



**Kenya County Government Workers Union v Nairobi City County Government & another
(Petition E185 of 2021) [2023] KEELRC 58 (KLR) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 58 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E185 OF 2021
K OCHARO, J
JANUARY 20, 2023**

BETWEEN
KENYA COUNTY GOVERNMENT WORKERS UNION PETITIONER
AND
NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT
NAIROBI CITY COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

JUDGMENT

Introduction

1. The Petitioner, Kenya County Government Workers Union, a duly registered trade union under the *Labour Relations Act* filed the Petition herein on behalf of its members on November 18, 2021.
2. In it, the petitioner challenges and seeks to halt the decision by the 2nd respondent to advertise for the positions of Early Childhood Development Education (ECDE) teachers.
3. The petition seeks inter alia the following orders that:
 - a. A declaration be and is hereby issued that the Respondents herein have violated the Constitutional rights of the Petitioner’s members to equal protection and benefit of the law, protection from discrimination, fair labour practices, and fair administrative actions under articles 27, 41, and 47 of the *Constitution* respectively.
 - b. This Honourable Court be pleased to issue an order of Injunction restraining the Respondents, their agents, officers, and/or persons acting under their instructions from carrying on with the impugned advertisements, planned interviews, recruitment, and/or employment of any new ECDE teacher IV-Job Group H without first promoting the existing, qualified ECDE teachers their employ.



- c. A declaration be and is hereby issued that the respondents are in breach of the return to work formula signed between the petitioner and the representatives of the respondents on 14th October, 2021.
 - d. This Honorable Court be pleased to grant an order of prohibition restraining the Respondents or anyone acting under their directions from proceeding with the planned interviews, recruitments, and /or employments of ECDE teacher IV-Job Group H until or unless they conduct promotions of qualified ECDE teachers.
 - e. An order of *mandamus* be and is hereby issued compelling the Respondents to carry out promotion of the existing ECDE teachers who are qualified to hold the advertised position of ECDE teacher IV-Job Group H.
 - f. A declaration be and is hereby issued that the Respondents have infringed upon the Petitioner's members' legitimate expectation regarding the internal promotions of ECDE teachers who possess the relevant qualifications, skills, and experience to fill the positions advertised.
 - g. An order of *certiorari* be and is hereby issued to bring to this Honourable Court and quash the 2nd Respondent's impugned advertisements inviting applications for ECDE teacher IV-Job Group H.
 - h. Costs of this Petition be provided for.
4. The Petition is supported by the Affidavit sworn by Roba S. Duba; General Secretary; on 18th November 2021.
 5. Despite being given adequate time to file their responses to the Petition at the time of retiring to write this judgement, the 1st and 2nd Respondents were yet to file their pleadings. As such, this matter is proceeding as undefended.

Petitioner's Case

6. The Petitioner avers that since the establishment of the Respondents, the Petitioner's members employed in 1st Respondent's education sector have had a legitimate expectation that before advertising any vacancies and recruiting new employees into its education sector, the respondents would first carry out promotions of the existing qualified ECDE teachers within the county's education sector who qualify for the advertised positions.
7. It states that to its dismay and that of its members, on October 4, 2021, the 2nd Respondent without any prior notice or consultation and engagements with the Petitioner placed advertisements on the 2nd Respondent's website advertising 219 vacancies for ECDE Teacher IV -Job Group H and inviting suitably qualified candidates to these positions to apply. The deadline for the application according to the advertisement was October 22, 2021.
8. The Petitioner avers that these advertisements are a clear indication of the Respondent's intention to recruit new ECDE Teachers into the 1st Respondent's Education, Sports, Youth, Gender, & Social Services Sector despite the fact that there are over 50 staff in that sector who have stagnated in the same job group for between 3 and 6 years since they were appointed.
9. That further, that the said advertisements and the likely subsequent shortlisting and/or interviewing of candidates, recruitment, and employment of the new ECDE Teachers into the County's education sector are in blatant breach of the Return to Work Formula signed between the Respondents and the petitioner applicant following a meeting had on October 14, 2021.



