



Wairimu v Uhai East African Sexual Health and Rights Initiative (Uhai-Eashri - Herein Represented by the Board Shamim Salim, Christian Rumi, Penina Mwangi, Muthoni Ngige & Julius Kagwa) & 4 others (Constitutional Petition E222 of 2022) [2025] KEELRC 1564 (KLR) (29 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1564 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E222 OF 2022**

B ONGAYA, J

MAY 29, 2025

IN THE MATTER OF ARTICLES 2(1), 10, 19, 20, 21(1), 22, 23, 25, 27, 28, 29, 30, 31, 33, 35, 41(1), 41(2), 47, 48, 165(3), 258 & 259(1) OF THE CONSTITUTION OF KENYA 2010;

AND

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS ENSHRINED IN ARTICLES 27, 28, 29, 30, 31, 40, 41, 47 & 48 OF THE CONSTITUTION OF KENYA 2010;

AND

IN THE MATTER OF CONTRAVENTION OF SECTIONS 45 & 49 OF THE EMPLOYMENT ACT 2007;

AND

IN THE MATTER OF CONTRAVENTION OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTIONS ACT 2015;

AND

IN THE MATTER OF CONSTRUCTIVE DISMISSAL AND UNFAIR LABOUR PRACTICE IN RESPECT TO DR STELLAH BOSIRE WAIRIMU

BETWEEN

STELLAH BOSIRE WAIRIMU PETITIONER

AND

UHAI EAST AFRICAN SEXUAL HEALTH AND RIGHTS INITIATIVE (UHAI-EASHRI - HEREIN REPRESENTED BY THE BOARD SHAMIM SALIM, CHRISTIAN RUMI, PENINA MWANGI, MUTHONI NGIGE & JULIUS KAGWA) 1ST RESPONDENT

MUKAMI MARETE 2ND RESPONDENT



IRENE MOLONEY	3 RD RESPONDENT
LYNETTE ALUOCH	4 TH RESPONDENT
AGATTA WANJIRU	5 TH RESPONDENT

JUDGMENT

1. The petitioner filed the Petition dated 19.12.2022. The petitioner prayed for:
 - a. A declaration that the actions of the respondents complained of herein are unconstitutional, illegal, unfair and amount to unfair labour practices.
 - b. A declaration that the respondents violated Article 27 of *the Constitution* by acting in a discriminatory manner against the petitioner and denying her equal protection of the law.
 - c. A declaration that the respondents violated articles 28, 29 and 30 of *the Constitution* by subjecting the petitioner to acts of indignity, cruel and inhuman treatment and forced labour/ slavery by denying him his rightful pay earned for services provided and by unfairly removing him from service.
 - d. A declaration that the respondents violated Article 35 of *the Constitution* by the infringement of the petitioner’s personal private information and sharing it.
 - e. A declaration that the respondents violated Article 31 of *the Constitution* by the infringement of the petitioner’s privacy by sharing her medical information without her consent.
 - f. A declaration that the respondents violated Article 41 of *the Constitution* by purporting to engage in discriminatory and unfair labour practices.
 - g. A declaration that the respondents violated Article 47 of *the Constitution* and section 4 of the *Fair Administrative Action Act* by unilaterally making the decision to deny the petitioner’s relocation request without reason and following due process and denying her the opportunity to a fair hearing by denying her access to her work email and further denying her favourable work conditions.
 - h. A declaration that the respondents constructively dismissed the petitioner.
 - i. A declaration that the removal of the petitioner from her service was unfair, unlawful and unconstitutional.
 - j. An order that the respondents pay the petitioner all her dues computed under her contract of service and the respondent’s policies, including six months’ salary in lieu of notice, service pay computed every year of service, severance pay duly computed, payment for her unutilized leave days and a further 12 month pay for unfair treatment.
 - k. An award of general damages for mental anguish and mental health breakdown attributable to the respondent’s violations herein.
 - l. Award of general damages for discrimination against the petitioner as attributable to the respondents.



