



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)

PETITION 252 OF 2011

GRACE A.

OMOLO.....APPLICANT

AND

ATTORNEY GENERAL.....1ST
RESPONDENT

PERMANENT SECRETARY, MINISTRY OF STATE FOR PUBLIC SERVICE.....2ND
RESPONDENT

PERMANENT SECRETARY, MINISTRY OF EDUCATION.....3RD
RESPONDENT

THE PUBLIC SERVICE COMMISSION.....4TH
RESPONDENT

JUDGMENT

Introduction

1. Grace A. Omolo, the petitioner, is a career civil servant. She is currently deployed as the Deputy Director, Human Resource Management at the Ministry of Labour. At the time material to this case, she was Deputy Director, Human Resources in the Ministry of Education (“MoE”) where she was tasked to deal with recruitment of lower cadre staff in that Ministry. She has been under interdiction since 4th March 2011.

The Interdiction Letter

2. By a letter dated 4th March 2011 (“the interdiction letter”) addressed to her by the Permanent Secretary, Ministry of State for Public Service, Office of the Prime Minister (“MSPS”) informed her that she had been interdicted. The letter stated as follows;

4th March, 2011

Mrs Grace Omolo

Deputy Director Human Resource Management

Thro'

The Permanent Secretary,

Ministry of Labour
Nairobi

INTERDICTION

It has come to the attention of this office that while deployed in the Ministry of Education, you were involved in irregular recruitment of lower cadre staff.

In view of the seriousness of the offence and in order to facilitate investigations, it has been decided that you be interdicted from performance of your duties with effect from the date of this letter pending finalization of your case. While on interdiction, you will be paid half salary and continue to draw house, medical and commuter allowances. Please note that you should not leave your duty station without prior permission from your immediate supervisor.

*TITUS NDAMBUKI, CBS
PERMANENT SECRETARY*

The Recruitment

3. The facts relating to the interdiction particularly those regarding recruitment of lower level cadre staff are not in dispute and are as follows.
4. In 2008, MoE sought to recruit lower cadre level staff from amongst qualified Kenyans. A selection and recruitment committee was established with members from the MoE and other ministries with the petitioner as a secretary.
5. The positions to be filled were advertised; candidates applied and those who qualified were shortlisted. The shortlisted candidates were also advertised and thereafter interviewed. Successful candidates were duly informed through advertisement in the print media. Some of the successful candidates did not take up their appointments. The MoE and the Public Service Commission ("PSC") decided to replace these individuals by persons who had qualified on the basis of set criteria.
6. According to the petitioner, the replacement process was the beginning of her woes. The petitioner was under pressure to employ certain persons. She received several notes from prominent personalities seeking her intervention in employing specific persons. She claims that her refusal to succumb to pressure and her steadfast adherence to the principles of integrity resulted in her transfer to the Ministry of Labour.

Petitioner's Case

7. The petitioner's case is set out in the petition dated 15th November 2011 and the founding affidavit sworn by the petitioner on 15th November 2011. There is also a supplementary affidavit sworn on 16th February 2012. Counsel for the petitioner, Mr Kaluma relied on the written submissions dated 6th March 2012.
8. The petitioner's case is that the interdiction constitutes a breach of her fundamental rights and freedoms guaranteed under **Article 47** of the Constitution. She avers that she was denied her right to a fair administrative process that was "***expeditious, efficient, lawful, reasonable and procedurally fair.***"
9. The petitioner claims that her travails began when the interdiction letter was issued. On 14th March 2011, the petitioner through her advocate wrote to the Permanent Secretary, MSPS responding to the interdiction letter. The advocate stated that the petitioner had discharged her duty in recruitment with

utmost integrity and in accordance with the law. The petitioner's advocate informed the Permanent Secretary that the petitioner had surmounted undue pressure from top government officers who had sought to influence the process to secure employment of certain persons. He emphasised that the interdiction was unfair, unprocedural and malicious and demanded that the interdiction be withdrawn in default of which legal action would be commenced.

