



REPUBLIC OF KENYA



KENYA LAW
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**Mugambi v Chief of Kenya Defence Forces & 2 others (Petition
E019 of 2020) [2022] KEELRC 1561 (KLR) (2 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1561 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E019 OF 2020**

MN NDUMA, J

JUNE 2, 2022

**IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLES 2(1), 3(1),
10(1) AND (2), 19, 20(1), 21(1), 23(1), 24(1), 25(A) AND (C), 26(1), 27, 28,
29(A), 47(1) & (2), 48, 165(3) (B), 232(1) (C) AND (F), 238(2) (B) 239, 241(1),
(5) & 7**

AND

**IN THE MATTER OF VIOLATION AND CONTRAVENTION OF
FUNDAMNTAL RIGHTS AND FREEDOMS GUARANTEES UNDER
ARTICLES 10(1) (A) –(C) AND 2(B), 25(A) & (C), 26(1), 27, 28, 29(A), 47(1)
AND (2). 48 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF SECTIONS 12, 156(4), 157, 147, 244, 251(2), 245(8),
(9), (10) OF THE KENYA DEFENCE FORCES ACT NO. 25 OF 2015**

AND

**IN THE MATTER OF CONTRAVETION OF SECTION 4(1) & (2) OF THE
FAIR ADMINISTRATIVE ACTION ACT, 2015**

AND

**IN THE MATTER OF CONTRAVENTION OF SECTION 9(2) (D) OF THE
FAIR ADMINISTRATIVE ACTIONACT**

AND

**IN THE MATTER OF CONTRAVENTION OF SECTION 9(2) (D) OF THE
PUBLIC SERVICE (VALUES AND PRINCIPLE) ACT, 2017**



BETWEEN

JACOB NDUBI MUGAMBI PETITIONER

AND

CHIEF OF KENYA DEFENCE FORCES 1ST RESPONDENT

KENYA DEFENCE FORCES COUNCIL 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. The Petitioner filed the suit on 7th August, 2020 praying for orders that:-
 - (A) The impugned decision of the Kenya Army to terminate the Petitioner from service be rescinded.
 - (B) The Petitioner be reinstated back to service without loss of benefits together with other consequential benefits.
 - (C) In the alternative to the prayer of reinstatement, the Petitioner be paid full remuneration and benefits inclusive of pension and gratuity as provided for under Section 244(1) of the [Kenya Defence Forces Act](#) No. 25 of 2012 and the same to be notified to the Court.
 - (D) The Petitioner be awarded damages/compensation for violation of his fundamental rights and freedoms.
 - (E) The petitioner be compensated for injuries sustained while in service and/or duty.
 - (F) The costs of this Petition to be borne by the Respondents.

Facts

2. The petitioner states that he was employed by the Kenya Army on 18th March, 1989 as a Service man.
3. That the petitioner was arbitrarily dismissed from service on 7th June, 2020 without any justifiable reason in violation of Article 47 of the [Constitution](#), 2010 and [Fair Administration Act](#) No. 4 of 2014.
4. That the dismissal letter dated 19th May, 2020 did not contain any reasons.
5. That sometime in March, 2020, the Petitioner was accused of abusing a Superior Officer, which accusation he states is false.
6. That he was called before the company commander in the company of other officers to answer to the false charges. That no specific charges known in law were read to him.
7. That Petitioner adds that he was merely told that he had abused a Major General to which charge the petitioner answered in the negative.
8. The petitioner was not availed any investigation report and was not informed of the specific charges facing him as required by Section 156 of the [Kenya Defence Forces Act](#) No. 25 of 2012.



9. In the same proceedings, the petitioner was told that his Rank had been reduced from Sergeant to that of Corporal without any basis at all contrary to Section 156(3) of the [Kenya Defence Forces Act](#) No. 25 of 2012.
10. The petitioner was not given an option to be tried before Court Martial contrary to Section 157(1) of the Act and this violated his right to a fair hearing and fair administrative action.
11. The petitioner was punished twice contrary to Section 156(1) of the Act, in that he had already been reduced in rank, before he was again dismissed for the same alleged offence.
12. That the petitioner had diligently served armed forces for 31 years and even sustained injuries in the course of duty and he has not been compensated for the said injuries as envisaged under the Act.
13. That the removal was tainted with illegality, was unfair and unlawful for violating principles of natural justice.
14. That the removal contravened Sections 157(1) of the [Kenya Defence Forces Act](#). That the removal also violated Articles 28 that protects the petitioner from inhuman treatment and Article 47 as aforesaid. That the petitioner be granted reliefs sought herein.

