



**Mosiria v Judicial Service Commission (Petition 5 of 2018)
[2019] KEELRC 1595 (KLR) (6 May 2019) (Judgment)**

Beatrice Nyambune Mosiria v Judicial Service Commission [2019] eKLR

Neutral citation: [2019] KEELRC 1595 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 5 OF 2018
MA ONYANGO, J
MAY 6, 2019
IN THE MATTE OF ARTICLE 47 OF THE CONSTITUTION OF KENYA, 2010
AND
IN THE MATTER OF THE JUDICIAL SERVICE ACT NO. 1 OF 2011
AND
IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015
AND
IN THE MATTER OF THE EMPLOYMENT ACT, 2007
BETWEEN
BEATRICE NYAMBUNE MOSIRIA PETITIONER
AND
THE JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Petitioner, Beatrice Nyambune Mosiria, filed a Petition dated 24th January 2018 against the Judicial Service Commission, for the enforcement of her fundamental rights. The petition is brought under Articles 22, 23, 41, 47 and 50 of the Constitution of Kenya, Sections 23(1), 25(4) and (5) of the Third Schedule of the Judicial Service Act, Sections 7(2)(b) and 8 of the Fair Administrative Action Act, Sections 43, 44, 45 and 50 of the Employment Act and Section 12 of the Industrial Court Act against the Respondent.
2. The Petitioner avers that she joined the Judicial Service Commission in 2003 as a District Magistrate II–Professional and rose through the ranks to the position of Principal Magistrate. As at February



2017, she was stationed at Milimani Law Courts, Nairobi. That on or about 15th August 2016, she received a letter of Interdiction and Charge from the Chief Registrar of the Judiciary requiring her to respond to the allegation in the Charge within 21 days. That she then requested for Particulars of the Charge by a letter to the Chief Registrar dated 26th August 2016 as provided under Section 23(1) of the Third Schedule to the Judicial Service Act since the Charge related to certain periods when she was out of office after being vetted out by the Judges & Magistrates Vetting Board in March 2015 and before being reinstated in March 2016 after a successful Review. That she was never provided with the said particulars contrary to the law and being cautious of the time limit, she filed her response to the Charge on 2nd September 2016 based on the information she was able to secure while on interdiction. She further avers that the Accountant with the primary information at Kapsabet Law Courts had died in a road traffic accident in November 2015 while the Executive Officer with whom she was a co-signatory to the Account had also been interdicted. That her response was therefore limited and deficient because the Respondent failed to furnish her with the particulars and/or access to a free copy of any documentary evidence to be relied upon.

3. She further avers that while on interdiction and after 5 months of no communication and in violation of Section 25(4) of the Third Schedule to the Judicial Service Act that sets a mandatory 14 days' hearing Notice, she was called by the Respondent's Registrar on phone on Monday 23rd January 2017 requiring her to attend a hearing before the Respondent's Disciplinary Committee on Tuesday 24th January 2017 and that she was forced to travel overnight from Eldoret to Nairobi to attend the hearing. That she then received a Notice of Hearing dated 24th January 2017 on 27th January 2017, three days after the hearing had been improperly conducted without justification and in disregard of her plea for time to secure documents in support of her defence and also in violation of Articles 41(1), 47 and 50 of the Constitution together with Section 7 of the Fair Administrative Action Act. That to date, she has never seen a copy of the Audit Report which formed the basis of the Charges against her and was also not allowed to cross-examine the Auditor by herself or an Advocate contrary to Section 25(5) of the Third Schedule to the Judicial Service Act and her constitutional right to a fair hearing and administrative action.
4. The Petitioner continues to aver that she received a letter dated 9th February 2017 from the Respondent's Chairman - the Chief Justice, advising her that in its meeting of 9th February 2017, the Respondent had resolved to dismiss her from judicial service with immediate effect. That this was followed by another letter dated 10th February 2017 from the Respondent's Secretary - the Chief Registrar advising her to clear and hand over all government property in her possession and complete the requisite forms. That under Clause D.9 of the Judiciary Human Resource Policies & Procedures Manual-September 2014, she then filed an Appeal on 22nd February 2017 citing discrepancies in her disciplinary proceedings and giving detailed explanations together with a Schedule of Vouchers/ Expenditures which she obtained from the District Treasury and the email authorization from the Deputy Chief Registrar in charge of Magistrates for attendance of the KMJA Meeting of 26th October 2013 and which formed the basis of her interdiction, charge and consequent dismissal from Judicial Service. That after 5 months, she received a letter dated 13th July 2017 forwarded on 20th July 2017 from the Respondent's Secretary advising her that her Appeal was tabled before the Respondent's meeting on 3rd July 2017 and was disallowed and consequently the Respondent had upheld the decision of 9th February 2017. She contends that she has not known any other source of livelihood or employer having worked for the Judiciary for 14 years with dedication after she left the Kenya School of Law.
5. She avers that her application for leave to commence Judicial Review proceedings in HC. J.R No. 664 of 2017 was dismissed on 23rd November 2017 without a hearing, for lack of jurisdiction and that she thereafter filed this Petition. She seeks the following reliefs and orders against the Respondent:-



