



**Nthuci v Principal Secretary, Ministry of Education & 2 others (Petition E012 of 2024) [2025] KEELRC 891 (KLR) (20 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 891 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
PETITION E012 OF 2024**

**ON MAKAU, J**

**MARCH 20, 2025**

**IN THE MATTER OF: ARTICLES 2(1), 3, 10,20,22,23,24,27,41,47,48  
AND 50 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF ARTICLES  
27 AND 47 OF THE CONSTITUTION OF KEYA, 2010**

**AND**

**IN THE MATTER OF: CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
UNDER ARTICLES 27, 41, 47 AND 48 50 OF THE CONSTITUTION OF KENYA, 2010**

**(RIGHT TO EQUALITY AND FREEDOM FROM NON-DISCRIMINATION,  
FAIR LABOUR RELAITONS, AND FAIR ADMINISTRATIVE ACTION)**

**BETWEEN**

**DAVID NJAGI NTHUCI ..... PETITIONER**

**AND**

**THE PRINCIPAL SECRETARY, MINISTRY OF EDUCATION .... 1<sup>ST</sup>  
RESPONDENT**

**THE CABINET SECTETARY, MINISTRY OF EDUCATION . 2<sup>ND</sup> RESPONDENT**

**THE OFFICE OF THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The petition herein challenges the conduct and actions of the 1<sup>st</sup> respondent during her visit to Manyatta Technical and Vocational College on 12<sup>th</sup> September 2024 and his subsequent deployment



to Jeremiah Nyaga National Polytechnic as Senior Principal and Trainer (Mechanical Engineering) with effect from 16<sup>th</sup> September 2024. The petitioner sought the following reliefs: -

- a. A Declaration that the 1<sup>st</sup> Respondent's action of deploying the petitioner was without due process and amounted to an irregular demotion.
  - b. A declaration that the 1<sup>st</sup> Respondent's action of transferring and demoting the petitioner constituted a limitation of the petitioner's rights under *the Constitution* contrary to Article 234 of *the Constitution*.
  - c. A declaration that the 1<sup>st</sup> Respondent's action of transferring and demoting the petitioner was in contravention of the petitioner's right to equal protection and equal benefit of the law and freedom from discrimination as set forth under Article 27 of *the Constitution*.
  - d. A declaration that the 1<sup>st</sup> Respondent's actions of calling the petitioner with threats and false allegations, transferring and demoting the petitioner was in contravention of the petitioner's rights to fair labour practices as set forth under Article 41 of *the Constitution*.
  - e. A declaration that the 1<sup>st</sup> Respondent's actions of calling the petitioner with threats and false allegations, transferring and demoting the petitioner was in contravention of the petitioner's rights to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair as set forth under Article 47 of *the Constitution*.
  - f. The petitioner be awarded damages to the tune of Kshs.10,000,000/- for infringement of his constitutional rights.
  - g. The petitioner be reinstated to the position of Chief Principal at Manyatta Technical and Vocational College forthwith.
  - h. Costs of this petition be borne by the Respondents herein.
  - i. Interest in respect of prayer (f) and (h) at the rate of 14% from the date of judgment until payment in full.
  - j. Such other orders this Honourable court shall deem fit pursuant to Article 23(3) of *the Constitution* of Kenya, 2010.
2. The petitioner filed a Notice of Motion of even date seeking conservatory order to prohibit or restrain the respondent from transferring or, demoting him or in any other way interfering with his employment as the Chief Principal Manyatta Technical and Vocational College pending hearing and determination of the motion and the petition. The petition and the motion are supported by the petitioner's Affidavit sworn on even date. The conservatory order was granted on 20<sup>th</sup> September 2024 pending the determination of the motion.
  3. The respondents filed Replying Affidavit sworn by Elcanah Mosiori on 1<sup>st</sup> October 2024 to oppose both the motion and the petition.
  4. On 2<sup>nd</sup> October 2024, the parties agreed to fast track the petition and therefore the conservatory order was extended until the determination of the petition.

