



**Awiti v National Police Commission & 3 others (Employment and Labour Relations
Petition E158 of 2023) [2024] KEELRC 2653 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2653 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E158 OF 2023
HS WASILWA, J
OCTOBER 31, 2024**

BETWEEN

GEORGE OTIENO AWITI PETITIONER

AND

THE NATIONAL POLICE COMMISSION 1ST RESPONDENT

INSPECTOR GENERAL, NATIONAL POLICE SERVICE 2ND RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD RESPONDENT

THE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

Introduction

1. Vide a Petition dated August 9, 2024, the Petitioner sought the following orders: -
 - i. A declaration that the actions of the Respondents complained of herein are unconstitutional, illegal, unfair and amount to unfair labour practices.
 - ii. A declaration that the Respondents violated Article 27 of *the Constitution* by acting in a discriminatory manner against the Petitioner and denying him equal protection of the law.
 - iii. A declaration that the Respondents violated Articles 28, 29 and 30 of *the Constitution* by subjecting the Petitioner to acts of indignity, cruel and inhuman treatment and forced labour/ slavery by denying him his rightful pay earned for services provided, and by unfairly removing him from service.
 - iv. A declaration that the Respondents violated Article 35 of *the Constitution* and section 4 of the *Access to Information Act* by making a decision detrimental to the Petitioner but refusing to



provide him with access to the decision or reasons therefore, prior to or even after the offensive decision of stopping the Petitioners salary and unfairly terminating him without reason.

- v. A declaration that the Respondents violated Article 47 of *the Constitution* and sections 4 and 6 of the *Fair Administrative Action Act* by unilaterally making the decision to stop paying salary and terminating the employment of the Petitioner without reason and following due procedure, and denying him the opportunity to be heard by refusing to hear his appeal through the internal appeal mechanisms, in a timely manner or at all.
- vi. A declaration that the pendency of the appeal since 22nd October 2022 without hearing and without a determination is a violation of Article 47 of *the Constitution* as well as section 4 of the *Fair Administrative Action Act*.
- vii. A declaration that the removal of the Petitioner from service was unfair, unlawful and unconstitutional.
- viii. An order compelling the Respondents to henceforth reinstate the Petitioner into his position in employment of the National Police Service and accord him all his rights to promotion and other rights that he missed out on as a result of the removal from service.
- ix. An order compelling the Respondents to immediately restore the Petitioner's name into the payroll and to pay all his unpaid salaries and all benefits he missed out from the date of removal from payroll until the determination of this suit and his reinstatement into service.
- x. A permanent order restraining the Respondents from taking any adverse decision against the Petitioner on the basis of the facts set out in the impugned removal letter.
- xi. An order that the Respondents jointly and severally bear the costs of the Petition.

Petitioner's Case

2. The Petitioner avers that he served as a police officer for the 1st Respondent stationed at Rhamu North Sub-county of Mandera County, in the Directorate of Criminal Investigations (3rd Respondent). His day-to-day duties were under the control and command of the 2nd and 3rd Respondent.
3. Contrary to usual practice where his salary would be credited by the 21st day of the month and payslip made available prior or immediately after; he did not receive his payslip on September 22, 2021.
4. He further learnt that his salary had not been paid into his bank account and upon inquiring, the 3rd Respondent informed him of the Respondents' decision to stop his salary.
5. It is the Petitioner's case that the Respondents' actions were in contravention of Article 47 of *the Constitution* as he was neither provided any information in writing regarding the stoppage of his salary nor subjected to any disciplinary procedure to warrant the stoppage of his salary.
6. Subsequently, he moved the Court under Nairobi ELRC Constitutional Petition No. E151 of 2021 on 23/09/2021; however, upon filing and serving the Respondents the court summons, he received a letter from the 1st Respondent on 18/10/2021, informing him of his removal from the police service on "grounds of public interests."
7. The Petitioner avers that in protest to the letter, he lodged an administrative appeal to his termination, vide a letter dated 22/10/2021, but the appeal has neither been heard nor concluded, raising reasonable conclusion that the Respondents are not interested in the process and that they are not keen to grant the Petitioner fair administrative action.



