



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

PETITION NO. 192 OF 2019

DOUGLAS KATANA RANDU.....PETITIONER

VERSUS

1. JUDICIAL SERVICE COMMISSION

2. THE HUMAN RESOURCE MANAGEMENT ADVISORY COMMITTEE....RESPONDENTS

JUDGMENT

1. The Petitioner, Douglas Katana Randu filed a Petition dated 17th October 2019 against the Judicial Service Commission and the Human Resource Management Advisory Committee, seeking for Orders:-

i. That a declaration be made by this Honourable Court that the Petitioner's fundamental rights and freedoms were grossly breached contravened, violated and infringed under Article 47, Article 50(1) and (2) (a), (b), (c), (e) & (j), Article 28, Article 19(3) Article 20(1) and (2) Article 21(1) of the Constitution by the Judicial Service Commission on the impugned ulterior charges, unfair suspension, unfair notice, unfair and biased disciplinary proceedings, unlawful conviction without jurisdiction and unfair dismissal from service thus rendering the decisions thereto void, nullity and unconstitutional.

ii. That this Honourable Court declare that decisions made on the 12th October 2018 when Petitioner was suspended, on 27th March 2019 when disciplinary proceedings and decisions were made and on 12th June 2019 when the Petitioner was purportedly convicted without jurisdiction and dismissed from service were void, nullity and they be set aside and or quashed in their entirety by this Honourable Court and the Petitioner be reinstated back to service in the Judiciary unconditionally and be paid his salary and allowances for the time he was suspended until date of his reinstatement in service.

iii. That this Honourable Court declare that the Petitioner is entitled to payments of damages and compensation for the violation and contravention of his fundamental rights and freedom under the provisions of Article 47 Article 50(1) and (2)(a), (b), (c), (e) & (j), Article 28, Article 19(3) Article 20(1) and (2), Article 21(1) and Article 25(a) & (c) of the Constitution.

iv. For an award of general damages and exemplary damages on aggravate under Article 23(3) of the Constitution for the violation of aforementioned Articles.

v. Cost of this Petition be provided for.

vi. For such other Order(s), Writs and or directions as this Honourable Court shall deem fit and just.

2. The Petitioner avers that he was employed by the 1st Respondent as an Italian Interpreter Clerk on 30th January 2001 and was deployed to Malindi Law Courts before being transferred to Kilifi and then to Mombasa Law Courts. He also provided the said services to many other court stations when required and called upon to do so and that he further attended to several Judicial Officers as a court clerk. That before the said employment, Malindi Law Courts had previously engaged his services on several occasions for 2 months and confirmed the quality of his services to interpret court proceedings from Italian to English language. That his ability, potential, skills and performance crowned him to be appointed In-Charge of various court registries and divisions including being a reliever of the CEO at Kilifi Law Courts and he has also served as a Member of the Mombasa High Court Leadership and Management team by appointment. He avers that on or about July 2017 he was required by the 1st Respondent to give an explanation on certificates submitted during his employment which were purported to have been forged as per a Report on screening and verification of Judiciary employees. That he tendered his written reply to the same and he was suspended from service by the 1st Respondent in October 2018. That he also made presentations before the 2nd Respondent during the disciplinary proceedings against him in March 2019 and avers that the Respondents did not furnish him with the said Report for his interrogation and preparation of a defence. He avers that his rights under Articles 19, 20, 25, 27, 28, 47 and 50 of the Constitution of Kenya

and under various provisions of the Judicial Service Act, the Employment Act, the Judiciary Human Resource Policies and Procedures Manual September 2014 and the Evidence Act have been violated. The Petitioner avers that the Respondents refusal to supply him with the aforesaid report and the relevant information they relied upon grossly breached, denied and infringed his rights to fair administrative action, a fair hearing and to be informed in advance of the evidence to be relied upon as under Articles 47(1) & (2) and 50(1) & (2)(c) and (j) of the Constitution of Kenya. Further, that the invitation notice served upon him by the Respondents requiring him to attend the disciplinary hearing was incompetent, short, unfair and irregular as it was not issued within the statutory period of 14 days. That the same thus prejudiced and occasioned a miscarriage of justice as he did not have enough time to prepare his defence and violated his right under Article 50(1) & (2) (a) and (c). He avers that the 1st Respondent never called any witnesses or adduced evidence in support of its case during the aforementioned disciplinary hearing against him considering that the standard of proof for the allegation of forgery ought to be beyond reasonable doubt due to its criminal elements. That he was further without any written reason not paid his alimentary allowance after his suspension and which he was entitled to under the law. He avers that the Respondents refusing to pay him the said allowance infringed on his rights under Article 25(a), (c), Article 27(1) on the equal protection of the law and Article 28 on protection of the inherent dignity of every person.

