

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

PETITION NO. E161 OF 2024

PURITY IRENE MAJALE.....PETITIONER

VERSUS

DP WORLD.....1ST RESPONDENT

DHL DUBAI.....2ND RESPONDENT

HILAL KHATIB.....3RD RESPONDENT

MOHAMED GHALY.....4TH RESPONDENT

JUDGMENT

The Petitioner Purity Irene Majale, has sued the 1st Respondent, DP World; 2nd Respondent DHL Dubai; 3rd Respondent Hilal Khatib and 4th Respondent Mohamed Ghaly.

Facts of the case

The facts giving rise to the dispute are set out at paragraph 6 to 11 of the Petition which are that the Petitioner was employed by the 1st Respondent under a formal fixed term contract from 2022 to 2023.

That the employment was then extended without a formal contract following expiry of the fixed term contract.

That the employment of the Petitioner was terminated vide a phone call from the 3rd Respondent at 1:15 p.m. Kenyan time on 28th August 2024 and

the termination was confirmed by the 4th Respondent on the same day at 2:38 p.m. Kenyan time.

Following the termination, the Petitioner's email address was blocked at 1 p.m. on the same day.

That while receiving the call that terminated her employment, the 3rd Respondent stated that he was looking at the Petitioner's DHL transactions and proceeded to recite all the data of transactions including: Waybill-1300740825, dated 6th April, 2024, Shipper: Hingurana Agro PVT LTD and Waybill – 7951624111, dated 21st June 2024, Shipper: Al Sadek General Trading FZE which contained sensitive and private details including the shippers, Al Sadek General Trading FZE and Hingurana Agro PVT Ltd, the product and shipment details, weigh and the Petitioner's contacts Pin No. and home address.

That these details did not come from either the Petitioner or one of the shippers. The Petitioner did not receive the soft copy of waybill 7951624111 but only received hard copy of the said bill.

Alleged violation

The Petitioner alleges that her statutory and constitutional rights were violated as follows: -

- (a) Failure to issue her with notice and reasons of termination of employment contrary to section 45 of the Employment Act, 2007.

- (b) 3rd and 4th Respondents' disrespect and derogatory treatment of the Petitioner in the presence of other employees, subordinates and clients was unlawful and therefore in violation of section 5 of the Employment Act, 2007 and Articles 27 and 28 of the Constitution of Kenya 2010.
- (c) That the termination was based on information obtained from breach of her privacy in violation of Article 31, 41, 47 and 48 of the Constitution of Kenya 2020.
- (d) That blocking the Petitioner's business mail address was unfair labour and unfair administrative action in violation of Articles 41 and 47 of the constitution read with section 47 of the Fair Administrative Action Act 2015.
- (e) That the sharing of unauthorized data aforesaid violated the Data Protection Act 2019 under sections 2, 25; 26(1) and 72(3) and Article 31 of the Constitution of Kenya 2010.

The Petitioner prays for the following reliefs against the Respondents: -

- A. A declaration that the Petitioner's termination of employment by DP World was arbitrary, unlawful, illegal, unconstitutional and in violation of the Petitioner's fundamental rights guaranteed by Articles 27, 28, 31 and 41.
- B. A declaration that the Petitioner suffered unfair treatment and discrimination in employment.
- C. A declaration that sharing of the Petitioner's shipping details by DHL Dubai was unlawful, illegal and unconstitutional.

- D. An order directing the 1st Respondent to compensate the Petitioner with USD 2,000,000 for unfair termination.
- E. An order directing the 2nd Respondent to compensate the Petitioner with USD 2,000,000 for breach of data privacy.
- F. Ex gratia payment of USD 38,604.39 as provided to other members who have been terminated.
- G. Severance pay of one month salary for every year worked for.
- H. Compensation worth three years' salary
- I. Interest on D, E and F at court rates.
- J. That costs of and occasioned by this petition be provided for.
- K. Any other relief that this Honourable Court shall deem fit and just to grant.

In the petition, the 1st Respondent (DP World) is said to be a Logistics Port Management Trade Flow and Supply Chain Company in United Arab Emirates with its headquarters in Dubai whereas the 3rd and 4th Respondents are said to be the Sales Manager and Assistant Sales Manager of the DP World.

