



**Musyimi & 2 others (Suing as Legal Representatives of the Late Joshua Muthama Musyimi) v Attorney General & 2 others (Employment and Labour Relations Cause 141 of 2014) [2025] KEELRC 408 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 408 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 141 OF 2014**

**K OCHARO, J  
JANUARY 30, 2025**

**BETWEEN**

**FAITH MBINYA MUTHAMA ..... 1<sup>ST</sup> CLAIMANT  
BENSON KYALO MUTHAMA ..... 2<sup>ND</sup> CLAIMANT  
JOSHUA MUTHAMA MUSYIMI ..... 3<sup>RD</sup> CLAIMANT  
SUIING AS LEGAL REPRESENTATIVES OF THE LATE JOSHUA MUTHAMA  
MUSYIMI**

**AND**

**THE HON ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT  
THE DIRECTOR OF PENSIONS ..... 2<sup>ND</sup> RESPONDENT  
MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL  
GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Joshua Muthama Musyimi [ the deceased] initiated this suit at the High Court, Machakos, as case number 173 of 2009, via a plaint dated 3rd June 2009, against the Respondents. The Respondents filed a Statement of Defence dated 5th November 2009 against the deceased's suit, denying his cause of action and entitlement to the reliefs he had sought.
2. By consent of the parties, dated 28<sup>th</sup> January 2014, this suit was transferred from the High Court to this Employment and Labour Relations Court, for hearing and determination.
3. As fate could unfortunately have it, the deceased passed on before the suit herein could be heard. Consequently, legal representatives of his estate sought to substitute him and be enjoined in this matter



as such legal representatives. Their application was allowed. Consequently, the Plaint was further amended to reflect this fact, inter alia.

4. By the Further Amended Plaint dated 9<sup>th</sup> May 2021, the legal representatives on behalf of the estate of the deceased, sought as against the Respondents following reliefs;
  - a. A declaration that the Plaintiff's dismissal from service was invalid, void, un-procedural, illegal, and not merited and the Plaintiff to be and is hereby paid all Terminal benefits and all withheld salary during interdiction and the damages for wrongful and malicious prosecution and the costs thereof and the plaintiff be reinstated and or be formally retired
  - b. A declaration that the Claimant's dismissal by the defendant from service was discriminatory, unfair termination of employment, not merited, and the Claimant is entitled to be paid all terminal benefits, pensions, and all withheld salary during interdiction and damages for wrongful dismissal and malicious prosecution.
  - c. An order for computation of the payment of pensions, gratuities, and allowances due to the plaintiff by the 2<sup>nd</sup> Respondent, in respect of service he offered.
  - d. Costs and interest of this suit thereto.
  - e. Interest with effect from the date of dismissal until the case is finalised.
  - f. Any further relief this Honourable court may deem fit and just to grant.

#### **Claimants' case**

5. It was the Claimant's case that the deceased was first employed by the 3<sup>rd</sup> Respondent on or about 27/03/1978 as a Clerical Officer. Subsequently, he rose through the ranks, to Job Group J, Senior Clerical Officer.
6. On or about 6<sup>th</sup> October 2003, while working on secondment to the Ministry of Health and stationed at Machakos District Hospital, a robbery occurred at the Hospital and money was stolen. The deceased and two of his colleagues were arrested, arraigned in court and charged with the offence of theft by a person employed in the Public Service, contrary to Section 280 of the *Penal Code*, vide Machakos Chief Magistrate's Court, Criminal Case No. 3453 of 2003. Later, they were all acquitted for lack of evidence.
7. On 13<sup>th</sup> October 2003, the District Commissioner Machakos, interdicted the deceased and the said interdiction was endorsed by the Permanent Secretary of Provincial Administration and Internal Security by a letter dated 25th April 2005. The Permanent Secretary communicated through the letter that the interdiction of the deceased was to remain in place from the 13<sup>th</sup> of October 2003 pending the finalization of his case.
8. By a letter dated 24 January 2006, the 3<sup>rd</sup> Defendant through the Permanent Secretary Provincial Administration and Internal Security, issued the deceased with a show cause letter, requiring him to show cause why he couldn't be dismissed from the service on the grounds of negligence in the performance of his duties, in that he failed to take reasonable care to safeguard Government property which resulted in the loss of the same.
9. By his letter dated the deceased denied the accusations, and expressed that the two years he had been on interdiction had been torturous both on him and his family and pleaded for the lifting of the interdiction, reinstatement of his salary and pay of the accrued salary with effect from, 13<sup>th</sup> October 2003.



