



**Kenya Council Of Employment And Immigration Agencies &
another v Teachers Service Commission & 4 others (Petition
112 of 2016) [2022] KEELRC 1309 (KLR) (7 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1309 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 112 OF 2016**

**JK GAKERI, J
JULY 7, 2022**

BETWEEN

**KENYA COUNCIL OF EMPLOYMENT AND IMMIGRATION
AGENCIES 1ST PETITIONER
JANE KERUBO MOGIRE 2ND PETITIONER**

AND

**TEACHERS SERVICE COMMISSION 1ST RESPONDENT
NANCY NJERI MACHARIA 2ND RESPONDENT
PAUL ONGERA ONSONGO 3RD RESPONDENT
FLORENCE MOGIRE ALIAS (JANE KERUBO MOGIRE) OF MASOBO
PRIMARY SCHOOL (0702790927) TSC NO.216760. 4TH RESPONDENT
HON. ATTORNEY GENERAL. 5TH RESPONDENT**

JUDGMENT

1. The 1st Petitioner is a civil society registered with Registrar of Societies and its constitutive instrument mandates it to address issues germane to constitutionalism, accountability, transparency, integrity and ethics, sustainability and governance.
2. The 2nd Petitioner is a registered member of the Teacher Service Commission (TSC) Number 340787.
3. The petitioners aver that the 2nd respondent failed to competently implement Chapters four and six of *the Constitution* of Kenya, 2010 by failing to have a proper record and data management of the teachers who have gone on study leave and filed their certificates, Diplomas and degrees qualifications after their graduation.



4. The petitioners further aver that the 2nd respondent's failure to implement chapters four and six of *the constitution* led to the Auditor discovering unqualified individuals who had fraudulently made their way into the 1st Respondent's payroll leading to a loss of Kshs 27 billion annually.
5. It is also averred that the 2nd Respondent has failed to implement the circular that unearthed the breaches of chapter four and six vide memo dated 8th January 2015 Ref. No. TSC/D(1A) Directors/4/135 and TSC/DHRM and D/14/VOL.11/57
6. The petitioners further contend that the 2nd respondent failed to remove from its payroll 139 names of individuals of unquestionable character during her tenure as the Director of Teacher Management.
7. The petitioners further aver that the 2nd Respondent failed to prosecute cases of unqualified individuals with forged certificates and degrees in the 1st Respondents payroll identified by the Director, Internal Audit thus breaching and burdening public interest and taxpayers.
8. The petitioners aver that the 2nd Respondent failed to act and protect the public interest from illegalities and is therefore unsuitable to serve as a public officer.
9. The amended petition dated 11th November 2016 and filed on the 23rd November 2016 is supported by the affidavit of Evans Nyambega Akuma, the chairman of the 1st petitioner.
10. The Petitioner prays for the following reliefs:
 - a. Declaration as to whether the Teachers service commission 1st Respondent records management is integrated into records information systems that alter teachers to have are commencing on study leave and upon their completion are alerted upon their leave elapsing and are asked to tender in their certified copies through the teachers service unit in county levels to curtail the loss of productive hours that must be employed to pupils and students other than the same teachers relentlessly or tiresomely being with chronic absenteeism, hence salary recovery are not inline with *the constitution*, national legislation and subsidiary legislation.
 - b. Declaration that the 1st Respondent has got no power under Article 41, 162(b) as read with article 165 into issues of bill of rights which powers are exclusive for high courts and specialists Employment and Labour relations court that cannot be jealously shared by any person, body commission or independent offices as their decision are subject to review and supervision by the court.
 - c. Declarations as whether the rogue officers of the Teachers Service commission 1st Respondent are subject to remands by their employer to arrest this scenario which maybe silent within their ranks and file and vetting be hereby applicable under the Statutory and instruments Act 2013.
 - d. Declaration that the 2nd Respondent is not a gazettes judge of the high court or related courts to declare the court orders incompetent fake and illegal without invoking the jurisdiction of the court for determinations.
 - e. Declaration as to whether the Teachers service commission 1st Respondent quality service and inspectorate are alive within their mandates on authentications of certificates, diplomas, degrees, and masters before embarking on any salary and promotion ranking and adjustment.