- a) A declaration that the disciplinary proceedings conducted by the Respondent's Human Resource Management Committee and the decision to summarily dismiss the Petitioner from Judicial Service by the Respondent on 9th February 2017 and subsequent rejection of her Appeal on 3rd July 2017 were irregular, unprocedural, unfair, unlawful and violated the Petitioner's fundamental rights and mandatory provisions of the law and consequently illegal null and void and of no effect in law.
- b) An Order setting aside/quashing the decision of the Respondent to summarily dismissing the Petitioner from Judicial Service 9th February 2017.
- c) An Order re-instating the Petitioner back to her position as a Principal Magistrate in the Judicial Service and posting to an appropriate station.
- d) Payment of all salaries and allowances payable to the Petitioner from the date of summary dismissal on 09/02/17 until to the date of Reinstatement.
- e) Compensation by way of Damages for the violation of the Petitioner's Constitutional Statutory and Fundamental Rights as aforesated.
- f) An Order for costs against the Respondent in any event.
- g) Such further or other Reliefs, Remedies and Orders as the Court deems just and expedient to grant in the unique circumstances of this Petition.

Respondent's Case

6. On 14th March 2018, the Respondent filed a Replying Affidavit dated 13th March 2018 sworn by Winfrida Mokaya, the Registrar of the Respondent who avers that the Petition herein lacks particularity as it does not specify the provisions of the Constitution alleged to have been infringed by the Respondent and it further does not meet the test in *Anarita Karimi Njeru v Republic (1976-1980) KLR 1272*. That an internal audit was conducted by the Judiciary's department of Internal Audit and Risk Management at the Kapsabet Law Courts for the financial year 2014/2015 which revealed irregularities in the accounts section at the time when the Petitioner was serving as the head of station. That specifically between 7th July 2014 and 1st April 2015, a total of Kshs.541,000/= was withdrawn from the court station's deposit bank account for office use through a cheque signed by the Petitioner and the District Accountant contrary to Section 8.6 of the Government Financial Regulations & Procedures. Further, that the Petitioner had on diverse dates also been paid daily subsistence allowance amounting to Kshs.333,000/= allegedly for attending meetings in Nairobi and that the payment vouchers for the same were not supported by invitation or communication from the said offices where the meetings allegedly happened in Nairobi.
7. She deposes that after the presentation of the audit findings, the Chief Justice legally instituted disciplinary proceedings and consequently framed charges which were served upon the Petitioner before she was interdicted. That the reason why there was no need to respond to the Petitioner's request for Particulars was because the Charges presented to her were precise and detailed. That the disciplinary proceedings against the Petitioner proceeded before the Respondent's Human Resource & Administration Committee. That the Petitioner was consequently invited for a hearing which she attended and also admitted to the Charges in her written response dated 2nd September 2016, in the following terms as referenced in the Hansard Report annexed as WM6:



- a) That she authorized the withdrawal and use of money deposited in the Judiciary Deposit Account on advice from the District Accountant Nandi Central on condition that it would be refunded once the station was allocated the Authority to Incur Expenditure 'AIE'.
 - b) She was not aware of the financial regulations being Section 8.6 of the Government Financial Regulations & Procedures, which prohibits the withdrawal and use of funds from the deposit account for any other use other than the intended use.
 - c) She was remorseful having authorized the withdrawal and used monies from the Deposit Account and admitted that what she did was unprocedural and amounted to theft.
 - d) That the said amount withdrawn from the Judiciary Deposit Account was eventually refunded after the station received its AIE.
 - e) She did not consult the Chief Registrar of the Judiciary before withdrawing the funds yet she knew the CRJ was the accounting officer of the judiciary and that she also did not consult the Registrar Magistrate Courts.
 - f) Allowances paid to her in 2014/2015 related to trips undertaken while on official duty.
8. Further, the Committee in their findings indicated that the charges against the Petitioner had been satisfactorily proved because the Petitioner had admitted to the same during the hearing and in her response as explained herein above. That the Respondent being satisfied that the charges against the Petitioner had been proved resolved to dismiss her from judicial services vide a letter dated 9th February 2017 which also noted the reasons that led to her dismissal. That the Respondent is mandated under Article 172(1)(c) of the Constitution, Section 32 of the Judicial Service Act and the Third Schedule to the Judicial Service Act to discipline and remove from office judicial officers and staff. That after further considering the Petitioner's Appeal, it disallowed it and upheld its decision to dismiss the Petitioner and that the Petitioner was therefore accorded a fair hearing and administrative action.
9. She contends that if indeed the Petitioner needed more time to prepare for the disciplinary hearing she would have sought for an adjournment during the hearing, which she did not and further, that 5 months was more than enough time to prepare for a hearing. That the Petitioner's statement that she could have adduced additional evidence after the hearing was disingenuous being that she is a judicial officer who understands clearly the threshold of evidence required to defend a case of financial impropriety. It is further deposed that the Petitioner has not demonstrated that she has suffered any prejudice for failing to produce additional documents. She also avers that the Petitioner needed not to cross-examine any witness because she admitted to the charges she was facing. That the Respondent adhered to principles of natural justice and also afforded due procedure to the Petitioner. She finally deposes that the Petition is an abuse of the court process, has no merit since the Petitioner has not proved a case of illegality, irrationality and procedural impropriety and that it ought to be dismissed with costs.
10. The Petitioner filed a Supplementary Affidavit dated 26th March 2018 averring that she was ill-prepared for the ambush hearing as it is clear from the Proceedings of the panel that she was responding on presumptions and beliefs rather than the actual particularised issues within her knowledge. That her admissions, remorse and regrets were on the basis that she did not have sufficient material, information, time and opportunity to mount a meaningful challenge to the Charges against her and that she was further not aware that the Auditor who prepared the audit report had been called as a witness.



Evidence

11. Both the Petitioner's and the Respondent's Advocates adopted their pleadings and submissions in Court on 12th July 2018 when the suit came up for highlighting of the submissions. The Petitioner's advocate further stated that the violations have not been denied but that the Respondent casually attempted to justify the failure to follow the mandatory provisions of the law and that if the Respondent was to do the process then it should get it right from the beginning. The Respondent's advocate on the other hand urged the Court not to allow this petition and that the court can refer it back to the Respondent to do the right thing.

