



**Gatheru & another v County Government of Tharaka Nithi & 5 others
(Cause E059 of 2021) [2024] KEELRC 595 (KLR) (8 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 595 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E059 OF 2021
ON MAKAU, J
MARCH 8, 2024**

BETWEEN

LYDIA WANGUI GATHERU 1ST CLAIMANT

JACINTA KATHAMBI KAMWARA 2ND CLAIMANT

AND

COUNTY GOVERNMENT OF THARAKA NITHI 1ST RESPONDENT

**COUNTY SECRETARY, COUNTY GOVERNMENT OF THARAKA
NITHI 2ND RESPONDENT**

COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

**COUNTY EXECUTIVE COMMITTEE MEMBER, MINISTRY OF FINANCE
THARAKA NITHI COUNTY 4TH RESPONDENT**

PAYROLL MANAGER THARAKA NITHI COUNTY 5TH RESPONDENT

**DIRECTOR HUMAN RESOURCE MANAGEMENT & DEVELOPMENT
THARAKA NITHI COUNTY 6TH RESPONDENT**

JUDGMENT

1. The claimants are employees of the County Government of Tharaka-Nithi. They were arrested on 15th September, 2017 and charged with several offences related to their employment. As a result, they were interdicted on half pay pending trial. The trial took over three years and it ended with the claimants' acquittal on 1st October 2021.
2. Thereafter the claimants wrote to the employer requesting to resume their work but in response they were served with show cause letters to respond to the same charges they had been acquitted of. They responded and they were invited to attend disciplinary hearing. However, they brought the instant



suits and obtained injunction to halt the disciplinary process pending the determination of this suit. The suit seeks the following reliefs:

- a. Declaration that the disciplinary proceedings as contemplated in the show cause letter dated 15th November 2021 and the Notice to Appear before the County Human Resource Advisory Committee on the 16th December, 2021 or any other day and all related actions by the respondents are unprocedural, illegal, null and void.
- b. A declaration that the claimant is entitled to immediate payment by the Respondent of all her outstanding dues and benefits.
- c. A permanent injunction stopping the disciplinary proceedings against the claimant through the County Human Resource Advisory Committee or any other forum.
- d. An order for payment of Kshs.8,009,948.90 being the outstanding half salary and the withheld half salary due after interdiction.
- e. An order for redeployment into service in a position not lower than that held at the time of interdiction and return to the County payroll.
- f. Costs of this suit.
- g. Interest on (4) and (6) above until payment in full.
- h. Any other further and better relief as the Honourable Court may deem just and fit to grant.

The 2nd claimant prays for the following reliefs: -

- a. A declaration that the letter dated the 18th of December 2021 requiring the claimant to appear before the County Human Resource Advisory Committee amounts to double jeopardy on the part of the claimant and the same is irregular and un-procedural, hence null and void.
- b. An order of reinstatement of the claimant to her previous position in the payroll office as occupied prior to her interdiction on the 26th of September, 2017.
- c. An order for payment of Kshs.860,000 being the half pay that the claimant was entitled to during her interdiction period.
- d. General damages.
- e. Any other relief that the court may deem fit to grant.
- f. Costs of this claim.

3. The respondents filed defence and counterclaim against the claimants. They admitted that the claimants are employees of the County Government. They however averred that the claimants committed misconduct and they ought to face disciplinary process irrespective of whether they were acquitted by the court in the criminal charges. They further counter claimed Kshs.11,584,402.00 which was lost when the claimants, directly or indirectly illegally added twenty-four (24) persons into the County Government's payroll between July 2014 and August 2017.



4. The claimants denied the counter claim and prayed for the same to be dismissed. They denied the allegation that they added 24 persons into the County Government's payroll illegally. They further averred that they faced the same charges in Criminal case No.789 of 2017 but they were acquitted for lack of evidence. They contend that the disciplinary proceeding initiated against them and the counter claim amounts to double Jeopardy which is illegal.

