



**Karanja v Sikalieh - Chairman, Karen Langata District Association (KLDA)
(Constitutional Petition E397 of 2022) [2022] KEHC 15924 (KLR)
(Constitutional and Human Rights) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E397 OF 2022**

M THANDE, J

NOVEMBER 30, 2022

BETWEEN

JAMES KARANJA PETITIONER

AND

**SAMORA M. SIKALIEH - CHAIRMAN, KAREN LANGATA DISTRICT
ASSOCIATION (KLDA) RESPONDENT**

JUDGMENT

1. The background of the matter before me as can be gleaned from the record is that the Petitioner was on March 23, 2022, at an annual general meeting, elected as a member of the Karen Langata District Association (KLDA). He was subsequently elected Chair of the Development Sub-Committee. His responsibilities included taking over a project dubbed “My Town Karen”. The Petitioner claims that vide a letter dated June 15, 2022, the Respondent who is the Chair of KLDA suspended him as chair of the Development Sub-Committee thereby preventing him from serving the people of Karen Langata District who elected him. The Petitioner claims that there had been an issue between the residents and KLDA over a public participation meeting held on January 25, 2021 regarding the said project when the Petitioner was not a committee member. The Petitioner further claimed that the Respondent questioned him over a letter written to a statutory body by one David Mereka, which the Petitioner knew nothing about. The Petitioner contended that the actions of the Respondent are driven by personal vendetta and accused him of failing to employ the dispute resolution mechanisms.
2. In his Petition dated August 3, 2022, the Petitioner states that the suspension was unlawful as he was not given advance notice thereof or an opportunity to be heard thereon. The Petitioner thus accused the Respondent of violating Article 47 of the *Constitution of Kenya, 2010* and the *Fair Administrative Action Act* (FAAA) and seeks the following orders:



- a. A Declaration that the Petitioner’s right to fair administrative action as guaranteed under Article 47 of the [Constitution](#) has been contravened.
 - b. A Declaration that in arriving at the decision expressed in the letter dated June 15, 2022, the Respondent violated the principles of fair trial under Article 47 of the [Constitution of Kenya](#) and Section 4 of the [Fair and Administrative Action Act](#).
 - c. A Declaration that that the decision expressed in the letter dated June 15, 2022 suspending the Petitioner is unlawful and illegal as the same was done in contravention of Article 50 of the Constitution of Kenya.
 - d. An Order compelling the Respondent to reinstate the Petitioner to his position as the chair of KLDA development committee.
 - e. An Order compelling the Respondent to pay general, exemplary and aggravated damages to the Petitioner for violation of the Petitioner’s fundamental rights under Article 47 of the [Constitution of Kenya](#).
 - f. Interest on (e) at court rates from the time of filing this suit until payment in full.
 - g. Costs of this Petition.
 - h. Any other orders that the Court may deem fit.
3. The Petitioner filed an application of even date, seeking similar prayers in the interim, which prayers were subsumed in the Petition.
 4. Although the Respondent was served with the Petition, he neither filed appearance nor response. The matter therefore proceeded as an undefended cause.
 5. I have considered the Petition, affidavit as well as the submissions filed by the Petitioner. The Petitioner set out the following issues for determination which the Court adopts:
 1. Whether the suspension of the Petitioner was lawful.
 2. Whether the remedies sought should issue.

Whether the suspension of the Petitioner was lawful

6. The Petitioner submitted that he was suspended on June 15, 2022 on the ground that he had approved David Meraka’s letter. It is the Petitioner’s case that letter was not availed to him and he was not given an opportunity to be heard. He was thus suspended without due process and without exhausting the dispute resolution mechanism provided in Clause 10 of the KLDA constitution. The Petitioner further submitted that the suspension was also contrary to the provisions of Articles 47 and 50 of the [Constitution](#) and Section 4 of the [FAAA](#).
7. Article 47 of the [Constitution](#) guarantees to every person fair administrative action as follows:
 1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—