10. On 23rd March 2011, the Permanent Secretary, MSPS responded to the petitioner's advocate's letter dated 14th March 2011. He indicated that the interdiction is "*part of a disciplinary process and not an end in itself*" and advised the petitioner "*to submit her representations on being called upon to do so when the disciplinary proceedings as laid down in Service Regulations are instituted against her.*"

11. On 28th March 2011, the petitioner's advocate responded to the Permanent Secretary, MSPS indicating the petitioner's readiness to appear and make representations in the disciplinary proceedings. The petitioner also sought to be told when the disciplinary proceedings were set to commence and to be furnished with the charges, evidence and materials to aid her preparation for the proceedings.

12. The petitioner's advocate's letter dated 28th March 2011 did not elicit response but instead on 29th March 2011, Prof James ole Kiyiapi, the Permanent Secretary, MoE wrote a second letter to the petitioner interdicting the petitioner from her duties with effect from 4th March 2011 ("second interdiction letter"). This letter stated as follows;

Mrs Grace A Omolo

Thro'

The Permanent Secretary,

Ministry of Labour,

NAIROBI

GROSS MISCONDUCT

Following your interdiction by the Authorised Officer, Ministry of State for Public Service for your involvement in irregular recruitment of lower cadre staff, this Ministry has initiated disciplinary proceedings against you, which may lead to your subsequent dismissal from the Service.

As you are aware, failing to abide by service regulations guiding the recruitment and selection of staff under delegated powers as stipulated in the Public Service Commission Act Regulation No. 9 (1-4), amounts to gross misconduct whose liability is summary dismissal from the Service.

Your breach and non-conformity to procedures and guidelines which informs selection and recruitment under delegated powers has among other things resulted in the following:

- *It has occasioned the Government loss of its good public image as an Equal Opportunity Employer.*
- *The undertaking of the recruitment process and its eventual outcome led to a great deal of wasted resources in terms of man-hours and monetary costs of the entire exercise.*
- *The subsequent verification exercise to screen cut eligibility of appointed candidates has resulted in additional cost and constrained the normal delivery initiatives as most senior employees were enjoined in the exercise on top of their normal schedule of duties.*
- *The exercise results indicate lack of transparency and accountability with you should have observed*

as a public servant. The auditor's report showed serious anomalies in that several candidates who were neither shortlisted nor interviewed were given appointment letters locking out needy and deserving successful candidates.

- The uncertainty surrounding threat of withdrawal of appointments to the many innocent Kenyan youths has subjected them to untold psychological stress and suffering which would have been avoided if the recruitment exercise was transparent and merit based.
- As a public servant entrusted with the supervision and use of delegated powers you failed to provide leadership focus and proper control and as a result your commission or omission has embarrassed and besmirched the reputation of Appointing Authority. This is contrary to the provisions of Public Officers Ethics Act (2007).

In view of the forgoing, it is contemplated that you be dismissed from the service in account of gross misconduct but before this is done, you are hereby called up to show cause within fourteen days from the date of this letter why you should not be dismissed from the service.

In the meantime, it has been decided that you be and are hereby interdicted from exercising the duties of your office with effect from 4th March 2011 in order to facilitate investigation into the matter. While on interdiction, you will be entitled to a half of your basic salary. You will be required to report to your supervisor at least once a week and will not be allowed to leave your duty station without express permission from your supervisor.

Prof James Legilisho Ole Kiyiapi, CBS

PERMANENT SECRETARY

13. The petitioner's advocates responded to this letter on 2nd May 2011 informing him that the petitioner had received the letter dated 28th March 2011 on 27th April 2011. In the letter, the petitioner's advocate stated that since the fourteen days required for response in the letter has elapsed he sought confirmation that the, "accusation leveled against Mrs Omolo thus abated before being communicated to Mrs Omolo." This letter did not provoke any response from the Permanent Secretary, MoE and no communication has been received from the MoE in this respect.

