



**Aradi v Teachers Service Commission (Petition E003 of 2024)
[2025] KEELRC 3551 (KLR) (11 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3551 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
PETITION E003 OF 2024
DN NDERITU, J
DECEMBER 11, 2025**

BETWEEN

RAJAB ARADI PETITIONER

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

I. Introduction

1. The petitioner acting in person commenced the proceedings herein by way of a petition dated 23rd April 2024 seeking for the following remedies –
 - a. That his deployment vide the letter dated 9th April 2024 was unfair as it breached articles 10, 20, 27, 41, 47, 50, 232, 236 and 249 of *the constitution* and SS 10(5), 41 and 43 of the *employment Act* and the code of conduct for teachers as his right to be heard which cannot be limited by dint of Article 25 of *the constitution* was breached.
 - b. He is entitled to general damages for breach of the rights above and unfair demotion.
 - c. That he be reinstated to his position as head teacher and all benefits before the 2017-2021 CBA have accrued to him and that he is entitled to benefit from 2017-2021 CBA and any subsequent CBA before his retirement on 1/7/2025.
 - d. The respondent shall then calculate his pension based on the earnings in the scale of head teachers.
 - e. This petition is neither resjudicata nor subjudice.



- f. The costs of the petition.
2. The petition is supported with an affidavit sworn by the petitioner on even date with annexures thereto.
 3. Subsequently, the petitioner instructed M/s Oscar Wachilonga & Associates Advocates to prosecute the petition on his behalf.
 4. In response to the petition, the respondent through Patrick Mulaku Advocate filed a replying affidavit sworn by Antonina Lentoijoni, the Director in charge of staffing, sworn on 10th February 2025 with several annexures thereto.
 5. In response to the replying affidavit the petitioner filed a supplementary affidavit sworn by himself on 29th February 2025 with several annexures thereto.
 6. On 18th March 2025 and by consent from counsel for both parties, the court directed that the petition be canvassed by way of written submissions. Mr. Munyendo for the petitioner filed submissions dated 2nd May 2025 while Mr. Mulaku for the respondent filed submissions dated 10th June 2025.

II. The Pleadings & Evidence

7. The petition sets out the constitutional provisions relied upon including Articles 10, 20, 21, 23, 25, 27, 40, 47, & 232. The petitioner briefly stated the application and relevance of each of the above Articles to the petition.
8. On the facts relied upon, it is stated that the petitioner was employed by the respondent on 3rd June 1986 and he was due for retirement on 1st July 2025. He was appointed acting deputy head teacher on 27th February 2003 and confirmed on 24th May 2007. He was subsequently appointed acting head teacher in 2007 and confirmed on 9th March 2009 and served in a several primary schools in that capacity.
9. The petitioner pleaded that notwithstanding his appointment as a head teacher, he was on 4th January 2021 deployed to Bayusuf Primary School as an assistant teacher. He complains that he has remained in the same job group L (C3) since 2010.
10. It is pleaded that the lack of promotion shall affect the computation of his retirement benefits as he was denied increment of salary for 14yrs.
11. The foregoing allegations are repeated in the supporting affidavit and supported with documents exchanged between the parties over the material time and subject matter. He deposed that his retirement benefits should be computed based on the 2017-2021 collective bargaining agreement between his trade union and the respondent.
12. In the replying affidavit by Antonina Lentoijoni for the respondent, it is deposed that as at the time the petitioner was deployed as a head teacher the position was neither substantive nor remunerative but just another deployment that could be held by any teacher.
13. It is deposed that from 1967 to 30th June 2017 when the first CBA with the teachers trade union was signed, all the administrative positions of senior, head, or deputy teacher were only deployment positions and all teachers were in job groups F to N regardless of any administrative position held.
14. It was further deposed that those teachers who held administrative positions of senior, head, or deputy teacher were paid an allowance and retained those positions based on performance as they could be removed and sent back as ordinary teachers.



