



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**JUDICIAL REVIEW NO. 7 OF 2019**

*(Before Hon. Lady Justice Hellen S. Wasilwa on 18<sup>th</sup> September 2019)*

REPUBLIC.....APPLICANT

VERSUS

CABINET SECRETARY,

MINISTRY OF LABOUR AND

SOCIAL PROTECTION.....1<sup>ST</sup> RESPONDENT

BOARD OF TRUSTEES.....2<sup>ND</sup> RESPONDENT

HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT

AND

GEORGE NJOROGE MBOOTHU.....1<sup>ST</sup> EX PARTE APPLICANT

FRANCIS KIMOTHO NJOROGE.....2<sup>ND</sup> EX PARTE APPLICANT

KENNETH OCHIENG ACHOLA.....4<sup>TH</sup> EX PARTE APPLICANT

PHILIP ADAJO ODHIAMBO.....5<sup>TH</sup> EX PARTE APPLICANT

JEDIDAH AKINYI OMONDI.....6<sup>TH</sup> EX PARTE APPLICANT

GEOFFREY OYARO NYAKINA.....7<sup>TH</sup> EX PARTE APPLICANT

VIOLET ATIENO.....8<sup>TH</sup> EX PARTE APPLICANT

RPBERT NYAMWEYA.....9<sup>TH</sup> EX PARTE APPLICANT

DUNCAN OGUTU.....10<sup>TH</sup> EX PARTE APPLICANT

EDWARD MBURU.....11<sup>TH</sup> EX PARTE APPLICANT

**JUDGMENT**

1. On 28<sup>th</sup> March 2019, the Applicant was granted leave to bring JR proceedings before this Court. As a result, the Applicants sought the following orders in their Chamber Summons Application filed on 28<sup>th</sup> March 2019:-

**1. Spent.**

**2. Leave be granted to the Applicants herein to apply for judicial review orders to wit-**

**a. An order of mandamus do issue directed upon the cabinet secretary, Ministry of Labour and Social Protection to compel it to pay the 4<sup>th</sup> to 10<sup>th</sup> Applicants, out of National Social Security Fund, salary arrears in the following sum, being half the total arrears that Nakumatt Holdings Limited owes the 4<sup>th</sup> to 10<sup>th</sup> Respondent or such sum that the Court deems tenable, to wit:-**

- i. Kenneth Ochieng Achola KShs. 824,175.00**
- ii. Philip Adajo Odhiambo KShs. 494,505.00**
- iii. Jedidah Akinyi Omondi KShs. 347,625.00**
- iv. Geoffrey Oyaro Nyakina KShs. 307,017.00**
- v. Violet Atieno KShs. 374,625.00**
- vi. Robert Nyamweya KShs. 3,100,500.00**
- vii. Duncan Ogutu KShs. 374,625.00**

**b. An order of mandamus do issue directed upon the cabinet secretary, Ministry of Labour and Social Protection to compel it to pay the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 11<sup>th</sup> Applicants, out of National Social Security Fund, salary arrears and annual leave days not taken in the following sum, being half the total arrears that Nakumatt Holdings Limited owes the 4<sup>th</sup> to 10<sup>th</sup> Respondent or such sum that the Court deems tenable, to wit:-**

- i. George Njoroge Mbothu KShs. 573, 624.00**
- ii. Francis Kimotho Njoroge KShs. 388,801.50**
- iii. Daniel Ndungu Njoroge KShs. 133,742.00**
- iv. Edward Mburu KShs. 223,482.00**

**c. An order of certiorari do issue to remove into this Honourable Court for purpose of it being quashed, the letter reference number A/15/17 VOL.XX dated 12<sup>th</sup> February 2019 from National Social Security Fund Board of Trustees, issued at the behest of the 1<sup>st</sup> Respondent, to the Applicants obstructing payment by the Cabinet Secretary, Ministry of Labour and Social Protection, of the Applicant's terminal and arrears against Nakumatt Holding Limited, out of National Social Security Fund;**