3. The Petitioner further avers he was informed during the hearing of his disciplinary proceedings that he had already been dismissed according to records for failing to respond to the charges against him and that his case had thus been concluded. That he applied to be supplied with copies of the proceedings for the disciplinary case of 27th March 2019; to be paid his alimentary allowance; and to be refunded his bus fare back to Mombasa but the 2nd Respondent's response was that the same was not their work. That he was subsequently dismissed by the 1st Respondent pursuant to the proceedings of the disciplinary hearing. That the Respondents having failed to tender evidence as required by law and having instead used mere casual news, his purported conviction and subsequent dismissal is illegal, unlawful, void and a nullity and that this Court should set aside the said decision and quash the dismissal order.

4. The Petitioner particularizes at paragraph 65 of his Petition the loss and damage he has suffered. He avers that the said disciplinary proceedings were *quasi* criminal and thus subject to the law of limitations and that since the alleged forgery was allegedly committed in 2001, the 1st Respondent's case against him was time barred under Section 90 of the Employment Act and is not tenable in law. That such proceedings of a cause of action that is time-barred and which led to an unlawful suspension and denial of earnings was a breach of his rights under Articles 19(2) & (3) (a) and Article 28 of the Constitution. Further, that the inordinate delay in concluding the disciplinary proceedings against him grossly breached his rights under Articles 21(1), 47 and 50(1) & (2)(e). In his Supporting Affidavit, the Petitioner annexes his identification documents, education certificates, court summons requiring his attendance for Italian interpretation, receipts and correspondence in support of his case.

5. The 1st Respondent filed a Replying Affidavit sworn on 23rd October 2020 by its Director Human Resource Management and Development, Dr. Elizabeth Kalei. She avers that the Petition herein lacks particularity as it does not specify with reasonable precision, the provisions of the Constitution alleged to have been infringed and how they have been infringed by the Respondents. It is her averment that the Petitioner was properly dismissed from judicial service as a Senior Clerical Officer after it was established he had forged his KCSE Certificate and his Kenya Utalii College Certificates and further failed to give an explanation on the said forgery charge. That the Petitioner also admitted in his disciplinary hearing of having forged his academic certificates but relied on the doctrine of limitation of actions. She asserts that both KNEC and Kenya Utalii College have confirmed the said academic certificates presented by the Petitioner were forged and that with Utalii College intends to prosecute the Petitioner as he never attended the said College. She further avers that the 1st Respondent has the power to receive complaints against, investigate, and remove from office or otherwise discipline Registrars, Magistrates, other Judicial Officers and other staff of the judiciary. She avers that the Petitioner was rightly before the 2nd Respondent for determination of his case considering his grade falls below grade JS9 and that he had been given 21 days to respond to the charges before he was suspended due to the gravity of the charges. That he was handled as judiciously as humanly possible during his disciplinary hearing and upon deliberation of the case and on the Petitioner's own admission, the 2nd Respondent decided to dismiss him from service on account of gross misconduct with effect from 12th December 2018. To demonstrate that the Petitioner had disciplinary issues, she annexed to her affidavit copies of a Show Cause Letter and Warning previously issued to the Petitioner in the course of his employment. She avers that the Petitioner was accorded a fair hearing and administrative action further because he was invited for the interview after approximately 5 months had elapsed since the date he had been issued with the Charge. Further, the charges were read to him and he comfortably proceeded to defend himself and that the Petitioner has failed to demonstrate the prejudice visited on him by the administrative actions of the Respondent. She averred that the Petition is thus an abuse of the Court processes, undeserved and also a breach of natural justice.

