

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT AT KISII**

**PETITION NO. E008 OF 2025**

*(Before Hon. Justice Dr. Jacob Gakeri)*

**IN THE MATTER OF THE CONSTITUTION OF KENYA (2010),  
ARTICLES 10, 20, 22, 23, 27, 28, 41, 43, 47, 50(1), 73, 232,  
237 AND 258**

**AND**

**IN THE MATTER OF TEACHERS SERVICE COMMISSION ACT  
2012**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT  
OF 2015**

**AND**

**IN THE MATTER OF THE TEACHERS SERVICE COMMISSION  
(CODE OF CONDUCT AND ETHICS FOR TEACHERS)  
REGULATIONS, 2015**

**AND**

**IN THE MATTER OF THE EMPLOYMENT ACT 2007**

**AND**

**IN THE MATTER OF ABUSE AND CONTRAVENTION OF THE  
TEACHERS SERVICE COMMISSION ACT, 2017 AND THE  
RULES AND REGULATIONS MADE THEREUNDER**

**AND**

**IN THE MATTER OF ABUSE OF THE PUBLIC SERVICE (VALUE  
AND PRINCIPLES) ACT, 2015**

**AND**

**IN THE MATTER OF AN ABUSE OF THE TEACHERS CODE OF  
REGULATIONS  
AND  
IN THE MATTER OF AN APPLICATION OF THE LEADERSHIP  
AND INTERGRRITY ACT 2012  
BETWEEN**

**BEAVON OMURWA NYAKUNDI  
.....PETITIONER**

**AND**

**THE TEACHERS SERVICE COMMISSION, C/O THE  
SECRETARY TSC,  
KENYA.....1<sup>ST</sup>**

**RESPONDENT**

**DIRECTOR, HUMAN RESOURCE MANAGEMENT IN THE  
TSC.....2<sup>ND</sup>**

**RESPONDENT**

**DIRECTOR DISCIPLINARY TSC.....3<sup>RD</sup>**

**RESPONDENT**

**THE DIRECTOR LEGAL, LABOUR & INDUSTRIAL RELATIONS  
TSC.....4<sup>TH</sup>**

**RESPONDENT**

**JUDGMENT**

The Petitioner filed this Petition on 18<sup>th</sup> June 2025 together with a Notice of Motion under Certificate of Urgency seeking various reliefs and when the matter came up on 1<sup>st</sup> July 2025 it was not certified urgent and directions on service of summons were issued but on 18<sup>th</sup>

June 2025 the Petitioner/Applicant's counsel agreed to withdraw the Motion application and the Attorney General was also discharged leaving the Teachers Service Commission (TSC) as the only respondent as it ought to have been *ab initio*.

Regrettably, the respondent took exceeding long to comply and file submissions.

The Petition is grounded on Articles 22, 24, 28, 35, 40, 46, 47 and 73 of the Constitution of Kenya.

The Petitioner averred that he is a teacher registered by the TSC, TSC NO. 544135 and after employment in 2012 he was posted to Lwanda Magwar Secondary School to teach Geography and Kiswahili and after 6 years he was transferred to Koderobara Boys Secondary School on 27<sup>th</sup> November 2018 after a request based on medical/family/domestic grounds, but a year later on 16<sup>th</sup> December, he received a letter transferring him to St. Michael's Nyarongi Secondary School which was a neighbour to Lwanda Magwar Secondary School and he complained about it as he had not asked for a transfer, appealed on 10<sup>th</sup> January 2020 to the Migori TSC County Director who advised him to remain at Koderobara

Secondary School which he did until schools were closed due to the COVID-19 Pandemic and continued when schools opened on 28<sup>th</sup> September 2020 and 23<sup>rd</sup> January 2021 as he had not been cleared to leave the school but was interdicted vide letter dated 8<sup>th</sup> September 2023 for desertion from 21<sup>st</sup> June 2019 to 31<sup>st</sup> January 2022 and he appealed, was heard on 18<sup>th</sup> October 2023, suspended for 2 months sought review, was heard and the interdiction was revoked and the suspension waived vide letter dated 3<sup>rd</sup> December 2024 but no salary was paid from February 2022 to January 2024 and the TSC allegedly continued to recover the sum of Kshs.1,811,058.70 paid during interdiction.

The Petitioner averred that he had suffered pecuniary embarrassment as the unfair deduction continued.

