



**REPUBLIC OF KENYA**

**Industrial Court at Nairobi**

**Petition 9 of 2012**

**IN THE MATTER OF THE RIGHTS AND FUNDAMENTAL FREEDOMS IN THE BILL OF RIGHTS, CHAPTER FOUR OF THE CONSTITUTION OF KENYA**

**AND**

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**IN THE MATTER OF THE INDUSTRIAL COURT CAUSE NO. 484 OF 2012**

**AND**

**IN THE MATTER OF ALLEGED INFRINGEMENT OF THE RIGHT OF EQUALITY AND FREEDOM FROM DISCRIMINATION AND EQUAL PROTECTION AND EQUAL BENEFIT OF THE LAW UNDER ARTICLE 27 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED INFRINGEMENT OF THE RIGHT TO ACCESS JUSTICE UNDER ARTICLE 48 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED INFRINGEMENT OF THE RIGHT TO A FAIR HEARING UNDER ARTICLE 50 [1] OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED FAILURE BY THE INDUSTRIAL COURT TO EXERCISE JUDICIAL AUTHORITY IN ACCORDANCE WITH ARTICLE 159 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION BY THE INDUSTRIAL COURT OF THE RIGHTS AND FUNDAMENTAL FREEDOMS IN THE BILL OF RIGHTS AND IN THE MATTER OF ALLEGED FAILURE BY THE INDUSTRIAL COURT TO PERFORM ITS DUTY, TO OBSERVE, RESPECT, PROTECT, PROMOTE AND FULFIL THE RIGHTS AND FUNDAMENTAL FREEDOMS IN THE BILL OF RIGHTS**

**BETWEEN**

EAST AFRICAN PORTLAND CEMENT COMPANY LIMITED .....  
PETITIONER

**AND**

THE ATTORNEY GENERAL ..... 1<sup>ST</sup>  
RESPONDENT

THE INDUSTRIAL COURT..... 2<sup>ND</sup>  
RESPONDENT

**AND**

KANANGA M'NCHEBERE ..... 1<sup>ST</sup> INTERESTED  
PARTY

STEPHEN KAMAU ..... 2<sup>ND</sup> INTERESTED  
PARTY

CHARLES OMANGA ..... 3<sup>RD</sup> INTERESTED  
PARTY

*Rika J*  
CC. Leah Muthaka

*Mr. Sean Omondi instructed by Daly and Figgis, Advocates for the Petitioner*

*Ms. Irari State Counsel instructed by the Attorney- General for the Respondents*

*Kindiki and Mburu Advocates for the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties Absent*

*Mr. Aduda instructed by Aduda and Company Advocates for the 3<sup>rd</sup> Interested Party*

**JUDGMENT**

1. This Petition was initiated in the High Court, as Petition Number 106 of 2012. It was transferred by the High Court to the Industrial Court on 23<sup>rd</sup> July 2012, and registered as Petition Number 9 of 2012 at the Industrial Court. It revolves around *ex parte* orders, issued by Hon. Justice Isaac E.K. Mukunya on 23<sup>rd</sup> March 2012, which-:

- a) Quashed two letters dated 9<sup>th</sup> March 2012, by which the Petitioner herein, interdicted its employees Kananga M' Nchebere and Stephen Kamau, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties respectively;
- b) Quashed the letters by which the Petitioner herein terminated the services of these two Interested Parties;
- c) Restrained the Petitioner from implementing any further interdiction and termination of the Interested Parties, pending hearing and determination of an interlocutory application filed by the two Interested Parties in the Cause; and
- d) Fixed the interlocutory application for hearing on 5<sup>th</sup> April 2012.

