



**Muthui & 9 others v Speaker, Nyandarua County Assembly & 2 others  
(Petition 28 of 2021) [2022] KEELRC 1785 (KLR) (27 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1785 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION 28 OF 2021  
HS WASILWA, J  
JUNE 27, 2022**

**BETWEEN**

**ELIZABETH WANJIKU MUTHUI ..... 1<sup>ST</sup> PETITIONER  
DANIEL MUCHERU MWANIKI ..... 2<sup>ND</sup> PETITIONER  
ESTHER GATHONI KIARIE ..... 3<sup>RD</sup> PETITIONER  
BENJAMIN MUNYEKI GATONGA ..... 4<sup>TH</sup> PETITIONER  
RUTH WAMBUI NJOGU ..... 5<sup>TH</sup> PETITIONER  
MOSES MWANGI MWANGI ..... 6<sup>TH</sup> PETITIONER  
TERESIA WAHU ..... 7<sup>TH</sup> PETITIONER  
JOSEPHINE WANJIKU NJOROGE ..... 8<sup>TH</sup> PETITIONER  
LOISE WAHU GITHINJI ..... 9<sup>TH</sup> PETITIONER  
ZACHARY MWANGI NJERU ..... 10<sup>TH</sup> PETITIONER**

**AND**

**SPEAKER, NYANDARUA COUNTY ASSEMBLY ..... 1<sup>ST</sup> RESPONDENT  
NYANDARUA COUNTY ASSEMBLY SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT  
NYANDARUA COUNTY ASSEMBLY ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioners were at all material times employees of Nyandarua County Assembly Service Board serving in various departments within the said county assembly.



2. Sometimes in December, 2020 there were leadership wrangles in the county assembly of Nyandarua that emerged causing chaos and some of the persons that took leadership continued to abuse their offices and threatening and at times executing their threats of firing all person who were not in their political faction.
3. On March 2, 2021 the 1<sup>st</sup> Petitioner was sworn in as the acting clerk of the county assembly of Nyandarua. Her appointment was gazetted *vide* Gazette Notice no. 10399 of 2021 by the chairperson of the County Assembly of Nyandarua service board, one Reuben G. Karanja.
4. When the 1<sup>st</sup> Petitioner started working, he received a warning letter on March 8, 2021 from one political faction demanding that the 1<sup>st</sup> Petitioner refrain from transacting any business in the name of acting clerk. Subsequently, she was issued with a show cause letter for alleged insubordination. However, the said show cause letter did not have any particulars to enable the 1<sup>st</sup> Petitioner respond substantively to the said allegation.
5. As the 1<sup>st</sup> Petitioner was waiting to be summoned for the disciplinary hearing to answer to the allegation, she was dismissed by the 1<sup>st</sup> Respondent in May, 2021, when the 1<sup>st</sup> Respondent, being the speaker, did not have any authority to hire or fire any employee.
6. The 2<sup>nd</sup> Respondent on May 2, 2021 rubberstamped the decision of the 1<sup>st</sup> Respondent and officially terminated her services without following due process contemplated under the *employment Act*. However the 1<sup>st</sup> Petitioner was left in the payroll for the month of May, June and July, 2021.
7. The 2<sup>nd</sup> Petitioner, was a senior driver of the 2<sup>nd</sup> Respondent, while the 3<sup>rd</sup> Petitioner was the principal Human Resource Officer of the 2<sup>nd</sup> Respondent. They aver that on the August 11, 2021, they were served each with a show cause letter requiring them to respond to the said letter within 7 days. However the said letter did not have enough particulars or attachment to enable them properly give a response. Nevertheless that they each responded and a disciplinary meeting was scheduled on August 27, 2021 in Old Town Council Building however on the due date of the meeting, the venue was changed without informing them of the said change of venue making it impossible for them to attend the disciplinary hearing. As such, they were terminated without being heard on the August 31, 2021 on allegation of misconduct.
8. The 4<sup>th</sup> Petitioner who was working as a commissionaire<sup>1</sup>, Nyandarua County assembly was also terminated on August 31, 2021 without being heard.
9. The 5<sup>th</sup> and 6<sup>th</sup> Petitioner were the secretary and driver respectively of the 2<sup>nd</sup> Respondent who were employed on permanent terms and whose salaries were unlawfully withheld till the Respondent got keys to the office of the county assembly and keys for the vehicle Registration number 18CGxxxx. The two were therefore constructively terminated.
10. The 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Petitioner were all working as Office Assistants on contractual basis for a term of one year. They were paid their July and August salary and none was paid for the month of September, 2021 and no explanation was given thereof.
11. The 10<sup>th</sup> Petitioner is the Deputy speaker of the county assembly of Nyandarua, whose salary was also withheld by the Respondent without any explanation.
12. It is averred that the termination of employees was caused by an allegation and believe that the said employees were in support of the impeachment of the 1<sup>st</sup> Respondent and the termination thereof was motivated by political reasons which cannot be a reason for termination of any employee.