8. He states that that the only time he was subjected to disciplinary action was when he was arraigned before the Anti-Corruption Court at Nairobi on 18/4/2018, accused of criminal solicitation and receipt of bribe contrary to section 6 of the *Anti-Corruption and Economic Crimes Act*; he pleaded not guilty to the charges and the matter was set down for trial on merit.
9. The Petitioner was interdicted pending conclusion of the criminal case and he was directed to hand over the Government Kit and all items of official nature in his custody. The interdiction was to remain in place until the criminal case was concluded.
10. It is the Petitioner's case that the Court dismissed the criminal charges against him and in addition to the acquittal, the Court recommended that he together with six other officers be investigated for crimes of robbery with violence in relation to the facts of the above Anti-Corruption Case.
11. The investigation were done to establish whether the Petitioner and his co-officers had been involved in robbery with violence vide DCI Inquiry File Number 34/2021 (Serious Crime Unit); the inquiry concluded that there was no facts or evidence to support charges of robbery with violence and recommended that the file be closed with no further police action.
12. The Petitioner states that subsequently he was issued with a Notice to Show Cause which he responded to and the Respondents absolved him of blame, and he was restored to service, with his interdiction lifted and his fully salary restored until the impugned decision was made.
13. It is the Petitioner's case that the Respondents' action of stopping his salary and terminating his employment without disclosing the information to him prior or soon after the decision to enable him exercise right of appeal or act to protect his rights was in violation of Article 35(1) and Article 41 of *the Constitution*.
14. The Petitioner states that the Respondents have violated Article 47 of *the Constitution* and section 4 of the *Fair Administrative Action Act* which requires appeals and decisions thereon to be concluded expeditiously. The Respondents have taken two years without any communications with the Petitioner, and without concluding the appeal thus demonstrating their unreasonableness.
15. Further, the Respondents' actions were in violation of Article 29 of *the Constitution*, and it is cruel, inhuman and degrading to the Petitioner to unfairly remove him from employment, deny him his salary and fail to communicate to him the decision or reasons therefor, and to subject him to economic penury together with his family.

1st Respondents' Case

16. In opposition to the Petition, the 1st Respondent filed a replying affidavit dated 29th July 2024.
17. The 1st Respondent avers that the Petitioner was enlisted in the Kenya Police Service as a Constable effective 12/01/2013.
18. On 29/03/2018, the Petitioner was arrested and arraigned before the Chief Magistrates Anti-Corruption Court Milimani for allegedly committing the offence of requesting a benefit contrary to Section 6(1)(a) read with section 18(1) of the *Bribery Act* No. 47/2016. This was subsequent to the Ethics and Anti-Corruption Commission receiving a complaint from Harrison Mugambi Abinja alleging the Petitioner solicited for a bribe of Kshs. 40,000 while stationed at DCI Ngong to forebear charging him for land fraud.



19. It is the 1st Respondent's case that pending conclusion of the criminal case, the Petitioner was interdicted by the 3rd Respondent effective 18/4/2018 vide a letter dated 22/8/2018 referenced CID/SE/LCA/1/2/8/VOL.1/80.
20. The 1st Respondent states that the Petitioner was acquitted by the Court. However, the Court in its judgment ordered that the Petitioner be further investigated and an inquiry file No. 34/2021 was instituted to ascertain the facts behind the robbery with violence but the evidence collected could not meet the threshold to sustain the charge before Court due to lapse of time.
21. Upon conclusion of the investigations, the 2nd Respondent approved the lifting of the interdiction effective 18/4/2018 and instituted removal proceedings under grounds of public interest against the Petitioner. The Petitioner was further served with a NTSC why he should not be removed from service under public interest as per paragraph 52 (e) of the Service Standing Orders read with Section 131(b) of the *National Police Service Act*, 2011.
22. The 1st Respondent avers that the Petitioner replied to the NTSC vide a letter to the 2nd Respondent, however, the response lacked a substantial explanation. Therefore, it resolved in its meeting of 11/6/2019 to remove the Petitioner from service effective 9/8/2021 and the same was communicated via letters to the 2nd and 3rd Respondents.
23. It is the Respondents' case that acquittal in the trial court does not bar the removal of the Petitioner from service as the two processes are different in nature and do not amount to double jeopardy.
24. It further avers that the Court can only intervene in an employer's internal disciplinary proceedings in exceptional circumstances such as where grave injustice might result or justice cannot be attained by other means; the Petitioner has not demonstrated any of these against the Respondents.

