



**Amutavi v DHL Supply Chain Kenya Limited (Petition E021 of 2022)  
[2024] KEELRC 1633 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1633 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E021 OF 2022  
K OCHARO & K OCHARO, JJ  
JUNE 28, 2024**

**IN THE MATTER OF THE THREATENED INFRINGEMENT AND  
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER  
ARTICLE 2,19, 22, 23, 24, 28, 29 & 41 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOMS UNDER ARTICLES 10(1), (2), (3),  
27 (4) (5) (6), 24 165 OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**JACQUELINE AMUTAVI ..... PETITIONER**

**AND**

**DHL SUPPLY CHAIN KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Through her petition herein dated 30<sup>th</sup> June 2020, the Petitioner seeks:-
  - a. A declaration that the Respondent's actions amount to discrimination against the Petitioner under Article 27 of the Constitution.
  - b. A declaration that the Respondent has infringed the Petitioner's right to Human dignity under Article 28 of the Constitution.
  - c. A declaration that the Respondent has infringed the Petitioner's right not to be deprived of the freedom arbitrarily or without just cause under Article 29 of the Constitution.



- d. A declaration that the Respondent has infringed the Petitioner's right to be subjected to torture in any manner, whether physical or psychological under Article 29 [d] of the Constitution.
  - e. A declaration that the Respondent's actions against the Petitioner amount to an infringement on the Petitioner's right to fair labour relations under Article 41 of the Constitution.
  - f. General damages
  - g. Any other orders it may deem just, fit and expedient to award in the interest of justice.
  - h. Costs of the petition be provided for.
  - i. Interest on General damages from the date of filing this petition until payment in full.
  - j. Interest on costs from the date of filing this petition until payment in full.
2. The Respondent resists the petition based on the grounds set out in the replying affidavit sworn by one LILIAN INZIANI on 3<sup>rd</sup> November 2020.
  3. On 26<sup>th</sup> September 2022, when the matter came up for directions, this Honourable Court ordered that the Petition be canvassed by way of written submissions. This culminated in the Petitioner's Submissions dated 1<sup>st</sup> February 2023. The Respondent filed none.

#### **Petitioner's case**

4. The Petitioner's case is that at all material times, she was an employee of the Respondent for 16 years up until 13<sup>th</sup> May 2020 when the Respondent terminated the same unceremoniously. Charging that the termination was unfair, she filed a suit, Nairobi ELRC Cause No. 271 of 2020 – Jacqueline Amutavi vs DHL Supply Chain Kenya Limited challenging it.
5. She states that on 29<sup>th</sup> June 2020, the Respondent summoned the Petitioner to its headquarters in Kasarani. She was informed that the invitation was for a clearance process. On 30<sup>th</sup> June 2020, she visited the Respondent's stated offices. Further, at this point, the Petitioner had already cleared with all the Respondent's departments save for the Human Resource and IT Departments. However, to her surprise, the Human Resource Manager informed her that she had instructions from the Respondent's South Africa Office, that she [the petitioner] must start the clearance process afresh, and sign new documents.
6. The Petitioner states that in the Boardroom, the Human Resource Manager demanded that she sign a fresh termination letter, notice to show cause, decision to terminate her employment, revised Appeal minutes and outcome of the appeal that she had lodged challenging the termination. She declined to sign the documents insisting that she had first to compare the same with hers, which unfortunately she wasn't having at the time. Irked by the suggestion, the Manager instructed the security personnel who were all through manning the Boardroom door, to sit in the room until the Petitioner signed off the documents. When she protested, she was immediately detained and her liberty curtailed.
7. The Respondent illegally incarcerated and detained her, causing her immense distress, and emotional and psychological turmoil. The Respondent did not care that she was unwell and needed access to medication.
8. The Respondent's actions were unnecessary, uncalled for, insensitive, illegal, and infringed on her fundamental rights; against discrimination under Article 27 (a) and (b); not to be subjected to human dignity under Article 28; to freedom and security of the person under Article 29 (a) and (b), which



includes the right not to be deprived of freedom arbitrarily and without just cause, and not to be subjected to physical or psychological torture; and to fair labour relations under Article 41.

