



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

(Before Hon. Lady Justice Maureen Onyango)

PETITION NO. 112 OF 2018

IN THE MATTER OF: ARTICLE 22(1)

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL FREEDOMS UNDER ARTICLES 36
AND 41 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: THE PROCEDURE FOR INSTITUTING COURT PROCEEDING UNDER PART II OF THE
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND
PROCUREMENT RULES**

AND

IN THE MATTER OF: SECTIONS 48 AND 49 OF THE LABOUR RELATIONS ACT NO. 14 OF 2007, LAWS OF KENYA

BETWEEN

KENYA TERTIARY AND SCHOOLS

WORKERS UNION (KETASWU)..... UNION

VERSUS

THE UNIVERSITY COUNCIL,

UNIVERSITY OF NAIROBI..... EMPLOYER

AND

KUDHEIHA WORKERS.....INTERESTED PARTY

AS CONSOLIDATED WITH

CAUSE NO. 25 OF 2019

KENYA TERTIARY AND SCHOOLS

WORKERS UNION (KETASWU)..... UNION

VERSUS

THE UNIVERSITY COUNCIL,

JUDGMENT

The Petitioner herein, a registered trade union filed the Petition herein on 16th October, 2018 in which it alleges that the Respondent has wrongfully and illegally denied, violated, infringed and/or threatened the fundamental rights and freedom of some seven hundred and four members of staff who are its members in contravention to Articles 36 and 41 of the Constitution of Kenya, 2010 as read together with Article 2 and 8 of the ILO Convention No. 87.

The Petitioner avers that the seven hundred and four (714) unionisable members of the Respondent's staff in accordance with the mandatory provisions of Section 48(2) of the Labour Relations Act, 2007 duly registered their membership to the Petitioner and proceeded to serve the Respondent with the requisite check off forms.

It was therefore the Petitioner's expectation that the Respondent would subsequently and in compliance with the provisions of Section 48 (3) of the Labour Relations Act, 2007 effect deductions of trade union dues within 30 days of service.

The Petitioner contends that its membership did surpass a simple majority and hence it qualifies to be recognized by the Respondent for purposes of Collective Bargaining by dint of the provisions of Section 54(1) of the Labour Relations Act, 2007.

The Petitioner further contends that the Respondent is guilty of making deductions from its members' salaries and diverting the funds to a different organization in complete violation of the provisions of Articles 36 and 41 of the Constitution of Kenya, 2010, Section 4(1), 48(2), (3), (6), (7) and (8) of the Labour Relations Act, 2007 and Section 19 of the Employment Act, 2007.

Aggrieved by the Respondent's actions of the Respondent, the Petitioner filed the instant Petition in which it seeks the following reliefs THAT:

1. *The Court do issue Orders compelling the Respondent to effect deductions of trade union dues from basic salaries/wages of the Seven Hundred and Four (704) unionisable staff employees who have duly acknowledged their union membership and remit the moneys so deducted to the Petitioner forthwith.*
2. *The Court do issue Orders compelling the Respondent herein to pay the Petitioner forthwith from its kitty all sums due and owed to the Petitioner as union dues which the Respondent would have deducted and remitted regularly from the Seven Hundred and Four (704) unionisable staff employees as do appear on the prescribed forms (check-off forms) as duly served upon the Respondent.*
3. *The Court do issue orders prohibiting the unjustified, wrongful, illegal and unlawful deductions of the purported "Agency Fees" forthwith from the basic salaries/wages of the Seven Hundred and Four (704) unionisable staff employees of the Respondent herein who have duly prescribed on the forms (check-off forms) on the Petitioner herein without the Cabinet Secretary's Gazette Order.*
4. *The Court do issue Orders compelling the Respondent to enter a "Recognition Agreement" forthwith with the Petitioner herein for purposes of collective bargaining as envisaged under Section 54 (1) of the Labour Relations Act, 2007, Laws of Kenya.*
5. *Such other and better orders as this Court shall deem just.*
6. *The cost of the Petition be provided by the Respondent.*

In response to the Petition, the Respondent filed a Replying Affidavit deponed by **HARRISON S. AKALA**, its senior Assistant Registrar sworn on 21st March, 2019 and filed in Court on 22nd March, 2019, in which he avers that the Respondent has entered into Recognition Agreement and Collective Bargaining Agreement with only three unions being **KUSU (Kenya Universities Staff Union)**, **KUDHEIHA (Kenya Educational Institutions, Hospitals and Allied Workers)** and **UASU (Universities Academic Staff Union)**.

