



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. E070 OF 2021

(Before Hon. Lady Justice Maureen Onyango)

IN THE MATTER OF ARTICLES 2, 3(1), 10, 19, 20, 21, 23(2), 28, 258 AND 259 OF

THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS

IN ARTICLES 27, 36(1), 41(1)(c), 47 AND 50(1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTIONS 3, 12 AND 20 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT

ACT NO. 20 OF 2011

AND

IN THE MATTER OF SECTIONS 4(2), 6 AND 7 OF THE LABOUR RELATIONS ACT, 2007

AND

IN THE MATTER OF ARTICLE 22 AND 26 OF THE

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

AND

IN THE MATTER OF ARTICLE 22 AND 26 OF THE INTERNATIONAL COVENANT ON ECONOMIC,

SOCIAL AND CULTURAL RIGHTS (ICESR)

AND

IN THE MATTER OF ARTICLE 23(4) OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHIR)

AND

IN THE MATTER OF SECTION 3, 4, 6 AND 7 OF THE FAIR ADMINISTRATIVE ACTIONS ACT

BETWEEN

JERRY OLE KINA.....PETITIONER

VERSUS

HON. TOM MBOYA ODEGE.....1ST RESPONDENT

UNION OF KENYA CIVIL SERVANTS.....2ND RESPONDENT

JUDGMENT

1. The Petitioner is the elected 1st Deputy Secretary General of the Union of Kenya Civil Servants, the 2nd Respondent herein.
2. The 1st Respondent is the Secretary General of the 2nd Respondent, a trade union registered under the Labour Relations Act to represent the interests of employees in the public service of the government of Kenya.
3. The Petitioner filed an application dated 6th May 2021 together with a petition of even date. The petition and the application were amended on 17th May 2021. The petition and the application were consolidated on 27th May 2021. The orders sought are as follows: -

- a. *A Declaration that the National Executive Board resolution of 11th May, 2021 suspending the Petitioner was ultra vires Articles 15(4)(iv) of the union constitution and Section 34 of the Labour relations Act and Articles 41 of the Constitution of Kenya, 2010;*
- b. *A permanent injunction to issue restraining the 1st and 2nd respondent and its organs from discussing the Petitioner and bar the Petitioner from participating in the elections scheduled for 22nd June, 2021;*
- c. *An order compelling the respondents to accept the Petitioner's notification of intention to view for the position of Secretary General;*
- d. *A declaration that the respondent's actions infringed upon the Petitioner's constitutional rights;*
- e. *General damages;*
- f. *That costs of the petition be borne by each party.*

4. The Respondents filed a replying affidavit of HON. TOM MBOYA ODEGE, the 1st Respondent in opposition to the petition. The grounds upon which the 1st and 2nd respondents opposed the amended petition as consolidated is summed up as follows: -

- (i) *That the entire application is fatally defective, frivolous. Vexatious, bad in law, an abuse of the court process, it is an afterthought, mis-conceived, time wasting, unmerited and a conglomeration of lies, it's full of half-truths, lies and blatant concealments of facts. The application is a perfect material for dismissal with costs.*
- (ii) *That the substratum of the entire petition is fatally defective the contents of the petition having not been verified by the relevant affidavits of the Petitioner.*
- (iii) *That the Petitioner is an official of the union and as such bound by the constitution of the union as amended by resolution of the National Special Delegates conference held on 12th November, 2015. The Petitioner is also bound by the rules of the union and the general standing orders, the union resolutions and decisions of the union organs.*
- (iv) *That the Petitioner being an official of the union is bound by the union constitution, rules and standing orders to personally attend at all times all union meetings organized by the union and its organs without fail more so on an issue touching on the subject official's character and person.*
- (v) *That the Petitioner being an official of the union is invited at all times to comply, respect and implement in full all lawful decisions and resolutions made by any organ of the union*
- (vi) *That Article 11 and 12 of the union constitution as set out the grounds for removal of officials from office as follows:-*

Article 11: Tenure of vacation of office

- (1) *Every elected Official of the Union shall hold office for a term of five (5) years, but shall be eligible for re-election.*
- (2) *Notwithstanding the provisions in Article 11(1), the fourteen (14) elected National Officials and the three (3) Trustees of the Union shall hold office for a term of five (5) years, but shall be eligible for re-election twice.*
- (3) *The term of office of all elected National Officials of the Union shall expire at the next National Quinquennial Delegates Conference following the assumption of office by that official.*

(4) If more than three positions in the National Office fall vacant at least twelve months before the next National Quinquennial Delegates Conference, the next National Delegates Conference shall fill the vacancies.

