



Juma & 4 others (Petitioners on their Behalf and on Behalf of 285 Other Casual Labourers at the National Police Service) v National Police Service Commission & 6 others (Employment and Labour Relations Petition E148 of 2023) [2025] KEELRC 2158 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2158 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E148 OF 2023**

**HS WASILWA, J
JULY 23, 2025**

BETWEEN

**ELIZABETH AKINYI JUMA 1ST PETITIONER
EVERLYNE CHEBET KINJO LENA 2ND PETITIONER
MAWIA MWANIKI JOAN 3RD PETITIONER
MUKUHU NYOIKE 4TH PETITIONER
MARK WANJAMA MUNIU 5TH PETITIONER
PETITIONERS ON THEIR BEHALF AND ON BEHALF OF 285 OTHER
CASUAL LABOURERS AT THE NATIONAL POLICE SERVICE**

AND

**NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT
COMMISSION SECRETARY/ CHIEF EXECUTIVE OFFICER, NATIONAL
POLICE SERVICE COMMISSION 2ND RESPONDENT
THE NATIONAL POLICE SERVICE 3RD RESPONDENT
INSPECTOR GENERAL OF POLICE 4TH RESPONDENT
THE SECRETARY ADMINISTRATION/ ACCOUNTING OFFICER,
NATIONAL POLICE SERVICE 5TH RESPONDENT
THE MINISTRY OF INTERIOR AND COORDINATION 6TH RESPONDENT
HON. ATTORNEY GENERAL 7TH RESPONDENT**



JUDGMENT

1. By a Petition dated 26th September 2024, the Petitioner sought for the following reliefs; -
 - A. A Declaration that the 3rd Respondent violated the Petitioners' rights to fair labour practices as enshrined under Article 41 of the Constitution of Kenya.
 - B. A Declaration that the 1st to 5th Respondents violated the Petitioners' rights to fair labour practices as enshrined under Article 41 of the Constitution of Kenya.
 - C. A Declaration that the failure of the 1st to 5th Respondents to provide the Petitioners with the opportunity to fairly participate in the recruitment process, and the opportunity to be heard before terminating their employment is in violation of
 - D. Article 41 of the Constitution as read together with Section 37 of the Employment Act.
 - E. A Declaration that the process of recruitment by the 1st and 3rd Respondents was a sham, tainted with illegalities/improprieties and inconsistent with Article 10 and 232 of the Constitution.
 - F. A Declaration and an Order directing the 1st Respondent to re-advertise the 1070 vacancies afresh and conduct fresh recruitment process in a fair, transparent, accountable and open manner.

Petitioners' Case

2. The Petitioners aver vide a letter dated 6th August 2018, the Principal Secretary (PS) of the Ministry of Interior and Coordination of Government approved the employment of the civilian casual staff in the National Police Service. Pursuant to this letter, the 3rd Respondent commenced the program which has been running for 6 years.
3. The Petitioners aver that the casual civilian workers as absorbed in 2018 continuously served the 3rd Respondent until 2022 without any interval renewal of their contracts on a periodical basis making them permanent and pensionable employees of the 3rd Respondent by law.
4. The Petitioners aver that when the formal absorption process of absorption of the civilian casual staff commenced, the 3rd Respondent introduced 3-months periodic contracts in 2022-2024 in an attempt to circumvent the provisions of the law.
5. The Petitioners aver that the 1st Respondent subsequently requested to be provided with a status report on the total number of civilian staff employed by the 3rd Respondent vide a letter dated 15th March 2024.
6. Subsequently, the 5th Respondent vide a letter dated 25th March 2024 to the Deputy Inspector General requested for the status report on the total number of civilian staff employed on casual basis as at March 2024 complete with their biodata, date of first appointment on casual basis, professional and academic qualification and area of deployment, for urgent transmission to the 1st Respondent.
7. The Petitioners aver that before the requested list was availed to her, the 5th Respondent vide a letter dated the 4th July 2024 wrote to the Deputy Inspector General of Police (DIG) directing that all civilian casual staff engaged with the National Police Service be terminated with immediate effect from 5th July



