



Noor & 6 others v Kenya Airports Authority; Kenya Aviation Workers Union (Interested Party) (Employment and Labour Relations Petition E002 of 2023) [2024] KEELRC 13261 (KLR) (21 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 13261 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS PETITION E002 OF 2023
MA ONYANGO, J
NOVEMBER 21, 2024**

BETWEEN

**IBRAHIM NOOR 1ST PETITIONER
JOHN CHESEREK 2ND PETITIONER
OMONDI ONYANGO 3RD PETITIONER
MOHAMED SALAH 4TH PETITIONER
SARAH TALAM 5TH PETITIONER
JULIUS ANDIKA 6TH PETITIONER
DANIEL NJENGA 7TH PETITIONER**

AND

KENYA AIRPORTS AUTHORITY RESPONDENT

AND

KENYA AVIATION WORKERS UNION INTERESTED PARTY

JUDGMENT

The Petition

1. The Petitioners herein are described in the Petition as unionisable employees working for gain under the employment of the Respondent. They aver that they have filed the instant petition on their behalf and on behalf of all unionisable employees of the Respondent.
2. The Respondent is a corporate person established under the *Kenya Airports Authority Act* Cap 395 of the Laws of Kenya.



3. The Interested Party is described as a duly registered Trade Union under the *Labour Institutions Act* operating and providing representation to all unionisable employees of the Aviation Industry and has an operational CBA with the Respondent.
4. Vide the Petition dated 7th June 2023, the Petitioners are seeking the following reliefs:
 - a. A declaration that the Respondents administrative actions particularly the unilateral development, approval and obtained approval from SCAC and intended implementation of the Respondents Organizational through the Proposed Human Resource Manual and Proposed Organization Structure, Grading, Staff Establishment and Career Guidelines without prior notification, consultation, engagement, hearing and considering representations of the Respondents unionisable employees in public participation either directly or indirectly through the Interested Party is violation of the said Respondents employees right to fair administrative action, non-discrimination in employment and unfair labour practices contrary to *Employment Act*, Fair Administrative Actions Act and *the Constitution* of Kenya and therefore is illegal, unlawful, un-procedural, unfair labour practices, null and void.
 - b. An order of certiorari to call into the Court and quash the decision of the Respondents Board of Directors and State Corporations Advisory Committee (SCAC)decisions approving the Respondents Proposed Human Resource Manual and Proposed Organization Structure, Grading, Staff Establishment and Career Guidelines unilaterally developed by the Respondents for implementation to restructure the Respondent without prior public participation, notice, engagement, consultation, hearing and consideration of the Respondents unionisable employees either directly or indirectly through the Interested Party in violation of Article 10, 27 (1, 2, 4 and 5), 40 and 47 of *the Constitution* of Kenya and section 4, 5 and 6 of the Fair Administrative Actions Act.
 - c. An Order of permanent injunction restraining the Respondent, its agents, servants, officers and or anyone claiming under them to restrain them from restructuring the Respondents Human Resource and Procedures manual and its organisation structure, Employees Grading Structure, Staff Establishment and Career Guidelines or implementing the Respondents Proposed Human Resource Manual and Proposed Organization Structure, Grading, Staff Establishment and Career Guidelines unilaterally developed by the Respondents to restructure the Respondent without prior public participation, notice, engagement, consultation, hearing and consideration of the Respondents unionisable employees either directly or indirectly through the Interested Party in violation of Article 10, 27(1, 2, 4 and 5), 40 and 47 of *the Constitution* of Kenya and section 4, 5 and 6 of the Fair Administrative Actions Act.
 - d. Costs of the Petition
 - e. Any other relief that the Court may deem fit to grant in the circumstances.
5. The basis of the Petition is that on 23rd March 2023, the Respondent issued a circular or memo to all its employees within the Republic of Kenya titled Sensitization of Human Resource Instruments in which the Respondent informed the Petitioners and all other employees of intended major organizational restructuring in terms of a Proposed Human Resource Policy and Procedures Manual and a Proposed Respondents Organization Structure, Grading and Staff Establishment and Career Guidelines attached thereto which human resource instruments had already been approved by State Corporations Advisory Committee (SCAC) and the Respondents Board of Directors for implementation.



