

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

ELRC PETITION NO. E246 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

ASHTON OMEDO AKARANGA.....1ST
PETITIONER

PETER OCHIENG ADIKA.....2ND
PETITIONER

JENNIFER MARAGA ASHIHUNDU.....3RD
PETITIONER

DUNCAN ROBERT RIGII NGUGI.....4TH
PETITIONER

ZAINABU WARIO SORA.....5TH
PETITIONER

BELINDA KAYARO MUGASIA.....6TH
PETITIONER

VS

PARLIAMENTARY SERVICE COMMISSION.....1ST
RESPONDENT

THE CLERK OF THE SENATE/SECRETARY

PARLIAMENTARY SERVICE COMMISSION.....2ND
RESPONDENT

THE DIRECTOR GENERAL,

PARLIAMENTARY JOINT SERVICES.....3RD
RESPONDENT

THE DIRECTORATE, HUMAN CAPITAL
AND ADMINISTRATIVE SERVICES

JUDGMENT

- 1 By an Amended Petition dated 18th December 2025, the Petitioner prayed the following orders: -
- a) *An Order declaring that the Respondents violated and/or breached the Petitioners' rights and freedoms envisaged in Articles 27, 28, 41, 43, 47, 50(1) and 236(a), (b) of the Constitution of Kenya, 2010.*
 - b) *An Order declaring that the dismissal of the Petitioners by the Respondents is illegal, unlawful, null and void ab initio, thus, it is permanently lifted, set-aside and/or discharged.*
 - c) *An Order declaring that the show cause processes, the suspension and the entire disciplinary processes commenced by the Respondents against the Petitioners were unlawful, illegal, null and void ab initio, thus, they are permanently set aside, discharged and/or lifted.*
 - d) *An Order directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally reinstate the Petitioners to their employment and former positions with the 1st Respondent without loss of benefits or seniority or rightful promotion.*
 - e) *An Order declaring that the Respondents' purported action to withhold/stop the Petitioner's monthly Salaries, Allowances and/or benefits in any way or*

manner, suspend the Petitioners in any way or manner and/or bar or prohibit the Petitioners from accessing their respective work stations or from executing the mandate of their offices/roles is illegal and unlawful null and void ab initio thus, and-is hereby set-aside, discharged and/or lifted permanently.

- f) An Order compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally Reinstate the Petitioners' monthly salaries, allowances and/or benefits due and payable to them on account of their employment with the 1st Respondent.*
- g) An Order Compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally release to the Petitioners all their withheld salaries, allowances and/or any benefits due and payable to them from when they were withheld to date.*
- h) An Order Compelling and/or directing the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical) to forthwith and unconditionally release to the Petitioners all their accrued leave days dues and payable to them from when they were suspended and/or withheld to date.*
- i) An Order of General damages against the Respondents jointly and severally on account of the violation and breach of the Petitioners' constitutional*

and/or fundamental Rights and Freedoms by the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical).

- j) An Order of Exemplary damages against the Respondents jointly and severally on account of violation and breach of the Petitioners' constitutional and/or fundamental Rights and Freedoms by the Respondents either by themselves and/or through their employees, agents, servants, representatives, and/or any person (natural or juridical).*
- k) An Order for Costs of the Petition to be borne by the Respondents Jointly and Severally.*
- l) An Order for Interests on all the above at court rates from the date of stoppage of salaries/employment benefits and/or from the date of filing this Petition until payment in full.*
- m) Any such other order(s) as this Honourable Court deems just and fit to grant.*

Petitioners' Case

- 2 It is the Petitioners' case that between 26th August 2024 and 19th February 2025, the Respondents issued them with various Notices to Show Cause accusing them of forging their respective academic certificates with the intention of defrauding the 1st Respondent.
- 3 The Petitioners aver that through the said notices they were each granted seven (7) days to explain why

disciplinary action should not be taken against them; and proceeded to suspend their monthly salaries, house allowances, medical allowances and all other employment benefits pending determination of the matter.

- 4 The Petitioners aver that on diverse dates between 5th September 2024 and 25th February 2025, they responded to the Notices to Show Cause and denied the allegations of forgery.
- 5 They contend that despite their responses, the Respondents, on diverse dates between 8th January 2025 and 3rd March 2025, proceeded to indefinitely suspend them, without supplying the evidence relied upon and without inviting them to any disciplinary hearing.
- 6 It is the Petitioners' case that from the time of suspension until their eventual dismissal they remained without their monthly salaries, house allowances, medical covers and other employment benefits.
- 7 The Petitioners aver that through the respective suspension letters, the Respondents directed them to vacate their respective offices and remain away from their workstations until the suspension was determined, informed them that they would not earn their monthly salaries, house allowances or benefits during the suspension period, and further indicated that they would forfeit all annual leave days due during the period of suspension.

- 8 The Petitioners contend that during the disciplinary process, the Respondents did not inform them of their right to be accompanied by another employee or a shop floor union representative of their choice, did not supply them with the evidence or investigation reports relied upon to initiate the disciplinary proceedings, did not grant them sufficient time to respond to the accusations or extend time where such extension was sought, and never communicated the date of the hearing of the show cause.
- 9 It is the Petitioners' case that by failing to supply them with the investigation reports or information received from the respective institutions regarding the authenticity of their academic certificates, the Respondents made it impossible for them to adequately prepare their defence to the allegations of forgery, thereby violating their right to a fair hearing under Article 50(1)(j) and (k) of the Constitution.
- 10 The Petitioners further state that they are entitled to the full enjoyment of their rights and fundamental freedoms as guaranteed under the Constitution and all applicable laws and regulations, including during periods of suspension.
- 11 They aver that the Respondents were equally bound by the Constitution and all applicable laws before resolving to indefinitely suspend them without pay and bar them from accessing their respective workstations.

- 12 The Petitioners contend that the Respondents indefinitely suspended them without pay, stopped their medical covers and other benefits without any legal justification, and continued to do so until the time they dismissed the Petitioners, despite being aware that the law requires an employer to pay at least half of the employee's salary together with their allowances and benefits during the suspension period.

- 13 The Petitioners aver that while suspending them, the Respondents failed, neglected and ignored to provide them with the evidence relied upon to initiate the suspension and disciplinary process, failed to grant them the opportunity and sufficient time to appear before them on a set date to explain themselves or make representations against the intended suspension, and failed to inform them whether there would be a hearing or the reasons why there would be none.

- 14 They further state that the Respondents failed to communicate when a decision on suspension would be rendered, failed to inform them whether they would receive their salaries, allowances or benefits or any portion thereof during the suspension, failed to indicate how long the suspension would last or when the disciplinary proceedings would be concluded, and failed to inform them of their right to challenge the decision to suspend them through a review or appeal as required by law.

- 15 The Petitioners aver that as a consequence of the Respondents' decision to indefinitely suspend them without pay, they were severely affected financially and were unable to meet their obligations or provide for their families' basic needs including food, shelter, clothing, medical care and school fees for their children.
- 16 They state that they now live in constant fear that their properties may be auctioned due to default in servicing mortgage facilities, which they had been servicing using their salaries that were subsequently stopped by the Respondents.
- 17 The Petitioners maintain that the Respondents' actions in indefinitely suspending them without pay, suspending their allowances and benefits and forfeiting their leave days were procedurally unlawful, unconstitutional and illegal, and amounted to constructive dismissal, rendering the said actions null and void *ab initio*.
- 18 The Petitioners further aver that the suspension persisted for more than eight (8) months without communication from the Respondents on when the disciplinary process would be concluded, thereby subjecting them to extreme suffering and inhumane and undignified treatment.
- 19 The Petitioners aver that by suspending them indefinitely without salaries, house allowances, medical covers and other benefits, the Respondents violated their

constitutional rights under Articles 27, 28, 41, 43 and 47 of the Constitution.

20 They further aver that the Respondents' failure to provide them with the evidence relied upon violated their right to a fair hearing under Article 50(1)(j) and (k) of the Constitution.

21 The Petitioners aver Article 24 of the Constitution, provides that a right or fundamental freedom in the Bill of Rights may only be limited by law and to the extent that the limitation is reasonable and justifiable. They assert that the right to a fair hearing under Article 50(1), as read together with Article 25 of the Constitution, is a non-derogable right which cannot be limited.

