

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC PETITION NO. E144 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

PATRICK MWONGERA MUGAMBI.....
PETITIONER

VS

KENYA REVENUE AUTHORITY.....
RESPONDENT

JUDGMENT

1 By a Petition dated 21st July 2025, the Petitioner prayed for: -

1. *A Declaration that the Petitioner's Fundamental Rights and Freedoms have been violated by the Respondent.*
2. *A Declaration to the effect that the Respondent dismissed the Petitioner's employment unfairly.*
3. *A Declaration that the Respondent discriminated against the Petitioner Exemplary damages for lost opportunity as per the attached Appendix A.*
4. *Aggravated Damages.*
5. *General Damages for Constitutional breaches and violations.*
6. *Costs of, and incidentals to, these proceedings be borne by the Respondent.*

7. Any other relief that this Honourable Court may deem just to grant.

Petitioner's Case

- 2 The Petitioner avers that he was employed by the Respondent Authority on 3rd October 2006 as a Security Assistant and served the Respondent continuously for over 18 years.
- 3 Through commitment, honesty and diligence, he rose through the ranks and, at the time of his termination, he held the position of Assistant Manager, Integrity Testing and Rapid Response.
- 4 The Petitioner avers that throughout his employment, he consistently received performance ratings of excellent or very good, later reflected as on "Track" in the Respondent's appraisal system, from his first year of service until his termination on 19th February 2025.
- 5 The Petitioner contends that his difficulties with the Respondent began on 8th January 2024, when the Respondent's Chief Manager - Internal Affairs Investigations (IAI), Dr. Isaiah Nyaga, through an email of the same date, reassigned him from Team "A" to Team "B", requiring him to report on 16th January 2024.

- 6 The Petitioner avers that, as the reporting timeline for Team A had almost elapsed, he immediately responded to the said email expressing his inability to comply with the reassignment as directed.

- 7 Upon resuming duty on 17th January 2024, the Petitioner wrote a grievance memo dated 18th January 2024, referenced “Rationalization of Staff”, addressed to Dr. Isaiah Nyaga. In the memo, he raised concerns regarding his working conditions, relying on Section 18 of the Approved Human Resource Policies as read together with Section 25 of the Public Officer Ethics Act (POEA).

- 8 The Petitioner avers that, a day after lodging the grievance, on 19th January 2024, an allegation of forgery arising from Investigation Report Inquiry No. KRA/IAD/146/2022 was revived in what he terms as a retaliatory act. He states that the said investigation had been concluded and its recommendations implemented in the year 2022, rendering the revival belated and malicious.

- 9 Subsequently, through a letter dated 1st March 2024, the Petitioner was transferred from the Internal Affairs Investigation Unit (IAI), Nairobi, where he served as Assistant Manager, Integrity Testing and Rapid Response, to the Intelligence Management Division, Central and

Northern Region Office in Isiolo, a designated hardship area, with effect from 18th March 2024. He reported to Isiolo on 26th March 2024. The Petitioner avers that he had served in the IAI Unit for a period of eight (8) years, initially as a Supervisor and later as an Assistant Manager, and that the transfer was punitive, malicious, arbitrary and unrelated to his conduct or performance.

- 10 Barely fourteen (14) days after reporting to Isiolo, the Petitioner was interdicted on 19th April 2024, pending investigations into alleged breaches of the Respondent's Code of Conduct, the particulars of which were not specified. He states that after the lapse of three months without any communication on the progress or nature of the investigations, he sought clarification. In response, the Respondent's Deputy Commissioner - Human Resource, Ms. Beatrice Odundo, confirmed that the interdiction constituted a disciplinary action rather than a preventive or administrative measure, rendering the interdiction unprocedural and unlawful.
- 11 On 22nd August 2024, the Petitioner was invited by the Respondent's Human Resource Division for what was presented as an interview to evaluate IAI operations. The Petitioner avers that the session instead turned into an interrogation over various allegations including forgery, soliciting and receiving bribes to exonerate culpable staff, leakage of information and insubordination.

- 12 The Petitioner further avers that prior to this interrogation, there existed another investigation conducted by a body referred to as a “Task Force”, in which he was a subject. The Task Force, among other things, recommended his transfer, interdiction and further investigation. However, the Petitioner states that he was never called, notified or afforded a hearing before the said Task Force.

- 13 Ahead of his disciplinary hearing scheduled for 28th November 2024, the Petitioner requested to be furnished with the Task Force Report Reference No. KRA/5/1002/IMD/1/777/24 dated 7th March 2024, in order to adequately prepare his defence. The Respondent declined to supply the report, thereby denying him access to information that adversely affected him.

