



**McKnight v Limika (Petition 6 of 2023) [2024] KEHC 15765 (KLR)
(Constitutional and Human Rights) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION 6 OF 2023
LN MUGAMBI, J
DECEMBER 13, 2024**

BETWEEN

NABII AKM MCKNIGHT PETITIONER

AND

SSGT IRENE LIMIKA RESPONDENT

RULING

Introduction

1. The Petitioner in a Petition dated 24th March 2023 sued the Respondent for not only violating his constitutional rights under Article 29, 30 and 54 of *the Constitution* but also being in breach of Section 126 of the Kenya Defense Forces Act and Sections 2(1), 23(1) and 43(1) of the *Sexual Offences Act*.
2. In response to the Petition, the Respondent filed a Notice of Preliminary Objection dated 25th August 2023 hence this ruling. This Objection is based on the following singular ground:

The Petition dated 24/03/2023 and Application dated 21/08/2023 lacks clarity and has failed to set out with reasonable precision that which he complains of as well as the provisions allegedly infringed and does not indicate the manner in which the Respondent has purportedly infringed or violated any rights.

Petitioner's Case

3. In rejoinder to this objection, the Petitioner opposed the Preliminary Objection on the ground that:
 - i. It is stated that the Respondent's Counsel averred that the Petitioner fails to specify the purported contravened provisions and further give particulars of the said contravention within the body of the Petition. However, the Petitioner notes that he did not cite any Articles in his



title but in his prayers as declarations sought in view of the provisions violated given that he is a pauper and layman in filing this Petition. He added that the declarations sought, rely on all paragraphs in the Petition read as a whole and in context.

- ii. The Petitioner's claim is not civil in nature as:
 - a. The context between parties is that of volunteership rather than employment or contractual business.
 - b. He has sought leave via the Notice of Motion dated 20th October 2023 to litigate parts of the Petition touching on the *Sexual Offences Act* and KDF Act in the Criminal and Military Courts.
- iii. The Preliminary Objection is an abuse of court process, a delay tactic and so should be dismissed.
- iv. The Notice of Motion dated 20th October 2023 should be determined.
- v. The Respondent's Counsel served the Petitioner with written submissions dated 18th October 2023 on 23rd October 2023 out of the time set by Court and via email rather than physically as directed by the Court.

Parties' Submissions

Respondent's Submissions

4. Allan Muluma Advocates on behalf of the Respondent filed submissions dated 18th October 2023 in support of her Preliminary Objection. The only issue identified for determination was: whether the Petition satisfies the specificity test as set out under *Anarita Karimi Njeru v Republic* [1979] KEHC 30 (KLR).
5. Counsel submitted that the Petitioner had cited a number of Articles alleged to have been violated but failed to provide particulars to support these allegations and the manner of infringement. Particularly, Counsel highlighted Paragraphs 5, 6, 7, 8, 9, 11, 15, 17 and 18 in the Petition.
6. It was noted that pleadings are a tenet of substantive justice and thus a Petitioner is required to frame issues precisely as an extension of this principle. Reliance was placed in *Thorp v. Holdsworth* [1876] 3 Ch. D. 637 where it was held that:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules —— was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided’ was. In fact, the whole meaning of the system is to narrow the parties to definite issues, and thereby to diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”
7. Like dependence was placed in *David Mathu Kimingi v SMEC International PTY Limited* (2021) eKLR and *Kenneth Gona Karisa v Top Steel Kenya Limited* (2020) eKLR.
8. Furthermore, Counsel submitted that the instant Petition is disguised as a constitutional petition yet is civil in nature. As such the same ought to be addressed before the proper forum not this Court. Considering this, Counsel submitted that the Petition does not meet the threshold for constitutional petitions and so should be dismissed.



Petitioner's Submissions

9. The Petitioner's submissions to the Respondent's preliminary objection are neither in the Court file or the CTS.

Analysis and Determination

10. It is my view that the only issue for determination is:

Whether the Respondent's Notice of Preliminary Objection meets the set threshold and if so whether it is merited

11. What constitutes a preliminary objection was reiterated in *DJC v BKL [2022] KEHC 10189 (KLR)* as follows:

"7. The Supreme Court in *Hassan Ali Joho & Another v Suleiman Said Shahbal & 2 Others* cited the leading decision on Preliminary Objections, *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd. (1969) EA 696*, where the Court held as follows:

" a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion".

