



**Kimani v Gulf African Bank Limited (Commercial Petition E004 of 2024)
[2026] KEHC 380 (KLR) (Commercial and Tax) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 380 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL PETITION E004 OF 2024**

AA VISRAM, J

JANUARY 22, 2026

BETWEEN

CHARLES KIMANI PETITIONER

AND

GULF AFRICAN BANK LIMITED RESPONDENT

JUDGMENT

Introduction & Background

1. Before the Court for determination is a Petition dated 23rd February, 2024, based on factual and legal grounds presented in its content, supported by affidavits sworn by the Petitioner, on 23rd February, 2024 and 31st May, 2024. The Petition is opposed by the Respondent through the Replying Affidavit of its Clearing Manager, Nicholas Macharia, sworn on 13th March, 2024.
2. The Petitioner's case is that he maintains an "Ujira Account" with the Respondent which he uses for his salary and emoluments and starting in March 2021, the Petitioner's ATM withdrawals were repeatedly declined. That in November 2023, the Respondent claimed an "undisclosed third party" had instructed them to withhold the funds but provided no further details and despite multiple written requests for account statements and reasons for the freeze between December 2023 and January 2024, the Respondent failed to release the funds or provide a formal explanation.
3. The Petitioner argues that the Respondent's actions infringe upon several articles of *the Constitution* including Article 47 on fair administrative actions, Article 50 on a fair hearing, Article 35 on Access to Information, Article 40 on the Right to Property, Article 43 on Socio-Economic Rights, Article 46 on Consumer Rights, and Article 30 on Freedom from Slavery. The Petitioner avers that his Petition meets the threshold for a constitutional petition by specifically identifying the rights violated and the manner of infringement and urges the Court to vindicate his rights and grant the sought prayers which include



a declaration that the Respondent's action of failing to release funds in his account amounted to violation of his rights, compensation for the loss arising from the defects of the Respondent's banking services and damages for the infringement of his constitutional rights.

4. In response, the Respondent avers that argues that the Court should decline to exercise its constitutional jurisdiction as the dispute is essentially a private commercial/contractual matter between a bank and its customer, and the Petitioner should have pursued other legal remedies before filing a constitutional petition. The Respondent urges the Court to find that it lacks jurisdiction and to decline to issue the declarations sought by the Petitioner.
5. On the merits of the Petition, the Respondent maintains that it acted upon the instructions of the bank of the Petitioner's employer and based on these external instructions, the Respondent argues it was legally justified in withholding the Petitioner's funds and that its actions do not constitute a violation of *the Constitution*. The Respondent submits that the Petition is incompetent and an abuse of the court process because it fails to disclose with reasonable precision the specific constitutional provisions alleged to have been contravened. The Respondent states that the Petitioner has not assisted the Court in determining the question of award of damages, which further warrants a dismissal of the suit. It asserts that a litigant bears the burden of proof and that court decisions cannot be based on "unsupported hypotheses" or "factual vacuums".
6. The Respondent concludes that the Petitioner has not discharged the burden of proving the alleged violations to the required standard and urges the Court to dismiss the suit in its entirety with costs awarded to it. The parties have supplemented their arguments by filing written submissions which together with the pleadings and evidence, I have considered, and I will be making relevant references to them in my analysis and determination below.

Analysis and Determination

7. From the parties' submissions, the following issues arise for determination;
 - a. Whether the Petition is rightly before the court and whether it raises constitutional issues for determination
 - b. Whether the Petition has merit and whether the Petitioner is entitled to the reliefs sought in the Petition.

Competence of the Petition

8. There is now a catena of superior court decisions which state that *the Constitution* should only be invoked as a last resort and if a remedy exists in ordinary law, the court should decline to treat it as a constitutional matter (see Speaker of the National Assembly v Karume [1992] KECA 42 (KLR) and Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others [2014] KESC 53 (KLR)]. In Uhuru Muigai Kenyatta v Nairobi Star Publications Limited [2013] KEHC 6084 (KLR), Lenaola J., (as he was then) held that looking at Article 21 of *the Constitution*, it is the State and every State Organ that is required to "observe, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights." No such obligation is imposed on an individual, including a company. He added that "where there is a remedy in Civil Law, a party should pursue that remedy and..... that not every ill in society should attract a constitutional sanction as such sanctions should be reserved for appropriate and really serious occasions."
9. In this case, it is clear that the parties were at the material time, in a banker-customer relationship hence a contract existed between the parties. The Petitioner's grievance is that the Respondent unjustifiably



withheld funds on instructions of the Petitioner’s employer’s bank and therefore, the Petitioner was not able to transact on his account. In my view, this matter is fundamentally rooted in contract law, banking regulations, and maybe potential tortious interference which typically qualifies as a civil or contractual claim rather than a constitutional petition. If the Petitioner was aggrieved by the withholding of the funds, then he ought to have claimed breach of the contractual relationship and sought the appropriate remedies available under civil proceedings in this Court.

10. This Court has actually stated in various decisions that claims arising from contractual relationships between a bank and its customer are not inherently constitutional unless state action or public interest is involved. This point was made clearly by the Supreme Court in *Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others* [2014] eKLR, where the court held that; “constitutional issues should not be raised where a matter may be resolved on another legal basis.” The present matter is no different; and I do not think it was not appropriate to elevate the present commercial dispute to a constitutional petition involving the breach of fundamental rights and freedoms.
11. In the foregoing, I am inclined to agree with the Respondent. I find that the Petitioner’s claim is founded on his relationship with the Respondent as its customer, and is a plain and ordinary civil claim. As such, this Court invokes the doctrine of avoidance and the Petition is accordingly struck out.
12. Having found the above, and to avoid occasioning prejudice to the parties, the issue concerning whether or not the Petition meets the threshold for a constitutional petition is rendered moot and I shall not comment on the same.

Conclusion and Disposition

13. Based on the reasons set out above, the Petition is struck out with costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 22ND DAY OF JANUARY, 2026

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lispa

..... for Petitioner

..... for Respondent

