



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. 81 OF 2020**

**JAMES MARINGA MWANGLI.....PETITIONER**

**VERSUS**

**KENYA MEDICAL RESEARCH INSTITUTE.....1<sup>ST</sup> RESPONDENT**

**KENYA MEDICAL RESEARCH INSTITUTE BOARD OF MANAGEMENT.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The petition was filed on 21<sup>st</sup> May, 2020 against the respondent by the petitioner praying for the following orders:-

- a. A declaration that the hearing as conducted by the Human Resource Advisory Committee was in violation of the 1<sup>st</sup> respondents Human Resource Policy Manual more specifically Section 11.2.2.
- b. A declaration that the hearing as conducted was in violation of the Gazette notice No. 2691 of 2016 at paragraph 3.3.4 (p), (q) and (r) with regard to discipline of the head of internal audit department.
- c. A declaration that the petitioner's dismissal is unlawful.
- d. An order of certiorari to bring to this honourable Court to quash the decision of the respondent contained in the letter of termination dated 31<sup>st</sup> January, 2020.
- e. A declaration that the disciplinary hearing as conducted was devoid of fairness.
- f. A declaration that petitioner is the lawful holder of the position of head of internal audit at the Kenya Medical Research Institute.
- g. The petitioner be reinstated to his position at the Kenya Medical Research Institute with all his back salary, allowances, benefits and any legal dues entitled by virtue of his employment and position.
- h. The honourable Court do communicate the reporting date and time for the petitioner to resume his duties.
- i. Maximum damages for unlawful termination.
- j. Punitive damages for mental anguish and harm to reputation.
- k. Costs be awarded to the petitioner.
- l. Costs be borne collectively by individuals of the Kenya Medical Research Institute board of management.

2. The petition is premised on facts set out from Clause 20 to 45 of the Petition in which the petitioner states that he worked for the 1<sup>st</sup> respondent as a Chief Internal Auditor with effect from 1<sup>st</sup> October, 2015. That he worked continuously for the respondent in that capacity until he was dismissed from service by a letter dated 31<sup>st</sup> July, 2020 attached to the petition.

3. The dismissal followed issuance of two Show Cause letters to the petitioner to answer two allegations of:-

**(i) Absence from duty without permission dated 17<sup>th</sup> June, 2019 and**

**(ii) Insubordination dated 22<sup>nd</sup> July, 2019.**

4. That the petitioner was called to a disciplinary hearing by a letter dated 9<sup>th</sup> July, 2020 before the Human Resource Management and Advisory Committee (**HRMAC**) on the 16<sup>th</sup> January, 2020 to which the petitioner attended with his advocate.

5. The petitioner was found guilty by the committee of absentsing himself from duty for 12 days without authority and justification contrary to Section 10.26.4 of the Institute's Human Resource Policy and Procedure manual; Section 44(4) (a) of the Employment Act, 2007, Section 9 (e) of the Public Officers Ethics Act and Section 67 of the Public Service Commission Act, 2017.

6. The petitioner was also found guilty of insubordinating the Chief Executive Officer by being disrespectful and discourteous in writing and informing him that the petitioner's decision to recall two auditors from leave still stood as earlier communicated contrary to Section 10.14.1 of the Human Resource and Procedure Policy Manual aforesaid.

7. That the Board met on 24<sup>th</sup> January, 2020 and deliberated the report of Human Resource Management and Advisory Committee and the Board dismissed the petitioner from employment.

8. The petitioner faults the decision by the respondents as follows:-

**(a) Regarding the charge of insubordination, the petitioner presented the disciplinary committee with official communication between the Chief Executive Officer and the petitioner in his capacity as the head of the Audit Department. That the committee acknowledged that the petitioner did not report to the Chief Executive Officer functionally, they found the petitioner to be insubordinate by virtue of the fact that he reported to the Chief Executive Officer administratively.**

9. That the committee which heard the petitioner comprised of:-

**Winwa Odinga as Chairperson,**

**M/s Harriet Muiruri – Member,**

**Dr. Tatuma Haji – Member**

**Dr. Joseph Mutai – Member**

**Dr. Simon Lagat – Member.**

10. With regard to the charge of absenteeism without authority between the 16<sup>th</sup> May, 2019 and 31<sup>st</sup> May, 2019, the petitioner explained that he was entitled to 30 days leave at the time he made a leave application to the Chief Executive Officer for 12 days between the 15<sup>th</sup> May, and 23<sup>rd</sup> May, 2019.

