

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

PETITION NO. E221 OF 2025

**IN THE MATTER OF ARTICLES 1, 2, 10, 19, 20, 21, 22, 23, 24,
27, 28, 41, 45, 47, 165(3)(A), (B), (C), 230(4)(5), 232, 233, 234 &
258 OF THE CONSTITUTION OF THE REPUBLIC OF
KENYA**

AND

**IN THE MATTER OF SECTIONS 2, 3, 4, 7, 8 AND 9 OF THE
FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

AND

**IN THE MATTER OF THE LABOUR RELATIONS ACT NO.
14 OF 2007**

AND

**IN THE MATTER OF CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS UNDER ARTICLES 27, 28, 41,
45, AND 47 OF THE CONSTITUTION**

AND

**IN THE MATTER OF CONTRAVENTION OF RIGHTS OF AN
EMPLOYEE UNDER SECTIONS 5 & 10 OF THE
EMPLOYMENT ACT**

AND

**IN THE MATTER OF THE EMPLOYMENT AND LABOUR
RELATIONS COURT ACT, 2011**

AND

**IN THE MATTER OF LEGITIMATE EXPECTATION AS
ENSHRINED IN A COLLECTIVE BARGAINING
AGREEMENT, EMPLOYMENT ACT & KPC'S POLICIES**

BETWEEN

KEFA ONSASE ONYANCH.....PETITIONER

- VERSUS -

KENYA PIPELINE COMPANY (KPC) LTD.....RESPONDENT

*(Before Hon. Justice Byram Ongaya on Wednesday 17th December,
2025)*

JUDGMENT

1. The petitioner filed the petition and affidavit in support of the petition dated 24.10.2025 through Wandeto Wachira Advocates.

He prayed that this Honourable Court be pleased to grant as follows:

- a) A Declaration that the respondent's actions of unlawful transfer of the petitioner and deployment, unfair labour practices, discrimination, victimisation, and retaliation contrary to Articles 27, 28, 41, 47, and 236(b) of the Constitution of Kenya, 2010 and is contrary to Section 5 of the Employment Act, 2007 and sections 22 and 50 of the CBA (2017-2021) and any other CBA in connection thereto, the Company's Whistleblowing Policy and the Code of Conduct on protection of Whistle blowers.
- b) A Declaration that the petitioner is entitled to equal opportunity, merit-based consideration, and fair administrative action in all matters relating to promotion, deployment, transfer and remuneration in accordance with Articles 27(1), 41(1), and 47(1) of the Constitution.
- c) A Declaration that the petitioner's right to fair administrative action under Article 47 of the Constitution has been breached by the respondent for failing to give the petitioner the reasons as to why he was not shortlisted in 2025 interviews and the reasons as to why he failed interviews in the past 4 years.
- d) An Order directing the respondent to transfer and redeploy the petitioner back to Mombasa Station forthwith with all his transfer allowances, taking into account his medical condition,

family responsibilities, and the exhaustion of his medical allowance caused by the unlawful transfer to Nairobi.

- e) An Order compelling the respondent to pay the petitioner all withheld shifts from 2020 till date; and acting allowances for the 1.5 years of service, together with interest at court rates from the date the amounts fell due until payment in full.
- f) An Order declaring that the petitioner is entitled to be promoted under Job Group KPC-7 and/or 6 in line with the Career Guidelines or such other Job Group as the Court shall deem fit, taking into account the petitioner's qualifications and immense experience of 17 years in finance.
- g) An Order declaring and confirming that the petitioner is a holder of Grade-7 or such Higher, as the Court shall deem fit, the petitioner having acted in the year May 2020-June 2021, for 1.5 years (more than the minimum 6 months) in such capacity in line with the terms of Clause 29 of the CBA, thereof.
- h) Subsequent thereto, an Order directing the respondent to pay the respondent the deficit of the Basic salary and allowances that accrued from 2021 till date payable had he continuously held the Grade 7, after the lapse of the acting role in line with Clause 29 of the CBA.
- i) An Order compelling and directing the respondent to put in place proper measures that shall protect the petitioner in line

with the Whistleblowing Policy, the KPC's Code of Ethics, Leadership & Integrity Act and Chapter 6 of the Constitution.

- j) An Order directing the respondent to conclude proper and independent disciplinary proceedings against MS. Subira Balali & Mr. Theophilus Muthoka in line with the Company Policy and submit into the Court within 30 days thereof of their recommendations with a detailed report thereof, in connection with the Complaint (whistle blowed by) of the petitioner on irregular payment of shift allowances to Ms. Subira Bilali.
- k) An Order compelling the respondent to include the petitioner in any current or future shortlist and interview process for the subject position within the Finance Directorate or any equivalent position for which he is duly qualified and ensure the strict compliance with the 3 year rule in line with the CBA and Company Policy for future progression of the petitioner in his career.
- l) An Award of Compensation as deemed fit by the Court, pursuant to Section 49(1)(c) of the Employment Act, 2007 for the unfair labour practices and discrimination contrary to Article 27 of the Constitution.
- m) An award of Compensation as deemed fit by the Court for the unlawful transfer & deployment of the petitioner contrary to Article 10, 41 and 47 of the Constitution as read together with

Section 5 of the Employment Act, Clauses 22 and 50 of the CBA.

