



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. E687 OF 2020**

(Before Hon. Lady Justice Maureen Onyango)

**BAKERY CONFECTIONERY FOOD**

**MANUFACTURING AND ALLIED WORKERS UNION (K).....CLAIMANT**

**VERSUS**

**KENAFRIC INDUSTRIES LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant is a duly registered trade union in line with the provisions of the Labour Relations Act, 2007 and represents the interests of workers in food manufacturing, confectionery making and allied industries.
2. The Respondent is a limited liability company with its principal place of business situated in Ruaraka, Nairobi within the Republic of Kenya.
3. The Claimant and the Respondent have a valid recognition agreement and have negotiated several collective agreements.
4. It is the averment of the Claimant that sometimes in October 2017, the grievants who were employees of the Respondent joined membership of the Claimant and thus became eligible to benefit from the CBA negotiated by the Claimant and the Respondent.
5. That upon joining membership of the Claimant, the Respondent reduced their basic salaries and house allowances to the basic minimum rates in the CBA before applying the annual wage increment in to CBA. That the Respondent further withdrew communication allowances that the grievants were earning before joining membership of the Claimant.
6. Vide its Memorandum of Claim dated **23<sup>rd</sup> October 2020**, the Claimant avers that the withdrawal of salary increments and subsequent scaling down of wages in respect of seven of its unionisable employees was unlawful, illegal and void. The Claimant seeks the following reliefs:
  - i. A Declaration that the actions of the Respondent in scaling down of the grievants' terms and conditions of service more specifically the reduction of Basic Salary and House Allowance and the withdrawal of Communication Allowance on the account of the grievants' joining the Claimant union violates the Collective agreement and existing law therefore, unlawful, illegal null and void.
  - ii. A Declaration that the actions of the Respondent in scaling down of the grievant' terms and conditions of service more specifically the reduction of Basic Salary and House Allowance and the withdrawal of Communication Allowance on the account of the grievants joining and/or associating with the Claimant union herein violates the grievants' Constitutional rights under Article 27(5) and Article 41(2)(c) of the Constitution thus unconstitutional, null and void.
  - iii. An order for immediate reinstatement of the grievants' salary increments on basic Salary, House allowance and Communication Allowance, without any loss of negotiated increments through the existing collective agreements signed between the Claimant and the Respondent that is to say the 2015-2017, 2017-2019 CBA and any subsequent CBAs.
  - iv. An order for computation and immediate payment of the difference of the withdrawn and/or scaled down Salaries, House allowance and Communication allowance without any loss of increments that would ordinarily accrue as a result of the Respondent's unlawful actions herein including any percentage salary increments for the time being negotiated in line with the 2015-2017 as well

as the 2017-2019 CBAs.

v. An order for compensation for violation of the grievants' Constitutional rights under Article 27(5) and 41(1) of the Constitution.

vi. An order for payment of cost and interest.

7. The Respondent filed its Statement of Response on 5<sup>th</sup> December 2020 where it denied the Claimant's allegations in toto.

#### **Claimant's Case**

8. The Claimant avers that the grievants were employed by the Respondent on diverse dates and engaged to serve in different capacities within the Respondent and they continue to be in the employ of the Respondent. That owing to their dedicated services to the Respondent the Claimant's aggrieved members were rewarded with salary and allowance increments as follows:

**9. Mwashu Wanjiru Peter's** Basic Salary increased from Kshs.21,100 to Kshs.22,577, house allowance increased from Kshs.9,500 to Kshs.10,165 while Communication allowance was increased from Kshs.2,340 to Kshs.2,504.

**10. Mukhala Shirly Liavoga's** basic salary increased from Kshs.19,000 to Kshs.23,900, house allowance increased from Kshs.9,600 to Kshs.12,075 while communication allowance was increased from Kshs.3,200 to Kshs.4,026.

**11. Kimuli James Ms** basic salary increased from Kshs.19,000 to Kshs.23,900, house allowance increased from Kshs.9,600 to Kshs.12,075 while communication allowance was increased from Kshs.3,200 to Kshs.4,026.

**12. Mutua Alexander's** basic salary increased from Kshs.34,840 to Kshs.36,500, house allowance increased from Kshs.16,120 to Kshs.17,000 while communication allowance was increased from Kshs.4,680 to Kshs.4,900.

