



Kadukha v Kenya National Private Security Workers Union (Petition E029 of 2023) [2024] KEELRC 482 (KLR) (6 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 482 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E029 OF 2023**

**S RADIDO, J
MARCH 6, 2024**

BETWEEN

PATRICK SAGWA KADUKHA PETITIONER

AND

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION RESPONDENT

JUDGMENT

1. Patrick Sagwa Kadukha was elected on or around 19 February 2021 as the Branch Secretary, Kisumu of the Kenya National Private Security Workers Union (the Union).
2. On 17 May 2023, the Union issued a show cause to the Petitioner. The show cause outlined 4 allegations against the Petitioner and called on him to make a written response and also invited him to attend before the National Executive Council on 9 June 2023 to defend himself.
3. The Petitioner responded to the letter on 29 May 2023 and also attended before the National Executive Council after which he put in another response through a letter dated 12 June 2023.
4. On 30 August 2023, the Union invited the Petitioner to appear before the National Executive Council on 8 September 2023.
5. The Petitioner attended the meetings and on 20 September 2023, the Union informed him that he had been suspended for 6 months.
6. The suspension aggrieved the Petitioner and he moved the Court on 31 October 2023, alleging that the Union had violated his rights to dignity, fair labour practices, fair administrative action, and fair hearing.
7. The Court gave directions on the Petition on 22 January 2024.



8. In the directions, the Union was granted leave and ordered to file and serve a response to the Petition on or before 5 February 2024 (it had been served with the Petition on 14 November 2023 but did not file a response).
9. Despite the leave, the Union did not file a response within the agreed timelines (replying affidavit and submissions filed without leave on 1 March 2024).
10. The Petitioner filed his submissions on 16 February 2024.
11. The Court has considered the Petition, supporting affidavit and submissions.

Unfair disciplinary process/right to be heard

12. The Union issued a show-cause letter dated 17 May 2023 to the Petitioner and requested him to respond in writing to outlined 4 allegations and also prepare for an oral hearing.
13. Although the Petitioner initially wrote to the Union seeking more particulars, it is clear from his response dated 12 June 2023, that the particulars were supplied and he gave a comprehensive written explanation.
14. Apart from the opportunity to make written representations, the Union afforded the Petitioner two more opportunities on 9 June 2023 and 8 September 2023, to make oral representations. The Petitioner honoured both opportunities.
15. The Petitioner was informed of the allegations to confront through the show-cause letter dated 17 May 2023 and the last oral hearing took place on 8 September 2023, a period of more than 30 days.
16. The assertions by the Petitioner, therefore, he was not afforded an opportunity to make representations is not borne out by the evidence.

Indefinite suspension

17. The Petitioner also contended that he had been suspended indefinitely and this ran afoul of his right to fair administrative action as set out in Article 47 of the *Constitution*. The suspension letter indicated that the suspension was for 6 months, but without any further explanation, it also referred to indefinite suspension.
18. The Petitioner's suspension letter was vague as to the exact period of suspension, but the Petitioner either through design or inadvertence failed to place the Union's Constitution before the Court to enable the Court to ascertain the period of suspension provided therein.
19. The Court is therefore unable to make a finding as to the unfairness or lawfulness of the suspension.

Alternative dispute resolution avenues

20. Clause 22(v) of the Union's Constitution as gleaned from what has been placed before the Court by the Petitioner provides that a member who has been suspended may appeal to the National Delegates Conference.
21. The Petitioner did not explore that avenue before moving to Court and the Court finds he moved the Court prematurely.



Constitutional Issues for Adjudication

22. The Court has also keenly perused the instant Petition and has not found any constitutional issue that warranted the Petitioner invoking the Court's jurisdiction through a Constitutional Petition.

Conclusion and Orders

23. The Petitioner did not demonstrate that the Union violated his rights. He moved the Court prematurely.

24. The Petition is dismissed with no order on costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 6TH DAY OF MARCH 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioner K'owinoh & Co. Advocates

For Respondent D.B. Wati & Co. Advocates

Court Assistant Chemwolo

