

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. E087 OF 2025

IN THE MATTER OF A PETITION FOR JUDICIAL REVIEW

ORDERS OF CERTIORARI, PROHIBITION, MANDAMUS

AND A DECLARATORY RELIEF

AND

IN THE MATTER OF A PETITION UNDER ARTICLES 10, 22,

23, 27, 41, 47, AND 50 OF THE CONSTITUTION OF KENYA,

2010

AND

IN THE MATTER OF SECTIONS 41, 42, 43 AND 45 OF THE

EMPLOYMENT ACT, 2007

AND

IN THE MATTER OF SECTIONS 4 AND 7 OF THE FAIR

ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

AHMED FARAH.....PETITIONER

- VERSUS -

KENYA NATIONAL CHAMBER OF

COMMERCE AND INDUSTRY (KNCCI).....RESPONDENT

(Before Hon. Justice Byram Ongaya on Thursday 13th November, 2025)

JUDGMENT

1. The petitioner filed the petition and supporting affidavit dated 08.05.2025 through Issah Mahat & Company Advocates. He sought the following reliefs:

- a) An order of *Certiorari* to quash the decision of the 1st and 2nd respondents made on 17.04.2025 to summarily dismiss the petitioner.
- b) An order of *Mandamus* for the reinstatement of the petitioner to his position as CEO of KNCCI, or in the alternative,
- c) An order of *Mandamus* against the 1st respondent to formally and publicly retract the press release issued by the 1st respondent on 18.04.2025 but backdated to 17.04.2025 announcing the petitioner's termination.

- d) An order of Prohibition prohibiting the 1st and 2nd respondents from further publishing or disseminating defamatory statements regarding the petitioner's termination.
- e) A Declaration that the decision to dismiss the petitioner was unfair, unlawful, and in violation of Articles 10, 22, 23, 27, 41, 47, and 50 of the Constitution of Kenya, 2010, the Employment Act, 2007, and the Fair Administrative Action Act, 2015.
- f) A Declaration that the petitioner's termination was politically motivated and constituted an abuse of power by the 2nd respondent.
- g) An order of *Mandamus* compelling the 1st respondent to submit to an independent forensic audit of its financial accounts and records and the board of governance, for the period from 01.11.2024 to the date of the audit.
- h) An order for the payment of damages for unfair termination.
- i) An order for the payment of damages for the loss of income, reputational harm, and emotional distress.

- j) An order for costs of this petition.
- k) Any other relief that this Honourable Court may deem fit to grant.

2. The petitioner's case was as follows:

- a. The petitioner was appointed the CEO of the 1st respondent *vide* an Employment Agreement dated 01.11.2024. The contract was for a term of three years, with an initial probationary period of six months that was to lapse on 01.05.2025. He was to receive Kshs.1,200,000/= subject to the requisite tax deduction.
- b. He displayed his commitment to the new role at the 1st respondent by resigning from Trademark Africa, where he had served as the Country Director, Kenya for about eight years and with considerable achievements as highlighted in the petition.
- c. He was appointed CEO of the 1st respondent following a competitive recruitment process. At that point, the 1st respondent had been marred by significant turnover of CEOs and faced various legal, compliance and governance issues, as

captured in the External Auditors' Management Letter of July 2024 and the donor-funded Delivery Capacity Assessment (DCA) Report of June 2024.

- d. Despite never being properly inducted or trained on his new role, the petitioner accomplished various milestones and achievements as extensively highlighted in the petition and supporting affidavit. He generally fostered the 1st respondent's values, mission and vision, short and long-term goals, thereby influencing the organization's effectiveness and results. He provided general oversight over the 1st respondent's activities, and enhanced its member engagement and financial discipline and turnaround. Further, he instituted processes to ensure the filing of all legal and regulatory documents and monitored compliance with relevant laws and regulations.
- e. The petitioner hoped that the 2nd respondent would collaborate with him to build synergies within the 1st respondent, to establish the 1st respondent's role in Kenya's socioeconomic transformation and transform countless entrepreneurial dreams into a prosperous and competitive Kenyan economy.

- f. On 07.04.2025, the 1st respondent, through its Chamber Secretary, called for a Special Board Meeting to be held on 11.04.2025 to discuss and review the WCF Summit 2025, and also discuss three committee reports. In the meeting on 11.04.2025, the Chamber President focused on his displeasure with the petitioner's performance. Given that it was five and a half months into his six-month probation period, the 2nd respondent instructed the petitioner to complete the Performance Appraisal Form and forward it to the Chamber President with the Chamber Vice-President and Board Human Resource Chair copied, by 14.04.2025. Notably, the other agenda items in the meeting were not discussed as planned. The petitioner filled out the performance appraisal form as required despite the short notice.
- g. Thereafter, through a memo published on the Board's WhatsApp messaging platform, the petitioner was notified of a Board of Directors' Meeting set for 17.04.2025, with the agenda stated as, "Finalization of CEO Appraisal". However, at the said meeting, he was surprised to learn that none of the

2nd respondent's members had been furnished with copies of the Performance Appraisal Form, even though the meeting had been clearly convened to conduct his appraisal. In addition, despite the form having been disseminated beforehand, the Chamber President, the appraiser, had neither reviewed the appraisal report nor considered the submitted assessment form.

