



REPUBLIC OF KENYA



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**Koin v Governor, Kajiado County & another (Employment and Labour Relations
Petition E152 of 2023) [2024] KEELRC 289 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 289 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E152 OF 2023**

MN NDUMA, J

FEBRUARY 15, 2024

BETWEEN

JACKLINE KOIN PETITIONER

AND

THE GOVERNOR, KAJIADO COUNTY 1ST RESPONDENT

COUNTY GOVERNMENT OF KAJIADO 2ND RESPONDENT

JUDGMENT

1. The petitioner filed suit on 31/7/2023 seeking an order in the following terms:-
 - a. That a declaration that the act of the 1st respondent terminating the petitioner vide the Facebook pronouncement on 22nd June 2023, and the back dated letter dated 18th May 2023 is a breach of the petitioner's rights under Article 21, 28, 41(1) and 47(1) and (2) of the Constitution and that the same is null and void;
 - b. That an order of certiorari quashing the nomination, vetting and/or appointment of any fresh nominee to the position of the 2nd respondent's CEC Member for Trade, Investments and Enterprise Development;
 - c. That an order reinstating the petitioner to the position of the 2nd respondent's CEC Member for Trade, Investments and Enterprise Development;
 - d. In alternative and without prejudice to prayer (b) and (c) above, the payment of the following to the petitioner:
 - i. Three (3) months' pay in lieu of notice period – Kshs. 1,212,750/=
 - ii. Severance pay equivalent to three (3) months' basic salary – Kshs. 1, 212,750/=



- iii. Gratuity equivalent to 31% of the basic salary for the period served – Kshs. 1,127,857.50
- iv. Payment for the remainder of the contract – Kshs. 10,922,040/=
- v. Settlement of the outstanding allowances – Kshs. 1,800,000/=
- vi. Compensation for unfair and unlawful termination (equivalent to 12 months' salary pursuant to section 49 of the Employment Act) – Kshs. 4,851,000/=
- Total – Kshs. 21,126,397.50
- e. Any other relief this Honourable Court deems fit to grant to meet the ends of justice
- f. Costs of the petition
- g. Interest on (d) and(f) above at court rates from the date of filing this petition until payment in full

Facts by the petitioner

2. The petitioner was appointed as a County Executive Committee (CEC) member of the 2nd respondent in charge of Trade, Culture, Tourism and Wildlife for a term of four and a half years by a letter dated 1/12/2017. On 14/2/2019 the 1st respondent deployed the petitioner to the Department of Agriculture, Livestock, Fisheries and Competitive Development in the same capacity.
3. The petitioner avers that she discharged her duty diligently and per the terms and conditions of the employment.
4. That the contract was extended for the three (3) years vide the letter dated 27/9/2022. By a letter dated 17/5/2023 she was redeployed to the Department of Trade, Investment and Enterprise Development with immediate effect.
5. That on 22/6/2023 the petitioner learnt from a news item appearing on the 1st respondent's page on Facebook that the 1st respondent had dropped her from the position of CEC, Trade Investment and Enterprise Development and had nominated one Leah N. Maria in her stead.
6. That the termination of the employment was done without notice and without according petitioner any due process.
1. The petitioner avers that she wrote to the 1st respondent's Chief of Staff on 24/10/2023 enquiring if a termination letter had been issued following the Facebook page announcement. However, the 1st respondent's chief of Staff indicated that she was not aware of any termination letter.
7. The petitioner states that on 19/1/2023 about a month after the purported Facebook termination, she was summoned to the 1st respondent' office to collect her termination letter on 20/1/2023.
8. On the said day, 20/1/2023, her replacement was scheduled to appear before the Kajiado County Assembly's Committee on appointment for approval hereof.
9. The letter of termination indicated that it was effective 18/5/2023 pursuant to section 31(e) of the County Government Acts 2012. No reasons were given for the termination.
10. The termination was one day after her redeployment.
11. The petitioner states that in terms of the contract of service she was entitled to:



- a. 3 months' pay in lieu of notice Kshs. 1,212,750/=
- b. Severance pay equivalent to three months pay (salary Kshs. 1,272,750/= and to
- c. Gratuity at 31% of the basic salary for the period served in the sum of Kshs. 3,553,957.50.