- n) An award of Compensation as deemed fit by the Court for the respondent's breach of the petitioner's legitimate expectation that he would be protected by the Whistleblowing Policy, the Code of Ethics, the Leadership Integrity Act and Chapter 6 of the Constitution. General Damages for psychological distress, humiliation, and emotional suffering, frustration of the petitioner's family, occasioned by the respondent's unlawful actions, management's action and inaction in connection thereto, and continued victimisation thereof.
- o) Costs of this petition and interest thereon at court rates from the date of judgment until payment in full.
- p) The Court be pleased to Order that the respondent in subjecting the petitioner to future interviews shall have due regard to the managers who have perceived bias as against the petitioner, particularly his previous Supervisor, Manager and the General Manager Finance who served under the period under review.
- q) The court to Award the petitioner, such reasonable general damages that resulted from irregular transfer including paying for two homes, frequent travels dated back from 2021 to date.
- r) The Court to direct the respondent to pay to the petitioner such per diem as appropriate from 2021 to date in relation thereto.

s) Such other or further orders as this Honourable Court may deem fit, just, and expedient to grant in the circumstances of this case.

2. The petitioner's case was as follows:

a. He was employed by the respondent on 04.06.2007 as a Clerical Officer I in the Product Accounting Department at Embakasi (JKIA Depot), under Job Group 12. Following exemplary performance and dedication, he was confirmed as a permanent employee on 15.07.2010 and has continuously served the respondent for over 17 years without any record of misconduct or disciplinary sanction. He discharged his duties in accordance with the respondent's policies, procedures and performance expectations.

b. In January 2013, the respondent introduced shift working arrangements affecting several employees, including the petitioner, who was accordingly scheduled under the said shifts with an entitlement to a 25% allowance as compensation for the irregular working hours occasioned by the shift system.

- c. In 2017, he was transferred from the JKIA depot to Mombasa PS14 Kipevu Terminal, where he served under the same shift arrangement, maintaining a clean employment record and meeting all operational targets assigned to his department.
- d. In 2019, the respondent introduced a Staff Career and Classification (SCAC) Structure intended to standardize grades and job designations. However, certain officers within the Finance Directorate manipulated its implementation to favour employees from specific ethnic communities. The petitioner's grade was irregularly downgraded from KPC 12 to KPC 11, a grade reserved for unskilled staff, even though his designation remained Accounts Assistant, which under the SCAC structure corresponds to KPC 9. Consequently, he was compelled to perform skilled duties while being remunerated as unskilled personnel.
- e. In 2020, he uncovered and reported serious corrupt and nepotistic practices within the Finance Department, including unauthorized payments of shift allowances, favouritism and unfair promotions to the Managing Director, in line with

KPC's Whistleblowing Policy. Instead of protecting him, the respondent subjected him to persistent retaliation, including removal from shift duties, unlawful transfer, denial of allowances, blocked promotions, and eventual isolation from key departmental functions. Following his whistleblowing, he alleges that he was discriminated against and victimised in multiple ways, as outlined in the petition.

- f. He was also unlawfully transferred in 2020 from Mombasa to Nairobi and redeployed to a different department with unrelated functions. The redeployment led to the loss of his long-established shift duties and allowances, which had been a component of his income for over a decade. The shift allowance had particularly helped him service professional development loans for UK and US certifications. These actions violated the KPC Transfer Policy and the 2017 to 2021 CBA for failing to consider his personal and social circumstances, including his family and health.
- g. The transfer was executed without consultation or justification and was motivated by the General Manager, Finance's intent

to replace the petitioner with a member of his community. The transfer was therefore unfair, retaliatory and discriminatory.

3. The petitioner particularized the violation of the Constitution as follows:

- i) The respondent arbitrary and unilateral transfer of the petitioner without consultation or justification constituted a violation of Article 47(1), which demands expeditious, efficient, lawful, reasonable, and procedurally fair administrative action.
- ii) The petitioner's redeployment to a different department without a valid reason or written communication equally offended the principles of fairness and accountability under Article 10(2)(c), which obligate all State organs and officers to uphold good governance, transparency, and the rule of law in the exercise of administrative discretion, consultation and the right to be heard under Article 47.
- iii) The respondent's refusal to pay acting and shift allowances while the petitioner performed duties of a higher grade violated his right to fair remuneration guaranteed under

Article 41(2)(a). Its cumulative conduct, characterised by discriminatory treatment, denial of benefits, and unfair administrative actions, amounted to an egregious breach of the petitioner's right to fair labour practices under Article 41(1), which assures every worker reasonable working conditions and protection against unfair or oppressive employer practices.

