



**Radoli v County Government of Tharaka Nithi & another (Employment and Labour Relations
Petition E005 of 2024) [2025] KEELRC 2461 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2461 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS PETITION E005 OF 2024
ON MAKAU, J
SEPTEMBER 18, 2025**

BETWEEN

JAMES LAURENT RADOLI PETITIONER

AND

COUNTY GOVERNMENT OF THARAKA NITHI 1ST RESPONDENT

**COUNTY PUBLIC SERVICE BOARD COUNTY GOVERNMENT OF
THARAKA NITHI 2ND RESPONDENT**

(Before Hon. Justice Onesmus N Makau on 18th September, 2025)

JUDGMENT

Introduction

1. By a Petition dated 15th August 2024, the petitioner accused the respondents of violating his constitutional rights and constructive dismissal. The petition is supported by the petitioner's affidavits sworn on 15th August 2024 and 24th January 2025 and it seeks the following reliefs:
 - a. A declaration that the Respondents violated Articles 1, 3, 10, 9, 20, 21, 22, 23, 27, 28, 41, 50, 73, 159, 162(2), 165(5)(b) & 258 as well as Chapter six of *the Constitution*.
 - b. A declaration that the Respondents violated the Petitioner's rights under Articles 27 and 236 of *the Constitution* regarding the right to equality and freedom from discrimination by selectively and discriminately releasing him from his responsibilities without an explanation as well as his right to fair remuneration.
 - c. A declaration that the Petitioner's constructive dismissal is unfair, discriminatory, irrational, unreasonable, malicious, vexatious, oppressive and therefore unconstitutional and unsustainable.



- d. Unpaid salary and benefits for the remainder of his five-year contract period at Kshs. 36,050/ = per month plus expected increments including annual service gratuity at the rate of 31% of the total basic salary as particularized in paragraph 51 total of Kshs. 2,272,241.00.
 - e. Damages equivalent to 12 months' pay for unlawful termination.
 - f. Payment of all other benefits due to the Claimant.
 - g. Interest in d, e and f at court rates from the day each payment fell due and payable until payment in full.
 - h. Issuance of certificate of service.
 - i. Any other relief that the court may deem just and expedient in the circumstances.
 - j. That costs of the petition be borne by the Respondents.
2. The Respondents opposed the Petition vide a Response dated 25th October 2024 and replying affidavit sworn on the same date by the County Attorney one Franklin Mwendani. In brief the Respondents denied the alleged dismissal and averred that the petitioner was still in active employment and prayed for the suit to be dismissed with costs.

Facts

3. The Petitioner was employed by the respondents as Chef vide a letter dated 7th February 2022. The appointment was for a contract of one year but by another letter dated 7th December 2022 the contract was extended for 5 years from 15th December 2022 to 31st August 2027. He was based at the governor's official residence in Tharaka Nithi, but sometimes he was allocated duties in the Governor's personal residence at Karen in Nairobi.
4. Sometime in January 2023 while working at the Governor's residence in Karen, an automatic water pump broke down and a Mr. Gellas, the gardener in charge of the pumps reported the same. As a result, the governor called technicians to repair the pump but they were unable to remedy the same due to the unavailability of spares at night.
5. Due to the dire need of water in the house, the technicians temporarily connected a manual pump from the swimming pool, and notified the gardener that the pump was not automatic and therefore there was no way to know the water levels.
6. On 7th April 2023, Mr. Gellas was not in and due to lack of water in the house for cooking and general use, the Petitioner switched the pump on but unfortunately there was a spillage in the house as there was no way to know when the tank gets full. On 8th April 2023 the governor told him to pack his belonging, go home and wait to hear communication from the Respondents.
7. He complied with the governor's orders, but he never received any official communication from the respondents despite his persistent inquiry about the status of his employment. He received his full salary for April and May but from June his salary stopped but the respondents continued remitting his NSSF and NHIF contributions. Upon enquiry, he was informed that the reason for stopping his salary was his resignation, which was not true as he had not tendered any resignation.
8. He then wrote to the Chief of Staff on 3rd July 2023 seeking a correction of the alleged resignation error and on 7th August 2023 he received a phone call from Mr. Brian Kithama, of HR Department, advising him to see the Chief of Staff in person.



