



Njoroge & 2 others v Kenya Medical Supplies Authority & 3 others (Employment and Labour Relations Petition E145 of 2024) [2025] KEELRC 3037 (KLR) (3 November 2025) (Judgment)

Neutral citation: [2025] KEELRC 3037 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E145 OF 2024**

**MN NDUMA, J
NOVEMBER 3, 2025**

BETWEEN

**EDWARD NJOROGE 1ST PETITIONER
NAHASHON WAIGANJO 2ND PETITIONER
CAROLINE ANUNDA 3RD PETITIONER**

AND

**KENYA MEDICAL SUPPLIES AUTHORITY 1ST RESPONDENT
CABINET SECRETARY, MINISTRY OF HEALTH 2ND RESPONDENT
HON ATTORNEY GENERAL 3RD RESPONDENT
PUBLIC SERVICE COMMISSION 4TH RESPONDENT**

JUDGMENT

1. The suit is by a further amended petition by the three Petitioners against the Respondents. From the court record, the 2nd Petitioner and the 1st Respondent entered a consent dated 4th July 2025 and the intended disciplinary action against the 2nd Petitioner was withdrawn by the 1st Respondent. The 2nd Petitioner resumed his duties as Director of Finance and Strategy and the matter between the two parties was marked as settled.
2. The 1st and 3rd Petitioners seek the following reliefs in the further amended petition:
 - i. A declaration that forced leave amounts to compulsory leave that should meet the statutory requirements of compulsory leave and thus the sending away of the Petitioners vide letters Ref. PN0154 dated 30th September 2024; Ref. CS0569 dated 30th September 2024 and Ref: CS0589 dated 30th September 2024 is null and void abinitio .



- ii. A declaration that the 1st Petitioner's notice of resignation dated 1st October 2024 is a constructive dismissal.
- iii. A declaration that the 3rd Petitioner's employment is under permanent and pensionable terms as per her employment contract Ref. ST 6 1 2 dated 14th June 2012.
- iv. An order of certiorari do issue to remove into this court for purposes of quashing the 1st Respondent's letters Ref. PN0154; Ref. CS0569 dated and Ref CS0589 all dated 30th September 2024 that sent away the Petitioners.
- v. An order that the 1st Petitioner be compensated with salary for 12 months with attendant gratuity for the constructive dismissal.
- vi. An order that the 3rd Petitioner's employment is under permanent and pensionable terms as per her employment contract Ref. ST 6 1 2 dated 14th June 2012 currently as the Finance Manager (Deputy Director).
- vii. In the alternative to prayers No. (iii) and (v) above, A declaration that the 1st Respondent's letter Ref CS0589 dated 28th February 2025 of rejection of renewal of the 3rd Petitioners employment contract dated 4th March 2020 in the face of her excellent performance and continued need of the services of the Finance Manager was unconstitutional, null and void ab initio.
- viii. Consequent to prayer no. (vii) above, an order of mandamus be issued against the 1st Respondent to renew the 3rd Petitioner's employment contract Ref. CS0589 dated 4th March 2020 with effect from 5th March 2025
- ix. An order of certiorari do issue to remove into this court for purposes of quashing the 1st Respondent's four letters of compulsory leaves and show causes Ref. PN0154 and Ref: CS0589 all dated 22nd November 2024 and 4th December 2024.

Facts of the petition

- 3. The complaint is against the interdiction and placing on half salary the 1st and 3rd Petitioners by a letter dated 20th September 2024 by the 1st Respondent on alleged "offence" that the office of the Auditor General's annual audit report for the fiscal year ended June 2023 (July 2022 to June 2023) returned a score card verdict of adverse opinion when no such offence is contemplated in the KEMSA HR Dispute Policy Manual.
- 4. The Petitioners state that during the financial year in question, they had been placed on compulsory leave and a caretaker team put in place following the directive by the Head of Public Service.
- 5. That the interdiction letters did not allow or invite Petitioners to show cause why disciplinary action should not be taken against them in violation of section 21.6 of the KEMSA HR Disciplinary Policy Manual which provides "in all disciplinary cases employees are allowed to make their representations."
- 6. The Petitioners were thus condemned unheard in violation of the rules of natural justice and violation of their rights to fair administrative action enshrined under Article 47 and 50 of *akn ke act 2010 constitution the Constitution* of Kenya 2010.
- 7. That all staff including the Petitioners were recalled on 18th May 2023. It is clear that the Petitioners were away from office during the audit period since the 1st Respondent de-activated access to its ICT portal upon interdiction and so should not be associated and or blamed for any act or omission during



the financial year ending June 2023 (July 2022 to June 2023). The caretaker team should be wholly held responsible.