- m. An order compelling the respondents to absolve the petitioner in writing of any wrongdoing to be internally shared with staff and provide a further public written apology to be shared with the relevant stakeholders in a format acceptable to the petitioner.
 - n. An order that the respondents bear the costs of this petition.
 - o. Any other remedy.
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition. The petitioner's case is as follows:
- a. That she is a trained medical doctor of repute with numerous accolades both locally and internationally, namely; the Commonwealth Point of Light Award from H.E. Queen Elizabeth, The Accountability International Recognition for work done on human rights and social justice for vulnerable and underserved communities in Kenya.
 - b. That she is a recipient of the Top 40 Under 40 most influential Kenyans, the Top 20 Faces of Science Kenya and the Top 100 Influential Kenyans among others.
 - c. That she was employed by the respondent as a Co-Executive Director vide a letter of appointment dated 20.12.2018 and commenced employment on 07.01.2019.
 - d. That her reporting lines were to the 1st respondent board members.
 - e. Just after she had been confirmed to be a Co-Executive Director of UHAI-EASHRI the petitioner was nominated as the County Executive Committee Member of Health (CEC) for Nairobi County in 2019, a position that she declined to take. Since she wanted to serve vulnerable and marginalized communities in alignment to the mandate of UHAI EASHRI.
 - f. It is the petitioner's case that she served the respondent with exceptional vigour, diligence and industry that saw her win accolades and admiration.
 - g. On a periodic basis, primarily annually, the petitioner was given performance targets which targets were set by the 1st respondent board of directors and a periodic review was conducted to ensure that she met her performance targets; and was not found wanting in her performance during the periodic reviews throughout her tenure.
 - h. That she understood and respected all policies relating to her employment and did not violate them.
 - i. It is the petitioner's case that her troubles began, when during her employment, she fell in love with a gentleman. That she took the step to notify the 1st respondent board of this development, given that the said gentleman had the potential of having a business relationship with UHAI EASHRI. However, the individual never received funding from the 1st respondent during the petitioner's tenure.
 - j. The 1st respondent placed the petitioner's partner as a spouse in the medical cover provided to the petitioner by the 1st respondent.
 - k. The petitioner brought to the attention of the 1st respondent through its Chair, Rhoda Mshana and the 2nd respondent, Mukami Marete an incident where she had been abused by a former board member who went ahead to resign in an email dated 03.01.2022.



- l. In her email of 31.01.2022, the Chair of the board called for an urgent board meeting having been informed that the board member wanted to rescind his resignation and sought to reclaim the position he had resigned from.
- m. Thereafter the 1st respondent's co-chairs Shamim Salim and Rhoda Mshana communicated with the petitioner and the former board member in an attempt to get more information about the abuse and harassment.
- n. The former board member admitted to abusing the petitioner, however, he insisted on being reinstated. The petitioner states that she made it clear to the board that she was uncomfortable working with the board member again.
- o. The 1st respondent board members appointed co-chair of the board, Shamim Salim as the contact person to the board member who had allegedly abused the petitioner to mediate the matter.
- p. On 31.01.2022 the petitioner wrote an email to the 1st respondent's chair of the board expressing her dissatisfaction with the insistence of dialogue with the former board member who had allegedly abused her.
- q. Shamim Salim in numerous phone and WhatsApp conversations with the petitioner entertained the idea of reinstating the former board member, insensitive to the petitioner's plight and the hostile work environment such a decision would have on her.
- r. It is the petitioner's case that instead of complying with the organizational policy that does not condone abuse and harassment in any form, the 1st respondent co-chairs and board members continued piling pressure on her to let go of the matter.
- s. On 31.01.2022 the 1st respondent's board unanimously decided not to readmit the former board member after numerous meetings with the petitioner as well as the former board member.
- t. On 04.02.2022 the 1st respondent's board chairperson Rhoda Mshana apologized to the petitioner for the miscommunication, expressing that they had no intention to harm her and instead wanted to offer her an opportunity to take time off and get well as her mental health had substantially deteriorated.
- u. Recognizing the trauma the petitioner experienced, the board encouraged the petitioner to seek professional help through psychotherapy which was paid for by the 1st respondent.
- v. On 16.03.2022 having experienced a traumatic season, the petitioner considered moving in with her partner in Uganda, where she could receive care and support and be with her family. She first informed the 2nd respondent, Mukami Marete of her desire to move her family, which was met with a positive response.
- w. On 09.05.2022 the petitioner wrote to Rhoda Mshana informing her of her decision to relocate her family, as well as requesting support for relocation as provided by the 1st respondent's manual.
- x. On 10.05.2022 the 1st respondent, its members and the petitioner were served by a former board member, Noah Mirembe, claiming that he had been unfairly dismissed from serving on the 1st respondent's board.



