



Mbandu & 6 others v County Government of Kakamega & 2 others (Cause E017 of 2023) [2024] KEELRC 1997 (KLR) (25 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 1997 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E017 OF 2023**

**JW KELI, J
JULY 25, 2024**

BETWEEN

**GODFREY OMONDI MBANDU 1ST CLAIMANT
ABIGAEI IJIKA AGUFA 2ND CLAIMANT
JAMGUN JENSEN IRAVUNGA 3RD CLAIMANT
JOY INDAGO ASIMBA 4TH CLAIMANT
PATRICK KEHODO AKOTO 5TH CLAIMANT
EDWIN AMBETSA AMIRA 6TH CLAIMANT
GEOFFREY ONDIEKI ONDORO 7TH CLAIMANT**

AND

**COUNTY GOVERNMENT OF KAKAMEGA 1ST RESPONDENT
COUNTY PUBLIC SERVICE BOARD OF KAKAMEGA 2ND RESPONDENT
PUBLIC SERVICE COMMISSION 3RD RESPONDENT**

JUDGMENT

1. The Claimants instituted this suit on 18/09/2023 by filing the Memorandum of Claim dated 13/09/2023 supported by the Claimants’ verifying affidavits all sworn on an even date(pg.1-19). The suit had been triggered by the dismissal of the claimants as the 1st Respondent’s employees and the subsequent decision by the 3rd Respondent finding that the claimants had been unfairly dismissed and making an order that they be paid 12 months’ compensation. Vide the said Memorandum of claim, the Claimants jointly have prayed for the following reliefs:-



- a. The decision of the 3rd Respondent dated 24th April 2023 be set aside and the same be substituted by an order reinstating the Claimants to their positions in the 1st Respondent's employment.
 - b. A declaration that the 3rd Respondent's decisions are unlawful, unconstitutional, and contrary to Articles 41, 47 and 50 of *the Constitution* and Sections 41,43(1) and (2) and Section 45 of the *Employment Act*.
 - c. A declaration that the decision of the 3rd Respondent was premeditated, actuated by malice, ill will, and bad faith, and contrary to public policy and law.
 - d. Payment of all withheld salaries, terminal dues, and all other dues as per employment laws from the time of suspension and or termination.
 - e. Damages for unlawful, wrongful, and unfair termination
 - f. Costs of the Claim herein.
 - g. Interests on (f) above at court rates.
 - h. Any other remedy the court deems fit to grant.
2. Accompanying the claim were the claimants' list of witnesses dated 13/09/2023(pg. 20-21), the claimants' witness statements all dated on an even date(pg.22-56), and the Claimants' list of documents dated 13/09/2023(pg. 57-63) and their bundle of documents(pg.64-380).
 3. The claim was opposed. The 1st and 2nd Respondents on 30th October 2023 filed their response to the claim of an even date. The 3rd Respondent on 15th January 2024 filed a Relying affidavit sworn by Simon K. Rotich on 11th January 2024 in response to the claim.
 4. On 24th January 2024, the 1st and 2nd Respondents filed the witness statement of Catherine Gathoni Otenyo dated 23rd January 2024.
 5. Further on 8th February 2024, the 1st and 2nd Respondents filed the list of documents dated 5th February 2024 accompanied with their bundle of documents(pg.1-163).

Hearing And Evidence

6. The claimants testified on oath on 18th March 2024. Godfrey Omondi Mbandu testified as CW1 in his case, produced his evidence as the claim filed, the claimant's list of documents dated 13th September 2023 (comprising of 25 documents that were eventually adopted by the court as the CW 1's evidence on pg. 1- 25) and his witness statement dated on 13th September 2023.
7. Abigael Ijika Agufa testified as CW2 in her case, produced her evidence as the claim filed, the claimant's list of documents dated 13th September 2023 (comprising of 12 documents that were eventually adopted by the court as the CW 2's evidence on page 26- 38) and her witness statement dated on 13th September 2023.
8. Jamgun Jensen Iravunga testified as CW3 in his case, produced his evidence as the claim filed, the claimant's list of documents dated 13th September 2023 (comprising of 22 documents that were eventually adopted by the court as the CW 3's evidence on pg. 39- 61) and his witness statement dated on 13th September 2023.



9. Joy Indago Asimba testified as CW4 in her case, produced her evidence as the claim filed, the claimant's list of documents dated 13th September 2023 (comprising of 25 documents that were eventually adopted by the court as the CW 4's evidence on pg. 62- 87) and her witness statement dated on 13th September 2023.
10. Patrick Kehodo Akoto testified as CW5 in his case, produced his evidence as the claim filed, the claimant's list of documents dated 13th September 2023 (comprising of 22 documents that were eventually adopted by the court as the CW 5's evidence on pg. 101- 123) and his witness statement dated on 13th September 2023.
11. Edwin Ambetsa Amira testified as CW6 in his case, produced his evidence as the claim filed, the claimant's list of documents dated 13th September 2023 (comprising of 14 documents that were eventually adopted by the court as the CW 6's evidence on pg. 87- 110) and his witness statement dated on 13th September 2023.
12. Geoffrey Ondieki Ondoro testified as CW7 in his case, produced his evidence as the claim filed, and the claimant's list of documents dated 13th September 2023 (comprising of 25 documents that were eventually adopted by the court as the CW 7's evidence on Pg. 125- 136 and his witness statement dated 13th September 2023.
13. The Claimants were cross-examined by the counsel for the 1st and 2nd respondents Ms. Tindi and the 3rd Respondent's Counsel Ms. Iseme.
14. The 1st and 2nd respondents' case was heard on 6th May 2023 with Catherine Gathoni Otengo as the only Defence Witness who testified on oath, relied on the response to claim dated 30/10/2023, his witness statement dated 15/01/2024 and respondent's list of documents dated 8/02/2024 (comprising of 12 documents that were adopted by court as Defence Exhibits 1 to 12). DW was cross-examined by the counsel for the Claimants, Mr. Odhiambo, and the 3rd Respondent's counsel, Ms. Iseme.
15. The 3rd respondent relied on the replying affidavit by Simon K. Rotich on 11th January 2024 as its case and evidence.

The Claimants' case in summary

CW1- Godfrey Omondi Mbandu

16. He testified that he was 47 years old and was employed by the defunct local authority in 1996 and thereafter was employed as an accountant in the Ministry of Water Environment and Natural Resources in the county for 4 years.
17. He testified that he is currently unemployed and sought his dues, and to be reinstated. He states that as per the show cause letter (C-Exh-25), four charges were leveled against him for misappropriation of funds, but he was not given any documents to support the charges despite having requested them.
18. He testified that the Public Service Commission found that he had been unfairly terminated and directed he be paid 12 months' salary as compensation and he was free to apply for review. He states that he did appeal to Public Service Commission and came to court to seek his dues since suspension. He testified that he is aware that his position is yet to be filled.
19. He confirmed on cross-examination that he was served with a show cause letter and he attended the disciplinary hearing after receiving the notice to attend dated 30th September 2020, and he was



dismissed through the letter of 16th December 2020 for violation of Public Finance Management Regulation.

20. He testified that despite the charges leveled against him, the county would trust him with public funds because the charges were not correct. He testified that he appealed to Public Service Commission first, but his dismissal was upheld, upon review, Public Service Commission found that he was unprocedurally dismissed and directed that he be paid 12 months' salary as compensation.
21. On why he sued the Public Service Commission, he testified that it relied on the erroneous Ad hoc committee report which was made after the disciplinary hearing on the 2nd Charge, and that the commission never considered his rejoinder. He testified that he sought to be reinstated. That Public Service Commission found that the report on Ad hoc Committee had charges not in the Notice to show cause or the invitation letter to the hearing. He confirmed that the charges against him were related to his employer. He testified that there was no report that the activities were not done.

CW-2- Abigael Ijika Agufa

22. She testified to be currently unemployed. She was employed on 22nd April 2020 by the County. That was working when she was called by the PA to the County secretary and at the County Secretary's office, she was given the Notice to show cause and suspension. She wrote a letter on 24th April 2020 asking for documents that were never supplied.
23. She confirmed to have been invited to a hearing through a letter, which did not inform her of her right to be accompanied by a representative or witnesses. She was called on 17th December 2020 by the Head of Records to collect her dismissal letter on grounds of violating imprest management, financial management, and breach of the *Public Officer Ethics Act*.
24. She testified that she appealed to the Board but her dismissal was upheld on 16th March 2021. She appealed to Public Service Commission on 10th March 2021, who confirmed receiving the appeal on 26th March 2021. That Public Service Commission found she was unfairly dismissed and directed she be paid 12 months' salary as compensation.
25. She sought that the Public Service Commission's decision be set aside and she be reinstated and paid all her dues. She testified that her interaction with finance was only to prepare a requisition to the chief officer for either approval or rejection and she never approved any monies nor was she supplied with any of the documents.
26. She testified that on the charge of Kshs. 223,350 and Kshs. 341,000, she was not aware that charges were proved as the receipts alleged to have been fraudulent in the report were provided and work had been done at the sub-counties (D-Ehb-4).
27. She testified that on the additional charge brought of Kshs. 540,000(Doc-29), she informed the board at the hearing that the imprest had been surrendered. She was referred to D-Exh-1 where the recommendation was that the activity of Kshs. 541,000, was not done, she insisted she answered that the same had been surrendered.
28. She confirmed she appeared before the committee for a hearing and she was given a response. She confirmed that although she asked for documents, there was no proof she asked for them. She remained silent on whether the respondent could trust her after the misappropriation.
29. She testified that allegations against her were about work done elsewhere and the report compiled, which issue she raised in her appeal to Public Service Commission. She testified that the sought-after documents (doc. 28) were never supplied.