**d. An order of prohibition do issue to stop and/or restrain the National Social Security Fund Board of Trustees from further obstructing payment by the Cabinet Secretary, Ministry of Labour and Social Protection of the Applicant's terminal dues and arrears against Nakumatt Holdings Limited, out of National Social Security Fund.**

**3. Costs of this Application be provided for.**

**2.** The Applicants are former employees of Nakumatt Holdings Limited (Nakumatt), now under administration. Pursuant to section 66 of the Employment Act 2007, a claim against an insolvent employer is a claim against the 1<sup>st</sup> Respondent who is enjoined to settle half of the claim out of the National Social Security Fund (NSSF).

**3.** Their case is that on 22<sup>nd</sup> January 2018, Mr. Peter Opondo Kahi was appointed the administrator of Nakumatt which was placed under administration. On 6<sup>th</sup> March 2018, Nakumatt Holdings Limited terminated the employment of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 11<sup>th</sup> Applicants and computed their salaries at KShs. 1,147,248.00, KShs. 777,608.00, KShs. 267,484.00 and KShs. 223,482.00 respectively, after statutory deductions.

**4.** Further, in August 2018 Nakumatt constructively terminated the employment of the 4<sup>th</sup> to 10<sup>th</sup> Applicants after it failed to pay their salaries for 14 months between July 2017 and August 2018. The outstanding salaries are as follows:-

- i. 4<sup>th</sup> Applicant – KShs. 1,648,350.00**
- ii. 5<sup>th</sup> Applicant – KShs. 989,010.00**
- iii. 6<sup>th</sup> Applicant – KShs. 749,250.00**

- iv. **7<sup>th</sup> Applicant – KShs. 614, 034.00**
- v. **8<sup>th</sup> Applicant – KShs. 749,250.00**
- vi. **9<sup>th</sup> Applicant – KShs. 6,201,000.00**
- vii. **10<sup>th</sup> Applicant – KShs. 749, 250.00**

5. On 28<sup>th</sup> September 2018, the Applicants' Counsel requested the 1<sup>st</sup> Respondent to pay the Applicants their salary arrears and terminal dues out of the NSSF Funds as outlined above. However, the 1<sup>st</sup> Respondent through 2<sup>nd</sup> Respondent, declined to pay on the ground that its mandate did not extend to payment of funds in lieu of an insolvent employer. This was contrary to its mandatory obligation under Section 66. It is the Applicants' position that section 72 has a recovery process for all funds paid out of the NSSF hence no prejudice will be suffered by paying the Applicants their salary arrears and terminal dues.

6. The 1<sup>st</sup> Respondent's refusal to make such payment continues to expose them to untold suffering and exigencies of life like indebtedness, inability to access food, shelter and clothing making them vulnerable to destitution.

7. The Applicants note that there have been various decisions of this Court in similar cases where it held that the Applicants' only remedy for recovery of their dues and salary arrears against Nakumatt is by enforcing payment against the 1<sup>st</sup> Respondent out of the NSSF.

8. The Application is supported by the Verifying Affidavit of the 4<sup>th</sup> Applicant and is based on the grounds on the face of the motion.

9. The 2<sup>nd</sup> Respondent opposes this Application vide its Grounds of Opposition and the Replying Affidavit of Hellen C. Koech sworn on behalf of the 2<sup>nd</sup> Respondent. In the Replying Affidavit, the Affiant admits that the 2<sup>nd</sup> Respondent received a letter from the Applicants' Advocates seeking payment of terminal dues and salary arrears to the tune of KShs. 14,865,247.00. The 2<sup>nd</sup> Respondent responded to the letter informing them that the claims were unfounded and not provided for under the NSSF Act.

10. It is the 2<sup>nd</sup> Respondent's position that such claims only fall in the realm of the Pension Fund since the contributions, if they were remitted, were made while in employment. Further, that the Act does not provide for the Application of the Pension Fund to pay employees' dues in the event of their employer's insolvency. As such, the Board of Trustees would be acting *ultra vires* the powers and responsibilities conferred upon it by the NSSF Act.

