



**Oindo v National Land Commission & another (Petition E147 of 2024)
[2024] KEELRC 13496 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13496 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E147 OF 2024**

B ONGAYA, J

DECEMBER 19, 2024

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF ARTICLES 1, 2, 10, 22, 23, 24, 28, 29,
41, 47, 50 & 236 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTION 62(1) OF THE ANTI-
CORRUPTION AND ECONOMIC CRIMES ACT, NO. 3 OF 2003**

BETWEEN

JOASH MOGAMBI OINDO PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

ETHICS & ANTI-CORRUPTION COMMISSION 2ND RESPONDENT

JUDGMENT

1. The petitioner filed the petition and supporting affidavit, both dated 25.09.2024, through Okubasu & Munene Advocates. He seeks the following prayers:
 - a. A declaration that the continued suspension of the petitioner beyond the 24 months stipulated by the *Anti-Corruption and Economic Crimes Act* is arbitrary, unlawful, punitive and in violation of Articles 10, 28, 41, 47, 232 and 236 of *the Constitution* of Kenya, 2010.
 - b. An Order that the petitioner was entitled to full pay from the end of the 24th month of his suspension.



- c. Any other or further relief that this Court may deem fit to grant.
 - d. Costs of this petition.
2. The petitioner's case was as follows:
- a. The petitioner is an employee of the National Land Commission (1st respondent herein) serving as a Deputy Director of Valuation on a permanent and pensionable basis, as of 09.05.2018.
 - b. On 18th and 23rd April, 2019, the petitioner was charged at Milimani Courts in ACC No. 9 of 2019 with conspiracy to commit the offence of corruption contrary to Section 47A (3) as read with Section 48 of the Anti-Corruption and Economic Crimes (ACECA), No. 3 of 2003 among other charges.
 - c. In a letter dated 25.04.2019, the Ethics and Anti-Corruption Commission (2nd respondent herein) directed the then Acting Secretary/ Chief Executive Officer of the 1st respondent to take the necessary administrative action against the petitioner in accordance with Section 62(1) of ACECA, No. 3 of 2003. The said provision states that, a public officer or state officer who is charged with corruption or economic crime shall be suspended, at half pay, with effect from the date of the charge until the conclusion of the case: Provided that the case shall be determined within twenty-four months.
 - d. Consequently, on 02.05.2019, the Acting Secretary/ Chief Executive Officer of the 1st respondent suspended the petitioner from discharging his official functions with effect from the date of the charge, being 18.04.2019, at half salary.
 - e. Whereas the suspension period ended on 18.04.2021, the 1st respondent has not taken any administrative action to ensure the petitioner is reinstated to the position he held with full benefits and on similar terms as of 09.05.2018. It has been over 54 months since the petitioner was suspended.
3. The petitioner pleaded the violations of *the Constitution* as follows:
- a. That by subjecting him to continued suspension beyond the 24 months stipulated in Section 62(1) of ACECA, the respondents are acting contrary to Article 41 in denying him the right to reasonable working conditions.
 - b. That the respondents' failure to take administrative action to reinstate him to his position, with full benefits under permanent and pensionable terms, is a violation of his rights to fair administrative actions under Article 47.
 - c. That the respondents have denied him the opportunity to continue performing his obligations as the Deputy Director of Valuation in violation of his right to human dignity provided under Article 28.
 - d. That in total disregard of the principles and values of *the Constitution* provided in Article 10 and the principles and values of public service in Article 232, the 1st respondent continues to suspend him in a manner that amounts to victimization, vilification and demotion in rank in a process that is not only arbitrary, but also fails to follow the due process of the law.
4. The 1st respondent filed the replying affidavit of Guyo Sora sworn on 15.10.2024, through its Director of Legal Affairs & Dispute Resolution. It was urged that:



