



Ng'ang'a v Kenya National Examinations Council & another (Petition E197 of 2021) [2024] KEELRC 876 (KLR) (5 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 876 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E197 OF 2021**

SC RUTTO, J

APRIL 5, 2024

**IN THE MATTER OF ARTICLES 35, 41, 232 AND
236 OF THE CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF THE FAIR ADMINISTRATION ACTION ACT, 2015 AND
IN THE MATTER OF SECTION 12 (1) (A) THE EMPLOYMENT
AND LABOUR RELATIONS COURT ACT CAP 24(B)**

AND

**IN THE MATTER OF THE IRREGULAR DISMISSAL OF MONICA NG'ENDO
NG'ANG'A FROM KENYA NATIONAL EXAMINATIONS COUNCIL**

BETWEEN

MONICA NG'ENNDO NG'ANG'A PETITIONER

AND

KENYA NATIONAL EXAMINATIONS COUNCIL 1ST RESPONDENT

**KENYA UNIVERSITIES AND COLLEGES CENTRAL PLACEMENT
SERVICES 2ND RESPONDENT**

JUDGMENT

1. It is common ground that through a letter dated 18th August 2017, the Petitioner was offered employment by the 1st Respondent in the position of Director, Corporate Services. The Petitioner accepted the officer of appointment which was to take effect from 19th September 2017. At the time, the Petitioner was an employee of the 2nd Respondent serving in the capacity of Deputy Chief Executive Officer. Consequently, through a letter dated 21st August 2017, the Petitioner issued the 2nd Respondent with a notice of her intention to terminate the employment contract.



2. Through a letter dated 19th September 2017, the 1st Respondent's Acting Chief Executive Officer requested the 2nd Respondent to provide confidential information regarding the Petitioner. In response, the 2nd Respondent's Chief Executive Officer through a letter dated 27th September 2017, notified the 1st Respondent that there were some unresolved issues at the time of the Petitioner's resignation hence sought to be excused from completing the confidential report. The record further reveals that through a letter dated 1st November 2017, the 1st Respondent's Acting Chief Executive Officer informed the Petitioner that she had been granted one week to take leave and clear with the 2nd Respondent.
3. From that juncture, each party has its own version as to what transpired subsequently.

Petitioner's Case

4. The Petitioner avers that on 29th November 2017, she received a call from the 2nd Respondent informing her that they were working on the clearance and would be informed when the same was ready.
5. On 30th November 2017, she was informed that her clearance was ready and the same was forwarded to her through email. She forwarded the same to the 1st Respondent through email. The 1st Respondent did not respond to her email. On 30th November 2017, she physically delivered the clearance letter to the 1st Respondent's Acting Chief Executive Officer.
6. According to the Petitioner, she was confident that she had complied with the directives of the 1st Respondent and having submitted her clearance, she resumed duties and continued to serve in the capacity she had been appointed to serve. She was however not allocated duties in the month of November and December 2017 and when she enquired from the Chief Executive Officer, she was informed that her issue was being considered by the Board and they would soon revert to her.
7. That she constantly wrote and made verbal reminders on the same but there was no response. She nonetheless continued to religiously attend to her workstation until December 2018 when the 1st Respondent went for Christmas break.
8. The Petitioner further avers that she did not receive her salaries from the month of December 2017 until December 2018. That she constantly made reminders to the 1st Respondent's Chief Executive Officer but her reminders went unanswered.
9. That on 6th January 2019, she received a phone call from the secretary to the 1st Respondent's Acting Chief Executive Officer, informing her that there was a letter for her in the office that she was required to collect. To her rude shock, she was handed a termination letter dated 30th November 2017, citing unspecified unresolved issues at the 2nd Respondent as the reason for her termination.
10. She wrote and protested against the inordinate delay in delivering the termination letter and for failure to accord her a chance to present her case in a disciplinary hearing. She appealed against the decision of the 1st Respondent requesting for a review of the dismissal but has never received any communication.
11. The Petitioner contends that the actions of the 1st Respondent against her were not expeditious, lawful, reasonable, procedurally fair and unlawful. Accordingly, she seeks the following remedies against the Respondents:
 - a. A declaration that the refusal/delays by the 2nd Respondent to specify the unresolved issues she had not cleared was a violation of her right to, access information, right to fair labour practices and freedom from discrimination, right to fair administrative actions and fair labour practices



as guaranteed by articles 27, 35, 41 and 236 of the Constitution 2010 and the principles of public service as set out in article 232 and 236 of the Constitution.

