



BALANCING ADMINISTRATIVE POWER WITH CONSTITUTIONAL RIGHTS

Case study of Magare Gikenyi v County Government of Nakuru & 4 Others
Supreme Court Petition No. E048 of 2024

Overview

The Supreme Court, on 30 January 2026, delivered a significant decision clarifying the constitutional limits of an employer's administrative powers, particularly in relation to salary stoppage for public officers. The judgment reinforces that even where an employer has substantive justification, procedural fairness under Article 47 of the Constitution remains mandatory. This alert highlights the Court's key findings and outlines the practical implications for employers, especially public sector entities.

Brief Facts

Dr. Magare Gikenyi, a public officer serving under the County Government of Nakuru, was granted four (4) years' paid study leave commencing 22 October 2013 to pursue a Master of Medicine (MMed) in General Surgery at Moi University. His studies were prolonged due to nationwide industrial actions by medical staff and university lecturers, as well as a suspension by the University and Moi Teaching & Referral Hospital, which suspension was later successfully quashed by court orders.

Despite notifying the County Government of the delays, the respondents abruptly stopped payment of his salary in November 2018 without issuing a notice, show cause letter, or affording him a hearing. At the time, Dr. Gikenyi had not been interdicted, suspended, or dismissed from service. He had, however, not sought an extension of his study leave at the time of informing the County Government of such delays.

Aggrieved, he challenged the decision as unconstitutional and in violation of his labour rights.

Findings of the Employment and Labour Relations Court (ELRC)

Lady Justice Mbaru of the Employment and Labour Relations Court (ELRC) dismissed the appellant's claim, reinforcing that approved study leave is a time-bound agreement rather than an open-ended commitment.

The court held that since the appellant's authorized leave had officially lapsed, the employer acted within its rights to stop salary payments the moment the period expired. A key factor in this decision was the appellant's failure to formally request an extension. The court noted that delays in completing academic studies cannot indefinitely bind an employer to a contract without such a request.

Ultimately, Mbaru LJ determined that the cessation of pay did not constitute an unfair labor practice or unconstitutional conduct. Consequently, she declined to award any claims for unpaid salary or constitutional damages.

Findings of the Court of Appeal

The Court of Appeal upheld the initial ruling by the ELRC, concluding that the County Government acted within its legal mandate when it chose to cease salary payments. In its assessment, the court found that the appellant had failed to provide sufficient evidence to demonstrate any violation of their constitutional rights.

Furthermore, it was noted that the employer's decision was a valid exercise of administrative discretion. By affirming that the Government had managed its payroll and personnel obligations appropriately under the circumstances, the court effectively closed the door on the appellant's request for relief.

Findings and Reasoning of the Supreme Court

The Supreme Court established that the stoppage of salary is not merely a payroll decision but a formal administrative action governed by Article 47 of the Constitution. This means that regardless of how justified an employer may feel, such power must always be exercised in a manner that is lawful, reasonable and procedurally fair. The Apex Court made the following key findings:

The Breach of Procedural Fairness

The Court found that the Respondents failed to meet the constitutional and statutory requirements for fair administrative action. Even if the Appellant's study leave had lapsed, the employer was mandated to follow due process. The reasoning centred on several key failures:

- **Lack of Notice:** The Appellant was never issued a "show cause" letter or formal notice.
- **Right to be Heard:** No opportunity was afforded to the Appellant to give his explanations before the salary was cut.

By bypassing these steps, the Respondents violated the principles of fair administrative action and the values of public service enshrined in the constitution.

The Limitation of Relief

Despite finding a constitutional violation, the Court balanced this against the principle of "no work, no pay." It held that while the process was flawed, the Appellant was not entitled to salary for periods where no services were rendered.

The Court concluded that the salary payments the Appellant had already received after his study leave lapsed to when the payments were stopped was sufficient vindication for the violation of his rights. Consequently, no further monetary compensation or damages were warranted.

Key Takeaways

1. **Salary stoppage is an adverse administrative action** and automatically attracts Article 47 safeguards.
2. Employers **MUST issue notice and afford a hearing** before stopping salary or taking any adverse employment action.
3. Lapse of study leave **does not justify unilateral salary stoppage**.
4. Courts will not condone **procedural non-compliance**, even where substantive justification exists.
5. Procedural lapses may expose employers to constitutional findings, even where monetary liability is ultimately avoided.
6. Employees **MUST** inform their employers of any issues arising from their study leaves and seek extension as and when needed. Failure to do so will be treated as abscondment.

Conclusion

The decision reinforces constitutional protection of employees, especially in matters of study leave, suspension and remuneration.

What We Can Do as a Firm

Our team specializes in auditing and aligning HR policies with Article 47 and the Fair Administrative Action Act and developing internal hearing mechanisms that insulate employers from constitutional exposure. We offer advisory services on drafting and managing study leave agreements, extensions, and training bonds. The Firm also assists in designing compliance notices and notices to show-cause as well as support internal hearing mechanisms.

We also offer expert litigation support, representing clients in employment claims while instituting robust defenses on their behalf. Furthermore, we empower HR departments through targeted training in line with the employment laws.

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