



Teachers Service Commission v Kenya National Union of Teachers & another; Attorney General (Interested Party) (Petition 72 of 2015) [2015] KEELRC 529 (KLR) (25 September 2015) (Judgment)

Teachers Service Commission v Kenya National Union of Teachers & 2 others [2015] eKLR

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**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 72 OF 2015
NJ ABUODHA, J
SEPTEMBER 25, 2015**

BETWEEN

TEACHERS SERVICE COMMISSION PETITIONER

AND

KENYA NATIONAL UNION OF TEACHERS 1ST RESPONDENT

KENYA UNION OF POST PRIMARY EDUCATION TEACHERS 2ND RESPONDENT

AND

ATTORNEY GENERAL INTERESTED PARTY

Circumstances in which parties to an industrial dispute may participate in a strike without issuing notice to the employer

The Teachers Service Commission (TSC) petitioned the court to challenge the legality of a teachers' strike, arguing that it was conducted in violation of constitutional provisions and statutory procedures under the Labour Relations Act. The respondents, the teachers' trade union, defended the strike, contending that the government's failure to implement a court-awarded salary increase justified industrial action without notice. The court held that while the right to strike was protected under article 41 of the Constitution, procedural requirements under section 76 of the Labour Relations Act generally apply. However, in exceptional cases—such as when an employer categorically refused to implement a judgment—notice may be unnecessary. The court directed parties to engage in conciliation and ordered the suspension of the strike for 90 days in the best interests of school children.

Reported by Teddy Musiga

Labour Law – labour relations rights – right to strike and lock-out – procedure for participating in a strike and lock-out – circumstances in which parties in labour relations dispute may participate in a strike without issuing notice to the employer – Constitution of Kenya, 2010, article 41; Labour Relations Act, sections 76 & 78.



Constitutional Law – *locus standi* - constitutional commissions as petitioners in a constitutional petition – *locus standi* of constitutional commission to institute suits – whether constitutional commissions could litigate to enforce the Bill of Rights – claim where the Teachers Service Commission instituted the petition challenging the constitutionality of the teacher’s trade union participating in an industrial strike – Constitution of Kenya, 2010 articles 237 and 249(1).

Brief facts

The petitioners instituted the petition to challenge the legality of the teachers’ strike. They argued that the teachers’ strike had been called in violation of constitutional provisions and without observing statutory procedures under the Labour Relations Act No. 14 of 2007. Specifically, they argued that the strike violated the petitioner’s rights under articles 30, 48 and 50 of the Constitution and the children’s rights under article 53 of the Constitution and further that the strike was against public policy. The respondent on the other hand argued that the matters raised were *res judicata* and the court was *functus officio*, thus the application was an abuse of the court process. It was argued further that the petition sought to review the judgment in Petition No. 3 of 2015 (the petition that awarded the 50 – 60% pay increase) and to reverse the decisions of the appellate courts including the Supreme Court. Also that, the petition sought to elevate a simple contractual obligation to a constitutional issue hence an abuse of the court process.

Issues

- i. Whether there were circumstances in which parties to a labour relations dispute could participate in an industrial strike without issuing notice to the employer.
- ii. Whether parties to a labour relations dispute could participate in a strike as a form of enforcement mechanism to compel compliance with court orders.
- iii. Whether the Teachers Service Commission (a state organ) has the *locus standi* to institute a suit to enforce the Bill of Rights.

Held

1. Section 12 of the Employment & Labour Relations Act gave the Employment & Labour Relations Court the jurisdiction to enforce labour rights under article 41 of the Constitution and to interpret the Constitution with respect to interpreting constitutional questions arising from claims for breach of fundamental rights and freedoms. However, such jurisdiction had to be construed in the context of breaches which substantially occurred in the context of employment and labour relations.
2. The petition touched on substantive rights and obligations recognized by the Constitution. That alone without more qualified the petition as a constitutional petition. The Constitution was the supreme law of the land and any allegation of violation or threatened violation of any right whether perceived or actual recognized by the Constitution itself had of right to be entertained by a court of competent jurisdiction and a finding on the validity or otherwise of the allegation had to be made. The court could not *ex facie* refuse an allegation of violation of rights under the Constitution without hearing it on its merits.
3. The instant petition as much as it appeared as an offshoot of the judgment in Petition No. 3 of 2015, it was not an issue that was decided then. All the court did then was to award the teachers as per the judgment but no directions were given on how the funds were to be sourced. In any event, no court would concern itself with how a judgment debtor was to honour a decree against him or her. To that extent, the instant petition was totally a new dimension to the dispute which the court noted was being addressed by the enforcement proceedings in Petition No. 3 of 2015.
4. The right to a strike was not absolute. The outer limit of a right was the obligation to exercise that right in a way that respected the rule of law and rights of other persons reasonably affected by the exercise of such a right.
5. The Constitution was silent on how the right to a strike under article 41(2)(d) of the Constitution of Kenya, 2010 was to be exercised. That was left to the provisions of section 76 of the Labour Relations



