



**Mango v Director General, National Youth Service & 2 others (Civil Appeal  
640 of 2019) [2025] KECA 1835 (KLR) (7 November 2025) (Judgment)**

Neutral citation: [2025] KECA 1835 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 640 OF 2019  
K M'INOTI, LA ACHODE & WK KORIR, JJA  
NOVEMBER 7, 2025**

**BETWEEN**

**RASHID MUSUNGU MANGO & 9 OTHERS ..... APPELLANT**

**AND**

**DIRECTOR GENERAL, NATIONAL YOUTH SERVICE ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF PUBLIC SERVICE, YOUTH &  
GENDER AFFAIRS ..... 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the Judgment and Order of the Employment and Labour Relations  
Court at Nairobi (Ongaya J.) dated 1st November, 2019 in ELRC Cause No. 892 of 2017)*

**JUDGMENT**

1. This appeal traces its origin to a claim filed in Cause No. 892 of 2017 in the Employment and Labour Relations Court, (ELRC) at Nairobi. The claim was initially instituted by Rashid Musungu Mango and forty-two others. However, by the time of hearing, the number of claimants had reduced to ten, who are the appellants herein. The named respondents were the Director General, National Youth Service, (1st respondent), the Principal Secretary, Ministry of Public Service, Youth and Gender Affairs (2nd respondent) and the Attorney General, (3rd respondent) respectively.
2. The claim commenced by way of a Memorandum of Claim dated 12<sup>th</sup> May 2017 and filed through Mandala & Company Advocates. The claimants sought declaratory orders to compel the respondents to adjust their salaries and emoluments in line with promotions they had received to the rank of Senior Sergeant (Pay Group 4), with effect from 19<sup>th</sup> August 2010. They also sought orders restraining the respondents from effecting other promotions until their entitlements were honoured, together with costs and other reliefs deemed fit by the Court.



3. The Hon. Attorney General filed a reply to the memorandum of claim on 21<sup>st</sup> July 2017 on behalf of the respondents. Their position was that the promotions in question were irregular, unprocedural, and contrary to the governing Scheme of Service for National Youth Service Uniformed Personnel (2009), which required 3 years of service in one rank prior to promotion. They further contended that the claimants could not lawfully leap from Corporal (PG2) to Senior Sergeant (PG4) without first serving as Sergeants (PG3). Further, that the Public Service Commission, (PSC) had not granted a waiver to permit such advancement. They therefore, denied liability and urged the Court to dismiss the claim with costs.
4. At the trial, Mr. Rashid Musungu Mango (PW1) testified on behalf of the claimants. He stated that he and his colleagues were formally nominated, interviewed, and approved to undertake the Senior Sergeant Promotion Course at the NYS College in Gilgil. They successfully completed the training and subsequently, they were issued with promotion letters dated 23<sup>rd</sup> August 2010, which were back - dated to take effect from 19<sup>th</sup> August 2010. According to PW1, these letters explicitly directed the adjustment of salaries and personal emoluments to reflect their new rank of Senior Sergeant (PG4).
5. Despite the issuance of these letters, however, the respondents failed to implement the salary adjustments and gave no reasons for their inaction. PW1 averred that this failure was unlawful, prejudicial to their career progression, and contrary to the principle of legitimate expectation. He alleged that other NYS officers were promoted irregularly, in some cases bypassing more than two ranks, which he contended amounted to discrimination against the claimants. Upon cross-examination, PW1 admitted that neither he, nor the other claimants had served the mandatory 3 years at the rank of Sergeant (PG3) before the purported promotion to Senior Sergeant (PG4). He also conceded that no waiver was obtained from the PSC to justify their leap - frogging of the rank.
6. Paul Owino (PW2), also testified in support of the claimants' case. He confirmed that the claimants had successfully undergone the Senior Sergeant Promotion Course, obtained certificates, and were issued with promotion letters appointing them to the higher rank. PW2 stated that despite assuming duties consistent with the new rank, they continued to draw salaries at the level of Corporal, and the respondents neither recalled the promotion letters, nor explained the failure to adjust their pay.
7. PW2 emphasized that the foregoing treatment was unjust and inconsistent, particularly in light of instances where other officers with less qualification, or service had been promoted, thereby creating disparities that he described as discriminatory. On cross - examination, he conceded that their promotions had indeed skipped the rank of Sergeant (PG3), contrary to the clear requirement in the Scheme of Service, and that they had not received any confirmation that the PSC had approved a waiver of this requirement.
8. On the part of the respondents, Samuel Kaloki (DW1), who was then the Director of Human Resource Management and Development at the Ministry of Public Service, Youth and Gender Affairs, gave evidence. He asserted that the claimants' promotions were irregular and unprocedural as they were contrary to the 2009 Scheme of Service for NYS Uniformed Personnel. The Scheme required an officer to serve at least 3 years in one rank before qualifying for promotion to the next. According to DW1, the claimants sought to leap - frog directly from Corporal (PG2) to Senior Sergeant (PG4), bypassing the rank of Sergeant (PG3). This was not permissible unless the PSC granted a waiver.
9. DW1 testified that no such waiver was given, and that implementing the promotions would have disrupted the orderly progression of ranks. Further, that the appellants' prayer to freeze promotions for other officers was malicious and could cause industrial unrest within the service. He asserted that the claim was baseless and irregular and intended to sow confusion in the NYS.