6. The Petitioners aver that by the same Memo, the Respondent announced to the Petitioners and all its employees a scheduled sensitization exercise in all its stations to enable the employees familiarize with the said Proposed Respondents organizational restructuring instruments before implementation.
7. It is contended that the above instruments substantially alter, vary and restructure the terms and conditions of service of the employees of the Respondent including their grading system which are matters that adversely affect the rights, obligations, conditions and terms of employment as well as engagement of the Respondents employees with the Respondent.
8. It is the Petitioner's case that there was no consultation or public participation exercise by the Respondent involving unionisable employees during development of the above two instruments and or prior to their development and submission of the instruments to the Respondents Board of Directors and or the said SCAC for approval.
9. The Petitioners further aver that the Respondent executed a Recognition Agreement dated 22nd April 2014 with the Interested Party herein and thereafter a CBA in 2015 wherein the Respondent undertook to discuss all issues covered by the said agreement through mechanisms set out in the labour laws and CBA's with the Respondents and also to consult and negotiate on matters relating to salaries, terms and conditions of the Respondents employees.
10. According to the Petitioners, the intended restructuring overhauls the Respondents Human Resource Manual and Organization Structure by not only stipulating the job specifications and placement which affect the employees' privileges, benefits and entitlements but also the terms and conditions of the Respondents employees, as well as representation by the Interested Party.
11. The Petitioners faulted the Respondent for not notifying them directly or through the Interested Party, nor inviting them to give representations prior to issuing the memo.
12. The Petitioners aver that the Respondent deliberately discriminated against them while developing the said restructuring instruments by failing to notify, consult, engage and hear their representations prior to development, submission for approval and implementation of the said restructuring instruments.
13. The Petitioners contend that the foregoing constitute actual and further threatened breach of the CBA, the law, unfair labour practices and fundamental rights and freedoms of the Petitioners relating to employment which unless restrained by the Court, will cause the Petitioners to suffer gross miscarriage of justice and irreparable loss.
14. Consequently, the Petitioners aver that The Respondent's unilateral development, approval and intended implementation of the restructuring instruments herein without notification, consultation or engagement of the Petitioners and all other unionisable employees of the Respondent breached Articles 10, 10(2)(b), 27(4) and (5) and Article 47 of *the Constitution* of Kenya which requires, obligates and binds the Respondent to observe national values such as the principle of public participation of the people particularly all its employees; violated Article 10(2)(b), 27(1), (2), (4) and (5) and Article 47 of *the Constitution* of Kenya and section 4, 5 and 6 of the Fair Administrative Actions Act.

The Respondent's case

15. In response to the Petition, the Respondent filed a Replying Affidavit sworn on 4th August 2023 by its General Manager, Human Resource Development, Mr Anthony Njagi. In that affidavit, the Respondent states that the process leading to the development of the Respondent's Human Resource Policy and Procedure Manual, Organizational structure, Grading Structure, Staff Establishment and Career Guidelines (hereinafter the 'HR instruments') was commenced way back in the year 2015 after



- the Public Service Commission (PSC) being empowered by law to develop Human Resource Policies for the Public Service, issued guidelines for adoption by the public sector agencies in the development of their HR instruments.
16. The Respondent aver that in compliance with the said guidelines, it began revision of its Human Resource Policy and Procedure manual in June 2015 which instrument was declined by SCAC on several occasions but was eventually approved on 31st May 2022.
 17. The Respondent maintained that upon approval by SCAC, the Respondent held a staff meeting on 20th July 2022 at the Kenya Airports Authority Training ground where one of the Agenda items was to take the staff through the approved HR instrument. It is stated that a total of 497 members of staff attended the said meeting and none of the staff members present were opposed to it. That it was a clear fact from the meeting that the staff had lost confidence in the Interested Party herein and raised their dissatisfaction with their representation.
 18. It is contended that following the meeting of 20th July 2022 where the members of staff raised no objection to the instrument, the Board at its 347th Statutory meeting held on 29th July 2022 approved the HR instruments and implementation road map thus the implementation of the career guidelines and HR manual commenced on 1st August 2022.
 19. The Respondent explained that following the approval of the instruments, the Board in its 349th Statutory Board meeting held on 10th November 2022 approved a road map for the implementation of the instrument and creation of awareness as part of change management.
 20. That on 23rd March 2023, the Managing Director of the Respondent issued a memo to all employees informing them that the Authority had organized a sensitization exercise that would be carried out in all stations. The exercise has since been completed.
 21. The Respondent contended that it invited staff to a meeting held on 20th July 2022 before the adoption of the instruments and took the employees through the documents. According to the Respondent, if any concern had been raised, it would have been incorporated in the instrument before its final approval and adoption by the Board.
 22. With regard to the Interested Party's averment that it did not participate during development of the above two instruments, the Respondent submitted that in 2020 when the review of the document was ongoing, the Respondent engaged the union KAWU and requested it to participate in the process that was being undertaken by Deloitte Consulting Services but the Interested Party walked out of the said meeting.
 23. The Respondent aver that the Interested Party is misleading its members that it was never consulted or involved in the preparation of the instruments.
 24. It is the Respondent's case that the Respondent carried out the exercise in a very transparent manner and involved all the necessary Stakeholders including SCAC, the workers union and the workers themselves.
 25. On the allegation by the Petitioners that the implementation of the new structure would result in varying the employees terms and conditions of employment, the Respondent maintained that the terms and conditions of employment of the current employees will not be affected by the migration to the new HR structure as the migration will be horizontal and thus the employees grades will remain the same. The Respondent contend that the grading structure has retained the ten structures in the Authority and the only change is that the structure has been inverted.



