



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. 23 OF 2018

IN THE MATTER OF: ARTICLES 3,10,19, 20, 21, 22, 23, 41, 47, 50, 159, 162(2), 165(5)(b), 232,236,258 AND 260 OF THE CONSTITUTION OF KENYA, 2010;

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS AS UNDER ARTICLES 10, 20, 28, 41, 47, 48, 50, 73, 232 AND 236 OF THE CONSTITUTION;

AND

IN THE MATTER OF: ENFORCEMENT OF ENFORCEMENT OF THE CONSTITUTION OF KENYA 2010

IN THE MATTER OF: SECTION 41, 45 AND 46(h) OF THE EMPLOYMENT ACT No. 14 OF 2007

AND

IN THE MATTER OF: SECTION 5, 6, 7, 8, & 10 OF THE PUBLIC SERVICE (VALUES AND PRINCIPLES) Act

AND

IN THE MATTER OF: SECTION 9, 10, 11 &12 OF THE PUBLIC OFFICER ETHICS ACT CAP 183 OF 2003

IN THE MATTER OF: SECTION 8,9,10 &15 OF LEADERSHIP & INTEGRITY ACT CAP 182 OF 2012

AND

IN THE MATTER OF: SECTION 4, 6,7,8,9, &11 OF THE FAIR ADMINISTRATION ACT NO. Four OF 2015

AND

IN THE MATTER OF: THE FOREST CONSERVATION AND MANAGEMENT ACT 2016 SECTION 7, 8, 9 & 14

AND

IN THE MATTER OF: RULE 4, 10, 11, 22, 23 AND 24 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013

BETWEEN

ESTHER W. KEIGE

VICTOR K. KOBIA.....PETITIONERS

~VERSUS~

KENYA FOREST SERVICE.....1ST RESPONDENT

PETER KIMATHI KINYUA.....2ND RESPONDENT

JUDGMENT

Introduction

1. The petitioners are employed by the first respondent as the Corporation secretary/Head Legal Services, and the Head of Supply Chain Management respectively. They brought this petition against the respondents who are a State Corporation established under the Forest conservation & management Act and her non- executive Chairman. The petitioners are challenging the decision by the respondents on send them to compulsory leave in violation of the constitution, employment Act and the first respondent's HR Policy and Procedure Manual.

2. The petitioners in this petition seek the following orders:

a) A declaration that the verbal order issued on 12.3.2018 and threatened decision to suspend, dismiss and or terminate the employment of the petitioners by the respondents is opaque, egregious, clandestine, capricious, whimsical and contrary to Clause 6.12.1 of the first respondent's HR Policy and Procedure Manual section 28, and 41 of the Employment Act and Article 10, 41, 47, 50, 73 & 236 of the constitution and hence unconstitutional, null and void.

b) An order to set aside the letter of compulsory leave dated 14.3.2018, the changes contained in the media release dated 13.3.2018 and any further disciplinary process by the respondents against the petitioners.

c) A permanent order of injunction restraining the respondents either by themselves , employees, servants and/or agents from debarring the petitioners' ingress into and egress from their offices situated at the Kenya forest service, Karura, off Kiambu road and or intimidating, harassing or interfering with performance of their duties as employees of the 1st respondent.

d) A permanent order of injunction restraining the respondents by either themselves, employees, servants and/or agents from, suspending, dismissing and or terminating the petitioner from employment and from taking any disciplinary issue against the petitioner pending before the 1st Respondent.

e) An order prohibiting/restraining the Respondents, their servants, officials, representatives, and/or agents from suspending summarily dismissing, and or terminating or having so suspended, dismissed and or terminated the petitioners restrained from acting thereupon by suspending, dismissing and or terminating the employment of the petitioners, or otherwise in any other manner replacing the petitioners in their positions as the Corporate Secretary/Manager Legal Services and Head of Supply Chain Management of the 1st Respondent respectively.

f) An order prohibiting/restraining the Respondents, their servants, officials, representatives, and/or agents from advertising or having so advertised from acting thereupon, interviewing, recruiting or otherwise in any other manner replacing the petitioner in their positions as the Corporate Secretary/Manager Legal Services and Head of Supply Chain Management of the 1st Respondent respectively.

g) General damages for the constitutional violations of the petitioners' fundamental rights.

h) The Honourable Court do issue any other orders and give such directions as it may deem fit to meet the ends of justice.

i) Costs of the Petition.

j) Interest on the above at Court rate.

