



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**VA v KCS & another (Petition E223 of 2022)
[2025] KEELRC 1315 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1315 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

PETITION E223 OF 2022

B ONGAYA, J

MAY 9, 2025

**IN THE MATTER OF: ARTICLES
2,3,10,19,20,21,22,23,41,47,50,159,162(2)(A),165(5)(B),258 AND
260 OF THE CONSTITUTION OF KENYA 2010;**

-AND-

**IN THE MATTER OF: THE ALLEGED CONTRAVENTION
OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER
ARTICLES 10,27,28,31,41,47,48,50 OF THE CONSTITUTION
OF KENYA, 2010;**

-AND-

**IN THE MATTER OF: THE ENFORCEMENT OF THE
CONSTITUTION OF KENYA, 2010;**

-AND-

**IN THE MATTER OF: SECTIONS 5, 6, 7, 8 AND 10 OF THE
EMPLOYMENT ACT 2007;**

-AND-

PAGE 1 OF 47

**IN THE MATTER OF: SECTIONS 4, 6,7,8,9 AND 11 OF THE
FAIR ADMINISTRATIVE ACTION ACT NO 4 OF 2015;**

AND

**IN THE MATTER OF: RULES 4, 10,11,22,23 AND 24 OF THE
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE AND**



PROCEDURE RULES, 2013

BETWEEN

VA PETITIONER

AND

KCS 1ST RESPONDENT

AM 2ND RESPONDENT

JUDGMENT

1. The petitioner filed the petition dated 19.12.2022 through Seko Minayo & Company Advocates. The petitioner prayed for:
 - a. A declaration that the respondents have breached the rights and fundamental freedoms of the petitioner.
 - b. A declaration that the respondents' actions in terminating the petitioner's contract as the Coordinator, AGCP had no reasonable cause or at all and as recommended by the Board of Directors is unfair, unlawful and constitutes breach of the petitioner's constitutional rights to fair labour practices and fair administrative action.
 - c. An order for an award of general damages for violation of the petitioner's constitutional rights under Articles 27, 28, 31, 41, 47 and 50 of *the Constitution*.
 - d. An order for payment of general damages for unfair or wrongful termination based on unproven and unsubstantiated sexual harassment allegations.
 - e. An order for an award of damages for breach of the petitioner's valid legitimate expectation.
 - f. Interest on the above at court rates.
 - g. The costs of the petition.
 - h. Any other relief the Honourable Court may see fit to grant.
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition and the Supplementary Affidavit sworn on 19.02.2023. The petitioner's case is as follows:
 - a. That she joined the 1st respondent as a volunteer in December, 2015.
 - b. That in February 2016 she successfully applied and was confirmed as a Program Officer in the 1st respondent's Mombasa regional office and worked as such until 2018.
 - c. That on 28.01.2019 the petitioner was promoted to the position of Program Coordinator for the Advocacy Governance and Community Partnership (AGCP) Program.
 - d. On 17.04.2020 the petitioner received an email from the 2nd respondent and copied to all members of the board of directors, forwarding a complaint from a former staff, whom the 2nd respondent had terminated six months prior.



