



**Kinyua v Governor, Tharaka Nithi County & another; County Assembly
of Tharaka Nithi & another (Interested Parties) (Petition E002 of 2025)
[2025] KEELRC 2458 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2458 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
PETITION E002 OF 2025
ON MAKAU, J
SEPTEMBER 18, 2025**

**IN THE MATTER OF: ARTICLES 1,2,3 (1), 10,21, 22, 23 (1), 27 (4), (6) &
(3), 56, 232, AND 258 (1) OF THE CONSTITUTION OF KENYA, 2010.**

AND

**IN THE MATTER OF: RULES 11,12,13,20 AND 21 OF THE
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMDNAL FREEDOMS) AND PROCEDURE RULES, 2013**

AND

**IN THE MATTER OF: SECTIONS 8 AND 40, 45 OF THE COUNTY
GOVERNMENTS ACT, ACT 17 OF 2012 LAWS OF KENYA**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF ARTICLES 2,
3, 10(1), (2) (C), 22(1), 25 (C), 27, 28, 40, 41 (1), 43, 46, 47 (1), 50, 75, 159 (1)
(2) AND (E) (A) AND 258(1) OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

BEATRICE KATHOMI KINYUA PETITIONER

AND

GOVERNOR, THARAKA NITHI COUNTY 1ST RESPONDENT

COUNTY GOVERNMENT OF THARAKA NITHI 2ND RESPONDENT

AND

THE COUNTY ASSEMBLY OF THARAKA NITHI INTERESTED PARTY

THE SPEAKER, COUNTY ASSEMBLY OF THARAKA INTERESTED PARTY



JUDGMENT

Introduction

1. The petitioner was appointed as County Executive Member (CECM) by the 1st respondent to serve a period of 5 years. By a letter dated 13th January 2025, she was dismissed from service by the 1st respondent for gross misconduct. She was aggrieved and brought the petition herein seeking the following reliefs:
 - a. Pursuant to Article 23(3)(a), a declaration that the act of the Respondents herein violated the petitioner's human rights under *the constitution* including:
 - i. The petitioner's employment and labour rights under Article 41 were violated.
 - ii. The petitioner's right to fair administrative action was violated.
 - iii. The petitioner's freedom from discrimination under Article 27 was violated.
 - iv. The petitioner's right to dignity under Article 28 is threatened with violation.
 - b. Pursuant to Article 23 (3)(f) An order of judicial review of quashing the decision of the Respondent communicated vide letter dated 13th January 2025 dismissing the petitioner.
 - c. Pursuant to Article 23(3) (e) An order of compensation for all violations for the rights in (1) above amounting to Kenya Shillings Four Million (Kshs.4,000,000/-)
 - d. Pursuant to section 12(3)(iv) of the ELRC Act, an award for damages for any unpaid salary and unremitted third-party obligation during the period of this dispute.
 - e. In alternative to and without prejudice to the above prayers, pursuant to section 12(3)(iii) of the ELRC Act, an order for specific performance by paying all the salary that would be due to the petitioner for the remainder of her unfinished term of the contract and gratuity as per contract amounting to sixteen million nine hundred and forty six one hundred and sixty (Kshs.16,946,160) (salary 12,936,000; gratuity Kshs.4,010,160)
 - f. General damages for loss of employment, pain and suffering.
 - g. Pursuant to section 12(3) (vii) of the ELRC Act, an order for reinstatement to her position.
 - h. Costs of the petition and application.
2. The respondents filed a response to the petition admitting the appointment of the petitioner as a CECM and also her dismissal from service. However, they averred that the termination was grounded on valid grounds and fair procedure was accorded to her but she squandered it when she declined to



respond to the show cause letters dated 6th June 2024 and 4th December 2024. The respondents further filed a Replying Affidavit sworn by the County Attorney, one Franklin Mwendani on 11th March 2025.

3. The petitioner filed a supplementary Affidavit sworn on 22nd April 2025 to respond to the respondents' Replying Affidavit. Attempts by the respondents to file a further affidavit with their submissions was objected to by the petitioner and it was withdrawn on 21st May 2025. On 17th March 2025, the court granted interim order suspending the vetting and filling the vacancy left by the petitioner pending the hearing and determination of the petition. The petition was canvassed by written submissions.

