



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

PETITION NO. 139 OF 2016

(Before Hon. Justice Hellen S. Wasilwa on 28th February, 2019)

FRANCIS MWENDWA TITUSCLAIMANT

VERSUS

KENYA PIPELINE COMPANY LIMITED.....RESPONDENT

JUDGMENT

1. The Petitioner filed the Petition dated 14th November, 2016, and later amended the same by a Petition dated 6th March, 2017, seeking prayers that:

a. A Declaration that the acts and letters of the Respondent complained of above are and were unlawful and infringed upon the Petitioners' rights and fundamental freedoms and are null and void ab initio.

b. An order of Certiorari to bring to this Honourable Court to quash the decision of the Respondent contained in the letters dated the 4th May, 2016, 4th August 2016, and 6th July 2016.

ba) An order of Certiorari to bring to this Honourable Court to quash the decision of the Respondent contained in the letter of termination dated the 11th November, 2016.

c. Upon grant of prayer (b) and (c) above the Honourable Court does issue an order directing that the Respondent to unconditionally reinstate the Claimant to his employment services and former position with the Respondent without any loss of benefits.

d. An order of prohibition directed at the Respondent, its employees, agents, representatives and or otherwise howsoever restraining them from taking or continuing any action against the Petitioner based on the unlawful illegal and unknown and opaque generalised allegations against the Petitioner.

e. A Permanent injunction restraining the Respondent acting by itself, agents, employees, servants or through any other person from publishing, causing to be published or to be printed, causing to be broadcast or in any way facilitating any such publication through any medium within and without Kenya.

f. A Declaration that the purported Staff Disciplinary Committee as presently constituted when the purported personal hearing took place cannot afford and guarantee fair hearing rights of the Petitioner.

g. A Declaration that the Respondent's Staff Disciplinary Committee as was constituted to purportedly hear the Petitioner was and still is illegal and lacked the jurisdiction to hear the Petitioner.

h. Compensation for unlawful and wrongful suspension.

ha) A declaration that the termination letter dated 11th November, 2016, is null and void ab initio.

i. Aggravated or punitive damages harm to reputation, hurt feelings and damage to self-esteem and emotional well-being in view of the fact that the Respondent's actions are particularly egregious.

j. The Honourable Court do issue any other Orders and give such directions as it may deem fit to meet the ends of justice.

k. Costs of the Petition.

