



**Mbiti v Judicial Service Commission (Cause E843 of 2021)  
[2024] KEELRC 192 (KLR) (12 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 192 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E843 OF 2021  
J RIKA, J  
FEBRUARY 12, 2024**

**BETWEEN**

**PETER MUSYOKI MBITI ..... CLAIMANT**

**AND**

**JUDICIAL SERVICE COMMISSION ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim, dated 6<sup>th</sup> October 2021.
2. He avers that he was appointed by the Respondent Commission as a Watchman, on salary scale PLS3, on 23<sup>rd</sup> July 2009.
3. He was promoted to Higher Clerical Officer, salary scale PLS 7, on 24<sup>th</sup> April 2015.
4. His appointment was confirmed, and he was made permanent and pensionable, through a letter dated 15<sup>th</sup> November 2016.
5. He worked at Nyando Law Courts, before transfer to Loitokitok Law Courts, on 7<sup>th</sup> June 2016.
6. He was designated as an Accounts Clerk at Loitokitok, through a letter dated 22<sup>nd</sup> February 2017.
7. He was suspended through a letter from the Chief Registrar of the Judiciary, dated 25<sup>th</sup> September 2009.
8. The allegations against him were that, he was involved in an act of gross misconduct; and, that he fraudulently received cash bail in respect of Criminal Case No. 96 of 2016, for Elisha K. Birir and Ben K. Birir, and issued 2 receipts, Nos. 0260212 and 0260213 of Kshs. 100,000 each, dated 29<sup>th</sup> July 2016.
9. He was taken through a disciplinary hearing of the Respondent's disciplinary committee, on 24<sup>th</sup> August 2020. He answered each charge.



10. It was alleged that the depositor of the cash bail, went for refund of his cash bail, and was faced with challenges in getting refund. Accountants at the Law Courts had assured him, that he would be refunded.
11. An audit carried out at the Law Courts uncovered gaps in the account books. There were funds that could not be accounted for. This included a total sum of Kshs. 200,000 collected and receipted by the Claimant in cash bail for the accused persons, in the criminal case above. The amount was not deposited in the relevant account.
12. The Claimant denied wrongdoing. He explained that it was common practice at Loitokitok, that money was received from Court Users in cash, and receipted. The specific Law Courts did not have a bank account. The receiving Accountant would hand over the cash to the Accountant-in-Charge. The Accountant-in-Charge was responsible for banking of the cash. Banking was done at the sister Law Courts, away at Kajiado. This process was approved by the Head of Station.
13. The Claimant explained that he was instructed by the Head of the Station, to receive cash bail in the sum of Kshs. 200,000. He issued the 2 receipts in accordance with the instructions by the Head of Station. The Accountant-in-Charge, who had the responsibility to issue receipts, was not at the Law Courts at the time.
14. The Claimant avers that he later, handed over the cash to the Accountant-in-Charge for banking. The Claimant's role in the transaction ended when he handed over the cash. He did not act fraudulently. The Head of Station was at all times, aware of the transaction.
15. He avers that dismissal process was marred with irregularities. The allegations against him were not substantiated. His evidence was ignored. The Head of Station confirmed that the Claimant acted in accordance with the standard practice. The Claimant was denied the opportunity to present a witness on 24<sup>th</sup> August 2020 and 15<sup>th</sup> October 2020. The Head of Station confirmed that the Claimant handed over the cash to the Accountant-in-Charge, and no complaint was made that he did not. Evidence presented at the disciplinary hearing suggested that the officer responsible for banking, had the opportunity and motive to misappropriate the cash bail. The Claimant was a mere scapegoat. The audit revealed that, the officer responsible misappropriated not only the amount in question, but a further sum of Kshs. 470,000.
16. The Accountant-in-Charge informed the depositor that he would personally refund the cash bail, confirming that the Claimant had no role in the fraudulent diversion of the money.
17. The Claimant urges the Court to find that the allegations against him by the Respondent were unfounded; termination was unfair and unlawful; the Claimant suffered loss and damage; and the Court grants him the following prayers: -
  - a. Declaration that termination was unfair and unlawful.
  - b. Declaration that termination was unfair and unlawful under the *Employment Act* 2007.
  - c. Declaration that termination amounted to unfair administrative action, under the *Fair Administrative Action Act*, 2015.
  - d. Payment of full salary from the date of suspension, till the date of Judgment.
  - e. Equivalent of 12 months' salary in compensation for unfair termination, at Kshs. 927,120.
  - f. Reinstatement.



