



**Omollo v Quintities East Africa Limited t/a Iqvia (Petition E121 of 2020)
[2025] KEELRC 2919 (KLR) (22 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2919 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E121 OF 2020
HS WASILWA, J
OCTOBER 22, 2025**

BETWEEN

ERICK OGAO OMOLLO PETITIONER

AND

QUINTITIES EAST AFRICA LIMITED T/A IQVIA RESPONDENT

JUDGMENT

Petitioner's case

1. By a Petition dated 20th July 2020, the petitioner sought for prayers that-
 - a. a declaration be issued that the Respondent's actions in purporting to "withdraw" the Petitioner's contract of employment amounts to an unfair labour practice.
 - b. a declaration be issued that the Respondent's actions in purporting to "withdraw" the Petitioner's contract of employment amounts to summary dismissal without a valid reason and without due process which was unlawful and unfair.
 - c. a declaration be issued that the Respondent's actions in purporting to "withdraw" the Petitioner's contract of employment are a gross violation of and an infringement of the Petitioner's constitutional rights including the right to fair administrative action and the right to fair labour practices.
 - d. a declaration be issued that the Respondent's withdrawal of the Petitioner's employment was a breach of the Petitioner's right to fair labour practises pursuant to Articles 41 of *the Constitution*.
 - e. a declaration be issued that the Respondent's withdrawal of the Petitioner's employment was a violation the Petitioner's right to fair administrative action



- f. pursuant to Articles 47 of *the Constitution* as read with Section 40 of the *Employment Act* and sections 2, 3[c], 4[3] and 4[4] of the Fair Administrative Act.
- g. an award of general damages for summary dismissal.
- h. exemplary Damages for the violation of the Petitioner's constitutional rights as per [1], [2], [3], [4] and [5] above.
- i. an order be issued directing the Respondent to pay the Petitioner his full salary for the remaining period of the contract from May 2020 to March 2021 being Kenya Shillings Three Million Two Hundred and Eighty-Four Thousand One Hundred and Ninety-Nine [Kshs. 3,284,199/-] net of taxes as agreed with the Respondent.
- j. the costs of, and incidental to, this Petition be awarded to the Petitioner.
- k. this Honourable Court be pleased to grant such further Order or Orders as may be just and appropriate
- l. a declaration be and is hereby issued that the letter dated 25th September 2017 purporting to put the Petitioner on a five-year contract was issued un-procedurally, illegally and/ or unlawfully and is therefore null and void.
- m. a declaration be and is hereby issued that the removal of the Petitioner from the payroll, denying her access to her place of work and withholding her salary was un-procedural, unjustified and unlawful and in violation of Article 41 [1] of *the Constitution*.
- n. a declaration be and is hereby issued that withholding the Petitioner's salary from September 2017 to date constitutes gross labour malpractice and is unconstitutional.
- o. the Petitioner be and is hereby reinstated to her position without loss of benefits and shall be paid all her pending dues within one month after judgement is delivered.
- p. the 2nd Respondent is hereby ordered to personally facilitate the reinstatement of the Petitioner and accord her the assistance she may need to settle back to her role.
- q. an order do issue restraining the Respondents by themselves, their agents, employees, servants, assigns and/or representatives from in any way harassing, discriminating and/or disturbing the Petitioner and taking any action that may be perceived or intended to victimize the Petitioner.
- r. costs be paid by the Respondents.

Petitioner's Case

2. The Petitioner avers that that one Chris Oosthuizen the Programs Executive of Healthcare - Africa Regions at Imperial Logistics indicating he was acting on behalf of the Respondent, called him on 21st February 2020 with the aim of recruiting him to market health products, on a permanent basis.
3. Subsequently, on 20th March 2020, one Razina Hurribunce [hereinafter referred to as the Respondent's Recruiter] who identified herself as a Talent Acquisition specialist from the Respondent's Recruitment division sent him an email confirming that she had received communication from Chris Oosthuizen and and that they were in discussions with regard to employing him.