Legal and Constitutional basis

12. The petitioner avers that the petitioner's right to fair administrative action under Article 47(1) and (2) of *the Constitution* read with *Fair Administrative Action Act*, 2015, was violated by the 1st respondent for failure to inform the petitioner of the decision to terminate; to provide reasons for the termination; and failure to give the petitioner opportunity to be heard.
13. The petitioner further states that the 1st respondent violated Article 28 protecting the petitioner's right to human dignity and failure to accord him fair labour practices enshrined under Article 41(1) of *the Constitution*.
14. The petition is supported by affidavit of the petitioner and supporting documents annexed thereof.

Replying affidavit

15. The petition is opposed vide a supporting affidavit of Joseph ole Lenku, the Governor, Kajiado County and the 1st respondent herein who deposes that upon redeployment to the Department of Livestock, Agriculture, Veterinary Services, Fisheries and Irrigation to the Department of Trade, Investments and Enterprise Development the applicant refused to report to her new office (emphasis added).
16. That the applicant was accountable to the Governor in the exercise of her duties and responsibilities and when she derelicted her duties the Governor had the power to remove her from office without undue delay once the Governor formed the opinion that she was not discharging her duties professionally and diligently.
17. That the applicant's dismissal was informed by the need to deliver efficient services to the people of Kajiado County and/or protect and preserve the interests of the people of Kajiado under the powers donated to the Governor by dint of Article 132 of *the Constitution* as read with section 31(a) of the *County Governments Act*.
18. That the Governor is under no legal obligation to disclose the cause of dismissal and to assign reasons for the action.
19. That the dismissal was lawful and proper and in accordance with *the Constitution* and the *County Governments Act*. That no notice is required for the Governor to terminate the employment of a County Executive Committee when and where circumstances warrants that to happen under section 31(a) of the Act. That in terms of the section, the Governor is not required to hold a disciplinary hearing in respect of the said member before dismissal but the Governor dismisses only when he considers appropriate or necessary.
20. That this particular dismissal was in the interest and for the benefit of the Kajiado County and the dismissal was at the pleasure of the Governor upon losing confidence in the Executive Committee member. That these are political appointments whose assumption and retention of office hangs on the political mandate granted by the appointing authority.
21. That the application lacks merit and it be dismissed with costs.



Determination

22. The parties filed written submissions which the court has carefully considered together with the rival depositions by the parties. The issues for determination are:-

- a. Whether the Governor has authority to dismiss an Executive Committee Member (CEC) without notice, hearing and any reason given for the decision to the member.
- b. Whether in the circumstances of this case, the dismissal of the petitioner was lawful and fair.
- c. Whether the petitioner is entitled to the reliefs sought.

23. Section 31(a) of the County Government Act reads as follows:

“Despite section 40, the governor may dismiss a county executive committee member at any time, if the governor considers that it is appropriate or necessary to do so.”

24. In the case of County Government of Nyeri and another versus Cecilie Wangechi Ndungu [2015] eKLR, the Court of Appeal sitting at Nyeri, held:

“...we are of the considered view that the section 31 (a) grants power to a Governor to dismiss a member of the County Executive Committee at any time, that is, at his pleasure.

However, we find that the said power is qualified to the extent that he can only exercise the same reasonably and not arbitrarily or capriciously, why do we say so.