The Petitioner prayed for

- (i) *Declaration that his rights to fair labour practices, fair administrative action, human dignity, equality and freedom from discrimination, among others were violated. He also sought an Order for the respondent to refund all the salary deducted and salary not paid or withheld and stop the deductions as well.*

- (ii) **PROHIBITION** prohibiting the deductions of Kshs.18,838 per month.
- (iii) **MANDAMUS** to compel the respondent to refund the amount deducted from his salary from March 2024.
- (iv) **MANDAMUS** to compel the respondent to restore the Petitioners full salary of Kshs.87,084.
- (v) **MANDAMUS** to compel the respondent to promote the Petitioner and accord him all promotions denied due to their actions or general damages Kshs.8,000,000.
- (vi) Compensation for mental anguish and frustration Kshs.8,000,000.
- (vii) Aggravated and exemplary damages Kshs.2,000,000.
- (viii) Injunction to restrain the respondents agents or employees from victimizing, intimidating or retaliatory conduct on account of the Petition.
- (ix) Costs of the Petition.
- (x) Any other relief the court deemed fit and just to grant.

### **Respondent's case**

By a Replying Affidavit sworn on 28<sup>th</sup> October 2025, Mr. David Mukui, the respondent's Acting Director Teachers

Discipline Management (TDM) deponed that the Petition was based on misinterpretation of the law, deliberate distortion and fabrication and was unmerited and an abuse of court process.

The affiant admitted that the Petitioner was the respondent's employee as a Graduate Teacher and was transferred to another school on 27<sup>th</sup> November 2018 effective 20<sup>th</sup> December 2018 and then to St. Michael's Nyarongi Mixed Secondary School effective 23<sup>rd</sup> December 2019 and appealed against the transfer and refused to clear from Koderobara School and report to St. Michael Nyarongi School.

That on 15<sup>th</sup> September 2019 the Principal of Koderobara School called the Deputy Director Migori County and informed him that the Petitioner had gone to the school on 6/9/2021 to find out if he could report back and teach.

That the respondent investigated the matter and the Petitioner was summoned for a disciplinary meeting on 20<sup>th</sup> September 2021 attended and was questioned about the desertion and admitted that he did not report to St. Michael Nyarongi Mixed Secondary School as his consent was not sought and was not listened to and was

interdicted, responded admitting the charge attended the hearing and defended himself and a suspension for 2 months followed but on appeal, the interdiction was revoked and suspension waived but the decision of the disciplinary committee was not changed.

That after a posting to Ritembu Secondary School, the Petitioner appealed and was transferred to Bobaracho Secondary School.

That the waiver of suspension and revocation of interdiction did not mean that the Petitioner should be paid during the interdiction or suspension.

The affiant prayed for dismissal of the suit.

### **Petitioner's submissions**

On jurisdiction of the court to hear and determine the Petition, counsel for the respondent relied on the decision in **United States International University (USIU) V Attorney General [2012] eKLR, Judicial Service Commission V Gladys Boss Shollei & another [2014] eKLR** to urge that the court had jurisdiction.

Reliance was also placed on **Anarita Karimi Njeru V Republic (No. 1) [1979] KLR 154** and **Mumo Matemu**

**V Trusted Society of Human Rights Alliance & 5 others [2013] eKLR** to urge that the Petition met the threshold of a constitutional Petition, to submit that the respondent authorised a transfer that was falsified and unprocedural and blocked the Petitioner from the HRM's portal for promotions and the disciplinary sanctions were irregular and salary stoppage.

That the Petitioner was excluded from promotions, suspended arbitrarily for 2 years the disciplinary hearing was biased.

Reliance was also placed on the sentiments of the court in **KUDHEIHA V B.O.G Moi University Secondary School [2015] eKLR** and **Fredrick Saundu Amolo V Principal Namanga Mixed Secondary School & 2 others [2014] eKLR** on suspension or withholding of salary without due process.

That internal remedial mechanisms failed.

Counsel further submitted that the court had jurisdiction to grant contractual reliefs citing **USIU V Attorney General & another (supra) Daniel N. Mugendi V Kenya University & 3 Others [2013] eKLR** and **Judicial Service Commission V Gladys Boss Shollei**

**& another (supra)** to urge that the court had jurisdiction to grant the Orders of *mandamus* among others.

On revocation of the interdiction, reliance was placed on **Amos Gichuhi V Teachers Service Commission [2017] eKLR, Republic V Teachers Service Commission & another Ex Parte James O. Nyaga [2014] eKLR** and **Judicial Service Commission V Gladys Boss Shollei (supra)** to submit that revocation of an interdiction restored an employee to his/her full salary as though it had not been imposed.

