



**Sholei v Judicial Service Commission (Petition 39 of 2013)  
[2025] KEELRC 960 (KLR) (27 March 2025) (Quantum Judgment)**

Neutral citation: [2025] KEELRC 960 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION 39 OF 2013  
MN NDUMA, J  
MARCH 27, 2025**

**BETWEEN**

**GLADYS BOSS SHOLEI ..... PETITIONER**

**AND**

**JUDICIAL SERVICE COMMISSION ..... RESPONDENT**

**QUANTUM JUDGMENT**

1. The Supreme Court by a judgment dated 17<sup>th</sup> February 2022 in Sholei v Judicial Commission and another (Petition 43 of 2014) [2022] KESC 5 KLR (The judgment) upheld this court's judgment of 7<sup>th</sup> March 2014 and directed the court to assess and award appropriate reliefs.
2. The court directed the parties to file submissions on the matter of appropriate reliefs that the court should award her.
3. The Petitioner filed submissions dated 2<sup>nd</sup> December 2024 whereas the Respondent filed submissions dated 17<sup>th</sup> January 2025.

**Determination.**

4. The Supreme Court in its judgment dated 17<sup>th</sup> February 2022 made the following final orders:  
85 consequently, we make the following orders: -
  - a. The appeal dated 30<sup>th</sup> October 2014 is hereby allowed.
  - b. The judgment of the Court of Appeal dated 19<sup>th</sup> September 2014 be set aside.
  - c. The judgment of the Industrial Court is upheld to the extent that the Appellant's right to fair administrative action and right to access to information was violated.



- d. The proceedings are hereby remitted to the Employment and Labour Relations Court, with instruction that appropriate reliefs be enhanced and awarded in accordance with the judgment and the pleadings at the Employment and Labour Relations Court.
  - e. There shall be no order as to costs.”
5. At paragraph 65 of its judgment, the Supreme Court in answer to the question whether Appellant’s right to fair administrative action under Article 47 of the Constitution was violated held as follows: -

“Consequently, we fault the Court of Appeal’s finding that it would have been impractical for Judicial Service Commission (JSC) to give specific reasons regarding the 87 allegations in the termination letter and that a press statement issued by JSC on 19<sup>th</sup> October 2013 gave detailed reasons for the termination of the Appellant’s employment. The least that JSC would have done was to enclose its reasons in the removal letter, the same way it enclosed the allegations against the Appellant in its letter dated 10<sup>th</sup> September 2013. It is therefore our finding that the refusal to give the Appellant reason(s) for her removal was without justification. The Appellant’s right to fair administrative action under Article 47 of the Constitution and the right to access to information was violated.”

6. The Supreme Court reiterated at paragraph 70 of the judgment: -

Further the JSC’s reasons for denying a public hearing on the basis that it was an ‘internal’ process, that it was common practice in other disciplinary matters is vague and not sufficient basis to deny a specific request. Again, we find, without justifiable reasons for the refusal, the Appellant’s right to fair administrative action through public hearing under Article 47 of the Constitution was violated.

#### **Petitioner’s submissions.**

7. The Petitioner submits that guided by section 49(4) of the Employment Act, the court should consider that the termination was unfair; that the Supreme Court held that the Petitioner was not given reasons for her termination, that her request for a public hearing was denied and that her request to be supplied with documents that would aid her in her defence was also denied. That the disciplinary proceedings against the Petitioner were widely publicized by the Respondent who routinely issued news releases to the public including notice that the Petitioner had been sent on compulsory leave. That the Respondent had published a notice calling for the public to submit information which would assist the Respondent in its inquiry into malpractices alleged against the Petitioner yet the Petitioner’s request for a public trial was unjustifiably denied.
8. That the Respondent announced the reasons for the Petitioner’s petition to the public on 19/10/2013 yet failed to set out the reasons in the Petitioner’s termination letter of 18/10/2013.
9. That the Respondent did not prove that the Petitioner contributed to her removal the reasons for the removal having not been given to her unfairly. That following her removal from office on 18/10/2013, the Petitioner was unable to secure comparable or suitable employment with another employer until her election as a member of parliament in 2017. That the Petitioner desired to be reinstated to her employment but given the lapse of time in determining the petition and subsequent appeals, it was impractical to get that remedy due to lapse of time.
10. That the position held by the Petitioner was high ranking. She was appointed on 22<sup>nd</sup> August 2021 and expected to serve her term of five (5) years as the Chief Registrar of the Judiciary.



