



Nyaga v French Embassy - Nairobi & another; International (Interested Party) (Constitutional Petition 365 of 2017) [2025] KEHC 3870 (KLR) (Constitutional and Human Rights) (28 March 2025) (Directions)

Neutral citation: [2025] KEHC 3870 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION 365 OF 2017**

**RE ABURILI, J
MARCH 28, 2025**

BETWEEN

REGINALD NJAGI NYAGA PETITIONER

AND

FRENCH EMBASSY - NAIROBI 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

TRANSPARENCY INTERNATIONAL INTERESTED PARTY

DIRECTIONS

1. This Constitutional/Petition was filed before the Constitutional and Human Rights Division on 24/7/2017. The Petitioner is Reginald Njagi Nyaga. The Respondents in the Petition are The French Embassy, Nairobi and the Hon. Attorney General while the Interested Party is Transparency International.
2. The Petitioner in his petition dated 18th July, 2017 claims that this court has original jurisdiction to hear and determine this matter and laments that his claim before the Employment and Labor Relations Court at Nairobi was dismissed by Hon. Lady Justice L. Ndolo on 31/5/2016 through assumptions and flimsy legal grounds.
3. According to the Petitioner, he had filed his matter before the Employment and Labor Relations Court believing that it had jurisdiction to determine any constitutional argument in the subject matter since it has the status of the High Court under Article 162(2) but that the Employment and Labor Relations Court has no jurisdiction to interpret any constitutional argument and therefore the Petitioner had



to seek for recusal of the Honourable Judge from his case and eventually, he sought for transfer of the said case to an appropriate court.

4. The Petitioner claims that he is a victim of successive unfair administrative action through successive corrupt and unethical influence which has followed the claimant to the Court of Appeal seeking admission as a pauper which was not determined. The Petitioner asserts that this is a simple labour matter which is long overdue and that he is still suffering since his employment was unlawfully terminated some 12 years prior to the filing of the petition.
5. The above are among the matters pleaded in the petition which was filed under certificate of urgency simultaneous with a Notice of Motion dated 18th July 2017, in which he posed 19 questions which are all Employment and Labour Relations related questions which he claims had not been answered to date; as a result of which the Petitioner was suffering since his employment was unlawfully terminated 12 years prior to the filing of the Petition herein.
6. In the final prayers to this court; and without delving too much into the other details of the pleadings in the petition which challenges his alleged unlawful termination from employment by the French Embassy in Nairobi, as contained in his detailed supporting affidavit which also annexed a judgment delivered on 31/5/2016 by Hon. Linnet Ndolo Judge of the Employment and Labor Relations Court; wherein the learned Judge dismissed the Petitioner's entire claim on account that his termination was due to redundancy and that the employer fully complied with the law applicable at the time hence, the Petitioner was not entitled to compensation and damages for wrongful dismissal as well as salary between 2005 and 2011.
7. The Learned Judge of the ELRC also found that having been given notice of termination of his employment, the claimant was not entitled to pay in lieu of notice. Further, that as the Petitioner was a contributing member of NSSF, he was not entitled to service pay. The other claims for leave pay and house allowance were dismissed for want of proof. On the whole, the Petitioner's entire claim for unlawful termination in employment and compensation for such termination was dismissed by the Employment and Labour Relations Court.
8. The above judgment in the form of an award by Justice Linnet Ndolo followed a rehearing of the Petitioner's Cause which had initially been heard and dismissed by Hon. Justice D.K. Marete on 21/2/2013 in the Employment and Labor Relations Court Nairobi Cause No. 160 of 2011. It was following the dismissal of the Petitioner's Cause at the Employment and Labor Relations Court that he filed this Constitutional Petition and the prayers contained in his petition aforesaid dated 18/7/2017 are as follows: -

"I. That an award of the learned Hon. Lady Justice Linnet Ndolo, delivered on 31st May 2016, dismissing the claimant suit, being Cause No. 160 of 2011 Employment and Labour Relations Court, be considered unconstitutional invalid and/or set aside.

