



**Ajwang v Office of the County Secretary, Nairobi City County & another  
(Petition E029 of 2025) [2025] KEELRC 1551 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1551 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E029 OF 2025**

**B ONGAYA, J**

**MAY 29, 2025**

**IN THE MATTER OF ARTICLES 2, 3, 20, 21, 22, 23, 24, 27, 28,  
41, 47, AND 50 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF  
FUNDAMENTAL RIGHTS UNDER ARTICLES 2, 3, 20, 21, 22, 23,  
27, 28, 41, 47, AND 50 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT, NO. 4 OF 2015**

**IN THE MATTER OF THE COUNTY GOVERNMENTS ACT, 2012**

**BETWEEN**

**MICHAEL AUKA AJWANG ..... PETITIONER**

**AND**

**OFFICE OF THE COUNTY SECRETARY, NAIROBI CITY  
COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner filed the amended petition and supporting affidavit dated 04.03.2025 through Jackson & Stanley Advocates. He sought the following reliefs:
  - a. A declaration that the suspension of the petitioner is unfair, unconstitutional, illegal, null and void.
  - b. An Order directing the respondents, their agents, servants and officers to allow the petitioner resume work with immediate effect with full salary and benefits paid to him backdated from November 2024.



- c. A permanent injunction restraining the respondents from proceeding with any further disciplinary proceedings against the petitioner in so far as contained in the suspension letter dated 16<sup>th</sup> November 2023.
  - d. An Order of Certiorari issued to bring before the Honourable Court the suspension letter dated 16<sup>th</sup> November 2023 issued to the petitioner and quash the same accordingly.
  - e. Damages for unlawful suspension and breach of the petitioner's constitutional rights under *the Constitution*.
  - f. Any other relief that this Honourable Court will deem fit and just to grant.
  - g. Costs of this suit.
2. The petitioner's case was as follows:
- a. The petitioner is a public officer employed as a Purchasing Officer I with the 2<sup>nd</sup> respondent, protected under Article 236(b) of *the Constitution*.
  - b. The 1<sup>st</sup> respondent suspended the petitioner through a suspension letter dated 16.11.2023.
  - c. Under Section 59 of the *County Governments Act*, any disciplinary control powers over the petitioner are vested in the county public service board, and therefore, the 1<sup>st</sup> respondent lacked authority to suspend the petitioner.
  - d. The suspension was unreasonable and unfair because it was without the relevant statutory authority or in usurpation of the statutory authority vested in the county public service board.
  - e. In addition, the petitioner has neither been charged in any court of law with corruption or economic crime offence to permit invocation of the provisions of Section 62 of the *Anti-Corruption and Economic Crimes Act* nor charged with a serious criminal offence to warrant suspension under Section 71 of the *Public Service Commission Act*, 2017, to justify the unlawful, unwarranted and prolonged suspension he has been subjected to since November 2023.
  - f. The petitioner has been enduring the unlawful suspension, which is a continued deprivation and violation of his constitutional rights, and thus craves the protection of this Court.
3. The petitioner particularised the violation of *the Constitution* of Kenya as follows:
- i. Unreasonably suspending the petitioner without the relevant legal authority violates his right under Article 47(1), which confers on him the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.
  - ii. To the extent that the petitioner's suspension was unlawful, it amounts to unfair labour practice in violation of Article 41(1) on fair labour practices.
  - iii. The unlawful suspension being sustained against the petitioner is a violation of his right to fair employment practices in violation of Article 41.
  - iv. The continued sustenance of the impugned suspension also violates the petitioner's human dignity as contained in Article 28 because it unlawfully deprives him of his employment and full income.



