



REPUBLIC OF KENYA



**Rang'ang'a v KCB Bank (K) Limited; Banking, Insurance and Finance Union (Interested Party)
(Constitutional Petition E100 of 2024) [2025] KEELRC 709 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 709 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E100 OF 2024**

B ONGAYA, J

MARCH 7, 2025

BETWEEN

OMONDI JUSTUS RANG'ANG'A PETITIONER

AND

KCB BANK (K) LIMITED RESPONDENT

AND

BANKING, INSURANCE AND FINANCE UNION INTERESTED PARTY

JUDGMENT

1. The petitioner filed the Petition dated 12.10.2023 in person. The petitioner prayed for:
 - a. An order directing the respondent to furnish the petitioner with all his medical records in their custody in line with Article 35(1)(b).
 - b. Damages for withholding petitioner's medical records in violation of Article 35(1b).
 - c. A declaration that the respondent directly victimized, retaliated and discriminated against the petitioner for filing Milimani ELRCC E618 of 2021.
 - d. Damages for victimization, retaliation, favouritism, limitation of rights, unequal employment opportunities and discrimination for seeking union recognition and fair employment practices.
 - e. A declaration that the respondent's actions limited petitioner's realization of full employment and fundamental rights protected in the bill of rights.
 - f. A declaration that the petitioner is deemed to have been converted into a permanent and pensionable staff by operation of the law as per *Employment Act* section 26, CBA 2019-2021 Clause A3(b) and Memorandum of agreement dated 04.10.2000 between the Kenya Bankers



Association (KBA) and BIFU (the interested party), having worked exemplary and retained for 79 months.

- g. A declaration that the last one year engagement ending 31.12.2021 was converted to permanent and pensionable by operations of the law after 6 months in employment.
 - h. Equitable remedy;
 - i. An exceptional order reinstating the petitioner and issuance thereto a contract that is consistent with the CBA 2019, 2021, Memorandum of agreement dated 04.10.2000 between the Kenya bankers association and the banking insurance and finance union and employment act section 26 and labour relations act section 59 without loss of benefits; or
 - ii. Compensate the petitioner for loss and unrealized employment till retirement age
 - i. Compensate the petitioner for unfair termination for:
 - a. Being inconsistent with existing CBA, Employment Act and Labour Relations Act; or
 - b. As declared in Milimani ELRCC E618/2021
 - j. Redundancy pay for years worked from 25.05.2015 to 31.12.2021.
 - k. Compensation for the illegal notice of 7 days contrary to 30 days requirement.
 - l. Costs of the suit and interest on the sum awarded at court rates.
 - m. Any other relief that the court may deem fit to grant.
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto, filed together with the petition, the Replying Affidavit sworn on 04.12.2024, and his Supplementary affidavit sworn on 21.02.2025. The petitioner's case is as follows:
- a. That before the institution of Milimani cause E618 of 2021 between Omondi Justus Rang'ang'a and 28 others Vs. KCB Bank Ltd and Banking Insurance and Finance Union, the respondent promised to retaliate if the petitioner and others continued to seek redress regarding their grievances.
 - b. In a meeting organized via virtual teams on 01.04.2021 and hosted by Azu Ogola the HR business partner of customer experience and Wanjiru Kinyua of Customer experience, the human resource team promised they would send the petitioner and others home and replace them with other Kenyans, and specifically stated that "they would outsource the services performed by the petitioner and other grievant. The services performed by petitioner and others can also be done by robots. Petitioner and other grievants are not unionisable"
 - c. In a physical meeting held on 23.04.2021 the HR director Japheth Achola intimidated and shouted at the petitioner and the rest. The HR team advised that "they will review the role and determine which ones deserve permanency. They would hate to take some of the grievants including the petitioner to court. They are ready to offer three months of paid leave for petitioner and others to self-evaluate. Several people outside Kencom House (job seekers) can easily replace the petitioner and the rest. They will outsource the services being performed by the petitioner and other grievants. Petitioner and others are free to quit if they are tired of working. Petitioner and other grievants are not unionisable since their contract do not state so"



