



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omuomo v Independent Electoral and Boundaries Commission (Petition  
E018 of 2025) [2026] KEELRC 949 (KLR) (20 April 2026) (Judgment)**

Neutral citation: [2026] KEELRC 949 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**PETITION E018 OF 2025**

**NZIOKI WA MAKAU, J**

**APRIL 20, 2026**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 2, 3, 10, 88(5),  
232(1)(E), & (2), 236(B), 249(1)(C), 249(2)(B), AND 250(1) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF RIGHTS AND FUNDAMENTAL FREEDOMS IN ARTICLES  
19, 20, 21, 25, 28, 30, 35, 41 AND 47 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTIONS 4, 7, 10(1), 11 AND 12 OF THE FAIR ADMINISTRATIVE  
ACTION ACT, NO. 4 OF 2015, AND SECTION 11A OF THE INDEPENDENT  
ELECTORAL AND BOUNDARIES COMMISSION ACT NO. 9 OF 2011, SECTIONS  
4 & 5 OF THE ACCESS TO INFORMATION ACT NO. 31 OF 2016, AND SECTION  
8 AS READ WITH PARAGRAPH 5 OF THE SECOND SCHEDULE TO THE  
INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION ACT, NO. 9 OF  
2011, THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT NO. 20 OF 2011**

**BETWEEN**

**CALISTO OYUGI OMUOMO ..... PETITIONER**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. The Petitioner seeks a myriad of reliefs in the Petition dated 28<sup>th</sup> November 2025. These reliefs against the Independent Electoral and Boundaries Commission are as follows:



- a. A declaration that the disciplinary hearing held on 3<sup>rd</sup> January 2023 was ultra vires unconstitutional and null and void ab initio having been convened and conducted by a body lacking jurisdiction under the Respondent's governing instruments in violation of his right to fair administrative action under Article 47 of *the Constitution* and was therefore incapable of producing any lawful outcome.
  - b. A declaration that the Commission's 284<sup>th</sup> Plenary Meeting held on 6<sup>th</sup> January 2023 was ultra vires and unlawful having been undertaken in breach of statutory quorum requirements prescribed under Paragraph 5 of the Second Schedule as read with section 8 of the IEBC Act 2011 making its outcomes null and void.
  - c. A declaration that the dismissal letter dated 19<sup>th</sup> January 2023 was unconstitutional, and null and void ab initio having been issued and communicated at a time when the Independent Electoral and Boundaries Commission was not constituted as required under Article 250(1) of *the Constitution* and therefore lacked the legal capacity to act.
  - d. A declaration that the dismissal letter dated 19<sup>th</sup> January 2023 being a constitutional nullity, and void ab initio, the Petitioner's status as a public officer of the Independent Electoral and Boundaries Commission is deemed in law never to have been terminated and remains subsisting with all attendant rights, benefits and obligations.
  - e. An order compelling the Respondent to forthwith restore him to the position lawfully held immediately prior to the impugned dismissal, with all attendant seniority, rank, status and concomitant benefits, and to provide written proof of compliance to this honourable court within fourteen (14) days of this judgment.
  - f. An order directing the Respondent to expunge the dismissal letter dated 19<sup>th</sup> January 2023 and all references thereto from all personal and official records of the Petitioner, ensuring no record of the unlawful dismissal remains.
  - g. An order directing the Respondent to pay him all remuneration and entitlements due for the period between 1<sup>st</sup> September 2021 and 19<sup>th</sup> January 2023, the withholding thereof having arisen from disciplinary action undertaken without due process in violation of Articles 41, 47 and 236(b) of *the Constitution* as read with Articles 28 and 30 thereof.
  - h. An order directing the Respondent to pay the Petitioner all accrued remuneration and entitlements from 19<sup>th</sup> January 2023 until the date of full restoration to duty, as part of constitutional restitution for the continuing violation of the Petitioner's rights under Articles 41, 47 and 236(b) of *the Constitution*.
  - i. An order that the Respondent shall bear the Petitioner's costs of this Petition.
  - j. An order that all monetary awards granted herein shall accrue interest at court rates, from the date of this judgment until payment in full.
  - k. Any other, or such further relief, or orders, that this honourable court deems just, equitable and expedient to grant in the circumstances, including such consequential or restorative orders as may be necessary to uphold *the constitution* and protect the Petitioner's rights.
2. The Petitioner avers that he was appointed by the Respondent as a County ICT Officer, Job Grade IEBC 6 on 16<sup>th</sup> June 2017, and served diligently until 9<sup>th</sup> September 2021 when he was issued with a show cause letter. He avers that the letter not only outlined contemplated disciplinary action for alleged gross misconduct, but also directed the stoppage of his salary and required him to respond to