II. An award to the Petitioner amounting to Option A – Unlawful Termination.

- a. 1 month pay in lieu of notice – 25,516;
- b. Gross Salary arrears until the final termination of this suit for period between April 2005 and April 2017, 12 years at the rate of Kshs.45,516 per month – 45,516 X 12 X126,554,304;
- c. Payment in lieu of unpaid annual leave for 18 years worked at the rate of equivalent to one month basic salary per year worked



Kshs. 25,516 X leave allowance at the rate of Kshs. 5,000 per year worked = 30,516 X 18549,288;

- d. Denied House, transport and medical allowances for 18 years worked at the rate of Kshs. 20,000 per month - 20,000 X 12 X 18 = 4,320,000;
- e. Service pay for the 18 years worked at the rate of Kshs.25,516 year Service = 459,288;
- f. Compensation for exploitation and oppression of the Factotum position at the rate of the equivalent of one-month basic pay per month worked for 18 years that is 25,516 X 12 X 18 = 5,511,456. Total Kshs. 17,419,850;
- g. Damages for dismissal
- h. Maximum 12 months gross salary in compensation;
- i. Cost of this suit with interest therein (a,b,c,d,e,f,g,h);

Option B: Termination on a Ccount of Redundancy

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Total22,388,428”

- 9. I have reproduced the above pleaded prayers in the petition by the Petitioner before this Court, and in these proceedings where every Judge, of the eight Judges who have handled this Petition right from its inception have been asked to recuse themselves and they have had to write lengthy rulings on the applications on recusal. Eventually, all these Judges have graciously declined to hear and determine the petition. The record shows that it became impossible for the Judges in the Constitutional & Human Rights Division to hear and determined this Petition because they were being accused of corruption and siding with criminals as well as refusing to compel the French Embassy Official and the Attorney General or the Advocates who purported to appear for the Attorney General to appear before the Court.
- 10. In the end, this file had to be submitted to the Principal Judge of the High Court by the Presiding Judge of the Constitutional and Human Rights Division for directions on which other judge can handle this petition in the High Court since every other Judge in the Division had recused themselves and the reasons can be discerned from the many applications on record and the proceedings that seemed to take this matter forever and nowhere, going by the extremely vexing demands made to the Court by the petitioner.
- 11. Mrima J in his ruling in the application dated 10th March 2022 where the petitioner sought for recusal of the Judge from hearing this petition, observed that that was the third of such applications. The previous two applications were against Judges E.C.Mwita and A.Makau.
- 12. In his Ruling of 10th March 2023, Mrima J observed as follows:

“ 31. On my part, and going by the short period in which this Court handled this matter and interacted with the petitioner, it is highly possible that the



petitioner cannot be at peace if he does not direct the proceedings. I noted as much and severally reminded him that it is the Court to give the way forward in the matter and not the petitioner. Going by the history of the matter and the way the petitioner wanted the proceedings conducted solely in his favour, I was not surprised that the instant application was filed.”

13. Vide a ruling delivered on 1st July 2021, A. Makau J had recused himself from hearing the case due to spurious allegations that the petitioner had been denied the right to a hearing.
14. Previously, he had also applied to have a bench empaneled to hear and determine the petition but W. Okwany J declined vide her ruling of 9th January, 2019.
15. On 23/1/2025, the Principal Judge Hon. E.K. Ogolla PJ gave directions that the matter be placed before me for hearing and final determination and on 3/2/2025, the matter was placed before me for directions. The Petitioner was absent but Mr. Terrell the 2nd Respondents’ Counsel was present and. I directed that the Petitioner be served with Notice to appear on 24/2/2025 and on the latter date, he did appear virtually and in his address to this court, he was emphatic that he requested that the court directs the Respondents to respond to his applications dated 8/10/2015 and that of 8/5/2023 and that the rest of the other applications were for recusal of the Judges so they are overtaken by events leaving only the above two stated applications.
16. Mr. Opundo Counsel for the 1st Respondent submitted that they had filed responses to the applications on 28/6/2019 and 30/7/2024 respectively and that they had difficulties serving the Petitioner with the said responses since they could not get him physically. Mr. Terrell for the 2nd Respondent also submitted that they had filed grounds of opposition to the applications dated 8/10/2018 on 6/7/2019 but that he could not trace the response to the application dated 8/5/2023.
17. The Petitioner then submitted that no responses had been filed and that this was despite Justice Thande directing the Respondents to do so. He added that he wanted all those people adversely mentioned to file responses in person and these are: The French Ambassador, Nairobi; Mr. David Wekesa; Antony Gathige; Madam Mutindi; Attorney General & David Michuki Advocate.
18. Further, that if those mentioned persons refuse to file responses to the main petition and to the applications then that is contempt of court, which is a criminal act so the Court should grant the orders since his original Petition has never been heard. He claimed that he was denied the right to access justice and Fair Hearing before the Labour Court, but that he did not appeal that decision and instead, he appealed to the Constitutional and Human Rights Court. That he did not see the need to appeal to the Court of Appeal since only the High Court has jurisdiction to hear on the violations of his human Rights. That his case had been dismissed maliciously in the Labour Court.
19. The petitioner maintained that if the Respondents respond to his applications without impersonation, then he will be okay. That successive Judges have directed the Respondents to respond to the Petition but the Respondents had failed. He gave his email address as reginald.njege@gmail.com for the Respondents to serve him with responses and the court granted the Respondents 7 days to file and serve any responses to the two applications, in the event that they had not filed and served the same upon the petitioner. I then set the mention date for 12/3/2025.
20. On the latter date, this court was taken through another motion of the applicant claiming that he had not been served with responses and that he used to be served from court precincts. The 1st Respondent’s Counsel submitted that he had served via the email supplied to court by the Petitioner. The 2nd Respondent’s Counsel stated the same. The Petitioner then stated that the people who contempered



