



REPUBLIC OF KENYA



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**Mburu v Technical and Vocational Education and Training Authority;
Public Service Commission & 2 others (Interested Parties) (Petition
E187 of 2023) [2024] KEELRC 2680 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2680 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E187 OF 2023**

B ONGAYA, J

OCTOBER 30, 2024

**IN THE MATTER OF ARTICLES 3(1) AND 22(1) & (2) OF
THE CONSTITUTION OF KENYA;**

AND

**IN THE MATTER OF ARTICLES 1, 2, 10, 19, 20, 21, 22, 23, 40,
41, 43, 47, 50(1), 159, 160, 162, 165(3), 233, 234 AND 258 OF THE
CONSTITUTION OF KENYA;**

AND

**IN THE MATTER OF SECTIONS 2, 3, 4, 6, 7 AND 8 OF THE
FAIR ADMINISTRATIVE ACTIONS ACT;**

AND

**IN THE MATTER OF SECTIONS 2, 3, 4, 5, 35, 38, 42 AND 43
OF THE PUBLIC SERVICE COMMISSION ACT, 2017 READ
TOGETHER WITH THE PUBLIC SERVICE COMMISSION
REGULATIONS, 2020;**

AND

**IN THE MATTER OF THE TECHNICAL AND VOCATIONAL
EDUCATION AND TRAINING ACT, 2013;**

AND

IN THE MATTER OF EMPLOYMENT OF MR. EDWARD

BETWEEN



EDWARD NDUNG’U MBURU PETITIONER

AND

**TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING
AUTHORITY RESPONDENT**

AND

PUBLIC SERVICE COMMISSION INTERESTED PARTY

**PRINCIPAL SECRETARY, STATE DEPARTMENT OF TECHNICAL,
VOCATIONAL EDUCATION AND TRAINING, MINISTRY OF
EDUCATION INTERESTED PARTY**

THE HON ATTORNEY GENERAL INTERESTED PARTY

JUDGMENT

1. The petitioner filed the petition on 02.10.2023 and later filed the Amended Petition dated 01.03.2024 through Njoroge Regeru & Company Advocates. The petitioner prays as follows:
 - i. An order be issued directing the respondent, by itself, its officials and servants, or agents to implement the directive issued for secondment and transfer of the petitioner’s services without loss of benefits as communicated in the letter dated 24th June, 2022.
 - ii. A declaration be and is hereby issued that the respondent’s conduct regarding the purported re-deployments and release with immediate effect, failure to hear and determine the petitioner’s appeal against the redeployment and the belated secondment and transfer of services to the respondent was in breach of the petitioner’s fundamental rights under Articles 10(1) and (2), 22, 25, 27(1) and (2), 28, 29, 40, 41, 47 and 73 of *the Constitution* of Kenya, 2010 and the express provisions of statute governing the respondents.
 - iii. An order do issue and is hereby issued directing the respondent to pay to the petitioner all the salaries and benefits accruing to him in accordance with the letter of appointment dated 4th September 2018, as prescribed by the Salaries and Remuneration Commission less the sums received and/ or earned from the 2nd interested party. That is a sum of Kshs. 8,070,804.00 being the difference between the sum of Kshs. 18,014,068.00 payable by the respondent until 29th February, 2024 and the sum of Kshs. 9,943,264.00 received from the interested party from September 2018 up to 30th June, 2022.
 - iv. Damages for the breach of the petitioner’s fundamental right to employment, unlawful (wrongful), irregular and technical termination of employment and removal from the payroll and the attendant suffering, professional embarrassment, and career development interruption amounting to Kshs. 3,713,411.00 being 13 months’ salary based on salary payable by the respondent.
 - v. Any other relief or such other orders as the Honourable Court shall deem fit and just to grant to the petitioner.
 - vi. Award costs of the petition to the petitioner.