- iv) By denying the petitioner rightful allowances and recognition for work performed, the respondent further infringed Article 27(1) and (4), which guarantee equality and freedom from discrimination in all spheres, including employment. The petitioner's right to labour rights under Article 41 is equally affected fundamentally. He was unfairly treated compared to colleagues performing similar tasks, amounting to deliberate economic discrimination.
- v) The respondent's retaliatory conduct following the petitioner's disclosure of corruption and malpractice contravened Article 236(b), which expressly prohibits victimisation or disciplinary

action against an employee for making lawful disclosures in the public interest.

vi) The respondent's continuous harassment, isolation, and intimidation of the petitioner constituted a violation of Articles 28 and 29(d), which safeguard human dignity and protect every individual from psychological torture, cruel or degrading treatment, including within the context of employment relations.

vii) The failure to pay the petitioner his acting allowance and confirm him under Grade 7 or such other proper Higher Job Group /Grade after acting for 1.5 years offends Article 41 on the labour rights and the right to property under the Constitution.

4. The respondent filed its replying affidavit, sworn by Nelson Nyaduwa on 25.11.2025, through Munyao, Muthama & Kashindi Advocates. It was averred as follows:

a. The issues raised in this petition are recurring complaints that have been resolved internally to the petitioner's satisfaction

and now appear to be raised strategically to exert undue pressure on the respondent.

- b. On 15.05.2017, the SCAC issued a circular to all state corporations to submit HR instruments to SCAC for review to aid in the determination of optimal staffing needs for state corporations. Following a review of the respondent's instruments, SCAC's recommendation was to reduce job grades from a total of 16 to 12 with a view to ensuring a lean grading structure that would run from Grade KPC1 to 12 against the previous Job Group 1 to Job Group 14B. The new grading system was developed through a formal job evaluation process and uniformly applied across all cadres to align all grades within the new system.
- c. The Board approved the new grading system, and all staff were notified in an internal memo dated 26.11.2019. The change in grading structure not only affects the petitioner but also all employees across the company. The management informed all staff that the changes in structure would be made appropriately. After the job grade review, the petitioner's job

cadre was reviewed from Job Grade 12 (previous system) to KPC 11 (new system). He was informed of the reclassification in a letter dated 10.03.2020.

- d. In 2021, when the petitioner complained of a difficult work environment in Mombasa following the whistleblowing report, a meeting was held between him, his supervisor and the Head of Directorate and it was resolved that he would be transferred to Nairobi so that he would have a conducive working environment. This transfer took place in November 2021 and was done with his consultation and his approval.
- e. The petitioner did not get the roles he applied for due to a lack of relevant experience or because he did not perform well compared to other candidates during the interview. There is a brief to the Board as well as a letter addressed to him on 21.11.2023 summarizing the petitioner's results from the interviews.
- f. With respect to the performance incentive for the period of 2020/2021, the incentive is not an automatic entitlement but is subject to completion of the prescribed performance

evaluation process, verification and approval in accordance with the respondent's Performance Management Policy. The petitioner did not complete his 2020/2021 performance evaluation and as a result, the process remained pending in the performance management system under the petitioner's personal account without being submitted for review and approval. This period is now closed and the petitioner cannot fault the respondent for his indolence.

- g. On 03.11.2022, the respondent wrote to the Commission on Administrative Justice (CAJ) confirming that it had received the petitioner's complaint, which was being handled in accordance with internal procedures, which the CAJ acknowledged. In a letter dated 17.03.2023, the respondent wrote to the petitioner informing him that his grievances had already been addressed by management.
- h. The petitioner is in the habit of re-litigating the same issues with a view to putting undue pressure on the respondent, and the reason the petition should be dismissed with costs.

5. The petitioner filed a supplementary affidavit, sworn on 01.12.2025, averring that the respondent has admitted that his whistleblowing was not merely flimsy. He reiterated that he suffered at the hands of the company for his whistleblowing. That to uphold the integrity of public service and for the need to secure his rights and those of his family and children, the Court considers his petition.
6. The parties filed their written submissions in court. The Court has considered the material on record. The Court returns as follows.
7. To answer the **1st issue**, the Court finds that the parties were in a contract of service. The respondent employed the petitioner on 04.06.2007 as a clerical officer job group 1 and over time he was promoted through the grades to job group 12. It is on 29.07.2029 that he was emplaced on the respondent's permanent and pensionable service in the same job group 12. It is that in January 2013 the respondent introduced shift working arrangements for some staff including the petitioner and for which 25% of monthly salary was paid to compensate the staff put on the shift

arrangements. The petitioner's service record appears to have been clean throughout prior to filing of the instant petition.

8. The **2nd issue** is whether the petitioner is entitled to reliefs sought for the grievances he alleges he suffered while in the respondent's service, and further, whether his rights and freedoms were violated as protected in the Bill of Rights and as pleaded. The Court answers in the affirmative and returns as follows:

a) On job reclassification, the petitioner urges that effective 2020 restructuring, petitioner's grade was irregularly downgraded from KPC 12 to KPC 11, a grade reserved for unskilled staff, even though his designation remained Accounts Assistant, which under the SCAC structure corresponds to KPC 9. Consequently, he was compelled to perform skilled duties while being remunerated as unskilled personnel. The respondent admits that petitioner's job cadre was reviewed from Job Grade 12 (previous system) to KPC 11 (new system) and he was informed of the reclassification in the letter dated 10th March 2020. Further, all other terms and conditions of his employment remained the same as per his contract of employment and the

