



**Oluoch v Teachers Service Commission & another (Petition
E003 of 2025) [2025] KEELRC 2362 (KLR) (8 August 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2362 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
PETITION E003 OF 2025
M MBARŪ, J
AUGUST 8, 2025**

BETWEEN

PETER OMONDI OLUOCH PETITIONER

AND

THE TEACHERS SERVICE COMMISSION 1ST RESPONDENT

THE NATIONAL ASSEMBLY 2ND RESPONDENT

RULING

1. The petitioner filed an application dated 3 June 2025 seeking orders that;
 - a. A declaration be made that the rights of the 1864 out of the initial 25,252 teachers who were shortlisted for promotions hitherto the rescindment in the 9 extreme ASAL counties of Tana River, Lamu, Garissa, Wajir, Mandera, Isiolo, Maarsabit, Samburu and Turkana, being the employees of the 1st respondent under articles 43, 27, 28, 10 and 237 of *the constitution*.
 - b. A declaration be made that the rights of acting administrators in public secondary schools in the 9 affected counties and any other county, for a period beyond 6 months, breach the fundamental rights of the said administrators and violate the constitutional provisions.
 - c. Regular classroom teachers were discriminated against in 2018 when all administrators in job group M were moved from C4 to D3, yet the classroom teachers in similar job groups or below never moved any grade higher, yet working under the same conditions under the same CBA.
 - d. An order directing the 1st respondent to promote all acting Heads of institutions (HOIs) who have acted for more than 6 months as deputies before being given principal's roles or as principals, to administrative grades in all marginalized, hard to staff, hard to ASAL counties to uphold the principle of equal pay for equal work, as the 1st respondent did in 2018 jumping job 3 job groups.



- e. A declaration that job groups C4 and D1 are illegal under the CPG, hence should be expunged from the teachers' job groups in the Career Progression Guidelines (CPG), to save teachers 6 years of stagnation.
 - f. An order to grant directing the 1st respondent to immediately uphold and affirm the promotions of the 1864 teachers affected in the 9 counties.
 - g. An order barring the members of the 2nd respondent from giving employment and deployment by taking over the 1st respondent's constitutional duties of employing and deploying teachers.
 - h. an order do grant barring the 1st respondent to have administrators work in acting roles for over 6 months
 - i. Costs of the petition be provided for.
2. The application is made on the grounds that the 1st respondent called for applications from qualified teachers for various posts shown under its portal Career Progression Guidelines. The 1st respondent circulated an advertisement for qualified teachers to apply for promotions on its portal in different job groups. Many qualified teachers responded by submitting applications. They were shortlisted, invited for interviews, and qualified for promotions.
 3. The petitioner avers in his affidavit that upon the successful promotions of the teachers, some national officials of the Kenya Union of Post Primary Education Teachers (KUPPET) were unhappy with the promotion and, through the acting general secretary, Nthurima Moses, he castigated the 1st respondent, alleging ASAL counties were favoured. He singled out Tana River, stating that it did not deserve promotions, instead vouching for pro-rata promotions for stagnated teachers.
 4. KUPPET, through the executive board members and 2nd respondent, lobbied and petitioned the Parliamentary Committee on Education to quash the promotions. As a result, the 2nd respondent summoned the 1st respondent and demanded a review of the promotions, a direct interference with the commission.
 5. Some of the members of the 2nd respondent have been seen publicly dishing out employment and deployment letters to non-interviewed teachers who then proceed to secure employment on a permanent and pensionable basis, bypassing the due process and causing discriminatory practices to trained teachers.
 6. The petitioner avers that the 2nd respondent has breached the law, usurped the mandate of the 1st respondent, and violated *the constitution* and the law.
 7. On 22 May 2025, the 1st respondent gave a circular Ref: CS/TSC/76/VOL.XI and a reporting overturning 1864 promotions in ASAL counties and redistributing the same to other counties following the interventions of the 2nd respondent. The 1st respondent advertisement from No.09/2024(D2-D3) through No.32/2024 (C1-C2) required that applicants have served in the previous job group for 6 months.
 8. The actions of the respondents discriminate against the teachers working in public schools in the 9 ASAL counties in violation of Article 10 of *the Constitution*. Quashing the 1864 promotions from ASAL is further marginalisation and violates Article 10 of *the constitution*.
 9. The petitioner avers in his affidavit that he is a teacher employed by the 1st respondent, currently working in Tana River County. As a concerned citizen and in contact with the leaders of the 1864 teachers affected by the promotions, he has filed the petition under the presumption of articles 43,



