

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E219 OF 2024

(Before Hon. Lady Justice Hellen Wasilwa, J)

DR. JANE NJOKI NJIRU.....
PETITIONER

VS

THE VETERINARY MEDICINES
DIRECTORATE.....1ST
RESPONDENT

THE VETERINARY MEDICINES
DIRECTORATE COUNCIL.....2ND
RESPONDENT

DR. NINGALA KALACHU,
THE CHAIRPERSON VETERINARY MEDICINES
DIRECTORATE COUNCIL.....3RD
RESPONDENT

THE CABINET SECRETARY, MINISTRY OF
AGRICULTURE LIVESTOCK FISHERIES
AND COOPERATIVES.....4TH
RESPONDENT

THE STATE CORPORATIONS
ADVISORY COMMITTEE.....5TH
RESPONDENT

THE HON. ATTORNEY GENERAL6TH
RESPONDENT

JUDGMENT

Petitioner's Case

- 1 By an Amended Petition dated 1st July 2025, the Petitioner sought for the following orders; -
 - a. *A declaration that the respondents have failed in their duty to uphold the rule of law, the constitution and to protect public interest.*
 - b. *A declaration that the petitioner's right to fair hearing and the right to have her cause heard under Article 50 of the constitution was infringed.*
 - c. *A declaration that the ongoing disciplinary proceedings against the Petitioner commenced vide a Show Cause letter dated 2nd December, 2024 null and void and of no legal effect for failure to comply with the constitution and law and the same is set aside until the Petitioner is provided with copies of payment vouchers under reference.*
 - d. *An order of declaration that the disciplinary process will be carried out in fair and procedural manner and shall align with the law and the needs of the organization.*
 - e. *That the council to ensure compliance with the laws and regulations governing the disciplinary process.*
 - f. *That the 3rd Respondent, the Chairperson of the Board/Council of the 1st Respondent is conflicted and be declared unfit to hold office for failing to uphold the constitution and the dignity of her office in the discharge of her duties.*

- g. Kshs 10,921,377; the expected salary for 23 months, being the unexpired salary of the petitioner's contract.*
- h. Kshs 150,000 as the leave allowance for 2024,2025,2026*
- i. Compensation in the sum of Kshs 5, 508, 000 for unfair termination of employment.*
- j. Compensation in the sum of Kshs 688,500 in lieu of the untaken leave days.*
- k. Compensation in the sum of Kshs 1,377,000 in lieu of termination notice.*
- l. Cost of this petition.*

Petitioner's Case

- 2 The Petitioner avers that she was appointed as the Chief Executive Officer of the Veterinary Medicines Directorate vide an appointment letter dated 31st January 2022 for a period of five years.
- 3 The Petitioner avers that on 30th September 2024, the Council held its 34th meeting which had 10 substantive agendas. Subsequently, the agenda was adopted with amendment to include an agenda item on complaint from a staff member as introduced by the Chairperson.
- 4 She avers that during the meeting, she was asked to leave after the Chairperson of the Audit and Risk Assurance Committee read his report to the Council, to allow the Council to deliberate on the report and on some other

confidential matters that required she be absent. She was recalled back to the meeting after 50 minutes where she found the Internal Auditor in the meeting making a presentation on the audit reports regarding internal audits which had been carried out in the institution.

- 5 After the presentation, she was informed that the Council had decided to call for a special audit by the Office of Auditor General (OAG). This was in line with the recommendation of the Audit and Risk Assurance Committee that a special audit be undertaken in the organization.
- 6 The Petitioner avers that the Council then informed her that she would be required to be away from the institution during the period of the audit. The Council asked for the Petitioner's view to which she indicated she had no objections to a special audit by an independent auditor since it would give the Council a second opinion in addition to that by the internal audit.
- 7 The Petitioner avers that she also pointed out that there was misrepresentation of facts in the internal audit's presentation as it indicated that documents were not available for audit thus the audit opinion could not be given in almost all areas.
- 8 She also requested for a record of the deliberations that were made while she was out of the meeting for recording in the minutes. But to date the Petitioner has not been

given the issues that were discussed during her absence to be able to finalize the minutes.

- 9 She requested that the management be informed of the specific documents that were not availed so that any issue that the Council felt was pending could be clarified. The management had provided responses and documents that were requested during the process of audit in various departments and sections and in response to management reports issued by the Internal Auditor.
- 10 It is the Petitioner's case that on 3rd October 2024, she found a copy of a letter in the in tray of her office from the 2nd Respondent's Chairperson addressed to the Principal Secretary, State Department for Livestock Development Ref: MOALD/VMDC/1/2 dated even date requesting for auditors to conduct a Special Audit in the institution in order to investigate possible financial irregularities, fraudulent activities and non-compliance to government laws and regulations within the Directorate.
- 11 The Petitioner avers that on 4th October 2024 she was invited to a meeting with the 3rd Respondent and the 2nd Respondent's Chairperson wherein in she was handed an internal memo addressed to her titled 'proceeding on annual leave'. It stated that during the 34th Council meeting, the Veterinary Medicines Directorate Council resolved that a Special Audit be carried out to address gaps in the current audit findings. As the CEO, she was

required to cooperate with the auditors to release all the necessary information.

- 12 She avers that prior to receiving the internal memo, she never discussed the issue of her leave with the Chairperson as agreed in the meeting of 30th September 2024.
- 13 The Petitioner avers that immediately after the meeting, she responded to the Memo and the letter dated 3rd October 2024 in which she made three requests: To be notified of the specific documents that were not availed for Internal Audit to allow for correlation with findings of the special audit and mitigate possible scenarios where documents could be intentionally removed to give the impression they were missing and therefore not availed for audit; Clarification on the type of leave she was being asked to take since she had planned to take her annual leave during the month December; Facilitation of management to be able to implement Council decisions and run operations smoothly through clear separation of roles.
- 14 The Petitioner avers that the 3rd Respondent responded vide a letter dated 9th October 2024 indicating that it had been circulated to all Council members for their consumption.
- 15 The 3rd Respondent however directed that the resolutions of the Council made during the 34th Council meeting that a

Special Audit be carried out to address audit gaps still stood and that the Council further resolved that the CEO, the Petitioner proceeds for 30 days leave with effect from 11th October 2024. In that regard the Petitioner's letter seeking review of the Council decision had been noted and would be considered during the next full Council meeting. The Petitioner was therefore required to cooperate and proceed on leave as directed.

16 The Petitioner avers that she responded vide a letter dated 11th October 2024, wherein she noted that the requests made in her earlier letter had not been addressed and reiterated that nowhere in her letter had she made a request for the review of the Council decision. She also noted the inconsistency in the Council resolution regarding the leave during the same meeting that she proceeds on leave for all accumulated and unutilized leave days until when she would be recalled and another that the Council resolved she proceeds on 30 days leave.