- the charges within fourteen (14) days. He contends that no reasons were advanced for the stoppage of his salary, though he duly responded to the allegations within the prescribed timeline. He further states that, during this period, he was transferred to the Respondent's Bomet County station, where he remained until his eventual dismissal.
3. The Petitioner avers that his salary was unlawfully withheld throughout the disciplinary process, which lasted sixteen (16) months and eighteen (18) days. He further contends that on 3<sup>rd</sup> January 2023, he attended a disciplinary hearing conducted by the Respondent's Commissioners, contrary to the Human Resource Manual which, requires that officers in Job Grade IEBC scale 5 and below appear before the Human Resource Management Advisory Committee (HRMAC) comprising directors.
  4. It is the Petitioner's contention that, during the disciplinary hearing, he was neither furnished with the investigation report nor afforded an opportunity to present his own evidence. He states that he was thereafter issued with a dismissal letter dated 19<sup>th</sup> January 2023, which purported to have been authorised at the Respondent's 284<sup>th</sup> Plenary meeting held on 6<sup>th</sup> January 2023. He avers that the authorisation was invalid, asserting that, at the material time, the only Commissioner in office was engaged in overseeing by-elections in Elgeyo Marakwet. He further contends that the dismissal letter failed to disclose the reasons for his dismissal, particularly in relation to the allegation of absence from duty, and did not set out the evidence relied upon, thereby denying him a meaningful opportunity to appeal. It is the Petitioner's additional averment that his dismissal was effected at a time when the Respondent lacked the capability to make binding decisions. He states that, as at that time, four Commissioners namely; Cherera, Nyangaya, Wanderi and Masit—had been suspended with effect from 2<sup>nd</sup> December 2022, while the six-year, non-renewable terms for Chebukati, Molu and Guliye had lapsed on 17<sup>th</sup> January 2023.
  5. Notwithstanding the foregoing, the Petitioner states that he lodged an appeal against the dismissal, which, to date, remains pending more than thirty-two (32) months later. He avers that, due to the Respondent's inaction, he was compelled to seek redress in *Omuomo v Chief Executive Officer, Independent Electoral and Boundaries Commission (IEBC) & another* [2025] KEELRC 1464 (KLR), wherein the Court held that it could not address substantive constitutional violations. On the basis of the foregoing, the Petitioner contends that the Respondent's actions, specifically the deprivation of his salary for sixteen (16) months and eighteen (18) days while requiring him to continue rendering services, and his transfer to a remote workstation without facilitation violated Articles 28, 30 and 25(b) of *the Constitution*, which guarantee the right to dignity and freedom from slavery, servitude and forced labour. He further asserts that the prolonged disciplinary process violated Articles 41(1), 41(2)(a) and 41(2)(b) of *the Constitution* on the right to fair labour practices and reasonable working conditions.
  6. The Petitioner also avers that the Respondent's refusal to furnish him with the material relied upon in reaching the decision to dismiss him violated his right to access to information under Article 35 of *the Constitution*. He further contends that the inordinate delay in concluding the disciplinary process, coupled with the alleged failure to adhere to the Respondent's Human Resource policies, contravened Article 47 of *the Constitution*, which guarantees the right to lawful, reasonable, expeditious, efficient and procedurally fair administrative action. With regard to the alleged lack of quorum in the meeting that ratified his dismissal, the Petitioner asserts that the same was in violation of Articles 88(5) and 250(1) of *the Constitution*.
  7. In response, the Respondent filed a Replying Affidavit sworn on 16<sup>th</sup> February 2026 by Mr. Abdallah Hassan, its Acting Director, Human Resource and Administration. The deponent denies the averments in the Petition and puts the Petitioner to strict proof thereof. He maintains that the Petitioner's dismissal was lawful, constitutional, and undertaken in compliance with the Respondent's