(5) Where a vacancy arises in the National Office under the circumstance not contemplated under sub-article (4), the Advisory Council shall appoint a person to act in that office.

5. That the procedure of removal of officials and members from office as enshrined in the union constitution, the Labour Relations Act and the Constitution of the Republic of Kenya is as follows:-

a. That upon determination by NEB the official may be suspended

from office;

b. That the next advisory council shall deliberate on the matter;

c. No official shall be suspended by NEB or any organs of the union or expelled unless he or she has been given an opportunity to state his case personally or in writing at the meeting of NEB about which he/she has received notice of not less than 14 days in writing;

d. The notice shall state the particulars and/or allegations with which the member is being charged and

e. That the official is entitled to invite witnesses in support of his/her case.

f. That if a member is dissatisfied, an appeal is provided by the union constitution to the advisory council.

6. That the union and its organs complied with the procedure above upon satisfying itself of violations of the union constitution by the Petitioner.

7. That the Petitioner was on 28th April, 2021 issued with a notice to show cause in compliance with Articles 12(3) of the union constitution for reasons inter- alia Insubordination, misuse of union assets, contemptuous display of scorn and disdain to elected officials of the union and flat-out disobedience and refusal to obey the laid out procedures, manuals, standing orders and the union constitution.

8. That the notice issued was for a period of 14 days between 28th April 2021 and 11th May 2021 both days inclusive. The notice carried with it details of all the allegations with which the Petitioner was charged. The notice further invited the Petitioner to avail himself at the meeting of the National Executive Board that was scheduled for 11th May 2021 and defend himself against all the proclamations contained in the notice.

9. That the Petitioner in complete violation of the union constitution and the law, failed to appear before the National Executive board meeting on 11th May, 2021 in violation of Article 4(3), 5(c), (d) and 12(3) of the union constitution.

10. That the NEB upon satisfying itself of all the assertions and proclamations made against the Petitioner and in compliance with Articles 12(2) and (3) of the Union constitution suspended the Petitioner and communication thereof was made on 12th May 2021.

11. That vide the letter dated 12th May, 2021 communicating the decision of NEB to the Petitioner, the Petitioner was duly advised to follow the constitutional procedures under Articles 12 of the union constitution and make the necessary appeal if he so wishes to the Advisory Council. The constitutional organs were not made in vain. That no authority in the circumstance ought to usurp the authority of the union organs as doing so would be unprocedural and unlawful and any decisions made thereof would be subject to other interventions and may likely cause uncalled for ridicule and embarrassment.

12. That the Petitioner has not complied with the above procedure and provisions of the law more specifically Article 11 and 12 of the Union Constitution.

13. That the applicant has failed to establish a clear case for interlocutory mandatory injunctive relief based on the established tenets relating to the said orders and invites the court to note that the union organs has acted within its constitutional prerogative and the Petitioner should exercise its rights of appeal under the union constitution.

14. That damages would be an adequate remedy to the Petitioner if the entire petition is subjected to full hearing in any event the said relief has already been sought in the main petition.

15. That the Petitioner has not demonstrated any violations of his rights under the constitution of the Republic of Kenya, 2010 or any at all. The union organs acted within the dictates of the union constitution.

16. That granting the said relief, the Court will be stifling the management prerogative of the union organs in disciplining rogue union officials while it ought only to intervene to put things right and not stop the process. The court ought not take away the prerogative of the union organs as per the union constitution and the law.

17. That in view of the above reasons, the application and the petition before court is premature and in total contravention of procedure as

above cited and should at the earliest opportunity be struck off.

18. That removal and/or suspension of national officials is not within the purview of court but the organs of the union.

19. That the allegations contained on the face of the application, the affidavit in support of the application and the petition itself are pure imaginations of the Petitioner.

20. That the union constitution has laid out qualifications for any person whether member of the union or not to run for the position of the secretary general of the union pursuant to Section 31 of the Labour Relations Act, 2014 and Articles 7 of the union constitution. The Petitioner has failed to satisfy and meet the minimum requirements having contravened the union constitution and acted in a manner detrimental to the interest of the union. That the Petitioner currently is being handled by the union organs.