3. The petition is supported by the affidavit sworn by the first petitioner and the annexed bundle of documents but it is vehemently opposed by the respondents through their response dated 7.5.2018 and filed on even date. The petition was disposed of by written submissions which were highlighted by the counsel on 5.6.2018.

Petitioners' case

4. The petitioners averred that on Monday 12th March 2018 at around 10.26 PM, they received a call from the 2nd respondent, cell phone number 0722513437 indicating that due to the pressure he was facing in relation to destruction of forests and the moratorium imposed, he had decided to send them home and as such they should not report to work on the next day 13th March 2018. They however defied and reported to work the next day but they were barred from entering by the guards manning the gates on instruction from the 2nd respondent. They averred that their job description as Head of Legal Services/ Corporation Secretary KFS Grade 3 and as Head of Supply Chain Management on KFS grade 4, respectively, did not involve management, protection or enforcement of forests.

5. The petitioners contended that on 13th March 2018, at the KFS headquarters, the 1st respondent held a special meeting of which the notice was issued by one Monica N. Kalenda as the Acting Chief Conservator of Forests purposely to sanitize the illegalities committed by the 2nd respondent through a media release issued on 12th March 2018 without the Board's resolution. They further contended that the purported notice of the meeting issued on 13th March 2018 was made by a person who had not been approved by the board as an acting conservator of

the forest and the notice of the meeting aforesaid never contained a specific agenda item on issues to do with sending any officer on compulsory leave or effecting changes on senior management positions as is the norm for special meeting. They however contended that they were served with letters of compulsory leave dated 14th March 2018, containing vague and broad charges which had nothing to do with their job descriptions and from which they were absolved by the HR and Administration Committee of the Board held on 23.3.2018.

6. It is the petitioners' case that their constitutional rights and fundamental rights were violated by the respondents through the lock-out on 13.3.2018 and the subsequent compulsory leave communicated by the letter dated 14.3.2018. They contended that the respondents infringed article 27 of the Constitution by discriminatively singling out them petitioners and denying them entry to their work place, and threatening them with suspension and termination of their employment. They further contended that the respondents subjected them to discrimination, inequality and unequal treatment before the law in breach of the rights under Articles 27 and 236 of the Constitution and the 1st respondent's Human Resource Policy And Procedure Manual.

7. Further in the alternative and without prejudice to the foregoing the petitioners averred that the 2nd respondent exercised administrative action or decision in abuse of power and/or in misfeasance in public office by purporting to exercise executive powers contrary to section 6 of the State Corporations Act, section 29(1) of the Human Resource Management Professional Act 2012, section 1.4 of the Mwongozo Code and the 1st respondent's human resource policy and procedure manual, 2016; and demonstrated targeted malice against the petitioners.

8. The petitioners further contended that the respondents infringed their right to fair labour practices under Article 41 of the Constitution of Kenya, 2010 in that the Petitioners have been ordered verbally by the Respondents not to report to work and are threatened with suspension, dismissal and or termination of their employment without any justifiable reason. They averred that the 2nd respondent is acting *ultra vires*, and in disregard of the principles of natural justice to victimize them discriminatively.

9. The petitioners further contended that the respondents infringed their right to fair administrative action under Article 47 of the Constitution of Kenya, 2010 and section 4 part 1 of the Fair Administrative Action Act, 2015 by failing to accord the Petitioner a fair hearing before taking any adverse decisions against them. They averred that the respondents are threatening to suspend and terminate the petitioners without any justifiable cause or reason, and failing to recognize that the office of Corporation Secretary and Head of supply Chain is not involved in logging at KFS yet the officers in charge of Protection and Security and field operations, who are responsible for ensuring the illegal logging in the forest have not been sent home.

