



Kyalo & 6 others v Kenya Railways Corporation & 8 others (Petition E049 of 2024) [2025] KEELRC 828 (KLR) (11 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 828 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E049 OF 2024
HS WASILWA, J
MARCH 11, 2025**

BETWEEN

**JONATHAN KYALO 1ST PETITIONER
ERICK AGURE 2ND PETITIONER
IDRIS SHWAIB 3RD PETITIONER
RACHAEL NJERI 4TH PETITIONER
STANLEY SIMIYU 5TH PETITIONER
HUDSON IMALWA 6TH PETITIONER
MERCY ESTHER 7TH PETITIONER**

AND

**KENYA RAILWAYS CORPORATION 1ST RESPONDENT
PUBLIC SERVICE COMMISSION 2ND RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT
ETHICS AND ANTI-CORRUPTION COMMISSION 4TH RESPONDENT
THE DIRECTOR OF PUBLIC PROSECUTION 5TH RESPONDENT
THE KENYA NATIONAL EXAMINATION COUNCIL 6TH RESPONDENT
KENYA SCHOOL OF LAW 7TH RESPONDENT
KENYA INSTITUTE OF MANAGEMENT 8TH RESPONDENT
MINISTRY OF EDUCATION 9TH RESPONDENT**



JUDGMENT

1. The matter before the court is a petition dated 9th April 2024, filed by Eric Agure, the 1st Petitioner, on his own behalf and on behalf of six other Petitioners. The Petitioners are adult Kenyan citizens who invoke their rights under Article 3(1) of *the Constitution* of Kenya, 2010, seeking redress for alleged violations of their constitutional rights by the Respondents.
2. The 1st Respondent, Kenya Railways Corporation, is a state corporation established under the *Kenya Railways Corporation Act*, CAP 397, and is sued as a public body with obligations under Article 3(1), Article 41 on fair labour practices, and Article 47 on fair administrative action. The 2nd Respondent, the Public Service Commission, is a constitutional commission under Article 233, sued for its administrative and constitutional functions under Articles 3(1) and 47. The 3rd Respondent, the Hon. Attorney General, is joined under Articles 3(1), 156(4), and 156(6) as the principal legal advisor to the government. The 4th Respondent, the Ethics and Anti-Corruption Commission, is a statutory body under the *Ethics and Anti-Corruption Commission Act*, 2011, joined as an independent commission with obligations under Articles 3(1) and 47. The 5th Respondent, the Director of Public Prosecutions, is established under Article 157, sued as a body mandated to exercise state powers of prosecution and ensure compliance with Article 3(1) and Article 47. The 6th Respondent, the Kenya National Examinations Council, established under the *Kenya National Examinations Council Act*, No. 29 of 2012, is sued for its statutory duties relating to examination standards and certification under Article 3(1). The 7th Respondent, the Kenya School of Law, established under the *Kenya School of Law Act*, 2012, is sued as an independent legal training institution with obligations under Article 3(1). The 8th Respondent, the Kenya Institute of Management, is sued as a professional management organization with constitutional obligations under Article 3(1).
3. The petition is grounded on various constitutional provisions, including the Preamble, which affirms the national values of human rights, equality, democracy, and the rule of law. Article 2(1) establishes the supremacy of *the Constitution*. Article 10(1) binds all state organs, officers, and persons to national values, including the rule of law, human dignity, and human rights, as enshrined in Article 10(2). The Bill of Rights, under Articles 19(1) and 19(2), guarantees the dignity of individuals and communities and the realization of their full potential. Article 19(3) affirms that rights belong to individuals and are not granted by the State. Article 20(1) applies the Bill of Rights to all state organs and persons, while Article 20(2) guarantees enjoyment of rights to the greatest extent possible. Article 21 imposes a duty on the State and state organs to protect, promote, and fulfill human rights. Article 22 grants every person the right to institute court proceedings for violations of rights. Article 23(1), read with Article 165, vests jurisdiction in the High Court to determine such matters. Article 25(b) guarantees freedom from slavery and servitude. Article 27(2) provides for equality and freedom from discrimination. Article 28 guarantees the right to human dignity. Article 41(1) guarantees fair labour practices. Article 43(1) provides for economic and social rights, including the right to health, housing, food, water, social security, and education. Article 47(1) guarantees the right to fair administrative action. Article 50 guarantees the right to a fair hearing. Article 165 vests the High Court with jurisdiction to determine whether rights have been violated. Article 258 grants every person the right to institute proceedings where *the Constitution* has been contravened.
4. The Petitioners contend that the 1st Petitioner was employed by the 1st Respondent as a driver on 17th March 2016 after undergoing a rigorous interview and document verification process. He worked under the Human Resources and Administration Department before being transferred to Kisumu



on 22nd May 2017, then to Mombasa SGR Department in Port Reitz on 4th June 2018, where he was promoted from Grade 9 to Grade 8. In December 2019, he was transferred to Nairobi Railways Headquarters and later posted to Railways Institute under the Director until his dismissal.

5. Throughout the 1st Petitioner's employment, the 1st Respondent appraised him quarterly and found that he met all set targets. However, in an opaque and unverifiable process, the 1st Respondent purported to conduct another document verification exercise, despite his documents having been scrutinized and verified at recruitment. Based on this opaque process, the Petitioner was summarily dismissed without being given any reasons or an opportunity to be heard. The Petitioner asserts that he obtained his documents from legitimate government agencies and that the 1st Respondent is unlawfully withholding his employment benefits despite issuing him a Certificate of Service.
6. The 2nd Respondent allegedly directed the 1st Respondent to recover all salaries paid to the Petitioner for services already rendered and to institute prosecution against him, thereby subjecting him to harassment, embarrassment, and mental torture. The Petitioners argue that these actions violate their right to a fair hearing under Article 50, as they were investigated, tried, and dismissed based on an opaque and biased process without an opportunity to be heard.
7. They further contend that the denial of their employment benefits violates Article 47(1) on fair administrative action. The termination allegedly violates their right to livelihood and socio-economic rights under Article 43, exposing them to economic hardship affecting access to food, water, healthcare, and sanitation. The directive to recover salaries paid to them is equated to slavery and servitude, in violation of Article 25(b).
8. The Petitioners maintain that they diligently served the 1st Respondent, and no concerns were raised about their competence during quarterly reviews. They argue that recovering money already paid violates their rights under Article 25(b). The intention to prosecute them, especially by the 4th Respondent, is said to be an abuse of state power and a failure to uphold *the Constitution* as required under Article 3(1). The 1st Respondent's actions allegedly violate their right to dignity under Article 28, as it had previously verified their documents during recruitment and is now estopped from doing so again. The intended prosecution is termed an abuse of power and a violation of Article 10.
9. The Petitioners seek various declaratory and injunctive reliefs, including declarations that the 1st and 2nd Respondents violated their rights under Articles 27, 43, 47, and 50, and that the Respondents violated Articles 3(1) and 10. They further seek a declaration that any adverse action against them would violate Articles 25 and 28. They seek an order restraining the Respondents from taking any adverse action, compelling the 1st Respondent to pay them their employment benefits, costs of the petition, interest, and any other relief deemed just by the court.
10. The 1st Petitioner swore an affidavit in support of the petition of even date. He stated that he made the affidavit in his own capacity and on behalf of the other Petitioners, all of whom were employed by the 1st Respondent in various capacities. He averred that at the time of their employment, the 1st Respondent collected their certificates, which were duly verified and found to be in order. He further deponed that the Petitioners diligently executed their duties, and their contracts were renewed continuously by the 1st Respondent. He asserted that the 2nd, 3rd, 4th, 5th and 6th Petitioners were placed on compulsory suspension between June 2023 and July 2023 on allegations of forgery.
11. He further stated that the 4th Petitioner and himself had resigned by letters dated 5th June 2023 and 8th June 2023, respectively, and that any subsequent suspension, disciplinary action, or termination by the 1st Respondent would therefore be void. He deponed that the Petitioners were subjected to a flawed disciplinary hearing, where the 1st Respondent based allegations of forgery against them without



providing any evidence of the report relied upon in making such claims. He stated that he had been advised by his Advocates on record, which advice he verily believed to be true, that the 1st Respondent was legally obligated to accord him and the other Petitioners a fair hearing before effecting any dismissal from service.

