

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC PETITION NO. E074 OF 2025

SAMMY KOLINS MULONGO MAKHANU.....PETITIONER

VERSUS

NAIROBI COUNTY COMMISSIONER.....1ST RESPONDENT

**PAYROLL MASTER (Integrated Payroll and
Personnel Data Base Office), MINISTRY OF INTERIOR
AND NATIONAL ADMINISTRATION.....2ND
RESPONDENT**

**HUMAN RESOURCE OFFICER,
NAIROBI COUNTY COMMISSIONER'S OFFICE.....3RD
RESPONDENT**

**DEPUTY COUNTY COMMISSIONER,
KASARANI SUB-COUNTY, NAIROBI COUNTY.....4TH
RESPONDENT**

**DIRECTOR, HUMAN RESOURCE, MINISTRY
OF INTERIOR AND NATIONAL ADMINISTRATION.....5TH RESPONDENT**

**PRINCIPAL SECRETARY, STATE DEPARTMENT FOR
INTERNAL SECURITY AND NATIONAL ADMINISTRATION,
MINISTRY OF INTERIOR AND NATIONAL
ADMINISTRATION.....6TH RESPONDENT**

**MINISTRY OF INTERIOR AND NATIONAL
ADMINISTRATION.....7TH RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL.....8TH RESPONDENT

JUDGMENT

The Petitioner filed the petition dated 25/4/2025 against the Respondents seeking the following reliefs:-

- (a) An order declaring that the Respondents violated and/or breached the Petitioner's rights and freedoms envisaged in Articles 27, 28, 41, 43, 47, 50(1) and 236(a), (b) of the Constitution of Kenya, 2010.
- (b) An order declaring that the Respondents' purported action to withhold/stop the Petitioner's monthly salaries, allowances and/or benefits in any way or manner suspend the Petitioner in any way or manner and/or bar or prohibit the Petitioner from accessing his work station or from executing the mandate of his office/role as the Assistant County Commissioner of Kasarani Sub-County or elsewhere within the Republic of Kenya is illegal and unlawful null and void ab initio and is hereby set aside, discharge and/or lifted permanently.
- (c) A permanent order compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally reinstate the Petitioner's monthly salaries, allowances and/or benefits due and payable to him on account of his employment with the 7th Respondent.
- (d) A permanent order compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally reinstate the Petitioner to his role/position as the Assistant County Commissioner of Kasarani Sub-County or any other Sub-County within the Republic of Kenya.

- (e) A permanent order compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally release to the Petitioner all his withheld salaries, allowances and/or any benefits due and payable to him from the month of December 2023 to date.
- (f) An order permanently prohibiting the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any other person (natural or juridical) from suspending, interdicting, dismissing and/or terminating the Petitioner from his role/position as the Assistant County Commissioner of Kasarani Sub-County and/or from his employment or position with the 7th Respondent, from preventing, stopping or obstructing the Petitioner from accessing his work station and/or from executing/exercising the mandate of his office/role as the Assistant County Commissioner of Kasarani Sub-County or elsewhere within the Republic of Kenya, and/or from withholding, stopping or interfering in any manner with the payment of the Petitioner's monthly salaries, allowances and/or benefits.
- (g) An order compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to unconditionally facilitate the Petitioner's resumption of his role/position and/or in the execution/exercise of his mandate, duties and functions of his office as the Assistant County Commissioner of Kasarani Sub-County or elsewhere in the Republic of Kenya within twenty-one (21) days of receipt of this order;

- (h) An order of general damages against the Respondents jointly and severally on account of the violation and breach of the Petitioner's Rights and Freedoms by the Respondents either by themselves and/or through their employees, agents, representatives, and/or any person (natural and juridical).
- (i) An order of exemplary damages against the Respondents jointly and severally on account of violation and breach of the Petitioner's right and freedoms by the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical).
- (j) An order for costs of the petition to be borne by the Respondents jointly and severally.
- (k) An order for interests on all the above at court rates from the date of filing this petition until payment in full.
- (l) Any such other order(s) as this Honorable Court deems just and fit to grant.

The Petitioner is a public officer and his present position is that of Assistant County Commissioner Kasarani Sub-County in the Ministry of Interior and National Administration.

The Petitioner avers that he was verbally suspended from work sometime in January 2024. That at the time he earned a monthly gross salary of Kshs. 274,144.80. That the suspension was for indefinite period.

The Petitioner avers that no explanation, reason or justification was given for the suspension and the Petitioner was not granted opportunity to be

heard. The suspension was without payment of salary and he was barred from accessing his work station.

That efforts by the Petitioner to get the suspension lifted and his salary reinstated went unheeded.