2nd, 3rd and 4th Respondents' Case

25. In opposition to the Petition, the Respondents filed a replying affidavit dated 5th October 2023 which reiterated the contents of the 1st Respondent's affidavit.
26. The Respondents aver that by executing his letter of appointment, the Petitioner voluntarily abided himself to be bound by terms of service and all laws, regulations and orders promulgated from time to time affecting his service. Therefore, he was subject to the *National Police Service Act*, National Police Service Standing Orders and the National Police Service Commission (Discipline) Regulations, 2015.
27. It's the Respondents' case that Court's judgment in the criminal suit against the Petitioner, it was observed that the evidence adduced pointed to an offence of robbery with violence and not requesting benefit as earlier directed by the ODPP, it ordered the Petitioner be investigated for the charge.
28. Pursuant to Chapter 21 of the service Standing Orders on 'Complaint Procedure', inquiry file no. 34/2021 was instituted at DCI headquarters and upon conclusion of the Inquiry, the file was closed as the evidence collected could not meet the threshold to sustain the robbery with violence charge due to lapse of time.
29. However, due to the gravity and nature of the Petitioner's corruption offence, he was served with a NTSC letter and was informed of his right to submit his response within 7 days failure to which removal proceedings was to be instituted without further reference to him.
30. The Petitioner responded vide a letter dated 29/6/2021, his representation was weak and lacking in substance hence the 1st Respondent upheld the decision to remove him from service under public



interest. This decision was communicated to him upon which he was struck off and removed from the nominal roll as is procedure.

31. The Respondents aver that the Petitioner appealed the decision and the same was forwarded to the 2nd Respondent; the outcome of the appeal is awaiting appellate decision by the 1st Respondent.
32. The Respondents state that the stoppage of the Petitioner's salary was based on his removal from service and as such he cannot draw any salary effective the date of his removal.

Petitioner's Submissions

33. The Petitioner submitted on four issues: whether the Respondent's impugned decision to terminate the Petitioner's employment was fair; whether the Respondents violated the Petitioner's fundamental rights and freedoms during and/or at the time of termination; whether the Petitioner is entitled to the reliefs sought; and who bears the cost of the Petition
34. On the first issue, it was the Petitioner's submission that his termination lacked any valid reason, was done without conducting a hearing, did not follow due procedure and/or was not related to his conduct, capacity or based on the Respondents operational requirements contrary to Sections 41,43 and 45 of the *Employment Act*.
35. He further submitted that the Respondents seek to rely on Standing Order No. 7 which provides for conviction of a criminal offence as ground on which officers may be removed from service, however, he has demonstrated that he has never been convicted of a criminal offence.
36. On the second issue, the Petitioner submitted that in violation of his right to fair administrative action and right to fair labour practices enshrined in Article 47 and 47 of *the Constitution*, the Respondents have ignored the Court's order in Constitutional Petition No. E151 of 2021 directing the exhaustion of the administrative appeal process before the Petitioner approaches the Court.
37. The 1st Respondent's assertion that delay to hear and determine the appeal has been caused by the loss of the Petitioner's file has not been substantiated. The Petitioner emphasized that its been 2 years since the alleged file loss and if it is indeed lost, it is the 1st Respondent's onus to search and produce it as the body mandated with exercising disciplinary control over persons acting within it pursuant to Article 246(3) (b) of *the Constitution*.
38. He submitted that the Respondents cited in the termination letter that the reason for his termination was that he was arraigned before the Chief Magistrates Court for a corruption offense. However, having been acquitted, this reason is invalid for invoking an acquittal as a basis for termination of employment.
39. Additionally, the Respondents vide the termination letter of 18/10/2021, gave the Petitioner 14 days to appeal, when in fact the decision to terminate his services was made on 22/6/2021. Nonetheless, the Petitioner proceeded to respond to the termination letter, requesting an appeal but the same was neither acknowledged nor heard by the Respondents.
40. It is the Petitioner's submission that the Respondents failed to demonstrate the reason for the termination was valid and fair and they acted in violation of Article 47 of *the Constitution*, Sections 4 (1) (2) and (3) of the *Fair Administrative Action Act*, Section 41 of the *Employment Act* and Order 7 of the National Police Service Standing Orders, by denying him his right to appeal.
41. It is the Petitioner's submission that in contravention of his right to access information under Article 35(1) of *the Constitution* and Section 4 of the *Access to Information Act*, the Respondents failed, neglected and refused to share the reasons for withholding the petitioner's pay slip and share the account into which the salary was paid into. They further failed and/or neglected to share



critical information regarding the disciplinary process including documentation and have withheld information pertaining to the appeal, two years down the line.

