



REPUBLIC OF KENYA



**Mwanza v National Police Service Commission & 3 others (Employment and Labour Relations
Petition E065 of 2024) [2025] KEELRC 2468 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2468 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E065 OF 2024
HS WASILWA, J
SEPTEMBER 22, 2025**

BETWEEN

ANDREW KYALO MWANZA PETITIONER

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

INSPECTOR GENERAL OF POLICE 2ND RESPONDENT

DIRECTORATE OF CRIMINAL INVESTIGATIONS 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. By a Petition dated 26th April 2024, the Petitioner sought for the following reliefs; -
 - a. A Declaration that the act of the 1st Respondent in relieving the Petitioner of his duties is a breach of the latter's Constitutional Rights under Article 27(1), (2) and (3), 28, 41, 48 and 50 of *the Constitution* of Kenya and that the same is null and void for all intent and purposes.
 - b. An Order of Judicial Review of Certiorari be and is hereby issued to quash the dismissal of the Petitioner by the 1st Respondent from the Service made on 19th July, 2021 for breaching the Petitioner's right to fair trial under articles 25, 47 (1) and (2) of *the Constitution* and Section 4 of the *Fair Administrative Action Act*.
 - c. An Order of Judicial Review of Mandamus be and is hereby issued to compel the Respondents to reinstate the Petitioner to the Police Service as his removal was unlawful, irregular and unjustifiable.



- d. In the alternative and without prejudice to prayer (b) and (c) above, an Order Of Payment Of All Dues Due To The Petitioner from the date of removal from employment to the conclusion of this Petition.
- e. Costs of this Petition and interest thereon.
- f. Any other relief or order that this Honourable court may deem fit to grant.

Petitioner's Case

2. The Petitioner avers that vide an appointment letter dated 26th April 2015, he was appointed to work for the Kenya Police Service under the terms and conditions expressly in the said appointment letter.
3. The Petitioner avers that he worked for the Service without blemish until 4th January 2021, when while out of his faculties due to influence, he had a rifle discharge at Huruma shopping Centre where several rounds were fired out of his G3 rifle which was lawfully assigned to him but fortunately, no one was injured in the incident.
4. The Petitioner avers that his Platoon Commander called him and while drunk, he allegedly uttered that he wanted to kill his then girlfriend, pronouncements which were unfortunate and not intended as he had never had any altercation with his then girlfriend and now wife, Stella Chepkwemoi.
5. It is the Petitioner's case that he came back to the camp, he was then disarmed and detained and the incident was booked. The following day, he was told to sign some documents to secure his release, only to realize the documents had concocted lies.
6. It is the Petitioner's case that he was neither served with any notice to show cause letter why he should not be removed from the National Police Service under public Interest) nor were the disciplinary proceedings carried out as per the provisions of the Legal Notice Number 90 of 2015 (National Police Service Commission (Discipline) Regulations of 2015).
7. The Petitioner avers that on 25th January 2021, he was suspended from duty without pay and he was ultimately dismissed from service vide a letter dated 19th July 2021.
8. The Petitioner avers that he was neither informed of his right to counsel to be able to get proper guidance and directions nor given an opportunity to face nor even cross examine his accusers.
9. The Petitioner avers that he appealed the dismissal vide a letter dated 12th November 2021 to the 1st Respondent's Chairman. In response to the letter, the 1st Respondent's Chairman vide a letter dated 18th May 2022 asked him to provide a list of documents to process his appeal.
10. The Petitioner avers that staff at the General Service Unit's personnel office through one Mr. Samoei (Headquarters 1), informed him that the said documents would be forwarded to the 1st Respondent.
11. The Petitioner avers that he did not receive any response for over one year, prompting his letter dated 28th February 2023, however, to date he has not received any response yet he continues to suffer both financially and psychologically from the un-procedural dismissal.
12. It is the Petitioner's case that his wife has since sworn an affidavit stating that she was neither near the petitioner nor did they have any kind of misunderstanding prior to the 4th January 2021 incident. However, she has never been summoned to even record a statement regarding the incident yet she was allegedly the intended victim.