11. The 2<sup>nd</sup> Respondent is of the view that although the Applicants' request is grounded on the Employment Act, it derives its mandate from the NSSF Act. As such, where a new Act conflicts with an existing one, the new Act should be presumed to communicate the legislature's intention.

12. The Affiant deposes that the order for mandamus is untenable since it would be issued in vain, the 2<sup>nd</sup> Respondent being a creature of statute, cannot apply the Fund outside its objectives as doing so will be committing an illegality and the same should be sought as a last resort. She further deposes that the prohibition order is untenable since the 2<sup>nd</sup> Respondent will be hindered from performing its statutory mandate and has been sought upon the Applicants' misapprehension of the law.

13. It is the 2<sup>nd</sup> Respondent's position that the nature of the Application does not fall within the purview of judicial review because it questions the 2<sup>nd</sup> Respondent's decision as opposed to the process. From the Affiant's understanding, judicial review focuses on the process rather than the merits of the decision.

14. The Affiant avers that the Application is premature since the Applicants will be given priority once their employer's debts are recovered. Additionally, the recoverable debt of an insolvent employer cannot be more than 6 months under the Employment Act and 4 months under the Insolvency Act.

15. The Respondent is of the opinion that an administrator of an insolvent company has to issue a comprehensive statement of the company's affairs before the cabinet secretary can make payment.

16. The 2<sup>nd</sup> Respondent is of the opinion that in the unlikely event it is found that the Applicants are entitled to payments, there is no sufficient material to warrant the granting of the orders. For instance, there is no evidence of membership to NSSF, existence of pay slips which are not up to date and the Applicants signed acknowledgment for their dues. As such, the Application is unmeritorious, misconceived and incompetent.

17. The 2<sup>nd</sup> Respondent in its Grounds of Opposition is of the opinion that the Applicants have failed to discharge their burden of proof in their failure to prove their employment and that their salary is a debt owed. It is their assertion that the NSSF Act and Retirement Benefit Act do not provide for such nature of payments from the NSSF Pension Fund.

18. The Application was disposed of by written submissions where the Applicants filed their written submissions on 14<sup>th</sup> June 2019 while the Respondents filed theirs on 25<sup>th</sup> June 2019.

19. In their submissions, the Applicants submit that judicial review orders of prohibition, certiorari and mandamus sought are efficacious

and in line with the principles set out in the case of **Kenya National Examination Council vs. Republic Ex Parte Geoffrey Gathenji Njoroge & Others [1997] eKLR.**

20. They submit that they have demonstrated that they were employed by Nakumatt Holdings, pursuant to the principles of validity of claim and insolvency of an employer as set out in the case of **Joseph Mburu Kahiga & Another vs. Kenatco Taxis Limited & Another Nrb ELRC Petition 39 of 2012.**

21. The Applicants also submit that vide their letter of 28<sup>th</sup> September 2019 (sic) they wrote to the Minister requesting for payment of the permitted dues and arrears from the NSSF. In doing so, they also complied with Section 66 of the Employment Act and the third principle enunciated in **Joseph Mburu Kahiga & Another vs. Kenatco Taxis Limited & Another [SUPRA]** that requires them to apply to the Minister to be paid their dues. As such, the Minister had no basis or just cause to refuse to pay the Applicant's dues.

22. It is their submissions that the Applicants have demonstrated there was money owing to them at the time of termination, as such they are entitled to the amounts claimed which are in line with sections 68 and 69 (1) (a) of the Employment Act. Therefore, the Minister had the obligation under Sections 70 (1) and (2) of the Act to request the administrator of their employer for the requisite information that would aid in making payment. They are of the view that the 2<sup>nd</sup> Respondent's allegation that their case has no factual basis, is without merit as the Minister has not controverted their claims.

23. The Applicants submit that the Respondents will suffer no prejudice if the orders sought are issued. In their view, the NSSF Act does not oust the application of Part VIII of the Employment Act to the Fund created in Section 3 of the NSSF Act.

