



**Matseshe v Busia Sugar Industry (Petition E008 of 2022)
[2023] KEELRC 2906 (KLR) (16 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2906 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
PETITION E008 OF 2022**

JW KELI, J

NOVEMBER 16, 2023

**IN THE MATTER OF THE ARTICLES 2, 10, 19, 20, 21, 22, 23, 28, 41,
47, 48 & 258 OF THE CONSTITUTION OF KENYA, 2010, THE
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013,
WORK INJURY BENEFITS ACT NO. 13 OF 2007, EMPLOYMENT ACT,
2007, EMPLOYMENT AND LABOUR RELATIONS COURT ACT, OF 2011,
EMPLOYMENT AND LABOUR RELATIONS COURT (PROCEDURE) RULES
2016, WORKMEN'S COMPENSATION REGULATIONS.**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 28, 41, AND 47 OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF SECTIONS 10,
18, 22, 30, 47, 48 OF THE WORK INJURY BENEFITS ACT NO 13 OF 2007
AND SECTION 44 OF THE EMPLOYMENT ACT 2007**

BETWEEN

JULIUS NYONGESA MATSESHE PETITIONER

AND

BUSIA SUGAR INDUSTRY RESPONDENT



JUDGMENT

1. The Petitioner alleges that he was summarily or constructively dismissed from employment by the Respondent and seeks damages for violation of his rights and compensation for injuries sustained at the Respondent's workplace. He filed the instant Petition dated 12th September 2022 and received in court on even date, seeking the following reliefs: -
 - a. A declaration that the conduct and actions of the Respondent are in violation of the Petitioner's inherent dignity and the right to have that dignity respected and protected as under Article 28 of *the Constitution* of Kenya, 2010;
 - b. Declaration that the Respondent violated the Petitioner's right to fair labour relations as protected under Article 41 of *the Constitution* of Kenya, 2020.
 - c. A declaration that the Respondent violated the petitioner's rights under Article 47 of *the Constitution* of Kenya.
 - d. General damages for violation of the Petitioner's rights Articles 28,41 and 47 of *the Constitution* of Kenya 2010
 - e. A declaration that the Respondents have contravened section 10, 18,22 30,47 and 48 of the *Work Injury Benefits Act* No. 13 of 2007.
 - f. Punitive damages for contravention of sections 10,18,2,30,47 and 47 of the *WIBA* 2007.
 - g. Compensation for the injuries sustained at the Respondent work place in the sum of Kshs. 198,729.
 - h. A declaration that the Respondent summarily or constructively dismissed the Petitioner from his employment.
 - i. General damages for summary or constructive dismissal in the sum of Kshs., 819,720.
 - j. A refund of Kshs. 23,000 for the medical expenses incurred by the Petitioner.
2. The Petitioner also filed the affidavit in support of the petition sworn on the 12th September 2022 together with annexures, which was later expunged after the ruling of 20th April 2023 and an Amended affidavit in support of the petition filed on 12th May 2023.
3. The Petition was opposed. The Respondent filed a Replying affidavit sworn by Caleb Anyula on the 20th January 2023 and received in court on 31st January 2023 accompanied by its annexures. The Respondent on 25th July 2023 filed an additional annexure.

Hearing

The Petitioner's case

4. The Petitioner's case was heard on the 25th July 2023 when the Petitioner testified on oath(CW), adopted his Supporting affidavit sworn on 25th April 2023 and filed in Court on 12th May 2023 as his evidence in chief, and produced his documents as exhibits P- Exhibits 1 to 13. The Petitioner was cross-examined by counsel for the Respondent, Mr. Ipapu.



The Respondent's cas

5. The Respondent's case was heard on even date where its witness Caleb Anyula (DW) testified on oath as the Respondent's witness of fact. He relied on his replying affidavit dated 20th January 2023 as his defence evidence in chief, and produced Respondent's annexures as exhibits D-1 to D-5. The witness was cross-examined by counsel for the petitioner , Nyegenye.

Petitioner's case in summary

(The case as per supporting affidavit of the petitioner filed on 12th May 2023..)

