



**Langat v Kenya Revenue Authority (Petition E146 of 2023)
[2024] KEELRC 1277 (KLR) (24 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1277 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E146 OF 2023**

**B ONGAYA, J
MAY 24, 2024**

BETWEEN

EDWARD KIPROP LANGAT PETITIONER

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. The petitioner through Muttisya & Co. Advocates filed the petition on 25.07.2023 seeking the following orders:
 - a. A declaration that the act of interdiction of the petitioner by the respondent for a period above six months and the attendant delay in taking administrative action (more than six years at the time of filing of this petition) is a gross violation of Constitutional right to fair labour practices, fair administrative action and infringement of the protection afforded by Articles 41 & 47 of the *Constitution*, therefore illegal, null and void.
 - b. That the respondent immediately reinstates the petitioner to work without any condition.
 - c. That the respondent be barred from re-opening the case against the petitioner.
 - d. That the petitioner be compensated by the respondent his dues and/or emoluments.
 - e. The petitioner be paid by the respondent damages for discrimination at work.
 - f. The petitioner be paid by the respondent general damages for violation of the petitioner's fundamental rights.
 - g. That the respondents do pay costs of these proceedings.
 - h. Any relevant relief.



- i. Interest on d), e), f), g) and h) above.
2. The petition was based upon the supporting affidavit of the petitioner sworn on 21.07.2023 and exhibits thereto filed together with the petition. His case is as follows:
 - a. That he was employed by the respondent under the ICT department in December 2006 and worked diligently until 15.03.2017 when he received a letter of interdiction grounded on an unfounded allegation. The letter of interdiction stated that he had been arrested on 08.03.2017 while on duty and consequently per section 8.1.1 of the respondent's code of conduct on interdiction pending investigations in alleged misconduct, he was interdicted. While on interdiction, he would be paid half-basic salary, full house allowance, and no leave will be earned during the period of interdiction.
 - b. That in the course of his employment he received several letters of commendation including on in the year 2017 which was later taken by officers of the DCI.
 - c. That the letter of interdiction did not specify his offence and neither has he been given any outcome of any investigations nor supplied with any documents that were relied on.
 - d. That the suspension has dragged for long, which contravenes his rights and various laws and procedures.
 - e. That it amounts to discrimination since other colleagues who had disciplinary issues were put through the whole disciplinary process and hearing before action was taken to dismiss them and that they had been informed of their various offences prior to such dismissal.
 - f. That despite issuing demand and notice of intention to sue, the respondent has declined to make good the claim.
 - g. The petitioner reiterating to be granted the orders as sought in the petition.
3. The respondent filed the replying affidavit of Peter Kambi Rwito through Elisha Nyapara– Advocate for the Kenya Revenue Authority sworn on the 30.10.2023. It was stated as follows:
 - a. That he works with the human resources division of the respondent.
 - b. That on 9th and 10th March 2017 the respondent received information from the Daily Nation publication that the petitioner together with two others were among 16 people arrested for being members of a ring of hackers that were involved in a multi-million-shilling KRA and bank theft syndicate.
 - c. That the respondent then reported the same to the Director of criminal investigations where the petitioner and the others were arrested and investigations initiated by a multi-agency team which led to having the petitioner interdicted to stay away from the office to pave way for the investigations hence his interdiction on 15.03.2017.
 - d. That from preliminary internal investigations, it was revealed that through the actions and engagement by the petitioner by way of deletions, manipulation and downward amendments of taxpayers' tax liabilities in the system, the respondent had lost approximately four billion shillings.
 - e. That the petitioner was charged in court for the offense of conspiracy to commit a felony contrary to section 393 of the [Penal Code](#) which led the respondent to convert the interdiction



into a suspension via a letter dated 19.10.2023 in accordance with section 62(1) of the [Anti-corruption and Economic crimes Act](#).