11. That it has been more than 10 years since the Petitioner left office, on 18/10/2013. That this matter has been litigated up to the Supreme court. That the matter received extensive media coverage. That the Petitioner has suffered immense loss and damage due to the unexpected loss of income before she was able to secure parliamentary election. That the Respondent did not pay the Petitioner terminal benefits including payment in lieu of notice upon termination. That the Petitioner was not compensated for loss of employment upon termination.
12. The Petitioner relies on the decision in Kenya Broadcasting Corporation v Geoffrey Wakio [2019] eKLR in which the Court of Appeal upheld an award of the equivalent of 12 months' salary in compensation for the unfair termination. That the award was issued in consideration, of the immense loss suffered by the Respondent during the long criminal trial, the blatant disregard for fair labour practices by the Appellant and the impracticability of reinstatement.”
13. The Applicant also relies on the Court of Appeal decision in Kenfreight (E.A.) Limited v Benson Nguti [2010] eKLR in which the Court upheld an award of 12 months' salary compensation for unfair termination where the trial court had considered factors such as the Respondent's rank and the Appellant's treatment by the Respondent. The Respondent in that case had not been given reasons for his termination as happened in the present case. The decision was upheld by the Supreme Court on appeal.
14. The Appellant further relied on the ELRC decision in Koin v Governor, Kajiado County and another [2024] KEELRC 289 (KLR) where the court awarded the Petitioner the equivalent of 12 months' salary as compensation for unfair termination and 3 months in lieu of notice. In this matter, the court found that the Petitioner had been humiliated by her employer, as her dismissal was announced on social media even before this was communicated to her.
15. The trial court had in its final orders at paragraph 127(d) held:  
that, the Petitioner is entitled to compensation for the unlawful and unfair loss of employment and for violation of her constitutional rights and that an inquiry to be gone into.”
16. The decision of the trial court was upheld by the Supreme court with respect to the unlawful and unfair removal from office and violation of Petitioner's right under Article 47 and 35 of *the Constitution* of Kenya 2010.

### **Submissions by Respondent.**

17. The court has in addition considered the submissions by the Respondent on the issue of compensation for unlawful and unfair termination of employment as follows: -
18. That courts have been hesitant to award damages for both unfair and unlawful termination based on the provisions of the *Employment Act* 2012 and a claim for violation of rights as provided in *the Constitution* of Kenya 2010.
19. The Respondent referred the court to the Court of Appeal decision in OL Pejeta Ranching Limited v David Wanjau Muhoro [2017] eKLR in which the Court of Appeal set aside the compensation awarded for unfair termination on the basis that the aggrieved party had also received compensation for violation of his constitutional right against racial discrimination, the learned Judges held as follows:
20. The compensation awarded to the Respondent under this head was the maximum awardable that is to say, 12 months' pay; the trial Judge did not at all attempt to justify or explain why the Respondent was entitled to the maximum award.”



21. The Respondent also relied on the decision in *Galgeto Jarsons Jiko v Agricultural Finance Corporation* [2021] KEEC 323 (KLR) stating that the Claimant was only partially successful with regard to the remedies sought.
22. The Respondent submits relying on the Court of Appeal decision in *Gitobu Imanyara and 2 others v Attorney General* [2010] eKLR that:

“...it seems to us that the award of damages for constitutional violations of an individual’s right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court’s discretion for award of damages in constitutional violation cases though is limited by what is “appropriate and just “according to the facts and circumstances of a particular case.

As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality.

In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration. Public policy considerations is also important because it is not only the Petitioner’s interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy.”
23. The Respondent further cited the case of *Doucet-Boudreau v Nova Scotia Minister of Education* [2003] SCC 62 to provide guidelines to determine whether a remedy awarded in the case of violation of constitutional rights is just and appropriate to include a remedy that will:
  - (1) meaningfully vindicate the rights and freedoms of the Claimants;
  - (2) employ means that are legitimate within the framework of our constitutional democracy;
  - (3) be a judicial remedy which vindicates the right while involving the function and powers of a court’s award to be fair to the party against whom the order is made.”
24. The Respondent further emphasis that the Supreme Court found that only the Petitioner’s right to fair administrative action and right to access information was violated at paragraph 63, 64 and 70 of the judgment.
25. The Petitioner on the other hand has submitted extensively on the need to both award damages for unfair termination in terms of section 49(1) and (4) of the *Employment Act* and in addition award general damages for the violation of Petitioner’s right to fair administrative action and her right to information which award is discretionary.
26. The Petitioner submits that the Petitioner is not required to prove any damage or loss to be entitled to any of the reliefs contemplated under Article 23(3) of *the constitution* considering the Supreme Court’s holding that the Respondent violated her rights.



27. The court was referred to the Supreme Court decision in (Suing of the next of friend of and on behalf of (WM) and 6 others v Standard Group and 4 others [2023] KESC 68 (KLR).

