



Mukabi v Public Service Commission & 3 others (Employment and Labour Relations Cause E295 of 2021) [2025] KEELRC 2165 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2165 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E295 OF 2021**

**HS WASILWA, J
JULY 23, 2025**

BETWEEN

JAMES KHAUNYA MUKABI CLAIMANT

AND

PUBLIC SERVICE COMMISSION 1ST RESPONDENT

**THE CABINET SECRETARY, MINISTRY OF NATIONAL
GOVERNMENT 2ND RESPONDENT**

THE CONTROLLER OF STATE HOUSE 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 30th March 2021 and prays for judgment against the Respondents for: -
 - a. A declaration that the abolition of the Claimants' office is unlawful for violating Articles 27, 41, 47 and 232 of *the constitution* read with Section 28 of the PSA Act and regulation 73 of the PSC regulations.;
 - b. A declaration that the request of the 2nd Respondent- Cabinet Secretary- Ministry of Interior and Co-ordination of National Government contained in the letter dated 18th March, 2020 seeking abolition of the Claimant's office is unlawful, null and void ab initio;
 - c. A declaration that the 1st Respondent- Public Service Commission has violated Articles 27, 41, 47 and 232 of *the Constitution* by acting an unlawful directive of the 2nd Respondent to abolish the Claimant's office in patent violation of the procedures laid down by the Public Service Commission and Regulations thereunder;



- d. Orders of certiorari to quash the request of the 2nd Respondent - Interior Cabinet Secretary- for termination of the Claimant's employment contained in the letter dated 18th March, 2020 and to quash the termination of his employment vide a letter dated 7th April, 2020.
- e. A declaration that the 3rd Respondent - the Comtroller of State House- acted unlawfully in terminating the Claimant's employment on the grounds of abolition of office which he had not requested for and obtained as stipulated by Section 28 of the Public Service Commission.
- f. A declaration that the Claimant's appointment set out in the letter dated 28th March, 2018 remains in force unless and until his office is abolished in accordance with the law or his contract is otherwise terminated in accordance with the law.
- g. Compensation for unlawful termination of employment.
- h. Damages for violation of our client's constitutional and legal rights
- i. Costs of the proceedings

Claimant's Case

- 2. The Claimant states that he was employed at State House on the 19th May 2003 as Information officer II and rose up the ranks to the position of Senior Director, Brand Strategy and Events vide an appointment of 28th March 2018 for a period of 3 years effective 1st December 2017 to 30th November 2020.
- 3. The Claimant states that the 1st Respondent vide a letter dated 18th March 2020 requested the 2nd Respondent to abolish the office he held occasioning redundancy of the said office.
- 4. The Claimant states that the abolition of office and termination of contract was purportedly pursuant to section 28 of the *Public Service Commission Act* and it was proposed that he be paid unspecified salary in lieu of notice upon clearance of any government liabilities.
- 5. The Claimant avers that there was no proper reason to prematurely terminate his employment thus he was unlawfully and unfairly terminated from employment.
- 6. The Claimant states that the Cabinet Secretary was not the authorized officer for purposes of his employment therefore the abolition of his office was prima facie illegal.
- 7. He further stated that before abolishing the office, the Respondent did not satisfy the conditions set out in section 28[2] of the PSC Act which provides:-

“The Commission in making a determination as to whether to abolish an office, shall satisfy itself that-

- a. the office relates to the provision of public services that are no longer necessary in view of improved methods for service delivery;
- b. the request is based on a comprehensive plan informed by the department's workload analysis;
- c. there is an indication of the financial implications of abolishing the office, including savings to be made in relation to services relating to the office;



- d. information on the current authorized establishment, level of grading, designation, and evidence of optimum utilization of existing posts is submitted;
 - e. The office, when abolished, shall eliminate duplication and overlaps of functions by public bodies; and
 - f. The functions of the office, if not abolished, are inconsistent with the Constitution or any other legislation.”
8. The Claimant states that within the meaning of Section 2 of the PSC Act the 3rd Respondent was the authorized officer in respect to his employment and he did not submit any request to PSC under Section 28 of the PSC Act for the abolition of the office compounding the illegality leading to the claimant’s termination from employment.
 9. The Claimant contends that there was no legal basis for involvement and engagement of the 3rd Respondent in the abolition of his office which led to the termination of his employment.
 10. The Claimant avers that his termination vide the letter dated 7th April 2020 was unlawful and without any lawful justification. He further contends that the termination did not comply with the provisions of Section 43 of the employment contract, which stipulates that an employer shall be required to prove the reasons for termination and where he fails to do so, the termination shall be deemed to be unfair.
 11. The Claimant asserts that no reasons were proffered to him, nor was he subjected to a hearing, which is a breach of the rules of natural justice and rights under Articles 27,28,41, 47 and 50 of the constitution.
 12. The Claimant further avers that it is within his knowledge that another person is currently performing the precise duties that he was employed to discharge; as such, there was no abolition of the office.

