



**Okwero & 6 others v Sokowatch Limited (Petition E183 of 2024)  
[2025] KEELRC 1663 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1663 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E183 OF 2024**

**B ONGAYA, J  
JUNE 5, 2025**

**BETWEEN**

**ENOCK ODHIAMBO OKWERO ..... 1<sup>ST</sup> PETITIONER  
TITUS KAMENDE MUEMA ..... 2<sup>ND</sup> PETITIONER  
JOSEPH KYALLO ..... 3<sup>RD</sup> PETITIONER  
CHARLES MUTETI MUNYAO ..... 4<sup>TH</sup> PETITIONER  
GEORGE ALARO ..... 5<sup>TH</sup> PETITIONER  
GEORGE WAWERU ..... 6<sup>TH</sup> PETITIONER  
BENSON MBALUKA ..... 7<sup>TH</sup> PETITIONER**

**AND**

**SOKOWATCH LIMITED ..... RESPONDENT**

**RULING**

1. The Respondent/Applicant filed a Notice of Preliminary Objection dated 21.03.2025 through MW & Company Advocates LLP.
2. The preliminary objection challenges the jurisdiction of the Honourable Court to hear and determine the matter, and was based upon the following grounds:
  - a. That the petition violates the doctrine of constitutional avoidance as the matter falls squarely within the *Employment Act* and does not warrant constitutional litigation. In the interests of the principle of constitutional avoidance, the matter is best placed to be litigated before the magistrate’s court as the employee’s salary was less than Kshs 80,000/= within the jurisdiction



of the magistrate's court. Accordingly, the court in *Lugo v Director of Public Prosecutions* (2022) KEHC 10574(KAR) held:

“ A constitutional issue is not ripe for determination until the determination of the constitutional issue is the only course that can give the litigant the remedy he seeks. Both constitutional avoidance and ripeness avert the determination of constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant's cause”.

- b. That the suit is sub judice on account of similar active suit between 7<sup>th</sup> petitioner and the respondent in Milimani MCELRC/E2221/2023 *Benson Mbaluka vs Sokowatch Limited* in which the court has issued directions on the hearing of the same on 23.06.2025.
  - c. The petition does not meet the threshold for constitutional pleadings as established in *Anarita Karimi Njeru v Republic* (1979)eKLR and *Mumo Matemu v Trusted society of human rights alliance*, civil appeal no 290 of 2012 together with Rule 10(2) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 (the Mutunga rules) to the extent that the petition does not demonstrate with a reasonable degree of precision the provisions of the Constitution violated or threatened to be violated and the manner of such violation in form of factual basis as well as the evidence in support. Instead, the petitioners have only cited constitutional provisions, without demonstrating how the same were violated by the respondent.
  - d. The Honourable Court lacks jurisdiction to hear and determine the dispute as part of the subject matter of this petition relates to the implementation of an employee stock ownership plan (ESOP) (issued by Sokowatch Inc., a Delaware-registered entity which is governed exclusively by the laws of Delaware, United States of America. The Court of Appeal in the celebrated case of the *Owners of Motor Vessel Lilian S v Caltex Oil (Kenya) Ltd* (1989) KLR 1, emphasized that jurisdiction is paramount, and without it, no court can proceed. By seeing adjudication of a matter falling within the governance and jurisdiction of Delaware law, the petition fundamentally missteps and is improperly before this Court.
  - e. The petition violates the principle upheld in *Salomon v A Salomon & Co Ltd* (1897) which firmly establishes a company's distinct legal personality. Sokowatch Inc, a Delaware registered and based entity governed by Delaware law and the sole issuer of the ESOP is completely separate from Sokowatch Limited a Kenyan registered entity. Sokowatch Inc serves as a shareholder of Sokowatch Kenya and a company is inherently distinct from its shareholders.
3. The parties filed their respective submissions. The Court has considered the parties' respective cases and makes finding as follows.
  4. The Court finds that the petition is indeed trapped by the constitutional avoidance principle. The reliefs sought are all available under the *Employment Act*, 2007 and the petition does not raise any issue going beyond such reliefs available under the *Act* in an ordinary statute. Essentially the petitioners pray for 12 months' compensation for unfair and unlawful termination, one month pay in lieu of notice, certificate of service, and costs of the suit. There is no disclosed claim for violation of the Bill of Rights and other constitutional provisions with attached reliefs in that regard. Accordingly, the preliminary objection must succeed.
  5. Further and as submitted for the respondent, the petition has not set out the facts relied upon, the constitutional provision violated, and, the nature of injury caused or likely to be caused to the petitioners as required the cited rule.



6. While the Court has original jurisdiction to determine a petition in all instances including where the monthly gross salary is below Kshs. 80,000.00 or where constitutional provisions are alleged to be violated or threatened with violation, in the instant case the Court has found that the petition fails to disclose a constitutional cause of action. While the magistrate's court is expressly barred by its statute from entertaining the constitutional petitions, the Court considers that in absence of such cause of action in the instant case, the it was incompetent and an abuse of court process to file the instant proceedings instead of moving the Magistrate Court as appropriate.
7. As to whether the company sued is foreign or local and whether the Court would lack jurisdiction, it is returned that such was an issue of fact requiring evidence and therefore not a pure point of law upon uncontested pleaded facts. That preliminary point fails to pass the test for a proper preliminary point.
8. The Court considers that each party will bear own costs of the petition in consideration that the petitioners may pursue the claims in appropriate forum as may be just.

In conclusion the preliminary objection is upheld as found herein and the petition struck out with orders each party to bear own costs of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 5<sup>TH</sup> JUNE, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