- e. On 04.09.2020 the petitioner received another email from the 2nd respondent and copied to all the board members, forwarding the same complaint.
- f. The petitioner was surprised and felt harassed by the 2nd respondent's insistence on a matter from a staff who had long left the 1st respondent.
- g. In June, 2022 the petitioner received another complaint sent to the 2nd respondent and managers of the 1st respondent by anonymous staff, portraying the petitioner as a bully and capable of sexual harassment.
- h. The 1st respondent formed an ad hoc committee of the board of directors to inquire into the nature of the complaint.
- i. The ad hoc committee held an inquiry into the complaint forwarded on 15.07.2022, 22.07.2022 and 14.10.2022.
- j. The ad hoc committee rendered its decision titled "outcome of hearing" vide a letter dated 11.11.2022.
- k. The said letter indicated that the board committee having considered the issues brought before it made findings and recommendations that had been duly adopted by the board of directors as follows:
 - a. There was sexual harassment towards SR
 - b. Management style was characterized by micro-managing of staff, favouritism and lack of collegiality.
 - c. There was a breach of the chain of command.
 - d. Contributed to bringing the organization to disrepute.
- l. At the inquiry hearing, the petitioner presented an alibi for the alleged sexual harassment towards SR. As per her witness, KO, the petitioner was away from the location of the incident.
- m. The petitioner produced exhibits and copies of communication from SR to her, which she states were never considered by the Ad Hoc committee.
- n. The petitioner contends that the board committee failed to consider all the evidence that she had produced concerning the issues raised, and also failed to note that the procedure on a claim of sexual harassment was never followed.
- o. The petitioner asserts that the actions terminating her employment were in full violation of the 1st respondent's human resource manual and sexual harassment policy and were never proved.
- p. The petitioner states that she never received any complaints, warning from her supervisor or the 1st respondent on her style of management or breach of chain of command. Further, that she never received complaints or concerns from development partners or stakeholders that work with the 1st respondent.
- q. The petitioner states that she served the 1st respondent diligently from 2015 until 11.11.2022 when the respondents alleged that she had sexually harassed a staff member, breached a chain of command, contributed to bringing the 1st respondent into disrepute with its partners and favouritism, micromanaging of staff and lack of collegiality.



- r. On 11.11.2022 the petitioner received an email from the 2nd respondent forwarding a termination letter dated 11.12.2017, which placed her on leave or purporting to be a termination letter.
- s. On 14.11.2022 the petitioner filed an appeal to the board of directors challenging the termination of her employment.
- t. The respondents did not acknowledge receipt nor respond to the appeal.
- u. On 25.11.2022 the petitioners advocates wrote to the respondents asking for directions on the appeal filed, and indicated that the appeal ought to be determined in time before the lapse of the termination notice period (termination being scheduled to take effect on 11.12.2022).
- v. On 30.11.2022 via email, the petitioner was informed that the appeal would be heard virtually on 08.12.2022 at 2:30pm. The petitioner was informed that her salary would be withheld.
- w. The petitioner attended and argued the appeal but the 1st respondent failed to indicate when it would render its decision on the appeal.
- x. The petitioner was apprehensive that the board's decision would be rendered after 11.12.2022 when the notice period of termination was to lapse.
- y. The petitioner states that the respondents have breached her rights enshrined in Article 41 of *the Constitution* by unfairly and wrongfully terminating her services.
- z. The petitioner argues that the respondents contravened her rights under Article 27 of *the constitution* by discriminating against her and using words that belittled, undermined and degraded her because of her tribe and gender by:
 - 1. The 1st respondent withholding her salary despite still being an employee of the 1st respondent.
 - 2. 2nd respondent communicating to its donors that the petitioner had been terminated despite a pending appeal and notice period having not lapsed.
 - 3. 2nd respondent forcefully putting her on leave and introducing another staff acting in her capacity as the coordinator.
 - aa. The petitioner argues that the respondents contravened her rights and freedoms contrary to Article 47 of *the constitution* and the provisions of Fair Administrative actions act by;
 - 1. Terminating her contract through an outcome of an inquiry not a disciplinary hearing.
 - 2. Failing to follow disciplinary procedures pursuant to policy number 31, 32 and 34 of the 1st respondent's human resource policy.
 - 3. The board making its findings without giving her an opportunity to be heard.
 - 4. The 1st respondent failing to consider her appeal to the board within reasonable time.
 - 5. The 1st respondent failing to render the outcome of the appeal before the expiry of the termination notice period.



