



**Siyani v Teachers Service Commission (Petition E165 of 2022)
[2023] KEELRC 1407 (KLR) (8 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1407 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E165 OF 2022**

MN NDUMA, J

JUNE 8, 2023

BETWEEN

WAFULA RUSSELL SIYANI PETITIONER

AND

THE TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The petitioner Wafula Russell Siyani filed the petition on 8th September, 2022 seeking for an order in the following terms:-
 - (1) A Declaration that the Petitioner's Fundamental Rights and Freedoms have been violated by the Respondent.
 - (2) A Declaration that the Respondent terminated the petitioner's employment unfairly.
 - (3) A Declaration that the Respondent discriminated against the Petitioner.
 - (4) An order directed to the Respondents to reinstate the Petitioner to the position of TSC County Director for Marsabit.
 - (5) Aggravated Damages.
 - (6) General Damages for Constitutional breaches and violations.
 - (7) Costs of, and incidentals to, these proceedings be borne by the Respondent.
 - (8) Any other relief that this Honourable Court may deem just to grant.



Facts of the Petition

2. The petitioner deposes that he was employed by the respondent as the Teachers Service Commission (TSC) County Director; that on 28th May, 2021, he collected tyres for the County vehicle GKB 250V and was then transferred to Marsabit County in the same role until 27th July, 2022 when his employment was unfairly and unprocedurally terminated.
3. That at the time the Petitioner collected the tyres, the tyres for the vehicle GKB 250V were still in good condition and so he chose to keep the new tyres at his residence to ensure security from any loss until the running tyres were due for replacement. That at the time, the petitioner had no office at Nyandarua since it was closed in January, 2021.
4. On 7th January, 2022, the respondent issued the petitioner with a notice to show cause dated 7th January, 2022 which read as follows:-

“It has been noted with concern that your office was issued with Four Good Year tyres of size 245/70R16 for GKB 205V on 25th May, 2021 while you were TSC County Director for Nyandarua County. The same had not been used to replace the worn out tyres. You are hereby asked to show cause why disciplinary action should not be taken against you for negligence.

Your response should reach this office within 14 days from the date of this letter.”

5. The petitioner replied to the show cause letter on 19th January, 2022 in which he admitted having collected the tyres but kept them at his residence for security reasons since the County Director Nyandarua had no office. That they got a new office in August, 2021 and started relocating on 15th August, 2021.
 6. That meanwhile he received a transfer to Marsabit County on 27th September, 2021 and he handed over on 4th October, 2021 and proceeded to Marsabit.
 7. The Petitioner stated that he unfortunately failed to inform the County Director about the tyres since the handing over report was not comprehensive. That on 27th December, 2021, the driver Mr. Ileri called him to tell him that the tyres were needed for replacement. That the petitioner called the County Director Nyandarua and informed him where the tyres were. The tyres were still in his house at Nakuru. That on 29th December, 2021, he made arrangements and the tyres were delivered to the County Director’s office.
 8. The petitioner apologized and regretted the inconvenience caused by what he referred to as breakdown of communication. The petitioner denied he had any malicious intent at all in keeping the tyres at his house.
 9. The petitioner was served with a further notice to show cause dated 8th June, 2022 for breach of Clause 112 (4) (j) and (k) and 112-3(b) of the Human Resource Policies and Procedure Manual for th June, 2022 stating that failure to hand over the tyres upon transfer to Marsabit for Nyandarua County was neither malicious nor intentional.
- Secretariat staff, 2018. The petitioner responded by a letter dated 14
10. The petitioner was served a letter of interdiction dated 20th June, 2022 and the petitioner responded to it on 6th July, 2022 reiterating his defence.



11. The petitioner was invited to a disciplinary hearing by a letter dated 28th June, 2022. He was to attend on 27th July, 2022 at Teachers Service Commission Headquarters Upper Hill at 8.30 a.m.
12. The petitioner attended the hearing in person.
13. The hearing proceeded and the minutes are attached to the petition. From the records, the commission called Lincoln Ireri, a driver; Charles K. Kariuki, Accountant; Tom Akal, County Director; Hannington Ouma, Fleet Manager and David Ngetich, administrator as witnesses.
14. At the hearing, the petitioner admitted having kept the tyres at his house since the tyres on the vehicle were still good and had not ordered for the new supply. That he was simply called from TSC Headquarters to pick the tyres. That upon being transferred to Marsabit, he handed over the vehicle but the tyres remained at his house at Nakuru. Petitioner said he was to hand over the pending property later, since handing over was a process. The petitioner had not recorded the tyres in the office inventory. The petitioner said he kept the tyres at his house for safety reasons.
15. The respondent found the petitioner guilty as charged and was served a letter of dismissal dated 5th August, 2022.
16. The petitioner alleges that the dismissal violated his rights under Article 47 and 50 of the Constitution read with Section 4 of the Fair Administration Act, 2015 in that he was not given a fair hearing. That, the matter should have been investigated before notice to show cause was issued. That he was not invited to an investigation Committee prior to the notice to show cause. That this violated Regulation 116(5) of the Human Resource Policies and Procedure Manual for Secretariat Staff (2018).
17. The petitioner states that there was no sufficient evidence to find him guilty as charged. That the petition be allowed.
18. The respondent filed a replying affidavit to the petition sworn to by Dr. Julius Olayo, the Director in charge of Human Resource and Development, at Teachers Service Commission. The deponent states that the petitioner was employed by the respondent in 1996 as a teacher. That he rose through the ranks to the position of Principal until August, 2008 when he was deployed to the Secretariat as Chief Staffing Officer.
19. That at the time of dismissal, the petitioner held the position of Deputy Director, TSC Job Grade 5 from 31st January, 2020 and served Nyandarua and Marsabit Counties in that capacity.
20. That the petitioner was the custodian of the respondent's property in that capacity. That on 28th May, 2021, the petitioner was entrusted with custody of four (4) tyres to be fitted on Motor Vehicle Registration No. GKB 250V. That on 28th December, 2021, it was noted the said vehicle was immobile and upon inquiry it was established that the motor vehicle tyres were worn out as the petitioner had not fitted the tyres issued to him on 28th May, 2021. Investigations were instituted and the petitioner was issued a show cause letter to explain his failure to replace the worn out tyres.
21. The investigation team obtained written statement from the petitioner and persons who had information on the matter. The investigation revealed that the four (4) tyres were received by the petitioner for motor vehicle GKB 250V. The County Accountant did not receive the tyres. The tyres were taken to the petitioner's residence. The tyres were not fixed on the vehicle. The petitioner failed to declare the tyres as property of the Commission and hand over the tyres to the incoming County Director as required by Government procedure and policy.
22. The tyres remained in the residence of the petitioner until 29th December, 2021 when they were delivered at the County office belatedly.



