

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC PETITION NO. E071 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

ANGELA NJERI CHEGE.....
.....PETITIONER

VS

KENYA RAILWAYS CORPORATION.
.....RESPONDENT

JUDGMENT

- 1 By a Petition dated 22nd April 2025, the Petitioner sought for the following prayers: -
1. *A Declaration that the Petitioner’s Fundamental Rights and Freedoms have been violated.*
 2. *An Order of Certiorari do issue to remove into the Honourable Court for purpose of being quashed the entire decision of the Respondent summarily dismissing the Petitioner from employment.*
 3. *An order reinstating the Petitioner to her employment as the General manager - Legal Services & Corporation Secretary without loss of any benefits from the time the impugned termination letter was issued.*
 4. *An order restoring the status quo ante in the event of the Respondent’s action adversely affecting the*

Petitioner's employment as General manager - Legal Services & Corporation Secretary.

5. Compensation to the Petitioner for the violation of her fundamental rights and freedoms.

6. Costs of this Petition.

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

- 2 The Petitioner further filed a Further Affidavit dated 13th May 2025 in response to the Respondent's replying affidavit dated 19th November 2025.

Petitioner's Case

- 3 The Petitioner avers that she was employed by the Respondent as the General Manager - Legal Services & Corporation Secretary on a five-year contract commencing on 1st October 2024 pursuant to a Letter of Appointment dated 27th August 2024.
- 4 She avers that although she was never issued with a formal job description as required under Clause 8.6.2 of the Respondent's Human Resource Policy and Procedure Manual 2023 (HR Manual), her responsibilities were outlined in her Letter of Appointment and included coordinating the Respondent's Board matters and overseeing the legal affairs of the Corporation.

- 5 She states that she was answerable to both the Managing Director and the Board of Directors and that her contract contemplated quarterly review and appraisal of key performance targets. However, no such appraisal was ever undertaken.

- 6 The Petitioner states that in addition to the rights guaranteed under the Constitution, the Employment Act and the Fair Administrative Action Act, she was entitled to the disciplinary procedures set out in Section 11 of the HR Manual which provide for objective and fair disciplinary processes grounded on the principles of natural justice, including prior notice of charges, access to evidence, an opportunity to be heard, the right to call witnesses and cross-examine adverse witnesses, and the right of appeal or review.

- 7 The Petitioner avers that the HR Manual establishes a specific procedure for disciplining employees in her grade (Grade RG 2), requiring allegations of misconduct to be reported to the Head of Human Resource Management and the Board, after which the Finance, Human Resource & Administration Committee is required to hear the charges, summon witnesses, consider documentary evidence, allow the affected employee to present a defence, determine whether the charges are proved and thereafter make recommendations to the Board for determination, with the Managing Director communicating the decision to the employee. According to the Petitioner,

none of these mandatory procedural safeguards were followed in her case.

- 8 It is the Petitioner's case that the events giving rise to the dispute occurred on 15th April 2025 when she was coordinating activities during a regular Board meeting of the Respondent, having issued the notice of the meeting and prepared the agenda in her capacity as Corporation Secretary.
- 9 After the meeting, she remained in the office beyond working hours to finalize various tasks, but as she was preparing to leave she was approached by the Security Manager together with the General Manager - Corporate Affairs who handed to her a letter terminating her employment on grounds of alleged poor performance, gross misconduct and insubordination. She was then under menaces ordered to handover her employment items, the laptop computer, the access keys and was then escorted out of the premises in a most embarrassing manner.
- 10 The Petitioner maintains that prior to the termination she had never been issued with any notice of accusations, charges or evidence against her and had never been invited to any disciplinary hearing.
- 11 She further avers that there was no Finance, Human Resource & Administration Committee proceedings held as

required by the HR Manual prior to her purported dismissal or any recommendations from the said committee to the Board for deliberations on her alleged misconduct.

- 12 The Petitioner therefore contends that her dismissal was unlawful and contrary to Articles 41 and 47 of the Constitution, Sections 41 and 44 of the Employment Act, Section 4 of the Fair Administrative Action Act and Clause 11.7 of the HR Manual which collectively require prior notice of allegations and an opportunity to be heard before adverse employment action is taken.
- 13 She avers that the Respondent proceeded to consider and determine allegations against her in her absence and without her knowledge, thereby condemning her unheard and violating the rules of natural justice.
- 14 The Petitioner contends that her purported removal from office was irregular as the agenda relating to her removal was allegedly introduced as a substantive motion in the Board meeting despite not having been circulated seven days prior as required.
- 15 It is the Petitioner's case that the provisions of the H.R. Manual require that disciplinary proceedings leading to termination of employment are to be undertaken by Finance, Human Resource & Administration Committee which then makes recommendations that are conveyed to the Board for determination.

- 16 The Petitioner avers that charge and notice of the alleged complaint against an employee under the HR Manual can only be drawn by the Managing Director and any decision of the Board communicated by the Managing Director, yet the termination letter was delivered by the Security Manager and General manager - Corporate Affairs. According to the Petitioner, the Respondent unlawfully initiated, conducted and concluded disciplinary proceedings outside the established legal and policy framework, rendering the entire process illegal and null.
- 17 The Petitioner further disputes the substantive allegations relied upon by the Respondent, including underperformance, insubordination, inefficiency, negligence and inappropriate conduct, which she describes as false, malicious, generalized and devoid of particulars.
- 18 She states that these allegations were never communicated to her during her employment and that she encountered them for the first time in the Respondent's pleadings before the Court. She diligently discharged her duties and, as an Advocate of twenty years' standing, devoted significant time and effort to her work, often reporting to the office early and leaving late to ensure effective performance.

