



**Maina v Judicial Service Commission & 3 others (Employment and Labour Relations
Petition E009 of 2023) [2025] KEELRC 686 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 686 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS PETITION E009 OF 2023**

AN MWAURE, J

MARCH 6, 2025

BETWEEN

NICHOLAS MACHARIA MAINA PETITIONER

AND

JUDICIAL SERVICE COMMISSION 1ST RESPONDENT

CHIEF REGISTRAR OF THE JUDICIARY OF KENYA 2ND RESPONDENT

**DIRECTOR HUMAN RESOURCE MANAGEMENT & DEVELOPMENT 3RD
RESPONDENT**

**HUMAN RESOURCE MANAGEMENT ADVISORY COMMITTEE
(HRMC) 4TH RESPONDENT**

JUDGMENT

Introduction

1. The Petitioner filed a Petition dated 19th May 2023.

Petitioner's case

2. The Petitioner avers that he was employed by the 1st Respondent as a clerical officer stationed at Naivasha Law Court.
3. The Petitioner avers that he was later redesignated to the accounts office as a cashier and promoted to grade of Accountant I.
4. The Petitioner avers that he was transferred to Engineer Law Courts, where he was tasked to fully operationalize the accounts department.



5. The Petitioner avers that while at Engineer Law Courts, he also doubled up as a cashier due to staff shortage.
6. The Petitioner avers that he was later transferred to Nyahururu Law Courts, where he was the Accountant In Charge (AIC).
7. The Petitioner avers that he was hardworking, honest, accountable, dependable and had good work ethic.
8. The Petitioner avers that there was an audit done, and according to the audit report for the year 2017-2018, he was accused of under-banking of deposit collection of Kshs. 3,442,258/=
9. The Petitioner avers that he faced challenges in Nyahururu Law Court, where there was a shortage of staff, and he could not work alone.
10. The Petitioner avers that the Head of Station requested more staff from 2nd and 3rd Respondents but they were not forthcoming, leading to a lot of constraints and systemic problems.
11. The Petitioner avers that he proceeded on leave and left the staff in the accounts office unsupervised, leading to complaint being raised and an internal investigation being done.
12. The Petitioner avers that the Head of Station wrote to the 2nd Respondent on 13th February 2019 about a complaint by clerks by the names of Mr. Titus Erupe and Obure.
13. The Petitioner avers that on 6th June 2019, the Head of Station made a report to the D.C.I Nyahururu, and an internal report was prepared, and recommendations were made.
14. The Petitioner avers that he received a letter dated 24th October 2019 from the 3rd Respondent accusing him of gross misconduct for failure to account for the under-banking amount of Kshs.3,442,258/= and asked to show cause why he should not be dismissed from employment. He was asked to respond within 14 days.
15. The Petitioner avers that he responded vide a letter dated 8th November 2019 to the allegations stating that there was erroneous banking of deposits funds into revenue accounts and vice versa.
16. The Petitioner avers that he reiterated that the Accounts department was understaffed, and he had to deal with dishonest staff, delays by the sub-county treasury in processing payments and producing reports and being involved in other activities outside the office, thus creating a backlog in the office work.
17. The Petitioner avers that he was suspended, and he was entitled to alimentary allowance, which was equivalent to one-third (1/3) of his basic salary.
18. The Petitioner avers that he attended the disciplinary hearing on 25th August 2020 and was given an opportunity to present a reconciliation report where he explained the discrepancies.
19. The Petitioner avers that he also attended the disciplinary hearing on 2nd March 2021, and he was dismissed vide letter dated 8th July 2021.
20. The Petitioner avers that the 1st Respondent overstepped its mandate, purporting to act on the recommendation, investigation, and determination of the 2nd and 3rd Respondents, and in gross violation of Article 259 of *the Constitution*.



