



REPUBLIC OF KENYA



KENYA LAW

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**Kenya Legal Defence Fund v Chekok & 7 others (Petition E013 of 2023)
[2023] KEELRC 3473 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3473 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION E013 OF 2023
M MBARÚ, J
NOVEMBER 23, 2023**

BETWEEN

KENYA LEGAL DEFENCE FUND PETITIONER

AND

WILSON CHEKOK 1ST RESPONDENT

STANLUS JIRA 2ND RESPONDENT

SIMON CHARO 3RD RESPONDENT

MARTIN TSUMA 4TH RESPONDENT

JACOB KIMTAI TORUT 5TH RESPONDENT

**COAST WATER WORKS DEVELOPMENT AGENCY BOARD 6TH
RESPONDENT**

CS WATER, SANITATION & IRRIGATION 7TH RESPONDENT

THE ATTORNEY GENERAL 8TH RESPONDENT

RULING

1. The ruling relates to the Notice of Preliminary Objections dated 4th October, 2023 filed by the 7th and 8th respondents on the grounds that;
 - a. The court lacks jurisdiction to hear and determine the matter.
 - b. The petition does not comply with rule 10 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 201.
2. Parties attended and agreed to address the objections by way of written submissions.



3. The 7th and 8th respondents submitted that the court has no jurisdiction to hear constitutional petitions unlike the High Court. the court is limited to hearing matters with regard to employment and labour relations matters as held in [Daniel Mugendi v Kenyatta University & 3 Others](#) [2013] eKLR that the court has jurisdiction to enforce not only Article 41 rights but also fundamental rights ancillary and incidental to the employment and labour relations including the interpretation of the constitution on matters before it as held in [United States International University \(USIU\) v The Attorney General & others](#) [2012] eKLR. The court has jurisdiction to hear matters arising from relationships defined under Section 12 of the [Employment and Labour Relations Curt Act](#).
4. The petitioner does not cite any violation of the constitution or Article 41 of the [Constitution](#) provisions. There is no indication as to what relationship exists between the petitioner and the respondents with regard to matters under Section 12 of the Act necessitating the invocation of the court jurisdiction. In the case of [Njue v Kenya Maritime Authority & another](#) Petition E012 of 2022 the court held that the doctrine of constitutional avoidance deals with instances where the court will decline to deal with a matter because there exists another remedy provided in law. In [Sumayya Athmani Hassan v Paul Masinde Simidi & another](#) [2019] eKLR the court held that legislation has been given to give effect to a constitutional right and it is not permissible for a litigant to found a cause of action directly on the constitution without challenging the legislation in question.
5. The petition is premised on the alleged contravention of the [Leadership and Integrity Act](#), [Public Officers Ethics Act](#) and the [Anti-Corruption and Economic Crimes Act](#) which matters call for investigations before civil or criminal proceedings can be commenced and which the petitioner has failed to apply before invoking the court jurisdiction.
6. The other respondents relied on the submissions by the 7th and 8th respondents.
7. The petitioner submitted that with regard to the question of jurisdiction, the court should address and render a ruling.

Determination

8. The petition is premised on the violations of various provisions of the [Constitution](#) Particularly Articles 10, 73, 75, 76 and 232. There are alleged violations of Section 11, 12, 13, and 15 of the [Leadership and Integrity Act](#), Section 11 of the [Public Officers Ethics Act](#), Section 46, 47, 62 and 64 of the [Anti-Corruption and Economic Crimes Act](#).
9. The petition is premised on the fact that the petitioner is a non-governmental organisation with mandate to address good governance, human rights, transparency and accountability in government. That the 2nd to 5th respondents are employees of the 6th respondent and are bound as public officers to uphold the [Constitution](#). The respondents have engaged in acts of massive economic loss and damage and misled various individuals that there exists works and projects to be tendered of which there are no such project(s).
10. The petitioner is seeking for orders and declaration that the 1st to 5th respondents be found to have contravened the [Constitution](#) through acts amounting to abuse of office and acts of corruption and fraud, that they be found as no longer worthy of holding public office for violating the constitution, and to be directed to compensate the victims of fraud in form of damages.
11. The jurisdiction of the court to hear and determine constitutional petitions is primary. As a specialised court for employment and labour relations protected under Article 162(2)(a) of the [Constitution](#), that jurisdiction is original and unfettered.