Human Resource Manual, 2020, as well as the applicable employment laws. He avers that the disciplinary process was conducted by a duly constituted body and in accordance with *the Constitution*, the *Fair Administrative Action Act*, and the *Employment Act*, both procedurally and substantively. He further contends that the Petitioner was accorded due process, including issuance of a show cause letter, notification of the allegations against him, and an opportunity to respond. In particular, he asserts that the hearing complied with Section 12.11 of the Respondent's Human Resource Manual, Articles 25(c), 41, 47 and 50 of *the Constitution*, as well as the provisions of the IEBC Act and the *Fair Administrative Action Act*.

8. Regarding the dismissal, the deponent avers that it was occasioned by credible information received from Maseno University indicating that the Petitioner was concurrently employed on permanent and pensionable terms by both the University and the Respondent, as evinced by the annexures marked "BC1", "BC2" and "BC3". He states that such dual employment contravened sections 8, 9 and 23 of the Conflict of Interest Act, the *Leadership and Integrity Act*, section 16 of the *Independent Electoral and Boundaries Commission Act*, Article 77(1) of *the Constitution*, section 12.10(i) and (ii) of the Respondent's Human Resource Manual, Part IV of the Petitioner's letter of appointment dated 16<sup>th</sup> June 2017, and the decision in *Kituku v Council of Legal Education & another (Employment and Labour Relations Petition E209 of 2022) [2023] KEELRC 1357 (KLR)*. The Respondent further maintains that the withholding of the Petitioner's salary during the disciplinary process was lawful and in accordance with section 12.12.2 of its Human Resource Manual. The deponent avers that the dismissal letter clearly set out the reason for dismissal, namely dual employment, and informed the Petitioner of his right of appeal, which he exercised. He asserts that the delay in determining the appeal was occasioned by the lack of quorum arising from the absence of a chairperson and members of the Commission, and urges the Court to dismiss the Petition with costs.
9. The Petition was canvassed by way of written submissions.

### **Petitioner's Submissions**

10. The Petitioner submits at the outset that the issue of dual employment does not arise from the pleadings and ought therefore to be disregarded. He contends that the Petition is confined to constitutional violations in the process leading to his dismissal, which issues, the Respondent has failed to address. In support, he relies on the case of *Galaxy Paints Company Ltd v Falcon Guards Ltd [2000] KECA 215 (KLR)*, where the Court of Appeal held that a court's determination must be anchored on issues arising from the pleadings or those framed for determination. Flowing from the foregoing, the Petitioner identifies the following issues for determination:
  1. Whether the Respondent's stoppage of his salary and subsequent dismissal complied with due process of law;
  2. Whether his rights under Articles 28, 30, 35, 41, 47 and 236(b) of *the Constitution* were violated during the disciplinary process; and
  3. Whether he is entitled to the reliefs sought.
11. On the question of due process, the Petitioner submits that the Respondent unlawfully stopped his salary and benefits at the show-cause stage without complying with Section 12.12.2 of the Human Resource Manual. He argues that this amounted to disciplinary action undertaken without due process, contrary to Article 236(b) of *the Constitution*. He further contends that the decision violated Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act*, as no written reasons were provided, and that the action constituted an abuse of power and an infringement of his right to fair labour practices under Article 41(2)(a). The Petitioner further impugns the disciplinary process as a