14. On 5th September 2011, the petitioner's advocate wrote to the Permanent Secretary, MSPS informing him that 6 months had lapsed since her interdiction. The petitioner's counsel cited the provisions of **Regulation G33(13), Section G of the Code of Regulations governing the Civil Service** which require that disciplinary proceedings be completed within 6 months and requested the Permanent Secretary to proceed to formally lift her interdiction to permit the petitioner to resume her duties in public service.

15. The petitioner's advocate wrote a further letter dated 25th October 2011 to the Permanent Secretary, MSPS demanding the formal lifting of her interdiction within seven days in default of which the petitioner would move the court to assert her rights.

16. The Permanent Secretary, MSPS responded by a letter dated 28th October 2011 where he stated that "the investigations concerning the disciplinary case.... are being conducted by the Ministry of Education" and that the Ministry of Education had "been advised to expeditiously conclude the investigations."

17. The petitioner asserts the letter of Permanent Secretary, MSPS dated 28th October 2011 is a formal admission by the Permanent Secretary, MSPS that he had no mandate and exceeded his lawful authority by issuing the interdiction letter. The petitioner's advocate therefore wrote to Permanent Secretary, MSPS a letter dated 1st November 2011 where he demanded that he withdraws his letter of interdiction. To date the Permanent Secretary, MSPS has not responded to the petitioner's advocate's letter.

18. The petitioner claims that the conduct of the petitioner and particularly the interdiction does not meet constitutional muster. MrKaluma submitted the Permanent Secretary, MSPS, has no power in law to interdict and in purporting to do is, he acted *ultra vires* his power. The power to discipline civil servants is vested in the Public Service Commission and may be delegated to a Permanent Secretary who in terms of **regulation 2** of the **Public Service Commission Regulations** (“PSC Regulations”) is an “*authorised officer*.” The Permanent Secretary referred to as an authorized officer is the Permanent Secretary in the Ministry concerned or where the person disciplined holds office. In these circumstances, MrKaluma argued that it is only the Permanent Secretary, Ministry of Labour or the Permanent SecretaryMoE who could have intervened and not the Permanent Secretary, MSPS.

19. MrKalumasubmitted that the process leading to interdiction was not followed and there was no investigation conducted entitling the Permanent Secretary to issue an interdiction letter. He submitted that **regulation 23** of **PSC Regulations** stipulates that interdiction can only issue in public interest or where proceedings they may lead to dismissal may be taken or about to be taken or where criminal proceedings are commenced. In this case no proceedings have been taken to date despite several pleas and no criminal proceedings have been commenced to date. Counsel submitted that it is now 13 months since the interdiction and no action has been taken and taking into account the provisions of **regulation 33(13)** of the **Code of Regulations Governing the Civil Service** which stipulates period of 6 months for thefinalisation of disciplinary cases, it is clear that the petitioner’s rights have been violated.

20. In view of these breaches, the petitioner seeks the following reliefs inthe petition;

- (a) *A declaration that the decision by the Permanent Secretary, Ministry of Public Service and the Permanent Secretary, Ministry of Education purporting to interdict the petitioner herein are arbitrary, in bad faith unreasonable, unconstitutional, unlawful, null and void.*
- (b) *Judicial review order of certiorari bringing to the Honourable Court to be quashed the decision by the Permanent Secretary, Ministry of State for Public Service and the Permanent Secretary, Ministry of Education purporting to interdict the petitioner from performing her duties in public service.*
- (c) *Judicial review order of prohibition prohibiting the respondents from bringing commencing, undertaking or continuing disciplinary action proceedings or process againstthe petitioner on the matter of recruitment of lower cadre staff inthe Ministry of Education.*
- (d) *An order for compensation inthe amount to be determined by the Honourable Court for violation of fundamental rights and freedoms under Article 23 of the constitution.*
- (e) *The petitioner’s salary or income withheld during the period of interdiction.*
- (f) *Such other or further relief as the Honourable Court shall deem fit to grant in the circumstances.*
- (g) *The costs of this constitutional petition be granted to the petitioner.*

Respondents’ Case

21. The respondents oppose the petition on the basis of a replying affidavit sworn by Alice AtienoOtwala, a Deputy Commission Secretary of the PSC sworn on 15th December 2011 and one by Prof James Ole Kiyiapi, the Permanent Secretary, MoE, sworn on 30th January 2012. Both affidavits confirm that the recruitment process was carried out and was subject of an audit.