22 It is the Petitioners' case that under Article 47 of the Constitution, a decision maker is required to act fairly when taking a decision that directly affects an individual. The Respondents, while exercising administrative authority over them, failed to comply with Article 47 of the Constitution, Section 4(3) and (4) of the Fair Administrative Action Act, and the rules of natural justice, particularly by failing to inform them when the suspension process would be concluded and by withholding their salaries and benefits during the entire period of suspension.

23 The Petitioners therefore contend that the show cause process, the suspension and the entire disciplinary process

undertaken by the Respondents were conducted in total violation of their right to fair administrative action, which ought to have been expeditious, efficient, lawful, reasonable and procedurally fair as required under Article 47 of the Constitution and Section 4(3) and (4) of the Fair Administrative Action Act.

- 24 It is the Petitioners case that the Respondents suspended them indefinitely without supplying the evidence relied upon, thereby condemning them unheard, in violation of their right to a fair hearing under Article 50(1) of the Constitution, as well as the rule of law and the principles of natural justice.
- 25 The Petitioners further aver that having been suspended for more than eight (8) months with all their employment benefits withheld, they filed the present Petition under certificate of urgency on 21st November 2025, and on 24th November 2025 the Court certified the matter urgent, directed service upon the Respondents and fixed the matter for inter partes hearing on 24th December 2025.
- 26 The Petitioners state that upon being served with the Petition on 24th November 2025, the Respondents, in what they describe as a knee-jerk reaction, proceeded to dismiss them through letters backdated to 18th November 2025, which were served upon them between 27th and 28th November 2025.

- 27 The Petitioners assert that their dismissal was unprocedural, unlawful and null and void *ab initio* because it was anchored on an unlawful show cause and suspension process, as the Respondents never supplied them with the evidence or investigation reports relied upon, never conducted fair disciplinary hearings, and because the dismissal letters failed to inform them of their right of appeal, where such appeal ought to be lodged and the time within which to appeal, contrary to Clause 15.6 of the Respondents' Human Resource Policies and Procedures Manual.
- 28 They state that the dismissal letters did not inform them of their entitlement to a Certificate of Service as required under the said Human Resource Manual.
- 29 The Petitioners therefore maintain that the Respondents' actions in indefinitely suspending them without pay and ultimately dismissing them without supplying evidence and without conducting a fair hearing violated their constitutional rights under Articles 41, 47 and 50 of the Constitution, as well as the rules of natural justice, and urge this Court to grant the orders sought in the Petition in order to uphold the Constitution, the rule of law and the principles of fairness and justice.

Respondents' Case

- 30 In opposition, the Respondents filed a replying affidavit dated 1st December 2025, sworn by Jeremiah Nyegenye,

CBS, the Clerk of the Senate and the Secretary to the Parliamentary Service Commission.

- 31 The Respondents aver that by a letter Ref: PSC/ADM/13 dated 19th October 2022, the Chairperson of the Public Service Commission directed all Authorized Officers to undertake an audit of academic and professional certificates of all newly appointed officers in Ministries, Departments and State Corporations for the previous ten years and submit a report by 31st January 2023.

- 32 The letter further directed that academic and professional certificates be continuously validated prior to appointments and promotions and the compliance filed through quarterly and annual reports to the Commission. It was also directed that any officer found in possession of forged certificates be dismissed from service in accordance with the Public Service Act, the Public Officer Ethics Act and the Leadership and Integrity Act.

- 33 The Respondents aver that by another letter Ref: PSC/ADM/13(42) dated 22nd May 2023, the Chairperson of the Public Service Commission addressed all Authorized Officers and Chief Executive Officers of State Corporations regarding authentication of academic and professional certificates in the public service. The Commission referred to the earlier letter of 19th October 2022 and noted that some Ministries, Departments and Agencies (MDAs) had requested an extension to finalize the verification process.

- 34 It is the Respondents' case that the Commission granted an extension to the respective MDAs up to 30th June 2023 to submit finalized reports. The Commission also requested the Ministry of Education to consider waiving authentication charges on KNEC certificates and further indicated that in addition to dismissal from service under the Public Service Act, the Public Officer Ethics Act and the Leadership and Integrity Act, any officer found in possession of forged certificates would face legal and administrative action including involvement of investigative agencies.
- 35 The Respondents aver that by a follow-up letter Ref: PSC/ADM/13(45) dated 19th October 2023, the Public Service Commission issued further guidance stating that employment based on forged certificates is *void ab initio* and should be declared *null* and void from the date of appointment.
- 36 It was further guided that such persons would not be entitled to benefits including pension, unpaid allowances or accrued leave. The cases were also to be referred to the Directorate of Criminal Investigations for prosecution and recovery of monies and assets obtained through fraudulent activities.
- 37 The Commission further directed MDAs that had not commenced or finalized the authentication exercise to do so by 31st December 2023, noting that the exercise was of critical national interest aimed at safeguarding integrity in training institutions and the public service.

- 38 The Respondents aver that on 12th March 2024 the 1st Respondent received a letter Ref: EACC.7/10/1 Vol. XIV (83) dated 11th March 2024 from the Ethics and Anti-Corruption Commission addressed to all Accounting Officers, Constitutional Commissions and the Clerks of Parliament advising on payment of terminal benefits to public officers found to possess forged academic and professional certificates. The Commission reminded institutions that it is established under Section 3 of the Ethics and Anti-Corruption Commission Act, 2011 pursuant to Article 79 of the Constitution and mandated to oversee and enforce compliance with integrity standards for State and public officers.
- 39 The Respondents state that the EACC advised that some public institutions had allowed officers facing allegations of forged certificates to resign or retire early and still processed terminal benefits contrary to the law. The EACC therefore advised accounting and authorized officers not to process benefits including pensions, unpaid allowances or accrued leave for officers found to have used fraudulent academic qualifications to gain employment in the public service.
- 40 EACC further advised all public institutions to prioritize verification of academic and professional certificates and to submit all cases involving forged certificates to the Commission for further action, noting that salaries, allowances and benefits earned through fraudulent qualifications are recoverable in full.

- 41 The Respondents aver that although the directives from the Public Service Commission do not strictly bind the 1st Respondent because the Parliamentary Service falls under the mandate of the Parliamentary Service Commission pursuant to Article 127(6) of the Constitution, the 1st Respondent is part of the wider public service and therefore uses the Public Service Commission as a benchmark for best human resource practices.
- 42 It is the Respondents' case that the 1st Respondent, being part of the wider public service, is bound by the values and principles of public service under Article 232(1) and (2) of the Constitution which emphasize high standards of professional ethics, accountability, transparency, efficient use of resources, fair competition and merit as the basis of appointments and promotions among other principles applicable to all State organs and State corporations.
- 43 The Respondents aver that in compliance with these principles, the 1st Respondent at its 316th meeting held on 22nd February 2024 resolved that a comprehensive institution-wide authentication of academic certificates for all officers serving in the Parliamentary Service be undertaken in line with similar verification exercises in the wider public service.
- 44 The Respondents further state that at its meeting held on 21st August 2024 the Commission resolved that the authentication exercise would apply to officers in the permanent and pensionable establishment as well as

contract officers in both the partisan and non-partisan establishments.

- 45 The Respondents aver that following these resolutions, the 4th Respondent conducted the authentication exercise of academic and professional certificates for all staff serving in the Parliamentary Service including the Petitioners.
- 46 The Respondents aver that the 1st Petitioner was employed by the Parliamentary Service Commission on 15th December 2003 as a Clerical Officer, PSC Scale 12.
- 47 On 26th May 2017, the 1st Petitioner submitted a Bachelor of Commerce (Human Resource Management) degree certificate allegedly awarded by the University of Nairobi in December 2016 for purposes of qualifying for promotion to the position of Human Resource Management Officer III, PSC Scale 8. Relying on the said certificate, the 1st Respondent promoted the 1st Petitioner to the position of Human Resource Management Officer III on 24th July 2018.
- 48 It is the Respondents' case that following the authentication exercise, the 4th Respondent wrote to the University of Nairobi on 14th July 2024 seeking verification of the 1st Petitioner's degree certificate. The University of Nairobi responded through a letter Ref: UON/AA/CEC/1/22/1 dated 17th July 2024 confirming that the certificate was not genuine and had not been issued by the University.