- 2024 in readiness for the absorption into the National Police Service on permanent and pensionable basis.
8. The Petitioners aver that the 5th Respondent further intimated in her letter that the 1st Respondent allegedly shortlisted and interviewed civilian casual staff from ‘some list’ purportedly provided to it and communicated vide a letter allegedly dated 17th May 2024.
 9. The Petitioners aver that the list requested by the 5th Respondent was never forwarded by the DIG until 17th July 2024 when the DIG forwarded to the Acting Inspector General of Police, the information of all the civilian casual staff deployed at the Kenya Police Service Headquarters, formations, units and regional police commands. Subsequently, the DIG forwarded to the 5th Respondent the list and information requested on 30th July 2024.
 10. The Petitioners aver that prior to the list of casual staff being availed to the 5th Respondent, the 1st Respondent advertised for 1070 vacant positions vide a Notice on the Nation Newspaper dated 6th June 2023, which required prospective applicants to submit their applications by close of business 20th June 2023.
 11. It is the Petitioners’ case that the recruitment process as purportedly conducted by the 1st Respondent was unconstitutional as it was not competitive as the full list of the casual labourers was not brought to its the attention during the recruitment process. Further, the shortlisting was shrouded in mystery and secrecy as there was no public notification of the qualified and shortlisted candidates; the process was tainted it with illegalities and substantive defects against Article 10 and 232 of the Constitution.
 12. The Petitioners contend that the 1st -5th Respondents’ laxity in providing the full data of civilian casual staff in the National Police Service in a timely manner to inform the planned uptake into the permanent and pensionable employment is unconstitutional and goes against the principle of responsive, prompt, effective, impartial and equitable provision of services. This amounts to a violation of the Petitioners right to fair labour practices as enshrined in Article 41(1) of the Constitution.
 13. The Petitioners aver that the termination of the contracts of the civilian casual staff by the 1st and 2nd Respondents was unlawful and procedurally unfair. The termination was without due process, fair hearing and any notice, the same is in violation of Articles 41(1) and 47 of the Constitution as read together sections 45 of the Employment Act.
 14. It is the Petitioners’ case that failure by the 1st to 5th Respondents to recognise them as permanent and pensionable employees after working for about 5 years is inconsistent to Article 41(1) of the Constitution read together with section 37 of the Employment Act; and is unconstitutional, null and void.

1st and 2nd Respondents’ Case

15. In opposition to the Petition, the Respondents filed a Replying Affidavit dated 8th October 2024 sworn by Peter Leley, the 1st Respondent’s Chief Executive Officer.
16. The Respondents aver that 1st Respondent is a constitutional commission established under Article 246 of the Constitution to oversee the human resource management of uniformed and civilian members of the National Police Service. This mandate is operationalized through the National Police Service Commission Act, National Police Service Act, National Police Service Commission (Recruitment and Appointment) Regulations 2015 and the Service Standing Orders.