30. She remained silent on the issue of what the court was to determine when she did not attach documents before Public Service Commission. She testified she had no document to defend herself on the charge of Kshs. 540,000.
31. She testified that she was deployed as an accounting clerk from administration officer 2 to issue imprest. She worked under the accountant who approved payments. She testified that Public Service Commission found she was unfairly terminated and she expected to be reinstated. She was 51 years old.

CW-3- Jamgun Jensen Iravunga

32. He testified to be currently unemployed. He was employed on 10th February 2017 and was dismissed on 4th June 2020 through suspension and termination letter on 1st December 2020. On receiving the Notice to show cause he asked for documents which were never issued by the respondent and he responded on what he knew.
33. He testified that he attended the hearing of the board without documents and he was not informed of his right to have a representative. He received his dismissal letter on 11th December 2020, on three grounds and he appealed on 20th January 2021 to the Board and made a follow-up on 26th February 2024.
34. He later appealed to Public Service Commission who acknowledged receipt of his appeal on 26th March 2021. The appeal was dismissed through a letter of 13th October 2021, but he filed a review, and on 22nd October 2021, Public Service Commission PSC's Lucy directed him to file documents. On 8th December 2021, he sought documents from the Board to file his last appeal but no documents were supplied.
35. On 29th December 2021, he filed a review at Public Service Commission, and on 19th January 2022, the Commission asked the county to supply documents. On 15th June 2022, the Commission directed the appeal to be heard afresh. The appeal was reheard and Public Service Commission directed that he be paid 12 months' salary as the procedure was unfair.
36. He testified that he was an invoicing accountant who invoiced approved requisitions and the invoice was approved and paid by the chief officer. He sought for reinstatement.
37. He argues that although his position was advertised there was an injunction thus the position was not filled. He says he was not informed of the right to be accompanied. He argues that on receiving the show cause letter, he objected to all charges raised. That he requested for documents but they were not supplied. He says on 30th September 2020 he received an invitation to a disciplinary hearing during which he did not provide all documents. He states that the Board decided without documentation and he raised the issue of having not been given documents at the hearing.
38. He states that the invitation letter was dated 20th September 2020, but he did not raise the issue at the hearing. He confirmed he was exonerated on the claim of Kshs. 252,490. But on the charge of 318,000, the board found there was no proof of activity having taken place.
39. He testified that the appeal did not prove he had denied the issue of monies. He states that on the issue of imprest documents, he was not in the custody of the documents for him to produce them. He states that Public Service Commission failed to consider his complaint that he had no documents. He stated that he wanted to be reinstated and not be compensated. He stated that he is 36 years and one month old.



CW-4-Joy Indago Asimba

40. She testified to be unemployed. She was working at the budget office as an accountant as of 4th June 2020 when she was issued with a notice to show cause. She requested from the county Committee documents on 8th June 2020 to be able to respond but none were supplied. She however responded based on information she had in memory on 10th June 2020.
41. She testified that the letter inviting her to a hearing did not inform her of her right to representation. She attended a hearing where no documents were produced and she was dismissed on 15th December 2020. She appealed to the board which responded after 113 days and upheld the dismissal on 15th March 2021.
42. She appealed to the Public Service Commission on 13th October 2021 who at first dismissed her appeal, but on 22nd December 2021, she sought review and on 15th June 2022 the Public Service Commission allowed the appeal to be reheard. She requested documents from the Board but the Board never responded. She expected to be called for a fresh hearing, but she was not.
43. She testified to having seen a letter from the Board to the Public Service Commission alleging some documents were attached but there were no documents. She in a rejoinder on 5th October 2022 informed the Public Service Commission she had no documents, which allowed her to appeal and directed she be paid 12 months' salary for unfair dismissal.
44. She testified to have requested for documents because the imprest changed and the process went through the approval process by Chief officers, heads of departments, and IFMIS. She testified that at the time of dismissal, there was no imprest that she had not surrendered and no complaints had been raised. That she only used to key in the budget and was not involved in any approval. She faults the Public Service Commission decision for failing to reinstate her.
45. She testified that she was not aware that the Public Service Commission decision found there was a valid decision to dismiss her. She testified that she responded to a show cause letter and indeed she attached documents and was called for a hearing.
46. She confirmed to have received Kshs. 504,000 which was signed for. She says the leadership training for Kshs. 504,000 was in Mombasa and she traveled there by bus. That she received the amount on behalf of three others who traveled by bus also and they provided receipts. She could not remember which bus company she traveled with and that she attached copies of documents she received. She received imprest on behalf of others as it reduces paperwork. She was not afforded the opportunity to produce evidence of three other persons who traveled with her to Mombasa.
47. She testified that she could not produce original documents at the Public Service Commission as she had already given them during the surrender. She was 35 years old.

CW-5- Patrick Kehodo Akoto

48. He testified to be unemployed and 59 years old. He testified that he was an ECDE Program officer employed in 1988 and seconded to the county in 2015 to supervise ECDE teachers.
49. On 4th June 2020, he received a show cause letter and on 9th June 2020 he requested to be supplied with documents but never received any response, he said the invitation for a hearing did not inform him about the right to be accompanied by a representative. That he responded to show cause from his memory and on 30th September 2020 at the hearing there were new charges brought against him that were not in the show cause letter, and the same had no supporting documents.



50. On 6th October 2020, he asked for documents from the CEO of the Board but he was never given and he was dismissed. He sought review from the board who only replied on 4th March 2021 and upheld his dismissal.
51. He appealed to Public Service Commission first but the appeal was dismissed but on review, the same was reheard. He says there was no fresh hearing. He argues that Public Service Commission found that the dismissal was unfair and recommended 12 months' salary. He stated he ought to have been reinstated for the remaining few days as he is almost 60 years old, he says when he went for a hearing he had the opportunity to present his case and that he was found culpable on one charge. He was dissatisfied with the Commission decision as it did not order his reinstatement, having found there was no valid reason for dismissal.

CW-6-Edwin Ambetsa Amira

52. He testified to be unemployed, was employed by the 1st Respondent for 5 years as an accountant where he processed payments, contract management, and financial reporting.
53. He testified to have been given a notice to show cause and suspension letter and asked to hand over and leave the office immediately. By a letter of 8th June 2020, he wrote to the CEO of the Board and copied to the Governor and relevant CEC but there was no response. He received the invitation letter which referred to an extra charge which was not in the Notice to show cause. He had 3 charges leveled against him in the show cause letter, while the invitation to the hearing referred to 4 charges, which he contested at the hearing.
54. He testified to have requested for documents for the extra charge but none were supplied. On 7th December 2020, he asked the board for evidence of charges, and on 15th December 2020 he received a letter of summary dismissal under a non-existent provision of the *Employment Act*. He sought review from the board and on their delay, he appealed to the Public Service Commission before the 90-day period lapsed. His first appeal to the Commission was disallowed but on review, a fresh hearing of the appeal was ordered. The Commission asked the Board to respond within 14 days, only for the Board, after 104 days to send a matrix of all employees, which response was way past the 14 days' period.
55. He testified that his rejoinder to the appeal was never exhaustively addressed by Public Service Commission as the Board failed to issue him with documents on the extra charge, as he could not access documents for having been on suspension and could not access public documents. On 28th April 2023, the Commission found his appeal merited and directed that he be paid 12 months' compensation for unfair termination.
56. He testified that the Commission did not handle some glaring concerns such as the fact that he was not supplied with documents to respond to the charges against him. He testified that he only requisitioned and received money approved by others. On the charge of Kshs. 448,000, he had been cleared by the accounting officer and he had no pending imprest. On the 1st charge, he confirmed he processed and paid to accountants and his response was made on 9th June 2020. He attended the hearing and made his representation but he had no documents from the employer.
57. He denied having submitted fictitious documents but the documents he had and he had surrendered all his imprest. He appealed on the substantive charges and not just on the procedure. He could not know whether the difference in the charge and the invitation letter was an error, at hearing the board stated that the extra charge would be expunged. He testified that at the hearing he submitted on the charge of Kshs. 429,0000, he testified that he did not deny receipt of money.



58. He testified that the farmer's activity occurred and he attached proof of receipts. He testified that there was attendance at the farmers' event although he did not get in touch with Jomo Kenyatta University to confirm whether the participants attended. The Public Service Commission stated that the activity was for accountants yet the same was for farmers. He confirmed with the chief officer who attended the activity that the farmers attended.
59. He testified that the Public Service Commission failed to consider he was not supplied with documents and that no witnesses who attended the event were called. The documents surrendered were per diem documents for meals and transport to and from Nairobi Juja. After surrender the documents goes to the treasury and it is archived. He had no access to the office to access documents. He surrendered documents immediately after the activity and the suspension was later. The accounting officer runs the office with the surrender documents.
60. He testified that there was no issue raised by the accounting officer after the surrender. He interpreted fairness to mean reinstatement. He was 40 years old.

