



**Kirande v Council of Legal Education (Petition E223 of 2023)  
[2024] KEELRC 1278 (KLR) (24 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1278 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E223 OF 2023**

**B ONGAYA, J**

**MAY 24, 2024**

**THE MATTER OF ARTICLES 10, 19, 20, 21(1), 23(3) &  
162(2)(A) OF THE CONSTITUTION OF KENYA, 2010;**

**-AND-**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF  
RIGHTS AND FUNDAMENTAL FREEDOMS UNDER  
ARTICLES 26, 35(1)(B), 47 & 50(1) OF THE CONSTITUTION  
OF KENYA 2010;**

**-BETWEEN-**

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**JAIRUS OUNZA KIRANDE ..... PETITIONER**

**AND**

**COUNCIL OF LEGAL EDUCATION ..... RESPONDENT**

**JUDGMENT**

1. The petitioner through Limo & Njoroge Advocates filed the petition dated 15.12.2023 seeking the following prayers:
  - a. A declaration that the petitioner’s impending disciplinary hearing by the respondent on allegation of loss of toners is illegal for contravening the respondents HR manual for being conducted outside the mandatory prescribed period of six (6) months.
  - b. An order of certiorari bringing into this Honourable Court and quashing the decision of the respondent commencing and or continuing with the disciplinary hearing against the petitioner



on the allegation of loss of toners contained in its letters dated 23.10.2023, 15.11.2023, 24.11.2023, 08.12.2023 and email correspondence dated 13.12.2023.

- c. A declaration of interpretation that the fundamental right to life guaranteed by Article 26 of the Constitution of Kenya, extends to and includes the right to livelihood.
  - d. A declaration that the respondent has violated the petitioner's rights guaranteed and protected under Articles 26, 35, 47 and 50 of the Constitution of Kenya.
  - e. An order of *mandamus* compelling the respondent to unconditionally reinstate the petitioner to employment in the position held immediately before the interdiction.
  - f. An order of *mandamus* compelling the respondent to release and pay to the petitioner all the withheld dues including but not limited to his allowances.
  - g. An appropriate order for compensatory damages for violation of the petitioner's fundamental rights guaranteed and protected under Articles 26, 35, 47 and 50 of the Constitution of Kenya.
  - h. Any other additional appropriate relief that the Honourable Court shall deem fit to grant in vindication and protection of the violation of the petitioners.
  - i. Costs on indemnity basis.
2. The petition was based upon the supporting affidavit of the petitioner and exhibits thereto filed together with the petition and sworn on 15.12.2023. His case is as follows:
- a. That he was employed by the respondent as a senior procurement officer (CLE/KSL 5) vide a contract of service dated 08.09.2014 effective 01.10.2014 at a monthly salary of Kshs 103,040 together with a house allowance of Kshs 40,000 per month among other perks.
  - b. That he was promoted to the position of principal supply chain management officer (CLE Job Grade 4) vide a letter dated 16.04.2021 effective 02.04.2021 at a monthly salary of Kshs 204,019 with a house allowance of Kshs 45,000 and commuter allowance of Kshs 14,000 and airtime allowance of Kshs 11,000 per month.
  - c. That vide a letter dated 06.09.2022 he was issued with a notice to show cause why he should not be subjected to a disciplinary process over loss of toners and procurement of Microsoft Teams software.
  - d. That he responded to the notice to show cause via a letter dated 26.09.2022 addressing the allegations and requesting documents, which he has not been supplied to date.
  - e. That the respondent found the response unsatisfactory and called him for a disciplinary hearing on the allegation of procurement of the Microsoft Teams vide a letter dated 05.01.2023.
  - f. That he was subsequently issued with a formal warning letter dated 30.01.2023 on the issue of procurement of Microsoft Teams leaving the issue of loss of toners unaddressed.
  - g. That vide a letter dated 20.03.2023 the respondent being dissatisfied with the petitioner's explanation on loss of toners interdicted the petitioner to pave way for further investigations and placed him on half of his basic salary, full house allowance and medical cover as per the respondent's HR manual.
  - h. The HR manual provides that an interdicted officer be paid full allowances but he was not being paid the monthly airtime allowance.



