



**Juma v Hans Kenya Limited (Petition 1 of 2023)
[2024] KEELRC 315 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 315 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 1 OF 2023
BOM MANANI, J
FEBRUARY 22, 2024**

BETWEEN

PATRICK WABWIRE JUMA PETITIONER

AND

HANS KENYA LIMITED RESPONDENT

JUDGMENT

1. The Petitioner has sued the Respondent alleging that the latter violated his constitutional rights by unlawfully detaining him at the workplace on the night of 3rd May 2019. According to the evidence on record, the Petitioner was engaged by the Respondent as a cleaner on a three months fixed term contract that ran between 5th February 2019 and 4th May 2019. On 3rd May 2019 as the Petitioner was leaving duty in the evening, he was found in possession of the Respondent’s property which he had concealed in a bag.
2. According to the evidence on record, the Petitioner was unable to give a satisfactory explanation why he had the property. He alleged that a workmate had asked him to ferry the items to a location outside the workplace. According to the Petitioner, he did not know that the items did not belong to the workmate until he was confronted by the Respondent’s security guards.
3. The evidence that was tendered shows that following this development, the Respondent’s manager asked the security guards to detain the Petitioner at the workplace until the following day. According to the Respondent’s witness, this decision was taken because the incident happened after 5 pm on the material day when the Respondent’s management had already left the workplace. As such, it was not possible to attend to the matter at that time. The earliest that this was going to happen was the following day, 4th May 2019, once they (the Respondent’s management) had resumed duty.
4. The Respondent’s witness stated that the Respondent was unable to surrender the Petitioner to the police immediately on the material day because they (the police) were unable to come for him from the



workplace. According to the witness, the police asked that the Petitioner be held at the workplace as they made arrangements to pick him. Meanwhile, they allegedly asked the parties to try and amicably resolve the matter.

5. The Respondent's witness also stated that the Respondent's management intended to interrogate the Petitioner about the alleged theft. Thus, it became necessary to detain him at the workplace until the following day for this purpose as there was no guarantee that he would turn up for the interrogation if he was let go on the evening of 3rd May 2019.
6. The Petitioner's case is that following the incident, he was detained in a toilet within the Respondent's premises without food until the following day. He avers that on 4th May 2019, the Respondent's management took him to the Respondent's offices where he was interrogated and forced to write a confession regarding the alleged theft.
7. The Petitioner avers that the Respondent subjected him to inhumane and degrading treatment by depriving him of his freedom and keeping him in a toilet overnight without food. The Petitioner contends that the Respondent had the option of surrendering him to the police instead of curtailing his freedom and treating him in the manner that it did.
8. On its part, the Respondent denies that the Petitioner was kept in a toilet. According to the Respondent's witness, the Petitioner was kept in comfort in the Respondent's sentry room with his consent.

Issues for Determination

9. After evaluating the pleadings and evidence on record, I am of the view that the following are the issues that fall for determination:-
 - a. Whether the Petitioner's constitutional rights were violated by the Respondent in the manner in which he was handled on the night of 3rd May 2019 and morning of 4th May 2019.
 - b. Whether the Petitioner is entitled to the reliefs that he seeks.

Analysis and Determination

10. There is no dispute that on the evening of 3rd May 2019, the Petitioner was found in possession of items that belong to the Respondent. There is also no dispute that following this development, the Respondent's manager instructed the guards on duty to keep the Petitioner within the work precincts until 4th May 2019 when the issue was to be addressed.
11. Although the Respondent's witness states that the decision to detain the Petitioner was informed by the fact that the police were unable to immediately pick him (the Petitioner) from the Respondent's premises, there is no evidence that it (the Respondent) had reported the incident to the police. Further, it is incomprehensible why the Respondent expected the police to pick the Petitioner from its premises when it (the Respondent) had the duty of going to report the incident to the police and surrendering the Petitioner to them (the police) now that its (the Respondent's) guards had apprehended him.
12. The Respondent's witness confirmed that there is a police station within a ten minutes radius from the Respondent's premises. It is therefore unclear why the Respondent's management could not immediately surrender the Petitioner to the police.
13. Although the Respondent's witness insinuated that the Petitioner consented to being held at the workplace overnight, this was denied by the Petitioner. As a matter of fact, the Respondent's witness



conceded during cross examination that he instructed the guards to confine the Petitioner until the following day.