CW-7- Geoffrey Ondieki Ondoro

61. He testified to be unemployed. That on 5th June 2020, he was served with a show cause and suspension letter dated 4th June 2020. Through a letter dated 8th June 2020 he requested to be supplied with documents that were never supplied.
62. He was invited to the hearing and thereafter he was dismissed. He sought review by the Board, but his dismissal was upheld. He appealed to Public Service Commission which at first dismissed his appeal, but on review, the appeal was directed that it be reheard. He states that there was no fresh hearing and the Board never provided any documents but the Commission found that the dismissal was unfair.
63. He testified that his work was to make requisitions and not to authorize payments.
64. He testified that the amount of Kshs. 469,900, 398,700, Kshs. 354,800 and 355,6000 were not made to his account. He was aware of the requisition of Kshs. 396,000 which was approved, the same case for the other amounts, and there was never a challenge.
65. He testified that for the cases above, he paid persons in the activities and he surrendered to the chief officer documents that were never questioned. He testified that his dismissal having been found unfair, he hoped to be reinstated, and sought the court to set aside the decision of the Commission and order his reinstatement and that he be paid all his dues since suspension.
66. He testified that the Ad hoc report relied on was never supplied to him nor were documents availed to him. He was 43 years old and sought to be reinstated.
67. He testified that the Notice to Show cause letter had 11 charges while the invitation to the hearing had 6 charges. He could not confirm whether his response to the show cause letter was filed and that he could not defend himself during the hearing as the documents were with the county.
68. He testified that the Ad hoc report was not supplied to him. He confirmed that his response to the show cause letter dated 10th June 2020 was very detailed from memory. He testified that in his appeal to Public Service Commission, there was no denial that he received the money. He testified that he asked for the Voucher because it shows the requisition, the attendance and payment receipts, and the voucher itself.



69. He testified that Public Service Commission was enjoined in the suit as it relied on the Ad Hoc Report and on finding he was unfairly dismissed failed to reinstate him. He testified that he was never informed that some charges were dropped.

1st and 2nd respondents' case in summary

70. The defence case was summarized from the testimony of Catherine Gathoni Otenyo's (DW) witness statement dated 15-01-2024. DW was the secretary and CEO of the board. She testified that the County Human Resource Management and Advisory Committee being unable to handle the dispute involving the Claimants since some Chief Officers had signed some of the vouchers under investigation, it referred the dispute to the Board on 28th August 2020 as evidenced under the Minutes of the Committee dated 1st June 2020(Doc. 3 Pg.27 to 29 of Respondent's documents).
71. DW testified that due to COVID-19 and the ongoing audit, the disciplinary process could not be completed in six months although there was no evidence on the issue. She remained silent on the issue of handling the dispute in six months as per the Public Service Manual Policies, 2016. On the allegations that the ad hoc report was done after the disciplinary hearing, she testified that, the Ad hoc committee formed by the board questioned the claimants and considered the show cause letters and their responses and where it was found that the allegations were not supported, the same were dropped.
72. She testified that, during the hearing, the Claimants were shown the documents and the report was done after the hearing (Doc 4 of Claimants' docs).That despite the allegations by the 1st claimant, the charges in the Ad hoc report, and the letter inviting the claimant to the hearing were the same. The 1st claimant was aware of what was required. That the 1st claimant indeed admitted he had money for an activity not as planned.
73. She testified that as relates to the 2nd claimant, an issue of misappropriation did not require one to be an accountant but rather one must account for monies given.
74. As relates to the 3rd claimant, DW testified that he produced a visitor's book and photos and he was discharged on that charge. DW states that at the hearing physical vouchers were produced and officers were to provide supporting documents but they admitted that the documents attached were fictitious.
75. She testified that as regards the 6th Claimant, his charges were 3 and the issue of a duplicated charge was clarified at the hearing.
76. She testified that the claimants' positions were advertised in February 2021 and filled in June 2022 although no evidence was before Court. She stated that as regards the 5th Claimant, there was an additional charge in the letter inviting him to the hearing which was not in the show cause letter, but the 5th Claimant was given the document at the hearing, yet he did not seek for extension of time.
77. On cross-examination, DW testified that as relates to the 4th claimant (Joy), she did not know her personally, but as staff and that on the charge against her of receiving an irregular payment of Kshs. 879,600, the evidence on the same was produced before the committee although it was not produced in court (pg.39 of defence docs).
78. She testified that as per page 44 of the respondent's documents, there was no document produced on charges against the 3rd Claimant but only the report was produced. She testified that there were no supporting documents for all the claimants.



79. DW testified that the County Human Resource Advisory Committee is normally constituted of Chief Officers and the Board delegates power to it. She testified that the committee deals in Human resource matters in delegated cases for Category A to P.
80. She testified that the Board has the mandate to listen to disputes as per Section 59 of the County Governments Act. She was aware of the Kakamega County Discipline Manual and that the respondents argued that there could have been a conflict of interest if investigations were handled by the Committee comprising chief officers. She confirmed that she was not aware of the number of chief officers available. She testified that they followed the rules.
81. She testified that although the county human resources manual allowed the committee to be formed with unconflicted members, the said manual was inferior to the Act. She confirmed that the Board and the committee exercise distinct functions.
82. She testified that the investigations had been commenced by the County Committee on Human Resource and Advisory, which on finding that the same was sensitive as some of the members of the committee had handled the payments, referred the investigations to the Board (Pg.28 of Defence Docs). She testified that the committee issued the show cause letters then the Board investigated.
83. She confirmed that the claimants were not accounting officers and that there were accounting officers above them, but she could not recall them.
84. She objected that an issue of misappropriation could only be brought by the accounting officer.
85. She testified that she did not have evidence in court on the report against the claimants on the misappropriation as per Regulation 22(2) (b), although a complaint must have originated from the accounting officer for the same to reach the County Committee on Human Resources.
86. DW testified that the claimants' positions were either filled externally or internally.
87. She was referred to Regulation 67 of the Public Service Commission Regulations 2020 on what ought to happen pending disciplinary process, and she argued that the matter had been determined, although it was in court. She confirmed that the claimants were employed on permanent and pensionable terms.
88. She confirmed receipt of the Public Service Commission decision which recommended payment of 12 months' salary for unfair termination. She could not answer for Public Service Commission what the 12 months' compensation was for, considering the claimants were permanent and pensionable. She testified that for permanent employees where there is no misconduct they retire at 60 years or 65 years for persons with disability.
89. She confirmed that Public Service Commission said that the procedure by the responded was "lapsed". She was aware fair hearing involved giving sufficient notice and availing evidence. She confirmed that the claimants were not informed of the right to representation in the show cause letter.
90. On cross-examination by the Public Service Commission Counsel, DW confirmed that the process of imprest receipt and surrender involves an officer requesting the accounting officer for imprest, and if it is approved and the payment approved, the requesting officer surrenders at the end of the activity in 24 hours attaching documents. She confirmed that the law does not allow an officer to receive imprest on behalf of other officers.
91. She confirmed that the County Human Resources Advisory Committee is comprised of all chief officers and the appointment is in writing to the accounting officer. She testified that the board can



take over from the County Advisory committee where necessary. She was not aware of the provisions of Regulation 3 of the Public Service Commission Regulations on Counties.

92. On re-examination, DW stated that the committee presented the complaint to the Board, where at MIN 14/d/6/2020, the chief officer for public service administration presented names of persons accused of financial misappropriation affirming that the chief officers are the accounting officers of various departments. 3rd Respondent's case in summary (as per the Replying affidavit of Simon K. Rotich sworn on 11th January 2024).
93. He averred that the decisions of Public Service Commission were not unfair, biased, or informed by malice as it determined the appeals based on the grounds presented and rendered its decisions on 24th April 2024 (SKR 1, SKR 2, SKR 3, SKR 4, SKR 5, SKR 6, and SKR 7).
94. He averred that Public Service Commission found that there was procedural unfairness in the manner the Claimants were terminated and to that end directed that claimants be compensated by being paid an equivalent of 12 months' salary in accordance with the Employment Act.
95. That the decision directing compensation rather than reinstatement is what the claimants are dissatisfied with, and to which the 3rd Respondent states that reinstatement is not an automatic remedy, which must be considered on its merit.
96. That the claimants have not raised any grounds to justify the setting aside of the PSC decision.

Written Submissions

97. The Court after the close of the defence hearing directed parties to file written submissions. The parties complied. The Claimants' written submissions drawn by Otieno, Yogo, Ojuro & Company Advocates were dated 3rd June 2024 and received in court on 5th June 2024. The 1st and 2nd Respondents' written submissions drawn by Tindi Munyasi & Company Advocates were dated 4th July 2024 and received in court on 6th July 2024. Their authorities were filed on 11th July 2024. The 3rd Respondent's written submissions drawn by Selina Iseme, Advocate were dated 18th June 2024.

Determination

98. The Court in determination of the case considered the background of the case as follows:-

Show cause letters

99. The claimants were served with show cause and suspension letters as follows: -

Godfrey Omondi Mbandu's show cause was dated 4th June 2020. (pg.123-124)

Abigael Ijika Agufa's show cause letter was dated 15th April 2020 (pg. 125-126)

Jamgun Jensen Iravonga's show cause letter was dated 4th June 2020 (pg. 154-156).

Joy Indago Asimba's show cause letter was dated 4th June 2020 (pg. 223-224 of C-Exh).

Patrick Kehodo Akoto's show cause letter was dated 4th June 2020 (pg. 297-298).