Respondents' case

10. The respondents admitted that the petitioners are employed as the Head of Legal services and corporate Secretary and the Head of Supply Chain Management respectively. They further admitted that by dint of section 14 (4) of the Forests Conservation and management Act, the day to day management of the first respondent is the responsibility of the Chief Conservator of Forests subject to the board's direction, and not the 2nd respondent. They however contended that the second respondent is the spokesman of the board and he is responsible to communicate its decisions.

11. They further contended that section 6.12 of HR Policy empowers the board to send employees on leave for a period not exceeding three months on full salary to facilitate investigations being carried out on the employee's area of operations. They contended that it is the second respondent who writes letters for compulsory leave on behalf of the board and not the Chief conservator of Forests. They denied the alleged change of petitioners' job description after being sent on leave and maintained that their employment plus their full terms of service together with the allowances and benefits attached thereto are intact.

12. The respondents further contended that the issuance of the media release by the second respondent was exercise of an interlocutory action before a substantive action by the board which is allowed whenever necessary like in the circumstances of this case. They further contended that the appointment of Monicah Kalenda as the Acting Chief Conservator of Forests by the second respondent was well within the mandate of the board exercisable through him. They further contended that the second respondent is also the one mandated to direct issuance of notice of meetings and the notice for the special meeting for 13.3.2018 was upon his direction as the Chairman of the board. They further contended that Agenda No. 5 in the said notice on 'the update on recent happening in the forest sector and what KFS needs to do was the relevant one to the petitioners.

13. They contended that there were complaints from the public with respect to felling of trees in the PELIS and through acts of omissions and commissions attributable to the petitioners and in order to verify the same, on 13.3.2018 the board decided to send them on compulsory leave to pave the way for investigations. They denied any wrong doing in sending them to compulsory leave and maintained that the petitioners have misled the court by alleging that their work does not entail any management, enforcement or protection of forests.

14. The respondents averred that the letter dated 14.3.2018 did not lay any charges against the petitioners but only directed them to the to stay away to pave way for investigations and resume work if cleared of any wrong doing. They denied that the petitioners were absolved of any charges by the HR and Administration committee on 23.3.2018 and averred that the committee merely said that the charges were vague and not specific to the acts or omissions of the petitioners and asked the management to avail evidence to support. It is the respondents' case that there is no way that the petitioners could be absolved before disciplinary hearing being conducted by the HR and Administration committee.

15.

They denied the alleged discrimination and contended that there were other officers also sent on compulsory leave. They averred that sending employees on compulsory leave was not an administrative function subject to application of Article 47 of the constitution and the Fair Administrative Action Act. They further denied the alleged abuse of power or threat to the petitioners' employment and maintained that the petition was brought prematurely before any contravention or threatened contravention of the in rights under article 10, 27, 41, 47, 50 and 236 of the constitution and the Employment Act.

Petitioners' submissions

16. It was submitted by the petitioners' counsel that under section 6 of the State corporations Act, the second respondent had no executive powers over the first respondent and as such he could not lawfully send the petitioners on a compulsory leave. He relied on the **Mundia Njeru Gatere –v- Embu county Governmenty [2015]eKLR**, and **R –v-Kenya School of Law & 2 others [2014] eKLR** which dealt with a similar issue of persons who acted *ultra vires* and in procedural impropriety. He further relied on **R –v- University of Nairobi Exparte Michael Jacobs Odhiambo & 7 others [2016] eKLR** which dealt with a similar issue of power being exercised by the wrong person and urged that in this case it is only the Chief Conservator of Forests who could send the petitioners on compulsory leave.

17. He further urged that Article 41 constitution was violated by the second respondent by calling the petitioners at night and instructing the not to attend work the following day. He contended that it was not fair labour practice to call employees at night and to stop them from attending work without giving them any reason. He observed that the petitioners' job description in their contracts has nothing to do with tree planting and urged that their compulsory leave is in breach of section 6.12 of the first respondent's HR policy and procedure manual 2016. He further urged that the compulsory leave was done discriminatively and without following due process in violation of Article 27, 47 and 50 of the constitution.