6. 1st respondent ignoring the petitioner's evidence during the inquiry.
 7. The 1st respondent terminating her employment contract vide a letter captioned "Outcome of Hearing" dated 11.11.2022.
 8. The 2nd respondent unlawfully writing and signing the letter terminating her employment without authorization from the 1st respondent.
 9. The 1st and 2nd respondent failing to pay her monthly salary without lawful cause.
 10. The 2nd respondent communicating to third parties that her employment had been terminated by the 1st respondent while the termination notice period had not lapsed or appeal decision had not been rendered.
- ab. That the respondents breached Article 50(1) of *the Constitution* by:
- i. The 1st respondent showing open bias in arriving at its decision communicated vide a letter dated 11.11.2022.
 - ii. The 1st respondent disregarding its internal disciplinary procedures in terminating the petitioner.
 - iii. The 2nd respondent being part of the board inquiry in spite of her open bias and discrimination against the petitioner.
 - iv. The 1st respondent allowing third parties to attend the hearing of her appeal before it.
 - v. The 1st respondent failed to acknowledge or give any responses to her appeal to the board of directors.
 - vi. The 1st respondent failed to consider her appeal within reasonable time.
 - vii. The 1st respondent failed to render the outcome of the appeal within reasonable time.
 - viii. 1st respondent adopting the findings of the ad hoc committee's inquiry without giving the petitioner an opportunity to be heard.
- ac. The petitioner believes that the 1st and 2nd respondents have violated her rights and freedoms contrary to Article 28 of *the constitution* by treating her in a degrading manner by sharing the letter of termination with staff and other employees contrary to Articles 29(d) &(f) and 31(d) of *the Constitution*.
3. In reply the 2nd respondent filed her replying affidavit sworn on 03.04.2023 and further replying affidavit sworn on 06.03.2023 and drawn by Muma & Kanjama Advocates. It was stated and urged as follows:
 - a. That the 1st respondent ensured integrity and fairness in the process that led to the termination of the petitioner.



- b. On 23.04.2022 the 2nd respondent received an anonymous email which contained a complaint from the Advocacy Governance and Community Partnerships (AGCP) program team.
- c. On 24.04.2022 the 2nd respondent notified the petitioner of the complaint via email and requested her to respond to the allegations by 26.04.2022.
- d. On 25.04.2022 the petitioner informed the 2nd respondent via email that she would seek independent legal representation and she would not respond until she is given a chance to face her accusers.
- e. The 2nd respondent responded to the anonymous email asking the complainants to disclose their names and affix their signatures to the complaint after indicating that they would not be victimized. The complainants identified themselves as being DR, SR, SB, JJ and JS and appended their names and signatures to the anonymous complaint.
- f. The 2nd respondent forwarded the signatures to the petitioner to enable her respond and followed it up with a letter dated 19.05.2022, informing the petitioner that she would be expected to respond within 48 hours from the date of the letter since the complaint against her “raises serious allegations of breach of workplace policy”.
- g. The petitioner responded to the complainant via a letter dated 24.05.2022. The complainants responded via a letter dated 31.05.2022 asserting their views that the petitioner breached the chain of command, she perpetrated a hostile working environment and continuous sexual harassment.
- h. The board set up a committee to hear and determine the complaints and address all issues brought up in accordance with the respondent’s disciplinary procedure and in compliance with the law.
- i. The petitioner was invited to and physically appeared before the disciplinary committee of the 1st respondent on 15.07.2022, 22.07.2022 and 14.10.2022.
- j. The committee thereafter deliberated on the matter and found the petitioner’s defence to the allegations against her wanting. It concluded that the petitioner was involved in sexual harassment of an employee who she had supervisory control over by repeatedly using the term “baby boy” and “boy lollipop” when referring to him without his consent and through advances of sexual nature that were both verbal and physical.
- k. That the petitioner’s management style was characterized by micro-managing of staff, favouritism and lack of collegiality which resulted in an unhealthy work environment that affected the mental health of staff within the organization among other reasons in the notice of termination.
- l. The committee’s findings and recommendations were presented to and adopted by the board of directors. The board of directors resolved to terminate the petitioner’s employment and the decision was then implemented vide letter dated 11.11.2022.
- m. The petitioner appealed the decision on 15.11.2022 and said appeal was virtually heard on 08.12.2022 in presence of the petitioner’s lawyer and a decision was communicated to the petitioner on 21.12.2022.
- n. The reasons for the termination were valid and lawful since they were informed by the board committee hearing which was held on 15.07.2022, 22.07.2022 and 14.10.2022 where



all parties were heard and which established with reasonable belief that the petitioner was involved in sexual harassment of an employee who she had supervisory control over, breach of chain of command by the petitioner by knowingly giving contradictory instructions to the staff contrary to the directions of the office of the executive director, the petitioner brought the organization to disrepute by undertaking unilateral decisions that involved other peer organizations which impacted on the 1st respondent's reputation.

