



**Ratemo v Teachers Service Commission (Petition E162 of 2022)
[2025] KEELRC 835 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 835 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E162 OF 2022**

MA ONYANGO, DO OGAL & DO OGAL, JJ

MARCH 13, 2025

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 3, 10, 20,
21(1), 22, 23, 25(C), 27, 28, 35(2), 41, 47, 162(2), 159(1), 172(1)(B)(II), (C) & (2)(A)
& (B), 232 AND 258(1) AND (2)(C) OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

JAPHETH AMENYA RATEMO PETITIONER

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Petitioner is an adult male Kenyan citizen of sound mind and disposition and institutes this petition as
 - a. A person with an obligation to respect, uphold and defend the Constitution within the meaning of Article 3(1) of the Constitution.
 - b. A person acting in his own interest with a right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated or infringed, or is threatened within the meaning of Article 22(1) of the Constitution.
 - c. A person acting both in his own interest and in the public interest with a right to institute Court proceedings claiming that the constitution has been contravened or is threatened within the meanings of articles 22(2)(2) and 258(1) and 2(c) of the Constitution.



2. The Respondent, Teachers Service Commission, is a Constitutional Commission established under Article 237(1) of the Constitution of Kenya, 2010 with its primary mandate stipulated thereunder to include but not limited to registration of trained teachers; recruitment of trained teachers; assignment of teachers to public institution; promotion and transfer of teachers; exercising of disciplinary control over teachers; and terminating the employment of teachers in the public service.

The Petitioner states that the Respondent is joined in this petition as:

- a. An entity with an obligation to respect, uphold and defend and defend the constitution within the meaning of Article 3 of the Constitution.
- b. A state organ with a fundamental duty to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of rights within the meaning of Article 21(1)
- c. An employer of the Petitioner.

Petitioner's case

3. It is the Petitioner's case that he was employed by the Respondent on 22nd January, 2014 as a Graduate Teacher on Permanent and Pensionable terms and was posted to Alliance Girls High School to teach History/CRE.
4. It is the Petitioner's case that on 9th day of December, 2016 the Petitioner Graduated with a degree in Bachelor of Laws from the University of Nairobi and subsequently enrolled for a post Graduate Diploma in law/Advocates training programme at the Kenya School of Law in the year 2017. That he was admitted to the bar as an advocate of the High Court of Kenya on the 13th day March, 2019 with admission No. P.105/16219/19.
5. That on or about the 1st day of March, 2019 the Petitioner approached Commissioner Kinoti Imanyara who was serving as Commissioner of the Respondent and was personally known to the Petitioner by virtue of being a parent to one of the students that the Petitioner was teaching at Alliance Girls High School, and requested for advice and assistance as he wished to transfer his services to the legal department at the Secretariat of the Respondent.
6. The Commissioner informed the Petitioner that it is possible to do so administratively since the Petitioner was already serving the Respondent as an employee. The Commissioner promised to pick up the request of the Petitioner and to ensure that the transfer of services was effected.
7. That on or about the 12th day of March, 2019 the Petitioner received a call from the Commissioner who had sent him a number to the Assistant Director of Legal Service, Mr. Timon Oyucho to liaise with and who should assist him with the transfer of services to the secretariat of the Respondent.
8. That on or about the 14th day of March, 2019 the Petitioner called Mr. Timon Yucho on his cell phone, introduced himself and requested for an appointment to discuss the modalities for transfer of his services to the Secretariat of the Respondent.
9. The Petitioner avers that on 16th March, 2019 he met with Mr. Oyucho, who advised him to write a formal request to the Secretary/CEO requesting for transfer of services from classroom teacher to the secretariat to work as legal officer and attach copies of his academic and professional certificates including his certificate of admission as an advocate and his current practicing certificate and to give a copy of the same to Mr. Oyucho for follow up purposes.
10. The Petitioner avers that Mr. Oyucho disclosed to the Petitioner that he had also joined the secretariat through transfer of service from classroom teacher. That Mr. Oyucho further disclosed to the



Petitioner that the Respondent was in the process of restructuring the Directorate of Legal, Labour and Industrial Relations and would be creating two distinct divisions, Legal Services Division and Industrial Relations Division. That they were having a shortage of staff at the directorate.