The 2nd Respondent (DHL Dubai) is said to be a Multinational Package and Delivery Supply Chain Company based in Dubai with a branch in Kenya, having its registered offices and principal place of business at DHL home, Nairobi.

Responses and preliminary objection

The 2nd Respondent filed a notice of preliminary objection dated 29th November 2024 to the petition in the following terms: -

1. There is no employment relationship between the Petitioner and the 2nd Respondent, any issues arising between them would be outside the jurisdiction of this honourable court as set out in section 12 of the Employment and Labour Relations Court Act.
2. In any event, this honourable court does not have jurisdiction to hear and determine the Petitioner's alleged claim against the 2nd Respondent which should have properly been filed before the Data Commissioner pursuant to section 56 of the Data Processing Act and Regulation 4 (1) of the Data Protection (Complaints Handling Procedure and Enforcement Regulations).
3. Any claim by the Petitioner against the 2nd Respondent is time barred pursuant to clause 7 of the 2nd Respondent's terms and conditions of carriage which required that any claims be made within 30 days of the date of shipment was accepted which period lapsed on 6th May 2024 and 21st July 2024 respectively.
4. Without prejudice to the foregoing, the 2nd Respondent was only in possession of the Petitioner's data for purposes of completing the contracts of carriage by shippers for shipment of goods to the Petitioner in accordance with section 30 (1) (b) (ii).

The 1st, 3rd and 4th Respondents on the other hand filed a notice of motion date 7th April 2025 seeking to strike out the 1st Respondent (DP World), Hilal Khatib, 3rd Respondent and Mohamed Ghaly, 4th Respondent from the suit on the grounds that the Petitioner did not seek leave to serve summons

or pleadings on the 1st, 3rd and 4th Respondents who do not reside or carry out business within the territorial jurisdiction of Kenya pursuant to Rule 28(3) of the Employment and Labour Relations Court (Procedure) Rules 2024.

That in the absence of such leave, the current suit is incompetent, bad in law and unsustainable and this court therefore cannot assume jurisdiction over the 1st, 3rd and 4th Respondents.

Furthermore, the Petitioner has not served any summons on the 1st, 3rd and 4th Respondents in breach of Rule 25(2) of ELRC (Procedure) Rules 2024.

That the Petitioner's advocate vide an affidavit of service sworn on 30th October 2024, depones that he had served the certificate of urgency, notice of motion application and petition dated 1st October 2024 on the 1st, 3rd and 4th Respondents via email. He also depones that he served the Respondents with a hearing notice dated 30th October 2024, via email.

That the 3rd and 4th Respondents are employees of DP World E-Commerce FZE and not the 1st Respondent. That DP World E-Commerce FZE is a free zone company incorporated in the United Arab Emirates and having its registered office and principal place of business at Jebel Ali Free Zone P. O. Box 17000, United Arab Emirates. The 3rd and 4th Respondents are employees of DP World E-Commerce FZE and they are resident of The United Arab Emirates.

That the 1st, 3rd and 4th Respondents are neither incorporated, resident or trading in Kenya and are therefore foreign Respondents which fact the Petitioner has admitted under paragraph 2 of the Petition. Further the Petitioner has admitted at paragraphs 4 and 5 of the Petition that the 3rd and 4th Respondents are residents of the United Arab Emirates.

Replying Affidavits by 1st, 3rd and 4th Respondents.

The 1st, 3rd and 4th Respondents filed a reply affidavit to the Petition sworn to be Hilal Khatib the 3rd Respondent who attests to the aforesaid facts of residence, registration and business dealings. He deposes that himself and 4th Respondent are not employers of the 1st Respondent but are employed in Dubai by DP World E-Commerce FZE. That the 1st Respondent appears to be a generalised reference to a separate legal entity which has no affiliation with the Petitioner. That DP World E-Commerce FZE, the 1st Respondent, 3rd and 4th Respondents were ever served with the pleadings and summons to enter appearance.

That the Petitioner was never employed under either a formal contract or informal arrangement by the 1st Respondent.

