



**Waweru v County Government of Kiambu (Petition E136 of 2023)
[2024] KEELRC 944 (KLR) (8 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 944 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E136 OF 2023**

B ONGAYA, J

APRIL 8, 2024

**IN THE MATTER OF ARTICLE 19(2), 41(1), 47(1) & (2)
AND ARTICLE 50(1) OF THE CONSTITUTION 2010**

AND

**IN THE MATTER OF VIOLATION OF FUNDAMENTAL RIGHTS
& FREEDOMS UNDER ARTICLE 19 OF THE CONSTITUTION**

BETWEEN

TONY KINYANJUI WAWERU PETITIONER

AND

COUNTY GOVERNMENT OF KIAMBU RESPONDENT

RULING

1. The petitioner herein filed the Notice of Motion dated 25.09.2023 through D. Muinde & Associates Advocates pursuant to the provisions of Section 5 of the *Judicature Act*, cap 8, Laws of Kenya & Supreme Court of England Rules. The applicant prayed for orders:
 - a. That the application be certified urgent and be heard ex parte in the first instance.
 - b. That the County Secretary and Head of Public Service, the Chief Executive Committee Member (C.E.C.M) Finance and Economic Planning, Director Human Resource Management and Chief Officer, Transport and Utilities working for the County Government of Kiambu be arrested and detained in prison for a period of Six (6) months for disobeying lawful Court Orders.
 - c. That in addition to or in lieu of such committal, an order of sequestration do issue sequestering such properties of the respondents, and of the County Secretary and Head of Public Service, the Chief Executive Committee Member (C.E.C.M) Finance and Economic



Planning, Director Human Resource Management and the Chief Officer, Transport and Utilities working for the County Government of Kiambu for disobeying a lawful Court Order.

- d. That costs of this Application be provided for.
2. The Application was based on the grounds on the face of the application and the supporting affidavit of the applicant sworn on 25.09.2023 and filed together with the application. The applicant's case is as follows:
 - a. On 25th July, 2023, the Court made an order that pending the hearing of the applicant's application inter partes, the disciplinary cause against him be determined and decision communicated not later than 1st September, 2023.
 - b. That failure to abide by the forgoing, the salary of the petitioner or applicant held by the respondent be released forthwith. The Court order is exhibited.
 - c. That the Respondent has arrogantly and wilfully disobeyed the orders that are well within its knowledge.
 3. The respondent filed its replying affidavit and submissions. The replying affidavit was sworn on 17th October 2023 by one Daniel Njenga, the Chief Officer, Transport & Public Works in the County Government of Kiambu. He stated as follows:
 - a. That the respondent has endeavoured to comply with the said order issued on 05.09.23 in terms of prayers 3 & 4.
 - b. That in terms of prayer 3, the office of the County Secretary vide a letter dated 12.09.23 ref CGK/ST/CHRMAC/VOL 1/011 communicated the decision of the County Human Resource Management Advisory Committee to uphold the decision of the Departmental Human Resource Advisory Committee to summarily dismiss the petitioner or applicant.
 - c. That the said decision was forwarded to the County Public Service Board for consideration which Board is yet to communicate its final determination to the petitioner or applicant.
 - d. That the order of sequestration being sought by the applicant herein is misguided since it is a remedy of last resort and that the petitioner has not demonstrated the vicarious liability against the state officers since they have not engaged in any unlawful actions when it comes to the disciplinary hearing.
 - e. That according to Article 176(1) of the Constitution the County Executive ought to have been part of the proceedings herein and hence it would be unfair for this Honourable Court to grant the sought orders.
 - f. That the respondent followed due process in the disciplinary process and that the release of the salaries withheld were to be effected after communication by the Public Service Board on the summary dismissal of the petitioner.
 - g. That the state officers identified in the application herein are not parties to the proceedings and therefore no reasonable cause of action has been brought against them in the application or in the main petition and thus the application should be dismissed with costs.
 4. The Court directed that both parties file their written submissions.
 5. The court has considered both cases and their written submissions and returns as follows.



6. While the Court order issued as mutually submitted for the parties, it appears that there exist a legitimate difficulty in compliance for two discernible and valid grounds. First, the order said to have been breached was given on 03.07.2023 but issued on 05.09.2023 long after compliance date of 01.09.2023. It appears that while counsel for both parties were present, disobedience cannot be inferred whereby the order had been belatedly issued and invariably not available for compliance by the due date. Second, the cited officers appear to have processed the disciplinary case and forwarded the same to the County Public Service Board for conclusion. The Board, which was not party to the proceedings, is judicially noticeable as the statutory body vested with disciplinary powers over the petitioner.
7. In view of the findings, the Court considers that the application and the prayers made will be declined. It is imperative that the Board should determine the disciplinary proceedings against the petitioner.

In conclusion, the application filed for the petitioner dated 25.09.2023 is hereby dismissed with orders:

1. The Kiambu County Public Service Board is hereby directed to conclude the disciplinary case against the petitioner by 02.06.2024 and the outcome notified to the Court and the parties by mention date.
2. For purposes of order 1 the Kiambu County Public Service Board is enjoined as an interested party herein and parties to serve the papers on record upon the Board within 7 days and, the instant order be served upon the Board by the petitioner accordingly, together with a mention notice.
3. Costs of the application in the cause.
4. The parties to take a convenient mention date for further directions, orders, and receiving report on outcome of the disciplinary process.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 8TH APRIL 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

