



**Namenya v Craft Silicon Limited & another (Employment and Labour Relations
Petition E076 of 2022) [2023] KEELRC 2721 (KLR) (5 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2721 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E076 OF 2022**

**K OCHARO, J
OCTOBER 5, 2023**

BETWEEN

JOSEPHINE NAMENYA PETITIONER

AND

CRAFT SILICON LIMITED 1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. Through a Petition dated the 6th May 2022, the Petitioner approached this court seeking the following orders;
 - a. A declaration that Gazette Notice Number 6024 published on the 10th June 2018 is unconstitutional for violating the provisions of Article 48 of *the Constitution* of Kenya on access of justice.
 - b. An order of certiorari do issue to bring to this court and quash the Gazette Notice No. 6024 published on the 10th June 2018.
 - c. A declaration that the Respondent's action of terminating the Petitioner's employment summarily amounts unlawful termination and violation of the Petitioner's rights under Articles 10, 27, 28, 41 and 47 of *the Constitution*.
 - d. The Respondent to pay the equivalent of twelve months salary based on the Petitioner's gross salary at the time of dismissal amounting to Ksh. 1, 920,000 being damages for unlawful termination.
 - e. Payment of General and aggravated Damages to the Petitioner for breach of the constitutional rights including but not limited to the right to fair labour practices, right to fair administrative action and the right to human dignity.



- f. The costs of the Petition be borne by the Respondent.
 - g. Any other relief that this court may deem fit to grant.
2. The 2nd Respondent filed Grounds of Opposition to the Petitioner’s petition dated 5th July 2022. The 1st Respondent opposed the Petition vide a replying affidavit sworn by Fredrick Okwaro, its Deputy Chief Executive Officer on the 15th of July 2022. On the 15th of July 2022, this Court directed that the Petition be canvassed by way of written submissions.

The Petitioner’s case

3. The Petitioner averred that she was offered employment by the Respondent on the 27th of May 2016 as a Software Developer which offer she duly accepted. This culminated in the execution of an employment contract between the two. Her contractual gross monthly salary was set as Kshs. 135,000. She initially served a six [6] month probation period and was confirmed into employment on the 15th of February 2017.
4. Upon confirmation she continued to serve the Respondent with loyalty, diligence and competence. Born out of this, the Respondent reviewed her salary upwards to Ksh. 160,000, on September 2017. She contended there wasn’t any complaint[s] against her conduct or performance during the course of her employment with the Respondent.
5. The Petitioner stated that on or about the 21st of June 2018, the 1st Respondent alleged against her and others of having engaged themselves in fraudulent activities, with a subject matter being over KShs. 95 million. Consequently, the Petitioner was arrested, arraigned and charged in Kiambu Court vide Criminal Case No. 1237 of 2018.
6. The Petitioner contended further that on the 30th of July 2018, the 1st Respondent terminated her employment. The termination did not adhere to the fair procedure contemplated by Section 41 of the [Employment Act](#) as he was never subjected to a disciplinary hearing process.
7. Aggrieved, she on the 23rd June 2021 filed a Claim against the 1st Respondent before the Chief Magistrates Court namely, CMEC No. E144 of 2021- Josphine Namenya versus Craft Silicon Limited. She chiefly sought compensation for wrongful and unfair termination of her employment, in the sum of Ksh. 1,920,000.
8. The Petitioner contends that the 1st Respondent raised a Preliminary Objection to the Claim on account that the Chief Magistrates Court lacked jurisdiction to hear and determine the matter. The crux of the said Preliminary Objection was the Gazette Notice No. 6024 published by Rtd. Chief Justice Hon. D.K Maraga which stated that:

“In exercise of the powers conferred by section 29 (3) and (4) (b) of the [Employment and Labour Relations Court Act](#), 2011, and in consultation with the Principal Judge of the Court, the Chief Justice appoints all Magistrates of the rank of Senior Resident Magistrate and above as Special Magistrates designated to hear and determine the following employment and labour relations cases within their respective areas of jurisdiction:

Disputes arising from contracts of employment (excluding trade disputes under the [Labour Relations Act](#), 2007) where employee’s gross monthly pay does not exceed Kshs. 80,000.00 as commenced and continued in accordance with the Employment and Labour Relations Court (Procedure) Rules, 2016.”



