



REPUBLIC OF KENYA



Egerton University v Kenya Universities Staff Union & another (Petition 11 of 2022) [2023] KEELRC 2616 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2616 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION 11 OF 2022
DN NDERITU, J
OCTOBER 25, 2023**

BETWEEN

EGERTON UNIVERSITY PETITIONER

AND

KENYA UNIVERSITIES STAFF UNION 1ST RESPONDENT

**KENYA UNIVERSITIES STAFF UNION EGERTON BRANCH 2ND
RESPONDENT**

RULING

I. Introduction

1. In a petition dated 11th October, 2022 filed through Sheth & Wathigo Advocates the petitioner prays for –
 1. A declaration that the strike called for by the Respondents is unprotected hence illegal, the same having been called for by a party who has no locus as per the provisions of Article 10 of the KUSU Constitution.
 2. A temporary and permanent order of injunction restraining the Respondents from striking on 12th October 2022 be issued.
 3. A declaration that any form of strike by the Respondents be suspended pending the hearing and determination of the instant Application.
 4. A declaration that the parties in dispute be ordered to have a meeting with a conciliator in an attempt to resolve the dispute at hand.
 5. An order allowing the petitioner to implement the terms of the meeting held on 29th September, 2022 in line with its current financial status.



6. That the costs of this petition and of all other proceedings associated thereto, be borne by the respondents.
2. Contemporaneously, the petitioner filed a notice of motion of even date (the application) under a certificate of urgency seeking for the following –
 1. Spent
 2. That this Honourable Court be pleased to grant a temporary injunction staying the intended strike scheduled for 12th October, 2022 by the Respondent pursuant to Article 23 of the Constitution of Kenya, 2010, pending the hearing and determination of the instant Application.
 3. That this Honourable Court be pleased to order that the Petitioners and Respondents do attend a conciliation process as per the directives by the County Labour Officer or the Minister.
 4. That this Honourable court be pleased to allow the petitioners to take disciplinary action against the Respondents who will participate in the unprotected strike.
 5. That the petitioner be allowed to continue implementing the terms of the resolution of the meeting held on 29th September, 2022.
 6. That the petitioner be allowed to take disciplinary action against any employee of union member who participates in the unprotected strike meant to be held on 12th October 2022.
 7. That costs of this Application be borne by the Respondents.
 3. The application is expressed to be brought under Articles 22 & 23(3) of the *Constitution* of Kenya and all other enabling provisions of the law.
 4. The application is based on the grounds on the face of it and supported with the affidavit of Prof. Richard M. S. Mulwa sworn on 11th October, 2022 with several annexures thereto.
 5. On 12th October, 2022 this matter came up in court under a certificate of urgency and the court issued some interim orders stopping the intimated strike called by the respondents that was to commence on 12th October, 2022 as per the notice issued by the 2nd respondent dated 3rd October, 2022.
 6. Upon the service of the application the respondents filed grounds of opposition dated 19th October, 2022 through Wachira Wekhomba Aim & Associates alongside a replying affidavit sworn by Wayaya E.O. sworn on 19th October, 2022 with several annexures thereto.
 7. The matter came up in court on 24th October, 2022 for directions whereby Miss Oteyo appeared for the petitioner (applicant) while Mr. Wekhomba appeared for the respondents. Counsel for the parties indicated that negotiations were on-going with the intention of resolving the issues between the parties. However, it was agreed that the application be canvassed by way of written submissions. The petitioner was granted leave to file a supplementary affidavit which was duly filed as sworn by Prof. Richard S. Mulwa on 9th December, 2022 with one annexure thereto – a report on negotiations.
 8. Counsel for the petitioner filed her written submissions on 13th December, 2022 while counsel for the respondents filed on 14th February, 2023.