Factual background

4. The petitioner's case was that;
 - a. She was initially appointed CECM for Water, Irrigation, Environment and Natural Resources on 14th October 2022 and on 23rd May 2023, she was reassigned as the CECM Gender, Children and Social Services.
 - b. She served diligently until 13th January 2025 when she received a dismissal letter from the respondents.
 - c. The termination was devoid of any valid reason known to her.
 - d. During the year before the dismissal, she was subjected to frustrations by the respondents calculated to force her into resignation including withdrawal of her official car, not being invited to committee meetings, being excluded from a new WhatsApp group for CECMs, and being subjected to recovery of salary for days allegedly not worked in April 2024.
 - e. Her letters requesting to be assigned an official car or be paid commuter allowance was ignored.
 - f. The termination was unlawful, unfair, discriminatory, heartless, done for no fault and for alleged failure to respond to a fictitious show cause letter.
 - g. The only show cause letter served on was dated 6th June 2024 and she responded to and the matter ended.
 - h. She denied being served with any show cause letter dated 4th December 2024.
5. The respondents' case was that the dismissal was necessitated by her failure to execute her duties including;
 - a. Failure to attend at her workstation as evidenced by biometric clock-in records leading to her loss of funds, wastage and under performance.
 - b. Diminishing public confidence in her conduct of public affairs, and execution of duties within her department.
 - c. Gross incompetence to perform her duties and meet the demands of her office in the financial year 2023/2024 and first half of 2024/2025 budgetary absorption.
 - d. Disruptive conduct including prosecuting her personal challenges and grievances in public fora, and criticizing the same government she was serving.
 - e. Deliberately failing to attend cabinet meetings and refusal to comply with County directives.
 - f. Citing lack of official car or commuter allowance as the reason for not attending official duty.



- g. Failing to respond to show cause letter dated 4th December 2024 and instead calling the 1st respondent two days after service of the letter and subsequently on 16th December 2024, writing to him a disparaging WhatsApp text message for his attention.
 - h. The tension between the petitioner and the Executive including the Governor was unjustified because she was aware of the budgetary constraints, limitation of resources, economic and political circumstances at both National and County Level in 2024.
 - i. That 6 out of 12 CECMs had no official vehicle and had to share the six available units on schedule basis.
 - j. A request to the SRC to allow payment of commuter allowance was never granted and as such the petitioner could not be paid the same.
 - k. The respondents did not discriminate or target the petitioner but rather stuck with its commitment to safeguarding public interest and the rule of law.
6. It was further respondents' case that fair procedure was followed before the dismissal of the petitioner since;
- a. The petitioner was served with show cause letter dated 6th June 2024 requiring her to explain her prolonged absenteeism and failure to perform her duties and she responded by the letter dated 11th June 2024 denying the charges.
 - b. She was served, through her office, with a second show cause letter dated 4th December 2024 requiring her to explain her continued absence from duty and non-compliance with County Government regulations amongst other charges, but she failed to respond and instead embarked on public utterances besmirching the executive to seek public empathy.
 - c. By failing to submit herself to the basic administrative process, she waived her rights to have the matter addressed or be heard.
 - d. It was expected that the petitioner was working from her office and would collect her show cause letter and respond but she did not do so.
 - e. As a result of the petitioner's conduct, and failure to submit herself to the disciplinary process, the Governor exercised his powers under section 31 of the County Government Act by dismissing the petitioner in order to safeguard the interest of public in the County.
 - f. The petitioner's Constitutional rights were not violated as the dismissal did not breach Article 236 of *the Constitution*.
7. In view of the foregoing matters, the respondents averred that the petitioner is not entitled to the reliefs sought as the dismissal was justified and the power to dismiss her was lawfully exercised as required under Article 41, 47 and 236 of *the Constitution* and section 31 of the County Government Act, in the interest of the public.

Issues for determination

8. There is no dispute that the petitioner was appointed CECM pursuant to Article 176 of *the Constitution* and section 35 of the County Government Act for a term of 5 years. It is also not in dispute that she was entitled to official car to enable her attend work and in the discharge of her official duties. It is common ground that her official car was withdrawn and no commuter allowance was paid to her despite request.



9. It is also a fact that she was served with a show cause letter dated 6th June 2024 requiring her to explain her absenteeism and she responded in writing on 16th June 2024. It is also a fact that no further action was taken against her and she continued with her duties until she received dismissal letter on 13th January 2025 accusing her of failure to respond to the show cause letter dated 6th June 2024 and 4th December 2024. The show cause letter accused her of continued absenteeism and failure to perform her duties.
10. The issues of determination are: -
 - a. Whether the dismissal of the petitioner from service violated her Constitutional rights to fair labour practises and right to fair administrative action.
 - b. Whether the petitioner is entitled to the reliefs sought.

violation

11. There is no dispute that the law allows a County Governor to dismiss a CECM. Section 31 of the County Government Act provides that The Governor;
 - a. "May, despite section 40, dismiss a County Executive Committee Member at any time, if the governor considers that it is appropriate or necessary to do so."
12. In addition, section 40 of the Act provides that: -
 - "(1) Subject to subsection (2), the Governor may remove a member of the County Executive Committee from office on any of the following grounds-
 - a. Incompetence;
 - b. abuse of office;
 - c. gross misconduct;
 - d. failure, without reasonable excuse, or written authority of the Governor, to attend three consecutive meetings of the County executive committee;
 - e. physical or mental incapacity rendering the executive committee member incapable of performing the duties of that office; or
 - f. gross violation of *the Constitution* or any other law."