- 49 The Respondents aver that pursuant to Regulation 15.4(c) of the PSC Human Resource Policies and Procedures Manual, the 4th Respondent issued the 1st Petitioner with a notice to show cause dated 26th August 2024 informing him that the certificate had been found to be a forgery and granting him seven days to respond. As a precautionary measure and to safeguard public funds, the 1st Petitioner's salary was stopped.
- 50 The Respondents aver that the 1st Petitioner responded by a letter dated 5th September 2024 stating that the information from the University was misleading and that he had personally visited the institution to seek clarification and expected a confirmation letter to be sent to the employer. However, no such clarification was received from the University.
- 51 The Respondents aver that the 1st Petitioner's response was unsatisfactory and the matter was forwarded to the 1st Respondent in accordance with the Parliamentary Service Regulations, 2002.
- 52 Having accorded the 1st Petitioner an opportunity to be heard and considering the seriousness of the offence, he was suspended pursuant to Regulation 15.5.2(d) and (f) of the PSC Human Resource Policies and Procedures Manual pending determination of the matter.
- 53 The Respondents aver that at its 329th meeting held on 5th November 2025, the 1st Respondent resolved to dismiss the 1st Petitioner from the Parliamentary Service pursuant

to Regulation 28(ii) of the Parliamentary Service Commission Regulations for gross misconduct arising from uttering a forged document with intent to defraud the Commission.

- 54 The Commission further resolved, pursuant to Regulation 23(i) of the Parliamentary Service Commission Regulations and Section 353 of the Penal Code, that criminal proceedings may be instituted against the 1st Petitioner and that recovery of monies paid to him from the date of uttering the forged document may be pursued under Regulation 28(c)(v).
- 55 They aver that the 1st Petitioner was subsequently notified of the dismissal decision through a letter dated 18th November 2025 served via WhatsApp.
- 56 The Respondents aver that the 2nd Petitioner was employed by the 1st Respondent on 19th February 2002 as a Personal Assistant, PSC Scale 7, and subsequently received promotions over the course of his employment. In 2013, he presented a Master of Arts (Economic Policy Management) degree certificate allegedly issued by the University of Nairobi in December 2009 for purposes of qualifying for promotion to the position of Principal Research Officer, PSC Scale 12.
- 57 The Respondents state that relying on this certificate, the 2nd Petitioner was promoted on 28th February 2013 to the position of Principal Research Officer and later appointed Chief Research Officer, PSC Scale 13 on 28th March 2023.

- 58 It is the Respondents' case that during the authentication exercise, the 4th Respondent wrote to the University of Nairobi via email dated 27th December 2024 seeking verification of the certificate. The University responded through a letter Ref: UON/AA/CEC/1/3 Vol. VIII dated 16th February 2025 confirming that the certificate was not genuine and had not been issued by the University.
- 59 The Respondents aver that the 2nd Petitioner was issued with a notice to show cause dated 19th February 2025 pursuant to Regulation 15.4(c) of the PSC Human Resource Policies and Procedures Manual and granted seven days to respond. His salary was also stopped as a precautionary measure.
- 60 The Respondents state that the 2nd Petitioner initially requested additional time to respond and later, by a letter dated 4th March 2025, sought early retirement effective 31st March 2025 instead of disputing the allegations.
- 61 The Respondents aver that the 2nd Petitioner's response being insufficient and the matter was forwarded to the Parliamentary Service Commission which subsequently suspended him pursuant to Regulation 15.5.2(d) and (f) of the PSC Human Resource Policies and Procedures Manual.
- 62 The Respondents further aver that at its 329th meeting held on 5th November 2025 the Commission resolved to dismiss the 2nd Petitioner from service pursuant to Regulation 28(ii) of the Parliamentary Service Commission Regulations, 2002 for gross misconduct arising from

uttering a forged document with intent to defraud the Commission. The Commission also resolved that criminal proceedings may be instituted pursuant to Regulation 23(i) of the Regulations and Section 353 of the Penal Code and that recovery of monies paid to him may be pursued under Regulation 28(c)(v).

- 63 The 2nd Petitioner was notified of the dismissal through a letter dated 18th November 2025 served via WhatsApp.
- 64 The Respondents aver that the 3rd Petitioner was employed by the 1st Respondent on 7th July 2003 as a Fitness Instructor, PSC Scale 7. One of the documents presented for purposes of securing employment was a Kenya Certificate of Secondary Education certificate with Index No. 63010/117 allegedly obtained in 1989 at Mukumu Girls Secondary School.
- 65 The Respondents aver that during the authentication exercise, the 4th Respondent wrote to the Kenya National Examinations Council on 3rd July 2024 seeking verification of the certificate. KNEC responded through a letter Ref: KNEC/CONF/QA&A/ARCH/FORG/02/304 dated 3rd October 2024 confirming that the certificate was not a true representation of the Petitioner's results as the English grade had been altered from D+ to B+.
- 66 The Respondents aver that the 3rd Petitioner was issued with a notice to show cause dated 7th October 2024 pursuant to Regulation 15.4(c) of the PSC Human Resource Policies and Procedures Manual and her salary was

stopped. She responded by denying altering the grade and attaching what she claimed was an authentic certificate.

67 The Respondents state that the 3rd Petitioner's response was unsatisfactory and the matter was forwarded to the Parliamentary Service Commission which suspended her pursuant to Regulation 15.5.2(d) and (f) of the PSC Human Resource Policies and Procedures Manual.

68 The Respondents aver that at its 329th meeting held on 5th November 2025 the Commission resolved to dismiss the 3rd Petitioner from the Parliamentary Service pursuant to Regulation 28(ii) of the Parliamentary Service Commission Regulations for gross misconduct arising from uttering a forged document with intent to defraud the Commission, with a further resolution to institute criminal proceedings under Regulation 23(i) and Section 353 of the Penal Code and to recover monies paid to her under Regulation 28(c) (v). She was notified of the dismissal through a letter dated 18th November 2025 served via WhatsApp.

69 The Respondents aver that the 4th Petitioner was employed by the 1st Respondent on 14th January 2003 as a Subordinate Staff, PSC Scale 12 and rose through the ranks to the position of Office Superintendent, PSC Scale 6. For purposes of employment he presented a Kenya Certificate of Secondary Education certificate with Index No. 370824/062 allegedly issued in 1998 by Mutito S.D.A Secondary School.

- 70 The Respondents aver that following the authentication exercise, the 4th Respondent wrote to KNEC on 3rd July 2024 seeking verification. KNEC responded through a letter dated 3rd October 2024 confirming that the certificate had been altered in that the Mathematics grade had been changed from E to B and the mean grade from D+ to C+.
- 71 The Respondents aver that the 4th Petitioner was issued with a notice to show cause dated 7th October 2024 pursuant to Regulation 15.4(c) of the PSC Human Resource Policies and Procedures Manual and his salary was stopped. He responded by stating that at the time of employment he had relied on a provisional transcript because he had not yet collected the original certificate and suggested that the alteration may have arisen from repeated photocopying. He also attached what he claimed to be a certified copy of the original certificate.
- 72 The Respondents state that the response did not exculpate the 4th Petitioner and the matter was forwarded to the Parliamentary Service Commission which suspended him pursuant to Regulation 15.5.2(d) and (f) of the PSC Human Resource Policies and Procedures Manual.
- 73 The Respondents further aver that at its 329th meeting held on 5th November 2025 the Commission resolved to dismiss the 4th Petitioner from the Parliamentary Service pursuant to Regulation 28(ii) of the Parliamentary Service Commission Regulations, 2002 for gross misconduct arising from uttering a forged document with intent to

defraud the Parliamentary Service Commission, with further resolutions to institute criminal proceedings under Regulation 23(i) of the Regulations and Section 353 of the Penal Code and to recover all monies paid to him from the date of uttering the forged document.