Edwin Ambetsa Amira's Show Cause Letter was Dated 4th June 2020 (pg. 349-350).

Geoffrey Ondieki Nyandoro's Show Cause Letter was dated 4th June 2020 (pg.355-356).



Request for documents

100. On receipt of the show cause letters the claimants requested copies of payment vouchers in support of the charges against them as follows: -
- i. Godfrey Omondi Mbandu's (pg.121-122); Jamgun Jensen Iravonga's(pg.157-158); Joy Indago Asimba(pg.225); Geoffrey Ondieki Nyandoro's (pg. 357) and Edwin Ambetsa Amiras all wrote the letters dated 8th June 2020
 - ii. Patrick Kehodo Akoto wrote a letter dated 9th June 2020 (pg. 299) and 6th October 2020(pg. 271)
 - iii. No request letter was filed in court for Abigael after the show cause letter.
101. Responses to Show Cause Letter
- i. Godfrey Omondi Mbandu replied to the show cause letter through the letter dated 10th June 2020(pg. 117-119 of C. Exh)
 - ii. Abigael Ijika Agufa replied to the show cause letter through the letter dated 30th April 2020 addressed to the county secretary (pg.128-129 of C-Exh).
 - iii. Jamgun Jensen Iravonga replied to the show cause letter through the letter dated 10th June 2020 (pg.159-161of C-Exh).
 - iv. Joy Indago replied to the Show Cause letter through the letter addressed to the Chief Officer, Public Service, and Administration, and received on 10th June 2020.
 - v. No responses to show cause letters were filed in court for Patrick Kehodo Akoto, Edwin Ambetsa Amira, and Geoffrey Ondieki Nyandoro.

Invitation to Disciplinary Hearing

102. All the claimants were invited to disciplinary hearings by the County Public Service Board through letters dated 30th September 2020. (pg. 116, 131, 162-163, 232-233, 300-301, 351-352, 359-360)

Summary dismissal

103. They were then issued with summary dismissal letters as follows: -
- a. Godfrey Omondi Mbandu's summary dismissal letter was dated 15th December 2020(. pg.114-115).
 - b. Abigael Ijika Agufa's summary dismissal letter was dated 15th December 2020(pg.132-133).
 - c. Jamgun Jensen Iravonga's summary dismissal letter was dated 15th December 2020(pg.164-165).
 - d. Joy Indago Asimba's summary dismissal letter was dated 15th December 2020(pg.234-235).
 - e. Patrick Kehodo Akoto's summary dismissal letter was dated 15th December 2020(pg.295-296).
 - f. Edwin Ambetsa Amira's summary dismissal letter was dated 15th December 2020(pg.317-318).
- Geoffrey Ondieki Nyandoro's summary dismissal letter was not filed.



Appeal to the Board

104. The Claimants dissatisfied with the decision to summarily dismiss them applied for review before the Board as follows: -
- a. Godfrey Omondi Mbandu's wrote letters dated 25th January 2021 and 26th February 2021(pg.111-113).
 - b. Abigael Ijika Agufa wrote a letter dated 25th January 2021(pg.133).
 - c. Jamgun Jensen Iravonga wrote a letter dated 28th January 2021 and 26th February 2021(pg.166-168).
 - d. Joy Indago Asimba wrote letters dated 29th January 2021 and 26th February 2021(. pg.236-238).
 - e. Patrick Kehodo Akoto wrote a letter dated 4th January 2021(pg.294).
 - f. Edwin Ambetsa Amira's wrote a letter dated 15th January 2021(pg.347-348).
 - g. Geoffrey Ondieki Nyandoro wrote a letter dated 25th January 2021(pg.361).

ON Board Decision on appeal

105. The Board on 16th March 2021 upheld its decision to dismiss all the claimants (Pg. 105, 134,169,239,293, 346, 361)

ON Process before the Public Service Commission

Appeal to Public Service Commission

106. After the Board (2nd Respondent) upheld its decision to dismiss the claimants, the claimants appealed to the Public Service Commission as follows: -
- a. Godfrey Omondi Mbandu's appeal was dated 11th March 2021 (pg.106-110).
 - b. Jamgun Jensen Iravonga's appeal was dated 11th March 2021 (pg.170-174).
 - c. Joy Indago Asimba's appeal was dated 11th March 2021 (pg.240-243).
 - d. Patrick Kehodo Akoto's appeal was dated 5th February 2021 (pg.272-274).
 - e. Edwin Ambetsa Amira's appeal was dated 11th March 2021 (pg.340-343).
 - f. Geoffrey Ondieki Nyandoro's appeal was dated 11th March 2021 (pg.363-366).
 - g. The appeal by Abigael Ijika Agufa was not filed in court.

Decision on appeal by Public Service Commission

107. Through the letters dated 13th October 2021, the Commission disallowed all the claimants' appeals (pg. 102-103, 136, 175-176, 245, 291-292, 344, 363-366, 179-182).
108. Request for documents by claimants to the Board
- i. Godfrey Omondi requested documents from the service board through a letter of 8th December 2021(pg. 96). The board responded on 10th December 2021(pg. 97).



- ii. Abigael Ijika requested for document from the service board through a letter of 8th December 2021(pg. 130).
- iii. Jamgun Jensen requested for document from the service board through a letter of 8th December 2021(pg. 178). The board responded on 10th December 2021(pg.184)
- iv. Joy Indago Asimba requested for document from the service board through a letter of 9th December 2021(pg. 247). The board responded on 10th December 2021(pg.184)
- v. Edwin Ambetsa Amira requested for document from the service board through a letter of 7th December 2021(pg. 316).
- vi. Geoffrey Ondieki Nyandoro requested for document from the service board through a letter of 8th December 2021(pg. 358).

Review application by the Kenya County Government Workers Union to the Public Service Commission.

- 109. Through a letter dated 22nd December 2021(pg. 289), the Kenya County Government Workers Union applied for review on behalf of the Claimants who are its members urging the Commission to review its earlier decision and allow the claimants to be reinstated and asked they be allowed to present their evidence before the commission. Godfrey Omondi made a review application dated 28th December 2021(pg. 91-94). Jamgun Iravonga made a review application dated 29th December 2021(pg. 179-182).
- 110. Through a letter dated 18th January 2022(pg. 90), the Commission asked the County to respond to the application for review.

Review allowed

- 111. On 15th June 2022, the Public Service Commission allowed the review and directed that the Claimants' appeal be heard afresh.
- 112. The county Government was directed to file a response on the grounds of appeal by the claimants within 14 days from that date(pg.88-89).
- 113. The response by the County Public Service Board was made later on 27th September 2022. (pg.84-87)
- 114. Rejoinder after the Service of Board's Response
 - i. Godfrey filed letter dated 30th September 2022(pg-73-75)
 - ii. Abigael Ijika filed letter dated 6th October 2022(pg. 143-144).
 - iii. Jamgun Jensen filed letter dated 3rd October 2022(pg. 195-198).
 - iv. Joy Indago Asimba filed letter dated 6th October 2022(pg. 257-258).
 - v. Edwin Ambetsa Amira filed letter dated 6th October 2022(pg. 307-308)

Decision by the Public Service Commission

- 115. Through letters dated 28th April 2023 each to all the Claimants, the Public Service Commission notified them that the appeal had been allowed and enclosed the Commission's decision dated 24th April 2023.
- 116. The commission decisions were as follows for each of the claimants: -



Godfrey Omondi (Pg. 65-72)

117. The Commission found that on procedural fairness, he did not ask to be represented and was denied. As to why the Board handled the matter rather than the committee, it found that this was explained adequately by the board. It found that the board failed to provide vouchers to the claimant despite the request dated 8th June 2020. It found that the 2nd respondent did not respond to the request for information and remained silent which was against the right to access information and to fair administrative action. It found that the employer under an employment contract should provide valid reasons and comply with fair procedure. It found the termination was unfair and pursuant to section 86(4) of the *Public Service Commission Act*, 2017 read with Regulation 21 of PSC (County Appeals Procedure) Regulations, 2022, and awarded 12 months' salary for unfair termination.

For Abigael Agufa (Pg. 145-152)

118. The Commission found that the claimant sought reinstatement and alleged that she had been paid per diem for working overtime but she could not show support for the said payments. It found that she alleged that she could not access information although she never specified which information or provided proof she asked for and was denied. It found that there was a substantive reason to terminate her. On procedural fairness, the Commission found that the 2nd respondent introduced a new charge through the invitation letter of 30th September 2020 and picked on 2nd October 2020 which did not allow the claimant time to respond.

119. The Commission found that the board failed to answer the issue of inadequacy of time and the commission found there was procedural unfairness. It observed that the dismissal letter did not specify the charges against the claimant. It found the termination was unfair and pursuant to section 86(4) of the *Public Service Commission Act*, 2017 read with Regulation 21 of PSC (County Appeals Procedure) Regulations, 2022, and awarded 12 months' salary for unfair termination.

Jamgun Iravonga (pg. 207-215)

120. The Commission found that he sought reinstatement. It found that the reasons for termination were substantive for some charges but the board failed to respond to the request for documents violating their right to access information and fair administrative action. That failure to avail payment vouchers to the appellants amounted to unprocedural unfairness. The Commission found the termination was unfair and pursuant to section 86(4) of the *Public Service Commission Act*, 2017 as read with Regulation 21 of PSC (County Appeals Procedure) Regulations, 2022, and awarded 12 months' salary for unfair termination.