26. In summary, the Respondent stated that almost all the State Corporations have now migrated to new structures and no employee has been affected by the same. That the Respondent will not be an exception.
27. The court was urged to dismiss the petition with costs.

The Interested Party's case

28. In reply to the Petition the Interested Party filed an answer to the Petition dated 2nd October 2023 in which it maintained that it was never notified or consulted by the Respondent with regard to the intended restructuring of its HR instruments. The Interested Party further filed a Replying Affidavit sworn on 21st June 2023 and a supplementary affidavit sworn on 2nd October 2023 reiterating that it was never consulted by the Respondent in the issue at hand.
29. In a rejoinder, the Petitioners filed a supplementary affidavit sworn by Ibrahim Noor on 12th September 2023. According to the Petitioners, in the Respondent's Replying Affidavit it is admitted that the Petitioners' and the Interested Party's right to fair administrative action or public participation of Respondent's employees in development of the proposed human resource and organizational structure was not observed as the impugned process commenced in 2015 and was completed in 31st May 2022 between the Respondent's management, the Public Service Commission and SCAC.
30. According to the Petitioners, there is no evidence of invitation, notice or participation of the Respondent's employees who are not in management or the Interested Party in the process of developing the impugned HR instruments or organizational restructuring prior to their development and approval by SCAC on 31st May 2022.
31. It is further averred that from the Replying Affidavit, the Respondent admits that the Interested Party was invited to submit views on job evaluation only to Deloitte Consulting Limited and not the HR instruments or the proposed restructure of the Respondent.
32. The Petitioners further aver that the Respondent by its own letter dated 29th June 2020 addressed to the Interested Party and annexed to the Replying Affidavit, advised the Interested Party that the Job Evaluation conducted in 2014 was never adopted or approved for circulation thereby admitting that the Interested Party's participation and views given in 2014 were not incorporated or adopted in the impugned process which commenced in 2015. That the letters dated 2nd, 3rd and 29th June 2020 to the Interested Party dispenses with any doubt that the Interested Party was invited, participated or its views were taken and or considered in the impugned instruments prior to the approval by SCAC.
33. The Petitioners have also contended that the purported list of sensitization attached to the Replying Affidavit had no single agenda such as invitation of views or comments for amendment or ratification of the said HR Instruments but exclusively sensitization on approved HR instrument for implementation.
34. On the allegations by the Respondent that the new instruments do not affect the terms of unionisable employees, the Petitioners contend that the proposed HR instruments vary the terms and conditions of employment contrary to freedom of contracts and fair labour practises that require the employees' prior input or comments prior to approval and implementation by the Respondent.
35. It is further averred that the proposed restructuring violates the Recognition Agreement and the CBA between the Respondent and the Interested Party.



36. The Petitioners stated that the Respondent's reply does not raise reasonable defence. They prayed that the Petition be allowed.
37. The Petition was disposed by way of written submissions.

