



Angule v Innovations For Poverty Action (Kenya) “IPA (K)” (Petition E082 of 2024) [2025] KEELRC 483 (KLR) (21 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 483 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E082 OF 2024**

B ONGAYA, J

FEBRUARY 21, 2025

**IN THE MATTER OF ALLEGED UNFAIR TERMINATION OF
EMPLOYMENT AND CONSTRUCTIVE DISMISSAL OF AGNES
LIAKONERA ANGULE CONTRARY TO THE LAWS OF KENYA;**

**IN THE MATTER OF ALLEGED INFRACTION OF
ARTICLE 27 OF THE CONSTITUTION OF KENYA 2010;**

**IN THE MATTER OF ALLEGED INFRACTION OF ARTICLE
41 (1) AND 41 (2) OF THE CONSTITUTION OF KENYA 2010;**

**IN THE MATTER OF ALLEGED INFRACTION OF
ARTICLE 55 OF THE CONSTITUTION OF KENYA 2010;**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS AND ENFORCEMENT OF THE
CONSTITUTION) PRACTICE AND PROCEDURE RULES (L.N. 117/2013)**

BETWEEN

AGNES LIAKONERA ANGULE PETITIONER

AND

INNOVATIONS FOR POVERTY ACTION (KENYA) “IPA (K)” ... RESPONDENT

JUDGMENT

1. The petitioner filed the petition and affidavit, both dated 29.05.2024, through Matekwa & Company Advocates. She prayed for judgment against the respondent as follows:



- a. A Declaration be hereby issued that the respondent unfairly terminated the petitioner's employment on account of constructive dismissal contrary to the *Employment Act* 2007.
 - b. A Declaration be hereby issued that the respondent violated the petitioner's right and fundamental freedom of equality and freedom from discrimination under Article 27 of *the Constitution* of Kenya 2010.
 - c. A Declaration be hereby issued that the respondent threatened, violated and breached the petitioner's right to fair labor practice under Article 41(1) and 41(2) of *the Constitution* of Kenya 2010.
 - d. A Declaration be hereby issued that the respondent threatened, violated and breached the petitioner's Specific Application of Rights under Article 55 of *the Constitution* of Kenya 2010.
 - e. A Declaration be hereby issued that the respondent is entitled to compensation under *the Constitution* of Kenya and the *Employment Act* 2007 (to be determined by the Honourable Court).
 - f. 12 months' salary (Kshs. 71,695 x 12months= Kshs. 860, 340.00).
 - g. Service pay (Kshs. 71,695 x 1.3years= Kshs. 95,593.30).
 - h. Payment in lieu of 32 leave days not taken (Kshs. 76,474.67).
 - i. Exemplary damages for mental anguish
 - j. Compensation for violation of Articles 27, 41(1), 41(2) and 55 of *the Constitution* of Kenya 2010;
 - k. The Honourable Court be pleased to Order the respondent hereby to meet the costs of the petition herein.
 - l. Interest at court rate on all of the liquidated awards from the date of filing till settlement in full.
 - m. Such other Orders that this Honourable Court shall deem just.
2. The petitioner's case was as follows:
- a. The respondent offered the petitioner employment on or about 22.12.2022 to the position of Field Manager and issued her a written contract of employment on or about 28.08.2023. The contract provided the terms of employment including her salary, gratuity, benefits and termination of the employment contract. The petitioner requested for original copies of her written contracts and any extensions thereto vide a letter dated 02.05.2024 to no avail.
 - b. The petitioner earned a net salary of Kshs. 71,695.00 subject to statutory deductions.
 - c. The petitioner commenced working for the respondent on or about 03.01.2023 and never had any performance concerns or disciplinary cases until on or about 23.04.2024 when the respondent illegally and invalidly constructively dismissed her from her position as Field Manager on the pretext that she resigned from employment. According to the petitioner, she neither resigned voluntarily from her position nor did the respondent grant her adequate notice under her employment contract prior to termination of her employment.
3. The petitioner particularized the violations, breach and threats to Articles 27, 41(1), 41(2) and 55 of *the Constitution* of Kenya averring that the respondent made her life extremely difficult by inter alia:



- a. Obliging her to work overtime without pay.
 - b. Obliging her to work on her designated leave days without equal and commensurate remuneration.
 - c. Prejudicial preferential treatment and discrimination on the basis of sex, colour, age, disability, culture, language, dress, marital status, race and social origin.
 - d. Whimsical renewal of her contract of service and failure to share the contract of service within the mandated statutory timelines.
 - e. Withholding the benefits accruing to her.
 - f. Failure to quantitatively and qualitatively consult her on matters relating to her employment and all terminal benefits thereto.
 - g. Unlawful and illegal expropriation of her Intellectual Property (IP) without just compensation.
 - h. Failure to provide her with house allowance.
 - i. Failure to provide her with transportation allowance.
4. It was the petitioner's further case that the totality of the respondent's actions and omissions have rendered her without a livelihood to sustain and maintain herself and her family. In addition, her professional reputation was damaged as a qualified statistician in her field of employment and the respondent hindered her timely processing of her undertaking further postgraduate education in the United Kingdom (UK). She contended that she continues to suffer from discrimination, loss of professional reputation, mental anguish and youthful time expended in pursuing her education in the UK. She averred that despite the demand notice dated 25.04.2024 to the respondent, they have jointly and severally refused, neglected and/or ignored to settle the claim or suit herein.
5. The respondent filed a replying affidavit of Joel Sewe sworn on 03.07.2024, through SS Musembi & Company Advocates. It was urged that:
- i. The petitioner failed to provide any details, instances and or evidence to support her claims of violation and breach of *the Constitution*. Consequently, the listed violations, breach and threats are untrue, imaginary and unsubstantiated. The petition discloses no constitutional issue and merely attempts to constitutionalize an ordinary civil employment dispute.
 - ii. Upon her employment by the respondent, the petitioner executed a written contract of employment dated 22.12.2022 for a fixed term period of three (3) months commencing 03.01.2023 to 02.03.2023. When the said contract lapsed, the petitioner's employment contract was renewed on 03.03.2023 for a further six (6) months term up to 02.09.2023 and renewed again on 28.08.2023 for a fixed term period of six (6) months from 03.09.2023 to 02.03.2024.
 - iii. The respondent issued the petitioner with an employment contract dated 28.08.2023. Later through a letter dated 16.02.2024, the said contract was extended from 03.03.2024 to 02.09.2024 with all terms and conditions of the original contract dated 28.08.2023 remaining the same. The petitioner signed the contract amendment letter on 26.02.2024. Furthermore, the employment contract dated 28.08.2023 provided the petitioner's gross salary as Kshs. 65,250.00 and not a net salary of Kshs. 71,695.00 as indicated in her petition.



- iv. Contrary to the petitioner's assertions, the respondent issued her with all her employment contracts that were sent to her via email each time a contract was renewed.
 - v. The petitioner voluntarily resigned and handed in her resignation letter vide the email dated 15.04.2024. She authored and sent the said email formally terminating her employment with the respondent thereby voluntarily resigning, and buttressed her decision by attaching her duly executed resignation letter. She expressly stated in the email that 18.04.2024 would be her last working day while in the resignation letter, she indicated that "Friday 19.04.2024" would be her last working day. The petitioner was therefore not terminated from her employment.
 - vi. The petitioner's claim for working overtime without compensation is baseless and unfounded since any entitlement to overtime was compensated through granting time off in line with the respondent's Employee Handbook. The respondent also denied the claim that the petitioner worked on her designated leave days. Further, it refuted the claim that the petitioner faced prejudicial preferential treatment and discrimination, which allegation she had failed to prove through evidence. She had also not provided any evidence to demonstrate that she had filed a complaint to the Human Resource Department of the Respondent on the said discrimination.
 - vii. The petitioner was paid all her benefits upon her voluntary resignation. Notably, her salary was inclusive of house allowance and other remunerative allowances as clearly indicated in clause 4 of the employment contract dated 28.08.2023. She was paid transportation allowance as and when due. The respondent also compensated her salary up to and including her last working day on 19.04.2024, and prorated annual gratuity up to and including 19.04.2024. The payment was effected less 25 days owed to the respondent due to the insufficient termination notice of five (5) days that she served it contrary to the required one month written notice expressly provided in her contract of employment dated 28.08.2023. Lastly, the petitioner was issued with her certificate of service.
6. The respondent also filed a further supplementary affidavit of Eric Ochieng sworn on 29.11.2024, through SS Musembi & Company Advocates. Mr. Ochieng averred that when he learnt of the petitioner's resignation, he contacted her to discuss her reasons for resigning and the petitioner informed him that she sought to pursue a new job opportunity and to focus on her master's studies. The explanation was supported by evidence from the petitioner's LinkedIn profile page showing she commenced employment with Badili Africa as a Monitoring and Evaluation Consultant from April 2024 to August 2024. This demonstrated that she secured the said role even before tendering her resignation on 15.04.2024. Furthermore, her said profile indicates that she began her master's studies at the University of Edinburgh from September 2024 to August 2025. He argued that these facts unequivocally establish that the petitioner left the respondent's employment voluntarily for career advancement and further education and directly contradict her claim of unfair termination.
 7. Mr. Ochieng further averred that on 17.04.2024, he sent the petitioner an email expressing gratitude for her exceptional contributions and dedication during her tenure with the respondent. In the said email, he equally conveyed his disappointment at her departure given her evident potential and the value she brought to the team. He asserted that the petitioner replied to his email indicating that it had been an honour working for the respondent. He argued that the same underscores the respondent's good faith and the positive relationship that was maintained with the petitioner up to and following her resignation. He also noted that the petitioner did not raise any concerns or complaints regarding her treatment or working conditions at the respondent company during their conversation or thereafter, or at all. It was Mr. Ochieng's averment that the claims of constructive dismissal raised in the petition are therefore untrue and baseless.



