



**Munyua v Sikalie & 2 others (Cause E385 of 2023)
[2025] KEELRC 413 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 413 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E385 OF 2023
SC RUTTO, J
FEBRUARY 14, 2025**

BETWEEN

DUNCAN THOITHI MUNYUA CLAIMANT

AND

SAMORA SIKALIE 1ST RESPONDENT

DON SMITH 2ND RESPONDENT

ROBERT NJUGUNA 3RD RESPONDENT

JUDGMENT

1. The Claimant avers in the Memorandum of Claim dated 15th May 2023, that the 1st, 2nd and 3rd Respondents hold the position of Chairman, Treasurer and Co-Treasurer of the Karen Langata District Association, respectively.
2. It is the Claimant's case that he was employed by the Karen Langata District Association (Association) sometime in the year 2015, to do general duties. His gross pay was Kshs 146,765/= together with a fuel allowance of Kshs 15,000/=.
3. It is common ground that on 27th October 2022, the Claimant was sent on compulsory leave with pay. The Claimant avers that sometimes in the year 2022, the Association's bank accounts were frozen owing to a legal dispute in Nairobi High Court Civil Case No. E171/2022- Samora M. Sikalie vs Murtaza Mohammed Ali and 2 others. As such, the Association was unable to meet its financial obligations.
4. According to the Claimant, the suit was compromised on 17th February 2023 and as a result, the suspension of the Association's Bank accounts was lifted and the Association was able to meet its financial obligations including payment of staff salaries.



5. The Claimant contends that despite the suspension on the Association's bank accounts being lifted, the Respondents have jointly and severally failed and or neglected to pay him his salary from the month of October 2022. That further, the Respondents have refused, failed and neglected to pay his salary as and when the same fall due.
6. Against this background, the Claimant prays for the following reliefs against the Respondents:
 - a. An order compelling the Respondents jointly and severally to pay the Claimant all his outstanding salary arrears due and owing to him since the month of October 2022 until payment in full.
 - b. An order compelling the Respondents jointly and severally to henceforth pay to the Claimant his monthly salary in arrears as and when it falls dues.
 - c. Costs.
7. The 1st and 2nd Respondents filed a joint Memorandum of Response dated 26th June 2023 in answer to the Claim. The 1st and 2nd Respondents contend that the 3rd Respondent has been wrongly joined and sued as Treasurer of the Association as he is not a current official hence cannot be sued in his representative capacity of the Association.
8. The Respondents aver that the Association conducted an Annual General Meeting on 31st March 2023 which was aborted and adjourned to 7th April 2023 wherein new officials of the Association were subsequently elected.
9. Whereas the Respondents admit that the Claimant was sent on compulsory leave with pay pending investigations, they contend that he was required to hand over all the property and information in his possession to the Chairman of the Association.
10. According to the Respondents, the Claimant failed and refused to hand over the property of the Association as directed and this grounded its operations as the said property (Laptop) contained crucial information relating to the Association.
11. In the Respondents' view, failure by the Claimant to hand over the Association's properties which were to assist in the investigations was meant to frustrate the said investigations.
12. The Respondents further aver that the information contained in the Association's laptop is deemed its intellectual property. That further, the information contains personal data of the Association's members and the continued retention of the laptop and the information contained therein is deemed personal data breach in violation of the provisions of *Data Protection Act, 2019*.
13. The Respondents further aver that the Claimant was issued with a Notice to Show Cause dated 9th May 2023. That the Claimant acknowledged receipt of the said Notice to Show Cause but failed to respond to the issues raised therein.
14. Subsequently, the Claimant was invited to attend a disciplinary hearing on 2nd June 2023 vide a letter dated 31st May 2023. He did not attend the disciplinary hearing hence the Association proceeded to terminate his services vide a letter dated 2nd June 2023.
15. It is the Respondents' assertions that the Claimant went through a lawful disciplinary process and his services thereafter terminated.