1st Respondent’s Case

13. In opposition to the Claim, the 1st Respondent filed a Response to the Memorandum of Claim dated 11th April 2024.
14. It is the 1st Respondent’s case that the Claimant has always been on fixed-term contracts on supernumerary positions established by the Public Service Commission, for example, the supernumerary position of Senior Director Brand Strategy & Events under the then President’s Delivery Unit [PDU]
15. The 1st Respondent states that by an Executive Order No.6 of 2019 issued on 22nd August 2019, His Excellency, the President, effected changes and placed the President’s Delivery Unit under the Ministry of Interior and Coordination of the National Government.
16. The 1st Respondent states that vide a letter dated 16th March 2020, the 2nd Respondent submitted a request to the Commission for the abolition of the Claimant’s position, which the Commission acted upon.
17. The 1st Respondent states that abolishing the Claimant’s supernumerary position was done lawfully, and it terminated the employment contract of the officer holding the office by the termination clause of the employment contract.
18. It is the 1st Respondent’s case that the question of retirement highlighted in the memorandum of claim does not apply to the Claimant, as retirement applies to persons or officers whose employment



engagement is on a permanent and pensionable basis and not to persons on supernumerary contractual positions.

19. The 1st Respondent further stated that there was a lawful justification for the abolition of the Claimant's supernumerary contractual position; hence, the termination of employment was justified, and the actions of commission complained of are within the confines of *the constitution* and the applicable law.

2nd, 3rd and 4th Respondent's Case

20. In opposition to the Claim, the Respondents filed a Response to the Memorandum of Claim dated 7th February 2024.
21. The Respondents state that Executive *Order 6 of 2019*, which informed the reorganisation of the Public Service Commission, led to the Claimant's position at the State House being abolished.
22. The Respondents state that the Claimant was handpicked for the role of a senior Director, Brand strategy, and the position being held by the Claimant was supernumerary with an option of termination.
23. It is the Respondents' case that the prayers being sought, including reinstatement, are not tenable since the office has been abolished.
24. The Respondents state that officers engaged by the President and Governors are employed under special contracts and they are dismissible at the will of the crown as was held in *Miguna Miguna V Permanent Secretary, Office Of The Prime Minister & Another* [2011] Kehc 4250 [Klr]
25. It is further the Respondents' case that the Claimant has not adduced into evidence how his constitutional rights and freedoms were violated.

Evidence in Court

26. The Claimant [CW1] adopted his witness statement dated 30th March 2021 as his evidence in chief and produced his filed bundle of documents dated on the same date as his exhibits 1-7.
27. During cross examination, CW1 testified that he was not aware of any letter from the Public Service Commission abolishing the office he held. Further, he stated that the abolishing of the office was never communicated to him through the authorised office the Comptroller of the State House.
28. CW1 testified that he was working at State House under the comptroller of the State House. He further stated that Cabinet secretaries are not authorised officers.
29. The Respondent's first witness, John Kimani Njoro [RW1] stated that he is the Director of Human Resources of the Public Service Commission. He adopted his witness statement dated 11th April 2024 as his evidence in chief and produced his filed bundle of documents dated on the same date
30. He testified that the Claimant was working at the president's delivery unit, which was merged with the Ministry of Interior and coordinated by national government by a presidential order no.6 of 2019.
31. Upon cross-examination, the RW1 testified that the public service commission caused the cabinet secretary to be the authorised officer to apply for the abolition of the office held by the claimant.
32. On re-examination, RW1 reiterated that the president's delivery unit was merged with the Ministry of Interior and coordination of the national government, hence the cabinet secretary for the ministry was the authorised officer, and there is no evidence to the contrary.



