

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MALIMDI

PETITION NO. E 001 OF 2025

ZEINAB SABRIA ABDULLAHI.....

PETITIONER

AND

MINISTRY OF INTERIOR AND

NATIONAL ADMINISTRATION1ST

RESPONDENT

STATE DEPARTMENT FOR INTERNAL

SECURITY AND NATIONAL ADMINISTRATION2ND

RESPONDENT

PUBLIC SERVICE COMMISSION.....3RD

RESPONDENT

THE ATTORNEY GENERAL.....4TH

RESPONDENT

JUDGMENT

Introduction

1. **The** Petitioner was employed on 6th April 2022, as an Assistant Chief, and served in the capacity until 3rd August 2023, when events took an unexpected and troubling turn. It emerged, following due inquiry, that her engagement had been secured on the basis of forged documents. The revelation struck at the very foundation of the employment relationship and led to her summary dismissal. It is against this factual backdrop, where trust, legality, and fairness intersect, that the court is now called upon to determine the issues placed before it.

The Petitioner's Petition.

2. By his Petition dated 21st February 2025, supported by an affidavit she swore on the same date, the Petitioner stated that she first entered employment in the public service as an Assistant Chief on 6th April 2022.

3. On 11th September 2023, the Respondents served her with a letter dated 3rd August 2023, accusing her of forging a KCSE certificate, thereby constituting gross misconduct. The letter also informed her that the Respondents were considering dismissing her from service and invited her to respond within 21 days.
4. The Respondents contended in the letter that the discovery of the forgery was the result of investigations they conducted in collaboration with the Kenya National Examination Council. However, the Respondents did not provide her with any correspondence between them and the Council under the letter. Further, the letter did not provide sufficient details concerning the misconduct.
5. That, although the letter dated 3rd August 2023 required her to respond within 21 days, it was served

on her on 11th September 2023, eighteen days after the 21 days had lapsed.

6. She further states that the letter dated 3rd August 2023 stopped her salary immediately. She responded to the letter with her letter dated 12th September 2023. Subsequently, by a letter dated 12th February 2024, the 2nd Respondent communicated her dismissal from employment. The dismissal was expressed to be retrospective. It took effect from the 1st day of August 2023.

7. She contends that by failing to furnish her with detailed information and the material evidence relied upon to reach the decision to dismiss her from employment, especially the correspondence between them and the Council, her rights under Articles 47[1][2] and 50[1] and [2] of the Constitution of Kenya, 2010, were violated.

8. Furthermore, by serving her with the letter dated 3rd August 2023 on 11th September 2023—eighteen days

after the 21-day response period expired—the Respondents acted in bad faith. They condemned her unheard and denied her the right to a fair administrative process and the opportunity to be heard, as required by the Constitution provisions mentioned above.

9. By failing to convene a disciplinary hearing and invite her to attend, the Respondents condemned her unheard and contravened her rights as mentioned above.

10. In purporting to dismiss her retrospectively, effective 1st of August, 2023, by which time the petitioner had not yet received a show cause letter, the Respondents breached her constitutional rights mentioned above.

11. She asserts that by reason of the foregoing premises, she is entitled to;

- a) A declaration that her dismissal from service without convening a disciplinary hearing was unfair and unlawful.
- b) A declaration that her dismissal from service without supplying her with adequate information, material evidence to be relied on was unfair and unlawful.
- c) A declaration that the service of the letter dated 3rd August 2023, coming after 18 days after the period when he was supposed to reply to the show cause letter violated his constitutional right to a fair administrative action guaranteed under Article 47 of the Constitution.
- d) A declaration that the stoppage of her salary on 3rd August 2023, by the Respondents, prior to a disciplinary hearing was unlawful and unfair.
- e) A declaration that the retrospective dismissal of the Petitioner from service was unlawful and contrary to the tenets of natural justice.

- f) An order of certiorari do issue, removing into this Court and quashing the entire decision of the Public Service Commission dismissing her appeal, conveyed vide its letter to the 2nd Respondent dated 6th December, 2024.
- g) An order setting aside the State Department for International Security and National Administration's decision to dismiss the Petitioner from Service, as communicated vide its letter to the Petitioner dated 12th February, 2024.
- h) An order for reinstatement of the Petitioner to her former job of Assistant Chief II.
- i) An order of compensation for unfair dismissal.
- j) Damages.
- k) Costs.