Factual Background

5. The first claimant Lydia Wangui Gatheru was employed by the 1st respondent vide a contract dated 18th July 2014 as the Head of County payroll. Her appointment was on permanent and pensionable basis. She worked until 14th September, 2017 when she was arrested and charged before Chuka Magistrates Court in Criminal case No.789 of 2017. The offences charges were abuse of office by adding workers to the County Government payroll arbitrary and irregularly. She was further charged together with the 2nd claimant with preparing certain payrolls and disposing off government revenue that was entrusted to them by virtue of their employment. The 2nd claimant was a payroll clerk since 12th August, 2015 when she was employed.
6. As a consequence of the criminal charges, the claimants were interdicted on half pay vide letters dated 26th September 2017. However, they never received any pay during the interdiction period and they reported the matter to Public Service Commission (PSC) which directed the respondents to pay the half salary. The respondent remained adamant till the end of the trial ended with an acquittal. During the interdiction the claimants were also denied allowances including medical and the letters from the PSC and the Ombudsman were ignored.
7. After the acquittal for lack of evidence in the criminal case, the claimants' attempt to report back to work and be paid their salary arrears was thwarted by the respondents. They were served with show cause letters dated 15th November 2021 accusing them of negligence of duties and abuse of office which led the County Government to lose Kshs.12,000,000.00 through payment of irregular salaries and ghost workers. The letter also charged them with insubordination of the 2nd respondent (CPSB) which is the sole agency authorized to employ workers for the county. They responded through their lawyer but they were invited to appear before the County Human Resource Advisory Committee (CHRAC) on 16th December 2021.
8. The claimants were aggrieved and sought for injunction to restrain the respondents for what they termed as breach of their constitutional rights from being subjected to double jeopardy. The inter locutory injunction was granted pending determination of the suit.
9. It is the claimants' case that they are entitled to the reliefs sought and protection from being subjected to disciplinary process for the same charges they were acquitted from. They deny that they illegally added 24 persons in the County Government payroll and prayed for the counter claim against them to be dismissed. They contended that they were not the only ones dealing with the payroll and contended that there were several payroll clerks inputting data to the payroll.
10. They contended that the procedure of adding a person to the County Government payroll does not allow them to add any person from the blues. They explained that after the CPSB appoints a new employee, the HR department compiles the bio data in a file after confirming the accuracy of the documents from the CPSB. The HR department then forwards the file to the payroll office together with a notification.
11. Upon receipt of the file, the payroll office is only required to check whether there is copy of Appointment letter, National Identification Card, Kenya Revenue Authority PIN card, NHIF Card



- and Bank Account details. Once the existence of the documents is confirmed, the person is added to the payroll. The claimant denied that they added the 24 persons to the payroll and contended that there is no such evidence. They further contended that after their interdiction, the respondents continued to pay the 24 persons. The claimants faulted the respondent for causing their arrest before giving them a chance to exonerate themselves. They denied that the 24 persons added to the payroll were their relatives.
12. The respondents' case is that police conducted investigations which revealed that the claimants together with others, illegally added 24 individuals into the County Government's payroll between July 2014 and August 2017. The respondent contended that the said persons were illegally added to the payroll by the claimants directly or indirectly. They further averred that the claimants were interdicted and sent on compulsory leave but the 1st claimant refused to hand over the payroll to the 1st Respondent. As a result of the refusal to hand over the payroll, the 1st respondent allegedly was denied access to critical reports and items that were in the 1st claimant's custody.
 13. It is further the respondents' case that they never commenced disciplinary action against the claimants until 15th November 2021 when they served them with show cause letters. The claimants responded through their Advocate and thereafter they were summoned to appear before the CHRAC on 16th December, 2021 but they obtained injunction. The respondents averred that the suit was filed prematurely before the outcome of the disciplinary process.
 14. It is the respondents' case that the claimants have deliberately refused to subject themselves to internal process and maintained that acquittal from the criminal charges does not extinguish the respondents' rights to subject the claimants to a disciplinary process. They contended that the claimants colluded with the investigating officer to ensure that the 1st respondents' officers were not bonded to attend court to give evidence, hence the acquittal.
 15. The respondents maintained that the claimants caused the County Government to lose Kshs.11,584,402.00 through fraudulent actions, negligence of duty and breach of contract. They accused the claimants of adding ghost workers to the respondents' payroll and misappropriation or occasioning loss of Kshs.11,584,402.00. the respondents contended that they did an Audit after a new government was elected into office in 2017. They did not produce a copy of the Audit Report to prove financial fraud but only an extract prepared from the payroll prepared by the payroll manager on 31st March, 2023.
 16. The respondents' averred that the weight of the offences by the claimant, the County Secretary reported the matter to the police without first giving the claimants to explain themselves before departmental committee and the CHRAC. The respondents admitted that the claim for Kshs.11,584,402.00 is against the claimants herein and Mr.Kenneth Kanga the claimant in ELRC Cause E022 of 2021 collectively.
 17. The respondents admitted that employees' personal file is compiled by the HR department and then forwarded to the payroll office for inputting of the data to the payroll. They denied that the HR office prepared personal files for any of the 24 persons allegedly added to the payroll. They maintained that the payroll is the basis upon which finance department pays the salaries. Finally, they admitted that there is no evidence adduced to prove that the said 24 persons are not employees of the County Government.