- 14 The disciplinary hearing of 28th November 2024 was chaired by Ms. Beatrice Odundo, the Respondent’s Chief Manager, Employee Relations. The Petitioner contends that the disciplinary process was procedurally unfair, lacked impartiality and was merely a public relations exercise intended to sanitize a predetermined decision to terminate his employment.

- 15 He further avers that the charges against him were fundamentally flawed, as the allegedly forged investigation report was never produced before the

Disciplinary Committee. His attempts to have the purported forged document identified and presented were ignored, yet his employment was terminated based on Investigation Report No. KRA/IAD/146/2022, which he maintains does not exist.

- 16 The Petitioner avers that his employment was terminated on 19th February 2025, without lawful justification and in violation of the Respondent's own policies and guidelines. He lodged an appeal against the termination on the same date, but no determination of the appeal has been communicated to him to date.
- 17 The Petitioner contends that the Respondent's actions violated his constitutional rights under Article 41 of the Constitution on fair labour practices and Article 47 on fair administrative action, as well as Section 4 of the Fair Administrative Action Act, 2015, which guarantees lawful, reasonable and procedurally fair administrative action, including the right to notice, reasons, a hearing, access to information, and an internal appeal. He further relies on Article 259 of the Constitution on purposive interpretation of constitutional provisions.
- 18 He asserts that the Respondent acted arbitrarily, oppressively and in contravention of the principles of natural justice, legitimate expectation and the rule of law. As a consequence, the Petitioner avers that he has

suffered economic loss, mental anguish, stress and reputational damage, and stands to be unfairly excluded from the job market until retirement age due to the nature of the allegations levelled against him without a fair process.

Respondent's Case

- 19 In opposition to the petition, the Respondent filed a replying affidavit dated 28th August 2025, sworn by Christine Nyanchera Maangi, currently serving within the Respondent's Human Resources Division.

- 20 The Respondent confirmed that the Petitioner was its employee until 21st February 2025, when his services were terminated on grounds of forgery of an investigation report and insubordination.

- 21 On the allegation of forgery, the Respondent avers that the Petitioner prepared Inquiry Report No. KRA/IAD/146/2022 dated 25th November 2022, which was submitted to the Commissioner, Intelligence and Strategic Operations (I&SO) on 6th December 2022 and formally approved on 19th January 2023. During an official trip to Bungoma between 9th December 2022 and 11th December 2022, the Petitioner independently recorded a statement from Ms. Wachira dated 10th December 2022, without the presence of another investigator.

- 22 The Respondent contends that the Petitioner’s unilateral recording of the statement contravened Clause 8.2 of the Case Registration and Allocation Framework, which mandates that *“all cases shall be handled with at least two investigating officers at any given time”*, thereby compromising the objectivity of the investigation.
- 23 Upon receipt of the approved report on 23rd January 2023, the Respondent avers that the Petitioner altered the report by inserting a summary of Ms. Wachira’s statement on pages 10-11, and subsequently forwarded the altered report to the Commissioner, Customs and Border Control (C&BC) for departmental comments. The alteration resulted in an increase in pagination from 14 pages in the original report to 16 pages in the altered version.
- 24 To verify the authenticity of the altered document, the Respondent engaged the Directorate of Criminal Investigations (DCI). In a report referenced CID/ORG/8/3/1/706-2024 dated 4th September 2024, the DCI concluded that while Mr. Mugambi’s signature was consistent across both reports, the signatures of the other signatories were inconsistent.
- 25 The Respondent avers that the alterations were in breach of Clause 7.4.7 of the Internal Affairs Investigations (IAI) Procedure Manual, which provides that once a report is

approved by the Head of Department, it should be forwarded to the relevant department for comments without alteration. Further, the Petitioner admitted to altering the report in his statement dated 5th August 2024.

- 26 On the charge of insubordination, the Respondent avers that the Petitioner was reassigned to a new team through an email dated 8th January 2024 by the Chief Manager – Internal Affairs Investigations, as part of staff rationalization within the Unit. The Petitioner declined the reassignment via an email dated 15th January 2024, in which he expressly refused to move to Team “A” headed by Eric Wekesa. The Respondent maintains that this constituted a clear refusal to obey a lawful instruction and amounted to insubordination, notwithstanding any subsequent engagement or reporting.
- 27 The Respondent avers that the Petitioner was transferred from Internal Affairs Investigations Unit, Nairobi to the Intelligence Management Division, Central and Northern Region Office in Isiolo, through a letter dated 1st March 2024, in accordance with the Respondent’s Transfer Policy. Reliance is placed on Clauses 34.3.7, 34.3.11 and 34.3.13, which allow authority-initiated transfers to address staffing needs, special directives, and limit tenure in sensitive stations and hardship areas to specified durations.

