



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**PETITION 115 OF 2018**

**IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010 ARTICLES 10, 19 (2);20 (1), (2),**

**(3) & (4); 21 (1), 27 (4) ; 28; 41 (1) & (2); 47; 165 (3) (B); 246(1) (2) (3) & (4); 250 (6), (7) & (8) ; 260**

**AND**

**IN THE MATTER OF: THE NATIONAL POLICE SERVICE ACT**

**AND**

**IN THE MATTER OF: UNCONSTITUTIONAL STOPPING OF THE SALARY AND BENEFITS OF A  
COMMISSIONER OF THE NATIONAL POLICE SERVICE COMMISSION ON 10<sup>TH</sup> FEBRUARY, 2014**

**BETWEEN**

**DR. MAJOR (RTD) SHADRACK MUTIA MUIU.....PETITIONER**

**AND**

**THE NATIONAL POLICE SERVICE**

**COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE SALARIES & REMUNERATION**

**COMMISSION.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is a unique case and possibly the first one of its kind in Kenya. The Petitioner was appointed a Commissioner at the National Police Service Commission, the 1<sup>st</sup> Respondent herein, on 2.10.2012 for a term of 6 years that was to expire on 2.10.2018. In February 2013 he went on a 3 week benchmarking tour to Sweden, United Kingdom and Germany, together with other Commissioners, and while there he fell ill and was admitted for a number of days having suffered a stroke. On 23.2.2013, he flew back to Kenya and was admitted at Nairobi Hospital for 2 weeks and thereafter he continued with medication and never reported back to work until his term ended on 2.10.2018.

2. As a result of his continued absence from work, his salary and allowances including medical cover were stopped from March 2014 following the 1<sup>st</sup> Respondent's a letter dated 10/2/2014 addressed to the Principal Secretary Treasury. The petitioner considered the withholding of his salary to be unconstitutional and discriminatory contrary to Article 27 of the Constitution. He therefore brought this petition seeking the following prayers:

- a. A declaration that the withholding and/or stoppage of the Petitioner's salary and benefits to his detriment was unfair and unconstitutional, null and void.

- b. A declaration that the Respondents have violated the Petitioner's right to fair labour practice and lawful expectation.
- c. An order of certiorari calling into this Honourable Court for the purposes of quashing forthwith the 1st Respondent's purported decision to withhold and/or stop the Petitioner's salary and benefits.
- d. An order of Mandamus for the purpose of compelling the Respondents to pay the Petitioner's withheld and/or accrued salary for the unpaid period between 10/2/2014 to date amounting to Kshs. 35,145,000/-.
- e. Punitive damages in favour of the Petitioner against the Respondent for discrimination.
- f. Damages for unfair labour practices and violations.
- g. The Respondent to bear the costs of this Petition in any event.
- h. Such further orders as this Honourable Court may deem just and expedient.

3. The 1<sup>st</sup> and 3<sup>rd</sup> Respondent's, opposed the petition through the Replying Affidavit sworn on 29.3.2019 by the Joseph Vincent Onyango, the Chief Executive Officer of the 1<sup>st</sup> respondent. The respondent admits that the petitioner was a commissioner and that he fell ill while on duty abroad and thereafter never reported back to work again even after his discharge from the hospital. They further admitted that as a result of his long absence and after seeking his doctor's comprehensive report in vain, the Commission resolved that the Petitioner be put on sick leave in accordance with the prevailing Government Rules and staff regulations as follows; from 1.7.2013 to 30.9.2013 the Petitioner be on full salary, from 1.10.2013 to 31.12.2013 on half salary and on 1.1.2014 to 30.6.2014 on nil salary.

4. An attempt was made to have the petitioner appear before a Medical Board which was convened by the Director of Medical Services but failed because he could not be reached. Again in September 2015 a Petition was presented to the National Assembly on behalf of Juhudi Community seeking that the Assembly does recommend the Petitioner's removal on grounds of misconduct and incapacity to perform functions of office and it was granted. However, the President never appointed a tribunal in accordance with Article 251 (5) of the Constitution to investigate the matter, until the petitioner's term lapsed.

5. The petition was disposed of by *viva voce* evidence and thereafter both sides filed written submissions. However, the Petitioner withdrew his claims against the 2nd Respondent as no orders had been sought against her.