11. That the Chief Executive Officer received the application at his office. That the petitioner made follow ups on the subject directly to the Chief Executive Officer through email and text messages on the 15<sup>th</sup> May, 2019.

12. That the Chief Executive Officer never responded to the messages he sent and to the leave application and due to exigent personal issues, the petitioner had to attend to, he proceeded on leave since there was no objection to the same.

13. That he was never recalled from leave and at that time the petitioner had accumulated a total of 55 days, untaken leave.

14. That the petitioner responded to the show cause letters dated 17<sup>th</sup> June, 2019, regarding absenteeism and to a 2<sup>nd</sup> notice to show cause dated 22<sup>nd</sup> July, 2019 on the issue of insubordination as against the Chief Executive Officer an incident that took place on 29<sup>th</sup> November, 2018.

15. The petitioner explained the matter of insubordination in writing that he was guided by the approved Kenya Medical Research Institute Internal Audit Charter dated August, 2016 and the Public Finance Management Regulations, 2015 in recalling the two Auditors.

16. That the Assistant Director Human Resource advised the two Auditors to ignore the recall by the petitioner awaiting further communication from the Chief Executive Officer.

17. That the petitioner wrote to the Assistant Director, Human Resource advising that his recall of the officers stood on account of the reasons the petitioner had given being exigencies of duty in the department that the petitioner headed.

18. The petitioner reminded the officers and the Assistant Director that Kenya Medical Research Institute approved Internal Audit Charter

that placed the petitioner in charge of the administrative function in the department of budgeting and human resource.

19. The petitioner reminded them that the Public Finance Management Regulations gave the head of internal audit operational independence and the staff in his department had a direct bearing to his functional deliverables.

20. The petitioner also reminded the respondents that the Public Service Commission Disciplinary Manual recommends disciplinary cases to be finalized within 6 months in view of the two months' timeline given to the disciplinary committee established on 18/7/2019, to finalise the matters involving the petitioner.

21. The petitioner states that the Chief Executive Officer suspended him from duty on 29/7/2019 after he responded to the show cause letters stating that the explanation given by the petitioner was not satisfactory. The petitioner handed over his office on 29/7/2019 as directed by the Chief Executive Officer.

22. The petitioner stated that due to the nature of work, he had raised audit queries regarding persons who were now hell bent to remove him. The petitioner cited one **Professor Yeri Kombe**, against whom he had raised audit queries and who had become a constant figure in the disciplinary issues raised against the petitioner. That the disciplinary process therefore had serious conflict of interest as set under paragraph 31 of the petition.

23. That the relationship between the Chief Executive Officer and the Petitioner had become frosty and the petitioner was constantly ignored by the Chief Executive Officer whenever he wished to communicate with the Chief Executive Officer as evidenced by the Chief Executive Officer's refusal to respond to the petitioner's leave application and to intervene positively in the matter of recall of the two audit officers.

24. The petitioner states that he had committed no dismissible offences and was merely victimized due to his work which rattled the feathers of some of the officers involved in the disciplinary process that ended in the dismissal of the petitioner.

25. On 31<sup>st</sup> July, 2019, the petitioner made an appeal to the commission on administrative justice, Ministry of Health, Inspectorate of State Corporations, Kenya Medical Research Institute Board of Management and the Kenya Medical Research Institute Board Audit Committee but only the Commission on Administrative Justice responded to his appeal. All the other organs ignored the petitioner's plea.

26. The petitioner made a further appeal to the Public Service Commission on 31<sup>st</sup> July, 2019 and made a follow up on 23<sup>rd</sup> October, 2019 but got no response and his plea was not responded to.

27. The petitioner states that the Chief Executive Officer suspended him after his response to the two notices to show cause without recourse to the Board.

28. The petitioner states that he was on 9<sup>th</sup> January, 2020 invited to attend a disciplinary hearing before Human Resource Management and Administration Committee.

29. That the committee was constituted in an unjust manner and had no mandate to hear his case and its Constitution violated Section 11.2.2 of the Human Resource and Procedure Manual Policy.

