



Lekwale (Suing as Administrator and Legal Representative of the Estate of the Late Hassan Abdallah Lengiremishoi) v Namunyak Wildlife Conservation Trust (Sued Thro' Board of Trustees & another; Directorate of Occupational Safety and Health Services (Interested Party) (Petition E014 of 2024) [2025] KEELRC 2186 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2186 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI

PETITION E014 OF 2024

ON MAKAU, J

JULY 23, 2025

**IN THE MATTER OF: 2, 3, 10,19, 22(1) & (3), 20, 21, 23(1) & (3), 25(A),
27, 28, 29(D) AND (F), 35, 41,47,50(1), 159, 165, 258
& 259 OF THE CONSTITUTION**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEMOMS ARTICLES 28, 29, 35, 41
AND 47 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF: SECTIONS 3, 4, 5, 10, 11(5), 12, 21, 22(1), 23, 25,
26(1), 27 (1,2), 34 (1,2) OF THE WORK INJURY
BENEFITS ACT 2007**

AND

**IN THE MATTER OF: SECTIONS 3, 4 AND 6 OF THE ACCESS TO
INFORMATION ACT, 2016**

AND

**IN THE MATTER OF: SECTIONS 3 AND 4 OF THE FAIR ADMINISTRATIVE
ACTIONS ACT, 2015.**

AND

IN THE MATTER OF: SECTIONS 24 OF EMPLOYMENT ACT, 2007

BETWEEN



SOFI LEKWALE (SUING AS ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE HASSAN ABDALLAH LENGIREMISHOI) PETITIONER

AND

NAMUNYAK WILDLIFE CONSERVATION TRUST (SUED THRO' BOARD OF TRUSTEES) 1ST RESPONDENT

NAMUNYAK CONSERVANCY LIMITED 2ND RESPONDENT

AND

DIRECTORATE OF OCCUPATIONAL SAFETY AND HEALTH SERVICES INTERESTED PARTY

JUDGMENT

Introduction

1. By a petition dated 4th November 2024, the petitioner sought the following reliefs:
 - a. A Declaratory order that the actions of the Respondent in failing to fill and submit the Notice by an employer of an Occupational Accident to an Employee to the Directorate of Occupational Safety and Health services violated the Petitioner's right under Article 41 of the Constitution of Kenya, 2010.
 - b. A Declaratory order that the actions of the Respondent in failing to fill and submit the Notice by an employer of an Occupational Accident to an Employee despite being requested by the petitioner violated the petitioner's right under Article 47 of the Constitution of Kenya, 2010.
 - c. A Declaratory order that the actions of the Respondent in failing to fill and submit the Notice by an employer of an Occupational Accident to an Employee and failing to give any justifiable reason violated the petitioner's right under Article 47 of the Constitution of Kenya, 2010.
 - d. A Declaratory order that the actions of the Respondent contravened and/or violated the provisions of the Constitution under Articles 2, 3,10, 19 22(1) &3, 23(1) & (3), 25(a), 27, 28, 29(d) and (f), and thus contravened and/or violated the rights and freedoms of the petitioner under the Bill of Rights of the Constitution of Kenya, 2010.
 - e. An order compelling the Respondent to fill the Notice by an employer of an Occupational Accident to an Employee and forward the same to the Directorate of Occupational Safety and Health services for purposes of computation of compensation payable to the petitioner.
 - f. An order for compensation against the Respondent for violating the petitioner's Constitutional rights and freedoms.



- g. An order for compensation in the sum of Kenya shillings.172,866/= being service pay for ten (10) completed years of service @ eighteen (18) days' salary for every completed year of service being $18/30 \times 28,811.00 \times 10$
 - h. Cost of this suit and interest thereon.
 - i. Any other order that this Honourable deems fit and just in the circumstances.
2. The respondents and the Interested party were served with the petition but failed to enter appearance and as such the petition was not opposed.

Background

3. The petitioner is the widow and dependant of Hassan Abdallan Lengiremishoi (deceased) who was employed by the respondents as a Driver until 7th October 2021 when he was shot dead by bandit/highway robbers at Logiresire while in the cause of his duty with other employees.
4. The death was immediately reported to his immediate supervisor who in turn notified the line supervisor. The matter was also reported to the police and a Report of Post mortem confirmed that the cause of death was gun shot.
5. The Respondents catered for the funeral expenses and promised to pay the deceased's terminal benefits. However, they neither paid the terminal benefits nor reported the death incidence to the Interested party herein as required under section 22 of the Work Injury Benefit Act (WIBA). Instead they requested the petitioner to wait until a new Board was elected to office.
6. As a result of the said default to notify the Interested Party about the death of the deceased employee, the interested party never assessed compensation due to the deceased's dependants under the Act. Despite demand and notice of intention to sue, the respondent has persisted in its refusal to comply with section 22 of WIBA by filling and forwarding to the Interested Party Form DOSH 1 in order to kick start the process of assessing compensation due to the deceased's dependants under the Act. They have also failed to provide her with a copy of the said notice if any upon request.
7. The petitioner averred that the conduct by the respondents amounts to violation of her right to dignity, right to information, fair labour practices and right to fair administrative action under Article 28, 35, 41 and 47 of the Constitution. Consequently, she prayed for the reliefs sought in the petition.
8. The petition was disposed of by written submission which basically reiterated the averments in the petition and urged the court to award compensation of Kshs.5,000,000 for the violations committed against the petitioner by the respondents. For emphasis she cited MWK & another v Attorney General & 3 others (2017) eKLR, and Anne Njoki Kumena v KTDA Agency Ltd (2019) eKLR where the court awarded Kshs.4,000,000 and Kshs.1,500,000 respectively for violations of rights. She also prayed for costs of the suit.

