



**Chege v Kenya Railways Corporation (Employment and Labour Relations
Petition E071 of 2025) [2025] KEELRC 2668 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2668 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E071 OF 2025**

**HS WASILWA, J
OCTOBER 2, 2025**

BETWEEN

ANGELA NJERI CHEGE PETITIONER

AND

KENYA RAILWAYS CORPORATION RESPONDENT

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 2nd May 2025 seeking orders that: -
 1. the Petition against the Applicant be struck out and/ or wholly dismissed.
 2. costs of this application be granted to the Applicant.

Respondent/Applicant's Case

2. The Applicant avers that the Petitioner has neither demonstrated or particularized the specific constitutional rights alleged to have been infringed nor shown why the issues raised cannot be addressed through existing statutory procedures under the *Employment Act*.
3. The Applicant avers that the petition has no merit, is fatally defective, and is void of substance, having failed to establish clear constitutional grounds or demonstrate a need for constitutional interpretation outside the prescribed existing statutory procedures under the *Employment Act*.
4. It is the Applicant's case that the issues raised in the Petition can be addressed through the established statutory procedure of filing a Memorandum of Claim under the *Employment Act*.
5. The Applicant avers that it is trite law that where an alternative remedy exists, particularly a statutory remedy, a constitutional petition should not be entertained. The Petition seeks compensation for an alleged unfair and unlawful termination without raising any constitutional issue requiring this Court's interpretation.



6. It is the Applicant's case that there is no reasonable cause of action concerning the Petitioner's constitutional rights against the them that transcends the ordinary employer-employee dispute. Thus, it is just and fair that the court orders the petition struck out, as the issues raised fall squarely within the jurisdiction of the Employment and Labour Relations Court and do not warrant constitutional interpretation.

Petitioner/ Respondent's Case

7. In opposition to the application, the Petitioner/ Respondent filed Grounds of Opposition dated 28th May 2025 on grounds that:
 1. The Respondent has not cited the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013* under which the impugned Petition is based.
 2. The *Civil Procedure Rules* as well as the *Employment & Labour Relations Court (Procedure) Rules* cited by the Applicant have no or have little application in a matter brought pursuant to *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013*.
 3. There is no provision under any law or procedure rules allowing permitting the filing of an Application for striking out of a suit at the Employment and Labour Relations Court or under the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013*.
 4. The Application is unnecessary and whatever grounds raised therein ought to have been raised as opposition to the Application for Conservatory Orders or in opposition to the Petition.
 5. It is an abuse of court process for a Respondent to purport to answer an Application and a Petition with another Application.
 6. Striking out is a draconian remedy and should not be entertained where there are triable issues such as those demonstrated in this Petition.
 7. The Petitioner was the Corporation Secretary and Head of the Legal Department of the Respondent meaning that the deponent to the Supporting Affidavit is her subordinate, is below the Petitioner within the Respondent in the pecking order and lacks authority to swear to matters or superintend over matters of her superior's employment.
 8. There is no written authority or any ostensible authority demonstrated permitting the said Deponent to swear the purported Supporting Affidavit.
 9. There is no cause shown why the Respondent's Managing Director could not have sworn the Supporting Affidavit yet he has in these proceedings already sworn the Affidavit in opposition to the Application for Conservatory Orders.
 10. In so far as the Application suggests that the particulars of the violation of the *Constitution* have not been outlined with clarity, the Application is misconceived as Articles 41, 47 and 50 (1) have been cited and the particulars of violation clearly set out.
 11. The Petitioner is permitted by the *Constitution* of Kenya to move this Court where her rights particularly under Articles 41, 47 and 50 (1) and it is therefore within her right to move this court by way of a Constitutional Petition.