9. On 9th August 2023, the petitioner went to see the Chief of Staff but despite waiting the whole day and returning on the next day, he was unable to see him. He then wrote a reminder on 17th August 2023 addressed to the 2nd respondent's secretary but the same did not elicit any response. He maintained his denial of the alleged resignation as a Chef, and further averred that from 8th April 2023, there was no formal communication from the respondents to him over his fate.
10. He contended that from January 2024, the Respondents' started paying him half salary and continued to remit his statutory deductions. However, they failed to formally inform him the status of his employment, which according to him amounted to infringement of his constitutional rights, constructive termination, and breach of his contract of employment, which exposed him to mental anguish. He further contended that the actions by the respondent smacked of blatant abuse of office, bad faith, caprice, unreasonableness, arbitrary and contrary to public interest. Therefore, he prayed for the reliefs sought in the petition to be granted.
11. The Respondents admitted that they employed the petitioner under one-year contract of employment from 7th February 2022 and thereafter extended it for 5 years from 15th December 2022 to 31st August 2027. However, they denied the alleged constructive dismissal and averred that the Petitioner is still their employee. They averred that the Petitioner's salary for June 2023 to November 2023 was fully paid and any arrears were settled on 15th December 2023.
12. They further averred that the petitioner failed to participate in the Staff and Skills Audit conducted between 26th February 2024 and 11th March 2024 which amounted to negligence of duty and insubordination contrary to section 6.11 of the Public Service Commission Discipline Manual for public service, and as a result, he was served with a Show cause letter dated 8th August 2024.
13. They averred that the disciplinary process initiated through the said show cause letter is being conducted fairly and in accordance with Article 41 and 50 (1) of *the Constitution* which guarantee the right to fair labour practices and the right to hearing. Besides, they are observing the provisions of the Fair Administrative Actions Act and the Public Service Commission Regulations.
14. They maintained that the claim for mental anguish, constructive dismissal and financial hardship lack merit as he is still their employee. They further averred that the claim for unpaid salary lack supporting evidence while the claim for gratuity, is premature as its only payable upon completion of employment contract. Finally, the claims for compensation for unlawful termination and salary in lieu of notice are without merit as no unlawful termination has taken place. Therefore, they prayed for the suit to be dismissed with costs.
15. In his rejoinder the Petitioner reiterated the contents of the Petition and clarified that his failure to attend the Staff and Skill Audit was because he was never invited, and that he only learned about it from the respondents' replying affidavit. He further averred that Kshs. 178,979.35 was credited into his account after serving a demand letter through his advocate on 20th September 2023, but there was no narration or letter explaining the lumpsum payment.
16. He contended that after filing and serving the instant proceedings on 15th August 2024, he received a text message from Edwin Nyaga on 20th August 2024, advising him to collect a letter from the County HR office at Kathwana. He complied and found that it was a show cause letter dated 8th August 2024 which he believed to have been backdated to defeat his case.
17. He contended that he had a valid claim of being subjected to mental anguish and constructive dismissal through the respondents' actions, and as such the alleged disciplinary proceedings is sub judice and only intended to sanitize the Respondents actions of constructive dismissal.