21. That the applicant has not demonstrated compliance with the above procedure or at all.

Petitioner's Case

22. It is the Petitioner's case that he is an aspirant for the position of Secretary General in the forthcoming elections of the 2nd Respondent scheduled for 22nd June 2021. That the 1st Respondent who is the incumbent secretary general of the 2nd Respondent is defending his seat and has hatched a well-choreographed dubious scheme to block the Petitioner from contesting for the position.

23. That by letter dated 28th April 2021 addressed to the Petitioner, the 1st Respondent called upon him to show cause before the 2nd Respondent's National Executive Board on 11th May 2021 why disciplinary action should not be taken against him on inter alia insubordination, misuse of union assets, contemptuous display of scorn and disdain to elected officials and flat out disobedience and refusal to obey the laid down procedures, manuals, standing orders and the Union's Constitution. That this was at the instigation of the 1st Respondent.

24. It is further the Petitioner's case that the Respondents failed to comply with the 2nd Respondent's constitution, the Labour Relations Act and the Constitution.

25. The Petitioner submits that Section 34(1) of the Labour Relations Act provides that the election of officials of a trade union, employer's organization or federation shall be conducted in accordance with their registered constitutions. This by extension applies to the running of Union affairs that any actions shall be conducted in accordance with registered constitution. As such, any actions taken contrary to the provisions of the Union's Constitution must fail and are a nullity ab initio.

26. That Section 4(2)(a) of the Labour Relations Act provides that every member of a trade union has the right, subject to the constitution of the trade union to participate in its lawful activities. In keeping to this well laid out provisions, the Petitioner has always discharged his duties as per Article 8 of the Union's Constitution. The Petitioner thus invited the court to find that the actions of the Respondents were not only unlawful and ultra vires but were meant to curtail his candidature in the forthcoming elections.

27. The Petitioner submits that the impugned show cause letter was occasioned by his letter dated 23rd April 2021 to the commissioner labour as a regulator which action was meant to ensure strict compliance with the Union's Constitution and was not in any way detrimental to the Union's interests but rather to foster and entrench good governance. That this did not settle well with the 1st Respondent who in effect wants to depart from the provision of Article 15(1.1) on how the delegates are arrived at.

28. That this blatant disregard was further compounded by the 1st Respondent's double application of the rules where he, vide letter dated 29th March 2021 forwarded a letter by the Petitioner to the registrar of trade unions whose content were challenging the registration of one Abdul Malik as the Chair Nakuru branch only to turn around and accuse the Petitioner of inter alia insubordination, misuse of Union Assets, Contemptuous display of scorn and disdain.

29. That this action were informed by the finding that the individual to whom a letter of protest was done was indicted of defrauding the union besides having admitted the theft and sought forgiveness in furtherance of the disregard. That the change of tune and double standards became more evident when officials from Transzoia branch were denied registration whereas a member who had admitted to his fraud was cleared and if questioned a notice to show cause was issued.

30. That further the scheme become more apparent by the introduction of a condition that is non-existent in the Union's Constitution that non-members pay a fee of three million shillings on application for the consideration of one's candidature as Secretary General. This is not only affront to Article 7(4) of the Union's Constitution but equally Section 34 of the Labour Relations Act 2007.

31. That the same would still be defeated by Section 27 of the Labour Relations Act 2007 since the amendments that would have legalised the said payment has never been registered. That it beats logic for the 1st respondent to allege that the Petitioner has abrogated the provisions of the Union's Constitution whereas the 1st Respondent is at the centre of destroying the facet and abrogating the Union's Constitution and is quick to point an accusing finger. He who comes to equity must come with clean hands.

32. That without prejudice to the forgoing, the fundamental question is who can initiate disciplinary proceedings against a union official? That Article 15(4)(d)(iv) of the Union's Constitution provide for the functions of the National Administrative Council to include but not limited to:

"Taking appropriate disciplinary action against any member or official of the union on issues relating to Constitutional breach and/or indiscipline. Such disciplinary action shall apply sanctions involving suspensions for a period not exceeding three (3) months in the first instance and not more than six (6) months in aggregate. A member or Union official on whom a disciplinary has been taken shall have recourse for appeal at the National Executive Board."

33. That Article 12 provides for disciplining of the Union officials and an elaborate process for issuance of notices and hearing, the same was not followed. This is evidenced from the show cause notice calling for the hearing within 14 days as opposed to the requirement to give a notice of not less than 14 days envisioned in Article 12(3).

