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THE SENATE

TWELFTH PARLIAMENT – FIFTH SESSION

01/12/21

*Approved
[Signature]
2/12/2021*

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE PETITION BY MR. DANIEL MATENDECHERE CONCERNING UNFAIR DISMISSAL AND LACK OF COMPENSATION BY BROADWAY BAKERY LIMITED

	PAPERS LAID
DATE	2/12/2021
TABLED BY	Chair
COMMITTEE	Labour
CLERK AT THE TABLE	Karate M.

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI

November, 2021

*DC-EG
Recommended & Forwarded for Approval
01/12/2021*

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PREFACE

The Standing Committee on Labour and Social Welfare is established under standing orders 187 and 218 (3) of the Senate Standing Orders.

The Committee is mandated to consider all matters related to *manpower and human resources planning, pension, gender, culture and social welfare, youth, National Youth Service, children's welfare; national heritage, betting, lotteries and sports, public entertainment, public amenities and recreation.*

In executing its mandate, the Committee oversees the Ministry of Labour; the Ministry of Public Service, Gender, Senior Citizens Affairs and Special Programmes; and the Ministry of Sports, Culture and Heritage.

Membership of the Committee

- | | |
|---|---------------------------|
| 1. Sen. Sakaja Johnson Arthur, MP, CBS | - Chairperson |
| 2. Sen. Mwaruma Johnes Mwashushe, MP | - Vice Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru, MP, CBS | - Member |
| 4. Sen. Mwangi Paul Githiomi, MP | - Member |
| 5. Sen. Kihika Susan Wakarura, MP | - Member |
| 6. Sen. Makori Beatrice Kwamboka, MP | - Member |
| 7. Sen. (Dr.) Mwaura Isaac, CBS, MP | - Member |
| 8. Sen. (Dr.) Milgo Alice Chepkorir, MP | - Member |
| 9. Sen. Masitsa Naomi Shiyonga, MP | - Member |

In executing its mandate, the Committee oversees the Ministries of:

- a) Labour;
- b) Public Service, Gender Affairs, Senior Citizens Affairs and Social Protection; and,
- c) Sports, Culture and Heritage.

Mr. Speaker Sir,

The Petition concerning the unfair dismissal and lack of compensation by Broadway Bakery Limited by Mr. Daniel Matendechere was presented to the Senate on Thursday, 16th September, 2021, by Sen. (Dr.) Gertrude Musuruve Inimah, MP. The salient issues raised in the Petition are that-

- 1) On Thursday, 26th April, 2018 while on duty, Mr. Matendechere was legally riding as a passenger in the company motor vehicle which was involved in a road accident that left him with severe injuries that included blood loss as well as bone loss on the upper part of his leg;
- 2) The accident left him with a physical disability that affected his mobility and required him to use an artificial leg;
- 3) On 1st October, 2019 his employer, Broadway Company Limited, deployed him from transport section to wrapping section which involved a lot of standing, inflicting a lot of pain on him;
- 4) On 16th November, 2020, he received a notice of termination of employment and was later sacked after 14 days on 30th November, 2020, without compensation; and
- 5) Upon his dismissal, he has tirelessly made an effort to seek justice, but his efforts have not borne any fruits.

Mr. Speaker Sir,

Pursuant to the provisions of the standing order 232 (1) of the Senate Standing Orders, the Petition was committed to the Standing Committee on Labour and Social Welfare for consideration. In considering the Petition, the Committee took into considerations the submissions and supporting documents by the petitioner and reports from the Broadway Bakery Limited.

On behalf of the Standing Committee on Labour and Social Welfare and on my own behalf, I wish to sincerely thank the petitioner – Mr. Daniel Matendechere, the presenter of the petition - Sen. (Dr.) Gertrude Musuruve, MP and the Broadway Bakery Limited for their submissions during the consideration of this Petition.

Mr. Speaker Sir,

During the consideration of the Petition, the Committee made the following observations-
Following Committee's engagement with the Petitioner and the Managing Director, Broadways Bakery Limited regarding the petition and subsequent deliberations, the Committee makes the following observations. THAT –

1. The Company had acted within the law in facilitating the petitioner access his Work Injury Benefits and regain his overall wellbeing;
2. The petitioner had not complied with the Work Injury Benefits Act requirements;
3. The Petitioner filed a case in Baricho Law Courts against Broadway Bakery Limited; *CMCC No. 38 of 2021, Daniel Matendechere Aura vs. Broadway Bakery Limited and James Ndura*. The matter is still awaiting the court's determination.
4. In this regard, the Committee notes that Standing Order 98 on the *subjudice* rule, various rulings by the Speaker on the same and the precedent set on the 2nd August 2018 by the Speaker of the Senate on the *Solai Dam*. The ruling implied that even if elements of active proceedings, prejudice have been met, the Speaker still has the discretion to decide whether a matter should proceed or not due to the following reasons—
 - (a) *If it a matter of great public interest; and*
 - (b) *If it is a matter about human rights.*
5. The present matter is a matter concerning human rights and as such will not be curtailed by an existing court case.

Mr. Speaker Sir,

Based on these observations, the Committee therefore recommends that-

1. The Petitioner complies with the Work Injury Benefits Act (WIBA) as provided under sections 16 and 23 of the WIBA as follows—
 - (i) The Petitioner to withdraw the case filed at Baricho law courts;
 - (ii) The Petitioner to continue with the adjudication of his matter by the Director of Occupational Safety Health (DOSHS);
 - (iii) The Petitioner to seek second medical opinion as advised by DOSHS;
 - (iv) DOSHS should adjudicate the matter within one (1) month of tabling of this Report.

2. Upon the Petitioner's compliance with WIBA, the company, shall within one month, initiate the process of paying the petitioner his Work Injury Benefits;
3. The Company should file monthly progress report to the Committee until the matter is brought to a conclusion upon tabling of the report; and
4. The petitioner shall be at liberty to file his matter in a court of law if he is dissatisfied with the determination by DOSH

Mr. Speaker Sir,

As I conclude, I wish to take this opportunity to thank all the members of the Committee for their thoughtful input and immense contribution during consideration of this Petition. The Committee wishes to acknowledge the time and considerable effort made by all parties who submitted information and required evidence.

Further, the Committee is thanks the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this report.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 232 to table the report of the Standing Committees on Labour and Social Welfare in relation to the Petition by Mr. Daniel Matendechere concerning unfair dismissal and lack of compensation by Broadways Bakery Limited.



SIGNATURE.....

CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS, MP.

STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE

DATE: SATURDAY, 27TH NOVEMBER, 2021

CHAPTER ONE: INTRODUCTION

1.1 The Subject of the Petition and Prayers

The Petition concerning the unfair dismissal and lack of compensation by Broadway Bakery Limited by Mr. Daniel Matendechere was presented to the Senate on Thursday, 16th September, 2021 by Sen. (Dr.) Gertrude Musuruve Inimah (*Annex 2*).

The Petitioner, Mr. Daniel Matendechere, sought to draw the attention of the Senate to the following issues-

1. That on 26th April 2018 while on duty, he was legally riding as a passenger in the company motor vehicle registration number KCL 989S, which was involved in a road accident along Sagana-Nyeri Highway in Makutano area;
2. The accident left him with severe injuries that included blood loss as well as bone loss on the upper part of his leg;
3. That upon public intervention, he was rushed to Kerugoya County Hospital where he was admitted for four (4) days and underwent a surgical procedure. He was later transferred to Thika Level Five Hospital on 30th April, 2018 for treatment where he was again admitted for four days;
4. From there, his employer, Broadway Bakeries Company, requested that he be transferred to Naidu Hospital on 4th May, 2018, where his wound was grafted with skin harvested from my abdominal region. He was admitted in Naidu hospital for three months and later discharged on 14th August, 2018, but he continued undergoing for check-ups for three weeks;
5. On 29th December, 2018, his health deteriorated and he went to Kijabe AIC Mission Hospital where upon examination, the doctor recommended amputation of his leg below the knee. Thereafter, he continued undergoing periodic check-ups at the medical facility for six (6) months;
6. The accident left him with a physical disability that affected his mobility and required that he uses an artificial leg. With the help of his family and friends, he was able to raise the funds but his employer did not give any support;
7. On 1st October, 2019, his employer, Broadways Bakery Company, re-employed him from transport section to wrapping section which to him, with a freshly amputated and artificial leg, was meant to enhance unconducive environment for him to work because the section involved a lot of standing which inflicted him with a lot of pain;

8. While at the section, he was falsely accused of negligence of duty and was served with a letter dated 5th October, 2020, from Bimal Shah, Company Director. Further, on 16th November, 2020, he received a notice of termination of employment and was later sacked after 14 days on 30th November, 2020, without compensation; and
9. That, upon his dismissal, he tirelessly made efforts to seek justice through different avenues which included engaging the National Council of Persons with Disabilities (NCPWD), who wrote two letters to the company on 11th December, 2020, *NCPWD/P/527368* and on 19th January, 2021, *NCPWD/P/527368*.

