



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAKURU**  
**PETITION NO. 17 OF 2014**  
**MICHAEL MEEGESH SANGIRIAKI.....PETITIONER**

v

**NAROK COUNTY GOVERNMENT.....RESPONDENT**

**JUDGMENT**

1. Michael Meegesh Sangiriaki (Petitioner) was appointed by the County Council of Narok as a Clerical Officer II in 1997. On 7 December 2004, the Public Service Commission of Kenya advised the Petitioner that he had been appointed as Accountant II with Narok County Council.
2. On 8 June 2010, the Permanent Secretary, office of the Prime Minister and Ministry of Local Government informed the Petitioner that he had been promoted to the grade of Accountant I with effect from 26 May 2010.
3. It appears that with the coming into effect of the Constitution 2010 and creation of the counties, the Petitioner was absorbed by the County Government of Narok (Respondent).
4. On 25 November 2013, the Interim County Secretary of the Respondent informed the Petitioner of his interdiction. The letter stated

This is to inform you that it has been decided you be interdicted with effect from 25<sup>th</sup> November 2013 pending investigation for giving Government information to unauthorised persons which is a breach of the Government Secrecy act.

During this period you will earn half basic salary and house allowance.

You are required to show cause why dismissal proceedings should not be taken against you.

5. The Petitioner promptly responded to the interdiction letter through a letter dated 27 November 2013. He was lamenting that the allegations he was expected to respond to were general and ambiguous.
6. The Petitioner therefore sought to know the *government information* he had disclosed and to which *unauthorised persons*, so that he could competently respond to the allegations.
7. The Respondent did not bother to respond to the Petitioner's request or furnish him with the details he had sought.

8. On 6 November 2014, the Petitioner moved to Court alleging violation of his rights and he cited Articles 22, 23, 28, 35(1)(b), 41(1) and 47 of the Constitution.

9. Together with the Petition, the Petitioner filed a motion in which he sought to be paid withheld wages.

10. When the Petitioner urged the motion, the Court was of the view that the Petition be determined on the merits and the Petitioner was directed to serve the Respondent and the Petition be heard on the merits on 4 December 2014.

11. Though served, the Respondent failed to appear and the Court allowed the Petition to proceed *ex parte*. The Court gave a judgment date of 13 February 2015, but in the meantime, the Respondent applied to have the proceedings taken on 4 December 2014 set aside/vacated.

12. On 19 December 2014, the parties agreed by consent that the proceedings be set aside. The Court consequently fixed the Petition for hearing on 18 March 2015.

### **Petitioner's case**

13. The Petitioner testified. He stated that he was not given a hearing before the interdiction and that after the interdiction he requested the Respondent to give him details which could enable him respond to the allegations but there was no response.

14. He also stated that as far as he was aware, the Respondent had not carried out any investigations because he had not been summoned to be interviewed more than a year and four months after the interdiction.

15. The Petitioner admitted that he had been on half salary and house allowance and that the Respondent had not dismissed him.

### **Respondent's case**

16. The Respondent filed an Answer to Petition on 12 January 2015. It asserted that the issues raised by the Petitioner were not constitutional but concerned an employer/employee relationship and that the interdiction of the Petitioner was legal and valid and that the matter was still under investigations, hence the Petition was premature and ill-advised.

17. The Respondent's Human Resources Officer, one Johnston Lepore testified. He stated that the Petitioner was interdicted because he had given information to an unauthorised person contrary to the provisions of the Secrecy Act.

18. The witness acknowledged that the Petitioner sought more details after the interdiction but no disciplinary action had been taken because the Petitioner had failed to show cause.

19. In cross examination, the witness accepted that the interdiction letter did not disclose the information that the Petitioner had allegedly given out and that fair labour practices required full disclosure of allegations.

20. He also stated that he was aware of the right to access to information as guaranteed by Article 35 of the Constitution and that the failure to supply the details sought by the Petitioner violated his rights.

21. The witness further stated that the Respondent's Human Resources Advisory Committee/Disciplinary Committee had not deliberated over the Petitioner's case.

### **Evaluation**

22. The Petitioner was interdicted in November 2013. The interdiction was to pave way for

investigations. By the time he was commencing legal action in November 2014, no investigations had been carried out.

23. Although the parties did not address the Court on any contractual or statutory authority for the interdiction during the hearing, the Respondent, in its submissions made reference to the *Public Service Commission Delegation Instrument to County Public Service Boards and County Assembly Service Boards on Discipline of Seconded Officers to the County Government*.