- Act since the Constitution never concerned itself with procedural issues. Thus the contention that in exercising the right to a strike under article 41(2)(d) of the Constitution of Kenya, 2010 that a party could ignore the procedural provisions under section 76 of the Labour Relations Act could not be correct in all cases.
6. The proposal for 50-60% increase was based on proposals presented to the court by the petitioner. It was therefore understandable for the respondents, that the omission or failure by the petitioner to honour its part of the bargain to pay 50 – 60% as proposed by them and reduced as the award of the court was provocative and justified their right to call for a strike without notice.
 7. In industrial relations matters, the workers ultimate arsenal in bargaining terms and conditions of service was the right to go on strike while the employer had the right to a lock – out. Both of those rights were primary and were recognized both by the Constitution and International Labour Organization Conventions and where parties to a trade dispute had constantly and consistently engaged and either of them had categorically stated its position without any room for compromise, the issuance of a strike or lock – out notice thus became superfluous.
 8. In the instant matter, the petitioner had made public pronouncements the sum effect of which was that the judgment in Petition 3 of 2015 awarding the respondents 50-60% could not be honoured. Therefore, in such circumstances, a strike notice as stipulated under section 76 of the Labour Relations Act could not serve any purpose.
 9. Whereas notice was an essential requirement of natural justice, the doctrine of *travaux preparatoires* (preparatory works) in statutory interpretation was persuasive in that there could be compelling moments such as the instant one when a procedural step could be overlooked in order to safeguard a substantive right.
 10. Parliament in enacting section 76 of the Labour Relations Act contemplated a smooth industrial relations where parties to a trade dispute engaged in good faith and not the scenario such as the instant one where the petitioner and the Cabinet Secretary who were supposed to facilitate the conciliation of the trade dispute had made their stand known concerning the very dispute.
 11. Under article 20 of the Constitution, a court was enjoined when interpreting the Bill of Rights to adopt an interpretation that most favoured the enforcement of that right or fundamental freedom. Further under article 24(1), a right or fundamental freedom of the Bill of rights could not be construed as limiting the right or fundamental freedom unless the provision was clear and specific about the right or freedom to be limited and the nature and extent of the limitation and further a right or freedom could not be so limited as to derogate from its core essential content. Thus from the foregoing, the strike could not be pronounced as unprotected.
 12. The right to go on strike could not be said to be an enforcement mechanism for the judgment in Petition No. 3 of 2015. Industrial action either by way of strike or lock – out was not among the compendium of orders that a court could make. That was to say, that no court could order a disputant in a trade dispute to go on strike or to effect a lock – out. The court’s role was limited to making declaration on the legality or otherwise of an ongoing or threatened strike or lockout.
 13. There was absolutely nothing wrong and it was not in breach of the Labour Relations Act for the respondent’s members to go on strike to compel the petitioner to honour the judgment in Petition No. 3 of 2015. When the Court of Appeal declined to order a stay of execution of the judgment in Petition No. 3 of 2015, the respondents were left at liberty to use any lawful means recognized by the Constitution and the Labour Relations Act to agitate for what they deemed as their members’ entitlement as awarded by the court in Petition No. 3 of 2015.
 14. The appeal by the petitioner was akin to a civil claim where a judgment debtor was in a dilemma after failing to obtain a stay of execution and had to grapple with the issue of whether to settle the decretal sum and still prosecute the appeal or pay and abandon the appeal altogether.



15. Under article 249 of the Constitution of Kenya, 2010, the petitioner being one of the constitutional commissions had as one of its objects the protection of the power of the people and to make and enforce laws in so far as fell within the petitioners' specialized mandate. The petitioner had the mandate to promote adherence to the Constitution by persons which fell within its power and by extension protected the principles and values in the Constitution in so far as fell in the petitioners areas of specialization.
16. Some of the core mandate as provided for under article 237 of the Constitution included recruitment and employment of registered teachers and exercise of disciplinary control over them as well as advising the national government on matters relating to the teaching profession.
17. Under article 53 of the Constitution of Kenya, 2010, every child had, among other rights, the right to free and compulsory basic education. The teachers recruited by the petitioner provided that right to the children on behalf of the petitioner in return for salaries. It could not therefore be denied that in executing its constitutional duties under article 249, the petitioner could from time to time be confronted with disputes as the instant one before the court.
18. To that extent, article 237 read together with article 249(1) clothed the petitioner with enough legal authority to bring the instant petition on its own behalf, the children in public schools and the people of Kenya generally. The definition of a person under article 260 of the Constitution included body of persons whether incorporated or unincorporated. The contention that an organ of state hence the state could not litigate on the Bill of Rights remained therefore novel and grey.

Petition partly allowed.

Orders

- i. *In the interest of Children in public schools and the rights under article 53(1) (c) of the Constitution, the respondents were ordered to suspend the strike for 90 days with the consequence that the respondents' members were to resume duties immediately.*
- ii. *The petitioner and the respondents were within 30 days of the judgment, with the help of the Cabinet Secretary in charge of Labour, to appoint a neutral and mutually agreeable conciliator or conciliation committee and engage in conciliation in good faith limited to exploring viable modalities of implementing the award in Petition No. 3 of 2015 bearing in mind the Government's fiscal policies and budgetary cycles.*
- iii. *The petitioner was ordered not to victimize or in any way take any adverse step against the respondents' members for participating in the strike called on 1st September 2015 and that included payment of full salaries and allowances without any deductions whatsoever on account of the period the respondents' members participated in the strike.*
- iv. *Either party could upon the expiry of the 90 day period stated in (i) and failure to conciliate the dispute as stated in (ii) above, be at liberty to declare a trade dispute and exercise any of their rights as provided under article 41 of the Constitution as read with sections 76 of the Labour Relations Act.*

Citations

Statutes

1. Constitution of Kenya, 2010
2. Labour Relations Act

Advocates

None mentioned



JUDGMENT

1. The present petition was filed concurrently with an interlocutory Notice of Motion dated 2nd September, 2015 seeking orders in the main:-
 - (a) That there be a Conservatory Order prohibiting the Respondents, their officials, servants, agents and or their members from calling or participating in any strike on account of the non-payment and or delayed payment of the salary increments ordered by the Court to be paid with effect from 1st August 2015.
 - (b) That the Conservatory order issued under 2 above to remain in force until the hearing and determination of the petition or until further orders of the Court.
2. The motion was based on grounds among others:-
 - (a) That the Respondents have called all teachers in public schools on strike with effect from 1st September, 2015.
 - (b) That the strike has been called in violation of constitutional provisions and without observing statutory procedures under the Labour Relations Act No. 14 of 2007.
 - (c) That the strike violates the Petitioner's rights and fundamental freedoms under Articles 30, 48 and 50 of the Constitution.
 - (d) That the strike violates rights and fundamental freedoms of children attending public schools as guaranteed by Article 53 of the Constitution.
 - (e) That the strike is against public policy.
3. The respondents opposed the orders sought in the Notice of Motion by filing a notice of preliminary objection dated 4th and 7th September, 2015.
4. The objections were in the main that:-
 - (a) The matters raised were res judicata, the Court was functus officio, the application was a blatant abuse of the Court process and that the petitioner had become a vexatious litigant.
 - (b) The respondent's further contended that the Motion sought the review of the judgment in Petition No. 3 of 2015 and reverse the decisions of the appellate Courts including the Supreme Court. It was further contended that the petition and the motion sought to elevate a simple contractual obligation disagreement into a constitutional issue hence an abuse of the Court Process.
5. On 4th September, 2015 when the parties herein appeared before Lady Justice Monica Mbaru, and after hearing submissions by Counsel, the learned Judge ordered among others that the Industrial action by the respondents was unprotected. She further ordered that both parties be heard with respect to the Preliminary Objection by the respondents which was to be filed and be heard on 10th September, 2015.
5. On 10th September, 2015 when the parties appeared before me, Mr. Ahmednassir Senior Counsel for the 1st respondent in what he termed as a house-keeping issue, argued that since the matter was an offspring of Justice Nderi's judgment in Petition No. 3 of 2015, the learned Judge was the one best placed to handle it. Mr. Paul Muite Senior Counsel also for the 1st respondent concurred with submissions by Mr. Ahmednassir and Mr. Harun Ndumbi while agreeing as much added that the



petition and the motion was an attempt to review or amend Judge Nderi's judgment in Petition No. 3 of 2015.

