



**Kilonzo v Governor Machakos County & another (Cause E019 of 2024)
[2026] KEELRC 308 (KLR) (4 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 308 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE E019 OF 2024
SC RUTTO, J
FEBRUARY 4, 2026**

BETWEEN

PHILIP MUTUA KILONZO CLAIMANT

AND

THE GOVERNOR MACHAKOS COUNTY 1ST RESPONDENT

THE COUNTY GOVERNMENT OF MACHAKOS 2ND RESPONDENT

JUDGMENT

1. It is not contested that on 9th November 2022, the Claimant was appointed as the County Executive Committee Member for Land, Urban Development, Housing and Energy in the 2nd Respondent's government, and was thereafter redeployed to serve as the County Executive Committee Member for Education.
2. From the record, the Claimant's tenure was relatively short, as the 1st Respondent terminated his appointment on 9th October 2023. The Claimant contends that the termination was effected without any justifiable reason and that he was denied an opportunity to be heard, as no disciplinary hearing was convened to allow him to present his defence.
3. In light of the foregoing, the Claimant seeks the following reliefs against the Respondents:
 - a. A declaration that the Claimant's termination was unfair;
 - b. 12 months' salary as compensation for unfair termination which is Kshs. 4,851,000
 - c. Six months' salary in lieu of notice which is Kshs.2,425,500;
 - d. Gratuity at 31% for the period served which is Kshs.1,503,810;
 - e. Unpaid leave days calculated at Kshs.282,975;



- f. Costs of this suit;
 - g. Interest on (b) (c) (d) and (e) at court rates;
 - h. Certificate of Service; and
 - i. Any other order that this Honourable Court shall deem fit to grant.
4. In response to the Claim, the Respondents assert that the rules of natural justice were observed and that the Claimant was afforded an opportunity to be heard and to respond to the allegations levelled against him before a decision was reached. They maintain that the Claimant is not entitled to the reliefs sought and to this end, have urged the Court to dismiss the suit with costs.
 5. In his Reply to the Memorandum of Response, the Claimant reaffirms the averments in his Statement of Claim and denies each allegation raised therein. He maintains that the Respondents violated the rules of natural justice in dealing with him and asserts that his termination was unlawful. Accordingly, he urges the Court to dismiss the Respondents' Response with costs and to grant the reliefs sought in the Statement of Claim.
 6. The matter proceeded for hearing on 26th September 2025 and 31st October 2025, during which both sides called oral evidence in support of their respective cases.

Claimant's Case

7. The Claimant testified in support of his case as CW1 and, at the outset, sought to adopt his witness statement as his evidence in chief. He further produced the list and bundle of documents filed on his behalf as exhibits before the Court.
8. The Claimant testified that on 4th October 2023, the 1st Respondent issued him with a Notice to Show Cause, alleging that he had engaged in conduct detrimental to the 2nd Respondent's mandate to serve the public.
9. He further stated that the 1st Respondent allowed him only three days to respond to the Notice to Show Cause. That despite the short timeline, he submitted a written response dated 6th October 2023, in which he categorically denied the allegations and addressed each of them with supporting evidence.
10. The Claimant added that by a letter dated 9th October 2023, the 1st Respondent terminated his employment as the County Executive Committee Member for Education, purportedly relying on his response and the evidence presented against him.
11. According to the Claimant, no meaningful consideration was given to either his response or the alleged evidence, noting that he received the Notice to Show Cause on a Wednesday, responded on Friday, and by the following Monday, his appointment had been terminated.
12. In his view, the process amounted to a political witch-hunt, as the outcome appeared predetermined.
13. The Claimant further asserted that he was never shown the evidence relied upon by the 1st Respondent and that no hearing was convened to allow him to properly defend himself. He maintained that the grounds for termination were not explained to him, and he was not afforded the right to have another employee of his choice present during any explanation of the reasons for termination.

Respondents' Case

14. The Respondents presented oral evidence through Dr. Victor Muya Ndambuki, who testified as RW1. Dr. Ndambuki, who identified himself as the County Secretary of the 2nd Respondent, equally relied



on his witness statement as his evidence in chief and produced the Respondents' list and bundle of documents as exhibits before the Court.