22. The respondents case is that at the end of the exercise, an audit report revealed that there were several shortcomings which came about because the recruitment was notdone in a transparent manner. From the number of complaints which arose, it was evident that there was manipulation of the whole process. Persons who had not attended interviews were offered employment in the Ministry, while persons who had been interviewed and their names published in the newspapers as successful applicants did not receive letters of offer.

23. Professor Kiyiapi confirms that he wrote to the petitioner the second interdiction letter, whose contents are reproduced at paragraph 12 above, requiring the petitioner to show cause why she should not be dismissed on account of gross misconduct. He asserts that he was entitled to do so under the provisions of **regulation 22** of the **PSC Regulations**.

24. Ms Alice Otwala also confirms that the matter was forwarded to the Kenya Anti-Corruption Commission for investigation on 14th December 2010. The PSC wrote to the Anti Corruption Commission on 5th September 2011 requesting it to expedite the process but no response has been forthcoming to date.

25. Counsel for the respondent, Mr Okumu, submitted that Permanent Secretary, MSPS acted within the law and in accordance with **regulation 22(1)(a)** the **PSC Regulations** empowers an authorised officer to interdict under **regulation 23**. According to counsel, an authorised officer is not confined to a particular ministry and in particular the Ministry of State for the Public Service is cross cutting in nature as it renders services and supervises other ministries and the Permanent Secretary, MSPS has supervisory powers over other civil servants irrespective of the station or place of duty.

26. Mr Okumu contends that investigations were underway in the MoE by the time the interdiction letter was issued there was an internal audit conducted by the Ministry of Finance and this is confirmed by a letter dated 17th November 2010 from the Permanent Secretary, Treasury to the Permanent Secretary, MoE which highlighted significant audit and integrity issues in the management of the recruitment process.

27. Counsel for the respondent also contended that the petition was filed prematurely as the petitioner was entitled to appeal the decision of the Permanent Secretary under **regulation 32** of the **PSC Regulations** and the PSC is empowered to entertain an appeal out of time. Mr Okumu submitted that the petition was obliged to follow the strict procedure set out under the **PSC Regulations**.

28. The respondents relied on the written submissions dated 15th March 2012 and urged the court to dismiss the petition with costs.

Whether there is a breach of Article 47 of the Constitution

29. The Public Service Commission is established under **Article 234** of the Constitution. Its functions as are relevant to these proceedings include the exercise of disciplinary control over and remove persons holding or acting in those offices and to promote the values and principles mentioned in **Article 10** and **232** through the public service. **Article 234(5)** empowers the PSC to delegate, in writing with or without conditions, any of its functions and powers under this Article to any or more of its members, or any officer, body or authority in the public service.

30. **Article 236** of the Constitution provides for protection of public officers as follows;

236. A public officer shall not be—

(a) victimised or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or

(b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.

31. The powers of the Public Service Commission are operationalised through the provisions of the **Public Service Commission Regulations** which set out the recruitment, appointment and disciplinary procedures.

32. **Article 47** of the Constitution entitles every person to **“administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”** The PSC is required to comply with this provision in

exercise of its responsibilities.

