



**Odira v Egerton University & 2 others (Petition E007 of 2024)
[2025] KEELRC 593 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 593 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E007 OF 2024
J RIKA, J
FEBRUARY 28, 2025**

BETWEEN

DR NYALALA INNOCENT ODIRA PETITIONER

AND

EGERTON UNIVERSITY 1ST RESPONDENT

THE COUNCIL, EGERTON UNIVERSITY 2ND RESPONDENT

THE VICE-CHANCELLOR, EGERTON UNIVERSITY 3RD RESPONDENT

JUDGMENT

Representation:

Mirugi Kariuki & Company Advocates for the Petitioner

Robert Ndubi & Company Advocates for the Respondent

1. The Petition herein is dated 11th April 2024. It is founded on the Affidavit of the Petitioner sworn on even date, and his Supplementary Affidavit, sworn on 3rd July 2024
2. The Petitioner is a part-time Lecturer at the Egerton University.
3. He avers that the University advertised for various job vacancies through its website, on 17th July 2023.
4. Among the vacancies, which the Petitioner applied for, was Lecturer, Grade 12, in Computer Science.
5. He was interviewed on 10th November 2023. He was appointed, and required to report to work within 3 months, through a letter dated 22nd November 2023.
6. He accepted the offer of employment and collected the appointment letter.



7. He subsequently received a letter from the University, dated 30th November 2023, requiring him to return the letter of appointment for ‘corrections.’
8. In March 2024, he learnt that all other colleagues who had been appointed, had received fresh letters of appointment. He was the only one excluded.
9. He wrote to the University on 5th March 2024, seeking an explanation. The University responded through a letter which was backdated to 27th February 2024, informing him that he was not successful on interview, because he did not have the right qualifications.
10. He would not have been shortlisted, if he was not qualified; he had been teaching the same subjects part-time at the same University, and even administered examinations to students; and he was at the time of petitioning the Court, teaching the same units.
11. His letter of appointment was recalled for ‘corrections,’ and he therefore expected a fresh letter of appointment to issue, not revocation of appointment.
12. The Respondents had ulterior motive, acted maliciously and in abuse of power, in recalling the Petitioner’s letter of appointment.
13. They violated the Petitioner’s right to fair labour practices and fair administrative action under Articles 41 and 47 respectively, of *the Constitution*. They violated the values and principles of public service under Article 232 of *the Constitution*.
14. The Petitioner prays for the following orders: -
 - a. Declaration that the decision by the Respondents, communicated through the letter dated 27th February 2024, has no legal basis, and is an infringement of the Petitioner’s right to fair labour practices and administrative action, under Articles 41 and 47 respectively, of *the Constitution*.
 - b. The Petitioner is declared to have been validly appointed as Lecturer Grade 12, Computer Science, through the letter issued by the University dated 22nd November 2023.
 - c. In the alternative to [b], he is awarded general damages for violation of constitutional rights, having regard to inter alia, the proposed term of engagement and salary.
 - d. Costs be borne by the Respondents.
15. The Respondents oppose the Petition, through the Replying Affidavit of Vice –Chancellor [VC], Professor Isaac Kibwage, sworn on 4th November 2024.
16. He states that sometime in the year 2023, he approved the recruitment of Lecturers in various departments.
17. Requests for recruitment were put to Kibwage by Chairs of the various departments, through their respective Faculty Deans. The requests were normally forwarded to Kibwage by the Deputy Vice-Chancellor [Administration, Finance and Planning]. The Deputy Vice-Chancellor duly forwarded the requests, including those from the Department of Computer Science.
18. Kibwage approved for appointment of 1 Lecturer Grade 12, Computer Science.
19. The candidate for the position was required to have the following qualifications: -
 - a. PhD degree in computer science, with specialization in computational theory, machine learning and artificial intelligence and data science, deep learning human computer interactions and computer graphics, computer security, wireless networks and cloud