13. The Petitioner avers that the termination was done without following due process. The employees who were served with notice to show cause were not supplied with particulars of the offenses to enable them properly respond and the said termination was basically a way of settling political scores.
14. It is alleged that the Board that passed the resolution to terminate their services was not properly constituted as it was made up of James Wahome Ndegwa, John Kieru Wambui, Kariuki Muchiri, Nancy Mercy Njoki Mureithi, David Kumiru Munyeki and Gideon mukiri Muchiri. Further that they failed to invite Reuben Gitau Karanja and Samuel Rimui Kaiyani into the meeting that passed the termination of the Petitioners. Also that the letter of termination for the 1<sup>st</sup> Petitioner was signed by an already impeached Speaker contrary to the law.
15. The Petitioner are aggrieved by the decision of the Respondents to terminate them and prays for the following reliefs; -
  - a) A declaration that within the intendment of Article 10 of the constitution and resonating the intention of Article 26 of the Constitution, the Respondents are bound to discharge their public duties in an open and transparent manner.
  - b) A declaration that the intendment of Article 47(1) of the Constitution as read with section 45 of the Employment Act, the Petitioners termination of employment was unfair and unlawful for failing to follow due process and provide valid reasons.
  - c) A declaration that within the intendment of Article 27 and 47(2) of the constitution, the Respondents failed to follow the mandatory procedure for the removal of the Petitioners.
  - d) An order of certiorari be and is hereby issued to quash the decision of Nyandarua Country assembly service Board to terminate the Petitioners employment on May 3, 2021 and August 31, 2021 respectively.
  - e) An order of Mandamus be and is hereby issued to compel the Respondents to reinstate the 1<sup>st</sup> to 9<sup>th</sup> Petitioners to the payroll and pay their salaries with effect from July, 2021.
  - f) General damages for violation of the Petitioners constitutional rights.
  - g) Compensation for unlawful and unfair termination of the Petitioners employment.
  - h) Costs of the Petition be borne by the Respondents.
16. The Petition is supported by the Affidavit of Elizabeth Wanjiku Muthui, the 1<sup>st</sup> Petitioner herein on her behalf and on behalf of the other Petitioner deposed upon on the December 1, 2021. The Affidavit in support reiterated the contents of the Petition.
17. In response to the petition, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent filed a replying Affidavit sworn by Gideon Mukiri Muchiri, the acting clerk and accounting officer of the 3<sup>rd</sup> Respondent and the secretary of the 2<sup>nd</sup> Respondent, on the December 8, 2021.
18. According to the affiant herein, the petition is incompetent and an abuse of the Court process for the reason that the Petitioners were terminated from service after following due procedure of the law and the termination was in accordance with the law.
19. On the 1<sup>st</sup> Petitioner, it was stated that she was placed on compulsory leave on the January 25, 2021 to pave way for investigation into her actions. On March 8, 2021 she was served with a warning letter but the said employee continued with her unbecoming acts and even employed Teresiah Wahu, Josephine Wanjiku Njoroge and Loise Wahu Githinji, the 7<sup>th</sup> to 9<sup>th</sup> Petitioners herein, without any authority



