



**Noor v Maasai Mara University (Petition E020 of 2024)
[2025] KEELRC 759 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 759 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E020 OF 2024**

**AN MWAURE, J
MARCH 7, 2025**

BETWEEN

HASSAN ABDI NOOR PETITIONER

AND

MAASAI MARA UNIVERSITY RESPONDENT

RULING

1. The Petitioner/Applicant filed a Notice of Motion dated 9th October 2024 filed under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. Pending hearing and determination of this Application, a temporary injunction be issued prohibiting the Respondent from creating, instituting, investigating, prosecuting and/or taking such other administrative action against the Petitioner/Applicant with respect to the charges preferred against him in Nakuru Anti-Corruption case No. E002 of 2020 (Republic Vs Professor Mary Khakoni Walingo & 4 Others) and all matters incidental thereto.
 3. Pending hearing and determination of the main suit, a temporary injunction be issued prohibiting the Respondent from creating, instituting, investigating, prosecuting and/or taking such other administrative action against the Petitioner/Applicant with respect to the charges preferred against him in Nakuru Anti-Corruption case No. E002 of 2020 (Republic Vs Professor Mary Khakoni Walingo & 4 Others) and all matters incidental thereto.
 4. Pending hearing and determination of this Application, an order be issued directing the Respondent to unconditionally reinstate the Petitioner/Applicant to his full salary and forthwith cease from withholding any further portion thereof on account of the unlawful suspension.



5. Pending hearing and determination of this Application, an order be issued directing the Respondent to unconditionally reinstate the Petitioner/Applicant to his full salary and forthwith cease from withholding further portion thereof on account of the unlawful suspension.
6. Costs of this Application be borne by the Respondent.
2. The application is expressed to be brought under Rule 17 of the Employment and Labour Relations Court (Procedure) Rules.

Petitioner/Applicant's case

3. The application is supported by the affidavit of the Petitioner/Applicant sworn on even date and attached annexures thereto.
4. The Petitioner/Applicant avers that he was employed as a Driver grade IV and was issued with a letter of temporary appointment on 19th June 2009, which was known as Narok University College as it was known then.
5. The Petitioner/Applicant avers that after completing his probation, he was confirmed on 31st May 2010.
6. The Petitioner/Applicant avers that sometime in 2013, Narok University College, received a fledged charter University by then President His Excellency the late Mwai Kibaki which was renamed to Maasai Mara University now the Respondent in this case.
7. The Petitioner/Applicant avers that the employees of Narok University were deemed to be employees of the Respondent.
8. The Petitioner/Applicant avers that after the conclusion of the transition from Narok University College to the Respondent, he was appointed and confirmed as Driver 3 vide a letter dated 30th March 2016.
9. The Petitioner/Applicant avers that during his employment with the Respondent, he worked diligently and to the best of his abilities, without facing any disciplinary actions for misconduct or breach of duty.
10. The Petitioner/Applicant avers that he was promoted to the rank of Senior Driver, earning a basic salary of Kshs.123,492/= and house allowance of Kshs.55,286/= together with allowances and benefits.
11. The Petitioner/Applicant avers that on 3rd September, 2019, there was a media feature alleging corrupt activities by the Respondent's administrator aired on a local broadcast channel, Citizen Television, in which he was implicated with the Respondent's administrators on misappropriation of funds causing uproar from the public on the absurd allegations raised by the media.
12. The Petitioner/Applicant avers that the Directorate of Criminal Investigations filed proceedings against him and the Respondent's administrators in Nakuru Anti-Corruption case No. E002 of 2020 Republic V Professor Mary Khakoni Walingo & 4 Others.
13. The Petitioner/Applicant avers that before the media exposure, he had no connection with the false allegations regarding his supposed involvement in the scandal. Additionally, aside from the flawed investigations by the Directorate of Criminal Investigations (DCI), no other criminal, administrative, or disciplinary actions were taken against him by or to the Respondent.