The Petitioners submissions

38. In their submissions dated 13th September 2023, the Petitioners framed the issues for determination to be:
- i. Whether the Petitioners Constitutional Rights have been violated?
 - ii. Whether the intended restructuring is injurious to the Petitioner and the unionisable employees?
 - iii. Whether the Petitioners are entitled to the reliefs sought?
39. On the first issue, the Petitioners submit that from the Response filed by the Respondent, the participants in the process of developing the impugned Instruments were the Respondent's management, the Public Service Commission and the SCAC. They submit that the Respondent already developed and approved for adoption the impugned instruments which directly affects, alters and varies the terms and conditions of the Petitioners' employment and only intended to meet with its employees for purposes of going through the said Instruments.
40. According to the Petitioners, the entire process of development and the subsequent approval for adoption was unprocedural, illegal, unconstitutional and unlawful and is thus null and void ab initio for the reason that there was neither consultation as provided by the Section 10 (5) of the *Employment Act* nor a public participation exercise conducted as required by *the Constitution* prior to the development of the subject instruments and prior to their submission to the Respondents' Board of Directors and or the State Corporations Advisory Committee (SCAC) for approval. In support of this position, the Petitioners cited the Court of Appeal case of Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 Others, [2017] eKLR.
41. The Petitioners submitted that being the parties directly affected by the impugned instruments, they ought to be consulted and involved in the public participation exercise. In support of this position, the Petitioners placed reliance on the case of Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others (2015) eKLR.
42. The Petitioners also submitted that from the Respondent's replying affidavit, the Interested Party was only invited to submit views on job evaluation to Deloitte Consulting Limited and not the impugned instruments. According to the Petitioners, without such evidence demonstrating that the Respondent invited, consulted and or carried out a public participation exercise incorporating the Petitioners, the Interested Party and or any other unionisable employee outside the Respondent management, then the impugned instruments were formulated arbitrarily without any involvement of the employees to be affected and therefore illegitimate.
43. On the issue whether the intended restructuring is injurious to the Petitioner and the unionisable employees, the Petitioner submits that the intended restructuring is injurious since it overhauls the Respondent's Human Resource Manual and Organisation structure which does not only stipulate the job specifications and placement which affects the employees' privileges, benefits and entitlements but also terms and conditions of the Respondents employees.



44. In addition, the Petitioners submit that the new human resource policies being implemented would result in issuance of new contracts of employment consequently varying the Petitioners terms and conditions of employment without their prior engagement and consultation and also, that it violates the Recognition Agreement and the CBA in place.
45. It is therefore the Petitioners submission that the implementation of the intended restructuring constitutes actual and threatened breach of the CBA, the law, unfair labour practices and fundamental rights and freedoms of the Petitioners relating to employment.
46. Lastly, on whether the Petitioners are entitled to the reliefs sought, the Petitioners submit that they have demonstrated that the alleged consultation never occurred as there was no meeting known to the Petitioners since they were not invited and that further that the alleged meeting was in fact post facto whose agenda was to discuss the already approved Instruments.
47. In urging the court to grant the reliefs sought, the Petitioners have submitted that in order to realize the objects of *the Constitution* particularly Article 10, 27 (1, 2, 4 and 5), 40 and 47 which requires businesses to be founded on the principles set out there in, issuing the prayers sought will stop any further violations to the Petitioners constitutional rights and illegalities perpetrated by the Respondent in the adoption of the impugned instruments without the Petitioners input.

The Respondent's submissions

48. On its part, the Respondent identified the issues for determination to be:
 - i. Whether there was public Participation before the adoption of the HR instruments
 - ii. Whether the HR instruments will alter the employee's terms of service contrary to the law
49. On the issue whether there was public participation during the development of the human resource instruments, the Respondent has submitted that contrary to the averments by the Petitioners and the Interested party, there was Public participation during the process of the development of the said Human Resource instruments, but the Interested Party frustrated the process by walking out of the engagement.
50. The Respondent reiterated that the Interested Party was invited for a zoom meeting on 3rd June 2020 during the Covid period to give their views to the firm (Deloitte) that had been retained to undertake the review of the said instruments but they walked out of the said meeting and efforts to reach them to participate thereafter were in vain.
51. It is further submitted that vide a letter dated 29th June 2020, the Respondent informed the Interested Party of the importance of the exercise and urged them to get involved in the job evaluation exercise as it was in the best interest of its membership.
52. The Respondent thus submitted that the Interested Party misled its membership that it was never consulted nor involved in the preparation of the instruments. They failed to disclose that they were aware but chose to not to participate.
53. It is therefore the Respondent's submission that once the Interested party was given a chance to participate in the process but failed to utilize the opportunity, they cannot now turn and blame the Respondent for failing to involve them.
54. The Respondent has also submitted that it held a staff meeting attended by 497 members of its staff, and among the agendas was to take them through the approved draft instruments for their input before



the same was adopted by the Board of Directors of the Respondent. The Respondent submitted that no employee was opposed or raised any issue with the instruments.

