



**Republic v Teachers Service Commission & 3 others; Lengoyiap & 2 others (Exparte)  
(Judicial Review E001 of 2024) [2024] KEELRC 2137 (KLR) (30 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2137 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
JUDICIAL REVIEW E001 OF 2024**

**ON MAKAU, J  
JULY 30, 2024**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**KENYA UNION OF POST PRIMARY EDUCATION TEACHERS  
(KUPPET) ..... 2<sup>ND</sup> RESPONDENT**

**THE CEO, TEACHERS SERVICE COMMISSION (TSC) ..... 3<sup>RD</sup> RESPONDENT**

**THE SECRETARY GENERAL, KENYA UNION OF POST PRIMARY  
EDUCATION TEACHERS (KUPPET) ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**WILLIAM LENGOYIAP ..... EXPARTE**

**KIMWERE MOSES ..... EXPARTE**

**PETER OMONDI OLUOCH ..... EXPARTE**

**JUDGMENT**

1. The applicants are high school teachers who were elected to serve as Branch Executive secretaries in three branches of the 2<sup>nd</sup> Respondent. Their term of service in the new job is five years from April 2021 and it is was on full time basis. They have leave of absence by the 1<sup>st</sup> Respondent until their term of office ends and/or they lose their positions in the subsequent elections.
2. On 23<sup>rd</sup> January 2024, the applicants received letters from 1<sup>st</sup> Respondent deploying them back to class upon the request from the 2<sup>nd</sup> respondent. The applicants were aggrieved and sought leave of this court



to institute Judicial Review proceedings and direction that the leave operates as stay. Subsequently, they filed Notice of Motion dated 5<sup>th</sup> February 2024 seeking the following reliefs:

- a. That an order of certiorari do issue to remove to this Honourable Court, for quashing, the decision of the 1<sup>st</sup> Respondent contained in its letters dated 23<sup>rd</sup> January 2024, purporting to remove the Ex-parte Applicants from their positions as KUPPET Branch Executive Secretaries and posting them to various schools.
  - b. That an order of prohibition do issue forbidding the 1<sup>st</sup> Respondent from unilaterally removing the Ex-parte Applicants from office without due process.
  - c. That an order do issue directing the 2<sup>nd</sup> Respondent to continue paying the Applicants' salaries and allowances for as long as they are in office.
  - d. That the costs of the application be provided for.
3. The motion is based on the facts and grounds set out in the statement of facts and various affidavits of the applicants and their witnesses Priscila M'Rukunga, Carolyne Mwangambo, Mbarak Bwanamkuu and Paul Rotich sworn between 29<sup>th</sup> January 2024 and 22<sup>nd</sup> March 2024. The Respondents have opposed the motion and prayed for the same to be dismissed on grounds set out in their various affidavits sworn between 23<sup>rd</sup> February 2024 and 16<sup>th</sup> April 2024.

### **Factual Background**

4. The applicants are Secondary school teachers and members of the 2<sup>nd</sup> respondent trade union. In 2021, they were elected as Branch Executive secretaries for the 2<sup>nd</sup> respondent in their respective Branches namely, Samburu, Isiolo and Tana River Counties respectively. Their term of office is five years with effect from 1<sup>st</sup> April 2021 during which term they have been granted a leave of absence by the 1<sup>st</sup> respondent upon request from the 2<sup>nd</sup> and 4<sup>th</sup> Respondents.
5. During the said term of five years they are to serve the union on full term basis and be paid their salary by the union, but without losing pensions under the 1<sup>st</sup> Respondent. The union is responsible for paying pension contributions for the applicants during the said term. The said arrangement is based on the Recognition agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent and the Code of Regulation for Teachers (CORT).
6. The respondents have not disputed the foregoing facts and they are indeed in agreement that the applicants were elected to serve as Branch Executive secretaries and they were released by the 1<sup>st</sup> respondent. The main issue in this suit is the recalling of the applicants from their full-time service to the union and deployment back to teaching before their term of office in the union lapsed.
7. The applicants contended that they were recalled without adherence to the rules of natural justice and in breach of their rights under Article 47 of *the Constitution*; that the respondents' actions and decisions are arbitrary and ultra vires; and that the Respondents actions and decisions amount to removal of applicants from office for no valid reasons and without following due process of the law. Consequently, they urged the court to exercise its jurisdiction under Article 165 of *the Constitution* to review and quash the said administrative decisions and actions by the respondents.
8. The 1<sup>st</sup> and 3<sup>rd</sup> respondents admitted that they deployed the applicants to Teaching service but averred that they were prompted to do so by letters written to them by the 2<sup>nd</sup> and 4<sup>th</sup> Respondent on 15<sup>th</sup> January 2024. The said letters indicated that the respective branches of the union could no longer pay the applicants' salaries and requested the 3<sup>rd</sup> respondent to consider deploying them back to class in