- computing from a recognized University; or, Master's degree in computer science with specialization in computation physics from accredited and recognized University, with at least 3 years' teaching experience, at University level.
- b. A minimum of 24 publication points, of which at least 16, should be from referred journal papers.
 - c. Registered with the relevant professional body [where applicable].
 - d. Certificate of good conduct.
20. The vacancies were advertised in the Daily Nation Newspaper, dated 25th July 2023.
 21. Kibwage states that as the CEO of the University, he had to approve commencement of recruitment, and in the end, endorse the outcome. He would confirm that the process was above board, before appointment letters issued.
 22. The Petitioner was among 3 candidates, interviewed for the position of Lecturer Grade 12, Computer Science.
 23. The appointment committee recommended that he is appointed to the position, on permanent and pensionable basis.
 24. The committee meeting minutes on appointment, were approved by the Chair to the committee on 16th January 2024, and forwarded to Kibwage for approval. This was done also, with respect to other appointments.
 25. Kibwage reviewed the minutes, and declined to approve the appointment of the Petitioner, on the following grounds: -
 - a. The Petitioner did not have a PhD degree in computer science, with specializations set out in the advertisement of vacancies. He was a doctoral fellow, pursuing PhD.
 - b. His Bachelor's degree from Kabarak University was in business management and information technology, and not computer science.
 - c. The Petitioner was a doctoral fellow at Nanjing Agricultural University in China, pursuing PhD in agricultural electrification and automation, and not in computer science.
 - d. He had a Master's degree in engineering, computer science and technology as opposed to Master of science degree in computer studies.
 26. Kibwage explains that his decision not to approve the Petitioner's appointment, was based on the objective review of his academic qualifications, and the vacancy requirements.
 27. The Registrar, Human Capital and Administration, erroneously issued letters of appointment, without the endorsement of Vice-Chancellor and CEO, Kibwage.
 28. It is not true that the Respondents discriminated against the Petitioner. He did not have the requisite qualifications.
 29. He attended job interview through Skype from his University at Nanjing, China. He was required to report within 3 months. There is no evidence that he discontinued what he was doing at Nanjing, following receipt of the recalled appointment letter.



30. It would be unfair for the Court to compel the University to employ an unqualified Lecturer, based on a letter issued to him erroneously, by the Registrar, Human Capital and Administration. Employment of the Petitioner would be against the interest of the University, the Students and that of the Public.
31. The fact that he was previously a part-time Lecturer in the same faculty, did not confer on him, the requisite qualifications. The teaching scope of a part-timer is limited.
32. Kibwage confirms that the University issued the Petitioner a letter dated 27th February 2024, informing him that he was unsuccessful in his interview.
33. The Respondents state that the Petitioner is not entitled to any of the prayers sought.
34. The Petitioner answers most of the submissions made by Kibwage through his Supplementary Affidavit, sworn on 3rd July 2024. He invokes various human resource instruments, which govern recruitment of staff at the University.
35. The Human Resource Manual 2022 calls for recruitment based on among other principles: fair competition and equal opportunities; ability and merit, with suitably qualified and experienced Employees of the University, given first consideration, before external candidates.
36. The Manual provides for advertisement, shortlisting and interviewing. The interview panel shall make recommendations. The Chair of the panel shall approve the recommendations and the successful candidates offered employment after background checks.
37. The Manual states that a letter of appointment shall be issued upon the successful candidate, detailing the terms and conditions of service. The appointee is required to sign a copy and return the same to the Registrar, Human Resource Capital.
38. The second instrument invoked by the Petitioner is the Egerton University Appointment and Promotion Criteria for Academic and Research Fellows, 2012.
39. This instrument requires Lecturers / Research Fellows Grade 12, must have: -
 - a. PhD degree in relevant area or its equivalent from a recognized academic institution; or,
 - b. Master's degree from a recognized academic institution.
 - c. At least 3 years' teaching or research experience, at University level after obtaining Master's degree.
 - d. Registered for PhD.
 - e. Have at least 2 publications in refereed journals, or in 1 book, or 2 book chapters, in the relevant area.
 - f. There are different requirements for appointment of Lecturers in the health services department.
40. The Evaluation Panel establishes that a candidate has satisfied the mandatory requirements, before shortlisting, leading to interviewing. The Evaluation Panel includes Dean of the Faculty, Chair of the relevant Department, 2 Senior Lecturers in the relevant Department and 2 Senior Lecturers from other Faculties.
41. Kibwage had no role in review of appointments. The appointments panel established under paragraph 5.2 of the Appointments and Promotions Criteria has this mandate. Kibwage had no background



