



**Ngatia v Nairobi City County Public Service Board & 2 others (Employment and Labour Relations Petition E156 of 2024) [2025] KEELRC 2531 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2531 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E156 OF 2024  
HS WASILWA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**FRANCISCAH MUTHONI NGATIA ..... PETITIONER**

**AND**

**NAIROBI CITY COUNTY PUBLIC SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY GOVERNMENT OF NAIROBI ..... 2<sup>ND</sup> RESPONDENT**

**GODFREY AKUMALI COUNTY SECRETARY NAIROBI CITY COUNTY  
GOVERNMENT, ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Petitioner's Case**

1. By a Petition dated 3<sup>rd</sup> October 2024, the Petitioner sought for the following reliefs; -
  - a. A declaration be and is hereby issued that the Respondents have violated the Petitioner's right to fair labor practices as guaranteed under *the Constitution* of Kenya 2010.
  - b. A declaration be and is hereby issued that the Respondents have contravened Article 232 (1) (i) and 236 (a) of *the Constitution* of Kenya 2010.
  - c. An order of Mandamus be and is hereby issued against the 3<sup>rd</sup> Respondent to ensure compliance with the decision of the Public Service Commission County Appeal No. 061 of 2023 dated 13<sup>th</sup> March 2024 and judgement/decree of this Honourable Court.
  - d. Payment of the net salary of the Petitioner to be computed in accordance with the decision of the Public Service Commission County Appeal No. 061 of 2023 dated 13<sup>th</sup> March 2024 up to the date of delivery of this judgement.



- e. The Respondents to remit all statutory deductions of the Petitioner to the appropriate statutory bodies.
- f. General damages.
- g. Exemplary damages
- h. Costs of this petition.
- i. Such other alternative reliefs as the Court shall deem just and expedient.

### **Petitioner's Case**

2. The Petitioner avers that she was initially employed by the national government on 4<sup>th</sup> July 1988 and in 2013, she was seconded to the 2<sup>nd</sup> Respondent. At the time of the transfer, she had a Diploma in medical laboratory sciences from the Kenya Polytechnic (now the Technical University of Kenya) which she had acquired in 2009.
3. The Petitioner avers that she stagnated in her then job designation for about eight years even though she was due for promotion and this propelled her to upgrade her qualifications and acquired a bachelor's degree in veterinary medicine in August 2016.
4. The Petitioner avers that on 3<sup>rd</sup> October 2016, she was deployed by the then County Director of Veterinary Services (CDVS) to Westlands subcounty as a veterinary officer but was still earning animal health assistant salary. On 4<sup>th</sup> September 2017, she applied for re-designation to Nairobi City County as a Veterinary Officer accompanied by her Bachelor's degree in Veterinary Medicine of which she received no response and no action was taken on the same.
5. The Petitioner avers that in 2021, she furthered her education and attained a Post Graduate Diploma in Veterinary Epidemiology and Public Health from University of London.
6. It is the Petitioner's case that in 2021, she lodged a complaint to the Public Service Commission (PSC), (REF: PSC10/2021/6983) due to the 1<sup>st</sup> Respondent's refusal to re-designate and promote her.
7. The Petitioner avers that on 12<sup>th</sup> January 2022, the Nairobi City County Chief Officer- Food, Agriculture and Forestry issued a memo on deployments to the Nairobi City County which included the deployment of the Petitioner.
8. On 26<sup>th</sup> January 2022, the Public Service Commission wrote to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents informing them of the Petitioner's request for re-designation and promotion and directed them to process the Petitioner's case in accordance with the prevailing rules and regulations.
9. The Petitioner avers that in 2022, she upgraded her education and obtained a Post Graduate Diploma in Sustainable and Safe Livestock Production from Farm to Fork from Copenhagen University in Denmark.
10. Subsequently, in December 2022, the 1<sup>st</sup> Respondent made an internal advertisement for Director Veterinary Services, Deputy Director Veterinary Services (Animal Health) and Deputy Director Veterinary Services (Veterinary Public Health). The Petitioner applied for all these positions because she possessed the primary qualifications, but she was not shortlisted for any despite her qualifications, years of public service and experience which span over a decade.