- 19 On the allegation of poor performance, the Petitioner states that performance appraisal under the HR Policy is a structured process conducted jointly between a supervisor and an employee and that the applicable appraisal period runs from 1st July to 30th June. She therefore contends that her termination before the end of the appraisal period and without any appraisal having been conducted demonstrates that the allegations of poor performance were arbitrary and unfounded. She further states that although she inquired about the appraisal framework during her induction, she was never provided with the relevant tools or guidance.
- 20 With regard to the Financial Sustainability Retreat held in January 2025, the Petitioner avers that she was informed that the Managing Director would discuss strategies with departmental heads, but despite attempting to secure meetings with him she was unable to do so due to his unavailability. She nonetheless developed strategies for the Legal Department in consultation with her team and submitted them to the Managing Director though she received no feedback.
- 21 The Petitioner also denies allegations of insubordination, stating that she maintained a professional and respectful working relationship with the Managing Director and that no particulars of the alleged insubordination have been provided. She points out that insubordination under the

HR Manual constitutes gross misconduct, therefore, any such allegation ought to have been formally communicated and subjected to a disciplinary hearing, which never occurred.

- 22 The Petitioner further disputes the allegations of inefficiency and negligence, stating that upon assuming office she initiated reforms aimed at improving the performance of the Legal Department by clearing backlog matters, streamlining internal systems and improving coordination with external advocates following a brief from the Managing Director that the department had previously been ineffective. She also explains that certain matters cited by the Respondent occurred during a period when she was attending the funeral of her sister, a fact that was well known to the Managing Director.
- 23 The Petitioner additionally refutes allegations that she failed to facilitate travel for court witnesses or mishandled litigation matters, explaining that when she assumed office the department's travel budget had already been depleted and that she worked with other departments to secure funding for witnesses while also introducing weekly summaries of upcoming court matters to enhance case management and ensure proper preparation.
- 24 She also denies allegations that she failed to communicate Board resolutions or interfered with procurement

processes. According to the Petitioner, draft Board resolutions issued before confirmation of minutes required approval by the Board Chairman and the Managing Director and she consistently circulated such drafts for approval.

- 25 She further states that the checklist she developed for procurement reviews was merely an administrative tool intended to ensure compliance with the Public Procurement and Asset Disposal Act and did not introduce new rules.
- 26 Similarly, she denies allegations that she removed the Managing Director from Board notices or unilaterally scheduled meetings, explaining that her role as Corporation Secretary was limited to issuing notices “By Order of the Board” following consultation between the Chairman and the Managing Director and that the January 2025 Board meetings were scheduled in accordance with the Board Almanac for the financial year 2024-2025.
- 27 The Petitioner also rejects allegations that she harassed staff or external advocates, stating that such claims are serious yet unsupported by particulars and were never raised with her prior to her termination. She contends that the evidence relied upon by the Respondent in fact demonstrates that she maintained professionalism in her interactions.

- 28 The Petitioner further challenges the competence of the Respondent's Replying Affidavit, stating that it was sworn by an officer who was her colleague of the same rank and not her supervisor and who had no personal knowledge of the matters alleged against her. The said officer only delivered the termination letter to her on the evening of 15th April 2025 after allegedly being instructed by the Managing Director to return to the office and hand over the letter, therefore, his evidence is hearsay.
- 29 She further avers that the Respondent deliberately avoided presenting the Managing Director or the Chairman of the Board as witnesses in order to shield them from cross-examination and accountability regarding the circumstances leading to her dismissal.
- 30 The Petitioner maintains that the allegations of misconduct against her were fabricated and motivated by malice, particularly arising from reforms she introduced to address governance and legal management challenges within the Respondent. She reiterates that her termination was effected without valid grounds and without adherence to due process, thereby unjustifiably damaging her professional reputation.
- 31 The Petitioner avers that her removal from office has caused her significant loss. She lost income from her employment and now faces financial obligations including loan repayments.

- 32 She states that prior to joining the Respondent she had resigned from the position of Corporation Secretary at the Public Sector Accounting Standards Board and had declined another employment opportunity at the Micro and Small Enterprises Authority, therefore, the termination has caused a serious blemish on her previously unblemished career and diminished her prospects of securing future employment.
- 33 It is the Petitioner's case that the remedies sought including reinstatement, are appropriate particularly because the Respondent is a public entity and the position she held was a public office.
- 34 She argues that failure by the Court to intervene would effectively condone unlawful conduct by public officers who disregard due process in employment decisions.
- 35 The Petitioner maintains that the Petition properly pleads constitutional violations in accordance with the principles set out in the *Anarita Karimi Njeru* decision and urges the Court to find that the Respondent's actions were unlawful and unconstitutional and to grant the reliefs sought.

Respondent's Case

- 36 In opposition to the Petition, the Respondent filed a replying affidavit dated 19th November 2025 sworn by its

General Manager, Corporate Services, Tialal Leparan Christopher.

- 37 The Respondent avers that the Petitioner was duly appointed as the General Manager – Legal Services & Corporation Secretary by the Respondent’s Board of Directors on a five-year contract commencing on 1st October 2024 pursuant to a Letter of Appointment dated 27th August 2024.
- 38 It is the Respondent’s position that the Petitioner’s employment was lawfully and validly terminated on 15th April 2025 on the basis of well-established grounds which were clearly set out in the termination letter.
- 39 The Respondent avers that the Petitioner persistently underperformed and failed to meet the performance targets set by the Respondent despite being accorded sufficient time and support to improve; she was repeatedly insubordinate to her supervisors and failed to comply with lawful instructions issued in the ordinary course of duty; she demonstrated inefficiency in the execution of her work resulting in delays, lack of responsiveness and poor coordination within the Legal Department; she was negligent in the performance of her duties and failed to discharge her responsibilities with the diligence and professionalism expected of her office; and she engaged in inappropriate conduct which impaired the functioning of the Legal Department and disrupted the

Respondent's relationship with external clients and advocates.