- 74 The Respondents aver that the 5th Petitioner was employed by the 1st Respondent on 1st February 2002 as a Security Warden III, PSC 12, and was subsequently promoted severally to the position of Serjeant-at-Arms I, PSC 9.
- 75 The Respondents aver that among the documents submitted by the 5th Petitioner during her employment was a Kenya Certificate of Secondary Education (KCSE) certificate with Index No. 940102/019, allegedly registered and sat at Nairobi Private – YMCA Shauri Moyo in 2007.
- 76 The Respondents aver that following the 1st Respondent's Resolution dated 22nd February 2024, an authentication exercise of employees' academic certificates was initiated. Consequently, by a letter dated 3rd July 2024, the 1st Respondent wrote to the Kenya National Examinations Council (KNEC) seeking verification of the 5th Petitioner's KCSE certificate.
- 77 The Respondents aver that KNEC, through a letter Ref: KNEC/CONF/QA&A/ARCH/FORG/02/304 dated 3rd October 2024, confirmed that the 5th Petitioner's KCSE certificate was not a true representation of her results, as several grades had been altered, including: English from D (Plain)

to C+; Kiswahili from D- to C; Mathematics from E to D-; Biology from D to D+; Chemistry from D- to D+; History & Government from D- to B-; Business Studies from Y (Cancelled Results) to E. The mean grade was also altered from Y (Cancelled Results) to C-.

- 78 The Respondents aver that pursuant to Regulation 15.4(c) of the PSC Human Resource Policies and Procedures Manual, the 4th Respondent issued the 5th Petitioner with a Notice to Show Cause dated 7th October 2024, informing her that the KCSE certificate submitted was not a true representation of her results as issued by KNEC. She was accorded seven (7) days to respond.
- 79 The Respondents aver that as a matter of due diligence and to safeguard public funds, the salary of the 5th Petitioner was immediately stopped, and she was notified of this in the said Notice to Show Cause.
- 80 The Respondents aver that by a letter dated 15th October 2024, the 5th Petitioner responded to the Notice to Show Cause stating that: There appeared to be confusion regarding the documents submitted by KNEC; She had sat the KCSE examination twice, the first result having been cancelled; The second KCSE result was the correct one and should have been considered; and she had lodged a complaint with KNEC regarding the matter. She attached a Statement of Examination Results Ref: KCSE/940102/019/ARCH/ST/2/2007, allegedly issued by Francis Kwedho of KNEC.

- 81 The Respondents aver that following this response, the 1st Respondent wrote another letter Ref: PSC/HR/2024/10 dated 2nd December 2024 to KNEC seeking confirmation of the authenticity of the Statement of Examination Results dated 14th October 2024 and whether the 5th Petitioner had indeed sat the KCSE examination twice.
- 82 The Respondents aver that by a letter Ref: KNEC/GEN/R&QA/ARCH/OM/13/358 dated 11th December 2024, KNEC confirmed that the Statement of Examination Results dated 14th October 2024 was fraudulent and did not originate from KNEC.
- 83 The Respondents aver that the 5th Petitioner's response did not exculpate her from the allegations, as KNEC had confirmed that the document she relied on was fraudulent. The matter was therefore forwarded to the Parliamentary Service Commission through its advisory channels in accordance with the Parliamentary Service Commission Regulations.
- 84 The Respondents aver that after according the 5th Petitioner an opportunity to be heard and noting that her response did not satisfactorily address the allegations of forgery, the 1st Respondent suspended the 5th Petitioner pursuant to Regulation 15.5.2(d) and (f) of the PSC Human Resource Policies and Procedures Manual.
- 85 The Respondents aver that at its 329th meeting held on 5th November 2025, the 1st Respondent resolved as follows: Pursuant to Regulation 28(ii) of the Parliamentary Service

Commission Regulations, 2002, the 5th Petitioner be dismissed for gross misconduct for uttering a forged document with intent to defraud the Commission. Pursuant to Regulation 23(i) of the Parliamentary Service Commission Regulations, 2002 and section 353 of the Penal Code, the Commission may institute criminal proceedings against her. Pursuant to Regulation 28(c)(v) of the Parliamentary Service Commission Regulations, 2002, the Commission reserved the right to recover all monies paid to the 5th Petitioner from the date of uttering the fake document.

- 86 The Respondents aver that the 5th Petitioner was notified of the dismissal via WhatsApp vide a dismissal letter dated 18th November 2025.
- 87 The Respondents aver that the 6th Petitioner was employed by the 1st Respondent on 20th February 2008 as a Printer III, PSC 7. The 6th Petitioner presented, among other documents: a Diploma in Printing Technology Certificate (Certificate No. DPT 101/05214) from the Kenya Polytechnic, granted in 2007; and a KCSE certificate Index No. 301823/052, allegedly obtained from Kilimanjaro Academy in 2004.
- 88 The Respondents aver that following the resolution of 22nd February 2024, the 1st Respondent initiated verification of the 6th Petitioner's KCSE certificate through a letter dated 3rd July 2024 addressed to KNEC.

- 89 The Respondents aver that the Technical University of Kenya, by a letter dated 26th July 2024, informed the 1st Respondent that the Diploma in Printing Technology Certificate (No. DPT 101/05214) was not authentic.
- 90 They further aver that KNEC, through a letter Ref: KNEC/CONF/QA&A/ARCH/FORG/02/304 dated 3rd October 2024, confirmed that the 6th Petitioner's KCSE certificate had been altered, including: English from D to B; Kiswahili from D to C-; Mathematics from E to C-; Biology from E to C+; Chemistry from D- to B+; History & Government from D to C-; Social Education & Ethics from D to B-; and Commerce from D to C+. The mean grade had also been altered from D- to B-.
- 91 The Respondents aver that pursuant to Regulation 15.4(c) of the PSC Human Resource Policies and Procedures Manual, the 4th Respondent issued the 6th Petitioner with a NTSC dated 26th August 2024 and 7th October 2024, informing her that both the Diploma certificate and the KCSE certificate were forgeries. She was given seven (7) days to respond and her salary was also stopped in order to safeguard public funds.
- 92 The Respondents aver that in her response dated 6th September 2024, the 6th Petitioner stated that her father submitted the documents during her appointment when he retired from Parliamentary Service in 2007. She later completed her Diploma in Printing Technology in 2016 at

the Technical University of Kenya and subsequently graduated with a degree in Printing Technology in 2023. She did not recall submitting the certificate in dispute.

- 93 The Respondents aver that in another response dated 14th October 2024, the 6th Petitioner maintained that her KCSE certificate submitted to the Commission was authentic. She was not aware of the alleged forgery and she intended to write to KNEC to verify the authenticity of the certificate.
- 94 The Respondents aver that the responses did not exculpate the 6th Petitioner, and the matter was forwarded to the Parliamentary Service Commission through its advisory channels in accordance with the Parliamentary Service Commission Regulations.
- 95 The Respondents aver that the 6th Petitioner was suspended on 8th January 2025 pursuant to Regulation 15.5.2(d) and (f) of the PSC Human Resource Policies and Procedures Manual.
- 96 The Respondents aver that at its 329th meeting held on 5th November 2025, the 1st Respondent resolved that the 6th Petitioner be dismissed for gross misconduct under Regulation 28(ii) of the Parliamentary Service Commission Regulations, 2002; the Commission may institute criminal proceedings pursuant to Regulation 23(i) of the PSC Regulations and section 353 of the Penal Code; the Commission reserved the right to recover all monies paid

to her from the date of uttering the forged documents under Regulation 28(c)(v).

- 97 The Respondents aver that the 6th Petitioner was notified of her dismissal via WhatsApp through a letter dated 18th November 2025.
- 98 The Respondents aver that Section 44 of the Employment Act, 2007 permits an employer to summarily dismiss an employee for gross misconduct, including where an employee commits or is reasonably suspected of committing a criminal offence against the employer or to the employer's detriment.
- 99 The Respondents further aver that Regulation 15.3.1 of the PSC Human Resource Policies and Procedures Manual categorizes offences such as fraud and forgery as gross misconduct.
- 100 The Respondents maintain that following the authentication exercise of academic certificates, they had reasonable and justifiable grounds to believe that the Petitioners had forged academic documents, which constitutes gross misconduct.
- 101 The Respondents aver that Section 41(2) of the Employment Act requires that an employee be accorded an opportunity to be heard before dismissal. The Petitioners were accorded a fair hearing through the issuance of notices to show cause, which gave them sufficient time to respond to the allegations.

