

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT AT NAKURU**

**ELRC PETITION NO. E002 OF 2024**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**JOHN NGIGI DANIEL .....**

**.....PETITIONER**

**VERSUS**

**COUNTY GOVERNMENT OF NYANDARUA  
COUNTY PUBLIC SERVICE BOARD.....1<sup>ST</sup>  
RESPONDENT**

**COUNTY GOVERNMENT OF NYANDARUA...2<sup>ND</sup>  
RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioner had initially filed a Petition on 19<sup>th</sup> January 2024 and subsequently filed an amended Petition dated 7<sup>th</sup> March 2025 seeking the following orders:

***a.A declaration that the interdiction of the  
Petitioner by the Respondents vide the  
letter dated 7<sup>th</sup> August, 2018 was and  
remains unconstitutional, null and void***

***abinitio for want of fair administrative action.***

***b. A declaration that, as a consequence of the foregoing, the commencement of and continued withholding of the Petitioner's emoluments based on the unlawful interdiction was and remains unconstitutional, null and void.***

***c. A declaration that the practice of withholding of employee's emoluments during the disciplinary process has no foundation in the Employment Act, it has no legal validity, and is therefore unconstitutional, null and void abinitio.***

***d. A declaration that the implementation by the Respondents of an obsolete manual in deciding whether or not to pay the accumulated salary arrears during the period of time the Petitioner was on interdiction vide the letter dated 24<sup>th</sup> February, 2025, is unconstitutional, null and void abinitio.***

***e. A declaration that the Claimant is entitled to pay of pension (both lump sum and monthly) from the date he attained the retirement age of 60 years.***

***f. A declaration that the continued withholding by the Respondents of the Petitioner's salary arrears, especially after the mandatory retirement of the Petitioner, is a violation of his constitutional right to property.***

***g. A declaration that any purported statutory law, regulation, circular or communication relied upon by the Respondents to deny the Petitioner salary arrears upon the attainment of the mandatory retirement age of 60 years is unconstitutional and a violation of Article 40(1) as read with Article 40(2) of the Constitution of Kenya, 2010.***

***h. General damages for violation of the Petitioner's constitutional right to property by the Respondents out of the***

***unlawful withholding of the Petitioner's emoluments and interest thereon at court's rate.***

***i. Exemplary damages for unlawful interdiction of the Petitioner by the Respondents and interest thereon at court's rate.***

***j. An order be issued directing the Respondents to, with immediate effect, release and pay the Petitioner's withheld emoluments dues owing as at the date he attained the mandatory retirement age of 60 years at Kshs.3,120,492.00/= and interest thereon at the court's rate, as well as for the continued payment to the Claimant of monthly pension from the date of retirement.***

***k. Costs of this suit and interest thereon at the court's rate.***

***l. Any other relief that court may deem fit and just to grant.***

## **Petitioner's case**

2. The Petitioner avers that he was employed by the National Government of Kenya, under the Ministry of Environment, Water and Natural Resources, serving as a Chief Superintendent of Water in Job Group "M".
3. The Petitioner avers that he was seconded to the Respondents in 2014 following devolution of water functions, where he served on probation as Sub-County Water Administrator until his appointment was confirmed in 2017 under job group P on permanent and pensionable terms.
4. During his service, the Petitioner avers that he was arrested and charged in 2018 alongside others for alleged abuse of office. Following the charges, he was interdicted without prior notice or opportunity to be heard, effective July 2018, and placed on half salary with full allowances and medical benefits. Subsequently, a Notice to Show Cause was issued in August 2018, but this came after the interdiction had already taken effect.
5. The Petitioner avers that he responded within the stipulated time, though the disciplinary process had already been prejudiced by the earlier interdiction.

