Njiru v International Livestock Research Institute & 3 others (Constitutional Petition E103 of 2025) [2025] KEHC 9724 (KLR) (Constitutional and Human Rights) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9724 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

CONSTITUTIONAL PETITION E103 OF 2025

AB MWAMUYE, J

JUNE 12, 2025

BETWEEN

RESEKELLEN NJIRU ..... PETITIONER

AND

INTERNATIONAL LIVESTOCK RESEARCH INSTITUTE ... 1ST RESPONDENT

OFFICER COMMANDING STATION KABETE ..... 2ND RESPONDENT

GENERAL INSPECTOR OF POLICE ..... 3RD RESPONDENT

ATTORNEY GENERAL ..... 4TH RESPONDENT

RULING

1. The Petitioner has filed a constitutional Petition dated 28th February 2025, together with a Notice of Motion Application of even date, seeking interim conservatory orders. The 1st Respondent (the International Livestock Research Institute – ILRI) raised a Preliminary Objection and a separate application, both dated 2nd April 2025, contending that it is immune from legal process and should be struck out from these proceedings. This ruling determines both the Petitioner's application and the 1st Respondent's objection.

2. In the Notice of Motion of 28th February 2025, the Petitioner sought several interim orders.

   i. Spent.

   ii. That pending the hearing and determination of this application and Petition, a conservatory order be and is hereby issued restraining the 1st Respondent from taking any disciplinary

action against the Petitioner, including but not limited to termination of employment, based on any allegations made against her.

iii. That pending the hearing and determination of this application and Petition, the 1st Respondent be and is hereby compelled to supply the Petitioner with all relevant materials, evidence, correspondence, and internal reports forming the basis of the disciplinary proceedings against her.

iv. That pending the hearing and determination of this application and Petition, this Honourable Court do issue a temporary injunction restraining the 1st Respondent from harassing, threatening, or otherwise intimidating the Petitioner in the course of the alleged internal investigations or proceedings.

v. That pending the hearing and determination of this application and Petition, a conservatory order be and is hereby issued restraining the 1st Respondent from proceeding with any internal disciplinary process against the Petitioner without first complying with the requirements of fair administrative action.

vi. That pending the hearing and determination of this Petition, a conservatory order be and is hereby issued restraining the 2nd to 4th Respondents, jointly and severally, whether by themselves, their agents, or servants, from summoning, arresting, detaining, charging, or otherwise interfering with the liberty and security of the Petitioner in connection with her employment with the 1st Respondent.

vii. That a mandatory order be and is hereby issued compelling the 2nd and 3rd Respondents to furnish the Petitioner and this Honourable Court with a certified extract of Occurrence Book No. 44/07/02/2025 from the relevant police station, within fourteen (14) days of the date of this order.

viii. That costs of this application be provided for.

3. The Petitioner is an employee of ILRI. In her supporting affidavit (sworn on 26th February 2025), she avers that ILRI issued her with a show-cause letter alleging misconduct but failed to furnish her with the evidence in its possession to enable a meaningful response. She states that she fears being "hounded out of office without being given an opportunity to answer any charges" by ILRI. The Petitioner contends that ILRI's disciplinary process against her is tainted with irregularity and violates her rights to due process (including the right to fair administrative action under Article 47 of *the Constitution*). She therefore urges the Court to grant conservatory orders barring ILRI from proceeding with the disciplinary process and to protect her from any collaterally initiated criminal proceedings which she says have been instigated unfairly in connection with the employment dispute.

4. ILRI opposes the application on two main fronts. First, ILRI argues that prayers 2–5 of the application invite the Court to intervene in a purely internal employer-employee disciplinary matter that raises no substantial constitutional issue. ILRI contends that the Employment and Labour Relations Court (or the employer's internal mechanisms) is the proper forum for such disputes, and that this Court ought not interfere in an ongoing disciplinary process absent exceptional circumstances. Second, ILRI has invoked immunity from legal process. It asserts that it is an international organization operating in Kenya under a Host Country Agreement and Legal Notices issued pursuant to the *Privileges and Immunities Act* (Cap. 179, Laws of Kenya). By virtue of those instruments, ILRI claims to enjoy immunity from suit and legal process in Kenya unless it expressly waives that immunity – which it has not. The 1st Respondent therefore maintains that this Court lacks jurisdiction over it and seeks to be struck out of the Petition.

