

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. E406 OF 2025_

NICHOLAS JUMA

MAKOKHA.....PETITIONER

VERSUS

NATIONAL YOUTH SERVICE.....1ST

RESPONDENT

NATIONAL YOUTH SERVICE COUNCIL.....2ND

RESPONDENT

**DIRECTOR GENERAL /COMMANDANT GENERAL OF
THE NATIONAL YOUTH SERVICE.....3RD**

RESPONDENT

ATTORNEY GENERAL.....4TH

RESPONDENT

**CABINET SECRETARY STATE DEPARTMENT FOR
PUBLIC SERVICE AND HUMAN CAPITAL
DEVELOPMENT.....5TH**

RESPONDENT

JUDGMENT

Introduction

1. This petition concerns the petitioner's claim that he was unlawfully suspended from duty by the 3rd respondent at the behest of the 2nd, 3rd, 4th and 5th respondents which was in contravention of Articles 10, 25, 41, 47, 50 and 73 of the Constitution.

Background

2. The petitioner is a member of the National Youth Service (NYS) holding the rank of Deputy Commandant General. On 2nd May 2025, Ethics and Anti-Corruption Commission (EACC) filed Milimani Anti-Corruption Court Misc. Criminal Application No E604 of 2025 on the basis that it had received a complaint that a public official had illegally acquired Ksh.510,500,198 between January 2017 and March 2025. An Investigating Officer alleged that the petitioner was a proxy of the public official involved and sought search warrants to search the petitioner's office, business and residence. The Court

issued the orders and directed that a progress report be filed in Court on 15th May 2025. A report was however not filed even after the time for filing the report was extended.

3. By letter dated 19th May 2025, the 5th respondent informed the 3rd respondent about an alleged embezzlement of money in NYS. The 5th respondent directed the 3rd Respondent to submit evidence of the disciplinary action taken against the petitioner within 5 days.
4. The 3rd respondent under instructions from the 2nd, 3rd, 4th and 5th respondents, sent the petitioner on compulsory leave on 29th May 2025. Thereafter, by letter dated 25th June 2025, the 3rd respondent suspended the petitioner from duty for a period of 6 months.

Petitioner's Case

5. The petitioner filed this petition against the respondents for the alleged failure to follow due process prior to suspending him from duty. The petitioner asserted that the respondents suspended him without notice, or without giving him an opportunity to be heard. The action was also based on unsubstantiated claims by EACC. The petitioner further asserted that the respondents' action was not based on any law this, unlawful, malicious and in violation of Articles 10, 25, 41, 47, 50 and 73 of the Constitution.

6. The petitioner stated that section 3(2) of the Employment Act excludes the National Youth Service personnel from the protection and mechanism of the Act. That notwithstanding, he maintained that the petition raises constitutional issues concerning

allegations against him by of a third party rather than his employer. The petitioner also asserted that the 3rd respondent had withheld his salary and benefits for the 6-month suspension period in contravention of his right to social-economic rights.

7. Based on the foregoing, the petitioner urged the Court to intervene and halt the illegal suspension and sought the following reliefs:

- i. A declaration that the respondents' decision communicated vide the letter Ref. National Youth Service/CONF/1989126142 dated 25th June 2025 suspending the petitioner contravened Articles 47, 50(1) and 236(b) of the Constitution and is unconstitutional, unlawful, unreasonable and null and void ab initio.*
- ii. A declaration that the 5th respondent acted ultra vires and in abuse of office by usurping the disciplinary powers vested elsewhere, thereby violating the petitioner's constitutional rights.*
- iii. A declaration that the acts and directives of the 5th respondent, purporting to oversight, enforce*

or initiate disciplinary actions in respect of the petitioner despite having no statutory mandate under Sections 2 and 9 of the National Youth Service Act, violates Articles 10, 41, 47 and 73 of the Constitution, is ultra vires, unconstitutional, null and void ab initio, and of no legal effect whatsoever.

