



**Gichohi v County Government of Embu (Cause E036 of 2024)
[2026] KEELRC 874 (KLR) (24 March 2026) (Judgment)**

Neutral citation: [2026] KEELRC 874 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E036 OF 2024
SC RUTTO, J
MARCH 24, 2026**

BETWEEN

CATHERINE WAKUTHI GICHOHI CLAIMANT

AND

THE COUNTY GOVERNMENT OF EMBU RESPONDENT

JUDGMENT

1. The Claimant moved this Court by way of a Statement of Claim dated 29th August 2024, in which she averred that on 28th August 2023, the Respondent's County Secretary, who also serves as the head of the County Public Service Board, issued her with a Notice to Show Cause. The notice alleged that she was suspected of producing fake office receipts relating to land subdivision, a matter reportedly under investigation by the DCI Runyenjes. The Claimant further averred that on the same date, she was issued with a letter of suspension.
2. The Claimant stated that she responded comprehensively to the Notice to Show Cause and denied all the allegations made against her.
3. She further averred that at the material time, she was expectant and subsequently gave birth to a baby boy on 8th October 2023. She contended that before she could fully recover, she was summoned on 13th October 2023 to undertake a handover, which she claims subjected her to significant emotional and psychological distress.
4. The Claimant further averred that by a letter dated 18th September 2023, the Respondent's County Public Service Board informed the County Secretary that his actions were ultra vires, and that all actions taken pursuant thereto stood revoked.
5. It was the Claimant's contention that despite the foregoing, the Respondent failed and/or neglected to formally revoke her suspension or facilitate her return to duty.



6. The Claimant further stated that the Respondent did not communicate the outcome of her response to the Notice to Show Cause, nor did it provide any update on the status of the investigations. She added that her advocates issued a demand letter seeking revocation of the suspension, but the Respondent failed to respond.
7. The Claimant contended that the Respondent thereby violated her rights to fair labour practices and fair administrative action as guaranteed under Articles 41 and 47 of *the Constitution*, by subjecting her to prolonged suspension exceeding 12 months, requiring her to work during maternity leave, initiating disciplinary proceedings without jurisdiction, failing to provide written reasons for the extended suspension, and neglecting to respond to correspondence. Consequently, the Claimant sought the following reliefs against the Respondent:
 - a. A declaration that it is the Respondent's County Public Service Board that has the mandate to conduct disciplinary processes and any disciplinary process or action taken by any other person was and is unlawful, null and void.
 - b. A declaration do issue that her suspension vide the letter dated 28th August 2023 was and is unconstitutional, unlawful, null, and void and that the same be revoked forthwith.
 - c. A declaration that the Claimant's constitutional rights as protected under Articles 29(d) & (f), 41 and 47 of *the Constitution* were and are being violated by the Respondent.
 - d. General damages for violation of the Claimant's constitutional rights as protected under Articles 29(d) & (f), 41 and 47 of *the Constitution*.
 - e. General damages for emotional and psychological torture.
 - f. Costs of the suit.
8. Opposing the Claimant's claim, the Respondent averred that, notwithstanding the allegations surrounding her suspension, the Claimant continued to receive her full salary and allowances throughout the entire period. The Respondent further denied any violation of *the Constitution*, maintaining that its actions were undertaken within the confines of the relevant legal framework.
9. The Respondent further contended that the measures taken against the Claimant were a result of her alleged acts of indiscipline and lack of integrity in the workplace, necessitating intervention in accordance with the law to avert further loss.
10. The Respondent maintained that its actions were both lawful and procedurally sound, and that the Claimant is not entitled to the reliefs sought. Consequently, it urged the Court to dismiss the claim with costs.
11. The record bears that the parties reached a partial settlement, pursuant to which it was agreed that the Claimant's suspension be lifted and that she resumes duty. Accordingly, the only issues remaining for determination by the Court were those relating to general damages and costs.
12. The Court thereafter directed the parties to canvass the outstanding issues by way of written submissions. Both parties complied and filed their respective submissions, which the Court has duly considered.

Submissions

13. On behalf of the Claimant, it has been submitted that she has established that her suspension was unprocedural, unjustified, and in contravention of the law. It has further been contended that her



reinstatement, coming after the matter had been set down for hearing, was indicative of bad faith and malice on the part of the Respondent. In the same breath, the Claimant has argued that her reinstatement, without any accompanying findings, underscored that the Respondent's actions were malicious, punitive, and devoid of justification.