1.2 Petition Prayers

The Petitioner humbly prayed that the Senate-

1. Compels Broadway Bakery Limited to compensate him for the disability that he incurred in line of duty; and
2. Compels Broadway Bakery Limited to compensate him for unlawful termination.

CHAPTER TWO: INTRODUCTION

2.1 Brief History About Broadways Bakery Ltd¹

Broadways Bakery Ltd dates back nearly six decades having started the company in 1958 as a scones bakery. The Company started by two brothers, the late Sobhagchand Shah and Ratilal Shah producing 45,000 scone every day. Two other brothers, Dalichand and the late Chunilal, joined the business. In 1968, the four siblings joined hands with Unga Limited (*which used to produce Elliots bread*) for a distribution partnership. An increase in demand coupled with the fact that Unga was not satisfying market needs resulting in the brothers setting up their own business when the deal with Unga ended in 1977.

In 2000, the founders retired and handed over the running of the businesses to their children. The current managing director, Mr. Bimal joined the family business in 1979. Today, Broadway Bakery Limited is managed by Mr. Bimal and his two cousins Hiten Shah and Bejul Shah.

In terms of production, the bakery's production capacity in 1979 was 70,000 loaves of bread per day and it had a workforce of 100. Currently, the Broadway Baker Ltd has a maximum capacity of 240,000 loaves per day but produces between 60 and 70 per cent of this, scaling it up when demand rises. The Company posts about Sh6 billion in annual revenue.

Broadways sources its wheat both from Kenyan farmers and imports from the USA, Canada, Argentina, Russia and Australia which it also sells to mini-bakeries in Thika, Nairobi and its environs. The company's bread brands include New Seneta, Broadways Premium, Broadways Sliced White (the most popular), Sandwich Bread and Broadways Sandwich Bread.

In terms of employment, the bakery employs 500 people, has 75 trucks that are used to distribute their bread brands across the country through a network of 250 distributors. Broadways has since diversified its operations into Bakex Millers Limited, a wheat flour miller milling about 250 tonnes of flour per day and sells two wheat flour brands, *Oboma* and *Vitafla*. The Broadways Group also comprises of Albizzia Downs Estate Limited, a real estate subsidiary.

¹ Source: www.broadway.co.ke and submission by the Broadway Bakers Ltd

CHAPTER THREE: COMMITTEE UNDERTAKINGS

This section contains highlights of the deliberations between the Committee, the petitioner and the Broadway Bakery Limited. Deliberations were informed by the relevant laws that guide the relationships between an employer and employee as articulated in the Constitution of Kenya. Further the Committee was also guided by other supporting legislations like the Work Injury Benefits Act of 2007 and Employment Act, 2007.

3.1 Meeting between the Petitioner, Broadway Bakery Ltd. and Kenindia Assurance

The Committee met with the petitioner, Mr. Daniel Matendechere, Broadways Bakery Limited Managing Director, Mr. Bimal Shah *and* Mr. Dilesh Bid from Kenindia Assurance on Tuesday, 9th November 2021.

3.1.1 Presentation by Mr. Bimal Shah, Managing Director, Broadways Bakery.

Mr. Bimal Shah informed the Committee that -

1. Mr. Daniel Matendechere who submitted the Petition is a former employee of Broadways Bakery and was employed on 4th January 2016 as a 'turn boy';
2. On 26th April 2018, Daniel who was by then working as a 'turn boy' was a passenger aboard motor vehicle Registration Number KCL 989S when along the Sagana-Nyeri Road around Makutano area when the said vehicle was involved in an accident at about 3.00 pm;
3. He was rushed to Kerugoya hospital where he was admitted until the 28th of April 2018 and was transferred to Thika Level V Hospital on 29th April 2018 for proper management;
4. During the course of his admission at Thika Level 5 hospital, the management realized that Daniel was not being attended to properly and after consultations they were advised to transfer him to Naidu Hospital in Thika, where he was admitted for a total of 102 days and discharged on 14th August 2018;
5. After his discharge from Naidu hospital, Daniel continued to go for checkups every three weeks and the Company catered for his bills; treatment, hospital charges and transport to and from hospital as well as his salary;
6. Daniel's leg wound worsened and it became necessary to seek another opinion and was taken to AIC Kijabe Hospital where amputation was recommended for his injured leg to avoid exposing him to any further risk. The management was saddened by the outcome of the entire process but remained supportive;

7. Mr. David Akorikodi, the Company's representative, visited Daniel to follow up on handover of receipts issued at AIC Kijabe Hospital to the Company to facilitate the processing of workman compensation since the insurer had been notified of the injury Daniel had suffered. However, Daniel explained that the receipts were in the custody of his family and that they had refused to submit them. This impeded effort to progress with the process;
8. Daniel was paid fifty percent (50%) of his monthly salary amounting to Ksh. 15,000 per month totalling Ksh. 270,000.00 during the entire period of 18 months, from May 2018 to October 2019 when he was on sick leave;
9. The Company covered Daniel's inpatient medical expenses and other aftercare expenses as follows:
 - a. Kerugoya County Hospital - Ksh. 4, 250.00;
 - b. Ambulance fee from Kerugoya hospital to Thika Level 5 hospital - Kshs. 10,000.00;
 - c. Thika Level 5 Hospital - Kshs. 5,050.00; and
 - d. Naidu hospital - Kshs. 990,612.00
10. The medical claim refunded to the Company was as per the limit (250,000.00 less Kshs. 5,000 excess). However, after exhausting his total insurance claim, the Company went ahead and paid Kshs. 740,612.00 as out of pocket;
11. On 4th November 2019, Daniel wrote to the Management seeking to resume work and he indicated that he was in a position to diligently work for the Company. Since it would then be difficult for him to continue working as a 'turn boy', he was requested to work in the wrapping section which he agreed and a new employment contract was signed on 5th November, 2019;
12. On 6th November 2020, the Company received a letter from Makhadia & Makhadia Advocate demanding admission of liability and to compensate his client Daniel for injuries suffered which we notified to our insurer for their further action;
13. Meanwhile David's Supervisor had complained to the senior management of Daniel's reluctance to work despite being given several verbal warnings leading to issuance of a written warning dated 5th October 2020;
14. There was no improvement in his behavior and his reluctance persisted on several occasion causing a jam on the conveyor leading to the loaves of bread on the conveyor falling down which led to termination of his employment on 16th November 2020 as per the Collective Bargaining Agreement (CBA) and after observance of due process. He was paid his terminal dues on 2nd December 2020 totaling Kshs. 13,719.00 receipt of which he acknowledged;

15. On 11th December 2020, the Company received letters from the National Council for Persons with Disabilities (NCPWD) and from Makhadia & Makhadia Advocate; and
16. The Company was baffled by allegations of bias against disabled members of the Society as they are an equal opportunity employer and currently has 5 employees living with disability in the workforce.

3.1.2 Presentation by the Petitioner, Mr. Daniel Matendechere

Mr. Daniel Matendechere, the Petitioner informed the Committee that -

1. He disagreed with Broadway Company, their advocate and Kenindia Assurance Company that the proceedings are *subjudice* because he has never been summoned in any court of law and he does not have the case number or case file number;
2. He gave Mr. David Okarikodi, the representative of Broadway Bakery Limited. the hospital receipts so that they could be handed over to Mr. Bimal Shah. However, Mr. Bimal Shah refused to refund him the money he spent on treatment;
3. He was not paid 50% of his salary for 18 months as alleged by Mr. Bimal Shah;
4. Upon re-employment, he performed his duties effectively in the wrapping yard despite being forced to work while standing with a prosthetic leg but he was falsely accused of neglecting his duties; and
5. He was unable to travel to Nairobi for the second opinion as requested by the Kenindia Assurance because of lack of resources and miscommunication

3.1.3 Presentation by Mr. Dilesh Bid, Insurer

Mr. Dilesh Bid from Kenindia Assurance made a presentation to the Committee and informed the Committee that-

1. Indeed, Kenindia Assurance received the claim pursuant to the Work Injury Benefits Act under reference number C/105/1115/2018/000185/10/01;
2. Kenindia Assurance, under Director of Occupational Safety and Health Services (DOSHS) rules, reimbursed Broadway's medical bills up to the limit the Policy was covered;
3. The Insurance Company requested for a second opinion to verify the disability, however, the Petitioner declined to be engaged for the second opinion;
4. The Petitioner filed a suit against Broadway Company Limited and the Kenindia Insurance company filed a defence but the case has not progressed;
5. Under the DOSHS rules, once an employee files a case, all the proceedings ceases and it is left to the court to decide; and

6. The Insurance Company has accepted the liability and is ready to compensate if the Petitioner goes for the second opinion.