The decision in **Daniel Kipngeno Mutai V Kenya Forestry Research Institute [2021] eKLR** was relied upon for the proposition that revocation of suspension restores an employee to his former status and implied vindication of the Petitioner.

That the respondent's conduct of crediting certain payments to the Petitioners account after the Petition was filed was an implicit admission of liability as held in **Moses Mwicigi & 14 others V Independent Electoral and Boundaries Commission & 5 Others [2016] eKLR** and **Joseph Ochieng Onyango V Teachers**

**Service Commission [2020] eKLR** to urge that an irregular document could not impose an obligation on an employee.

### **Respondent's submissions**

Counsel for the respondent submitted that when the Petitioner was transferred to St. Michael Nyarongi Secondary School he refused to clear from Koderobara Secondary School and report to the new school and made reference to the alleged call by the Principal of the School to the Deputy Director Migori County.

That the Petitioner admitted the charge and he was taken through due process, was heard and having sought leniency, the review panel waived the suspension and revoked the interdiction.

Counsel submitted that the respondent had reason to take disciplinary action against the Petitioner for desertion under Regulation 140(b)(iv) of the Code of Regulations for Teachers (hereinafter "CORT") citing **Judicial Service Commission V Gladys Boss Shollei & another (supra)** on due process, to submit that the respondent discharged its administrative and statutory obligations.

On procedural fairness, reliance was placed on the decisions in **Local Government Board V Aliage [1915] A. C 120 Selvarajan V Race Relations Board [1975] ICLR 1686** and **Republic V Immigration Appeal Tribunal Ex Parte Jones [1988] ICLR 477**, on hearing an employee.

Reliance was also placed on the sentiments of the court in **Republic V National Police Service Commission Ex Parte Daniel Chacha, Anthony Mkala Chitavi V Malindi Water & Sewerage Co. Ltd [2013] eKLR** to buttress the submission on fair hearing and urge that the disciplinary process was in accordance with the law as the Petitioner was accorded fair hearing.

On the threshold for a constitutional Petition, counsel cited the sentiments of the court in **Gabriel Mutava & 2 others V Managing Director Kenya Ports Authority & another [2016] eKLR Josephat Ndirangu V Henkel Chemicals (EA) Ltd [2013] eKLR, Peter V Ndegwa Nderitu V Teachers Service [2019] eKLR** and **Alphone Mwangemi & 10 others V African Safari Club cited in Mathew Kamau Mwaura V Permanent secretary Office of the President Provincial Administration & 2 Others [2018] eKLR**, to urge that

the principle of Constitutional avoidance applied in this case and the Petitioner ought not to have invoked the jurisdiction of the constitutional court.

Counsel urged the court to dismiss the Petition with costs.

### **Analysis and determination**

The issue of jurisdiction of the court to hear and determine the instant Petition including the threshold of a constitutional Petition, which the Petitioner's counsel addressed in detail was not contested.

However, it is evident that the Petition raises no constitutional issue and could have been litigated more effectively as a normal cause to enable parties avail oral evidence as well.

It is common ground that the parties in this suit have been in an employer/employee relationship since 2012 and the Petitioner served in two other Schools before the grievance, the subject matter of this Petition arose.

The contentious transfer was vide letter dated 16<sup>th</sup> December 2019 from Koderobara Secondary School to St. Michael Nyarongi Mixed Secondary School which the

Petitioner appealed against because he had only served for one (1) year and had not requested for a transfer contrary to the opening paragraph of the letter. The transfer was supposed to take effect on 23<sup>rd</sup> December 2019.

The appeal was received by the County director TSC and the Principal of Koderobara Secondary School on 13<sup>th</sup> January 2020.

A second letter to the secretary TSC was dated 27<sup>th</sup> January 2020.

From the documents on record, it is evident that the respondent did not respond to the Petitioner's appeal against the transfer and the respondent appear to have been unaware of the Petitioner's whereabouts until 6<sup>th</sup> September 2021 when the Petitioner is reported to have sought the Principal of Koderobara Secondary School's authority to report back to school and start teaching.

The Petitioner did not contest the contents of this letter.

This letter suggests that the Petitioner left Koderobara Secondary School but did not report and work at St. Michael Nyarangi Secondary School.

This letter precipitated the disciplinary hearing meeting on 20<sup>th</sup> September 2021.