- iv. This prayer is missing.*
- v. This prayer is missing.*
- vi. An order of mandamus directing the 1st respondent to expunge from National Youth Service Records all adverse entries arising from the impugned suspension.*
- vii. An order of permanent injunction against all the Respondents to cease from further acting illegally by threatening, intimidating, harassing, victimizing and or subjecting the petitioner to any further unnecessary and unwarranted disciplinary action.*
- viii. General damages (or in the alternative aggravated damages) for the violation of the petitioner's constitutional and statutory rights, to be assessed by this Court.*
- ix. Costs of this Petition together with interest.*

x. *Such other or further relief as this Court may deem fit in the circumstances to grant.*

Response

8. The respondents opposed the petition through a preliminary objection, arguing that the Court lacks jurisdiction to hear and determine this matter since the subject matter of the petition is predominantly an employment and labour relations dispute concerning petitioner's suspension from duty.

9. In that regard, the respondents maintained that the matter falls within the jurisdiction of Employment and Labour Relations Court (ELRC) by virtue of Article 162(2) (a) of the Constitution read with section 12 of the Employment and Labour Relations Court Act.

Parties Submissions

Petitioner's submissions

10. Brig. Dindi, learned counsel for the petitioner, submitted highlighting their written submissions, that this Court has jurisdiction to hear and determine the petitioner. According to learned counsel, the petition concerns the respondents' violation of the petitioner's rights guaranteed under Articles 10,47 and 50(1) of the Constitution. The respondents also violated sections 3, 60, 65 and 71 of the Public Service Act, read with regulations 3, 4, 60 and 62 of the Public Service Regulations and sections 2, 4, 5, 9, 12, 33 and 34 of the National Youth Service Act.

11. Brig. Dindi argued that the issues raised in the petition were not on employment but focus on violation of fundamental rights and unconstitutionality of regulation 13 of the National

Youth Service (Disciplinary Procedure) Regulations and Legal Notice No. 8 of 2021.

12. Learned counsel argued that jurisdiction of the Employment and Labour Relations Court can only be invoked where the dispute is on employer - employee relationship. Counsel maintained that the petition is not about an employee suing the employer. Counsel relied on the Supreme Court decision in *Karisa Chengo & others v Republic* [2017] eKLR that jurisdiction is not determined by the parties' pleadings or the respondents' characterization of the dispute but from a contextual reading of the claim and the issues raised therein.

13. Counsel again relied on *National Social Security Fund Board of Trustees v Kenya Tea Growers Association & 14 others* [2023] KECA (KLR) and *Elijah*

Okemwa v Clerk, County Assembly of Nyamira & others [2018] KEHC 8632 (KLR).

14. Brig. Dindi argued that the constitutional principles outlined in the cited provisions oblige all state organs and officers to uphold national values when discharging their mandate. In this case, the respondents were required to undertake an administrative process that was expeditious, lawful, reasonable and procedurally fair while affording the petitioner fair hearing which was not the case.

15. In the circumstances of this petition, learned counsel argued, the respondents' actions violated the petitioner's rights and fundamental freedoms. The respondents suspended the petitioner without due process; without notice; hearing or written reasons for the action taken against him. The petitioner was condemned unheard; without investigation or opportunity to defend himself. The

suspension was based on external influence as opposed to a legitimate claim thus, arbitrary.

16. Learned counsel relied on the decision in *Commission for the Implementation of the Constitution v Attorney General & another* [2013] eKLR for the position that Article 10 of the Constitution binds all decision making by public bodies and failure to uphold those values renders administrative actions invalid.

17. Further reliance was placed on the decisions in *Kenya Human Rights Commission v Non-governmental Organizations Co-ordination Board* [2018] eKLR; *Judicial Service Commission v Gladys Boss Shollei and another* [2014] eKLR; *Njuguna v Ministry of Agriculture* [2004] 1 KLR and *Republic v Dedan Kimathi University of Technology; Wachiuri (Ex parte)* [2022] KEHC 10052(KLR).