- g. General damages for discrimination.
  - h. General damages for career regression.
  - i. Interest.
  - j. Costs.
  - k. Any other suitable relief.
18. The Respondent filed a Statement of Response, dated 14<sup>th</sup> December 2021. It is conceded that the Claimant was employed, and promoted by the Respondent as pleaded in the Claim. It is conceded that his contract was terminated by the Respondent, on the date, and for reasons given in the Statement of Claim.
  19. Termination was fair. The Claimant received Kshs. 200,000 in cash bail, in Criminal Case No. 96 of 2016, from accused persons, at his station in Loitokitok. He was issued a letter to show cause dated 25<sup>th</sup> September 2019. He was suspended on the same date.
  20. He responded in his letter dated 9<sup>th</sup> October 2019.
  21. He was invited to disciplinary hearing before the Respondent's Human Resource Management Advisory Committee [HRMAC]. He was heard on 24<sup>th</sup> August 2020.
  22. Evidence was adduced also, by Head of the Station, Hon. Mathias Okuche. The Claimant confirmed that he received Kshs. 200,000 in cash bail, and issued 2 receipts to the depositor. He confirmed that he did not bank the money. His claim that he handed over the money to the Accountant-in-Charge, was unsubstantiated. Hon. Okuche confirmed that money collected at the station was banked at Kajjado daily. It would reflect on the bank account of Kajjado Law Courts, from where the Loitokitok Law Courts was served.
  23. Okuche revealed that he had received 2 complaints in relation to failure of depositors, to get refund of cash bail. Even when he had directed refunds to be made, there was no compliance. This is because the money was missing. The Claimant's failure to deposit the money in the bank, upon receipt, was against the standard practice.
  24. HRMAC established that there was no documentary evidence, showing that the Claimant handed over the money to the Accountant-in-Charge. HRMAC however recommended on 28<sup>th</sup> September 2020, that further investigation is carried out.
  25. A complaint had been made by the cash bail depositor, at the Office of Judiciary Ombudsman on the subject. Further investigation was to determine whether the Ombudsman, had confirmed that the Accountant-in-Charge, agreed to refund the depositor the cash bail amount of Kshs. 200,000.
  26. The Judiciary Ombudsman confirmed on 29<sup>th</sup> September 2020, that indeed, a complaint on non-refund of the cash bail had been received at the Office, and that the Accountant-in-Charge, Loitokitok Law Courts, had committed to refund the money.
  27. HRMAC recommended on 25<sup>th</sup> November 2020, that the matter is handed over to the Respondent's Directorate of Human Resource Management Committee [DHRMC].
  28. The latter recommended that the Claimant is dismissed from service, effective 14<sup>th</sup> March 2019, on account of gross misconduct. Recommendation was approved by the Respondent, and a letter of summary dismissal dated 4<sup>th</sup> January 2021, issued upon the Claimant.