- forcing the Respondent to issue her with show cause letter dated April 9, 2021 with a disciplinary hearing for April 19, 2021 which the 1<sup>st</sup> Petitioner ignored. The Board of the 2<sup>nd</sup> Respondent convened a meeting of May 3, 2021 when they decided to terminate the services of the 1<sup>st</sup> Petitioner and she was issued with the letter of termination of the same date.
20. The 1<sup>st</sup> Petitioner then filed a suit in Nairobi ELRC E684 of 2021 praying for interim reinstatement which was declined by the Court. That there was another suit which was filed being Nakuru ELRC No 1 of 2021 which is still active and pending hearing before this Court therefore this suit is *subjudice* with regard to the 1<sup>st</sup> Petitioner case.
  21. The 10<sup>th</sup> Petitioner, who is the Deputy Speaker of the 3<sup>rd</sup> Respondent, in excess of his authority took over the roles of the Speaker of the County assembly and even chaired the 2<sup>nd</sup> Respondent and irregularly paid himself Kshs 2,999,954,71. The 2<sup>nd</sup> Respondent therefore withheld his salary in order to recover the said money not for the purpose of terminating his services or at all. The Respondent avers that the 10<sup>th</sup> Petitioner was informed of the Respondent's decision vide their letter of November 11, 2021.
  22. With regard to 2<sup>nd</sup> to 4<sup>th</sup> Petitioner case, it was stated that, the said employees were terminated on the August 31, 2021 for failing to adhere to lawful authority and clear disobedience of Court Orders. It is averred that Esther Gathoni was directed *vide* the letter of July 26, 2021 to implement Court Orders to the effect that she was to hand over assembly offices, mace and vehicle but she refused. Benjamin Gatonga was directed to hand over keys to assembly gates, chambers and all officers to no avail while Daniel Mucheru was to surrender assembly vehicle registration number 18CG 093A and 18CG 211A instruction that he did not execute despite being served with Court Order.
  23. It is averred that these Petitioners were all served with notices to show cause for failing to obey authority and Court Orders by the letter dated August 11, 2021. They also ignored disciplinary meeting scheduled for August 27, 2021 and their termination was therefore fair in the circumstances.
  24. With regard to the 7<sup>th</sup> to 9<sup>th</sup> Petitioner, the Respondents aver that the said Petitioners have never been employees of the Respondents as their employment was done by the 1<sup>st</sup> Petitioner who was acting in excess of her powers and the said employment was quashed by the decision of this Court in ELRC Petition number E007 of 2021.
  25. On the 5<sup>th</sup> and 6<sup>th</sup> Petitioners, the affiant avers they have both defied lawful command and despite being served with the Orders of this Court, they have failed to comply and disciplinary proceedings are still ongoing and are yet to be terminated.
  26. In summary, the Respondents' deponent avers that the 1<sup>st</sup> and 4<sup>th</sup> Petitioners' services were terminated lawfully, the 5<sup>th</sup> & 6<sup>th</sup> the disciplinary proceedings are underway and yet to be completed, the 7<sup>th</sup> to 9<sup>th</sup> Petitioner are strangers and not employees of the Respondents while the 10<sup>th</sup> Petitioner was not terminated but his salary withheld to recover the money he haphazardly paid himself.
  27. It is therefore contended that the actions of the Respondent is justified in the circumstances.
  28. James Wahome, Ndegwa, the 1<sup>st</sup> Respondent also opposed the Petition herein and filed a replying affidavit deposed upon on the December 8, 2021.
  29. The 1<sup>st</sup> Respondent avers that the 1<sup>st</sup> Petitioner was appointed as the county clerk by Reuben Gitau Karanja, a member of County Assembly for Shamata ward who illegally acted as the clerk of the 3<sup>rd</sup> Respondent and the secretary of the 2<sup>nd</sup> Respondent when it was outrightly illegal for such a person



to make any appointment. He stated that such appointment was done when the issue of Nyandarua County was before PPDT under claim under E005 of 2021.