17 It is the Petitioner's case that she clarified that during the council meeting, the essence of going on leave during the period of audit was to allow for independent investigations devoid of her influence and interference and therefore the issue of recalling her from time to time was inconsistent with the purpose and intention of the leave.

- 18 She avers that she proposed to the Council that since she was directed to proceed on leave, she presumed the leave would be undertaken in accordance with Regulation 62 of the Public Service Commission Regulations of 2020, to which the Council did not object. She then also requested the members to identify the person to handover the Accounting Officer function which is given to the CEO by law.
- 19 The Petitioner avers that on 9th October 2024, the Principal Secretary had called for a stakeholders meeting at the 1st Respondent's premises which was attended by the 3rd Respondent and four other members. However, she noted with concern that members were still not observing separation of roles to ensure smooth governance; as afterwards they decided to hold another meeting in the Boardroom. The Vice Chairman reprimanded the front office staff for not opening the boardroom instead of informing the Petitioner to avail it for use by members. Other members were loudly scolding lower cadre staff for not keeping the Chairpersons office orderly.
- 20 The Petitioner avers that on 14th October 2024, there was a meeting of the Finance, Strategy & Administration Committee. She therefore went to the office very early in the morning to ensure the files for Committee members were in order for the meeting and clear her desk and hand over.

- 21 Thereafter, the 3rd Respondent came to the Petitioner's office around 10.00 a.m. after making frantic calls on her phone. She demanded to know whether the Petitioner was proceeding on leave or not. The Petitioner explained the reason she had gone to the office and indicated she would leave as soon as she was done. The 3rd Respondent came back again to the Petitioner's office at around noon demanding she leaves; however, she did not leave immediately because she was still clearing with a few items on her desk.
- 22 The Petitioner avers that she left the office at 6.30 PM and still left the 3rd Respondent and some Council members meeting some staff members at the car park. The Petitioner started her 30 days compulsory leave on that day.
- 23 Later that night, the 3rd Respondent called her to confirm whether she had actually started her leave and confirmed she saw the Petitioner leaving the office premises. The Petitioner responded in the affirmative and submitted the handing over letter to the appointed acting officer.
- 24 It is the Petitioner's case that on diverse days between 15th -22nd October, 2024, she received emails from the 3rd Respondent and the Acting officer to provide different documents to the Special Audit team which were followed up by calls by the 3rd Respondent. The Petitioner wrote a message to both the 3rd Respondent and Acting officer and

requested she gets a list of all the required documents by 22nd October 2024 so that she could go to the office for one day only and provide the same. She went and availed the all the requested documents for the special audit team on 25th October, 2024.

25 The Petitioner avers that the 3rd Respondent called her on 29th October 2024 and asked her to approve payments for the Special Audit team to which she responded that she could not take responsibility for payments she had not evaluated. The 3rd Respondent later wrote a WhatsApp message directing the Petitioner to log into the system and approve payments that had been uploaded for her approval, clearly ignoring the earlier telephone conversation. The Petitioner did not respond to the WhatsApp message.

26 The Petitioner avers that on 30th October 2024, the 3rd Respondent posted a letter addressed to the Petitioner on the Council WhatsApp group directing her to approve payments for the auditors who had been undertaking the special audit. The letter was also copied to the Principal Secretary. Members started complaining on the group chat how auditors had not been paid and that the Council should take action against the Petitioner for not taking Council instructions. The Petitioner neither responded to the letter nor the messages.

27 The Petitioner avers that on 18th November 2024, she received an email from the 3rd Respondent with a cover

letter forwarding a draft Special Audit Report. The letter required she provides Management response to the issues raised in the draft special audit report within 7 days to allow for preparation of a final Report.

28 It is the Petitioner's case that she later came to learn that the draft Audit Report had been deliberated on by the Audit & Risk Assurance Committee of the 2nd Respondent before being sent to her for response. This was unprocedural because management responses are sought from the auditee to aid in preparation of a final report with recommendations.

29 She avers that she sent the management's response on 25th November 2024, and she also requested that she be invited to present the referenced documents to the Special Audit team physically since she had noted the Draft Special Audit Report was indicating some documents were not availed when the audit team had actually signed for them. The Petitioner's request was however not responded to.

30 The Petitioner avers that she was invited to a Special Council meeting on 26th November 2024 to a presentation of the Management's response. All the functional heads had also been invited to make presentations regarding areas under their departments and sections. The management response submitted by the Petitioner had addressed all issues raised in the draft Special Audit report from all departments and sections so it was not clear why

the functional heads were also being invited. The Petitioner was not able to attend the meeting due to ill health.

- 31 It is the Petitioner's case that it was unprocedural for the 2nd Respondent to deliberate on the Petitioner's management responses to the Draft Special Audit Report instead of the responses being availed to the audit team to aid in preparation of a final report with recommendation for action. To date no final report from the special audit team has been issued and neither has the Petitioner received feedback on whether the responses she provided were adequate or not.
- 32 The Petitioner avers that her leave lapsed and she resumed duty on 27th November 2024 and informed staff through a Memo dated 28th November, 2024 that she had resumed duty. On the same day, the 3rd Respondent sent her a letter via email informing her that the 2nd Respondent, during its 35th Special meeting held on 26th November, 2024 had resolved to extend her leave for a further 30 days to allow for completion of the Special Audit exercise and that Dr. Emily Muema would continue serving as acting CEO until when the Petitioner would resume from leave. Although the letter was dated 27th November 2024, the Petitioner received it on 28th November, 2024.

- 33 The Petitioner avers that she responded on 28th November 2024 seeking for the legal basis for the leave extension and how to treat the period that was not supported by law. The Petitioner also notified the 2nd Respondent that she had received a Notice of a Special Audit of the institution by the Inspectorate of State Corporations and would be in the office to participate in the same.
- 34 Subsequently, the 3rd Respondent posted the letter notifying the Petitioner of the leave extension on the Council WhatsApp group on 28th November, 2024 and made several phone calls to the Petitioner. The 3rd Respondent also posted the Petitioner's response in the same group with members commenting the Petitioner be given the legal basis for the extension as alleged.
- 35 It is the Petitioner's case that on 2nd December, 2024, the 3rd Respondent attached what she called an initial response to the Petitioner's letter and indicated that further clarification would come from the Council in due course. The 3rd Respondent further directed via the email that the Petitioner should note that the resolution of the Council stood enforced and the Petitioner should proceed on leave as resolved.
- 36 The Petitioner avers that she responded via email on 3rd December 2024 indicating that her letter had indeed requested the 2nd Respondent to clarify the legal basis for the leave extension and informed members of the special audit by the Inspectorate of State Corporations. The 3rd

Respondent responded on email on same day and quoted the 1st Respondent's Regulations that the Petitioner shall be responsible to the Council, Section 28 (1a) of the Employment Act 2007 that requires an employee not less than 21 working days leave with full pay and regulation 5(1) that states the management of the VMD was vested on the Council.

