REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.E073 OF 2021

UNIVERSITIES ACADEMIC STAFF UNION

(UASU) (KENYATTA UNIVERSITY CHAPTER)..... CLAIMANT

VERSUS

KENYATTA UNIVERSITY.....RESPONDENT

RULING

The claimant union filed application and Notice of Motion dated 29th January, 2021 and seeking for orders that;

> *a) This court be pleased to issue a restraining order in the nature of an injunction directed at the respondent restraining it from forcing the applicant's members to develop Modules for blended online teaching without consultation and agreement on the terms with the applicant pending the hearing of the instant suit.*
>
> *b) The court be pleased to grant an order of injunction restraining the respondent by itself, through its governing council and/or servants or agents from victimising any member of the applicant union in the academic staff bracket on grounds of not having participated in the vetting of modules for blended online teaching pending the hearing of this application and suit.*
>
> *c) The respondent to pay costs.*

The application is supported by the Supporting Affidavit of Dr. George Lukoye Makokha and on the grounds that;

> *The claimant union's rights have been violated by the respondent.*
>
> *The claimant union's members are bound to suffer irreparable loss and damage.*
>
> *It is in the interests of justice that the prayers sought herein should be granted.*

In his **Supporting Affidavit, Dr Makokha** avers that he is the secretary general of the claimant who represents the academic staff of the respondent in accordance with Article 3, 5, and 5 of the union constitution. The claimant has a valid Recognition Agreement with the respondent and have negotiated several collective agreements (CBAs) which governs the working terms of the employees and the employer covered by the same.

On 21st March, 2020 the Covid 19 pandemic hit the country like many parts of the world and which led to disruption of educational curriculum at all levels including institutions of higher learning like the respondent. On 18th May, 2020 the respondent issued the claimant members with a circular directing them to engage in the development of online modules without any consultations and/or negotiations with the claimant.

Dr Makokha also avers that on 18th August, 2020 the claimant wrote to the respondent objecting to the implementation of the development modules for blended online teaching without consultations with the union. There was no response save the respondent issued threats and intimidation intended to cow down its members. The respondent has since threatened the claimant members with sacking and hence the need for protections from the court. Unless these orders and issued to protect claimant's members there shall be loss and irreparable injustice.

The respondent in reply filed Notice of Preliminary Objections and on the grounds that the suit should be dismissed as the claimant has no capacity to sue in the manner is has purported to do.

The respondent also filed a **Replying Affidavit sworn by Prof. Fatuma Chege** the deputy vice-chancellor (administration) of the

respondent and with authority to respond herein and avers that she is a lecturer with 30 years' experience and that the instant application by the claimant is fatally defective and ought to be dismissed on the grounds that the claimant has failed to furnish the court with facts that would enable the court to exercise its discretion in addressing the application, the claimant has no capacity to claim as herein done and the application is made in misapplication of the law. The application is made in bad faith and if the orders sought are allowed there shall be great prejudice visited against the respondent.

Prof. Chege also avers that in March, 2020 the COVID-19 pandemic hit Kenya and this led to disputation of learning and institutions of higher learning like the respondent were forced to close as per the Ministry of Education circular. To adapt to the changing times and moving towards offering blended learning both physical and online classes, the respondent vide memo dated 18th May, 2020 directed its academic staff to engage in the development of online modules. The modules are basically a detailed document highlighting a schedule of what the lecturer is supposed to teach and the methodology of teaching. Such modules were already in place before COVID-19 pandemic considering every teaching staff is supposed to prepare a module before teaching, be it face to face or online teaching. The memo only now required the teaching staff to upload the said modules online. Preparation of a module is basic to a lecturer's job.

Prof. Chege also avers that the application by the claimant is in bad faith considering that uploading the modules would make learning easier for both the academic staff and the students while adhering to the ministry guidelines in maintaining social distancing and embracing alternative means of learning that are safe.

A majority of the teaching staff have already created the modules which are currently being used in the university for the on-going 1st semester and the instant application is an effort in futility and overtaken by events and made in bad faith and the court should shy away from this invitation by the claimant as it will cause chaos where there is none.

