



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**PETITION NO. 6 OF 2017**

*(Before D. K. N. Marete)*

**ANNE CHEPKORIR TURGUT.....CLAIMANT**

**VERSUS**

**COUNTY GOVERNMENT OF BOMET.....1ST RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD BOMET COUNTY.....2ND RESPONDENT**

**JONATHAN SOI .....3RD RESPONDENT**

**JUDGEMENT**

This matter is brought to court by way of a Petition dated 6th April, 2017.

The respondents in a 1st and 3rd Respondents Response to the Petition dated 25th April, 2017 denies the petition and prays that the same be dismissed with costs.

The petitioner's case is that she is an employee of the respondent. Further, on 4th April, 2017 the 2nd respondent through its Board Secretary made a letter of instructions to the 3rd respondent to interdict the petitioner herein. She has not been issued with a show cause notice by the respondents or at all.

The petitioner's other case is that the assault allegation by one, Emily Chepkemai Mosonik, filed against the petitioner in Bomet Chief Magistrate's court criminal cause No. 311 of 2017 still pends a determination of court. She (Petitioner) has entered a plea of not guilty. The petitioner, fearful of an intended interdiction of her services with the 1st respondent now prays relief as follows;

*a) Pending the hearing and determination of this petition conservatory orders be issued in terms of the Notice of Motion filed herewith.*

*b) A declaration that any Suspension by the 1<sup>st</sup> Respondent against the Petitioner in relation to Bomet Chief Magistrates' Court Criminal Case Number 311 of 2017 and the subsequent recommendations by the 2<sup>nd</sup> Respondent are flawed, manifestly unreasonable and violates the petitioners' rights inter alia their right to a fair administrative action, fair hearing and therefore null and void ab initio.*

*c) A declaration that any interdiction by the 1<sup>st</sup> Respondent against the Petitioner in relation to*

*Bomet Chief Magistrates' Court Criminal Case Number 311 of 2017 and the subsequent recommendations by the 2<sup>nd</sup> Respondent are flawed, manifestly unreasonable and violates the petitioners' rights inter alia their right to a fair administrative action, fair hearing and therefore null and void ab initio.*

*d) A declaration that any Suspension and Interdiction by the 1<sup>st</sup> Respondent against the Petitioner in relation to Bomet Chief Magistrates' Court Criminal Case Number 311 of 2017 and the subsequent recommendations by the 2<sup>nd</sup> Respondent are flawed, manifestly unreasonable and violates the petitioners' right presumption of innocence in any criminal proceedings.*

*e) A declaration that 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondents have violated the petitioner's rights to human dignity under Articles 28 of the constitution and the right not to be subjected to any form of violence or be treated in a cruel, inhuman or degrading manner under article 29(c) and (f) of the constitution.*

*f) A declaration that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have violated the petitioner's right to equal benefit of law under Article 27 of the constitution, right to a fair administrative action under Article 47 of the constitution, right to a fair hearing under Article 50 of the Constitution and the right to access justice under Article 48 of the constitution.*

*g) An order for judicial review to quash any decision of the 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> Respondents made pursuant to flawed, biased and unreasonable investigations and/or recommendations of the 2<sup>nd</sup> Respondent.*

*h) An award of damages for pain and suffering, humiliation and distress visited upon the petitioner.*

*i) Costs of this petition.*

*j) Any other or further relief that this Honourable Court considers appropriate and just to grant.*

The respondents acknowledge the legal foundations anchoring this petition as particularized in paragraph B of the petition. They however deny that only the petitioner's fundamental rights have been infringed and therefore put her into strict proof thereof. This is as follows;

*13. That the 1<sup>st</sup> and 3<sup>rd</sup> Respondents further state that the petition herein is incompetent, bad in law, frivolous or vexatious, fatally defective and or an abuse of the court process and the same ought be dismissed.*

*14. The 1<sup>st</sup> & 3<sup>rd</sup> Respondent further states that this Honourable court lacks the requisite jurisdiction to grant the orders sought herein by virtue of section 12 of the Employment and Labour Relations Court Act, and the Rules made thereunder and the 1<sup>st</sup> & 3<sup>rd</sup> Respondents shall at the hearing hereof raise a preliminary objection to have the petition dismissed.*

The issues for determination therefore are;

1. Whether the interdiction of the petitioner by the respondent is a violation of her constitutional and legal rights and therefore unlawful?
2. Whether the petitioner is entitled to relief sought.
3. Who bear the costs of this cause?

The 1st issue for determination is whether the interdiction of the petitioner by the respondent is a

violation of her constitutional and legal rights and therefore unlawful? The claimant's case and submission is that the 3rd respondent has no authority of interdiction this being the province of the 2nd respondent. Again, the interdiction is not preceded with a letter of notice to show cause which would have enabled the petitioner to present her case before interdiction. This is also a matter for the Human Resource Advisory Committee which is legally bound to partake disciplinary action against employees.