24. On the other hand, the Respondents submit that the 2<sup>nd</sup> Respondent is a creature of statute which derives its mandate from section 4 of the NSSF Act. It is also their submissions that the provisions in the Retirement Benefits Act and Section 34 of the NSSF Act clearly indicate that the Fund was not intended to pay for salary arrears to former employees of an insolvent company.

25. They further submit that Section 30 of the NSSF Act expressly ousts the application of any other law while the Employment Act is a general Act which also seeks to compel the 2<sup>nd</sup> Respondent to Act ultra vires, as such, the Employment Act ought not to apply in this case.

26. They are also of the view that the Court should adopt a harmonious interpretation of the Acts. They rely on the case of **Commercial Tax Officer, Rajasthan vs. M/S Binani Cement Limited & Another (Civil Appeal No. 336 of 2003), Erica A. Ross vs. State (2000)** and **Reserve Bank of India vs. Peerless General Finance and Investment Company Limited 1987 SCR (2) 1.**

27. It is their position that the Application is bad in law because an order of prohibition cannot be issued where a decision has already been made and rely on the case of **Kenya National Examination Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & 9 Others [SUPRA]**.

28. Further, judicial review is only sought as a last resort where alternative remedies have been exhausted or are unavailable and rely on the case of **Starways Express Limited vs. National Transport & Safety Authority & 2 Others [2017] eKLR.**

29. The Respondents have distinguished the cases relied upon by the Applicants as follows: the case of **Kenya National Examination Council vs. Republic Ex parte Geoffrey Gathenji Njoroge & 9 Others [SUPRA]** where the appeal was allowed and the judicial review remedies given by the High Court set aside.

30. They also distinguished the decision in **Joseph Mburu Kahiga & Another vs. Kenatco Taxis Limited & Another [SUPRA]** which they submit was made with reliance on retired laws where there existed an Insolvency Fund which was held by the Minister for Labour and Social Protection, and the case of **Grace Wanjiku Mburu & 5 Others Suing on their own behalf and on behalf of 89 others vs. Kenatco Taxis Limited [2014] eKLR** which they submit was determined at a preliminary stage hence no indication that the Minister made payment out of the Fund.

31. It is the Respondents' submissions that the payments the Applicants seek to be made from the Fund are not provided for under the NSSF Act or Retirement Benefits Act and making such payments will be in violation of the law.

32. In their view, the Parliaments intention have been clearly outlined in the NSSF Act. As such, the Court should not read such payments into the Act where Parliament did not intend it to be so. Therefore, this Court ought to consider the objects and purpose of the Statute in its interpretation. To buttress this argument, they rely on the case of **Law Society of Kenya vs. Kenya Revenue Authority [2017] eKLR, Institute of Social Accountability & Another vs. National Assembly & 4 Others [2015] eKLR** and **Nicole Ann Thibodeau vs. Design Group One Architects LLC (SC 16593) (2002).**

33. The Respondents submit that if the orders sought were to be granted, they would offend the principles of legality because granting them will make the 2<sup>nd</sup> Respondent act ultra vires in the performance its statutory duties if a prohibition order is issued. They rely on the case of **Republic vs. National Employment Authority & 3 Others Ex parte Middle East Consultancy Services Limited [2018] eKLR.**

34. It is the Respondents' submissions that the Application is actually an appeal of the decision as it raises issues touching on the merits of a decision hence an abuse of the court process. As such, the order for certiorari should not be issued. It is their view that the test to be applied is whether the decision was illegal or irrational, which has not been established. They rely on the case of **Republic vs. Public Procurement Administrative Review Board & 2 Others Ex parte Rongo University [2018] eKLR.**

35. The Respondents submit that the issuance of the orders sought will set a bad precedence and will be injurious to public policy. For instance, an employee who fails to recover dues from their insolvent employer would seek payment under the fund and the funds would be

constantly applied to functions not contemplated in the Act and it would also create the impression that courts can read into Acts of Parliament to compel performance of obligations not contemplated in the Acts. The orders should not be issued even where they are merited. They rely on the case of **Republic vs. Principal Secretary, Ministry of Internal Security & Another Ex Parte Schon Noorani & Another [2018] eKLR.**

36. It is also their submissions that the Applicants should be condemned to costs because of their conduct of not heeding to the 2<sup>nd</sup> Respondent's advice and their failure to prove their case.

