



**Edward v Public Service Commission & 4 others (Petition E062 of 2022)  
[2024] KEELRC 13394 (KLR) (5 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13394 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E062 OF 2022  
MA ONYANGO, J  
DECEMBER 5, 2024**

**IN THE MATTER OF ARTICLES 2(4), 10, 19, 20, 21(1), 23, 34,  
35(C) 27, 28, 33(1), 34(2), 35(1)(B), 43, 47, 50, 165(3), 159(1), 2(A)  
& (B), 258 & 259(1) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF ENFORCEMENT OF ARTICLES 2, 10, 22, 23, 25(C), 27,  
28, 33(1) 34(2), 35(1)(B), 47 & 50 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF CONTRAVENTION OF SECTION  
4 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**AND**

**IN THE MATTER OF**

**BETWEEN**

**DR KIEMA EDWARD ..... PETITIONER**

**AND**

**PUBLIC SERVICE COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY AGRICULTURE, LIVESTOCK, FISHERIES AND CO-  
PERATIVE ..... 2<sup>ND</sup> RESPONDENT**

**PRINCIPAL SECRETARY STATE DEPARTMENT FOR LIVESTOCK .... 3<sup>RD</sup>  
RESPONDENT**



**DIRECTOR LIVESTOCK POLICY RESEARCH AND REGULATIONS .... 4<sup>TH</sup>  
RESPONDENT**

**OFFICE OF THE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Petitioner describes himself in the Petition as the Current Deputy Director, Animal Health, State Department of Livestock, Nairobi.
2. The 1<sup>st</sup> Respondent, the Public Service Commission (PSC), is an independent Government Commission established under Article 233(1) of *the Constitution* of Kenya to manage Human Resources in the Kenya Civil Service and the Local Authorities. It is sued as the employer of the Petitioner in this suit and as the body that grants authority to establish offices including the Office of Livestock Policy Research and Regulations where the Petitioner is currently deployed. It provides for staff upgrading, promotion and succession management, where currently there are 4 vacant positions for succession management.
3. The 2<sup>nd</sup> Respondent, the Cabinet Secretary of Agriculture, Livestock, Fisheries And Cooperatives, is described in the petition as the head of a government ministry in Kenya who sits at the Head office in Kilimo House Nairobi and implements policies of Human Resource.
4. The 3<sup>rd</sup> Respondent, the Principal Secretary of Agriculture, Livestock, Fisheries And Cooperatives, is the head of a government ministry in Kenya and sits at the Head office in Kilimo House Nairobi, in this case implements policies of Human Resource.
5. The 4<sup>th</sup> Respondent, Director of Livestock Policy Research Regulations, in this case the Petitioner's Supervisor.
6. The 5<sup>th</sup> Respondent, The Office of The Attorney General, is the head of the Kenyan State Law Office, the Principal legal advisor to the Government, and an exofficio member of Parliament and Cabinet.
7. The Petitioner states that he was employed as a Deputy Director, Animal Health State Department of Livestock by the 2<sup>nd</sup> Respondent via Public Service Commission letter dated 23<sup>rd</sup> January 2022 and has worked for the Respondent from 1997 to date.
8. The Petitioner avers that the Cabinet Secretary, Ministry of Agriculture, Livestock Fisheries and Co-Operatives through its letter dated 9<sup>th</sup> June 2021 reviewing the Organization structure including succession management where the Petitioner's office has 4 available positions for promotion to Senior Deputy Director Livestock Research and Policy which the Petitioner qualifies for promotion position to.
9. It was the Petitioner's case that on 24<sup>th</sup>, January 2022, the 2<sup>nd</sup> Respondent sent a letter to the Petitioner deploying him to the Directorate of Agricultural Research with immediate effect, yet his background is in livestock.
10. It was further the Petitioner's case that the next day on 25<sup>th</sup> January 2022, the Petitioner got a second letter from the 3<sup>rd</sup> Respondent deploying him to Directorate of Veterinary Services, that he reports with immediate effect.
11. That both letters were delivered to the Petitioner on 2nd February 2022.