37 The email further stated that the Council had appointed an acting CEO and the issue of deserting duty therefore did not arise since it was a Council directive and that the Petitioner's continued disobedience of the Council directives was causing anarchy in the office. The email further stated special audits are not audits to an individual but an audit to review the organizational processes and also, the Petitioner be informed that the Special Audit by the Inspectorate of State Corporations was redundant and had been cancelled as VMD had already had a special audit by the internal audit team from the Ministry of Agriculture and Livestock Development.

38 The Petitioner avers that on 3rd December 2024, she received a Show Cause letter with 25 allegations and she was to respond within 10 days. The allegations were to do with her role of carrying into effect the decisions of the 2nd Respondent, implementation of the Directorate's mandate, issues of staff discipline which had not been taken through due process and other matters that the 2nd Respondent had been well briefed and concurred with regarding

investigations of some members of staff for allegations of corruption and abuse of office and criminal activities relating to sharing of official government documents in the media contrary to the provisions of the Cybercrime Act.

39 On 10th December 2024, two days to the deadline for submission of the Petitioner's response to the notice to show cause, the Acting Chief Executive Officer wrote a request to the Ministry for an extra special meeting for an Ad hoc Disciplinary Committee to conduct hearings and make recommendations to the 2nd Respondent on the alleged misconduct of the CEO and two staff.

40 The Petitioner avers that on 9th December 2024, a meeting for the Ad hoc Committee had already been called with an agenda to analyze the show cause letters in which the Secretary is the Internal Auditor. One of the members to the Committee (Beatrice Adueri) is a staff from the State Department for Livestock Development and was co-opted by the 3rd Respondent with no resolution by the 2nd Respondent.

41 The Petitioner avers that she submitted her response to the Show cause letter on 12th December 2024 vide email with 18 attachments to all the members of the 2nd Respondent.

42 She avers that on 17th December 2024, the Petitioner received an email from the 3rd Respondent notifying her to appear before the ad hoc Disciplinary Committee on 7th

January 2025. The email had 3 attachments namely; the letter of notice of the disciplinary hearing; email correspondences between the Petitioner, the internal auditor and the Chairman of the Audit & Risk Assurance Committee; and a Show Cause Response Analysis Matrix which contained a table with 5 columns titled: gross misconduct; response; reference documents; and analysis.

- 43 The Petitioner avers that the Show Cause Response Analysis Matrix included more issues not raised in the initial show cause letter with no indication whether earlier responses by the Petitioner to initial issues were adequate or not. Additionally, she was being asked to provide documents that were already availed to the special audit team during the process of special audit and in the management response to the draft special audit report.
- 44 The Petitioner avers that she was also was required to attach copies of specific payment vouchers yet on opening the 1st Respondent Enterprise Resource Plan Information Technology(IT) system realized that the said documents which she is required to attach are no longer available. There was no way the Petitioner was expected to have had copies of the Payment vouchers when the 1st Respondent resolved in the Financial Year 2022/2023 to digitize the finance/accounts processes including the handling of payment vouchers and had done away with the issues of hard copies of the payment vouchers.

- 45 Administratively, it is only the 1st Respondent's IT department that has unlimited access and ability of managing the IT system including adding, editing and deleting items from its IT system. Therefore, she was being compelled to produce the said payment vouchers to form part of her defense in the ongoing disciplinary process yet the same may have been deleted from the IT system and cannot be accessed by the Petitioner.
- 46 The Petitioner avers that the said disciplinary proceedings ought to be halted and/or stayed and the 1st Respondent directed to provide a backup of the payment vouchers in question and provide copies to her for purposes of her defense in the disciplinary proceedings.
- 47 The Petitioner avers that the issue of alleged embezzlement of the Corporation's funds was the subject of ***Nairobi ELRC Petition E 077 OF 2024; Dindi Oscar Okumu vs. Veterinary Medicines Directorate & 5 others***. This suit was dismissed by Hon. Judge Byram Ongaya on 21st November 2024 for want of prosecution.
- 48 The Petitioner avers that the 3rd Respondent was appointed as the Chairperson to the Board/Council of the 1st Respondent vide Gazette notice dated 17th May 2024 but knowingly went ahead to apply for and was issued with a License to operate and supervise the operations of a business that is regulated by the 1st Respondent on 15th August 2024.

- 49 She contends that as the Chairperson of the decision making organ of the 1st Respondent, the 3rd Respondent is therefore highly conflicted since she is advantaged to influence decisions in favour of the business she superintends in terms of being granted business license after inspections, product registration, import and export permits thereby giving her business undue advantage over the competitors.
- 50 The Petitioner avers that since appointment as the Chairperson of the Board/Council of the 1st Respondent, the 3rd Respondent has continued to flout the principles of good governance by usurping the powers of the 2nd Respondent as well as those of management which is headed by the Petitioner and making operations difficult.
- 51 It is the Petitioner's case that the 3rd Respondent is unfit to hold office as the Chairperson of the Board/Council of the 2nd Respondent for failing to uphold the Values and Principles of Public Service, National Values and Principles of Governance as enshrined in the Constitution and the Code of Governance for State Corporations.
- 52 The Petitioner avers that she commenced these proceedings and obtained interim orders suspending the illegal disciplinary proceedings that had been initiated against her pending hearing and determination of this petition. The said interim orders of the court were duly served upon the Respondents and the court further

reiterated the interim orders on 23rd January 2025 and warned the Respondents against breach thereof.

53 The Petitioner avers that notwithstanding the said interim orders and the warning of the court, the Respondent proceeded to terminate her contract and to appoint a Chief Executive Officer to take up her position.

54 It is the Petitioner's case that the Respondent's actions other than being in contempt of court rendered the impugned disciplinary proceedings superfluous. The Respondent's contemptuous conduct was intended to, and indeed changed the gravamen of this petition.

55 The Petitioner asserts that the Respondent forced her to forfeit her earned 45 days leave by unlawfully converting the same to what was akin to interdiction. She was therefore not compensated in lieu of the said 45 days untaken leave.

1st, 2nd, 4th, 5th and 6th Respondents' Case

56 The Respondents filed a replying affidavit dated 24th September 2025 sworn by Dr. Elloy Otieno, the Chairperson of the Ad Hoc Disciplinary Committee of the 2nd Respondent.

57 The Respondents aver that the disciplinary process which is the subject of the Petition arose from an internal staff complaint delivered to the 1st Respondent and dated 3rd

July 2024. The complaint raised allegations of harassment, discrimination and abuse of office against the Petitioner.

- 58 The Respondents aver that following receipt of the complaint and preliminary inquiries, the 1st Respondent resolved to institute a Special Audit and to convene the Ad Hoc Disciplinary process to investigate alleged governance and financial irregularities. The Special Audit report and related internal audit material bearing on the matters in issue were produced during the inquiries.
- 59 The Respondents aver that the matters were placed before Council at its 34th meeting where the staff complaint was introduced and Council resolved to request a Special Audit.
- 60 The Respondents aver that in the course of the disciplinary investigations the Petitioner was issued with management correspondence requesting documents and records. Subsequently, she was issued with a show cause letter dated 2nd December 2024 setting out 25 specific allegations of gross misconduct.
- 61 The Respondents aver that was served with a Notice of Hearing dated 17th December 2024 which expressly accorded her access to documents, the right to appear and be represented and to receive the evidence on which the Respondents relied.