8. Petitioner refers to judgment of Nderi Nduma J. delivered on 27th July 2023 in Petition No. E149 in which the court quashed intended termination of Petitioners' employment on grounds of redundancy vide an advertisement published on 26th July 2022. The Petitioners further state that sending of all staff on compulsory leave was also frowned upon by Maureen Onyango J. on 27th July 2021 in Petition E174 OF 2021, that,

“ The foregoing notwithstanding, the mass sending home of most of all employees even if on full salary, is not provided for by law.”

9. The Petitioners conclude that the interdictions were unlawful, unfair, arbitrary and unreasonable in the circumstances of the case.
10. That selective interdiction of the Petitioners was discriminatory and violated their rights under Articles 27,41,47, 50 and 236 of *akn ke act 2010 constitution the Constitution of Kenya 2010*.
11. The Petitioners further allege that the 1st Respondent on 30th September 2024 sent away the Petitioner on an invented compulsory leave in a clear attempt to circumvent and defeat the conservatory orders issued on 25th September 2024 vide letters of same date. The letter read: -

“ You are hereby directed to proceed on your annual leave for the accumulated 38 days with effect from 1st October 2024. Please hand over your duties...”

12. Petitioners state that compulsory leave as provided at clause 11.10 (k) of the KEMSA Human Resource Policy and Procedure Manual and Regulation 62 of the Public Service Commission (PSC) Regulations 2020 may only be issued upon written approval by PSC. When the officer is under investigation with reasons and such leave should not exceed 30 days.
13. That the aforesaid conduct by the Respondents fundamentally breached the root of the contract of employment resulting to severe mental anguish and psychological torture which action left the 1st Petitioner with no option but to resign which he proceeded to do on 1st October 2024 and states that he was constructively dismissed from the employment of the 1st Respondent with effect from the date of resignation.
14. The 1st Petitioner claims compensation for the wrongful, unlawful and unfair constructive dismissal and payment of gratuity.
15. With regards to the 3rd Petitioner, she held a contract of employment dated 14th June 2012 in which she was employed at Cadre SA4 on permanent and pensionable terms. However, when the Claimant was due for promotion and attended an interview for the purpose in the year 2020, the 1st Respondent changed her terms of employment to a fixed term contract dated 3rd April 2020 in grade SA3. This change was unlawful since once employed on permanent and pensionable terms, that cannot be arbitrarily changed to a fixed term contract. That the 3rd Petitioner was apprehensive that the intention of the 1st Respondent was not to renew her contract when it fell due for renewal despite her stellar performance.
16. The 3rd Petitioner served her five (5) year contract until 28th February 2025. The 1st Respondent declined to renew the contract and directed the 3rd Petitioner to clear and leave the premise shattering her legitimate expectation.



17. The 1st Respondent contemporaneously appointed Pauline Nyoru as the Acting Finance Manager in place of the 3rd Petitioner vide memo dated 5th March 2025.
18. That the 94th Board meeting that rejected the renewal of 3rd Petitioner's contract was illegal as it was held without written approval of the Cabinet Secretary in consultation with the state corporation Advisory Committee provided at clause A(3) of circular OP CAB.9 1A dated 11th March 2020 read together with section 8 of the *akn ke act 1986 11 state corporations Act* for having been over and above the maximum six meeting, for the year ending June 2023.

Violation

19. The Petitioners allege violation of Articles 27, 41, 47, 50 and 236) as set out in the petition. The Petitioners allege violation of the principles of governance enshrined under Article 10 of *akn ke act 2010 constitution the Constitution*. The Petitioners in addition allege violation of principles of Leadership and Integrity provided at Article 73 of *akn ke act 2010 constitution the Constitution*.
20. The Petitioners add that they are protected by provisions of Article 236 against arbitrary disciplinary action and punishment.
21. That in any event, the current Board of Management of 1st Respondent was appointed and gazetted vide notice no. 6269 dated 15 5 2023 by the 2nd Respondent without prior competitive recruitment and was not based on competence and suitability and disregarded principles of governance and public service as per Articles 10, 27, 72, 153 and 232 of *akn ke act 2010 constitution the Constitution* and section 5 of KEMSA Act.
22. Sending away the Petitioners out of 22 Directors and Deputy Directors without any reason is an act of unlawful discrimination that subjected them to psychological torture, inhuman treatment and unfair labour and administrative practices in violation of Articles 27, 28, 29, 41 and 47 of *akn ke act 2010 constitution the Constitution*. The Respondents acted contemptuously by circumventing court orders as set out in the petition and should be held to account.