21. The Petitioner avers that the Respondents contravened Articles 2(4), 10, 25(c), 27(1) and (2), 28, 41, 47, 50 161(2)(a), 172(1)(c) of the Constitution, section 32(3), Rules 15 to 17 and Rule 25(1) of the 3rd schedule of the Judicial Service Commission.
22. The Petitioner prays that:
 - a. The charge and suspension of the Petitioner by the 3rd Respondent violated the Constitution by usurping the Chief Justice's mandate under Articles 2(4), 161(2)(a), and 172(1)(c), as well as Rules 15 to 16, 25(1) of the Judicial Service Act and deemed unlawful, without jurisdiction, null and void, and all related actions are consequently set aside and considered ineffective.
 - b. The Judiciary Human Resource Policies and Procedures Manual, to the extent that it prescribes disciplinary procedures not in strict conformity with Articles 94, 172(1)(c) of the Constitution and the Judicial Service Act, is unlawful, unconstitutional, null and void to that extent and the offending sections are hereby struck out.
 - c. The Petitioner, protected by Article 236(a) and (b) of the Constitution, cannot be dismissed without due process. Therefore, he remains an employee of the Judiciary and is reinstated to his position without any loss of salaries and allowances. The Respondents are ordered to deploy and pay him immediately.
 - d. The Respondents contravened the Petitioners' fundamental rights and freedoms under Article 27(1)(2); 28, 41, 47, Article 25(c) as read with Article 50 and be compensated by way of damages under Article 23 over and above reinstatement or other statutory reliefs.
 - e. Costs of the suit and interest.

Respondents' replying affidavit

23. In opposition to the Petition, the Respondents filed a replying affidavit sworn by the 1st Respondent Assistant Director Human Resource Management and Development duly authorized to depone on behalf of the Respondents dated 28th September 2023
24. The Respondents aver that there was an internal audit on revenue, deposit, procurement and expenditure management in Nyahururu Law Courts conducted by the Respondents' Directorate of Audit and Risk Management dated 23rd September 2019.
25. The Respondents aver that the audit report revealed that there was under banking of deposit collections totalling of Kshs.3,443,258/= during July 2017 and December 2018.
26. The Respondents aver that the report recommended that appropriate disciplinary action be taken against the Petitioner for presiding over the under banking of the deposits by Kshs.3,443,258/=.
27. The Respondents aver that before the final report, the Petitioner was given an opportunity to reconcile and account for the sum of Kshs.3,443,258/=.
28. The Respondents aver that the Petitioner was suspended upon the conclusion of the disciplinary case, and the Petitioner was informed that he would be entitled to one-third of his basic salary and alimentary allowance.
29. The Respondents aver that the Petitioner explained his reasons for the suspension being failure to account for the under banking of deposits amounting to Kshs. 3,443,258/= according to the final report dated 23rd September 2019.



30. The Respondents aver that the Petitioner was given a chance to respond within 14 days to show cause why he should not be dismissed on account of gross misconduct.
31. The Respondents aver that the Petitioner responded vide a letter dated 8th November 2019 indicating that the unreconciled amount of Kshs.3,442,258/= arose from receipts issued for direct bank transfers which had been paid prior to the audit report and erroneous banking of deposits into the revenue account and vice versa.
32. The Respondents aver that the allegations of victimization against the Petitioner were refuted, with explanations provided for unreconciled amounts and cheque reversals related to cash bail.
33. The Respondents aver that despite numerous opportunities, the Petitioner's initial audit response was unsatisfactory.
34. The Respondents aver that a disciplinary hearing was conducted on 25th August 2020 and 2nd March 2021, where the Petitioner failed to clear himself of financial misconduct charges.
35. The Respondents aver that recommendations were made, including the Petitioner's dismissal, and a fourteen-day repayment notice for Kshs.2,777,165/=: failure to which the matter be referred to the Assets Recovery Agency for recovery.
36. The Respondents aver that the Petitioner's explanations for certain erroneous bankings were satisfactory, but no funds were transferred to the Revenue Account.
37. The Respondents aver that the Petitioner's suspension and charges vide letter dated 24th October, 2023, were issued by the Chief Registrar of the Judiciary on delegated authority from the 1st Respondent.
38. The Respondents aver that the Petitioner, being an Accountant in Charge, was expected to provide financial management and advice.
39. The Respondents aver that given the Petitioner's significant financial management responsibilities, the 1st Respondent adhered to Chapter 12 of *the Constitution* on Public Funds and the *Public Finance Management Act*, 2012. These provisions, including Article 201 of *the Constitution* and section 74 of the *Public Finance Management Act*, mandate disciplinary actions by the Chief Registrar of the Judiciary if it is believed that a public officer in a National Government entity has engaged in improper conduct.
40. The Respondents aver that the Chief Justice has delegated disciplinary power, including suspension, to the Chief Registrar, who also served as the JSC's secretary responsible for enforcing decisions in accordance with Regulation 15 of the Third Schedule of the *Judicial Service Act*, section 5(2)(a) read together with sections 8(e) and (m) and 21 of the *Judicial Service Act*.
41. The Respondents aver that the 3rd Respondent signed the letter dated 24th October 2019 on behalf of the Chief Registrar of the Judiciary. The disciplinary process against the Petitioner emanated from the audit report prepared by the Directorate of Audit and Risk Management, not from the 3rd Respondent's initiative.
42. The Respondents contend that there was no violation of the Fair Administrative Actions Act as alleged. The Respondents aver that the charge and suspension of the Petitioner were lawful and authorized under the *Judicial Service Act*, which allows the Chief Justice to assign duties to the Chief Registrar. The Human Resource Management Advisory Committee conducted the disciplinary process, with the Petitioner given multiple opportunities to respond. The Committee's actions were in line with legal and procedural requirements, and no witnesses were called, making cross-examination unnecessary.



