



**Letting v County Director of Education & another (Petition E014 of 2021)
[2024] KEELRC 13207 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13207 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E014 OF 2021**

MA ONYANGO, J

NOVEMBER 21, 2024

**IN THE MATTER OF ARTICLES 2,10,19,20,227,28,41,47,48,50
AN 260 OF THE CONSTITUTION**

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT N. 4 OF 2015

AND

IN THE MATTER OF THE EMPLOYMENT ACT 2007, SECTION 44

BETWEEN

KIPROTICH MUTAI LETTING PETITIONER

AND

THE COUNTY DIRECTOR OF EDUCATION 1ST RESPONDENT

TEACHERS SERVICE COMMISSION 2ND RESPONDENT

JUDGMENT

1. Vide his petition dated 16th August, 2021 the Petitioner seeks the following orders against the Respondents:
 - i. An order of prohibition to hereby issue prohibiting the Respondent from taking any disciplinary action and/or suspending/interdicting/dismissing the Petitioner from her employment on the basis of the allegations levelled against him.
 - ii. The Claimant/Petitioner be paid his terminal dues, unpaid salaries, unpaid deductions, allowances as claimed amounting to Kshs.16,626,198
 - iii. The Claimant/Petitioner be fully enumerated for humiliation, loss of earnings, defamation and loss of salary, loss of employment to the tune of Kshs. 20,000,000



- iv. The Petitioner's treatment was inhuman, degrading, unfair treatment, ill motivation, malice and indignant action amounting to unfair termination of employment to the tune of Kshs. 5,000,000
 - v. The Respondents be penalized for their acts and or omissions in contravention of Section 44,45 and 49 of the *Employment Act*
 - vi. The Respondents be penalized for failing to initiate a proper disciplinary process that would have led to the vindication of the Petitioner in that regard.
 - vii. The Employment of the Petitioner be recognized by the Respondent, and a Certificate of Service be executed and sent to the Petitioner.
 - viii. That the Respondent be and is hereby condemned to pay costs of the suit
2. The 2nd Respondent is a constitutional commission established under Article 237 of *the Constitution* with its primary functions being to register trained teachers, to recruit and employ trained teacher, to assign teachers in its service to teach in various public schools, to promote and transfer teachers, to exercise disciplinary control over teachers and to terminate the employment of teachers.
 3. The 1st Respondent is the representative of the 1st Respondent in Uasin Gishu County.
 4. The Petitioner is a teacher by profession and an employee of the Respondent having been employed as such from 1997.
 5. It is the Petitioner's averment that upon his engagement he was posted to Tiret Primary School where he taught for 3 years before being transferred to Tapsagoi Primary School in January, 2001. He worked at Tapsagoi for 5 years after which he was transferred to Elgon Estate Primary School.
 6. The Petitioner was promoted to Deputy Head Teacher in 2007 and served for one year before being promoted to the position of Head Teacher in March 2008.
 7. It is the Petitioner's case that he served with distinction and was nominated and awarded as top performing Head Teacher by UWEZO in 2010.
 8. According to the Petitioner, his woes began in 2014 when he declined to give a bribe of Kshs. 100,000 out of a CDF cheque of Kshs. 600,000 issued for development of the school he was heading.
 9. He avers that the then Member of Parliament (MP) and his CDF schemed to have the Petitioner irregularly removed from the school and transferred to Tuigoin Primary School. That he eventually ended up in St. Patricks School on demotion to an ordinary classroom teacher.
 10. The Petitioner avers that he was never served with copies of letters to attend any meeting, summons to show cause or invitation to attend any disciplinary hearing. He avers that he was condemned unheard.
 11. The Petitioner anchors his petition on Articles 10, 23, 41 47(1) and (2) and 50 of *the Constitution* of Kenya, 2010, Rule 7 of the Employment and Labour Relations Court (Procedure) Rules, 2016, Sections 41, 44, 45 and 49 of the *Employment Act* and section 4 of the *Fair Administrative Action Act*, 2015.
 12. The Respondents filed a replying affidavit of Mary C. Cherotich, the 1st Respondent's Director, Field Services who avers in the affidavit sworn on 14th September, 2021 that she was in charge of the discipline of the Petitioner.