That on 24th April 2024, M/s. Kandie, the 3rd Respondent sent the Petitioner a short message service (SMS) inviting him to appear before the County Human Resource Management Advisory Committee (the HR committee), at Nyayo House on 25/4/2025, the following day.

The Petitioner appeared before the committee despite being unwell due to psychological trauma caused by the suspension of his salary and employment.

The Human Resource committee comprising six (6) people including the 1st and 3rd Respondents who did not introduce themselves proceeded to read charges to the Petitioner which the Petitioner was not aware of prior to the meeting. The charges included:

- (a) Absenteeism
- (b) Prosecution in Kitale Criminal Case No. E4176/2023 and
- (c) Extortion of Kshs. 250,000.00 from Rev. Lewis Mukono.

The Petitioner responded to the charges sufficiently despite the short notice. Petitioner stated that he was never absent from work and whenever he was away he sought permission from the 4th Respondent who authorized his request to be away for medical care and treatment

Petitioner said Kitale Criminal Case No. E4176/2023 had no bearing on his competence and performance as Assistant County Commissioner as it arose from a family land dispute between his family and a 3rd party. That Kitale Constitutional court had since stayed his prosecution in High Court Petition E015 of 2024 as it constituted abuse of court process.

The Petitioner denied ever extorting money from Rev. Lewis Mukono, who he said was a stranger to him.

The Petitioner said that no evidence was offered regarding alleged Kshs. 250,000.00 corruption allegations.

The Petitioner protested suspension of his employment and salary before he had opportunity to be heard.

The Petitioner further stated that in May 2024 he was required to attend a six (6) months Diploma Course in Public Administration at the Kenya School of Government in Matuga and he had reported on 19th May 2024.

That while at Matuga, the Petitioner received a show cause letter from the 6th Respondent requiring him to explain why he was absent from work. Petitioner stated that the notice to show cause raised the same issues he had responded to before the Human Resource committee on 25th April 2024 and was still awaiting the decision of the Human Resource Committee and the reasons thereof.

The Petitioner however responded again the same way he had explained to the Human Resource Committee and he continued with his course work at Matuga Government School.

The Petitioner meanwhile continued to suffer grave hardship due to the withheld salary and was promised that the matter was being looked into.

The Respondents by a letter dated 20th February 2025 cited the Petitioner for gross misconduct on account of extortion of Kshs. 250,000.00 from Rev. Lewis Mukono and the stayed Kitale Criminal Case No. E4176 of 2023 and required the Petitioner to respond within 21 days.

Petitioner avers that these were the same allegations he had responded to before the Human Resource Committee on 25th April 2025 and through the letter of response to the notice to show cause.

The Petitioner responded to the letter dated 20th February 2025 through his advocates stating that he was being subjected to the alleged charges multiple times despite his verbal and written responses that no decision had been communicated to him by the Human Resource Committee before whom he had appeared on 25th April 2024.

The Petitioner reiterated his defence to the alleged charges stating that same were without basis and were malicious and untenable.

The Petitioner demanded that the suspension of his employment and salary be lifted forthwith.

Violations

The Petitioner alleges that his rights under Articles 27(1), 41(1), 43 and 47 of the Constitution of Kenya, 2010 have been violated by the conduct of the Respondents to subject him to three different disciplinary processes on same charges; suspending him from employment without salary infinitely without any prior hearing, reasons given or any justification. That his right to equality before the law and the right to equal protection and equal benefit of the law has been violated; That the conduct by the Respondents amounts to unfair labour practice and unfair and unjustified administrative action.

The Petitioner prays that the court grants him the reliefs sought.

Replying Affidavit

The 1st to 8th Respondents depose in a replying affidavit sworn to by Mr. I. R. Chebet that Rev. Lewis Mukono reported to the 4th Respondent that between the years 2023 and 2024, the Petitioner had extorted money from him amounting to Kshs. 208,000.00 in exchange for a job as an Area Chief. The complaint dated 7/11/2024 by Rev. Lewis Mukono is attached.

The 4th Respondent reported the complaint to the 1st Respondent on 30th November 2023. On 8/12/2023 the Regional Commissioner Nairobi wrote a show cause letter to the Petitioner informing him of the complaints levelled against him and was to respond within 21 days.

That on 14th December 2023 the 4th Respondent reported to the 1st Respondent that the Petitioner who had been redeployed to Kasarani Sub-

County as an Assistant County Commissioner had not reported to his new work station and was last seen on 13th November 2023.

That the 4th Respondent states that the Petitioner had been arrested jointly with his 3 brothers for the offences of house breaking; stealing, malicious damage to property and threatening to kill and were arraigned in Kitale Law Courts on 13th December 2023 and released on a cash bail of Kshs. 50,000.00 each.