29. He appealed unsuccessfully against the decision.
30. The Respondent urges the Court to find that dismissal was fair and lawful, and dismiss the Claim with costs.
31. The Claimant gave evidence on 14<sup>th</sup> October 2022, and 3<sup>rd</sup> March 2023. His Witness Solomon Kibor Rono, cash bail depositor, gave evidence on 26<sup>th</sup> September 2023, closing the Claimant's case. The Respondent's Assistant Human Resource Director, Hesbon Limisi, gave evidence on the same date, 26<sup>th</sup> September 2023, closing the hearing. The Claim was last mentioned on 31<sup>st</sup> October 2023, when the Parties confirmed filing and exchange of their Closing Submissions.
32. The Claimant relied on his Witness Statement and Documents, exhibits 1-14. His Witness Statement is a rerun of the Statement of Claim, whose contents are summarized at the outset of this Judgment.
33. Cross-examined, the Claimant told the Court that he is a qualified Accountant. He worked for 10 years for the Judiciary. His employment was regulated by the *Employment Act*, and the Human Resource Manual. He carried out accounting duties. Before that, he was designated as Clerical Officer 2. He worked as a Court Assistant.
34. He reported to the Head of Station. He was aware of the accounting role. He did not attend training. He initially would issue receipts, guided by other staff. Litigants paid cash. The Claimant owed them a duty of care.
35. The Claimant was dismissed on account of gross misconduct. He was alleged to have been involved in fraud. Gross misconduct is defined in the manual.
36. The Claimant received Kshs. 200,000 from a Mr. Rono, in cash bail. It was paid on behalf of 2 suspects, in a criminal case pending at the Law Courts. The Claimant issued receipts. Handling of public funds is sensitive.
37. Cash bail would be refunded or forfeited. The Claimant received the instructions of the Head of Station to receive the cash. It was not written instructions. There was no need for written instructions. The Head of Station wrote letters saying he was aware about the deposit.
38. The Claimant kept the money in a cabinet, at the Law Courts. He told the disciplinary committee that he handed over the money to the Accountant-in-Charge on 1<sup>st</sup> August 2016. The Claimant received it on 29<sup>th</sup> July 2016. This was a Friday. He kept it for about 2 days.
39. He did not document the handover. Duncan, the Accountant-in-Charge, was not present at the Law Courts when the money was received. The Claimant did not conspire with the depositor, to frame the Accountant-in-Charge. The Claimant was not designated as an Accountant. He had instructions to receive the money, issued by the Head of Station. Duncan had the bank details; the station did not.
40. When the allegation arose, Duncan disappeared in June 2017. The Claimant was not in contact with him, after he disappeared. The Claimant did not report the incident to the Police.
41. The Claimant is familiar with the Judiciary Disciplinary Procedure. He received the letter to show cause. He responded. He was heard. The Claimant's Witness Solomon Rono, was not heard. The Claimant was denied the opportunity to cross-examine Duncan, who was available at the hearing.
42. The Claimant was issued the letter of summary dismissal and advised on his right of appeal. He appealed unsuccessfully.



43. The Claimant told the Court, that he was familiar with the depositor Solomon, who was his Witness before the Court. He did not coach Solomon, what to say. He confirmed that he received the cash bail, and that the money did not reach the Judiciary Account.
44. Redirected, the Claimant told the Court that Duncan was the Accountant-in-Charge, and also the Executive Officer.
45. Solomon Kibet Rono relied on his Witness Statement on record, dated 6<sup>th</sup> October 2021.
46. On cross-examination, he told the Court that he works for a micro-finance company. He paid the cash bail at Loitokitok Law Courts for Elisha and Birir, accused persons. They are his cousins. Solomon did not know the Claimant personally. He denied the suggestion that the Claimant had paid him any incentive, to testify on his behalf.
47. Solomon agreed that money is sensitive subject. He handles money at his micro-finance. Utmost care must be taken, in money transactions.
48. He paid the money to the Claimant. The Claimant issued him receipts. Solomon did not know where the money was kept, after he deposited. He was given receipts, and release letters. He did not know who signed release letters. He was told that the Magistrate signs. Solomon retained copies of the receipts, not the release letters.
49. The criminal case was concluded in September 2016. Solomon went for his refund. He was advised that Duncan was responsible for refunds. He did not see the Claimant. Solomon did not seek him out.
50. Duncan asked the Claimant to make his request for refund in writing. The Claimant did so. He was told to return after 2 weeks. He did so, only to be told to return later. He kept being told by Duncan to come back later. He was told money was at Kajjado Law Courts. Solomon dealt with Duncan alone. Eventually, after failed promises, Duncan confided in Solomon, that he had applied the cash bail for his own use. He said he was selling his car, to enable him refund. He asked for time to refund. Solomon denied that his was hearsay evidence.
51. He was told that Duncan was taken through a disciplinary hearing, after Solomon made a complaint at the Judiciary Ombudsman.
52. He was advised that audit would take place. Audit was done, and the money was found not to have been deposited. Solomon was told that he would be refunded, by the Director of Finance. Eventually, he was refunded.
53. Solomon did not know that the Claimant and Duncan, were found culpable by the audit exercise. He did not witness the Claimant handing over the money to Duncan. Duncan told Solomon that the Claimant handed over the money to him. Solomon told the Court that he came to Court to give truthful evidence, not to assist the Claimant.
54. Redirected, he told the Court that Duncan confirmed he received the cash bail and utilized it for his own purpose. Solomon did not deal with the Claimant.
55. Assistant Director Human Resource, Hesbon Limisi, relied on his Witness Statement and Documents filed by the Respondent.
56. Cross-examined, he told the Court that the disciplinary committee deliberated. It was alleged that the Accountant-in-Charge admitted taking the cash bail, and committed to refund. The committee recommended that Claimant's suspension is lifted. The decision-maker is the Respondent. The Respondent determined that the Claimant is dismissed.