- in computer science, so as to review the Petitioner's suitability. He had no mandate to endorse the appointment. The process ended with the approval of the Chair of the appointment committee.
42. Lastly, the Petitioner states that he is eminently qualified to the advertised role. He had been teaching in the same position, in what was described as part-time. He clarifies that under the Human Resource Manual, he was a 'contract employee.'
 43. It was agreed by the Parties that the Petition is considered on the strength of the grounds set out in the Petition; the Affidavits and Documents on record; and the Submissions filed by the Parties.
 44. The Petitioner filed Submissions dated 7th October 2024, while the Respondents filed their Submissions dated 7th December 2024.
 45. The record indicates that the Court issued an order, barring the Respondents from filling up the position which the Petitioner was interviewed for.
 46. The issues as understood by the Court are: whether the recall by the Respondents, of the Petitioner's letter of appointment dated 22nd November 2023, violated the Petitioner's constitutional rights, particularly under Articles 41 and 47 of *the Constitution*; whether the Petitioner should be deemed to have been validly appointed; alternatively, whether he should be paid general damages for violation of his constitutional rights; and, who should meet the costs of the Petition.

The Court Finds: -

47. The primary facts in this dispute are not contested. The Petitioner was a part-time or contracted Lecturer, at the 1st Respondent's Faculty of Science, Department of Computer Science, from April 2022.
48. He was teaching computer science courses in programming, artificial intelligence, and computer applications.
49. His CV shows he was also a part-time Lecturer at Maseno University [February–August 2022]; tutorial fellow Zetech University [January–August 2017]; Lecturer, East African University, Kitengela September 2016–August 2017]; and part-time Lecturer, Kabarak University, September–December 2016.
50. At all the Universities, he taught in the field of computer science.
51. He graduated from the Nanjing Agricultural University, China in 2016, with a Master's degree in engineering computer science and technology. His degree was authenticated by the Commission of University Education, Kenya, on 19th April 2017.
52. The 1st Respondent University advertised in the local media on 25th July 2023, various job vacancies, in different Faculties.
53. Among the vacancies advertised, was Lecturer Grade 12, Computer Science.
54. It is not contested that the Petitioner applied for the position, was shortlisted, interviewed and appointed.
55. The dispute arose, when the Registrar, Human Capital and Administration, wrote to the Petitioner and other appointees a letter dated 30th November 2023, recalling the letters of appointment, ostensibly for certain corrections.



56. Starting from this letter, it is clear that the treatment of the Petitioner by the Respondents, violated his right of fair labour practices and fair administrative action, under Articles 41 and 47 of the Constitution.
57. The Petitioner was not told what was being corrected, in his letter of appointment.
58. No corrections were communicated to him, after the letter of appointment was recalled.
59. The shortlisting, interviewing and appointment committees, did not reconvene, and make resolutions, revoking their decisions, leading to the appointment of the Petitioner.
60. Up to 5th March 2024, when the Petitioner wrote asking the Respondents for a corrected version of his appointment letter, there was nothing informing him that appointment had altogether been revoked.
61. It is important to look at the process leading to the Petitioner's appointment, the governing human resource instruments, and the organs tasked with the decisional powers at the various turns of the process.
62. The key human resource instruments, as identified by the Petitioner are: the Egerton University Human Resource Manual 2022 [HR Manual]; and the Egerton University, Appointment and Promotions Criteria for Academic and Research Fellows [A&P Criteria].
63. According to the HR Manual, vacancies shall be approved by the University Management. This would include the VC Kibwage. Vacancies were therefore identified and approved collectively by the University Management.
64. The job descriptions and specifications were identified. Applications were addressed to the Deputy VC, Administration, Planning and Development], to reach him not later than 7th August 2023.
65. The applications were to be placed before a shortlisting committee, which is constituted in accordance with the 1st Respondent's policies.
66. This committee sat on 6th September 2023. It comprised Dr. Oduor, Faculty Dean as the Chair; Associate Dean, Prof. Kibet; other departmental Chairs, Professors Matsoyah, Ondiek, Dr. Bosire, Dr. Muga, Dr. Maina, and Dr. Githia; Chief Technologists Physics and Chemistry, Messrs. Ngumbu and Kariuki respectively; and Secretary Ms. Fedha recording.
67. Different Faculties as shown in the minutes of the meeting held on 6th September 2023, were represented by various Professors and Doctors.
68. The Petitioner was awarded the highest score at 98% by the shortlisting committee, among 6 applicants.
69. The process then went to interviewing. The committee which met on 10th November 2023, and interviewed the 3 candidates who had qualified for the interview after shortlisting, is described in the minutes as an "appointment committee."
70. Its composition was again prescribed by the 1st Respondent's policies, and included Prof. Mulwa, Deputy VC, who chaired the committee, and logically, represented Management, including the VC. Other members were Dr. Nyaoga, representing the Principal, Nakuru Campus; Prof. Saidi, Registrar Academic Affairs; Prof. Mungai Acting Director, Research; Dr. Omariba Chair Department of Computer Science; Dr. Oduor, Dean Faculty of Science; Dr. Kirui, Senate Representative; Ms. Ngala, Acting Registrar Human Capital & Administration; Mr. Omas, Senior Assistant Registrar; Dr. Chepkurgat, Assistant Registrar; and J. Mwarora, Administrative Assistant.
71. It must be underscored that Management, including the VC, was fully represented by Prof. Mulwa, in accordance with the 1st Respondent's HR Manual.



