

dismissal which amounts to unfair labour practice and breach of employment laws of Kenya.

e) A declaration be and is hereby issued that the Respondent violated its policies and the suspension is unlawful.

*f) **F1(A)** An order for immediate reinstatement of the Claimant's employment and terms of service and payment of salaries and allowances from the date of suspension until the delivery of judgement of this suit.*

***F1(B)** And in the alternative; An order for payment of salaries and allowances with an annual increment of 3% and interest thereof from the date of suspension to retirement being:*

i. Kshs. 22,564,206.00 being salary from the date he was suspended to retirement.

ii. Kshs. 5,448,428.00 being house allowance from the date of suspension to retirement.

iii. Kshs. 2,334,528.5 being commuter allowance from the date of suspension to retirement.

iv. Kshs.2,200,000.00 being leave allowance from date of suspension to retirement.

v. Kshs 2,050,000.00 being medical cover from the date of suspension to retirement

g) An order for general damages for embarrassment and humiliation, damage to

reputation, mental anguish and emotional distress

h) Costs of this suit.

H (A) Interest in F1(B), g(A) and h above.

i) Any other relief this Honourable Court deems fit and just to grant

Claimant's Case

- 2 The Claimant avers that he was employed by the Respondent on 22nd November 1999 as a Clerical Officer effective 28th January 2000.
- 3 He was initially assigned duties as a Clerical Officer at the Procurement and Stores Division and was subsequently redeployed to the Accounts Division on 5th January, 2011.
- 4 The Claimant avers that he diligently, dutifully and honestly rendered his services to the Respondent and in accordance with his employment contract and without any disciplinary action being preferred against him.
- 5 The Claimant avers that at the instigation of the Respondent, he was arrested on 16th March 2012 and arraigned before the Nairobi Milimani Chief Magistrate Court in Criminal Case No. 378 of 2012 pursuant to a criminal complaint made by the Respondent and was charged with two counts namely fraudulent false accounting contrary to section 330B of the Penal Code and attempted stealing contrary to section 389 of the Penal

Code. The Claimant pleaded not guilty to all the counts preferred against him.

- 6 It is the Claimant's case that the said Criminal case Number 378 of 2012 was fully heard and he was acquitted on all the counts.
- 7 The Claimant avers that despite his acquittal, the Respondent issued him with a letter of termination on 26th February 2021.
- 8 The Claimant avers that at the time of interdiction he was earning a salary of Kshs.50,724.00 monthly and which salary was to attract annual salary increment at 3% per annum and claims for the salary for the remainder of his working life which was to end in 2037.
- 9 The Claimant avers that he was unlawfully terminated from his employment as the Respondent indefinitely suspended his services and unfairly dismissed his employment contrary to the law.
- 10 It is the Claimant's case that the Respondent withheld his entire salary during the period of interdiction. Additionally, the Respondent's failure to invite him for a disciplinary meeting in the Teachers Service Act thus subjecting him to unlawful disciplinary processes and violating his rights.

Respondent's Case

- 11 In opposition to the Claim, the Respondent filed a Statement of Defence dated 10th May 2022.
- 12 The Respondent avers that the Claimant's contract of employment was governed by inter-alia the Teachers Service Commission Act; the Employment Act; the Code of Regulation for Secretariat Staff revised 2006; the Respondent's Code of Conduct and Ethics and other legal instruments that include Policies issued by the Respondent from time to time.
- 13 The Respondent admitted that it appointed the Claimant as Clerical Officer on 22nd November 1999. He was later re-deployed from the procurement and stores division to the accounts division in January 2011 as an accounts assistant.
- 14 The Respondent avers that the claimant's duties as an accounts assistant entailed among others: - (i) timely remittance of monthly statutory and third-party deductions by the 10th day of the following month; (ii) timely and efficient preparation and disbursement of the employees' salaries and allowances by the 29th day of every month; (iii) timely preparation and separation of drafts and final accounts for each financial year and submission to the Kenya National Audit office by the 30th day of September every year; (iv) initiating payments for insurance service providers, hire purchase companies; (v) reimbursement of witness expenses; (vi) attending to

teachers at the front office, accounts section, and responding to teacher's correspondences.