- 102 The Respondents aver that the suspension of the Petitioners under Regulation 15.5.2(d) and (f) was necessary to allow investigations to be concluded and to safeguard the integrity of the institution.
- 103 They further contend that halting the Petitioners' salaries was necessary because their remuneration was drawn from public funds.
- 104 The Respondents maintain that the disciplinary matters were processed through the Commission's advisory channels, after which the Petitioners were lawfully dismissed for uttering forged documents.
- 105 The Respondents aver that the dismissal was transparent, fair and procedurally compliant.
- 106 It is therefore the Respondents' case that the Petitioners approached the Court with unclean hands, having secured employment and promotion through forged documents, rendering the Petition frivolous, vexatious and an abuse of the court process.

Petitioner's Submissions

- 107 The Petitioner submitted on five issues: whether the Petitioners' Certificates were lawfully verified and/or whether the results thereof were lawfully relied upon; whether the disciplinary process leading to the suspension

and dismissal of the Petitioners was lawful; whether illegality and public policy overrides, the due process and fair labour practices; whether the Petitioners approached the Court with unclean hands, thus undeserving the reliefs sought; and whether the Petitioners are entitled to the remedies sought.

108 On the first issue, the Petitioners submit that although the Respondents possessed the institutional mandate to verify academic and professional qualifications held by employees within the Parliamentary Service, the manner in which the verification exercise was undertaken and the manner in which the alleged outcomes were relied upon was unlawful, unconstitutional and procedurally unfair.

109 The Petitioners submitted that they were long-serving employees whose appointments and promotions had, for many years, been accepted by the Respondents on the basis of the very qualifications that were later impugned. The Respondents had relied on these certificates throughout the Petitioners' employment and only raised allegations of forgery following an institution-wide verification exercise conducted in the year 2024.

110 The Petitioners submitted that following the said verification exercise, the Respondents alleged that the Petitioners' academic certificates were forged or altered and consequently issued Notices to Show Cause. However, despite the gravity of the accusations, the Petitioners were never supplied with the verification reports, the

correspondence allegedly received from academic institutions, or any investigative material forming the basis of those allegations. This fact has never been denied by the Respondents and therefore stands uncontested

111 The Petitioners submitted that despite the absence of disclosure of the material relied upon, the Respondents immediately proceeded to act on the alleged verification outcomes by stopping the Petitioners' salaries and benefits, suspending them indefinitely without pay, and eventually dismissing them from employment.

112 It is the Petitioners submission that they were required to defend themselves against serious allegations of forgery without knowledge of the evidence against them, without access to the documents relied upon and without an opportunity to interrogate or challenge the purported findings from the issuing institutions. The Petitioners argue that this approach collapsed the processes of investigation, accusation and adjudication into a single unilateral exercise where the Respondents acted simultaneously as investigator, accuser and judge.

113 It was submitted that the Respondents' conduct violated their rights to fair administrative action, fair hearing and fair labour practices enshrined under Articles 47, 50 and 41 Constitution. These protections are reinforced by Sections 4(3) and 4(4) of the Fair Administrative Action Act, which expressly require an administrator to provide the affected person with the information, materials, and evidence to be relied upon, and to afford a genuine

opportunity to be heard before a decision is taken. Similarly, Sections 41, 43, and 45 of the Employment Act require that disciplinary action be founded on both valid reasons and a fair process.

114 The Petitioners submitted that once the verification exercise became the basis for stopping their salaries, suspending them and eventually dismissing them, it ceased to be a neutral administrative inquiry and became adverse administrative action attracting the full protection of these constitutional guarantees.

115 They submitted that the Court of Appeal has repeatedly affirmed that administrative bodies cannot lawfully rely on undisclosed material to the detriment of affected persons. In ***Suchan Investment Limited v Ministry of National Heritage & Culture & 3 others [2016] KECA 729 (KLR)***, the Court held that public authorities must act transparently and fairly and must disclose the material upon which their decisions are based, particularly where those decisions adversely affect rights. in

116 The Petitioners submitted that the Respondents' reliance on undisclosed verification outcomes was unlawful. They contend that verification results are evidentiary in nature and cannot substitute the disciplinary process required under the Constitution and statute. Such evidence must first be disclosed and interrogated through a fair

disciplinary process before it can lawfully ground punitive action.

117 It is the Petitioners submission that by acting on undisclosed verification material and treating it as conclusive, the Respondents denied them procedural fairness and rendered the entire process arbitrary and unconstitutional.

118 The Petitioners therefore submitted that the verification exercise, as conducted and relied upon, was unlawful, procedurally unfair, and incapable of sustaining the suspension and dismissal, which are consequently null and void.

119 On the second issue, the Petitioners submitted that the disciplinary process leading to their suspension and eventual dismissal was fundamentally flawed as it failed to comply with constitutional requirements, statutory provisions and the Respondents' own internal human resource procedures.

120 The Petitioners submitted that immediately upon issuing the Notices to Show Cause, the Respondents stopped their salaries, allowances, medical cover and employment benefits even before any determination of culpability had been made. This action deprived them of their livelihoods before the disciplinary process had been concluded.

121 It is the Petitioners submission that although they responded to the Notices to Show Cause denying the allegations and, in some instances, sought clarification

from the issuing academic institutions, the Respondents never supplied them with the investigation reports or verification responses allegedly relied upon. The failure to supply the investigation reports rendered the disciplinary process procedurally unfair. They cited ***Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR*** where the Court of Appeal held that where suspension/disciplinary action is predicated on an investigation/audit, withholding the report (or verification responses) vitiates procedural fairness because the affected person cannot meaningfully answer the case against them.

122 The Petitioners submitted that the Respondents' failure to disclose the evidence relied upon violated Article 47 of the Constitution and the principles of natural justice as they made it impossible for the Petitioners to understand the Respondent's accusations and their ability to prepare and mount effective defenses against the accusations.

123 The Petitioners further submitted that they were never invited to any disciplinary hearing despite this being a mandatory requirement of the law. They cited ***County Government of Nyeri & another v Cecilia Wangechi Ndungu [2015] eKLR***, where the Court of Appeal held that an employer must inform the employee of the allegations against them and accord them an opportunity to be heard before taking adverse action.

124 The Petitioners submitted that they were not informed of their right to be accompanied by a fellow employee or

union representative during the disciplinary hearing as required under Section 41 of the Employment Act. They relied on ***Gogni Rajope Construction Company Limited & another v Omondi [2025] KECA 161 (KLR)***, where the Court of Appeal held that informing an employee of the right to be accompanied at a disciplinary hearing forms part of the minimum standards of procedural fairness.

125 The Petitioners submitted that by the Respondents own admission, they were placed on indefinite suspension without pay in addition to directing them to vacate their offices and to forfeit their leave days. They contend this amounted to an unfair labour practices.

126 The Petitioners further submitted that the suspension lasted for over eight months without communication as to when the disciplinary process would be concluded. It was only after the Petitioners filed the present Petition that the Respondents proceeded to dismiss them through dismissal letters that neither informed the Petitioners of their right of appeal nor their entitlement to Certificates of Service as required by the Respondents' own Human Resource Policies. Reliance was placed on ***Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] eKLR*** where the Court of Appeal held that indefinite suspension unsupported by the terms and conditions of service may amount to constructive dismissal.

127 The Petitioners submitted that the dismissal letters issued by the Respondents did not inform them of their right of

appeal and did not indicate their entitlement to Certificates of Service as required under Section 51 of the Employment Act. They relied on ***Modern Mail Limited v Omolo [2025] KEELRC 1043 (KLR)*** where the Court upheld the trial court's finding that failure to outline appeal mechanisms and failure to provide a certificate of service renders a dismissal procedurally flawed.

128 The Petitioners submitted that the Respondents actions violated the Petitioners' rights to fair labour practices, administrative action and fair hearing under Articles 41,47 and 50 of the Constitution. The Respondents' actions amounted to administrative action by a public body that directly affected the Petitioners' rights, livelihood, and dignity, thereby attracting the full protection of Articles 41, 47, and 50 of the Constitution.