14. The available evidence further confirms that on the following day, the Respondent still did not notify the police about the incident. Instead, it (the Respondent) released the Petitioner from his illegal detention after the parties allegedly resolved the matter.
15. The evidence on record points to the fact that the Respondent detained the Petitioner at its premises on the night of 3rd May 2019. It is also apparent that the Petitioner was detained against his will.
16. The Respondent has no legal power to detain an employee purportedly because he has stolen from it. All it (the Respondent) can do is to report the matter to the police for further processing. Therefore, the Respondent's decision to confine the Petitioner at its premises on the night of 3rd May 2019 against his will was not only illegal but violated the latter's constitutional rights.
17. It does not matter that the Petitioner had allegedly stolen from the Respondent. This could not have justified the Respondent's decision to illegally detain him at the workplace overnight on the material date.
18. The Petitioner states that he was treated in a degrading and inhumane manner. He asserts that he was confined in a toilet without food the entire night.
19. The Respondent did not provide evidence to show that it provided the Petitioner with meals during the period of his detention. Whilst the Respondent's witness denied that the Petitioner was held in a toilet, it is noteworthy that this witness was not at the Respondent's premises during the period of the Petitioner's detention. Therefore, he was not in a position to speak to the conditions under which the Petitioner was held. At best, his evidence on this issue was mere hearsay.
20. The Respondent stated that its guards held the Petitioner in the sentry room with his concurrence. However, it (the Respondent) did not call any of the guards who were on duty on the material night to affirm this assertion.
21. Having regard to the evidence on record, I find that the Petitioner's evidence that he was unlawfully detained at the Respondent's premises on the night of 3rd May 2019 has not been cogently controverted. Similarly, the Respondent has not cogently controverted the Petitioner's evidence that he was held in a toilet without food.
22. The Respondent's conduct violated the Petitioner's rights under article 29 of the *Constitution* of Kenya 2010 (the *Constitution*). By holding the Petitioner in a toilet overnight, the Respondent arbitrarily deprived him of his freedom.
23. As well, this action by the Respondent subjected the Petitioner to psychological torture and undignified treatment. The impugned actions of holding the Petitioner in a toilet without food subjected him to cruel, inhumane and degrading treatment. It is so declared.
24. The second issue for consideration is whether the Petitioner is entitled to the reliefs that he seeks. The court having found that the Petitioner's constitutional rights under article 29 of the *Constitution* were infringed, it follows that he is entitled to compensation for these violations.
25. The principles that inform the nature of reliefs that a court ought to grant in reparation of violated constitutional rights are now well settled. The reliefs must be able to vindicate the rights in question.
26. Whilst not aimed at merely compensating the victim of the violations, the reliefs granted must be capable of deterring the violator from engaging in acts that further violate the rights. In essence, the



reliefs must be able to underscore the significance of the rights in question and the need to recognize, promote, fulfill and respect them not just for the benefit of the victim but the public generally. These principles have been reiterated in a series of decisions including *Akusala A. Borniface v OCS Langata Police Station & 4 others* [2018] eKLR and *Sylvanus Okiya Ogoro v Director of Criminal Investigations & 4 others* [2020] eKLR.

27. Having regard to the foregoing, I award the Petitioner Kshs 1,500,000/= in vindication of his rights that were violated. In arriving at this award, I have considered comparable awards such as in the Akusala case (supra) where the Petitioner was awarded Kshs 2,000,000.00 for unlawful confinement for one night at a police station
28. I award the Petitioner interest on the above amount at court rates from the date of this decision.
29. I award the Petitioner costs of the Petition.

Summary of the Award

30. The court makes the following findings:-
 - a. The Respondent's impugned actions violated the Petitioner's rights under article 29 of the Constitution.
 - b. The Petitioner is awarded Kshs 1,500,000.00 in vindication of his constitutional rights that were violated.
 - c. The Petitioner is awarded interest on the amount awarded at court rates from the date of this judgment.
 - d. The Petitioner is awarded costs of the Petition.

DATED, SIGNED AND DELIVERED ON THE 22ND DAY OF FEBRUARY, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Petitioner

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