Facts

2. The Petitioner avers that he was engaged by the Respondent on the 1st July, 2003, in the position of an Internal Auditor III Job Group 7 in the Internal Audit Department. He states that he conducted his duties with utmost diligence, commitment, responsibility, industry and reverence in accordance with the specifications of his employment and on 3rd January, 2004, the Respondent confirmed his position on first appointment on permanent basis.
3. That for the 13 years he has worked for the Respondent he has never been issued with a warning letter or verbal warnings but have earned recommendations for promotions due to exemplary performance.
4. He avers that during the period from November 2015 to March 2016 while executing his normal duties he was assigned work by his supervisor Mr. Joseph Nyanchama to conduct an Audit of Infrastructure and Pipeline Maintenance.
5. He contends that during the assignment he made an honest transparent and professional audit which he submitted to his supervisor Mr. Joseph Nyanchama who forwarded the same report to the Departmental Head who circulated the same to top management and various managers in the organisation.
6. That thereafter on 13th March, 2016, the Respondent without notice, and out of malice deployed him from Internal Audit Department Nairobi to Finance Department and later transferred him to Mombasa purely based on the report that implicated senior officers in fraud.
7. The Petitioner avers that in the month of April he was called by the Respondent's Security Manager Mr. Harry Kithinji instructing him to appear before the Senior Security Officer. That the said Senior Security Officer alleged that he had instructions to question him on a report purportedly leaked to the media without substantiating the claims either by giving him the purported link, print or electronic publication.
8. That on 9th May, 2016, he received a suspension letter on allegations of contributing to leakage of information to external parties about tenders for supply of materials of projects. Thereafter he avers that he was terminated illegally without justifiable cause, and in utter breach and violation of the Respondent's Staff Rules and Regulations.
9. He avers that the Respondent's Staff Rules and Regulations provide that in the event of suspension it should be for a maximum period of 6 months with full pay, which the Respondent is said to have blatantly breached.
10. The Ex parte Applicant contends that in contravention of the Staff Rules and Regulations, the Employment Act, the Fair Administrative Action Act and the Constitution of Kenya 2010 he received a show cause letter on 11th July, 2016, and was given 48 hours to respond thereto. That he however endeavoured to reply to the show cause letter by a letter dated 13th July, 2016.
11. That as a result of the Respondent's illegal actions, he lodged an official complaint with the Commission on Administrative Justice on 12/5/2016 particularly on suspension on half pay whereupon the Commission wrote to the Respondent on 19/5/2016 on his complain which letter elicited no response.
12. He states that on 4th August, 2016, the Respondent wrote to him inviting him for a hearing which was to take place on 9th August, 2016. He attended the said hearing with his colleague one Mr. Joseph Nyanchama but the Respondent declined such company. That the said hearing was a charade and he contends that he was entitled to due process consistent with the rules of natural justice.
13. That he was not accorded an opportunity to know who his accusers were, the nature of the investigation report, the kind of evidence purportedly in support of the claim of leakage of information contrary to Article 47 of the Constitution and the provisions of the Fair Administrative Action Act.
14. He contends that on 14th November, 2016, he proceeded to contest his illegal suspension but unknown to him the Respondent had already prepared a termination letter which had not been brought to his attention and only learnt of his suspension after perusing the Respondent's Replying Affidavit herein. That the said termination letter was posted on 14th November, 2014 at 4.00 pm when he had already filed this Petition.
15. He further contends that he wrote to the Respondent to pay him per diem allowance for 3 days when he attended disciplinary hearings in Nairobi as per the Staff Rules and Regulations but the Respondent declined to do so. He appealed to the Respondent's General Manager Human Resources to pay him his withheld salaries which appeal was ignored.
16. The Ex parte Applicant contends that on 1st September, 2016, the Respondent demanded return of the Company laptop for safe custody four months after his suspension from duty. He requested for per diem allowance to enable him travel to Nairobi to return the said laptop but his request was declined.
17. The Ex parte Applicant urges the Court to allow the Petition since his constitutional rights as contained in Articles 47, 27, 10, 24, 35, 73, and 28 of the Constitution of Kenya 2010.
18. The Respondent have opposed the application and have filed a Replying Affidavit sworn by one Joe Sang, the Managing Director of the Respondent wherein he admits the employment relationship between the Petitioner and the Respondent.

19. He further avers that one of the terms and conditions regulating the Petitioner's employment as set out in the letter of employment dated 1st July 2003 is that the Petitioner could be deployed to any station within the Respondent to discharge his duties.

20. That by a letter dated 1st March 2016, the Petitioner was re-designated from Internal Auditor III, Job Group 7 to Accountant III, Job Group 7 in Finance Department at PS 14-Kipevu, Mombasa. Following the re-designation, the Petitioner was paid a transfer allowance.

21. He avers that by a letter dated 4th May 2016, the Petitioner was notified that the Respondent has conducted initial investigations as regards some negative appearance in both the print and social media (web site blog) of the Respondent's information on tenders for supply of materials and information on other projects and that the Petitioner was found as having contributed to the provision of the information to external parties in an unauthorized manner.

22. Consequently, the Petitioner was informed that in line with Clause 8.3.4 of the Respondent's Staff Rules and Regulations, 2015, the Respondent had decided that the Petitioner be suspended from duty with immediate effect in order to facilitate further investigations into the matter.

23. That in accordance with the provisions of Clause 8.3.4 of the Respondent's Staff Rules and Regulations, 2015 as set out at paragraph (7) above, the Petitioner by the letter dated 4th May 2016 was notified that during the period of his suspension:-

a. He should not attend his place of work and must keep off the company's operation premises unless authorized to do so though he was expected to be accessible when required and should arrange to provide a permanent contact address/telephone number through which he could be reached anytime by the Respondent in case any need arose.

b. He would be entitled to half salary and full benefits.