10. Through a letter dated 9<sup>th</sup> May 2006, the Permanent Secretary of Provincial Administration & Internal Security communicated that it had been decided that the interdiction be lifted “retrospectively” and that he be dismissed from the service with effect from 4<sup>th</sup> April 2006 on account of negligence of duty. Further, he would forfeit all terminal benefits from the Government. The letter informed him of his right to appeal the decision within six [6] weeks.
11. By his letter dated 8<sup>th</sup> June 2006, the deceased appealed against the decision to dismiss him from employment to the Public Service Commission, maintaining his innocence. He sought that the summary dismissal be set aside.
12. On 17<sup>th</sup> May 2007, the Permanent Secretary wrote to the deceased, informing him that his appeal to the Public Service Commission had been declined. Further, he had a right to apply for a review of the decision within one [1] year from the date of receipt of the letter. On 12<sup>th</sup> June 2007, the deceased applied for review of the decision. The application was rejected. A communication on the rejection was made to him through a letter dated 11<sup>th</sup> December 2007.
13. It was asserted that the deceased wasn’t allowed an opportunity to defend himself, and was not given any reason or reason for his dismissal or rejection of his appeal and application for review.
14. Further, the dismissal was malicious and without any reasonable basis. It contravened the provisions of the *Public Service Commission Act* and the Regulations thereunder.
15. Having attained the retirement age, the deceased was entitled to pensions, gratuities and other allowances payable to public service officers.
16. It was further asserted that discriminatorily, his two colleagues were reinstated to work, yet without any justifiable cause, he was made to meet a different fate.

### **Respondent’s case**

17. The Respondent presented one witness, a Human Resource Management Officer with the Public Service Commission, Mr. Avisia Kiguhi Harold, to testify on its behalf. The witness adopted his witness statement herein filed as his evidence in chief.
18. The witness asserted that both the Ministry of State for Provincial Administration and Internal Security [ as was then], in the determination of the deceased’s disciplinary case.
19. The deceased was arrested and charged before the Chief Magistrate’s Court at Machakos under Criminal Case Number 3453 of 2003 with the offence of stealing by a person in the Public Service contrary to section 280 of the *Penal Code*.
20. In conformity with the requirements of the regulations that were in force, the Permanent Secretary placed the deceased under interdiction with effect on 13<sup>th</sup> October 2003 pending the finalisation of his case.
21. In the criminal case, the Court in its Judgment delivered on 28<sup>th</sup> September 2005, observed that the deceased’s behaviour was questionable, and reluctantly acquitted him.
22. The deceased opportunity ed was charged administratively through the Permanent Secretary’s letter dated 24<sup>th</sup> January 2006 with negligence of duty which amounted to gross misconduct and was given an opportunity to make his representations as to why he could not be dismissed from service. He submitted his defence in a letter dated 26<sup>th</sup> January 2006 in which he denied the offence.



23. The Ministerial Human Resource Management Advisory considered his defence on 4<sup>th</sup> April 2006 and found it unsatisfactory. They also noted that out of his negligence, the Government had suffered a loss and thus recommended that he be dismissed from the service on account of negligence of duty. The Permanent Secretary concurred with the Committee's recommendation and dismissed him from service with effect 4<sup>th</sup> May 2006. The decision was communicated through a letter dated 9<sup>th</sup> May 2006 in which he was also informed of his right of appeal.
24. He preferred an appeal against the decision to dismiss him from employment to the Public Service Commission. The appeal was dismissed. Subsequently, he applied for a review of the decision by the Commission. Again, he was unsuccessful.
25. The witness argued that criminal proceedings were separate from the administrative charge of negligence of duty, hence Regulation G.33[4] of the Code of Regulations, 2006 provided that an officer had been acquitted of a criminal charge in a court of law, the Permanent Secretary would not be prevented from dismissing him from or otherwise punishing him on any other charge arising out of his conduct in the matter.
26. The deceased was dismissed from service based on his gross misconduct. The Commission neither acted procedurally nor in excess of its authority, given that applicable regulations were complied with.
27. Cross-examined by Counsel for the Claimant, the witness stated that the deceased was dismissed from the service on account of negligence of duty which amounted to gross misconduct. Though this was related to the criminal case proceedings, it wasn't necessarily a result of the proceedings.
28. The administrative charges were preferred against him after his acquittal in the Criminal case. In his Judgment, the Learned Trial Magistrate found that the principal suspect wasn't the deceased but prosecution witness number three, whose main duty was to arrange for security.
29. The witness testified that he couldn't tell whether terminal dues were paid to the deceased. The law at the time provided that an employee dismissed from his or her employment could lose benefits like gratuity, pension and gratuity.
30. The witness stated that he couldn't tell of what happened with the other colleagues who were co-charged with the deceased in the criminal matter, after their acquittal. He went ahead to state that in the criminal proceedings, the Learned Magistrate made statements that could support administrative proceedings against the deceased.