12. It was the Petitioner's averment that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents declined to clarify which of the deployments the Petitioner should report to and that he risked disciplinary action as he had not been given a release letter from his supervisor, he must report to two different directorates, and this will deny him a chance of the promotion by succession management that has 4 vacancies.
13. The Petitioner avers that he applied IDRM (Internal Despite Resolution Mechanism) by writing to both the Cabinet Secretary, 1<sup>st</sup> Respondent and Principal Secretary, 2<sup>nd</sup> Respondent seeking clarification of the said mishap through letters dated 4<sup>th</sup> February 2022 and 8<sup>th</sup> February 2022 but there was no feedback.
14. That the Cabinet Secretary wrote a letter to the Petitioner's Supervisor asking all deployed officers including the Petitioner to remain in their current departments, which letter was positively responded to and the Petitioner continued in his current position.
15. The Petitioner avers that on 7<sup>TH</sup> MARCH 2022 he received a WhatsApp message inviting him to a meeting called by 4<sup>th</sup> Respondent but on arrival, he was embarrassed in front of his juniors being told he should not be there, and that he should walk out and report to the Directorate of Agriculture.
16. That it is apparent that the Respondent breached the Petitioner's right to dignity, equal treatment and right to fair administrative action.
17. The Petitioner stated that he was apprehensive that the two (2) deployments to the directorate of veterinary services and to directorate of agriculture will deny him the available chance for promotion in his current department of Livestock Research & Policy where he has worked for the last 2 years and at the State department for Livestock for 25 years.  
That the acts of the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Respondent are an affront to the principles of the Constitution, the right to a fair hearing and natural justice and that it is of utmost urgency that this illegal act be arrested before it leads to further violation of the rights and freedoms of the Petitioner.
18. The petition avers that the Respondents breached his right to fair administrative action under Article 47 of the Constitution, his right to equal protection under the law under Article 27 of the Constitution and his right to dignity under Article 28 of the Constitution.
19. The Petitioner further averred that the Respondents failed to comply with section 4 of the Fair Administrative Action Act which entitles everyone to fair administrative process including timely communication of intended action, provision in advance of evidence to be used, and reasonable scheduling of hearings and ability to adjourn where necessary for fair hearing.
20. The Petitioner sought the following reliefs:
  - i. A declaration that the decision made by the 1<sup>st</sup> & 2<sup>nd</sup> Respondent on 24<sup>th</sup> January 2022 and 25<sup>th</sup> January 2022 respectively and delivered to him on 2.2.22 violated Article 47 of the Constitution on fair administrative action, and section 4 of the Fair Administrative Action Act.
  - ii. A declaration that the current status quo remains and the said unreasonable deployment to 2 directorates violated the Petitioner's Right to Human Dignity and Access to Justice as enshrined in Articles 28 and 48 of the Constitution where he has no expertise denying him an upcoming promotion in his department of expertise and seniority.
  - iii. A declaration that the said decision violated Article 27 of the Constitution on equality and freedom from discrimination to the extent that, the Respondent denied the Petitioner the benefit of the rule of law and uniform application of rules