- b. A declaration that the dismissal of the Petitioner by the 2nd Respondent on account of the alleged uncleared issues with the 2nd Respondent to specify the unresolved issues she had not cleared was a violation of her right to, access information, right to fair labour practices and right to fair administrative actions and fair labour practices as guaranteed by articles 27, 35, 41 and 47 of the Constitution 2010 and the principles of public service as set out in article 232 and 236 of the Constitution.
- c. A declaration that dismissal of the Petitioner by the 1st Respondent without according her the right to be heard, and the delayed response in addressing her appeal against the dismissal was a violation of her rights to fair administrative actions and fair labour practices of the Constitution as well as her right to fair labour practices as guaranteed by articles 47 and 41 of the Constitution and the principles of public service as set out in article 232 and 236 of the Constitution.
- d. A declaration that actions of the 1st Respondent against the Petitioner are not expeditious, efficient, lawful, reasonable and procedurally fair and unlawful
- e. An order directing the 1st Respondent to reinstate the employment of the Petitioner as a Director of Corporate Services.
- f. An order for compensation for the violation of her rights.
- g. An order for the payment of salaries not paid from the months of December 2017 up to the date of the determination of this matter.
- h. Costs of an incidental to this Petition.

1st Respondent's Case

12. The 1st Respondent avers through the Replying Affidavit sworn by its Corporation Secretary, Ms. Befly Bisem on 4th March 2022, that confirmation of the Petitioner's employment was pegged on satisfactory reports being obtained from suitable referees upon accepting the appointment.
13. That the 1st Respondent requested for a confidential report from the 2nd Respondent and a duly filed Confidential Report Form. The 2nd Respondent responded to the 1st Respondent's letter stating that there were unresolved issues from the Petitioner's end. This was brought to the attention of the Petitioner through a letter dated 1st November 2017.
14. Ms. Bisem further avers that the clearance form availed by the 2nd Respondent showed clearly that the clearance was incomplete and that the same had not been filled by the Human Resource & Administration Department.
15. That upon receiving no response from the 2nd Respondent and upon the 2nd Respondent not submitting the forwarded Confidential Report Form, the 1st Respondent proceeded to terminate the services of the Petitioner vide a letter dated 30th November 2017.
16. Ms. Bisem avers that to date, no communication has been received from the 2nd Respondent to update the 1st Respondent that the position communicated vide the letter dated 27th September 2017 has varied in any way. She further avers that the Petitioner duly received the letter dated 30th November 2017 terminating her services.



17. Ms. Bisem further denies that the 1st Respondent received any appeal against the decision to terminate the Petitioner's services.
18. She further denies the Petitioner's assertions that the office of the 1st Respondent's Chief Executive Officer received the letter dated 6th January 2019. She contends that the same does not bear the official stamp of the office of Chief Executive Officer.
19. That following the termination of the Petitioner, she was removed from the payroll in January 2018 as she ceased being a staff.
20. She further contends that the Petitioner did not comply with the requirement to file the suit within three years as required by Section 90 of the Employment Act.
21. According to Ms. Bisem, four years have since lapsed since the cause of action took place. That in the circumstances, the court lacks jurisdiction to hear and determine the matter in light of Section 90 of the Employment Act hence the orders and damages sought by the Petitioner are not awardable.
22. She further contends that the actions of the 1st Respondent were reasonable and procedurally fair and lawful and the Petition should be dismissed.

2nd Respondent's Case

23. The 2nd Respondent countered the Petition through the Replying Affidavit sworn on 14th October 2022 by Mr. Nichola Kanisa, its Manager, Human Resource and Administration.
24. Mr. Kanisa avers that as at 27th September 2017, the Petitioner had failed and/neglected to clear herself with the 2nd Respondent and it was reluctant to provide a confidential report as requested by the 1st Respondent.
25. That the Petitioner presented herself in the month of November 2017, together with the clearance form and the process of clearance was finalized on 30th November 2017.
26. Following the clearance, the 2nd Respondent was promptly issued with a clearance letter on 29th November 2017. That the Petitioner's dues were computed and paid to her last known account.
27. Mr. Kanisa further avers that following the remittance of the said monies and clearance letter, the 2nd Respondent did not have any pending issues with the Petitioner that would warrant the termination of her employment with the 1st Respondent.
28. It is worth pointing out that the Petition was canvassed by way of oral evidence. In this regard, the Petitioner testified in support of her case while the 1st and 2nd Respondents called oral evidence through Ms. Zaituni Kioko Murungi and Ms. Jacklyne Makhamara respectively. On her part, the Petitioner sought to rely on her Supporting Affidavit to constitute her evidence in chief while Ms. Zaituni Kioko Murungi and Ms. Jacklyne Makhamara adopted their respective witness statements to constitute their evidence in chief.
29. Upon close of the hearing, the parties filed written submissions which I have considered.