6. The Petitioner asserts that no disciplinary proceedings were ever initiated against him following his interdiction on 27<sup>th</sup> July 2018, thereby violating his right to fair administrative action. He maintains that the withholding of half his salary from that date lacked any legal foundation under the Employment Act and amounted to unconstitutional unfair labour practices.
7. The Petitioner avers that his criminal case, filed in 2018, remains pending before the Nyahururu Chief Magistrate's Court. Despite this, he was served with a retirement notice in May 2022 and formally retired on 30<sup>th</sup> June 2023 upon attaining the mandatory retirement age of 60 years.
8. The Petitioner avers that he requested release of his pension benefits, citing a Public Service Commission circular permitting payment despite pending criminal cases, and the Ministry of Water's HR division also sought his personal file to process the dues. Nevertheless, the Respondents have refused to forward the file, relying on an advisory from the EACC, which has led to the filing of the present petition.

9. During the pendency of the suit, the Petitioner avers that the Respondents consented to forward the Petitioner's file for pension processing, but the clearance form falsely indicated that he had been paid up to 30<sup>th</sup> June 2023. In reality, from his appointment as Sub-County Water Administrator on 22<sup>nd</sup> February 2016, his gross salary rose from Kshs.89,748/= in 2018 to Kshs.103,894/= by 2022, yet during interdiction, he was consistently paid only Kshs.47,520/= per month, resulting in withheld arrears totalling Kshs.3,120,492/=.
10. Because of the arrears, the Petitioner avers that the Ministry of Water and Irrigation declined to process his pension dues, noting that the pension cannot be cleared while salary arrears remain outstanding.
11. The Petitioner avers that when he demanded full payment, the respondents replied by letter dated 24<sup>th</sup> February 2025, insisting they could not settle the arrears until the pending criminal proceedings were concluded.
12. The Petitioner further avers that the Respondents wrongly relied on its outdated 2016 Human Resource Manual, which only provided for restoration of

withheld salary after termination of proceedings, and ignored the updated Discipline Manual Revised-2022. The latter explicitly requires that where an officer retires while under interdiction and is not dismissed or punished, all withheld salary, allowances, and benefits must be restored from the date they were stopped.

13. On this basis, the Petitioner maintains that upon his retirement on 30<sup>th</sup> June 2023, he became entitled to full restoration of his dues. He emphasizes his pressing financial and medical needs, noting that he no longer earns a salary, has children in secondary school, and is undergoing costly treatment abroad for Multiple Myeloma, a blood cancer, making the continued withholding of his pension unjust and burdensome.
14. The Petitioner maintains that he is entitled to his salary arrears and pension as a permanent and pensionable civil servant, arguing that these rights constitute accrued property that crystallized upon his retirement on 30<sup>th</sup> June 2023. He contends that it is unconstitutional for the respondents to deny him enjoyment of this property retroactively, particularly

by relying on the obsolete 2016 Human Resource Manual in their letter dated 24<sup>th</sup> February 2025.

15. The Petitioner asserts that his interdiction was unconstitutional, null, and void ab initio for lack of fair administrative action, and that the continued withholding of his emoluments based on that interdiction is equally unlawful.
16. The Petitioner further asserts that the practice of withholding employee emoluments during disciplinary proceedings has no foundation in the Employment Act, lacks legal validity, and is unconstitutional. He concludes that the Respondents' actions offend the Constitution and the rule of law, and therefore, in the interest of substantive justice, his petition should be allowed.

### **Respondent's replying affidavit**

17. The Respondents opposed the amended petition vide a replying affidavit dated 3<sup>rd</sup> November 2025 sworn by Frank K. Muchina, the Respondents' County Secretary and Head of Public.
18. The Respondents aver that the County Government of Nyandarua operates under the Constitution and

laws of Kenya, denies knowledge of certain claims in the Petitioner's affidavit, and provide evidence of the Petitioner's employment history. Specifically, it confirms the Petitioner's secondment to the County Government in March 2014, his appointment as Sub-County Water Administrator in February 2016 after a successful interview, and subsequent confirmation of that appointment in April 2017.