15. RW1 testified that the Claimant was issued with a Notice to Show Cause dated 4th October 2023, through which the 1st Respondent invited him to explain why he should not be dismissed.
16. According to RW1, the Claimant responded to the Notice to Show Cause and upon considering both the allegations against him and his response, the 1st Respondent, by a letter dated 9th October 2023, proceeded to dismiss him from his position as a member of the County Executive Committee of the 2nd Respondent.
17. RW1 further stated that the Claimant had conducted himself in a manner incompatible with his role as a County Executive Committee Member, rendering it untenable in the 1st Respondent's view for him to continue serving in that capacity.
18. RW1 maintained that the entire process leading to the Claimant's dismissal was carried out in accordance with the law and adhered to the principles of natural justice.
19. To this end, RW1 therefore urged the Court to dismiss the Claim, asserting that due process had been followed in effecting the Claimant's dismissal.

Submissions

20. The Claimant submitted that the Notice to Show Cause provided no justifiable reasons or supporting evidence to counter his response, nor any valid explanation as to why his response was deemed unsatisfactory. In support of this position, he cited the decision in *Alex & 27 others v Nairobi City County Government & 3 others* (2025) KEELRC.
21. The Claimant further argued that the Notice to Show Cause did not include any evidence to substantiate the allegations against him. In this regard, he contended that, by failing to provide supporting evidence, the Respondents' allegations were baseless, fabricated, unfounded, and made in bad faith.
22. Relying on the case of *Ngagaya v Securitas Kenya Limited* (Cause 1459 of 2017) [2025] KEELRC 1714 (KLR), the Claimant submitted that he was not afforded an opportunity to be heard in person, thereby violating his constitutional rights to a fair hearing and fair administrative action.
23. Citing the decision in *Narok County Government & Another v Richard Bwogo Birir and Another* [2015] eKLR, the Claimant argued that, notwithstanding Section 31 of the *County Governments Act*, the 1st Respondent remained bound by statute and *the Constitution* and was therefore required to follow proper procedure when dismissing a County Executive Committee Member, as outlined in Section 76(2) of the Act.
24. The Claimant further contended that, on a balance of probabilities, he had proven that his termination was both substantively and procedurally unlawful and unfair.
25. On the Respondents part, they urged the Court to adopt the reasoning in *County Government of Nyeri & another v Ndungu* (2015) KECA 1011 (KLR) asserting that the County Governor retains the right to dismiss a County Executive Committee Member in the interests of service to the public, with the only considerations being reasonableness and adherence to the principles of fair administrative action. In the Respondents' view, both tests were satisfied in this case.
26. The Respondents further cited the case of *Kinyua v Governor, Tharaka Nithi County & another; County Assembly of Tharaka Nithi & another* (Interested Parties) [2025] KEELRC 2458 (KLR)



and *Nzioka v Lemoc Limited* (Cause 495 of 2016) [2025] KEELRC 501 (KLR) to reinforce their submissions.

27. The Respondents further submitted that they followed the prescribed procedure before terminating the Claimant's employment.
28. It was further posited that the 1st Respondent acted within her lawful authority in terminating the Claimant's employment, as permitted under the applicable law.
29. The Respondents further argued that a County Executive Committee Member is exempt from the Public Service Commission Discipline Manual because, by law, they are not considered public service employees.

Analysis and Determination

30. Upon considering the parties' pleadings, the evidence on record, and the rival submissions, the Court identifies the following issues for determination:
 - a. Whether the termination of the Claimant's appointment as County Executive Committee Member was for a valid reason;
 - b. Whether the Claimant was afforded procedural fairness before the termination of his appointment;
 - c. Whether the Claimant is entitled to the reliefs sought.

Whether the termination of the Claimant's appointment County Executive Committee Member was for a valid reason

31. As can be discerned from the letter dated 9th October 2023 terminating the Claimant's appointment, the 1st Respondent relied on Section 31 of the [County Governments Act](#), highlighting it as follows:

“The Governor –

- a. May despite section 40, dismiss a county executive committee member at any time, if the governor considers that it is appropriate or necessary to do so;”

32. It is evident that the statutory provision referenced by the 1st Respondent is no longer in effect, as the current Section 31(a) of the [County Governments Act](#) provides as follows:

“The Governor—

- (a) may dismiss a county executive committee member.”

33. It is now settled that, although the law confers on a Governor the authority to dismiss a County Executive Committee Member, this power must be exercised fairly. In this regard, for a dismissal to satisfy the requirements of fairness, it must be supported by a valid reason and carried out through a process that is fair.
34. In the case of *The County Government of Nyeri & The Governor of Nyeri –vs- Cecilia Wangechi Ndungu – Civil Appeal No. 2 of 2015*, which the Respondent urges this Court to follow, the Court of Appeal held that the Governor is empowered to dismiss a County Executive Committee Member at any time that is, at the Governor's pleasure provided that such power is exercised reasonably and not arbitrarily or capriciously.