- their respective counties. In that respect the 1<sup>st</sup> and 3<sup>rd</sup> respondent maintained that they did nothing wrong by granting the said request by the union.
9. On the other hand, the 2<sup>nd</sup> and 4<sup>th</sup> respondents admitted that they made the request for deployment of the applicant back to class but contended that their request was prompted by communication from the applicants' respective Branches that they could not sustain the applicants' salaries due to insufficient finances in the Branches.
  10. The 2<sup>nd</sup> and 4<sup>th</sup> respondents further contended that the applicants are employees of their respective branches by dint of Article 8.8 1 (d) of the Union constitution which provides that a branch shall run its own affairs under the direction of the National Executive Board (NEB). They wondered why the applicants, being the Branch bosses had not come up with sustainable posterity measures after being assisted by the NEB for a long time. The 2<sup>nd</sup> and 4<sup>th</sup> respondent contended that they are still remitting 65% to the branches as required by Article 17.0 (e) (i) of the Union Constitution but clarified that the same is not enough to pay the applicants salary.
  11. They further averred that the applicants will not suffer any loss because they have not been removed from the office of Branch Executive Secretary, and that they will be earning salary from their work in class. They further argued that the agreement between the union and the 1<sup>st</sup> respondent to release the applicants from class to the union is only a privilege and not a right.
  12. The four respondents have raised preliminary points that the suit is premature and the court lacks jurisdiction because it was commenced before exhausting internal appeal mechanism under section 46 of the Teachers Service Commission (TSC) Act and Regulation 156 of the CORT.

### **Submissions**

13. It was submitted for the applicants that this court is clothed jurisdiction to entertain the motion herein as was determined in the case of Abdikardir Suleiman v County Government of Isiolo & another (2015) eKLR. It was urged that the matter is properly before this court since it touches on violation of the applicants rights under Article 47 of the Constitution by their employers in their administrative functions. It was further urged that the 2<sup>nd</sup> respondent was and still is the employer of the applicants by dint of clause 4.8 of the Memorandum of Agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Consequently, it was submitted that the internal mechanism under the 1<sup>st</sup> Respondents' CORT does not apply to the employment between the applicants and the 2<sup>nd</sup> respondent.
14. As regards the merits of the motion, it was submitted that the application has met the legal threshold for granting the reliefs sought which are provided for, under section 11 of the Fair Administrative Actions (FAA) Act. It was urged that the applicants were lawfully released to serve as Branch Executive Secretaries until the time their positions through removal from office or loss of subsequent elections.
15. It was submitted that the applicants neither lost their office through elections nor were they removed through the procedure set out in the union constitution. It was further urged that Article 12 of the Union Constitution, the term of office for all office bearers is five years, but they are eligible for re-election. Further, it was submitted that clause 4.8 of the Memorandum of Agreement between 1<sup>st</sup> and 2<sup>nd</sup> Respondents provides that once a teacher is elected into the office of Executive Secretary of the union, the 1<sup>st</sup> Respondent shall release him/her from its service, to work for the union on full time basis for five years and only deploy the teacher if he/she is not re-elected.
16. It was further submitted that the employment of the applicants was tainted with illegality and procedural impropriety and is therefore null and void. It was contended that the applicants' witnesses swore affidavits to prove that there were no meetings held by their branches that resolved to send the