4. It is the Petitioner's case that they agreed on employment terms including the fact that the Respondent would match his previous employer's pay package by paying him a net annual salary of Kshs. 3,284,199 which amounted to Kshs. 252,630.69 per month before taxes.
5. The Petitioner avers that on 1st April 2020, he received an official email from Mr. Chris Oosthuizen addressed to him and other colleagues stating that regardless of when they sign the employment contract, he had reached an agreement with the Respondent's finance team and that the employment will be effective from 1st April 2020.
6. The Petitioner avers that he commenced his employment in the month of April 2020 and he was involved in coordination of sales from distributors to wholesalers to retailers and addressing their plights. During this period, he continued to follow up on the processing of his employment contract which is highlighted by the exchange of the email correspondence with the Recruiter of the Respondent.
7. The Petitioner avers that vide an email dated 3rd April 2020, the Respondent's Recruiter apologized for delay, and informed him that both companies needed to align before they could go ahead with the transition. He further acknowledged that the start date was 1st of April therefore the need to rush. The recruiter requested that the Petitioner keeps in contact and respond with the following documents as speedy as possible to onboard him as soon as possible: copy of his qualifications; copy of his ID; copy of his passport; copy of his working visa permit [if applicable]; copy of his CV; and a duly filled new application form.
8. The recruiter further requested that the Petitioner sends his National Health Insurance Fund [NHIF] and National Social Security Fund [NSSF] numbers and Kenya Revenue Authority [KRA] personal identification number which he did and received an acknowledgment of receipt on the same date vide an email dated 28th April 2020.
9. Vide an email dated 28th April 2020, the Respondent informed the Petitioner that it was still waiting for one final document and to ensure they were ready to "onboard" him effectively, they requested that he urgently fill in attached document and scan them back as he was supposed to submit all the attached documents by close of business the same day. The attached documents included; confirmation of banking details on bank letterhead; medical aid form; pension fund form; new employee hire form.
10. The Petitioner avers that he received a copy of the contract vide an email dated 29th April 2020. The job description provided was of a Medical Sales Representative, East Africa on a fixed contract which was to commence on 1st April 2020 and to end 31st March 2021 with a consolidated salary of Kshs. 2,522,696.69 per annum. The salary would be paid [less any statutory and voluntary deductions] in equal monthly installments in arrears on or about the 25th of each month directly into the Petitioner's bank account.
11. It is the Petitioner's case that the Respondent reneged on the agreed salary of Kshs. 3,284,199 which amounted to Kshs. 252,630.69 per month before taxes. He therefore sought to find out the reason for the discrepancy and before the Respondent could clarify on the discrepancy, the contract was "withdrawn".
12. The Petitioner avers that he received another email on 29th April 2020, in which the Respondent notified him that he should look out for an email from "workday" which will request that he accept the date privacy and the he should "Accept" as soon as possible to allow the Recruiter to create employee number for him, which the petitioner did. The email also had a dummy payslip.