11. The Petitioner avers that on 2nd July, 2019 he wrote to the Secretary/CEO of the Respondent through his immediate supervisor the Principal, Alliance Girls High School and the County Director Kiambu County as advised by Mr. Oyucho. That after that he kept in touch with Mr. Oyucho through calls, text messages and WhatsApp.
12. The Petitioner avers that on 13th January, 2020 Mr. Oyucho called and asked him to send his detailed curriculum vitae and subject combination to facilitate the Petitioner's replacement upon the Petitioner's successful transfer to the secretariat of the Respondent. That the Petitioner complied on 14th January, 2020 and confirmed so to Mr. Oyucho.
13. The Petitioner avers that on 5th January, 2021 a teacher by the name Mr. Samson Mokuwa with a similar subject combination as the Petitioner was sent to Alliance Girls High School to replace him. That Mr. Oyucho called the Petitioner and advised him to prepare for the transfer to the Respondent's Secretariat as the Director of Human Resource Dr. Julius Olayo was in the process of writing an official letter to that effect.
14. The Petitioner avers that on or about the 10th December, 2020 he contacted the Director Human Resource Dr. Julius Olayo who unfortunately disclosed to him that the process of recruitment had taken a different dimension, that through nepotism and tribalism the Respondent had already issued letters of appointment to Mulaki Patrick Owino, Odhiambo Isaac Ochieng, Njau Mary Ruguru and Edwiq Luvaluli Musundi who are persons connected to or related with the Respondent's Commissioner and CEO/Secretary.
15. The Petitioner avers that his efforts to seek audience with the Director Legal, Labour and Industrial Relations become difficult as his telephone calls went unanswered and text messages were not responded to.
16. The Petitioner further avers that pursuant to the Career Progression Guidelines for Teachers created by the Respondent, the Petitioner will never have an opportunity to be promoted in his work as a teacher since his file is already soiled by the actions of the Respondent. That in an advertisement for promotion of teachers on or about the 8th January, 2021 the Petitioner was not shortlisted as a result of the letter dated the 6th January 2021 despite having the requisite qualifications and recording exemplary results.
17. That upon schools re-opening on or about the 5th January 2021 the Petitioner resumed his normal duties as a teacher at Alliance Girls high school. That upon resumption of learning the Respondent resorted to witch-hunting the Petitioner, threatening and intimidating the Petitioner with an aim of looking for a reason to dismiss the Petitioner from his employment after failing and/or refusing to facilitate the transfer of the Petitioner to the Secretariat. That this was after the Petitioner's replacement had been posted to the institution. The Petitioner avers that this was intended to silence and stop the Petitioner from questioning how the Respondent conducted recruitment without due regard to values and principles of Public Service.
18. The Petitioner avers that the Principal of Alliance Girls High School sent a letter dated 6th January, 2021 to the Respondent through the County Director, wherein the Principal gave a brief history of the Petitioner from the time he reported to the school and annexed 2019 KCSE analysis, 2016, warning letter from the then Principal Mrs Dorothy Kamwilu, 2018, warning letter from the Current Principal and the Time table for term one 2020 form 1-4 of the Petitioner. It is the contention of the Petitioner that such acts were intended to cause fear, panic, intimidation and threats to the Petitioner and were



meant to silence him from questioning the Respondent's action of recruiting people without adhering to the values and Principles of Public Service.