- d. In July 2021 the petitioner and other colleagues had applied for internally advertised jobs for graduate clerks and were shortlisted for interview. Thereafter the HR withheld their result while other employees in the bank who had applied for the job received feedback. Later in September 2021 over 2 months and as the E618 of 2021 case proceeded for mention, the HR department sent regret letters to all because the petitioner had filed a suit.
- e. While E618 of 2021 was ongoing the petitioner and others sought interim conservatory orders for status quo, which orders were granted pending disposal of the cause. However, the respondent proceeded and terminated the contracts of all KCB Bank contract clerks being staff in customer experience including Karen Chepchirchir Malakwen, the petitioner's comparator.
- f. In violation of the court order and existing collective bargaining agreement between interested party (BIFU) and Kenya Bankers Association (KBA) the respondent terminated the contracts of all KCB bank contract clerks in customer experience via notices received on 22.12.2021.
- g. Thereafter, Karen Chepchirchir Malakwen who was one of the customer experience contract clerks issued with the notices of non-renewal was recalled and her contract renewed in 2022.
- h. Karen was recalled back to work because, while other grievants including the petitioner pursued redress at the Ministry of Labour and eventually in the employment and labour relations court, Karen opposed and was never part of the proceedings.
- i. Karen was recalled because her father was a KCB bank company secretary and chief legal advisor from 1996 to 2013.
- j. On 07.03.2022, two months after issuance of notice of non-renewal, the petitioner's position of compliance executive was advertised internally.
- k. To circumvent justice, the position previously held by the petitioner and others was briefly outsourced to Sheerlogic Ltd in 2022 for a few months.
- l. 3 months prior to termination of the petitioner's contract, a Sheerlogic Ltd employee by the name Jude Tenai Kiplangat was brought to the petitioner's team "makini compliance" to be trained as part of business continuity plan once the petitioner's services were disengaged. Jude's employment and others from Sheerlogic Ltd who replaced the petitioner and the rest, was later converted to KCB bank ltd employees.
- m. By May 2023 all third party contracts had been converted to KCB bank Ltd terms, with the employer changing from Sheerlogic Ltd to KCB Bank Ltd, and all roles converted into permanent and pensionable terms, a salary of Kshs 100,000 from Kshs 45,000, and the roles were under managerial level with no option to join the union.
- n. The notices of non-renewal dated 22.12.2021 were used to dupe the petitioner and other grievants into believing that there were no vacancies. However, the respondent used them to achieve victimization, witch-hunt and discrimination goal.
- o. The collective bargaining agreement between KBA and BIFU provided that a unionisable cadre of employees will be on probation for only 6 months and if the employer is satisfied with the performance, they are confirmed as permanent and pensionable. The respondent failed to confirm the petitioner and instead extended his contract multiple times for over 79 months.
- p. The petitioner was disadvantaged and was at the mercy of the respondent who conned him by failing to disclose terms provided for in section 59 of the [Labour Relations Act](#).



- q. The court's judgment in cause E618 of 2021 held that the termination of the petitioner's contract was illegal, and the contract between the petitioner and respondent was fraudulent and illegal due to misrepresentation of facts.
 - r. By denying the petitioner access to his documents consisting of medical records, the respondent is violating Article 35(1) (b) of the *Constitution*.
 - s. The petitioner seeks redress for distinct actions that occurred after the filing of ELRCC E618 of 2021 and that prayers (a) and (b) of the petition are new and distinct from those in ELRCC E618 of 2021.
 - t. These prayers arise from the respondent's refusal to release the petitioner's medical examination reports for the years 2018, 2019, 2020 and 2021 despite his formal request made on 09.06.2023.
 - u. The recalling back to work of Karen Chepchirchir Malakwen is a new act of nepotism, victimization and unequal employment opportunities and is a new fact in support of the new suit.
 - v. Failure to comply with the collective bargaining agreement regarding severance pay, one month's notice or one month salary in lieu and contract reinstatement constituted ongoing violations that were not and could not have been fully litigated in ELRCC E618 of 2021.
 - w. That the respondent's attempt to invoke the doctrine of re judicata is erroneous and contrary to the principles set out in law. The present petition raises fresh constitutional violation, factual circumstances and distinct legal issues that were neither pleaded nor determined in ELRCC E618 of 2021.
3. The respondent filed the replying affidavit of Lilian Sogo, Advocate, sworn on 11.02.2025, the Head Counsel Litigation with the respondent, through Muriu Mungai & Company Advocates LLP. It was stated and urged as follows:
- a. The instant petition is an abuse of the court and is res judicata for reasons that;
 - i. Parties are the same. The parties in the instant petition are the same as those in the former suit.
 - ii. There is sameness of title or claim. The petitioner in the instant petition was the claimant in the former suit while the KCB Bank PLC was the respondent and BIFU was the interested party in the former suit.
 - iii. The matter in issue is identical in both suit. The issue in dispute in this instant petition is pegged on the termination of the petitioner's employment by the respondent. It was also the issue in dispute in the former suit.
 - iv. Concurrence of jurisdiction. The former suit was heard and determined by the Employment and Labor Relations Court.
 - v. Finality of the previous decision. The matter in the former suit was heard and a judgment delivered on 30.11.2022.
 - b. The doctrine of res judicata prohibit parties from suing in bits and pieces or giving a subsequent case a legal face lift by removing parties who are part of the earlier dispute and/or case filed and determined.