57. Page 8 of the committee minutes refers. It is recorded that the Head of Station carried out his own investigations. He found out that Duncan withheld information from other staff. It is confirmed that Duncan received the cash bail, in the sum of Kshs. 200,000 and did not bank the same. Okuche states that Duncan duped other staff, including the Claimant. Okuche confirmed also, that his station was temporarily using Kajiado Law Courts' bank account. The Head of Station laid blame on Duncan. The Respondent did not victimize a junior officer. It summoned Duncan, who did not show up. He deserted. He was present for the disciplinary hearing, on 13<sup>th</sup> September 2020.
58. Redirected, Limisi told the Court that comments made by the Ombudsman on investigation, were not conclusive. HRMAC did the hearing. The Claimant participated in the hearing. The Respondent did not have an obligation to rely on the evidence of the Head of Station and recommendations of HRMAC. The Claimant did not prove that he gave the money to Duncan. Duncan was dismissed after he deserted.
59. The issues in dispute are whether the Claimant was dismissed from judicial service lawfully and fairly; and whether he merits the prayers sought.

**The Court Finds: -**

60. The Claimant's employment history with the Judiciary, from a Watchman on 23<sup>rd</sup> July 2009, to Higher Clerical Officer, and Accounts Clerk as of 25<sup>th</sup> September 2019, the stated date of his summary dismissal, is not contested.
61. The letter of summary dismissal is dated 4<sup>th</sup> January 2021. The effective date was given to be 25<sup>th</sup> September 2019. The reasons for dismissal are given in the letter. The Claimant was informed that he was summarily dismissed on account of gross misconduct, in relation to Kshs. 200,000 he fraudulently received from a client, as cash bail, in Loitokitok SRM's Court, Criminal Case No. 96 of 2016. He alleged to have handed the money over to the Accountant-in-Charge, but failed to prove handing over.
62. It is not disputed that the Claimant was advised of his right of appeal to the Respondent. He exercised that right, unsuccessfully. He was informed by the Respondent, on 28<sup>th</sup> June 2021, that his appeal had come to a cropper. His gross monthly salary, captured in his pay slip of September 2019 on record, was Kshs. 77,945.
63. The procedure employed by the Respondent, in dismissing the Claimant appears largely to be uncontested, and in the view of the Court, met the basic requirements of procedural fairness, under the *Employment Act* and the Respondent's Human Resource Manual.
64. The Claimant does not dispute the mandate of any committee, person or organ of the Respondent, who investigated and heard him.
65. He was suspected of abuse of office, details which were communicated in a letter from the Chief Registrar of the Judiciary dated 25<sup>th</sup> September 2019. The details were as stated in the Pleadings and Evidence of the Parties summarized above.
66. The Respondent invoked Section D 7.2. [ix] [xvii] and [xvii] of the Judiciary Human Resource Manual, and Sections 44 [3] and 44 [4][c] of the *Employment Act*, in calling on the Claimant to show cause why, disciplinary action should not be taken against him. He was required to respond within 14 days.