18. Brig. Dindi argued that the Public Service Act and the Regulations made thereunder set out explicit requirements for due process, in terms of disciplinary control and procedural fairness in proceedings involving public officers. He argued that under sections 60, 65 and 71 of the Act read with regulations 3, 4, 60 and 62, disciplinary actions are to be carried out in a transparent manner where adequate notice is issued, proper investigations carried out and the officer concerned granted an opportunity to be heard before a decision is made.

19. Learned counsel argued that the respondents acted arbitrarily without adhering to the requirements of the law. According to learned counsel, the petitioner's employer, the Public Service Commission, was not involved in the process. Reliance was placed on *Republic v Public Service Commission & another ex parte Loise Maina* [2017]

eKLR for the position that the Court should quash disciplinary action taken against a public officer without observing statutory and regulatory procedures (investigation, notification and a hearing).

20. Brig. Dindi maintained that section 12 of the National Youth Service Act read with National Youth Service (Disciplinary Procedure) Regulations only empower the Council to review penalties after proper disciplinary procedures and not to initiate disciplinary actions directly.

21. Learned counsel argued that the respondents' failure to comply with the law rendered their actions against the petitioner unlawful null and void.

Respondents' Submissions

22. Miss Were, learned counsel for the respondents, relied on their written submissions and the decisions cited therein. In the written submissions, the respondents argued that the Court lacks jurisdiction to entertain the petition since the substratum of the petition concerns the suspension of the petitioner from duty.

23. The respondents argued that the petitioner was suspended from duty on the recommendation of EACC based on the allegation of abuse of office by the petitioner and two other officers of NYS. In that regard, the proper court with jurisdiction to deal with the petitioner's grievances lies with the ELRC by virtue of Article 162(2) (a) of the Constitution read with section 12 of the Employment and Labour Relations Court Act.

24. The respondents submitted that the issue of jurisdiction is fundamental, maintaining that this Court cannot entertain the Petition since it falls within the purview of the ELRC. Reliance was placed on *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR for the position that a court of law can only exercise jurisdiction as conferred by the Constitution or other written law.

25. Reliance was further placed on the decisions in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR and *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] KESC 53 (KLR). They urged the court to dismiss the petition.

Determination

26. I have considered the pleadings, arguments by parties and the decisions relied on. The issues that arise for determination are whether this court has jurisdiction and, depending on the answer to this issue, whether the petition should be allowed.

Jurisdiction

27. The respondents argued that this Court has no jurisdiction to hear this petition because the issues raised in the petition relate to employment thus, falling within the jurisdiction of the ELRC. The petitioner maintained that there is no employer-employee relationship, but a case of violation of the Constitution, the law and rights and fundamental freedoms which are issues that fall within the jurisdiction of this Court.

28. Jurisdiction is the power or authority given to a court to hear and determine disputes presented before it for resolution. Whether a court has jurisdiction to hear a matter or not, is a threshold question to be determined based on the facts of the matter before court. Where jurisdiction of a court is challenge, the Court has to carefully consider and determine the fundamental question of its jurisdiction over the matter.

29. If the Court determines that it has no jurisdiction to hear a matter, that is the end of that matter. The Court should not take any further step, but down its tools. (See *Owners of Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited* [1989] eKLR).

30. In *Samuel Kamau Macharia v Kenya Commercial Bank Ltd & 2 others* [2012] KESC 8 (KLR), the Supreme Court stated:

[68] A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...without jurisdiction, the Court cannot entertain any proceedings...Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.

31. *In re the Matter of the Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011 [2011] KESC 1 (2011), after referring to Owners of Motor Vessel*

“Lillian S” v Caltex Oil (Kenya) Limited (supra), the Supreme Court observed:

[30] The Lillian ‘S’ case establishes that jurisdiction flows from the law, and the recipient-Court is to apply the same, with any limitations embodied therein. Such a Court may not arrogate to itself jurisdiction through the craft of interpretation, or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity. In the case of the Supreme Court, Court of Appeal and High Court, their respective jurisdictions are donated by the Constitution.

