



Juma & 4 others (on their Behalf and on Behalf of 285 Others Casual Labourers at the National Police Service) v National Police Service Commission & 6 others (Constitutional Petition E148 of 2023) [2024] KEELRC 2800 (KLR) (14 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 2800 (KLR)

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

HS WASILWA & HS WASILWA, JJ

NOVEMBER 14, 2024

**IN THE MATTER OF ARTICLE 2 (1),3,10, 19,20, 21, 22 (1) AND (2), 23
(1), 24 (1), 258 AND 259 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE VIOLATION OF THE FUNDAMENTAL RIGHTS OF
FAIR LABOUR PRACTICES UNDER ARTICLE 41 OF THE CONSTITUTION**

AND

**IN THE MATTER OF THE VIOLATION OF ARTICLE 10 ON THE
NATIONAL VALUES AND PRINCIPLES OF ARTICLES 10 AND 232 OF
THE CONSTITUTION ON THE PRINCIPLES OF PUBLIC SERVICE**

AND

**IN THE MATTER OF VIOLATION OF ARTICLE 47 OF THE
CONSTITUTION ON FAIR ADMINISTRATIVE ACTION**

AND

**IN THE MATTER OF VIOLATION OF ARTICLE 27 OF
THE CONSTITUTION ON NON- DISCRIMINATION**

BETWEEN

**ELIZABETH AKINYI JUMA 1ST PETITIONER
EVERLYNE CHEBET KINJO LENA 2ND PETITIONER
MAWIA MWANIKI 3RD PETITIONER
JOAN MUKUHU NYOIKE 4TH PETITIONER
MARK WANJAMA MUNIU 5TH PETITIONER**



**ON THEIR BEHALF AND ON BEHALF OF 285 OTHERS 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**
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

RULING

1. The Petitioners through a petition dated 26th September 2024 sought for the following orders: -
 - i. A declaration that the 3rd Respondent violated the Petitioners' rights to fair labour practices as enshrined under Article 41 of *the Constitution* of Kenya.
 - ii. 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.
 - iii. 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 Article 41 of *the Constitution* as read together with Section 37 of the *Employment Act*.
 - iv. 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*.
 - v. 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.
2. Elizabeth Akinyi Juma swore an affidavit dated 26th September 2024 in support. She stated that the Principal Secretary of the Ministry of Interior and Coordination of Government via a letter dated the 6th of August 2018 approved the employment of the civilian casual staff in the National Police Service. Pursuant to the said letter the National Police Service commenced the employment of the Civilian casual staff, which program has been running for about 6 years. The Casual Civilian workers as absorbed from 2018 continuously served the 3rd Respondent until 2024 making them permanent and pensionable employees of the 3rd Respondent by law, and that what was pending was formal issuance of letters of appointment and completing their absorption into the system. The 1st Respondent unlawfully recruited 1070 fresh/new civilian staff in violation of due process and it intended to proceed and deploy the said uncompetitively recruited employees from Monday 4th of October, 2024 unless



restrained by this Honorable Court. She knows that the 3rd Respondent advertised for the said 1070 vacant positions vide a Notice on the Nation Newspaper dated the 6th of June 2023 demanding that the applicants do submit their applications by close of business 20th of June 2023.

3. Elizabeth Akinyi Juma further swore that the entire recruitment process has been shrouded in mystery and that the Secretary Administration/ Accounting Officer, the National Police Service Bernice S. Lemedeket, EBS vide a letter dated the 4th July 2024 wrote to the Deputy Inspector General of Police 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. That the National Police Service, the National Police Service Commission advertised for 1070 vacant positions vide a Notice on the Nation Newspaper on 6th of June 2023. The Notice required prospective applicants to submit their applications by close of business 20th of June 2023.
4. She swore that the recruitment process as purportedly conducted by the National Police Service Commission is unconstitutional as it was not competitive as the full list of the casual labourers was not brought to the attention of the National Police Service Commission during the recruitment process and process was not competitive and that it directly discriminated against the petitioners and 280 other civilian casual employees whose education, experience and skills acquired during their service period with the National Police Service as Civilian Casual Staff has been unreasonably and unjustifiably ignored by the 1st Respondent.