- f. Declarations are hereby made that Jane Kerubo Mogire TSC NO. 340787 is hereby awarded on the principles and practices of teachers service commission, three incremental credits due to her master’s degree and all accruing arrears and interests at court rate since the year 2010 up to the time of determination of this petition, in addition to her promotions in job groups M N and P with all the allowances pertaining to such denial of rights as partial consent and admission of collusion, connive and knowledge has been clearly set out.
- g. Declaration as to whether the court of law weight the prejudices as above that are likely to be suffered by an innocent party and weight it against the prejudice to be suffered by the offending or breaching party if the court truck out a document or does not grant prayers as sought.
- h. Declaration is hereby made that Jane Kerubo Mogire T.S.C NO. 340787 is hereby awarded instant by waivers a promotion to job groups M N and P at an interval of three years in accordance with principles and practices of teacher’s service commission, that bypassed her when her degrees were on the records of Jane Kerubo Mogire TSC NO. 216760.
 - i. Declarations as to whether in that regard courts exercise judicial function from a quasi-judicial commission as and discretion based upon the vision, missions, and the statement and core values as a subject matter of public policy entails herein.
- j. Declarations are thereby made that Jane Kerubo Mogire TSC NO. 340787 is hereby awarded designation and duties in line with her qualifications of masters of Education in Administration Degree instead of being wasted in the Kinoo Holy ghost Mission Primary school kikuyu- sub-county since qualifications are recognized and approved for study leave by the Teachers Service Commission of Kenya, and there are 16 vacancies within Nairobi that are filled skewedly or corruptly clandestinely and 21 vacancies in Nairobi of teachers deployed to home districts in Machakos county.
- k. Declaration as whether the teacher Jane Kerubo Mogire is subject to recompensation of loss of promotions as given in a period of 3 years each hence now to jo group “p”
- l. Declarations that such skewed, corruptly, and clandestinely staffing and posting is in breach of chapters four and six and the public interest losses Kshs 27 million as more than 30,000 primary schools do not attend class due to low morals and 90000 teachers who enjoy their staffing and postings turn up do not attend class.
- m. Declaration as to whether the teacher Jane Kerubo Mogire is subjected to recompensation of re designation to the teachers’ service commission headquarters and handle matters pertaining to her master’s degree in education administration as staffing officer or quality assurance department on the transfer of services, or other.
- n. Declarations that *Teachers Service Commission Act* No. 20 of 2012 is clear that no teacher should be hereby appointed before confirmation of their



certificates, degrees, and masters must have certified copies of the certificates, degrees and master's and other relevant documents.

- o. Declarations as to whether the teacher Jane Kerubo Mogire is subject to salary adjustments to commensurate with her grades/position.
- p. Declarations are hereby made that Jane Kerubo Mogire T.S.SC NO. 340787 is hereby awarded a promotion to job group 'P' at an interval of 3 years in accordance with Principles and practices of Teachers Service Commission.
- q. Declaration as whether the Teacher Jane Kerubo Mogire is to re compensation at interest of court rates for any accrued arrears.
- r. Declarations are hereby made that Jane Kerubo Mogire is to be considered by the court as alright and her rights have been infringed in accordance to Article 22,23,24,27, (4), 35,47,48, 50(1) of the constitution of Kenya.
- s. Declaration as whether this court must find that the respondents are in breach of the constitution as a constitutional commission under Chapter six of the constitution of Kenya 2010 as read with the Teachers service commission Act, values and principles of public service and public officers ethics of 2003 and leadership Act 2012.
- t. That declarations is hereby made that Jane Kerubo Mogire T.s.c No. 340787 is hereby awarded designations and duties in line with her qualifications of master of education in administration degree instead of being wasted at Kinoo Holy ghost mission primary school Kikuyu sub-county since these qualifications are recognized and approved by the Teachers Service Commission of Kenya.
- u. Declarations as whether this court must find that the teacher Jane Kerubo Mogire Teachers Service Commission 1st Respondent personal file number 340787 primary section is hereby rectified of errors in which her employer erroneously/ or intentionally substituted to her name with unknown persons herein- primary Florence Mogire Teachers Service Commission Number 216760 – primary Selection based at Gatacho Primary School And Formerly Of Chigwobi Primary School, Masaba South County.
- v. Declarations that subject to misleading information to the court on 9.11.2016 by Calvin Odhiambo Anyuor And Oyucho Tiomin with instructions from their clients are solely, collectively or otherwise each found in breach of session 20(7) of the employment and labour relations court revised 2014(2012) and are hereby brought strictly into the jurisdiction of this court and hereby fined 1000000 or jail of two years or both.
- w. Declaration that the O.C.S Capitol Hill Police Station to hereby be ordered to arrest and bring them into the jurisdiction of this court for fine, jailing or bot as above.
- x. Declarations that O.C.S Capitol Hill Police Station to hereby be ordered to arrest Paul Ongera Osongo and bring him into the jurisdiction of this court for fine jailing or both as above.