- 28 The Respondent asserts that the Petitioner possessed the requisite investigative skills for the intelligence collection function, having previously worked with the Criminal Investigations Department, the Security Division, and the Intelligence and Strategic Operations Department.
- 29 The Respondent contends that the Petitioner's predicament arose from his own culpable conduct, namely forgery, insubordination, lack of integrity and dishonesty, as outlined in the termination letter dated 23rd January 2025. The Respondent maintains that there can be no legitimate expectation to continued employment where an employee acts in violation of the KRA Code of Conduct and established work ethics.
- 30 The Respondent avers that a Task Force was constituted to gather evidence on alleged malpractices within the Internal Affairs Investigations Unit. The Petitioner appeared before the Task Force and recorded a statement dated 5th August 2024 regarding his knowledge of the Unit's operations. The Task Force thereafter recommended further investigations.
- 31 Subsequently, investigations were conducted by officers within the Intelligence and Strategic Operations Department, appointed on 25th July 2024 by the Chief Manager - Intelligence Collection, pursuant to Clause 7.5.5 of the IAI Procedure Manual, which requires complaints

against officers of the Division to be referred to the Commissioner, I&SO.

- 32 The Respondent states that the Petitioner was lawfully interdicted in accordance with Clause 7.1 of the KRA Code of Conduct, and that particulars of the alleged breaches were disclosed to him during interviews and statement recording.
- 33 The Respondent avers that in his statement dated 23rd August 2024, the Petitioner acknowledged being invited for an interview and outlined the allegations against him, including forgery, solicitation and receipt of bribes, leakage of information and insubordination. The Petitioner was issued with a show cause letter Ref: Conf/6973 (36) dated 8th October 2024, which he responded to on 22nd October 2024.
- 34 Pursuant to Section 41 (1) and (2) of the Employment Act, 2007, the Petitioner was invited for an oral disciplinary hearing scheduled for 28th November 2024, through a letter dated 20th November 2024.
- 35 Following the hearing, the Petitioner was found culpable of forgery, insubordination, lack of integrity and dishonesty, and his services were terminated vide letter dated 23rd January 2025. His appeal dated 21st February 2025 was considered and declined on 2nd May 2025.

36 The Respondent opposed all prayers sought in the Petition, maintaining that the termination of the Petitioner's services was fair, lawful and procedural, that no constitutional or statutory rights were violated, that no discrimination was proved, and that the Petitioner is not entitled to any damages or costs.

Petitioners' Submissions

37 The Petitioner submitted that the allegation of insubordination levelled against him was unfounded, malicious, and unsupported in law. The Respondent relied on an email dated 15th January 2024 to found the charge, yet the Petitioner received the said email while on approved annual leave in Meru County. According to the Petitioner, he responded promptly to the email, and his response neither contained abusive or insulting language nor amounted to refusal or failure to obey a lawful and proper command as contemplated under Section 44(4)(d) and (e) of the Employment Act.

38 It was submitted that insubordination, in law, requires a constant or continuing intentional refusal to obey a lawful order. In support of this position, the Petitioner relied on ***Abraham Gumba v Kenya Medical Supplies Authority [2014] eKLR***, where Rika J, citing ***Sims v Board of Trustees, Holly Springs Municipal Separate***

School District 414 So. 2d 431 (Miss. 1982), defined insubordination as a persistent and intentional refusal to obey a reasonable order issued by lawful authority. The Petitioner submitted that his conduct fell far below this threshold.

- 39 The Petitioner further submitted that the disciplinary process that culminated in his dismissal was unfair, flawed, and devoid of impartiality. Although the Petitioner appeared before the disciplinary committee on 28th November 2024, the charges against him were baseless, unproven, and procedurally defective. During the hearing, he was denied the opportunity to adduce evidence or challenge the Respondent's evidence, as the Respondent declined his request to cross-examine witnesses or interrogate their written statements. Crucially, the alleged forged investigation report, Inquiry No. KRA/IAD/146/2022 dated 25th November 2022, was never produced before the disciplinary committee for identification or inspection.
- 40 It was submitted that the Petitioner was denied access to critical information required to prepare his defence, particularly the Task Force Report Reference No. KRA/5/1002/IMD/1(177/24) dated 7th March 2024. Despite requesting the report ahead of the disciplinary hearing of 28th November 2024, the Respondent declined to supply it, thereby depriving the Petitioner of a fair opportunity to defend himself.

