



Arendse & 182 others v Meta Platforms, Inc & 3 others; Kenya Human Rights Commission & 8 others (Interested Parties) (Constitutional Petition E052 of 2023) [2023] KEELRC 3381 (KLR) (7 December 2023) (Ruling)

Neutral citation: [2023] KEELRC 3381 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E052 OF 2023

MN NDUMA, J

DECEMBER 7, 2023

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
ARTICLES 2, 19, 20, 21, 22, 23, 24, 27, 28, 29, 33, 36, 41,
43, 47, 50, 54, 55, 159, 165, 258, 259 AND 260 OF THE
CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF RULE 7(1) OF THE EMPLOYMENT AND
LABOUR RELATIONS COURT (PROCEDURE RULES), 2016**

AND

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

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
SECTIONS 2, 3, 5, 9, 10, 11, 12, 13, 14, 15, 17, 20, 21, 30,
34, 35, 36, 40, 41, 43, 44, 45 AND 49 OF THE EMPLOYMENT
ACT**

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
THE ILO TERMINATION OF EMPLOYMENT CONVENTION,
1982 AND RECOMMENDATION 166 THEREOF;
TERMINATION OF EMPLOYMENT RECOMMENDATION,**



1982 (NO. 166)

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
SECTIONS 3 AND 4 OF THE FAIR ADMINISTRATIVE
ACTION ACT

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF
GUIDING PRINCIPLES 11, 12, 13, 14, 17, 18, 19, 22, 23, 29

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AND 31 OF THE GUIDING PRINCIPLES ON BUSINESS AND
HUMAN RIGHTS IMPLEMENTING THE UNITED NATIONS
'PROTECT, RESPECT AND REMEDY' FRAMEWORK

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
THE INTERNATIONAL CONVENTION ON THE
ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
THE CONVENTION AGAINST TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
THE MIGRATION FOR EMPLOYMENT CONVENTION
(REVISED), 1949 AND THE MIGRANT WORKERS
(SUPPLEMENTARY PROVISIONS) CONVENTION, 1975

BETWEEN

KIANA MONIQUE ARENDSE 1ST PETITIONER

JAMES AGADA MARK 2ND PETITIONER

MEAZA SHURA 3RD PETITIONER

MARK AGABA 4TH PETITIONER

FASICA BERHANE GEBREKIDAN 5TH PETITIONER



CAMERON ROWAN CORNER	6 TH PETITIONER
ROBEL KHASAY GEBRU	7 TH PETITIONER
ABEL ABRHA ASGEDOM	8 TH PETITIONER
EPHREM KIRUBEL MIHRETEAB	9 TH PETITIONER
DAWIT BIRHANE BERHE	10 TH PETITIONER
TREVIN BROWNIE	11 TH PETITIONER
LUBEGA PACIFIC	12 TH PETITIONER
NAOD AMANUEL GEBREKIDAN	13 TH PETITIONER
TEAMIR DELLELEGN	14 TH PETITIONER
KAUNA IBRAHIM MALGWI	15 TH PETITIONER
TSIDENA ABADI ZEMO	16 TH PETITIONER
MESERET DINKU ABDO	17 TH PETITIONER
AYANA EPHREM GELETA	18 TH PETITIONER
ALEWIYA MOHAMMED MUSA	19 TH PETITIONER
TIKKY OLANG'O	20 TH PETITIONER
KHOTHAMANI MHLONGO	21 ST PETITIONER
YONA BEDASA	22 ND PETITIONER
THRAS GIDEY	23 RD PETITIONER
SAMRAWIT TEKESTE	24 TH PETITIONER
ZEGEYE DAWIT GEBREMARIAM	25 TH PETITIONER
JASON ILOVU	26 TH PETITIONER
ROSEBELLAH WAKHU	27 TH PETITIONER
CAROLINE NJERI MUCHANGI	28 TH PETITIONER
EVELYN NALUWU	29 TH PETITIONER
HASSAN ALKANO	30 TH PETITIONER
EDINAH LUMUMBA	31 ST PETITIONER
PALESA GLORIA KOMETSI	32 ND PETITIONER
MAHAT ABDULLAHI SHEIKH	33 RD PETITIONER
MAHLET YILMA	34 TH PETITIONER
CIELLA IRAMBONA	35 TH PETITIONER
MUSA ABUBAKAR	36 TH PETITIONER
ABDIKADIR GUYO	37 TH PETITIONER



JAMES IRUNGU	38 TH PETITIONER
HABEN HAILE YOHANES	39 TH PETITIONER
JUANITA JONES	40 TH PETITIONER
ODIRILE MOLEBOGE	41 ST PETITIONER
TESSLINE TONI KIEWIETS	42 ND PETITIONER
ANTIAN JAY-DEAN MOOSA	43 RD PETITIONER
SAMUEL EBENIRO	44 TH PETITIONER
LIELINA ASSEFA	45 TH PETITIONER
MARION IMUYA MUHANDA	46 TH PETITIONER
ABDULLATEEF KEHINDE	47 TH PETITIONER
BELLA NININHAZWE	48 TH PETITIONER
MAGDALENE SILA	49 TH PETITIONER
SOPHIA DANIELS	50 TH PETITIONER
EPHRATA MAMO	51 ST PETITIONER
AMERTI BAYISA	52 ND PETITIONER
JEAN DE DIEU UWIDUHAYE	53 RD PETITIONER
TUYISHIMIRE MARIE IRENE	54 TH PETITIONER
SIBUSISO DUMA	55 TH PETITIONER
ARIANE HOGOZA	56 TH PETITIONER
FAYO HUSSEIN KADIR	57 TH PETITIONER
NGARAMBE CHRYSOLOGUE	58 TH PETITIONER
UWAMAHORO STELLA CARINE	59 TH PETITIONER
ABDIKHES DAAR	60 TH PETITIONER
ESTHER MUKAMANA	61 ST PETITIONER
CYLIA SKOSANA	62 ND PETITIONER
MUGERWA HAMIDAH	63 RD PETITIONER
ISMAIL ALIYU	64 TH PETITIONER
LAWAL MOHAMMAD SHUAIBU	65 TH PETITIONER
SONIA MATETE KGOMO	66 TH PETITIONER
JODA BASHIR SUNDAY	67 TH PETITIONER
DAWIT BIRHANE BERHE	68 TH PETITIONER
DAVID NKURUNZIZA	69 TH PETITIONER



NATHAN NKUNZIMANA	70 TH PETITIONER
JOHNSON TWAGIRIMANA	71 ST PETITIONER
NASIRU AMINU MADAKI	72 ND PETITIONER
STEPHAN VAN DEN BERG	73 RD PETITIONER
NALEDI MKHIZE	74 TH PETITIONER
ALINOOR MOHAMED ABDULLAHI	75 TH PETITIONER
WILBERFORCE APUNGU	76 TH PETITIONER
NAFTALI ANDATI WAMBALO	77 TH PETITIONER
RAYWINE MUKONAMBI	78 TH PETITIONER
IRANYIBUTSE KOFFI	79 TH PETITIONER
MUSA ALIYU BAFFA	80 TH PETITIONER
DANIEL ELIAS YADETA	81 ST PETITIONER
MICHAEL MELAKU WALELIGN	82 ND PETITIONER
NEO NKWE	83 RD PETITIONER
BUSISIWE EGNECIOUS NKOSI	84 TH PETITIONER
PHETHILE BRIDGET DLAMINI	85 TH PETITIONER
KWENZEKILE NGIDI	86 TH PETITIONER
PRINCESS NELISIWE MADLEBE	87 TH PETITIONER
ANTONY AWUOR	88 TH PETITIONER
KIDIST FANTU BUZUNEH	89 TH PETITIONER
ASCHALEW SEIFU HUSEN	90 TH PETITIONER
ABDIHAMID BULLE	91 ST PETITIONER
NAKATE JANAT	92 ND PETITIONER
KAME TUYE BADASA	93 RD PETITIONER
NYANGARESI DANCAN	94 TH PETITIONER
UMAR KABIR	95 TH PETITIONER
HIJRA ABDALLAH	96 TH PETITIONER
HANAN ABDI	97 TH PETITIONER
BEATRICE ANI	98 TH PETITIONER
INNOCENTIA NEO MABASO	99 TH PETITIONER
SAMRAWIT MARKOS WELDESENBET	100 TH PETITIONER
MINASE SISAY	101 ST PETITIONER



