



**Cosmas & 2 others v Natembeya, Governor, Trans Nzoia County & 2 others (Constitutional Petition E001 of 2025) [2025] KEELRC 1996 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1996 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE  
CONSTITUTIONAL PETITION E001 OF 2025**

**MA ONYANGO, J**

**JULY 3, 2025**

**BETWEEN**

**BONFACE WANYONYI COSMAS ..... 1<sup>ST</sup> PETITIONER**

**JACKSON AMBOKA WANYUNGU ..... 2<sup>ND</sup> PETITIONER**

**JULIA CHEROBON RUTTO ALIAS JULIE KICHWEN ..... 3<sup>RD</sup> PETITIONER**

**AND**

**HIS EXCELLENCY GEORGE NATEMBEYA, GOVERNOR, TRANS NZOIA  
COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY SECRETARY, TRANS NZOIA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY GOVERNMENT OF TRANS NZOIA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The 1<sup>st</sup> Petitioner is the County Executive Committee Member for Finance and Economic Planning in the County Government of Trans Nzoia.
2. The 2<sup>nd</sup> Petitioner is the County Executive Committee Member for the Department of Education and Technical Training.
3. The 3<sup>rd</sup> Petitioner is the County Executive member for the Department of Public Service Management and Governance.
4. The 1<sup>st</sup> Respondent is described in the Petition as the Governor of the County Government of Trans Nzoia having been elected as such in the year 2022 and he is the appointing authority of the petitioners to the positions of County Executive Committee Members of the County Government of Trans Nzoia pursuant to the provisions of the [County Government Act](#).
5. The 2<sup>nd</sup> Respondent is the County Secretary of the 3<sup>rd</sup> Respondent



6. The 3<sup>rd</sup> Respondent is established under the Constitution of the Republic of Kenya.

### **The Petition**

7. The Petitioners herein filed the instant petition dated 16<sup>th</sup> January 2025 invoking various articles of the Constitution and the Fair Administrative Actions Act seeking the following reliefs:
- a. A declaration that the Respondents have violated the petitioners' constitutional rights to fair administrative action under Article 47 of the Constitution and that the Executive Order by the 1<sup>st</sup> Respondent the internal memo by 2<sup>nd</sup> Respondent dated 15/1/2025 violates Article 10, 41, 47, 50 and 159 of the Constitution of the Republic of Kenya.
  - b. An order of Certiorari to bring into this court and to quash the decision of the 1<sup>st</sup> Respondent embodied in the Executive Order No. 1 of 2025 dated 10/1/2025 together with the internal memo of the 2<sup>nd</sup> Respondent dated 15/1/2025.
  - c. An order for general damages against the respondents jointly and severally for violating the constitutional rights of the petitioners as outlined in this petition.
  - d. The costs of the petition to be borne jointly and severally by the Respondents.
  - e. Any other relief the court may deem fit
8. The basis of the Petition is that the Petitioners were appointed to the positions of County Executive Committee Members for the County Government of Trans-Nzoia and Gazetted as such on 2/11/2022 and sworn in on 3/11/2022 and have been in office since the said appointment.
9. It is averred that the 1<sup>st</sup> Petitioner was designated to be in charge of Finance and Economic Planning but was later deployed by the 1<sup>st</sup> Respondent to be in charge of the Department of Water, Environment, Natural Resources and Climate change in the County Government of Trans-Nzoia; that the 2<sup>nd</sup> Petitioner was designated to be in charge of Finance and Economic Planning but was later deployed to be in charge of the department of Education and Technical Training and that the 3<sup>rd</sup> Petitioner was designated to be in charge of Education and Technical Training but was later transferred to be in charge of Public Service Management.
10. The Petitioners assert that on 10<sup>th</sup> January 2025, the 1<sup>st</sup> Respondent through Executive Order No. I of 2025 made changes in the departments with the aim of removing the Petitioners from their departments and re-assigning to other County Executive Committee members the functions and duties of the Petitioners without due process of law.
11. It is contended that in compliance with the Executive Order No. 1 of 2025 issued by the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent ordered County Executive Committee Members affected to hand over and take over the respective departments as assigned without indicating the fate of the Petitioners whose departments were set to be taken over by the newly assigned executive committee members.
12. It is the Petitioners' case that there have never been any disciplinary proceedings against them and neither have they been given any reasons why they are constructively being dismissed without being given an opportunity to be heard, or reason for other person to take up their positions.
13. The Petitioners faulted the 1<sup>st</sup> Respondent's Executive order No. 1 of 2025 arguing that it is bad labour practice contrary to the provisions of Article 41 of the Constitution and that it aims at adversely affecting the Petitioners by purporting to indirectly remove them from office without being given written reasons for such removal contrary to the provisions of Article 47(2) of the Constitution.



