



Ndirangu v Nyandarua County Government & another (Employment and Labour Relations Petition E018 of 2024) [2025] KEELRC 1911 (KLR) (24 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1911 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS PETITION E018 OF 2024**

AN MWAURE, J

JUNE 24, 2025

BETWEEN

SIMON MAINA NDIRANGU PETITIONER

AND

NYANDARUA COUNTY GOVERNMENT 1ST RESPONDENT

NYANDARUA COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

RULING

1. The 1st and 2nd Respondents filed a Notice of Preliminary Objection dated 25th February 2025 in opposition to the Petitioner’s Petition dated 23rd September 2024 on the following grounds that:
 1. On the face of it, the aforesaid petition is misconceived and does not meet the constitutional threshold for a petition and to warrant the prayers sought by the Claimant.
 2. The Petition is time barred in law and contrary section 90 of the *Employment Act*, 200, that provides that “Notwithstanding the provisions of section 4(1) of the Limitation of Action (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof” and
 3. The petition before this Honourable Court is unmerited, an abuse of the court process, defective in law and a waste of judicial time. The same should be dismissed with enhanced costs to the Respondents.



Petitioner's response to the Preliminary Objection

2. In opposition to the Preliminary objection, the Petitioner filed a response dated 13th March, 2025 on the following grounds that:
 1. The Preliminary Objection is without any basis/merit at all in law.
 2. The Preliminary Objection is based on a misappreciation of the law and, in particular, the applicability and import of *the Constitution*. 2010.
 3. The matter before the court is not an ordinary employment dispute for determination as such; rather, it is a Constitutional petition premised on violations of the petitioner's constitutionally protected and guaranteed rights committed in the context of employment.
 4. There is, in law, no limitation of time in matters relating to violation of rights under *the constitution* as was stated in *Monica Wangu Wamwere & 5 Others v the Attorney General* Pet. No. 26 of 2019 consolidated with Nos. 34 & 35 of 2019 SC.
 5. The petition is merited and it meets the requisite constitutional threshold for petitions to warrant a full determination by this honourable court.
 6. That in any event, the question whether or not the petition meets the requisite threshold for constitutional petitions cannot be determined preliminarily without affording parties a hearing thereto.
3. Parties canvassed the Preliminary objection by way of written submissions.

1st and 2nd Respondents' submissions

4. The 1st and 2nd Respondents submitted that a constitutional petition must specifically outline the alleged violations, failing which it becomes vague. In *Siaya County Public Service Board v County Assembly of Siaya & Another* [2020] KEHC 5868 (KLR), the court reaffirmed the precedent set in *Anarita Karimi Njeru v Republic* [1979] KLR 154, requiring a petition to detail the infringed provisions and how they were violated. The 1st and 2nd Respondents submitted that the petition in question lacks specificity and merges constitutional claims under Articles 27, 28, 41, 47, and 50 of *the Constitution* together with employment claims under section 41 of the *Employment Act*. The primary issue revolves around the right to be heard and constructive dismissal, which should be litigated through an employment dispute rather than a constitutional petition. In *Elizabeth Mburu v Kenya Breweries Limited* [2014] eKLR, the court dismissed an attempt to circumvent time limits using a constitutional petition.
5. The 1st and 2nd Respondents relied on the case of *Petronella Nellie Chores v Transnet Ltd* (2007) ZACC, where the South African Constitutional Court held that a case does not become constitutional simply by being labelled as such. Similarly, in *Sumayya Athmani Hassan v Paul Masinde Simidi & another* [2019] KECA 107 KLR, the Court of Appeal held that employment contract disputes do not warrant constitutional litigation.
6. The 1st and 2nd Respondents submitted that the petitioner's claim is time-barred under section 90 of the *Employment Act*, which mandates that employment-related suits be filed within three years. In *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors* [1969] EA 696, the court emphasized that preliminary objections can be raised on points of law, including limitation periods.



7. The 1st and 2nd Respondents submitted that the petition was filed 24 years after the alleged violation, violating the principle that “equity aids the vigilant, not the indolent.” Additionally, the claim is incoherent, mixing employment claims with constitutional violations without demonstrating specific infringements.
8. Given its defects, the 1st and 2nd Respondents urged this Honourable Court to find that the petition is untenable and should be dismissed with costs.