- a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - b. promote efficient administration.
8. In compliance with Article 47(3) Parliament did enact the FAAA to give effect to the rights stipulated in Article 47(1). Section 4 of the Act provides:
1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. Every person has the right to be given written reasons for any administrative action that is taken against him.
 3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
 - a. prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representations in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to section 6;
 - e. notice of the right to legal representation, where applicable;
 - f. notice of the right to cross-examine or where applicable; or
 - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.
 4. The administrator shall accord the person against whom administrative action is taken an opportunity to–
 - a. attend proceedings, in person or in the company of an expert of his choice;
 - b. be heard;
 - c. cross-examine persons who give adverse evidence against him; and
 - d. request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
9. The right to fair administrative action cannot be gainsaid. This right encompasses action that is expeditious, efficient, lawful, reasonable and procedurally fair. Further, where a person’s right or fundamental freedom has been, or is likely to be adversely affected by administrative action, such person must be given reason in writing, for such action. This requirement ensures that administrative bodies discharge their mandate within constitutional and statutory confines.
10. In the case of Judicial Service Commission v Mbalu Mutava & another [2015] eKLR, the Court of Appeal had this to say about the right to fair administrative action:

Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and



other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.

11. A similar position was adopted in the case of *Kenya Human Rights Commission & another v Non-Governmental Organizations Co-ordination Board & another* [2018] eKLR, where Mwita, J. stated:

33. Article 47(1) of the Constitution is in mandatory terms that every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Sub Article 2 makes it even more forceful that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for that action.

12. The learned Judge went on to state:

37. The fact that the right to Fair Administrative Action is a constitutional right was stated by the Constitutional Court of South Africa in the case of *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* (CCT16/98) 2000 (1) SA 1, that;

“Although the right to just administrative action was entrenched in our Constitution in recognition of the importance of the common law governing administrative review, it is not correct to see section 33 as a mere codification of common law principles. The right to just administrative action is now entrenched as a constitutional control over the exercise of power. Principles previously established by the common law will be important though not necessarily decisive, in determining not only the scope of section 33, but also its content. The principal function of section 33 is to regulate conduct of the public administration, and, in particular, to ensure that where action taken by the administration affects or threatens individuals, the procedures followed comply with the constitutional standards of administrative justice. These standards will, of course, be informed by the common law principles developed over decades...”

38. The importance of this right to fair administrative action as a constitutional right in our Article 47 cannot be over emphasized. The Court of Appeal stated in the case of *Judicial Service Commission v Mbalu Mutava & another* [2014] eKLR; that;

“Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of



constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”

13. The record shows that at the K LDA’s annual general meeting held on March 23, 2022, the Petitioner was elected a committee member, representing the Zone 2 Mbagathi. At a committee meeting held on March 29, 2022, the Petitioner was appointed the development and urban planning sub-committee chair.
14. The Petition was provoked by a letter dated June 15, 2022, by which the Respondent suspended the Petitioner as chair of the development committee. The reason given is a letter written to statutory bodies by David Mereka regarding a development referred to as “My Town”, on Langata Road. The letter stated in part:

I do bring to your attention that Mr David Mereka wrote a letter to statutory bodies claiming he had your authority to approve a project in Karen, specifically the My Town development on Langata Road. Myself as Chairman and Don Smith as Hon Treasurer, were shown this letter by Mr. David Mereka himself.

The residents in that area have strongly opposes the project and have opted to go the legal way and stop the project. It is indeed K LDA’s business to ensure that we support residents’ wants and cannot at any time be seen to be acting contrary to their interests.

Having laid out these facts, I do hereby suspend you from your position as K LDA committee Development Chair, pending a committee meeting where you will be required to elaborate to the committee in regard to this letter. In addition, you will be required to write a letter in your personal capacity, revoking any letter that was sent out to statutory bodies using your name and position in the committee.