Third Respondent's Response.

12. The 3rd Respondent opposed the Petition through a replying affidavit sworn by Paul Fwamba, its Secretary / Chief Officer, sworn on the 11th April 2025.

13. It is stated that the 3rd Respondent, through its letter dated 19th October, 2022, directed that an audit of academic and professional certificates for all newly appointed officers in the Ministry and relevant state corporations, in the last ten [10] years, be undertaken. The directive was pursuant to its mandate, under Article 234[2] of the Constitution, the Public Service Commission Act, and the Public Service Commission Regulations, 2020.

14. The Authorized Officer, in compliance with the directive, requested the Kenya National Examination Council [KNEC] to authenticate 7,779 copies of academic certificates for the employees, including the Petitioner, via a letter dated 25th April, 2023.

15. The CEO of KNEC, by a letter dated 12th July 2023, reported that the Petitioner did not sit for the year 2009 KCSE examinations at Madogo Secondary School under index number 103401/062 and that the *bona fide* candidate who sat in the said year under the

aforementioned index number was Manyanya Evans Jack.

16. The Petitioner was issued a show cause letter dated 3rd August, 2023 and given 21 days to respond.

17. She responded to the show-cause letter with a reply dated September 14, 2023. She admitted that she was a class eight leaver and that she had to obtain a form four certificate from another person, given that the role required a form four certificate and that she needed the job. She expressed regret for her actions and begged for forgiveness.

18. That HRMAC deliberated on the case on 8th November, 2023, and recommended that the petitioner be dismissed from service. The Authorized Officer concurred with HRMAC's recommendations and dismissed the petitioner by letter dated 12th February, 2024.

19. The Petitioner submitted an appeal to the Commission through a letter dated 2nd May 2024. After

review, the appeal was rejected. The rejection was conveyed to her in a letter dated 6th December 2024.

20. The Respondent further stated that the Petitioner explicitly admitted to the charge in the show cause letter.
21. Further, the Petitioner has not in any way challenged the report from KNEC, which confirmed that she did not sit for KSCE in the year stated above.
22. The contract entered into through fraud and or illegality is null and void, and a party cannot be allowed to benefit from such fraudulently or illegally induced contract.
23. It was further contended that the Petitioner has not demonstrated with precision how her fundamental rights and freedoms under the Constitution have been violated, contrary to the requirements of the law.

Analysis and Determination

24. I have carefully considered the Petitioner's petition, the 3rd Respondent's replying affidavit, and the respective submissions by Counsel for the parties, and the following principal issues emerge for determination;

a) Whether the Petition meets the threshold for a properly crafted and presented petition.

b) Whether the Petitioner's constitutional rights under Article 47 [right to fair administrative action] and Article 50[right to fair hearing] were violated by the Respondents.

c) Whether the Petitioner is entitled to the reliefs sought.

25. The 3rd and 4th Respondents take the position, and their Counsel have submitted that the petition herein is fatally deficient for failing to meet the legal threshold for a properly crafted and presented constitutional petition, as provided for under Rule 10 of the Constitution of Kenya [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules,

2013. The Rules require a petition to be set out with precision;

- a) The specific rights alleged to have been violated,
- b) The manner of violation,
- c) The specific actions or omissions complained of.

26. To buttress this submission, reliance has been placed on the cases of **Anarita Karimi Njeru v Republic [1979]** and **Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR**.

27. My understanding is that the two decisions did not emphasise strict mathematical precision in the manner of bringing out the matters mentioned, in a petition. Given the purpose and significance of pleadings, what is necessary is a clear enough averment to inform the opposing party of the case they are to address. I have carefully considered the Petitioner's averments in paragraphs 10 to 17, and conclude that they supply sufficient content from which one can discern the rights

alleged to have been violated, the manner in which the violation occurred, and the reliefs sought. As such, I do not agree with the Respondents' position and submissions.