- v. The petitioner’s right to equal protection and equal benefit of the law under Article 27, which includes the full and equal enjoyment of all rights and fundamental freedoms unless lawfully curtailed after due process, by a lawful authority, has been violated.
  - vi. The petitioner’s unlawful suspension violates Article 24 as it limits his rights in the Bill of Rights in contravention of the stated statutory law, which limitation is unreasonable and unjustifiable to the extent of the provisions of statutory law.
4. The respondents filed a replying affidavit of Janet Opiata sworn on 02.04.2025, through Fredrick Achola, Advocate. It was urged as follows:
- i. The petitioner has been an employee of the 2<sup>nd</sup> respondent, and is currently on suspension and half salary.
  - ii. On 10.11.2023, the Ethics and Anti-Corruption Commission (EACC) wrote to the 2<sup>nd</sup> respondent informing it that the Commission had investigated the allegations of bribery and possession of unexplained wealth against the petitioner.
  - iii. Upon receipt of the communication from EACC, the 1<sup>st</sup> respondent suspended the petitioner at half pay per Section 44(3) of the County Government Act, which recognizes the County Secretary as the Head of County Public service and who exercises disciplinary control under delegated functions by the County service Board under Section 86 of the [County Governments Act](#).
  - iv. The County Secretary’s act of suspending the petitioner was in line with well-laid-down statutory provisions and was in order.
  - v. Section 62(1) of the Anti-Corruption and Economic Crimes (ACEC) Act, 2003 provides that a public officer charged with corruption or economic crime shall be suspended at half pay with effect from the date they are charged. Section 62(2) provides that a suspended public officer on half salary shall continue to receive the full amount of any allowances.
  - vi. The petitioner was under investigation and was subject to court proceedings in ACEC Suit No. E012 of 2023 (OS), in which the EACC, the petitioner and seven (7) other interested parties related to the petitioner recorded consent to settle the dispute under investigations. The terms of the said consent entered in court were per a settlement agreement dated 15.07.2024, as follows:
    - a. Kshs. 22,000,000.00 being the cost of parcel number SouthSakwa/Barkowino/6934 to be paid within 30 days from the date of entry of judgement.
    - b. Kshs. 176,000,000.00 being cost of development of Hydeout Riviera Hotel to be paid within 12 months from the date of judgement.
    - c. In default thereof, the Hydeout Riviera Hotel measuring approximately 0.19 Ha be hived off from parcel number Kisumu/Reru/1454 and execution to issue and the decretal sum to accrue interest at 12% per annum.
    - d. Forfeiture of Kshs. 799,000.00 cash seized from the defendant.
  - vii. The petitioner remains suspended as the terms of the consent agreement have not been met.



- viii. The Office of Human Resource has not received communication from the EACC regarding the fulfilment of the consent terms. There is therefore a need to uphold the petitioner's suspension until further communication from EACC.
5. The petitioner then filed his further affidavit sworn on 30.04.2025 through Jackson & Stanley Advocates. The petitioner stated as follows:
- a. He had never seen the contents of the letter dated 10.11.2023 from EACC as alleged by the respondents.
  - b. Upon conclusion of investigations, a civil forfeiture suit was filed in ACEC Suit E012 of 2023 against some of his assets, which the EACC deemed as unexplained wealth.
  - c. The Court in ACEC Suit E012 of 2023 entered a Consent Judgment dated 17.07.2024.
  - d. The said Consent Judgment is self-executing as there is a properly defined mode of its execution at clause (iii) thereon. Therefore, it was insincere of the respondents to make averments concerning execution when they were not parties to the consent, and more so without proof.
  - e. He has not been charged in any court of law with corruption or economic crime to warrant the invocation of the provisions of Section 62 of the ACEC Act, which the respondents are relying on to justify the impugned unlawful, unwarranted and prolonged suspension he has been subjected to. That the Court held in *Kinyae vs. Public Service Commission & 2 others (Employment and Labour Relations Petition E044 of 2023) [2024] KEELRC 791 (KLR)*, that suspension can only be sustained in terms of Section 62 of the *Anti-corruption and Economic Crimes Act, 2003* if there are criminal charges lodged.
  - f. Additionally, he has not been charged with a serious criminal offence to warrant suspension even under Section 71 of the Public Service Act, 2017.
  - g. The respondents' reliance on Section 86(1) of the *County Governments Act* is erroneous because he who alleges must prove. Whereas the said statutory provision requires delegation in writing, the respondents have not provided any proof of such delegation in writing by the County Public Service Board to the Office of the County Secretary.
  - h. The Court of Appeal held in *Onudi vs. Okuro & 7 others (Civil Appeal 79 of 2018) [2023] KECA 272 (KLR)*, that the act of suspending unless delegated under the provisions of Section 86 of the *County Governments Act*, was the exclusive remit of the Public Service Board and that in absence of such proof of delegation in writing under the said provisions, the respondents acted without authority.
6. The petitioner filed his written submissions dated 30.04.2025, while the respondent opted not to file submissions.
7. The Court has considered the material on record and returns as follows:
- a. As submitted for the petitioner there has not been or pending criminal case about alleged economic crimes by the petitioner and section 62 of the of the *Anti-corruption and Economic Crimes Act, 2003* does not apply in the circumstances of the case.
  - b. The parties mutual evidence is that the petitioner was suspended by the letter dated 16.11.2023 upon investigations by the Ethics and Anti-corruption Commission about the allegations of bribery and possession of unexplained wealth levelled against the petitioner. The letter required the petitioner to show cause within 21 days from the date of the letter why disciplinary action



leading to his dismissal should not be taken against him. He was suspended on half salary, full house allowance and medical insurance remittances. There is no material on record to suggest that the petitioner responded within the 21 days. The Court's inference is that on a balance of probability he appears not to have responded.