30. That one Mr. Kalu Kitaba, a committee member was the subject of a query raised by the petitioner regarding Policy qualification as the head of procurement department.

31. The petitioner had also raised issues against Assistant Finance Director and Mr. Kamau Mugenda, reported to him and was therefore conflicted either by perception or reality.

32. That the petitioner had also raised issues on the promotion of Dr. Elizabeth Echoka and Zipporah Bukanie who were present at the disciplinary hearing and therefore took part in the decision to dismiss the petitioner.

33. That the petitioner had raised audit issues against Professor Yeri Kombe and the entire committee as constituted reported back to the Chief Executive Officer at all times taking note that the Chief Executive Officer was a material witness on the two charges made against the petitioner.

34. The petitioner states that he wrote to the committee on 10/1/2020 requesting to be provided with documents enumerated at paragraph 38 of the petition but same were not provided to him before the hearing. The documents included, minutes of the 113<sup>th</sup> Board meeting held on 18/7/2019; minutes of the meeting directing suspension of the petitioner; Kenya Medical Research Institute staff records recalls procedures; any other minutes touching on the two offences; Kenya Medical Research Institute Human Resource Policies and Procedure Manual; and any letter seeking clarification or complaining against the petitioner on the alleged insubordination.

35. On 15/1/2020, the respondent shared the voluminous Human Resource Policy and Procedure Manual that had come into force in January, 2019. The petitioner requested for more time to prepare for the disciplinary hearing and reminded the committee to provide other documents requested. The said documents were not availed to the petitioner prior to the hearing.

36. The petitioner states that he answered all the questions on the two matters and was clearly not guilty of any offence.

37. The Petitioner alleges that the respondent violated Section 46(b) of the Employment Act, 2007 and Article 41 of the Constitution for punishing him for taking leave lawfully due to him; violated Article 50 of the Constitution on the right to a fair hearing and also violated

Article 47, on the right to a fair and expeditious administrative action.

38. The petition is buttressed by a list of documents attached to the supporting affidavit of the petitioner and the statement of facts attached thereto.

39. The petitioner prays to be awarded as prayed.

#### Replying Affidavit

40. The respondent filed a replying Affidavit of Mr. Gachuhi Mungai, sworn to on 24<sup>th</sup> February, 2021 in which he states that the petitioner was Chief Internal Auditor of the 1<sup>st</sup> respondent. That being a senior staff he was aware of the Institute's Human Resource Policy and Procedure Manual. That this is a mundane employment suit that ought to have been filed by statement of claim since it raises no constitutional issues.

41. That the suit against the 2<sup>nd</sup> respondent is vexatious and abuse of Court process since the Board and its members are not involved in the institute's day to day management.

42. The respondent raised a preliminary objection that the petitioner came to the Court prematurely since being a public officer in the employment of the respondent which is regulated under the provisions of Section 16 of the Science, Technology and Innovation Act, No. 28 of 2013, he ought to have invoked the provisions of Section 74(1) of the Public Service Commission Act which provides that:-

**“Any person who is dissatisfied or affected by a decision made by an authorized officer or other authority in exercise or purported exercise of disciplinary control against any public officer under this Act, may appeal to the Commission.”**

43. The respondent submitted further that under the provisions of Section 11.2.2. of the Human Resource Policy and Procedures Manual is provided that:-

**“11.2.2 The discipline of members of staff in grades KMR 4 – KMR 1 shall fall under the purview of the Board and Appeals shall lie to the Public Service Commission or as the case may be delegated.”**

44. In the present case, the petitioner appealed to the Board the disciplinary hearing having been conducted by a Human Resource Committee. The Board deliberated the said appeal and the Board responded to the petitioner by a letter dated 4<sup>th</sup> March, 2020 thus:-

**“Having received the Human Resource Committee report, discussed it and adopted it, the Board cannot sit on appeal against its own decision as this would offend the principles of natural justice.”**

45. It is the Court's finding on the objection that the Board hid in its own violation of the Human Resource Policy and Procedure Manual to deny the petitioner his right of Appeal to the Board as provided under Clause 11.2.1 of the Human Resource and policy manual. The petitioner who was in Grade KMR 4 ought to have been disciplined under Section 11.2.2 and not 11.2.1 as happened in which event his appeal would have been to the Public Service Commission which avenue was now not available to the petitioner.