That the Petitioner was employed as Regional Sales Manager under a fixed term contract by Ngao Credit Limited commencing on 12th August 2022 and ended on 31st August 2023.

That the contract terminated by effluxion of time on 31st August 202. That the Petitioner was neither offered an extension of her employment nor formally engaged by DP World E-Commerce FZE thereafter.

That the Petitioner ceased to be an employee on expiry and non-renewal of her fixed term contract on 31st August 2023.

That the Petitioner has not provided any proof to the contrary. That none of the annexed exhibits by the Petitioner marked 'PIM 3a', 'PIM 3b', or 'PIM 3c' demonstrate that the contract of employment was extended and the Petitioner continued to receive salary for services rendered from DP World E-Commerce FZE or the 1st Respondent.

That the Petitioner bears the burden of proving the existence of an employment relationship, and in the absence of such proof, the Petition cannot be sustained.

That employment relationships are contractual in nature and must be evidenced *prima facie* which is not the case herein.

That the verifying affidavits marked 'PIM 9a' and 'PIM ab' merely establish that the Petitioner was indeed at one point in time employed as a Regional Manager of Dubuy.com by DP World E-Commerce FZE but not that she continued her employment beyond the fixed term contractual period. In any event it is clear from these exhibits that as recently as January 2024, the Petitioner was actively misrepresenting herself as an employee of Dubuy.Com by DP World E-Commerce FZE.

That the allegations that the 1st Respondent unfairly terminated the Petitioner's employment after her fixed term contract elapsed by effluxion of time is legally and factually untenable.

That no cause of action is disclosed in this petition.

In response to the claims of breach of data protection rights under paragraph 11 of the petition, the Respondents depose that on 28th August 2024, the 3rd Respondent logged on to Trade Data.Pro, a subscriptions-based internet platform for global supply chain intelligence where logistics companies can track their shipments and access other trade data. That the Respondent noticed that on various dates between April and June 2024, the Petitioner had engaged in importing shipments in her personal capacity for client of Dubuy.com by DP World E-Commerce FZE, namely Aslsadek General Trading and Hingurana Agro PVT Ltd. Owing to the 3rd Respondent's knowledge that the Petitioner's employment was terminated on 31st August 2023, it was alarming to note that the Petitioner still maintained access to DP World E-Commerce FZE's clients list and shipment details and appeared to be masquerading as an employee of Dubuy.com by DP World E-Commerce FZE.

Therefore, the Petitioner was neither an employee during all material time pertaining to this Petition and is not entitled to the reliefs sought.

That the Petitioner has colluded with individuals who now allege to have been employees of Dubuy.com by DP World E-Commerce FZE in order to fabricate claims two years after expiry of the Petitioner's contract of employment.

That no rights of the Petitioner were violated by the Respondents as alleged or at all, and the petition lack merit and it be dismissed with costs.

DETERMINATION

The Petitioner and Respondents filed written submissions which the court has carefully considered together with the evidence adduced by the Petitioner and the Respondents vide their depositions and annexed exhibits. The issues for determination are: -

- (a) Whether the Petitioner has disclosed any case against the Respondents in the Petition.
- (b) Whether the Petitioner is entitled to the reliefs sought in the Petition.

The Petitioner in her brief facts of the Petition in paragraphs 6 to 11 has not set out any action or omission and/or any relationship between herself and the 2nd Respondent that places the 2nd Respondent in an employment relationship or any relationship connected to employment and labour relations that would entitle this court to have jurisdiction to hear and determine this petition as between the Petitioner and the 2nd Respondent.

It is explained by the 3rd Respondent in his replying affidavit to the Petition that he on 8th August 2024 logged on to Trade Data.Pro, a subscription-

based internet platform for global supply chain intelligence where logistics companies can check their shipments and access other trade data.

The 3rd Respondent noticed that on various dates between April and June 2024, the Petitioner had engaged in importing shipments in her personal capacity for clients of Dubuy.com by DP World E-Commerce FZE, namely Al Sadek General Trade and Hingurana Agro PVT Ltd which information alarmed the 3rd Respondent and caused him to block Petitioner's access to her work email address, which the 3rd Respondent deposes had inadvertently not been stopped upon expiry of the Petitioner's contract of employment on 31st August 2023.