30. It is stated that the 1<sup>st</sup> Petitioner failed to act on any of the Orders issued by various Courts in Nairobi and Nakuru including this Honourable Court and is now before this Court seeking for other Orders when she did not even have respect to the Orders issued against her by this very Court.
31. It is stated that, *Vide* ELRC Cause No. E011 OF 2021, this Court issued Orders barring the 1<sup>st</sup> Petitioner and her group from carryout any form of appraisal, however the 1<sup>st</sup> Petitioner in defiance of the Court Orders carried out appraisal exercise and created 10 directorates from the initial 4 with one such directorate having only 2 officers she also promoted some staff from grade 6 to grade 9 without following due procedure for promotions completely disfiguring the face of the county assembly establishment.
32. It was further stated that despite being stopped by this Court in ELRC E010 of 2021 from terminating the services of the 9 employees, she went ahead and terminated them, denied them access to the county assembly and removed all of them from the payroll. It is averred also that the 1<sup>st</sup> Petitioner in defiance of the Orders of Court issued by Justice D.K.N Marete in Nyeri ELRC E005 of 2021 terminated the services of 8 employees of the county who were servicing under permanent and pensionable terms. Additionally, that they removed two member representing the public from the Board of the 2<sup>nd</sup> Respondent without any powers to do so.
33. The 1<sup>st</sup> Respondent maintain that the termination of the 1<sup>st</sup> Petitioner followed due process and justified.
34. With regard to the 10<sup>th</sup> Petitioner, the 1<sup>st</sup> Respondent avers that while, illegally in occupation of the Speakers officer , he illegally remunerated himself and failed to pay taxed to the government for using Vehicles registration number 18CG 093A and 18CG 211A ,which they are now surcharging him.
35. On the other Petitioners, the 1<sup>st</sup> Respondent reiterated the averments of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent replying affidavit on how the said employees were terminated. The 1<sup>st</sup> Respondent prayed for the Petition to be dismissed with costs to the Respondents.
36. The 5<sup>th</sup> and 6<sup>th</sup> Petitioner filed a notice of withdrawal of their suit on the February 14, 2022 which was adopted by the Court *vide* the Orders of March 8, 2022.
37. The Court directed the Parties dispose to of the Petition by way of written submission with the Petitioners filing on the April 12, 2022, the 2<sup>nd</sup> Respondent filed on the May 24, 2022 and the 1<sup>st</sup> Respondent filed his on the May 24, 2022.

#### **1<sup>st</sup> to 4<sup>th</sup> & 7<sup>th</sup> to 10<sup>th</sup> Petitioners' Submissions.**

38. The Petitioners submitted on two issues; Whether the Petitioners' Employment was unlawfully and unprocedurally terminated and Whether the Respondents performed their public duties in violation of Article 10 and 236 of the [Constitution](#).
39. On the first issue, it was submitted that The Petitioners' employment was terminated by the Respondents without being given an opportunity to be heard and due process in terminating their employment was not followed as clearly outlined in the Petitioners' Petition. It is argued that Pursuant to Article 41 of the [Constitution](#), every employee has the right to fair labour practices. Further, Part VI of the [Employment Act](#), 2007 provides for the procedure for lawful termination of employment which ought to guide all employers in the process of termination of an employee's employment.



40. It was submitted that the Respondent violated the Petitioner rights under Article 47(2) and 50 of the Constitution in failing to subject the Petitioner to due process before the said termination. This is also in contravention of Section 41 and 43 of the Employment Act and to support their argument the Petitioner cited the case of Kusow Billow Issack v Ministry of Interior and Coordination of National Government & 3 Others (2021) eKLR where the Court held that:

“Respondents violated Petitioner right to fair administrative actions and fair hearing as enshrined under Article 47 and 50 of the Constitution by terminating his employment without fair hearing.”

41. It was argued that the reason given for the termination of the Petitioners are not valid or backed up with evidence as such the termination was unfair as provided for under section 45 of the Employment Act. To support this argument the Petitioner relied on the case of Kenfreight (EA) Limited v Benson K. Nguti (2016) eKLR, the Court pronounced as follows:

“ It is considered unfair to terminate contract of service if the employer fails to demonstrate that the reason for termination is valid and fair, that the reason related to the employee’s conduct, capacity and compatibility and is based on the operational requirements of the employer. The employer must also prove that the termination was in accordance to fair procedure.”