35. A differently constituted bench of the Court of Appeal, in *Narok County Government & another v. Richard Bwogo Birir & another* [2015] KECA 118 (KLR), adopted a contrary approach, holding that the pleasure doctrine is no longer applicable in Kenya under the current Constitution. The Court proceeded to find that the Governor's contention that he may exercise the power of dismissal without providing any reasons has no legal foundation. The Court affirmed that the reasons for dismissal are what determine whether the power was exercised reasonably, and such reasons must be both valid and compelling.
36. In *County Government of Garissa & another v. Idriss Aden Mukhtar & 2 others* [2020] KECA 546 (KLR), the Court of Appeal held that the appointment of state officers must be protected from political or other undue interference. The Court observed that if Section 31(a) of the *County Governments Act* were interpreted to grant a Governor unfettered discretion to dismiss a County Executive Member at any time, based solely on the Governor's personal judgment, such a standard would lack transparency and accountability, and would therefore contravene the principles and values enshrined in *the Constitution*. The Court further held that there must be valid reasons demonstrating that the Governor's powers have been exercised in good faith and for proper purposes, and not arbitrarily or capriciously.
37. The bottom line is that the Governor's discretion to dismiss a County Executive Committee Member is fettered. Such a decision must be exercised reasonably and based on valid and compelling grounds. Put differently, a Governor may dismiss a County Executive Committee Member only for legitimate reasons and for the public good, subject to due process being followed.
38. Turning to the present case, the 1st Respondent terminated the Claimant's appointment on the following grounds:
- a. That in Matuu at the State Lodge, he was quoted publicly, castigating the 2nd Respondent and informing residents that the government would only serve for one term;
 - b. That he was involved in irregularly subdividing and allocating public land without following the due process of the law and in particular was complicit in the illegal subdivision and allocation of property L.R.NO. 32794 Mulinge Scheme in total disregard of the law; and
 - c. That he abused his office by engaging in acts meant to disenfranchise one Mbithe Nzioka Kioko of her land parcel no. Machakos/Kitanga/1363.
39. In *County Government of Garissa & another v. Idriss Aden Mukhtar & 2 others* [supra], the Court found that since the Governor had alleged gross misconduct by members of the County Executive Committee, the evidential burden shifted to the Governor and the County Government to establish the said allegations and to show that they constituted compelling reasons making it necessary or appropriate to dismiss the members of the County Executive Committee.
40. Similarly, in the present case, since the 1st Respondent made specific allegations against the Claimant, it was incumbent upon the 1st Respondent to prove those allegations and demonstrate that the reason for terminating the Claimant's appointment was both valid and compelling.
41. Notably, in the case herein, the Respondents failed to present any evidence in Court to substantiate the allegations against the Claimant. For example, on the first charge, there was no indication of when the Claimant purportedly made the verbal statements that the Government of Machakos County would serve only one term. In this regard, no witnesses were called to verify that they heard the Claimant make such statements or to establish the timing thereof. Consequently, the allegations amounted to mere hearsay.



42. Equally, regarding the second charge, there was no evidence confirming that the Claimant participated in the irregular subdivision and allocation of public land, or that he was complicit in the unlawful subdivision and allocation of Property L.R. No. 32794, Mulinge Scheme.
43. This is bearing in mind that in his response to the Notice to Show Cause, the Claimant was categorical that he had never visited the land in question to allocate it to any person, nor had he signed or lodged any document relating to the property at the Machakos Land Registry or any other registry. The Respondents did not refute the Claimant's assertion with any evidence.
44. Accordingly, one wonders the basis for the 1st Respondent's conclusion that the Claimant was unfit to continue serving as a County Executive Committee Member.
45. On the final charge, the Claimant stated in his response to the Notice to Show Cause that the matter concerned a boundary dispute between neighboring property owners in his locality. He explained that the chief and assistant chief had been involved in resolving the dispute, and that the issue had been referred to the county surveyor, who visited the site, demarcated the boundaries, and placed beacons, thereby settling the matter. In support of his response, the Claimant attached an abstract of the map showing the demarcation.
46. In the letter of termination, the 1st Respondent did not discount the Claimant's assertions, nor did it specifically address the evidence he had attached to his response.
47. Furthermore, the Respondents provided no evidence that the Claimant engaged in any acts intended to disenfranchise Mbithe Nzioka Kioko of her land. Indeed, Mbithe Nzioka herself did not appear in Court to testify or corroborate this allegation, nor was there any written statement from her submitted to the 1st Respondent in this regard.
48. Overall, the Court finds that the reasons provided for the termination of the Claimant's appointment as County Executive Committee Member were not supported by evidence and, therefore, cannot be regarded as valid or compelling.