The 1st and 2nd Respondent's Preliminary Objection

5. The 1st and 2nd Respondents filed a preliminary objection dated 8th October 2024 with the following grounds: -
 - i. That the Petition is grounded on breach of S. 37 and S. 45 of the Employment Act 2007 which Act does not apply to employment of members of the police Service under S. 3 (2) (b) of the Employment Act, 2007 who include civilians in the Service.
 - ii. That being a class Petition, the Petition is in breach of R. 23 (2) of the Employment and Labour Relations Court Procedure Rules 2024 which requires that the Petition be supported by letters of authority signed by all the Petitioners.
 - iii. That The Petition filed by the five Petitioners for and on behalf of 285 other casual laborer at the National Police Service is in breach of R. 23 (3) of the Employment and Labour Relations Court Procedure Rules 2024 which requires the Petition by accompanied by a schedule of the names of all the other Claimants, their addresses, descriptions and details of wages due or particulars of any other breaches and reliefs sought by each Claimants.
6. The 1st and 2nd Respondents filed a Replying Affidavit through Peter Leley (the Chief Executive Officer of the 1st Respondent) dated 8th October 2024. Peter Leley stated as follows: -
 - i. The Petitioners have allegedly filed this suit on behalf of 285 other individuals whose particulars have not been disclosed neither written authorization provided as is required of representative claims brought before this court. The omission not only undermines the legitimacy of their claim but also renders the petition incurably defective, malicious and lacking in good faith. The duties of the Deputy Inspector General 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 unprocedural.

- ii. The continued engagement of casual workers by the Principal Secretary of the Ministry of Interior and Coordination of National Government and the Deputy Inspector General without the knowledge of the 1st Respondent was a usurpation of the authority vested in the 1st Respondent under Article 246(3)(a) of *the Constitution*.
- iii. In June, 2024 the 1st Respondent interviewed shortlisted candidates for 1,045 positions. This excluded 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 conducted in December 2023 and the shortlisted candidates for the 1,045 positions were duly notified of the date and schedule for the interviews conducted virtually between 25th July, 2024 and 5th August, 2024 due to the volatile situation in the country at the time that impeded movement within and outside Nairobi where the 1st Respondent is situate. In accordance with regulations the 1045 successful candidates were notified of their appointment vide communication from the 2nd Respondent and were subsequently deployed by the 3rd Respondent to the respective services on 1st October 2024.
- iv. The averments by the Petitioners that the recruitment exercise was not competitive, opaque, secret, fashioned and convoluted in a manner to prejudice and lock out the Petitioners, 280 other civilians and casual employees are baseless, as the interviews were done in strict adherence to Article 10, Article 232 of *the Constitution*, governing statutes and regulations. A total of 273 casual civilian staff applied for the advertised vacancies 90 were shortlisted and 83 appointed and deployed.
- v. The 1st Respondent extended invitation to interested and eligible persons and could only select qualified applicants. Having not applied for the advertised vacancies, the petitioners, cannot reasonably expect placement by the 1st Respondent. Whereas the Petitioners allege promises by the 1st and 2nd Respondent to formally absorb them into the service on permanent and pensionable terms, no evidence has been tendered to prove the veracity of the allegations. Additionally, the Petitioners expectation of absorption into the police service on account of a lengthy service without being subjected to a suitability interview is an illegitimate and misconceived expectation calculated at rendering the 1st and 2nd Respondents actions illegal and unconstitutional. This petition is an expression of the Petitioners dissatisfaction with the 1st and 2nd Respondent's refusal to be compromised at the expense of other legitimately qualified civilians.
- vi. The Petitioners have sought declaratory orders against the 1st and 2nd Respondent on account of their misconceived entitlement to permanent and pensionable terms of service. The mere fact that the Petitioners were engaged as casual staff for a period of six years does not earn them an automatic right of conversion of their engagement to permanent and pensionable terms. Further the Petitioners have failed to specifically articulate or demonstrate to the court how the 1st and 2nd Respondents have breached or violated their constitutional rights, as alleged in the Petition. They have not provided any clear or substantive evidence showing how their rights, as protected under *the Constitution*, have been infringed upon by the actions or omissions of the 1st and 2nd Respondents, thus breaching the principle in Anarita Karimi Njeru case that requires Constitutional Petitions to be pleaded with reasonable precision.



