



**Awino v Siror; Wandayi & another (Interested Parties) (Petition E402 of 2024)
[2025] KEHC 9806 (KLR) (Constitutional and Human Rights) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 9806 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E402 OF 2024

AB MWAMUYE, J

APRIL 10, 2025

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 27(1), 27(3), 27(8),
131(2), 132(2)(F), 159, 165, 232, 233, 234, 249, 258, 259, AND 260 OF THE
CONSTITUTION OF KENYA**

IN THE MATTER OF THE LEADERSHIP & INTEGRITY ACT NO.19 OF 2012

-AND-

IN THE MATTER OF THE PUBLIC SERVICE (VALUES & PRINCIPLES) ACT

-AND-

IN THE MATTER OF THE ANTI-CORRUPTION & ECONOMIC CRIMES ACT

BETWEEN

FRANCIS AWINO PETITIONER

AND

JOSEPH SIROR RESPONDENT

AND

HON JOSEPH OPIYO WANDAYI INTERESTED PARTY

ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

*(On the Notice of Preliminary Objection dated 17th September,
2024 and Grounds of Opposition dated 2nd September 2024))*



RULING

1. The Petitioner approached this Honourable Court with a Petition dated 9th August, 2024 seeking the following orders which I will quote verbatim;
 - a. An order of Declaration declaring that the Respondents actions are in violation of the Constitution and other legislation.
 - b. An order of Mandamus directed to the appointing Authority to declare the positions of the Managing Director of Kenya vacant and to conduct fresh interviews and appointment of the same.
 - c. An order of Mandamus compelling the 2nd Interested Party to criminally investigate and, if culpable, instruct the Director of Public Prosecutions [D.P.P], to criminally prosecute the Respondents for their flagrant breach of the law.
 - d. An order of Declaration be issued that the Respondent is unfit to hold any other public office because they have grossly violated the Constitution and other laws, and is guilty of gross misconduct.
 - e. An order directing that a lifestyle audit be conducted on the Respondent from the time the respondent occupied office to date.
 - f. That the Honourable court be pleased to issue and hereby issues a permanent order of Prohibition prohibiting the Respondents from holding public office any further.
 - g. That the Honourable court be pleased to exercise its powers under article 23(3) of the Constitution to issue any other appropriate relief.
 - h. An order that the Respondent do pay the costs of this Petition.
2. The Petition is based on the grounds that the Respondent has allegedly caused Kenya Power to plunge deeper into financial woes under the Respondent's leadership into post a 3.19 billion net loss for the year 2023.
3. The Petitioner states that the state-owned utility, under the Respondent's management, had posted a net profit of Kes. 3.2 billion in the fiscal year ending June 2022 and Kes. 1.49 billion in the year ending June 2021 where its revenue from electricity sales grew by 21 per cent from Kes. 157.3 billion to Kes. 190.9 billion, mainly supported by an expanding customer base. However, in December 2022, Kenya Power made a loss of Kes. 3.66 billion following a nine-month government -backed electricity subsidy plan that was aimed at cushioning customers from high energy bills.
4. The Petitioner further avers that the Auditor General revealed that charges loaded to the consumer cannot be traced to KPLC billing systems as there were miscalculations of system losses by the utility firm caused by arithmetic errors, outdated reports, faulty check meters and discrepancies in existing check meters. Based on these reasons, there is need to proceed and bar the Respondent from occupying the office of CEO Kenya Power and Lighting Company any further due to gross violation of the law.
5. In response, the Respondent filed a Replying Affidavit and a Notice of Preliminary Objection both dated 17th September 2024.