14. The Claimant has further submitted that the Respondent's disregard of the advisory issued by the County Public Service Board was demonstrative of malice, bad faith, and an abuse of power.
15. It is the Claimant's position that her suspension was procedurally unfair, unlawful, and ultra vires the powers of the County Secretary, and that it infringed upon her constitutional rights.
16. The Claimant has further contended that the subsequent lifting of her suspension did not absolve the Respondent of liability for the wrongful and unlawful actions taken against her.
17. Relying on the decision in *Kenya Union of Commercial Food and Allied Workers v Meru North Farmers' Sacco Ltd (2014) eKLR*, the Claimant has submitted that this Court has the discretion to award general damages for violation of constitutional rights.
18. It has further been submitted that the Respondent's conduct, in acting beyond its mandate and subjecting the Claimant to undue hardship, warranted an award of costs on a full indemnity basis.
19. On its part, the Respondent has submitted that throughout the period of suspension, the Claimant remained on full pay, inclusive of all due allowances, thereby enabling her to meet her obligations and maintain the lifestyle she was accustomed to.
20. The Respondent has further contended that there is no evidence to substantiate the alleged psychological and emotional distress, and that the Claimant has failed to prove her entitlement to general damages.

Analysis and Determination

21. The issues that arise for determination at this stage are twofold:
 - a. Whether the Claimant is entitled to an award of general damages for the alleged violation of her constitutional rights; and
 - b. Whether the Claimant is entitled to the costs of the suit.

General damages?

22. It is the Claimant's case that the Respondent's actions infringed upon her rights to fair labour practices and fair administrative action, as well as her rights to freedom and security of the person as protected under Articles 29(d) and (f), 41, and 47 of *the Constitution*. In this regard, she cited, inter alia, her prolonged suspension allegedly exceeding 12 months, being required to work during maternity leave, the institution of disciplinary proceedings without jurisdiction, and the failure to furnish written reasons for the extended suspension.
23. In response, the Respondent denied any violation of the Claimant's constitutional rights, maintaining that its actions were undertaken within the confines of the applicable legal framework. It further contended that the measures taken were necessitated by the Claimant's alleged indiscipline and lack of integrity, and that, notwithstanding the suspension, she continued to receive her full salary and allowances.



24. It is not in dispute that, by letters dated 28th August 2023, the Claimant was issued with both a Notice to Show Cause and a suspension letter barring her from performing her duties pending the conclusion of her case.
25. The record further reveals that, through a letter dated 18th September 2023 addressed to the County Secretary, Embu County Government, the Secretary, Embu County Public Service Board communicated that the Board had considered the issuance of the show cause letters and suspensions affecting the Claimant and others, and resolved that the County Secretary had acted outside his jurisdiction, rendering all such actions revoked.
26. Despite this communication, the Claimant's suspension was not lifted. Indeed, it was only during the pendency of the present suit that the suspension was eventually lifted and the Claimant allowed to resume duty.
27. Pursuant to Section 59(1) of the *County Governments Act*, County Public Service Boards are, inter alia, mandated to establish offices at the county level, undertake appointments, exercise disciplinary control, remove persons holding or acting in county public service offices, and oversee performance management.
28. This position was affirmed by the Court of Appeal in *Kisumu County Public Service Board & another v Samuel Okuro & 7 others* [2018] eKLR, wherein it was held that County Public Service Boards bear the responsibility of regulating the employment of officers in the county public service.
29. It follows, therefore, that the authority to exercise disciplinary control over, and to remove persons holding or acting in offices established within the county governments, is vested in the County Public Service Boards, and not in the County Secretary.
30. Accordingly, the issuance of the Notice to Show Cause and the suspension of the Claimant by the County Secretary, Embu County, was undertaken irregularly and without lawful authority. Does this then entitle the Claimant to general damages?
31. It is notable that the Claimant did not controvert the Respondent's assertion that she remained on full pay throughout the duration of her suspension.
32. Accordingly, the Court finds that although the suspension and the disciplinary process initiated by the County Secretary against the Claimant were irregular, any loss arising from the prolonged suspension was mitigated by the fact that the Claimant continued to receive her full salary.
33. It is also evident that, following the partial settlement reached by the parties, the Claimant resumed duty and was assigned responsibilities, as reflected in the letter dated 2nd April 2025 from the Chief Officer, Lands & Mining.
34. Consequently, the Court is not persuaded that the Claimant is entitled to general damages on this score.
35. The Claimant also alleged that she was required to work during her maternity leave hence her right to fair labour practices was violated. It is noteworthy that apart from a handing-over report dated 16th October 2023, there is no evidence on record demonstrating that the Claimant was required to perform any duties during that period.
36. All things considered, the Court is not persuaded that this is an appropriate case for the award of general damages for the alleged violation of the Claimant's constitutional rights.