13. The Petitioner avers that petitioner unsuccessfully sought the intervention of the Independent Police Oversight Authority (IPOA) on the 31st October 2023.
14. The Petitioner avers that the appeals committee of the General Service Unit made him sign some documents without explaining to him the full repercussions of the contents of the said documents which the petitioner later realized had outrageous admissions.
15. It is the Petitioner's case that his dismissal from service was both substantively and procedurally unfair. It neither met the constitutional safeguards of Articles 47 and 50 of *the Constitution* nor did it meet the statutory requirements of Section 4 of the *Fair Administrative Action Act*, Sections 41 and 45 of *Employment Act* nor the provisions of the National Police Service Commission (Discipline) Regulations of 2015.
16. The Petitioner avers that he was neither invited to or subjected to any disciplinary hearing, nor was he afforded a hearing to respond to the allegations levelled against him.

1st Respondent's Case

17. In opposition to the Petition, the 1st Respondent filed grounds of opposition dated 2nd April 2025 on the following grounds:
 1. That the 1st Respondent is a Constitutional Commission within the Republic of Kenya established under Article 246 of *the Constitution* of the Kenya with a clearly laid out mandate namely to:
 - a. Recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service;
 - b. Observe due process in exercising disciplinary control over and removing persons holding or acting in offices within the Service; and
 - c. Perform any other functions prescribed by national legislation.
 2. That the National Police Service is established under Article 243 of *the Constitution* of Kenya and the objectives of the National Police Service under Article 244 include but are not limited to:
 - a. Strive for the highest standards of professionalism and discipline among its members;
 - b. Train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
 - c. Foster and promote relationships with the broader society.
 3. That the National Police Service is a service anchored on discipline and good order due to the nature of its function and officers are procedurally governed by *the Constitution*, the *National Police Service Act* and the Service Standing Orders.
 4. That the Petitioner has demonstrated through the Police Basic Training Course Certificate he has presented as evidence that he was trained in Skill at Arms, Police Procedures among other courses in order to successfully complete the Police Basic Training Course at the GSU training school.



5. That Section 88 (2) as read with the Eighth Schedule of the *National Police Service Act* provides for offences against discipline which include:
 1. Be guilty of drunkenness while on duty;
 2. Drink intoxicating liquor or psychotropic substances or drugs, or smoke in uniform when actively engaged on duty in a public place;
 3. Discharge any weapon without orders or without reasonable lawful cause.
6. That the Petitioner in Paragraph 2 of his Petition admits to this Honorable Court that he committed these three offences against discipline which led to his suspension and ultimate dismissal from the National Police Service.
7. That the Petitioner admits to this Honorable Court in Paragraph 3 of his Petition that he confessed to his superior after the unlawful discharge of his firearm that he wanted to kill one Stella Chepkwemoi. This amounts to threatening violence against any police officer or any other person which is the first offence against discipline under the Eighth Schedule of the *National Police Service Act*.
8. That the Petitioner alleges in his Petition that he was denied the Right to Fair Administrative Action and the Right to a Fair Hearing. However, the Petitioner was issued a Notice to Show Cause dated 8th January 2021 in accordance with Section 11 (5) the National Police Service Commission Discipline Regulations 2015 and Section 15 (5) of Chapter 30 of the Service Standing Orders. The Notice to Show Cause was signed as received by the Petitioner and gave prior and adequate notice of the nature and reasons for the proposed administrative action as outlined in Section 4 of the *Fair Administrative Action Act*.
9. That the Petitioner's right to a fair hearing was not in any way violated as alleged in the Petition. A subordinate disciplinary committee was constituted on 5th January 2021 as outlined under Section 10 (2) of the National Police Service Commission Discipline Regulations 2015. The Subordinate Disciplinary Committee convened on 8th January 2021 where a hearing took place by way of orderly room proceedings as provided in Chapter 30 of the Service Standing Orders.
10. That the Orderly Room Proceedings convened by the Subordinate Disciplinary Committee were in order for Petitioner to be heard on the charges of disciplinary offences brought against him. The institution of these proceedings was in accordance with Article 47 and Section 4 of the *Fair Administrative Action Act* and in recognition of the Petitioner's right to a fair hearing under Article 50 of *the Constitution*.
11. That the Petitioner out of his own volition entered a plea of guilty by admitting that he discharged his firearm without reasonable cause due to the influence of alcohol. The Petitioner was never denied a right to call witnesses or to cross examine the Prosecution's witnesses, he pleaded guilty of the offence and thus waived this right. Further, the Petitioner was informed of his right after the conclusion of the proceedings; although he stated that he did not wish to appeal, he was given the option which is in accordance with the law.
12. That the Petitioner's allegations under Paragraph 19 that his dismissal was not properly anchored in law are untrue. Suspension and Dismissal are some of the penalties under Section 89 of the *National Police Service Act*. Section 89 (6) states that an officer recommended for dismissal under disciplinary proceedings shall be suspended from duty, pending the final decision of the Commission.