24. It is also contended by the Respondent that by a letter dated 6th July 2016, the Respondent notified the Petitioner that investigations conducted by the Respondent have established that the Petitioner was found as having contributed to the provision of confidential Respondent's information to external parties in an unauthorized manner. By the aforesaid letter, the Petitioner was notified that his actions/omissions as set out in the aforesaid letter amounts to gross misconduct as per the provisions of Section 2.8.1.9, 2.8.1.10 and 8.5.5 of the Respondent's Staff Rules and Regulations.

25. In the aforesaid letter of 6th July 2016, the Petitioner was requested to provide a written explanation giving reasons as to why disciplinary action should not be taken against him for the cited gross misconduct which he responded to by a letter dated 13th July 2016, and appealed to the Respondent to clear him of the allegations and allow him to continue to discharge his duties as per his terms of employment.

26. That by a letter dated 4th August 2016, the Respondent invited the Petitioner to attend the Respondent for a hearing before the Staff Disciplinary Committee regarding the instances of his gross misconduct as had been notified to him by the letter dated 6th July 2016.

27. The Petitioner attended the hearing as had been scheduled however, the Petitioner could not be heard on the said 9th August 2016 since the Committee had many cases to hear and hence the Petitioner could not be reached. That the Petitioner was asked to attend the hearing on 10th August 2016, which he did and was asked by the Respondent's Staff Disciplinary Committee to defend himself against the allegations of gross misconduct. The Petitioner made his representations before the Committee as required.

28. Mr. Sang avers that the Petitioner chose to be accompanied by Mr. Joseph Nyanchama to the hearing. However, Mr. Nyanchama could not be allowed by the Respondent to be present during the Petitioner's hearing since Mr. Nyanchama was also facing similar charges as the Petitioner's. That at this point the Petitioner did not seek an adjournment in order to secure another witness and the hearing proceeded.

29. That the Petitioner's representations into consideration, the Staff Disciplinary Committee found his explanation unsatisfactory and resolved that the Petitioner be summarily dismissed. Consequently, by a letter dated 11th November 2016, the Respondent was terminated from employment. The letter of termination was posted to the Petitioner's last known postal address via registered post as had been set out by the Petitioner in his letter dated 13th July 2016 addressed to the Respondent.

30. The Respondent avers that the Petitioner's suspension lasted for a period of 6 months and 2 weeks during which time he was on half pay with full benefits. That the said suspension was in accordance with the Staff Rules and the Employment Act 2007.

31. That the Disciplinary Committee that heard and determined the Petitioner's case was properly constituted and no injustice was occasioned by virtue of its constitution.

32. In response of the per diem allowances that were payable to the Petitioner when he attended the disciplinary hearings were not applied for by the Petitioner and thus they are yet to be paid.

33. The Respondent contends that the claims of discrimination, threats and actual violence were not proved and should as a result be disregarded by the Court.

34. That the Claimant's position has already been filled and as such the entire Petition should be dismissed with costs.

Submissions

35. It is submitted on behalf of the Petitioner that the actions by the Respondent against him pieces of which include re-designation, suspension, notice to show cause, invitation to the disciplinary committee meeting, rejection of Joseph Nyanchama as his witness, the committee hearing and recommendation, summary dismissal et al were all opaque, arbitrary, malicious based on vendetta, hatred, fear, enmity bad blood pettiness and childishness.

36. That Section 41(1) of the Employment Act No 11 of 2007 provides:-

"subject to Section 42(1), an employer shall before termination the employment of an employee, on the grounds of misconduct poor performance or physical incapacity explains to the employee, in a language the employee understands, the reasons for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation."

37. It is further submitted that the Respondent failed completely to obey the tenets of Section 41(1) of the Employment Act and therefore the termination of the Petitioner's employment was unfair. That the Respondent did not explain to the Petitioner the reason for the intended termination and neither did they allow the attendance of his co-employee at the alleged disciplinary hearing and thus the termination was grossly unfair.

38. They cite the case of Mary Chemweno Kiptui -v- Kenya Pipeline Company limited [2014] eKLR where Justice Monica Mbaru held:-

"Section 41 of the Employment Act is couched in mandatory terms. Where an employer fails to follow those mandatory provisions, whatever outcome of the process is bound to be unfair as the affected employee has not been accorded a hearing in the presence of a fellow employee of their own choice. The situation is dire where such an employee is terminated after such a flawed process without a hearing, as such termination is ultimately unfair. The employee must be informed through a notice as to the charges and given a chance to submit a defense followed by a hearing in due cognizance of the fair hearing principles as well as natural justice tenets".