The Respondent further maintains that the Petitioner is therefore a stranger to union matters at its institution and therefore lacks capacity and backing in law to request for deduction of trade union dues and agency fees.

The Affiant further avers that no official communication be it oral or written has been received from the alleged unionisable employees for the deduction of union dues and subsequent instructions to forward the same to the Petitioner.

The Respondent contends that the Petition as filed does not establish a prima facie case, fails to disclose any arguable constitutional issues to warrant the issuance of any of the Orders sought therein and that the same ought to be dismissed in its entirety with costs to the Respondent.

By an Order of this Court dated 16th November 2018 KUDHEIHA Workers Union was enjoined as an Interested Party in this matter and filed its Memorandum of Response dated and filed in Court on 29th January, 2019 in which it avers that it has negotiated several Collective Bargaining Agreements with the last one registered on 15th October, 2018.

The Interested Party further avers that there are already three trade unions operating directly in the public university sector in the Country and whose membership is based on staff cadre with staff from grade 1 to 4, KUDHEIHA, grade 5 to 15, KUSU and grades 11 to 15 (teaching staff) being members of UASU.

It is further contended that it receives union dues by virtue of membership and agency fees for those employees who are beneficiaries of the services it renders in collective bargaining.

The Interested Party argues that the Petitioner ought to stop engaging in union activities as the workers of the Respondent are sufficiently represented by the existing unions.

The Interested Party urged this Court not to allow the stoppage of deductions made from the salaries of either union members or agency fees because doing so would be so punitive and injurious to the employees who are already enjoying fruits of an already negotiated agreement.

It is the Interested Party's contention that the employees of the Respondent University are already sufficiently represented and that the Petitioner should on this basis be barred from encroaching into other union jurisdictions.

In conclusion the Interested Party urged this Court to find the Petition as filed devoid of merit and proceed to dismiss the same with costs.

In its brief rejoinder to the Interested Party's Response the Petitioner filed a Further Affidavit deposed by **JAPHETH ANYIRA AGURA** on 23rd April, 2019, in which he avers that the Interested Party has no valid Recognition Agreement and therefore all negotiated Collective Bargaining Agreements entered between it and the Respondent are null and void *ab initio*.

The Affiant further avers that the Interested Party has unlawfully and illegally been receiving trade union dues from un recruited and duly registered unionisable employees without them having duly been registered on membership through check-off form S.

He further contends that the Interested Party has been receiving illegal agency fees in complete contravention of the provisions of Section 48 and 49 of the Labour Relations Act, 2007 with impunity.

He states that the Inter Public Universities Consultative Council Forum (IPUCCF) is not a duly registered employers' organization and/or association as envisaged under the provisions of Section 15 of the Labour Relations Act and therefore its involvement in trade union matters of any magnitude is considered as null and void *ab initio*.

The Petitioner maintains that the rights and fundamental freedoms as protected for workers in Kenya is not a preserve of the Interested Party for donation and/or distribution at will but is an integral part of the County's democracy as envisaged under Article 19 of the Constitution of Kenya, 2010.

In conclusion the Petitioner urged this Court to find the contents of the Interested Party's Memorandum of Response as misleading, frivolous, vexatious and wanting in both fact and law and that this Court ought to dismiss the same with costs to the Petitioner.

This Petition was consolidated with Employment and Labour Relations Cause Number 25 of 2019 in which the Claimant therein claims that the Respondent therein has unlawfully and un-procedurally caused the unfair termination of some 68 grievants who are allegedly members of the Petitioner herein.

The Claimant further contends that its affected members are aggrieved by the mass unprocedural termination and/or redundancies and sought the following reliefs:

- a) *Declaration that the un-procedural termination denied the grievants (the 68 unionisable staff employees) Natural Justice.*
- b) *Declaration that all the grievants (the 68 unionisable staff employees) are forthwith reinstated without loss of benefits, allowances and seniority; ALTERNATIVELY*
- c) *Declaration that all the Grievants (the 68 unionisable staff employees) be compensated for unfair termination*
- d) *Exemplary Damages for unfair termination.*

In response to the Claim the Respondent maintained that it has entered into Recognition Agreements and Collective Bargaining Agreements with only three unions KUSU (Kenya University Staff Union, KUDHEIHA and UASU (Universities Academic Staff Union) and that the Claimant union therefore lacks *locus standi* to institute the Claim on behalf of any of the grievants.

