



**Waweru v County Government Of Kiambu; Kiambu County Public Service Board (Interested Party) (Petition E136 of 2023) [2025] KEELRC 1645 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1645 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E136 OF 2023**

**B ONGAYA, J**

**JUNE 5, 2025**

**BETWEEN**

**TONY KINYANJUI WAWERU ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... RESPONDENT**

**AND**

**KIAMBU COUNTY PUBLIC SERVICE BOARD ..... INTERESTED PARTY**

*(Before Hon. Justice Byram Ongaya on Thursday 5th June, 2025)*

**RULING**

1. The Respondent/applicant filed a Notice of Motion application dated 21.02.2025 through the County Attorney, Kiambu County Government. The application was under sections 1A, 3A of the [Civil Procedure Act](#), order 45 rule 1 and rule 2 of the [Civil Procedure Rules](#) and all enabling provisions of law. The applicant is seeking the following orders:
  - a. That the application be certified as urgent and service of the same be dispensed with in the first instance.
  - b. That this Honourable Court be pleased to set aside orders issued on 29.10.2024.
  - c. That the Honourable Court be pleased to have the petition dated 03.07.2023 heard and determined on merit.
  - d. That costs be in the cause.
2. The application is supported by the applicant's replying affidavit and supplementary affidavit made upon the following grounds:



- a. That counsel from the office of the county attorney, county government of Kiambu in conduct of the matter has discovered undisclosed material facts which were concealed by the petitioner.
  - b. That upon perusal of the county government of Kiambu Human Resource Policies and Procedures Manual for the County Public Service (2019), section K.6(1) provides that where a public officer is absent from duty without leave or reasonable or lawful cause for a period exceeding twenty four (24) hours and is not traced within a period of ten (10) days from commencement of such absence the officer's salary shall be stopped and action to dismiss the officer initiated.
  - c. That the petitioner concealed the fact that his salary was stopped on 19.12.2022 yet the petitioner misrepresented this fact and claimed that his salary was stopped in November 2022.
  - d. That there are triable issues to be determined owing to the fact that misrepresentation and non-disclosure of facts has greatly prejudiced the respondents herein.
  - e. That owing to the foregoing there will be no prejudice occasioned should the petition be heard on merit.
  - f. That the respondents wish to have this matter heard on merit and the consent orders set aside as the said consent orders cannot be enforced pursuant to the provisions of the human resource policies and procedures manual for the public service (2016).
  - g. That it is in the interest of justice that the orders sought be granted.
  - h. That the applicant will suffer great prejudice if the orders sought are not granted as the same touches on public policy which guide the county government of Kiambu on employment and labour matters.
3. In turn the petitioner/respondent filed his Replying affidavit sworn on 25.05.2025 and drawn by Masaviru & Ketoo Advocates. It was stated and urged thus:
- a. That the applicant has not established any justifiable reason known in law indicative of any fraudulent scheme, mistake, inducement, corruption or material non-disclosure that would warrant setting aside of the consent orders in question, and that in any event the Court is functus officio having pronounced itself with finality and the orders made can only be appealed against and not reviewed as attempted by the petitioner.
  - b. The court having substantially pronounced itself on the petition and counsel having adopted and recorded the consents on 29.10.2024, the decision is final and has already taken effect and conferred a benefit on the petitioner which cannot be reversed.
4. The parties filed their respective submissions. The court has considered the parties' respective positions and makes finding as follows.
5. On 29.10.2024 parties' respective advocates attended court and in view of their respective submissions it was ordered by consent the petition is determined with orders:
- a. The respondent to pay the claimant all accruing payments per law and regulations for the period of suspension or disciplinary process being 11.11.2024 to 01.08.2024 when dismissal decision was made.
  - b. Decree to issue and parties to compute the amounts.
  - c. Mention on 12.03.2025 9.30am on satisfaction.



6. It appears no step was taken until the instant application dated 21.02.2025 was filed. It is submitted for the petitioner that in *Brooke Bond Liebig v Mally* (1975) EA 266 and quoted in *Katima v Clerk, Nairobi City County Assembly & 2 others* [2022]KEELRC 13383, it was held that the principles for setting aside a consent order were as follows:
- a. If the order was procured through fraud.
  - b. If there was non-disclosure of material facts.
  - c. If there was a mistake.
  - d. If there is any reason that would enable the court to set aside an agreement.

In *Brookes' case* the Court stated,

“A consent order cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the Court or if the consent was given without sufficient material facts or in general for a reason which would enable the court to set aside an agreement.”

7. It is urged for the applicant that the petitioner concealed the fact that his salary was stopped on 19.12.2022. However, what is material is whether on the applicant's part, with due diligence, the alleged new fact could not be made accessed and invoked prior to entering the consent. The Court considers that the applicant has made no explanation in that respect and the Court finds that the stoppage of salary must have been made by or for the applicant, a decision the applicant knew or ought to have known as at the date of the consent. The alleged new material fact is found to have been a decision by or for the applicant and in the applicant's knowledge at all material times. As a ground for review or setting aside the consent judgment, the same will fail.
8. The record shows that respective counsel for the parties addressed the Court and the Court recorded and entered the consent decree. The applicant has failed to establish any of the known ground for setting aside a consent order.
9. While the petitioner was punished per the laid down procedure and as submitted and urged for the applicant, it appears to the Court that the same cannot be relied upon by the applicant to nullify the petitioner's entitled payment as per the consent orders or decree. In any event, the consent was entered with full knowledge of the parties that the petitioner had been dismissed.
10. Accordingly, the application is liable to dismissal with costs. It is that the petitioner is entitled to pay per the terms of the consent orders.

In conclusion the application is hereby dismissed with costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 5<sup>TH</sup> JUNE, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