Procedural fairness

49. Procedural fairness entails the right of an individual to be given an opportunity to defend themselves before any administrative decision is taken that may adversely affect them.
50. It is the Claimant's contention that he was denied the opportunity to be heard, as no disciplinary hearing was held where he could defend himself, nor was he allowed to have an employee present during his response to the allegations.
51. Conversely, the Respondents maintain that the principles of natural justice were observed, asserting that the Claimant was given the right to be heard and to respond to the allegations before any determination was made in his case.
52. The record bears that the Claimant was served with a Notice to Show Cause dated 4th October 2023, in which he was alleged to have engaged in acts detrimental to the delivery of the mandate of the Machakos County Government.
53. The Claimant was granted three days to respond to the Notice to Show Cause, and to specifically explain why he should not be dismissed from office as a County Executive Committee Member.
54. The Claimant submitted his response through a letter dated 6th October 2023, following which his appointment was terminated on 9th October 2023.



55. The *Fair Administrative Action Act* defines ‘administrative action’ to mean: any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.
56. In this case, there is no doubt that the 1st Respondent’s decision to terminate the Claimant’s appointment as a County Executive Committee Member constituted an administrative action. Accordingly, it was incumbent upon the 1st Respondent to act in accordance with Article 47 of *the Constitution* and the *Fair Administrative Action Act* when making the decision to terminate the Claimant’s appointment.
57. Article 47 of *the Constitution* guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. To give effect to this constitutional provision, Parliament enacted the *Fair Administrative Action Act*, which provides in Section 4(3) as follows:
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
- (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
 - (b) an opportunity to be heard and to make representations in that regard;
 -
 - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
58. In this case, the Claimant has argued that the three-day period given to him to respond to the Notice to Show Cause was insufficient. The Respondents dispute this contention, stating that the Claimant neither indicated that the time was inadequate nor requested an extension to file his response.
59. The law does not prescribe what constitutes a reasonable period for responding to a notice to show cause. Accordingly, what amounts to a reasonable period must be determined on a case-by-case basis.
60. In addressing the adequacy of a notice period in *Nebert Mandala Ombajo v Institute of Certified Public Accountants of Kenya (ICPAK)*, Nakuru Civil Appeal No. 62 of 2018, the Court of Appeal observed as follows:

“The respondent has not justified the urgency in undertaking the disciplinary proceedings on the 4th March, 2014 when the letters were only written on 3rd March, 2014.

(27) Disciplinary proceedings are a grave matter for an employee as the consequences may be catastrophic to the employee’s life. In the case of the appellant, the complaints against him were serious, and there is no doubt that he needed sufficient time to prepare psychologically, and if need be, get the best advice that he could. Any prejudice to the respondent by having the appellant in his place of work could easily have been addressed by sending the appellant on compulsory leave, or interdicting him during the pendency of the disciplinary hearing, so that both the appellant and the respondent would have had time to reflect on and prepare to address the issues arising in the disciplinary process.



(28) The fact that the appellant nonetheless, did his best to respond to the allegations made against him and attended the disciplinary proceedings on the due date, did not ameliorate the prejudice that was caused to him by the inadequate notice. It was oppressive, unfair, and unjust, for the respondent to serve the appellant with a letter for a disciplinary hearing that was to take place the next morning. Such haste reduced the disciplinary hearing to a mere formality to achieve that which the respondent had already predetermined. There was no procedural justice and this vitiated the whole disciplinary process.”