Wherefore the Petitioners pray for the reliefs sought.

The 2nd and 3rd Respondents filed notice of preliminary objection to the suit as follows: -

1. That the amended petition dated 2nd October 2024 does not comply with the requirements of Rule 10 of *akn ke act 2010 constitution the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules and therefore cannot be sustained.
2. That the amended petition dated 2nd October 2024 contravenes the Doctrine of constitutional avoidance and ought to be struck out with costs.

Grounds of opposition by 4th Respondent

23. The 4th Respondent filed grounds of opposition dated 9th July 2025 stating that the 4th Respondent is improperly joined in the proceedings and no cause of action is disclosed against the 4th Respondent.

The 4th Respondent states that the 1st Petitioner resigned on 1st October 2024 and never appealed to the 4th Respondent within 90 days as provided under section 74 – Appeals; as follows: -

- “ (1) Any person who is dissatisfied or affected by a decision made by an authorized officer on other authority in exercise or purported exercise of disciplinary control against any public officer under the Act may appeal to the Commission.



2. An appeal under sub-section (1) shall be made in writing within ninety days from the date of the decision appealed against:
24. provided that the Commission may consider an appeal that was made out of time if, in the opinion of the Commission, the circumstances warrant such consideration.”
25. The 4th Respondent prays that it be expunged from the proceedings as it did not participate in the disciplinary process issue in this petition.

Determination

26. The parties filed written submissions which the court has carefully considered together with the deposition by the parties. The issues for consideration are:
 - a. Whether the resignation of the 1st Petitioner amounted to unlawful constructive dismissal.
 - b. Whether the refusal to renew the contract of the 3rd Petitioner by a letter dated 25th February 2025 was unlawful and unfair.
 - c. Whether the Petitioners are entitled to the reliefs sought.

3rd Petitioner

27. The Petitioner was employed by the 1st Respondent vide a permanent and pensionable contract dated 14th June 2012 at Grade SA4.
28. That in 2020, the 3rd Petitioner was due for promotion and when a chance arose, instead of promoting her to grade SA3, the 1st Respondent required the 3rd Petitioner to attend an interview and the Petitioner was successful but instead of being promoted was informed by the 1st Respondent that position of Grade SA5 and above had changed to renewable contractual engagements and so the 3rd Petitioner was transited to a fixed term contract dated 3rd April 2020 for a period of five (5) years.
29. The 3rd Petitioner states that this information given to her was a misrepresentation of facts since the position of Finance Manager (Deputy Director) in the staff establishment of the 1st Respondent is on pensionable and permanent terms. That Salaries and Remuneration Commission (SRC) had advised the 1st Respondent that once a staff was employed on permanent and pensionable terms, the staff could not be transited to contractual terms. That this was only applicable to new recruits for example, the 2nd Petitioner was not transited to contractual terms.
30. That renewal of contracts of KEMSA is guided by clause 5.4 of the KEMSA Human Resource Policy and Procedures Manual (KEMSA HR Manual) and provides that: -

Employees will be engaged on contract terms based on exigency of service and other operational requirements. Contract terms shall depend on the nature of the job and shall range from 6 months to 3 years or as determined by work requirement. Employees serving on contract terms shall be eligible to renewal subject to service need and performance. An employee serving on contract shall request for contract renewal at least one month before lapse of his contract.”
31. The 3rd Petitioner complied with this requirement by requesting the 1st Respondent for renewal of her five-year contract dated 4th March 2020 by a letter dated 2nd February 2025.



