



**Murira v Kenya Medical Training College & another (Employment and Labour Relations  
Petition E177 of 2024) [2025] KEELRC 2096 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2096 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E177 OF 2024**

**HS WASILWA, J  
JULY 17, 2025**

**BETWEEN**

**MS ANN KANINI MURIRA ..... PETITIONER**

**AND**

**KENYA MEDICAL TRAINING COLLEGE ..... 1<sup>ST</sup> RESPONDENT**

**DR KELLY OLUOCH ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. By a Petition dated 24<sup>th</sup> October 2024, the Petitioner sought for the following reliefs; -
  - a. A declaration that dismissal of the Petitioner was irregular, unprocedural, illegal, unconstitutional hence null and void ab initio;
  - b. An order directing the Respondents to unconditionally revoke the dismissal letter issued to the Petitioner and immediate reinstatement of her employment with a promotion to serve the remainder of the years as a lecturer in Human Nutrition having duly qualified with bachelors of science in human nutrition and dietetic from Kabarak University.
  - c. An order directing the Respondents to pay the Petitioner any pending salaries, allowances and benefits accrued to her while on dismissal;
  - d. In the alternative, an order directing the Respondents to duly issue retirement to the Petitioner and duly pay any outstanding salary arrears and retirement benefits to the Petitioner;
  - e. An order for the Respondents damages for failure to accord the Petitioner procedural fairness in the process leading to her dismissal;



- f. An order restraining the Respondents either by themselves, employees, servants and/or agents from harassing, arresting, intimidating or terminating the employment of the Petitioner on the basis of the illegal dismissal; and
- g. Costs of this Petition be borne by the Respondents.

### **Petitioner's Case**

2. The Petitioner avers on 27<sup>th</sup> April 2021, she was issued with a retirement letter by the Respondents informing her that she is due for retirement effective 20<sup>th</sup> November 2023.
3. The Petitioner avers that surprisingly, on 5<sup>th</sup> May 2023, she was issued with a notice to show cause letter from the Respondent's human resource manager to explain why disciplinary action could not be taken against her for submitting a non-authentic degree certificate in bachelors of science in human nutrition and dietetic from Kabarak University.
4. The Petitioner avers that she responded to the NTSC on 12<sup>th</sup> May 2023 attaching detailed proof showing that she undertook her degree program at Kabarak University upon which she was issued with a certificate.
5. Subsequently, the 2<sup>nd</sup> Respondent suspended her on 31<sup>st</sup> May 2023 for an offence of forged certificate from Kabarak Univeristy and immediately followed the same with a dismissal letter dated 10<sup>th</sup> July 2023 without according her an opportunity to be heard and cross examine witnesses as laid down under Sections 11.3,4 and 5 of the 1<sup>st</sup> Respondent's Human Resource Policy and Procedure Manual.
6. The Petitioner avers that she appealed the decision on 31<sup>st</sup> July 2023 pointing out she was denied her right of fair hearing with the Respondents granting the same as an afterthought on 20<sup>th</sup> November 2023 vide their letter dated 1<sup>st</sup> November 2023.
7. The Petitioner avers that during the hearing of the appeal, the Respondents failed to invite the deputy registrar and/or witness from Kabarak University to support the allegations and for cross examination on the alleged forged certificates as required by the Human Resource Policy and Procedure Manual.
8. It is the Petitioner's case that on 27<sup>th</sup> March 2024, the 2<sup>nd</sup> Respondent communicated the 1<sup>st</sup> Respondent's decision to uphold the decision dismissing her employment claiming that no new evidence was presented to the Respondents.
9. The Petitioner avers that additionally, the Respondents have since refused to pay her retirement benefits against the law on reasons best known to themselves.
10. The Petitioner avers that Respondents violated her right to fair administrative action by dismissing her employment without fair process and effecting external directions in violation of the *Employment Act* as well as the 1<sup>st</sup> Respondent's Human Resource Policy and Procedure Manual.
11. The Petitioner avers that the Respondent's treated her in a discriminatory and undignified manner by singling her out for unprocedural and unlawful dismissal contrary to *the Constitution*, the *Employment Act*, *Fair Administrative Action Act* and best international practices on employment and treatment of employees.



