



Wambui v Teachers Service Commission (Employment and Labour Relations Cause E072 of 2024) [2025] KEELRC 454 (KLR) (19 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 454 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E072 OF 2024**

**HS WASILWA, J
FEBRUARY 19, 2025**

BETWEEN

PETER NJUGUNA WAMBUI PETITIONER

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. The application before court is an application dated 3rd October 2024 filed by the Respondent, in which the Respondent raises a Preliminary Objection on the grounds that the instant Petition does not meet the threshold for constitutional pleadings as established in *Anarita Karimi Njeru v Republic [1979] eKLR* and *Mumo Matemu v Trusted Society of Human Rights Alliance, Civil Appeal No. 290 of 2012*, thereby violating the principle of Constitutional Avoidance. Further, the Respondent contends that this Court lacks jurisdiction to determine the Petition, as the Petitioner has failed or neglected to exhaust all internal and administrative remedies available to him, in clear contravention of the doctrine of exhaustion as set out in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others; Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR*.
2. The application is supported by the Respondent's submissions dated 7th January 2025, in which the Respondent contends that the Petitioner was employed by the Commission on 14th March 2019 as a Secondary School Teacher II and posted to Muthurwa Girls Secondary School, with his employment governed by the *Teachers Service Commission Act* and the Code of Regulations for Teachers. In 2023, the Petitioner was alleged to have engaged in inappropriate conduct with a student, Mary Hope Wanjiru, leading to a disciplinary process under Article 237(2)(e) of *the Constitution*, which culminated in his dismissal.
3. The Petitioner subsequently filed this Petition challenging the dismissal, prompting the Respondent to raise a Preliminary Objection dated 3rd October 2024, asserting that the Petition offends the principle of Constitutional Avoidance and the doctrine of exhaustion. The Respondent submits that the Petition



- fails to meet the constitutional pleadings threshold as set out in *Anarita Karimi Njeru v Republic* [1979] eKLR and *Mumo Matemvu v Trusted Society of Human Rights Alliance*, Civil Appeal No. 290 of 2012. It is argued that the matter falls squarely within employment law and does not warrant constitutional litigation, citing *Gabriel Mutava & 2 others v Managing Director Kenya Ports Authority & another* [2016] eKLR, which emphasizes that constitutional courts should not be trivialized where other sufficient avenues exist.
4. The Respondent further relies on *Daniel N. Mugendi v Kenyatta University & 3 others* [2013] eKLR and *Josephat Ndirangu v Henkel Chemicals (EA) Limited* [2013] eKLR, both of which affirm that employment disputes should be resolved within the framework of the *Employment Act* and not through constitutional petitions. Similar principles were upheld in *Peter Ndegwa Nderitu v Teachers Service Commission* [2019] eKLR, *Alphonse Mwangemi Munga & 10 others v African Safari Club Limited* [2004] eKLR, and *Matthew Kamanu Mwaura v Permanent Secretary, Office of the President, Provincial Administration & 2 others* [2018] eKLR, where the courts discouraged the elevation of employment disputes into constitutional matters. The Respondent argues that the Petitioner's grievances arise from the disciplinary process, which is adequately addressed under the *Employment Act* 2007, making the Petition a blatant breach of the principle of Constitutional Avoidance. Additionally, the Respondent invokes the doctrine of exhaustion, citing Section 46 of the *Teachers Service Commission Act* and Regulation 156(1) of the Code of Regulations for Teachers, which provide for an internal review mechanism before seeking judicial intervention.
 5. The Respondent asserts that the Petitioner failed to exhaust these remedies, rendering the Petition premature. Reference is made to *Mulili v Kenya Judicial Staff Association Elections Board & 13 others* [2023] KEHC 2685 (KLR), where the court underscored the need to defer jurisdiction to statutory bodies in the first instance, except in exceptional circumstances. The Respondent submits that the Petition is frivolous, vexatious, and an abuse of the court process, having been filed in the wrong forum to evade the *Employment Act*. The Respondent concludes that the Petition is incurably defective and prays that it be dismissed with costs to the Respondent.
 6. There is an Affidavit of Service dated 8th October 2024 filed by the Respondent and sworn by Peter Munyao Kimeta, a Process Server employed by the Teachers Service Commission, Kenya. He states that he is duly authorized to serve court processes and that, unless otherwise stated, the contents of his affidavit are based on his own knowledge and are true. He depones that on 4th October 2024, he received a copy of the ruling notice dated 3rd October 2024 and a preliminary objection of the same date from Mary Njua, Advocate for the Respondent, with instructions to serve the Petitioner's Advocates.
 7. He avers that on 13th August 2024, he served the said firm via their registered email, ratemooira@tsc.go.ke. He further states that he has returned to court with copies of the email, the ruling notice, and the preliminary objection, all duly served upon the Petitioner's Advocates, marked as Exhibits "PMK-1" and "PMK-2," respectively. He concludes that the contents of his affidavit are true to the best of his knowledge, belief, and understanding.
 8. The application remained unchallenged despite service. Having considered the preliminary objection herein, it is indeed true that the issue raised in this petition fall squarely under the employment law.
 9. The petitioner has however raised pertinent constitutional issues which this court cannot ignore. A man must have his day in court and it is pertinent that the issues raised in the preliminary objection be considered as a whole within the main petition. The said issues are also factual and fall outside the purview of the principle of *Mukhisa Biscuit* case. I find the preliminary objection unmerited. I dismiss it accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF FEBRUARY, 2025.

HELLEN WASILWA

JUDGE