37. I have examined the averments and submissions of both Parties. In deciding this matter, the issues for this Court's determination are as follows:-

1. *Whether this application as filed falls within the review of Judicial Review.*
2. *What the legal principles in relation to insolvency of companies is and whether the Applicant's prayer falls within this category.*
3. *Whether the orders sought can be granted.*

38. Order 53 of the Civil Procedure Rules provides instances under which orders for Judicial Review may be granted. Order 53 rule 1 envisages that remedies of Judicial Review are orders for mandamus, prohibition and certiorari.

39. The Court of Appeal in **Kenya national Examination Council versus Republic Ex Parte Godfrey Gathenji Njoroge and 9 others, Nairobi Civil Appeal No. 266 of 1996 (1997) eKLR** discussed the three remedies of Judicial Review and opined as follows:-

*“What does an order of prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings”.*

40. The next issue we must deal with is this: what is the scope and efficacy of an order of mandamus. Once again we turn to Halsbury's Law of England, 4<sup>th</sup> Edition Volume 1 at page 111 from paragraph 89. The learned treatise says:-

*“The order of Mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue to the end that justice may be done in all cases where there is a specific legal right and no specific legal remedy for enforcing that right and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual.....”*

41. As to the order of Certiorari, the Court of Appeal stated:-

*“Only an order of Certiorari can quash a decision already made and order of Certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.....”*

42. The Fair Administrative Action Act 2015 on the other hand has expanded the scope of Judicial Review and Section 7 of the Fair Administrative Action Act states as follows:-

1. *“Any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to:-*

- a) *a court in accordance with section 8; or*
- b) *a tribunal in exercise of its jurisdiction conferred in that regard under any written law.*

2. *A court or tribunal under subsection (1) may review an administrative action or decision, if:-*

a) *the person who made the decision:-*

- (i) *was not authorized to do so by the empowering provision;*
- (ii) *acted in excess of jurisdiction or power conferred under any written law;*
- (iii) *acted pursuant to delegated power in contravention of any law prohibiting such delegation;*
- (iv) *was biased or may reasonably be suspected of bias; or*

- (v) denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;*
- b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;*
- c) the action or decision was procedurally unfair;*
- d) the action or decision was materially influenced by an error of law;*
- e) the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;*
- f) the administrator failed to take into account relevant considerations;*
- g) the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;*
- h) the administrative action or decision was made in bad faith;*
- i) the administrative action or decision is not rationally connected to:-*
  - (i) the purpose for which it was taken;*
  - (ii) the purpose of the empowering provision;*
  - (iii) the information before the administrator; or*
  - (iv) the reasons given for it by the administrator;*
- j) there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;*
- k) the administrative action or decision is unreasonable;*
- l) the administrative action or decision is not proportionate to the interests or rights affected;*
- m) the administrative action or decision violates the legitimate expectations of the person to whom it relates;*
- n) the administrative action or decision is unfair; or*
- o) the administrative action or decision is taken or made in abuse of power...”.*

43. I have considered the application before me and the nature of the remedies being sought which are all in the nature of Prohibition, Mandamus and Certiorari.

44. In order for the orders sought to be relevant, the Applicants must establish that the Respondents are responsible for implementing the orders sought or have in a way prevented the execution of the orders sought.

45. In this regard, the orders the Applicant seek emanate from their previous engage with Nakumatt Holdings Limited herein after referred to as Nakumatt. The contention by the Applicants is that they were former employees of Nakumatt, which is now insolvent. An administrator has already been appointed to administer Nakumatt as on 22.1.2018.

