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## PRESS RELEASE

### **Whistle-blower sues Facebook and agent, Samasource Kenya EPZ Limited, for Human Trafficking, Forced Labour and contravention of Constitutional and Human Rights at tech giant's content moderation hub in Nairobi.**

NAIROBI - Tuesday May 10, 2022, 10:00 EAT

Nzili & Sumbi Advocates, representing Facebook whistle-blower and former content moderator, Daniel Motaung, filed a Constitutional Petition at the Labour Court today, launching a lawsuit against Meta Platforms, Inc. (Meta), the company that owns Facebook, its subsidiary, Meta Platforms Ireland Limited and agent in Kenya, Samasource Kenya EPZ Limited (Sama). The petition includes numerous counts of contraventions of the constitutional and human rights of workers and **accuses Meta and Sama of multiple labour violations** including **human trafficking and forced labour**. It also **seeks 16 separate counts of relief on the moderators' behalf**.

The petitioner **represents all current and former workers** at Facebook's main content moderation hub in Africa based in Nairobi which covers the Eastern and Southern Africa regions. Sama, the 1st respondent in the lawsuit, is accused of recruiting young and vulnerable youth from Kenya, Ethiopia, Somalia, South Africa, and Namibia under false pretences, **failing to disclose to applicants that that they are intended to work as Facebook Content Moderators**. Mr. Motaung, the petitioner in the case, seeks collective compensation and reparation for damages for more than 240 personnel. Further, the South African national beseeches the Kenyan Court to order Facebook and Sama to reform dangerous and degrading working conditions, return unlawfully withheld wages to its employees, and allow them to form a union.

With 10 government and non-governmental agencies included in the petition as interested parties, the lawsuit calls upon Kenya's government to **take a closer look at the labour and migration practices** of Facebook and its outsourcing companies, setting a precedence for other multinational companies operating in Africa's Silicon Savannah. The petitioner **compels the Labour Court to end a culture of exploitation** that has a lasting impact on **young African workers**, most of whom are currently **battling mental health conditions including depression, anxiety and Post Traumatic Stress Disorder (PTSD)**. "When I first applied to the advert for this job, I was straight out of university and on a mission to lift myself and my family out of poverty," Mr. Motaung claims, adding that his physical and mental health had been adversely affected by the violence he witnessed as Facebook Content Moderator for only six months.

The petitioner alleges that **job applicants were neither informed that they would be working as Facebook Content Moderators**, nor about the true nature of the graphic content they would be moderating for the Meta-owned platform. "At all material times between 2019 to date, the 1st Respondent has issued various calls for applications for content moderators with varying descriptions for the vacancy designed to trick unsuspecting applicants into unknowingly becoming Facebook Content Moderators," the petition claims. **'Zulu Speaking Call Centre Agents (Based in Kenya)'** and **Agent at Samasource** are some of many cited examples of

advertisements placed on various job application platforms, and on Sama's website as part of an underhanded recruitment process. The respondents are alleged to only disclose specifics of the job to successful applicants once they have signed an employment contract with a strict non-disclosure agreement, and do not allow their employees to retain copies of either document. Mr. Motaung, for instance, **was initially informed that he would be shortlisted for the position of 'Quality Analyst'** before being offered the position 'Content Moderator at Samasource Kenya' on 26th February 2019.

Sama, the 1st respondent in the lawsuit is specifically **accused of deliberately targeting Kenyans and Africans from disadvantaged backgrounds** who, after being tricked into a job they are ill-equipped for and for which they had not intended to apply, are subjected to irregular wages with inexplicable deductions. Like Mr. Motaung, **a majority of the personnel at the Nairobi hub who are migrants find themselves trapped in a traumatising job far away from home, without appropriate training or the requisite health and safety measures.** A medical cover with a limit of KES 50,000 for out-patient care and KES 500,000 for in-patient care and 'wellness' sessions is all that is provided for the Content Moderators, whom the petition refers to as the **"critical front-line workers of social media, who protect billions of people who rely on Facebook every day for connection and news"**.

Meta (formerly Facebook Inc.) has repeatedly come under scrutiny globally for its systems which often promote inflammatory content and fake news because it is precisely this kind of content that is likely to go viral by provoking reactions, comments and sharing, thus maximising advertising revenue for the company. Content moderators therefore sift through hours of toxic content – such as graphic violence, murder, animal torture and the sexual exploitation of children. The first video Mr. Motaung recalls moderating was a livestream of a person being beheaded; the court will hear. **Lead counsel for the petitioner, Mercy Mutemi** said, "Content moderators struggle every day to make Facebook safer for 10 million Kenyan users and many more Africans. **With the Kenyan elections now so close, there has never been a more important time to force Mark Zuckerberg to take responsibility** for the people on the frontline of the information battle during the contest".

The Petition also alleges **failure to pay overtime, unequal pay for equal work, irregular remuneration with unlawful deductions, double taxation, and wrongful termination** by Sama. "By manipulating young people who are just trying to support themselves and their families into modern slavery, **Facebook and Sama have revealed their colonialist mindset.** It seems that they think they can do whatever they want while ignoring Kenyan law. They're in for a rude awakening," said Ms. Mutemi in her remarks outside Kenya's High Court. **Cori Crider**, Director of UK-based tech justice non-profit Foxglove which is supporting the petitioner, **criticized Sama for claiming to be an 'ethical artificial intelligence (AI)' company while busting unions, intimidating workers, and destroying people's lives.** "You couldn't have Facebook without content moderation", Ms. Crider said, adding that "it is fundamental to the billions of dollars the company rakes in each year, yet Mark Zuckerberg continues to treat this work like a dirty secret. That's why he outsources this work to corporate enablers like Sama".