Submissions

30. It is the Petitioner's submission that the delivery book exhibited by the 1st Respondent has no probative value and that her version that she received the letter of termination letter on 6th January 2019 is more believable. The Petitioner has further submitted that time started running from the date she received the letter of termination and not when the same was authored. That as such, she cannot be faulted for



not acting on an issue she did not know about. In support of her position, the Petitioner has sought to rely on the case of *Alice Njmabi Mutura v Principal Secretary Ministry of Health & another* (2021) eKLR.

31. In further submission, the Petitioner states that the inordinate delay by the 2nd Respondent in delivering/withholding the clearance letter for over 3 months was only aimed at frustrating her, which actions militated against her right to fair administrative action, right to access information, fair labour practices as well as being in violation of Article 236 of *the Constitution*. In support of her submissions, the Petitioner has placed reliance on the cases of the *Judicial Service Commission v Mbalu Mutava & Another* (2014) eKLR and *Dry Associates Ltd v Capital Markets Authority & another* (2012) eKLR.
32. The Petitioner has further submitted that she was never invited for a disciplinary hearing to defend herself and neither was she given a notice or reasons necessitating the stoppage of her salary. It is her position that this manifest failure to observe due process violated Article 47 of *the Constitution* and the Fair Administrative Actions Act. In further support of her argument, the Petitioner has referenced the case of *Richard Bwogo Birir v Narok County Government & 2 others* (2014) eKLR.
33. On the 1st Respondent's part, it is submitted that the suit is time-barred by dint of Section 90 of the *Employment Act*. It is the 1st Respondent's position that the letter of termination was delivered to the Petitioner on 1st November 2017 as per the delivery note exhibited before Court. It is the 1st Respondent's contention that the said date has been altered to 3rd November 2017. That the Petitioner did not detest (sic) the signature attested in the section name of the person receiving the delivery note.
34. The 1st Respondent, further submits that the Petitioner has not demonstrated with precision how her fundamental rights and freedoms under *the Constitution* have been violated or are threatened contrary to Article 22 (1) of *the Constitution*. In support of this argument, the 1st Respondent has placed reliance on the cases of *Mumo Matemu v Trusted Society of Human Rights Alliance* (2013) eKLR and *David Mathu Kimingi v SMEC International Pty Limited* (2021) eKLR.
35. The 2nd Respondent submits that the Petitioner has failed to meet the irreducible minimum expected for a court to determine the dispute to be decided in a constitutional matter as far as the purported delay is concerned. In support of this argument, the 2nd Respondent has invited the Court to consider the cases of *Bethwell Allan Omondi Okal v Telkom (K) Ltd (Founder) & 9 others* (2017) eKLR and *Anarita Karimi Njeru v Republic* (1976-1980) KLR 1272. The 2nd Respondent has further posited that the Petitioner has failed to demonstrate clearly the manner in which her constitutional rights under Articles 27, 35, 41 and 236 of *the Constitution*.

Analysis and Determination

36. For purposes of disposing of the matter, the Court has distilled the following issues for determination:
 - a. Whether the suit by the Petitioner is time-barred;
 - b. Depending on (a), whether there is a constitutional violation;
 - c. Is the Petitioner entitled to the reliefs sought?

Whether the suit by the Petitioner is time-barred

37. The 1st Respondent contends that the suit is time-barred as the Petitioner filed the instant Petition outside the timelines stipulated under Section 90 of the *Employment Act*. According to the 1st Respondent, the cause of action arose on 30th November 2017, while the Petition was filed on 1st December 2021.