- applicants back to class. It was contented further that if such meetings occurred, then they were not lawfully convened as required under Article 9.0 of the Union Constitution.
17. The said Article provides that branch meeting shall only be convened by a notice from the Executive secretary or in the case of a branch organ by a resolution of six members of a branch organ if the Executive secretary fails to call a meeting. In this case, it was urged that the respondent did not adduce any resolution by six members of the Branch committee requisitioning for a meeting to discuss the matters. Further that, the Branch members who allegedly meet to make the impugned resolutions disowned the minutes adduced by the respondent and denied ever attending such meetings.
  18. As regards the 1<sup>st</sup> and 3<sup>rd</sup> respondent, it was submitted that their action and decision in the impugned deployment were tainted with illegality, irrationality and procedural impropriety as they were written without authority over the applicants. It was urged that since the 1<sup>st</sup> respondent had released the applicants to work for the 2<sup>nd</sup> respondent it has no mandate to exercise authority over them until their employment by the union ends through the means and procedure set out in the Union Constitution, and the release letters.
  19. As regards the 3<sup>rd</sup> applicant, it was submitted that the 1<sup>st</sup> and 3<sup>rd</sup> respondent went overboard by purporting to deploy him from Tana River County where he is the Executive secretary, to Migori County. It was submitted that such posting prematurely terminated his appointment as Executive secretary in the County where he was elected to serve for five years. As such, it was argued that apart from acting ultra vires as demonstrated above, the 1<sup>st</sup> and 3<sup>rd</sup> respondents abused their statutory power and their acts were unreasonable and actuated with bad faith.
  20. In view of the foregoing matters, it was submitted that the applicants have demonstrated sufficient grounds for granting the writ of Certiorari and Prohibition as prayed. For emphasis, reliance was placed on *Macfoy v United Africa Co.Ltd* (1961) 3 ALL E.R 1169, *Republic v Commissioner for Co-operative Development* (1999) EA 245 and *Kenya National Examination Council v Republic* (1997)eKLR. Consequently, the court was urged to grant the orders sought with costs.
  21. On the other hand, the respondents submitted that the suit herein offends the exhaustion doctrine because it was brought before exhausting the internal procedure provided under section 46 of TSC Act and Regulation 156 of the CORT. Reliance was placed on section 9(2) of the FAA Act which bars review by the courts of law unless the internal appeal or review mechanism and all the available remedies are first exhausted. Further reliance was placed on *Republic v National Environment Management Authority, Exparte Sound Equipment Ltd* [2011] eKLR, *William Odhiambo Ramogi & 3 others v Attorney General & 4 others* [2020] eKLR and *Jeremiah Momba Ocharo v Evangeline Njoka & 3 others* [2022] eKLR.
  22. As regards the merits of the motion, it was submitted for the 1<sup>st</sup> and 3<sup>rd</sup> respondents that they did nothing wrong by deploying the applicants to teach in various schools because that was a lawful mandate conferred on it by Article 237 and 249 of *the Constitution* and the TSC Act.
  23. It was further submitted that pursuant to Article 41 of *the Constitution*, it executed a Recognition Agreement with the 2<sup>nd</sup> Respondent in which it undertook to release without pay, teachers elected as National Branch Executive Secretaries and later deploy them when they cease being officials. It was further submitted that they released the applicants on a leave of absence under Regulation 167 of CORT upon request by the 4<sup>th</sup> respondent and later deployed them upon receipt of request by the 4<sup>th</sup> respondent vide letters dated 15<sup>th</sup> January 2024 which indicated that the union was unable to pay their salaries.