### **Claimants Submissions**

31. The Claimant identified the following issues for determination, thus; whether the claimant was dismissed illegally or terminated unfairly and or unprocedurally; whether the claimant was discriminated against; and who will bear the costs of this claim.
32. Submitting on the first issue, Counsel for the deceased testified that having been acquitted of the charges in the criminal case by a court of competent jurisdiction, the 3<sup>rd</sup> Respondent had no justifiable reason not to lift the interdiction and reinstate the deceased. It is clear, therefore, that the summary dismissal [ as the deceased was dismissed without notice], was substantively unfair.
33. The Claimant was discriminated against. The interdiction of the other two colleagues was lifted and as a result, they were reinstated, yet the Claimant wasn't. There was no justifiable reason for the differentiation.



34. The deceased was not accorded an opportunity to be heard. He was therefore condemned without defending himself against the accusations that had been levelled against him. This affronted the tenets of natural justice. As such, his dismissal from employment was unfair. To support this point, reliance was placed on the case of *Kenafic Industries Limited v John Gitonga Njeru* (2016) eKLR.
35. On the issue of the reliefs sought, Counsel submitted that the deceased having demonstrated that he was discriminated against and unfairly dismissed, this Court should grant the estate of the deceased all the reliefs sought in the further amended plaint.

### **Respondents' Submissions**

36. Counsel for the Respondent identified three issues for determination; whether the dismissal of the deceased was based on valid and justifiable reason[s]; whether the dismissal was done in conformity with the dictates of procedural fairness; and whether the remedies sought can be availed to the claimants.
37. It was submitted further that Section 47(5) of the *Employment Act*, placed a duty on the Claimants to establish that the dismissal of the deceased from the service was unfair and on the other hand, thereafter, the Respondents could be required to establish that the decision to terminate the Claimant was justified under the provisions of Section 44 of the *Employment Act* as was held in the case of *David Githinji Kibuge vs New Cooperative Creameries* (2019) eKLR.
38. Considering the Claimants' pleadings, evidence and submissions, nothing emerges therefrom that can be a basis for this Court to return that the Claimants discharged the burden of proof under section 47[5] and as elaborated in the *David Githinji* case[supra].
39. It was further submitted that section 43 of the *Employment Act*, places a legal burden on the employer in a dispute as is in the instant matter, to prove the reason[s] for the termination of an employee's employment. Through the letter dated 24<sup>th</sup> January 2006, the deceased was given reason[s] for termination of his employment.
40. The summary dismissal against the deceased was justified under the provisions of Section 44 (4)(c) and (g) of the *Employment Act*. He wilfully neglected to perform his duty and/or performed it carelessly and further committed a criminal offence to the detriment of his employer's property contrary to section 44(4) (c) and (g) of the *Employment Act*. His conduct violated essential terms of his contract, as such, it cannot be argued that the sanction of summary dismissal wasn't well informed. To buttress this submission, reliance was placed on the case of *George Onyango Akuti -VS- G4S Security Services Kenya Limited* (2013) eKLR.
41. The Court should conclude that the dismissal of the deceased from employment conformed with the provisions of section 45[2] of the *Employment Act* and, therefore substantively and procedurally unfair.
42. The Respondents complied with the provisions of section 41 of the *Employment Act*, 2007 on due process/ and/or fair hearing. The deceased was served with an interdiction letter dated 25<sup>th</sup> April 2005. He was thereafter charged administratively by vide the letter dated 24th January, 2006 with negligence of duty which amounted to gross misconduct and allowed to make his representation. The Ministerial Human Resource Management Advisory Committee (MHRMAC) considered his response on 4th April 2006 and found it unsatisfactory. He was then informed of his right to appeal to the Public Service Commission vide letter dated 9th May 2006. The appeal was disallowed on 25th April 2007. In a letter dated 12th June 2007, he was informed of his right to apply for review. The Claimant applied for the same, but it was disallowed.