(sic) the court by refusing to respond to the applications dated 8/10/2018, & 8/5/2023, action should be taken against them and that there are criminal elements of court impersonations.

21. When the Respondents' counsel maintained that responses to the two applications had been filed, Mr. Njagi the Petitioner told the court to ask them as to who had responded and the Respondents' Counsel informed the court. Mr. Njagi then stated that he wanted the 1st Respondent to respond not Anthony Gathige, and on the part of the Attorney, the Petitioner questioned who Madam Mutindi was in the Attorney General's Chambers and how a response could be filed without a sworn statement or affidavit or official stamp.
22. He stated that the Attorney General must respond and that this court should take action against criminal elements.
23. Throughout the proceedings, the petitioner kept repeating himself over and over the submissions about this court being invaded by criminal elements and impersonators whom he was not ready to litigate with. I must confess that it was a forever session for the petitioner to express himself and at that moment, this court patiently listened to Mr. Njagi and posed a question to him as follows:

“What remedy did you want from this court?”
24. Mr. Njagi stated that he wanted a declaration that his rights were violated by the labour court by the judgment of Linnet Ndolo J in ELRC 160/2011; which judgment was unconstitutional and invalid. That he was ready to be heard but the Constitutional Court allowed in criminals and that he only wants to be heard in a constitutional process and for the court to take action against the criminal elements of court impersonation.
25. Upon my perusal of the entire court file, I have established that the Respondents have indeed responded to the applications which the Petitioner claims have not been responded to.
26. On the occasions that I patiently listened to the Petitioner addressing the court, making demands, as to who should respond to his applications mentioned and which criminal elements have infiltrated the court hence this court should treat them to be in contempt of court, I asked myself so many questions but one question stands out.
27. Why has this Court, as the High Court been taken round the circles by the Petitioner, non-stop without the court taking a stand and making a decision on how this matter, from 2017, should be disposed of, one-way or the other? where did the principle that justice delayed is justice denied go, noting that the petitioner himself was solely responsible for the delay in the disposal of his petition with the filing of numerous applications and accusation after accusation of every judge that attempted to have the petition disposed of on merit?
28. In other words, for how long can a court of law be held at ransom by a litigant who wants every decision to go their way at the expense of justice to the other party and at the expense of the hallowed principle of jurisdiction is everything without which, a court of law must do no more than down its tools and say no more, the moment it establishes that on the face of it, there is no jurisdiction to entertain the matter? Should a party's ego and character be so scaring to the court that it cannot pronounce itself on the law and bring to an end the endless accusations of every judge handling the file that the judge has to pass the file to the next file and so on and so forth in perpetuity?
29. So, did this court have any scintilla of jurisdiction to even receive, consider and determine the merits of the Petition whose prayers I have reproduced above, and which Petition, obviously, however constitutional it may look, or appear, to be, seeks to challenge the judgment of Hon. L. J. Linnet Ndolo



of the Employment and Labor Relations Court rendered on 31/5/2016 vide Nairobi ELRC Cause No. 160 of 2011?

30. To answer the above question, I must say that the petitioner appears to have overwhelmed the court so much so that the court concentrated on his preliminary objections against shadow persons and the allegations of denied justice by the judges, and in due course, time continued to run. There is much more in this file than what I have just stated herein.
31. I will focus on jurisdiction because it is an obvious feature in the petition.
32. In *Anacleth Kalia Musau v Attorney General & 2 Others* [2020] eKLR, Civil Appeal 111 of 2017, the Court of Appeal in determining a jurisdictional issue which was never raised by the parties to the suit stated as follows:

“The solitary issue in this appeal is, whether the suit before the High Court was statutorily time barred. To demonstrate that time limitation is a jurisdictional question and that if a matter is statute-barred a court has no jurisdiction to entertain it, we cite the decision of the Supreme Court in the case of *Nasra Ibrahim Ibren V. Independent Electoral and Boundaries Commission & 2 others*, Supreme Court Petition No. 19 of 2018, where that court stressed the fact that jurisdiction is everything and that a court may even raise a jurisdictional issue suo motu. It said:

40. A jurisdictional issue is fundamental and can even be raised by the court suo motu as was persuasively and aptly stated by Odunga J in *Political Parties Dispute Tribunal & another v Musalia Mudavadi & 6 others Ex Parte Petronila Were* [2014] eKLR. The learned Judge drawing from the Court of Appeal precedent in *Owners and Masters of The Motor Vessel “Joey” vs. Owners and Masters of The Motor Tugs “Barbara” and “Steve B”* [2008] 1 EA 367 stated thus:

25. What I understand the Court to have been saying is that it is not mandatory that an issue of jurisdiction must be raised by the parties. The Court on its own motion can take up the issue and make a determination thereon without the same being pleaded...” (Emphasis supplied)

We fortify that view by quoting yet another passage from the East African Court of Appeal in the matter of *Iga V. Makerere University* (1972) E.A 62, where it was stated that;

“The limitation Act does not extinguish a suit or action itself, but operates to bar the claim or remedy sought for and when a suit is time-barred, the court cannot grant the remedy or relief..... The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the plaint, and no grounds of exemption are shown in the plaint, the plaint must be rejected.” (Our emphasis). The learned Judge in this appeal, no doubt did not err when she determined whether, by operation of the law, she had to down tools for want of jurisdiction.”

33. On the above authority, which I had the privilege to be the judge against whose decision was appealed against to the Court of Appeal, I am satisfied that this court has power to determine an obvious jurisdictional issue even if the parties have not raised it in their pleadings. I have nonetheless perused the file and it is clear that the respondents, in their responses to the numerous applications filed by the petitioner, including that of empanelment of a bench to hear the petition, they raised the question



of the petition being res judicata and that this court does not have jurisdiction to hear and determine the petition.

34. On what jurisdiction is, as judicially defined and as has been pronounced by this Court all the way to the Supreme Court, in Civil Appeal No. 119 of 2017 Public Service Commission & 2 Others vs. Eric Cheruiyot & 16 Others, as consolidated with Civil Appeal No. 139 of 2017 County Government of Embu & Another vs. Eric Cheruiyot & 15 Others (unreported) the Court of Appeal stated in a decision rendered on 8th February, 2022 on the doctrine of jurisdiction in general as follows: -

36. Jurisdiction is everything, it is what gives a court or a tribunal the power, authority and legitimacy to entertain a matter before it. John Beecroft Saunders in “Words and Phrases Legally Defined”, Volume 3 at Page 113 defines court jurisdiction as follows:

By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

37. The locus classicus on jurisdiction is the celebrated case of Owners of the Motor Vessel “Lillian S’ v. Caltex Oil (Kenya) Ltd [1989] KLR 1. Nyarangi, JA. relying, inter alia, on the above cited treatise by John Beecroft Saunders held as follows:

...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 draws tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

38. A decision made by a court of law without proper jurisdiction amounts to nullity ab initio, and such a decision is amenable to setting aside ex debito justitiae.

39. The Supreme Court in In the Matter of Interim Independent Electoral Commission [2011] eKLR, Constitutional Application No. 2 of 2011 held that jurisdiction of courts in Kenya is regulated by the *Constitution*, statute, and principles laid out in judicial precedent. The Supreme Court at paragraph 30 of its decision held in part as follows:

...a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of Legislation is clear and there is no ambiguity.

40. In Samuel Kamau Macharia and Another v. Kenya Commercial Bank Limited & 2 others [2012] eKLR, Application No. 2 of 2011, the Supreme Court reiterated its holding on a



court's jurisdiction. In the matter of the Interim Independent Electoral Commission (*supra*) at paragraph 68 of its ruling, the Supreme Court held as follows:

(68). A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law." [emphasis added]

35. From the above judicial pronouncements, it is clear to this court that jurisdiction is conferred by the Constitution and statutes. No court of law can arrogate itself jurisdiction it is devoid of and neither can parties confer or clothe a court of law or tribunal with jurisdiction. It would also be in vain for a court of law to belabor hearing and determining the dispute before it if it had no jurisdiction to do so as the decision would remain null and void ab initio and incapable of implementation.

36. Having said so, albeit the High Court is conferred with unlimited original jurisdiction in civil and criminal matters under Article 165(3)(a) of the Constitution and (b) jurisdiction to hear and determine the question of whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened, the question is whether this court has jurisdiction to hear and determine a constitutional petition challenging:

“(1) The decision rendered by a court of competent jurisdiction and of the equal status with the High Court, namely, the Employment and Labor Relations Court;

(2) Whether this court has jurisdiction to hear and determine the Petition herein whose prayers are all prayers resulting from a cause of action which is an Employment and Labour Relations dispute between an employee and employer.”