Joy Indago (Pg. 262-269)

121. The Commission found she sought for reinstatement. The Commission found that the claimant duly appeared before the committee and the reasons for her termination were valid. Nevertheless, the board failed to respond to requests for documents thus making the termination procedurally unfair. The Public Service Commission found the termination was unfair and pursuant to section 86(4) of the *Public Service Commission Act*, 2017 as read with Regulation 21 of PSC (County Appeals Procedure) Regulations, 2022, and awarded 12 months' salary for unfair termination.

Patrick Kehodo Akoto (pg. 276-283)

122. The Commission found that he wished to be reinstated. The Commission found that the claimant was found culpable of one charge that was introduced in the invitation to the hearing of Kshs. 739,000.



The board only argued that the claimant failed to respond to the charge in the invitation letter. The board failed to answer the issue of adequacy of notice. The Commission found that notice of a charge as per section 35(1) (c) of the *Employment Act* is 28 days while the claimant here was given the invitation letter with a new charge on 30th September and invited for a hearing on 7th October 2020. It found there was unprocedural unfairness in so far as the new charge was introduced and the claimant was not given time to respond.

123. The dismissal letter did not also state the charge for dismissal. The Commission found that there was no valid reason for termination nor was there procedural fairness. It found the termination was unfair and pursuant to section 86(4) of the *Public Service Commission Act, 2017* as read with Regulation 21 of PSC (County Appeals Procedure) Regulations, 2022, and awarded 12 months' salary for unfair termination.

Edwin Ambetsa (pg.321-330)

124. The Commission found that the claimant anchored his appeal on procedural unfairness which the board explained save on failure to supply the appellant with copies of payment vouchers that he requested. It found there was procedural unfairness but on substantive fairness, it found that the claimant did not respond to the substantive issues in the show cause letter thus reason for termination was valid.
125. The Commission found the termination was unfair and pursuant to section 86(4) of the *Public Service Commission Act, 2017* as read with regulation 21 of PSC (County Appeals Procedure) Regulations, 2022, and awarded 12 months' salary for unfair termination.

Geoffrey Ondieki Nyandoro (pg.375-379)

126. The Commission found that he sought reinstatement. It found that the claimant here majorly appealed on procedural unfairness, but found that there was no evidence he sought to be represented and a representative was denied. The issue of the Board handling the Disciplinary matter rather than the committee was well explained but the Board failed to reply to the request for documents violating the right to access to information and the Fair Administrative Actions Act. PSC found the termination was unfair.
127. The Commission found the termination was unfair and pursuant to section 86(4) of the *Public Service Commission ACT, 2017* as read with Regulation 21 of PSC (County Appeals Procedure) Regulations, 2022, and awarded 12 months' salary for unfair termination

Final decision by employer

128. Upon receipt of the Public Service Commission's decisions the County Public Service Board through letters dated 30th June 2023 each to all the Claimants, the County Public Service Board confirmed its decision to uphold the said decision by Commission (Pg. 64,153,216,270,275,320,380 of the 1st and 2nd Respondent's bundle of documents). A sample of the letters at page 64 in part stated: ' the Board in its 88th Meeting held on 17th May 2023, upheld the decision of the Public Service Commission that you be paid twelve (12) months salary for unfair dismissal.' The Board then stated the case stands closed.

Issue For Determination

129. The Claimants addressed the following issues for determination in the claim: -
- a. Whether the Claimants' termination was unlawful and unfair.



- b. Whether 1st and 2nd defendant had jurisdiction to handle disciplinary claims against the Claimants.
 - c. Whether the 1st and 2nd Respondents proved the allegations against the claimants.
 - d. Whether the 1st and 2nd Respondents actions were actuated by malice, ill will and bad faith contrary to public policy and the law.
 - e. Whether actual loss was established by the 1st and 2nd Respondent
 - f. Whether the Claimants are entitled to the reliefs sought.
130. The 1st and 2nd Respondent addressed the following issues for determination in the claim:
- a. Was the process leading to termination of the Claimant's fair and in accordance with the provisions of the *Employment Act*.
 - b. If there was valid reasons to terminate the claimants from employment
 - c. Whether the Claimants should be reinstated back to employment
 - d. Issue of the Public Service Decision ruling the claimants be compensated by payments of 12 months salary.
 - e. Issue of award of Damages for unlawful wrongful and unfair termination.
131. The 3rd Respondent addressed the following issues for determination: -
- a. Whether the 3rd Respondent, in making the decision being contested acted within the law.
 - b. Whether the claimants should have been reinstated.
132. The court having heard the case, analysed the background to the case and perused the submissions and was of the considered opinion that the issues placed before the court by the parties for determination were as follows: -

Whether the Claimants are entitled to the reliefs sought.

Whether the Claimants are entitled to the reliefs sought.

Submissions by Claimants

- 133. The claimants submit that they were employed variously by the 1st Respondent and through letters of 15th April 2020 and 4th June 2020 respectively, they were served with show cause letters and put on suspension on various allegations.
- 134. They submit that by dint of sections 43, 45(2), and 47(5) of the *Employment Act*, 2007, the employer has the burden to prove the reasons for termination.
- 135. They submit that by dint of Section 43, where an employer fails to prove the reasons for termination, then the termination is deemed unfair. The claimants submit that in employment matters, the burden does not shift to the employees to prove reasons for termination.
- 136. The claimants submit that for termination to be fair, there must be both substantive and procedural fairness relying on *Walter Anuro v Teachers Service Commission (2013)eKLR* and that the employer must explain to an employee in a language an employee understands reasons for termination, an employee be allowed a representative of the employee or a fellow employee, shop steward to be present



- during the explanation, the employer to consider the explanation of an employee and where the employer has more than 50 employees to comply with internal disciplinary procedural rules as held in *Alphonse Machanga Mwachanya v Operation 680 Limited* (2013)eKLR.
137. The Claimants assert that there was no reason offered for the termination of their employment pursuant to section 43(1) of the *Employment Act* and to buttress this assertion they relied on *Godfrey Paul Okutoyi v Habil Olaka Of the Kenya Bankers Association & Anor* (2018) eKLR and Miscellaneous application N. 267 of 2014-Republic v Public Procurement Administrative Review Board & 3 others.
 138. The claimants submit that Article 50 enjoins every person to have their dispute resolved by an impartial tribunal or body. They submit that after their suspension they on various dates requested documents in support of the charges levelled against them to be able to respond to the said show cause letter. They submit that the documents were never produced even at the disciplinary proceedings held on various dates contrary to the provisions of Articles 35 and 50 of *the Constitution* and the Fair Administrative Actions Act.
 139. They submit that they were subjected to the disciplinary hearing without any representation nor having been accorded documents in support of the charges.
 140. The claimants submit that the minutes of the meeting of the County Human Resource Management Committee held on 12.06.2020(D-Ex-3) raised allegations that were not supported by any evidence and the 1st and 2nd Respondents never produced any evidence.
 141. The claimants submit that neither the accounting officers under whom the claimants worked tabled any evidence as contemplated by Regulation 22(2)(b) of the Public Finance Management Regulations 2015, in support of the particulars of any unauthorized expenditure.
 142. The claimants submit that the County Discipline Manual at Part Four mandates the County Human Resource Management Advisory Committee to hear and decide disciplinary cases for persons under job group A to P within which the claimants belong, and thus The County Public Service Board had no mandate to handle the dispute unless the committee was unable to finalize the same.
 143. The claimants assert that no documents were forwarded by the committee to the Board and none were presented to the 3rd Respondent. They submit that in the County Regulations on *Public Finance Management Act* at Section 143(1), an accounting officer is mandated to undertake investigations for any reported case of loss and where the accounting officer is implicated, the CEC shall revoke the investigation authority and report to the relevant authority.
 144. The claimants submit that despite the 2nd respondent's assertion that there was a conflict of interest affecting the committee to handle the claimants' disciplinary disputes, there was no report presented in court on the alleged assertion, that allowed the 2nd Respondent to assume the mandate of hearing the dispute against the claimants. The claimants assert that the Committee was never short-handed in performing its duty.
 145. The claimants submit that the Ad hoc Report dated 17th November 2020 was produced way after the claimants were heard in October 2020 and thus the witnesses who made their defence were not cross-examined nor were the documents relied on by the Ad hoc committee seen by the claimants.
 146. The claimants submit that as per Regulation 146 of the Public Finance Management Regulation, 2015, an accounting officer ought to keep a register of all losses in a county government entity and attach a list of the losses incurred during the year to the financial statement submitted to the Auditor General for audit.



