



REPUBLIC OF KENYA



**Mohamed v Wajir County Assembly & 2 others (Petition E088 of 2025)
[2025] KEELRC 2562 (KLR) (23 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2562 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E088 OF 2025
HS WASILWA, J
SEPTEMBER 23, 2025**

BETWEEN

FARDOWSA HASSAN MOHAMED PETITIONER

AND

WAJIR COUNTY ASSEMBLY 1ST RESPONDENT

WAJIR COUNTY ASSEMBLY SERVICE BOARD 2ND RESPONDENT

THE CLERK COUNTY ASSEMBLY OF WAJIR 3RD RESPONDENT

JUDGMENT

Petitioner's Case

1. By a Petition dated 5th December 2024, the petitioner sought for the following reliefs; -
 - a. A declaration be and is hereby issued that the Petitioner had a legitimate expectation that she would be admitted to the permanent and pensionable scheme after her six-month probation.
 - b. A declaration be and is hereby issued that the letter dated 25th September 2017 purporting to put the Petitioner on a five-year contract was issued un-procedurally, illegally and/ or unlawfully and is therefore null and void.
 - c. A declaration be and is hereby issued that the removal of the Petitioner from the payroll, denying her access to her place of work and withholding her salary was un-procedural, unjustified and unlawful and in violation of Article 41 (1) of the Constitution.
 - d. A declaration be and is hereby issued that withholding the Petitioner's salary from September 2017 to date constitutes gross labour malpractice and is unconstitutional.
 - e. The Petitioner be and is hereby reinstated to her position without loss of benefits and shall be paid all her pending dues within one month after judgement is delivered.



- f. The 2nd Respondent is hereby ordered to personally facilitate the reinstatement of the Petitioner and accord her the assistance she may need to settle back to her role.
- g. An order do issue restraining the Respondents by themselves, their agents, employees, servants, assigns and/or representatives from in any way harassing, discriminating and/or disturbing the Petitioner and taking any action that may be perceived or intended to victimize the Petitioner.
- h. Costs be paid by the Respondents.

Petitioner's Case

2. The Petitioner avers that she was employed by the 1st Respondent as Assistant Secretary on permanent and pensionable terms of service with effect from 2nd October 2017. She was placed on probation for a period of 6 months and her confirmation to permanent and pensionable terms was subject to satisfactory performance.
3. The Petitioner avers that upon completion of her probation in 2023, she was issued with a letter backdated to 25th September 2022 which altered her employment terms and purported to put her on contract for a period of five years.
4. It is the Petitioner's case that prior to that her terms of employment were being reviewed, Respondents did not notify her of the same or the reasons why. Further, there was no consultation and therefore the decision was unfair, un-procedural and unlawful and violated her labour rights as provided for under the Constitution, the Fair administrative Actions Act and the Employment Act.
5. The Petitioner together with other affected employees tried to engage the Respondents in order to resolve this issue, however, they have shown no interest and have continued to ignore her and have failed to address the issue necessitating this suit.
6. It is the Petitioner's case that prior to her removal from the payroll, she has never been accused of any wrong doing and/or misconduct, or issued with a notice to show cause or invited to a hearing of any kind where she was heard and her representations considered before the decision was taken. The failure by the Respondents to accord her a fair procedure violated her right to fair administrative action and a fair hearing.
7. The Petitioner avers that the 1st Respondent has continued to unlawfully withhold and/or refuse to pay her salary and has constructively dismissed her from employment as an officer of the county as per her terms of her appointment has rendered her destitute. The Respondents actions have violated her constitutional right to dignity, right to fair labour practices and freedom against servitude which cannot be limited under the Constitution.
8. She further avers that between September 2022 to January 2023, she unsuccessfully attempted to access her place of work, however, she has been denied access to the building as the security manning the offices appear to have been instructed not to allow her access.
9. Additionally, the Petitioner together with other affected employees attempted to reach out to the Respondents through the Kenya County Government Workers Union to resolve the issue, however, the union has been frustrated by the Respondents to date, therefore necessitating this petition.
10. The Petitioner avers that the Respondents have never issued her with a termination letter from employment. Vide orders issued by this court in Cause No. E094 of 2023; Habon Kahiye Mohamed vs Wajir County Assembly Service Board and ELRCC Petition No. E155 OF 2024; Halima Omar Gaal vs Wajir County Assembly & 2 Others, this court reinstated the employees back to work in Wajir



County who had similar grievances against the Respondents. Thus the Petitioner is entitled to equal protection of the law as the employees have since been reinstated to employment.

11. The Petitioner avers that she is a single mother to 3 children who have all been affected adversely by the 1st Respondent's decision to withhold her salary and deny her an opportunity to work. She has been unable to meet basic obligations as a parent as a result of this injustice.
12. It is the Petitioner's case that she is a victim of political, cultural and gender discrimination. She refuses to endorse the bad manners that is prevalent in the county governments where the incoming governments frustrate, harass, discriminate, intimidate and dismissed county officers perceived to be loyal to the previous administration in order to employ their own people.

