**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CONSTITUTIONAL PETITION NO. EO99 OF 2020**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL, RIGHTS AND**

**FREEDOMS UNDER ARTICLES, 10, 20, 22, 23, 25, 27, 28, 41, 43, 47, 50, 73, 232,**

**236 and 258 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF THE PHARMACY AND POISONS ACT, EMPLOYMENT ACT**

**AND THE PUBLIC SERVICE COMMISSION ACT AND REGULATIONS**

**BETWEEN**

**DR. HEZEKIAH CHEPKWONY.....1ST PETITIONER**

**DR. PIUS WANJALA.....2ND PETITIONER**

**VERSUS**

**CABINET SECRETARY, MINISTRY OF HEALTH.....1ST RESPONDENT**

**HON. ATTORNEY GENERAL.....2ND RESPONDENT**

**JUDGMENT**

1. The 1st petitioner Dr. Hezekiah Chepkwony was the Director of National Quality Control Laboratory herein after **(NQCL)** wherein the 2nd Petitioner, Dr. Pius Wanjala was the senior Deputy Director of National Quality Control Laboratory **(NQCL).**

2. The petition dated 10/12/2020 by the petitioners is based on facts and Legal basis set out in paragraphs 1 to 26 of the petition which may be summarized as follows: -

3. That the 1st respondent Cabinet Secretary, Ministry of Health (*herein after (CS)* by letters dated 12th June, 2020 and 16th June, 2020 respectively transferred/deployed the petitioners and required them to report the following day 17th June 2020.

4. That while executing the transfer, the CS violated every law that governs transfers in Civil Service including Section 43 of the Public Service Commission Act, 2017 as read together with Section 13.31 of the Human Resources Policies and Procedures Manual for the Public Service, May, 2016 which respectively provides: -

> "Section 543(3) in effecting a transfer, the following shall be taken into account: -
>
> (a) The transfer shall lead to improved service delivery.
>
> (b) The interest of the children, if any, of the affected public officer; and

(c) The transfer shall not be arbitrary."

5. Section B.13 of the Human Resource Policies and Procedure Manual for the Public Service, May, 2016, provides: -

> "…. deployment of officers in their substantive capacity within a ministry will be undertaken by the respective authorised officer on recommendation of Ministerial Human Resource Management Advisory Committee (MHRMAC**)."**

6. That the respondents did not process the transfer vide Ministerial Human Resource Management Advisory Committee **(MHRMAC)** to ensure that the law is followed to achieve the objective of transfers.

7. That in terms of skill, the 1st petitioner is the most senior pharmacist in civil service and highest, skilled in pharmaceutical analysis being holder of PHD in Pharmaceutical Analysis since 2001 and given that National Quality Control Laboratory is the only mandated institution for Quality Control of medicine, the other suitable station other than National Quality Control Laboratory is the office of Chief Pharmacist administratively and not a tutor.

8. That similarly, in terms of skill, the 2nd petitioner is the 2nd most senior pharmacist in civil service and specialized in Pharmaceutical Regulations being the first holder of master degree in Pharmaceutical Regulation since 2007 and hence the other appropriate station would be the Pharmacy and Poisons Board which is the medicines Regulatory Authority or at the headquarters.

9. Further, the 2nd petitioner has young children in Pre-Unit and Primary School and hence transferring him away to Eldoret during COVID-19 pandemic is unlawful.

10. That the 1st petitioner is Director/Chief Executive Officer of National Quality Control Laboratory having been appointed as such by the Board of management for a period of three (3) years with effect from 18th April, 2018 to 17th April, 2021 vide a letter of appointment dated 19th December, 2018 which had one year left at the time of impugned transfer. That the transfer amounted to an arbitrary termination of his contract without consultation with the Board of Management and the 1st petitioner himself and in contempt of the Judgment/Decree delivered on 31st January, 2020 in Employment and Labour Relations Court Petition No. 131 of 2020.

11. That similarly, the impugned transfer of Dr. Pius Wanjala, 2nd Petitioner, who is senior Deputy Director of National Quality Control Laboratory (NACL) went against the directive of Public Service Commission vide his letter dated 13th March, 2021 and contrary to Court Orders in Employment and Labour Relations Petition No. 131 of 2020 delivered on 31/1/2020.

