



Owuonda v Permanent Secretary, Ministry of Interior & Coordination of National Government & 2 others (Petition E062 of 2020) [2023] KEELRC 1181 (KLR) (18 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1181 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION E062 OF 2020

L NDOLO, J

MAY 18, 2023

IN THE MATTER OF ARTICLES 22, 23, 41, 43, 47 AND 50 OF THE CONSTITUTION

OF KENYA

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF SECTIONS 3 AND 12 OF THE EMPLOYMENT AND LABOUR

RELATIONS COURT ACT

AND

IN THE MATTER OF SECTIONS 46 AND 89 OF THE NATIONAL POLICE SERVICE ACT

BETWEEN

PHILGONE AWITI OWUONDA PETITIONER

AND

THE PERMANENT SECRETARY, MINISTRY OF INTERIOR &

COORDINATION OF NATIONAL GOVERNMENT 1ST RESPONDENT

THE NATIONAL POLICE SERVICE COMMISSION 2ND RESPONDENT

THE INSPECTOR GENERAL OF POLICE 3RD RESPONDENT

RULING

1. The Petitioner filed a Petition dated September 8, 2020 seeking the following remedies:



- a. A declaration that the enhancement of the Petitioner’s punishment and dismissing her from service without reference to her was a breach of her rights under articles 47 and 50 of the Constitution;
 - b. A declaration that failing to address the appeal by the petitioner filed on May 19, 2020 amounts to breach of her rights enshrined under articles 41, 47 and 50 of the Constitution;
 - c. An order directing the respondents to reinstate the petitioner to her position as at May 19, 2011, without loss of benefits;
 - d. An order directing the respondents to pay the petitioner her unpaid salaries from May 17, 2011 when she was dismissed until the date of judgment;
 - e. An order directing the respondents to hear, determine and issue a verdict on the petitioner’s appeal dated May 19, 2011.
2. Subsequent to the Petition, the 1st and 3rd respondents filed a notice of preliminary objection dated February 2, 2022, stating that:
- a. The suit is time barred and offends section 4(1) of the Limitation of Actions Act;
 - b. The Petitioner has not sought and obtained leave to file suit out of time contrary to sections 27 & 28 of the Limitation of Actions Act;
 - c. The petitioner is circumventing the law by relying on constitutional provisions, having realised that the matter is statute barred under the statutes that give effect to constitutional rights;
 - d. The petitioner has not demonstrated with precision how her fundamental rights and freedoms under the Constitution have been violated or are threatened and has not produced any evidence to prove the alleged violations;
 - e. The suit is an abuse of the court process;
 - f. The suit is incompetent and ought to be struck out with costs.
3. The 2nd respondent filed its own notice of preliminary objection dated February 2, 2023, citing the following grounds:
- a. That the suit is time barred;
 - b. That the 2nd respondent lacks the mandate to reopen disciplinary matters that were lawfully, procedurally and exhaustively concluded before its inception;
 - c. That filing of a petition does not extinguish the time limitation for filing of employment disputes between an employer and an employee.
4. The issue for determination is whether the Petition as framed raises any constitutional controversy.
5. It is now well settled that ordinary employment disputes ought not to be couched as constitutional petitions.
6. In *Josphat Ndirangu v Henkel Chemicals (EA) Limited* [2013] eKLR

Radido J held that:

“...a litigant should not avoid the provisions of the Employment Act regarding unfair termination or wrongful dismissal by going behind the statute and seeking to rely directly



on article 41 of the Constitution on the right to fair labour practices. The purpose of the Constitution is that the right to fair labour practices is given effect in various statutes of which the Employment Act and the Labour Relations Act are primary. The primary legislation should not be circumvented by seeking to rely directly on a constitutional provision. Both the Employment Act and the Labour Relations Act give effect to the constitutional rights.”

7. Having looked at the petitioner’s pleadings, I find that although she cites some constitutional provisions, there is really no constitutional issue in controversy. In fact, there is no credible nexus between these provisions and her complaint before the court.
8. What the petitioner has couched as a Petition is no more than a straightforward employment dispute, which would be well covered under the Employment Act.
9. To this extent, I uphold the respondents’ preliminary objection and strike out the Petition.
10. Each party will bear their own costs.
11. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF MAY 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Juma for the Petitioner

Ms. Mwangi for the 1st and 3rd Respondents

Ms. Opiyo for the 2nd Respondent

