



Catright v Public Service Commission; Principal Secretary State Department for Lands and Physical Planning (Interested Party) (Judicial Review Application E040 of 2024) [2025] KEELRC 459 (KLR) (21 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 459 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E040 OF 2024**

B ONGAYA, J

FEBRUARY 21, 2025

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
PROCEEDINGS FOR ORDERS OF CERTIORARI AND MANDAMUS AND
IN THE MATTER OF ARTICLES 10, 19, 20, 21, 22, 23, 25, 27, 28, 29,
40, 47, 48, 50 AND 165, CONSTITUTION OF KENYA, 2010 AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACT, 2015 AND
IN THE MATTER OF THE CIVIL PROCEDURE ACT, CAP 21 LAWS OF
KENYA AND THE LAW REFORM ACT, CAP 26 LAWS OF KENYA AND
IN THE MATTER OF THE LAND REGISTRATION ACT, 2012 AND
IN THE MATTER OF THE PUBLIC SERVICE COMMISSION ACT, 2012 AND
IN THE MATTER OF THE PUBLIC SERVICE
COMMISSION DISCIPLINE MANUAL, 2008 AND
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

BETWEEN

OWINO JACOB CATRIGHT EXPARTE APPLICANT

AND

PUBLIC SERVICE COMMISSION RESPONDENT

AND

**PRINCIPAL SECRETARY STATE DEPARTMENT FOR LANDS AND
PHYSICAL PLANNING INTERESTED PARTY**

(Before Hon. Justice Byram Ongaya on Friday 21st February, 2025)



JUDGMENT

1. The ex-parte applicant filed the notice of motion dated 07.08.2024 through Miima & Company Advocates, under Order 53 rule 1(1) (2) and (4) of the Civil Procedure Rules, section 8(2) of the Law Reform Act, the inherent power and jurisdiction of the Honourable Court and all other enabling provisions of the law. He sought for Orders that:
 1. An Order Of Certiorari do issue quashing the entire decision of the respondent dated 04.07.2024 to dismiss the ex-parte applicant from Service communicated vide letter dated 04.07.2024 Reference PSC/D/OW/102(28).
 2. A Declaration that the summary interdiction and charge (without a hearing) of the ex-parte applicant offended the strict and mandatory rules of natural justice, section 41 of the Employment Act, Article 41, Article 47 of the Constitution as read with section 41(1), (2) and (3) of the Fair Administrative Action Act; illegal, ultra vires unprocedural, unfair and unconstitutional null and void ab initio and are hereby condemned, revoked, quashed and or set aside and the consequent proceedings and determination founded on the interdiction and charge decision suffer the same fate.
 3. A Declaration that the ex-applicant's enjoyment of his rights and fundamental freedoms secured in the Bill of Rights under Articles 25, 27, 28, 41, 47, 50 and 51 of the Constitution have been infringed by the respondent by failing, neglecting, and refusing to grant the ex-parte applicant a fair administrative action, fair hearing and right of appeal.
 4. A Declaration that the respondent and its agents violated the ex-parte applicant's right to work as envisaged under Articles 23(1) (2) (3) of the Universal Declaration of Human Rights and constitutional right to fair labour practices under Article 41 of the Constitution of Kenya.
 5. A Declaration that the termination of the appointment of the ex-parte applicant as a Chief Registration Officer by the respondent and all processes flowing from the said termination were unprocedural, illegal ultra vires and null and void.
 6. An Order Of Mandamus compelling the respondent to reinstate the ex-parte applicant to his position as a Chief Land Registration Officer at the State Department of Lands and Physical Planning.
 7. An order directing the respondents to pay the ex-parte applicant all unpaid salaries, dues, benefits and allowances from the date of illegal summary interdiction and dismissal up to date.
 8. Costs of this application be provided for.
2. The application was based on the grounds set out in the substantive motion and the ex parte applicant's supporting affidavit sworn on 07.08.2024. The ex parte applicant's case was as follows:
 - a. Prior to the respondent's decision dated 04.07.2024, the ex-parte applicant had served as a Chief Land Registration Officer for a period of 8 years and 5 months since 2015. The said respondent's decision to dismiss him from service at the State Department for Lands and Physical Planning was with effect from 03.07.2024.
 - b. The interested party issued the ex-parte applicant with a notice to show cause for the charge of absence from duty without reasonable cause on 16.09.2022. By a telephone call on 25.04.2023,



the interested party then invited him for hearing to be conducted before the Human Resource Management Advisory Committee. The said notice was unreasonably short since the ex-parte applicant was at the time admitted in hospital and upon seeking an adjournment and the interested party failing to respond, the ex-parte applicant believed that the matter had been terminated.