- 62 They aver that the measures taken, including the commissioning of the Special Audit and the institution of disciplinary inquiries, were lawful exercises of oversight, accountability and supervisory functions vested in the Council and in the Accounting Officer under the Public Finance Management Act, 2012, the Employment Act, 2007 and relevant regulations.
- 63 It is the Respondents' case that the Petitioner was afforded the procedural rights mandated by law including notice, particulars of allegations, opportunity to respond, access to documents and the right to representation as evidenced by the notices and correspondence
- 64 The Respondents aver that the allegations set out in the Draft Special Audit and the Internal Audit Annual Summary disclose issues of unsupported expenditure and other irregular financial transactions which the Respondents are entitled to investigate in order to protect public funds
- 65 The Respondents aver that subsequent to the institution of the Petition and the ongoing administrative processes, the 4th Respondent by way of official letter Ref: 1994000686/116 dated 23rd September 2025 confirmed that the Petitioner retired from the Service with effect from 25th August 2025 upon attaining the mandatory retirement age of 60 years, in accordance with Section D.22 of the Human Resource Policies & Procedures Manual (2024).

- 66 The Respondents aver that having considered the contents of the Ministry's confirmation and, having regard to the change in circumstances occasioned by the Petitioner's lawful retirement, the Respondents no longer find it appropriate to continue to pursue the Petitioner through the internal disciplinary mechanism in the present terms.
- 67 They assert that they are content to dispense with the pursuit of the Petitioner in the disciplinary forum and accept that the substantive disciplinary process has been overtaken by events and rendered academic and moot by reason of the Petitioner's retirement.
- 68 The Respondents aver that they reserve the right to cooperate with and provide information to any competent oversight, investigatory or prosecutorial authority in the exercise of its lawful mandate; the foregoing reservation does not constitute a continuation of disciplinary process against the Petitioner but is a limited administrative and statutory preservation of accountability applicable to public entities.
- 69 It is the Respondents' case that it is a well-established principle that courts will decline to adjudicate matters which have been overtaken by events or have otherwise become academic. Where the subject matter of proceedings no longer exists or the relief sought cannot be granted in a practical or meaningful way, courts will ordinarily strike out or dismiss such proceedings in the

interests of judicial economy and to avoid issuing advisory or academic pronouncements.

70 The Respondents aver that the Human Resource Policies & Procedures Manual (2024) sets out the mandatory retirement age and related administrative provisions; the confirmation of retirement is made in accordance with same.

71 The Respondents urged the court that there be no order as to costs in view of the Respondents' position that the Petition is academic following the Petitioner's lawful retirement; alternatively, the Court may make such other order as it deems just and equitable.

3rd Respondent's Case

72 In opposition to the petition, the 3rd Respondent filed a replying affidavit dated 27th October 2025.

73 It is the 3rd Respondent's case that the petition and the orders sought have been overtaken by events.

74 She avers that that the 2nd Respondent commenced disciplinary proceedings against the Petitioner for gross misconduct vide a Notice to Show Cause dated 2nd December 2024. The Petitioner had the opportunity to respond to the Notice to Show Cause, which she did on 12th December 2024.

- 75 As per the Notice to Show Cause, the Petitioner was required to appear before an Ad hoc Committee on 7th January 2025 for a disciplinary hearing.
- 76 The 3rd Respondent avers that before the Petitioner could be taken through the disciplinary process as contemplated under the Employment Act and the Veterinary Surgeons and Veterinary Para-Professionals Act, this Court issued orders of injunction stopping the Respondents from continuing with the disciplinary process.
- 77 The 3rd Respondent avers that the process for the initiation of the disciplinary proceedings against the Petitioner was proper and in accordance with Regulation 14(2) of the Veterinary Surgeons and Veterinary Paraprofessionals (Veterinary Medicines Directorate) Regulations, 2015, requiring that a notice to show cause and a hearing be afforded to the Petitioner before any contemplated removal from office. Additionally, the initiation of the disciplinary proceedings was in accordance with the provisions of Section 41(2) of the Employment Act.
- 78 It is the 3rd Respondent's case that pursuant to this court's orders, the disciplinary process against the Petitioner was halted in compliance with the court orders. At no point did the Respondents take any further disciplinary action against the Petitioner contrary to the court's directive, as alleged by the Petitioner.

- 79 The 3rd Respondent avers that she wrote to the Petitioner informing her that the disciplinary proceedings against her stood suspended in light of the court's orders. Consequently, no disciplinary proceedings were ever continued against the Petitioner that are capable of being impugned by this Court, contrary to the Petitioner's averments.
- 80 She avers that upon suspension of the disciplinary proceedings by this Court, and during the pendency thereof, the Petitioner was subsequently recalled by the Ministry of Agriculture and Livestock Development, her primary employer, and subsequently, through effluxion of time her employment terminated through statutory retirement on 25th August 2025.
- 81 The 3rd Respondent avers that the Petitioner was lawfully retired upon the attainment of the mandatory retirement age for all public servants is sixty (60) years.
- 82 It is the 3rd Respondent's case that the Petitioner cannot rely on non-existent disciplinary proceedings to claim unfair termination of employment as termination of employment through retirement does not amount to unfair and unlawful termination of employment.
- 83 Further, the 3rd Respondent has no mandate under the Constitution to advertise for recruitment of members of the Service. Further, the budgetary allocation for recruitment of members of the Service, which includes the

cost of advertisement for recruitment, lies with the 2nd Respondent.

84 The 3rd Respondent asserts that issues raised by the Petitioner on this court's interim orders of 30th December 2024 are res judicata and amount to an attempt by the Petitioner to relitigate facts already determined by this Court.

85 The 3rd Respondent avers that this Court vide its ruling dated 9th June, 2025 already found that the impugned actions by the Respondents did not amount to contempt of this Court's orders and/or directions.

86 The 1st Respondent avers that vide a letter of appointment dated 10th May, 2016, the Petitioner was appointed to the grade of Deputy Director of Veterinary Services, being Job Group 'B' with effect from 6th April, 2016.

87 She avers that on 22nd April 2020, the Petitioner was appointed the Acting Chief Executive Officer (Ag. CEO) for the 1st Respondent, upon the re-deployment of the then CEO of the Directorate, Dr. Naphtal A. Mwanzinki to the State Department of Livestock. The appointment was for a period of three (3) months, or until the position was filled substantively.