13. That the Petitioner pleaded guilty to discharging a firearm without lawful cause which is an offence against discipline, one of the penalties of an offence against discipline according to the Act is suspension and/or dismissal.
14. That the Petitioner was also subjected to Fair Administrative Action as his Appeal was considered by the 1st Respondent and was disallowed and the sentence for dismissal upheld. The fact that his Appeal was disallowed and his dismissal upheld does not mean that he was denied fair administrative action, the fact that his Appeal was considered is evidence of fair administrative action.
15. That equity will not allow a wrongdoer to profit by a wrong. The Petitioner admitted and continues to admit that he unlawfully discharged a firearm in a shopping center where ordinary Kenyans were going about their day to day activities. Ordinary citizens trust that officers of the National Police Service wielding firearms are assigned these firearms to preserve law and order and not to discharge rounds in a drunken stupor.
16. That the Petitioner could have caused grave and irreparable harm to innocent bystanders and/or his colleagues by discharging a firearm while under the influence of alcohol. The Petitioner's threats to kill his girlfriend or wife were also a serious disciplinary offence as they were threats of violence against another person made to a superior officer, this is not only insubordination but also extremely alarming as the Petitioner having access to a firearm could easily make these threats true.
17. That the 1st Respondent has not violated the Petitioner's constitutional rights and that the Petitioner is not entitled to any damages whether general or special. The Petitioner was not only under the influence of alcohol while on duty but he committed the very serious offence of discharging his firearm without any lawful or reasonable cause, placing the lives of innocent citizens and other officers at risk due to his gross misconduct.
18. That it is in the public and police interests that the Petitioner was dismissed from the National Police Service.
19. That no constitutional violations can be discerned from this Petition. This Petition is a Claim disguised as a Petition, it lacks merit and is an abuse of the Court's process that ought to be dismissed with costs.

2nd, 3rd and 4th Respondents' Case

18. In opposition to the Petition, the 2nd, 3rd and 4th Respondents filed a Replying Affidavit dated 3rd June 2024 sworn by William Sawe, SSP, a Staffing Personnel at the General Service Unit under the 2nd Respondent.
19. The Respondents aver that the Petitioner is an Ex-Police Constable performing police duties under the General Service Unit and was deployed in with Platoon No. 4 of the Bravo Company.
20. The Respondents aver that on 4th January 2021, the Petitioner while stationed at GSU Korngutuny Camp in Cheptais within Bungoma County, he discharged six (6) rounds of ammunition from a G3 rifle that had been assigned to him without any lawful cause contrary to Section 88(2) as read with 8th Schedule sub section 1(o) of the *National Police Service Act* No. 11A of 2011. He was subsequently charged and dismissed from the Service due to the seriousness of the offence and poor record of service.



21. It is the Respondents' case that the Petitioner admits culpability in his discharging several rounds at Huruma Shopping Centre in Cheptais and he further admitted that he uttered words that he wanted to kill his girlfriend. The issue of marriage certificate tendered does not in any way tally with his behaviour of unlawfully discharging a rifle and being a threat to members of the public.
22. The Respondents aver that the Petitioner was disarmed and booked a normal police procedure carried out when an officer commits a disciplinary offence of the Petitioner's nature.
23. The Respondents aver that the committee handling the proceedings invoked the provisions of Legal Notice No. 90 Reg. 9 (5) National Police Service Commission (NPSC) Discipline Regulations and served the Petitioner with a Waiver Notice on 8th January 2021. The provision allows the proceedings to be conducted immediately as deterrence and in order to set an immediate example.
24. The Respondents avers that the Petitioner was served with a Show Cause Letter dated 5th January 2021 which he acknowledged receipt by signing against it.
25. It is the Respondents' case that the guidelines on dealing with indiscipline exhibited by the members of services was followed to the later. The Petitioner was also afforded time to appear before the subordinate Disciplinary Committee that was instituted to commence disciplinary inquiry.
26. The Respondents aver that the Petitioner was suspended from duty following recommendation to the National Police Service Commission, which is the procedure while awaiting approval.
27. It is the Respondents' case that there was an observer present during the disciplinary committee hearing and the Petitioner being a law enforcement officer, was fully seized of disciplinary procedures which allowed him to have a representing officer as opposed to and advocate and he chose to proceed alone.
28. The Respondents aver that the Petitioner participated in the Subordinate Disciplinary Committee proceedings without any coercion. He pleaded guilty and was convicted on his own plea of guilt and he even opted not to appeal.
29. Despite indicating he did not wish to appeal, the Petitioner went ahead and appealed; the appeal was heard by the 1st Respondent and the same was communicated to the Petitioner vide GSU command.
30. The Respondents aver that the Petitioner has a poor record of service with four disciplinary convictions recorded against him.
31. It is the Respondents' case that the disciplinary process was clearly followed as guided by Section 88(2) of the NPS Act No. 11A of 2011, Chapter 30 of the Service Standing Orders on discipline and the National Police Service Commission Legal Notice No. 90 of 2015 on Discipline Regulations.
32. The Respondents aver that the Petitioner abused his position and chance to serve in the service based on the poor record of service and being a threat to members of the public.