15. It is deposed that the petitioner was appointed a permanent teacher vide a letter dated 8th May 1992 and that was his designation. It is deposed that any additional duties such as deputy or head teacher were only administrative deployments that were compensated by way of allowance without attracting any rise in grade or salary.
16. It is deposed that on 1st July 2017 the respondent signed a CBA with the teachers' trade unions and this transformed the teaching profession. It is only after this date that appointment and designation as a senior, deputy, or head teacher came with new grading and remuneration. Such positions became substantive appointments.
17. It is deposed that the petitioner was deployed as a deputy and head teacher prior to the 2017 changes. The letters of the said deployments are attached.
18. It is deposed that since the deployments were dependent on the performance and that the petitioner failed to exhibit good performance in all the schools wherein he served, he was in 2014 redeployed as an ordinary teacher. It is deposed that as at this time the petitioner was serving at Davanga Primary School and upon redeployment he took off without handing over to the new head teacher.
19. It is deposed that the petitioner was not demoted but simply directed to resume his normal contractual duties as a teacher. It is deposed that after 2017 the petitioner would only become a deputy or head teacher by applying in a competitive and transparent manner as vacancies arose, and not through any other manner.
20. It is deposed that the petitioner filed a complaint with the Commission on Administrative Justice (CAJ) over this same subject matter and it was held that the respondent was right in relieving the petitioner of the duties of a head teacher based on his poor performance.
21. It is deposed that the petitioner was appointed a senior teacher with effect from 1st July 2017 and he has remained as such since then and his retirement benefits may only be computed based on his last held position once he vacates service.
22. In the supplementary affidavit the petitioner reiterated that he was unfairly and unlawfully demoted without a hearing. It is admitted that he referred the dispute to CAJ but that did not take away his right to approach the court for a remedy as he has done through this petition.

III. Submissions By Counsel

23. In the submissions dated 2nd May 2025, counsel for the petitioner summarized the applicant's case as contained in the petition and in the two affidavits alluded to above. It is submitted that at no point was the petitioner subjected to any disciplinary action notwithstanding all the allegations made by the respondent that the petitioner perennially performed poorly. In any event, it is submitted that poor performance is not recognized as misconduct in law and in the policies of the respondent.
24. It is submitted that the petitioner was demoted without a hearing subjecting him to unfair labour practice under Article 41 of *the Constitution*. Counsel cited *National Bank of Kenya V Samuel Nguru Mutonya (2019) eKLR* to the effect that an employee shall be heard and views considered in any administrative action taken against him/her. It is submitted that the protest letter by the petitioner dated 17th November 2021 was not responded to.
25. It is submitted that the demotion communicated in the letter of 9th April 2014 resulted in the petitioner not benefiting from the CBA that came into effect from 1st July 2017.



26. It is submitted that the petitioner violated the petitioner's rights as pleaded in the petition and the court is urged to order compensation as prayed.
27. Counsel for the respondent identified the issues for determination as –
- i. Whether the petition discloses any constitutional violation or cause of action.
 - ii. Whether the deployment of the petitioner was unlawful or amounted to a demotion.
 - iii. Whether the respondent acted lawfully and within its constitutional and statutory mandate.
 - iv. Whether the petitioner is entitled to the reliefs sought.
28. On the first issue, it is submitted that the petition does not meet the threshold set in *Anarita Karimi Njeru V Republic* (1979) KLR 154 as affirmed by the Court of Appeal in *Mumo Matemu V Trusted Society of Human Rights Alliance & 5 Others* (2013) eKLR, and again by the Supreme Court in *Communications Commission of Kenya & 5 Others V Royal Media Service Ltd & 5 Others* (2014) eKLR. It is submitted that the petition herein is vague, speculative, and lacking in specificity.
29. On the second issue, it is submitted that the respondent has in the replying affidavit to the petition set out the terms and conditions under which the petitioner was appointed and served. It is emphasized that the service by the petitioner as a head or deputy head teacher prior to 1st July 2017 was not a substantive appointment but merely administrative and the petitioner was paid an allowance for that role. His redeployment back to class teacher was lawful and all along he earned a salary based on his contract. He was neither demoted nor punished at any point in the process. He was appointed a senior teacher I on 1st July 2017 following policy changes based on the negotiated CBA between teachers' unions and the respondent. Counsel cited *Peter Gichuki King'ara V Teachers Service Commission* (2020) eKLR to the effect that deployment without change of salary or grade is not tantamount to demotion.
30. On the third issue, it is submitted that the respondent has the constitutional and statutory mandate to promote, transfer, and deploy teachers within the Republic. Counsel cited Article 237 of *the Constitution* and Sections 4 & 11 of the *Teachers Service Commission Act*. It is submitted that the transfers that the petitioner complained about including his being relieved of the administrative roles was initiated in the best interest of the learners in accord with Article 53(2) of *the Constitution*.
31. The court is urged not to interfere with the mandate of the respondent in the recruitment, appointment, deployment, transfer, and management of teachers.
32. On reliefs, it is submitted that the retirement dues payable to the petitioner can only be pegged on his last salary as anything contrary to that shall offend the provisions on prudent management of public finances as provided for in the *Public Finance Management Act*. It is submitted that even the CAJ agreed with the respondent on the manner it handled the petitioner's complaints.
33. It is further submitted that petition is computed based on substantive appointments not in acting capacity and only paid for services actually rendered as it was held in *John Ochieng Opiyo V Kenya Commercial Bank Limited* (2021) eKLR. It is further submitted that the petitioner has not proved violation of his rights and as such no compensation is awardable. It is emphasized that the deployment and redeployment of the petitioner was within the applicable law, policy, and guidelines and as such no rights were violated or breached.



