



**Putwai v Narok Diploma Training College (Petition E005 of 2022)  
[2022] KEELRC 12744 (KLR) (4 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12744 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
PETITION E005 OF 2022  
HS WASILWA, J  
OCTOBER 4, 2022**

**BETWEEN**

**PURITY NOLODI PUTWAI ..... PETITIONER**

**AND**

**NAROK DIPLOMA TRAINING COLLEGE ..... RESPONDENT**

**RULING**

1. Before this Court for determination is the Petitioner/ Applicant's Notice of motion dated June 21, 2022, brought pursuant to Articles 20 and 21 of the *Constitution of Kenya (Supervisory Jurisdiction and protection of fundamental rights and freedoms of individual)*, *High Court practice and procedure Rules* 2006, Articles 22 and 23 of *the Constitution* of Kenya and all other enabling, provisions of the law, seeking the following Orders;
  - a. That the application herein be certified urgent and be heard ex parte in the first instance in respect of prayer 2 hereof.
  - b. That an order be issued directed to the Respondent by itself/ and or through its authorized principals, agents and servants to lift unpaid indefinite leave issued to that the Petitioner that he has been serving for the last 11 months since march, 2021.
  - c. That the Petitioner/ Applicant be at liberty to resume her duties at the Respondent's college unconditionally or any other Orders and/or directions by this Honourable Court as it may deem fit and just to grant.
  - d. That the costs of this Application be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of the Petitioner deposed upon on the June 21, 2022 and based on the following;



- a. That the Petitioner was employed by the Respondent in 2011 as a store clerk and later promoted to be the procurement officer in 2017.
  - b. That the applicant was placed on unpaid indefinite leave from March 29, 2021 while still on her maternity leave till date.
  - c. She states that Article 47(1) &(2) of the Constitution does not take away the Applicant's legitimate expectation to the right to fair hearing before an administrative decision affecting her working terms which have been grossly violated.
  - d. It is stated that there is real and imminent danger that unless the Court intervenes, the Applicant's fundamental rights and freedoms may be contravened and abrogated and the petition herein will be rendered nugatory.
3. In response to the application, the Respondent filed a replying affidavit deposed upon on the July 6, 2022, by Joseph Oloishuroh Ole Ngadayu, the Chief Principal and the secretary of the Respondent's Board of management. Based on the following grounds.
- i. That the Claimant was indeed employed as store keeper in 2014 and while manning the said store, an issue of theft of food was reported, which led to the Respondent transferring the Petitioner to the Library department.
  - ii. The affiant admitted placing the Petitioner on unpaid leave and justified it by stating that on April 1, 2021, save for Thirteen (13) staff members, all other employees, including the Petitioner, were placed on unpaid leave which was to curb the covid-19 economic issues that led to the closure of the school, that was brought about as a result of lack of students and failure by the government to remit grants since 2020.
  - iii. That some of the staff placed on unpaid leave were recalled back on October 29, 2021 while others were recalled on November 1, 2021.
  - iv. Three of the staff members including the Petitioner, who allegedly had disciplinary issues were served with a show cause letters of September 8, 2021 and were not recalled back.
  - v. It is stated that the Petitioner, while working as procurement officer failed to turn up for handing over exercise which raised question on her integrity as deliberated by the Board in meeting of 1<sup>st</sup> January, 2019 and captured in the letter of January 15, 2019 and the letter of September 18, 2018.
  - vi. It is stated that the Petitioner was summoned, by the letter of January 21, 2022, to appear before disciplinary committee on the January 28, 2022, where the Petitioner's issue was discussed and the Board resolved to suspend her by the letter of February 4, 2022 based on the previous warning letter on allegation of theft while she was the store officer.
  - vii. He states that while the issue was pending hearing, he received summons from Director of Criminal investigation and therefore that the matter is still pending.
  - viii. In addition, the affiant states that the Respondent received a circular from the ministry of education dated October 27, 2021 and the position of procurement officer was not recognized as such faced out.
  - ix. He prays for the application to be dismissed on grounds that the applicant concealed material facts on disciplinary issue facing her; secondly, that she was not the only employee on unpaid leave and lastly, that she had not exhausted all internal dispute resolution mechanisms.



4. The application was canvassed by way of written submissions with the applicant filing on the July 25, 2022 and the Respondent filed theirs on the August 4, 2022.

#### **Applicants submissions.**

5. The applicant submitted that the actions by the Respondent to place her on compulsory unpaid leave for more than one and half years now is against her right to administrative actions as provided for under section 4 of the *Fair Administrative Actions Act*.
6. It was argued that the said decision was made before subjecting the applicant to any hearing as envisaged under the law. Furthermore, that the move to subject the Petitioner to unpaid leave while still on maternity leave was unfair labour practice.
7. The Applicant submitted that the allegation by the Respondent that the leave was justified on financial grounds is not true, since the Applicant was replaced by one Wilson Kilerai. To support her case, she relied on the case of *Harrison Macharia Maina V Leo Design Limited* [2021] eklr.

#### **Respondent's Submissions.**

8. The gist of the Respondent's submissions is that the Orders should not issue for the reason that the Petitioner did not disclose material facts before Court. It was argued that contrary to the Applicant's pleadings, the applicant was facing disciplinary, ethics and integrity issues which were pending before the board. These issues include the fact that she was placed on the said unpaid leave together with other employees of the Respondent due to the economic issue facing the Respondent, brought about as an effect of Covid- 19 pandemic that saw the Respondent fail to receive student and also that the government did not remit any grants to sustain the Respondent. To justify its argument, the Respondent relied on the case of *Kenya Airways Limited V Aviation and Allied Workers Union, Kenya & 3 others* [2014] eklr and urged this Court to disallow the application.
9. I have examined all the averments and submissions of the parties herein.
10. The applicant has averred that she has been on compulsory unpaid leave for over 1 year now. No disciplinary hearing has been conducted for the alleged transgression committed by the applicant.
11. The Respondents aver that they served letters concerning allegation against her which letter was one dated September 1, 2018.
12. The Claimant responded to it on January 4, 2019. This was handled by a warning and the matter closed vide a letter of January 1, 2019.
13. The applicant was served with another notice to show cause letter dated 8/9/2021.
14. The applicant replied to this letter again on September 29, 2021.
15. Since then the applicant received no communication on this issue prompting her to file this petition on June 23, 2022.
16. Vide a letter dated 4/2/2022 the applicant was placed on an indefinite suspension without pay.
17. Whereas the Respondents may have been investigating the complaints against the applicant, it is also true that the wheels of justice have been very slow.
18. The applicant now seeks orders from this Court to lift the indefinite leave she has been on since March 2021.



19. Article 47(1) and (2) of *the Constitution* provides as follows;

“47.	Fair administrative action	
	(1)	Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
	(2)	If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

20. Indeed the applicant is correct to legitimately expect that any administrative action against her is conducted expeditiously, efficiently, lawfully, reasonably and procedurally fair.
21. Keeping the applicant on unpaid leave and later suspension for over 1 year is far from fair and just and expeditious.
22. In the circumstances, it is my finding that keeping the applicant on suspension for over a year infringes on her rights and therefore I order that the suspension be lifted accordingly.
23. The applicant be paid her back pay.
24. The Respondents are free to institute and complete free, fair and expeditious disciplinary process against the applicant within 3 months.
25. Costs in the petition.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 4<sup>TH</sup> DAY OF OCTOBER, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Museve for Petitioner Applicant – present



Respondents – absent

Court Assistant - Fred