- 40 From this conduct, the Respondent's Board of Directors resolved to terminate the Petitioner's employment with immediate effect and the decision was duly communicated to her through a letter dated 15th April 2025.
- 41 The Respondent avers that the termination of the Petitioner's employment followed a series of documented incidents demonstrating a consistent pattern of underperformance, negligence, insubordination and inappropriate conduct which adversely affected the Respondent's internal operations and its relations with stakeholders.
- 42 It is the Respondent's case that under Clause 4 of the Petitioner's contract of employment her performance was subject to key performance indicators to be reviewed quarterly by the Managing Director.
- 43 Following a Financial Sustainability Retreat held in Malindi on 22nd and 23rd January 2025, the Managing Director developed cost-cutting and performance targets for all General Managers, including the Petitioner, aimed at enhancing the Respondent's financial sustainability and profitability. According to the Respondent, the targets were communicated to all General Managers who were required to submit strategies for their implementation by 31st

January 2025. However, the Petitioner failed to address critical issues relating to the Legal Department necessary for implementation of the Respondent's strategic plan, though, other departmental heads complied.

44 The Respondent further avers that the Petitioner consistently failed to submit performance targets and reports as required by her supervisor and did not meet the agreed performance benchmarks stipulated under her contract.

45 The Respondent contends that the Petitioner's conduct negatively affected the Respondent's governance and operational efficiency. The Petitioner repeatedly delayed or failed to communicate Board resolutions for implementation, thereby hindering the execution of Board directives. Additionally, she ignored professional advice from competent officers within the Corporation and introduced a checklist imposing new rules in procurement review processes contrary to the approved departmental ISO procedures.

46 According to the Respondent, the Petitioner improperly assumed roles reserved for other officers including those of the evaluation committee, accounting officer and head of procurement, and persistently questioned restricted tendering processes which are permissible under the Public Procurement and Disposal Act 2015 and the Respondent's approved procurement plan.

- 47 The Respondent avers that these actions caused delays in handing over project sites to contractors and attracted complaints from other departments.
- 48 The Respondent also contends that the Petitioner displayed ignorance of the laws governing the affairs of the Corporation and failed to familiarize herself adequately with the relevant legal framework.
- 49 The Respondent avers that the Petitioner was negligent in the preparation and submission of legal documentation which resulted in adverse consequences for the Respondent in litigation matters. In several instances, tribunals issued adverse rulings against the Respondent due to the Petitioner's failure to provide external advocates with complete instructions and supporting documents within the timelines set by the courts.
- 50 The Respondent also states that the Petitioner failed to process and facilitate travel clearance for key witnesses required to attend court proceedings, leading to adjournments, wasted legal costs and reputational damage to the Respondent.
- 51 Additionally, the Respondent asserts that the Petitioner engaged in acts of insubordination in violation of Section 11.11(iv) of the Respondent's Human Resource Policy and Procedures Manual, including removing her supervisor

from Board notices and failing to consult the supervisor in scheduling meetings, which resulted in the postponement of a Board Committee meeting on 16th January 2025 due to lack of quorum.

52 The Respondent further alleges that the Petitioner harassed staff within the Legal Department and other departments as well as external advocates, thereby straining working relationships.

53 According to the Respondent, the cumulative effect of these actions severely impaired the functionality of the Legal Department and compromised service delivery.

54 The Respondent maintains that the Board of Directors, in a duly convened meeting, resolved to summarily terminate the Petitioner's employment with immediate effect in accordance with the terms of her contract and the applicable legal and policy framework, and that the decision was justified and based on valid grounds.

55 The Respondent contends that the reliefs sought by the Petitioner, particularly the order of certiorari to quash the termination and the order of reinstatement, are inappropriate in the circumstances.

56 It is the Respondent's position that reinstatement would be untenable as the Petitioner's departure occurred under acrimonious circumstances arising from her conduct

towards Board members and staff, which eroded the trust and confidence necessary for the continuation of an employment relationship.

- 57 The Respondent states that the principle against specific performance in employment contracts is grounded on the inherently personal nature of such relationships and that once confidence between the parties is destroyed the relationship cannot reasonably continue.
- 58 The Respondent further avers that reinstating the Petitioner, particularly in a senior leadership role such as General Manager - Legal Services & Corporation Secretary, would disrupt managerial authority, undermine operational integrity and destabilize the ongoing functions of the Corporation.
- 59 The Respondent contends that the position previously held by the Petitioner is central to the Corporation's governance, risk management and legal strategy and that her return would expose the Corporation to significant risks including access to confidential information, interference with ongoing legal matters and disruption of internal workflows, particularly given that insubordination was one of the grounds for her termination.
- 60 The Respondent asserts that the Petitioner has failed to specify with precision any constitutional rights that were allegedly violated and has not established any

constitutional breach warranting the intervention of the Court.

61 It is therefore the Respondent's case that the allegations raised in the Petition are vague, speculative and unsupported by evidence and that the Petition is frivolous, misconceived and intended to tarnish the Respondent's reputation. Consequently, the Respondent urges the Court to find that the Petition lacks merit and to dismiss it with costs.

Petitioner's Submissions

62 The Petitioner submitted on two issues: whether the termination of the Petitioner's contract of employment was justified and whether was carried out lawfully and in accordance with the Law and the Respondent's own Human Resource manual; and whether the Petitioner is entitled to orders sought and to what extent.

