitted and a vote was taken and held that he should stay suspended. It would therefore follow that where one is invited and fails to appear, then such a person cannot come to cry wolf later.
36. The Respondents submitted that the ex parte Applicant was interdicted by NAC under Article 15(4) (d)(iv) of the union's constitution. He was suspended pending hearing and was given a 7-day notice for the hearing. He did not object to the notice period, whether before the hearing or during the hearing.
37. The Respondents submitted that Article 15(4)(d)(iv) of the union's constitution which NAC used to suspend the ex parte Applicant does not have a written down procedure as one provided for NEB. However, NAC has its own institutional mechanism operationalizing and implementing Article 15.
38. It's the Respondents' submission that given that the ex parte Applicant did not actually record the events of 8/3/2023, and recognising that there is no evidence confirming that the voices of the audio recordings presented details of those of NAC members, and considering that the Ex-Parte Applicant has no one to corroborate his allegations, and acknowledging that in this age of open access artificial intelligence and digital audio file editing softwares like "Outfit7 Limited" which have developed a mobile application that can imitate anybody's voice with 84% accuracy, and Codespace Digital who has a mobile Application called Chatbot AI & Smart Assistant powered by ChatGPT API & Chat GPT-4, free for access to anyone, which can simulate an entire conference imitating different voices all at the same time as if an actual meeting is taking place, the Respondents pray that the court expunges the alleged audio recordings and proceed to try this Application fairly and taking into consideration that the minutes produced herein are a true, accurate and factual representation of the meeting of NAC and NEB regarding this instant suit.
39. The Respondents submitted that the ex parte Applicant cannot allege that lack of minutes stopped him from lodging an appeal. Considering by the time NEB was sitting and considering his matter, the Applicant had instructed his current advocates on record and could actually have attended the NEB meeting with him, but he chose to abscond it. The claim of manifest unreasonableness therefore falls on its face.
40. The Respondents submitted that there is no particulars of bias as the 1<sup>st</sup> Respondent equally acted within his right, power and authority in recording minutes of the NAC meeting held on 8/3/2023. Article 8(f) of the Union's Constitution provides that the Secretary General shall issue notices of meetings of all National Organs of the Union and ensure proper documentation of the Minutes of all such meetings and safe custody of the minutes and other records of the Union; the 1<sup>st</sup> Respondent being a complainant, absconded from voting.
41. Further, the 1<sup>st</sup> Respondent acted within his right, power and authority in communicating NAC's decision to suspend the ex parte Applicant; as General Standing Order No. 8 of the Union's General Standing Orders states that all official correspondence to the Union shall be addressed to the Secretary General of the Union.
42. It is the Respondents' submission that the ex parte Applicant failed to show that the decision or actions of the Respondents are tainted with illegality, irrationality and procedural impropriety. He further failed to show that the Respondents acted in a manner that frustrated the fair administration of justice.

Analysis and Determination



43. The first issue for the court's determination is whether the ex parte Applicant is entitled to judicial review orders sought.
44. The nature of judicial review orders was aptly discussed in the case of Republic v Director of Immigration Services & 2 others Exparte Olamilekan Gbenga Fasuyi & 2 others (2018) eKLR as follows:-

“...It is common ground that the prayers sought are Judicial Review remedies and the rules governing grant of judicial review orders do apply. Judicial Review is about the decision-making process, not the decision itself. The role of the court in judicial review is supervisory. It is not an appeal and the court should not attempt to adopt the forbidden appellate approach. Judicial Review is the review by a judge of the High court of a decision; or refusal to exercise a power of decision to determine whether that decision or action is unauthorized or invalid. It is referred to as supervisory jurisdiction- reflecting the role of the courts to supervise the exercise of power by those who hold it to ensure that it has been lawfully exercised. Judicial Review is a means to hold those who exercise public power accountable for the manner of its exercise. The primary role of the courts is to uphold the fundamental and enduring values that constitute the rule of Law. Judicial Review is more concerned with the manner in which a decision is made than the merits or otherwise of the ultimate decision. As long as the process followed by the decision-maker are proper, and the decision is within the confines of the Law, a Court will not interfere.”

45. According to Halsbury Law of England 4th EDN.Vol. 1 (1) para 12 page 270:

“The remedies of quashing orders (formerly known as orders of Certiorari) prohibiting orders formerly known as orders of prohibition (mandatory orders formerly known as orders of mandamus) ...are all discretionary. The court has a wide discretion whether to grant relief at all and if so, what form of relief to grant. In deciding whether to grant relief the court will take into account the conduct of the party applying and consider whether it has not been such as to disentitle him to relief. Undue delay, unreasonable or unmeritorious conduct, acquiescence in the irregularity complained of or waiver to the right to object may also result in the court declining to grant relief.”

46. Further, in Chief Constable of the North Wales Police VS Evans (1982)1 WLR 1155 e Lord Brightman noted:

“Judicial Review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power...Judicial Review, as words imply, is not an appeal from a decision but a review of the manner in which the decision was made.”