34. Article 15(3) provide for the National Executive Board, which board as per the provision of Article 15(4) serves as an appellate body to the decision of the National Administrative Council. As such, any officious by bystander can easily read in between the line to see a malicious scheme by the 1st Respondent to initiate a process that is not within his mandate and at a wrong forum let alone having been an active participant as a drafter or conveyor belt in some of the letter to which he accuses the Petitioner for various abuses.

35. That the Respondents' action fail in both the rationality and reasonableness tests and proceed to quash the decision made by the Respondents on the basis that the design was flawed. Where a process is flawed, it is incurably bad thus void *ab initio*.

36. The Petitioner relied on the case of **Republic v Public Procurement Administrative Review Board & 2 others Exparte Rongo University (2018) eKLR** where Mativo J. in expounding the rationality and reasonableness cited the Australia case in **Prasad v Minister for Immigration** where the Federal Court of Australia applying the above stringent test held that –

"In order for invalidity to be determined, the decision must be one which no reasonable person could have reached and to prove such a case required "something overwhelming". It must have been conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt, and when "looked at objectively... so devoid of any plausible justification that no reasonable body of persons could have reached them."

37. The Petitioner also relied on the Court of Appeal decision in **Suleiman Said Shabbal v Independent Electoral & Boundaries Commission & 5 Others (2014) eKLR** citing **Macfoy v United Africa CO. LTD** wherein Lord Denning distinguished between an act that is a mere irregularity, and one that is a nullity. A mere irregularity is not void but voidable. An act that is voidable is valid until it is made or declared void. It ceases to have effect after it is declared void; it is not *void ab initio*. What had been done or accomplished before, pursuant to that act, is not affected by the declaration. That on the other hand a nullity is really something that is void, a nothing right from the beginning. In the word of Lord of Lord Denning:

"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse... But if an act is only voidable, then it is not automatically void. It is only an irregularity which may be waived. It is not to be avoided unless something is done to avoid it. There must be an order of the court setting it aside; and the court has a discretion whether to set it aside or not. It will do so if justice demands it but not otherwise. Meanwhile it remains good and a support for all that has been done under it."

38. The Petitioner submits that the Respondent initiated the process in the wrong forum, did not accord the Petitioner a hearing or give sufficient notice and used double standards in applying the rule. That the Respondent departed from their own rule thus making the entire process a nullity and that every other proceeding founded thereon is bad and incurably bad. That the only commendable finding militates toward granting the prayer sought in both the motion and petition.

39. The Petitioner submits that his accuser and his accolade were presiding jurors in his case.

40. The Petitioner relies on the case of **Judicial Service Commission and Another v Lucy Muthoni Njora (2021) eKLR** where the Court held that: -

"We emphatically find and hold that there is nothing doctrinally or jurisprudentially amiss or erroneous in a Judge's adoption of a merit review in judicial review proceeding. To the contrary, the error would lie in a failure to do so, out of a misconception that judicial review is limited to a dry formalistic examination of the process while strenuously and artificially avoiding merit. That path only lead to intolerable superficiality."

....

...the traditional "process-only" approach to judicial review must involve a measure of merit analysis. How would a court determine whether an employer acted reasonably and fairly "in the circumstances of the case", without examining those circumstances and measuring them against what is reasonable or fair and arriving at the conclusion that the action taken was within or outside the bond or range of reasonable responses? I think that it would be unrealistic for a court to engage in a dry and formalistic approach, steeped in process alone, while eschewing a measure of merit examination. Such merit review is a sine qua non of meaningful engagement with the question of reasonableness and fairness as the antidote to the arbitrary, capricious or illegal conduct of authorities that invite judicial review in the first place."

ISSUES FOR DETERMINATION

41. Upon consideration of the petition, the replying affidavits and the supporting documents before the court, the following issues present

themselves for determination: -

- i. Whether the disciplinary process instituted against the Petitioner was in violation of the Union constitution, the Labour Relations Act and the Constitution of Kenya, 2010.
- ii. Whether the remedies sought by the Petitioner can be granted by this court.
- iii. Costs of the petition.

Whether the disciplinary process instituted against the Petitioner was in violation of the Union constitution, the Labour Relations Act and the Constitution of Kenya, 2010.

