



**Njuki v Independent Electoral and Boundaries Commission (Constitutional
Petition E021 of 2023) [2023] KEELRC 2026 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2026 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CONSTITUTIONAL PETITION E021 OF 2023**

B ONGAYA, J

AUGUST 4, 2023

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE
CONSTITUTION IN ARTICLES 2, 3 AND 10 OF THE
CONSTITUTION OF KENYA
IN THE ALLEGED CONTRAVENTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS IN ARTICLES 20, 21, 27, 28,
33(3), 35, 28, 41, 43 & 47, 88(5), 232(1)(E), (I) & (2), 236, 249(1)(C)
& 250(1) OF THE CONSTITUTION OF KENYA 2010
IN THE MATTER OF THE EMPLOYMENT ACT, 2007
IN THE MATTER OF THE FAIR ADMINISTRATIVE
ACTION ACT, 2015
IN THE MATTER OF THE INDEPENDENT ELECTORAL
AND BOUNDARIES COMMISSION ACT, 2011**

BETWEEN

HANSON MUGO NJUKI PETITIONER

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION RESPONDENT**

JUDGMENT

1. The petitioner filed the petition dated 03.02.2023 through M/S Muma & Kanjama Advocates. The petitioner prayed for:



- a. A declaration that the respondent can only formally communicate a decision of the Commission when it is lawfully constituted and any purported decision communicated during the absence of the Commissioners is unconstitutional null and void.
 - b. A declaration that in a disciplinary hearing the employee is entitled to have evidence presented to the disciplinary panel in the employee's presence or in advance and for the employee to be given ample opportunity to reply.
 - c. A declaration that the purported disciplinary process that the petitioner underwent was unlawful, unconstitutional, null and void and violated the petitioner's right to fair labour practices.
 - d. A declaration that an unreasonable delay in commencing a disciplinary hearing after issue a show-cause letter is unconstitutional and that the eighteen (18) months delay affecting the petitioner herein rendered the purported disciplinary hearing of 03.01.2023 and all subsequent actions unconstitutional, null and void.
 - e. An order of certiorari quashing the decision by the respondent as captured in the dismissal letter dated 19.01.2023.
 - f. An order of mandamus compelling the respondent to reinstate the petitioner to gainful employment.
 - g. An order that the respondent pays compensation to the petitioner herein for unlawful and unconstitutional disciplinary proceedings equivalent to twelve (12) months gross pay, namely Kshs.1,773,528.00.
 - h. A conservatory order restraining the respondent, its agents, servants or any other person acting for and or on their behalf from taking any disciplinary action against the applicant or interfering with his employment in any manner whatsoever including retaliation, reprisal or victimization on account of filing this petition.
 - i. An order for general and aggravated damages for breach of constitutional rights including the right to fair administrative action, right to human dignity and self-worth and unfair discrimination on the grounds of age and ethnicity.
 - j. An order for general and aggravated damages for injury to reputation and discrimination.
 - k. An order for interest on prayers g, i and j herein at court rates.
 - l. That the costs of this petition be borne by the respondent.
2. The petition was based upon the petitioner's supporting affidavit and exhibits thereto filed together with the petition and further affidavit sworn on 20.02.2023. The petitioner's case is as follows:
- a. He was employed by the respondent on 14.01.2010 as a constituency election coordinator and was initially posted to Siakago constituency.
 - b. That he received a letter dated 06.08.2021 regarding a tender awarded in August of 2017, to a company affiliated to him. He responded on 18.08.2021 and sought to be excused since he would never compromise on his duties and obligations towards the respondent.
 - c. In the build up to the August, 2017 general election, together with other officials of the respondent, he was involved in an accident that affected the state of his mind and in effect he forgot to formally communicate the details of the alleged conflict of interest.