The Petitioner's submission that the letter dated 20<sup>th</sup> September 2021 was largely a confession by the Petitioner that after the unsolicited transfer to St. Michael Nyarangi Secondary School came the Petitioner sought the Principal's advise who advised him to appeal the transfer to the County TSC Offices and appealed in January 2020 and he was told to report to the new school as he awaited the outcome of the appeal, but visited TSC Head quarters was referred back to the Principal for a transfer form but he refused, reported to the Human Resource Migori County, then to TSC Head Office again but was referred to the County Director, Mr. Lukalo and COVID-19 pandemic struck in March 2020 and schools were closed.

Significantly, the Petitioner submitted that he visited Koderobara Secondary School in September to teach there as he had not been teaching since December 2019

and admitted the same in writing contending that it was because he had not been consulted on the transfer and his family need him and St. Michael Nyarongi Secondary School was far.

The County Disciplinary meeting held on 20<sup>th</sup> September 2021 found the Petitioner guilty for deserting and recommended interdiction which was effected vide letter dated 8<sup>th</sup> September 2023 almost two (2) years later. It is unclear why it took so long for the respondent to finalise the Petitioner's case.

The Petitioner submitted his defence on 14<sup>th</sup> September 2023, was invited for a hearing vide letter dated 15<sup>th</sup> September 2023, scheduled for 18<sup>th</sup> October 2023 and was informed of his right to adduce evidence and be accompanied by witnesses, if any.

The Petitioner attended the hearing, charges were read out to him, pleaded not guilty was questioned and given an opportunity to present his case. He apologised for his mistake and sought leniency.

The Disciplinary panel found the Petitioner culpable and he was suspended for 2 months and salary overpayment

would be recovered for the period he did not work. He appealed the decision against recovery of salary overpayment.

The court did not peruse any letter or memo on stoppage of salary and when it took place.

The Petitioner sought review of the decision of the panel and the Review Panel revoked the interdiction and waived the suspension vide letter dated 3<sup>rd</sup> December 2024 by which time the Petitioner had already been posted to Rilembu Secondary School, vide letter dated 6<sup>th</sup> November 2023, appealed vide letter dated 9<sup>th</sup> November 2023 and was transferred to Bobaracho Secondary School vide letter dated 15<sup>th</sup> May 2024 where he currently teaches.

The foregoing and as adverted to elsewhere confirms that the Petitioner had not rendered any service from January 2020 to 8<sup>th</sup> September 2021 when he was interdicted; a duration of one year and seven (7) months and if he was paid, such salary is recoverable as it was not earned and was not payable to him in accordance with the provisions of Section 17 of the Employment Act which provides:

Subject to this Act, an employer shall pay the entire amount of wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly, in currency of Kenya

- (a) in cash;**
- (b) into an account at a bank or building society, designated by the employee;**
- (c) by cheque, postal order or money order in favour of the employee or**
- (d) in the absence of an employee to a person other than the employee; if the person is duly authorized by the employee in writing to receive the wages on the employee's behalf.**

However, the amount paid while schools were closed owing to the Covid-19 pandemic from April 2020 is not recoverable. Any amount paid after December 2020 for services not rendered is recoverable until the date of interdiction.

Although the Petitioner attached 3 pages of Time-tables of Koderobara High School with his name as Teacher 032, the 3 pages had neither a date, term nor authentication and were thus of no evidential value and the Petitioner

rendered no services at all after the transfer to St. Michael Nyarongi Secondary School.

Similarly, although the Petitioner faulted the disciplinary procedure variously without supportive evidence, records reveal that after County Disciplinary Meeting held on 20<sup>th</sup> September, which he attended, wrote down his defence and was interviewed, he was interdicted vide letter dated 8<sup>th</sup> September 2023 effective immediately, submitted his response vide letter dated 12<sup>th</sup> September 2023, was invited for a disciplinary hearing vide letter dated 15<sup>th</sup> September 2023 and attended the hearing on 18<sup>th</sup> October 2023 and the outcome communicated vide letter dated 25<sup>th</sup> October 2023, suspension for 2 months.

Records show that the Petitioner appealed vide letter dated 8<sup>th</sup> November 2023 by which he admitted his mistake of not reporting to St. Michael Nyarongi Secondary School.

The Review Panel heard the Petitioner on 22<sup>nd</sup> November 2024 and allowed the Petitioner's appeal by waiving the suspension so that he could be posted to a school immediately and revoked the interdiction.