12. He further deponed that upon dismissal, the Petitioners were entitled to their full contributions to the Pension Fund and half of the employer's contribution immediately, with the remaining portion to be disbursed upon attaining retirement age. He averred that the said actions of the 1st Respondent were not only unfair but also in direct violation of their rights as guaranteed under the Constitution, the Employment Act, 2007, the Labour Relations Act, and various court decisions.
13. He stated that as a result of the actions complained of, the Petitioners had been subjected to undue hardship, psychological distress, and financial difficulty, as their jobs had been their primary source of livelihood, and they had made plans based on their expected employment benefits until they secured alternative employment. He further stated that he had been advised by his Advocates on record, which advice he verily believed to be true, that this Honourable Court had the power to intervene and prevent further abuse of power by the 1st Respondent and the continued violation of their constitutional rights.
14. He averred that unless this Honourable Court intervened urgently and granted the orders sought, the Petitioners would suffer irreparably, and the Respondents would persist in violating their fundamental rights and freedoms as enshrined in the Constitution. He deponed that it was on this basis that the Petitioners had instructed their Advocates to file the present petition. He further averred that he swore the affidavit on his own behalf and on behalf of the other Petitioners in support of the petition filed therewith. He stated that whatever was deponed therein was true to the best of his knowledge, save for matters deponed on information, the sources whereof had been disclosed.

Petitioner's Submissions

15. The Petitioners filed written submissions dated 11th November 2024 in support of the petition dated 9th April 2024, together with the supporting affidavit sworn by the 1st Petitioner, Eric Agure. The 1st Petitioner presented the petition in his capacity and on behalf of the other six Petitioners, asserting an obligation to respect, uphold, and defend the Constitution as provided under Article 3(1) of the Constitution of Kenya, 2010.
16. The 1st Petitioner was appointed to the position of a Driver by the 1st Respondent on 17th March 2016 after undergoing a rigorous interview and verification of his academic documents. He worked under the Human Resources and Administration Department of the 1st Respondent until 22nd May 2017, when he was transferred to Kisumu in the same position. He later worked in Kisumu until 4th June 2018, when he was transferred to Mombasa SGR Department in Port Reitz and was promoted from Driver Grade 9 to Grade 8. In December 2019, the 1st Respondent transferred him to Nairobi at the Railways Headquarters, where he worked until 2nd February 2020, after which he was posted to the Railway Institute and attached to the Institute's Director until his dismissal.
17. The 1st Respondent appraised him every quarter and was satisfied that he met all targets and expectations. However, the 1st Respondent subsequently conducted a verification of his documents in an opaque and unverifiable process with no available report on the method and criteria used. This process led to his summary dismissal without being given a reason as to why his documents were being verified again, despite having been verified and approved during his recruitment. He contended that he was issued the documents in question by government agencies and had no control over their authenticity.



18. The 1st Respondent unlawfully withheld his employment benefits despite issuing him with a Certificate of Service. The 2nd Respondent instructed the 1st Respondent to recover all the money paid to the 1st Petitioner as salary for services already rendered and to institute prosecution proceedings against him to harass, embarrass, and subject him to mental torture and stress. The Petitioners, therefore, sought orders from the Honourable Court, including a declaration that the 1st and 2nd Respondents violated their rights under Articles 27, 43, 47, and 50 of *the Constitution* of Kenya, a declaration that the Respondents violated Articles 3(1) and 10 of *the Constitution*, a declaration that any adverse action taken against them would violate Articles 25 and 28 of *the Constitution*, an order restraining the Respondents from taking adverse action against them, an order compelling the 1st Respondent to pay their employment benefits, and costs and interest on the petition.
19. The Petitioners submitted that they were employed by the 1st and 2nd Respondents after a thorough and competent interview process, where their qualification documents were subjected to scrutiny and verification. They had served for over a decade and were dismissed unilaterally without being given an opportunity to defend themselves, contrary to their right to a fair hearing under Article 50 of *the Constitution*.
20. The Petitioners had been diligent in their duties and had been promoted on various occasions, with no indication that their academic certificates were inauthentic. The termination of their services was a targeted witch hunt meant to deprive them of employment, despite the fact that they had no access to or control over their academic certificates, which were submitted to the Human Resource Department upon employment. The Petitioners relied on Articles 22(5), 47, and 50 of *the Constitution*, which guarantee the right to a fair hearing.
21. The Petitioner cited the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, where the Court held that procedural fairness requires a complete and thorough investigation before termination, and failure to follow due process renders the dismissal unfair. They also relied on *Postal Corporation of Kenya v Tamy* [2019] eKLR and *Pius Machafer Isundu v Lavington Security Guards Ltd* [2017] eKLR, which emphasized that for substantial fairness to be met, the employer must have a valid reason and that not all misconduct warrants dismissal. Further, in *Kenya Bankers Association v Attorney General & another, National Assembly (Interested Party)* [2020] eKLR, the Court held that retrospective application of laws, especially criminal sanctions, is prohibited under Article 50(1) (n) of *the Constitution*.
22. The Petitioners urged the Court to find that they were deserving of the orders sought. On the issue of costs, they relied on Section 27 of the *Civil Procedure Act*, which grants the Court discretion in awarding costs to a successful party. They cited *Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others* [2013] eKLR, which held that costs should be awarded to the successful party unless there are good reasons to depart from this principle. They also relied on *Republic v Rosemary Wairimu Munene (Ex parte Applicant) v Ihururu Dairy Farmers Co-operative Society Ltd* Judicial Review Application No. 6 of 2004, where the Court held that costs serve to compensate the successful party for the trouble of prosecuting or defending a case rather than penalizing the losing party.
23. Further reliance was placed on *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another* [2016] eKLR, where the Court emphasized that costs should follow the event unless special circumstances dictate otherwise. The guiding principles in awarding costs were reiterated in *Jasbir Singh Rai*, where the Supreme Court held that costs follow the event, and a party who institutes a suit will bear costs if it fails, while a successful party is entitled to costs unless there are special circumstances.



24. The Petitioners further relied on *Orix (K) Limited v Paul Kabeu & 2 others*, where the Court held that costs should follow the event unless there are exceptional circumstances. They submitted that the suit sought to protect their rights and prevent further infringement by the Respondents and that they were entitled to costs on a full-indemnity basis. They urged the Court to exercise its discretion and allow the orders sought in the petition. They concluded that the Petitioners were deserving of the reliefs sought and requested the Honourable Court to grant the prayers in the petition.

Petitioner's Submissions

25. The Petitioners filed written submissions dated 17th January 2025 in support of their petition dated 9th April 2024. They submitted that the 1st Petitioner presented the petition in his capacity and on behalf of six other petitioners, asserting their obligation to respect, uphold, and defend *the Constitution* under Article 3(1) of *the Constitution* of Kenya, 2010. The 1st Petitioner was appointed as a driver by the 1st Respondent on 17th March 2016 after undergoing a rigorous interview process and verification of his documents.
26. He served under the Human Resources and Administration department until 22nd May 2017, when he was transferred to Kisumu in the same capacity. On 4th June 2018, he was transferred to the Mombasa SGR Department in Port Reitz, where he was promoted from Driver Grade 9 to Grade 8. In December 2019, he was transferred to the Nairobi Railways Headquarters and later posted to the Railway Institute, where he worked until his dismissal.
27. Throughout his tenure, the 1st Respondent conducted quarterly appraisals and confirmed that he met all targets and expectations. However, in a process the Petitioners described as opaque and unverifiable, the 1st Respondent conducted a second verification of their documents, despite an earlier verification at recruitment. This process led to their summary dismissal without a clear reason. The Petitioners contended that they do not issue academic certificates, as such documents are issued by government agencies. They alleged that the 1st Respondent unlawfully withheld their employment benefits despite issuing certificates of service and that the 2nd Respondent directed the 1st Respondent to recover all salaries paid to them and to initiate prosecution proceedings, subjecting them to harassment, embarrassment, and mental anguish.
28. The Petitioners sought declarations that their rights under Articles 27, 43, 47, and 50 of *the Constitution* of Kenya, 2010, had been violated. They further sought a declaration that the 1st and 2nd Respondents contravened Articles 3(1) and 10 of *the Constitution* and that any adverse action against them would violate Articles 25 and 28. They prayed for an order restraining the respondents from taking any further adverse action, an order compelling the 1st Respondent to pay them their employment benefits, costs of the Petition, interest on the sums due, and any other orders the court deemed just.
29. The Petitioners framed two issues for determination: whether they were entitled to the reliefs sought and who should bear the costs. They argued that they had been employed through a thorough and competitive recruitment process that involved verification of their academic documents and had served for over a decade without disciplinary issues. They contended that their dismissal was a unilateral decision made without affording them an opportunity to defend themselves, in violation of Article 50 of *the Constitution*. They noted that they had received promotions during their tenure, which were subject to rigorous scrutiny and verification of their qualifications, and at no point had their certificates been questioned.