14. It is therefore the Petitioners' case that the actions of the Respondents contravene the spirit of the Constitution as enshrined under Article 10 and 159 in regard to good governance.

### **The Respondents' case**

15. In response to the Petition, the Respondents filed a Replying affidavit sworn on 17<sup>th</sup> March 2025 by Truphosa Amere, the 2<sup>nd</sup> Respondent herein.
16. In that affidavit, the deponent avers that the Petition does not meet the threshold for grant of the orders sought as it lacks precision and specificity as required in constitutional petitions. It is further contended that the Petitioners have failed to demonstrate how their constitutional rights have been violated and have not cited a single constitutional violation in their petition. On this basis, the court was urged to strike out the petition with costs.
17. Further, the deponent stated that under Article 179(2) of the Constitution of Kenya, the County Executive Committee comprises of members appointed by the county<sup>st</sup> Respondent in his exercise of his constitutional and statutory mandate as County Governor has an obligation to constitute the County Executive Committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county. governor, with the approval of the County Assembly. The deponent explained that under section 30(2)(e) of the County Government Act, the 1<sup>st</sup> Respondent in his exercise of his constitutional and statutory mandate as County Governor has an obligation to constitute the County Executive Committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county.
18. That further, under section 30(2)(1) of the County Government Act, by a decision notified in the county Gazette, the County Governor has an obligation to assign to every member of the county executive committee, responsibility to ensure the discharge of any function within the county and the provision of related services to the people.
19. The Respondents aver that the County Government of Trans-Nzoia through its selection panel in the month of September, 2022 advertised for 10 positions of County Executive Committee Members which prescribed terms of service as indicated in the advertisement, among them, that the successful candidates would be employed on a three (3) years renewable contract.
20. It is the Respondents case that the Petitioners and other<sup>st</sup> Respondent nominated the petitioners together with others and forwarded their names to the County Assembly for onward processing and approval as provided for under Article 179(2) of the Constitution. individuals applied for the respective positions, upon which the 1
21. The Respondents aver that the Petitioners were approved, and thereby appointed into the positions they applied for, to wit: 1<sup>st</sup> Petitioner, County Executive Committee Member for Finance and Economic Planning, 2<sup>nd</sup> Petitioner, Public Works, Transport and Energy, and 3<sup>rd</sup> Petitioner, Education and Technical Training.
22. The Respondents maintain that in exercise of his constitutional and statutory powers, the 1<sup>st</sup> Respondent later on reassigned his County Committee with changes as thus: 1<sup>st</sup> Petitioner, Water, Natural Resources and Climate change; the 2<sup>nd</sup> Petitioner, Education and Technical Training, and 3<sup>rd</sup> Petitioner, Public Service Management.
23. It is further averred that on 10<sup>th</sup> January, 2025, the 1<sup>st</sup> Respondent again reassigned his County Committee and none of the petitioners was dismissed as alleged. According to the Respondents, the Petitioners absconded duty as from 16<sup>th</sup> January, 2025 to date. That instead of handing over



as instructed in the Internal Memo of 15<sup>th</sup> January, 2025 and seeking clarification from the County Secretary, they rushed and prematurely filed this matter alleging that they had been removed from office without due procedure.

24. This action, according to the Respondents was a preemptive measure to forestall intended disciplinary proceedings that was to be shortly initiated on account of various malpractice acts, and acts of sabotage and insubordination perpetuated by the Petitioners against the Respondents.
25. The Respondents state that by the time the Petitioners brought this action purporting to seek conservatory orders, none of them had been denied entry into office. In addition, it is asserted that to date, the Petitioners still earn salary, but the relationship between the parties has irretrievably broken down in that they can no longer work together as the Executive.
26. In the end, the Respondents urged the court to find the petition to be without merit and dismiss it with costs.