II. Evidence & Analysis

9. It is clear from the foregoing paragraphs that the strike that was to commence on 12th October, 2022 as per the notice issued by the respondents on 3rd October, 2022 did not take place in view of the interim court order issued on 12th October, 2022. To that extent the said notice expired and if the respondents were to call for a strike they would have to issue a fresh notice. It should therefore logically seem like this ruling is an exercise in futility were it not for the nature of the issues raised by the parties in this petition and the application that call for the attention of and ventilation by this court.
10. It is in the public domain that the petitioner has for several years now been embroiled in endless trade disputes and strained relationship with both its academic and non-teaching staff leading to a polluted industrial environment wherein strikes, picketing, demonstrations, and interruptions of normal operations have become an almost every day occurrence. Numerous causes and suits are pending in this court and other courts across the country concerning and involving the operations, management of resources, human capital issues, et al, of the petitioner herein which obviously smacks on the reputation of the institution posing risk of the same coming down and disintegrating into oblivion and ignominy.
11. It is for the foregoing reason that the court has to render a ruling in this matter to set the record straight and may be sound a wake-up bell to the parties for an urgent need to end the long-standing strained industrial relationship for the sake of reviving and rejuvenating this otherwise prestigious and premier institution of higher learning.
12. This petition was triggered by a notice of a strike dated 3rd October, 2022 issued by the 2nd respondent worded as follows –

3rd October, 2022

The Council Chair,
Egerton University

Dear Sir,

RE: Notice Of Strike

Pursuant to the provisions of Articles 41(2)(d) of the Kenya Constitution 2010, the Kenya Universities Staff Union(KUSU) hereby issues and serves a seven(7) days strike notice from 5th October 2022 to your Council for:

Payment of irregular salaries, non-payment of salary arrears, and failure to negotiate local internal CBA.

Failure to attend to the above demand within seven(7) days from the date of this notice, ALL unionisable KUSU members in Egerton University employment will withdraw their labour/services commencing 12th October 2022 and will not resume duty until the above issues has been addressed to the satisfaction of our members.

Thank you.

Signed

Wayaya E.O.



Branch Secretary, KUSU
For Branch Executive Committee
Cc : Cabinet Secretary, Hon. Ezekiel Machogu
Ministry of Education
Jogoo House, Harambee Avenue
Box 30040, Nairobi
County Labour Officer – Nakuru County

13. From the above notice, the fundamental issue for the calling of the strike by the 2nd respondent is “Payment of irregular salaries, non-payment of salary arrears and failure to negotiate local internal CBA”.
14. From the supporting affidavit it is deposed that there has been several meetings or engagements intended to deal with the issues raised. The deponent alludes to several meetings in paragraphs 3, 4, 5, 6, and 7 aimed at ironing out and settling the issues between the parties.
15. It is alleged that the issue of “failure to negotiate internal CBA” was not raised by the 2nd respondents in the initial list of demands and only became visible in the notice of strike.
16. However, the real reason why the petitioner is unable to meet the remunerative commitments demanded by the respondents is disclosed in paragraphs 26 to 28 of the supporting affidavit. It is beyond peradventure that the reason why the petitioner is unable to pay members of the respondents their full monthly wages and salaries, and instead paying the same at only 60%, is that it has no money, or it is so alleged.
17. It is stated that if any strike takes place such an occurrence shall highly affect the operations of the petitioner and deny students services and paralyze the business of the petitioner. The petitioner alleges that it is the Government of Kenya (GOK) that has failed to capitulate the petitioner as expected making it impossible for the petitioner to operate normally and optimally.
18. Annexed to the supporting affidavit are several correspondences and notices pointing towards protracted discussions and negotiations towards resolving the issues in dispute but without a settlement in sight.
19. Further, it is alleged that the strike notice is irregular and un-procedural the same having been issued by an official of the 2nd respondent instead of an authorized official of the 1st respondent.
20. The foregoing position by the petitioner is reiterated and restated in the supplementary affidavit.
21. In the grounds of opposition and the replying affidavit the respondents have emphasized and insisted that the strike notice as issued by the 2nd respondent is proper and lawful and that the members thereof are entitled to participate in the intimated lawful strike as a last resort since the petitioner has failed, refused, and or neglected to listen and act on their lawful demands, ignored correspondences, and half-heartedly participated in negotiations in bad faith with the sole intention of buying more and more time to the detriment of the workers, members of the respondents.
22. It is the respondents’ position that the petitioner has failed, refused, and or neglected to comply with the provisions of an internal CBA negotiated for 2012/2013 which clearly and unambiguously provides for the procedures and processes of negotiating or amending the terms and conditions of service for the member workers. It is alleged that the petitioner has unilaterally been changing those



terms and conditions without any resolutions from a joint negotiation team (JNT) as should be the case.

