



**Seth & 2 others v Ministry of Interior and Coordination of National Government & 3 others (Petition E001 of 2024) [2024] KEELRC 1614 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1614 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
PETITION E001 OF 2024**

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

**BETWEEN**

**ANUNDA ADAMS SETH ..... 1<sup>ST</sup> PETITIONER  
FRANKLINE OMBASA ..... 2<sup>ND</sup> PETITIONER  
ELIZABETH LOKOOLI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL  
GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT  
GODFREY KIGOCHI, COUNTY COMMISSIONER ..... 2<sup>ND</sup> RESPONDENT  
KENYA NATIONAL BUREAU OF STATISTICS ..... 3<sup>RD</sup> RESPONDENT  
ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. On or around June 2019, the Kenya National Bureau of Statistics advertised for the positions of supervisors and enumerators for purposes of the national census in 2019.
2. Frankline Ombasa and Elizabeth Lokooli applied for and were interviewed for the positions of content supervisors and were eventually offered employment. The 2 Petitioners were taken through training/induction.
3. On 9 August 2019, the County Commissioner wrote to the 2 Petitioners communicating that due to the extent of their disability they had been relieved of responsibilities as content supervisors.
4. The Petitioners felt the communication violated their rights and on 20 August 2019, they moved the High Court in Kisii seeking the following remedies:



- i. An order of certiorari to quash the letters dated 9<sup>th</sup> August 2019 from Mr G.M. Kigochi – Kisii County Commissioner communicating the decision of the Committee to the Petitioners.
  - ii. An order of mandamus to compel the Respondents by self or their agents to train, include, engage and facilitate the Petitioners with the right tools to be content supervisors for the August 2019 census.
  - iii. A declaratory order that the Respondents have violated Articles 2(1), 10, 27, 28 and 54 of *the Constitution*.
  - iv. A declaratory order that persons with disabilities are entitled to work and be remunerated fairly without discrimination of any kind as guaranteed in Article 27(8) of *the Constitution*.
  - v. An order directing the State and its agencies to comply with Article 54 of *the Constitution* that requires that at least 5% of any appointive or elective positions to go to persons with disability.
  - vi. General and exemplary damages in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners on an aggravated scale for physical and psychological suffering occasioned by unlawful and unconstitutional discrimination.
  - vii. Each party should bear their own costs on grounds that this Petition is in the public interest.
  - viii. Any further order or relief that this Court may deem and fit to grant.
  - ix. An order directing the State and its agencies to come up with policies and structures for effective, outlined reasonable accommodation by persons living with disabilities in more places.
  - x. An order directing that persons with disabilities be exempted from payment of court filing fees when petitioning in person or an alleged violation of a right or threat to a violation of a right.
  - xi. An order that this matter be brought up for mention before this Court six (6) months after date of judgment to confirm compliance with orders issued.
5. On 1 October 2020, the Petitioners sought leave to file an Amended Petition and the reasons included that the 1<sup>st</sup> Petitioner had relocated to the United States.
  6. The High Court granted leave and directed the Petitioners to file and serve an Amended Petition within 14 days.
  7. The Petitioners did not comply and on 18 November 2020, the Court directed them to file and serve an Amended Petition before 7 December 2020.
  8. On 29 January 2021, the Petitioners filed an Amended Petition removing G.M. Kigochi as a party in person and deleting prayers (ii), (vii) and (xi).
  9. The Director General of the Kenya National Bureau of Statistics filed a replying affidavit and Grounds of Opposition on 27 April 2021.
  10. The hearing commenced before the High Court on 26 January 2021 with evidence taken from the 2<sup>nd</sup> Petitioner and on 30 November 2022, the parties were directed to file and exchange submissions.
  11. The Petitioners filed their submissions on 23 May 2023, and the Respondents on 8 August 2023.
  12. When the parties appeared before the High Court on 4 December 2023, judgment was reserved for 4 March 2024.