42. As a consequence to the unfair termination of their employment, the 1<sup>st</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> Petitioners were denied their right to salary which is contrary to the provisions of Article 41 of the constitution and the same amounts to inhuman treatment akin to slavery and servitude as was held in the case of Kusow Billow Issack v Ministry of Interior and Coordination of National Government and 3 others (2021) eKLR.

43. Accordingly, it was submitted that the Petitioners were unfairly terminated from employment and they ought to be compensated for the said actions by the Respondents.

44. It was further submitted that the Petitioners are public officer as per Article 260 of the Constitution and their termination ought to have been done in accordance with Article 10 and 236 of the Constitution. It was argued that the 2<sup>nd</sup> Respondent while terminating the services of the Petitioners was not properly constituted as such the decision made by it was null and void *abinitio* and their termination was in violation of Articles 10, 47, 50 and 236 of the Constitution. To support this argument the Petitioner relied on the case of Miguna Miguna v Fred Okengo Matiang’I Cabinet Secretary, Ministry of Interior and Coordination of National Government & 6 Others; Kenya National Commission on Human Rights (Interested Party) [2018] eKLR the Court held that:

“.. Rights have inherent value and utility and their recognition, protection and preservation is not an emanation of state largely because they are not granted, nor are they grantable, by the State. They attach to persons, all persons, by virtue of their being human and respecting rights is not a favour done by the state or those in authority. They merely follow a constitutional command to obey.”

45. In conclusion, the Petitioners submitted that they have made out a case against the Respondent and urged this Court to allow the Petition as prayed.



## 2<sup>nd</sup> Respondent's submissions.

46. The 2<sup>nd</sup> Respondent submitted on 4 issues; whether the Nyandarua County Assembly Service Board was properly constituted, whether the Respondent demonstrated any lawful cause to carry out disciplinary proceedings against the Petitioner, whether due process was followed and whether the Petitioner are entitled to the reliefs sought.
47. On the first issue, it was submitted that the county assembly service board is constituted in accordance with section 46 of the [County Assembly service Act, 2017](#) and the members of the board comprises of the Speaker, as the chairperson, vice chairperson, two members appointed by the political parties represented in the county assembly, one man and one woman appointed by the county assembly. In this he argued that all these people were in office thought, the 1<sup>st</sup> Petitioner attempted to remove them from office, therefore any decision made by the Respondent was done legally with the Board being full constituted.
48. On whether there was a valid reason for termination, it was submitted that each of the Petitioners were terminated for valid reason being gross misconduct and insubordination. For gross misconduct the Respondent herein submitted that section 44 (4) of the [Employment Act](#) empowers an employer to summarily terminate the services of an employee who was found culpable of any act that was tantamount to gross misconduct. It was further argued that the 3<sup>rd</sup> Respondent's Human Resource Management Handbook at clause 2.16.5 defines what misconduct is while clause 2.16.5.2 describes what gross misconduct is, therefore that the Petitioner were terminated in accordance with the [Employment Act](#) and Respondent's Human Resource hand Book.
49. It was submitted that the Respondent has demonstrated the reason for termination of each of the Petitioner who was an employee of the Respondent therefore the termination has passed the substantive test as provided for under section 43 of the [Employment Act](#).
50. On whether due process was followed, the 2<sup>nd</sup> Respondent submitted that the procedure of disciplinary hearing is provided for under section 41 of the [Employment Act](#) and clause 2.16 of the Nyandarua County Assembly Human Resource Management handbook. Accordingly, that the 1<sup>st</sup> to 6<sup>th</sup> Petitioner were issued with show cause letters and Disciplinary Hearing Notices and only the 5<sup>th</sup> and 6<sup>th</sup> Petitioner appeared for hearing when they were heard and discharged. Therefore, that the Petitioner under this category were subjected to due procedure but they opted not to attend hearing as scheduled and should therefore not be compensated at all as they squandered their internal dispute resolution mechanism. To support this the Respondent cited the case of [Pamela Nelima Lutta v Mumias Sugar Co Limited](#) [2017] eKLR where the Court relied on the case of [Jackson Butiya v Eastern Produce](#) Cause 335 of 2011 in which the Court held:

“An employee who squanders the internal grievance handling mechanisms provided by an employer cannot come to Court and say “I refused to talk with those people and therefore I was not heard, order them to pay me.” It is not the role of the Court to supervise the internal grievance handling processes between employers and employees. The role of the Court is to ensure that such processes are undertaken within the law”.