23. It is stated that a CBA covering 2013/2017 that was submitted to the petitioner in 2016 has not been acted upon or responded to yet during the said period the petitioner unilaterally changed and violated the terms and conditions of employment of the union members without any consultation whatsoever. It is stated that even after being ordered to engage and conclude the said CBA in Nakuru ELRC Petition No. 88 of 2020 the petitioner has made no efforts in settling the issues between it and the respondents.
24. The respondents posit that the petitioner has failed, refused, and or neglected to pay accumulated salary arrears since 2020, failed to review salaries since 2018, failed to pay full salary and instead paid 57% and now 60% thereof, failed to negotiate and complete the 2013/2017 CBA, failed to remit statutory deductions and others dues on loans and pay to concerned entities, removed tuition waiver, varied its pension scheme contributions from 20% to 1% without consultation whatsoever, and interfered with medical benefits.
25. It is the respondents' position that the foregoing are weighty and pertinent issues affecting the workers which the petitioner has violated with abandon and in the circumstances the respondents have a lawful and justified reason to call for a strike. It is stated that the 1st respondent lawfully and procedurally delegated the right to issue a strike notice to the 2nd respondent on 29th September, 2022. It is re-emphasized that the respondents have had to push the petitioner even for it to attend negotiation meetings and discussions and that the call for a strike has been taken as a last resort. It is stated that the respondents have complied with the law in calling for the strike and issuing the notice for the strike.
26. It is stated that instead of the petitioner participating and making efforts to resolve the issues it has resulted to filing this petition to buy time in total disregard of the plight of its employees who are in financial embarrassment and suffering for the failures of the petitioners.
27. The respondents accuse the petitioner of serious financial mismanagement leading to its inability and unwillingness to engage or honour its lawful obligations. It is alleged that the petitioner has violated the constitutional rights of the concerned workers as enshrined and provided for under Articles 10, 27, 28, 41, 47, and 73 of the *Constitution* and other provisions of the statutes.
28. The respondents have annexed correspondences addressed to the petitioner seeking indulgence and audience for the parties to discuss and negotiate on the issues raised but it is alleged that the petitioner has ignored all those efforts made rendering the strike absolutely necessary. It is restated that the petitioner has failed or refused to address the issues raised leading to a trade dispute for which the respondents have taken all the necessary steps in calling for a strike. It is emphasized that the steps taken in issuance of the notice calling for a strike complies with all the relevant provisions of the law.
29. It is on the basis of the foregoing that the respondents have prayed that the application and indeed the petition be dismissed with costs.

III. Submissions By Counsel

30. The petitioner's counsel has identified six issues for determination by court as follows –
 1. Whether the respondents will cripple the University even further if they went on strike.
 2. Whether the petitioner who has always been ready and willing to comply with the respondents' demands save for the lack of funds should be given a chance to implement the issues agreed on.



3. Whether the petitioner has a financial muscle that can handle the concerns raised by the respondents without the help of the government.
 4. Whether the parties have agreed on the way forward regarding the respondents' demands through a conciliation meeting.
 5. Whether the petitioner has mismanaged public funds as alleged by the respondents
 6. Cost of the Application to be borne by the Respondents.
31. On issue 1 counsel submits that the petitioner has not recovered from the effects of Covid-19 and that the GOK has failed to capitulate it as expected making it difficult for the petitioner to meet its financial obligations, including the demands by the respondents. Counsel submits that if the strike was to proceed as notified or at any other time the petitioner will face a crisis and even closure as parents and students may not ensure any further closure of the institution that has been afflicted by several strikes in the recent past.
 32. On issue 2 it is submitted that no matter how much the petitioner is understanding and willing to meet the demands from the respondents there is no way that it shall be able to meet them unless and until the GOK avails the necessary funds. It is submitted that while the petitioner has attended conciliation meetings and participated in joint meetings to iron out the CBAs, it is not capable of committing to executing the same due to lack of funds.
 33. On issues 3, 4, and 5 counsel submits that unless the GOK funds are received the petitioner is completely helpless notwithstanding that it has the goodwill to settle the legitimate demands by the respondents. It is denied that the petitioner has mismanaged its resources resulting in its inability to meet the demands from the respondents. It is submitted that no charges have been preferred against the managers of the petitioner in regard to the alleged mismanagement of resources and as such the allegations by the respondents are not factual.
 34. Counsel has cited *Teachers Service Commission v Kenya National Union of Teachers & Others* (2015) eKLR in persuading this court to outlaw the notice of the strike and to allow the petitioner more time to seek and obtain funds from the GOK to settle the admittedly genuine demands from the respondents.
 35. The petitioner prays for costs of this application.
 36. On the other hand, counsel for the respondents has traced the genesis of the trade dispute between the petitioner and the respondents from the recognition agreement, the CBA, and the many correspondences, alongside efforts made by the respondents in approaching the petitioner to resolve the issues without any particular success. It is submitted that the petitioner has severally and unilaterally changed the terms and conditions of service for the members of the respondents and ignored or neglected any attempts or overtures for an amicable resolution of the issues. It is submitted that the notice for a strike was issued as a last resort due to indolence and contempt on the part of the petitioner. It is submitted that the said notice was issued in accordance with the law.
 37. Counsel for the respondents has identified three issues for determination as follows –
 1. Whether the Applicant is deserving of the orders sought herein;
 2. Whether the parties have agreed on the way forward regarding the Respondents' demands via a conciliation meeting.
 3. Which party gets to bear the cost.