67. He was suspended with effect from the date of the letter. He was advised he would not be receiving his monthly salary for the period of suspension, but would be paid an alimentary allowance, equivalent of 1/3 of his monthly basic salary.
68. The Claimant gave a detailed response, in his letter dated 9<sup>th</sup> October 2019.
69. The record indicates that the Claimant was heard on 24<sup>th</sup> August 2020. His Head of Station, Hon. SRM Okuche, gave evidence on the same date.
70. The committee recommended that the matter is deferred, and that the Judiciary Ombudsman, to whom a complaint on non-refund of the cash bail had been lodged by depositor Rono, be contacted to confirm if the Accountant-in-Charge, had committed to refund the cash bail.
71. HRMAC recommended on 25<sup>th</sup> November 2020, that the Claimant's suspension is lifted.
72. The matter was passed on to the Respondent's Human Resource Management Committee, who determined that the Claimant is dismissed for reasons stated in the letter of summary dismissal.
73. The letter of summary dismissal dated 4<sup>th</sup> January 2021 was issued upon the Claimant. He was given the reason for the decision, and advised on his right of appeal. He appealed through his letter dated 4<sup>th</sup> February 2021. The Appeal was unsuccessful. The Respondent informed him that it met, on 24<sup>th</sup> June 2021, and deliberated on his Appeal. There were no adequate grounds to warrant interference with the decision to summarily dismiss the Claimant. This outcome was communicated to the Claimant, in the letter of the Hon. Chief Registrar Judiciary, dated 28<sup>th</sup> June 2021.
74. The Court is of the view that the minimum statutory and constitutional standards of fair hearing, under the *Employment Act*, the *Fair Administrative Action Act* and Article 47 of *the Constitution*, were observed.
75. The substantive grounds, cited in justifying summary dismissal, however, cannot be described to have been valid and fair grounds.
76. The charge against the Claimant was variously communicated by the Respondent to comprise: -
- i. Abuse office.
  - ii. Gross misconduct.
  - iii. Fraudulently receiving cash of Kshs. 200,000 from a client, Solomon Rono as cash bail for Elisha K. Birir and Ben K. Birir in Criminal Case Number 98/2016, and issued 2 receipts Nos. 0260212 and 0260213 of Kshs 100,000 each, both dated 29<sup>th</sup> July 2017.
77. The reasons stated in the letter of summary dismissal dated 4<sup>th</sup> January 2021 cite gross misconduct, with fraudulent receipt of the cash bail, given as the details of gross misconduct. There is nothing said about abuse of office, which was cited in the letter to show cause, dated 25<sup>th</sup> September 2019.
78. The letter of summary dismissal amplified the reason for dismissal, explaining to the Claimant that he claimed to have handed over the cash bail, but failed to prove that he handed the cash to the Accountant-in-Charge.
79. Dictionary sources describe a fraudulent act, as an act done by, or involving criminal deception. Fraudulent behaviour, as attributed to the Claimant, involves deliberately deceitful, dishonest or untrue conduct. A fraudulent person intends to deceive, by doing something dishonest and illegal. Gross misconduct is any unethical and unprofessional behaviour, normally elaborated under Section 44 [4] of the *Employment Act*.