9. By a ruling delivered by Hon. Gathogo Sogomo, Principal Magistrate, the Petitioner's Claim hereinabove mentioned was dismissed. The Learned Magistrate upheld the preliminary objection.
10. The Petitioner argued that as her employment was summarily terminated without due regard to procedural fairness, and as the application of Gazette Notice No. 6024 limits the pecuniary jurisdiction of the Magistrates Court to hear employment disputes where gross salary does not exceed Kshs. 80,000, provisions of *the Constitution* and constitutional rights were violated, namely Articles 2, 10, 27, 28, 41, 47 and 48, respectively.
11. The Petitioner further contends that the Gazette Notice No. 6024 published by the Rtd Hon. Chief Justice D.K Maraga is an impediment to access justice and therefore unconstitutional for the reasons that ; it contravened the provisions of section 9 [b] and 7 [1] of the Magistrates Court Act which allow Magistrates to hear and determine employment disputes within the pecuniary jurisdiction set forth in section 7 [1] of the Magistrate Court Act, Litigants whose claims for compensation falls below the Kshs.20 million ceiling prescribed under section 7 [1] of the Magistrates Court Act denied the opportunity to access justice before the Magistrates Court and prefer appeals to the two other court forum i.e. the Employment and Labour Relations Court and the Court of Appeal where aggrieved, the Chief Magistrates Courts are widely spread throughout the country as opposed to the specialised Employment and Labour relations Court therefore the application of Gazette Notice No. 6024 limits access to justice for a majority of litigants and lastly the said Gazette Notice No. 6024 has created a backlog of cases in the Employment and Labour Relations Court thereby denying litigants expeditious and efficient determination of employment disputes.
12. Lastly, the Petitioner contends that she has a legitimate expectation to protect her constitutional rights and freedom which apply to all persons.

1st Respondent's Response

13. The 1st Respondent stated that by a letter of offer dated 27 May 2016, the Petitioner was offered employment as a Software Developer. She accepted the offer and was appointed to the position as a consequence. The terms and conditions of the employment relationship were put forth in the contract of employment dated 15 August 2016.
14. Furthermore, she was issued with an Employee Handbook, read the same, and by executing the same committed herself to be bound by the terms, and the codes of practice, that were set forth therein.
15. Following an annual salary appraisal, her salary was increased from Ksh. 135,000 to Ksh. 160,000 on the 1st of September 2017.
16. The 1st Respondent contended that on the 21st of June 2018, their client KWFT [the bank] received a call from the Safaricom Fraud Department reporting that they had noted fraudulent transactions on the bank systems. The analysis from the Safaricom reports indicated that a total of KShs. 6,874, 489 had been fraudulently withdrawn on the 21st of June 2018. An analysis by the bank revealed that the transaction did not originate from its end and the customers involved in the transaction were not registered in their system.
17. The 1st Respondent further stated that on the same date, their client Standard Chartered Bank received a call from the Safaricom Fraud Monitoring Unit reporting that they had noticed suspicious transactions on their Mpesa pay bill number integrated through the 1st Respondent Company to support Mpesa services for online and Mobile Banking Application. The analysis of the Mpesa report indicated that 2856 transactions were processed on the said pay bill in the sum of Ksh. 91,176, 192.



18. The 1st Respondent avers that in June 2018, a virtual meeting was held between the Standard Chartered Bank team, the 1st Respondent Company and the Safaricom team to discuss the incident and that it was agreed that the 1st Respondent and the Safaricom should continue with the investigation as it was clear, the breach was between their integration.
19. It was averred that by a letter dated 16th July 2018, Mr Dennis Onyango the Head of risk operation at Standard Chartered Bank gave a statement on the reported fraud and indicated that the transactions did not originate from the bank and that the customers involved in the transactions were not registered in their system.
20. This prompted the 1st Respondent to engage the services of Infosents Limited to conduct a specialist Forensic Investigation on the fraudulent activities in the company. Eventually, a report dated 23rd July 2018, prepared by one Sammy Njeru, was released. The report concluded that the Petitioner was among the users who were engaged in then fraudulent activities. The Petitioner was identified to have logged into the servers several times on the day the fraud occurred and at the time of the execution of the fraudulent transaction.
21. The 1st Respondent further averred that the Petitioner herein together with other employees of the 1st Respondent Company were charged in Kiambu Criminal Case No. 1237 of 2018 with the offence of conspiracy to commit a felony that is stealing Ksh. 91, 176, 192 being the property of Standard Chartered Bank Kenya Limited.
22. It is contended that as a consequence of the outcome of the investigations and the arraignment in court, the 1st Respondent terminated the Petitioner's employment by a letter dated 30th July 2018. The termination was anchored on the stipulations of section 44 of the *Employment Act* 2007 and clause 6.2 of the employment contract. The termination was therefore lawful and fair.
23. The 1st Respondent argued that the Chief Justice has a lead role in setting policies for the administration of justice and the running of the Judicial arm. It was well within his mandate to make the jurisdictional decision that was published in the Gazette notice, the subject matter herein.
24. It is further averred that the Constitutional violations the petitioner relies upon on her petition are baseless and unfounded and this Petition does not meet the threshold of matters to be litigated under Constitutional Petitions.
25. Lastly, it is contended that the Petitioner's Petition is misconceived and does not disclose any reasonable cause of action in law. Consequently, the reliefs sought are not available to the Petitioner. The petition is a fit candidate for dismissal with costs.