6. The Petitioner a resident of Busia was employed by the Respondent sometime back in 2020 as a driver, although he was never issued with any employment contract(C-Exh 1 being National Identity Card & C-Exh-2 Driving licence).
7. That on 25th May 2020, he was assigned duty to transport sugarcane using Tractor number xxxx(ZB2044) from Kabula in Bungoma to the respondent's company in Busibwabo area in Busia(C-Exh-3 unsigned weight tag indicating the Petitioner as the driver).
8. That upon delivering the sugarcane and offloading it he was asked to remove the remaining sugarcane in the tractor with his hands and his left finger was hit and cut by the offloading bar.
9. The Petitioner asserts that the Respondent violated his right under Article 41 of *the Constitution* , 2010, by assigning him duties beyond his description, failing to provide him with protective gear for the newly assigned role; failing to instruct or train him on his new duties, failing to provide him with a supervisor for the new role; failing to maintain the tractor and keep it in safe condition to ensure his safety; failing to cater for his medical expenses; failing to pay him his salary of May 2020, failing to issue him with a certificate of service; constructively dismissing him; failing to compensate him after the accident; failing to fill the Dosh form despite several requests; denying him access to the Company to have an audience with the management and abandoning him after the accident.
10. The Petitioner states that he reported the accident to Mr. Mohamed Pangu who called Mr. Abdul, the Transport Manager, who then instructed one Julius to take him to Nambale Sub-County Hospital where he was treated and taken home(C-Exh-4).He states that when he went home the Respondent did not bother with his condition and he was forced to find ways to cater for his medical expenses of Kshs. 23,000/-(C-Exh-5).
11. The Petitioner states that when he noticed that the Respondent was not keen to report his accident to the Director of occupational Safety and Health Services(Dosh) he visited Nambale Sub-County Hospital and was issued with a P3 Form(C-Exh- 6).
12. The Petitioner states that he sent a demand letter to the Respondent on 16th September 2020(C-Exh-7) which was never responded to and in October 2020, when he visited the Respondent's premises intending on going back to work, and following up on his compensation, he was barred by the security guards at the gate and informed by one of them that he was not allowed to enter until his compensation claim was settled which he states, coupled with the lack of communication from the company to date amounts to constructive dismissal.
13. The Petitioner states that he visited Lubinu Medical Clinic on 5th October 2020 and was examined by Dr. Charles Andai whom he paid Kshs. 8000(C-Exh-9) and a medical report was issued assessing his injuries to a degree of permanent incapacitation at 4%.(C-Exh- 8).



14. The Petitioner states that on finding that the Respondent had not notified Dosh, his advocates lodged a Complaint dated 9th September 2021 with Dosh(C-Exh-10) who then on 28th October 2021 wrote to the Respondent to comply with section 21 and 47 of WIBA, 2007. The Petitioner's advocates on 5th November 2021 served the said letter on the Respondent who acknowledged receipt(C-Exhb12) but failed to respond.
15. The Petitioner states that in light of the non-cooperation by the respondent, the Petitioner on the 5th February 2020 visited Busia County referral Hospital with an Unfilled Dosh Form I which was filled by Dr. Sammy Obukhuma(C-Exh-13).
16. The petitioner states that the respondent's continued failure to pay his May 2020 salary and compensation has put his life in peril by rejecting to facilitate his medical expenses; not affording him means to access treatment, constructively dismissing him.
17. The Petitioner states that the Respondent's actions are illegal, discriminatory, unlawful, inhumane and unconstitutional and against his employment and Work Injury Compensation laws which have frustrated hu financially and psychologically.
18. The Petitioner states that the Respondent has violated his rights under Article 28, 41 and 47 of the Constitution of Kenya, 2010 and the Respondent's action contravene Section 10,23,30,37 and 48 of the Work Injury Benefits Act, No. 7 of 2007 and should be punished for violating the law.
19. The Petitioner states that his salary was not fixed and was dependent on tons of sugar delivered per month and as at 25th May 2020, he was expecting a salary of Kshs. 51,570 which was not paid by the Respondent.