- iv. A declaration that the said decision is unreasonable and disproportionate weighed against its intended consequence of regulating the profession.
  - v. A declaration that the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Respondents acted in bad faith and in abuse of public trust, arising out of their unilateral decision to transfer the Petitioner twice to two different directorates where he has no expertise and denying him an upcoming promotion without giving him an opportunity to be heard in Internal Dispute Resolution Mechanism (IDRM) or explanations. Despite the petitioner trying to engage the Respondents through the IDRM on several occasions.
  - vi. An award of general and aggravated damages in favour of the Petitioner for violation of his fundamental rights by the 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Respondents.
  - vii. Any other relief that the Honourable Court may deem just and fair in the circumstances.
  - viii. An order that the Respondents bears the costs of the Petition.
21. The 2<sup>nd</sup> to 5<sup>th</sup> Respondents opposed the petition through the replying affidavit of Hon. Peter Munya, EGH the then Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Cooperatives in the State Department for Livestock in which it was deposed that it was not true that the Petitioner was unreasonably deployed/transferred in bad faith and that the deployments did not amount to a violation of the Petitioner's constitutional right to fair administrative action.
  22. The Cabinet Secretary deposed that deployment and Designation are not one and the same thing. That while one's designation has an impact on their chances of promotion, deployment is done on the basis of where service is needed and has no impact on one's designation and or chances of promotion.
  23. It was deposed that the Petitioner's previous deployment to the Directorate of Policy, Research and Regulations did not effectively change his designation to that of a Livestock Research and Policy Officer. That he was deployed to that Directorate in his capacity as an Animal Health Officer. The decision to re-deploy him was solely on a service need basis.
  24. The CS explained that the decision to re-deploy the petitioner was not solely targeted at him as suggested. On the contrary, all officers in the department were re-deployment to their substantive departments for purpose of enhancing service delivery. Deployment or posting of officers within the PSC is a normal administrative action undertaken to enhance efficiency in service delivery.
  25. On the allegation that the Petitioner has been deployed to an area in which he has no experience, the CS pointed out that the Petitioner's current substantive appointment is an Animal Health Officer and not a Livestock Research and Policy Officer. The Petitioner's deployment is still in his capacity as an Animal Health Officer.
  26. The CS deposed that the Petitioner's deployment did not threaten or infringe on his fundamental rights and freedoms as alleged. He stated that deployments in the Public service are normal and meant to improve service delivery as citizens in all corners of the country have a right to efficient public service delivery, which is achieved by deployment of officers to where they are needed the most.
  27. On the issue of conflicting deployments and having not been issued with a release letter, the CS stated that the Petitioner ought to have sought clarification with the deploying authorities. That instead, he chose to challenge his deployment. He stated that it was misleading to suggest that the Petitioner will be subjected to disciplinary action for non-compliance before a release letter had been issued to him.



28. The petition was filed together with an application of even date in which the Petitioner sought the following orders:
- i. That this Application be certified urgent and be heard ex parte on the first instance.
  - ii. That leave of the court be granted to the petitioner to move this Honourable court.
  - iii. That the Petition filed herewith be heard expeditiously and on a priority basis within such period as the Honorable Court may direct.
  - iv. That pending the hearing and determination of this Application and Petition, an order be issued, staying the implementation of the verdict by the 2<sup>nd</sup> & 3<sup>rd</sup> Respondent delivered on 24 January 2022 and 25<sup>th</sup> January 2022 which deployed the Petitioner to two different Directorates and that the current status quo to remain.
  - v. The hearing and determination of this Application and Petition, an order be issued restraining the 2<sup>nd</sup> 3<sup>rd</sup> & 4<sup>th</sup> Respondents by themselves or through their agents from taking any adverse action against the Petitioner arising from the impugned verdict dated 24<sup>th</sup> January 2022 and 25<sup>th</sup> January 2022.
  - vi. The costs of this Application be borne by the Respondents.
29. When counsel for the Petitioner appeared before the court on 28<sup>th</sup> March, 2022 for exparte hearing of the application, directions were given that the parties dispose of the petition instead. The court further directed that the parties dispose of the petition by way of written submissions.
30. On 23<sup>rd</sup> May when parties appeared before the court for mention Ms. Wangeci for the 1<sup>st</sup> Respondent requested for time to allow the Public Service Commission, the 1<sup>st</sup> Respondent, to sort out the matter out of court. She informed the court that the Commission had written to the Ministry to explain the circumstances under which two (2) deployment letters were issued to the Petitioner at the same time.
31. On 13<sup>th</sup> October, 2022 when parties again appeared before the Court, Ms. Mwangi for the 2<sup>nd</sup> to 5<sup>th</sup> Respondents informed the Court that they had harmonized their positions with the 1<sup>st</sup> Respondent and had complied with the directions of the Commission. She prayed that the matter be marked as settled with no orders for costs.
32. Mr. Washika for the Petitioner opposed the proposal to mark the matter as settled with no orders as to costs arguing that the Commission had directed that the issue of damages be settled by the court.
33. The court gave the parties more time to discuss the matter and the suit was mentioned severally thereafter. When they appeared before court on 15<sup>th</sup> December, 2022 they informed the court that they had agreed on all issues except costs. Parties were directed to file submissions on the issue of costs.
34. In view of the fact that the issue of costs was between the Petitioner and the 1<sup>st</sup> to 5<sup>th</sup> Respondents only, the 1<sup>st</sup> Respondent did not file any submissions. The Petitioner and 2<sup>nd</sup> to 5<sup>th</sup> Respondents filed their submissions.

