



REPUBLIC OF KENYA



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**Karanja v Kenya Forest Service & 2 others (Petition 3 of 2021)  
[2023] KEELRC 392 (KLR) (3 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 392 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
PETITION 3 OF 2021  
NJ ABUODHA, J  
FEBRUARY 3, 2023**

**BETWEEN**

**AMOS WABURI KARANJA ..... PETITIONER**

**AND**

**KENYA FOREST SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**BENJAMIN KINYILI ..... 2<sup>ND</sup> RESPONDENT**

**MOSES CHENGEYWA CHESEBE ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. By a Petition dated December 16, 2020 the Petitioner sought orders which I quote verbatim;
  - a. An order of stay of interdiction/suspension of the Claimant pending hearing and determination of this petition.
  - b. A declaration that the disciplinary proceedings conducted by the 1<sup>st</sup> respondent with the directions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein to be null and void ab initio and the decisions entered thereafter be quashed.
  - c. A declaration that the disciplinary proceedings conducted by the 1<sup>st</sup> respondent with the directions of the 2<sup>nd</sup> and 3<sup>rd</sup> respondent herein as illegally wrong, malicious and or unfairly handled and that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents acted outside their mandate known to law.
  - d. An order of mandamus to be issued compelling the 1<sup>st</sup> respondent to reinstate the petitioner / claimant and treat the claimant in all respect as if his employment has not been interfered with, suspended or otherwise sent interrupted in any way.
  - e. An order directing the 1<sup>st</sup> respondent jointly with the 2<sup>nd</sup> and 3<sup>rd</sup> respondents be compelled to pay the petitioner/claimant salary arrears that were deducted during the illegal interdiction/



suspension of Kshs 1,084,864 and a further increment for 6 months from the date of the purported interdiction that is a period of 18 months' salary exclusive of all benefits as per the payslip.

- f. An award of general damages for breach of the petitioner/claimants rights and the ultimate expectations, embarrassment, ridicule, shame and unfair treatment.
  - g. Order compensation do issue for violation of the petitioner/claimant rights and inquiry as to quantum be gone into.
  - h. Interest
  - i. Costs of this claim and interest thereon from the date of judgment.
  - j. Any other order and or relief this court may deem fit and just to grant
  - k. Costs of this petition
2. The petition was supported by the affidavit of the petitioner in which he averred that he had been in gainful employment with the 1<sup>st</sup> Respondent effective as from April 22, 2013 as a Forest Trainee and subsequently rising the ranks to become the Assistant Forester at Sabor Forest Station under a written contract of service at a gross monthly remuneration package of Kshs 82,620 with a work Identification No. KFS/No 05265.
  3. He stated that on December 3, 2018, he received an interdiction and/or suspension letter from the Chief Conservator of Forest based at the 1<sup>st</sup> Respondent headquarters for the alleged offence of desertion of duty contrary to section 2(2) of the Kenya Forest Service Disciplinary Manual (2016) between October 15, 2018, the date the letter was sent.
  4. According to the petitioner, he was issued with a notice to show cause letter, the effect of which he was to subsequently receive half of his monthly salary and this in turn exposed him to very harsh living conditions thereafter.
  5. He maintained that the 1<sup>st</sup> interdiction/suspension letter lasted between December 2018 and was lifted on April 2019, a cumulative period of 5 months for which he lost a cumulative salary of Kshs 206,550 at the rate of Kshs 41,310 per month.
  6. That thereafter, he resumed his daily duties as Assistant Forester Sabor Forest Station up and until August 13, 2019 where vide a letter dated August 13, 2019 from the 1<sup>st</sup> Respondent Head North Rift Conservancy, informed him of an intention and decision to transfer him to Head of Conservancy North Rift Office for which he received the same on August 26, 2019 by appending a signature on the face of his copy.
  7. The Petitioner averred that a follow up letter dated August 19, 2019 was thereafter sent from the 1<sup>st</sup> Respondent Ecosystems Conservator Elgeyo Marakwet County informing him to report to his new work station being Head of Conservancy North Rift office with effect from August 21, 2019 which he received by signing on the face of his copy on August 26, 2019 which was 7 days later from the date of the said letter herein had directed him to report to the new station.
  8. He maintained that another letter dated August 19, 2019 was dispatched from the 1<sup>st</sup> Respondent Ecosystems Conservator Elgeyo Marakwet County and addressed to him for which he quoted a letter from the 3<sup>rd</sup> respondent which stated as follows;
    - i. That January 2019, the petitioner had posted himself to Kaptarakwa Beat Outpost and as such had assumed supervisory roles therein.