33. The Respondents' second witness, Kepha Onyiso [RW2], stated that he is the Deputy Chief State Counsel of the Office of the Attorney General, adopted his witness statement dated 28th October 2024 and adduced into evidence his filed bundle of documents.

Claimant's Submissions

34. The Claimant submitted on four issues: - whether the Claimant's office was lawfully abolished; whether the Claimant was unlawfully terminated from office; whether the constitutional rights of the Claimant have been violated by the Respondent and; and what reliefs should be granted.
35. On the first issue, the Claimant submitted that the letter dated 18th March 2020 addressed to the Claimant through the Head of the Presidential Strategic Communication Unit informing him that his employment had been terminated on account of redundancy occasioned by the abolition of the office. The Claimant was attached to the Presidential Strategic Communication Unit, which is distinct from the President's Delivery Unit; as such, he was not affected by Executive *Order No.6 of 2019*.
36. The Claimant submitted that his office was unlawfully abolished and the 1st Respondent did not uphold its constitutional mandate to defend the interests of public officers and to act independently.
37. On the second issue, the Claimant submitted that the 2nd Respondent was not the authorised officer in respect to his employment and he had no authority to terminate his employment. He relied in *Wanja v North Coast Medical Hospital [Employment and Labour Relations Cause E003 of 2023] [2025] KEELRC 1241 [KLR] [30 April 2025] [Judgment]* wherein Ocharo J held:

“In my perspective, it is insufficient for an employer merely to articulate that the organisation or entity underwent restructuring, resulting in the redundancy of certain positions. Employers are expected to provide reasonable details, and this expectation intensifies when the employee disputes the redundancy, perceiving it as obfuscated.

The process of restructuring and declaring redundancy is not a mere event; rather, it constitutes a series of actions. In circumstances such as those presented in the current case, it is reasonable to anticipate evidence from the employer regarding: when the concept of restructuring was first conceived; the rationale behind this concept; the dates when discussions about the idea occurred; the specific date when a decision was made regarding the restructuring; and the considerations regarding the steps necessary to facilitate the restructuring process, culminating in the exit of those affected.”

38. The Claimant submitted that the Respondents did not provide reasonable justification for the redundancy and the process of redundancy was not procedurally fair as it was a mere one-off event devoid of transparency and good faith; as such the process could not pass muster and should be annulled alongside the resultant termination.
39. The Claimant relied in the Court of Appeal case of *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others [2014] KECA 404 [KLR]*, Maraga JA held as follows:

“Termination of employment on account of redundancy is justified if there is substantive justification for declaring redundancy and there is procedural fairness in the consequent retrenchment. Given the fact that for a period of about five years the appellant's profits had continually dipped, I find that the appellant was justified in declaring redundancy. The appellant, however, failed to meet that statutory threshold of procedural fairness in the implementation of its redundancy decision in that it failed to give notice to the labour officer



and a proper and adequate notice to the affected employees or their union; it failed to hold meaningful consultations with the affected employees or their union; and its selection of the affected employees was not based on an objective and open criteria.”

40. On the third issue, the Claimant submitted that the unlawful or unjustified abolition of office was done in a manner that stripped him of the protection of law and also in a discriminatory manner, as the office was not abolished contrary to Article 27 of *the Constitution*.
41. The Claimant submitted that he was denied the benefit of fair labour practices and right to a fair administrative action contrary to Articles 41, 47 and Articles 232[1][c] and [e] of *the Constitution*.
42. The Claimant submitted that he has demonstrated that the Respondents acted unlawfully and without justification and urged the court to grant the reliefs sought.