#### **Facts of the case**

5. The petitioner was deployed from Nyeri National Polytechnic to Manyatta Technical and Vocational College as Principal vide a letter dated 20<sup>th</sup> December 2019. Thereafter he rose the rank to Chief Principal.



6. On 12<sup>th</sup> September 2024, the 1<sup>st</sup> respondent made an impromptu visit to the college and demanded for data from the Heads of Department about enrolment of trainees in the College. She then asked the petitioner about the enrolment of students at the college and he gave the number as 316 which was higher than 195 which was the record as at September 2023 and still erroneously reflected in the TVETMIS System.
7. The difference in the numbers was due to delay by the Registrar in updating the data after the system was corrupted in June 2024. The number of 195 did not include the intake done in January, May and September 2024 which could not be uploaded after the excel template was corrupted in June 2024.
8. The petitioner averred that the 1<sup>st</sup> respondent made false allegation that the college had too few trainees than the number in the college records of enrolment. She also complained to the petitioner in the presence of the trainers and trainees that he had given the new trainers occupational standards and curricula (syllabus) since that is within the mandate of principal to do so to help trainers to prepare for lessons.
9. On 16<sup>th</sup> September 2024, he received a letter from the HR Management and Development office under the State Department reposting one Hillary Ngari Kariuki, a new trainer who had reported on 9<sup>th</sup> September 2024 from Meru National Polytechnic.
10. On 17<sup>th</sup> September 2024, he reallocated Hillary's workload to other trainers and also removed him from the college trainer's WhatsApp wall because he had left the college.
11. On 18<sup>th</sup> September 2024 at 6.34am he received a telephone call from the 1<sup>st</sup> respondent enquiring why he was harassing a new trainer known as Hillary by instructing the Heads of Departments to reallocate his workload to other trainers, and by removing him from the trainer's WhatsApp wall. Despite explaining that Hillary had left the college, she accused him of fighting her. She then harshly told him that she was sending people to kick him out of his office and the college.
12. On the same day at 4.05pm, he received an email forwarding a letter dated 16<sup>th</sup> September 2024 deploying him to Jeremiah Nyaga National Polytechnic as a Senior Principal Vocational and Technical Trainer (Mechanical Engineering). The deployment constituted an illegal transfer and demotion since he was being moved from the rank of Chief Principal to that of a Senior Principal.
13. He termed the actions of the 1<sup>st</sup> respondent during her visit to the college, early morning call and the subsequent transfer and demotion illegal and unconstitutional. The same actions had also caused him to suffer mental anguish. He averred that the 1<sup>st</sup> respondent violated Article 27, 41, 47, 75 and 232 (a) of *the Constitution* and clause 11.(a) of Exh.EM-1. He contended that under clause 11.0 (a) of the delegation instrument (Exh.EM-1) transfer of Job Group P required recommendation from MHR MAC which was not the case here.
14. It is further petitioner's case that he is entitled to file the petition because the 1<sup>st</sup> respondent had violated his fundamental rights and *the Constitution* by dint of Article 19,20,21,2,23,159, 160 (1), 162 (2) (a) and 258 of *the Constitution*.
15. On the other hand, the 1<sup>st</sup> respondent averred that she is the Authorized Officer with delegated HR powers and functions from the Public Service Commission (PSC) under circular Ref. PSC/SEC/93/37/VOL.IV/(37) and that visiting and monitoring of institutions is part of her mandate as the authorized office and Principal Secretary.
16. She denied that the petitioner is Chief Principal and averred that he is a Senior Principal Vocational and Technical Trainer Job Group R/Civil Grade 6. She denied the alleged demotion and contended that



the petitioner was transferred in the same position and remuneration. She averred that the petitioner has the responsibility of knowing what was happening in the college, collect data and demographics of the college which he admitted not to have done since January 2024.

17. She further averred that the suit is premature because it was filed before exhausting the internal appeal procedure provided under section 74 of the PSC Act for public officers like the petitioner. Consequently, the court was urged to dismiss with costs the petition and the motion dated 19<sup>th</sup> September 2024 for lack of merits and for being an abuse of the court process.