38. On her part, the Petitioner avers that the cause of action arose on 6th January 2019 when she received the letter of termination as opposed to the date the said letter was authored. Therefore, when she filed the Petition on 1st December 2021, only 2 years and 10 months had lapsed from the date the cause of action arose.
39. In light of the foregoing rival arguments, it is apparent that the question that must be answered at the outset is whether the Petitioner's case is time-barred and has been filed outside the statutory three-year period stipulated under Section 90 of the *Employment Act*. Indeed, this was the gist of the 1st Respondent's Notice of Preliminary Objection dated 21st January 2022.
40. Overruling the Notice of Preliminary Objection, the Court observed in its Ruling delivered on 30th September 2022, that there was a need to undertake a factual evaluation of the evidentiary material presented in order to determine the date when the cause of action arose.
41. In support of its argument that the suit is time-barred, the 1st Respondent contends that the letter of termination was physically handed over to the Petitioner. To this end, the 1st Respondent exhibited a copy of a delivery note. Cross-examined, the Petitioner denied signing the delivery note.
42. A look at the delivery note reveals that the date when the Petitioner allegedly received the letter of termination is not clear. I say so because, the date indicated could either be 1st, 3rd or 31st November 2017. Be that as it may, it is not logical that the date of receipt is 1st or 3rd November 2017, noting that the correspondence received immediately before the Petitioner's letter of termination, was delivered on 29th November 2017. Therefore, if it is indeed true that the Petitioner received the letter of termination on 1st or 3rd November 2017, it follows that the same could only have been before 29th November 2017 and not after, as is the case herein.
43. On the other hand, if it is to be presumed that the date indicated in the delivery note is 31st November 2017, it would be absurd in the sense that the same is a nonexistent date in the calendar year seeing that the last date in the month of November is 30th. It is therefore illogical to presume that the Petitioner received the letter of termination on 31st November 2017.
44. In light of the foregoing, I cannot help but find that the 1st Respondent has failed to prove that the letter of termination was physically delivered to the Petitioner as it has alleged.
45. In addition to the foregoing, it is evident that the Petitioner wrote to the 1st Respondent's Chief Executive Officer on 12th January 2018 notifying her that she had resumed duty in December 2017 and that since then, she was unable to access her log-in portal. She further stated that she was yet to be allocated any duties since she resumed duty that year, while her log in credentials had been blocked. That further, she had not received her salary from the month of December while her colleagues had received theirs. The Petitioner further stated that she had been to the Chief Executive Officer's office several times seeking to discuss the said issues but the secretary had notified her that she (Chief Executive Officer) was engaged.
46. In another letter dated 7th March 2018, the Petitioner addressed the 1st Respondent's Chief Executive Officer citing non-allocation of duties under her office and withdrawal of her official car. She further brought up the issue of unpaid salary.
47. The record further reveals that in subsequent letters dated 12th March 2018, 17th September 2018 and 21st October 2018, the Petitioner yet again addressed the 1st Respondent's Chief Executive Officer, raising the issues of unpaid salary and allocation of duties. Indeed, in the letter of 21st October 2018, the Petitioner notified the 1st Respondent's Chief Executive Officer that she was proceeding on 21 days



- leave as she had not been allocated duties for the longest time. On 14th December 2018, she informed the 1st Respondent's Chief Executive Officer that she had resumed work and was requesting for a meeting to chart the way forward.
48. What is notable is that all the aforementioned letters from the Petitioner bear the receiving stamp of the office of the 1st Respondent's Chief Executive Officer. In her Replying Affidavit, Ms. Bisem denied that the office of the 1st Respondent's Chief Executive Officer received the said letters. She termed the receiving stamps as an act of forgery. Despite making this assertion, Ms. Bisem did not lead any evidence to discount the authenticity of the receiving stamps. It is trite law that "he who alleges must prove".
49. On this score, I find the following expression by the Court Appeal in the case of Demutilla Nanyama Pururmu vs Salim Mohamed Salim [2021] eKLR, to be apt:
- “As the appellant was the one claiming that the documents were forgeries, the burden was on her to prove that the documents were not authentic government documents as claimed by the respondent. Section 107 of the Evidence Act, provides as follows: -
- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
50. As such, since the 1st Respondent has failed to prove its claim of forgery, the Court is persuaded that the letters by the Petitioner were received by the office of the 1st Respondent's Chief Executive Officer.
51. That said, it is also notable that there is no response from the 1st Respondent's Chief Executive Officer addressing the issues raised by the Petitioner. As such, if the 1st Respondent's version is to be believed that the Petitioner had been terminated on 30th November 2017, one wonders why the 1st Respondent would fail to respond to the Petitioner's letters, informing her as much.
52. In the circumstances, I am led to conclude that the Petitioner was not aware that her employment had been terminated by the 1st Respondent on 30th November 2017. If not, why would she write four letters to the 1st Respondent's Chief Executive Officer seeking to be allocated duties and paid salary? Further, why would she seek to proceed on leave and notify the 1st Respondent's Chief Executive Officer that she had resumed work after leave? This is not the conduct of an employee who is aware of her termination from employment.
53. Add to that, the Petitioner in her letter dated 6th January 2019, informed the 1st Respondent's Chief Executive Officer that she had received the letter of termination on that day. Why didn't the 1st Respondent's Chief Executive Officer respond and correct this impression by reminding the Petitioner that she had already been served with her letter of termination on 1st November 2017? This further confirms that up until 6th January 2019, the Petitioner was not aware of her termination from employment.
54. Therefore, the fact that the letter of termination was authored on 30th November 2017 does not mean that the Petitioner was aware of her termination as of that date. From my analysis, the evidence on record discounts the assertions by the 1st Respondent that the Petitioner received her letter of termination on 1st November 2017.