61. I reiterate and apply the above reasoning to the present case. Given that the Claimant was terminated by the 1st Respondent pursuant to Section 31(a) of the *County Governments Act*, and bearing in mind that the 1st Respondent’s decision would be final, the Claimant’s response to the Notice to Show Cause was his sole opportunity to address the allegations levelled against him.
62. Accordingly, this Court finds that the three-day period granted to the Claimant to respond to the Notice to Show Cause was relatively short, particularly given the gravity of the allegations levelled against him and their potential to significantly impact his career.
63. The Claimant’s compliance with the prescribed timeline for responding to the Notice to Show Cause does not remedy the prejudice he suffered due to the inadequacy of the notice period.
64. In any event, the 1st Respondent would not have suffered any prejudice by allowing the Claimant adequate notice to respond to the Notice to Show Cause. What, then, was the urgency?
65. The Claimant has further asserted that he was not provided with access to the evidence supporting the allegations against him.
66. Indeed, there is no indication that the 1st Respondent provided the Claimant with any evidentiary material when issuing the Notice to Show Cause. This is particularly striking given that, in the letter of termination, the 1st Respondent stated that she had considered evidence supporting the allegations against the Claimant. Why, then, was this evidence not made available to the Claimant to enable him to mount his defence?
67. On this issue, I concur with the Court’s decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, in which it was held that the employee is entitled to documents in the possession of the employer which would assist them in preparing their defence.
68. As there is no proof that the 1st Respondent provided the Claimant with the materials and evidence relied upon in the decision to terminate his appointment, I cannot help but find that the Claimant’s termination was not carried out in accordance with a fair process.
69. This Court further concurs with the finding by the Court of Appeal in *County Government of Garissa & another v Idriss Aden Mukhtar & 2 others* (supra) that, despite their status as state officers, members of the County Executive Committee are entitled to the fundamental rights and freedoms guaranteed by *the Constitution*, including the right to fair labour practices and the right to fair administrative action.
70. Despite the 1st Respondent herein issuing the Claimant with a Notice to Show Cause and requesting a response, the brief notice period, coupled with the failure to provide evidence supporting the allegations, severely undermined the Claimant’s ability to adequately mount a defence and, consequently, his right to a fair hearing.



71. Needless to say, the process followed by the 1st Respondent in terminating the Claimant's appointment lacked the essential elements of a fair hearing, namely, prior and adequate notice, and the right to access the information, materials, and evidence relied upon in making the termination decision. Ultimately, the Claimant was denied procedural fairness.

Reliefs?

72. As the Court has determined that the reasons for terminating the Claimant's appointment were not valid and compelling, the Court awards him one (1) month's salary in lieu of notice and compensatory damages equivalent to five (5) months' salary. This award has taken into account the Claimant's period of service of nearly one year.

73. The Claim for gratuity succeeds, as the Claimant's letter of appointment stipulated entitlement to a service gratuity at the rate of 31% of his basic salary. Although the gratuity was conditional on the successful completion of his term, the Claimant is entitled to the same in view of the Court's finding that his termination was neither based on a valid reason nor carried out in accordance with a fair procedure.

74. The Claimant has further claimed Kshs 282,975/- in respect of 21 unpaid leave days. The Respondents, however, have opposed this claim, contending that the Claimant's letter of appointment did not expressly provide for entitlement to leave days.

75. In *County Government of Garissa & another v Idriss Aden Mukhtar & 2 others* (supra) the Court of Appeal held that although the employment of state officers is regulated by *the Constitution* and relevant statutes, the *Employment Act* applies to them and they are entitled to rights under the *Employment Act*, unless *the Constitution*, or the relevant statute, or their contract of service provide better terms.

76. Applying the above principle to the present case, the Court finds that the Claimant's entitlement to leave days is protected under Section 28 of the *Employment Act*, regardless of whether his letter of appointment provided for the same.

77. It is also worth pointing out that under Section 26 of the *Employment Act*, the provisions in Parts V and VI of the Act constitute the basic minimum terms and conditions of employment, which include the right to annual leave.

78. Under Section 74(1)(f) of the *Employment Act*, an employer is under a statutory obligation to keep leave records. In this case, the Respondents failed to produce the Claimant's leave records. As a result, there was no evidence to rebut the Claimant's assertion that he did not take leave during his employment. Accordingly, the Claimant is entitled to payment for 21 accrued leave days.

Orders

79. The total sum of my consideration is that Judgment is entered in favour of the Claimant in the following manner:

- a. A declaration that the termination of the Claimant's appointment was unfair.
- b. The Claimant is awarded one (1) month's salary in lieu of notice, amounting to Kshs 404,250.00.
- c. The Claimant is awarded compensatory damages of Kshs 2,021,250.00, equivalent to five (5) months' gross salary.
- d. The Claimant is awarded Kshs 282,975.00 in respect of 21 unpaid leave days.



- e. The Claimant is awarded Kshs 1,503,810.00 as gratuity for the 12 months served.
- f. The total award amounts to Kshs 4,212,285.00.
- g. Interest shall accrue on the total sum in (f) at court rates from the date of judgment until full payment.
- h. The Claimant is also entitled to the costs of the suit.

80. The Claimant is further entitled to a Certificate of Service pursuant to Section 51(1) of the Employment Act, which shall be issued within 14 days from the date of this Judgment.

DATED, SIGNED and DELIVERED at NAIROBI this 4th day of February 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Wambua

For the Respondents No appearance

Court Assistant Catherine

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