80. The Claimant received cash bail from one Solomon Kibor Rono. The cash bail was paid on behalf of Rono's cousins, Elisha and Ben, who were accused persons at the Loitokitok Law Courts. Rono gave evidence for the Claimant, in the proceedings herein.
81. The cash bail was Kshs. 100,000 for each accused person. The Claimant received the amount and issued valid official receipts, sequentially numbered, from the court receipt books.
82. This was on 29<sup>th</sup> July 2016. It was a Friday, and the Accountant-in-Charge, who had the responsibility of banking the money, was not in.
83. The Judiciary had not facilitated banking of money collected at Loitokitok Law Courts, within Loitokitok. The Court banked under Kajiado Law Courts. Head of Station explained that Loitokitok was a new Station.
84. The Claimant kept the money at the Loitokitok Law Courts, in a cabinet and handed over to the Accountant-in Charge, the following Monday, 1<sup>st</sup> August 2016.
85. It was unreasonable of the Respondent, to charge that there was anything fraudulent, deceitful, dishonest and illegal, in the Claimant's conduct, with regard to his handling of the cash bail.
86. The Accountant-in-Charge Duncan Mosinko never denied that he received the money from the Claimant. What evidence did the Respondent require the Claimant to produce, to establish that he handed over the money to Duncan, a fact that was not contested?
87. There is evidence that Rono, dealt with Duncan and was promised refund of the cash deposit at the end of his cousins' trial. He told the Court that he dealt with Duncan throughout, not with the Claimant. Duncan had apparently used the money for his own purpose, instead of banking at Kajiado Law Courts, when the money was handed over to him by the Claimant. He was not able to refund, when Rono sought refund, and asked for time to sell his car, to enable him refund.
88. If the Respondent did not believe the Claimant's explanation, why was it hard to believe the positions of the Judiciary's Ombudsman and the station Head Hon. Okuche?
89. The record shows that HRMAC sat on 28<sup>th</sup> September 2020. Interestingly, the day's proceedings show that the Claimant had been called earlier by HRMAC as a witness, in a disciplinary case brought against the Accountant-in-Charge Duncan Mosinko.
90. The HRMAC proceedings state that the Claimant had been called as a Witness "to shed more light on Mr. Duncan Mosinko's case [a staff who received Kshs. 200,000] from a Litigant, who was charged with misappropriation of funds at Loitokitok Law Courts and failed to bank the amount]."
91. The HRMAC was aware that the Accountant-in-Charge, Duncan Mosinko had received the cash bail, and failed to bank the same. It boggles the mind, in view of this evidence, why the Respondent would demand that the Claimant provides evidence of handing over the cash bail to Duncan, and why fraudulent conduct was in any way attributed to the Claimant, in the transaction. HRMAC, a committee of the Respondent, confirmed that the money was received by Duncan Mosinko, and that Duncan failed to bank the money, which led to the disciplinary proceedings against Duncan, in which the Claimant was merely a Witness.
92. HRMAC deferred its proceedings and sought confirmation from the Judiciary Ombudsman, that Duncan Mosinko had been engaged by Ombudsman and committed to refund the money. Confirmation was accordingly given.



93. The Head of Station, Hon. Okuche confirmed in his evidence that his Court was using Kajiado Law Courts bank account. Loitokitok was a new Court, with limited number of staff. Okuche confirmed that the money was received by the Claimant, and later handed over to Duncan.
94. The Claimant was not charged by the Respondent from the outset; he was only charged after he availed himself to give evidence against Duncan Mosinko.
95. Duncan Mosinko was himself said to have deserted. Although he was in contact with the Judiciary Ombudsman, and available for his own disciplinary proceedings; and although he persistently made promises to refund the stolen cash bail; the Judiciary does not appear to have sought the assistance of the DCI in apprehension of, Duncan Mosinko, and in bringing him to justice to account for his very grave criminal offence. Instead, there was an unreasonable pursuit of a hapless junior officer, the Claimant herein, for an unsubstantiated claim of gross misconduct and fraudulent behaviour.
96. The HRMAC recommended lifting of suspension of the Claimant. The Human Resource Management Committee and the Respondent recommended and determined respectively, that the Claimant is dismissed from service.
97. The Respondent needed to justify its decision to summarily dismiss the Claimant. It is not right to argue that the Respondent was not bound by the findings and recommendations of its own organs and committees. The Respondent had contractual, statutory, and constitutional responsibility, to give valid reason or reasons, in departing from facts established through its own processes, and in dismissing the Claimant from judicial service. If the Claimant's version of events was not credible, the Respondent ought to have given consideration to the position taken by its Accountable Officer at Loitokitok Law Courts, Hon. SRM Okuche, or the position of the Judiciary Ombudsman. The evidence of the cash bail depositor, Solomon Kibor Rono, was very persuasive in this Court. Why did not HRMAC summon Rono the depositor, to explain his deposit? The suggestion by the Respondent's Advocate, that Rono gave evidence for the Claimant upon receiving some unspecified incentive, was preposterous. Rono was a victim of the Judiciary, having deposited his money as cash bail, and having subsequently been taken in circles by the Judiciary, when he sought release of his money. Why would he need an incentive to give evidence for the Claimant? There was no evidence to support the allegation of fraudulent behaviour, on the part of the Claimant.
98. In the end the Court is satisfied that substantive justice, under the *Employment Act*, the *Judicial Service Act*, Articles 41 and 47 of *the Constitution*, and the *Fair Administrative Action Act*, was denied to the Claimant. No valid reason was established to end the Claimant's 10 years of judicial service.
99. The Claimant seeks a raft of remedies.
100. It is declared that termination was unfair, unlawful and unconstitutional.
101. He seeks the primary remedy of reinstatement. In *Judicial Service Commission & Another v. Njora* [2021] e-KLR, the Court of Appeal upheld the remedy of reinstatement, holding that a public body that is subject to *the Constitution* and its Statute, and which has been found to have been in breach of law and to have acted unlawfully, irrationally and disproportionately, in dismissing an Employee, cannot escape the remedy of reinstatement. This Court defers to the judicial authority of the Court of Appeal of Kenya.
102. The Court is persuaded that the remedy of reinstatement is merited. The Claimant worked his way up in the Judiciary Organogram, in 10 years, from a lowly Watchman, to an Accounts Clerk and Higher Clerical Officer. He is a valuable asset, to the judicial workforce. The Respondent met on 24<sup>th</sup> June 2021