ESTHER EMOSHOGWE MICHAEL	102 ND PETITIONER
LAWAL SUWIDI MOHAMMAD	103 RD PETITIONER
TUMWEBAZE PROSCOVIA	104 TH PETITIONER
KAME BADASA	105 TH PETITIONER
NAHOM TEKEST	106 TH PETITIONER
ABDIAZIZI HUSSEIN ADAN	107 TH PETITIONER
FREDRICK AMOS OKUMU	108 TH PETITIONER
ABDULLAHI GULIYA ADAN	109 TH PETITIONER
SHEWIT MULUGETA	110 TH PETITIONER
MOHAMED DAUD ABDI	111 TH PETITIONER
RIYAN ISMAEL IBRAHIM	112 TH PETITIONER
HALIMA JILLO	113 TH PETITIONER
NAJMA ILYAS HAJI	114 TH PETITIONER
GLADYS ATYANG	115 TH PETITIONER
TEDDY ODHIAMBO	116 TH PETITIONER
SAUSEPETER OJIAMBO	117 TH PETITIONER
LESEGO MOTLANTHE	118 TH PETITIONER
PASSY NAMYALO	119 TH PETITIONER
ADIAM GEBREZGABHER BEYIN	120 TH PETITIONER
TIRHAS HAILEKIROS HAILESILASSE	121 ST PETITIONER
BOTLHOKWA NONDALI DITSHEPO RANTA	122 ND PETITIONER
MOHAMUD AHMED HAJI	123 RD PETITIONER
HENRY NTEGE	124 TH PETITIONER
MOIPONE MMUSI	125 TH PETITIONER
ABDIAZIZ OSMAN ADAN	126 TH PETITIONER
SANDILE MKHABELA	127 TH PETITIONER
KELVIN MAGU NGILA	128 TH PETITIONER
HELLEN NAMUYANJA	129 TH PETITIONER
MERCY CHIMWANI	130 TH PETITIONER
ROSS KAGOSHE	131 ST PETITIONER
AMIR AHMEDMUZ ADEM	132 ND PETITIONER
SINIDU YOHANNES JOBA	133 RD PETITIONER



YASMIL DAUD ALI	134 TH PETITIONER
ADDNA HAJI	135 TH PETITIONER
LONWABO MTSHENGU	136 TH PETITIONER
HAMZA DIBA TUBI	137 TH PETITIONER
FELIX OTIENO MURUKA	138 TH PETITIONER
IBRAHIM ALIO GALGALLO	139 TH PETITIONER
LARSON ABEL DOMJUL	140 TH PETITIONER
BORU HUSSEIN JATTANI	141 ST PETITIONER
MOHAMED ABDIKADIR IBRAHIM	142 ND PETITIONER
HUSSEIN KORE WAKO	143 RD PETITIONER
MOHAMED GURACHA	144 TH PETITIONER
JATANI HUSSEIN JATANI	145 TH PETITIONER
MOLU ADAN GOLICHA	146 TH PETITIONER
FELIX MUNDE ONDIGO	147 TH PETITIONER
BONGIWE LAMANI	148 TH PETITIONER
BERISA TESFAYE	149 TH PETITIONER
SHARMAKE SAID	150 TH PETITIONER
CARYN PIETERSE	151 ST PETITIONER
SHUKRIA ALI TIFOW	152 ND PETITIONER
ASHA ABDULLAHI ABDIRAHIM	153 RD PETITIONER
OBSITU ALIYI OMER	154 TH PETITIONER
GEORGE KIPSANG	155 TH PETITIONER
KEANAN LESLEY JOUSTEN	156 TH PETITIONER
ELMI OSMAN	157 TH PETITIONER
ABDIRIZAK MUKTAR AHMED	158 TH PETITIONER
IBRAHIM ROBA QAMPARE	159 TH PETITIONER
MARIAM ADHAN HASSAN	160 TH PETITIONER
BIGOMBA LASTO	161 ST PETITIONER
KIBIRIGE IVAN GAAYI	162 ND PETITIONER
MAWERERE ERIC	163 RD PETITIONER
FRANK MUGISHA	164 TH PETITIONER
ENDALEW SHIBABAWE	165 TH PETITIONER



RETINA ASFAWEUNICE WANJIRU MWAURA TELEGN ..	166 TH PETITIONER
EUNICE WANJIRU MWAURA	167 TH PETITIONER
AHMEDNOOR SALAT OSMAN	168 TH PETITIONER
MUSTAPHA MUKHTAR	169 TH PETITIONER
SANI MUHAMMAD FAISAL	170 TH PETITIONER
STEPHEN KOOME	171 ST PETITIONER
JOSHUA OTIENO OOKO	172 ND PETITIONER
SSENGOOBA ALLAN OSWALD	173 RD PETITIONER
ESTHER MAINGI	174 TH PETITIONER
MARVIN NKOJO	175 TH PETITIONER
ILIYASU ABBA AHMED	176 TH PETITIONER
MUHAMMAD ALIYU	177 TH PETITIONER
EMMANUEL SAMBO	178 TH PETITIONER
FIYORE NUGUS	179 TH PETITIONER
ABDI MOHAMED ALI	180 TH PETITIONER
ROBA DEREJE AMANTE	181 ST PETITIONER
MICHAEL NKOKO	182 ND PETITIONER
AYUB HUSSEIN GISHO	183 RD PETITIONER

AND

META PLATFORMS, INC	1 ST RESPONDENT
META PLATFORMS IRELAND LIMITED	2 ND RESPONDENT
SAMASOURCE KENYA EPZ LIMITED T/A SAMA	3 RD RESPONDENT
MAJOREL KENYA LIMITED	4 TH RESPONDENT

AND

KENYA HUMAN RIGHTS COMMISSION	INTERESTED PARTY
KATIBA INSTITUTE	INTERESTED PARTY
KITUO CHA SHERIA	INTERESTED PARTY
KENYA NATIONAL HUMAN RIGHTS AND EQUALITY COMMISSION	INTERESTED PARTY
CENTRAL ORGANIZATION OF TRADE UNIONS KENYA	INTERESTED PARTY
THE ATTORNEY GENERAL	INTERESTED PARTY



MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES ... INTERESTED PARTY

MINISTRY OF HEALTH INTERESTED PARTY

MINISTRY OF FOREIGN AFFAIRS INTERESTED PARTY

RULING

1. The Petitioners/Applicants brought a Notice of Motion application dated 11th April, 2023 seeking an order in the following terms:-
 - (a) Spent
 - (b) Spent
 - (c) Spent
 - (d) That this Honourable Court be pleased to cite the Respondents for contempt of Court for disobeying this Honourable Court's order given on 20th March 2023 and extended on 28th March 2023.
 - (e) That this Honourable Court be pleased to deny the Respondents audience before this Honourable Court until each of them has complied with the court orders issued on 20th March 2023 and extended on 28th March 2023.
 - (f) That this Honourable Court be pleased to issue summons to the Chief Executive Officer of the 1st and 2nd Respondents, Mr. Mark Elliot Zuckerberg, to explain why the 1st and 2nd Respondents have failed to abide by the court orders given on 20th March 2023 and extended on 28th March 2023.
 - (g) That this Honourable Court be pleased to issue summons to the Chief Executive Officer of the 3rd Respondent, Ms. Wendy Gonzalez, to explain why the 3rd Respondent has failed to abide by the court orders given on 20th March 2023 and extended on 28th March 2023.
 - (h) That this Honourable Court be pleased to issue summons to the Chief Executive Officer of the 4th Respondent, Mr. Thomas Mackenbrock to explain why the 4th Respondent has failed to abide by the court orders issued on 20th March 2023 and extended on 28th March 2023.
 - (i) That this Honourable Court be pleased to order that each of the Respondents pay a fine to this Court of Kshs.10,000,000 per day for every day they have disobeyed and continue to disobey the orders of this Honourable Court issued on 20th March 2023 and extended on 28th March 2023.
 - (j) That costs of this application be provided for by the Respondents
2. The application is premised on grounds (1) to (16) set out on the face of the Notice of Motion and buttressed by supporting affidavits of the 1st petitioner Kiana Monique Arendse sworn on 11th April, 2023; Affidavit of Service of Fatuma Diba sworn on to 27/3/2023 deposing to the service done on the 3rd respondent on 22nd March, 2023 and the Court Order the subject of this application issued on 21st March, 2023 and attached to the application.



3. Affidavit by Joyce Gathoni Sworn to on 27th March, 2023 deposing to the service of the said Court order inter alia on the 1st to 6th interested parties. Service of the Notice of Motion and supporting documents was also done on all the parties including a hearing notice for 28th March, 2023. Affidavit of Service of Mercy Mutemi sworn on 27th March, 2023 deposing to the service of the Court Order issued on 20th March, 2023 and the rest of the documentation on the 1st and 2nd respondents.
4. The respective affidavits of service depose to specifics of service done in Kenya; in the United States of America and Sweden on the cited contemnors. All the parties served have fully participated in these proceedings except the intended interested parties who have chosen not to file any pleadings and submissions. Supporting affidavit of 169th Petitioner sworn to on 11th April, 2023 deposing to discovery of a Facebook content by one Abubakar Umar Abubakar of Nigeria dated 6th April, 2023 and in respect of which the content had been moderated as follows:-

“violent or graphic content. This photo is covered, so people can chose whether they want to see it”

and affidavit by Tessline Toni Kiewiets the 42nd Petitioner who is from South African and deposes to discovery of an offensive face book content written in Zulu by one Clayton Matjan dated 17th March, 2023. That after the Court Order was issued on 20th March, 2023, she reported the offensive content to facebook on 4th April, 2023 and on 6th April, 2023 she received a report that the post she had reported did not go against the 1st and 2nd respondent’s community standards and would remain on the platform. She deposes that the response could only have been generated by a content moderator engaged by the 1st and 2nd respondent and is therefore evidence that content moderation was proceeding in defiance of the orders of the Court aforesaid.

5. It is the applicants’ case that the respondents had proper knowledge of and proper notice of the terms of the Court Order issued on 20th March, 2023. That despite the said knowledge, the 1st 2nd 3rd and 4th respondents have willfully disobeyed the said Court orders as follows:-

A.

- (i) The 1st and 2nd respondents have intentionally breached Order ‘e’ and ‘f’ as they have engaged moderators other than the moderators engaged through the 3rd respondent to carry out Facebook Content Moderation for the Eastern and Southern Africa Region.

B.

