



**Ouko v Kenya Railways Corporation (Employment and Labour Relations
Petition E010 of 2025) [2025] KEELRC 2652 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2652 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E010 OF 2025**

**HS WASILWA, J
OCTOBER 1, 2025**

BETWEEN

HANNINGTON O. OUKO PETITIONER

AND

KENYA RAILWAYS CORPORATION RESPONDENT

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 17th March 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 not 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. 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](#). The Petition seeks compensation for an alleged unfair and unlawful termination without raising any constitutional issue requiring this Court's interpretation.
4. The Applicant avers that where an alternative remedy exists, particularly a statutory remedy, a constitutional petition should not be entertained.
5. It is the Applicant's case that there is no reasonable cause of action concerning the Petitioner's constitutional rights against the it that transcends the ordinary employer- employee dispute.



6. The Applicant contends that 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 23rd April 2025 on the following grounds:
 1. The application does not lie as there are no restrictions on the part of the Petitioner in the choice of filing pleadings befitting dismissal.
 2. There is no inhibition the Petitioner who reserves the right to choose how to approach the Court.
 3. The application is bad in law and mischievous.
 4. The application is misplaced and unmerited.
 5. The application is yet another attempt to frustrate and humiliate the Petitioner.
8. The Petitioner/Respondent further filed a replying affidavit dated 7th May 2025.
9. The Petitioner/Respondent avers that throughout his 12 months of employment, he rendered the Respondent/Applicant exemplary performance, diligently and faithfully served as required under his employment contract; and the Respondent/Applicant never raised any capability issues regarding his performance whatsoever.
10. The Petitioner/Respondent avers that the Applicant violated Section 2.25.5 of its own Human Resource Policy Manual by placing him on extended probation as it states:

“members of staff employed on contract terms will not be subject to probationary period, however quarterly appraisals shall be done of their performance in the first year of their contract.”

Additionally, the Applicant/Respondent also violated its policy on probation and my employment contract which states that confirmation into service upon completion of probation is on the sixth month.
11. The Petitioner/Respondent avers that he served the Applicant for over one year under probation but it failed and neglected to confirm him upon completion of his probation period. The Applicant unilaterally extended his probation for a further six months without his consent and without reason.
12. The Petitioner/ Respondent avers that he wrote to the Respondent's Acting General Manager, Legal Services and General Manager Human Resources and Administration vide complaint letters dated 8th May and 4th August 2023 inquiring about confirmation of his employment, which letters were never replied to.
13. It is the Petitioner/Respondent's case that the Applicant kept her in the dark regarding his review and confirmation without justifiable reason which is in violation of its Human Resource Policy Manual Section 2.25.5 and in breach of his right to fair administrative action granted under Article 47 of *the Constitution* and Section 4 of the Fair Administrative Actions Act.



14. The Petitioner/Respondent avers that by failing to reply to the complaint letters, the Respondent/Applicant not only acted in violation of its own established Customer Service Charter which requires that correspondence be replied to within two weeks from the date of receipt but also violated his constitutional right under Article 47 of *the Constitution* and Section 4 of the Fair Administrative Actions Act.
15. The Petitioner/Respondent avers that the Respondent/Applicant discriminated against him as he was left to languish in the office without much work while his juniors were regularly assigned important work as Board Secretariat and to also work outside Nairobi and out of the Country drawing hefty allowances in the process.
16. The Petitioner/Respondent avers that the Managing Director shunned and ignored him by directly instructing his juniors and assigning them more important work which they were not qualified and certified to perform; this made the junior staff taunt him.
17. The Petitioner/Respondent avers that the nature of the Respondent/Applicant's repudiatory breach of his employment contract violated his constitutional rights and he has cited the specific articles connected to the labour dispute herein.

Respondent/Applicant's Submissions

18. The Applicant submitted that the petition discloses no reasonable cause of action grounded in a constitutional violation. The dispute, as framed, arises purely from an ordinary employer-employee relationship and does not warrant the invocation of this Court's jurisdiction through a constitutional petition.
19. The Applicant submitted that this court when sitting as a constitutional court, lacks jurisdiction to address ordinary employment disputes unless there are demonstrated constitutional violations that cannot be redressed through the statutory mechanisms provided under employment law. It cited Gabriel Mutava, Elizabeth Kwini & Mary Martha Masyuki v Managing Director Kenya Ports Authority & Kenya Ports Authority [2016] KECA 411 (KLR) wherein the court stated:

“.....*The Constitution* is not a general substitute for the normal procedures for invoking judicial control of administrative action. Where infringements of rights can found a claim under substantive law, the proper cause is to bring the claim under that and not under *the Constitution*.”
20. It is the Applicant's submission that the Petitioner has neither challenged the constitutionality of any provision of the *Employment Act* nor has he demonstrated that the dispute entails a constitutional violation outside the scope of statutory employment law. The gravamen of the Petitioner's case is that his rights under Articles 41, 47, and 259 of *the Constitution* have been infringed, however, these claims stem from an employment relationship and are therefore matters that fall under the Employment and Labour Relations Court's statutory mandate.
21. The Applicant submitted that the petition bypasses the statutory dispute resolution procedures laid down under the *Employment Act*, and proceeds as a constitutional petition contrary to the doctrine of constitutional avoidance and Rule 10(3) of the Employment and Labour Relations Court (Procedure) Rules.
22. It is the Applicant's submission that the doctrine of constitutional avoidance dictates that where a dispute can be resolved under ordinary legislation or specialised statutory mechanisms, the courts must refrain from entertaining it under the broad banner of constitutional litigation.