Replying Affidavit

15. The petition is opposed by Major Frankline Oyese Omuse (19835), a Staff Officer II Records Department of Kenya Defence Forces Headquarters.
16. The respondents aver that the petitioner was properly dismissed from Kenya Defence Forces after being found guilty of offences he committed and lawfully tried under the [Kenya Defence Forces Act](#), 2012.
17. That the offence was investigated by military police and petitioner was served and acknowledged receipt of an Abstract of Evidence from the investigating officer attached to this affidavit and marked F00-1A and F00-1B.
18. That pursuant to Section 156(1) (a) of the [Kenya Defence Forces Act](#), on 22nd April, 2020, the Petitioner appeared in person for summary trial before his commanding officer to answer to the charges of misconduct that was prejudicial to good order and service discipline as provided under Section 121 of the [Kenya Defence Forces Act](#) and a second offence of using insubordinate language against a superior officer, 2/Lieutenant S.C. Waikwa, contrary to Section 82(1) (b) of the same Act as seen in Annexures F00-2A and F00-2B.
19. That during the summary trial before his commanding officer, the petitioner was given the choice to be tried before a Court Martial or to proceed with summary trial contrary to his deposition in the petition. That the petitioner elected to be tried by the later. The petitioner also elected not to be represented by a person of his choice and confirmed that he had been served with the abstract of evidence prior to the summary trial proceedings as per annexures “F00-3A, and F003B.
20. That the petitioner was found guilty on his own admission where upon he was awarded the punishment of reduction in rank from Sergeant to Corporal per Section 156(2) (a) (ii) of the [Kenya Defence Forces Act](#), 2012 for the offence of misconduct and dismissal from Kenya Defence Forces subject to approval by the Service Commander as per Section 156(2) (a) (i) as read with Section 156(3) (a) of the [Kenya Defence Forces Act](#) for the offence of using insubordinate language against a superior officer as per annexure “F00-2A, 2B, 3A and 3B.
21. That the deposition by the petitioner is untruthful since he was aware of the charges and evidence against him and freely elected to be summarily tried before his commanding officer.



22. That the service commander, upon automatic review of the summary trial as provided for under Section 158(1) of the [Kenya Defence Forces Act](#), confirmed the award of dismissal and the petitioner was dismissed from service by a letter dated 27th May, 2020 marked 'F00-4.
23. That the petitioner was not punished twice for the same offence, he was charged with two offences, which under Section 156(4) of the [Kenya Defence Forces Act](#) warranted two different punishments when found culpable as in this case.
24. That the process and dismissal was lawful, and the respondents did not violate any of the rights and or provisions cited by the petitioner.
25. That the petitioner had previously been subjected to summary trial on 10th June, 2004, 10th September, 2004 and 9th May, 2007 and so was familiar with the disciplinary procedure aforesaid and he is feigning ignorance of the same.
26. That the petitioner having been dismissed is not entitled to payment of gratuity or pension as provided under Section 244 of the [Kenya Defence Forces Act](#) read with regulation 6 of the [Armed Forces \(Officers and servicemen\) \(Pensions and Gratuities\) Regulations](#), which provides that pensions and gratuities in the military are not a right and the Defence Council may withhold the same where service personnel have been dismissed.
27. That the petitioner was a non-contributing member of the pension scheme and so he is not entitled to any payments whatsoever.
28. That the petition lacks merit and it be dismissed with costs.
29. The petitioner filed further affidavit on 11th February, 2021 joining issue with averments set out in the replying affidavit.
30. The petitioner reiterated that he was never given the Abstract of Evidence and the charge sheets for the two offences at all and had seen them for the first time attached to the replying affidavit.
31. The petitioner reiterated the contents of his supporting affidavit on all material facts he set out therein.
32. That if an automatic review was done by the service commander, then his findings ought to have been communicated to the petitioner personally and in writing as per Section 159(2) of the [Kenya Defence Forces Act](#).
33. That in any event, the charge sheets as drawn were defective for splitting of charges.
34. That the respondent did not state the truth and have no clean hands contrary to their allegations against the petitioner.