### **The Petitioners' Response**

27. In a rejoinder through a supplementary affidavit sworn by Bonface Wanyonyi Cosmas, the 1<sup>st</sup> Petitioner herein on 27<sup>th</sup> March 2025 on his behalf and on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners, the Petitioners' contend that the Replying affidavit sworn on 17<sup>th</sup> March 2025 is full of falsehood and has not been presented in court in good faith.
28. The Petitioners aver that the 1<sup>st</sup> Respondent is bound by law to assign them duties by virtue of them being county executive committee members.
29. According to the Petitioners, there was no reason communicated to them as to why they were ordered to hand over their offices. That filing the instant petition was necessary as the handing over was meant to adversely affect their positions.
30. The Petitioners denied the allegations made by the Respondents that they had absconded duty and contended that they have been in constant touch with the Respondents except for instances where hired goons have attacked them at their offices.
31. The Petitioners maintained that they have at all times reported to their offices but have been meeting unusual conduct exhibited by the Respondents such as locks to the Petitioners' offices being changed and offices locked to deny them access therein.
32. The Petitioners pointed out that the 2<sup>nd</sup> Respondent has been used to push them out of office and delink communications to the Petitioners. In support of this position, the Petitioners annexed excerpts of a WhatsApp communication where they were removed from the official county executive group, the letters concerning change of keys to the offices and photos of the vehicles alleged to have been assigned to the 3<sup>rd</sup> Petitioner being clamped.
33. The Petitioners state that the subsequent correspondence by the 2<sup>nd</sup> Respondent requiring them to hand over was done without any complaint against the Petitioners having been raised and brought to their attention.
34. The Petition was canvassed by way of written submissions pursuant to the directions of this court issued on 29<sup>th</sup> January 2025. The Petitioners filed two sets of submissions. The one dated 20<sup>th</sup> March 2025 and the supplementary submissions dated 27<sup>th</sup> March 2025. The Respondents on their part filed the submissions dated 20<sup>th</sup> March 2025.



## Submissions

35. The Petitioners in their written submissions dated 20<sup>th</sup> March 2025, submitted that their legitimate expectation under section 42(1) of the County Government Act was that when a general election is held for a county government they are to remain in office until a new County Executive Committee is constituted after an election. The Petitioners submit that section 42(1) of the [County Governments Act](#) gives the Petitioners an opportunity to serve till another General Election is held in the year 2027 and upon a new executive committee being appointed after the said election unless lawfully removed from office.
36. The Petitioners further submit that they filed the instant petition pursuant to Article 259 of the [Constitution](#), and that the instant petition seeks to promote good governance as far as the affairs of the County Government of Trans-Nzoia is concerned. In this regard, the Petitioners submit that good governance will be promoted if the reliefs prayed in the petition are granted.
37. It is the Petitioners' submissions that the facts herein point out that the 1<sup>st</sup> Respondent in his decision embodied in the Executive Order No. 1 of 2025 did not give reasons why the Petitioners were not being given duties but instead the order aimed at displacing the Petitioners. They aver that the said actions by the 1<sup>st</sup> Respondent contravene the provisions of Article 47(1) and (2) which requires the Petitioners to be taken through administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
38. The Petitioners submit that the 1<sup>st</sup> Respondent has not given the Petitioners an opportunity to be heard as established in Article 50 of the [Constitution](#) and further, that the Respondents have not lodged any dispute against the petitioners anywhere for a just determination.
39. The Petitioners submit that the actions of the Respondents contravene the spirit of the [Constitution](#) as enshrined under Article 10 and 159 in regard to good governance.
40. Further, the Petitioners have contended that the petition herein has precisely brought out the case by the Petitioners in regard to various articles of the [Constitution](#) that have been violated and reiterate the contents of the said petition and the supporting affidavit. The Petitioners also sought for Kshs 1,000,000 as general damages for the constitutional violations occasioned by the Respondents against the Petitioners.
41. In the supplementary submissions, the Petitioners submitted that they have demonstrated in the supplementary affidavit on how they have continued reporting to work and the allegation by the 2<sup>nd</sup> Respondent that the Petitioners have not been reporting to work since 16/1/2025 is not supported by any evidence.
42. The Petitioners reiterated that the instant petition meets the threshold set by the court of appeal in the case of Anarita Karimi. It is averred that the Petition as presented has brought facts complained against the Respondents, has cited the provisions of the [Constitution](#) breached by the Respondents, and has gone further to state how the same have been breached. According to the Petitioners, the petition fully complies with the standard set by the Court of Appeal on how Constitutional Petitions should be presented to court.
43. It is their submission that the Executive Order complained of together with the 2<sup>nd</sup> Respondent's internal memo of 15/1/2025 had the effect of purporting to remove the Petitioners from office as the two documents was leaving out the Petitioners without any portfolio. On this basis, the Petitioners submitted that it cannot be said this petition was prematurely presented.



