



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NUMBER E096 OF 2020

IN THE MATTER OF DENIAL OF RIGHTS, VIOLATION

INFRINGEMENT OF ARTICLES 10, 22, 23, 28, 41, 47, 48, 50

AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 3, 4, AND 12 OF FAIR

ADMINISTRATIVE ACTIONS, ACT, NO. 4 OF 2015

AND

IN THE MATTER OF JUDICIAL SERVICE ACT SECTION

32 AND THE RULES 25(1-11) OF 3RD SCHEDULE

AND

IN THE MATTER RULES 3(4), 4, 11, 13, 19 AND 23 OF THE

CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND

FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF SECTION 12 OF EMPLOYMENT AND

LABOUR RELATIONS COURT ACT NO. 20 OF 2011 SECTION

12 AND THE EMPLOYMENT AND LABOUR RELATIONS RULES

BETWEEN

ISSABELLA LINET ODOLO.....PETITIONER

AND

JUDICIAL SERVICE COMMISSION.....1ST RESPONDENT

THE HONOURABLE CHIEF JUSTICE.....2ND RESPONDENT

THE CHIEF REGISTRAR OF THE JUDICIARY.....3RD RESPONDENT

HUMAN RESOURCE MANAGEMENT ADVISORY

JUDGMENT

1. The Petitioner **Issabella Linet Odolo** filed this petition on 15th December, 2020 praying for orders:-

(i) A declaration that under Article 172(1) (c) of the Constitution empowers the Judicial Service Commission as the ONLY mandated body to appoint, receive complaints against, investigate and remove from office or otherwise discipline Registrars, Magistrates, other judicial officers and other staff of the Judiciary, in a manner prescribed by the Judicial Service Act.

(ii) A declaration that the Judicial Service Commission has no jurisdiction to sub-contract, delegate and or confer disciplinary powers under the Constitution to the HRMAC or any other body or persons(s) outside the strict confines of the Constitution and the Judicial Service Act.

(iii) A declaration that the HRMAC has no jurisdiction, under the Constitution and the Judicial Service Act over discipline of Judiciary officers and staff and any policy, resolution, conferment or directive or delegation by the 1st and 2nd respondents to such effect is unconstitutional, unlawful, null and void and are hereby quashed.

(iv) A mandatory injunction do issue forthwith to the 4th Respondent (the HRMAC) to cease and desist from carrying out such disciplinary actions against Judiciary Staff and officers.

(v) A declaration that the action of the Respondents against the petitioner jointly and severally contravened and was inconsistent, the Constitution and the following laws and regulations; Article 2(4); 10(2)(a), 27(1), 41, 47, 73(2); 75(2) (a); 172(1) (c), 232(e) (f), 236(a), (b), 259(11); Section 32(1) & 3 of the Judicial Service Act; Rule 17(3); 23(1); and 25(1-11) of the 3rd schedule of the Judicial Service Act and Section 4(3) (b) of the Fair Administration Action Act, unfair, unreasonable, unconstitutional, unlawful, null and void *ab initio*.

(iv) An order of Judicial Review under Article 23(3) (f) to bring into the Honourable Court to quash; Revoke, annul and or set aside, the Charge and suspension and letter of dismissal concerning the Petitioner and all proceedings and determinations and resolutions founded on them.

(vii) A declaration that under Article 2(4) and 236(a) (b) the Petitioner is a lawful employee of the Judiciary unless removed in compliance of the law and the Constitution and a mandatory injunction do issue for her unconditional reinstatement and payment of her withheld salaries, back pay and benefits from her date of “suspension.”

(viii) An order for compensation for breach of the Petitioner’s fundamental rights and freedoms

under Article 27(1), 41, 47(1), (236) (a) (b).

(ix) Costs of the suit and interest.

Facts of the Suit

2. The petitioner is a Court clerk formerly based at Kibera Chief Magistrate’s Court.

3. The petitioner’s duties at the cash office included receipting of fines, cash bail and fees against bankslips provided by clients.

4. That after sentences have been passed by the Court, the petitioner’s role is to issue receipts against the Bank deposit slips and Court Judgments, rulings and fines as ordered by the Court. The Petitioner does not deal, handle or exchange cash whatsoever from the clients.

5. That receipts are issued in quadruplicate (4) copies as follows:-

(i) The original is issued to the customer.

(ii) The Duplicate is surrendered to the Chief

Accountant.

(iii) Triplicate is rejoined into the Court file.