6. Mr. Obura, for the Petitioner on the other hand submitted that the prayers in the Petition were different from the judgment of Nderi J in Petition No. 3 of 2015. According to Mr. Obura the Petition was anchored on the strike called by the respondents on 1st September, 2015. Mr. Kiragu Kimani also for the Petitioner agreed with Mr. Obura adding that the respondents were changing since they had wanted the matter to be heard by more than one Judge and now they were changing that it be placed before Nderi J. Mr. Bitta for the Attorney General associated himself with submissions of Mr. Obura.
7. After considering arguments by both sides, I ruled that the Motion and the Petition raised new issues and was distinct from the judgment of Nderi J in Petition No. 3 of 2015 since it questioned the legality of the strike called by the Respondents on 1st September, 2015 and concerned Government's fiscal and budgetary procedures, from where the funds ordered payable to the respondent's members could be drawn.
8. After disposing of the foregoing issue, it was agreed by consent of the parties that as a way forward and in the interest of time, the Notice of Motion dated 2nd September, 2015 be merged with the Petition and argued as part of the Petition and in that regard, I directed that the Respondents to file and serve their response to the petition by close of business, the next day and that parties file and exchange their skeleton submissions before the 15th of September, 2015 when I fixed the matter for hearing. These orders were duly complied with and the matter proceeded as scheduled on 15th September 2015 in what I must admit was a long protracted argumentation which saw the Court sit for almost six hours with only a break for twenty minutes. This was a sacrifice the Court made in order to dispose of this matter which has attracted public anxiety and interest especially the children in public schools and their parents.
9. Mr. Obura in his submissions before the Court identified the following issues for determination by the Court.
 - (a) Whether the Court has jurisdiction to entertain the present petition.
 - (b) Does the petition raise constitutional issues?
 - (c) Whether the issues in the present petition were determined in petition no. 3 of 2015.
 - (d) Is the right to strike under article 41 of the Constitution absolute. In other words does article 41 of the Constitution dispense with the requirement to give notice of strike as provided under section 76 of the Labour Relations Act?
 - (e) Is the strike called by the respondents legal?
 - (f) Does the Petitioner have the locus standi to bring the present petition on its behalf and that of the school going children in public schools and people of Kenya generally.
10. The foregoing issues as flagged by Mr. Obura broadly form the substance of the submissions made before me by Counsel for the parties in the matter and will therefore be adopted in this judgment in considering the issues for determination.
 - (a) Does the Court have jurisdiction to entertain the Motion and the Petition?

To this Mr. Obura submitted that section 12 of the Industrial Court Act gives the Court jurisdiction. According to Mr. Obura, the Court must have jurisdiction to enforce Labour rights under article 41 of the Constitution and to interpret the Constitution generally. In



support of this submission Counsel relied on the case of United States International University Vs. Eric Rading (2012) eKLR and Prof. Daniel N. Mugendi V. Kenyatta University & Others (2013) eKLR. Mr. Bitta for the Attorney General further submitted that jurisdiction of the Court includes incidental constitutional matters which arise in employment disputes.

11. None of the respondents responded to the submission by Mr. Obura on this point. The Court therefore rules that the decision of Majanja J in the USIU case which was adopted by the Court of Appeal in Prof. Mugendi's case settled the question whether this Court does have jurisdiction to interpret Constitutional questions arising from claims for breach of fundamental rights however such jurisdiction must be construed in the context of breaches which substantially occur in the context of employment and or labour Relations.

12.

(b) Does the Petition raise Constitutional issues?

On this issue Mr. Obura submitted that his client had pleaded that its rights under article 30,48 and 50 of the Constitution had been violated. Counsel submitted further that the respondents had violated children's rights under article 53. According to Mr. Obura, the strike further violated public rights as enshrined in the Constitution. Counsel further submitted that both sides are claiming rights under the Constitution hence the Petition raises Constitutional issues.

13. Mr. Bitta in support of this point submitted that the Constitution enjoins everyone including the state to protect and promote rights under it. He further submitted that under article 21 the petitioner had a duty to address the needs of vulnerable groups in the society and children are included in this group. He further submitted that teachers are public officers and have a duty to protect vulnerable groups.

14. Mr. Ahmednassir for the 1st respondent on the other hand submitted concerning this issue that the petition as filed questions the rule of law. According to Counsel, it showed the conduct of the petitioner in trying to select which Court Order to obey which according to him was an attack on the integrity of the judicial process. He urged that the Court must be robust in defending its orders.

15. Counsel further submitted that the present petition was a collateral attack on the judgment made in petition No. 3 of 2015. According to him parties cannot be allowed to relitigate issues endlessly through superficial changes. Mr. Ahmednassir further submitted that the provisions of the Constitution cited in the petition do not create a rights which can be litigated. While conceding that rights under article 30, 41, 50 and 53 can be litigated as Constitutional questions but for the petitioner to succeed it must however show how these provisions have been violated by the respondent.

16.

(c) Were the questions in the present petition similar and were they resolved by the Judgment in Petition Number 3 of 2015? In other words is the present Petition res judicata?

On this issue Mr. Obura submitted that the same was determined by my ruling on 10th September, 2015 when I became of the view that the Motion and the petition raised different issues from those that were before Justice Nderi in Petition No. 3 of 2015. According to Counsel, the issue of the strike of 1st September, 2015 was not before Justice Nderi when he decided Petition No. 3 of 2015. Counsel further submitted that res judicata should be sparingly raised as defence in Constitutional issues and on this point he sought reliance on the case of Okiya Omtata Okiiti Vs. AG & 6 Others (2014) eKLR.