12. That at National Quality Control Laboratory the 1st and 2nd Petitioners are most senior officials and below them are four (4) colleagues Deputy Directors, named Dr. Sarah Muthoni, Dr. Nicholas Mwaura, Dr. George Wang'ang'a and Dr. Ernest Gitonga all coming from central region of Kenya and share same ethnicity with the 1st respondent and the impugned transfer was merely meant to elevate the said colleagues to the positions of the Director, Senior Deputy Director and Deputy Directors in clear contravention of Section 40(4) (c) and (d) of the Public Service Commission Regulations that;

> "(4) subject to these Regulations in making a decision to transfer a public officer, the commission or the authorized officer referred to in Section 43(4) (b) of the Act, shall take into account the: -
>
> (c) promotion of National integrations and Cohesion;
>
> and
>
> (d) Promotion of representation of Kenya's diverse
>
> Communities, men and women, the members of all ethnic groups and persons with disabilities.

13. That each of the foregoing colleague – Deputies have been at National Quality Control Laboratory (NQCL) for between 17 to 18 years since employment while for instance the 2nd petitioner has been at National Quality Control Laboratory (NQCL) for only 9 years and has also worked in at least eight other stations since employment. There are other colleagues to the petitioners at National Quality Control Laboratory who have been stationed there for over 20 years since their employment. These are Dr. Wilfred Ochieng; Dr. Jacinta Wasike, Dr. Mohammed, Dr. Naikuni and Many others.

14. That the 1st respondent has had a trend to negatively and discriminatorily targeting senior doctors in the Ministry from especially the Western region. He started with Dr. Lutomia of Kenya Medical Research Institute (KEMRI) which action shocked the country; then Dr. Fridah Govedi of Blood Transfusion Services and now 2nd petitioner at National Quality Control Laboratory.

15. It is fundamental that the Respondents have no mandate to transfer civil servants to full-fledged parastatals/state corporations which bodies have their own employees and have different grading and pay roll systems and are outside the powers of the Respondents in terms of their employment, remuneration and supervision as illustrated in paragraph 15 of the petition.

16. For example, the 1st petitioner was in 2003 deployed to Kenya Medical Training College (KMTC) and the Chief Executive Officer declined to accept him and informed the respondents that the 1st respondent was a civil servant then and could not be admitted to Kenya

Medical Training College (KMTC).

17. That the 1st Petitioner was never employed as a tutor to teach at Kenya Medical Training College (KMTC) and therefore transferring the 1st petitioner to Kenya Medical Training College (KMTC) as a tutor amounts to "***re-designation"*** which is defined in Section 2 of Public Service Commission Act, 2017 as: -

> "Movement of Public Officer from career path or cadre to another at a grade equal to or substantially equal to the one held before the movement to facilitate the public officer's horizontal mobility."

18. That Honourable Justice Onesmus Makau on 31st January, 2020 delivered a judgment and attendant decree in petition No. 124 of 2019 stopping unlawful transfer of the 1st and 2nd petitioners from their current positions. That the said Court order and decree are still in force and the impugned decision of the 1st respondent is therefore in contempt of Court orders.

19. That the petitioners upon receipt of the letters of transfer dated 17/6/2020 filed contempt of Court application dated 16th June, 2020.

20. The judge, delivered a ruling on 9th July, 2020, in respect to the said application for contempt and stated that this is a new cause of action that needed to be heard and determined, hence the prayers sought by the petitioners in the present suit.

21. The petitioners allege that their human rights and fundamental freedoms have been violated by the respondents including violation of: -

(i) Article 10 by failing to adhere to National Values of good governance, integrity, transparency and accountability.

(ii) Article 27 of the Constitution by arbitrarily whimsically and habitually transferring the petitioners from one office to another.

(iii) Article 28 of the Constitution by infringing on the human dignity of the petitioners by subjecting them to public ridicule and odium by requiring them to be supervised by their juniors.

(iv) Article 41 of the Constitution by subjecting the 1st Petitioner to unfair Labour Practice in purporting to abruptly and without reasonable notice or giving reasons terminate his contract as Chief Executive officer of National Quality Control Laboratory.