- 15 The Respondent avers that upon being deployed to the accounts section, the Claimant was issued with a password that was to enable him access his work, and which password was personal and was not to be known, shared with any other person.
- 16 The Respondent avers that on 29th December 2011, it received a report from the National Bank of Kenya that there was a case of fraudulent transfer of Kshs. 14,913,198.45 belonging to Pioneer Assurance in the month of November 2011.
- 17 It is the Respondent's case that the Claimant being the concerned accounts officer, and at the center of the fraudulent transfer transaction had, using his password credentials, made entries to the effect of changing the known bank and account numbers of Pioneer Assurance from Habib Bank Account No. 30265421 to Jamii Bora Bank Account No. 1001675507, without authorization and/or following the right channels.
- 18 The Respondent avers that the Claimant proceeded to make entries to the effect that the aforementioned sum of Kshs. 14,913,198.45 was credited to the Jamii Bora Bank account instead and in place of Habib Bank account.

- 19 The Respondent avers that upon receiving the said report it issued a letter of interdiction dated 11th May 2012 to the Claimant calling on him to make his representation in writing in response to the allegations raised. The Claimant was further notified of his right to be heard in person on the allegations facing him, thus, he exercised his right to respond to the interdiction letter vide his letter of 31st May 2012.
- 20 Consequently, the Respondent conducted its independent internal investigations, on the professional misconduct on the Claimant's part and to verify the veracity of the allegations facing him, where it was discovered that he had indeed used his credentials to make entries to actuate the fraudulent funds transfer.
- 21 The Respondent avers that at the Claimant's instance as per his response to the letter of interdiction, he requested it not to proceed with the intended disciplinary process and to wait for the criminal process that he had equally been subjected to come to an end.
- 22 The Respondent avers that it acknowledged the Claimant's request and put on hold the disciplinary process despite the fact that the two processes were distinct and that the employer's disciplinary process was not subject to the outcome of the criminal process.
- 23 The Respondent further avers that it reprogrammed the employer's disciplinary process and notified the Claimant

that his disciplinary hearing would be conducted on 13th November 2018 and he was invited to present himself before the panel and avail any witness and documents in his defence.

24 The Respondent contends that when inviting the Claimant for the hearing it gave him the opportunity to give his oral testimony to the allegations levelled against him, and present any exculpatory documentary evidence in his possession.

25 The Claimant further requested for the disciplinary process to be delayed to enable him conclude his criminal case. Thus, the Respondent subsequently invited him for hearing on 28th February 2019 and the Claimant again requested for a deferment of the case. The Respondent being magnanimous enough allowed the requests and decided that the Claimant be re-invited for hearing on a later date.

26 It is the Respondent's case that it accommodated the Claimant in a bid to ensure and protect his right to be heard in person to defend himself before any decision is made.

27 The Respondent avers that it subsequently invited the Claimant for hearing on the 4th of June 2019, when the claimant indeed appeared and was granted an opportunity to present his case and cross-examine the Commission's witnesses.

- 28 At the close of the disciplinary hearing, the panel diligently evaluated the written and oral evidence relating to the matter and determined that the Claimant was guilty of the charges facing him and accordingly dismissed him.
- 29 It is the Respondent's case that thereafter, it notified the Claimant of its decision emanating from the disciplinary panel's recommendations. The Claimant being aggrieved of the same, lodged an Appeal with the Review Committee of the Respondent.
- 30 The Respondent avers that it has the right to recruit, train, conduct disciplinary processes and terminate in accordance with the law.
- 31 The Respondent avers that upon analysing the grounds for review and the evidence adduced in the matter, the Commission arrived at a finding that the Claimant had not adduced any new or sufficient grounds to warrant a review and upheld its decision to dismiss the Claimant.
- 32 It is the Respondent's case that in determining the Claimant's disciplinary case, it acted impartially, independently and with outmost professionalism. Therefore, its decision was fair, just and appropriate based on the merits of the case, evidence adduced before it and the nature of the offence committed by the Claimant under provisions of the Code of Regulation for Secretariat Staff, 2006.

33 The Respondent avers that the process leading to the Claimant's interdiction and dismissal was procedural and it conformed to the rules and principles of natural justice.

Evidence in Court

34 The Claimant (CW1) adopted his witness statement dated 27th July 2021 as her evidence in chief and produced his list of documents dated 27th July 2021, 4th July 2024 and 6th May 2025 as his exhibits.

35 Upon cross-examination, CW1 testified that he was clerical officer at the Respondent's procurement and stores department in charge of staff airtime. During this period there was no allegation of loss of airtime at the stores.

36 CW1 testified that he was later promoted to the Finance Department as an Accounts Clerk. He was issued credentials to allow him access his computer and documents.