17. The Respondents aver that Section 10(1)(e) of the *National Police Service Commission Act* and Chapter 60 of the *Service Standing Orders* grants the 1st Respondent the responsibility to determine terms and conditions of service and procedures for recruitment of civilians in the National Police Service.
18. It is the Respondents' case that the Petitioners allegedly filed this suit on behalf of 285 other individuals, however, the individuals have not been disclosed and no written authorizations have been provided as required in representative claims brought before this court. This omission therefore undermines the legitimacy of their claim and renders the petition incurably defective and lacking in good faith.
19. The Respondents aver that the DIG engaged the Petitioners as casual workers between 2018 and 2022 with the approval of the PS Ministry of Interior and Coordination of National Government who was at the time the Accounting Officer of the National Police Service. The Respondents contend that this approval did not divest the 1st Respondent's human resource mandate over the service particularly recruitment, appointment and determination of terms and conditions of service.
20. The Respondents aver that the duties of the DIG as set out in sections 23 and 26 of the *National Police Service Act* do not include the power to recruit or appoint individuals to positions within the National Police Service; this power is a preserve of the 1st Respondent hence the engagement of 80 casual workers as confirmed vide a letter dated 17th February 2020 was illegal and un-procedural.
21. It is the Respondents' case that the continued engagement of casual workers by the 6th Respondent's PS and the DIG without the 1st Respondent's knowledge was a usurpation of its authority vested under Article 246(3)(a) of the Constitution.
22. The Respondents aver that in June 2024, the 1st Respondent interviewed shortlisted candidates for 1,045 positions in exclusion of managerial positions for the Secretary Administration, Chief Finance Officer, Chief Economist, Deputy Chief Legal Officer, Principal Public Communications Officer and Supply Chain Management Officer II which had been filled in the first phase of the recruitment exercise in December 2023.
23. The Respondents aver that the shortlisted candidates were duly notified of the date of the interviews to be conducted virtually between 25th July 2024 and 5th August 2024 due to the volatile situation in the country due to demonstrations against the Finance Bill at the time impeding movement within and outside Nairobi where the 1st Respondent is situate. The 1st Respondent settled for virtual interviews to ensure the safety of participants hailing from various regions in the country.
24. Additionally, the 1st Respondent in line with its strategic plan is digitizing its human resource processes including recruitment of staff, which is an ongoing process, intended to extend to recruitment uniformed officers.
25. The Respondents aver that the 2nd Respondent notified successful candidates of their appointment and subsequently deployed by the 3rd Respondent to respective services on 1st October 2024.
26. It is the Respondents case that 273 casual civilian staff applied for the advertised positions, 90 were shortlisted and 83 appointed and deployed. Therefore, the Petitioners averments that the recruitment exercise was non-competitive, opaque, secret, fashioned and convoluted in a manner to prejudice and lock them out are baseless. The interviews were done in strict adherence to Articles 10, 232 of the *Constitution*, governing statutes and regulations.
27. The Respondents aver that the 1st Respondent extended invitation to interested and eligible persons and could only select qualified applicants. The Petitioners cannot reasonably expect placement by the 1st Respondent, having not applied for the advertised vacancies.



28. It is the Respondents' case that shortlisted applicants were invited and contested for positions through interviews that were openly conducted, is evidence that the recruitment process was competitive. Additionally, each candidate was accorded an opportunity to demonstrate their suitability for the advertised positions.
29. The Respondents aver that the Petitioners did not tender any evidence to prove the veracity of the allegation that the 1st and 2nd Respondents promised to formally absorb them on permanent and pensionable terms. Moreover, the Petitioners expectation of absorption into the Police Service on account of lengthy service without being subjected to a suitability interview is illegitimate and misconceived. The petition is an expression of the Petitioner's expression of dissatisfaction in the Respondents refusal to be comprised at the expense of other legitimately qualified civilians.
30. It is the Respondents' case that the doctrine of legitimate expectation dictates that legitimate expectation arises when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. Consequently, for an expectation to be legitimate, it must be founded upon a promise or a regular practice by a public authority.
31. The Respondents aver that the Petitioners expectation for employment through absorption in disregard of formal procedures is an illegitimate expectation as it has never been the Respondents practice. The Respondents do not have a record of absorptions into the National Police Service outside laid down procedures.
32. The Respondents aver that the mere fact the Petitioners were engaged as casual staff for a period of 6 years does not earn them an automatic right of conversion of their engagement to permanent and pensionable terms.
33. The Respondents aver that the Petitioners have not provided any clear or substantive evidence showing how their rights have been infringed upon by the actions or omissions of the Respondents thus breaching the principle in *Anarita Karimi Njeru case* that requires constitutional petitions to be pleaded with reasonable precision.
34. The Respondents reiterate that it is unjust for the Petitioners to label the recruitment process of the 1045 civilian staff unconstitutional when they did not express any interest in the process by submitting applications for the Respondents' consideration. Therefore, they cannot challenge the fairness or legality of a process they deliberately failed to participate in and their claims must be viewed as baseless and without merit.

3rd, 4th and 5th Respondents' Case

35. In opposition to the petition, the 3rd, 4th and 5th Respondents filed a replying affidavit dated 8th October 2024, sworn by Bernice Sialal Lemedeket, the 5th Respondent herein.
36. The Respondents aver that the petition does not disclose with specificity and preciseness the provisions of the *Constitution* alleged to have been infringed and the manner of infringement on their part, thus, denying them an opportunity to respond adequately contrary to the tenets set out in *Anarita Karimi Njeru v Republic* [1979] KECA 12 (KLR) and *Mumo Matemba v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR).
37. The Respondents aver that the recruitment process challenged by the Petitioners was conducted following a thorough, lawful, fair, and procedural process undertaken by the 1st Respondent which was aimed at ensuring proper, responsive service delivery as required by the *Constitution* and aimed at securing fair labour practice for all the employees working for the service.