### Submissions

18. The Petitioner submitted that the dispute herein arises or relate to employment and this court has jurisdiction to determine the dispute by dint of Article 162(2)(a) of *the Constitution* and section 12(1)(a) of the Employment and Relations Court (ELRC) Act. He further submitted that the exhaustion doctrine does not apply to this case since the PSC does not have jurisdiction to remedy violations of human rights. Besides there was urgency in the matter and PSC could not grant conservatory orders sought. Consequently, the local remedy under section 74 of the *Public Service Commission Act* was not viable in the circumstances of the case.
19. He fortified the above submission by citing *Jawara v The Gambia ACmHPR 147/95 – 149/96*, *Mustafa Abdulrahman Khogali v Gulf African Bank Limited (2020) eKLR* and *Mohamed Ali Baadi and others v Attorney General & 11 others (2018) eKLR*. He maintained that section 74 of the PSC Act cannot limit the right of the petitioner to approach the court seeking redress of his human rights.
20. As regards the merits of the petition, he submitted that the 1<sup>st</sup> respondent violated, threatened, and limited his rights to fair labour practices, right to fair administrative action, right to hearing, right to dignity and freedom from discrimination. He cited several authorities to support the above submissions including *Kenya Ports Authority v Munyao & 4 others (Petition E008 of 2023) (2023) KESC 112 (KLR) (Civ) (28 December 2023) (Judgment)*, *Peter Wambugu Kariuki & 16 others v Kenya Agricultural Research Institute (2013) eKLR*, *James Ang'awa Atanda & 10 others v Judicial Service Commission (2017) eKLR* and *Godfrey Odipo Tom v Tabasamu Sacco Limited (2022) eKLR*.
21. Finally, he submitted that he is entitled to the reliefs sought because the 1<sup>st</sup> respondent acted arbitrarily by transferring and demoting him without cause and due process. Consequently, he contended that the said actions were unconstitutional, unlawful and irregular for contravening Article 27, 41, 47, 73(1)(a) & (b), 75(1) and 232(a) of *the Constitution*.
22. To justify the above submissions, he cited *Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 others KECA 328 (KLR)*, *MWK & another v Attorney General & 4 others (2017) KEHC 1496 (KLR)*, *Standard Group Ltd v Jenny Luesby (2018) eKLR*, *Ol pajeta Ranching Ltd v David Wanjau Muhoro (2017) eKLR* and *Gitobu Imanyara & 2 others v Attorney General (2016) eKLR*.
23. On the other hand, it was submitted for the respondents from the onset that the petition is subject to the provisions of the PSC Act and by dint of Section 74 of the Act, he ought to have first exhausted the internal appeal mechanism before coming to court. Consequently, it was submitted that the suit is premature by dint o section 74 of the PSC Act.
24. As regards the merits of the petition, it was submitted that the alleged arbitrary transfer and demotion was not factual. It was argued that pursuant to the 2018 schemes of service for Technical and Vocational Trainers, the petitioner's title changed from Chief Principal to Senior Principal Vocational and Technical Trainer. Consequently, it was submitted that he was transferred in the same position and his benefits were never affected.



25. It was further submitted that the petitioner’s right to fair labour practices under Article 41 of *the Constitution* was not violated since the transfer was conducted within the legal framework established by the PSC and the Ministry of Education, and in adherence to the HR Policies Manual. For the same reason, the alleged discrimination was denied. Besides, it was argued that the petitioner did not adduce any evidence to prove the alleged discrimination in his deployment.
26. During the highlighting of the submission on 23<sup>rd</sup> January 2025, Mr. Gisemba, Learned State Counsel, appearing for the respondents, informed the court that the petitioner was proceeding on terminal leave in February 2025. However, in his brief rejoinder Mr. Nyaga for petitioner did not dispute that allegation but merely stated that the issue of terminal leave was not in the pleadings. He further submitted that the 1<sup>st</sup> respondent had no jurisdiction to transfer or demote the petitioner and urged the court to find that she acted ultra-vires and the court has jurisdiction to determine the petition.

