



**Suyianka & another v Attorney General & 4 others (Employment and Labour Relations
Petition E171 of 2024) [2025] KEELRC 1537 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1537 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E171 OF 2024**

**HS WASILWA, J
MAY 28, 2025**

BETWEEN

LEMPAA SUYIANKA 1ST PETITIONER

AFRICA CENTRE FOR PEACE AND HUMAN RIGHTS 2ND PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

PUBLIC SERVICE COMMISSION 2ND RESPONDENT

**MINISTRY OF PUBLIC SERVICE AND HUMAN CAPITAL
DEVELOPMENT 3RD RESPONDENT**

**FELIX K KOSKEI (SUED IN HIS CAPACITY AS THE CHIEF OF STAFF AND
HEAD OF PUBLIC SERVICE 4TH RESPONDENT**

**PRINCIPAL ADMINISTRATIVE SECRETARY IN THE OFFICE OF THE
DEPUTY PRESIDENT 5TH RESPONDENT**

JUDGMENT

1. By a Petition dated 22nd October 2024, the Petitioner sought for the following reliefs; -
 1. A declaration be issued to declare that the Respondents is in violation of Article 27 of the [Constitution](#) on the right against discrimination.
 2. A declaration be issued to declare that the Respondents is in violation of Article 28 of the [Constitution](#) on the right to dignity.
 3. A declaration be issued to declare that the Respondents is in violation of Article 29 of the [Constitution](#) on the right not to be treated in a cruel and degrading manner.



4. A declaration be issued to declare that the Respondents is in violation of Article 41 of the Constitution on the right to fair labour practices.
5. A declaration be issued to declare that the Respondents is in violation of Article 47 of the Constitution on the right to fair administrative action.
6. A declaration be issued to declare that the Respondents is in violation of Article 50(1) of the Constitution on the right to be heard.
7. A declaration be issued to declare that the Respondents is in violation of Article 232 of the Constitution of Kenya.
8. A declaration be issued to declare that the Respondents is in violation of Article 236 of the Constitution of Kenya.
9. An order of Certiorari to bring up into this Honourable Court and quash the decision and/or resolution of the Respondents made on 19th October 2024.
10. That this Honourable Court be pleased to issue an order that each party should bear their own costs on grounds that this Petition is in public interest.
11. This Honourable Court be pleased to issue such further or other orders as it may deem just and expedient for the ends of justice.

Petitioners' Case

2. The Petitioners aver that on 1st October 2024, the Speaker of the National Assembly communicated to the members of a special motion by Hon. Eckomas Mutuse, M.P Kibwezi West for the removal from office by impeachment of H.E Geoffrey Rigathi Gachagua as the Deputy President of Kenya.
3. The Petitioners aver that the special motion was approved by the National Assembly on 8th October 2024 and it proceeded to undertake hearing sessions in plenary on 16th and 17th October 2024.
4. On the night of 17th October 2024, the 3rd Respondent passed a resolution for the impeachment of H.E Geoffrey Rigathi Gachagua as the Deputy President of Kenya; subsequently, resolution was published vide Gazette Notice No. 13400 and he ceased to hold the office with immediate office.
5. The Petitioners aver that the National Assembly then approved the nomination of Prof. Kithure Kindiki as Deputy President on 18th October 2024 and on the same day the President officially appointed him as the Deputy President.
6. It is the Petitioners' case that on the same date, two courts, one sitting in Kerugoya and another in Nairobi, issued conservatory orders restraining Prof. Kithure Kindiki from assuming office as the Deputy President of the Republic of Kenya.
7. Subsequently, vide a memo dated 19th October 2024, the 5th Respondent directed that 108 public officers in the office of the Deputy President proceed on compulsory leave without any lawful, legal and procedural justification.
8. It is the Petitioners' case that the Respondents' action of 108 public officers in the office of the Deputy President to proceed on compulsory leave on account of the purported impeachment of H.E Geoffrey Rigathi Gachagua is in contravention of Articles 27,28,29,41,47, 50(1), 232, and 236 of the Constitution.