42. The Petitioner submitted that the Respondents' unilateral decision to stop payment his salary and unfairly terminating his employment rendered him unable to meet his obligations of providing for his family and himself the basic human needs and exposed him to destitution all without justification and in a manner that infringes on his right to human dignity under Articles 28, 29 and 30 of *the Constitution*.
43. Lastly, by withholding his hard-earned salary, the Respondents have violated his right to property and denied him the use of his property under Article 40 of *the Constitution* which is to his detriment and that of his dependants.
44. On the third issues, the Petitioner submitted that this Court has the power to grant the declaratory, equitable and compensatory reliefs sought pursuant to Article 23(3) of *the Constitution*. The Petitioner maintains that it has been demonstrated that the Respondents' actions violated his right to fair administrative action, right to fair labour practices, right to access information, right to dignity, right to property and freedom from discrimination as set out in *the Constitution*.
45. On the final issue, the Petitioner submitted that considering the time spent on this matter, the Respondents should bear the cost of the petition. Further, the matter is before this Court for a second time as the Respondents are in contempt of court orders in Constitutional Petition No. E151 of 2021 where the matter was referred to the Respondents' administrative appeal process on 14/6/2022. The appeal was lodged by the Petitioner on 22/10/2021 and still pending determination by the Respondents.

1st Respondent's Submissions

46. The 1st Respondent submitted on four issues: whether the Petitioner's actions warranted dismissal; whether the Petitioner was given an opportunity to be heard; whether the Petitioner's constitutional rights were violated as alleged; and whether the Petitioner is entitled to the orders sought.
47. On the first issue, the 1st Respondent submitted that Petitioner's action of soliciting a bribe was contrary to Section 88(2) read with 1 (a) of the 8th Schedule of the *National Police Service Act* amounted to gross misconduct therefore attracting the harshest penalty; as the Petitioner's offence critically tarnishes the image of the National Police Service.
48. On the second issue, the 1st Respondent submitted that the Petitioner was accorded a fair hearing and fair administrative action as he was given a reasonable opportunity to defend himself but instead of tendering cogent evidence in his defence, he submitted unsatisfactory reasons.
49. On the third issue, the 1st Respondent submitted that the rules of evidence provide that there must be material evidence to support the claim, however, in the instant petition, the Petitioner has failed to table material evidence to demonstrate that his constitutional rights were violated by the Respondents. It relied on the decisions made in *Susan Waithera Kariuki & 4 others v Town Clerk Nairobi City Council & 3 others* [2013] eKLR and *Godfrey Paul Okutoyi (suing on his own behalf and on behalf of and representing and for the benefit of all past and present customers of banking institutions in Kenya) v Habil Olaka – Executive Director (Secretary) of the Kenya Bankers Association Being sued on behalf of Kenya Bankers Association) & another* [2018] eKLR.
50. Lastly, the 1st Respondent submitted that it is evident that the Petitioner failed to prove any procedural unfairness on its part and therefore it is just and fair that the petition is dismissed as it lacks merit.