I will revert to this decision shortly to determine its effect.

In his 72 paragraph Supplementary Affidavit sworn on 31<sup>st</sup> October 2025, the Petitioner delved into the law and the Code of Regulation for Teachers (CORT) in the form of submission as opposed to an affidavit on facts in his knowledge.

However, he added that the respondent did not involve the school's Board of Management as the 1<sup>st</sup> level of addressing the Petitioner's case.

This was a fundamental procedural omission by the respondent.

Strangely, the Petitioner purported to deny that there was a meeting on 20<sup>th</sup> September 2019 and he had been invited and attended as his letters reveal.

He also contested the disciplinary report of the hearing at the TSC Head Quarters to urge that the disciplinary process he was taken through was flawed.

Intriguingly, in his appeal letter dated 8<sup>th</sup> November 2023, the Petitioner did not raise any procedural issue and gave an account of the procedural steps he had been taken through but as adverted to elsewhere in this Judgment,

the respondents failure or refusal to involve the union as by law required dented the entire process.

The CORT requires the B.O.M to undertake preliminary investigations and report to the respondent.

The B.O.M. investigation would have clearly revealed whether the Petitioner had been rendering services or not, although he alluded to it in his letters which are contradictory.

For instance while by letter dated 20<sup>th</sup> September 2021 he admitted that he was not working, vide letter dated 8<sup>th</sup> November 2023, he stated that he was in school.

In the earlier letter dated 20<sup>th</sup> September 2021 he was emphatic that “I did not refuse to work I did my best only to be swapped after one year of service. I had no disciplinary case in my station. I only wanted to know why I was swapped without my consent to a far distant school after working for a short period”.

In his appeal on overpayment of salary dated 8<sup>th</sup> November 2023, the Petitioner stated that when he approached the Principal on the transfer the Principal

declined to listen to him but equally stated that by the time the COVID-19 pandemic struck in March 2020 and schools closed at the end of month, he was still at Koderobara Secondary School, yet he was supposed to have reported at St. Michael Nyarongi Secondary School in January 2020 and as adverted to elsewhere in this Judgment, the Petitioner had no evidence of having been in a class from December 2019 to 20<sup>th</sup> September 2021, when he attended the County Disciplinary meeting.

The court is at a loss as to how the Petitioner could claim that he was teaching at Koderobara Secondary School from January 2020 to 20<sup>th</sup> September 2021 and thereafter, which is a long time without any credible piece of evidence that he appeared in any class at all for the entire duration but for his own words and he did not *inter alia* disown the contents of the letter based on a conversation between the Principal of Koderobara Secondary School and the Deputy Director Migori County, on the Petitioner's request to report back to Koderobara which indeed culminated in the meeting on 20<sup>th</sup> September 2021, where he admitted in writing having been out for long.

The Petitioner ought to have had tangible and credible evidence of attending class and teaching and supportive evidence from Mr. Okeyo, the new Principal of Koderobara Secondary School who followed up his case with the Migori County Office. Without any scintilla of evidence that he was at work before and after the COVID-19 Pandemic, any amount paid to him as salary was not earned and could not be payable to him, the unsolicited transfer/swap to St. Michael Nyarongi Secondary School notwithstanding.

Going back to the effect of the decision of the Appeals Panel, it is not in dispute that the Petitioner's suspension was waived and the interdiction revoked.

These terms denote different things and their effects are equally different.

The Appeals committee/panel waived the suspension for 2 months.

Black's Law Dictionary 10<sup>th</sup> Edition defines waiver as:

**The voluntary relinquishment or abandonment - express or implied of a legal right or advantage. To abandon, renounce or surrender a claim, privilege or right.**

It denotes the giving up of the claim or right willingly which meant that the Petitioner was not required to serve the suspension the finding of guilt notwithstanding.

Black's Law Dictionary 10<sup>th</sup> Edition on the other hand defines revocation to mean

**“To annul or make void by taking back or recalling; to cancel, rescind, repeal or reverse”.**

The annulment of the interdiction meant that the Petitioner ought to have been teaching and enjoying all the rights and privileges of other teachers, including applying for promotion when opportunities arose, if he felt qualified and applying for transfer among others.

The sentiments of Nduma J in **Amos Gichuhi V Teachers Service Commission (supra)** are instructive that:

*“Revocation of an interdiction wipes away the stigma of disciplinary action. The teacher must be restored to his*

*full salary benefits and position as though no interdiction had been imposed”.*

The Petitioner was thus entitled to recover salary and allowances unpaid during the interdiction.