6. The Replying Affidavit avers that since his appointment on 2.05.2023, the Respondent has never been subject of any complaint or disciplinary action challenging his credibility towards his work performance, appointment or any other matter. It further stated that the Petition is premature as the Petitioner has not exhausted the statutory laid down procedures for addressing such issues and therefore this Honourable Court lacks jurisdiction to entertain this matter.
7. While in the Notice of Preliminary Objection the Respondent averred that this Honourable Court lacks jurisdiction to hear and determine the petition herein as the same offends section 3(1) of The Public Authorities Limitation Act, Cap 39 making it fatally defective, incompetent, a monumental legal nullity and inconsequential.
8. The 2nd Interested party filed Grounds of Opposition dated 2nd September, 2024 which stated that the Petitioner has not made out a prima facie case to warrant the issuance of the order of mandamus against it as the petitioner has not demonstrated to this court that prior to the filing of this case, the 2nd Interested Party has without proper and justifiable reason refused to investigate such complaints.
9. Parties agreed to canvass the Preliminary Objection application by way of written submissions however the Petitioner opted not to file any written submissions. The Respondent on the other hand filed written submissions dated 9th February 2025 and the 2nd Interested Party filed written submissions dated 7th January, 2024.
10. The Respondent's written submissions stated that the petition herein is time barred. He referred to Section 3 of the Public Authorities Limitations Act Cap 39 which provides that the limitation period for action against the government or local authority is twelve (12) months from the date on which the cause of action accrued.
11. They submitted that the time limit within which to sue the Respondent herein is one year from the accrual of the cause of action and since the alleged cause of action arose in the financial years ending June 2020, June 2021, June 2022 and June 2023, the earliest period the claim should have been brought against the Respondent in his capacity is not later than June 2024.
12. The Respondent while discussing the object of limitation of time relied on the cases of Rawal v Rawal (1990) KLR 275; Iga v Makerere University [1972]EA 65, the Court of Appeal case of Anacleto Kalia v Attorney General & 2 Others[2020]eKLR and finally the case of Mbijiwe v Nairobi City Commission [1993] KEHC 150 (KLR) which dismissed claims for being time barred.
13. The 2nd Interested Party submitted that the jurisdiction of this Honourable Court is barred by the provisions of Section 3 (1) and (2) of the Public Authorities Limitation Act, CAP 39 and Section 89 of the Employment Act, 2007 as well as Section 4 of the Limitation of Actions Act, Cap 39.
14. They argued that the Ethics and Anti- Corruption Commission has put in place mechanisms that protect the rights of members of the public to report acts of corruption or violation of codes of ethics. It further stated that the Petitioner has not demonstrated to this court that a complaint regarding the Respondent was made to the 2nd Interested party or that the commission has failed to investigate such a complaint. The 2nd Interested Party averred that the avenues provided by law must be exhausted before this Honourable Court can be approached or orders sought can be granted.
15. Reliance was placed in the case of Rawal v Rawal (1990) KLR 275; Iga v Makerere University [1972]EA 65, the Court of Appeal case of Anacleto Kalia v Attorney General & 2 Others[2020]eKLR and finally the case of Mbijiwe v Nairobi City Commission [1993] KEHC 150 (KLR) in outlining the object of limitation of time thus this court should be guided by the cases listed above to dismiss the present petition.



Analysis and Determination

16. I have very carefully considered the Petition, the Affidavits in support and in opposition, the Notice of Preliminary Objection, the Grounds of Opposition thereto and the subsequent submissions filed as well as the authorities relied upon in support thereof. The issues that arise for consideration can be summed up as follows: -
- i. Whether this Court has Jurisdiction to entertain this suit based on the statute for limitation
17. On this issue, the Preliminary Objection before court is anchored on Section 3(1) of Public Authorities Act, Cap 39 which states as follows:
1. No proceedings founded on a tort shall be brought against the Government or a local authority after the end of twelve months from the date on which the cause of action accrued.
18. Section 2 (1) of the [Public Authorities Limitation Act](#) defines “proceedings” as civil proceedings in the High Court or the subordinate court. Subsection (2) provides that for the purposes of the Act, proceedings against the Government includes proceedings against the Attorney General or any public officer as such. Section 42 further provides that Limitations of Actions Act does not apply to proceedings which the [Public Authorities Limitation Act](#) applies.
19. The question for determination in order to settle whether this court has jurisdiction to determine the instant petition is; can a right as envisaged in the [Constitution](#) of Kenya be repressed by time lapses? In other words, should causes of action be open ended for the right of access to justice to be actualized? The Limitations of Actions Act (Cap 22) Laws of Kenya; gives statutory timelines within which specific causes can be presented to court.
20. The [Limitation of Actions Act](#) among others including the [Civil Procedure Act](#), [Government Proceedings Act](#) demonstrate that many causes of action have time limits. The only exception to time limits would be constitutional petitions.
21. It is trite law that neither the former nor the current Constitution provides for limitation of actions for enforcement of the Bill of Rights. There is consensus by the Courts as reflected in several judicial precedents that the statutory limitation of causes of Action does not apply to those causes of action that arise out of a violation or threatened violation of the [Constitution](#) or constitutional rights.
22. Faced with the question, the Court of Appeal in the case of Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eKLR held;
- “Guided and convinced of the sound jurisprudence that there is no time limit for filing a constitutional petition, we find the ground that the trial judge erred in failing to dismiss the petition on account of delay, acquiescence and laches has no merit. Unless expressly stated in the [Constitution](#), the period of limitation in the [Limitation of Actions Act](#) do not apply to violation of rights and freedoms guaranteed in the [Constitution](#). The law concerning limitation of actions cannot be used to shield the State or any person from claims of enforcement of fundamental rights and freedoms protected under the Bill of Rights.
- In our view, subject to the limitations of Article 24 of the 2010 Constitution, fundamental rights and freedoms cannot be tied to the shackles of [Limitation of Actions Act](#). However, each case is to be decided on its own merits...”
23. This court has equally affirmed that it is sound judicial policy for the courts to assure transitional justice by vindicating past violation of fundamental rights in order to secure the country’s future. Lenaola



J, (as he then was) in the case of Jennifer Muthoni Njoroge & 10 others v Attorney General [2012] eKLR held that:

“(18) ...The reasoning for the proposition that it is the State that must be held liable also found favour in the case of Cholmondely v Republic [2008] eKLR

(19) In the same case, the Court of Appeal admitted failing of the Courts in the past and argued that Courts “must now vigorously enforce and enforce against the State the fundamental rights and freedoms of the individual guaranteed by the Constitution.” I emphasize this point because it is quite obvious to me that as a lesson for the future, the State must today pay the price for its failings in the past.”