**13. Makau Francis Gitau's** basic salary increased from Kshs.25,800 to Kshs.29,154, house allowance increased from Kshs.12,650 to Kshs.14,294 while communication allowance was increased from Kshs.3,500 to Kshs.3,955.

**14. Musau Daniel Mutisya's** basic salary increased from Kshs.25,830 to Kshs.27,400, house allowance increased from Kshs.12,705 to Kshs.13,500 while communication allowance was increased from Kshs.4,200 to Kshs.4,400.

**15. Ogunja Austine Otieno's** basic salary increased from Kshs.25,800 to Kshs.28,896, house allowance increased from Kshs.13,200 to Kshs.14,784 while communication allowance was increased from Kshs.3,500 to Kshs.3,920.

16. That sometime thereafter the above grievants exercised their constitutional rights and joined the Claimant. That the Respondent immediately after the said subscription to union membership unilaterally and without any lawful cause, unlawfully and illegally scaled down the grievants' salary increments and allowances and subjected the said grievants to inferior terms in contravention of the Collective Agreement in force and the law.

17. The Claimant further contends that the Respondent has selectively applied the applicable collective agreement in force by subjecting the said grievants to inferior terms for exercising their rights to join and participate in the activities of a trade union.

18. The Claimant further claims that vide a letter dated the 1<sup>st</sup> of December 2017, the Claimant protested the scaling down of the grievants' terms and conditions of service but vide a letter dated the 15<sup>th</sup> of December 2017, the Respondent declined to reinstate the said salaries and allowances stating that the same were in accordance with the applicable CBA in place.

19. The Claimant further avers that whilst the collective agreement sets out the applicable duly negotiated minimum salary scales under Appendix "A" the same were to be read together with clause 22 of the CBA, which is categorical that the job, titles and basic minimum rates of pay spelt out in Appendix A of the CBA shall be applicable on condition that where an employee was earning above the basic minimum rates provided in the same agreement, their wage increments shall be based on whatever the said employees were earning.

20. It was the Claimant's view that it was not open to the Respondent to illegally and unlawfully withdraw the grievants salary increments and to scale down and/or withdraw the grievants salaries and allowances without their express consent as provided for in Section 10(5) of the Employment Act, 2007. Further that clause 22(a)(iii) of the Collective agreement, does not envisage the scaling down and withdrawal of allowances when the same are over and above those specified in Appendix A. As such the Respondent's action of scaling down the grievants said wages and entirely withdrawing their communication allowance is in violation of the CBA.

21. The Claimant further averred that while the minimum salary scales spelt out in Appendix "A" are subjected to periodic review through negotiated adjustments, clause 22(a) (iii) implies that any negotiated increments are to apply in respect of the more favorable terms, which is the salary "*he or she was earning*".

22. The dispute was subjected to alternative dispute resolution mechanisms under Section 62 of the Labour Relations Act, 2007 but being dissatisfied by the findings of the Minister, the Claimant filed the instant suit.

#### **Respondent's Case**

23. The Respondent admits that the grievants are its employees save for Mutua Alexander who no longer works for the Respondent and is therefore not a proper party in the claim.

24. The Respondent also admits that it entered into a Collective Bargaining Agreement dated 15<sup>th</sup> December 2015 for the period between 1<sup>st</sup> January 2015- 31<sup>st</sup> December 2016 and later on entered into a 'renewed' Collective Bargaining Agreement dated 6<sup>th</sup> March 2019 for the period between 1<sup>st</sup> January 2017- 31<sup>st</sup> December 2019.

25. It also confirms that the grievants joined the Claimant and duly notified the Respondent vide a check off on 16<sup>th</sup> October 2017.

26. The Respondent contends that the operative CBA, in the preamble, is clear that the CBA superseded all previous memoranda of agreement on such matters and therefore the Respondent had an obligation of aligning the terms then in force to match the CBA in default of which the Respondent would be acting in breach of the terms of the CBA. Further that Appendix A of the CBA is clear on the wages payable to the members. As such the Respondent in compliance with the terms of the CBA informed the grievants of the deduction of the union dues and the alignment of the grievants' salaries with those of the other unionized employees to the rates outlined in "Appendix A" of the CBA beginning November 2017.