(v) Article 47 of the Constitution by depriving the petitioner, the right to fair administrative action and in breach of their legitimate expectation and in breach of the judgment of the Court delivered on 30th January, 2020 in Employment and Labour Relations Court Petition No. 124 of 2019, and Court orders dated 5th April, 2012, and 14th October, 2011.

22. Furthermore the respondent deployed the 1st petitioner, a holder of PHD in Pharmaceutical analysis and 2nd Petitioner holding Masters degree in Pharmaceutical Regulations to be placed where their expertise shall not be better utilized in violation of the Public Service Act, and Human Resource Policies and Procedures Manual for the Public Service, May, 2016.

23. ***Wherefore the Petitioners pray for: -***

(a) **A DECLARATION THAT** at all times material the petitioners herein were and are entitled as against the Respondents and all persons to the protection of their Fundamental Rights and Freedoms enshrined in the Bill of Rights which applies to all and binds all State Organs including but not limited to fair labour practices, freedom from discrimination, equal protection and benefit of the law and that in the relationship between the parties herein the Respondents were and remain under a duty to observe the National values enshrined in Article 10 of the Constitution.

(b) **A DECLARATION THAT** the impugned posting/deployment of the petitioners by the Respondents in utter disregard of their qualifications, Statute and attendant Regulations, multiple Court orders/Decree is contrary to their contract of employment and against the public interest involved in their specialized and contrary to public policy and is therefore in contravention of the National Values of this Country as contained in Articles 10 and 232 of the Constitution of Kenya, 2010 and hence the same is unconstitutional, null and void *ab initio.*

(c) **CONSEQUENTLY, AN ORDER OF CERTIORARI** to remove to this honourale Court and quash the decision of the 1st Respondent contained in letters Ref. No. 1999047895 and Ref. No. 1991082265 both dated 12th June, 2020 seconding Applicants/Petitioners to other Public Bodies without the authority of the Public Service Commission.

(d) **CONSEQUENTLY, AN ORDER** for just compensation by 1st Respondents to the Applicants/Petitioners for an amount or sum to be determined by the Court for contravention of their Fundamental Rights and Freedoms enshrined in the Constitution thus injuring their feelings and dignity and exposing them to public ridicule, odium and prejudice.

(e) **AN ORDER THAT** the costs consequent upon this Petition be borne by the Respondents in any event.

**Replying Affidavit**

24. The respondents filed a replying affidavit sworn to by the 1st respondent **Mutahi Kagwe, Cabinet Secretary, Ministry of Health** who

deposes *inter alia* that he is opposed to the petition by the 1st Petitioner who was deployed to National Quality Control Laboratory on 20/8/2013 and by the 2nd Petitioner who was deployed to National Quality Control Laboratory on 18/12/2010.

25. That on 24/6/2019 the C S deployed the 1st petitioner from National Quality Control Laboratory to Mathari National Teaching and Referral Hospital while the 2nd Petitioner was deployed to Kenya Health Professionals Oversight Authority (KHPOA) on 24/6/2019.

26. That the petitioners filed Employment and Labour Relations Court Petition No. 124 of 2019, in which the letters of deployment were quashed in a judgment delivered on 31/1/2020. That there is already pending Civil Appeal No. 107 of 2020 before the Court of Appeal in the said matter.

27. That in the judgment delivered on 31/1/2020 Employment and Labour Relations Court did not permanently shield and/or bar the respondents from deploying the petitioners out of National Quality Control Laboratory as decreed at paragraph 54(d) of the Judgment.

28. That in compliance with the judgment of the Court the C S deployed the 1st Petitioner to Kenya Medical Training College and 2nd Petitioner to Moi Teaching and Referral Hospital through letters dated 12/6/2020 but the petitioners challenged the deployment vide application dated 16/6/2020.

29. That Hon. Justice Onesmus Makau in a ruling delivered on 9/7/2020 found the C S guilty of contempt of Court for defying the Court's judgment/decree dated 31/1/2020 and declared the letters of deployment dated 12/6/2020 with regard to the 1st petitioner invalid.

30. The Court directed the 2nd petitioner to file contempt proceedings in the suits where he had obtained conservatory orders.