- The Petitioner had access to all relevant documents, and no additional, undisclosed evidence was considered.
43. The Respondents aver that the decision to dismiss the Petitioner was made by the 1st Respondent following a disciplinary hearing and after reviewing the evidence supporting the charges.
 44. The Respondents aver that the Petitioner appealed against the said decision of his dismissal and the 1st Respondent held a meeting on 4th November 2021 to deliberate on the same.
 45. The Respondents aver that the Petitioner was informed vide a letter dated 5th November 2021 that his appeal did not have sufficient grounds and so his appeal was not successful.
 46. The Respondents aver that the Petitioner admitted he did not properly supervise staff, leading to his dismissal for failing to account for Kshs.2,777,165/= in misappropriated public funds under his supervision.
 47. The Respondents aver that there was no violation of *the Constitution*, the *Judicial Service Act*, or natural justice and the Petitioner was given a fair hearing, access to necessary documents, and opportunities to respond.
 48. The Respondents aver the disciplinary process complied with relevant legal requirements, and thus, the Petition dated 19th May 2023 lacks merit and should be dismissed with costs.
 49. The Petition was canvassed by way of written submissions.

Petitioner's submissions

50. The Petitioner submitted that the 2nd Respondent's position is established by Article 162(2)(a) of *the Constitution* and Section 5 of the *Judicial Service Act*, making them the head of the Judiciary. Articles 166 to 168 of *the Constitution* specify the qualifications and stringent constitutional requirements for the appointment and removal of the Chief Justice.
51. The Petitioner submitted that the 2nd Respondent is the accounting officer and chief administrator of the Judiciary under Article 161(2)(c) of *the Constitution* as well as the secretary of the 1st Respondent as outlined in Article 171 (3) of *the Constitution* and the roles of the 2nd Respondent are set out in Sections 8 and 9 of the *Judicial Service Act*.
52. The Petitioner submitted that Rule 15 to 18 of the 3rd Schedule of the Judiciary Service Act, the 1st Respondent delegates to the Chief Justice the powers to interdict, suspend, and issue reprimands, to be exercised under the said Schedule and applicable regulations.
53. The Petitioner relied on the case of *Judicial Service Commission & another V LMN [2024] KECA 1394 KLR*, where the Court of Appeal held that the Chief Justice's disciplinary power cannot be delegated to any other entity, including the Chief Registrar. Therefore, any actions taken by the Chief Registrar in disciplinary proceedings, as well as any resulting resolutions, are ultra vires invalid.
54. The Petitioner submitted that the court should adhere to stare decisis, a fundamental principle of the rule of law outlined in Article 10 of *the Constitution*. This principle promotes certainty, predictability, uniformity, and respect for higher courts and the rule of law as set out in the cases of *Wakhungu and 2 others V Republic [2024] KECA*, *Simon Rotich Ruto V Judicial Service and another [2019] eKLR* and *John Mukiria Waweru V Judicial Service Commission [2020] eKLR* in support of that proposition.