24. Regrettably, the Respondent did not place this document before Court if it formed/affected part of the Petitioner's contract of employment.

25. The Court however has had sight of this document in other Causes. Under regulation 23 of the Instrument, the purpose of interdiction is to allow for investigations.

26. The investigations would establish the facts upon which to take further disciplinary action against an employee or even prefer criminal charges.

27. The interdiction of the Petitioner has gone beyond one year. The Respondent could not clearly state whether investigations had even commenced. The Petitioner's testimony that he had not been summoned by any investigators was not controverted.

28. The Petitioner's request was not responded to by the Respondent.

29. An employer should have reasonable and proper cause/grounds for interdicting or suspending an employee. Merely having reasons to conduct an investigation or the carrying out of investigations without more should not be the basis of an interdiction or suspension.

30. By placing the Petitioner on interdiction for over one year when it is apparent that no investigations are ongoing in the view of the Court amounts to the Respondent conducting itself in a manner likely to seriously damage the implied term of trust in the employment relationship.

31. An employer should deal promptly with disciplinary complaints in the work place and reasonably.

32. In the view of the Court, there has been inordinate delay, and without any explanations for the delay by the Respondent, the Petitioner's right to fair labour practices was violated. The Petitioner has been or stands to be prejudiced by the failure by the Respondent to carry out investigations, memories fade and the Petitioner may not competently defend himself.

33. Fair labour practice although not defined in Kenya would include expeditious investigation of allegations of misconduct in employment by an employer.

34. In the case of *A v B* (2003) IRLR 405, it was held that a delay in the conduct of investigations might of itself render the dismissal process unfair. In my view, this jurisprudence from a comparative jurisdiction holds true even in our circumstances.

35. The Petitioner also challenged the interdiction on the basis that the allegations he was to respond to were generalized and ambiguous. The Respondent did not inform the Petitioner of the identity of the person he purportedly divulged the government information to. The nature of such information was also not disclosed.

36. Public officers such as the Petitioner meet very many people in the nature and course of duty. Without the particulars sought by the Petitioner, it was impossible for him to competently address the allegations.

37. In refusing to disclose the details sought by the Petitioner, the Respondent was violating the Petitioner's right to access information he needed to assert his Article 35 right.

38. Without the basic details, the allegations against the Petitioner remain ambiguous and the Petitioner could not have been expected to know how to respond.

39. The conduct by the Respondent in this case seems to have been informed by a carelessness which is not expected of a public institution.

40. The Court therefore finds that the Respondent violated the Petitioner's rights to fair labour practices and of access to information.

41. Although the Court has not referred to the numerous authorities cited by the parties, it has considered the same.

### **Appropriate remedies**

#### ***Declaration that the interdiction was unfair and unlawful***

42. The Petitioner has made out a case for a declaration that his interdiction was unfair and the Court so declares.

#### ***Declaration of violation of right to access to information***

43. The Court also finds and declares that the Respondent violated the Petitioner's right of access to information.

#### ***Reinstatement***

44. Having found that the interdiction was unfair, the Court is of the view that the interdiction should be lifted. The Petitioner is entitled to reinstatement to his office without loss of any benefits with effect from 25 November 2013

#### ***Compensation/damages***

45. In the view of the Court, this is an appropriate case to award the Petitioner compensation/damages for violation of his rights. The Petitioner submitted that an award of Kshs 5,000,000/- as punitive/exemplary damages would be adequate.

46. The Court has proposed reinstatement of the Petitioner without loss of any benefits. The Petitioner testified as to the agony and suffering he has undergone.

47. Considering these factors, the Court would award him Kshs 500,000/-.

### **Conclusion and Orders**

48. From the foregoing, the Court finds and declares

(a) that the interdiction of the Petitioner was unfair

(b) the Respondent violated the Petitioner's right of access to information.

49. The Court orders

(a) the interdiction of the Petitioner be lifted forthwith

(b) the Respondent reinstates the Petitioner to duty without loss of any benefits from 25 November 2013

(c) the Respondent pays the Petitioner damages of Kshs 500,000/-.

50. The Petitioner to have costs of the Petition.

**Delivered, dated and signed in Nakuru on this 5<sup>th</sup> day of June 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner      Mr. Wambola instructed by Ongoya & Wambola Advocates

For Respondent    Mr. Fidelis Wambua Musembi instructed by Kemboy & Co. Advocates

Court Assistant    Nixon