Submissions

18. It was submitted for the petitioner that since 8th April 2023, he has not been assigned or given any work as a Chef, and as such he has not been in active employment. It was submitted that the failure to assign work to the claimant amounts to breach of section 10(2) of the *Employment Act*. Besides, he did not receive any salary from June until December when he received Kshs 178,979.35 without any narrative and thereafter half salary started coming without any explanation.
19. It was further submitted that the above conduct by the respondents plus the suspension of the petitioner for an unspecified period at a half salary was unlawful and it amounted to constructive dismissal. Further that it contravened of Article 10, 19(2), 20(2), 21(1), 22, 23, 27, 41, 47, 50(1), 159, 162, and 258 of *the Constitution*. For emphasis, reliance was placed on the case of *Mwirigi v Cabinet Secretary, Ministry of Gender, Culture, Art & Heritage & 2 others* [2024] KEELRC 623 (KLR).
20. It was also submitted that the suit is not premature because it was filed after the respondents failed to respond to several letters by the petitioner about his verbal suspension by the governor. It was argued that the said conduct amounted to unfair administrative action.
21. As regards the alleged disciplinary proceedings for failure to participate in the staff and skills audit, it was submitted that the petitioner was never made aware of the exercise before it was done. It was argued that, after the Petitioner was verbally suspended by the governor on 8th April 2023, he never received any communication whatsoever from the respondents as promised until 20th August 2024 when he received a show cause letter after filing this suit.
22. It was submitted that the actions by the respondents violated his right to fair labour practices under Article 41 of *the Constitution*. For emphasis, reliance was placed on *Mwirigi v Cabinet Secretary, Ministry of Gender, Culture, Art & Heritage & 2 others*, supra.
23. On the other hand, it was submitted for the respondent that the suit is premature and it offends section 9 (2) and (3) of the Fair Administrative Actions Act as the parties have not exhausted the internal mechanism provided by the *Public Service Commission Act* and the Regulations thereunder. Reliance was placed on *Geoffrey Muthinja & another v Samuel Maguna Henry 1756 other* [2015] eKLR.
24. It was further submitted that the alleged constructive dismissal did not occur as the petitioner did resign on account of intolerable working conditions. He remains in active employment still receiving his salary pending disciplinary process which was initiated by the show cause letter. The case of *Kenedy Otieno Onyango v Kenya National Examination Council* [2018] eKLR was cited to fortify the above submissions.
25. It was submitted that the respondents did not violate any of the rights alleged by the petitioner as he was served with a show cause letter charging him with negligence and insubordination, which charges he hasn't rebutted. Reliance was placed on *Judicial Service Commission v Mbalu Mutava* [2015] eKLR.
26. As regards the reliefs sought, it was submitted that the petitioner is not entitled to the same because the claim for unpaid salary has since been settled, while the claim for compensation and salary in lieu of notice is untenable since no termination has occurred. Further that, the claim for gratuity is premature as the same becomes payable after completing the contract term. Therefore, the court was urged to dismiss the suit for being premature, incompetent, unproved and meant to frustrate internal disciplinary process.



Analysis

27. Having carefully considered the pleadings, evidence and submissions by both sides, the following issues fell for determination:
- a. Whether the suit is premature by dint of the exhaustion doctrine.
 - b. Whether the Respondents infringed the constitutional rights of the petitioner.
 - c. Whether the respondents constructively dismissed the petitioner.
 - d. Whether the petitioner is entitled to the reliefs sought.

Premature suit

28. There is no dispute that on 8th April 2023, the petitioner was verbally suspended from service by the governor and ordered to go home till he received communication from the respondents. It is also a fact that he never received any formal communication from the respondents despite persistent follow up through phone and letters. He only received salary for April and May and thereafter it was stopped on allegation that he had resigned but he clarified that it was his colleague James Mogesa Nyakeruma.
29. By December 2023, he was paid all his salary arrears from June, and thereafter he was paid half salary from January to July 2024 without any explanation. His several demand letters elicited no response from the respondent and therefore he filed this suit.
30. The respondents submitted that the suit is premature and offends the provisions of the PSC Act and the Regulations thereunder. Section 87 (2) of the PSC Act provides that
- “(2) A person shall not file any legal proceedings in any Court of law with respect to matters within the jurisdiction of the Commission to hear and determine appeals from county government public service unless the procedure provided for under this Part has been exhausted.”
31. In *Geoffrey Muthinja & another v Samuel Maguna Henry 1756 other [2015] eKLR* the court held:
- “Where a dispute resolution mechanism exists outside courts, it must be exhausted before jurisdiction of the court is invoked.”
32. The above provision presupposes that there is a decision made by a competent person in the county government public service on a matter that falls within the jurisdiction of the PSC. The dispute herein is about the indefinite suspension from duty on half salary and an alleged resignation. The governor told the petitioner to wait for communication from the respondents but no word was received from them. Instead, he received all his unpaid salary after explaining that he had not resigned but his colleague James Mogesa Nyakeruma.
33. It follows that, there were no pending disciplinary proceedings commenced against the petitioner or any formal decision made against him by the respondents before he filed the instant suit. The alleged show cause letter was about the failure to participate in Staff and Skills Audit and it was served after the petitioner quit the job and sued the respondents for constructive dismissal. Had the show cause letter been served before the filing of the suit, I would have reached a different conclusion. Consequently, I find that the suit is not prematurely before the court.