- ii. That there was evidence and complaints of destruction of the forest in Kipsalen 8(E), Kaptarakwa Beat under the petitioner's watch.
  - iii. That he was thus called upon to take an active role in conservation failure to which he would be subjected to disciplinary action without further reference.
9. The petitioner maintained that he was never furnished with particulars of the allegation against him vide the letter dated August 19, 2019 and that on October 1, 2019, vide a letter referenced as Ref No. KFS 05265/17, he was interdicted again by the 1<sup>st</sup> Respondent on claims of neglecting and deserting duty between September 13, 2019 and September 20, 2019.
  10. He stated that the said interdiction period lasted between August 2019 and was lifted on September 2020 which was a cumulative period of 13 months for which the claimant herein lost a salary of Kshs 537,030 at the rate of Kshs 41,310 per month.
  11. He maintained that his woes and troubles were commenced by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent in an exercise that led to actions of interdictions and eventual half salary as per the 1<sup>st</sup> Respondents policy manual thus exposing him to harsh living conditions thereafter.
  12. He averred that his termination was unfair and in breach of the Employment Act 2007 and that the respondents in their actions violated his human rights and fundamental freedoms.
  13. It was his contention that he had not been informed of the respondent's case against him nor had he been accorded any opportunity to prepare his defence.
  14. The Petitioner maintained that the respondents acted in contravention of Article 10(2)(b)&(c) of the Constitution of Kenya that articulates the national values and principles of governance underpinning all state officers, public officers and all persons in the application of the Constitution of Kenya 2010 and further on matters touching on human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, good governance, integrity, transparency, accountability and sustainable development.
  15. That the respondents acted in contravention of Article 19(2) of the Constitution of Kenya on the Bill of Rights and fundamental principles.
  16. The Respondents opposed the petition through a Replying Affidavit sworn by Juliana O. Ochieng, the Manager, HR & Administrator of the 1<sup>st</sup> Respondent.
  17. The Respondents' admitted that the Petitioner was an employee of the 1<sup>st</sup> Respondent designated as Forester 1 KFS Grade 8 appointed on November 1, 2013 on permanent terms.
  18. The 1<sup>st</sup> Respondent further stated that on October 15, 2018, the petitioner failed to show up at his work place at Sabor Forest Station without permission or communication to his supervisor and that he continued to be absent from work without communication up to January 2, 2019 when he reported back to work.
  19. It was deponed that the petitioner was served with a show cause letter dated December 3, 2018 for desertion of duty where he was accorded 21 days to respond to the said letter.
  20. According to the 1<sup>st</sup> respondent, the petitioner responded vide a letter dated December 21, 2018 and apologized for not communicating and further explained that he was unwell following an accident that left his ribs broken in November 2018.



21. It was contended that the disciplinary advisory committee held a meeting to discuss the petitioner's absenteeism issue among other issues and after deliberations it was recommended that the suspension be lifted where he was reinstated back and reported to work on April 6, 2019.
22. According to the 1<sup>st</sup> Respondent, the petitioner continued to perform his duties but negligently as a result 12 cypress trees were lost due to illegal logging on June 16, 2019 and 26 cypress trees on August 7, 2019 and that he absented himself again from duty without leave or communication from August 13, 2019 to September 16, 2019
23. It was averred that the petitioner was again served with a letter of interdiction dated October 1, 2019 and instead of responding to the interdiction letter as requested, he notified the 1<sup>st</sup> respondent of his resignation with effect from November 15, 2019. Which was accepted subject to him finalizing his pending case to enable issuance of an acceptance letter.
24. The Respondents stated that there was a delay in dealing with the petitioners' case which was occasioned by his failure to prepare and avail his written defence within 21 days as advised and that the Disciplinary Advisory Committee met on June 11, 2020 and it was recommended that the petitioner be issued with a second warning letter, the number of days he was absent from duty be recovered from his salary, the petitioner be surcharged for destruction once the value is confirmed and the interdiction be lifted without any payment of resultant arrears in accordance with Section 7(3)Public Service Act.
25. The Respondents averred that the petitioner was surcharged a total of Kshs 158,088.60 being the cost of trees lost as a result of his negligence and that upon finalization of the case against him, he did not follow up on his resignation request hence the conclusion that he only intended to delay the disciplinary case against him
26. The Respondent stated that the petitioner did not deserve the prayers he was seeking as due process was followed in dealing with the disciplinary cases against him; that sanctions recommended by the committee were within the law and lenient considering his habitual absenteeism; that the committee deciding the petition's case was well constituted and acted within their mandate that the petitioner alleged malice during handling of his disciplinary case but he has failed to demonstrate or at least avail the particulars and that the interdiction and suspension was within disciplinary cases but he has failed to demonstrate which right was violated and how.
27. Further that the applicant did not deserve the prayers sought due to the reasons that the petitioner was not being sincere in opposing transfer to another station since he had requested for the same and finally the 1<sup>st</sup> respondent had been able to grant his wish; that the petitioner was not the only one affected by the transfers since several officers had been moved to new stations; that the issue of transfers could be resolved administratively and that the 1<sup>st</sup> respondent had the mandate to deploy any of its employees to any of its facilities within the Republic of Kenya, a policy that the petitioner was well aware of.
28. On April 27, 2022, the court directed that the petition be canvassed by way of written submissions.
29. The petitioner filed his submissions on July 26, 2016 whereas the respondent filed theirs on September 19, 2022.