19. The Respondent avers that while the Petitioner was serving the Department of Water, Climate Change, Environment and Natural contravening laws relating to the management of funds he was charged as per the charge sheet.
20. The Respondents aver that following arrest and arraignment on charges by the EACC, the petitioner was interdicted from service on 7<sup>th</sup> August 2018 with entitlement to half salary, house allowance, and medical benefits. He was then issued a Notice to Show Cause on 28<sup>th</sup> August 2018, to which he responded on 3<sup>rd</sup> September 2018. The Petitioner remained on half salary from September 2018 until June 2023, with payments and remittances duly made. Finally, the 2<sup>nd</sup> Respondent issued a

retirement notice on 5<sup>th</sup> May 2022, and the petitioner retired from service on 1<sup>st</sup> July 2023.

21. The Respondents aver that the Petitioner wrote to the Respondents vide a letter dated 4<sup>th</sup> July 2023 seeking authorization of payment of his benefits. It is also important to note that in the said letter, the Petitioner was fully aware that his salary adjustments for the period he was interdicted would be done after the determination of the EACC case.
22. The Respondents aver that they responded to the Petitioner's letter vide a letter dated 6<sup>th</sup> July 2023 advising him that the office awaited clearance from EACC.
23. The Respondents aver that the Ministry of Water requested the Petitioner's file in June 2023 to process payments, but the office delayed forwarding it pending clearance from the EACC. Several follow-up letters were sent to the EACC in 2024 seeking advisory on payment, but no response was received. As a result, they reached a consent with the Petitioner's advocate allowing the file to be forwarded to the Ministry, which was confirmed by

the County Attorney in December 2024 and duly executed.

24. The Respondents aver that the interdiction process followed due process in accordance with section 4.2.1 of the Discipline Manual for Public Service, 2022 and section K.K 6(4) of Human Resource Policies and Procedures Manual for the Public Service.
25. The Respondents aver that they followed legal framework and outcome of the petitioner's suspension and subsequent acquittal. It notes that under **section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003**, an employer is empowered to suspend or interdict a public officer at half pay once charged. It further confirms that the petitioner's criminal case in Nyahururu was heard and determined, resulting in his acquittal, after which the county restored his salary and remitted pension and relevant taxes.
26. Parties canvassed the Petition by way of written submissions.

### **Petitioner's submissions**

27. The Petitioner submitted that he was interdicted on 7<sup>th</sup> August 2018, effective from 27<sup>th</sup> July 2018, and issued a Notice to Show Cause on 28<sup>th</sup> August 2018 due to criminal charges, to which he responded promptly. However, no disciplinary proceedings followed, violating his constitutional right to fair administrative action and also under Article 47 of the Constitution. The interdiction letter itself was punitive, citing gross misconduct, and thus required a fair hearing before affecting his salary and employment status. Even if viewed as preventive, a hearing was still necessary before any final decision. Since none was ever conducted before or after the interdiction, and the petitioner retired without being heard, his right to fair administrative action was clearly infringed.

28. The Petitioner relied on the case of ***Arapkoko v Ethics and Anti-Corruption Commission*** [2024] KEELRC 271 (KLR) the court held that:

***“In considering whether an interdiction has the potential of materially prejudicing an employee, the court needs to draw a distinction between disciplinary/punitive***

***and administrative/preventive interdictions.***

***Where an interdiction is disciplinary/punitive it is critical that an employee is heard prior to the decision to interdict.***

***However, where it is administrative/preventive pending further inquiry into the matter, the right to be heard at this preliminary stage is not absolute unless entrenched in statute or the contract of employment between the parties as the interdiction is only a precursor to an administrative process that will result into an eventual hearing of the dispute at a disciplinary session before the ultimate decision is rendered.”***  
***(Emphasis supplied).***

29. In ***Fredrick Saundu Amolo v Principal Namanga Mixed Day Secondary School & 2 others [2014] KEELRC 755 (KLR)***, cited the case of ***Oyagi v Nairobi City County [2024] KEELRC 736 (KLR)*** outlined a three-part test for fair interdiction: there

must be a justifiable belief that the employee engaged in serious misconduct, an objective reason to remove the employee from the workplace to protect investigations and workplace integrity, and the employee must be given an opportunity to be heard. Together, these cases establish that interdiction must be both reasonable and procedurally fair, safeguarding employees' rights while allowing employers to preserve institutional integrity. The court held that interdiction requires both substantive justification and procedural fairness.

