



REPUBLIC OF KENYA



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Mwangi v Attorney General & another; Public Service Commission & 2 others (Interested Parties) (Employment and Labour Relations Petition E110 of 2024) [2024] KEELRC 13338 (KLR) (5 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13338 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E110 OF 2024

HS WASILWA, J

DECEMBER 5, 2024

**IN THE MATTER OF ARTICLES 1, 2, 3, 10, 19, 20, 21, 22,
23, 24, 41, 47, 48, 73, 127, 157, 159, 162 (A), 172, 232,
236, 258 & 259 OF THE CONSTITUTION OF KENYA;**

AND

**IN THE MATTER OF VIOLATION OF RIGHTS AND
FUNDAMENTAL FREEDOMS UNDER ARTICLES 24, 27, 28,
41 AND 47 OF THE CONSTITUTION OF KENYA;**

AND

**IN THE MATTER OF VIOLATION OF SECTIONS 3, 4, & 8 OF
THE FAIR ADMINISTRATIVE ACTIONS ACT, CAP 7L OF THE
LAWS OF KENYA;**

AND

**IN THE MATTER OF SECTION 80 OF THE PUBLIC SERVICE
ACT, CAP 185 OF THE LAWS OF KENYA;**

AND

PETITION NO E110JUDGMENTPAGE 1 OF 50
**IN THE MATTER OF THE JUDICIAL SERVICE ACT, CAP 8A;
AND PARLIAMENTARY SERVICE ACT, CAP 186 OF THE LAWS
OF KENYA;**

AND

IN THE MATTER OF THE PRESIDENTIAL DIRECTIVE ON



**MANDATORY RETIREMENT AGE FOR PUBLIC OFFICERS
SERVING ON PERMANENT AND PENSIONABLE TERMS
ISSUED ON 8TH JULY 2024;**

BETWEEN

CAROLINE WAMBUI MWANGI PETITIONER

AND

ATTORNEY GENERAL 1ST RESPONDENT

CHIEF OF STAFF & HEAD OF PUBLIC SERVICE 2ND RESPONDENT

AND

PUBLIC SERVICE COMMISSION INTERESTED PARTY

JUDICIAL SERVICE COMMISSION INTERESTED PARTY

PARLIAMENTARY SERVICE COMMISSION INTERESTED PARTY

JUDGMENT

1. The petition before me was filed by the Petitioner herein Caroline Wambui Mwangi against the Respondents: Attorney General and Chief of Staff & Head of Public Service and the Interested Parties herein the Public Service Commission, Judicial Service Commission and the Parliamentary Service Commission.
2. The Petitioner through a Petition dated 24th July, 2024 sought for the following reliefs: -
 - a. A declaration be made that the Presidential Directive dated 8th July 2024 on mandatory retirement age for public officers serving on permanent and pensionable term is ultra vires to the powers of His Excellency the President and a usurpation of the powers of the 1st, 2nd and 3rd Interested Parties and therefore unconstitutional, illegal, null and void.
 - b. A declaration be made that Presidential Directive dated 8th July 2024 on mandatory retirement age for public officers serving on permanent and pensionable term violates the doctrines of separation of powers and autonomy of arms of government.
 - c. A declaration be made that the publication of the Presidential Directive dated 8th July 2024 on mandatory retirement age for public officers serving on permanent and pensionable term violates Articles 10, 41, 47, 73, 127, 132, and 172 of the *constitution*.
 - d. An order of Certiorari be issued to bring into this Honourable court for purposes of quashing the Presidential Directive dated 8th July 2024 on mandatory retirement age for public officers serving on permanent and pensionable term.
 - e. An order of permanent and/or perpetual injunction be issued restraining the restraining the 1st Respondent and/ or any other person acting under his directive and/or authority from implementing, acting on and/or enforcing the Presidential directive on mandatory retirement age for public officers serving on permanent and pensionable terms dated 8th July, 2024 or any



other action, directive and/or decision arising therefrom whose effect is to interfere with the existing terms of engagement in public service.