- o. That the actions of the petitioner contravened the provisions of the KCS Human Resource Management Policy and also amounted to Gross Misconduct warranting termination of the petitioner in line with Policy 32 and 34 of the KCS Human Resource Management Policy and Policy 9 of KCS Sexual Harassment Policy.
- p. The ad hoc committee heard the substance of the complaint and the same was a disciplinary hearing of the complaint, and the disciplinary hearing was conducted properly and with diligence.
- q. The issue of sexual harassment was not based on one incident only. The sexual harassment included the harassment of another female employee and other electronic evidence in form of screenshots provided to the committee. The petitioner only disputed one incident of sexual harassment, while, there were several alleged instances of sexual harassment.
- r. Policy no 8 was the Sexual Harassment Policy of the 1st respondent and provided that such claims shall be investigated promptly and a resolution provided. Policy 8.1 provides that a committee shall be appointed to investigate, receive and make findings as to the complaints.
- s. The 1st respondent was dealing with multiple disciplinary issues of both sexual harassment and insubordination as well as micro-managing staff and favouritism hence the committee heard all the issues jointly. Policy no 32 of the sexual harassment policy states that if an employee in job grade M2 commits a breach of discipline which is sufficiently serious to justify termination, the case shall be referred to the board.
- t. The reason the petitioner was terminated was not as a result of her gender and tribe, rather, the termination was as a result of reasons including sexual harassment and breach of chain of command.
- u. An appeal against termination of an employee does not unless and until allowed, disturb or vary the decision to terminate. The employees service remains terminated, and the 1st respondent had a duty to communicate the termination to its stakeholders and maintains the power to appoint someone to act in her post temporarily.
- v. There was no bias on the part of the 1st respondent as the petitioner was given a chance to defend herself and call her witnesses during the hearing and was further heard during the appeal.
- w. The petitioner's rights under Article 10, 23, 24,25,41,47 and 50 of *the Constitution* or her rights under the *Employment Act* have not been violated by the 1st respondent.
- x. The petitioner has pending accounting issues with the imprest as she had not accounted for some monies. The 1st respondent followed up with the petitioner to account for the same which she could not. The 1st respondent is donor funded and accounting is key. The 1st respondent withheld the petitioner's salary as compensation for the pending accounts, the petitioner's salary is not adequate to cover the pending accounts hence she owes the 1st respondent some money.



- y. As a result of the hostile working environment created by the petitioner, two of the complainants resigned, due to the fact that any attempt to perform their duties since they complained was curtailed by verbal threats.
4. Parties' witnesses testified at the hearing of the petition. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows.
5. To answer the 1st issue, there is no dispute that parties were in a contract of employment.
6. To answer the 2nd issue, the Court returns that the contract of employment was terminated by the letter dated 11.11.2022 signed by the 2nd respondent. The letter addressed to the petitioner stated in part thus,

“The Board Committee having considered the issues brought before it made findings and recommendations that have been duly adopted by the Board of Directors, which are as follows:

1. There was sexual harassment towards SR, a complainant.
2. Management style was characterised by micro-managing of staff, favouritism and lack of collegiality.
3. There was a breach of the chain of command.
4. You contributed to bringing the organization into disrepute.

The particulars of the above issues, are well within your knowledge and are as follows:

You sexually harassed Mr. R, one of the complainants, by coining and then repeatedly using the labels of “baby boy” and “boy lollipop” without his consent. The form of sexual harassment was both verbal and physical in nature. The acts were persistent and unwanted advances of a sexual nature made towards a member of staff over whom you had authority. The conduct breaches Policy Nos.3 and No.4 of the Human Resources Manual and Sexual Harassment Policy respectively.

You deliberately breached the chain of command by giving contrary instructions to the members of staff in your department even while fully knowing that your aforesaid instructions were in contravention with officially communicated directions given by the Office of the Executive Director.

Your management style was characterised by high-handedness and micro-managing that is inconsistent and incompatible with the core values of the organization and resulted in a non-collegial work environment that affected the mental health of members of staff within the department.