It is ironic that the Petitioner who purports to have been an employee of the 1st Respondent at the material time, on 28th August 2024, in the same vein deposes that the information regarding the shipping transaction the Petitioner was conducting on behalf of Al Sadek General Trading and Hingurana Agro PVT Ltd was personal information and access to that information by the 3rd Respondent was a violation of her right to privacy and an infringement on Data Protection Act. It is either the Petitioner was at the material time an employee of the 1st Respondent, transacting on behalf of the company or was conducting, unlawfully shipment in her personal capacity for named clients using information she had previously acquired in her capacity as an employee of the 1st Respondent.

This allegation of violation of her rights to privacy is hollow, is not credible but in itself, defeats the claim by the Petitioner that her employment relationship with the 1st Respondent had been informally extended beyond

the expiry of the one-year fixed term contract on 31st August 2023.
(Emphasis added)

In terms of the case of ***Samuel Macharia v Kenya Commercial Bank and 2 others [2012] eKLR***, jurisdiction flows from the constitution or statute and a literal reading of Articles 162(2)(a) of the constitution together with section 12(1) of the ELRC Act dictates that an employer-employee relationship must exist between the Petitioner and the 2nd Respondent and/or that the Petitioner must establish in the Petition that the alleged violation of Article 31 of the constitution read with the Data Protection Act by the 2nd Respondent emanated or was closely connected to the employment relationship between the Petitioner and the 1st, 3rd and 4th Respondents.

The allegation that this was private data, completely negates the case put forth by the Petitioner and the inevitable finding by the court is that this court lacks jurisdiction to determine any alleged dispute between the Petitioner and the 2nd Respondent and the 2nd Respondent is struck out of the petition for this reason alone.

Indeed, no cause of action whatsoever had been disclosed by the Petitioner against the 2nd Respondent based on a careful analysis of the entire petition. The court would have in any event dismissed the petition as against the 2nd Respondent on the merits of the case, in the event the 2nd Respondent had not been struck out in the first place.

1st, 3rd and 4th Respondents

The case by the Petitioner is that she was employed by the 1st Respondent by a fixed term contract of one year on 12th August 2022, which contract ended on 31st August 2023. The Petitioner alleges, which allegation is denied by the Respondents, that she continued to serve the 1st Respondent on a verbal contract until the date of termination of employment by a phone call from the 3rd Respondent on 28th August 2024.

The 3rd Respondent has denied that the contract of the Petitioner was with the 1st Respondent, but with an entity not sued by the Petitioner namely DP World, E-Commerce FZE. The 3rd Respondent has also denied that the fixed term contract between the said company and the Petitioner, which expired on 3rd August 2024, was ever extended orally. The 3rd Respondent to the contrary deposes, that the Petitioner's business platform credentials were inadvertently not stopped when the fixed term contract expired and so the Petitioner had continued to unlawfully use the platform of the 1st Respondent to do personal business with named clients of the Respondent. That upon discovering the unlawful conduct by the Petitioner, the 3rd Respondent called the Petitioner by phone on 28/8/2024 at 1:13 p.m. cajoled her for misusing the Respondent's work platform for her own business and promptly removed the Petitioner from the platform to stop her from accessing the customers of the 1st Respondent unlawfully again.

That the 4th Respondent who like the 3rd Respondent were employees of the company known as DP World E-Commerce FZE which was the former employer of the Petitioner also confirmed the removal of the Petitioner from

the platform on the same day at 2:38 p.m. Kenyan time and her email address was blocked at 1 p.m. on the same day.

The court finds in the first place the fact that the Petitioner did not cite the full name of the 1st Respondent but used the name by which the 1st Respondent is mostly known by “DP World” is not fatal to this petition. The 1st Respondent trades by and is known world over as “DP World”. It is not in dispute that the Petitioner had a 1-year fixed term contract with “DP World” and that the 3rd and 4th Respondents worked with the Petitioner while her 1-year fixed term contract existed.