39. That the Respondent failed to comply with Section 43 of the Employment Act as they failed to prove the reasons for termination of the employment of the Petitioner. For the aforesaid reasons the Claimant urges the Court to allow the Claim in its entirety.

Respondent's submissions

40. It is submitted that Clause 8.3.5 of the Staff Rules and Regulations lists behaviour which amounts to gross misconduct, inter alia;

i. "If an employee wilfully neglects to perform any work which it was his duty to have performed, or if he carelessly and improperly performs any work which, from its nature, it was his duty under your contract to have performed carefully and properly.

ii. If an employee commits or on reasonable and sufficient ground is suspected of having committed a criminal offence against or to the substantial detriment of his employer or his employer's property.

iii. If an employee disregards security/safety regulations in a manner likely to cause damage to the property or to sabotage the services of the Company."

41. That the minutes of the Staff Disciplinary meeting attest that the Petitioner was in breach of his terms of employment as observed by the Staff Disciplinary Committee. Page 5 of the minutes of the meeting is as follows:-

"The Committee's attention was drawn to a recent email that was forwarded to Management by 'Nyakundi' on a story that was appearing in the Star Newspaper related to the Thange River lean up. Apparently, from the email one could see that the same had been forwarded from titus.mwendwa@email.com. Consequently, during the personal hearing with Mr. Mwendwa, the Committee had asked him to confirm whether the email address titus.mwendwa@amail.com was his to which he responded in the affirmative".

42. A Private Investigator who was contracted by the Respondent's Security Manager confirmed that the leaked information was sent from the Petitioner's email address. The Staff Disciplinary Committee proceeded to find that the Petitioner had shared information with third parties in breach of his express terms and conditions of employment and Section 43 and 44 of the Employment Act, 2007.

43. They cite the case of Attorney General & Another -Vs- Crispinus Ngayo Musundi (2017) eKLR, the Court of Appeal cited with approval the decision by the Canadian Supreme Court in Me Kinley vs. BC Tel (2001) 2 S.C.R 161 where the standard employed in determining whether an employee's misconduct presents a just cause for dismissal was aptly stated as follows:-

"Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say for example, that just cause for dismissal exists where the dishonesty violates an essential condition of employment contract, breaches the faith inherent to the work relationship or is fundamentally or directly inconsistent with the employees' obligations to his or her employer".

44. That as per Section 47 (5) of the Employment Act, 2007, the Petitioner did not establish that wrongful dismissal in order for his claim against the Respondent to stand. The said Section provides as follows:-

"For any complaint of unfair termination or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee while the burden of justifying the grounds for the termination of employment or wrongful employment shall rest on the employer."

45. On violation of constitutional rights, it is submitted that the right to fair hearing as guaranteed under Articles 47 and 50 of the Constitution, it is submitted that the said provisions are not applicable in cases of employer-employee disciplinary proceedings. They cite the case of **Judicial Service Commission -Vs- Gladys Boss Sholei & Another (2014) eKLR**, the Court of Appeal held that Articles 47 and 50 of the Constitution are not applicable in hearing of disciplinary cases, thus:-

"However, the invocation of Article 50 of the Constitution by the 1st Respondent and its endorsement by the Industrial Court was misplaced. The right to fair hearing in Article 50 relates to hearing before a Court i.e. a court of law...or, if appropriate, another independent and impartial tribunal or body.

The invocation of Article 50 (2) (a) (b) and (c) of the Constitution was misplaced. In the context, it did not apply to the 1st Respondent who faced disciplinary proceedings.... A careful perusal of the Constitution shows that Article 50 (2) (a) (b) and (c) applies to criminal trials and not to civil litigation or disciplinary proceedings. That this is so dear from the plain reading of Article 50 (2) (a) to (g). There can be no argument that on correct interpretation of the Article, it does not apply to disciplinary proceedingsSo too with regards to Article 25 (c) relating to constitutional right to fair trial, the learned judge failed to appreciate that the disciplinary proceedings were not a trial and the issue of fairness in the proceedings was addressed by principles of natural justice...."