- d. That the affiliate company that won the tender had not paid income taxes due to an oversight on the petitioner's part and he cleared with the Kenya Revenue Authority as soon as he could.
- e. That by a letter dated 06.12.2021 the respondent re-designated the petitioner to the position of senior elections officer.
- f. That he has diligently and effectively performed his duties and due to his excellence, he has always received an outstanding rating on appraisals. On 22.03.2022 he was transferred and appointed as the returning officer for Embakasi South constituency.
- g. On 23.12.2022 he received a notice to appear before the Commission's disciplinary committee on 03.01.2023. That the disciplinary proceedings came as a surprise to the petitioner, because all along he had been diligently performing his duties as evidenced by his high-performance scores and consistently reported to work on time and had not received any verbal or written warning from his supervisor regarding his performance.
- h. That he appeared before the Commission's disciplinary committee which contrary to the Independent Electoral and Boundaries Commission Human Resource and Administration Manual (Policies and Procedures) 2020 was comprised of two commissioners and the director, human resource and administration and was rushed through the process within a record five (5) minutes.
- i. That the Independent Electoral and Boundaries Commission Human Resource and Administration Manual (Policies and Procedures) 2020 states that the Commission's disciplinary committee shall be comprised of the members of the commission and the director human resource and administration.
- j. That on the said hearing date, one of the three remaining commissioners of the respondent, that is Professor Abdi Guliye was in Elgeyo Marakwet County conducting the Senatorial by-election and therefore, the respondent could not have been properly constituted.
- k. That at the hearing he was not given opportunity to present his case fully.
- l. That on 19.01.2023 he received a dismissal letter which cited non-compliance of tax obligations as one of the reasons for the petitioner's dismissal, a reason that the petitioner cites as not having been communicated to him prior to the disciplinary hearing.
- m. The letter stated that the respondent had its 284th plenary meeting and resolved on 06.01.2023 to dismiss him from employment.
- n. That the respondent's commissioner Professor Abdi Guliye issued a press statement on 06.01.2023 and declared that the Senatorial by-election in Elgeyo-Marakwet, where he issued the statement from, was his last official assignment with the respondent.
- o. That the disciplinary committee at the 284th plenary could not have been properly constituted as required by section 12.5.3 of the respondent's Human Resource and Administration Manual (Policies and Procedures) 2020.
- p. That the tenure of the respondent's commissioners expired on 17.01.2023 whereas the decision to dismiss him was communicated to him on 19.01.2023.
- q. That on 03.01.2023 there were around 15 disciplinary sessions that were scheduled for that day, involving different employees and before the same disciplinary committee.



- r. That his dismissal was not conducted in accordance with the procedure set out in the independent electoral and boundaries commission Human Resource and Administration Manual (Policies and Procedures) 2020.
 - s. That there were about seven officials of the respondent from North Eastern who had been suspended by the respondent after the audit firm KPMG conducted an audit report on the infamous illegal voter migration that happened sometime in June 2022. That the process of reinstating the officials happened concurrently with the disciplinary proceedings as employees of the respondent whose disciplinary matters had been unfairly processed were being terminated.
 - t. That it is the petitioner's belief that the disciplinary proceedings against him were predetermined and that he was unfairly discriminated by the respondent on the grounds of age and ethnicity despite diligently working for the respondent for thirteen years.
 - u. It is his case that his dismissal from employment was an afterthought since it was anchored on a stale ground and a flawed process. That the internal appeal mechanism provided in the manual is inapplicable of being invoked by the petitioner since the commissioners' term with the respondent expired and the respondent is yet to be reconstituted and he will likely not get any relief.
3. The respondent filed the replying affidavit sworn on 13.02.2023 of Christine Owiye, the Director Legal and Public Affairs and through Garane & Somane Advocates. It was stated and urged as follows:
- a. That the petitioner violated the doctrine of exhaustion of internal dispute resolution mechanisms set out under section 12.14 and 12.15 of the respondent's human resource manual.
 - b. The respondent exercises disciplinary powers through its disciplinary committee which comprises of members of the commission and the director, human resource and administration. The committee is currently well constituted in accordance with section 12.5.3 of the respondent's HRA manual as there is an existing member of the Commission and a director, human resource and administration. The internal appeal mechanism is applicable and the petitioner should be compelled to pursue it before approaching the court.
 - c. That the respondent's disciplinary action taken against the petitioner and the decision to terminate his employment is not illegal, ultra vires or in breach of constitutional principles as alleged by the petitioner.
 - d. The petitioner's dismissal from his employment was triggered by the commission's receipt of a letter from the Kenya Revenue Authority Northern Region ref. no. P05156871Q dated 02.03.2021 with concerns that the commission was engaged in business with a company known as Bremen limited and that the company owed tax amounting to Kshs.3,140,507 to the agency.
 - e. The agency notice noted that the petitioner and his spouse were mentioned as the directors of the Bremen Ltd. That the respondent discovered that Bremen Ltd had provided catering services in Githunguri constituency during the August, 2017 general elections.
 - f. That the petitioner was appointed to the tender opening committee and participated in the process without declaring conflict of interest in disregard to section 11.5.3 of the respondent's Human Resource Manual and section 66(5)(a) of the Public Procurement and Assets Disposal Act (PPADA) 2015 which states that an employee or an agent of the procuring entity who