38. On issue 1 it is submitted that the petitioner has violated and breached the rights of the members of the respondents as enshrined in Articles 10, 41, 47, & 73 of the Constitution by unilaterally changing the terms and conditions of service, failing to pay negotiated and agreed remuneration, and hence failing and violating the legitimate expectation of the employees.
39. Further, it is submitted that the petitioner has violated the constitutional rights of the concerned employees under Articles 27 & 28 of the Constitution. It is submitted that it has been demonstrated by the petitioner through this petition that it has deliberately refused to commit to the conciliation process on allegation of lack of capitation from the GOK. It is submitted that the continued violation of the rights of the affected employees culminated in the issuance of the strike notice as a last resort and that the said notice complied with the law and in particular Section 76 of the Labour Relations Act. It is submitted that other than picketing, the respondents have never called for a strike and this intended strike was therefore called after all other means and avenues had failed and collapsed.
40. It is submitted that the petitioner has had time since 2017 to settle the issues herein but it has deliberately applied delaying and unilateral tactics to scuttle all efforts made in attempting to resolve the issues. It is submitted that the petitioner has cited Covid-19 and GOK capitation as scapegoat to cover up for its indolence and lack of concern for the welfare of the employees. It is stated that this dispute stretches way back to pre-Covid-19 days in 2017.
41. On issue 2 it is submitted that except for tuition fee waiver, the petitioner has refused to discuss and or resolve any of the other issues. It is submitted that the petitioner has cunningly and deliberately refused to discuss the issue of irregular and illegal salary deductions and has been paying in bits of 57% and now 60% contrary to all known provisions of the law and terms and conditions of employment.
42. It is submitted that the petitioner has carelessly and recklessly exposed the employees to mental anguish, financial embarrassment, emotional stress and drain, and social oblivion of unprecedented levels which is now unbearable. It is submitted that the petitioner is neither ready nor willing to engage and or come up with solutions to the issues raised by the respondents and that the petitioner has deliberately decided to shield behind Covid-19 pandemic, which is now long gone, and alleged lack of capitation from the GOK for its failure to meet its constitutional and statutory obligations and duty.
43. Counsel submits that the respondents were right in issuing the strike notice, they followed the law, have justified and lawful reasons to call for a strike, and the petition was filed in bad faith with the sole purpose of postponing the resolution of the dispute. It is urged that the application and indeed the petition be dismissed with costs.

IV. Determination

44. The court has carefully and dutifully gone through the application, the supporting affidavit, grounds of opposition, the replying affidavit, the supplementary affidavit, and the submissions by counsel, and summarized the same as per the preceding part of this ruling. In my view, there is only one broad main issue for determination – Should the application by the petitioner, as presented, be allowed?
45. Within the foregoing broad issue there are questions that beg for answers – Is the application by the petitioner made in good faith and time? Should the orders sought be granted? What are the appropriate orders on costs?
46. From the evidence as analyzed above, and this is now in the public domain, the petitioner has been at loggerheads with its staff, both academic and non-teaching, for several years. To state the obvious, in the recent past the petitioner has become more popular as an institution of industrial unrest than one of academic excellence as it ought to be. It is not farfetched to state that the petitioner seems to



be in a perpetual fight for its bare minimum survival. This is not a befitting description of a premier institution of higher learning that has over the years produced graduates who have gone on to make huge contributions in the economic development of the Republic.