55. The Petitioner submitted that the 2nd Respondent does not have powers to charge and suspend a judicial staff or officer, and the 3rd Respondent acting on the 2nd Respondent's behalf has no basis.
56. The Petitioner submitted that Sections 5(2)(a) and 8(e) of the Judiciary Service Act allow the Chief Justice to delegate certain duties. In response, the Respondents contended that the Chief Justice delegated disciplinary responsibilities, or that she is allowed to sub-delegate tasks she has been assigned. The Petitioner argued that there is no documentation of such delegation has been provided, nor is there any constitutional or legal basis for it under the laws of Kenya and hence such contention lacks factual foundation.
57. The Petitioner argued that the principle of delegatus non potest delegare means that a delegate cannot delegate their authority further. Unless specifically allowed by statute, disciplinary authority cannot be delegated again. Moreover, a secretary to a tribunal cannot assume the powers of a lawful tribunal and issue charges as it was settled in the case of Republic V Law Society of Kenya, Advocates Disciplinary Tribunal and Secretary Law Society of Kenya [2018] eKLR.
58. The Petitioner submitted that the delegation of powers was illegal, lacked transparency and accountability, and was contrary to *the Constitution*. As a result, the action was null and void ab initio, which was sufficient grounds to dismiss the case. The Petitioner relied on the case of Attorney General and 2 others, V Independent Policing Oversight Authority and another [2015] eKLR, in support of the proposition.
59. The Petitioner submitted that the action contrived multiple constitutional provisions and violated their fundamental rights. The case seeks judicial review under Articles 47, 50, 258, and 165(3)(b)(d) (ii) of *the Constitution* and remedies under Articles 2(4) and 23 of *the Constitution* to quash the action and declare it null. Judicial review, a constitutional right, allows courts to address rights violations, including those in employer-employee relations, as affirmed by the Supreme Court cases Saisi V Director Public Prosecutions & 2 Others [2020] eKLR and Dande and another V Inspector General, National Police Service and 2 others [2022] eKLR.
60. The Petitioner submitted that the principle of legality under Article 47 of *the Constitution* mandates that charges be quashed without further inquiry, set out in the Supreme Court case of Kenya Revenue Authority V Export Trading Company Limited [2022] eKLR and Wanderi and 106 others V Engineers Registration Board and 6 others [2024] eKLR.
61. The Petitioner submitted that the charge is deemed unconstitutional, null, and void, rendering subsequent proceedings ineffective and creating no rights or obligations, as established in Macfoy V United Africa Co. Ltd. [1961]. Courts cannot assume jurisdiction over a nullity, as supported by Owners of the Motor Vessel "Lilian S" V Caltex Oil (Kenya) Ltd [1989] KLR 1 and Cabinet Secretary for the National Treasury and Planning V Okoiti and 52 others [2024] eKLR, which declare unconstitutional actions void ab initio and restore the status quo ante.
62. The Petitioner submitted that he is entitled to the reliefs sought and urges the Honourable Court to allow the Petition as prayed.

Respondents' submissions

63. The Respondents submitted that the letter dated 24th October 2019, which communicated the suspension of the Petitioner from service along with the charges, was issued by the 2nd Respondent under the authority delegated by the 1st Respondent. Therefore, the fact that the 2nd Respondent communicated the Petitioner's charges and suspension does not render the action arbitrary or invalid.