- c. The material on record shows that the investigation against the petitioners and others was subject of ACES Suit No. E012 of 2023 (OS) and the suit was determined by a settlement agreement dated 15.07.2024 and a consent dated 17. 07.2024 was concluded in terms not disputed between the parties under for forfeiture of unexplained assets or wealth. By that undisputed settlement agreement and consent it appears to the Court that the reasons for the suspension were valid and fair.
- d. It is urged for the petitioner that the 1<sup>st</sup> respondent lacked authority to suspend the petitioner because the authority to do so was vested in the county public service board. For the respondents it is submitted that the Board had delegated the authority to the 1<sup>st</sup> respondent. Section 86 of the [County Governments Act](#) states:
  - (1) The County Public Service Board may delegate, in writing, any of its functions to any one or more of its members and the county secretary, county chief officer, sub-county or Ward administrator, village administrator, city or municipal manager and town administrators.
  - (2) The provisions of this Part shall apply to the person to whom the powers are delegated under this section.”
- e. By that section the Court returns that the county public service board is empowered to delegate the authority to the county secretary, the 1<sup>st</sup> respondent. It is urged and submitted for the petitioner that the respondents have failed to exhibit the written delegation of authority to suspend. However, while alleging that there exist no such delegation, the petitioner has failed to show by evidence from the board that the delegation indeed was not made. The petitioner has not shown that it made the inquiry about the delegation and it was denied. It is that he who alleges must prove the allegation. The petitioner offers no evidence to show the board did not delegate to the 1<sup>st</sup> respondent the power to suspend as was exercised against the petitioner. The Court returns that upon a balance of probabilities, the 1<sup>st</sup> respondent exercised the board's delegated power to suspend. In particular, the petitioner appears to have failed to invoke section 75 of the [County Governments Act](#) on the alleged irregularity of procedure in the suspension thus,

If it comes to the attention of the County Public Service Board that there is reason to believe that any process or decision under this Part may have occurred in an irregular or fraudulent manner, the County Public Service Board shall investigate the matter and, if satisfied that the irregularity or fraud has occurred, the County Public Service Board may—

  - (a) revoke the decision;
  - (b) direct the concerned head of department or lawful authority to commence the process afresh; or
  - (c) take any corrective action including disciplinary action.”
- f. It is urged for the respondents that the reason the suspension has not been lifted is that the terms of the consent agreement have not been met and therefore the petitioner has continued to be on suspension. Further, the respondents have not received communication from the



Ethics and Anti-Corruption Commission about satisfaction of the consent. For the petitioner it is submitted that the consent agreement and consent order therefrom is self-executing and can be satisfied in the suit it was recorded per provisions of the Civil Procedure Act and Rules.

- g. It appears to the Court that the petitioner has not established violation of rights and fundamental freedoms as alleged because the reason for suspension appears valid and fair, the investigations leading to suspension as undertaken by the Ethics and Anti-Corruption Commission concluded in a consent order but which appears not satisfied, the petitioner has not shown that his culpability or lack of it has been conclusively determined in view of the ensuing investigations subject of the suspension, and, the petitioner has not raised his grievances toward s lifting of the suspension with the county public service board and subsequent appeal to Public Service Commission, as prescribed in the County Governments Act. The Court considers that such statutory provisions offer sufficient pathways for a remedy to the petitioner as may be appropriate. The statutory pathways should be exhausted in view of the long pending suspension. It should be that the pending suspension should be resolved expeditiously to mitigate losses to tax payers in the circumstances, that the petitioner has been earning for a long time half salary, full housing allowance and medical insurance cover but without rendering public service and principles in Article 232 of the Constitution on economical and prudent use of public resources apply.
- h. The petition is found liable to dismissal.
- i. There should be no orders on costs in view that parties continue in the employment relationship.

In conclusion, the petition is dismissed with no orders on costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29<sup>TH</sup> MAY, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