31. The suit was to be mentioned on 23/7/2020 for mitigation and sentencing.

32. Application for stay of execution of the ruling dated 9/7/2020 was filed at the Court of Appeal under Rule 5(2) (b) of the Court of Appeal Rules and on 28/9/2020, the Court of Appeal issued temporary orders in the following terms: -

> **(a)** An interim order of stay of execution of the decision and orders of the Employment and Labour Relations Court delivered by Hon. Mr. Justice Onesmus Makau, J. on 9th July, 2020 in Nairobi Petition No. 124 of 2019 be and is hereby granted as prayed for in prayer (b) of the application pending delivery of ruling on 20th November, 2020.
>
> (b) An interim order of stay of proceedings in Petition No. 124 of 2019 be and is hereby granted as prayed for in prayer (c) of the application pending delivery of the ruling on 20th November, 2020.
>
> (c) Costs of the application to abide outcome of the ruling.

33. The temporary orders were confirmed by the Court of Appeal in a Ruling delivered on 20/11/2020 in the following terms: -

> (b) **THAT** pending the hearing and determination of the intended appeal, this Honourable Court be pleased to grant an interim order of stay of execution of the decision and orders of the Employment and Labour Relations Court delivered by Hon. Mr. Justice Onemus Makau, J. on 9th July, 2020 in Nairobi Petition No. 124 of 2019 – Dr. Hezekia Chepkwony & 2 Others –vs CS Ministry of Health & 2 Others.
>
> (c) THAT pending the hearing and determination of the intended appeal, there be a stay of proceedings and stay of execution of the decision delivered by Hon. Mr. Justice Onesmus Makau on 9th July, 2020 Dr. Hezekiah Chepkwony & 2 Others –vs CS Ministry of Health & 2 Others.
>
> (d) Costs of the application to abide outcome of the appeal (*Annexed hereto and marked MK3a and 3b are copies of the temporary orders and the ruling respectively).*

34. That the petitioners have filed an application dated 4/2/2020 before the Court of Appeal seeking review of the ruling by the Court of Appeal dated 20/11/2020.

35. That in the said application for review, the petitioners having understood the import of the ruling of the Court of Appeal therefore, as admitted at paragraph 9 and 10 of the said review application have sought variation of the orders given by the Court of Appeal so as not to stay execution of the decision and orders in Petition No. 124 of 2019 by Hon. Onesmus Makau dated 9/7/2020 but only retain order (1) to stay the proceedings in Petition No. 124 of 2019 and the decision by Hon. Onesmus Makau, J.

36. That the effect of the stay orders by the Court of Appeal includes stay of the decision by Hon. Onesmus Makau to declare invalid the letters of deployment issued by the C S on 12/6/2020 and therefore the deployment of the 1st and 2nd Petitioners out of National Quality Control Laboratory temporarily stands, pending the hearing and determination of the intended appeal on the review application.

37. That to date, since the ruling by the Court of Appeal on 28/9/2020 and 20/11/2020, the Petitioners have not reported to the workstations they were deployed to on 12/6/2020.

38. That on 26/3/2012, the 2nd petitioner was deployed to Western Province as a Provincial Pharmacist, but he challenged the deployment in High Court Petition No. 124 of 2012 where he obtained temporary orders of stay. The said stay orders were varied by Hon. Justice Nzioki Wa Makau when the suit was transferred to Employment and Labour Relations Court from the High Court. That despite the variation of the orders, the 2nd petitioner never reported to Western Kenya and never prosecuted the petition to conclusion. The 2nd petitioner therefore disobeyed Court orders and remained at National Quality Control Laboratory.

39. That the present petition is a copy and paste of the petitioners' application of 16/6/2020 filed in Petition 124 of 2019 as seen in annexture "MK-1" attached to the replying affidavit. The issues raised, allegations made, the law and prayers made and the parties are the same. Indeed, this is admitted at paragraphs 26-29 of the petition.

40. That this suit is now seized by the Court of Appeal and the petitioners cannot now be heard to ask this Court to quash the letters of deployment dated 12/6/20 which are the subject of the Appeal pending before the Court of Appeal. Indeed, the matter now before this Court was determined by Hon. Onesmus Makau, J. in his ruling now appealed by the respondents and the issue of the letters of deployment dated 12/6/2020 cannot be litigated afresh in another suit before this Court.

