



**Ngatia v National Syndemic Diseases Control Council (Cause
E905 of 2024) [2025] KEELRC 2286 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2286 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E905 OF 2024
BOM MANANI, J
JULY 31, 2025**

BETWEEN

AUGUSTINE M NGATIA CLAIMANT

AND

NATIONAL SYNDEMIC DISEASES CONTROL COUNCIL RESPONDENT

RULING

Background

1. The Claimant has instituted these proceedings alleging unfair treatment by the Respondent. He contends that he was an employee of the Respondent until 31st December 2018 when he retired after attaining the mandatory retirement age of sixty (60) years.
2. The Claimant contends that on retirement, the Respondent only paid him Ksh. 490,078.00 as gratuity. He believes that he should have been paid more.
3. In addition to the above claim, the Claimant makes several other claims including that: the Respondent unfairly kept him in employment as a casual when his contract ought to have been converted into indefinite term; the Respondent underpaid his salary; the Respondent denied him the right to belong to a trade union; the Respondent deprived him of his annual leave; and the Respondent failed to issue him with a Certificate of Service. In the premises, he contends that the Respondent subjected him to unfair labour practices thus infringing his right to fair labour practices under article 41 of [the Constitution](#).
4. At paragraph five (5) of the Memorandum of Claim, the Claimant states that his monthly salary before he retired from employment was Ksh. 70,690.00. He refers to his pay slip for November 2018 to support this contention.



5. When the Respondent was served with the Summons to Enter Appearance in the cause, it entered appearance through the Office of the Attorney General. Contemporaneous with filing the Notice of Appointment of Advocates, the Attorney General filed a Notice of Preliminary Objection in which the following grounds are enumerated:-
 - a. That the suit is time barred and offends the provisions of section 90 (currently section 89) of the *Employment Act*.
 - b. That the suit is otherwise an abuse of the court process.
 - c. That the suit is incompetent and ought to be struck out.
6. Simultaneous with the Notice of Preliminary Objection, the Attorney General filed submissions on the objection. The court record shows that on 4th March 2025 when the parties appeared before the Deputy Registrar, the Claimant's advocates asked for time to file their submissions on the objection. Thereafter, the matter was placed before this court for fixing of a ruling date.

Analysis

7. On scrutinizing the court record, this court noted that the Claimant pleaded that his exit salary was Ksh. 70,690.00 as indicated earlier in this ruling. This fact is not denied by the defense.
8. Section 29 (3) of the *Employment and Labour Relations Court Act* Cap 234B Laws of Kenya provides as follows:-

“The Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country.”
9. Pursuant to the aforesaid provision of law, the Honourable the Chief Justice issued directions through Gazette Notice No. 6024 of 22nd June 2018 appointing magistrates of the rank of Senior Resident Magistrate to handle employment and labour relations disputes in which the gross salary of an employee does not exceed Ksh. 80,000.00. In effect and by this notice, all employment disputes arising from contracts of service in which an employee's monthly salary is below Ksh. 80,000.00 are to be handled by the Magistrate's Court.
10. What is the implication of the foregoing on this court's jurisdiction to entertain this suit? The jurisdiction of the Employment and Labour Relations Court (ELRC) is donated by section 12 of the *Employment and Labour Relations Court Act* as read with article 162 of *the Constitution*. By virtue of these provisions of law, the ELRC has unlimited original and appellate jurisdiction over all employment and labour relations cases. As such, it (the ELRC) retains jurisdiction over employment disputes where an employee's monthly salary does not exceed Ksh. 80,000.00.
11. That said, should the ELRC overlook the directions in the aforesaid Gazette Notice and adjudicate on employment disputes where the salary of an employee is not more than Ksh. 80,000.00 if there is a Magistrate's Court which is entitled, by virtue of the Gazette Notice, to entertain such disputes? The answer to the question is in the negative.
12. The aforesaid directions were not issued in vain. They are intended to decongest the ELRC by defraying some work to the Magistrate's Court in order to enhance access to justice. In my view, the ELRC and the parties who come before it must give meaning to the directions by ensuring that matters in which an employee's salary does not exceed Ksh. 80,000.00 are presented to the Magistrate's Court for adjudication. Otherwise, the court will be setting ground for confusion and possible forum shopping.