34. Besides, the issue of the indefinite suspension of an employee and disciplinary action against the county public officers by a governor, have been litigated before the courts under the banner of constitutional violations which squarely fall within the jurisdiction of this court. It is only this court which has the legal mandate to determine the legality or constitutionality of any action or decision made by an employer or a person exercising disciplinary control of an employee by dint of Article 162 (2) and 165(5) of *the Constitution*. Under Article 22 of *the Constitution* an employee has the right to petition this court alleging that his rights in the Bill of Rights has been violated or is about to be violated by his employer.

Violation of constitutional rights

35. The petitioner's case was that his right to fair labour practices and fair administrative action under Article 41 and 47 of *the Constitution* were violated by the respondents by keeping him in suspension on half salary for an indefinite period. The respondents denied the alleged violations and maintained that the petitioner was facing disciplinary charges commenced by the show cause letter dated 8th August 2024.
36. Having considered the above rival contentions, it is clear that the respondents stopped the salary of the petitioner from June 2023 without notice or an opportunity to be heard and when he enquired, he was informally told that he had resigned. The said allegation was based on no written evidence as the petitioner never resigned but his colleague James Mogesa Nyakeruma. Despite persistent demands for correction of the error, no salary was paid to him until December 2023 when he received the same in arrears.
37. Again, the respondents decided to pay the petitioner half salary from January 2024 without any justifiable reason. It was only after the petitioner filed this suit on 20th August 2024 when the respondent's served him with a Show cause letter. The petitioner's evidence that he was served with the show cause letter after filing the suit has not been rebutted by the respondents by evidence. It follows that the decision to pay half salary was done without informing the petitioner the reason for the same as there was no suspension or show cause letter served on him with respect to the alleged negligence of duty and insubordination, before the half pay started.
38. Besides, the alleged offence of failure to participate in the Staff and Skills Audit in February and March 2024 was not factual as the respondents did not prove that the petitioner was made aware of the exercise and wilfully failed to participate. The petitioner was on suspension for water spillage awaiting communication from the respondents but they never contacted him about the suspension by the governor, or even regarding the Staff and Skills Audit. Consequently, I find that the cumulative conduct/actions by the respondents including the indefinite suspension of the petitioner amounted to breach of his right to fair labour practices and right to fair administrative action. Whereas an employer has the right to suspend an employee from service pending investigations, that said right ought to be exercised fairly for a specific period.

Constructive dismissal

39. Constructive dismissal is defined by the Black's Law Dictionary 11th edition as follows:

“An employer's creation of working conditions that leave a particular employee or group of employees with little or no choice but to resign, as by fundamentally changing the working conditions or terms of employment; an employer's course of action that, being detrimental to an employee, leaves the employee almost no option but to quit.”



40. The Court of Appeal in *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] KECA 394 (KLR) laid down the principles pertaining to constructive dismissal as follows:

“ 30. The legal principles relevant to determining constructive dismissal include the following:

- a. What are the fundamental or essential terms of the contract of employment?
- a. Is there a repudiatory breach of the fundamental terms of the contract through conduct of the employer?
- a. The conduct of the employer must be a fundamental or significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract.
- a. An objective test is to be applied in evaluating the employer’s conduct.
- a. There must be a causal link between the employer’s conduct and the reason for employee terminating the contract i.e. causation must be proved.
- a. An employee may leave with or without notice so long as the employer’s conduct is the effective reason for termination.
- a. The employee must not have accepted, waived, acquiesced or conducted himself to be estopped from asserting the repudiatory breach; the employee must within a reasonable time terminate the employment relationship pursuant to the breach.
- a. The burden to prove repudiatory breach or constructive dismissal is on the employee.”
- i. Facts giving rise to repudiatory breach or constructive dismissal are varied.”

41. In this case, the Petitioner mainly accused the employer of indefinitely suspending her on half pay. The employer denied the alleged constructive dismissal of the petitioner and contended that there are disciplinary proceedings against the petitioner. The burden of proof is on the employee to demonstrate that the employer has by his conduct created intolerable working environment that left him with no option but to quit the job, or that the employer has fundamentally breached the contract of employment that made him to repudiate the contract.