- y. The 1st respondent board members engaged lawyers and it was agreed that the board would officially alert the staff members of the existence of the suit before the end of the week.
- z. On 23.05.2022 Mukami Marete noticed that the board had not officially informed the staff of the suit and went ahead to urge the board to haste the communication.
 - aa. In her capacity as the 1st respondent board co-executive director, the petitioner decided to write to the staff members informing them about the suit,
 - ab. The petitioner wrote to the 1st respondent to support her to pay for the cost of the suit as she had been sued in her official capacity as the co-executive director of UHAI, however, her request was rejected, yet every other person sued in their name in the suit received legal support from the 1st respondent.
 - ac. The petitioner later requested to join her family because her mental health had worsened, however, her proposal to relocate and join her family was rejected.
 - ad. The petitioner states that her request was rejected without much consideration, exposing her further to mental anguish and worsened her mental health.
 - ae. The petitioner continued to be ignored numerously by the board and her mental wellness deteriorated further because the working environment had become hostile for her.
 - af. The petitioner states that the two long-serving 1st respondent board members prematurely resigned owing to how the matter of the petitioner had evolved to her being harassed, abused and discriminated by the 2nd respondent and the 1st respondent board members.
 - ag. On 31.05.2022 an email thread was begun by one of the staff members, the 4th respondent Lynette Aluoch, who was joined by the other staff members, the 3rd respondent Irene Moloney, and the 5th respondent Agatta Wanjiru abusing and attacking the petitioner.
 - ah. On the night of 31.05.2022 at 22:49 the petitioner received a letter via her gmail address, sending her on compulsory leave.
 - ai. On 13.06.2022 at 20:02pm, the petitioner was issued with a Show Cause letter asking her to show cause why disciplinary proceedings should not be taken against her for violation of the organization's policy and for failing to meet her performance targets.
 - aj. On 14.06.2022 the petitioner lost access to her work email, which issue she raised via email to the 1st respondents who responded via Christian Rumi that they would not give the petitioner access to her work email.
 - ak. It is the petitioner's case that blocking her from accessing her email was done by the respondent to frustrate her defence and to assist the respondents achieve a pre-determined position of ending her career with the 1st respondent.
 - al. The petitioner states that the procedure adopted by the 1st respondent to suspend her and initiate a disciplinary process was unfair and not consistent with the 1st respondent's human resource policies and practice, the board of management manual and the operations manual. That she was subjected to a procedure leading to her



termination when she had never been subjected to any form of warning or performance evaluation over the matter raised in the letter instructing her to undertake compulsory leave.