46. There is no provision in the Science Technology and Innovation Act; No. 28 of 2013 or any clause in the Human Resource and Policy and Procedure Manual of the institute which the petitioner could invoke to file a second (2<sup>nd</sup>) appeal to the public service commission having rightly filed an appeal from a decision of Human Resource Management and Administration Committee to the Board.

47. The Court has considered the decision of the Court of **Appeal in Secretary, County Public Service Board and Another -vs- Hulbhai Gedi Abdille – Civil Appeal No. 202 of 2015 [2017] eKLR** which case dealt with an express provision of the County Governments Act, which mandates persons aggrieved by decisions made in terms of the Act, to first seek redress from the Public Service Commission before approaching the Court. We do not have a similar statutory provision cited by the respondent under the Science Technology and Innovation Act, No. 28 of 2013 and in terms of Section 11.2.1 of the manual, the petitioner was only entitled to appeal to the Board.

48. This matter is clearly distinguishable from that discussed by the Court of Appeal in the **Hulbhai Gedi Abdille** case.

49. The objection by the respondent therefore lacks merit and the Court finds that this petition was properly brought before it.

50. R.W.1 further submits that the 1<sup>st</sup> respondent did not violate article 41, 47 and 50 by subjecting the petitioner to a disciplinary process since they have the mandate to do so as the employer.

51. That the petitioner was issued show cause letters for absenteeism and insubordination which are dismissible offences to which he duly responded. That these offences are provided for under Section 44(4) of the Employment, Act, 2007.

52. That the petitioner went on leave without authority since the application submitted had not been approved at the time he took leave. That the petitioner had failed to submit the application for leave at least 14 days before commencement of the leave as is required of him by the Human Resource Policy and Procedure Manual.

53. The applicant did not give any reasons that could have necessitated him to take emergency leave.

54. That the respondent appeared before a disciplinary committee, properly appointed by the Board of Management. That the 1<sup>st</sup> committee was investigative and there was no requirement for calling of witnesses.

55. That the 2<sup>nd</sup> committee was a Disciplinary Committee which was appointed by the Board in its 113<sup>th</sup> Board meeting held on 18/7/2019.

56. That the petitioner was afforded a proper hearing by the committee and the petitioner has not proved that the respondents violated the Employment Act and or the provisions of Article 41, 47 and 50 of the Constitution. There is also no evidence that the respondent violated Articles 232 and 236 of the Constitution.

57. That the petitioner was found guilty of dismissible offences and was summarily dismissed upon being given a fair hearing. That the dismissal was for a valid reason and the respondents followed a fair procedure in dismissing the petitioner from employment. The respondents pray that the suit be dismissed with costs.

### **Determination**

58. The parties filed written submission that were duly considered by the Court.

#### **The issues for determination are:-**

**i. Whether the petitioner has proved violation of his constitutional rights under Articles 41, 47, 50, 232 and 236 of the Constitution of Kenya, 2010.**

**ii. Whether the petitioner is entitled to the reliefs sought.**

59. It has been submitted by the respondents that this suit ought to be struck out since it seeks primarily reliefs provided for under the Employment Act, 2007 whereby the suit has been disguised as a constitutional petition alleging violation of constitutional rights under Articles 41, 47, 50, 232 and 236 of the Constitution of Kenya, 2010.

60. The respondent relied on the case of **Republic –vs- Egerton University Council; Exparte Applicant - Rose Mwonja [2019] eKLR** where the Court stated:-

**“... In employment matters such as was the case here, the contract of employment should have been the entry point. The terms and conditions of employment in the contract govern the employment relationship except to the extent that the terms are contrary to the law or have been superseded by statute. Certainly, invoking the constitutional route in the circumstances of this case was misguided. The Constitution should not be turned into a thorough fare for resolution of every kind of common grievance.**

**..... I would lay it down as a general principle that where it is possible to decide any case, civil or criminal without reaching constitutional issue that is the course which should be followed.**

61. A close reading of the pleadings in the petition demonstrate that this is not a mundane employment dispute but was specific violations of the human rights of the petitioner which have been pleaded with specificity. The facts in dispute here relate to the validity of the offences of absenteeism and insubordination contrary to the Institute’s Human Resource Policy and Procedure Manual. The petitioner alleges that delay in prosecuting the disciplinary offence against him allegedly committed on 29<sup>th</sup> November, 2018 and the show cause letter issued on 22<sup>nd</sup> July, 2019, a year later violated the Petitioner’s right to fair labour practice enshrined under Article 41 of the Constitution. This was the offence of insubordination.