6. In response, the Petitioner filed a Supplementary Affidavit sworn on 5th November 2020 averring that his KCSE Certificate was duly acknowledged received in writing by the then Principal Magistrate Malindi Law Courts when he applied for the job. He denies forging the said certificate and alludes that the said contentious certificate may have been placed in his file by the dishonest staff who lost his station personal files and caused him not to be paid for 8 months upon employment. That the said staff later reconstructed his station files without his input or verification of documents. He further denies submitting the Kenya Utalii College Certificates when applying for the job and that he only forwarded the same in 2009. He avers that the document referred to in the Replying Affidavit by Dr. Elizabeth Kalei is not the Report but an internal memo dated 5th November 2019 from the Director Human Resource to the 1st Respondent and which in his view was maliciously drafted in response to his Petition. It is the Petitioner's averment that under the limitation of action, a warning letter cannot have consequences of its reference after 12 months. The Petitioner avers that the said Replying Affidavit by Dr. Elizabeth Kalei was filed out of time and without leave of court and that the inordinate delay of about 10 months is not reasonable considering the Respondents and their advocates are in Nairobi. That the same also offended the provisions of Rule 13(1) of the Employment and Labour Relations Court (Procedure) Rules 2016. He thus prays that the Respondents' Replying Affidavit sworn 23rd October 2020 be dismissed or struck out and judgment be entered in his favour as prayed in the Petition.

7. The Petition was dispensed by way of written submissions. The Petitioner's submissions were to the effect that this Court has the jurisdiction in accordance with Article 165 of the Constitution to hear and determine the present Petition for redress of denial, violation or infringement of or threat to a right or fundamental freedom in the bill of rights. That he has also met the threshold of a constitutional petition as set in the case of **Anarita Karimi Njeru v Republic [1979] eKLR**. The Petitioner submits that under section 60(1)(a) of the Evidence Act (Chapter 80 of the Laws of Kenya) this Court is entitled to take judicial notice of the Laws of Kenya including Section 27(1) of Interpretation and General Provisions Act, Cap 2 Laws of Kenya which provides that all subsidiary legislation come into operation on the day of publication, or, on the day enacted. That he was dismissed under the provisions of the Judiciary Human Resource Policies and procedures

Manual which became operational in September, 2014. That by dint of section 27 of the Interpretation and General Provisions Act, the provisions of the Judicial Service Act 185B and the said Judicial Human Resource Manual were not there when he was employed in 2001. He nevertheless submits that Subsection 25 of the Third Schedule Section 32 Part V of the Judicial Service Act 185B illustrates how the dismissal proceedings are to be conducted. That Subsection 25(4) of Section 32 further provides that after a party responds in writing to the allegations against him, a hearing notice of not less than 14 days shall be issued to him. That this requirement is meant to accord the parties fair hearing with opportunity to defend their pleadings. He submits that failure by the Respondents to verify his certificates when he applied for employment and during the probation period was due to negligence, lack of professionalism, omission, incompetence, inefficiency and ignorance by the officers under the watch and supervision of the Respondents. He relies on the Court of Appeal case of **Johnson Maghoha v East Africa Breweries Ltd (C.A. 28 of 1982)** which held that:

“The appellant was duly employed by the Respondent after satisfying the set qualifications and passing the interview by the Respondent. The appellant worked satisfactorily for 13 years under the administration of the Respondent. The Respondent could not purport to revisit the Appellant’s employment proceedings after 13 years and instigate forgery disciplinary proceedings against him on his professional certificates used for employment. The Respondent had all the time to verify the Appellant’s certificates before employment and during the probation period. Revisiting the Appellant’s employment proceedings which was time barred implies the Respondent was ignorant, negligent, incompetent, careless and inefficient. No amount of evidence can validate an illegal cause of action commenced out of the limitation period without the leave of the court or consent of the parties. The dismissal of the Appellant from service in this circumstance is illegal, void and nullity...”

8. The Petitioner submits that since the Respondents unlawfully and illegally continued with a stale, time barred cause of action contrary to Section 90 of the Employment Act and without leave of court, consent of parties or written reasons the proceedings and the decisions thereto are rendered void and a nullity. He cites the case of **Michael Maina and Another v Stanley Kigara Kagombe [1996] eKLR, Civil Appeal No. 109 of 1996** where the court held that an order that is a nullity is something that a person affected by it is entitled *ex debito justitiae* to have set aside. He further submits that the disciplinary proceedings were conducted and concluded outside the statutory limitations period of 3 months thus which contravening section D.13.1 (ii) of the Judiciary HR Manual September, 2014 as read together with Section 13(3) (b) of the Public Service Value and Principles Act 2015 and section 8 of the Fair Administrative Act. The Petitioner submitted that the purported screening report was incompetent, unauthorized by the Document Examiners Professionals and Experts and thus not enforceable in law and in support of his case, he relies on the holding of the court in **Mark Omondi v Timothy Oyodo t/a Cargo Rangers Ltd (C.A. 39 of 1985)**. He urges this Court to make similar orders against the incompetent purported screening report filed with the 1st Respondent on 14th April 2016 and set aside all the consequential orders and decisions made thereto by the Respondents.

