



**Abinayo v House & Farm Company Limited (Petition E061 of 2024)  
[2024] KEELRC 2832 (KLR) (15 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2832 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E061 OF 2024**

**B ONGAYA, J**

**NOVEMBER 15, 2024**

**IN THE MATTER OF ACTUAL BREACH AND CONTRAVENTION OF SUBJECT'S  
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE(S) 19, 22, 23,  
27(1), 28, 29(D), 30, 31, 41(1), 47 & 162(2)(A) OF THE CONSTITUTION OF KENYA.**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTISE AND PROCEDURE RULES, 2013**

**BETWEEN**

**RACHAEL ABINAYO ..... PETITIONER**

**AND**

**HOUSE & FARM COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed the petition and supporting affidavit both dated 02.04.2024 through Masolia Loveta & Company Advocates seeking the following prayers:
  - a. A declaration that the respondent violated the petitioner's fundamental rights to privacy and human dignity under Articles 28 and 31 of *the Constitution* by publishing the petitioner's image for purposes of commercial advertisements without her consent.
  - b. A declaration that the respondent violated the petitioner is right under Article 30 of *the Constitution* by publishing the petitioner's images for their own commercial gain with no personal financial advantage gained by the petitioner.
  - c. A declaration that the petitioner's right to fair labour practices has been breached.



- d. An order of permanent injunction restraining the respondent from publishing and or using the petitioner's images in any way in its advertisement or advertisement campaigns or partnerships without the petitioner's consent and compelling the respondent to stop any further advertisement featuring the petitioner's image on their social media platforms and to delete and or pull down all posts on the respondent's social media pages with the petitioner's image.
  - e. An order that the respondent be compelled to compensate the petitioner for damages and or loss arising from the use and publication of the petitioner's image without her consent and the exploitation of the petitioner by the respondent for commercial gain.
  - f. An order that the respondent be compelled to compensate the petitioner for unlawful termination.
  - g. Costs of this petition.
  - h. Interest.
  - i. Any other orders that this Honourable Court may deem fit and just to grant.
2. In the supporting affidavit, the petitioner pleaded as follows:
- a. The respondent employed the petitioner on or about 04.02.2022 as a Sales Representative and she also performed other general duties. She was offered a salary on retainer for Kshs. 23,000/= with guaranteed commissions calculated based on each unit sold on behalf of the respondent. Her duties included making calls and taking clients to sites; cleaning the office and utensils; and, running office errands such as documents at company lawyer's offices, the various lands registries; and, going for activations in various destinations.
  - b. During the pendency of the contract, the petitioner was never issued with any employment contract but operated from the respondent's main office situate along Eastern Bypass with occasional site visits to the units being sold.
  - c. While in its employ, the respondent caused the petitioner to make promotional videos of the units being sold or take photos while at units in various places within Kiambu County. The respondent then without express consent of the petitioner, used her videos and photographs to promote its business to wit, uploading the said videos and photographs to the company's official Facebook page and TikTok accounts that have more than 11,000 followers. This averment by the petitioner appear not denied by the respondent in any material respect and the Court upholds the averment on a balance of probabilities or as established, accordingly.
  - d. The petitioner subsequently raised her concerns and sometime on or about 30.01.2024, she was issued with a signed but undated Photo and Video Consent form by the respondent's directors for her signature giving authority to the respondent to use the same. She declined to sign the form and raised concerns verbally with the respondent's directors. The exhibited photo and video consent is exhibited as RA-2 and is signed by James Gathiga Mburu but not the petitioner. There is no reason for the Court to doubt that the petitioner was required to sign the consent as drawn and that she must have declined as urged in her affidavit. The photo and video consent form was to the following demanded consent from the petitioner and, effect:
    - i. The respondent to use the petitioner's likeness in any photograph, video or other digital media taken or to be taken when working for the respondent in any and all of its publications including print or web-based publications.



