



Seth & 2 others v Ministry of Interior and Coordination of National Government & 3 others (Petition 6 of 2019) [2024] KEHC 1322 (KLR) (7 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1322 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
PETITION 6 OF 2019
DKN MAGARE, J
FEBRUARY 7, 2024**

**IN THE MATTER OF THE ENFORCEMENT IF THE BILL OF
RIGHTS UNDER ARTICLE 22(1) OF THE CONSTITUTION
AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLE
2(1), 10,12,19,20,21,24,25,27,28,54, &56 OF THE CONSTITUTION**

BETWEEN

**ANUNDA ADAMS SETH 1ST PETITIONER
FRANKLINE OMBASA 2ND PETITIONER
ELIZABETH LOKDOLI 3RD PETITIONER**

AND

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT 1ST RESPONDENT
COUNTY COMMISSIONER OF KISII 2ND RESPONDENT
KENYA NATIONAL BUREAU OF STANDARDS 3RD RESPONDENT
ATTORNEY GENERAL 4TH RESPONDENT**

RULING

1. The Petitioners vide their Petition dated 2nd October 2020 sought reliefs for the alleged infringement of their constitutional rights.
2. The rights stated to be infringed were particularized to flow from Articles 25, 27, 28, 54, and 56 of the Constitution.



3. When the matter came up before me, I directed parties to file submissions.
4. On reading the Petition, it is apparent that it is not simply a Petition for enforcement of rights. Conversely, it is a Petition on whether the Respondents had a right to terminate the services of the Petitioners on account of the nature of their disability.
5. There is no other question to be determined. There is thus no predominant question of Constitutional Rights.
6. The matter was brought before this Court as a Constitutional Petition but as this Court and Superior Courts have observed, not every issue brought before a Court of law is a Constitutional issue.
7. It is important to figure out the threshold a matter ought to meet before it is considered as a Constitutional question. This is intended to avoid raising statutory questions as Constitutional issues. This was well set out in the now famous case of *Anarita Karimi Njeri v Attorney General* [1979] eKLR 154 where the court stated that if a person is seeking redress from the Court on a matter which involves a reference to the *Constitution*, it is important that he should set out with reasonable degree of precision that of which he complains, that provision said to be infringed and the manner in which they are alleged to be infringed. This has been reiterated in the case of *Kamlesh Mansukhlal Ramkji Pattni v The Attorney General* [2001] eKLR, 264.
8. Under article 165 (5)2 of the *Constitution*, it is provided doth

The High Court shall not have jurisdiction in respect of matters falling within the jurisdiction of the courts contemplated in Article 162
9. I note that Article 162 (2) of the *Constitution* provided doth:
Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to
 - (a) Employment and labour relations; and
 - (b) The environment and the use and occupation of, and title to, land.
10. In the case of *Mohamed Ali Baadi and others v Attorney General & 11 Others* [2018] eKLR, the Court stated doth:

We are fully aware of the provisions of Article 165(5)(b) of the *Constitution* which limits the jurisdiction of the High Court with respect to matters falling within the jurisdiction of the Courts set up under Article 162(2) of the *Constitution*. Article 162(2)(b) provides for the establishment of a Court with the status of the High Court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land.
11. Therefore, I find that the questions presented in the Petition are the kind to be dealt with by a court established under Article 162(2)a of the *Constitution*.
12. I consequently transfer the entire Petition to be the employment and Labour Relations Court at Kisumu for determination of the issues raised herein.
13. It is also my finding that the issues of breach of other laws and constitutional imperative are peripheral to the determination of this case.



Determination

14. In the circumstances I make the following orders: -

- a. The Petition is transferred to the Employment and Labour Relations Court at Kisumu for hearing and determination.
- b. Costs shall abide the outcome of the Petition.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 7TH DAY OF FEBRUARY, 2024.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

Ms Ndemo for Kerosi for Petitioner

No appearance for the Respondent

Court Assistant – Brian