2. The Petitioner, supported by the affidavit of its Managing Director Kephah Tande, seeks the following

Orders:-

- a) A declaration that by the *ex parte* orders issued by the Industrial Court [Hon. Justice Isaac E.K. Mukunya] on 23<sup>rd</sup> March 2012 in *Industrial Court Cause No. 484 of 2012 between Kananga M' Nchebere & Stephen Kamau v. East African Portland Cement*, and the proceedings leading to the issuance of the said orders, the Industrial Court [Hon. Justice Isaac E.K. Mukunya] has violated / infringed and / or limited the rights and fundamental freedoms of the Petitioner under Article 27, 48 and 50 of the Constitution;
- b) This Honourable Court issues a declaration that by the *ex parte* orders issued by the Industrial Court [Hon. Justice Isaac E.K. Mukunya] on 23<sup>rd</sup> March 2012 in *Industrial Court Cause No. 484 of 2012 between Kananga M' Nchebere & Stephen Kamau v. East African Portland Cement*, and the proceedings leading to the issuance of the said orders, the Industrial Court [Honourable Justice Isaac E.K. Mukunya] has failed to perform its constitutional duties and obligations under Article 20, 21, and 159 of the Constitution of Kenya;
- c) The Honourable Court issues a judicial review order of certiorari to remove into this Honourable Court and quash the *ex parte* orders issued by the Industrial Court [Honourable Justice Isaac E.K. Mukunya] on 23<sup>rd</sup> March 2012 in *Industrial Court Cause No. 484 of 2012 between Kananga M' Nchebere & Stephen Kamau v. East African Portland Cement*, together with all the proceedings leading to the issuance of the said *ex parte* orders;
- d) The Honourable Court directs that *Industrial Court Cause No. 484 of 2012 between Kananga M' Nchebere & Stephen Kamau v. East African Portland Cement* and the pending application therein be fixed for hearing and determination by any Judge of the Industrial Court other than Honourable Justice Isaac E.K. Mukunya;
- e) Costs of the Petition are borne by the Respondents; and the Honourable Court issues such other orders as it may deem just.

3. The Attorney General filed Grounds Opposing the Petition, dated 22<sup>nd</sup> May 2012. The Respondents hold that the Petition does not show any constitutional rights of the Petitioner have been violated; the Petitioner ought to instead of filing the Petition, have appealed to the Court of Appeal under Section 17 of the Industrial Court Act 2011; and that the Industrial Court exercised its jurisdiction properly under Section 12 of the Industrial Court Act 2011. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties filed Grounds of Opposition dated 23<sup>rd</sup> April 2012. Their position is that the High Court lacked jurisdiction to entertain the dispute by virtue of Article 165 [5] [b] of the Constitution of Kenya; the Petition violated Article 162 [2] [a] of the Constitution of Kenya; and the proceedings violated Section 21 [2] of the Industrial Court Act. The 3<sup>rd</sup> Interested Party had not filed a response to the Petition at the High Court. At the time of transfer to the Industrial Court, the 3<sup>rd</sup> Interested Party had not been joined to the Petition. He describes himself as a Human Rights/ Civil Rights Crusader, and persuaded the Industrial Court to add him to the Petition, on 21<sup>st</sup> January 2013. He strongly supports the Petition.

4. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties had filed an application at the High Court, dated 4<sup>th</sup> July 2012, seeking to overturn the *ex parte* conservatory orders given by Hon. Justice Nicholas Ombija of the High Court on 30<sup>th</sup> March 2012, which stayed the *ex parte* orders of Hon. Justice Isaac E.K. Mukunya. The application was dismissed by the present Court on 14<sup>th</sup> March 2013.

5. The main Petition was heard in the presence of all the Parties, save for the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties, on the 22<sup>nd</sup> May 2013.

6. The 2<sup>nd</sup> Respondent named as the Industrial Court of Kenya, it must be made clear from the outset, is not the same Industrial Court which has been called upon to hear the Petition, and make this determination. It would be profoundly irregular, if a party to a dispute is called to make the determination.

The Industrial Court whose decision has been called to question was a creature of Statute, presided over by Judges whose mandate under the Constitution of Kenya 2010, was contentious. The old Court was dissolved, and the present Court assembled with the appointment and swearing in of new Judges in July 2012, under the Constitution of Kenya 2010. This needs to be clarified, particularly for the benefit of those who may not be familiar with the recent history of the Industrial Court.