28. The Respondents argue that the doctrine of constitutional avoidance militates against the Petitioner's petition. The 3rd Respondent's Counsel submits that it is trite law that parties shouldn't be allowed to use the constitutional litigation to litigate on procedural and substantive law matters. Further, certain rights are afforded effect by various statutes. Articles 41 and 47 rights have been given effect through various primary labour laws; therefore, the Petitioner is circumventing the other avenues provided for in statutes for litigating her dispute by relying on the Constitution. As such, the petition should be struck out. To support this point, he places reliance on the case of **Josephat Ndirangu v Henkel Chemicals [EA] [2013] eKLR** and **Elizabeth Mburu vs Kenya Breweries Ltd [2014] eKLR.**

29. In *KKB v SCM & 5 Others* [[2020] KEH 289 [KLR], on the doctrine of constitutional avoidance, the court stated:

“Constitutional avoidance has been defined as a preference of deciding a case on any other basis than one which involves a constitutional issue being resolved. As a principle, constitutional avoidance has been linked to the doctrine of justiciability. In broad terms, justiciability governs the limitations on Constitutional arguments that courts will entertain. It encompasses three main principles, which are standing, ripeness and mootness. The doctrine of avoidance was fortified in *Sports and Recreation Commission v Sagittarius Wrestling Club and Anor.* [2001][2] ZLR 501[S], in which Ebrahim JA said the following:-

“.....Courts will not normally consider a constitutional question unless the

existence of a remedy depends upon it, if a remedy is available to an applicant under some other legislative provision or on some other basis, whether legal or factual, a court will usually decline to determine whether there has been, in addition, a breach of the Declaration of Rights.....”

30. The Constitutional Court of Zimbabwe in **Chewira & others v Minister of Justice, Legal and Parliamentary Affairs & others** held;

“As we have already seen, in the normal run of things, courts are generally loath to determine a constitutional issue in the face of alternative remedies. In that event, they would skirt and avoid the constitutional issue and resort to the available alternative remedies.”

31. The Supreme Court of Kenya in the case of **Communications Commission of Kenya & 5 others v**

Royal Media Services Limited and 5 others [2014] eKLR
stated on the principle;

“256. The Appellant in this are seeking to invoke the “principle of avoidance also known as “Constitutional avoidance.” The principle entails that the court will not determine a constitutional issue when the matter may properly be decided on another basis.....”

32. The Supreme Court of India also held that ordinary remedies available under the common law and statutes must be pursued in an ordinary manner as provided under the statute. For instance, in **Re Application by Bahadur [1968] LRC [Cost.]**, the Court expressed itself as follows;

“The Courts have said time and again that where infringement of rights is alleged, which can be founded on a claim under substantive law, the proper course is to

bring the claim under such law and not the Constitution.”

33. The common theme across all the cited decisions is that constitutional litigation is a limited route, reserved for exceptional cases. Not every grievance or dispute should be brought under the Constitution. Where a matter can be resolved through alternative processes, it is preferable that those options be pursued. I have thoroughly examined the issues raised and presented in the petition. They concern, largely, the procedural and substantive fairness of the termination of the Petitioner’s employment. On weighing the material before me, I reach the inevitable conclusion that the substantive remedies sought do not depend on the “constitutional issues” raised by the Petitioner. The reliefs sought ought to have been pursued under the Employment Act in an ordinary claim, through the procedure provided under the

Employment and Labour Relations Court Act and the Practice and Procedure Rules of this Court.

34. It is imperative to note, therefore, that a mere allegation that a human right or fundamental freedom has been or is threatened with violation is not sufficient to engage the Court's jurisdiction under the provisions of the Constitution rather than under statute.

35. For the foregoing reasons, I hold that the doctrine of constitutional avoidance militates against the Petition. The Petitioner's grievance is improperly presented to this Court for consideration. The petition fails at this point. It is so ordered.

36. Having found as I have herein above, it shall be imprudent to turn to consider the other issues identified for determination, as it shall be an unnecessary expenditure of the precious judicial time.

Read Signed and Delivered this 12th Day of February 2026

OCHARO KEBIRA

JUDGE

ORIGINAL