## Respondents' Case

12. The Respondents raised a preliminary objection which was included in their replying affidavit dated 29<sup>th</sup> January 2025, sworn by Dr. Kelly Oluoch, the 2<sup>nd</sup> Respondent and the 1<sup>st</sup> Respondent's Chief Executive Officer.
13. The preliminary objection being a jurisdictional question to the petition in that it is incompetent and does not meet the threshold of a constitutional petition as follows:
  - a. The petition is justiciable on account of the doctrine of constitutional avoidance. It is clear from a reading of the petition that the petitioner is aggrieved by a decision of the Respondent to terminate her service of employment and seeks a remedy under the *Employment Act*. In the premises, the matter ought to be determined as an ordinary labour and employment claim as oppose to a constitutional petition.
  - b. The petition does not identify with precision, the constitutional entitlements/right threatened, infringed or violated and the manner of the alleged violation. As a result of the said omission, the Respondents are prejudiced and disadvantaged in relation to filing of an appropriate defence or response.
14. The Respondents aver that the Petitioner was employed on 4<sup>th</sup> October 1988 by the government of Kenya as a subordinate staff Job Group "C" at the Ministry of Health. On 18<sup>th</sup> March 1990, she was deployed as a cook at M.T.C Embu and after gaining some experience, she was officially designated as a cook vide a letter dated 23<sup>rd</sup> April 1996.
15. The Respondents aver that between 1996 and 2017, the Petitioner was promoted and ultimately on 17<sup>th</sup> November 2017, she was promoted to Caterer/ Housekeeper I.
16. The Respondents aver that the Petitioner applied for re-designation from Cateress/Housekeeper I to Lecturer vide a letter dated 20<sup>th</sup> August 2018. In support of her application, she attached a Bachelor of Science (Hospitality Management) degree certificate from Grets University. Subsequently, the Human Resource Advisory and Training Committee considered the application and rejected it on grounds that the degree cannot be equated to a degree in Nutrition and Dietetics.
17. The Petitioner reapplied for consideration as a Lecturer in 2021, this time she provided another degree in Bachelor of Science in Human Nutrition and Dietetics dated 17<sup>th</sup> December 2021 from Kabarak University.
18. The Respondents aver that while the application was undergoing consideration, the Public Service Commission directed all government institutions to authenticate their employees academic and professional certificates. In compliance with the directive, they requested Kabarak University to authenticate the Petitioner's degree dated 17<sup>th</sup> December 2021. Kabarak University responded vide a letter dated 3<sup>rd</sup> April 2023 whereby they reported that the certificate was a forgery and that the Petitioner did not graduate in 2021.
19. The Respondents aver that the Petitioner was born on 1<sup>st</sup> November 1963, in compliance with the KMTC Human Resource Policies and Procedures, 2017 which provides that an employee ought to be notified of his/her retirement at least two years before the date of retirement; the Respondents notified her of the date of retirement as 19<sup>th</sup> November 2023 vide a letter dated 27<sup>th</sup> April 2021.
20. The Respondents aver that the Petitioner was issued a show cause letter dated 5<sup>th</sup> May 2023 on account of the forged degree certificate and or falsified information. The Petitioner responded vide a letter dated



12<sup>th</sup> May 2023, and admitted that she did not graduate in the year 2021 and instead provided a different degree certificate dated 16<sup>th</sup> December 2022.