- f. That the actions taken against the petitioner by the respondent are all fair and within the law.
 - g. That the internal memo dated 23.04.2018 used by the petitioner in his case is illegally obtained evidence and ought to be struck out accordingly.
 - h. That the petitioner is not entitled to any of the orders sought because the actions of the respondent are justifiable and for public interest and should be found to be within the law.
 - i. That the petition herein lacks merit and should be dismissed with costs.
4. The petitioner filed a further affidavit in response to the replying affidavit of the respondent and stated as follows;
- a. That he is an accused person in criminal case no. 614 of 2017 having been arrested on 06.03.2017 and later charged on 22.03.2017 together with two others.
 - b. That after the arrest he dutifully reported to the DCI offices on Kiambu road every month from April of 2017 to December of 2019 no attempt was made to require him to record a statement or clarify any information regarding the charges.
 - c. That he was interdicted on 15.03.17 before he was charged contrary to the provisions of the KRA code of conduct and hence he is entitled to leave days, leave allowance and bonuses for the period of interdiction.
 - d. That there is no evidence against him by the respondent and he has not been taken through any disciplinary hearing as prescribed by law.
 - e. That the replying affidavit of the respondent is fatally flawed and has misrepresented matters of fact as pleaded in the petition.
 - f. That the charge sheet placed on record shows date of arrest as 06.03.2017 hence respondent cannot claim that they learnt of the rest on the 09.10.2017 and 10.10.2017.
 - g. That the suspension letter dated 19.10.2023 is drafted as an afterthought and offends the principles of due process.
 - h. That there is no nexus between the criminal proceedings and the continuing injury of indefinite interdiction or suspension.
 - i. That in addition to the prayers in the petition the Court do award special damages for employment defamation.
5. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows:
- a. The overriding consideration in this petition is that the petitioner has been charged in a Milimani Court on 29.11.2022 for conspiracy to commit a felony contrary to section 393 of the Penal Code under case files No. 574/2017 and 614/2017. The allegation in the charge is of conspiracy to steal Kshs.3, 985, 663, 858 from the respondent, the property of the Government of Kenya. The claimant is fully aware of those facts and circumstances.



b. Further it is not in dispute that section 62 of the *Anti-Corruption and Economic Crimes Act* provides thus:

- “(1) A public officer or state officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case: Provided that the case shall be determined within twenty-four months.
- (2) A suspended public officer who is on half pay shall continue to receive the full amount of any allowances.
- (3) The public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.
- (4) This section does not derogate from any power or requirement under any law under which the public officer may be suspended without pay or dismissed.
- (5) The following shall apply with respect to a charge in proceedings instituted otherwise than by or under the direction of the Attorney-General—
 - (a) this section does not apply to the charge unless permission is given by the court or the Attorney-General to prosecute or the proceedings are taken over by the Attorney-General; and No. 3 of 2003 Anti-Corruption and Economic Crimes [Rev. 2016] [Issue 3] A17 - 30
 - (b) if permission is given or the proceedings are taken over, the date of the charge shall be deemed, for the purposes of this section, to be the date when the permission is given or the proceedings are taken over.
- (6) This section does not apply with respect to an office if the Constitution limits or provides for the grounds upon which a holder of the office may be removed or the circumstances in which the office must be vacated.
- (7) This section does not apply with respect to a charge laid before this Act came into operation”

c. The Court finds that the section applies to the petitioner’s case. The petitioner laments that the letter dated 19.10.2023 was an afterthought is found baseless because the letter was issued in accordance with section 62 of the Act. The letter was clear thus, “Pursuant to the provisions of the above quoted statute, your interdiction which has been prolonged to allow for the conclusion of the ongoing internal investigation is hereby converted to suspension with effect from the date of this letter.” The letter states that the suspension was on half of basic salary, full house allowance, full transport allowance, and enjoyment of full medical cover in line with the provisions of Clause 7.2.4.2 of the respondent’s Code of Conduct. The petition was filed on 25.07.2023 and the suspension letter had not issued. It is therefore understood that at filing the suit, the petitioner was on interdiction and not suspension. As per the petitioner’s further affidavit sworn on 03.11.2023, the respondent as the complainant must have known about the



petitioner being charged in a criminal case. The amended charge sheet was dated 29.11.2022 and the respondent as the complainant could not have conceivably come to know about it on 19.10.2023. Be it as it may, the suspension letter appears properly anchored upon the quoted section 62 of the *Act*, though, belatedly issued.