10. The petitioner avers that the impugned adverts are unconstitutional for denying the Petitioner's affected members the right to fair administrative action guaranteed to them under article 47 of the Constitution of Kenya, 2010.
11. It maintains that its members have had the requisite qualifications, skills, and experience for a long time working as ECDE Teachers in County schools but have not been promoted to determine the vacancies that left by the promotions or which the existing ECDE teachers cannot fill.
12. As such, it posits that the advertisements and the planned recruitments of new ECDE teachers have greatly prejudiced the Applicant's members on the basis that they have been prevented from applying for the same as doing so would only disadvantage them, for the reason that the 2nd Respondent plans to apply the terms contained in the Salaries and Remuneration Commission (SCR)'s guidelines and circulars which are unfavourable and inferior compared to the terms under the CBA between the 1st Respondent and the Applicant.
13. The petitioner further maintains that as a sound human resource practice, new recruitments should only be warranted by identified vacancies in existing the workforce brought about by a lack of qualified or experienced staff.
14. The Petitioner also avers that the adverts by the 2nd Respondent and the likely subsequent shortlisting of candidates, interviews, and recruitments of new ECDE Teachers amount to gross violation of the Constitutional rights of the affected members of the Applicant to fair administrative action, fair labour practices, and to protection from discrimination under articles 47, 41, and 27 of the Constitution of Kenya, 2010.
15. This is owing to the fact that the 1st and 2nd Respondents had failed to afford the petitioner's members equal opportunities for appointment and advancement in the 1st Respondent's education sector. In addition, the respondents had failed to give reasons for its decision to advertise positions where the petitioner's members are holding and have experience in while not considering the practical effect of the decision which would be rendering members redundant.
16. The petitioner also avers that the 2nd Respondent failed to involve or consult it before making the decision to advertise for new ECDE teachers while its existing members have the relevant qualifications, skills, expertise, and experience needed to fill up the advertised positions if promoted accordingly.
17. It attests that the 2nd Respondent's actions go against the Applicant's members' legitimate, reasonable expectations that it would first promote the existing ECDE Teachers who have stagnated in the same job group for over three (3) years since their appointments to higher job grades before advertising vacancies and recruiting new ECDE teachers.
18. Finally, the petitioner states that by failing to afford the members adequate and equal opportunities for advancement; indirectly barring its members from benefiting from the salary scales provided for under the CBA; declaring vacancies in positions that had substantive office holders; the Petitioner states its members were discriminated against in contravention with the provisions of article 27 of the Constitution.

Respondent's Case

19. The court has noted that the respondents have not filed a specific response to the Petition. I shall deem the respondents' response to the application by the Petitioner to also constitute their response to the Petition.



20. The respondents aver that it is true that an advertisement announcing vacancies for ECDE Teacher IV-Job Group H inviting suitable candidates to apply on October 4, 2021.
21. The Respondents maintain that the decision to take up more teachers was influenced by the need in the sector and the steady expansion of early childhood development education centres. That this was an implementation of the strategic plan which had began way before the said adverts and the conclusion of the Return to work formula signed between the petitioner and themselves.
22. The respondents further aver that the said advert and call for applications by suitable candidates is in no way a move to constructively dismiss the petitioner's members neither is it meant to displace them from their current positions.
23. In addition to the above, the respondents aver that the advertisement is part and parcel of their steps to promote old employees who have been holding the same position at the same job group because once new employee are employed, the older ones would be promoted.
24. The respondents attest that the petitioners' members will not suffer any prejudice and injury as the ongoing process is not illegal and unfair in any way. They insist that the same is not meant to do away with the terms of the return to work formula regarding their promotion and re-designation.
25. They conclude that the court's intervention is not needed to ensure that they are promoted because as it stands the Return to work formula has not been breached.
26. The respondents pray for the dismissal of the petition with costs.