Petitioner's Submissions

33. The Petitioner submitted that the Grounds of Opposition is merely speculative. There were no citizens at the scene of discharge and neither were there any officers at the shopping center. It cannot therefore be said that any human life was threatened. Additionally, the Petitioner disclosed the threats to kill his girlfriend while under influence; he has since confirmed that the words were unfortunate and that the two of them are a couple and have never experienced any disputes between them.
34. The Petitioner submitted that while he confirms that he received a show cause letter, the period between the show cause letter and his response was unjustifiably hurried, as records have already shown.



- Further, there was no proper invitation of the Petitioner by the 1st Respondent to answer to the charges and neither has it provided evidence nor demonstration that there was proper invitation and sufficient time to answer to the charges.
35. It is the Petitioner's submission that he was not accorded a proper physical hearing as the same was hurriedly done without affording him an opportunity to find proper moral support or legal guidance as is expected in disciplinary hearings. It is uncontroverted evidence that the incident happened on 4th January 2021 and on 5th January, barely 24 hours later, he was already facing the disciplinary. The 1st Respondent is yet to show this court how this is fairness and justice to the Petitioner.
 36. The Petitioner submitted that the disciplinary process itself was not impartial. Orderly Corporal Maurice Wakhu had the Petitioner's debt in 2019 and he repaid in 2020, but still had a grudge because his boss, Mr. Gilbert Too, called him over it. Mr. Too who at one time wanted the Petitioner's wife's affection once beat the Petitioner's wife in the Police Camp when she came to visit the Petitioner. Subsequently, Mr. Too gave the Petitioner punishment to work extra hours at the gate at Huruma Koronguny GSU camp. These statements are yet to be disputed nor responded to by the 1st respondent, a clear indication that the petitioner's punishment was unfair, hurried and unwarranted.
 37. The Petitioner submitted that the presence of the two aforementioned officers in his internal disciplinary hearing was biased ab initio. This is yet to be disputed by the 1st Respondent; this manifested a conflict of interest scenario denying the Petitioner a fair hearing.
 38. It is the Petitioner's submission that he appealed his dismissal but was never called for a hearing of the appeal. Further, said dismissal was communicated orally and the 1st Respondent on second thought called the Petitioner to pick his letter dismissing his appeal on 5th June 2024, while the suit was already in this court. This is a clear indication of breach of due process and the manifest unfairness is yet to be addressed by the 1st Respondent.
 39. The Petitioner submitted that the Respondents quickly treated him as a guilty person against the provisions of Article 50(2)(a) of *the Constitution*; and there was no fair trial as provided for under Article 50(1), 2(a)(c)(f)(g)(k) and as stated in Article 25(c) of *the Constitution*, this right cannot be limited.
 40. It is the Petitioner's submission that he was hurriedly terminated under a wrong and grossly unfair attitudinal inclination that is against constitutional presumption of innocence and the entire constitutional regime on the right to a fair trial. Thus, this court not only a responsibility to apply the law as pleaded but also the spirit of the law as needs to be interpreted for protection of fundamental rights and freedoms of litigants.
 41. The Petitioner submitted that it will be a miscarriage of justice for the 1st Respondent to unsit the Petitioner from the seat of justice on the basis that one party preferred another court or different pleadings from the one the Petitioner has chosen to approach the court for justice to be served.