“The procedural fairness requirements set out under Section 41 of the [Employment Act, 2007](#) are fulfilled by asking an employee facing disciplinary proceedings to respond to a show cause letter and to attend an oral disciplinary hearing. The employee is not at liberty to decline to respond to the allegations levelled against them and if they have any issues with the process, they must raise them directly with the employer within the timelines provided”.



“It seems to me that the Claimant chose to ignore the summons issued to her by her employer and she cannot therefore come to Court and state that she was not given an opportunity to be heard. The Court stated in Jackson Butiya (*supra*) this is precisely what the Claimant did and her claim for unlawful and unfair dismissal must therefore fail”.

The Court further observed that –

“From the evidence on record, I find that the Claimant failed to avail herself of the internal grievance handling procedure provided by the Respondent and cannot therefore complain that she was not heard. For this reason the claims for unfair termination and one month’s salary in lieu of notice fail and are hereby dismissed.”

“It is a cardinal rule of evidence, which is echoed by Section 47(5) of the *Employment Act* that he who alleges must prove” and section 47(5) provides that:

(5 “For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

“It is my finding that the Claimant has not proved that he did not get a fair hearing at his disciplinary hearing. From the foregoing I find that there was valid reason to dismiss the Claimant and that he was subjected to a fair hearing of his disciplinary case.”

51. It was submitted that the 7<sup>th</sup> to 9<sup>th</sup> Petitioners have never been employees of the Respondent therefore there is no employer/employee relationship.
52. On the final aspect, as to whether the Petitioners are entitled to the reliefs sought, it was submitted that section 47(5) of the *Employment Act* puts the burden on the Petitioners to prove their case of unfair termination and once they prove then the Respondent is tasked with giving reason. In this case it was argued that the Petitioners have not discharged that burden and therefore the tables cannot turn. They urged this Court to disallow the Petition with costs to the Respondents.

### **1<sup>st</sup> Respondent’s submissions.**

53. The 1<sup>st</sup> Petitioner submitted on three issues; Whether the Respondent has demonstrated lawful cause for terminating the services of the Petitioner, whether due process was followed in the termination and whether the Petitioner are entitled to the reliefs sought. On these issues the 1<sup>st</sup> Respondent duplicated the submissions by the 2<sup>nd</sup> Respondent which have been considered above and in conclusion also urged this Court to dismiss the Petition.
54. I have examined all evidence and submissions of the parties herein. The issues for this Court’s determination are as follows;
  1. Whether the County Assembly Service Board was fully constituted.
  2. Whether there were valid reasons to warrant dismissal of the Petitioners.
  3. Whether due process was followed before the Petitioner’s dismissal.
  4. Whether the Petitioners are entitled to the prayers sought.



### **Issue No. 1**

55. The Petitioners submitted that they were terminated by a CPSB which was not properly constituted as such the decisions made were null and void.
56. The Respondents denied that the CPSB was not properly constituted. The 2<sup>nd</sup> Respondent submitted that the board is made up of the Speaker, as the Chairperson, Vice Chairperson, 2 members appointed by the political parties represented in the County Assembly and one man and one woman appointed by the County Assembly.
57. They argued that all these members were present though the 1<sup>st</sup> Respondent had attempted to remove them from office.
58. There is however no evidence that is presented before Court to demonstrate that the CPSB was not properly constituted. The contention therefore that the CPSB was not properly constituted is not true.