46. The Applicants have relied on Section 66 of the Employment Act 2007 to pursue this claim and want the 1<sup>st</sup> Respondent who is enjoined to settle half of the Claim out of NSSF funds.

47. Section 66 of the Employment Act 2007 states as follows:-

*“Where on an application made to him in writing by an employee or his representative the Minister is satisfied that:-*

- a) the employer of an employee has become insolvent;*
- b) the employment of the employee has been terminated; and*
- c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which this Part applies,*

*The Minister shall, subject to section 69, pay the employee out of the National Social Security Fund, the amount to which, in the*

*opinion of the Minister, the employee is entitled in respect of the debt”.*

48. The Applicants aver that pursuant to the above provisions, they wrote to the 1<sup>st</sup> Respondent to pay their salary arrears due to them from Nakumatt. The 1<sup>st</sup> Respondent declined to pay on the grounds that its mandate did not extend to payment of funds in lieu of an insolvent employer.

49. The 2<sup>nd</sup> Respondent NSSF have submitted that their mandate is cut out in the NSSF Act under Section 4 which states as follows:-

- a) *“providing basic security for its members and their dependants for various contingencies under the Act;*
- b) *increasing membership coverage of the scheme;*
- c) *improving adequacy of benefits paid out of the scheme by the Fund;*
- d) *bringing within the ambit of this Act self-employed persons to access social security for themselves and their dependents;*
- e) *Ensuring that the Fund and its social security are sustainable and affordable;*
- f) *Doing any other thing as permitted by the Act for the attainment of the objects of the Act.*

50. Section 34 of the NSSF Act also provides the uses under which Pension Funds can be put to and this include invalidity pension, retirement pension, survivors’ benefits, funeral grant and emigration benefit. Indeed the above does not extend to payment under insolvency.

51. In Kenya National Examination Council vs Republic, (supra) the Learned Judges of Appeal stated that:-

*“----- As a creature of statute, the cl can only do that which its creator (the Act) and the Rules made thereunder permit it to do. if it would purport to do anything outside that which the Act and the rules, then like all public bodies created by Parliament, it would become amenable to its supervisory jurisdiction of the High Court-----“*

52. This same position was expounded in the Law Society of Kenya vs Kenya Revenue Authority & Another (2017) eKLR where the Court opined as follows:-

*“In construing a statutory provision the first and the foremost rule of construction is that of literal construction. All that the Court has to see at the very outset is, what does the provision say? The Courts are bound by the mandate of the Legislature and once it has expressed its intention in words which have a clear significance and meaning, the Court is precluded from speculating. If the provision is unambiguous and if from that provision the legislative intent is clear, the other rules of construction of statutes need not be called into aid. They are called into aid only when the legislative intention is not clear. But the courts would not be justified in so straining the language of the statutory provision as to ascribe the meaning which cannot be warranted by the words employed by the Legislature”.*

53. I would like to refer to rules on Interpretation of Statutes and I note that the Employment Act 2007 is an earlier Act to the NSSF Act, which was enacted in 2013. Whereas the Employment Act wanted to confer jurisdiction upon the NSSF (2<sup>nd</sup> Respondent) on payment for insolvency, the NSSF Act does not list such a role as one of its objectives and being the later Act, its provisions override the provisions stated in the Employment Act 2007.

54. Going back to the scope of Judicial Review under the Fair Administrative Action Act, the Applicants have failed to establish that the Respondent have failed to do what was ordinary their duty to do as to warrant issuance of orders sought.

55. The Applicants have also not shown that the Respondent have done what they should not ordinary do. In the circumstances, this application must fail and I hereby dismiss the whole application in its entirety. There will be no order of costs.

Dated and delivered in open Court this **18<sup>th</sup> day of September, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Obuo for 2<sup>nd</sup> Respondent – Present

Kinyua holding brief Kithaka for 1<sup>st</sup> Respondent – Present

Applicants – Absent