8. The Supreme Court in *Independent Electoral & Boundaries Commission v Jane Cheperenger & 2 Others [2015] eKLR* made the following observation as relates to Preliminary Objections:

"... The true preliminary objection serves two purposes of merit: firstly, it serves as a shield for the originator of the objection—against profligate deployment of time and other resources. And secondly, it serves the public cause, of sparing scarce judicial time, so it may be committed only to deserving cases of dispute settlement. It is distinctly improper for a party to resort to the preliminary objection as a sword, for winning a case otherwise destined to be resolved judicially, and on the merits."

12. Equally in *Dismas Wambola v Cabinet Secretary, Treasury & 5 others (2017) eKLR*, the Court noted as follows:

"A preliminary objection must first, raise a point of law based on ascertained facts and not on evidence. Secondly, if the objection is sustained, that should dispose of the matter. A



preliminary objection is in the nature of a legal objection not based on the merits or facts of the case, but must be on pure points of law.

It may be noted that preliminary objections are narrow in scope and cannot raise substantive issues raised in the pleadings that may have to be determined by the court after perusal of evidence....”

13. The instant preliminary objection raises a singular issue: that the Petition fails to meet the constitutional threshold set out in *Anarita Karimi*(supra). If successful, it is capable of disposing of the whole matter. It is worthy to note that at this juncture the Court is not concerned with the merits of the case but whether the preliminary objection is merited.
14. The Respondents attacks the Petition for its failure to provide specifics of the alleged violated constitutional provisions and a descriptive manner in which the violations happened. The Respondent thus asserts that the Petition does not meet the threshold of a constitutional petition.
15. The threshold was re-stated by the Court of Appeal in *Mumo Matemu vs Trusted Society of Human Rights Alliance & 5 others* (2013) eKLR as follows:

“(42) However, our analysis cannot end at that level of generality. It was the High Court’s observation that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting.” Yet the principle in *Anarita Karimi Njeru* (supra) underscores the importance of defining the dispute to be decided by the court. In our view, it is a misconception to claim as it has been in recent times with increased frequency that compliance with rules of procedure is antithetical to Article 159 of *the Constitution* and the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* (Cap 21) and section 3A and 3B of the *Appellate Jurisdiction Act* (Cap 9). Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

- (43) The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19, 20 and 73 of *the Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of



the petition alleged that the Government of Kenya had overthrown *the Constitution*, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of *the Constitution* and the rule of law, without any particulars.

(44) We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting,” without requiring remedy by the 1st respondent.”

16. A constitutional petition, just like any other pleading must not embarrass the adverse party who must know what exactly it is that he/she is accused of so as to be able to defend or answer the allegations. The Court should also be in a position to appreciate what the issues in controversy are. That is the essence of particularity test for if the pleadings are vague, it is a tall order for the court to reach a just resolution in a nebulous dispute.
17. A pleading that is overbroad is unacceptable as it undermines fair trial. A Petitioner should thus set out in his/her petition the complaint with reasonable degree of precision by clearly stating the facts that show how *the Constitution* has been violated.
18. A Petition that does not meet this threshold cannot be valid and sustainable and the court will not allow it. There must be clarity in presentation of factual situation relied upon to seek court intervention.
19. Looking at the present Petition, it is imprecise, mixed-up and confounding. The nature of the complaint is difficult to decipher or isolate from the many scenarios presented. I am aware that under rule 10 (3) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013; the Court may accept an oral application or a letter that discloses denial, violation, infringement of a right but this would only happen where there is clarity in the nature of the complaint laid which the present petition absolutely lacks and thus cannot be resuscitated under Rule 10 (3).
20. The Petitioner, despite the spirited objection did not see the need to amend the Petition. He instead insisted on proceeding with the same as it is despite very clear pointers that the Petition is blurred. I have no option but to strike out the Petition.
21. Considering that the Petitioner filed this Petition as a pauper, I order that each party shall bear its own costs of the Petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF DECEMBER, 2024.

.....
L N MUGAMBI

JUDGE