Submissions

35. The petitioner filed written submissions reiterating the particulars of his employment on 18th March, 1989 as a serviceman and having worked for 31 years until 19th May, 2020 when he was dismissed from service.
36. The petitioner submits that the letter of dismissal dated 19th May, 2020 has no reasons why the petitioner was dismissed from service. The letter is not addressed to the petitioner but merely gives



authority for dismissal of the petitioner from service. This violates Article 47(2) of the Constitution and Section 4 (2) of the Fair Administrative Action Act No. 4 of 2015 which provides: -

“Every person has the right to be given written reasons for any administrative action that is taken against him.”

37. That the failure to give the petitioner a letter addressed to him with written reasons for his dismissal violates aforesaid provisions.

38. That Section 147(1)(a) of Kenya Defence Forces Act No. 25 of 2012 provides that summary disciplinary proceedings under the Act are to be guided by Article 47(2) of the Constitution which provides: -

“If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.”

39. That secondly, failure by the respondents to serve the petitioner with the abstract evidence violates the principles of natural justice. That in terms of Rule 9 of the Armed Forces Rules of procedure, an abstract of evidence should be in a particular format and made in a particular way. That the abstract must contain witness statements by which the charges against the accused are to be proved. The Rule is couched in mandatory terms and the respondents have not demonstrated by way of annexures or otherwise that an abstract of evidence in the approved format contained in the first schedule to the Rules was indeed served upon the petitioner.

40. That annexure F001A attached to the replying affidavit does not constitute the prescribed abstract of Evidence required under Rule 9(4). F00 1A is (Certificate to be attached to an abstract of evidence.)

41. The disciplinary process was unlawful, and violated the petitioner’s right to fair hearing under Article 50(1) of the Constitution and the principles of natural justice.

42. That under Section 150 of Kenya Defence Forces Act, a complaint is to be reported to the commanding officer and the commanding officer forwards the matter for investigation by the military police.

43. That under Section 156(1) after the investigation is conducted, an investigation report is supposed to be forwarded to the commanding officer in the form of an abstract of evidence.

44. That clearly, there is no such complaint, investigation report and/or abstract evidence before Court to demonstrate that a fair hearing was undertaken by the respondents.

45. That the respondent violated Article 47(1) of the Constitution in that the administrative action was not lawful and procedurally fair.

46. That Article 47(1) provides: -

“Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”

47. The petitioner reiterates that Section 147 of the Kenya Defence Forces Act provides: -

“Summary disciplinary proceedings under this Act shall be guided—

(a) by Article 47 of the Constitution; and



- (b) with necessary modifications, and without derogating from the essence of the right or limiting the right to fair hearing of an accused person by Article 50 of the Constitution.”

48. The Petitioner further submits that he is entitled to pension and gratuity as provided under Section 244(1) of Kenya Defence Forces Act in view of the irregular administrative action taken by Kenya Defence Forces. Section 244(2) and (3) of the Kenya Defence Forces Act provides: -

“(2) where an officer or a service member has been dismissed under any circumstance provided under this Act, the Defence Council may withhold, reduce the amount or suspend any such benefits payable to the officer or the service member under subsection (1).

(3) A decision to withhold, reduce in amount or suspend any benefits of an officer or a service member contemplated under subsection (2) shall be made with the concurrence of the Public Service Commission.

49. The petitioner submits that the letter dated 19th May, 2020 purports to deny the petitioner pension and gratuity benefits without any supporting evidence that the same had no concurrence of the Public Service Commission.

50. That the petitioner is entitled to Disability Pension, Service Pension, and gratuity as provided under Sections 4, 20 and 40 of the Kenya Defence Forces (Pensions and Gratuities) (Officers and Service Members) Regulations, 2017.

51. Further, the petitioner is entitled to compensation for the injuries sustained while on duty per Section 245(8), (10) and (11) of the Kenya Defence Forces Act.

52. That the petitioner suffered serious injuries in the course of duty and has attached supporting medical documents to prove the disability suffered as a result thereof.

53. The petitioner wrote several letters to the respondent to review their decision but no action was taken. The petitioner has therefore exhausted internal mechanism and is in this Court rightly.

54. That the petition be allowed as prayed.

Respondent’s submissions.