15. In his letter of June 15, 2022, the Respondent informed the Petitioner that David Mereka wrote a letter to statutory bodies claiming that he had the Petitioner’s authority to approve the My Town development project on Langata Road, which is contrary to the wishes of the residents. The Respondent suspended the Petitioner pending a committee meeting. The Respondent further required the Petitioner to write a letter in his own capacity, revoking any letter sent to any statutory body using his name and position in the committee.
16. It is the Petitioner’s case that his suspension was unlawful and that the Respondent violated his constitutional right to be heard and to fair administrative action. He contended that the allegations against him ought to have first been tabled before the K LDA Management Committee. Further that the issue in question arose before the Petitioner became a member of K LDA committee and chair of the development sub-committee.
17. Article 47 of the Constitution guarantees to every person fair administrative action as follows:
 1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - a. provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and



- b. promote efficient administration.
18. In compliance with Article 47(3), Parliament did enact the *FAAA* to give effect to the rights stipulated in Article 47(1). Section 4 of the *Act* provides:
1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. Every person has the right to be given written reasons for any administrative action that is taken against him.
 3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
 - a. prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representations in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to section 6;
 - e. notice of the right to legal representation, where applicable;
 - f. notice of the right to cross-examine or where applicable; or
 - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.
 4. The administrator shall accord the person against whom administrative action is taken an opportunity to–
 - a. attend proceedings, in person or in the company of an expert of his choice;
 - b. be heard;
 - c. cross-examine persons who give adverse evidence against him; and
 - d. request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
19. A person in respect of whom an adverse decision is made must be accorded the right to fair administrative action. Such fair administrative action entails inter alia being given sufficient notice of the nature and reasons for the proposed administrative action, an opportunity to attend proceedings alone or accompanied by a legal or other expert. Such person must also be given an opportunity to be heard and to face his accusers and cross examine them. Further, such person must be given adequate time to prepare his defence. Where the right to fair administrative action is violated, the Court must intervene to safeguard the rights of the victim.
20. In the case of *Catherine Chepkemai Mukenyang v Evanson Pkemei Lomaduny & another* [2022] eKLR, cited by the Petitioner, Ogola, J. considered the removal of the petitioner from office in a manner that violated the provisions of Article 47. The learned Judge stated:
70. The process for the removal of the Petitioner from office did not accord her the right to fair administrative action and the right to fair hearing as the Petitioner was not served with



the evidentiary documents that the Respondents were relying on during the impeachment proceedings so as to enable her file her defence to the serious charges levelled against her. Further, the Petitioner sought for adjournment of the said proceedings on grounds that she had not been served with the said evidentiary documents but the same was denied, breaching of the Petitioner's right to fair administrative action and fair hearing under Articles 47 & 50 of the Constitution.

21. And in the case of *County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others* [2015] eKLR, the Court of Appeal addressed its mind to the sacrosanct right to be heard and stated:

The person charged is entitled to what, in legal parlance is referred to as the right to "notice and hearing." That means he must be given written notice which must contain substantial information with sufficient details to enable him ascertain the nature of the allegations against him. The notice must also allow sufficient time to interrogate the allegations and seek legal counsel where necessary. In the epigram of the indomitable Lord Denning in *Kanda v. Government of Malaya*

"If the right to be heard is to be a real right which is worthy anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them."

22. In the present case, the suspension of the Petitioner as chair of the KLDA development committee is based on David Mereka's letter. The letter that was the cause of the suspension, was written not by the Petitioner, but by David Mereka. The said letter, the date of which is not even indicated, was not shown to the Petitioner. The Respondent merely states that David Mereka claimed that he had the Petitioner's authority to approve the My Town development project. The Respondent refers to statutory bodies that he does not name. Further, the letter is vague and does not contain any particulars setting out the nature of the allegations against him. Without ascertaining the nature of such allegations, the Petitioner could not have defended himself. Worse still, the Petitioner was not given an opportunity to be heard, interrogate the allegations or seek legal or other counsel or even cross-examine David Mereka who allegedly gave adverse evidence against him. When one looks at the contents of the letter of suspension by the Respondent, one cannot help but perceive violation of Article 47 and Section 4 of the *FAAA*.
23. The Respondent is an administrator within the meaning of Section 2 of the *FAAA* which provides:

"administrator" means a person who takes an administrative action or who makes an administrative decision;

An administrative action is defined to include:

- i. the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
- ii. any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

24. From the foregoing it is clear that by his letter to the Petitioner dated June 15, 2022, the Respondent made an administrative decision that affected the legal rights of the Petitioner. The Respondent did



not comply with the requirements of Article 47 of the Constitution and Section 4 of the FAAA. Accordingly, this Court finds that the suspension of the Petitioner by the Respondent was unlawful.