43. The Respondent relied on the case of Kenya Revenue Authority versus Maginga Salim Murgani (2010) eKLR, to support the submissions that the dictates of procedural fairness were adhered to, and that fairness of a hearing is not determined solely by its oral nature. It may be conducted through the exchange of letters.
44. Counsel submitted further the fact that the deceased was acquitted of the criminal charges, was not a bar to the Permanent Secretary initiating internal disciplinary proceedings against the deceased. This was allowed under Regulation G.33(4) of the Code of Regulations 2006, to the [Public Service Commission Act](#) which stated: -
- “where an officer had been acquitted of a criminal charge in a court of Law, the Authorized officer would not be prevented from dismissing him and/or punish him on any charge arising out of his conduct in the matter”
45. Having failed to prove their case, the reliefs sought cannot be availed to the Claimants on behalf of the estate of the deceased.

### **Analysis and determination**

46. Before I delve into identifying the issues for determination in this matter, it is pertinent to point out at this juncture, that the instant matter possesses a unique characteristic, that none of the Counsels for the parties managed to identify and therefore align his submissions with the same. The summary dismissal against the deceased was effected on 4<sup>th</sup> April 2006. The last pursuable internal process by the deceased, as regards his dismissal, was concluded on the 11<sup>th</sup> of December 2007. No doubt, the dismissal occurred when the [Employment Act](#), of 2007 hadn't been enacted. However, the decision to decline his application for a review of the decision on his appeal came in when the Act was in place. It isn't difficult to conclude, therefore, that the events of the dismissal spread across two statutory regimes.
47. The failure on the part of both Advocates to spot this characteristic, hence immensely but irrelevantly, in their submissions dwelling on provisions of the [Employment Act](#), and decisions that could not be applicable in the circumstances, of this matter.
48. The deceased contended that his dismissal was unconstitutional and discriminatory. The stipulations of the retired Constitution are relevant to address this issue.
49. Having said this, I have carefully considered the pleadings by the parties, their respective evidence and submissions and distil the following issues for determination
- i. Whether the deceased was discriminated against.
  - ii. Whether the summary dismissal against the deceased was unfair and wrongful.
  - iii. Whether the Claimants as legal representatives of the deceased's estate can be availed the orders sought.

### **Whether the deceased was discriminated against.**

50. There was no dispute that as a result of the robbery mentioned hereinabove, the deceased and two of his colleagues were arrested, arraigned, and charged, in a court of law under the same file and with the same offence. They all were acquitted, by the Court. The state didn't appeal against the acquittal or any part of the Learned Magistrate's. Further, after the acquittal, his colleague's interdiction was lifted and they were reinstated into the service. The letters dated 12<sup>th</sup> April 2007 by the Permanent Secretary, addressed to Onesimus M Munyao and Nicholas M Kiilu are a testament to this.