13. She deposes that the Petitioner was at all material times an employee of the 2nd Respondent deployed at Uasin Gishu County as a classroom teacher.
14. That the Petitioner was transferred by the 2nd Respondent from Elgon Estate Primary School to Tuigoin Primary School on 27th August, 2014 in the capacity of Head Teacher in the course of its routine operations but the Petitioner declined to take over the new station. He instead requested to be transferred to a school within Eldoret Municipality to enable him continue with his further studies.
15. That in compliance with the Petitioner's request the 2nd Respondent re-routed him to St. Patrick's Primary School within Eldoret Municipality but as a classroom teacher since there was no vacancy for head teacher within Eldoret Municipality as per the Petitioner's request.
16. It is deposed that in or about October, 2016 the 2nd Respondent received information through its agents at the County that the Petitioner had deserted duties. The Petitioner was reported to have been absent without permission with effect from 28th September, 2016 and his whereabouts were unknown.
17. On 17th June 2021 the 2nd Respondent served a Notice to Show Cause letter the Petitioner requiring him to show cause why disciplinary action should not be taken against him.
18. The Petitioner responded to the Notice to Show Cause letter vide his letter dated 18th June, 2021 admitting that indeed he deserted duty from 28th September, 2016. That based on the aforesaid admission the Respondent issued an interdiction letter to the Petitioner setting out the charges against him and inviting him to make a written statement of defence within 21 days.
19. The Petitioner did not respond or present his written defence as required. At the time of institution of the instant petition by the Petitioner the Respondent was in the process of convening a disciplinary panel to hear and determine the Petitioner's case.
20. The affiant deposes that the instant petition is premature as the Petitioner will be given a fair hearing and a determination made based on the outcome of the hearing.
21. The petition was fixed for hearing at which the Petitioner testified on his behalf and called 2 witnesses who testified in support of his case. The Respondents called one witness who testified on their behalf. The parties thereafter filed and exchanged submissions.
22. The Petitioner testified that he had a healthy working relationship with his employer until July 2014 when he successfully lobbied for CDF funding and received Kshs. 600,000 of the Kshs. 1.2 million he had requested for upgrading Tiret Primary School which he was heading and which was in a bad state of dilapidation.
23. He testified that when the area MP visited the school with a huge crowd to deliver the CDF cheque the MP accused the Petitioner of neglecting the school and made a lot of noise about it. He testified that the MP was unhappy with him because he had declined a request to give back Kshs. 100,000 of the CDF funds as kickbacks to the MP. That on the day he went to bank the cheque in the company of the School committee chairman he got a call to go back to the office where he received a letter of transfer to Tuigoin Primary School.
24. The Petitioner testified that upon reporting to Tuigoin Primary School the outgoing head teacher informed the Petitioner that he had prepared his deputy to take over from him. The head teacher further informed the Petitioner that the petitioner was in bad terms with the area MP.
25. The Petitioner testified that everybody avoided him, including the County Director of Education whom he was introduced to by a friend as the person capable of helping him. That it was the County



- Director of Education who advised the Petitioner to write a letter to be posted to St. Patrick's School where she transferred him to as an ordinary teacher, after promising that he would be posted to another school as soon as there was an opening for head teacher. That this was in spite of the fact that the Petitioner had identified a school whose head teacher was retiring in 2016.
26. The Petitioner testified that it was the County Director of Education who advised him to write a letter stepping down from the position of head teacher.
 27. He testified that he decided to abscond duty because the County Director of Education was not ready to help him. That he was hoping that he would be taken through disciplinary action during which he would have an opportunity to appear before the disciplinary committee and express his frustrations.
 28. The Petitioner testified that his salary was stopped in December, 2016 but he was not called for disciplinary hearing until his lawyer wrote a letter of demand to the Respondents on 20th May, 2021.
 29. He testified that at the disciplinary hearing he called his 2 witnesses. That he was dismissed after the hearing.
 30. PW2, Isaac Kipchumba Bett testified that he was a former Chairperson of BOM of Elgon Estate Primary School where the Petitioner was head teacher in 2013/2014. He testified that the Board made proposal for funding for improvement of the school and received Kshs. 600,000 from Turbo Constituency CDF. That the cheque was delivered by the MP.
 31. He testified that while the Treasurer, himself and the Headteacher who was secretary were on their way to Eldoret to bank the cheque the Petitioner got a call to go to TSC office where he was issued with a transfer letter and was therefore not able to travel with them. That the BOM requested for deferment of the transfer to January as the Petitioner was also a classroom teacher but the request was refused. That he later got a call from the area MP who directed him to let the teacher go on transfer and stop interfering. That he decided to resign after the call. That the entire board resigned over the issue and called for an AGM where new members were elected. That he handed over the cheque to the new committee after receiving a call from the MP.
 32. PW2 testified that he was called by the Petitioner as a witness in his TSC disciplinary hearing at St. Patrick's Iten.
 33. He stated he was informed by the Petitioner about the request for Kshs. 100,000 out of the CDF funds.
 34. PW3 Samuel Kipchumba Kemei adopted his undated witness statement in which he reiterated the evidence of PW2. He was not cross examined or re-examined.
 35. For the Respondents Doreen Munene Njagi testified on 5th December, 2023. She informed the court that she was an Assistant Director Human Service Directorate of Teachers Service Commission, the 2nd Respondent herein. She testified that the Directorate is responsible for handling discipline matters for teachers.
 36. RW1 adopted her witness statement dated 8th September, 2023 as her evidence in chief. She further adopted the documents dated 17th November, 2022 filed by the Respondent's as part of her evidence in this suit.
 37. RW1 testified that she was aware that the Petitioner was transferred severally. That in 2014 the Petitioner was transferred from Elgon Estate Primary School where he had worked from 2008. That the transfer of the Petitioner to Tuigoin Primary School by letter dated 27th August, 2014 was a normal transfer.