- f. An order of mandatory injunction be issued directing the Respondents to reinstate or cause the reinstatement of all the public officers who were serving on post-retirement contracts back to their positions.
 - g. Any other order, relief or remedy that the Honourable Court deems fit and just to grant.
3. The Petitioner states that she is given locus standi to institute this suit by Articles 2, 3, 10, 19, 20, 21, 22, 23, 24, 27, 41, 47, 48, 73, 127, 159, 162, 172, 232, 236, 258, 259 as read together with sections 3, 4 and 8 of the *Fair Administrative Action Act*. Sections 80, 80(2), 83 and 84 of Public Service Act as well as Section 3 of the *Judicial Service Act* and section 11 of the *Parliamentary Service Commission Act*.

Facts of the case.

4. Sometime in early May 2024, the notorious controversial Finance Bill, 2024 (hereinafter, “the Bill”) was introduced in the National Assembly, passed through various stages of law making and ultimately passed by the National Assembly.
5. The Bill attracted countrywide debate and criticism particularly on account of various unpopular tax proposals which majority of Kenyans objected to as being oppressive. It was generally felt that this was not the best time for tax hikes as the overall cost of living had become unbearably hard for the majority of Kenyans majority of whom are unemployed and poor.
6. Following the nationwide demonstrations predominantly led by the youth fashioning themselves, and popularly christened as “Gen-Z’s”, on 26th June 2024, His Excellency the President declined to ascent to the Finance Bill and promised the Country that the condemned Finance Bill would subsequently be withdrawn.
7. In a Presidential Address of Friday, 5th July 2024, His Excellency the President announced a raft of austerity measures and other state interventions aimed at aligning the Government expenditures with the budgetary implications of the withdrawal of the Finance Bill, 2024. Paragraph 7(f) of the said address stated as follows;

“Henceforth, public servants who attain the retirement age of 60 years shall be required to immediately proceed on retirement, with no extensions to their tenure of service.”
8. The 2nd Respondent herein subsequently published a Presidential Directive dated 8th July 2024 reiterating the mandatory retirement age for public officers serving on permanent and pensionable terms. The Directive required all public officers who have attained the age of 60 years to proceed on retirement without fail with the exception of all cadres of all the staff whose terms are pegged on the existing schemes of service, being;
 - i. Academic staff serving in public universities
 - ii. Researchers serving in research institutions;
 - iii. Persons living with disabilities; and
 - iv. Retirement age for the judges stipulated in Article 167(1) of the *constitution*



9. The Directive further reiterated that the magistrates and research staff serving in management capacity in public research institutions and public universities must adhere to the 60 years' mandatory retirement age.
10. The Directive was addressed to the Speaker of the National Assembly and Chairperson of the Parliamentary Service Commission, Chief Justice and President of Supreme Court, Chairperson of the Council of Governors, Chairperson of the Public Service Commission, Chairperson of the Teachers Service Commission, Chairperson of National Police Service Commission and the Registrar of Judiciary.
11. The directive and the subsequent publication by the 2nd Respondent unconstitutional, illegal, null and void for being in direct contravention of, and ultra vires to the following provisions of the [constitution](#) and the law:
 - (a) Article 249(2) of the Constitution which safeguards the independence of the commissions and independent offices established under Articles 248(2) and (3) of the [constitution](#) including the Interested Parties. Under the [constitution](#), the Interested Parties are not subject to direction or control by any person or authority, not even the President of the Republic of Kenya or the Respondents.
 - (b) Section 80 of the Public Service Act and Regulation 70 of the Public Service Commission Regulations, 2019 which stipulate the mandatory retirement age and vests in the 1st Interested Party authority to determine the retirement age for certain cadres of public officers including the lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by the 1st Respondent in consultation with such universities, research institutions or equivalent institutions;
 - (c) Article 172 (1) (b) of the [constitution](#) which mandates 2nd Interested Party to review and make recommendations on the conditions of service of judges and judicial officers, and the staff of the Judiciary including the applicable retirement age;
 - (d) Article 127 (6) (b) of the Constitution, which mandates the 3rd Interested Party to independently constitute offices in the parliamentary service, appoint and supervise office holders; and
 - (e) Article 234 of the [constitution](#) which vests in the 1st Respondent authority on all matters touching on the tenure, terms and conditions of service of public officers.
12. The Directive offends the doctrines of separation of power and autonomy of government arms to the extent that it purports to direct the Honourable Chief Justice and the Speaker of the National Assembly who are not by any stretch, under the supervision or control of the Respondents.
13. By dint of the foregoing, the capping of the retirement age by the Respondent is unreasonable, procedurally unfair and expressly infringes on the right to fair administrative action secured by Article 47 of the [constitution](#), and severely infringes on the citizenry right to fair labour practices enunciated under Article 41 (1) of the [constitution](#).
14. No public participation was conducted prior to the issuance of the Directive. Thus, the said directive runs afoul the national values and principles of governance enunciated at Article 10 of the [constitution](#).
15. The Directive disregards the existence of multiple employment contacts, by persons outside the prescribed age bracket. Unless reversed, the directive will expose taxpayers to severe financial setbacks accruing from awards for damages occasioned by breach of contract.



