



**Guyo v Commandant Kenya Prisons Staff Training College & 3 others (Petition E074 of 2021) [2022] KEELRC 1371 (KLR) (14 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1371 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E074 OF 2021**

**AN MWAURE, J**

**JULY 14, 2022**

**IN THE MATTER OF: ARTICLES 2(1), 3(1), 19, 20, 21, 22, 23, 28, 29, 47, 48, 49 AND 50 OF THE CONSTITUTION OF KENYA, 2010 AND (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF THE UNFAIR TERMINATION FROM THE PRISONS TRAINING COLLEGE OF YUSSUF ALIO GUYO**

**BETWEEN**

**YUSSUF ALIO GUYO ..... PETITIONER**

**AND**

**COMMANDANT KENYA PRISONS STAFF TRAINING COLLEGE .... 1<sup>ST</sup> RESPONDENT**

**COMMISSIONER GENERAL PRISONS ..... 2<sup>ND</sup> RESPONDENT**

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT STATE DEPARTMENT FOR CORRECTIONAL SERVICES ..... 3<sup>RD</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner filed a Petition dated May 3, 2021 filed on May 12, 2021. The Petitioner describes himself as a law abiding Kenyan citizen who was undergoing training at the Kenya Prisons Staff Training College of 1<sup>st</sup> Respondent.
2. The 1<sup>st</sup> Respondent is the Directorate of the Kenya Prisons service a Department in the Ministry of Interior and Coordination of National Government whose mandate is training uniformed officer of



all ranks and cadres and is cited in these proceedings being that the Petitioner was training under the Prisons Staff Training College.

3. The 2<sup>nd</sup> Respondent is cited in these proceedings according to its mandate under the [Kenya Prisons Services Act](#) Cap 90 Laws of Kenya which is responsible for recruiting and training of Prisons Manpower a right which the petitioner avers he has been denied.
4. The 3<sup>rd</sup> Respondent is the state Department for correctional services.
5. The 4<sup>th</sup> Respondent is the Attorney General and is cited in these proceedings pursuant to the constitutional duties conferred to his office as under article 156 of the [constitution](#) of Kenya 2016 being the Principal adviser to the Government.

### **Petitioner's Case**

6. The Petitioner avers that he was undergoing training at the Kenya Staff Training College in Ruiru until July 5, 2018 when he was unlawfully terminated.
7. He says on February 13, 2018 the Petitioner was arrested at the training college and arraigned at the Chief Magistrates Court in Thika on 14<sup>th</sup> February 2018.
8. He says on May 30, 2019 he was acquitted under s. 215 of the [Criminal Procedure Act](#) as prosecution failed to establish a *prima facie* case.
9. The court is told that the prison officer by the name Evans Odhiambo attached to the training college during his petrol duties at 8.00 p.m. noticed the petitioner and another trainee was on top of a tree. He asked them to come down.
10. He says upon descent the officer claimed to have sensed the smell of bhang on the petitioner and he reported the same to the sleeping officer one Sergeant Kyalo who instructed a search to be conducted on the petitioner and the other trainee's boxes.
11. The search claimed to have received two rolls of bhang from the petitioner's box.
12. The Petitioner and the other trainee were arrested and thereafter escorted to Ruiru Police Station and the rolls of bhang handed over to the police where P.C. Evans Odhiambo recorded a statement.
13. The Petitioner says that despite being acquitted against criminal charges he was terminated from his employment.
14. He says that upon appeal of the decision of the 2<sup>nd</sup> Respondent the petitioner was given a second letter dated 16<sup>th</sup> March 2020 by 1<sup>st</sup> Respondent communicating the upholding of the 2<sup>nd</sup> Respondents decision to terminate him from training. The Petitioner avers his rights were violated.
15. Particulars of violation were inter alia failure by the respondent to give the petitioner adequate notice of the nature and reasons for the administrative actions towards the petitioner of any wrong doing, or accusation before terminating the petitioner's training via letter dated 5<sup>th</sup> July 2018.
16. Further the 1<sup>st</sup> Respondent failed to given Petitioner written reasons for any administrative action and terminating his training without any reasons or explanations as to why they arrived at such a decision.
17. Further he says he was not given adequate time to prepare this defence and also was not given a chance to legal representations and finally the respondent failed to give notice of a right of review or internal appeal against the administrative decision made by the 2<sup>nd</sup> Respondent after terminating the petitioner's training.