Whether the remedies sought should issue

25. Article 22 of the Constitution grants to every person, the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. The jurisdiction of this Court to grant relief for denial, violation, infringement or threat of fundamental rights is stipulated in Article 23 of the Constitution as follows:

(1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

26. Under Article 23(3), the Court may in any proceedings brought under Article 22, grant appropriate relief, including but not limited to, declaration of rights, injunction, conservatory order, a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24. The Court may also grant an order for compensation or for judicial review.

27. In the present case, the Petitioner seeks a declaration that his suspension by the Respondent is unlawful. He also seeks reinstatement to the position from which he was suspended. The Court has already found that the suspension of the Petitioner as the KLDA development committee chair was unlawful. Appropriate orders in this regard will thus be granted.

28. The Petitioner further seeks an order compelling the Respondent to pay general, exemplary and aggravated damages for violation of his fundamental rights under Article 47 of the Constitution of Kenya.

29. This is a case of constitutional violation, which does not call for an award of compensatory damages in the traditional sense. Further, the award of damages is a secondary remedy, as was stated by the Constitutional Court of South Africa in the case of *Dendy v University of Witwatersrand, Johannesburg & Others* - [2006] 1 LRC 291 as follows:

[T]he primary purpose of a constitutional remedy was to vindicate guaranteed rights and prevent or deter future infringements. In this context an award of damages was a secondary remedy to be made in only the most appropriate cases.

30. I also derive guidance in the case of *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR in which the Court of Appeal spoke to the issue of award of damages for infringement of constitutional rights and stated:

The relevant principles applicable to award of damages for constitutional violations under the Constitution was explained exhaustively by the Privy Council in the famous case of *Siewchand Ramanoop v The AG of T&T*, PC Appeal No 13 of 2004. It was held that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense.

Per Lord Nicholls at Paragraphs 18 & 19:

When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered



damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. (emphasis ours). All these elements have a place in this additional award. “Redress” in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions “punitive damages” or “exemplary damages” are better avoided as descriptions of this type of additional award. (emphasis ours).

31. The Court of Appeal went on to state:

Consistent with the above judicial experience and philosophy, it seems to us that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court's discretion for award of damages in Constitutional violation cases though is limited by what is “appropriate and just” according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration.

32. Duly guided by the dictum in the cited cases and having regard to the circumstances herein, I find that the justice of this case does not favour the grant of an award of damages for the breach of constitutional rights. My view is that a declaration of violation of rights would be the appropriate remedy. In any event, no submissions were made to support the claim for damages.

33. In the end and in view of the foregoing, I find that the Petition is merited and I allow the same in the following terms:

- a. A declaration is hereby made that by suspending the Petitioner as Chair of the Karen Langata District Association Development and Urban Planning Sub-Committee Chair *vide* his letter dated June 15, 2022, the Respondent violated the Petitioner's right to fair administrative action guaranteed under Article 47 of the *Constitution of Kenya, 2010* and Section 4 of the *Fair Administrative Action Act*.



- b. A declaration is hereby made that suspension of the Petitioner as Chair of the Karen Langata District Association Development and Urban Planning Sub-Committee Chair vide the Respondent's letter dated June 15, 2022, is unlawful and illegal.
- c. The Petitioner is forthwith reinstated as Karen Langata District Association Development and Urban Planning Sub-Committee Chair.
- d. The Petition being undefended, there shall be no order as to costs.

DATED AND DELIVERED IN NAIROBI THIS 30TH DAY OF NOVEMBER 2022

.....

M. THANDE

JUDGE

In the presence of: -

.....for the Petitioner

.....for the Respondent

.....Court Assistant