129 The Petitioners also submitted that the Respondents violated their own Human Resource Policies and Procedures Manual which required disclosure of material relied upon, disciplinary hearings, notification of appeal rights and issuance of Certificates of Service, thus, the Respondents actions were invalid. They cited the Court of Appeal decision in ***Bramuel Dibondo Musundi -v- Kenya Revenue Authority [2018] eKLR*** and as relied on in ***Timothy Nchoe Sironka v Judicial Service Commission [2020] eKLR*** expressly settled, that an employer who promulgates internal disciplinary procedures is bound to follow them strictly, and failure to do so renders any resultant disciplinary action invalid.

- 130 It is the Petitioners submission that due process is not a technicality but a substantive requirement that goes into the root of the validity of disciplinary action. The Respondents reduced the disciplinary process to a sham process by making punitive decisions, first by stopping the Petitioners salaries and all the other employment benefits, imposing indefinite suspensions, and ultimately dismissing the Petitioners; and only thereafter purporting to justify those decisions without disclosure of evidence or affording a hearing. Such conduct is irreconcilable with the Constitution, the Employment Act, the Fair Administrative Action Act, and binding Court of Appeal jurisprudence.
- 131 The Petitioners therefore submitted that the disciplinary process leading to their suspension and dismissal was procedurally unfair, unlawful, and unconstitutional, rendering their suspension and dismissal null and void *ab initio*.
- 132 On the third issue, the Petitioners submitted that the Respondents' reliance on the doctrine of illegality, public policy and the assertion that the Petitioners' employment was "*void ab initio*" cannot override constitutional guarantees of due process and fair labour practices.
- 133 The Petitioners submit that the Respondents' argument that the Petitioners allegedly secured employment on the basis of forged academic certificates and therefore approached the Court with unclean hands, misconceives the doctrine of constitutional supremacy and settled employment law. Allegations of illegality, however serious,

do not suspend or extinguish the Constitution, nor do they license a public employer to disregard mandatory procedural safeguards.

134 It is the Petitioners submission that the factual matrix before the Court demonstrates that the Respondents treated the allegation of forgery as conclusively established from the outset. On the strength of undisclosed verification outcomes, the Respondents stopped the Petitioners' salaries and employment benefits, placed them on indefinite suspension without pay, and ultimately dismissed them without affording a hearing or disclosing the evidence relied upon. The Respondents now seek to justify this conduct by invoking public policy and contending that employment allegedly founded on illegality is *void ab initio* and undeserving of constitutional protection. This position is untenable in law.

135 The Petitioners submitted that the Constitution is unequivocal; Article 2(1) and (4) declares the Constitution supreme and renders any law, conduct, or decision inconsistent with it void. The Constitution guarantees the rights to fair labour practices, fair administrative action and fair hearing under Articles 41, 47 and 50 of the Constitution respectively and these protections apply to every worker irrespective of the allegations levelled against them. Further, Sections 41, 43 and 45 of the Employment Act, which require employers to establish valid reasons for termination and to follow a fair procedure before dismissing an employee. The Fair Administrative

Action Act, enacted pursuant to Article 47 of the Constitution, which requires disclosure of evidence relied upon, an opportunity to be heard and reasoned decision-making before adverse administrative action is taken.

136 Reliance was placed on ***Judicial Service Commission v Gladys Boss Shollei & another [2014] eKLR***, where the Court held that even where serious allegations touching on integrity are raised, disciplinary proceedings by public bodies must comply with Articles 47 and 50 of the Constitution.

137 The Petitioners submitted that public policy must operate within the framework of the Constitution and cannot be used to justify unconstitutional conduct. Constitutional rights cannot be overridden by broad appeals to public interest or administrative convenience. To accept the Respondents' argument would be to sanction a dangerous precedent where public employers could dispense with due process merely by alleging illegality, thereby undermining the rule of law.

138 They submitted that the Respondents did not establish illegality through a lawful disciplinary process but merely alleged it and acted upon it without affording the Petitioners an opportunity to challenge the allegations.

139 It is the Petitioners submission that the Respondents' reliance on illegality, public policy, and the "void ab initio" doctrine is legally unsustainable and constitutionally impermissible. Allegations of forgery, until established

through a fair, transparent, and lawful process, cannot override the Petitioners' rights under Articles 41, 47, and 50 of the Constitution.

140 On the fourth issue, the Petitioners submitted that the Respondents' argument that the Petitioners approached the Court with unclean hands is premature and unsupported in law. The factual foundation of the Petition before this Court is not an admission of wrongdoing by the Petitioners, but a challenge to the process through which the Respondents exercised disciplinary power.

141 The Petitioners submitted that they have consistently denied the allegations of forgery and maintain that no competent forum has made a definitive finding that their academic certificates are forged or that they procured employment through fraud. In the absence of such a finding reached through a lawful and fair process, the Respondents' invocation of the doctrine of unclean hands is speculative and cannot bar the Petitioners from invoking the Court's jurisdiction.

142 The Petitioners submitted that Constitution guarantees every person the right to approach the courts for the enforcement of rights and fundamental freedoms. Article 22 confers the right to institute proceedings where a right has been denied, violated, or threatened, while Article 258 extends standing to any person who alleges a violation of the Constitution. These provisions do not condition access to justice on moral perfection or on the prior vindication of allegations levelled by an employer.

143 It is the Petitioners submission that Article 48 of the Constitution guarantees access to justice, and Article 50(1) guarantees the right to a fair hearing before an independent and impartial tribunal. The Employment Act does not recognise “unclean hands” as a bar to enforcement of procedural rights and that employers must comply with statutory safeguards irrespective of allegations against an employee.

144 The Petitioners submitted that the Court of Appeal has repeatedly affirmed that allegations of misconduct or illegality, until lawfully established, do not disentitle a litigant from constitutional protection or judicial redress. They cited ***Judicial Service Commission v Mbalu Mutava & another [2015] eKLR***, where the Court of Appeal held that that constitutional rights to fair administrative action and fair hearing are substantive rights that must be respected regardless of the nature of the allegations.

145 It is the Petitioners submission that equity’s maxim that one who comes to court must come with clean hands cannot be invoked to defeat clear constitutional and statutory commands. Where a litigant seeks to enforce procedural fairness and the rule of law, the doctrine of unclean hands has limited application, particularly in public law and constitutional litigation. To accept the Respondents’ argument would be to permit public bodies to immunize unconstitutional conduct from judicial

scrutiny merely by alleging misconduct against those affected.

146 The Petitioners submitted that they approached the Court to challenge their indefinite suspension without pay, the non-disclosure of evidence, the absence of hearings, and the ultimate dismissal carried out in breach of the Constitution and statute. These grievances are justiciable and deserving of judicial determination regardless of the Respondents' unproven allegations. The Petitioners' invocation of this Court's jurisdiction is therefore lawful, proper, and constitutionally protected.

147 It is the Petitioners submission that the allegation of unclean hands is without merit and does not disentitle them to the reliefs sought.

148 On the final issue, the Petitioners submitted that having demonstrated grave violations of the Constitution, statute and employment law principles, they are entitled to the reliefs sought.

149 The Petitioners submitted that the Court's remedial jurisdiction is firmly grounded in the Constitution and statute. Article 23(3) of the Constitution empowers this Court to grant appropriate relief, including declarations, compensation, judicial review remedies, and any other relief that is just and equitable. Article 41 guarantees fair labour practices, while Articles 47 and 50 guarantee lawful, procedurally fair administrative action and the right

to a fair hearing. These provisions are complemented by the Employment and Labour Relations Court Act, which vests the Court with broad authority to grant reliefs appropriate to redress violations arising from employment and labour relations. Further, Sections 49 and 50 of the Employment Act, 2007 expressly empower the Court to grant remedies including reinstatement, compensation, payment of withheld wages and benefits, and damages for unfair termination.

150 The Petitioners submitted that the Court of Appeal has consistently affirmed that where termination is found to be procedurally or substantively unfair, the Court must fashion remedies that are effective and proportionate to the violation. They cited ***Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR.***

151 The Petitioners submitted that reinstatement is a remedy contemplated under Section 49 of the Employment Act and Article 23 of the Constitution, especially where dismissal is tainted by illegality and procedural impropriety. The Petitioners were long-serving employees whose positions were terminated through an unlawful process; no evidence has been presented that reinstatement would be impracticable or inimical to public interest.