Petitioner’s submissions

9. The Petitioner submitted that a preliminary objection, as defined in Black’s Law Dictionary, is an objection that, if upheld, would render further proceedings unnecessary. The landmark case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd* (supra) established that a preliminary objection must be a pure point of law that does not require fact-finding. Courts have expanded on this principle, including in *Attorney General & another v Andrew Maina Githinji & another* [2016] KECA 817 (KLR) and *Oraro v Mbaja* [2005] KEHC 3182 (KLR), where it was emphasized that improperly raised objections increase costs and complicate disputes. The courts have consistently held that a valid preliminary objection must be based solely on legal principles and must not rely on contested facts or evidentiary inquiries.
10. The Petitioner submitted that the Respondents raised a preliminary objection, but only the issue of whether the petition is time-barred qualifies for consideration. The Petitioner also argued that the petition lacks specificity regarding constitutional violations. However, cases such as *Peter Michobo Muiro v Barclays Bank of Kenya Ltd & another* [2016] KEHC 5493 (KLR), *Anarita Karimi Njeru Republic*(supra), and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR) establish that while petitions must be reasonably precise, absolute specificity is unnecessary.
11. Regarding limitation under section 90 of the *Employment Act*, the Petitioner submitted that there are ongoing violations, including indefinite suspension, withheld salary, and impaired dignity. In *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR), the Court of Appeal held that continuing violations are exempt from limitation constraints. Additionally, the Supreme Court in *Monica Wangu Wamwere & Others v Attorney General* Petition (supra) held that time limitations do not apply to constitutional rights violations.
12. The Petitioner submitted that, given the continuing nature of the alleged violations, determining limitation requires a full hearing. The Petitioner has urged this Honourable Court to find that the preliminary objection is premature and lacks merit, warranting dismissal with costs.

Analysis and determination

13. The court has considered the preliminary objection, the Petitioner’s response to the preliminary objection, together with the rival submissions by both counsels; the issue for determination is whether the preliminary objection before this Honourable Court is merited and should it be allowed?
14. The landmark case of *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors*(supra) has been reiterated in the earlier part of this ruling stating that a preliminary objection relies on points of law. Also, in *Attorney General & Another v Andrew Maina Githinji & Another* (Supra), the Court of Appeal held that a preliminary objection must be based on a pure point of law, assuming all pleaded facts are correct. It cannot be raised if factual determinations or judicial discretion are required.



Improperly raising a preliminary objection leads to unnecessary costs and may create confusion in the dispute.

15. Section 89 of the *Employment Act* provides as follows:

“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

16. In this instant case, the Petitioner was appointed by the town council of Ol Kaluo (now known as Nyandarua County) via a letter dated 21st June 1995 as a Market Attendant II. The Petitioner stated he accepted the offer of appointment and commenced his duties. The Petitioner also stated that he was constructively dismissed on allegations of misappropriating revenue cash amounting to Kshs. 9,182.90/=. The Petitioner further stated that he had appeared before the Finance Staff and General purposes committee to vindicate himself from the said allegations, and the same did not take place because of several postponements by the Respondents.

17. The Petitioner stated that he wrote a letter on 19th September, 2011, seeking reinstatement to his job. Section 12(3) of the *Employment and Labour Relations Court Act* gives this Honourable Court powers to issues orders which include interim preservation orders in urgent cases, prohibitory orders, specific performance directives, declaratory orders, compensation awards, damages awards, reinstatement of employees within three years of dismissal under applicable laws, and any other appropriate relief deemed fit by the court.

18. The court is of the view that the Petitioner came to this Honourable Court and filed a Petition after 28 years since the said allegations were levelled against him. The Petitioner ought to have taken immediate action when the said Finance Staff and General Purposes Committee did not sit to hear his disciplinary case of misappropriating revenue cash. The petition is time barred in accordance with section 89 of the *Employment Act*, and he is also not eligible for reinstatement as the same needs to be done within three (3) years as set out in section 12(3)(vii) of the *Employment and Labour Relations Court Act*.

19. The Petitioner in his petition claims violation of his constitutional rights under articles 27, 28, 41 and 50(1) of *the Constitution*. This is a straightforward case of an employment relationship where the Petitioner was accused of misappropriating revenue and failing to report to work. It is regrettable the Petitioner sat on his right for decades until his claim became time barred.

In the case of *Elizabeth Mburu v Kenya Breweries Ltd* 2014 KE ELRC 56 (KLR) where the court stated -

“6. The attempt by the Claimant to elevate the contest to the constitutional platform is misplaced. It is clear from the Originating Summons filed, the dispute is in the main on employment and this can be gleaned from the questions the Claimant sets out for determination in the Originating Summons. I am persuaded that on the basis of *Petronella Nellie Chirwa v Transnet Ltd* [2007] ZACC 23 where the Constitutional Court in South Africa held that a matter does not become a constitutional matter merely because the party calls it one. In the premises I would uphold the preliminary objection raised by Mr. Burugu. The suit is without any legs once we cut off



the constitutional pins the Claimant has attempted to deploy to hold this case together. It is dismissed with costs to the Respondent.”

20. In the case of Peter Muoki Mutuki v Mwiti Choice Kenya Ltd & Another Cause 1039 of 2023 the court stated –

“Limitation is not in the books for show it is meant to protect a party so as not to meet a case where witnesses are gone, memories faded and documents misplaced eternally.”

21. When time has elapsed as provided in Section 89 of the *Employment Act* the court has no option but to fold its hands and send the case to abyss. There is no room to extend the time.

22. This is a case which was filed as a petition 28 years since the occurrence of the allegation against the Petitioner. It is unavailable. The preliminary objection dated 25th February 2025 is merited and the Petition is disallowed as it is time barred. The petition is struck off.

23. Each party to bear its costs of the suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COvID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