2nd Respondent's Grounds of Opposition

26. The 2nd Respondent contends that the Petitioner has not demonstrated with precision how her fundamental rights and freedoms under *the Constitution* have been violated or are threatened contrary to Article 22[1] of *the Constitution* and the holding in the locus classicus decisions in Mumo Matemu vs Trusted Society of Human Rights Alliance [2013] eKLR and Annarita Karimi Njeru [1979] KLR 154.
27. It is further contended that this court lacks jurisdiction to quash and declare unconstitutional gazette notice No. 6024 published on 10th June 2018 by Rtd Hon. Chief Justice and therefore it is before an inappropriate forum.



28. The 2nd Respondent avers that the instant petition is res judicata. It offends the provisions of section 7 of the *Civil Procedure Act*, Cap 21 Laws of Kenya, given that the subject matter of the Petition was determined by Hon. Gathomo Sogomo in the ruling of CMEL Case No. E1144 of 2021, Josephine Namenya vs Craft Silicon Ltd.
29. It is further argued that the Petitioner's petition is a deliberate abuse of the Court process. The petitioner is guilty of invoking a multiplicity of proceedings for the collateral purpose of defeating the fact that the contested issues were settled before a court of competent jurisdiction.
30. The 2nd Respondent contends further that it has been improperly enjoined in this matter. The instant matter is purely an employer-employee dispute. It is not the employer of the Respondent.

Submissions, Analysis and Determination.

31. I have carefully considered the petitioner's petition, the 1st Respondent's replying affidavit, the grounds of opposition by the 2nd Respondent and the respective submissions by the parties, the following issues present themselves for determination;
 - I. Whether this Court is seized with the jurisdiction to entertain the petition herein.
 - II. Whether the petition herein meets the threshold of a properly crafted and presented petition.
 - III. Whether the petitioner has established that the constitutional provisions and rights
 - IV. Whether the petition herein is res judicata and or an abuse of the Court process.

Whether this Court is Seized with the Jurisdiction to entertain the petition herein.

32. For tidiness and good purpose once a jurisdictional issue is raised by a party, it should be interrogated and a decision rendered thereon by the Court, as a preliminary issue. This obvious position flows from the fact that once the Court determines that it has no jurisdiction over a matter, it has to down its tools and proceed no further. In the celebrated judicial decision in Owners of Motor Vessel "Lilian S" VS- Caltex Oil [Kenya] Limited [1989] KLR, the Court aptly captured it thus;

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized with the matter is then obligated 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. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

33. Thirteen years ago, the great Citizens of this Nation saw the need to have a specialized court to deal with employment and labour relations matters. The need was an informed one. It wasn't hot air. The history of the dispute resolution mechanism in regard to the matters and its pitfalls was in their mind. They understood, the sometimes complexities that characterise matters falling within the realm, that the matters in their nature require faster disposal as they often touch on livelihoods and the economic state of the nation and, the necessity of consistent and synchronised jurisprudence on the area, inter



alia. The specialized court had to be entrenched in *the Constitution*. Their desire was honoured, the 2010, Constitution under Article 162[2] commanded the establishment of the court.

34. Following the command, the legislature enacted the Employment and Labour Relation Court Act 2011, establishing the court. Section 12 thereof provides the jurisdiction for the Court thus;

“The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

- (a) disputes relating to or arising out of employment between an employer and an employee;
- (b) disputes between an employer and a trade union;
- (c) disputes between an employers’ organisation and a trade union’s organisation;
- (d) disputes between trade unions;
- (e) disputes between employer organisations;
- (f) disputes between an employers’ organisation and a trade union;
- (g) disputes between a trade union and a member thereof;
- (h) disputes between an employer’s organisation or a federation and a member thereof;
- (i) disputes concerning the registration and election of trade union officials; and
- (j) disputes relating to the registration and enforcement of collective agreements.”