2. The petitioner stated in his Supporting Affidavit that since 1st February 1991, he has served in public service in various capacities and that he had a legitimate expectation that he would continue to serve the public until the statutory age of retirement in Kenya.
3. It was the petitioner's case that by an Internal Memo dated 13.08.2014, the 2nd interested party (then as the State Department of Science and Technology) advised the petitioner as well as the 2nd interested party's Human Resource Director as follows:
 - a. Upon establishment of the respondent, the entire Directorate of Technical Accreditation and Quality Assurance staff be posted to the other Directorates of the State Department of Science and Technology in view of the fact that their functions had been taken over by the respondent.
 - b. The respondent's Board Chairman had requested to be identified and deployed to the respondent's Secretariat, the listed public officers including the petitioner who was the Deputy Director, Quality Assurance his personal number being 1991010608 in Job Group "Q".
4. The petitioner further stated that upon deployment, he served the respondent in the capacity of Ag. Director of Standards Development and Compliance until it was fully established as an independent Authority. That he subsequently successfully applied for the publicly advertised vacancy and he was appointed the respondent's first Manager, Standards Development, Grade TVETA 3 reporting to Director Standards and Compliance (a position that remained vacant until 2022). He stated that the letter of his appointment to Manager is dated 04.09.2018 and was accepted on 05.09.2018, signifying commencement of his appointment. He stated that the position was later renamed to Deputy Director, Standards Development and that the terms of engagement with the respondent were inter alia:
 - a. Salary at entry point – Kshs. 142,800 from the date of appointment; revised by SRC to Kshs. 145,465 – 200,647;
 - b. House allowance of Kshs. 50,000/-.
 - c. Commuter allowance of Kshs. 25,000/-.
 - d. Comprehensive medical cover, Group Life Cover and Group Personal Injury Cover.
 - e. All allowances were payable in accordance with the terms and conditions of the service as approved by the respondent's Board from time to time and with the prevailing government regulations.
 - f. The petitioner was required to join the respondent's pension scheme where he would contribute 10% of the pensionable emoluments (monthly basic pay) and the respondent would contribute 20% of the petitioner's pensionable emoluments towards the petitioner's pension savings.
 - g. The employment was terminable by either party giving one (1) months' notice or payment equivalent to one (1) month basic pay and remunerative allowances in lieu of notice. The employment could also be terminated through summary dismissal due to gross misconduct on the grounds stipulated under the *Employment Act*, 2007, or any other legally binding grounds.The petitioner's case was that the respondent neither paid him his salary nor offered any of the benefits stipulated in the letter of appointment dated 04.09.2018.
5. The petitioner pleaded that by a letter dated 24.09.2018, the 2nd interested party communicated the decision to promote him from Senior Assistant Director, Technical Education, Job Group "Q" to the grade of Deputy Director, Technical Education, Job Group "R". The petitioner continued to draw



his salary from the 2nd interested party while still fully engaged by the respondent and having entered a performance contract dated 04.02.2021 with clear deliverables.