10. Ongaya J. heard and determined the matter. In a judgment delivered on 1<sup>st</sup> November, 2019, the learned Judge found that, under the prevailing Scheme of Service, the claimants had not served the mandatory 3 years in the rank of Sergeant (PG3) and were therefore, not eligible for promotion to Senior Sergeant (PG4). Further, that although the respondents erred in issuing the promotion letters without first securing a waiver from the PSC, such an error did not entitle the claimants to enforce the promotions, or claim the corresponding emoluments. The learned Judge also observed that, since the respondents had admitted to a mistake in conveying the promotions and the claimants had nonetheless relied upon the same, fairness required that each party should bear its own costs. In the result, he dismissed the claim with an order that each party bear its own costs.
11. The appellants were aggrieved and filed this appeal, setting out 13 grounds in their Memorandum of Appeal. They alleged that the Learned Judge erred in law and in fact:
  - i. By failing to analyse the issues that arose at the hearing and raised in the submissions as filed by the Appellants, and to make a determination on the same.
  - ii. By failing to analyse and address himself on the pertinent legal and factual issues among them the legitimate expectation of the appellants, all of which were contained in the appellants' submissions, evidence, and facts, thereby arriving at an erroneous and misguided determination.
  - iii. By arriving at a decision which was against the weight of evidence, specifically disregarding the provisions of the Scheme of Service of the National Youth Service.
  - iv. By failing to determine the validity of the letters of promotion and their significance in the ranking of the appellants.
  - v. By making a finding in favour of the respondents while acknowledging a mistake on their part, leaving the appellants without any recourse.
  - vi. By making a wrong finding as to how many ranks the appellants skipped, and by relying on the wrong facts.
  - vii. By failing to give reasons for his judgment and in disregard of the appellants' case and evidence tendered.
  - viii. By failing to appreciate and penalize the respondents for wastage of taxpayers' money spent on the appellants' training, belatedly alleging that the process was not proper.
  - ix. By failing to appreciate the grounds for promotion as per the Scheme of Service and evidence tendered by the appellants, in particular discriminatory promotions entailing skipping of more than two pay groups in favour of other officers.
  - x. By failing to determine the unexplained inaction by the respondents as regards the promotion letters, which was contrary to the *Fair Administrative Action Act* and *the Constitution*, and which had an impact on the appellants' duties and rank.
  - xi. By failing to appreciate that any waiver on promotions was to be done before the actual training if need be and not as submitted by the respondents. There was no evidence of waiver request or rejection on promotions relating to the letters dated 23rd August 2010.
  - xii. By stating in his judgment that the appellants' promotions were with effect from 19th August 2000, instead of 19th August 2010 as testified by the appellants.



- xiii. By stating that the appellants had bypassed two ranks, contrary to their evidence.
12. The appellants filed written submissions dated 27<sup>th</sup> July 2020 through the firm of Mandala & Company Advocates. They contended that the promotion letters dated 23<sup>rd</sup> August 2010, effective 19<sup>th</sup> August 2010, were valid, binding, and conferred enforceable rights, including the adjustment of their salaries and allowances. They argued that the respondents' failure to implement the adjustments amounted to a violation of the doctrine of legitimate expectation under Article 47 of *the Constitution* and the *Fair Administrative Action Act*, 2015.
13. The appellants submitted that the trial court erred by disregarding evidence showing that other officers had been irregularly promoted, which subjected them to discriminatory treatment contrary to Article 27 of *the Constitution*. They maintained that the respondents' admission of error in issuing the promotion letters was proof that they had been prejudiced through no fault of their own. Lastly, that the learned Judge misdirected himself by failing to evaluate their submissions, misapprehending the evidence, and delivering a judgment that was not supported by the weight of the evidence on record.
14. The respondents did not file submissions although they were duly served with the record of appeal and the hearing notice. When the matter came before us for hearing via the electronic platform on 24<sup>th</sup> March 2025, neither the appellant nor the respondent was present. We reserved the matter for judgment since the appellants had filed their submissions.
15. The 13 grounds of appeal listed by the appellants largely overlap and have therefore, been collapsed into five broad grounds as follows:
- i. Failure to analyse evidence and submissions;
  - ii. Validity of promotion letters and legitimate expectation;
  - iii. Misapprehension and misapplication of the Scheme of Service;
  - iv. Failure to consider the impact of training and expenditure; and
  - v. Overall decision against the weight of evidence.