The Petitioner's Submission on the Preliminary Objection

7. The Petitioner filed her response dated 29th October 2024 to the Respondents' Preliminary Objection stated as follows: -

- i. The Preliminary Objection is totally misconceived and bad in law and should be dismissed with costs to the Petitioners. The Petitioner case is not an Employment Claim, but a Constitutional Petition on violation of human rights. The Petition is anchored on the Constitutional Provisions and not the statute. The caption of the case clearly shows the provisions under which this court is moved and the Articles of *the Constitution* that have been violated. There is no mention of any section of the *Employment Act* in the caption or in the Legal Foundation of the Petition.
- ii. The Respondents are bound by *the Constitution*, and *the Constitution* applies to them. Hence, they must avail themselves before this court to be accountable to *the Constitution* and the People of Kenya. In this regard, Articles 2 (1), Article 3, Article 19(1) and (2), Article 21, Article 22 (1), Article 258 (1), Article 22 (2), Article 258 (2) and Article 23 of *the Constitution* are self-explanatory. Further, there petition raises serious issues of constitutional violations. They are issues that require this honourable court to consider constitutional rights and values. The Petition requires the interpretation of a constitution rather than that of the *Employment Act*.
- iii. With respect to the jurisdiction of the Employment and Labour Relations Court to hear and determine claims relating to violations of the rights in the Bill of Rights, the court in United States International University (USIU) vs Attorney General, [2012] eKLR went on to state that:

“(41) Labour and employment rights are part of the Bill of Rights and are protected under Article 41 which is within the province of the Industrial Court. To exclude the jurisdiction of the Industrial Court from dealing with any other rights and fundamental freedoms howsoever arising from the relationships defined in section 12 of the Industrial Court Act, 2011 or to interpret *the Constitution* would lead to a situation where there is parallel jurisdiction between the High Court and the Industrial Court. This would give rise to forum shopping thereby undermining a stable and consistent application of employment and labour law. Litigants and ingenious lawyers would contrive causes of action designed to remove them from the scope of the Industrial Court. Such a situation would lead to diminishing the status of the Industrial Court and recurrence of the situation obtaining before the establishment of the current Industrial Court.

(43) The intention to provide for a specialist court is further underpinned by the provisions of Article 165(6) which specifically prohibits the High Court from exercising supervisory jurisdiction over superior courts. To accept a position where the Industrial Court lacks jurisdiction to deal with constitutional matters arising within matters its competence would undermine the status of the court. Reference of a constitutional matter to the High Court for determination or permitting the filing of constitutional matters incidental to labour relations matters would lead to the High Court supervising a superior



court. Ordinarily where the High Court exercises jurisdiction to interpret *the Constitution* or enforce fundamental rights, its decisions even where declaratory in nature will require the court to follow or observe the direction. This would mean that the High Court would be supervising the Industrial Court which is prohibited by Article 165(6).”(Emphasis added).

- iv. Ground 2 and 3 of the Preliminary Objection do not meet the test of a competent objection. The said grounds are disguised as points of law, but they are an invitation to this court to analyze matters of facts and evidence in the Petition. It now a settled principle of law that a preliminary objection was in the nature of what used to be a demurrer. It raised a pure point of law which was argued on the assumption that all the facts pleaded by the other side were correct. It could not be raised if any fact had to be ascertained or what was sought was the exercise of judicial discretion. A preliminary objection could only be properly taken where what was involved was a pure point of law, but that where there was any issue involving the clash of facts, the production of evidence and assessment of testimony it should not be treated as a preliminary point. Rather, it became a matter of substantive adjudication of the litigations on merits with evidence adduced, facts shifted, testimony weighed, witnesses called, examined and cross examined, and a finding off act then made by the court.
- v. On the issues of the Petitioners as raised in ground 2 and 3 of the Objection, the parties have expressly brought this Petition on their behalf and on behalf other Petitioners. The list containing those other Petitioners is also attached to the Petition and the Application. This is not a point of law. Article 22 (1) as read together with Article 258 (1) of *the Constitution* gives every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or threatened with infringement.
- vi. Article 22 (2) and Article 258 (2) of *the Constitution* provides that in addition to a person acting on their own interest, court proceedings under clause 1 may be instituted by: a person acting on behalf of another person who cannot act in their own name; a person acting as a member of, or in the interest of a group or class of persons; a person acting in the public interest; or an association acting in the interest of one or more of its members. Lastly the Petitioner prayed that the Court do find that the Notice of Preliminary Objection Lacks Merit and the same be dismissed with costs.

