



Lumumba v Football Kenya Federation; Zoo Football Ltd (Interested Party) (Employment and Labour Relations Petition E009 of 2023) [2025] KEELRC 1904 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1904 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
EMPLOYMENT AND LABOUR RELATIONS PETITION E009 OF 2023**

**AN MWAURE, J
JUNE 25, 2025**

BETWEEN

BRIAN LUMUMBA PETITIONER

AND

FOOTBALL KENYA FEDERATION RESPONDENT

AND

ZOO FOOTBALL LTD INTERESTED PARTY

JUDGMENT

Introduction

1. The Petitioner filed a Petition dated 20th November 2023 through the law firm of D.C Ngeno Co. Advocate seeking the following reliefs:
 - i. A declaration be and is hereby issued that the Petitioner’s right to a fair hearing, as pertains to the Respondent’s Decision/Directive of 13.1.2023 subject hereof, was infringed by the Respondent in contravention of Article 50 of *the Constitution* of Kenya, 2010 and hence invalid.
 - ii. A declaration be and is hereby issued that the Petitioner’s right to a Fair Administrative Action, as pertains the Respondent’s Decision/Directive of 13.1.2023 subject hereof, was infringed by the Respondent in contravention of Article 47 of *the Constitution* of Kenya, 2010 and hence invalid.
 - iii. A declaration be and is hereby issued that the Petitioner’s right to a Fair Administrative Action, as pertains the Respondent’s Decision/Directive of 13.1.2023 subject hereof, was infringed by the Respondent in contravention of Article 27 of *the Constitution* of Kenya, 2010 and hence invalid.



- iv. A declaration be and is hereby issued that the Respondent's Decision/Directive of 13.1.2023, subject hereof, is unconstitutional in view of the declaration (i), (ii), and (iii) above
- v. An Order of Permanent injunction do issue immediately restraining the Respondent by itself or its servants or its members and or agents from giving effect to its Decision/Directive of 13.1.2023 subject hereof.
- vi. General Damages
- vii. Costs of this Petition to be awarded to the Petitioner.

Petitioner's case

2. The Petitioner, a professional football player, avers that he was contracted by the Interested party from 26th November 2022, to 26th November 2024, earning an aggregate salary and match day allowances of Kshs.25,000/= per month.
3. The Petitioner avers that vide two (2) separate letters from its Chief Executive and Head of Integrity Department dated 13th January 2023 respectively, the Respondent unlawfully and without any justifiable cause, indefinitely suspended the Petitioner from all football related activities pending unspecified, ill-defined and or vague investigations on untrue and unsubstantiated allegations of match fixing levelled against the Petitioner.
4. As a result, the Petitioner avers that he was excluded from all football activities, losing his sole source of livelihood. Under clause VII (8) of the Anti-Match Manipulations Regulations, 2016, investigations should have been completed within 90 days, but 10 months have elapsed without any action. The Petitioner also avers that the Respondent failed to extend or abridge this period, contrary to clause VII (9) of the Anti-Match Manipulations Regulations.
5. The Petitioner avers that, as per clause VIII (2) of the Anti-Match Manipulations Regulations, if an accused player is cleared, they must be released with a public notice, which the Respondent has not issued despite requests. Clause X of the Anti-Match Manipulations Regulations mandates referral to a hearing by the Disciplinary Committee, which should have taken place within 90 days of notice, but no hearing has been scheduled.
6. The Petitioner avers that he missed the 2022–2023 Division One League (Zone B) and fears the 2023–2024 season will end without him playing. His exclusion severely affects his football career, warranting urgent intervention.
7. The Respondent entered appearance through the firm of Litoro & Omwebu Advocates. On 23rd July, 2024, the Honourable Court (Nderitu) directed the Respondent for file its response and even this court gave the Respondent time to comply but failed to do so as well as the Interested Party.
8. The court directed parties to put in their written submission, but at the time of writing of this Judgment, the Respondent did not file their written submissions, nor did the Interested Party.

Petitioner's written submissions

9. The Petitioner submitted that his indefinite suspension since 13th January 2023, the Respondent has violated his constitutional rights under Articles 23(1), 50(2), and 47 of *the Constitution*.
10. The Petitioner submitted that the suspension, based on unsubstantiated match-fixing allegations, denied him presumption of innocence, adequate notice, a timely trial, and access to relevant evidence, thereby infringing on his right to a fair trial, a non-derogable right under Article 50(2) of *the*



Constitution. The Petitioner relied on the case *Natasha Singh V CBI* [2013] 5 SCC 741, *Rattiram V State of M.P.* [2012] 4 SCC 516, and *Zahira Habibullah Sheikh V State of Gujarat* AIR 2006 SC 1367, which emphasizes the fundamental necessity of fair trial standards. Additionally, Sections 3,4,5,6 and 7 of the Fair Administrative Actions Act and clauses VII (8) to (9), VIII (2), and X (2) of the FKF Anti Match Manipulations Regulations, 2016 require timely investigations and hearings, which the Respondent failed to conduct. The Petitioner seeks a declaration that the Respondent’s directive of 13th January 2023, was unconstitutional, violating procedural fairness and his right to fair administrative action.