7. The Petitioner's case may be cut down to the following- Hon Justice Mukunya gave *ex parte* orders on 23<sup>rd</sup> March 2012; he quashed 2 interdiction letters, given to the employees by their employer the Petitioner herein; he quashed 2 termination letters similarly given; and gave an *ex parte* injunction restraining the Petitioner from implementing interdiction and termination. These orders are in the nature of final orders. They issued without the participation of the Petitioner. The effect was to cancel and nullify interdiction and termination, even before the application was heard. It is a trite principle of the law that final orders cannot issue *ex parte*. They cannot issue at the interlocutory stage. They cannot be given before a party has been accorded the opportunity to review evidence.

8. Article 159 of the Constitution requires justice is done to all irrespective of status. Article 27 provides equal treatment, protection and benefit of the law. The right to equality includes the equal enjoyment of all rights, and fundamental freedoms. Article 48 guarantees the Petitioner access to justice. Article 50 [1], entitles the Petitioner the right of a fair and public hearing. The Industrial Court acted illegally, unlawfully and *ultra vires*. The facts in the affidavit of Kephah Tande were not challenged by any affidavit from the other Parties. The Industrial Court powers under Section 12 are exercised in the interest of justice; they are not to be used to issue final orders at interlocutory stage. After the *ex parte* proceedings quashed the letters of interdiction and termination, there was nothing left to be heard at the *inter parte* hearing. Mr. Omondi urges the Court to allow the Petition.

9. The Attorney General emphasizes that the orders of the Industrial Court, were justifiable under Section 12 of the Industrial Court Act. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties were given a chance to serve their application and the interim orders, upon the Petitioner. The Hon. Judge of the Industrial Court considered the peculiar nature of the two employees at the workplace. He considered the economic interest of the business. Termination was carried out without the due process of the law. The Petitioner failed to show how its rights have been infringed. It is not sufficient to mention an Article of the Constitution; it must be shown that a right has been infringed. The orders of the Industrial Court issued within the confines of the law. The Attorney General calls for dismissal of the Petition.

10. The 3<sup>rd</sup> Interested Party as mentioned above is a Human Rights Crusader, affiliated to the Human Rights Watch. He came to Court because he was drawn into the initial dispute by a mob of Petitioner's employees, who were shouting that the Managing Director of the Petitioner Mr. Kephah Tande *must go!* The 3<sup>rd</sup> Interested Party's car had been blocked by this mob, and when he stopped to enquire, he found out that the mob had been paid to demonstrate against Mr. Tande, by some of the Petitioner's Managers. He was persuaded the rights of the genuine workers were being violated by hirelings. Among the organizers of this mob, the 3<sup>rd</sup> Interested Party found out, was one Stephen Kamau, the 2<sup>nd</sup> Interested Party. The 3<sup>rd</sup> Interested Party felt that the genuine workers of the Petitioner were being denied a fair day's pay, for a fair day's work.

11. The Human Rights Crusader therefore fully supports the Petition. Article 41 according to him, guarantees fair labour practices to every person. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties engaged themselves in unfair labour practices. Money was paid to workers to cause industrial unrest. The Petitioner and the economy lost colossal sums of money. This Court has the jurisdiction to enforce fundamental rights. The rights are given to both the employees and the employers. The Petitioner's right to fair labour practices was infringed. The Industrial Court has an obligation under Section 4 of its constitutive Act, to secure good industrial relations. The contents of the affidavit sworn by the 3<sup>rd</sup> Interested Party were not challenged by the other parties. The 3<sup>rd</sup> Interested Party associates himself fully with the submissions of the Petitioner. He asks the Court to grant the Petition.

**THE COURT FINDS:-**

12. It is agreed that the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties were involved in a disciplinary process with their employer, the Petitioner herein. They were issued letters of interdiction and termination, compelling them to approach the Industrial Court for reliefs, in Industrial Court Cause No. 484 of 2012. They met their expectations at the Industrial Court, when they were granted orders that reversed the decision made by the Petitioner

13. The affidavit sworn by M' Nchebere explains the background against which the contentious reliefs were granted. The two employees had worked for the Petitioner for some considerable number of years. M' Nchebere worked for 18 years. He was the Head of Production Operations at the time of termination.