47. Order 53 Rule 1 of the Civil Procedure Rules provides that no application for Judicial review orders should be made unless leave of the court has been sought and granted. It states inter alia, as follows-;

“(1)No application for an order of Mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rules

(2) an application for such leave as aforesaid shall be made ex-parte to a judge in chambers, and shall be accompanied by a statement setting out the name and



description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on.

- (3) the judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.”

48. The reason for the leave was explained by Waki J (as he then was) in *Republic V County council of Kwale & another Ex-parte Kondo & 57 others, Mombasa HCMCA No 384 of 1996* as follows-;

“The purpose of application for leave to apply for Judicial Review is firstly to eliminate at an early stage any applications for Judicial review which are either frivolous, vexatious or hopeless and secondly to ensure that the applicant is only allowed to proceed to substantive hearing if the court is satisfied that there is a case fit for further consideration. The requirement that leave must be obtained before making an application for judicial review is designed to prevent the time of the court being wasted by busy bodies with misguided or trivial complaints or administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived... leave may only be granted therefore if on the material available the court is of the view, without going into the matter in dept that there is an arguable case for granting the relief claimed by the applicant the test being whether there is a case fit for further investigations at a full inter partes hearing of the substantive application for Judicial review. It is an exercise of the court’s discretion but as always it has to be exercised judicially.”

49. In the instant application, the ex parte Applicant averred that the application is meant to challenge the procedural fairness of the disciplinary process he underwent especially the 1<sup>st</sup> Respondent’s bias. Further, he was not informed of his right to appeal, date of appeal or materials to appeal.

50. It is the ex parte Applicant’s submission that the 1<sup>st</sup> Respondent acted ultra vires by issuing him with the NTSC unilaterally as a complainant against the union’s Constitution and his right to fair hearing. The applicant avers therefore that he was not given a fair hearing as the respondents were biased and acted as the judge, jury and prosecutor against him. He prays that the respondent’s letter dated 14<sup>th</sup> March 2023 which ordered his suspension pending further feedback from the National Executive Board (NEC) which was to be deliberated at their meeting which was to be held on 5<sup>th</sup> April 2023 was biased.

51. The applicant then filed this application and that meant that there was no more feedback pertaining to his suspension.

52. The respondent in their defence says they suspended the applicant as provided in their constitution in article 15(4)(iv) of their constitution which provides as follows

“the function of the national administrative council shall be to take appropriate disciplinary action against any member or official of the union on issues relating to constitutional breach and on indiscipline such disciplinary action shall apply sanctions ... suspensions for a period not exceeding three (3) months in the first instance and not more than six months in aggregate. A member union official on whom disciplinary action has been taken shall have recourse for appeal at the National Executive Board.”



53. The Role of the NEB as in article 15(3) (A) Is “ to be responsible for the day to day running of the affairs of the union”.
54. The constitution further provided that once an official is suspended he is entitled to appeal to NEB and this is an automatic right.
55. The court finds the respondents complied with the provisos of their constitution in that they issued the applicant with a notice to show cause and listed down the allegations that the applicant was faced with for his response. The applicant was taken through a disciplinary hearing on 8th March 2023 and was allowed to defend himself. A vote was taken and the decision of NAC was communicated to him on 14<sup>th</sup> March 2023. It was forwarded to NEB and a hearing was scheduled for 5<sup>th</sup> April 2023.
56. The applicant failed to appear before NEB for the hearing and so a decision was taken to suspend him. He chose not to appeal the NAC decision and hence filed this judicial review on 27<sup>th</sup> March 2023. The applicant can only have himself to blame for rushing to court before the process was taken to its logical conclusion as per the respondent’s constitution.
57. The court finds the applicant referred to a transcript he recorded of the proceedings in an attempt to demonstrate he was not taken through fair procedure. He avers he was not allowed to defend himself and was being ordered to just say yes or on.
58. The court is not keen to admit the transcript for obvious reason that the same was not in compliance with sections 78(7) and 106(b) of the Evidence Act. The applicant also failed to produce evidence that the phone in the electronic certificate belonged to the applicant. Further there is no concrete evidence that the recordings in the transcript were an accurate happenings at the disciplinary hearing.
59. The court finds the judicial review application has a lot of discrepancies and indeed the court finds the applicant did not prove sufficient grounds to grant him the orders prayed as per his application. Instead, the court finds the respondent acted within the provisions of their constitution and the Employment Act. In conclusion, their court finds that as per the sentiments of the court in the case of Ondari Isaac Mageto vs Machakos University (2021) eKLR where court held;  
  
“procedural fairness is a flexible principle of natural justice has always been an entirely contextual principle. There are no rigid or universal rules as to what is needed in order to be procedurally fair. The content of the duty depends on the particular function and circumstances of each individual case”.
60. In view of the foregoing, the court finds the respondent complied with their union constitution and Employment Act and so the applicant has failed to prove otherwise.
61. The court therefore holds that the applicant is not entitled to the orders sought therefore and the same are declined and his application is dismissed.
62. Each party will meet their costs of the judicial review application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 31<sup>ST</sup> DAY OF JULY, 2024.**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 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**