44. The Petitioners thus urged the court to allow the Petition.
45. On their part, the Respondents in their submissions identified the issues for determination to be:
  - i. Whether the Petition meets the competency threshold;
  - ii. Whether this matter is premature and therefore offends the doctrine of ripeness;
  - iii. Whether the Respondents have violated the Petitioners alleged rights?
  - iv. Whether the Petitioners are entitled to the reliefs sought in the Petition?
46. On the first issue, the Respondents while citing the case of *Anarita Karimi Njeru v the Republic (No.1)* (1978) KLR 154 submitted that it is not enough to merely cite constitutional provisions without some particularization on the alleged violations. According to the Respondents, in the instant petition, the Petitioners have not particularized the violations at all. The Petitioners has cited Articles 41,47, 50 and 159 of the Constitution but without any elaboration as to how the same have been violated thereby prejudicing and incapacitating the Respondents to respond to the same.
47. On the issue whether this matter is premature and therefore offends the doctrine of ripeness, the Respondents submitted that the Petitioners have not demonstrated that they were removed from office. The Respondents submitted that the action of filing this matter then proceeding to abscond duty discloses the bad faith and that they prematurely filed this matter with an intention to forestall an intended disciplinary process.
48. The Respondents submitted that the impugned Executive Order and Internal Memos did not direct the Petitioners to leave office and therefore, the assumption picked that it amounted to removal from office is wrong.
49. The Respondents submitted that the Ripeness Doctrine is a principle in law which prevents a party from approaching a court prematurely at a time when he/she has not yet been subject to prejudice, or the real threat of prejudice, as a result of a legislation or conduct alleged to be unconstitutional.
50. On the third issue, the Respondents submitted that the Petitioners have not drafted the instant Petition with precision. It is averred that the Petitioners at paragraph 9 of the Petition, have merely cited Articles 41,47,50 and 159 of the Constitution without any elaboration. In addition, they submit that under paragraph 11 and 12 of the Petition, the Petitioners have not demonstrated how Article 47 of the Constitution has been infringed.
51. As to whether the Petitioners are entitled to the reliefs sought in the Petition, the Respondents have stated that the Petition in its entirety is unmerited for the reasons that it has not been drafted with precision, and no constitutional violations have been proved at all.
52. It is therefore the Respondents case that the Petitioners have approached court with unclean hands having refused to report to work and instead filed a suit alleging violations.
53. The Respondents have submitted that since the relationship between the parties herein has now irretrievably broken down with the full breach of trust and an impracticability of ever working together, the orders sought for a declaration and quashing of the Executive Order and the Internal Memo is untenable.
54. On the prayer for damages as compensation for alleged constitutional violations, the Respondents urged the court to dismiss the same, as the Petitioners have not demonstrated with precision any violation to their rights. The Respondents submitted that the Petitioners have not lost a single salary



with all the benefits and that it would be an atrocity to innocent taxpayers to award them damages with the limited public resources.

55. Consequently, the court was urged to dismiss the Petition with costs

### **Determination**

56. From the Petition, the rival affidavits thereto and the submissions on record, the issues that fall for determination are:

- i. Whether the Petition satisfies the particularity and precision threshold required of Constitutional Petitions
- ii. Whether the Petitioners constitutional rights were violated by the Executive Order No. 1 of 2025 issued by the 1<sup>st</sup> Respondent
- iii. Whether the Petitioners are entitled to the reliefs sought.