### **Petitioner's Submissions**

35. It was submitted for the Petitioner that he had established that the Respondents violated his fundamental rights and freedoms as enshrined in *the Constitution* under Articles 41, 47 and 50.
36. Relying on the decisions in Francis Mwendwa Titus v Kenya Pipeline Company Limited [2019] eKLR and Joseph Nyandiko Nyanchama v Kenya Pipeline Limited [2019] eKLR, the Petitioner submitted



that it was clear that where infringement of constitutional rights is proved the court can exercise its discretion and make the necessary award to remedy the infringement.

37. The Petitioner urged the court to invoke Article 23(3) of *the Constitution* and award the Petitioner the reliefs sought to ensure the values underlying the rights entrenched in *the Constitution* are upheld and enhanced.
38. The Petitioner gave particulars of the losses he had incurred as follows:
- i. Data capture training at Naivasha in month of February for two weeks  $10,500 \times 14 = 147,000$
  - ii. Training of Ward officers across the country from 14 to 25 March 2022 at rate of 10,500 for 12 days  $10,500 = 126,000$
  - iii. Supervision of data collection at Naivasha in month of June two weeks  $10500 \times 14 = 147,000$
  - iv. Report writing at Mombasa in month of August for 21 days  $14000 \times 21 = 294,000$
  - v. Denial of telephone allowance for last financial year airtime allowance last financial year and current fiscal year upto November 2022 at  $17 \times 7000 = 119,000$
  - vi. Loss arising from being omitted in the team food safety committee for bench marking food safety visiting Denmark for six days  $430 \times 125 \times 6 = 322,000$   
SUB- Total= KSH 1,155,000
  - vii. Loss of incremental facilitative allowance should the promotion had been granted
    1. Naivasha activity  $2000 \times 14 = 28000$
    2. Training ward officer  $2000 \times 12 = 24000$
    3. Naivasha  $2000 \times 14 = 28000$
    4. Mombasa  $2800 \times 21 = 58,800$SUB- Total difference for increments= KSH 138 800
  - viii. Loss benefits that should arise if promotion was granted given other staff were promoted during reorganization of structure and implementation of succession management
    1. Loss of salary increment for next 4 years  $(154,000 - 147,210) \times 11 = 74,690$
    2.  $(161,330 - 154,170)$
    3.  $(169,140 - 161,170) \times 12 = 96,640$
    4.  $(182,820 - 169,170) \times 12 = 163,800$
    5. Loss of salary increment for 5 years  $(197,800 - 169,170) \times 5 = 1,717,800$
    6. Loss of increment in house allowances  $(60000 - 55000) \times 12 \times 9 = 540,000$Sub-Total KSH 2, 678 850
  - ix. Loss increments of monthly emoluments periodic or one-off amount that is payable to public officers over and above basic salary for next 9 years.
  - x. Loss upper incidental duty allowances for next 9 years allowable for 21 days for 12 months  $2800 \times 21 \times 12 \times 9 = 6,350,400$