The claimant only filed the instant suit 3 months after the development of the modules and particularly on the deadline of the submissions. The delay in addressing the matter has not been explained. The injunctive orders sought by the claimant are purely monetary. The respondent has always paid the claimant members their full salaries despite the fact that there is no learning going on since March, 2020 until November, 2020 a period of 9 months when operations resumed and the claimant is seeking to take advantage of the pandemic to make extra money to the detriment of the respondent and the students instead of offering solutions.

The respondent is making great efforts to maintain its operations and to grant the orders sought by the claimant and cease further development and use of the online modules, operations would come to a halt and learning would stop in its entirety considering a majority of courses are now offered online or partly online thus affecting students education who are already suffering due to the pandemic. It would be selfish to subject the students to further anguish. The court should bear the public interest which is represented by the respondent.

The use of online modules is not a new concept considering very many universities in Kenya and the worked at large have embraced this new mode of learning which curtails modules and uploading them online for easy use by students.

The respondent has not threatened its teaching staff with regard to the development of the modules and such a statement is meant to mislead the court and no evidence has been adduced in court to support such grave allegations.

Prof. Chege also avers that there is no evidence of the prejudice to be suffered by the claimant if the orders sought are not granted and the application should be dismissed with costs.

The claimant filed a **Further Affidavit** sworn by Dr. Makokha and who avers that with regard to threats issued to its members they made demand and tried to engage the respondent without success. The claimant's efforts with regard to the protection of its members is recognised under its constitution and recognition agreement.

The claimant is a registered branch of the union and has capacity to sue and be sued in its right to protect the interests of its members.

The COVID -19 pandemic has affected everyone within the university just like the public at large and any induction of change to the work terms needed engagement of the claimant in order to agree on the parameters of the intended changes which the respondent refused to engage. The effect of the changed modules affect claimant members teaching schemes and styles and cannot be imposed unilaterally.

The claimant members have been threatened with a sack and that unless they prepare the modules there is threat of victimisation and the respondent has refused to engage the claimant in order to develop a good working environment forcing the claimant to commence these proceedings.

In further reply, the respondent filed a **Further Affidavit sworn by Prof. James Kungu** the acting vice-chancellor (Administration) of the respondent and also has been teaching for over 25 years and avers that the deponent in the affidavits filed by the claimant defines Dr Makokha as the National Secretary General of Universities Staff Union (UASU) but a perusal of the returns of national officials lists a different person in such position/office. This show the claimant is misleading the court and concealing material facts especially in urging this application. This is misleading and the suit is filed without the blessings of the union.

Prof. Kungu also avers that the claimant as a chapter has no capacity to sue in the manner it has purported to do and the entire suit is incompetent. The deponent in support of the suit is currently not an official of the claimant and the union has no officials at the moment.

The claimant has not given evidence of any harassment of its members who have since developed the required modules willingly which has made their work easy. This is within the management discretion and the court should be slow to intervene.

The claimant filed a **Supplementary Affidavit sworn by Dr Makokha** and who avers that the claimant is a registered branch of the union with capacity to sue and be sued in its own right as long as it is protecting the interests of its members. COVID-19 pandemic affected everybody within the university establishment like all the public and any change to the working terms and style needed engagement of the claimant and the respondent council in order to agree on the parameters of the intended changes which the respondent has refused to engage.

Dr Makokha also avers that the subject module development in incorporated in the 2013/2017 CBA under clause 5(d) between the union and the respondent's council. This is a negotiable item which the respondent cannot overlook. The respondent should be made to engage the union before implementing systems that have serious repercussion on the welfare of its employees and members of the claimant and hence the need for protection orders by the court.

Both parties attended and agreed to address the objections made by the respondent and the motion by the claimant by way of written submissions.

The claimant submitted that on the alleged lack of capacity to sue, it is a registered branch of the union whose mandate is to address labour relations and employer/employee relations at the respondent in terms of article 3, 5 and 15 of the constitution. In filing the suits the claimant complied with Rules 5, 6, 7 and 8 of the Employment and Labour Relations Court (Procedure) Rules which allow initiation of suits through a claim or petition.