Petitioner's Submissions

27. The petitioner listed the following issues for determination:
 - a. Whether the Respondents have violated, or threatened to violate, the Constitutional rights of the petitioner's members under articles 27, 41, and 47 of the Constitution of Kenya, 2010;
 - b. Whether the respondents' advertisements and planned recruitments, being in breach of a valid return to work formula between the respondents and the petitioner, are invalid, null and void; and
 - c. Whether the Petitioner is entitled to the orders of injunction, prohibition, *mandamus*, and costs of this Petition.
28. The Petitioner submitted on the right to fair labour practices under Article 41 of the Constitution and argued that the same relates to fairness in employment practices, decisions, processes and the workplace in general. Counsel relied on the case Peter Wambugu Kariuki & 16 others v Kenya Agricultural Research Institute (2013) eKLR.
29. The Petitioner further submitted that the planned recruitments by Respondent are discriminatory against its members, which in turn is contrary to article 232(1)(i) of the Constitution. That these actions and/or decisions adversely affect the legal rights of the Petitioner's members due to the fact that it might render some members redundant and jobless.
30. It argued that the advertisements and planned recruitments are invalid being in breach of an existing validly signed Memorandum of Agreement and open to annulment by this court.
31. The petitioner made reference to the cases of Geoffrey Mworio v Water Resources Management Authority & 2 others (2015) eKLR, where the court held that it will not hesitate to interfere with human resource functions, decisions and practices of an employer where it can prove that the employer is



proceeding in breach on an agreement between parties or in a manner that is manifestly unfair in the circumstances and in *Republic v CEO, Youth Enterprise Development Fund & another ex-parte Entone Wasonga* [2018] eKLR where it held that the employer's discretion is not to be readily interfered with except for good cause shown.

32. In furtherance of the above, the petitioner stated that the Respondent's adverts and imminent recruitments are invalid and, theretofore, amenable to interference, disturbance, or annulment by this Honourable Court for being in breach of a valid agreement in the form of a return to work formula between the parties and for being in violation of the Petitioner's members' Constitutional rights as already demonstrated. In addition, it submitted that the fact that the Respondents are proceeding or intend to proceed with the recruitments in blatant violation of a valid agreement or return to work formula with the Petitioner constitutes a good cause for this Honourable Court to intervene and stop them on their track until and unless they fully implement the terms of that agreement.
33. The petitioner submitted that this Court is empowered by article 23(3) of the *Constitution* and section 12(3) of the *Employment and Labour Relations Court Act* to grant orders sought in the petition. Counsel maintained that the petitioner has clearly and convincingly proved that the rights of its members have been infringed and urged the court to exercise its discretion in its favour.
34. As for the injunctions sought, the petitioner submitted that the Court of Appeal in the decision of *Kenya Breweries Ltd & another v Washington O. Okeyo* [2002] eKLR held that a Court, when considering a prayer for mandatory injunction, must be satisfied that there are not only special and exceptional circumstances but also that the case is a clear one. As such, the petitioner argued that the exceptional or unique circumstance in the Petition before this Honourable Court is the fact that the Respondents acted and may - if not stopped on their tracks - continue acting in flagrant breach and disregard of the return to work formula signed with the Petitioner on 14th October, 2021.
35. In conclusion, the petitioner urged the court to allow the petition and grant the prayers sought therein.

Respondents' Submissions

36. The respondents listed the following as issues for determination by the court;
 - a. Whether the Respondents have violated or threatened to violate the rights of the Petitioners under articles 27, 41 and 47 of the *Constitution* of Kenya 2010
 - b. Whether the Respondents decision to advertise and planned recruitment is in breach of the return to work formula between the Respondents and the Petitioners.
37. The respondents submitted that the Petition as a whole, does not disclose any violation in respect of articles 27, 41 and 47 of the *Constitution*
38. As for discrimination under article 27 of the *Constitution*, the respondents submitted that by inviting applications from the general public, they had not specifically discriminated against the Petitioner's members. In addition, the respondents argued that averments of discrimination under this Article ought to be specific and that the Petitioners have not proffered or identified the specific grounds under which its members have been discriminated or threatened to be discriminated against.
39. They relied on the cases of *Mohammed Abduba Dida v Debate Media Limited & another* [2018] eKLR to support the argument above and *Haki Na Sberia Initiative v Inspector General of Police & 3 others* [2020] to argue that mere differentiation or unequal treatment does not per se amount to discrimination prohibited under article 27 of the *Constitution*.