- h. Throughout the course of the petitioner's appraisal meeting, the Board contravened the set agenda for the meeting by failing to analyse or call into defence his appraisal. The meeting was instead transformed into a disciplinary hearing without prior notice to him. He was put on his defence on various matters without being informed of the specific allegations or provided with any evidence, thus rendering the process unfair. The 2nd respondent had clearly premeditated and resolved to dismiss him without any basis. The 1st respondent's HR Committee Chair thereafter called him after the meeting, and upon learning he was not in the office, the

petitioner was informed of the termination of his engagement 15 minutes later. He was subsequently served with a termination letter for failing to meet performance criteria.

- i. According to the notice dated 17.04.2025, the petitioner's termination of employment was to take effect immediately, contrary to the law on dismissal of employees on probationary contracts.
- j. On 18.04.2025, the petitioner posted about the end of his tenure as the 1st respondent's CEO on his X and LinkedIn social media platforms. The 1st respondent retaliated by issuing a press release on the same day, backdated to 17.04.2025, announcing his termination in a manner that was defamatory and damaging to his professional reputation.
- k. The petitioner's dismissal was unfair as evidenced by the 2nd respondent's persistent hostility towards him. He never received the reasons why the 2nd respondent terminated his employment. Further, he had consistently received disapproval from the 2nd respondent regarding his decision not to remit their monthly responsibility allowance, contrary to a

Resolution dated 19.04.2023 whereby the 2nd respondent had illegally passed a special resolution to remit monthly responsibility allowances to its membership. Lastly, his efforts to achieve financial stability for the 1st respondent were seen as a threat by the 2nd respondent because he had also started raising questions on certain employees having parallel contracts as consultants in donor projects implemented by the 1st respondent.

3. The petitioner particularised the violation of the Constitution of Kenya as follows:

(i) The 1st and 2nd respondents violated the principles of procedural fairness enshrined in Article 47 by transforming the petitioner's scheduled appraisal meeting into a disciplinary hearing without prior notice to him. Additionally, the respondents' breach of the petitioner's legitimate expectation was rooted in their arbitrary and unfair actions contrary to the principles of fair administrative action under Article 47. The petitioner's right to fair administrative

action was therefore grossly violated, justifying the issuance of an order of *certiorari* to quash the dismissal decision.

- (ii) The dismissal process breached the principles of natural justice, as guaranteed under Article 50, which mandates a fair and impartial hearing. The respondents denying the petitioner the opportunity to be heard in a transparent and unbiased manner rendered the dismissal decision void, thus necessitating judicial review to restore fairness.
- (iii) The 2nd respondent's actions in dismissing the petitioner constitute an abuse of power and were undertaken in bad faith, contrary to provisions of Article 10 on integrity, transparency and accountability in public administration. Such abuse of authority not only undermines the principles of good governance but also violates the principles of rationality and his right to fair treatment, warranting a declaration that the dismissal was tainted by bad faith and an order to quash it.
- (iv) The petitioner's summary dismissal without valid reasons or due process infringes his right to fair labour practices, as

guaranteed under Article 41. The respondents' reliance on unsubstantiated grounds for termination violates the petitioner's constitutional entitlement to dignified and equitable treatment in employment. Such a violation necessitates judicial intervention to reinstate him and/or award appropriate compensation for the harm suffered.

(v) The petitioner's dismissal was motivated by political considerations, constituting discrimination in violation of Article 27, which prohibits unfair treatment based on political opinion or other grounds. The respondents undermined the principles of equality and fairness, justifying a declaration that the dismissal was unlawful.

(vi) The retaliatory action taken in response to the petitioner's social media posts stating the end of his tenure as KNCCI CEO violates his right to dignity under Article and constitutes an abuse of the 1st respondent's platform. The defamatory publication necessitates an order of *certiorari* to quash it and a prohibition against further defamatory statements by the respondents.

