



**Ochola v Siaya County Public Service Board (Petition E014 of 2024)
[2024] KEELRC 1596 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1596 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E014 OF 2024**

**S RADIDO, J
JUNE 26, 2024**

**IN THE MATTER OF VIOLATION OF ARTICLES 1, 2, 3, 4, 10, 19, 20, 21, 22, 23, 73,
75, 159, 174, 175, 232, 235, 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF THE VIOLATION OF THE PETITIONER’S BASIC AND
FUNDAMENTAL HUMAN RIGHTS AS ENSHRINED UNDER ARTICLES
27, 28, 29, 41, 47 AND 50 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF RULE 4 RULE 10(1) OF THE CONSTITUTION
OF KENYA (PROTECTION OF RIGHT AND FUNDAMENTAL
FREEDOM PRACTICE AND PROCEDURE RULES, 2013**

BETWEEN

ERICK JUMA OCHOLA PETITIONER

AND

SIAYA COUNTY PUBLIC SERVICE BOARD RESPONDENT

JUDGMENT

1. On 23 November 2018, the County Public Service Board, Siaya (the Board) advertised for the position of Principal Finance Officer (Fiscal Analyst).
2. Eric Juma Ochola (the Petitioner) applied for the position, was shortlisted and interviewed, and was issued with an offer of appointment dated 5 April 2019 which required him to accept the offer within 14 days.
3. The Petitioner accepted the offer on 10 April 2019.



4. At the material time, the Petitioner was employed by Tana and Athi River Development Authority as a Data Clerk and he resigned from the Authority on 20 May 2019. The Authority accepted the resignation and informed the Petitioner that his last working day would be 3 June 2019.
5. Despite accepting the offer, the Board did not inform the Petitioner when to report for duty, and on 30 September 2020, the Petitioner sought the intervention of the Public Service Commission through an appeal.
6. The Public Service Commission considered the appeal and through a letter dated 11 September 2023, notified the Petitioner that the appeal had been disallowed on the basis of section 86(4) of the *Public Service Commission Act* as read with regulation 21 of the *Public Service (County Appeals Procedures) Regulations*, 2022. The Commission rejected the appeal because it was filed outside the prescribed 90 days.
7. The Petitioner filed a review request with the Commission on 4 October 2023. The review request was also declined.
8. The Petitioner then moved this Court on 17 April 2024, alleging that the decision of the Board not to issue him with a contract or allow him to commence work constituted an unfair labour practice and had breached his legitimate expectation.
9. When the Petition was placed before the Court on 9 May 2024, it was not satisfied with the service and it directed the Petitioner to serve the County Attorney. An affidavit of service filed on 19 May 2024 attested to the service.
10. On 7 May 2024, the Petitioner filed a Notice of Motion seeking leave to file an Amended Petition. The Amended Petition was also filed on the same day.
11. In the Amended Petition, the Petitioner sought the following reliefs:
 - i. A declaration that the conduct of the Respondent is in breach of section 9(2) of the *Employment Act* and the provisions of Articles 27, 28, 41, 47, 50, 249, and 259 of the *Constitution* of Kenya, 2010 and thus violated the Petitioner's constitutional rights as contained in the Bill of Rights.
 - ii. An order compelling the Respondent to issue the Petitioner an appointment letter within 14 days of this Honourable Court's judgment.
 - iii. A declaration that the Petitioner be allowed to report to work within 14 days of this Honourable Court's judgment.
 - iv. An award of exemplary damages in the form of general damages for unfair labour practices and violation of and or breach of the Petitioner's constitutional rights.
 - v. An award of compensation in the form of special damages specifically for the loss of income and future earnings based on the monthly income from the previous employer (TARDA). The award to be for 33 months being the period from the accrual of cause of action at September 2021 to the date of judgment of this Honourable Court. Also special damages on expenses incurred by the Petitioner in relation to the dispute herein.
 - vi. Costs of the Petition.
 - vii. Interest on the awards at court rates.
 - viii. Any other relief as the Court may deem just and expedient to grant.



12. The Court directed the Petitioner to file and serve submissions before 27 May 2024 and the Board before 3 June 2024. Despite service, the Board failed to participate in the proceedings.
13. The Petitioner filed his submissions on 27 May 2024.

Enforceable contract of service?