5. The 2nd to 4th Respondents similarly oppose the Petitioner's application. They maintain that any criminal investigations or actions relating to the Petitioner are lawful and should not be halted by an interim order. They also align with ILRI's position that the Petitioner's grievance is essentially an employment dispute.

6. From the foregoing, the Court distills the following key issues:

   i. Whether the Court has jurisdiction or a proper basis to grant the interim orders sought in prayers 2–5 of the application, which would effectively halt the 1st Respondent's internal disciplinary process;

   ii. Whether the 1st Respondent enjoys immunity from legal process, and if so, whether it should be struck out from the Petition for want of jurisdiction; and

   iii. Whether the Petitioner has met the legal threshold for grant of the conservatory orders sought in prayers 6 and 7 (including the mandatory order for disclosure of the OB extract).

Analysis

Court Intervention in Employer's Internal Disciplinary Process (Prayers 2–5)

7. It is a well-established principle in our jurisprudence that courts should be reluctant to interfere with an ongoing employer's internal disciplinary process except in exceptional circumstances where such intervention is necessary to prevent grave injustice. In the Employment and Labour Relations Court case of Fredrick Saundu Amolo v Principal Namanga Mixed Day Sec. School & 2 others [2014] eKLR, Mbaru J. held:

> "I find that the Court can only intervene in an employer's internal disciplinary proceedings until they have run their course, except in exceptional circumstances – that is, where grave injustice might result or where justice might not by other means be attained."

8. This means that ordinarily an employer should be allowed to complete its disciplinary procedure without judicial interference, and the employee can then seek remedies if the outcome or process violated the law. Early judicial intervention is reserved for cases where the very process is shown to be patently unfair or unlawful, such that the employee would suffer irreparable injustice if the process is allowed to proceed.

9. In the present case, the Petitioner's complaints that she was not provided with evidentiary material alongside the show-cause letter, and her apprehension that she may be removed without a fair hearing are essentially grievances about procedural fairness under ordinary employment law. These are matters that can be addressed through the mechanisms provided in the *Employment Act* 2007 and, if necessary, by ex post facto relief such as a claim for unfair termination in the Employment and Labour Relations Court. The Petitioner has not demonstrated that this is one of those rare cases where the Court's intervention is required before the disciplinary process is concluded. Notably, the disciplinary process had only reached the show-cause stage an initial step where the Petitioner is being asked to respond to allegations, and no final decision had been made. The Petitioner's fear of being "hounded out" without a hearing, while not trivial, is speculative at this stage; she would still have the opportunity to respond to the allegations and even to challenge any decision that might be taken, through the appropriate legal avenues. There is no clear evidence of bad faith, gross violation of the law, or ultra vires action by the employer that would elevate this matter into the realm of a constitutional violation requiring immediate court supervision.

10. Moreover, for prayers 2–5 the Court must be satisfied not only of prima facie merit but also that the dispute involves constitutional interpretation or enforcement outside the scope of ordinary employment law. The Constitutional and Human Rights Division (or a constitutional petition in the ELRC) is not a forum to convert every employment grievance into a constitutional question. The Court of Appeal has cautioned that where a legal remedy exists in a specialized domain (such as labour law), parties should not bypass it by dressing up their claims as constitutional violations unless there is a genuine question of constitutional interpretation involved. In this case, the Petitioner's rights to fair hearing and fair administrative action in the employment context substantially overlap with rights and procedures provided under statute (*Employment Act* and *Fair Administrative Action Act*). There is no novel or complex constitutional question presented; thus, the ordinary mechanisms suffice.

11. In light of the above principles, the Court finds that it would be improper to grant prayers 2, 3, 4, and 5 of the application. Stopping ILRI's disciplinary proceedings at this juncture would amount to unwarranted interference in the managerial prerogative of the employer without a compelling constitutional justification. Additionally, to the extent that the Petitioner's claim against ILRI is essentially an employment dispute, the specialized Employment and Labour Relations Court (a court of equal status to the High Court) is statutorily mandated to handle such matters. Article 165(5) of *the Constitution* bars the High Court from exercising jurisdiction in matters reserved for that specialized court. Accordingly, this Court lacks jurisdiction to entertain the pleas in prayers 2–5. Those prayers are declined for want of jurisdiction.