37 CW1 testified that he was given an individual password and did not have permission to share it with anyone. He used the same to initiate payments to insurance and hire purchase on his computer.

38 CW1 testified that he used to share his computer with several other employees and he gave an example of Macharia. The employees used to sign in using their passwords in any of the computers and print out their work once done.

- 39 CW1 testified that vide a payment voucher entered in December 2011, he requested that Kshs. 15,380,564 be paid in favour of Pioneer Insurance, however, he later learnt that the monies were channelled to an account not owned by the Insurance.
- 40 CW1 testified that as of October 2011, Pioneer Insurance's bank was Habib Bank but in November the same had been changed to Jamii Bora Bank which was the right bank. It was his duty to feed the right bank to receive funds for Pioneer Insurance.
- 41 CW1 testified that a complaint was made in respect to the payment and he was arrested. The Respondent did not subject him to any disciplinary process.
- 42 CW1 testified that the Respondent notified him vide a letter dated 15th October 2018 of a disciplinary hearing and he requested for another date as he was facing criminal court. He was later invited for a disciplinary hearing again vide a letter dated 23rd January 2018 to which he requested for a different date indicating that he was bereaved.
- 43 CW1 testified that he has no formal letter evidencing that TSC inferred that he finalises his criminal case first.
- 44 CW1 testified that he finally attended the disciplinary hearing but states that he was not given a chance to cross examine the Respondent's witnesses.

- 45 CW1 testified that he is bound by TSC's Code of Regulations for Secretariat Staff.
- 46 The Respondent's first witness, Pascal Okubasu (RW1) stated that he is the Respondent's Internal Auditor. He adopted his witness statement dated 16th August 2022 as his evidence in chief.
- 47 During cross-examination, RW1 testified that at the time of the Claimant's tenure, he was a cashier. He used to prepare cheques and present them to the bank. He used to receive authorised payment vouchers then prepare the cheques.
- 48 RW1 testified that payment vouchers and schedules are different. The payment schedule used to inform the account which the payment was to be paid into and this was done by Duncan.
- 49 RW1 testified that preparation of the payment schedule was Duncan's job description and he was the only one in that department.
- 50 RW1 testified that the payment schedules produced in court does not show they were prepared by Duncan. The same were not signed as he was not expected to sign but they were authorised.

- 51 RW1 testified that the payment schedules that showed where the payment to Pioneer Insurance was to be remitted were prepared by Duncan.
- 52 The Respondent's second witness, Evaleen Matendechere (RW2) stated that she is the Respondent's Principal Accountant. In respect to this case, she was an accountant and voucher examiner in the Accounts Department.
- 53 She adopted her witness statement dated 16th August 2022 as her evidence in chief.
- 54 RW2 testified that as a voucher examiner, her role involved examination of the voucher and the payment schedules to ensure they are correct. This included checking the bank account details are correct.
- 55 She testified that on that particular date, she checked and there was no detail written as to the change of the bank account. Additionally the payment schedules produced in court are not signed.
- 56 RW2 testified that the payment system could be assessed by the one doing a particular job. The job of preparing the insurance schedule was done by the Claimant.
- 57 RW2 testified that in November 2011, she did see any discrepancy in the payment schedule before she signed because she only had the payment voucher. Her role did not involve examining the payment schedule.

58 The Respondent's third witness, Doreen Munene (RW3) adopted her witness statement dated 8th July 2025 as her evidence in chief and produced the Respondent's bundle of documents as her exhibits.

59 RW3 testified that the Claimant was in breach of Regulation 55(4) of TSC's Code of Regulations for Secretariat Staff and this was indicated in the interdiction letter.

60 RW3 testified that the Respondent conducted investigations by the Claimant's supervisor but she is not aware whether a report was produced in court.

Claimant's Submissions

61 The Claimant submitted on four issues: whether the termination was procedurally fair; whether the termination was substantially fair; whether the claimant is entitled to reliefs sought; and who bears the burden of costs.

62 On the first issue, the Claimant submitted that though he was only responsible for preparing payment vouchers, a different person approves the same, and if he made any mistake, he would have been noted and rectified. RW1 informed this court that he is responsible for confirming vouchers and authorizing payment vouchers. He received the voucher prepared by the Claimant went ahead to approve the same for payment.

63 The Claimant submitted that the Respondent failed to follow due procedure laid down under Section 41(2) of the Employment Act as follows:

“ Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.”