27. The Respondent denies any unlawful and/or illegal scaling down of the grievants' salaries and allowances. It avers that the Respondent's act of aligning the grievants' salaries and allowances with those of other unionized employees was in accordance with the 2015 CBA particularly the preamble and clause 22(a)(i) which requires the alignment and harmonization of the grievants' salaries and allowances to reflect the rates at "Appendix A" of the 2015 CBA. The Claimant's allegation that the grievants have been subjected to inferior terms is also denied.

28. The Respondent reiterates that the effected changes in the grievants' salaries and allowances were initiated by the grievants themselves when they joined the Claimant as they were thus bound by the terms of the CBA. That failure to take the action they took would amount to discrimination by putting the grievants on higher rates and better terms than all the other unionized employees.

29. The Respondent further avers that the Claimant is riding under an unsupported misapprehension that the grievants are subjected to inferior terms, which is false, as was reaffirmed by the conciliator in the report dated 24<sup>th</sup> August 2018. That it would be discriminatory to subject the grievants herein to far superior terms than those of other employees.

30. On the claim for communication allowance the Respondent avers that the same is misconceived as the allowance is not provided for in the CBA and was part of the package on the salary increments in July 2017 before the grievants joined the Claimant Union. That the allowance is awarded at the discretion of the Respondent and may be varied and/or withdrawn at the Respondent's behest.

31. Upon request by the parties, the claim was disposed off via written submissions.

### **Claimant's Submissions**

32. The Claimant proposes the following issues for determination:

- a. Whether the scaling down of the grievant's terms and conditions of service more specifically the reduction of basic salary, house allowance and withdrawal of communication allowance on account of the grievant's joining the Claimant union violated the CBA, existing law thus illegal null and void.
- b. Whether the scaling down of the grievant's terms and conditions of service more specifically the reduction of basic salary, house allowance and withdrawal of communication allowance on account of the grievant's joining the Claimant union violated the article 27(5) and article 41(2) of the constitution, thus unconstitutional null and void.
- c. What remedies are available to the Claimant?

33. On the 1<sup>st</sup> issue, counsel submits that the grievants' salary increments are underpinned and anchored in their individual Contracts of employment with the Respondent and enjoy the protection of **Section 10(5) of the Employment Act, 2007**.

34. Counsel reiterates that immediately after joining the union the Respondent unilaterally and unlawfully reduced the grievants salaries and withdrew certain allowances enjoyed by the said grievants prior to joining the union purportedly to re-align them with the CBA. That for instance, the 1<sup>st</sup> grievant had his basic salary slashed from **Kshs.22,577.00** to **Kshs. 14,693.00**, House Allowance reduced from **Kshs.10,165.00** to **3,969.00** and Communication Allowance of **Kshs.2,504.00** completely withdrawn in its entirety. That the same pattern of salary reduction is replicated in respect of the rest of the grievants.

35. Counsel further submits that the Respondent's justification of the reduction of salary and withdrawal of allowances is based on an erroneous and selective interpretation of the existing CBA and the law. That the application of the minimum wages specified in Appendix A of the CBA envisages two scenarios:

- where the salaries and remuneration of a unionisable employee are below the rates provided for in the said appendix to the CBA
- where the salary of an employee is over and above the rates provided for in the said appendix to the CBA.

36. Counsel further submits that in the event an employee's salary fell under the first scenario, the employer was obligated to align the said salaries to correspond with the basic minimum set out under Clause 21(b) of the CBA. That if the employee's salary fell under the second scenario as it was in the instant case, realignment can only be done in accordance with the provisions of Clause 21(c) of the CBA.

37. Counsel submits that the provisions of the CBA in place does not envisage reduction of contractual salaries and wages or withdrawal of any allowances as done by the Respondent where the same are over and above the set basic minimum wages. That the Respondent's interpretation of CBA, is manifestly absurd and in violation of the provisions of the same Collective Agreement.

38. To buttress this point, counsel relies on the case of **Kenya Union of Commercial Food & Allied Workers Union (K) v Tusker Mattresses (2020) eKLR**, where Ongaya J. held thus:-

“Under section 10(5) of the Act, a change in terms of employment shall be effected by the employer in consultation with the employee. It appears that in view of Covid 19 situation and the difficult economic times for supermarkets industry the Respondent is desirous of renegotiating salaries or wages as well as working hours. The Court returns that in the circumstances of the present case the Respondent has effected the pay cut upon the salaries or wages of the unionisable staff without consultation or renegotiation with the Claimant and contrary to the cited statutory provisions and provisions in the recognition agreement on negotiation and the terms set in the CBA. It is clear that under section 59 (3) of the Labour Relations Act, 2007, the terms and conditions of service as agreed upon by the parties are automatically incorporated into the contract of employment of every employee covered by the CBA. Thus the statutory provisions as cited and applying to variation of the salaries or wages apply. Consultation and negotiation between the parties was mandatory by statute and by contract per recognition agreement.”