42. Article 12(1)(i – iv) of the union constitution sets out the grounds for removal of the officials from office as follows: -

- (i) *when he/she fails within thirty days of demand in writing by the Secretary- General to pay Union subscriptions, which are, more than thirteen weeks in arrears;*
- (ii) *when he/she is guilty of gross contravention of any of the provisions of this Constitution and the Rules and the General Standing Orders of the Union;*
- (iii) *has contravened the provisions of the Financial Manual of the Union thereby occasioning loss to the Union;*
- (iv) *Persistently acts in a manner generally detrimental to the interests of the Union.*

43. It is the Petitioner's submission that under Article 15(4)(d)(iv) of the union Constitution, it is the National Administrative Council that has authority to discipline union officials. That the Respondents did not comply with procedure under Article 12 of the union constitution. Further that there were no valid grounds for his discipline as he was punished for participation in lawful union activities and for filing complaints against the violations of the union constitution by the 1st Respondent.

44. Article 12(2) of the Union Constitution provides for discipline of National Officials as follows;

Article 12: Discipline of National Officials

- (1) *A National Official may be suspended from office as may be determined by the National Executive Board:-*
 - (i) *when he/she fails within thirty days of demand in writing by the Secretary- General to pay Union subscriptions, which are, more than thirteen weeks in arrears;*
 - (ii) *when he/she is guilty of gross contravention of any of the provisions of this Constitution and the Rules and the General Standing Orders of the Union;*
 - (iii) *has contravened the provisions of the Financial Manual of the Union thereby occasioning loss to the Union;*
 - (iv) *Persistently acts in a manner generally detrimental to the interests of the Union.*
- (2) *The next Advisory Council shall deliberate on the matter and decide whether to uphold the suspension, remove the official from office or rescind the decision of the National Executive Board of suspending the official.*
- (3) *No official shall be suspended or expelled unless he/she has been given an opportunity to state his/her case personally or in writing at a meeting of the National Executive Board, about which he/she has received notice of not less than fourteen days in writing. Such notice shall include details of the allegations with which the member is being charged.*
- (4) *An officer who has appeared before the Advisory Council in accordance with this Article, if he/she is dissatisfied with the decision of the Advisory Council, has the right to restate his/her case at the Delegates Conference where the matter will be deliberated.*
- (5) *An officer appearing before the Advisory Council in terms of this Article shall be entitled to call witnesses in support of his/her case.*
- (6) *Any decision taken by the Advisory Council to uphold suspension, expulsion of a member or official shall remain effective until reversed by the next National Delegates conference.*

45. Article 15(3) provides for the functions of the National Executive Board as follows;

3. The National Executive Board

- (a) *The National Executive Board shall be responsible for the day to day running of the affairs of the Union;*
- (b) *It shall exercise control and supervision over the individual Union's National officers (National, County, Branch, Chapter and employees of the Union).*
- (c) *The National Executive Board shall consist of the fourteen (14) National Officials, three (3) Trustees of the Union, and sixteen (16) Regional Representatives.*
- (d) *The sixteen (16) Regional Representatives to the National Executive Board, shall be elected by the delegates from their respective regions at the Quinquennial delegates conference. The election process shall observe gender balance. Upon election, the Regional Representatives shall relinquish any other position held previously at any level in the Union governance.*
- (e) *The Regional Representatives shall continuously consult with the respective County leadership(s) before any National Executive Board meeting and present the issue(s) at the National Executive Board meeting. He/she shall also communicate feedback to all the administrative levels of the region that he/she represents*
- (f) *The regional representatives shall be determined along the lines of the former provinces of the Republic of Kenya.*
- (g) *Decisions of the National Executive Board shall be binding on the Union officials, members and employees, provided that if any such decisions directly affects the rights or privileges of any member or group of members, such member or group of members may within thirty (30) days of the date the meeting of the National Executive Board, appeal to the Advisory Council against such decision and/or resolution.*
- (h) *The National Executive Board shall have power to appoint such committee, as it may deem prudent for the effective and efficient discharge of its functions.*

46. From the foregoing, it is clear that the organ of the 2nd Respondent charged with the discipline of National Officials and members is the National Executive Board as provided under Article 12 of the Union's Constitution. The decision of the National Executive Board is to be deliberated upon by the Advisory Council, which may uphold the suspension by the National Executive Board, remove the official from office or rescind the suspension.