38. That after the transfer the Petitioner wrote to the Respondents stating that he needed to work within the Municipality of Eldoret as he was undertaking some studies. That the Respondents complied and transferred him to St. Patrick's Primary Scholl as an Assistant Teacher because at that time there was no vacancy for school headship. That this did not affect his salary.
39. RW1 testified that the Petitioner reported to St. Patrick's and continued working there until 28th September, 2016 when he walked out after a staff meeting and never reported back. That the Petitioner did not appeal against the transfer. She testified that there is no record that the Petitioner was promised a transfer to another school as head teacher.
40. RW1 testified that the Petitioner did not write any formal complaint over any issue. That his matter went silent until 2021 when the Petitioner asked to be reinstated. That it is then that the 2nd Respondent realized that the Petitioner had not been working and served him with a show cause letter to explain where he had been.
41. That the Petitioner responded to the show cause letter almost immediately admitting that he had deserted duty due to frustration for the last 19 years.
42. According to RW1 the Petitioner did not give any viable reason for walking out of school as he had no complaints from the previous school.
43. RW1 testified that the Petitioner was interdicted after he responded to the show cause letter, did not write a defence as requested in the letter of interdiction, was invited for disciplinary hearing which he attended and informed the disciplinary panel that he was annoyed by the disciplinary hearing.
44. RW1 testified that the Petitioner informed the Panel that he had been working elsewhere and that he was building a school in Kakamega. That when asked if he was willing to go back to work he said no. RW1 informed the court that she was part of the panel hearing the Petitioner's disciplinary case.
45. RW1 testified that the panel decided that the Petitioner be dismissed from service on grounds that he was not ready to report back to work. That the decision was communicated to the Petitioner.
46. RW1 testified that the Petitioner is not entitled to payment of salary for the period he was away because he did not render any service to the Respondents and was working elsewhere.

Petitioner's Submissions

47. In the submissions filed on behalf of the Petitioner dated 19th December, 2023, it is submitted that the Petitioner was treated in an inhumane and degrading manner by the Respondents, his employer, under instructions of the member of Parliament. That he was demoted without any disciplinary issue.
48. It is further submitted that in his pursuit to frustrate the Petitioner the MP used the Petitioner's bosses to intimidate, manipulate, harass and eventually to dismiss the Petitioner. That in doing so the Petitioner's rights and freedoms were fundamentally breached.
49. It is submitted that the Petitioner was subjected to unfair disciplinary proceedings which were triggered by his advocates' demand letter dated 17th July 2021 which woke the Respondents from slumber.
50. It is submitted that the Petitioner had never been indicted of any wrongdoing, that the Respondents failed to consider that the Petitioner had sought a legitimate request for a rerouting to accommodate his studies within Eldoret Municipality.
51. It is submitted that there were procedural lapses in the demotion of the Petitioner from head teacher to a mere assistant teacher, that the reason for transfer of the Petitioner was not fair but arbitrary for



lack of consultation and in violation of the right to fair administrative action, failure to give reason, ulterior motive and unreasonable exercise of power, violation of the right to fair labour practices and lack of reasonable and sufficient notice.

52. It is submitted that there was malice in the decision to hold disciplinary hearing after 4 years and 11 months.
53. It was submitted that the Petitioner had discharged his burden and was entitled to the remedies sought in the petition.