- (ii) The 3rd respondent has violated Order ‘c’ and ‘d’ by terminating contracts of some of the Content Moderators and processed their terminal dues despite the Court Order barring them from terminating the contract of the Facebook Content Moderators.
- (iii) The 3rd respondent has varied the contractual terms of the Facebook Content Moderators (GPL 8 CO) in a manner unfavourable to the moderators by sending all of them on compulsory paid leave and on ambiguous terms which action has caused the applicants untold anxiety as they do not know what will become of them.
- (v) The 3rd respondent has breached Order ‘c’ and ‘d’ by putting undue pressure on the GPL 8 CO by approaching them DIRECTLY with an ultimatum to sign unlawful documents denouncing this petition despite both the moderators and the 3rd respondent being represented by Counsel.

C.



- (iv) The 4th respondent has breached Court Order 'f' by proceeding to engage Facebook Content Moderators who are currently being trained on how to conduct Facebook Content Moderation.

The applicants depose that the terms of the Court Order issued on 20th March, 2023 were clear, unambiguous and binding on the respondents. That despite the knowledge of the existence of the said Court Orders, the respondent have willfully disobeyed and acted in breach of the terms of the order.

6. That the conduct of the respondents was willful and deliberate and very much in line with the respondents' Modus Operandi and violating the contractual rights of the petitioners.
7. That the contempt demonstrated by the respondents is severe and to the detriment of the applicants and the Court has set out to protect the applicants from the ongoing violation of their contractual rights.
8. That the respondents have grossly undermined the authority and dignity of the Court and have subjected the Court to contempt in the eyes of the public.
9. That it is necessary for the Court to restore the dignity, honour and public confidence in the judicial process by granting the orders sought in this application.
10. That the advocates for the applicants have written to the respondents to purge their contempt yet the contempt persists. That this is evidence that the said contempt is deliberate and willful. That the application be granted as prayed.
11. The applicants have attached to the application a notice written to the Content Moderators by one Lilian Kiplagat in which she stated:-

“As many of you have heard, the temporary injunction was maintained today in Court. This means that Sama is temporarily pausing all activities related to the redundancy for the GPL 8 CO team including:-

1. Contract - termination for redundancy are suspended.
2. Return flights cannot be issued (flights home).
3. Severance and ex gratia dues cannot be paid.
4. Leave balances cannot be encashed.
5. Expiring work permits/pass will be renewed on an urgent basis.

We apologise for any inconvenience or uncertainty this may cause. The March Payroll will be paid out by 30th March, 2023.

Given that as at March 31st 2023, there will be no content Moderation work available to Sama, the GPL 8 CO then will be placed on paid leave pending further directions from management and from the Court. Staff are asked not to come to the office after March, 31st 2023, but payroll and benefits will continue in accordance with your contracts of employment. We will communicate an update by April 12th 2023 at the latest. If you have any questions please send them to queries.people@sama.source.org.

Best regards” (Empasis added)



12. The applicants in the Notice of Motion and supporting affidavit of Kiana Monique Arendse, restate the Orders of the Court issued on 20th March, 2023 emphasizing matters which the respondents were specifically restrained and/or prohibited from doing pending the hearing and determination of the suit. The applicants further attempt to demonstrate the manner in which the 1st, 2nd 3rd and 4th respondents have willfully defied the Orders of the Court. The applicants urge the Court to grant them the orders sought in the application and in particular cite the respondents for willful contempt of the Court orders; summon the named persons to Court to show cause why they should not be found guilty of willful contempt of the Court orders and punish them as prayed for in the Notice of Motion.
13. The applicants filed a further application dated 27th April, 2023 in which they sought the following further orders:-
 - (a) The respondents be restrained from terminating the petitioners' contracts for any reason whatsoever.
 - (b) The Court be pleased to quash any termination letters issued as from 21st March, 2023, the date of issue of the 20th March, 2023 Order.
 - (c) The respondents be compelled to pay the Facebook Content Moderators their full entitlement in terms of monthly income and benefits for the month of April, 2023 and for every month until the petition is determined.
 - (d) An Order preserving the immigration status of the Facebook Content Moderators and allowing them to remain in the country lawfully pending the hearing and determination of the petition.
 - (e) An order citing the 1st, 2nd and 3rd respondents for further and grave contempt.
14. The applicants depose that this further application dated 27th April, 2023, was necessitated by unlawful conduct by the 1st, 2nd and 3rd respondents in violation of the order issued on 20th March, 2023 in which the Court had prohibited the 1st, 2nd and 3rd respondents from implementing the redundancy notice of 10th January, 2023 as read with the redundancy notice of 18th January, 2023 and further the 1st, 2nd and 3rd respondents were prohibited from terminating the contract of the Facebook Content Moderators or varying their contract in a manner unfavourable to them.
15. The applicants depose that on 27th April, 2023, the petitioners received from the 3rd respondent emails that their contracts had already expired by effluxion of time and that they had until 11th May, 2023 to clear with the 3rd respondent. That thereafter those applicants who were not Kenyan would have to leave the company as they were not employed. Further through the email the petitioners learnt that the 3rd respondent did not intend to pay their April, 2023 salaries.
16. That this breach of Court orders had created a new nightmare for the Facebook Content Moderators including lack of income to sustain their living in Kenya and the safety of the majority of them who are foreigners. This necessitated the filing of this second application dated 27th April, 2023. On 28th April, 2023, the Court per Ongaya J. granted a further interim Order preserving the immigration status of foreign petitioners herein being Facebook Content Moderators and allowing them to remain in Kenya lawfully.
17. The applicants depose that the 3rd respondent could not separate with the petitioners by effluxion of time since the principle no longer applied in the circumstances of the case, the 3rd respondent having sent to all the Facebook Content Moderators the email dated 10th January, 2023, informing them that



they were all going to lose their jobs as a result of redundancy and that their last working day was 28th February, 2023.

18. That a further email was sent by the 3rd respondent to the petitioners on 18th January, 2023 titled “Business – Updated Timelines” which informed the petitioners that the timeline for the redundancy had been adjusted with the final working day being 31st March, 2023.
19. The email also informed the petitioners that because of the extended redundancy timelines, all the contracts and work visas expiring before 31st March, 2023 would be extended to 31st March, 2023. That on 8th February, 2023, all the Facebook Content Moderators were issued with termination letters titled “Termination on account of redundancy.” The letter stated that their contracts had been terminated on account of redundancy. The last working day was to be 31st March, 2023.
20. The question that the applicants now pose is whether the Facebook Content Moderators contracts having been terminated on account of redundancy via the termination letter dated 8th February, 2023 could also be said to have been termination later by reason of effluxion of time. The applicants posit that a contract of employment cannot be terminated twice for different reasons, and therefore the 1st, 2nd and 3rd respondents were acting in contempt of Court vide their letter dated 27th April, 2023 in which they purported to now terminate the contracts of employment of the applicants in violation of the Court Order and under the pretext that the contracts had terminated by effluxion of time which event could not arise by fact of the earlier termination and the issued Court Order of 20th March, 2023.
21. The applicants cited the decision of the Federal Court of Australia in the case of Melbourne Stadiums Limited –vs- Sautner [2015] FCAFC 20 Tracey Gilmour, Jagot White and Beach JJ where the Court stated as follows at paragraph 112:-

“We do not consider that Shepherd supports MSL’s contention that a lawfully terminated agreement, in effect, may be resuscitated and then re-terminated upon some ground not known at the time of the termination. An agreement may be terminated lawfully for any number of reasons: resignation of the employee; redundancy; effluxion of the contractual term of employment or some other contractual basis. A contract cannot be terminated twice.”
22. The applicants deposed that the employer having chosen to terminate the service agreement in one way, was bound by that choice and by the contractual consequences of that choice.
23. That in the Australian case, the employer had undertaken a redundancy and later sought to backtrack to dismiss the employee on disciplinary grounds.
24. The applicants urged the Court to find that the conduct by the respondents vide the letter of 27th April, 2023 further aggravated their willful contempt of the Orders issued by the Court on 20th March, 2023 and they be punished accordingly.

The applicants filed supplementary affidavit in support of both Applications dated 11th April, 2023 and 27th April, 2023 sworn to by Kiana Monique Arendse on 23rd May, 2023 and in response to the replying affidavit by the 1st and 2nd respondents reiterating their case in greater detail and emphasis to have the respondents cited and punished for willful contempt of Court Orders of 20th March, 2023.