18. Finally it was submitted that the petitioners are entitled to the remedies sought because the second respondent's conduct in the manner he handled the petitioners' compulsory leave was callous, irrational, unreasonable, unconstitutional and without any force of law. The petitioners reiterated that the second respondent lacked the legal authority to send them on compulsory leave without the board's approval, and more so without any legal basis considering that it is for matters not related to their job description. They further urged that the special meeting of the board on 13.3.2018 was only called to rubber stamp an illegality committed by the second respondent the previous night which culminated with the lock-out of the petitioner from their offices. They prayed for an award of kshs. 5000,000 each for the said violation of their constitutional rights and relied on **Mundia Njeru Gateria case** and **Miriam Wambui Thiriku –v- Bomas of Kenya [2017] eKLR** to support the said prayer.

Respondents' submissions

19. It was submitted for the respondents that under section 6.12.1 of the first respondent's HR Policy and Procedure manual empowers the first respondent's Board to send an employee on compulsory leave by a resolution. It was further submitted that the board met on 13.3.2018 and resolved that the petitioners be send on compulsory leave and the second respondent as the lawful spokesman of the board under Mwongozo code of Governance for State Corporation communicated the decision of the board to the petitioners by the letter dated 14.3.2018. It is therefore the respondents' case that the said letters for the compulsory leave were written by the second respondent within the law and his mandate.

20. The respondent submitted that, by being send on compulsory leave the petitioners' job description had not been changed as alleged and their employment, remuneration and annual leave are still intact. They further submitted that other employees were also send on compulsory leave pending investigations and denied that the petitioners had been discriminated and treated differently from other employees and especially those who were responsible for protection of the trees in the forests plantations. They therefore urged that the petitioners' freedom from discrimination under Article 27 of the constitution was not violated.

21. It was further urged for the respondents that compulsory leave is an administrative leave imposed on an employee to pave way for investigations into possible employment offences which may or may not lead to disciplinary proceedings. It was submitted that compulsory leave is essentially a suspension from employment, that is, temporary removal of an employee from the workplace without interfering with his terms of service and as such, Article 47 and 50 of the constitution and section 41 of the Employment Act do not apply. They relied on **Thomson kerongo & 2 others –v- james omariba Nyaoga & 3 others[2017] eKLR**, **makhokha nyongesa & another –v- Communications Authority of Kenya & 2 others [2018] eKLR**, **Nancy Makhokha Barasa –v- Judicial Service commission & 9 others [2012] eKLR** and **Daniel Ochieng –v- Ezemak refrigeration and Contractors limited[2015 eKLR** to fortify the foregoing contention plus view that compulsory leave is not a disciplinary penalty. It was therefore urged that the petitioners' right to fair labour practices and fair administrative action under Article 41 and 47 of the constitution was not violated. It was further urged that the petitioners' right Article 236 of the constitution has not been violated because at no instance have they been threatened with dismissal or victimized and they are indeed enjoying full benefits under their employment contracts.

22. Finally the respondents submitted that the petitioners were not absolved from any the charges by the HR and Administration committee of the board through the meetings held on 23.23.2018 and 28.3.2018 and contended that the committee merely observed that the charges against them were vague and not specific to the acts or omissions of the petitioners. The urged that the committee just demanded for evidence from the management to support the charges, but they urged that it was not possible because investigations by the first respondent had been prevented by the presence of the petitioners' in the office where they have control of potential evidence.

23. They concluded by urging for the dismissal of the petition because the court should not stop the employer from exercising her managerial prerogative of investigating employees after receiving complaints against them. They relied on **Dock Workers Union –v- Kenya Ports Authority[2015] eKLR** to support the foregoing submission of managerial prerogative. They also opposed the prayer for kshs.5000,000 damages for violation of the petitioners' constitutional rights and observed that the said quantum is superfluous and not reflecting the principles for awarding damages espoused in **peter Ngari Kagume & 7 others –v- Attorney General [2009] eKLR**

Analysis and determination

24. After careful consideration of the petition, affidavits, supporting documents and the rival submissions, the following are the main issues for determination in this dispute:

- a) Whether the petitioners' compulsory leave as ordered by the second respondent was lawful and valid.
- b) Whether the petitioners' fundamental rights and freedoms and other constitutional protections were violated by the respondents.

c) Whether the petitioners are entitled to any remedies.