63 On the first issue, the Petitioner submitted that she was denied both notice and a fair hearing prior to her purported removal in breach of Articles 41, 47 & Article 50(1) of the Constitution and the Respondent's own Human Resource Manual.

64 The Petitioner submitted that the evidence on record demonstrates that she was served by the Respondent's witness in the night at 8.30 pm. Additionally, he confirmed that was no handover whatsoever, the Petitioner was

forcefully made to surrender the office keys and laptops in an inhumane and degrading manner and was not even given an opportunity to gather her personal belongings to date.

65 It was submitted that the Respondent's witness, Mr. Tialal confirmed that he was not privy to this matter despite being the General Manager, in charge of Human Resources and only learnt of the matter when he was recalled by the Respondent's MD in the night to give the letter to the Petitioner.

66 The Petitioner submitted that in compliance with Section 12 of the Employment Act, the Respondent had in place the Human Resources Policy and Procedure Manual 2023. The Petitioner argues that the Policy is not for aesthetic purposes and should be applied at all times a disciplinary issue is being handled. It is a roadmap for both the employer and the employees giving both an advance notice of the procedures to be adopted. As such, it cannot be selectively applied at the whims of the employer or any official thereof as that would amount to discrimination.

67 It is the Petitioner's submission that where there is an internal manual on disciplinary mechanisms, then that manual has to be followed. She cited several case law including the Court of Appeal decision in ***Bramuel Dibondo Musundi v Kenya Revenue Authority [2018] eKLR*** where it found that an employer who violates its

own Code while dismissing an employee makes such termination not only unlawful but also unfair.

68 The Petitioner submitted that HR Manual provides for the procedure leading to the dismissal of an employee under Grade RG 2 and above like herself, required the reporting of the employee to the Head of Human Resource Management (HRM) as well as the Board whose committee on Finance, Human Resource & Administration would hear charges brought against any employee; summon and hear any witnesses or consider any documents produced as evidence; allow the employee charged to attend before it, to give her defence and determine whether or not each charge has been proved; recommend any penalties; and hear and consider pleas in mitigation. The Board then considers recommendations of the Finance, Human Resource & Administration Committee and makes a decisions out of which it can also hear and determine appeals.

69 The Petitioner submitted that the Respondent failed to follow the HR Manual, as admitted by DW1. After completing Board-related duties on 15th April 2025 and working beyond office hours to prepare required documents, the Petitioner was ambushed by DW1 with a summary dismissal letter, had her belongings confiscated, and was escorted out by security in a humiliating manner, demonstrating a clear breach of internal procedure and procedural fairness.

- 70 It is the Petitioner's submission that there being an internally laid down internal procedure which was deliberately disregarded, the Respondent's failure to comply with it renders the action illegal and unfair.
- 71 The Petitioner submitted that the Respondent failed to observe the rules of natural justice as it did not supply her with the complaints against her or even the accompanying documents. She heard the said allegations against her for the first time in these court proceedings. Reliance was placed in ***Wilfred Mbithi Jason v National Police Service Commission & another [2016] eKLR*** wherein the Court discussing the import of Article 47 of the Constitution in Paragraph 44 held that: *"It would be fair to state that procedural propriety on the part of decision makers is now a substantive and mandatory constitutional requirement. It is substantive in the sense of having been embedded in the Constitution. It must not be a case of mere psychological satisfaction being extended to persons to be affected by any decision. It is substantive as well in the sense that even where there is no requirement that one be afforded the benefit of natural justice, the decision maker is still expected to act expeditiously, fairly, lawfully, efficiently and reasonably in all circumstances."*
- 72 The Petitioner submitted that it is sound law that a person accused of any impropriety should know the nature of the accusation made, he should be given an opportunity to

state his case and the subject tribunal should act in good faith.

- 73 The Petitioner submitted that in addition to failing to issue a Notice, the Respondent also failed to accord the Petitioner her right to a fair hearing under doctrine of *Audi alteram Partem* .She cited **County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR**

“Due process is a fundamental aspect of the rule of law. Due process is the right to a fair hearing. The right to a fair hearing encapsulated in the audi alteram partem rule (no person should be condemned unheard) and founded on the well-established principles of natural justice, is not a privilege to be graciously accorded by courts or any quasi-judicial body to parties before them. As is clear from Articles 47 and 50 of our Constitution, it is a constitutional imperative.”

- 74 It is the Petitioner’s submission that the Respondent in its documents and testimony has admitted that none was given only. Its action was therefore an affront to the provisions of Article 41 & 47 of the Constitution as read with Sections 41 & 44 of the Employment Act and Clause 11 of the HR Manual and the Fair Administrative Action Act.

- 75 On substantive reasons, the Petitioner submitted that she never faced with the accusations against her during the time that she was serving and only saw the generalized allegation of non- performance in the termination letter which was the only reason cited for the termination. She argues that the termination letter only made references to the alleged incidences of insubordination, inefficiency, negligence in duty and inappropriate behavior; and she saw the alleged particulars for the first time in the responses filed herein.
- 76 The Petitioner submitted that the allegations against her, including failure to achieve targets, communicate Board resolutions, follow procurement guidance, or prepare court witnesses, were false and malicious. She argues that she provided detailed rebuttals in her further affidavit, demonstrating adherence to the Respondent's HR Manual and policies, and showed that the alleged failures were either unfounded or due to circumstances beyond her control, such as compassionate leave during her sister's funeral, with duties reassigned by DW1.
- 77 On performance appraisal, the Petitioner submitted that under clause 8.4 of the HR Policy, appraisals are joint processes conducted by the supervisor and employee over a formal period. She was terminated before the year ended, before any appraisal could occur, and the quarterly appraisals and appraisal tools had not been provided. She

submitted financial sustainability strategies while awaiting completion of appraisal tools.