1st Respondent's Submissions

42. The 1st Respondent submitted on three issues: whether the Petitioner was lawfully and procedurally dismissed from the National Police Service; whether the Petition before this Honorable Court raises discernable constitutional issues; and whether the Petitioner is entitled to the reliefs sought.
43. On the first issue, the 1st Respondent submitted that that it is not in contention that the Petitioner did in fact unlawfully discharge a weapon without reasonable lawful cause and the Petitioner did in fact



use threatening language to a police officer senior to him in rank. It is undisputed that the Petitioner did in fact commit offences against discipline in the National Police Service.

44. The 1st Respondent submitted that Regulation 4(3) of the NPSC Disciplinary Regulations states that:

“In exceptional circumstances, where the offence against discipline is clearly manifest as to render investigations unnecessary, the officer in-charge may immediately issue a notification to the appropriate disciplinary committee to conduct the disciplinary proceedings.”

Additionally, Regulation 4 (1) states that the disciplinary process commences upon the receipt of a complaint from a member of the public, a member of the Service or a member of a state organ. In this instance, a complaint was received from a member of the Service namely the Platoon Commander that the Petitioner unlawfully discharged his firearm while being drunk on duty and that the Petitioner threatened violence against his girlfriend and used threatening language to an officer superior to him in rank.

45. It is the 1st Respondent’s submission that the Petitioner was properly invited to answer to the charges by way of the Notice to Show Cause dated 5th January 2021 and Waiver Notice dated 8th January 2021 both rooted in law under Regulation 11(4) and (5) of the NPSC Disciplinary Regulations 2015 which provides that where a disciplinary hearing is scheduled, an officer accused of a disciplinary offence shall be given at least seven calendar days’ notice before the date of the hearing; and the notice may, in exceptional circumstances, be waived and the hearing held in accordance with the Service Standing Orders. The exceptional circumstances are outlined in the waiver notice to be to set an immediate example or if it is expedient in public interest.

46. The 1st Respondent submitted that the Waiver Notice did not in any way violate the Petitioner’s right to a fair hearing and if anything expedited his right to come before the Subordinate Disciplinary Committee and be heard.

47. The 1st Respondent submitted that by virtue of the Orderly Room Proceedings produced as evidence by the 2nd, 3rd and 4th Respondents, it is evident that the Petitioner was given an opportunity to be heard which he waived through his admission of guilt. The Petitioner was also informed of his right to appeal which he further waived by stating that he did not wish to appeal.

48. It is the 1st Respondent’s submission that the disciplinary process carried out against the Petitioner has met the threshold envisioned in Section 4 (3) of the *Fair Administrative Action Act*, thus, the Petitioner was lawfully and procedurally dismissed from the National Police Service.

49. On the second issue, the 1st Respondent relied in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] KECA 445 (KLR) where the Court of Appeal reinforced the principles in the *Anarita Karimi Njeru* case when it held that:

“Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru* (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from



knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

50. The 1st Respondent submitted that this petition does not meet the specificity and precision test required of constitutional petitions. The petition does not outline the precise constitutional violations, instead it invokes the provisions of *the Constitution* in an omnibus that does not specifically state how the 1st Respondent violated the Petitioner’s constitutional rights. For instance, the petition seeks for declaratory orders that the 1st Respondent has violated Articles 27 (1) (2) and (3), 28, 41, 48 and 50 of *the Constitution* with no specificity of how precisely they have been contravened anywhere in the petition.
51. The 1st Respondent submitted that the Petitioner was lawfully and procedurally dismissed from the National Police Service and has not raised any discernible constitutional violations as the Petitioner has admitted culpability for dismissal in his own case.
52. The 1st Respondent further submitted that the Petitioner is not entitled to any of the reliefs sought and the Petition dated 26th April 2024 should be dismissed with costs to the 1st Respondent.