- am. Frustrated by the rapidly evolving issues and the increasing toxicity, the petitioner states she faced multiple mental health breakdowns and had to be hospitalized and treated and after the hospitalization subjected to a long rehabilitation process for her mental health.
- an. On 20.06.2022 compelled by the frustrations and denial of access to the work environment, the petitioner states she was forced to resign from her position as the Co-Executive Director in what she terms constructive dismissal arising from UHAI's board unlawful and unfair actions.
- ao. The petitioner states that she had no intention of leaving her workplace having already received a staff scholarship to study law at the University of Nairobi and the 1st respondent had committed to paying her fees, but she found herself being pushed out involuntarily.
- ap. That the petitioner was admitted to the ICU of MP SHAH hospital for attempted suicide by consumption of an overdose of acetaminophen because of mental anguish and pressure suffered in the hands of the respondents.
- aq. The petitioner was diagnosed with severe depression that had her institutionalized at Chiromo mental hospital for more than two weeks receiving psychiatric care.
- ar. It is the petitioner's case that the 1st respondent infringed upon her right to privacy by sharing her sensitive personal data, medical information, with their partners and staff without her consent, further damaging her reputation and exposing her personal information to those who were not entitled to such information.
- as. The petitioner maintains as follows:
 - i. She was entitled to a fair hearing and an opportunity to make her defence before the respondent could take adverse actions.
 - ii. She was entitled to protection against unfair labour practices and the respondent failed to guarantee these rights to her.
 - iii. She was entitled to a safe work environment devoid of abuse, threats, harassment and discrimination.
 - iv. She was entitled to equal enjoyment and application of the organization's human resource policies and the respondent violated them by giving the petitioner a lesser and different set of treatment contrary to what was contained in the policy.
 - v. She was entitled to end the employment contract in the circumstances as it was obvious the respondent had designed a scheme to push her out, and the only thing standing on the way was the procedure of dismissal it was already rolling out.
 - vi. She was entitled to have her privacy safeguarded by her employer.
 - vii. She was entitled not to be discriminated based on her relationship status.
 - viii. She was entitled to compensation and remedies as set out in the petition.



1. Mukami Marete, the 2nd Respondent and the 1st respondent's Executive Director, filed her replying affidavit sworn on 10.02.2023, and drawn by Omuodo Ogotu Advocates. It was stated and urged as follows:
 - a. On 30.12.2021 a former board member, Noah Mirembe Gabigogo sent an email resigning from his position as a board member and citing a family emergency.
 - b. On 02.01.2022 the petitioner informed the 1st respondent that she was in a relationship with a grantee of the company, Severus Hama Owamparo.
 - c. On 06.01.2022 the board co-chair at the time sent an email to the co-executive directors and her board co-chair requesting for the protocol in reference to the email received from Noah Mirembe Gabigogo.
 - d. On 10.01.2022 the petitioner responded to the email indicating that the 1st respondent should accept the resignation and that she was already in the process of looking for a replacement.
 - e. On 13.01.2022 the petitioner requested that her new partner be added to the organisation's medical cover, a request the organization obliged.
 - f. On 24.01.2022 the former board member expressed interest to rescind his resignation and be readmitted as a board member of the 1st respondent.
 - g. Upon learning of the former board member's desire to return, the petitioner raised an objection stating that the former board member had physically and verbally abused her during the 2021 Christmas holidays.
 - h. That up until the 24.01.2022 the petitioner had not disclosed that she and the former board member had an altercation that was physically violent.
 - i. The petitioner had not disclosed to the 1st respondent that her new partner Severus Owamparo was the immediate former partner of the former board member.
 - j. In light of the allegations made, the board co-chair Rhoda Mshana suggested that the grievance mechanism be triggered and that the petitioner file a written complaint to enable the board find a solution.
 - k. The board sought to have a meeting which occurred on 31.01.2022 to discuss the request by the former board member to return to the board vis a vis the issues raised by the petitioner.
 - l. Following the meeting and the information that came to light, the board resolved not to readmit the former board member.
 - m. On the same day, the board sought to investigate the issues related to the conflict of interest. In response to the board's request to investigate the matter further, the petitioner sent an email to the board threatening to sue the board for daring to question her.
 - n. In early May, 2022, social media was rife with information around a potential suit against the 1st respondent by the former board member. While the



1st respondent was dealing with the reputational risks and questions being raised as a consequence of the information circulated on social media, the 1st respondent was served with court documents indicating that the former board member Noah Mirembe had sued the organization and the petitioner claiming unfair termination and defamation.