Submissions by the Parties

The Petitioner maintains that it has complied with provisions of the Labour Relations Act, 2007 and has successfully recruited more than 700 members of the Respondent's unionisable staff. It is on this basis that the Petitioner argued that it has the requisite *locus standi* to file the instant Claims on behalf of its members.

It further submitted that the continued failure by the Respondent to enter into a Recognition Agreement and subsequently conclude a Collective Bargaining Agreement with the Petitioner is in complete contravention of the provisions of Articles 36 and 41 of the Constitution of Kenya, 2010 as read together with Section 4(1) of the Labour Relations Act, 2007.

It further submitted that contrary to the Respondent's contention it did report this matter to the Ministry of Labour and Social Protection as required under the provisions of Section 62 of the Labour Relations Act, 2007 before moving this Court under Section 74.

The Petitioner maintained that despite serving the Respondent with Check-off forms S as required under the provisions of Section 49 of the Labour Relations Act, it has unlawfully and unfairly continued to remit Agency Fees for some 692 unionisable members of staff to the Interested Party herein.

The Petitioner further contended that pursuant to the provisions of Section 48(6) and (8) of the Labour Relations Act, 2007 an employee is allowed to withdraw his/her membership from a trade union if they so wish by serving their withdrawal notices to the employer and such an employer is obligated to accept service and forward such notices to the affected union, a requirement the Respondent failed to comply with. The Petitioner referred this Court to the case of **Joseph Mwangi Kihara & 85 Others v Kenya Union of Domestic, Educational Institutions, Hospitals & Allied Workers (2016) eKLR** where the Court held that *dissatisfied members of a union can seek redress by vacating their membership or organizing themselves and seeking to register a union to articulate their needs better.*

The Petitioner argued that this Court has a duty to act impartially and independently with an aim to create fairness and justice. It further argued that it ought to be allowed to represent its members who willingly joined the union and are a majority of unionisable members of staff.

In conclusion the Petitioner urged this Court to find merit in its Petition and allow it in terms of the reliefs sought therein.

Respondent's Submissions

The Respondent in its submissions maintained that the Petitioner has sued the wrong party and ought to have filed its Claim against the University of Nairobi instead of the University Council by dint of the provisions of Section 3 and 14 of the University of Nairobi Act.

The Respondent further submitted that the instant Petition is premature as the Petitioner ought to move this Court for recognition first before they can seek the grant of the orders sought in the Petition herein.

It further maintained that the Petitioner has no Recognition Agreement with it and that it has already entered into Recognition Agreements with three unions KUSU, KUDHEIHA and UASU. Further, that the Petitioner is a stranger and therefore lacks the requisite locus to institute the current Claims as against the University. The Respondent relied on the Court of Appeal decision in the case of **Abyssinia Iron & Steel Limited v Kenya Engineering Workers Union (2016) eKLR** and the cases of **Kenya Plantation and Agricultural Workers Union v Bendor Estate Limited (2019) eKLR** and **Banking Insurance & Finance Union (Kenya) v Waumini Sacco Society Limited (2018) eKLR** all on recognition of trade unions.

The Respondent contended that out of the alleged 704 members claimed to be members of the Petitioner Union it was only able to verify 392 members out of which, 13 members belonged to Kenya University Staff Union (KUSU), 1 was deceased, the contracts of 5 had expired, 2 had retired while 16 names were double entries.

The Respondent further contended that it had further not received any official communication from the verified 392 members of the intention to become members of the Petitioner nor were their signatures as appended on the list provided by the Petitioner verified as authentic. It is on this basis that the Respondent maintains that the Petitioner has failed to meet the mandatory requirement as provided under Section 48(b) of the Labour Relations Act.