### **The Respondents' case**

9. The Respondent contends that this Court lacks jurisdiction to handle this matter, as at the time of filing the petition, the Petitioner was no longer its employee at the time of the alleged constitutional rights violations. In the absence of an employer-employee relationship, this Petition should have been filed in the High Court.
10. Further, the Respondent contends that the Petitioner has not pleaded, with a reasonable degree of precision, the violation of her Constitutional rights by the Respondent. Further, the petition is an abuse of the court process, as the Petitioner has another suit elsewhere where she seeks inter alia damages for violation of constitutional rights. The petition is a good candidate for striking out by this Court.
11. The Respondent states that it had employed the Petitioner until the justified and lawful termination of her employment on 13 May 2020, for violating the Respondent's conflict of interest policies. The Petitioner participated in interviews which saw her nephew hired as an Archiving and Filing Clerk, without disclosing their relationship; and by having a company owned by her sister-in-law contracted to supply lunch to the Respondent's staff, without material disclosure.
12. Indeed, the Petitioner was invited for a clearance meeting on 30<sup>th</sup> June 2020, as a follow-up to a clearance meeting on 10<sup>th</sup> June 2020. She voluntarily and willingly entered the Respondent's premises and attended the clearance meeting. The Petitioner had been informed by the Respondent, prior to the meeting of 30<sup>th</sup> June 2020, through email, that she would be required to execute new documents reflecting amended details relating to dates. The documents had errors with the dates.
13. The Petitioner refused to sign the documents and left the Respondent's premises. Further, contrary to the Petitioner's allegations, she was not confined in the Boardroom as alleged. She was invited to the boardroom to sign various clearance documents. As she was no longer an employee of the Respondent, she was accompanied and escorted by a lady security personnel. She was at all material times free to leave the premises. She was not detained in any manner.
14. The CCTV footage is a testament that the Petitioner was not detained at any time or at all. The mere fact that she was accompanied by security personnel does not amount to detention.
15. The Respondent states that is surprising that the Petitioner can equate a standard clearance process to a violation of human rights. Another employee who was dismissed during the same period cleared with the Respondent without dispute as to the clearance process.
16. Lastly, on the 15<sup>th</sup> of September 2020, the Petitioner attended the Offices of the Respondent in the presence of her counsel and duly cleared.

### **Petitioner's Submissions**

17. The Petitioner's Counsel identified four issues for determination, thus; Whether there was false imprisonment by the Respondent to the Petitioner; whether the Petitioner suffered Psychiatric injury resulting from the Respondent's conduct; whether the Respondent's conduct amounted to Discrimination against the Petitioner under Article 27; and what is the quantum payable?
18. Counsel submitted that false imprisonment occurs when one is confined or restrained at a place they do not desire to be in. This is what happened in the instant matter against the petitioner. For a party to



succeed in his or her Claim for false imprisonment, a couple of elements as outlined by Harper & James, in their book, *The Law of Torts*, 3<sup>rd</sup> Edition at page 226, must be established. It must be demonstrated that; there was detention; the detention was forceful; the detention was total i.e. the restraint was total rather than a mere obstruction of the right to go where the party pleases; the detention was for an appreciable time, however short; and it was unlawful and against the party's will. The material placed before this court establishes all the ingredients. To further buttress the submission, Counsel placed reliance on the of *Daniel Waweru Njoroge & 17 others vs Attorney General* [2015] eKLR and *Andrew Mulika Kithusi vs Beatrice Nthambi Muya & 3 Others* [2020] eKLR.