- c. The respondent proceeded to issue another notice to show cause on 06.06.2023, which process seemed to have been concluded by the interested party. The ex-parte applicant thereafter expected a decision from the respondent as per the respondent's disciplinary manual. Aggrieved by the decision, the ex-parte proceeded to file Petition No. E127 of 2023 that was eventually dismissed. However, the Court's decision did not permit the respondent and interested party to flaunt the disciplinary procedure. They disregarded due process and subjected him to a flawed disciplinary process thus contravening his right to fair administrative action, the right to fair hearing and the right to appeal.
- d. On 21.02.2024, the respondent sent a letter dated 15.02.2024 to the ex-parte applicant referring to the notice to show cause dated 06.06.2023 and attaching the Judgment of the Court dated 21.12.2023. The ex-parte applicant was given a seven-days' notice to respond but which was unreasonable and no evidence had been availed from the interested party that the respondent intended to rely on.
- e. Under clauses 3.0, 4.1.2 (c) and 4.3 of the Public Service Commission (PSC) Discipline Manual for Public Service, 2022 and sections 69 and 70 of the PSC *Act, No. 10 of 2017*, the respondent's authority to deal with disciplinary matters concerning employees in Job Group N and below, having served under 15 years, is fully delegated to the authorized officer of the interested party. There seems to be no retention of any residual power for the respondent to pick a few disciplinary matters for some employees under the said job group and handle them outside the authority as an appellate forum. Therefore, the respondent was the investigator, prosecutor, judge and hangman in the ex-parte applicant's case, undermining the principle of fair process.
- f. Since the ex-parte applicant had not lodged any appeal with the interested party regarding the disciplinary process initiated by the interested party, the respondent's actions were ultra vires contrary to sections 69 and 70 of the PSC Act and clauses 3.0 and 4.3 of the PSC Discipline Manual for Public Service, 2022.
- g. Further, the ex-parte applicant is apprehensive that the respondent stage-managed the disciplinary hearing as no evidence was supplied to him on the charges levelled against him. Both the interested party and the respondent therefore denied him the opportunity to examine the evidence supplied by the interested party to enable him respond adequately to the notice to show cause. That the annexation of the Judgment delivered in Petition No. E127 of 2023 cannot constitute evidence relied upon by the interested party and the respondent. Annexing the said petition demonstrated that the charges were based on the ex-parte applicant's decision to file a petition in court and did not establish the elements of the charges brought against him.
- h. The ex-parte applicant responded to the notice to show cause and indicated that he had already been punished through another process undertaken by the interested party for the same charge raised by the respondent. He sought for leniency in the resolution of the matter but the respondent chose to ignore this aspect.
- i. On 16.02.2024, the ex-parte applicant received another show cause letter from the interested party on non-compliance with the Public Officers Ethics Act. This was notwithstanding the



fact that he had been informed to await the decision of the respondent and needed not be in the office, which meant he was not issued with the necessary forms for such compliance.

- j. On 08.03.2024, the ex-parte applicant received an interdiction letter from the respondent according him half salary, full house allowance and medical insurance cover, and instructing him not to leave the duty station without express permission of his supervisor. According to the ex-parte applicant, he was unaware of investigations having been conducted prior to the interdiction and the outcomes of the said investigations, if any. The interested party however declined to comply with the said letter despite the ex-parte applicant being a person living with a chronic condition highly dependent on medication and medical services and needing to meet those medical needs.
 - k. The respondent then invited the ex-parte applicant for hearing, which was either a parallel proceeding to the disciplinary proceedings commenced by the interested party or fresh disciplinary proceedings for the same charge. He attended the hearing on 07.03.2024 and submitted on four (4) issues addressing the allegations levelled against him and the procedural impropriety he had faced being punished by a different process over the same charges.
 - l. The ex-parte applicant proceeded to write a letter to the interested party requesting for half salary, full house allowance and medical cover. Immediately after the said letter, he received communication from the respondent dated 04.07.2024 stating that he was dismissed from the service without any notification of his right to appeal.
 - m. The ex-parte applicant's argument was that despite the ERLC having made a determination, it was incumbent upon the respondent interested party to ensure that the disciplinary process complied with the law and upheld the applicant's constitutional rights. That the impugned procedure and decision by the interested party infringed on his fundamental rights and freedoms under *the Constitution* and flaunted the procedure set out in the PSC Act, PSC Regulations and PSC Discipline Manual.
 - n. Further, the ex-parte applicant's case was within the delegated powers of the interested party and it was mandatory that the same is handled by the interested party and not the respondent. That he was discriminated upon by being subjected to a different process from what is set out in regulation and the Act. That having never received a salary, medical cover and housing allowance before and during the interdiction period deprived him of human dignity.
 - o. It is therefore futile to pursue an appeal with the respondent having been the one who initiated the disciplinary process, interdicted the ex-parte applicant, heard the matter and subsequently dismissed him. There is no guarantee for fair hearing or fair administrative action and it is therefore in the interest of justice that the orders sought in the substantive motion be granted.
3. The respondent filed the replying affidavit sworn by its Secretary and CEO Paul Famba on 07.10.2024. It was averred as follows:
- i. Pursuant to Regulation 5 of the PSC Regulations, the respondent through the Delegation Instrument Ref No. PSC/SEC/93/37 (37) dated July, 2018 delegated its function to the Authorized Officer at the State Department for Lands and Physical Planning.
 - ii. On 14.04.2022, the respondent received a letter from the Cabinet Secretary (CS), Ministry of Lands and Physical Planning requesting for re-designation and deployment of officers out of the Ministry. Since the CS could only handle transfer or deployment of staff only up to grade CSG-7 as per the said delegation instrument, the CS requested the respondent to handle the same. On 15.06.2022, the respondent wrote to the CS deploying seven (7) officers in the



