



**Mjomba & 22 others v Attorney General (Petition 8 of 2016)  
[2022] KEELRC 27 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELRC 27 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
PETITION 8 OF 2016**

**AK NZEI, J  
APRIL 28, 2022**

**BETWEEN**

**ESSAU KIORA MJOMBA & 22 OTHERS ..... PETITIONER**

**AND**

**ATTORNEY GENERAL ..... RESPONDENT**

**RULING**

1. The Petition herein was filed by the 1<sup>st</sup> to 35<sup>th</sup> Petitioners against the Honourable Attorney General (the Respondent) on 16<sup>th</sup> November 2016. In the petition (dated November 6, 2016) the Petitioners pleaded, inter alia:-
  - a. that they were Servicemen in Kenya Air Force and citizens entitled to the enjoyment of legal safeguards enshrined in the then Kenya *Constitution 1969*, the *Kenya Armed Forces Act* No. 60 of 1968 and the *Prisons Act*, Chapter 90 of the Laws of Kenya.
  - b. that at all material times to the suit, the Petitioners were illegally detained at Kamiti Maximum Prisons and Naivasha Maximum Prisons without valid warrant of detention from a competent state authority.
  - c. that on diverse dates in the course of August 1982, the Petitioners were captured by Kenya Army personnel on suspicion of participating in the coup-d-etat of 1<sup>st</sup> August 1982.
  - d. that at the time of capture and thereafter, the Petitioners were subjected to barbaric torture and cruel, inhumane and degrading treatment by Kenya Army (details of which are contained in the petition).
  - e. that after the brutal capture, the Petitioners were detained at various military installations, police stations and prisons where they were treated in cruel inhumane and degrading manner as they were locked stark naked in dark water logged cells.



- f. that the Petitioners' rights as employees with the Kenya Airforce as enshrined in the [Armed Forces Act](#), No. 60 of 1968 were brazenly contravened, particularly during arrests and incarcerations.
  - g. that the Petitioners were never accorded legal representation of their own choice.
  - h. that the acts of torture, cruelty, inhumane treatment and degrading treatment meted on the Petitioners by Kenya Army personnel, Police and Prison Wardens was a gross violation of Section 74(1) of the [Constitution of Kenya 1969](#).
  - i. that the Petitioners' arrests and subsequent incarceration at the various prisons for months was unconstitutional, wrongful and not legally justifiable and hence the Petitioners are entitled to damages and compensation by the government of the Republic of Kenya.
2. The Petitioners sought several reliefs including declaratory orders on the illegality and unconstitutionality of the alleged violations of their constitutional rights and payment of damages by the Respondent, retirement benefits and terminal benefits, among others.
  3. An amended petition was filed on January 20, 2020 pursuant to the Court's leave given on September 16, 2019 and 20<sup>th</sup> January 2020 respectively. The Court's record shows that on August 30, 2021, the 15<sup>th</sup>, 18<sup>th</sup> and 21<sup>st</sup> Petitioners withdrew their entire claim/petition against the Respondent.
  4. When the Petition came up for mention before me on 24<sup>th</sup> September 2021, Counsel for the Petitioners orally prayed for consolidation of the petition herein with petition No. 10 of 2021, and submitted that both matters are almost similar. Counsel for the Respondent told the Court that he needed to take instructions on the issue of consolidation.
  5. On January 27, 2022, Counsel for the Respondent opposed consolidation on ground that although the cause of action is similar in both petitions, there are four Respondents in Petition No. 10 of 2021, whereas there is only one Respondent herein; and that there may arise an issue of apportionment of liability in petition No. 10 of 2021. This Ruling is on the issue of whether or not the two petitions should be consolidated.
  6. This Court's jurisdiction to consolidate suits is donated by Rule 23 of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#), which provides:-
 

The Court may consolidate suits if it appears that in any number of suit;

    - a. Some common questions of fact or law arises; or
    - b. It is practical and appropriate to proceed with the issues raised in the suits simultaneously."
  7. As stated and appreciated by Counsel for both parties, the two Petitions are similar. Matters of fact and of law pleaded in the two petitions are similar; and reliefs sought in the two petitions are basically the same. The only difference is that in petition No. 10 of 2021, the Petitioners sued the Honourable Attorney General together with the Defence Council of the Armed Forces of Kenya, the Public Service Commission and the Commissioner General of Prisons of Kenya. The Defence Council of the Armed Forces of Kenya and the Public Service Commission are institutions within the government of the Republic of Kenya, while the Commissioner General of Prisons Kenya is a Civil Servant and/or Government Officer. The Honourable Attorney General is a Respondent in both petitions. In my view, the inclusion of the Defence Council of the Armed Forces of Kenya, the Public Service Commission and the Commissioner General of Prisons cannot be a bar to consolidation of the two petitions. It has



not been demonstrated that any prejudice will be occasioned to any of the Respondents in the two suits if the petitions are consolidated.

8. In the case of *Law Society of Kenya v Centre for Human Rights & Democracy & 12 others* [2014] eKLR (cited in *Arnold Kipkirui Langat v Atticon Limited & other* [2021] eKLR) the Supreme Court of Kenya held:-

“The essence of consolidation is to facilitate efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposed it.”

9. It was held in the case of *Nyati Security Guards & Services Ltd -vs- Municipal Council of Mombasa* [2000] eKLR as follows:-

“the situation in which consolidation can be ordered include where there are two or more suits or matters pending in the same Court where:-

- a. Some common question of law or fact arise in both or all of them.
- b. The rights or reliefs claimed in then are in respect of the same transaction.
- c. For some other reason, it is desirable to make an order for consolidating them”

10. The Court has wide discretion in deciding on whether or not to allow consolidation of suits. In the instant case, I find it desirable, practical and appropriate for the Court to hear and to determine the issues raised in both petitions simultaneously. Consequently, I make the following orders:-

- a. Petition Number 8 of 2016 and Petition Number 10 of 2021 are hereby consolidated.
- b. The lead file will be Petition No. 8 of 2016.
- c. Any party wishing to amend and/or further amend their pleadings to accord with the consolidated character of the Petition may do so within thirty days of this Ruling.
- d. The consolidated petition will be mentioned for directions on 18<sup>th</sup> May 2022.

11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28<sup>TH</sup> DAY OF APRIL 2022**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

No appearance for Petitioner



Miss Kimotho for Respondent