18. He also says he was not informed expeditiously and efficiently upon his appeal and the reasons why his termination was upheld.
19. The petitioners prays for the following orders against the respondent:-
- a) A declaration that the Petitioner's right to fair administrative action, guaranteed under Article 47 of the Constitution of Kenya has been contravened.
  - b) A declaration the Petitioners' right and fundamental freedom to access to justice guaranteed under Article 48 of the Constitution of Kenya has been contravened.
  - c) A declaration that the Petitioners' right and fundamental freedom to dignity and security guaranteed under Articles 28 and 29 respectively of the Constitution of Kenya have been contravened.
  - d) An order of certiorari bringing into this Court the decisions of the 2<sup>nd</sup> Respondent made on 5<sup>th</sup> July, 2018 and subsequently March 16, 2020 and quashing the same forthwith, to the extent that the same purported to terminate the Petitioner from training at the 1<sup>st</sup> Respondents' school without according him a fair hearing as set out under the Constitution.
  - e) A declaration that the decisions of the 2<sup>nd</sup> Respondent to terminate the Petitioner from training at the 1<sup>st</sup> Respondent's school on July 5, 2018 and March 16, 2020 from training were all illegal unconstitutional, unreasonable, null and void to the extent that the Petitioner was not accorded a hearing at all before any of those decisions were taken as set out in the Constitution.
  - f) An order of mandamus for reinstatement of the Petitioner as a trainee of the 1<sup>st</sup> Respondent.
  - g) An order effecting the Petitioner, being the 1<sup>st</sup> Respondent's trainee, resume his previous status as a student of Kenyatta University, School of Security, Diplomacy & Peace Studies, to enable him complete the remaining units in his Diploma in Criminology and Correctional Sciences.
  - h) An order of permanent injunction barring the Respondents jointly and/or severally from removing and/or interfering with the Petitioner's training as a prison officer in any manner not provided for in accordance to the Constitution and/or law
    - i) An order consequential to the above orders and declarations directing for payment by the Respondents jointly and/or severally of such compensation for breach of the Petitioner's Constitutional rights as the Honourable Court shall determine fit to grant.
  - j) Costs in the Petition be borne jointly and/or severally by the Respondents.

### **Respondents Facts**

20. The replying affidavit is deposed by Kennedy Aluda the Senior Assistant Commissioner Central Prisons and Director Administrator and Personnel in Kenya Prisons services.
21. He says on 8<sup>th</sup> February 2018 two trainees Adhar Dida ID NO. XXXXX and Yusuf Alio Guyo ID No. XXXX were found in possession of bhang at the Prisons Staff Training College contrary to rules and regulations governing trainees conduct while at college.
22. He says they were handed to the DCIO Ruiru for investigation.
23. He says that on February 14, 2018 they were charged before the Senior Resident Magistrates Court in Thika for offence of being in possession of narcotics contrary to sections 3(1) (2) (a) of narcotics and psychotropics substance Act No. 4 of 1994.



24. That they appeared before the court on March 8, 2018 and were released on cash bails of Kshs.10,000/= each and Kshs.5000/= respectively.
25. That the two were then terminated from training on 5<sup>th</sup> July 2018. The Petitioner appealed the decision but the service together with Public Service Commission upheld his termination.
26. That the service followed the stipulated procedures and rules and regulations governing recruiting training at the Prisons Staff Training College without violating any constitutional rights of the petitioner.
27. That the services were further guided by the Memorandum of agreement for the development of the training in academic and professional programmes between Memorandum of Agreement between Kenya Prisons and Kenyatta University.