Respondents' Submissions

43. The 1st Respondent submitted on three issues: - whether the Claimant's supernumerary position was lawfully abolished, whether the Claimant has made a case against the commission; and what reliefs are appropriate under the circumstances.
44. On the first issue, the 1st Respondent submitted that it created a supernumerary position of Senior Director, Brand strategy & events under the then president's delivery unit to which the Claimant was appointed and was under the control of the State House as the authorized officer.
45. It was submitted that by an Executive *Order No.6 of 2019* issued on 22nd August, 2019, by His Excellency the President, effected changes in the structure of the Executive and placed the President's Delivery Unit under the Ministry of Interior and Coordination of National Government from the Executive Office of the President under the Comptroller of State House. As a result of the changes, the Claimant ceased being under comptroller of the State House as his authorised officer to his new authorised officer, the Cabinet Secretary, Ministry of Interior and Coordination of National Government.
46. The 1st Respondent submitted that it was guided by the provisions of Section 28 of the *Public Service Commission Act*, in particular clause [2][e] thereof, which relates to the elimination of duplication and overlaps of functions by a public body as a consideration for abolition of office.
47. It is therefore the 1st Respondent's submissions that it acted on the authorized officer request and abolished the Claimant's position, hence the termination of the Claimant's contract of employment which decision was communicated to the Claimant. Thus, the abolition of the Claimant's supernumerary position was done in accordance with the law, specifically 28[3] of the *Public Service Commission Act*, Cap 185 of the Laws of Kenya.
48. On the second issue, the 1st Respondent submitted that once an office or position is abolished by the Commission, the affected person's Authorised Officer then proceeds to terminate the employment contract of the affected officer in accordance with the termination clause.
49. The 1st Respondent submitted that the Claimant has failed to make a case against it for any alleged violation of his constitutional rights. It relied in Jackson Maina Ngamau v Ethics and Anti-Corruption Commission & 3 others [2015] KEHC 3693 [KLR] the court held:

“The principle of ‘constitutional avoidance’ as discussed by the Supreme Court of Kenya in Communications Commission of Kenya & 5 Ors. v. Royal Media Services Ltd & 5 Ors. [2014] eKLR that the Court will not determine a constitutional issue or question even



where it is properly before it, if there is another basis upon which the case can be disposed of, does not oust the jurisdiction of the Court but rather calls for judicial restraint in cases where there exists an statutory or other remedy. In addition, in accordance with the rule in *The Speaker of the National Assembly v. Karume* [2008] EG&F, it is now accepted as a principle of constitutional adjudication that where *the constitution* or statute makes provision for the process for determination of a particular matter that procedure should be strictly followed.”

50. On the third issue, the 1st Respondent submitted that having demonstrated that the Claimants supernumerary position was lawfully abolished by the Commission and the Claimant having failed to make a case against violation of any of his rights; the reliefs sought are not merited and urges the court to dismiss the suit with costs.

2nd, 3rd and 4th Respondents’ Submissions

51. The Respondents submitted on three issues: - whether the 1st Respondent lawfully abolished the Claimants office in accordance to the *Public Service Commission Act* 2017 and applicable regulations; whether the Respondents acted in violation of Articles 27,41,47 and 232 of *the constitution*; whether the claimant’s termination was lawful, fair and procedurally fair; and whether the Claimant is entitled to the reliefs sought including compensation for unlawful termination.
52. On the first issue, the Respondents submitted that the 1st Respondent lawfully abolished the Claimant's office pursuant to Article 234 [2][a] of *the Constitution* of Kenya, which empowers the PSC to establish and abolish offices in the public service.
53. The Respondents submitted that following Executive *Order No. 6 of 2019*, issued on 22nd August 2019, the Executive was restructured and functions of the President’s Delivery Unit [PDU] were transferred to the Ministry of Interior & Coordination of National Government. Consequently, all PDU staff, including the Claimant, were placed under the Ministry.
54. The Respondents submitted that subsequently, the 2nd Respondent acting as the authorised officer, submitted a request via letter referenced OP/PA.3/91A dated 16th March 2020, seeking the abolition of five offices, including the Claimant's. The request approved by the 1st Respondent and it advised that the contracts of the affected officers be terminated in accordance with their employment terms.
55. It is the Respondents’ submission that as per the government structure, Cabinet Secretaries are designated as the Authorised Officers of Ministries, meaning that the Comptroller of State House ceased to be the Claimant’s Authorised Officer after issuance of Executive *Order No. 6 of 2019*. The request to abolish the Claimant's office was, therefore, procedural, lawful, and within the statutory mandate of the 2nd Respondent.
56. On the second issue, the Respondents relied in *Josephine M. Ndungu & others v Plan International Inc* [2019] KEELRC 663 [KLR], the court held that:
- “The employer could not continue to employ them in non-existent positions which had been phased out or realigned in an effort to ensure efficient and effective management of the organization. The court cannot interfere with the employer’s managerial prerogative, which is lawfully done to achieve strategic business sustainability and efficiency and especially where the employer deems that there is a bloated workforce, blurred chain of command and control, and high operational cost.”
57. It is the Respondents’ submissions that the restructuring and the resulting redundancy were justified and done through a fair procedure. The alleged discrimination by the Claimant is without merit. In



Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] KECA 445 [KLR], the Supreme Court held that:

“A party alleging a constitutional violation must demonstrate how the alleged violation occurred, by linking the actions of the Respondent to the specific harm suffered.”