38. The Respondents aver that prior to 2022, the PS, Ministry of Interior and National Administration was the accounting officer for among others National Police Service mandated to authorise engagement of casuals among others.
39. The DIG requested for authority to engage casual workers from the PS, Ministry of Interior and National Administration which was granted by dint of the letter dated 17th February 2020 and consequently a number of casual were engaged including the Petitioners.
40. The Respondents aver that initially, majority of civilian staff at the National Police Service (NPS) were employees of the Public Service Commission (PSC) deployed on need basis. There was a delinking of staff on 15th October 2019 between PSC and the National Police Service Commission (NPSC) with all the deployed PSC staff with NPS transferred to NPSC and the 1st Respondent was to proceed with any further recruitment, engagement of employees including casuals for NPS thereafter.
41. The Respondents aver that in 2022, the 5th Respondent was appointed as the Accounting Officer and the Principal Administrative Secretary for the 3rd Respondent taking over the mandate of the PS, Ministry of Interior and National Administration.
42. The Respondents aver that vide a letter dated 16th March 2023, the 1st Respondent requested the 5th Respondent to furnish it with information relating to the number of civilian staff then employed within the NPS. This was informed by the need to determine if the existing staff levels in the service were in tandem with the approved staff establishment and to ensure proper human resource management and service delivery to members of the public.
43. The Respondents aver that the 5th Respondent vide a letter dated 9th March 2023, informed the 1st Respondent that the number of civilian staff stood at 1,316 against establishment of 11,744 hence a shortfall of 10,428.
44. Subsequently, the 1st Respondent declared vacancies which included professionals and specialists, clerical staff and support staff; casuals engaged at the service were encouraged to apply. Thereafter, the 5th Respondent sought approval to recruit 1,070 civilian staff to address the existing gap in human resources in the NPS.
45. The Respondents aver that upon the 1st Respondent's approval, an advert dated 6th June 2023 was issued in the Daily Nation Newspaper requesting qualified individual including the Petitioners to submit their applications before close of business on 20th June 2023. The advertisement was pursuant to an approval from the National Treasury which specified that this process should take effect from 30th May 2023.
46. It is the Respondents' case that the 1st Respondent received over 100,000 applications including those of the Petitioners which were considered, shortlisted and recruitment undertaken. The interviews were then conducted and 1,045 successful candidates including 91 qualified casuals were deployed.
47. The Respondents aver that the process leading to recruitment of the 1,070 civilian employees was conducted in accordance with Articles 10, 27, 35, 41, 47 and 232 of the Constitution; it was responsive, prompt, effective, impartial and equitable.
48. The Respondents aver that 1st Respondent conducted the recruitment of the 1070 civilian employees fairly, transparently, competitively and equitably in tandem with the Constitution, the National Police Service Commission Act, National Police Service Act, National Police Service Commission (Recruitment and Appointment) Regulations 2015 and Chapter 60 of the Service Standing Orders.



49. The Respondents aver that after the 1st Respondent completed the recruitment process of the new staff, some of whom were to replace the work done by the casuals; the 5th Respondent proceeded to terminate any engagement of casual staff with effect from 5th July 2024 pending the deployment of the new staff.
50. It is the Respondents' case that the 3rd Respondent's disengagement of casual staff was done in line with the current ongoing police reforms to ensure qualified staff are properly placed by the 1st Respondent.
51. Upon termination of the casuals, they were paid one month wages in lieu of notice including the Petitioners.

Petitioners' Submissions

52. The Petitioners submitted that they have brought this Petition on their own behalf and behalf of their other Petitioners, which list of those Petitioners annexed at paragraph 3 of the Supporting Affidavit and is marked as 'EAJ-2'. The Respondents have not challenged that list, neither have they produced any evidence showing that the people listed therein did not give the Petitioners authority. He who alleges must prove.
53. The Petitioners submitted that the issue of signatures and or express authority from each Petitioner is a matter of technicality and not a substantive issue of law. They therefore urge the court to exercise its discretion to find that there is a list and that where there is no evidence challenging the authority of the Petitioners, the court can proceed to deal with the substance of the Petition as no injustice or prejudice is suffered by the Respondents.
54. The Petitioners submitted that having been engaged continuously for more than 5 months, their employment then was converted to term contract and they were thus entitled to notice, leave and other benefits of contractual employment as enshrined under Section 37 of the Employment Act which reads:-