152 They further submitted that compensation and payment of withheld salaries and benefits serve as a restorative mode of justice for the unlawful and the punitive withholding of their salaries and or other employment benefits. The

prolonged unpaid suspension in this case justifies an order for payment of all withheld remuneration, as the Respondents cannot benefit from their own unlawful conduct.

153 The Petitioners submitted that the circumstances of this case warrant an award of damages for violation of constitutional rights, particularly the rights to fair labour practices, fair administrative action, dignity, and fair hearing. The Courts recognise that constitutional damages may be awarded where violations are egregious and cannot be adequately remedied by ordinary employment compensation alone.

154 It is the Petitioners submission that costs should follow the event. The Petitioners argue that they were compelled to approach this Court to vindicate their rights after the Respondents failed to act lawfully and fairly. An award of costs and interest would therefore be consistent with the principles of justice and fairness.

Respondents' Submissions

155 The Respondents submitted on four issues: whether the verification exercise carried out by the Respondents in respect of the Petitioners' academic certificates was lawful; whether the disciplinary process leading to the Petitioners' suspension and dismissal was lawful and contrary to the Petitioners' right to fair administrative action under Article 47 of the Constitution; whether the

Petitioners' dismissal was fair and lawful; and whether the Petitioners approached the Court with unclean hands thus undeserving of the reliefs sought.

156 On the first issue, the Respondents submitted that verification exercises of academic certificates are mandatory, legal processes put in place to prevent fraud, ensure meritocracy and to uphold public trust and the integrity of institutions particularly within the public service.

157 It is the Respondents' submission that the verification exercises are anchored in Article 232(1) and (2) of the Constitution, which provides for the values and principles of public service including high standards of professional ethics, accountability for administrative acts, transparency, fair competition and merit as the basis of appointments and promotions, as well as efficient and effective use of public resources. These principles apply to all State organs in both levels of government; and all State corporations.

158 The Respondents submitted that pursuant to the values and principles of public service as espoused in Article 232, verification exercises within the public service are typically initiated through circulars and directives issued by the Public Service Commission (PSC). In the present case the verification exercise was initiated through letters issued by the Chairperson of the Public Service Commission dated 19th October 2022, 22nd May 2023 and 19th October 2023.

- 159 The Respondents further submitted that the Ethics and Anti-Corruption Commission (EACC) also issued a letter to the 1st Respondent cautioning against the processing of benefits including pensions, unpaid allowances and accrued leave to persons found to have used fraudulent academic qualifications to gain employment in the public service.
- 160 It was therefore submitted that the 1st Respondent, being part of the public service and guided by the Public Service Commission as the benchmark for human resource management practices, initiated a comprehensive institution-wide authentication exercise of academic certificates for all officers serving in the Parliamentary Service.
- 161 The Respondents submitted that the Petitioners were long-serving employees having been employed between 2002 and 2008, and that during recruitment they submitted academic certificates which the 1st Respondent relied upon for purposes of employment and subsequent promotions.
- 162 The Respondents submitted that in **Kyalo & 6 others v Kenya Railways Corporation & 8 others [2025] KEELRC 828 (KLR)** the Court upheld the mass audit of academic documents that was undertaken by the Kenya Railways Corporation pursuant to a letter dated 19th October, 2022 issued by the Public Service Commission. The letter required all academic certificates of public

servants to be verified regardless of when they joined the service. The Respondents submitted that the said letter relied upon by Kenya Railways Corporation was the same letter relied upon by the 1st Respondent in the present matter when initiating its own verification exercise following the Resolutions of 22nd February 2024 and 21st August 2024

163 It is the Respondents' submission that the verification exercise undertaken in respect of the Petitioners' academic certificates was lawful.

164 On the second issue, the Respondents submitted that the Petitioners were properly issued with and notified of the reports from the respective academic institutions by way of their individual show cause letters. If indeed they had not been furnished with the verification reports vide their show cause letters, nothing would have prevented them from requesting copies of those reports when submitting their responses to the show cause letters.

165 The Respondents submitted that the 1st, 3rd, 4th, 5th and 6th Petitioners merely contested the outcome of the verification exercise without furnishing any information or evidence to contradict the verification report conducted by the 1st Respondent.

166 It was further submitted that the 2nd Petitioner, upon receiving the notice to show cause, requested fourteen

(14) days to respond and subsequently applied for early retirement through a letter dated 4th March 2025.

167 The Respondents submitted that the uttering of false documents with the intention of defrauding an employer constitutes gross misconduct and fraudulent misrepresentation, and further amounts to a criminal offence under Section 353 of the Penal Code.

168 It is the Respondents submission that under Section 107 of the Evidence Act (Cap 80), the burden of proof lies upon the party asserting a fact. In employment matters, when it comes to forged academic certificates, the burden of proof lies on the party alleging the forgery, which is typically the employer. The employer must prove, on a balance of probabilities (a higher likelihood than not), that the employee used forged documents to secure employment.

169 The Respondents submitted that in ***Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others [2023] KESC 105 (KLR)***, the Supreme Court elaborated on the standard of proof for fraud in civil matters when it held as follows: *“In addition, although the standard of proof of fraud in civil matters is not proof beyond reasonable doubt, it is higher than proof on a balance of probabilities as required in other civil claims.”*

170 It was submitted that once an employer produces evidence of forgery in respect of academic certificates, the burden of proof shifts to the employee to demonstrate the

authenticity of the academic certificate. Section 111 of the Evidence Act, places the burden on a person to prove facts especially within their knowledge. They cited ***Janet Melly Otieno v Kenya Ports Authority [2018] eKLR***, the court held that a verification report by an examining body may lead an employer to believe that an employee's academic certificate is forged.

171 It was submitted that Section 41(2) of the Employment Act requires an employer to hear and consider an employee's representations before dismissal. The Respondents gave the Petitioners an opportunity to respond through show cause letters pursuant to Regulation 15.4(c) of the Public Service Commission Human Resource Policies and Procedures Manual.

172 The Respondents further submitted that the Petitioners' right to fair hearing under Article 50 of the Constitution was upheld all through the disciplinary process as the Petitioners were given sufficient time to rebut the allegations of forgery as indicated in their respective show cause letters.

173 The Respondents submitted that in response to the show cause letters, the Petitioners did not furnish the Respondents with any evidence rebutting the allegations of forgery. The Petitioners merely denied the allegations.

174 It was further submitted that by informing and furnishing the Petitioners with the verification reports on their

academic certificates, the Respondents discharged the burden of proof on a balance of probability as is the threshold in forgery cases. The burden thus shifted to the Petitioners to prove that the allegations were false.

175 The Respondents submitted that following the verification report, the Respondents had reasonable grounds to believe that the Petitioners' academic certificates were forged. Given that the Petitioners' salaries and benefits were being paid from public funds, it was necessary for the 1st Respondent to halt their salaries in the interest of the public good and the same acted as a mitigation measure to prevent the loss of more public funds.

176 The Respondents submitted that the Supreme Court of Canada set the criteria for suspension of salaries and benefits in the case of ***Cabiakman V Industrial Alliance Life Insurance Co. [2004] 3 S.C.R. 195, 2004 SCC 55*** where it held as follows: *“sufficient link between the reproached act and the type of employment; the nature of the accusations; the existence of reasonable grounds to believe that maintaining, even temporarily, the employment relationship would be prejudicial to the employer or to his reputation; the existence of immediate, important inconveniences that cannot be practically countered by alternate measures (for example: assigning the employee to another post); and, the necessity of protecting the public.”*

177 It is the Respondents' submission that had they not suspended the salaries and benefits of the Petitioners upon confirmation that they forged their academic certificates, that would perpetuate an illegality and misuse of public funds.