1st, 3rd -5th Respondents' Case

9. In opposition to the Petition, the Respondents filed a Replying Affidavit dated 20th January 2025 sworn by Hudson Aligula Mugodo, the Director, Department of Human Resource Management and Development at the Office of the Deputy President.
10. The Respondents aver that compulsory leave, being a disciplinary mechanism, only occurs with the concurrence and approval of the 2nd Respondent and they have not received any communication from the 2nd Respondent to convey to any of the alleged officers cited by the Petitioners herein, to proceed on compulsory leave.
11. The Respondents confirm that officers engaged on permanent and pensionable terms attached to the office of the Deputy President are currently in office carrying out their duties and enjoying full remuneration and benefits as per their terms of service.
12. It is the Respondents' case that the officers set out in the 2nd Respondent's replying affidavit were engaged on contractual basis to serve during the tenure of the former Deputy President, H.E Geoffrey Rigathi Gachagua.
13. The Respondents aver that the petition herein is an abuse of the court process as the Petitioners have not demonstrated any justifiable labour dispute against the Respondents as there are no grievances before this court.

2nd Respondent's Case

14. In opposition to the Petition, the 2nd Respondent filed a Replying Affidavit dated 14th November 2024 sworn by Paul Famba, the Secretary/ Chief Executive Officer of the Public Service Commission.
15. The 2nd Respondent avers that the 2nd Respondent is a constitutional commission established under Article 233 of the Constitution and Article 234 grants it powers to manage human resource in the public service from entry to exit. Further, Article 234 (2)(b) provides that the commission shall exercise disciplinary control over and remove persons holding or acting in those offices.
16. The 2nd Respondent avers it is responsible for recruitment and appointment of all public officers in the Office of the President, the Office of the Deputy President and the Office of the Prime Cabinet Secretary. These offices have two categories of staff.
17. The first category consists of persons employed on permanent and pensionable terms of service who remain in office regardless of the government in office. The second category is persons on contract, who serve during the tenure of the office holder and are specifically employed to serve the person holding the aforementioned offices.
18. The 2nd Respondent avers the contracts of staff employed on contractual terms are tied to the tenure of the office holder and their contracts terminate upon termination of the tenure of the office of the office holder.
19. It is the 2nd Respondent's case that the office of the Deputy President H.E Hon. Rigathi Gachagua had both categories of staff, however, majority were appointed to serve on contract during his tenure of office. 26 of the employees who are listed in the replying affidavit cannot be removed from office when there is a change of government or office holder as they are permanent and pensionable officers serving the government of the day.



20. The 2nd Respondent avers that the rest of the officers listed in exhibit LS 5 attached to the Petitioners' further list and bundle of documents dated 22nd October 2024 were employed on contract to serve the Office of the Deputy President during the tenure of H.E Hon. Rigathi Gachagua. Therefore, their contracts automatically terminate when his term of office terminates.
21. It is the 2nd Respondent's case that on 17th October 2024, the Senate voted to impeach Hon. Rigathi Gachagua as the Deputy President of the Republic of Kenya. Therefore, in accordance with Article 145(7) of the Constitution, he ceased to hold office immediately the Senate voted to impeach him.
22. It is the 2nd Respondent's case that the order issued in Nairobi HCCHR PET. NO. 565 OF 2024 staying the implementation of the senate decision to impeach Hon. Gachagua were to remain in force until 24th October 2024 and were not extended beyond then, therefore, the orders are no longer in force.
23. The conservatory orders issued in Kerugoya HCCHR PET NO. E015 OF 2024 preventing any person appointed by the President and approved by the National Assembly from assuming the Office of the Deputy President did not set aside the impeachment of Hon. Gachagua.
24. The 2nd Respondent avers that both of these orders were vacated by a 3-judge bench presided over Hon. Justice Eric Ogola and as such the impeachment of H.E Hon. Rigathi Gachagua still stands unless set aside by a court of competent jurisdiction.
25. Therefore, the contracts of appointment of all officers appointed on contract to serve during the tenure of office of H.E Hon. Rigathi Gachagua as deputy president terminated on 17th October 2024. Hence, the said officers cannot proceed on any form of leave least of all compulsory leave.
26. The 2nd Respondent avers that compulsory leave is tied to a disciplinary process as provided for in Regulation 62 of the Public Service Commission Regulations; the Commission was not involved in the decision to require the officers to proceed on compulsory leave.
27. It is the 2nd Respondent's position that officers employed on permanent and pensionable terms deployed in the office of the Deputy President who were required to proceed on compulsory leave, should resume duty unless they are undergoing a disciplinary process within the law.
28. For, the officers on contractual basis, unless the impeachment of H.E Hon. Rigathi Gachagua is set aside, their contract automatically terminated on 17th October 2024 and they cannot continue holding office on compulsory leave or otherwise.