“Notwithstanding any provisions of this Act, where a casual employee
 - (a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or
 - (b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service.”
55. The Petitioners submitted that the termination of the Petitioners' contracts by the 1st and 2nd Respondents was unlawful and procedurally unfair as they were not given any notice, hearing, benefits and/or payments. The termination was arbitrary, inhuman and illegal and did not take into consideration the Petitioners' rights and period in service in violation of Articles 41(1) and 47 of the Constitution as read together sections 45 of the Employment Act
56. The Petitioners submitted that the recruitment process as purportedly conducted by the 1st Respondent is unconstitutional as it was not competitive on grounds that the full list of the casual labourers was not brought to its attention during the recruitment process.



57. The Petitioners submitted that the shortlisting was shrouded in mystery and secrecy as there was no public notification of the qualified and shortlisted candidates. The 1st and 2nd Respondent has not disclosed to this court how the notifications and communications were done to the candidates.
58. The Petitioners submitted that they were not required to apply for the advertised position as they were already recruited and were serving as casuals; it was the duty of the 1st and 2nd Respondents to formally absorb and or promote the Petitioners who were already serving in the National Police Service. Therefore, the Respondent cannot be heard to be demanding that all the Petitioners needed to re-apply for the positions again yet they were having running contracts as casuals.
59. It is the Petitioners' submission that the 1st and 2nd Respondent cannot by law be allowed to unlawfully terminate their contracts and then demand that they apply for the same positions they have been unlawfully denied.
60. The Petitioners submitted that the recruitment process should have considered their longevity and performance at the service before termination and or outsourcing.
61. The Petitioners submitted that the 1st -5th Respondents' laxity in providing the full data of civilian casual labourers in the National Police Service in a timely manner to inform the planned uptake into the permanent and pensionable employment was unconstitutional and goes against the principle of responsive, prompt, effective, impartial and equitable provision of services. The process was fashioned in a convoluted, discriminatory and opaque way. It unfairly profiled and prejudiced the Petitioners, locking them out despite diligently serving the service.
62. It is the Petitioners' submission that the Respondents' failure to recognize the Petitioners as permanent and pensionable employees after working for about 5 years is inconsistent to Article 41(1) of the [Constitution](#) read together with section 37 of the [Employment Act](#), thus unconstitutional, null and void.
63. The Petitioners submitted that they had a legitimate expectation that having been terminated before the recruitment process was terminated, and considering the letters and express mentioning of their absorption in the correspondences, they were going to be subjected to a competent absorption process. They had served the Respondents and were ripe for conversion into permanent and pensionable basis. They relied in the Supreme Court decision in [Communications Commission of Kenya & 5 Others v Royal Media Services Limited & 5 Others](#) [2014] eKLR, the court stated that a party that seeks to rely on the doctrine of legitimate expectation has to show that it has *locus standi* to make a claim on the basis of legitimate expectation.
64. The Petitioners submitted that the 2nd Respondent communicated to them and their departmental heads that their contracts were terminated specifically, in preparation for their absorption on permanent and pensionable basis. Having been serving and having met the requisite qualifications, the Petitioners had legitimate expectation to be interviewed and if successful be formally absorbed. This expectation was legitimate hence constitutional.
65. The Petitioners submitted that the recruitment process was marred the process and tainted it with illegalities and substantive defects against Article 10 and 232 of the [Constitution](#). The process ignored the Petitioners' education, experience, longevity and skills acquired during their service period with the National Police Service as Civilian Casual Staff, and the Respondent disregarded and ignored the legitimate expectations of the petitioners to be fully absorbed into the permanent and pensionable program.