30. The Petitioners asserted that their termination was a witch-hunt designed to unlawfully strip them of their employment. They argued that their academic certificates were in the custody of the Human Resource Department, and they did not have access to them. They relied on Articles 22(5), 47, and 50 of *the Constitution* and submitted that their right to fair hearing and fair administrative action had been violated.
31. They cited *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, where the court held that an employer must conduct a thorough disciplinary process and ensure procedural fairness. The Petitioners argued that procedural fairness required reasonable advance notice of disciplinary proceedings and access to relevant documents. They relied on *Postal Corporation of Kenya v Tamy* [2019] eKLR and *Pius Machafer Isundu v Lavington Security Guards Ltd* [2017] eKLR, where the court emphasized that substantial fairness required an employer to have a valid reason for termination.
32. The Petitioners further cited *Kenya Bankers Association v Attorney General & Another, National Assembly (Interested Party)* [2020] eKLR, where the court held that retrospective application of laws, particularly criminal laws, was unconstitutional under Article 50(1)(n). The petitioners contended that they had been denied access to critical information in violation of Article 35(1)(a) of *the Constitution* and Section 4 of the *Access to Information Act*, 2016.
33. They cited *Nairobi Law Monthly v Kenya Electricity Generating Company & 2 Others*, where the court held that public bodies had a duty to proactively disclose and provide access to information. They further relied on *President of the Republic of South Africa v M & G Media*, where the Constitutional Court of South Africa held that access to information was crucial for accountability and participation in public life.
34. The Petitioners argued that their termination was based on unverifiable audits and reports that the Respondents refused to disclose. They contended that the verification system used by the respondents had previously validated their academic qualifications and now, without justification, deemed the same documents inauthentic. They submitted that the Respondents' actions were unfair and unlawful. The Petitioners asserted that they had rendered their services diligently and that their salaries had been lawfully earned.
35. They relied on *Vincent Omollo Obuom v Catholic Diocese of Nakuru* [2015] eKLR, where the court held that payment of wages was an essential component of an employment contract and non-payment amounted to a breach. They argued that the respondents' attempt to recover salaries already paid for work done was illegal and unfair. On costs, the Petitioners submitted that costs should follow the event and relied on Section 27 of the *Civil Procedure Act*. They cited *Party of Independent Candidate of Kenya & Another v Mutula Kilonzo & 2 Others* [2013] eKLR, which held that a successful party was entitled to costs unless there were compelling reasons to deny them.
36. The Petitioners also relied on *Republic v Rosemary Wairimu Munene (Ex parte Applicant) v Ihururu Dairy Farmers Co-operative Society Ltd* Judicial Review Application No. 6 of 2004, where the court held that costs were compensatory rather than punitive. They cited *Cecilia Karuru Ngayu v Barclays Bank of Kenya & Another* [2016] eKLR and *Jasbir Singh Rai*, where the Supreme Court held that costs followed the event but could be adjusted based on special circumstances.
37. The Petitioners argued that their case sought to protect fundamental rights and should not be subject to cost burdens. They relied on *Orix (K) Limited v Paul Kabeu & 2 Others*, where the court held that costs should be awarded unless there were compelling reasons to the contrary. The petitioners urged the court to award them costs on a full-indemnity basis. They concluded by submitting that they were



deserving of the orders sought against the respondents and urged the court to allow the petition as prayed.

Respondents' Case

38. The 1st Respondent through Richard Koskei filed a Replying Affidavit dated 11th November 2024 in response to the petition dated 9th April 2024. Richard Koskei the Senior Human Resource Assistant of the Corporation Secretary of the 1st Respondent, averred that he was duly authorized to swear the affidavit and was well conversant with the facts of the matter. He stated that he had read and understood the petition together with the supporting affidavit of Eric Agure and had been advised by the 1st Respondent's advocates that the petition was misconceived, failed to specify with certainty the constitutional rights allegedly breached or threatened, and amounted to an abuse of the court process.
39. It was his contention that the petition was in essence an employment and labour relations claim disguised as a constitutional petition and should be dismissed. He admitted that the Petitioners were at one point employees of the 1st Respondent until their termination. At the time of recruitment, they submitted their academic documentation and underwent an interview process. The 1st Respondent relied on the documents submitted, assuming they were authentic and issued by the relevant institutions.
40. On 19th October 2022, the Public Service Commission, the 2nd Respondent, issued a directive requiring Ministries, Departments, Agencies, and State Corporations to undertake an audit of academic and professional certificates of all newly appointed officers in the last ten years and submit the report by 31st January 2023, continuously validate academic certificates before appointments and promotions, and dismiss any officer found in possession of forged certificates in accordance with the *Public Service Commission Act*, 2003, and the *Leadership and Integrity Act*, 2012.
41. In compliance with the directive, the 1st Respondent issued a circular on 15th November 2022 requesting all staff to submit copies of their academic certificates for verification by 30th November 2022. Since the 1st Respondent did not issue the academic certificates, it sought validation of the documents from the relevant institutions, including the 5th and 7th Respondents, through letters dated 4th January 2023 and 17th March 2023.
42. In response, the 5th Respondent issued a letter dated 24th May 2023 confirming that the academic certificates of the 1st, 3rd, 4th, 5th, 6th and 7th Petitioners were either not registered for the years they claimed to have undertaken examinations or were not authentic. Similarly, the 7th Respondent issued a letter confirming that the Diploma in Law (Paralegal Studies) certificate of the 2nd Petitioner was forged, as he had not graduated from the institution. The 8th Respondent also confirmed through a letter dated 15th June 2023 that the 4th Petitioner's Academic Diploma Certificate in Secretarial Studies was a forgery and did not originate from its institution.
43. The 1st Respondent, upon receiving these reports and noting the professional misconduct involved, instituted disciplinary proceedings against the petitioners. It issued suspension letters requiring them to respond to the allegations within seven days. The 1st Petitioner, upon receiving his suspension letter dated 6th June 2023, issued a resignation letter dated 9th June 2023. The 2nd Petitioner responded to his suspension letter dated 31st June 2023 via a letter dated 26th June 2023. The 3rd Petitioner responded to his suspension letter dated 6th June 2023 through a reply dated 22nd June 2023.
44. The 4th Petitioner responded to her suspension letter dated 23rd June 2023 via a letter dated 6th July 2023 requesting more time. The 5th Petitioner, upon receiving his suspension letter dated 6th June 2023,



responded via a letter dated 23rd June 2023, acknowledging that he had submitted forged certificates to the 1st Respondent and apologizing. The 6th Petitioner, upon receiving his suspension letter dated 6th June 2023, requested early retirement through a letter dated 8th June 2023. The 7th Petitioner responded to her suspension letter dated 5th June 2023 by issuing a resignation letter on the same date.