It follows, therefore, that since jurisdiction of a court must flow from the Constitution, statute or both, the Court should only exercise jurisdiction as

conferred on it by the Constitution or the law. The Court must not act without jurisdiction.

32. Article 162(2)(a) required Parliament to establish Courts with equal status to the High Court to hear and determine disputes relating to employment and labour relations. Parliament enacted the Employment and Labour Relations Court Act whose section 4 establishes the ELRC, while section 12 of the Act provides for the jurisdiction of the Court.

33. Under section 12, the ELRC has exclusive, original and appellate jurisdiction to determine all disputes referred to that court in accordance with Article 162 (2) of the Constitution, the provisions of the Act, and any other written law that extends jurisdiction to the Court.

34. Section 12 is clear that jurisdiction of the ELRC is on disputes relating to, or arising out of, employment between an employer and an employee; an employer and a trade union; an employers' organisation and a trade union's organisation; between trade unions; between employer organisations; an employers' organisation and a trade union; a trade union and employer's organisation or a federation and a member thereof; concerning registration and election of trade union officials; and disputes relating to the registration and enforcement of collective agreements.

35. In that regard, Article 162(2) (a) of the Constitution read with section 12 of the ELRC Act, are clear that the core jurisdiction of the ELRC is to determine disputes that arise out of employer-employee relationship and related matters.

36. The jurisdiction of this Court, on the other hand, is donated by Article 165(3) of the Constitution. This Court has unlimited original jurisdiction in criminal and civil matters. Further, this Court has jurisdiction to, among others, determine (b) the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened; (d) any question respecting interpretation of the Constitution, including determination of—(i) the question whether any law is inconsistent with or in contravention of the Constitution; (ii) the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the Constitution.

37. Article 165(3) therefore authorizes this Court to decide all matters other than those reserved for

other superior courts as contemplated under Article 162 (2) and restricted by Article 165(5) and (6) of the Constitution. The sweep of the constitutional authorization given to this Court, including when determining a challenge to its jurisdiction, should be understood and viewed through the prism of Article 165(3).

38. The issue of jurisdiction between the ELRC and this Court has been the subject of litigation in the superior courts. In *Attorney General & another v Dr. Major (RTD) Shadrack Mutia Muiu & another* (Civil Appeal No. E146 of 2021) [2025] KECA 816 (KLR), the Court of Appeal was called upon to consider an appeal from the judgment of the ELRC where a petition had been filed challenging the decision to withhold the petitioner's salary and allowances as unconstitutional. The petitioner had been appointed a Commissioner to the National

Police Service Commission. The ELRC held that withholding the salary was unlawful and awarded the petitioner his withheld salary from the period it was stopped to the end of his term.

39. The Attorney General and the National Police Service Commission, the respondents in the case, were aggrieved with that judgment and lodged an appeal in the Court of Appeal. The Court of Appeal held, referring to its decision in *Attorney General & 2 others v Okiya Omtatah Okoiti & 14 others* (Civil Appeal 621 of 2019 & 74 of 2020 (Consolidated)) [2020] KECA 30 (KLR) as follows:

[25] In its judgment in Attorney General & 2 others v Okiya Omtatah Okoiti & 14 others (supra), this Court emphatically found that the appointment and removal from office of the commissioners or holders of independent offices is not a labour and employment issue

as it does not involve any of the parties or raise any of the employment and labour issues contemplated by section 12 of the Act.

40. The Court of Appeal took the view, that the dispute raised in the matter had a constitutional connotation and could not be said to strictly fall under section 12 of the Employment Act. The Court of Appeal pointed out that jurisdiction of the ELRC is limited rather than unlimited and that whereas the ELRC has jurisdiction in appropriate cases to interpret and apply the Constitution in matters that arise in the context of disputes on employment and labour relations, the ELRC has no original or unlimited jurisdiction to interpret and apply the Constitution.