16. Upon hearing the application dated 24th July, 2024, the court ordered: -
- i. The application to be certified urgent, be served within 4 days and a response to be filed 7 days upon service.
 - ii. A conservatory order is issued staying the presidential directive dated 8th July 2024 on mandatory retirement age for public officers serving on permanent and pensionable terms and/or any other precipitate action, directive, decision and/or form of interference with the existing terms of engagement all public officers in the public service pending the hearing and determination of this application inter partes.
 - iii. An order of interim injunction is issued restraining the 1st Respondent and/or any other person acting under his directive and/or authority from implementing, acting and/or enforcing the presidential directive on mandatory retirement age for public officers serving on permanent and pensionable terms dated 8th July, 2024 or any other action, directive and or decision arising therefrom whose effect is to interfere with the existing terms of engagement in public service pending the hearing and determination of the application inter partes.

1st Interested Party's Case

17. In response to the Petition, the 1st interested party filed grounds for opposition dated 13th August, 2024 and gave the following grounds: -
- a. Section 80 of the *Public Service Commission Act* makes provision for the mandatory retirement age of public officers as prescribed by Regulations.
 - b. Section 92 of the *Public Service Commission Act* gives power to the 1st interested party, the Public Service Commission, to make Regulations to provide for, amongst others, guidelines on retirement.
 - c. The 1st interested party made the Public Service Commission Regulations, 2020 which were approved by Parliament. The said Regulations provide the retirement age at Regulation 70(1) as follows:
 - 70(1) Subject to the *constitution*, Section 80 of the Act, any other relevant written law or a specific government policy, the mandatory retirement age in the public service shall be –
 - a. Sixty years
 - b. Sixty-five years for persons with disability; and
 - c. Such age as may be determined by the commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by the Commission in consultation with such universities, research institutions or equivalent institutions.
 - d. The retirement age is already provided in the regulations as required by the *Public Service Commission Act* therefore a Presidential directive on the same is simply a reiteration of the already existing legal requirement.
 - e. It is true the 1st Interested Party Is An independent constitutional commission which is not subject to the direction and control of any person or authority pursuant to Article 249(2). However, compliance with existing constitutional,



legislative and regulatory provisions does not amount to subjecting itself to direction and control by H.E the President where the President has only reiterated the need to comply with existing legal provisions.

- f. Even without a Presidential directive, the 1st Interested party is obligated to comply with the constitution and the law therefore a court order stopping implementation of a Presidential directive contained in the President's directive cannot stop the 1st interested party from complying with the law on mandatory retirement age.
- g. Public Officers are aware of the retirement age as the same is provided for the Regulations and the petitioner cannot therefore argue that the statement by H.E the President amounts to violation of rights yet the retirement age is provided for in Regulations and in the terms of employment of each public officer.
- h. The petition is therefore frivolous, vexatious and devoid of merit and should be dismissed with costs to the 1st interested party.