45. The 1st Respondent, after conducting investigations and finding that all the petitioners had a case to answer, invited each petitioner individually to a disciplinary hearing to explain why they were in possession of forged documents and why they submitted them during recruitment and onboarding. The disciplinary hearings were conducted in accordance with the rules set out in the *Employment Act, 2007*, and the due process was followed.
46. Upon being questioned, the Petitioners could not justify the authenticity of their documents, nor did they present evidence to rebut the findings of the academic institutions. The 1st Respondent, in full compliance with the directive of the Public Service Commission and having found the Petitioners' explanations to be unsatisfactory, dismissed them from employment on grounds of professional misconduct. The Petitioners' dismissal letters were duly issued.
47. The 1st Respondent maintained that the Petitioners were terminated on reasonable and sufficient grounds, having committed fraud, a criminal offense to its substantial detriment. The termination was lawful and fair, and due process was followed in accordance with the law and the 1st Respondent's internal policies. The disciplinary proceedings established reasonable and sufficient grounds to suspect that the petitioners had forged their academic certificates to secure employment and/or promotion.
48. The Petitioners did not adduce any evidence to rebut the findings of the academic institutions, relying only on bare denials. Their conduct amounted to fraudulent misrepresentation of their qualifications, inducing the 1st Respondent to employ them. This misrepresentation was an act of dishonesty, constituting a valid and fair reason for summary dismissal under section 44 of the *Employment Act, 2007*, as it amounted to gross misconduct.
49. Contrary to the Petitioners' allegations, the 4th Respondent issued an advisory letter dated 11th March 2024, directing that all authorized officers should not process benefits, including pensions, unpaid allowances, or accrued leave, for persons found to have used fraudulent academic qualifications to gain employment in the public service. It further directed that all cases of forged academic and professional certificates be submitted to it for further action in accordance with the law, noting that such professional misconduct amounted to a criminal offense.
50. The 1st Respondent contended that the petition lacked precision in framing the rights allegedly infringed and the manner in which they were violated. The petitioners' apprehension that the respondents would punish them by recovering assets or taking other adverse action was unfounded, as no material evidence was presented to show any intention by the respondents to recover or withhold any assets acquired during their tenure of employment.
51. The 1st Respondent prayed that the Honourable Court exercises its discretion in its favour and dismisses the petition with costs. It reiterated that the facts deposed in the affidavit were true to the best of its knowledge, information, and belief, save where otherwise stated, with sources disclosed.
52. The 7th Respondent through Fredrick Muhia filed a Replying Affidavit dated 13th November 2024 in response to the petition dated 9th April 2024. Fredrick Muhia the Principal Officer, Academic Services, employed by the 7th Respondent, stated that he was conversant with the matter at hand and duly authorized to swear the affidavit. He averred that he had read and understood the contents of the petition and the documents in support thereof and had been advised by his advocate on record.



53. The 7th Respondent is a State Corporation established under Section 3 of the [Kenya School of Law Act](#), Cap 16C, Laws of Kenya, and its mandate includes training persons for purposes of the [Advocates Act](#), Cap 16, through the Advocates Training Programme (ATP), the Diploma in Law and Paralegal Training Programme (PTP). The 7th Respondent denied ever issuing a Diploma in Law (Paralegal Studies) certificate to the 2nd Petitioner and asserted that any such certificate was false, not issued by the school, and inauthentic. It put the 2nd Petitioner to strict proof thereof. The certificate bearing registration number DIP/PL/2012049, serial number 2014/24280, was not authentic, and there were no records of such a certificate being issued to the 2nd Petitioner.
54. The 7th Respondent offers a Diploma in Law (Paralegal Studies) Programme, which comprises twenty-four (24) mandatory examinable units. A student is only eligible to receive a Diploma in Law (Paralegal Studies) certificate upon sitting for and passing all twenty-four (24) units, with no exemptions allowed. A student who fails any of the twenty-four (24) mandatory units is allowed to resit the failed units within the stipulated time. However, a student who applies for a resit under the old curriculum after a lapse of four (4) years is not eligible to resit the examinations.
55. The 2nd Petitioner made an application for admission into the Diploma in Law (Paralegal Studies) Programme on 19th March 2012, which was accepted, and he was admitted for the 2012/2013 academic year through a letter dated 19th April 2012. As per his overall performance in the examinations for the years 2012/2013 and 2013/2014, out of the twenty-four (24) mandatory units, he passed fourteen (14) and failed ten (10). After the lapse of the four-year period, he paid for a resit under the old curriculum on 28th March 2022 but was informed that he was not eligible to sit for the exams as the resit period had expired. He was advised that he could restart the programme afresh. On 3rd May 2022, the 2nd Petitioner requested a refund of the examination fees in a letter where he acknowledged failing some units and having postponed his resits, thus exceeding the four-year period.
56. The 7th Respondent confirmed that the 2nd Petitioner had never completed the Diploma in Law (Paralegal Studies) Programme by sitting for and passing all the twenty-four (24) mandatory units and therefore was never awarded a Diploma in Law (Paralegal Studies) certificate. It was further averred that the 2nd Petitioner presented an inauthentic certificate for employment to the 1st Respondent, who wrote to the 7th Respondent on 5th May 2023 to verify its authenticity.
57. The 7th Respondent's Student Disciplinary Committee invited the 2nd Petitioner to appear before it on 31st August 2023 to answer to the charge of presenting an unauthentic transcript and certificate for purposes of employment. The 2nd Petitioner was notified of this invitation through a letter dated 22nd August 2023. After hearing the 2nd Petitioner, the Disciplinary Committee found that he had indeed presented an inauthentic transcript and certificate and subsequently expelled him from the institution through a letter dated 12th September 2023.
58. The 7th Respondent averred that the 2nd Petitioner's documents were fake, inauthentic, not lawfully earned, and not issued by the 7th Respondent. The 7th Respondent had been requested to assist the Directorate of Criminal Investigations (DCI), which was investigating the matter. The 7th Respondent provided a statement and continued to cooperate in the investigation. The 7th Respondent further contended that the petition did not raise any breach of fundamental rights or freedoms by the 7th Respondent and did not particularize any such alleged breach.
59. The 7th Respondent asserted that it was bound by the values of good governance, transparency, and integrity as provided under Article 10 of [the Constitution](#), which guide all its decisions and actions, and it could not allow an imposter to infiltrate the legal profession. The 7th Respondent maintained that



what was deponed to in the affidavit was true to the best of its knowledge, save for matters deponed to on information and belief, sources, and grounds whereof had been disclosed.

60. The 3rd and 9th Respondents filed Grounds of Opposition dated 21st August 2024 in opposition to the Petitioners' Petition dated 9th April 2024. They contended that they had been misjoined in the proceedings, as the 1st Respondent had its own legal personality and could sue and be sued in its own name. They asserted that the matter before the court was purely an employment dispute between the petitioners and the 1st Respondent, and as such, no cause of action had been established against them. The 3rd and 9th Respondents further argued that the Honourable Court could not issue orders against them that it could not enforce, and therefore, their continued participation in the proceedings was unwarranted. On those grounds, they prayed to be struck out from the instant proceedings and discharged from any liability therein.

1st Respondent's Written Submissions

61. The 1st Respondent filed submissions dated 8th January 2025 in response to the Petition dated 9th April 2024, wherein the Petitioners sought various declarations, orders restraining the 1st and 2nd Respondents from taking adverse action against them, and compensation for employment benefits, among other reliefs. The 1st Respondent filed its Replying Affidavit sworn on 11th November 2024 by Richard Koskei.
62. The Petitioners were employees of the 1st Respondent until their termination. During recruitment, they submitted academic credentials, which the 1st Respondent relied upon in their hiring. On 19th October 2022, the Public Service Commission, the 2nd Respondent, issued a directive requiring all Ministries, Departments, Agencies, and State Corporations to audit the academic and professional certificates of newly appointed officers within the last ten years and submit a report by 31st January 2023.
63. The 2nd Respondent further directed that any officer found to possess forged academic certificates be dismissed under the [Public Service Commission Act](#) 2003 and the [Leadership and Integrity Act](#) 2012. The 1st Respondent consequently issued a circular on 16th November 2022 requesting its staff to submit copies of their academic certificates for verification by 30th November 2022. Upon full compliance with the directive, the 1st Respondent sought validation of the academic documents from relevant institutions, which confirmed that the Petitioners' certificates were either fraudulent or that they were never registered as students.
64. Following this revelation, the 1st Respondent initiated disciplinary proceedings, leading to the termination of the Petitioners' employment. It is undisputed that the Petitioners were employees of the 1st Respondent; therefore, the only issue for determination is whether their termination was procedurally and substantively fair. The 1st Respondent submits that the Petitioners' dismissal was due to gross misconduct, as they had presented forged academic certificates to secure employment, which is classified as gross misconduct under the [Employment Act](#) and other public service regulations.
65. Section 45(1) and (2) of the [Employment Act](#) prohibits unfair termination, requiring the employer to prove that the termination was based on valid, fair reasons related to the employee's conduct, capacity, or operational requirements and that fair procedure was followed. Section 43(1) of the [Employment Act](#) places the burden of proof on the employer to establish valid and fair reasons for termination. In *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 Others* [2019] eKLR, the Court of Appeal held that the standard of proof in gross misconduct cases is on a balance of probabilities rather than beyond a reasonable doubt.