19. The Petitioner avers that the Respondent did not bother to find out whether the Petitioner responded to the said warning letters and if they had a basis.
20. The petitioner seeks the following remedies against the Respondent:
 - a. A declaration that the recruitment process of Four Advocates Mulaki Patrick Owino, Odhiambo Isaac Ochieng, Njau Mary Ruguru and Edwiq Luvaluli Musundi conducted by the Respondent in the Month of November and December 2020 lacked transparency hence unconstitutional since no advertisement, shortlisting and minutes of how the recruitment process was undertaken is available.
 - b. A declaration that Respondent has violated the Petitioner's right to legitimate expectation by refusing to deploy the Petitioner as a legal officer despite the Petitioner being in possession of the relevant skills and the vacant positions of legal officer being available.
 - c. And order for general damages for discrimination, violation of the Petitioner's right to human dignity and self-worth, violation of the Petitioner's right to fair labour practices and fair administrative action.
 - d. A permanent injunction restraining the Respondent from victimizing or treating the Petitioner unfairly on account of instituting this petition.
 - e. An order of Judicial Review in the form of Mandamus to bring into this Court to direct the Respondent to appoint the Petitioner in the position of Legal officer in the Respondent's Directorate of Legal, Labour and Industrial relations.
 - f. Costs of this Petition
 - g. Any other or further relief that this Honourable Court may deem appropriate to meet the ends of justice.
21. The petition was filed simultaneously with an application filed under certificate of urgency in which the petitioner sought the following orders:
 - a. That the Honourable Court be pleased to grant leave for hearing of this application during the current court vacation.
 - b. That this application be certified as urgent and heard ex-parte in the first instance.
 - c. That this Honourable Court be pleased to declare that the decision of the Respondent to recruit advocates in its Directorates of Labour and Industrial Relations without following the guidelines in values and principles of Public Service is Ultra vires, unlawful and unreasonable.
 - d. That this Honourable Court be pleased to order that the letter dated 6th day of January, 2021 and referenced AGHS/TSC/2021 is unlawful and infringed the rights of the Petitioner and should be expunged from the Files held by the Respondent.
 - e. That pending inter-parties hearing and determination of this application Conservatory orders do issue restraining the Respondent from taking any action against the Applicant/Petitioner, victimizing him on account of filing this Application and Petition or interfering with his position as a Teacher in an unlawful manner.



- f. That upon inter-parties hearing and determination of this Application but pending the hearing and determination of the Petition, Conservatory Orders do issue restraining the Respondent from taking any action against the Applicant, victimizing him on account of filing this Application and Petition or interfering with his position as a teacher in an unlawful manner.
- g. That the Respondent be directed to produce before this Honourable Court, an Advertisement indicating vacant positions of legal officers, notes, minute, scores and rankings for all applicants and specifically the records of Mulaki Patrick Owino, Odhiambo Isaac Ochieng Njau Mary Rugur and Edwiq Luvaluli Musundi.
- h. That the Respondent be directed to produce before this Honourable Court the Casualty form for Mr. Samson Mokuwa a teacher sent to replace the Petitioner and reported to the institution on the 5th day of January, 2021.
- i. Any other or further order or relief that this Honourable Court may deem appropriate and expedient to grant in order to meet the ends of justice.
- j. Costs of the Application to be provided for.

Respondent's Case

- 22. The Respondent filed a replying affidavit of Dr. Julius O. Olayo, the Respondent's Director in charge of Human Resource Management sworn on 24th October, 2022.
- 23. Dr. Olayo states that the Petitioner designed an irregular, unethical and unprocedural enterprise to canvass for a position through the back door and only filed this Petition when his attempts failed to materialize therefore violated the tenets of Article 10 and 232 of the Constitution.
- 24. He deposes that in order for the Respondent to carry out its teacher management and regulatory obligations under Article 237(2) and (3) of the Constitution pursuant to Article 252(1)(c) and Section 18 of the TSC Act, the Respondent has a mandate to recruit its own staff. To this end, the Respondent has in its employment the Secretariat Staff that assists the Board in performing the Respondent's Day to day operations.
- 25. That in carrying out its functions, the Respondent is bound by the National Values and Principles of Governance under Article 10 of the Constitution. Further, the Respondent is guided by the Values and Principles of Public Service set out under Article 232 of the Constitution that includes inter alia fair competition and merit as the basis for appointments and promotions.
- 26. That in discharging its mandate to recruit both teachers and secretariat staff, the Respondent has endeavoured to apply the principles of fair competition and merit as the basis of appointment. Accordingly, all employment vacancies in the Respondent's service are filled competitively as ordained by the Constitution.
- 27. That the competitive nature of the recruitment process involves advertisement of the vacant positions through various modes; transparent shortlisting of candidates; interviews and selection based on available vacancies
- 28. That contrary to the unsubstantiated allegations propagated by the Petitioner, the Respondent has always advertised, shortlisted and interviewed candidates to fill the various vacancies that have arisen within the Commission. That all vacancies in the Respondent's organization including the Legal, Labour and Industrial Relations Directorate were advertised through the Respondent's website and