62. That the offence was combined with a more recent one of absenteeism allegedly committed on 16<sup>th</sup> May, 2019. The petitioner states that combining of the two offences in itself was an indication of bad faith and unfair labour practice in violation of not only Article 41 but also Articles 47 and 50 of the Constitution of Kenya, 2010.

63. This issue of unearthing stale offences from the closet to corner an employee at a convenient time when there is a frosty relationship with the boss is a definite indicator of bad faith on the part of the supervisor, in this case, the Chief Executive Officer of the institute.

64. The refusal by the Chief Executive Officer to respond to an application for annual leave by the petitioner, an independent, Chief Auditor of the institute and refusal to respond to telephonic and text follows up on the matter is further confirmation of malice and extreme bad faith on the part of the Chief Executive Officer.

65. The malice and bad faith was compounded by the failure by the Chief Executive Officer to communicate and/or recall the petitioner from the leave he had taken upon submitting an application to the Chief Executive Officer if indeed the Chief Executive Officer had no intention of approving the leave.

66. It has not been disputed by the respondents that the petitioner was entitled to 30 days annual leave and as at the time he took the disputed leave, he had accumulated 55 days leave.

67. The respondents cannot rely on their deliberate omission, nay abdication coloured with bad faith to then mount a disciplinary process for absenteeism and to make sure the evil ploy is accomplished by unearthing a one year old related grudge under the guise of insubordination to

justify the summary dismissal of a very senior officer of the institute. The position of Chief Internal Auditor does not functionally report to the Chief Executive Officer. The Chief Internal Auditor was the head of this independent unit of the institute.

68. The petitioner has ably demonstrated that his role constantly caused him to ruffle feathers of senior officials, some of whom constituted the disciplinary committee that summarily dismissed him. The alleged one year old insubordination related to the Chief internal Auditor recalling two auditors working under him due to exigencies of work. The Chief Executive Officer and the Human Resource unit, blocked the recall and the petitioner being the head of the Independent unit had put his foot down. This is the so called insubordination kept as a secret weapon of choice to be used to settle the scores at an appropriate time.

69. The respondents have failed to demonstrate that upon a careful consideration of the very clear explanation by the petitioner with regard to the alleged offence of insubordination and absenteeism, they had any justification to summarily dismiss the petitioner. The alleged disciplinary process was a sham, and the petitioner has ably demonstrated so. The process was muddled with bad faith and vendetta. It did not meet the threshold under Section 41 of the Employment Act, 2007 and the holding of stale offences to corner employees at an appropriate time is in itself an unfair labour practice in violation of Article 41 and does not amount to a fair and expeditious administrative action and therefore violates Article 47 of the Constitution of Kenya, 2010.

**70. The Court is satisfied that the respondents jointly and severally violated Sections 36, 41, 43, 44 and 45 and 46 of the Employment Act, 2007 and in addition, the respondents violated the right of the petitioner under Articles 41 and 47 of the Constitution of Kenya, 2010 in the manner they treated the petitioner.**

71. In addition the respondents violated the Kenya Medical Research Institute Human Resource Policy and Procedure Manual by firstly disciplining the petitioner under Clause 11.2.1 instead of Clause 11.2.2 which action denied the petitioner the right of appeal to the Public Service Commission. Furthermore, the respondents failed to deliberate obstruction and inaction by the Chief Executive Officer in the circumstances of this case and instead punished the petitioner firstly for doing his work as the head of the Internal Audit department of the 1<sup>st</sup> respondent and for taking leave days he was lawfully entitled to considering the circumstances of the case.