What is in dispute and must be proved by the Petitioner is whether:

- (a) She sought leave to issue and serve summons and the pleadings including the notice of motion and the Petition on the 1st, 3rd and 4th Respondents who the Petitioner admits are based in the United Arab Emirates, the 1st Respondent being a registered company in Dubai and the 3rd and 4th Respondents being the Sales Executives of the 1st Respondent also based in Dubai. It is not in dispute that the three Respondents are not within the jurisdiction of this court.
- (b) Whether the Petitioner has proved that she had an oral contract with the 1st Respondent beyond the fixed term written contract, which oral contract was unlawfully terminated by the 3rd and 4th Respondents.
- (c) If (a) and (b) are in the affirmative, whether the termination of the employment of the Petitioner was for a valid reason following a fair procedure and
- (d) Whether the Petitioner is entitled to the reliefs sought.

In the case of ***Casmir Nyaukunu Nyaberi v Mwakikar Agency Limited [2016] KEELRC 1323 (KLR)*** Ndolo J. (as she then was) in upholding a preliminary objection on lack of jurisdiction of the court to entertain a matter before ELRC held: -

“The jurisdiction of the Employment and Labour Relations Court as far as employment matters are concerned is limited to the existence of an employment relationship as defined in law and the court must always satisfy itself on this account before proceeding any further.”

The learned Judge stated further: -

“This court is fully aware that it is the responsibility of an employer to document the employment relationship and in certain respects, the burden of proving or disproving a term of employment shifts to the employer. This does not however release the Claimant from the burden of proving their case. Even where an employment contract is oral in nature, the Claimant must still adduce some evidence whether documentary or viva voce to corroborate their word. More importantly, where an employee believes that the employer was in his possession some document that would support the case of the employee, that employee is obliged to serve a production notice.”

In the present Petition, the Petitioner in her verifying and supporting affidavits states that in the period 2022-2023, while she worked as the

Regional Head of DP World, she was attached to Ngao Credit Ltd as her human resource manager and to oversee her salary payments and tax remittance. She produced the fixed term contract between herself and Ngao Credit Ltd in that respect.

Secondly, the Petitioner relied on her work email address allocated to her by the DP World under her name as Purity Majale @dubuy.com, emails written to her and her colleague, Rachael by the 3rd Respondent whose date of sending is ineligible but one email refers to emails sent to the Petitioner on 15th and 22nd January, 2024 requesting the Petitioner and one Rachael to sign 2024 objectives.

The Petitioner states that she had signed these objectives under duress. The 2nd email with no date is sent to the team but does not show who the members of the team are and bears a message ***“You can’t send messages to this group because you are no longer a member.”*** The 3rd email which also does not have a date bears the same message at the bottom.

These emails have no probative value since they are not accompanied by certificates to authenticate electronic evidence; bear no visible dates and do not constitute evidence that the Petitioner was employed by the 1st Respondent beyond 31st August 2023 when the fixed term contract expired.

The Petitioner also relies on three incoming ‘swift’ transfer documents dated 6th June 2024 for USD 1,438; 3rd July 2024 for USD 1,396 and 28th

August 2024 for USD 1,438. The amounts are sent to an entity named “Lady Bird Advertising Limited – P. O. Box 40760 – 00100 Nairobi” Account No. 59994666001.

These ‘swift’ transfer documents do not bear the name of the Petitioner and do not constitute any evidence regarding the purpose of the money transferred. The three are not sufficient to establish an employment relationship between the Petitioner and the 1st Respondent. In any event, the three ‘swift’ transfer documents are electronic in nature and are not accompanied by the mandatory certificate in terms of section 106B of the Evidence Act, Cap 80 Laws of Kenya.

In short, the Petitioner has failed to establish that she had any employment relationship with the 1st Respondent beyond the 31st August 2023, when her one-year fixed term contract expired by effluxion of time. This court therefore finds that it lacks jurisdiction to hear and determine the dispute set out by the Petitioner against the 1st, 3rd and 4th Respondents having not established that there was any employee-employer relationship between the Petitioner and the 1st, 3rd and 4th Respondents.