17. Mr. Bitta in support of this submission stated that the matter before the Court was in the realm of a public claim. It emanated from a contract of service between the respondent's members and the petitioner. According to Counsel, the legality or otherwise of the strike called by the respondents on 1st



September, 2015 brings the matter within the jurisdiction of the Court. Mr. Bitta further submitted that the Constitution enjoins everyone including the state to protect and promote rights under it.

18. Mr. Ahmednassir for the 1st respondent on his part submitted that the substratum of the petition is the judgment in Petition No. 3 of 2015 hence collateral attack. To demonstrate, he submitted that paragraphs 2.4, 2.5, 2.6 and 2.8 of the petition advance same arguments as were advanced in Petition No. 3 of 2015. According to counsel, prayers (d) and (e) of the petition asks the Court to review and stay the decision in Petition No. 3 and vacate the Judgment therein. It was his view that the petitioner had exhausted the Court process as regards Petition No. 3. The Court should therefore not allow a repeat process. He further submitted that the Court had a duty to stop abuse of its process especially when it comes from the state. In support of this limb of submission Counsel relied on the case of *Hunter V. Chief Constable of West Midlands & Another* (1981) 3 ALLER 727 and *Community Advocacy & Awareness Trust & 8 Others V. AG & 5 Others* HC Pet. No. 243 of 2011.

18. Mr. Kiragu Kimani in reply to submissions by Mr. Ahmednassir submitted that the Court ought to look at the pleadings and the directions issued on 9th September, 2015. According to him the Court should examine what the case for each party is, which issues are live and which ones were disposed of in Petition No. 3. He contended that the issue of res judicata was decided on September 10, 2015 when the court ruled that the present petition raises new issues. According to counsel the court should seek to find out if there is a strike and if so, was there notice prior to calling the same.

19.

(d) Is the right to strike under article 41 absolute? Does it dispense with the requirement of notice under section 76 of the Labour Relations Act?

On this issue, Mr. Obura for the petitioner submitted that Justice Mbaru had already stated that employee's rights under article 41(2)(d) are not absolute but can be limited. According to Counsel article 25 of Constitution lists rights and freedoms which are absolute and article 41 is not one of them. It was Mr. Obura's submission that section 76 of the Labour Relations Act does not limit the right to go on strike.

20. The section provides for conditions which must be fulfilled before a strike is called. According to counsel, the respondent did not follow the procedure under section 76 of the Labour Relations Act. Making reference to Handbook on Bill of Rights, counsel submitted that restrictions on fundamental rights is measured against an open and democratic society. Mr. Obura therefore submitted that limitation on the right to strike is to control damage a strike can cause and those involved to enter into dialogue before a strike is called. Uncontrolled strike would paralyse institutions and the economy ultimately. Hence the right to go on strike must be balanced against any other fundamental right since a right cannot be exercised if it violates other rights. In support of this submission, counsel relied on the case of *Ferry Services Limited V. Dock Workers Union (Ferry Branch)* 2015 eKLR and ILO Principles Concerning the right to strike by Bernard Gernigon, Alberto Ordero and Horacio Guido. According to counsel, ILO Convention No. 87 stipulates conditions which must be met prior to calling of a strike. The conditions must be reasonable and there is an obligation to give prior notice as part of the standard rules acceptable to family of nations and Kenya must not encourage strikes at will even when they hurt other parties.

21. Concerning the present strike, Mr. Obura submitted that the right to strike and the children's right to education must be balanced but according to counsel, the children's right to education outweighs the teachers' right to go on strike. Concerning notice, counsel submitted that provisions of the law have to be obeyed unless repealed or declared unconstitutional by a court of competent jurisdiction.



22.

(e) Is the current strike illegal?

On this point, Mr. Obura submitted that Lady Justice Mbaru had already declared the strike unprotected for want of procedure. According to Mr. Obura, the current strike is to compel the petitioner to pay the award made in Petition No. 3 of 2015 hence the strike is being used by the respondents as a tool of execution of a court's Judgment.

23. According to counsel, rule 31 of the court rules provides for procedure of execution of the Judgments. The respondent should therefore follow these execution processes and strike is not one of the means of executing the court's Judgment.

24. Regarding the issue whether the current strike is a continuation of an earlier strike, counsel submitted that the 5th January strike was called off and consent recorded before Nderi J ending the strike. This being the case, counsel submitted that the September 1, 2015 was therefore a new strike based on new issues and should have followed the procedure set under section 76 of the [Labour Relations Act](#).

25. Mr. Paul Muite, senior counsel for the 1st respondent in response to Mr. Obura's submissions contended that the intention of the present petition is to have the ongoing strike decreed as illegal by the court and teachers ordered to resume work. If this is achieved, Mr. Muite submitted, the court would be assisting the petitioner and the Government in disobeying the court's previous order that the teachers be paid. The court should therefore not countenance an abuse of its process.

26. Regarding strike notice stipulated under section 76 of the [Labour Relations Act](#), Mr. Muite submitted that [Labour Relations Act](#) was a 2007 legislation which predated the current constitution. According to counsel therefore section 76 must be interpreted in line with section 7 of the 6th schedule to the [Constitution](#) in order to render it not necessary to give notice before a strike is called. Mr. Muite further argued that the background to the current strike should be taken into account in considering whether it was necessary to issue a seven days' notice as provided under section 76 of the [Labour Relations Act](#).

27. According to counsel, if the court declares the strike illegal for want of notice, the Union (respondents) can issue another notice. The court would have then acted in vain. It was Mr. Muite's argument that the notice was meant to give the petitioner opportunity to consider whether to concede to the respondent's demands but the petitioner and the government has stated that it will not give in to the respondent's demands hence notice was not necessary under those circumstances. In support of this argument counsel sought reliance on South African case of Transportation Motor Spares V. National Union of Metal Workers of South Africa & others (J2498/98(1998) ZALC 71.

28. On the issue whether the current strike is a new one, counsel submitted that it was a resumption of an earlier strike hence no new notice was necessary. Counsel further submitted that the present strike is not for enforcement of the judgment of Nderi J but about demands made by the teachers which have not been met which include execution of a new CBA and if the petitioner were to concede to these, the strike would end and there would be no more strikes.

29. Mr. Ndumbi for the 2nd petitioner submitted on this point that a strike notice was issued although unnecessary under the current constitution.