On the Motion before court the claimant is seeking an injunction directed at the respondent who has unilaterally introduced the development of modules for blended online teaching by the respondent in May, 2020 without consultation with the claimant union as required by the Recognition Agreement signed between the parties at section 4, 5 and 7 and sections 3, 7 and 8 of the CBA. The respondent wrote to the claimant members advising them to prepare the modules with a certain timeframes and despite protests by the claimant, the respondent ignored.

The claimant has the right to negotiate and engage in consultations touching on the introduction of modules for blended online teaching which has been violated by the respondent by intimidation of its members and who risk victimisation unless the court issues protective orders and injunction. There are verbal and intimidating threats issued to claimant members by the respondent and despite the claimant writing to the respondent to cease such action they have not obliged.

In the case of **Robert Nixon Shitambanga v Sunny Processors Ltd Cause No.E372 of 2020** the court issued restraining orders against the employer for victimising, intimidating, harassing, coercing and threatening the employee with termination or disciplinary action for engaging in union activities. Similarly in the case of **KUCFAW v Kenya Credit Traders Ltd ELRC Cause No.285 of 2020** the court restrained the employer from victimising employees for engaging in union activities pending the hearing of the main suit.

The respondent submitted that they have made objections with regard to the capacity of the claimant to sue as a branch. Section 21 of the Act, a trade union has capacity to sue but those powers can only be exercised by the union as registered.

The claimant is not a registered trade union and has not submitted its registration certificate and a chapter of the union has no capacity to sue or be sued. In **Kenya National Chamber of Commerce & Industry – KNCCI (Muranga Chapter) & 2 others v Delmonte Kenya Limited & 3 others; County Government of Kiambu [Interested Party] [2020] EKLR** the court held that the 1st plaintiff did not demonstrate it had capacity and mandate to sue on behalf of the national outfit.

In this case the claimant has not demonstrated the persons on whose behalf the *petition* [Claim] is instituted. There is no schedule of names of claimants that is attached as held in **Dock Workers Union v Kenya Ports Authority [2015] eKLR.** the persons who purport to represent the claimant are no longer in office.

The respondent also submitted that the claimant has not demonstrated a *prima facie* case with a probability of success to justify the grant of the orders sought as set out in the case of **Giella v Cassman Brown & Co. Ltd [1973] EA** that the applicant must show a *prima facie* case with high probability of success, there will be irreparable injury and the balance of probabilities favours such party. And in **Mrao Limited v First American Bank of Kenya Limited & 2 others [2003] EKLR** the court held that a *prima facie* case is one with an arguable case and on the material presented to the court, such demonstrate there exists a right which has been infringed by the respondent and calls for a rebuttal.

The claimant has made attempts to frustrate the efforts being undertaken by the respondent to offer education in extremely difficult circumstances occasioned by Covid-19 as confirmed in the affidavits of Prof. Chege and Prof. Kungu who have vast experience in teaching of a unit without first preparing detailed notes that would specify the contents of each lesson that is to be covered during the semester.

Before Covid – 19 pandemic, detailed notes would be prepared but not uploaded online as teaching was 100% face to face and little online learning and lecturers engaged in online teaching were largely regarded as 'overtime' work. With Covid -19 pandemic, it has become necessary for the respondent to explore creative ways of learning and necessitating blended learning as alternative to overcome mode of learning. For online teaching to be effective there is need for detailed notes to be uploaded online and hence the request for lecturers to upload these notes now termed as modules.

The respondent also submitted that almost all the lecturers have complied and uploaded the detailed notes/modules on the online platform without any coercion and in effect the suit is spent. The claimant is only keep to cause chaos and frustrate operations for a selfish motive for a payment. The respondent has continued to pay the lecturers their salaries for 9 months when there was no learning. All universities around the country and the world have adopted online learning and the application before court should be dismissed with costs.

The claim by the claimant is purely monetary and seeking payment of damages. An injunction should not issue where there exists adequate damages.

Determination

On the objections and motion before court, the twin issues for determination are whether the claimant has capacity to sue as herein done and whether the orders sought seeking restraining orders against the respondent should issue in the interim.