- i. That after the investigations, vide a letter dated 23.10.2023 the respondent invited the petitioner to disciplinary hearing on 31.10.2023 which he attended but the human resource advisory committee (hereinafter 'the committee') that was tasked to hear the issue adjourned the hearing to 16.11.2023 citing lack of quorum.
  - j. That on 14.11.2023 he wrote a letter through his representatives raising a raft of issues including a preliminary objection on the legality of the proceedings for being conducted outside the prescribed timelines in the HR manual.
  - k. That on 15.11.2023 the respondent's CEO who is not a member of the committee responded to the said letter and said that the delay was not inordinate and that the disciplinary hearing shall proceed.
  - l. That on 16.11.2023, the petitioner attended the disciplinary hearing where he stated several issues including failure of the respondent to supply the petitioner with requisite documents to prepare for the hearing and the basis of the hearing since the investigation committee report had since been withdrawn.
  - m. That the hearing was made orally despite the petitioner asking that they be recorded and same was to proceed on 07.12.2023 but which was later again changed to 08.12.2023.
  - n. That due to the unavailability of his representatives on 08.12.2023, the petitioner requested that same be rescheduled and it was rescheduled to 18.12.2023.
  - o. That before the 18.12.2023, the respondent again sent an email to the petitioner's representatives rescheduling the disciplinary hearing to 14.12.2023 which date the petitioner said he would be unavailable and asked that they maintain the date of 18.12.2023
  - p. That the HR manual of the respondent in paragraph 11.8.2 (b)(ii) together with 11.16.2(h) provides that a disciplinary case should be concluded within 6 months from the date of issuance of a show cause letter.
  - q. That it has been over 15 months since the respondent served the petitioner with the notice to show cause.
  - r. That the HR manual states that any disciplinary hearing that has not commenced after six months from the date of the notice to show cause is deemed to have been abandoned and hence the respondent should allow him to resume his duties.
  - s. That the court should intervene and protect the rights of the petitioner that are and have been violated by the respondent.
3. The respondent filed the replying affidavit of Jennifer Gitiri sworn on the 22<sup>nd</sup> February 2024 and filed through the learned Deputy Chief State Counsel, Ms. Schola Mbilo for the Hon. Attorney General. She reiterated the facts of the case as stated by the petitioner and urged the respondent's case as follows:
- a. That she is the acting Secretary and Chief executive officer of the Council of Legal Education, the respondent herein.
  - b. That the petition is an abuse of court process and that the Honourable Court should disallow it.



- c. That the investigation report that found the petitioner guilty of misconduct as particularized in the petition was shared with the petitioner on 14.11.2023 as was relied upon by the Committee.
  - d. That the respondent supplied the petitioner with all other relevant documents before inviting him to the disciplinary committee. They attached the documents.
  - e. That despite several failed attempts to hold the disciplinary meeting it was finally held on 20.12.2023 where the petitioner was allowed to sit with his representative and allowed to defend himself.
  - f. That the committee noted negligence of duty on the part of the petitioner for failing to perform his duty as expected and failure to advise management which amounts to gross misconduct as per the HR manual clause 11.11.1(III) (I) and recommended dismissal from service.
  - g. That the respondent issued a summary dismissal letter to the petitioner on 29.12.2023 citing the gross misconduct committed by the petitioner and the petitioner was informed of his right to appeal. He was given the minutes of the disciplinary hearing on 11.01.2024.
  - h. That it was in the best interest of the respondent to summarily dismiss the petitioner for gross misconduct that saw the loss of Kshs 1,384,150/= and should not be condemned for undertaking its disciplinary process.
4. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows:
- a. While the 6 months for determining the disciplinary case lapsed, the petitioner appears to have condoned the same. That contractual and procedural safeguard in the opinion of Court appears to have been waived by the petitioner.
  - b. The Court has considered the character of the petition and the ensuing dismissal. The petitioner has not in any manner challenged the reasons advanced for his dismissal. He was also given a chance to participate in the disciplinary process. It appears to the Court that the petitioner has filed the petition to simply evade the disciplinary process that was initiated and continued against him. In any event, the petition was not amended to challenge the summary dismissal letter to the petitioner on 29.12.2023 and did not appeal as was communicated. As urged for the respondent, the petition appears overtaken by the ensuing summary dismissal. The petitioner does not rebut the respondent's demonstrated position that the petitioner was provided all relevant documents.
  - c. The Court returns that the petitioner has not established the justification for grant of the reliefs sought and the petition must collapse. Each party will bear own costs taking into account the period of time that lapsed prior to conclusion of the disciplinary case.

5. In conclusion the petition is hereby dismissed with orders each party to bear own costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 24<sup>TH</sup> MAY 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