Collective Bargaining Agreement. It is submitted for the respondent that in implementing this change, the respondent did not alter the benefits that the claimant was earning. His reclassification kept him at the same level as his previous grade in that it did not result in a promotion or demotion. The respondent urges that the petitioner never complained and never raised a grievance in accordance with clause 12 of the respondent's Human Resource and Policy Manual 2019 produced by the petitioner. The clause 12.2.1 states that a grievance shall be raised to the immediate supervisor first then appeal to the Managing Director or Head of Department if he is not satisfied with the decision. The respondent admits that first time that the petitioner raised the grievance over job grading was lodged with the respondent was in March 2024. It is also submitted for the respondent thus, "This complaint only came to the fore almost a year later on 17th February 2021 when he wrote to SCAC without the respondent in copy. He wrote a second letter to SCAC on 24th May 2021. This letter was never brought to the respondent's attention by SCAC and it is absurd that the

petitioner would expect the respondent to act on a grievance or complaint that he had not brought to his attention.” As submitted for the respondent, the petitioner was invited to a grievance hearing which he attended on 19th March 2024. The minutes of this hearing are at pages 42 to 47 of the exhibit annexed to the replying affidavit. The petitioner raised the issue which the committee deliberated upon and found no merit in the grievance. The Court finds that the Manual did not provide for time limits about raising grievances and the grievance being a continuing one as pleaded for the respondent, the respondent’s submissions that the petitioner raised the grievance belatedly after inordinate delay is rejected. The respondent has offered no explanation by way of pleadings, evidence and submissions to defeat the petitioner’s case that job group11 that he was assigned did not align or even exist in the career for Finance Department. The handling of his grievance by the respondent did not address his concern about academic qualifications versus placement policy while the respondent wrote to Ombudsman the letter of 30.07.2024 alleging that the petitioner’s grievance had

been resolved, the evidence shows that was not correct in view that the merits of the grievance appear to have not been addressed. The petitioner's case is upheld in that respect.

- b) On whistleblowing the respondent admitted that the petitioner's whistleblowing was well founded and genuine. The evidence is that the petitioner issued correspondence to the respondent about the issues in the syndicate. His workmate Ms. Subira was surcharged but then subsequently promoted to grade 8 as having performed better than the petitioner. It appears to the court that the petitioner was not promoted unfairly and discriminately so especially that the respondent has not rebutted his case that Mr. Ndegwa against whom he had accused of being part of the syndicate apparently sat at both the disciplinary hearing of the culprits and at the committee that approved the promotions in circumstances that the petitioner had implicated Mr. Ndegwa in working with the said Ms. Subira to defraud the respondent. His immediate supervisor Theophilus Muthoka was also surcharged.
- c) In the circumstances and contrary to the respondent's submissions, the Court finds that the petitioner has shown that

he has been grossly victimized on account of his whistleblowing because he has been held and stagnated at KPC 11 which is even outside the lowest available grade of KPC 9 in his proper cadre, and, he has been denied confirmation despite “acting” but in fact, imposition to work under grade KPC-7 for more than 1.5 years. The respondent has admitted that the whistle blowing was in fact genuine and after involvement of EACC, the culprits were punished thus, the termination of employment for Francis Maore; surcharge for funds irregularly earned or lost for Ms. Subira Bilali; and, warning for Mr. Theophilus Muoka.

d) While the respondent’s submission that the petitioner needed not to be consulted during the respondent’s exercise of the disciplinary process in that respects is found valid as due on account of employer autonomy and prerogative, the respondent has confirmed that the transfer from Mombasa was on account of the whistle blowing when it was pleaded for the respondent as follows,

“8. In late 2021, when the petitioner complained of a difficult work environment in Mombasa following the whistleblowing

report as one of the persons he had reported was his supervisor, a meeting was held between him, his supervisor and the Head of Directorate. From the meeting, it appeared that the petitioner and his supervisor had irreconcilable differences and the petitioner expressed that his work environment was difficult. 29. Taking note of this, the respondent resolved to transfer the petitioner to a different station with a different supervisor. This was intended to enable him to operate in a conducive working environment free from the fear of retaliation or victimization. See page 10 of the exhibit annexed to the replying affidavit. 30. The claimant was transferred from Mombasa to Nairobi in November 2021 and paid a transfer allowance for his relocation expenses. 31. Transfers are the prerogative of the employer and are dependent on operational requirements. In paragraph 1 of his contract of employment dated 15th July 2010, the petitioner accepted that he was liable to be posted at any station within the company to discharge his usual duties. 32. While understanding that transfers are at the employer's prerogative, the petitioner's considerations were taken into account when he was moved

from Nairobi to Mombasa. This was a move that was agreeable to the claimant and he did not raise any complaints regarding his transfer from Mombasa to Nairobi. The complaints regarding his family and running two households were never raised with the respondent and have come up for the first time in this petition. 33. In any event, the petitioner was paid a hefty transfer allowance to organize his affairs and cannot blame the respondent for failing to make proper personal arrangements following his transfer. The claimant cannot have his cake and eat it too.”