#### **Petitioner's case**

6. The Petitioner testified as Pw1. He reiterated the facts set out above and added that on the flight back to Kenya he was downgraded to Economy Class and his colleagues abandoned him; that on arrival he was immediately admitted at Nairobi Hospital and again none of his colleagues visited him; that he was bedridden and has been undergoing medical treatment ever since; that the Respondents were aware of his medical condition and that they stopped his salary from March 2014 to October 2018 when his term lapsed; and that his medical cover was also cancelled and the Respondents never paid his medical bills.

7. He further testified that he was neither invited to show cause why he was not to be terminated for failure to attend work nor was he given prior notice before his salary was stopped; that he was never taken to the medical Board to assess his capacity and his medical reports were never challenged by his employer; and finally he was never removed from office before his term ended.

8. In cross-examination, he admitted that the Constitution provides for his removal as a commissioner and one of the grounds for such removal is medical grounds. He testified that during such removal, the correct procedure has to be followed. However, he stated that the CEO's letter dated 10.2.2017 was not addressed to him and he was not copied in the letter. He admitted that he had been paid his full salary from July to September 2013 and half salary from October to December 2013 but the salary was stopped effective from 1.3.2014.

9. He contended that his medical condition did not permit him to go to the office to apply for sick off but his doctor informed the 1<sup>st</sup> Respondent of his condition. He testified that he was advising administration police and commanders and that there was no other person with expertise with respect to uniformed officers. He admitted that his absence from office deprived the Commission advice on important matters. However, he maintained that he was not removed from office under Article 251 (5) (c) of the Constitution although he learned through the television that there was a petition seeking his removal.

#### **Respondent's case**

10. George Okida Okoth the 1<sup>st</sup> Respondent's Deputy Director Human Capital testified as Rw1. He stated that the Commission wrote to the Petitioner's doctor on 29.11.2013 seeking details of his progress which was 10 months after the Petitioner fell sick and had failed to report to work but the doctor did not respond to the letter; that as a result, the Commission resolved to place the Petitioner on sick leave under the Government of Kenya Staff Rules and Regulations section N (8) clause (1)(i) and liaise with the appointing authority; that thereafter the Commission wrote to the Treasury on 10.2.2014 to stop the Petitioner's salary, and another to the director of Medical Services to convene a Medical Board to assess the petitioners suitability; and finally, the Commission also wrote to the Chief of Staff to liaise with the appointing authority about the Petitioner's continued absence from duty.

11. He further testified that on 23.6.2014 the Chief of Staff wrote to the Petitioner imploring him to resign on medical grounds but he could not confirm whether or not the Petitioner responded to the letter. He contended that Mr. Simon Kalei, petitioned Parliament for the removal of the petitioner as a commissioner and on 17.5.2015 the Commission informed Parliament that it was in support of the Petition. However, he

was not sure whether or not the President formed the Committee to investigate the case.

12. He admitted that the Petitioner's salary was from a consolidated Fund at the Treasury and maintained that the Petitioner served the Commission for only 5 months out of her 6-year term.

13. On cross-examination, he admitted that he never received any approval stopping the Petitioner's salary; that the Commission never referred the Petition to any other doctor for medical examination; that they never doubted that the Petitioner was sick; and that the letter dated 12.6.2013 recommended for light duties but he was not sure whether the Petitioner was given any light duties.

14. He further admitted that he did not know if the Petitioner was served with the letter dated 29.5.2014 to attend the Medical Board, and that he did not have any evidence to prove that the Petitioner received the letter from the Chief of Staff. Finally, he admitted that the Petitioner was never retired on medical grounds and there was no letter stopping his salary after the commission notified Treasury that he was not attending work.

#### **Petitioner's submissions**

15. The Petitioner submitted that the entire process of stopping his salary without giving him any hearing was shrouded in secrecy as he was not a party to the process. He further submitted that the 1<sup>st</sup> Respondent's letter dated 10.2.2014, made reference to the Government of Kenya Staff Rules and Regulations as contained in section N8 Clause 1 (i) of the COR which applies to civil servants yet he was a State Officer within Article 260 of the Constitution. He contended that the Respondents' allegation that it withheld his salary and benefits due to his poor health was unconstitutional because it was discriminatory and a violation of his right to fair labour practices. He contended that the withholding of his salary and benefits was done hurriedly without consultation and prior notice. Therefore, he urged the court to find that his appointment was to lapse on 2.10.2018 and as such he is entitled to be remunerated for the whole 6666period of his term.

