



REPUBLIC OF KENYA



**KENYA LAW**  
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**Saire & another v Cabinet Secretary for Lands and Planning & another  
(Petition 68 of 2022) [2024] KEELRC 894 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 894 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION 68 OF 2022  
MA ONYANGO, J  
APRIL 18, 2024**

**162(2) AND 258 OF THE CONSTITUTION AND IN THE MATTER OF  
THE ALLEGED CONTRAVENTION AND VIOLATIONS OF ARTICLES  
47(1) OF THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER  
OF SECTION 7 OF THE FAIR ADMINISTRATIVE ACTION ACT 2015**

**BETWEEN**

**WUANTAI OLE SAIRE ..... 1<sup>ST</sup> PETITIONER**

**ALEX PARTATI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**CABINET SECRETARY FOR LANDS AND PLANNING ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioners are former members of Kajiado West sub-county Land Control Board. They filed the instant petition following their removal by the 1<sup>st</sup> Respondent before their term lapsed. The 2<sup>nd</sup> Respondent is sued in his capacity as principal legal advisor to the Government under Article 156 of *the Constitution* of Kenya.
2. In the Petition dated 10<sup>th</sup> February 2022 the Petitioners invoked various Articles of *the Constitution* together with sections 4 and 7 of the *Fair Administrative Action Act* and seek the following reliefs:
  - a. A declaration be and is hereby made that the impugned revocation of the Petitioners' appointment to the Kajiado West Sub-county Land Control Board vide a Gazette Notice No. 12827 dated 18<sup>th</sup> November 2021 by the 1<sup>st</sup> Respondent without any reasonable and justifiable cause is inimical to Article 47 of *the Constitution* of Kenya and thus unconstitutional as it



amounts to administrative action that is inefficient, unlawful, unreasonable and procedurally unfair.

- b. A declaration be and is hereby made that the Petitioners' appointment to the Land Control Board of Kajiado West sub-county vide Gazette Notice No. 6986 and Gazette Notice No. 8451 is valid and remains in force as initially anticipated for three years from the date of their appointment as the revocation of their appointment by the 1<sup>st</sup> Respondent in an absolute abuse of power.
  - c. An order of Certiorari be and hereby issued bringing into the Court and quashing the decision of the 1<sup>st</sup> Respondent communicate vide Gazette Notice No. 12827 dated 18<sup>th</sup> November 2021 communicating the revocation of the Petitioners' appointment to the Kajiado West sub-county Land Control Board.
  - d. This Honourable Court be pleased to issue an order restraining the 1<sup>st</sup> Respondent by themselves, their agents or anyone under their instructions from frustrating or in any other manner unlawfully interfering with the Petitioners appointment to the Kajiado West sub county Land Control Board for the three year period specified during their appointment vide Gazette Notice No. 6986 and Gazette Notice No. 8451.
  - e. The costs of this Petition and interest thereon be provided for
  - f. Any other order that this Honourable Court may deem just.
3. The facts relied upon in the instant Petition are that on 16<sup>th</sup> July 2021 vide a Gazette Notice No. 6989, the 1<sup>st</sup> Petitioner was appointed to be a member of the Land Control Board of Kajiado West sub-county for a period of three years by the 1<sup>st</sup> Respondent vide powers conferred on it by section 17 of the [Land Control Act](#). It is averred that pursuant to that appointment, the 1<sup>st</sup> Petitioner attended and participated in the meetings of the Land Control Board of Kajiado West sub-county on 12<sup>th</sup> August 2021, 11<sup>th</sup> November 2021 and 9<sup>th</sup> February 2022.
  4. It is further contended that on 29<sup>th</sup> August 2021, vide a Gazette Notice No. 8451, the 2<sup>nd</sup> Petitioner was appointed to be a member of the Land Control Board of Kajiado West sub-county for a period of three years by the 1<sup>st</sup> Respondent effective 16<sup>th</sup> July 2021 by powers conferred on it by section 17 of the [Land Control Act](#). It is averred that on 9<sup>th</sup> September 2021, 14<sup>th</sup> October 2021, 11<sup>th</sup> November 2021 and 9<sup>th</sup> February 2022, the 2<sup>nd</sup> Petitioner attended and participated in the meetings of the Land Control Board of Kajiado West sub-county.
  5. The Petitioners aver that they diligently executed their duties as members of the Land Control Board of Kajiado West sub-county after their appointment by the 1<sup>st</sup> Respondent on 16<sup>th</sup> July 2021.
  6. The Petitioners aver that their appointments as members of the Land Control Board Kajiado West sub-county were revoked by the 1<sup>st</sup> Respondent vide the Gazette Notice No. 12827 dated 18<sup>th</sup> November 2021 barely six months after their appointments.
  7. The Petitioners state that the revocation of their appointments was without any reasons being advanced to them or being given any notice of the revocation. They contend that they were not given a chance to be heard and that they have not had any reasons advanced to them informing them of the circumstances that led to the revocation of their appointment.
  8. It is the Petitioners case that unless this Petition is heard and orders prayed for granted, their appointments as members of the Land Control Board of Kajiado West sub-county will continue to