1st and 2nd Respondent's Submissions

66. The 1st and 2nd Respondents submitted on six issues: Whether the [Employment Act](#) is applicable to the members of the National Police Service; Whether the Petitioners were lawfully engaged as employees of the National Police Service or its Commission; Whether the Petitioners' constitutional rights under Articles 10, 27, 41, 47, and 232 of the [Constitution](#) were violated; Whether the Petitioners had a legitimate expectation to be absorbed into permanent and pensionable terms; Whether the recruitment process for the 1,045 civilian staff was competitive, transparent, and in compliance with the law; and Whether the Petitioners are entitled to any of the declaratory or compensatory reliefs sought.
67. On the first issue, the Respondents submitted that the [Employment Act](#) does not apply to the Petitioners or to any person classified as a member of the National Police Service, including civilian members of staff, they are subject to the [National Police Service Act](#) and the accompanying regulations.
68. It is the Respondents' submission that Article 24(5) of the [Constitution](#) expressly allows for limitation of the application of certain fundamental rights and freedoms in relation to persons serving in the National Police Service and the Kenya Defence Forces. It further provides that despite the general safeguards under clauses (1) and (2), legislation may validly limit rights under, *inter alia*, Article 41 — Labour Relations, for members of these disciplined services. Therefore, Article 41 protections and entitlements under the [Employment Act](#) may be justifiably withheld from members of the National Police Service, including its civilian staff. Additionally, Section 3(2)(b) unequivocally provides that the [Act](#)
- “ shall not apply to the Kenya Police, the Kenya Prisons Service or the Administration Police Force.”
69. The Respondents submitted that [Nyaga v National Police Service Commission & 2 others](#) (Petition E048 of 2022) [2024] KEELRC 1201 (KLR), the Employment and Labour Relations Court unambiguously affirmed:
- “The [Employment Act, 2007](#) does not apply to members of the Kenya Police, and therefore any employment or disciplinary disputes involving police officers or civilian staff must be resolved in accordance with the National Police Service Act and the regulations made thereunder.”
70. The Respondents submitted that the National Police Service Commission, established under Article 246(3) of the [Constitution](#), is the single employer for both uniformed and civilian staff of the National Police Service. The [Constitution](#) does not distinguish between the two in terms of the source of legal authority or the applicable framework. Both uniformed and civilian staff serve under the same employer, and are subject to the same Commission's authority. Therefore, it is inherently contradictory and discriminatory to apply the [Employment Act](#) to one category of staff (civilians) while exempting the other (uniformed officers), yet both fall under the same definition of “member of the Service.” Such selective application would undermine the institutional coherence of the Service, distort the principle of parity in treatment, and erode the constitutional rationale behind centralized human resource management in security services.
71. On the second issue, the Respondents submitted that the engagement of the Petitioners was initiated by the Deputy Inspector General of Police and approved by the Principal Secretary in the Ministry of Interior and Coordination of National Government.



However, while both the DIG and the PS may exercise significant administrative and operational roles, neither office is constitutionally or statutorily mandated to recruit/engage or appoint personnel within the National Police Service.

72. The Respondents submitted that the 1st Respondent has the mandate to recruit civilians in the services as outlined under the [National Police Service Commission Act, 2011](#) and the [National Police Service Commission \(Recruitment and Appointment\) Regulations, 2015](#) and Chapter 60 of the [Service Standing Orders](#).
73. It is the Respondents' submission that the Petitioners' engagement did not adhere to any of requisite procedures, and no approval or directive from the Commission has been presented to justify or ratify the said engagements. Consequently, their engagement was not only irregular, but was undertaken by entities that lacked the constitutional authority to do so, rendering it ultra vires and legally untenable.
74. The Respondents submitted that the actions of the National Police Service and the Principal Secretary purporting to engage the Petitioners are void ab initio and cannot form the basis of any legitimate employment relationship.
75. On the third issue, the Respondents submitted that the Petitioners' demand for direct absorption into permanent and pensionable positions, without subjecting themselves to a transparent and merit-based recruitment process, is in direct contradiction to the spirit and letter of the Constitution particularly Articles 10 and 232.
76. The Respondents submitted that to allow direct absorption without an open recruitment process would not only erode public confidence in the integrity of the public service but would also set a dangerous precedent that rewards informal or casual engagement with permanent employment in the absence of due process.
77. The Respondents submitted that the Petitioners' allegations of unfair labour practices is false, noting that the Petitioners failed to submit applications for the advertised positions during the valid recruitment window. Therefore, it is disingenuous for the Petitioners to claim discrimination or exclusion from a process in which they chose not to participate.
78. It is the Respondents' submission that the recruitment exercise was conducted in an open, transparent, and competitive manner in line with the constitutional principles set out in Articles 10 and 232.
79. On the fourth issue, the Respondents relied in the 4th Edition, Vol 1
 - (1) At page 151, paragraph 81 of the [Halsbury's Laws of England](#), which described legitimate expectation as follows:

“A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by authority, including an implied representation, or from consistent past practice”.
80. Further in the Supreme Court case of in [Kenya Revenue Authority v Export Trading Company Limited](#) [2022] KESC 31 (KLR)



Where it was held:

“..... We then went on to find the emerging principles on legitimate expectation to be that; a. there must be an express, clear and unambiguous promise given by a public authority; the expectation itself must be reasonable; the representation must be one which it was competent and lawful for the decision-maker to make; and there cannot be a legitimate expectation against clear provisions of the law or the Constitution.”

81. The Respondents submitted that the Petitioners have not demonstrated the existence of any clear, unambiguous, or lawful promise by the Respondents that would give rise to a legitimate expectation of absorption into permanent and pensionable terms. The Petitioners' reliance on prolonged service as casual labourers, without more, is insufficient to invoke the doctrine of legitimate expectation.
82. It is the Respondents' submission that the Petitioners have failed to demonstrate that they were ever assured that their casual status would be converted without subjecting themselves to the structured, open, and competitive recruitment processes laid out under the National Police Service Commission Act and the Recruitment and Appointment Regulations, 2015. In the absence of a lawful, reasonable, and competent assurance or an established past practice that the Petitioners cannot rely on the doctrine of legitimate expectation.
83. On the fifth issue, the Respondents submitted that the interviews were neither shrouded in secrecy nor skewed in favour of select candidates; they were nationally advertised, competitively conducted, and informed by clearly defined eligibility criteria. Therefore, the Petitioners' contention that the process was opaque is wholly unsubstantiated and amounts to nothing more than dissatisfaction with an outcome they made no effort to influence.
84. The Respondents submitted that as the sole appointing authority within the National Police Service under Article 246(3) of the Constitution, the 1st Respondent cannot be faulted for adhering to lawful procedure and ensuring that all candidates including those previously serving on casual terms were given equal opportunity to compete for permanent appointments. Further, the Petitioners' claims of bias, exclusion, and procedural unfairness are not supported by the evidence on record.
85. It is the Respondents' submission that the recruitment exercise was lawfully initiated, transparently conducted, and constitutionally compliant; and the Petitioners' failure to submit applications for the positions disqualifies them from alleging unfairness or exclusion.
86. On the final issue, the Respondents' submission that the Petitioners engagement as casual workers was administratively initiated by officers who had no lawful authority to employ, rendering their purported employment void ab initio. It is a settled principle of law that there can be no declaration of an employment relationship where no lawful engagement has taken place. They relied in Frigoken Limited v Musotsi (Civil Appeal 89 of 2024) [2024] KEHC 10642 (KLR) holding:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad... You cannot put something on nothing and expect it to stay there. It will collapse.”
87. The Respondents submitted that the Petitioners cannot predicate their claim on the mere fact of long service. The law does not recognize longevity of irregular or unlawful engagement as a substitute for due process. Public employment is not acquired by estoppel, waiver, or acquiescence; it must be earned through a transparent, merit-based, and competitive process as demanded by Article 232(1)(g) of the Constitution, which affirms the core value of fair competition and merit as the basis of appointments and promotions.



88. The Respondents submitted that no evidence has been provided of any quantifiable loss suffered by the Petitioners arising from a breach of constitutional or statutory obligation by the Respondents. Without proof of legal entitlement to employment or demonstrable constitutional violation, no compensatory relief can issue.
89. It is the Respondents' submission that the Petitioners' claim is premised on a void engagement, unsupported by any lawful promise, contractual entitlement or constitutional breach. Therefore, granting such reliefs would create a dangerous precedent whereby unlawful or irregular service could be used to circumvent merit-based appointments in the public sector.