Respondents' case in summary

(As per the replying affidavit of Caleb Anyula who is the Respondent's Human Resource Officer.)

20. The Respondent states that the Petitioner was never an employee of the Respondent and was on the contrary an employee of Bethaniel Solutions and Services,(hereinafter "Bethaniel") a firm contracted by the respondent to provide ancillary services such as garbage collection and casual labour management(D-Exh-4 and D-Exh- 5).
21. That the Petitioner was among the employees of the said contracted firm(DExh-1), which firm was responsible for paying its employees from monies paid out by the Respondent(D-Exh-2).
22. The Respondent states that the Contractor was engaged by the Respondent on the premise that the Contractor was compliant with labour laws as outlined in its manual supplied to the respondent(D-Exh-3).
23. The Respondent stated that the court lacks the jurisdiction to award the Petitioner's prayers as it is not seized of the power to determine constitutional issues and that the Court lacks the jurisdiction to grant compensations contemplated under the Work and Injury Benefits Act.

Written Submissions

24. The court directed that the Petition be canvassed by way of written submissions. The Petitioner's written submissions drawn by Calistus Nyegenye instructed by the firm of Calistus & Co. Advocates were dated 29th August 2023 and received in court on the 30th August 2023. The Respondent's written submissions drawn by Ipapu P. Jackah & Co. Advocates were dated 16th October 2023 and received in court on even date.



Determination

Issues for determination.

25. The Petitioner addressed the following issues in his written submissions:-
 - a. Was the Petitioner an employee of the Respondent?
 - b. Did the Petitioner get injured while at the Respondent's Company
 - c. Is the Petitioner entitled to the reliefs sought?
26. The Respondent did not identify any issues and maintained that the Petitioner was not its employee but that of Bethaniel Solutions and Services.
27. The court having perused the pleadings by the parties and their submissions was of the considered opinion that the issues placed before the court by the parties for determination of the petition were follows:-
 - a. Whether the Court has jurisdiction to hear this case
 - b. Whether the Petitioner and the Respondent herein were in an employment relationship. If issue (b) above is in the affirmative, the Court to address the following additional issues:-
 - c. Whether the Petitioner was constructively dismissed.
 - d. Whether the Petitioner was entitled to remedies sought.

Issue a).Whether The Court Has Jurisdiction To Hear This Case

28. The Respondent in its Replying affidavit alluded to the court having no jurisdiction to hear matters relating to the violation of constitution rights.
29. The Court Of Appeal in *Daniel N Mugendi v Kenyatta University & 3 others* [2013] eKLR (Nambuye, Mwera & Kiage, JJ.A) in recognising the Jurisdiction of the Employment and Labour relations Court in determining constitutional matters relating to employment held that:-

“Believing as we do that the approach taken by Majanja J is the correct one, and in endeavouring to meet the ends of justice untrammelled by procedural technicalities, we set aside the order striking out the appellant’s petition and direct that the High Court do transfer it to the Industrial Court which also has jurisdiction and authority to consider the claims of breach of fundamental rights as pertain to industrial and labour relations matters. It is only meet and proper that the Industrial Court do exclusively entertain those matters in that context and with regard to Article 165(5)(b). And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well-acquainted with the appropriate forum for each kind of claim. However, parties should not file “mixed grill” causes in any court they fancy. This will only delay dispensation of justice.”



30. Applying the foregoing decision of the Court of Appeal, it is now settled law that the Court has jurisdiction hear, determine and to grant damages sought for breach of Constitutional rights in employment and labour disputes.

Issue b. Whether The Petitioner And The Respondent Herein Were In An Employment Relationship.