jurisdictional nullity. He asserts that, being a Job Grade 6 officer, he ought to have been subjected to the Human Resource Management Advisory Committee (HRMAC), which handles Job Grade 5 (non-CECs) and below, but was instead subjected to the Commission Disciplinary Committee (CDC), whose mandate covers Job Grades 1 to 4 and Grade 5 (CECs only). He relies on *Adan v IEBC* [2024] KEELRC 13491 (KLR), where the court held that bypassing HRMAC denies an employee the right of appeal and renders the process procedurally flawed. On that basis, he submits that the CDC acted ultra vires and its decision is a nullity. He emphasizes that due process under Article 236(b) encompasses the legal competence of the decision-maker, and invokes *Owners of the Motor Vessel "Lilian S" v Caltex Oil Kenya Ltd* [1989] KECA 48 (KLR) for the proposition that jurisdiction is everything and any decision made without it is a nullity. He further relies on the maxim *ex nihilo nihil fit* to argue that an invalid process cannot yield a valid outcome, rendering any inquiry into the merits unnecessary.

12. The Petitioner also submits that the decision to dismiss him made at the Commission's 284<sup>th</sup> Plenary Meeting held on 6<sup>th</sup> January 2023 without the requisite quorum, was a nullity. He relies on the decisions in *Hanson Mugo Njuki v IEBC* [2023] KEELRC 2026 (KLR) and *Adan v IEBC* (supra), where the court held that the said meeting was unconstitutional for want of quorum. He further cites *Mwangi & another v National Biosafety Authority & 13 others* [2025] KEELRC 3646 (KLR) for the proposition that public bodies must strictly adhere to constitutional and statutory requirements. Additionally, he submits that the disciplinary process was vitiated by an inordinate delay of approximately sixteen months, contrary to the Human Resource Manual and Article 47 of *the Constitution*, which delay was not explained by the Respondent.
13. On the communication of the dismissal, the Petitioner submits that the letter dated 19<sup>th</sup> January 2023 was issued when the Commission lacked the minimum constitutional composition, following the exit of commissioners. He points out that three Commissioners had resigned in December 2022; the Chairperson, Chebukati, together with Commissioners Molu and Guliye, exited office on 17<sup>th</sup> January 2023; and Commissioner Irene Masit was under suspension. He contends that, in those circumstances, the secretariat contravened Articles 250(1) and 236(b) of *the Constitution*, when they purported to act in the absence of a properly constituted Commission. He relies on *Macfoy v United Africa Co. Ltd* [1961] 3 ALL ER 1169, for the principle that an act founded on nothing is void, and submits that the dismissal letter was void ab initio.
14. On the alleged violation of constitutional rights, the Petitioner submits that the impugned disciplinary process infringed his rights under Articles 41, 47, 50 and 236 of *the Constitution*. He relies on *Adan v IEBC* (supra), where similar proceedings were found to have violated those provisions. He further contends that his right to access information under Article 35(1) was violated by the Respondent's failure to supply the investigation report prior to the disciplinary hearing, contrary to the requirements of the Human Resource Manual.
15. The Petitioner further submits that the prolonged withholding of his salary violated his rights under Articles 41, 30 and 28 of *the Constitution*. He relies on *Ndwiga v Principal Secretary, Ministry of Health & another* [2024] KEELRC 2703 (KLR), where the court held that failure to pay remuneration amounts to inhumane treatment and servitude; *Mokaya v Christ the King Parish & another* [2024] KEELRC 28 (KLR), where non-payment of salary was held to constitute an unfair labour practice and subjection to indignity; and *Kusow Billow Isaack v Ministry of Interior and Coordination of National Government & 3 others* [2021] KEELRC 1056 (KLR), where working without pay was found to amount to inhuman treatment and a violation of dignity. He maintains that he continued to render services without interdiction or pay, contrary to the HR Manual, and was subjected to prolonged uncertainty without communication, thereby aggravating the violation of his rights.