Respondent's Case

18. The Respondents opposed the Petition and the Notice of Motion application dated 24th July, 2024 on the following grounds:
- i. The Constitution and prevailing statutory provisions are very clear on mandatory retirement age for state and public officers. The Presidential Directive of 8th July, 2024 issued pursuant to the Presidential Address of 5th July, 2024 was purely a retaliation of the Government policy on retirement age for public officers, in recognition of the exceptions as set out in the various laws and schemes of service and, did not in any way contradict nor contravene the; existing Constitutional and statutory provisions.
 - ii. His Excellency the President issued the Presidential address on 5th July, 2024 and further the Presidential Directive of 8th July, 2024 on mandatory retirement age of public servants in exercise of His Presidential Authority and in His capacity as Head of State in line with Article 131 of the constitution and the same did not in any manner offend the doctrine of Separation of Powers and autonomy of Government Arms nor did it in any way amount to usurpation of powers of the Interested Parties as alleged by the Petitioner.
 - iii. The Honourable Court thus lacks the requisite jurisdiction to hear and determine the matter before it as:
 - a. There is no justiciable cause of action for the Court to exercise the discretion conferred on it as;
 - i. the constitution is very clear under Article 167 that the retirement age of a Judge is seventy (70) years.
 - ii. The Judicial Service Act, Section 25 provides a judicial officer or member of staff of the Judicial Service Commission shall retire on attaining the mandatory retirement age for public officers.



- iii. The *Parliamentary Service Act*, Section 36 provides that employees of the Parliamentary Service Commission shall retire upon attaining the age of sixty (60) years.
- iv. The *Public Service Commission Act*, Section 80 as read with Regulation 70 of the Public Service Commission Regulations 2020 and circulars Ref. No. PSC/ADM/13/ (7) of 19th November, 2020 and Ref. No. PSC/ADM/13/(41) of 4th April, 2023 sets retirement age for public officers-
 - a. sixty years;
 - b. sixty-five years for persons with disability; and
 - c. such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions or equivalent institutions as determined by Commission in consultation with such universities, research institutions or equivalent institutions.
- v. The Presidential directive did not thus in any way alter the Constitutional, legal or regulatory provision in this regard and the same was actually a re-emphasis of the Government policy and cannot be read to raise any justiciable issue for determination by the Court.
- iv. The Petitioner has failed to demonstrate contravention of the *constitution* and the prevailing statutory provisions on mandatory retirement age for civil servants serving on permanent and pensionable terms, has not demonstrated existence of any illegality; irrationality or any impropriety required for orders sought to be issued.
- v. The petition as set out does not meet the threshold for grant of declaratory orders as set out by the Singapore Court of Appeal in *Karaba Bodas Co LLC v Pertamina Energy Trading Ltd and another* [2006] 1 SLR (R) 112 that:
 - a. The court must have jurisdiction and power to award the remedy, there is no remedy to be awarded in the instance.
 - b. The matter must be justiciable in the court, there is no cause of action or labour dispute for determination as against the Respondents.
 - c. As a declaration is a discretionary remedy, it must be justified by the circumstances of the Case, there is no justification in the instant case.
 - d. The plaintiff must have locus standi to bring the suit and there must be a real controversy for the court to resolve, the Petitioner has no locus stand/ in this case and no controversy.
 - e. Any person whose interests might be affected by the declaration should be before the court; and
 - f. There must be some ambiguity about the issue in respect of which the declaration is asked for so that the court's determination would have the effects of laying such doubts to rest.



- vi. The Petitioner clearly has no locus standi to commence the proceedings herein as she has not demonstrated her interest in the issues before court, the public officers being the persons affected by the policy have not questioned the Presidential directive and the Petitioner has not demonstrated how she is aggrieved by the directive, the public interest she is defending or that she is representing the public officer's interests.
- vii. The Presidential directive is not capable of being quashed or prohibited as there is no valid basis to warrant such adverse orders against the Respondents.
- viii. The Court cannot issue orders in vacuum reinstating alleged public officers not known nor disclosed by the Petitioner or before the Court as the same amount to violation of the doctrine of privity of contract.
- ix. The application has not met the clearly set out threshold for grant of interlocutory injunctions and conservatory orders as established under *Giella Vs Cassam Brown & Co. Ltd* [973] EA 358. The Petitioner has not demonstrated a prima facie case with probability of success, that she will suffer irreparable injury which would not adequately be compensated by way of damages and in case the court is in doubt then it can be granted on a balance of convenience.
- x. The Petition, as filed herein, has not been pleaded with precision; it does not provide adequate particulars of the claim relating to any alleged violation of the constitution by the Respondents, does not raise any Constitutional issues for deliberation as enshrined under the cited Articles, the Petitioner has equally failed to demonstrate the harm occasioned to her as a result of the alleged violation and as such should be dismissed with costs.
- xi. The Petitioner stand to suffer no irreparable injury or prejudice in case the Court orders are not granted it would be in the great public interest that the orders sought are declined as set out in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR.
- xii. The great public interest touching on the issues raised in this matter outweighs the undefined, unidentified and undisclosed personal interest of the Petitioner as there is no prejudice the Petitioner is going to suffer if the stay order is not granted or the petition dismissed.
- xiii. It is in the great public interest that the Honourable Court vacates the exparte conservatory orders issued on 26th July, 2024 staying the Presidential directive as the Petitioner stands to suffer no irreparable harm or damage.
- xiv. The Respondents herein pray that the petition and application all dated 24th July, 2024 be dismissed with costs as they are an abuse of the Court process and are geared towards embarrassing the Court and wasting precious judicial time.