- o. On 24.05.2022 the petitioner made a request that the organization pays her legal fees in defending the suit filed by the former board member.
- p. In response to the request for payment of legal fees, the 1st respondents board resolved and informed the petitioner that they would be declining the request as they were of the opinion that the actions complained of in the suit were not as a result of any duty or responsibility assigned to the petitioner as an employee of the organization.
- q. On 20.05.2022 the petitioner informed the co-chair of the board that she would be relocating to Uganda and sought approval for relocation expenses.
- r. The staff manual at clause 2.4(vi) provided that the organization may facilitate relocation costs for employees who are non-resident in Kenya only, and as such the petitioner did not qualify for this assistance according to the staff manual.
- s. The petitioner was upset with the decision of the 1st respondent and sent an email expressing her displeasure.
- t. The organization was faced with issues surrounding the petitioner and the former board member and the misinformation that was being spread on social media, brought the 1st respondent a lot of negative scrutiny which was affecting the reputation of the organization.
- u. The board was trying to find a way of dealing with the anxiety the suit was causing the staff and funders and specifically asked the 2nd respondent and the petitioner to allow them time to communicate with the staff.
- v. Contrary to the board's directions, the petitioner on 23.05.2022 sent an email to the staff entitled 'openness on suit' where she divulged information in reference to the suit by the former board member and her personal information including Whatsapp conversations between her, the former board member and her new partner.
- w. Due to the issues that were facing the organization and the letter the petitioner addressed to the staff, on 31.05.2022 the staff members began an email thread asking the petitioner to account for her actions and expressing their dissatisfaction with the way the petitioner conducted herself vis a vis the objectives of the 1st respondent.
- x. That due to insubordination of the board and the hostile work environment the petitioner had created the 1st respondent resolved to send the petitioner on compulsory leave.
- y. Following investigations into the conduct of the petitioner, the 1st respondent sent the petitioner a Notice to Show Cause why disciplinary action should not be taken against her.



- z. In response the petitioner wrote to the NTSC and gave notice of her resignation and did not attend the disciplinary hearing scheduled for 20.06.2022.
 - aa. The organization accepted the petitioner’s resignation on 20.06.2022 and on 30.06.2022 sent her a letter computing her final dues.
 - ab. Following the petitioner’s resignation the organization, its funders and grantee partner’s received an ‘anonymous’ email sent via proton email, making allegations and defaming the organization and its board.
 - ac. That despite the anonymous nature of the email, the organization could not ignore the allegations made and saw it fit to address the allegations in an email to its donors and grantee partners. The 1st respondent did not reveal any information that was not already in the public domain.
 - ad. The respondent maintains that the petitioner was not subjected to an unfair or unlawful process and was accorded an opportunity to defend herself.
 - ae. That the organization did not discriminate against the petitioner in any way and there was no premeditated outcome of the enquiries into the conflict of interest, the investigations or the disciplinary process.
4. Agatta Wanjiru, the 5th Respondent and the Finance Assistant (payments and compliance) of the 1st respondent filed her replying affidavit sworn on 08.02.2023 and made through Omuodo Ogotu Advocates. It was stated and urged thus;
- a. That the petitioner had admitted to struggling with mental health problems throughout her life, which she claimed was hereditary.
 - b. The petitioner had informed her that she had been going through therapy for many years and therefore cannot claim that the messages sent on 30.05.2022 were the cause of her mental health breakdown.
 - c. That the 5th respondent’s messages were true and purely to demand accountability from the petitioner who had refused to take responsibility for the part she played in the woes that encumbered the organization and the communities they serve.
 - d. During the staff retreat which begun on 10.01.2022 the petitioner brought her partner who she painted as having a happy time with.
 - e. The 5th respondent would later find out that the circumstances under which the petitioner begun her relationship with her new partner were marred with physical and verbal abuse which the petitioner kept hidden until the former board member requested to rejoin the board.
 - f. The petitioner failed to attend meetings during the retreat, which the 5th respondent found to be unprofessional and unfair since there were tasks they were supposed to complete with her guidance, but no one dared to question her because they feared her.
 - g. In May 2022 a lot of negative stories were circulating on social media about the case the former board member had filed against the organization and the petitioner.