2nd, 3rd and 4th Respondents’ Submissions

53. The Respondents submitted on two issues: whether due process was followed in dismissing the Petitioner; and whether the Petitioner is entitled to the orders sought in the Petition.
54. The Respondents submitted that on 4th January 2021, the Petitioner while under the influence of alcohol had a rifle discharge at Huruma Shopping Centre where several rounds were fired out of his rifle. He further uttered that he wanted to kill his then girlfriend when his Platoon Commander called him. Considering the severity of the offences, the Petitioner was disarmed and booked. He was then served with a show cause letter dated 5th January 2021 which required a response to the Subordinate Disciplinary Committee. In his response, the Petitioner affirmed that indeed the charges were true and the only reason he proffered to the Committee was that the cause of his actions was as a result of intoxication.
55. The Respondents submitted that the Subordinate Disciplinary Committee sat on 8th January 2021 where the charges were read to the Petitioner and he admitted to them and a plea of guilty was entered; and the Committee found the Petitioner guilty. The Petitioner being aware of his right of appeal exercised this right which appeal was heard and determined and the decision was communicated to the Petitioner.
56. The Respondents submitted that the conduct of disciplinary proceedings is guided by Regulation 11 of the National Police Service Commission (Discipline) Regulations, 2015 which provides:
 1. Disciplinary proceedings shall be conducted in accordance with these Regulations the Service Standing Orders and any guidelines issued by the Commission from time to time.
 2. Where an offence against discipline is committed by an officer, the officer’s supervisor may take a corrective action, where applicable, pending the commencement of disciplinary process.
 3. The accused officer shall be notified of the offence accused of having committed and shall be accorded an opportunity of at least three calendar days within which to show cause why disciplinary action should not be taken against him or her.



4. Where a disciplinary hearing is scheduled, an officer accused of a disciplinary offence shall be given at least seven calendar days' notice before the date of the hearing.
 5. The notice under paragraph (4) may, in exceptional circumstances, be waived and the hearing held in accordance with the Service Standing Orders.
 6. Where paragraph (5) is invoked, the presiding officer shall record the reasons for such waiver in writing.
 7. Where applicable or relevant, the officer who is the subject of the hearing may call witnesses or other evidence on his or her behalf, at the officer's own cost.
 8. The disciplinary hearings before the Disciplinary Committees shall be conducted expeditiously and without undue delay or technicalities and any delay in the disposal of the proceedings beyond twenty-eight days shall be reported to the Commission together with the reasons for such delay.
 9. The recommendations of the Disciplinary Committee shall be forwarded to the Commission for confirmation and approval and the Commission shall subsequently communicate the disciplinary action to be taken on the officer through the Inspector-General.
 10. The recommendations of the Subordinate Disciplinary Committee shall be forwarded to the Inspector-General or authorized officer as prescribed in the Service Standing Orders, for confirmation and approval and the Inspector-General or authorized officer shall subsequently communicate or implement, where applicable, the disciplinary action to be taken on the officer, taking into consideration the provisions of regulation 10.
57. The Respondents submitted that they followed the procedure stipulated by law in dealing with indiscipline exhibited by Members of the Service. The Petitioner has not presented before this court an iota of evidence to rebut this position. The Petitioner has sought to rely on mere allegations, falsehoods and uncorroborated claims.
58. It is the Respondents' submissions that they have adduced sufficient evidence that the Petitioner committed an offence that warranted disciplinary action, and in response disciplinary proceedings were conducted where the Petitioner was made aware of his offence and given an opportunity to defend himself. The Petitioner was convicted on his own plea of guilt. They relied in *Felister Waithiengi Mugweru v National Police Service Commission & 2 others* [2018] KEELRC 53 (KLR) wherein Onesmus N. Makau J. held:

“After considering the rival contentions by both sides, I find that the Orderly Room Proceedings were conducted in accordance with the provisions of the FSOs and *the constitution* and as such, the speed with which they were concluded did not render them unfair and unconstitutional. First, the waiver of 24-hour notice before the start of the hearing was permitted by the FSOs. Paragraph 16(x) (viii) of the FSO provides: “(viii) an accused person shall, at least 24 hours before the commencement of such inquiry be notified of the alleged offence against discipline into which it is proposed that an inquiry shall be held... provided that notice need not be given where an immediate example is required, or where the provincial or any gazette officer, considers it expedient or in the public interest that an inquiry should proceed forthwith.”

Second, the petitioner's right to representation a police officer during the orderly room Proceedings was subject her requesting but in this case, the petitioner never requested.



Paragraph 16(x) (vi) of the FSO provides:“(vi) in all cases , the accused may apply for a police officer above the rank of an inspector to assist him/her in his/her defence, and in all the cases in which a gazetted officer considers it to be in the interest of the accuse such officer shall be appointed.” Although under paragraph 16(x) (c) the presiding Officer had a duty to enquire whether the accused officer needs assistance from another officer, the petitioner never raised any objection to proceeding without an assisting police officer. I would find that she never suffered any prejudice because she ably defended herself by cross examining witnesses and even tendered defence and filed an appeal.”