11. The Petitioner avers that on 15<sup>th</sup> February 2023, the Kenya Veterinary Association wrote to the 1<sup>st</sup> Respondent highlighting the Petitioner's grievance and requesting that her pending re-designation for 7 years and promotion for 13 years be addressed by the 1<sup>st</sup> Respondent.
12. It is the Petitioner's case that the Respondents' failure to action any of her continuous requests on re-designation and promotion, led her to file an appeal on 9<sup>th</sup> June 2023 to PSC, Public Service Commission County Appeal No. 061 of 2023. However, the Respondents failed to file a response to the appeal despite being served on 16<sup>th</sup> June 2023.
13. Consequently, PSC in the appeal, directed that, "the Appellant be issued with the promotion letter for "K" to job group "L" and she be paid all the salaries and benefits attached thereto from the time it became due until payment in full; and the Appellant be issued with the promotion letter in respect of her second promotion in the financial year 2023/2024 and the said promotion to correctly indicate that it is from job group "L" to job group "M" and she be paid all the salaries and benefits attached thereto from the time it became due until payment in full to date.'
14. The Petitioner avers that she was also directed in Public Service Commission County Appeal No. 061 of 2023 to re-submit her requests for re-designation to the Respondent for consideration and determination with seven days from the date of the decision.
15. She re-submitted her request for re-designation within the stipulated time on 18<sup>th</sup> March 2024 as directed by the Public Service Commission, but no action has been taken by any of the Respondents to date.
16. It is the Petitioner's case that she is due for retirement in the next 2 years without any form of career and financial progression during her tenure in public service despite her 14 years of exemplary public service to the 2<sup>nd</sup> Respondent.
17. The Petitioner avers that by failing to re-designate and promote her when it was rightfully due, the Respondents violated her right to fair labour practices under Article 41 of *the Constitution* and the values and principles of public service which include equal opportunities for appointment, training and advancement, at all levels of the public service of men and women under Article 232(1) of *the Constitution*
18. The Petitioner avers that the Respondents violated the her right to equal protection and benefit of the law under Article 27(1) of *the Constitution* by failing to implement the lawful decision of the Public Service Commission County Appeal No. 061 of 2023 in favour of the Petitioner.
19. It is the Petitioner's case that the Respondents violated the values and principles of public service which include equal opportunities for appointment, training and advancement, at all levels of the public service of men and women under Article 232(1) of *the Constitution* by failing to provide adequate reasons in writing for not rightfully promoting her when it fell due to her.

### **Respondents' Case**

20. In opposition to the Petition, the Respondents filed a Replying Affidavit dated 24<sup>th</sup> June 2025 sworn by Violet A. Oyangi, the 1<sup>st</sup> Respondent's Ag. Board Secretary.
21. The Respondents admit that the Petitioner is the 2<sup>nd</sup> Respondent's employee serving as a veterinary officer in having been seconded from the National Government in 2013.
22. The Respondents further admitted that the Petitioner upgraded her qualifications in August 2016 by obtaining a Bachelor's degree in Veterinary Medicine, and subsequently applied for re-designation



- on 4<sup>th</sup> September 2017, but no immediate response was provided. The Petitioner further attained a Postgraduate Diploma in Veterinary Epidemiology and Public Health in 2021 and later a Postgraduate Diploma in Sustainable and Sale Livestock Production from Copenhagen University in 2022.
23. The Respondents aver that although the Petitioner furthered her education and acquired additional qualification there is no automatic entitlement to re-designation.
  24. It is the Respondents' case that they did not discriminate against the Petitioner. The delay in considering and implementing her re-designation and promotion was not targeted or discriminatory, but was due to historical stagnation within the County Public Service since 2014 occasioned by a lack of funds.
  25. The Respondents assert they did not act in bad faith or in violation of the Petitioner's constitutional rights and that the failure to promote her to date has been due to administrative processes and operational constraints. However, the current County Public Service Board upon assuming office, undertook to address this stagnation by carrying out mass promotions in 2020.
  26. During the said mass promotions, the Petitioner was among those considered for promotion, having been promoted from Job Group 'K' to Job Group 'L'. However, due to an administrative error in the payroll system, this promotion was not implemented in the system at that time, resulting in her continued listing in Job Group K.
  27. The Respondents aver that the next phase of promotions occurred after three years, during which the Petitioner was again considered and promoted from Job Group K to Job Group L.
  28. It is the Respondents' case that the 1<sup>st</sup> Respondent has already identified the oversight in implementing the Petitioner's initial promotion in 2020 and is in the process of rectifying and regularizing the same.
  29. The Respondents aver that they have acted in good faith and in accordance with the law at all times, and the delays experienced were due to systemic and operational factors beyond their control not due to discrimination or unfair treatment.
  30. It is the Respondents' case that promotion and re-designation are managerial prerogatives dependent on various factors, including budgetary provisions, availability of positions, and compliance with human resource policies, and not an automatic constitutional entitlement under Article 41 of *the Constitution*.

