



**Sifuna v County Government of Nairobi & another (Petition
E147 of 2021) [2025] KEELRC 1895 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1895 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E147 OF 2021
DKN MARETE, J
JUNE 25, 2025**

BETWEEN

CALEB WANYAMA SIFUNA PETITIONER

AND

COUNTY GOVERNMENT OF NAIROBI 1ST RESPONDENT

**PUBLIC SERVICE MANAGEMENT (NAIROBI CITY COUNTY) 2ND
RESPONDENT**

JUDGMENT

1. This matter was originated by way of a Petition dated 20th September, 2021. It does not disclose any issue in dispute on its face.
2. The Respondent in a reply to Petition dated 19th October, 2022 denies the Petition and pray that it be dismissed with costs.
3. The Petitioner's case is that he has been an employee of the first Respondent working under supervision up to and including November, 2015 and has not been terminated or dismissed at all. He took leave in November, 2015 and extended this due ill health and on return to work, he realized that his salary has been stopped without any lawful cause or notice. After waiting for a long period and with follow-ups with his supervisors, over the issue, he engaged the head of human resource to resolve the issue but instead, he was served with a show cause letter for absenteeism.
4. The Petitioner's further case is that while he had been barred from accessing the 1st Respondent premises to perform his duties, his salaries were stopped indefinitely without lawful cause. Even his demand notes on the same fell on deaf ears and was in vain. This lock out was unprocedural as he had presented the Respondent with a medical report which the Respondent has ignored or even acknowledge receipt.



5. The Petitioner further avers that decision of locking out the Petitioner from work and withholding his salary and allowances was illegal and unconstitutional as no trial was conducted but instead this was by the word of mouth and the letter dated 25th April, 2015. This was also an infringement of Articles 49 and 50 in that the Petitioner was not afforded a hearing and a fairly administrative decision. The refusal to pay his salaries and allowances is also unconstitutional and an infringement of Articles 41 and 47 of *the Constitution* of Kenya, 2010 as read with section 17 and 45 of the *Employment Act*, 2007. The withholding of salaries and allowances was also illegal, fraudulent and an orthodox in that the Petitioner was never informed in writing of the action contrary to Articles 236, 75, 41,47(2) and sections 35 and 36 of the *Employment Act*, 2007.
6. He prays as follows;
 - a. A declaration that the purported stoppage of salaries and allowances and emoluments of the petitioner by the respondents is malicious, un procedural hence unconstitutional and in violation of the petitioner's rights under Articles 41, 47, 58, 159 of *the constitution* of Kenya,
 - b. A declaration that the action and of inaction by the respondents in causing and or imposing a lock out on the petitioner from his place of work is un constitutional hence null and void. Permanent Order quashing the said stoppage of salaries and allowances of the petitioner and lock out including any process and or any intended disciplinary procedure against the petitioner in the past and or future.
 - c. An order compelling the respondents to immediately process the salaries, allowances and emoluments amounting to Kshs4,731,650/- plus subsequent months up to the date of determination of the petition to the petitioner
 - d. An order of immediate allocation of dates to the petitioner
 - e. The alternative the court do make an order for payment of terminal benefits including salaries and Allowances, pension and all statutory benefits pending remittances and or submission, full compensation for wrongful lock out from employment up to and including the date the petitioner ought to retire than his employment.
 - f. Any other relief which this Honorable court deems fit and just to grant.
 - g. An order of payment of cost plus interest.
7. The Respondent denies the petition. It is their case that the Petitioner extended his leave illegally and without permission or communication. There was no information on the extension of leave or reasons for so doing and neither did he produce a certificate of incapacity to work signed by a duly qualify medical practitioner.
8. The Respondent's further case is that section 44(4) of the *Employment Act*, 2007 offers a valid ground for dismissal in the event of absenteeism from work without leave or other lawful cause. In any event, the Petitioner was issued with a show cause letter with a view to hearing his case but he failed to turn up to explain his case of absenteeism as was required of him. He is also not owed any salaries or allowances as these were fully paid to him.
9. The issues for determination therefore are;
 1. Whether the purported stoppage of salaries, allowances and other emoluments of the Petitioner by the Respondents was malicious, un procedural, unconstitutional and a violation of his rights under Articles 41, 47, 50 and 159 of *the Constitution* of Kenya, 2010.



2. Whether the Petitioner is entitled to the relief sought.
3. Who bears the costs of this cause?
10. The 1st issue for determination is whether the purported stoppage of salaries, allowances and other emoluments of the Petitioner by the Respondents was malicious, un procedural, unconstitutional and a violation of his rights under Articles 41, 47, 50 and 159 of *the Constitution* of Kenya, 2010. The Petitioner in his written submission dated 23rd September, 2024 reiterates his case that he was unlawfully terminated from employment through a dismissal letter dated 18th August, 2020 without being awarded a hearing in contravention to Article 47 as read with section 9(4) of the Fair Administrative Act.
11. The Petitioner further submits a breach of section 41, 43 and 45 of the *Employment Act*, 2007 in that in terminating his employment, the Respondent did not demonstrate or prove the reason for termination and therefore the termination is deemed unfair per section 45 of the Act. It is also his case that he was not awarded an opportunity to be heard in accordance with section 41 of the Act. On this he seeks to rely on authority of *Maurice Kawilwa v South Eastern University College* [2015] eKLR and *Janet Nyandiko v Kenya Commercial Bank Limited* [2017] eKLR where these legal principles were pronounced.
12. The 1st Respondent in her written submission dated 25th May, 2024 submits that the Petitioner has not proved their alleged violations and how the same relate to Articles 41, 47, 50 and 159 of *the Constitution* of Kenya, 2010. There is no evidence on record to prove these violations as alleged. She buttresses this on authority of *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR where the court observed as follows;

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue.”
13. It is the Respondent’s penultimate submission that it followed the due process of law as required in summary dismissal by providing a fair hearing to the Respondent against the accusation of misconduct and also issuing a written notice to the employee communicating the decision to terminate his employment. This was done in writing and the reasons for such termination tabulated in the termination letter.
14. A look at the respective cases of the parties brings this out in favour of the Respondent. Its case overwhelms that of Petitioner. It is not in dispute that the Petitioner absented himself from duty for long periods of time without notice, communication or at all. His salaries must have been estopped as a consequence of this inaction. He was subsequently issued with a show cause letter but did not heed as was required of him.
15. I agree with the Respondent that the Petitioner has failed to establish a case of constitutional breaches on his part. There is no evidence in support of the various assertions of violations. This is a simple case of termination of employment for just cause. I therefore find a case of no breach of *the Constitution* and hold as such.
16. The 2nd issue for determination is whether the Petitioner is entitled to the relief sought. With a finding of no violation of *the Constitution*, the Petitioner becomes disentitled to the reliefs sought.
17. I am therefore inclined to dismiss the Petition with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.



D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Orenge instructed by S. W. Orenge & Company Advocate for the Petitioner

Miss Gichana holding brief for J.W. Wachira Advocates for the 1st Respondent.