40. The respondents further submitted that the only contention by the Petitioner is the fact that the advertisement invited Applicants outside the employment of the Respondents. This does not amount to discrimination at all and that, the Petitioner has neither demonstrated the manner in which recruitment of new employees will be discriminatory to its members nor demonstrated that the new employees will serve under more favourable terms compared to the current employees, who are its members.
41. They maintained that the burden of proving that a right was infringed would be upon the person alleging such violation as was held in *Mohammed Abduba Dida v. Debate Media Limited* (*supra*) and that the Petitioner has not proved that they have violated the provisions of Article 27 by practicing discrimination against its members either directly or indirectly.
42. Regarding the issue as to whether the respondents' decision to advertise and planned recruitment is in breach of the return to work formula between the Respondents and the petitioners; the respondent argued in the negative.
43. It was submitted that while the a return to work formula as the one before Court is a binding document on all the parties involved in its conclusion, it is often consummated in tense environment and are hardly well drafted. That notwithstanding the Respondents submitted that it has every intention to honor the agreement.
44. However, they clarified that action to take up more teachers was influenced by the need in the sector and the steady expansion of early childhood development education centres, which was also implementation of the strategic planning that started way before the said adverts and way before conclusion of the return to work formula signed between the Respondents and the Petitioner Applicant.
45. The Respondents further submitted that the said advert and call for applications by suitable candidates is in no way a move by the Respondents to constructively dismiss the Applicants from work and it's not meant to displace them from their current positions or keep them in the same positions contrary to the return to work formula concluded between the Applicant and the Respondents.
46. While placing reliance on the case of *Geoffrey Mworira v Water Resources Management Authority and 2 others* [2015] eKLR; they submitted that there has been no breach of the Petitioners rights as the petitioners cannot fill up the vacancies even after implementation of the return to work Formula. The Respondent will still have to advertise for those positions to be filled up.
47. In conclusion, they maintained that the petitioner had failed to fulfil the burden of proof that its members had been discriminated against and urged the court to dismiss the petition with costs.

Analysis and determination

48. Having carefully analysed the petition, the Respondent's response, and the submissions presented before me by the parties, I distil the following issues for determination:
 - a. Whether there was a breach of the Petitioner's members' legitimate expectation as expressed in the petition or at all.
 - b. Whether the Petitioner's constitutional rights as enshrined under articles 27, 41, 47 and 232 (1) (i) of the *Constitution* have been violated or threatened to be violated.
 - c. Whether the Petitioner entitled to the reliefs sought?



Whether there was a breach of the Petitioner’s members’ legitimate expectation as expressed in the petition or at all.

49. The petitioner contended and I hold the view that the contention formed the backbone of the petition herein, that, its members who were in the employment of the 1st Respondent under its education sector at the material time, had a legitimate expectation that before the 1st Respondent would advertise any vacancies and recruit new employees into the stated sector, it was under an obligation to first promote the petitioner’s members who had qualifications to occupy the to be advertised positions. That notwithstanding that there were such members, the Respondent didn’t honour the obligation. Consequently, there was a breach of the members’ legitimate expectation.

50. Black’s Law Dictionary, 10th Edition defines legitimate expectation, thus;

“Expectation arising from the reasonable belief that a private or public body will adhere to a well-established practice or will keep a promise.”

51. The Supreme Court of Kenya in the case of *Communications Commission of Kenya and Five others v Royal Media Services Ltd* [2014] eKLR, defined legitimate expectation, thus;

“Legitimate expectation would arise, when a body by representation or by practice has aroused an expectation that is within its power to fulfil.”

52. Imperative to state that an employee alleging existence of a legitimate expectation assumes the duty to prove the basis of his expectation, and cannot be allowed to shift the burden. It is an elementary principle of evidence that he who alleges must prove his allegations. See, Petition No. E119 of 2022, *Dr. Naim Bilal Yaseen v Cabinet Secretary, Ministry of ICT, Innovations and Youth Affairs and 2 others*.

53. Court tasked to interrogate whether an employee acquired a legitimate expectation, has to appreciate that the test is objective; would a reasonable person have the expectation in issue? and that it requires an assessment of all circumstances of the case. On this, I draw fortification from the South African case of *Deirks v University of South Africa* [1999]20 ILT 1227, in which the court stated;

“ 133. A number of criteria have been identified as considerations which have influenced the findings of the past judgements of the Industrial Labour Appeals Courts. These include an approach involving the evaluation of all the surrounding circumstances, the significance or otherwise of the contractual stipulations, agreements, undertakings by the employer or practice or custom

54. In order for one to successfully argue on an alleged existence of a legitimate expectation, he or she must demonstrate to court that there was an objective basis for creation of the reasonable expectation. Reasonable which is often used interchangeably with legitimate, is defined by the Cambridge Advanced Learners Dictionary as “based on or using good judgment and therefore fair and practical” and *Black’s Law Dictionary*, “Fair, proper, and sensible.”

