



**Koech v Kenya Post Office Savings Bank (Petition E034 of 2024)
[2025] KEELRC 430 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 430 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E034 OF 2024
NZIOKI WA MAKAU, J
FEBRUARY 18, 2025**

**IN THE MATTER OF: ARTICLES 2(1) 10(2) (C), 22 (1) 23(1) & (3), 27, 41,
47(1), 50(1), 75(1) (C) 175 (A) 236, 258 & 259 OF THE CONSTITUTION**

AND

**IN THE MATTER OF: VIOLATION AND/OR INFRINGEMENT
ON THE FUNDAMENTAL RIGHTS OF THE PETITIONER**

AND

IN THE MATTER OF PUBLIC SERVICE COMMISSION ACT

AND

**IN THE MATTER OF EMPLOYMENT ACT AND IN THE
MATTER OF: THE FAIR ADMINISTRATIVE ACTIONS ACT 2015**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS & FUNDAMENTAL FREEDOM) PRACTICE AND PROCEDURE RULES.**

BETWEEN

CHARLES KOECH PETITIONER

AND

KENYA POST OFFICE SAVINGS BANK RESPONDENT

JUDGMENT

1. The Petitioner herein Mr. Charles Koech was employed by the Respondent Kenya Post Office Savings Bank on 2nd October 1990 as clerical officer, rising through the ranks to branch manager at Kehancha. It is averred that on 26th August 2015 the Respondent terminated his employment citing operational



irregularities bordering on gross misconduct. Following his termination, the Petitioner was charged with stealing by servant before the Kehancha Law Courts, based on the same allegations that led to his dismissal. After a lengthy trial, the court delivered its judgment on 13th July 2021, acquitting him of all charges. Despite this acquittal, the Respondent still upheld his dismissal, maintaining that it was not bound by the outcome of the criminal proceedings.

2. This Prompted the Petitioner to file the current petition seeking the following reliefs:
 - a. A declaration be made that he is entitled to protection under the Provisions of *the Constitution* 2010 and the Fair Administrations Actions Act.
 - b. A declaration to issue to declare that his Summary Dismissal from Employment vide the letters dated 26th August 2015 and 31st December 2021 is unconstitutional, unlawful and amounts to violation of the aforesaid provisions of *the Constitution* and statutes enumerated in the Petition herein.
 - c. An order of Certiorari to issue to bring into this Honourable Court for purposes of being quashed the decision of the Respondent summarily dismissing him vide the letters dated 26th August 2015 and 31st December 2021.
 - d. An order reinstating him in his position of clerical officer as stated in the petition.
 - e. Permanent injunction prohibiting and restraining the Respondent either by themselves, servants, agents or otherwise howsoever from appointing any other person to act and/or replace him in his position.
 - f. Compensation
 - g. Respondent be condemned to pay damages for unfair and illegal dismissal.
 - h. This Honourable Court be pleased to issue any orders as it deems fit and expedient.
3. The Petitioner argued that since the court had exonerated him of any wrongdoing, there was no legitimate basis for his termination. He contended that the dismissal process was not only unfair but also a violation of his fundamental rights. According to him, the decision was driven by ulterior motives, constituted an abuse of power, and was outright unlawful. To support his claims, he averred out that he was on leave at the time of the alleged incident. Furthermore, he asserted that despite his acquittal in the criminal case, the Respondent failed to acknowledge his exoneration.
4. Despite being duly served, the Respondent neither entered appearance nor filed any response. As a result, the matter proceeded undefended, with the Petitioner filing his written submissions at the conclusion of proceedings.

Petitioner's Submissions

5. From the outset the Petitioner urges the court to take note that the Petition remains unchallenged. He submits that labour-related matters are constitutionally protected, citing Articles 41, 47 and 236 of *the Constitution*. Additionally, he asserts that the petition is justified under Article 22(1) of *the Constitution*, which safeguards every individual's right to institute court proceedings claiming infringement of rights. The Petitioner submits that his dismissal from employment failed to adhere to the procedural requirements set out in section 41 of the *Employment Act*. In support of this, he references the Respondent's letter dismissing his appeal dated 31st December 2021, which states: "This is to inform you that the issues raised in your letter were accorded careful evaluation..." He



contends that this statement highlights the lack of a proper hearing and underscores that the decision to terminate his employment was made unilaterally.

6. Furthermore, he submits that the Respondent has not fulfilled its obligation under sections 43 and 44 of the Employment Act, to prove the reasons for termination and to justify summary dismissal respectively. To buttress this argument, the Petitioner submits that the Respondent has not defended this suit or provided its version of events. He also highlights the fact that he was acquitted of the criminal charges brought against him. The Petitioner asserts there is primacy in procedural fairness and cites the case of Co-operative Bank of Kenya Ltd v Yator Civil Appeal No. 87 of 2018 (2021) KECA 95 (KLR) 20th October 2021 where it was held:

“...that notwithstanding, even where an employee has committed gross acts of misconduct, which acts warrant summary dismissal, the law requires that before such sanction is undertaken, an employer must ensure procedural fairness to the employee by allowing the employee to give his defence.”

7. The Petitioner was denied the fair administrative action contemplated in Articles 41 and 47 of the Constitution as well as the process under the Employment Act and the Fair Administration Actions Act. Granted that he was exonerated and was never meant to have been lumped with the two colleagues who had conspired to steal, he ought to have been at worst placed on suspension or some minor punishment as he was even on leave when the theft occurred. His only failure was in not taking decisive action once he noted the discrepancy which he alerted the head office about leading to his eventual termination from employment. The letter of 31st October 2021 revived his claim in as far as fair procedure and the adherence to the dictates of the law in termination were concerned hence his Petition. Having suffered the termination as he did, he is entitled to recover some degree of recompense. He cannot be reinstated and therefore the orders sought of certiorari will not issue. He will instead be compensated as follows:
 - a. Kshs. 1,000,000/- (Read - One million Kenya Shillings only) for the breach of his constitutional rights as regards his employ with the Respondent.
 - b. Costs of the Petition.
 - c. Interest at court rates on the sum due and owing in (a) above from the date of judgment till payment in full.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 18TH DAY OF FEBRUARY 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

