



REPUBLIC OF KENYA



KENYA LAW
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**Langat v Kenya Revenue Authority (Petition E146 of 2023)
[2023] KEELRC 3011 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3011 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E146 OF 2023
B ONGAYA, J
NOVEMBER 27, 2023**

BETWEEN

EDWARD KIPROP LANGAT PETITIONER

AND

KENYA REVENUE AUTHORITY RESPONDENT

RULING

1. The Petitioner filed an application by notice of motion dated 28.07.2023 through Mutisya & Company Advocates. The petitioner prayed for the following orders:
 - a. That the application be certified urgent and the same be heard *ex-parte* in the first instance.
 - b. That pending the hearing and determination of the application, the Honourable Court be pleased to issue an order restraining the respondent whether by itself, agents and servants and whomsoever acting under its authority or instruction from terminating, harassing, intimidating or conducting any disciplinary proceedings in relation to the subject matter.
 - c. That pending the hearing and determination of the petition, the Honourable Court be pleased to issue an order restraining the respondent whether by itself, agents and servants and whomsoever acting under its authority or instruction from terminating, harassing, intimidating or conducting any disciplinary proceedings in relation to the subject matter.
 - d. That such other or further orders be issued to facilitate the just, expeditious, fair determination of this application and petition.
 - e. That the costs of this application be in the cause.
2. The said application is supported by the affidavit of Edward Kiprop Langat as well as his further affidavit sworn on 03.11.2023 and urged upon the following grounds:



- a. That the petitioner was employed by the respondent under the respondent's ICT department in December, 2006 and worked diligently until 15.03.2017 when he received a letter of interdiction grounded on an unfounded allegation. The petitioner had an exemplary performance and was even issued with letters of commendation for exemplary performance on 20.07.2013, 19.03.2014, 30.07.2014 and the year 2017.
 - b. That the letter of interdiction was too general and did not specify which offence the petitioner had committed to warrant the interdiction. The letter just indicated that the petitioner is interdicted from duty with effect from the date of the said letter of 15.03.2017 until further notice. However, to date the respondent is yet to communicate the outcome of the said investigations to the petitioner. The respondent had also declined to supply the petitioner with the documents relied on in relation to his case.
 - c. That the suspension has unduly dragged for long, contravenes petitioner's right as provided by Article 47 of the Constitution of Kenya, goes against the provisions of the Employment Act, 2007, KRA's Employee Code of Conduct, Access to Information Act, Fair Administrative Action Act and other related laws of Kenya.
 - d. That the said suspension also goes against Amb. Francis K. Muthaura's (Permanent Secretary, Secretary to the Cabinet and Head of Public Service) circular dated 24.05.2010 on guidelines on handling of cases of public officers who are suspected of involvement in corrupt practices. The circular provides that the guideline be strictly followed to ensure that administrative action in dealing with suspected cases of corruption by public officers is taken without delay and in accordance with relevant laws and guidelines.
 - e. That the respondent has also discriminated against the petitioner as it has treated the petitioner's case differently. All his colleagues who had the same case went through the disciplinary procedure as is required by the respondent's code of conduct, rules and regulations. They were given a notice to show cause which specified the offence they had committed. The respondent responded to the notice to show cause and were invited to appear before the disciplinary committee for hearing, where, they defended themselves and were terminated. These include Lucy Katilo and Kenneth Riaga.
 - f. That it is in the interest of justice that the present application be allowed as prayed.
3. The respondent has opposed the application by filing the replying affidavit of Peter Kambi Rwito, sworn on 30.10.2023 and filed through Elisha Nyapara Advocate. It is urged as follows:
- a. That the respondent on 09.03.2017 and 10.03.2017 received information from the daily nation publication that the petitioner together with other respondent's officers Kenneth Operer Riaga and Lucy Katilo Chemiat were among 16 other people arrested by police for being members of a ring of hackers that were involved in multi-million-shilling KRA and bank theft syndicate.
 - b. That following receipt of this information, the respondent reported the same to the Director of Criminal Investigations who swiftly arrested the petitioner together with his co-perpetrators in the cyber fraud syndicate.
 - c. That investigations were initiated using a multi-agency team (involving the respondent, Director of Criminal Investigations, National Intelligence Service) created in that regard. Its mandate included forensic examination of the cyber reports.