Finally, you took unilateral decisions in a joint intervention that involved other peer organizations, which impacted on the reputation of the organization within the sector.

It has been found that your conduct breached Policy Nos. 28, 29, and 31 of the Human Resources Manual and Policy Nos. 4 and 7 of the Sexual Harassment Policy. YOU ARE HEREBY NOTIFIED that your services are terminated with effect from 11th December 2022 i.e. within ONE (1) MONTH from



the date hereof. During the aforesaid notice period, you are required to immediately handover and take leave days.

Kindly note that you are entitled to appeal to the full Board within the next SEVEN (7) working days, which you will lodge in writing through the undersigned for further transmission.

Yours faithfully,

For KCS –LAC

Signed

Dr. AM

Executive Director/Secretary Board of Directors”

7. The 3rd issue for determination is whether the termination of the contract of service was unfair or unlawful. The Court has considered the material on record in detail and returns as follows:
- a. It is not in dispute that the 2nd respondent received a complaint from the employees working under the petitioner. The formal complaint was date 23.04.2022. The complaints were of two kinds, the one about sexual harassment and others about the petitioner’s performance and which purportedly constituted the 2nd, 3rd and 4th reasons for termination.
 - b. With respect to the general complaints, the 1st respondent’s Human Resource Management Policy 2008 provided at policy No.30 that the employee raises the grievance with the immediate superior in the first instance. If dissatisfied, the employee had the discretion to report to the Performance Management Committee comprised of the 1st respondent’s senior officers known as coordinators. Any of the three coordinators constituted a quorum but had to be convened by the coordinator for Finance and Administration. If the employee was still not satisfied with the decision of the committee, the employee may appeal to the Executive Director whose decision would be final and binding. The Court finds that with respect to the complaints other than the sexual harassment complaints, the grievances were never submitted to the prescribed committee. The 2nd respondent received the anonymous complaints by email and then asked the employees not to fear intimidation. They then made the formal complaint in writing and signed. Instead of referring the complaint to the committee as envisaged, the 2nd respondent skipped the prescribed grievance management procedure and forwarded the same to the petitioner to answer the complaints. It should be clear that by raising the complaints, the employees were not making a decision that the petitioner was culpable and should be subjected to disciplinary process. It was that the grievances about management style, handling of or conflict in instructions as given by the 2nd respondent and the petitioner to the complainants, relationship with the clients and sexual harassment were all grievances to be subjected to the 1st respondent’s prescribed employee grievance procedure. That was not done. The court finds that as submitted for the petitioner the respondents failed to accord the petitioner the benefit of amicable grievance procedure prior to imposing the purported disciplinary process. Policy No.32 on disciplinary procedure at clause (6) stated that for an employee in M2 or MM3 (the petitioner being in M2) who commits a breach of discipline which is considered sufficiently serious to justify termination, the case shall be referred to the 1st respondent’s Board of Directors. The Court finds that the 2nd respondent lacked basis to consider that the complaints by way of the grievances of employees working under the petitioner would justify a termination while the clear grievance procedure leading to that may have guided the forming of such opinion had not been followed. The employees had not raised the grievances with



the petitioner and formally so in writing and even if they had raised them orally and become dissatisfied with the petitioner's decision thereon as their immediate supervisor, then the same ought to have been reported to the committee if the employees wished to pursue it further. The Court finds that the 2nd respondent referred the matter to the Board prematurely and in total breach of the employee grievance policy. The 2nd respondent confirmed that throughout her prior service with the respondents and until when the complaints were made, the petitioner had not been issued with a warning and she had a clean record of service. The complaints between the employees and the petitioner were presented as having been looming over a long period of time of over 1.5 years. The Court finds that with such clean record of service and without prior individual or collective complaints by the employees as at the time or about the time the alleged complaints happened, it was suspect that a collective complaint was signed and then the Performance Management Committee denied the chance not to undertake its role. It was unfair and the Court finds accordingly.