### **Whether the Petition satisfies the particularity and precision threshold required of Constitutional Petitions**

57. In their submissions, the Respondents asserted that the instant Petition does not meet the threshold of a Constitutional Petition as the Petitioners have cited Articles 41, 47, 50 and 159 as the constitutional provisions that the Respondents have allegedly infringed but have not particularised the alleged violations as laid out in the case of *Anarita Karimi Njeru v Republic* [1979] eKLR

58. In response to this allegation, the Petitioners in their supplementary submissions contended that the Petition as presented shows that the Petitioners have brought facts complained against the Respondents; they have also cited the provisions of the *Constitution* breached by the Respondents and stated how the same have been breached.

59. The Petition filed is premised on Articles 1, 2, 10, 22, 23, 40, 47, 50, 73, 159, 162(2) and 165 but substantively it focuses on the rights as guaranteed under Articles 41, 47, 50 and 159 of the *Constitution*. The Petitioners allege that the Executive Order No. 1 of 2025 issued by the 1<sup>st</sup> Respondent made changes in the departments purporting to constructively remove them from their departments and re-assigning other County Executive Committee members to the said positions without assigning them any positions and without following due process of the law in dropping them. The Petitioners further contended that there have never been any disciplinary proceedings against them and neither have they been given reasons why they were constructively dismissed without being given an opportunity to be heard. The Petitioners thus seek, inter alia, for a declaratory order to be made by this Court that the Respondents have violated the petitioners' constitutional rights to Fair Administrative Action under Article 47 and that the Executive Order by the 1<sup>st</sup> Respondent and the internal memo by 2<sup>nd</sup> Respondent dated 15/1/2025 violate Article 10, 41, 47, 50 and 159 of the *Constitution*.

60. The Petitioners also sought an order of Certiorari to bring into this court and to quash the decision of<sup>t</sup> Respondent embodied in the Executive Order No. 1 of 2025 dated 10/1/2025 together with the internal memo of the 2<sup>nd</sup> Respondent dated 15/1/2025.

61. Rule 10 of the *Mutunga Rules* governs that the form that a Constitution should take. Rule 10(2) of the same Rules specifically provide as follows:

“(2) The petition shall disclose the following-



- a. the petitioner's name and address;
- b. the facts relied upon;
- c. the constitutional provision violated;
- d. the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
- e. details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
- f. the petition shall be signed by the petitioner or the advocate of the petitioner; and(g)the relief sought by the petitioner.”

62. The instant petition as presented complied with Rules 10 of the Mutunga Rules and has therefore met the threshold laid in the Anarita Karimi case

**Whether the Petitioners constitutional rights were violated by the Executive Order No. 1 of 2025 issued by the 1<sup>st</sup> Respondent**

63. The Petitioners have averred that the Respondents have constructively dismissed them from employment vide the Executive order No. 1 of 2025 issued by the 1<sup>st</sup> Respondent which directive made changes in the departments and reassigned to other County Executive Committee members to act in the positions of the Petitioners.
64. The Respondents in their Replying affidavit denied dismissing the Petitioners from employment and averred that the Petitioners absconded duty as from 16<sup>th</sup> January, 2025 to date and instead of handing over as instructed in the Internal Memo of 15<sup>th</sup> January 2025, they rushed to prematurely filed this matter alleging that they had been removed from office without due procedure.
65. The Respondents further stated that the Petitioners rushed to court in a bid forestall intended disciplinary proceedings against them that was to be shortly initiated because of various malpractice acts, and acts of sabotage and insubordination.
66. In the supplementary affidavit dated 27<sup>th</sup> March 2025 filed by the Petitioners and particularly the annexures therein, the annexed excerpts of WhatsApp communication as annexure marked BWC-1, a WhatsApp communication excerpt from the CECM Transnzoia WhatsApp group indicating that the Petitioners herein were removed from the said WhatsApp group. Annexure BWC-2 and BWC-3 are letters on the subject “Access to the office” written by the 3<sup>rd</sup> Petitioner herein and addressed to the 2<sup>nd</sup> Respondent on the Complaint that the 3<sup>rd</sup> Petitioner was unable to access her office. Annexures BWC-7 and BWC- 8 are letters by the 1<sup>st</sup> Petitioner referenced “Access to Office” where he was complaining of not being able to access his office.
67. From the above annexures, there is no doubt that the Respondents herein constructively dismissed the Petitioners from employment.
68. The allegation made by the Respondents that the Petitioners absconded duty is not supported by the evidence on record. There are no show cause letters or any other evidence tendered in court to prove this assertion. The letters in the Supplementary Affidavit of the 1<sup>st</sup> Petitioner further disprove the allegation