Petitioners' Submissions

29. The Petitioner submitted that the 2nd Respondent's categorization of public servants violates Article 232(1)(g) of the Constitution. The court should take judicial notice that the office holders of the prime cabinet secretary and deputy president can change at any time. Therefore, tying the fate of any public officer to the life or fate of another human being and not office is in violation of their right to fair labour practices under Article 41 of the Constitution.
30. The Petitioner submitted that Article 259 of the Constitution provides that it shall be interpreted in a manner that promotes its purposes, values and principles; advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights; permits the development of the law; and contributes to good governance. In application of this principle, a term of office for public officers can be tied to the tenure of office and not on an individual as it would unnecessarily increase the powers of the officeholders and work against the Constitution's objective of limiting power.



31. In respect to jurisdiction, the Petitioners submitted that Article 22 of the *Constitution* is their defence and contracts of public officers have public nature in them and cannot meet the standards of privity of the contracts that non-state actors would require.
32. The Petitioners' submitted that the 2nd Respondent has crafted contracts that politicize the civil service and tying them to the fate of a politician or a spouse thereof.
33. The Petitioners submitted that the president and former deputy president could not get along and this court is called upon to fill in the vacuum which the 2nd Respondent created with the contracts outside Articles 234(2)(i) and (ii) which are political in nature and thus politicizing the civil service. Terminating workers employed by the public service because the deputy president was impeached implies that the workers who did nothing were also impeached in a procedure no known to law.
34. It is the Petitioners' submission that the civil service owes its loyalty to the government of the day irrespective of the political party or politician in power and the civil service should avoid creating the impression of political bias. The anonymity and neutrality of civil service is reinforced by rules restricting political activity.
35. The Petitioners submitted that Section 23 (2) and (3) of the *Leadership and Integrity Act* provides that an appointed state officer or public officer should not engage in any political activity that could compromise the political neutrality of the office subject to any laws relating to elections; although most of the second-degree victims of the impeachment that took place in October 2024 are not state officers, this principle applies. Therefore, civil servants should not be the grass that suffers when most political giants lock horns.
36. The Petitioners invited the court to interpret the clause ".....I am pleased to convey the decision of the public service commission that you be appointed to the supplementary post of Chief Driver, CSG12/ Jog Group 'H' in the office of the spouse of the deputy president on Local Agreement Terms of a period of three (3) years with effect from 1st August tied to the tenure of his excellency, the spouse of the deputy president." The Petitioners argued that their interpretation is that the person is expected to work for a period of 3 years regardless of the fate of the person holding the office.
37. It is the Petitioners' submission that the office of the deputy president is a term of 5 years and therefore the affected workers had a legitimate expectation that their fate is not a political fate but a civil servant fixed contract and that should there be circumstance in which they were to be terminated, it would be done fairly.
38. The Petitioners submitted that the affected employees had legitimate and reasonable expectation that their contracts, issued by the Public Service Commission, were valid, not political and would be sent on compulsory leave only if there are individual disciplinary cases against them and not because their boss was in a political disagreement with the President. They also had a legitimate expectation that their terms of contract would rum for the stated period regardless of the political fate of the deputy president.
39. The Petitioners submitted that the 2nd Respondent stated they were not involved in the decision to require the officers to proceed on compulsory leave or of any investigations or disciplinary process targeting the affected employees. The affected employees feel discriminated in that they were not taken through the due process of the law as expected.
40. The Petitioners submitted that the 3rd Respondent decided to send majority of persons in the internal memo on compulsory leave without consulting the 1st and 2nd Respondent.



41. On locus standi, the Petitioners submitted that Articles 22(1) and (2) and 258 (1) and (2) of the Constitution are clear that any person can institute proceedings in a court claiming the violation of rights and fundamental freedoms under the Constitution on behalf of another person or in public interest. The petition herein only argues issues related to the violation of fundamental rights and freedoms and values and principles of public service in relation to the Constitution and determination of personal rights as regards to an award of damages for wrongful termination.

1st, 3rd -5th Respondents' Submissions

42. The Respondents submitted this Honourable Court lacks jurisdiction to hear and determine the petition and application as the same do not meet the threshold for grant of declaratory orders as set out by the Singapore Court of Appeal in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd* and another [2006] 1 SLR (R) 112.