- c. The petitioner is doing litigation in instalments by trying to give this petition a makeover by removing the 28 claimants in the former suit and adding a new ground of being denied access to his medical records hence re-opening issues that have already been heard and determined by this court.
 - d. The issues raised in the petition regarding retaliation against the petitioner during the meeting held with the human resources director, the renewal of Karen Chepchirchir Malakwen's contract, the issuance of notices of non-renewal of the petitioner's contract dated 22.12.2021, the outsourcing of new employees post termination of the petitioner's contract were live issues when the parties litigated the former suit and have not arisen pursuant to the decision rendered in court on 30.11.2023.
 - e. Medical records are kept by the hospitals that conduct the annual health check, and they have no authority to disclose and or share the employee medical records with the respondents since it would be a breach of privacy. Therefore the respondent is not able to provide the petitioner with the said medical records since they are in the custody of the respective hospital which the petitioner can simply request to furnish the said medical records.
 - f. The petitioner's employment contract was on fixed term basis and had an expiry date. Consequently, there was no legitimate expectation of renewal of the petitioner's contract, because the contract had a specific expiry date. The respondent cannot be faulted for issuing a regret letter for non-renewal of the petitioner's contract otherwise it would undermine the very purpose of the fixed term contract and revert to indeterminate contracts of employment. Consequently, non-renewal of the petitioner's contract which was on fixed term basis cannot constitute retaliation as alleged by the petitioner.
 - g. Parties to a contract are bound by the terms thereof. The petitioner applied to be employed by the respondent, willingly accepted the terms thereof and is therefore bound by the terms agreed. The petitioner though unionisable, neither made any application to join the union nor remitted contributions directly to the union to benefit from the collective bargaining agreement.
 - h. The issue as to whether the petitioner was entitled to benefit from the CBA was heard and determined by the judgment delivered by this court on 30.11.2022 where the court held in the affirmative. This issue having been heard and determined by a court of competent jurisdiction cannot be subject to re-litigation in this petition because it would amount to this court being asked to sit on appeal on a matter heard by a court of concurrent jurisdiction and because the finding of the judgment regarding the petitioner's right to benefit from the CBA is currently before the Court of Appeal in Civil Appeal No. 349 of 2023.
 - i. The petitioner has not given any particulars or facts of being subjected to favouritism, nepotism, unequal employment opportunity, discrimination, retaliation and victimization, denial of access to information and unfair termination by the respondent to prove breach of his constitutional rights to enable the respondent to respond appropriately.
4. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows.
5. To answer the 1st issue, the Court finds that indeed the issues surrounding the petitioner's service and termination or separation were decided in the earlier suit. The matters appear res judicata as urged for the respondent.



6. To answer the 2nd issue, the petitioner has not shown that the medical reports in issue are in possession of the respondent. He has not shown efforts he has made to obtain them from his doctor or hospital. The Court cannot compel the respondent to provide information which has not been shown to be in respondent's possession. The alleged violation of Article 35 and claim for compensation in that regard is found unjustified.
7. The alleged discrimination based on employment or recall into employment of Karen Chepchirchir Malakwen is speculative and unfounded. The circumstances of subsequent employment of Karen Chepchirchir Malakwen after she had separated with the respondent appears not established at all. The claimant has not shown that he applied for such re-employment or was entitled to such re-employment but for the alleged reasons, he was denied the employment. The alleged comparator is found baseless and the alleged discrimination is not established.
8. The petitioner has not shown that he was a member of the union, the interested party. Thus it appears that the terms and conditions of service never got incorporated into his individual contract of service per section 59(3) of the *Labour Relations Act*, 2007.
9. The Court has considered the winding history of the case and returns that parties to bear own costs.

In conclusion the petition is hereby dismissed with orders each party to bear own costs of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 7TH MARCH, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