- 10, 27, 28, 162 (20, 165, 237, and 258) of *the constitution*. The 1st respondent has since overturned the 1864 promotions in ASAL counties and redistributed the same to other counties as a result of interference from the 2nd respondent.
10. In reply, the 1st respondent filed the Replying Affidavit of Dr. Lilian Wachira, acting director in charge of staffing at the 1st respondent. She avers that the application by the petitioner is an abuse of the court process and should be dismissed.
 11. Dr. Wachira avers that the 1st respondent raises Preliminary Objections on the application since similar matters are under consideration in Nairobi ELRC Petition No. E113 of 2025 between the same parties and is pending determination. This court lacks jurisdiction to hear the petitioner as the issue of stagnation of teachers, the validity of the 1st respondent Career Progression Guideline for Teachers and appointment to acting positions are prayers that are time-barred. Collective grievances related to the stagnation of teachers and CPG are subject to ongoing bipartite collective bargaining negotiations. The court ought to decline jurisdiction.
 12. The application and petition violate the principle of exhaustion and constitutional avoidance. The matters raised in the petition are subject to an ongoing collective bargaining negotiations between the 1st respondent and KUPPET, where the petitioner serves as the executive officer, the branch executive secretary, Tana River Branch.
 13. The petition lacks specificity and particularity, hence does not meet the test of constitutional pleadings as held in *Anarita Karimi v Republic and Mumo Matemu v Trusted Society of Human Rights Alliance* Civil Appeal No. 290 of 2012. The petition has not raised any cause of action anchored in *the constitution*, and the subject matter relates to ordinary contractual grievances within the ambit of the *Employment Act*, disguised as a constitutional petition. The orders sought are vague and lack specificity, and are an abuse of the court process.
 14. Dr. Wachira avers that the petitioner is acting in bad faith and has concealed material facts from the court. He has failed to disclose that the Association of Kenya Teachers in Arid and Semi-Arid areas Welfare Association (KETHAWA), the teachers he purports to represent, have filed Nairobi ELRC Petition No. E113 of 2025 on the same issue he seeks to address in this petition.
 15. The petitioner has failed to disclose that he is the branch secretary of KUPPET and a member of the national governing council of the union, hence aware that the issues raised in his petition are before the 1st respondent as part of the 2025-2029 CBA negotiations.
 16. Dr. Wachira avers that under Article 237(3) of *the Constitution*, the 1st respondent has been mandated to register teachers and assign them with duties. As an independent constitutional commission, the 1st respondent is governed by the values and principles of *the constitution*. The 1st respondent advertised various promotions of 25,252 teachers in the 2024/2025 financial year. Upon receipt of applications, a shortlist and interview were conducted under articles 10 and 232 of *the constitution*. After the process, upon publication of the results, this attracted different reactions from the public, including the 2nd Respondent Committee on Education and Research. Under its oversight mandate under Article 95 of *the Constitution*, the 2nd respondent engaged with the 1st respondent without interference with the constitutional mandate as alleged.
 17. The selection process for promotions was based on objective and transparent criteria. The allegation that 1864 teachers from ASAL were removed upon the intervention of the 2nd respondent is without proof. The transfer of teachers, stagnation of teachers, appointment of teachers to serve in acting positions, and expunging some job groups are addressed in a vague and unclear manner. To grant such



orders based on the instant application would deny the 1st respondent a fair chance to be heard on the merits.

18. The conservatory orders sought relate to matters that took place 9 years ago, in 2016. The petition is filed with inordinate delay and lacks merit. It should be dismissed with costs.
19. In reply, the 2nd respondent filed Grounds of Opposition and avers that the Supporting Affidavit filed by the petitioner in support of his application offends section 4(1) and 5 of the [Oaths and Statutory Declarations Act](#) and hence the application dated 3 June 2025 is defective and incurable in law and based on an unsworn affidavit. The orders ought to be final and cannot be issued at the interlocutory stage.
20. The 2nd respondent further grounds that the allegations made have not met the threshold of section 107 of the [Evidence Act](#), and the petition is not pleaded with a degree of precision as required in the case of Anita Karimi Njeru v Republic [1079] eKLR.
21. The petitioner has failed to exhaust alternative remedies before filing the petition, as matters addressed herein are within the investigative mandate of other agencies under articles 79 and 241 of [the constitution](#).
22. The 2nd respondent is improperly sued in these proceedings for actions committed by its members in their private capacities.
23. Parties attended and made oral submissions in court, which are analysed, and the issues which emerge for determination are;

Is this a proper petition?

Whether the orders sought in the application dated 3 June 2025 should be issued.

The petitioner is acting in person.