- xi. Loss of salary incremental Commuter Allowance:
- xii. Loss increment accruing from of telephone allowances
- xiii. Losses emanating from filing and briefing legal team
  - Transport cost weekly travel 5000x4 x8= 160,000
  - Printing services 5000x8 40,000
  - Photocopying services 6000x8= 48,000
  - Legal Services— Ksh. 3,500,000
  - Sum Total cost calculated from lost opportunities = 14,571.050
- xiv. Suffer undignified environment Loss of respect, discrimination unfair administrative action and distress and psychological torment award to be determined by the court-But may range to 8,000,000
- xv. Failure to respond to alternative Internal Dispute Resolution Mechanisms (IDRM) to my appeal letters.
- xvi. Being forced out of meeting which was convened and he was invited by the 4 Respondent.
- xvii. Discriminatory action by 3<sup>rd</sup> Respondent recommending for promotion and re-designation of six members of staff and then left the Petitioner out of the list without any justification at the Directorate of Livestock Policy by Public Service Commission (PSC) in the period from September to October 2022.
- xviii. Selective application of Public Service Human Resource Policies and Procedures provided for in the Human Resource Policies and Procedures Manual for the Public Service May 2016 where in his letter to the 3<sup>rd</sup> Respondent, he disallows recommendation for promotion and re-designation citing deployment status for which as well contradicts the position of authorized officer (2<sup>nd</sup> Respondents ' Replying affidavit no. 7)
- xix. Unfair treatment and consideration given erroneous position that the Petitioner was promoted on 23<sup>rd</sup> January 2022 which is not true and the same date is among basis to deny him a promotion. Further they go ahead and effect promotions by non-competitive mechanisms and the tell Petitioner that vacant positions shall be filled on competitive basis.
- xx. Unfair administrative action by fourth respondent by not sharing a memo he written for interventions on deployments
- xxi. Eroded dignity from colleagues and professional colleagues arising from misplacement in directorate of agriculture which was not o of my establishment and qualification
- xxii. Decline by the fourth respondent to issue formal assignment
- xxiii. Decline to by fourth respondent to appraise as per requirement by head of department
- xxiv. Denying qualified appraisal which is an annual requirement
- xxv. Denial access to training projection and thereafter service course approval
- xxvi. Denial of access to office materials stationery and associated amenities
- xxvii. Black listing in all internal communication through instruction of fourth respondent



- xxviii. Failure to comply with court instructions
39. The Petitioner urged the court to find that the Respondents had failed to issue reasonable notice of transfer to the Petitioner, that there were no prior consultations and that the changes made to the Petitioner's terms and conditions of employment with the relocation of work station was arbitrary and contrary to section 10 of the Employment Act relying on the decision in *Githunguri v Republic* [1986] eKLR where the court stated:
- “...That official undertaking given officially must be honoured and members of the society are entitled to an orderly and tranquil life and not be subjected to vicissitudes of law especially when there have been no subsequent fresh events to justify it.”
40. For the 2<sup>nd</sup> to 5<sup>th</sup> Respondents it was submitted that the issues in this petition were settled by the Public Service Commission as per report filed in court on 31<sup>st</sup> May, 2022 as reported to court by Counsel for the 1<sup>st</sup> Respondent on 22<sup>nd</sup> September, 2022 to the effect that:
- a. The Petitioner to be deployed in his current position as Deputy Director Animal Health in line with his skills and designation;
  - b. Redeployment be undertaken in accordance with the directive of the Commission on determination of optimal staffing levels as communicated vide letter Ref: PSC/EMCS/15/2/(8); and
  - c. Any future deployment be undertaken on recommendation of the Ministerial Human Resource Advisory Committee.
41. It is submitted that the court advised that the decision of the Commission was final on the matter and directed the other Respondents to harmonize their positions to the Commissions and comply with the directive of the Commission.
42. It is submitted that when the matter was mentioned on 13<sup>th</sup> October, 2022 the Respondents reported that they had harmonized their positions with the Public Service Commission and had complied with the directives of the Commission. That the court issued directions that parties agree on costs.
43. It is submitted that the Petitioner did not report to any of the positions in the letters of redeployment and only reported to the Directorate of Veterinary Services after the decision of the Public Service Commission.
44. The 2<sup>nd</sup> to 5<sup>th</sup> Respondents submitted that the Petitioner is not entitled to any of the reliefs sought in his petition. That the claim for allowances that the Petitioner purports to have drawn from the development of the Livestock Masterplan are reimbursable allowances and only payable when an officer has been sent on official duty. That the allowances are not fixed income. That the petitioner was on full salary and never lost any income.
45. On the claim for loss of benefits that arose when promotions were granted to other staff during reorganization of the structure and implementation of succession management the 2<sup>nd</sup> to 5<sup>th</sup> Respondents submitted that the State Department does not have the mandate to promote officers at the Petitioner's level.
46. The 2<sup>nd</sup> to 5<sup>th</sup> Respondents further submitted that they wrote to the 1<sup>st</sup> Respondent, the Public Service Commission recommending the promotion of the Petitioner as per request of 4<sup>th</sup> February, 2021 forwarding the Appeals list for officers who were left out after a succession management exercise in the State Department.