- h. The petitioner refused to take responsibility and come up with a solution to protect the organization. She did not care about the organization but expected the organization to step in and protect her despite the problem arising from decisions made in her personal life due to poor judgment on her part. That she expected the organization to pay her legal fees just like she had in the past made demands that the finance department reimburse her for unauthorized expenditure.
 - i. On 23.05.2022 the petitioner sent the staff an email titled “Openness to Suit” where she divulged a lot personal information attaching personal messages that made the 5th respondent uncomfortable and anxious.
 - j. The petitioner created a hostile work environment and demonstrated unprofessionalism and selfishness, and the 5th respondent had enough and when she saw a message thread demanding accountability from the petitioner, she had to contribute to it.
 - k. The 5th respondent maintains that she never bullied nor insulted the petitioner. Being asked to be accountable is a natural consequence of being an executive director, a position the petitioner held.
5. Lynette Aluoch, the 4th respondent and the 1st respondent’s Operations officer filed her replying affidavit sworn on 08.02.2023. It was stated and urged thus:
- a. On 31.05.2022 the 4th respondent started a conversation on the internal messaging platform, slack, where she raised her frustrations with the petitioner’s conduct, the collective silence, and how it had affected her ability to work and caused her extreme anxiety and stress.
 - b. On 20.01.2022 the petitioner sent an email copied to all staff members disclosing that she was in a romantic relationship with a director of a grantee, to which the 4th respondent replied and said “all the very best Dr Stiz, may you be held in love and care”.
 - c. The 4th respondent states that she had no idea how the petitioner’s relationship began and how this would impact the work the organization does.
 - d. Part of the 4th respondent’s job description included overseeing the organization’s official email. On 13.05.2022 the 4th respondent received an email on the office info email, serving the organization with court documents in relation to a suit instituted by former board member Noah Mirembe Gabigogo.
 - e. The court documents revealed to the 4th respondent that the petitioner’s new partner was the former board member’s immediate former partner and that they had been in a three way relationship which ended in an abusive incident from December 2021.
 - f. That as a result of the abusive incident the former board member and his partner separated and he resigned as a board member of the organization.
 - g. The 4th respondent states that the conflict of interest was glaring and its impact greatly felt.
 - h. That the nature of the work the 1st respondent does is political and relies heavily on perception and good will of the communities it serves.
 - i. Details of the suit and the circumstances surrounding the conflict of interest presented by the petitioner circulated on social media and this became a difficult time for the 4th respondent who wondered what happens to the people the organization served and what about her



employment. She was apprehensive and wondered what the petitioner as the co-executive director was doing about the situation.

- j. On 23.05.2022 the petitioner sent all the staff an email titled “Openness to suit” where she shared details of her personal relationship including personal messages with both the former director and former board member which made the 4th respondent uncomfortable and further compounded the issues that they were facing.
 - k. The 4th respondent maintains that the message thread she created was not bullying as alleged by the petitioner and that she only demanded for accountability for the petitioner’s leadership and solutions to save the organization. That the petitioner’s interpretation of the message as bullying goes to show that the petitioner was averse to accountability.
 - l. That she did not cause the petitioner mental health breakdown nor were her actions malicious or discriminatory towards her.
6. A Statement of Response to Petition dated 27.01.2023 was filed on behalf of all five respondents and drawn by Omuodo Ogutu Advocates. It was stated and urged as follows:
- a. On 30.12.2021 the 1st respondent received an email from Noah Mirembe Gabigogo a former board member of the 1st respondent resigning from his position as a board member citing “a family emergency”.
 - b. The 1st respondent accepted the resignation.
 - c. Subsequently Noah Mirembe Gabigogo made a verbal request to rescind his resignation and continue as a board member.
 - d. When this request was tabled before the board for deliberation, the petitioner made an objection to the re-instatement and raised complaints of physical and verbal abuse by the now former board member alleged to have occurred during the 2021 Christmas holidays.
 - e. The issue of alleged abuse was not brought to the attention of the board on 02.01.2022 as alleged by the petitioner but only after the former board member expressed interest in re-joining the board.
 - f. Following this allegation by the petitioner, the 1st respondent called for a meeting on 31.01.2022 where the board gave both the petitioner and former board member audience. Upon hearing both parties the board deliberated extensively and resolved to maintain the original position accepting the former board member’s resignation effective 30.01.2022.
 - g. Following the 1st respondent’s decline to accept the former board member’s rescission of his resignation, the former board member sued the 1st respondent in HCCC/E077/2022 claiming unfair termination and damages for defamation and psychological trauma.
 - h. As a result of the suit the 1st respondent was faced with a fall out with stakeholders related to the malicious allegations made by the former board member stemming from what had allegedly happened in December 2021 culminating in the ongoing suit.
 - i. Upon receipt of the petitioner’s request to relocate to Uganda the 1st respondent declined to facilitate such relocation noting that the 1st respondent had just been sued in the matter and the petitioner’s presence in navigating the organizational crisis was crucial.