Claimants' submissions

18. The claimant's framed six issues for determination by the court: -



- a. Whether their interdiction was unfair, unlawful and unprocedural.
 - b. Whether internal disciplinary process before the CHRAC amounts to double jeopardy to the claimants.
 - c. Whether they were entitled to half salary during interdiction and full salary after acquittal.
 - d. Whether the claimants are entitled to reinstatement to their positions.
 - e. Whether the claimants are entitled to compensation for the unlawful interdiction.
 - f. Whether the counterclaim has been proved against the claimants.
19. On the first issues, it was submitted that the claimants ought to have been given a choice to explain themselves before being hurled to the police for criminal charges. For emphasis reliance was placed on the case of Patrick Kariuki Njuguna Kariuki v Delmonte (K) Ltd (2012) eKLR.
 20. As regards the second issue, it was submitted that subjecting the claimants to disciplinary proceedings before the CHRAC amounted to breach of the rule against double jeopardy since they had been acquitted of the same offences in Criminal case No.789 of 2017. Reliance was placed on the case of Co-operative Bank of Kenya Ltd v Yator (2021) KECA 95 (eKLR) where the Court of Appeal held that an infraction resolved by a warning cannot be revived and used for summary dismissal of an employee. Further reliance was placed on the case of Paul Ngeno v Pyrethrum Board of Kenya Ltd (2013) eKLR where this court held that an acquittal binds the employer as to the innocence of the employee and therefore disciplinary process ends with the acquittal.
 21. As regards payment of salary, it was submitted that the interdiction letter indicated that the claimants were entitled to half salary during the interdiction period and full salary after the acquittal. They cited Regulation 23 of the Public Service Commission Regulations, 2005 which provides that an officer on interdiction is entitled to all withheld salary if the officer is not dismissed or otherwise punished in disciplinary or criminal proceedings instituted against him. For emphasis they relied on the case of Joseph Otieno Akech v Rai Plywoods (K) Limited (2015) eKLR where the court held that suspending an employee without pay amounts to breach of contract and unfair labour practices which entitles an employee to sue the employer for unfair termination.
 22. Further reliance was placed on Grace Gacheri Murithi v Kenya Literature Bureau (2012) eKLR and Paul Ngeno case supra, where the court held that the employer was obliged to pay the employee the withheld salary upon the employee being exculpated or acquitted from criminal charges.
 23. As regards reinstatement, it was submitted that the claimants were entitled to be reinstated to their positions after the acquittal. They submitted that they wrote letters dated 25th October 2021, through their Advocate demanding reinstatement to their positions or equivalent alternative positions but the respondent ignored them. They urged that the respondents have not adduced evidence to prove that their respective positions were filled or that their services were no longer required.
 24. They have submitted that they are entitled to compensatory damages under section 49 of the [Employment Act](#) for unfair termination and interdiction without pay. Reliance was placed on the case of Margaret Ayuma Katungu v Attorney General (2018) eKLR where the court awarded general damages for violating employees right to fair labour practices, right to fair administrative action and removal from office without due process contrary to Article 236(b) of [the Constitution](#).
 25. As regards the counter claim it was submitted that the respondent did not prove the same. It was submitted that the sum claimed was decided without giving the claimants a chance to defend



themselves. It was contended that there were no internal investigations done before handing the claimants over to the police and therefore the alleged loss due to breach of contract and negligence is not valid. Further, it has not been demonstrated by evidence how the claimants breached their contracts.

26. It was observed that the respondents witness (RW1) admitted during cross examination that there was no Audit Report to prove the alleged loss of Kshs.11,584,402.00. further, that the witness was not able to prove the authenticity of the payroll extract report dated 31st March, 2022 or prove that the claimants were the ones who entered the 24 persons in the payroll. Finally, it was submitted that the respondents have failed to prove that the 24 persons are not employees of the County Government. They prayed for the counterclaim to be dismissed because the respondents did not prove the alleged loss of funds.