- ii. The petitioner authorises the respondent to edit, enhance, crop or otherwise alter any photo for use in their publications and, the petitioner thereby waive any rights for approval or inspection of any photos.
- iii. The petitioner understands that all photos and videos are the property of the respondent and will not be returned to the respondent.
- iv. The petitioner acknowledges that she is not entitled to any compensation or royalties with respect to the use of the photos and videos.
- v. The petitioner agrees to release and forever discharge the respondent and its affiliates, successors and assigns, officers, employees, representatives, partners, agents and any one claiming through them, in their individual or corporate capacities from any and all claims, liabilities, obligations, promises, agreements, disputes, demands, damages, causes of action of any nature or kind, known, which the petitioner and anyone claiming on behalf of the petitioner may have or claim to have against the respondent in connection with the consent.
- vi. That the petitioner understands the consent and signs it voluntarily.
  - a. The respondent continued to use the said videos and uploaded more photos of the petitioner to market its business despite the petitioner's concerns. Therefore, the use of her videos and images was for the respondent's sole commercial gain. The Court considers the averment correct as the respondent has admitted that it took the employees photos in the cause of undertaking its enterprise of selling houses and plots.
  - b. On or about 02.03.2024, the respondent summarily dismissed the petitioner from employment citing prolonged unsatisfactory performance by the petitioner. However, the petitioner believes the dismissal was a reaction to her refusal to sign the consent form for use of her images. The Court finds that the petitioner's position is correct on a balance of probabilities. The respondent has not denied dismissing the petitioner. While alleging poor performance, the respondent has not alleged and shown the particulars of the poor performance as at termination as envisaged in section 43 of the *Employment Act*, 2007 or, want of the petitioner's capacity, compatibility and compliance with the respondent's operational requirements as per section 45 of the Act. The due process of a notice and a hearing in section 41 of the Act appears not to have been invoked at all. The Court finds that the termination was unfair in procedure and merit and it was upon the claimant raising a well grounded grievance that she would not sign the consent as it was outside her terms and conditions of service as well as job description and was oppressive as signing the consent amounted to commercial use of her image or personal identification data or information with no gain but or against her wish.
  - c. The petitioner's performance was never in question prior to her services being terminated and she was one of the best performing sales agents for the respondent. At the time of the termination, she had sold more than 20 units and as at the time of filing the petition herein, the respondent owed her Kshs. 60,000/= in commissions for units sold to two clients. The Court considers that the position was not rebutted at all and it is upheld as urged for the petitioner.
  - d. In addition, the respondent failed to remit her statutory dues during the pendency of her employment and no plausible reason was ever accorded to her for this lapse.
  - e. The summary dismissal, arbitrary and continued use and or publishing of the petitioner's image by the respondent on numerous and diverse platforms without her consent and for



commercial gain is not only wrong but a clear violation of her fundamental rights guaranteed under *the Constitution* as hereunder:

- i. The petitioner has been subjected to psychological torture as envisaged in Article 29(d) since the continued use of her videos and images on social media while in employment and especially upon being terminated, has subjected her to ridicule and mockery from her friends and former colleagues.
  - ii. The respondent has violated the petitioner's rights to human dignity and privacy as envisaged in Articles 28 and 31 of *the Constitution* since it did not have consent to use her image and likeness in their advertising campaigns or any other platform during and after her services were terminated.
  - iii. The petitioner has been subjected to exploitation with the respondent publishing and using her image for their own commercial advantage while she does not get any financial advantage.
  - iv. The petitioner has been subjected to unfair labour practices and denied the right to a fair administrative action where the respondent sat as the judge and jury on her case without according her a fair hearing before terminating her services – contrary to Articles 41 and 47 of *the Constitution*.
3. The respondent filed its replying affidavit sworn by James Njau Mburu on 28.06.2024, through Kago N. & Company Advocates. He averred that the petition is an abuse of this Court's process and that the petition and supporting affidavit should be struck out with costs for the following reasons:
- i. The petition as drafted does not precisely set out the articles of *the Constitution* of Kenya, 2010 alleged to have been infringed and the manner of infringement. It is therefore apparent that the petition does not meet the constitutional test for drafting constitutional petition as set out in the case of Anarita Karimi Njeru v Republic [1979] eKLR.
  - ii. The petition does not disclose with reasonable precision the manner in which the petitioner's rights were violated therefore denying the respondent a fair and a reasonable chance to respond adequately, contrary to the dictates of Article 25(c) & 50 of *the Constitution* of Kenya, 2010;
  - iii. The petition is ambiguous and amorphous as it raises a multiplicity of issues of mixed jurisdictions. If this Honourable Court were to entertain the petition as drafted, it will be forced to exercise its jurisdiction as an employment court, considering an employment cause and/or dispute and also sit as a constitutional court, which is irregular;
  - iv. The petition is barred by the doctrine of constitutional avoidance that entails that a court shall not determine a constitutional issue, when a matter may properly be decided on another basis;
  - v. Constitutional litigation is not open for every claim which may be properly dealt with under the alternative existing mechanisms for redressing civil and/or employment laws; and
  - vi. It is apparent from reading the instant petition that the foundation of the petitioner's allegation is the termination letter dated 02.03.2024.
4. The respondent's further case was that the petitioner's informed consent was obtained voluntarily and without coercion, threat or undue influence attributed to it or its agent or employees. That the respondent's other employees occasionally had their photographs taken while donning the respondent's branded t-shirts. The respondent denied the petitioner's assertions and averred that the