The Respondent further submitted that the Petitioner has failed to prove that it has a simple majority for purposes of Recognition as provided under Section 54 of the Labour Relations Act, 2007. The respondent relied on the cases of **Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (Kudheihia) v British Army Training Unit Kenya (2015) eKLR**, **Kenya National Union of Nurses v County Public Service Board Homabay (2018) eKLR** and **Kenya Union of Commercial, Food and Allied Workers v Eastleigh Mattresses Limited (Eastmatt) (2017) eKLR** where the Courts held that *for a union to be recognized for Collective Bargaining it must have a majority of unionizable members of staff within the establishment in compliance with the provisions of Section 54 of the Labour Relations Act, 2007.*

The Respondent further submitted that it is yet to be served with the requisite notice as provided under Section 48(2) of the Labour Relations Act, 2007 and was therefore not bound to make the requisite union deductions and remittance to the Petitioner.

The Respondent further submitted that the Petitioner has failed to prove its case as against it by availing the requisite evidence to support its case as against the Respondent and therefore urged this Court to dismiss the same with costs. The Respondent relied on the provisions of Sections 107 and 108 of the Evidence Act.

It is further the Respondent's contention that the Petitioner has further failed to lead any evidence to support its contention that 68 unionisable members of staff were unfairly terminated and therefore argued that in absence of any evidence the Claim stands dismissed. The Respondent cited the case of **Wareham T/A A.F. Wareham & 2 Others v Kenya Post Office Savings Bank (2004) 2 KLR 28.**

On the Claim for exemplary damages the Respondent submitted that the Petitioner has similarly failed to lead any evidence to justify the need for this Court to grant the same. The Respondent urged this Court to dismiss the Petitioner's Claim under this head. The Respondent relied on the cases of **Godfrey Julius Ndumba Mbogori & Another v Nairobi City County (2018) eKLR** and **The Nairobi Star Publication Limited v Elizabeth Atieno Oyoo (2018) eKLR** where the Courts dismissed claims for exemplary damages for want of proof.

In conclusion, the Respondent argued that the Petition and Claim have been filed in bad faith, are devoid of merit and aimed at discrediting it and ought to be dismissed in their entirety with costs to the Respondent.

Interested Party's Submissions

It is the Interested Party's Submission that the Petitioner is indeed a stranger in so far as Labour and/or union activities are concerned at the Respondent University as it is clearly not in dispute that the Respondent employees are adequately represented by three unions with recognition agreements with the Respondent. The Interested Party relied on the case of **Communication Workers Union v Safaricom Limited (2014) eKLR** where the Court held that the Claimant union was a stranger in the proceedings where there was no averment in their pleading to the effect that the grievants were members of the union and there existed no recognition agreement between the Claimant and the Respondent respectively. The Court in that matter proceeded to make a finding that the Claimant union lacked the requisite locus standi to institute the Claim on behalf of the affected grievants.

The Interested Party further submitted that the names on the list provided by the Petitioner as its members are actually members of the Interested Party. It contended that the list as provided by the Petitioner is a clear misrepresentation of facts and figures and hence cannot be relied on.

It further contended that the alleged withdrawal letters referred to by the Petitioner are also unreliable as none of them have been served upon the Interested Party. It further maintained that the said letters are not authentic and that this Court ought not to rely on the same.

The Interested Party maintains that it holds a simple majority of unionisable members of staff of the Respondent University and that the Petitioner has therefore no *locus standi* in instituting the present claim. The Petitioner further relied on the case of **Communication Workers' Union v Safaricom Limited (2014) eKLR**.

It is further submitted that the instant Petition was filed prematurely as a conciliator was yet to be appointed to resolve the dispute in compliance with the mandatory provisions of Section 62 of the Labour Relations Act, 2007.

The Interested Party further contended that the Respondent is yet to terminate the existing Recognition Agreement and can therefore not enter into another Recognition Agreement with the Petitioner who claims to now have a simple majority of unionisable members of staff with the Respondent. It further contended that the Respondent was in the circumstances correct when it declined not to honour any instructions from the Petitioner herein.

The Interested Party further submitted that it would be unnecessary to bring another trade union in the Respondent establishment to represent members of staff who are already sufficiently represented by dint of Section 14 of the Labour Relations Act, 2007.

In the circumstances the Interested Party maintained that it is un-procedural, unlawful, null and void for the Petitioner to represent any member of staff as it does not have any recognition agreement with the Respondent. Further that in the absence of any recognition agreement the Petitioner lacks the requisite locus to institute the instant Claim.