- c. While the foregoing findings apply to the sexual harassment grievances, the Court finds that the 1st respondent had specifically put in place the Sexual Harassment Policy of 2020. Clause 8 on internal complaints procedure on sexual harassment required that for a complaint between fellow staff members (like in the instant case), the Office of Director constitutes an ad hoc committee in charge of receiving, investigating, and making findings and recommendations on such complaints within 60 days. The committee was required to carry out the investigations to determine the merits of the complaint and submit to the office of the Director a conclusive written report. If the recommendation was that the employee was culpable, then the Office of the Director would apply any sanctions approved within K, the 1st respondent. Clause 9 specifically provided that disciplinary or remedial action would be imposed according to the 1st respondent's disciplinary policies and procedures. In that event. The remedial measures or disciplinary action would include warnings, transfers, suspensions, and dismissal from employment, and professional sanctions. The Court finds in the instant case no conclusive investigation report of the alleged sexual harassment was submitted by an ad hoc investigation committee. There was no indication that such committee was ever constituted. Thus, the 2nd respondent appears to have referred the case to the 1st respondent's Board without satisfaction of the mandatory precondition of established culpability in a conclusive report by the ad hoc committee. The submission for the petitioner that the procedure was unfair in that respect is as well upheld by the Court.
- d. The Court finds that the respondents adopted an unfair procedure to terminate the petitioner's employment without according her the chance to explain herself and to seek to amicably resolve the alleged grievances with the employees working under her per the roles of the Performance Management Committee under the general grievance procedure and the investigative role of the ad hoc committee under the Sexual Harassment Policy. The claimant has therefore established that the termination violated her right to due procedure per section 41 and 45 of the *Employment Act*, 2007, Articles 41, 47, and 50(1) of *the Constitution* on fair labour practices, fair administrative action, and fair hearing. The Court finds accordingly.
- e. In view of the complete violation of the grievance procedure and the investigative complaints procedure for alleged sexual harassment, the Court returns that as at the time of termination it cannot be said that respondents had valid or genuine and existing reason to terminate per section 43 of the Act, or that they had a fair reason relating to the petitioner's conduct and the respondent's operational requirements per section 45 of the Act.



- f. With respect to the alleged complaints and purported reasons for termination other than alleged sexual harassment of S, the Court observes and returns as follows:
- i. The 2nd respondent was the immediate supervisor and superior of the petitioner. The 2nd respondent testified and confirmed that until the employees submitted the formal complaints herein, she had not imposed any warning or raised a concern about the petitioner's conduct and performance. It was for the 2nd respondent to supervise and if necessary, complain or handle the issues about the petitioner's relationship with clients, management styles, collegiality, and breach of chain of command, and petitioner's contribution to the 1st respondent's reputation or lack of it. It is absurd that the employees working under the petitioner ganged up, belatedly long after the dates of occurrence of the alleged grievances, and without prior formal concerns by the 2nd respondent against the claimant, the 2nd respondent hurriedly skipped the prescribed grievance procedure and the sexual harassment complaints and investigation procedure and prematurely presented the case to the Board to determine the petitioner's culpability.
- ii. Respondent Witness No.3 (RW3) was SR and he testified confirming that the use of the nickname "baby boy" "lollipop" and "baby boy lollipop" by the petitioner had started right from the date of appointment and 1.5 years had lapsed prior to making a complaint. The evidence was that other staff members had also used the nicknames like on the WhatsApp screen shorts where an employee known as M had used it and the exchange of the messages did not receive RW3's protestation. While alleging physical sexual harassment allegedly on the evening rw3 alleged the petitioner touched his right hand, the petitioner never took steps to report the otherwise serious sexual harassment that was alleged. Similarly, on another day the nick name had been used by staff collectively on the RW3's birthday cake and that shows RW3 had for over a long time become used to his colleagues using the nick names. In absence of any other material, the Court finds that RW3 condoned the use of the nicknames by his workmates including the petitioner and the alleged sexual harassment was unfounded. In finding tolerance or condoning of the allegations, RW3 testified, "Events of 12.08.2021. I say EN called me to go and help. Petitioner called me to her office. I did not tell E what had happened. I did not call her to testify. At 6.30pm E was at office but not in petitioner's office. After I left petitioner's office I did not tell E petitioner had annoyed me by calling me "baby boy." There were guards at gate but no CCTV. I did not call the guards to testify at the disciplinary hearing. No one can tell I was not at office at 6.30pm or was there. E can testify to confirm. She is not a witness. I do not know if she attended at disciplinary hearing." By that testimony it is that RW3 had never complained or reported the sexual harassment on the alleged instances and further, he like on that material evening, had no corroborating evidence or material. RW3 testified that in all the instances of alleged sexual harassment, and the alleged instances being several, he had not lodged any written warning or report. The Court has found that the alleged sexual harassment never occurred and if at all it occurred, then it was welcome in view of consistent failure to report.
- iii. The Sexual Harassment Policy at clause 1 defined Sexual Harassment to include any direct or indirect requests for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express promise of preferential treatment in employment; threat of detrimental treatment in employment; or threat about the present or future employment status of the employee; and further "(b) Any behaviour that is unwelcome or offensive, of a sexual nature that includes physical conduct, display of visual material and communication whether written, verbal, or non-verbal and includes non-electronic material. The Court finds that the respondents have failed by evidence to show elements of the alleged sexual harassment