Submissions of the Respondents

54. The Respondents filed submissions dated 11th March 2024. It was submitted that the Code of Regulations for Teachers (CORT) outlines the procedures for exercising disciplinary powers under the *Teachers Service Commission Act*. That Regulations 146 to 156 outline specific steps to be followed which the Respondents complied with meticulously. That the Respondents also adhered to the principles of natural justice.
55. It is submitted that the prior to investigation the Petitioner was granted ample opportunity to present his case. That he was issued with notice to show cause why disciplinary action should not be taken against him by letter dated 17th June 2021 which he responded to admitting that he deserted duty.
56. It is submitted that the Petitioner was thereafter interdicted pursuant to Regulation 147 of the CORT and given opportunity to present his defence within 21 days which the petitioner snubbed and instead moved to court in an attempt to stop the disciplinary proceedings but the court declined to stop the proceedings.
57. It is submitted that the Petitioner was invited to attend disciplinary hearing as provided in Regulation 149 of CORT and informed of his right to present his documents and witnesses. That the Petitioner attended the hearing and fully participated. That he called his two witnesses who testified on his behalf. That after the hearing the Petitioner's evidence was considered before a decision was made to dismiss him from service.
58. The Respondents pointed out to the court that at the time of the Petitioner's disciplinary hearing he had not rendered service to the 2nd Respondent for 5 years.
59. It is the submission of the Respondents that the Petitioner is not entitled to any of the prayers sought in his petition. The Respondents urged the court to dismiss the petition with costs.

Analysis and Determination

60. Having considered the pleadings, evidence and submissions, the issues arising for determination are whether the Respondent violated the Petitioners constitutional rights and fundamental freedoms and if the Petitioner is entitled to the prayers sought.
61. It was the case of the Petitioner that the Respondents violated the Petitioners constitutional rights and fundamental freedoms through the unfair transfer, demotion, hearing and dismissal. That the MP maliciously influenced the frustration of the Petitioner because the Petitioner had refused to give kickback on the CDF funds awarded to his school for development purposes.
62. According to the Respondents, they have no control over CDF funds. The Respondents further stated that no complaint was filed by the Petitioner over harassment by the MP or the 2nd Respondent's officers in the County. It was further the position of the Respondents that the MP was not their agent.



63. The position of the Respondents is not controverted by the Petitioner. Although the Petitioner testified and called PW2 and PW3 who corroborated his evidence about harassment by the MP, none of this was reported to the Respondents or to any other office by the Petitioner. As correctly pointed out by the Respondents the MP was not their agent. The Petitioner cannot therefore blame the Respondents or hold them accountable for the actions of the MP.
64. I therefore find that the Petitioner did not prove that the Respondents violated any of his constitutional rights or fundamental freedoms in his transfer from Elgon Estate Primary School to Tuigoin Primary School.
65. On the Petitioner's averment that he was unfairly demoted, the Respondents stated that the transfer from Tuigoin to St. Patrick's was on the request of the Petitioner and there was no headship position available within Eldoret Municipality to which the Petitioner could be placed within. It is further pointed out that there was no reduction in the salary and benefits of the Petitioner and that he agreed to the transfer and worked at St. Patricks for two years from October, 2014 to September, 2016 before deserting duty. The court thus finds that the Petitioner did not prove that he was unfairly demoted.
66. On the averment of the Petitioner that his dismissal was unfair, it has been demonstrated by the Respondents that the Petitioner was taken through the disciplinary process as set out in the Code of Regulations for Teachers. It was demonstrated that the Petitioner was first issued with a show cause letter which he responded to admitting to the charge of deserting duty. That he was thereafter interdicted and required to submit his written defence to the charges in the letter of interdiction which the Petition did not respond to.
67. It was further demonstrated that the Petitioner was invited for a disciplinary hearing which he attended with his two witnesses and was allowed to cross examine the Respondents' witnesses and to present his case together with the evidence of his witnesses. It was further the evidence of the Respondents that the Petitioner informed the disciplinary panel that he was working elsewhere after deserting duty and that when asked if he would wish to be reinstated he stated he did not wish to go back to work for the Respondent as he was doing his own business in Kakamega.
68. On the averment that the disciplinary hearing was inordinately delayed the Respondent explained that it was not aware the petitioner was not working and as soon as it was alerted by the Petitioner's advocate's letter it commenced the disciplinary process. It is the court's finding that the Petitioner cannot blame the Respondents for the delay in commencing the disciplinary process when the Petitioner himself had abandoned his work and failed to contact the Respondents even after his salary was stopped. This cannot constitute a breach of constitutional rights and fundamental freedoms.
69. From the forgoing I find that the Petitioner was the author of his misfortunes and cannot blame the Respondents for the same. I further find that the Petitioner did not prove any violation of his constitutional rights and fundamental freedoms by the Respondents.
70. The result is that the petition is found to be without merit and is accordingly dismissed. There shall be no orders for costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 21ST DAY OF NOVEMBER, 2024

MAUREEN ONYANGO

JUDGE