46. The Respondent submits that the Disciplinary Committee observed the rules of natural justice in conducting its proceedings.

47. On the alleged breach of Article 27 of the Constitution, it is submitted that the Petitioner was subjected to the disciplinary procedure stipulated under the Respondent's Staff Rules and Regulations as well as the Employment Act. The aforesaid procedure is the procedure that any staff member of the Respondent who commits a disciplinary offence is subjected to. Hence, the Petitioner was not denied equal treatment before the law as alleged or at all.

48. The alleged infringement of the right to information under Article 35 the Respondent submits that the charges of misconduct were clearly communicated to the Petitioner. He understood the case against him and responded to the show cause letter.

49. As to violation of the right to human dignity, the Respondent submits that this allegation has not been pleaded with specificity or proved and should fail. In **Gladys Boss Sholei** case (supra), the Court of Appeal dismissed the Respondent's claim that her right to dignity was infringed on the ground of lack of specificity of instances of breach and also that the disciplinary proceedings had been initiated in accordance with the law.

50. In the case of **Mumo Matemu Vs Trusted Society of Human Rights (2013) eKLR**, the Supreme Court set the threshold to be met in a Petition alleging breach of the constitution and opined that it should define the dispute to be decided by the Court and plead with particularity and reasonable precision the provisions breached and the nature or manner of the breach alleged or complained of.

51. On the prayers sought it is submitted that an order of Certiorari to quash the decision of the Respondent contained in the letters dated 4th May 2016, 6th July 2016, 4th August 2016 and 11th November 2016; that the said letters were issued by the Respondent in compliance with the requirements of the law. Further, that due process was followed prior to the issuance of the aforesaid letters.

52. That an Order directing the Respondent to unconditionally reinstate the Petitioner to his employment services without any loss of benefits it is submitted that the relationship between employer and employee is in essence one of trust and confidence. The Respondent lost confidence in the Petitioner as a result of the Petitioner's gross misconduct. Hence, the Respondent is not be in a position to engage the Petitioner. Further, the Petitioner's position that he held with the Respondent has already been occupied.

53. They cite the case of **Geoffrey Mworira-Vs- Water Resources Management Authority and 2 others [2015]eKLR** the Court held as follows:-

"The Court will very sparingly interfere in the employer's entitlement to perform any of the human resource functions such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy, or any other human resource function. To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of the Constitution or legislation; or in breach of the agreement between the parties; or in a manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer's internal process."

54. On the prayer for a permanent injunction restraining the Respondent, its agents or servants from publishing, causing to be published, broadcasting or printing any publication through any medium within and without Kenya it is submitted that this relief as sought by the Petitioner is vague. The Petitioner has not set out what the Respondent is to be restrained from publishing, causing to be published or causing to be broadcast.

55. That a declaration that the Staff Disciplinary Meeting as constituted did not afford or guarantee the Petitioner a fair hearing is not tenable for the reason that the Petitioner was accorded a fair hearing.

56. That the Petitioner cannot be compensated for injured feelings and reputation as he has to prove that any article that was published and that was injurious to his reputation was published by the Respondent and that he suffered loss and damage as a result. The Petitioner has not pleaded particulars of defamation. In the case of **Gerald Kaura Muthamia Vs. Co-Operative Bank Of Kenya Limited [2017] eKLR** the

Court held as follows:-

"...failure to comply with the said rule renders the claim legally incompetent Therefore, even before I look at the merits of the claim itself the same was incompetent ab initio going by the pleadings filed by the appellant He however omitted the particulars of defamation and that was fatal to his claim."

57. The Respondent has demonstrated that the suspension and termination of the Petitioner's employment was justifiable, procedural and lawful. Hence, there is no compensation due to the Petitioner. The Respondent urge the Court to dismiss the Petition with costs.

58. I have examined all the evidence and submissions of the Parties. The issues for this Court's determination are as follows:-

- 1. Whether the Respondent had valid reasons to terminate services of the Petitioner.**
- 2. Whether the Respondent followed due process before the termination of the Petitioner's services.**
- 3. Whether the Respondent breached the Petitioner's rights under the Constitution.**
- 4. What remedies if any to grant in the circumstances.**

59. On the 1st issue, the Respondent terminated the services of the Petitioner on the grounds that the Petitioner released confidential company information regarding the Respondent to external parties in an unauthorised manner.