12. However, a constitutional petition filed before this court should give contextual account. A petitioner should first address key questions well outlined by the Court of Appeal in the case of *Sumayya Athmani Hassan v Paul Masinde Simidi & another* [2019] eKLR. Whether the issue in dispute is well regulated under a given statute. Whether invoking the constitution is necessary and fundamentally, whether the application of Rule 7 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* is insufficient. The Court of Appeal hence held that;

... where legislation has provided a remedy and prescribed a clear procedure for address of a particular grievance, a litigant cannot invoke the provisions of the Constitution for redress of such grievance. ... [and in] the case of *Speaker of the National Assembly v Karume* [2008] KLR 425 for the principle that:

“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or the Act of Parliament, that procedure should be strictly followed”

13. With regard to employment and labour relations disputes, the Court of Appeal went on to hold as follows;

The right to fair labour practices is part of the human rights secured by the Bill of Rights under Article 19 of the Constitution. By Article 21(4) of the *Constitution*, the State is required to enact and implement legislation to fulfil its international obligations in respect of Human Rights and Fundamental Freedoms. By Article 22(1) as read with Article 22(3) and the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* - Legal Notice No. 117 of 2013, the Bill of Rights is enforced by filing a petition in the High Court and by Article 23(3), the Court may grant appropriate relief including a declaration of invalidity of any law that violates the Bill of Rights. The *Employment Act, 2007* as revised in 2012 – after the coming into operation of the current Constitution, indicates in the preamble that one of its objects is to “declare and define the fundamental rights of employees”. Section 3 thereof provides that the *Act* applies to all employees employed by an employer under a contract of service except the classes of employees specified therein.

The *Employment and Labour Relations Court Act* stipulates the procedure for the enforcement of employment rights.

14. Therefore, where there is a clear procedure for redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed.
15. In this case, the petition, though based on the provisions of Article 22 of the *Constitution*, the petitioner is not defined as acting for any members of the public not capable of acting in their own name or that there is an employment relationship or any other relationship as outlined under Section 12 of the *Employment and Labour Relations Court Act, 2011* to justify the invocation of the court original jurisdiction under the *Constitution*. Lack of any direct relationship between the petitioner and the respondents with regard to employment and labour relations of for connected purposes is lost. Lapse is defining which constitutional provisions have been breached and the statute is insufficient in addressing such matter is not stated. Largely, there is no statute(s) challenged as not sufficient to cover the rights addressed or that there are unconstitutional provisions therefrom,
16. The only matter remotely linked to the court is that the 2nd to 5th respondents are employees of the 6th respondent.



17. The orders sought in their nature are far wide and removed from any employment relationship between the petitioner and the respondents. Within the specialised mandate of the court, employment and labour relations, it would be an overstretch for the petitioner to seek to agitate its petition seeking to interrogate claims of fraud, tender awards and projects alleged to have been initiated through abuse of office and acts of corruption whereas there exist forums to address such matters.
18. Even though the court is clothed with a constitutional mandate to interpret and enforce constitutional rights and fundamental freedoms, the petitioner must have the required standing to urge such matters before the court. Fundamentally, there must be a proper petition seeking for constitutional interpretation of a statute that is alleged to be unconstitutional with regard to the enforcement of employment and labour disputes. Where a matter is well addressed under any written law such as the Employment Act, 2007 or the Labour Relations Act, 2007 to needlessly invoke constitutional petition route is in abuse of court process and should not be allowed.
19. Without the petition raising any matter directly or remotely related to the court mandate, the invocation of a constitutional petition being unnecessary, the objections made are hereby found with merit.
20. Before conclusion, the matters raised by the petitioner are grave and of concern. The concerned parties ought to deal particularly the interested party. However, for want of forum, this shall suffice.
21. Accordingly, objections dated 4th October, 2023 are hereby found with merit and allowed. The court lacks jurisdiction. The petition is dismissed. Costs of Ksh. 20,000 awarded to 7th and 8th respondents.

DELIVERED IN OPEN COURT AT MOMBASA THIS 23RD DAY OF NOVEMBER 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... **and**