19. The Respondent further filed submissions and list of authorities dated 4th November, 2024 as follows: -

Issues for determination

- a. The legal framework governing the retirement age for state and public officers



- b. The President's Constitutional authority
- c. The jurisdictional limitations of the Court
- d. The Petitioner's locus standi
- e. The legal thresholds for declaratory orders
- f. Whether there are Constitutional issues for determination by the Court
- g. The public interest in the matter
- h. The orders sought Legal framework governing retirement age

a) Constitutional Provisions

20. the constitution of Kenya 2010 provides explicit provisions governing the mandatory retirement age for public officers, ensuring clarity and uniformity across different sectors of public service. For instance: Judicial Officers: Article 167 of the constitution clearly states that judges shall retire upon reaching seventy (70) years of age. This provision is designed to uphold the integrity and efficacy of the judiciary by allowing experienced judges to serve while ensuring timely transitions to newer appointees. Public Servants: Various statutes articulate different retirement ages depending on the role, reflecting the government's commitment to a dynamic and responsive public service.

b) Statutory Provisions

21. The following statutory provisions govern the retirement age for different categories of public officers:
- i. Judicial Service Act (Section 25): This Act mandates that judicial officers retire upon reaching the constitutionally specified age, ensuring adherence to the rule of law.
 - ii. Parliamentary Service Act (Section 36): This provision specifies that employees within the Parliamentary Service shall retire upon attaining the age of sixty (60) years. This age limit is vital for promoting efficiency and responsiveness in legislative functions.
 - iii. Public Service Commission Act (Section 80) and related regulations: Regulation 70 of the Public Service Commission Regulations 2020 and circulars Ref. No. PSC/ADM/13/(7) of 19th November 2020 and Ref. No. PSC/ADM/13/(41) of 4th April 2023 set retirement ages for public officers:
Sixty (60) years for general public servants. Sixty-five (65) years for persons with disabilities, promoting inclusivity within the workforce. A flexible retirement age for specific roles, such as lecturers and research scientists, reflecting the need for adaptability in the academic and research sectors.

c) Implications of the Framework

22. The comprehensive legal framework governing retirement ages serves multiple purposes: Clarity and Stability: By clearly defining retirement ages, the framework provides stability and predictability within public service, essential for effective governance. Accountability and Renewal: The retirement age requirements facilitate the infusion of new talent into public service, ensuring that the government remains dynamic and responsive to evolving societal needs. Protection of Rights: The framework balances the rights of public officers with the need for effective governance, ensuring that transitions occur in a manner that respects individual contributions while promoting organizational efficiency.



23. It is thus clear there is a constitutional and statutory framework governing the retirement age for state and public officers.

a. Role of the President

24. Under Articles 131 and 132 of the *constitution*, the President exercises, among other powers, executive authority of the Republic as the Head of State and Government; is the Commander-in-Chief of the Kenya Defence Forces; chairs the National Security Council; appoints high-ranking state officers; and directs and coordinates the functions of government ministries.
25. The State encompasses the executive, legislative, and judicial functions. As the Head of State, the President has the authority to issue directives and policies aimed at effectively governing public affairs while upholding constitutional mandates concerning public service in the interest of the citizens.

b) The Presidential Directive of 8th July 2024

26. The Presidential Directive issued on 8th July 2024 was a necessary and lawful reiteration of existing government policy regarding the retirement age of public servants. This directive serves several purposes:
Clarification of Policy: It clarifies the application of the mandatory retirement age across various sectors, ensuring consistency and adherence to statutory provisions.
Reaffirmation of Legal Standards: The directive reinforces the legal framework governing retirement ages without introducing new conflicts or alterations to existing law.
27. The President's actions were undertaken in a lawful manner, consistent with his constitutional mandate. Under the doctrine of separation of powers, state organs should not encroach upon the territory of the other. The directive was issued and a reaffirmation of the Government position and did not in any way infringe on the doctrine of Separation of Powers, which allows for cooperation and collaboration among the branches of government to promote effective governance.