19. On the second proposed issue, Counsel for the Petitioner submitted that Article 29 (a) and (d) assures every person the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; and the right not to be subjected to torture in any manner, whether physical or psychological. "Torture" is defined under Article 1 of the Convention against Torture as:

"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

20. It is the Petitioner's submission that the refusal to allow her to leave the Respondent's premises, despite pleading with the Respondent's officers that she needed to take her medication, greatly distressed her as she was not well and needed medication. This amounted to emotional and psychological torture. The exposure to ridicule, odium and contempt in the eyes of her peers and the diminution of her reputation, also added to her emotional and psychological torture. To support this point, the Respondent placed reliance on the case of *MKK vs CWN* [2016] eKLR.
21. Submitting that the Petitioner was discriminated against, her Counsel submitted that there was no legitimate reason for her differential treatment. She had a staff identity card and yet she had to be handed a visitor's pass and confined to the Boardroom. That differential treatment amounts to discrimination and is contrary to the provisions of Article 27 of the Constitution, reliance has been placed on the decision in the case of *Nyarangi & Others vs Attorney General* [2008] eKLR 688

### **Issues for Determination**

22. I have reviewed the petition herein, the response thereto by the Respondent and the submissions by Counsel for the Petitioner, and the following issues emerge for determination;
- a. Whether this Court has jurisdiction to entertain this Petition;
  - b. Whether the Respondent unlawfully detained the Petitioner and violated her rights as claimed;
  - c. Whether the Court should grant the prayers sought by the Petitioner.

### **Whether this Court has jurisdiction to entertain this Petition;**

23. The Respondent has challenged this Court's jurisdiction to entertain this matter. It argues that at the time of institution of this petition, there was no employer-employee relationship existing between the



Petitioner and the Respondent. The petition should have approached the High Court. Further, the Petition doesn't meet the threshold of a properly crafted and presented petition as the Petitioner has not pleaded with a reasonable degree of precision, the violation of her Constitutional rights by the Respondent, and there is in existence another suit before this Court where the Petitioner seeks damages for the violation of her constitutional rights.

24. This Court appreciates the legal duty upon it to deal with jurisdictional issues from the onset whenever they are raised before further delving into interrogating the controversy presented before it. This is on the premise that jurisdiction is everything and without it, the Court has to down its tools and proceed no further.

25. The Court in the case of RC v KKR [2021] eKLR in paragraph 26 stated as follows: -

“26. Any challenge on jurisdiction must be addressed at the onset. This Court has in the recent past, in Petition No. E282 of 2020 David Ndiu and & 4 Others - vs- The Attorney General & Others (unreported), discussed the legal concept of jurisdiction at length. This is what the Court stated: -

24. Jurisdiction is defined in Halsbury's Laws of England (4th Ed.) Vol. 9 as "...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for decision.". Black's Law Dictionary, 9th Edition, defines jurisdiction as the Court's power to entertain, hear and determine a dispute before it.

25. In Words and Phrases Legally Defined Vol. 3, John Beecroft Saunders defines jurisdiction as follows: -

By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics.... Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

26. That, jurisdiction is so central in judicial proceedings, is a well settled principle in law. A Court acting without jurisdiction is acting in vain. All it engages in is nullity. Nyarangi, JA, in Owners



of Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Limited [1989]  
KLR 1 expressed himself as follows on the issue of jurisdiction: -

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings

28. On jurisdictional issue raised poses one vital question, can an employee who is aggrieved by acts of an employer post termination of an employer-employee relationship, challenge the acts by initiating proceedings before the Employment and Labour Relations Court for redress? In my view, no, it will be an exercise in futility as the Court will not have jurisdiction to entertain the same.

29. Section 12(1) of the Employment and Labour Relations Court Act provides the jurisdiction of this Court as follows: -

“(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including —

- (a) disputes relating to or arising out of employment between an employer and an employee;
- (b) disputes between an employer and a trade union;
- (c) disputes between an employers' organisation and a trade unions organisation;
- (d) disputes between trade unions;
- (e) disputes between employer organizations;
- (f) disputes between an employers' organisation and a trade union;
- (g) disputes between a trade union and a member thereof;
- (h) disputes between an employer's organisation or a federation and a member thereof;
- (i) disputes concerning the registration and election of trade union officials; and
- (j) disputes relating to the registration and enforcement of collective agreements.”