47. I therefore find that the National Executive Board acted within its powers to suspend the Petitioner.

48. The next issue is whether the reasons for suspension were valid. The reasons for disciplinary action are set out in the letter dated 26th April 2021 addressed to the Petitioner. He was invited to defend himself at the National Executive Board meeting of 11th May 2021 by letter dated 27th April 2021. The Petitioner received both letters on the dates on which they were written as admitted by him in his affidavit. He was accused of insubordination, misuse of union assets, contemptuous display of scorn and disdain to elected officials of the union and flat out disobedience and refusal to obey the laid out procedures, manuals, standing orders and the union constitution. These are valid grounds for suspension under Article 12(1) of the Union Constitution.

49. The Petitioner did not deny the specific allegations set out in the letter dated 27th April 2021 inviting him to defend himself before the National Executive Board, which according to Article 12(30) of the 2nd Respondent's Constitution, he could respond to either personally (physically) at the time of appearance before the National Executive Board, or in writing.

50. The Petitioner has further averred that the notice was not sufficient. Article 12(3) provides for notice of not less than fourteen days in writing. The Petitioner avers that the notice was less than 14 days while the Respondents state that the Petitioner was given 14 days' notice inclusive of the date of receipt and the date of the meeting. The constitution of the union is silent on how the 14 days should be reckoned. The Court can therefore not fault either the Petitioner's interpretation or the Respondents'. The onus was on the Petitioner to prove that his interpretation, and not the Respondents' is the correct one which he did not do.

51. Further the Petitioner acknowledged receipt of the notice and confirmed attendance of the meeting, albeit that he would attend late. He did not contest the period of notice. At paragraphs 7 and 8 of the affidavit in support of his amended motion, the Petitioner states;

7. Following the malicious actions hatched by the 1st Respondent, clearly outlined in the supporting affidavit and the supplementary affidavit aforementioned, I am aware that the National Executive Board of the 2nd Respondent held a meeting on the 11th May, 2021 at the union Boardroom when I had tendered my apology that I would join the meeting later.

8. Despite my apology and late attendance, the National Executive Board of the 2nd Respondent went ahead and deliberated on my alleged misconduct in blatant disregard to the general rules of natural justice and my right to fair hearing.

52. The Petitioner does not state whether the deliberations over his conduct were in his absence. He does not state at what point he joined the meeting or what action he took to defend himself at the meeting after he joined the meeting. If the Petitioner failed to defend himself, it is not because he had no opportunity to do so. It is because he chose not to do so as he was aware of the meeting in which his conduct was discussed. He chose instead to attend another meeting as he has stated in his affidavits.

53. In the supplementary affidavit sworn on 25th May 2021, the Petitioner has annexed a letter from the Registrar of Trade Unions dated 17th May 2021. The letter from the Registrar of Trade Unions refers to the Petitioner's letter dated 13th May 2021. By 13th May 2021, the

Petitioner was already in court. This means that the appeal to the Registrar of Trade Unions was an afterthought and in bad faith as the Petitioner was already pursuing his suspension in this petition. He could not appeal to the Registrar when he had already filed his petition herein. He cannot pursue relief in two different forums. In any event, a letter from the Registrar written while the suit is already in this court cannot qualify as evidence before this court. The court will therefore treat the same as an attempt to create evidence for use in the pending suit. Therefore, that evidence has no probative value.

54. For the foregoing reasons, I find that there were valid grounds for suspension of the Petitioner, that the National Executive Board had authority to suspend him and that the National Executive Board complied with the procedure within Article 12 of the Union constitution.

55. I thus find no impropriety or other valid reason to interfere with the suspension of the Petitioner by the 2nd Respondent.

Whether the claimant is entitled to the orders sought.

56. Having found that the suspension was in compliance with the Union's constitution, the Petitioner has not proved that he is entitled to any of the orders sought in his petition.

57. I must add here that the Petitioner cited several Articles of the Constitution in his petition. He also referred to violation of the Labour Relations Act. None of those Articles was referred to in his submissions except a casual mention of Articles 41(2)(c) and 47 at paragraph 20 of his submissions. He has thus not proved violation of any constitutional right or fundamental freedoms or violation of the Labour Relations Act.

58. For the foregoing reasons, I find no merit in the petition and dismiss the same.

59. Each party shall bear its costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 17TH DAY OF JUNE 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 had 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