3.2 Legal Framework Underpinning the Work Injury Compensation and Benefits

The following legal framework provide the legal basis for work injury compensation and benefits.

(a) The Constitution of Kenya

Article 41 of the Constitution provides the constitutional basis of the labour law in Kenya as follows-

- 1) *Every person has the right to fair labour practices*
- 2) *Every worker has the right—*
 - a. *to fair remuneration;*
 - b. *to reasonable working conditions;*
 - c. *to form, join or participate in the activities and programmes of a trade union;*
and
 - d. *to go on strike.*
- 3) *Every employer has the right—*
 - a. *to form and join an employer's organization; and*
 - b. *to participate in the activities and programmes of an employers' organization.*
- 4) *Every trade union and every employers' organization has the right—*
 - a. *to determine its own administration, programmes and activities;*
 - b. *to organize; and*
 - c. *to form and join a federation.*
- 5) *Every trade union, employers' organization and employer has the right to engage in collective bargaining.*

(b) The Work Injury Benefits Act, 2007

The Work Injury Benefits Act of 2007 (WIBA) provides for compensation to employees for work related injuries and diseases contracted in the course of their employment. Pursuant to the Act, an employer is liable to compensate an employee for personal injury, including contracting a disease, and or death if these arise while the employee is at work. Section 7 of the Act mandates every employer to obtain and maintain an insurance policy in respect of any liability that the employer may incur under the Act to any of their employees. The Supreme Court definitively held that compensation claims for workplace injury and illnesses are to be adjudicated by the Director of Occupational Safety and Health Services in the *Law Society of*

Kenya v. the Attorney General and Central Organization of Trade Unions, Supreme Court of Kenya, Petition No. 4 of 2019.

The main issue for determination by the Supreme Court was whether sections 16 and 23 of the Act are unconstitutional for unjustifiably restricting employees' rights to access to justice and fair hearing. These provisions bar employees from filing compensation claims for workplace injury and illness in court. The power to adjudicate the claims is instead assigned to the Director.

The Supreme Court affirmed the Court of Appeals' finding that sections 16 and 23 of the Act are constitutional. The Court observed that the intention of the Act is not to limit access to courts but to introduce an alternative dispute resolution mechanism before the Director. The Director's decision may then be appealed to the Employment and Labour Relations Court.

The Supreme Court reiterated that where the law creates an organ with the power to resolve a given class of disputes, courts should not usurp that power. The Court concluded that compensation claims for workplace injury and illness should be adjudicated by the Director and not the courts.

Notably, the Judges observed that adjudication by the Director offers a faster and simpler procedure which could enhance access to justice by reducing the backlog of cases in court and lowering the cost of accessing justice.

The Employment Act, 2007 defines the fundamental rights of employees, provides the basic conditions of employment for employees and provides the basic standards of employment in Kenya.

As regard the Petition by Mr. Daniel Matendechere concerning unfair dismissal and lack of compensation by Broadways Bakery Limited, Section 5 of the Employment Act, 2007 provides *inter alia*-

- (3) *No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee —*
 - (a) *on grounds of race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or HIV status;*

(b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment...

- (5) An employer shall pay his employees equal remuneration for work of equal value.*
- (6) An employer who contravenes the provision of the section commits an offence.*
- (7) In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this section.*

Additionally, Section 45 of the Employment Act, 2007 provides the following on unfair termination-

- 1) No employer shall terminate the employment of an employee unfairly;*
- 2) A termination of employment by an employer is unfair if the employer fails to prove—*
 - a. that the reason for the termination is valid;*
 - b. that the reason for the termination is a fair reason—*
 - i. related to the employee's conduct, capacity or compatibility; or*
 - ii. based on the operational requirements of the employer; and*
- 3) that the employment was terminated in accordance with fair procedure.*

CHAPTER FOUR: COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 Committee Observations

Following Committee's engagement with the petitioner and the Managing Director, Broadways Bakery Limited regarding the petition and subsequent deliberations, the Committee makes the following observations. THAT –

1. The Company had acted within the law in facilitating the Petitioner access his Work Injury Benefits and regain his overall wellbeing;
2. The Petitioner had not complied with the Work Injury Benefits Act requirements;
3. The Petitioner filed a case in Baricho Law Courts against Broadway Bakery Limited; *CMCC No. 38 of 2021, Daniel Matendechere Aura vs. Broadway Bakery Limited and James Ndura*. The matter is still awaiting the court's determination.
4. In this regard, the Committee notes that Standing Order 98 on the *subjudice* rule, various rulings by the Speaker on the same and Tragedy. The ruling implied that even if elements of active proceedings, prejudice have been met, the Speaker still has the discretion to decide whether a matter should proceed or not due to the following reasons —
 - (a) *If it a matter of great public interest; and*
 - (b) *If it is a matter about human rights.*
5. The present matter is a matter concerning human rights and as such will not be curtailed by an existing court case.

4.2 Committee Recommendations

The Committee therefore makes the following recommendations-

1. That the petitioner complies with the Work Injury Benefits Act (WIBA) as provided under sections 16 and 23 of the WIBA as follows -
 - a) The Petitioner to withdraw the case filed at Baricho law courts;
 - b) The Petitioner to continue with the adjudication of his matter by the Director of Occupational Safety Health (DOSH);
 - c) The Petitioner to seek second medical opinion as advised by DOSH; and
 - d) DOSH should adjudicate the matter within one (1) month of tabling of this Report.
2. Upon the Petitioner's compliance with WIBA, the company, shall within one month, initiate the process of paying the petitioner his Work Injury Benefits;
3. The Company should file monthly progress report to the Committee until the matter is brought to a conclusion upon tabling of the report; and

4. The petitioner shall be at liberty to file his matter in a court of law if he is dissatisfied with the determination by DOSH.

MINUTES OF THE 91ST MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON SATURDAY, 27TH NOVEMBER 2021 AT 12.45 PM IN CONFERENCE ROOM 1B, TRADEMARK HOTEL, VILLAGE MARKET, KIAMBU COUNTY.

MEMBERS PRESENT)

- | | |
|---------------------------------------|-----------------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - V. Chairperson (Virtual) |
| 3. Sen. Madzayo Stewart Mwachiru, CBS | - Member (Virtual) |
| 4. Sen. Paul Mwangi Githiomi | - Member |
| 5. Sen. Susan Kihika | - Member (Virtual) |
| 6. Sen. Makori Beatrice Kwamboka | - Member (Virtual) |
| 7. Sen. Naomi Masitsa Shiyonga | - Member |
| 8. Sen. (Dr.) Milgo Alice Chepkorir | - Member |

ABSENT WITH APOLOGIES

- | | |
|---------------------------------|----------|
| 1. Sen. (Dr.) Isaac Mwaura, CBS | - Member |
|---------------------------------|----------|

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Ms. Mwanate Shaban | - Clerk Assistant |
| 2. Mr. Kevin Kibet | - Clerk Assistant/HO |
| 3. Ms. Marale Sande | - Senior Research Officer |
| 4. Mr. Jeremy Chabari | - Legal Counsel |
| 5. Mr. Frank Mutulu | - Media Relations Officer |
| 6. Ms. Fatuma Abdi | - Audio Officer |
| 7. Mr. Ruben Kimosop | - Serjeant-At-Arms |
| 8. Ms. Lydia Nyagol | - Secretary |
| 9. Mr. Hassan Adow | - Office Assistant |

MINUTE SEN/SCLSW/393/2021: PRELIMINARIES

The Chairperson called the meeting to order at 12.50 p.m. followed by a word of prayer.

MINUTE SEN/SCLSW/394/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. Makori Beatrice Kwamboka, MP and seconded by Sen. Paul Mwangi Githiomi, MP as follows—

AGENDA

1. Preliminaries (Prayers);
2. Adoption of the Agenda;
3. **Consideration and adoption of Reports;**
 - (a) **Report on the petition by Mr. Daniel Matendechere concerning unfair dismissal and lack of compensation by Broadway Bakery Limited;**
 - (b) **Report on the petition by Mr. Isaac Sikonyakeriga on alleged non-payment and failure to be confirmed by Kisii County Government; and**
 - (c) **Report on the Petition concerning the Recruitment and Remuneration of Early Childhood Development (ECD) Teachers in Kericho County; and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/395/2021: ADOPTION OF THE REPORT ON THE PETITION BY MR. DANIEL MATENDECHERE CONCERNING UNFAIR DISMISSAL AND LACK OF COMPENSATION BY BROADWAY BAKERY LIMITED

The Committee considered the report on the petition by Mr. Daniel Matendechere concerning unfair dismissal and lack of compensation by Broadway Bakery Limited. The Report was adopted after being proposed by Sen. Masitsa Naomi Shiyonga, MP and seconded by Sen. Paul Mwangi Githiomi, MP.