55. It was the petitioner’s case that at the material time there was in existence a collective bargaining agreement between it and the 1st Respondent. I have keenly considered the material placed before me, I see not, the agreement presented or, an assertion that the alleged expectation flowed from the terms of the same.



56. In asserting existence of the expectation, the Petitioner invited this court to find the Resolutions of the joint meeting of 13th and October 14, 2021 between NCCG Management, NCSPBD, and the Petitioner, as anchor for the alleged expectation. From the minutes, it has not been difficult for this court to come to a conclusion that there is no content therein that is relevant to the petition herein or the petitioner's alleged legitimate expectation.
57. In absence of any express contractual stipulation, proved practice and or representation, in my view, a position that the Respondent's authority to recruit new staff under its Education Sector would only legally and properly happen after consultations with, and or concurrence of, the petitioner, is one, without an objective basis, not proper, not sensible and that lacks fairness.
58. In sum, the petitioner didn't prove that there existed a legitimate expectation as alleged in the petition. The answer to the above stated issue is in the negative therefore.

Whether the Petitioner's constitutional rights as enshrined under Articles 27, 41 and 47 have been violated or threatened to be violated.

59. The petitioner submitted that the planned recruitment is discriminatory against the petitioner's members contrary to the provisions of article 27[4] of the Constitution as they are being deprived of fair, reasonable, adequate, and equal opportunities for advancement in the 1st Respondent's public service. Further that the intended recruitment will affront the stipulation of article 232[1] [i] of the Constitution which provides for values and principles of public service, inter alia affording adequate and equal opportunities for appointment, training, and advancement at all levels of the public service.
60. It is a principle in constitutional litigation that a party seeking reliefs through a constitutional petition upon premise of an alleged violation of the Constitution, Constitutional rights and fundamental freedoms, he or she must plead with a higher degree of precision, show Constitutional provision in question in question or violated, and the jurisdictional basis for the litigation as was held in the case of Anerita Karimi Njeru v Attorney General [1979] eKLR.
61. In the case of Julius Meme v Republic [2004] eKLR, the Court stated;

“Where a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the provisions infringed and the and the manner in which they are alleged to be infringed.”

Despite the general allegation made by the petitioner that the right under article 27 of the Constitution has been violated, this Court finds considerable difficulty in seeing in a specific manner, how. The petitioner has not placed forth any material to establish the how.
62. Article 27 [4] of the Constitution of Kenya, which the petitioner contents was infringed on, and that it specifically submitted on provides;

“The state shall not discriminate directly or indirectly against any person on any ground including race, sex, pregnancy, marital status, health, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”

Imperative to state that discrimination against an employee on any of the above stated grounds is by definition “unfair” there is no room left to find it permissible or fair. The rationale being that; the grounds are inherent aspects of human personality, which if



not immutable, are so important to self-definition as to be inviolable in a contractual relationship.

I have carefully, considered the material placed before me, I see nowhere whereat the petitioner contends that the impugned act of the Respondents was based on all or any of those prohibited grounds under article 27 of the Constitution. I am therefore not convinced that discrimination occurred in the manner alleged or at all.

63. At paragraph 26 of the petition, the petitioner stated;

“The petitioner avers that the advertisement and the planed recruitment by the 2nd Respondent are discriminative for their failure to afford the Applicant’s members who are ECDE teachers equal and adequate opportunity for advancement and promotions in the 1st Respondent Education sector.”

The court has carefully analysed the petition, and has met considerable difficult in understanding how the planned recruitment has in it a failure to afford the petitioner’s members equal opportunity for advancement and promotions. There is no elaborative material in the petition on it. With due respect, the assertion is just a bald assertion.

