



PN v Intercity Secure Homes Limited & another (Petition E011 of 2024) [2025] KEELRC 601 (KLR) (28 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 601 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E011 OF 2024
J RIKA, J
FEBRUARY 28, 2025**

BETWEEN

PN PETITIONER

AND

INTERCITY SECURE HOMES LIMITED 1ST RESPONDENT

DUNCAN MWENDA JACKSON 2ND RESPONDENT

RULING

1. The Respondents filed an application dated 23rd September 2024, seeking an order striking out the Petition.
2. The application is founded on the affidavit of the 2nd Respondent, sworn on 23rd September 2024.
3. The 2nd Respondent is the Managing Director of the 1st Respondent.
4. The 1st Respondent employed the Petitioner as a Sales Representative, between 14th November 2018 and 18th September 2023, when her contract was terminated by the 1st Respondent.
5. She earned a gross monthly salary of Kshs. 45,000, at the time of termination.
6. She petitions the Court to find that termination was unfair and in violation of: her constitutional right not to be discriminated against at the workplace; the right to protection of her inherent dignity; and, the right to fair labour practices.
7. She pursues general damages for discrimination and sexual harassment; holiday pay; underpayment of salary; arrears of house allowance; notice pay; and compensation equivalent of 12 months' salary, for unfair termination.



8. The 2nd Respondent states that, the Petitioner filed E&LRC Cause No. E018 of 2024 against the Respondents, on the same subject matter. The Cause was declined by the Court on the ground that the Petitioner had not exhausted alternative dispute resolution mechanisms.
9. The 2nd Respondent states also, that the Petition is a disguised Claim for breach of contract. It does not disclose a constitutional moment, and is in breach of the doctrine of constitutional avoidance.
10. Further, it is the position of the Respondents, that the Petitioner's monthly salary of Kshs. 45,000, places the dispute within the jurisdiction of the Chief Magistrate's Court. The E&LRC has jurisdiction in disputes where an Employee's monthly salary is from Kshs. 80,000.
11. The Respondents urge the Court to strike out, or wholly dismiss the Petition, on these grounds.
12. The Petitioner relies on her affidavit sworn on 30th September 2024. She submits that the Court, has the mandate to hear her Petition, pursuant to Article 165 [3] of the Constitution and Rule 10 of the E&LRC (Procedure) Rules, 2024.
13. Her constitutional rights have been violated, and she cannot secure remedies from the Chief Magistrate's Court, through an ordinary claim. The Chief Magistrate's Court does not have jurisdiction to grant her constitutional remedies pursuant to Section 8[3] of the Magistrates' Courts Act, 2015.
14. Gazette Notice No. 6024 of 2018, extending employment and labour relations jurisdiction to specified Magistrate's Courts, does not oust the jurisdiction of the E&LRC to hear and determine this Petition. The extent of sexual harassment suffered by the Petitioner, can only be ascertained upon full trial. It is inconceivable that the Petitioner files separate claims on constitutional violations, and the core employment dispute, in different Courts, on the ground that she earned a salary of less than Kshs. 80,000 monthly.
15. Parties agreed to have the application considered and determined, on the strength of their affidavits and submissions. The Respondents confirmed filing and service of their submissions at the last appearance before the Court, on 26th November 2024.

The Court Finds: -

16. The Petitioner did not say anything about E&LRC Cause No. E018 of 2024.
17. She does not dispute that, that Claim was between her and the Respondents, or that the Claim related to the same issues raised in the Petition.
18. She said nothing about the outcome of that Claim.
19. The Statement of Claim exhibited by the Respondents, confirms that the Claimant sought the same remedies sought in the Petition, including damages for sexual harassment.
20. She invoked the same Articles of the Constitution she invokes in this Petition, in her failed Claim.
21. She has not disputed that the Claim was rejected by the Court, on account of not exhausting other dispute resolution mechanisms, open to her.
22. It was open for her to appeal against the decision to dismiss her Claim. Her choice to file this Petition, was the wrong choice.
23. Sexual harassment and workplace discrimination, are primarily governed by Sections 5 and 6 of the Employment. They have a statutory underpinning.



24. Section 5 [1] mandates the Cabinet Secretary Labour, Labour Officers and the Industrial Court [now the E&LRC, including all the designated Magistrates under Gazette Notice No. 6024 of 2018], to:
 - a. Promote equality of opportunity in employment in order to eliminate discrimination in employment; and,
 - b. Promote and guarantee equality of opportunity for a person who is a migrant worker or a member of the immigrant worker, lawfully within Kenya.
25. Sexual harassment and workplace discrimination are defined and regulated under the [Employment Act](#). Violation does not have to be redressed through a Constitutional Petition, at the E&LRC.
26. The Petitioner earned less than Kshs. 80,000 in monthly salary. Her dispute ought to have been presented before the Chief Magistrate's Court. There is nothing under the [Employment Act](#), to bar the Chief Magistrate's Court, from hearing her on sexual harassment and workplace discrimination, and granting her general damages. Designated Magistrates have employment and labour relations jurisdiction, and are seized of jurisdiction on the subject matter of this Petition, under Section 5 [1] of the [Employment Act](#). It is inconceivable that all claims of sexual harassment and workplace discrimination in the entire country, are only heard by the E&LRC, with only 20 Judges.
27. As for Article 41 rights, the Petitioner has a recourse under Sections 41, 43, 45 and 49 of the [Employment Act](#). Fair labour practices find expression and regulation, in the [Employment Act](#). The right to fair labour practices she complains about, in no more that the right to fair procedural and substantive justice, under Sections 41,43 and 45 of the [Employment Act](#). It is a right that can be enforced, at the Chief Magistrate's Court, through a Statement of Claim.
28. Rule 10 of the [E&LRC \(Procedure\) Rules, 2024](#), states that, notwithstanding anything contained in the Rules, a person may seek the enforcement of any constitutional right and freedom, or any constitutional provision, in a Statement of Claim.
29. This is what the Petitioner did through her failed Claim. Why does she seek enforcement of the same constitutional rights and constitutional provisions, through a Petition? She ought to have pursued an appeal, after her first attempt at enforcement through a Statement of Claim, failed.
30. It is open to her to pursue a proper Claim before the Chief Magistrate's Court. The Respondents have correctly invoked the doctrine of constitutional avoidance. There is a clear legislative pathway available to the Petitioner, for resolution of her dispute, without invoking constitutional jurisdiction.
31. Costs of the Petition shall be paid by her to the Respondents.

It Is Ordered: -

- a. The Petition is hereby struck out.
- b. Costs of the Petition to the Respondents.
- c. The Petitioner is at liberty to file a fresh Claim at the Chief Magistrate's Court.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28TH FEBRUARY 2025.

JAMES RIKA
JUDGE