24. It is imperative to note however that where constitutional litigation is initiated long after the cause of action arose, the Court is faced with the task of interrogating the controversy by either striking out the petition on the ground that either the delay initiating the matter was inexplicably and inordinately long or that the justice and circumstances of the case demand the striking out.

25. This was the determination by Majanja J (as he then was) in the case of James Kanyita Nderitu vs A.G and Another, Petition No. 180 of 2011 where he held;

“Although there is no limitation period for filing proceedings to enforce fundamental rights and freedoms, the court in considering whether or not to grant relief under Section 84 of the Constitution, is entitled to consider whether there has been inordinate delay in lodging the claim. The Court is obliged to consider whether justice will be served by permitting a respondent, whether an individual or the state in any of its manifestations, should be vexed by an otherwise stale claim. Just as a petitioner is entitled to enforce its fundamental rights and freedoms, a respondent must have a reasonable expectation that such claims are prosecuted within a reasonable time.”

26. I find that though there is no limitation period for filing proceedings to enforce fundamental rights and freedoms, the Court in considering whether or not to grant reliefs sought in constitutional petition for enforcement of fundamental rights and freedoms, it is entitled to consider whether there has been inordinate delay in filing a Petition and consider further whether there is plausible explanation for delay and whether justice will be served by proceeding on with the matter.

27. In the instant Respondent contends that there was a delay of approximately 1 month since the earliest period to which the Petitioner should have instituted was not later than June 2024 yet the instant petition was instituted on 9th August 2024.

28. I find that the circumstances of this matter do not call for striking out the petition considering the Petitioners are not guilty of inordinate delay. The Petition is therefore not time barred by limitation of Actions granting this Court Jurisdiction to determine this matter.

29. I will now briefly discuss the Grounds of Opposition filed by the 2nd Interested party dated 2nd September 2024. The Grounds of Opposition was premised on the following grounds:

- i. That the Petitioner is using this Honourable Court as the first port of call before approaching and using the available avenues exhaustively;
- ii. The Petitioner has not demonstrated that the 2nd Interested Party has without proper or justifiable reason failed to investigate to warrant the issuance of the order sought against it;



- iii. The Petitioner has not presented a factual or substantial claim, or controversy that has arisen between himself and the 2nd Interested Party;
 - iv. The orders sought against the 2nd Interested Party if granted would contravene Articles 157(10) and Article 249(2)(b) of the Constitution and Section 28 of the Ethics and Anti-Corruption Act.
30. The High Court in the case of *Judicial Service Commission v Speaker of the National Assembly & another* [2013] eKLR described an interested party as follows:
- “...is a person with an identifiable stake or legal interest in the proceedings hence may not be said to be wholly non-partisan as he is likely to urge the Court to make a determination favourable to his stake in the proceedings.”
31. The Supreme Court of Kenya on the other hand in the case of *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 others* [2014] described an interested party as;
- “...one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be articulated unless he himself or she herself appears in the proceedings, and champion his or her cause.”
32. The Supreme Court placed emphasis by indicating that the most crucial interest in a case is that of primary parties before Court and the interests of the interested party must never override the interests of the principal parties. In the case of *Francis Karoki Muruatetu & another v Republic & 5 others*, Sup Ct Pet 15 & 16 of 2015(consolidated)[2016] eKLR the court stated as follows:
- “Having carefully considered all arguments, we are of the opinion that any party seeking to join proceedings in any capacity, must come to terms with the fact that the overriding interest or stake in any matter is that of the primary/principal parties. Third parties admitted as interested parties may only be remotely or indirectly affected, but the primary impact is on the parties that first moved the court.”
33. Where a party has demonstrated that he/she has a stake in the matter, the stake cannot take the form of a new issue to be introduced before the court. The same was observed by the Supreme Court in the case of *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others*, Civil Appeal No. 290 of 2012 where the court stated:
- “A suit in court is a ‘solemn’ process, ‘owed’ solely by the parties. This is the reason why there are laws and Rules under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit on the grounds of defective pleadings.”
34. I have noted that through its Grounds of Opposition dated 2nd September 2024 the Interested Party brought in new facts against the Petitioner and thereafter sought that this Honourable Court should dismiss the instant petition on the grounds that it is premature and the orders sought are untenable and constitute and abuse of the court process.



35. I am however guided by the decision of the Supreme Court that whether some parties are enjoined as Interested Parties or not, the issues to be determined by the court will always remain the issues as presented by the principal parties, or as framed by the court from the pleadings and submissions of the principal parties. An interested party may not frame its own fresh issues or introduce new issues for determination by the court.
36. In light of the foregoing find that the Respondent's Notice of Preliminary Objection dated 17th September 2024 in relation to the Court's jurisdiction has no merit and I dismiss it accordingly. I direct that the claim therefore proceeds before this court.
37. Each party to bear their own costs

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 10TH DAY OF APRIL 2025.

BAHATI MWAMUYE

JUDGE