Replying Affidavits by 1st and 2nd respondents to the Applications dated 11th April, 2023 and 27th April, 2023



25. M/s Joanne Redmond based in Dublin Ireland deposed to affidavits sworn to on 18th May, 2023 in which she states that she is the Director and Associate General Counsel, Labour and Employment, EMEA at Meta Platforms Ireland Limited, the 2nd respondent herein and is aware of the facts of the case and had authority to swear the replying affidavit on behalf of the 1st and 2nd respondents. That he had understood the contents of the Notice of Motion application before Court. That the 1st and 2nd respondents were foreign companies not resident or trading within this country's jurisdiction and made this affidavit in protest. That the petitioners were not at all material times to the petition the employees of the 1st and 2nd respondent. That the 1st and 2nd respondents to the extent that they have noted an appeal against the Ruling of this Court on the issue of jurisdiction to the Court of Appeal reserve their right to continue to object to the jurisdiction of this Court over the 1st and 2nd respondents in this petition.
26. That the application before Court seeks inter alia to cite the respondents for contempt of Court having allegedly violated the orders of this Court issued on 20th March, 2023. That to the extent that the application also seeks that the Chief Executive Officer (CEO) of the 1st and 2nd respondent be summoned to explain why the 1st and 2nd respondents have allegedly failed to abide by the Court orders is wholly incompetent, bad in law and without merit. That to the extent that no order was granted by the Court to lift the Corporate Veil of the 1st and 2nd respondent, the application is incompetent, since this Court cannot assume jurisdiction over the Chief Executive Officer as he is not a party to these proceedings and has not been served with the Order of 20th March, 2023.
27. That the applicants have not demonstrated to the Court that there was willful and deliberate disobedience of a Court Order that the 1st and 2nd respondents were aware of. That the applicants have not demonstrated that the Order issued was clear and precise so as to leave no doubt as to what a party was supposed to do or refrain from doing. That he is aware that the law in Kenya places a high standard of proof on a party who wishes to have another cited for contempt of Court.
28. That it is alleged that the 1st and 2nd respondents have contravened Orders (e) and (f) of the ex parte orders issued on 20th March, 2023. The deponent sets out the two orders in extenso at paragraph 7 of the affidavit and deposes that the applicants have not demonstrated that the 1st and 2nd respondents have contravened the two Orders or any one of them.
29. That the affidavit of the 1st petitioner sworn in support to the application is wholly irrelevant to the 1st and 2nd respondents since redundancy matters deposed to thereof relate to Sama at Sama's office in Nairobi. That the 1st and 2nd respondents are not privy to the redundancy process and do not have any involvement therein and could not have breached the Order of 20th March, 2023 on account of the said redundancy process and that in any case the application does not allege any breach of the interim orders 'c' and 'd' by the 1st and 2nd respondents.
30. That the supporting affidavit of the 42nd and 169th petitioners which allegedly speak to issue regarding the 1st and 2nd respondents do not show that the 1st and 2nd respondents are in breach of the Orders (e) and (f) issued on 20th March, 2023.
31. That the two deponents (42nd and 169th) petitioners' affidavits rely on the uncertified digital and electronic evidence, the Content of which cannot be verified by the Court. That the said electronic evidence is therefore not admissible to prove the alleged contents as against the 1st and 2nd respondent.
32. With regard to the 169th Petitioner, he alleged that he saw a post on the social media platform Facebook in Nigeria which post is blurred and alleges that the post contravenes the Order of 20th March, 2023. The deponent states that the post is totally unrealistic and cannot be certified to be true being digital



- evidence. That the said position in any event relates to content allegedly posted in Nigeria, which is in West Africa. The deponent states that he is aware that the Order of the Court relates to Eastern and Southern Africa and not West Africa.
33. With regard to the affidavit of the 42nd petitioner, the deponent states the same does not prove any issue of contempt. That the 42nd petitioner also relies on uncertified electronic and digital evidence and makes allegations that are not substantiated by way of evidence. The 42nd petitioner alleges to have made a report on the social media site Facebook, which she alleges was responded to and this allegedly shows that the content is underrated. That this does not show the 1st and 2nd respondents were in violation of the Court Order in any way. In any event, if at all the post is a genuine post made on the social media site, Facebook, it is impossible to discern who could have responded to the 42nd petitioner's message. That the document submitted by the 42nd and 169th petitioners do not prove contempt of Court on the part of the 1st and 2nd respondents and further do not meet the standard of proof with respect to contempt proceedings.
34. That culpability for contempt, which is a grave offence, is only established on the basis of sound, cogent and clear evidence placed before Court demonstrating willful disregard of the Court Order. That this application fails the test and it be dismissed.
35. That the terms of the Order are in any event vague and unclear. That the 1st and 2nd respondents responded to the petitioners' letter dated 3rd April, 2023 and stated that there was non-disclosure on the part of the 1st and 2nd respondents of any breach of the Court order of 20th March, 2023. That there is no factual or legal basis for the Court to find the 1st and 2nd respondents are in willful breach of the Court Order of 20th March, 2023 and the application be dismissed with costs.
36. Joanne further deposed to a replying affidavit dated 18th May, 2023 in response to the application dated 27th April, 2023 in which she noted that most of the issues raised by the petitioners in this application are the same or similar to the issues raised in the application dated 11th April, 2023 to which the deponent had already responded to. That the conduct by the petitioners of filing a multiplicity of applications seeking similar orders amounts to an abuse of the Court process and this particular application dated 27th April, 2023 be struck out for being an abuse of the Court process. That the 1st and 2nd respondents are not privy to the issues raised in prayers 'c' and 'd' since they are redundancy matters and related to the Sama, the 3rd respondent. That these matters relate to expiry of the petitioners' contracts of employment with Sama and not the 1st and 2nd respondent. That this application seeks further injunction which were dealt with in the initial application dated 17th March, 2023 and at the same time seeks an Order for contempt of Court. That this is further abuse of Court process since the issue as to whether the respondents are in contempt of Court is before Court already. That the applicants show no prima facie case that the 1st and 2nd respondents are in any willful defiance of the Court Orders issued on 20th March, 2023. That this application be dismissed with costs.
37. M/s Lilian Kiplagat deposed to two replying affidavits sworn to on 10th May, 2023 in respect to the twin applications filed by the petitioners on the issue of contempt of Court Orders issued on 20th March, 2023 by the Court on the respondents for the 3rd respondent.
38. Lilian deposes that she is the Director, Service Delivery of the 3rd respondent. Lilian deposes further that having understood the allegations made by the applicants, the 3rd respondent has not done anything that can be construed as implementation of the redundancy notices issued on the 10th and 18th January, 2023. That the 3rd respondent has not altered the petitioners' employment contracts in any way that can be construed as unfavourable to the petitioners.



39. Lilian confirms that on 28th March, 2023, the 3rd respondent issued a communication to its employees as partly stated at paragraph 9 of Kiana Monique's affidavit. That this communication did not vary the terms of the petitioners' contracts. That under Clause 4.3 of the contracts of employment of the Petitioners is provided "the employee will be expected to work whichever shift he or she is assigned up to a total of 45 hours per week." That therefore whether to allocate or not a shift to an employee is in the whole the discretion of the 3rd respondent.
40. The 3rd respondent deposes at paragraph 7(d) of the replying affidavit that:-
- "The employees were sent on PAID Leave in accordance with their individual contracts which cannot be said to be a variation of the employees' contractual terms in a manner unfavourable to them."
41. Lilian deposes further that since the contract between the 3rd respondent and the 1st respondent pursuant to which the 1st respondent outsourced Content Moderation Work to the 3rd respondent lapsed on 31st March, 2023, the 3rd respondent no longer had any Content Moderation work to offer to its employees.
48. That indeed, this was the reason why the 3rd respondent initiated the redundancy process in January, 2023.
49. In view of the Court Order issued on 20th March, 2023, which prevented the redundancy process from proceeding, the 3rd respondent had no option other than to send the employees on paid leave in accordance with their individual contracts at great expense to itself.(Empasis added)
50. Lilian further deposes at paragraphs 7(g) of the affidavit:-
- "(g) In any event, the contracts of a majority of the employees expired by effluxion of time on 31st March, 2023, and the contract of even more employees have expired in the course of the month of April and May, while even more are due to expire imminently. A true schedule of the expiry dates of the individual contracts of the petitioners is annexed hereto and marked as exhibit "KK1"
51. A closer look of exhibit "LK1' shows that the fixed term contracts of the employees of the 3rd respondent expired on diverse dates from 31st March, 2023 until 14th August, 2023. Only four (4) contracts in respect of Rose Achieng Kagoshe; Derric Nderitu Mwangi; John Mwaura Njoroge and Rosebelleh Wakhu are open-ended.
52. Six (6) employees are shown in the annexure to have signed the settlement agreement.
53. Lilian deposes that the petitioners having insisted that the Content Moderation Work was done in a very toxic environment and so, sending them on paid leave cannot be said to be unfavourable change of their terms of employment.
54. Lilian deposes further that the contract of Kiana Monique expired on 5th May, 2023 and so is no longer on paid leave.
55. Lilian states that the fate of the petitioners is self-inflicted, having elected to go to Court to injunct the redundancy process on 17th March, 2023, a short period to the intended date of termination on account of redundancy.(Empasis added)