16. He relied on **Francis Waweru Njenga v Public Service Commission [2017] e KLR** where the Court reinstated an unfairly dismissed employee, without loss of salary and allowances, and **Dorcas Jepkorir Kiplagat v Uasin Gishu County & 3 Others [2018] e KLR** where the court held that the employee was unfairly terminated and awarded her salary for the entire period it had been stopped plus compensatory damages.

17. Finally, he urged the court to correct the violation of his fundamental rights and freedoms that were violated by the respondents by failing to uphold the National Values and Principles of good governance which enshrine the rule of law, human dignity, equality, human rights, non-discrimination, good governance, equity and social justice. He urged that he is entitled to the reliefs sought because he was deprived of his salary and allowances when he was bed ridden and the respondents knew about it.

#### **Respondents' submissions**

18. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents submitted that Articles 250 and 251 are silent on the suspension of Petitioner's salary upon being placed on sick leave and such they relied on Regulation 12 of the Regulation of Wages (General) Order and Section 30 of the Employment Act. To fortify that argument, they relied on the case of **John Micheal Abuodha v Kenya Kazi Services Ltd [2018] eKLR** where the Court held that the Claimant's sick leave for 3 months with full pay was more than compliant with section 30 of the Employment Act. They further relied the case of **Oliver Odadi Nyaleso v Sheikh Zayed Childrens Welfare Centre [2017] eKLR** where the court found that the claimant was entitled to full salary for the entire period of sick leave.

19. They further submitted that the Petitioner cannot seek compensation up to date as he only served for 4 months and payment of such sums would amount to unjust enrichment. They relied on the Court of Appeal decision in **Elizabeth Wakanyi Kibe v Telkom Kenya Ltd [2014] eKLR** where the Court cited **with approval D.K. Njagi Marete v Teachers Service Commission** and held that the learned judge correctly dismissed the prayer for expected remuneration that the appellant would have earned upto the date of retirement.

20. They urged the Court to consider that Article 232 (1) (b) of the Constitution encourages effective, efficient and economic use of public funds. In support of this position, they relied on the case of **Jadiah M. Mwarania v Kenya Reinsurance Corporation Limited [2018] eKLR** where the court held that compensating the claimant Kshs. 22,362,000 for unfair termination was uneconomical use of resources and granted the alternative relief of reinstating the claimant to his employment.

21. They further argued that the Petition has not met the threshold of pleadings for constitutional petitions and relied on **Judicial Service Commission v Gladys Boss Shollei & another [2014] eKLR** where the Court of Appeal held that this court is bound by the decision of the Supreme Court in **Mumo Matemu v Trusted Society of Human Rights** where the court held that a petitioner alleging constitutional violations should define the dispute to be decided with particularity and reasonable precision on the provisions breached and the nature or the manner of the breach alleged or complained of.

22. They further submitted that it was the duty of the Petitioner to update the Commission of his health and whereabouts because the Petitioner in his last letter dated 12.4.2016, the Petitioner only requested for 4 weeks off. They relied on the case of **Gideon Akwera v Board of Governors Church on the Rock Academy [2015] eKLR** where the Court held that the Respondent was generous enough to pay the salary for the month when the Claimant was recalcitrant and obstinate in his refusal to give explanation or attend his place of work.

23. Finally, they submitted that the stoppage of the petitioner's salary was done procedurally and the Petitioner never contested against the same so to enable the commission to give him an explanation.

#### **Issues for determination and analysis**

24. There is no dispute in the fact that the Petitioner was appointed to serve as a Commissioner for a fixed term of 6 years but only served for a period of 5 months and fell sick never to report back to work till the end of his term. It is also a fact that as a result of his continued absence from office the 1<sup>st</sup> Respondent stopped payment of his salary and benefits including medical cover from March 2014 till 2.10.2018 when his term lapsed. Finally, it is a fact that the petitioner's suitability to continue serving was never assessed by a Medical Board and he was never removed from office under Article 251 of the Constitution.

