



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**PETITION NO. 2 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

MAURICE OPON OMOM .....1<sup>ST</sup> PETITIONER

ALEXANDER ODUNDO OMOLO.....2<sup>ND</sup> PETITIONER

CHARLES OWINO PINDA.....3<sup>RD</sup> PETITIONER

GEORGE THOMAS ODHIAMBO.....4<sup>TH</sup> PETITIONER

JAMES MOSES OTIENO OMONDI.....5<sup>TH</sup> PETITIONER

JULIUS SEDA ONGONG'A.....6<sup>TH</sup> PETITIONER

EMMANUEL MESSIAH DONGO.....7<sup>TH</sup> PETITIONER

WILLIAM OGWARI OBUNGA.....8<sup>TH</sup> PETITIONER

ABRAHAM RENSON OPATI.....9<sup>TH</sup> PETITIONER

ANDREW LAMECK ODHIAMBO.....10<sup>TH</sup> PETITIONER

ELIJAH ANYANGA.....11<sup>TH</sup> PETITIONER

JACQUES HANNINGTON MUGA.....12<sup>TH</sup> PETITIONER

JAMES ORANYO MIDAMBA.....13<sup>TH</sup> PETITIONER

MAURICE OKOTH KAYUGI.....14<sup>TH</sup>  
PETITIONER

MARTIN ODHIAMBO ONGINJO.....15<sup>TH</sup> PETITIONER

ROBERT OUMA OGANA.....16<sup>TH</sup> PETITIONER

CHARLES OCHIENG OMOLO.....17<sup>TH</sup> PETITIONER

ALBERT OBONYO.....18<sup>TH</sup> PETITIONER

EVANS OPINO OKOTH.....19<sup>TH</sup> PETITIONER

JAMES ABONYO ABONYO.....20<sup>TH</sup> PETITIONER

JOHN OKELLO KISERO.....21<sup>ST</sup> PETITIONER

MOSES OGALO OUMA.....	22 <sup>ND</sup> PETITIONER
MOSES OGALLO OUMA.....	23 <sup>RD</sup> PETITIONER
JERIM OWINO NYAMOR.....	24 <sup>TH</sup> PETITIONER
JAMES ONANGO ORUCHA.....	25 <sup>TH</sup> PETITIONER
JERIM OLUOCH ODONGO.....	26 <sup>TH</sup> PETITIONER
DAVIS OBIRI SEDA.....	27 <sup>TH</sup> PETITIONER
SILAS OWINO AGAO OGUCHE.....	28 <sup>TH</sup> PETITIONER
AHBRAHAM RENSON OPATI.....	29 <sup>TH</sup> PETITIONER
JOSEPH AGENG'A ONUONG'A.....	30 <sup>TH</sup> PETITIONER
SAMUEL ZACHARY OKOYO.....	31 <sup>ST</sup> PETITIONER
EVANS JUMA OWUOR.....	32 <sup>ND</sup> PETITIONER
ALEXANDER ODUNDO OMOLO.....	33 <sup>RD</sup> PETITIONER
GEORGE THOMAS ODHIAMBO.....	34 <sup>TH</sup> PETITIONER
JAMES MOSES OTIENO OMONDI.....	35 <sup>TH</sup> PETITIONER
FREDRICK OWITI.....	36 <sup>TH</sup> PETITIONER
ROBERT OUMA OGANA.....	37 <sup>TH</sup> PETITIONER
GEORGE WILSON ONYANGO DIANGA.....	38 <sup>TH</sup> PETITIONER
JACK HAMILTON MBALI.....	39 <sup>TH</sup> PETITIONER
JOHN OMOLO OGOLA.....	40 <sup>TH</sup> PETITIONER
JOSEPH ODHIAMBO WAMIRU.....	41 <sup>ST</sup> PETITIONER
MARTIN OPIYO MBAGA.....	42 <sup>ND</sup> PETITIONER
OUMA GILBERT OKINA.....	43 <sup>RD</sup> PETITIONER
CHARLES SUDHE GWADA.....	44 <sup>TH</sup> PETITIONER
JEKTONE KWEDE ANGEWO.....	45 <sup>TH</sup> PETITIONER
HILLARY NGAU ADERO.....	46 <sup>TH</sup> PETITIONER
EMMANUEL MASIA DONGO.....	47 <sup>TH</sup> PETITIONER
SAMUEL OBUCHE OGAWO.....	48 <sup>TH</sup> PETITIONER
WALTER ASER ODEP.....	49 <sup>TH</sup> PETITIONER
MOSES OGALO OGOMA.....	50 <sup>TH</sup> PETITIONER
BARRACK OCHOLA OSENDO.....	51 <sup>ST</sup> PETITIONER