24. The petitioner filed an application dated 3 June 2025, together with his petition seeking similar orders as set out above. Dealing with the application would be to address the main petition with finality. This would deny both respondents a fair chance to be heard on the merits of the case.
25. Furthermore, the petitioner submitted his Supporting Affidavit, which is not commissioned as required under sections 4 and 5 of the [Oaths and Statutory Declarations Act](#). An application based on a Supporting Affidavit that does not support its claims is invalid. Its foundation is undermined, as held in the case of Mwariama & 18 others (suing on behalf of approximately 3,000 residents of Timau Area in Buuri West Sub-County) v Commission & 5 others; Meru County & another (Interested Parties) [2025] KEELC 5193 (KLR), where section 4 of the [Oaths and Statutory Declarations Act](#) is described as being couched in mandatory terms.

Powers of commissioner for oaths

- (1) A commissioner for oaths may, by virtue of his commission, in any part of Kenya, administer any oath or take any affidavit for the purpose of any court or matter in Kenya, including matters ecclesiastical and matters relating to the registration of any instrument, whether under an Act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the High Court or any subordinate court:

Provided that a commissioner for oaths shall not exercise any of the powers given by this section in any proceeding or matter in which he is the advocate for any of the parties to the proceeding or concerned in the matter, or clerk to any such advocate, or in which he is interested.



26. Furthermore, under section 5 of the Act, an affidavit should be commissioned by the Commissioner for Oaths, indicating the place and date of taking the oath, as held in *Salesio Njeru Mbogo & 112 others v Kenya Planters Co-operative Union* [2017] KEELRC 312 (KLR);

Every Commissioner for Oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.

27. As noted above, the petitioner, acting in person, opted to address the lapse in filing a proper application supported by an Affidavit by filing an application dated 7 July 2025. He attached his Supporting Affidavit dated 7 July 2025 seeking to apply the same in his application dated 3 June 2025.
28. The application dated 7 July 2025 was not addressed or allowed. Even if this were to be allowed, it is supported by the affidavit dated 7 July 2025. There is no annexure seeking to amend the uncommissioned Affidavit for application dated 3 June 2025.
- This is fatal.
29. The application dated 3 June 2025 is without a foundation and is materially lacking a Supporting Affidavit. It cannot stand.
30. The other matter raised by the respondents is whether this is a proper petition.
31. The decision whether to file a constitutional petition is thoroughly discussed in the case of *Sumayya Athmani Hassan v Paul Masinde Simidi & another* [2019] KECA 107 (KLR). It is established that rights under the Bill of Rights, particularly those related to employment and labour relations under article 41 of *the Constitution*, are now addressed by the *Employment Act* and the *Labour Relations Act*. Unless these statutes are insufficient and the matter concerns the interpretation of constitutional rights and freedoms, a party should not pursue a constitutional petition route without exhausting available statutory remedies. See *Njue v Kenya Maritime Authority & another* [2023] KEELRC 820 (KLR) and *Ngure v Tear Fund* [2023] KEELRC 1324 (KLR).
32. Indeed, under Rule 10(3) of the Employment and Labour Relations Court (Procedure) Rules, a party is allowed to urge their case through a Memorandum of Claim which can also include claims for the enforcement of a constitutional right;
- (3) Notwithstanding anything contained in this rule, a person may seek the enforcement of any constitutional right and freedom or any constitutional provision in a statement of claim or other suit filed before the court.
33. A Memorandum of Claim, in which the petitioner ought to set out his claims, should suffice.
34. As stated above, the petitioner is acting in person and may not appreciate the importance of filing a petition as against a claim. However, ignorance of the law is not a defence, as the adage goes.
35. The petitioner raises salient matters concerning the constitutional mandate of the respondents, especially the 1st respondent in the employment, placement and promotion of teachers, particularly those serving in ASAL counties. The disparities noted about marginalisation in promotions, where the teachers were interviewed and promoted and then withdrawn, are serious matters that the respondent should interrogate and address. This will suffice.
36. On the other hand, the petitioner is a high-ranking official of KUPPET, being the branch secretary of the Tana River Branch. Any CBA negotiations concerning matters in question and including career



progression of teachers, as an official of KUPPET that is engaged with the 1st respondent in the negotiations, to remove the issues from the negotiations table to court is an abuse of process.

37. The tripartite negotiations are an acceptable mode of dispute resolution secured under the *Labour Relations Act* and the *Labour Institutions Act*. The negotiations should be addressed to a conclusion before invoking the judicial route. This shall suffice.
38. The issue of the existence of Nairobi ELRC Petition No. E113 of 2025, the 1st respondent raised this issue, and the petitioner failed to disclose the existence of this matter, which is filed in Nairobi and based on the same facts and grounds. However, upon interrogation by the court, it emerged that the petitioner moved this court first and should not be faulted for acting in good faith to secure rights and freedoms as herein done, albeit the issues raised above.
39. Accordingly, the application dated 3 June 2025 is without a supporting affidavit, which renders it fatal. There is no proper petition. The application is dismissed and the petition struck out. Each party bears its costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 8 DAY OF AUGUST 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