Petitioner's Submissions

13. The Petitioner submitted on four issues: whether the Respondent's decision to alter the terms of the Petitioner's employment and put her on contract was procedural and/or constitutional; whether the petitioner was lawfully removed from the payroll of the 1st Respondent and/or terminated; whether the Petitioner is entitled to orders sought; and costs.
14. On the first issue, the Petitioner submitted that she was employed by the 1st Respondent vide letter dated 25th September 2017 and her confirmation to the permanent and pensionable terms was subject to satisfactory performance during her 6 months' probation period. She completed her probation period successfully, however, the 1st Respondent issued her a letter backdated to her initial date of employment purporting to put her on a 5-year contract. Despite numerous concerns raised by her and other affected employees, the 1st Respondent arbitrarily altered the employment terms without prior notice, explanation and legal justification. The employees including the Petitioner were arbitrarily removed from the payroll at the end of the contract period.
15. The Petitioner submitted that vide orders obtained in Cause No. E094 of 2023; Habon Kahiye Mohamed vs Wajir County Assembly Service Board and ELRCC Petition No. E155 OF 2024; Halima Omar Gaal vs Wajir County Assembly & 2 Others this court reinstated without loss of benefits including full salaries the employees back to employment on permanent and pensionable terms.
16. It is the Petitioner's submissions that Article 47 (1) of the Constitution read with section 4 of the Fair Administration Action Act provides that every person has a right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Whereas, Article 41 (1) provides that every person has a right to fair labour practices. the Constitution also guarantees every person a right to inherent dignity and to have that dignity respected and protected which includes the dignity of employees within the context of employment.
17. The Petitioner submitted that Section 45 (1) and (2) of the Employment Act protects employees from unfair and/or arbitrary termination by employers and outlines the ingredients of unfair termination. It provides that termination is unfair if the employee fails to prove that the reason for termination is valid and that the employment was terminated in compliance with a fair procedure.
18. The Petitioner submitted that under Section 43 of the Employment Act, the duty to prove that termination was unfair is placed squarely on the employer; where the employer fails to do so, employment is deemed to be unfairly terminated within the meaning of Section 45.
19. The Petitioner submitted that she has demonstrated that she was employed by the 1st Respondent and that the terms of her employment were varied without notice vide a letter backdated to her initial date of employment. She has further demonstrated that there was no consultation on her part and she did



- not consent to the changes either in writing or by inference. Additionally, the instant dispute is not an isolated as other affected employees have since been reinstated back to employment with this court.
20. The Petitioners submitted that her allegations have been controverted by the Respondents who were duly served but chose not to participate in these proceedings. The Respondents failure to participate or defend this petition is a demonstration of the arbitrary nature with which they have chosen to handle these proceedings and the contempt they have for this court.
 21. It is the Petitioner's submissions that the *Employment Act* requires the Respondents to demonstrate that indeed there was a valid reason to remove her from the payroll and/or to terminate her employment; and to prove that she was taken through a fair procedure when the terms of her employment were being changed. No such prove has been placed before this court, consequently the court must arrive at the conclusion that the Petitioner has proved her case on a balance of probability.
 22. On the second issue, the Petitioner submitted that having demonstrated that the terms of her employment were arbitrarily, unlawfully and unconstitutionally changed by the 1st Respondent; she is entitled to the orders sought and particularly the order of reinstatement with no loss of benefits like the other employees who have been reinstated in the two different suits mentioned herein.
 23. On reinstatement, the Petitioner relied in Gladys Boss Shollei v Judicial Service Commission [2013] KEIC 1 (KLR) wherein she quoted the case of Alfred Nyungu Kimungui -vs- Bomas of Kenya; Industrial Court of Kenya at Nairobi Cause No. 620 of 2013 wherein Hon. Justice James Rika observed: "Ordinarily, reinstatement of an employee is a substantive remedy, not a temporary relief. The law does not contemplate that reinstatement issues as a provisional measure. It is a remedy that should normally be granted upon the full hearing of the employer, and the employee."
 24. The Petitioner submitted that in the Habon Kahiye Mohamed vs Wajir County Assembly Service Board Case, the court determined that this court has jurisdiction to hear and determine employment disputes relating to county governments and ordered the reinstatement of the Claimant without any loss of his benefits.
 25. It is the Petitioner's case that the court in the Habon Kahiye Case, acknowledged that the Respondent, Wajir County Assembly Service Board is a public employer and therefore the Petitioner is able to be reintegrated easily back to employment. This applies even in the instant petition where the same Respondent is sued for the same grievances and or grounds as exists in the Habon Case.
 26. The Petitioner submitted that reinstatement unlike damages is the only appropriate remedy in this case. An award of damages shall not prevent another case like this from happening as all county institutions pay off employees each time their arbitrary actions are brought under scrutiny and invalidated.

Respondents' Case

27. The Respondents did not enter appearance in the matter despite being served affidavits of service severally by the Petitioner.
28. On 2nd July 2025, this court observed that the petition stands unopposed by the Respondents at the time of grant of judgment delivery date.
29. I have considered all averments and submissions of the parties herein. The petitioner indicated that she was employed by the respondent in 2023 but issued with a letter backdated in 2022 which altered her employment terms and placed her on a 5 year contract.



30. She is however contesting that she had been employed before in 2017 on 2nd October and placed on probation for 6 months and it was only in 2023 that her employment terms were altered to contract ones. She avers that since 2017, her salary has however been withheld which is unconstitutional.
31. I believe the facts of his petition do not flow. It is not clear how the petitioner was employed in 2023 and has never been paid since 2017. The petition as submitted and as presented before court though not opposed by the respondents lacks factual precision and is therefore not established. The petition is therefore dismissed accordingly.
32. There are no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