13. The Petitioner avers that the Respondent sent him a withdrawal letter vide an email dated 30th April 2020. The letter stated that they had withdrawn the contract issued on 29th April 2020, effective 30th April 2020. It was alleged that there was discrepancy during "on boarding" related to his application and unfortunately, they had received feedback resulting in "misconduct".
14. The Petitioner then contacted the Respondent's Recruiter on 4th May 2020, to enquire why his contract was withdrawn and if he would be paid for the month worked [April] as he was performing his duties as was directed by his sales manager. In response, the Respondent sent him a form to sign pursuant to his request to be paid, which stated a figure to be the final compensation for the month being one-month salary for April 2020. The Petitioner signed and acknowledged it as pay for the month of April.
15. Vide a letter dated 5th May 2020, the Respondent's Recruiter informed the Petitioner that in order to process his April salary; he would require his signature on a one-month contract and a fully completed hire form. He further directed that the Petitioner revert as soon as possible to add him on to payroll.
16. The Petitioner responded seeking clarification if the one-month contract would supersede the initial one-year contract and also sought for an explanation as to why his contract was withdrawn. In response, the Respondent's Recruiter vide an email dated 6th May 2020, asked him to sign the contract within 1 hour to ensure that he was paid within the current payroll cycle. They further assured the Petitioner that the one-month contract had been issued only for payroll purposes and the withdrawal was still valid and he should direct his enquiries to the Programs Executive of Healthcare at Imperial Logistics he is the only one that can assist on that.
17. The Petitioner avers that that his efforts to get further information were fruitless thus he instructed his lawyers on record to write a demand letter dated 19th May 2020 to the Respondent. The Respondent responded via its lawyer's letter dated 3rd June 2020 in which it purported to explain the reasons for withdrawal of the Petitioner's employment. Having no other recourse, the Petitioner has filed this petition seeking vindication of his constitutionally guaranteed rights.
18. It is the Petitioner's case that by withdrawing his contract of employment after he had accepted the said contract and even worked for a month, the Respondent infringed his right to fair labour practices as provided under Article 41[1] of *the Constitution* and also includes the rights expressed under Sections 5, 26, 29, 40, 41, 43, 44, 45, 46 and 49 of the *Employment Act*.
19. The Petitioner avers that the Respondent's act of forcing him to execute a one-month contract in order to be paid for the month worked, is an unfair labour practice contrary to Article 41[1] of *the Constitution*. This was meant to intimidate and dissuade him from vindicating his rights. The Respondent did however confirm that the withdrawal was still in effect.
20. The Petitioner avers that the purported unilateral withdrawal of his employment contract without valid reason and proper legal notice/procedure, the Respondent violated the Petitioner's right to fair administrative action as protected under Article 47 [1] and [2] of *the Constitution* and section 4 of the *Fair Administrative Action Act*.

Respondent's Case

21. In opposition to the petition, the Respondent filed a replying affidavit dated 25th August 2020 sworn by Gerhard Van Dilen, its Human Resources Manager.
22. The Respondent avers that it is a multinational company serving the combined industries of health information technology and clinical research. It is a provider of biopharmaceutical development



and commercial outsourcing services focused primarily on Phase I-IV clinical trials and associated laboratory and analytical services including consulting services.

23. The Respondent avers that Mr. Chris Oosthuizen is neither an employee nor its authorised representative as alleged by the Petitioner. It contends that it has qualified officers of its own duly authorised to speak for and or act on its behalf, and Mr. Chris Oosthuizen is not one of them.
24. It is the Respondent's case that it entered into negotiation with a client, Imperial Limited in March 2020 with a view to concluding a commercial agreement. Signing off on the agreement would require additional employees and consequently, it notified prospective candidates including the Petitioner to be on standby for a possible job offer on a future project.
25. At the time, the Respondent could not discuss or give undertakings to prospective employees on the time as it had not secured the commercial agreement hence it could not make contractual promises.
26. The Respondent denied the Petitioner's allegation that they had an agreement in principle through Razina Hurribance for an annual salary of Kshs. 3,284,199. It avers that it never discussed or concluded contractual terms with the Petitioner and any representations Mr. Chris Oosthuizen might have made to the Petitioner were private views unbeknown to the Respondent.
27. The Respondent avers that it commenced the recruitment process for new hires on 1st April 2020 in which the Petitioner was considered for a role as a Medical Sales Representative, East Africa, but based in Kenya.
28. The Petitioner was issued an employment form to provide his personal information and he also executed a confirmation and acknowledgement letter dated 4th April 2020. In signing the Acknowledgement Letter, the Petitioner represented that all the information he had provided in the Employment Form were accurate.
29. The Respondent avers that prior to giving the Petitioner a contract of employment, it temporarily retained him as it worked on the finer details of its contractual agreement with Imperial. The Respondent was hopeful of making a firm offer of employment to the Petitioner for his consideration subject to a return of a positive due diligence report of his employment history.
30. It is the Respondent's case that it is standard practice for its Human Resource Department to request potential new hires to provide supporting documentation for the information shared in the employment form. Therefore, the request made to the Petitioner was not unique.
31. On 28th April 2020, the Respondent issued the Petitioner a hire form which he completed and signed off. The hire form contained a suspensive condition to the effect that knowingly providing false information to secure employment with the Respondent would attract sanctions up to and including summary dismissal or withdrawal of the offer of employment if employment had not yet commenced.
32. The Respondent avers that having obtained the Petitioner's pre-employment information and documents, it sent the Petitioner a contract of employment to executethrough Razina Hurribunce. However, before the Petitioner could communicate his acceptance/rejection of the offer of employment, it became evident that the Petitioner had misrepresented his employment history. The Petitioner represented that his previous employment was terminated because of redundancy, however, it was later discovered that his previous termination was the result of dismissal for cause and not redundancy as he claimed.
33. The Petitioner having not signified his acceptance by signing the contract of employment, the Respondent determined that the appropriate action to take in the circumstances was to immediately