- i. The petitioner was initially employed on 01.09.2015 as the Deputy Director Valuation and Taxation on contractual basis and thereafter converted to permanent and pensionable terms on 09.05.2018.
 - ii. After suspending the petitioner on half salary in compliance with section 62(1) of ACECA, 2003, the 1st respondent duly advised the petitioner that he was suspended until the case is heard and determined. Furthermore, Section 62(3) of ACECA provides that the public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted.
 - iii. In the petitioner's case, as the proceedings against him in ACC No. 9 of 2019 are ongoing and not finalized, he is still under suspension. There has therefore been no wilful, deliberate and intentional violation and or contravention of the petitioner's rights envisaged in the Constitution.
 - iv. The petition fails as it has failed to adequately demonstrate how the 1st respondent has violated the petitioner's constitutional rights. In addition, the petition is therefore bad in faith, an abuse of the court's process and should be dismissed with costs.
5. The 2nd respondent filed the replying affidavit of Caroline Kimathi sworn on 09.10.2024 through Diana C. Kenduiwa, Advocate. Ms. Kimathi was part of the team that investigated an irregular compensation by the 1st respondent to Tornado Carriers Ltd for Kshs. 109,769,363.00, which led to the suspension and criminal prosecution of the 1st respondent's officers, including the petitioner. The investigator with the 2nd respondent urged as follows:
- i. The genesis of the matter emanated from an allegation of payment of bribes to the 1st respondent's officials for the said irregular compensation made to Tornado Carriers Ltd, for land reference MN/VI/3801.
 - ii. The investigations established that the petitioner, in his capacity at Deputy Director of Valuation and Taxation, participated in a deliberate over-valuation of the subject property at a sum of Kshs. 109,769,363/- after an initial valuation by the Deputy Director Land Valuation at the Ministry of Lands & Physical Planning had returned a valuation of Kshs. 34,501,100/-, and whereas a third valuation gave a value of Kshs. 38,625,832/-.
 - iii. Whereas a total of Kshs. 109,769,363/- was paid by the 1st respondent in respect of the subject property, the owner of the said property stated that they received a sum of Kshs. 55,269,363/- from the 1st respondent, being part payment with a balance of Kshs. 19,998,890.00 outstanding at the time as it was purported the award was Kshs. 75,268,253/-.
 - iv. Investigations further revealed that excess amount of Kshs. 54,500,000/- paid by the 1st respondent was received by a C.W. Chege & Co. Advocate, who in turn distributed it to various persons who participated in the fraudulent scheme, including the petitioner, who received Kshs. 7,000,000/= through a proxy company known as Sunside Guest House Limited that is registered in the name of his son.
 - v. Consequently, the Office of the Director of Public Prosecution (ODPP) commenced prosecution of criminal charges against the petitioner and 23 others involved in the fraudulent scheme. The criminal matter has progressed and awaits the cross-examination of the final prosecution witness.



- vi. The proceedings in the criminal matter were not concluded within 24 months due to various circumstances surrounding the case, including an appeal on a ruling to the High Court that concluded on 14.09.2024.
 - vii. Even though Section 62(1) of ACECA provides for determination of a matter within 24 months, the drafters' intention was for a quick determination of the matter and the principle founding the provision is that if a person charged in a criminal matter is allowed to continue to have access to his office, he is likely to perpetrate further acts of corruption or lead to an ineffective prosecution by interfering with witnesses and like matters, as was stated by the Court in Criminal Revision 25 of 2019: Moses Kasaine Lenolkulal vs. ODPP. The petitioner cannot therefore interpret the said provision in isolation of the overall purpose of ACECA and the inviolable wider objects of *the Constitution* on integrity and leadership in public service.
 - viii. The petitioner's suspension is not punitive as it is a temporary measure curtailing certain rights by operation of the law and the petitioner is still receiving half pay, full allowances and benefits pending determination of the trial. In the event the petitioner is acquitted, the office and full benefits shall be restored. He will therefore not suffer prejudice if the suspension remains in force under the prevailing terms pending determination of the criminal proceedings.
 - ix. The lifting of the petitioner's suspension is against public interest and the public shall suffer great prejudice considering the trial touching on corruption and economic crimes is ongoing. Further, this Court should consider the implication of a reinstatement in the event the matter concludes in a conviction.
6. The parties filed their respective written submissions. The Court has considered the parties' respective cases and submissions. The Court returns that indeed, as urged for the respondents the petitioner was suspended on account of the commenced and pending criminal case and as envisaged in section 62 of ACECA. The petitioner acknowledges that the criminal proceedings are pending hearing and determination. Section 62 of ACECA does not provide that if two years lapsed and the criminal case had not been determined, then the suspension would lapse or get lifted. Instead the section provides that ensuing criminal proceedings be determined within 2 years. It appears to the Court that the Director of Public Prosecutions, the trial Court, and other persons or agencies involved in the pending criminal case would be in a better position to explain the delay. In any event, the 2nd respondent has explained the circumstances of the delay and the petitioner has not rebutted the explanation.
 7. The Court therefore returns that the petitioner has failed to show the violation of the cited provisions of the Bill of Rights as was pleaded and alleged. The Court considers that the petitioner is still in public service and no costs of the petition.

In conclusion, the petition is hereby dismissed with no costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19TH DECEMBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