Costs?

37. The other outstanding issue for determination concerns the award of costs arising from these proceedings. With regards to the issue of costs, Section 27 of the *Civil Procedure Act* provides as follows:

“[27](1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and give all the necessary directions for the purposes aforesaid; and the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of those powers;

provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise direct.”

38. Further, pursuant to Section 12(4) of the *Employment and Labour Relations Court Act*, this Court has discretion to make appropriate orders as to costs in any proceedings instituted under the Act.

39. As already stated herein, the matter was partially settled by consent of the parties. In *David Kiptum Korir v Kenya Commercial Bank & another* [2021] eKLR, the Court addressed the issue of costs in matters settled by consent as follows: -

“As such, the settlement of a matter whether by consent or otherwise, is not a bar to costs. In addition, settlement of a case by consent does not necessarily mean there is no successful party.”

40. And further, in the case of *Morgan Air Cargo Limited v Evrest Enterprises Limited* [2014] eKLR, it was held as follows: -

“But it does not necessarily mean that, where parties have entered into consent to settle a proceeding, no costs should be awarded, or there is no successful party in the matter. The incidence of settlement by consent of the parties, to my mind, is just but a vital factor the court should consider, within the circumstances of each case, in deciding whether costs are payable or not. A consent recorded in settlement of a proceeding is not an automatic disentitlement of costs and I, would, therefore, hesitate profoundly to make any generalized propositions on the law that consent is an automatic disentitlement of costs without reference to the context of the particular case...”

41. Accordingly, the fact that this matter was partially settled by consent does not automatically preclude the Claimant from being awarded costs.

42. The Court has already found, elsewhere in this judgment, that the County Secretary acted irregularly and without lawful authority when he issued the Claimant with the Notice to Show Cause and suspended her from duty.

43. Further, the record shows that the County Secretary failed to lift the Claimant’s suspension despite the letter from the Secretary of the County Public Service Board dated 18th September 2023, which declared the disciplinary action revoked. As a matter of fact, by a memo dated 18th March 2024 addressed to the Chief Officer, Housing, Physical Planning, and Urban Development, the County Secretary was still requesting a disciplinary status report regarding the Claimant.



This confirms that the County Secretary continued to act in disregard of the decision of the County Public Service Board.

44. It is also evident from the record that, by a letter dated 5th August 2024 addressed to the County Secretary, the Claimant's advocate formally demanded that her suspension be revoked or terminated. Evidently, there was no responsive action from the Respondent's end, necessitating the filing of the present suit on 31st August 2024.
45. Indeed, it was only during the pendency of these proceedings that the Claimant's suspension was lifted, allowing her to resume duty.
46. It follows from the foregoing that the County Secretary's failure to revoke the Claimant's suspension, notwithstanding the directive from the County Public Service Board, contributed to her prolonged suspension.
47. Furthermore, the County Secretary's inaction on the demand letter from the Claimant's advocate compounded the situation and precipitated the current proceedings. Indeed, it is highly probable that had the Respondent acted on the demand letter, the litigation before this Court could have been entirely avoided.
48. In view of the above, the Court finds that the Claimant is entitled to the costs of these proceedings.
49. In sum, the Court makes the following orders:
 - a. A declaration is hereby issued that it is the Respondent's County Public Service Board that holds the authority to carry out disciplinary processes or actions against the Claimant.
 - b. A declaration is hereby issued that the Claimant's suspension vide the letter dated 28th August 2023 was unlawful, null, and void.
 - c. The Claimant is entitled to the costs of this suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 24TH DAY OF MARCH 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Magee

For the Respondent No appearance

Court Assistant Ndati

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.