55. On this issue, I subscribe to the position taken by the Court (Rika J) in the case of *Alice Njambi Mutura v Principal Secretary, Ministry of Health & another* [2021] eKLR in which the Court found that termination does not take effect until the letter is in the hands of the employee.
56. Following cue, it is the Court's finding that the Petitioner's termination took effect on the date she received the letter of termination. Therefore, and by dint of Section 90 of the *Employment Act*, the cause of action arose on 6th January 2019. Consequently, at the time of instituting the suit on 1st December 2021, the suit was not time-barred.
57. Having so found, I now turn to consider whether there is a constitutional violation.

Constitutional violation?

58. The Petitioner has averred that the Respondents violated her constitutional rights. Specifically, the Petitioner has cited the Respondents for violation of her rights under Articles 35, 41, 47, 232 and 236 of *the Constitution*.
59. As can be discerned from the letter of termination, the Petitioner was let go by the 1st Respondent on grounds that there were unresolved and outstanding issues from her former employer, the 2nd Respondent.
60. At the outset, it is worth noting that there is no evidence that upon receipt of the letter dated 27th September 2017 from the 2nd Respondent, the 1st Respondent sought to know the nature of the unresolved issues cited by the 2nd Respondent and whether the same would render her unsuitable to continue serving as its Director, Corporate Services.
61. Further to the foregoing, there is no evidence or any indication for that fact, confirming that the Petitioner was granted an opportunity to defend herself prior to being terminated from employment.
62. Article 236 of *the Constitution* protects public officers from being dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law. It is not in doubt that the Petitioner being a public officer, was protected under Article 236 of *the Constitution* from being terminated without due process.
63. In addition to the foregoing, Article 47 of *the Constitution* guarantees every person the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. To give effect to this constitutional provision, Parliament enacted the Fair Administrative Actions Act. In this regard, Section 4 (3) (a), (b) and (c) of the Fair Administrative Actions Act, which I find significant to this case, provides as follows: -
 - 4(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;.....



64. In the instant case, it is evident that the Petitioner was not granted prior and adequate notice of the intended termination from employment and an opportunity to be heard and to make representations in that regard. Further, in communicating the decision to terminate the Petitioner's employment, the 1st Respondent did not notify her of her right to a review or appeal if any.
65. Indeed, Section 41 of the *Employment Act*, stipulates the requirements of a fair hearing prior to termination of employment. This entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.
66. From the facts of this case, it is apparent that the 1st Respondent did not comply with any of the aforesaid constitutional and statutory requirements.
67. It is on account of the foregoing that I find that the Petitioner's right to due process and fair administrative action was violated by the 1st Respondent in that she was not notified of the allegations against her and was not given a chance to defend herself against such allegations. This was contrary to Articles 47 and 236 of *the Constitution*.
68. The Petitioner has further cited the 1st Respondent for violation of her right to fair labour practices under Article 41 of *the Constitution*.
69. Notably, the 1st Respondent has not disputed the Petitioner's assertions that her salary was not paid from the month of December 2017. According to the 1st Respondent, the Petitioner was removed from the payroll in January 2018 when she ceased being its employee.
70. As I have found elsewhere in this judgment, the effective date of termination of the Petitioner from the 1st Respondent's employment was 6th January 2019 when she received her letter of termination. This being the case, she was an employee of the 1st Respondent until the said 6th January 2019.
71. Further, as stated herein, the Petitioner addressed the 1st Respondent's Chief Executive Officer through her letters of 12th January 2018, 7th March 2018, 12th March 2018, 27th September 2018 and 21st October 2018 regarding allocation of duties and payment of salary. None of these letters elicited a response from the 1st Respondent.
72. What's more, the 1st Respondent has not adduced evidence that the Petitioner was not attending work during the period in question. As a matter of fact, in her letter dated 21st October 2018, the Petitioner notified the 1st Respondent's Chief Executive Officer that she was taking 21 days leave as she had not been allocated duties for the longest time. She added that her productivity and value had reduced despite doing all she could towards the resolution of the impasse. Again, there was no response from the Respondent's end.
73. Taking into account the foregoing circumstances, it is highly probable that the Petitioner was attending work from December 2017 up to January 2019, but was not being allocated any duty. Most of all, the 1st Respondent withheld her salary during the period in question and did not notify her of the reason for the said action. It is this Court's considered view that failing to allocate duties to an employee without any valid reason and to remunerate her as contractually agreed, is no doubt an affront to the principle of fair labour practices.
74. The total sum of my consideration is that the 1st Respondent's actions against the Petitioner violated her constitutional right to fair labour practices as guaranteed under Article 41 of *the Constitution*.