41. In *County Assemblies Forum v Attorney General & 3 others; Parliamentary Service*

Commission (Interested party) [2022] KESC 66(KLR), the Supreme Court stated:

On the question of the appropriate forum of the dispute, the trial court found that the question of enforcement of rights and fundamental freedoms even touching on the employment and labour is within the competence of the High Court pursuant to article 22. We are inclined to agree with the trial court and add that articles 23 and 165 of the Constitution fortifies this position as they are the provisions that give the High Court jurisdiction to hear and determine applications for redress of denial, violation or infringement of rights and fundamental freedoms in the Bill of Rights.

42. In addition to the above pronouncement, one must also pay close attention to Article 165(3)(d) which confers on this court jurisdiction to hear any

question respecting interpretation of the Constitution, including the determination of the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution.

43. In the present petition, the petitioner argued that the issues raised are on violation of the Constitution, the law and fundamental rights and freedoms. According to the petitioner, the issues that the Court is required to determine, include whether the respondents could suspend him in the manner they did without giving him a hearing. The petitioner further argued that he is not an employee of any of the respondents and that section 3(1) (c) of the Employment Act does not apply to NYS and by extension, to him.

44. I have carefully read the petition and the issues raised. The issues do not include determination of employer-employee relationship or related matters. Rather the issues are purely on the interpretation of the Constitution and the law, namely; whether the respondents could act as they did and if indeed the petitioner's rights and fundamental freedoms were violated. In other words, this Court is called upon to determine whether the respondents' actions were constitutional and lawful. As a matter of fact, there is no employer-employee relationship issue in this petition, except the constitutionality and legality of the respondents' impugned actions. That is; the petition challenges what the petitioner perceives to be constitutional and legal infractions thereby, questioning the constitutional validity and legality of those actions.

45. Section 3(2)(c) of the Employment Act excludes the National Youth Service from the application of that Act. This does not however mean that issues of employment cannot be raised with ELRC in appropriate cases.

46. As already stated earlier, under article 165(3) (b) and (d) of the Constitution, this Court is given express jurisdiction to hear any question on violation of rights and fundamental freedoms and the interpretation of the Constitution, including determination of questions whether anything said to be done under the authority of the Constitution or of any law, is inconsistent with, or in contravention of, the Constitution.

47. In so far as this petition is concerned, this Court will have to determine whether anything that was said to have been done by the respondents under the authority of the Constitution or the law,

is inconsistent with or in contravention of the Constitution, the law or the petitioner's rights and fundamental freedoms which falls within the jurisdiction of this Court.

48. In other words, the petition seeks this Court's determination of whether the respondents' actions were within the framework of the Constitution and the law thus, falling within the exclusive jurisdiction of this Court. There are also questions regarding actions or omissions on the part of the respondents which also call for interpretation of the Constitution and the law.

49. In the circumstances, I find and hold that this Court has jurisdiction to hear and determine this petition.

Violations

50. Having disposed of the issue of jurisdiction, the next question is whether the respondents' action violated the Constitution, the law or the petitioner's rights and fundamental freedoms. The petitioner argued in the affirmative while the respondents took the opposite view. The petitioner argued that the 3rd respondent unlawfully suspended him from duty at the behest of the other respondents in contravention of Articles 10, 25, 41, 47, 50 and 73 of the Constitution.

51. EACC obtained search warrants on the basis that it had received information that an official had acquired public money between January 2017 and March 2025 and that the petitioner was a proxy of that official. EACC wanted to search the petitioner's office, business and residence to gather documentary evidence to assist in the investigations. The Magistrate's court issued search warrants and

directed that a progress report be filed in Court on 15th May 2025. The petitioner stated that no report was filed as directed and the petitioner argued that the respondents' actions unlawful.

52. On 19th May 2025, the 5th respondent informed the 3rd respondent about a statement by EACC that it was investigating members of the Service for suspected offences of conflict of interest and abuse of office which are cognizable offences under sections 42 and 46 of the EACC Act and directed the 3rd respondent to submit information regarding disciplinary action taken against the petitioner.

