



Orwoba v Parliamentary Service Commission & another (Employment and Labour Relations Cause E251 of 2025) [2025] KEELRC 1384 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1384 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E251 OF 2025**

MN NDUMA, J

MAY 8, 2025

BETWEEN

HON SENATOR GLORIA ORWOBA APPLICANT

AND

PARLIAMENTARY SERVICE COMMISSION 1ST RESPONDENT

CLERK OF THE SENATE 2ND RESPONDENT

RULING

1. The 1st Respondent raised a Notice of Preliminary Objection to wit: -
 - a. That there is no employer-employee relationship between the Petitioner, a member of parliament and either of the two Respondents, Parliamentary Service Commission and Clerk of the Senate.
 - b. That this matter arose from the suspension from service by the Senate of the Republic of Kenya and the High Court has already conclusively dealt with the challenge by the Petitioner against the suspension in the Nairobi High Court Petition No. 2 of 2024

Res judicata

2. The first issue for determination is whether the subject matter of this suit is res judicata having been heard and conclusively determined by Hon. Mugambi J. in Nairobi High Court Petition No. 2 of 2024.
3. The parties in Petition No. 2 of 2024, aforesaid were Hon. Gloria Magoria Orwoba, who is also the Petitioner in this matter. The Respondents were the Attorney General, Clerk of the Senate, Speaker of the Senate; Senate Committee on Powers and Privileges and the Senate itself, whereas the Respondent in the present matter is the Parliamentary Service Commission and Clerk of the Senate.



4. The cause of action in Petition No. 2 of 2024 was to injunct the Respondents from suspending the Petitioner from the Senate for misconduct in terms of *Parliamentary Powers and Privileges Act* 2017, and the Code of Conduct for the member of Parliament contained in the form H schedule to the said Act.
5. The High Court delineated the issues for determination in that matter to be: -
 - i. Whether the case offended the doctrine of separation of powers.
 - ii. Whether the 2nd, 3rd 4th and 5th Respondents violated the Petitioner/Applicant's rights under Article 47 and 50 of *the Constitution* and
 - iii. Whether the applicant is entitled to the reliefs sought.
6. Upon a careful consideration of the matter, the High Court reiterated that: -
 - i. Provided the 4th Respondent complies with both statutory and Constitutional requirements, the court could not interfere with the mandate of the 4th Respondent to discipline an errant member of parliament.
 - ii. That the Petitioner/Applicant had declined to participate in a hearing that ensued in the Senate to inquire into her conduct upon refusal to recognize the jurisdiction of the 4th Respondent to conduct the inquiry over her. That indeed the Petitioner/Applicant had walked out of the Senate proceedings and so the issue of failure to accord her a fair hearing did not arise. The court found therefore that there was no infringement of the Petitioner's right to fair administrative action or the right to fair hearing in the circumstances of the hearing.
 - iii. The Petition and Judicial Review application was dismissed with costs.
7. The judge had in a ruling dated 28/2/2024 allowed withdrawal of Petition No. 285 of 2023 and Petition No. 3 of 2014 (formerly Nairobi JR. No. E145 of 2023) which had been filed by the Petitioner/Applicant herein. The judge had made adverse comments about the Petitioner/Applicant therein having hopped into three (3) different courts filing suit on the same subject and against similar parties in 3 different courts in the said ruling.
8. In the present matter, which is against a new party, named parliamentary Service Commission, the Petitioner's main complaint is that the 2nd Respondent, Clerk of the Senate has abused his office by issuing a memo stopping payment of the Petitioner's salary until 1st May, 2025.
9. That the Petitioner had not received her full salary for the month of February and March 2025 and had only received 11 days salary for the month of February contrary to the recommendation of the Senate Committee on Powers and Privileges dated 9/8/2025.
10. That the recommendation by the Committee had been adopted by the whole house of the Senate. That the 2nd Respondent had acted ultra vires his power and in abuse of his office by directing the stoppage of the Petitioner's salary.
11. The Petitioner seeks the following final prayers in the petition: -
 - i. A declaration that the withholding of the Petitioner's salary or dues by the Respondents violates Article 40, 41 and 47 of *the Constitution*.
 - ii. A declaration that the conduct of the 2nd Respondent of causing a memo to be written stopping the payment of the Petitioner's salary constitutes gross misconduct, an act which is in violation



of Article 10, Chapter six of *the Constitution*, section 29 of the *Parliamentary Service Act* and an abuse of office.

- iii. An order of Certiorari to remove into this Honourable Court and quash directive by the Respondents, stopping the payments of the Petitioner's salary/dues.
 - iv. An order of Mandamus do issue compelling the 1st Respondent to carry out urgent investigation on the complaints on the role played by the 2nd Respondent on the stoppage of the payment of the Petitioner's salary and the continued intimidation and discrimination against the Petitioner by the 2nd Respondent.
 - v. An order of Injunction restraining the Respondents whether by themselves, their employees, servants, agents or any other persons acting under them from further victimizing, harassing and in any manner interfering with the performance of the Applicant's statutory duties/mandate.
 - vi. General damages for violations of the Petitioner's constitutional rights.
 - vii. Costs of this petition.
 - viii. Interest at court rate until payment in full in respect of (vi) and (vii) above
 - ix. Any other just and expedient order the court may deem fit to make.
12. The Petitioner raises issues of sexual harassment, discrimination, favoritism and malicious victimization against the 2nd Respondent in the body of the Petition and the annexures thereof. The key prayer sought in respect of the 1st Respondent is for the court to issue an order of mandamus compelling the 1st Respondent to carry out urgent investigation on the complaint made by the Petitioner against the 2nd Respondent on the unlawful stoppage of the payment of Petitioner's salary and the continued intimidation and discrimination against the Petitioner by the 2nd Respondent.
13. Clearly, the issue raised in this petition and the reliefs sought were not the subject of the previous case filed by the Petitioner. Furthermore, the 1st Respondent was not a party to the previous petitions and application filed by the Petitioner.
14. The threshold for the defence of res judicata was well set out in the following cases by our superior courts: -
- i. Kenya Commercial Bank Ltd versus Benjoh Amalgamated (2017) KECA 98 KLR
 - ii. Mburu Kinyua vs Gachini Tutu (1978) KLR 69
 - iii. Independent Electoral Commission vs Maina Kiai & 5 Others (2017) e KLR
 - iv. Henderson v Henderson (1843) 67 ER 313
15. The preliminary objection has failed to meet the threshold to establish that the suit before court is res judicata. The same is therefore dismissed for want of proof.