25. The issues for determination are:

- a. Whether the Respondent's action of stopping the Petitioner's salary and allowances was unlawful and unconstitutional.**
- b. Whether the stoppage of the salary and allowances violated petitioner's fundamental rights and freedoms under Article 27 and 41 of the Constitution.**
- c. Whether the Petitioner is entitled to the reliefs sought.**

**Whether stoppage of salary and allowances was unlawful and unconstitutional**

26. The Petitioner averred that the 1<sup>st</sup> Respondent's action of withholding his salary and benefits was in violation of his contract of employment as his 6-year contract was to lapse on 2.10.2018. He further averred that the 1<sup>st</sup> Respondent acted unfairly by writing to the Principal Secretary, National Treasury to stop his salary with effect from 1/3/2014 without according him a hearing and before he was removed from office. However, the Respondents averred that the Petitioner was paid his salary until March 2014 and his salary was stopped because he never reported back to work after discharge from the hospital. They further averred that the petitioner is not entitled to the salary claimed because he never rendered any services from the time he fell ill.

27. I have carefully considered the pleadings, evidence and written submissions presented. It is clear that vide the letter dated 10.2.2014, the 1<sup>st</sup> Respondent advised the Principal Secretary National Treasury that the petitioner's salary be stopped effective 1.3.2014 due to his absence from work due to prolonged sickness as his case was being pursued with the relevant authorities including the Director of Medical Services. By the same letter the 1<sup>st</sup> Respondent purported to put the Petitioner on sick leave pursuant to the provisions of the Regulation N (8) Clause 1 (i) of Code of Regulations. The letter was never served on the petitioner despite the damage caused on him.

28. Regulation N (8) provides that:

***“(1) An officer may be granted sick/convalescent leave in a “leave year”, subject to the maximum period indicated below, provided it is certified that there is a reasonable prospect of eventual recovery and fitness for duty.***

***(i) All officers serving on permanent and pensionable or contract terms of service and support staff will be granted up to three months***

***leave on full pay followed by three months on half pay in a leave year.***

***(ii) All other officers serving on temporary terms of service, up to one month on full pay followed by one month on half pay in a leave year.***

***(2) Sick leave may be authorized as follows:***

***(i) Clinical Officers***

***(a) Clinical officers serving under a qualified medical officer may authorize absence from duty up to a maximum of forty-eight (48) hours.***

***(b) Clinical Officers in sole charge of a station may authorize absence from duty up to a maximum of four (4) days.***

***Any period in excess of four (4) days will require to be countersigned by a Medical Officer.***

***(ii) Government Medical Officers and Consultants:***

***Government Medical Officers and Consultants may authorize absence from duty up to a maximum of twenty one (21) days. Should it be necessary to allow absence from duty in excess of these periods, reasons must be given.***

***(iii) Private Medical Practitioners: Private Medical Practitioners may authorize absence from duty up to a maximum of seven (7) days. If it is necessary to grant an extension, the case should be referred to a Government Hospital or Hospital registered under the National Hospital Insurance Fund Act.***

***(3) Sick leave in excess of three (3) months will require confirmation of the Director of Medical Services who will decide if the officer should be examined by a***

*Medical Board with a view to determining whether or not there is reasonable prospects of eventual recovery and fitness for duty.*

*(4) In exceptional cases of continued ill-health, the Authorized Officer may on the recommendation of the Director of Medical Services, grant an extension of sick leave beyond the maximum periods indicated in paragraph (1) above, with such salary as may be decided.*

*(5) Notwithstanding paragraph (1) above, an officer who by virtue of the definition of “workman” qualifies for sick leave on half-pay in terms of Section 9(1) of the Workmen’s Compensation Act (Cap.236) may be granted such leave in accordance with the law.”*

29. The Preamble to the Code of Regulations provides that the Code applies to Civil Servants who are defined as employees of Public Service Commission of Kenya deployed in Ministries/Departments. The Code of Regulations defines public service as to incorporate the Civil Service, Disciplined Services, Teaching Service, Judiciary, Armed Forces, Local Authorities, Public Universities, Parliamentary Service Commission, State Corporations and Statutory Bodies. It follows that the Petitioner herein being as a State Officer serving in an Independent Commission, as defined under Article 260 of the Constitution, the Code of Regulations was not applicable to him. Consequently, I find and hold that the application of the said Code of Regulation for Civil Servants to stop the petitioner’s salary and allowances was unlawful as it violated his right to protection from unfair disciplinary action as guaranteed by Article 236(b) of the Constitution which provides that:

*“236. A public officer shall not be-*

*(a) ...*

*(b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”*

30. The said unlawful stoppage of the salary was also done while the petitioner was still in office and contrary to the protection of his remuneration by Article 250 (8) of the Constitution which provides that:

*“(8) The remuneration and benefits payable to, or in respect of, the members of a commission or holder of an independent office shall not be varied to the disadvantage of that person during their respective terms of office.”*

31. In light of the forgoing Constitutional provisions, it is clear that the petitioner’s contract had a Constitutional underpinning because the terms of his appointment, remuneration and removal are all expressly provided under section 250 and 251 of the Constitution. As correctly observed by the respondents, the said Constitutional provisions do not provide for suspension of remuneration of a commissioner. It follows therefore that the drafters of the Constitution did not contemplate taking of any action against a sick commissioner other than removal from office under Article 251.