### **Petitioner's Submissions**

31. The Petitioner submitted that she was employed by the National Government in 1988, as an animal health assistant and was seconded to the 2<sup>nd</sup> Respondent in 2013. However, she has been unable to receive re-designation and/or promotion to date. After 37 years of exemplary civil service, she still occupies the same position despite attaining four significant academic qualifications as her career progressed.
32. The Petitioner submitted that she initially applied to the 1<sup>st</sup> Respondent for re-designation as a veterinary officer with full remuneration and benefits but received no response necessitating her to lodge a complaint to the Public Service Commission. In 2022, the 3<sup>rd</sup> Respondent's Chief Officer-Food, Agriculture and Forestry announced deployments to Nairobi City County which included her deployment that was never implemented, while in the same year the Public Service Commission directed the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to process her case in a just manner.



33. The Petitioner submitted that in December 2022, the 1<sup>st</sup> Respondent advertised for Director Veterinary Services, Deputy Director Veterinary Services (Animal Health), and Deputy Director Veterinary Services (Veterinary Public Health), however, she was not shortlisted for any of the positions despite her qualifications and years of public service. This led Kenya Veterinary Association to contact the 1<sup>st</sup> Respondent and requesting her re-designation for 7 years and promotion for 13 years, however, the 1<sup>st</sup> Respondent failed to address these requests, leading the Petitioner to file an appeal to the Public Service Commission in Public Service Commission County Appeal No. 061 of 2023.
34. It is the Petitioner's submission that the Public Service Commission in its decision directed that the Petitioner: be issued with a promotion letter for the year 2020 from job group "K" to "L"; be paid all salaries, remuneration and benefits from the time the same became due until payment in full; and she re-submits her re-designation requests to the Respondents within seven days of the decision. However, the Respondents remain obstinate not to heed to the decision despite participating in the hearing of the appeal and the decision being sent to them together with a reminder on their action by her advocates.
35. The Petitioner submitted that under Section 85 of the Public Service Commission Act, PSC sat as quasi-judicial authority and its decision was delivered and was not challenged by the Respondents within the six months statutory period as stipulated under Section 88 of the Act.
36. It is the Petitioner's submission that this court's jurisdiction flows from either a statute or the Constitution or both. Section 89(1) of the Public Service Commission Act confers upon the Employment and Labour Relations Court powers to enforce decisions of the Public Service Commission appeals. Additionally, under Article 162(1) (2)(a) of the Constitution, the Employment and Labour Relations Court is of the same status as the High Court hence they can determine matters of violation of fundamental right in the work place and incidental thereto and on constitutional validity of a statute in employment and labour matters as was held in Kenya Tea Growers Association & 2 others v The National Social Security Fund Board of Trustees & 13 others.
37. The Petitioner submitted that the County Public Service Board is established under Section 57 of the County Government Act as a body corporate capable of suing and being sued. Its functions are stipulated under Section 59 of the Act which includes: " to appoint persons to hold or act in the offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments; to promote in the county public service the values and principles referred to in Article 10 and 232 of the Constitution; to advise the county government on human resource management and development..." Furthermore, the 1<sup>st</sup> Respondent was a Respondent in Public Service Commission County Appeal No. 061 of 2023, thus, the PSC decision is binding upon them.
38. The Petitioner submitted that Article 27(4) of the Constitution and Section 5 of the Employment Act prohibits discrimination of employees in any form. However, the Respondents' actions evidence their discrimination against her when other employees received their promotions and attendant remuneration and salaries, but she is yet to receive the same.
39. It is the Petitioner's submission that she has suffered greatly from the Respondents contravention of her constitutional rights. The Petitioner contends that there are no grounds or reasons that can be provided to this court to justify the intentional stagnation of her career despite her exemplary service and continuous professional development displayed. Therefore, she is entitled to general damages of Kshs. 30,000,000.