33. Administrative action must be lawful and the lawfulness or legality of the interdiction letter is impugned by the petitioner on the basis of the fact that it was not issued by an “*authorised officer*.” An authorised officer is defined in **regulation 2(1)** of the **PSC Regulations** as;

(a) ***The Permanent Secretary who exercises supervision over the ministry concerned, or over the ministry in which the public officer concerned holds an office, as the case may be; or***

(b) ***In the case of a department which is not assigned to any Minister, the head of that department;***

34. **Regulation 2(1)(a)** grants authority to a Permanent Secretary in respect of the Ministry concerned or in respect of the ministry in which the public officer concerned holds office. In the first part the authority is given to the Permanent Secretary where the disciplinary offence took place. In the circumstance of this case it is the MoE and thus the Permanent Secretary, MoE would exercise authority irrespective of the station of the petitioner. The second part grants authority on the Permanent Secretary in ministry where the public officer holds office. The Ministry of Labour, where the petitioner is now deployed, would be entitled to exercise disciplinary authority.

35. I agree with the petitioner that the Permanent Secretary, MSPS would not ordinarily fall into the definition of an “*authorized officer*” as the Permanent Secretary, MSPS does not exercise supervision over the MoE nor does the petitioner hold office in that Ministry.

36. But the interdiction letter was not the end of the matter. Even if the letter did not comply with the regulations, there was a second interdiction letter written by the PS, MoE. That letter, which I have set out in paragraph 12 above, detailed the nature of the breaches and non-conformity with established procedures for selection and recruitment of staff under delegated powers of the PSC. The letter required the petitioner to show cause why she should not be dismissed from service. It also stated that the petitioner interdiction was with effect from 4th March 2011.

37. Even if I were to quash the letter dated 4th March 2011, on the basis of the **regulation 2(1)(a)** of the **PSC Regulations**, the subsequent letter dated 29th March 2011 is still valid and complies with the basic requirements of the law. In fact the second interdiction letter appears to have been written when it was recognized that the Permanent Secretary, MSPS has no authority issue the first interdiction letter.

38. I therefore find and hold that the interdiction letter is ineffective null and void as it was not issued in accordance with the provisions of **regulation 2(1)(a)** of the **PSC Regulation**. I further find and hold that the petitioner was properly interdicted on the basis of the second interdiction letter.

39. The complaint against the second interdiction letter is that it was received after the fourteen day deadline set out therein. As a notice though, it could only take effect from the date of receipt of the notice itself not the date of the letter. The notice was effective and I do not agree with the sentiments of the petitioner’s counsel expressed in the letter of 2nd May 2011 that the, “*The accusation against Mrs Omolo [had] abated before being communicated to Mrs Omolo,*”

40. The import of the second interdiction letter is that the petitioner was interdicted from the date of receipt of that letter as acknowledged by her, which is 27th April 2011. The letter availed her an opportunity to present her side of the case. Unfortunately, she did not respond to it by showing cause why she should not be dismissed.

41. The second interdiction letter is important to the extent that it sets out an outline of the nature of the charges against the petitioner. It sets out in a general manner the breaches that the petitioner was accused of and therefore it cannot be argued that the charges against her were not stated or provided. In fact, there is no complaint that the nature of the charges was insufficient or inadequate to enable her defend herself.

42. The petitioner also attacks her interdiction on the basis that there was no investigation prior to her interdiction. **Regulation 23** of the **PSC Regulations** provides that interdiction can only issue “*in the public interest*” and only if, “*proceedings which may lead to his dismissal are being taken or about to be taken or where criminal proceedings are instituted against a public officer.*”

43. In my view what is required for an interdiction to satisfy the requirements of **Article 47** is that there is reasonable basis for taking action. What is reasonable depends on the facts and circumstances of the case. The subject matter at hand concerned allegations of irregular recruitment of staff. The MoE engaged the Ministry of Finance to conduct an audit which disclosed that the process was affected by audit and integrity issues. The result of the audit was disclosed in the letter dated 17th November 2010 from the Treasury to the Permanent Secretary, MoE.

44. Some of these issues included the fact that the list of successful candidates advertised in the print media contained 436 names of persons who has not applied or shortlisted for interview. 344 individuals issued with appointment letters yet were not successful candidates as advertised. 239 candidates who were successful after interviews and had their names placed in the newspapers and did not receive any formal appointment letter and 60 persons successful person recommended for appointment as drivers were replaced by persons either not short listed for interview, did not attend the interview or were disqualified by the selection panel for various reasons.