be undermined and frustrated by the 1<sup>st</sup> Respondent. That the revocation of their appointments was out rightly ultra vires.

### **The Respondents case**

9. In response to the petition the 1<sup>st</sup> Respondent filed Grounds of Opposition dated 22<sup>nd</sup> July 2022 in which it contends:
  - i. That the Petition is fatally defective, hopeless, misconceived, frivolous and totally devoid of merit.
  - ii. That the Petitioners' prayers are vexatious, a clear abuse of process, and unreasonable oppressive effort to frustrate the 1<sup>st</sup> Respondent's operatives.
  - iii. That the Petitioners have not demonstrated any grounds allowed in law to justify grant of the prayers sought.
  - iv. That the Petitioners have not demonstrated any loss that may be suffered by themselves if the application dated 9<sup>th</sup> May 2022 is not allowed. The loss by the Petitioners, though not exhibited, can be mitigated by way of damages and or costs.
  - v. That the Petition is incompetent, misconceived, mischievous and bad in law as the same does not conform to the threshold of an application for conservatory orders as envisaged under the Civil Procedure Rules, 2010.
10. The Petition was disposed of by way of written submissions. The Petitioners' submissions are dated 25<sup>th</sup> May 2022. The Respondents did not file any submissions.

### **Petitioner's submissions**

11. In their submissions the Petitioners identified the issues for determination to be:
  - i. Whether the revocation of the Petitioners' appointment to the Land Control Board of Kajiado West sub-county by the 1<sup>st</sup> Respondent violates the Petitioners right to fair administrative action.
  - ii. Whether the 1<sup>st</sup> Respondent violated the Petitioners legitimate expectation to be members of the Land Control Board of Kajiado West Sub-county for a period of three years as prescribed by their respective appointive Gazette Notices.
12. On the first issue, the Petitioners submit that Article 47 of *the Constitution* prescribes that any administrative action must be lawful, reasonable and procedurally fair. It is the Petitioners contention that the revocation of their appointments by the 1<sup>st</sup> Respondent outrightly disregards these provisions as the revocation is unlawful, unreasonable and procedurally unfair.
13. The Petitioners further submit that section 14 of the Land Control Board Act does not bestow upon the 1<sup>st</sup> Respondent power to obliterate the fundamental principles of Fair Administrative Action embedded in Article 47 of *the Constitution*.
14. It is the Petitioners case that the 1<sup>st</sup> Respondent blatantly and inexcusably acted in violation of her powers by revoking the Petitioners appointment to the Land Control Board of Kajiado West sub-county which they had legitimate expectation to serve for a period of three years.
15. The Petitioners submit that the import of Article 47 of *the Constitution* is that rules of natural justice including the requirement of notice are no longer left within the realm of common law principles



and are now anchored in the Constitution whose intent is to promote the rule of law as a national value under Article 10(2)(c) of the Constitution and to cure the culture of arbitrariness inherent in our administrative processes.