24. It was submitted that the deployment letters gave the applicant right of appeal if they were dissatisfied with the posting but no appeal was preferred. Consequently, it was urged that the deployment upon request by the 4<sup>th</sup> respondent back to the teaching service was lawful and the suit against the 1<sup>st</sup> and 3<sup>rd</sup> Respondents is without merits.
25. It was further submitted that, the 1<sup>st</sup> and 3<sup>rd</sup> respondents did not remove the applicants from their positions as Branch Secretaries as it has no mandate to do so. Besides, it was urged that under section 31(1) of the *Labour Relations Act*, an employee can be an official in a union and still execute his/her duty as an employee. Consequently, it was submitted that the 1<sup>st</sup> and 3<sup>rd</sup> respondent did nothing illegal in deploying the applicants to teach while still serving in union in their official capacity.
26. As regards 2<sup>nd</sup> and 4<sup>th</sup> respondents, it was submitted that they did not act ultra vires in requesting for the deployment of the applicants back to teaching service. It was urged that the 4<sup>th</sup> respondent is the authorized representative of the union and therefore he acted in good faith with the intention of improving the running of the trade union having been prompted by a valid economic reason. For emphasis reliance was placed on the case of *Mauke Co.Ltd v Attorney General (2000) eKLR* where the term good faith was discussed.
27. It was further submitted that the applicants have not shown sufficient cause for the court to interfere with the union operations. It was urged that trade unions have the right to run their affairs as they wish. Consequently, the court was urged to dismiss the suit since the applicants are not entitled to the reliefs sought.

### **Analysis**

28. Having considered the pleadings, evidence and submissions filed by both sides, the following issues fall for determination: -
  - a. Whether the suit offends the doctrine of exhaustion.
  - b. Whether the applicant has laid sufficient basis to warrant judicial review orders sought.
  - c. Who should pay costs of the suit.

### **Exhaustion doctrine**

29. The respondents contended that the suit herein offends the doctrine of exhaustion and the court lacks jurisdiction to entertain it because it was commenced before exhausting the internal appeal process availed to the applicants by the deployment letters, section 46 of the TSC Act and Regulation 156 of the CORT. The doctrine of exhaustion in Kenya is codified in section 9(2) of the FAA Act which provides that:

“The High Court or a Subordinate court shall not review an administrative action or direction under this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.”

30. However, subsection (4) provides that

“Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.”



31. In the instant case, the applicants contended that they are currently in contract of service with the 2<sup>nd</sup> respondent and as such the 1<sup>st</sup> respondent's internal appeal process does not apply to this case. I will not belabor the point but rather agree with the applicant's contention. The suit is not merely prompted by their deployment to teaching services by the 1<sup>st</sup> respondent but the decision by the 2<sup>nd</sup> and 4<sup>th</sup> respondents to unilaterally alter the terms of service as Executive Secretaries. The applicants were to work full time for the union and be fully paid by it but the union now wants them to work for it for free. I say so because the applicants are being told to work for the 1<sup>st</sup> respondent in order to earn salary but continue working for the union.
32. Besides, even if the applicants were to pursue the appeal procedure provided by the 1<sup>st</sup> respondent, the same would not remedy the claim against the 2<sup>nd</sup> and 4<sup>th</sup> respondent. Consequently, I hold that the internal mechanism provided by section 46 of the TSC Act and Regulation 156 of the CORT is not suitable to determine the real dispute herein as there are exceptional circumstances warranting the exemption of the applicants from the obligation of first exhausting.

### **Basis for review**

33. The applicants alleged that they were elected to serve as Executive Secretaries for a term of five years and the 2<sup>nd</sup> respondent gave them employment contract to serve the union for the said term on full time basis. The appointment letters stated as follows:

“Following your re-election as the Executive Secretary of Samburu Branch of KUPPET on 13<sup>th</sup> February 2021, I am pleased to inform you that the branch has employed you on full time basis for a period of 5 years as from 1<sup>st</sup> April 2021.

