



**Munywoki v Metsec Cables Limited (Petition E047 of 2022)  
[2023] KEELRC 76 (KLR) (20 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 76 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E047 OF 2022  
SC RUTTO, J  
JANUARY 20, 2023**

**BETWEEN**

**NDANU MUNYWOKI ..... PETITIONER**

**AND**

**METSEC CABLES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Through a Petition dated March 3, 2022 and filed in court on March 9, 2022, the petitioner states that while in the employment of the respondent, she received a letter suspending her indefinitely from employment. That the suspension was to take effect on November 20, 2020. That the purpose of the said suspension was to pave way for investigations of a criminal case in which together with others, she had been charged with an offence of theft at Milimani Chief Magistrates' Court. That subsequently, she was dismissed from employment on or about July 6, 2021.
2. It is the petitioner's case that on November 29, 2021, her Advocate did a letter demanding for certified copies of minutes and all documents, representations, as well proceedings if any, used in arriving at the impugned decision to summarily dismiss her from employment. That on January 10, 2022, her Advocate did a reminder letter requesting for the documents erstwhile requested for, through the letter of November 29, 2021. That the respondent opted to ignore and/or refuse and/or neglected to heed to the said demand hence she continues to suffer from the effects of the illegal decision taken by the respondent.
3. In this regard, the petitioner has cited the respondent for violation of articles 29(1)(a) & (f), 35(1) (a) & (b), 41(1) and 47(1) of the Constitution as well as sections 4(1) and (2) and 6(1) of the Fair Administrative Actions Act and consequently seeks the following reliefs:



- a) An order compelling the respondent to supply the petitioner with all copies of all documents, representations, records and proceedings relating to the impugned disciplinary process that led to her summary dismissal;
- b) Costs of the petition; and
- c) Any other relief as the Court may deem fit.

## Response

4. In response to the Petition, the respondent filed a Replying Affidavit sworn by Ms. Alice Mutitu who describes herself as its Human Resource Manager. She avers that the petition is incompetent, frivolous and an abuse of the court process. That the petition discloses no reasonable cause of action against the respondent as the same has been filed for reasons other than enforcement of the petitioner's constitutional rights.
5. That the cause of action emanates from breach of contract of employment hence the petitioner should have approached the Court by way of a Memorandum or Statement of Claim instead of a Constitutional Petition. The respondent further avers that invoking the constitutional route in the circumstances of this case is misguided since the Constitution should not be turned into an open-ended avenue for resolution of every kind of common grievance. That further, the petitioner has not demonstrated violation of any fundamental freedom and or rights envisaged under the bill of rights under the Constitution of Kenya hence the Petition should be dismissed with costs.

## Submissions

6. The Petition was canvassed by way of written submissions. On the part of the Petitioner, it was submitted that the actions of the respondent amounted to unfair, cruel, inhumane and degrading treatment. That article 35 (1) (a) and (b) of the Constitution guarantees the rights to access information held by the state and information held by another person and required for exercise or protection of any rights or fundamental freedom. That all efforts by the petitioner to obtain documents, representations, records as well as proceedings if any that culminated in her summary dismissal were all in vain. In further submission, the petitioner stated that her right to fair labour practices as envisaged under article 41(1) of the Constitution were infringed. In support of its submissions, the petitioner placed reliance on the case of Agnes Wacu Gagoto v Kenya Kazi Services Limited (2020) eKLR.
7. As to whether the petitioner should have approached this court by way of a memorandum of claim, it was submitted that the Petition seeks orders to compel the respondent to supply her with documents relating to the impugned disciplinary process. That she requires the documents in order to make an informed decision on the necessary steps to take. To support this argument, the petitioner sought reliance on the case of Chelimo A Esther Martin A Lotte & 15 others v John Lonyangapuo & 2 others [2018] eKLR.
8. The respondent on the other hand, submitted that the Petition discloses no reasonable cause of action against it as the same has been filed for reasons other than enforcement of the petitioner's constitutional rights. That the Petition does not meet the threshold of a constitutional case. To support its argument, the respondent cited the case of Jane Angila Obando vs Teachers Service Commission & 2 others [2020] eKLR and Gabriel Mutava & 2 others v Managing Director, Kenya Ports Authority & another (2016) eKLR.
9. The respondent further submitted that where the law provides for specific provisions for dealing with a given issue, invoking the Constitution of Kenya is superfluous. That the remedies sought by the



petitioner are available under the [Employment Act](#) and that she should have filed a Memorandum of Claim.