use of her photographs had never been an issue until it rightfully relieved her of her duties for her unsatisfactory performance.

5. It was further urged that the petitioner's job description including grant of consent for promotional purposes relating to sale of properties and consequently agreeing to take the job amounted to guaranteeing the necessary consent.
6. The respondent pleaded that the petitioner had never been held at the respondent's direction, subjected to slavery, servitude or forced labour, and had failed to provide any material to prove the same. It believes that the petition herein would have been addressed under the [Employment Act, 2007](#) and the suit ought to have been pursued in the ordinary manner under statute.
7. The petitioner's further affidavit was sworn on 10.10.2024. She averred that the petition as drafted is meritorious and well before this Honourable Court. That the letter of employment attached to the respondent's replying affidavit as JNM-2 was never issued to her during her time in employment with the respondent and the same is thus a fabrication to cover up an illegality. That in any event, she has not signed anywhere on the said letter and or agreed to the terms set out therein. She noted that the respondent continues to use their photos to date despite the petition herein.
8. Parties filed their respective written submissions. The Court has considered the material on record and returns as follows:
9. The petitioner has established that the respondent has commercially used her personal identification information or data without her consent. The attempt to obtain the consent belatedly was rejected on the part of the petitioner and in the opinion of the Court, correctly so because the petitioner would not receive any consideration in that respect. The consent as proposed in the draft she was required to sign was clearly oppressive. The Court finds that the petitioner has established contravention of her rights and freedoms in the Bill of Rights as pleaded. It was a proper petition with well-pleaded particulars of violations and cited provisions of the rights and freedoms so violated. It is found that the respondent miserably fails to show that the petition failed to pass proper pleading or that it was trapped by the doctrine of constitutional avoidance.
10. There is no dispute between the parties that they were in a contract of employment. The respondent employed the petitioner as a Sales Representative. The claimant was offered a monthly retainer of Kshs.23, 000.00 plus a commission of Kshs.25, 000 for each unit. The Court has found that she performed as employed and the termination was unfair as it was based upon her refusal to sign the oppressive consent. It was blended with violation of the rights and freedoms as well as the respondent's malice to terminate upon the petitioner's well-founded grievance of refusal to sign the consent – a reason declared unlawful under section 46 of the [Employment Act, 2007](#). In view of the aggravating factors she is awarded Kshs 23, 000.00 x 12 months under section 49 of the Act thus Kshs. 276, 000,00.
11. The allegations of violation of the right to privacy must succeed. It appears prior to the petitioner receiving the termination letter dated 02.03.2024, she had raised a grievance about the violation of privacy because of the sales photographs or video clips with her image. It appears to the Court that the grievance had persisted throughout the service. It must be that the photographs were part of the sales strategy and there is no evidence to show that the respondent had obtained the petitioner's consent for her photograph being commercially used while she was in employment of the respondent and after the separation.
12. In view of the separation, it appears to the Court that the respondent must then, going forward, be barred by an injunction from any further use of the photographs or videos with the petitioner's images, unless expressly agreed to or consented to by the petitioner. In that sense, continued use would



infringe the petitioner's right to fair labour practices contrary to section 41 of *the Constitution* and her right to privacy contrary to Article 31 of *the Constitution* which states that every person has the right to privacy which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed or privacy of their communication unnecessarily infringed. The respondent needed to have an express permission to continue using the images of the petitioner in sales advertisements and for gain for the period before and after the termination of the employment. Failing such consent, the petitioner is entitled to urge a case in unfair labour practices as and unfair invasion of her privacy as done in the instant petition.