41. That on 16/10/2020 the President of the Republic of Kenya, revoked appointment of the Chairperson and members of National Quality Control Laboratory and all functions at National Quality Control Laboratory are currently carried out by the Ministry of Health under the leadership of the C S.

42. That the petitioners were suspended for gross misconduct vide letters of 13/7/2020 and have again filed **Employment and Labour Relations Court - Petition E006 of 2020 (Petition 105 of 2020)** where they seek orders to quash the suspension letters and declarations that they are employees of National Quality Control Laboratory.

43. That Petitioners have made all attempts to force their way back to National Quality Control Laboratory including filing several contempt applications.

44. On 11/12/2020, Hon. Rika, J. declined to grant orders sought by the Petitioners recognizing that the matter was now pending before the Court of Appeal as per the Court of Appeal ruling dated 20/11/2020.

45. That this Petition is a continuation of the sharp practice and abuse of Court process by the petitioners. That the petition be struck out with costs.

46. That the respondents have raised the aforesaid objections as preliminary matters for determination before the Court delve into the merits of the petition.

47. That the petitioners in any event have not demonstrated with precision how their human rights and fundamental freedoms have been violated as espoused in **Mumo Matemu –vs- Trusted Society of Human Rights Alliance (2013) eKLR and Annerita Karimi Njeru (1979) KLR 154**.

48. That the Petition is an abuse of Court process and it be dismissed with costs.

49. The petitioners filed two further affidavits sworn to by the 2nd petitioner Dr. Pius Wanjala on 25/2/2021 in which the petitioners extensively traverse the facts set out by the C S in the replying affidavit. The petitioners also joined issues with the respondents on all matters in dispute in the suit. To the extent that the contents of the further affidavits comprise retaliation of facts set out in the petition and the supporting affidavit by the petitioners, I shall not regurgitate the same in this judgment though I have carefully considered the said contents.

50. The parties filed written submissions and lists of authorities dated 27/2/2021 and 16/3/2021 respectively and the Court has carefully considered the same together with the pleadings and documentation presented by the parties and shall take all in consideration in the determination herein after.

**Determination**

51. ***The issues for determination in this petition are: -***

> **(i)** Whether the matters for determination in this suit are pending for determination before the Court of Appeal in the Court of Appeal Civil Application No. 107 of 2020 arising from Nairobi Employment and Labour Relations Court Petition No. 124 of 2019 - Contempt Application No. 124 of 2019 and therefore, this Court is *functus officio* pending the hearing and determination by the Court of Appeal.
>
> **(ii)** If the answer to (i) above is in the negative, whether the petition herein has merit.
>
> **(iii)** What relief if at all is available to the petitioners?

52. The Respondents have raised the issue whether the subject of the present petition is r*es-judicata* and therefore the Court is *functus officio*

and ought to down its tools with regard to the present petition.

53. The plea is founded on the submissions that there is pending before the Court of Appeal Civil Appeal No. 107 of 2020 arising from a ruling of this court on the same issues. That the Appeal was filed by the Cabinet Secretary, Ministry of Health and 2 Others –vs- Dr. Hezekiah Chepkwony who were the parties in petition No. 124 of 2019, **Hezekiah Chepkwony and Another –vs- Cabinet Secretary Ministry of Health and 2 others.**

54. Onesmus Makau, J. in Petition No.124 of 2019 rendered a judgment in favour of the petitioners on 31/1/2020 quashing the letters dated 24th June, 2019 deploying the 1st petitioner from National Quality Control Laboratory to Mathari National Teaching and Referral Hospital and the 2nd Petitioner to Kenya Health Professional Oversight Authority (KHPOA). The Court directed the respondents to follow the law in deploying the petitioners but did not permanently bar the respondent's from exercising their lawful mandate to transfer staff.

55. The respondents then subsequently deployed the 1st Petitioner to Kenya Medical Training College and 2nd Petitioner to Moi Teaching and Referral Hospital vide letters dated 12/6/2020.

56. The two petitioners challenged the deployment again vide an application for contempt of Court dated 16/6/2020. Upon hearing the parties Hon. Onesmus Makau, J. delivered a ruling on 9/6/2020 in which he found that the Honourable Cabinet Secretary Mr. Mutahi Kagwe was guilty of contempt of the Court's judgment and decree dated 31/11/2020 for his decision contained in the letter dated 12/6/2020 deploying Dr. Hezekiah Chepkwony from National Quality Control Laboratory to Kenya Medical Training College.