9. On the right to a fair trial including the right to be informed of the charge, with sufficient detail to answer it per Article 50 (2)(b) of the Constitution, the Petitioner relies on the Supreme Court case of **Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission & 2 Others [2017] eKLR Election Petition 1 of 2017**. That the right to a fair hearing was also buttressed by the Supreme Court of Kenya in the case of **Deynes Muriithi & 4 Others v Law Society of Kenya [2016] eKLR**.

10. On the right to fair administrative action under Article 47 of the Constitution, the Petitioner cites **Nairobi High Court Petition No. 336 of 2015 Masai Mara [SOPA] v Narok County Government [2016] eKLR**; the Court of Appeal case of **Judicial Service Commission v Mbalu Mutava & Another [2015] eKLR**; and the South African case of **Pharmaceutical Manufacturers Association of South Africa & Another: ex parte President of the Republic of South Africa & Others (CCT) 31/99 [2000] ZACC 1; 2000 (2) ZA 674**. The Petitioner submits that the 1st Respondent refused to pay him his entitlement alimentary allowance upon suspending him yet the same is provided for under Subsection 17(3) Third Schedule – Section 32 Part V of the Judicial Service Act Cap 185 B (Revised - 2015) read together with Section D.7.5.2 (iii) and sections H.14 of the Judiciary Human Resource Manual September, 2014. That due to the unfair termination of his employment, loss and damage was further occasioned to him such as failing to service loans guaranteed by the 1st Respondent. That the court should assess and award general damages and exemplary damages on aggravate.

11. The Respondents submit that in exercising their disciplinary function they are guided by the provisions of the Judicial Service Act, 2011, which derives its enactment directly from Article 171 of the Constitution. That therefore the Petitioner's reliance on the provisions of the Fair Administrative Action Act and the Employment Act is misconceived and entirely inapplicable to the proceedings herein and that this Court should determine the appropriateness of the Petitioner's reliance on the provisions of the Fair Administrative Action Act. To this end they rely on the Constitutional Court of South Africa's decision of **Petronella Nellie Chirwa v Transnet Ltd (2007) ZACC 23** wherein the Court had been confronted with a similar state of affairs to define the distinction between the country's Labour Relations Act and its Protection of Administrative Justice Act; and their import in disputes arising from employment relationships. They urge this Court to find that the action taken by the Respondents is purely a matter of private contract that is governed by the Judicial Service Act, the terms and conditions of employment as contained within the Petitioner's contract and further, the Judiciary's Transformation Framework. That this Court should further find that the 1st Respondent was not exercising administrative authority in terminating the employment of the Petitioner and therefore the action does not fall within the purview of Article 47 of the Constitution. It is the Respondents' submission that the Petitioner was accorded a fair hearing and that the procedure adopted was procedurally fair and anchored under all the applicable provisions of law. That the 2nd Respondent Committee was established pursuant to Regulation 25(1), Part IV of the Third Schedule to the Judicial Service Act and further had the jurisdiction to hear the Petitioner's disciplinary case as under Section 32 of the Judicial Service Act and Part D.4 of the Judiciary Human Resource Manual. They further submit that the right to a fair hearing has to be examined from the peculiar facts and circumstances of each case including the nature of the investigations and the consequences thereof as held in the Court of Appeal case of **Judicial Service Commission v Mbalu Mutava & Another [2015] eKLR**. The Respondents further cited the case of **Republic v Public Procurement Administrative Review Board & 3 Others ex parte Nomads Construction Limited [2017] eKLR** where Odunga J. held that courts will only interfere with the decision of a public authority if it is outside the band of reasonableness. They submit that the 1st Respondent reached the decision to dismiss the Petitioner on account of the charges of gross misconduct pursuant to the provisions of Paragraph 25(11), Part IV, Third Schedule of the JSA. That especially because KNEC and Utalii College confirmed that the certificates provided by the Petitioner were forgeries, the Petitioner was fairly dismissed. That the Petitioner never invoked his right to appeal to the 1st Respondent and which right was duly informed to him by the 1st Respondent.