30. Mr. Kiragu Kimani in response to submissions by the respondent submitted that on January 15, 2015 a consent was recorded calling off the strike which was then ongoing. The December strike notice therefore ceased to exist. Regarding the requirement of notice, counsel submitted that under article 41 of the [Constitution](#), every person has a right to fair labour practice. The article does not provide how one goes about exercising these rights. This is within the province of the [Labour Relations Act](#) hence



there is no inconsistency with the Constitution. According to counsel, the right to notice before calling a strike is also a fair labour practice.

31. Mr. Kiragu further submitted that the object of notice was to allow the addressee to avert a strike by looking at the demands. Section 77(7) of the Labour Relations Act allows an employer to come to court and seek injunction relief. In prohibiting the present strike, the court would not be staying Nderi J's Judgment since the Judge did not sanction any strike. Mr. Kiragu further concurred with Mr. Obura's submissions that the present strike is for the enforcement of Nderi J's Judgment which is unprocedural since where the law provides avenue for redress a party cannot be heard to use a different modality not provided for in law. Counsel further submitted that a strike can only be in furtherance of a trade dispute and a judgment is not a trade dispute.

32.

(f) Does the petitioner have the locus to bring the petition on its behalf and that of school going children and people of Kenya generally and as a corollary is the petitioner guilty of contempt hence should not be heard?

Mr. Obura submitted concerning this issue that the petition was brought pursuant to article 22 and 258 of the Constitution and therefore confers on the petitioner the right to bring petition on behalf of the children. According to Mr. Obura the petitioner receives funding from the National Treasury and this follows certain procedures. The funds have not been availed to the petitioner yet the respondents have engaged in public demonstrations accusing the petitioner of refusal to pay. Mr. Obura contended that you cannot force an employer to do what it cannot do as to do otherwise would amount to servitude. Mr. Obura further complained that the respondents were aware that the petitioner had appealed against the judgment in Petition No. 3 of 2015. The respondents on the other hand have commenced enforcement proceedings in respect of judgment in Petition No. 3 yet they are also on strike. According to counsel therefore, the strike is intended to frustrate the petitioner's appeal and stating its position in the enforcement proceedings. The petitioner's right of access to court is therefore under threat. According to Mr. Obura, ignoring strike procedures violates public interests. It seeks to compel the petitioner to pay the award without following governments budgetary procedures.

33. On the issue of contempt, Mr. Obura submitted that no proceedings have been commenced in that respect.

34. Mr. Kiragu in support of Mr. Obura's submissions stated that article 237 of the Constitution sets out the functions of the petitioner, article 249(1) (c) provides for promotion of constitutionalism by the petitioner. The petitioner to this extent have the locus to bring the present petition.

35. Mr. Bitta for the Attorney General submitted that the court had a duty to protect the rights of the children. According to counsel, the 3rd term in the academic calendar is supposed to be ongoing. It will terminate in life defining examinations. Therefore time lost by the children cannot be compensated.

36. Mr. Ahmednassir for the 1st respondent on the other hand submitted that the petitioner is a creature of article 237 of the Constitution and under article 253 it is a body corporate. It therefore as such lacked the juridical persona to file a constitutional petition. According to counsel Bill of Rights are rights in persona. Under article 260 the petitioner is a state organ and any part of the Government cannot litigate bill of rights. According to counsel, Bill of rights are only litigated against the state and not vice versa. In seeking to appreciate the constitutional anchoring of the petition, Mr. Ahmednassir stated that under article 22(1), there must be a person, then a right and which right must be violated. Further, under article 21 it is a fundamental duty of the state to protect, observe and respect the Bill of Rights.



- According to Counsel, a state cannot litigate over Bill of Rights. Regarding litigation over the rights of the vulnerable, counsel submitted that article 21(3) of the *Constitution* as concerns rights of children as vulnerable members of the society can in event of violation thereof only be litigated against the state and not by the state. Regarding allegations of slavery and servitude under article 30, counsel submitted that no empirical evidence had been laid before the court in support of the allegation in any event it was profound that an organ of the state was alleging that it was being held in servitude.
37. Concerning, compulsion on the petitioner to do what it cannot do, counsel submitted that the petitioner does not generate its own funds and there was no evidence that the respondents were compelling the petitioner to do what it cannot do. What the respondents were seeking was respect for the court order. In other words, holding a party to its own bargain and that cannot amount to slavery or servitude. Concerning the rights of children under article 53, these only apply vertically against the state and never horizontally. Counsel further submitted that the right to strike does not run against state sovereignty.
38. Mr. Kilukumi in support of Mr. Ahmednassir's submissions stated that the petitioner had no right of audience before the court, since they had disregarded a court order. Relying on the case of *Hadkinson v. Hadkinson* (1952) ALLER 567 Counsel submitted that the issue of contempt must be resolved first before the petitioner can be heard. According to him, the petitioner must purge the contempt and obey the court order regardless of what they think of it. Mr. Kilukumi argued that the continuation of the pay dispute between the petitioner and the respondent has been camouflaged as a new suit and to support this argument counsel relied on the case of *Ramesh Popatlal Shah & 2 others v. National Industrial Credit Bank* (2014) eKLR and *Econet Wireless Ltd Vs. Minister for Information & Communication of Kenya & Another* (2005) eKLR. Mr. Kilukumi further submitted that under article 10 of the *Constitution*, rule of law is one of the national values and every public officer is under duty to observe national values. According to counsel, there was no need to approach the court if the orders made will not be obeyed. On this point he relied on the case of *Judicial Service Commission v. Speaker of the National Assembly & Another* 2013 eKLR. Counsel further submitted that the court must stick to rule of law and give justice to all. It was his view that disobedience of court orders undermine rule of law and akin to a funeral for rule of law. If these were allowed, public confidence in rule of law would suffer.
39. Regarding article 53 and read together with section 7 of the Children's Act, he submitted that the government has a duty to provide free education but not teachers to offer services at a lower rate. Hence according to him, it was the government and not the teachers who was violating the rights of the children by not paying teachers.
40. Mr. Ndumbi for the 2nd petitioner on his part submitted that the issue before the court was to make a distinction between article 41 and 53 of the *Constitution*. According to him, the court was being asked to remove rights under article 41 by seeking a stay of Judgment of Nderi J in Petition No. 3. He submitted that there had been no utterance on the petitioner's obligation to obey respondent's right as ordered in Petition No. 3. According to him, the correct application of article 30 would show that it was the petitioner who was holding the respondent's in servitude. Mr. Ndumbi submitted that the petitioner has failed to discharge its duty under article 249(1) of the *Constitution* by failing to comply with the orders of Nderi J in Petition No. 3. Counsel submitted that the petitioner sought to have successfully appealed and sought and obtained a legal stay but have failed to do so hence were now abusing the court process. According to counsel, if the orders sought were granted, the court would be put to ridicule. Counsel further submitted that the petitioner had a duty to uphold the rule of law. The petitioner, according to counsel had a duty to uphold industrial peace in order to ensure the children's rights were safeguarded.