6. It was the petitioner's case that by a letter dated 23.07.2021, the 2nd interested party purported to redeploy him back to the Directorate of Technical Education (DTE) with immediate effect. He was consequently required to report to the Ag. Director DTE for deployment and allocation of duties and the Director General of the respondent was to confirm when the petitioner was released. The petitioner received the said letter on or about 26.07.2021 after it had been endorsed by the respondent's Director General with the words "Forwarded and Released". The petitioner's case was that the decisions to redeploy him back to the 2nd interested party and his release by the respondent were made without notice, consultation and hearing, contrary to his right to a fair administrative action under Article 47 of *the Constitution*.
7. The petitioner further pleaded that by his letter dated 04.08.2021, he appealed to the respondent against the re-deployment and sought reversal of the irregular release back to the 2nd interested party without any reference of the re-deployment to the respondent's Board of Directors. The respondent replied through its letter dated 09.08.2021 directing the petitioner to appeal to the relevant authority and thereby refused to take responsibility for its own decision. The petitioner therefore wrote to the 2nd interested party on 12.08.2021 appealing against the re-deployment while asserting that he had duly been appointed Manager, Standards Development of the respondent. That what was awaited was only the secondment and transfer of service letter from the 2nd interested party to the respondent for purposes of pension. The petitioner averred that he did not receive any response from the 1st or 2nd interested parties on his appeal and that he continued to serve the 2nd interested party without hindrance or restriction.
8. It was the petitioner's averment that as a follow-up on the appeal, he wrote a letter dated 14.03.2022 to the 1st interested party, triggered by the respondent's advertisement of the position of Deputy Director, Standards Development, TVETA Grade 3. According to the petitioner, he held the said position at the time of the aforementioned advertisement as his employment had not been terminated.
9. The petitioner further averred that by a letter dated 24.06.2022, the 2nd interested party communicated its decision on his belated secondment to the respondent effective 05.09.2018 up to March 2019 and transfer of pensionable services to the respondent effective from 01.04.2019. By the said letter, the respondent was directed to remit 31% of the petitioner's basic salary to the Director of Pensions in order to service his pension during the period of secondment. The respondent replied through a letter dated 05.07.2022 seeking guidance on how to implement the 1st interested party's directive as to the belated secondment and transfer of the petitioner's services for reasons that:
 - i. The petitioner had been recalled back to the 2nd interested party through the letter dated 23.07.2021 to work at the Directorate of Technical Education.
 - ii. Following the recall of the petitioner with immediate effect, the respondent's Board resolved to declare the petitioner's position vacant and went on to advertise and fill in the position with the successful candidate appointed on 05.05.2022.
 - iii. The belated secondment requires remittance of 31% gratuity to the Director of Pensions which was not budgeted for.
 - iv. The petitioner was being paid his salary by the 2nd interested party and the belated transfer would amount to double payment of his salary.
 - v. The position had already been filled.



10. By a letter dated 21.07.2022, the 2nd interested party responded to the respondent's request for guidance as follows:
 - i. The 31% is a deduction from the petitioner's salary during the period of secondment and is remitted back to the Director of Pensions to preserve the petitioner's pensionable salary. The petitioner was occupying a fully funded position and the respondent only needed to deduct 31% from the salary due to him.
 - ii. The petitioner had been appointed to an established and fully funded post at the respondent and ought to have been paid as per his employment contract with the respondent. Under section 42 of the Public Service Commission (PSC) Act, it was the responsibility of the respondent to bear all costs, remuneration and allowances, and other benefits of the petitioner during the period of secondment.
 - iii. The 2nd interested party continued to pay the petitioner's salary and allowances leading to overpayment of Kshs. 9,943,264.00 to the petitioner. Since the petitioner was an employee of the respondent and services were rendered to its benefit, the respondent needed to fully pay him his salary and allowances due to him under his contract of employment dated 04.09.2018, recover the amount paid to him by State Directorate of Technical and Vocational Training (SDTVT) and remit the same via banker's cheque or bank transfer to the 2nd interested party.
 - iv. Regarding the position having been filled, it was noted that the petitioner's appointment dated 04.09.2018 was on permanent and pensionable terms with a defined termination clause and the respondent needed to follow due process.
11. The petitioner's case was that the 2nd interested party stopped processing his salary effective 30.06.2022 with no corresponding uptake of the same by the respondent, thereby rendering him destitute in violation of his right to property, economic and social rights under Articles 40 and 43 of *the Constitution*. The petitioner averred that he wrote to the respondent the letter dated 30.08.2022 requesting its compliance with the directions given by the 1st and 2nd interested parties but the respondent's response on 05.09.2022 was that the petitioner's position was no longer available and it could not execute his belated secondment and transfer.
12. It was the petitioner's averment that through a letter dated 05.11.2022, the respondent asserted to him that it did not terminate his services and he was required to regularize his terms of service as required by the 1st interested party's Guidelines on Secondment. The respondent further noted that it had previously sought the petitioner's secondment by its letter of 18.02.2019 but the same was not responded to and consequently, the petitioner continued drawing salary from the State Department and his employment with the respondent was not regularized. That when the respondent received the petitioner's redeployment letter, he was released immediately, as he was still an employee of the State Department, and he willingly reported back to the Department for duty. The respondent also stated that the petitioner should not have left the respondent if he believed he was its employee.
13. The petitioner pleaded that after the 2nd interested party yet again on 16.01.2023 notified the respondent to comply with the decision of his secondment and transfer, he engaged the Commission on Administration of Justice (Office of the Ombudsman). The Ombudsman verified the facts and thereafter advised him to invoke section 89 of the PSC Act for enforcement of the 1st interested party's Directive to the respondent.
14. It was the petitioner's case that the respondent's officials acted in consort to technically terminate his employment and deny him promotion through the feigned re-deployment, contrary to the national