- e) The Court finds that the petitioner is entitled to lament that he adversely suffered on account of the whistle blower and the impact of the transfer being adverse, his rights and freedoms in the bill of rights are found to have been violated in the process and as was pleaded for the petitioner. The Court finds that by reason of being a whistle blower the respondent adversely transferred the petitioner from a shift station to a non-shift station and was thereby curtailed to earn per-diem by the HR General Manager declining to approve any work done outside

the station as it was the norm and the respondent promoted unqualified persons while leaving the petitioner out.

f) On acting appointment the Court has already found that the petitioner without a formal acting appointment the respondent nevertheless imposed upon him performance of the duties of the higher grade without due compensation.

g) On promotions, the Court has already found that the petitioner was unfairly denied promotion in gross discriminatory manner and in circumstances that it was aggravating when the culprit in the syndicate that the petitioner unearthed was promoted as against the petitioner. The Court finds that amounted to gross violation of the petitioner's fundamental rights and freedoms as claimed and prayed for the petitioner.

9. While finding that the petitioner's case is merited, the Court repeats what it has held previously that the war against integrity leakage especially in the public service shall not be won merely by punishing culprits but also and equally important by vindicating the whistle blowers and upholders of integrity by rewarding and safeguarding their rights and freedoms in the

processes. Thus the Court upholds its holding in **Masoud - Versus – Kenya Revenue Authority (Cause 906 of 2016) [2022]KEELRC1393 (KLR) (22 July 2022) (Judgment)** and also applied by the Court in **Gichimu v Higher Education Loans Board (Cause 769 of 2019) [2023] KEELRC 2918 (KLR) (16 November 2023) (Judgment)** as follows, “ By that elaborate testimony, the Court finds that the claimant has established that first, the reason for termination was unfair and not genuine, second he was targeted for performing his duties in accordance with the law and his official authority as employed by the respondent, and, by that reason he was victimized and punished in exclusion of the other officers he has established appear to have failed in their responsibilities and duty. The claimant has also shown that he was denied equal enjoyment of the due process and safeguards under the respondent’s Code of Conduct, Rules and Regulations. The claimant has further shown that by the respondent’s letter dated 16.03.1998 and his reply thereto dated 24.03.1998, the respondent had elected to mistreat the claimant in a discriminatory manner. The Court

returns that the claimant suffered inequity, in-equality, unfairness, mistreatment and all of which amounted to discrimination as envisaged in section 82(2) of the Former Constitution of Kenya. The Court has considered the claimant's long service and his resolution to otherwise be an honest public officer keen to act in the best respondent's interests. He lost his employment in the most unfair and oppressive manner. He begged the respondent to retain him in the service but as the evidence shows that it had been predetermined that he had to be terminated from public service. The circumstances were that claimant had spent all his working life building his career with the Government in the unique specialty of revenue collection but the respondent suddenly ended the claimant's legitimate expectation to continue in employment to glorious retirement after the full realization his potential in his chosen career. It was most discriminatory, unfair and unjust. The court returns that the respondent will pay the claimant a sum of Kshs.15, 000,000 to vindicate that violation of his fundamental freedom from discrimination as was protected under the Former Constitution

which was in force at the material time. While making that award the Court upholds the claimant's submission that a public body such as the respondent by its agents or employees must not indulge in facilitating, aiding and abetting grant corruption and if such indulgence appears to take place and the public body fails to prove that it did not deliberately fail to discharge its responsibilities according to its mandate, then the victim of the public body must be protected and adequately compensated. The Court in awarding the compensation has also considered that in absence of any other evidence the claimant appears to have been targeted and so discriminated against for performing his duties. The Court further reckons that the war on corruption shall not only be won by punishing perpetrators but also by protecting and judiciously rewarding the anti-corruption soldiers. It is the Court's view that public officers who act in accordance with the values and principles of public service, integrity and honesty will receive protection and exoneration by the courts in event of victimization for their ethical and virtuous performance towards protection of public interest. Further, the Court holds that the

award is not made to punish the respondent as no punitive damages were prayed for. It is made and meant to make up the harm the claimant has suffered as flowing from the unfair discrimination and treatment.” The Court considers that the instant case is substantially similar to that cited case. The Court has considered the award of an order of automatic reinstatement for the unfair termination and its full monetary consequence. In that consideration the Court returns that a sum of Kshs.10,000,000.00 will serve for the manner the claimant was discriminated and victimized. While making that award, the Court has as well considered that the claimant went out of his way to report the issue to the Ethics and Anti-Corruption Commission towards, not only vindicating himself of the harsh discrimination, but as well as protecting the Constitution, law and public interest. The award should serve as just reparation or atonement for the unjustified and glaring manner the claimant was discriminated and as envisaged in Articles 23(3) (e) and 19 (2) (b) as read with section 12 (3) (vi) and of the Employment

and Labour Relations Court Act, 2011 as well as section 5 of the Employment Act.”