64 The Claimant submitted that the Supreme Court case of ***Shollei v Judicial Service Commission & another [2022] KESC 5 (KLR)*** laid down the procedure to be applied by all constitutional bodies including the Respondent. The Supreme Court held:

“We have considered that the question on the administrative procedure applicable in disciplinary proceedings before JSC (being a major employer in one arm of the government) have been recurring in different cases before this Court and in courts below. As a result, we are of the opinion that the following guiding principles ought to assist the courts when considering a matter concerning disciplinary proceedings before JSC. Guiding principles on disciplinary proceedings before Judicial Service Commission

- a) *The JSC shall comply with the procedure set out in article 47 of the Constitution and the Fair Administrative Actions Act.*
- b) *JSC shall always give an employee reasonable time to defend himself or herself.*
- c) *An employee shall be informed the basis of complaint(s) or who his or her accusers to enable the employee defend themselves.*
- d) *JSC shall furnish an employee with details of allegations against him or her.*
- e) *JSC must always be clear from the start whether the administrative action against an employee is of an investigatory nature or of a disciplinary nature. Should an investigatory process turn into a disciplinary one, an employee must be accorded fresh notice to prepare his/her defence.*
- f) *An employee should be accorded a public hearing if he/she desires to have one. A decision to decline such a request must be accompanied with reasons which shall be given to the employee.*
- g) *An employee shall be given detailed reasons for any administrative action/decision by JSC*
- h) *An employee should access and receive any relevant documents relating to his/her matter. Any decision to the contrary must be accompanied by a written reason.*
- i) *An employee shall be accorded opportunity to attend proceedings, in person or in the company of an expert of his/her choice.*

j) An employee undergoing disciplinary proceedings shall be given an opportunity to call witnesses, be heard; cross examine witnesses; and request for an adjournment of the proceedings upon providing good reasons and where necessary to ensure a fair hearing."

65 On the second issue, the Claimant submitted that Section 43 of the Employment Act places a burden of proof on the employer for reasons of termination and such reasons must be valid and fair.

66 The Claimant submitted that the Respondent failed to take into consideration his acquittal and his meticulous and unblemished record for the 12 years he worked for the Respondent. Reliance was placed in paragraph 31 and 37 of **Mugo v Teachers Service Commission [2022] KEELRC 13180 (KLR)** wherein the court held:

"The claimant's case and submission is that he had employed on September 14, 2001 and this eventuality occurred on October 30, 2018. This is a seventeen (17) plus years blemish free stint of service. Was this factor taken into account in preferring a determination of dismissal? Was the determination fair in the circumstances Whatever the outcome of the disciplinary proceedings, I find the determination or sentence wrongful, unfair and unlawful. This is based on the history of the employment relationship inter

partes and the circumstances of the case. There were alternative and sane means of dealing with the situation without resort to this draconian outcome. I therefore find that the termination of the employment of the claimant by the Respondent was wrongful, unfair, unjust and unlawful and hold as such."

67 It is the Claimant's submission that if the allegations existed, the acquittal in the criminal court negated any valid basis for termination.

68 The Claimant submitted that it is trite law that disciplinary proceedings are independent from criminal proceedings. However, where the disciplinary charges are founded upon the same facts as the criminal trial, the employer must have cogent independent evidence to sustain disciplinary action. The Respondent had none. The acquittal rendered the allegations untenable, thus, the proceedings to dismiss the Claimant despite acquittal was unreasonable, disproportionate and unlawful.

69 It is the Claimant's submission that the Respondent's actions violated his constitutional rights to fair labour practices, fair administrative action and fair hearing enshrined under Articles 41,47 and 50 of the Constitution.

70 On the third issue, the Claimant submitted that he entitled the reliefs sought having established that the dismissal was both procedurally and substantively unfair.

71 On costs, the Claimant submitted that by virtue of Section 27 of the Civil Procedure Act, it is trite law that the issue of costs is a discretionary award that is awarded to the successful party.

Respondent's Submissions

72 The Respondent submitted on THREE issues: whether the Respondent lawfully exercised its disciplinary mandate over the Claimant; whether the disciplinary process was fair, impartial, and consistent with natural justice; and whether the Claimant is entitled to the remedies sought.

73 On the first issue, the Respondent submitted that it is a constitutional commission established under Article 237 of the Constitution and the Teachers Service Commission Act. Pursuant to Article 252 (1)(c) of the Constitution, it has the statutory power to recruit, appoint, and exercise disciplinary control over its employees.

