



Angule v Innovation for Poverty Action (Kenya) "IPA (K)" (Petition E082 of 2024) [2024] KEELRC 2682 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEELRC 2682 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E082 OF 2024**

B ONGAYA, J

OCTOBER 30, 2024

**IN THE MATTER OF ALLEGED UNFAIR TERMINATION OF
EMPLOYMENT AND CONSTRUCTIVE DISMISSAL OF AGNES
LIAKONERA ANGULE, CONTRARY TO THE LAWS OF KENYA;**

**IN THE MATTER OF ALLEGED INFRACTION OF ARTICLES 27,
41(1), 41(2) AND 55 OF THE CONSTITUTION OF KENYA 2010;**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS AND ENFORCEMENT OF THE
CONSTITUTION) PRACTICE AND PROCEDURE RULES (LN 117/2013)**

BETWEEN

AGNES LIAKONERA ANGULE PETITIONER

AND

INNOVATION FOR POVERTY ACTION (KENYA) "IPA (K)" RESPONDENT

RULING

1. The respondent filed the Notice of Preliminary Objection dated 03.07.2024 through S.S Musembi & Company Advocates. It objects the hearing and determination of the petition dated 29.05.2024 by this Honourable Court and seeks to have it struck out for reasons that:
 - i. The petition is incompetent, misconceived, has no merit, is frivolous, bad in law and ought to be dismissed with costs.
 - ii. The petition fails to raise a genuine constitutional issue but instead attempts to reframe a contractual dispute between an employer and employee under the guise of constitutional rights.



- iii. The petition offends the doctrine of constitutional avoidance by seeking to apply constitutional principles to matters fully addressed by statute.
 - iv. The petition by the petitioner herein contains purported constitutional claims which are a disguised assertion of breach of employment contract, merely couched, clothed and framed in the 'Bill of Rights Language'.
 - v. The law states that a Court will not entertain a constitutional issue where there exists a remedy under some other legislative provision.
 - vi. The issues raised and reliefs sought by the petitioner are subject to the legislative provisions of the *Employment Act*.
 - vii. Pursuant to Gazette Notice No. 6024 (Vol CXX No. 74) dated 22 June 2018, this Honourable Court is mandated to adjudicate matters where an employee's gross monthly pay exceeds Kshs. 80,000/=.
2. The respondent/applicant filed its written submissions dated 01.09.2024 while the petitioner filed and relies on her written submissions dated 01.10.2024 and rebuttal submissions dated 03.10.2024. The Court has considered the parties' respective cases and returns as follows:
- a. The respondent submits that the petition is trapped by the doctrine of constitutional avoidance. It is urged that the petition raise issues about a contract of employment between the parties and which can be satisfactorily pursued in an ordinary claim as envisaged in the *Employment Act*, 2007. For the petitioner it is submitted that he claims infraction of his rights under Articles 27, 41(1), 41 (2) and 55 of the *Constitution*. Whether the petitioner has a case beyond the mere contract of service is question to be determined by looking at the pleaded case. The petitioner has specifically pleaded the particulars of alleged infraction of the cited provisions of the Bill of Rights. The allegations go beyond breach of the contract of service. The petitioner has alleged unlawful and illegal expropriation of her intellectual property without just compensation. She has also alleged prejudicial preferential treatment and discrimination on the basis of sex, colour, age, disability, culture, language, dress, marital status, race and social origin. She alleges damage to her professional reputation; delayed undertaking of further studies; and, respondent's actions that have left her without a livelihood. She has prayed for declarations that the respondent has violated her rights under Articles 27 and 41 of the *Constitution*. While further claims have been made on contract such as unfair termination and claims for overtime, leave and withholding of other benefits, it appears from the stated pleadings that the petitioner has by her pleadings set out a proper case disclosing a cause of action for alleged violation of the cited provisions of the Bill of Rights. The court therefore returns that on the face of the pleadings, a proper cause of action for violation of rights has been pleaded and until the petition is heard, it passes the test and is not trapped by the doctrine of constitutional avoidance.
 - b. While the petitioner earns less than Kshs.80, 000.00 per month and the case would in that respect be filed for hearing and determination before the Magistrate's Court as per Gazette Notice No. 6024 (Vol.CXX No. 74) of 22.06.2018, it appears to the Court that the petitioner was entitled to move the Court in view of the alleged violation of rights and fundamental



freedoms. The petitioner has cited section 8(3) of the Magistrates Court Act, Cap 10 which provides,

“Nothing in this Act may be construed as conferring jurisdiction on a Magistrates Court to hear and determine claims for compensation for loss or damage suffered in consequence of a violation, infringement, denial of a right or fundamental freedom in the Bill of Rights.”

The Court finds that the section applies and the petitioner could make a claim for infraction of a fundamental freedom or right only as claimed in the instant petition.

c. In view of the findings, the preliminary objection will collapse with costs in the cause.

In conclusion, the notice of preliminary objection dated 18.10.2024 is dismissed with costs in the cause and parties to take directions for further steps towards expeditious determination of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 30TH OCTOBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