39. On whether the reduction of salaries and withdrawal of grievants' allowances was in violation of their constitutional rights, counsel submits in the positive and adds that the grievant's constitutional rights under Article 27(4) and (5) and Article 41 of the Constitution were violated. Counsel relied on the provisions of **Section 5(2)(c)** of the Labour Relations Act, 2007 which provides as follows:-

**(2) Without limiting the general protection conferred by sub-section (1), no person shall do, or threaten to do any of the following-**

**a. ...**

**b. ...**

**c. dismiss or in any other way prejudice an employee or a person seeking employment—**

**i. because of past, present or anticipated trade union membership;**

**ii. for participating in the formation or the lawful activities of a trade union;**

**iii. for exercising any right conferred by this Act or participating in any proceedings specified in this Act; or**

**iv. for failing or refusing to do something that an employee may not lawfully permit or require an employee to do.**

40. Counsel further submits that the grievants suffered discrimination and were prejudiced through salary reductions and withdrawal of communication allowances on account of their exercising their Constitutional rights to join the Claimant union. He urges the Court to be guided by the case of **Kenya County Government Workers Union v County Government of Wajir**.

### **Respondent's Submissions**

41. The Respondent through its counsel on record proposes the following issues for determination by the Court:

i. Whether the harmonization of the grievants' salaries and allowances in line with the Collective Bargaining Agreement amounts to scaling down of their terms and conditions of service;

ii. Whether the harmonization of the grievants' salaries and allowances in line with the Collective Bargaining Agreement are in violation of the Collective Bargaining Agreement and/or the employment laws;

iii. Whether the harmonization of the grievants' salaries and allowances in line with the Collective Bargaining Agreement are in violation of the grievants' constitutional right under Article 27(5) and Article 41(2) of the Constitution;

iv. Whether the Claimant is entitled to the remedies sought;

42. On whether the Respondent's actions amounted to scaling down of their terms and conditions of service counsel submits that the harmonization was in line with the Collective Bargaining Agreement did not and cannot in any way be construed as a scaling down of their terms and conditions of service. That it was merely an act of alignment of the grievants' salaries with those of other unionized employees, in compliance with operative CBA.

43. Counsel further submits that prior to joining the Claimant Union, the grievants were engaged by the Respondent on terms and conditions

of service stipulated in their individual contracts of employment. That upon joining the Claimant Union, the terms and conditions of service was then to be governed by the CBA between the Claimant and Respondent which in its preamble clearly stipulates that it “*supersedes all previous memoranda of agreement on matters wages, terms and conditions of employment.*” Counsel submits that the grievants' terms and conditions of service were not scaled down nor have the grievants been subjected to inferior terms as alleged.

44. On whether the impugned action by the Respondent was in violation of the Collective Bargaining Agreement and/or the employment laws counsel cites Section 59 (3) of the Labour Relations Act, 2007 which stipulates that the terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement. Further that the preamble of the 2015 CBA provides that the CBA supersedes all previous agreements. Counsel also relies on the case of **James Mutisya Nzokila & 8 others v Kenya Nut Company Limited [2019] eKLR** where the Court stated:

a. “I agree with **Said Ndege v Steel Makers Ltd [2014] eKLR**, where Radido J held that:

b. ‘Under section 59(1) of the Act, a collective agreement binds the parties to the agreement, all unionisable employees employed by the employer, group of employers or members of the employers' organisation party to the agreement, while section 59(3) of the Act provides that the terms of the collective agreement shall be incorporated into the contract of employment of every employee covered by the collective agreement.’

c. Based on the said section 59(1) and (3) of the LRA, I find that the CBA produced by the Respondent formed part of the Claimants' contract of service and they were all bound by the terms agreed between their employer and KUCFAW. It follows therefore that by dint of Clause 13(a) of the CBA all the unionizable staff of the Respondent were to retire at the age of 55 years unless the period of service was extended at the employer's sole discretion. In my view, it is immaterial whether or not the Claimants were members of the union that negotiated the CBA. All that matters under section 59(3) of LRA is whether they were covered by the CBA.”