14. On 19<sup>th</sup> March 2012, the Managing Director purported to interdict him, alleging he had engaged in riotous behaviour disrespectful of the Managing Director. The 2<sup>nd</sup> Interested Party was interdicted on the allegation that he was incompetent, and had failed to implement Human Resource Policy. The termination letters of 21<sup>st</sup> March 2012 gave the reasons for the termination- in both cases, the employees refused to receive their letters of interdiction; they had gone on to hold unauthorized meetings with other Managers; and in the case of M' Nchebere, chased away the guards who were sent to deliver the interdiction letters, stormed the company premises with the assistance of a mob of the staff which he had mobilized, and vowed not to comply with the directives given by the Managing Director. On 23<sup>rd</sup> March 2012, the two employees had the interdiction and termination reversed by the Industrial Court. This factual background is corroborated by the affidavit of the 3<sup>rd</sup> Interested Party, which confirms the presence of some kind of industrial disturbance at the Petitioner's business, at the material time.

15. Did the orders of the Industrial Court infringe the Petitioner's fundamental rights under the Constitution?

16. The grant of *ex parte* orders reversing interdiction and termination appears to this Court, to amount to reinstatement of employees by the Court, through interim *ex parte* orders. This was in violation of Rule 16 [8] [a] of the Industrial Court [Procedure] Rules 2010, which states:

**“ The Court shall not give an *ex parte* order which reinstates an employee, whose service has been terminated.”**

17. The Employment Act 2007 and the Industrial Court Act 2011 do not intend that Courts should intervene in employment disputes at the workplace, on *ex parte* interim basis, in a manner that deprives the employer its managerial prerogative. The law seeks to merely protect the weaker of the bargaining partners against workplace injustices, not to deprive the employer of its prerogative in decision-making. It certainly is not in the mandate of the Industrial Court to determine the validity of termination letters given to employees by their employers, on interim *ex parte* basis. The orders issued on 23<sup>rd</sup> March 2012 by Hon. Justice Isaac E.K. Mukunya, had the effect of reinstating employees, and clearly offended the Rules regulating the proceedings of the Industrial Court.

18. Article 21 of the Constitution of Kenya demands that it is the fundamental duty of the State and every State Organ to observe, respect, protect, promote and fulfil the fundamental freedoms and rights in the Bill of Rights. The Petitioner submits that by granting the *ex parte* orders of 23<sup>rd</sup> March 2012, the Industrial Court as an Organ of the state, failed in these obligations.

19. According to the Petitioner, Article 27 which guarantees all persons equal protection, and equal benefit before the law; Article 48 extending the right of unhindered access to justice; Article 50 [1] assuring all persons the right of fair trial; and Article 159 [2] [a] which requires that Judicial Authority is exercised in a manner that ensures justice to all persons, irrespective of their status, were all disregarded in the decision of Hon. Justice I.E.K Mukunya. Article 22 empowers a Court, where it is shown, that these rights have been infringed, to grant appropriate reliefs, including declarations and orders for judicial review, as prayed for in this Petition.

20. Equal protection and equal benefit of the law, requires that persons who are similarly situated, are entitled to similar treatment. All persons are to be treated equally, in the application of the procedural and substantive laws. The right also implies that persons, who are differently circumstanced, are treated differently. The Law and Courts are justified in treating marginalized groups and minorities differently from other persons in the mainstream of the society. This different treatment permeates employment and labour law, on the ground that employers, as the wielders of capital, can hardly be said to be similarly circumstanced with their labourers. The Employment Act 2007 for instance requires employers to prove the fairness of termination reasons in claims filed by employees, while the accepted evidential standard in other litigation is that he who alleges must prove, and employees would therefore be expected to prove that termination reasons were not fair. The philosophy underpinning the existence of Labour Courts, or Industrial Justice Systems as a whole, is that Capital and Labour do not have equality of bargaining strength; the Court and the Law must therefore proceed from that premise, and protect the weaker of the bargaining partners.

21. This is not to say, that all employees in all workplaces, are disadvantaged, and in need of the Court's protection. There are employees with high levels of skills, who are highly in demand in their respective fields, and who are therefore in very strong bargaining positions. They name the terms of their employment. Such highly skilled employees need little or no employment protection. They are said to have an overabundance of skills, and frequently secure for themselves golden handcuffs upon employment, and golden parachutes on exit. These are real artists, not like a majority of us artisans, and cannot be said to be similarly circumstanced with the hewers of wood in the global labour market.