On 2013/2024 the 4th Respondent further wrote to the 1st Respondent stating that the Petitioner was yet to report to office.

That on 3rd April 2024, the 1st Respondent wrote another show cause letter to the Petitioner informing him that his absence from duty without leave had been reported and was to show cause within 21 days why he should not be dismissed from service.

That the Petitioner responded to the show cause letter on 15th April 2024 alleging that he had been experiencing memory loss and mental instability which was triggered by illness diagnosed by his doctor and he attached a copy of a medical note from the doctor.

That on 14th May 2024, the Principal Secretary Office of the Ministry of Interior and National Administration, the 6th Respondent, wrote to the Petitioner informing him of the desertion of his duties and the consequence of the same. That the Petitioner has not responded to the said letter to date.

That on 14th June 2024, the 6th Respondent wrote to the 1st Respondent and requested that the matter of the Petitioner's desertion from duty be tabled before the County Human Resource Advisory Committee for discussion and recommendations.

The committee sat on 16th May 2024 and recommended that the Petitioner be given a last written warning to desist from engaging in cases of gross misconduct and because the Petitioner was psychologically disturbed due to his illness he be reinstated and be deployed to the Ministry headquarters for close supervision.

On 9/8/2024 the 1st Respondent wrote to the 6th Respondent indicating that the Petitioner had been charged in Kitale Criminal Court on 13th December 2025.

That on 20th February 2025, the 1st Respondent wrote another show cause letter to the Petitioner on the issue of gross misconduct and that he was to respond within 21 days.

That the Petitioner responded to the show cause letter through his advocate on 11th March 2025 denying the allegations levelled against him.

That the Petitioner has not come to court with clean hands. That his suspension and non-payment of his salary were lawfully done.

That the Petitioner has not demonstrated with precision how his rights have been violated. That the petition violates the doctrine of exhaustion of internal remedies and/or ripeness since the Petitioner approached the court prematurely while his disciplinary case had not been finalized at the work place.

That the petition be dismissed with costs.

Supplementary and Further Supplementary Affidavit

The Petitioner filed supplementary affidavit dated 11th June 2025 and further supplementary affidavit dated 19th June 2025 in which he reiterated his case. Petitioner states he has seen the notice to show cause dated 8th December 2023 in court for the first time and had not received same.

That the ongoing criminal case has not been concluded and has since been stayed by the High Court by a court order dated 12/7/2024. That the Petitioner is presumed innocent until found guilty.

Petitioner reiterates that on 25th April 2024, he appeared before the County Human Resource Advisory Committee on charges of desertion of duty, extortion of Kshs. 250,000.00 from Rev. Lewis Mukono and prosecution in Kitale Criminal case no. E4176 of 2023 on a one-day notice. That he had fully defended the case but got no verdict from the said committee.

That all subsequent notices were a duplication of the matter that had been heard and was awaiting determination. That the Petitioner has remained under suspension unlawfully without pay for a long time.

That the committee on 16th May 2024 recommended a warning and reinstatement to employment and remuneration which has not happened to date.

That the Respondents have no basis for withholding the Petitioner's salary indefinitely. In the least the Petitioner ought to have been on half salary.

That the Petitioner had completed the six (6) month Diploma course and graduated on 13th June 2025. It is therefore not true that the Petitioner had absconded duty during that period but was attending full time course at the Kenya School of Government Matuga.

That the petition be granted as prayed.

DETERMINATION

The parties filed written submissions and list of authorities which the court has carefully considered together with the deposition by the parties.

The issues for determination are:

- (i) Whether the continuous suspension of employment and salary of the Petitioner is lawful and justifiable.
- (ii) Whether the Respondents have violated the rights of the Petitioner.
- (iii) Whether the Petitioner is entitled to the reliefs sought.

The Respondents in their replying and further affidavits have admitted subjecting the Petitioner to multiple notices to show cause based on same

charges. The Respondents admit that the Petitioner had appeared before the Human Resource Advisory Committee for the hearing of his case.

That the Petitioner had responded in writing to the charges and had appeared before the committee for hearing.

The Respondents went ahead to issue further notices to show cause to the Petitioner before he had received a verdict from the Human Resource Committee.

The Respondent admitted that eventually, the Human Resource Advisory Committee had recommended that the Petitioner be given a warning and he be redeployed to Ministry headquarters for close supervision taking into account his mental state.

It is common cause that up to the time the petition was filed, the Petitioner remained on suspension without payment of salary or allowances and without access to his office.

