



**Ganira v Teachers Service Commission (Petition E107 of 2024)  
[2025] KEELRC 538 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 538 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E107 OF 2024**

**B ONGAYA, J**

**FEBRUARY 27, 2025**

**IN THE MATTER OF ARTICLES 2(1), 3(1), 10(2) (B), 19(2), 20(4), 21(1), 22(1), 24(1), 25(A),  
25(C), 27(4), 41, 47(1), 48, 50, 237 AND 253 OF THE CONSTITUTION OF KENYA 2010  
IN THE MATTER OF ALLEGED VIOLATION OF ARTICLES 27(4),  
50(2) (C), 50(2) (P) AND 41 OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**OLIVER AMWOKA GANIRA ..... PETITIONER**

**AND**

**THE TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. The petitioner filed the petition dated 18.07.2024 through Adoli & Company Advocates. The petitioner prayed for reliefs as follows:
  - a. A declaration that by dismissing the Petitioner from employment for having mental health challenges and struggling with addiction, the Respondent violated the Petitioner’s right not to be discriminated against on grounds of health status as provided under Article 27 (4) of *the constitution*.
  - b. A declaration that by failing to accord the Petitioner adequate time an opportunity to prepare and present his defence statement to the disciplinary panel, the Respondent violated the Petitioner’s right to fair hearing as provided under Article 50 (c) of *the Constitution*.
  - c. A declaration that by dismissing the Petitioner from employment, the Respondent subjected the Petitioner to the harshest punishment whereas the Teachers service Commission code of regulations for teachers provides for other less severe punishments and therefore the Respondent violated the provisions of Article 50 (2)(p) of *the Constitution*.



- d. A declaration that by failing to provide the Petitioner with professional help at the work place to help the Petitioner deal with his mental health problems and addiction the Respondent violated the provisions of Article 41 of *the Constitution*.
  - e. A declaration that the Respondent's review committee illegally upheld the dismissal of the Petitioner from employment under TSC Act regulation 34 (f) which does not exist in the TSC code of regulation for teachers, 2015.
  - f. A declaration that desertion is not one of the grounds for removal of a teacher from the register under regulation 141 of the Teachers Service Commission code of regulations for teachers, 2015.
  - g. A declaration that the Respondent terminated the Petitioner's employment unfairly.
  - h. An order be and is hereby issued directing the Respondent to reinstate the Petitioner to his position as a teacher and member of the Respondent.
  - i. An order be and is hereby issued directing the Respondent to pay in full all the outstanding emoluments and benefits that the Petitioner would have otherwise earned from the time he was dismissed from employment on the 15<sup>th</sup> of September, 2021.
  - j. Any other relief the Court deems fit and just to grant.
  - k. Cost of this Petition to be borne by the Respondent.
2. The petition was based upon the following grounds:
- a. The Petitioner was employed by the Respondent under TSC number 559505 and at the time of his dismissal he was a teacher at Kipsigak High school.
  - b. On the 7<sup>th</sup> of June, 2021 the Petitioner failed to report to his work station as a result of his overwhelming struggle with alcoholism, mental and psychological battles.
  - c. Consequently, he was interdicted and summoned to attend disciplinary proceedings on the 15<sup>th</sup> of September, 2021 and answer to the charge of deserting duty.
  - d. He pleaded guilty to the charge and submitted that he had left for half term around the said date after working for short period after interdiction. He went to try and get a loan from the bank which was denied as he was not on payroll. This led to depression, memory loss, mental instability, amongst other psychological problems and thus the reason he deserted.
  - e. The desertion was not on his own volition but due to his mental health problems and battle with alcohol addiction.
  - f. It was established during the proceedings that the Petitioner did not have a defence statement for the reason that he did not have time to write the defence statement.
  - g. Despite the information, the disciplinary committee did not adjourn to accord the Petitioner sufficient time to prepare his defence. The disciplinary committee proceeded with the proceedings without the Petitioner's defence statement.
  - h. During examination of the Petitioner by the disciplinary committee he admitted to having an alcohol problem. The Petitioner opened up on having depression, memory loss as well as mental challenges. He confirmed that he was taking the necessary steps to ensure that he



overcomes the habit to wit; seeking professional assistance from rehabilitation centres as well as undertaking guiding and counselling with a psychologist.