The respondent's objection herein it that the claimant has no capacity to sue in this matter. The respondent relied on the case of **Kenya National Chamber of Commerce & Industry – KNCCI (Muranga Chapter) & 2 others v Delmonte Kenya Limited & 2 others; County Government of Kiambu (Interested Party) [2020] eKLR.**

In the Memorandum of Claim filed together with the instant Motion, the claimant defines itself as the *duly registered union with a constitutional mandate to recruit and represent members in the respondent university amongst institutions of higher learning.*

At paragraphs 3 and 4 of the Memorandum of Claim the claimant avers that on 28th October, 2019 the union entered into a Recognition Agreement with the respondent setting out the terms of engagement between the parties and under section 5 the parties agreed to engage and consult on matters touching on the terms and conditions of employment within the respondent. The parties have since negotiated several CBAs setting out the terms and conditions of service for the claimant members within the respondent establishment.

The Motion is supported by several Affidavits sworn by Dr Makokha and who avers that;

> *I am the Chapter Secretary General of the applicant union herein duly authorised by the Union and competent to swear this Affidavit in support of the Application filed herewith.*

In the Further Affidavit of Prof. Kungu dated 12th April, 2021 he has attached extract from the office of the Registrar of Trade Unions with a list of Committee Members and Trustees of the claimant and the Secretary therefrom is noted as Dr. George Makokha effective 9th October, 2014 and the extract was as at 19th May, 2016.

Without contrary extract as to the current status of the claimant, the extract from the Registrar of Trade Union is *prima facie* evidence of the current officials of the claimant.

Prof. Kungu in his paragraph 6 of his Further Affidavit of 12th April, 2021 avers that;

> ***…*** *As a matter of law, the claimant (as a chapter of UASU) has no capacity to sue in the manner it has purported to do and the entire suit herein is therefore incompetent.*

Sect 25 of the Labour Relations Act, 2007 (the Act) allow the Registrar of Trade Unions to register a branch of a trade union under its own name with rights and obligations. Where there are changes to the particulars of any union or its branch (es), the *secretary* thereof is allowed to effect change(s) and issue notice to the Registrar of Trade Unions pursuant to section 27 of the Act.

Where the claimant is a chapter/branch of UASU and has received registration under section 25 of the Act and issued notice of any changes pursuant to section 27 thereof, the secretary therefrom is allowed to act for the chapter while the national office is allowed to act through the *General Secretary* as defined under section 2 of the Act.

The legality and standing of a union branch upon registration by the Registrar of Trade Unions is secured and protected under section 21 of the Act;

> ***21. Effect of registration***
>
> *A trade union, employers' organisation or federation shall be registered as a body corporate—*
>
> *(a) with perpetual succession and a common seal;*
>
> *(b) with the capacity in its own name to—*
>
> *(i) sue and be sued; and*
>
> *(ii) enter into contracts; and*
>
> *(c) hold, purchase or otherwise acquire and dispose of movable and immovable property.*

In the case of **Perpetua Mponjiwa & 4 others on behalf of members of Aviation & Airports Workers Services Union & 2 others v Aviation & Airports Workers Services Union & 2 others [2016] eKLR** the court held that

elected officials of a union branch once registered with the Registrar of Trade Unions have capacity to sue and be sued. This is true of the claimant. As a branch of UASU there is legal capacity to sue and be sued.

The respondents have relied on the case of **Kenya National Chamber of Commerce & Industry – KNCCI (Muranga Chapter) & 2 others v Delmonte Kenya Limited & 2 others,** cited above, to assert that the claimant has no capacity to sue save the court reading of this matter is that the foundation and the issues therein are foundationally different and cannot apply with regard to the application of the Labour Relations Act, 2007 which give the claimant capacity to initiate these proceedings.

Objections made are without foundation and are hereby dismissed.

With regard to the orders sought for an injunction restraining the respondent from forcing the claimant members to develop modules for blended online teaching without consultations and agreement on the terms, it is not contested that the parties herein are regulated under a Recognition Agreement and the CBA. On the one hand the Recognition Agreement gives the claimant legal mandate to negotiate a CBA with the respondent pursuant to section 54 of the Act and on the other hand, CBAs are negotiated periodically with regard to terms and conditions of service for the claimant members in the employment/service of the respondent and as required under section 57, 59 and 60 of the Act.

It is not in dispute that there exits an active CBA covering the years 2013/2017.

Under the CBA parties are bound by its terms.

Should the orders sought issue?