55. The respondent filed written submissions in which they summarise grounds for grant of the reliefs sought as follows: -

- (a) Procedure for terminating the Petitioner’s service with Kenya Defence Forces was lawful and just.
- (b) None of the petitioner’s Constitutional rights or freedoms were violated.
- (c) The Court lacks original jurisdiction to handle the issue of alleged disability pension.
- (d) The petitioner has not exhausted statutory remedies in regard to withholding pensions and gratuities.
- (d) The petitioner is not entitled to any of the remedies sought.



56. . The respondents submit that the petitioner was served with Abstract Evidence on 20th April, 2020 as per Exhibits F00 “1A-B.” Summary trial was conducted on 22nd April, 2020 as per “F00-2A-B” culminating in the confirmation of his dismissal on 27th May, 2020. That the summary trial took only one month and was therefore expeditious, lawful, and procedurally fair.
57. That exhibit “F00 1A” comprises a certificate of service from the investigating officer and exhibit “F00 1B” indicates that the petitioner was served with the abstract two (2) days prior to his trial.
58. That exhibits “F00 2A-B” show the abstract comprised two charge sheets which the petitioner was served with before the summary trial. Therefore, he knew the exact nature of the offence for which he would appear for orders and the evidence as comprised in the entire abstract of evidence.
59. That exhibit “F00-3A is the proceedings of the summary trial. That the trial proceedings constitute the reason for the administrative action taken against the petitioner.
59. That exhibit “F004” show Right to review or internal appeal was proceeded on leading to the dismissal of the petitioner.
60. That the letter dated 27th May, 2020 was not addressed to the petitioner. It was not for his consumption but was intended for the petitioner’s former unit. This is in line with ordinary submissions of Defence Force as per Section 60(1) (c) of the Evidence Act, Cap. 80 Laws of Kenya.
61. That the obligation to communicate the dismissal was done per exhibit “F005” as per unit’s Part II *Modus Operandi* for Communicating high command undertakings with soldiers of all cadres within the ordinary military business as per Section 183 of the Kenya Defence Forces Act, 2012 read with Regulation 10 of the Kenya Defence Forces (General) Regulations, 2017.
62. The offence was against a superior officer namely; 2/Lieutenant SI Waikwa and not a Major General as is alleged in the petition. This touches on the credibility of the petition. The Court to dismiss the petition for lack of credibility.
63. The Commanding officer had discretion to conduct summary trial against the petitioner with his consent. The petitioner opted not to attend a Court Martial as shown in the records produced. The offence falls under Section 121 and 82(1) (b) respectively of the Kenya Defence Forces Act. It is not true therefore that the two offences are not known in law.
64. That under Section 156(4) of the Kenya Defence Forces Act, it is prohibited awarding of more than one punishment for the same offence. That in this case, the petitioner committed two (2) offences contrary to Section 82(1) (b) – using insubordinate language towards superior officer and violating Section 12 being offence against good order and discipline. He was found guilty of both and awarded two punishments; one for each offence being dismissal and reduction in rank under the provisions of the Kenya Defence Forces Act.
65. That pension was withheld lawfully under Section 244(2) of Kenya Defence Forces Act. That per the decision of Gift Kambu Murandu v Kenya Defence Forces Council and Another [2017] eKLR, the Court stated: -
- “Where pension and gratuity should be paid, and in what amounts, are matters the claimant should pursue with the Defence Council and the Public Service Commission of Kenya under the Kenya Defence Forces Act, and the relevant Regulations under the Act.”
66. The Court therefore lacks jurisdiction to determine the issue.



67. Similarly, the claim for disability pension is grounded under Regulation 18. That the pension Assessment Board in terms of Regulation 17, is empowered to assess the disability pension and the right to compensation. That the Court likewise has no jurisdiction over this issue as was decided in the case of *Arab Sagal Adow v Cabinet Secretary, Ministry of Defence and 2 Others* [2020] eKLR where the Court stated: -

“I decline to make any order for the claim for pension and gratuity and also damages for mental disorder suffered as a result of alleged illegal detention, torture and dismissal, because the Court has no jurisdiction to determine those issues under *Kenya Defence Forces (Pension and Gratuities) (Officers and Service Members) Regulations*, 2017 (S.C.) I therefore leave the same for determination by the relevant Boards under the Kenya Defence Forces Regulations.”