16. Whereas the Respondents aver that the Association is not opposed to the settlement of the Claimant's dues, they maintain that he ought to clear with the Association and hand over its property, documents and information in his possession. That as such, there is no legal basis to claim the orders sought.
17. On account of the foregoing, the Respondents have asked the Court to dismiss the Claimant's suit with costs.
18. The matter proceeded for hearing on 30th October 2024 during which both sides called oral evidence.

Claimant's Case

19. The Claimant testified in support of his case as CW1. It was the Claimant's evidence that he has not been paid his salary since the month of October 2022 even though he remains a member of staff and continues to provide services for the Association.
20. The Claimant further averred that due to the leadership wrangles in the Association, he could not return the laptop in his possession.
21. According to the Claimant, the elections by the Association were marred with wrangles and he is not aware of any other elections that were held.
22. In further testimony, the Claimant stated that the 1st Respondent did not have the capacity to call for him for a disciplinary hearing hence his reason for not attending the disciplinary hearing on 2nd June 2023.
23. The Claimant further averred that he followed the instructions in the letter dated 19th May 2023, from Murtaza Mohammed Ali, hence did not attend the disciplinary hearing.
24. The Claimant was categorical that he is still an employee of the Association.
25. According to him, his outstanding salary is in the sum of Kshs 4,529,420/=.

Respondents' Case

26. Mr. Samora Sikalieh, the 1st Respondent (RW1) testified on his behalf and on behalf of the 2nd Respondent. At the outset, he identified himself as the Chairman of the Association and proceeded to adopt his witness statement and the list and bundle of documents filed on behalf of the Respondents to constitute his evidence in chief.
27. RW1 stated that in the elections held on 7th April 2023, he was elected as the Chairman of the Association, Mburu Ngugi as the Secretary and Don Smith as the Treasurer.
28. That a further election was held on 27th March 2024, where he was re-elected as the Chairman, Don Smith as the Vice Chairman, Fitzgerald Oyoo as the Treasurer and Mburu Ngugi as the Secretary.
29. That as such, the Consent referred to by the Claimant has been overtaken by events.
30. RW1 further averred that he issued the Claimant with the Notice to Show Cause after the elections but he (Claimant) didn't respond hence he invited him for a disciplinary hearing which he also failed to attend.
31. He subsequently issued the Claimant with a letter of termination. He is yet to receive any communication from the Claimant with respect to his outstanding salary.
32. RW1 further averred that the Claimant has never reported to work upon being sent on compulsory leave.



33. According to RW1, the Association does not have a problem paying the Claimant's salary from October 2022 when he was sent on compulsory leave, up to June 2023, when he was terminated from employment. He only needs to hand over the Association's property.

Submissions

34. On his part, the Claimant submitted that his employment would have been terminated if the 1st Respondent had the power and mandate to institute and take him through a disciplinary process. According to the Claimant, the Respondents as at that time they purport to have instituted the disciplinary process, lacked the capacity to do so.
35. The Claimant further posited that according to the terms of the court order of 17th February 2023, it was recognized that until an election was held, the Respondents constituted an interim committee with limited powers and or mandate that is limited to settling and or offsetting the financial obligations of the Association and planning for the elections.
36. The Claimant further submitted that the minutes of the purported meeting of 7th April 2023 at which elections were purportedly held have been made by the 1st Respondent and or his proxies.
37. In further submissions, the Claimant stated that the 1st Respondent has not produced any letter of introduction or other communication from the Registrar of Societies to demonstrate that he is the Chairman of the Karen Langata District Association.
38. It was the Claimant's view that the purported elections of 7th April 2023 did not comply with all laws.
39. In the same vein, the Claimant argued that no elections have been held to date and the 1st Respondent is masquerading as the Chairman without any powers he purports to have. According to the Claimant, the 1st Respondent does not have the power to initiate disciplinary action against him or any other employee of the Association.
40. The Claimant further argued that since the Respondents are merely exercising a limited mandate which does not include initiating disciplinary action against him or any other employee of the Association, the purported disciplinary process that was initiated against him is of no effect, null and void.
41. To this end, the Claimant termed the termination of his employment as of no effect, null and void. In support of the Claimant's submissions, reliance was placed on the case of Nairobi Industrial Court Petition Number 35 of 2012 – George S Onyango vs Board of Directors of Numerical Machining Complex Limited & 2 others.
42. On the Respondents' part, it was submitted that it is untenable for the Claimant to claim that the 1st Respondent is the Chairman of the Association at one point and sue him in that capacity and at another claim that the 1st Respondent isn't the Chairman.
43. It was further submitted by the Respondents that the Claimant has not pleaded unfair termination. On this score, the Respondents sought to rely on the case of David Sironga Ole Tukai vs Francis arap Muge & others, CA NO. 76 of 2014 and argued that a party is bound by its own pleadings. In this regard, the Respondents submitted that no remedy for unfair termination can thus be granted.
44. The Respondents further submitted that the Claimant was taken through a lawful disciplinary process and his services terminated thereafter. In the Respondents' view, there is no legal basis for the orders sought.