As regards the reliefs sought and having found as above, the court proceeds as follows:

**(i) Declarations**

Although the respondent did not avail evidence to prove that Petitioner had requested for a transfer/swap from Koderobara Secondary School to St. Michael Nyarongi Secondary School, the Petitioner's conduct in dealing with the issue escalated the grievance which to a large extent explains why an action taken in 2019 remained pending until 2023.

Neither the Petitioner nor the respondent is free from blame. Both contributed equally to the escalation.

In the court's view, and based on the evidence on record, none of the infringements or violations of the constitution was demonstrated evidentiary to be decreed.

The declarations sought under paragraph 56 of the Petition are declined.

**(ii) Prohibitions**

Having found that the Petitioner did not render any services from sometime in 2019 to March 2020 and from January 2021 to September 2021, when he was interdicted, the amount paid him save for the period 1<sup>st</sup> April - December 2020, is recoverable, a total of about 11 months.

The respondent shall compute the amount deducted against the amount paid in 11 months and any excess shall be given to the Petitioner and any unrecovered balance shall be recovered.

The Order of prohibition would be premature at this stage and it is declined.

**(iii) Mandamus**

The Order of *mandamus* only issues where there is no other adequate remedy, public legal duty on the party to pay owed to the applicant, clear right to the performance, no equitable bar among other parameters.

Having not demonstrated that the deductions were unlawful or the amount was over and above the amount for the 11 months the Petitioner did not render services, the Order of *mandamus* cannot issue.

significantly, the amount to be refunded was not specified.

The prayer is declined.

**(iv) *Mandamus* on promotion**

Although the Petitioner may have lost an opportunity for promotion during the interdiction and may have applied and indeed secured a promotion, promotion is not a legal right in employment and ought to be competitive as ordained by Article 232 of the Constitution of Kenya, which prescribes the values and principles of Public Service, including fair competition and merit, it is an employer's domain and this court is not persuaded that the interests of justice would be served on both parties by a court sanctioned promotion.

The prayer is declined.

**(v) *General damages* and compensation**

The above prayers under paragraph 57(iv) and (v) of the Petition involve monies counted and require proof of the loss suffered. The prayers ought to be supported by credible and verifiable evidence showing that the respondent's acts or omissions were the cause of the loss and no such *nexus* was demonstrated.

In cases of compensation, the amount payable by the respondent ought to be certain unlike general damages. The sum of Kshs.8,000,000 prayed for lacked a legal or factual basis.

The prayers are declined.

**(vi) Aggravated and exemplary damages**

The Petitioner prayed for Kshs.2,000,000 as aggravated and exemplary damages for social, economic and psychological suffering occasioned by the respondent and its agents but tendered no verifiable proof of the alleged suffering and its *causa causan*.

It is trite that exemplary and aggravated damages are not synonymous. They are distinguishable and awarded in specific circumstances.

Unlike other categories or types of damages, exemplary damages are punitive in nature because they are awarded to punish the other party for its conduct in particular, where the other party's conduct is adjudged as reckless.

Aggravated damages on the other hand are awarded where it is authorised by statute, in cases of oppressive, arbitrary or unconstitutional actions by servants of government and for

conduct calculated by the other party to derive a profit.

See in this regard, Halsburys Laws of England 4<sup>th</sup> Edition 1979 paragraph 243 at page 120 and **Bank of Baroda (K) Ltd V Timewood Products Ltd [2008] 236 John V MG Ltd [1996] 1 ALLER 35, The Standard Ltd V Alnashir Visram** CA No. 89 of 2017.

From the evidence on record, the Petitioner has not demonstrated which actions or conduct of the respondent qualify as oppressive or unconstitutional for aggravated damages to issue or punitive damages.

The prayer is declined.

**(vii) Injunction**

The Petitioner adduced no evidence to prove that he was threatened with or was being subjected to or was likely to be victimized, intimidated or subjected to retaliatory conduct to justify the award of the Order of injunction against any of the respondents or all of them.

The prayer is declined.

The respondent shall compute the total amount deducted from the Petitioner's salary against the amount paid in 11

months and any excesses shall be paid to the Petitioner and any recoverable balance shall be recovered.

Having found that the Petitioner's suit against the respondents is only partially successful, parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 20<sup>TH</sup> DAY OF JANUARY 2026.**

**DR. JACOB GAKERI  
JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of

the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**  
**JUDGE**