- y. Declaration that the 2nd Respondent appointment letter referenced TSC/600559/VOL.II/94 dated 24th June 2015 is hereby set aside and quashed.
- z. Declaration that the 2nd Respondent gazettement is hereby set aside and quashed
 - aa. That cost of this petition be borne by the Respondents.

The Respondent's Case

- 11. There is a mention in the 1st respondent's submissions of a replying affidavit by Mr. Simeon Omare sworn on 8th September 2016 and another one by Julius Olayo sworn on 15th January 2021, however, the two affidavits are not in the file nor in the CTS.
- 12. As such it was difficult to deduce the precise averments of the Respondent.

2nd Petitioner's Submissions

- 13. The 2nd petitioner submits that once the petition was amended the 1st petitioner ceased to have locus on the matter.
- 14. The 2nd petitioner submits that the main issue before the court is the 1st respondents awarding the 4th Respondent a promotion to Graduate Teacher II on an account of a Bachelor's degree of the 2nd petitioner which was a violation of *the constitution*.
- 15. The 2nd petitioner submits that the 4th respondent admitted the mistake and called the TSC to recover the overpayments but the recoveries were done only for 2 months.
- 16. The 2nd petitioner submits that she was awarded Kshs 1,201,558 in three increments but was only refunded Kshs 133,456.
- 17. The 2nd petitioner prays for salary arrears/underpayments at the correct job group from 2014 to date.

1st Respondents submissions

- 18. The 1st Respondent distilled 5 issues for determination as follows;
 - i) Whether the 1st petitioner has locus to bring the present petition as filed
 - ii) Whether the petition filed meets the threshold for a constitutional petition
 - iii) Whether the cause of action against the 1st Respondent had fully crystallized.
 - iv) Whether this court can grant the orders sought by the petitioner
 - v) Who should bear the cost of this petition?
- 19. On the 1st issue the 1st respondent states that section 12 of the *Employment and Labour Relations court Act* provides;

“...that an application claim or complaint may be lodged with the court by or against an employee, employer, trade union, an employer's organization, federation, registrar of trade unions, cabinet secretary or any office established under any written law for such purpose. These classes of people may be represented before the court either in person, an advocate



duly authorized to practice law under the advocates Act or duly authorised trade union official”