10. The Court makes the following specific findings on the remedies as prayed for:

a) The Court has returned that the petitioner is entitled to a declaration that the respondent’s actions of unlawful transfer of the petitioner and deployment, unfair labour practices, discrimination, victimisation, and retaliation contrary to Articles 27, 28, 41, 47, and 236(b) of the Constitution of Kenya, 2010 and is contrary to Section 5 of the Employment Act, 2007 and sections 22 and 50 of the CBA (2017-2021) and any other CBA in connection thereto, the Company’s Whistleblowing Policy and the Code of Conduct on protection of Whistle blowers.

b) The petitioner is entitled to a declaration that the petitioner is entitled to equal opportunity, merit-based consideration, and fair administrative action in all matters relating to promotion, deployment, transfer and remuneration in accordance with Articles 27(1), 41(1), and 47(1) of the Constitution.

c) The petitioner is entitled to a declaration that the petitioner's right to fair administrative action under Article 47 of the Constitution has been breached by the respondent for failing to give the petitioner the reasons as to why he was not shortlisted in 2025 interviews and the reasons as to why he failed interviews in the past 4 years and in particular for unfair denial of the promotions as prayed for.

d) The Court finds that the petitioner is not entitled to an order directing the respondent to transfer and redeploy the petitioner back to Mombasa Station forthwith with all his transfer allowances, taking into account his medical condition, family responsibilities, and the exhaustion of his medical allowance caused by the unlawful transfer to Nairobi. The Court has considered the submissions and finds that while the respondent purports that it was not aware of the petitioner's predicament in that respect, it is not rebutted that he suffered as shown, pleaded and submitted. While it may appear that the grant of the order will be just if no bar is established thereto, the Court has reflected and warned itself on the extent it can

interfere with the employer's prerogative to transfer an employee and in the instant case, the Court is actually asked to transfer and deploy the petitioner back to Mombasa. The transfer to Nairobi has taken effect. The Court has found that the transfer was in circumstances that amounted to adverse consequences as his rights were violated as pleaded and in view of the surrounding victimizations flowing from being a whistle blower. However, the Court considers that in the circumstances of this case the transfer has long ago taken effect and the injury suffered in that respect can be taken into account in awarding damages for breach of the Bill of rights as pleaded and found. To order and direct the respondent to transfer the petitioner back to Mombasa, in the opinion of the Court may amount to unjustified intervention by the Court that may be seen as a disruption of the respondent's enterprise administration, creating new rights and obligations between the parties. The Court considers that it is a decision best left to the respondent's consideration in accordance with the internal governance and management of enterprise requirement and application of its

available human resource including the prevailing petitioner's role in the scheme of the respondent's needs. In making the finding the Court has considered that it might amount to judicial overreach and unjustified unsettling and intrusion of the respondent's human resource powers and functions to disrupt the petitioner's deployment as already implemented and in circumstances that it was not a term of the contract of service that the petitioner's station of service must be Mombasa and not anywhere else. In the circumstances the Court finds that the petitioner, upon the cited personal grounds alone, cannot insist on working or being deployed to Mombasa. The petitioner by his terms of service has not claimed that he had a right to stay stationed at Mombasa. The findings by the court are considerations which override personal hardships and compassionate considerations, which are actually important and ought be considered in appropriate cases, but, are subordinate to parties agreed terms and conditions of service. The court will not therefore, in the circumstances of the case, interfere with the respondent's authority to decide when and where the petitioner

will be deployed so as to further the respondent's operational requirements for efficiency, effective and optimal economy. The Court has found that the transfer came after hardships at work in view of the whistle blowing and in absence it was *mala fides* and it amounted to unfair labour practice contrary to Article 41 of the Constitution and unequal or unfair treatment as was discriminatory contrary to Article 27, especially, in view of the adverse consequences of the transfer like loss of shift allowance he enjoyed in Mombasa and not in Nairobi, Further, after the impugned transfer he was redesignated deploy to perform duties outside his profession and cadre of appointment. As found, damages for violations in the manner the transfer was carried out will be sufficient. While making the finding the Court has considered the holding of the Supreme Court of India in **Union of India V. S.L. Abbas' – AIR 1993 SC 2444** that an order of transfer is not only a condition of service but also an incidence of service. It is the appropriate authority to decide who should be transferred and where. Unless the transfer order is vitiated by *mala fides* or is made in violation of statutory provisions, the

Court cannot interfere with it. The Supreme Court further held that while ordering the transfer there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The Court has considered all those guiding principles and returns that the prayer as made will be declined upon the grounds as stated herein earlier.

e) The petitioner has prayed for an order compelling the respondent to pay the petitioner all withheld shifts from 2020 till date; and acting allowances for the 1.5 years of service, together with interest at court rates from the date the amounts fell due until payment in full. The prayers are in the nature of special damages but which have not been computed and then strictly proved as is trite law to do. The prayer also appears to be with respect for a period the petitioner did not work on shifts or assigned as such as is partly futuristic prayer.