HILLARY ONYANGO OPIYO.....	52 <sup>ND</sup> PETITIONER
MOSES ONOKA ONYERA.....	53 <sup>RD</sup> PETITIONER
SEMEI SOM OKELLO.....	54 <sup>TH</sup> PETITIONER
ANDREW OUMA OTIENO.....	55 <sup>TH</sup> PETITIONER
GASPER OCHIENG OMOLO.....	56 <sup>TH</sup> PETITIONER
SAMWEL ONDIEGI OCHIENG.....	57 <sup>TH</sup> PETITIONER
FRANCIS OKOTH ODHIAMBO.....	58 <sup>TH</sup> PETITIONER
GASPER OCHIENG OMOLO.....	59 <sup>TH</sup> PETITIONER
GERPHAS JULU OGWENO.....	60 <sup>TH</sup> PETITIONER
PETER OWINO OPONDO.....	61 <sup>ST</sup> PETITIONER
NICHODEMUS ODHIAMBO MUSIA.....	62 <sup>ND</sup> PETITIONER
JOHN OKAKA GOMBE.....	63 <sup>RD</sup> PETITIONER
JOSEPH AGENG'A ONUONG'A.....	64 <sup>TH</sup> PETITIONER
SILAS OWINO AGAO OGUCHE.....	65 <sup>TH</sup> PETITIONER
ALBERT OBONYO.....	66 <sup>TH</sup> PETITIONER
CHARLES OCHIENG OMOLO.....	67 <sup>TH</sup> PETITIONER
EVANS JUMA OWUOR.....	68 <sup>TH</sup> PETITIONER
NICHODEMUS ODHIAMBO MUSIA.....	69 <sup>TH</sup> PETITIONER
PETER OWINO OPONDO.....	70 <sup>TH</sup> PETITIONER
APOLO OCHIENG' AMIENO.....	71 <sup>ST</sup> PETITIONER
ANDREW LAWARENCE ODHIAMBO.....	72 <sup>ND</sup> PETITIONER
ELIJAH ANYANGA.....	73 <sup>RD</sup> PETITIONER
JACQUES HANNINGTON MUGA.....	74 <sup>TH</sup> PETITIONER
EVANS JUMA OWUOR.....	75 <sup>TH</sup> PETITIONER
EMMANUEL MASIAH DONGO.....	76 <sup>TH</sup> PETITIONER
WILLIAM OGWARI OBUNGA.....	77 <sup>TH</sup> PETITIONER
FRANCO APUDO OTINEO.....	78 <sup>TH</sup> PETITIONER
JACKSON AZERE AGINGA.....	79 <sup>TH</sup> PETITIONER
JOHN OTIENO ONYIMBO.....	80 <sup>TH</sup> PETITIONER
JOSEPH ORIARO OKUMU.....	81 <sup>ST</sup> PETITIONER