35. Notwithstanding the foregoing, a decade and a quarter after its establishment, litigants, practitioners, academicians, and sometimes judicial minds seem to be grappling with the exact scope of the jurisdiction of the Court. Some want to look at the jurisdiction from a constrained view, while others from a liberal perspective. In my view, the jurisdictional issue should be looked at through a purposive lens, and without ignoring the historical background of the Court.

36. The 2nd Respondent asserted that this court does not have jurisdiction to interrogate and render itself on the constitutionality of the Gazette notice hereinabove mentioned. According to it the notice has totally nothing in character that can place it under the purview of the Employment and Labour Relations Court. In sum, it is raised in a context that does not reveal it as a justiciable employment and or labour relations issue.

37. The 2nd Respondent holds the view that if this court proceeds to determine the issue of constitutionality of the notice it shall be overstepping its boundary into the space of the High Court. The Respondent’s argument allegedly flows from the provisions of Article 165[5] of *the Constitution*. I have no doubt in my mind that this Court has the requisite jurisdiction to entertain constitutional issues, inclusive of determining the constitutionality of a particular Act, a part thereof or a section therein, or, any instrument. The only rider being that the issue, the Act, the part or section thereof,



or instrument has to be not in a remote sense connected with employment, and or labour relations matter [s].

38. The Petitioner asserted that the Gazette notice is an impediment to access of justice of a class of litigants, those seeking justice in regard to employment and or labour relations matters. Sight shouldn't be lost of the fact that the notice was intended for application on a specific class of matters. The matters it targeted and placed for adjudication under the Magistrates courts are employment matters, which undeniably fall under the jurisdiction of this Court as contemplated by Article 162[2] of *the Constitution* of Kenya, 2010, and Section 12 of the Employment and Labour Relations Court, Act.
39. To argue that the High Court is the court that is best suited to determine the constitutionality of the Notice in the context of the instant matter, is to ignore, the foregoing vital premise, and, the purpose and historical background for the establishment of the Employment and Labour Relations Court. I am not persuaded therefore to find in favour of the Respondents' reasoning concerning the jurisdictional issue raised by the 2nd Respondent. In my view, this court is seized with the jurisdiction to render itself on the constitutionality or otherwise of the Notice.
40. Having found as I have hereinabove, I now turn to consider whether the notice is an impediment to the right to access justice as alleged by the Petitioner. From the onset, it is imperative to point out that in support of her argument that the application of the notice has been an impediment to access by that class of litigants mentioned hereinabove, Counsel for the Petitioner in his submissions resorted to place reliance on statistics from the Kenya National Bureau of Statistics [KNBS], and Kenya Revenue Authority [KRA]. The statistics were neither set forth in the petition nor the supporting affidavit thereof. In an adversarial system as is ours, parties are bound by their pleadings. Submissions by parties are never a substitute for evidence. This has been said by courts time without number.
41. Consequently, I find the statistics provided through submissions by Counsel for the Petitioner unhelpful to her case.
42. This is not the 1st time that the Gazette notice is impugned on the ground that it is a hindrance to, the right to access to justice. But, it is important for this Court to state that the challenge of the same in the earlier cases was under a different shade. That by subjecting the matters to the jurisdiction of Magistrates who are not the specialized court contemplated under Article 162[2] of *the Constitution*. In the case of *Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others* [2017] eKLR, the Court of Appeal held;

“65. In our view, conferring jurisdiction on magistrates' courts to hear and determine does not diminish the specialization of the specialized courts considering that appeals from magistrates' courts over those matters lie with the specialized courts. As argued by Mr Kanjama, under the doctrine of judicial precedent, the decisions of the specialized courts would bind the magistrates' courts and the magistrates' courts would therefore undoubtedly imprint the” specialized jurisprudence on the magistrates' courts.