- 78 Regarding Board resolutions, she submitted that she shared drafts promptly, and in procurement, the checklist she developed was administrative and based on the Public Procurement & Asset Disposal Act (PPADA), introducing no new rules.
- 79 On the alleged negligence leading to adverse orders from the National Environment Tribunal, she submitted that this was disproven, as she was on leave, and others handled her docket.
- 80 On failing to facilitate travel for key witnesses to attend Court proceedings, she submitted that this was false and malicious as in all instances. The Petitioner argued that she ensured that the respective Departmental heads were informed to release the witnesses to attend Court and when since the legal department's travel budget had been depleted, the least she could do was to seek budgetary support from the sponsoring departments which was done in all instances. She also took other measures to ensure that cases proceed.
- 81 She further submitted that despite receiving an abusive e-mail from an external counsel on the matter, she retained professional demeanor in her response.

- 82 The Petitioner submitted that the Court of Appeal in ***National Bank of Kenya v Samuel Nguru Mutonya [2019] eKLR*** adopted the ELRC case, ***Jane Samba Mukala v Ol Tukai Lodge Limited [2013] eKLR*** and upheld a decision that had found that an appraisal ought to have been conducted on the employees work performance to confirm improvement or lack thereof before termination of employment and that in the absence of such proof, termination of employment was considered unfair.
- 83 The Petitioner submitted that under Section 47 of the Employment Act, the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer. The Respondent did not succeed in demonstrating the wrong committed by the Claimant, instead, it only claimed that the performance was poor without giving any specifications.
- 84 It is the Petitioner's submissions that her stand on irregular restricted tenders and extension of tenures for senior officers may have caused her to be targeted for removal.
- 85 The Petitioner submitted that the *Anarita Karimi Njeru* rule is to the effect that where a person approaches a Court on a matter which involves a reference to the Constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the

provisions said to be infringed and the manner in which they are said to be infringed.

- 86 It is the Petitioner's submission that there is clarity in the Petition on every violation that is said to have been violated and the Petition has specifically mentioned the Articles violated.
- 87 On the reliefs sought, the Petitioner submitted that for the last 20 years, the Petitioner has not had any other formal employment. She relied on her salary for her upkeep and for payment of the loans she has taken with financial service providers. She was irregularly removed from service and suffered an abrupt loss of income. The chances of defaulting on financial obligations a result is real and this may have a domino effect on other matters.
- 88 She further submitted that no prejudice shall be suffered by the Respondent if the Petitioner is reinstated to the payroll and back salaries from the date of the purported summary dismissal paid.
- 89 It is the Petitioner's submission that public interest is in favour of the issuance of the orders sought. The people's voice in the preamble of the Constitution, Article 10 on National Values & principles of governance & Article 20 dictate that the state and its organs must observe natural justice and good governance. When there is a violation,

the public interest is that an appropriate remedy be given to the victim.

- 90 The Petitioner submitted that the Respondent created a disharmonious exit of the Petitioner. She is a senior officer in the Corporation yet her purported termination letter was handed over to her by an official who was not her superior and then taken away by the same official in a corridor and at night. The Respondent is being insincere when it creates an embarrassing situation and then wants to benefit from its own misconduct. The maxim *Ex Turpi Causa Non Oritur Actio* (no one can be benefited from its own wrong) comes into play.
- 91 The Petitioner further submitted that the Respondent is not a private entity that is ran at the whims of its private owner. DW1 could not hence allege that the Petitioner's return would sabotage managerial authority. The Petitioner has not been found guilty of such sabotage after an impartial hearing preceded by notice.
- 92 It is the Petitioner's submission that under Section 12(3) (a)(vii) of the Employment and Labour Relations Court Act, the court has the power to issue an order for the reinstatement of any employee within three years of their dismissal. Under Section 49(4) of the Employment Act, the court must consider such factors such as the wishes of the employee, practicability, the circumstances of termination especially the extent to which the employee caused or

contributed to the dismissal. Reliance was placed on ***Parliamentary Service Commission v Christine Mwambua [2018] KECA 810 (KLR)*** the court asserted that reinstatement is an appropriate remedy where the termination was most illogical, unlawful and unfair and where the reinstatement is tenable. The Court of Appeal was not persuaded that the allegation of the employee having bad blood with her trainer or immediate supervisor would be a reason enough to decline a reinstatement.

93 The Petitioner submitted that she is a single mother who didn't have any other source of income other than this employment. She hasn't received any payment since being removed from office. She has personal financial obligations including loans that were pegged on this employment. The abrupt removal without due process is the worst violation that can be done to the rights under Article 41 and 47 of the Constitution which would make the order of reinstatement and compensation justified.

94 In the alternative, the Petitioner submitted that if reinstatement is not granted, she should be compensated for the remainder of the unexpired term of her five-year contract. She had a reasonable expectation that she would serve the full term, thus, she was deprived of the income that she would have made for that period. She relied on ***Wrigley Company (E.A) Limited v Bakery Confectionery Food Manufacturing & Allied Workers***

Union (Kenya) [2017] eKLR* and *Kimathi Mithika v Coastal Bottlers Limited [2016] eKLR.

95 The Petitioner therefore submitted that she is entitled to Kshs. 35,916,800, representing salary, allowances, leave allowance and gratuity for the remainder of the contract, in addition to Kshs. 5,000,000 as damages for violation of constitutional rights, and urged the Court to allow the Petition with costs.