56. Lilian traverses the allegations by Kiana Monique and denies each one of them in total except those which have been expressly admitted.
57. Lilian further deposes that the Court Order of 20th March, 2023 did not stop the 3rd respondent from extending an olive branch to the employees. That the 3rd respondent was also not barred by the said Court Order from communicating with its employees which it did in good faith and copied the communication to their advocates on record.
58. That the settlement proposal is understood by the law and Article 159 of *the Constitution* of Kenya and cannot be deemed as conduct in contempt of Court of Order issued on 20th March, 2023. That conciliation and other means of out of Court settlement is central in Employment and Labour relations. That at the time of issuing the invitation to settle the matter, only 43 petitioners were part of this suit and others joined the same later. It was only proper to provide information about the Court injunction to all other employees who were not part of the suit but had been affected by the orders of the Court issued on 20th March, 2023.
59. That the invite to settle was done in good faith and no employee was compelled to accept it. That employees were encouraged to seek legal advice from their advocates before signing the waiver and settlement form placed before Court.
60. That this conduct on the part of the 3rd respondent does not amount to breach of the Court Order dated 20th March, 2023.
61. That in view of the fact that the service outsourcing contract between the 3rd respondent and the 1st respondent, the 3rd respondent is not privy to matters of Content Moderation deposed to by the 42nd and 169th Petitioners on posts made on Facebook and in their supporting affidavit.
62. With specific reference to the application dated 27th April, 2023, Lilian deposes that the Court declined to grant various other orders sought in the application dated 17th March, 2023 and in particular prayer 'g' which read:-
- “Pending the hearing and determination of this Application, this Honourable Court be pleased to issue an interim order that any contracts that were to lapse before the determination of this petition be extended such that the termination date will be after the determination of the petition.”
63. The 3rd respondent deposes that this failure by the Court to grant the aforesaid Order is an indication that the Court did not stop any contracts that were due for expiry by effluxion of time to expire as scheduled and in accordance with each employee's individual contract of employment.
64. The 3rd respondent further deposes that a reading of prayer (d) as granted by the Court related to variance of existing contract in a manner unfavourable to the petitioners. That this Order cannot be extended to contracts that have expired by effluxion of time. Both parties were strictly bound by the terms of their contracts therefore.
65. That in any event the 3rd respondent made it clear that, “payroll and benefits would continue in accordance with each employee's individual contract of employment.”
66. The 3rd respondent deposes that, it follows that salary and benefits were to stop upon expiry of each individual contracts of employment and the 3rd respondent has faithfully continued to pay salaries and



benefits in respect of contracts that have not expired. That the petitioners have admitted this fact at paragraph 12 of Kiana Monique's Affidavit sworn on behalf of all the petitioners where she deposes:-

“ 12. . This means that for those of us, such as myself, whose employment contracts had not expired, we ought to have remained in employment, going to the office at our normal hours and working.....”

67. Kiana Monique also admits in her supporting affidavit that her contract was due to expire on 31st March, 2023 on effluxion of time. That the Court Order of 20th March, 2023 did not injunct such eventuality by operation of the law of contract.

67. The 3rd respondent dismisses the contents in the supporting affidavit of Juanita Jones as pure hearsay with regard to the issue of expiry of service contract between the 3rd respondent and the 1st and 2nd respondent and puts her to strict proof thereof. That her deposition does not demonstrate any breach on the part of the 3rd respondent. The 3rd respondent prays the twin applications be dismissed with costs.

Replying Affidavits by the 4th respondent sworn to on 24th May, 2023 and 12th May, 2023 respectively.

68. The 4th respondent responded to the Affidavit sworn to by the 1st, 42nd and 169th Petitioners and states that the applications against the 4th respondent are baseless, malicious and an abuse of the Court process.

69. That the 4th respondent has obeyed the orders of the Court issued on 20th March, 2023 from the date of their issuance and their extension on 28th March, 2023, and 13th April, 2023. That in this regard, the 4th respondent has not conducted any Facebook Content Moderation as alleged or at all. That the 4th respondent has also not conducted any recruitment as alleged or at all.

70. That with regard to the 4th respondent's operations, the true position is that on 17th March, 2023, prior to the institution of this suit, the 4th respondent had already completed its own recruitment of 230 members of staff on its Content Moderators project.

71. That these employees are employed by the 4th respondent directly and at the cost and risk of the 4th respondent only. That 4th respondent had on boarded the 230 employees and commenced their training programmes.

72. That the 4th respondent would have commenced the Content Moderation Work from 1st April, 2023 or as soon as the training was complete.

73. That upon issuance of the Court orders on 20th March, 2023, the 4th respondent has not conducted any work nor has it had any content moderation work assigned to it by the 1st and 2nd respondents. The staff the 4th respondent recruited therefore have had no work since recruitment but continue to train so as not to remain idle. The 4th respondent continues to train its staff until the Orders of the Court have been lifted. That meanwhile the 4th respondent continues to fulfil the contractual obligations it has with the said staff and is highly prejudiced in that respect by this dispute.

74. That majority of the 230 staff recruited by the 4th respondent are not of Kenyan origin. That the orders of the Court are clearly against the 1st and 2nd respondents and not against the 4th respondent and cannot be indirectly extended to the 4th respondent.

75. That the application is aimed at raising the profile of the suit by targeting the high profile executives not in Kenya in the contempt application. That this is abuse of Court process. That it is a malicious made campaign against the respondents.



76. That it is inconceivable that the petitioners wish to rewrite the service contract between the 3rd respondent and the 1st and 2nd respondents which has come to an end to the loss and detriment of the 4th respondent. That the Court should not entertain such unholy invite to exclude other worthy players in the business of Content Moderation not only in Kenya, but in the whole Eastern and Southern region.
78. That the law provides for and upholds freedom of contracting between parties. That the orders sought are absurd.
79. That the allegation that the 4th respondent has continued to recruit Content Moderators after 20th March, 2023 is not true and is not based on any tangible evidence adduced by the petitioner.
80. That the Court Order of 20th March, 2023 did not stop expiry of contracts on effluxion of time. That the 4th respondent be protected by this Court and dismiss the false narrative made against it.
81. That the 42nd and 169th petitioners' deposition does not touch on the 4th respondent.
82. The 4th respondent reiterates its response to the allegations made by the petitioners in the Application dated 27th April, 2023 as false and misleading. The 4th respondent states that the Court orders did not stop it from recruiting staff to perform Content Moderation for other companies which it serves and not just the 1st and 2nd respondents. That the 4th respondent is not conducting any content moderation for the 1st and 2nd respondents until the Court orders have been lifted. That the 3rd respondent is a competitor of the 4th respondent and cannot be collaborating with it to subvert the Court orders. That the 4th respondent is disproportionately prejudiced by the interim Court orders as a 3rd party to the dispute between the petitioners and the 3rd respondent. That the application be dismissed as against the 4th respondent.

1st Petitioners' Supplementary Affidavit sworn to on 23rd May, 2023.

83. Kiana Monique Arendse in the supplementary affidavit, traverses and joins issue with the 1st, 2nd, 3rd and 4th respondents' deposition in their response to the twin applications.
84. The deponent reiterates the case of the petitioners from the Court to cite the respondents and the named persons in particular in contempt of Court. The Court will not repeat the case of the petitioners already well set out in this ruling except to emphasize that the petitioners state that admissions made by M/s Redmond and M/s Lilian regarding the conduct of the 1st, 2nd and 3rd respondents upon receipt of the Court Order issued on 20th March, 2023 is a confirmation that;
 - (i) The 1st and 2nd respondents stopped giving the 3rd respondent work of Facebook Content Moderation to give to the petitioners contrary to the Court.
 - (ii) That the redundancy process commenced in January, 2023 is connected to the non-renewal of the service contract by the 1st and 2nd respondents with the 3rd respondent and so the 1st, 2nd and 3rd respondents are involved in the redundancy process contrary to the Court Order.
 - (iii) That the 1st and 2nd respondents therefore induced the 3rd and 4th respondents to further violate the Court Order of 20th March, 2023.
 - (iv) v) That work of Content Moderation as demonstrated by the petitioners vide affidavit of the 42nd and 169th petitioners is still being carried out in the region at the behest of the 1st and 2nd respondent in violation of the Court Order.



- (v) That the petitioners have now placed on record the necessary certificates of authenticity of the evidence presented by the 42nd and 169th petitioners. That the 169th petitioner has demonstrated that he was employed in Kenya to serve the Nigerian market where Yoruba Moderation was still going on. That the 42nd petitioner further demonstrated that Content Moderation was still ongoing in the region vide her post.
- (vi) That purported replacement of defective affidavits by Lilian Kiplagat for the 3rd respondent was done without leave of Court and both affidavits should be struck out for want of form and therefore not admissible before Court having not been properly sworn by a competent advocate in the first place and the replacement having been filed without leave of the Court.
- (vii) That sending the petitioners on an indefinite paid leave without giving them Content Moderation Work violated order 1 (c) because this action was “incidental or related to the redundancy notice.”

That the 3rd respondent was bound to continue giving the petitioners work but could not do so if the 1st and 2nd respondents unlawfully terminated the service contract and stopped giving the 3rd respondent work. That the 1st and 2nd respondent continued to give the work to 3rd parties.

- (viii) That the 3rd respondent could not have continued to incur undue expenses had the 1st and 2nd respondents continued to give the 3rd respondent work since the 3rd respondent would have given the work to the petitioners on consideration of the salary and benefits paid. That this is self-inflicted injury on the part of the 1st, 2nd and 3rd respondents.
- (ix) That contracts that had been terminated by a redundancy notice effective on 28th February, 2023 could not now expire by effluxion of time on 31st March, 2023. This was impossible.

The deponent reiterated the sequence of events from 10th January, 2023, when redundancy notice was issued effective 28th February, 2023, 18th January, 2023, when the timeline of business was adjusted to end on 31st March, 2023 and not as earlier communicated on 28th February, 2023.

All the contract and work visas expiring before 31st March, 2023 were extended to 31st March, 2023.

- (x) The petitioners reiterate that by its conduct, the 3rd respondent had forfeited its right to terminate the contract of employment by effluxion of time having issued redundancy notices effective 28th February, 2023 as per the notice of 10th January, 2023. This termination was complete and on account of redundancy as is specified in the notice.

The Petitioners’ bottom line is that all the contracts of the petitioners were earlier terminated on 28th February, 2023 on account of redundancy and before the petitioners came to Court. That the notice of 18th January, 2023 simply extended the redundancy period and the last day of work to be 31st March, 2023. That termination of contract on 31st March, 2023 was not by effluxion of time. It was an implementation of the redundancy notice in violation of the Court Order. (Empasis added).