23. The Applicant submitted that this court lacks jurisdiction to entertain this petition which raises no constitutional question beyond the scope of employment law. The Petitioner ought to ventilate his grievances in an ordinary employer-employee claim as provided for under the *Employment Act*; entertaining the petition would violate the doctrine of constitutional avoidance.
24. The Applicant submitted that the Petitioner invokes Articles 41, 47, and 259 of *the Constitution*, while alleging constructive dismissal and unfair labour practices. However, these claims are fully addressed within the framework of the *Employment Act* and the *Fair Administrative Action Act*.
25. It is the Applicant's submission that the Petitioner has not demonstrated any exceptional circumstances justifying a direct constitutional approach or the invocation of *the Constitution*. Thus, his claim is disguised ordinary employment dispute.
26. The Applicant submitted that under the doctrine of constitutional avoidance, where a statutory remedy exists, it must be pursued through ordinary litigation. Since the Petitioner has not stated in his claim that the remedies sought cannot be enforced under the *Employment Act*, the constitutional route is improper.
27. The Applicant submitted that the petition fails to meet the basic threshold of a constitutional claim as outlined in *Anarita Karimi Njeru vs. Republic (1979) eKLR*, where the court stated

“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.”
28. It is the Respondent/Applicant's submission that the Petitioner's invocation of the Court's constitutional jurisdiction is unwarranted. The dispute arises purely from an employer/employee relationship and can be sufficiently and effectively addressed through the ordinary statutory dispute resolution framework provided under the *Employment Act*. The Petitioner has an adequate, alternative, and more appropriate remedy available through the ordinary claim procedure.
29. The Respondent/Applicant submitted that this court is properly vested with jurisdiction to handle such disputes. Statutory processes, such as filing a Memorandum of Claim, provide sufficient remedies. The Petitioner/Respondent's decision to bypass these mechanisms and file a constitutional petition is unwarranted as held in *C O D & Another vs. Nairobi City Water & Sewerage Co. Ltd (2015) eKLR*.
30. It is Respondent/Applicant's submission that the Petition fails to meet the threshold of a constitutional petition as it does not raise any genuine constitutional issue. It is a disguised employment claim that should be struck out for lacking merit and being an abuse of the court process.

Petitioner/Respondent's Submissions

31. The Petitioner/Respondent submitted that the Respondent/Applicant violated its policy on probation and the Petitioner's employment contract which stipulates that confirmation into service upon completion of probation is on the sixth month. The Petitioner served the Respondent for over one year under probation but the Respondent without any logical reason failed and neglected to confirm him to the position of Legal Service Manager as was required upon completion of his six months' probation period.



32. The Petitioner/Respondent submitted that the Respondent failed/neglected to furnish him with information and subsequently kept him in the dark regarding his review and confirmation which action was in violation of the Applicant's own established Customer Service Charter, Section 2.25.5 of its Human Resource Policy Manual, the Employment Contract as well as his constitutional right under the provisions set out in Article 47 of *the Constitution* which provides that every person has the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair as read together with section 4 of the Fair Administrative Actions Act.
33. The Petitioner/Respondent submitted that the Applicant discriminated against him by leaving him to languish in the office without much work while his juniors were regularly assigned important work as Board Secretariat and to also work outside Nairobi and out of the Country thereby drawing hefty allowances in the process.
34. The Petitioner further submitted that he was subjected to discrimination on account of unsubstantiated allegations that he was "associated to a former Board Chairman" who hailed from his ethnic community which action was discriminatory on the basis of his ethnicity thus his right under Article 27(1) (4) and (5) of *the Constitution* was violated.
35. It is the Petitioner/Respondent's submission that his constitutional rights were infringed and/or violated and that the instant application is devoid of any merit, frivolous and is intended to waste the court's time.
36. I have examined all the averments and submissions of the parties herein. The applicant contends that the petition as filed does not raise any constitutional issues and should therefore be struck out.
37. The petitioner has averred that his rights under *the constitution* and in particular articles 41, 47 and 259 of *the constitution* have been breached. To establish whether the rights of the petitioner under *the constitution* have been breached or not, this court would have to delve into factual which in law cannot be determined as a preliminary objection as established in the Mukisa Biscuit case.
38. This court is being called upon to delve into factual issues at this point which in my view is beyond its scope as a preliminary issue. I find the application thus not merited and I dismiss it accordingly and direct the parties to proceed with the main petition. Costs shall be in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