13. In my view therefore, whilst this court is entitled to entertain the instant dispute on account of its original jurisdiction, the Claimant's decision to approach it whilst he was aware that his salary fell below the threshold set by the above Gazette Notice amounted to an unwarranted choice of the forum to hear his case. As such and in a sense, it amounts to abuse of the court process.
14. Although this court has jurisdiction to hear the case, it is necessary to ensure uniformity of application of the directions by the Honourable the Chief Justice by referring the cause to the Magistrate's Court for hearing and determination. As such, I refer the matter to the Chief Magistrate's Court, Milimani Commercial Court, Nairobi for hearing and determination (see *Onyango v Ken Knit Kenya Limited* [2024] KEELRC 1569 (KLR)).
15. As I issue the above orders, I am alive to the fact that the Claimant has alleged violation of his constitutional right to fair labour practices. As such, he may be of the view that because of this, the matter ought to be handled by the ELRC as opposed to the Magistrate's Court. However, that cannot stand in the way of the orders that I have issued in the suit.
16. It has been said time and again that litigants must not invoke provisions of *the Constitution* to resolve claims which can be resolved using ordinary legislation (*Aliela v Kenton College Trust & another* (Employment and Labour Relations Petition E084 of 2022) [2023] KEELRC 226 (KLR) (26 January 2023) (Judgment)). This edict, which is founded on the doctrine of constitutional avoidance, seeks to protect the hallowed place that a Constitution occupies in a legal system.
17. Underscoring this point, the Court of Appeal in the case of *Gabriel Mutava & 2 others v Managing Director Kenya Ports Authority & another* [2016] eKLR, quoted with approval an excerpt from the case of *Bahadur* [1986] LRC (Const) 297 where the learned Judge had observed as hereunder:-

“.....*The Constitution* is not a general substitute for the normal procedures for invoking judicial control of administrative action. Where infringements of rights can found a claim under substantive law, the proper cause is to bring the claim under that and not under *the Constitution*.”
18. The learned Judges went further to quote the South African case of *SA Naptosa & Others v Minister of Education Western Cape & others* [2001] BLLR 338 at 395 in which the court had commented on the subject as follows:-

“...If an employer adopts a labour practice which is thought to be unfair, an aggrieved employee would in the first instance be obliged to seek remedy under the *Labour Relations Act*. If he or she finds no remedy under the act, the Act might come under scrutiny for not giving adequate protection to a constitutional right...”
19. Although the Claimant has invoked article 41 of *the Constitution* to anchor his claim, a perusal of the Statement of Claim demonstrates that the matters which he raises to wit: the right to join a trade union; underpayments of salary; denial of annual leave; failure to be granted a Certificate of Service; and failure to convert his contract from casual to permanent are adequately addressed in various provisions of the *Employment Act* and the *Labour Relations Act*. As such and in the face of this, there is no reason for him to side step these statutes and seek to mount his claim on the basis of article 41 of *the Constitution*.
20. The Claimant may have attempted this feat in order to overcome the possibility of his claim being declared time barred. However, by way of obiter dictum and without purporting to decide on the question of limitation of actions that is the subject of the pending preliminary objection, I note that courts have previously questioned the propriety of disguising a claim as a constitutional matter in



order to avoid the law on limitation of actions (see *Reuben Ngila Kitonyi v Central Bank of Kenya* [2019] eKLR and *Morris Kyengo Makovu v Kenya Power & Lighting Company Ltd & 3 others* [2021] KEELC 54 (KLR)).

21. In the premises, it is my considered view that the instant claim ought to be resolved relying on the provisions of the *Employment Act* and the *Labour Relations Act* without resorting to provisions of *the Constitution*. As such, it ought to have been presented before the Magistrate's Court as an ordinary claim as observed earlier in the decision.

Determination

22. The upshot is that the court declines the invite to hear the cause since it falls within the purview of the Magistrate's Court as per the directions issued by the Honourable the Chief Justice through Gazette Notice No. 6024 of 22nd June 2018.
23. As such, the suit is hereby transferred to the Chief Magistrate's Court, Milimani Commercial Courts (Employment and Labour Relations Court Division), Nairobi for hearing and determination.
24. The Respondent's preliminary objection shall be determined by the Magistrate's Court to which the file shall be allocated.
25. Since the matter has been remitted to the Magistrate's Court for adjudication, I make no orders as to costs.

DATED, SIGNED AND DELIVERED ON THE 31ST JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