These broad issues frame the scope of analysis in this judgment

16. This being a first appeal we are obligated to review the issues of both facts and the law afresh and arrive at our own independent conclusions. (See - *Selle vs. Associated Motor Boat Co. Limited* (1968) EA 123). In addition, this Court is cognizant of the fact that it should not interfere with the findings of fact by the trial court unless they were based on no evidence, or on a misapprehension of the evidence or the trial Judge is shown demonstrably to have acted on wrong principles in reaching his findings. (See - *Jabane vs. Olenja* (1968) KLR 661).
17. The first issue for determination is whether the trial court failed to analyse the evidence and submissions and provide adequate reasons for its judgment. The appellants contended that the learned Judge did not sufficiently address their submissions or evidence and that the court disregarded their case and failed to give reasons for rejecting their claims.
18. From the record, Rashid Musungu Mango (PW1) testified that the appellants received promotion letters after completing their training, and Paul Owino (PW2), corroborated this evidence emphasising that they thereafter performed duties at the higher rank. On the other hand, Samuel Kaloki (DW1), the Director of Human Resource, testified that the promotions contravened the Scheme of Service and lacked the required waiver from the PSC.



19. We note that the trial Judge expressly considered the Scheme of Service (2009) and the testimonies of the parties and found that the claimants had not served three years at the rank of Sergeant (PG3). Therefore, they did not qualify for promotion. While the judgment was brief, it nevertheless disclosed the reasoning process and sufficient grounds on the basis of which the court dismissed the claim.
20. Under Order 21, Rule 4 of the Civil Procedure Rules (2010), a judgment in a defended suit must include;
  - i. A concise statement of the case;
  - ii. The points for determination by the court;
  - iii. The court's decision on each of those points and
  - iv. The reasons for the court's decision on each issue.
21. The position on adequacy of judicial reasoning is well settled. In *Kenya Ports Authority vs Kuston (Kenya) Limited* [2009] 2 EA 212 (CAK) this Court emphasised that the duty of a trial court is to demonstrate that it has considered and determined the principle issues raised before it. That a first appellate court will not interfere merely because a judgment is brief, as long as the reasoning is discernible. Similarly, in *Magnate Ventures Ltd vs Alliance (K) Ltd and Others* [2015] eKLR, the Court reaffirmed that compliance with Order 21 Rules 4 and 5 of the Civil Procedure Rules does not require an exhaustive recital of all evidence. It only requires that the judgment should contain sufficient reasoning, to show how the court resolved the main issue in controversy.
22. This Principle was restated in *Omondi vs Attorney General & 2 Others*: [2021] KECA 297 (KLR) (Civil Appeal No. 20 of 2020) where this Court held that although a trial court is obliged to give reasons for its decision, it is not required to address each and every argument advanced by the parties. What is essential is that the judgment demonstrates that the court considered the relevant evidence and submissions and reached a reasoned conclusion on the principal issues. The Court observed that brevity in a judgment does not per se render it defective, provided that the essential elements, that is; a concise statement of the case, the points for determination, and the reasons for the decision are present and the court's reasoning can be followed.
23. In the present appeal, the trial court clearly identified the central issue, that is, whether the appellants qualified for promotion under the applicable Scheme of Service. It considered the competing testimonies and submissions, and made a finding that the requisite 3 years' service in PG3 had not been met. This in our view constitutes sufficient compliance with Order 21 Rule 4 and 5 of the Civil Procedure Rules. Accordingly, the ground alleging that the trial court failed to analyse the appellant's evidence and the submissions is unsustainable and must fall by the way.
24. In the second issue, the appellants placed heavy reliance on the promotion letters dated 23<sup>rd</sup> August 2010, contending that they were valid and binding. That they created enforceable rights, including entitlement to the salary and allowances of Senior Sergeant (PG4). They argued that failure to implement the letters violated their legitimate expectation under Article 47 of *the Constitution* and the *Fair Administrative Action Act*. However, the evidence showed that the letters were issued contrary to the governing Scheme of Service, which required 3 years of service at Sergeant (PG3) prior to promotion. Both PW1 and PW2 admitted that they had not served in PG3 and that no waiver was obtained from the PSC.
25. This Court, in *Ngetich & 3 Others v County Service Board, Bomet & Another* [2022] KECA 732 made it clear that legitimate expectation can only arise from a lawful, clear, and competent promise, and cannot contradict statutory provisions. Similarly, the Court in *Tenai v Sidhu & 5 Others* (Civil