29. Undeniably, and it is settled law now, that this court has jurisdiction hear and determine Constitutional Petitions, or matters relating to Constitutional violations of the rights of any party. Such alleged violations must arise from an employer-employee relationship or must be ancillary or incidental to the matters contained in Section 12 aforesaid. On this, the Court of Appeal held in the case of Public



“44. Our interpretation of the provisions of section 12 of the Employment and Labour Relations Court Act is that the Employment and Labour Relations Court has jurisdiction to entertain any dispute or any contemplated dispute under section 12(1) but the dispute between the parties must be related to their employment and/or touching on labour relations. This is therefore to mean that the jurisdiction of the Employment and Labour Relations Court is not limited to the determination of disputes arising out of a contract of employment between an employee and an employer, the court can also determine any constitutional violations of the rights of any party arising from an employee-employer relationship. However, for the court to entertain a petition premised on the breach of a party’s fundamental rights under the Constitution, the alleged constitutional breach must be ancillary and incidental to the matters contemplated under section 12 of the Act. Our view is fortified by the preamble to the Employment and Labour Relations Court Act, 2011 which provides that it is:

“An Act of Parliament to establish the Employment and Labour Relations Court to hear and determine disputes relating to employment and labour relations and for connected purposes...

51. The Constitution appreciates that there are matters within the exclusive jurisdiction of the High Court on the one hand and those reserved and/or falling within the jurisdiction of the courts contemplated in article 162(2) on the other hand, notwithstanding the fact that the latter courts enjoy the same status as the High Court. This court in *Karisa Chengo & 2 others v Republic* [2015] eKLR held thus:“...The jurisdiction of the High Court as established under article 165 of the Constitution is limited in two fronts. First, it shall not exercise jurisdiction on matters reserved for the Supreme Court and matters falling within the jurisdiction of the two courts contemplated in article 162(2). It is therefore clear that the High Court no longer had the original and unlimited jurisdiction in all matters as it used to have under the repealed Constitution. It cannot deal with matters set out under section 12 of the ELRC Act and section 13 of the ELC Act. Conversely, the courts contemplated in article 162(2) of the Constitution cannot deal with matters reserved for the High Court.”
52. This court in the *Karisa Chengo* case (*supra*) held that status of a court is not synonymous to jurisdiction. In this context therefore, although the Employment and Labour Relations Court exercises the same power as the High Court in performance of its judicial functions, it has specialized jurisdiction and is not the High Court. It is important to point out that the finding of this court in the *Karisa Chengo* case was upheld by the Supreme Court.
53. Therefore, for want of an employee-employer relationship, we find and hold that the Employment and Labour Relations Court arrogated itself jurisdiction



that exceeded that conferred upon it by law, which renders its decision a nullity ab initio.”

29. In *The Clerk, Nakuru County Assembly & 2 Others vs Kenneth Odongo & Others* (Civil Appeal No. E136 of 2022 consolidated with Civil Appeal E137 of 2022 (Unreported)), the Court reiterated the above sentiments and held: -

“Having found that there was no employee/employer relationship between the appellants and the 1<sup>st</sup> Respondent, nor an employment and labour relations dispute as contemplated by Article 162 (2) of the Constitution or Section 12 of the Employment and Labour Relations Court Act, it is our view that the Court fell into error when it proceeded to assume and arrogate unto itself a jurisdiction that it did not have.”

29. I note that at the time of the alleged illegal aggrieving actions of the Respondent, the Petitioner was at the Respondent’s premises to complete the clearance process, following termination of her employment. In fact, under the sub-heading, “The Facts and Grounds Relied Upon” under paragraph 2, the Petitioner makes a terse statement that her employment was unceremoniously terminated on 13th May 2020. There was no employer -employee relationship after this date. The petition was initiated, and is at a wrong forum. It is hereby dismissed.

29. Having held as I have, it shall be imprudent to expend the precious judicial time in considering the other sub-issues identified for determination under the jurisdictional aspect, and the issues for other issues for determination in the petition.

29. Orders Accordingly.

**READ, DELIVERED AND SIGNED THIS 28<sup>th</sup> DAY OF JUNE, 2024.**

**OCHARO, KEBIRA.**

**JUDGE**

In the presence of:

Mr. Onganya for the Claimant

Mr. Wesonga holding brief for Mr. Kahura for the Respondent

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**OCHARO KEBIRA**

**JUDGE**