The 2nd, 3rd and 4th Respondents' Submissions

51. The Respondents submitted on four issues; whether the Respondents acted on a reasonable cause while dismissing the Petitioner and whether acquittal in criminal cases barred the respondents from carrying out independent disciplinary process; whether the Respondents acted procedurally and lawfully in removing the Petitioner from Service; whether the Petitioner's Petition raises any constitutional issues hence violation of the doctrine of constitutional avoidance; and whether the Petitioner is entitled to the remedies as sought.
52. On the first issue, the Respondents submitted that they acted with reasonable cause in public interest and in the interest of the Service as under Paragraph 52(1)(e) and Section 56(1) of Chapter 30 of the National Police Service Police Standing Orders while dismissing the Petitioner.
53. It further submitted that the Respondents has valid reasons to terminate the Petitioner's employment as genuinely believed that he was guilty of the criminal offences. They relied on the Court of Appeal decision in *Bamburi Cement Ltd. vs Farid Aboud Mohammed* (2016) Eklr.
54. On the second issue, it is the Respondents submission that Paragraph 56(2)(b) & (c) and Paragraph 57 of Chapter 30 of the National Police Service Police Standing Orders envision that disciplinary proceedings may be dealt with by way of written submission. Therefore, they in accordance with the provisions of the National Police Service Police Standing Orders and *the Constitution* in removing the Petitioner.
55. They further submitted that it is a settled principle that disciplinary process is fair even in the absence of oral hearing so long as there were written submissions exchanged between the employer and the employee regarding issues of concern. Reliance was placed on the Court of Appeal decision in *Kenya Revenue Authority vs. Menginya Salim Murgani, Civil Appeal No.108 of 2010*.
56. On the third issue, the Respondents submitted that Petitioner has not demonstrated that Respondents failure to comply with the and/or how the Articles of *the Constitution* stated in the Petition were violated. Additionally, the alleged violated rights are framed in general terms as the Respondent failed to bring out the specific actions or inactions of the Respondents.
57. They continued to submit that the Petitioner has failed to demonstrate the nature of the Articles of *the Constitution* allegedly violated. The Petitioner did not provide particulars of the alleged breach and therefore is not suitable as a constitutional petition.
58. On the final issue, it is the Respondents' submission that the Petition lacks merit as they acted on a reasonable cause while removing the Petitioner from Service; the Respondents acted procedurally and lawfully in removing the Petitioner from Service; and the Petitioner has not demonstrated that there was failure to comply with the law on the part of the Respondents. Thus, the orders sought should not be granted and the Petition should be dismissed with costs to the Respondents.
59. I have considered all the documents and submissions of the parties herein. The issues for this court's determination are as follows:
 1. Whether the decision to subject the petitioner to internal disciplinary process after protracted criminal proceedings amount to double jeopardy.
 2. Whether the internal disciplinary processes were done fairly and justly.
 3. Whether the petitioner's constitutional rights were infringed upon.
 3. Whether the petitioner is entitled to remedies sought.



Issue 1

60. The petitioner has demonstrated that there were complaints against him leading to his interdiction on account of Anti corruption case No 5 of 2018. He was charged before the Court on 18/4/2018. He was then interdicted pending conclusion of the criminal case.
61. The interdiction letter produced before Court indicated that the interdiction would remain in place until the criminal case was concluded. He was accordingly placed on half salary. The criminal case was tried and determined on merit and the petitioner was accordingly acquitted of all criminal charges vide a judgment of 2/9/2019. After the judgment the petitioner was reinstated in his full service and the interdiction lifted and all withheld salaries paid to him.
62. The petitioner was however served with a notice to show cause letter dated 23/4/2021 requiring him to show cause why he should not be removed from the National Police Service in the interest of the public and that of the service as per para 52(e) Cap 30 section 50 as read with section 131(b) of the National Police Service Act no 11A of 2011. He was required to respond within 7 days.
63. The petitioner indeed responded vide his letter dated 30/4/2021 indicating that the issue being raised in the show cause letter had been subjected to a criminal process and he was acquitted under section 215 of the Criminal Procedure Code on 2/9/2019. He also indicated that the Court had directed the ODPP (Office of Director of Public Prosecution) to institute investigations against him and 6 others for an offence of robbery which investigations were done and he was absolved from the blame and the inquiry file closed.
64. He also prayed that he should not be condemned unheard. Upon receipt of the response to the show cause letter, the 1st respondent concluded the same and made a decision to remove the petitioner from service.
65. The petitioner has submitted that being subjected to another set of disciplinary proceedings after the criminal hearing, he was being subjected to double jeopardy. This Court has on many cases considered such submissions and held that criminal proceedings are independent of internal disciplinary processes and such acquittal or discharge before a criminal Court is not a bar to any internal disciplinary process.
66. In Nyeri ELRC Cause No E59 of 2021 – ELRC 593(2024) eKRL. The Hon J Makau held as follows:

“an acquittal in criminal process does not insulate the employee from the internal disciplinary process. The employer has the managerial prerogative to initiate internal disciplinary process against an employee at any stage of the criminal proceedings and take appropriate action independent from the criminal proceedings. This means that an employer is not bound by the outcome of the criminal proceedings initiated against the employee”
67. In Gladys J Cheronon vs Board of Trustees of NSSF and Another (2021) eKLR, the court also held that:

“Internal disciplinary process and criminal process are independent processes and therefore can proceed side by side and none can bar the other from proceeding”
68. I do agree with my learned colleague on these findings and do add that the fact of an acquittal in criminal proceedings is not a bar to future internal disciplinary processes unless inordinately delayed and subsequent internal disciplinary process is not double jeopardy.