64. Article 41 of the Constitution guarantees every Kenyan a right to fair labour practices which include but are not limited to fair remuneration, reasonable working conditions, to go on strike and the right to form or join in the activities of a trade union. An unfair practice is an act which is whimsical, capricious, and unreasonable. The Respondents contended that the intended recruitment followed a need assessment, and the ever expanding ECDE sector of the 1st Respondent. This assertion was not at all or in any manner rebutted by the petitioner. The Court is consequently convinced that the impugned action was need attracted, and for the service of public interest. Resultantly it shall be off mark for this court to hold the action unreasonable, or capricious and or whimsical.

65. The petitioner contended that its members right under article 47 of the Constitution was infringed upon by the Respondents. The Article provides;

“47[1] 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 the 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 the 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.

66. In pursuance to the provision forestated, Parliament enacted the Fair Administrative Actions Act, wherein the details as regards the enforcement of the right under the Article are.

67. The petitioner argued that the Respondents acted in an unfair and unreasonable manner by failing to consider the likely, practical effect of their decision, which is to render the petitioner’s members redundant. A contention that a recruitment that has been spurred by a need assessment, and therefore



a need to bolster the numbers of an employee's workforce, would lead to a redundancy situation is the most difficult to understand. Without any proper explanation and justification as is here, with due respect, it becomes an unreasonable contention. The Court declines to find in its favour.

68. It was further argued by the Petitioner that the 2nd Respondent failed to involve or consult it before making the decision to advertise for the new ECDE teachers while its existing members had the relevant qualifications, skills, expertise, and experience needed to fill up the advertised positions if promoted accordingly. According to paragraph 5 of the supporting affidavit filed herein by the petitioner on the November 23, 2021, only 40 ECDE had the relevant academic papers and experience that would fit in the advertised position[s]. Sight should not be lost that in the same affidavit, the deponent is clear that the advertised vacancies were 219. This position obtaining in the affidavit, which is more specific as regards numbers is at variance with that in the petition which suggests that all the serving teachers have the experience, skills and qualifications to fill the advertised vacancies.
69. It shall be without any sound justification for one to insist that a recruitment process which has been attracted by an organizational need be halted till a certain group of workers are promoted, yet the number that is sought to be recruited following the need is far higher than that of the group. Probably, a sound justification would flow from a stipulation in a collective bargaining agreement, since it is alleged that that group of workers are members of the Petitioner trade union, but that is not the case in the instant matter. At best, the Petitioner should negotiate for the promotion of the group of workers, for inter alia that is the reason why they are its members. In fact, the tone of paragraph 11 of the petitioner's Exhibit JWG-8, the hereinabove mentioned resolutions from the meetings of 13th and 14th October, 2021, is in contemplation of the negotiations. In sum, absent of any demonstrated existence of such a stipulation, this Court finds no sense in the insistence by the petitioner.
70. The Petitioner argues that it was obligatory on the 2nd Respondent to give the affected members who were likely to be affected by their decision the reasons to advertise the positions they are holding. Having found as I have hereinabove, that the intended recruitment shall in no way create a redundancy situation, I see not how the intended recruitment which has been dictated by an organizational need could adversely affect the 1st Respondent's workers to enable them seek protection under the provisions of Article 47 of the Constitution.
71. By reason of the foregoing premises, I find that the Petitioner's members' rights cited, were not violated at all.

Whether the Petitioner is entitled to the reliefs sought or any of them.

72. The Petitioner's petition herein is substantially anchored on its allegation that the rights of its members were violated by the Respondents. I am of the view that a grant of the orders sought could only flow from a positive finding that the rights were violated. Having found that none of the cited rights was violated, I have no difficulty in concluding that the Petitioner is not entitled to any of the sought reliefs. Consequently, the petition herein is dismissed with costs.
73. However, it is worth stating that the post 2007 employment and labour relations Kenyan legal regime, and the current constitutional dispensation, came in with an expansive protection of employees deliberately, and the Court will not hesitate to intervene with an appropriate remedy or remedies, whenever an employer through his or her action[s] and inaction[s] diminish or threaten to diminish the protection.
74. Each party shall bear its own costs.

READ, SIGNED AND DELIVERED THIS 20TH DAY OF JANUARY, 2022.



OCHARO KEBIRA

JUDGE

In Presence of

Mr. Oginda for the Petitioner.

Ms Ndugire for the Respondent.

ORDER

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

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

OCHARO KEBIRA

JUDGE

Page 9 of 9 *JUDGMENT ELRC NRB PETITION NO. E185 OF 2021*