13. The *Employment Act, 2007* does not expressly provide for protection of worker's data and the protections surrounding the employers' collection, use, and disposal of workers' personal identification data or employee data generally. Such is a lacuna that the Honourable Attorney General and the Cabinet Secretary should address as an urgent legislative reform in Kenya's world of work so that employers, owners of work and work places or spaces, and workers, are specifically guided on the salient concerns, principles, and standards about protection of personal workers' data in the world of work.
14. Nevertheless, the *Data Protection Act, 2019* offers some insights for the protection of the worker's personal data at work and workspaces or places. The Act in the long title states thus, "AN ACT of Parliament to give effect to Article 31(c) and (d) of *the Constitution*; to establish the Office of the Data Protection Commissioner; to make provision for the regulation of the processing of personal data; to provide for the rights of data subjects and obligations of data controllers and processors; and for connected purposes". Section 2 of the Act makes pertinent definitions including the following:
  - "consent" means any manifestation of express, unequivocal, free, specific and informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject.
  - "data controller" means a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purpose and means of processing of personal data.
  - "data processor" means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller.
  - "data subject" means an identified or identifiable natural person who is the subject of personal data.
  - "identifiable natural person" means a person who can be identified directly or indirectly, by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social or social identity.
  - "personal data" means any information relating to an identified or identifiable natural person.
  - "personal data breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed.
15. The Court considers that in the instant case the respondent breached the petitioner's right to privacy by commercially using her personal data during the employment and after the termination of the contract of employment. The evidence is that the respondent did not obtain the petitioner's consent as



defined in the [Data Protection Act, 2019](#) allowing the respondent to commercially use her photographs and videos in the respondent's commercial property sales.

16. Section 25 of the Act sets out principles of data protection thus: Every data controller or data processor shall ensure that personal data is —
- (a) processed in accordance with the right to privacy of the data subject;
  - (b) processed lawfully, fairly and in a transparent manner in relation to any data subject;
  - (c) collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes;
  - (d) adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;
  - (e) collected only where a valid explanation is provided whenever information relating to family or private affairs is required;
  - (f) accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay;
  - (g) kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and,
  - (h) not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject.
17. Further, section 26 provides for rights of a data subject thus: A data subject has a right —
- (a) to be informed of the use to which their personal data is to be put;
  - (b) to access their personal data in custody of data controller or data processor;
  - (c) to object to the processing of all or part of their personal data; (d) to correction of false or misleading data; and,
  - (e) to deletion of false or misleading data about them.
18. Further section 29 of the Act provides : A data controller or data processor shall, before collecting personal data, in so far as practicable, inform the data subject of —
- (a) the rights of data subject specified under section 26;
  - (b) the fact that personal data is being collected;
  - (c) the purpose for which the personal data is being collected;
  - (d) the third parties whose personal data has been or will be transferred to, including details of safeguards adopted;
  - (e) the contacts of the data controller or data processor and on whether any other entity may receive the collected personal data;
  - (f) a description of the technical and organizational security measures taken to ensure the integrity and confidentiality of the data;
  - (g) the data being collected pursuant to any law and whether such collection is voluntary or mandatory; and,



- (h) the consequences if any, where the data subject fails to provide all or any part of the requested data.
19. Section 32 of the Act on conditions for consent provides:
- (1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.
  - (2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.
  - (3) The withdrawal of consent under sub-section (2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.
  - (4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.
20. Section 37 of the Act on commercial use of data states:
- (1) A data controller or data processor shall bear the burden of proof for establishing a data subject's consent to the processing of their personal data for a specified purpose.
  - (2) Unless otherwise provided under this Act, a data subject shall have the right to withdraw consent at any time.
  - (3) The withdrawal of consent under sub-section (2) shall not affect the lawfulness of processing based on prior consent before its withdrawal.
  - (4) In determining whether consent was freely given, account shall be taken of whether, among others, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.
  - (5) A data controller or data processor that uses personal data for commercial purposes shall, where possible, anonymise the data in such a manner as to ensure that the data subject is no longer identifiable.
  - (6) The Cabinet Secretary, in consultation with the Data Commissioner, may prescribe practice guidelines for commercial use of personal data in accordance with this Act. 38.
21. The Court has considered the provisions of the [\*Data Protection Act, 2019\*](#) and returns that the respondent failed to abide with the statutory safeguards for use of personal identifiable data or information prior to commercially using the petitioner's photographs and videos with her images. It was unfair labour practice and violation of her right to privacy and freedom from forced labour. To the extent that the petitioner would not gain from the use of her personal data by the respondent in its commercial enterprise, it appears to the Court that the petitioner has established the violation of Article 30 on freedom from slavery or servitude and performance of forced labour. In particular, the respondent punished the petitioner by imposing the dismissal upon the petitioner's objection to respondent's commercial use of her personal data. Thereafter, the respondent appears to have continued to use the petitioner's data unhindered. The commercial use of the petitioner's personal data during the employment and thereafter the termination without obtaining her informed and explicit consent, in the Court's opinion, amounted to forced labour. Per ILO Forced Labour Convention,