of absconding duty by the Petitioners as each of them demonstrated that they were not granted access to their offices.

69. With regard to the allegation that the Petitioners filed this appeal to stall the disciplinary action against them, I have not seen any evidence tendered in court by the Respondents in support of this allegation.
70. It is also worth noting that apart from alleging that the Petitioners were not dismissed from employment, the Respondents did not tender evidence on the departments or positions that the Petitioners were re-assigned to upon other County Executive Committee members being reassigned and taking over their positions pursuant to the Executive Order.
71. Section 31 of the [County Governments Act](#) provides for the powers of the Governor to remove a County Executive Committee member from office as follows:

31. Powers of the governor

The governor—

- (a) may dismiss a county executive committee member;
- (b) shall dismiss a county executive committee member, if required to do so by a resolution of the county assembly as provided under section 40;
- (ba) may re-assign a county executive committee member;
- (c) may appoint an accounting officer for each department, entity or decentralized unit of the county government; and
- (d) shall have such powers as may be necessary for the execution of the duties of the office of governor.

72. Further, section 40 of the [Act](#) provides for removal of a county Executive officer as follows:

40. Removal of member of executive committee

- (1) Deleted by [Act No. 11 of 2020](#), s. 14.
- (2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds—
  - (a) gross violation of the [Constitution](#) or any other law;
  - (b) incompetence;
  - (c) abuse of office;
  - (d) gross misconduct; or
  - (e) if convicted of an offence punishable by imprisonment for at least six months.
- (3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—



- (a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and
  - (b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.
- (4) The county executive committee member has the right to appear and be represented before the select committee during its investigations.
- (5) If the select committee reports that it finds the allegations—
- (a) unsubstantiated, no further proceedings shall be taken; or
  - (b) substantiated, the county assembly shall vote whether to approve the resolution requiring the county executive committee member to be dismissed.
- (6) If a resolution under subsection (5)(b) is supported by a majority of the members of the county assembly—
- (a) the speaker of the county assembly shall promptly deliver the resolution to the governor; and
  - (b) the governor shall dismiss the county executive committee member.

73. The right to fair administrative action is articulated in Article 47 of the [Constitution](#) as follows:

1. Every person has the right to fair 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.

74. In addition, Section 4(3) of the [Fair Administrative Action Act](#) lays down the procedure to be adopted by the administrator as follows:-

Where an administrative action is likely to adversely affect the rights of fundamental freedoms of any person, the administrator shall give the person affected by the decision-



- a. Prior and adequate notice of the nature and reasons for the proposed administrative action;
- b. An opportunity to be heard and to make representations in that regard;
- c. Notice of a right to a review or internal appeal against an administrative decision where applicable;
- d. A statement of reasons pursuant to Section 6;
- e. Notice of the right to legal representation, where applicable;
- f. Notice of the right to cross examine or where applicable; or
- g. Information, materials and evidence to be relied upon in making the decision or taking the administrative action.

75. Flowing from the above, it is evident that the Petitioners had a constitutional right to be accorded fair administrative action by the Respondents prior to the issuance of the Executive Order No. 1 of 2025. I am therefore convinced that the Respondents in their actions particularly the 1<sup>st</sup> Respondent's Executive Order No. 1 of 2025 intended to constructively dismiss the Petitioners from employment.