16. On the reliefs sought, the Petitioner submits that this Court is empowered under Article 23(3) of *the Constitution* to grant appropriate relief where constitutional violations are established. He cites *Adan v IEBC* (supra), where, notwithstanding findings of gross misconduct, the court declared the disciplinary proceedings unconstitutional and granted reinstatement together with payment of withheld salary. The Petitioner also relies on *Hanson Mugo Njuki v IEBC* (supra), where the court held that unreasonable delay in commencing disciplinary proceedings rendered the disciplinary process null and void, and that decisions communicated in the absence of a properly constituted Commission are unconstitutional. He further references *Ndwiga v Principal Secretary, Ministry of Health & another* (supra), where the court awarded general damages, ordered payment of salaries and granted costs upon finding a violation of constitutional rights. In conclusion the Petitioner urges the court to allow the Petition.

### Respondent's Submissions

17. The Respondent submits that the Petition is misconceived, legally untenable, and constitutes an improper attempt to fault it despite its adherence to *the Constitution*, its Human Resource and Administration Manual (2020), and the *Fair Administrative Action Act*. On the issues for determination, the Respondent invites the Court to determine: whether a public officer can hold two concurrent public offices, and whether the Petitioner is entitled to the reliefs sought. From the outset the Respondent submits that as a constitutional commission, it is bound by Articles 2(1), 3, 10 and 20(1) of *the Constitution* and that it complied with all applicable legal provisions in disciplining the Petitioner. It cites its establishment under Articles 88(1) and 248(2)(c) of *the Constitution* and its functions under Article 88(5) and section 3(2) of the IEBC Act. It further relies on *Independent Electoral and Boundaries Commission v National Super Alliance (NASA) Kenya & 6 others* [2017] eKLR, where the Supreme Court underscored the IEBC's obligation to act strictly within constitutional and statutory parameters.
18. The Respondent further submits that upon discovering the Petitioner's employment with Maseno University, it initiated disciplinary proceedings in compliance with Articles 35, 41 and 47 of *the Constitution*, section 41 of the *Employment Act*, the *Fair Administrative Action Act*, the IEBC Act, and section 12.11 of its Human Resource Manual. It maintains that the stoppage of salary was justified under section 12.12.2 of the Manual, to which the Petitioner had bound himself on signing his employment contract. Relying on the case of *Langat v County Public Service Board Kericho County & 2 others* [2022] KELRC 164 (KLR), it submits that it complied with sections 41 and 45 of the *Employment Act* by issuing a show-cause letter dated 9<sup>th</sup> September 2021 outlining five allegations, and thereafter conducting a disciplinary process culminating in dismissal. It states that the dismissal, communicated by the letter dated 19<sup>th</sup> January 2023, was based on the Petitioner's engagement in dual employment. It further contends that it did not impede the Petitioner's right of appeal, noting that he exercised that right through a letter dated 30<sup>th</sup> January 2023.
19. On the question as to whether a public officer can hold two public offices, the Respondent submits that Article 77(1) of *the Constitution* prohibits a full-time public officer from engaging in other gainful employment, while Articles 73(2)(b) and 75(1) require integrity, objectivity, and avoidance of conflict of interest. It further relies on sections 8(b), 9 and 23 of the Conflict of Interest Act, 2025, and section 12 of the *Public Officer Ethics Act*, which prohibit conduct giving rise to actual or perceived conflicts of interest. The Respondent submits that the Petitioner's dual employment violated these provisions and exposed him to a conflict between his duties to the Respondent and his personal interests. It asserts that the Petitioner failed to disclose his employment with Maseno University and thereby breached his ethical and statutory obligations. In support of this position the Respondent cites Felix Kiprono



Matagei v Attorney General & 3 others [2016] eKLR, where the Court held that public officers must avoid situations creating conflict of interest and should not hold two public offices, as this undermines constitutional principles of integrity under Chapter Six. It also cites the case of Kituku v Council of Legal Education & another [2023] KEELRC 1357 (KLR), where the court held that holding two public offices is unlawful unless expressly permitted, and justifies disciplinary action due to the resulting conflict of interest. It therefore maintains that the Petitioner's dismissal was justified.

