



Jadevela v National Police Service Commission & 2 others (Petition E003 of 2025) [2025] KEELRC 1617 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1617 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E003 OF 2025**

B ONGAYA, J

MAY 29, 2025

IN THE MATTER OF ARTICLES 22(1), OF THE CONSTITUTION OF KENYA, 2010

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF
ARTICLES 10, 21(1), 22(1) & (2), 27(1) (2) & (3), 28, 40(3), 41(1)
43(1)(E) AND 47(1) OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

TIMOTHY LIHANDA JADEVELA PETITIONER

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE SERVICE 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated 20.11.2024 in person. The petition was filed on 13.01.2025. The petitioner prayed for reliefs as follows:
 - a) A declaration be and is hereby made that the withholding of the Petitioner's pension amounts to violation of the Petitioner's constitutional right to property and social security under Articles 40 (3) and 43 (1) (e) of *the Constitution* of Kenya 2010 and that the same is unlawful, null and void for all intents and purposes.
 - b) An order nullifying the decision to withhold the Petitioner's pension and gratuity benefits and directing the 1st Respondent to forthwith release to the Petitioner her pension and social security benefits.
 - c) General damages for violation of the Petitioner's constitutional rights in the process leading to the dismissal of the Petitioner from the National Police Service.



- d) Service Pay (Basic Salary ((Ksh...27,000.....) *15*No. of Years (..))/30 - Kshs 4,000,000.
 - e) Public Holidays (15 days) 30,000/=.
 - f) Annual Leave days (26 days per year for years) Kshs.
 - g) 4 weekly resting days every month (for months) Kshs.
 - h) An order that the Respondent issue the Claimant with a certificate of service.
 - i) Costs of the claim and interest thereon.
 - j) Costs of the Petition.
 - k) Any other relief that the Court may deem fit and just do grant the Petitioner.
2. The petition is based upon the petitioner's supporting affidavit and the following facts:
- a. The Petitioner was enlisted into the National Police Force on 29/08/1995, after graduation from P.T.C Embakasi.
 - b. The Petitioner was deployed to work in Nyanza Province, Central Province and APTC College Embakasi and where he worked under minimum supervision. He was totally dedicated to serving the People of the Republic of Kenya.
 - c. On 28th January 2011, at around 18:00Hrs when the Petitioner was off duty at Kinangop Subcounty DC's office, the Petitioner was approached by a Senior Officer while he was at a nearby restaurant resting with fellow members of the public.
 - d. The Senior Officer came at the Petitioner with harsh words, but the Petitioner kept quiet and left heading to his house.
 - e. The Petitioner was later charged in an Orderly Room Proceedings on 8th February, 2011 at District Commissioner's Office, Kinangop on conduct to the prejudice of good order and discipline contrary to Section 20(1) of the Administration Police Act Cap 85 Laws of Kenya.
 - f. The charges that the Petitioner faced were as follows: COUNT I: On 28th February, 2011 at around 0600hrs he uttered abusive language to a person senior to him in rank; COUNT II: On the same occasion using threatening words to S/SGT Liban Ali.
 - g. The dismissal letter dated 25th February stated that the Petitioner's conduct of using abusive language and threatening words to his seniors clearly indicated his lack of commitment to the service. It was upon that ground that the Petitioner was dismissed from the Administration Police Service.
 - h. The Petitioner avers that he has appealed the decision severally without any response from the office concerned.
 - i. That, the Petitioner's claim is thus for payment of all his benefits and dues in line with Article 40 of *the Constitution* of Kenya 2010
3. The petitioner has further pleaded the constitutional and legal foundations of the petition as follows:
- a. Article 10 of *the Constitution* sets out the national values and principles of governance for Kenya. Among these values and principles are: - the rule of law, human dignity, equality, human rights, non-discrimination, good governance, integrity, transparency and accountability.



- b. Article 21 of [the Constitution](#) makes it a fundamental duty of the state and every state organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.
 - c. Article 22 of [the Constitution](#) entitles every person to 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.
 - d. Article 27 of [the Constitution](#) provides for equality of every person before the law, the right of every person to equal protection and equal benefit of the law.
 - e. Article 27 defines equality to include the full and equal enjoyment of all rights and fundamental freedoms.
 - f. Article 28 of [the Constitution](#) provides that every person has inherent dignity and the right to have that dignity respected and protected.
 - g. Article 40 of [the Constitution](#) guarantees the right to property. Article 40(3) provides that the state shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless for lawful purposes as spelt out under [the Constitution](#).
 - h. Article 41(1) of [the Constitution](#) provides that every person has the right to fair labour practices.
 - i. Article 43(1) (e) of [the Constitution](#) provides for the right to social security.
 - j. Article 47(1) & (2) of [the Constitution](#) provides for the right to fair administrative action.
 - k. Article 50 of [the Constitution](#) guarantees the right to fair hearing.
4. The learned Chief State Counsel Mr. Oscar Eredi filed a notice of appointment for the Attorney General for the 2nd and 3rd respondents. He further filed for the 2nd and 3rd respondents the notice of preliminary objection dated 20.01.2025. It was urged that the petition was defective, bad in law and should be struck out upon the following grounds:
- a. The cause of action is based on a letter of dismissal dated 25.02.2011 which the 1st respondent issued to the petitioner.
 - b. The suit is time barred and offends provisions of section 90 of the [Employment Act](#), 2007.
5. The preliminary objection was orally urged and dismissed on 12.03.2025 when the Court ordered thus “1. The preliminary objection is dismissed with costs in the cause because it is based upon disputed facts about the date of the cause of action”. For the 2nd and 3rd respondents the learned Counsel for the Attorney General Ms. Jepkemei had submitted that dismissal was on 25.02.2011 and the suit filed on 13.01.2025 so that the three years of limitation prescribed in section 90 of the [Employment Act](#), 2007 had lapsed when the petition was filed. The petitioner on the other hand urged that the letter by the 1st respondent was dated 11.02.2022 and delivered to him on 17.03.2022 so that three years had not lapsed. While Counsel submitted that she had not seen the letter, the 1st respondent’s letter of 11.02.2022 had been exhibited on the petitioner’s supporting affidavit. The letter stated that the claimant had been dismissed effective 21.02.2011 by letter dated 25.02.2011; petitioner appealed by letter dated 02.02.2012 but the same disallowed by the letter dated 15.10.2012; and the same letter by 1st respondent concluded, “Owing to the above therefore, please be advised that your matter is deemed closed, having been concluded before the establishment of the Commission.” The Court has reflected about section 90 of the [Employment Act](#), 2007 on the time of limitation. While the preliminary objection stands dismissed as was ordered for need to resolve the disputed fact on the date