Respondents submissions

27. It was submitted for the respondents that the claimants enabled 24 persons who were not employees to obtain money from the respondents by false pretences. It was further submitted that the said infraction was discovered after an audit that the 24 persons had been added to the County Government payroll improperly. It was contended that the claimant does not deny the infraction and the only defence they gave being served with show cause letters is that they were acquitted of the criminal charges by the court.
28. It was submitted that acquittal from criminal charges does not bar employer from undertaking disciplinary proceedings provided rules of natural justice are observed. For emphasis, reliance was placed on the case of Gladys J Cherono v Board of Trustees NSSF & Another (2021) eKLR where the court held that rule against double jeopardy applies to criminal process and does not extend to internal disciplinary process.
29. It was further submitted that the court should not interfere with employer's prerogatives to initiate internal disciplinary proceedings in accordance with the law. For emphasis, reliance was placed on the Alfred Nyungu Kimungui v Bomas of Kenya (2013) eKLR, Professor Gitile Nairuli v University Council Multimedia University College and another and Ian Changamu v Co-operative University of Kenya (2022) eKLR where the court recognized the employer's managerial prerogative to initiate internal disciplinary proceedings against an employee. Consequently, the respondents submitted that the reliefs sought by the claimants should await the outcome of the disciplinary proceedings which stands restrained by a court order.

Analysis and Determination

30. Having carefully considered the pleadings, evidence and submissions, presented to the court, it is clear that the claimants are still employees of the respondents. It is also a fact that the claimants were arrested, charged and finally acquitted of the same offences as the ones they have been subjected to disciplinary proceedings by the respondents. The following issues fall for determination:
- a. Whether the claimants were entitled to half salary and allowances during the interdiction period and the withheld half pay after acquittal from criminal charges.
 - b. Whether the claimants were entitled to reinstatement to their positions with full benefits after the acquittal.
 - c. Whether the acquittal is a bar from internal disciplinary process for the same allegations.
 - d. Whether the claimants are entitled to the reliefs sought.



- e. Whether the respondents are entitled to the reliefs sought in the counterclaim.

Half salary upon interdiction

31. There is no denial that the interdiction letter dated 26th September 2017 entitled the claimants to half salary. The letters stated as follows in paragraph 3: -

“While on interdiction, you will be paid half salary and you should not leave your station without the express permission from your immediate supervisor.”

32. The respondents never paid the said half salary to the claimants. There is no denial that the claimants appealed to the PSC against the failure by the respondents to pay the half salary and the PSC directed them to pay the withheld half salary from 26th September 2017. The letter by the PSC dated 14th July, 2021 is copied below:

“The secretary

County Public Service Board

Tharaka Nithi County Government

O Box 10-60406

KATHWANA

APPEAL AGAINST FAILURE BY THARAKA NITHI COUNTY GOVERNMENT
TO PAY HALF SALARY UPON INTERDICTION SUBMITTED BY LYDIA
WANGUI GATHERU, P/NO.20140033245, COUNTY PAYROLL MANAGER

Ref: Letters dated 17.12.2020 and 27.5.2021

This is to inform you that the Public Service Commission has considered an Appeal against failure by Tharaka Nithi County Government to pay half salary upon interdiction as submitted by Ms.Lydia Wangui Gatheru, P/NO.20140033245, County Payroll Manager and:

- a. Noted that:
- i. Section D.31 the County Public Service Human Resource Manual issued by the Public Service Commission in May, 2013 and other prevailing Regulations provides that; a County Public Officer who is interdicted should receive half basic salary, full house allowance and be paid medical allowance or medical insurance premium remitted whichever is the case;
 - ii. The County Public Service Board did not respond to rebut the Appellant’s claim as required under the Regulations. The Commission requested for comments vide letter Ref:No.PSC/CAP/13 (27) dated 8TH February, 2021 and no response has been forthcoming contrary to the Public Service Commission (County Government Public Services Appeals Procedures) Regulations, 2016 which provides that the response should be received within fourteen (14) days from the date of receipt; and



- b. Allowed the Appeal and directed that she be paid her withheld half salary from 26th September, 2017 when the interdiction was imposed”.
33. In view of the evidence above, I find and hold that the claimants were entitled to half basic salary, full house allowance and medical allowance or insurance cover during the whole period of interdiction, that is from 26th September, 2017 to 1st October, 2021.
34. In addition, the claimants were entitled to the half salary withheld during the whole period of interdiction after the acquittal from the criminal charges on 1st October, 2021. Based on the authorities cited by the claimants, an employee who is interdicted on half pay is entitled to payment of the half pay withheld during the interdiction period. The reason for the withholding of the half pay was in the fear that the claimants may be convicted of the offences charged. Therefore, once the charges were dismissed against them, the employer became obliged to pay the withheld salaries for no work done because the employer is the one who stopped the employee from rendering services.