MINUTE SEN/SCLSW/396/2021: ADOPTION OF THE REPORT ON THE PETITION BY MR. ISAAC SIKONYAKERIGA ON ALLEGED NON-PAYMENT AND FAILURE TO BE CONFIRMED BY KISII COUNTY GOVERNMENT

The Committee considered the report on the petition by Mr. Isaac Sikonyakeriga on alleged non-payment and failure to be confirmed by Kisii County Government. The Report was adopted after being proposed by Sen. (Dr.) Alice Chepkorir Milgo, MP and seconded by Sen. Paul Mwangi Githiomi, MP.

MINUTE SEN/SCLSW/397/2021: ADOPTION OF THE REPORT ON THE PETITION CONCERNING THE RECRUITMENT AND REMUNERATION OF EARLY CHILDHOOD DEVELOPMENT (ECD) TEACHERS IN KERICHO COUNTY

The Committee considered the report on the petition concerning the Recruitment and Remuneration of Early Childhood Development (ECD) Teachers in Kericho County. The Report was adopted after being proposed by Sen. (Dr.) Alice Chepkorir Milgo, MP and seconded by Sen. Naomi Shiyonga, MP.

**MINUTE SEN/SCLSW/398/2021: ANY OTHER BUSINESS AND
ADJOURNMENT**

There being no other business, the meeting was adjourned at 2.30 p.m.



SIGNATURE:

(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Saturday, 27th November, 2021

MINUTES OF THE 85TH (ZOOM ONLINE) MEETING OF THE STANDING COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 9TH NOVEMBER 2021 AT 9.30 A.M.

MEMBERS PRESENT

- | | |
|---------------------------------------|---------------------------|
| 1. Sen. Johnson Sakaja, CBS | - Chairperson |
| 2. Sen. Johnes Mwaruma | - Vice-Chairperson |
| 3. Sen. Madzayo Stewart Mwachiru, CBS | - Member |
| 4. Sen. Naomi Masitsa Shiyonga | - Member |
| 5. Sen. Susan Kihika | - Member |

ABSENT WITH APOLOGIES

- | | |
|-------------------------------------|----------|
| 1. Sen. Paul Mwangi Githiomi | - Member |
| 2. Sen. (Dr.) Milgo Alice Chepkorir | - Member |
| 3. Sen. Makori Beatrice Kwamboka | - Member |
| 4. Sen. (Dr.) Isaac Mwaura, CBS | - Member |

IN-ATTENDANCE

- | | |
|----------------------------|--|
| 1. Mr. Bimal Shah | - Managing Director, Broadways Bakery Ltd. |
| 2. Esther Muiruri | - Legal Counsel, Broadways Bakery Ltd |
| 3. Ms. Bonyo | - Advocate, Broadways Bakery Ltd |
| 4. Mr. Dilesh Bid | - Insurer, Kenindia Assurance |
| 5. Mr. Daniel Matendechere | - Petitioner |
| 6. Mr. Allan Ogongo | |
| 7. Mr. Geoffrey Obura | |

SENATE SECRETARIAT

- | | |
|-----------------------|---------------------------|
| 1. Mr. Kevin Kibet | - Clerk Assistant/ HO |
| 2. Ms. Marale Sande | - Senior Research Officer |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Ms. Fatuma Abdi | - Audio Officer |

5. Mr. Ruben Kimosop - Serjeant-At-Arms
6. Ms. Cynthia Wanjiku - Pupil, Directorate of Legal Services

MINUTE SEN/SCLSW/368/2021: PRELIMINARIES

The Chairperson called the meeting to order at 9.55 a.m. followed by a word of prayer. This was followed by introductions by all present.

MINUTE SEN/SCLSW/369/2021: ADOPTION OF THE AGENDA

The agenda of the Meeting was adopted after it was proposed by Sen. Johnes Mwaruma, MP and seconded by Sen. Naomi Shiyonga, MP as follows-

AGENDA

1. Preliminaries (Prayers & Introductions);
2. Adoption of the Agenda;
3. **Meeting with the Broadway Bakery Limited and the Petitioner on the Petition by Mr. Daniel Matendechere concerning unfair dismissal and lack of Compensation by Broadway Bakery Ltd; and**
4. Any Other Business & Adjournment.

MINUTE SEN/SCLSW/370/2021: MEETING WITH THE BROADWAY BAKERY LIMITED AND THE PETITIONER ON THE PETITION BY MR. DANIEL MATENDECHERE CONCERNING UNFAIR DISMISSAL AND LACK OF COMPENSATION BY BROADWAY BAKERY LTD

(a) Presentation by Mr. Bimal Shah, Managing Director, Broadways Bakery Ltd.

Mr. Bimal Shah presented as follows;

1. Daniel Matendechere who submitted the Petition is a former employee of Broadways Bakery and was employed on 4th January 2016 as a turnboy.
2. On 26th April 2018, Daniel who was by then working as a turnboy was a passenger aboard motor vehicle Registration Number KCL 989S when

along the Sagana-Nyeri Road around Makutano area the said vehicle was involved in an accident at about 3.00 pm.

3. He was rushed to Kerugoya hospital where he was admitted until the 28th of April 2018 and was transferred to Thika Level V Hospital on 29th April 2018 for proper management.
4. During the course of his admission at Thika Level 5 hospital, the management realized that Daniel was not being attended to properly and after consultations they were advised to transfer him to Naidu Hospital in Thika, where he was admitted for a total of 102 days and discharged on 14th August 2018.
5. After his discharge from Naidu hospital, Daniel continued to go for checkups every three weeks and the company catered for his bills; treatment, hospital charges and transport to and from hospital as well as his salary.
6. Daniel's leg wound worsened and it became necessary to seek another opinion and was taken to AIC Kijabe Hospital where amputation was recommended for his injured leg to avoid exposing him to any further risk. The Management was saddened by the outcome of the entire process but remained supportive.
7. Mr. David Akorikodi, The Company's representative, visited Daniel to follow up on handover of receipts issued at AIC Kijabe Hospital to the Company to facilitate the processing of workman compensation since the insurer had been notified of the injury Daniel had suffered. However, Daniel explained that the receipts were in the custody of his family and that they had refused to submit them. This impeded efforts to progress with the process.
8. Daniel was paid fifty percent (50%) of his monthly salary amounting to Kshs.15,000 per month totalling Kshs.270,000.00 during the entire period of 18 months from May 2018 to October 2019 when he was on sick leave.
9. The Company covered Daniel's inpatient medical expenses and other aftercare expenses as follows;
 - (i) Kerugoya County Hospital-Kshs 4,250.00
 - (ii) Ambulance fee from Kerugoya hospital to Thika Level 5 hospital-Kshs.10,000.00
 - (iii) Thika Level 5 Hospital- Kshs.5,050.00

- (iv) Naidu hospital- Kshs.990,612.00-The medical claim refunded to the Company was as per the limit (250,000.00 less Kshs.5,000 excess), however after exhausting his total insurance claim, the Company went ahead and paid Kshs.740,612.00 out of pocket.
10. On 4th November 2019, Daniel wrote to the Management seeking to resume work and he indicated that he was in a position to diligently work at our company. Since it would now be difficult for him to continue working as a turnboy, he was informed if he could work in the wrapping section is light and he agreed to accept that work. A new employment contract was signed on 5th November, 2019. It is therefore untrue that Daniel performed his new duties while standing as he alleges in his Petition.
 11. On 6th November 2020, the Company received a letter from Makhadia & Makhadia Advocate demanding admission of liability and to compensate his client Daniel for injuries suffered which we notified to our insurer for their further action.
 12. Meanwhile David's Supervisor had complained to senior management of Daniel's reluctance to work despite being given several verbal warnings leading to issuance of a written warning dated 5th October 2020.
 13. There was no improvement in his behavior and his reluctance persisted on several occasion causing a jam on the conveyor leading to the loaves of bread on the conveyor falling down which led to termination of his employment on 16th November 2020 as per the Collective Bargaining Agreement (CBA) and after observance of due process. He was paid his terminal dues on 2nd December 2020 totaling Kshs.13,719.00 receipt of which he acknowledged.
 14. On 11th December 2020, the Company received letters from the National Council for Persons with Disabilities (NCPWD) and from Makhadia & Makhadia Advocate.
 15. The Company is baffled by allegations of bias against disabled members of the society as they are an equal opportunity employer and currently has 5 disabled employees in the workforce.