The 3rd, 4th and 5th Respondent’s Case

8. The 3rd, 4th and 5th Respondents through their counsel filed submissions dated 22nd October 2024 and stated as follows: -
 - i. The 3rd, 4th and 5th Respondents shall support on the 1st and 2nd Respondents’ Preliminary Objection dated 8th October, 2024 and in prosecuting it the 3rd to 5th Respondents shall rely on the written submissions and authorities. The 1st and 2nd Respondents opposed the Petition and application vide Preliminary Objection dated 8th October, 2024 arguing that the Petition is barred by the provisions of Section 37 and 45 of the *Employment Act*, 2007 and ought to be dismissed.
 - ii. Two issues were raised namely whether the Petition is barred by the provisions of Section 3(2) (b) of the *Employment Act*, 2007 and Whether the Petition is fatally defective in the light of the



breach of Rule 23(2) and Rule (3) of the Employment and Labour Relations Court Procedure Rules, 2024.

- iii. The 3rd, 4th and 5th Respondents argued that the import of the Preliminary Objection is that the Petitioners' claim being members of the National Police Service are not subject of application of the Employment Act, 2007 in the light of the provisions of Section 3(2)(b) of the Employment Act, 2007. These provisions find constitutional basis in Article 24 of the Constitution of Kenya, 2010 particularly Sub –article 5(d) which limits the application of labour rights to the persons employed under the National Police Service. The Petitioners cannot therefore move the court in the light of the provisions of Section 3(2)(b) of the Employment Act, 2007. The court's jurisdiction is limited and ought not to be exercised in favour of the Petitioners. The jurisdiction of the court is therefore ousted by the said provision.
- iv. The 3rd, 4th and 5th Respondents cited Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] eKLR in which the Supreme Court held as follows...

“A court's jurisdiction flows from either the constitution or legislation or both.

Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law. We agree with counsel for the first respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, it not one mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings.”

They further quoted Owners of Motor Vessel 'Lillian S' v. Caltex Oil (Kenya) Limited [1989] KLR 1, which bears the following passage (Nyarangi, JA at p.14):

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a Court has no power to make one more step.” Still on jurisdiction they quoted Justice Dr., Jacob Gakeri in Kivevenze v Principal Secretary Ministry of Defence & 2 others (Cause 1921 of 2017) [2023] KEELRC 2470 (KLR) (16 October 2023) (Judgment) where he held as follows:

“The foregoing is further decipherable from the submissions and reliefs sought. Since the action herein is grounded on the provisions of the Employment Act, 2007, the court is satisfied that it has no jurisdiction to hear and determine the suit and proceeds to down its tools as by law required.”

- v. Lastly, the 3rd, 4th and 5th Respondents cited Benard Murage v Fine Serve Africa Limited & 3 others [2015] eKLR the in which the Court stated as follows “Not each and every violation of the law must be raised before the High Court as a constitutional issue. Where there exists an alternative remedy through statutory law, then it is desirable that such a statutory remedy should be pursued first,”

The 3rd, 4th and 5th Respondent's Affidavit

9. The 3rd, 4th and 5th Respondents filed a replying affidavit dated 8th October 2024, sworn by Bernice Sialal Lemedeket and stated as follows: -



- i. That she is the Secretary Administration and the Accounting Officer for the 3rd Respondent, conversant with the facts of this matter and therefore competent to swear this affidavit. She has the authority of the 3rd and 4th Respondents to make and swear this Affidavit on their behalf in response to the Notice of Motion Application and Petition both dated 26th September, 2024.
- ii. That she has read and understood the contents of the Notice of Motion Application, Petition and the Supporting Affidavit dated 26th September 2024 together with the annexures thereto and in response wish to state as follows: -

Whether the injunctive orders sought ought to be granted?