20. The 1st respondent submits there is no provision for any other representation as such the 1st petitioner cannot be said to be acting in person, nor an advocate authorized to practice under the law nor an authorized trade union.
21. It submits that the teaching fraternity has three main unions which have verifiable documents being a recognition agreement or collective bargaining agreement with the employer and they are KNUIT, KUPPET and KUSNET.
22. It submits for any union official to represent a teacher in court he must have authority or exhibit in court that the matter is one of public interest.
23. The 1st respondent submits that the 1st petitioner has not shown that the petition before the court is in the interest of or benefit of the public and therefore the 1st petitioner lacks locus standi.
24. The 1st respondent further submits that the petition having been amended and introduced a 2nd petitioner shows that the 2nd petitioner had the ability to act on her own therefore the filing of the petition by the 1st petitioner was unnecessary and has only convoluted the issues being raised in the petition making the petition a classical example of a vexatious pleading.
25. The 1st respondent relies on the holding in ELRC MISC APP No. 200 of 2020 Kenya Council of Employment and Migration Agencies & Another vs Samuel Mwangela Arach & Another (2015) where the 1st petitioner was adjudged to lack locus standi to bring a suit.
26. On the 2nd issue, it is submitted that the petitioner has not properly invoked the constitutional jurisdiction of this court since the relationship between the 1st Respondent and the 2nd Petitioner is contractual and within the purview of employment law. It is submitted that the issue of promotion based on her master’s certificate is a contractual issue regulated by the Code of Regulations for teachers and should not be elevated to a constitutional crisis.
27. The 1st respondent relies in the holding in Joseph Mutura Mberia & Another v Council of JKUAT [2013] where Lady Justice Mbaru held;

“direct reliance on fundamental rights as contained in the constitution is impossible when the right in issue is regulated by legislation as is actually with the Employment Act which directly regulates fair labour practices which include suspension, termination and dismissal. When a legislation is enacted to give effect to a constitutional right, a litigant cannot bypass the legislation and rely directly on the constitution without challenging the legislation as falling short of the constitutional standard.
28. In Petition No. 187 of 2012 Uhuru Kenyatta vs Star Publications Ltd. Justice Lenaola dismissing a similar petition held:

“I say no more where there is a remedy in civil law, a party should pursue that remedy and I say so well aware of the decision in Haco Industries (supra) where the converse may have been expressed as the position. My mind is clear however that not every ill in the society should attract a constitutional sanction and as stated in AG v SK Dutambala Cr Appeal No. 37 of 1991(Tanzania Court of Appeal), such sanctions should be reserved for appropriate and really serious occasions.



29. The 1st Respondent submits that the petitioner cannot invoke directly the jurisdiction of a constitutional court where the remedies are clearly and explicitly available under legislation. It further submitted the facts in issues are the promotion and award of incremental credits which is a contractual issue and not a constitutional issue no fundamental rights and freedoms have been infringed.
30. It is further submitted that the petition does not disclose the right alleged to have been violated and relies on the holding in Anaratia Kirimi Njeru vs The Republic where the court held; “a party claiming an infringement or violation of any part of *the constitution* has a duty to set out with precision the section of *the constitution* and the manner of infringement”.
31. Further, the 1st respondent relies on the holding in Joseph Mutuura Mberia v Council, Jomo Kenyatta University of Agriculture & Technology [2019] eKLR where Lady Justice Maureen Onyango held that;
- The claimant was not entitled to damages for breach of constitutional rights and discrimination as his claim was not specific in how his rights were violated and which constitutional provisions were infringed. Further, the instances given do not necessarily involve constitutional questions since the respondent did not hinder the claimant’s participation in union activities.
32. The 1st respondent further relied on Rule 10 (2)(d) of the Mutunga Rules which provide that the petition must disclose and set out precisely the nature of injury caused or likely to be caused. It is further submitted that the Articles referred to in the petition’s title provide little or no particulars as to the allegations and the manner in which they have been infringed.
33. It is the 1st respondent’s case that the petitioner has failed to provide the nexus between the various provisions of *the constitution* and the incremental credits payable to the teacher and further submits that the prayers sought in the petition are too broad and generic in nature and do not point to a direct violation of *the constitution*.
34. On the third issue, the 1st respondent submits that by the time the petitioner filed this matter, it was aware of the complaint by Kerubo Jane Mogire TSC No. 340787 and had already been interviewed and a decision had been reached to rectify the anomaly by adjusting the salary of Ms Kerubo Jane Mogire TSC No. 340787, the 2nd petitioner in recognition of her master’s certificate.
35. The 1st Respondent submits that it corrected the anomaly and instituted the recovery of the 2nd Petitioner’s salary which was to run from 1st January 2011 to August 31st August 2016.
36. It also submits that the 2nd petitioner had not lodged a complaint with the commission with respect to her incremental credits.
37. The 1st respondent submits that an innocent mistake cannot be construed in any manner whatsoever as a denial, violation, infringement and/or threat to Kerubo Jane Mogire’s TSC No. 340787 fundamental rights.
38. The 1st respondent submits that the petition ought not to be allowed as no cause of action has crystalized to warrant the said petition.
39. The 1st respondent submits that the prayers sought are incompetent and cannot be issued and urges the court to have them struck out with costs.