- (xi) The deponent further states that failure by the 3rd respondent to pay April, 2023 salaries is further evidence of direct defiance of the Court Order by the 1st, 2nd and 3rd respondents. That the Court should intervene to ensure that the petitioners are paid their May, 2023 salaries and until the petition is finalized.



That the Petitioners are already sick due to the exposure at work. All they require is treatment but not to be sacked. That they have a right to a safe working environment and to the job itself. It is not one or the other. That the petitioners are stranded in Kenya and need the respondent to obey the Court Orders and for the petition to be resolved expeditiously.

- (xii) That the direct approach by the 3rd respondent to the petitioners in disregard of their representation is unethical practice and amounted to intimidation and coercion to abandon the petition which in itself is a further demonstration of the contemptuous conduct by the respondents.
- (xiii) That the replying affidavit by Norbert Onyango for the 4th respondent also amounts to mere statements having been commissioned by an advocate without a Practising Certificate. That the contents thereof amounts to no evidence at all and the Court should find the same to be inadmissible.
- (xiv) That the affidavit by Mr. Sven on behalf of the 4th respondent does not demonstrate that the recruitment of the 230 Content Moderators was done before the Court Order was issued on 20th March, 2023. If the Court Order stopped Content Moderation, it is impossible that the 4th respondent could continue to train the employees for such a prolonged period without provision of work to be done by the new staff.
- (xv) To the contrary, the statement by Mr. Sven is proof that the 230 new staff were recruited to take over the petitioners' work as from 1st April, 2023. That this is why the petitioners' contracts were choreographed to terminate on 31st March, 2023.
- (xv1) The petitioners reiterate that the 1st and 2nd respondents are the authors and master mind of the redundancy exercise by changing the service contract from the 3rd respondent to the 4th respondent to evade their legal obligations to the petitioners.
- (xvii) That the Court be pleased to summon the named contemnors as they are guilty of willful defiance of the Court Orders. That the applications are against all the respondents jointly and severally as they have all violated the rights of the petitioners. The 4th respondent has in particular engaged in discrimination against the petitioners by failing to recruit any one of them in favour of new Content Moderators and engage in deception together with the 1st, 2nd and 3rd respondents. That the applications be granted.

Submissions

85. All the parties filed written submissions and highlighted the same verbally. The issues for determination are:-
- (a) Whether the replying affidavits filed by the respondents ought to be struck off the Court's record.
 - (b) Whether the respondents ought to be cited for contempt of Court.
 - (c) Whether the prayers sought should be granted.
86. In respect of prayer (a) above, the Court will consider the rival submissions filed by the parties on the issue and the applicable law. It is submitted by the petitioners that the replying affidavit by Joanne Redmond was sworn on 8th May, 2023 in Dublin, Ireland, outside the Commonwealth. The affidavit was notarized in Dublin, Ireland which is not a member of the Commonwealth of Nations having



left Commonwealth in 1949 as indicated in the supplementary affidavit of Kiana Monique annexure KMAC'11'.

87. In the case of Microsoft Corporation –vs- Mitsumi Computer Garage Limited & Another [2001] decided by Ringera J. and recently confirmed by Chepkwony J. in Rene and Hans Advocates LLP – vs- Kiwipay (Kenya) Limited and 4 Others [2023] KEHC 2970 [KLR], it was held that in terms of Section 88 of the *Evidence Act*, Cap. 80, Laws of Kenya, affidavits taken in countries other than the Commonwealth Countries require proof by affidavit or otherwise, that they were taken by a Notary Public, of the stamp and seal or the official position of the person taking the affidavit, which is not a requirement for affidavits notarised within the Commonwealth Countries. That an affidavit without authentication is defective and must be struck out, and such a defect cannot be cured by calling upon Article 159 of *the Constitution* since Article 159 was never intended to override the clear rules as set out in the *Evidence Act*.
88. The petitioners submit that M/s Redmond's affidavit was not authenticated despite it being notarized outside the Commonwealth and the notary's stamp is invisible as only a black blob of paint can be seen.
89. It is a fact that the 1st and 2nd respondents filed a replying affidavit in response to the applications dated 11th April, 2023 sworn to by M/s Joanne Redmond on 8th May, 2023 in Dublin Ireland. The affidavit on the face of it is signed by a notary public named Cormac Brown, whose stamp is clear on the face of the affidavit. The affidavit also bears a notarial stamp below the name of the deponent. The 1st and 2nd respondents also filed a replying affidavit to the application dated 27th April, 2023 sworn to by Joanne Redmond in Dublin, Ireland on 8th May, 2023. The affidavit is signed by a notary public named Cormac Brown and a stamp bearing his name is affixed on the face of the affidavit. A notarial stamp is also affixed below the signature of M/s Joanne Redmond. From the stamp affixed on the affidavit, the Court has observed that Mr. Cormac Brown is a Notary Public situate at 20 Harcourt Street, Dublin Do2 H364 Ireland. This Court is satisfied that both affidavits sworn to by M/s Joanne Redmond have been properly authenticated by the notary public whose signature, official stamp and Seal appear on the face of the affidavits. The Court observes that the general meaning of the term authentication as from Oxford Dictionary is “the process or action of proving or showing something to be true, genuine, or valid.” The Court is satisfied that the replying affidavits of M/s Joanne Redmond are admissible in defence of the twin applications by the petitioners, having been properly and/or reasonably authenticated to be duly sworn by the deponents.
90. It is not in dispute that the 3rd respondent filed two replying affidavits sworn to by Lilian Kiplagat on 10th May, 2023 and 11th May, 2023 respectively. The affidavit sworn to on 10th May, 2023 was commissioned by one Mr. Kamau Minjire who was confirmed by the Law Society of Kenya not to have a Practising Certificate as at 10th May, 2023. On the authority of the decision by Gitari J. in Pius Njogu Kathuri –vs- Joseph Muthura & 3 Others [2018] eKLR, this affidavit is incurably defective and struck off.
91. It is also not in dispute that as soon as the 3rd respondent discovered that they had filed a defective affidavit, they filed a second replying affidavit sworn to by Lilian Kiplagat on 11th May, 2023 as a replacement of the defective affidavit. The 3rd respondent did not seek leave of the Court to remove the defective affidavit and replace it with the proper one. The 3rd respondent submitted that they sought condonation by the Court after the fact and craved for the indulgence of the Court in this respect.
92. In *Mutua -vs- Anwarali & Brothers Ltd.* [2003] Seron J. held that it was “improper, dishonest, deceitful and discourteous” for an advocate to withdraw pleadings from Court records without a Court Order and proceed to file a proper affidavit without leave of the Court. The judge stated that this was an act of professional misconduct.



93. The Court of Appeal per Githinji Musinga and J. Mohammed JJA espoused the correct procedure to be followed in *Flystar Limited –vs- Delphis Bank Limited* [2015] eKLR that the party who has discovered the illegality in their filings must seek leave from the Court to correct their mistake. The 3rd respondent clearly did not follow this procedure. The second affidavit sworn to by Lilian Kiplagat on 11th May, 2023 filed as a replacement of the first affidavit without leave of Court is also struck off the Court record. In the case of *Caltex Oil (Kenya) Limited –vs- New Stadium Service Station Limited & Another* [2002] eKLR, Otieno J. stated in a matter on all fours with this one.

“It was wrong for the applicant to file the three affidavits without leave of the Court and now seeks to have the Court stamp that irregularity and make it valid.”

I fully concur with this finding and restate that both affidavits filed by the 3rd respondent are struck off the record of the Court.

94. With regard to the 4th respondent’s affidavit sworn by Sven Alfons A De Cauter on 19th April, 2023, it is also clear that the affidavit was sworn before one Nobert Jude Oduor Onyango. The Law Society of Kenya confirmed that the said advocate did not have a current Practising Certificate as at the time he commissioned the said affidavit. The 4th respondent did not apply to the Court to strike off that affidavit and replace it with an authentic one. On the authority of Pius Njogu case (*supra*), this affidavit is also struck off the record.

95. In conclusion, the replying affidavits of the 3rd and 4th respondents to the application before Court are struck off the record. The effect of this is that the 3rd respondent only relies on the grounds of opposition dated 11th April, 2023 and written submissions on matters of law to be determined by this Court. Equally, the 4th respondent relies on their written submissions on matters of law for determination in the twin application before Court.

B. Whether the respondents ought to be cited for Contempt of Court.

96. Applications for contempt of Court are governed by Section 5 of the *Judicature Act*, upon declaration that the *Contempt of Court Act* 2015 was unconstitutional in the case of *Kenya Human Rights Commission –vs- Attorney General & Another* [2018] eKLR.

97. Section 5 of the *Judicature Act*, provides that the High Court and the Court of Appeal have the same power to punish for contempt of Court as is for the time being pronounced by the High Court of Justice in England, and such power extends to upholding the authority and dignity of Subordinate Courts.

98. The current applicable law in England is the *contempt of Court Act* of 1981 and part 81 of the procedure in the Civil Procedure (Amendment No. 2) Rules 2012).