88 It is the 3rd Respondent's case that the Petitioner was appointed the CEO of the 1st Respondent on secondment from her primary employer, the Ministry of Agriculture,

Livestock, Fisheries & Cooperatives. Vide a letter dated 30th August 2022, the Principal Secretary, Ministry of Agriculture, Livestock, Fisheries & Cooperatives communicated the decision of the Public Service Commission (PSC) allowing for the Petitioner's secondment to the 1st Respondent for a period of three (3) years, with effect from 1st December 2021 up to and including 30th November 2024.

- 89 The 3rd Respondent asserts that as per the provisions of the Public Service Commission Regulations, 2020 and the Guidelines on Secondment in the Public Service, 2016, at all material times during the secondment of a public service employee, such employee shall remain the employee of the parent organization. Consequently, the Petitioner remained the employee of the Ministry of Agriculture, Livestock, Fisheries & Cooperatives during the time of her secondment as Chief Executive Officer of the 1st Respondent.
- 90 It is the 3rd Respondent's case that the 1st Respondent's previous Council offered the Petitioner an employment contract as CEO of the Directorate for a period of five (5) years commencing on 1st December 2021, and which contract of employment was stated to be renewable subject to the Petitioner's performance. However, that the decision to appoint the Petitioner in the position of CEO for a contract period of five (5) was contra statute, and hence invalid for the extra period of two (2) years.

91 The 3rd Respondent avers that under Regulation 37 (4) of the Public Service Commission Regulations, 2020; Guidelines on Secondment in the Public Service, 2016 and Section 2.37 (a) of the Veterinary Medicines Directorate Human Resource Policy and Procedure Manual, any secondment from the Public Service shall not be for a term exceeding three (3) years.

92 It is the 3rd Respondent's case that for the Petitioner to be validly employed under the five-year contract issued by the 1st Respondent, she was required to resign as an employee of the Ministry of Agriculture and become an employee of the 1st Respondent, as provided under the PSC Regulations and the Veterinary Medicines Directorate (VMD) Act. The letter seconding the Petitioner to the 1st Respondent expressly instructed the 1st Respondent to remit 31% of the Petitioner's basic salary to the Director of Pensions, an obligation that the 1st Respondent has duly undertaken. This demonstrates that the Petitioner remains an employee of the Public Service Commission, to wit, the Ministry of Agriculture and Livestock Development rendering the purported employment contract void to the extent that the Petitioner did not resign from the PSC as required. In fact, the Petitioner has continued to receive promotions from the Ministry, her employer.

93 The 3rd Respondent further avers that under Regulation 13 of the Veterinary Surgeons and Veterinary Para-Professionals (Veterinary Medicines Directorate)

Regulations, 2015, which regulations establish the 1st Respondent, the CEO of the Directorate shall hold office for a term of 3 years renewable once subject to satisfactory performance. Consequently, and admittedly, the Petitioner's Contract of Employment for a period of 5 years was erroneous, illegal and contra statute, and any period beyond the statutory provided 3 years was *void ab initio*.

94 The 3rd Respondent contends that being an employee of the Ministry of Agriculture, Livestock, Fisheries & Cooperatives seconded to the 1st Respondent, the letter of secondment takes precedence over any contract issued by the 1st Respondent as far as any inconsistencies arise.

95 The 3rd Respondent avers that vide a letter dated 27th September, 2024 the Petitioner requested for the renewal of her secondment to the 1st Respondent, upon the expiry of her secondment term on 30th November, 2024. Subsequently, the Ministry communicated its decision vide a letter dated 7th January 2025 rejecting the Petitioner's application for renewal of her secondment and directing that the Petitioner be redeployed back to the Directorate of Veterinary Services upon the expiry of her secondment.

96 The 3rd Respondent avers that the Petitioner's decision to request for a renewal of her secondment directly to the Ministry and without reference to the 1st Respondent, being the host organization, was in utter bad faith and in contravention of the Public Service Commission

Regulations, 2020 and the Guidelines on Secondment in the Public Service, 2016.

- 97 The 3rd Respondent avers that in accordance with the decision of the Ministry declining to renew the Petitioner's secondment, and to accordingly redeploy the Petitioner, and in her capacity as Chairperson of the 2nd Respondent, vide the letter dated 9th January, 2025, and for ease of transition, she required the Petitioner to hand over all CEO functions and documents to the 15th Respondent before the Petitioner's clearance on 14th January, 2025.
- 98 It is the 3rd Respondent's case that having ceased to be an employee of the 1st Respondent, the suspended disciplinary proceeding against the Petitioner stood terminated, therefore, the present proceedings and the consequential orders having been overtaken by events.
- 99 The 3rd Respondent reiterated that by virtue of the decision communicated on 7th January 2025, the Petitioner's secondment as the 1st Respondent's CEO was terminated having been recalled back to her parent Ministry.
- 100 The 3rd Respondent avers that the Petitioner has willfully and deliberately concealed the fact that she was on secondment as the 1st Respondent's CEO through a letter dated 30th August 2022. As well as her application for an extension/renewal of secondment dated 27th September 2025.

101 It is the 3rd Respondent's case that the Petition lacks merit and that the Petitioner has failed to prove to the required standard the violation of her rights to warrant the intervention of this Court.

102 The 3rd Respondent further avers that she has demonstrated that the Petitioner's employment was never terminated on account of any disciplinary proceedings, but through upon her attainment of the mandatory retirement age. Thus, the present Petition is spurious and frivolous and the same ought to be dismissed with costs, for being an abuse of the court process.

Petitioner's Submissions

103 The Petitioner submitted on three issues: whether the purported refusal to renew the secondment of the petitioner was lawful; whether termination of the petitioner's contract was done in accordance with the law; and whether the petitioner is entitled to the orders sought.

104 On the first issue, the Petitioner submitted that she was appointed by the 1st Respondent for a renewable term of five years which took effect on 1st December 2021 and would have lapsed naturally on 30th November 2026. To take up this appointment, she was required to apply to the Public Service Commission for secondment thus she made

the requisite application to the Public Service Commission and was accordingly seconded to the 1st Respondent.

105 The Petitioner submitted that pursuant to regulation 37(4) of the Public Service Commission Regulations, 2022, the Public Service Commission can only second employees in the public service for a maximum of three years at a time. Such secondment may be renewed by the Public Service Commission for a further and final period of 3 years.

106 It is the Petitioner's submission that she was seconded to the 1st respondent for the initial period of three years after the lapse of which, she was expected to apply to the Public Service Commission through her parent ministry for extension of her secondment. This would enable her to serve for the entire 5 years of her contract. In compliance with this requirement, she applied for extension/renewal of secondment. While she awaited response in that respect, she continued to execute her responsibilities. Indeed, she executed her duties beyond the three years of initial secondment and the respondents did not raise any issues.

107 On her termination, the Petitioner submitted that the Respondents initially sent her on compulsory leave to give room for some purported audit to be conducted. Subsequently, the Respondents invited her for a disciplinary hearing which was to take place on 7th January, 2025. She challenged the propriety of the said disciplinary proceedings before this court, which issued interim orders suspending the said disciplinary

proceedings. When the court issued the said interim orders, the 1st, 2nd and 3rd Respondents evicted her from office and installed her replacement. This effectively terminated her running contract of employment.