30. The Petitioner submitted that his interdiction of the was unconstitutional as it unlawfully deprived him of his right to property under **Article 40 of the Constitution**. Since the interdiction was unfair and void ab initio, the continued withholding of his emoluments in the form of half salary was invalid. Consequently, he is entitled to full recovery of all withheld emoluments, consistent in **Boniface v Teachers Service Commission & Another [2024] KEELRC 2075(KLR)**, where the court held as follows:

***“In view of the foregoing declarations of nullity of the whole proceedings, I grant prayer (c) in the Statement of Claim to the***

***extent that the suspension of the claimant is nullified and she is deemed to have been in continuous service of the 1st respondent with full benefits between February 2020 and December 2021 when she was posted to another school. Accordingly, the claimant is entitled to salary for the time it was stopped from September 2020 to December 2021, 16 months equalling to Kshs.2,738,304.00.”***

31. In ***Peterson Ndung’u & 5 Others V Kenya Power and Lighting Company Limited [2014] eKLR*** the court stated that withholding employees’ emoluments during suspension pending disciplinary outcomes is merely a procedural practice and not a lawful disciplinary penalty. On close scrutiny, the practice lacks any foundation in the Employment Act and therefore has no legal validity. The only statutory provision permitting non-payment of wages is Section 18(6) of the Employment Act 2007, which applies when an employee is detained in custody or serving a prison sentence. Section 19, which governs wage deductions, does not authorize employers to withhold or deduct wages as a disciplinary measure. Thus,

suspension alone cannot justify withholding an employee's salary. Section 80(1)(b) of the Labour Relations Act 2007 provides that an employee who participates in or incites an unlawful strike forfeits entitlement to salary and benefits during that period. However, outside such circumstances, as well as detention or imprisonment under Section 18(6) of the Employment Act, there is no legal basis for withholding wages. In this instant case, the claimants were neither detained, imprisoned, nor engaged in an unprotected strike, meaning they could not lawfully be denied their salaries. The practice of withholding pay during preventive or administrative suspension therefore lacks statutory support and is unjustifiable.

32. Justice Jemimah Keli, in ***Odongo v Masinde Muliro University of Science and Technology [2023] KEELRC 1761 (KLR)***, affirmed that under the Constitution and Section 17 of the Employment Act, every worker is entitled to full payment of wages for work performed. She emphasized that the respondent had not initiated any disciplinary process to justify suspending the claimant's salary, particularly since the claimant continued to discharge duties under the respondent's direction. Thus, withholding salary

without lawful cause was a violation of the claimant's right to remuneration for work done. The Petitioner submitted that withholding an employee's salary during suspension or pending disciplinary proceedings is unlawful and lacks any legal foundation. The Employment Act does not provide for such a practice, and no statutory provision permits employers to deny wages while a contract of employment is still running. Consequently, the continued withholding of the petitioner's emoluments was unconstitutional, null and void ab initio, making the practice of using salary suspension as a punitive measure impermissible.

33. The Petitioner submitted that the Respondents unlawfully withheld the petitioner's salary arrears even after his mandatory retirement, despite earlier findings that the half-salary arrangement was unconstitutional. Their reliance on **Section K, K.6(4) of the Human Resource Policies and Procedures Manual for the Public Service, 2016** was misplaced, as that manual had already been replaced by the **Discipline Manual for the Public Service Revised-2022**. Under **section 4.2.1(d) of the revised manual**, where disciplinary or criminal

proceedings have been instituted, and the officer is not dismissed or punished, all withheld salary, allowances, and benefits must be restored from the date they were stopped. Since the Petitioner retired without dismissal or sanction, the continued withholding of his arrears violated his constitutional right to property and was therefore unconstitutional.