### Issues for determination and analysis

27. There is no dispute that the 1<sup>st</sup> respondent made an impromptu visit to Manyatta Technical and Vocational College on 12<sup>th</sup> September 2024 and registered her dissatisfaction with performance by the petitioner. It is also a fact that by a letter dated 16<sup>th</sup> September 2024, she transferred the petitioner from the said college to Jeremiah Nyaga National Polytechnic as a Senior Principal Vocational and Technical Trainer (Mechanical Engineering) with immediate effect.
28. The issues for determination are: -
- a. Whether the petition offends the doctrine of exhaustion of local remedies.
  - b. Whether the 1<sup>st</sup> respondent violated *the Constitution* and the rights of the petitioner.
  - c. whether the reliefs sought are merited.

### Exhaustion doctrine

29. It is trite law that where *the Constitution* or a statute provide for an alternative procedure of settling disputes, the court should give way to allow the alternative process to run its full course. In the National Assembly v Njenga Karume (2008) 1 KLR the Court of Appeal held that: -
- “In our view, there is considerable merit in the submission that where there is a clear procedure for redress of any particular grievance prescribed by *the Constitution* or an Act of Parliament, that procedure should be strictly followed.”
30. In the instant case, the law cited is section 74 of the PSC Act which provides that:
- “Any person who is dissatisfied or affected by a decision made by an authorised officer or other authority in exercise or purported exercise of disciplinary control against any public officer under this Act may appeal to the Commission.”
31. The 1<sup>st</sup> respondent alleged that she is the authorised officer by dint of the instruments of delegation marked “Exhibit EM-1” dated 30<sup>th</sup> July 2018, and that she exercised her mandate lawfully by deploying the petitioner to Jeremiah Nyaga National Polytechnic. She denied that the deployment amounted to demotion of the petitioner, or violation of his constitutional rights and therefore the court has no jurisdiction over the dispute.



32. However, the petitioner contended that the 1<sup>st</sup> respondent violated *the constitution* by her conduct which was contrary to the conduct expected of a state officer. He further averred that the 1<sup>st</sup> respondent acted ultra-vires by transferring and demoting him from Chief Principal to Senior Principal. The said actions were also allegedly done without any good cause and due process. Consequently, he averred that the doctrine of exhaustion of local remedies does not apply in the circumstance of this case due to the urgency involved and also the fact that the PSC cannot remedy violation of fundamental rights under *the Constitution*.
33. The basis of the objection of jurisdiction by the respondent is section 74 of the PSC Act. The said section provides for appeal from the decision of the Authorised officer or other authority in exercise or purported exercise of disciplinary control against a public officer. The petitioner maintains that the 1<sup>st</sup> respondent acted ultra vires because she had legal mandate to transfer or demote him.
34. Section 2 of the *Public Service Commission Act* defines an Authorised officer as “any officer, body or authority appointed by the commission to perform its delegated functions in a Ministry or state department or any member of the commission.”
35. My reading of the instrument of delegation “Exhibit EM-1” filed by the respondents indicates that the 1<sup>st</sup> respondent was not the authorised officer for purposes of this case. I say so because of the following clauses from the instrument:

“

“1. 0 Preamble

Pursuant to Article 234 (5) of *the Constitution* of Kenya, section 31 of the *Public Service Commission Act*, 2017 and the PSC Regulations, the Public service Commission delegates the Human Resource powers and functions as spelt out in this delegation instrument to the Authorised Officer.”