- 41 The Petitioner submitted that his dismissal was founded on mere allegations that were neither valid nor proven. None of the accusations were supported by evidence, nor were they procedurally interrogated, and none disclosed a complainant.
- 42 With respect to the first allegation of forgery relating to Investigation Report Inquiry No. KRA/IAD/146/2022, the Petitioner submitted that the allegation was belated, as the investigation had been completed and its recommendations implemented in 2022. No complainant was disclosed and that the charge did not meet the threshold of forgery as defined under Section 3 (Forgery and Fraud) of the Respondent's Code of Conduct, which creates the offence. The Petitioner asserted that the alleged forged report dated 25th November 2022 does not exist.
- 43 The Petitioner submitted that the investigation into irregular importations and exportations by Comarco Supply Base EPZ Limited was initiated by him with the authority of the Respondent's Chief Manager - Internal Affairs Investigations, Dr. Isaiah Nyaga.
- 44 It was submitted that the investigation, report writing, submission, and implementation of recommendations were jointly undertaken with his co-investigator, Mr. Moses

Nyakeya, and were aimed at protecting the Respondent's interests by detecting tax evasion. According to the Petitioner, the Respondent failed to place before the Court any evidence demonstrating forgery or explaining the rationale behind the allegation.

45 On the second allegation that he solely recorded the statement of Ms. Wachira on 10th December 2022 during a trip to Bungoma between 9th and 11th December 2022, the Petitioner submitted that the Respondent failed to produce evidence demonstrating a contravention of Clause 8.2 of the Case Registration and Allocation Framework.

46 It was submitted that no policy or procedure governing statement recording was produced to justify the alleged breach. The statement was self-recorded by Ms. Wachira in her own handwriting and not recorded by him. In addition, the Respondent's Supervisor, Ms. Emily Ndwiga, confirmed in her statement dated 23rd August 2024 that she was present during the statement recording at Malaba One Stop Border Post (OSBP).

47 The Petitioner further submitted that the trip to Bungoma had been duly approved by Dr. Terah Saidimu, Commissioner - I&SO Management, and Dr. Isaiah Nyaga.

48 The Petitioner submitted that Inquiry No. KRA/IAD/146/2022 dated 25th November 2022 does not

exist. Instead, the investigation report KRA/IAD/INV/RPTS/VOL.XIV/2B/183 dated 25th November 2022 was forwarded to the Commissioner, Customs and Border Control Department on 23rd January 2023 by Dr. Isaiah Nyaga, as evidenced by the Internal Affairs Investigations dispatch register.

- 49 On the third allegation of altering the report by inserting a summary of Ms. Wachira's statement, the Petitioner submitted that the report was subjected to forensic examination without his involvement and that the Respondent failed to adduce evidence linking him to any alteration. The Respondent did not call the DCI forensic document examiner to testify, rendering the allegation unproven.
- 50 Regarding the fourth allegation of insubordination, the Petitioner submitted that he did not decline reassignment as alleged. Dr. Isaiah Nyaga's written statement dated 26th August 2024 confirms that the issue of reallocation was discussed and that the Petitioner was directed to move to Team B, as reflected in internal memo Conf/PNo. 6973 dated 18th January 2024.
- 51 The Petitioner submitted that his reporting to Team B was further confirmed by Mr. Eric Wekesa, Manager - Internal Affairs Investigations, in a statement dated 26th August 2024, as well as by the Petitioner's email dated 23rd

January 2024. He merely complied with Dr. Nyaga's directives and that the charge of insubordination was therefore malicious and unfounded.

- 52 The Petitioner submitted that he was never accorded a fair disciplinary hearing prior to his termination, having been denied access to information and material that the disciplinary panel intended to rely on. This prevented him from adequately preparing and presenting his defence.
- 53 The Petitioner submitted that the Respondent failed to place before the Court any material evidence supporting the allegations, including minutes of the disciplinary meeting allegedly held on 28th November 2024. There was no proof that the confidential report annexed to the Replying Affidavit was ever shared with him for comment.
- 54 The Petitioner submitted that the forensic document examiner's report did not conclusively implicate him and that his detailed response to the Notice to Show Cause dated 22nd October 2024 was never substantively tested through a disciplinary hearing.
- 55 The Petitioner submitted that the grounds cited in his termination were frivolous, lacked merit, and were not proven, and therefore could not lawfully justify termination. He urged the Court to find that he had served the Respondent for over 18 years with an exemplary

record and would have continued in service until attaining the mandatory retirement age of 60 years on 31st December 2026, were it not for the unlawful and malicious termination of his employment.

Respondent's Submissions

- 56 The Respondent submitted that the Petition before Court is incompetent and misconceived as it does not meet the threshold of a constitutional petition. It was submitted that the dispute arose purely from an employer–employee relationship founded on contract, and the Petitioner ought to have pursued his remedies through an ordinary employment claim rather than invoking the Constitution. According to the Respondent, not every alleged breach of law gives rise to a constitutional question.
- 57 In support of this position, the Respondent relied on ***Francis James Ndegwa v Tetu Dairy Co-operative Society Ltd [2016] eKLR***, where the Court adopted the holding in ***Harrison v Attorney General of Trinidad and Tobago (1980) AC 265***, to the effect that failure by a public authority to comply with the law does not automatically amount to a violation of constitutional rights, particularly where the constitutional claim is contrived to avoid the appropriate statutory remedy.
- 58 The Respondent further cited the Court of Appeal decision in ***James Mukuha Gichane v National Hospital***

Insurance Fund & 3 Others [2017] eKLR, where it was held that disputes arising from termination of employment fall within the realm of labour law and do not ordinarily implicate constitutional rights. On this basis, it was submitted that the Petition should be struck out.