21. It is the Respondents' case that the Petitioner was suspended from employment pending a disciplinary hearing on 31<sup>st</sup> May 2023. Following a disciplinary hearing on 29<sup>th</sup> June 2023, the Human Resource Management Advisory Committee resolved that the Petitioner be dismissed from employment for gross misconduct on account of forgery and falsification of documents and was issued a letter of termination dated 10<sup>th</sup> July 2023.
22. The Respondents aver that the Petitioner appealed against the decision to terminate her service of employment vide a letter dated 31<sup>st</sup> July 2023, wherein she admitted that she provided a forged document but that she did not benefit from the document and the college did not lose anything from the same.
23. The Respondents aver that the Petitioner appeared before the Human Resource Management Advisory Committee on 25<sup>th</sup> September 2023 for the hearing of her appeal which was not successful.
24. It is the Respondents' case that the Petitioner vide a letter dated 27<sup>th</sup> November 2023, admitted that she attended a disciplinary committee hearing and pleaded with the Respondents to rescind its decision to terminate her service of employment.
25. The Respondents aver that after the Petitioner's termination, the Ethics and Anti-corruption Commission requested for her personal file which was forwarded to them. When the Petitioner filed this suit, they made efforts to retrieve her personal file from EACC, although they managed to make copies of the file, they noted that certain documents were missing from the file, therefore, they do not have all documents in respect of the Petitioner's personal file.
26. It is the Respondents' case that the termination of the Petitioner's service of employment was both procedurally and substantively fair thus she was given a fair hearing and the reason for termination was valid and fair.

### **Petitioner's Submissions**

27. The Petitioner submitted on two issues: whether the Honourable court lack jurisdiction pursuant to the preliminary objection raised on doctrine of constitutional avoidance by the Respondent; whether the Petition has merit and the Petitioner entitle to the relief sought.
28. The Petitioner submitted that the petition is precise on the violation of her fundamental constitutional rights under Articles 28, 41 and 47 of *the Constitution* as she was condemned to suffer dismissal on the verge of her retirement unheard and non-consideration of unequivocal communication from Kabarak University dated 21<sup>st</sup> June 2023. Further, the subject matter of alleged forgery was no longer available for any purported disciplinary action as she graduated at the said university with Bachelors of Science in Human Nutrition and Dietetics (Second class Honors).
29. It is the Petitioner's submission that the preliminary objection based on general doctrine of Constitutional avoidance has no place under Articles 10, 19, 22, 23, 159 & 258 of *the Constitution* and well-reasoned decision in *Munir Sheikh Ahmed v National Bank of Kenya* [2018] eKLR with citation of *Peter Muchai Mubura –Versus- Teachers Service Commission* [2015] eKLR which held:

“Thus, *the Constitution* therefore breaks the walls and mixes all the other constitutionally lawful rights and freedoms, wherever they are in law, into the human rights and fundamental freedoms in the Bill of Rights, together as one. The Court therefore holds that litigants will



rarely get frowned at by the courts at in the manner they move the courts towards realization and enforcement of rights and freedoms barely on account of procedural considerations and especially in view of Article 159 of *the Constitution* which provides, inter alia, that justice shall not be delayed, justice shall be administered without undue regard to procedural technicalities, and, the purpose and principles of *the Constitution* shall be protected and promoted.”