“3.15 Principal Secretary

The principal secretary shall be responsible to the Authorised officer for: -

(i)…”

36. In view of the above, I find that the 1<sup>st</sup> respondent has failed to prove that she had the delegated powers to transfer or exercise such powers over the petitioner. Accordingly, I hold that she acted ultra vires by usurping the role of the Authorised Officer in the Ministry of Education and thereby denied the petitioner the right of appeal to the PSC under section 74 of the PSC Act. Consequently, the petitioner had the right to access the court to challenge the said illegality.
37. I gather support from the Court of Appeal decision in *Kisumu County Public Service Board & others v Samuel Okuro & 7 others* (2018) eKLR where it held that: -

“We have come to the conclusion that the Governor initiated the removal of the respondents without following the appropriate mechanism. The respondents being County Public Officers, the Governor could not terminate their services without involving the County Board and the County Assembly. In sending the respondents on compulsory leave and terminating the respondent’s contract, the Governor usurped the role of the County Board. This denied the respondent their rights under Section 77 of the County Government Act that allows any County Public Officer that is dissatisfied with the decision of the County



Board in a disciplinary process to appeal to the Public Service Commission. Further, the respondents' Constitutional fundamental rights were violated.”

38. The legal principle coming from the above decision is that where an officer makes a decision, ultra vires, the employee is denied access to make use of internal appeal mechanism and therefore the courts of law should entertain suits brought to challenge the illegal administrative decisions, like in this case.
39. In addition to the foregoing illegality, the transfer was not guided by the values and the principles of public service as it was not procedurally done under clause 11. (a) of the instrument of delegation (Exhibit “EM -1”) which provides that:
- “(a) the positing of officers from one station to another in their substantive capacity within the Ministry shall be undertaken by the Authorised Officer upon recommendation of HRMAC.
  - (b) The Central Human Resource Management Posting Committee (CHRMPC) shall consider and recommend transfer of officers on Job Group ‘Q’ and above for approval by the Public Service Commission.
  - (c) The Administrators of Scheme of Service shall be responsible for transfer of common cadre staff across State Departments in Consultation with the Authorised Officer.”
40. There is nothing in the above clause that gives the 1<sup>st</sup> respondent any power to solely transfer any officer, including the common cadre staff. The power to transfer is only exercisable by the Authorised Officer on recommendation from the HRMAC, or by the PSC on recommendation from CHRMPC.
41. The court further notes that, the timing of the transfer was also not proper, because the court was informed by the defence counsel that the petitioner was due for retirement in the same financial year.

### **Violation of rights**

42. The petitioner alleged that the 1<sup>st</sup> respondent visited Manyatta Technical College without prior notice, demanded data on student enrolment from Heads of Departments and himself. She then alleged that she had intelligence information that the students' enrolment had seriously gone down. She also complained against him in the presence of trainers and trainees concerning course syllabuses he had given to the trainers. He further accused her of unprofessional conduct and of his transfer and demotion without any good cause, and due process.
43. However, the 1<sup>st</sup> respondent maintained that she acted within the law and she had the mandate to transfer the petitioner.
44. I have already made a finding of fact that the 1<sup>st</sup> respondent was not the Authorised officer in this case and as such, she acted ultra vires. Whereas she had the right to make an impromptu visit to the college after receiving intelligent information about the low enrolment of students, she had no right to act unprofessionally contrary to Article 232 (1) (a) of *the Constitution* which requires high standards of professional ethics in the public service.
45. A Principal secretary is a public officer who ought to conduct herself in line with the professional standards prescribed under Article 232 above and not to bully any college principal by quarrelling him in the presence of his juniors and students, or calling him outside working hours to issue threats of retaliation. Supervision in the civil service should be characterized by civility and not bullying, or retaliation against the junior officers through transfers, deployments and demotions. Such high



handedness arouse the court's supervisory duty to protect the rights of the victims from unfair administrative actions.