- 59 The Respondent submitted that the termination of the Petitioner's employment was both substantively and procedurally fair and in full compliance with the Employment Act. Under Sections 43 and 47(5) of the Employment Act, the Respondent bore the burden of proving the reasons for termination and demonstrating that the termination was justifiable, which burden it had discharged.
- 60 The Respondent submitted that the Petitioner committed serious acts of misconduct warranting disciplinary action and eventual termination. It was submitted that the initial misconduct involved the forgery and illegal alteration of an investigation report, being Inquiry No. KRA/IAD/146/2022 dated 25th November 2022. According to the Respondent, the Petitioner inserted the written statement of one Elizabeth Wachira into the report and falsified the signatures of three officers who were signatories to the original report.
- 61 The Respondent submitted that it annexed the original report at page 9 of its affidavit and the altered report at

page 27, and further relied on a forensic document examination report by IP Gideon Osundwa, annexed at page 44, which confirmed that the signatures in the altered report were forged.

62 It was submitted that the Petitioner admitted to altering the report in his own written statement dated 5th August 2024, annexed and marked KRA5 at page 62 of the Respondent's bundle. In that statement, the Petitioner indicated that he input Ms. Wachira's statement after being instructed to amend and progress the report, which amounted to an admission of misconduct.

63 The Respondent further submitted that, notwithstanding the foregoing, the Petitioner committed an additional act of insubordination by defying express instructions to move from one team to another within the same unit. Vide an email dated 15th January 2024, the Petitioner declined to move from Team A to Team B. According to the Respondent, these acts of forgery, alteration of official documents, and insubordination were grave and fundamentally undermined the trust inherent in the employment relationship.

64 In support of the position that these acts constituted justifiable grounds for dismissal, the Respondent relied on ***Judicial Service Commission v Gladys Boss Shollei & Another [2014] eKLR***, where the Court of Appeal

adopted the principles in ***McKinley v BC Tel [2001] 2 SCR 161***, to the effect that dishonesty or misconduct that leads to a breakdown of the employment relationship amounts to just cause for dismissal. The Respondent submitted that the Petitioner's conduct met this threshold.

65 On procedural fairness, the Respondent submitted that it fully complied with Section 41 of the Employment Act. The Petitioner was issued with a show cause letter dated 8th October 2024, referenced "Forgery, Negligence of Duty, Insubordination, Lack of Integrity and Dishonesty," setting out the allegations against him and inviting him to respond. The Petitioner responded by a letter dated 22nd October 2024. Thereafter, by a letter dated 20th November 2024 referenced "Invitation to appear before the disciplinary panel," the Petitioner was invited to appear before the disciplinary committee and informed of his right to be accompanied by a fellow employee of his choice and to present documents in support of his case.

66 It was submitted that the Petitioner appeared before the disciplinary panel on 28th November 2024 accompanied by a fellow employee and was accorded an opportunity to make oral representations. The disciplinary panel found the Petitioner culpable of forgery, insubordination, lack of integrity, and dishonesty, and consequently, by a letter dated 23rd January 2025, the Respondent terminated his employment. The Respondent relied on ***Loice Otieno v***

Kenya Commercial Bank Ltd [2013] KEELRC 271 and submitted that the requirements of Section 41 of the Employment Act were met, the Petitioner not being a member of a union.

67 The Respondent submitted that the transfer was lawful, reasonable, and did not violate Section 10(5) of the Employment Act. The Petitioner was employed on 8th August 2006 as a Security Assistant Grade KRA 12, upgraded on 2nd December 2014, and later promoted by a letter dated 31st August 2016 to the Ethics and Integrity Department, later renamed the Intelligence and Strategic Operations Department. By virtue of this promotion, the Petitioner could be deployed anywhere within the department. He was later promoted to Assistant Manager - Integrity Testing and Rapid Response.

68 It was submitted that the Petitioner and one Edna Mwalenga were Assistant Managers overseeing Team A and Team B respectively, both teams performing identical roles. By an email dated 15th January 2024, the Respondent swapped the teams, requiring the Petitioner to move from Team A to Team B. The Petitioner declined on the basis that he could not work under the manager in charge of Team B.

69 It was further submitted that the Petitioner was at the time facing allegations of falsifying a subordinate's

signature, making it untenable for him to remain in Team A. Consequently, by a letter dated 15th March 2024, the Respondent transferred him to Intelligence Collection Central & Northern Region at the same rank and paid him transfer and transport allowance.