11. The Petitioner submitted that the Respondent failed to provide prior notice, a hearing, or access to relevant evidence, contravening Sections 3, 4, 5, 6 and 7 of the Fair Administrative Actions Act and clauses VII (8) to (9), VIII (2), and X (2) of the FKF Anti Match Manipulations Regulations, 2016. The suspension was arbitrary, ultra vires, and an abuse of power, violating principles of natural justice such as impartiality and the right to be heard.
12. The Petitioner relied on the case of *Deepak Lalchand Nichani V Kenya Revenue Authority* [2021] eKLR, where the court cited the case of *Fleur Investment Limited v Commissioner of Domestic Taxes & Another*, in which the court stated that courts must intervene against blatant abuses of discretion.
13. The Petitioner urged this Honourable Court to grant him what he seeks by declaring that the Respondent’s actions were unconstitutional, an injunction to halt the enforcement of the suspension, general damages, and costs of the petition to remedy his unjust exclusion from football.

Analysis and determination

14. The court has considered the petition alongside the pleadings and submission on record. The issue for determination is whether the petition filed herein is merited.
15. Article 47 of the Constitution provides as follows:
 - “(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 - (3) Parliament shall enact legislation to give effect to the rights in clause (1), and that legislation shall—
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration.”
16. Article 50(2) of the Constitution provides that a person is entitled to a fair trial, and Section 4(1) of the Fair Administrative Actions Act provides that everyone has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.



17. In *Patriotic Guards Ltd V James Kipchirchir Sambu* [2018] KECA 799 (KLR), the Court of Appeal held as follows:

“The right to a fair trial remains at the heart of any judicial determination, and courts should endeavour to protect and uphold the same. It is a cardinal rule, and it emanates from the principle of natural justice. In *M K V M W M & another* [2015] eKLR, it was reiterated that;

“The courts of this land have been consistent on the importance of observing the rules of natural justice and, in particular, hearing a person who is likely to be adversely affected by a decision before the decision is made. In *Onyango V. Attorney General* (1986-1989) EA 456, Nyarangi, JA asserted at page 459:

“I would say that the principle of natural justice applies where ordinary people who would reasonably expect those making decisions which will affect others to act fairly.”

At page 460, the learned Judge added:

“A decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right. If the principle of natural justice is violated, it matters not that the same decision would have been arrived at.”

And in *Mbaki & Others V. Macharia & Another* (2005) 2 EA 206, at page 210, this Court stated as follows:

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”

18. In the instant case, the Petitioner was suspended since 13th January 2023 and up to date by a letter by 1st Respondent. The 1st Respondent further suspended the Petitioner from all football activities until the matter would be concluded. The same date the 2nd Respondent informed the Petitioner of the decision to ban him from participating in any football related activities with the club until his name would be cleared. He was informed his financial entitlement were also suspended.

19. On 13th July 2023 the Petitioner wrote to the 1st Respondent inquiring whether the investigations had been concluded. This petition was then filed on 20th November 2023.

20. The Respondents have violated the Petitioner’s constitutional rights as well as statutory rights in suspending him indefinitely without according him a hearing. Since January 2023 the Petitioner has never been invited for a disciplinary hearing and so the Respondents have failed to give him a valid reason for his termination contrary to Sections 45(1) of the *Employment Act*. The same states as follows

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“(1) No employer shall terminate the employment of an employee unfairly.”

Section 43(1) of the *Employment Act* also provides as follows –

“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.”



21. Section 3, 4, 5, 6 and 7 of Fair Administrative Actions Act require timely investigations and hearings. The Respondent has failed to give the Petitioner a hearing from January 2023 to date. That constitutes unfair labour practice contrary to Article 41 of the 2010 Kenya Constitution.
22. Article 50(1)(2) of *the Constitution* also provide for a fair trial.
23. Clause VII of Respondents Anti-Match Manipulation Regulations 2016 provide all investigations ought to be completed within 90 days.
24. The court is in agreement with the Petitioner submissions that his right to fair administration of action and rules of natural justice were violated against him. This is also in contravention of article 47 of the 2010 Kenya Constitution.
25. The Respondents did not respond to the Petition and did not file any submissions. It seems they suspended the Petitioner from his employment and took no further action after that.
26. In the case of Fleur Investment Limited -VS- Commissioner of Domestic Taxes & Another cited in Deepak Lalchand Nichani Vs Kenya Revenue Authority & Another (2021) eKLR

“The court cannot, being a bastion of justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the constitution* and other legislations or protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice capriciousness, and disrespect of rule of Natural justice are manifest.”

27. Having considered the foregoing, the court is persuaded the petition is merited and grants the underlisted of the reliefs sought –
 1. Prayer 1, 2 and 4 are granted;
 2. The element of discrimination is not proved – prayer (3) and is declined.
 3. Petitioner is granted general damages of Kshs.1,000,000/= for violation of his constitutional rights and costs of this petition is awarded to him.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 25TH DAY OF JUNE, 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.

