



REPUBLIC OF KENYA



**Mwangi v Teachers Service Commission (Petition E009 of 2024)
[2025] KEELRC 2270 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2270 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E009 OF 2024**

J RIKA, J

JULY 31, 2025

BETWEEN

RICHARD MACHARIA MWANGI PETITIONER

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. The Petitioner filed this Petition on 29th April 2024.
2. He was a Teacher, registered with the Respondent, and employed in 1994 as a Primary School Teacher.
3. He was accused of defiling his pupil. He was taken through a disciplinary process, interdicted and eventually deregistered and dismissed by the Respondent.
4. He prays for about 19 remedies, claiming that the Respondent did not treat him fairly and lawfully, in deregistering and dismissing him.
5. The prayers include declarations revolving around the constitutional principles of fair administrative actions and labour practices; and the alternative remedies of compensation and reinstatement.
6. The Respondent has raised a point of preliminary objection under the revised Section 89 of the *Employment Act*, Section 4 [1] of the *Limitation of Actions Act*, and Section 3[2] of the Public Authorities Limitations Act, submitting that the Petition is time-barred.
7. It is submitted that the Petitioner was found guilty at the end of the disciplinary hearing on 14th February 2019, and the decision communicated to him on 21st March 2019. He filed the Petition 5 years after dismissal, on 27th April 2024. Section 89 [formerly 90] of the *Employment Act*, caps the period for filing of employment claims, at 3 years, from the date of termination.



8. The Respondent argues also, that the Petitioner has not shown that he has a constitutional grievance, under Article 22 of *the Constitution* and *The Constitution* of Kenya [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules.
9. The Petitioner filed an Affidavit in response to the preliminary objection, sworn by himself on 25th April 2025.
10. He submits that the preliminary objection is an afterthought. The Respondent is on record as earlier indicating to the Court, it was ready to be heard through oral evidence.
11. The Petition is founded on the Respondent's violation of the Petitioner's constitutional right to a fair trial. The right was violated during the disciplinary process. The Acts of Parliament cited by the Respondent cannot override the Petitioner's constitutional rights and guarantees. The Petition is well-founded under *the Constitution*.
12. The Petitioner submits that he was denied the right to call witnesses at the disciplinary hearing, contrary to Article 50[2] [k] of *the Constitution*. He was denied adequate time and facilities to conduct his defence. He was not presumed innocent. He challenged the composition of the disciplinary panel. All relevant evidence was not considered on hearing and review.
13. Further, Regulation 156 [1] of the Regulations governing the disciplinary process, requires an Employee who is dismissed, to follow the appeal process. The ad hoc committee convened on appeal, shall consider and determine matters arising from the disciplinary process.
14. The Petitioner appealed, and the appellate decision was communicated to him, on 20th September 2023. The effective date of termination was 20th September 2023.
15. Parties agreed to have the preliminary objection considered and determined on the basis of their affidavits, pleadings and submissions. They confirmed filing and exchange of submissions, at the last mention, on 13th May 2025.

The Court Finds: -

16. The Petition has anchorage in *the Constitution*, and the Procedural Rules regulating filing of Petitions [Mutunga Rules].
17. It is similarly well-anchored under Rule 10 of the E&LRC [Procedure] Rules 2024.
18. Substantively, the Petitioner has demonstrated through his affidavits on record, that he has constitutional grievances, under Articles 22, 41, 47 and 50 of *the Constitution*.
19. The remedies sought are tenable, under Article 23 of *the Constitution*.
20. The effective date of termination [EDT] has not been established by the Respondent, to be 14th February 2019. The Petitioner appealed against the decision of 14th February 2019. The Code of Regulations governing the disciplinary process mandated the Respondent to hear the appeal. The Petitioner could not approach the Court, until that mandate expired. He lodged an appeal. The ad hoc committee which heard him, communicated its decision on 20th September 2023.
21. The EDT was on 20th September 2023. The Petition was filed on 24th April 2024. It is not affected by any statutory limitations of time.

It is ordered: -

- a. The preliminary objection is declined.



- b. No order on the costs.
- c. The Petition shall be scheduled for oral hearing, at the Registry.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 31ST DAY OF JULY 2025.

JAMES RIKA

JUDGE

