



Gaal v Wajir County Assembly & 2 others (Constitutional Petition E155 of 2024) [2024] KEELRC 13240 (KLR) (27 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 13240 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E155 OF 2024**

HS WASILWA, J

NOVEMBER 27, 2024

IN THE MATTER OF VIOLATION OF ARTICLES 27 (1), (2), (3), (4) & (5), 28,41 (1), 45, 47 (1), 48, SO (1), 53 (2) OF THE CONSTITUTION.

AND

IN THE MATTER OF THE EMPLOYMENT ACT, 2007

IN THE MATIER OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

HALIMA OMAR GAAL PETITIONER

AND

WAJIR COUNTY ASSEMBLY 1ST RESPONDENT

WAJIR COUNTY ASSEMBLY SERVICE BOARD 2ND RESPONDENT

THE CLERK COUNTY ASSEMBLY OF WAJIR 3RD RESPONDENT

JUDGMENT

1. The Petitioner/Applicant filed a petition dated 3rd October 2024 alleging the Respondents' unprocedural, arbitrary and illegal acts against her and specifically, by failing to remit the Petitioner's salary since October 2022.
2. The Petitioner has also averred that the actions of the Respondent of withholding her salary for two years and preventing her from accessing her place of work was illegal and arbitrary.
3. The Petition was based on the following grounds: -
 - i. Having been unlawfully denied access to her place of work the Petitioner seeks to be allowed access to her place of work, where she can continue working and earning her livelihood lawfully as per the terms of her employment without any loss of benefits.



- ii. The Petitioner has not been terminated and/or dismissed from employment and has done nothing wrong to warrant her dismissal and/or termination. In any case, she has never been cited for misconduct, issued with a show cause letter or invited to any kind of hearing where administrative decisions against her were made.
- iii. The Respondent's continued unlawful action to withhold and/or refuse to pay the Applicant her salary and allow her an opportunity to work as an officer of the county as per her terms of appointment has rendered her destitute, violated her right to dignity, and the right to fair labour practices and the same amounts to servitude under the Constitution of Kenya, 2010. The right against servitude cannot be limited under the Constitution.
- iv. The Petitioner has never been given written reasons by the Respondents if any of any decision that was and/or may have been taken against her and the Respondents have been very dismissive of her attempts to return to work either by herself or through the County Government Workers Union.
- v. The Applicant avers that she is human, a sister, a single mother to 3 children who have all been affected adversely by the decision of the Respondent to withhold her salary and deny her an opportunity to work. She has been unable to meet basic obligations as a parent as a result of this injustice and she now puts her confidence in this Honourable court to uphold her rights.

Facts

4. On 25th September 2017, the Petitioner was employed by the 1st Respondent as Assistant Secretary on contract terms of service for five years with effect from 2nd October 2017. On 25th September 2019, her employment was confirmed and she was admitted to permanent and pensionable establishment with effect from 1st October 2019. Both letters were signed by the 3rd Respondent.
5. During her employment to date, the Petitioner has never been cited for any wrong doing, issued with a show cause letter or invited by the Respondents to any kind of meeting where her conduct was discussed in order for her to make her representations to be considered before administrative action against her is taken.
6. Sometime in September 2022 just after the new county administration took over office, the Petitioner was, without prior notice arbitrarily, unprocedurally, illegally and without any justification removed from the payroll by the 1st Respondent. Consequently, she has not been paid her salary since October 2022. The last time the Applicant received her salary was in September 2022.
7. Prior to her removal from the payroll, the Petitioner has never been accused of any wrong doing and/or misconduct, or issued with a notice to show cause or invited to a hearing of any kind where she was heard and her representations considered before the decision was taken. The failure by the Respondents to accord her a fair procedure violated her right to fair administrative action and a fair hearing.
8. The 1st Respondent's continued unlawful action to withhold and/or refuse to pay the Petitioner her salary and allow her an opportunity to work as an officer of the county as per her terms of her appointment has rendered her destitute, violated her right to dignity, and the right to fair labour practices and the same amounts to servitude under the Constitution of Kenya, 2010. Article 25 (b) provides that the freedom against servitude cannot be limited under the Constitution.
9. The Petitioner avers that she has always wanted to go back to work and between September 2022 to January 2023, she unsuccessfully attempted to access her place of work. However, she has been denied