- other media platforms and recruitment thereof conducted competitively. Dr. Olayo referred the court to annexure 10-1 which are copies of advertisements for various positions in the Legal Directorate since 2019.
29. He deposes that the Respondent, pursuant to Article 55 of the Constitution and in line with Government Vision 2030 which advocates for economic, social, and political development of the youth, has incorporated a robust Internship Programme covering various professions including law.
 30. That in this regard, in 2019, the Respondent advertised for vacancies for Legal Interns amongst other positions in its secretariat service. That pursuant to the advertisement, the Respondent received a total of 200 applications out of which 18 Applicants were shortlisted and invited for interviews.
 31. That subsequently, the Respondent competitively conducted interviews wherein two Applicants namely Ms. Mary Njau Ruguru and Ms. Edwiq Musundi Luvaluli emerged successful and were engaged by the Respondent with effect from January, 2020.
 32. That following exemplary performance of the two Legal Interns for a period of one year and availability of vacancy at the Respondent's Legal Directorate, the Respondent in exercise of its mandate made a decision to absorb the said interns as Legal Officers in January, 2021, having already met the qualifications for appointment and after being competitively selected as interns. The Petitioner did not tender his application for the said Internship Programme.
 33. Dr. Olayo deposes that in 2020, the Respondent advertised for the position of two (2) Principal Legal Officers. The said advertisement was made in the normal manner and posted in the Respondent's website for the general public.
 34. Pursuant to the advertisement the Respondent received a total of 69 applications out of which 6 applicants were shortlisted and invited for interview. The Respondent competitively conducted interviews wherein two Applicants namely Mr. Patrick Owino Mulaku and Mr. Isaac Ochieng Odhiambo emerged successful and were employed by the Respondent with effect from January, 2021.
 35. Dr. Olayo deposes that contrary to the averments by the Petitioner, the appointment of Mr. Patrick Owino Mulaku and Mr. Isaac Ochieng Odhiambo was done through a competitive process based on fair competition and merit. The Petitioner yet again did not submit an application for the positions.
 36. Dr. Olayo deposes that the fact that the Petitioner is an Advocate of the High Court of Kenya does not in itself confer upon him the right to be engaged by the Commission as a Legal Officer in its secretariat service
 37. That in July 2019, barely four 4 months after the Petitioner was admitted to the Bar, the Respondent received his application dated 2nd July, 2019, seeking for transfer of service from a classroom teacher to the secretariat service.
 38. That the Respondent duly considered the said Application and informed the Petitioner vide a letter dated 23rd, July 2019 that deployments to secretariat positions are done through competitive selection and that he should therefore apply when vacancies are advertised.
 39. That the Petitioner in his entire pleadings has not disclosed this material fact to the Court. That the Petitioner has come to Court with unclean hands, is guilty of non-disclosure and deliberate distortion of facts with the sole mislead the Court hence undeserving of any prayers sought.
 40. That specifically, the Applicant has withheld from the Court the fact that upon making an Application for employment as an Advocate vide letter dated 2nd July, 2019, the Respondent conclusively advised him vide letter dated 23rd July, 2019 marking the matter as closed.