values and principles of governance set out under Article 10 of *the Constitution*. This was so as he was never allocated any duties at the State Department of Vocational and Technical Training upon his reporting back to the Ministry. That further compounded with his belated secondment and transfer of his services to the respondent, his rights as guaranteed under Articles 28 and 29 of *the Constitution* were infringed. The petitioner also reasonably believes that the respondent's refusal to expeditiously deal with his appeal against the re-deployment and release back to the 2nd interested party was intended to create a scenario for declaration of his post at the respondent vacant and render him jobless, against fair labour practice.

15. The petitioner further pleaded that contrary to Article 27 (1) and (2) of *the Constitution*, he was discriminated against as no other seconded officer suffered the same fate including being denied payment of benefits under the respondent's contract, re-deployment and/or belated secondment and transfer of services. He believes the respondent's ulterior motive was to deny him the chance to advance to the headship or directorship of the respondent Authority or such higher opportunities in public service, together with the associated benefits (including pension) that would have been naturally available to him were it not for the unlawful removal from office.
16. The petitioner averred that his rights under Articles 28 and 29 of *the Constitution* on freedom and security of person were also infringed as he was denied the right to work or remain in employment without being accorded due process, and his profession in public service has suffered reputational damage and indignity on account of the respondent's conduct. The petitioner further averred that the conduct of the respondent and its officials, and having been carried out with the knowledge and/or presumed knowledge of the interested parties, was against his right to responsible leadership under Article 73 of *the Constitution*.
17. In response, the respondent filed a Replying Affidavit through the Hon. Attorney General. The affidavit was sworn on 06.05.2024 by Dr. Kipkirui Langat on behalf of the respondent and the 2nd and 3rd interested parties. Their case was that implementing the decision of the PSC would require the holder of the position to vacate thus exposing the respondent to possible litigation and that the same is not only impracticable but would be against the law.
18. Dr. Langat averred that the petitioner was deployed to the respondent from the State Department of Science and Technology on 25.08.2014. That the petitioner's appointment in 2018 to the position of Manager Standards Development could not take effect because:
 - a. The petitioner did not have his services seconded to the respondent and remained on his deployment from the Ministry and continued to draw his salary from the State Department of Vocational and Technical Training.
 - b. Further, the respondent had not yet set up a pension scheme to enable the transfer of the petitioner's service.

Dr. Langat noted that the foregoing was informed by Rule 2.0 (vi) of the PSC Guidelines on Secondment which provides that:

“Staff of newly established organizations who continue to be paid salary by the parent ministry at the Civil Service salary levels, will be deemed to be on deployment and will not be required to remit the 31% of their Civil Service basic salary or the prevailing rate as pension contribution until a new salary structure is approved for the entity and the officer is formally seconded.”