53. On 29th May 2023, the 3rd respondent sent the petitioner on compulsory leave and on 25th June 2025, following the Council's meeting, the 3rd respondent suspended the petitioner from duty for a period of 6 months until further notice. The

petitioner argued that these actions were not only in disregard of the, but also violated his rights and fundamental freedoms.

54. I have considered the arguments by parties and perused the record. The EACC commenced investigations against members of the Service for suspected conflict of interest and abuse of office(corruption) within the Service. The EACC obtained search warrants authorizing searches and seizure of documents from the petitioner's office, residence and business premises which may be relevant in its investigations. In the meantime, the petitioner was asked to take leave pending investigations, but was later suspended for six months.

55. Section 5 of NYS Act establishes NYS as a disciplined Service. Members of the Service consist of officers of the ranks specified in the First

Schedule. These ranks are: Gazetted Officers, that is the Director General to Superintendents; Inspectorate Officers-Chief Inspectors to Cadet Inspectors; and Subordinate Officers-Senior Sargent to privates. The Act applies to these officers of the Service and also those who may be seconded to the Service.

56. Section 33 of the Act is on discipline. Section 33(2) provides that a member of the Service who commits any of the acts set out in the Fourth Schedule commits an offence against discipline. Subsection (3) provides that a member of the Service who commits an offence under any other written law *“shall be liable to proceedings in a court of law in accordance with the provisions of the law under which the offence was committed.”*

57. Further, section 33(4) provides:

Despite the provisions of subsection (3), the Director-General or an officer authorised in writing by the Director-General may, for cause, take such disciplinary action as may be appropriate in the circumstances against a member of the Service who commits an offence under this Act or any other written law.

58. On the other hand, section 42 of the EACC Act is on conflict of interest. Section 42 (3) provides that an agent of a public body who knowingly acquires or holds, directly or indirectly, a private interest in any contract, agreement or investment emanating from or connected with the public body is guilty of an offence. Section 46 of the same Act provides that a person who uses his office to improperly confer a benefit on himself or anyone else is guilty of an offence.

59. The gravamen of the petitioner's case is that the 3rd respondent had no mandate to send him on compulsory leave and later to suspend him for six months. The actions, the petitioner argued, were in violation of the Constitution, the law and his rights and fundamental freedoms. The petitioner cited Articles 10, 25, 41, 47, 50 and 73 of the Constitution in that regard.

60. The petitioner stated that he is a member of the Service and gave his Service Number. For purposes of the NYS Act, members of the Service, include those who are seconded to the service so that the Act applies fully to such a member as members of the Service. The petitioner did not argue that the Act does not apply to his as a member of the Service.

61. Article 10 is on national values and principles of good governance. Article 10(1) stated that

values and principles in article 10(2) binds all person in the performance of their duties while article 10(2) enumerates the values and principles of good governance, including the rule of law, human dignity, and human rights. Article 25 is on human rights and fundamental freedoms that may not be limited, including the right to a fair trial. Article 41 is on the right to fair labour practices; article 47 on the right to administrative action; article 50 of the right to fair hearing while article 73 is on responsibilities of leadership.

62. These articles must be looked at and appreciated in the context of the facts of this petition, that the actions complained of were preliminary and subject to investigations that were being undertaken at the time the petition was filed and in particular, whether the 3rd respondent could act as he did at the time.

63. To determine whether the 3rd respondent properly acted, as he did, the starting point must be the action taken by the EACC. The EACC filed an application in court Misc. Application No. E 609 OF 2025, seeking an order for search warrants. The petitioner was the respondent in that application. The petitioner attached a copy of the supporting affidavit to the application. Investigations were covering the period January 2017 and March 2025. The deponent stated in the supporting affidavit that documents to be obtained during searches would be necessary for the conclusion of ongoing investigations. Investigators could not access and conduct searches in the petitioner's premises (residential, business and office) without the orders. The petitioner confirmed in his own pleadings that search warrants were issued but

investigators had not filed returns in court as directed.