72. It is noted that the Dean and Chair in the relevant Faculty and Department of Computer Science, were represented. They were present to ensure that the candidate appointed to the position, met the academic specifications, for the Faculty and Department.
73. The committee examined the requirements for the vacancy; and the Petitioner's and his competitors' qualifications.
74. The Petitioner was again rated at the top of the interviewees with a score of 83%. His 2 competitors scored 76.7 % and 59.4%.
75. The committee resolved: -
- a. Innocent Odira Nyalala [Petitioner] is offered the post of Lecturer, Grade 12, Computer Science, on permanent and pensionable terms of service, at a salary entry point of Kshs. 110,591 per month, having attained the highest score, with effect from the date he reports for duty.
 - b. That in event the first candidate [Petitioner], does not take up the offer, the second candidate to be considered for the post.
76. The process from advertisement of vacancies, shortlisting, interviewing to appointment of the Petitioner, was scrupulously in conformity with clause 1.0 to 1.5 of the HR Manual, and the A&P Criteria. It is underscored that the 1st Respondent has an approved appointment and promotion criteria, and that the objective, inter alia, is to ensure administrative processes are followed. The recruitment and promotion HR policies in place are meant to ensure all job applicants, at the 1st Respondent, have their constitutional rights under Articles 41 and 47 respected, and to ensure that the 1st Respondent's constitutional obligations under Article 232 of *the Constitution*, are not impaired.
77. The Petitioner was issued a letter of appointment dated 22nd November 2023. He was advised that his terms of service would be permanent and pensionable, in accordance with the 1st Respondent's terms of service for academic, senior library and administrative staff.
78. He was advised that the 1st Respondent's terms of service, and the letter of appointment, constituted a contract of employment between him and the 1st Respondent.
79. He states that he accepted the contract, and this is not disputed by the Respondents. The letter was signed by Maureen Agala, for Registrar, Human Capital and Administration. The letter was copied to the 1st Respondent's Management, including the VC Kibwage.
80. The Parties therefore entered into a valid contract of employment. None of them disputed the formal validity of the contract. Part 111 of the *Employment Act* 2007, was adhered to, with an offer made, an offer accepted, and comprehensive details of employment clearly stated.
81. Kibwage however, appears to have rescinded the contract unilaterally. He justifies rescission on his own assessment of the Petitioner's qualifications. His unilateral decision appears to the Court to have flown in the face of the processes preceding the appointment, the collective decisions of authorized officers who included well-informed academics, and flown in the face of the human resource instruments, upon which those processes were founded.
82. Throughout in his Affidavit, Kibwage does not disclose which clause, in either the HR Manual or the A&P Criteria, enabled him to review the processes and the decision on appointment of the Petitioner, and to rescind the appointment. Once the appointment Chair approved the Petitioner's appointment,