- access to the building as the security manning the offices appear to have been instructed not to allow her access.
10. The Petitioner has attempted to reach out to the Respondents through the Kenya County Government Workers Union to resolve the issue and allow her back to work but the Respondents have ignored and/or refused and continue to ignore and/or refuse to right their wrong. The union has been frustrated by the Respondents to date, therefore necessitating this Petition and Application.
 11. The Respondents have never issued the Petitioner with a termination and/or dismissal letter from employment. Consequently, the Applicant is still lawfully an employee of the Respondents deserving of all the benefits accruing to her appointment.
 12. The Petitioner is a human being, a person, a sister, a single mother to 3 children who have all been affected adversely by the decision of the 1st Respondent to withhold the Applicants salary and deny her an opportunity to work. She has been unable to meet basic obligations as a parent as a result of this injustice and she now puts her confidence in this honourable court to uphold her rights.
 13. The Petitioner is a victim of political, cultural and gender discrimination. She refuses to endorse the bad manners that is prevalent in the county governments where the incoming governments frustrate, harass, discriminate, intimidate and dismissed county officers perceived to be loyal to the previous administration in order to employ their own people.
 14. The Respondents have succeeded in harassing and/or intimidating persons and/or institutions that may want to champion human rights such as The County Governments Workers Union and therefore this Honourable Court to the Petitioner is the last beacon of hope to defend and protect her rights.
 15. The Petitioner therefore prays for: -
 - i. A declaration be and is hereby issued that the removal of the Petitioner from the payroll, denying her access to her place of work and withholding her salary was unprocedural, unjustified and unlawful and in violation of Article 41 (1) of the Constitution.
 - ii. A declaration be and is hereby issued that withholding the Petitioner's salary from October 2017 to date constitutes gross labour malpractice and is unconstitutional.
 - iii. The Petitioner be and is hereby reinstated to her position without loss of benefits and shall be paid all her pending dues within one month after judgement is delivered.
 - iv. The 2nd Respondent is hereby ordered to personally facilitate the reinstatement of the Petitioner and accord her the assistance she may need to settle back to her role.
 - v. An order do issue restraining the Respondents by themselves, their agents, employees, servants, assigns and/or representatives from in any way harassing, discriminating and/or disturbing the Petitioner and taking any action that may be perceived or intended to victimize the Petitioner.
 - vi. Costs be paid by the Respondents.
 16. There is an affidavit sworn by the Petitioner/Applicant dated 3rd October 2024 in support of the Petition. Three affidavit of service have been sworn by one Emmanuel Elijah Otieno – an Advocate of the High Court of Kenya dated 9th October 2024, 23rd October 2024 and 4th November 2024.
 17. None of the respondents entered appearance despite being served and therefore this court ordered this petition to proceed undefended.



18. I have considered the averments and submissions of the petitioner herein. From the attached documents, it is evident that the petitioner was employed by the county Assembly of Wajir vide a letter dated 25th September 2017 on a five year contract with effect from 2nd October 2017 as an Assistant Secretary. *Vide* a letter dated 25th September 2019, she was informed of the decision of the County Assembly Service Board of Wajir to convert her terms of employment into permanent and pensionable terms.
19. There is no other evidence exhibited herein to controvert the position stated by the petitioner. There is also no reason advanced as to why the petition's salary has been stopped or why she has been removed from the payroll as stated.
20. Indeed, payment of salary is a right of an employee as provided under Article 41 of the Constitution of Kenya 2024 which guarantees labour rights.
21. Having found as above and having established breach of the portioner's, I find the petitioner has established her case accordingly and I find for her and enter judgement for her as prayed as follows; -
 - a) A declaration be and is hereby issued that the removal of the Petitioner from the payroll, denying her access to her place of work and withholding her salary was unprocedural, unjustified and unlawful and in violation of Article 41 (1) of the Constitution.
 - b) A declaration be and is hereby issued that withholding the Petitioner's salary from October 2017 to date constitutes gross labour malpractice and is unconstitutional.
 - c) The Petitioner be and is hereby reinstated to her position without loss of benefits and shall be paid all her pending dues within one month after judgement is delivered.
 - d) The 2nd Respondent is hereby ordered to personally facilitate the reinstatement of the Petitioner and accord her the assistance she may need to settle back to her role.
 - e) An order do issue restraining the Respondents by themselves, their agents, employees, servants, assigns and/or representatives from in any way harassing, discriminating and/or disturbing the Petitioner and taking any action that may be perceived or intended to victimize the Petitioner.
 - f) Costs be paid by the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF NOVEMBER, 2024.

HELLEN WASILWA

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.



A signed copy will be availed to each party upon payment of Court fees.

HELLEN WASILWA

JUDGE