40. Finally, the 1st respondent submits that the amended petition, chamber summons and any pending application fail for lack of merit and the same goes against public interest and urges the court to dismiss the same with costs.

Issues for Determination

41. The issues that commend themselves for determination are:
- a. Whether the 1st petitioner has locus standi?
 - b. Whether the Petitioner's constitutional rights have been violated?
 - c. Whether the petitioners are entitled to the orders sought?
42. As to whether the 1st Petitioner has standing to commence these proceedings, the court proceeds as follows;
- According to Black's Law Dictionary 10th Edition, 2014 Standing means,
- “ A party's right to make allegation or seek judicial enforcement of duty or right.”
43. The 1st respondent contends that the 1st Petitioner lacks the requisite standing by reason of Section 12(2) of the *Employment and Labour Relations Court Act*, 2011 which identifies the persons who may make an application, claim or complaint in court. That the 1st Petitioner does not fall under the list in Section 12(2) of the Act.
44. However, since the matter is filed as a Petition, the provisions of Act 22(1) of *the Constitution* of Kenya, 2010 could salvage the 1st Petitioners standing. Article 22 (2) sets out the capacities in which a person may approach the court on matters germane to the enforcement of rights or fundamental freedoms in the Bill of Rights as follows:
- In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by;
- a. a person acting on behalf of another person who cannot act in their own name;
 - b. a person acting as a member of or in the interest of a group or class; of persons
 - c. a person acting in the public interest; or
 - d. an association acting in the interest of one or more of its members.
45. As the 1st respondent submits, the teaching fraternity has three unions all of which represent teachers' interests and which have Recognition Agreements and/or Collective Bargaining Agreement with the employer.
46. It is unclear whether the 1st Petitioner filed the petition herein with consent and/or authority of the 2nd Petitioner whose name was introduced by way of an amendment which may have been a last ditch attempt to salvage the petition. Evidently, the 2nd Petitioner had capacity to act on her own as the 1st Petitioner has not submitted that the petition falls under the umbrella of public interest.
47. Since the petition herein relates to matters germane to employment and thus contractual generally, the 1st Petitioner could only have attained locus standing by sustainably asserting that the 2nd Petitioner could not act in her own name or the matter was one of public interest which was not established.