Whether the petitioners' compulsory leave as ordered by the second respondent was lawful and valid.

25. The petitioners contended that the compulsory leave they were condemned to, is unlawful and invalid because the second respondent lacked the power to do so. The respondent have however maintained that the leave is lawful because under the State Corporation Act, and Mwongozo code of Corporate governance, the chairperson of the board, is the spokesperson of the board responsible for communicating the board's decisions. It is the defence case therefore that, the second respondent lawfully wrote the letter for the petitioners compulsory leave on 14.3.2018 after the board made that resolution on 13.3.2018.

26. Clause 6.12.1 of the first respondent's HR Policy and Procedure manual 2016 provided thus:

“The board may direct an employee to proceed on leave for a period not exceeding three months on full salary to facilitate investigations being carried out in the employees area of operations. An appropriate action shall then be undertaken within thirty days to the concerned employee. The director may extent the leave by one month with a reason.”

27. In this case there is no dispute that the board met on 13. 3.2018 and resolved that the petitioners should step aside to pave way for investigations. Under minute number **“Special Board /MIN6/3/2018: recent happenings in the forest sector and what KFS needs to do”** (petitioners exhibit 8) it was recommended and resolved among other things that:

“13. Mr. Victor Kobia to step aside as the principal Officer, Supply Chain Management pending investigations.

15. Ms. Esther Keige to step aside as the Corporate Secretary and Head of Legal Services pending investigations;

Letters to the affected officers to be prepared and sent out to them informing them of the changes as per the Human Resource Manual.”

28. There is no dispute that on 14.3.2018 the second responded communicated the board's decision to the petitioners through the impugned letters for compulsory leave which read:

“The board at its meeting on 13.3.2018, resolved to send you on thirty days annual leave with effect from 13.3.2018 to pave way for investigations in accordance with the Human Recourse Policy and Procedure manual revised June 2016 section 6.12.1. Further communication will be done to you upon completion of the investigation. Meanwhile you will retain your employment terms of service as currently provided.”

29. It does not require the scrutiny of a genius to notice that the said letter was not an accurate communication of the resolution of the board vide the said minutes of 13.3.2018. Whereas the board resolved that the petitioners step aside pending investigations and letters be addressed to them as per the HR manual, the letter by the second respondent went a notch higher by sending the petitioners to 30 days annual leave to pave way for investigations in accordance with section 6.12.1 of the HR policy and procedure manual revised June 2016. The alleged annual leave pending investigations was neither what the board resolved on 13.3.2018, nor is it what clause 6.12.1 of the HR policy and Procedure Manual provides. Consequently I find that the second respondent acted ***ultra vires*** by sending the petitioners to compulsory annual leave contrary to the board's resolution and the express provisions of clause 6.12.1 of the HR Policy and Procedure Manual 2016.

30. The said conduct was in furtherance of an earlier illegality of issuing a press release on 12.3.2018 about stepping aside and sending of the petitioners on compulsory leave before any board's resolution (petitioners exhibit 6); suspending the petitioners by phone on the same date but late in the night; and further by instructing the security to lock them out of their offices from 13.3.2018. After careful consideration of the material presented to the court, I find and hold that the petitioners compulsory leave as ordered by the second respondent on 12,3,2018 through the said press release, late night phone call, the lock out from work station on 13 3.2018 and the letter dated 14.3. 2018 was unlawful and invalid on ground that it was done ***ultra vires*** and contrary to the first respondent's HR Policy and Procedure Manual.

Whether the petitioners' fundamental rights and freedoms and other constitutional protections were violated by the respondents.