31. The Petitioner produced his national identity card, his driving Licence and a Weightment Tag as his documents. His employment was denied in defence at the hearing. The Petitioner told the court that he had applied for work at the Respondent and was employed as a driver and not issued with a letter of employment. He stated that his name appeared in the List of Cane Haulier Drivers appearing as D-Exh- 1(PG.7). He produced the Weightment Tag bearing the name of the Tractor xxxx No. 2B2044, which had the name of the Respondent.
32. The Petitioner testified that the tractor belonged to the Respondent but he had no Log Book details. He testified that he was employed as a Cane Haulier Driver in April 2020 as per D-Exh- 1(PG.7) and was paid per tonne at Ksh. 15. He states that he had no proof of payment as he was paid in cash after delivery of cane. When asked how many tonnes he delivered, he stated he only had the one for 25th May 2020.
33. The Petitioner stated that he was paid at the end of the month when they calculated all the tonnes delivered. When asked how much he was owed, he stated that he needed to calculate.

The Respondent's case

34. The Respondent called Mr. Caleb Anyula who testified on its behalf. He adopted his Replying affidavit of 20th January 2023. He testified that he was the In-charge Human Resource and repeated his statement that the Petitioner was never employed by the Respondent. He stated that for employment, they call for applications, interview, select and issue appointment letters.
35. Caleb testified that the Petitioner must have misdirected himself to be its employee and that he must have been an employee of an independent contractor engaged by the Respondent to supply manpower/Labour; and produced the Engagement contracts with the Contractor, Bethaniel(D-exh-4 and 5).
36. Caleb testified that the contractor paid its workers' wages after receiving money from the Respondent ((R-Exh-2A & 2B) and when asked whether Bethaniel had confirmed if the Petitioner was its employee, DW stated that they had not confirmed with them as their contract had expired at the time the Petitioner's suit was filed. DW stated that they did not respond to the letters from the Dosh as the petitioner was not its employee.
37. During cross-examination, Caleb told the Court that the list provided(R-Exh-1) bearing the Petitioner's name did not bear Bethaniel's name, but on re-exam stated that the list on Pg 5 of R-Exh-1 was of employees under the direct employment by the Respondent, while the list on pg. 4 of R-Exh-1 was of the contracted employees.
38. Caleb confirmed that the Petitioner's name was on a list that did not bear details whether it was from Bethaniel. He testified that the Respondent did not receive any demand letter and pointed to the variances in the address and dates in the demand letter with the postage receipt. He testified that they never responded the Ministry of Labour since the Petitioner was not their employee.



Analysis of Facts and the Law

39. The existence of employer -employee relations is primal to any employment claim. The jurisdiction of the court flowing from Article 162(2)(a) of *the Constitution* and Section 12 of the *Employment and Labour Relations Court Act* is premised on the existence of employer- employee relationship.
40. The respondent denied the Petitioner was ever its employee. The burden of proof of the employment relationship lay with the Petitioner. The Petitioner produced the Weighment Tag which bore his name and the name 'Busia Sugar Industry Ltd', the Respondent, as his evidence that he was an employee of the Respondent. He also referred to the Respondent's own document produced to show the employees of a Contractor engaged by the respondent. His name was in the list of Haulage drivers. The Petitioner did not produce the employment application letter he claimed to have used to seek for employment at the Respondent company.
41. The weighment Tag did not indicate that the Petitioner was an employee of the Respondent. The Weighment Tag did not refer to any employee number. It only had details relating to the following:- Weighment Tag: Busia Sugar Industry Ltd; Date: (5/25/2020 6.58.55pm); sub location as Kabula; Area: Kabula; Vehicle No: T052 REG : xxxx; Trailer: ZA2044; Net Weight: 3400; Loaders: (Blank) Driver: Julius Nyongesa Matseshe; Clerk: Wa...(Illegible) Mullah and sign words against the Petitioner's and the clerk's name, but the same was not signed. It was interesting that the Petitioner did not have any other prove as a driver of the Respondent, but only the weighment Tag of one day on 25th May 2020, no other Weighment Tags for any other days.
42. The Respondent produced agreement with Bethaniel Solutions & Services dated 1st January 2020(R-Exb 5). Clause 1 (xxii) was a provision for casual workers under the contractor which indicated that the Tractor drivers' wage was pegged on cane tonnage delivery (piece rate basis). This court find that this was consistent with the petitioner's testimony that the was paid per tonnage delivery. It was also consistent with the Respondent's witness testimony that the Petitioner was engaged by the contractor and not an employee of the Respondent.
43. Section 47(5) of the *Employment Act* provides as follows –
- (5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.
44. It was the burden of the Petitioner to prove the existence of an employment relationship as basis for the claim for constructive dismissal. The Petitioner did not call any employee he might have worked with to prove that he was an employee of the Respondent. The Petitioner did not provide any evidence of working continuously for the Respondent or at their company outside the weighment tag for one day. The petitioner in his Petition and documents, did not state the exact date when he was engaged as an employee by the Respondent and only stated that he was employed by the Respondent early in the year 2020 and that on the particular date of 25th May 2020, he was injured when he was an employee of the respondent. The Petitioner stated he was sent home after the injury only to return to the Respondent's premises in October of the same year and be denied entry.
45. The Court holds the opinion that the mere appearance of the name of the Respondent on the Weighment Tag did not mean that the Petitioner was an employee of the Respondent. There was no evidence of continuous engagement by the Respondent outside the weighment tag for one day. The Court finds that the Petitioner was a piece rate worker based on his statement that, his salary