Respondent's Submissions

96 The Respondent submitted on four issues: Whether this Honourable Court is properly seized of the matter as a Constitutional Petition, and whether the Petition discloses any specific and particularized violation of constitutional rights sufficient to invoke the Court's constitutional jurisdiction and warrant the grant of public law remedies; whether the termination of the Petitioner's employment was substantively justified in law and in fact; whether the termination of the Petitioner's employment was procedurally unfair; and whether the reliefs sought in the Petition are available and appropriate in the circumstances of this case.

97 On the first issue, it was submitted that the Petition as framed does not disclose any proper constitutional violation. It was argued that the dispute in substance concerns an ordinary claim of unfair termination governed by the Employment Act, 2007 and the Respondent's

Human Resource Manual, but has been improperly “constitutionalised” by merely citing Articles 41, 47 and 50 of the Constitution without meeting the threshold required for constitutional litigation.

98 The Respondent submitted that it is settled law that a constitutional petitioner must plead with reasonable precision the constitutional provisions alleged to have been violated, the manner in which they were violated and the nexus between the impugned conduct and the alleged violation as established in **Anarita Karimi Njeru v Republic [1979] KEHC 30 (KLR)** and reaffirmed in **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR**.

99 The Respondent submitted that the grievances raised by the Petitioner relate to performance evaluation, managerial oversight, operational disagreements, disciplinary processes and termination of employment, all of which fall squarely within the domain of employment law governed by the Employment Act and the contract of service. The matters do not, without more, transform into constitutional questions.

100 It is the Respondent’s submission that such claims must be pursued within the ordinary statutory framework and not by way of a constitutional petition merely because constitutional provisions are cited. Reliance was placed on

Muli v Kenya Water Institute & 2 others
[2023] KEELRC 942 (KLR)

“I do not understand the pleadings by the Petitioner as suggesting that the current statutory framework on employment and labour in Kenya is incapable of sufficiently redressing his grievance in relation to the impugned dismissal. As such, this matter ought to have been filed as an ordinary Claim as opposed to a Constitutional Petition.”

101 The Respondent submitted that claims relating to termination, performance management, and procedural fairness, such as those in the present Petition, do not, without more, constitute justiciable constitutional controversies. The Petition merely invokes constitutional provisions without satisfying the pleading and proof threshold required to sustain a constitutional cause of action as held in ***PN v Intercity Secure Homes Limited & another [2025] KEELRC 601 (KLR)***.

102 The Respondent submitted that the instant petition fails the threshold for constitutional adjudication. The grievances pleaded concern performance evaluation, managerial oversight, operational disagreements, disciplinary processes, and eventual termination of employment. These are quintessential matters of private employment law, governed by the Employment Act, 2007 and the contract of service, and do not, without more,

transmute into constitutional questions or public law disputes.

103 On the second issue, the Respondent submitted that the Petitioner was appointed as General Manager, Legal Services & Corporation Secretary on a five-year contract effective 1st October 2024, subject to achievement of Key Performance Indicators (KPIs) to be appraised quarterly by the Managing Director as provided under Clause 4 of the Letter of Appointment. Her role was senior, strategic, and trust-based, central to governance, litigation, procurement support, and Board work, and therefore required a higher standard of diligence, professionalism, and loyalty.

104 The Respondent submitted that under Sections 43 and 45 of the Employment Act an employer is required to demonstrate valid and fair reasons related to the employee's conduct, capacity or compatibility to justify termination, while Section 44(4) recognizes gross misconduct, including insubordination, negligence and breach of duty, as grounds for summary dismissal. It cited ***Pius Machafu Isindu v Lavington Security Guards Limited [2014] eKLR*** wherein the Court of Appeal emphasized the statutory burden, holding that:

“The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47(5)).”

105 The Respondent submitted that the decision to terminate the Petitioner's employment was based on documented instances of poor performance, negligence, insubordination and misconduct including: Persistent failure to meet set performance targets and submit reports despite clear KPIs agreed after the Financial Sustainability Retreat at Malindi on 22nd - 23rd January 2025; Failure to submit required cost-cutting and performance strategies by the deadline of 31st January 2025, whereas all other General Managers complied, thereby undermining corporate financial strategy; Failure and delays in communicating Board resolutions for implementation, causing significant delays in executing Board directives and affecting operational efficiency; Unlawful interference with procurement processes by introducing a personal checklist and assuming roles of the evaluation committee, accounting officer, and head of procurement, contrary to the Public Procurement and Asset Disposal Act, 2015 and departmental ISO procedures, causing project delays and complaints from other departments; Evident lack of familiarity with applicable statutes governing the Respondent's operations, inconsistent with her position; Negligence in preparation and transmission of legal documentation, leading to adverse orders at the NET Tribunal due to failure to provide complete and timely instructions or supporting documents to external counsel; Failure to process travel clearances for witnesses, causing

adjournments, wasted legal costs, and reputational damage; Repeated insubordination contrary to Section 11.11(iv) of the HR Manual, including failure to comply with lawful instructions, removing her supervisor from Board notices, and failing to consult on meetings, resulting in postponement of a Board committee meeting for want of quorum; Harassment of staff and external advocates, evidenced by email correspondence (CT-4) and WhatsApp exchanges (CT-5), which impaired working relationships and departmental cohesion.

106 The Respondent submitted that these cumulative facts, which the Petitioner does not credibly rebut, amounted to valid and fair reasons justifying termination under Sections 43, 44 and 45 of the Employment Act. They show a consistent failure to meet expectations in a senior role, serious insubordination, and a breakdown of trust, factors which justify her dismissal.

107 It is the Respondent's submission that in ***Linnet Akasa Shikoli v Lilian Otundo [2014] eKLR*** the Court held that insubordination constitutes a valid and fair ground for dismissal where an employee fails to comply with reasonable and lawful instruction.