59. The Respondents submitted that the Petitioner’s dismissal was carefully considered and grounded in established legal standards, ensuring that all relevant laws and regulations were properly applied with due regard paid to the severity of the actions by the Petitioner. Therefore, the claim that the decision lacked a proper legal basis is incorrect and does not reflect the thorough legal analysis that was undertaken in making the determination.
60. On the final issue, the Respondents submitted that the Petitioner has not presented any substantiating evidence to support the claims made in the Petition. Although the Petition delineates the rights purportedly violated, it fails to provide any corroborative evidence for these assertions. Additionally, the Petition is characterized by inconsistencies and speculative assertions.
61. The Respondents submitted that should this court grant the reliefs sought by the Petitioner, it would effectively impose sanctions on the Respondents, who were diligently and lawfully performing their constitutional and statutory duties. The Respondents have been executing their mandates in good faith and in accordance with established legal and regulatory frameworks.
62. It is the Respondents’ submission that to grant the Petitioner’s requests would not only undermine their legitimate functions and responsibilities but could also set a precedent that discourages the proper exercise of their official duties. Such an outcome would be contrary to the principles of justice and fair play, as it would penalize entities for acting within the bounds of their legal obligations.
63. I have examined all the evidence and submissions of the parties herein. The issues for this court’s determination are as follows:
 1. Whether the petitioner was fairly and lawfully dismissed from the service.
 2. Whether the petitioner’s constitutional rights were breached.
 3. Whether the petitioner is entitled to the remedies sought.

Issue No 1

64. The petitioner has submitted that he was unfairly treated and the disciplinary process hurriedly done contrary to law and for no proper reason.
65. From the documents before court the petition was dismissed from service for being drunk and discharging a rifle with intention of shooting one Stella Chepkemai Kiboi. Before the dismissal the respondents aver that the petitioner was subjected to a proper disciplinary process.
66. The respondents produced App nos. 2 which they submit is a notice to show cause under legal notice no 90 para 9(b) of 2015. The document signed on 5/1/21 show that the petitioner admitted to discharging bullets from his G3 rifle without reasonable cause due to the influence of alcohol he had consumed. He was then subjected to a subordinate disciplinary committee on the said date 5/1/21



presided over by 5 officers. The proceedings of the said committee have not been produced but are signed by all parties with the petitioner allegedly admitting to the offence.

67. I have looked at legal notice no 90 of 2015 (National Police Service commission Discipline) regulation of 2015. Section 4(1) of the said regulation indicates the manner in which complaints against police officers may commence. Under 55(2) where an incident under subsection (1) occurs, such complaint shall be investigated by the most senior officer available or by an authorized officer in the manner prescribed in the service standard order.
68. However, where the offence is clearly manifest as to render investigation unnecessary, the officer in charge may immediately issue a notification to the appropriate disciplinary committee to conduct the disciplinary proceedings. Sub section 6 indicate that the appropriate disciplinary committee shall upon conclusion of the disciplinary proceedings make a recommendation to the inspector general or authorized officer on the disciplinary action to be taken
69. Under sub section (7) upon conclusion of the disciplinary proceedings and on receipt of the recommendation of the appropriate disciplinary committee, action may be taken by the Inspector General or the authorized officer in accordance with the procedure set out in the said regulation and the standing orders.
70. Under section 10 of the said regulation state as follows:

Subordinate Disciplinary Committee

- (1) Where a hearing is for purposes of undertaking discipline of an officer of the rank of Chief Inspector and below, the Commission shall constitute a Subordinate Disciplinary Committee to inquire into and hear the disciplinary matter.
- (2) The Subordinate Disciplinary Committee shall consist of—
 - (a) a presiding officer. being an officer who is appointed as a presiding officer by the immediate commanding officer of the respective Service, and shall be of a rank not below the rank of Inspector and not of or below the rank of the accused officer;
 - (b) a presiding officer. being an officer who is appointed as a presiding officer by the immediate commanding officer of the respective Service, and shall be of a rank not below the rank of Inspector and not of or below the rank of the accused officer;
 - (c) an officer appointed by the immediate commanding officer of the respective Service to observe the proceedings, who shall not be of a rank lower than the accused officer.
- (3) There shall be, during the hearings of the Subordinate Disciplinary Committee, an officer prosecuting the offence being an officer authorized to inquire into offences against discipline and shall be of a rank higher than the accused officer but not of a rank higher than the presiding officer.
- (4) A police officer facing disciplinary action may be accompanied by another officer of his or her choice for assistance and support: Provided that such an officer shall not be of a senior rank to the presiding officer. (