67. Devolution, access to services and access to justice, among others, are critical pillars of our constitutional architecture. Article 6[3] of *the Constitution* demands reasonable access to the service. Article 48 demands that the state “shall ensure access to justice for all persons.” Access to justice has many facets. One facet is the geographical location of the courts and the proximity of the Courts to the people intended to be served by the courts. There are undoubtedly more magistrates' courts in Kenya than there are specialised



courts or even High Court stations for that matter. The close proximity of magistrates' courts to the people ensures efficiency and access to justice at a reasonable cost. It would be illogical and unreasonable to prohibit magistrates' courts from determining land and employment disputes when it is undeniable that their reach to the citizenry is much wider than that of the specialised courts. Public interest, in our view, would be better served by increasing the number of courts with the capability of resolving such disputes.”

43. The Court *Watson Burugu v Attorney General & 2 others* [2021], like the Court of Appeal in the above-stated case, didn't agree with the petitioner that the Gazette notice was an impediment to the constitutional right to access to justice.
44. In my view, the two judicial decisions cited are a testament that the Gazette notice and the Chief Justice's decision therethrough to bestow the jurisdiction on the magistracy was reasonable, well-intentioned, in furtherance of the right to access to justice under Article 48 of *the Constitution* and an act that was well within his mandate.
45. Despite the founded intention of the Chief Justice emeritus, reasonableness, and legality of the Notice, the Petitioner now wants this Court to find that the notice is unconstitutional as it places a pecuniary limit on the jurisdiction of the magistrates. According to her, this has the effect of limiting and has limited litigants whose salaries are above the ceiling set out in the Notice, from accessing justice.
46. To declare the Gazette, notice unconstitutional as sought by the Petitioner shall have the unfortunate and untidy effect of setting aside the earlier decisions on the constitutionality of the notice, inclusive that of the Court of Appeal which in the ordinary run of things bind this Court.
47. Further, I am not convinced that any sufficient ground has been brought forth to attract this Court's exercise of authority to declare the notice unconstitutional. As indicated hereinabove, the Petitioner has through her submissions tried to fortify her grounds of the petition by bringing on board statistics which were never pleaded. Having found that nothing should turn on the statistics, the argument that some class of litigants are being impeded from accessing justice remains standing in quicksand. In fact, the authenticity of the purported statistics cannot be ascertained. The allegation is speculative. Courts of law never determine matters on speculation.
48. Instead of attempting to found a constitutional litigation on the Gazette notice, yet there is completely nothing justiciable on it considering the premises foregoing, the Petitioner who is apparently a keen Citizen ought to have approached the concerned authority [the office of the Chief Justice], or push through other forums like Court Users Committees, to have the ceiling pushed higher. That is if there would be any justification for disturbing the ceiling.
49. By reason of the foregoing, I am totally unable to see any unconstitutionality or illegality in the Gazette notice.

Whether the petitioner's petition herein meets the threshold for a properly crafted and presented petition.

50. It is a trite principle in constitutional litigation that a party seeking relief through a constitutional Petition upon the premise of an alleged violation of *the Constitution*, constitutional rights and fundamental freedoms, must plead with a reasonable degree of precision demonstrating the constitutional provision[s] violated or threatened to be violated, or the rights and freedoms violated or threatened to be violated, and the nature of the alleged violation. This was so stated in the case of *Anerita Karimi Njeru vs Attorney General* [1979] eKLR.



51. In the case of Julius Meme Vs Republic [2004] eKLR the Court stated:

“We would however, again stress that if a person is seeking redress from the High Court on a matter which involves *the Constitution*, it is important [if only to ensure that justice is done to his case] that he should set out a reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.”

52. The Court notes that the petitioner’s petition has a sub-caption, “Violation of *the Constitution* and Fundamental Freedoms”. Careful consideration of the contents thereunder reveals that she has not explained the manner the alleged rights or provisions of *the Constitution* were violated by the Respondent. All she did was recite the Constitutional Articles as they obtain in *the Constitution*. The Court has also carefully scanned through the other parts of the petition, and the supporting affidavit, and finds no difficulty in stating that they do not reveal how the provisions of *the Constitution* and or the Petitioner’s rights have been violated

53. It is worth stating that after the promulgation of the 2010, Constitution there has been a surge in litigants constitutionalising every dispute, a practice that the Court abhor. Based on the doctrine of constitutional avoidance, such litigations often fail.