Appeal 106 of 2019) [2025] KECA 105 (KLR), reaffirmed that for legitimate expectation to arise, there must be an express, clear and unambiguous promise made by a competent public authority. The expectation must itself be reasonable; and it must not be in conflict with express provisions of the law or *the Constitution*. The Court emphasised that a legitimate expectation cannot override statutory requirements. In the instant appeal, we are certain that the promotion letters, being ultra vires the Scheme of Service and having been issued without PSC approval, could not confer enforceable rights or give rise to legitimate expectation.

26. The third issue is whether the court misapprehended and misapplied the Scheme of Service. The appellants submitted that the trial Judge erred in his interpretation of the Scheme of Service by incorrectly stating that they had skipped two ranks. That he also misstated the effective dates of promotion, and failed to address the discriminatory promotions of other officers.
27. Black's Law Dictionary, 10<sup>th</sup> Edition Byran A. Gurner, 2014 page 551 and 567 defines discrimination as:

“A differential treatment; especially a failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured”

In sum, discrimination entails the unjust or prejudicial treatment of different categories of people in the same circumstances, as was held by the Supreme Court in the case of *Law Society of Kenya v Attorney General and Another* [2019] eKLR.

28. In *Dr. Samson Gwer & Others v Kenya Medical Research Institute & Others* [2020] eKLR (Petition No. 12 of 2019) the Supreme Court clarified the evidentiary threshold in discrimination claims. The Apex Court held that while discrimination may take both direct and indirect forms, the claimant must first discharge an initial burden of proof by presenting substantial and cogent evidence showing that they were treated differently, and that the differential treatment was on account of a prohibited ground. The Court stressed that “mere suspicions, broad assertions or unsubstantiated allegations are insufficient,” and that unless the claimant demonstrates, on a balance of probabilities, that they suffered prejudice attributable to discriminatory conduct, the evidential burden does not shift to the employer or the respondent.
29. From the evidence in the appeal before us, the central fact remained that the appellants did not serve in PG3 for the mandatory 3 years, before they were promoted to PG4. PW1 and PW2 both admitted this on cross-examination, and DW1 testified that the omission was fatal absent a waiver from the PSC. The appellants failed to provide concrete proof that similarly situated officers were promoted irregularly, while they were denied the promotion.
30. From the foregoing analysis, we find that even if the learned Judge misstated whether the appellants skipped one or two ranks, or he confused the dates of promotion, these minor inaccuracies did not alter the substance of the decision. We are satisfied that the trial court did not misapprehend or misapply the Scheme of Service in a manner that infringed the appellants' rights. This ground therefore, fails.
31. On the fourth issue, the appellants alleged that the trial court failed to take into account the public resources spent on their training for the Senior Sergeant Promotion Course. PW1 and PW2 both testified that they underwent the training at NYS College in Gilgil, which was facilitated and funded by the respondents, only for their promotions to be disregarded thereafter.
32. While this concern highlights mismanagement and inefficiency on the part of the respondents, the legal position remains that training or expenditure alone cannot validate an irregular promotion. We call to mind the observation of this Court in the case of *Republic v Public Service Commission & 2*



Others ex parte Oloo [2015] eKLR, that courts cannot compel implementation of an administrative act that is unlawful, simply because public resources were expended. Therefore, we are in no doubt that although the respondents' conduct was regrettable, it could not confer enforceable rights upon the appellants, particularly where legitimate expectation does not apply, like in the present case.

33. Finally, on the fifth issue, the appellants contended that the judgment was against the weight of the evidence. Particularly since the respondents themselves admitted to an error in issuing the promotion letters. However, the decisive issue was whether the appellants met the legal criteria under the Scheme of Service, and the evidence showed that they did not, both PW1 and PW2 having conceded that they did not serve in PG3 and that the PSC waiver was not granted.
34. Consequently, we find that this appeal lacks merit and is hereby dismissed in its entirety. The respondents having not participated in this appeal, we order each party to bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2025**

**K. M'INOTI**

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**JUDGE OF APPEAL**

**K. ACHODE**

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**JUDGE OF APPEAL**

**W. KORIR**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