37. On the 1st question posed above, Article 165(5) (b) of the Constitution provides that:

“The High Court shall not have jurisdiction in respect of matters –

- a. Reserved for the exclusive jurisdiction of the Supreme Court under this constitution' or
- b. Falling within the jurisdiction of the court contemplated in Article 162(2).”

38. The courts contemplated under Article 162(2) of the Constitution and which are now fully established vide legislation are the Employment and Labour Relations Court and the Environment and Land Court. Therefore, this court's jurisdiction in matters falling squarely within the jurisdiction of the Supreme Court and the ELRC and ELC is not only limited but excluded and therefore this court is prohibited from hearing and entertaining disputes that fall under the jurisdiction of the two courts stated in Article 162(2) as restated in Article 165 (5)(b) of the Constitution.

39. That being the case, and as the dispute herein is an Employment and Labour Relations Dispute, which was heard and dismissed by the Employment and Labor Relations Court, this court has no jurisdiction over such matter and more so, this court cannot sit on appeal of the decision of a Judge of the Employment and Labor Relations Court being a Judge of a Superior Court.

40. Furthermore, Article 165(6) of the Constitution prohibits this court from exercising supervisory jurisdiction over a Superior Court. Employment and Labour Relations Court is a court of equal status



with the High Court and therefore any person or litigant aggrieved by its decision can only appeal to the Court of Appeal and not to this court by way of a Constitutional Petition.

41. In any event, the Employment and Labor Relations Court has jurisdiction similar to the jurisdiction of this court under Article 165(3)(b) in matters constitutional interpretation and question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.
42. Finally, following the Judgment of L. Ndolo J in ELRC Cause No 160 of 2011, on 31st May, 2016, the petitioner herein vide Notice of Appeal dated 6th June 2016 filed Notice to appeal the said decision to the Court of Appeal on 9th June 2016. That Notice of Appeal was received in the Court of Appeal Registry on 10th June, 2016 and he even got leave to appeal as a pauper and leave to file a record of appeal in Court of Appeal Civil Application No. 213 of 2016 out of time vide his Notice of Motion dated 21st September, 2016.
43. All this information is contained in one of the bundles filed in this Court by the petitioner in support of his petition, which appears to be a record of appeal to the Court of Appeal. There is also a Notice of Judgment dated 17th October, 2016 from the Court of Appeal notifying the petitioner that judgment in his matter would be delivered on Wednesday 19th October, 2016.
44. There is also a notice of hearing of his application by the Court of Appeal dated 2nd February 2017. A replying affidavit filed by David Muthee Michuki sworn on 21st February 2017 at paragraph 8 shows that when the petitioner's application, upon being heard, came up for ruling before Nambuye JA, the Petitioner filed a complaint against the Judge of appeal for being biased as a result of which the file was taken to the president of the Court of appeal with the ruling not delivered.
45. What emerges from the documents filed in this petition is that the petitioner enjoys terrorizing judges and he takes pleasure in accusing Judges of bias and denying him justice. Courts exist to do justice and not to visit injustice on parties before them. In this case, the petitioner has not given any judge who has handled this case any opportunity to do justice and justice is for both parties.
46. The petition was filed as an appeal challenging the decision of Ndolo J in ELRC Cause 160 of 2011, which decision the petitioner also appealed against before the Court of Appeal and only the Court of Appeal could hear and determine his appeal, not this court by way of a constitutional petition.
47. The matters complained of in the petition all fall under the jurisdiction of the Employment and Labour Relations Court and he already followed the appeal channel. The petition is, besides being res judicata ELRC Cause 160 of 2011, on the face thereof, is an abuse of the court process. This court cannot, through a constitutional petition, purport to sit on appeal of a judgment of a sister court of concurrent and competent jurisdiction.
48. For all the above reasons, I find that this court is devoid of any jurisdiction to hear and determine the petition herein and all the applications on record. The petition is hereby struck out with no orders as to costs.
49. The Petitioner has a right of appeal to the Court of Appeal and not to oscillate around the High Court.
50. This file was allocated to me by the principal Judge of the High Court. I direct that the file be taken back to the Principal Judge together with copy of the Directions that I have given on the petition for noting and resubmission of the file to the Constitutional and Human Rights Division of the High Court.
51. This file is closed.
52. I so order.



DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 28TH DAY OF MARCH,
2025

R.E. ABURILI

JUDGE