99. These are moderated by decisions of our Courts and *the Constitution* of Kenya, 2010.

100. The Supreme Court of Canada in *Carey -vs- Laiken*, 2015 SCC 17 (16th April, 2015) cited with approval by Mwita, J. in *Sheila Cassatt Issenberg & Another –vs- Antony Macharia Kinyanjui* [2021] eKLR established the three (3) elements of Civil Contempt as follows:-

- a. The order alleged to have been breached must state clearly and unequivocally what should and should not be done.
- b. The party alleged to have breached the order must have had actual knowledge of it.



- (c) The party alleged to be in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.
101. With regard to requirement (a) above, the intention of the Court is to be ascertained primarily from the language of the judgment or Order as construed according to the well-known rules. The Order and the Court's reasons for giving it must be read as a whole to ascertain its intention. If on such a reading the meaning of the judgment is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify or substantiate it. See Republic –vs- CMC at Milimani Law Court Director of Public Prosecution & 2 Others (Interested parties); Exparte Applicant Pravin Galot [2020] eKLR.
102. Whereas the Petitioners submit that the Orders of the Court were clear and unambiguous, the respondents submit that the said orders of the Court were general, unclear, ambiguous and incapable of implementation by the respondents.
103. The 1st and 2nd respondents cited the case of Katsuri Limited –vs- Kapurchand Depar Shah [2016] eKLR, on the strict elements that must be proved by the applicant as follows:-
- “There are essentially four elements that must be proved to make the case for civil contempt. The applicant must prove to the required standard (in Civil Contempt cases which is higher than Civil Cases) that:-
- (a) The terms of the order (or injunction or undertaking) are clear and unambiguous and are binding on the Defendant.
 - (b) The Defendant had knowledge of or proper notice of the terms of the order.
 - (c) The Defendant has acted in breach of the order.
 - (d) The Defendant's conduct is deliberate.”
104. The respondents cited further the decision in Alken Connections Limited -vs- Safaricom Limited & 2 Others [2013] eKLR where it has emphasized that:-
- “In my view, it is upon the applicant to convince the Court that even without “reading in” the Order was so clear about what the respondent was meant to do that it cannot be an excuse to raise the omission as warranting non-compliance thereto.”
105. The 1st and 2nd respondents submit that there is nothing in the Order of the Court issued on 20th March, 2023 which concerned the 1st and 2nd respondents directly since the two entities are outside the jurisdiction of the Court; were not the employer of the applicants; were not involved in the redundancy exercise commenced by the 3rd respondent and so had no power to stop it from the exercise or vary the terms of employment terms of the applicants and that were not involved in recruitment of new Content Moderators in Kenya, which was being done by the 4th respondent and therefore there is nothing in the said Order which they did in defiance of it or failed to do in contempt of the said Order. In summary, the 1st and 2nd respondents submit that there was nothing direct, clear and unambiguous that the Order directed them to do or refrain from doing.
106. The 1st and 2nd respondents submitted further that the application was wholly incompetent in as far as it sought the Court to summon Mr. Mark Zuckerberg, the Chief Executive Officer of the 1st respondent since Mark Zuckerberg is not a party to this suit and the Corporate Veil of the 1st and 2nd respondents has not been pierced.



107. That no orders of the Court were expressly and clearly directed at Mr. Mark Zuckerberg to do or to refrain from doing and so he cannot be cited for contempt of the Court Order.

108. The 1st and 2nd respondents referred the Court to the case of Geoffrey Kathuri Kisoni & 10 Others – vs- East African Cement Company Limited & 5 Others [2021] eKLR where the Court stated:-

“We also note that the 2nd to 6th respondents cited for contempt are directors and officers of a corporate entity not cited in the application, which begs the question whether in such case the directors of a company will be personally liable for contempt committed by and in the name of the company. In the persuasive authority of Katsuri Limited v Kapurchand Debar Shah [2016] eKLR, the High Court (Mativo, J.) in considering contempt by a director of a company observed and rightly so in our view that:-

“The alleged contemnor is a director of the company. He is not a party to these proceedings in his personal capacity. The company is a legal entity. The proper procedure for the applicant was first to apply to lift the corporate veil then go for the directors in their personal capacities. It follows therefore that failure by the applicants to cite the 1st respondent for contempt and to lift the corporate veil of the 1st respondent denied them the chance to cite the 2nd to 6th respondents for contempt as directors or accounting officers of the 1st respondent”

109. Accordingly, on the question whether the Court may cite Mr. Mark Zuckerberg ,Chief Executive Officer of the 1st respondent, M/s Wendy Gonzalez, Chief Executive Officer of the 3rd respondent and Mr. Thomas Macken Brock, Chief Executive Officer of the 4th respondent to show cause why they should not be punished for contempt of Court Orders issued on 20th March, 2023, the Court returns on the negative, the persons having not been joined as parties to this suit and the applicants having made no application first to lift the Corporate Veil of the 1st, 2nd, 3rd and 4th respondents.

110. The question however, remains whether or not the applicants have proved that the 1st, 2nd, 3rd and 4th respondents have willfully defied the Order of the Court issued on 30th March, 2023.

111. In the ruling of the Court dated 20th April, 2023, pursuant to which the orders of 20th March, 2023 were extended, the Court held at paragraph 60 of the ruling as follows:-

“The Court finds that this Court has jurisdiction to determine the matter of alleged unlawful and unfair termination of employment on grounds of redundancy by the 1st, 2nd, and 3rd respondents and also the Court has jurisdiction to enforce alleged violation of human rights and fundamental freedoms by the 1st, 2nd, 3rd and 4th respondents against the petitioners as set out in the petition and the Supporting documents.”

This ruling has been appealed against but the appeal is still pending at the Court of Appeal.

112. This is the context in which the Orders of the Court issued on 20th March, 2023 are to be construed. Therefore, the Orders of 20th March, 2023, if found to be clear, and unequivocal, the same bind the 1st, 2nd, 3rd and 4th respondents to the extent any of the Orders is directed specifically to any one of the respondents and/or jointly directed to all of them.

113. The applicants have proved the following facts which have not been contested by the 1st, 2nd and 3rd respondents. That the 1st, 2nd and 3rd respondents have knowledge of the Orders of the Court issued on 20th March, 2023.



114. That on 28th March, 2023, the 3rd respondent sent all members of the GPL 8 CO team, including all the petitioners on paid leave and asked them not to come to the office anymore. The question to be answered is whether this action by the 3rd respondent amounted to willful defiance of the Court Order.
115. The applicants submitted this conduct on the part of the 3rd respondent which conduct was enabled by the 1st and 2nd respondents amounted to willful defiance of prayer (c) which injunctioned the 1st, 2nd and 3rd respondents from implementing in any manner whatsoever anything incidental to or related to the Redundancy Notice issued to Facebook Content Moderators (GPL 8 CO) on 10th January, 2023 as read together with the Redundancy Notice issued on 18th January, 2023.
116. The applicants submit further that by sending the petitioners on paid leave violated Order (d) which restrained “the 1st, 2nd and 3rd respondents from varying the contractual terms of the Facebook Content Moderators [GPL8 CO] in a manner unfavourable to the Moderators pending the hearing of this application.”
117. The respondents submitted that sending the petitioners on paid leave, was not a variation of the contractual terms since allocation of work was a prerogative of the employer provided the work was available. It was argued that since the petitioners were to be fully paid while on leave, sending them on leave did not adversely affect them. That in any event, only the 3rd respondent had ability to vary the terms of employment of the petitioners and not the 1st and 2nd respondents and that the 3rd respondent no longer had work to give to the petitioners since the outsourcing of service contract between the 1st and 2nd respondents on the one hand with the 3rd respondent on the other hand was to come to an end on 31st March, 2023. That the respondents opted to take this painful step to pay the petitioners for no work at all so as to pay deference to the Order of the Court issued on 20th March, 2023 and this action in no way was willful disobedience of the Court Order.(Empasis added).
118. The applicants on the other hand argued that to give or not to give work was in the hands of the 1st, 2nd and 3rd respondents jointly and severally and so were in a collective willful disobedience of the Court orders. That this willful disobedience was demonstrated by the conduct of 1st and 2nd respondents continuing to recruit new employees to replace the petitioners through the 4th respondent with the sole aim of circumventing the prohibitive orders of the Court.
119. The 3rd respondent relied on the Supreme Court decision in Republic -vs- Ahmad Abolfathi Mohammed & Another [2018] eKLR;
- “Mr. Munga deponed that, while they considered other options, holding the respondents at the Anti-Terrorism Police Unit establishment was found to be the best option. We would not perceive such a line of action as a willful, or deliberate disobedience to Court Orders. It was a well-considered course of action, for balancing between respondents’ security, and compliance with Court Order.”
120. It is the Court’s considered finding that pending the resolution of the dispute as to whether the intended termination of employment of the petitioners on grounds of redundancy was lawful or not, the action by the 3rd respondent to send the petitioners on paid leave because the 1st and 2nd respondents no longer gave any work to the 3rd respondent was not an action that constituted willful, or deliberate disobedience of the Court orders issued on 20th March, 2023. The 3rd respondent was constrained to balance between the 3rd respondent’s sustainability and compliance with the Court order. In any event, sending employees on paid leave indefinitely on grounds that no work was available to be done by the applicants is strictly speaking not a variance of the petitioners’ terms of contract in a manner



unfavourable to them but was indeed a constructive termination of the contracts of employment of the applicants whether or not the applicants were paid a salary while not doing any work. It is for the respondents in due course, during the hearing of the petition on the merits, to prove that they had a valid reason for their conduct and that they followed a fair procedure in that operational separation with the applicants and that their conduct was lawful and fair therefore. The fact that there was in place a court order in place when that constructive dismissal on operational grounds was effected shall be a relevant consideration.