32. The court notes that, the 3rd Petitioner did not protest the transition from permanent and pensionable terms to fixed term contract when it happened on 4th March 2020. This is when the cause of action arose and the 3rd Petitioner is barred from bringing that dispute before court after 3 years limitation period has lapsed. The Petitioner would have no doubt made a good case of discrimination since her senior counterparts remained in permanent and pensionable terms and there was no written justification for the transition from permanent and pensionable terms to contractual terms. That particular dispute is time barred and cannot be adjudicated upon in this matter. What remains is whether the refusal to renew the contract of the 3rd Petitioner by the letter dated 28th February 2025 is unlawful, that is the dispute before court. The other issue is whether sending of the 3rd Petitioner on compulsory leave by a letter dated 22nd November 2024 violated the 3rd Petitioner's rights and whether sanitization of the said compulsory leave by the 4th Respondent by a letter dated 19th December 2024, makes the 4th Respondent a necessary party to the suit.
33. The 2nd and 3rd Respondents referred the court to the Supreme Court decision in the case of Communication Commission of Kenya and others versus Royal Media Services Limited and 5 others [2014] eKLR , where the court held that where a party fails to apply the doctrine of constitutional avoidance and apply the dispute resolution mechanisms available under a given statute such suit should be struck out.
34. The court however notes that the cause of action in this matter arose from sending of almost all the staff of an organization on compulsory leave with pay and without notice. This was unchartered waters that required extraordinary action in the manner the Petitioner, acted in the present case. The Petitioners were interdicted without substantive charges and timelines to respond.
35. The Petitioners cite violation of their rights under Articles 27,41,47,50 and 236 of *akn ke act 2010 constitution the Constitution* in that they were denied equal benefits and protection of the law enshrined under Article 27; that the indefinite interdiction without opportunity to explain themselves amounted to unfair labour practice in violation of Article 41(1) of *akn ke act 2010 constitution the Constitution*; and that they were subjected to unfair, unreasonable and inexpedient administrative action in violation of Article 47 of *akn ke act 2010 constitution the Constitution* of Kenya 2010 as read with the provisions of section 4 of *akn ke act 2015 4 Fair Administrative Action Act 2015*. Furthermore, failure to give them a hearing violated Articles 50(1) and 236 of *akn ke act 2010 constitution the constitution*.
36. The court agrees with the 1st and 3rd Petitioners that the action by the Respondents violated Articles 27, 41, 50, 47 and 236 of *akn ke act 2010 constitution the constitution 2010*.
37. That such is the conduct that justified repudiation of the contract of employment by the 1st Petitioner. The resignation by the 1st Petitioner amounted to unfair constructive dismissal within the meaning placed on the terms by our courts in several cases including Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] e KLR where the Court of Appeal laid down legal principles pertinent to determining constructive dismissal to include the following:
 - a. What are the fundamental or essential terms of the contract of employment?
 - b. Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer?
 - c. The conduct of the employer must be a fundamental or significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.
 - d. An objective test is to be applied in evaluating the employer's conduct.



- e. There must be a causal link between the employer’s conduct and the reason for employee terminating the contract i.e. causation must be proved.
 - f. An employee may leave with or without notice so long as the employer’s conduct is the effective reason for termination.
 - g. The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach;
38. The court considering the above authority finds therefore that the 1st Petitioner was unlawfully constructively dismissed by the Respondents upon violation of his rights under Articles 27, 41, 50, 47 and 236 of *akn ke act 2010 constitution the constitution*.
39. With regard to the 3rd Petitioner, her rights under Articles 27, 41, 47, 50 and 236 were equally violated. Both Petitioners are entitled to damages for the gross violation of the stated rights.
40. The 1st Petitioner is also entitled to compensation under section 49(1)(c) and (4) of the *akn ke act 2007 11 Employment Act 2007* for the unlawful and unfair constructive dismissal.
41. The 3rd Petitioner however, failed to come to court in time when her contract on permanent and pensionable terms was grossly breached and was unlawfully converted to contract terms. That cause of action is time barred.
42. The five (5) years contract granted to the 3rd Petitioner eventually lapsed by effluxion of time and the non-renewal was lawful since renewal is a mandate that belongs to the employer and need not provide any reason or justification for non-renewal as has been held by the Court of Appeal in *Amatsi Water Services Company Limited versus Francis Shire Chachi [2018] eKLR* which cemented the foregoing position when it cited with approval the holding of Rika J. in *Bernard Wanjohi Muriuki versus Kirinyaga Water and Sanitation Company Limited and another [2013] KLR* , that;

In the view of the court, there is no obligation on the part of an employer to give reasons to an employee why a fixed term contract of employment should not be renewed...Reasons, beyond effluxion of time, are not necessary in termination of fixed-term contracts, unless there is a clause in the contract calling for additional justification of the termination.”

43. In the final analysis, the court finds that:
- i. The Respondents’ violated the human rights for the 1st and 3rd Respondents enshrined under Articles 27(1), 41(1), 47(1), and 50(1) and (2) and requirements under Article 236 of *akn ke act 2010 constitution the Constitution of Kenya 2010*.
 - ii. The Respondents unlawfully and unfairly constructively dismissed the 1st Petitioner from his employment.