The petitioner further submits her right to equal protection and benefit of the law as provided in Article 27 of the Constitution of Kenya, 2010. This is also discriminative application of the law amongst the respondent's employee as she had reported the matter to the relevant officers before she was charged in court but her plea for disciplinary proceedings was not taken seriously.

The petitioner in further support of her case sought to rely on the authority of **Donald C. Avude vs. Kenya Forest Service, Nairobi, Industrial Court, Cause No.998 of 2014**, where Maureen Onyango, J. in allowing an application to lift the suspension of the claimant held;

*"...I find the disciplinary action premature as the basis of the process has not been established. Even if established, it would not be necessary to suspend the claimant/applicant as there would be no investigations necessary to establish the facts that cannot be carried out while the claimant is at work."*

It is the petitioner's submission that the above finding occurred in circumstances similar to the present case where an employee had been charged with criminal proceedings at the Senior Principle Magistrates Court, Mpeketoni but released on cash bail and yet a suspension was inflicted at his work place.

The respondent's in their submissions dated 29th June, 2017 supported their case as follows;

*9. The justifiability of an interdict rests on the existence of a prima facie case on the reason that the employee has committed serious misconduct and the employee is formally informed in writing of the allegations of misconduct that precipitated the interdict, in the circumstances where knowledge of the allegations are apparent from the surrounding circumstances like in the present case. The court in the case of **Fredrick Sandu Amolo vs. Principal Namanga Mixed day secondary school & 2 others (2014) eKLR** the court stated that it can only intervene in an employer's internal disciplinary proceedings when it has run its course, except in exceptional circumstances that is where grave injustice might result or where justice might not by other means attained. It cannot be said that is the situation in this case, in any event, the proceedings are premature and no grave injustice that has been advanced that cannot be attained in the ongoing criminal proceedings.*

I find that the petitioner's case overwhelms that of the respondents. She brings out a case of a botched up interdiction that on the face appears sinister. It also sounds like it is driven out of malice and other extraneous circumstances. The respondents are not able to explain why, despite an early report by the petitioner on the incidence leading to this interdiction, no investigations or disciplinary action was taken.

Further, it appears that the circumstances and environment leading to interdiction was strictly borne out of in house and domestic issues which neither party wishes to narrate to this court. It is suspicious that these were not work related and therefore the fallacy of an interdiction based on personal or unexplained reasons and circumstances.

I agree with submissions of the respondent that courts should only interfere with the internal disciplinary proceedings only in exceptional circumstances. The only difference is that these exceptional circumstances apply in this case. This interdiction would grossly interfere with the rights of the petitioner as outlined in Articles 27, 28, 41, 43, 47, 48 and 50 of the Constitution of Kenya, 2010. It would cause grave injustice and infringe on the fundamental rights of the petitioner as claimed.

I am therefore inclined to allow the petition an order relief as follows;

- i. A declaration be and is hereby issued that any Suspension by the 1st Respondent against the

Petitioner in relation to Bomet Chief Magistrates' Court Criminal Case Number 311 of 2017 and the subsequent recommendations by the 2nd Respondent are flawed, manifestly unreasonable and violates the petitioners' rights inter alia her right to a fair administrative action, fair hearing and therefore null and void ab initio.

ii. A declaration be and is hereby issued that any Suspension and Interdiction by the 1st Respondent against the Petitioner in relation to Bomet Chief Magistrates' Court Criminal Case Number 311 of 2017 and the subsequent recommendations by the 2nd Respondent are flawed, manifestly unreasonable and violates the petitioners' right presumption of innocence in any criminal proceedings.

iii. A declaration be and is hereby issued that 1st, 2nd & 3rd Respondents have violated the petitioner's rights to human dignity under Articles 28 of the constitution and the right not to be subjected to any form of violence or be treated in a cruel, inhuman or degrading manner under article 29(c) and (f) of the constitution.

iv. A declaration be and is hereby issued that the 1st, 2nd and 3rd Respondents have violated the petitioner's right to equal benefit of law under Article 27 of the constitution, right to a fair administrative action under Article 47 of the constitution, right to a fair hearing under Article 50 of the Constitution and the right to access justice under Article 48 of the constitution.

v. That an order be and is hereby issued quashing the decision of interdiction by the 1st, 2nd or 3rd Respondents made pursuant to flawed, biased and unreasonable investigations and/or recommendations of the 2nd Respondent.

vi. That the interdiction of the petitioner by the respondent be and is hereby declared null and void *ab initio*.

vii. The costs of this petition shall be borne by the respondent.

Delivered, dated and signed this 17th day of October 2017.

**D. K. Njagi Marete**

**JUDGE**

Appearances

1. Mr. Orina instructed by E.M Orina & Company Advocates for the Respondents.

2. Mr. Koech holding brief for Mr. Samala instructed by Bitala & Company Advocates for the Petitioner.