147. That no such register was presented before the court to show the 1st respondent incurred such losses and thus there was no valid reason to terminate the claimants' employment.
148. The claimants challenged the 1st and 2nd respondents' decisions before the 3rd Respondent through the Kenya County Government Workers Union to review the 2nd respondent's decision upholding the claimants' dismissals in an application dated 22.12.2021.
149. That through the letter of 15th June 2022, the 3rd respondent considered the review application and allowed the same directing the matter to be heard afresh and the county to respond on the grounds of appeal raised within 14 days thereof.
150. The claimants submit that the county in breach of the timelines by PSC responded through the letter dated 27th September 2022 providing documents in support of the charges, which they had failed to provide. The claimants objected to the response but the said objection was not considered by the 3rd respondent and neither did the 3rd respondent consider the claimants' rejoinder before making its decision.
151. That through the letter of 28th April 2023, PSC forwarded its decision dated 24th April 2023 setting aside the decision of the 2nd respondent and ordering the 1st and 2nd respondents to pay the claimants 12 months' salaries for unfair termination.
152. The claimants urge the court to find that their termination was unfair.
153. The claimants submit that by dint of section 49 of the [Employment Act](#), where in the opinion of a labour officer an employee's dismissal or termination of employment is unfair, it recommends that either an employee be reinstated and be treated as though they were never terminated, or re-engage the employee in work comparable to that which the employee was employed to before the dismissal and to buttress this assertion they rely on the case of Ken freight (EA) Limited Benson K. Nguti SC Pet No. 37 of 2018(2019)eKLR.
154. The claimant asserts that the 3rd respondent was wrong to rely on section 49 (c) of the [Employment Act](#) in coming up with its decision of 24.04.2023 ordering the respondents to pay the claimants 12 months' salaries for unfair termination instead of ordering reinstatement.
155. They submit that in the Public Service Commission Regulations 2020, Regulation 67, where a disciplinary process has not been concluded administratively or before the commission or in court, a public body shall not recruit an officer to substantively fill the position.
156. The claimants state that the 1st and 2nd respondent violated their own regulations as in the summary dismissal letters they stated that the appeal was to be made in 90 days to the County Public Service Board in their letter of 15th December 2020. The claimants appealed to the board in January 2021 and sent a reminder in February 2021 and the Board made a decision on 16th March 2021. They thereafter appealed to PSC which made a decision on 28th April 2023 which the claimants challenged before the court.
157. The claimants state that the 2nd respondent admitted to having advertised the claimants' positions when the claimants' appeal was before them for appeal which points to a case of predetermined decisions against the claimants.
158. The claimants assert that the respondents contravened the Public Service Commission Regulations, 2020 on timelines to review and appeal.



159. The claimants submit that the 1st and 2nd respondents have not shown any proof that they advertised the claimants' position and urge the court to reinstate them. They submit that the reliefs under Section 49 of the *Employment Act* are discretionary and the court in setting aside the 3rd respondent's grant of 12 months' compensation under Section 49(1) (c) should consider that substantive justice is done to the claimants and relies on the decision in *Kenya Revenue Authority & 2 others v Darasa Investments Limited* (2018) eKLR.
160. The claimants submit that the court in granting compensation considers if it is to make good an employee and not to punish the employer. The claimants submit that the court should make any other order for the sake of justice considering the peculiar circumstances of each case depending on the nature and quantum of relief that would be awarded. The claimants submit that section 49(f) empowers the court to consider the reasonable expectation of the employee as to the length of time the employment might have continued to work if not for the termination.
161. The claimants submit that the respondents acted arbitrarily toward them and they should be condemned to pay the claimants damages. The claimant relied on the decision in *Obonyo and Another v Municipal Council of Kisumu and Hema Hospital V Wilson Makongo Marwa*.

1st and 2nd respondents' submissions.

162. The 1st and 2nd respondents submit that the process leading to the termination of the Claimant's employment was fair, reasonable and in adherence to the provisions of the *Employment Act*.
163. They submit that they issued notices to show causes, one dated 15th April 2020 and the rest dated 4th June 2020.
164. That the various charges against the claimants were outlined. They submit that the charges were for the same year for the months of January to March 2020, hence the activities were still fresh in the claimants' minds.
165. They submit that the show cause letters required the claimants to produce documentation on various monies they had processed or received, and it was thus the claimants who were required to prove the activity for imprest received that took place and not the 1st and 2nd respondent since it was the claimants who had processed and received the monies.
166. They submit that the claimants all acknowledged receipt of the show cause letters and they had ample time to respond to the charges therein.
167. They submit that the claimants all responded to the show cause letters and they did not indicate that they needed documentation to respond thereof.
168. They submit that the Ad hoc Committee was formed to handle discipline cases and on considering the charges and responses, dropped some charges that were sufficiently proved as discernible in the subsequent notice for Disciplinary hearing. They submit that this shows that the respondents accorded the claimants fair and due process.
169. They submit that the claimants were called to a hearing and they admitted receiving the notices for them to give their submissions.
170. They state that the claimants were heard and their submissions considered.
171. They state that the Report by the Ad hoc Advisory and Discipline Committee of the Board titled, "Report of County Government of Kakamega Staff involved in Financial irregularities" was proof that



the claimants were given a hearing and they made their presentations which were considered before a decision was made.

172. They submit that the Ad hoc report was table before the Board and was adopted as per the minutes of 7th Special Board Meeting held on 24th November 2020 Minute SP/43/01/2021(pg. 69-70 of respondent's documents).
173. They submit that 2 officers Kennedy Lumbwe and James Joab Ambeyi Mukolwe were reinstated after the disciplinary hearings and thus the 2nd respondent made efforts to have a fair process.
174. They submit that the claimants appealed against the dismissal which appeals were further considered in the minutes of the 44th Board Meeting on 26th February 2021 Min 504/03/2021(pg. 72-73).
175. They submit that the claimants testified that they requested documents, but they submit that the nature of the charges levelled required the claimants to provide proof of the activities where imprest was issued, which the claimant had processed themselves, and to provide the documents thereof.
176. They submit that they did not have in their possession the said documents as the claimants did not provide them and thus the respondents were seeking them.
177. They submit that the claimants had the information in their ambit and knowledge, as they were the ones who alleged several activities and events had taken place for monies they received and for which they were being required to provide proof.
178. They submit that the claimants responded to the show cause letters and at the disciplinary hearings they provided documents to the committee as per the report of the Ad Hoc Committee.

They further submit that: -

179. Patrick Akoto Kehodo (5th Claimant) No. 4 page 8- he produced documents for charges 1 and 2, he was exonerated for the charge of receiving irregular payment of Kshs. 399,700 receiving a double payment of Kshs. 263,000, receiving irregular payments of Kshs. 232,700 which the committee noted imprest was fully and properly surrendered. He was found culpable for irregularly receiving payment of Kshs. 739,000 as the activity did not take place and he alleged the money was given to auditors.
180. Joy Indago Asimba (4th Claimant) -produced documents in support of the imprest she received and she was exonerated for the charges of receiving Kshs. 879,600, Kshs. 787,600, Kshs. 363,000, Kshs. 292,000 as she produced banking slips for monies she re-banked. She was however found culpable for receiving Kshs. 504,000 irregularly and the activity did not take place but she admitted money was paid to other 4 officers whom she named, but the receipts attached in the surrender were found to be fictitious.
181. Jensen Jamgun Iravonga (3rd Claimant) -he produced documents on charges of irregular payments of Kshs. 255,490, Kshs. 109,600 for activities whose imprest was fully surrendered. He was culpable for irregularly receiving Kshs. 318,000, Kshs. 109,600, Kshs. 300,000 and Kshs. 170,800 as documents produced were fictitious, as there was no proof activities took place and payment of Kshs. 170,800 was made yet work was done locally and they paid themselves per diem allowances.
182. Geoffrey Nyandoro (7th Claimant)-he produced documents on the charges of Kshs. 396,000 and Kshs. 465,000 which were found to be fictitious as he alleged activities did not take place. He was found culpable of receiving irregular payments of Kshs. 469,900 as the activities had been done locally from the county boardroom yet they paid themselves per diem allowances. He produced documents to confirm an activity took place for payment of Kshs. 386,500 and he was exonerated.



183. Godfrey Omondi Mbandu (1st Claimant) on the charge of receiving irregular payments of Kshs. 380,000 and Kshs. 301,410, he confirmed that the activity never took place and was found culpable. He was exonerated on the charge of 170,800 upon producing documents and for the charge of Kshs.900,000, he produced proof that he re-banked the money as the event was cancelled.
184. Abigael Ijika Aguja-(2nd Claimant)- on the charge of Kshs. 223,350, she produced documents that were found to be fake as the activity took place in the office and ought not to have been paid per diem. She was also culpable for irregularly receiving Kshs. 341,000 for work done in the office. She further submitted fictitious documents for the charge of receiving Kshs. 540,000/- as the activity never took place.
185. Edwin Ambetsa Amira (6th Claimant) produced fictitious documents for a farmer's expo in JKUAT for Kshs. 448,000 and yet he was an accountant in the finance and not the agriculture department. That the money was paid in his account and he did not provide evidence of travel. That no new charge was there against him but rather a duplication of a charge.
186. They submit that the claimants were obligated to produce documents for activities on imprest given and it was not the Respondents. They submit that some of the charges against the claimants were dropped even before the disciplinary hearing and some at the hearings. That some charges were upheld where documents were found falsified.
187. They submit that DW1 confirmed that any person can receive imprest but the onus of how the same was used and surrendered, lies with the recipient and that one cannot take imprest on behalf of another person.
188. They submit that the County Human Resource Management Advisory Committee forwarded the matter for determination to the board in the minutes of 12th June 2020 under Minute 14/D/6/2020 on pages 27 and 28 of the list of respondent's documents, as the claimants were accountants of various departments and hence there could have been a conflict of interest and quorum would not have been achieved by the committee. They testify that disciplinary matters are a mandate of the 2nd respondent and can only be delegated to the Committee hence handling of disciplinary cases referred to them was within their mandate and they rightfully took over.
189. They state that as testified by DW1 the board had authority under Section 59 of the County Public Service Board Act to handle human resource matters while the Committee comprised of chief officer exercises delegated power.
190. They submitted that DW1 testified that there are 10 departments and a single chief officer could handle them, but the claimants were drawn from across them and thus a conflict of interest could arise and thus the committee referred the matter to the board.
191. They submit that due process was followed from the beginning and ask the court to find so.
192. They submit that the claimants never challenged the substantive charges against them on receiving money but rather concentrated on the process. They submit that there were valid reasons to terminate the claimants' employment as the claimants had misappropriated public funds and contravened financial regulations
193. They state that the Ad hoc Report was prepared by the ad hoc committee after the hearing of the disciplinary matters and it shows that there was a hearing, several other persons were heard and their presentations and evidence were considered before the decision was made. The notices and appeals show that the process was fair.