30. It is the Petitioner’s submission that the Respondent’s preliminary objection is an attempt to escape answering violation to the Constitutional rights that accrues to her hence should be dismissed with cost the Petitioner.
31. On the second issue, the Petitioner submitted that the Respondents issued her with a show cause letter dated 5<sup>th</sup> May 2023 alleging that her certificate in Bachelors of Science in Human Nutrition and Dietetics from Kabarak University was not authentic to which she responded on the 12<sup>th</sup> May 2023 attaching evidence and proof that she undertook the said course at Kabarak University. She was subsequently suspended and dismissed vide a letter dated 10<sup>th</sup> July 2023 without being taken through disciplinary hearing as required by Article 41 and 47 of *the Constitution* read together with Section 41 and 45(1) c of *Employment Act* and Section 11(3) of HR Policy for the 1<sup>st</sup> Respondent all provisions which addresses fair procedure.
32. The Petitioner submitted that the Respondents became the complainant, the investigators, the jury and judge in their own falsified academic certificate case which was not even considered for its intended purpose of promoting her from House-Keeper 1 to Lecturer.
33. It is the Petitioner’s submission that the court cannot countenance unlawful action by the Respondents in condemning the Petitioner to dismissal without an opportunity to be heard by an independent internal tribunal using the initial letter written by Kabarak University disowning the certificate as the truth against the provisions of *the Constitution* and the law that requires fair procedure.
34. The Petitioner further submitted that she appealed the dismissal vide a letter dated 31<sup>st</sup> July 2023 stating that she visited Kabarak University who instructed her that a letter would be written to the Respondents clearing the miscommunication regarding her bachelor’s degree in Human Nutrition & dietetics. Pursuant to the letter, the Respondents invited her for hearing on 20<sup>th</sup> November 2023 a day when she was supposed to have retired on the 19<sup>th</sup> November 2023.
35. The Petitioner submitted that the purported hearing of 20<sup>th</sup> November 2023 after the retirement and confirmation to uphold the dismissal dated to 27<sup>th</sup> March 2024 by the Respondents are ultra vires of *the Constitution* and the law, inconsequential, null and void ab initio.
36. The Petitioner submitted that she was not accorded any hearing before the dismissal on the face of show cause, suspension and dismissal letter.
37. The Petitioner submitted that vide a letter dated 21<sup>st</sup> June 2023, the Registrar Kabarak University, Mr. Antony Somba, who had purportedly disowned her certificate in his letter dated 3<sup>rd</sup> April 2023 changed tune and confirmed that she graduated at Kabarak University in December 2022 with a degree in Human Nutrition and Dietetics. This communication it beats the logic of reasoning why the Respondent never recalled the dismissal letter and consider promoting the Petitioner to lecturer before retirement date of 19<sup>th</sup> November 2023 pursuant to their advice that she gets a degree in Human Nutrition and Dietetics.
38. The Petitioner submitted that the Respondents never acted in good faith with the purported forged certificates investigation and was only out to ruin her career and retirement despite serving the 1<sup>st</sup>



- Respondent diligently for 25 years without tainted employment record. Therefore, the Respondents and their source of information on the credibility on the Academic Degree of the Petitioner in Human Nutrition and Dietetics cannot be allowed to approbate and reprobate at the same time.
39. The Petitioner submitted that correspondence between the Respondents and the EACC on the investigations of the forged certificates, are not in respect to the Petitioner as her name does not appear anywhere in the EACC letters of 27<sup>th</sup> March 2024 and 31<sup>st</sup> July 2024. The Respondents have further failed miserably to file in court the outcome of the said investigation nor invited the EACC to file the same.
40. It is the Petitioner's submission that Article 28, 35, 41 and 47 of *the Constitution* are among the basic foundation law on Employment & Labour Relations matters and thus the nerve center when it comes to the interpretation of section 17,18, 41, 43 and 45 of the *Employment Act* coupled with section 11(3) of the HR Policy on a lawful and dignified disciplinary procedure. Additionally, Section 45 of *Employment Act* requires that the Respondent must not only follow the procedure but give a valid reason for the dismissal.
41. The Petitioner submitted that that Respondents must be accountable to the manner in which they dismissed her on unfounded grounds and refused even to comply with Section 18(4) of *Employment Act* by refusing to pay her benefits for the years of service.
42. It is the Petitioner's submission that upon accepting her appeal and failing to determine the same before the retirement age of 60 years on 19<sup>th</sup> November 2023; any purported hearing and confirmation upholding by the Respondents on dismissal is unlawful, null and void for lack of locus since the Petitioner had ceased being their employee by statutory requirement of retirement.
43. The Petitioner submitted that there was no hearing at all before the dismissal and the unlawful hearing on appeal conducted after the retirement was equally fatally flawed as the witness being representative from Kabarak University was never invited for examination and cross examination by the Petitioner.
44. It is the Petitioner's submission that the Respondent equally refused to pay her retirement benefits claiming that EACC cautioned them without any court order or backed by any known provision of the law subjecting her to double punishment and extreme suffering.