40. The Petitioner submitted that an award of exemplary damages is within the judicial discretion of this court going by the conduct of the Respondents; she believes that the award may serve as a deterrent effect of any similar occurrence in future.
41. The Petitioner relied in *Jasbir Singh Rai & 3 Others V Tarlochan Singh Rai & 4 Others* [2007] KECA 21 (KLR) and submitted that the general rule is that costs follow the suit. This is not a public interest suit, but a violation of petitioners' constitutional rights individually.

### **Respondents' Submissions**

42. The Respondents submitted on three issues: whether the petition offends the principle of constitutional avoidance; whether the Respondent have infringed on the Petitioner's rights; and whether the Petitioners deserve to be granted the prayers sought.
43. On the first issue, the Respondents submitted that a court will not determine a constitutional issue when a matter will properly be decided through other avenues. They relied in *KKB v SCM & 5 others* [2022] KEHC 289 (KLR) wherein the court held: "the doctrines of ripeness and constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. In other words, a constitutional issue is not ripe for determination until the determination of the constitutional issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance and ripeness avert the determination of the constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant 's cause....."
44. The Respondents submitted that the petition does not demonstrate any question of interpretation or application of *the constitution*. They argue that the Petitioner's complaints are more appropriately addressed under the statutory regime rather than through constitutional litigation.
45. On the second issue, the Respondents submitted that the Petitioner has not shown with clear precision how if any, such discrimination occurred and has not provided clear evidence on whether they were any promotions given to other employees as opposed to her. Further, between 2014 and 2020, the Respondents were unable to issue promotion to any of its employees and since 2020 when the new board come in place several promotions have been undertaken and the Petitioner has benefitted from two of the promotions. The Petitioner's first promotion was erroneously not implemented and they are in the process of regularizing the same.
46. It is the Respondents' submission that Section 107 of the *Evidence Act*, places the burden of proof on the person who is bound to prove the existence of any fact. Therefore, the Petitioner having alleged violation of her constitutional rights bears the burden of proving that indeed there was such violation; in the absence of such proof, thus, the Petition must fail.
47. The Respondents submitted that promotions are not an automatic right but a managerial prerogative unless there is a specific contractual or statutory guarantee. Therefore, unless an employee can demonstrate discrimination, breach of an express term, or an unfair labour practice, a claim for promotion cannot be sustained as a constitutional or legal right.
48. It is the Respondents' submission that the Petitioner has not demonstrated that her rights have been violated. She has not shown how the failure to implement a single recommendation amounts to a violation of her right to equality and freedom from discrimination; or that she was subjected to unfair labour practices. Therefore, the Petitioner's allegations are unsubstantiated and lack evidentiary support.



49. On the final issue, the Respondents submitted that the petition has not established on a balance of probabilities the alleged violations of the constitution and discrimination against the Petitioner to warrant the discretion of this court.
50. The Respondents submitted that they have admitted that the Petitioner has already benefited from two promotions and that efforts are ongoing to regularize the earlier administrative omission. Therefore, the conditions warranting the grant of an order of mandamus have not been met as the Respondents are already taking reasonable administrative steps within their capacity.
51. I have examined all the evidence and submissions of the parties herein. From the pleadings herein, the respondent seem to agree in principle that the petitioners promotion was delayed due to a system error which they indicate they are working on to regularise the earlier omission. This in my view is an admission of guilt on their part.
52. The PSC had already directed them to implement the petitioner's promotion vide Appeal no 161/23 which they did not appeal against and which they are obligated to implement.
53. In the circumstances, I find this petition has merit. I find that the rights of fair labour practices of the petitioner under article 41 of the constitution have been infringed upon.
54. I therefore order that the promotion of the petitioner be done and her payments computed as per the order the PSC County Appeal No 061/23 of 13/3/24 to the date of this judgment.
55. The respondents will pay the petitioner damages equivalent to kshs 500,000/- for breach of her constitutional rights. The respondent to pay costs of this suit plus interest at court rates with effect from the date of this judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**HELLEN WASILWA**

**JUDGE**