(b) Presentation by the Petitioner, Mr. Daniel Matendechere

Mr. Daniel Matendechere, the Petitioner presented as follows;

1. He disagrees with Broadway Company, their advocate and Kenindia Assurance Company that the proceedings are *subjudice* because he has never been summoned in any court of law and he does not have the case number or case file number.
2. He alleges that he gave Mr. David Okarikodi the hospital receipts so that they could be handed to Mr. Bimal Shah. However, Mr. Bimal Shah refused to refund him the money he spent on treatment.
3. He further denied being paid 50% of his salary for 18 months as alleged by Mr. Bimal Shah.
4. Upon re-employment, he stated that he performed his duties effectively in the wrapping yard despite being forced to work while standing with a prosthetic leg but he was falsely accused of neglecting his duties.
5. He stated that he could not go to Nairobi for the second opinion as ordered by the Kenindia Assurance because he did not have money and there was no official communication.

(c) Presentation by Mr. Dilesh Bid, Insurer

Mr. Dilesh Bid presented as follows;

1. He acknowledged that Kenindia Assurance received the claim pursuant to the Work Injury Benefits Act under reference number C/105/1115/2018/000185/10/01.
2. Kenindia Assurance, under DOSH rules, reimbursed Broadway's medical bills up to the limit the policy was covered.
3. The insurance company requested for a second opinion to verify the disability. However, the petitioner refused to go for the second opinion.
4. The petitioner filed a suit against Broadway and the insurance company filed a defence but the case has not progressed.
5. Under the DOSH rules, once an employee files a case, all the proceedings cease and it is left to the court to decide.
6. The insurance company has accepted the liability and is ready to compensate if the petitioner goes for the second opinion.

(d) Members' Interventions.

1. Members undertook to further scrutinise the submissions by both parties, deliberate then make a decision on the issue.
2. Members commiserated with Mr. Matendechere for the injuries sustained in the accident.

MINUTE SEN/SCLSW/371/2021: ANY OTHER BUSINESS AND ADJOURNMENT

There being no other business, the meeting was adjourned at 11.15 a.m.



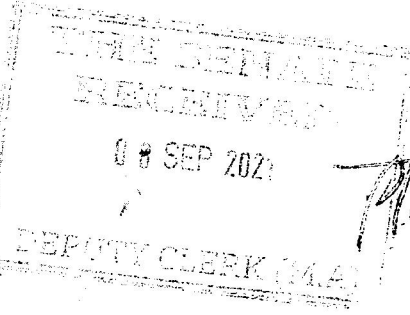
SIGNATURE:

(CHAIRPERSON: SEN. JOHNSON SAKAJA, CBS)

DATE: Saturday, 27th November, 2021

Mr. Mogen
PS Fracts
8/19/21

THE CLERK OF THE SENATE
PARLIAMENT BUILDINGS
P.O. BOX 41842-00100
NAIROBI
Email: senatepetition@parliament.go.ke



DLPS
Please process
8/19/21

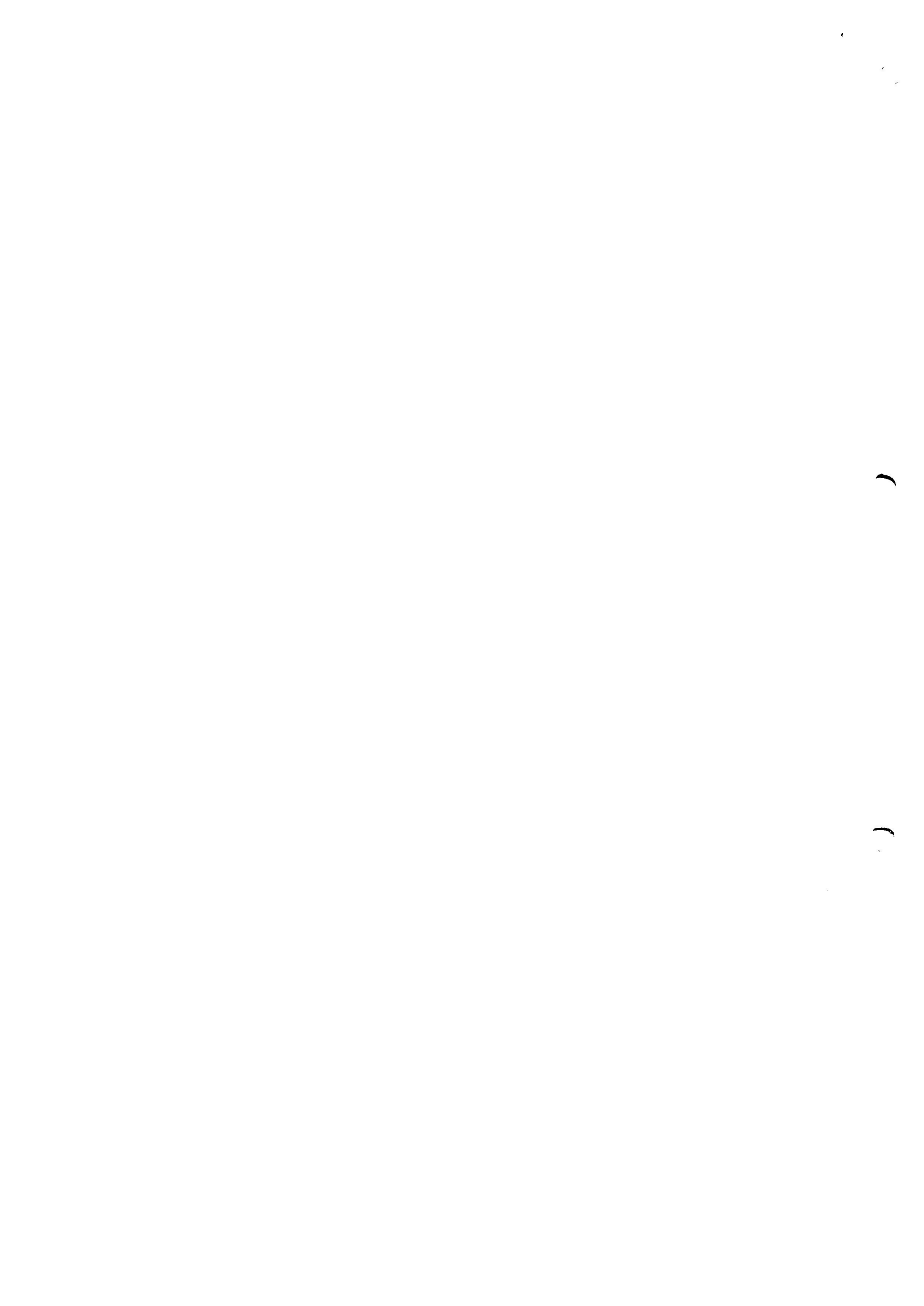
REF: PETITION TO THE SENATE CONCERNING UNFAIR DISMISSAL AND LACK OF COMPENSATION BY BROADWAYS BAKERY LIMITED

I the undersigned Daniel Matendechere a Kenyan citizen and resident of Kakamega county within the republic of Kenya, ID.No. 24519785 hereby bring the following petition to the Senate:

1. That on Thursday April 2018 at 15.00p.m while on duty, I was legally riding as a passenger in the company motor vehicle registration number KCL 989S. I was involved in a road accident along Sagana Nyeri Highway in Makutano area.
2. The accident left me with severe injuries that included blood loss as well as bone loss on the upper part of my leg.
3. That upon public intervention, I was rushed to Kerugoya County Hospital where I was admitted for 4 days. At this facility, I underwent a surgical toilet procedure of large wounds. I was then transferred to Thika Level 5 hospital on 30th April 2018 for treatment where I was again admitted for 4 days. It is now from here that my employer Broadways Bakery of contact broadway@africaonline.co.ke / 0720 504 309/ P.O BOX 25-01000 Thika requested that I be transferred to Naindu Hospital on 4th May 2018 where my wound was later grafted with skin harvested from abdominal region. I was admitted in the said hospital for 3 months and later discharged on 14th August 2018 but I continued going for checkups for 3 weeks.
4. That on December 29th 2018 my health deteriorated and I went to Kijabe AIC Mission Hospital where upon examination the doctor recommended amputation of my leg below the knee. Thereafter, I went for periodic checkups at the medical facility for 6 months.
5. The accident left me with a physical disability that affected my mobility.

Ms. Kavita
Please review and
re-submit to WGOE
this is under
228
Client
8/19/21

3 No. change
Please process
201
08/09/21




Wherefore your humble petitioner prays that the senate:

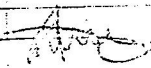



- (i) By your able power and wisdom to compel Broadways Bakery my lifetime disability that I incurred while in line of duty since I am now incapacitated
- (ii) To compel Broadways Bakery Company to compensate me on unlawful termination my job since it was my livelihood and had many dependents.

