



Iloti & 14 others (Acting on Their Behalf and on Behalf of Dock Workers Union of Kenya) v Sang & another; Dock Workers Union of Kenya (Interested Party) (Petition E004 of 2025) [2025] KEELRC 808 (KLR) (13 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 808 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION E004 OF 2025
M MBARŪ, J
MARCH 13, 2025

BETWEEN

AMIN ILOTI 1ST PETITIONER
SULMAN OWOUR 2ND PETITIONER
KIBIBI OMERI 3RD PETITIONER
MASKAT SALIM 4TH PETITIONER
MEJUMAA CHIRAU 5TH PETITIONER
RUWA MPATE 6TH PETITIONER
GLADYS MBITHI 7TH PETITIONER
ALI MWAMREZI 8TH PETITIONER
QUEEN MSHIHIRI 9TH PETITIONER
MOHAMED SHAMAHUYA 10TH PETITIONER
MAURICE MWANYULE 11TH PETITIONER
AUGUST RUWA 12TH PETITIONER
JUMA MAJEPO 13TH PETITIONER
KENNEDY OKETCH 14TH PETITIONER
EDWIN WASONGA 15TH PETITIONER
ACTING ON THEIR BEHALF AND ON BEHALF OF DOCK WORKERS
UNION OF KENYA

AND

SIMON KIPRONO SANG 1ST RESPONDENT



AND

RULING

1. The petitioners filed the petition on 23 January 2025 with an application seeking interim orders. The parties attended court on 13 February 2025 to take hearing directions, and the petitioners submitted that they would call evidence at the hearing of the petition. The first respondent and the interested party offered to file written submissions and not call any witnesses.
2. The court directed parties to address whether this was a proper petition and to file written submissions.
3. Parties attended to highlight the analyses of the submissions.
4. The petitioners assert that this is a proper petition because they have been elected union officials, the interested party under the *Labour Relations Act* (LRA). They seek to enforce the LRA where the 1st respondent convened a meeting in their absence and, in violation of the union constitution, sought to suspend them as officials and trustees. The 1st respondent has since written to the 2nd respondent to remove the petitioners from the list of registered officials and trustees of the interested party trade union.
5. The petitioners further assert that the petition addresses constitutional questions that can only be secured through the orders sought. Where the court finds the petition does not meet the threshold, it should be converted to an ordinary Memorandum of Claim under the *Employment and Labour Relations Court (Procedure) Rules*.
6. The 1st respondent and the interested party submitted that this is not a proper petition and does not seek to address any constitutional violations that cannot be addressed in an ordinary suit. The petition should be struck out with costs.
7. The petitioners agree that the orders sought can be addressed in an ordinary suit under a Memorandum of Claim. The submissions that the court should convert the petition into an ordinary sought is testimony to this fact. Indeed, Rule 10(1) and (3) of the *Employment and Labour Relations Court (Procedure) Rules* allow a party to file a petition, but these rules should be read carefully and together;
 - (1) Any person who wishes to institute a petition shall do so in accordance with the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms and Enforcement Of the Constitution) Practice and Procedure Rules*.
 - (2) ...
 - (3) Notwithstanding anything contained in this rule, a person may seek the enforcement of any constitutional right and freedom or any Constitutional provision in a statement of claim or other suit filed before the Court.
8. In a Memorandum of Claim, a party is allowed to urge a case for judicial review, the enforcement of constitutional rights and freedoms without invoking the constitutional petition route, which should be reserved for matters seeking the interpretation of the constitution vis-a-vis a given statute. The



Court of Appeal aptly captures this in the case of *Sumayya Athmani Hassan v Paul Masinde Simidi & another* [2019] KECA 107 (KLR), the court held that;

The Article 41 rights are enacted in the *Employment Act* and *Labour Relations Act*. The two Acts and the rules made thereunder provide adequate remedy and orderly enforcement mechanisms. The 1st respondent filed a petition directly relying on the provisions of the Constitution for enforcement of contractual rights governed by the *Employment Act* without seeking a declaration of invalidity of the provisions of the *Employment Act* or alleging that the remedies provided therein are inadequate. The petition did not raise any question of the interpretation or application of the Constitution.

9. In the case of *Njue v Kenya Maritime Authority & another* [2023] KEELRC 820 (KLR) and *Ngure v Tear Fund* [2023] KEELRC 1324 (KLR) where the court held that;

The rights alleged to have been violated are capable of being articulated in a normal suit before this Court and granted that there is no particularization of the alleged violations of Articles 3(1), 10(1) and (2), 19(1) and (2), 20(1) and (2), 25(1), 27(1) and (5), 28, 31, 41, and 47(1). Whereas the Constitution of Kenya may well be impacted by the actions of the Respondent herein, not every dispute where there is an infraction of the Constitution elevates said dispute to the threshold for a Constitutional Petition as was filed here. ...

No orders are sought seeking the interpretation or application of the Constitution. This is not a proper petition. The petitioners should have moved the court under an ordinary suit in a Memorandum of Claim.

Should the court convert this petition to an ordinary suit?

10. The court moved the parties to address the issue at hand. Without demonstrating any constitutional question, the order that holds is to strike out the petition. Each party will bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 13 DAY OF MARCH 2025.

M. MBARŪ

JUDGE