47. From the record and the evidence availed in court, the petitioner is paying its employees at a maximum rate of 60% of their monthly salaries or remuneration. This has been confirmed by the petitioner who has admitted that it is unable to meet its financial obligations due to lack of funds. It is for this reason that the petitioner has been non-committal in the negotiations and conciliation process. In not so few words the petitioner has clearly and evidently resigned to the corner where it attaches no value to the negotiations and conciliation process as it shall not, in any event, be in a position to implement the outcome for alleged lack of funds.
48. Unfortunately, in those circumstances the petitioner has resorted to unilateral decision making and, in the process, as it shall be demonstrated hereunder, violated and breached the constitutional and statutory rights of the members of the respondents.
49. There are numerous constitutional and statutory rights both for employees and employers. Obviously, rights come with duties and obligations. The starting point is Article 41 of the Constitution wherein it is provided as follows –

41.

- (1) Every person has the right to fair labour practices.
- (2) Every worker has the right—
 - (a) to fair remuneration;
 - (b) to reasonable working conditions;
 - (c) to form, join or participate in the activities and programmes of a trade union; and
 - (d) to go on strike.
- (3) Every employer has the right—
 - (e) to form and join an employers organisation; and (f) to participate in the activities and programmes of an employers organisation.
- (4) Every trade union and every employers' organisation has the right—
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
- (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.

50. The above rights are further broken down and illuminated in various provisions of the statutes including the Employment Act, the Labour Relations Act, the Employment and Labour Relations Court Act, and a myriad of other statutory provisions and pieces of legislation and sub-legislation. One of the most prominent rights of an employee is to form and join a trade union of their choice and to participate in lawful activities of such union. Invariably, such activities include agitating for rights by picketing and going on strike.



51. One of the other foremost right for employees is to receive the agreed remuneration at the agreed time, in accordance with the contract of employment, without fail.
52. In case of abuse, breach, or violation of those rights the law grants various reliefs to the employees. Obviously, one of the actions that employees can take is to agitate for those rights through withholding their labour by way of picketing, strike, or go-slows.
53. It is not denied in this petition that the employees have been denied a fundamental right of payment of their agreed remuneration as and when the same falls due. The unilateral decision by the petitioner to pay salaries at 60% is not only unlawful but in gross violation of the rights of the affected employees who are members of the respondents. Further, the unilateral action by the petitioner to vary the pension contribution, medical benefits, and other terms and conditions is completely unconstitutional and unlawful.
54. From the evidence on record the respondents were within the law in issuing the subject notice dated 3rd October, 2022 and calling for the strike commencing on 12th October, 2022. It is none of the business of the respondents to engage the GOK to release the funds for capitation. That is in the domain and province of the petitioner and no evidence has been availed demonstrating what efforts, if any, have been made in that regard.
55. It is illustrative that while the petitioner was served with the notice of a strike on 3rd October, 2022 it did not approach the court until 11th October, 2022, one day before the commencement of the strike, seeking for orders to stop the impending strike. Surely, if the petitioner was acting in good faith and with good intentions to resolve the issues, it should have engaged the respondents within the seven days of the notice and come up with an amicable and acceptable resolution of the issues. While the court issued an interim order stopping the strike and therefore stalling the strike, it is now clear that the petitioner is either unwilling or unable to resolve the impasse. There is no evidence on record of any efforts on the part of the petitioner towards a resolution of the issues.
56. The genesis of the issues afflicting the parties herein has been traced back to 2017 and the situation has been deteriorating over the years vanned by the above outlined unilateral decisions and actions of the petitioner.
57. In the very human nature it is not possible to get used to pain. An employee budgets and styles his lifestyle around the regular and agreed income or remuneration expected as and when the same falls due and payable. The plight of the affected employees has been graphically captured in the grounds of opposition, the replying affidavit, and the submissions by their counsel. Surely, the petitioner needed to take this issue more seriously and thus apply all efforts and means to resolve the same.
58. Instead of facing the issues and coming up with an amicable resolution of the issues through dialogue, mediation, conciliation, and engagement with all the stakeholders and those concerned, including the GOK, the petitioner opted to file this petition and luckily over one year has passed since the interim order stopping the strike was issued. It is reasonable and logical to assume that the petitioner must have by now put in place efforts to resolve the issues and that indeed the issues have been resolved.
59. The magic with the law is that it provides for an outlet in every legal quagmire. The petitioner is not helpless and or hopeless even in a situation where the GOK may fail or has failed to provide adequate capitation as expected. The position in law is that it is unconstitutional and unlawful for an employer to keep employees in the payroll without paying to them the entire agreed remuneration and meeting all other agreed terms and conditions of employment. If the parties entered into an interim arrangement where the respondents had agreed to the piece meal payment of wages and salaries, well, that would