47. On costs the 2<sup>nd</sup> to 5<sup>th</sup> Respondents submitted that this court has unfettered discretion which must be exercised judiciously. That in this case the Petitioner does not merit award of costs considering his conduct before and during the proceedings which remained adversarial against his employer while he continued drawing salary, relying on the decision in *Orix Oil (Kenya) Limited v Paul Kabeu and 2 Others*.
48. On the Claim for unfair treatment the Respondents submitted that the Petitioner did not prove that he was unfairly treated.
49. The Respondents further submitted that there was no malice in the deployment of the Petitioner which was done based on the re-assignment of the policy and legislative functions of the Ministry to the Agriculture Transformation Office (ATO) vide letter dated 24<sup>th</sup> January, 2022.
50. The Respondents submitted that the deployment was not based on any improper motive and was done administratively, that the Petitioner who works in the civil service is liable to be transferred to work in any station within the republic.

### **Determination**

51. I have considered the pleadings and evidence on record. I have further considered the submissions of the parties and all the authorities cited.
52. The court notes that when the Petitioner came to court his complaint was that he had received two letters dated 24<sup>th</sup> and 25<sup>th</sup> January, 2022, transferring him to two different departments. The letter dated 24<sup>th</sup> January 2022 deployed the Petitioner to the Directorate of Agricultural Research while the letter dated 24<sup>th</sup> January, 2022 deployed him to the Directorate of Veterinary Services. Both letters were effective with immediate effect. Both were delivered to him on 2<sup>nd</sup> February, 2022.
53. According to the Petitioner, the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents had declined to clarify to him which of the deployments he should report to. According to the Petitioner, he was afraid that he risked disciplinary action because he had not been given a release letter from his then supervisor. His other concern was that reporting to the two different directorates would deny him a chance of promotion by succession management where there were 4 open vacancies that he qualified for.
54. From the affidavit in support of the petition I gather that the Petitioner had written a letter of appeal dated 4<sup>th</sup> February, 2022 to the Principal Secretary, State Department of Livestock, requesting that the deployments be set aside so that he could continue serving in the department where he was deployed at the Directorate of Policy, Research and Regulations.
55. The Claimant wrote another letter dated 8<sup>th</sup> February, 2022 to the Secretary/CEO Public Service Commission, seeking guidance on the two deployments.
56. The Petition herein was filed on 10<sup>th</sup> March, 2022, just over one month from the date of the Appeal to the Public Service Commission.
57. From the evidence on court record, there is no indication that either before or after the Petitioner wrote the appeals, he was threatened with any disciplinary action for not complying with the redeployment letters.
58. The Petitioner further stated that he had not received a release letter from his immediate supervisor, which would facilitate his movement from his current deployment.