4. The respondents filed the replying affidavit of Joseph Mutavi Kithu, a member of the 1st respondent's board of directors, sworn on 11.06.2025, and through Okweh Achiando & Company Advocates. They urged as follows:

- a) The petition dated 08.05.2025 does not raise any constitutional issues, and the petitioner ought to have ventilated his grievances by way of a claim and not a constitutional petition. The constitutional jurisdiction of this Honourable Court has been improperly invoked and the Court is therefore divested of jurisdiction based on the doctrine of constitutional avoidance.
- b) Contrary to the petitioner's allegations, he joined the 1st respondent when he was without a job, having left Trademark Africa in September 2024.
- c) The petitioner's employment was subject to his meeting key results areas in his job description, and the respondent reserved the right to terminate his employment should he fail to meet his performance targets. Notably, the 1st respondent's revenue streams decreased during the petitioner's tenure as its

CEO, and contrary to his assertions, the petitioner was not a good performer.

- d) On or about 17.03.2025, the 1st respondent's president wrote to the petitioner, instructing him to carry out a self-appraisal as per his Key Performance Indicators. Whereas he was required to present his self-appraisal within seven days and acknowledged receipt of the email, the petitioner failed to comply with the instructions.
- e) On 11.04.2025, the 1st respondent held a board meeting in which the petitioner's immediate supervisor informed the 2nd respondent that the petitioner had not complied with the instructions to conduct a self-appraisal. This meant that the 2nd respondent could not assess the petitioner's performance. When members of the 2nd respondent inquired from the petitioner why he had not followed the instructions, he responded that he was busy planning for the WCF summit, hence the delay. The 2nd respondent resolved to give him seven days to carry out the self-appraisal and present the same to the 1st respondent's president for onward transmission to

the Board. Therefore, the meeting was adjourned to 17.04.2025 to give the petitioner more time to share his self-appraisal report.

- f) On or about 17.04.2025, the 2nd respondent held a meeting in which the petitioner was appraised by the 1st respondent's directors. The results were an average of 43.9%, which was rounded off to 44% and rated as Poor Performance. When the petitioner was called back to the board meeting to discuss the outcome of his appraisal, he was nowhere to be found as he had left the office.
- g) The respondents considered the petitioner's appraisal and the fact that he was serving a probationary contract, and proceeded to terminate his employment and serve him the termination letter through his personal WhatsApp number.
- h) Following the petitioner's statement via his social media accounts that he had resigned from his position at the 1st respondent, several media outlets wrote articles on the same. The respondents thus informed the public on 19.04.2025 of the termination of the petitioner's employment from the 1st

respondent. His allegations of defamation are therefore unfounded and not specifically pleaded.

- i) Through a letter dated 30.04.2025, the petitioner was offered, and he accepted payment of his final dues by appending his signature on a discharge voucher signifying agreement with the calculations and confirming no further claims against the 1st respondent. The petitioner is therefore estopped from making any further claims from the respondents having signed the discharge voucher.
- j) The petitioner is undeserving of the orders sought in his petition because his contract was terminated for valid and genuine reasons. He has not demonstrated any exceptional circumstances to warrant his reinstatement to his position, and in any event, the relationship between him and the respondents has irretrievably broken down. He has also failed to prove the allegations of loss of income, reputational harm and emotional distress

5. The respondents also filed a notice of preliminary objection dated 11.06.2025 against the petition dated 08.05.2025 on the following grounds:

- i) That the petition dated 08.05.2025 has been filed contrary to the provisions of Article 22 of the Constitution of Kenya, 2010 and Rule 10 (1) and (2) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.
- ii) That the petition dated 08.05.2025 does not disclose any constitutional issues and the same offends the doctrine of constitutional avoidance as expounded by the Supreme Court in **Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others [2014] eKLR.**
- iii) That the petition dated 08.05.2025 is founded on a contract of employment and remedies sought can be obtained by way of a normal suit. The petition is a contractual claim disguised as a constitutional petition.

- iv) That the petition dated 08.05.2025 gravely offends the principles laid down in Anarita Karimi Njeru v Republic [1979] eKLR as affirmed by the Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR. The petition does not, in any manner whatsoever, disclose with precision or particularity any constitutional rights violations and/or infringement.
- v) That this Honourable Court lacks the jurisdiction to entertain the petition dated 08.05.2025 since a discharge voucher was executed between the petitioner and the respondents, discharging the respondents from any claims arising from the petitioner's contract of employment.
- vi) That in due regard to the foregoing, the constitutional jurisdiction of this Honourable Court has been improperly invoked, and the petition dated 08.05.2025 is *mala fide*, misconceived, incompetent, vexatious, frivolous, bad in law, defective and an abuse of the Court process as this Honourable Court is not seized of the jurisdiction to hear

and determine the petition in respect of the issues raised in the petition.

vii) Therefore, for the aforementioned reasons the petition should be struck out with costs to the respondents.