- 70 The Respondent submitted that the transfer did not amount to a demotion and distinguished the decision in ***Elizabeth Kwamboka Khaemba v Bog Cardinal Otunga High School Mosochi & 2 Others [2014] eKLR***, arguing that unlike in that case, the Petitioner retained his rank, status, and department. Further, the transfer was occasioned by the Petitioner's own refusal to comply with a reasonable directive
- 71 The Respondent submitted that the Petitioner should not be allowed to benefit from his own choice of declining to move from Team A to Team B. This would run contrary to the maxim, '*Nullus commodum capere potest de injuria sua propria*, which means, no one can gain an advantage by his own wrong'. It cited ***GIBB Africa Limited v Rent Works East Africa Limited (Civil Appeal E122 of 2023) [2024] KEHC 14396 (KLR) (Civ) (18 November 2024)***, wherein the court affirmed the principle in this maxim.
- 72 On the clarity of the disciplinary charges, the Respondent submitted that the allegations were clearly set out in the

show cause letter and fully interrogated. The Petitioner was further given adequate time to prepare his defence and afforded an opportunity to respond both in writing and orally.

73 The Respondent further submitted that the Petitioner's own written statements dated 5th August 2024 and 23rd August 2024, lend credence to its assertion that the Petitioner lacks integrity and is dishonest. In the first statement dated 5th August 2024, the Petitioner states that, *"When he instructed that I amend and progress, I input Ms. Elizabeth statement since it is a common practice..."*. Then subsequently in the statement dated 23rd August 2024, the Petitioner states, *"On how Ms. Elizabeth statement found its way in the copy of the investigation that is now alleged to be forged, I wish to state that Mr. Nyakeya input the summary of the statements in the report."*

74 On the allegation of discrimination, the Respondent submitted that the Petitioner was not discriminated against. The Petitioner was investigated by officers outside the Internal Affairs Investigations Unit to avoid a conflict of interest, given that he worked within that unit. This did not amount to discrimination and the Respondent relied in ***Mohammed Abduba Dida v Debate Media Limited & Another [2017] eKLR*** wherein the court held that

differentiation based on legitimate and rational reasons does not amount to unfair discrimination.

- 75 The Respondent submitted that the issue of forgery of the investigation report only came to light in September 2023 during the review of Inquiry No. KRA/IAD/57/2023, a fact acknowledged by the Petitioner in his statement dated 23rd August 2024. The Petitioner's assertions that the matter was belated were therefore misleading. The Petitioner did not properly record Ms. Wachira's statement in the presence of his co-investigator and that the report was unlawfully altered.
- 76 The Respondent submitted that the Petitioner was accorded a fair hearing, received a reasoned decision, and exercised his right of appeal, which was unsuccessful.
- 77 It was submitted that the absence of disciplinary hearing minutes did not negate compliance with Section 41 of the Employment Act. The Petitioner had failed to discharge the burden of proof regarding alleged violations of his rights as provided under Section 107 of the Evidence Act.
- 78 The Respondent submitted that it acted strictly within the provisions of the Employment Act and that no rights or freedoms of the Petitioner were violated. Reliance was placed in ***CFC Stanbic Bank Ltd v Muwakwuwona (Civil Appeal 3 of 2014) [2015] KECA 919 (KLR)*** and

urged the court to find that the Petition lacks merit and dismiss the same with cost to the Respondent.

79 I have examined all the evidence and submissions of the parties herein. The issues for this courts determination are as follows:

1. Whether the petitioner's termination was fair and justified.
2. Whether the petitioner's rights under the constitution were breached.
3. What remedies this court can grant in the circumstances.

Issue No 1

80 From the documents on record, the petitioner was terminated from employment vide a letter of 23rd January 2024 in which he was accused of committing offences of forgery of an investigation report and in subordination.

81 The issue of forgery according to the respondents was premised on an investigation report which is inquiry no. KRA/1AB/146/2022 of 25th November 2022.

82 As per the respondents, it was indicated that the petitioner had forged the report by inserting a summary of Ms Wachira's written statement and dispatched a copy of the altered report to Cover customs and border control (C & BC).

- 83 The petitioner averred that the issues of the report in inquiry no KRA/IAD/146/2022 was a retaliatory act after he lodged a grievance on 17/1/24 on his work conditions reference; “ rationalization of staff”.
- 84 He averred that the said report had been concluded and its recommendation implemented in year 2022 and so their revival was belated and malicious.
- 85 Prior to the issue of this termination, the petitioner was served with an interdiction letter dated 19/4/2024 which stated that he was being interdicted for breach of KRA code of conduct in line with the respondents code of conduct clause 7.1. He responded to the interdiction vide a letter of 29th July 2024 asking for review of the interdiction indicating that the particulars of breach were not specified.
- 86 He further stated that the interdiction was in breach of article 47(1) and (2) of the Constitution which he cited.
- 87 He also indicate that he had never been served with a show cause letter prior to the interdiction and that being interdicted and transferred to a hardship area simultaneously was double punishment to him. He sought to be informed of the particular/progress of the investigation and a request for lifting of the interdiction.