“97. Therefore, once a Petitioner has presented proof on a balance of probabilities that his or her rights were violated, the court must vindicate and affirm the significance of the violated rights, even though the Petitioner may not present evidence of any loss or damage suffered as a result of the violation. For these reasons, it can be said that the approach in awarding damages or compensation in constitutional rights violation cases is different from that in tortious claims. The two courts below misdirected themselves in treating the case as if it was based on a claim of libel or one of personal injury by insisting that, even after proving an infringement, the victim must, in addition, demonstrate the extent of loss, injury or damage suffered as a result.” (Emphasis ours)

28. The Petitioner submitted that the court should in considering award of general damages for violation of rights under Article 47 and 35 of *the Constitution* to take into account the following:

- a. The Respondent passed a resolution for the removal of the Petitioner on 17<sup>th</sup> August 2013. It was ratified on 18<sup>th</sup> August 2013, before the Petitioner’s disciplinary hearing began and before she received her letter of termination on 18<sup>th</sup> October 2013.
- b. The Petitioner produced emails establishing that there was a conspiracy to remove her from office, being the “war strategy” by the “war council.” The Respondent did not lead any evidence which would discredit the resolution or emails furnished by the Petitioner.
- c. The Respondent routinely issued press statements regarding the matter. Despite this, the Petitioner’s request for a public hearing was unjustifiably denied.
- d. Although the reasons for her termination were announced to the public through a press conference, the Petitioner was never furnished with the said reasons.
- e. As a result of the Respondent’s publishing of the proceedings, the Respondent suffered public ridicule.

29. The Petitioner submitted further that the general damages awarded should serve to vindicate *the Constitution* and should be sufficient to meet the justice of the case. The court in this respect was referred to the persuasive decision of Mwita J. in *Law Society of Kenya v Attorney General and another Warsame and another* (Interested Party [2019] KEHC 10881 (KLR).

“49. This country has a unique constitution that requires justification of every governmental or public action, taken or not taken. In that regard, Etienne Mureinik opines in his article “a Bridge to where? Introducing the interim Bill of rights” (Supra) at page 32, that:

“If the new constitution is a bridge away from a culture of authority, it is clear what it must be a bridge to, it must lead to a culture of justification, a culture in which every exercise of power is expected to be justified; in which the leadership given by government rests on the cogency of the case offered in defence of its decisions, not the fear inspired by the force at its command. The new order must be a community built on persuasion, not coercion.” (emphasis)”



50. On that note, therefore, actions of any state officer or public officer in our Republic, including that of the president, must meet the constitutional test of justification as an incidence of the rule of law and a founding value in our constitution.”
51. The Petitioner adds that the Respondent in this matter arbitrarily and oppressively exercised its constitutional power resulting in the violation of the Petitioner’s constitutional rights.
52. Upon a careful consideration of all the above matters set out by the parties in their able submissions, the factual and legal findings by the trial court that was upheld by the Supreme court and the principles of award of damages as enunciated in the various decisions of the court set out herein, the court is of the considered finding that: -
- i. The violation of the human rights of the Petitioner under Article 35 and 47 of *the Constitution*, crystalized in the unlawful and unfair termination of employment of the Petitioner as the Chief Registrar of the Judiciary earning a monthly salary of Kshs. 1,162,000.00 and performing the duties of the Chief Administrator and the Accounting Officer of the Judiciary. The Petitioner also doubled up as the Secretary of the Judicial Service Commission by virtue of her office.
53. The actual loss and damage therefore to the Claimant as a result of the violation of her rights under Article 35 and 47 of *the Constitution* was the loss of her employment as the Chief Registrar Judiciary for the remainder of her five (5) year term and possible renewal of the contract upon expiry as the law mandated a maximum of two five (5) year terms.
54. The court embraces all the factors under section 49(4) set out in the submissions by the Petitioner and will not regurgitate the same, which factors provide lawful and reasonable basis of assessment of compensation payable to the Petitioner save to repeat that the Petitioner lost a most respected and lucrative job and career prospects; was not proved to have contributed to the dismissal; was not compensated for the loss; was not paid terminal benefits upon dismissal including payment in lieu of notice; took over 3 years to get another decent job upon being elected to parliament, suffered immense negative publicity resulting in investigations for criminal conduct which has resulted to nothing to date; wished to be reinstated to her job but it was not possible due to the passage of time and the negative publicity which surrounded the separation. The Petitioner had also proved the nefarious schemes by the employer and others to end her career at the Judiciary. The court also notes that the value of money has gone down drastically over the 10 years wait by the Petitioner.
55. Further, having regard to the law and authorities set out herein before in the judgment, find that the Petitioner is entitled to an award of maximum compensation of the equivalent of twelve (12) months’ salary for the unlawful and unfair dismissal under section 49(1) (c) and (4) of the *Employment Act* in the sum of Kshs. (1,162,000 x 12) = Kshs. 13,944,000.00.
56. The court finds that the award of damages as above serve to vindicate the loss and injury suffered by the Petitioner having considered all the circumstances of the case and shall not make a further award of general damages in respect of the violation of her rights under Article 23 of *the Constitution* of Kenya 2010. The Supreme Court did not award costs to the parties and so we make no award of costs.
57. In the final analysis, judgment on quantum, is entered in favour of the Petitioner against the Respondent in the sum of Kshs. 13,944,000.00.
- (b) Interests at court rates from the date of this judgment till payment in full.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF MARCH 2025.**

**MATHEWS NDERI NDUMA**



## **JUDGE**

Appearance:

Hamilton, Harrison & Mathews Advocates for Petitioner

Issa & Company Advocates for Respondent

Mr. Kemboi – Court Assistant