60. In dismissing the Petitioner, the Respondent relied on Clause 8.3.5 of the Staff Rules and Regulations which lists behaviour which amounts to gross misconduct as follows:-

- i. If an employee wilfully neglects to perform any work which it was his duty to have performed, or if he carelessly and improperly performs any work which, from its nature, it was his duty under your contract to have performed carefully and properly.**
- ii. If an employee commits or on reasonable and sufficient ground is suspected of having committed a criminal offence against or to the substantial detriment of his employer or his employer's property.**
- iii. If an employee disregards security/safety regulations in a manner likely to cause damage to the property or to sabotage the services of the Company."**

61. The clause deals with performance of work or carelessly performing work and further on commission of a criminal offence and further damage to property or sabotage to the services of the company. Indeed the rule forbids action as explained above. However, if at all the Petitioner gave out information to unauthorised persons, this would not be taken as a gross misconduct Clause under 3.2 of Respondent's Rules and Regulations as this rule concerns unsatisfactory work performance or omission to perform. The rule further covers commission of a criminal offence.

62. The Respondent avers that the Petitioner indeed breached his terms of employment as per page 5 of staff disciplinary meeting as follows:-

"The Committee's attention was drawn to a recent email that was forwarded to Management by 'Nyakundi' on a story that was appearing in the Star Newspaper related to the Thange River lean up. Apparently, from the email one could see that the same had been forwarded from titus.mwendwa@email.com. Consequently, during the personal hearing with Mr. Mwendwa, the Committee had asked him to confirm whether the email address titus.mwendwa@amail.com was his to which he responded in the affirmative".

63. If indeed this finding was corrective, the Petitioner breached the Rules and Regulations of the Respondent on confidentiality but this would not have amounted to a gross misconduct. This is true because sharing information received by the Petitioner would have been a misconduct but would not fit in the definition of gross misconduct under Section 44(4)(a) of the Employment Act as submitted by the Respondent.

64. The duty of the Petitioner was not to supply information because he was an Auditor. If he failed to properly do his work as an Auditor, then he would have been found culpable under the gross misconduct provision.

65. It is my finding that the Petitioner may have committed a misconduct but this was not a gross misconduct warranting dismissal.

66. On the 2nd issue, the Petitioner told Court that he appeared before the disciplinary committee for hearing with a witness but his witness was turned away. The Respondent admitted to this too.

67. Section 41 of Employment Act 2007 states as follows:-

- 1. "Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the**

reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make”.

68. Under this Section, there is no indication that the Respondent have a leeway to decide which employee witness should not be allowed to testify. The Section is categorical that the employee would chose a fellow employee of his own choice. The Respondent in the circumstances denied the Petitioner his right to choose his witness and were in breach of Section 41 of Employment Act and the right to a fair hearing of the Petitioner.

69. This also breached the Petitioner’s right under the Fair Administrative Action Act, which allows him to call a witness of his own choice. It is therefore my finding that the Petitioner was denied a fair hearing. Coupled with this, Section 45(2) of Employment Act states as follows:-

2. “A termination of employment by an employer is unfair if the employer fails to prove:

a. that the reason for the termination is valid;

b. that the reason for the termination is a fair reason:-

i. related to the employee’s conduct, capacity or compatibility; or

ii. based on the operational requirements of the employer; and

c. that the employment was terminated in accordance with fair procedure.

70. Given that the Petitioner was denied a fair hearing, I find his termination unfair and unjustified under Section 45(2) of Employment Act. The Petitioner’s rights under Article 47 of the Constitution have also been infringed upon.

71. In terms of remedies, the Petitioner sought remedies including reinstatement.

72. Having considered the evidence and submissions, I find for the Petitioner and order that he be reinstated accordingly with backpay of all salary and allowances since the unfair dismissal. In default, the Petitioner should be re-engaged on same terms without loss of pay or promotions.

73. The Respondent will pay costs of this suit.

Dated and delivered in open Court this **28th day of February, 2019.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Obado holding brief Okoth for Petitioner – Present

Miss Nyaga holding brief for Ngatia for Respondent – Present