45. In my view, the evidencesuggests that there was a reasonable basis to interdict her as the Head of Human Resource Management pending contemplated disciplinary or criminal action as required by **Regulation 23** of the **PSC Regulations**.

46. Of more immediate concern is that the disciplinary proceedings to which the petitioner and every civil servant is subject to have not been commenced to date. The second interdiction set out the charges is yet to be acted upon 13 months after it was issued. **Regulation G33(13)** of the **Code of Regulations Governing the Civil Service** specifies that disciplinary proceeding cases should be dealt with promptly and must be finalised within six months. This is the standard upon which delay is to be judged.

47. It cannot be disputed that disciplinary proceedings were contemplated as the Permanent Secretary, MSPS in his letter dated 14th March 2011 and which I have adverted to in paragraph 10 above, confirmed that the interdiction was only part of the disciplinary process and the petitioner would be called up to answer to charges when disciplinary proceedings are instituted against here.

48. Furthermore the replying affidavit of MsOtwala disclosed that an audit had been completed by the Treasury in November 2010 which disclosed the irregularities. After reviewing the matter, the PSC communicated to MoE by a letter dated 14th December 2010directing that the recruitment exercise be nullified in its entirety. By a letter dated 16th December 2010, the Permanent Secretary, MoE requested the PSC to reconsider its decision on the ground that, “*nullification would have social/psychological, political and even economic consequences including disruption of programmesof the Ministry ...*”

49. The PSC responded by a letter dated 19th January 2011, in which it rescinded the nullification decision contained in the letter. Amongst the measures taken to ameliorate the decision was the persons who were not shortlisted but interviewed and appointed be screened for eligibility for appointment and those who do not meet eligibility criteria be paid as temporary staff for the period served and discharged. Those whose names appeared in the newspapers as successful and met the appointment criteria be employed. The PSC also recommended that the then Kenya Anti-Corruption Authority be engaged to conduct independent investigations.

50. These facts show that the MoE and PSC have had possession of all the facts necessary to lodge disciplinary proceedings against the petitioner and I therefore conclude that there has been an unreasonable delay in commencing disciplinary proceedings her.

51. The respondentscontend that matter is being investigated by the Anti-Corruption and Ethics

Commissionhence the delay in commencing disciplinary proceedings. Criminal proceedings and disciplinary proceedings are not mutually exclusive. PSC has the exclusive jurisdiction to discipline public servants in a manner consistent with the provisions and values of the Constitution. It is an independent commission and in exercising its powers to discipline public officers, it is not subject to the control or authority of the Anti-Corruption and Ethics Commission. While it may be proper to give due consideration to the authority of the Anti-Corruption and Ethics Commission, in this case there is no indication whether and how far the investigations have proceeded and how long it will take to conclude the investigation.

52. In my view a year of inaction on the disciplinary process, in an inordinate delay and infringes on the petitioner rights protected under **Article 47**.The petitioner has been under interdiction for over a year. She does not know her fate, she does not know when disciplinary proceedings will commence yet she is required, *‘to report to [her] supervisor at least once a week and will not be allowed to leave [her] duty station without express permission from [her] supervisor.’* Based on the provisions of **regulation G33(13)** of the **Code of Regulation Governing the Civil Service** she had a legitimate expectation that disciplinary proceedings would be completed within six months or at any rate within a reasonable time.