Remedies

44. The first remedy available to both the 1st and 3rd Petitioners is a declaration that the forced leave amounted to a violation of the Petitioners rights under Articles 27, 41,47, 50 and 236 of *akn ke act 2010 constitution the Constitution of Kenya 2010* and the Petitioners are entitled to damages.
45. The court finds that assessment of damages that vindicates the violation of the 1st and 3rd Petitioners rights does not require proof of damage or loss suffered. The Petitioners are entitled to damages upon prove that indeed their rights enshrined in the Bill of Rights were violated by the Respondents. The



Supreme Court in Charles Muturi Macharia and 6 others versus Standard Group and 4 others SC Petition No 13 (E013) of 2022 observed that;

To answer directly the question posed by this issue, under common law principles, it is settled that an injured party is entitled to damages for the loss and injury suffered under private law causes of action, like in tortious claims. In situations like those, compensation for personal loss depends on proof of such loss or damage. However, arising out of the violation of constitutional rights and fundamental freedoms of an individual under public law, the nature of the damages awardable are broadly compensatory or vindicatory, as should be apparent from the list of examples of reliefs in Article 23. While it is not necessary to prove loss or damage in cases of constitutional rights violations, the court may consider the extent, nature, gravity and immensity of harm suffered by the aggrieved party when determining the appropriate remedy. In deserving cases, the redress may be in the form of an award of damages to compensate the victim. In some cases, a suitable declaration, an injunctive or conservatory order, or an order of judicial review will suffice to vindicate the right ... Therefore, once a petitioner has presented proof on a balance of probabilities that his or her rights were violated, the court must vindicate and affirm the significance of the violated rights, even though the petitioner may not present evidence of any loss or damage suffered as a result of the violation. For these reasons, it can be said that the approach in awarding damages or compensation in constitutional rights violation cases is different from that in tortious claims....”

46. The Petitioners however suffered psychological torture, public ridicule and odium upon being publicly subjected to unlawful compulsory leave for indefinite period without any notice, hearing and or any opportunity to explain themselves. In the case of the 1st Petitioner the unlawful conduct resulted in his forced resignation which the court has found to be constructive dismissal. The court is also of the firm view that this unlawful conduct by the Respondent greatly contributed to the unexplained non-renewal of the contract of the 1st Respondent despite the clause in the KEMSA’s HR Policy that fixed term contracts “shall be eligible for renewal subject to service need and performance.” It is reasonable and prudent for the Respondents to give an explanation to this long-standing officer who had served the Respondent for a long time and without any proved blemish why the contract was not renewed even though it is not a mandatory requirement.
47. The 1st and 3rd Petitioners were not compensated for the loss of employment.
48. The court awards the 1st and 2nd Petitioners general damages for the violation of their human rights protected under Articles 27, 41,47, 50 and 236 in the sum of Kshs. 6 million Kenya shillings each.
49. In addition, the 1st Petitioner is awarded compensation equivalent to six (6) months’ salary for the unlawful and unfair constructive dismissal in terms of section 49(1)(c) and 4 of the *akn ke act 2007 11 Employment Act, 2007*.
50. For the avoidance of doubt, the preliminary objections raised in this matter have no merit. This petition was properly brought to the courts considering all the circumstances of this case. The doctrine of constitutional avoidance is not applicable in this matter where the court has found that the Respondents had violated constitutional rights of the Petitioners.
51. Equally, the Public Service Commission under section 74 of PSC Act has no jurisdiction on appeal, on violation of human rights of public officers protected under the Bill of Rights. The Commission was properly joined in this suit.
52. Equally, there is no prove that the Petitioners violated Mutunga Rules in bringing this petition.



53. Accordingly, the court enters judgment in favour of the 1st and 3rd Petitioners against the Respondents as follows: -

- a. A declaration is issued that the placing of the 1st and 3rd Petitioners on an indefinite compulsory leave without notice, due process, or reasons violated the rights of the Petitioners under Articles 27, 41, 47, 50 and 236 of *akn ke act 2010 constitution the Constitution of Kenya 2010*.
- b. The court awards the 1st and 3rd Petitioner general damages for the violation of their human rights protected in the sum of Kshs. 6,000,000.00 (six million) each.
- c. The court awards the 1st Petitioner compensation for unlawful constructive dismissal equivalent to six (6) months gross salary to be computed and paid by the 1st Respondent.
- d. Interest at court rates in respect of (b) and (c) above from date of the judgment till payment in full.
- e. Costs of the suit

54. For the avoidance of doubt all other sought reliefs are not granted for lack of merit.

DATED AT NAIROBI THIS 3RD DAY OF NOVEMBER 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Simiyu for Petitioners

Mr. Nyamondi for 1st Respondent

Mr. Odukenya for 2nd Respondent

Mr. Muthuri for Attorney General

Mr. Kemboi – Court Assistant