34. The court is urged to dismiss the petition with costs as the same is devoid of merits.

IV. Issues For Determination

35. Upon due consideration of the petition, the affidavit in support thereof, the affidavit in opposition, the supplementary affidavit, the annexures to all the affidavits, and the written submissions by counsel for both parties, the court finds that the following issues commend themselves for determination –
- a. Has the petitioner proved his petition?
 - b. Is the petitioner entitled to the reliefs sought?
 - c. What are the appropriate orders for the court to make based on the findings on the foregoing issues and on costs?

V. Merits of the Petition

36. As at the time of filing and prosecuting this petition, the petitioner was an employee of the respondent as a Senior Teacher I, the grade that he acquired after 1st July 2017. This date is important in the history of the teaching profession in Kenya as that is the point at which teachers' unions were able to negotiate and bargain with the employer, the respondent, resulting in a first historic CBAs.
37. Prior to the above date, the petitioner had worked and served as a teacher with the respondent since 1986 and of importance as a permanent teacher from 22nd June 1992 as per a letter of appointment issued to him by the respondent on the said date.
38. Prior to the new of scheme implemented from 1st July 2017 through the negotiated CBAs, the petitioner had served as a deputy head and also as a head of a school or schools. That is the evidence on record. It is the petitioner's case, as far as the court understands the same, that he was demoted and that his appointment as Senior Teacher I was a demotion. It is his case that his retirement benefits, including the pension, upon retirement should be calculated on the emolument payable to a head teacher.
39. In the replying affidavit, the respondent has demonstrated in detail how the foregoing policy came about and that the positions of head or deputy teacher became competitive and merit-based from 1st July 2017. The petitioner was not promoted to either of those positions after this date.
40. This petition was filed in 2024 yet the petitioner is complaining about a demotion that allegedly occurred prior to the 2017 reforms to the teachers' terms and conditions of service as stated above. It is now a common practice for litigants to file constitutional petitions to beat the limitation in Section 89 of the *Employment Act*. In my considered view, what the petitioner is complaining about is an alleged demotion which is an ordinary employment dispute that does not deserve the status of a constitutional violation. In any event, the court has not detected any violation of his rights as alleged.
41. Fundamentally, therefore, and in the above context, the claim by the petitioner is clearly time barred under Section 89 of the *Employment Act*.
42. However, even if the court was gracious and exceedingly generous to consider the dispute as one deserving of a constitutional petition, it is the finding and holding of the court that the petitioner has failed to prove the same. The petition falls below the bar set in *Anarita Karimi Njeru V Republic* (supra) and *Mumo Matemo V Trusted Society of Human Rights Alliance* (supra).
43. This court has in many a decision warned of the danger of the court entering the workplace to manage the human capital. That duty is best left to the employer and any grievances arising from such internal issues should first be handled there before coming to court. In any event, the evidence on record is



that prior to 1st July 2017 the positions of the head or deputy teacher were merely administrative and were neither graded nor received any remuneration other than determined allowance. They were not permanent positions.

44. The petitioner did not hold the position of deputy or head teacher after 1st July 2017 and hence the issue of demotion does not arise. Further, as of 1st July 2017 the petitioner did not hold an administrative position. It is too late in the day, beyond five years, for the petition to now complain of an alleged demotion. Demotion is not a continuing injury and even if it was, as at the time of filing this petition the petitioner had not exited service with the respondent as for such a claim based on alleged continuing injury to crystallize.
45. In my understanding, the petitioner filed this petition on basic and fundamental misunderstanding of his status as a head or deputy teacher prior to 1st July 2017. He failed to appreciate that the said appointments were neither permanent nor pensionable. They were merely administrative and for that he earned a determined monthly allowance over and above his salary as a teacher. The failure by the respondent to continue deploying him as such cannot be faulted by the court. It was allegedly based on poor performance and since the same was not appointive the court cannot spend time investigating the issue as it did not affect the policy change effected from 1st July 2017.
46. The evidence on record is that the petitioner was due for retirement in July 2025. He can only be paid his retirement dues, including pension, based on his last pay and grade. The court finds no merits in this petition at all.
47. The court has this far said enough in demonstrating that the entire petition has no merits and the same is for dismissal and the same is hereby dismissed.

V.Orders

60. Flowing from all the foregoing –
 - a. The petition is dismissed with no order on costs.
 - b. The petitioner shall be paid his retirement benefits based on his last pay and grade.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 11TH DAY OF DECEMBER, 2025.

.....

HON. DAVID NDERITU
JUDGE.