Issues for determination

9. I have considered the petition, evidence and the submissions by the petitioner and the following issues fall for determination:
- a. Whether the petition meets the competence threshold of Constitutional pleading.
 - b. Whether the respondents have violated petitioner's Constitutional rights.
 - c. Whether the petitioner is entitled to the reliefs sought.



Competence threshold

10. The legal threshold for a Constitutional pleading was laid down by the High Court in *Anarita Karimi Njeru v Republic (1979 - 1980) KLR 1272* thus: -

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
11. Having considered the petition herein, it is clear that it makes reference to various Articles of the Constitution but the petitioner has then picked on Article 28, 35, 41 and 47 as the violated provisions of the Constitution. The petition also pleads the manner in which the violation has been done mainly by failing to comply with a mandatory statutory provision, that is, section 22 of the WIBA. It further pleads that said breach of the law has denied the petitioner enjoyment of the rights to dignity, right to information, right to fair labour practices and right to fair administrative action.
12. In view of the foregoing, I find that the petition, though too wordy, meets the legal threshold of a Constitutional pleading. I am satisfied that it has pleaded with clarity the matter complained of, the provisions of the Constitution that are alleged to have been breached, and the manner in which they have been violated.

Violations

13. The petitioner alleged that the root of the said Constitutional violations herein is the respondents failure to initiate the process of assessment of compensation for her husband who died while in the course of his employment by the respondents. Section 22 of the WIBA provides that: -
 1. Subject to the provisions of this section, an employer shall report an accident to the Director in the prescribed manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident.
 2. For the purposes of this section, an accident includes any injury reported by an employee, to his employer, if the employee when reporting the injury, alleges that it arose out of and in the course of his employment and irrespective of the fact that the employer is of the opinion that the alleged accident did not so arise out of and in the course of employment...”
14. The above provision is loaded with legal obligations to the employer and it is couched in mandatory terms. The failure to comply with the said mandatory provisions after an employee falls dead while on duty is not only inhuman and undignified treatment to the deceased’s dependants, but also denial of the other rights complained of.
15. Under sub-section (3), an injured employee or dependants of a deceased employee are entitled to a copy of the notice given by the employer to the Director (Form DOSH 1) under subsection (1). Denial of such copy if indeed the notice was issued to the Director, amounts to violation of Article 35 of the Constitution which provides that: -

“Every citizen has the right of access to—



- a. information held by the State; and
 - b. information held by another person and required for the exercise or protection of any right or fundamental freedom.”
16. There is no dispute that the petitioner has severally demanded for the information through her Advocate but the information has been withheld.
 17. The failure by the respondents to comply with section 22(1) obviously violates the petitioner’s right to fair labour practices. The relationship between the deceased and the respondents was founded on a contract of service and therefore failure to comply with an express provision of the law which regulates the contract of service amounts to unfair labour practice contract to Article 41 of the Constitution.
 18. Although subsection (b) allows the injured employee or dependent of a deceased employee to report an occupational accident to the Director at any stage of the process, that does not absolve the employer from the legal obligation of notifying the Director about the accident. In fact, under subrule (4) an employer who fails to comply with subsection (1), commits an offence. Finally, I find that the respondents failure to comply with section 22 without giving any reasons and ignoring the demands by the petitioner amounts to violation of her right to fair administrative action.
 19. Having considered the uncontested evidence and submission, I find that the petitioner has proved on a balance of probability that the respondents have violated her Constitutional rights to dignity, right of access to information, right to fair labour practices and right to fair administrative action.

Reliefs

20. In view of the foregoing conclusions, I find that the petitioner is entitled to declaration that the respondents have violated her rights to dignity, right of access to information, right to fair labour practices and right to fair administrative action contrary to Article 28, 35, 41 and 47 of the Constitution.
21. She is also entitled to an order to compel the respondents to fill and forward notice of the material accident (FORM DOSH I) to the Director Occupational Safety and Health Services for purposes of computing compensation payable to her for the death of her husband while on duty.
22. The petitioner is also entitled to compensation for the violation of her Constitutional right. I award to her only Kshs.700,000 considering that she had also the option of reporting the matter directly to the Director when the respondents became uncooperative.
23. The petitioner further prayed for service pay of Kshs.172,866 for the 10 years served by the petitioner. However, that claim is declined because the pay slips produced indicate that he was a contributing member of NSSF. Under section 35 (6) of the Employment Act, a member of the NSSF is disqualified from claiming service pay from the employer.

Disposition

24. In view of the above matters, I enter judgment for the petitioner as follows: -
 - a. A declaration that the respondents have violated the petitioner’s rights to dignity, right of access to information, right to fair labour practices and right to fair administrative action contrary to Article 28, 35, 41 and 47 of the Constitution.
 - b. Payment of Kshs.700,000 as damages for the aforesaid violations.
 - c. Costs of the suit plus interest at court rates from the date of this judgment.



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

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, 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.

ONESMUS N MAKAU

JUDGE