### **Petitioner's submissions**

30. It was submitted for the Petitioner that the issues for determination were whether the suspension and interdiction was procedural and unlawful; whether the proceedings and the decision made by the disciplinary Committee was fair, procedural and lawful; that the petitioner should be awarded the



- salary arrears; whether there existed a mutual and healthy work relationship between the petitioner and the respondents and whether the petitioner was entitled to any remedies.
31. As regards whether the suspension was procedural and unlawful, it was submitted that the suspension was in the year 2018 and the same was not followed by an investigation and there were no minutes showing the same was investigated and a finding made and that the interdiction took a period of 13 months before his case was heard. The petitioner submitted that this was in contravention of the Human Resource Manual.
  32. On whether the proceedings and the decision made by the Disciplinary Committee was fair, procedural and lawful, counsel for the petitioner submitted that the suspension and interdiction were given in 2018 and 2019 respectively and that the disciplinary committee deliberated on the petitioner's case on May 11, 2020 after the disciplinary measures had been undertaken. It was submitted that the petitioner's right to fair hearing by virtue of Article 50(1) of the *Constitution*. The case of *Timon Otieno Mboga v Kenya Forest Service* (2015)eKLR was cited to buttress this position.
  33. On the issue of whether the Petitioner should be awarded the salary arrears, the petitioner submitted that during his interdiction, he was not paid and therefore the salary and benefits accrued to Kshs 1,840,864 and a further increment of six months from the date of the purported interdiction. He cited the case of *Philemon Musembi Mubindi V Chairman Board of Management Keveye Youth Polytechnic* (2015)eKLR.
  34. As to the issue whether there exists a mutual and healthy work relationship between the petitioner and the respondents, it was submitted that the petitioner's relationship with the respondent had been ruined since the institution of the suit as he had been handed several transfers with the aim of frustrating him. It was submitted that the Petitioner had been transferred to more than five stations within 6 months with the aim of frustrating him.
  35. The petitioner submitted that he had extremely suffered mentally, psychologically and physically as a result of the frustrations subjected to him by the respondents and that as such he voluntarily wished to quit his employment.
  36. Lastly as to whether he was entitled to any remedies, it was submitted that the petitioner deserved to be compensated for outright violation of his constitutional rights.
  37. It was submitted that a compensation in the sum of Kshs 6,000,000 would be fair

### **The respondents' submissions**

38. The Respondents on the other hand identified the issues for determination to be whether the interdictions/ suspension were lawful and fair; whether the petitioner's constitutional rights were breached or violated; whether the services of the petitioner were terminated and whether the petition should succeed.
39. It was submitted that for suspension to be valid, it must explain the reason for the suspension and accord the employee an opportunity to respond to the allegations against him and must be for a reasonable period of time and that in the instant case, the petitioner was accused of deserting his duties on various dates without permission or reasonable cause.
40. It was submitted the petitioner was first served with a show cause letter dated December 3, 2018 in which he was given an opportunity to defend himself and that he was reinstated after his mitigation was considered he was reinstated with a warning.