have been a different scenario and there is no evidence of such an agreement in this matter. The point to make here is that the petitioner cannot unilaterally change and or vary the terms of employment at will without seeking concurrence and agreement from the respondents.

60. The evidence on record is that the respondents made great efforts in engaging the petitioner for a resolution of the dispute before taking the option of issuing the notice of a strike as a last resort. Article 41(2)(d) of the Constitution and Section 74 of the Labour Relations Act provide for this right and the steps to be taken and the respondents complied with the same. The respondents issued a seven days' notice and the same was copied to the cabinet secretary for education. It is not alleged that the said notice was not served upon all those intended to be served. There is no evidence that the 1st respondent did not authorize or sanction the issuance of the said notice by the 2nd respondent.
61. Section 46 of the Employment Act is unambiguous that joining and taking part in the lawful activities of a union cannot found a ground for disciplinary action, dismissal, or termination. The petitioner has not demonstrated good faith so as to seek refuge under Sections 77, 78, 79, and 80 of the Labour Relations Act – See Joash Alubale Jacob V Mega Pack Limited (2019) eKLR.
62. The court has in the foregoing paragraphs alluded to the fact that an employer who is unable to meet the agreed terms and conditions of its employees is not helpless. Had the petitioner, in good faith, engaged the respondents in meaningful discussions, negotiations, and conciliation meetings, bringing all stakeholders on board, including the GOK, probably, the matter should not have deteriorated this far. Instead of so doing the petitioner has adopted an aloof unilateral approach to the issues and lukewarm attempts hence making it difficult for a solution or a settlement to be reached. The dispute between the parties and the matters cannot be held in abeyance forever as the respondents have detailed the suffering that their members have endured and continue to face due to the failure on the part of the petitioner to meet the agreed terms and conditions of employment.
63. Further, Section 40 of the Employment Act provides for termination on account of redundancy. That is yet another lawful avenue that the petitioner may explore and which it has probably not considered so far. This would ameliorate the suffering to the affected employees and at the same time allow the petitioner to retain only the necessary workforce. Of course, if the petitioner opts for this route it has to comply with the strict provisions of the law on redundancy.
64. The court has said enough in demonstrating that the respondents had a right and indeed followed the lawful means in issuing the notice and calling for a strike. The petitioner has not demonstrated good faith and proactive approach and will to resolve the dispute. While the petitioner has an eternal right to approach the court for reliefs, and in this case the court saved the situation by way of an interim order stopping the strike, that cannot be the ultimate solution.
65. It is now the high time that the petitioner engaged the respondents, the GOK, and all the stakeholders with the sole and motivated aim of resolving the dispute. This court is replete with causes, petitions, applications, et al, between the same parties herein, and or the academic staff union, concerning the same or similar issues and disputes. This situation is neither sustainable nor tenable. A solution ought to be found now and the petitioner must take the lead.
66. For all the foregoing reasons, the application by the petitioner is hereby dismissed with costs to the respondents.
67. For the sake of industrial peace and harmony and in the hope that a longstanding solution is found, the petitioner is hereby ordered and directed to call for negotiations and or conciliation meetings and include all the parties and representatives of all the stakeholders, including the GOK, and file a report



on the settlement reached and agreed upon with sixty (60) days from today. In default, the respondents shall be free to take the next appropriate lawful action.

68. Obviously, the notice issued by the respondents has since expired and is now of no consequence.

V. Orders

69. The Applicant's notice of motion dated 11th October, 2022 has no merits and the same is hereby dismissed with costs and the interim orders issued on 12th October, 2022 are hereby vacated.

70. Mention on 5th February, 2024 to confirm status in view of paragraph 67 above.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 26TH DAY OF OCTOBER, 2023.

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DAVID NDERITU

JUDGE