41. Regarding the award, hence the strike, counsel submitted that conversation about the issues in dispute in the petition and judgment in Petition No. 3 have spanned over a long time yet nothing had been said why the respondent's demands were not factored in the budget. According to him, the court's order in Petition No. 3 was just like any court order.

42. May I at this point express my gratitude to all counsel in this matter for their insightful and at times very powerful and fiery arguments that have not only enriched my judicial mind but have served to elucidate various aspects of the issues of law that were involved in this petition. I must thank them for their industry and the high level of research they must have undertaken to come up with authorities which they thought would assist the court in appreciating the dispute better and reaching a fair determination. I may not have had time to go through all of them but that is not say they were less important. That having been said, having reviewed submissions by counsel as above the court would proceed to render itself on the same as follows:-

(a) Jurisdiction of the court to hear this petition.

As pointed out earlier, this issue although identified as a ground of objection by the 1st respondent, no submission was advanced in support thereof and the court became of the view that it must have been abandoned with the consequence that this court does have jurisdiction to entertain the present petition. The court relies on the Court of Appeal's Judgment in Prof. Daniel N. Mugendi v. Kenyatta University & others (2013) eKLR and United States International University v. Eric Rading 2012 eKLR. The court further adds that as was held in its judgment in Dr. Anne Kinyua v. Nyayo Tea Zone Development corporation & 3 others IC No. 1066 of 2012 (2012 eKLR), a claim that a fundamental right under Constitution has been violated or fair administration procedure has not been followed in the course of employer – employee relationship is a dispute relating to employment and Labour Relations hence within the jurisdiction of the Employment and Labour Relations Court to which the High Court has been denied jurisdiction by virtue of article 165(5) (b) of the Constitution.

(b) Does the petition raise constitutional issues

Having considered submissions by counsel for the parties on this point the court is of the view that the petition does raise constitutional questions. The petitioner has alleged that the right to strike under article 41(2) (d) is not absolute in that the right must be exercised as stipulated under section 76 of the Labour Relations Act and such regulation does not in any way derogate from this constitutional right. The respondents on the other hand have contended that the requirement of notice under section 76 of the Labour Relations Act prior to going on strike is negation of the right to strike under article 41(2)(d) of the Constitution. It has further been argued that the ongoing strike violates the right of children under article 53 and further that the respondents strike action seeks to frustrate the petitioner's right to fair hearing in the pending appeal and enforcement proceedings pending before Nderi J. These are by no means ordinary questions of law. They touch on substantive rights and obligations recognized by the Constitution. This alone without more qualifies the petition as a constitutional petition. the Constitution is the supreme law of the land and any allegation of violation or threatened violation of any right whether perceived or actual recognized by the Constitution must of right be entertained by a court of competent jurisdiction and a finding on the validity or otherwise of the allegation be made. The court cannot ex facie refuse an allegation of violation of rights under the Constitution without a hearing on merit.

(c) Are the issues in this petition same as those determined in Petition No. 3 of 2015?



This question was partially determined when on September 10, 2015 the court ruled that it had jurisdiction to hear the petition since it was based on the strike called by the respondent on September 1, 2015 and could not have been within reasonable contemplation of Nderi J when he delivered his judgment in Petition No. 3 of 2015 in June. The court further found that the petition concerned the dilemma by the petitioner over where to raise the funds to honour the judgment of the court given in Petition No. 3 of 2015 since the petitioner was bound by the Government's fiscal policies and budgetary cycle. This second limb of the dispute as much as may appear to be an offshoot of the judgment in Petition No. 3, it is not an issue that was decided then. All the court did in June was to award the teachers as per the judgment but no directions were given on how the funds would be sourced. In any event no court would concern itself with how a judgment debtor will honour a decree against him or her. To this extent this is totally a new dimension to the dispute which the court notes is being addressed by the enforcement proceedings before Justice Nderi hence the court will say no more.

(d) Is the right to strike under article 41 absolute?

The court has considered submissions by counsel on this issue and is of the view that no right is absolute. The outer limit of a right is the obligation to exercise that right in a way that respects rule of law and rights of other persons reasonably affected by the exercise of such a right. For instance the freedom of speech is check-mated by the duty not to shout fire in a crowded theatre when there is no fire since the consequence of such a practical joke is likely to be grave. In other words the recognition of rights under the *Constitution* or international law has never been akin to licentiousness.

43. The *Constitution* under article 41(2)(d) recognizes the right to go on strike as one of the fair labour practices however the article is silent on how this right is to be exercised. This is left to the provisions of section 76 of the Labour Relation Act since the *Constitution* has never concerned itself with procedural issues. The contention therefore that in exercising the right to strike under article 41(2) (d) a party can ignore the procedural provisions contained in section 76 of the *Labour Relations Act* may not in all cases be correct. But why do I say in all cases?
44. The issue of teacher's pay and strikes concerning the same is of local notoriety. Everyone especially in the education sector including children and the public generally can safely be said to know about the ever festering problem between the teachers and their employer, the Teachers Service Commission and ultimately the government. The matter of teachers' strike has become like a ritual, every President since Mr. Moi, must go through while in office. From the era of Ambrose Adongo, through to Francis Ng'ang'a, and the late David Okuta and now Mr. Wilson Sossion, the mantra has been "we want decent salaries for our members" and the signing of a Collective Bargaining Agreement to provide a framework for future negotiations. The petitioner hence the Government on the other hand has not yielded enough to the teachers demands arguing that they are unreasonable and if acceded to would push to unbearable levels, the public wage bill and the government's provision of other essential services and development agenda.
45. While I will return to the foregoing later, the court observes that the substance of the judgment in Petition No. 3 of 2015 consisted of documents, and submissions by the parties. The court further notes that the proposal for 50-60 percent increase was based on proposals presented to the court by the petitioner. It is therefore understandable from the respondent's view point that, the omission or failure by the petitioner to honour its part of the bargain to pay 50-60 percent as proposed by them and reduced as the award of the court is provocative and justified their right to call for a strike without notice.