178 The Respondents submitted that given the serious nature of the offence of forgery, the Petitioners responses to the show cause letters did not exculpate them from the charges for forgery that were leveled against them. The Courts have held that in circumstances of fraud, an employer must not conduct a disciplinary hearing and that where an employee is accorded an opportunity to respond to allegations that is sufficient. Reliance was placed in ***Judicial Service Commission v Gilbert Mwangi Njuguna & another [2019] eKLR*** "[Kenya Revenue Authority v Menginya Salim Murgani \[2010\] eKLR](#), this Court expressed that fairness of a hearing is not determined solely by its oral nature. It may be conducted through an exchange of letters. Comparatively, in the Canadian case of *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, it was held that "the lack of an oral hearing or notice of such a hearing did not constitute a violation of the requirement of procedural fairness. The opportunity to produce full and complete written documentation was sufficient. It cannot be said that an oral hearing is always necessary to ensure a fair hearing and consideration of the issues involved. The flexible nature of the duty of fairness recognizes that meaningful participation can occur in different ways in

different situations.” In Xwave Solutions Inc. v Can. (2003), 310 N.R. 164 (FCA), the Canadian court held that: “fairness does not necessarily require a Tribunal to hold an oral hearing on the issue and its failure to do so did not deny an individual a reasonable opportunity to establish the validity of its complaint.”

179 It is the Respondents submission that charges of forgery are of a serious nature and once an employee is furnished with information that their academic certificate is a forgery, the said employee ought to disprove the forgery with concrete evidence that the academic certificate is not a forgery in line with the high threshold for forgery cases. The Petitioners’ responses to the show cause letter were hollow and did not offer any explanation regarding the forged documents yet that was the crux of the matter. They were afforded a hearing which they squandered by failing to squarely deal with the question of forgery of certificates.

180 The Respondents submitted that the failure by the Petitioners to satisfactorily respond to the forgery allegations, led to their suspension in line with Regulation 15.5.2(d) and (f) of the Public Service Commission Human Resource Policies and Procedures Manual pending final determination of the disciplinary process. The suspension was necessary in order to allow for the matter to be conclusively determined through the 1st Respondent’s advisory channels and to safeguard the institution’s integrity and public trust.

- 181 It is the Respondents submission that they did not infringe on the Petitioners' right to fair administrative action. The Petitioners were duly informed of the verification reports in respect to their academic certificates, accorded an opportunity to rebut the allegations with conclusive proof but failed to do. Therefore, the Respondents were well within their right to proceed to suspend the Petitioners having failed to satisfactorily respond to the allegations of forgery.
- 182 On whether the Petitioners' dismissal was fair and lawful, the Respondents submitted that Section 44 of the Employment Act provides for circumstances under which an employer may summarily dismiss an employee. Under Section 44(4)(g) an employee may be summarily dismissed where the employee commits or is reasonably suspected of committing a criminal offence against the employer or the employer's property.
- 183 The Respondents further submitted that Regulation 15.3.1 of the Public Service Commission Human Resource Policies and Procedures Manual categorizes offences such as fraud and forgery as acts of gross misconduct warranting disciplinary action including dismissal.
- 184 It was submitted that following the authentication exercise of all academic and professional certificates of its employees, the 1st Respondent has reasonable and justifiable grounds to believe that the Petitioners had

forged some of their academic certificates. Forgery amounts to gross misconduct under the Employment Act and PSC Human Resource Policies and Procedures Manual.

185 The Respondents submitted that they have demonstrated that the Petitioners were duly accorded a fair hearing through the issuance of the respective notice to show cause letters. In the said show cause letters, the Petitioners were given sufficient time to respond to the forgery allegations, in line with the provisions of section 41(2) of the Employment Act.

186 The Respondents submitted that had valid reasons to believe that the Petitioners' certificates were forged having undertaken a verification exercise. The Respondents then proceeded to accord an opportunity to the Petitioners to respond to the charges of forgery. Being a case of forgery, the Courts have affirmed that the employer need not initiate oral hearings and that it is sufficient for an employer to accord an employee an opportunity to be heard through show cause letters.

187 It was submitted that the Petitioners failed to respond satisfactorily and therefore the matter was escalated to the Respondent's advisory channels, which during the 329th meeting of the Commission resolved to dismiss the Petitioners.

188 The Respondents submitted that the dismissal was both substantially and procedurally fair and lawful. They relied

on ***Judicial Service Commission v Gladys Boss Shollei & Another [2014] eKLR*** and the South African decision in ***Hoch v Mustek Electronics (Pty) Ltd (J 499/98) [1999] ZALC 151***.

- 189 On the final issue, the Respondents submitted that the Petitioners had failed to demonstrate how their rights under Articles 41, 48 and 50 of the Constitution were violated. On the contrary, the Petitioners approached this Court with unclean hands having used forged academic certificates to secure employment and promotions.
- 190 The Respondents submitted that it is a general principle in law that relief is unavailable where the Petitioners have approached court with unclean hands. It is also a settled principle that fraud negates the validity of a contract. When an employee relies on forged documents to secure a position they were otherwise ineligible for, they cannot claim protection under employment laws.
- 191 The Respondents submitted that courts have also consistently held that they will not aid or sanction illegality, including situations where a litigant relies on forged or unlawful documents to seek relief such as conservatory orders, reinstatement, or payment of salary. They cited ***Standard Chartered Bank Kenya Ltd v Intercom Services Ltd & 4 others [2004] KECA 163 (KLR)*** “No court ought to enforce illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or

transaction which is illegal, if illegality is duly brought to the notice of the court, and if the person invoking the aid of the Court is himself implicated in the illegality.”

192 It was submitted that the uttering of false documents with the intention of defrauding an employer constitutes gross misconduct and fraudulent misrepresentation warranting dismissal, and also amounts to a criminal offence under section 353 of the Penal Code.

193 The Respondents submitted that the Petitioners have approached this Court with unclean hands having forged their academic certificates to secure employment and promotion. They were duly accorded an opportunity to rebut the allegations of forgery but failed to do so. The Petitioners cannot therefore hide their illegality under the guise of breach of constitutional rights.

194 I have considered all the evidence and submissions of the parties herein. Three issues for consideration are :

(1) Whether dismissal was fair and justified.

(2) Whether petitioner’s rights under the constitution were infringed upon.

(3) What remedies to grant in the circumstances.

ISSUE NO 1

195 From the evidence submitted by the respondents, they found the academic documents submitted by the petitioners to be forgeries and proceeded to summarily dismiss them. What however is apparent is that the

respondents after establishing that the academic documents were forged, they failed to subject the petitioners to any disciplinary hearing through which the petitioners would have had an opportunity to explain their case.

196 The respondents have averred that they have a right to dismiss an employee summarily as provided for under section 44 of the Employment Act 2007 and clause 15.3.1 of the Public Service Commission HR policies and procedures manual. They aver that the petitioners were accorded a fair hearing through issuance of a notice to show cause.

197 It is however true that the envisaged disciplinary process is one found at section 41 of the Employment Act 2007 which states as follows:

41. (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”

198 The respondents relied on reports from various academic institutions i.e University of Nairobi and Kenya National Examinations Council but officers from these institutions were never called as witnesses for the petitioner to get a

chance to cross examine them. It is therefore evident that the petitioners were condemned unheard. They were not given an opportunity to cross examine the authors of the documents used against them. This was the courts finding in **Postal Corporation of Kenya vs Andrew K Tanui (2019) eKLR** (supra) where the court held that withholding the report for verification responses vitiates procedural fairness.

199 In **JSC vs Gladys Boss Shollei & Another** the Supreme Court of Kenya affirmed the need to have disciplinary proceedings carried out in compliance with the law.

200 Having considered the evidence and submissions, I accordingly return the verdict that the summary dismissal of the petitioners were unfairly and unjustly carried out as per section 45(2) of the Employment Act 2007 which 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**

ISSUE NO 2

201 I have indicated that the respondents dismissed the petitioners without any fair hearing. This was in direct infringement of article 41 and 47 of the Constitution Kenya which provide for fair labour practices and fair disciplinary hearing. It is my finding that the rights of the petitioners under the Constitution were therefore compromised accordingly.

ISSUE NO 3

202 Having found as above I find for the petitioners and return the following verdict.

- (1) The summary dismissal of the petitioners was unfairly and unjustly done.
- (2) Each petitioner is entitled to damages for breach of their constitutional rights equivalent to Kshs 2 million.
- (3) Each petitioner will be paid their full salary from time of suspension to dismissal accordingly.
- (4) The petitioners are entitled to payment of their accrued leave days at the time of dismissal.
- (5) 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 11th Day of March, 2026.

HELLEN WASILWA
JUDGE