14. The Board offered the Petitioner an appointment in writing and the offer required the Petitioner to signify acceptance within 14 days. The evidence before the Court is that the Petitioner accepted the offer by signing and returning a copy of the offer to the Board within the set 14 days.
15. Although the offer indicated that a contract would be signed in due course, for purposes of the *Employment Act*, the Board had entered into a contract of service with the Petitioner.
16. Section 2 of the *Employment Act* defines a contract of service as:

means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership...
17. The offer the Board made the Petitioner thus met the legal threshold for enforcement. The offer of appointment had all the essentialia of a valid employment contract.
18. It was a valid contract.

Breach of contract of service?

19. The Petitioner attested that despite following up with the Board to detail when he should commence fulfilling his part of the contract, the Board kept a studious silence forcing him to appeal to the Public Service Commission.
20. The Commission rejected the Petitioner's appeal because it was made outside the prescribed 90 days.
21. The record shows that the Petitioner was ever ready to commence work but for the silence and inaction on the part of the Board.
22. The Court has no hesitation in finding that the Board was and continues to be in breach of contract.

Legitimate expectation

23. The Board made a written commitment to the Petitioner that if he accepted the appointment within 14 days, he would be offered a contract.
24. Based on the commitment from the Board, the Petitioner accepted the offer of appointment and also resigned from his then employment (see Supreme Court Petition No. 14 of 2014, *Communications Commission of Kenya & 5 Ors v Royal Media Services & 5 Ors* and *Keen Kleeners Ltd v Kenya Plantation & Agricultural Workers Union* (2021) KECA 352).
25. The Court finds that the Board breached the Petitioner's legitimate expectation.

Unfair labour practice

26. the *Constitution* assures all persons in Kenya of a right to fair labour practices. the *Constitution* and the legal framework have not expressly defined fair labour practices but the hallmarks can be found in the protections given to all workers.



27. The Board offered the Petitioner an appointment. It did not keep its part of the bargain after the Petitioner had intimated acceptance. Pleas by the Petitioner for clarification fell on deaf ears.
28. The Court finds that the conduct of the Board fell within the realm of unfair labour practices.

Remedies

29. Despite service more than once, the Board failed to appear in Court or participate in the litigation. The Court can, therefore, assume that there are no factual or legal impediments to the enforcement of the contract herein.
30. The Petitioner resigned from his then employment in the anticipation that he would be gainfully employed by the Board within a very short time.
31. Up to the time of this judgment (63 months), the Petitioner has not secured any alternative or gainful employment. The loss of income can be directly attributed to the inactions or conduct of the Board.
32. The Petitioner sought damages equivalent to the income he would have earned as well as general damages for unfair labour practices. The loss is easily quantifiable as the Petitioner disclosed his remuneration at the material time.
33. Equally known, is the remuneration the Board had promised to pay the Petitioner (Kshs 76,770/-).
34. In the Court's view, the remuneration promised to the Petitioner by the Board would be a just factor in determining the level of damages for lost income up to the time of filing the Petition. The award would also serve as a vindication of the finding on unfair labour practices.

Conclusion and Orders

35. From the above, the Court orders:
 - i. A declaration be and is hereby issued that the offer of appointment issued to the Petitioner by the County Public Service Board, Siaya constituted a valid and enforceable contract of service.
 - ii. A declaration be and is hereby issued that the County Public Service Board, Siaya has breached the contract of service and the Petitioner's legitimate expectation.
 - iii. A declaration be and is hereby issued that the failure by the County Public Service Board, Siaya to issue a contract or allow the Petitioner to commence work amounts to an unfair labour practice.
 - iv. An order be and is hereby issued compelling the County Public Service Board, Siaya to issue the Petitioner an appointment letter/contract of service within 14 days of this Honourable Court's judgment.
 - v. An order be and is hereby issued that the County Public Service Board, Siaya allow the Petitioner to report to work within 14 days of this Honourable Court's judgment.
 - ix. The Petitioner is awarded lost income of Kshs 4,836,510/-.
36. The award of lost income to attract interest at court rates from 5 April 2019.
37. The Petitioner to have costs of the Petition.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 26TH DAY OF JUNE 2024.



RADIDO STEPHEN, MCIARB

JUDGE

Appearances

Petitioner in person

Respondent did not participate

Court Assistant Chemwolo

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