54. In KKB VS SCM & 5 others [Constitutional Petition 014 of 2020] KEH 289 [KLR] on the doctrine, Justice Mativo stated and I agree, thus;

“Constitutional avoidance has been defined as a preference of deciding a case on any other basis than one which involves a constitutional issue being resolved. As a principle, constitutional avoidance has been linked to the doctrine of justiciability. In broad terms, justiciability. In governs the limitations on Constitutional arguments that courts will entertain. It encompasses three main principles which are standing, ripeness and mootness. The doctrine of avoidance was fortified in Sports and Recreation Commission v Sagittarius Wrestling Club and Anor. [2001][2] ZLR 501 [s], in which Ebrahim JA said the following:-

“ Courts will not normally consider a constitutional question unless the existence of a remedy depends upon it; if a remedy is available to an applicant under some other legislative provision or on some other basis, whether legal or factual, a court will usually decline to determine whether there has been in addition, a breach of the Declaration of Rights....”

55. The Constitutional Court of Zimbabwe in Chawira & Others v Minister of Justice Legal and Parliamentary Affairs & Others held:

“As we have already seen, in the normal run of things courts are generally loathe to determine a constitutional issue in the face of alternative remedies. In that event, they would rather skirt and avoid the constitutional issue and resort to the available alternative remedies.”

56. In COD & another v- Nairobi City Water & Sewerage Company Limited [2015] eKLR, the Court stated;

“Of justice and right that should guide and inform the law and actions of man. While an infringement of *the Constitution* might in certain cases give rise to redress for under Section



1“11. Similarly, in *Papinder Kaur Atwal v- Masnjit Singh Amrit*, Nairobi Petition No. 236 of 2011 where after considering several authorities Justice Lenaola remarked as follows;

” All the authorities above would point to the fact that *the Constitution* is a solemn document, and should not be a substitute for remedying emotional personal questions or mere control of excesses within the Administrative processes..... I must add the following; the Bill of rights is robust. It has been hailed as one of the best in any constitution in the world. Our courts must interpret it with all the liberalism they can marshal. However, not every pain can be addressed through the Bill of Rights and alleged violation thereof.”

12. The Supreme Court of India also has held that ordinary remedies available under common law and statutes must be pursued in the ordinary manner as provided under statute. For instance, see *Re Application by Bahadur* [1986] LRC [Cost.] The Court expressed itself as follows at page 307:

“The Courts have said time and again that where infringement of rights is alleged which can be founded in a claim under substantive law, the proper course is to bring the claim under such law and not *the constitution*. This case highlights the un-wisdom of ignoring that advice.....

The Constitution sets out to declare in general terms the fundamental concepts 4, yet, as has been proclaimed by the highest Court in the land, it is not a general substitute for the normal procedures for invoking judicial control of Administrative Action.”[see *Harrison v- A.G* [1979]3 WKR.....”

57. In the case of *Dr Emmanuel Wambua Kituku vs the Council of Legal Education and Another* [Petition number E209 of 2022] eKLR this Court noted as follows:

“The common thread across all the decisions cited above is that the constitutional litigation path is one that is narrow, only to be travelled on, in exceptional and very necessary situations. Not every grievance or dispute shall be litigated under *the Constitution*. Where a matter can be handled through other processes, the best course is to allow them to be under those processes. It matters not that alternatively; they can be dealt with under a Constitutional litigation.”

58. I have carefully considered the issues raised and presented in the Petitioner’s petition, and more specifically on the summary dismissal of the Petitioner from her employment. They are largely on procedural fairness of the process that led to the decision by the Respondent to dismiss her. of the Petitioner’s employment with the 1st Respondent. Weighing the material presented before me more particularly on the dismissal, leaves me with no option other than to conclude that the substantive remedies sought by the Petitioner, do not depend upon the “constitutional issues” raised by her. The reliefs sought are those that ought to have been sought under the *Employment Act* in an ordinary Claim, through the procedure provided for under the *Employment and Labour Relations Court Act*, and the Practice and Procedure Rules of this Court.

59. Worth stating at this point that the mere allegation that a Human right or fundamental freedom, or *the Constitution* has been infringed or is threatened to be violated is not sufficient to attract the Court to engage its jurisdiction under the provisions of *the Constitution* instead of jurisdiction under statute.



Conclusion

60. Having found as I have hereinabove, I find it unnecessary to consider the other issues. By reason of the foregoing premises, I strike out the petitioner's petition herein. Each party is to bear its own costs.

61. The Court thanks Counsel for the parties for their detailed and insightful submissions. They were helpful to this Court. The fact that I have not summarised and brought them out in a detailed manner, is not reflective that I didn't find them useful.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF OCTOBER, 2023.

OCHARO KEBIRA

JUDGE