14. The Petitioner/Applicant avers that he was suspended by the Respondent's council on 28th August 2020, without pay pending the hearing and determination of the criminal charges.
15. The Petitioner/Applicant avers that the last time he received his full salary was in August 2020, and since then, all subsequent payments have been significantly reduced.
16. The Petitioner/Applicant avers that on 23rd October 2020, the Respondent's council rescinded the initial letter dated 28th August 2020 and revised the terms of the suspension to include half salary, full house allowance, and medical benefits, with the suspension duration remaining indefinite until the conclusion of the criminal charges.
17. The Petitioner/Applicant avers that another case was filed in Nakuru Constitutional Petition No. E028 of 2022 Professor Mary Khakoni Walingo V DCI & 4 others; Prof Simon Kasaine Ole Seno & another Interested parties challenging the propriety of the criminal proceedings and sought to have them quashed for the illegalities committed by the DCI due to sensationalized public opinion.
18. The Petitioner/Applicant avers that the High Court delivered its Judgment on 21st March 2024 in Nakuru Constitutional Petition No. E028 of 2022 quashing the proceedings and prohibiting any further proceedings with respect to the alleged scandal.
19. The Petitioner/Applicant avers that the Respondent's council has neglected to take any action regarding his suspension, leaving him in a state of uncertainty and unfairly depriving him of work and earnings, despite the matter having been resolved.
20. The Petitioner/Applicant avers that he instructed the firm of Ombok & Owuor Advocates LLP to issue a demand letter on 29th July 2024 to the Respondent demanding his immediate reinstatement to employment and repayment of all money owed to him, being salary withheld during his suspension.
21. The Petitioner/Applicant avers that the High Court issued an order in Criminal Revision No. E203 of 2024 Noor Hassan Abdi V Republic on 16th May 2024 pending effect of the allegations to be and the Court ordered that he be immediately discharged from the proceedings in Nakuru Anti-Corruption Case No. E002 of 2020.
22. The Petitioner/Applicant avers that although demands and court orders were issued, the Respondent has failed to respond or take any action.
23. The Petitioner/Applicant avers that the Respondent's actions were illegal offending provisions of the Public Service Commission.
24. The Petitioner/Applicant claims that the High Court orders preventing further investigation into the allegations cannot be reviewed by the Respondent's administrative processes without being sanctioned, thus constituting contempt of court.
25. The Petitioner/Applicant avers that his salary withheld by the Respondent is amounting to Kshs.2,526,244, which continues to accrue since the Respondent has no intention to pay the said monies.
26. The Petitioner/Applicant avers that he continues to suffer financial, mental, and psychological strain due to the Respondent's unfair and unreasonable refusal to reinstate him to employment with full salary.
27. The Petitioner/Applicant avers that the Respondent's actions and omissions are in bad faith, violate justice and court orders, and infringe on his fundamental rights.



28. The Petitioner/Applicant avers that his concerns that if the court intervenes to stop these actions, the Respondent is likely to initiate retaliatory administrative measures against him.
29. The Petitioner/Applicant urged this Honourable Court to grant the orders sought.
30. The Respondent was represented by its Deputy Chief Legal Officer, Alfred O. Nyabochwa.
31. The Respondent did not put any response to the application, and the court directed that the application be disposed of by way of written submissions.

Petitioner/Applicant's submissions

32. The Petitioner/Applicant submitted that the principles for granting of a temporary injunction was set out in *Giella V Cassmass Brown & Co. Ltd* [1973] EA 358 where Spry J. held that: -

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”

33. The Petitioner/Applicant relied on the case of *Mrao Ltd V First American Bank of Kenya Ltd & 2 Others* [2003] KECA 175 (KLR) where the Court of Appeal stated that a prima facie case is one where the material presented to the court indicates that a right has likely been infringed by the opposing party, warranting an explanation or rebuttal. It requires more than just raising issues; the evidence must demonstrate both the infringement of a right and the likelihood of the applicant's success at trial, which is a higher standard than merely having an arguable case.
34. In *Nguruman Limited V Jan Bonde Nielsen and 2 others* [2014] eKLR, it was held that the burden of the party proving a prima facie case must demonstrate a clear and undeniable right that is directly threatened by the act they seek to restrain. The court's role is to verify that, based on the pleadings, the person praying for an injunction has a right that has been or is at risk of being violated.
35. The Petitioner/Applicant submitted that he has demonstrated a prima facie case, as his rights were violated despite the absence of any pending criminal charges or administrative or disciplinary proceedings against him by the Respondent. His suspension from duty continues to date, with the Respondent withholding his salary and other emoluments. The Petitioner/Applicant also contended that the indefinite suspension and withholding of his salary, in the absence of criminal proceedings, amounted to a violation of his rights to fair labour practices, fair administrative action, and fair hearing.
36. The Petitioner/Applicant relied on the Court of Appeal case of *Said Ahmed V Manasseh Denga and Another* [2019] eKLR where it was held as follows:

So too, 'where, going by the material placed before it at an inter-parte hearing of an application for injunction, it appears to the court that the plaintiff has a strong case, like where it is clear that the defendant's act complained of is or may very well be unlawful, the issue of whether or not damages can be an adequate remedy for the plaintiff does not fall for consideration. A party should not be allowed to maintain an advantageous position he has gained by flouting the law simply because he is able to pay for it. Support for this view is to be found in the Court of Appeal decision in the case of *Aikman vs Muchoki* [1984] KLR



353.' See the case of Joseph Mbugua Gichanga vs Co-operative of Kenya Ltd [2005] eKLR per Maraga, J. (emeritus Chief Justice).