68. The respondents submit therefore the respondents did not violate Article 28, 47 and 50 of the *Constitution* as alleged by the petitioner or at all and relies on the decision of *Anarita Karimi v Republic* [1979] eKLR where the Court said: -

“We would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the *Constitution*, it is important (if only to ensure that justice is done to his case), that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

69. The respondents’ state that the Petitioner merely mentions alleged violations without any demonstrated precision “Anarita Karimi case (*supra*)

70. The respondents pray the suit be dismissed with costs.

Determination

71. Having carefully examined the depositions and the submissions by the parties, I shall not regurgitate the same and will briefly set out the finding of the Court based on a foregoing exegesis.

72. Section 156(1) of the *Kenya Defence Forces act* provides: -

Charges against service member

“(1) After investigating a complaint against a service member, the officer or service member shall forward the investigation report in the form of an abstract of evidence and appropriate charges, if any, to the commanding officer, who—

(a) shall deal summarily with the charge if the charge is one that the commanding officer has power to deal with summarily and the commanding officer considers that the charge should be so dealt with;

73. Under Section 151, it is provided: -

“Rights and representation of an accused person during trial



- (1) An accused person who is subject to this Act shall be informed of the charges against him or her and of his or her right to be represented during the summary disciplinary proceedings or trial.”

74. The guiding principles to the summary disciplinary proceedings under part VIII of *Kenya Defence Forces Act* are set out under Section 147- Guiding Principle: -

“ 147. Guiding principles

- (1) Summary disciplinary proceedings under this Act shall be guided

—

- (a) by Article 47 of the *Constitution*; and
- (b) with necessary modifications, and without derogating from the essence of the right or limiting the right to fair hearing of an accused person by Article 50 of the Constitution.”

75. In the present case, the petitioner states that he was not given the report of investigation given to the Commanding Officer under Section 156 of the *Kenya Defence Forces Act* and this violated his rights under Article 147(1) and 50 of the *Constitution* read with Section 4 of the *Fair Administrative Action Act* of 2015.

76. The respondents have submitted on the other hand that the petitioner was served with an Abstract Evidence on 20th April, 2020 shown on exhibits “F00 A 1A – B.”

77. The documents produced by the respondents do not constitute a complaint made to a Commanding Officer under Section 150 of the *Kenya Defence Forces Act* accompanied by an investigation report and/or Abstract of evidence that was duly served on the petitioner to prepare for the summary trial.

78. Instead, the respondents availed to the Court a Certificate in terms of regulation 9(4) by one LT AN Barasa, dated 20th April, 2021 which is a certificate to be attached to an abstract of Evidence after it has been handed over to the accused.

79. The alleged copy of abstract evidence supposedly handed over to the petitioner is not attached to Exhibit “F00 1A” as alleged by the respondent or at all. The petitioner has in the petition, supporting and further Affidavit categorically denied receipt of any such Abstract Evidence and submits this to be the basis of his case that he was denied a fair hearing and was not given adequate information to prepare for his case in violation of the *Kenya Defence Forces Act* and relevant regulations and thus the respondents violated Article 47 and 50 of the *Constitution* which Kenya Defence Forces are bound to follow in the conduct of summary proceedings against him.

80. The petitioner has denied having received and signed exhibit F001 ‘B’ presented by the respondents.

81. The Court finds that the petitioner having denied any receipt of the Abstract evidence to prepare his case, the evidential burden had shifted to the respondents to produce a copy of the Abstract evidence allegedly served on the petitioner and or prove by expert evidence that indeed the Petitioner had signed exhibit ‘F00 ‘B’ upon receipt of the Abstract evidence. This the respondents failed to do and the Court is satisfied that no such abstract evidence was prepared and served on the petitioner to adequately prepare for his case.