In conclusion the Interested Party argued that the Petitioner has no claim as against the Respondent herein and that this Court should proceed and collectively dismiss the Petition herein and Cause No. 25 of 2019.

Analysis and Determination

I have carefully considered the Petition, the claim, Affidavits, rival submissions filed and authorities cited in support of the various arguments. The following are the issues for determination:

1. *Whether the Petitioner has locus standi to institute the petition and Claim herein.*
2. *Whether the Petitioner has met the threshold for recognition by the Respondent.*
3. *Whether the Petitioner's rights have been violated.*
4. *Whether the Petitioner is entitled to the remedies sought in the petition and the claim.*

Locus Standi

The Petitioner maintains that it has locus to institute the current petition against the Respondent herein as it has successfully recruited members of the Respondent's workforce for purposes of union representation and had in fact recruited more than 700 unionisable members of the Respondent's staff.

It further maintained that some of the union members belonging to the interested party voluntarily left the Interested Party and joined it and served the requisite notices of withdrawal to the Respondent University.

It is the Respondent's submissions that because the Claimant union has no simple majority or recognition agreement with the Respondent, it has no locus standi in the instant suit.

The Respondent maintained that it only has recognition Agreements with three unions being KUSU, UASU and KUDHEIHA and that it was never served with any documentation by the Petitioner herein as proof of union membership.

The Interested Party contended there is enough union representation within the Respondent University with the three unions having been recognized by the Respondent.

It further maintained that the lists availed by the Petitioner as proof of union membership are not authentic as they contain a lot of discrepancies from double entries to inclusion of its members on the list.

The Interested Party argued that the Petitioner ought to be locked out of the Respondent University as there is enough union representation with the three unions already recognised by the Respondent University.

The law on union representation is contained in Articles 36 and 41 of the Constitution and Section 4 and 5 of the Labour Relations Act, which protect the right of employees to form, join and participate in activities of trade unions. The Employment Act also recognises participation in union activities and at section 46 protects employees participating in union activities from victimisation.

Further, the Court in decisions on issues of locus standi of a trade union in similar circumstances as the suits herein has time and again explained that the issues of representation and recognition are different. The issue of representation is a constitutional right under Article 36 and 41 of the Constitution and Section 4 of the Labour Relations Act.

It is by virtue of membership that a trade union acquires the right to represent an employee on the rights of an employee. It does not require a simple majority of membership or a recognition agreement to do so. Section 48 of the Labour Relations Act provides the procedure for joiner by an employee to the membership of a trade union by signing of Form S in the Act, which is a check off form for deduction of union dues.

The Respondent has admitted that at least 392 of its employees have signed the check off forms of the Petitioner. For the foregoing reasons I find that the Petitioner having recruited members and having been registered as a trade union has a right to institute the instant suits.

I therefore find that the Petitioner has locus to institute this Petition.

Whether the Petitioner has met the threshold for recognition by the Respondent

Section 54 of the Labour Relations Act, 2007 provides for the threshold for recognition of a trade union being recruitment of a simple majority of members and taking into account the sector in which the employer operates.

In the present case the Petitioner maintains that it has successfully recruited a simple majority of the unionisable members of the Respondent's staff.

It goes on to aver that some of the members the Interested Party maintains are its members had actually voluntarily withdrawn their union membership and served the Respondent with notices of withdrawal.

The Respondent however denies any knowledge of any withdrawal of its employees from the Interested Party. It further denies having any knowledge of any notice of withdrawal as none had been served upon it. This Court takes note that the said Notices of Withdrawal were produced by the Petitioner in its Supplementary List of Documents at page 70 to 661. The said notices have no stamp indicating service of the same upon the Respondent.

Section 48(5), (6), (7) and (8) of the Labour Relations Act, 2007 provides as follows on the issue of resignation from a trade union:

(5) An order issued under this section, including an order to vary, revoke or suspend an order, takes effect from the month following the month in which the notice is served on the employer.

(6) An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the union.

(7) A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.

(8) An employer shall forward a copy of any notice of resignation he receives to the trade union.

The Petitioner seeks several prayers. The first is an order compelling the Respondent to effect deduction of trade union dues in terms of the check off forms it has submitted to the Respondent.