III. Jurisdiction Limitations of the Court

a) Justiciable Cause of Action

28. The Respondents submit that the Honourable Court lacks jurisdiction to entertain the Petition due to the absence of a justiciable cause of action. Justiciability refers to the capacity of a matter to be resolved through judicial intervention. the *constitution* delineates specific circumstances under which judicial review is applicable, particularly concerning matters that involve the enforcement of rights or obligations.
29. The Petition fails to articulate a valid legal claim against the Respondents. It relies on broad assertions of constitutional violation without substantial evidence or legal foundation. The Court's role is not to reassess policy decisions made by the Executive unless a clear and specific legal breach is established.
30. The Respondents submit that the directive issued by the President did not in any way violate constitutional and statutory provisions on the retirement of state and public officers. The directive sought to restate, reaffirm, and reiterate the existing Government position as set out in the law. It does not call for the intervention of this Honourable Court as it does not violate any constitutional provisions.
31. The Petitioner has not provided sufficient evidence to demonstrate any contravention of the *constitution* or statutory provisions. Legal challenges must be grounded in factual allegations supported by concrete evidence rather than speculation or conjecture. For instance, Article 167 of the *constitution*



clearly delineates the retirement age for judges. The Presidential Directive merely reaffirms this provision, confirming the government's commitment to upholding the rule of law.

b. Legal Standards for Establishing a Cause of Action

32. Legal principles dictate that a plaintiff (Petitioner) must demonstrate the following to establish a cause of action: A breach of a legal right. A clear legal basis for the remedy sought. Evidence supporting the claim.
33. The Petitioner has failed to satisfy these requirements, rendering the Petition untenable. The Respondents state that no new legal issues have arisen from the Presidential Directive. The lack of concrete evidence and legal rationale necessitates the dismissal of the claims made against the Respondents.
34. The Petitioner has failed to demonstrate any contravention of the constitution and prevailing statutory provisions on the mandatory retirement age for civil servants serving on permanent and pensionable terms. No evidence has been provided of illegality, irrationality, or impropriety required for the orders sought to be issued.
35. The Supreme Court in *In the Matter of Interim Independent Electoral Commission* [2011] eKLR, Constitutional Application No. 2 of 2011, held:

“Jurisdiction of courts in Kenya is regulated by the constitution, statute, and principles laid out in judicial precedent... A Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavors to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity.”

36. In further support of these submissions, in *Samuel Kamau Macharia and Another v. Kenya Commercial Bank Limited & 2 Others* [2012] eKLR, Application No. 2 of 2011, the Supreme Court reiterated:

“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. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law.”

37. Consequently, this Honourable Court lacks jurisdiction to entertain this matter and should proceed to down its tools. In the celebrated case *of Owners of the Motor Vessel “Lillian S” v. Caltex Oil (Kenya) Ltd* [1989] KLR 1, Nyarangi JA held:

“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 pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

IV. Locus Standi of the Petitioner

a) Locus Standi Requirements

38. The Petitioner lacks locus standi, meaning she does not possess the legal right to bring the action before the Court. Locus standi requires that a party demonstrate a direct and personal interest in the matter at hand.



39. In this case, the affected public officers allegedly impacted by the Presidential Directive have not contested the directive; there is no evidence to that effect. The absence of challenges from these individuals raises significant questions about the legitimacy of the Petitioner's claims and her interest in pursuing the Petition.
40. The Petitioner has not demonstrated the interest she has in the matter or how she is aggrieved by the directive. The Respondents submit that the Court cannot issue orders in a vacuum without the Petitioner demonstrating her locus standi in the matter.

