



**Olwero v County Assembly of Siaya & another (Cause E040 of 2024)
[2025] KEELRC 1797 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1797 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E040 OF 2024
NZIOKI WA MAKAU, J
JUNE 19, 2025**

BETWEEN

ISAAC FELIX OLWERO CLAIMANT

AND

COUNTY ASSEMBLY OF SIAYA 1ST RESPONDENT

SIAYA COUNTY ASSEMBLY SERVICE BOARD 2ND RESPONDENT

JUDGMENT

1. Through an amended Memorandum of Claim, the Claimant instituted this suit alleging unlawful termination. He averred that he was employed by the Respondent as the Clerk of the County Assembly on 30th July 2014. He further asserted that on 17th December 2014, the Salaries and Remuneration Commission (SRC) issued a circular directing that the Respondents' car loan and mortgage scheme would henceforth be managed independently. In compliance with the said directive, the Siaya County Assembly Loans and Mortgage Fund Act was assented to on 27th April 2015, thereby establishing the Loans and Mortgages Board of Management.
2. The Claimant averred that despite the statutory requirement to constitute a Board or Committee to oversee the loan scheme, the Respondent instead delegated the role of loan approval to the Chairperson of the County Assembly Service Board. In line with the prevailing arrangements, the Claimant submitted a loan application, which was approved by the County Assembly Board, signed by the Chairperson, and the funds were subsequently disbursed into his bank account.
3. The Claimant further contended that he was later suspended for three months on half salary to allow for investigations. He challenged this action before up to the Court of Appeal, which held that the Respondents were not precluded from initiating fresh disciplinary proceedings. Pursuant to that decision, the Respondents commenced a new disciplinary process, charging the Claimant with the unlawful withdrawal of Kshs. 2,000,000/-. He was summoned to appear before a Select Committee



on 30th April 2024. However, the Claimant averred that he was involved in an accident on 25th April 2024, rendering him unable to attend the scheduled hearing. Despite notifying the Respondents, the Committee proceeded in his absence and resolved to revoke his appointment. The Claimant maintained that the allegation against him was unfounded, as he had already repaid Kshs. 1,250,000/- of the loan amount. He contended that the Respondents' actions were discriminatory and unfair. As such, he claimed entitlement to reinstatement or, in the alternative, compensation equivalent to twelve (12) months' gross salary for unfair termination. He also sought three (3) months' salary in lieu of notice, withheld salary and allowances from 1st March 2019 to the date of dismissal, staff welfare shares amounting to Kshs. 102,000/-, the costs of the suit, and any other relief the court might deem fit to grant.

4. In response, the Respondents acknowledged the SRC circular referenced by the Claimant but denied all other allegations contained in the Amended Memorandum of Claim. They urged the Court to dismiss the suit with costs.
5. In support of his case, the Claimant testified on his own behalf. He contended that the Respondents had erroneously computed his withheld salary and maintained that the correct amount of withheld salary and allowances stood at Kshs. 11,378,000/-. He acknowledged that a successor had since been recruited to his position. The Claimant produced documents annexed to his list of documents dated 2nd October 2024 in support of his claim.
6. The Respondents called one witness, Mr. Eric Oenga, the current Clerk of the County Assembly of Siaya. He adopted his witness statement and produced the Respondents' bundle of documents dated 30th August 2024. Mr. Oenga testified that the Claimant's withdrawal of the loan was unlawful, as there was no loan application form on record, no security was provided, and the withdrawal was not insured. He further stated that the Claimant had been given an opportunity to appear before the Select Committee on 30th April 2024 either virtually or through legal counsel, but declined both options.

Claimant's Submissions

7. The Claimant submitted that the reasons for his dismissal were unfair, asserting that the loan he took was valid. He contended that, as a permanent and pensionable employee, he was eligible for the loan in accordance with the Salaries and Remuneration Commission's letter dated 17th December 2014. To support the validity of the loan, he stated that he applied using the standard prescribed form, a fact acknowledged by the Respondents' Principal Accountant. He further submitted that he was not charged with any contravention of the Siaya County Loans and Mortgage Fund Act, as the loan facility had already been operational before the Act was enacted. To illustrate the unfairness of the revocation of his appointment, the Claimant emphasized that the Respondent had not adopted any alternative mechanism for loan approval, and other board members had also benefited from similar loans. He argued that a board resolution was not a prerequisite for loan approval. Moreover, he maintained that the disbursement process was procedurally sound, as evidenced by the Finance Officer issuing a cheque and a forwarding letter, both of which he acknowledged in the Hansard.
8. In further support of the loan's validity, the Claimant submitted that he had commenced repayments, as demonstrated in paragraph 3.3 of the Internal Audit Report and corroborated by the Principal Finance Officer's statement in the Hansard. He contended that having already repaid Kshs. 1,200,000/-, the revocation of his appointment was unjustified. He argued that the Respondent's act of acknowledging the repayment while simultaneously revoking his employment was indicative of a witch-hunt.