withdraw the contract of employment. This was done vide a letter dated 30th April 2020 which clearly indicated to the Petitioner the reason for the withdrawal of the contract of employment.

34. It is the Respondent's case that that the one-month contract given to the Petitioner was for payroll purposes only. This was necessary as it was the only means by which the Petitioner's profile could be uploaded on the Respondent's payroll system. The Petitioner was not coerced into signing the one-month contract. The factual basis relating to the Respondent's operational requirements compelling the Petitioner to sign the one-month contract was explained to him.
35. The Respondent avers that the Petitioner had not signified consent and acceptance of the contract of employment by signing the contract of employment prior to its withdrawal. Thus, an employment relationship had not crystallized based on the withdrawn contract of employment. The work performed by the Petitioner in the month of April 2020 was based on a separate understanding between the Petitioner and the Respondent and completely unrelated to the withdrawn contract of employment.
36. The Respondent avers that under Kenyan law parties are bound by the terms of their contract unless coercion, fraud and undue influence are pleaded and proved. In this case, the Petitioner bound himself to a restrictive condition which the Respondent rightly invoked while withdrawing the contract of employment.
37. It is the Respondent's case that there was no employment relationship between it and the Petitioner capable of being terminated. The Petitioner is therefore not entitled to the declarations sought, an award of general damages for summary dismissal and exemplary damages for the alleged violation of the Petitioner's constitutional rights and for payment of salary from May 2020 to March 2021 for KES 3, 284,199, as alleged.

Petitioner's Submissions

38. The Petitioner submitted on five issues: whether the Petitioner was contractually employed by the Respondent; whether the Petitioner had an agreement with the Respondent on an annual salary; whether the Respondent could validly withdraw a contract of employment; whether the Respondent's conduct amounted to a violation of the Petitioner's rights; and what are the appropriate remedies.
39. On the first issue, the Petitioner submitted that it is not denied that he worked for the Respondent for one month before the purported withdrawal of contract, pursuant to the engagement that emanated from the said Chris Ooustheizen; The Respondent even paid the Petitioner for the one month worked. That act of the Petitioner starting to work for the Respondent and the Respondent giving the Petitioner work lends credence to the fact that there was a valid offer and acceptance.
40. The Petitioner submitted that the fact that the parties ultimately never signed the contract does not aid the Respondent's case at all. He relied in *Ali Abdi Mohamed v Kenya Shell & Company Limited* [2017] eKLR where the court stated thus: -"It therefore follows that a contract can exist where no words have been used but where it can be inferred from the conduct of the parties that a contract has been concluded...."
41. It is the Petitioner's submissions that after the withdrawal of the contract, the Respondent purported to have the Petitioner sign a contract for one month to enable it process his salary for April. This was being done in May way after the one-year contract had been illegally withdrawn, therefore, there was a binding contract between the parties for the Petitioner to work for the Respondent for one year.
42. On the second issue, the Petitioner submitted that he was dealing with Hurribunce Razina who was an employee of the Respondent and who had indicated that she had been instructed to deal as such by