45. On whether the grievants were consulted, counsel submits that the grievants were the initiators, proposers and movers of the revision of their terms of employment and cannot now come to claim that they were not consulted on the changes to their terms and conditions of employment. That by joining the Claimant Union, the grievants intimated their consent and accepted the changes to their terms of employment in accordance with the Collective Bargaining Agreement.

46. On the issue of the alleged withdrawal of grievants' communication allowance counsel submits that communication allowance is granted at the employer's discretion and may be so withdrawn at the employer's discretion. That the Respondent is thus justified to withdraw the same as it remains within its discretion.

47. On whether the impugned actions are in violation of the grievants' constitutional rights under Article 27(5) and Article 41(2) of the Constitution counsel submits that it is trite that when claiming a violation of right it is not enough to quote a constitutional provision. The Claimant must go further to state with specificity and give particulars of how the Respondent has infringed the grievants' rights. That having failed to do so, the claim fails as it was held in the case of **David Mathu Kimingi v SMEC International PTY Limited [2021] eKLR**.

48. Counsel submits that based on the foregoing, the Claimant has not proved their case to the required standard and the Claimants suit should be dismissed with costs to the Respondent.

#### **Determination**

49. From the foregoing appreciation of the pleadings of the respective Claimants, the responses thereto, the submissions and decisions relied on, the following issues arise for determination: -

i. Whether the scaling down of the grievant's terms and conditions of service more specifically the reduction of basic salary, house allowance and withdrawal of communication allowance on account of the grievant's joining the Claimant union violated provisions of their individual contracts, the CBA and existing laws.

ii. Whether the scaling down of the grievant's terms and conditions of service more specifically the reduction of basic salary, house allowance and withdrawal of communication allowance on account of the grievant's joining the Claimant union violated the article 27(5) and article 41(2) of the constitution.

iii. Whether the grievants are entitled to the reliefs sought.

#### **Whether the Respondent's impugned actions violated provisions of their individual contracts, the CBA and existing laws**

50. It is not in dispute that the salaries of the grievants have been varied. What is in dispute is whether the same was in line with the grievants individual contracts, the CBA and the relevant laws.

51. On one hand, the Claimant maintains that it was not open to the Respondent to illegally and unlawfully withdraw the grievants salary increments and to scale down and/or withdraw the grievants salaries and allowances without their express consent as provided for in Section 10(5) of the Employment Act, 2007. Further that clause 22 (a)(iii) of the Collective agreement, does not envisage the scaling down and withdrawal of allowances when the same are over and above those specified in Appendix A and as such the Respondent's action of scaling down the grievants said wages and entirely withdrawing their communication allowance is in violation of the CBA.

52. On the other hand, the Respondent's holds the view that the harmonization was in line with the Collective Bargaining Agreement and

cannot in any way be construed as a scaling down of their terms and conditions of service. That it was merely an act of alignment of the grievants' salaries with those of other unionized employees, in compliance with operative CBA. Further that the preamble of the 2015 CBA provides that the CBA supersedes all previous agreements.

53. From above it is thus clear that the gist of this claim is the interpretation of the CBA. Clause 21 of the CBA provides as follows; -

**“Clause 21; Wages, Occupational Grades, Titles, Negotiated Rates of Pay in Appendix ‘A’**

**a. The grading, job titles and negotiated pay for each grade contained in Appendix “A” attached to this agreement shall be observed by both parties. Provided that any job identified before the next CBA negotiation period shall be subjected to a job evaluation and the rates of pay for such job negotiated and agreed upon.**

**b. An employee who as at 31<sup>st</sup> December 2016 was earning less than the basic minimum rate shown for his/her grade in Appendix ‘A’ of this Agreement, shall first have his/her salary adjusted accordingly to grade with the one shown for his/her grade and thereafter, earn his/ her first wage increment based on the minimum rate shown for the grade.**

**c. Any employee who as at 31<sup>st</sup> December 2016 was earning above the basic minimum rate shown in Appendix A of this Agreement shall have his/her wage increment based on whatever he/she was earning.”**

54. As submitted by the Claimant’s Counsel, the above clause envisages two scenarios; an employee earning below the basic minimum rate and an employee earning above the basic rate as at 31<sup>st</sup> December 2016. For the employees earning below the basic minimum rates the clause is clear that his/her salary shall be adjusted accordingly to grade with the one shown for his/her grade and thereafter, earn his/ her first wage increment based on the minimum rate shown for the grade. For employees earning above the basic minimum rates as at 31<sup>st</sup> December 2016, the employee shall have his/her wage increment based on whatever he/she was earning.