9. In response to the Respondents' allegation that the loan was uninsured, the Claimant submitted that an insurance deduction of Kshs. 15,146/- was made, a fact also acknowledged by the Principal Finance Officer in the Hansard. On the allegation of non-disclosure of the loan, the Claimant denied the claim, asserting that the loan had been disclosed in the financial statements. He maintained that his dismissal was wrongful, particularly in light of the Principal Finance Officer's admission that the charge of non-disclosure was erroneous.
10. With respect to the issue of security for the loan, the Claimant maintained that there was no legal requirement for such under the Siaya County Loans and Mortgage Fund Act. On the procedural irregularities in the proceedings before the Select Committee, the Claimant submitted that he was denied access to critical documents necessary for his defence. He referred to his unresponded letter dated 29th April 2024, in which he requested a copy of the motion by the 2nd Respondent recommending the revocation of his appointment, and the Hansard report of the relevant proceedings. He asserted that the failure to provide these documents suggested they did not exist. He relied on the decision in *Republic v Elgeyo Marakwet County Assembly Service Board & 2 others; Kiptum (Ex parte Applicant) KEELRC 331 (KLR)*, where the court held that forwarding a report to the County Assembly without a motion from the Board violated section 23(3) and (4) of the [County Assembly Services Act](#). He further submitted that he was denied the right to be heard as the virtual link to the Committee hearing was not shared, contrary to section 23(6) of the Act. Highlighting additional procedural breaches, he contended that the Committee failed to investigate the matter as required under section 23(4), did not submit a report for debate by the 1st Respondent as per sections 23(7) and (8), and there was no resolution by the 1st Respondent to revoke his appointment as required under Order 76 of the Standing Orders.
11. On the issue of unlawful withholding of salary, the Claimant submitted that his initial three-month suspension was illegally extended, resulting in denial of his salary and allowances for an extended period. He cited the case of *Kabucho v Kamuthi Co-operative Society Ltd [2024] KEELRC 536 (KLR)*, where the court held that suspension should be exercised sparingly, only in the clearest of cases, and for the shortest duration possible. He further asserted that the Respondents' unilateral extension of his suspension under Section 71(3) of the [Public Service Commission Act](#) was unlawful, as he was an employee of the County Public Service Board, not the Public Service Commission. He relied on *Denis Musyoka Mutui v Kwale County Assembly Service Board & another [2018] KEELRC 1144 (KLR)*, where the court held that an employee of the County Assembly Service Board could not rely on provisions of the [Public Service Commission Act](#) in challenging suspension. He added that the County Assembly Act does not authorize suspension on half pay.
12. Regarding the computation of withheld salaries and allowances, the Claimant contended that the Respondents' calculations excluded allowances and failed to factor in the salary increment from the Salaries and Remuneration Commission effective from 1st July 2023. He asserted that this increment increased his half salary from Kshs. 80,665/- to Kshs. 87,000/-. He therefore urged the Court to award him Kshs. 12,438,575/-. In support, he cited the case of *Thomas Sila Nzivo v Bamburi Cement Limited [2014] KEELRC 118 (KLR)*, which held that salary is protected under Part IV of the [Employment Act](#) even during suspension. In conclusion, the Claimant urged the Court to award him compensation equivalent to 12 months' salary for unfair termination, or in the alternative, reinstate him to his position.