12. The Respondents submitted that administrative bodies may not conduct their proceedings exactly the way a Court of law would conduct its proceedings. That Odunga J. further noted in the case of **Republic v Commission on Administrative Justice Ex Parte Stephen**

Gathuita Mwangi [2017] eKLR that the fair hearing must be meaningful for it to meet the constitutional threshold. They submit that there exists an unmistakable distinction between the standard of proof in disciplinary proceedings and that in criminal proceedings. That in the present case the burden of proof in proving the acts of gross misconduct was on a balance of probabilities considering the existence of an employer-employee relationship between the parties herein. The Respondents relied on the case of **Attorney General & Another v Andrew Maina Githinji & Another [2016] eKLR** where the Court of Appeal addressed itself on this distinction as follows:

"13. Finally, I may refer to two decisions where a distinction between internal disciplinary proceedings of an employer and criminal proceedings was upheld for the reason that the internal disciplinary proceedings are anchored on the contract of employment and the burden of proof is on a balance of probability, while in criminal proceedings, proof beyond reasonable doubt is required. One is the decision of Okwengu, J.A. in the case of Judicial Service Commission v Gladys Boss Shollei & Another [2014] eKLR...

14. the other is an English decision which underscored the possibility of a multiplicity of causes of action sprouting from a single act. That is R. v. Wigglesworth (1984), 1984 CanLII 2275 (SK CA), 11 C.C.C. (3d) 27, 7 D.L.R. (4th) 361, 38 C.R. (3d) 388 (Sask. C.A.)..."

13. The Respondents submitted that the Petitioner's averments on limitation of action constitute a gross misunderstanding of the said concept provided under Section 90 of the Employment Act because that time limit is not applicable to internal disciplinary proceedings as similarly reiterated in the case of **James Mugeria Igati v Public Service Commission of Kenya [2014] eKLR**. They submit that without prejudice to the foregoing, the law cannot be used to sanitize an illegality. That the Petitioner knowingly submitted a forged KCSE and college certificates at the point of applying for the position of Clerk and that it does not matter at which point the JSC unearths the Petitioner's illegal acts of gross misconduct. The Respondents further submitted that the Petitioner's Petition fails to meet the basic threshold for Constitutional Petitions as set out in the celebrated case of **Anarita Karimi Njeru v Republic [1979] eKLR**. That the prayers sought by the Petitioner are not attainable in law as they are tantamount to creating a contract between the Petitioner and the 1st Respondent and which cannot be executed by this Court. That it is trite law that this Court would only be entitled to refer the Petitioner's disciplinary case back to the Respondents as the decision-maker and not determine the same on its merits. Further, that the Petitioner's prayer for reinstatement cannot be granted as the allegation of gross misconduct was indeed proved against him, on his own admission and further because the employer-employee relationship between the Petitioner and 1st Respondent has been strained. That having demonstrated that the Petitioner's dismissal was fair, he is consequently not entitled to any damages whatsoever and the Petition ought to be dismissed with costs to the Respondents.

14. The Court has considered the rival pleadings, the evidence adduced in affidavits and exhibits as well as the authorities cited, the law and the Constitution in coming to this decision. From the foregoing, the issues that lend themselves for determination are – whether limitation had set in in relation to the Petitioner's disciplinary case, whether the Petitioner has met the constitutional threshold for a finding that his rights were infringed by the Respondents and whether the Petitioner is entitled to the reliefs he seeks in the Petition.

15. The Petitioner was an employee of the 1st Respondent and served in various court stations of the Judiciary at the Coast rendering services as a Court Clerk as well as offering interpretation services from Italian to English and vice versa. It is this aspect of his service that precipitated the action that led to the Petitioner's dismissal from service. The Petitioner was accused of forging certificates in order to obtain employment with the 1st Respondent. It is asserted the discovery was after a period of service by the Petitioner hence his argument that limitation had set in per Section 90 of the Employment Act as the incidents complained of had taken place more than 3 years prior. In matters discipline where something as egregious as criminal conduct as alleged herein, I think it would be stretching it a bit too far to assert limitation. What is the remedy for an employer who discovers that Mr. John who applied to be a manager in the establishment is indeed Mr. James and that he forged the identity of Mr. John in order to obtain employment 6 years prior? Is the employer thereby precluded from disciplining or removing the imposter Mr. James? In my considered view, this going to the root of the employment cannot be amenable to limitation in the manner of infringement of employment rights such as discipline issues which Section 90 covers. It is clear that there is no statute of limitation on criminal conduct and if there had been an allegation that the Petitioner herein had say, insubordinated his supervisor and this allegation was being made a few years later, it would not fly. However, in respect to the accusation that the Petitioner presented false certificates in order to secure employment with the 1st Respondent would not fit within the limitation prescribed in Section 90 of the Employment Act. I therefore find that the process undertaken by the Respondents not to have been caught by limitation at all and therefore cannot be impugned solely on that ground. The disciplinary proceedings undertaken by the Respondents therefore were within time.