43. On the threshold for grant of declaratory orders, the Respondents submitted that the court cannot award the remedies sought as the petition seeks to enforce rights under the doctrine of privity of contract which can only be enforced by parties to the employment contracts being employers and employees and not non- parties hence the petitioners lack the capacity. Further, the alleged aggrieved parties are not before the Court and neither are the petitioners acting for them.

44. The matter must be justiciable in the court; there is no appropriate cause of action for determination by the Court as against the Respondents. The Petitioners failed to demonstrate any violation of rights or any breach of contracts by the Respondents to warrant the grant of any reliefs.

45. A declaration is a discretionary remedy, it must be justified by the circumstances of the case. It is the Respondents' submission that there is no justification for grant of the declaratory orders sought in the instant case.

46. For the declaratory orders, the plaintiff must have locus standi to bring the suit and there must be a real controversy for the court to resolve. The Respondents submitted that the Petitioners have no locus standi to commence the proceedings herein as they have not demonstrated their interest in the issues before court, the public officers being allegedly affected by the directive have not questioned nor complained about it and the Petitioners have not demonstrated how they are aggrieved by the directive, the public interest they are defending or that they are representing the public officers' interests.

47. Lastly, the Respondents submitted that there is no ambiguity for determination before the court and the same has not been demonstrated.

48. On locus standi, the Respondents' submission that there being no employer-employee relationship between the Petitioners and the Respondents, this Court lacks the jurisdiction to hear the matter and the Petitioners have no locus standi before this court.

49. On the threshold for constitutional petitions, the Respondents submitted that the petition has not met the threshold set out in *Anarita Karimi Njeru-vs- The Republic (1979) eKLR* case as it has not been pleaded with precision. The petition does not provide adequate particulars of the claim relating to any alleged violation of the Constitution by the Respondents; and does not raise any constitutional issues for deliberation as enshrined under the cited Articles. The Petitioners further failed to demonstrate the harm occasioned to them as a result of the alleged violation.

50. The Respondents submitted that Rule 10(2) of the Constitution of Kenya (Protection of Rights and Procedure Rules, 2013) provides that constitution petitions must contain the facts relied upon, the



- constitutional provision violated, the nature of injury caused or likely to be caused, and the relief sought. The instant petition does not set out any facts relied upon, and the constitutional violations and injuries suffered by the Petitioners.
51. The Respondents submitted that the content in the Replying Affidavits of the Respondents have not been rebutted by the Petitioners. Therefore, there is no dispute for determination before this court. The alleged memo dated 18th October, 2024 which forms the basis of these proceedings has no legal effect and is not capable of being quashed as it does not exist.
 52. The Respondents submitted that the Petitioners, in contravention of the equity maxim of “he who seeks equity must come with clean hands” and the provisions of Article 35 of the Constitution and the Access to Information Act, using privileged public documents obtained without authority or consent. The Petitioners seek to rely on document marked “LS5” annexed to the supporting affidavit sworn by Lempaa Suyianka on 22nd October, 2024, being an internal memo dated 18th October, 2024. This is an internal communication, which is privileged communication and can only be obtained with authority or consent.
 53. On the third issue, the Respondents submitted that they have demonstrated that the Petitioner has not raised any grounds that the disciplinary process was unlawful, therefore, this Court lacks jurisdiction in the first instance to pre-empt the disciplinary process as the same would be contrary to the Respondents rights under Article 41 of the Constitution.
 54. The Respondents submitted that the Petitioners did not request for this information from the Government office and they did not provide any evidence to demonstrate they lawfully obtained the document. There is reasonable expectation that privileged communication must be protected and this information was illegally obtained contrary to Article 35 of the Constitution and Section 80 of the Evidence Act and should be struck out with costs.
 55. On privity of contracts, the Respondents submitted that the Petitioners do not disclose whom they are representing and the court cannot be called upon to issue orders in vacuum. It is the Respondents’ case that alleged aggrieved officers are in office discharging their duties, whereas, the officers engaged on contract to serve at the tenure of the former Deputy President have since left office in line with their respective contractual terms. This has not been rebutted by the Petitioners, therefore, there is no dispute for determination before this court.
 56. It is the Respondents submission that any breach of terms of contract can only be enforced by a party to the contract and not a third party. The alleged aggrieved parties have not, within the knowledge of the Respondents, raised any issues touching on their employment or any issues before the Court, hence, there is no issue for determination by the Court.
 57. On legitimate expectation, the Respondents submitted that Regulation 27 (1) of the Public Service Commission Regulations 2020 permits certain State Officers, namely the President, Deputy President and Cabinet Secretaries to make written requests to the Public Service Commission for the appointment of various advisors to their respective offices. Regulation 27 (8) of the Public Service Commission Regulations 2020, further provides that each advisor shall be appointed on contract for a period not exceeding three years renewable once for a further three years. The appointment of an advisor for a State Officer shall not extend beyond the tenure of the State Officer. Additionally, Article 234 (4) of the Constitution read with the Presidential Retirements Benefits Act, 2003 and the Retirement Benefits (Deputy President and Designated State Officers) Act, provides that the Public Service Commission shall not appoint personal staff without the consent of the President, Deputy President or retired President.