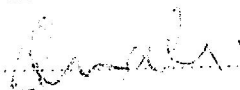
Petition to the senate by: Daniel Matendechere

Concerning: Unfair dismissal and lack of compensation

Sign: 

Dated: 8th day SEPTEMBER 2021

NO.	NAME	ID	CONTACTS	SIGNATURE
1.	Daniel Matendechere	24519785	0716 558 658	
2.	Harrison Musonye	24043866	0726 477 476	
3.	Rev. Kitazi Erick	23324829	0708 679 485	
4.	Rev. John Lugongo	5632273	0713 446 587	

Counter signed by: 

Senator: DR. Gertrude Musuruve Inimiah

Senator for PwDs (Nominated)

County: Kakamega

6. This required that I use an artificial leg with the help of my family and friends. I was able to raise the funds but my employer did not give any support.
7. That on 1st October 2019 my employer broadways company re-employed me from transport section to wrapping section which to me with a freshly amputated and artificial leg was meant to enhance un conducive environment for me to work since the section involve a lot of standing that inflected a lot of pain on me. The change of section was done in bad faith while at the section, I was falsely accused of negligence of duty and served with a letter dated 5th October 2020 from BIMAL SHAH Company's director.
8. That on 16th November 2020 I received a notice of termination of which after 14 days I was sacked on 30th November 2020 without compensation.
9. That upon my dismissal I tirelessly made an effort to seek justice but the management was not yielding towards the same. This effort include;
 - i) After my termination from job I engaged the national council of persons with disability of which they wrote to the company 2 letters with the following reference demanding why they had terminated my service without compensation
 - (a) On 11th December 2020 termination of employment for Daniel Matendechere aura of NCPWD/P/527368
 - (b) On 19th January 2021 reminder from NCPWD/P/527368 the effort by the disability council to the company was futile and never gave fruits. Now jobless I could no longer manage to afford lawyers and therefore any attempt of this case in any court has never been mentioned or heard in any court in Kenya.
 - (c) My humble submission to my employer and even willing to work was a sign of my co-operation to the company management for them to consider my compensation; however to my rude shock the company director Mr. Bimal Shah dismissed my quest with a ridicule I quote "Enda kule nje niko na pesa tutakutania huko". What else could I do a helpless poor Kenyan now with permanent disability and without job?
10. That I have made the best effort to have this matter addressed by the relevant authority of which all have proved unsuccessful.
11. That none of this issue in this petition pending in any court of law.

MR. MATENDECHERE RESPONSE TO BROADWAYS MEMO

1. Yours honourables, I do firmly disagree with both Broadway Company. Their advocate and Kenidia Assurance Company that the proceedings are subjudice with the following facts ;-
 - i) I have never been summoned in any court of law, neither do I have the case no or case file no.
 - ii) I have made the best effort to have this matter by relevant authority i.e national council for the person with disabilities whom they wrote to the company two letters without bearing any fruits.
 - iii) My uncle then who works at Makhandia and Makhandia Advocates decided to fight for my justice but after a while he declined to handle the matter till the down payment of kshs. 100,000 to be paid to him. My dad then was shocked and this let him to develop "stroke" on January 16th 2021 up to now he is bed ridden and any time from now we are going to bury him (picture)
 - iv) Being so frustrated , I tried to look for another advocate firm in the name of Mutubwa Company Advocates on 4th February 2021. The advocate agreed to help me. From the February 2021 up to these minutes, they have not called me or update any matter on me, even my efforts trying to call have bore no fruit. Nine months with no effort still undergoing medication there where I remembered the clause "enda kule nje niko na pesa tutakutana huko".
 - v) I would like to know from Bimal Shah and his advocate as they claim that the matter is in Baricho courts, when was the case filed and has his advocate one day seen me in the court platform.?
2. The company has gone along to lie that they transferred me from Kerugoya District to Thika Level 5 Hospital. When transferring a patient you are given summary discharge, do they have one?
3. According to number 8 , I do agree that my father who is now sick together with my sister refused for me to be transferred to Naindu hospital and I wish I could have listened to them , my leg would have not been amputated . Reasons are;-
 - i) The same institution made us loose our beloved brother Douglas Sakwa after spending 250k for his medication and left behind a wife and a son whom is under my custody.
 - ii) The orthopedic on James Muigwa whome the company claim that he was my doctor is the senior orthopedic doctor in Thika Level 5 and the company used all means for me to be transferred to Naindu Hospital so that the doctor would do his side hustling on me while in Naindu Hospital.
 - iii) My family wont access any important document since the hospital is friendly to the company.
4. According to no. 4 under status of workmen : compensation ;

MR. MATENDECHERE RESPONSE TO BROADWAYS MEMO

- i) The company is claiming that Naindu Hospital is the best medical treatment. If it's the best medical treatment, why do they have their own orthopedic doctor as they claim. Doctors like James Mulingwa is being hired from Thika Level 5? Just confirm if am lying.
 - ii) Does the best hospital do have mortuaries and highly trained doctors just like KNH ,AGA KHAN, why then did they transfer me to Kijabe hospital ?
 - iii) Do they even have a mortuary?
 - iv) After spending 8 months in the hospital with a bill total kshs. 990,612 + 740,612 which is 1,731,224 even if it was KNH or Kijabe hospital or Thika Level 5 for heavenly sake, were they treating a cancer patient who has got NHIF ?
 - a) I do conclude that the issue of money paid to Naindu was a scheme by the company to transfer me to a company friendly hospital in order to inflate the cost, that's why they were so disparate to take me there.
 - b) An independent investigation should be done for the same case, some treatment in public hospital.
 - c) On the same contrary, I have a copy of dr. Ranganathan Naindu Hospital claiming that I was admitted on 8th Aug 2018 and discharged on 17/08/2018. Why are they contradicting the admission dates?
5. According to no. 18, I agree with the statement , Mr David Okarikodi came to us as a family demanding the receipts which we spent with our own money through family and friends fundraising and the reasons are as follows;
- i) Earlier when I was undergoing medications in Kijabe Hospital, I personally gave Mr. David Okarikodi the receipts to hand it to Mr. Bimal Shah 3 times but he rejected to refund the money telling him that I would rather go and be refunded by labour.
(voice recording of David Okarikodi)
 - ii) According to dosh I form which I acquired by the grace of God and undersigned by dr. Isaac King'ori who was my orthopedic doctor in Kijabe not Mr Chege as the company claims on no. 6, 7 and 8 clearly demands who took the expenses of medical bill transport expenses are not filled , so Mr. Bimal and its insurance wanted all copies of the receipts and discharge summary so that they can defend themselves they paid all expenses.
 - iii) I asked Mr. Bimal shah to buy for me artificial leg but he rejected forcing me to seek help from churches and friends.
6. According to no. 19 and 20 Mr. Bimal claims that he settled my salary paying the 50% salary under CBA.
- i) I want him to explain to me as he claims that the total was 270,000 who signed those payslips?
 - ii) Can we compare the signatories with the ones I have ?

MR. MATENDECHERE RESPONSE TO BROADWAYS MEMO

- iii) If there aren't, is it time that he usually forges everything so that he can be seen as an angel.
7. According to their claim that they paid 4,250/= in Kerugoya county hospital and 5,050 /= in Thika level 5. A person who is in charge of the patient bills is given summary discharge, can they show the honourables senators those summary discharges.
8. According to no. 22, it is true I wrote to them a letter to seek employment because of the following reasons:-
- i) Mr. Bimal shah kept sending Okarikodi that I should resume work bearing in mind that he did not contribute anything on my medication in Kijabe and also I had now bought a prosthetic leg which he did not contribute.
 - ii) He had already removed my name on Broadway system as an employ since he had already sacked me due to accident, while his vehicle is still operating on kagumo route, Kirinyaga county.
 - iii) I had dependents, three kids by then in class 4 (James Aura), Pp2 Praise Aura and another baby class (Patience Aura) whom had all right for education, medication and food.
9. According to no.23, I do say that I performed my duties on conveyer where am falsely accused with a warning on 5th October 2020 where I even collapsed on wrapping yard due to pressure of the leg and fresh wound where I myself went to Kijabe according to the letter with you, changed the socket with my money bearing in mind that the salary was reduced by 50%.
10. According to the claim of no.25 that I received verbal warnings from David Okarikodi leading to issuance of a written warning is false accuse because of the following :-
- i) They wanted me to be out of their company since my so then uncle who works with Makhandia and Makhandia Advocate has issued them with a letter.
 - ii) I had really refused to give them a summary discharge from Kijabe.
 - iii) Despite of the torture, they had given me working for 12 hours on conveyer standing it was now clocking one year and I was moderately coping with their environment.
 - iv) Mr. Bimal thought I will refuse to work on certain circumstances finding a good reason that he gave me employment and I refused.
 - v) Since I was employed 4th January 2016 in Broadway company I had never acquired verbal warning or written warning so as the law states that a person is required to be issued at least three warning leading to his dismissal.
11. According to no. 26, it is untrue since they had received a letter dated on 6th November 2020 from my uncle who works with Makhandia & Makhandia Advocates