### **Petitioner Submissions**

28. The Petitioner submits that his reasonable expectation was that he will be given a fair hearing before any adverse action is taken to terminate him from training as well as the adverse administrative action as provided in Article 47(2) of the Constitution of Kenya (2010).
29. He says the rights to give him prior notice of the nature and reasons for proposed administrative action taken towards him were violated against article 48 of the constitution of Kenya.
30. The petitioner cites the case of Mohamed Sheria & 2 others v Simon Kipkorir Sang & 5 others (2018)eKLR under paragraph 27 where the Court of Appeal in "Judicial Service Commission of Kenya v Mbalu Mutava & Another [2015] eKLR, concluded that unlike the right to fair hearing under the common law, the right to fair administrative action is wide in scope, as it encompasses several duties; the duty to act expeditiously; duty to act fairly; duty to act lawfully; duty to act reasonably; and in specified cases; duty to give written reasons for the decision. The Petitioners were denied the right to fair administrative action, which entails substantive justice, rather than procedural justice.
31. Further the Petitioner refers to the case of Kenya Human Rights Commission v Non-Governmental Organization Co-ordination Board [2016] eKLR Halsbury Laws of England, 5<sup>th</sup> Edition 2010 Vol. 61 at para 639 on the right to be heard states that:-

“The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court.”

32. The Petitioner submits that the 1<sup>st</sup> respondent violated his rights of dignity and security as guaranteed in articles 28 and 29 of the constitution. He seeks for remedies as outlined in the petition.
33. The Respondent did not file their written submissions.

### **Decision**

34. The issues for determination are two fold:-
  - a) Was the petitioner unlawfully discontinued from attending the training?
  - b) Is he entitled to the remedies prayed?



35. According to section 2 of the *Employment Act* an employee means a person employed for wages or a salary and includes an apprentices and indentured learner. The Petitioner was undergoing training at the Kenya Staff Prisons training college in Ruiru. He had an admission letter from Kenyatta University but training was to take place at Kenya Prisons Staff Training College in Ruiru. The Petitioner qualifies to be described as an employee as defined by above since he was a learner therein.
36. His training was terminated by the 1<sup>st</sup> Respondent on 5<sup>th</sup> July 2018 after being charged in court with being in possession of narcotics on February 14, 2018. They were released on 30<sup>th</sup> May 2019 for the reasons that no prima facie case was established against them. He was with another trainee.
37. The court is guided by the provision of section 45 of the *Employment and Labour Relations Act* and Articles 47(5) and 48 of the *Constitution* of Kenya. Article 47 of the *Constitution* provides that every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

Article 48 provides that the state shall ensure access to justice for all persons and if any fee is required it shall be reasonable and shall not impede justice.

38. Section 45 of the *Employment Act* 2007 provides that:-
- (1) No employer shall terminate the employment of an employee unfairly.
  - (2) A termination of employment by an employer is unfair if the employer fails to prove——
    - (a) that the reason for the termination is valid;
    - (b) that the reason for the termination is a fair reason——
      - (i) related to the employees 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.
  - (3) An employee who has been continuously employed by his employer for a period not less than thirteen months immediately before the date of termination shall have the right to complain that he has been unfairly terminated.
  - (4) A termination of employment shall be unfair for the purposes of this Part where-
    - (a) the termination is for one of the reasons specified in section 46; or
    - (b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee .
  - (5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour Officer, or the Industrial Court shall consider-
    - (a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;
    - (b) the conduct and capability of the employee up to the date of termination;



- (c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;
- (d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and
- (f) the existence of any previous warning letters issued to the employee.

39. The law is explicit that an employee can only be terminated from employment with valid reasons as provided above. The facts of this case are that the Petitioner was purportedly found to be in possession of bhang and was arraigned in court in Thika. He was acquitted of the offence charged but by then the 2<sup>nd</sup> respondent had already terminated him from the training with the 1<sup>st</sup> Respondent. The Petitioner appealed the 2<sup>nd</sup> Respondents decision and on March 16, 2020 the 1<sup>st</sup> Respondent upheld the termination by the 2<sup>nd</sup> Respondent.

40. The Court finds the 1<sup>st</sup> and the 2<sup>nd</sup> respondent failed to follow the provisions of section 41, 45 and 47 of the Employment Act. They did not give the Petitioner a valid reason for terminating his training.