46. In this case, the petitioner's peace at the work place was disturbed by a transfer ordered by 1<sup>st</sup> respondent acting ultra vires. The transfer was not guided by the values and the principles of public service as it was not procedurally done under clause 11. (a) of Exh.EM -1. It was retaliatory and illegal, and also done without consideration that the petitioner was due for retirement.
47. I further find that the transfer having been done without following the right procedure, amounted to differential treatment of the petitioner which is a violation of Article 27 of *the Constitution*, that guarantees the right to equality before the law and freedom from discrimination.
48. Considering the above matters, I am satisfied that there is evidence to prove that the 1<sup>st</sup> respondent violated the petitioner's right to fair labour practices and right to fair administrative action under Article 41 and 47 respectively of *the Constitution*. There is evidence that the 1<sup>st</sup> respondent acted on unknown "intelligent information" to make the decision she made against the petitioner without any fair opportunity to be heard.
49. Article 236 of *the Constitution* of Kenya, 2010 provides that: -
  - a. Victimized or discriminated against for having performed the functions of office in accordance with this Constitution or any other law, or
  - b. Dismissed, removed from office, demoted in rank or subjected to disciplinary action without due process of law."
50. Having considered all the evidence before the court, it is apparent that the 1<sup>st</sup> respondent subjected the petitioner to unfair disciplinary action without observing the due process of law contrary to Article 47 and 236 of *the Constitution*. Such action also amounted to violation of his right to fair labour practice, aforesaid, and human treatment under Article 28 of *the Constitution*.

## Reliefs

51. In view of the finding above that the 1<sup>st</sup> respondent acted contrary to the Delegation Instrument (Exhibit EM-1), I hold that he is entitled to declaration that his transfer/deployment was without due process and it was irregular.
52. He is further entitled to a declaration that the 1<sup>st</sup> Respondent's action of transferring him denied him right of internal appeal contrary to Article 234 of *the Constitution*.
53. I have already made a finding of fact the transfer of the petitioner was contrary to the laid down procedure and therefore I hold that he is entitled to a declaration that the 1<sup>st</sup> Respondent's action of transferring him contravened his right to fair labour practices, right to fair administrative action, right to human treatment and and freedom from discrimination as guaranteed under Article 41, 47, 28 and 27 of *the Constitution*.
54. He is further entitled to a declaration that the 1<sup>st</sup> Respondent's actions of calling the petitioner outside working hours with threats and false allegations that he was fighting her was in contravention of the petitioner's rights to fair labour practices as set forth under Article 41 of *the Constitution*.
55. The petitioner prayed for an award damages of Kshs.10,000,000 for the infringement of his constitutional rights and cited relevant authorities. I have carefully considered the same in the context



of this case, where it was evident that the petitioner had failed to ensure that the enrolment of all the students were captured in the computer system as required. Taking the said conduct of the petitioner into account, I have formed the opinion that an award of Kshs.1,000,000 is reasonable compensation for the violation of his rights by the 1<sup>st</sup> respondent.

56. I have already made a finding that the 1<sup>st</sup> respondent had no mandate to transfer the petitioner as she did and therefore the transfer was null and void ab initio. Consequently, the petitioner is entitled to be reinstated to the position of Chief Principal at Manyatta Technical and Vocational College as prayed.
57. The suit was necessitated by the 1<sup>st</sup> respondent and therefore I award the petitioner costs of the suit plus interest at court rates from the date of this Judgment.

### **Conclusion**

58. I have found that the petitioners constitutional rights were violated by the 1<sup>st</sup> respondent and as such the reliefs sought are merited. Consequently, I enter judgment for him as against the respondents by granting the following orders:
- a. A declaration that the transfer/deployment of the petitioner was without due process and it was irregular.
  - b. A declaration that the 1<sup>st</sup> Respondent's action of transferring him denied him right of internal appeal contrary to Article 234 of *the Constitution*.
  - c. A declaration that the 1<sup>st</sup> Respondent's action of transferring him contravened his right to fair labour practices, right to fair administrative action, right to human treatment and freedom from discrimination as guaranteed under Article 41, 47, 28 and 27 of *the Constitution*.
  - d. A declaration that the 1<sup>st</sup> Respondent's actions of calling the petitioner outside working hours with threats and false allegations that he was fighting her was in contravention of the petitioner's rights to fair labour practices as set forth under Article 41 of *the Constitution*.
  - e. An award of Kshs.1,000,000 as general damages for the violation of his rights by the 1<sup>st</sup> respondent.
  - f. The petitioner be reinstated to the position of Chief Principal at Manyatta Technical and Vocational College forthwith.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 20<sup>TH</sup> DAY OF MARCH, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