In **Nguruman Limited v Jan Bonde Nielsen & 2 others, CA No. 77 of 2012; [2014] eKLR,** the Court of Appeal reiterated the conditions to be met by a litigant who seeks injunctive relief as follows;

> *In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;*
>
> > *a. establish his case only at a **prima facie** level,*
> >
> > *b. demonstrate irreparable injury if a temporary injunction is not granted, and*
> >
> > *c. ally any doubts as to (b) by showing that the balance of convenience is in his favour.*
>
> *These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.*

And in in the case of **Mrao Ltd. v First American Bank of Kenya Ltd & 2 others [2003] KLR** the court defined a *?prima facie case?* in the following terms;

> *In civil cases, a **prima facie** case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A **prima facie** case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.*

In this regard, under the applicable CBA for the years 2013/2017 under Clause 5 the parties agreed on the workload for the clamant members in the following terms under clause 5(a) (v);

> *The maximum Lecturer workload shall be 40 hours per week and shall include 10 hours of teaching; setting examinations; marking of examination scripts; entering of marks on the individual mark sheets; tutorials; preparation of teaching; supervision of academic work; 16 hours of administrative work; laboratory and laboratory preparation; and 14 hours of research/research assignments.*

With regard to remuneration for the workload, the parties agreed to outline the same under Clause 5(d) of the subject CBA in the following terms;

> *i. Part-time/extra teaching undergraduate courses - Ksh.2,300 per hour*
>
> *ii. Part-time Masters courses – Ksh.2,300 per hour*
>
> *iii. …*
>
> *iv. …*

v. …

vi. …

vii. …

viii. …

ix. …

x. …

xi. Module writing – Ksh.120,000

xii. Vetting of modules – Ksh.4,200

These are the applicable terms and conditions agreed upon by the parties and outlined under the CBA. The CBA is a registered instrument with the court pursuant to section 59 (5) of the Act and under which the respondent is bound in the following terms;

> *(5) A collective agreement becomes enforceable and shall be implemented upon registration by the Industrial Court [Employment and Labour Relations Court] and shall be effective from the date agreed upon by the parties.*

The assertions by the respondents as outlined in the Replying Affidavits of Prof. Chege and Prof. Kungu that the *claimant has exhibited extreme selfishness by taking advantage of COVID – 19 Pandemic to make an extra coin to the detriment of the University and its students* on the face of the memo dated 18th May, 2020 and follow up memo dated 29th June, 2020 is telling. The respondent directed the department heads that;

> *ADHERENCE TO THE DEADLINE FOR DEVELOPING ONLINE MODULES FOR FIRST SEMESTER*
>
> *This is a follow up to my memo of 18th May, 2020 …*
>
> *Please note that the university will initiate the mainstreaming of the blended mode of learning in all the face face-to-face programmes with effect from 1st September of the Academic Year 2020/2021. To ensure effective implementation of this mode of teaching, all Chairpersons of Departments were advised via earlier memo to oversee the development of interactive online modules for all the first semester units and complete the exercise by the deadline on 15th July, 2020.*
>
> *This is to reinstate that the set deadline for the development of the modules remains INTACT and will NOT be extended. As Chairperson of Departments, you are hereby asked to confirm completion of this exercise with accompanying evidence by 15th July, 2020. …*

The memo is couched in mandatory terms. Adherence to the deadline is given. The threat apparent. Each chairperson of departments was directed to ensure *completion of this exercise with accompanying evidence.* the court reading of this memo and requiring adherence leaves no room for anything else. It is not optional.

As noted above, the CBA has set out the issue of workload as a negotiable item. Whereas the respondent has the duty to allocate work to the claimant members and academic staff within the university, the development/writing and vetting of modules are agreed as remunerated items. The subject memos for the development and writing of the online modules are set out in no uncertain terms as mandatory. No room is left for engagement or consultation on a negotiable item.

In the written submissions, the respondent appreciates the gist of the claimant's application save to assert that before Covid – 19 pandemic the online learning *was very little online learning at that point and lecturers engaged in online teaching were generally regarded as doing ? overtime? work.* With this recognition that online learning was as such and having been agreed upon in the subject CBA, the claimant is justified in seeking for consultations and negotiations over the matter for and on behalf of its members now directed and required to undertake work *generally regarded as doing ? overtime? work.*

The court finds there is a *prima facie* case established by the claimant to secure the orders sought.