20. On whether the Petitioner is entitled to the reliefs sought, the Respondent submits that although Article 23(3) of *the Constitution* provides for appropriate reliefs, the Petitioner has failed to plead constitutional violations with precision. It relies on Anarita Karimi Njeru v Republic [1979] KLR 154, which established the requirement for precision in constitutional petitions, and Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, where the Court of Appeal reaffirmed that constitutional claims must not be vague or speculative. Accordingly, the Respondent prays that the Petition be dismissed with costs and that the Court grants any other appropriate orders.

### Disposition

21. The issue for determination can be collapsed into simply whether there were constitutional violations meted out to the Petitioner and what reliefs he is entitled to therefor. It is undisputed that the Petitioner was an employee of the Respondent and he was removed after a disciplinary process. The point of divergence is as to whether there was basis to remove him from his position. The Petitioner asserts that he was terminated unlawfully as the Commission was not lawfully constituted.
22. The Petitioner in his Petition has not articulated constitutional violations with particularity. As held by the Court of Appeal in the case of Anarita Karimi Njeru v Republic (Miscellaneous Criminal Application 4 of 1979) [1979] KEHC 30 (KLR) (Crim) (29 January 1979) (Judgment), if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed. Here, the Petitioner has not laid out with precision the way in which the Respondent infringed on the constitutional rights of the Petitioner. The suit ought to have been filed as an ordinary claim. Nothing here reveals the constitutional threshold was reached. The ordinary claim by the Petitioner was elevated to a constitutional petition with no basis.
23. Notwithstanding the findings in para 22 above, it behoves this Court to establish whether the Petitioner has established by way of his claim any infringement of his rights that would permit the grant of the reliefs he seeks. He was accused of having two engagements in public office. The question the Court poses is whether a public officer can hold two public offices. The answer is found in Article 77(1) of *the Constitution* of Kenya which restricts the activities of state officers to ensure integrity. It prohibits full-time state officers from participating in other gainful employment. The Petitioner was found to hold two public offices and he faults the determination by the Respondent as the Commission was in his view not quorate.
24. The Petitioner was appointed by the Respondent as a County ICT Officer, Job Grade IEBC 6 on 16<sup>th</sup> June 2017. As at the time he was issued with a notice to show cause on 9<sup>th</sup> September 2021, he held another permanent and pensionable position at Maseno University as demonstrated in evidence before the Court. The illegal position he held cannot be wished away and merely because the Commission was not quorate cannot confer upon him any right to be declared a lawful employee of the Commission. He was rightfully removed from the employ of the Respondent as his illegal action of securing employ at Maseno University cannot be upheld by this Court or indeed any other Court as his breach of sections 8, 9 and 23 of the Conflict of Interest Act, the *Leadership and Integrity Act*, section 16 of



the *Independent Electoral and Boundaries Commission Act*, Article 77(1) of *the Constitution*, section 12.10(i) and (ii) of the Respondent's Human Resource Manual, as well Part IV of his letter of appointment dated 16<sup>th</sup> June 2017 cannot be countenanced.

25. The Petitioner is unsuccessful in his quest for the reliefs set out in the preamble to this judgment. Petition is accordingly hereby dismissed with costs to the Respondent.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 20<sup>TH</sup> DAY OF APRIL 2026**

**NZIOKI WA MAKAU, MCIARB.**

**JUDGE**