53. **Article 19** of the Constitution provides that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.**Article 47** and particularly its application to the context of this case must be read in this light. The new dispensation seeks to enhance human dignity and the fact that the petitioner can remain in limbo for such a time undermines her dignity and fundamental rights and freedoms. In the case of **Foley v Interactive Data Corporation(1988) Cal Rptr 211**, Justice Broussard of the California Supreme Court recognized the dignity work confers upon a person. He observed, *“A man or a woman usually does not enter into employment solely for the money; a job is status, reputation, a way of defining one’s self-worth and worth in the community. It is also essential to financial security, offering assurance of future income needed to repay present debts and meet future obligations. Without a secure job a worker frequently cannot obtain a retirement pension, and often lacks access to affordable medical insurance. In short, “in a modern industrialized economy employment is central to one’s existence and dignity.”*

54. Upon interdiction, a person is entitled to half salary. Quite apart from affecting an employee financially, an indefinite interdiction without more affects the integrity, dignity, reputation and standing of the person in community. It is for this reason that I am must hold that the actions of 3rd and 4th respondents fall below the standard set by **Article 47** of the Constitution. As I have stated there is no reason why disciplinary proceedings cannot be commenced given the fact that the matter has been subject of an audit by the Treasury and actions have been taken by the MoE and PSC to rectify or regularize some of the problems caused by the recruitment process.

55. Finally, the respondents have argued that the petitioner has an alternative avenue for appeal under the **PSC Regulations** from any orders issued by the Permanent Secretary and that this petition is premature. This ground lacks merit as the procedure for enforcement of fundamental rights and freedoms protected under the Bill of Rights and reliefs provided by **Article 22** and **23** of the Constitution respectively are independent of and are not affected by the existence of any other avenue for relief or any other remedy, statutory or otherwise.

Relief and Disposition

56. I am required under **Article 23** to frame appropriate relief upon finding that a person’s rights and fundamental freedoms have been infringed.

57. The petitioner is the subject of disciplinary proceedings and the PSC has the constitutional responsibility of ensuring expeditious and fair proceedings in a manner consistent with **Article 47** and the values set out in **Article 10** and ensuring that public servants are protected as required by **Article 236**. Where the public servants rights are threatened the Court will not hesitate to intervene.

58. I have found that the first interdiction letter is null and void. I have also determined that the interdiction could only take effect upon receipt of the second letter on 27th April 2011. I consequently direct that the petitioner be paid her full salary from 4th of March 2011 to 27th April 2011.

59. The petitioner has sought orders setting aside the interdiction and prohibiting disciplinary proceedings. Since I have concluded that the interdiction was based on reasonable grounds, I reject these orders. To prohibit disciplinary proceedings would amount to granting immunity to the petitioner from the disciplinary process where serious allegations have been leveled against her. What I have found as a fact is that the process has been delayed and in order to give effect to her right to fair administrative process and the due process rights protected under **Article 236 (b)**, I direct that disciplinary proceedings be commenced within 30 days from the date hereof.

60. In order to vindicate her rights, I award her the sum of **Kshs. 300,000.00** as general damages as against the 3rd and 4th respondents who shall also pay her costs.

61. I hope that the petitioner will undergo a fair disciplinary process guaranteed to her by our Constitution. I state this because there is evidence that the recruitment process was conducted not only by her but by other persons. I have seen evidence of undue pressure exerted on her by her superiors including persons engaged in preparing the audit report and it is my expectation that the PSC will live up to the highest ideals that the Constitution prescribes in considering the matter.

62. I now frame the following reliefs under **Article 23** of the Constitution;

(a) I declare that by failure to institute and commence disciplinary proceedings within a reasonable time the petitioner's rights under Article 47 of the Constitution have been violated by the 3rd and 4th respondents.

(b) The petitioner shall be paid her full salary for the period between 4th of March 2011 to 27th April 2011.

(c) I direct the 4th respondent to commence disciplinary proceedings against the petitioner within the next 30 days from the date hereof.

(d) I award the petitioner general damages in the sum of Ksh. 300,000/00 to be paid by the 3rd and 4th respondents.

(e) The 3rd and 4th respondents shall bear the costs of this petition.

DATED and DELIVERED at NAIROBI this 4th May 2012.

D.S. MAJANJA

JUDGE

Mr P. Kaluma instructed by Lumumba Mumma & Kaluma Advocates for the petitioner.

Mr N. Okumu, Litigation Counsel, instructed by the State Law Office for the respondents.