16. They contend that the Fair Administrative Action Act is explicit as to the steps that the 1<sup>st</sup> Respondent ought to have taken before revoking the appointment of the Petitioners as Land Control Board members of Kajiado West sub-county. The Petitioners submit that under section 4(3)(a) and (b) of the Fair Administrative Act, the 1<sup>st</sup> Respondent ought to have given the petitioners prior and adequate written reasons for the proposed administrative action as well as an opportunity to be heard and to make representation in that regard. In support of this position, the Petitioners placed reliance on the cases of High Court of Kenya Nairobi Petition No. 148 of 2013, Export Trading Company vs Kenya Revenue Authority, Civil Appeal No. 52 of 2014, the Judicial Service Commission v Hon. Mr. Justice Mbalu Mutava & Another and Wangonde & Others v Coffee Board of Kenya & Minister for Agriculture (2012) eKLR.
17. The Petitioners urged the court to find that though section 14 of the Land Control Act bestows upon the 1<sup>st</sup> Respondent power to appoint and revoke appointments of Land Control Board members, the revocation of the Petitioners appointments was arbitrary and in absolute violation of the Petitioners right to Fair Administrative Action embedded in Article 47 of the Constitution.
18. On the second issue, it is the Petitioners submission that the 1<sup>st</sup> Respondent through her appointment of the Petitioners created a reasonable expectation in the mind of the Petitioners. It is submitted that the 1<sup>st</sup> Respondent further created a legitimate expectation when she specified that the Petitioners would be members of the Land Control Board of Kajiado West sub-county for a period of three years.
19. According to the Petitioners, legitimate expectation ought not be frustrated because it is the root of the constitutional principle of Rule of Law which requires predictability and certainty in government dealings with the public. They aver that they had the legitimate expectation that they would be members of the Land Control Board of Kajiado West sub-county for a period of three years as unequivocally stipulated in the Gazette Notices appointing them. In support of this position, the Petitioners cited the following cases: Communications Commission of Kenya & 5 others v Royal Media Services & 5 others, National Director of Public Prosecutions vs Phillips & Others (2002) (4) SA 60.
20. The Petitioners urged the court to uphold the rule of law and protect the pronouncements of the Constitution by declaring that the 1<sup>st</sup> Respondent's revocation of the Petitioners appointment as members of the Land Control Board of Kajiado West sub-county is unconstitutional and void ab initio.

### **Determination**

21. From the pleadings as well as the submissions on record, the issues that fall for my determination are:
  - i. Whether the revocation of the Petitioners appointment vide Gazette Notice No. 12827 was lawful.
  - ii. Whether the 1<sup>st</sup> Respondent violated the Petitioners legitimate expectation by revoking their appointments
22. On first issue, the Petitioners have submitted that their appointments were revoked without any reasons being advanced to them or being given any notice of the revocation



23. Section 14 of the Land Control Board provides;
- “An appointed member of a board shall hold office for such period as may be prescribed or, where no period is prescribed, for such period as may be specified in his appointment: Provided that a member’s appointment may be terminated at any time by the Minister, and a member may resign at any time by notice in writing to the Minister.”
24. It is clear that a person appointed as a member of Land Control Board shall hold office at the discretion of the Minister.
25. However, Article 47 of *the Constitution* is in mandatory terms and provides:
47. Fair administrative action
- (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) Every person has the right to be given written reasons for any administrative action that is taken against him.
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-
26. The above provision require that an administrative action is to be expeditious, fair, lawful and reasonable and that where such an action adversely affects a person’s right or fundamental freedom, the affected person is entitled to be given written reasons for the action.
27. The Court of Appeal in the case cited by the Petitioners of Judicial Service Commission v Mbalu Mutava & another [2014] eKLR observed as follows;
- “ Article 47(1) marks an important and transformative development of administrative justice for, it not only lays a constitutional foundation for control of the powers of state organs and other administrative bodies, but also entrenches the right to fair administrative action in the Bill of Rights. The right to fair administrative action is a reflection of some of the national values in article 10 such as the rule of law, human dignity, social justice, good governance, transparency and accountability. The administrative actions of public officers, state organs and other administrative bodies are now subjected by Article 47(1) to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.”
28. In the instant case, there is no indication that the 1<sup>st</sup> Respondent gave any reasons whatsoever for the revocation of the Petitioners appointment. The revocation therefore failed the test of a fair administrative action and was a violation of the Petitioners’ rights to a fair administrative action under Articles 47 of *the Constitution*.
29. On the second issue, the Petitioners submitted that the 1<sup>st</sup> Respondent created a reasonable expectation in the mind of the Petitioners by appointing them and also specifying that they would be members of the Land Control Board of Kajiado West sub-county for a period of three years.