(iv) The quadruplet is retained in Court for the receipt

book.

6. The Petitioner issues the aforesaid receipt in quadruplicate against the Bank slips.
7. That on or about 24th September, 2018, the petitioner was served with a charge and suspension by the 2nd respondent, the Hon. The Chief Justice while on leave and ordered to leave the Judiciary on allegations that on or about the 6th August, 2018 at Kibera Law Courts, contrary to the laid down Judiciary procedures, the petitioner unlawfully retained a sum of Kshs 10,000 which was part of the sum of Kshs 30,000 Court fine, paid by **James Ogola Wairero** in **Kibera Traffic Case No. 3301 of 2018** leading to a loss of Kshs 10,000. That further the petitioner unlawfully made an entry of Kshs 30,000 on the original and triplicate copy and an entry of Kshs 20,000 on the duplicate and book copy of Receipt **No. 4190487**.
8. The petitioner was informed in the said letter, that tampering with official documents and forgery are acts of gross misconduct which can render the petitioner liable to serve disciplinary action.
9. The petitioner was therefore suspended from performance and function of her office with effect from 12th September, 2018 pending commencement of proceedings against her which may lead to her dismissal.
10. The suspension was on nil salary and she was to report to her station at Kibera, every last Friday of the month.
11. The petitioner responded to the charges by a letter dated 1st October, 2018, by stating in response to charge 1. Gross misconduct; that she was a clerical officer deployed to work in Account Section as a cashier. That her duty at the cash office included receipting of fines, cash bail against bank slips for Court fees provided by the clients/Accused persons.
12. That she also attended to the traffic Court together with a Kenya Commercial Bank agent who collects fines after the petitioner confirms the amount to be paid and collected by the bank Agent from the clients/accused persons. That once the agent receives the fund the agent generates a payment deposit slip which the petitioner then uses to issue/write receipts.
13. The Petitioner stated further that she worked under the supervision of one Mr. Mwangi, Chief Accountant, Kibera who supervises and checks the receipt books on a daily basis. That in the event of any error or anomaly, the same should be picked immediately.
14. That on the material day, the Court clerk presented the petitioner with files where fines were to be paid and one of the files belonged to Mr. James Ogola Wairero who had been fined Kshs 30,000 for a traffic offence owing to worn out tyres.
15. That Mr. Ogola made payment by withdrawing the stated sum from Kenya Commercial Bank Agent Mpesa and had the same deposited in the Judiciary's Kenya Commercial Bank account by the same agent.
16. That the petitioner was thus given the payment receipt of Kshs 30,000 and the petitioner drew up a receipt No. 4190487 for the stated sum and signed off at the bottom and issued it to the police officer who in turn used it to secure Mr. James Wairero's release.
17. The petitioner further stated, the duplicate and triplicate copies of the receipt bore Kshs 30,000 as had been issued and receipted and the book and corresponding receipts were submitted to the supervisor Mr. Mwangi.
18. That at a later date the petitioner states that she was shown another set of a triplicate receipt of Kshs 20,000 that was allegedly written by her.
19. The petitioner denied having written the said receipt and that the same did not bear her signature and as such she could not authenticate its genuineness. That the receipts that the petitioner issued on 6th August, 2018 all bore her signature at the bottom and that she did not receive any cash at all.
20. The petitioner deposes that the charges against her lacked any merit since she had only issued a receipt of Kshs 30,000 as judged by the Court and against the Bank slip raised by the Bank Agent.
21. That on the highlighted Bank Statement, the case number was different since the subject file case number was **TR 3301/2018 Republic – vs- James Ogola Wairero**, while the one on the statement furnished by the 4th respondent was **TR 3310 of 2018 – R –Vs- Joseph Njoroge**.
22. That she had done no wrong and was therefore wrongly found guilty by the respondent.
23. On the 2nd charge of uttering false document, the petitioner states that it was her supervisor Mr. Mwangi who had the custody of the receipts and was supposed to explain the origin of the false receipt for the sum of Kshs 20,000 instead of the one she had correctly issued for Kshs 30,000. That the petitioner had surrendered all the receipts to the accountant for safe keeping as per procedure and the two of the receipts were retained by him. He therefore had a chance to explain and account. That the unsigned receipts were not written by her and the accountant ought to explain that anomaly.
24. The petitioner further states that by a new letter dated 13th August, 2019, she was re-invited to a disciplinary hearing expanding the scope of the charges from one incident to sixty three (63) different incidences outside the scope of the original charge which charges lacked evidence and merit. That these touched on her bank transactions on her loan account with Sheria Sacco.
25. That the charges lacked merit and evidence and this was a clear witch hunt and victimization of the petitioner.