The union undertake to release you back to the Teachers Service Commission after five years for redeployment should you cease being an official/fail to be re-elected (refer to Memorandum of Agreement between Teachers Service Commission and the Union part 4.8)

While performing your duties, you will be entitled to remuneration commensurate with the post which will be reviewed from time to time based on your performance, the capacity to pay and the Union commitments.

I wish to congratulate you as you begin your new task.

Sincerely,

Akelo M.T. Misoro

Secretary General”

34. Clause 4.8 of the Memorandum of Agreement states as follows:

“The Commission undertakes to release without pay, teachers elected as National Officials and Branch Executive Secretaries and do undertake to redeploy such teachers when they cease being officials”

35. Article 12. 0 of the KUPPET constitution provides that :

“ All office bearers shall be elected to serve for a term of 5 years, but eligible for re-election.”



36. The foregoing documentary evidence affirm that the applicants were elected to serve for the entire term of five years and only return to the 1<sup>st</sup> respondent if they ceased being officials. In my view a person can only cease being an officer of the union if he resigns, or he is removed, or his term lapses and he is not re-elected.
37. The applicants contended that the decision and actions by the respondents which culminated in the impugned redeployments violated their rights to fair administrative action as enshrined under Article 47 of *the Constitution* since they were not heard before the administrative action was taken. They contended that the said actions were detrimental to them financially and amounted to termination or removal from office unlawfully. The 3<sup>rd</sup> applicant was more affected by being posted away from the County where he was the Executive Secretary.
38. Article 47 (1) (2) and (3) of *the Constitution* provide that: -
- “Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in Clause (1) and that legislation shall-
- a. Provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal, and
- b. Promote efficient administration.”
39. The rights under Article 47 of *the Constitution* are illuminated by the Fair Administrative Actions (FAA) Act. Section 2 of the Act defines administrative action as –
- “(i) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
- (ii) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.”
40. Section 4(3) of the Act then provides that –
- “where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision –
- a. Prior and adequate notice of the nature and reasons for the proposed administrative action;
- b. An opportunity to be heard and make representations in that regard;
- c. Notice of a right to a review internal or appeal against an administrative decision, where applicable;
- d. A statement of reasons pursuant to section 6;
- e. Notice of the right to legal representation, where applicable;



- f. Notice of the right to cross-examine; where applicable; or
- g. Information, materials and evidence to be relied upon in Making the administrative action”

41. The above provisions basically codify the rules of natural justice which requires that a person shall not be condemned for no just cause and without being heard. In this case, the petitioner was never accorded any chance to be heard and defend himself whether in writing or verbally before the respondents made the administrative decisions in various stages culminating in the impugned redeployment letters.
42. The respondents have denied that the applicants have been removed from their elected offices and maintained that they will not suffer any financial loss since they will be paid salary by the 1<sup>st</sup> respondent. Even the 4<sup>th</sup> respondent who requested for the redeployment of the applicants purported that he did so in good faith and for the best interest of the Union. In the respondents’ view, the applicants’ rights were never violated by the impugned redeployment. They even argued that the leave of absence was a privilege and not a right.
43. However, I agree with the applicants that the decisions by the respondents right from the 2<sup>nd</sup> respondent’s branches to the 4<sup>th</sup> respondent and finally the 3<sup>rd</sup> respondent affected the rights of the applicants. First, the contract of employment between the applicants and their union was breached. Their leave of absence was not a privilege but a right grounded on the Regulation 167 of CORT, clause 4.8 of the Memorandum of Agreement, the release letters by the 1<sup>st</sup> Respondent and the Appointment letters by the 2<sup>nd</sup> Respondent. Second, they were treated different from other Branch Executive Secretaries who were not redeployed. Third, they were in effect removed from office on account of redundancy because the 4<sup>th</sup> respondent alleged that their branches could not pay their salaries.
44. In addition, I agree with the applicants that the respondents acted ultra vires in the actions that culminated in the impugned deployment. First the 2<sup>nd</sup> and 4<sup>th</sup> respondents purported to reverse the decision of the Branch Annual meeting which elected the applicants to office to serve for five years. Secondly, the 1<sup>st</sup> and 3<sup>rd</sup> respondents exercised authority over the applicants by redeploying them before the lapse of the five years’ leave of absence. The said action also violated Regulation 167 of the CORT and Clause 4.8 of Memorandum of Agreement which provided for release of teachers to serve the union if they are elected as Executive Secretaries until they cease being officials. In this case, the respondents have admitted that the applicants are still serving in their branches as Executive Secretaries.
45. The basis upon which a court can review administrative decisions were discussed in the Ugandan case of *Pastoli v Kabale District Local Government Council & Others* [2008], E.A. 300 where it was held that: -