- 5) The Subordinate Disciplinary Committee may decline the officer selected by the accused officer under paragraph (5) and shall give reasons for the refusal, however the accused officer shall be granted an opportunity to select a different officer to assist him or her in the defence.
 - (6) A police officer aggrieved by the Subordinate Disciplinary Committee's decision may apply for appeal in the following sequence—
 - (a) at the County or Formation or Unit, at the first instance;
 - (b) to the respective Deputy Inspector-General or to the Directorate of Criminal Investigations, at the second instance;
 - (c) to the Inspector-General in accordance with these Regulations and the Service Standing Orders, at the third instance.
 - (7) An appeal from the decision of the Inspector-General shall lie with the Commission in accordance with these Regulations and the Service Standing Orders.
71. The petitioner was apparently subjected to the subordinate disciplinary committee. The respondents aver that they conducted the proceedings under the service orderly room standing orders. Orderly room proceedings are provided for in chapter 30 of the service standing orders. Section 17 of the PSC discipline regulation provide how the disciplinary proceedings may be conducted. Sub section (3) state that in all disciplinary proceedings the accused officer shall be notified of the offence he is charged of and shall be given at least three calendar days within which to show cause why disciplinary action should not be taken against him.
 72. The petitioner has averred that he was never issued with any notice to show cause. The respondents have averred that they followed the process and exhibited exhibit WS2 dated 5/1/2021 in which the petitioner also signed and admitted to the offence of discharging 6 rounds of ammunition without reasonable cause.
 73. On the same day the subordinate disciplinary committee sat and heard his case but there is no notice of the hearing to take place. There are no proceedings exhibited of the hearing on this day but just a document showing members who were present but as to what transpired during the hearing (App WS3) is not stated.
 74. The respondents also exhibited a 'judgment' of their determination which does not bring out the facts clearly and the final findings. It is signed 8/1/21. It is indeed clear how the disciplinary hearing should be conducted. The respondents aver that the hearing was conducted under force standing orders and hearing notice waved. The notice for hearing should be at least 24 hours under section 17(4) of these regulations. The petitioner was never given any notice though but the respondents officer signed a waiver of the notice.
 75. Sub section (6) indicates that where the waiver notice is waived the presiding officer shall be required to make a written statement stating the reasons for the waiver. The officer who waived the notice did not make any written statement as to why the waiver was necessary.
 76. Having analyzed the proceedings, the petitioner was subjected to, it is in my finding that the proceedings were conducted unproceduraly. The offence is said to have been committed on 4/1/21. On 5/1/21 he ws subjected to disciplinary proceedings and a decision made against him without any



notice and no written statement given by the presiding officer as to why he was being subject to a hurriedly convened process.

77. In view of the provision of section 45(2) of the *Employment Act* 2007 it then follows that the petitioner was not fairly and legally dismissed from the service.

Issue No 2

78. As concerns breach of the petitioner's constitutional rights the fact that the petitioner was not subjected to a fair disciplinary process implies that his rights under *the constitution* were breached. The petitioner submitted that his rights under *the constitution* were infringed. He cited breach of articles 41, 27(1) (2) & (3) 28, 48 and 50 of *the constitution*.
79. Section 41 implies fair labour practices which presuppose a fair disciplinary hearing. Article 28 of *the constitution* provides that any person has inherent dignity and the right to have that dignity respected and protected.
80. Indeed being subjected to a flawed disciplinary process is a breach on ones dignity and therefore a breach of that right to dignity.
81. Article 50 of *the constitution* deal with fair trial. Article 50(2)(k) envisages adequate time and facilities to prepare a defence. It is indeed true that the proceedings the petitioner was subjected to were hurriedly convened and he was not given any adequate notice to prepare for his defence. This being the case, I return the verdict that the petitioner's rights under *the constitution* were infringed upon and in particular breach of article 28, 41 and 50(2) of *the constitution*.

Issue No 3

82. Having found as above I return a verdict for the petitioner as follows:
1. A declaration that the rights of the petitioner under articles 28, 41 and 50 of *the Constitution* were breached.
 2. In view of the offence the petitioner was subjected to and in which he admitted committing under the influence of alcohol, I direct that he be paid all his terminal dues from the date of removal from employment to the date of this judgment.
 3. The respondent to pay costs of this petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