The claimant as a party to the CBA and whose mandate is to protect the interests of its members and academic staff serving under the respondent has a right to secure any rights violations which negate the CBA. The respondent has recognised the claimant so as to ensure work terms and conditions are negotiated by the single entity for academic staff. To proceed *suo motto* on a negotiated item under the CBA without consultations and direct the claimant members to proceed development and vetting of modules is to negate the very document the respondent has negotiated and agreed upon. Such document and CBA is registered with the court and subject of enforcement.

the clarity of a *prima facie* case established, the other limb the court must further be satisfied with is that the injury the claimant will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage.

The CBA is clear to the extent that the development/writing and vetting of modules is remunerative.

The respondent confirm that the claimant members have since developed the modules and with passage of time as evidenced by the memo dated 29th June, 2020 and the demand letter by the claimant dated 15th July, 2020 to the effect that;

> **…** *with the deadline of submissions being 15th July, 2020. Whereas as the Union may support the idea toward blended learning methods and hence the module requirement, the following concerns needed to inform the process:*
>
> *1. Timely and official communication to Academic Staff members, including chairpersons. …*
>
> *2. According to the obtaining CBA (2013-2017 section 5(d) xi and xii on workload), the costs of module writing is KES 120,000.00 and that of vetting is KES 4200. These terms should be included in letters of engagement to all academic staff in addition to specifying the course units for which they are being engaged.*
>
> *3.* ***It should be noted that development of modules that meet expected quality standards requires time. this is particularly critical given the prescribed formant.*** *Faculty members need to research, synthesize, and consolidate knowledge.*

… [emphasis added].

The claimant was hence clear on its demands.

Prof. Kungu in his Affidavit dated 12th April, 2021 at paragraph 8 avers that;

> **…** *members of the claimant have developed modules willingly and happily having realised that such modules even make their work easy. Consequently, the current suit is aimed to introduce confusion and chaos where there is none.*

Far from it. This has to be two-way. Remunerate the willing employee and make the employee happy. This is the essence of a negotiated CBA. Pay where due.

As set out above, there is a CBA governing relations between the parties. Even where the claimant members have proceeded *willingly* and *happily* to develop the modules as directed by the employer, such directive being without option, it is not lost to the court that the gist of the matters at hand are these are negotiated items and are remunerated and beyond all else the need for ***development of modules that meet expected quality standards requires time. this is particularly critical given the prescribed formant.*** I take it; by the parties to the CBA 2013/2017 outlining the need for vetting of the modules was on purpose and deliberate to ensure quality control. As a work tool for application by the academic staff of the respondent and who are members of the claimant, this element of quality control and vetting of the developed modules is negotiated and once done, it is remunerated.

In conclusion, bearing in mind that the very foundation of the jurisdiction to issue orders of injunction vests in the probability of irreparable injury and in this case the terms of the CBA at clause 5 looked at in whole address the remuneration of claimant members who have since developed and are using the modules, the reliefs sought at this stage shall be to ensure the operations of the respondent do not stall subject to adherence to the given and agreed upon terms of the CBA 2013/2017 without victimisation of any claimant member or being put to a disadvantage for developing the required modules. These are matters the parties can address across the table taking into account ***development of modules that meet expected quality standards requires time. this is particularly critical given the prescribed formant*** and *the costs of module writing is KES 120,000.00 and that of vetting is KES 4200. These terms should be included in letters of engagement to all academic staff in addition to specifying the course units for which they are being engaged.*

> **Accordingly, application by the claimant dated 29th January, 2021 is hereby found with good foundation;**
>
> **(a) the respondent now enjoying the facility and developed modules by the claimant members shall apply CBA 2013-2017 terms and condition under clause 5 thereof without placing any claimant member at a disadvantage;**
>
> **(b) On these ORDERS, the claimant members shall oblige lawful directions and instructions of the respondent in the development of modules taking into account Clause 5 of the CBA 2013-2017 until otherwise directed and pending the hearing of the main claim herein; and**
>
> **(c) Costs herein shall abide the outcome of the main suit.**

DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF APRIL, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

……

and …….....