



**THE SUPREME COURT OF KENYA**

**DR. MAGARE GIKENYI Vs COUNTY GOVERNMENT OF NAKURU & 4 OTHERS**

**SC PETITION NO. E048 of 2024**

**DATE OF JUDGMENT: 30<sup>TH</sup> JANUARY, 2026**

**MEDIA SUMMARY**

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*The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.*

***Orders: The Court partly allows the appeal.***

**Background**

The appellant is a medical doctor who joined the public service in 2008 and later became an employee of the County Government of Nakuru following devolution of health services in 2013. At the time, he served as a Senior Medical Officer and Medical Superintendent at Elburgon Nyayo Hospital. In October 2013, he was admitted to Moi University to pursue a Master of Medicine degree in General Surgery. The County Government granted him four years of paid study leave, running from 22 October 2013 to 21 October 2017, after which he was expected to resume duty.

During his studies, nationwide strikes by university lecturers and health workers disrupted academic programmes and delayed completion of courses. He was also suspended from the university in 2018 on disciplinary grounds, which suspension was later set aside by the High Court. The appellant neither reported back to work when his study leave expired on 21<sup>st</sup> October 2017 nor sought an extension of his study leave from the County Government of Nakuru. In November 2018, he discovered that his salary had been stopped. He wrote to County officials seeking an explanation, but said he received no response,

He then filed a case at the Employment and Labour Relations Court (ELRC), arguing that the stoppage of his salary was done without notice or a hearing and violated several constitutional rights. The ELRC found that although the industrial actions were beyond the appellant's control, the appellant was still required to seek extension of his study leave from the County Government of Nakuru, which he failed to do. The court observed that up until the appellant's letter dated 20<sup>th</sup> May 2018, there was no communication on his part to the County Government on his whereabouts and/or the extension of his study leave. Moreover, that the appellant was guilty of material non-disclosure of his suspension from the university which fact affected his study period. In totality, the court found that the appellant was absent from his duty station without approval of the County Government from 21<sup>st</sup> November 2017, when his study leave concluded. Therefore, the County Government was justified to stop payment of the appellant's salary in line with its Human Resource Policies and Procedures Manual for the Public Service, 2016. In the end, the court dismissed most of the appellant's claims and the Court of Appeal upheld that decision. Dr. Gikenyi subsequently appealed to the Supreme Court.

The following issues arose for consideration by the Supreme Court:

- i. *Whether the stoppage of the appellant's salary was lawful and whether due process under Article 47 was followed.*
- ii. *Whether the appellant was constructively dismissed.*
- iii. *What remedies (if any) the appellant was entitled to?*
- iv. *What orders should issue?*

Upon consideration, the Supreme Court dismissed the appellant's appeal for the reasons that:

**1. Issue 1:**

- i) The Court found that the County Government was legally entitled to stop the appellant's salary. His study leave ended on 21<sup>st</sup> October 2017, and he neither returned to work nor obtained approval to extend the study leave. His absence from duty was therefore without permission.
- ii) Although the County Government had legal power to stop the salary, the Court found that it failed to follow due process. The County did not issue the appellant with a notice or show-cause letter, nor did it give him an opportunity to be heard before stopping his salary. This violated Article 47 of the Constitution.

**2. Issue 2:** The Court agreed with the superior courts below that the appellant was not constructively dismissed. His employment was never terminated, and he later resumed duty after completing his studies.

**3. Issue 3:**

- i. The Court declined to order payment of the appellant's salary for the period November 2018 to January 2020. During that time, the appellant had not reported to work or performed duties for the County Government. The Court found that paying salary for that period would amount to payment for work not done.
- ii. The Court also declined to award general or punitive damages for violation of the appellant's rights. It held that the salary that the appellant continued to receive after his study leave ended (October 2017 to November 2018) was sufficient to remedy the violation of his right to fair administrative action. The Court also noted that the appellant was not entirely blameless, as he failed to resume duty or properly seek extension of his study leave.

**4. Issue 4:**

- i. The appeal dated 10<sup>th</sup> December, 2024 and filed on 7<sup>th</sup> March, 2025 is allowed to the extent that –
  - a) While the respondents' administrative action of stopping payment of the appellant's salary due to his absence from duty without leave or reasonable grounds was lawful, the respondents failed to adhere to due process by failing to issue the appellant with notice or show cause letter before taking the impugned action.
  - b) The salary paid to the appellant for the period from 21<sup>st</sup> October 2017, when his study leave lapsed, to November 2018, when his salary was stopped, sufficiently vindicated the violation of the appellant's right to fair administrative action, and no further monetary relief is warranted.
- ii. The judgment of the Court of Appeal dated 11<sup>th</sup> October, 2024 is hereby upheld save to the extent set out in Order iii (b).
- iii. The parties herein being in subsisting employer/employee relationship, each party shall bear their own costs so as to preserve this relationship.