In *Kabucho versus Kamuthi Housing Co-operative Society Ltd [2024] eKLR*, the court held;

“The decision to suspend an employee from employment ought to be for a specified term. It cannot be indefinite. An indefinite suspension exposes an employee to unnecessary anxiety and mental anguish and amounts to an indirect punishment to him. *Kenya Magistrates and Judges Association versus Judicial Service Commission and 2 others [2020] eKLR*. It is a practice

that employers must refrain from as it amounts to unfair labour practice.”

In the present matter, the multiple notices to show cause to which the Petitioner was subjected to amounted to unfair labour practice in violation of Article 41(1) of the Constitution.

The manner in which the Respondent has handled the whole disciplinary charges against the Petitioner violated the Petitioner's right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, in violation of Article 47(1) of the Constitution read with section 4 and 5 of Fair Administrative Action Act 2025.

Furthermore, the conduct by the Respondents violated Article 27 which guarantees the Petitioner equality before the law and equal protection and equal benefit of the law regardless of the evil or misconduct he was accused of. Every person is entitled to a presumption of innocence until proven guilty.

The criminal case at Kitale Court, arising from a family dispute had been enjoined by the High Court and was not available for disciplinary hearing until the constitutional matter had been resolved.

With regard to the allegation of bribery by the Reverend, the matter was not properly placed before the Human Resource Advisory Committee with opportunity given to the Petitioner to defend himself properly, upon good notice and chance to listen to his accuser and cross-examine him. The

conduct by the Reverend if true is a great indictment on the clergy to the contrary, who are entrusted to lead the flock as reported, unto righteousness. The allegations have not been proved, however, against the Petitioner, following a fair just and expeditious procedure.

Section 71(3) of the Public Service Commission Act, Cap 185 Laws of Kenya provides that:-

“A public officer who is suspended shall receive a half basic salary and full house allowance but other benefits shall be withheld by the authorized officer provided an officer on suspension shall be paid medical allowance or medical insurance premium remitted whichever is the case.”

The Respondents completely disregarded this provision of the law and embarked on an impugned multiple jeopardy fatigue against the Petitioner. This manner of dealing with public officers is to be condemned irrespective of the gravity of allegations facing the officer where a final decision has not been reached following a fair and just hearing.

The court has considered all the three issues together and is of the considered finding that the Petitioner has proved his case on a balance of probability and is entitled to the reliefs sought.

Accordingly, judgment is entered in favour of the Petitioner against the Respondents and the following orders issued:-

- (a) A declaration is made that the Respondent violated the Petitioner's rights and freedoms protected under Articles 27(1), 41(1), 47(1) and 50(1) of the Constitution of Kenya 2010
- (b) An order declaring that the Respondents' purported action to withhold/stop the Petitioner's monthly salaries, allowances and/or benefits in any way or manner suspend the Petitioner in any way or manner and/or bar or prohibit the Petitioner from accessing his work station or from executing the mandate of his office/role as the Assistant County Commissioner of Kasarani Sub-County or elsewhere within the Republic of Kenya is illegal and unlawful null and void ab initio and is hereby set aside, discharged and/or lifted.
- (c) An order compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally reinstate the Petitioner's monthly salaries, allowances and/or benefits due and payable to him on account of his employment with the 7th Respondent.
- (d) An order compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally reinstate the Petitioner to his role/position as the Assistant County Commissioner of Kasarani Sub-County or any other Sub-County within the Republic of Kenya.
- (e) An order compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally release to the Petitioner all his withheld salaries,

allowances and/or any benefits due and payable to him from the month of December 2023 to date.

- (f) An order prohibiting the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any other person (natural or juridical) from suspending or interdicting, the Petitioner from his role/position as the Assistant County Commissioner of Kasarani Sub-County and/or from his employment or position with the 7th Respondent, from preventing, stopping or obstructing the Petitioner from accessing his work station and/or from executing/exercising the mandate of his office/role as the Assistant County Commissioner of Kasarani Sub-County or elsewhere within the Republic of Kenya, and/or from withholding, stopping or interfering in any manner with the payment of the Petitioner's monthly salaries, allowances and/or benefits.
- (g) The court orders the full payment of arrear salary and allowances with interest at court rates from date of stoppage till payment in full. This order serves to vindicate the harm caused to the Petitioner and no further damages are awarded to the Petitioner accordingly.
- (h) The Respondents to meet the costs of the suit.

Dated at Nairobi this **9th Day of October 2025.**

Mathews Nduma
JUDGE

Appearance:

Mr. Makhanu for Petitioner

Ms. Karbolo for Respondent

Mr. Kemboi – Court Assistant

ORIGINAL