f) The Court finds that the petitioner is entitled to a declaration that the petitioner is entitled to be promoted by the respondent under Job Group KPC-7 and/or 6 in line with the Career Guidelines or such other Job Group as the Court shall deem fit, taking into account the petitioner's qualifications and immense experience of 17 years in finance. As already found, the Court should sparingly interfere with employer's prerogative to exercise powers and perform human resource functions. In **Geoffrey Mworira –Versus- Water Resource Management Authority & 2 Others [2015] eKLR** the Court held thus, "The principles are clear. The court will very sparingly interfere in the employer's entitlement to perform any of the human resource functions such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy, or any other human resource function. To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of the Constitution or legislation; or in breach of the agreement between the parties; or in a manner that is manifestly unfair in the circumstances of the case; or the internal

dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer's internal process." It has been found that unlike for the prayer of transfer back to Mombasa not based on contract, for the promotion, the petitioner has shown that per respondent's human resource policy he was entitled to promotion, he was denied promotion discriminately with a conflicted promotional panel and the denial is found a grossly *mala fides*. The petitioner has established that the respondent has failed to follow its own schemes of service (career guidelines) and grading structure. If the Court fails to intervene, the petitioner will continue to stagnate in a grade which he has shown is inconsistent with the respondent's grading of skilled and non-skilled employees. The petitioner has shown that but for the victimization, he would have been promoted; other serving officers will not be prejudiced if he is promoted; and, the denial of promotion amounted to the petitioner's blatant dereliction of duty per promotion policy and terms of service as it was actuated by conflict of interest and punishing the

petitioner on account of having been a whistle blower. The petitioner had applied for promotion but was not shortlisted but was informed that the reason was that he lacked qualifications. However the evidence is that he had all the qualifications as submitted for the petitioner including experience, academic and professional requirements as was prescribed for the respondent. The denial of the promotion has been found *mala fides*. In making the declaration, the respondent will nevertheless make the grading at 7 or 6 based on its internal processes and to make the decision by 01.07.2026 taking into account government budgetary cycle and the respondent being a public enterprise.

g) The petitioner is not entitled to a declaration confirming that the petitioner is a holder of Grade -7 or such Higher, as the Court shall deem fit, the petitioner having acted in the year May 2020-June 2021, for 1.5 years (more than the minimum 6 months) in such capacity in line with the terms of Clause 29 of the CBA, thereof. As already found, the Court should sparingly interfere with employer's prerogative to exercise powers and perform human resource functions. The court has found that the

respondent should exercise the promotion based upon its internal processes and policy considerations per foregoing findings in (f) above. The Court considers that it should not by itself promote the petitioner or deem or hold him promoted. Such prerogative has been found to vest in the respondent and is enough to make declaration of parties' just positions with respect to promotion and about which the Court has pronounced itself in (f) above.

h) In view of findings in (g) above the petitioner is not entitled to an order directing the respondent to pay the respondent the deficit of the basic salary and allowances that accrued from 2021 till date payable had he continuously held the Grade 7, after the lapse of the acting role in line with Clause 29 of the CBA.

i) The petitioner being in continuing employment and to prevent future victimization, he is entitled to an order compelling and directing the respondent to put in place proper measures that shall protect the petitioner in line with the

Whistleblowing Policy, the KPC's Code of Ethics, Leadership & Integrity Act and Chapter 6 of the Constitution.

j) The petitioner is not entitled to an order directing the respondent to conclude proper and independent disciplinary proceedings against MS. Subira Balali & Mr. Theophilus Muthoka in line with the Company Policy and submit into the Court within 30 days thereof of their recommendations with a detailed report thereof, in connection with the Complaint (whistle blower by) of the petitioner on irregular payment of shift allowances to Ms. Subira Bilali. It is evidence that the respondent already undertook disciplinary action in that regard and is functus officio. In that view, it would be improper to interfere with the respondent's prerogative powers of disciplinary control and the attached discretion.

k) The petitioner is not entitled to an order compelling the respondent to include the petitioner in any current or future shortlist and interview process for the subject position within the Finance Directorate or any equivalent position for which he is duly qualified and ensure the strict compliance with the 3 year

rule in line with the CBA and Company Policy for future progression of the petitioner in his career. The prayer is futuristic and devoid of justification for Court's interference with the respondent's future exercise of employer's discretionary prerogative in that regard.

l) The petitioner has prayed for award of compensation as deemed fit by the Court, pursuant to Section 49(1)(c) of the Employment Act, 2007 for the unfair labour practices and discrimination contrary to Article 27 of the Constitution. The Court finds that section 49 of the Act applies to unfair, unjustified or unlawful termination of service and which is not the case in the instant case. The petitioner continues in employment unhindered albeit his rights and fundamental freedoms having been violated as found herein.

m) The petitioner prayed for an award of compensation as deemed fit by the Court for the unlawful transfer & deployment of the petitioner contrary to Article 10, 41 and 47 of the Constitution as read together with Section 5 of the Employment Act, Clauses 22 and 50 of the CBA. The Court has variously

found earlier in the judgment that the petitioner's rights and freedoms in the Bill of Rights were violated. The Court has also earlier pointed out instances that aggravated or justified such award. Such award of damages for violation of rights and freedoms is to vindicate the petitioner and deter future violations. It is submitted for the petitioner that given the petitioner's established case of prolonged unfair treatment, procedural disregard, humiliation and career destabilization, discrimination , blatant breach of the CBA and respondent's policies, a sum of Kshs.5,000,000.00 would fall squarely within established precedents and fulfil the constitutional imperatives of effectiveness and deterrence. For the respondent it was submitted that the cases cited for the petitioner did not apply because they were upon awards not being for violations of the Bill of Rights and the Court upholds that submission. The Court has considered the reliefs that the petitioner is entitled to and already found due as justified. The Court has also considered the very urgent and important duty Courts have to protect whistleblowers against retaliation as a key impetus in the war against