41. Dr. Olayo deposes that the Petitioner only filed this Petition after the illegally initiative recruitment attempts failed. That the instant Petition has been filed in bad faith, with malice, vengeance and as an afterthought.
42. That contrary to the averments at Paragraph 19 of the Petition, the appointment and posting of Mr. Samson Mokuia to Alliance Girls High School had no relation with the Petitioner and his quest to join secretariat service of the Respondent. He deposes that the recruitment and posting of Mr. Samson Mokuia to alliance Girls was informed by the shortage of teachers of History/CRE at the school as informed by the Respondent's Staffing Norms.
43. Dr. Mokuia further deposes that without prejudice to the above, the letter dated 6th January, 2021 was illegally obtained hence inadmissible at the hearing hereof and ought to be expunged from the court record.
44. It is deposed by Dr. Olayo that the Respondent is mandated under Section 11 of the TSC Act to monitor the conduct and Performance of teachers. To this end, the Respondent has put in place a framework to supervise performance of teachers including the Teacher Performance Appraisal and Development tool and performance contracting. That Regulation 12(1) (j) of the Code mandates the County Director to ensure that teachers comply with the teaching standards prescribed by the Respondent.
45. That contrary to the allegations by the Petitioner, the visit to the school by the County Director was pursuant to the supervisory mandate of the County Director to conduct lesson observations and ensure teachers comply with standards and to monitor implementation performance. This is a practice in the teaching profession applied across Kenya and which is informed by international best practices.
46. Dr. Olayo states that the averments by the Petitioner that the County Director only monitored him with intentions to frustrate him so as to push him to resign is not only insincere but also dishonest as he is aware that County Director has a mandate to monitor the performance of all teachers to ensure efficient implementation of Curriculum in a bid to enhance quality education for learners across the country.
47. Dr. Olayo deposes that he was informed by Commissioner Timon Oyicho, that at no time did he promise the Petitioner any automatic and/or direct transfer of his services to the secretariat as alleged by the
48. Dr. Olayo further deposes that he was informed by Commissioner Kinoti Imanyara (now retired) that at no time did he represent to the Petitioner that he would influence his Transfer of Service directly to the Secretariat Service
49. Dr. Olayo deposes that all the prayers sought in the Petition are not tenable in law on the grounds that:
 - a) Declaratory orders cannot ensue against innocent parties who were recruited in a transparent and competitive process where the Petitioner did not even participate;
 - b) Employment in the Secretariat's services follows a competitive process and cannot be awarded by Court as doing so will not only be unconstitutional but also irregular. The Court has no such jurisdiction;
 - c) The Petitioner cannot use the sanctity of the court process to legitimize an illegal, irregular and unethical enterprise who objective was to circumvent the due process and secure employment through the back door;



- d) No evidence has been placed before Court to justify the alleged victimization. Court orders are no issued in vain.
 - e) Employment of persons in the service of the Respondent is purely a management prerogative exclusively within the mandate. The Court has no such jurisdiction.
50. He prayed that the petition be dismissed with costs.

Petitioner's Submissions

51. The Petitioner did not file submissions in spite of having been given ample opportunities to do so.

Respondent's Submissions

52. The Respondent submitted under several heads. The first head is that the petition is bad in law, incompetent, fatally defective and amounts to an abuse of court process for reason that the petition seeks the removal of 4 advocates employed by the Petitioner who were never joined as parties to the suit. That this would amount to condemning them unheard contrary to Articles 41, 47, 48 and 50 of the Constitution.
53. For emphasis the Respondent cited and relied on the decisions in Petition E012 of 2021 Oliver Mukhebi & 28 Others v County Public Service Board of Bungoma & Another; Civil Appeal No. 15 of 2015: JMK v MWM & Another [2015] eKLR; Onyango v Attorney General (1986-1989) EA 456; and Mbaki & Others v Macharia & Another (2005) 2 EA 206. In all these cases the courts emphasized the right of a party adversely mentioned in a suit to be heard.
54. The second head under which the Respondent submitted was that the doctrine of legitimate expectation is not applicable in this matter. It is submitted that the Petitioner erroneously asserted that he had legitimate expectation to be recruited as a Legal Officer by the Respondent on the basis of alleged representations of agents of the Respondent. That he had expectation that once he qualified as an advocate he would be directly transferred from the teaching service to the secretariat of the Respondent to serve as an advocate, which was an erroneous assumption.
55. It is the submission of the Respondent that the Petitioner misconstrued the application of the doctrine of legitimate expectation and arrived at the wrong conclusion of the law for reasons that:
- a. It is trite law that the doctrine of legitimate expectation cannot override a clear provision of law.
 - b. Article 323 of the Constitution read together with Regulation 68 of the Code of Regulations confirms that deployment from teaching to the secretariat service of the Respondent must be carried out in a transparent and competitive manner.
 - c. No representations were made by the Respondent or its authorised agents to the Petitioner whatsoever;
 - d. Vide letter dated 23/7/2019 (Appendix 8 at page 145 of the Replying Affidavit), the Respondent formally informed the Petitioner that all appointments to the Secretariat service were competitive; accordingly, the Petitioner could not abrogate himself a distinct expectation which was not conveyed by the Respondent.
56. In support of this position the Respondent relied on the decision in Civil Appeal No. 352 of 2019: Attorney General & 2 others v Muthuuri & 4 others (EKLR) where the court set out the principles of legitimate expectation.