- Chris Ooustheizen. Therefore, there is sufficient proof that the Petitioner had been promised that the Respondent would match his previous employer's salary being a net annual salary of Kshs. 3,284,199 which amounted to Kshs. 252,000 per month net of taxes. The Respondent failed to honor the promise and the Petitioner actually enquired on this failure but got no response.
43. On the third issue, Petitioner submitted that had started working and if the Respondent wished to terminate the employment it needed to have a valid reason and also follow the provisions of the *Employment Act*. It could not withdraw the contract.
 44. It is the Petitioner's submission that what the Respondent sought to do was to rescind the contract, however, it could only do that if the Petitioner was in breach of the contract which he was not. Moreover, rescission would have meant a clear acknowledgement that there was indeed a contract of employment which the Respondent was trying hard to justify that there was none in spite of the clear evidence of offer and acceptance.
 45. The Petitioners submitted that the Respondent was bound by the law to subject him to a fair process in the event that there was indeed any valid reason for termination of the Petitioner's employment. The Petitioner contends that the Respondent's reason that he lied on his employment documents is untrue. The Petitioner indicated that he left his previous employment on account of redundancy. In the letter from his former employer, the said employer indicated that the Petitioner left in the aftermath of a disciplinary process. It did not contradict the Petitioner at all as it did not indicate that he had been summarily dismissed. By refusing to give further details the Petitioner's former employer was well aware that the Petitioner had not been summarily dismissed.
 46. It is the Petitioner's submissions that instead of following due procedure, the Respondent sought an illegal easier way out of withdrawing the contract and thus violated the Petitioner's rights. It also caused the Petitioner untold suffering noting that the same was happening at the height of the covid 19 pandemic a fact of which the court can take judicial notice of.
 47. On the fourth issue, the Petitioner submitted that he has set out distinctly and with precision the specific violations of his rights as guided by the locus classicus of Anarita Karimi Njeru v Republic [1979] eKLR. The Petitioner asserts that he has laid down his complaint with a reasonable degree of precision, the provisions said to be infringed, and the manner in which they are alleged to be infringed.
 48. The Petitioner submitted that the Respondent's actions infringed his right to fair labour practices, fair remuneration and reasonable working conditions provided under Article 41 of the Constitution; and his right to fair administrative action enshrined under Article 47.
 49. The Petitioner submitted that he had a legitimate expectation that he would have a job for one year from 1st April 2020 to 31st March 2021. This was at the height of the Covid 19 pandemic where people lost jobs and there was a lot of anxiety. The Petitioner was relieved he would have a job that would enable him to care for his family for one year only for the Respondent to take away that hope and legitimate expectation in a callous manner.

Respondent's Submissions

50. The Respondent submitted on four issues: whether there was an employment relationship created between the Petitioner and the Respondent; whether the Respondent acted lawfully in withdrawing the offer of employment; whether the Petitioner is entitled to the reliefs sought; and who should bear the costs of this petition.
51. The Respondent submitted that that the starting point to any employment relationship is the undertaking by an employee to provide skill and effort to the employer in return for which the



- employer provides the employee with a salary or wage. Contrary to the Petitioner's assertions, the intended employment relationship between the Petitioner and the Respondent did not materialize.
52. The Respondent submitted that before issuing the Employment Contract, it temporarily retained the Petitioner while it worked on the finer details of its contractual agreement with Imperial. The Respondent was hopeful of making a firm offer of employment to the Petitioner for his consideration subject to a return of a positive due diligence report of the Petitioner's employment history. The Respondent also required the Petitioner to provide pre-employment information and documents which included; confirmation of banking details, medical forms, pension fund forms, and new employee hire forms so that he could to be given an offer of employment.
53. The Respondent submitted that through Razina Hurribunce, it emailed the Petitioner the Employment Contract on 29th April 2020. It was envisaged that the Petitioner would signify his consent and acceptance by signing the Employment Contract. However, the Petitioner did not sign it but made a counter proposal on remuneration. During the same period, it became apparent to the Respondent that the Petitioner had misrepresented his employment history in the Employment Form, that his previous employment was terminated because of redundancy. The accurate information was that the Petitioner had been terminated for cause and not on account of redundancy as expressed.
54. The Respondent submitted that as the Petitioner had not signed the Employment Contract, the Respondent determined that the appropriate action to take in the circumstances was to withdraw the Employment Contract. The Respondent withdrew the Employment Contract by a letter dated 30th April 2020 which also informed the Petitioner the reason for the withdrawal. Thus, at the time of withdrawing the contract, no employment relationship had been created with the Petitioner orally or otherwise.
55. Reliance was placed in *Thomas Ogunde Mboya v Grand Royal Swiss Hotel* [2022] KEELRC 314 [KLR] wherein the court held: "Under the common law, for an offer to be binding or valid, three essentials should be construed, and these are an intention to create a legal relationship; an offer and an acceptance and agreement on the essentials of the contract [including consensus on the rights and duties of the parties, remuneration, duration and start date]."
56. It is the Respondent's submission that the Petitioner by reverting with comments on the Employment Contract, failed to accept the offer of employment and consequently, no binding contract of employment came into existence. It is apparent that the parties had not agreed on the remuneration the Petitioner was to earn, therefore, the Petitioner's assumption that his salary would be comparable to what he earned in his previous employment is baseless and not backed by evidence.
57. The Respondent submitted that the employment contract, like other contracts, cannot be binding unless there is consideration. In the employment context, the consideration from the employer is usually payment of a salary and the consideration from the employee is usually the provision of labour. The parties had not agreed on the Petitioner's remuneration before the Employment Contract was issued to the Petitioner to sign. From the documents the Petitioner was asked to complete, the Petitioner was not asked to indicate his expected salary. Additionally, the only time remuneration was discussed between the Petitioner and the Respondent was through the Petitioner's email of 29th April 2020 when the Petitioner requested an amendment of the Employment Contract to reflect the pay he used to receive from his previous employer.
58. The Respondent submitted that section 9[3] of the *Employment Act* provides that the employee signifies consent to a written contract of service in one of two ways; signing his name thereon or imprinting an impression of his thumb or one of his fingers in the presence of a person other than