12. This Court has entertained numerous Petitions of this kind in the past.
13. It is not for the Respondent to elect for or dictate to the Petitioner what law and under what vehicle the Petitioner approaches court.
14. The Respondent being a Public Body should be more minded to adhere to the Constitutional and statutory provisions of the laws regarding employment and hence subject to Constitutional remedies whenever a breach of the Constitution arises.
15. There is no prejudice that has or will be suffered by the Respondent just because the claim has been filed as a Constitutional Petition rather than a standard employment claim under the provisions of the Employment Act.
16. The Application is misconceived and meant to prolong the determination of the proceedings herein.
17. The suggestion at paragraphs 11 of the Supporting Affidavit that this Court in Constitutional matters can only examine constitutionality of provisions of the Employment Act is ignorant and completely misconceived.
18. The suggestion at paragraphs 15 of the Supporting Affidavit that a Constitutional question is one that requires interpretation of the Constitution only is fundamentally mistaken, narrow, ignorant and completely oblivious of the
19. The Petition fits within the description of what raises constitutional questions as laid out by Justice Mativo as he then was in CNM v WMG [2018] eKLR in which he cited with approval the South African case of Fredericks & others v MEC for Education and Training, Eastern Cape & others [2002] 23 ILJ 81 (CC) in which Justice O'Regan recalling the Constitutional Court's observations in S v Boesak [2001] (1) SA 912 (CC) and for which a Constitutional question includes a matter examining whether "...conduct is inconsistent with the Constitution".

The South Africa Court stated:-

“the Constitution provides no definition of “constitutional matter.” What is a constitutional matter must be gleaned from a reading of the Constitution itself: If regard is had to the provisions ofthe Constitution , constitutional matters must include disputes as to whether any law or conduct is inconsistent with the Constitution , as well as issues concerning the status, powers and functions of an organ of State...the interpretation, application and upholding of the Constitution are also constitutional matters. So too,...is the question whether the interpretation of any legislation or the development of the common law promotes the spirit, purport and objects of the Bill of Rights. If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of the Constitution , such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly an extensive jurisdiction.”

20. The Application lacks merit and is an abuse of the process of the Court.



Respondent/Applicant's Submissions

8. The Applicant submitted that the petition is an abuse of the court process and offend the doctrine of constitutional avoidance. The gravamen of the Petitioner's case is that her rights under Article 41, 47 and 50 of the Constitution, which relates to labour relations infringed by the Respondent. The Petition seeks redress for what is in essence a dispute arising from an employment relationship, therefore, it undermines the doctrine of constitutional avoidance and offends the spirit and purpose of Rule 10(3) of the Employment and Labour Relations Court (Procedure) Rules, 2021.
9. It is the Applicant's submission that the doctrine of constitutional avoidance dictates that where a dispute can be resolved through the application of ordinary statutes or statutory mechanisms, courts should refrain from determining the matter on constitutional grounds unless absolutely necessary; as articulated in Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR).
10. The Applicant submitted that the matters raised in the petition, particularly the alleged unfair termination, non-payment of dues, and breach of fair labour practices, fall under the purview of the Employment Act, particularly Sections 41 (procedure for termination), 43 (proof of reasons for termination), and 49 (remedies for unfair termination).
11. The Applicant submitted that the Petitioner has failed to demonstrate any exceptional circumstances that would warrant the direct invocation of the Constitution. Instead, the petition is a disguised ordinary employment claim and should be treated as such.
12. It is the Applicant's submission that the petition has failed to meet the basic threshold of a constitutional claim as outlined in Anarita Karimi Njeru v Republic [1979] KEHC 30 (KLR) where the court held that:

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
13. The Applicant submitted that the Petitioner has invoked Articles 41, 47 and 50 of the Constitution but no particulars have been pleaded with sufficient clarity to demonstrate how these provisions were violated or the extent of the alleged violation. Therefore, the Petitioner/Respondent has failed to establish how the Applicant specifically infringed upon her employment rights to warrant this petition.
14. It is the Applicant's submission that the Petitioner has failed to exhaust the statutory dispute resolution mechanisms under the Employment Act. This, the petition is premature and misconceived as buttressed in PN v Intercity Secure Homes Limited & another [2025] KEELRC 601 (KLR).
15. The Applicant submitted that the petition does not provide sufficient particulars linking the alleged constitutional violations to specific acts of the Applicants. The allegations are broad, vague, and unsupported by evidence, making it impossible for this court to determine any genuine constitutional question.
16. I have examined all the averments and submissions of the parties herein. The petitioner has averred breach of her constitutional right arising out of a contract of employment.



17. To determine this breach, this court will have to delve into factual issues which I am unable to consider in this application by virtue of the scope in the celebrated Mukisa Biscuit case.
18. In the circumstances, I find the application before me is not merited. I dismiss it accordingly and direct the parties to proceed with the main petition. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF OCTOBER 2025.

**HELLEN WASILWA
JUDGE**