108 It is the Petitioner's submission that to justify their contempt, the Respondents relied on a letter dated 7th January, 2025 authored by the Principal Secretary purporting to reject the petitioner's request for extension/renewal of secondment. In the said letter, the Principal Secretary states that her request for renewal of her secondment was considered but declined. The letter however failed to state who considered and declined the Petitioner's request for secondment nor does it state when the said request was considered. Further, no minutes were attached to the Principal Secretary's letter showing deliberations in which the said matter was considered.

109 It is the Petitioner's submission that the said proceedings having been suspended by the court, the Respondents designed an alternative means to ensure that they achieved their objective, which was to remove her from office; hence the purported non-renewal of her secondment.

110 The Petitioner submitted that the purported non-renewal of her secondment was not only in bad faith but also against the law; hence null and void.

111 It is the Petitioner's submission that the Principal Secretary does not have the power to second and/or to decline to second an employee in the public service. That is the province of the Public Service Commission. Section 42(1) of the Public Service Commission Act states thus:-

"The authority to second a public officer shall vest in the Commission and shall be carried out on the request of an authorised officer or a public officer."

This is further reiterated under regulation 37(1) of the Public Service Commission Regulations, 2022.

112 The Petitioner submitted that the Principal Secretary acted beyond his powers in purporting to decline the petitioner's request for renewal of secondment. She cited **County Assembly of Kitui v Governor, Kitui County Government & another; Kitui County Public Service Board & another (Interested Parties) [2021] KEHC 8557 (KLR)** wherein the court stated thus regarding the powers of the Public Service Commission in secondment:-

"This court has looked at the correspondences between the 1st Respondent and the Office of the President, the Ministry of Interior and Coordination of National Government and there is no doubt in my mind that the engagement of the 2nd Respondent was by way of Secondment as per the definition of the Section above. The only issue for determination is whether the secondment was lawful or proper. The

answer to the above critical question lies in the interpretation of Section 42 (1) of the Public Service Commission Act, 2017.”

113 The Petitioner submitted that the Principal Secretary did not have the power to grant and/or decline a request for secondment of the petitioner to the 1st Respondent. Further, the Principal Secretary’s impugned letter was written in an attempt to justify the kicking of the petitioner out of her office through alternative means the moment the court suspended the initial route through disciplinary proceedings that had hitherto been initiated against her.

114 The Petitioner submitted that since the Principal Secretary’s decision was null and void, any action anchored on it is equally void and must fall. She cited [PALACE INVESTMENT LIMITED |& ANOTHER V PENINA ACHIENG OYUGI & 5 OTHERS \[2012\] KEHC 275 \(KLR\)](#)

115 5 others where while quoting Macfoy vs. United Africa Co. Ltd [1961] 2 ALL ER 1169 at 1172 & Omega Enterprises (Kenya) Ltd. vs. KTDC & 2 Others Civil Appeal No. 59 of 1993 and Andrew Kamau Mucuha vs. The Ripples Limited Civil Appeal No. 19 of 1998 [2001] KLR 75, the learned judge stated thus:-

116 If an act is void, then it is in law a nullity as it is not only bad but

117 incurably bad and there is no need for an order of the Court to set it aside, though sometimes it is convenient to have the Court declare it to be so. You cannot put

something on nothing and expect it to stay there, as it will collapse.

118 On the second issue, the Petitioner submitted that her contract of employment was terminated unfairly. The Petitioner was initially sent on compulsory leave before being issued with a Notice to Show Cause and subsequently invited for a disciplinary hearing. As part of the disciplinary hearing, she was directed to avail some payment vouchers for scrutiny, though, since 2022, the 1st Respondent passed a resolution to be paperless. As such, documents such as payment vouchers can only be accessed online. However, upon logging into the 1st Respondent's portal, she realized that the vouchers she was being ordered to produce had been deleted from the system. As such, these said vouchers could not be availed having been deleted and the 1st Respondent's direction to the petitioner to produce them during the disciplinary hearing was only but a trap.

119 It is the Petitioner's submissions that she filed these proceedings to challenge the said disciplinary proceedings which were intended to sanitize her premeditated termination. When the court issued temporary orders suspending the said disciplinary hearing, the Respondents proceeded to terminate the Petitioner's employment nonetheless.

120 It was submitted that the Respondents denied the Petitioner the right to be heard before termination. The components of fair opportunity to be heard was defined by the Court of Appeal in the case of ***Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR*** in the following terms;

“Four elements must thus be discernible for the procedure to pass muster:- (i) an explanation of the grounds of termination in a language understood by the employee; (ii) the reason for which the employer is considering termination; (iii) entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made; (iv) hearing and considering any representations made by the employee and the person chosen by the employee.”

121 The Petitioner submitted that the Respondents did not comply with the proper procedure prior to termination of employment as required under section 41 of the Employment Act.

122 The Petitioner submitted that the Respondents failed to discharge the burden placed upon them under section 43(1) and 45(2) to prove any reason for terminating the claimant from employment. The Respondents chose to terminate the Petitioner’s employment while the

disciplinary proceedings they had initiated against the petitioner had been suspended by the court.

123 The Petitioners submitted that since the Principal Secretary who signed the letter of non-renewal of the Petitioner's secondment did not have the authority to do so, thus, the Petitioner could not rely on this as the reason for termination.

124 On the final issue, the Petitioner submitted that the purported disciplinary proceedings initiated against her culminating into a directive that she produces documents that had been deleted by the 1st, 2nd and 3rd Respondents from the 1st Respondent's portal and subsequently evicting her from her office breached her rights to fair administrative action, right to fair labour practices, right to be heard contrary to articles 47, 41 and 50 of the Constitution as well as sections 41, 43, and 45 of the Employment Act.

125 The Petitioner submitted that her contract was terminated with 23 months left. She legitimately expected to remain in the 1st Respondent's employment for the said duration and earn income. The Petitioner's monthly salary was Kshs 474, 842 which translates to Kshs 10,921,377 for the 23 months thus she urged this court to award her the same being the equivalent of the salary for 23 months left of her contract. She cited ***Donas Lombom & 7 others versus Civicon Limited [2016] Eklr.***

126 It was submitted that the Petitioner had been seconded to the 1st Respondent under a contract in which she was to serve for five years. She therefore vested her time and expertise to serve the 1st Respondent in the hope that she would serve the full term of the contract. She urged the court to award her compensation for unfair termination equivalent of her 12 months' salary.

127 The Petitioner submitted that as soon as a new Council was appointed headed by the 3rd Respondent, the 2nd respondent orchestrated a scheme to remove her. This scheme was orchestrated in a conspiracy between the 2nd Respondent and junior employees of the 1st respondent. Initially, they alleged that the Petitioner had participated in financial malpractices and initiated disciplinary proceedings against her. The Petitioner challenged the propriety of the said proceedings and obtained an order in these proceedings suspending the same.