Firstly, by dint of Article 179(1) of *the Constitution* and Section 34 of the *County Governments Act*, the executive authority of a county is vested in the County Executive Committee. The County Executive Committee comprises of the Governor, Deputy Governor, member of the County Executive Committee who are appointed by the Governor. The member of the County Executive Committee assist the Governor to carry out his mandate under the law. It is the Governor who assigns to every member of the County Executive Committee responsibility to ensure the discharge of any function in the county. This is the reason why the County Executive Committee members are individually and collectively accountable to the Governor in the exercise of their powers and performance of their duties and responsibilities (see Article 179 (6) of *the Constitution* and section 39 of the *County Governments Act*). The County Executive Committee member is the Governor’s right hand in his/her respective office. Hence the Governor has to have confidence in the County Executive Committee member. Where such confidence is lost, the Governor ought to have the capability of removing such a member without undue delay so as to enable the County Executive Committee to function for the benefit of the county.”

25. The court agrees fully with the rendition by the Court of Appeal and is in any event bound by it.

26. The Court of Appeal however, went ahead to say, while elaborating the mandate of the Governor under section 31(a) of the County Government Act:-

“We found that the reasons for exercising the said power ought to be valid and compelling and will depend on the circumstances of each case. Consequently the power to dismiss members of the County Executive is qualified to the extent that the same ought to be for the benefit of the county and in accordance to the principle of devolution...” (emphasis added).



27. In the case of County Government of Garissa and another versus Idris Aden Muktar and 2 others [2020] Eklr, the Court of Appeal in its decision discussed the Court of Appeal decision in the Wangechi case Supra; and the case of Narok County Government and another versus Richard B. Bwogo Birir and another [2015 eKLR and stated as follows:-

“As observed in the Richard Bwogo Birir decision, unlike the previous Constitution, the current Constitution of Kenya has not specifically entrenched the pleasure doctrine. In our view, this omission is not by accident or inadvertence, but a deliberate omission because the pleasure doctrine is not compatible with the spirit and letter of the current constitution. The doctrine is inimical to the material value of human rights, good governance, transparency and accountability which are the hall mark of the delegated sovereignty and power and position of public trust. Therefore, the appointment of state officer must be insulated from political or any untoward interference. If section 31 (a) of the County Governments Act was to be interpreted as giving the Governor unfettered discretion to dismiss a County Executive at any time, if he, the Governor, considers it appropriate or necessary to do so, the yard stick would be personal and without transparency or accountability and this would be contrary to the principle and values espoused in the Constitution.”

28. The Court of Appeal went on to conclude:

“This means that there must be reasons upon which it can be concluded that the power of the Governor have been exercised in good faith and for proper reasons and not arbitrarily and capriciously. It cannot be as the appellant appear to contend that the Governor is entitled to fire the respondent at will without any reasons and without due process. That would be contrary to the respondents’ constitutional right to fair labour practices and the right to fair hearing. Thus the appellant had to satisfy the court not only that the Governor had a good reason for the termination of the respondents employment, but also that the reasons for termination was one which justified urgent action under section 31(e) of County Governments Act. Secondly, the Governor had to satisfy the court that in taking the action, due process was followed and a fair hearing given to the respondents.”

29. The events leading to the dismissal of the petitioner as an Executive Committee member are well captured in the letters from the Governor dated 17/5/2013 and 18/5/20233.

30. By dint of the letter dated 17/5/2023, the petitioner was redeployed from the department of Livestock, Agriculture, Veterinary Services, Fisheries and Irrigation to the department of Trade, Investment and Enterprise Development with immediate effect. The redeployment was accepted by the petitioner vide a certificate of acceptance signed by the petitioner on the same date being 17//2022. The respondent has not impugned this certificate of acceptance of redeployment of the petitioner by the Governor.

31. Before lapse of 24 hours and by the letter dated 18/5/2023, the Governor terminated the employment of the petitioner as Executive Committee member for Trade, Investment and Enterprise Development.

The letter reads as follows:

“RE: Termination Of Contract Of Employment

Your appointment letter dated 1st December 2017 and your extension of employment contract dated 27th September 2022 refers,



Pursuant to section 31(a) *County Governments Act*, 2012 and subsequently in accordance with the provision of your contract, I hereby terminate your contract as a County Executive Committee member for Trade, Investment and Enterprise Development.”