26. That the suspension from 11th September, 2018 to 22nd April, 2019 was without alimentary allowance in contravention of Rule 17(3) of the 3rd Schedule to the Judicial Service Act.

27. That the action by the 4th respondent (**Human Resource Management and Advisory Committee (HRMAC)**) was incompetent, biased, discriminative and hurried to get rid of her.

Violations

28. That in terms of Article 172 (1) (c) of the Constitution, it is only the Judicial Service Commission through its secretariat or a sub-committee which has the mandate to discipline staff as follows:-

172 (1) *The Judicial Service Commission shall promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice and shall:-*

(c) *appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the Judiciary, in the manner prescribed by an Act of Parliament;*

29. That in terms of Section 32(1) of the Judicial Service Act, Judicial Service Commission is mandated to constitute a committee or panel for purpose of appointment, discipline and removal of judicial officers and staff.

30. That the procedure to be followed thereafter is guided by the Third Schedule to the Act.

31. The petitioner therefore contends that Human Resource Management Advisory Committee is not a panel or committee constituted in compliance with the Constitution and Judicial Service Commission. That the action by the 1st and 2nd respondent in delegating and ceding their disciplinary functions to the Human Resource Management Advisory Committee is unconstitutional, null and void.

32. That once the Chief Justice draws the charge under rule 25(1) of the 3rd Schedule to Judicial Service Act, and invites responses or exculpation, the matter is then escalated to Judicial Service Commission under rule 25(2) and not to Human Resource Management Advisory Committee.

33. The petitioner submits therefore, that escalation to Human Resource Management Advisory Committee, violated Article 172(1) (c) and Article 161(1) and rule 25(3) of the Third Schedule to Judicial Service Act and was thus unconstitutional, null and void since Human Resource Management Advisory Committee has no powers of discipline over judiciary staff which is a sole mandate of Judicial Service Commission as a corporate body under Article 172(1), read with rule 25 and 26 of the Third Schedule.

34. That therefore, the respondent violated Article 27(1) of the Constitution by denying the petitioner equal protection of the law and also violated Article 41 of the Constitution by denying the petitioner right to fair labour practice.

35. Furthermore, the respondents violated Article 47(1) by subjecting her to unfair administrative action under a body without authority to discipline Judiciary staff.

36. That Human Resource Management Advisory Committee also violated rule 25(8) of the Third Schedule by introducing new charges outside the charges drawn by the Chief Justice and this violated Article 236(a) (b) of the Constitution which prohibit punishment of a public officer without due process

37. That Human Resource Management Advisory Committee acted in excess of jurisdiction, and is subject to judicial review and the petitioner prays accordingly.

38. That also, the delay in prosecuting; the disciplinary action of 14 months was inordinate and unreasonable and was contrary to the Judicial Service Commission Policies and the Judiciary Human Resource Policies and Procedure manual which requires disciplinary action to be conducted within 6 months unless there is a resolution to extend the same.

39. The petitioner referred the Court to **Judicial Service Commission –vs Daniel Mudanyi Ochenja - Civil Appeal No. 312 of 2019 (unreported)** on the issue of unreasonable delay contrary to Article 47 of the Constitution and provision of Section 4 of Fair Administrative Act, 2015.

40. Wherefore, the petitioner prays that the petition be allowed with costs.

Response by 1st, 3rd and 4th Respondents

41. The Chief Registrar of the Judiciary, Anne Amadi, deposed to a replying Affidavit sworn to on 19th February, 2021 in opposition to the petition.

42. The Chief Registrar deposes the Affidavit on behalf of Judicial Service Commission and Human Resource Management Advisory Committee and states Judicial Service Commission is established under Article 171 of the Constitution and has the mandate to reflect the highest standard of Constitutionalism and integrity in discharge of its work. That Judicial Service Commission is also regulated by the Judicial Service Commission Act, 2011 (JSCA).

43. That in terms of Section 3 of the Judicial Service Commission Act, Judicial Service Commission is mandated to manage judicial services including administrative functions and regulate its own process through the application of the principles set out in the Constitution and other relevant laws.