corruption. It is established that the petitioner suffered retaliation in the manner he missed on promotions, was transferred from Mombasa to Nairobi with adverse consequences, was required to re-designate albeit informally and to perform duties of a higher rank as unfairly redesignated without pay, and, the suffering as found herein. It appears that the petitioner pegged the damages for the violations in consideration of the proposed Whistle-blower Protection Bill, 2025 which proposes to introduce stiffer penalties for retaliation, including proposed fines of up to Kshs. 5 million or 10 years in prison. The Court reckons that the proposed bill is not yet passed and enacted. The Court has found that the petitioner was a whistle-blower who suffered serious victimization in his employment relationship with the respondent. The Court has considered that retaliation like in the instant case can constitute an offence under the Bribery Act and Anti-Corruption and Economic Crimes Act which prohibit and criminalise retaliation and, violators can face fines up to Kshs, 1 million or imprisonment. In consideration of all

the findings herein and the circumstances and the adverse impact of the violations to the petitioner's employment, the Court returns that an award of **Kshs. 3,000,000.00** should meet ends of justice.

n) The petitioner has prayed for an award of compensation as deemed fit by the Court for the respondent's breach of the petitioner's legitimate expectation that he would be protected by the Whistleblowing Policy, the Code of Ethics, the Leadership Integrity Act and Chapter 6 of the Constitution. General Damages for psychological distress, humiliation, and emotional suffering, frustration of the petitioner's family, occasioned by the respondent's unlawful actions, management's action and inaction in connection thereto, and continued victimisation thereof. The Court considers that the same issues as prayed have been considered in awarding damages for violation of rights and freedoms and they run into each other. The prayer is declined.

p) The petitioner is entitled to an order that the respondent in subjecting the petitioner to future interviews shall have due regard to the managers who have perceived bias as against the

petitioner, particularly his previous Supervisor, Manager and the General Manager Finance who served under the period under review and in view of the findings herein.

q) The court finds that the prayers to award the petitioner, such reasonable general damages that resulted from irregular transfer including paying for two homes, frequent travels dated back from 2021 to date; and, to direct the respondent to pay to the petitioner such per diem as appropriate from 2021 to date in relation thereto are deemed abandoned as no submissions were made to guide the Court in that regard. The prayers are not based on contractual or legal provisions and the Court finds that they are unjustified.

The petitioner has significantly succeeded and the respondent will pay costs of the petition.

In conclusion judgment is hereby entered for the petitioner against the respondent for orders as follows:

- 1) The declaration that the respondent's actions of unlawful transfer of the petitioner and deployment, unfair labour practices, discrimination, victimisation, and retaliation

contrary to Articles 27, 28, 41, 47, and 236(b) of the Constitution of Kenya, 2010 and is contrary to Section 5 of the Employment Act, 2007 and sections 22 and 50 of the CBA (2017-2021) and any other CBA in connection thereto, the Company's Whistleblowing Policy and the Code of Conduct on protection of Whistle blowers.

- 2) The declaration that the petitioner is entitled to equal opportunity, merit-based consideration, and fair administrative action in all matters relating to promotion, deployment, transfer and remuneration in accordance with Articles 27(1), 41(1), and 47(1) of the Constitution.
- 3) The declaration that the petitioner's right to fair administrative action under Article 47 of the Constitution has been breached by the respondent for failing to give the petitioner the reasons or giving invalid reasons as to why he was not shortlisted in 2025 interviews and the reasons as to why he failed interviews in the past 4 years and in particular for unfair denial of the promotions as prayed for.

- 4) The declaration that the petitioner is entitled to be promoted by the respondent (based on the respondent's internal processes and to make the decision not later than 01.07.2026) under Job Group KPC-7 , KPC-6 or such other Job Group, in line with the approved and prevailing respondent's Career Guidelines as the respondent shall deem fit, taking into account the petitioner's qualifications and immense experience of 17 years in finance.
- 5) The order hereby issued compelling and directing the respondent to put in place proper measures that shall protect the petitioner in line with the Whistleblowing Policy, the KPC's Code of Ethics, Leadership & Integrity Act and Chapter 6 of the Constitution.
- 6) The order hereby issued that the respondent by itself or by its Board Members, Chief Executive Officer, employees or agents, in subjecting the petitioner to future interviews, shall have due regard to the managers who have perceived bias as against the petitioner, particularly his previous Supervisor, Manager and the General Manager Finance

who served under the period under review and in view of the findings of protection of the petitioner from retaliation herein.

7) The respondent to pay the petitioner a sum of Kshs.3,000,000.00 for violation of the Bill of Rights as found herein and to pay buy 01.03.2026 failing interest to run thereon at court rates from the date of this judgment till full payment.

8) The respondent to pay the petitioner's costs of the petition.

**Signed, dated and delivered by video-link and in court at Nairobi
this Wednesday 17th December, 2025.**

**BYRAM ONGAYA
PRINCIPAL JUDGE**