16. The second issue isolated for determination is whether the Petitioner has met the constitutional threshold for a finding that his rights were infringed by the Respondents. He asserts that the Respondents were guilty of violation and contravention of his fundamental rights and freedom under the provisions of Article 47 Article 50(1) and (2)(a), (b), (c), (e) & (j), Article 28, Article 19(3) Article 20(1) and (2), Article 21(1) and Article 25(a) & (c) of the Constitution. He also asserts that his fundamental rights and freedoms were grossly breached contravened, violated and infringed under Article 47, Article 50(1) and (2) (a), (b), (c), (e) & (j), Article 28, Article 19(3) Article 20(1) and (2) Article 21(1) of the Constitution. In the Petition he did not particularise the infringements and violations with specificity and the Court cannot discern infringements *in rem*. What came out strongly was that the Respondents infringed on his right to a fair hearing and for failure to accord him fair administrative actions. Those are two aspects of infringement in addition to the claim that he was denied a right to livelihood that this court can delve into. In relation to the denial to a fair hearing, the Chief Justice emeritus Hon. D. K. Maraga CJ, issued the Petitioner with a letter dated 12th October 2018 in which the charges were laid out and the Petitioner given 21 days to make written representation in relation to the charges. It was on the basis of this that the Respondents held an oral hearing on 27th March 2019. The letter of invitation was dated 20th March 2019. The Petitioner asserts that under the Judiciary Human Resource Policies and Procedures Manual, September 2014 he was entitled to a longer notice period. The Respondents on their part assert that the right to a fair hearing has to be examined from the peculiar facts and circumstances of each case including the nature of the investigations undertaken in the case. The right to a fair hearing must be viewed against the backdrop of the particular disciplinary process undertaken. Where an employee has stolen from an employer it may be well taken that a few hours preparation for defence are all it will be required so that the employee does not take off and disappear. In the case of the Petitioner herein, he had been advised of the charges and had been given time to respond. He only takes umbrage that the time he was called for the oral interview were few. I agree. However, did this that lead to manifest failure to accord him a hearing? Did he claim that he was not able to mount a defence because of the brevity of the notice to appear? He does not seem to have suffered any lapse in the failure to give him an additional 7 days to appear. He indeed appeared and defended himself and did not raise incapacity at the hearing on account of the 7 days that he asserts were denied him. There is nothing that hangs unsaid because he was not given the 7 days. In relation to the allegations that the Respondents failed to provide him with an alimentary allowance in terms of

Subsection 17(3) Third Schedule – Section 32 Part V of the Judicial Service Act Cap 185 B (Revised - 2015) read together with Section D.7.5.2 (iii) and sections H.14 of the Judiciary Human Resource Manual September, 2014. The 1st Respondent ought to have provided an alimentary allowance as would have been determined by the 2nd Respondent. As such he was denied a right he was entitled to in relation to his sustenance as provided for in the 1st Respondent's manual.

17. The final issue to determine is what remedies the Petitioner is entitled to in relation to his Petition. Having found that the Petitioner's fundamental rights and freedoms were not breached or contravened, violated or infringed under Article 47, Article 50(1) and (2) (a), (b), (c), (e) & (j), Article 28, Article 19(3) Article 20(1) and (2) Article 21(1) of the Constitution, the disciplinary proceedings, conviction and dismissal of the Petitioner from service are valid and constitutional. The only lapse by the Respondents was the failure to pay an alimentary allowance which I order and direct should be paid upon determination of the 1st Respondent as to the amount the Petitioner would be entitled to noting that the sum is discretionary hence the inability of the Court to indicate a precise amount. As the Petition was largely unsuccessful I will order that each party bears their own costs for the Petition herein.

It is so ordered.

Dated and delivered at Nairobi this 17th day of February 2021

Nzioki wa Makau

JUDGE