51. In his evidence under cross-examination the Respondents' witness just stated that he could not tell what happened with the two's employment after their acquittal. I find the answer not candid in the circumstances of this matter, and more particularly considering that discrimination was expressly pleaded by the deceased and denied by the Respondents.
52. Section 82[2] and [3] of the retired Constitution of Kenya provided;
- “2. Subject to subsections [6][8] and [9], no person shall be treated in a discriminatory manner by a person acting by virtue of any written law or in the performance of the functions of a public office or a public authority.
  3. In this section the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex whereby persons of such one description are not made subject or accorded privileges or advantages which are not accorded to persons of another such description.”
53. Black's Law Dictionary, 10<sup>th</sup> Edition defines discrimination as “failure to treat persons equally when no reasonable distinction can be found between those favoured and those not favoured.” However, it is pertinent to point out that not all cases of distinction amount to discrimination. Learned author Robert K. Fullinwider, in *The Reverse Discrimination Controversy* 11-12 [1980] states;
- “The dictionary sense of discrimination is neutral while the current political use of the term is frequently non-neutral, pejorative. With both a neutral and a non-neutral use of the word having currently, the opportunity for confusion in arguments about racial discrimination is enormously multiplied. For some, it may be enough that a practice is called discriminatory for them to judge it wrong. Others may be mystified that the first group condemns the practice without further argument or inquiry. Many may be led to the false sense that they have actually made a moral argument by showing the practice discriminates [distinguishes in favour of or against]. The temptation is to move from X distinguishes in favour of or against X to discriminate to X is wrong without being aware of the equivocation involved.”
54. In the context of discrimination at the workplace, the International Labour Organization Discrimination [Employment and Occupation] Convention, 1958 [No. 111], discrimination is defined as follows;
- “For the purpose of this convention, the term discrimination includes –
- any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- such other distinction, exclusion or preference in respect of a particular job on the inherent requirements thereof shall not be deemed to be discrimination.”
55. In the case of *Peter K. Waweru v Republic* [2006] eKLR the Court defined discrimination as follows;
- “Discrimination means affording different treatment to different persons attributable wholly or mainly to their description by race tribe, place of origin or residence or other local



conviction, political opinion, colour, creed, or sex, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”

56. The Court of Appeal in *Mohammed Abduba Dida v Debate Media Limited & another* [2018] eKLR quoted the case of *Kadar Nath v State of W. B* [1953] SCR 835[843] where the Supreme Court of India stated that:

“Mere differentia or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislation has in view.”

57. The burden of proof in cases of discrimination was considered in the case of *Samson Gwer & 5 others v Kenya Medical Research Institute & 3 others* [2020] eKLR, where the Supreme Court applied section 108 of the *Evidence Act* in requiring the Claimant to prove his claim in a matter involving discrimination. The Court observed thus:

“49. Section 108 of the *Evidence Act* provides that “the burden of proof in a suit or procedure lies on that person who would fail if no evidence at all were given on either side;” and Section 109 of the Act declares that, ‘ the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular persons.’”

50. This Court in *Raila Odinga & others v Independent Electoral & Boundaries Commission & others, Petition No. 5 of 2013*, restated the basic rule on the shifting of the evidential burden, in these terms

“.....a Petitioner should be under obligation to discharge the initial burden of proof before the Respondent are invited to bear the evidential burden.....”

51. In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in the discharge of the evidential burden establishing their treatment at the hands of the 1<sup>st</sup> Respondent as unconstitutional. Only with this threshold transcended, would the burden fall to the 1<sup>st</sup> Respondent to prove the contrary. In the light of the turn of events at both the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to the 1<sup>st</sup> Respondent.”

58. I have carefully considered the material placed before me by the Claimants that; following a violent robbery at the deceased’s place of work, the deceased and his two colleagues were arrested, arraigned in court and charged with the offence mentioned hereinabove; the three of them were interdicted pending the case; they were all eventually acquitted by the Trial Court; upon the acquittal, the colleagues’ interdiction was lifted and as a result, they were reinstated into the service; and inexplicably, notwithstanding these, the deceased’s interdiction was lifted “retrospectively” but he was dismissed from the service.



59. With the foregoing evidence, I am inclined to conclude and I hereby do that the Claimants established that the deceased was differentially treated, unreasonably, and arbitrarily. Having transcended this threshold, the evidential burden shifted to the Respondents to demonstrate the contrary.
60. I have carefully considered the material placed before this Court by the Respondents, and see no disclosure of the reason, the basis for the differential treatment the deceased suffered after the acquittal compared with how his colleagues were treated, notwithstanding the factors herein-above brought out.
61. This Court hasn't lost sight of the fact that even though the 3<sup>rd</sup> Respondent had expressed that the deceased's interdiction was to remain in force pending the conclusion of the criminal case, therefore making any action on their part subject to the outcome of the case, and ingraining in the deceased a legitimate expectation to that effect, at acquittal, the 3<sup>rd</sup> Respondent without care of this, charged him with administratively with a charge wide apart from that which was the subject matter of the criminal matter. No administrative charges were preferred against his colleagues. The Respondents didn't offer any explanation for this.
62. By reason of the foregoing premises, I come to the conclusion, that in the performance of his public function and or exercise of his public authority, the Permanent Secretary discriminatorily treated the deceased, in violation of section 82[2] of the retired Constitution. In the circumstances of the matter, the decision for the dismissal and the differential treatment of the deceased from the service was infested with unreasonableness and arbitrariness. The deceased was discriminated against.