Jurisdiction

16. The dispute between the Petitioner and the Respondent is one related to alleged unlawful non-payment of salary and violation of the Petitioner's right not to be harassed and discriminated at the work place as a member of the Senate by a senior administrator of the Senate, being the Clerk of the Senate. The Petitioner has set out with clarity and precision in the petition and supporting affidavit



- the particulars of the violation of her Constitutional rights by the 2nd Respondent and seeks the 1st Respondent, who she states is her employer to come to her aid vide the fiat of the court.
17. The Petitioner has relied on the provisions of Article 127(6) of *the Constitution* which provides the function of the 1st Respondent to include: -
- a. Providing services and facility to ensure the efficient and effective functioning of parliament;
 - b. Constituting offices, the Parliamentary Service and appointing and suspending office holders;
 - c. Prepare annual statements of expenditure of the Parliamentary Service and submitting them to the National Assembly approval and exercising budgetary control over the service and;
 - d. Undertaking singly or jointly with other relevant organizations programs to promote the ideals of parliamentary democracy; and
 - e. Performing other functions: -
 - i. if necessary for wellbeing of the members and staff of parliament or
 - ii. prescribed by national legislation. (emphasis made)
18. Pursuant to the said Article, enacted *Parliamentary Service Act* 2019, section 11 of which stipulates that:
- “In addition to the functions set out in Article 127 (6) of *the Constitution*, the Commission shall: -
- a. Direct and supervise the administration of the services and facility provided by and exercise budgetary control over the service.
 - b. Determine and review the terms and condition of service of persons being or acting in the offices of the service
 - c. .
 - d.
 - e. do such other things as may be necessary for the wellbeing of the members and staff of parliament.
19. The Petitioner submits that the 1st Respondent is the lawful employer of the Petitioner as a member of parliament and has an employer-employee relationship with the Petitioner herein which gives jurisdiction to this court to hear and determine this dispute.
20. That section 2 of the *Employment Act*, 2007 provides employer: -
- Means any person, public body, firm, corporate or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporate or company.
21. That section 3 of the Act, provides employers and employees who are excluded from the purview of the Act and these do not include members of parliament.
22. That therefore, section 12 of the *Employment and Labour Relations Court Act*, as read with Article 162(2) of *the Constitution* gives the requisite jurisdiction to this court to deal with this matter.



23. The Petitioner relies on the Court of Appeal decision in Daniel Mugendi versus Kenyatta University and 3 others (2013) eKLR, where the court held: -

...the Employment and Labour Relations Court has jurisdiction to enforce labour rights under Article 41; the jurisdiction to interpret *the Constitution* and fundamental rights and freedoms; is incidental to the exercise of jurisdiction over matters within its exclusive domain. In any matter falling within the provisions of section 12 of the Industrial Court Act, then the Industrial court has jurisdiction to enforce not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of *the Constitution* within the matter before it.”

24. The Petitioner posits that all constitutional matters arising from a dispute between an employer and employee as in this case, matters of violation of human rights at the work place protected under Articles 27, 41 and 47 of *the Constitution* set out in this petition fall to be determined by the ELRC and not any other court and that indeed, the Senate, is the workplace of the Petitioner and her terms and conditions of service, including guarantee to her well fare while serving as a member of the Senate are matters related to employment and labour within the meaning of section 12(1) of ELRC Act as read with Article 162(2) of *the Constitution* and any dispute arising within that contextual framework must of necessity be adjudicated by ELRC.

25. The court was further referred to the decision in Public Service Commission and 4 others versus Cheruiyot and 32 others (consolidated) 2022 eKLR where the court stated:

This is therefore to mean that the jurisdiction of the Employment and Labour Relations Court is not limited to the determination of disputes arising out of a contract of employment between an employee and an employer, the court can also determine the constitutional violations of the rights of any party arising from the employee-employer relationship. However, for the court to entertain a petition premised on the breach of a party’s fundamental rights under *the Constitution*, the alleged constitutional breach must be ancillary and incidental to the matters contemplated under section 12 of the Act. Our view is fortified by the preamble to the *Employment and Labour Relations Court Act*, 2011.”

26. Accordingly, the court is of the unequivocal finding that it has jurisdiction to determine a dispute between a member of parliament and the parliamentary service commission with regard to the threat to or violation of the terms and conditions of service of a serving member of parliament which includes threats to or violation of constitutional rights of such a member of parliament with regard to his/her terms of service.

The Preliminary Objection is without merit and is also dismissed.

27. In conclusion both Preliminary Objections lack merit and are dismissed with costs. The petition to follow its normal course.

DATED AT NAIROBI THIS 8TH DAY OF MAY 2025

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Kariuki for Petitioner

Mr. Njoroge with ANW for Respondent/Objector



Mr. Kemboi – Court Assistant