Reinstatement with full salary

35. For the reasons stated above the claimants were entitled to reinstatement to their positions with full salary effective 1st October 2021 when they were acquitted. The claimant wrote to the respondents through their Advocates requesting for reinstatement and payment of salary arrears. Under Regulation D.31 (1) (g) the respondents were obliged to lift the interdiction and issue a letter to that effect but they did not. There is no evidence that the positions were filled substantively while on their interdiction as such the claimants are granted the reinstatement.

Whether acquittal ends disciplinary process

36. The claimants relied on the rule against double jeopardy provided under Article 50 (2) (0) of *the Constitution* to argue that the disciplinary proceedings initiated against them after the acquittal are illegal, null and void. The said constitutional provision states that every accused person has the right to fair trial which includes-

“(0) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted.”

37. The claimant did not cite any law or contractual provision that insulates them from internal disciplinary process after acquittal from criminal process. The correct position is that criminal process and internal disciplinary process are two distinct process as with different standards of proof. An acquittal in criminal process does not insulate the employee from the internal disciplinary process. The employer has managerial prerogative to initiate internal disciplinary process against an employee at any stage of the criminal proceedings and take appropriate action independent from the criminal proceedings. This means that an employer is not bound by the outcome of the criminal proceedings initiated against the employee.
38. In the case of Gladys J Cheronon v Board of Trustees NSSF & Another (2021) eKLR the court held:
- “Internal disciplinary process and criminal process are independent processes and therefore can proceed side by side and none can bar the other from proceeding.”
39. I entirely agree with the foregoing decision and wish to emphasize that the rule against double jeopardy provided by Article 50 (2) (0) of *the Constitution* applies to criminal proceedings only and not in civil and disciplinary proceedings. The only instance when the rule against double jeopardy applies



to disciplinary proceedings is when an employee has been taken through disciplinary process for an infraction and a final punishment meted or an unconditional pardon is given. In the case of *Co-operative Bank of Kenya Ltd v Yator (2021) KECA 95 (eKLR)* the Court of Appeal held that:-

“The respondent was suspended to allow for investigations. The suspension was subsequently lifted following the conclusion of investigation and the respondent was given another lease of life with a warning that in case of any similar infraction in future the respondent would face drastic action. The complaint having been resolved it was as good as buried forever and the appellant could not revive it later and use it as the basis for summary dismissal of the respondent as it happened here, (sic) amounted to double punishment over the same complaint which is unfair and unconscionable.”

40. In view of the foregoing matters, I find and hold that the disciplinary proceeding initiated by the respondents against the claimants after acquittal from criminal charges are squarely within the four corners of the law and the claimants are obliged to submit themselves to the said process.

Reliefs to the claimants

41. In view of the foregoing, an employee can only challenge internal proceedings in case the employer adopts a procedure which is contrary to the law, the HR policy and procedures or the rules of natural justice. In this case it has not been shown that the employer is adopting such unlawful or unfair procedure. Consequently, I decline to make declaration that the disciplinary proceedings commenced by the employer through the show cause letter dated 15th November 2021 and the Notice to appear before the CHRAC on 16th December 2021 unprocedural, illegal, null and void. For the said reason, I decline to grant permanent injunction stopping the disciplinary proceedings against the claimants through the CHRAC or any other forum.
42. However, in view of my earlier finding on the claimants’ benefits of the acquittal, I declare that the claimants are entitled to immediate payment of all the salary and allowances that were withheld during the four years of interdiction and full salary after the acquittal on 1st October 2021. As observed, they were not paid a penny during the entire period of the interdiction. Therefore, I award each claimant gross salary plus annual increments from 26th September, 2017.
43. The first claimant’s salary as at the date of interdiction was Kshs.77,527, house allowance of Kshs.40,000 and other allowances of Kshs.12,000 totaling to Kshs.129,527.00. He prayed for Kshs.8,009,948.90 as the salary withheld during the interdiction and after acquittal till the date of the filing suit in December 2021. My calculation gives a period of 52 months x Kshs.129,527 =Kshs.6,735,404.00. She is further entitled to gross salary from the date of filing suit till the date of this judgment since she is still in employment.
44. The second claimant’s salary was Kshs.27,000 x 53 months=Kshs.1,404,000.00 upto December 2021 when she filed suit. She prayed for Kshs.860,000.00 and that is what I award her. She is further entitled to gross salary from the date of filing suit till the date of this judgment since she is still in employment.
45. Finally, I award the prayer for reinstatement of each claimant to their positions of Payroll Manager and Payroll clerk respectively with effect from 1st October 2021 when they were acquitted from the criminal charges. In case the respondents have filled the said positions, they are directed to deploy the claimants to equivalent positions within the County Public Service.