- the die was cast. The Petitioner would only be denied appointment if he did not accept appointment, as resolved by the appointment committee.
83. His qualifications for the position were scrutinized by 2 competent committees of the 1st Respondent. The members included the relevant Dean, Chair and other academics, familiar with the advertised role, and the Petitioner's suitability to that role.
 84. Kibwage states that one of the reasons why he revoked the Petitioner's appointment letter, was that the Petitioner held a Bachelor's degree in business management and information technology, from the University of Kabarak, and not in computer science.
 85. The advertisement for the vacancy did not mention qualification in Bachelor's degree of any nature. There was no mention of such a degree in the A&P Criteria. Kibwage seems to have devised his own criterion, and imposed it on the Petitioner.
 86. It is submitted persuasively for the Petitioner, that Prof. Kibwage's field of study is not computer science. Where did he acquire the competence to overrule the Dean and the Chair, who had the relevant knowledge in computer science, and both who were involved in shortlisting, interviewing and appointment of the Petitioner?
 87. The process of promotion, recruitment and appointment of staff at the 1st Respondent is a collective responsibility, in line with principles of corporate governance, which has its pillars in accountability, transparency, fairness and responsibility, as enshrined under Article 232 of *the Constitution*.
 88. Kibwage, without directing the attention of the Court to any clause in the 1st Respondent's policies, states in his Affidavit at paragraph 8, that as CEO, he must personally approve the beginning of the recruitment process, and endorse appointments. He assumes the position that the findings and decisions made by panels made up of his eminent colleagues, in accordance with the applicable policies, are subject to his review.
 89. The Court would not disagree with him, if he had directed its mind, to the clause in the relevant policies, or a law, which confers on him this broad mandate. If it was intended that the VC overrules the shortlisting and the appointment committees, nothing would have been easier than for the relevant policies to state so. His Affidavit appears to the Court to advance the idea, that the VC enjoys a mandate of the heaven, where recruitment, promotion and appointment of staff processes, must begin and end with him.
 90. The Petitioner was highly rated by the committees which shortlisted, interviewed and appointed him. He was already serving under contract, teaching the same subject to the same students, in the role he was interviewed to fill, on a permanent and pensionable basis. Kibwage states that the Petitioner was at the time of appointment a Doctoral Fellow pursuing PhD in agricultural electrification and automation, not computer science.
 91. The Petitioner explains in his supplementary affidavit, that he acquired PhD degree and this, with his Master's degree, granted him specialization in artificial intelligence, among other areas of computer science, sought to be covered under the vacancy advertisement. These academic qualifications and teaching experience were adequately examined by the shortlisting and appointment committees, and there was no justification in the VC attempting to do his own review, and rescind a completed contractual process.
 92. He perhaps ought to have raised any issues he had, with the shortlisting, and the appointment committees, the respective Dean and Chair, instead of taking matters into his own hands, undoing the