22. The 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties were Managers, persons in strong bargaining positions, and who garnered the temerity to defy their Managing Director, mobilize employees to paralyze the operations of the Petitioner in a vicious boardroom war for the control of the heart and soul of the company. They were not ordinary employees, but highly placed and self assured employees, who were willing to stand up to Mr. Kephah Tande eyeball to eyeball. They were not in weak bargaining positions as to merit the assistance of the Court, in the way Hon Justice I.E.K Mukunya deemed fit to assist. They appear to this Court to have been at par with Mr. Kephah Tande the MD, in their potential to influence decisions at the Petitioner. They mobilized employees and fellow Managers, chased away security persons and refused to receive their interdiction and termination letters. They went before Hon. Justice I.E.K. Mukunya with soiled hands. They did not merit interim *ex parte* reinstatement under any circumstances.

23. Fair hearing is manifested through a number of elements. The Court is not here concerned, with fair hearing in a criminal trial, which has its own peculiar elements; focus is on the general concept of fair trial, which the Petitioner claims it was robbed of, by Hon. Justice I.E.K. Mukunya. Fair hearing requires real and effective access to the Seat of Justice. Parties are entitled to be heard before an independent and impartial Court or Tribunal, established by law. Hearing should be concluded within a reasonable time. All parties must have a real opportunity to present their case, or challenge the case brought against them. The Court or Tribunal must at the end give its decision, and reasons for the decision. Fair hearing presupposes the presence of equality of arms; both parties must be allowed to present their evidence, and given the chance to interrogate through cross-examination, the other parties' witnesses. Normally, fair hearing entails a public hearing, and a judgment rendered before the public.

24. Access to justice is about broadening the spaces within which all persons can access their rights. This right is joined with the other rights discussed above. All persons must be availed procedural rights. This is a component of the right to a fair hearing. Besides the procedural rights, access to justice demands, that all persons have substantive justice. Substantive justice calls for fair and just remedy for violation of one's right. Access to justice is not confined to the Courts; it extends to accessing justice under the administrative processes. In a capsule, access to justice means that all persons, individual and corporate, have the ability to seek, and obtain, remedies through formal and informal institutions of justice. Access to Justice is about equality, in accessing the formal Rule of Law Institutions for the population, by removing barriers.

25. Interim orders are granted where the Court, exercising its discretion is satisfied that they are necessary due to the urgency and nature of the circumstances. They are mostly injunctive in nature,

putting on hold an action, maintaining the status quo, until the substantive dispute can be investigated and resolved. The applicant must establish genuine urgency. Interim orders are not suitable if by their grant, they finally determine the substantive dispute. The Courts must be wary of prejudgment of the substantive merits.

26. Did the Industrial Court infringe the Petitioner's fundamental rights under the Constitution of Kenya, by grant of interim *ex parte* orders, on 23<sup>rd</sup> March 2012? The Court, upon consideration of the Petition finds the grant of interim *ex parte* orders, did not to implicate constitutional issues. There is no constitutional issue raised by the decision of Hon. Justice I.E.K Mukunya of 23<sup>rd</sup> March 2012. This was a dispute that arose under the Employment Act 2007 and the Industrial Court Act 2011, and need not have been escalated into a constitutional issue. It is a matter that could easily have been dealt with under legislation. It is wrong to constitutionalize every dispute in the society.

27. The Respondent was invited to appear for an *inter parte* hearing, within 2 weeks of the grant of the impugned interim orders. There was access to justice. An invitation by the Court to answer court processes is evidence of the opportunity offered, to access justice. Instead of appearing before Hon Justice I.E.K Mukunya to justify interdiction and termination, the employer went to the High Court in a matter of days. How does a party who opts not to appear before a Court established by law, an independent and impartial Court, turn around and accuse the Court of denying it access? How does a party conclude there is no fair hearing, even before it has availed itself for the hearing? How does an *ex parte* injunction result in discriminatory administration of law and justice? The law would not contemplate such orders, if they are invariably discriminatory. *Ex parte* orders would never be granted if the views of the Petitioner herein, were to be endorsed by this Court. In the respectful view of the Court, no constitutional right of the Petitioner, who chose not to submit to the Industrial Court, was infringed. It does not matter how wrong the trial Judge was; Judges are all the time making errors of the Law or fact. Parties however have the duty to appear before those Judges, and point out these errors, and if they cannot convince Judges that the Judges' decisions are faulty, move the dispute to the next level. How does a party conclude there is no fair treatment, even before it has said anything to the Judge?