13. The Court of Appeal explained the above power of the County Governor in County Government of Nyeri & another v Cecilia Wangechi Ndung'u (2015) KECA 1011 (KLR) where it held that: -

"39. Secondly, section 31 (a) provides that a Governor may dismiss a County Executive Committee member at any time, if he considers that it is appropriate or necessary to do so. We find that the provision places an obligation on the Governor to exercise the said power only when necessary or appropriate. In our view this entails reasonableness on the point of the Governor in exercising this power...

Further, by virtue of the fact that a Governor ought to exercise his powers for the public good he should not act on selfish motives but for the benefit of his/her County. We find that the reasons for exercising the said power ought to



be valid and compelling and will depend on the circumstances of each case. Consequently, the power to dismiss a member of the County Executive is qualified to the extent that the same ought to be for the benefit of the County and in accordance to the principles of devolution as set out herein above.”

14. Again, the Court of Appeal in *County Government of Garissa & another v Idriss Aden Mukhtar & 2 others* (2020) KECA 546 (KLR), held that: -

“ 39. It is for these reasons that we reiterate this court’s holding in the *Richard Bwogo Birir* decision, that the pleasure doctrine was not preserved under section 31(a) of the CGA. Nor do we agree that the section allows the Governor to dismiss members of the County Executive without observing any procedures or assigning any reason. Section 31(a) merely gives the Governor the discretion to dismiss a County Executive Member for a reason and process other than that is stated in section 40 of the CGA, subject to due process being followed...

41. This means that there must be a reason upon which it can be concluded that the powers of the Governor have been exercised in good faith and for proper reason and not arbitrarily or capriciously. It cannot be, as the appellant appear to content, that the Governor is entitled to fire the respondents at will, without any reason and without due process. That would be contrary to the respondents’ Constitutional rights to fair labour practices and the right to fair hearing. Thus, the appellant has to satisfy the court not only that the Governor had a good reason for termination of the respondents’ employment, but also that the reason for the termination was one which justified urgent action under section 31(a) of the CGA. Secondly, the Governor had to satisfy that in taking the action, due process was followed and a fair hearing given to the respondents.”

15. The gist of the foregoing precedents is that a Governor is required to act fairly before dismissing a member of the executive committee under section 31(a) of the County Government Act. For the dismissal to pass the test of fairness, there must be a valid reason and fair procedure must be followed. Valid reason is one that is in the public interest and in accordance with the principles of devolution. Fair procedure on the other hand refers to the right of a person to be accorded an opportunity to defend himself/herself before an administrative decision is made to his or her detriment.

16. In this case, the petitioner was dismissed for failure to respond to show cause letters dated 6th June 2024 and 4th December 2024. The letters charged the petitioner with absenteeism and failure to perform her duties. The respondent admitted that the petitioner responded to the show cause letter dated 6th June 2024 and therefore the alleged failure to respond to that letter was not a valid reason for dismissing the petitioner.

17. As regards the show cause letter dated 4th December 2024, the petitioner denied receipt of that letter. The respondents did not prove personal service but it alleged that service was done through petitioner’s office. No delivery book or other evidence was adduced to prove that the letter was indeed delivered at the petitioner’s office and eventually handed over to her. Consequently, I find that the show cause letter dated 4th December 2024 was never served on the petitioner and therefore the alleged failure to respond to the said letter was not a valid reason for dismissing the petitioner. It was irrational for the respondent to expect a response from the petition without first serving her with the show cause letter.



18. Besides, the allegations set out in the show cause letter dated 4th December 2024 have not been substantiated. The allegations are basically the grounds for removal of a CECM under section 40 of the CGA but the respondents did not adduce any evidence to substantiate the same. Consequently, I proceed to hold that there was no valid reason to justify the dismissal of the petitioner on 13th January 2025.
19. As regard procedural fairness, the respondents were required to observe due process before dismissing the petitioner. They were obliged to give the petitioner an opportunity to defend herself on the allegations contained in the show cause letter dated 4th December 2024 before dismissing her. The way to do so was by serving her with the show cause letter to enable her know the charges and then respond before a decision could be made against her.
20. As it is clear from the record, the show cause letter was never served on the petitioner yet it was used as the reason for dismissing her. As held in Idriss Aden Mukhtar case and Cecilia Wangechi Ndung'u case, dismissing a CECM without a valid reason in the public interest and without due process amounts to violation of the right to fair labour practices and right to fair administrative action as guaranteed under Article 41 and 47 of *the Constitution*. Accordingly, having found that the dismissal of the petitioner was without a valid reason and due process was not followed, I now hold that the dismissal violated petitioner's right to fair labour practises and right to fair administrative action as envisaged by Article 41 and 47 of *the Constitution*. It was therefore contrary to Article 236 of *the Constitution* which provides that: -