Ministries to various Ministries or State Departments. It was through the said letter that the applicant was deployed to the Ministry of Environment and Forestry and was required to report by 29.06.2022.

- iii. The applicant and other officers who were affected by the impugned transfers filed an appeal to the respondent through the letter dated 05.07.2022 challenging the transfers. The respondent considered and declined their appeal for the reason that a decision to transfer an employee is the prerogative of the Commission and transfer in the public service is not an administrative action that is subject to the provisions of Articles 41 and 47 of *the Constitution*. The said decision on the appeal was then communicated vide a letter dated 21.12.2022.
- iv. Through a letter dated 19.12.2022, the applicant filed an application for review against the Commission's decision declining to reconsider its decision to transfer him. The respondent considered and allowed the said application on 20.03.2023. Following this rescission of its decision on the deployments, the other officers who had reported to the Ministries were reinstated back to the positions at the Ministry of Lands and Physical Planning and no disciplinary action was taken against them.
- v. The Authorized Officer issued the applicant with a show cause letter on 16.09.2022 to explain why disciplinary action should not be taken against him for failure to obey lawful instructions, to wit, failing to report to the Ministry of Environment and Forestry. The respondent did not institute disciplinary proceedings against the applicant because of the pending appeal and later application for review before the Commission at the time. Nevertheless, the same did not mean that the respondent had allowed him to continue working at the State Department for Lands and Physical Planning.
- vi. The applicant failed to appear before the Ministerial Human Resource Management Advisory Committee on 27.04.2023 to give presentations on the show cause letter issued to him. The interested party then forwarded his file to the respondent for consideration and determination as per section 4.1.2 of the Discipline Manual for the Public Service, Revised 2022. The respondent then issued the applicant the letter to show cause dated 06.06.2023 for an explanation on why he failed to report to the Ministry of Environment and Forestry from 08.07.2022 to 20.03.2023.
- vii. Based on the Judgment of the Court in Pet. No. E127 of 2023, the respondent asked the applicant to make representations on the show cause letter dated 06.06.2023. The ex-parte applicant responded to the show cause through a letter dated 27.02.2024 and after the respondent considered his representations, it decided to interdict him. The applicant appeared before the Discipline Committee on 07.05.2024 and his submissions later received by the respondent on 15.05.2024. The respondent considered the matter and pursuant to section 68 of the PSC Act as read together with section 4.6 of the Discipline Manual for the Public Service, Revised 2022, it dismissed the applicant from the service on account of absence from duty without reasonable cause. The Commission's decision was then communicated to the applicant and the State Department for Lands and Physical Planning through the letter dated 04.07.2024.
- viii. In sum, the applicant was accorded a fair hearing and allowed to exercise all his rights under *the Constitution*, Legislation, policies and manuals applicable in the public service. He had eight (8) months to respond to the show cause issued on 06.06.2024 but failed to. The Commission had jurisdiction to undertake the disciplinary process against the applicant and was not required to refer the matter back to the Authorized Officer after the Judgement in ELRC Pet. No. E127



of 2023. At the hearing of 07.05.2024, the applicant never requested to cross-examine officers from the State Departments present even after having been informed of his right to do so.