has a conflict of interest with respect to a procurement, shall not take part in procurement proceedings.

- g. That as a consequence, the petitioner was served with a show-cause letter dated 06.08.2021 requiring him to show cause why the respondent should not proceed with disciplinary action against him. That the said notice to show-cause specified with sufficient clarity the disciplinary offences alleged against the petitioner, including the tax non-compliance offence.
 - h. The petitioner replied to the respondent's show cause letter via letter dated 18.08.2021 where the petitioner admitted that indeed he was the director of Bremen Ltd and further acknowledged his failure to disclose the conflict of interest. That the petitioner failed to give sufficient reasons for the allegations against him in the said response. The respondent being dissatisfied with the petitioner's response, the matter was referred to the relevant disciplinary committee for appropriate action as provided in section 12.11.1(iv) of the respondent's Human Resource Manual. The petitioner was furnished with a notice dated 23.12.2022 to appear before the Commission's disciplinary committee on Tuesday, 03.01.2023.
 - i. The disciplinary hearing took place on 03.01.2023 and the respondent in its 284th disciplinary plenary meeting of 06.01.2023 further deliberated on the case and resolved to terminate the employment of the petitioner.
 - j. That there was quorum during the meeting held on 06.01.2023 and thus the meeting was valid.
 - k. The respondent's decision to terminate the petitioner was communicated vide a dismissal letter dated 19.01.2023. That the delay in conducting the disciplinary hearing after receiving response to the show-cause letter dated 06.08.2021 is explainable, excusable and justifiable since the respondent had a very busy schedule preparing for and conducting the 2022 general election of the Republic of Kenya.
 - l. That the respondent has the discretion to resolve exceptional cases due to their nature and complexity for a period of one (1) year pursuant to section 12.1.4 as read together with section 12.1.6 of the Commission's Human Resource Manual.
4. Final submissions were filed for the parties. The Court has considered all the material on record. The Court returns as follows.
 5. The 1st issue for determination is whether the petition should fail because the petitioner has not exhausted the internal respondent's appeal procedure. That issue was resolved in the ruling delivered by the Court on 10.03.2023 in favour of the petitioner and the Court will not revisit the same issue as it is settled accordingly.
 6. The 2nd issue is whether the dismissal was in accordance with fair procedure that was lawful, reasonable and fair. It is submitted for the petitioner as follows that the procedure leading to the dismissal was unfair as follows. The letter to show cause was dated 06.08.2021. it alleged conflict of interest in view that the Kenya Revenue Authority (KRA) Northern region had written on 2.03.2021 with concerns that the Commission was engaged in business with a company known as Bremen Limited and that the company owed tax amounting to Kshs.3, 140, 507.00 to KRA. Further, the petitioner and his spouse one Rahab Nyambura Kamau were the registered directors of Bremen Limited and the company had provided catering services in Githunguri Constituency during the August 2017 General Elections – amounting to conflict of interest under section 66(8) (a) and (b) and 11(a) of the Public Procurement and Assets Disposal Act (PPADA), 2015. The allegation was that the petitioner was conflicted because he had been appointed on the tender opening committee and participated in the process without declaring the conflict of interest as per section 66(5) (a) of the PPADA, 2015. The petitioner was