23. That due process was followed in giving the petitioner opportunity to respond to the notice to show cause and to explain himself at a disciplinary hearing as the records before Court show. That interdiction was done in terms of Regulation 117 of the Human Resource Manual. That Investigation Committee was instituted in terms of Regulation 116(2) contrary to assertions by the petitioner that the first notice to show cause was issued by the investigation team and the petitioner responded to it.
24. Upon conclusion of the investigations, an amended notice to show cause was given giving full particulars of the allegations against the petitioner. The petitioner responded to both notices.
25. The respondent furnished the petitioner with the investigations report together with witness statements to enable him prepare his response at the hearing before the disciplinary panel.
26. That the petitioner has misconstrued the nature, intent and purpose of the investigations under the Human Resource Manual and confused the same with the hearing before the disciplinary panel which took place on 27th July, 2022. Purpose of investigation is to gather evidence to establish the veracity of allegations and a report is made with recommendations which happened in this case.
27. That the respondent was dismissed for a valid reason following a fair procedure. The petition be dismissed with costs.

Determination

28. The issues for determination are:-
 - a. Whether the respondent had a valid reason to dismiss the petitioner from employment.
 - b. Whether the respondent followed a fair procedure in dismissing the petitioner from employment.
29. The Court has carefully considered the depositions by the parties and the final written submissions together with the documentation produced as annexures before Court.
30. There is overwhelming evidence that the petitioner unlawfully, and or irregularly and in violation of government policy kept four (4) new tyres issued for replacement of worn out tyres in respect of motor vehicle GKB 250V, which vehicle was used by the petitioner while he worked as County Director TSC, Nyandarua. The tyres were issued to the petitioner on 28th May, 2021 but he kept them at his private residence until 19th December, 2021 long after he had been transferred to Marsabit County. That upon transfer, the petitioner did not declare and handover the new tyres to the incoming Director at Nyandarua. That the motor vehicle had become immobile as at 28th December, 2021 due to worn out tyres and it took investigations and prompting by the respondent for the petitioner to hand over the tyres from his house. The conduct by the petitioner was unlawful, illegal and irregular and is a valid reason for a dismissal from public service.
31. The Court is satisfied that the respondent followed a fair procedure in firstly, investigating the matter; giving the petitioner opportunity to show cause in writing twice and thereafter subjecting the petitioner to disciplinary hearing before a disciplinary panel constituted in terms of the Teachers Service Commission, Human Resource Manual.
32. The petitioner has failed to prove any violation of his rights protected under Articles 47 and 50 of the Constitution of Kenya, 2010 read with Section 4 of the Fair Administration Act, 2015.
33. Indeed, the petition itself did not disclose in a specific manner the particulars of alleged violation of the petitioner's rights.



34. This matter is a mundane dismissal from employment case and the petitioner ought to have filed a Memorandum of Claim in terms of the Rules of this Court. This would have given the petitioner opportunity to testify before Court in person and have the matter determined like all other ordinary claims. The filing of the petition was indeed an abuse of the process.
35. We have however considered the evidence adduced by the petitioner vis a vis that adduced by the respondent in their respective depositions; annexures and submissions and are satisfied that the petition lacks merit and is dismissed accordingly. The dismissal of the petitioner was for a valid reason in terms of Section 43(1) and (2) of the *Employment Act*, 2007 read with Section 45 of the Act. The respondent followed a fair procedure as guided by the Teachers Service Commission, Human Resource Manual and the Act.
36. Considering the long service by the petitioner to the respondent, we deem this an appropriate case for each party to bear their costs of the petition.
37. It is so ordered.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 8TH DAY OF JUNE, 2023.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Museve for the Petitioner

M/s Manyasa for the Respondent

Ekale - Court Assistant