### **Respondents' Submissions**

45. The Respondents submitted on three issues: whether the court should invoke the doctrine of constitutional avoidance and decline jurisdiction; whether the petition has achieved the threshold of a constitutional petition; and whether the termination of the Petitioner's employment was procedurally and substantively fair.
46. On the first issue, the Respondents submitted that it is evident that petition is about unlawful and unfair termination of employment, therefore, the claim ought to have been brought as an ordinary civil suit yet it is fashioned as a constitutional petition. They relied in the Supreme Court case of *Communications Commission of Kenya v Royal Media Services Limited & 9 others* [2014] KESC 51 (KLR) which held: -

“The principle of avoidance entails that a Court will not determine a constitutional issue, when a matter may properly be decided on another basis.”



47. In South Africa, in *S v. Mblungu, 1995 (3) SA 867 (CC)* the Constitutional Court Kentridge AJ, articulated the principle of avoidance in his minority Judgment as follows [at paragraph 59]:

“I would lay it down as a general principle that where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, that is the course which should be followed.”

Similarly, the U.S. Supreme Court has held that it would not decide a constitutional question which was properly before it, if there was also some other basis upon which the case could have been disposed of (*Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936)*).

From the foundation of principle well developed in the comparative practice, we hold that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents’ claim in the High Court, regarding infringement of intellectual property rights, was a plain copyright- infringement claim, and it was not properly laid before that Court as a constitutional issue. This was, therefore, not a proper question falling to the jurisdiction of the Appellate Court.”

48. On the second issue, the Respondents submitted that the Petitioner has not pointed put any specific provision of *the constitution* which she seeks to be declared as having been violated. The petition has not pleaded with specificity the articles of *the constitution* allegedly violated and the manner which they are alleged to have been violated. Articles 41 and 47 of *the constitution* which have been alluded to has not stated whether the same were violated and if so the manner which they were violated.
49. They relied in the decision made in *Kenya Medical Practitioners, Pharmacists and Dentists’ Union v University of Nairobi & another* [2021] KEHC 13442 (KLR) where the judge stated: -

“The foregoing finding received endorsement from the Court of Appeal in Nairobi Civil Appeal No. 290 of 2012, *Mumo Matemu v Trusted Society of Human Rights Alliance* when the Learned Judges remarked on the importance of compliance with procedure under Article 159 of *the Constitution*, the overriding objective principle under section 1A and 1B of the *Civil Procedure Act* and need for precision in framing issues in constitutional Petitions. It was observed thus: -

We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.

The Learned Judges further bolstered the foregoing finding by making reference to the decision of Jessel, M.R in *Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639* where he made the following findings: -

... The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the



real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing....

.....

The Apex Court has, as well, discussed the issue. That was in Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others [2014] eKLR where the Court stated as follows: -

Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in Anarita Karimi Njeru vs. Republic, (1979) KLR 154: the necessity of a link between the aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.”