- a. An injunctive order cannot issue as requested in the Notice of Motion of Application dated 26th September, 2024 as the same is anchored in vacuum in that a similar prayer has not been sought in the Petition. Injunctive orders sought cannot issue to restrain deployment of the employees at this point considering that about thirty-nine (39) of the said employees were deployed on 6th March, 2024 and whereas One Thousand and forty-five (1,045) were deployed on 1st October, 2024 and consequently the issues raised in the Application and the Supporting Affidavit sworn 26th September, 2024 were overtaken by events.
 - b. Injunctive orders sought will serve no purpose as the Petitioners in the Petition dated 26th September, 2024 have not sought an order nullifying the appointment of the 1070 Civilian employees employed and deployed on 26th March, 2024 and 1st October, 2024 respectively; grant of injunctive orders sought will substantially prejudice the general public who will be denied a constitutional right to service delivery and will also amount to condemning the 1070 Civilian employees unheard contrary to *the Constitution* of Kenya, 2010 in that they have not been enjoined as interested parties.
 - c. Injunctive orders sought will not enhance administration of justice as there is no request for injunctive orders pending hearing of the Petition and even if the order is granted pending the hearing of the application it will not be of any benefit to the applicant and the court in progressing the matter and the Notice of Motion Application which was filed after inordinate delay considering that the recruitment process began pursuant to the Advertisement of 6th June, 2023.
 - d. Injunctive order is an equitable remedy only available to a deserving party who approaches the court with clean hands. The Petitioners have failed to disclose to the Honourable court that all of them participated in the recruitment process and indeed more than ninety (90) of the casuals were employed on both permanent and pensionable basis on the premise of their academic qualification.
10. That in respect to the Petition dated 26th September, 2024 and the orders sought therein; she stated as follows and as advised by their Advocates on record: -
- a. The Petition as drafted does not disclose with specificity and preciseness the provisions of *the Constitution* of Kenya, 2010 alleged to have been infringed and the manner of infringement on the part of the 3rd, 4th and 5th Respondents and consequently denying us an opportunity



to respond adequately contrary to the tenets set out Annarita Karimi Njeru-vs- Republic (1976-1980) and Mumo Matemu -vs- Trusted Society of Human Rights Alliance & Another (2013) and as presently constituted does not disclose a case for constitutional violation and indeed the 3rd, 4th and 5th Respondents are left to second-guess as to what to respond to in the said petition.