37. In Joseph Siro Mosioma V Housing Finance Company of Kenya Limited and 3 Others [2008] eKLR, the court held that Damages are not an automatic remedy when deciding whether to grant an injunction. They cannot substitute for the loss caused by a clear breach of the law. A party's financial strength is not always a reason to refuse an injunction, and a party should not be forced to accept damages instead of a protected legal right.
38. The Petitioner/Applicant submitted that the Respondent breached the law, and his rights ought to be protected. The fact that his withheld wages and emoluments can be quantified becomes irrelevant.
39. The Petitioner/Applicant submitted that this Honourable Court has to compare the injury which would be sustained by the Petitioner/Applicant if an injunction was denied and by the Respondent if the injunction were granted, thus a balance of "inconvenience". The Petitioner/Applicant relied on the case of Pius Kipchirchir V Frank Kimeli Tenai(2018) eKLR the court stated that the balance of convenience in favour of the Plaintiff means that if an injunction is not granted and the suit is later decided in the Plaintiff's favour, the inconvenience to the plaintiff would be greater than the inconvenience to the Defendants if an injunction is granted but the suit is dismissed. Essentially, plaintiffs must show that the inconvenience to them would be greater than the inconvenience to the defendants.
40. The Petitioner/Applicant submitted that the inconvenience that will be caused to him will be higher than that which will arise to the Respondent if the injunction is denied. The Petitioner/Applicant also submitted that he has continued to suffer due to the unfair suspension, and he had anxiety and uncertainty about his livelihood. The Petitioner/Applicant further submitted that denying granting the injunction in his favour would amount to condemnation without fault and this is injurious as the balance of convenience therefore lies in his favour.
41. The Petitioner/Applicant urges this Honourable Court to allow the application by granting the prayers as prayed.
42. The Respondent did not file their submissions.

Analysis and determination

43. Having considered the application, supporting affidavit and the submissions on record, the issue for determination is whether the application is merited.
44. The Honourable Court revised its rules and implemented them via [Legal Notice No. 133 of 2024](#) dated 16th August 2024. Interlocutory applications and temporary injunctions are found under Rule 45 of the Employment and Labour Relations Court (Procedure) Rules 2024. The principles for granting injunctions were settled in the case of Giella V Cassmass Brown & Co. Ltd [1973] EA 358, which has been precluded in the earlier part of this ruling.
45. There is no doubt that the Petitioner/Applicant was suspended from employment in August 2020, and even after being acquitted, no action has been taken by the Respondent to lift the suspension. This Honourable Court understands the irreparable injury that has been caused to the Petitioner/Applicant by not working for 5 years and waiting in anticipatory anxiety about his fate.
46. The Respondent has a disciplinary process which needs to be followed, and at the same time, the said disciplinary process has not yet been fully exhausted. The Respondent need to initiate the disciplinary process.



47. In *Nguruman Limited V Jan Bonde Nielsen & 2 Others*(supra), the Court of Appeal stated as follows:

“With respect to the issue of irreparable loss, I am aware that the general position of the courts of equity has always been, that in determining whether to exercise its discretionary power to grant an equitable remedy, a court will not grant the remedy where the result would necessitate a breach by the respondent or defendant of a prior contract with a third party, or would compel the respondent (defendant) to do that which he is not lawfully competent to do and the applicant must show that in seeking the relief, he does not call upon the other party to do an act which he is not lawfully competent to do... Whereas, the damage may be quantified, the fact that the source of livelihood of third parties and their families are likely to be adversely affected in the meantime unless the injunction sought is granted, is not totally far-fetched and, in my considered view, does tilt the balance of convenience in favour of the maintenance of the status quo.”

48. Following the above-mentioned case, the court acknowledged that while the damages could be quantified, the potential adverse effects on the livelihoods of third parties and their families justified granting the injunction to maintain the status quo. In the instant case the court will urge the Petitioner to proceed with the main petition.

49. The applicant has been on half salary since August 2020. There does not seem to be any evidence that the Respondent has taken any steps since then to give him a chance to defend himself.

The Court has not been availed reasons for the suspension of the applicant from employment. It is unfair labour practice to keep an employee in limbo for so many years contrary to article 41 of *the Constitution* of Kenya 2010. The Respondent should make a decision either way.

50. On 16th May 2024 the applicant was discharged in the anti-corruption case in the High Court Criminal Revision Case E203/2024 and the Respondent is well aware of the same.

51. The court finds that the Respondent has had sufficient time to invite the Petitioner for disciplinary hearing and decide on his fate rather than keeping him in a state of uncertainty for so many years.

52. The court having said so however will defer to consider prayers for reinstatement of the Petitioner to his employment at this interlocutory stage. Instead the court orders the Respondent to pay the Petitioner his full salary to date. Petition should be fixed for hearing with immediate effect.

53. Costs will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 7TH DAY OF MARCH, 2025.

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 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 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 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