- work of these committees, and exposing the 1st Respondent to damages for contractual, statutory and constitutional violations.
93. In *Oyatsi v. the Judicial Service Commission* [2022] KEELRC and E&LRC Cause No. 273 of 2019, *Maiywa v. University of Nairobi Enterprises & Services Limited* [2020] e-KLR, the Courts held that Human Resource Polices, are employment policy or labour practice; and are founded on the law, and cannot be wished away, such as the 1st Respondent's VC, Prof. Kibwage appears to have done, in his unilateral revocation of the Petitioner's contract.
 94. In E&LRC decision, *Thomas Ogunda Mboya v. Grand Royal Swiss* [2022] e-KLR; and South African Labour Appeal Court decision *Wyeth SA [PTY] Limited v Mangele & Others* [2005] 6 BLLR 523, it was affirmed that a contract of employment is consummated once an offer, detailing the essentials of the contract, is made by the Employer and accepted by the Employee. In this Petition, as concluded above, there was an offer made to the Petitioner, complete with the terms and conditions of service, and which incorporated the existing terms of service of the academic staff. The letter of appointment specifically identified itself, and the existing terms of service of the academic staff, as the Petitioner's contract of employment. It is not disputed that he accepted the letter of appointment.
 95. The South African decision above, found that the values of *the Constitution* would best be served, if the description of the term 'Employee,' included a recruitee, who had accepted an offer of employment. This thinking aligns with Section 5[8] [a] of our *Employment Act*, which extends the term 'Employee,' to cover job applicants. The law against workplace discrimination, and promotion of equality of opportunities [Section 5 of the *Employment Act*] extends to job applicants.
 96. This observation is important because the 1st Respondent, through Kibwage, appears to hold that the Petitioner was to report within 3 months of appointment, and had not reported, at the time Kibwage repudiated the contract. According to him, the contract had not been consummated. Although the Court has concluded that the contract was indeed consummated, once the Petitioner accepted the appointment, the Petitioner would not be denied the protection afforded to an Employee under the *Employment Act*, on the ground that he was merely a job applicant, studying far away in Nanjing, China, rather than an Employee, as suggested by Kibwage.
 97. It is irrelevant that he sat his interview via Skype from the University of Nanjing, China, or that he had not reported to work, at the time Kibwage recalled his letter of appointment for 'corrections.'
 98. In the Supreme Court of Kenya, *Petition No. E008 of 2023, Kenya Ports Authority v. Joseph Makau Munyao & 4 Others*, unfair labour practice was defined as any conduct, prohibited by law, governing the relations among Employers, Employees and Labour Organizations. Among the incidences of unfair labour practice identified by the Supreme Court include: interference with protected employment rights; discrimination at the workplace; refusal to engage in collective bargaining; illegal strikes; and featherbedding [where trade unions force employers to hire more employees than required].
 99. The Supreme Court upheld the holding of the E&LRC in *Peter Wambugu Kariuki & 16 Others v. Kenya Agricultural Institute* [2013] e-KLR, that the bundle of elements of unfair labour practices, is elaborated under Article 41 of *the Constitution*, and secondly, the right encompasses constitutional and statutory provisions, workplace conventions and usages, that breath life to Article 41. The Supreme Court underscored that the right of fair labour practices, encompasses all conduct prior to, in the course of, during, and after employment. It is a right extended to job applicants.
 100. The conduct of the 1st Respondent's VC, in overruling the organs mandated to carry out the shortlisting, interviewing and appointment of the Petitioner; and in his unilateral decision to repudiate



- the contract of the Petitioner's contract, fell within conduct described by *the Constitution*, and interpreted in a succession of judicial opinions, to amount to unfair labour practices.
101. The right to fair administrative action under Article 47 of *the Constitution*, unlike the right to fair labour practices under Article 41 of *the Constitution*, is well defined in Legislation, under the *Fair Administrative Action Act* No. 4 of 2015.
 102. Section 2 of this Act defines administrative action to include the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates.
 103. This definition appears to be the same, as the concept of fair labour practices, elaborated by the Courts above. There is no discernible conceptual parting of ways, between fair labour practices, and fair administrative action. At the heart of fair labour practices and fair administrative action, in employment and labour relations, is the concept of fair dealing between labour and capital. There seems to this Court to be, a doctrinal confluence, between Article 41 and Article 47 of *the Constitution*. The Court of Appeal in a very progressive decision, *The German School Society & Another v. Ohany & Another* [2023] KECA 894 [KLR], demonstrated this confluence, by holding that Employers are obligated to consult Employees on redundancy, under Section 40 of the *Employment Act*, as well as Section 4 [3] of the *Fair Administrative Action Act*. Consultation, is an expression of fair dealing, fair labour practices and fair administrative action, between capital and labour. Lack of consultation would fall within the Courts' definition of unfair labour practices. The only difference in the respectful view of this Court, is that one is located in the province of administrative and constitutional law; the other in the province of employment /labour and constitutional law.
 104. The VC Kibwage, did not give the Petitioner written reasons for his administrative action, unilaterally repudiating the contract of employment. Section 4 [2] of the *Fair Administrative Action Act*, required that the Petitioner is given written reasons. The Claimant was left dangling in the wind after his letter was recalled, and only learnt that his appointment had been repudiated, about 4 months after the appointment. He had to write to the Respondents, to be advised on the fate of his letter of appointment, which had been recalled for 'corrections.'
 105. The Petitioner's rights were impaired as concluded above. Section 4 [3] of the *Fair Administrative Action Act* required that the Respondents give the Petitioner adequate notice and reasons for the proposed decision. Other requirements include the right to be heard; right of internal review and appeal of the decision; and supply of a statement of the reasons justifying the impugned action. These standards of fair dealing, were not met by the VC Kibwage.
 106. Having been an Employee, as defined under the *Employment Act*, having executed a contract of employment, the Petitioner was entitled likewise, to be heard under Sections 41 and 45 of the *Employment Act*, and given valid reason[s], justifying termination of his contract, under Sections 43 and 45 of the *Employment Act*.
 107. The Respondents, in particular the VC Kibwage, acted in serial violation of *the Constitution*, the *Employment Act*, the *Fair Administrative Action Act*, the 1st Respondent's HR Manual and the A&P Criteria.
 108. What remedies are appropriate? The Court does not discern any hurdles, in granting the prayers as alternatively pleaded by the Petitioner.
 109. Repudiation of his contract took place only last year. The employer-employee relationship is retrievable, and can be reconstructed, as was intended by the Parties, before the misconceived intervention of the VC Kibwage.



