

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NYERI

CIVIL APPEAL NO E036 OF 2024

**MINISTRY OF INTERIOR AND COORDINATION
OF NATIONAL GOVERNMENT.....1ST APPELLANT**

THE HON ATTORNEY GENERAL.....2ND APPELLANT

VS

CATHERINE WANJIRA KIMARU.....RESPONDENT

***(Appeal from the judgment of Hon. Kaimenyi Kanyiri, PM delivered on 5th
November 2024 in Karatina MCELRC No. E008 of 2022)***

JUDGMENT

1. This appeal arises from the judgment of Hon. Kaimenyi Kanyiri, PM delivered on 5th November 2024, in Karatina MCELRC No. E008 of 2022 by which the following orders were issued:

- a) *The claimant is entitled to be reinstated and is hereby reinstated to her employment forthwith and all her withheld salary from February 2022 to date be paid to her;*
- b) *The said salary arrears shall be calculated by the respondents and paid by 1st Respondent to the claimant within 30 days of today's judgment;*
- c) *In default the parties shall file submissions on the proposed payments for the court to determine;*

- d) The respondents shall be at liberty to subject the claimant to disciplinary process when they shall be ready to do so;*
- e) The claimant is awarded the interest on the salary arrears from the date of this judgment till payment in full;*
- f) The claimant is awarded the costs of this suit.*

2. In their Memorandum of Appeal dated 12th November 2024, the Appellants raised the following grounds of appeal:

- a) That the learned Magistrate erred in law and fact in making a finding that the Respondent's interdiction is unfair and therefore entitled to payment of all her withheld salary from February 2022 to date;
- b) That the learned Magistrate erred in law and fact in holding that the Respondent is entitled to reinstatement into employment yet she is still an employee of the Appellants;
- c) That the learned Magistrate erred in law and fact in failing to appreciate facts and the Respondent's gross misconduct leading to her interdiction;
- d) That the learned Magistrate erred in law and fact in disregarding the Appellants' written submissions and by not appreciating and fully considering all the material evidence on record and hence delivered an unconsidered judgment.

3. This being a first appeal, I am required to re-evaluate the evidence adduced before the trial court, and draw my own conclusions, bearing in mind that I did not have the opportunity to see and hear the witnesses.

4. The duty of a first appellate court was reiterated by the Court of Appeal in its decision in *Kenya Ports Authority v Kuston (Kenya) Limited [2009] 2 EA 212* as follows:

“On a first appeal...the Court...should consider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”

5. The dispute forming the subject matter of this appeal, was triggered by a multi-agency crackdown on motor vehicles carrying foreign registration plates. The Respondent, who at the material time served as Chief, Ruguru Location, was accused of obstructing the multi-agency team of police officers engaged in the crackdown.
6. According to the evidence on record, the Respondent started receiving half pay from February 2022 and upon making inquiries, she was notified that she had been interdicted. An interdiction letter dated 1st March 2022 was subsequently served on her, stating as follows:

RE: GROSS MISCONDUCT/INTERDICTION

It has been reported that you were arrested on 12th January, 2022 and detained at Kiamariga Police Station for wilfully obstructing Multi Agency team of Police Officers who were carrying out a National crackdown of vehicles with Foreign Numbers contrary to section 254(b) of penal code.

In view of the foregoing, it is contemplated to dismiss you from the Service on account of Gross Misconduct. However, before this is done, you are hereby called upon to show cause in writing why the contemplated action should not be taken against you.

Your representations, if any should reach this office within twenty-one (21) days from the date of this letter failure to which the contemplated action will be taken without further reference to you.

Meanwhile, it has been decided that you be interdicted from exercising the duties of your office with effect from 19th October, 2021 pending finalization of your case.

While on interdiction, you will be paid half of your basic salary, full house allowance and medical benefits. Further, you should not leave your duty station without permission of your immediate supervisor.

(signed)

Tabitha Muduya

FOR: CABINET SECRETARY"

7. It would appear that after the interdiction, no further action was taken and the Respondent filed a claim before the trial court seeking reinstatement and payment of withheld salaries.
8. The gravamen of this appeal is that the Respondent was not dismissed and cannot therefore claim the remedy of reinstatement. In their written submissions dated 24th October 2025, the Appellants submit that reinstatement cannot be ordered where there is no evidence of termination of employment.