According to Section 48(6) and (7), an employer can only stop deduction of union dues upon being notified by the employee to stop deduction of union dues, which notice the employer is supposed to forward to the Union, in this case, the Interested Party.

There is no evidence that any notice of resignation has been sent by the 704 employees on whose behalf the Petitioner seeks the order. For this reason, this prayer fails.

The second prayer is that the Respondent pays the Petitioner from its kitty in respect of all sums due and owed to the Petitioner, which the Respondent would have deducted and remitted to the Petitioner from the 704 employees, the Petitioner claims to be its members. This prayer must also fail for the same reason as the first one, being that there is no proof that the 704 employees notified the Respondent of their resignation from the membership of the Interested Party to enable it stop deducting and remitting Union dues to the Interested Party, and to remit, the same to the Petitioner.

Further Section 50 of the Labour Relations Act absolves an employer from liability in respect of any deductions made in accordance with the

Act. Section 50(3), (4), (5) and (6) provide as follows: -

(3) No amount deducted from the wages of an employee in accordance of this Part may be recovered from the employer by that employee.

(4) Any amount deducted from the wages of a member of a trade union by the member's employer in accordance with this section discharges the liability of the member to pay trade union dues.

(5) An employer may set off against any sum payable to a trade union in accordance with this section, the amount of any money over paid by the employer into the account designated by the Minister.

(6) No employer shall make a deduction from the wages of an employee for the purposes of making a payment to any trade union, except in accordance with the provisions of this Part.

For these reason, this prayer also fails.

The third prayer is for orders prohibiting the Respondent from deducting agency fees from the salaries of the 704 employees the Petitioner alleges are its members. Agency fees is provided for in Section 49 of the Labour Relations Act and is deducted where an employee who is not a member of a union benefits from a CBA negotiated by the union.

The Petitioner has not negotiated any CBA with the Respondent. The CBAs that all the employees of the Respondent benefit from are negotiated by the Interested Party or the two other unions that the Respondent has recognition agreements with. The employees who are not members of the said unions are therefore liable to pay agency fees.

For this reason, the prayer No. 3 must also fail.

Prayer No. 4 is an order compelling the Respondent to enter into a recognition agreement with the Petitioner. Again, this prayer is pegged on proof of resignation of the 703 employees the Petitioner alleges to have recruited from the employees of the Respondent, which as already observed above, has not been proved.

Besides the foregoing, the Petitioner must also prove that its Constitution permits the employees of the Respondent to join its membership. Section 54(8) provides that: -

(8) When determining a dispute under this section, the Industrial Court shall take into account the sector in which the employer operates and the model recognition agreement published by the Minister.

For this reason, a union seeking recognition must prove that it has capacity to recruit the employees of that employer according to the membership clause of its Constitution. The petitioner did not avail to this court a copy of its Constitution. In the absence of proof that its Constitution covers membership by the employees of the Respondent, this prayer also fails. All the substantive prayers sought by the Petitioner having failed, the petition has no merit and is accordingly dismissed.

In terms of the reliefs sought in ELRC Cause No. 25 of 2019, I find that the claimant union has not led any evidence to support its case. Consequently, the claim is dismissed with costs to the Respondent.

Before I conclude thus judgment, there is one thing I need to point out. Litigants seem to have developed a penchant for filing petitions even where the issues raised are adequately covered in the statutes and do not raise constitutional questions. For example, in this matter the Labour Relations Act provides for the procedure for filing disputes relating to both union dues and recognition of trade unions. These are not provided for in the Constitution. The fact that Article 36 and 41 provides for Freedom of Association and recognition of trade unions respectively does not elevate such matters to the constitutional pedestal. Constitutional petitions must be left to matters which are constitutional in nature and which cannot be adequately pleaded under any other form of proceedings.

It is for this reason that I will condemn the petitioner herein to pay costs to both the Respondent and the Interested Party, having unnecessarily dragged them to court in a matter that may well have been settled through conciliation in the manner provided in the Labour Relations Act.

I will also grant costs to the Respondent in the claim as the

Petitioner did not make any attempt to prove the averments therein.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF MARCH 2021

MAUREEN ONYANGO

JUDGE

ORDER

In view of the declaration of measures restricting court operations

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

MAUREEN ONYANGO

JUDGE