



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU**

**CAUSE NO. 266 OF 2018**

**KENYA UNION OF DOMESTIC, HOTELS,**

**EDUCATIONAL INSTITUTIONS, HOSPITALS**

**AND ALLIED WORKERS (KUDHEIHA WORKERS).....CLAIMANT**

**VERSUS**

**KENYATTA SECONDARY SCHOOL.....RESPONDENT**

**DIRECTIONS**

This court has gone through this file in readiness to writing and delivering a Judgment in this cause. However, this court is unable to deliver the Judgment for the reasons enlisted below and gives the directions as hereunder.

This is an old matter that was filed in court on 15<sup>th</sup> November, 2018. Before the matter was filed in court the parties had entered into a consent dated 29<sup>th</sup> March, 2017.

The Respondent has pleaded and submitted that it has already implemented the said consent while the Claimant states that the said consent has not been implemented.

That is an issue that can only be heard and determined by way of *viva voce* evidence because it is a matter of fact that cannot be resolved and or determined by way of written submissions from the bar.

The Respondent has also raised the issue of the legal capacity and standing of the Claimant in filing this cause for and on behalf of the Grievants.

There is no evidence on record as to whether the Grievants are members of the Claimant. This again is a matter of fact that can only be heard, resolved, and determined based on adduction of evidence.

This court has gone through the written submissions by the parties herein and the same do not answer to the above issues and others that would enable this court to render a well reasoned, fair, and just Judgment.

The directions given by this court on 24/11/2021, with the consent of both parties, that this matter be disposed of by way of written submissions was clearly an oversight on the part of this court as the issues for determination have not been effectively answered by way of written submissions.

In the circumstances, *suo moto*, this court orders and directs as follows:-

- 1. THAT the court order/direction of 24/11/2021, to the effect that this matter be disposed of by way of written submissions be and is hereby set aside.**
- 2. THAT this matter shall now proceed by way of *viva voce* hearing where oral and documentary evidence shall be tendered.**
- 3. THAT both parties are hereby granted leave to amend pleadings and or file such other documents, statements, or pleadings as they may wish within 30 days of these directions.**
- 4. THAT this matter be mentioned on 16<sup>th</sup> March, 2022 for pre-trial directions.**

**DAVID NDERITU**

**JUDGE**

**23/02/2022**

These directions have been given pursuant to **Section 1A, 1B, 3, and 3A of the Civil Procedure Act (Cap 21)**, and **Section 3 of the Employment and Labour Relations Court Act No. 20 of 2011**; and **Articles 159 (2) (a) (b) (d) of the Constitution**.

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**DAVID NDERITU**

**JUDGE**

**23/02/2022**