LEONARD OKEYO OBEGO.....	82 <sup>ND</sup> PETITIONER
PAUL OLUOCH OWINO.....	83 <sup>RD</sup> PETITIONER
SAMWEL ZACHARY OKOYO.....	84 <sup>TH</sup> PETITIONER
WASHINGTONONYIMBO MOLA.....	85 <sup>TH</sup> PETITIONER
JAMES MORRIS WERE.....	86 <sup>TH</sup> PETITIONER
SILVANUS OYANGE NDEDA.....	87 <sup>TH</sup> PETITIONER
GEORGE OWINO JAMES.....	88 <sup>TH</sup> PETITIONER
TOM ANGANG’O DADA.....	89 <sup>TH</sup> PETITIONER
DISMAS OCHIENG YIEMBE.....	90 <sup>TH</sup> PETITIONER
PETER OCHOKOH OCHIENG.....	91 <sup>ST</sup> PETITIONER
EDWARD EMACKS OKELLO.....	92 <sup>ND</sup> PETITIONER
MARTIN NAKHAWANGA OGUTU.....	93 <sup>RD</sup> PETITIONER
PAUL AUMA OSELU.....	94 <sup>TH</sup> PETITIONER
THOMAS JOSHUA WERE.....	95 <sup>TH</sup> PETITIONER
SAMWEL ZACHARY OKOYO.....	96 <sup>TH</sup> PETITIONER
GERPHAS JULU OGWENO.....	97 <sup>TH</sup> PETITIONER
JOHN OKAKA GOMBE.....	98 <sup>TH</sup> PETITIONER
SILAS OWINO AGAO OGUCHE.....	99 <sup>TH</sup> PETITIONER
EVANS OPINO OKOTH.....	100 <sup>TH</sup> PETITIONER
JAMES ABONYO OBONYO.....	101 <sup>ST</sup> PETITIONER
ANDREW ONG’ONGA CHANGE.....	102 <sup>ND</sup> PETITIONER
JOHN OKELLO KISERO.....	103 <sup>RD</sup> PETITIONER
MOSES OGALO OGOMA.....	104 <sup>TH</sup> PETITIONER
CHARLES OGOLA JAGONGO.....	105 <sup>TH</sup> PETITIONER
GEORGE OKUMU OBIERO.....	106 <sup>TH</sup> PETITIONER
JAMES SANDYS AJIGO.....	107 <sup>TH</sup> PETITIONER
JOSEPH CHARLES ONYANGO.....	108 <sup>TH</sup> PETITIONER
JOSHUA OPIYO OMORO.....	109 <sup>TH</sup> PETITIONER
ODUOR PETER.....	110 <sup>TH</sup> PETITIONER
PHILLIPPS OCHIENG BOAZ.....	111 <sup>TH</sup> PETITIONER

SILVANUS ANTHONY OGHINA.....	112 <sup>TH</sup> PETITIONER
WILLIAM OJUNJUS OKECH.....	113 <sup>TH</sup> PETITIONER
PAUL OCHIENG WAUDI.....	114 <sup>TH</sup> PETITIONER
TOBIAS OBILO OBILO.....	115 <sup>TH</sup> PETITIONER
JULIUS ONGONGA SEDA.....	116 <sup>TH</sup> PETITIONER
TOM NJURA OGOYA.....	117 <sup>TH</sup> PETITIONER
CHARLES MAUTI OGANGA.....	118 <sup>TH</sup> PETITIONER
ANTONY OLOO OGOLA.....	119 <sup>TH</sup> PETITIONER
GEORGE OWUOR OGOLA.....	120 <sup>TH</sup> PETITIONER
MAURICE AUSTINE AUMA OPONDO.....	121 <sup>ST</sup> PETITIONER
RAPHAEL VICTOR OTIENO.....	122 <sup>ND</sup> PETITIONER
ALOIS CAVINS OKOTH.....	123 <sup>RD</sup> PETITIONER
FRANCIS OKOTH ODIAMBO.....	124 <sup>TH</sup> PETITIONER
HESBON OBONG'O ATIENO.....	125 <sup>TH</sup> PETITIONER
JOSEPH AGENG'A OUNUONG'A.....	126 <sup>TH</sup> PETITIONER
PAUL OMBEWA RUTHA.....	127 <sup>TH</sup> PETITIONER
SISTO OWUOR HAIRA.....	128 <sup>TH</sup> PETITIONER
ROY GENO OKOLA.....	129 <sup>TH</sup> PETITIONER