was not fixed and was dependent on tonnes of sugar delivered per month and as at 25th May 2020, he was expecting a salary of Kshs. 51,570 which was not paid by the Respondent. In the reliefs sought there is no claim for unpaid wages. This position of truck drivers engaged by the Contractor being paid as per tonnage delivery was confirmed in the Agreement between the Respondent and the Contractor(R-Ehbt 5). At no point had the burden to prove that the Petitioner was an employee shift to the Respondent, for the Petitioner to require the Respondent to confirm whether the Petitioner was its employee. It was for the Petitioner to provide proof that he was employed by the Respondent. Additionally, there was no proof that the Motor vehicle Reg: xxxx Trailer No. ZA2044 belonged to the Respondent which could have been determined by obtaining a copy of records from the National Transport and Safety Authority(NTSA).

46. The court is persuaded by the decision in *Casmur Nyankuru Nyaberi v Mwakikar Agencies Limited* (2016) eKLR, where the Court stated:-

“ 8. The jurisdiction of the Employment and Labour Relations Court as far as employment matters are concerned is limited by the existence of an employment relationship as defined in law and the Court must always satisfy itself on this account before proceeding any further.

11. This Court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer. This does not however release the Claimant from the burden of proving their case. Even where an employment contract is oral in nature, the Claimant must still adduce some evidence whether documentary or viva voce to corroborate their word. More importantly, where an employee believes that the employer has in its possession some documents that would support the case of the employee, that employee is obligated to serve a production notice.”

47. In the instant case the Respondent provided evidence to show that the Petitioner was not its employee and that it had engaged an independent contractor(R- Exhb 5), under whom the Petitioner had been engaged as a piece rate worker. The Respondent disproved the assertion that the petitioner was its employee and the burden was on the Petitioner to show that he was engaged by the Respondent and, if he believed that any documents to show he was employed were with the Respondent he could have asked the Respondent to produce them. The Petitioner did not serve notice to produce.

48. Further in *Transport Workers Union v Euro Petroleum Products & another* [2019] eKLR, the Court stated that:-

“The Respondents on their part did not produce any documents to prove that the grievants were neither their employees nor engaged on casual basis. However, the Claimant ought to have at the least established that there was an employment relationship between the grievants and the Respondent(s) before the respondent would be called upon to produce records.

.....

The Claimant herein has failed to prove the existence of an employment relationship between the grievants and the Respondents. In the absence of an employer-employee relationship the Court is not in a position to consider the issue of termination of employment under the *Employment Act*.”