64. The Respondents relied on the case of Benedict Abonyo V Judicial Service Commission [2015] eKLR where the court held that the Chief Registrar, acting on behalf of the Commission, can communicate the charges, and the letter is not fatally defective just because it was not signed by the Chief Justice.
65. The Respondent submitted that the authority to discipline judicial officers is vested in the 1st Respondent by dint of Article 172(c) of *the Constitution*. This power is delegated to the Chief Justice under Regulation 14 of the Third Schedule of the *Judicial Service Act*, but the ultimate authority remains with the Judicial Service Commission. The Respondent relied on the case of Byran Mandila Khaemba V Chief Justice and President of the Supreme Court of Kenya and another [2019] eKLR where the court held that the court affirmed that the Third Schedule to the *Judicial Service Act* is a direct parliamentary enactment. Article 172(1) of *the Constitution* mandates the 2nd respondent to exercise disciplinary functions as prescribed by an Act of Parliament, and Article 249(1)(2) of *the Constitution* asserts that constitutional commissions are subject only to *the Constitution* and the law. The *Judicial Service Act* was properly enacted, binding accordingly unless proven inconsistent with *the Constitution*. The court further held that provisions in a schedule, like those in a statute, are parliamentary enactments, with earlier statutory provisions prevailing in conflicts. Section 32 of the *Judicial Service Act* details procedures for committees and panels, with the Third Schedule prevailing in committee roles. Delegation to the 1st respondent was imposed by Parliament and deemed rational, reasonable, and constitutional. The 1st respondent's administrative role to impose suspension is effectively performed under the Chief Justice's leadership, fitting within the Judicial Service's needs. There is no conflict between paragraphs 15 and 17 of the Third Schedule and sections 14 and 32 or the definition of "Committee" under the Act.
66. The Respondent argued that the power to suspend an officer is delegated by the 1st Respondent to the Chief Justice. Under Regulation 14 of the Third Schedule of the *Judicial Service Act*, Sections 5(2)(a), 8(e), and (m) of the *Judicial Service Act* permit the Chief Justice to assign duties to the 2nd Respondent. Additionally, section 21 of the *Judicial Service Act* states that the Chief Registrar, as the JSC's secretary, is responsible for accepting and transmitting documents and enforcing the Commission's decisions.
67. The Respondents submitted that the disciplinary process against the Petitioner originated from an audit report prepared by the Directorate of Audit and Risk Management, not from the 3rd Respondent. The Respondent also submitted that the Petitioner was given three opportunities to reconcile and respond to the audit report. He failed to do so satisfactorily.
68. The Respondents relied on section 14 of the *Judicial Service Act*, which allows the Commission to hire experts or delegate functions for day-to-day management. The Respondent also submitted that the 1st Respondent published the Judiciary Human Resources Policies and Procedures Manual to promote independence and accountability. Section D.4 of the Manual outlines that disciplinary matters are handled by committees constituted by the Judicial Service Commission or the Human Resource Advisory Committee for lower-level staff, as delegated by the Commission.
69. The Respondents argue that Sections 14 and 19 of the *Judicial Service Act* allow the commission to delegate functions, including hiring experts or consultants, to subcommittees or the secretariat, without needing to comprise JSC commissioners. The 4th Respondent, a committee created under sections 19 and 32 of the Act, handles appointments, discipline, and removal of judicial officers. This committee can include at least three persons delegated by the Commission.
70. The Respondents submitted the Petitioner attended disciplinary hearings on 25th August 2020 and 24th March 2021, and the 4th Respondent's recommendations were ratified by the 1st Respondent.



There was no statutory requirement for the Petitioner to appear before the JSC's HRM Committee for further hearings.

71. The Respondents submitted that the Petitioner was accorded a fair hearing when he was issued with a letter dated 24th October 2019, where the 1st Respondent gave its reasons for his suspension and was given an opportunity to respond to the letter to defend himself. The Respondents submitted that the Petitioner attended the disciplinary hearing held on 25th August 2020 and 2nd March 2021. The Respondents gave their verdict and informed the Petitioner of his right to appeal, and when he appealed, his appeal was not successful and his dismissal was upheld.
72. The Respondents submitted that substantive justification and procedural fairness were followed and relied on Articles 47 and 50 of *the Constitution*, Sections 41 and 43 of the *Employment Act*, as well as the Third Schedule of the *Judicial Service Act*. The Respondents also relied on several authorities *Mwende V Interstrat Limited t/a Big Square* [2023] KEELRC 1153, *CFC Stanbic Bank Limited V Danson Mwashako Mwakuuwona*[2015]eKLR, *Dr. Samson Gwer & 5 others V Kenya Medical Research Institute and 3 others* [2020] eKLR and *British Leyland (UK) Ltd V Swift*[1981] eKLR.
73. On the reliefs sought, the Respondent submitted that the Petitioner is not entitled to them as he was lawfully dismissed therefore, the reliefs sought ought to be declined as prayed.
74. The Respondents urged the Honourable Court to dismiss the Petition with costs.