- b. The Petitioners have not pleaded with precision the conduct, actions or omissions on the part of the 3rd, 4th and 5th Respondents that are in violations with the provisions of the Constitution of Kenya, 2010 to warrant grant of the orders sought.
11. Bernice Sialal Lemedeket stated that the process leading to the advertisement, application, shortlisting, recruitment and employment of the 1070 employees was conducted procedurally, legally and competitively in line with the Constitutional principles set out in Article 10, 41 and 232 of the Constitution of Kenya, 2010 as further amplified by the National Police Service Commission Act, 2011 and National Police Service Act, 2011 and the attendant regulations enacted in line with the said statutes. Prior to the year 2022, the Principal Secretary, Ministry of Interior and National Administration was the Accounting Officer for among others National Police Service mandated to authorize engagement of casuals among others. That during this time, the majority of Civilian Staff at the National Police Service were employees of the Public Service Commission deployed to National Police Service on need basis. There was a delinking of staff on 15th October, 2019 between the Public Service Commission and the National Police Service Commission with all the deployed PSC staff within NPS being transferred to National Police Service Commission and the NPSC was to proceed with any further recruitment, engagement of employees including casuals for National Police Service thereafter.
 12. Bernice Sialal Lemedeket stated that in the year 2022, she was appointed as the Accounting Officer and the Principal Administrative Secretary for the National Police Service taking over the mandate of the Principal Secretary, Ministry of Interior and National Administration as the Accounting Officer of the National Police Service and the record at the National Police Service shows that on 27th October, 2015, the staff establishment for the civilian staff stood at Eleven thousand Seven Hundred and forty-four (11, 744) employees.
 13. She further stated that she sought an approval to recruit 1,070 Civilian staff to address the existing gap in human resource in the National Police Service and following approval by the National Police Service Commission to fill the said vacancies, an advert was issued dated 6th June, 2023 in Daily Nation Newspaper requesting qualified individuals including the Petitioners to submit their applications by close of business on 20th June, 2023. The 1st Respondent advertised for the vacant positions with approval from the National Treasury, which specified that this process should take effect in from 30th May, 2023.
 14. Bernice Sialal Lemedeket stated that contrary to the Petitioners' allegations that the process leading to the employment of the 1070 Civilian employees was opaque, secret and unclear: -
 - a. The recruitment process by the 1st Respondent was constitutional, lawful, transparent, open to all, accountable, participatory, equitable; efficient and economic use of resources;
 - b. The process leading to recruitment of the 1070 civilian employees was responsive, prompt, effective, impartial and equitable in that members of the public and the Petitioners were involved and participated and indeed 91 of the members of the Petitioners were employed;
 - c. The process leading to the employment was conducted in accordance with the provisions of Article 10, 27, 35, 41, 47 and 232 of the Constitution of Kenya, 2010 and consequently the



provisions of Constitution of Kenya, 2010 were fully complied with and therefore the process is not assailable in the manner pursued to by the Petitioners.

15. She stated that that the recruitment process for civilian staff was conducted lawfully, procedurally and competitively and thus the process met the constitutional threshold and indeed all shortlisted applicants including some of the members of the Petitioners were given equal opportunity. The allegations that the process was unconstitutional is unfounded and baseless. After the 1st Respondent completed the recruitment process of the new staff, some of whom were to replace the work done by the casuals, she proceeded to terminate any engagement of Casual staff with effect from 5th July, 2024 pending the deployment of the new staff by the 1st Respondent and that the disengagement of Casual staff at the National Police Service was done in line with the current ongoing police reforms to ensure qualified staff are properly placed by the 1st Respondent, the employer and she paid them one-month wages in lieu of notice including the Petitioners herein as per the July, 2024 wages.
16. Bernice Sialal Lemedeket implored upon the court to find that the Notice of Motion Application and the Petition dated 26th September, 2024 is not merited and be dismissed.
17. I have examined all the averments and submissions of the parties herein. The respondent applicants have contended that the petition is wrongly filed before this court because the Employment Act does not apply to employees of the Police Service by virtue of the provisions of section 3(2). of the Employment Act which states as follows:
This Act shall not apply to—
 - (a) the Kenya Defence Forces or the reserve as respectively defined in the Kenya Defence Forces Act, 2012;
 - (b) the Kenya Police, the Kenya Prisons Service or the Administration Police Force;
 - (b) the Kenya Coast Guard Service;
 - (c) the National Youth Service; and
 - (d) an employer and the employer's dependants where the dependants are the only employees in a family undertaking
18. That notwithstanding, it is worth noting that what is before court is a constitutional petition grounded upon the Constitution of Kenya 2010 as demonstrated in the petition filed hereon.
19. The petitioner respondent has filed this petition on the basis of what she says are her right under various articles of the Constitution.
20. Indeed it has already been decided by the High Court (USIU case) cited herein that labour rights are human rights and are therefore subject to interpretation by this court.
21. The respondents have also objected to this petition on the ground that certain factual documents such as affidavits have not been filed. The petitioner has denied any such omission. This court is being invited at this time to come and analyze whether the alleged pleadings have been filed or not which in my view goes outside the purview of a preliminary objection as held in the Mukisha Biscuits case.
22. Having stated as above, I find the preliminary objection raised has no merit. I dismiss it accordingly. Costs to the petitioner.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 14TH DAY OF NOVEMBER, 2024.



HELLEN WASILWA

JUDGE

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 15th March 2020 and subsequent directions of 21st 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.

HELLEN WASILWA

JUDGE