- j. The decision not to facilitate the petitioner's relocation to Uganda was not malicious. The 1st respondent as an employer would only pay relocation costs if the concerned employee had been stationed in Kenya from a foreign country in accordance with the organisation's policy.
 - k. In the suit the petitioner was not sued in her capacity as the co-executive director but in her personal capacity and due to this the 1st respondent declined to pay for the petitioner's legal defence in the suit.
 - l. The 1st respondent maintains that it has no obligation under the law or otherwise to pay for legal defence for employees who have been sued due to actions undertaken in their personal capacity.
 - m. The 1st respondent avers that it specifically instructed the petitioner not to communicate any information to the staff without its approval. The petitioner in defiance of the board instructions went ahead and communicated to the staff through an email causing unrest among the staff which is what the board was avoiding.
 - n. The 1st respondent states that the petitioner was not unlawfully or unfairly terminated, she resigned.
 - o. The 1st respondent maintains that it has a right to suspend or send an employee on compulsory leave and limit their access to the work place and facilities during compulsory leave.
 - p. The petitioner was sent on compulsory leave on 31.05.2022 for a period of 10 days to allow for investigations following complaints from members of staff that her disclosure of information surrounding a suit against the organization in defiance of the board's resolutions was causing the staff extreme anxiety.
 - q. Following the suspension, the petitioner was then invited to a disciplinary hearing through a letter dated 13.06.2022.
 - r. The 1st respondent maintains that it has and continues to provide the best possible environment for its employees in accordance with its policies and the law.
7. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows:
- a. The evidence is no dispute that the petitioner was employed by the 1st respondent as a Co-Executive Director. The employment relationship is not in dispute.
 - b. The employment relationship ended by the petitioner's written resignation on 20.06.2022. The evidence is that as at resignation the respondent had initiated a disciplinary process against the petitioner by email on 13.06.2022 at 20:02pm when the petitioner was issued with a Show Cause letter asking her to show cause why disciplinary proceedings should not be taken against her for violation of the organization's policy and for failing to meet her performance targets. The Court finds that as submitted for the 1st respondent, the petitioner instead of subjecting herself to the disciplinary process, she opted to resign.
 - c. The Court returns that in view that the petitioner resigned voluntarily, the alleged unfair termination is found untenable. While she was locked out of the 1st respondent email platform and she had written on 14.06.2022 that she needed access to the documents to comprehensively answer the allegations, she purported to answer the allegation in her resignation letter as the letter as well aborted the initiated disciplinary process. The alleged constructive unfair