75. As I pen off, I find it imperative to address the 2nd Respondent's role in the entire issue. From the evidence on record, it is apparent that the 2nd Respondent highly contributed to the breakdown of the employment relationship between the Petitioner and the 1st Respondent. This is evidenced by the manner in which the 2nd Respondent couched its letter dated 27th September 2017. As it is, this letter was the turning point in the Petitioner's employment with the 1st Respondent. Besides stating that the Petitioner had "unresolved issues" at the time of her resignation, the 2nd Respondent's Chief Executive Officer added that he wished to be excused from completing the confidential report for the Petitioner's appointment. Having received such a comment from the Petitioner's former employer, it does not come as a surprise that the 1st Respondent might have had a change of heart regarding her employment.
76. At the very least, the 2nd Respondent ought to have clarified what it meant by the term "unresolved issues". As it turned out, the only pending issue was that the Petitioner had not completed the clearance process with the 2nd Respondent. Why didn't the 2nd Respondent indicate as much? As Mr. Kanisa deposed in his Replying Affidavit, the 2nd Respondent did not have any pending issues with the Petitioner that would warrant the termination of her employment with the 1st Respondent.
77. As the Petitioner's former employer, the 2nd Respondent was bound to give her current employer (1st Respondent), accurate and complete information regarding her employment. In this regard, it gave the 1st Respondent incomplete information thereby sending a wrong signal leading to the Petitioner's termination from employment.
78. That said, I now turn to consider the reliefs available to the Petitioner.

Reliefs?

79. In view of the foregoing analysis, I find that the Petitioner is entitled to a declaration that her rights under Articles 41, 47, and 236 of *the Constitution* of Kenya were violated by the 1st Respondent.
80. The Court further finds that the Petitioner is entitled to compensation for violation of her constitutional rights. This being the case, the Petitioner is entitled to damages which the court assesses at Kshs 750,000.00. In arriving at this award, I have considered several authorities. Case in point is James Ang'awa Atanda & 10 others v Judicial Service Commission [2017] eKLR in which the Petitioners were each awarded the sum of Kshs 750,000.00 as damages for unfair labour practice(s)/breach of contract(s). And further, in the case of Mbage v Hillcrest Investment Limited (Employment and Labour Relations Cause 2007 of 2016) [2023] KEELRC 2096 (KLR) (27 July 2023) (Judgment), the Claimant was awarded the sum of Kshs 400,000.00 as compensation for violation of her right to fair labour practices,
81. The Court further finds that the Petitioner is entitled to salary withheld by the 1st Respondent from December 2017 up to 6th January 2019 when she was notified of her termination from employment.

Orders

82. In the end, I enter judgment in favour of the Petitioner against the 1st Respondent in the following terms: -
- a. A declaration is hereby issued that the 1st Respondent violated the Petitioner's rights enshrined under Articles 41, 47 and 236 of *the Constitution*.
 - b. The Petitioner is entitled to salary withheld from December 2017 up to January 2019 being the sum of Kshs 6,318,444.00.



- c. The Petitioner is awarded the sum of Kshs 750,000.00 for violation of her constitutional rights.
 - d. The total award is Kshs 7,068,444.00.
83. The Petitioner shall have also the costs of this Petition. For the avoidance of doubt, this shall be borne equally by the 1st and 2nd Respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF APRIL 2024.

.....

STELLA RUTTO

JUDGE

In the presence of:

For the Petitioner Mr. Nani instructed by Mr. Kiroko

For the 1st Respondent Ms. Oyugi

For the 2nd Respondent Ms. Kaluai

Court Assistant Millicent Kibet

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