that amounted to satisfaction of the definition. The Court has found that any unwelcome behaviour, but which was not investigated by the ad hoc committee and is therefore not established, appears was condoned.

- iv. Thus the Court returns that the termination was unfair both in substance and procedure. While making that finding, the Court finds for the petitioner that Policy No.34 of the Human Resource Manual provided for termination of contract upon set out criteria and her termination did not meet any of the outlined criteria. Employees found culpable of sexual harassment were liable to summary dismissal per Policy No.35 clause (9). Thus, the petitioner's case that it was unfair termination in violation of the cited constitutional provisions in the Bill of Rights as found earlier herein is upheld.

8. The 5th issue is on remedies. The Court returns as follows:

- a. The termination was unfair in violation of the Bill of Rights in Articles 27, 41, 47, 50(1) as submitted for the petitioner. The Court has considered the factors in section 49 of the *Employment Act*, 2007. The aggravating factors include violation of rights and freedoms as found. Second, the termination was blended with malice manifested in disregard of the grievance procedure by the Performance Committee and the procedure on conclusive investigation of sexual harassment complaints by the ad hoc committee. The Sexual Harassment Policy specifically prohibited making of malicious sexual harassment complaints. The petitioner desired to continue in employment and upon the unfair termination her final dues were withheld. The respondent offered no mitigating factors and in the circumstances, the petitioner having otherwise upheld a clean record of service and having suffered serious anxiety and reputational injury as an Advocate of the High Court is awarded maximum compensation of Kshs.132, 000.00 per month x 12 making **Kshs. 1, 584,000.00**. As submitted for the respondents, the violation of rights was intertwined and mixed up in the unfair termination and the violation of rights having been considered as an aggravating factor, there will be no separate award on violation of rights in the circumstances of the case.
- b. The petitioner has made submissions on award of withheld salaries which was not specifically pleaded and proved and the same is declined. Similarly the submissions on pay for outstanding leave was not pleaded and prayed for and the same is declined. Similarly submissions on provident fund and certificate of service were not pleaded though, the claimant is strictly entitled to the two by operation of law and contractual terms and conditions. They will issue under the prayer for any other just relief.
- c. The petitioner is awarded costs of petition because she has substantially succeeded.

In conclusion judgment is hereby entered for the petitioner against the 1st respondent for orders:

- a) The declaration that the respondents breached the rights and fundamental freedoms of the petitioner as found in this judgment.
- b) The declaration that the respondents' actions in terminating the petitioner's contract as the Coordinator, AGCP had no reasonable cause or at all and as recommended by the Board of Directors is unfair, unlawful and constitutes breach of the petitioner's constitutional rights to fair labour practices and fair administrative action.
- c) The 1st respondent to pay the claimant a sum of Kshs. 1, 584,000.00 less PAYE by 01.07.2025 failing interest to run thereon at Court rates from the date of this judgment till full payment.



- d) The 1st respondent to deliver the certificate of service in 30 days from today and to cause payment of dues under the provident fund per terms and conditions of service and per provisions of relevant law.
- g) The 1st respondent to pay petitioner's costs of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 9TH MAY, 2025**

**BYRAM ONGAYA
PRINCIPAL JUDGE**