- d. That in line with section 8.1.1 of the respondent's Code of Conduct, it was in the interest of the respondent and that of larger public that the petitioner stays away from the office in order to facilitate investigations of his misconduct.
 - e. That accordingly, the petitioner was interdicted from performance of functions of his office vide a letter dated 15.03.2017.
 - f. Preliminary internal investigations by the respondent established that as a result of the criminal syndicate engaged in by the petitioner, the respondent had lost approximately four billion shillings through irregular deletions, manipulation and downward amendments of the taxpayers' tax liabilities in the respondent's legacy system.
 - g. That internal investigations further revealed that the cyber fraud crimes were executed using unauthorised programs called 'here link' that penetrated into the respondent's legacy system and was used in the cancellation of the taxpayer's penalties and another software called 'raypez. Ink' that was used to reopen value added tax returns and make unauthorised and illegal amendments to taxpayer's tax ledgers.
 - h. The petitioner together with others were charged on 29.11.2022 before the Milimani Courts for the offence of conspiracy to commit a felony contrary to Section 393 of the [Penal Code](#), charges that were with respect to investigations that were being undertaken against the respondent from the year 2017 and whose outcome were consistent with the respondent's internal preliminary findings.
 - i. That immediately these changes were brought to the attention of the respondent's Human Resource Division, administrative action was undertaken against the petitioner wherein the petitioner's prior interdiction was immediately converted to suspension vide a letter dated 19.10.2023 pursuant to section 62(1) of the [Anti-corruption and Economic Crimes Act, 2003](#).
 - j. That the interdiction of the petitioner was procedurally done in accordance to section 8.1.1 of the respondent's Code of Conduct in order not to compromise or premeditate the outcome of the ongoing investigations.
 - k. The internal memo dated 23.04.2018 is an illegally obtained evidence and ought to be struck out accordingly and has no nexus to the dispute leading to the interdiction and subsequently suspension of the petitioner.
 - l. That the petitioner was aware of the reasons for his interdiction and that he had on 29.11.2022 been charged with a felony under section 393 of the [Penal Code](#) and thus in line with section 62(1) of the [Anti-corruption and Economic Crimes Act, 2003](#) and section 8.1.1 of the respondent's Code of Conduct continuing administrative actions against him were justified and within the law.
4. The parties' respective counsel made brief submissions on the application. The Court has considered parties' respective positions. The evidence is that the petitioner has been charged with an offence alleging contravention of section 393 of the [Penal Code](#) being conspiracy to commit a felony in that on 01.03.2017 at unknown place in the Republic of Kenya the petitioner conspired with other persons to commit a felony, namely, stealing ksh 3, 085,663,858.00 from the Kenya Revenue Authority, the property of the Government of Kenya. Section 62 of the [Anti-Corruption and Economic Crimes Act](#) provides 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 and provided the case shall be determined in 24 months. The section further provides that a suspended



public officer who is on half pay shall continue to receive the full amount of any allowances. The petitioner's suspension letter dated 19.10.2023 states that he will be paid as envisaged in the section. The section further provides that the public officer ceases to be suspended if the proceedings against him are discontinued or if he is acquitted. Further, the section does not derogate from the power or requirement under any law under which the public officer may be suspended without pay or dismissed. Under section 2 of the Act, corruption means, inter alia, embezzlement or misappropriation of public funds, bribery, fraud, breach of trust, or, an offence involving dishonesty in connection with any tax, rate or impost levied under any Act; or, under any written law. Economic crime under section 2 of the Act means an offence under section 45; or, an offence involving dishonesty under any written law providing for the maintenance or protection of public revenue. By those definitions, the Court returns that the offence the petitioner was charged with placed his suspension under section 62 of the Act. His suspension has persisted under the provisions of the section. He was charged on 29.11.2022 and the two years (24 months for determining the case as prescribed) will lapse on or about 29.11. 2024. By those findings, the suspension is proceeding per provisions of the Act. The petitioner has not therefore established a *prima facie* case for the granting of the orders as prayed for. It is true that the petitioner had been interdicted prior to the suspension but that situation has not been shown to shift the provisions of section 62 under which the respondent imposed the suspension. The Court also considers that if other provisions of section 62 are available to conclude the disciplinary process against the petitioner is a matter for consideration when the petition is to be heard and determined.

5. The court therefore returns that the application is liable to dismissal with costs in the cause.

In conclusion the application filed for the petitioner dated 28.07.2023 is hereby dismissed with costs in the cause and parties to take further steps for expeditious determination of the petition or may consider compromise in view of the findings in this ruling and as may be appropriate.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 27TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