6. In response to the respondents' replying affidavit and preliminary objection, the petitioner filed his further affidavit, sworn on 07.07.2025, and stated as follows:

a. The deponent of the replying affidavit lacks the requisite authority to plead on behalf of the 1st respondent and assuming the deponent refers to the 2nd respondent, the 1st respondent admits the contents of the petition. The deponent has further not demonstrated that he was duly authorised to depose the affidavit on behalf of the 2nd respondent.

b. The preliminary objection does not raise a pure point of law capable of ousting the jurisdiction of this Honourable Court as set out in the *Mukisa Biscuit* case.

c. Further, this Court is vested with the jurisdiction to determine

constitutional questions within the context of employer-employee relations, provided they meet the **Anarita Karimi Njeru v Republic [1979] eKLR** threshold; if a person is seeking redress from the High Court on a matter involving a reference to the Constitution, they 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, as this petition does.

- d. This Honourable Court has the jurisdiction to enforce constitutional rights, particularly those under Article 41 (labour rights), when they are incidental to employment and labour disputes. The doctrine of constitutional avoidance does not divest this Court of the jurisdiction to hear and determine constitutional petitions, and this Court has the jurisdiction to determine the question of whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.

- e. The petitioner turned down a new role offered by Trademark Africa when he was offered employment at the 1st respondent, and he instead opted to resign.
 - f. The meeting held on 11.04.2025 was meant to be a meeting to discuss the WCF Summit and not the petitioner's performance.
 - g. The respondents' claim that he was an underperformer as a CEO is baseless and contradicts the evidence of his remarkable achievements, which demonstrate his competence and dedication. The respondents have also not laid the basis for their appraisal.
 - h. This Court ought to grant the reliefs as sought in the petition.
7. The parties filed their respective written submissions. The Court has considered the material on record and returns as follows.
8. To answer the **1st issue**, there is no dispute that parties were in a contract of service. The petitioner was employed by the respondents as the Chief Executive Officer and the terms of service were not in dispute.

9. To answer the **2nd issue** for determination, the Court returns that the contract of service was terminated by the letter of termination of employment during probationary period dated 17.04.2025. As pleaded for the petitioner, there is no doubt that as at the date of the termination the probationary term had not lapsed. The reason given for the termination was that after evaluation by the board, the petitioner's performance was found not to meet the expectations of the position held by the petitioner. The letter stated in part, "You will be paid all dues owed to you up to the date of termination, including 7 days salary in lieu of notice, any accrued leave and applicable entitlements under the probationary contract...." The letter also required the petitioner to return all respondents' property in his possession. On his part, the petitioner issued a public statement announcing his departure from the 1st respondent effective 18.04.2025. The respondents' President issued a public statement dated 17.04.2025 announcing that the petitioner's probationary appointment had been terminated. The Court finds that the flow of events show that the separation was by termination of the probationary appointment.

10. To answer the **3rd issue** and as urged for the respondent's, the petition is chained with the doctrine of constitutional avoidance. The primary dispute was about the impugned termination of probationary service. The petitioner has alleged violation of Article 41 on the right of fair labour practices because the respondents failed to comply with procedure in the Employment Act but particulars of which failure were not pleaded at all. The petitioner also pleaded violation of Article 27 on the right to equality before the law and freedom from discrimination on account that the termination was upon political considerations but again particulars of which were not pleaded at all. In the circumstances, it appears to the Court that the dispute about fairness of the termination of the probationary service was a contractual issue not importing a constitutional intervention and remedy.
11. To answer the **4th issue** the Court returns that the petitioner has not established the basis for grant of the remedies as prayed for. The judicial review orders as prayed for appear not to be available in this dispute about pure private rights and obligations

evolving from the termination of the probationary service. The petitioner has not pleaded and established by evidence that the respondent breached the probationary termination clause of the contract of service or the relevant provisions of the Employment Act on termination of probationary service. The Court has found that allegations of violation of rights were extremely remote to the instant dispute. The petitioner has as well failed to show the particulars of the defamatory material and that his reputation was thereby injured. The material before the Court show that the respondent accurately published the circumstances of the separation. That the petition makes no liquidated claims upon the contract in view of the separation leads the Court to find that the petitioner acknowledged the payment of terminal dues and the respondent owed him no further liability. The Court upholds the respondent's submission in that respect. In any event, no submissions were made for the petitioner to guide the court in granting any of the reliefs other than urging that the Court grants as prayed.

In conclusion the petition is hereby dismissed with costs.

**Signed, dated and delivered by video-link and in court at Nairobi
this Thursday 13th November, 2025.**

**BYRAM ONGAYA
PRINCIPAL JUDGE**