19. It was stated that the respondent's letter of 18.02.2019 to the State Department of Vocational and Technical Training undertook to initiate the process of transfer of the petitioner's services once it had a pension scheme in place. That thereafter in a letter dated 06.07.2021, the State Department requested the respondent to confirm the petitioner's terms of engagement and whether he was drawing any remuneration from the respondent. The respondent notified the State Department of the petitioner's appointment as Manager Standards under permanent and pensionable terms but emphasised that since the petitioner had not formalised his employment status with the State Department, he was ineligible to receive remuneration from the respondent.
20. Dr. Langat further averred that when the petitioner was recalled by the State Department of Vocational and Technical Training from which he was drawing salaries at all material times during the deployment to the respondent, the respondent's Director General released him vide a letter dated 23.07.2021. He noted that with the petitioner's subsequent assumption of new roles in the State Department as assigned, the letter of his appointment to the respondent ceased to have effect in the circumstances.
21. Dr. Langat pleaded that on 12.04.2022, the 2nd interested party wrote to the PSC requesting for a belated secondment and transfer of service for the petitioner. The 2nd interested party then communicated to the petitioner, through the respondent's Director General on 24.06.2022, of the decision of the PSC on his belated secondment and transfer of service to the respondent. However, the position had already been filled at that time and which communication was made to the 2nd interested party by the Director General. That the respondent maintained that the petitioner was not its employee as the PSC had delayed in regularizing his terms of service and it was unable to execute the belated secondment and transfer of service.
22. It was Dr. Langat's averment that a day after the petitioner had received his appointment letter to be Manager Standards, the petitioner also received a letter promoting him to Deputy Director, Technical Education Job Group "R" with effect from 05.09.2018. He therefore refuted the petitioner's claim that he was not assigned any duties after his re-deployment. He further noted that there was a letter from the State Department of Vocational and Technical Training appointing the petitioner as an alternate member of the Coast Institute Board. The deponent also denied the assertion that the petitioner was discriminated against, asserting that the 2nd interested party took separate actions for other seconded officers by forwarding requests for their secondment to the Commission through distinct letters.
23. The 1st interested party filed their Replying Affidavit, sworn by Remmy N. Mulati on 13.05.2024. It was urged as follows:
 - a. The PSC is established under Article 233(1) of *the Constitution* and its functions and powers are as provided under Articles 234(2) and (5), 249(1), 252(1). The mandate of the Commission is further buttressed under Article 232(2) of *the Constitution*, to effect that values and principles of public service apply to public service in all State Corporations.
 - b. Pursuant to section 42 of the PSC Act, 2017 and Regulation 37 of the PSC Regulations, the Commission has the power to approve secondment of officers from Ministries to State Corporations and vice-versa.
 - c. That vide the letter dated 12.08.2021, the Commission received the petitioner's Appeal against his re-deployment back to the Ministry. Thereafter by a letter dated 31.05.2022, the Commission rendered a decision on the appeal that:
 - i. Mr. Mburu be granted belated secondment to the Authority for the period 05.09.2018 up to and including 30.08.2019.



- ii. His pensionable service be transferred belatedly from the Civil Service to the Authority with effect from 01.04.2019.
 - a. That despite the Ministry conveying the Commission’s aforesaid decision to the petitioner through the respondent Authority, the Authority maintained that it was unable to execute the belated secondment and transfer of pensionable service for the petitioner.
 - b. By a letter dated 27.10.2022, the Commission communicated to the Authority the petitioner’s complaint regarding the Authority’s failure to comply with the Commission’s decision in issue.
 - c. The Commission vide a letter dated 20.04.2023 responded to the Office of the Ombudsman that the respondent had been directed to implement the Commission’s letter of 16.12.2022 on the same, and had been informed that the Commission’s Directive on the matter was final and the matter considered closed.
 - d. That an investigations report by the Commission’s Compliance and Quality Assurance Directorate established that the respondent’s Board had refused, declined or failed to implement the Commission’s decision.
 - e. The Commission then found the respondent’s action to be contrary to Regulation 9 of the PSC Regulations, 2020. The Commission further advised that the Cabinet Secretary for Education invoke the said Regulation 9 and take necessary disciplinary action against the Board members in accordance with their terms of service.
 - f. That it is the respondent’s failure to implement the Commission’s decision on the belated secondment and transfer of service of the petitioner that has precipitated the instant petition. That this Honourable Court should thus hold the respondent accountable for:
 - i. the unlawful termination of the petitioner’s employment;
 - ii. failure to implement the Commission’s decision on the belated secondment and transfer of service with respect to the petitioner; and
 - iii. the respondent should bear the costs of the instant suit.