58. The Respondent further relied on Regulation 28 of the Public Service Commission Regulations which provides:“ (1) Subject to the provisions of Article 234 (4) of the Constitution, the Presidential Retirements Benefits Act, 2003 and the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015, the Commission shall appoint the personal staff of the President, Deputy President and retired Presidents in accordance with the establishment approved by the Commission. (2) Personal staff shall serve at the pleasure of the President, Deputy President or retired President as the case may be and for such period as shall be determined by the Commission. (3) Notwithstanding paragraph (2), a person shall not serve on the personal staff of the President or Deputy President for longer than the term of office of the President or Deputy President. (4) (5) For the purposes of this regulation, “personal staff” includes— (a) personal assistants; (b) health fitness instructors; (c) support staff; (d) cooks; (e) housekeepers; and (f) gardeners.”
59. Based on the foregoing, the Respondents submitted that the office of the Deputy President has two categories of staff, those permanent and pensionable and those on contractual basis. Majority of the employees are on contractual basis to serve the holder of the office in line with Article 234 of the Constitution read together with the Presidential Retirements Benefits Act and the Retirement Benefits (Deputy President and Designated State Officers) Act and the Public Service Commission Regulations. These positions which were tied to the office holder and were not competitively recruited for these positions being advisors and personal staff to the State office holders.
60. It is the Respondents’ submission that retention of such officers in office upon the exit of the office holders would be in breach of Article 234(4) of the Constitution as these officers cannot occupy the office of the incoming state officer, his consent is paramount. Therefore, the alleged officers could not have any legitimate expectation to continue holding these positions once the same terminated pursuant to Regulation 27[8] of the Public Service Commission Regulations.
61. It is the Respondents’ submission that the Petitioners have neither demonstrated the Respondents’ violation of Articles 27, 28, 29, 41, 47, 50, 232 and 236 of the Constitution nor has any evidence been tabled to demonstrate the same. Further, the Petitioners are not clear how many persons the petition affects, in some orders they seek orders for 76 persons while in others they seek for 108 officers, the court cannot be left guessing as to which is the right number affected.
62. It is the Respondents’ submissions that an order of certiorari cannot issue in vacuum, the decision sought to be quashed must be produced in court as provided under Order 53 (7) of the Civil Procedure Rules. The Petitioners have not produced any resolution or decision of 19th October 2024 made by the Respondents for purposes of being quashed, they only attached a document dated 18th October 2024 whose authenticity is in question but the Petitioners do not seek to quash the same. It is therefore clear that the decision of 19th October, 2024 sought to be quashed does not exist.

2nd Respondent’s Submissions

63. The 2nd Respondent submitted on three issues: whether the petitioner has the locus standi to institute this petition; whether the contracts of appointment of the persons appointed to serve during the tenure of office of the then Deputy President Hon. Rigathi Gachagua and his spouse terminated when the Deputy President was impeached from office on 17th October 2024; and whether the petitioner is entitled to the prayers sought as against the 2nd Respondent.
64. On the first issue, the 2nd Respondent submitted that the petitioners have no locus standi to institute this petition as they are neither employees of the government or trade union representatives of the allegedly affected officers. Additionally, although the petitioners filed this petition allegedly in public