The fact that he was arraigned in court with the offence of being in possession of narcotics does not establish he was guilty of gross misconduct per-se. I am supported by the case of Lawrence Onyango Oduori v Kenya Commercial Bank Limited Cause No. 1592 of 2010 where the court held that the fact that an employee was absent from employment on police detention for up to 14 days had not given the employer the right to dismiss the employee without observing the procedural guarantees given under S. 41 and 45 of the employment Act 2007. The right to be heard is never discarded.

41. In any event even if an employee is arrested the employer is still expected to conduct the due process and to follow the provisions of the Employment Act. Section 47(5) of the Employment Act provide that in a complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred rest on the employee, while the burden of justifying the grounds for termination of employment or wrongful dismissal shall rest on the employer.

42. The court finds the Respondents did not give the Petitioner valid reason to terminate his training and they also failed to follow the right procedure. In the case of Mohamed Sheria & 2 Others (*Supra*) the Court of Appeal case of Judicial Service Commission of Kenya v Mbalu Mutawa & another 2015 eKLR, concluded that unlike the right to fair hearing under the common law, the right to fair administrative action is wide in scope, as it encompasses several duties; the duty to act expeditiously; duty to act fairly; duty to act lawfully; duty to act reasonably; and in specified cases; duty to give written reasons for the decision. The Petitioners were denied the right to fair administrative action, which entails substantive justice, rather than procedural justice.

43. Similarly in the case of Kenya Human Rights Commission v Non-Governmental Organization Co-ordination Board [2016] eKLR Halsbury Laws of England, 5<sup>th</sup> Edition 2010 Vol. 61 at para 639 on the right to be heard the court states that:-

“The rule that no person is to be condemned unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the



rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court.”

44. The Respondents also failed to follow the mandatory procedure clearly provided in section 41 of the *Employment Act*. The matter of following right procedure in terminating an employee is well put in the often cited case of *Walter Ogal Onuro v Teachers Service Commission* Cause No. 955 of 2011 where the court held that for termination to pass fairness test it ought to be shown that there was not only substantive justification for termination but also procedural fairness.
45. In conclusion the court finds from the foregoing the 1<sup>st</sup> Respondent violated the Petitioner's right to fair hearing, fair labour practices, dignity and security guaranteed in Articles 28, 29, 47 and 48 of the *Constitution*. The court finds the 1<sup>st</sup> respondents terminated the Petitioner's training and went ahead and upheld the same after he appealed without due regard to the provisions of the law. The termination herein was an affront to the Petitioner's fair labour practices and fair administrative actions.

### Reliefs

46. The Petitioner is entitled to the reliefs sought as follows:-
- a. A declaration that the Petitioner's right to fair administrative action, guaranteed under Article 47 of the *Constitution* of Kenya has been contravened.
  - b. A declaration that the Petitioner's right and fundamental freedom to access to justice guaranteed under Article 48 of the *Constitution* of Kenya has been contravened.
  - c. A declaration that the Petitioner's right and fundamental freedom to dignity and security guaranteed under Articles 28 and 29 respectively of the *Constitution* of Kenya have been contravened.
  - d. An order of certiorari bringing into this Court the decisions of the 2<sup>nd</sup> Respondent made on 5<sup>th</sup> July, 2018 and subsequently March 16, 2020 and quashing the same forthwith, to the extent that the same purported to terminate the Petitioner from training at the 1<sup>st</sup> Respondents' school without according him a fair hearing as set out under the *Constitution*.
  - e. An order of mandamus for reinstatement of the Petitioner as a trainee of the 1<sup>st</sup> Respondent.
  - f. An order effecting the Petitioner, being the 1<sup>st</sup> Respondent's trainee, resume his previous status as a student of Kenyatta University, School of Security, Diplomacy & Peace Studies, to enable him complete the remaining units in his Diploma in Criminology and Correctional Sciences.
  - g. An order of permanent injunction barring the Respondents jointly and/or severally from removing and/or interfering with the Petitioner's training as a prisons officer in any manner not provided for in accordance to the Constitution and/or law.
  - h. The prayers for payment by the Respondents for compensations to the Petitioner is not specific and is disallowed.
  - i. Costs in the Petition be borne jointly and/or severally by all the Respondents.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 14<sup>TH</sup> JULY, 2022**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**ANNA NGIBUINI MWAURE**

**JUDGE**