46. In Industrial relations matters, the workers' ultimate arsenal in bargaining terms and conditions of service is the right to go on strike while the employer has the right to a lock out. These rights are primary and are recognized both by the Constitution and ILO Conventions and where parties to a trade dispute have constantly and consistently engaged and either of them has categorically stated its position without any room for compromise, the issuance of a strike or a lock-out notice becomes superfluous. The petitioner herein and its allies in government have since the judgment in Petition No. 3 of 2015 made public pronouncements the sum effect of which is that the judgment in Petition No. 3 of 2015 awarding the respondents a pay rise of between 50-60 percent will not be honoured. This was presumably and especially after the Court of Appeal and the Supreme Court declined to issue interim relief pending appeal. What purpose would a strike notice therefore serve under those circumstances? Or to put it the other way, would if today, the respondents call off the strike and issue 7 days' notice as stipulated under section 76 of the Labour Relations Act change the petitioner's attitude of "Can't pay, won't pay?"
47. Whereas notice is an essential requirement of natural justice, the doctrine of "travaux preparatoires" in statutory interpretation persuades me that there may be compelling moments such as this one when a procedural step may be overlooked in order to safeguard a substantive right. Parliament in enacting section 76 of the Labour Relations Act contemplated a smooth industrial relations where parties to a trade dispute engage in good faith and not the scenario obtaining herein where the petitioner and the Minister who is supposed to facilitate the conciliation of the trade dispute has made his stand known concerning the very dispute.
48. Under article 20 of the Constitution a court is enjoined when interpreting the Bill of Rights to adopt an interpretation that most favour the enforcement of that right or fundamental freedom. Further under article 24(1) a right or fundamental freedom in the Bill of Rights shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation and further a right or fundamental freedom shall not be so limited as to derogate from its core essential content. The foregoing having been said, the court declines to pronounce the current strike as unprotected.
49. Before I exit the issue of the right to go on strike, I would like to address the argument that the respondent were using the current strike to enforce the award in Petition No. 3 of 2015.
50. Having become of the view that the commencement date for the present strike was 1st September, 2015, its cause is conceded to have very close connection to the judgment in Petition No. 3 of 2015 in that it was the failure or refusal by the petitioner to honour the judgment of the court in Petition No. 3 of 2015 which led to the respondents calling on their members to down their tools. However, it cannot be said to be an enforcement mechanism for the judgment in that petition. Industrial action either by way of strike or lock-out is not among the compendium of orders that a court of law can make. That is to say no court can order a disputant in a trade dispute to go on strike or effect a lock-out. The court's role is limited to making declaration on the legality or otherwise of an on-going or threatened strike or lock-out.
51. From the respondent's perspective, however, it may well be said that the strike is being used by them as a tool to compel the petitioner to honour the judgment in Petition No. 3 of 2015.
52. Section 76 of the Labour Relations Act provides as follows concerning strikes:-
76. A person may participate in a strike or lock-out if:-
- (a) the trade dispute that forms the subject of the strike or lock-out concerns terms and conditions of employment.



53. Further section 78(1) of the [Labour Relations Act](#) provides:-

78 (1) No person shall take part in a strike or lock-out or in any conduct in contemplation of a strike or lock-out if -

(a) any law, court award or collective agreement binding on that person prohibits a strike or lock-out in respect of the issue in dispute.

(c) the parties have agreed to refer the trade dispute to Industrial court or arbitration.

54. The dispute between the petitioner and the respondents is no doubt a trade dispute hence it is quite lawful for the respondents to participate in a strike in regard thereof in order to agitate for the implementation by the respondent of an award which they deem concerns their members terms and conditions of service. Further, neither Justice Nderi in his judgment in Petition No. 3 of 2015 nor the Court of Appeal, prohibited the respondents from calling on their members to go on strike over the pay dispute with the respondent as at 1st September, 2015. Further still, the disputants herein namely the petitioner and the respondents have not agreed to refer to the dispute over the implementation of the judgment in Petition No. 3 of 2015 to this court in order to bar either of them from engaging in any industrial action as provided under section 78(1) of the [Labour Relations Act](#). What is before the court is a contested enforcement proceedings which in itself is a furtherance of the dispute between the parties and not an agreement that the court arbitrates the dispute.

55. From the foregoing, the court is of the view that there is absolutely nothing wrong and it is not in breach of the [Labour Relations Act](#) for the respondent's members to go on strike to compel the petitioner to honour the judgment in Petition No. 3 of 2015. When the Court of Appeal declined to order a stay of execution of the judgment in Petition No. 3 of 2015, the respondents were left with the liberty to use any lawful means recognized by the [Constitution](#) and [Labour Relations Act](#) to agitate for what they deem as their members entitlement as awarded by the court in Petition No. 3 of 2015. The appeal by the petitioner is akin to any civil claim where a judgment debtor is in dilemma after failing to obtain a stay of execution and must grapple with the issue of whether to settle the decretal sum and still prosecute the appeal or pay and abandon the appeal altogether.

56.

(e) Does the petitioner have the locus standi to bring the petition on its behalf and that of the school going children in public school and the people of Kenya generally?

As observed earlier in this judgment, Mr. Obura for the petitioner submitted regarding this issue that the petition was brought under article 22 and 258 of the [Constitution](#) which confers on the petitioner the right to bring the petition on behalf of the children in public schools. Mr. Kiragu in support of Mr. Obura's submissions added that article 237 of the [Constitution](#) sets out the functions of the petitioner and article 249(1) provides for the promotion of constitutionalism by the petitioner and to this extent counsel submitted that the petitioner had the locus standi to bring the petition.

57. Mr. Ahmednassir for the 1st respondent on the other hand submitted that the petitioner being a creature of article 237 of the [Constitution](#) hence a body corporate by virtue of article 253 lacked the juridical persona to file constitutional petitions. According to counsel, Bill of Rights are rights in persona and the petitioner being a state organ hence part of Government cannot litigate Bill of Rights.