66. In *Bakery Confectionery Food Manufacturing & Allied Workers Union v Wrigley Company (EA) Limited* [2022] eKLR, the court affirmed that its role is to determine whether the employer's grounds for termination are valid and fair. Section 43(2) of the [Employment Act](#) states that an employer must genuinely believe the reasons for termination to exist at the time of dismissal. The Petitioners' dismissal letters cite their submission of forged academic certificates as the reason for termination, which contravened the 1st Respondent's Human Resource Policy, the [Employment Act](#), the Public Ethics Act 2003, the [Public Service Commission Act](#) 2017, and the [Leadership and Integrity Act](#) 2012.
67. Correspondence from the Kenya National Examination Council, the Kenya School of Law, and the Kenya Institute of Management confirms that the Petitioners' academic certificates were forged. Forgery of academic credentials not only violates the 1st Respondent's internal policies but is also a criminal offense. Section 44 of the [Employment Act](#) permits summary dismissal for gross misconduct, including criminal offenses committed against the employer.
68. The Court of Appeal in *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR held that an employer must prove the reasons for termination, their validity, fairness, and justification. Similarly, in *Geoffrey Opanga Mogambi & 16 Others v County Government of Nyamira & 4 Others* [2022] eKLR, the court upheld the summary dismissal of employees with forged academic certificates, emphasizing the need for integrity in public service.
69. The standard for assessing reasonableness in employment termination was elaborated in *British Leyland UK Limited v Swift* [1981] IRLR 91, as cited in *Judicial Service Commission v Gladys Boss Shollei & Another* [2014] eKLR. The court recognized that different employers may take different reasonable actions in response to misconduct and that dismissal may be a reasonable option even where others might have chosen a lesser penalty.
70. In *McKinley v B.C. Tel.* (2001) 2 S.C.R. 161, as cited in *Judicial Service Commission v Gladys Boss Shollei & Another* [2014] eKLR, the court emphasized that dishonesty leading to a breakdown in the employment relationship constitutes just cause for dismissal. An employer relies on the integrity of an employee's credentials during hiring, and dishonesty at this stage breaches fundamental trust, making continued employment untenable. The Petitioners' submission of forged academic certificates was a fundamental breach of trust, justifying dismissal.
71. This aligns with the reasoning in *Iyego Farmers Co-operative Sacco v Kenya Union of Commercial Food and Allied Workers* [2015] eKLR, where the Court of Appeal held that wrongful dismissal cases must consider both the validity of reasons and procedural fairness. Section 45(2) of the [Employment Act](#) mandates that dismissals follow fair procedures, including notifying the employee, allowing them to respond, and conducting a thorough investigation.
72. the Respondent further submitted that upon receiving the directive from the 2nd Respondent on 19th October 2022 to audit the academic and professional certificates of newly appointed officers from the past ten years, it promptly carried out the task. All staff were required to submit their academic certificates, which they did. The 1st Respondent then sought verification from the Kenya National Examination Council, Kenya School of Law, and Kenya Institute of Management regarding the authenticity of the Petitioners' certificates.
73. The 1st Respondent sent letters to the 6th Respondent on 4th January 2023 and to the 8th Respondent on 17th March 2023. The 6th Respondent's report dated 24th May 2023 confirmed that the certificates of the 1st, 3rd, 4th, 5th, 6th and 7th Petitioners were not authentic as they were never registered for the claimed examinations during the stated years. The Kenya National Examination Council rejected the Petitioners' degree certificates.



74. The 7th Respondent informed the 1st Respondent that the 2nd Petitioner's Diploma Certificate in Law (Paralegal) was forged, as he had never graduated from the institution. The 8th Respondent submitted their verification report on 15th June 2023, confirming that the 4th Petitioner's Diploma Certificate in Secretarial Course was forged and did not originate from their institution.
75. The 1st Respondent, relying on these letters from academic institutions, probed further into the academic qualifications of the Petitioners. Upon confirming that the Petitioners' academic certificates were fraudulent, the 1st Respondent initiated disciplinary proceedings, requiring the Petitioners to explain their academic qualifications, which were relevant to their individual positions, and why they were in possession of forged certificates.
76. Following the reports from the 6th to 8th Respondents, the 1st Respondent interdicted the Petitioners and gave them seven days to show cause why disciplinary action should not be taken in accordance with Section 41(2) of the *Employment Act*, which mandates that an employer must hear and consider any representations made by an employee before termination on grounds of misconduct or poor performance. Some Petitioners responded to the show cause letters, while others resigned or requested early retirement.
77. Specifically, the 1st and 7th Petitioners issued resignation letters, the 2nd, 3rd, and 4th Petitioners responded in writing, the 6th Petitioner requested early retirement, and the 5th Petitioner admitted to the misconduct and apologized. The 1st Respondent considered the Petitioners' responses and proceeded with disciplinary hearings, allowing them to present their case orally. Invitation letters were issued, and hearings were held with all Petitioners in attendance.
78. After considering the Petitioners' responses and their oral representations during the disciplinary hearings, the 1st Respondent summarily dismissed them on account of their forged certificates. The dismissal letters informed the Petitioners of their right to appeal within six weeks, but none filed an appeal. The 1st Respondent maintained that it had valid reasons to summarily dismiss the Petitioners for gross misconduct—specifically, presenting forged academic certificates—while complying with due process under Section 44 of the *Employment Act*, 2007.
79. The Petitioners alleged that their termination was unlawful, but they failed to challenge the grounds for their dismissal or provide any evidence to dispute them. Section 47(5) of the *Employment Act* places the burden of proving wrongful dismissal on the employee while requiring the employer to justify the grounds of termination. In *Cooperative Bank of Kenya Limited v Banking Insurance & Finance Union (K)* [2017] eKLR, the Court of Appeal held that proving wrongful dismissal is a shared burden between the employee and employer.
80. The 1st Respondent argued that it had fully discharged its burden, while the Petitioners had failed to do so, merely asserting that their termination was unlawful without any supporting evidence. The Petitioners had used forged documents to qualify for jobs they were otherwise ineligible for and had not adduced any evidence to prove the authenticity of their certificates.
81. The 1st Respondent asserted that the Petitioners' termination was lawful and in compliance with due process under the *Employment Act*. With respect to the reliefs sought, the 1st Respondent submitted that the claims under Articles 27, 43, 47, and 50 of *the Constitution* of Kenya were an attempt to disguise a labour dispute as a constitutional matter. The Employment and Labour Relations Court has jurisdiction over such matters, and the Petitioners only framed their claims in constitutional terms after recognizing the severity of the grounds for their dismissal.



82. The Petitioners merely cited constitutional provisions without demonstrating any specific violations by the 1st Respondent. In Nairobi HC Petition No. 564 of 2004 Alphonse Mwangemi Munga & 10 Others v African Safari Club Limited (2008) eKLR, the court held that not every failure by a public authority to comply with the law amounts to a constitutional violation, and judicial control of administrative action should not be misused as a substitute for ordinary legal procedures. The Petitioners' claims should be adjudicated under employment law rather than constitutional law.
83. Regarding the reliefs seeking to restrain the 1st Respondent from taking adverse action against the Petitioners, the 1st Respondent argued that since the Petitioners had been lawfully dismissed for gross misconduct, they could not dictate the disciplinary measures imposed upon them. The decision on sanctions lies within the employer's discretion based on the severity of the misconduct. In Nampak Corrugated Wadeville v Khoza (JA 14/98) [1998] ZALAC 24, as cited in Cooperative Bank of Kenya Limited v Banking Insurance & Finance Union (K) [2017] eKLR, the court held that the determination of an appropriate sanction is within the employer's discretion, provided it is exercised fairly.
84. The 1st Respondent argued that dismissal for submitting forged certificates was a reasonable sanction. Regarding the claim for employment benefits, the Petitioners failed to specify which benefits were being claimed. In Francis Muchee Nthiga v David N. Waweru [2014] eKLR, the court emphasized that employment-related claims must be specifically pleaded and proved. Similarly, in William Kiplangat Maritim & Another v Benson Omwenga, the court reiterated that special damages must be specifically pleaded and proved.
85. The 1st Respondent asserted that all employment benefits due at the time of termination had been paid, and the Petitioners had not identified any outstanding entitlements. The 1st Respondent maintained that the summary dismissal of the Petitioners was lawful, justified, and in accordance with the *Employment Act*. The Petitioners obtained employment through fraudulent means, a fact they were aware of. As such, the Petitioners were not entitled to the reliefs sought, and the 1st Respondent prayed that the petition be dismissed with costs.