55. As a result, the Respondent submits that, following that participation by the employees on 20th July 2022, the Board at its 347th Statutory meeting held on 29th July 2022 approved the Human Resource instruments leading to the implementation of the career guidelines and Human Resource manual commencing on 1st August 2022.
56. The Respondent therefore submitted that the involvement of the employees especially before the adoption of the Human Resource instruments met all the requirements of Public Participation as required by law. To buttress this position, the Respondent cited the case of Nairobi Metropolitan PSV Saccos Union Limited & 25 others v County of Nairobi Government & 3 others (2013) eKLR.
57. On the second issue, the Respondent has submitted that before the amendments of the said instruments, the Respondent had ten job groups which have been retained. According to the Respondent, the only difference is that the same has been inverted so that the highest job group being that of the Managing Director is now job group 1 and not 10 as before and the lowest job group is now 10 and not 1 as before. The Respondent thus submitted that the Petitioners have not pointed out how the changes has negatively impacted them. In this regard, the Respondent cited the case in Kenya Petroleum Oil Workers Union v Kenya Pipeline Company Limited [2022] eKLR.
58. In the end, the Respondent urged this court to hold and find that the new instruments are not injurious to the unionisable staff and do not in any way affect their terms of conditions of service. The Respondent sought for the Petition to be dismissed with costs.
59. The Interested Party's submissions are not on record.

Determination

60. From the Petition, the responses thereto and the submissions on record, the issues that fall for determination are:
 - i. Whether there was public participation in the restructuring of the Respondent's Human Resource Policy and Procedures Manual and the Organization Structure, Grading and Staff establishment and career guidelines
 - ii. Whether the Approved Human Resource instruments will alter the terms of service of the Respondent's employees
 - iii. Whether the Petitioners are entitled to the reliefs sought.

Whether there was public participation in the restructuring of the Respondent's Human Resource Policy and Procedures Manual and the Organization Structure, Grading and Staff establishment and career guidelines

61. It is the Petitioners case that there was lack of public participation in the restructuring of the Respondent's Human Resource Policy and Procedure Manual and the organisational structure. They contend that the Respondent unilaterally developed, approved and obtained approval from SCAC to restructure its human resource manual and organization structure, grading, staff establishment and career guidelines without prior notification, consultation, engagement, hearing and consideration of the Respondents unionisable employees either directly or indirectly through the interested party in violation of Article 10, 27(1), (2), (4) and (5), 40 and 47 of *the Constitution* of Kenya and section 4, 5 and 6 of the Fair Administrative Actions Act.



62. The Respondents on the other had disagreed with the Petitioners and the Interested party and argued that there was adequate public participation which met the Constitutional threshold. According to the Respondent, it held a staff meeting on 20th July 2022 where 497 members of its staff attended and were taken through the approved draft instruments for their input before the same was adopted by the Board of Directors of the Respondent. The Respondent has maintained that the members of staff raised no objection to the instruments and as a result, the Board at its 347th Statutory meeting held on 29th July 2022 approved the Human Resource instruments.
63. Regarding the input of the Interested Party, the Respondent has argued that the Interested Party was invited for a zoom meeting on 3rd June 2020 during the Covid period to give their views to the firm (Deloitte) that had been retained to undertake the review of the said instruments but they walked out of the said meeting and efforts to reach them to participate thereafter were in vain.
64. Article 10 (2) a of *the Constitution* outlines participation of the public as one of the national values and principles of governance which bind all state organs and public officers.
65. In the case cited by the Petitioners in their submissions of *Mui Coal Basin Local Community & 15 Others vs Permanent Secretary Ministry of Energy and 17 Others [2015] eKLR*, the Court set out the minimum basis for adequate public participation as follows:
- From our analysis of the case law, international law and comparative law, we find that public participation in the area of environmental governance as implicated in this case, at a minimum, entails the following elements or principles:
- a. First, it is incumbent upon the government agency or public official involved to fashion a programme of public participation that accords with the nature of the subject matter. It is the government agency or Public Official who is to craft the modalities of public participation but in so doing the government agency or Public Official must take into account both the quantity and quality of the governed to participate in their own governance. Yet the government agency enjoys some considerable measure of discretion in fashioning those modalities.
 - b. Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single regime or programme of public participation can be prescribed and the Courts will not use any litmus test to determine if public participation has been achieved or not. The only test the Courts use is one of effectiveness. A variety of mechanisms may be used to achieve public participation. Sachs J. of the South African Constitutional Court stated this principle quite concisely thus: The forms of facilitating an appropriate degree of participation in the law-making process are indeed capable of infinite variation. What matters is that at the end of the day, a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case. (*Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others 2006 (2) SA 311 (CC)*)”
 - c. Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information. See *Republic vs The Attorney General & Another ex parte Hon. Francis Chachu Ganya (JR Misc. App. No. 374 of 2012)*. In relevant portion, the Court stated: Participation of the people necessarily requires that the information be availed to the members of the public whenever public policy decisions are intended and the public be afforded a forum in which they can adequately ventilate them.”



