



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**PETITION NO. 70 OF 2018**

**IN THE MATTER OF ARTICLES 22(1), 23(1), 28, 47(1),  
50(1), 258 AND 259 OF THE CONSTITUTION, 2010**

**AND**

**IN THE MATTER OF VIOLATION AND INFRINGEMENT OF  
THE FUNDAMENTAL RIGHTS OF THE PETITIONERS**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT, 2007**

**AND**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**BETWEEN**

**FRANCIS NDAVI & 527 OTHERS.....PETITIONERS**

**VERSUS**

**PUT SARAJEVO GENERAL ENGINEERING COMPANY.....RESPONDENT**

**RULING NO. 3**

1. On 2 May 2019, the Court directed that the jurisdictional questions raised by PUT Sarajevo General Engineering Co Ltd (the Respondent) through a Notice of Preliminary Objection be taken during the hearing of the Petition on the merits.
2. By the time the Respondent was raising the Objection, a Motion dated 16 November 2018 by the Petitioners was still pending on file and on 16 July 2019, the Court directed that it be canvassed through submissions to be filed.
3. The parties did not comply with the timelines for the filing and exchange of the submissions, and on 18 February 2020, the Court directed the parties to file and exchange submissions on the Petition within set timelines.
4. When the Petition was mentioned before the Deputy Registrar on 20 July 2020, none of the parties was present, and the Deputy Registrar rescheduled the mention to 4 August 2020. On this latter date, again, none of the parties appeared.

5. On 5 August 2020, the Petitioners filed another Motion seeking injunctive orders against the Respondent, and the Court granted the orders.
6. The Court further directed that the Motion be served and that affidavits and submissions be filed and exchanged ahead of highlighting.
7. Despite service, the Respondent did not respond to the Motion within the timelines set by the Court.
8. The Petitioners filed their submissions on the Motion dated 5 August 2020 on 23 September 2020.
9. When this Motion came up for further directions on 19 November 2020, the Respondent sought leave to respond to the application(s) which were pending, and the Court directed it to file and serve the responses before 30 November 2020, with mention set for 2 December 2020 to confirm compliance.
10. For the umpteenth time, the Respondent did not comply within the set timeline.
11. Instead, on 2 December 2020, the Respondent filed a Motion seeking injunctive orders against the Petitioners.
12. On the same day, the Respondent filed a replying affidavit to the Petitioners Motion dated 5 August 2020.
13. Faced with a plethora of applications, the Court directed that it would give further directions on 27 January 2021, after going through the file.
14. The Court perused the file, and on 27 January 2021, it gave comprehensive directions, which included that all the Motions and Petition would be taken together.
15. The Court set a judgment date of 28 April 2021.
16. The Petitioners filed a replying affidavit to the Respondent's application on 3 February 2021 and submissions on 26 February 2021.
17. A day to the delivery of judgment, on 27 April 2021, the Respondent filed yet another Motion seeking orders staying the directions given on 27 January 2021 and granting leave for the cross-examination of deponents of affidavits filed on behalf of the Petitioners.
18. The Petitioners filed Grounds of Opposition to the Motion on 17 May 2021.
19. None of the parties filed submissions on this latter Motion as directed by the Court.
20. This Ruling relates to this Motion to set aside the directions given on 27 January 2021.
21. The Court has considered the record, the Motion and affidavits and come to the view that the Motion should be dismissed for the following reasons.
22. One, the Respondent moved the Court very late, which was on the eve of the delivery of judgment. The directions set to be varied were issued 3 months early in the presence of the Respondent's advocate.
23. Two, the affidavits whose deponents the Respondent sought to be cross-examined had been on record before the Court gave directions on 27 January 2021.
24. The Respondent was aware of the contents of the affidavits, and at no point in time did it intimate that it wanted the Petition to proceed through *viva voce* evidence.
25. Three, the Court had on 18 February 2020, directed that the Petition proceeds to hearing on the merits through submissions and the parties were directed to file and exchange submissions within 14 days, respectively.
26. Consequently, the Petitioners filed their submissions on 29 April 2020, but the Respondent did not file its submissions.
27. Lastly, the Court had given comprehensive directions on 27 January 2021 with a view to the expeditious and proportionate determination of the Petition as contemplated by the Court's establishing statute.

### **Conclusion and Orders**

28. From the foregoing, it is ordered:
  - (i) The Motion filed on 27 April 2021 is dismissed with costs to the Petitioners.
  - (ii) The Respondent to file and serve submissions on or before 18 October 2021.

(iii) Judgment on 17 November 2021.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF OCTOBER 2021.**

**RADIDO STEPHEN,**

**MCIARB**

**JUDGE**

**Appearances**

**FOR PETITIONERS MR. AWINO INSTRUCTED BY ODONDI AWINO & CO ADVOCATES**

**FOR RESPONDENT MR. WACHIRA INSTRUCTED BY O & M LAW LLP ADVOCATES**

**COURT ASSISTANT CHRISPO AURA**