b) Legal Precedents on Locus Standi

41. Courts have consistently emphasized the importance of locus standi in public interest litigation. For example, in *Four Wheel Drive Accessory Distributors CC v. Lesbni Rattan* (2018) DR 2203 (SCA), the Supreme Court of Appeal scrutinized the locus standi of the appellant, affirming that individuals must demonstrate a personal interest in the litigation to ensure that the judicial process is not abused.
 - a. In *Mumo Matemvu v. Trusted Society of Human Rights Alliance and 5 Others*, the court held: "Our commitment to the values of substantive justice, public participation, inclusiveness, transparency, and accountability under Article 10 of the constitution broadens access to the courts. However, this Court cannot fashion or sanction a standard for locus standi that invites hypothetical, abstract, or abusive litigation."
42. The Petitioner's lack of a demonstrable personal stake in the matter significantly undermines the legal foundation of her claims and reinforces the need for dismissal.
43. The Petitioner seeks order (e) in the petition to reinstate all public officers who were serving on post-retirement contracts back to their positions. The Respondents submit that the Court cannot act in abstract and cannot issue orders in vacuum. An order of reinstatement is a private right enjoyed by an employee under the doctrine of privity of contract. The Court cannot thus be called upon to issue such an order without evidence demonstrating the same, which can only be provided by parties to the contract.

V. The Legal Thresholds for Declaratory Orders

44. The Respondents submit that the threshold for the grant of declaratory orders was outlined by the Singapore Court of Appeal in *Karaha Sodas Co LLC v. Pertamina Energy Trading Ltd* [2006] 1 SLR (R) 112, which held: "The court must have jurisdiction to award the remedy. The matter must be justiciable. A declaration, as a discretionary remedy, must be justified by the circumstances of the case. The plaintiff must have locus standi to bring the suit, and there must be a real controversy for the court to resolve. Any person whose interests might be affected by the declaration should be before the court. There must be some ambiguity about the issue in respect of which the declaration is sought so that the court's determination lays doubts to rest."
45. The Respondents submit that the Petitioner has not met the threshold for the grant of declaratory orders. There is no justiciable cause of action, no justification for the grant of orders sought, and the Petitioner clearly lacks the locus standi to commence these proceedings.



VI. Constitutional Issues for Determination and Public Interest

a) Constitutional Issues for Determination

46. The Petition lacks the necessary precision and clarity required for legal pleadings. Legal documents must provide adequate particulars regarding the claims made, including specific constitutional provisions allegedly violated and the nature of the harm suffered.
47. The absence of specific claims and details surrounding the alleged violations undermines the Petition's validity.
48. Legal standards dictate that parties must plead their cases with sufficient detail to allow proper response and adjudication. In this case, the Petitioner's vague assertions constitute a failure to meet these standards.
49. The Respondents submit that the Petitioner has not demonstrated any violation of the constitution.
50. The Courts in *Anarita Karimi Njeru and Mumo Matemu* established the rule requiring reasonable precision in framing issues in constitutional petitions:

“The whole object of pleadings is to bring the parties to an issue and prevent the enlargement of the issue, ensuring clarity and focus during trial.”
51. The Respondents submit that the Petitioner has not met the threshold set for constitutional violations and pray the petition be dismissed with costs.

b) Public Interest

52. Public interest serves as a guiding principle in judicial decision-making.
53. The Presidential Directive is fundamentally rooted in public interest, ensuring defined periods of service for public servants, promoting efficiency and accountability within public service.
54. In *Gatirau Peter Munya v. Dickson Mwenda Kitbinji & 2 Others* [2014] eKR, the Court emphasized that the greater public good should take precedence over individual claims unless clear harm is demonstrated.
55. The broader implications of the Petitioner's claims could lead to instability within public service, undermining the government's ability to enforce consistent policies.
56. The Respondents submit that the Court should uphold the great public interest served by the directive and dismiss the petition.

VII. Orders Sought

57. The Petitioner seeks various declarations and orders, which the Respondents oppose as follows:
 - a. Declaration that the directive is unconstitutional: The directive reiterates existing policy and is consistent with the law.
 - b. Declaration that the directive violates the doctrine of separation of powers: The Respondents submit that the directive does not offend this doctrine.
 - c. Declaration that the directive offends constitutional provisions: The Petitioner has not demonstrated any breach of the cited provisions.