58. The Respondents submitted that constitutional claims must be substantiated with cogent evidence, linking the alleged breach to a direct violation of *the Constitution*. The Claimant's reliance on general constitutional principles without factual backing renders his claim legally insufficient.
59. On the third issue, the Respondents submitted that the 1st Respondent exercised its constitutional and statutory mandate in abolishing the Claimant's office, as provided under Article 234[2] of *the Constitution* of Kenya which empowers PSC to establish and abolish offices in the public service. Additionally, Section 28 of the *Public Service Commission Act*, expressly grants PSC the authority to abolish an office in the public service where such abolition eliminates duplication of roles or enhances efficiency. Lastly, Clause 6[1] of the Claimant's Local Agreement Contract explicitly permitted termination at any time by issuing notice or payment in lieu thereof.
60. The Respondents submitted that the Claimant was compensated in strict compliance with the termination clause, therefore, the allegation of unfair termination is misplaced.
61. The Respondents submitted that the Claimant's termination was lawful, procedurally fair, and in compliance with his contractual terms and constitutional provisions. The abolition of his office was part of a legitimate government restructuring process, and he was duly compensated in accordance with the agreed contractual terms.
62. It is the Respondents' submission that the Claimant had no legitimate expectation of continued employment and his claim for compensation lacks merit as the process was both substantively and procedurally sound.
63. I have considered all evidence and submissions of the parties herein. The claimant has averred that he was attached to the Presidential Strategic communication Unit which is distinct from the President's Delivery Unit as such was not affected by the executive order no 6 of 2019.
64. I have looked at the documents submitted by the claimant. From his appointment letter, he was appointed on 25th March 2018 on a 3 year contract with effect from 1/12/2017 as a Senior Director Brand Strategy and E Events Job Group J during the tenure of his Excellency the President up to and including 30th November 2020. The letter was signed by the Comptroller of State House under executive order No 6 of 2019 dated 22/8/2019. His Excellency the President reorganised functions of Ministries and the President's Delivery Unit was placed under the Ministry of Interior and Co ordination of National Government.
65. The claimant avers that he never was under the President's Delivery Unit, which was affected by the changes herein. It is still however true that the delivery unit or Presidential Strategic Communication Unit were under the Ministry of Interior and Co Ordination of National Government.
66. The issue of whether the Cabinet Secretary of the Ministry being the Authorised officer is then answered by the averments of the 1st respondent who avers that the Cabinet Secretary became the authorised officer. There is no evidence to the contrary on this.
67. It is also true that vide a letter dated 16th March 2020 the Cabinet Secretary Ministry of Interior and Coordination of National Government, submitted a request to the Public Service Commission to abolish the claimant's position and the commission acted on this request and granted the permission.



68. It is after this that the respondents proceeded to terminate the claimant's services. Whereas there may have been a reason for this termination in account of redundancy, the respondents were still duty bound to follow the procedure as envisaged under section 40 of the Employment Act 2007 which states as follows:-
1. An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –
 - a. where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
 - b. where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer ;
 - c. the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
 - d. where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
 - e. the employer has where leave is due to an employee who is declared redundant , paid off the leave in cash;
 - f. the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
 - g. the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service.
69. In the claimant's case however, the respondents have admitted that the office the claimant was occupying was abolished. The respondents then needed to follow the process of redundancy as set out in section 40 of the Employment Act 2007. The respondent's however decided to proceed and terminate the claimants employment without any notice and without any hearing following the process envisaged.
70. The Kenya Airways Limited v Aviation and Allied Workers Union Kenya and 3 Others [2014] KECA 404 [KLR] set out clear processes that must be followed where there is a redundancy situation. There is no indication that the respondents applied procedural fairness in implementing the termination of the claimant.
71. It is therefore my finding that the claimant was unfairly declared redundant on account of abolition of his office.
72. Having found for the claimant as such, I find he is entitled to compensation on this account and is entitled to the tune of 6 months' salary given the length of time the contract was to run = 6x315,700=kshs 1,894,200/-.



73. The claimant is also awarded costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