76. In the case of *Coca-Cola East & Central Africa Limited v Maria Kagai Lugaga* [2015] eKLR the Court of Appeal had this to say about constructive dismissal:-

“The key element in the definition of constructive dismissal is that the employee must have been entitled to or have the right to leave without notice because of the employer's conduct. Entitled to leave has two interpretations which give rise to the test to be applied. The first interpretation is that the employee could leave when the employer's behaviour towards him was so unreasonable that he could not be expected to stay- this is the unreasonable test. The second interpretation is that the employer's conduct is so grave that it constitutes a repudiatory breach of the contract of employment- this is the contractual test.”

77. By constructively dismissing the Petitioners through the Executive Order issued by the 1<sup>st</sup> Respondent, the Respondents were in violation of the Petitioners rights to fair labour practices, fair administrative action and their rights to a fair hearing.

#### **Whether the Petitioners are entitled to the reliefs sought.**

78. Consequent to the finding and holding above, that the Executive order No. 1 of 2025 issued by the 1<sup>st</sup> Respondent violated the Petitioners rights to fair labour practices, fair administrative action and right to a fair hearing. The court shall now consider each of the reliefs sought by the petitioners as hereunder.

79. Prayer (a) is for a declaration that the Respondents have violated the Petitioners' constitutional rights to fair administrative action under Article 47 of the *Constitution* and that the Executive Order by the 1<sup>st</sup> Respondent, the internal memo by 2<sup>nd</sup> Respondent dated 15/1/2025 violates Article 10, 41,47, 50 and 159 of the *Constitution*. Having found that the Petitioners were constructively dismissed from employment against good and established labour practices, I declare it as so

80. Prayer (b) is for an order of Certiorari to bring into this court and to quash the decision of the 1<sup>st</sup> Respondent embodied in the Executive Order No. 1 of 2025 dated 10/1/2025 together with the internal memo of the 2<sup>nd</sup> Respondent dated 15/1/2025. As the court has already made a finding that



the 1<sup>st</sup> Respondent in constructively dismissing the Petitioners vide his directive in Executive order No. 1 of 2025, breached the Petitioners constitutional rights, this prayer is granted.

81. Prayer (c) seeks for order for general damages against the Respondents jointly and severally for violating the constitutional rights of the petitioners as outlined in this petition. The relevant principles applicable to award of damages for constitutional violations under the Constitution were explained by the Court of Appeal in the case of Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 others (Civil Appeal 243 of 2017) [2021] KECA 328 (KLR) (17 December 2021) (Judgment) where the court observed as follows:

“It is notable in this respect that comparative jurisprudence limits the award of general damages in constitutional cases to only proven damages and not presumed damages. In *Ntanda Zeli Fose vs Minister of Safety and Security*, 1996 (2) BCLR 232 (W), the Court of Appeal held that an award of constitutional damages in addition to delictual damages would not be appropriate, and that delictual damages are an adequate vindication of the Plaintiffs constitutional rights. The Court was however not decided on the nature of an award where delictual damages are not available, and observed that the law was flexible to provide relief that was appropriate for a breach of constitutional rights.”

82. Being guided by the above case law, I decline to make awards for general damages as the Petitioners did not prove the loss and this court is unable to exercise its discretion to assess general damages. The Petitioners will however be entitled to all their remuneration and allowances during the period that they have been kept out of office. They will thus be placed in the same financial position that they would have been had their services not been terminated.
83. Consequently, judgment is entered in favour of the Petitioners against the Respondents in the following terms: -
- a. A declaration be and is hereby issued that the Respondents have violated the Petitioners' constitutional rights to fair administrative action under Article 47 of the Constitution and that the Executive Order by the 1<sup>st</sup> Respondent the internal memo by 2<sup>nd</sup> respondent dated 15/1/2025 violates Article 10, 41, 47, 50 and 159 of the Constitution.
  - b. A Judicial Review Order of Certiorari is hereby issued to bring to this Court and quash the decision of<sup>st</sup> Respondent embodied in the Executive Order No.1 of 2025}dated 10/1/2025 together with the internal memo of the 2<sup>nd</sup> Respondent dated 15/1/2025.
  - c. The Petitioners are awarded costs of the Petition with interests at court rates from the date of this judgment till payment in full.

**DATED, DELIVERED AND SIGNED AT THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

**M. ONYANGO**

**JUDGE**