dismissal has not been established. The evidence was that the petitioner by herself engaged in personal relationships which resulted in a toxic work environment and not attributable to the respondents. The submission made for the respondents is upheld thus “9. The petitioner herein began a relationship with an individual who was director of a grantee of the 1st respondent. The individual also happened to be in a relationship with a former board member, Noah Mirembe Gabigogo, who is currently suing the 1st respondent due to actions he alleges were instituted by the petitioner herein. 10. The petitioner brought to the attention of the 1st respondent complaints of physical and verbal abuse by the now former board member alleged to have occurred during the 2021 Christmas holidays. It later came to the attention of the 1st respondent that the petitioner had been involved in a relationship with the former board member and his partner. 11. A breakdown in the relationship among the three of them led to the alleged verbal and physical assault that occurred during the 2021 Christmas holiday and the resignation of the former board member. The petitioner would continue with a relationship with the 3rd party and notified the 1st respondent of this relationship.” The material on record shows that the personal actions of the petitioner and the former board member put in motion a chain of events, some very adverse to the 1st respondent, and which the 1st respondent is still trying to manage and resolve. The Court finds that the petitioner has failed to show a fundamental breach of the contract of service by the 1st respondent that may have constituted the alleged constructive termination by way of the resignation. Further the Court finds that the petitioner has failed to show intolerable contact or circumstances attributable to the petitioner that may have made it impossible for the petitioner to continue in employment. The resignation, in the Court’s view and findings, appears to have been a design by the petitioner to escape the initiated disciplinary proceedings by defeating the logical conclusion thereof. It is the Court’s findings that even if she had been locked out of the 1st respondent’s email system and she could not access the needed material to exculpate, such are matters that would have possibly been addressed and determined one way or the other if the disciplinary process would have proceeded as initiated. The Court returns that the petitioner has not established the unfair constructive termination but she voluntarily resigned thereby bringing the initiated disciplinary proceedings to an end. She is found undeserving of the claimed compensation for alleged unfair constructive termination.

8. It is submitted for the petitioner that the 1st respondent subjected her to unfair treatment when she was placed on compulsory leave on 31.05.2022. It is urged that the petitioner’s Manual did not provide for compulsory leave but for warnings in view of misconducts of breach of confidentiality and unauthorised disclosure of confidential information. For the respondents it was submitted that warnings were punishments to be imposed after due process. The disciplinary process had been initiated accordingly and compulsory leave was a preliminary step facilitative of investigations and due process. The Court agrees that the compulsory leave not being free from due pay, the petitioner was not thereby prejudiced. The tenets of fairness cannot be said to have been violated as envisaged in Article 41 of *the Constitution*.
9. The Court finds that the petitioner has not established unfair labour practice upon the test of the content and scope of the right to fair labour practices in *Peter Wambugu Kariuki and 16 Others v Kenya Agricultural Research Institute* [2013] KEELRC 373 (KLR) thus,

“What is this right to fair labour practices?”

First, it is the opinion of the court that the bundle of elements of “fair labour practices” is elaborated in Article 41(2), (3), (4) and (5) of *the Constitution*. Under Article 41(2) every worker has the right to fair remuneration; to reasonable working conditions; to form, join



or participate in the activities and programmes of a trade union; and to go on strike. Under Article 41(3) every employer has the right to form and join an employers' organization; and to participate in the activities and programmes of an employers' organization. Under Article 41(4), every trade union and every employers' organization has the right to determine its own administration, programmes and activities; to organize; and to form and join a federation. Under Article 41(5) every trade union, employers' organization and employer has the right to engage in collective bargaining. These constitutional provisions constitute the foundational contents of the right to fair labour practices.

Secondly, it is the opinion of the court that the right to "fair labour practices" encompasses the constitutional and statutory provisions and the established work place conventions or usages that give effect to the elaborations set out in Article 41 or promote and protect fairness at work. These include provisions for basic fair treatment of employees, procedures for collective representation at work, and of late, policies that enhance family life while making it easier for men, women and persons with disabilities to go to work."

10. The Court finds that the petitioner appears to have, correctly so, abandoned the claims related to contravention and violation of the cited provisions of the Bill of Rights and as had been pleaded. Thus in the conclusive submissions it was submitted that the petitioner be awarded six months salaries in lieu of notice; 12 months' pay for unfair termination; and service pay for 4 years. The reliefs claimed as based on violation of cited provisions of the Bill of Rights will fail as not established at all and in any event, duly abandoned. The petitioner has failed to justify the basis for the three headings of awards as submitted and the same is hereby declined. Turning to costs, the Court has considered the history of the parties' relationship and each will bear own costs of the proceedings.

In conclusion the petition is hereby dismissed with orders each party to bear own costs of the petition.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29TH MAY, 2025

BYRAM ONGAYA, PRINCIPAL JUDGE