The 1st Respondent's Immunity from Legal Process

12. The 1st Respondent has persuasively demonstrated that it operates in Kenya under specific international agreements granting it certain immunities. In particular, ILRI is the successor to the International Laboratory for Research on Animal Diseases (ILRAD) and benefits from a Host Country Agreement (HCA) with the Government of Kenya dated 29th September 1994. By that Agreement (and pursuant to Section 9 of the *Privileges and Immunities Act*), ILRI was conferred the status of an international organization with legal personality, and Article V(1) of the HCA expressly provides ILRI, its property, and assets with immunity from every form of legal process except where it has expressly waived such immunity . This was further given effect through *Legal Notice No. 2 of 2001*, which extended to ILRI the privileges and immunities previously enjoyed by ILRAD.

13. ILRI has not waived its immunity in this case. The evidence on record (including the affidavit and documents filed by ILRI) shows that ILRI entered appearance under protest and immediately raised the immunity objection. ILRI's Host Country Agreement stipulates that any dispute against it (other than by the Kenyan Government) should be referred to the Ministry of Foreign Affairs for negotiation and settlement. ILRI asserts that the Petitioner did not pursue or exhaust that avenue, and in any event ILRI has not consented to submit to this Court's jurisdiction. In law, an immunity of this nature means ILRI is not subject to suit or legal process in Kenyan courts unless it chooses to be.

14. The practical consequence of ILRI's immunity is that this Court has no jurisdiction over ILRI in these proceedings. This position is supported by case law. For instance, in Karen Njeri Kandie v Alassane Ba & Another (Shelter Afrique case) [2017] eKLR, the Supreme Court of Kenya upheld the immunity of an international organization and its officers, noting that such immunity, once validly conferred by law and treaty, must be respected by municipal courts unless lawfully waived. Likewise, in Kenya Agricultural Research Institute v Farah (a Court of Appeal decision) and Tononoka Steels Ltd v EADB, Kenyan courts have recognized that certain international entities enjoy immunity which can bar suits against them. While the doctrine of absolute immunity has evolved with modern international law favoring restrictive immunity, especially for commercial or private-law dealings, our own Supreme

Court in the Kandie/Shelter Afrique case effectively reaffirmed that an employment dispute with an international organization like ILRI falls within the scope of its official functions and thus within the bounds of immunity, absent a waiver. Consequently, ILRI's claim of immunity is well-founded and has not been defeated by the Petitioner.

15. In view of the above, the 1st Respondent's Preliminary Objection is meritorious. The Court allows the objection. The 1st Respondent (ILRI) is hereby struck out as a party from both the Petition and the Notice of Motion dated 28th February 2025. This means that no orders can be issued, even on an interim basis, against ILRI in these proceedings. (It bears emphasizing that this outcome is dictated by law and not a pronouncement on the merits of the employment dispute. The Petitioner may have other avenues such as invoking the dispute resolution mechanism under the Host Country Agreement via the Ministry of Foreign Affairs but this Court cannot exercise jurisdiction over ILRI). Accordingly, prayers 2–5 of the application, which were directed at ILRI, stand dismissed.

16. As regards costs consequent upon ILRI's striking out, the Court notes that ILRI's appearance was solely to assert its immunity. In the circumstances, and given the ongoing relationship between the Petitioner and ILRI, it is appropriate that each party bear its own costs on the matters of ILRI's objection. The Petition shall proceed for hearing only against the remaining Respondents. For clarity, following ILRI's exit, the original 2nd, 3rd, and 4th Respondents shall henceforth be referred to as the 1st, 2nd, and 3rd Respondents respectively in the continuation of the case.

Threshold for Grant of Conservatory Orders (Prayers 6 and 7)

17. The remaining prayers in the Petitioner's application are aimed at preserving the status quo and preventing harm pending the hearing of the Petition. Prayer 6 seeks a conservatory order to restrain the (now) 1st to 3rd Respondents who are government authorities from "summoning, arresting, detaining and/or recommending or facilitating the prosecution of the Petitioner" in relation to any matter touching on the Petitioner's employment with ILRI, until the Petition is heard and determined. Prayer 7 seeks a mandatory order compelling certain Respondents to provide the Petitioner with a copy of a police Occurrence Book (OB) extract (No. OB 44/07/02/2025) and to file the same in court within 14 days. The Petitioner's apprehension (as gleaned from her pleadings) is that after she challenged her disciplinary process, a complaint was lodged with police (or other investigative agencies) possibly by ILRI or its officials and that she faces an imminent threat of arrest or criminal charges as a means to intimidate or victimize her. She seeks the court's protection to avert what she views as an abuse of power and to ensure a fair process.