32. The procedure for removal of a commissioner under Article 251 involves a petition to the parliament, which then petitions the President to appoint a Tribunal to investigate and make recommendations on the removal. In this case, it is a fact that a petition for removal of the petitioner was presented to the Parliament by a citizen, and the parliament recommended to the president for appointment of a tribunal to investigate the case but that was never done. Instead the Head of Public Service wrote a letter to the petitioner imploring him to resign voluntarily but the said letter was never served on him. It follows that the petitioner served his entire term of 6 years and the appointing authority, who is the president, waived the right to remove him from office on ground of physical or mental incapacity to perform functions of his office. Consequently, I return that the respondents stopped the petitioner’s salary and allowances without any legal basis.

#### **Violated petitioner’s fundamental rights and freedoms under Article 27 and 41 of the Constitution.**

33. The petitioner contended that the respondents violated his right to fair labour practices and legitimate expectation and discriminated him contrary to Article 27 of the Constitution. However, the respondents contended that the petition is not well drafted and it falls short of the threshold for constitutional petitions as enunciated by the Supreme Court in **Mumo Matemu v Trusted Society of Human Rights** when it held that a petition alleging constitutional violations must define the dispute to be decided with particularity and reasonable precision on the provisions breached and the nature or manner of the breach alleged or complained of.

34. I have carefully considered the petition before me, dated 24.10.2018 and I must agree with the respondents that the same does not meet threshold of a constitutional petition as set out by the Supreme Court in the **Mumo Matemu Case supra**. Although paragraph 29 of the petition sets out the provisions of the Constitution that are material and germane to this case, the petitioner did not plead with precision, the particulars of the alleged violations and the manner in which the said provisions of the Constitution were breached. Therefore, I decline to entertain the petition on alleged violation because of the inadequate pleadings.

#### **Whether the petitioner should get the reliefs sought.**

35. In view of my earlier finding herein above that the withholding and/or stoppage of the petitioner’s salary and benefits was contrary to Article 250 (8) of the Constitution, I make a declaration that the stoppage and /or withholding was unfair, unconstitutional, null and void. The forgoing declaration is fortified by Article 2(1) & (4) of the Constitution which provides that:

*“(1) This Constitution is the Supreme Law of the Republic of Kenya and binds all persons and all the State organs at both levels of government.*

***(4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.***

36. In **Simon Ngugi Kamau v Silpack Industries Limited [2015] eKLR** the Court held:

***“Absence from work is an issue so serious that an employer should address. Where such absence is caused by sickness, then the employer should take appropriate action to support the affected employee. Where an employee becomes sick and requires medical attention and has to be absent from work, and then they must disclose their whereabouts and allow the employer to interrogate such absence. The production of a handwritten medical note however urgent and whatever sickness or ailment an employee is suffering from, where the employer demands that proper certification be produced to confirm such illness or sickness to confirm the absence or need for support to such an employee, then such an employee must oblige. The practice that any medical note, treatment card from any establishment is acceptable is a notion that should be discarded.”***

37. The above precedent cited by the respondents is distinguishable from the instant case because in this case, the contract has a Constitutional underpinning and the only punishment prescribed by the Constitution is removal from office. There is therefore no room for legal innovations or discretion on the part of the respondents to invoke unsolicited sick leave without pay. So long as a state officer remains in office and his salary is payable from the Consolidated Fund, such pay cannot be denied for whatever reason unless otherwise provided in the Constitution or a statute passed to amplify a relevant Constitutional provision.