“In order to succeed in an application for Judicial Review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

Illegality, is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provision of a law or its principles are instances of illegality.

Irrationality, is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it would have



made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety, is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice to act or to act with procedural fairness towards one to be affected by the decision – it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislature instrument by which such authority exercises jurisdiction to make a decision. (*Al-Mehidswi v Secretary of State for the Housing Department* [1990] AC 876.”

46. In this case there is evidence to prove that the administrative actions were actuated with procedural impropriety, illegality and irrationality. First, the respondent acted in breach of procedure by redeploying the applicants before ceasing to be officials and without according them any hearing. Second, they acted illegally by reversing the decision of the respective union branches which was taken through the vote in February 2021 and also breaching the Regulation 167 of the CORT, Clause 4.8 of the Memorandum of Agreement and Article 12(a) of the Union Constitution. Finally, the respondents acted irrationally by treating the applicants differently from the other Branch Executive Secretaries contrary to the said instruments of engagement and express contract of employment between the 2<sup>nd</sup> respondent and the applicants. As pointed out above the 1<sup>st</sup> and 3<sup>rd</sup> respondent acted unreasonably by posting the 3<sup>rd</sup> Respondent from Tana River County where he is elected to serve as Executive Secretary, to Migori County hundreds of kilometers away.
47. Having considered the material placed before the Court by both sides, I am satisfied that the applicants have demonstrated sufficient basis upon which to review the administrative actions by the respondents which culminated in the redeployment of the applicants to teaching services by the 3<sup>rd</sup> respondent through the impugned letters. Consequently, I find and hold that the applicants are entitled to the reliefs sought by the Notice of Motion dated 5<sup>th</sup> February 2024.

## Conclusion

48. I have found that the applicants have demonstrated sufficient grounds to warrant judicial review of the respondents’ administrative actions which crystalized in the redeployment of the applicants to teaching service prematurely. I have also found that the doctrine of exhaustion does not apply to this case because of special circumstances which renders the internal appeal mechanism availed by section 46 of the TSC Act and Regulation 156 of the CORT unable to provide adequate remedy to the applicants. Consequently, I allow the applicants motion and award them the following orders against the respondents:
  - a. An order of certiorari quashing, the decision of the 1<sup>st</sup> Respondent contained in its letters dated 23<sup>rd</sup> January 2024, purporting to remove the Ex-parte Applicants from their positions as KUPPET Branch Executive Secretaries and posting them to various schools.
  - b. An order of prohibition forbidding the 1<sup>st</sup> Respondent from unilaterally removing the Ex-parte Applicants from office without due process.
  - c. An order of mandamus directing the 2<sup>nd</sup> Respondent to continue paying the applicants’ salaries and allowances for as long as they are in office
  - d. The 2<sup>nd</sup> and 4<sup>th</sup> respondents shall pay the applicants costs of the suit because they are the ones who prompted the impugned redeployment.



**DATED, SIGNED AND DELIVERED AT NYERI THIS 30TH DAY OF JULY, 2024.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