57. *The judge went on to determine: -*

> "(ii) ***That for the avoidance of any doubt the offending letter Ref. 19910226 and 1999047895 dated 12/6/2020 to the Applicants are hereby declared invalid for being issued in contempt of the judgment/Decree of this Court dated 31/1/2020*** *(emphasis mine)*

58. It is this decision by Onesmus Makau, J. dated 9/7/2020 which is the subject of the Appeal to the Court of Appeal in Civil Appeal No. 107 of 2010 and upon which the Court of Appeal has issued interim orders staying the ruling of Onesmus Makau, J. delivered on 9/7/2020 pending the hearing and determination of the Appeal.

59. In the statement of facts at paragraph1 of the present petition, the 1st and 2nd petitioners challenge the deployment of the petitioners by the C S , Mutahi Kagwe vide

> "***letters Ref. No. 1991082265 and Ref. 1999047895 both dated 12th June, 2020 and delivered on 16th June, 2020.***

60. Clearly the said letters form the subject matter of a determination by Onesmus Makau, J. in his ruling on 9/7/2020 which orders have been temporarily stayed pending the hearing and determination in Civil Appeal No. 107 of 2020.

61. Even though the respondents have in the present petition pleaded new remedies constituting alleged breach of their human rights, the cause of action in the present application is the impugned letters of deployment dated 12th June, 2020 to the two petitioners.

62. Not only has Onesmus Makau, J. in his ruling made a definitive determination on the validity of the said letters of deployment dated 12/6/2020 making the matter *res-judicata* this Court has also been rendered *functus officio* with regard to a determination on the validity or otherwise of the letter dated 12th June, 2020 since the letters are the subject of the ruling by the Court of Appeal referred to herein delivered on 20th November, 2020 staying execution of the ruling by Hon. Justice Onesmus Makau, J. delivered on 9th July, 2020 in Nairobi Petition No. 124 of 2019.

63 The Court further stayed any further proceedings with regard to the said subject matter. Furthermore, there is pending before the Court of Appeal an application dated 4th December, 2020 by the aggrieved petitioners herein for review of the ruling of the Court of Appeal on 20th November, 2020.

64. This petition No. E099 of 2020 dated 11/12/2020 was filed by the same petitioners against the same respondents in Nairobi Petition No. 124 of 2019 and Civil Appeal No. 107 of 2020.

65. This Petition was filed after the ruling delivered by the Court of Appeal on 28th September, 2020 and in the Court's view and finding to side step the interim orders by the Court of Appeal issued on 28th September, 2020.

66. In **Henderson –vs- Henderson** relied upon by the Court of Appeal in **Civil Appeal No. 107 of 2020**, **Kenya Commercial Bank Limited –vs Benjoh Amalgamated**, the principle of *res-judicata* "***applies not only to points upon which the Court was actually called upon by the parties to form an opinion on, but every point which properly belonged to the subject of litigation and which parties exercising reasonable diligence ought to have brought forward at the time of filing the suit."***

67. Everything in this Petition revolve around the lawfulness or otherwise of the deployment of the petitioners by the respondents vide letters of deployment dated 12th June, 2020.

68. It is my considered and final determination that this matter was determined by Hon. Justice Onesmus Makau and is a subject of a pending Court of Appeal Application.

69. This petition therefore violates the principle of *res-judicata* with regard to this Court and offends the principle of *subjudice* with regard to the Court of Appeal.

70. The Petitioners herein lack good faith and are bent to set this Court on a collision course with an earlier decision of this Court and a future decision by the Court of Appeal. Any proceedings regarding this subject matter have in any event been stayed by the Court of Appeal.

71. This suit having been filed in direct affront to that stay of proceedings by the Court of Appeal cannot be allowed to stand before this Court.

72. On that fact alone, the Petition is an abuse of Court process and is struck out with costs.

**DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**ORDER**

*In* view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this judgment has been delivered to the parties online with their consent. 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 18 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.

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Mr. Simiyu for Petitioners

Mrs Odukenya for Respondents

Ekale – Court Assistant