### **Issue No.2**

59. The Petitioners have submitted that they were dismissed without valid reasons.
60. I have looked at the Petitioners termination letters. For Petitioner 1 the Respondent indicated that she presented herself for appointment as Acting Clerk to Nyandarua County Assembly and Secretary to County Service Board by persons and an entity not known in law despite her being on compulsory leave. Its further indicated that she continued and purported to transact business on behalf of the Assembly without regard to the Nyandarua County Assembly's Central Bank Kenya (CBK) Account.
61. The reasons are varied as per the letter of termination dated 3/3/21 and further include dismissing contracts of certain employees illegally.
62. She was informed that as a result of the many accusations, the Nyandarua County Assembly Service Board sitting on May 3, 2021 made a decision to terminate her services with effect from 3/5/21 on grounds of gross misconduct.
63. The 2<sup>nd</sup> Petitioner was terminated for the reason of gross misconduct and so was the 3<sup>rd</sup> Petitioner and also the 4<sup>th</sup> Petitioner.
64. The 5<sup>th</sup> & 6<sup>th</sup> Petitioners withdrew their petition hence are not included in this Judgment.
65. The Respondents indicated that the 10<sup>th</sup> Petitioner is the Deputy Speaker of the 3<sup>rd</sup> Respondent. They avers that he has not been terminated.
66. The Respondent indicated that the 7<sup>th</sup> to 9<sup>th</sup> Petitioners are strangers and not employees of the Respondent.
67. From the evidence submitted in Court in respect of the 1<sup>st</sup> Petitioner, she was employed by the Respondent as a Principle Procedural Clerk before the events leading to her termination.
68. It is however contended that she allowed herself to be appointed Acting Clerk of the assembly by an unlawful board chaired by the Deputy Speaker (3<sup>rd</sup> Petitioner).
69. This was when the substantive Speaker and Chairman of the Board was still in office *vide* orders of the High Court in NKR PET E002/2021 and E008/2021.
70. All other actions the 1<sup>st</sup> Petitioner is accused of committing emanate from her role as Acting Clerk of the Assembly.



71. The 1<sup>st</sup> Petitioner was appointed as Acting Clerk *vide* a letter dated 2/3/21 and thereafter gazetted by the Vice Chairman of the Nyandarua County Service Board on 23/9/21.
72. From the Respondent's submissions, the High Court in Nakuru had stayed orders purporting to remove the elected Speaker and so he was substantially and legally in office.
73. While having knowledge of this fact, it is indicated that the 1<sup>st</sup> Petitioner caused the speaker to be locked out of his premises and office and also withheld the clerk and Acting Office Clerks official motor vehicles and the Assembly mall in blatant disregard to orders of Hon. J. Chemitei in Petition No. E002/2021. The Respondents submitted and exhibited the direction of this Court in ELRC Pet. No. E7/2021 and even show that she was convicted of Contempt of Court by the said Court.
74. On her part, the 1<sup>st</sup> Petitioner indicates that her problems came from wrangles within the Nyandarua County Assembly putting one faction to another.
75. That notwithstanding, as indicated above, the 1<sup>st</sup> Petitioner is a lawyer by profession. By virtue of her position in the Nyandarua County Assembly, she was well aware of legitimate Court orders issued including orders issued by the High Court and the ELRC. The orders issued restated that the County Speaker was still in office.
76. She was initially appointed *vide* a letter signed by one Zachary Mwangi Njeru – the 10<sup>th</sup> Petitioner herein purporting to be the Acting Speaker when in effect the substantive Speaker was in office. As a lawyer again, the 1<sup>st</sup> Petitioner was in a position to understand, the folly of all this. All other actions by the 1<sup>st</sup> Petitioner ensued from the above appointment which she should have rejected knowing the legal implications. She chose to ignore the law and even Court orders.
77. It is therefore my finding that the Respondents had valid reasons to terminate the services of the 1<sup>st</sup> Petitioner.
78. The other Petitioners save for the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Petitioners acted as directed by their “bosses” who may or may have been in office illegally. By virtue of their position, they can be excused for taking what they thought were lawful commands. It is for this reason that I find that the reason for their termination was not valid.