194. They submit that the claimants should not be reinstated as the reasons for their termination were valid, due process was followed, and their positions are no longer available as 3 years have passed since their termination.
195. The claimants having been accountants dealing with public funds and it having been found they violated financial regulations it is not practicable for them to be reinstated as trust is already eroded.
196. They affirm that the award of compensation by the Public Service Commission as proper as it had the mandate to hear appeals and reviews from the county government.
197. They submit that under section 88(4) of the [Public Service Commission Act](#), the implementation of a decision shall not be deferred or suspended during the pendency of an appeal or application for review.
198. They submit that an award of damage is not available to the claimants in an employment case. Relying on the case of Alfred Githinji v Mumias Sugar Company Limited, Civil Appeal NI. 194 of 1991 (UR); Central Bank of Kenya v Julius Nkonge (2000) eKLR and George Onyango Akuti v G4S Security Services Limited (2-013) eKLR and Joseph Njogu Kamunge v Charles Muriuki Gachari (2016) eKLR.
199. To buttress their case they relied on the following decisions: Jacob Orlando Ochanda v Kenya Hospital Association t/a Nairobi Hospital (2019)eKLR; Kenya Airways v Aviation & Allied Workers Union Kenya & 3 others (2014)eKLR; Central Bank of Kenya v Julius Nkonga Nkabu (2002)eKLR; engineer Francis N. Gachuri v Energy Regulatory Commission (2013)eKLR; Kenya shipping clearing freight Logistics and warehouse workers union v may freight ltd(20020)eKLR; Alfred Nyungu Kimungui v Bomas OF Kenya (2013)eKLR; Joshua Rodney Marimbah v Kenya Revenue Authority(2021)eKLR; Elizabeth Wakanyi Kibe V Telkom Kenya ltd(2014)eKLR; and Associated Provincial Picture Houses Ltd v Wednesbury corporation(1948)1KB 223

3rd Respondents submissions

200. The 3rd Respondent was the Public Service Commission whose decision was challenged for award of compensation and not reinstatement. It submitted that the claimants had not shown how its decision was actuated by malice, ill will or bad faith, and neither did they show how the decision breached *the Constitution* or the *Employment Act*.
201. The 3rd respondent asserted that it addressed both substantive and procedural issues on the decisions about the claimants and that none of the claimants challenged the specific findings.
202. They assert that the only complaint against it was that it ought to have reinstated the claimants as opposed to compensation.
203. They submit that all the claimants were accountants and they were charged with misappropriation of funds or failing to account for monies given.
204. They submit that the claimants did not prove that the monies received were used for the intended purposes and duly surrendered.
205. They submit that the claimants had the onus to prove that the monies were sent for the activity stated and for some, where activities such as an expo, the claimants could have obtained proof from the institution where the Expos were undertaken, or produced registration documents, registration for the activities or certificate of training attended.
206. They submit that they considered the substantive aspect of each of the claimants' cases and thus acted within the law.



207. They submit that though it found the process leading to the claimants' termination of employment was flawed, by dint of section 49 of the [Employment Act](#), the Claimants contributed to their termination as they could not exculpate themselves during cross-examination, and they were awarded compensation for the unfair procedure and reinstatement was not an available remedy having not established whether they had either received money or surrendered money properly.
208. They assert that reinstatement is not an automatic remedy and the same is available to an employee based on the merit of their case. To buttress this assertion, they relied on the decisions in [Kenya Airways Limited versus Allied and Aviation Workers Union Kenya and 3 others Civil Appeal No. 46 of 2013](#) and [Kenya Airways Limited v Alex Mbugua \(2019\) eKLR](#).
209. The 3rd Respondent submits that the Claimants have not advanced any arguments to convince the court to disturb their decision.

Decision Of The Court

210. Having analysed the case, the Court returns that the only issue to determine in this case is whether the claim for reinstatement was merited and or any other relief. This is because the case was already heard on merit by a body clothed with jurisdiction and a lawful remedy granted.
211. The claimants in the instant case were county public officers. Following the termination of their employment by the 1st and 2nd Respondents, the Claimants appealed to the Public Service Commission, the 3rd Respondent, to exercise jurisdiction pursuant to section 77 of the [County Governments Act](#) to wit:- “(1) Any person dissatisfied or affected by a decision made by the County Public Service Board or a person in exercise or purported exercise of disciplinary control against any county public officer may appeal to the Public Service Commission (in this Part referred to as the “Commission”) against the decision.” As read together with Section 85 of the [Public Service Commission Act](#) to wit:- “85. Appeal from County Government public service The Commission shall, in order to discharge its mandate under Article 234(2)(i) of [the Constitution](#), hear and determine appeals in respect of any decision relating to engagement of any person in a County Government, including a decision in respect of— (a) recruitment, selection, appointment and qualifications attached to any office; (b) remuneration and terms and conditions of service; (c) disciplinary control; (d) national values and principles of governance, under Article 10 and values and principles of public service under Article 232 of [the Constitution](#); (e) retirement and other forms of removal from the public service; (f) pension benefits, gratuity and any other terminal benefits; or (g) any other decision the Commission considers to fall within its constitutional competence to hear and determine an appeal in that regard.”
212. The process to be followed by Public Service Commission is stated in section 87 of the [Public Service Commission Act](#) to wit :- “86. Procedure for appeal (1) Any person who is dissatisfied or affected by a decision made by any authority or person in respect of a County Government public service may appeal to the Commission against the decision. (2) An appeal under subsection (1) shall be in writing and made within ninety days from the date of the decision: Provided that the Commission may consider an appeal out of time if, in the opinion of the Commission, the circumstances warrant it. (3) The Commission shall make regulations to guide the hearing and determination of appeals from the county public service boards. (4) After considering an appeal under this section the Commission may— (a) uphold the decision; (b) set the decision aside; (c) vary the decision as it considers to be just; or (d) give such directions as it may consider appropriate with respect to the decision.”
213. The Public Service Commission pursuant to that jurisdiction as stated under section 85 and 87 of [Public Service Commission Act](#)(supra) proceeded to hear the appeal (see the background of the case as outlined above) and made its decision dated 24th April 2023 at review holding there was unfair



- termination and proceeding to order compensation equivalent of 12 months' salary for each of the Claimant's under section 49 of the *Employment Act*.
214. The claimants were not happy with the remedy and submitted that by dint of section 49 of the *Employment Act*, where in the opinion of a labour officer an employee's dismissal or termination of employment is unfair, it recommends that either an employee be reinstated and be treated as though they were never terminated, or re-engage the employee in work comparable to that which the employee was employed to before the dismissal and to buttress this assertion they rely on the case of Ken freight (EA) Limited Benson K. Nguti SC Pet No. 37 of 2018(2019)eKLR.
215. The claimants assert that the 3rd respondent was wrong to rely on section 49 (c) of the *Employment Act* in coming up with its decision of 24.04.2023 ordering the respondents to pay the claimants 12 months' salaries for unfair termination instead of ordering reinstatement.
216. They submit that in the Public Service Commission Regulations 2020, Regulation 67, where a disciplinary process has not been concluded administratively or before the commission or in court, a public body shall not recruit an officer to substantively fill the position.
217. The claimants state that the 2nd respondent admitted to having advertised the claimants' positions when the claimants' appeal was before them for appeal which points to a case of predetermined decisions against the claimants.
218. The claimants submit that the 1st and 2nd respondents have not shown any proof that they advertised the claimants' position and urge the court to reinstate them. They submit that the reliefs under Section 49 of the *Employment Act* are discretionary and the court in setting aside the 3rd respondent's grant of 12 months' compensation under Section 49(1) (c) should consider that substantive justice is done to the claimants and relies on the decision in Kenya Revenue Authority & 2 others v Darasa Investments Limited (2018) eKLR. In that decision the Court was held not to interfere with exercise of discretion unless it was satisfied that the judge misdirected himself in some matter and as a result arrived at a wrong decision.
219. The Court discerned the main issue in the claim was the failure of the Public Service Commission to reinstate the claimants to service. The court finds that the Commission also recognised the reinstatement as the issue and gave its reasons why it failed to reinstate them. The Commission asserts correctly that the only complaint against it was that it ought to have reinstated the claimants as opposed to compensation.
220. On the reasons to justify its decision the Commission submitted that all the claimants were accountants and they were charged with misappropriation of funds or failing to account for monies given. That the claimants did not prove that the monies received were used for the intended purposes and duly surrendered as required. That the claimants had the onus to prove that the monies were sent for the activity stated and for some, where activities such as an expo, the claimants could have obtained proof from the institution where the Expos were undertaken, or produced registration documents, registration for the activities or certificate of training attended.
221. They submit that they considered the substantive aspect of each of the claimants' cases and thus acted within the law. They submit that though it found the process leading to the claimants' termination of employment was flawed, by dint of section 49 of the *Employment Act*, the Claimants contributed to their termination as they could not exculpate themselves during cross-examination, and they were awarded compensation for the unfair procedure and reinstatement was not an available remedy having not established whether they had either received money or surrendered money properly.