72. In addition the procedure for dealing with public officers who absent themselves from work is set out under Section 67 of the Public Service Commission Act, which provides:-

**“Where a public officer is absent from duty without leave, reasonable or lawful cause for a period exceeding twenty four hours and the public officer cannot be traced within a period of ten days from the commencement of such absence or if traced no reply to a charge of absence without leave is received from the public officer within ten days after the dispatch of the charge to such public officer, the authority empowered to dismiss the public officer may summarily dismiss the public officer.....”** (*Emphasis mine*)

73. This provision, which was clearly not applicable to the petitioner, on the facts of this case was abused to victimize the petitioner, another indication of bad faith on the part of the Chief Executive Officer. Furthermore, the 14 days’ notice to apply for leave is not provided for under Clause 6.3 on Annual leave in the policy manual. The allegations on notice by the respondent are therefore preposterous under the circumstances explained by the petitioner herein.

74. The Court relies on the Employment and Labour Relations Court case of **Kenya National Union of Nurses -vs- Nairobi County Government and 5 Others** where Wasilwa, J. underpinned the importance of fairness and good faith in a disciplinary process. The conduct by the respondents herein failed this critical threshold of fairness and expediency.

75. The Court finds and declares that the summary dismissal of the petitioner was unlawful and unfair and in violation of Articles 41 and 47 of the Constitution of Kenya, 2010. Furthermore, the summary dismissal violated Sections 36, 41, 43, 44, 45 and 46 of the Employment Act, 2007,

76. In addition the summary dismissal violated the provisions of the Human Resource Policy and Procedure Manual stated in this judgment and in particular Section 11.2.2. and Section 67 of the Public Service Commission Act.

### **Remedies**

77. The Petitioner was the head of Internal Audit at the Kenya Medical Research Institute. He sought in the main to be reinstated back to his work vide a declaration and an order of certiorari. In considering the nature of this case, the peculiar role played by the petitioner and in a public institute, the order that commends itself to this Court is for the petitioner to be reinstated to his position without loss of status or remuneration due to him.

78. The Court has considered the decision of Abuodha J.N. in **Petition No. 50 of 2018 – Lucy Muthoni Njora -vs- Judicial Service Commission** and Another [2019] eKLR in which the learned judge whilst considering a similar case, involving an independent judicial officer stated:-

**“...the directions smacked of control and interference with decisional independence of fellow judges as correctly observed by Lady Justice Njoki Ndung’u in her response to the retired Chief Justice.”**

79. In the present case the friction between the Chief Executive officer and the petitioner emerged from concerted efforts by the Chief Executive Officer to interfere with the decisional independence of the petitioner as the head of internal audit of the institute regarding a recall of auditors by their head and falsely terming it as insubordination and prosecuting the said offence against the petitioner more than a year down the line which smacks of extreme back faith. The circumstances of this case have persuaded the Court that it is in the interest of justice and fair play and indeed in public interest that the petitioner is reinstated to the position he held prior to his unlawful and unfair summary

dismissal.

80. In the Njora Case (*supra*) Employment and Labour Relations Court reinstated the petitioner to her position and the Court of Appeal upheld the decision of Employment and Labour Relations Court in that respect. The judge stated:-

**“In the circumstances, the Court hereby declares that the disciplinary proceedings involving the petitioner and eventual termination from service were unfair, lacked valid reason, therefore null and void and the petitioner is hereby ordered reinstated back to judicial Service without loss of benefits.”**

81. A similar order commends itself in this matter and therefore in the final analysis the Court makes the following order in favour of the petitioner as against the respondent:-

**(a) The disciplinary process conducted against the petitioner was unlawful, unfair and violated the Human Resource and Procedure Manual of the respondent; the Public Service Commission Act, the Employment Act, 2007 and Articles 41, 47 and 50 of the Constitution of Kenya, 2010 and was null and void *ab initio*.**

**(b) The dismissal of the petitioner was unlawful, unfair and therefore null and void.**

**(c) An order of Certiorari is brought to this Court to quash the decision of the respondent contained in the letter of termination dated 31<sup>st</sup> January, 2020.**

**(d) The petitioner is reinstated to his position of head of Internal Audit at the Kenya Medical Research Institute with immediate effect with all his back salary, allowances, benefits and any legal dues he is entitled to by virtue of his employment and position.**

**(e) The respondent to pay costs of the suit.**

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 28<sup>TH</sup> DAY OF OCTOBER, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

Wetaba, Were Associates Advocates for the petitioner

Muriu, Mungai and Co. Advocates LLP for the respondent

Ekale – Court clerk