### **Issue No. 3**

79. The Petitioners submitted that there was no due process before their dismissal. The Respondents however aver that they invited the Petitioners for disciplinary hearing which they ignored.
80. The 1<sup>st</sup> Petitioner exhibited a warning letter dated 8/3/21 after she was sworn in as Acting Clerk. On 9/4/21 she was served with a show cause letter for insubordination. She was given 7 days to respond. There is no indication that she responded. She indicated that she didn't respond because there were no documents attached. There is however no letter from herself asking for the documents she alleges. The Respondents aver that they invited her for a disciplinary hearing which she chose not to attend.
81. The Petitioners however avers that they were never invited for any disciplinary hearing but just learnt of their dismissal with 1<sup>st</sup> Petitioner being dismissed in May 2021.
82. 2<sup>nd</sup> & 3<sup>rd</sup> Petitioners indicated that they were invited for the disciplinary hearing but the board changed the venue of the hearing without informing them and so they couldn't attend the hearing even if they wanted.



83. The 7<sup>th</sup>, 8<sup>th</sup> & 9<sup>th</sup> Petitioners indicated their contracts were for 1 year and they were duly paid for July & August and what is pending is their September 2021 salaries.
84. The 10<sup>th</sup> Petitioners contention is about withholding of his salary in a bid to frustrate the political situation at the county.
85. As concerns 1<sup>st</sup> Petitioner, there is no evidence that she was served with any disciplinary hearing notice. She indicated that she wasn't. The onus of proving that she was actually served with an invite to attend the disciplinary hearing rests upon the Respondents which they have not discharged.
86. As for the 2<sup>nd</sup> & 3<sup>rd</sup> Petitioners, issue of change of venue for the disciplinary hearing is not responded to by the Respondents in their submissions and averments. I would give 3<sup>rd</sup>, 2<sup>nd</sup> & 1<sup>st</sup> Petitioners a benefit of doubt and find that they were terminated without being given an ample opportunity to defend themselves.
87. As concerns the 4<sup>th</sup> Petitioner, there is also no evidence that he was served with a letter inviting him for a disciplinary hearing.
88. In essence it is true that the Petitioners were terminated without being given an opportunity to defend themselves and thus were condemned unheard.
89. Section 45 (2) of the [Employment Act](#) 2007 states as follows;

“ 45.

- (1) .....
- (2) A termination of employment is unfair if the employer fails to prove-
  - (a) the reason for the termination is valid;
  - (b) that the reason for the termination is a fair reason-
    - (i) related to the employee's conduct, capacity or compatibility; or
    - (ii) based on the operational requirements of the employer; and
  - (c) that the employment was terminated in accordance with fair procedure”.

90. Given that the Petitioners were not accorded an opportunity to defend themselves and in respect of the other Petitioners save for the 1<sup>st</sup> Petitioner, there were no valid reasons established for the dismissal, I find the dismissal of the Petitioners unfair and unjustified except for the 1<sup>st</sup> Petitioner who I find her dismissal was justified though not fairly done.

#### **Issue No. 4 Remedies**

91. The Petitioners sought various remedies including reinstatement of the Petitioners to the payroll and to work.



92. Given my finding that the 2<sup>nd</sup> to 4<sup>th</sup> Petitioners were dismissed unfairly and unjustly, I find the remedy of reinstatement applicable to them and they are henceforth reinstated to work with effect from the date of this Judgment.
93. As for the 1<sup>st</sup> Petitioner, having found that there were valid reasons for the dismissal, reinstatement would not be an apt remedy. I will however award her 1million in damages for the unlawful termination.
94. The petition as against 5<sup>th</sup> & 6<sup>th</sup> Petitioners was withdrawn.
95. As for the 7<sup>th</sup>, 8<sup>th</sup> & 9<sup>th</sup> Petitioners they are entitled only to payment of their September 2021 pay.
96. 10<sup>th</sup> Petitioner is reinstated to the payroll with back pay save for any amounts withheld as surcharge.
97. Those would be the orders of this Court.
98. The Respondent will pay costs of this suit.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 27<sup>TH</sup> DAY OF JUNE, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of:

Munyao holding brief for Wanyama for Petitioners – present

Langat for 2<sup>nd</sup> Respondent – present

Osere Peter holding brief for Githinji Kamamo for 3<sup>rd</sup> Respondent – present

Court Assistant - Fred

