



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NO. 152 OF 2018

IN THE MATTER OF: ARTICLES 2(5),(6), 10, 19, 20, 21, 22, 23, 27, 28, 29, 160(2)(a), 165, 172, 236, 258, 259(1),(3) AND 260 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ARTICLE 47 OF THE CONSTITUTION AND SECTIONS 3, 4, 5, 6 & 7 OF THE FAIR ADMINISTRATION ACTION ACT (2015) AND ARTICLE 159(2)(d) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE ACCESS TO INFORMATION ACT

ARTICLE 23(1) OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

INTERNATIONAL COVENANT ON ECONOMIC AND SOCIAL RIGHTS

ARTICLE 25(1) OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

AFRICA CHARTER ON HUMAN AND PEOPLES RIGHTS

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN ARTICLE 12

INTERNATIONAL LABOUR ORGANISATION GENERAL COMMENT NO. 14 ON THE RIGHT TO HEALTH, COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

ILO GUIDELINES ON HIV/AIDS IN THE WORKPLACE

AND

IN THE MATTER OF: SECTION 5 OF THE PENSIONS ACT

AND

IN THE MATTER OF: SECTIONS 12, 41, 43 & 45 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT NO. 20 OF 2011, SECTION 12 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT RULES

AND

IN THE MATTER OF: JUDICIAL SERVICE ACT SECTION 5, 8, 32(3) AND RULES 25(1-11) OF THE 3RD SCHEDULE

BETWEEN

NMLPETITIONER

VERSUS

RULING

1. On 11 October 2019 the Court delivered a judgment in which it ordered the Judicial Service Commission to commence and conclude a fresh disciplinary case concerning the Petitioner within 60 days.
2. The Court also ordered that the Petitioner be deemed as being on interdiction and be paid half salary from 22 August 2016 up to date of conclusion of the fresh disciplinary process (the Court issued other orders which are not relevant for purposes of this Ruling).
3. The orders were not complied with and on 12 November 2019, the Petitioner moved the Court under certificate of urgency seeking an order directing the Respondents to restore her to the payroll and reinstate certain benefits she was entitled to as an employee on interdiction.
4. The Respondents filed Grounds of Opposition to the application on 14 November 2019 and the Court heard submissions from the parties on 10 December 2019 (despite the Court encouraging the parties to resolve the dispute of restoration to the payroll and reinstatement of benefits accruing to an interdicted judicial officer, there was no resolution).
5. The Court has considered the application, the affidavit in support, the Grounds of Opposition and the brief oral highlights.
6. It is not in dispute that in terms of the judgment of the Court, which has not been overturned, the Petitioner is a judicial officer on interdiction and that pursuant to the applicable legal framework in place and terms and conditions of service, she is entitled to half salary and other benefits.
7. Under the legal framework and terms and conditions of service, the Petitioner is estopped from engaging in any other income generating endeavor, yet she has to live in dignity.
8. Until the judgment is stayed or overturned on Appeal, there is no valid or legitimate reason why the Respondents should not comply.
9. Considering all the above and the record, the Court directs that the Chief Registrar/Secretary, Judicial Service Commission (2nd Respondent) and/or her delegate being a senior officer within the Judicial Service Commission attends this Court on 7 February 2020 to explain why the orders of the Court have not been complied with and what steps are being taken to comply.
10. In case the Chief Registrar/Secretary, Judicial Service Commission fails to attend Court, the Court will not hesitate to use its coercive powers to ensure attendance.
11. The Petitioner will have costs of this application.

Delivered, dated and signed in Nairobi on this 31st day of January 2020.

Radido Stephen

Judge

Appearances

For Petitioner	Mr Okemwa instructed by Okemwa & Co. Advocates
For Respondents	Mr Malenya instructed by Gumbo & Associates, Advocates
Court Assistant	Judy Maina