- d. In view of the suspension and the pending criminal case, the Court returns that the petitioner's fate appears to rest with the regime set out in the section. A finding that the petitioner's rights and freedoms have been violated as alleged will collapse. Taking all circumstances into account, each party will bear own costs.
 - e. The evidence is that the interdiction was on 15.03.2017. The petitioner had filed an application by the notice of motion dated 11.12.2023 seeking review of the ruling of 27.11.2023 and stating in ground 2 thus, "2. That in the ruling, the Honourable Court indicated 29.11.2022 as the date the Petitioner/ Applicant was charged in Court yet the Petitioner / Applicant was formally charged in court on 22nd March, 2017 in Milimani Chief Magistrate's Court Criminal Case No. 614 of 2017. The Petitioner / Applicant indicated the date of taking plea in paragraph 3 of the Further Affidavit dated 3rd November, 2023, filed on the same date. An Amended charge sheet was presented before Court on the 29th of November 2022 when the accused persons pleaded afresh to charges to facilitate the removal of one of the accused persons, Albert Kipkechem Komen who had absconded bail. This is the same day that the hearing of criminal case 614/17 began. We attached to the Further Affidavit and marked EL8, a copy of a court order dated 11th August 2021 which shows all the accused persons. This was indicated in paragraph 18 of the Further Affidavit." While the dates as urged for the petitioner indicate the chronology of events and the application would be determined as such, it is irresistible to find that throughout from arrest, interdiction, and filing of the petition herein, the petitioner knew the case that confronted him. The investigations and criminal charges appear to have been allowed by the respondent to take priority over the initiating and continuing of the internal disciplinary process.
6. The Court further considers that whether administrative disciplinary proceedings may be undertaken concurrently as the involved criminal trial is a difficult discretionally decision on the part of the employer. In in the case of *Mathew Kipchumba Koskei v Baringo Teachers Sacco* [2013] eKLR, the court opined and advised as follows:

"Nevertheless, such circumstances have never ceased to occasion complex considerations that must be taken into account to ensure that justice is done in every individual case. It is the opinion of the court that the following general principles would apply in assessing the individual cases:

- a. Where in the opinion of the employer the employee's misconduct amounts to a criminal offence, the employer may initiate and conclude the administrative disciplinary case and the matter rests with the employer's decision without involving the relevant criminal justice agency.
- b. If the employer decides not to conclude the administrative disciplinary case in such matters and makes a criminal complaint, the employer is generally bound with the outcome of the criminal process and if at the end of the criminal process the employee is exculpated or found innocent, the employer is bound and may not initiate and impose a punishment on account of the grounds similar to or substantially similar to those the employee has been exculpated or found innocent in the criminal process.



- c. If the employer has initiated and concluded the disciplinary proceedings on account of a misconduct which also has substantially been subject of a criminal process for which the employee is exculpated or found innocent, the employee is thereby entitled to setting aside of the employer's administrative punitive decision either by the employer or lawful authority and the employee is entitled to relevant legal remedies as may be found to apply and to be just.
 - d. To avoid the complexities and likely inconveniences of (a), (b) and (c) above, where in the opinion of the employer the employee's misconduct amounts to a criminal offence, the employer should stay the administrative disciplinary process pending the outcome of the criminal process by the concerned criminal justice agency. In event of such stay, it is open for the employer to invoke suspension or interdiction or leave of the affected employee upon such terms as may be just pending the outcome of the criminal process."
7. In the instant case, the Court considers that other than the respondent's belated issuing of the suspension letter under the cited section 62 of the Act, the circumstances under the section had accrued and it was proper for the respondent to exercise the discretion not to initiate and continue internal disciplinary proceedings. In view of the belated suspension letter, each party will bear own costs. Whether the issues are proceeding per contemplation of section 62 is an issue not subject of the instant petition.
 8. In conclusion the petition will be dismissed and each party will bear own costs.

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

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

BYRAM ONGAYA

PRINCIPAL JUDGE

