



**Opondo v Dodia & another (Petition E154 of 2024)  
[2025] KEELRC 1317 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1317 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E154 OF 2024**

**B ONGAYA, J**

**MAY 9, 2025**

**\*IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS  
UNDER ARTICLES 28,31,35&41 OF THE KENYAN CONSTITUTION**

**BETWEEN**

**JOSPHINE ADHIAMBO OPONDO ..... PETITIONER**

**AND**

**NELISH DODIA ..... 1<sup>ST</sup> RESPONDENT**

**KAJAL DODIA ..... 2<sup>ND</sup> RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Friday 9<sup>th</sup> May, 2025)*

**JUDGMENT**

1. The petitioner filed the Amended Petition dated 29.10.2024 and prayed for:
  - a. A declaration that the respondents' actions are unconstitutional and in violations of my fundamental rights enshrined in the Bill of Rights under Articles 28, 31,35 and 41 of the Constitution read together with provisions of WIBA and the Employment Act.
  - b. An order compelling the respondents to compensate for:
    - i. 12 months pay for unlawful & unfair termination  
(Net basic salary + House allowance + statutory deductions) × 12 months  
Kshs (17,500 + 6,500 + 2,500)×12 months = Kshs 318,000
    - ii. Housing not provided  
Kshs (6,500 ×21 months) = Kshs 136,500



- iii. Refund of statutory deductions not submitted  
Kshs 2,500 × 21 months = Kshs 52,500
  - iv. Leave days not taken  
[(Kshs 26,500/24 days p.m)× 2 days p.m ] × 21 months) = Kshs 46,375
  - v. One month notice pay at Kshs 26,500
  - vi. Service pay at Kshs  
[(26,500/24days p.m.)× 15 days p.m]× 6 months) × 1 years = Kshs 99,375.00
  - vii. Compensation for disablement and constant assistance at Kshs 500,000
  - c. Compensation for general damages suffered due to the respondents' actions
  - d. Costs of this petition
  - e. And/or such other order(s) that this honourable court shall deem just
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition and sworn on 03.10.2024. The petitioner's case is as follows:
- a. The petitioner was employed by the respondents from 07.10.2022 to 09.07.2024, however, she was never issued with a written contract of service.
  - b. On 09.07.2024 the petitioner injured her hand while on duty, and on reporting the incident to the respondents, they became hostile and verbally terminated the petitioner's employment without giving reasons, but paid the petitioner Kshs 33,000/= on account of basic pay for the month of July and one month notice.
  - c. The petitioner states that she has not received WIBA benefits for the injury she suffered at the workplace. That she sought treatment at her own costs at the Armurt Health care center.
  - d. By a letter dated 07.09.2024 the petitioner made demands of the respondents. Additionally, she asked them to issue her with a Certificate of Service, Pay slips and consolidated statements of statutory deductions for the period 2022 to 2024.
  - e. On 10.09.2024 without the petitioner's consent, the respondents engaged and paid Armurt Health care centre Kshs 2,000/=, which the petitioner states was to compel her to remove the PoP.
  - f. On 10.09.2024, the respondents by way of whatsapp message, confessed to having accessed the petitioner's health status.
  - g. When the petitioner realised that Armurt Health care centre was separately engaging the respondents on her health status, without her consent, she opted for treatment from Mbagathi Hospital.
3. The respondents filed the replying affidavit of Kajal Dodia, sworn on 06.12.2024 and drawn by Cliff Oduk Advocates. It was stated and urged as follows:
- a. The respondents deny that the Petitioner commenced work on 07.10.2022 as alleged.
  - b. The respondents contend that the petitioner voluntarily left employment and handed her work uniform.



- c. The respondents paid for all the hospital bills for the minor injury as well as her dues, subsequently, the petitioner acknowledged that she had left in good faith and had no further claims.
  - d. The petition fails the test of precision per Anarita Karimi Njeru's case. Wherein this case has been fashioned as a constitutional petition, but does not plead how any article of *the Constitution* has been threatened or violated.
  - e. The petition violates Rule 10(2)(d) of the Mutunga Rules (Constitution of Kenya Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.
4. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows:
- a. While the petitioner prays that her fundamental rights and freedoms have been violated, she has not particularised the facts supporting the alleged violations and no evidence has been provided. The petition is trapped by the principle of constitutional avoidance.
  - b. In particular the Court finds that the dispute falls in the arena of an ordinary action for alleged unfair termination. In any event, the petitioner has failed to provide evidence to support her date of employment. While the respondents admit the petitioner was their employee, the petitioner offered no evidence on the circumstances of her alleged separation or unfair termination. The issue of unfairness of termination in the relationship which is said to be oral required testimonies for the Court to be able to decide one way or the other.
  - c. The claim for compensation for injury as claimed and prayed for ought to have been determined by the Director under *Work Injury Benefits Act, 2007* and the Court lacks jurisdiction to entertain that cause of action.
  - d. The Court considers that the petitioner may still pursue the pending compensation under the Act and parties will bear own costs of the petition. The Court has considered that the petitioner was in person and the petition will be struck out rather than dismissed.

In conclusion the petition is hereby struck out with orders parties to bear own costs of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 9<sup>TH</sup> MAY, 2025**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