3rd, 4th and 5th Respondents' Submissions

90. The 3rd, 4th and 5th Respondent submitted on three issues: whether the Petitioners' Petition has satisfied the prerequisites of a constitutional Petition; whether the Petitioners' constitutional rights were violated; and whether the petitioners are entitled to the reliefs sought.
91. On the first issue, the Respondents submitted that the Petitioners have not demonstrated with specificity how the alleged violations occurred nor have they produced satisfactory evidence to support the alleged violation. They have merely mentioned the Articles of the *Constitution* and failed to specify with reasonable degree of precision the manner in which the said provision and by extension their constitutional rights were violated.
92. It is the Respondents submission that it is a trite principle of constitutional ligation that where a party seeks reliefs through a constitutional petition, they must plead with a higher degree of precision the manner in which the alleged violations occurred as held in *Anarita Karimi Njeru v Republic* [1979] eKLR and affirmed in *Mumo Matemu vs Trusted Society for Human Rights Alliance & 5 Others* [2013] eKLR.
93. The Respondents submitted that the Petitioners have listed the constitutional provisions alleged to be infringed, they have failed to state and demonstrated they violated the listed rights alleged to have been infringed hence they are left to second –guess as to what to respond to in this petition.
94. It is the Respondents' submission that the Petitioners have not disclosed any constitutional issue that would warrant the court to exercise its jurisdiction as donated by Article 165 of the *Constitution*.
95. On the second issue. the Respondents submitted that the recruitment process was done in a fair and procedural manner. The 1st Respondent approved an advertisement dated 6th June 2023 was placed in Daily Nation newspaper requesting qualified individuals including the petitioners to submit their application by close of business on 20th June 2023. The application process was fair and open attracting over 100,000 applicants, subsequently, 1045 successful candidates including 91 qualified casual staff who are among the petitioners were employed.
96. The Respondents submitted that the process for disengagement of the Petitioners' as casual staff was done in tandem with the labor laws they were paid one month in lieu of notice.
97. It is the Respondents' submissions that the petition has been brought by petitioners who allege to be casuals of the National Police Service; the *National Police Service Act* under Section 2(1) of *National Police Service Act* defines members of service that include civilian staff. They further submit that various judicial pronouncements confirm that the *Employment Act* cannot be applied to any member of the National Police service, including civilians as their employment matters including termination are governed by the *National Police Service Act*, *National Service Commission Act* and the *Regulations*



therein. In *Nyaga v National Police Service Commission & 2 others* [2024] KEELRC 1201 (KLR), the court affirmed that:

“There is ample authority that decision making bodies other than courts and bodies whose procedure are laid down by statute are masters of their own procedures, provided that they achieve the degree of fairness appropriate to the task, it is for them to decide how they will proceed.”

98. On the final issue, the Respondents submitted that the prayers as drafted and pleaded cannot be allowed considering that the same are ambiguous and not properly anchored on the facts raised in the petition. Therefore, the Petitioners are not entitled to the reliefs sought.
99. I have examined all the averments and submissions of the parties. First, the petition is filed by the petitioners herein on behalf of 285 other casual undisclosed labourers. The petitioners had vide a letter to Inspector General of Police dated 28/9/2024 indicated they were officers who had been on casual basis and were seeking to be absorbed on permanent basis. The letter was however only signed by 3 people but the names of the said officers was not indicated.
100. It is not therefore clear who the 285 other casuals are. That notwithstanding, the Petitioners have contended that they had served the Respondents in casual capacity for 6 years and had a legitimate expectation of being absorbed into the National Police Service on permanent and pensionable terms as previously done. They aver that their rights under the Constitution were flouted by the Respondents who ignored their request to be absorbed in the service.
101. The 285 others who the Petitioner filed the petition against and who are not known and who have also not given any authorization to file the petition renders the petition defective and lacking in material facts.
102. The Petitioners have also filed the petition seeking to have the Respondent compelled to give them an opportunity to fairly participate in the recruitment process. It is worth noting that the initial process of giving the Petitioners an opportunity to serve as casuals was given to them by the Inspector General of Police the 2nd Respondent. This was on a periodic contract.
103. It is however true that the work of appointing to office disciplinary and terminating services in the Police Service is a preserve of the National Police Service Commission which in this case never participated in recruiting the Petitioners as casuals.
104. Having said this and in view of the fact that the 285 Petitioners remain faceless and they have not given any authority to the other 6 to institute this petition on their behalf, this petition remain largely incompetent and cannot therefore proceed.
105. I will therefore find the petition is not merited and I proceed to strike it out. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