- d. Fourth, public participation does not dictate that everyone must give their views on an issue of environmental governance. To have such a standard would be to give a virtual veto power to each individual in the community to determine community collective affairs. A public participation programme, especially in environmental governance matters must, however, show intentional inclusivity and diversity. Any clear and intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.
- e. Fifth, the right of public participation does not guarantee that each individual's views will be taken as controlling; the right is one to represent one's views – not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or Public Official involved to take into consideration, in good faith, all the views received as part of public participation programme. The government agency or Public Official cannot merely be going through the motions or engaging in democratic theatre so as to tick the Constitutional Box.
- f. Sixthly, the right of public participation is not meant to usurp the technical or democratic role of the office holders but to cross-fertilize and enrich their views with the views of those who will be most affected by the decision or policy at hand.”
66. I have had the advantage of looking at the minutes of the meeting held on 20th July 2022 and as rightfully submitted by the Respondent, item 4 of the Agenda was, “Overview of Approved Human Resource Instruments”.
67. From a literal interpretation of that agenda, it is clear that the instruments had already been approved and the Respondent's employees were just taken through it as a to bring the contents to their attention. The argument by the Respondent that none of its employees objected to the aforesaid instruments is not valid since the said instruments had already been approved before the said meeting.
68. With regard to the non-participation of the Interested Party in the process, the Respondent confirmed that the Interested Party did not participate. As a trade union with a recognition agreement and CBA that was going to be affected whether positively or negatively, it was imperative that the Interested Party be part of the process of review of the HR instruments of the Respondent as a representative of unionisable employees of the Respondent.
69. It is this court's view that public participation was key before approval of the Human Resource instruments to ensure not only the legitimacy of those instruments, but that the views of the persons to be affected by the instruments was taken on board. This Court is therefore satisfied that no public participation was conducted before the human resource instruments was approved.

Whether the Approved Human Resource instruments will alter the terms of service of the Respondent's employees

70. Having found that there was no public participation in the process leading to the approval of the Human resource instruments, I find no reason to delve onto the second issue as the same would amount to an academic exercise.



Whether the Petitioners are entitled to the reliefs sought

71. Having found that there was no public participation in the development of the Respondent's Human Resource Instruments, I find that the Petition herein has merit and therefore make the following orders:
- i. A declaration be and is hereby made that the Respondent's administrative actions particularly the unilateral development, approval and obtained approval from SCAC and intended implementation of the Respondents Organizational through the Proposed Human Resource Manual and Proposed Organization Structure, Grading, Staff Establishment and Career Guidelines without prior notification, consultation, engagement, hearing and considering representations of the Respondents unionisable employees in public participation either directly or indirectly through the Interested Party is violation of the said Respondents employees right to fair administrative action, non-discrimination in employment and unfair labour practices contrary to *Employment Act*, Fair Administrative Actions Act and *the Constitution* of Kenya and therefore is illegal, unlawful, un-procedural, unfair labour practices, null and void.
 - ii. An order of Certiorari be and is hereby issued quashing the decision of the Respondents Board of Directors and State Corporations Advisory Committee (SCAC) decisions approving the Respondent's Proposed Human Resource Manual and Proposed Organization Structure, Grading, Staff Establishment and Career Guidelines unilaterally developed by the Respondents for implementation to restructure the Respondent without prior public participation, notice, engagement, consultation, hearing and consideration of the Respondents unionisable employees either directly or indirectly through the Interested Party in violation of Article 10, 27 (1, 2, 4 and 5), 40 and 47 of *the Constitution* of Kenya and section 4, 5 and 6 of the Fair Administrative Actions Act.
 - iii. Prayer (iii) is declined.
 - iv. The Respondent to bear costs of the Petitioners.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 21ST DAY OF NOVEMBER 2024.

M. ONYANGO

JUDGE