- interest, employment matters between an employer and employee are not public interest matters even though the employer is the government.
65. The 2nd Respondent submitted that issues of sending an employee on compulsory leave or the lapse of a contract of employment cannot be matters of public interest. Public interest matters are specific to an individual or class of individuals and cannot be pursued as public interest matters. Reliance was placed on the decision in *Brian Asin & 2 others v Wafula W. Chebukati & 9 others* [2017] eKLR.
 66. On the second issue, the 2nd Respondent submitted that there are two categories of officers serving in the office of the Deputy President. The first category is officers serving on permanent and pensionable terms of service who are identified through a competitive recruitment process and serve the government of the day regardless of the person holding office. The second category of staff are staff who are employed to serve the office holder on request of the office holder and are considered as personal staff of the office holder.
 67. It is the 2nd Respondent's submission that the second category of staff are personal to the office holder as they are identified by the office holder and given contracts of appointment to serve and assist the office holder while serving in the public office. This category is therefore restricted to the office of the President and the Deputy President and their contracts are tied to the tenure of the office holder as it is not expected that they would serve as personal staff to another President, Deputy President or their spouses due to the high security nature of the offices they hold and the very close engagements that they have with the President and the Deputy President.
 68. The 2nd Respondent further submitted that it is common knowledge that the holder of the position of the Deputy President may leave office either at the end of the term of office; or through impeachment; or through death. A person given a contract tied to the tenure of office of the Deputy President cannot therefore turnaround when any of those events occur to allege violation of Article 41 and 47 of the [Constitution](#) when the fixed term contract was clear on when it would terminate. Further, none of the said officers has filed a petition challenging the termination of their contracts; this is evidence that they understand that they signed up to a fixed contract clear on its termination.
 69. The 2nd Respondent submitted that the contracts of appointment of the officers lawfully terminated when the term of office of the then Deputy President terminated. The sensitivity of the office which the officers were employed to serve requires and depends on trust by the office holder on the people that the office holder interacts with often and at very close proximity on a daily basis, thus, the office holder identifies the people that he trusts and can work with. Therefore, the persons identified for the said office holder cannot be retained to be handed over to the successor of the office as the successor would also need to identify persons that they can trust to work with in close proximity on a daily basis.
 70. It is the 2nd Respondent's submission that as far as it is concerned, contracts of appointment of the affected employees were terminated on 17th October 2024, therefore, the alleged memo dated 19th October 2024 could not apply to them as they were not eligible for any form of leave after 17th October 2024. Regulation 62 of the Public Service Commission Regulations provides that compulsory leave must be approved by the 2nd respondent, however, there was no request made to have the officers sent on compulsory leave and the 2nd Respondent was not aware of any such leave and did not approve the same. If at all the officers were sent on compulsory leave, the same was unlawful and irregular.
 71. The 2nd Respondent submitted that legitimate expectation could not arise from the fixed term contract issued to the officers as there was no promise that they would continue to retain their appointments if the then Deputy President was impeached before the lapse of the contract period. The contracts were explicit that they would only subsist during the tenure of office of the Deputy President; there



was no promise beyond that. They relied on the Court of Appeal decision in *Richard Erskine Leakey & 2 Others v Samson Kipkoech Chamai* [2019] eKLR where the court held that; “Lord Diplock in the *Council of Civil Service Union V Minister for Civil Service* [1985] 1 A.C. 374 [at pages 408-409], stated that for legitimate expectation to arise, the contested decision must have the effect of depriving one of some benefit or advantage, which he had been permitted in the past by decision and decision-maker to enjoy and which he can legitimately expect to be permitted to continue to enjoy, or he has received assurances from the decision -maker that it will not be withdrawn without giving him an opportunity to advance reasons for non-withdrawal.”

72. On the third issue, the 2nd Respondent notes that the Petitioners seeks orders of declaration that the Respondents violated Articles 27, 28, 29, 41, 47, 50(1), 232 and 236 of the *Constitution* relying on the directive that was allegedly issued requiring some public officers then serving the office of the then Deputy President to proceed on compulsory leave. They submitted that the said officers could not be sent on compulsory leave as they were no longer employees in the public service.
73. The 2nd Respondent submitted that compulsory leave is not a dismissal and does not deny an employee their entitlement under the contract of appointment. Therefore, when an employee is sent on compulsory leave, he/she has not been discriminated, denied dignity, treated in a cruel and degrading manner, and has not been denied the right to fair labour practices and right to fair administrative action or fair hearing or the employer has failed to comply with Article 232 or has violated Article 236.
74. The 2nd Respondent submitted that none of its decision is capable of being quashed as it made no decision to send the listed officers on compulsory leave as required by Regulation 62 of the PublicService Commission Regulations. Further, the Petitioners have not attached any decision of the 2nd Respondent which this court should quash.
75. I have examined all the averments and submissions of the parties herein. This court sets out the following issues for determination.
1. Whether the Petitioner herein has locus standi to institute this petition.
 2. Whether this court has jurisdiction to handle this petition.
 3. Whether the Respondents committed any constitutional breaches as submitted by the Respondents.
 4. Whether the Petitioners are entitled to the remedies sought.