82. The record of proceedings produced by the respondents being exhibits “F00 2A and F00 2B indicate that the petitioner entered a plea of not guilty to the second charge.
83. The record of proceedings with respect to the charge of being found while drunk and disorderly during working hours indicate that the petitioner pleaded guilty before the Commanding Officer E.M. Muthee but the petitioner went ahead to offer an explanation that he was proceeding to Ngong that morning and met a Colonel but could not remember what he said to him. When asked if he was drunk, he said that he had bought a drink the previous night which he had taken during the night and was still drunk in the morning. The petitioner was found guilty and reduced in rank from Sergeant to Corporal.
84. On the same date; the petitioner was tried on the same facts by Commanding Officer Major Dr. Bulukhu on a different charge of using insubordinate language to a superior officer 2 LT. Simon Chege Waikwa by asking him:-
- “kwani ni wewe ulininunulia hiyo pombe “when asked why he was drunk during working hours.
85. The petitioner pleaded not guilty to the charge. No prosecution witness was called to give evidence. The Commanding Officer did not record any statement of facts regarding this charge. The petitioner was not asked any questions. The Commanding Officer then recorded previous record of the petitioner and proceeded to enter a verdict of guilty as charged and the petitioner was dismissed from service.
86. From the record before Court, the trial was conducted by Major E.M. Muthee in the presence of Warrant Officer II Sergeant Wanjala and Sergeant Baya Keya, whereas the second trial was conducted by Major Mr. Bulukhu in the presence of Major E.M. Muthee who tried the first charge LT. A.N Baraza and 1 N. Gathambo and Sergeant Jacob Olekete.
87. The petitioner has submitted that he faced double jeopardy in respect of one act which was split into two different charges, and tried by two different Commanding Officers and with the first commanding officer participating in the second trial.
88. Firstly, the record before Court does not demonstrate any statement of fact recorded in the proceedings with respect of the charge of using insubordinate language to a superior officer. The petitioner having pleaded not guilty, it was incumbent on the Commanding Officer to call witnesses to testify against the petitioner. No witness for the prosecution was called and so the petitioner could not be put on his own defence. There is absolutely no evidence adduced by the respondent to support this charge upon which the petitioner was wrongfully found guilty and dismissed from service. The Court finds that the respondents not only violated the petitioner’s right to fair administrative action in terms of Article 47(1) of the Constitution read with Section 4 of Fair Administrative Action Act, 2015, the respondent grossly violated the right of the petitioner to a fair hearing in violation of Article 50(1) of the Constitution.
89. The verdict of guilty on the charge of insubordination having been based on no evidence at all upon a plea of not guilty by the petitioner was a nullity and void *ab initio*.
90. Equally therefore, the sentence of dismissal by the respondents having been based on a mis-trial and a void verdict of guilty is equally null and void and is set aside.
91. With respect to the first offence in respect of which the petitioner was found guilty of being drunk and disorderly during working hours and was reduced in rank from a sergeant to a Corporal, was arrived at upon a plea of guilty by the petitioner notwithstanding lack of abstract evidence availed to him and presented before Court.



92. This procedural omission, notwithstanding, the Court is satisfied that the petitioner was found guilty on his plea of guilty and the Commanding Officer proceeded to ask the petitioner questions and therefore recorded statement of facts in support of the offence. This is evidence from the record of summary proceedings produced before Court.
93. The Court has no basis to fault the verdict and sentence by the Commanding Officer in respect of the first charge and returns a verdict accordingly.
94. In the final analysis, the Court finds that there was no valid reason to dismiss the petitioner from service. The dismissal having been found null and void *ab initio*, the petitioner is entitled to return to service on the reduced rank of a corporal. The Court so finds.
95. Accordingly the Court enters judgment in favour of the petitioner against the respondent as follows: -
- (a) The decision by the Kenya Army to dismiss the petitioner from service is set aside having been declared unlawful, and void *ab initio*.
 - (b) The petitioner is reinstated to service in the rank of corporal without loss of remuneration and/or benefits from the date of dismissal till payment in full.
 - (c) The Court lacks jurisdiction to deal with the issue of compensation in respect of injuries sustained by the petitioner in the cause of duty and strikes that aspect of the petition accordingly.
 - (d) The respondents to pay the costs of the petition.

DATED AND DELIVERED AT NAIROBI THIS 2ND DAY OF JUNE, 2022.

MATHEWS N. NDUMA

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this Judgment has been delivered to the parties online with their consent. They have waived compliance with Order 21 rule 1 of the Civil Procedure Rules which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances:-

Mr. Gitamo Onsombi & Com Advocates for the Petitioner

O.M. Mjomba, Litigation Counsel, Attorney General's Chambers

Ekale – Court Assistant.