24. It was the position of the 1st interested party that when the respondent issued the petitioner with a letter of appointment and he accepted on 05.09.2018, an employment relationship was created and he immediately became an employee of the respondent on permanent and pensionable terms. That therefore when the respondent proceeded to recruit another person into the same position, the same was in breach of the petitioner’s contract and amounted to unlawful termination of his employment without following due process. The Commission urged that the respondent should be compelled to implement the Commission’s decision on belated secondment and transfer of service of the petitioner.

25. The petitioner’s rebuttal in his Further Affidavit dated 25.06.2024 was that his deployment to the respondent was effected on 13.08.2014 and not 25.08.2014 as alleged. The petitioner asserted that Rule 2.0 (vi) of the respondent’s HR Manual applies to seconded officers and not to him, as he had been substantively appointed by the respondent and was not on deployment. He argued that since the



delay on his secondment had been occasioned by the 1st interested party and the parent Ministry, the respondent should have invoked PSC Regulation 20(5) of 2020 that provides:

“Notwithstanding paragraph (4) or (5), if the public officer who has been promoted to a public office in public body other than that which the officer is serving is not released, the officer shall be considered to have been released on the expiry of sixty days from the date of the decision to promote.”

26. The petitioner filed his submissions, the respondent and the 2nd and 3rd interest parties filed their joint submissions while the 1st interested party relied on its Replying Affidavit.
27. The 1st issue for determination is whether the respondent was entitled, for want of formal petitioner’s secondment, not to implement the appointment of the petitioner per letter dated 04.09.2018 and accepted by the petitioner on 05.09.2018. By that letter the respondent employed the petitioner to the position of Manager, Standards Development, TVETA 3 effective the date the petitioner assumed the duties. As at that time the petitioner was already performing the duties and in the service of the respondent, albeit, during a transition. The letter does not mention that the appointment was subject to formal secondment. The respondent obviously misdirected itself. Once the petitioner and the respondent concluded the contract of service emplacing the petitioner on permanent and pensionable service, the position was duly filled and there could be no vacancy for the respondent to fill the position a second time as it purported to do. The Court observes that the petitioner was entitled to serve as appointed by the respondent with or without the secondment. Secondment only served as an arrangement of temporary absence of the petitioner from the service under the 1st and 2nd interested parties if the petitioner desired to revert back to that service. However, the terms of the letter dated 04.09.2018 were that the petitioner was getting into the respondent’s full service as a permanent and pensionable employee. The respondent could not have failed to implement the contract on any account because it must have budgeted accordingly and assured availability of the money to satisfy the financial implications of employing the petitioner. As urged for the 1st interested party, there was no vacancy for the respondent to fill on account that the petitioner had not been formally seconded. There was no precondition of secondment as a term and condition of concluding the employment in the letter of 04.09.2018.
28. It was submitted for the respondent that upon the appointment the petitioner ought to have renounced his deployment to the respondent by the 2nd interested party. However, it should be obvious that it was for the respondent to implement the terms of its new appointment of the petitioner and the petitioner to effect the new appointment by assuming duty in the new capacity as appointed - the appointment was never subject to the petitioner renouncing the redeployment but he had to assume the new appointment by reporting and working as such by reason of absorption of the petitioner in full respondent’s service through the permanent and pensionable appointment. The Court returns that the petitioner did not need a formal secondment or to renounce the deployment from the 2nd interested party to benefit the terms and conditions of the letter dated 04.09.2018. However, as is found later in this judgment, the petitioner appears to have failed to take steps to perfect the appointment in good faith as he continued to work as earlier deployed and enjoyed promotion from the 1st and 2nd interested parties without taking up the new appointment.
29. Should the respondent be ordered to implement the terms and conditions of the appointment dated 04.09.2018? There appears to exist bars to that implementation as claimed for the petitioner. First, as submitted for the respondent and the parent Ministry, after accepting the appointment on 05.09.2018, the petitioner was promoted by the 1st and 2nd interested parties as per the letter dated 24.09.2018. The petitioner accepted the promotion and enjoyed the enhanced salary and benefits without notifying