34. The petitioner endured nearly five years of unlawful interdiction and continued withholding of salary arrears even after mandatory retirement, with the respondents justifying their actions by awaiting the conclusion of criminal proceedings. However, as established in ***Oyagi v Nairobi City County(supra)***, employers are not required to await criminal processes, especially where delays are inordinate. This prolonged interdiction and denial of pension dues caused severe hardship, as the Petitioner suffering from Multiple Myeloma and supporting children in secondary school, was left financially deprived. The respondents' conduct, including failure to provide a fair hearing and continued withholding of emoluments even after acquittal, amounted to aggravated violations warranting damages, consistent with precedents

such as ***Margaret Ayuma Katungu v Attorney General [2018] KEELRC 500 (KLR)*** where aggravated damages were awarded for similar injustices. The court further stated that prolonged interdiction without fair process causes aggravated suffering and warrants compensation. In one case, a claimant endured unlawful interdiction for three years and eight months and was awarded Kshs.5 Million in general damages. The Petitioner urged that, since he suffered an even longer period of 4 years and 11 months under unlawful interdiction, be granted general damages of Kshs.7 Million to reflect the severity and duration of the wrong committed by the Respondents.

35. The Petitioner submitted that he served as a Sub-County Water Administrator, earned a gross salary ranging from Kshs. 89,748/= in 2018 to Kshs.103,894/= by mid-2023 when he retired. However, throughout his interdiction period, the respondents consistently paid him only Kshs.47,520/= per month, far below his entitled gross salary. As a result, they unlawfully withheld and continue to withhold a total of Kshs. 3,120,492/=

in salary arrears, reflecting the financial loss suffered during nearly five years of interdiction up to his retirement.

36. The Petitioner urged the court to allow the Petition as prayed.

### **Respondent's submissions**

37. The Respondent submitted that the Petitioner's interdiction was lawful, arising from charges of abuse of office instituted by the EACC in 2018. They maintain that the interdiction followed due process under **section 62(1) of the Anti-Corruption and Economic Crimes Act, 2003, section 70 of the Public Service Commission Act, and the Public Service Discipline Manuals (2016 and Revised 2022)**, which permit suspension on half salary with allowances when criminal proceedings are pending.

38. The Respondents emphasized that the petitioner was duly served with interdiction and show cause letters, and upon acquittal in 2025, his withheld salary arrears and benefits were paid. The Respondents contend that the Employment Act must be read alongside other statutes and manuals, and therefore, the interdiction was proper.

39. The Respondents further submit that the Petitioner is undeserving of general or exemplary damages. The Respondent relied on the case of ***James Mugera Igati v Public Service Commission of Kenya [2014] KEELRC 735 (KLR)***, the court upheld the lawfulness of interdiction where a public officer was charged with a criminal offence, finding that issuance of an interdiction letter after charges was consistent with statutory provisions. In ***Kenya Broadcasting Corporation v Geoffrey Wakio [2019] KECA 65 (KLR)***, the Court of Appeal emphasized that remedies under Section 49 of the Employment Act are discretionary, not mandatory. It clarified that general damages are not awardable for wrongful termination, and compensation is typically limited to salary in *lieu* of notice or other statutory remedies. In ***Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kenya Limited [2019] KEELC 1664 (KLR)***, the court reiterated that exemplary damages are awarded sparingly and only in limited circumstances, such as oppressive or unconstitutional government action, profit-driven misconduct, or where expressly authorized by statute.

40. Ultimately, the Respondents urge the court to dismiss the petition with costs, asserting that no violation of constitutional rights occurred.

### **Analysis and determination**

41. The Petitioner who was working for County Government of Nyandarua County Service Board being the 1<sup>st</sup> Respondent from the National Government and was eventually confirmed on full time basis for the County Government in February 25<sup>th</sup> 2016.
42. In 2018 he was charged with others by Ethics and Anti-Corruption Commission (EACC) for abuse of office and was served with interdiction from 27<sup>th</sup> July 2018. He was hence to receive half basic salary with full allowance and medical benefits.
43. On 28<sup>th</sup> August 2018 he was issued with a Notice to show cause why he should not face disciplinary action owing to criminal charges facing him. He responded by 3<sup>rd</sup> September 2018. The interdiction however remained in place. The Petitioner was retired on 1<sup>st</sup> July 2023. The Petitioner wrote to the Respondents requesting to be paid his pension dues.