121. The applicants have urged the Court to find that the 1st, 2nd and 3rd respondents are in willful defiance of Court orders by informing the petitioners on various dates in April and May, 2023 that their contracts had expired by effluxion of time and that they would no longer receive a salary. The applicants submitted that this conduct on the part of the 1st, 2nd and 3rd respondents violated Orders ‘c’ and ‘d’ and in particular Order ‘c’ which restrained the respondents from “terminating the contracts of the Facebook Content Moderators pending the hearing and determination of the application.” The communication to the petitioners that their contracts had already expired by effluxion of time and that they had until 11th March, 2023 to clear with the 3rd respondent was done by the 3rd respondent via an email dated 27th April, 2023. This prompted the petitioners to file the 2nd application dated 27th April, 2023 seeking various orders including:-
- (a) The respondents be restrained from terminating the petitioners’ contract for any reason whatsoever.
 - (b) This Honourable Court be pleased to quash any termination letters issued as from 21st March, 2023, the date of issue of the 20th March 2023 order.
 - (c) The respondent be compelled to pay the Facebook Content Moderators their full entitlement in terms of monthly income and benefits for the month of April, 2023 and for every month until the petition is determined.
 - (d) An order preserving the immigration status of the Facebook Content Moderators and allowing them to remain in the company lawfully pending the hearing and determination of the petition.
 - (e) An Order citing the 1st, 2nd and 3rd Respondents from further and grave contempt.
122. On 28th April, 2023, the Court granted an interim Order preserving the immigration status of foreign petitioners herein being Facebook Content Moderators allowing them to remain in Kenya lawfully. This is the reason why this Court is seized with two applications for determination with regard to citing the respondents for contempt of Court being the Application dated 11th April, 2023 and this one dated 27th April, 2023.
123. The next issue for determination is whether the respondents are in contempt of the Court Orders issued on 20th March, 2023 for communicating to the petitioners that on 27th April, 2023 that their contracts had already expired by effluxion of time and that they had until 11th May, 2023 to clear with the 3rd respondent and any other subsequent communication to the petitioners in this respect.
124. The applicants have submitted that the orders of the Court issued on 20th March, 2023 and extended thereafter prohibited the respondent from terminating the contracts of employment of the petitioners pending the hearing and determination of the petition.
125. That on 8th February, 2023, and 18th February, 2023, the respondents issued notices whose effect was to terminate the contracts of employment of the petitioners on grounds of redundancy. That the same



contracts could not be terminated for a second time on any other grounds, including by effluxion of time as the respondents proposed to do by the email dated 27th April, 2023. That the email dated 10th January, 2023 had already informed the petitioners that their last day of work was 28th February, 2023, which termination date was extended to 31st March, 2023 vide the email dated 18th January, 2023.

126. The Court has carefully perused and considered the communication by the 3rd respondent to the petitioners on 10th January, 2023 and one dated 18th January, 2023 respectively.
127. The letter of 10th January, 2023 is annexure “KMA C ‘19’. In the 1st Petitioners’ supplementary Affidavits for the application dated 11th April, 2023. This letter only communicated to the petitioners the intention to declare their positions redundant for the reasons given in the notice.
128. The 3rd respondent also communicated in the same notice that there would be 30 days consultation and immigration support period and that ‘Release and Severance Agreements’ would be concluded. The letter did not specifically terminate the employment of the petitioners on grounds of redundancy but only expressed an intention to do so.
129. The email dated 18th January, 2023 by the 3rd respondent is ‘KMAC 20’ in the same bundle of the 1st petitioner at page 102. This email communication was more definitive and stated that the 3rd respondent was ceasing operations for company work with Meta and “Today we would like to communicate new timelines for this process as we are extending the final working day to March, 31st 2023”. The email ended by informing the petitioners that, “Your last day of employment will be March 31st, 2023.”
130. . The Court has also considered the letter dated 8th February, 2023 written to the petitioners by the 3rd respondent. The letter is titled

“RE: Termination on account of Redundancy.”

The letter partly reads:-

“Your employment contract will be terminated effective March 31, 2023 on account of redundancy.”

131. It is apparently clear that as at the date the Court issued injunctive and prohibitory orders against the respondents on 20th March, 2023 termination of the contract of employment on account of redundancy was intended to take place with effect from 31st March, 2023 but had not actualized. That is why the Court found it fit to issue an interim injunction to stop the process of termination pending the hearing and determination of the application dated 17th March, 2023.
132. It is the finding of the Court therefore that the Orders of the Court issued on 20th March, 2023 prohibited alteration and/or termination of the contract of employment of the petitioners pending the hearing and determination of the application dated 17th March, 2023. The intention of the Court was to preserve the subject matter of the dispute until the merits or otherwise of the application had been determined. Preservation of the subject matter meant that the petitioners were to remain in employment working and getting paid their salaries and benefits until the application dated 17th March, 2023 was heard and determined. Orders (c) and (d) were clear and unequivocal in this regard. However, sending the petitioners on compulsory paid leave vide the notice issued by the 3rd respondent on 28th



March, 2023 constructively ended the employment of the petitioners provided no work was to be allocated to the applicants again as was expressly stated in the said letter. The letter partly read:-

“ Given that as of March, 2023, there will no Content Moderation Work available to Sama, the GPL 8 CO team will be placed on paid leave pending further directions from management and from the Court. Staff are asked not to come to the office after March 31st 2023, but payroll and benefits will continue in accordance with your contracts of employment.”

133. We have found that this particular action on the part of the 3rd respondent did not constitute willful and contemptuous defiance of the Court Order provided the role played by the 1st 2nd and 4th respondents towards that end is yet to be fully determined. This decision and action clearly was a fundamental breach of the contract of employment of the petitioners provided there was no intention to allocate work to the applicants again contrary to the Court Order of 20th March, 2023.
134. It is the finding of this Court that on the strength of the persuasive decision by the Federal Court of Australia in the case of Melbourne Stadiums Ltd. (supra) the contracts of employment of the petitioners could no longer terminate by effluxion of time the same having come to an end by dint of the letter dated 28th March, 2023. This conduct by the respondents though not in obedience of the Court Order issued on 20th March, 2023 did not constitute willful and contemptuous violation of the Court Order. The standard required to prove conduct that constitutes willful contempt of the Court Order was not proved by the applicants considering all the circumstances of the case.
135. With regard to the allegations by the petitioners that the 1st, 2nd and 4th respondents are guilty of contempt of Court because they have proceeded to give the Facebook Content Moderation work to parties other than the petitioners and that the 4th respondent has proceeded to engage Facebook Content Moderators other than the petitioners in defiance of Orders (e) and (f) issued on 20th March, 2023, the evidence available to the Court at this interlocutory stage of the proceedings is not sufficient to prove the charge of contempt of Court by the 1st, 2nd or 4th respondents to the required standard. There is no prove that the 1st, 2nd and 4th respondents are in willful contempt of the orders of Court issued on 20th March, 2023 in this regard. The electronic evidence adduced by petitioners 142nd and 169th is admissible but not sufficient prove that the respondents had replaced the petitioners and had engaged other persons to do Content Moderation specifically hitherto done by the applicants in willful disobedience of the Court Order.
136. The Court reiterates the Supreme Court decision in the case of Republic -vs- Ahmad Abolfathi Mohammed & Another [2018] eKLR regarding the high standard required to find persons guilty of contempt of Court Order, specifically because contempt of Court proceedings are quasi criminal in nature and the standard of prove required is higher than on a balance of probabilities in civil cases but beyond reasonable doubt applied in Criminal cases. The Supreme Court said:-

“ Further, we are unconvinced that the allegations of contempt of Court have been proved to the required standard. In as much as the respondents are convinced that their liberties as contained in Articles 27, 29, 32, 36 and 39 of *the Constitution* are being infringed, and they impute willfulness and bad faith on the part of the applicant, such interests have been rebutted, by demonstrating that the applicant did what was sincerely believed to be in accordance with the Court Order.”

137. Furthermore, direct out of Court negotiations by the 3rd respondent with some of the petitioners in our view was done in good faith and does not amount to willful defiance of the Court order. However, ethical issues arise on the part of the advocates for the 3rd respondent by opting to by-pass the advocates



for the petitioners in the said settlement negotiations. The Court is still of the view that out of Court settlement of this dispute could have been in the best interest of all parties.

138. The petition raises substantial issues relating to violation of human and labour rights of the petitioners as enshrined in the Kenya Constitution 2010 and the *Employment Act* 2007 interalia. The respondents are yet to file their substantive responses to the Petition. These matters shall be determined upon full consideration of the petition and the responses there to and the Court does not wish to pre-empt that process at this stage of the proceedings. In conclusion, however, the applicants have failed to demonstrate to the standard required, any willful, contemptuous conduct on the part of the 1st, 2nd, 3rd and 4th respondents.

139. Accordingly, the twin applications dated 11th April, 2023 and 27th April, 2023 are dismissed with costs in the cause.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 7TH DAY OF DECEMBER, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

M/s Mercy Mutemi for Nzili & Sumba Advocates for the petitioners

M/s Onyaga for 1st and 2nd respondents

Mr. Omino for 3rd respondent

Mr. Mbatia for 4th respondent

M/s Akuno for 6th, 7th, 8th and 9th respondents

5th Interested Party (not represented)