Counter claim

46. The respondents counter claim is for Kshs.11,854,402.00 being salary paid to ghost workers between July 2014 -August 2017. The alleged fraud ought to be proved whether or not a defence was filed. The need to prove the counter claim is vital considering that the criminal charges were never proved.
47. To support the counterclaim, the respondents have produced an extract from the payroll to prove that the claimants added the said ghost workers into the county government payroll fraudulently. They alleged that the 24 persons were claimants' relatives who ended up receiving the said Kshs. 11,854,402 as salary from the county government.
48. The claimants denied the alleged fraud and maintained that there is no evidence that they added the said persons to the payroll. They contended that they were arrested and interdicted before being given a chance to defend themselves. They stated that they were not the only ones dealing with the payroll. They further contended that after the arrest no evidence was presented to the court to prove the charges against them and therefore, they were acquitted.
49. They further contended that after the arrest the respondents continued paying the said 24 persons and no evidence has been adduced to prove that they were ghost workers of the respondent. They also contended that no evidence was tendered to prove that the said 24 persons were their relatives.
50. The question to be answered is whether the respondents have proved that the 24 persons were added to the payroll by the claimants herein, and whether the alleged Kshs. 11,854,402 was lost due to the claimants' fault.
51. The counterclaim is premised on a payroll extract showing 24 persons as ghost workers who were paid the said money as salary. The respondents sent the claimants on a compulsory leave to pave the way for investigations on the matter and subsequently caused them to be charged with criminal case. The claimants were acquitted after four years trial without adduction of any evidence to prove the charges. No conclusive report of the intended investigations was produced as an exhibit herein.
52. I say so because the said list of ghost workers was extracted from table 221 in the Staff Audit Report of September 2017 page 29 which was not an investigation report. Under recommendation 9.2 the said Staff Audit Report, the Committee recommended the following to the County Public Service Board:
 - “ 1. The above listed in Table 211[sic] be considered as ghost workers;
 2. payroll analysis on how much they were paid since they were included in the payroll be done;
 3. investigations on how they were entered in the payroll without the prerequisite documents and authority be conducted.
 4. That[sic] action including charging and reprimanding the officers involved in their payment and removing all of them from the County Payroll.”
53. There is no evidence to prove that the recommended investigations were conducted by the Board as no Board member testified herein. It follows, therefore, that the respondents have failed to prove on a balance of probability that the said persons were in fact ghost workers as alleged. They have failed to prove that the claimants did the addition of the alleged ghost workers to the payroll. Paragraph 9 in the Staff Audit deals with ghost workers and states in 9.1 that there were no employment records for them. Consequently, the counterclaim against the claimants fails as it has not been proved on a balance of probability.



Conclusion

54. I have found that the claimants are entitled to their gross salary from 26th September 2017 when they were interdicted to date. They are also entitled to reinstatement to their respective positions with effect from the date they were acquitted from criminal charges. I have also found that the acquittal of the claimants from the criminal charges did not preclude the employer from initiating disciplinary proceedings against them for the same allegations. I have found that the respondent's counterclaim has not been proved on a balance of probability. Finally, I have found that the claimants are entitled to the following reliefs and I enter judgment against the respondents jointly and severally;
- a. Declaration that the claimants are entitled to immediate payment of gross salary for the period they were on interdiction until now.
 - b. The respondents are directed to reinstate the claimants to their respective positions or deploy them to equivalent positions within the County Public Service.
 - c. 1st claimant is awarded gross salary from 26th September, 2017 up to December 2021 when she filed suit being Kshs.6,735,404.00.
 - d. 2nd claimant is awarded Kshs.860,000.00 for the same period.
 - e. Each claimant is further awarded gross salary plus increments for the period from 1st October 2021 when they were acquitted subject to any sum awarded under (c) and (d) above.
 - f. The award of damages is subject to statutory deductions based on the tax rates applicable during the period from 2017 to date.
 - g. The claimants are awarded costs of the suit plus interest at court rates from the date of this judgment.

It is so ordered.

Dated, signed and delivered at Nyeri this 8th day of March, 2024.

onesmus n makau

judge

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, 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.

ONESMUS N MAKAU

JUDGE

9 Nyeri ELRC Cause No. E059 of 2021