55. Accordingly, it is clear from the above that the CBA did not envisage a scenario where the employees’ salaries would be reduced to the basic minimum rates. It only provided that in the event an employee was earning above the said minimum basic minimum rates, any future wage increment shall be based on the amount the employee was earning. This in my view, meant that the wages increase was to be loaded on the salary that the employee was earning, except where it is below the statutory minimum, in which event employee’s salary would be increased to the minimum wage before loading thereto the CBA wage increases.

56. The law is also clear on the procedure to be followed before a reduction of salary is deemed to be valid. Section 10(5) of the Employment Act provides as follows:

**Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.**

57. In **Nakuru ELRC Petition No. 29/2016 Maxwell Miyawa & 7 Others v JSC (2017) eKLR** the Court held as follows:-

“Further, in my view, the common law principle that a unilateral variation of an employment contract is unlawful and amounts to repudiation and or breach of contract, and the statutory requirement to consult with an employee where there is a variation to the employment contract, and more specifically to an essential of the contract such as duration and remuneration where the employee would be adversely affected are ingredients of and are subsumed in the fair labour practice principle.

65. The Respondent also did not suggest that the variation(s) involved consultations with these Petitioners.

66. The decision by the Respondent in regard to the contracts of the 7<sup>th</sup> and 8<sup>th</sup> Petitioners as conveyed through letters of 6 August 2013 were therefore not only unlawful for being unilateral but also for lack of consultation and therefore amounted to a violation of the right to fair labour practices as it took away vested rights and entitlements”.

58. In the instant case, it is not in dispute that the Respondent did not consult the grievants before reducing their salaries. This Court finds that indeed the action of the Respondent in unilaterally reviewing downwards the salaries of its employees without consultation, was unfair and unjustified and amounts to an unfair labour practice.

**Whether the Respondent’s impugned actions violated Articles 27(5) and 41(2) of the constitution**

59. **Article 27(4)** of the Constitution provides as follows; -

**4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.**

**5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).**

60. **Article 41(1) and (2)** provides for the **Right to Fair Labour Relations** and provides thus;-

**41. Labour relations**

**1. Every person as the right to fair labour practices.**

**2. Every worker has the right—**

**a. to fair remuneration.**

**b. to reasonable working conditions;**

**c. to form, join or participate in the activities and programmes of a trade union; and;**

**d. to go on strike.**

61. The Court has already made a finding that the reduction of the grievants' salaries without consultation was unjustified and amounts to an unfair labour practice. It clearly violates article 41 on the right to fair labour practices and fair remuneration. The grievants were discriminated against for joining the Claimant.

62. The upshot is that this Court finds in favour for the Claimant and issues orders as follows: -

**i. A Declaration do and is hereby issued that the actions of the Respondent in scaling down of the grievants' terms and conditions of service on the account of the grievants' joining the Claimant union violates the Collective agreement and existing law and is therefore, unlawful, illegal null and void.**

**ii. A Declaration do and is hereby issued that the actions of the Respondent in scaling down of the grievants' terms and conditions of service on the account of the grievants' joining the Claimant union violates the grievants' Constitutional rights under article 27(5) and article 41 (2) (c) of the Constitution and is thus unconstitutional, null and void.**

**iii. An order do and is hereby issued for immediate reinstatement of the grievants' salary increments on basic Salary, House allowance and Communication Allowance, without any loss of negotiated increments for the grievants still in employment.**

**iv. A mandatory order do and is hereby issued compelling the Respondent to compute and immediately pay the grievants in full the unlawfully varied salaries from October 2017 to date or to the last day of employment for the grievants no longer working for the Respondent.**

**v. The prayer for compensation is denied as in the Court's view, payment of the unlawfully varied salaries will suffice.**

**vi. The Respondent is condemned to pay costs.**

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 10<sup>TH</sup> DAY OF DECEMBER, 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**