222. They assert that reinstatement is not an automatic remedy and the same is available to an employee based on the merit of their case. To buttress this assertion, they relied on the decisions in [Kenya Airways Limited versus Allied and Aviation Workers Union Kenya and 3 others Civil Appeal No. 46 of 2013](#) and [Kenya Airways Limited v Alex Mbugua \(2019\) eKLR](#).
223. The 3rd Respondent submits that the Claimants have not advanced any arguments to convince the court to disturb their decision.
224. It was the opinion of the Court that the question of whether the termination was fair or not had been determined to finality by the Public Service Commission and the decision accepted by the 2nd Respondent as communicated in their letters to the claimants of 30th June 2023 (see page 64 of the Respondent's bundle). The court returns that it had no jurisdiction to open up the issue of fairness of the termination. This is in recognition and promotion of alternative dispute resolution as stated in Article 159(2)(c) of [the Constitution](#) obliging the court in the exercise of its judicial authority to promote:- "(c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);" and the Court of Appeal decision [Speaker of the National Assembly v James Njenga Karume \[1992\] eKLR](#) to wit:- "Where there is a clear procedure for the redress of any particular grievance prescribed by [the Constitution](#) or an Act of Parliament, that procedure should be strictly followed. We observe without expressing a concluded view that order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions."
225. The claimants were not satisfied with the decision of award of remedy of compensation by the 3rd Respondent stating they wish to be reinstated.
226. Section 49 of the [Employment Act](#) provides for remedy of compensation as awarded to the claimants and in the alternative the remedy they seek before court of reinstatement. The court agreed with the 3rd Respondent that the remedy of reinstatement is not automatic. It is provided in Section 49 of the [Employment Act](#) remedies for wrongful dismissal and unfair termination to wit:- "(1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following— (a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service; (b) where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or (c) the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal. (2) Any payments made by the employer under this section shall be subject to statutory deductions."
227. The Claimants submit that the Commission having found unfair termination they ought to have been reinstated and relied on the remedy under section 49(3) to wit:- "(3) Where in the opinion of a labour officer an employee's summary dismissal or termination of employment was unfair, the labour officer may recommend to the employer to— (a) reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated; or (b) re-engage the employee in work comparable to that in which the employee was employed prior to his dismissal, or other reasonably suitable work, at the same wage."



228. Section 49 further provides:“(4) A labour officer shall, in deciding whether to recommend the remedies specified in subsections (1) and (3), take into account any or all of the following— (a) the wishes of the employee; (b) the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and (c) the practicability of recommending reinstatement or re-engagement; (d) the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances; (e) the employee's length of service with the employer; (f) the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination; (g) the opportunities available to the employee for securing comparable or suitable employment with another employer; (h) the value of any severance payable by law; (i) the right to press claims or any unpaid wages, expenses or other claims owing to the employee; (j) any expenses reasonable incurred by the employee as a consequence of the termination; (k) any conduct of the employee which to any extent caused or contributed to the termination; (l) any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and (m) any compensation, including ex-gratia payment, in respect of termination of employment paid by the employer and received by the employee.”
229. Whereas it is the wish of the Claimants to be reinstated other factors came into effect like the fact that they hold a position of trust of accountants or work in accounting departments, the fact that there were questions on transactions they had done and as the Commission states they had not produced evidence to exculpate themselves. The fact that the employer had stated it had filled the positions though no proof in court it was a reasonable position as the Claimants were removed from office in 2020. The *Employment and Labour Relations Court Act* under section 12 provides for the jurisdiction of the court and prohibits reinstatement of employees on lapse of 3 years. It states:- “12(3) In exercise of its jurisdiction under this Act, the Court shall have power to make any of the following orders;-(Vii) an order for reinstatement of any employee within three years of dismissal, subject to such conditions as the Court thinks fit to impose under circumstances contemplated under any written law;” The Claimants pleaded in paragraph 2.6 of the statement of claim dated 13th September 2023 that they were all issued with letters of dismissal dated 15th December 2020. Clearly, 3 years have lapsed ousting the jurisdiction of the Court to order reinstatement.
230. The court was satisfied with the decision of the Commission as having been appropriate. The court was guided by the decision of Court of Appeal in *Kenya Airways Limited v Alex Wainaina Mbugua* where while setting aside award of reinstatement cited *M. Holmes*” *Employment Law, Cases and Materials*, 7th Edition, and in particular this passage at page 444 as follows:-
- “The common law has been most reluctant to enforce contracts of employment remedies which require the contract to continue, i.e. injunction and specific performance. There are a number of reasons for this. First, damages are often adequate as a remedy, and it is a general rule of a contract that where this is the case then the equitable remedies of injunction and specific performance should not be considered. Secondly, and perhaps most importantly, contracts of employment require mutual trust and confidence. This element would be missing if the employer and employee were to continue a relationship of service against the will of one or the other. As Fry LJ said in *De Francesco vs. Barnum* (1890) 45 ChD 430, the courts „are very unwilling to extend decisions the effect of which is to compel persons who are not desirous of maintaining personal relations with one another to continue those personal relations ... I think the courts are bound to be jealous lest they should turn contracts of service into contracts of slavery.? (Emphasis ours)”



231. The Court of Appeal (supra) further observed:- “With respect to the learned Judge, and while noting that the position did remain open main titularly vacant by court order, we are not satisfied that she fully engaged with the statutory requirement to consider the propriety of reinstatement. We think, in particular, that the uncontested loss of confidence in Alex by the Government of Kenya and KLM, who were KQ’s major shareholders, is not a matter that could be wished away. Courts ought to attempt to fashion workable solutions to the often sensitive and volatile employment spaces, and should eschew the making of orders that serve only to further complicate as opposed to solving the problems already existing. On this score we think the criticism against the learned Judge was not without basis. Reinstatement was not an appropriate remedy and this would explain why the learned Judge, to her credit, issued other orders in the alternative.”
232. The Court further returns that it has no jurisdiction to hear the case afresh under the doctrine of exhaustion of remedies as defined in the Black’s Law Dictionary 10th ed as follows:- ‘exhaustion of remedies. The doctrine that, if an administrative remedy is provided by statute, a claimant must seek relief first from the administrative body before judicial relief is available. The Doctrine’s purpose is to maintain comity between the courts and administrative agencies and to ensure that courts will not be burdened by cases in which juridical relief is unnecessary.’ The juridical relief invoked is thus unnecessarily applying the definition of the term exhaustion of remedies. Hearing the dispute afresh cannot have been the intention of the Constitution under article 234(2)(i) to wit :- “hear and determine appeals in respect of county governments’ public service;” and or the intention of Parliament under section 77 of County Governments Act as read together with section 85 of Public Service Commission Act. The Public Service Commission exercised quasi-judicial powers in making the impugned decision on the claimants employment hence the court can only exercise supervisory jurisdiction over the said decision. Judicial review is about the procedural fairness and lawfulness.
233. The Court holds that there was no iota of evidence placed before it to justify interference with decision of Public Service Commission The Court finds that appeal mechanism before Commission does not stay the termination as stated in section 88 of the Public Service Commission Act as follows:-“ (4) Despite the right of appeal or the right to apply for review in accordance with this Part, the implementation of the decision shall not be deferred or suspended pending the determination of the appeal or the application for review.” Consequently, the alleged advertisement of the positions previously held by the claimants post-termination was lawful.
234. In the upshot, the court for the foregoing reasons returns that the Claimants were not entitled to the reliefs sought.

Conclusion And Disposition

235. The Court for the above reasons holds that the Claim dated 13th September 2023 was unmerited and is dismissed.
236. In the opinion of the Court, the only issue pending is the enforcement of the decision by the Public Service Commission. Section 89 of the Public Service Commission Act provides for the enforcement of appeal decision to wit:- “ (1) Any person who is affected by the decision of the Commission made under this Part may file the decision for enforcement by the Employment and Labour Relations Court provided for under Article 162(2)(a) of the Constitution.”
237. The Court in disposal of the claim upholds the decision of the 3rd Respondent to dismiss the claim. In the interest of substantive justice and to avoid further litigation before the Court, the Court adopts the decisions of Public Service Commission on compensation of the claimants pursuant to section 89



of *Public Service Commission Act* as Decree of the Court. The monies to be paid with interest at court rates from date of the Decree until payment in full.

238. The Court taking into consideration the decision of the Commission, finds that this is a case where the appropriate order on costs in the suit is that each party to bear own costs.

239. Right of appeal.

240. It is so Ordered.

DATED, SIGNED & DELIVERED IN OPEN COURT AT KAKAMEGA THIS 25TH DAY OF JULY 2024.

J.W. KELI,

JUDGE.

_In the Presence Of: -

Court Assistant: Macheso

For Claimant: Odhiambo

For 1st & 2nd Respondent: - Tindi

For 3rd Respondent: - Iseme