Analysis and Determination

45. Flowing from the pleadings by both parties, the evidentiary material on record as well as the rival submissions, it is apparent that there is no dispute regarding payment of the Claimant's salary from October 2022 up to 2nd June 2023. This being the case, the main issue in dispute is payment of the Claimant's salary beyond 2nd June 2023.
46. In order to determine whether the Claimant is entitled to payment of his salary beyond 2nd June 2023, the Court has to first establish whether he is still an employee of the Association.
47. It is the Respondents' case that the Claimant was taken through a lawful disciplinary process and his employment terminated on 2nd June 2023 hence he ceased being an employee of the Association.
48. On the other hand, the Claimant contends that he is still an employee of the Association as the 1st Respondent did not have the power to initiate disciplinary action against him. In this regard, the Claimant contends that the elections of 7th April 2023 referenced by the Respondents were not legally compliant. To this end, the Claimant contends that no elections of the officials of the Association have ever been held to date.
49. In support of its position, the Respondents exhibited a copy of the minutes of an Annual General Meeting held on 7th April 2023 by the Association. According to the minutes, the 1st Respondent was elected as the Chairperson of the Association.
50. In the Claimant's view, the meeting of 7th April 2023 was held by the 1st Respondent and or his proxies.
51. Despite the Claimant's assertions, there is no evidence before this Court that the Annual General Meeting held on 7th April 2023 by the Association and the subsequent elections of the elected officials was challenged in Court and consequently invalidated.
52. It also follows that in the event the Claimant's assertions to the effect that no elections have been held by the Association to date are true, it is reasonably expected that the parties to the consent in Nairobi HCCC No. E171 of 2022 would have moved the Court appropriately.
53. This is more so noting that the said consent was executed on 17th February 2023 and under clause (c) thereof, the Association's elections were to be held in March 2023.
54. Further to the foregoing, the Claimant did not challenge the Respondents' assertions that the Association is an exempt society within the meaning of the Societies Act, hence in holding the elections, it was guided by its own constitution.
55. In view of the foregoing reasons, there is no plausible reason presented before this Court to doubt the capacity of the 1st Respondent as the Chairman of the Association.
56. In the same vein, there is no plausible reason for the Court to question the 1st Respondent's capacity to take disciplinary action against the Claimant. As to whether the said disciplinary action met the legal threshold under Sections 41,43 and 45 of the Employment Act is another issue altogether which is not for determination in this Judgment. As a matter of fact, the Claimant did not plead unfair termination and his evidence did not take this direction.
57. The upshot of the foregoing is that the Claimant ceased being an employee of the Association on 2nd June 2023 following his termination from employment.
58. Accordingly, the Claimant is only entitled to payment of his salary arrears from October 2022 up to 2nd June 2023.



Orders

59. The Claimant is awarded the sum of Kshs 1,183,904.00 being unpaid salary from 1st October 2022 to 2nd June 2023.
60. As it is not in dispute that the Claimant had not cleared and handed over the Association's property and documents in his possession, he shall attend the Association's offices for clearance and payment of his terminal dues.
61. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF FEBRUARY, 2025.

STELLA RUTTO

JUDGE

In the presence of:

Mr. Bibiu instructed by Mr. Onyango for the Claimant

Mr. Ongeru or the Respondents

Kemboi Court Assistant

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.