- 88 His request was responded to in the same manner where the respondent only cited their clause 7.1 as being the basis for the interdiction and also informed him that investigations were ongoing.
- 89 On 8/10/24, the petitioner was served with another letter which referred to investigation report ref no KRA/IMD/1002/3(015)24 of 13/9/24 on breach of KRA code of conduct by the petitioner in which they indicated the report was attached.
- 90 Issues raised in the said letter related to forgery, negligence of duty, insubordination and coaching of witnesses. The petitioner was informed that the offences could lead to his summary dismissal and he was asked to show cause why disciplinary action should not be instituted against him. He was asked to respond within 7 days from the date thereof.
- 91 The petitioner responded vide his dated 22/10/24 in which he stated that the interdiction against him was triggered by his transfer from Team A to B and to which Mr Eric Wekesa of team "B" also protected. He denied allegation levelled against him. The petitioner submitted that report ref no. KRA/IMD/146/22 of 25th November 2022 which the respondent sought to rely on was non-existent.

- 92 He further indicated that he never forged any reports as the statement of one Ms Wachira of 10th December 2022 was self recorded and done in the presence of Ms Emily Nduga as confirmed in her statement of 23rd August 2024. He also stated that the trip to Bungoma to obtain the statement of Ms Wachira on 10/12/22 was approved by the respondent's senior managers namely Dr Tena Saidimu and Dr Isaiah Nyaga.
- 93 The petitioner further submitted that the report inquiry no KRA/IAD/146/2022 of 25th November 2022 was taken to forensic examination without his input and that the respondents did not call the DCI to testify on the said report. It thus remains as an allegation not proved.
- 94 It is true that the respondent submitted a report from DCI reference no CID/ORG/8/3/1/706-2024 dated 4/9/24 where the DCIO concluded that some signatures were different and thus a forgery but no officer from the office was ever called as a witness before this court or even before the disciplinary committee. The issue of forgery on the report therefore was not proved.
- 95 On the case of insubordination, the petitioner is said to have declined a transfer to another team due to difference he had with the head of the team. It is also true that the same head of team B also protected the move of the petitioner for his team. The conduct of the petitioner in his

response declining a move was definitely impolite to his superior and is an insubordination.

96 As relates to the disciplinary process meted against him the petitioner submitted that the procedure was flawed. The petitioner submitted that section 7 of the respondents manual on 1A1 investigation process stated the process of investigation and states as follows:

7.1 The Manager and the Assistant Manager will analyse the complaint and advice whether to carry out a Full Investigations or a Preliminary Investigations.

7.2 It is the duty of the Investigating Officer to record the complaint in the relevant register. When the Investigating Officer is not sure on where to record the complaint, he/she shall seek guidance from the Supervisors.

7.3 The criteria for complaint handling shall be based on;

7.3.1 The magnitude of the amount of revenue involved. Priority shall be given to large amounts of revenue lost while ensuring that all revenue leakage encountered are investigated. However, eventually all offences of tax evasion, bribery/corruption and fraud will be investigated.

7-3.2 The impact of the contravention / violations on the human, plant and animal's health and safety. This is as provided in the Second

*Schedule of the East Africa Community
Customs Management Act.*

- 7-3-3 The public interest of the case and its effect on national security*
- 7-3-4 Staff cases that have an impact on international relations with other countries*
- 7.3.5 Cases that negatively impacts to the Corporate/Authority's image*
- 7.3.6 Sanctioned cases from the Board or Commissioner General's office.*

97 The petitioner indicated that whereas Dr Nyaga was the complainant in the allegation of forgery and insubordination, there was no indication who the compliant was or particulars of the complaint. He also avers that the allegations are not registered in the relevant registers as per section 7.2.4, 7.3.5, and 7.4.1 of the IAI procedure manual.

98 The petitioner further submitted that the lead investigator in his case had previously dealt with the case of forgery vide investigation report KRA/IA/INV/RPYS/VOL.XIV/2B/183 dated 25th November 2022. The task force recommended the petitioners transfer interdiction and investigation. The petitioner thus submitted that it was not fair for the said Mr Kerego to chair the panel investigating him and make a decision after being a member of the task force and was therefore conflicted.