18. The power of a constitutional court to issue conservatory orders is found in Article 23(3)(c) of *the Constitution*. The principles governing the grant of such orders are now well settled. Unlike ordinary civil injunctions (which focus largely on private-party rights and the risk of irreparable harm), conservatory orders in constitutional matters have a public law dimension and are meant to maintain constitutional status quo or prevent violation of rights pending the final determination. The applicant must satisfy a three-part test. First, the applicant must establish a prima facie case, or at least an arguable case, disclosing a real constitutional grievance with a likelihood of success. This does not mean the court conclusively determines the merits, but there should be a genuine case that is not frivolous.

19. Second, the applicant should demonstrate that absent the conservatory order, he or she is likely to suffer prejudice as a result of the threatened violation – in other words, that there is a real danger of injury or irreversible harm if the court does not intervene. This often overlaps with showing that the petition (or its substratum) will be rendered nugatory if no interim protection

is given. Third, the court considers where the balance of convenience and public interest lies. The court asks whether granting or denying the order will enhance constitutional values, uphold the rights in question, and generally serve the public interest in the case. (Public interest is particularly pertinent where the orders sought may affect functions of public agencies or the enforcement of law).

20. In the case at bar, even after removing ILRI as a party, the Petition raises concerns that implicate constitutional rights. The Petitioner alleges that state actors (police and prosecutors) are being deployed to her detriment in a matter that essentially stems from a private employment dispute. If true, this could engage rights such as the right to liberty and security of the person, freedom from abuse of legal process, and the right to fair administrative action. It is arguable that using criminal law mechanisms to resolve what is essentially an employment or administrative issue might amount to an abuse of power or violation of the Petitioner's rights, including the right to equal protection and benefit of law. The Court is careful not to prejudge the facts, but it is satisfied that the Petitioner's contentions are not frivolous. There is a substantive question whether the criminal process (summons, arrest, prosecution) is being misused as alleged, which deserves full examination at the hearing of the Petition. This suffices to establish an arguable prima facie case.

21. The Petitioner has also demonstrated that she stands to suffer serious prejudice if interim protection is withheld. If the police or other authorities were to arrest and charge her in the interim, she would suffer loss of liberty, reputational harm, and the stress and burden of criminal proceedings. Such harm cannot be adequately compensated by any later relief. Furthermore, allowing a prosecution to proceed (if indeed it is improperly motivated) could moot the Petition or render its outcome merely academic. In constitutional litigation, courts have often granted conservatory orders to forestall actions that would otherwise defeat the purpose of the petition or render the enforcement of fundamental rights difficult. Here, the substratum of the petition is the Petitioner's claim that she is being unfairly targeted; if she were to be arraigned in court or detained, the scales would be irrevocably tilted. Thus, the irreparable prejudice limb is satisfied.

22. The public interest factor also tilts in the Petitioner's favor on these facts. While the state has a legitimate interest in investigating and prosecuting crime, it is equally in the public interest to ensure that criminal law is not used oppressively or for ulterior purposes. If indeed the dispute is purely civil or administrative in nature, the public interest is served by maintaining the civilian dispute-resolution process (here, the pending Petition) and not allowing potentially abusive criminal action to proceed in the meantime. On the other hand, granting a conservatory order in this case does not occasion any significant prejudice to the public or the Respondents if the intended criminal process is bona fide, it will only be temporarily held in abeyance, and can proceed if the Petition is ultimately unsuccessful. Protecting constitutional rights and the rule of law is inherently a public interest goal. The Court finds that in the interim, preserving the Petitioner's liberty and ensuring a fair resolution of her grievance outweighs any countervailing interest.