### **Analysis and determination**

10. I have considered the pleadings, the parties' submissions as well as the authorities cited and two issues stand out for determination in this Petition, thus:
  - i. Whether there is a case for constitutional violation.
  - ii. Whether the Court should grant the orders sought in the Petition.

### **Constitutional violation?**

11. The petitioner has cited the respondent for violation of articles 29(1)(a) & (f), 35(1) (a) 7 (b) 41(1) and 47(1) of the [Constitution](#). The petitioner seeks an order to compel the respondent to supply her with all copies of documents, representations, records as well as proceedings relating to her summary dismissal. She avers that she has unsuccessfully sought the information from the respondent through two demand letters from her Advocates.
12. The respondent's contention was that the Petition was misguided and that the petitioner ought to have moved the court by way of a memorandum of claim.
13. As stated herein, the primary order sought against the respondent is for the supply of copies of documents, representations, records as well as proceedings relating to her summary dismissal. Therefore, this brings the dispute within the ambit of article 35(1) (a) and (b) of the [Constitution](#) which provides that:
  - (1) "Every citizen has the right of access to—
    - (a) information held by the State; and
    - (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.
14. In order to give further effect to article 35 of the [Constitution](#), Parliament enacted [Access to Information Act](#). Section 4 of the said Act is key as it guarantees every citizen the right to information. It provides as follows:
  - (1) Subject to this Act and any other written law, every citizen has the right of access to information held by—
    - (a) the State; and
    - (b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.
  - (2) Subject to this Act, every citizen's right to access information is not affected by—
    - (a) any reason the person gives for seeking access; or
    - (b) the public entity's belief as to what are the person's reasons for seeking access.
  - (3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.



- (4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6.
- (5) Nothing in this Act shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information.
15. The import of article 35 of the Constitution and section 4 of Access to Information Act, is that every citizen has the right to access information held by the state or another person where that information is required for the exercise or protection of any right or fundamental freedom.
16. In the instant case, the petitioner has urged that she requires the documents relating to her summary dismissal in order to appeal the decision by the respondent to terminate her from employment. She further avers that she also requires the documents in order to make an informed decision on the necessary steps to take. It is therefore evident that the information sought by the petitioner is to enable her assert her right to fair labour practices and fair hearing.
17. It is notable that the respondent did not dispute receiving the demand letters from the petitioner's Advocates through which the information was sought. Further, the respondent did not give any reasons for its failure to supply the petitioner with the documents as per her request.
18. My thinking accords with that of the court in the case of Katiba Institute v Presidents Delivery Unit & 3 others [2017] eKLR where it was held that:
- “ 32. The Constitution therefore, grants citizens' access to information as a constitutional right and only the same Constitution can limit that access... [34]. On the above basis, the right to access information is inviolable because it is neither granted nor grantable by the state. This is a right granted by the Constitution and is protected by the same Constitution.”
19. In light of the foregoing, and taking into account the facts and the law relating to this Petition, I cannot help but conclude that the respondent violated the petitioner's constitutional right to access information and indeed, did not justify this violation.
20. This finding discounts the respondent's contention that the petitioner should have moved the court by way of a memorandum of claim. the primary dispute as brought forth in the instant Petition, is failure by the respondent to provide the documents relating to the petitioner's summary dismissal. It has nothing to do with the fairness or otherwise of the petitioner's summary dismissal from employment. Therefore, the Petition has properly been brought before this court and has disclosed violation of the petitioner's constitutional rights under article 35 of the Constitution.

### Orders

21. Accordingly, the Petition dated March 3, 2022, is allowed and the respondent is hereby directed to supply the petitioner with copies of the documents sought through her Advocate's letters, dated November 29, 2021 and January 10, 2022 within 30 days from the date of this Judgment.
22. The respondent shall bear the costs of the Petition.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2023.**

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**STELLA RUTTO**



## **JUDGE**

### **Appearance:**

**Mr. Mwinzi for the Petitioner**

**Mr. Juma by the Respondent**

**Court Assistant Abdimalik Hussein**

## **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 had 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 Civil 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.

**STELLA RUTTO**

**JUDGE**

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