



REPUBLIC OF KENYA



KENYA LAW
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**Abdilie v County Government of Wajir & 4 others (Employment and Labour Relations
Petition E152 of 2025) [2025] KEELRC 2709 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2709 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E152 OF 2025**

MN NDUMA, J

OCTOBER 2, 2025

BETWEEN

SADIK OMOR ABDILIE PETITIONER

AND

COUNTY GOVERNMENT OF WAJIR 1ST RESPONDENT

WAJIR COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

COUNTY SECRETARY, WAJIR COUNTY 3RD RESPONDENT

**COUNTY EXECUTIVE COMMITTEE MEMBER FOR HEALTH, WAJIR
COUNTY 4TH RESPONDENT**

**COUNTY CHIEF OFFICER, DEPARTMENT OF MEDICAL SERVICES, WAJIR
COUNTY 5TH RESPONDENT**

RULING

1. The Petitioner/Applicant filed a Notice of Motion application dated 2/9/2025 seeking an order in the following terms:-
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to order the Respondents to reinstate the Applicant to the payroll and resume payment of his salary and full benefits with immediate effect pending the hearing and determination of the petition.
 4. Spent



5. That this Honourable Court be pleased to grant a conservatory order setting aside and/or quashing the 4th Respondent's decision dated 28th August 2025 suspending the Applicant from employment pending the hearing and determination of this application.
6. Spent
7. That this Honourable Court be pleased to grant a conservatory order restraining the Respondents, their agents, personnel, officers or any county organ acting under their lawful command and control from suspending the Applicant from employment, withholding or stopping payment of his salaries and benefits from taking any such other adverse action or decision against the Applicant's employment pending the hearing and determination of the petition.
8. That this Honourable Court be pleased to grant such other orders and prayer as it deems necessary in the interest of justice.
9. That cost of the application be provided for.
2. The application is premised on grounds set out on the face of the Notice of Motion and buttressed in the supporting affidavit of Sadik Omar Abdille. The nub of which is that Hon. Justice D. K. Marete issued a ruling on 14/8/2025 ordering the Respondents to release the Applicant on a study leave to pursue post-graduate medical studies at the University of Nairobi on the 18/8/2025.
3. That the Petitioner/Applicant informed the Respondent pursuant to the ruling that he would not be reporting to work any further and that he be given official clearance and release as ordered by the court.
4. That instead of complying with the court's order, the Respondents have informed the Applicant that his employment has been suspended vide a letter written by the 4th Respondent dated 28/8/2025. The Respondent further informed the Applicant that his salary would be stopped effective from the month of September 2025.
5. That the Applicant is being punished for obtaining a court order. The Respondents were ably represented in court and have even filed an application to review the court's ruling which application is pending determination.
6. That the conduct by the Respondent violates the principles and values of national governance and violates the right of the Applicant set out in the *Constitution*.
7. That it is well established that no medical officer in the employment of the Wajir County Government has ever been released on unpaid study leave. That, all doctors currently on study leave and prior have all been released on paid study leave.
8. That the conduct by the Respondents amounts to blatant discrimination. That the Applicant is entitled to the right to equal benefit and equal treatment of the law.
9. That there is no provision of unpaid study leave under the Public Service and County Public Service Human Resource respective Polices. That the decision by the Respondent lacks any statutory or regulatory basis.
10. That release on "unpaid study leave" is a constructive dismissal in disguise and a direct disobedience of the court order.
11. That the application be allowed with costs.



Replying Affidavit:

12. The Respondent filed a replying affidavit sworn to by Naema Ibrahim on 18/9/2025 stating that the application is misconceived and an abuse of the court process.
13. That by a letter dated 19/10/2022, the Respondent imposed a freeze on study leave effective 20/10/2022 for all health cadre. The decision was informed by an acute shortage of doctors, a ballooning wage bill and the need to safeguard resident's constitutional right to the highest alternative standing of health as guaranteed under Article 43(1) (a) of the *Constitution*. The court did not see the alleged annexure to the application despite careful scrutiny of the annexures to the replying affidavit.
14. The deponent deposed that:-

“vide a highly intrusive ruling delivered on 14th August 2025 and while granting final orders thus pre-maturely allowing both the application and the petition at interlocutory stage, Justice Njaagi Marete ordered as follows:-

“The Respondent be and are hereby ordered to grant and release the Applicant to study leave to enable him to report to the University on 18th August, 2025.”
15. The Respondents depose that in full compliance with the said order, the Respondents released the Applicant on unpaid study leave as follows:-

“Following the court ruling delivered on 14th August 2025 in ELRCPET/152/2025 directing the County Government of Wajir to grant you study leave, we hereby confirm that you have been released on unpaid study leave effective 18th August 2025.