2nd Respondent's Written Submissions

86. The 2nd Respondent filed submissions dated 22nd November 2024, arguing that the Petitioners had come to court seeking various declaratory orders and asserting that the 1st and 2nd Respondents had violated Articles 3(1), 10, 25, 26, 27, 28, 47, and 50 of *the Constitution* of Kenya. The Petitioners contended that their termination by the 1st Respondent and the directive by the 2nd Respondent to recover the salaries they had received during their employment amounted to subjection to slavery and servitude, causing them serious economic hardship. It was not in contention that the Petitioners were employees of the 1st Respondent.
87. The 2nd Respondent, in the discharge of its mandate to ensure efficiency and effectiveness in the public service, had directed public institutions to authenticate the academic and professional certificates used by officers to secure employment or promotions. The Petitioners were among those whose certificates were found not to have originated from the institutions they purported to have issued them, meaning the certificates were fake. The Petitioners had been issued with show cause letters and were granted an opportunity to appear before the Human Resource Management Advisory Committee, as evidenced in the letters lifting their suspensions and subsequent dismissal letters annexed to their pleadings.
88. The 2nd Respondent identified three issues for determination: whether there were valid reasons to dismiss the Petitioners from employment, whether due process was followed, and what reliefs, if



- any, the Petitioners were entitled to. The Petitioners had been dismissed for securing employment using fake certificates. By a memo referenced KL/HRM/4/VOL.34 dated 16th November 2022, the 1st Respondent requested all staff to submit certified copies of their academic and professional certificates and practicing licenses where applicable.
89. The Petitioners were among those found with fake certificates, were issued with show cause letters, and were suspended on various dates in June 2023. They were subsequently required to appear before the Human Resource Management Advisory Committee on various dates in June and July 2023. The Petitioners failed to prove before the Human Resource Management Advisory Committee that their certificates were genuine, leading to their dismissal. The Petitioners had not submitted to the court any evidence demonstrating that they were registered students at the institutions in question or that they had paid fees. Without proof of enrolment, the authenticity of their certificates was doubtful. Once the certifying institutions denied issuing the certificates, the burden of proof shifted to the Petitioners to demonstrate that their certificates were legitimate.
90. Having failed to do so, the 2nd Respondent submitted that the 1st Respondent had a valid reason to dismiss the Petitioners. The Petitioners claimed that Articles 47 and 50 of *the Constitution*, which provide for fair administrative action and the right to be heard, had been breached. However, the record showed that the Petitioners were issued with show cause letters and were given an opportunity to be heard in person, as deduced from their own documents.
91. The Petitioners had not demonstrated how these constitutional provisions were violated. In *Annarita Karimi Njeru v Attorney General* [1979] eKLR 154, the court held that where a person seeks redress on constitutional grounds, they must set out with reasonable precision the specific complaints, the provisions alleged to be infringed, and the manner of infringement. The Petitioners had failed to meet this standard, and their own documents indicated that due process was followed.
92. The 2nd Respondent submitted that the Petitioners were not entitled to the reliefs sought. The Petitioners sought various declaratory orders based on alleged breaches of constitutional provisions, but they had not demonstrated with precision how the Respondents had violated these articles. In line with the principle established in *Annarita Karimi Njeru v Attorney General*, the 2nd Respondent argued that prayers 58(A), (B), and (C) should fail. The Petitioners also sought an order restraining the Respondents from taking adverse action against them, but they had not specified the adverse actions they sought protection from. The court could not issue a blanket order in the manner sought, and this prayer should also fail.
93. The Petitioners further sought an order compelling the 1st Respondent to pay their benefits. However, the certificates used by the Petitioners to secure employment were found to be fake, meaning their employment contracts were grounded in illegality. The Court of Appeal in *Kenya Airways v Satwant Singh Flora* [2013] KECA 545 eKLR, quoting from *Scott v Brown, Doering, McNab & Co* (1892) 2 QB 724, held that courts should not enforce illegal contracts. Lindley W at page 728 stated that no court should enforce an illegal contract or allow itself to be used as an instrument to enforce obligations arising from an illegal transaction. If the evidence proves illegality, the court must not assist the party involved. Since the Petitioners had been dismissed for securing employment using fake certificates, their employment contracts were procured illegally. The court could not aid in the enforcement of illegalities. For these reasons, the 2nd Respondent submitted that this prayer should also fail and prayed to be awarded the costs of defending the suit.



3rd and 9th Respondents' Written Submissions

94. The 3rd and 9th Respondents filed submissions dated 31st January 2025 in opposition to the Petitioner's Petition dated 9th April 2024. In response, the 3rd and 9th Respondents filed Grounds of Opposition dated 21st August 2024 and filed on the same date. The opposition was premised on the grounds that the 3rd and 9th Respondents had been misjoined in the proceedings, that the 1st Respondent has its own legal personality and can sue and be sued on its own behalf, that the matter was a purely employment dispute between the Petitioners and the 1st Respondent, that this Honourable Court could not issue orders against the 3rd and 9th Respondents that it could not enforce, and that the 3rd and 9th Respondents should therefore be struck out from the proceedings.
95. The 3rd and 9th Respondents submitted that they had been improperly joined in the suit on the grounds that the 1st Respondent, as the employer of the Petitioners, is a body corporate with its own legal capacity to sue and be sued and had already engaged external counsel to represent it in the matter.
96. They further submitted that the dispute was purely an employment matter between the Petitioners and the 1st Respondent, and the 3rd and 9th Respondents had no role in the dispute. Additionally, no orders had been sought against them, and this Honourable Court could not issue orders that they could not enforce. The 3rd and 9th Respondents prayed that they be discharged from the proceedings and that the Petition be dismissed with costs to them.

4th Respondent's Written Submissions

97. The 4th Respondent filed submissions dated 14th October 2024 in opposition to the Petition filed by the Petitioners challenging the directive issued by the Public Service Commission Chairperson through a communication dated 19th October 2023, referenced PSC/ADM/13(45). The directive required all authorized officers and Chief Executive Officers of State Corporations to authenticate academic and professional certificates in the Public Service.
98. The communication further advised that employment based on forged certificates was void ab initio, should be declared null and void, and that individuals found with such certificates would not be entitled to any form of benefits, including pensions, unpaid allowances, and accrued leave. Additionally, the communication directed that such cases be referred to the Directorate of Criminal Investigations for prosecution, recovery of monies owed, and the retrieval of assets acquired through fraudulent activities.
99. The Petitioners challenged this directive and sought orders preventing the Respondents from recovering any monies, benefits, pensions, unpaid allowances, accrued leave, or dues, which the 4th Respondent opposed. The 4th Respondent submitted that the investigations into the authenticity of the Petitioners' academic certificates were being conducted by the Directorate of Criminal Investigations and not by the 4th Respondent.
100. Despite being aware of this, the Petitioners had failed to include the Directorate of Criminal Investigations as a party to the proceedings, despite its possession of all relevant facts and information. The failure to join the Directorate of Criminal Investigations was a calculated move to deny the Court an opportunity to have all facts before it, which was malicious, unfair, and intended to mislead the Court. Notwithstanding this, the 4th Respondent submitted that it acted within its statutory mandate in issuing the advisory dated 11th March 2024.