58. The petitioner is established under article 237 of the [Constitution](#) and has as one of its functions, to advise the national government on matters relating to the teaching profession. Under article 248 read together with article 249, the petitioner as one of the Constitutional Commissions has as some of its



objects, the protection of the sovereignty of the people, and promotion of constitutionalism. Black's Law Dictionary 9th edition defines sovereign people as a political body consisting of the collective number of citizens and qualified electors who possess the powers of sovereignty and exercise them through their chosen representatives. It further defines sovereign power as the power to make and enforce laws. Concise Oxford Dictionary 12th edition defines constitutionalism as the adherence to a system of constitutional government. Applying these legal definitions to the petitioner, it may be said that under article 249 of the Constitution, the petitioner being one of the Constitutional Commissions has as one of its objects, the protection of the power of the people of Kenya to make and enforce laws in so far as falls within the petitioners' specialized mandate. Further, the petitioner has the mandate to promote adherence to the Constitution by persons which fall within its power and by extension protect the principles and values in the Constitution in so far as falls in the petitioners areas of operation.

59. Some of the petitioners core mandates as provided for under article 237 of the Constitution include recruitment and employment of registered teachers and exercise of disciplinary control over them. The petitioner further has the duty to advise the national government on matters relating to the teaching profession.
60. Under article 53(1) of the Constitution, every child has the right among others to free and compulsory basic education. The teachers recruited by the petitioner provide this right to the children on behalf of the petitioner in return for salaries. It cannot therefore be denied that in executing its constitutional duties under article 249 the petitioner will from time to time be confronted with disputes as the one presently before the Court. To this extent article 237 read together with article 249(1) clothes the petitioner with enough legal authority to bring the present petition on its behalf, the children in public schools and people of Kenya generally. Further under article 22 proceedings for enforcement of Bill of Rights can be brought either by the person whose rights and fundamental freedom are breached or on his or her behalf by among others, a person acting in the public interest. The definitions of a person under article 260 of the Constitution includes body of persons whether incorporated or unincorporated.
61. The contention by Mr. Ahmednassir that an organ of state hence the state cannot litigate on Bill of Right remains therefore novel and grey.
62. Having considered the foregoing issues as I have, the only question that remains to be resolved in this petition is what would be the appropriate orders to make in this petition? Having regard to the heat the ongoing strike has generated among the protagonists deciding on the appropriate orders to make becomes challenging to me as a Judge and takes me through very anxious moments and personal reflection.
63. I have the petitioner on one hand stating that it wants the teachers back to class without payment of any of the amounts awarded in Petition No. 3 of 2015 because the judgment has been appealed from and the appeal is pending and on the other, the respondents who have asked their members to stay away from class unless the award in Petition No. 3 of 2015 is implemented. In this scenario, the integrity and respect for any order the court may make becomes a daunting task. Making an order in favour of one party against the other portends a reputational risk to the court as an arbiter of the dispute. The court will however not renege on its constitutional duty to interpret the law and make orders informed by such interpretation. Respect for court orders is our sovereign responsibility as a people and no one should regard him or herself bigger than the sovereign will of the people of Kenya encapsulated in our Constitution.
64. There is a sense in which it may be safely said that the current teachers strike has transmogrified into political dispute in respect of which the court should be very cautious before throwing a legal fiat of



judicial determination. It may be apt to say at this point that our judicial institutions are meant to solve legal disputes while political disputes should be left to our political institutions. Therefore while the court will be making a judicial pronouncement on the dispute over teachers' pay it is incumbent upon the state (executive) and the legislature to consider and reconsider this ever festering wound that the issue of teachers' pay has become.

65. These two arms of government must join the judiciary as co-trustees of the sovereign will of the people of Kenya to resolve or at least mitigate the stalemate over the teachers' pay. The judiciary has tirelessly and dutifully discharged and continues to discharge its role in resolving the dispute but if the dispute be dead, the court as a surgeon cannot play the pathologist as well. Let the executive and legislature take the role of a mortician and tell Kenyans the cause of death of the teachers' pay dispute and recommend a decent burial if that be the case. Blackmail, cajoling and "can't pay, won't pay attitude" only serve to entrench positions and allow the dispute to relapse into a fodder for political opportunism.
66. On the extreme end, the continuation of the strike is not good for either of the protagonists. For the teachers it creates in them the moral dilemma of leaving the children whom they love and sacrifice so much to teach, suffer while for TSC as an institution, the continuation of the strike makes it look insensitive to the wellbeing of the teachers and borders on abdication of TSC's constitutional duty of managing teachers affairs on behalf of the national government.
67. The foregoing having been said and after resolving purely legal aspects of the petition and considering that the Petitioner had asked the court as an alternative, to make orders it may deem fit in the circumstances; and recognizing the delicate nature of the dispute and what it portends for the future of our children in public schools, and guided by the provision of article 3(1) of the Constitution that binds us as a people to respect, uphold and defend the Constitution, appreciating the calmness and respect the parties especially the respondents have displayed in awaiting the determination of this dispute and doing the best I can in the circumstances, I hereby order as follows:
 - A. In the interest of the children in the public schools and the rights under article 53(1)(c) of the Constitution, the respondents are hereby ordered to suspend for 90 days, the strike commenced on September 1, 2015 with consequence that the respondents' members do resume duties immediately.
 - B. The petitioner and the respondents within 30 days of this Judgment, with help of the Cabinet Secretary for the time being in charge of Labour, appoint a neutral and mutually agreeable conciliator or conciliation committee and engage in conciliation in good faith limited to exploring viable modalities of implementing the award in Petition No. 5 of 2015 bearing in mind Government's fiscal policies and budgetary cycle.
 - C. The petitioner will not victimize or in any way take any adverse step against the respondents' members for participating in the strike called on September 1, 2015 by the respondents and this includes payment of full salaries and allowances without any deductions whatsoever on account of the period the respondents' members participated in the strike called by the respondents.
 - D. Either party shall upon the expiry of the 90 day period stated in A and failure to conciliate the dispute as stated in B above, be at liberty to declare a trade dispute and exercise any of their rights as provided under article 41 of the Constitution as read together with section 76 of the Labour Relations Act.
 - E. Each party shall bear their own costs.
 - F. It is so ordered



DATED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2015.

ABUODHA JORUM NELSON.

JUDGE

DELIVERED THIS 25TH DAY OF SEPTEMBER 2015.

In the presence of:-

..... for the Petitioner and

..... for the Respondent.

ABUODHA JORUM NELSON.

JUDGE