- 99 It is indeed true that that having been a member of the task force that dealt with the case, Mr Kerega could not be the chair of the investigating panel which was contrary to fair process.
- 100 On the process leading to interdiction, the petitioner submitted that the interdiction letter did not specify the particulars of the gross misconduct. The petitioner even wrote to the respondent on this issue but the respondents only indicated that the petitioner was interdicted due to gross misconduct and investigations were on going.
- 101 The petitioner wrote to the respondent a letter dated 14th October 2024 seeking some documents but the respondent declined to supply on the grounds stated including confidentiality. It is however true that the respondents relied on some of these reports to terminate of the petitioner. The petitioner was invited to a disciplinary hearing on 20th October 2024 vide a letter dated 20th November 2024. He was asked to appear with a colleague of his choice and carry any documents he wished. He did appeared as per the respondents submissions. The missing link however are the proceedings that were carried out. Minutes of the said proceedings have not been presented before this court. There is no knowledge of what transpired during the hearing and which proceedings/minutes would aid the court in determining that the procedure employed was fair

and that the respondents succeeded in establishing a case against the petitioner which led to his dismissal.

102 The respondents submitted that they complied with both substantive and procedural aspects prescribed under section 41, 43 and 45 of the Employment Act.

103 Section 4 (1) and (2) of the Fair Administration Action Act states as follows:

(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

104 It is envisaged under this act that where administrative action has to be taken against an employee, written reasons for the administration action have to be given. Under sub section 3(a) prior and adequate notice of the nature and reasons for the proposed administrative action must be given and under sub section 3(g) information materials and evidence to be relied upon in making the decision or taking the administrative action must be given to the employee.

105 It is evident from the record that the petitioner was interdicted in the 1st instance without any valid reason

being assigned by the respondents. He sought for reason and the reply was non commit ant. He was later served with notice to show cause and sought some documents to be given to him to enable him respond. The respondents responded agains and cited confidentiality.

106 In this court's finding, the respondents indeed breached the petitioners right to under the fair administriave action act as cited above and also failed to supply information needed to him to enable him adequately defend himself.

107 The respondents have also failed to demonstrate the guilt or otherwise of the petitioner by not submitting the proceedings of the disciplinary hearing. This court is being asked to adjudicate on a fair process without the said evidence and it becomes an uphill task to make a finding that the disciplinary process was fair and that evidence if at all submitted was valid to find the petitioner culpable.

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

- (2) A termination of employment by an employer is unfair if the employer fails to prove—**
 - (a) that the reason for the termination is valid;**
 - (b) that the reason for the termination is a fair reason—**

- (i) related to the employees conduct, capacity or compatibility; or
- (ii) based on the operational requirements of the employer; and
- (c) that the employment was terminated in accordance with fair procedure

109 The requirement for valid reason and procedural fairness must be established. It is however my finding that both these are lacking in this case and it is therefore my finding that the petitioner's termination was unfair and unjustified.

ISSUE NO 2

110 Having found unfairness in the manner the respondent handled the case against the petitioner, it is also my finding that the respondent breached the petitioner's rights under article 41, and 47 of the constitution which states as follows:-

41 (1) Every person has the right to fair labour practices.

(2) Every worker has the right—

(a) to fair remuneration;

(b) to reasonable working conditions;

(c) to form, join or participate in the activities

and programmes of a trade union; and

(d) to go on strike.

- (3) Every employer has the right—
 - (e) to form and join an employers organisation;
 - and
 - (f) to participate in the activities and programmes of an employers organisation.
 - (4) Every trade union and every employers' organisation has the right—
 - (a) to determine its own administration, programmes and activities;
 - (b) to organise; and
 - (c) to form and join a federation.
 - (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining.
47. (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 - (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
 - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
 - (b) promote efficient administration

111 It is my finding that the petitioner's right to fair labour practice and fair administrative action were compromised in the manner the respondents handled the petitioner.

ISSUE NO 3

112 Having found as above, it is my finding that the petitioner is entitled to some remedies which I award him as follows:

1. A Declaration that the Petitioner's Fundamental Rights and Freedoms have been violated by the Respondent.

2. A Declaration to the effect that the Respondent dismissed the Petitioner's employment unfairly.

3. General damages equivalent to 5 million for breach of his constitutional rights.

4. Payment of compensation for unfair termination equivalent to 7 months' salary due to the unfairness against him and especially due to lack of proper procedure and given his age here he can't get employed again = $7 \times (173,000 + 45,000) = 7 \times 218,000/- = 1,526,000/-$

5. Pending leave days of 105 days = Kshs 825,818 (as per petition)

6. Withheld basic salary a Kshs 86,500/-x8(during interdiction) = Kshs 692,000/-

TOTAL Kshs 9,569,818/- less statutory deductions.

7. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

Dated, Signed and Delivered Virtually at Nairobi this 24th Day of February, 2026.

**HELLEN WASILWA
JUDGE**