- 1930 (No.29), forced or compulsory labour is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.
22. The International Labour Organisation (ILO) has issued and published the “Protection of workers’ personal data, An ILO Code of Practice Geneva, International Labour Office, 1997.” The code of practice was adopted by a Meeting of Experts on Workers’ Privacy of the ILO convened in Geneva from 1 to 7 October 1996 in accordance with the decision taken by the Governing Body of the ILO at its 264th Session (November 1995). The Code is not binding but it makes recommendations on best practice on protection of workers’ privacy and personal data. The code does not replace national laws or other ILO standards but it provides guidance on the protection of workers’ personal data. The Court makes elaborate provisions on protection of workers’ personal data that may guide appropriate provisions towards inclusion in the amendments to the *Employment Act*, 2007. As relates to the matters in dispute in the instant petition, the code specifically guides and provides, “10.2. A worker’s personal data should not be communicated for commercial or marketing purposes without the worker’s informed and explicit consent.” The commentary on the code about informed and explicit consent states, “The issue of consent is of fundamental importance. Informed and explicit consent is referred to in several provisions. The basic reason is to ensure that, when a worker is asked to consent to the gathering or release of certain data, he or she has sufficient information on which to make a decision. Explicit consent would normally mean written consent. If there is no written consent, this must be justified. For example, there are circumstances where written notice or consent would not be sufficient or appropriate, since a worker might be illiterate or not understand a given language. In such cases, information and consent may have to be given verbally.”
  23. The Court returns that the petitioner has established the violation of her right to privacy and fair labour practices as pleaded. No informed and explicit consent was obtained by the respondent for the commercial use of the petitioner’s photographs and images in the videos as envisaged in the ILO Code of Practice on Protection of Workers’ Personal Data, 1997 and as envisaged under the *Data Protection Act, 2019*.
  24. The Court considers that an ordinary suit could not have served the in view of the petitioner’s pleaded and established cause of action in the instant circumstances. The dispute was purely in the realm of breach of Articles 31 and 41 of *the Constitution* and in the special circumstances of the established facts of the petition. It is also true that in the circumstances, the petitioner has established violation of Article 41 in the manner the respondent continues or may continue using her images in the sales advertisement for gain and no benefit to the petitioner. Doing so would also amount to misrepresentation or misleading the respondent’s customers to perceive that the petitioner is continuing as its employee or in its sales team, and, at no benefit to the petitioner. It amounts to unfair labour practice for the respondent to continue using such sales video images and photographs of the petitioner without due agreement. The submission that the consent said to have been impliedly given at employment could go beyond the contract of service is found unjustified. In any event, the Court has found that at employment, during the employment, and, after the termination, the respondent had failed to obtain the petitioner’s informed and explicit consent. It was submitted for the respondent that the appointment letter dated 08.02.2022 provided for the role including, “d)To familiarize yourself with social media marketing, as well as generate content and promotional material including (but not limited to skits, videos, photos, by-lines, etc), as well as use these and others to promote the Co products in your social media as well as the Company’s social media pages and other channels.” The petitioner denied ever receiving the letter as alleged for the respondent. The Court has considered the role and even if the petitioner may have received that letter, the role was not about using her personal photos and videos to generate the promotional or marketing content. The letter does not bear the petitioner’s signature or even acknowledgement of its receipt. That the petitioner did not sign the letter and further



the role was was not communicated to be use of her personal photos and videos in the commercial sales means that there is no established informed and explicit consent that was obtained and as already found earlier in this judgment. The evidence is that while the petitioner and other staff took photos and videos, which the respondent says, were taken voluntarily and used in the respondent's marketing, the petitioner protested and objected to such use. The respondent purported to obtain a belated consent, and, when the petitioner declined to grant the consent and in view of her grievance, she was dismissed from employment. It was unfair.