the 2nd interested party that the respondent had in fact appointed him per letter of 04.09.2018. He continued to work for the respondent as deployed and enjoyed the promotion. Second, the petitioner's remuneration continued to be made by the 2nd interested party and not the respondent. On 23.07.2021 the petitioner was recalled by the 2nd interested party and as submitted for the respondent and 2nd interested party, the petitioner had failed to comply with section B.17(3) of the Human Resources Policies and Procedures Manual which provided and required an officer making application for appointment in another public entity to ensure his authorised officer (in this case the 2nd interested party) is informed of such application to enable a smooth transfer of service in the event the officer is appointed following such application. It appears that the petitioner failed to inform the 2nd interested party that the deployment had ended by reason of the appointment letter of 04.09.2018. Thus, again, and thirdly, on 28.10.2021 the 2nd interested party appointed the petitioner as an alternate board member of the Board of Governors for Coast Institute of Technology located in Voi. The petitioner happily took up the appointment, which was made under the Technical Vocational Education and Training Act, 2013 and as an officer in the service of the 2nd interested party. The Court finds for the respondent and the 2nd interested party that the petitioner must have waived his appointment in the letter of 04.09.2018 by reason of his stated conduct and which demonstrates that at all material times he was silently enjoying as an officer in the service of the 2nd interested party. He appears to the Court to be a litigant who wanted to benefit both ways but which was impossible. In that consideration and consequential to failure to perfect the appointment in the letter of 04.09.2018, the petitioner appears to make claims in bad faith and submissions for the respondent, 2nd and 3rd interested parties are upheld, in that regard.

30. The Court further finds that the appointment was on 04.09.2018 and the petition was filed on 04.10.2023, after lapsing of 5 years from the date of the appointment. It appears to the Court that per submissions made for the Attorney General the petitioner went into slumber in enjoyment of the terms and conditions of service as a civil servant in 2nd interested party's service as had been deployed and as an afterthought, decided to file the instant petition.
31. In the circumstances, the Court returns that the petitioner has failed to establish contravention or threatened contravention of the rights and fundamental freedoms as alleged. In any event, it was not the respondent who had redeployed the petitioner from the authority. All the respondent did was to fail to implement the appointment in the letter dated 04.09.2018 in circumstances that the petitioner continued to enjoy the terms of deployment to the respondent without overtly taking up the new appointment by notifying the 1st and 2nd interested parties that he had taken up the appointment, and, that he was no longer on deployment arrangements with the respondent. The appointment in the letter of 04.09.2018 was to take effect upon the petitioner assuming duties as appointed. The evidence is that he never assumed duties as appointed but he continued to work upon duties as deployed and then as promoted by the interested parties. The appointment, therefore, was never implemented per its own commencement terms as it never took effect. The respondent is not culpable and liable as urged for the petitioner. The petition must therefore fail as a mere afterthought. Awarding the reliefs prayed for would amount to unjust enrichment of the petitioner. It also appears to the Court that once the petitioner failed to assume duty as appointed in the new capacity, the respondent was entitled to take it that he had declined the appointment, he never got absorbed into the respondent's service, and, a vacancy thereby validly evolved to be filled by the respondent.
32. The Court has considered all circumstances of the petition and each party to bear own costs of the proceedings.

In conclusion, the petition is hereby dismissed and each party to bear own costs of the proceedings.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
WEDNESDAY 30TH OCTOBER 2024.**

BYRAM ONGAYA

PRINCIPAL JUDGE