31. The petitioners submitted that through the said compulsory leave their rights to protection from discrimination under Article 27 of the constitution was violated by the respondents. The respondents have however denied the alleged discrimination and contended that other employees were also suspended. I have perused the Press Release and the Board's minutes for 13.3.2018 produced as exhibits by the petitioners, and confirmed that indeed other than the petitioners herein, the Chief Conservator of Forests Mr. Emilio Mugo was also made to step aside pending investigations. The press Release further stated that other implicated officers had already been disciplined. Consequently, I find that the petitioners fundamental freedom from discrimination was not violated by the board's decision to send them on compulsory leave. However as confirmed by the exhibits above the petitioners were sent on a compulsory annual leave pending investigations as opposed to the HR Policy and Procedure Manual which does not provide for compulsory annual leave. It is therefore obvious that the petitioners were treated differently from other employees of the first respondent.

32. In addition, I find that the petitioners' right to fair labour practices and right to fair administrative action under Article 41 and 47 & 50 of the constitution was violated by the respondents by sending them to the annual compulsory leave. Whereas *per se* compulsory leave is a permitted managerial prerogative as demonstrated by the various precedents cited herein above, what is at the Centre of this petitioner is the compulsory annual leave pending investigations, ordered by a person acting ***ultra vires*** and in contravention of an express provision of HR Policy and Procedure Manual and resolution of the board. Although it was contended by the defence that the petitioners are not losing any benefits including their annual leave, it is obvious that such contention is the opposite of the plain reading of the leave letter dated 14.3.2018.

33. In my considered view, the true meaning of compulsory leave should be one where the employee loses none of his rights under the contract because as unanimously agreed by the cited precedents, the employee is only being removed from the workplace to facilitate investigations on his operations, as opposed to being removed from employment. In fact as at that time, the employee is entitled to the right of being presumed innocent of any offences being investigated and that explains why his rights and benefits under the contract of employment cannot be taken away while serving a compulsory leave.

34. Flowing from the foregoing view, the court holds that, it is unfair labour practice and a breach of clause 6.12.1 of the respondent's HR Policy and Procedure manual, for employer to force an employee to go on annual leave so that the employer can investigate him. In my opinion, such an action is subject to the employee's right to due process under Article 47 and 50 of the constitution because the decision has detrimental effect on the employee who is not spending his annual leave at his pleasure but for the employer's benefit. It is a punitive measure to say the least because the employee is losing his right to enjoy his annual leave and instead does in agony and anxiety.

35. The attention of the court was court by the petitioners' contention that they were absolved from charges by the HR and Administration committee of the board of 23.3.2018. The Committee recommended and resolved under minute number **KFS/HRA/MIN10/2017: disciplinary cases** as follows:

“11. VICTOR KOBIA- KFS 05562

Reported :

- ***That the officer has been serving as the principal Supply Chain Officer.***
- ***That he has been sent on compulsory leave 30 days to pave way for investigations***
- ***That he has been charged with of loss of plantations and PELIS mismanagement following complaints of the public.***
- ***That he has also been charged with acts of omission and commission in his capacity as the principal Supply chain officer.***

Noted:

- ***The committee noted that the charges are vague and not specific to the procurement failures/ omissions that the officer undertook and or neglected to do.***
- ***There is need for management to show how the officer in carrying out his duties as the head of procurement failed and the same must relate to the charge.***

Recommended: the committee cannot proceed with any actions as the charges are not specific. There is no relation with the charges and the officer's duties and responsibilities. Management is tasked to avail evidence of commission/ omission for the committee to be able to deal with the matter.

12. ESTHER KEIGE- KFS 02393 Reported:

- ***That the officer has been serving as the Corporation Secretary/Manager , legal Services***
- ***That she has been sent on compulsory leave 30 days to pave way for investigations***
- ***That she has been charged with of loss of plantations and PELIS mismanagement following complaints of the public.***
- ***That she has also been charged with acts of omission and commission in her capacity as the Corporation Secretary/Manager , legal Services***

Noted:

- ***The committee noted that the charges are vague and not specific to the acts or omissions the officer is accused of.***
- ***There is need for management to show how the officer in carrying out her duties as the Corporation Secretary/Manager, legal Services failed and the same must relate to the charge.***

Recommended: the committee cannot proceed with any actions, as the charges are not specific. There is no relation with the charges and the officer's duties and responsibilities. Management is tasked to avail evidence of commission/omission for the committee to be able to deal with the matter.”

