



Jakaiti v Independent Policing Oversight Authority (Cause E265 of 2024) [2025] KEELRC 3504 (KLR) (5 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3504 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E265 OF 2024
AK NZEI, J
DECEMBER 5, 2025**

BETWEEN

REBECCA ATYANG JAKAITI CLAIMANT

AND

INDEPENDENT POLICING OVERSIGHT AUTHORITY RESPONDENT

RULING

1. Pursuant to this Court's Orders dated 10th February, 2025, the Claimant amended her Memorandum of Claim filed herein, and now seeks the following reliefs in the main suit, against the Respondent:-
 - a. A permanent injunction restraining the Respondent from advertising, recruiting and/or otherwise conducting interviews for the position of Assistant Director, Administration, pending the hearing and determination of the suit.
 - b. A declaration that the move by the Respondent to advertise and to recruit for the position of Assistant Director, Administration pending hearing and determination of the Claimant's Appeal is illegal, unprocedural, unlawful and amounts to infringement of the Claimant's constitutional right to fair hearing.
 - c. A declaration that the Claimant's dismissal was unfair and unlawful.
 - d. Reinstatement of the Claimant to her position with the Respondent as the Assistant Director, Administration.
 - e. An order that the Respondent pays the Claimant the half salary withheld from August 2023 to December 2023, totalling to Kshs.383,309.61/=.
 - f. General damages for unfair, unlawful and unprocedural termination.



- g. Costs of the suit.
- h. Interest on (f) and (g) above.

2. The Claimant has pleaded:-

- a. that she was employed by the Respondent as an Administration Officer on 6th January, 2014, and rose through the ranks to become a Principal Administration Officer-Grade 4 in the year 2023, a position later converted to Assistant Director – Administration; and which the Claimant retained until her unfair interdiction on 8th August, 2023 and subsequent dismissal from service by the Respondent.
- b. that during the period of employment, the Claimant consistently upheld a record free from disciplinary incidents.
- c. that on 16th August, 2023, the Claimant received a notice to show cause from the Respondent seeking that the Claimant appears before the Authority’s Chief Executive Officer (CEO) to show cause why she could not be dismissed for failure to account for the whereabouts of the Authority’s Motor Vehicle GKB 429D from 15th July, 2023 to 18th July, 2023.
- d. that on 11th October, 2023, the Claimant received a further show cause letter seeking that the Claimant appears before the Respondent’s Chief Executive Officer (CEO) to show cause why she could not be dismissed following an incident involving the Authority’s Motor Vehicle GKB 109M.
- e. that the Claimant appeared before the Human Resource Management Advisory Committee on 1st November, 2023 for hearing [on allegations contained] in both show cause letters.
- f. that the Claimant appeared at the hearing together with another employee facing similar accusations regarding the whereabouts of the Authority’s Motor Vehicle GKB 429D.
- g. that pending the hearing on the accusations, the Claimant was irregularly interdicted on 8th August, 2023; and that during the interdiction period (8th August, 2023 to December 2023), the Respondent unlawfully withheld the Claimant’s half salary amounting to Kshs.383,309.61/=.
- h. that the Respondent dismissed the Claimant from employment vide a letter dated 14th December, 2023, but reinstated the Claimant’s co-accused without offering any rationale for that treatment.
- i. that the reasons for dismissal cited in the dismissal letter did not match the accusations outlined in the show cause letter.
- j. that the Claimant appealed against her dismissal from employment vide a letter dated 23rd January, 2024, receipt whereof the Respondent acknowledged vide a letter dated 12th February, 2024, and vide a letter dated 7th March, 2024 requested the Claimant to provide all evidence and grounds in support of her appeal.