Mr. Motaung claims that **Meta and Sama broke Kenyan law by targeting him and his colleagues with threats, intimidation and eventually termination for forming a union** they named '*The Alliance*'. The content moderators had hoped to use the union to lobby for better working conditions, demand fair, regular and full wages and a more substantial health cover. "I helped launch The Alliance to defend myself and my co-workers. For that I was fired and forced

to leave Kenya”, he said. The petitioner also claims that migrant workers at the Nairobi-based firm did not receive in full, a relocation allowance as promised before leaving their home-countries take up the job offer in Kenya. **“Mark Zuckerberg and his cronies at firms like Sama cannot be allowed to treat people like this. That’s why I’m doing this. We are not animals. We are people – and we deserve to be treated as such,”** he added.

Ms. Crider **underscored the global significance of the petition filed in Kenya** and commended Mr. Motaung for his courage in taking on the tech-giant and Sama on their shameful exploitation of content moderators across the world. **“Foxglove is proud to be supporting Daniel’s case because it sets out, for the first time, clear and specific remedies for how Facebook should clean up its factory floor”**, she said in a video recorded message.

### **Prayers in the petition include but are not limited to:**

- Order that Facebook Content Moderators engaged through Samasource Kenya EPZ Limited be considered direct employees of Meta Platforms, Inc. and Meta Platforms Ireland Limited.
- An independent human rights and psychological health audit at the Nairobi hub to report to the court, within 30 days, recommendations on how to create a safer work environment for content moderators.
- Order of permanent injunction restraining the respondents from interfering with content moderators’ rights to freedom of expression, their right to freedom of association and their right to form, join and participate in a trade union. Additionally, an order to each respondent to prominently exhibit in the 1<sup>st</sup> respondent’s Nairobi office, and on Facebook’s intranet Workplace, a notice affirming that Facebook content moderators have the right to speak out about working conditions and to form a union, and that neither Facebook nor any outsourcer will interfere with these rights.
- Financial penalties to each former and existing content moderator employed in Kenya for the violation of their constitutional rights and to cater for lifetime treatment for any mental health problems that may have developed as a result of being content moderators.
- Order Sama to account for and pay back all unlawful deductions made from its employees’ salaries and that all current and former employees be provided with their payslips from date the date of employment to the date of termination of employment or to date.

Nzili & Sumbi Advocates are calling on all former and current Facebook Content Moderators recruited by Sama to work at the Nairobi hub **to reach out directly to the lead counsel, Mercy Mutemi**, on email at [mercy@nzilisumbi.com](mailto:mercy@nzilisumbi.com).

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## NOTES TO EDITORS

**Nzili and Sumbi Advocates** are a Kenyan law firm that work on a range of issues including human rights in the 'digital age'. The firm's Managing Partner and Lead Counsel on this case, Mercy Mutemi, is a renowned Internet Law and Policy Litigator, and co-host of the **Digit Podcast**. Ms. Mutemi is also the Founding Partner of **Mutemi Sumbi Law**, a consultancy firm which runs the *Rejesh* programme, a **free legal clinic for women victims of online abuse**.

[Foxglove](#) is a London-based legal non-profit that has been working since 2019 with Facebook content moderators in several countries around the world. Its work led to the first-ever appearance of a content moderator at a parliamentary hearing, [in Dublin](#), and it helps moderators around the world get their stories out to the public and organise for safe and dignified work. It also provides legal advice and support to other tech workers at Uber, YouTube, Amazon, and elsewhere.

### Additional resources Annexed:

- Constitutional Petition Daniel Motaung.pdf
- Petitioner's Supporting Affidavit to the Petition.pdf
- Petitioner's 2nd Expert Witness' Affidavit.pdf
- Petitioner's 1st Expert Witness' Affidavit.pdf
- Meta Response to Letter of demand.pdf
- Sama Response to Letter of Demand dd 20.4.2022.pdf
- A 'Frequently Asked Questions' about content moderation: <https://www.foxglove.org.uk/2022/03/29/what-is-a-content-moderator/>
- Daniel Motaung Demand Letter to Sama and Meta.pdf
- Definition of Terms.pdf
- Constitutional Petition Daniel Motaung.pdf
- The front-page exposé of brutal conditions and union-busting at Sama Nairobi in Time Magazine's February 2022 issue can be found here: <https://time.com/6147458/facebook-africa-content-moderation-employee-treatment/>
- The Petition against Facebook and Sama comes amidst a wider drive among other tech workers (such as [Amazon](#)) to form unions and demand dignified work from the world's tech giants: <https://www.theguardian.com/technology/2022/apr/06/chris-smalls-amazon-union-warehouses>
- 2 Video messages of Cori Crider, Foxglove Director, on the filing of petition n by Daniel Motaung. Mp4
- Video message by petitioner, Daniel Motaung.Mp4
- Sample screenshots of misleading Facebook Content Moderator Job advertisements.pdf