32. It is as clear as day light that within hours of redeployment, without notice any hearing and/or any sort of discussion of the matter, and without assigned reasons and without payment of any terminal benefits, the employment of the petitioner as an Executive Committee member for Trade, Investments and Enterprise development was terminated. This was indeed a summary dismissal which took place immediately.
33. It is the considered finding by this court that the Governor failed the Constitutional and statutory tests of lawfulness and fairness well-articulated by the Court of Appeal in the discussed cases of Cecilia Wangechi; Richard Bwogo Birir and Idris Aden Mukta (supra).
34. Accordingly, the action by the Governor violated the material value of human rights, good governance, transparency and accountability established under section 10 of *the Constitution*. The summary dismissal of the petitioner violated Article 41 which protects all Kenyans against being subjected to unfair labour practices and the action was arbitrary, capricious and unjust and violated the petitioner’s right to fair administrative action protected under Article 47 of *the Constitution* as read with section 4 of the *Fair Administrative Action Act*, 2015.
35. In sum, failure to give the petitioner notice of termination; any opportunity to explain herself and to assign any reasons to the summary dismissal rendered the action unlawful, unfair, void abinitio. The court so finds and makes the following final orders:-
 - a. A declaration is issued that the dismissal of the petitioner by the 1st respondent by letter dated 18th May, 2023 violated petitioner’s rights under Articles 28, 41(1) and 47(1) and (2) of *the Constitution* of Kenya 2010 and the same is null and void abinitio.
 - b. The 1st respondent to pay to the petitioner the following terminal benefits:
 - i. Three (3) months’ pay in lieu of notice in the sum of Kshs. 1,212,750/=.
 - ii. Gratuity equivalent to 31% of the basic salary of the period served in the sum of Kshs. 1,127,857.50.

Compensation:

36. The employment of the petitioner was curtailed for no fault of her own, without notice; notice to show cause; without no reason assigned and without payment of any terminal benefits. This being an employee and employer relationship that was terminated unfairly award of damages is guided by section 49(1) (c) as read with (4) of the *Employment Act*, 2007, which provisions, the petitioner has invoked in the prayers for compensation. The petitioner was entitled to serve the remaining term of her contract. The petitioner had faithfully served the 1st respondent as a CEC from 14th December 2017 upto 18th July 2023 when the employment was unlawfully and unfairly terminated by the 1st respondent.
37. The petitioner was humiliated by the 1st respondent by announcing publicly on social media her dismissal before she was aware of the termination since she had not received the letter of termination. The 1st respondent further humiliated the petitioner by redeploying her to a new portfolio on 17/5/2023 before summarily dismissing her from employment without notice or any reasons assigned within 24 hours on 18/5/2023. This was a violation of the petitioner’s right to protection of her human



dignity and is a serious aggravating circumstance in this case. The court has considered possibility of reinstating the petitioner to the position of CEC which prayer the petitioner had made, but the court has not found that option suitable given the circumstances of her dismissal from that position.

38. The court has considered the Supreme Court decision in Ken freight E.A versus Benson Nguti 2016 eKLR and all circumstances leading to the unlawful and unfair summary dismissal and makes an award in the sum of Ksh. 4,851,000/= in favour of the petitioner..
39. In the final analysis judgment is entered in favour of the petitioner against the respondents as follows:
- a. Three months' notice Kshs. 1,212,750/=
 - b. Gratuity for period served Kshs. 1,127,857.50
 - c. Compensation Kshs. 4,851,000/=
- Total award Kshs. 7,191,607.50
- d. Interest at court rates from date of judgment till payment in full
 - e. Costs of the suit

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF FEBRUARY, 2024

Appearances

Mr. Mungai for Petitioner

Mr. Orenge for Respondent

Ekale: Court Assistant