9. It is true that reinstatement as a primary remedy under Section 49 of the Employment Act, cannot issue where the employment relationship has not been severed. It seems to me however, that the reinstatement referred to in the impugned judgment by the trial court, was in fact cessation of the interdiction by which the Respondent was stopped from performing her duties while earning half pay.

10. With this confusion out of the way, I will now proceed to examine the legality of the interdiction slapped on the Respondent. The Appellants referred the Court to Section 70 of the Public Service Commission Act, which provides as follows:

70. Interdiction

(1) Where an authorized officer is satisfied that public interest requires that a public officer should immediately cease to exercise the powers and functions of public office, the authorised officer may, where proceedings which may lead to the public officer's dismissal are being taken or are about to be taken or criminal proceedings are being instituted against the public officer, interdict the public officer from the exercise of those functions and powers.

(2) A public officer who is interdicted shall receive half basic salary and full house allowance but other benefits shall be withheld by the authorised officer:

Provided that a public officer on interdiction shall be paid medical allowance or medical insurance premium remitted, whichever is the case.

(3) Where disciplinary or criminal proceedings have been instituted against a public officer under interdiction and the public officer is not dismissed or otherwise punished, any benefit withheld under subsection (2) shall be restored to the public officer upon the termination of such proceedings.

(4) A public officer who is under interdiction shall not leave the duty station without the permission of the authorized officer or any public officer who is vested with the powers to give such permission on behalf of the authorized officer.

(5) Under this Part, "salary" refers to basic salary and, where applicable, includes overseas allowance.

11. My examination of the evidence tendered before the trial court did not show any proof of either criminal proceedings or internal disciplinary proceedings commenced against the Respondent. After the interdiction, which at the time of writing this judgment had run for a period of over four (4) years, no further action was taken. Yet, the Respondent remains on half salary, with no work to do, but is restricted from leaving her duty station.

12. In her written submissions dated 27th October 2025, the Respondent referred to the decision in ***Grace A. Omolo v Attorney General & 3 others [2012] eKLR*** where **Majanja J** stated the following:

“In my view a year of inaction on the disciplinary process, is an inordinate delay and infringes on the petitioner’s right protected under Article 74. The petitioner has been under interdiction for over a year. She does not know her fate, she does not know when disciplinary proceedings will commence yet she is required, to report to [her] supervisor at least once a week and will not be allowed to leave [her] duty station without express permission from [her] supervisor. Based on the provisions of regulation G33(13) of the Code of Regulations governing the Civil Service she had a legitimate expectation that disciplinary proceedings would be completed within six months or at any rate within a reasonable time.”

13. The need to dispense with interdiction in an expeditious manner, was affirmed by Makau J in *Omar Bakari Hanzi & 5 others v County Government of Mombasa & another* [2018] eKLR in the following terms:

“...the continuation of the interdiction years after the close of the criminal proceedings is unfair and uncalled for. The exercise of disciplinary process and control by the employer must be exercised within reasonable time to avoid a situation where the employee is subjected to untold suffering and deprivation of human dignity. The reason...is that during interdiction or suspension an employee’s income is reduced, his freedom of movement is curtailed and most of his benefits are withheld. Such situation should not be extended for years at the whim of the employer.”

14. In the present case, no criminal proceedings or internal disciplinary proceedings were initiated, giving the impression that the interdiction was an end by itself, perhaps to exhaust the Respondent and force her to resign.

The Appellants have not offered any justification to support this seemingly unlawful situation, and I must therefore agree with the learned trial Magistrate that the Respondent's rights have been violated.

15. Consequently, I find no reason to cause me to interfere with the judgment of the trial court delivered on 5th November 2024. The appeal is without merit and is dismissed with costs to the Respondent.

DELIVERED VIRTUALLY THIS 11TH DAY DECEMBER 2025

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JUDGE

Appearance:

Mr. Gisemba for the Appellants

Mr. Nabende for the Respondent