128 She submitted that once that route was blocked for the Respondents, they purported to remove the Petitioner while alleging that her secondment had not been renewed. This happened during the period of suspension of the disciplinary proceedings. The Petitioner was physically evicted from her office which remained locked in order to deny her access. Subsequently, the Respondents appointed someone else who took over in her stead.

129 It was submitted that pursuant to the Petitioner's contract of employment, she was entitled to annual leave

allowance of Kshs 50,000. This was not paid to her in the year 2024. Further, the Petitioner expected to earn the said allowance in 2025 and 2026 if her contract had not been prematurely terminated.

130 The Petitioner submitted that she was entitled to 30 working leave days each year. She carried 15 days leave forward from the year 2023 and she did not take leave in 2024. The Respondent did not controvert this.

131 The Petitioner submitted that her contract of employment, each party was obligated to issue to the other a notice of three months in the event of intention to terminate the contract. The Respondents terminated her contract unfairly and without notice as demonstrated in the petition.

1st, 2nd, 4th, 5th and 6th Respondents' Submissions

132 The Respondents submitted on three issue; whether the Petitioner's employment lawfully came to an end upon the lapse of her secondment and subsequent retirement; whether, in light of those events, this Petition has been rendered moot and academic; and whether the Petitioner is entitled to the declaratory, compensatory, and monetary reliefs sought.

133 The Respondents submitted that the Petitioner was appointed as Chief Executive Officer of the 1st Respondent

for a contractual term of 5 years commencing 1st December 2021. However, the said appointment was subject to secondment by the Public Service Commission (PSC) as the Petitioner was a substantive employee of the public service. The Secondment Letter, dated 8th August 2022, clearly provided that the secondment would be for a maximum initial period of 3 years, renewable at the discretion of the Commission.

134 The Respondents submitted that mid-2024, out of an internal audit conducted the report discovered that there was an abuse of office, discrimination, and irregular financial approvals. The 2nd Respondent, exercising its oversight powers under the Veterinary Surgeons and Veterinary Paraprofessionals Act, 2011, resolved to request a Special Audit by the Auditor-General.

135 It is the Respondents' submission that the final Audit Report dated 29th November 2024 revealed governance and procurement anomalies. The Petitioner was thus issued with a Show Cause Letter detailing 25 allegations and granted an opportunity to respond, which she did. She was further invited to appear before a disciplinary committee on 7th January 2025.

136 The Respondents submitted that before conclusion of the disciplinary process, the Public Service Commission declined to renew the Petitioner's secondment beyond 30th November 2024. The Ministry of Agriculture and Livestock

Development formally communicated this decision, and the Petitioner was redeployed to her parent ministry, thereby lawfully terminating her engagement with the 1st Respondent. The non-renewal of the Petitioner's secondment lawfully brought her appointment to an end. The 1st and 2nd Respondents were thus justified in ceasing to engage her as CEO.

137 The Respondents submitted that vide letter Ref: 1994000686/116 dated 23rd September 2025, the Petitioner was confirmed to have attained the mandatory retirement age of 60 years with effect from 25th August 2025. The Respondents therefore lawfully abandoned the disciplinary process, as any further proceedings would have served no practical purpose.

138 The Respondents submitted that the Petitioner was notified of the intended action, supplied with the audit report, and allowed to respond. She remained on full pay and benefits during the process. Further, the right to be heard in disciplinary proceedings is not equated to judicial trial rights; internal processes are guided by reasonableness, not rigidity. They thus submitted that there was no infringement of her rights, and the disciplinary process met all constitutional thresholds.

139 It is the Respondents' submission that the 4th and 5th Respondents acted strictly within their constitutional and statutory mandates under the State Corporations Act (Cap 446) and the Public Service Commission Act. Their role

was limited to policy guidance, governance oversight, and compliance verification not direct involvement in disciplinary or administrative action. The Petitioner's attempt to impute liability to them is therefore misconceived and unsubstantiated.

140 The Respondents submitted that the claim that the Principal Secretary's letter declining renewal of secondment was ultra vires the PSC is misleading. The letter merely communicated the PSC's decision, an act well within the Ministry's administrative function.

141 It is the Respondents' submission that the interim orders were directed at halting disciplinary proceedings; the Petitioner's redeployment and eventual retirement occurred by operation of law, not through disciplinary sanction. Therefore, the allegations that the Respondents violated a court order are unfounded.

142 The Respondents submitted that the Petitioner's claim for Kshs 10,921,377 as salary for the unexpired term of a contract that was contingent upon PSC secondment has no legal basis. Additionally, the prayer for damages for unfair termination cannot arise where termination resulted from the lapse of a statutory secondment and subsequent retirement, not from disciplinary dismissal.

143 It is the Respondents' submission that the Petitioner's invitation to the Court to declare the disciplinary process

null and void is academic, as the process was abandoned long before any determination was made.

3rd Respondent's Submissions

- 144 The 3rd Respondent submitted that Petitioner's claim falls within matters which can and should be adjudicated under the Employment Act and the institutions established under that Act, rather than by way of constitutional petition. The Court in ***Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR*** reiterated that constitutional jurisdiction should not be invoked where alternate remedies exist. Therefore, the present petition is misconceived and misplaced and the same ought to be struck out.
- 145 The 3rd Respondent submitted that the petition as presented fails to meet the test enunciated in the ***Anarita Karimi Njeru v Republic [1979] eKLR*** that requires constitutional petitions and/or claims to be precise, concise, and specific
- 146 It further submitted that the 3rd Respondent submitted that the Amended Petition, raises questions that have already been determined by this Court, and the same are consequently, res judicata. The Petitioner contends the actions of the Respondents as described at paragraphs 97A-97G of the Petition constituted to contempt of court. However, and contrary to the Petitioner's averments that

the Respondents' actions were contemptuous, this Court already entered a finding based on the same set of facts, vide its ruling of 9th June, 2025, that the impugned actions did not amount to contempt of this Court's orders and/or directions. Consequently, the Petitioner cannot purport to re-litigate the issue by way of her Amended Petition

147 It is the 3rd Respondent's submission that the employment relationship between her and the 1st & 4th Respondents was terminated by operation of law, consequent upon her redeployment by the 4th Respondent and subsequently, upon her attainment of mandatory retirement age.

148 The 3rd Respondent submitted that It is not in contest that the disciplinary proceedings against the Petitioner were commenced by the 1st Respondent after preliminary investigation/audit report revealed possible gross misconduct on the part of the Petitioner. However, before the disciplinary process could be commenced, this Court issued orders of injunction, stopping the continuation of the disciplinary proceedings against the Petitioner. With those orders in place, the disciplinary proceedings were suspended and the decision to suspend the proceedings on account of the court orders were clearly communicated to the Petitioner.