57. The Respondent further submitted that the petition does not meet the threshold of a constitutional petition relying on the decision in *Anarita Karimi v Republic* (No. 1) (1979) 1 KLR 15 and *Mumo Matemu v Trusted Society of Human Rights Alliance* Civil Appeal No. 290 of 2012 (2013) eKLR.
58. It is submitted that the Petitioner quoted an array of Articles of the Constitution without illustration of violation. That the extent of such violations have not been pleaded nor demonstrated through evidence.
59. The Respondent further relied on High Court at Nairobi Petition No. 218 of 2017: *Leonard Otieno v Airtel Kenya Limited*; Supreme Court Petition 14 of 2014: *Communications Commission of Kenya & 5 others v Royal Media Services Limited and 5 Others*; Constitutional Petition 491 of 2016: *Japheth Ododa Origa v Vice Chancellor University of Nairobi & 2 others* and High Court at Mombasa Petition No. 22 of 2014: *Manase Guyo & 260 other v Kenya Forest Services*.
60. The other ground raised by the Respondent in its submissions is the doctrine of constitutional avoidance. It is submitted that the Petitioner has not raised any cause of action anchored in the Constitution. That his grievances pertain to contractual matters under the Employment Act disguised as a constitutional petition. The Respondent relies on Constitutional Petition 014 of 2020: *KKB v SCM & 5 others* where it was held that parties should keep away from engaging in constitutional petitions where the alleged infringed right is enforceable through statute law.
61. The Respondent further relied on Civil Appeal No. 67 of 2015: *Gabriel Mutava & 2 others v Managing Director Kenya Ports Authority & another*.
62. The Respondent further submitted that the Petitioner has come to court with unclean hands. That by his own admission, the Petitioner engaged in a dubious, irregular, unethical and un-procedural enterprise to obtain employment in the Respondent's secretariat and only filed the instant petition after the illegal initiative failed to bear the desired outcome. That the instant petition is laced with bad faith, malice and vengeance. That the same is an afterthought and an abuse of court process.
63. It is further submitted that the Petitioner is guilty of material non-disclosure and deliberate distortion of facts to mislead the court. It is submitted that the Petitioner withheld from the court the fact that upon applying for employment as an advocate vide his letter dated 2nd July, 2019 he was appropriately advised by letter dated 22nd July, 2019 at Appendix 8 page 145 of Respondent Replying Affidavit. For emphasis the Respondent quoted and relied on the decision in Civil Application No. 26 of 2016: *Mohamed Shally Sese (Shah Sese) v Fulson Company Ltd & another* where the court while quoting with approval the decision in *John Njue Nyaga v Nicholas Njiru Nyaga & another* (2013) stated that equity calls to those seeking its aid to come before it with clean hands and also do equity. Further, that one who comes to equity must come with clean hands and equity frowns upon secrecy and underhand dealings.
64. It is further the submission of the Respondent that the petition is based on inadmissible evidence. That Annexures marked 'RA-5' and 'RA-6' violate sections 65(8) and 106B of the Evidence Act for failure to produce a certificate which render the same fatal. For emphasis the Respondent relied on Civil Case 317 of 2014: *Jack & Jill Supermarket Ltd v Victar Maina Ngunjiri* and Civil Case No. 12 of 2017: *Rachael Njoki Kahara v Gideon Migiro Nyambati* [2020] eKLR
65. Finally, the Respondent submits that the orders of Mandamus cannot ensue in the circumstances of this case as such order can only issue against a person or body of persons who has failed to perform a duty to the detriment of a party who has a legal right. The Respondent relied on the definition in Miscellaneous Application 615 of 2017: *Republic v Principal Secretary, Ministry of Internal Security*