108 It was submitted that the Respondent has fully discharged its statutory burden under Sections 43 and 45 of the Employment Act by demonstrating valid, fair, and reasonable grounds justifying the Petitioner's summary

termination, which was therefore substantively justified both in law and on the facts.

109 On the third issue, the Respondent submitted that Section 41 of the Employment Act requires that before termination on grounds of misconduct or poor performance, the employer explains the reasons for termination and gives the employee an opportunity to respond, with representation where desired. This procedural safeguard operates alongside Sections 43 and 45, which impose a duty on the employer to show valid, fair, and justifiable reasons for termination.

110 However, the Respondent argued that the Petitioner's reliance on the Kenya Railways Corporation Human Resource Policy and Procedures Manual, 2023 was misplaced. It was submitted that while the Manual provides general procedural and contemplates the role of the Finance, Human Resource and Administration Committee, it must be read in the context of the Board's statutory oversight powers under the Kenya Railways Corporation Act and the Petitioner's contract of employment.

111 The Respondent submitted that internal policies guide disciplinary processes but do not override statutory provisions or the Board's lawful authority. The Petitioner's claim that she was terminated abruptly must be

considered in light of the ongoing performance concerns, repeated requests for reports, procurement disputes and documented instances of insubordination.

112 It was therefore submitted that a senior executive who had been repeatedly engaged on performance and conduct issues the process adopted met the substantive requirements of Section 41. Any technical deviations from the Manual were not fatal. The Court's task is to assess whether, viewed as a whole, the Petitioner was made aware of the concerns, had a fair opportunity to respond, and whether the employer's response fell within the range of reasonable responses open to a reasonable employer in the circumstances.

113 The Respondent submitted that cumulative record therefore establishes a rational and evidence-based breakdown of managerial confidence, demonstrating that the statutory fairness requirements under Section 41 of the Constitution were met. The termination process cannot be impeached as procedurally unfair in the circumstances.

114 On the reliefs sought, Respondent argues that the declaratory and compensatory reliefs sought are vague because they fail to identify specific constitutional rights allegedly violated. It is settled that the precision requirement in constitutional litigation applies not only to the statement of issues and particulars in the body of the Petition but also to the remedies sought. It cited **Anarita**

Karimi Njeru v Republic (supra), the Court held that a constitutional claimant must:

“set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed and the manner in which they are alleged to be infringed.”

115 It is the Respondent’s submission that the impugned prayers are not only unsupported by a proper legal and factual foundation, but are themselves framed without the requisite precision demanded in constitutional litigation. Blanket and omnibus prayers that are not tied to identified constitutional provisions and clearly pleaded factual infringements offend the precision requirement and leave the Court without a proper juridical basis upon which to grant declaratory relief.

116 On the prayer for certiorari, the Respondent submitted that certiorari is a judicial review remedy designed to control jurisdictional excess, illegality, procedural impropriety, or breach of natural justice in the exercise of statutory or quasi-judicial power when exercising a public duty. It is not a mechanism for enforcing or undoing private contractual rights.

117 The Respondent submitted that although the Respondent is a State Corporation, the decision challenged here is not a regulatory or adjudicative act affecting the public at

large or a public function. It is a contractual employment decision made within an employer-employee relationship.

118 The Respondent submitted that it is trite that courts have consistently distinguished between public law remedies and private employment claims. Termination of employment, even by a public body, is governed substantively and procedurally by the Employment Act, particularly Sections 41, 43, 45, and 49.

119 The Respondent contends that the termination decision in the present case was a contractual employment decision rather than the exercise of quasi-judicial authority. It therefore argues that the proper remedies lie within the framework of the Employment Act rather than judicial review.

120 It is the Respondent's submission that the Petitioner has not pleaded any jurisdictional or ultra vires grounds capable of attracting the remedy of certiorari. The Petitioner does not allege that: the Board lacked authority under the Kenya Railways Corporation Act to terminate her employment; it acted in excess of its statutory mandate; or the termination decision was ultra vires the statute or made by an inferior tribunal exercising adjudicative powers capable of being quashed.

121 The Respondent submitted that the Petitioner's complaint is that the termination was abrupt, unfair, and inconsistent

with the Respondent's Human Resource Manual. These grievances relate to the merits of the employment decision and fall within the contractual and statutory framework governing unfair termination under the Employment Act. As such, they raise issues of fairness, justification and possible breach of contract, rather than jurisdictional error or illegality in the public law sense required to justify the grant of certiorari.

122 The Respondent submitted that reinstatement is a discretionary remedy granted only in exceptional circumstances where the employment relationship remains viable and mutual trust and confidence can be restored. In this case, reinstatement would be impracticable given the breakdown of the relationship between the parties. The Petitioner's own affidavits reveal circumstances that are inconsistent with the restoration of the working relationship, particularly considering the high-trust and sensitive nature of the position of General Manager, Legal Services and Corporation Secretary.

123 The Respondent submitted that the Petitioner's conduct toward Board members, staff and external advocates created a hostile working environment and undermined institutional cohesion, resulting in a loss of confidence in her ability to effectively serve in a senior governance role. It argues that the position of General Manager, Legal Services and Corporation Secretary is a high-trust office

requiring confidentiality, collegiality and strategic cooperation, and that once trust and confidence are fundamentally compromised, the employment relationship becomes impracticable.