- k. that on 19th March, 2024, as the appeal pended hearing, the Respondent advertised vacancies at the Authority, which notably included the Claimant's position of Assistant Director, Administration.
 - l. that advertisement of the Claimant's position and recruitment process during the pendency of her appeal before the Respondent's Board was a violation of the Claimant's right to fair hearing and [fair administrative] action and would render the appeal moot.
 - m. that filling of the Claimant's position without giving her an opportunity to challenge the unfair dismissal through appeal amounted to unfair and unjust treatment that violated the Claimant's constitutional rights.
3. The Respondent filed an Amended Statement of Response and Counter-claim dated 26th February, 2025 and stated as follows in the Counter-claim:-
- “
- “29. The Respondent counter-claims against the Claimant the sum of Kshs.300,000/= being the repair costs incurred by the Respondent in the repair of M/V GKB 109M due to the gross misconduct of the Claimant and any other attendant loss thereof which was damaged due to gross misconduct of the Claimant.
- Reasons Wherefore
- the Respondent prays for the following reliefs:-
- a. That the Claimant's suit be dismissed with costs.
 - b. That Judgment be entered for the Respondent for the said sum of Kshs.300,000/=.
 - c. Costs of the Counter-claim.
 - d. Interest on the costs and Counter-claim at court rates from the date of filing of this statement of response and counter-claim until payment in full.
 - e. Any other relief that the Court deems fit to grant.”
4. On 1st April, 2025, the Claimant filed a Notice of Preliminary Objection against the Respondent's Counter-claim. The Preliminary Objection states as follows:-
- “Take Notice that the Claimant shall at the hearing of this matter raise a preliminary objection on the ground that:-
- As per Section 12 of the *Employment and Labour Relations Court Act*, this Court lacks Jurisdiction to hear, determine and/or entertain the Counter-claim amended on 26th February, 2025.”
5. Both parties filed written submissions on the preliminary objection pursuant to the Court's directions in that regard. The Claimant's written submissions are dated 24th May, 2025 while those filed by the Respondent are dated 9th June, 2025.



6. By dint of Article 162(2)(a) of *the Constitution* of Kenya 2010, this Court is endowed with Jurisdiction to hear and to determine disputes relating to employment and labour relations. The operative words here, in my view, are “relating to”. Article 162(2)(3) mandated Parliament to determine this Court’s Jurisdiction; which mandate Parliament executed by enacting the *Employment and Labour Relations Court Act*.
7. Section 12(1)(a) of the *Employment and Labour Relations Court Act* provides as follows:-
 - “(1) The Court shall have exclusive original and appellate Jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including –
 - a. disputes relating to or arising out of employment between an employer and an employee.”
8. It is a common ground that the Claimant was an employee of the Respondent. The alleged misconduct giving rise to the Counter-claimed sum of Kshs.300,000/= is alleged to have occurred during the subsistence of the employer-employee relationship between the Claimant and the Respondent. The Counter-claim, therefore, relates to, and arose out of the employment between the Claimant and the Respondent/the employer.
9. Indeed, the preamble to the *Employment and Labour Relations Court Act* states as follows:-

“An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes.”
10. Any dispute relating to or connected to an employment relationship between an employer and an employee falls within the purview of this Court’s Jurisdiction. The culture and practice of parties attempting to diminish and/or to dwarf the specialised Jurisdiction of this Court at every available opportunity must come to an end. The time spent in determining the numerous unmerited preliminary objections that are filed can be utilised in hearing and determining the suits in which the preliminary objections are raised. The culture of raising unmerited preliminary objections has contributed to case backlog in our Courts.
11. Further, an employment contract is a contract like any other contract, and any act or omission by one of the contracting parties which amounts to a breach of the contract of employment and causes loss and/or damage to the other party is justiciable before this Court, and may form the basis of a suit or a Counter-claim, as may be applicable.
12. It was stated as follows in *Abraham Nyambane Asiago – vs – Barclays Bank of Kenya Limited* [2013] eKLR:-
 - “16. The question then is what constitutes a dispute relating to or arising out of employment between an employer and an employee. Is it confined to issues that are ordinarily found in employment contracts or does it extend to all matters emanating from the employment relationship? Counsel for the Respondent asked the Court to down its tools in this matter because the subject matter is land and not employment. With much respect to the



learned Counsel, that is a very narrow interpretation of what constitutes an employment and labour relations matter and the consequential jurisdiction of the Industrial Court.

17. By its nature, the employment relationship generates a multiplicity of rights and obligations, some of which are not to be found in the express provisions of the employment contract. In my view, all these fall under employment and labour relations as intended by the law makers. To rule otherwise would be to create a situation where an employer or an employee traverses different Courts to enforce different rights arising from the same employment relationship. That, in my view, could not have been the intention of the legislators. . . .”

13. I fully agree with the foregoing sentiments.

14. In the upshot, and having considered written submissions filed on behalf of both parties herein, I find no merit in the Preliminary Objection dated 1st April, 2025; and the same is hereby dismissed with no order as to costs.

15. The suit herein shall be fast-tracked, and both the Claim and the Counter-claim shall be set down for hearing in accordance with this Court’s Rules of procedure on priority basis.

16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF DECEMBER 2025

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Nekoye for the Claimant

Miss Ali for the Respondent