48. In the absence of evidence to the contrary, the court is in agreement with the 1st respondent's submission that the 1st Petitioner had no Locus standi to file the Petition. The court is guided by a similar holding in Kenya Council of Employment and Migration Agencies & another v Samuel Mwangera Arachi & 2 others [2015] eKLR.
49. As the 2nd Petitioner submits the 1st Petitioner ceases to have locus standi when the Petition herein was amended.
50. On whether the Petitioner's constitutional rights have been violated, the starting point is the relevant jurisprudence on the issue.
51. As this is a Constitutional Petition, premised on alleged violations of various articles of *the Constitution* of Kenya 2010, it behoves the Petitioner to establish with sufficient clarity and precision the specific articles that have been violated, the manner or nature of the alleged violation and its extent as enunciated in Anarita Karimi Njeru V Republic (1979) eKLR as well as Trusted Society of Human Rights Alliance V Attorney General and 2 others (2012) eKLR.
52. In Anarita Karimi Njeru v Republic (Supra) Trevelyn and Hancox JJ stated as follows;
- “We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with 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.”
53. Similar sentiments were expressed by the Court in Kiambu County Tenants Welfare Association v Attorney General & another [2017] eKLR as follows;
- “Court have over the years established that for a party to prove violation of their rights under the various provisions of the Bill of Rights, they must not only state the provisions of *the Constitution* allegedly infringed in relation to them, but also the manner of infringement and the nature and extent of that infringement and the nature and extent of the injury.”
54. The petition cites Articles 1, 2, 3, 10, 22(3), 41, 94(5)(6), 167, 165 (3), 232, 234, 237, 258 and 260 of *the Constitution* as it is preamble to urge that Constitutional rights have been violated.
55. More specifically, the reliefs sought cite Articles 41, 162(b), 22, 23, 24, 27(4), 35, 47, 48 and 50(1) of *the Constitution* of Kenya, 2010.
56. Puzzlingly, the 1st Petitioner has not shown by cogent evidence the manner and extent to which the alleged Articles of Constitution were violated and the consequent loss, damage or injury. Rule 10(2) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rule) require particulars of injury caused.
57. The 1st respondent admits that it made a mistake by filing the documents of the 2nd Petitioner in the file or folder of the 4th Respondent and promoted her in place of the 2nd Petitioner and commenced recovery of the sums due to the 2nd Petitioner.
58. From the evidence on record and based on the principle enunciated in Anarita Karimi Njeru v Republic (Supra) and applied in legions of decisions, the court is satisfied that the petitioners have failed to establish that the petition herein meets the threshold of a Constitutional Petition.



59. The foregoing finding is buttressed by the further jurisprudence emerging from courts on the place of Constitutional petitions.
60. It is common ground that the gravamen of the 2nd Petitioners case is promotion and incremental credits due to her for having attained the Masters degree qualification in 2011 which regrettably were mistakenly bestowed upon another person owing to the apparent similarity of their names although their TSC Registration numbers are different. Mistakes do and will continue to occur but must be corrected as soon as they are discovered.
61. As submitted by the 1st respondent, the relationship between the Petitioner and the 1st respondent is contractual, governed by the provisions of the *Employment Act*, 2007, other relevant legislation, Code of Conduct, any Collective Bargaining Agreement and other relevant policies.
62. Relatedly, the rights the 2nd Petitioner seeks to enforce are exclusively contractual. It would be overstretching imagination to construe a single innocent mistake as a Constitutional infringement.
63. In *Gabriel Mutava & 2 others v Managing Director Kenya Ports Authority & another* [2019] eKLR after reviewing decisions of courts in the United Kingdom, Kenya, South Africa as well as Trinidad & Tobago, such as *Harrikissoon v Attorney General* [1980] AC 265 (PC), *Re Application by Bahadur* [1986] LRC (Const) 297, *Naptosa and others V Minister of Education Western Cape & others* [2001] BLLR 338 and *Daniel Mugendi v Kenyatta University & 3 others* [2013] eKLR and *S v Mhlungu* [1995] SA 867 CC, the court expressed itself as follows;

“Time and again, it has been said that where there exist other sufficient and adequate avenue to resolve a dispute, party ought not trivialize the jurisdiction of the Constitutional Court by bringing actions that could very well and effectively be dealt with in that other forum. Such party ought to seek redress under such other legal regime other than trivialize Constitutional litigation . . . *The Constitution* should not be turned into a thorough fare of every kind of common grievance. The duty of the employers to act fairly is now recognized in the Act as well as *the Constitution*. The court is mandated further by *the constitution* and the Act to resolve all employment disputes expeditiously and its procedures have been rendered less technical. We are saying all these in answer to the applicant’s submissions on the twin question of the applicability of the rules of natural justice and *the constitution* to the dispute. This was purely a labour dispute that could have been resolved by the application of the *Employment Act* . . .”