25. It is submitted for the petitioner that for violation of rights as urged for the petitioner, the Court should award a sum of Kshs. 3,000, 000.00 as adequate compensation. It is submitted for the petitioner that the High Court upheld an award of a sum of Kshs. 1, 500,000.00 in *Dhabiti Sacco Ltd –Versus- Sharon Nyaga* [2022] eKLR for use of personal images without permission to promote services and good in a calendar. Patrick J.O Otieno J stated as follows, “26. This is an unequivocal admission that the appellant used and published photograph of the respondent in its calendar without her consent, then distributed the same to its staff and customers in some five or so branches spread over four counties. The use of the photograph without deference to the plaintiff was evidently in violation of the respondent's right to privacy and to be accorded her dignity under Articles 31(c) and 28 of *the Constitution*. There was a financial benefit that the appellant expected to derive and reap from the publication which must have flowed to it contrary to the concurrence of the 1<sup>st</sup> respondent. I find that to have been an exploitation of the 1<sup>st</sup> respondent and her photograph by the appellant. The appellant having admitted to have been the beneficiary of such exploitation, it became liable to the 1<sup>st</sup> respondent who was then entitled to compensation. I find that the trial court cannot be faulted for having regarded the evidence in a cursory of perfunctory manner. In fact, at page 112 of the record of appeal, the trial court appropriately juxtaposed the appellant's defence with the respondent's case in reaching the decision it did at page 112 of the record of appeal, appropriately juxtaposed the appellant's defence with the respondent's case in reaching the decision it did. I find that even this on the decision cannot be justifiable. It is unmerited and therefore dismissed.” For the respondent, it was submitted that the petitioner's claims must fail as unfounded. The Court has found there was violation of rights. T he Court has considered the submissions made for the petitioner. The Court returns that an award of Kshs. 2,000, 000.00 for the established violation of rights will meet ends of justice.
26. Considering all the circumstances and margins of success, the respondent will pay the petitioner's costs of the petition. Prior to filing suit, the respondent received a demand notice and instead of seeking to compromise the petitioner's concerns, it opted to defend the legal proceedings.

In conclusion, the petition is hereby determined with orders hereby given as follows:

1. The declaration that the respondent violated the petitioner's fundamental rights to privacy and human dignity under Articles 28 and 31 of *the Constitution* by publishing the petitioner's image for purposes of commercial advertisements without her consent.
2. The declaration that the respondent violated the petitioner's right under Article 30 of *the Constitution* by publishing the petitioner's images for their own commercial gain with no personal financial advantage gained by the petitioner.
3. The declaration that the petitioner's right to fair labour practices has been breached.
4. The order of permanent injunction restraining the respondent from publishing and using the petitioner's images in any way in its advertisement or advertisement campaigns or partnerships without the petitioner's consent and compelling the respondent to stop any further advertisement featuring the petitioner's image on their social media platforms and to



delete and or pull down all posts on the respondent's social media pages with the petitioner's image.

5. The order that the respondent to pay the petitioner Kshs. 2,000,000.00 for violation of rights as found herein.
6. An order that the respondent to pay the petitioner Kshs. 276, 000,00 (less PAYE) for the unfair termination.
7. The amount awarded in (5) and (6) above be paid by 01.03.2025 failing interest to be payable thereon at Court rates from the date of this judgment until full payment.
8. The respondent to pay the petitioner's costs of the petition.
9. The petitioner to serve this judgment, within seven (7) days, upon the Honourable Attorney General and the Cabinet Secretary for Labour and Social Protection towards consideration of initiating and instituting the relevant, general or sector-based policies, and, specific legislative reforms, for the protection of workers' privacy and personal data, and, along the guidelines envisaged in the Protection of Workers' Personal Data, An ILO Code of Practice Geneva, International Labour Office, 1997.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 15<sup>TH</sup> NOVEMBER 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