the cause of action had accrued, after full consideration of the material on record in a full hearing, it also appears to the Court that the said section 90 was inapplicable. In particular, section 3 (2) (b) of the Act provides that the Act shall not apply to, inter alia, the Kenya Police, the Kenya Prisons Service, or the Administration Police Service. It appears to the Court that the section as invoked to urge time barring of the petition was misconceived. It then appears that the final submissions for 2nd and 3rd respondent based on section 90 of the Act remain misconceived. It might be that the petition could be time barred under other statutory provisions but the point was not urged for the parties and the Court will not delve into the issue.

6. The 1st respondent filed grounds of opposition dated 24.04.2024 and through learned Litigation Counsel Ms. Chebet Koech. It was stated that the petition was an abuse of court process because the petition omitted to frame the case with reasonable precision against the 1st respondent as required in *Anarita Karimi Njeru –Versus- Republic (1976-1980) KLR 1272* and it should therefore fail. In particular, it was stated that the petition did not enumerate the alleged constitutional provisions infringed or violated by the 1st respondent, and, it did not set out the manner in which the 1st respondent had infringed or violated the petitioner’s rights. The Court upholds the 1st respondent’s case. Indeed, the petitioner has exhibited the 1st respondent’s letter of 11.02.2022 confirming that all transactions in issue concluded prior to the 1st respondent becoming operational. The petitioner has not disputed that material fact and in the petition he has not particularized material facts of infringement or threatened infringement of his rights and fundamental freedoms by the respondents, and then, by evidence, established any such infringement. The petition must fail as against the 1st respondent and, indeed, other respondents. As submitted for the 1st respondent the petitioner has failed to specify the constitutional provision violated by the 1st respondent and the nature of the injury caused or likely to be caused to the petitioner or the person in whose name the petition has been brought – as provided for in rule 10 (c) and (d) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) (Practice and Procedure) Rules, 2013.
7. As against all the respondents and as submitted for the 1st respondent, the petition as drawn merely invokes constitutional provisions without showing how the respondents’ conduct infringed upon the specified constitutional rights and as was held by the Court of Appeal in *Musa Ogaro Osoro –Versus- Wilfred N. Gutwa & 3 Others [2021]KECA 931 (KLR)* that it is not sufficient to merely enumerate constitutional provisions without showing how the respondent may have infringed or threatened to so infringe. The Court upholds submissions made for the 1st respondent thus:
 30. While the Petitioner makes sweeping claims of constitutional violations, including under Articles 40 and 43 of *the Constitution*, he fails to clearly plead the specific facts demonstrating how these rights were allegedly violated, by whom, and in what manner.
 31. The Petition merely references constitutional provisions without tying them to the circumstances or actions complained of. This lack of specificity deprives the Respondents of the opportunity to address the claims directly or to mount a substantive defence, thereby offending the basic tenets of fair hearing and due process.
 32. Constitutional petitions must meet a minimum threshold of clarity and factual support to enable the court and the parties involved to grasp the precise nature of the grievance. Where such clarity is absent, as in this case, the Petition is rendered fatally defective and incapable of sustaining the reliefs sought.
 33. In light of the foregoing, the 1st Respondent respectfully submit that the Petition, as currently framed, fails to meet the legal threshold required for constitutional pleadings and is therefore fatally defective.



34. It is trite law that a party alleging violation of constitutional rights must plead with precision the specific rights allegedly violated, the manner in which they were violated, and the nexus between the 1st Respondent's conduct and the alleged infringement.
35. The Petition herein is replete with general references to various constitutional provisions such as Articles 10, 21, 22, 27, 28, 40, 41(1), 43(1)(e), 47(1)(2), and 50 but is entirely lacking in specific factual averments to show how the Respondents violated those provisions.
36. This failure renders the Petition ambiguous, speculative, and incapable of being answered in any meaningful way. In the interests of judicial economy and the Respondents' constitutional right to a fair hearing, this Honourable Court is urged to strike out or dismiss the Petition in its entirety for want of specificity, coherence, and legal sufficiency." The Court therefore finds accordingly and the petition is liable to dismissal and considering all circumstances of the case, no costs will issue. The Court finds that the petitioner has not pleaded material facts and provided evidence on a balance of probability to justify any of the reliefs as prayed for. In any event it appears that the cause of action was time barred under the general time limitations for a cause of action based upon a contract. While making that finding the Court has considered the petitioner's submissions and they do not remedy the failures as found for the respondents and further, do not address the issue of time barring of the cause of action. No explanation was given for the belated filing of the petition long after lapsing of 6 years of limitation for a cause of action based on contract.

In conclusion the petition is dismissed with no orders on costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

Page 3 of 3