Respondents' submissions

13. The Respondents identified the following issues for determination:



- a. Whether there was a valid and fair reason to revoke the Claimant's appointment.
 - b. Whether the Claimant was accorded a fair hearing before the select committee.
 - c. Whether the Claimant is entitled to the relief sought in the amended claim.
14. On the first issue, the Respondents submitted that the Claimant was ineligible for the loan, which was reserved exclusively for Members of the County Assembly under section 2 of the Siaya County Assembly Loans and Mortgage Fund Act. They therefore contended that the Claimant's application was illegal and unprocedural. They further argued that the Claimant's claim that the loan was approved by the Chair of the County Assembly Service Board was false and contrary to section 12(3)(a) read with section 7(1) of the Act. Regarding the disbursement of the loan, the Respondents maintained that it was irregular. They submitted that the application form contravened section 9 of the Act, there was no board approval as required under section 7(1), and the Committee had not found the application form suitable to support disbursement.
 15. On the matter of loan repayment, the Respondents contended that repayments were irregular and not made through the mandatory check-off system. They further observed that the loan documents failed to indicate the term, first instalment date, interest rate, and total interest payable. In relation to insurance, the Respondents submitted that the Claimant failed to insure the loan, shifting the responsibility to others despite being the accounting officer for the County Assembly, as highlighted in the Committee's report.
 16. As to disclosure, they maintained that the Claimant failed to declare the loan in his wealth declaration forms and also concealed the same in a letter dated 28th June 2018 addressed to the Committee. On the issue of security, the Respondents submitted that Section 10 of the Act required collateral, which the Claimant failed to provide. They argued that no logbook was produced to prove that the loan was used to purchase a vehicle. In view of the foregoing, the Respondents urged the Court to find that the termination was justified.
 17. Turning to the second issue, the Respondents submitted that the Claimant was given sufficient opportunity to request documents but delayed until the close of business on the last day. They also contended that the Claimant failed to appear physically, virtually, or through counsel for the hearing, and that no medical evidence of indisposition was provided. They asserted that he had consistently frustrated the disciplinary process. Regarding the scope of the Select Committee's investigation, the Respondents submitted that no prescribed procedure governed the depth or extent of the Committee's inquiry.
 18. On the final issue, the Respondents submitted that the suspension was lawful and necessitated by the Claimant's own actions in challenging the process. They cited the extension letter dated 1st June 2019 and relied on *Isaac Felix Olwero v Siaya County Assembly Service Board & 2 others* (Kisumu ELRC Petition No. 16 of 2019) [2021] eKLR, where the court upheld the legality of the suspension.
 19. With respect to withheld salary, they submitted that it was not payable since the Claimant had been found culpable, citing the case of *Grace Gacheri Muriithi v Kenya Literature Bureau* [2012] eKLR. On facilitative allowances, the Respondents contended that these were not utilized during the suspension and were therefore not payable. Finally, on reinstatement, the Respondents submitted that it was not practicable as the position had already been filled. They invoked section 49(4) of the *Employment Act* and the Court of Appeal decision in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others (Civil Appeal No. 46 of 2013)* [2014] eKLR emphasized the importance of practicability



in ordering reinstatement. They argued that the Claimant had not demonstrated any exceptional circumstances warranting such relief.

20. The Claimant was the Clerk of the County Assembly Siaya. He was dismissed after extraordinary proceedings before the County Assembly for allegedly misconducting himself and the fact that the employer was of the view the Clerk was not fit to hold the position.
21. It was evident there was opportunity accorded the Claimant to exonerate himself. It was clear he did not wish to participate as the Claimant failed to appear physically, virtually, or through Counsel for the hearing. He asserted he was unwell but failed to provide any evidence of his medical indisposition. The Respondents asserted that the Claimant had consistently frustrated the disciplinary process. A Select Committee of the house has a varied degree of scope. It is an ad hoc Committee. The scope of the Respondents' Select Committee's investigation has no prescribed procedure that governs either the depth or extent of the Committee's inquiry. Whereas sometimes witch hunt and misguided focus can beleaguer a process such as the one the County Assembly of Siaya undertook, it is apparent the Claimant had concealed the asset by not declaring it in his assets declaration form. He also had been the one who processed the loan to himself contrary to policy. One ought not be a judge in their own cause.
22. The foregoing is indicative that the Claimant was susceptible to action for misconduct and he unfortunately declined to take advantage of the avenue provided at the County Assembly. I would find he did not prove malice and improper motive in the case before me and therefore it suffers the fate of dismissal. However, for the suffering he has undergone since he lost his position at the County of Siaya, there will be no costs against him.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF JUNE 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