50. On the second issue, the Respondents submitted that it is trite law that in order for termination of an employment contract to be deemed as fair and lawful, an employer must discharge a burden of demonstrating that the procedure employed was fair and that the reasons or grounds of termination were valid and or fair. The courts have termed the two requirements as procedural and substantive fairness.
51. On procedural fairness, the Respondents submitted that the Petitioner was suspended from employment vide a letter dated 31<sup>st</sup> May 2023 as it was established that the Petitioner submitted a forged degree certificate from Kabarak University and her dismissal from service is being contemplated. Subsequently, a disciplinary hearing of the Human Resource Management Advisory Committee was conducted on 29<sup>th</sup> June 2023 and the Petitioner was granted an opportunity to make representation. Thereafter, the Petitioner appealed the decision on grounds that she had not been granted a hearing of the Advisory Committee vide a letter dated 27<sup>th</sup> November 2023.
52. The Respondents submitted that the Petitioner admitted in her letter dated 27<sup>th</sup> November 2023 that she appeared before the disciplinary committee on 20<sup>th</sup> November 2023. However, the minutes of the disciplinary hearing have not been produced in court owing to misplacement after the Petitioner’s personal file was taken by EACC. Further, the Petitioner does not complain that during the hearing she was not granted an opportunity to explain herself.
53. It is the Respondents’ case that the circumstances of the case and facts point to a lawful hearing as contemplated under Section 41 of the *Employment Act*.
54. The Respondents submitted that documentary evidence produced in court amounted to a hearing and the disciplinary committee had before it the forged degree certificate dated the year 2021 which the Petitioner submitted for promotion in the year 2022. Further, after her appeal, the Petitioner was given an opportunity for an oral explanation.
55. On substantive fairness, the Respondents submitted that the Petitioner applied to be promoted to a lecturer and in support of her application, she submitted a degree certificate for Bachelor of Science in



- Human Nutrition and Dietetics from Kabarak University dated 17<sup>th</sup> December 2021. In the course of evaluation and consideration, a circular by the government requiring all institutions to verify academic credentials of their employees, it turned out that the said degree certificate was a forgery.
56. The Respondents submitted that the Petitioner vide her letter dated 12<sup>th</sup> May 2023, she admitted presenting the degree certificate and stated: “I went back to the university to check the anomaly and I was issued with a certificate which I would like to forward to you.” She then forwarded a degree certificate dated 16<sup>th</sup> December 2022 thus it means that she graduated in 2022 not 2021. Accordingly, she had not graduated at the time of applying to be promoted to a lecturer. Further, in her letter dated 31<sup>st</sup> July 2023, she admitted that she submitted a forged degree certificate and urged the Respondents to rescind the decision to dismiss her since she did not benefit from the documents and the college did not lose anything from the same.
57. The Respondents submitted that Section 44(g) provides that it is a gross misconduct for an employee to commit or on reasonable and sufficient ground he is suspected to have committed a criminal offence against or to the substantial detriment of his employer or his employer’s property. They relied in *Thamuda H. Mwaruwa v Kenya Ports Authority* [2017] KEELRC 1375 (KLR) where the court held: -
- “Having found herein above that the claimant presented the said fake documents to the respondent to secure employment/promotion, it is my further finding that such action amounted to gross misconduct and brought her within the bounds of Section 44(4) (g) of the Act. Under the said provision, an employee who commits a crime against his employer or is reasonably suspected to have committed a crime against the employer, is guilty of misconduct which entitles the employer to summarily dismiss her. I agree with the defence that uttering a forged or false document is a criminal offence under the *Penal Code*. I also agree with the defence that employment contract is grounded on mutual trust and once that trust flies away, the employer has a right to dismiss the dishonesty employee.”
58. It is the Respondents’ submission that the court should decline to assume jurisdiction to hear the petition on account of the principle of constitutional avoidance and the petition does not meet the threshold of a constitutional petition. Additionally, they have demonstrated that the procedure adopted by the Respondents was fair and that there were valid reasons for dismissal.
59. I have examined all the evidence and submissions of the parties herein. The issues for this courts consideration are as follows
1. Whether the petitioner was condemned unheard and thus dismissed unfairly.
  2. Whether the petitioner’s rights under *the Constitution* were infringed upon.
  3. Whether the petitioner is entitled to the remedies sought.