- d. Certiorari to quash the directive: There is no justification for such an order.
- e. Permanent injunction restraining implementation of the directive: The directive does not breach the law.
- f. Mandatory injunction to reinstate officers on post-retirement contracts: There is no evidence supporting such an order.

C. Conclusion

58. The Respondents submit that the directive was issued lawfully, consistent with constitutional and statutory provisions.
59. The Respondents further submit that the Court lacks jurisdiction, the Petitioner lacks locus standi, and the petition does not meet the legal thresholds for the reliefs sought.
60. The Respondents respectfully pray that the Honourable Court dismiss the Petition and Notice of Motion dated 24th July 2024, with costs.
61. I have examined all the evidence and submissions of the parties herein. In regard to this petition, the issues for this court's determination are as follows:
 1. Whether the petitioner has locus to institute this petition.
 2. Whether this court has jurisdiction to entertain this petition.
 3. Whether the presidential directive of 8/7/24 violated the *constitution* of Kenya 2010.
 4. What orders to grant in the circumstances.

Locus

62. The petitioner herein has described herself as a public spirited adult Kenyan citizen of sound mind and a defender of the *constitution*.
63. She has submitted that she has locus standi to institute this petition by dint of various articles of the *constitution* and the law. Article 22 of the *constitution* states as follows:
 - 22.(1) Every person has 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 is threatened
64. Indeed under this article any person has locus to institute a claim alleging breach or intended breach of the *constitution*.
65. The petitioner has averred that she has filed the petition to defend the *constitution* from breach. As the law stands, there is nothing that can bar the petitioner from filing this petition. It is my finding that the petition has locus to file this petition.
66. The 1st respondent submitted that this Court has no jurisdiction to entertain this petition because there is no justifiable cause of action for the Court to exercise its discretion.
67. As to whether Court has jurisdiction or not, the matter can only be determined upon the hearing of this petition in which case the court has been invited to determine issue emanating from the employment of certain employees whose employability has or has been affected by the Presidential directive herein.



68. The Court’s jurisdiction is drawn from article 162(2) (a) of the constitution which sets out the envisaged ELRC court finally established under the ELRC Act. The jurisdiction set thereunder relates to Employment and Labour relations matters.
69. The issue in this petition falling within the retirement age of an employee is indeed a matter triable before this Court and for which this court has jurisdiction to entertain.

Constitutional Breach

70. The petitioner averred that the Presidential directive made on 8/7/24 was a directive to the Public Service Commission, the Judicial Service Commission and Parliamentary Service Commission and therefore a usurpation of powers of the Independent Commission who act without directive from anyone.
71. She also averred that the directive was a breach of the doctrine of separation of powers and an interference with the Judiciary and Parliament function.
72. From the facts submitted by the petitioner, the President indeed reiterated the need by the Public Service Commission, Judicial Service Commission and Parliamentary Service Commission to adhere to the set retirement age of Public Officers, Judges and Magistrates.
73. The proclamation by his Excellency the President, reiterated that the retirement age for public officers was 60 years and 65 years for persons with disabilities, Judges 70 years and with exception of Lecturers and Academicians whose retirement age range from 65 to 70 years.
74. What was stated by the President is actually what is the law and there was no further addition as has been demonstrated by the respondents and the interested parties. Their ages are set out in the Public Service Commission Act, Parliamentary Service Commission, The Judicial Service Commission Act, and the constitution of Kenya.
75. The President in his directive indicated that:

henceforth, public servants who attain the retirement age of 60 years shall be required to immediately proceed on retirement with no extension to their terms of service”
76. My understanding of this directive was to restate the law and there was therefore no addition or an indication that the President was usurping the role of other Government institutions or organs.
77. That being the case, I find that there is no breach of the constitution or the law as submitted and therefore the petition has on merit.

Remedies

78. The petitioner submitted that there were staff who need to be reinstated to the service and especially those who were serving on post retirement contracts. Without going to the finer details of this prayer the directive by the President was “henceforth” which implies that the directive was to operate in the future and not retrospectively and does not therefore affect contracts of staff who are already on post retirement contracts.
79. The issue of post retirement contracts is therefore a matter which cannot be exhaustively addressed in this petition unless it relates to individual contracts can only be addressed based on the said contract.
80. The petition is therefore found without merit and is dismissed accordingly
Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF DECEMBER, 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