101. The advisory, issued through a letter dated 11th March 2024, advised all accounting and authorized officers not to process benefits, including pensions, unpaid allowances, and accrued leave, for persons found to have used fraudulent academic qualifications to gain employment in the public service. The 4th Respondent submitted that this advisory was issued within the statutory framework of Chapter Six of *the Constitution*, particularly Article 79, which grants the 4th Respondent powers to ensure compliance with and enforcement of Chapter Six.
102. Section 11(1)(g) of the Ethics and Anti-Corruption Act, 2011, mandates the 4th Respondent to advise, on its own initiative, any person on any matter within its functions. Sections 11(1)(a) and (b) further empower the 4th Respondent to develop and promote standards and best practices in integrity and anti-corruption, while Sections 11(1)(d) and (f) grant it authority to investigate breaches of codes of conduct and oversee the enforcement of ethics codes for public officers. Sections 4(5) and 4(2) of the *Leadership and Integrity Act*, 2012, grant the 4th Respondent the power to require public entities to implement necessary measures to enforce the Act, while Section 42(10) empowers it to investigate breaches upon complaint or on its own motion. Section 43(4) further allows the 4th Respondent to take any necessary action.
103. As an independent Commission, the 4th Respondent argued that the Court ought not to interfere with its mandate as long as it acted within its legal authority in issuing the advisory. The 4th Respondent further submitted that none of the Petitioners' rights had been or were likely to be violated in the discharge of its mandate. The claim that prosecuting the Petitioners would amount to an abuse of state power and violate the principles of governance under Article 10 of *the Constitution* was misleading, as both criminal and civil proceedings could be instituted against an individual and proceed concurrently.
104. The Petitioners had not proved that the 4th Respondent had violated their rights under Articles 25 and 28 of *the Constitution* to warrant an order stopping the recovery of salaries and benefits acquired fraudulently. The 4th Respondent submitted that no orders could be granted stopping it from undertaking its mandate, as there was no evidence before the Court proving that it had acted ultra vires or infringed upon the Petitioners' alleged rights.
105. Granting such orders would allow the Petitioners to accrue benefits from employment contracts based on fraud and illegality. The 4th Respondent further submitted that the Petitioners had breached public trust and lacked the moral and ethical requirements to continue holding public office. Allowing persons who had breached public trust to remain in public office was against the public interest, as public funds would continue being used to pay individuals who obtained employment through fraudulent means.
106. The public would suffer if the Petitioners were granted orders preventing the recovery of fraudulently acquired salaries and allowances. The order sought to declare that the Respondents would be violating Articles 25 and 28 of *the Constitution* by taking adverse action against the Petitioners, as well as the order restraining the Respondents from recovering monies from them, should not be granted. The Petition was premature, as the Directorate of Criminal Investigations had yet to conclude its investigations and issue recommendations. Since the outcome of the investigations remained unknown, the Petitioners had based their case on mere speculation, amounting to an abuse of the Court process.

6th Respondent's Written Submissions

107. The 6th Respondent filed submissions dated 20th January 2025 in opposition to the Petitioners' Petition dated 9th April 2024. The Petitioners approached the Honourable Court seeking various declaratory orders, including declarations that the 1st and 2nd Respondents violated their constitutional rights



- under Articles 3(1), 10, 25, 27, 28, 43, 47, and 50 of *the Constitution* of Kenya, and an order restraining the Respondents from taking adverse action against them. The Petitioners further sought an order compelling the 1st Respondent to pay them their employment benefits, as well as costs and interest.
108. The Petitioners averred that they were all employees of the 1st Respondent in various positions and capacities, that their academic certificates had been verified and found to be in order, and that they had diligently discharged their duties. They contended that their contracts had always been renewed until they were placed on compulsory leave in June and July 2023 on allegations of forgery. The 4th Petitioner claimed that he had resigned on 5th and 8th June 2023, rendering any disciplinary action against him null and void.
109. The Petitioners alleged that they were subjected to an unfair disciplinary process where the 1st Respondent failed to produce any evidence against them and that they were entitled to their full pension contributions immediately, with the remainder upon attaining retirement age. They claimed that their termination subjected them to financial and psychological hardship, as their jobs were their sole source of income, and further asserted that their rights to fair labour practices and fair hearing had been infringed.
110. Although no specific allegations were made against the 6th Respondent, a Replying Affidavit was filed on 18th July 2024, sworn by Jane Nabiki Kashu, presenting the details of the matter. By way of Circular Ref PSC/ADM/13(42) dated 19th October 2022, the Public Service Commission directed Ministries, Departments, Agencies, and State Corporations to conduct an audit of academic and professional certificates for newly appointed officers in the last ten years and submit a report by 1st January 2023.
111. The directive also required the dismissal of any officer found in possession of forged certificates and continuous validation of academic and professional certificates before appointments and promotions. In compliance with this circular, the 1st Respondent, by letter dated 4th January 2023, requested the 6th Respondent to validate the copies of academic certificates and result slips for its staff. The 1st Respondent attached a schedule of stamped academic certificates, including those of the 1st to 7th Petitioners. The 6th Respondent analyzed these certificates and responded via letter Ref: KNEC/CONF/R&QA/ARCH/FORG/22/02/083 dated 24th May 2023, confirming that several certificates were fraudulent.
112. Specifically, the 7th Petitioner's purported KCSE certificate from Kapkenda Girls High School in 1999 was found to be fake, as no such examination centre existed under that code at the time. The 1st Petitioner's alleged KCSE certificate from Kegati Mixed Secondary School in 1996 was also fraudulent, as the index number belonged to a different candidate. The 3rd Petitioner's 1993 KCSE certificate from City High School was false, as the school's examination centre code did not match that year.
113. The 5th Petitioner's 2005 KCSE certificate from Bungoma Secondary School was fake, as the examination centre code did not exist at that time. The 6th Petitioner's 1986 KCE certificate from Busali Union School was fraudulent, as the last registered index number at the school for that year was different. While the 1st Respondent confirmed the verification results, it could not authenticate the identity of the candidates who sat for the exams, as its role was limited to verifying the documents presented before it.
114. The Petitioners sought to invoke the jurisdiction of the Honourable Court to sanitize their academic certificates, a task that is administrative rather than judicial and falls within the statutory mandate of the 6th Respondent and the respective academic institutions. The Petitioners failed to provide any evidence proving that the academic documents they submitted to the 1st Respondent were genuine.



- Instead, they created parallel academic records that were never in the custody of the 6th Respondent. Consequently, the 6th Respondent prayed that the Honourable Court dismisses the Petition with costs.
115. The 6th Respondent submitted that certain facts were undisputed, including the Public Service Commission’s directive of 19th October 2022 requiring verification of academic certificates, the 1st Respondent’s request for validation by letter dated 4th January 2023, the 6th Respondent’s subsequent verification and response dated 24th May 2023, and the 1st Respondent’s disciplinary proceedings against the Petitioners.
116. The 6th Respondent submitted that it has statutory power under Section 10(1)(c) of the Kenya National Examination Council Act, 2012, to confirm the authenticity of academic certificates upon request from the government, public institutions, learning institutions, and employers. It emphasized that the Public Service Commission had directed government agencies to conduct an audit and that it had undertaken its verification pursuant to the 1st Respondent’s request dated 4th January 2023, producing the verification report on 24th May 2023.
117. The 6th Respondent performed its statutory duty under the law and should not have been sued. It maintained that based on its verification, which confirmed that the Petitioners’ certificates were forged, the 1st Respondent rightfully undertook disciplinary proceedings against them. In the case of *Abdi Mohammed Daib v Kenya Ports Authority (Cause 760 of 2015) [2016] KEELRC 217 (KLR)*, the court upheld dismissal based on verification by KNEC that an employee’s certificates were forged, affirming that an employer only needed to prove a genuine belief in the misconduct under Section 43 of the *Employment Act*.
118. Similarly, in *Janet Melly Otieno v Kenya Ports Authority [2018] eKLR*, the court held that an employer could rely on verification reports from examining bodies and that disciplinary action based on such findings was justified. The 6th Respondent asserted that it acted within its statutory mandate in verifying the authenticity of the certificates. The Petitioners alleged violations of Articles 10, 25, 27, 28, 43, 47, and 50 of *the Constitution* but failed to demonstrate any transgressions by the 6th Respondent or any other Respondent.
119. In *Anarita Karimi Njeru v Republic (Miscellaneous Criminal Application 4 of 1979) [1979] KEHC 30 (KLR)*, the court held that a petitioner must set out with reasonable precision the provisions allegedly infringed and the manner of infringement. The Petitioners failed this test, and their Petition should be struck out. The Petitioners also failed to discharge the burden of proof, meaning that no order or declarations sought in the Petition should be granted. In *John Kisaka Masoni v Nzoia Sugar Co. Limited (Cause 148 of 2015) [2016] KEELRC 483 (KLR)*, the court held that awarding damages to an employee who had falsified certificates would be a travesty of justice.
120. In *Janet Melly Otieno v Kenya Ports Authority*, the court declined to award reinstatement, damages, or compensation where the employer had proven that dismissal was founded on a valid and just reason. The Petitioners fraudulently obtained employment by forging their certificates, and the Honourable Court should dismiss all their prayers. They also failed to produce any evidence showing that they were subjected to unfair disciplinary proceedings, and their Petition should consequently be dismissed. The 6th Respondent performed its statutory duty of authenticating the certificates submitted by the 1st Respondent and should not have been part of these proceedings. The 6th Respondent prayed that the Honourable Court dismisses the Petition with costs.