64. The allegations by EACC were that the petitioner may have been involved in committing offences under a written law, namely, The EACC Act which required to be investigated and either confirmed or ruled out. That was why EACC applied for search warrants to enable its investigators search, where necessary, not only the petitioner's residential and business premises but also his office.

65. Under section 33(2) of the NYS Act, commission of acts set out in the Fourth Schedule amounts offences against discipline and by virtue of section 33(3), a member of the Service who commits an offence under any other written law is liable to proceedings in a court of law in accordance with the provisions of the law under

which the offence is committed. In that regard, section 33(4) gives the Director-General or an officer authorised by the Director-General, authority to take such disciplinary action as may be appropriate in the circumstances against a member of the Service who commits an offence under the Act or any other written law.

66. Section 64 of the NYS Act gives powers to the Cabinet Secretary who may, in consultation with the Council, make regulations that necessary or expedient to give full effect to or for the carrying out of the provisions of the Act, including-(i) *rules of procedure for disciplinary proceedings.*”

67. The Cabinet Secretary came up with The National Youth Service (Disciplinary Procedure) Regulations, 2021 under Legal Notice No 8 of 2021. regulation 13 of the Regulations on the powers of the Director General provides:

The Director-General may on receipt of a report, allegation or complaint that a member of the Service has committed an offence against discipline, temporarily suspend that officer from the Service, whether or not the matter has been investigated.

68. The law allows the Director General to take disciplinary action against a member of the Service who may have committed an offence under the NYS Act or any other written law. In this petition, the position is not that the petitioner had committed an offence under the NYS Act or the EACC Act. There was however suspicion he may have committed an offence and the EACC was investigating. The 3rd respondent as the Director General acted first, by asking the petitioner to take leave.

69. The letter dated 29th May 2025 referenced *“RELINQUISHMENT OF OFFICE PENDING INVESTIGATIONS”* stated where material:

In view of the ongoing investigation concerning corruption, you are hereby directed to utilize your leave days from the date of this letter until further communication.

The letter was clear that the petitioner was to proceed on leave pending investigations. The action was not violative of the rights since the petitioner was to utilize his leave days as investigations were going on.

70. Thereafter, on 25th June 2025, the 3rd respondent sent a notice of suspension to the petitioner informing him that following letter dated 28th May 2025 and the Council’s Special Meeting of 24th June 2025, a decision was made that the petitioner be suspended from duty with effect from 24th June 2025 for a period of six months. The

alleged letter from EACC dated 28th May 2025 was not attached and its contents were not disclosed to the court.

62. The petitioner argued that his suspension was unlawful since the council had no power or authority to suspend him. The petitioner argued that his employer the Public Service was not involved in making the decision to send him on leave or suspension. The petitioner did not, however, argue that the provisions of the NYS Act do not apply to him though he admitted through his pleadings that he is a member of the Service.

63. Section 12 of the Act provides for the functions of the Council. Under section 12(1)(a), the Council is responsible for the formulation of policy, control, oversight and supervision of the Service. In my view, control, oversight and supervision would

include ensuring discipline in the Service is maintained. One cannot control, oversight and supervise the Service without dealing with issues of discipline. This view is supported by the fact that under section 12(1)(e) the Council may upon application, review penalties imposed on members of the Service after undergoing disciplinary proceedings in accordance with the Act and The National Youth Service (Disciplinary Procedure) Regulations.

64. I do not agree with the petitioner that the Council had no mandate to suspend him given his rank and the fact that investigations were being undertaken on the basis of alleged commission of offences under another written law-the EACC Act.

65. The petitioner again argued that his rights and fundamental freedoms were violated and cited several provisions of the Constitution to back up

his claim. An aggrieved person has a right under Article 22 of the Constitution, to approach the Court on a claim that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. When such an application has been instituted, Article 23(1) read with article 165(3) of the Constitution, confers on the Court jurisdiction to determine the issue. Article 23(3) then grants the Court jurisdiction to grant an appropriate relief to redress denial, violation or infringement of, or threat to, a right or fundamental freedom. The essence of such relief, is to ensure that rights enshrined in the Constitution are not only protected but are also enforced. (*Fose v Minister of safety and Security* (CCT 14/1996) [1997] ZACC 6.