### Issue No 1

60. From the pleading herein, the petitioner was dismissed vide a letter of termination dated 10<sup>th</sup> July 2023 for reason of falsifying documents.
61. Prior to this letter of dismissal, the petitioner had been served with a notice of retirement dated 27<sup>th</sup> April 2021 indicating her last day on duty will be on 19<sup>th</sup> November 2023.
62. On 5<sup>th</sup> May 2023, the petitioner was now served with a show cause letter indicting that her degree certificate in Bachelor of Science in Human Nutrition and Dietetics submitted from Kabarak



University was found not authentic. She was asked to show cause within 14 days why disciplinary action should not be taken against her.

63. On 12/5/2023, the petitioner responded to the notice to show cause indicating that the allegation was not true and that there had been a mistake at Kabarak University which had been corrected and showed that she was a bonafide student at Kabarak University.
64. On 31/5/2023, the petitioner was suspended from exercising her duties of her office pending finalization of her case. While on suspension was entitled to half salary.
65. After the suspension, the petitioner was dismissed from service vide a letter of 10<sup>th</sup> July 2023. The petitioner appealed the decision to dismiss her but the dismissal was upheld vide a letter of 27<sup>th</sup> March 2024.
66. From these chronology of events, it is clear that the respondents issued the petitioner with a show cause letter and she responded. Being dissatisfied with her response the respondent's proceeded to dismiss the claimant from service. There is no indication that the petitioner was thereafter invited for any disciplinary hearing. Section 41 of the *Employment Act* 2007 is clear that no termination should proceed without a hearing on the grounds of misconduct.
67. The principle of fair hearing is a principal instituted not only in statute but also in *the constitution*. The Fair Administrative Action at section 4 provide as follows:
  4. Administrative action to be taken expeditiously, efficiently, lawfully etc.
    - (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
    - (2) Every person has the right to be given written reasons for any administrative action that is taken against him.
    - (3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision–
      - (a) prior and adequate notice of the nature and reasons for the proposed administrative action;
      - (b) an opportunity to be heard and to make representations in that regard;
      - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;
      - (d) a statement of reasons pursuant to section 6;
      - (e) notice of the right to legal representation, where applicable;
      - (f) notice of the right to cross-examine or where applicable; or
      - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.
    - (4) The administrator shall accord the person against whom administrative action is taken an opportunity to–
      - (a) attend proceedings, in person or in the company of an expert of his choice;



- (b) be heard;
  - (c) cross-examine persons who give adverse evidence against him; and
  - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
- (5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.
- (6) Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of *the Constitution*, the administrator may act in accordance with that different procedure.
68. Section 45(2) of the *Employment Act* 2007 also state as follows:
- (2) A termination of employment by an employer is unfair if the employer fails to prove——
    - a. that the reason for the termination is valid;
    - b. that the reason for the termination is a fair reason——
      - i. related to the employees conduct, capacity or compatibility; or
      - ii. based on the operational requirements of the employer; and
    - (c) that the employment was terminated in accordance with fair procedure.
69. Article 50(1) of *the Constitution* is also clear that a man should not be condemned unheard. The article states as follows:
- 50.
- (1) Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
70. In view of the fact that the petitioner was condemned unheard by the respondent before being given an opportunity to present her case, I find that she was unfairly terminated.

### **Issue No 2**

71. As exemplified above the dismissal of the claimant without an opportunity to be heard was a breach of *the constitution* at article 41, 47 and 50(1) and therefore it is my finding that the petitioner's constitutional rights were infringed upon.

### **Issue No 3**

72. Having established constitutional and statutory breaches in the manner in which the petitioner was dismissed, I find for the petitioner and award her as follows:
- 1. The petitioner be considered to have retired and be paid all her salaries and allowances up to her retirement on 19<sup>th</sup> November 2023.
  - 2. The petitioner be paid all her retirement benefits.



3. The respondents to pay the petitioner damages for breach of her constitutional rights to the tune of 2 million.
4. The respondents to pay 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 17<sup>TH</sup> DAY OF JULY 2025.**

**HELLEN WASILWA**

**JUDGE**