MR. MATENDECHERE RESPONSE TO BROADWAYS MEMO

demanding admission of liability to compensate and I also refused to give them all documents they required, they went against labour law and issued me a termination letter on 16th November 2020 and gave me kshs. 13,719 wages via receipt after working for 14 days and I stepped out of the company on the last day on 30th November 2020

12. On contrary basing on no. 31, I agree they have employed 5 disabled employees but they were employed while disabled but equally punished like any other employee **(voice recording)**.
13. According to no.13 under status of workmens compensation, I did not agree to attend medical assessment which was scheduled for 19th November 2020 because of the following reasons'-
 - i) They wanted I to use my own money for transport go for medication as I didn't have enough money whereby most of my salary I spend on transport from where I stay to workplace which is 200/= per day bearing in mind that I could not walk a long distance.
 - ii) I was serving under termination letter dated on 16th November 2020 whereby I was not needed in that company.
14. Conclusion on the proceedings which are claimed by Bimal Shah together with Kenindia Insurance that the case is in Baricho Law Courts I disagree because of the following:-
 - i) There is a different between an advocate and the court. My advocate who is my uncle was given the case but he failed to deliver it to court claiming that I should give him kshs. 100,000.
 - ii) How can you file the case in a law court bearing in mind that the 2nd defendant who was then a driver (James Ndura) was dismissed 5 days after my accident.
 - iii) How can insurance and the company claim that the matter lies in court of law while I the victim, I have never served by court summon, neither do I have a case number and file no. They want to force the matter to be solved in the court, so that they can use all means of tricks so that justice should never be served to me. Going with the quote " enda kule nje niko na pesa tutakutana huko"
 - iv) Can they confirm to me which advocate is handling the case and the exact date they were issued with summon.
 - v) How can I file a company case in Baricho Law Court in Kirinyaga where the accident happened, does it mean my case is under traffic act.
 - vi) From here in Kakamega to Kirinyaga one need to have almost 6,000 shillings to and fro since am jobless with difficult in coping with my situation under CRB because of the loans I was borrowed for my family upkeep, how I can afford that amount.

MR. MATENDECHERE RESPONSE TO BROADWAYS MEMO

- vii) Bimal Shah will use all possible resources to manipulate the case as he claims that he has money to block justice.
15. It is my cry for help to you the standing committee on labour and social welfare , national council for the persons with disabilities and his excellence the President Uhuru Kenyatta to intervene into this case because ;-
- i) I was dismissed by Broadway Bakery basing on my disability and no one can employ me right now.
 - ii) I have three children , James Aura in Grade 6, Praise Aura in Grade 2 and Patience Aura in Pp2 all are entitled to the right of education, medication and food and cloths whereby as a responsible father its so painful to see them going to bed without food and also being at home due to lack of education facilities.
 - iii) It is so painful to see both of my two parents whom they depended on me, a father who is now paralyzed with no money for medication and my mother now partially blind because I do not have money for her eye surgery.
 - iv) Does it mean that we the poor people don't have access to justice because people like Bimal Shah who are tycoons can manipulate justice?
 - v) It's my prayer to you honourables to hear my cry because the future of my children and my life lays into your hands.

**MEMORANDUM SUBMITTED BY BROADWAYS BAKERY LIMITED IN RESPONSE TO PETITION TO
THE SENATE CONCERNING UNFAIR DISMISSAL AND LACK OF COMPENSATION OF MR. DANIEL
MATENDECHERE**

BACKGROUND FACTS

1. Broadways Bakery Limited is a private limited liability Company operating at Thika in Kiambu County since 1958 with a nationwide reach engaged in production of bread, mandazi and related products.
2. For purposes of nationwide distribution of our products, we deliver with our own transport vehicles and employ drivers assisted by turnboys on various routes forming our distribution network.
3. Daniel Matendechere who has submitted the subject Petition is our former employee. We employed him effective 4th January 2016 as a turnboy. He also goes by the names Daniel Matendechere Aura (henceforth "*Daniel*").
4. On 26th April 2018, Daniel who was by then working as a turnboy was a passenger aboard motor vehicle Registration Number KCL 989S driven by James Ndura which was assigned to the Kagumo Depot Sales Route within our distribution channels, when along the Sagana-Nyeri Road around Makutano area the said vehicle was involved in an accident at about 3.00 pm.
5. Daniel was injured in the accident and well-wishers rushed him to Kerugoya hospital where he was admitted until the 28th of April 2018.
6. On 29th April 2018, we opted to transfer him from Kerugoya hospital to Thika Level 5 hospital for proper management.
7. However, during the course of his admission at Thika Level 5 hospital we realized that Daniel was not being attended to properly despite him being there for several days and after consultations we were advised to transfer him to Naidu Hospital also in Thika.
8. We then consulted Daniel's family on this proposed course of action but Daniel's father and sister refused to approve the transfer despite the fact that Daniel was in a lot of pain.
9. Owing to the gravity of Daniel's situation we decided to further engage the family and we sent our representatives namely the Sales Manager-Mr. Mathenge, the Sales representative-Mr. James Kiragu and the Legal Officer- Mr. Johnpaul to meet the family. That meeting aborted as Daniel's father and sister chased away our representatives.
10. We were discouraged by the attitude taken by Daniel's family members but after further internal consultations we opted to once again send the Sales Manager to try and reason with them. When he got to the hospital, he found Daniel's colleagues, some of the other



~~turnovers already there, and they managed to persuade Daniel's father to allow him to be transferred as proposed.~~

11. To note is that all along Daniel did not have a problem with the proposed transfer, but his father is the one who was reluctant to accept the transfer.
12. Daniel was released from Thika Level 5 hospital on 4th May 2018, and we then organized for his transfer to Naidu hospital, where he was admitted on the same day.
13. At Naidu Hospital, they immediately commenced treatment and Daniel was admitted for a total of 102 days and discharged on 14th August 2018.
14. After his discharge from Naidu hospital, Daniel continued to go for checkups every three weeks and all this while we continued to cater for his bills mainly treatment and hospital charges and transport to and from hospital. We also continued to pay his salary.
15. All through his hospitalization and even during his checkups I constantly followed up on his progress with his primary Doctor Ranganathan Naidu himself. He was also being managed by a Doctor Mulingwa and the 2 Doctors in a bid to avoid amputation of Daniel's leg, opted to try skin grafting first.
16. After it was noted that Daniel's leg wound was not healing properly it became necessary to seek another opinion and it was recommended that Daniel be seen at AIC Kijabe Hospital where it was sadly recommended that his injured leg would have to be amputated to avoid exposing him to any further risk.
17. Daniel's family then settled on AIC Kijabe Hospital for the leg amputation procedure and this decision was conveyed to us. We were saddened by the outcome of the entire process but remained supportive.
18. However thereafter when our representative Daniel's Supervisor- Mr. David Akorikodi went to visit Daniel and to follow up on handover to us of the receipts issued at AIC Kijabe Hospital to enable us pursue workman compensation as we had notified our insurer of the injury, he suffered but Daniel explained that the receipts were in the custody of his father and his uncle and that they had refused to submit the same to us as requested thereby frustrating any efforts to progress the process.
19. He was paid his salary all through even though he had exhausted his statutory and contractual sick leave entitlement. At the material time he was a unionisable employee and the prevailing CBA was express that Employees with less than four (4) years continuous service would be entitled to a maximum of thirty (30) days sick leave on full pay during any period of one year service followed by a maximum of fifteen (15) days on half (1/2) pay. **(See attached as APPX.1 a copy of the relevant CBA)**
20. Daniel was paid fifty percent (50%) of his monthly salary amounting to Kshs. 15,000 per month and we therefore paid Daniel salary totaling Kshs. 270,000.00 during the entire

period of 18 months from May 2018 to October 2019 when he was on sick leave. **(See attached as APPX.2 copies of pay slips covering the period of his sick leave)**

21. Daniel's inpatient medical expenses which we covered in addition to other aftercare expenses are as follows,

- a) Kerugoya County Hospital-Kshs 4,250.00
- b) Ambulance fee from Kerugoya hospital to Thika Level 5 hospital-Kshs 10,000.00
- c) Thika Level 5 Hospital- Kshs 5,050.00
- d) Naidu hospital- Kshs. 990,612.00-The medical claim refunded to the Company was as per the limit (250,000.00 less Kshs 5,000 excess), however after exhausting his total insurance claim, the Company went ahead and paid Kshs 740,612.00 out of pocket.