Consequently, your employment contract is temporarily suspended during the study leave. No monthly salary shall be paid to you throughout the period of study leave and the period shall not count towards leave or pensionable service benefits.”
16. That the Applicant neither pleaded nor prayed for paid study leave both in his application and petition and the court granted him what he prayed for. That the Applicant is bound by his own pleadings.
17. That the *Employment Act, 2007* does not mandate study leave whether paid or unpaid as a right for employees. The annual leave is provided under section 28; maternity leave under section 29; paternity leave under section 30 and sick leave under section 31.
18. That study leave is granted at the discretion of the employer subject to the terms of the employment and the employer's policies and depending on availability and needs of the employer.
19. That the application lack merit and it be dismissed.
20. The Respondent adds that in any event the Applicant has not exhausted internal remedies in terms of Article VII(e) of the Collective Bargaining Agreement (CBA) and section 77(1) of the County Government Act, which mandates aggrieved employees to appeal to the Public Service Commission (PSC). That the Applicant raises new cause of action and this court lack jurisdiction to entertain it. The Respondent thus filed a notice of preliminary objection accordingly.

Determination

21. The parties made oral submissions before court which the court has considered together with the deposition by the parties.



22. This application arises from a ruling by Hon. Justice Marete, which Judge is still stationed at Employment and Labour Relations Court, Nairobi and should have been the most appropriate Judge to hear and determine this application which arises from an alleged failure to comply with the judgment of the court issued by the said Judge.
23. It is also pertinent to note that an application for the review of the Ruling of Hon. Marete J. has been filed by the Respondent in this matter, according to the deposition by the Applicant.
24. The Respondent has however not obtained stay of execution of the ruling and orders of Marete J. dated 14/8/2025. The Respondent states that it has complied with the order as given by placing the Applicant on unpaid study leave since the Applicant did not apply for “paid study leave” in the application and the petition.
25. The court has considered the Ruling by Hon. Marete J. and the order given as follows:-
 - i. The Respondents be and are hereby ordered to grant and release the Applicant to study leave to enable him to report to the University of Nairobi to pursue postgraduate Diploma in Ophthalmology on 18th August, 2025.
 - ii. The Respondents be and are hereby ordered to make, file and serve a response to the petition in thirty days.
 - iii. Hearing inter parties on 30th September, 2025 before Court No. 5
 - iv. The costs of this application shall be borne by the Respondent.
26. It is the court’s considered finding that the letter of release for the Applicant to go on study leave was in accordance with the court order to the extent that the court did not grant the Applicant paid study leave nor had the Applicant applied for paid study leave in the application and the petition.
27. The Applicant is however entitled to return to his work place upon completion of the study leave since leave of absence does not amount to termination of employment so as to allow the Respondents to “temporarily suspend” the contract of employment of the Applicant during the study leave as the Respondent stated in the letter of ‘release on study leave’ written by the Respondent to the Applicant dated 28/8/2025.
28. Accordingly, the application succeeds partly to the extent that the Respondent is restrained from temporarily suspending the contract of the employment of the Applicant while on study leave, and to continue to treat the Applicant as its employee on release on study leave. The issue of being considered for re-absorption does not also therefore arise in the circumstances of the case.
29. This is the proper interpretation of the ruling of the court per Marete J. dated 14/8/2025.
30. As regards whether or not the Applicant is entitled to payment during the study leave, this is a matter that should be determined upon the hearing of the petition on the merits.
31. The issue of failure to exhaust internal mechanisms was determined by Marete J. in his ruling of 14/8/2025 and is therefore res judicata unless canvassed on appeal before the Court of Appeal.

It is so ordered.

DATED AT NAIROBI THIS 2ND DAY OF OCTOBER 2025.

MATHEWS NDUMA

JUDGE



Appearance:

Mr. Abubakar for Petitioner/Applicant

Ms. Aswani for Respondent

Mr. Kemboi – Court Assistant