49. The Jurisdiction of this Court to handle constitutional petitions and any other employment related claim is premised on existence of employer employee relations. I do uphold to apply in the instant case the decisions cited above which are consistent with the jurisdiction of the Court under Article 162(1) (b) of *the Constitution* to wit:- ‘Article 162. System of courts (1) The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in clause (2). (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to- a) employment and labour relations; (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).’”
50. The legislature under section 12 of the *Employment and Labour Relations Court Act* legislated the jurisdiction of the court as envisaged under Article 162(2)(a) of *the Constitution*. Section 12 of *Employment and Labour Relations Court Act* provides for the jurisdiction of the court in employment and labor disputes as follows:- ‘12. Jurisdiction of the Court (1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including — (a) disputes relating to or arising out of employment between an employer and an employee; (b) disputes between an employer and a trade union; (c) disputes between an employers’ organisation and a trade unions organisation; (d) disputes between trade unions; (e) disputes between employer organizations; (f) disputes between an employers’ organisation and a trade union; (g) disputes between a trade union and a member thereof; (h) disputes between an employer’s organisation or a federation and a member thereof; (i) disputes concerning the registration and election of trade union officials; and (j) disputes relating to the registration and enforcement of collective agreements.’”
51. The Petitioner having failed to prove the existence of an employment relationship with the Respondent, the Petitioner’s claim for constructive dismissal and all related violations have no leg to stand and must thus fail.

Issue d). Whether The Petitioner Was Entitled To Remedies Sought.

52. The Petitioner sought for various reliefs as follows:-
- k. A declaration that the conduct and actions of the Respondent are in violation of the Petitioner’s inherent dignity and the right to have that dignity respected and protected as under Article 28 of *the Constitution* of Kenya, 2010;
 - l. Declaration that the Respondent violated the Petitioner’s right to fair labour relations as protected under Article 41 of *the Constitution* of Kenya, 2020.
 - m. A declaration that the Respondent violated the petitioner’s rights under Article 47 of *the Constitution* of Kenya.
 - n. General damages for violation of the Petitioner’s rights Article 28,41 and 47 of *the Constitution* of Kenya 2010
 - o. A declaration that the Respondents have contravened section 10, 18,22 30,47 and 48 of the *Work Injury Benefits Act* No. 13 of 2007.
 - p. Punitive damages for contravention of sections 10,18,2,30,47 and 47 of the *WIBA* 2007.
 - q. Compensation for the injuries sustained at the Respondent work place in the sum of Kshs. 198,729.



- r. A declaration that the Respondent summarily or constructively dismissed the Petitioner from his employment.
 - s. General damages for summary or constructive dismissal in te sum of Kshs. 819,720.
 - t. A refund of Kshs. 23,000 for the medical expenses incurred by the Petitioner.
53. The prayers a, b,c,d, h & i above are reliefs available to an employee. The Court held that the Petitioner did not prove that he was employed by the Respondent. The said prayers are not available to him.
54. As regards prayers e,f, g and j which relate to the injuries allegedly sustained by the Petitioner at work, the preamble to Work Injury Benefits Act, 2007 (WIBA) provides as follows:-“An Act of Parliament to provide for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes.”
55. Work injuries and diseases claims and the applicable remedies are regulated under the Work Injury Benefits Act, 2007 (WIBA). The appropriate legislation with regard to any work injuries and diseasesclaims at the place of work is WIBA. The Employment Act, 2007 does not apply in this instance as there is a specific legislation with regard to work injury and disease at the work place.
56. In the upshot, the Court cannot overstep the mandate of the Director of Occupational Safety and health services and the said prayers e,f, g and j fail for want of jurisdiction.

Conclusion And Disposition

57. The Court having considered the petition dated 12th September 2022 on merit Declares that the Petition is incompetent as there was no employer employee relationship between the Petitioner and the Respondent. The Court further holds that it lacks jurisdiction to hear and determine work injury and disease related claims which is the exclusive mandate of Director of Occupational Safety and Health Services under the Work Injury Benefits Act, 2007 (WIBA).
58. The Petition is dismissed with costs to the Respondent.
59. Stay of 30 days granted of the execution on costs
60. It is so Ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 16TH DAY OF NOVEMBER 2023

JEMIMAH KELI

JUDGE

In The Presence of

C/A Lucy Macheso

For Petitioner: Nyegenye Advocate

For Respondents: Ipupa Advocate