invited to reply within 14 days as it had been contemplated that disciplinary action be taken against him. The petitioner responded by his letter dated 18.08.2021 and stated as follows. It was true that KRA addressed to the respondent letters dated 02.03.2021 under agency notice and dated 08.03.2021 suspending agency contents therein. It was also true that the petitioner was associated with Bremen Limited which had successfully bid for and provided catering services to the Commission during the August 2017 elections. The failure to remit tax per the agency notice was an oversight swiftly resolved per the letter lifting the agency notice. He expressed his sincere regrets to the Commission as it was an oversight and not a deliberate act to contravene the laws and the HR policies. That he had learned his mistakes and the same would not be repeated. He further wrote thus, “On the issue of conflict of interest, I would humbly wish to confirm to your office that I did not disclose the conflict of interest due to the intensely busy schedules and pressure I had in the run up to the general elections, nominations petitions and other logistical issues although it was my obligation to declare any interest as per Commissions code of conduct and other provisions. In retrospect, it is clearly a bad call on my end that I greatly regret. This was not a good practice on my part towards the commission and I wish to plead to your good office at laege to drop any disciplinary case against me because I do promise deep in my heart, it will not happen again. Lastly, I wish to reiterate my commitment to serve the Commission with utmost dedication, integrity, professionalism to the best of my ability which have done in the past and endeavour to continue serving the Commission at all times. I have stood by the Commission through its ups and down by being a good ambassador. It is my prayer that the Commission finds leniency in this case.” That was on 18.08.2021. The respondent’s Chief Executive Officer wrote on 06.12.2021 conveying the respondent’s reviewed organisation structure under which the job title of Constituency Election Coordinator was changed to Senior Elections Officer with immediate effect so that, the petitioner was re-designated accordingly. The letter concluded, “Your commitment to the Commission’s service is highly appreciated.” The petitioner received a certificate of appreciation signed by the respondent’s Chief Executive Officer Marjan H. Marjan and Chairperson W.W. Chebukati, Chairperson in recognition of the petitioner’s outstanding leadership, diligence and dedication in conducting a successful 2022 General Election as a Returning Officer of Embakasi South Constituency. The petitioner had been transferred to the Embakasi South Constituency by the letter dated 22.03.2022. It is by the letter dated 23.12.2022 that petitioner was invited to attend the Commission Disciplinary Committee on Tuesday 03.01.2023 and in reference to the show cause letter dated 06.08.2021 and the petitioner’s response dated 18.08.2021 – a period of over a year during which the petitioner had been complimented as outstanding in his service delivery. The Chief Executive’s letter dated 19.01.2023 conveyed that the Commission at its 284th meeting of 06.01.2023 had decided to dismiss the petitioner with immediate effect noting that the involved conflict of interest and tax evasion offences are gross and undermined the respondent’s core values.

7. As submitted for the petitioner the Court returns that there was unreasonable delay in instituting the disciplinary proceedings and the same was done without justifiable cause contrary to section 12.1.4 of the respondent’s Manual which required such proceedings to be concluded within six months whereas the petitioner was summoned to a disciplinary hearing after 18 months. The Court has noted section 12.1.3 of the Manual which states discipline cases shall be dealt with reasonably, efficiently, effectively, expeditiously, lawfully and in a procedurally fair manner. Section 12.1.4 thereof states all disciplinary cases should be concluded in six (6) months within which investigations should be concluded and disciplinary action determined. Further, section 12.1.5 of the manual states that in exceptional circumstances some disciplinary cases may exceed the six months (6) due to nature and complexity of the case. In the instant case the respondent has not urged and submitted upon such exceptional circumstances. Article 50 (1) of *the Constitution* provides that Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. Article 50 (2) (e)



provides every accused person has the right to a fair trial, which includes the right to have the trial begin and conclude without unreasonable delay. In the instant case, the Court returns that the respondent took inordinate and unexplained delay to conclude the disciplinary case. Article 25 provides that despite any other provision in *the Constitution* the following rights and freedoms shall not be limited, thus, “(c) the right to a fair trial”. Further, while returning that the disciplinary procedure in the instant case was continued unfairly, the Court has been guided by the Supreme Court holding in Gladys Boss shollei –Versus- Judicial Service Commission & Another Petition No. 34 of 2014 [2022]KESC5(KLR) (17 February 2022) (Judgment) (Kooame CJ &P, Mwilu DCJ, &V-P, Ibrahim, NSNdungu, & W Ouko, SCJJ), inter alia,