44. That pursuant to Section D4 of the Judiciary Human Resources Policies and Procedures Manual 2014, the Human Resource Management Advisory Committee (**HRMAC**) is one of the Disciplinary Committees constituted by the Judicial Service Commission to handle disciplinary matters under delegated powers pursuant to section 14 of the Judicial Service Act, 2011.

45. Section 14 of the Judicial Service Act provides:-

“(14) Delegation by the Commission

Subject to the provisions of the Constitution or any other law, the commission may hire such experts or consultants, or delegate such of its functions as are necessary for the day to day management of the Judicial Service to sub-committees or to the secretariat.”

46. That on 23rd October, 2019, the Judicial Service Commission delegated its disciplinary powers to Human Resource Management Advisory Committee as a way of streamlining management of discipline in the Judiciary. This was done by way of expanding the mandate of the Human Resource Management Advisory Committee to handle discipline matters for judicial staff in PLS 12 which is equivalent to JSG4 to 11 in the new judiciary Grading System from PLS 9 and below.

47. That on 31st September, 2019, the Chief Magistrate of Kibera Law Courts wrote a letter addressed to the Chief Registrar in response to the complaint and in the said letter, the petitioner was implicated in the act of misleading litigants that the Court's Mpesa Pay bill was not operational and thereby collecting cash and depositing a lesser amount in respect of the traffic files.

48. The Human Resource Management Advisory Committee invited the petitioner to an interview before it on 19th February, 2019. The invitation was sent on 1st February, 2019.

49. On 19th February, 2019, the petitioner together with a witness that is the Accountant in- charge Kibera Law Courts were taken through a hearing before the Human Resource Management Advisory Committee. The matter was however deferred for Judicial Service Commission inspectorate unit to avail the relevant documents to the petitioner. The minutes attached thereto show that.

50. On 13th August, 2019, the petitioner was invited to attend a disciplinary hearing on 29th August, 2019 in relation to the charges communicated to the petitioner in the letter dated 12th September, 2018.

51. On 20th August, 2019, the petitioner was supplied with certified copies of receipts, bank slips, receipt book extracts and revenue account statements through a letter from the Secretary of the Human Resource Management Advisory Committee.

52. On 28th August, 2019, the petitioner responded to the Human Resource Management Advisory Committee's invitation letter dated 13th August, 2019 and adduced the various documents issued to her.

53. On 29th August, 2019, the second disciplinary interview took place and upon hearing the petitioner and making its deliberations, the Human Resource Management Advisory Committee found that though the petitioner denied the allegations against her in totality, a forensic report indicated and confirmed that the receipts in question bore her handwriting and there was evidence that the petitioner committed the offences as charged. Human Resource Management Advisory Committee made decision to dismiss the petitioner. The minutes of the hearing are attached to the affidavit.

54. The decision was communicated to the petitioner vide a letter of dismissal dated 22nd November, 2019 written by Chief Registrar of the Judiciary, and the reasons for dismissal were stated in the letter that Human Resource Management Advisory Committee had established that the petitioner was dismissed for breaching Section D7.2 of the Human Resource Policies and Procedures Manual and Section 44 of the Employment Act, 2007. The petitioner was in addition notified of the right to appeal to the Judicial Service Commission within 6 weeks, which she proceeded to do and the appeal was also found to be without merit. The respondent prays that the Court finds the petition to be without merit and dismiss the same with costs.

55. The petitioner filed further affidavit joining issue with the respondent and retaliating the particulars of the claim against the respondent and various constitutional, legal and procedural violations the petitioner makes against the respondent.

56. The issues for determination are as follows:-

(a) Is the Judiciary Human Resource Policies and Procedures Manual applicable to the petitioner?

. (b) Does Human Resource Management Advisory

Committee have the mandate to discipline and recommend dismissal of the petitioner in respect of charges preferred against the petitioner.

(c) Did the respondent violate Constitutional and statutory rights of the petitioner?

(d) Was the petitioner dismissed for a valid reason following a fair procedure?

(e) Is the petitioner entitled to the reliefs sought?

57. In answer to issue (a) above, Judicial Service Commission is by dint of Article 172(1) of the Constitution mandated to:-

(c) Appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officer and other staff of the Judiciary, in the manner prescribed by an Act of Parliament.

58. The Judicial Service Act, was promulgated pursuant to Article 172 aforesaid and provided under Section 14:-

“Subject to the provisions of the Constitution or any other law, the Commission may hire such experts, or consultants; or delegate such of its functions as are necessary for the day to day management of the Judicial Service to sub-committees or to the Secretariat.”