41. It was further submitted that on October 1, 2019, he was interdicted on the grounds that he was negligent on duty leading to loss of logs and absenteeism and that instead of responding to the interdiction letter, he resigned voluntarily via a resignation letter dated November 1, 2019. even in the absence of a response, the case was tabled before the Disciplinary Committee on June 11, 2020 and the recommendation was made that the interdiction be lifted and he be issued with a second warning letter, from his accrued salary, days not worked be deducted as well as the surcharging for the loss of logs as a result of his negligence and that this was communicated to the petitioner vide a letter dated October 30, 2020.
42. As to whether the petitioner's constitutional rights were breached, the respondent submitted that from the evidence on record, the petitioner's rights were never breached or violated at any particular time.
43. It was submitted that it was not enough to merely allege that certain constitutional rights were violated and that such an allegation must be stated with precision as to which rights were violated and the manner in which those rights were violated.
44. On the issue whether the services of the Petitioner were terminated, it was submitted that the 1<sup>st</sup> Respondent has never terminated the petitioner from employment and that he was still a fully-fledged employee who continues to enjoy full benefits of being an employee under law and the contract.
45. Lastly as regards whether petitioner deserved the orders sought the Respondents submitted that the petitioner had failed to discharge his burden of proof on issues in dispute. The Respondents further submitted that the petition did not meet the threshold of a constitutional petition.
46. It is submitted for the Respondents that part 6 of the *Employment Act* cannot apply as there was no dismissal on the part of the petitioner by the 1<sup>st</sup> Respondent.
47. The Respondents submitted that the petitioner has not discharged his duty of proving his allegations to the standard of proof required of him and thus the court was urged to dismiss the petition with costs to the respondents.

### **Analysis and determination**

48. I have considered this petition, the response thereto, submissions by counsel for the parties and authorities relied on. The issue the court is called upon to decide is whether the petitioner's fundamental rights and freedoms were violated. The constitutional provisions upon which the petition was premised were Article 47(1) and (2) of the Constitution of Kenya as read together with Section 4(1), (2),(3) and (4) of the *Fair Administrative Action Act* 2015; Article 25(c) of the *Constitution of Kenya 2010*; Article 50(2)(a)(b) and (c) of the *Constitution*, Article 236(a), Article 236(b) and Article 28 of the *Constitution of Kenya*.
49. The petitioner argued that the respondents' acted in contravention of article 10(2)(b) and (c) that articulates the national values and principles of governance underpinning all state officers, public officers and all persons in the application of the constitution of Kenya.
50. The petitioner averred that the respondents acted in contravention of article 19(2) of the *Constitution of Kenya 2010* on the Bill of rights and fundamental principles that emphasizes basis of adoption, use, legality and protection of an employee. In this case it is pegged on the need to preserve the dignity of individuals and to promote social justice and the realization of the potential of all human beings.
51. The Petitioner's main issue is that he was interdicted and taken through a disciplinary process where he was not accorded an opportunity to prepare a defence.



52. The Respondents have given a chronology of events of this particular case from the time the Petitioner was first issued with a suspension letter on December 3, 2018 until June 11, 2020 when the disciplinary advisory committee deliberated and recommended that the petitioner be issued with a second warning letter, the number of days he was absent from duty be recovered from his salary, he be surcharged for destruction once the value is confirmed from the plantations and enterprise department and that further the interdiction be lifted without any payment of resultant arrears in accordance with section 70(3) of the Public Service Act.
53. In the instant petition, I must mention that from the pleadings on record the Petitioner had not been dismissed but was still working for the respondent.
54. It was not in dispute that the petitioner herein was issued with the suspension letter dated December 3, 2018 which he responded to vide a letter dated December 21, 2018. The petitioner was then reinstated back to work vide a letter dated April 25, 2019 and that he signed the reinstatement feedback report on April 6, 2019.
55. The second suspension letter dated October 1, 2019 was served on the Petitioner on allegations of absenteeism and negligence where 12 cyprus trees were alleged to have been lost due to illegal logging.
56. The Respondents' evidence was that upon being issued with the suspension letter, he Petitioner notified the 1<sup>st</sup> respondent of his resignation with effect from November 15, 2019 which was accepted subject to the petitioner finalizing his pending case with the 1<sup>st</sup> respondent.
57. The Petitioner on the other hand had alleged that he was frustrated by the respondents and as a result he decided to resign after he was served with the suspension letter dated October 1, 2019.
58. After carefully considering the circumstances of this case and particularly the averments by the petitioner that his rights were violated, it is my view that he has not demonstrated how his rights have been violated by the respondent. The Court therefore finds and holds that the Petition herein is without merit and is hereby dismissed with costs.
59. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 3RD DAY OF FEBRUARY, 2023**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