- “ 19. Article 50(1) of *the Constitution* referred to the right to a fair hearing for all persons, while article 50(2) accorded all accused persons the right to a fair trial. Article 25(c) of *the Constitution* listed the right to a fair trial as a non-derogable fundamental right and freedom that could not be limited. Often the terms fair hearing and fair trial were used interchangeably, sometimes to define the same concept, and other times to connote a minor difference.
 20. Although the right to a fair trial was encompassed in the right to a fair hearing in *the Constitution*, a literal construction of article 50(1) and 50(2) of *the Constitution* could be misconstrued in some quarters to mean that article 50(1) dealt with the right to fair hearing in any disputes including those of a civil, criminal or quasi criminal nature whereas article 50(2) was limited to accused persons thereby arguing that the protection of such right only related to criminal matters. That was not an acceptable interpretation or construction within the parameters of articles 19 and 20 of *the Constitution* on the Bill of Rights, which called for an expansive and inclusive construction to give a right its full effect.” The Court is guided accordingly and returns that the respondent breached its own internal procedures and the same is a manifestation of the violation of the cited constitutional provisions on the right to fair hearing.
8. The Court in finding that the procedure was unfair has as well considered the respondent’s failure to respond to the petitioner’s notice to produce relevant documents per the notice to make discovery on oath filed for the petitioner and dated 23.03.2023. The Court notes that in particular the respondent failed to provide the minutes of the disciplinary proceedings attended by the petitioner on 03.01.2023; notes of the disciplinary committee noted at the meeting of 03.01.2023; minutes of the respondent’s 284th plenary meeting held on 06.01.2023 when the decision to dismiss the petitioner is said to have been made; list of all disciplinary actions taken on 03.01.2023; confirmation on whether the 284th plenary meeting of 06.01.2023 was virtual or physical and whether the Commissioners at the time were in attendance; and the special audit report mentioned in the dismissal letter dated 19.01.2023 that gave rise to the show cause letter dated 06.08.2021. As submitted for the petitioner, Article 250(1) of *the Constitution* provides that the respondent is composed of at least three but not more than nine members. Section 5(1) of the Independent Electoral and Boundaries Commission (IEBC) Act provides, the Commission consists of a chairperson and six other members appointed in accordance with Article 250(4) of *the Constitution* and the provisions of the Act. Further, paragraph 5 of the second schedule of the IEBC Act provides that the quorum for the conduct of business at a meeting of the Commission shall be at least half of the existing members of the Commission, provided that the quorum shall not be less than three members. Section 12.5.1 of the respondent’s Manual provides that the Commission Disciplinary Committee shall handle cases involving officers in IEBC Grades 1 to 4



and 5 (CECs only). There is no dispute that the claimant was in Grade 5. Section 12.5.3 provides that membership to the Commission Disciplinary Committee shall comprise members of the Commission and the Secretary shall be the Director, Human Resource and Administration. Section 12.3.1 of the Manual states that the power to exercise disciplinary control and removal of employees are vested in the Commission which shall exercise disciplinary powers through its Disciplinary Committee. The Court finds that the respondent having failed to produce the documents upon service of the notice for discovery under oath, on a balance of probability, the petitioner has established that the purported decisions particularly by the Committee on 03.01.2023 and allegedly by the Commission at its 284th plenary meeting of 06.01.2023 were ultra vires for want of quorum and due exercise of the Committee or Commission discretion and mind. The Court finds that the respondent has as well failed by relevant evidence to unsettle the petitioner's account that on those two dates, there was no due quorum of the Commission as purported for the respondent. It was unfair process in breach of the respondent's own Manual.