his employer. Therefore, to the extent that the Petitioner did not accept the terms of the Employment Contract before it was withdrawn by the Respondent in the manner set out under section 9[3] of the Act, an employment relationship could therefore not arise.

59. It is the Respondent's submission that if there existed an employment relationship between the Petitioner and the Respondent, that relationship was not based on the Employment Contract as this was withdrawn. Rather, an employment relationship was created based on the one-month employment contract the Petitioner signed for payroll purposes that enabled the Petitioner to receive his April salary. Therefore, no binding employment contract was entered into by the Petitioner and the Respondent that can be enforced by the Court.
60. On the second issue, the Respondent submitted the Petitioner was made aware that providing false information in the Employment Application would attract sanctions. This was expressly provided in the Acknowledgment Letter. Moreover, the Hire Form contained a suspensive condition which provided that knowingly providing false information attracts sanctions including but not limited to withdrawal of employment consideration. The Petitioner stated in the Application that he had left his previous employment because of redundancy while in fact, he was terminated following a disciplinary process.
61. The Respondent submitted that the Petitioner misrepresented the reasons for his separation with his previous employer which was crucial information that the Petitioner ought to have disclosed to the Respondent. Therefore, in accordance with the Employment Application and the Hire Form, the Respondent was justified in withdrawing the Employment Contract. The Respondent could not have invoked the termination clause in the Employment Contract as the Petitioner had not accepted the terms thereof.
62. It is the Respondent's submission that that the Petitioner's claim for legitimate expectation cannot arise in the circumstances of this case as no employment contract was concluded between the parties. It placed reliance in the Supreme Court case *Communications Commission of Kenya & Others v Royal Media Services and Others* [2014] eKLR set out the elements for legitimate expectation as follows: there must be an express, unambiguous promise given by a public authority; the expectation itself must be reasonable; the representation must be one which it was competent and lawful for the decision-maker to make; and there cannot be a legitimate expectation against clear provisions of the law or *the Constitution*.
63. The Respondent submitted that the Application and the Hire Form made it clear that the Petitioner's employment was subject to him providing the correct information. The Application and the Hire Form further detailed the sanctions the Petitioner would face should he be found to have provided false information. Therefore, the representation by the Respondent was clear, unambiguous and devoid of relevant qualification.
64. It is the Respondent's submission that the Petitioner's legitimate expectation claim that he would have been employed by the Respondent for a period of one year cannot arise in the circumstances of this case. The Respondent's offer to the Petitioner was conditional and contingent upon the Petitioner providing accurate information about his previous employment which he failed to do.
65. On the final issue, the Respondent submitted that that unfair labour practice is an action by an employer that violates the provisions of the *Employment Act* and other applicable labour-related legislations. The Petitioner faults the Respondent for withdrawing the Employment Contract, however, the Respondent was justified in withdrawing the Employment Contract. At the time of withdrawal of the Employment Contract, there was no valid and binding contract between the Petitioner and the Respondent.