**VERSUS**

THE HON. ATTORNEY GENERAL.....	RESPONDENT
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**RULING**

1. The application dated 20<sup>th</sup> July 2018 and filed on 24<sup>th</sup> July 2018 sought to strike out the Supporting Affidavits to the petition on the grounds that same are incurably defective in that they are commissioned by the petitioner's Advocate contrary to the law. That some of the signatures on the Supporting Affidavits appear forged. That some of the petitioner's never signed the Supporting Affidavits as unverified signatures have been cut out and pasted in the petition.
2. That all Affidavits were commissioned by a person who has an interest in the matter contrary to clear provisions of the law.
3. The petitioners filed notice of preliminary objection on points of law to have the notice of motion struck off on grounds that the application is frivolous, misconceived and abuse of court process.
4. That the notice of motion is not supported by any affidavit. That what purports to be an affidavit in support is deposed to by Alice Muringo Mate a legal officer without authorization from neither the cabinet secretary nor the principal secretary Department of Defence and is therefore incompetent.
5. That the Motion as filed offends the **constitution [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules 2013**. That the motion be struck off.
6. On the date the motion was to be argued, counsel Agina for the petitioner applied to withdraw all the Supporting Affidavits.
7. The court obliged and made an order marking all the Supporting Affidavits to the petition as withdrawn.

8. M/S Ayuma for the applicant/respondent went on to submit that the petitioners having withdrawn the supporting affidavits to the petition, the petition remains non-supported and it be struck –off. That in terms of the **Constitution [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rule 2013**, popularly known as the Mutunga Rules, the petition maybe supported or not by affidavits but the petitioners had elected to file supporting affidavits in support of the petition which they had now withdrawn from this Bar. Therefore the application be granted to strike the petition off.

9. Counsel Agina for the petitioners in reply submitted that in terms of the Mutunga Rules, there was no requirement to have a petition supported by affidavit. That this was a matter of choice. That the petition as filed without supporting affidavits is proper and sound and the court ought to proceed to hear and determine the petition as it is.

10. Mr. Agina further argued that the Notice of Motion before court is grossly defective since it is supported by an Affidavit of counsel on record, M/S Muringo Mate who is not an officer of the Ministry of defence and has no authority to swear the affidavit on behalf of the Ministry. That the application is defective and it be dismissed and the court proceeds to give directions on the hearing and determination of the application.

11. For the record, Supporting Affidavits commissioned by an advocate in conduct of the same matter the affidavits are meant to support offends the provisions of the Oaths and Statutory Declaration Act Chapter 15 of the laws of Kenya.

Section 4(1) of the Act reads

*“4(1) A commissioner of Oaths may by virtue of his commissioning in any part of Kenya, administer any oath or take any affidavit for the purpose of any court or matter in Kenya including matters ecclesiastical and matters relating to the registration of any instrument; whether under an act or otherwise, and take any bail or recognizance in or for the purpose of any civil proceeding in the court or any subordinate court provided that a commissioner for oath shall not exercise any of the powers given by this section in any proceeding or matters in which he is the advocate for any of the parties to the proceeding or concerned in the matters or clerk to any such advocate or in which he is interested. See Caltex Oil Kenya Ltd vs New Stadium Service Station Ltd and Another. [2002] eKLR per Otieno Onyango- J.*

12. The Supporting Affidavits now withdrawn were clearly defective and were correctly withdrawn.

13. The next issue for determination is whether a petition may stand alone without supporting affidavits of the petitioners.

14. In the matter, both counsel for the parties agree that it is not a requirement under Mutunga Rules 2013 to have a constitutional petition be supported by affidavit. It is indeed sufficient that grounds in support of the petition are set out in the petition itself.

Rule 10 provides the form of petition as follows:

**“(2) The petition shall disclose the following:**

**(a) The petitioner’s name and address;**

**(b) The facts relied upon;**

**(c) The constitutional provision violated;**

**(d) The nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit on in a public interest case to the public, class of persons or community;**

**(e) Details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition.**

**(f) The petition shall be signed by the petitioner or advocate of the petitioner; and**

**(g) The relief sought by the petitioner.”**

15. There is no other mandatory requirement in filing a petition. None can therefore be implied to deny a person the right to institute a petition. Support of a petition by sworn affidavit is therefore a matter left to the discretion of a petitioner. Affidavit filed in support may equally be withdrawn by the petitioner without affecting the validity of the petition.

16. Accordingly, the Notice of Motion to strike out the petition on grounds that it is supported by defective affidavits lack merit and is dismissed with costs in the cause.

**Ruling Dated, Signed and delivered this 2<sup>nd</sup> day of May, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

M/S Alice Muringo Mate State Counsel for the Attorney General

Mr. Agina for the petitioners

Chrispo – Court Clerk