110. The Court also notes that the vacancy which the Petitioner was successfully recruited to fill, was preserved through an order of the Court.
111. The alternative prayer for damages, should also be available to the Parties, in event they feel that the employer-employee relationship cannot be reconstructed.
112. The contract concluded between the Parties offered the Petitioner employment until retirement, at the age of 65 years. At his interview in November 2023, he disclosed that he was 33 years old. He would have expected to serve for 32 years. His monthly gross salary at entry, was Kshs. 185, 477.
113. It is declared that the Respondents' decision, recalling and repudiating the Petitioner's letter of appointment, has no legal or lawful justification, and is an infringement of the Petitioner's employment rights under Sections 5, 41, 43 and 45 of the Employment Act, and the right to right fair labour practices under Article 41, and right to fair administrative action under Article 47 of the Constitution.
114. The Respondents shall immediately reinstate the Petitioner's appointment, with effect from the date of appointment indicated on the letter of appointment, and without loss of salaries, years of service and accrued benefits.
115. Alternative to the order at paragraph 114 above, the Respondents shall pay to the Petitioner general damages for violation of his statutory and constitutional rights, under Sections 5, 41, 43 and 45 of the Employment Act, and Articles 41 and 47 of the Constitution, assessed at Kshs. 4,450,000.
116. The 1st Respondent's relevant committees appear to have conducted themselves with respect to this dispute, in accordance with the workplace policies, but their adherence to the 1st Respondent's HR Manual, which has one of its objectives as to ensure the correct administrative processes are followed, was upended by the 3rd Respondent's misreading and misapprehension of his mandate. The Petition would not have been necessary, had the 3rd Respondent respected the workplace policies, and the organs charged with the administration of those policies. Costs of the Petition shall be paid to the Petitioner by the 3rd Respondent, VC Prof. Isaac Kibwage.

In sum, it is ordered: -

- a. It is declared that the Respondents' decision, recalling and repudiating the Petitioner's letter of appointment, has no legal or lawful justification, and is an infringement of the Petitioner's employment rights under Sections 5, 41, 43 and 45 of the Employment Act, the right to fair labour practices under Article 41, and the right to fair administrative action under Article 47, of the Constitution.
- b. The Respondents shall immediately reinstate the Petitioner's appointment, with effect from the date of appointment indicated on the letter of appointment, without loss of salaries, years of service and accrued benefits.
- c. In the alternative to [b] above, the Respondents shall pay to the Petitioner general damages for violation of his employment rights under the Sections 5, 41, 43 and 45 of the Employment Act, and his constitutional rights under Articles 41 and 47 of the Constitution, assessed at Kshs. 4,450,000
- d. Costs shall be paid to the Petitioner by the 3rd Respondent, VC Isaac Kibwage.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28TH DAY OF FEBRUARY 2025.



James Rika

Judge