- i. Vide a letter dated 12<sup>th</sup> October, 2020 the Respondent dismissed the Petitioner from employment for the reasons that he had deserted duty from 7<sup>th</sup> June, 2021.
  - j. The Petitioner appealed the decision on the 8<sup>th</sup> of November, 2021 through the Respondent's internal appeal and review structures in which appeal he argued that the decision to dismiss him was very harsh and discriminative. He further argued that the reasons for his absence had been explained to the school board but they were never considered.
  - k. The Review Committee heard the Petitioner's appeal on the 27<sup>th</sup> of June, 2022 in which proceedings the Petitioner provided new evidence to demonstrated that even after the dismissal he had taken the initiative to seek further professional help by admitting himself to Asumbi Treatment Centre for three months where he was rehabilitated and at the time of the hearing of the appeal he confirmed that he was now able to cope and control himself and had mechanisms to prevent him from drinking again.
  - l. Unfortunately, on the 7<sup>th</sup> of July, 2022 the Respondent upheld the Petitioner's dismissal.
  - m. The decision to dismiss the Petitioner was a very harsh and unfair decision.
  - n. The menace of substance abuse more specifically alcohol and the devastating effects on the helpless victims is of notorious nature and employers are expected to take reasonable steps to assist their helpless employees who may be victims towards care, rehabilitation, and resumption of normal life including proper performance of their duties.
  - o. The Respondent never took any initiative to assist the Petitioner as its employee during his struggle with the menace that is alcoholism.
  - p. The Respondent had other forms of punishment at its disposal but opted for the harshest despite the very special circumstances of the case. The Respondent should have embraced employee assistance programs and employee wellness programs to help teachers battling substance abuse and mental health challenges.
  - q. The Petitioner avers that his rights were violated and as a result he has suffered greatly.
3. The petitioner pleaded that his rights were violated as follows:
- a. To the extent that the Respondent did not grant the Petitioner adequate time, facilities and opportunity to prepare and present his defence statement during the disciplinary proceedings, the Respondent violated the provisions of Article 50 (2)(c) of *the Constitution*.
  - b. To the extent that the Respondent subjected the Petitioner to the most severe punishment whereas the Teachers Service Commission code of regulations for teachers provides for other less severe punishments, the Respondent violated the provisions of Article 50 (2)(p) of *the Constitution*.
  - c. To the extent that the Respondent dismissed the Petitioner from employment for desertion despite desertion not being one of the grounds for removal of a teacher from the register under regulation 141 of the TSC Act code of regulations for teachers, the Respondent violated the Petitioner's rights under Article 50 of *the constitution*.



- d. To the extent that the Respondent did not admit the Petitioner to an Employee assistance program even after the Petitioner admitted to having an alcohol addiction problem the Respondent violated the provisions of Article 41 of *the Constitution*.
  - e. To the extent that the Respondent did not refer the Petitioner to medical evaluation by the director of medical services with a view to ascertain his suitability to be retained in the teaching service in line with regulation 154(2)(vii) of the Teachers Service Commission code of regulations for teachers, after the Petitioner disclosed his mental health problems which had led to memory loss and mental instability, the Respondent violated the provisions of Article 41 of *the Constitution* by subjecting the Petitioner to unfair labour practice.
  - f. To the extent that Respondent took severe action against the Petitioner for what the Petitioner did while in a state of mental instability, memory loss and battle with addiction, the Respondent violated the provisions of Article 27 (4) of *the Constitution* which forbids discrimination on grounds of health status.
4. The respondent opposed the petition by filing the replying affidavit of Kenneth Marangu, Director for Human Resource and Development, sworn on 27.11.2024 and filed through Amos Lang'at Advocate. It was urged for the respondent as follows:
- a. The respondent employed the petitioner as pleaded for the petitioner.
  - b. It was alleged that in March 2016 the petitioner failed to consistently attend and report on duty. He was reported not to have attended on duty from 07.06.2021 to 25.06.2021.
  - c. The Board of Management (BOM) for Kipsigak High School acting as authorized agent of the respondent initiated a hearing on 20.08.2021 to verify the report of petitioner's absence as was levelled per exhibited minutes. The petitioner attended and admitted all the allegations and alleged mental health but did not provide medical evidence. The BOM decided to interdict the petitioner per letter dated 15.03.2022. Thereafter the petitioner failed to provide a written defence to the levelled allegations.
  - d. The petitioner was invited to a disciplinary hearing held on 15.09.2021. He attended and the panel decided he be dismissed from the respondent's service. He appealed the decision by letter dated 08.11.2021 and attended the review panel on 27.06.2022 but the dismissal was upheld. The disciplinary process and dismissal was lawful. Throughout the disciplinary process he failed to account for his absence from work as had been alleged.
5. Final submissions were filed for the parties. The Court has considered all material on record and returns as follows:
- a. By the petitioner's own pleadings and the material exhibited for the respondent particularly at the BOM hearing, the petitioner admitted to the leveled allegations. The Court finds that the reason for dismissal existed as valid per section 43 of the *Employment Act*, 2007 and was fair as it related to the petitioner's conduct and capacity as well as the respondent's operational requirements per section 45 of the Act. The dismissal was not unfair upon the merits. The petitioner has not exhibited medical evidence on his alleged mental ill-health or efforts towards rehabilitation. He has also not provided the alleged respondent's employee rehabilitation and support policy. Even if such policy existed, the petitioner has not shown that he qualified for such support, he requested for such support but it was denied, and has failed to show a case of discrimination in that respect.



- b. The respondent afforded the petitioner due procedure up to appeal stage despite the petitioner's admission of the levelled allegations early in the process before the BOM. The Court finds that as urged for the respondent, a fair procedure was adopted and the relevant regulations and law was complied with. The dismissal was not unfair in procedure and it is returned accordingly.
- c. Accordingly the Court returns that the petitioner was the author of his dismissal and the alleged violation of the cited provisions of the Bill of Rights have not been established at all.
- d. The review committee issued its decision on 07.07.2022 and the petition was filed on being two years to the date the petition was filed. It appears that the review's upholding the dismissal as the cause of action would not render the constitutional time barred as 3-years of limitation had not lapsed. Nevertheless, if the only cause of action is considered as the dismissal of 12.10.2020, it may be that the 3-years of limitation under section 90 of the *Employment Act* would have lapsed by the time the petition was filed. It appears that the petitioner has explained the delay in filling to challenge the dismissal decision on account the review proceedings were pending. The review and dismissal proceedings ran into each other and on whole, looking at the mixed causes of action, the petition is found not to have been time barred.
- e. The Court has considered all circumstances of the case and each party to bear own costs of the proceedings.

In conclusion the petition is hereby dismissed and each party to bear own costs of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 27<sup>TH</sup> FEBRUARY, 2025**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