“ A public officer shall not be;

- a.
- b. Dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”

Reliefs

21. In view of the foregoing holding, I find that the petitioner is entitled to declaration that the respondents have violated her Constitutional right to fair labour practices and right to fair administrative action under Article 41 and 47 of *the Constitution*.
22. She further prayed for declaration that her right to equality and freedom from discrimination under Article 27 of *the Constitution* was violated by the respondent by being denied official car while her colleagues were allocated official cars. She contended that a request for payment of commuter allowance after the withdrawal of the official car was also declined. She further averred that the respondents stopped inviting her to CECM meetings some of which were held in the private residence of the Governor. She further averred that she was excluded from the new WhatsApp group for the CECMs. In her view, the foregoing matters were meant to frustrate her and force her into resignation.
23. The respondents contended that only 6 out of 12 CECMs had official vehicles due to budgetary constraints and as such the available vehicles were shared by all the CECMs. As for the invitation to the CECMs meeting, it was argued that there were no invitations being made as the CECMs had prepared a Schedule for Meetings.
24. The respondents did not adduce any evidence to prove that there was no vehicle to be allocated to the petitioner except the 6 cars allocated to other CECMs. Where an officer is entitled to an official car, the employer is under a legal and contractual duty to provide the vehicle. Denying one officer an official car while giving others, amounts to discrimination and also breach of contract of service.



- Consequently, I find that withdrawing the petitioner’s official car and requiring her to borrow from her colleagues or use private means for official duties amounted to discrimination contrary to Article 27 of *the Constitution*.
25. Finally, I find that the violation of the petitioner’s right to fair labour practices, right to fair administrative action and discrimination also amounted to inhuman treatment and violation of petitioner’s right dignity under Article 28 of *the Constitution*.
26. The effect of the foregoing violations was unfair/unlawful termination of the petitioner’s employment by the respondents. As such, I find that the petitioner is entitled to compensation under section 49(1) of the *Employment Act*. In Idriss Aden Mukhtar case, supra the Court of Appeal held that;
- “ 54. Section 3 of the *Employment Act* is clear that other than the categories stated therein, the *Employment Act* applies to all the employees employed under a contract of service and provides minimum terms and conditions of employment. Therefore, although the employment of state officers is regulated by *the Constitution* and relevant statutes, the *Employment Act* applies to them and they are entitled to rights under the *Employment Act*, unless *the Constitution*, or the relevant statute or their contract of service provides better terms. Given the relationship between the appellants and the respondents, and the matter having been filed in the Employment and Labour Relations Court, we find nothing wrong with the learned Judge being guided by Section 49(1) of the *Employment Act* in awarding damages.”
27. Having considered the manner in which the petitioner was dismissed without regard to her rights in *the Constitution*; that she expected to continue working and earning for a further 3 years; and the fact that she stands no chance of getting a comparable job within one year, I award her 12 months gross salary as compensation for the unfair loss of employment. I gather support from the Idriss Aden Mukhtar case, supra, where the Court of Appeal upheld an award of 12 months gross salary compensation given by the trial court.
28. The petitioner produced her payslip for July 2024 indicating her gross salary as Kshs.413,079. Consequently, 12 months gross pay equals to Kshs.4,956,840 which I award to her as compensation for the unfair termination of her employment contract.
29. The petitioner will also have gratuity for the period served being 26 months. The gratuity will be assessed and paid by the respondents based on the petitioner’s contract of service of which the court takes judicial notice that, it incorporated terms prescribed by the SRC.
30. The prayer for reinstatement is declined considering that the relationship between the petitioner and respondents has irretrievably broken-down rendering reinstatement not practicable.

Conclusion

31. I have found that the dismissal of the petitioner by the respondents was unfair and it violated petitioner’s Constitutional rights. I have further found that the petitioner is entitled to compensation for the unfair termination and gratuity for the 26 months served. Consequently, I enter judgment for the petitioner against the respondents as follows: -
- a. A declaration that the dismissal of the petitioner was unfair, unlawful and violated her Constitutional rights.
 - b. Respondents to pay the petitioner Kshs.4,956,840 being compensation for unfair dismissal.



- c. Respondents to compute and pay the petitioner gratuity for the 26 months served.
- d. The respondents to pay the petitioner Kshs 2,000,000 as general damages for the violation of her constitutional rights cited above.
- e. The award is subject to statutory deductions.
- f. The petitioner is awarded costs and interest at court rates from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NYERI THIS 18TH DAY OF SEPTEMBER, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