7th Respondent's Written Submissions

121. the 7th Respondent filed submissions dated 13th November 2024 in opposition to the Petitioners' Petition dated 9th April 2024. The 7th Respondent is a State Corporation established under Section 3 of the *Kenya School of Law Act* Cap 16C, Laws of Kenya, with a mandate to train persons for purposes of the *Advocates Act* Cap 16 and offer the Advocates Training Programme and the Diploma in Law (Paralegal Studies) Programme.
122. The 7th Respondent was requested by the 1st Respondent to authenticate the 2nd Petitioner's certificate. Upon examination of the 2nd Petitioner's student record, it became apparent that the 7th Respondent had never issued any certificate for a Diploma in Law (Paralegal Studies) to the 2nd Petitioner. The certificate purported to have been issued by the 7th Respondent was found to be false, unauthentic, and not originating from the institution.
123. The 7th Respondent submitted that the general principle of law is that he who alleges must prove, as provided under Sections 107 to 109 of the *Evidence Act* Cap 80. Section 107(1) states that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts must prove that those facts exist. Section 107(2) further states that when a person is bound to prove the existence of any fact, the burden of proof lies on that person.
124. Section 108 provides that the burden of proof in a suit or proceeding lies on the person who would fail if no evidence were given on either side, while Section 109 states that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any particular person.
125. The 2nd Petitioner alleged that the certificate and transcripts produced by him were authentic but had not satisfied the burden of proof. He had not offered any explanation as to why he paid to re-sit papers if he had passed the programme, which was indicative of the fact that he was aware that he had never qualified for the award of the certificate. In *Raila Odinga & another v Independent Electoral and Boundaries Commission & 2 others; Aukot & another (Interested Parties); Attorney General & another (Amicus Curiae) (Presidential Election Petition 1 of 2017) [2017] KESC 42 (KLR) (Election Petitions)*, the Supreme Court held that he who alleges must prove and that the burden of proof, derived from the Latin phrase "onus probandi," means an obligation to adduce evidence of a fact.
126. Phipson on the Law of Evidence describes the burden of proof as having two meanings: first, the obligation on a party to convince the tribunal of a fact, which is critical to the party's case, and second, the obligation to adduce sufficient evidence of a particular fact to justify a finding in their favour. If a party fails to meet this burden, they fail in their claim or defence. Under Section 107(1) of the *Evidence Act*, the legal burden of proof lies upon the party who invokes the aid of the law and asserts the affirmative of the issue. The facts averred by the 7th Respondent sufficiently demonstrated dishonesty on the part of the 2nd Petitioner.

8th Respondent's Written Submissions

127. The 8th Respondent filed submissions dated 6th February 2025 in opposition to the Petition filed herein dated 9th April 2024. The 8th Respondent relied on the Replying Affidavit filed on 6th December 2024. The 8th Respondent submitted that the Petition as filed disclosed no cause of action against it. A perusal of the Petition indicated that the Petitioners made allegations only against the 1st and 2nd Respondents. In the prayers sought, there was no specific mention of the 8th Respondent, save for where the Respondents were generally lumped together.



128. The 8th Respondent was therefore a stranger to the proceedings, and no evidence had been presented or adduced linking it to the Petition. The prayers sought could not be granted against the 8th Respondent, which had no relationship with the Petitioners whatsoever. If granted, such prayers would violate the 8th Respondent's rights to property and privacy as enshrined in *the Constitution*. This was a clear case of misjoinder, and the Petitioners had not disclosed any cause of action against the 8th Respondent. The Petitioners had not filed any documents linking the 8th Respondent to the matter, had not sought any specific prayers against it, had not disclosed any cause of action, and had misjoined the 8th Respondent in the proceedings. The 8th Respondent prayed that the Petition be dismissed with costs.
129. I have examined all the evidence and submissions of the parties herein. From the evidence adduced herein, the petitioners were found to have forged their academic certificates which certificates they presented to the 1st respondent to gain employment.
130. They were asked to respond to accusation of the forgery and they responded accordingly. Some of them opted to take an early retirement from the respondent i.e 6th and 7th petitioners. These were taken through a disciplinary process and were thereafter terminated.
131. The termination letters issued to the said petitioners dated 21/7/2023 indicated as follows:
- “Your dues shall be paid less any liabilities owed to the corporation in accordance with the corporation policies and your terms of service as contained in your employment contract. You are further advised to contact the NSSF and Kenya Railways Provident Fund services provider, Liaison Insurance Ltd, where applicable for payment of your retirement dues in accordance with the Trust fund and rules.
132. It is after the termination that the petitioners aver that the 1st respondent unlawfully withheld their employment benefits despite issuing them with a certificate of service. It is due to this withholding of their benefits that the petitioners have sought redress from this court contending that their rights under articles 25,27,28,43, 47 and 50 of *the Constitution* have been violated.
133. The respondent on their part submitted they have not violated the petitioner's rights at all and all due process was followed before their termination.
134. The 4th respondent in their part aver that they advised the PSC not to pay terminal dues of employees employed on fake certificates terming their employment null and void. They also directed that such cases should be referred to the DCI for prosecution. The 4th respondent issued this advisory through a letter dated 11th March 2024 advising all accounting and authorised officers not to process benefits including pension, unpaid allowances and accrued leave for persons found to have used fraudulent academic qualification to gain employment in the public service.
135. The 4th respondent further submitted that it was within its mandate to promote good governance and that petitioners should not be allowed to get benefits of an employment based on fraud.
136. The petition is solely based on this directive by the 4th respondent that the petitioner accused of misconduct should not be paid their terminal dues.
137. The issue of the misconduct by the petitioners is in this courts finding proved with the evidence produced before this court from various bodies showing that the petitioner forged their academic certificates.
138. The petitioners were also subjected to a proper disciplinary process and thereafter terminated. The process was above board with the finding that there were valid reason to warrant termination and due



process being followed as per section 45(2) of the employment act. The decision to terminate and pay final dues was therefore proper.

139. The only setback is the directive by the 4th respondent which seems to have been followed denying the petitioners their pension and other terminal dues. Section 18(4) of the employment act 2007 states as follows:

Where an employee is summarily dismissed for lawful cause, the employee shall, on dismissal be paid all moneys, allowances and benefits due to him up to the date of his dismissal

140. My reading of this section shows that even where there is dismissal for lawful cause all money, allowances and benefits due to an employee are payable.

141. In Felister Waithegeni Mugweru vs National Police Service Commission and 2 Others (2018) KEELRC 53 (KLR) Hon, J Makau held as follows:-

“..... finally, I have found that under section 5(2) of the Pension Act, dismissal of a public officer does not automatically disqualify him/her from accrued pension and/or gratuity benefits. Consequently, I enter judgment for the petitioner declaring the decision by the respondents to withhold her pension and/or gratuity benefits unconstitutional and is hereby annulled and the 1st respondent directed to forthwith release or cause to be released to the petitioner her pension and/or social security benefits subject to section 5(3) of the Pension Act.”

142. Indeed pension is an accrued right which cannot be denied or withheld given that despite the mistakes of the employee, services were rendered. Section (5) of the Pension Act Cap 189 states follows:

- (1) Every officer shall have an absolute right to pension and gratuity.
- (2) The right conferred under subsection (1) shall not apply in respect of compensation for past services, nor shall anything in this Act affect the right of the Government to dismiss any officer at any time and without compensation.
- (3) Where an officer has completed five years of pensionable service, the benefits accruing to the officer under this Act shall vest in that officer and shall become payable in such manner and at such times as may be determined under this Act.”

143. This is the law and the petitioner herein having been dismissed or having resigned for whatever reason are indeed entitled to the dues, Pension/NSSF and this should be paid subject to section 5(3) of the Pension Act.

144. It is indeed true and in breach of their rights for the respondents to withhold the petitioner’s terminal dues/pension/NSSF. I find this unconstitutional null and void and I set that decision aside and direct that the petitioners be paid their dues as per their terminal letters. There will be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF MARCH, 2025.

HELLEN WASILWA

JUDGE