38. The respondents relied on section 30 of the Employment Act to justify the stoppage of petitioner’s salary and benefits. Section 30 of the Act provides that:

***“(1) After two consecutive months of service with his employer, an employee shall be entitled to sick leave of not less than seven days with full pay and thereafter to sick leave of seven days with half pay, in each period of twelve consecutive months of service, subject to production by the employee of a certificate of incapacity to work signed by a duly qualified medical practitioner or a person acting on the practitioner’s behalf in charge of a dispensary or medical health centre.***

***(2) For an employee to be entitled to sick leave with full pay under subsection (1), the employee shall notify or cause to be notified as soon as is reasonably practicable his employer of his absence and the reasons for it.***

***(3) For the purposes of sub-section (1) and (2) “full pay” includes wages at the basic rate excluding deductions from the wages allowable under section 19.”***

39. The foregoing provision does not, in my view, apply to this case because as already stated above, the contract of service herein was firmly grounded on express provisions of the Constitution which bound the respondents.

40. In view of the finding above that the stoppage of the Petitioner’s salary and benefits was null and void, I issue an order of certiorari quashing the decision by the respondents to withhold and /or stop the petitioner’s salary and other benefits and return that he is entitled to all his salary and other benefits from the period it was stopped on 1.3.2014 to 2.10.2018 when the term of his contract lapsed.

41. The respondent objected to that relief citing Article 232 (1) (b) of the Constitution which provides that the values and principles of public service include the efficient, effective and economic use of resources. I also appreciate Article 201 of the Constitution which provides that as a principle of public finance public money must be used in a prudent and responsible way. However, the decision to award the withheld salary and benefits is grounded on the express provisions of the Constitution that have been violated with impunity by the respondents. If they wanted to deny the claimant the remuneration provided by the Constitution by virtue of his office, they should have ensured that he was lawfully removed from office by the appointing authority through the procedure set out in the Constitution. Without such removal, the petitioner remained lawfully in office and entitled to his full package as prescribed by the Salaries and Remuneration Commission.

42. The respondent further relied on the **Jadhiah M. Mwarania case** where the Court held:

***“The Court considers that in this case where the claimant is willing and is able to continue in service, it would be oppressive and unfair to impose the payment of Kshs.22, 362, 000.00 in this case of glaring substantive and procedural unfair termination. The respondent’s Board must be bound by the provisions of Article 232 (1) (b) of the Constitution on the efficient, effective and economical use of resources. Considering the public interest against that principle and value of public service delivery, the Court cares that such high sum of public money is not paid out in circumstances whereby there is no reasonable justification as a bar to the claimant to be reinstated and to only earn after he has worked accordingly.”***

43. The facts of the said case were different from the instant case in that, whereas the claimant in that case had been unfairly dismissed and reinstatement was possible, in this case the petitioner was not dismissed but his fixed and non-renewable contract lapsed after effluxion of time.

44. With respect to discrimination, the Petitioner herein has not proved that he was discriminated in receiving a lower remuneration as compared to other commissioners. No evidence was tendered to support the allegation that the minimum pay was Kshs. 640,681, and that the other commissioners were earning kshs.710000 compared to his salary of kshs. 639000 per month. Accordingly, I issue an order of mandamus directed at the respondents to pay the petitioner, all his rightful salary withheld from 1.3.2014 to 2.10.2018 being the monthly salary of kshs.639000 x 55 months = ksh. 35,145.00/-.

45. However, the prayer for punitive damages for discrimination and general damages for unfair labour practices and violations is declined because of the finding herein above that the alleged violations were not pleaded with precision as set out by the said binding judicial

precedents.

**Conclusion and disposition**

46. I have found that the withholding and/or stoppage of the petitioner's salary and other benefits by the respondents was in contravention of Article 250(8) of the Constitution and as such it was unfair, unconstitutional, null and void by dint of Article 2(4) of the Constitution. Consequently, I enter judgement for the petitioner against the respondents in the following terms:

- (a) An order of certiorari be and is hereby issued quashing the 1<sup>st</sup> respondent's decision to withhold and/or stop the petitioner's salary and benefits.
- (b) An order of mandamus be and is hereby granted compelling the respondents pay the petitioner Kshs. 35,145,000 being the amount of his salary withheld from 1.3.2014 to 2.10.2018 when his term of office lapsed.
- (c) The sum awarded is subject to statutory deductions.
- (d) I award the petitioner costs plus interest at court rates from the date of filing the suit.

**Dated, Signed and delivered at Nairobi this 2<sup>nd</sup> day of July 2020.**

**ONESMUS N. MAKAU**

**JUDGE**