



**Kandie v Bureau; Communications Authority of Kenya (Interested Party)  
 (Employment and Labour Relations Petition E178 & E413 of 2023  
 (Consolidated)) [2024] KEELRC 1721 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1721 (KLR)

**REPUBLIC OF KENYA  
 IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
 EMPLOYMENT AND LABOUR RELATIONS  
 PETITION E178 & E413 OF 2023 (CONSOLIDATED)**

**MN NDUMA, J**

**JULY 4, 2024**

**BETWEEN**

**JUMA KIPRONO KANDIE ..... PETITIONER**

**AND**

**NATIONAL REGISTRATION BUREAU ..... RESPONDENT**

**AND**

**COMMUNICATIONS AUTHORITY OF KENYA ..... INTERESTED PARTY**

**RULING**

1. The respondent in petition 178 of 2023 as consolidated with cause no. 423 of 2023 filed a notice of preliminary objection dated 30<sup>th</sup> November 2023 to wit:-
  - i. This honourable court lacks jurisdiction to hear and determine this petition as it does not disclose any employer-employee relationship between the petitioner and respondent to invoke the jurisdiction of the Employment and Labour Relations Court.
  - ii. The petitioner does not raise constitutional issue ancillary or incidental to the matters contemplated under section 12 of the *Employment and Labour Relations Court Act*.
2. The court will proceed to determine this matter as guided by the Court of Appeal decision in *Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Limited* [1969] EA 690 in which Sir Charles Newsold discussed the nature of a preliminary objection and observed as follows:-

“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 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.”

3. The court has perused the petition as pleaded and has made the following findings of fact:-
  - i. The petitioner was an employee of the interested party, having been employed on a permanent and pensionable basis in July 2020.
  - ii. The employment was later changed to a fixed term contract of 5 years which was effective from 1<sup>st</sup> August 2022 and was to expire on 12<sup>th</sup> December 2024 when the petitioner would have reached 60 years.
  - iii. On 24<sup>th</sup> March 2023, the interested party wrote a letter to the petitioner while he was on leave asking him to explain the variance between the date of birth on his identity card being 12<sup>th</sup> December 1962 and the date of birth on his passport being 12<sup>th</sup> December 1964.
  - iv. Against this back ground, the petitioner made an application to the respondent on the 28<sup>th</sup> March 2023 to have the year of birth on his identification card rectified to 12<sup>th</sup> December 1960.
  - v. The respondent allowed the application and on 3<sup>rd</sup> April 2023 issued the petitioner with a new identity card number 4897578 of serial number 249796802 which indicated his date of birth as 12<sup>th</sup> December 1964.
  - vi. The petitioner however received a letter of separation dated 22<sup>nd</sup> May 2023 from the interested party terminating his employment on the ground that the respondent had informed it vide a letter dated 22<sup>nd</sup> May 2022, that it had unilaterally invalidated the new identity card number 4897578 of serial number 249796802. The petitioner was not copied with the said letters as it was a response to an inquiry by the interested party vide a letter dated 25<sup>th</sup> April 2023 as to whether the respondent had truly issued the petitioner with new identity card number 4897578 of serial number 249796802.
  - vii. The respondent instead on responding to the query raised by the interested party went ahead to unilaterally revoke the said identity card which injured the petitioner on the basis that no birth certificate had been produced by the petitioner acquiring his passport.
  - viii. The petitioner cites violation of his human rights enshrined under Article 28 of the Constitution (Right to human dignity); Article 35 (Access to information); Article 35(2) (right to correction and for deletion of incorrect information that affects the person); and Article 47 (Right to fair Administrative Action).
4. The petitioner seeks the following reliefs:-
  - i. A declaration be and is hereby made that the respondent’s decision dated 22<sup>nd</sup> May 2022 made through the letter Ref. No. NRB/IOW/ADM/1/13/15/VOL. 11/(38) to invalidate the petitioner’s constitutional rights as set out under Articles 27, 28, 31, 33 and 47 of Constitution is procedurally unfair, unconstitutional and unlawful.
  - ii. An order of certiorari be made quashing the respondent’s decision dated 22<sup>nd</sup> May 2022 made through the letter Ref. No: NRB/IOW/ADM/1/13/15/VOL. 11/(38) to invalidate the petitioner’s identity card number 4897578 of serial number 249796802.
  - iii. The respondent be and is hereby directed to pay the petitioner damages in the sum of Kshs. Ten million (10,000,000/=) for the violation of the petitioner’s right.