and deliberated on his Appeal. The decision to uphold dismissal was communicated to the Claimant thereafter, on 28<sup>th</sup> June 2021, effectively ending the employer-employee relationship.

103. The Respondent shall reinstate the Claimant to the position he held, as of 25<sup>th</sup> September 2019.
104. The Claimant prays for full salary from the date of suspension to the date of Judgment.
105. The Court does not think this is reasonable, considering that the Claimant has not rendered any judicial service to the public, from the date of suspension.
106. He however, was effectively an Employee of the Judiciary, until 28<sup>th</sup> June 2021, when he received the letter of declining his appeal. His contract of employment ended on this date. The Effective Date of Termination [EDT], falls on the day, when the final decision to terminate an Employee's contract, is received by an Employee from his Employer. It was improper for the Respondent to allege that dismissal was effective from 25<sup>th</sup> September 2019. Was not the Claimant an Employee of the Judiciary, when he was taken through the disciplinary hearing, and the appellate hearing?
107. The letter suspending him, advised him that, " you shall not be in receipt of your salary..." The Claimant therefore ceased to receive his monthly salary, on the date of suspension.
108. As it is the conclusion of the Court, that termination was unfair, unlawful and unconstitutional, it is proper that he is paid his arrears of salary, from 25<sup>th</sup> September 2019 to 28<sup>th</sup> June 2021. The Respondent shall pay to the Claimant, arrears of salary from 25<sup>th</sup> September 2019 to 28<sup>th</sup> June 2021.
109. The period from the date of the letter declining appeal, 28<sup>th</sup> June 2021 to the date of reinstatement, shall be treated as a period of unpaid leave.
110. The remedy of reinstatement suffices. Prayers for general damages for discrimination, career regression, and unfair termination are in overshoot, and are declined.
111. There shall be no order on costs and interest.

In sum, it is ordered: -

- a. It is declared that termination of the Claimant's contract of employment was unfair, unlawful and unconstitutional.
- b. The Respondent shall reinstate the Claimant to the position he held as of 25<sup>th</sup> September 2019.
- c. The Respondent shall pay to the Claimant arrears of salary, from 25<sup>th</sup> September 2019 to 28<sup>th</sup> June 2021.
- d. The period from 28<sup>th</sup> June 2021 to the date of reinstatement, shall be treated as a period of unpaid leave.
- e. No order on the costs and interest.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020 THIS 12<sup>TH</sup> DAY OF FEBRUARY 2024.**

**JAMES RIKA**

**JUDGE**