36. It would appear from the foregoing minutes of the HR and Administration Committee that even if the compulsory annual leave was procedurally fair, which was not, the same would still have been wrong substantively because it was not to pave way for investigations in the petitioners' area of operations. Interestingly, the same second respondent who chaired the said Committee is the same person who prematurely issued a press release, suspended the petitioners at night by phone, ordered security guards to lock them out, chaired the full board that resolved to force them to step aside, and also wrote the impugned letter of compulsory annual leave to pave way for their investigations. All the foregoing matters smacks of unfair labour practice and victimization being done by the second respondent to petitioners, to please undisclosed quarters which were exerting pressure on him.

Remedies

37. In view of the finding herein above that the petitioners compulsory annual leave was actuated by procedural and substantive breaches to the petitioners' employment contract and clause 6.12.1 of the employer's HR Policy and Procedure Manual, I make declaration that Article 27, 41, 47, 50 and 236 of the constitution were violated through the oral order and issuance of the letter for compulsory leave dated 14.3.2018 and it is set aside.

38. A permanent order of injunction is also granted to restrain the respondents or their agents from unlawfully debaring the petitioners ingress into and egress from their offices situated at the Kenya Forest Services , Karura , off Kiambu Road and from interfering with the performance of their lawful duties as employees of the first respondent.

39. I further grant an order of prohibition barring the respondents from unlawfully replacing, or terminating the contracts of service for the petitioners, and from unlawfully advertising and recruiting or in any other manner from replacing the petitioners in their positions as the Corporation Secretary/Manager , legal Services and head of Supply Chain Management of the first respondent. However nothing herein should be construed to mean that the employer is muzzled from exercising her managerial prerogatives against the petitioners through the lawful manner.

40. As regards the award of damages, I am guided by the decision of Nyamu J in ***Peter Ngari Kagume & 7 others -v- Attorney General [2009]e KLR*** where he adopted the following principles of granting damages for infringement of Fundamental rights as set out by Lord Woolf in ***The Human rights Act 1998 and Remedies in Andenes and***

D Fairgrieve (eds), Judicial review in International Perspective:11(2000),pp 429-436

1. If there is any other remedy in addition to damages, that other remedy should usually be granted initially and damages should only be granted in addition if necessary to afford just satisfaction.

2. The court should not award exemplary and aggravated damages.

3. An award should be "of no greater sum than that necessary to achieve just satisfaction."

4. The quantum of the award should be "moderate" and "normally on the low side by comparison to tortious award"

5. The award should be restricted to compensating the victim for what happened "so far as the unlawful conduct exceeds what could lawfully happen."

6. Failure by the claimant to take preventive or remedial action will reduce the amount of damages.

7. There is no reason to distinguish between pecuniary and non-pecuniary loss. What matters is that the loss should be "real and clearly caused by the conduct contrary to the Fundamental rights."

41. In the ***Mundia Njeru Gateria case*** this court kshs. 5000,000 for violation of rights and freedoms through interdiction done *ultra vires* and this Court ***Miriam Wambui Thiriku Vs Borias of Kenya [2017] eKLR*** also awarded kshs 500,000 for violation of fundamental rights of an employee through sending her on compulsory leave without following due process and locking her out. Considering the aforesaid principles of awarding damages for infringement of fundamental rights and the cited precedents emerging from this court, I deem that an award of Kshs.2,000,000 to each petitioner would give them just satisfaction for the infringement caused by the violation of the said fundamental rights and freedoms. The said award is in addition to the non-financial remedies given above which essentially restores the petitioners back to their offices.

Conclusion and disposition

42. In view of all the findings made herein above, I enter judgment for the petitioners by allowing the amended petition dated 16.4.2018 in terms of the declarations and the awards made above. Any order not specifically granted is declined. The petitioners are also granted costs.

Dated, Signed and Delivered at Nairobi this 22nd day of June, 2018

ONESMUS N. MAKAU

JUDGE