Issue No. 1 Locus

Article 22(1) of the *Constitution* states as follows:

“Every person has the 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.”

76. This Article is clear that every person has locus to institute proceedings alleging infringement or threatened infringement of a constitutional right. In the circumstances of the case, the submission that the Petitioners has no locus to institute this petition is without basis and is disregarded.



Issue No. 2

77. On the issue of this court's jurisdiction, the SCOK in Petition No. E002 of 2023 Kenya Tea Growers Association & 2 others vs. NSSF Board of Trustees & 13 others, had this to say: "that the ELRC had jurisdiction to determine the constitutional validity of a statute in matters employment and labour".
78. The SCOK made a determination that the jurisdiction of this court extends beyond employer-employee disputes so long as it affects a wider variety of employees. The instant petition deals with what the petitioner aver hinges on the termination of employees on contract working in the public service. It is not clear what would preclude this court from not hearing this petition as submitted by the Respondents. I find the submission without merit and is disregarded.

Issue No. 3 - Infractions

79. From the pleading filed by the petitioner he listed 108 public servants who were serving in the Deputy President's office who he allege had been sent on compulsory leave.
80. In his supplementary affidavit, the 108 staff members serving in various categories includes No. 20, One Hudson Aligula Mugodo the Deputy Director Human Resource Management and Development Grade 5.
81. The said Hudson Aligula swore an affidavit before this court on behalf of the 1st, 3rd and 5th Respondents herein indicating that he serves in the office of the Deputy President. He indicated that there was no officer sent on compulsory leave which is a disciplinary issue. He indicated that he had not received any communication from the PSC to proceed on compulsory leave either.
82. He averred that the officers who were engaged on contractual tenure to serve during the tenure of the former Deputy President Hon. Rigathi Gachagua had since left office in line with their respective contractual terms. He asked this court to dismiss the petition accordingly.
83. The Petitioner was asked to file the employment contracts of the 108 employees on whose behalf he filed this petition. On 21/11/2024, he informed court that he had managed to file 61 names and letters of appointment for the 61 of them. I have looked at the list of the 61 officers. The contract letter for the 61 officers named in the further list of bundle of documents dated 14th November 2024 relates to officers employed on short-term contracts and each stated as follows on each contract save for other term of engagement. "That you are appointed to the post of cleaning supervisor (or to the respective post) on local Agreement term for a period of three (3) years with effect from 1st April 2024 tied to the tenure of His Excellency the Deputy President."
84. It is clear that the said 61 officers were employed on local agreement terms with a provision that the contract was pegged to the tenure of office of the Deputy President. The 61 listed officers are the ones listed in the further list of documents but are listed all officers are provided by the petitioner in the supporting affidavit.
85. In fact the officers listed in the further affidavit were junior officers as compared to the 108 listed in the supporting affidavit who were all on JG P to U.
86. The list provided by the Petitioner therefore derogate for the 108 list he was asked to provide to the court.
87. That notwithstanding, the agreements provided are all for officers who were appointed on local agreement contracts which were pegged on the tenure of office of the Deputy President H.E. Hon. Rigathi Gachagua who has since been impeached as per the evidence adduced herein.



88. It is also clear that the officers in question signed the agreement agreeing to serve during the tenure of the former Deputy President and therefore they cannot derogate on this fact.
89. The Petitioner filed the petition alleging infringement of rights of the 108 staff in former Deputy President's office. He however only exhibited 61 appointment letters leaving out 47 others. The contracts of the 47 cannot be ascertained and therefore this court cannot determine if they were unfairly terminated or not.
90. That being the position, I do not find any constitutional infringements meted against the 108 officers who served in the office of the former Deputy President Hon. Rigathi Gachagua and therefore the orders sought cannot be granted as prayed.
91. The entire petition lacks merit and is hereby dismissed. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH OF MAY, 2025.

HELLEN WASILWA

JUDGE