30. Legitimate expectation was defined by De Smith, Woolf & Jowell in “Judicial Review of Administrative Action” 6<sup>th</sup> Edition Sweet & Maxwell at page 609 as follows:

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”

31. The Supreme Court of Kenya in the case of Communication Commission of Kenya & 4 others -v-Royal Media Services Ltd & 4 other [2014] eKLR observed as follows concerning legitimate expectation:

“Legitimate expectation applies the principles of fairness and reasonableness to the situation in which a person has an expectation, or interest in a public body retaining a long standing practice, or keeping a promise. An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil...”

32. In the instant Petition, the 1st Respondent vide the Gazette Notice No. 6986 and Gazette Notice No. 8451 made a representation to the Petitioners that they had been appointed as board members to the Kajiado West Sub-county Land Control Board where they were to serve for a period of three years. The Petitioners upon receiving this communication attended and participated in the meetings of the Land Control Board of Kajiado West sub-county on various dates. By revoking the Petitioners’ appointment vide the Gazette Notice No. 12827 dated 18<sup>th</sup> November 2021 1<sup>st</sup> Respondent breached the Petitioners legitimate expectation to serve for three years.

33. Consequently, this court finds merit in the Petition dated 10<sup>th</sup> February 2022 and Judgment is hereby entered in favour of the Petitioners in the following terms:

- a. A declaration be and is hereby made that the impugned revocation of the Petitioners’ appointment to the Kajiado West sub-county Land Control Board vide a Gazette Notice No. 12827 dated 18<sup>th</sup> November 2021 by the 1<sup>st</sup> Respondent without any reasonable and justifiable cause is inimical to Article 47 of *the Constitution* of Kenya and thus unconstitutional as it amounts to administrative action that is inefficient, unlawful, unreasonable and procedurally unfair.
- b. A declaration be and is hereby made that the Petitioners’ appointment to the Land Control Board of Kajiado West sub-county vide Gazette Notice No. 6986 and Gazette Notice No. 8451 is valid and remains in force as initially anticipated for three years from the date of their appointment as the revocation of their appointment by the 1<sup>st</sup> Respondent in an absolute abuse of power.
- c. An order of Certiorari be and hereby issued bringing into the Court and quashing the decision of the 1<sup>st</sup> Respondent vide Gazette Notice No. 12827 dated 18<sup>th</sup> November 2021 communicating the revocation of the Petitioners’ appointment to the Kajiado West sub-county Land Control Board.
- d. A restraining order is hereby issued restraining the Respondents by themselves, their agents or anyone under their instructions from frustrating or in any other manner unlawfully interfering



with the Petitioners appointment to the Kajiado West sub county Land Control Board for a term of three years as specified in the vide Gazette Notice No. 6986 and Gazette Notice No. 8451 unless the same is done in compliance with the law.

e. The 1<sup>st</sup> Respondent shall bear the costs of this Petition

34. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON

THIS 18<sup>TH</sup> DAY OF APRIL, 2024

**MAUREEN ONYANGO**

**JUDGE**

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**NRB ELRC PET. NO. 68 OF 2022 JUDGMENT**