59. Pursuant to the mandate under Section 14 of the Judicial Service Act, the Judicial Service Commission promulgated Judiciary Human Resources Policies and Procedures Manual in order to ***“promote and facilitate the independence and accountability of the Judiciary and the effective and transparent administration of Justice”*** as provided under Article 172(1) of the Constitution.

60. In that respect, Judicial Service Commission provided under Section D.4 of the Judiciary Human Resource Policies and Procedure Manual as follows:-

“D4. Disciplinary Committees

Disciplinary matters shall be handled by the following committees:-

(i) A Committee/Panel constituted by Judicial Service Commission.

(ii) Human Resource Advisory Committee for staff in JSG9 and below as delegated by Judicial Service Commission.

61. It is not in dispute that the disciplinary process against the petitioner was conducted by Human Resource Management Advisory Committee, the Committee established in terms of Section D4 (ii) of the manual.

62. The power to enact, an Act of Parliament through which Judicial Service Commission delegated some of its functions including discipline of various categories of staff such as the petitioner has constitutional support under Article 127(1) (c).

63. The Contention by the petitioner that the conduct of the disciplinary process against her was in violation of Article 172(1) (c) of the Constitution does not hold any water.

64. The article mandates enactment of Act of Parliament through which the authority of Judicial Service Commission may be devolved and/or delegated for efficient, transparent and better management of judicial staff, including discipline.

65. In the ***Petition No. E111 of 2021 Susan Khakase Oyatsi –vs- Judicial Service Commission***, this Court specifically found:-

“105. It is the Court’s finding that the Human Resources Policies and Procedures Manual of the Judiciary is an employment policy or labour practice recognized under Section 5(7) of the Employment Act, 2007.....

106. The manual therefore, is an internal mandatory guide with statutory underpinnings and is in the Court’s judgment a kingpin of good corporate governance in any organization worth its salt. The Court finds without any hesitation that the respondent is bound by its own Human Resource Policies and Procedure Manual the same way, the employees are bound to abide by its terms in their daily work, disposition and behavior. Indeed, employees of the Judiciary who fall foul of the provisions of the Human Resources Policies and Procedures Manual would be subjected to disciplinary action in terms of the manual. Equally, the respondent cannot be heard to say that they are at liberty to cherry pick what to adhere to and what not to respect in the manual.” (emphasis mine)

66. It is therefore beyond per adventure that the petitioner was lawfully subjected to disciplinary action under the Judiciary Human Resource Policies and Procedures Manual and by a committee lawfully established and clothed with jurisdiction to discipline the petitioner.

67. It is the Court’s finding that the Judicial Service Commission did not abdicate its power by delegating its constitutional mandate via an Act of Parliament and Human Resources Policies and Procedure Manual to the Human Resource Management Advisory Committee.

68. The next question is whether the Human Resource Management Advisory Committee followed a fair and lawful procedure in disciplining the petitioner. From the chronology of events set out herein before, the petitioner was by a letter dated 12th September, 2018 charged with the offence of unlawfully retaining a sum of Kshs 10,000 out of Kshs 30,000 fine paid by an accused person on or about 6th

August, 2018 at Kibera Law Courts. The petitioner was further accused of unlawfully making a false entry of Kshs 30,000 on the original and triplicate copy and an entry of Kshs 20,000 on duplicate and book copy of receipt No. 4190487.

69. The petitioner was then suspended from employment for tampering with official documents and forgery which are actions of gross misconduct.

70. In terms of the Human Resources Policies and Procedures Manual, Section D.7.5.2 – suspension did not apply to the petitioner because suspension is made against an employee who has either been convicted of a serious offence (i) or in respect of an officer **“whom proceedings for dismissal have been taken” (ii).**

71. The case of the petitioner falls under Section D.7.5.1, interdiction which provides:-

“ (i) The Chief Justice may interdict an officer/staff from the exercise of the powers and functions of their office provided proceedings which may lead to their dismissal are being taken or are about to be taken or that criminal proceedings are being instituted against them.”

72. The disciplinary process against the petitioner had just commenced on 12th September, 2018, when the petitioner was suspended. It is the Court’s finding that the proper sanction at that stage was interdiction in terms of Section D.7.5.1 (i) of the Manual and in terms of Section (ii) thereof:-

“An officer/staff on interdiction shall be paid half of basic salary, full house allowance, and medical benefits while all other benefits and allowance will stand suspended.”