59. When the Public Service Commission, the 1<sup>st</sup> Respondent herein, attended court for the very first time on 23<sup>rd</sup> May, 2022, Ms. Wangeci who appeared on its behalf informed the court that the Public Service Commission had already written to the Ministry to explain the two deployments. She informed the court that the Public Service Commission would come up with a decision in 14 days.
60. When the parties appeared in court on 13<sup>th</sup> October, 2022 Ms. Mwangi for the 2<sup>nd</sup>, 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> Respondents informed the court that the issue had been settled according to the directions of the Public Service Commission. The court therefore directed the parties to go and discuss settlement.
61. The parties were unable to agree and the court directed them to file submissions on the outstanding issues.
62. Having considered the facts and the submissions as summarised above, it is my view that the issues for determination are whether the Petitioner's constitutional rights were infringed or threatened by the two concurrent redeployment letters and whether he is entitled to the damages sought in the petition and costs.
63. As stated above, the Petitioner approached this court about a month from the date of his appeal against the deployments in the two letters that he received on 2<sup>nd</sup> February, 2022. It is my view that the suit was rushed as a delay of one month to respond to his appeals was not unreasonable. It is my view that the best course of action would have been for the Petitioner to send reminders on his appeals before moving to court. This is especially so as there was no hurry, the Petitioner having not received release letters from his immediate supervisor.
64. On the specific prayers, I do not find proof of breach of any fundamental rights of the Petitioner. I do not see how receiving two letters of deployment from an employee's superiors would constitute violations of the employee's constitutional rights. What I find is administrative errors that would have been easily resolved had the Petitioner been patient.
65. Section 60, 61 and 62 of the Public Service Act mandates the Public Service Commission to investigate such matters and resolve them administratively. Section 60 provides:
60. Investigation
- The Commission may, upon a complaint or on its own motion, investigate the organization, administration and personnel practices of the public service.
66. Section 61 provides:
61. Reporting and use of findings
- Upon investigation, monitoring and evaluation under this Part, the Commission shall communicate its findings to the respective authorised officer, public body or office, and where necessary, take appropriate action.
67. Section 62 further provides:
62. Promotion of efficiency and effectiveness of the public service
- (1) The Commission shall promote efficiency and effectiveness of the public service by—
- (a) setting standards in service delivery for evaluating performance in the public service;



- (b) evaluating the organization and core functions of public bodies with respect to human resources, internal processes, citizens' satisfaction and recommending measures for improved performance;
- (c) setting the performance contract guidelines in the public service and ensuring compliance with the Commission's set standards;
- (d) providing guidelines on performance appraisal systems for public bodies and the individual public officers;
- (e) evaluating performance agreements between the government and public bodies or individual public officers; and
- (f) investigating and making recommendations to the authorized officer on its own motion or upon receipt of a complaint on inefficiency and ineffectiveness of service delivery in public bodies including general practices that lead to inefficiency in the public service; and reported breach of any law, code of conduct or values and principles of governance and public service; or making recommendations to the respective authorised officer, public body or office for improved efficiency and effectiveness of the public service.

(2) The Commission may impose sanctions and make recommendations to the President on any penalty to be imposed on an authorized officer who does not ensure efficiency and effectiveness of a public body. [Emphasis added]

68. It is my view that the Petitioner having reported to the Public Service Commission, should have given the Commission sufficient time to investigate and resolve the issues about his double redeployment to different departments within the Ministry.
69. On the prayers for damages, having found that the Petitioner has not proved any breach of his rights under *the Constitution*, he is not entitled to any damages.
70. In the end, I find no merit in the petition. The same is accordingly dismissed. There shall be no orders for costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5<sup>TH</sup> DAY OF DECEMBER 2024**

**MAUREEN ONYANGO**

**JUDGE**