74 The Respondent submitted that it accommodated the Claimant's requests for adjournments on several occasions, demonstrating fairness, but was not legally bound to suspend its internal process indefinitely.

75 It is the Respondent's case that it has unfettered legal mandate to discipline their staff, provided the process accords with fairness and due process. Thus, it acted within its statutory mandate in initiating and concluding the disciplinary proceedings against the Claimant.

- 76 On the second issue, the Respondent submitted that during the hearing of this suit, the Claimant confirmed receipt of the formal charge as contained in the interdiction letter and outlining the offence he was facing. He further confirmed that his personal system credentials were used to alter account details, resulting in a fraudulent transfer of Ksh. 14,913,198.45. This was despite the fact that each employee was issued with a distinct password, not to be shared with any other person. This was a gross misconduct offence under Section 44(4) (g) of the Employment (theft, fraud, or dishonesty).
- 77 The Respondent submitted that Regulation 55 of the Code of Regulations for TSC Secretariat Staff, outlines the offences that may lead to interdiction. At sub-regulation (4) an officer may be interdicted if he/she is guilty of fraud, misappropriation, mismanagement, embezzlement of the Commission's finances or gross misconduct incompatible with his continued employment in that office.
- 78 The Respondent cited ***National Bank of Kenya v Anthony Njue John [2019] eKLR***, the Court of Appeal held that the standard of proof in a disciplinary process is not that of a criminal trial but rather on a balance of probabilities. The Respondent was therefore not required to wait for the outcome of criminal proceedings before taking administrative action.

- 79 On the final issue, the Respondent submitted that the Claimant was subjected to the discipline process as envisaged under Chapter 9 of the Code of Regulations for Secretariat Staff. Regulation 56 provides that upon receipt of allegations against an officer; the Commission shall undertake investigations to establish whether the officer has a case to answer. The Commission shall thereafter issue the officer with an interdiction letter in the manner prescribe.
- 80 The Respondent submitted that the Claimant's interdiction letter clearly confirmed him that he shall be granted an opportunity to be heard in person. The Claimant however sought to exhaust the criminal process that he was undergoing before appearing for the disciplinary hearing. Subsequently, the Claimant was issued with an invitation letter dated 15th August 2028. Maintaining his position, the Claimant vide his letter dated 9th November 2018, 3days prior to the scheduled disciplinary hearing, sought for adjournment on the same grounds that the criminal case was still active in court.
- 81 The Respondent cited Section 47 (5) of the Employment Act that:

"For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds

for the termination of employment or wrongful dismissal shall rest on the employer.”

Additionally, he submitted that even though Section 49 (1) of the Employment Act entitles an aggrieved employee to damages, it only does so in the event that there was wrongful dismissal which is not the case in the instant suit.

82 It is the Respondent’s submission that the claim for damages is coupled together with the claim for wrongful dismissal. As the claim for wrongful dismissal is non-existent, therefore, the claim for damages must also fail.

83 On the costs, the Respondent submitted that the Claimant is not entitled to receive any compensation having been terminated on valid grounds. It cited ***Herbert Wafula Waswa v Kenya Wildlife Services [2020] KEELRC 78 (KLR)*** wherein the court stated that:

“The Appellant, having failed in his major claim for damages for constructive dismissal, although succeeding in the other claims, did not attain an automatic entitlement to costs.”

84 I have examined all the evidence and submission of the parties herein. From the evidence herein, it is indeed true that the claimant was interdicted from employment vide a letter dated 16th May 2021 on the grounds of making a false entry in November 2011 to a different insurance company being Jamii Bora Bank as opposed to Pioneer Assurance Company of Kshs 14,913,198/45. The respondent informed him that the matter was under

investigation and he was expected to respond to the issues raised in the letter within 21 days.