66. The Respondent submitted that it neither failed to comply with statutory provisions nor with the terms of the Acknowledgment Letter and the Hire Form and as such cannot be guilty of unfair labour practice. In the absence of supporting evidence, the Petitioner has failed to prove his claim for unfair labour practice on the Respondent's part and the same must fail.
67. It is the Respondent's submission that the proposed contract of employment between the parties was never signed, therefore, no employment relationship was created on account of the Employment Contract that was withdrawn. Consequently, the Respondent could not have summarily dismissed the Petitioner or invoked section 41 of the Act. The correct action in the circumstances of this case was a withdrawal of the Employment Contract.
68. The Respondent submitted that the Petitioner bears the overriding obligation to lay substantial material before the Court in the discharge of his evidential burden of proof to establish that his treatment at the Respondent's hands was unconstitutional. In the absence of supporting evidence, the Petitioner has failed to prove his claim for violation of his right to fair administrative action and the same must fail.
69. The Respondent submitted that the Petitioner is not entitled to an award of general damages for summary dismissal as no employer-employee relationship arose between the Respondent and the Petitioner on account of the withdrawn Contract of Employment.
70. The Respondent submitted that given the nature of the Petitioner's claim and the failure on his part to prove his claim, general and exemplary damages cannot issue. The Petitioner has not proved that the Respondent's action was reprehensible or excessive in any manner.
71. The Respondent submitted that the Petitioner's evidence has not fulfilled the ingredients established in the Court of Appeal case of Kenya Revenue Authority v Menginya Salim Murgani [2010] KECA 508 [KLR] wherein it held:
- “there are only two categories of cases in which an award of exemplary damages could serve a useful purpose, viz, in the case of oppressive, arbitrary or unconstitutional action by the servants of the government and in the case where the defendant's conduct had been calculated to make a profit for himself which might well exceed the compensation payable to the plaintiff”
72. It is the Respondent's submission that the Petitioner has failed to prove any legal or contractual basis for the claim of full salary for the remaining period of the contract. Had the Petitioner accepted the Employment Contract, his annual consolidated salary would have been Kshs. 2,522,696.69 and not Kshs. 3,284,199 as alleged.
73. I have examined all the evidence and submissions from the parties. I note that the relationship between the petitioner and the respondent commenced via email communication with a recruitment agent and culminated in an offer of employment dated 29/4/2020 which the petitioner was asked to sign and revert soonest. There is no evidence that the petitioner signed the offer accepting the terms thereof and on 30/4/2020, the offer was withdrawn.
74. The respondents aver that by the time of the withdrawal, there was no employment relationship between them and the petitioner and the issue of unfair termination does not therefore arise.
75. It is however true as submitted by the petitioner that he was informed through email of 1/4/2020 at 21.55 that irregardless of the time the employment contract was to be signed, the employment would commence on 1/4/2020 but this was subject to IQUIA due diligence. Things seemed to be looking up



for the petitioner with communication between him and respondents requested for certain documents in order to complete the recruitment process. This process however was not completed as the petitioner himself never accepted the offer before its withdrawal.

76. As indicated above the email offering the petitioner employment on 1/4/2020 indicated that the start date would be 1/4/2020 subject to due diligence by the respondents. Respondents did their due diligence and communicated with the petitioner's previous employer and confirmed that he had been dismissed after a disciplinary process which the petitioner had not disclosed. In essence the start of the contract on 1/4/2020 was negated after the due diligence and which the respondent communicated to the petitioner
77. In essence there was no employment contract between the petitioner and respondent sealed through any signed contract capable of being enforced. The issue of wrongful termination and a breach of the petitioner's rights does not therefore arise. The petitioner in my view fails below the standard of proof expected and is dismissed accordingly. There will be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