Analysis and determination

75. The court has considered the Petition, the replying affidavits as well as the submissions by both parties, the issues for determination are as follows:
 - a. Whether the 3rd Respondent had legal authority to charge and suspend the Petitioner.
 - b. Whether substantive justification and procedural fairness were followed.
 - c. If (b) is in the affirmative, is the Petitioner entitled to the reliefs sought?
 - d. Who should bear the costs of the suit
76. According to section D.4. of the Judiciary Human Resource Manual, the Policies and Procedures Manual provides as follows:

“Disciplinary matters shall be handled by the following committees:

 - i. A committee/panel constituted by JSC.
 - ii. HRAC for staff in JS 9 and below as delegated by JSC.”
77. Section 14 of the *Judicial Service Act* provides as follows:

“Subject to the provisions of *the Constitution* or any other law, the Commission may hire such experts or consultants, or delegate such of its functions as are necessary for the day-to-day management of the judicial service to subcommittees or to the secretariat.”
78. In this instant Petition, the Petitioner was employed as a clerical officer and redesignated and promoted to the position of Accountant I. From the letter dated 24th October 2019, the Petitioner group job was initially Pls 10, but the 1st Respondent reorganised and renamed the job groups whereby Accountant I now falls under job group JSC 5 and as the entry-level of an accountant is JSC 6. Therefore, this



Honourable Court finds that the 3rd Respondent had legal authority to handle issues of discipline as provided in the Judiciary Human Resource Manual.

79. The petitioner's averments are that the Director of Human Resource Management (3rd Respondent) usurped the Chief Justice mandate under article 2(4) and 161(2)a and 172(1) (c) of *the Constitution* and rules 15 and 16 and 25(1) of the *Judicial Service Act*.

80. Regulation 25(1) of the Third Schedule of the *Judicial Service Act* provides that the Chief Justice is to frame the charge against a staff member and to lay the same before the Judicial Service Commission under Regulation 25(2) for their consideration.

81. At the same time Regulation 32(1) of *Judicial Service Act* make space for *Judicial Service Act* to appoint a committee or a panel to discipline judicial officers and staff.

There is no doubt in a huge institution like the judiciary there are clear provisions for delegation and the Chief Justice being the chair of Judicial Service Commission has authority to appoint a committee to deal with staff matters be they to recruit, discipline and suspend the staff.

82. Regulation 8(m) of *Judicial Service Act* also state that the Chief Registrar of the Judiciary is to perform all duties assigned to her by the Chief Justice and in Section 21 of the *Judicial Service Act* Chief Registrar is described as Secretary to the Commission and her duties are articulated therein. The court does not interpret it that the Chief Justice must always write specific authority to delegate the assignments already delegated by the law and policy to the Chief Registrar of the Judiciary.

83. The termination letter was also written by the Chief Registrar of the Judiciary as the Secretary of Judicial Service Commission.

84. The disciplinary proceedings were conducted by the Human Resource Management Committee. The commission obviously has authority to appoint a committee to discipline Judiciary officers as already stated and are provided in Section 32(1) of the *Judicial Service Act*.

At the hearing the committee observed that the Petitioner had been suspended from duty on 24th October 2019. He was an accountant at Nyahururu Law Courts. He was heard by the Committee and then invited for a disciplinary hearing on 25th August 2020.

He was taken through the disciplinary hearing and he did not raise any complaints against the composition of the committee or the process. He admitted he understood the charges against him.

85. The Petitioner admitted on several occasions he underperformed his duties and regretted not having noted the malpractice of the staff he supervised. He apologised and asked to be pardoned.

The committee recommended the Petitioner be dismissed from service but Chief Accounts Controller recorded a dissenting opinion and asked the staff be given more time for reconciliation of the accounts.

86. The petitioner was given another two weeks to reconcile the books and avail report for verification.

The Petitioner forwarded his report on reconciliation of the under-banking of Kshs.3,443,258/= on 13th October, 2020.

87. Once again he asked to be pardoned and be given a second chance and would going forward perform his duties diligently and in accordance to laid down procedures. He then sent another report on 8th February 2021.