- ix. The Motion dated 07.08.2024 is therefore unmeritorious, bad in law and should be dismissed with costs to the respondent.
4. The interested party's replying affidavit sworn by Janerose Karanja on 15.10.2024 was filed through the Honourable Attorney General. It was urged as hereunder:
 - i. After the ex-parte applicant was transferred to the Ministry of Environment and Forestry by the respondent, he was subsequently released vide the interested party's letter dated 27.06.2022. The interested party then wrote to the said Ministry on 18.08.2022 requesting their confirmation on whether the ex-parte applicant had reported for duties. In their letter dated 23.08.2022, the said Ministry confirmed that the applicant had not reported. On 15.09.2022, the Authorized Officer directed that payment of emolument for officers who had not reported to their new stations be withdrawn. As a result, the applicant's salary was stopped on 16.09.2022 and he was then issued with a show cause letter and informed of stoppage of his salary.
 - ii. The Ministry of Environment and Forestry confirmed in their letter of 22.02.2023 that the ex-parte applicant had not yet reported. Through a letter dated 13.01.2023, the interested party directed that the ex-parte applicant do a proper handing over on or before 20.01.2023. The applicant neither responded to the correspondence nor handed over as directed.
 - iii. The ex-parte applicant was issued with a dismissal letter, which informed him of his right to appeal against the dismissal from service to the respondent. Instead of appealing, he went to Court.
 - iv. The ex-parte applicant's salary and allowances as directed by the respondent were paid in September 2024.
 5. The ex-parte applicant, in his supplementary affidavits dated 24th and 29th October 2024, reiterated his averments as pleaded in the substantive motion. He averred that the respondent failed to follow due process and the pre-determined outcome was simply to unlawfully dismiss him.
 6. The parties filed their respective submissions. The Court has carefully considered the material on record and returns as follows:
 - a. As submitted for the applicant, section 31(3) (b) of the *Public Service Commission Act*, 2017 provides that a delegation by the Commission shall not divest the Commission of the responsibility concerning the exercise of the powers or performance of the duty delegated. Again, as submitted for the respondent, Per respondent's submissions, Regulation 5 (2) of the Public Service Commission Regulations provides that where the Commission has delegated any of its powers or duties, it shall retain the power to take corrective measures regarding the exercise of that power or performance of that function on its own motion or upon complaint or request on appeal or review. Further, the respondent's foundational power and function to exercise disciplinary control over and remove persons holding or acting in a public office, like the applicant, is provided for in Article 234(2) (b) of *the Constitution* of Kenya. Thus section 65(1) of the *Public Service Commission Act* states that the power to exercise disciplinary control within the public service shall vest in the respondent. Clause 27 of the delegation instrument Ref. No. PSC/SEC/93/37/VOL.VI/(3) dated 14.12.2022 states that notwithstanding the delegation therein, the Commission shall be at liberty to exercise the powers conferred upon it in Article 234 of *the Constitution*. Accordingly, the Court finds that the applicant's lamentation



that it was unprocedural or unlawful for the respondent by itself to undertake disciplinary proceedings against the applicant will collapse as unfounded. In making that finding the Court returns that the applicant has not shown any material prejudice or manifest injustice that resulted in the manner the respondent by itself undertook the disciplinary proceedings. Procedural unfairness based upon that allegation for the applicant is unfounded.

- b. The respondent has established that in ELRC Petition N0. E127 of 2023 between the parties and in the judgment dated 21.12.2023 by Mwaure J, it was found that without doubt the applicant had disobeyed lawful order to report to his new station even as he would have done pending determination of his review. Further, the Court found that from June 2022 to March 2023 the applicant's whereabouts was not clear and so that constituted grounds for disciplinary hearing. Further, despite several notices to show cause served for the applicant to explain his whereabouts for the period in issue, he had failed to do so. In the instant proceedings, the applicant merely alleges violation of due process but makes no attempt to answer the allegations of absence on the merits. It appears to the Court that the applicant had no explanation and the reason for the dismissal being valid as existing and fair as relating to his misconduct, the applicant was the sole author of his predicament. Accordingly, the Court finds that the applicant being culpable of the levelled allegations and not having offered exculpatory circumstances or evidence, he fully contributed to his dismissal. The alleged grievances and violation of the cited provisions of the Bill of Rights is found unjustified.
- c. The evidence is that the matter was pending before the respondent for review of the applicant's transfer and by the time the respondent rescinded the transfer decision, the interested party could not implement the rescission decision because the applicant had been absent from duty as was levelled against him. The matter having been properly vested in the respondent with respect to the challenged transfer, the Court finds that the interested party correctly referred the issue of the applicant's absence to the respondent by the letter dated 08.05.2023. Consequential to that reference, the respondent commenced the disciplinary action by itself per letter to show because dated 08.05.2023. The Court finds that the respondent was entitled to proceed as was done.
- d. The Court has considered the history and circumstances of the case and each party to bear own costs of the case.

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

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 21ST FEBRUARY, 2025.**

BYRAM ONGAYA

PRINCIPAL JUDGE