Issue No 2

69. Having cleared out of the way the issue of double jeopardy, the next issue for consideration is whether the disciplinary process was conducted fairly and justly.
70. From the evidence adduced by the respondents, upon the petitioner responding to the show cause the 1st respondent vide a meeting held on 11th June 2019 (paragraph 2) of the response, found that the petitioner's response lacked substantial explanation and hence approved his removal from service under public interest with effect from 9/8/ 2021. The paradox of this explanation is that the notice to show cause was dated 23rd April 2021. The response was dated 30/4/2021. It beats logic that a decision to remove the petitioner was made way back on 11/6/2019 when the notice to show cause was served upon the petitioner in 2021.
71. That notwithstanding, the disciplinary procedure anticipated under the Employment Act 2007 is as provided for under section 41 of the Employment Act 2007 which states as follows:
41. (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
72. The Fair Administrative Action Act section 4(3) and (4) also provide as follows:
- (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
- (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
 - (b) an opportunity to be heard and to make representations in that regard;
 - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - (d) a statement of reasons pursuant to section 6;
 - (e) notice of the right to legal representation, where applicable;
 - (f) notice of the right to cross-examine or where applicable; or
 - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
- (4) The administrator shall accord the person against whom administrative action is taken an opportunity to–
- (a) attend proceedings, in person or in the company of an expert of his choice;
 - (b) be heard;
 - (c) cross-examine persons who give adverse evidence against him; and
 - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.



73. These processes were never followed and neither has the respondent demonstrated compliance with the law as herein provided. It is therefore my finding that the petitioner removal from service was done without following due process as envisaged and is therefore unfair and unjustified as provided for under section 45(2) of the *employment act* 2007 which states as follows:

A termination of employment by an employer is unfair if the employer fails to prove——

- a. that the reason for the termination is valid;
- b. that the reason for the termination is a fair reason——
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. (ii) based on the operational requirements of the employer; and
- (c) that the employment was terminated in accordance with fair procedure.

Issue No 3

74. The petitioner submitted that his rights under *the Constitution* have been breached. The petitioner indicated that his rights under articles 27, 28, 29, 30, 35 and 47 were infringed upon and article 27 deals with discrimination and forbids treating anybody in a discriminatory manner. The petitioner did not however demonstrate the manner in which he was treated in as discriminatory manner vis a vis another employee facing similar situation as him. That submission must therefore fail.

75. As concerns article 28, it is indeed true that the petitioner was treated in a cruel and inhumane manner. He was interdicted and after the criminal trial, the respondent did not reinstate him to service for almost 2 years. He was also bundled out of service without being given any hearing and without any justified authority from the 1st respondent.

76. It is indeed true that he was treated in a cruel and inhumane and indignified manner and in breach of article 28 of *the Constitution*. The manner in which the disciplinary process was conducted if at all also offends the requirements of article 41 on fair hearing and article 47 of Fair Administrative Action and was therefore a breach of his constitutional rights as submitted by the petitioner.

Issue No 4 Remedies

77. Having found as above, I do find for the petitioner and make the following orders:-

1. The petitioner's dismissal from service was un procedural and unjustified and in breach of the law and *the Constitution* of Kenya 2010.
2. The petitioner's rights under article 27, 41 and 47 of *the Constitution* were breached.
3. Given the lapse of time from the time of dismissal to date and in view of the provision of section 90 of the *Employment Act*, 2007 the remedy of reinstatement cannot lie for this petitioner.
4. The petitioner be paid damages for unlawful dismissal and breach of his constitutional rights amounting to 5 million.
5. The 1st respondent to pay costs of his petition plus interest at court rates with effect from the date of this judgement.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF OCTOBER, 2024.



HELLEN WASILWA

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