44. The mother Ministry of Water, Sanitation and Irrigation requested from the 2<sup>nd</sup> Respondent the Petitioner's Personal file and actually a consent was recorded in court where Respondents agreed to forward the said Petitioner's file. They however vacated the said consent and informed the court the dues would only be settled once the pending case is completed. The court was informed by the Respondent during one of the mention dates that the Claimant was acquitted of the criminal case. No evidence however was produced to support that information.

45. In view of the foregoing, the court is of the view that the issues for determination are: -

- (i) Whether the Petitioner's right to his property were violated***
- (ii) Whether he is entitled to his pension***
- (iii) Whether he is entitled to general damages for violation of his Constitutional rights.***

46. As to whether Claimant's property rights were violated the Petitioner had been requesting for the release of his file to the Ministry of Water and Irrigation to enable them to process his payments in

lumpsum and monthly but there is no evidence todate that the same has been released.

The parties had consented that the Respondent to release the file but later Respondent informed the court that they were informed by EACC that benefits would only be paid after conclusion of the criminal case. Court was not told if his file was therefore released.

The court is therefore of the view that the Petitioner's rights to his property being his personal file were violated as the Respondents keep holding the same despite them (Respondents) informing the court that the Petitioner had been acquitted of the criminal case.

47. As to whether the Petitioner is entitled to his pension payments the Public Service Regulation 70(5) provide as follows; -

***“(5). Subject to the Constitution, the Retirement Benefits Act, 1997, the rules of a retirement benefits scheme or a specific government policy, where an officer attains the mandatory retirement age while undergoing disciplinary proceedings,***

***the officer shall retire with the applicable pension benefits.”***

48. The Petitioner was retired from his employment and was even acquitted of the criminal case against him as court was informed orally. There is no reason why the pension dues should not be paid to him in full as applicable pension benefits.

49. The Petitioner suffered interdiction from 27<sup>th</sup> July 2018 to 1<sup>st</sup> July 2023 when he retired. During that period, he only received half his salary. The court has several decisional laws that provide that putting an employee on an inordinate long interdiction is unfair labour practice.

50. In ***Margaret Ayuma Katungu -VS- The Attorney General KEELRC 500 KLR*** the court stated that prolonged interdiction without fair process causes aggravated suffering and warrants compensation.

51. Also, in the case of ***OYAGI -VS- NAIROBI CITY COUNTY*** (Supra) the court said that employees need not await criminal processes especially where delay is inordinate.

52. The court finds the Petitioner constitutional rights were violated by subjecting him to a very long interdiction in the twilight of his employment cycle. He also informed the court he was seriously ailing and had also to cater for his children school fees. It would have been fair for the Respondent to take the Petitioner through a disciplinary hearing even during the pendency of the criminal case and decide his case one way or the other. They kept him in limbo and that must have caused him immense anxiety, uncertainty and untold suffering.
53. Therefore, from my analysis of the pleadings, submissions and case laws I am persuaded the Petitioner has proved a case to support his amended petition dated 7<sup>th</sup> March 2025.
54. The following reliefs are therefore awarded accordingly.
- a) The court compresses prayers a, b, c, d, f and g and declares the Petitioner was treated unconstitutionally. He is awarded Kshs.3,000,000/= for the violation of his constitutional rights as per prayers h & i accordingly.***

- b) He is to be paid both his lumpsum pension and monthly payments as per prayer e of the amended petition.**
- c) Any unpaid arrears of salary and emoluments to be paid to the Petitioner.**
- d) Costs of the suit to be paid to the Petitioner.**
- e) Interest to be paid to the Petitioner on a and c at 14% from today until full payment.**

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru this 6<sup>th</sup> Day of February, 2026.**

**ANNA NGIBUINI MWAURE  
JUDGE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**