73. Clearly, the letter of suspension dated 12th September, 2018 stated that the petitioner would earn nil salary during the period of suspension.

74. The Chief Registrar of the Judiciary however deposes under paragraph 12 that **“during the suspension period and as per the provisions of Section D.7.5.2 as read with Section H114 of the Judiciary Human Resources Policies and Procedures Manual, 2014, the petitioner was paid alimentary allowance at the rate of 1/3 of her monthly basic salary with effect from 12th September, 2018 to 22nd November, 2019.”** The payslip is not attached to that deposition.

75. The Court reiterates also that the petitioner ought not to have been suspended in terms of Section D.7.9.2 but should have been interdicted in terms of Section D7.5.1 of the manual.

76. It is the Court’s finding also that this error did not prejudice the disciplinary process that was commenced against the petitioner and has been set out in details by both parties. However, she was denied lawful payments during the 14 months of suspension.

77. It is common cause that the petitioner was given opportunity to respond in writing to the notice to show cause, which she proceeded to do by a letter dated 1st October, 2018. The petitioner requested and was availed all the documents she required to defend herself against the two charges laid against her. It is also not in dispute that the petitioner was interviewed twice by the Human Resource Management Advisory Committee (HRMAC) on 19th February, 2019 and also appeared for a disciplinary hearing before the said committee on 29th August, 2019.

78. The minutes of both proceedings were placed before Court and the contents of the proceedings have not been placed in dispute by the petitioner.

79. The Court is satisfied that the totality of evidence before Court shows that the petitioner was afforded a fair hearing by the disciplinary Committee before the Committee proceeded to make a decision rejecting her explanation and finding the petitioner guilty of gross misconduct as explained in the letter of dismissal dated 22/11/2019. The disciplinary committee also provided further reasons for the decision to dismiss the petitioner from employment for involving herself in corrupt practices and therefore breached Section D.7.2 of the Human Resource Policies and Procedures Manual and Section 44 of the Employment Act, 2007.

80. The petitioner was called upon to refund the Kshs 10,000 the committee found had been corruptly retained by the petitioner. The petitioner was also notified of the right to appeal to Judicial Service Commission within six (6) weeks which right, the petitioner exercised but was not successful.

81. Section D.7.2 titled Gross Misconduct, provides:-

“A judicial officer/staff found to be involved in gross misconduct may be dismissed even if she/he is a first offender.”

82. It is the Court’s finding that the disciplinary process against the petitioner was lawful, fair and procedural and did not violate the Constitution, the Judicial Service Act, or the Human Resources Policies and Procedures Manual of the respondent.

83. The above finding lead the Court to the next inquiry whether the petitioner has established that any of her constitutional rights set out in the petition were violated.

84. It is the Court's view and finding that, this case is a mundane claim for unfair dismissal and ought to have been filed by way of a statement of claim. The petitioner ought to have appeared before Court to exculpate herself of the alleged corrupt practices. The evidence adduced by the Chief Registrar of the Judiciary in the replying affidavit against the petitioner is overwhelming. Fair and just procedure was followed in establishing that indeed the petitioner was involved in stealing from the respondent and falsifying documents to cover her tracks. The petitioner has failed in the circumstances to prove on a balance of probabilities that the respondent violated her right to fair labour practice and her right to fair administrative action.

85 To the contrary, the respondent has proved that it had a valid reason to dismiss the petitioner from employment and that in doing so it followed a fair procedure in terms of Sections 41, 43 44, and 45 of the Employment Act, 2007.

86. Considering the investigative process demonstrated by the various reports produced by Chief Registrar of the Judiciary in this matter, and having considered the Court of Appeal decision in *Judicial Service Commission –vs- Daniel Mudanyi Ochenja – Civil Appeal No. 312 of 2019* and the explanation why the disciplinary process took about 14 months to conclude, it is the Court's view and finding that the process did not take inordinate delay to finalise in the circumstances of this case.

87 For the aforesaid reasons, the petition must fail in its entirety and the Court so finds and dismisses all the reliefs sought by the petitioner. The parties to bear their own costs of the suit in consideration of all the circumstances of the case.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 17TH DAY OF MARCH, 2022.

Mathews N. Nduma

Judge

Appearances

Mr. Okemwa for the Petitioner

M/s Owano for the 1st, 3rd and 4th Respondents

Ekale – Court Assistant.