8. The petitioner and the respondent's two witnesses gave their testimonies by way of examination upon their respective affidavits. Parties thereafter filed their respective submissions.
9. The Court has considered the material on record and returns as follows.
10. To answer the 1st issue, the Court returns that there is no dispute that parties were in a contract of service. The petitioner served as a Field Manager per the fixed term contracts that are exhibited. Her monthly gross salary was Kshs. 65, 250.00 per the exhibited contract and per submission for the petitioner at paragraph 6 of the final submissions.
11. To answer the 2nd issue the Court returns that the contract of service terminated by reason of the petitioner's resignation email dated 15.04.2024 that her last working day was on Friday 18.04.2024 per exhibit R15. The petitioner confirmed that the contract of service at clause 8(a) provided for a termination notice of one month but the email of resignation was dated 15.04.2024 and taking effect on 19.04.2024 thus falling short of the one month notice. The petitioner admitted the failure to give the one month notice. The Court finds that the petitioner voluntarily resigned and it was in breach of the contractual duty to give a one month notice. As submitted for the respondent the alleged unfair termination is found unjustified. The Court finds that there was no shown reason to doubt the respondent's evidence that the petitioner resigned in view that she had got alternative employment as per the replying affidavit and testimony by RW2. As submitted for the respondent no fundamental breach of the contract of service or unbearable working conditions attributable to the respondent has been established and, the court returns that unfair constructive dismissal did not exist at all.
12. To answer the 3rd issue the Court returns that the alleged violation of rights has not been established at all. The Court finds as follows:
 - a. As submitted for the respondent the petitioner has not shown discrimination. She was employed as a Field Manager at Kshs. 65, 250.00 per month. It was her case that her male counterparts Joel Okoth Sewe earned Kshs. 308, 000.00 as an Associate Human Resource Manager and Eric Oduor Ochieng earned Kshs.396, 000.00 per month as the Research Manager. The allegation of discrimination based on gender or sex will fail because on the material before the Court, the petitioner has failed to show that the respondent had a pay scale structure based on designation such as for Managers and which was discriminately not applied to her pay. Upon her own testimony the petitioner testified that she had no evidence filed to show while in service she complained about the lower monthly payment. She testified that she had been paid transport reimbursement and further, per employee handbook she was not entitled to overtime payment. While invoking ILO Equal Remuneration Convention, 1951 and as domesticated in the [Employment Act, 2007](#) on the principle of equal pay for work of equal value, the petitioner has not shown that the work of a Field Manager had the same value as the work performed by her male counterparts as was alleged. In the circumstances the requirement to establish a comparator with respect to worthiness or value of the job and then matching compensatory rates renders the alleged discrimination not established at all.
 - b. The petitioner's final submissions and the material on record appear not to establish the other alleged violations of rights and freedoms going beyond the strongly urged but not established case of discrimination. The alleged violations are found not established as they remained empty allegations not backed with relevant particulars and evidence. They will fail accordingly.
13. The 4th issue is on remedies. The Court returns as follows:
 - a. There was no unlawful or unfair termination and the prayer for compensation and declaration in that regard will fail.



- b. The violation of rights and freedoms as alleged was not established. The prayers for declarations and compensation in that respect are declined.
- c. The petitioner was a member of NSSF and service pay as claimed is not available per section 35 of the *Employment Act*.
- d. There was no unlawful expropriation of intellectual property because per contract of service property in all documents the petitioner may have authored while in respondent's employment vested and belonged to the respondent. Parties are bound by that contractual provision.
- e. The remedies as prayed for are found unjustified as the claims and prayers are not established.
- f. The Court has considered all circumstances of the case and the margins of success and each party will bear own costs of the petition.

In conclusion the petition is hereby dismissed and each party to bear own costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 21ST FEBRUARY, 2025.**

**BYRAM ONGAYA
PRINCIPAL JUDGE**