#### **Whether the dismissal of the deceased from employment was wrongful and unfair.**

63. As I have already pronounced myself hereinabove, the accrual of the cause of action regarding the instant matter happened when the new employment and labour relations legal regime hadn't come into place. The immense protection and rights that employees enjoy now, courtesy of the post-2007, legal regime, were not available to the deceased at the accrual of the cause of action. Sadly, though the Public Service Commission's decision to reject his application for a review of the decision that declined his appeal against the dismissal decision, I am not able to employ the provisions of the [Employment Act](#), in this matter, as the vital events regarding the controversy between the Respondent and deceased took place before the Act came into effect.
64. Pre-2007, employment disputes were treated as purely contract disputes. Therefore, resolvable under the space of private law and not public law. The tenets of natural justice were not applicable in matters of employment contracts. The employers could dismiss at will without cause for as long as the contractual or statutory notice was issued or pay in lieu of notice made. Dismissal of an employee's could be wrongful only if notice wasn't issued by the employer.
65. I have carefully considered the assertion by the Claimants that the deceased was dismissed from the service without notice, and I agree with them. The dismissal letter was even expressed to have a retrospective effect. The termination was therefore wrongful.

#### **Whether the Claimants should be granted the reliefs sought**

66. The Claimants substantially submitted on the compensatory relief contemplated under section 49[1] [c] of the [Employment Act](#), twelve months gross salary. But as I have indicated hereinabove, considering, the date of accrual of the cause of action, the provision isn't applicable.
67. Considering the circumstances of this matter and this Court's finding that the dismissal was wrongful and discriminatory if I were to base my decision on the stipulations of section 49 of the [Employment](#)



Act, I could reinstate the deceased [if he were alive], and award him a compensatory award to the extent of 12 months gross salary.

68. Having found that the deceased was discriminatorily treated in breach of his Constitutional right under section 82[2] of the retired Constitution, with the effect that he wrongfully and unfairly lost his job and immense suffering occasioned on him and his family to whom he was a breadwinner, I find this a proper case where an award of general damages is merited. I deliberately award KShs. 1,286,730, a sum equivalent to twelve months' gross salary, for the violation of his right against discrimination.
69. Having found that the dismissal against the deceased was discriminatory in violation of his constitutional right, I direct that the estate of the deceased be paid the withheld salary during the period he was under interdiction
70. By reason of the foregoing, I am equally convinced that the deceased, and therefore, his estate is entitled to the pension, and or gratuities, that could ordinarily accrue to a civil servant of his [the deceased's] Job Group, at retirement or lawful termination of his employment.
71. In the upshot, Judgment is hereby entered in favour of the Claimants as the Legal Representatives of the estate of the deceased, in the following terms;
  - i. A declaration that the deceased's right against discrimination was breached, and the termination of his employment was discriminatory and unfair.
  - ii. General damages for the violation of his right not to be discriminated against, KShs. 1,286,730.
  - iii. Unpaid salary for the period the deceased was under interdiction.
  - iv. The deceased was and therefore, his estate is, entitled to pension or gratuity that could ordinarily accrue to a civil servant of his Job Group accrue to them at their retirement or lawful termination of their employment.
  - v. The 3<sup>rd</sup> Respondent is directed to compute and serve the computation on the Claimants within 21 days of today for concurrence or otherwise, and for recording a final order regarding the benefit [pension and or gratuity]. This matter shall be mentioned on a date to be given hereafter, for recording consent on the computation or for further orders and/or directions.
  - vi. Interest at court rates from the date of this Judgment till full payment.
  - vii. Costs of the suit.

**READ, SIGNED AND DELIVERED THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

**OCHARO KEBIRA**

**JUDGE**

In the presence of:-

Mr. Oure for the Respondent.

Mr. Ochieng holding brief for Ms. Agata for the Claimants.