& another Ex Parte Schon Noorani & another. In this case the court identified the conditions to be met for an order of Mandamus to ensue as follows:

“There must be a public duty to act; the duty must be owed to the Applicants; There must be a clear right to the performance of that duty; No other adequate remedy is available to the Applicants; The order sought must be of some practical value or effect; There is no equitable bar to the relief sought; on a balance of convenience, mandamus should lie.”

66. It is submitted that the Respondent is a public body in which vacancies are determined by various factors including vacancy and budget prison. That compelling the Respondent to employ the Petitioner will be outside the jurisdiction of the court. The Respondent relied on the decision in Constitutional Petition 4 of 2015: Geoffrey Mworira v Water resources Management Authority and 2 others where the court stated that courts will rarely interfere in the employer’s entitlement to perform any of the human resource functions such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy, or any other human resource function.
67. In concluding, the Respondent submitted that as deponed in the Replying Affidavit by Dr. Julius Olayo, the engagement of the 4 Advocates in the secretariat service was conducted competitively and transparently within the tenets of the constitutional edicts and Human Resource Management best practices.
68. The court is urged to decline the invitation to issue adverse orders against innocent parties who were not parties to the instant petition as doing so will not only violate the Constitution but also condemn them unheard. They urged the court to dismiss the petition.

Analysis and Determination

69. I have considered the pleadings and submissions on record. As already stated above, the Petitioner, though invited severally to submit his submissions to the court, failed to do so.
70. Having considered the pleadings and submissions on record, the issues for determination are:
 - a. Whether the petition meets the threshold of a constitutional petition or it is incompetent and fatally defective,
 - b. Whether the Petitioner’s constitutional rights have been violated by the Respondent,
 - c. Whether the Petitioner is entitled to any of the remedies sought in the petition.
71. The petition herein is premised on the alleged violation of the Petitioner’s rights to be deployed as a legal officer in the Respondent’s secretariat despite possessing the relevant skills and availability of vacancies. He seeks a declaration that the recruitment of four advocates of the Respondent be declared unconstitutional for lack of transparency in the process of their recruitment and an order compelling the Respondent to appoint him to the position of Legal Officer.
72. The legal officers against whom the Petitioner seeks these orders were not joined as parties to this suit. Secondly, the persons whom the Petitioner alleges he approached and who he alleges gave him assurance of recruitment are not parties to the petition.
73. Thirdly, the Petitioner has not explained how the Respondent is liable for promises allegedly made to him in private communication between him and Commissioner Kinoti Manyara and Mr. Timon Oyicho and how such communication can form the basis for legitimate expectation capable of enforcement by this constitutional petition against the Respondent.



74. The Petitioner cited multiple articles of the Constitution of Kenya 2010 without demonstrating the relevance thereof to his petition or how the Respondent violated such provisions.
75. I would agree with the Respondents that the petition herein does not meet the threshold of a constitutional petition as articulated in *Anarita Karimi v Republic* (supra) and *Mumo Matemu v Trusted Society of Human Rights Alliance* (supra) that a party seeking a constitutional remedy is required to set out with reasonable precision that which is complained of, noting to stipulate which constitutional provisions have been infringed and how they have been infringed.
76. The Petitioner has in the petition and his pleadings attempted to malign persons who had nothing to do with what the petitioner terms as witch hunt, intimidation, malice and threats against him by the Respondent.
77. I would further agree with the Respondent that the petition is incurably defective, is vexatious and an abuse of court process.

The same is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 14TH DAY OF MARCH 2025

MAUREEN ONYANGO

JUDGE