28. Kephra Tande was in the eye of a storm. He issued interdiction letters, and termination letters in quick-fire. It was his prerogative to do so, but even an untutored mind would conclude the two employees, for all their bargaining strength, arrogance and insubordination, were not availed fair procedure under the Employment Act 2007. In such circumstances, a Judge of the Industrial Court steeped in the old ways of employee protectionism, could make a genuine legal mistake, by grant of *ex parte* reinstatement, to the two employees. The Industrial Court [Procedure] Rules 2010 are explicit that interim *ex parte* orders last for only two weeks. Rule 16 [8] [b] states:

**“ An ex parte order shall be granted once, for a period of 14 days, and shall not be extended.”**

Both Parties were to be heard on 5<sup>th</sup> April 2012. The Petitioner was served with the application and *ex parte* orders on 26<sup>th</sup> March 2012, three days after their issue, and nine days to the *inter parte* hearing. The Petition was filed on 29<sup>th</sup> March 2012, and conservatory orders obtained the following day.

29. There was no justification in the argument by the Petitioner that there was no point in appearing before Hon. Justice I.E.K. Mukunya, because he had issued final orders. The Judge did not say those were final orders. The Petitioner knew its fate was not cast in stone by Hon. Justice I.E.K Mukunya. There was a chance, depending on the persuasive force of the Petitioner's submissions at the *inter parte* hearing on 5<sup>th</sup> April 2012, for the letters of interdiction and termination to be upheld. If the Hon. Judge could quash interdiction and termination letters, it can fairly be assumed that he considered he had the power to unquash his orders. To him, it was possible to return to the status quo obtaining on the date of termination. The Petitioner ought to have filed a reply to its employees' application, and appeared before the Court to challenge the legality of the interim orders. The Petition does not look to the Court well grounded.

30. Courts must guard against the distortion, or manipulation of the constitutional rights regime. Characterizing everyday dispute as a constitutional violation, trivializes the Constitution,

transforming it from a blueprint of fundamental freedoms and rights, into a document for litigating everyday disputes. The Constitution's moral force is diminished, when day to day affronts, raise potential constitutional claims. If every legal question is constitutionalized, the overall effect is the dilution of constitutional protections. Not all actions that impinge on constitutional values call for a constitutional answer. The refusal to submit before the trial Court was in reality, aimed at avoiding a Court which was established by law. That Court had the mandate to make decisions, and correct any decisions made. The Petitioner could even have appeared before the Industrial Court, before the 5<sup>th</sup> April 2012, with an application to correct the mischief of 23<sup>rd</sup> March 2012. There were various options open to the Petitioner, rather than constitutionalization of an everyday application for injunction.

31. In the end the Court finds that the Industrial Court may have erred in granting the orders of 23<sup>rd</sup> March 2012. The Petitioner was not closed out of the proceedings, and did not attempt to bring the issues disguised as constitutional questions, before the trial Court. The Petitioner instead constitutionalized a mundane legal issue. The interim orders in law, had a lifespan of 14 days. The Petitioner had adequate opportunity to appear before the Industrial Court and validate the interdiction and termination letters by application of statutory law, without resort to the supreme law.

IT IS HEREBY ORDERED:-

***[a] The Petition is declined;***

***[b] Parties to prosecute and defend the Industrial Court Cause Number 484 of 2012 to its conclusion;***

***[c] For avoidance of doubt, the ex parte orders issued by the Industrial Court in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties in that Cause are deemed to have lapsed; and***

***[d] No order on the cost.***

Dated and delivered at Nairobi this 11<sup>th</sup> day of June 2013

James Rika  
Judge