9. The Court has also considered the conduct of the respondent namely, after the petitioner replied the letter to show cause, it all went silent for over 18 months within which the petitioner was redesignated, transferred and thanked by way of a certificate of service for his outstanding performance. The 6 months for determining the disciplinary case had in the meantime lapsed with plus over a period of a year lapsing. The Court considers that by that conduct the respondent must be taken to have waived the pursuit of the disciplinary process or indeed accepted the petitioner's remorsefulness in that regard as communicated in his response to the letter to show cause. The respondent must indeed be bound accordingly because it cannot be that the respondent received the petitioner's response to the letter to show cause within time, the petitioner was remorseful and promised to not to repeat the mistake otherwise having a clean record of service, the respondent issued appreciation certificate of petitioner's outstanding service. The time to conclude the disciplinary action had long lapsed, the petitioner was re-designated and transferred and, the respondent still be considered to have retained the competence and intention to continue and conclude the disciplinary process. The respondent's conduct must be taken to have implied abandonment to continue and conclude the disciplinary process in that regard as was purportedly done. The Court deems the respondent, by reason of the established conduct, to have waived the claim to continue and conclude the disciplinary process that had otherwise been commenced by the letter to show cause in the instant petition.
10. While returning that the procedure was unfair, the Court has already considered that while the petitioner was remorseful for the turn of events, the failure to declare the interest was due to pressure of work and that the failure to remit the tax had been due to an oversight on the company he was associated with. He invoked his otherwise clean record of service. The respondent has not rebutted any of the petitioner's explanations. Indeed, the taxes were remitted by the company and while the petitioner did not declare his conflicting interest it turned out that the respondent did not disclose or urge loss in that regard. It is that employees will avoid conflict of interest or declare it with the goal of protecting the employer's interest. In the instant case the respondent has failed to show how failure by the petitioner to declare the conflicting interest may have adversely affected the respondent following the conclusion of the transaction in issue. Upon consideration of proportionality, the un rebutted petitioner's explanation and remorsefulness, and the respondent's established implied waiver, the Court returns that the impugned ensuing dismissal was clearly excessive and unjustified in the circumstances of the case.
11. To answer the 3rd issue for determination, the Court returns that the petitioner has not established the alleged discrimination on account of age and ethnicity. It is submitted that on 03.01.2023 the Disciplinary Committee handled cases with some officers being dismissed like the petitioner had been dismissed. However, it is further urged that seven employees who had been on suspension after being



implicated in the infamous illegal voter migration sometimes in June 2022 were reinstated on account that they came from the North Eastern Region where two of the Commissioners hailed from. The Court returns that it has not been shown that the reinstated officers indeed belonged to same ethnicity as the alleged Commissioners and were of different ethnicity from that of the petitioner. The facts about that petitioner's allegation of discrimination remain at large and the Court will not delve into the issue any further for want of due particulars and sufficient evidence in that regard.

12. The 4th issue is on remedies. The Court returns as follows:

- a) The petitioner prayed for a declaration that the respondent can only formally communicate a decision of the Commission when it is lawfully constituted and any purported decision communicated during the absence of the Commissioners is unconstitutional null and void. The Court has found that the material before the Court have failed to show that the respondent exercised due disciplinary control in the instant case. There is no material evidence that the Disciplinary Committee and then the Commission indeed made the impugned decision. The order will therefore issue as prayed for.
- b) The petitioner prayed for a declaration that in a disciplinary hearing the employee is entitled to have evidence presented to the disciplinary panel in the employee's presence or in advance and for the employee to be given ample opportunity to reply. While the declaration as sought is correct, in the instant case it would appear that the same was complied with and it would be superfluous to issue the declaration.
- c) The petitioner prayed for a declaration that the purported disciplinary process that the petitioner underwent was unlawful, unconstitutional, null and void and violated the petitioner's right to fair labour practices. The Court has already found as much and the declaration will issue accordingly.
- d) The petitioner prayed for declaration that an unreasonable delay in commencing a disciplinary hearing after issue a show-cause letter is unconstitutional and that the eighteen (18) months delay affecting the petitioner herein rendered the purported disciplinary hearing of 03.01.2023 and all subsequent actions unconstitutional, null and void. The Court has already found as much and the declaration will issue as prayed for.
- e) The petitioner prayed for order of certiorari quashing the decision by the respondent as captured in the dismissal letter dated 19.01.2023. The decision has been found unfair and unlawful and certiorari will issue accordingly.
- f) The petitioner prayed for an order of mandamus compelling the respondent to reinstate the petitioner to gainful employment. The Court finds that the order will issue especially that the dismissal decision is liable to quashing. In consideration of practicability for reinstatement per section 49 (4) of the [Employment Act, 2007](#) it is submitted for the respondent that the relationship between the parties has broken down. However, the Court has already found that position as untrue especially that long after the initiation of the disciplinary process and the petitioner respondent, the parties continued in a harmonious employment relationship marked with the petitioner's outstanding performance and re-designation. Further, it is not said that the position held by the petitioner has since been filled by another person. The petitioner is no doubt an outstanding employee with an otherwise clean record and he has since served within the terms of remorsefulness as he thereafter served with integrity. The Court finds that there is no established bar to operate as a bar to reinstatement.