42. In this case, the petitioner has adduced evidence to show that the governor placed him on an indefinite suspension until the respondents gave him further directions. He has shown that the respondents never contacted him but they delayed his salary from June to December 2023 alleging that he had resigned. Further, they started paying him half salary from January to August 2024 when he quit the job and filed this suit.

43. I would say that by paying the petitioner all his salary for June to December 2023, the respondents essentially reinstated him to his employment and the matter of water spillage at the governor’s house



ended. As such the decision by the respondents to pay the petitioner half salary without citing any reason and extending it for 7 consecutive months entitled the petitioner to quit the employment without notice and sue for constructive dismissal. The petitioner was entitled to consider the continued half pay as a fundamental breach of his contract of employment and repudiate it. Besides the unilateral decision to pay the half salary and keep the petitioner on an indefinite suspension was conduct unbecoming which the petitioner was not bound to tolerate.

44. Having considered the said matters, I find that the petitioner has proved on a balance of probability that the conduct by the respondents left him with no other option but to quit his employment without notice, and then brought this suit.
45. I must also observe that paying out public funds as salaries to an employee from June 2023 to July 2024 amounts to violation of the following values and principles of public service under Article 232(1) of *the Constitution*:
- “(a) high standards of professional ethics
 - (b) efficient, effective and economic use of resources”
46. The said payment of salary, for over a year for no work done, also violated the following principle of public finance under Article 201(d) of *the Constitution*:
- “(d) public money shall be used in a prudent and responsible way”

Reliefs

47. Having found that the respondents unlawfully placed the petitioner on an indefinite suspension for no reason, I must hold that he is entitled to a declaration that the Respondents violated his rights to fair labour practices and fair administrative action under Articles 41, 47 and 236 of *the Constitution*.
48. For the same reason he is entitled to a declaration that the respondents constructively dismissed him which amounts to unfair and unlawful termination of employment.
49. In view of the foregoing declaration, I find that the petitioner is entitled to compensation for unfair termination which I assess at three months gross salary considering his short service of less than two years, and also the fact that he never contributed to the termination through misconduct. Hence $Kshs.36050 \times 3 = Kshs. 108,150$.
50. The petitioner’s contract provided for payment of gratuity at the rate of 31% of the basic salary at the end of the contractual term. However, the termination was prematurely terminated by the respondents and as such he is entitled to gratuity on pro rata basis being $Kshs 28,850 \times 20 \text{ months} \times 31\% = Kshs178,870$.
51. The claim for salary for the remainder of the contract term is not supported by evidence. Besides, the contract provided for termination of the same before the lapse of its term by serving a notice of one month or payment of salary in lieu of notice. Consequently, I decline the claim for expected salary and instead award the prayer for one-month salary in lieu of notice being $Kshs36,050$.
52. The claim for half salary for January to June 2024 is granted as there is bank statement filed showing that the petitioner received half salary during that period. Therefore, I award him $Kshs 19,631.15 \times 6 = Kshs. 117,786.90$.



53. The petitioner was paid salary for July, August and September 2024 when the respondents stopped further payments. Therefore, the claim for salary for the said months or after, lacks merits as the employment had come to an end.
54. The prayer for Certificate of Service is granted as it is a right under section 51 of the [Employment Act](#).

Conclusion

55. I have found that the respondents violated the petitioner's constitutional right to fair labour practices and right to fair administrative action. I have further found that the respondents further constructively dismissed the petitioner from employment before the due date. Finally, I have found that the petitioner is entitled to some of the reliefs sought. Consequently, I enter judgment for the petitioner as follows:
- a. Declaration that the respondents have violated the petitioner's constitutional rights and unlawfully dismissed him from service.
 - b. Respondents to pay the petitioner the following:
Notice Kshs.36,050
Compensation Kshs. 108,150
Unpaid half salary Kshs. 117786.90
Gratuity Kshs. 178,870
Total Kshs. 440,856.90
 - c. The award is subject to statutory deduction.
 - d. The petitioner is granted certificate of service, costs of the suit plus interest at court rates from the day of this judgment until payment in full.

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.