66. In order for the Court to enforce fundamental rights and freedoms, a petitioner has to

demonstrate to the satisfaction of the Court, violation of his rights and fundamental freedoms. Violation is first a question of fact and once facts establish violation, it then becomes a question of law that a petitioner has to prove to the required standard. Should the Court find that violation has been proved, it will invoke Article 23(3) of the Constitution to grant an appropriate relief.

67. In that regard, the Constitutional Court of Uganda stated in *Tinyefuze v Attorney General of Uganda* (Constitutional Petition No. 1 of 1996) [1997] UGCC 3, that “*if a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of constitutional jurisdiction as a matter of course.*” A petitioner must establish violation or breach of rights and fundamental freedoms in contravention of the Constitution or the law.

68. In *Communication Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR; [2014] KESC 53 (KLR), the Supreme Court observed:

[349]...Although Article 22(1) of the Constitution gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Annarita Karimi Njeru v. Republic, [1979] KLR 154: the necessity of a link between the aggrieved party, the provisions of the Constitution alleged to have been contravened, and the

manifestation of contravention or infringement. Such a principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.

69. The Supreme Court took the view, that a party claiming violation of rights and fundamental freedoms should plead with precision, the constitutional rights violated, the provisions infringed and demonstrate the manner of violation so that there is a link between the alleged violation, the rights infringed and the constitutional provisions involved in order to put the respondent on notice over the petitioner's claim so as to respond appropriately.

70. In this petition, although the petitioner alleged violation of his rights and fundamental freedoms in

contravention of the Constitution, he did not demonstrate actual violations. I must point out that the issue of suspension was temporary and, in any case, it was for six months pending completion of investigations. The petitioner did not show that the action was permanent which would then require this Court to examine whether the law on removal of the petitioner from office was followed.

71. The petitioner contended that EACC did not file a report with the Magistrate's Court after executing the search warrants as that Court had directed. EACC was not made a party to these proceedings. The search warrants were not attached to the pleadings and, therefore, it is difficult for this Court to determine what EACC was directed to do within what period and for what purpose and what effect failure to comply with that direction if any would have to this petition. This

Court was not also told how far investigations had gone. The petitioner can therefore raise the issue of failure to comply with directions before the relevant court.

72. I am unable to agree with the petitioner that his rights and fundamental freedoms were violated when he was sent on leave and later suspended for six months pending investigations.

73. The petitioner's counsel argued that the issues raised in the petition included not only violation of fundamental rights but also the unconstitutionality of regulation 13 of the National Youth Service (Disciplinary Procedure) Regulations. I have not seen an argument why regulation 13 of the Regulations is unconstitutional or a prayer in the petition seeking a declaration that the regulation is unconstitutional. For that reason, the less I say about the issue, the better.

Conclusion

74. Having considered the pleadings, arguments by parties, precedents, the Constitution and the law, the conclusion I come to, is that the petitioner has not demonstrated that the respondents acted outside the Constitution or the law. In particular, the petitioner did not demonstrate that the respondents were wrong in sending him on leave or suspension pending investigations.

75. The petitioner did not demonstrate that he was not a member of the National Youth Service and that the National Youth Service did not apply to him to render the respondent's action unlawful. The petitioner was not removed from Service to call on this Court to determine whether his removal was lawful or not. In any case, the suspension was

temporary and for six months pending investigations which is now past.

76. The petitioner did not also demonstrate that the respondents' action of sending him on leave and later on suspension violated his rights and fundamental freedoms.

77. Consequently, and for the above reasons, the petition is declined and dismissed. Costs being discretionary, each party shall bear their own costs.

Dated and signed at Nairobi this 12th Day of February 2026

**E C MWITA
JUDGE**

Delivered and countersigned this 13th Day of February 2026

L N MUGAMBI

JUDGE

ORIGINAL