- g) The petitioner prayed for order that the respondent pays compensation to the petitioner herein for unlawful and unconstitutional disciplinary proceedings equivalent to twelve (12) months gross pay, namely Kshs.1,773,528.00. The Court considers that an order for reinstatement with full back payment and benefits is a sufficient remedy in the instant case.
- h) The petitioner prayed for a conservatory order restraining the respondent, its agents, servants or any other person acting for and or on their behalf from taking any disciplinary action against the applicant or interfering with his employment in any manner whatsoever including retaliation, reprisal or victimization on account of filing this petition. The Court returns that the prayer is justified to the extent that no disciplinary action would issue and be continued on account of the matters leading to the impugned dismissal herein.
- i) The petitioner prayed for an order for general and aggravated damages for breach of constitutional rights including the right to fair administrative action, right to human dignity and self-worth and unfair discrimination on the grounds of age and ethnicity. The Court has found that there was no established discrimination. The Court has also considered that any constitutional breaches have been sufficiently remedied by an order of reinstatement which places the petitioner in a position as though he had not been dismissed at all as far as back payment will issue. Upon the same justification the Court will decline an order for general and aggravated damages for injury to reputation and discrimination.
- k) The Petitioner will get costs of the petition.

13. In conclusion judgment is hereby entered for the petitioner against the respondent for:

1. The declaration that the respondent can only formally communicate a decision of the Commission when it is lawfully constituted and any purported decision communicated during the absence of the Commissioners is unconstitutional null and void.
2. The declaration that the purported disciplinary process that the petitioner underwent was unlawful, unconstitutional, null and void and violated the petitioner's right to fair labour practices.
3. The declaration that an unreasonable delay in commencing the disciplinary hearing herein after the issuance of the show-cause letter was unconstitutional and that the eighteen (18) months delay affecting the petitioner herein rendered the purported disciplinary hearing of 03.01.2023 and all subsequent actions unconstitutional, null and void.
4. The judicial review order of certiorari hereby issued quashing the decision by the respondent as captured in the dismissal letter dated 19.01.2023.
5. The judicial review order of mandamus hereby issued compelling the respondent to reinstate the petitioner to gainful employment in the same position as at dismissal date without break in service and with full back payment of all due remuneration and benefits prevailing as at dismissal date payable by 01.10.2023 failing interest to be payable thereon at court rates from the date of this judgment until full payment; and for that purpose the petitioner to report to the respondent's Chief Executive Officer for deployment not later than 01.09.2023.
6. The conservatory order hereby issued restraining the respondent, its agents, servants or any other person acting for and or on their behalf from taking any disciplinary action against the petitioner or interfering with his employment in any manner whatsoever on account of the matters leading to the impugned dismissal herein and including retaliation, reprisal or victimization on account of filing the petition herein.



7. The respondent to pay the petitioner's costs of the petition.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 04TH AUGUST, 2023.**

BYRAM ONGAYA

PRINCIPAL JUDGE