More importantly, the law on jurisdiction of our courts over foreign defendants in a contractual dispute is clear and was restated by the Court of Appeal in the case of ***Ravytheon Aircraft Credit Corporation and another v Air Alfraj Limited [2005] eKLR*** citing the case of ***Karachi Gas Co. Ltd v Issag [1965] EA 42 and Fonville v Kally III and others [2002] IEA 71*** as follows: -

“The High Court assumes jurisdiction over persons outside Kenya by giving leave on application by a plaintiff to serve summons or notice of summons as the case may be outside the country under Order V Rule 23 and after such summons are served in accordance with the machinery stipulated therein.”

In respect of this court, Rule 28(3) of ELRC (Procedure) Rules, 2024 provides: -

“Upon application, the court may grant leave for service of summons or pleadings upon a party residing or carrying on business outside the territorial jurisdiction of Kenya.”

In the case of ***Misnak International (UK) Limited v 4MIS Mining c/o Ministry of Mining Juba, Republic of South Sudan and 3 others [2019] eKLR***, the Court of Appeal per Visram, Gatembu and Murgor, JJA., while dealing with the issue of service of summons and pleadings on foreign persons, held: -

“The learned Judge was required to first assume jurisdiction over the Appellant and there was no short cut to that. In our view, the learned Judge by directing service of the application before determining the issue of leave placed the cart before the horse.....in Law Society of Kenya v Martin Day and 3 others (Supra):

“It is not sufficient for a plaintiff to institute suit against a party. That party must be invited to submit to the authority of the court in order for the legal process of setting down the suit for trial commence. The circumstances of this case are such that

summons must be served in the manner provided for in the rules to enable the defendants who have no registered office or business in Kenya submit to the jurisdiction of this country. It therefore follows that their knowledge of the existence of the suit is not sufficient enough to proceed against them. They may be aware of the suit but unless they are prompted by the summons in the manner provided for in the rules, the jurisdiction of the court is not invoked.”

In the present matter the Petitioner elected to serve the summons and pleadings via email on the Advocates of the 1st, 3rd and 4th Respondents before seeking leave to serve the summons and the Petition on the Respondents. It matters not that the Respondents were aware of the suit and had instructed their advocates to defend the same. The Respondents must be invited to submit to the authority of the court in terms of the Rules of this court since the 1st Respondent has no registered office or business in Kenya nor are the 3rd and 4th Respondents, Resident in Kenya. The three persons having not been invited to submit to the jurisdiction of the court in the manner provided by the rules means that the jurisdiction of the court is not invoked and the court lacks jurisdiction to hear and determine this matter.

In the final analysis the court finds that there is no employer/employee relationship between the Petitioner and the 1st, 2nd, 3rd and 4th Respondents and the jurisdiction of this court was not properly invoked in terms of the Rules of this court so as to assume

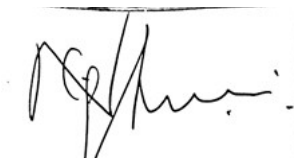
jurisdiction over this matter. For the aforesaid reasons this suit is struck out for want of jurisdiction to hear and determine the same.

For completeness, it having been established that the employment of the Petitioner with the 1st Respondent ended on 31st August 2023 by effluxion of time, the claim that the employment of the Petitioner was terminated by the 1st, 3rd and 4th Respondents unlawfully and unfairly lack merit.

The issue of violation of constitutional and statutory rights set out in this matter in respect of violation of right to privacy; fair labour practice and fair administrative action have not been proved by the Petitioner as alleged or at all.

The court would have dismissed the petition in its entirety for lack of merit but for the matter of lack of jurisdiction to hear and determine the Petition. The parties to meet their own costs of the petition.

Dated at Nairobi this 27th day of April 2026



Mathews Nduma
JUDGE

Dated, signed and delivered in open court at Nairobi this 29th day of April 2026

**Dr. Gakeri J.
JUDGE**

Appearances:

Mr. Omari for Petitioner

Mr. Nkonge for 1st, 3rd and 4th Respondent

Mr. Ndungu for 2nd Respondent

Mr. Kemboi – Court Assistant

ORIGINAL