- iv. Costs of the suit.
5. Cause no. 413 of 2023 is based on same facts and is between the claimant who is the petitioner in petition E178 and the respondent Communication Authority of Kenya who is the interested party in the aforesaid petition no. E178 of 2023.
- 6.. The reliefs sought in cause no. 413 are against the respondent the former employer of the claimant and the main reliefs sought include:-
  1. A declaration that the claimant’s forceful retirement before attaining the age of 60 years through the employment separation letter dated 22<sup>nd</sup> May 2023 was unjustified, malicious illegal and amounted to unfair termination.
  2. A declaration that the claimant is entitled to retire upon attaining 60 years of age effective 12<sup>th</sup> December 2004 with due pension benefits.
  3. An order directing the respondent to reinstate the claimant to his former position as the Director of Human Capital and Administration of the Communication Authority of Kenya.
7. Alternative reliefs are also sought comprising of compensation and terminal benefits.
8. A plain reading of the petition and the memorandum of claim, has led the court to the inevitable conclusion that the suit between the claimant and the respondent arose from an employee and employer relation and that between the petitioner and the interested party is related to Employment and Labour matter in that the invalidation of the identity card of the petitioner directly led to termination of petitioner’s employment. Consolidating of the two matters was prudent since the court is now able to determine direct and incidental contractual and constitutional matters in one judgement.
9. The court has jurisdiction to hear and determine the consolidated suit in terms of Article 162(2) of [Constitution](#) as read with section 12(1) of the [Employment and Labour Relations Court Act](#), 2014.
10. The Supreme Court decision in the is on point on this finding in the case of Kenya Tea Growers Association and 2 others versus The National Social Security Fund Board of Trustees and 13 others Petition E004 and 002 of 2023 KESC KLR, in which the court stated : -

We now come to the specific question whether the ELRC correctly assumed jurisdiction to determine the constitutional validity of the [NSSF Act](#) 2013. Towards this end, we are persuaded by the appellants’ argument to the effect that the Court of Appeal adopted a rather restrictive view of the reach of the [NSSF Act](#) 2013, in holding that the matter before the ELRC did not emanate from an “employer employee” dispute. The extensive provisions of the Act, requiring employers and employees to contribute specific amounts of money to a Social Security Fund cannot be said to have nothing to do with an employer-employee relationship. Even if the matter did not emanate from an employer employee dispute within the confines of the [ELRC Act](#), to the extent that it introduces enhanced and mandatory contributory amounts of employee earnings, the Act has potential to ignite justiciable grievances from certain cadres of employees. No doubt these grievances would end up at the ELRC which would likely be called upon, as it was in this case, to determine the constitutional validity of the same. But even beyond the employer-employee dispute resolution regime, the [NSSF Act](#) 2013, seeks to expansively regulate a wide array of labour relations especially the social security of the employed cadre when they finally exit formal



employment. Should it then be surprising that an employee should be concerned about what his/her future would look like after salaried employment?.

11. The objection is dismissed for lack of merit. Consolidated suit to proceed to hearing and determination on merits.

**DATED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY, 2024.**

**MATHEWS NDERI NDUMA.**

**JUDGE.**

Appearance:.

M/s. Awuor for the petitioner.

M/s. Aluoch for respondent

Mr. Mogere for interested party

Mr. Kemboi Court Assistant