23. Prayer 7 seeks a mandatory order at the interlocutory stage specifically, to compel the concerned Respondents to disclose and furnish the Petitioner with the OB extract reference OB 44/07/02/2025. The Court is mindful that granting a mandatory injunction at an interlocutory stage is an extraordinary remedy. The threshold for such relief is higher than that for a prohibitory injunction. The Court of Appeal in Kenya Breweries Ltd & Another v Washington O. Okeyo [2002] eKLR stated that "a mandatory injunction can be granted on an

interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted." The court must be satisfied that the case is unusually clear and straightforward, or that special circumstances exist. Additionally, the court should feel a "high degree of assurance" that at trial it will appear that the mandatory order was rightly granted. This test has been reiterated in our courts, emphasizing caution in ordering a party to take positive action before the merits are determined, unless the right to such relief is quite clear.

24. In the present situation, the mandatory order sought is limited in scope and geared towards facilitating fairness in the ongoing proceedings. The OB 44/07/02/2025 is essentially a formal record of a complaint lodged with the police. The Petitioner asserts that knowledge of what is recorded in that OB entry is critical for her to understand the nature of any allegations against her and to prepare her defense both in this Petition and in any potential criminal matter. The Respondents did not articulate any lawful basis for refusing to provide this record; indeed, an Occurrence Book extract is a public record of a complaint and ought to be available to a person implicated by it. Given that ILRI (the complainant, presumably) is now out of the proceedings, the mandatory order is directed at the police and prosecution authorities (now the 1st and 2nd Respondents). Providing the OB extract is a straightforward ministerial act that does not unduly burden the Respondents. It is an action that can be easily complied with and, if ultimately the Petition fails, it does not prejudice the Respondents' position on the merits. In the Court's view, this amounts to a "special circumstance" warranting a mandatory interim order. It will promote transparency and possibly facilitate an amicable or expedited resolution. Moreover, the Court has a high degree of assurance that the propriety of this disclosure will be vindicated at trial withholding such basic information would offend notions of fair play.

25. The Court is satisfied that the Petitioner has met the requisite threshold on all the limbs for the grant of conservatory relief (in prayer 6) and the ancillary mandatory order (prayer 7). Granting these orders will preserve the rights in question and the integrity of the judicial process without determining the ultimate issues in dispute. It bears repeating that these orders are interim in nature they do not amount to a finding of wrongdoing by the Respondents, nor do they absolve the Petitioner if there is legitimate cause for investigation. The orders' purpose is to hold the situation steady, protect constitutional rights, and prevent irreparable harm while the Petition is heard on its merits.

Disposition

26. In light of the foregoing analysis, the Court makes the following orders in the interests of justice:

    a. The 1st Respondent's Preliminary Objection dated 2nd April 2025 is upheld. Consequently, the 1st Respondent (International Livestock Research Institute – ILRI) is hereby struck out as a party to the Petition and to the Notice of Motion application, both dated 28th February 2025. (Prayers 2, 3, 4, and 5 of the Petitioner's application being directed against ILRI – are accordingly declined for want of jurisdiction.) The former 1st Respondent shall bear its own costs with respect to the objection and application.

    b. The Petition shall proceed against the remaining Respondents only. For clarity, following the removal of ILRI, the current 2nd, 3rd, and 4th Respondents (as per the original pleadings) shall be re-designated as the 1st, 2nd, and 3rd Respondents respectively in all further proceedings.

    c. Pending the hearing and determination of the Petition herein, a conservatory order is hereby issued restraining the (reconstituted) 1st to 3rd Respondents, jointly and severally, and whether acting directly or through their servants or agents, from summoning, arresting, detaining and/

or recommending or facilitating the prosecution of the Petitioner with respect to any matter touching on the Petitioner's employment with the International Livestock Research Institute.

d. A mandatory order be and is hereby issued compelling the 1st and 2nd Respondents (as re-numbered) to avail to the Petitioner and to file in this Court a certified copy of the Occurrence Book extract for OB Ref. No. 44/07/02/2025 within fourteen (14) days from the date of this ruling.

e. In view of the striking out of ILRI as a party, the Petitioner is granted leave, if she so wishes, to file and serve an Amended Petition to align the pleadings with the changed composition of parties and to refine the issues. Such amendment may be done within forty-five (45) days from today. If no amendment is filed within that time, the Petition shall proceed on the basis of the existing petition (with the understanding that ILRI is no longer a party). The Court will give further directions on the hearing of the Petition at the next case management mention, which should be scheduled in due course.

f. costs of shall be in the cause.

Orders Accordingly.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 12TH DAY OF JUNE 2025.

.....

BAHATI MWAMUYE

JUDGE