13. However, instead of delivering a judgment, the High Court delivered a Ruling declining jurisdiction. In the Ruling, the High Court noted:

On reading the Petition, it is apparent that it is a Petition on whether the Respondents had a right to terminate the services of the Petitioners on account of the nature of their disability.

There is no other question to be determined. There is thus no predominant question of Constitutional rights.

Therefore, I find that the questions presented in the Petition are the kind to be dealt with by a Court established under Article 162(2)(a) of *the Constitution*.

I consequently transfer the entire Petition to the (E)mployment and Labour Relations Court at Kisumu for determination of the issues raised herein.

14. The High Court ordered that the Petition be transferred to this Court and the parties appeared before this Court on 15 April 2024 and requested the Court to look at the record and prepare a judgment.
15. This Court has keenly perused the Ruling by the High Court. Its tenor was to hamstring this Court from exercising its discretion on the live/real Issues in dispute by identifying a single issue as being in dispute.
16. The orders by the High Court appear to have been overbroad and restricted this Court from exercising its discretion. The parties herein seem to have been happy with the Ruling, for no appeal was preferred on the extent of Issues in dispute.
17. This Court will therefore limit its discretion in addressing the question of whether there was unfair termination of employment on the ground of discrimination.
18. It is not in dispute that the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners applied for employment as Census officials, they were interviewed and offered contracts as Content Supervisors for 27 days. The Petitioners were put through induction training.
19. The Court can, therefore, conclude that these 2 Petitioners were in an employment relationship with the Respondents.
20. It is also common that on 9 August 2019, the County Commissioner wrote to the 2 Petitioners in the following terms:  

Re: Regret

According to the meeting held on 8<sup>th</sup> August 2019 Min 5/08/19, the Kisii County Census Committee recommended that due to the extent of your disability in relation to the demanding nature of the current census, you are hereby relieved of your duty as a content supervisor.

The Committee is sorry for the inconvenience caused.

We thank you for your participation in the process and wish you the best in all your future endeavours.
21. The Respondents were essentially terminating the contracts of the 2 Petitioners. The primary ground for the decision was that the Petitioners could not perform their tasks and roles because of the extent of their disability.
22. The Respondents should at the very least have afforded the Petitioners an opportunity to make representations before making the decision to terminate. Such an opportunity is a requirement of not only natural justice but procedural fairness as demanded by Articles 41 and 236 of *the Constitution*.



23. Perhaps, had the Respondents afforded the Petitioners such an opportunity, they would have discussed the possibility of reasonable accommodation. The doctrine of reasonable accommodation is generally accepted within the employment arena (see *MacNeill v Canada (Attorney General)* (CA) 1994 CanLII 3496 and *Lucy Chepkemoi v Sotik Tea Company Limited* [2022] eKLR.
24. The doctrine has also been given statutory recognition in sections 12 and 15(5) of the Persons with Disability Act, 2003.
25. The Respondents' decision did not only fail the procedural fairness and reasonable accommodation test, but they also isolated the Petitioners for dismissal because of their disability.
26. The disability of the Petitioners must have been obvious to the Respondents at the point of recruitment.
27. The Court finds that the termination of the 2 Petitioners' employment was an assault on their dignity. The decision was discriminatory.
28. The Petitioners were to be engaged for a period of slightly less than a month at a daily rate of Kshs 2,500/- and they lost on the remuneration.
29. The Court concludes that damages of Kshs 100,000/- each would be fair and just.

#### **Conclusion and Orders**

30. The Court finds and declares that the Respondents unfairly terminated the contracts of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners and also discriminated against them on the ground of disability thus assaulting their dignity.
31. The Court awards the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners damages of Kshs 100,000/- each. The awards to attract interest at court rates from the date of judgment.
32. The Petition was initiated as a matter of public interest and the Court directs each party to bear own costs.

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

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

**Appearances**

**For Petitioners Nyagaka, Mosata, Isaboke, Kerosi Ondieki & Associates Advocates**

**For Respondents Ms Osebe, Litigation Counsel, Office of the Honourable Attorney General**

**Court Assistant Chemwolo**