- 85 On 31/5/2012, the claimant responded to the interdiction letter indicating that under regulation 55/4 of the TSC, an officer could only be interdicted if he is guilty of fraud, misappropriation, mismanagement and embezzlement of finances or gross misconduct.
- 86 He indicated that the issue of what he was accused of was still pending in court and he had not been found guilty of fraud, misappropriation, mismanagement, embezzlement of the respondent's funds and that the said issues were subject to criminal proceedings pending in court.
- 87 He urged the respondents to suspend the intended investigation and proceedings and await the outcome of the court case. On 14/4/2014, the claimant wrote to the respondents again requesting to be placed on half salary pending interdiction. His counsel also requested for the same vide a letter of 15/4/2014. The respondent declined to act on that request vide their letter of 30/4/2014 indicating that he could not be placed on $\frac{1}{2}$ salary according to regulation 59(3) which states that an officer would not be entitled to half salary during the period of interdiction in case of fraud. I have looked at the referred code of respondents regulations for TSC secretariat staff and regulations 55(4) of the said regulations state as follows:

" An officer may be interdicted if he/she is guilty of fraud, misappropriation, mismanagement, embezzlement of the commission's finances or gross misconduct incompatible with his continued employment in that office"

88 Regulation 59 of the TSC secretariat staff regulations on the other hand state as follows:

" An officer will be entitled to payment of half salary during the period of interdiction except in cases of

- (1) Desertion of duty*
- (2) Misappropriation of funds*
- (3) Fraud*
- (4) Use of forged certificates*
- (5) Chronic absenteeism*
- (6) Failure to take up transfer*
- (7) Being jailed or held in legal custody*
- (8) Forgery, impersonation and collusion"*

89 I have looked at these regulations and indeed the claimant could only be interdicted after conviction of a criminal offence and is found guilty. While on interdiction however he could only be paid $\frac{1}{2}$ salary except in instances mentioned.

90 The claimant was accused of committing fraud which matter was pending in court. There was no proof he had committed the offence and neither was he convicted of the said offence. The act by the respondent of interdicting

him then was done without the support of the respondent's HR manual.

91 However, assuming that the respondents wanted to rely on relation 59, they would have then paid him $\frac{1}{2}$ salary given that the finality of the offence had not been proved.

92 The principle of $\frac{1}{2}$ pay during interdiction is a principle grounded in law that a man is presumed innocent until proved guilty and denial of $\frac{1}{2}$ salary during the pendency of the process is to determine the guilt of the employee before the hearing.

93 That said and done, following the interdiction, there is evidence that the claimant was not subjected to any disciplinary process until 2018 as he sought deference of the same pending the conclusion of the criminal proceedings.

94 The claimant was finally subjected to a disciplinary hearing as per the proceedings held on 4/6/2019. As per the proceedings, the claimant was found guilty of the charges. He was allowed to present his case and was cross-examined by the respondent. He admitted that his credentials were used to transfer the kshs 14,913,198.45.

95 The claimant was taken through the criminal trial and was found innocent. It is however worth noting that the criminal process and the internal disciplinary process are parallel processes and one cannot depend on the other. The claimant was taken through a disciplinary process on

the basis of the transfer of the 14M plus. This was based on the reasons given.

96 I have looked at the disciplinary proceedings presented before me. The charges were read to the claimant and he was asked to respond. He denied culpability. He was then asked to explain himself before any evidence was adduced against him. The rest of the proceedings are illegible and the court is unable to discern what really transpired during the proceedings. Other than this challenge, the proper mode of a disciplinary hearing is one established 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

97 The claimant was entitled to have an opportunity to cross-examine witnesses giving evidence against him. The commission did not call any witness and so he had no chance to test the veracity of evidence against him. The respondents failed to take the claimant's through a proper disciplinary process. Without a proper disciplinary process, it is not possible to make a finding that there existed valid reasons to warrant the claimant's dismissal.

98 Section 45(2) of the Employment Act 2007 states follows:

- (2) 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) based on the operational requirements of the employer; and**
 - (c) that the employment was terminated in accordance with fair procedure**

99 In view of the fact that the claimant was not taken through a fair disciplinary process and the existence of valid reasons to warrant his dismissal is not established, I find the claimant's dismissal unfair and unjustified as provided for under section 45(2) of the Employment Act.

100 Having found the dismissal of the claimant unfair and unjustified, and I declare it so, I also find for the claimant and award him as follows:

- (1) 1 months' salary in lieu of notice = kshs 50,724/-.
- (2) Payment of claimant's withheld salary from time of interdiction to dismissal being from 16th March 2012 to 4th June 2019 = Kshs 4,260,816/-.
- (3) In view of the unfair termination of the claimant cutting short his employment life, compensation

equivalent to 10 months salary is apt = 10x
50,724=Kshs 507,240/.

TOTAL = 4,818,780/ Less statutory deductions.

- (4) The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment till payment in full.

**Dated, Signed and Delivered Virtually at Nairobi
this 15th Day of December 2025.**

**HELLEN WASILWA
JUDGE**

ORIGINAL