(See attached as APPX.3 copies of receipts)

22. On 4th November 2019, Daniel wrote to us a letter seeking to resume work and he indicated that he was in a position to diligently work at our company. Since it would now be difficult for him to continue working as a turnboy, he was informed if he could work in the wrapping section is light and he agreed to accept that work. A new employment contract was signed on 5th November, 2019. **(See attached as APPX.4 a copy of Daniel's letter)**

23. This was good news to us and he resumed duties effective 5th November 2019 but owing to his changed circumstances we transferred him to our wrapping section, a better suited work environment as he would not move around a lot and he could comfortably work. It is therefore untrue that Daniel performed his new duties while standing as he alleges in his Petition.

24. On 6th November 2020, we received a letter from Makhadia & Makhadia Advocate demanding admission of liability and to compensate his client Daniel for injuries suffered which we notified to our insurer for their further action. **(See attached as APPX.5 a copy of the Advocate's letter)**

25. Meanwhile David's Supervisor had complained to senior management of Daniel's reluctance to work despite being given several verbal warnings leading to issuance of a written warning dated 5th October 2020. **(See attached as APPX.6 a copy of the warning letter)**

26. There was no improvement in his behavior and his reluctance persisted on several occasion causing a jam on the conveyor leading to the loaves of bread on the conveyor falling down which led to termination of his employment on 16th November 2020 as per the Collective Bargaining Agreement (CBA) and after observance of due process. We paid him his terminal dues on 2nd December 2020 totaling Kshs. 13,719.00 receipt of which he acknowledged. **(See attached as a bundle marked Appx.7 a copy of the termination letter and final dues payment)**



27. We acted fairly and were committed to accommodating Daniel however he was uncooperative in the workplace thereby affecting the working relationship which is why his services were terminated and not on account of his disability as he alleges in his petition.
28. On 11th December 2020, we received a letter from the National Council for Persons with Disabilities *vide* an email from one Peter Kipchumba Chebii. **(See attached as APPX.8 a copy of the email and the Council's attached letter)**
29. On the same date, 14th December 2020, we again received another letter from Makhadia & Makhadia Advocate through email, the letter was dated 11th December 2020, which we responded to *vide* our letter dated 14th December 2020 **(See attached as a bundle marked APPX. 9 a copy of the Advocate's letter and our response thereto).**
30. On 19th January 2021, we again received another letter from the National Council for Persons with Disabilities which we responded to *vide* our letter dated 21st January 2020 **(See attached as a bundle marked APPX. 10 a copy of the Council's letter and our response thereto).**
31. We were baffled by allegations of bias against disabled members of the society as we are an equal opportunity employer and even up to date we have 5 disabled employees on our workforce. **(See attached as a bundle marked APPX. 11 a list and photos of our current employees living with disabilities).**

STATUS OF WORKMAN'S COMPENSATION BY OUR INSURER

1. As a Company following the accident, we lodged a claim with our insurer through our agent (BTB) *via* email concerning the subject accident immediately we received news of the same which is on the 26th of April 2018 and our claim was registered under motor vehicle damage claim reference no:103/080/11/01044/1998/12 accident on 26/4/2018 KCL 989S BTB REF NO:35395.
2. Thereafter our insurer M/S Kenindia informed us of registration of a claim pursuant to the Work Injury Benefits Act under reference number C/105/1115/2018/000185/10/01.
3. On 30th April 2018 we also reported Daniel's injury to the County Occupational Health and Safety office by filing and submitting the DOSH form part 1.
4. After submission of the DOSH form to the County office, we continued to source for the best medical treatment for Daniel leading up to his admission at Naidu Hospital as already explained above.
5. The DOSH form was shared with Dr. Doctor Ranganathan Naidu for filing of the medical report under part 11, however the Doctor advised that the form could only be filled once Daniel concludes his treatment.

6. After Daniel recovered and following his amputation at AIC Kijabe hospital we again submitted the DOSH form to Naidu Hospital and it was filled by Dr. Ranganathan Naidu and thereafter taken to AIC Kijabe Hospital where it was filled and stamped by Dr. Isaac Chege an Orthopedic doctor and then the same was taken back to the County Occupational Health and Safety office for assessment of compensation under the DOSH/WIBA 4 form following which Daniel was awarded Kshs. 1,540,419.00.
7. The duly filled DOSH/WIBA 4 form was sent to the insurer who received the same on 13th of December 2019.
8. The Insure thereafter called for the summary discharge issued by AIC Kijabe Hospital as the one from Naidu had already been submitted to them for purposes of ascertaining the basis of the factor of 229 days awarded in the DOSH assessment form.
9. As we did not have the summary discharge issued by AIC Kijabe Hospital we sent our representative, Supervisor Mr. David Akorikodi, to AIC Kijabe hospital to try and get a copy of the discharge summary but the hospital informed our representative that owing to rules of confidentiality, documents pertaining to the patient could only be given to the patient or an authorized family member and that the original discharge summary had already been given to Daniel and they only retained a copy in the file.
10. However, upon follow up with Daniel he informed Mr. Akorikodi that the discharge had been withheld by his father and uncle who is an Advocate, and they refused/ advised him not to release the same.
11. We thereafter informed our insurer of the inability to get the discharge summary from AIC Kijabe Hospital, and the insurer then requested that Naidu hospital give a summary of the days awarded in the Dosh Form for insurance purposes only to which Dr. Ranganathan agreed and requested for release to them of the DOSH form which was taken to him by our company representative who was familiar with Daniel's treatment process. Dr. Naidu analysed the days as filled in the DOSH form and the same was thereafter sent to the insurer for their review and confirmation.
12. Thereafter, the insurer requested that Daniel undergo a second medical examination from their doctor through their letter dated 27th October 2020 which also referred Daniel to Dr. A. Madhiwalla for examination who would then submit the report to the Permanent Total Disability (PTD) department within the insurance Company to enable them finalize the claim.
13. We communicated to Daniel the need for this second medical opinion and he agreed to go for the same, which was scheduled for 19th November 2020 at 10.00 am, and he agreed to carry along all medical reports, including the ones from AIC Kijabe Hospital.
14. However, he reneged on the agreed course of action as we were served with the demand letter dated 6th November 2020, from Makhadia & Makhadia Advocate seeking our admission of liability in respect of his client Daniel.



15. We forwarded the same to the insurer, who confirmed that there was already an on-going registered claim no C/105/1115/2018/000185/10/01 and confirmed that Daniel had been referred for a second opinion.
16. We then sought to know from Daniel whether he would go through the already instituted WIBA compensation process to which he responded that he would not withdraw the demand by his Advocate and would go ahead with a court case if need be following further consultation with his father and Uncle.
17. He adamantly refused to go for the second medical examination, and thereafter the insurer wrote a letter dated 3rd December 2020 advising that they could only process the ongoing claim once Daniel had undergone a second medical examination in lieu of which they would refer the matter to their legal department should court summons be received.
18. However, this process has now stalled yet we are advised by the Advocates guiding this process that developments in the Law dictate that any compensation payable to Daniel is to be undertaken pursuant to the WIBA compensation procedure which was ongoing until Daniel declined to cooperate or participate in that process.

PROCEEDINGS ARE SUB JUDICE

1. Following the above developments Daniel has gone on to file suit against us which is currently pending determination in Court as **Baricho CMCC No. 38 of 2021, Daniel Matendechere Aura vs. Broadway Bakery Limited and James Ndura** over the very same issues that form the subject matter of this Petition and is therefore blatantly misleading this Committee when he denies the existence of a Court case at paragraph 11 of his Petition. (See attached as a bundle marked **APPX. 12** a copy of the pleadings filed by Daniel through his Advocate in **Baricho CMCC No. 38 of 2021, Daniel Matendechere Aura vs. Broadway Bakery Limited and James Ndura**).
2. We are advised by the Advocates guiding us through these proceedings that the fact that that suit is still pending renders this proceedings *sub judice* as we cannot agitate the same issue before two forums to avert the risk of conflicting findings by the two bodies.
3. Further nothing stops him from enhancing his claim before the Court to address any issue that he feels has not been addressed.
4. In conclusion even predating filing of suit we afforded Daniel immense support and accommodated him at every turn as we appreciated the predicament that arose. We acted in all fairness but it would appear that Daniel's adamancy and refusal to submit himself to a second medical examination which is standard insurance practice, as informed to us by the insurer's representative and his refusal to perform the light duties assigned to him is what has led us up to this point. Whilst we submit this Memorandum we are however constrained to refrain from any further submissions given the pending Court Case.



FOR: BROADWAY BAKERY LIMITED



BIMAL S. SHAH
MANAGING DIRECTOR