124 The Respondent therefore submitted that reinstatement, being a discretionary and exceptional remedy under Employment Act, should only be granted where the employment relationship remains viable. It relies on ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] eKLR***, where the Court of Appeal held that: *“The remedy of reinstatement is discretionary... The Industrial Court is required to be guided by factors stipulated in section 49(4) of the EA which includes the practicability of reinstatement or re-engagement and the common law principle that specific performance in a contract for employment should not be ordered except in very exceptional circumstances... The EA has enacted the common law principle that the remedy of reinstatement should not be given except in ‘very exceptional circumstances’.”*

125 It was submitted that the Petitioner’s exit from employment was marked by acrimonious exchanges, allegations against colleagues, harassment of staff and external advocates, and persistent insubordination, all of which demonstrate a breakdown of trust. The Respondent further cited decisions such as ***Njuguna v Sybrin Kenya***

[2024] KEELRC 287 (KLR) wherein the Court declined reinstatement of a senior employee, holding that reinstatement was impracticable in light of the circumstances and the loss of confidence in the employment relationship. The case underscores that where trust has broken down, reinstatement is not an appropriate remedy.

126 It is the Respondent's submission that under Section 49(3) of the Employment Act and Section 12(3)(vii) of the ELRC Act, reinstatement is a discretionary and exceptional remedy to be granted only in clear cases, considering practicability, the nature of the employment, the trust relationship and the circumstances of termination. Section 49(4), read together with the common law principle against specific performance of contracts of service "except in very exceptional circumstances," confirms that reinstatement is not the norm but the exception. This is especially in senior management roles where trust is key.

127 The Petitioner submitted that contracts of employment, particularly in senior positions, are personal in nature and not ordinarily amenable to specific performance. Where trust is irretrievably broken, reinstatement should not issue. On these facts, reinstatement would be oppressive to the Respondent and contrary to the broader public interest in the effective and lawful functioning of a State Corporation. The employment relationship is no longer viable.

128 It further submitted that there is clear evidence of acrimonious disengagement, allegations of harassment of staff and external advocates, breakdown of trust with Board members, the governance sensitivity of the role, and access to confidential legal strategy. These factors weigh heavily against reinstatement.

129 The Petitioner submitted that reinstatement would destabilise governance, compromise operational integrity, undermine managerial authority and expose the Corporation to strategic legal risk. It therefore urged this Court not to impose a fractured and unworkable relationship upon a corporate entity.

130 I have examined all the averments and submissions of the parties herein. The petitioner has explained to court what transpired before her dismissal from service of the respondents. She contends she was condemned unheard and even the reasons given by the respondent to warrant her dismissal were not proved and were non-existent.

131 The respondents have defended their action and aver that the petitioner underperformed her duties, was negligent and was insubordinate to her supervisors thus undermining the respondents' operations.

132 For whatever omission or commission the petitioner committed, there is no indication that she was ever given any warnings or served with a notice to show cause to

explain her shortcomings. She was also not subjected to any disciplinary hearing. The process of discipline envisaged for any act or omission is provided for under 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.

133 The Fair Administrative Action Act also envisage a fair disciplinary process for all employees and section 4(4) of the fair administrative action states as follows:

(4) The administrator shall accord the person against whom administrative action is taken an opportunity to- (a) attend proceedings, in person or in the company of an expert of his choice; (b) be heard; (c) cross-examine persons who give adverse evidence against him; and (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

134 Given the way the petitioner was treated pre termination, it is my finding that she was unfairly dismissed as

provided for under section 45(2) of the Employment Act 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**

135 In terms of constitutional breaches, article 41 of the constitution provides for fair labour practices, which also include a fair disciplinary process.

136 Article 47 of the constitution envisages also a fair disciplinary process and which was not adhered to. It is my finding that articles 41, and 47 of the constitution was breached. Article 47 provides as follows:

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

137 Article 236 of the constitution of Kenya 2010 also provides as follows:

236. A public officer shall not be— (a) victimised or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or (b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.

138 It is my finding that indeed the petitioner was treated unfairly and against the constitutional mandate and therefore her rights under the law and constitution were breached.

REMEDIES

139 Having found the dismissal of the petitioner unfair and unjustified, it is my finding that she is entitled to certain reliefs. The petitioners sought to be reinstated.

140 In considering whether the petitioner can be reinstated I wish to refer to section 49(4) of the employment act 2007 which provides for what the labour officer may consider before recommending reinstatement and states as follows:

(4) A labour officer shall, in deciding whether to recommend the remedies specified in subsections (1) and (3), take into account any or all of the following— (a) the wishes of the employee (b) the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and (c) the practicability of recommending reinstatement

or re-engagement; (d) the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances; (e) the employee's length of service with the employer; (f) the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination; (g) the opportunities available to the employee for securing comparable or suitable employment with another employer; (h) the value of any severance payable by law; (i) the right to press claims or any unpaid wages, expenses or other claims owing to the employee; (j) any expenses reasonable incurred by the employee as a consequence of the termination; (k) any conduct of the employee which to any extent caused or contributed to the termination; (l) any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and (m) any compensation, including ex-gratia payment, in respect of termination of employment paid by the employer and received by the employee.

141 The employer the respondents is opposed to the reinstatement and especially given the position she occupied as head of legal division; she sat and interacted with the board of the respondent which board terminated her. This definitely must have resulted in a strained relationship with the board and insisting on a

reinstatement would render board operations difficult with the petitioner serving the board, which dismissed her.

142 It is indeed impracticable for the board to function properly in the circumstances. I find reinstatement not viable in the circumstance. Given the breaches however, I find that the only remedy then would be compensation for breach of petitioner's rights, which I award at kshs 3 million plus costs and interest at court rates with effect from the date of this judgment.

**Dated, Signed and Delivered Virtually at Nairobi
this 19th Day of March, 2026.**

**HELLEN WASILWA
JUDGE**