149 The 3rd Respondent submitted that no further disciplinary action was ever taken against the Petitioner. The Petitioner has not provided any proof that disciplinary proceedings were continued against her contrary to the

orders/directions of the court. Therefore, the Petitioner cannot rely on a non-existent disciplinary proceeding to claim unfair termination of employment. If the Petitioner's employment was terminated in any way, it was not as a result of disciplinary proceedings.

150 The 3rd Respondent submitted that the purported contract of employment issued to the Petitioner for 5 years was clearly *ultra vires* both the statute and the regulations and the 1st Respondent's own internal policy, the same was therefore invalid to the extent that it provided for employment beyond the one provided under the law.

151 The 3rd Respondent submitted that upon the expiry of the Petitioner's secondment on 30th November, 2024, and during the pendency of these court proceedings, the Petitioner was recalled back to the Ministry who is her primary employer. In fact, the Petitioner's request for an extension on his deployment was summarily rejected by the Ministry, and she was directed to be redeployed back to the Ministry.

152 It is the 3rd Respondent's submission that it is trite law, that while the host organization maintains disciplinary control over a seconded employee, such an employee on secondment remains the employee of the seconding employer. The court in ***SMW v DHL Kenya [2023] KEELRC 1468 (KLR)*** observed thus: -

“Whilst the economic employer enjoys the actual services of the employee during the currency of secondment, the primary employer remains the legal employer of the employee with the consequence that the employment relation between the employee and the primary employer remains alive. It is not extinguished. It is because of this reality that the employee is able to resume his services with the original employer upon the lapse of the period of secondment.”

153 The 3rd Respondent submitted that the redeployment decision by the 4th Respondent was an administrative act that falls squarely within the autonomy of the parent ministry. Such redeployment, upon expiry of secondment, is inherent to the autonomy of each organization and does not amount to disciplinary sanction. This is not a matter where the 3rd Respondent interfered with the autonomy of the parent ministry; rather, the 3rd Respondent implemented the redeployment communicated by the ministry. She cited ***Republic v Principal Secretary, Ministry of Interior & Coordination of National Government ex parte Beatrice Nyambura Nduati[2020] eKLR*** the Court held that redeployment upon expiry of secondment is not a punitive act but an administrative reversion.

154 The 3rd Respondent submitted that having been redeployed back to the Ministry and having been asked to

hand over, the Petitioner immediately ceased being an employee of the 1st Respondent, and denying her access to the office did not go against her contract. Further, upon expiration of her deployment, the Petitioner's right to access the 1st Respondent's offices immediately ceased. The Petitioner cannot then claim unfair termination from these circumstances. The Petitioner's employment reverted back to the Ministry.

155 It is the 3rd Respondent's submission that redeployment was not tantamount to termination of employment by the host organization, the 1st Respondent. Rather, the employment relationship simply reverted back to the parent ministry and thereafter terminated by operation of law through retirement.

156 The 3rd Respondent submitted that upon the Petitioner's re-deployment back to the Ministry on 7th January 2025, she subsequently attained the mandatory retirement age of 60 years required of all public servants. Consequently, upon attaining the mandatory retirement age, the Petitioner was retired from employment, and to wit, from the public service.

157 It is therefore the 3rd Respondent's submission that the termination of the Petitioner's employment was never procedural but was done accordingly and was due to effluxion of time, to wit, her retirement.

158 The 3rd Respondent submitted that the Petitioner's prayers (b), (c), (d) and (e) as contained in the Amended Petition have been overtaken by events, and in any case, are incapable of being granted; as it has been demonstrated that the Petitioner's employment was never terminated, but the same terminated by the operation of the law upon her attainment of the mandatory retirement age for persons in the public service. Further, no disciplinary proceedings were ever undertaken against the Petitioner, as the same was enjoined by this Court.

159 The 3rd Respondent submitted that the Petitioner is not entitled to any terminal dues as her employment was never terminated.

160 The 3rd Respondent submitted that the 5 year contract awarded to the Petitioner was *ultra vires* the express provisions of Section 42 of the Public Service Commission Act; Regulation 37 of the Public Service Commission Regulations, 2020 and Clause 2.37 of the 1st Respondent's Human Resource Manual, all of which provide that secondment in the public service shall be for a period of three (3) years. Consequently, a claim for compensation for the remainder of the illegal contract goes against public policy and such contract cannot be enforced by this Court. She submitted that this position has been well settled by Court of Appeal in ***Kenya Airways Ltd v Satwant Singh Flora [2013] eKLR.***

- 161 I have examined all the evidence and submissions of the parties herein. The petitioner filed this petition seeking to stay disciplinary action instituted against her by the respondents. She cited irregularities and various omissions in the process.
- 162 The respondents submitted that the process instituted was above board having been commenced through investigations and the petitioner having been asked to respond before being subsequently invited to appear for a disciplinary hearing.
- 163 The respondents further submitted that the petition has since been overtaken by events following the attainment by the petitioner of her mandatory retirement age of 60 years on 25/8/2025. They aver that they no longer wish to proceed with the disciplinary hearing on that account and that the subject matter of the petition no longer exists.
- 164 The respondents further submitted that the petitioner had been seconded to the respondents from the Ministry of Agriculture And Veterinary Medicine and her secondment period thereof was 3 years and which was not renewed. It was therefore in bad taste to expect to serve a CEO when she had already been released to the Ministry vide a letter of 7/1/25 rejecting further secondment.
- 165 It is indeed true that the petitioner had been seconded to the respondents from the Ministry. The secondment was not renewed vide letter of 7/1/25. It is also true that the

disciplinary process was stayed by court pending hearing of this petition. It is however also true that the petitioner has since reached retirement age and retired from the service. The respondents have informed this court that they do not wish to proceed with any disciplinary process against the petitioner as she has since retired from the service and the subject matter overtaken by events.

166 This position is not denied by the petitioner. The petitioner left the service upon attainment of her retirement age and no disciplinary action can lie against her. The orders she sought in the petition relates to the disciplinary issues which cannot proceed. It is therefore my finding that the issue pertaining to disciplinary action have been overtaken by events and so the orders sought cannot be granted. The issue of unfair termination can also not lie as the petitioner was not terminated for any breaches under the law but due to her attaining of 60 years mandatory retirement age as per Exh NKA1.

167 As concerns remedies for payment of leave allowance, leave not taken of Kshs 688,500/- the petitioner averred that she did not go on leave in 2024, 2025 and 2026. She however filed this petition in 2024 and would not have been asking for futuristic leave of 2025 and 2026. For 2024, she indicated that she was asked to take 30 days leave which she did and so there is no demonstration of any other leave days due and not taken in the said period.

168 The other prayers sought are not tenable and cannot be granted by this court for lack of proof of the same. The entire petition therefore fails. There shall be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi
this 4th Day of December 2025.**

**HELLEN WASILWA
JUDGE**

ORIGINAL