64. Similar sentiments were expressed by Muriithi J in *Josphat Koli Nanok & another V Ethics and Anti Corruption Commission* [2018] eKLR, Mbaru J in *Joseph Mutuura Mberia & another v Council of JKUAT* [2013] eKLR and Lenaola J (as he then was) in *Uhuru Kenya v Star Publication’s Ltd* [2013] eKLR.
65. The foregoing analysis shows that the reliefs sought by the 2nd Petitioner were obtainable in an ordinary employment claim.
66. The court is guided by the sentiments of Nzioki Wa Makau J in *Petition No. E084 of 2021 James Ambuso Omondi v Dr. Alice Mercy Wahome & 3 others* as follows;

“Having read the Petition herein, . . . indeed the petition ought to have been filed as an ordinary cause since it is plainly a suit about the dismissal of an employee and has nothing Constitutional about it . . .”



67. Although the instant petition is not about dismissal of the 2nd Petitioner, its pith and substance is contractual.
68. Relatedly, it is common ground as submitted by the 1st respondent that by the time the petition herein was filed, the 1st respondent was investigating the mix up of names between the 2nd Petitioner and the 4th respondent but it had in principle resolved to remedy the mistake and recoveries were underway from Mogire Jane Kerubo TSC No. 216760 effective 31st August 2016.
69. The 1st respondent raises the issue whether the 2nd Petitioner's rights had been violated by the 1st respondent. It is submitted that the claimant had not formally lodged a complain but was intending to in April 2016.
70. According to the 2nd Petitioner, her right to 3 incremental credits based on her master degree qualification had been violated to the extent that they were not reflected in her payslip which was her entitlement.
71. Article 22(1) of *the Constitution* of Kenya, 2010 enables a person to petition the court claiming that their right or fundamental freedom has been denied, violated or infringed or is threatened.
72. In addition, Rule 4(1) of the Mutunga Rules, 2013 permits any person who is affected or likely to be affected by the threatened, denial, violation or infringement of any right or fundamental freedom to make an application to the court. The 2nd Petitioner may have perceived a threatened violation of her constitutional rights.
73. Be that as it way, the decision to file a petition when the matter was under active consideration by the 1st respondent and no firm conclusion had been arrived at was premature. In the courts view, the 2nd Petitioner should have waited for the outcome as opposed to seeking judicial redress. This is reinforced by the 1st respondent's submission that it had commenced recoveries although it had not communicated with the 2nd Petitioner who appear to have been impatient to seek remedies elsewhere without having initiated or exhausted internal grievance resolution mechanisms.
74. For the above mentioned reasons, the court is satisfied that the petition herein was pre-mature.
75. As regards the reliefs sought, the Petitioners identifies about 26 declaratory orders.
76. For purposes of this judgement, the orders sought are reproduced as prayed by the Petitioners.
77. The court would be failing in its duty if it does not mention that whereas the drafters of the Petition and the accompanying documents expended time and other resources to prepare the petition for presentation to the Court, the drafting was inelegantly done and some of the reliefs sought are indecipherable for lack of clarity and specificity. Being a 2016 matter, the court has struggled to appreciate the dispute from scratch. Having received the file at the tail end, the duty of the court was to prepare judgement only.
78. It is the duty of parties to file clear pleadings and prayers to facilitate expeditious resolution of disputes.
 - (i) In the upshot, it is the finding of the court that the Petitioners have not by cogent evidence demonstrated how the various provisions of *the Constitution* of Kenya 2010, relied upon were allegedly violated, manner and extent of violation or injury.
 - (ii) The court further finds that the Petitioners action of filing the Petition herein before the 2nd Petitioner had invoked the 1st respondent's internal grievance resolution mechanism was premature. This finding is buttressed by the fact that the 1st respondent had commenced



investigation to unearth the anomaly that had come to light after a complaint was made and the process was underway.

(iii) It is also the finding of the court that the petition herein does not meet the threshold in *Anarita Karimi Njeru V Republic* (Supra).

79. Having found as above, the petition herein is accordingly dismissed but being essentially an employment dispute between an employee and employer, each party shall bear own costs.

80. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 7TH DAY OF JULY 2022

DR. JACOB GAKERI

JUDGE

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 15th March 2020 and subsequent directions of 21st 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 has 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.

DR. JACOB GAKERI

JUDGE

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