88. On 2nd March 2021 Petitioner was invited for disciplinary hearing and once again he could not satisfy the committee on discrepancies in accounting for the losses of revenue.



He admitted failure to properly supervise staff working under him despite being the Accountant in charge.

Hence the dismissal from employment and order to pay Kshs.2,777,165 to the Judiciary as per the letter dated 8th July 2021.

89. The court also noted that even in his response to the reconciliation questions as per his letter dated 13th October 2020 the Petitioner admitted he was culpable of omission in not tracking the discrepancies earlier and he apologised for this mistake.
90. On 5th August 2021 the Petitioner lodged an appeal and once again was informed the appeal had been dismissed as per the Judicial Service Commission letter dated 5th November 2021.
91. The Petitioner was taken through disciplinary process that was reasonable in all ways and would be given every opportunity to explain himself. Even when the Chief Accountants Controller asked the Petitioner be given more time to reconcile the accounts the committee obliged to the request and Petitioner was given more opportunity to present further reconciliations.
92. The court would like to refer to the case of Isabella Linet Odolo -Vs- Judicial Service Commission Petition No. 096/2020 where the court held:

“It is not in dispute that the disciplinary process against the Petitioner was conducted by the Human Resource Management Advisory Committee, the Committee established under term of Section D(43(ii) of the Manual.”

The contention by the Petitioner that the conduct of the disciplinary process against her was in violation of the Article 172(1) of *the Constitution* – does not hold any water.”

The court goes further stated:-

“it is the court’s finding that the Judicial Service Commission did not abdicate its power by delegating its constitutional mandate via an Act of Parliament and Human Resource Policies and Procedure Manual to the Human Resource Management Advisory Committee.”

93. The court in this case is persuaded the Chief Justice did not abrogate her powers to discipline the Petitioner simply because the disciplinary proceedings letters were signed by the Chief Registrar of the Judiciary. She is mandated to handle documents and matters of the Judiciary staff on behalf of the Chief Justice and she is the Secretary of the Judicial Service Commission.
94. The Petitioner submitted on the decision of Judicial Service Commission and Chief Registrar of The Judiciary -VS-L.M.N.(Supra) quite extensively, in return the court considered the said Court of Appeal decision but found the facts and the circumstances in the said decision were different from this instant petition.

In the above case, the Petitioner was a judicial officer and her disciplinary process seemed to have been rushed as there was even no sitting Chief Justice at the time.

There was nobody to delegate the authority as required by the law to the Chief Registrar of the Judiciary.

95. The process itself was also flawed as the Petitioner was given like one day to avail herself for the disciplinary hearing.



96. In the instant case, the Petitioner was taken through a thorough disciplinary process and he subjected himself to the committee appointed to handle the disciplinary process without raising the issues which he has now raised in his Petitioner after the dismissal.

97. In *Walter Ogal Anure V Teachers Service Commission (2013) eKLR*, the court held as follows:

“... For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”

98. In *Overdrive Consultants (K) Ltd V Mazhar Sumra [2020] KECA 293 (KLR)* where the Court of Appeal held that for a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness.

99. In this instant Petition, the Petitioner was issued with a letter dated 24th October 2019 stating reasons for his suspension as there was an underbanking of Kshs.3,442,258/= at the Nyahururu Law Courts. The Petitioner was accorded several opportunities to defend himself and also to reconcile the accounts upto the time he received the dismissal letter on 8th July 2021.

99. The Petitioner was in charge of the Accounts department, and to whoever much is given, much is expected in return. The Petitioner was running the whole department, and he was to ensure that everything ran smoothly and that there were no losses of revenue. He admitted there were discrepancies while doing the reconciliation accounts, and he asked for forgiveness.

The Petitioner blames the discrepancy on heavy workload, but frankly his main responsibility was to safeguard Judiciary revenue. He failed to do and hence the act of negligence and eventual dismissal.

101. In view of the foregoing, the Honourable Court finds that substantive justification and procedural fairness were followed. The court finds the Petitioner has not proved he deserved to have him granted prayers as per his petition and the petition is accordingly dismissed.

102. In view of the circumstances of this case the court orders each party to meet their respective costs.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 6TH DAY OF MARCH, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of



the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