Petitioner's Submissions

12. The Petitioner submits that this Petition is concerned with whether the Disciplinary Process and Procedures leading to her unlawful and unfair dismissal from the judicial service was in strict compliance with the applicable laws and whether she has pleaded with precision how the Respondent breached her fundamental rights under the Constitution and the relevant Statutes.
13. That the Respondent stating there was no need to issue her with the mandatory 14 days' notice before the disciplinary hearing is extremely frivolous and contemptuous of the law and further, that the notice is not dependent on when the Charges were preferred nor when the Response was made. That this violation renders the proceedings of the Respondent's panel null, void and unfair under Section 49(3) (a) of the Employment Act as read with Section 45(2)(c) and (5)(a) of the Act and that the same must be reviewed and set aside as provided under Section 7(2)(b), (c) and (n) of the Fair Administrative Action Act. She cites the case of Republic –v- Electoral Commission of Kenya (ECK) ex-parte Nyoike & 3 others [2004] 1 KLR where Ojwang J. held at page 385 that the ECK has a duty to act judiciously and its decisions whether affecting the public in general or an individual in particular must be exercised judiciously and judicially and where it fails to follow the laid down procedure, the decision must be quashed/invalidated. That the Judge stressed it was not the question of merits but the procedure that is brought for interrogation.
14. It is submitted by the Petitioner that since the Respondent is a constitutional commission with a constitutional and statutory mandate, it ought to have adhered to the constitution and the parent statute in all its decisions. That she is therefore entitled to the remedies she seeks under Articles 22 and 23 of the Constitution and Sections 49(3), (9) and 50 of the Employment Act and that this court has jurisdiction to grant the remedies sought. Further, that Sir William Wade and Christopher Forsyth in "Administrative Law" 7th Edition Clarendon Press, Oxford, Chapter 17 (Pages 614-631) discusses the prerogative remedies available in Public Law and provides in pages 623-624 the power to qualify/nullify a decision arrived at in a flawed process.
15. Further, that in the case of Joseph Mutuura & Another –v- Council Jomo Kenyatta University of Agriculture & Technology (JKUAT) [2013] eKLR, the Court held that an employer is at liberty to commence disciplinary proceedings against the employee and it is the duty of the employee to justify in the administrative disciplinary process the continuation of his employment. That where the Court however establishes that such administrative disciplinary proceedings are commenced with ulterior motive or that the process is shrouded with illegalities, then the court must intervene and stop the illegalities. She submits that she has outlined 3 fundamental illegalities and contravention of statute in this Petition and that this court must purge the illegalities and nullify the decision of the Respondent. She also relies the case of Mary Chemwono Kiptui –v- Kenya Pipeline Company Ltd [2014] eKLR, where Mbaru J. ordered the reinstatement of the Claimant whose termination or dismissal was held to have been unprocedural and unfair and further ordered for payment of all salaries and allowances



from the date of the unprocedural and unfair suspension and subsequent termination until the date of reinstatement.

16. The Petitioner finally submits that she has proved on a balance of probabilities that her constitutional rights to a fair hearing and a fair administrative action was violated and prays for a Declaration nullifying the decision of the Respondent dismissing her from Judicial Service and an award of the remedies outlined in her Petition herein.

Respondent's Submissions

17. The Respondent submits that this Court is not seized of jurisdiction to retry the case or sit on appeal of the disciplinary case that was before the Respondent as it has to be concerned only with the process that led to the dismissal and whether the process met the requirements under the specific laws. It cites the South African Labour Appeal court case of *Nampak Corrugated Wandeville –v- Khoza* (JA14/98) [1998] ZALAC 24 where the Court held that:
18. A court should, therefore not lightly interfere with the sanction imposed by the employer unless the employer acted unfairly in imposing the sanction. The question is not whether the court would have imposed the sanction imposed by the employer, but whether in the circumstances of the case the sanction was reasonable.”
19. Further, that the Court of Appeal in *Judicial Service Commission –v- Gladys Boss Shollei & Another* [2014] eKLR has also held that a disciplinary process such as in the case herein is an administrative action which falls under the ambit of Article 47 of the Constitution and which confers on every person the right to expeditious, efficient, lawful, reasonable and procedurally fair administrative action.
20. It is submitted by the Respondent that the Chief Justice instituted disciplinary proceedings after rationally considering the audit report findings because the acts of the Petitioner contravened Article 10 and Chapter 6 of the Constitution on leadership and integrity and that the Court in *Nabulime Miriam –v- Council of Legal Education & 5 Others* [2016] eKLR observed that courts will only interfere with the decision of a public authority if it is outside the band of reasonableness. That the Court in *Nabulime* quoted Professor Wade’s passage in his treatise on *Administrative Law*, 5th Edition at page 362 which was approved in the case of the *Boundary Commission* [1983] 2 WLR 458, 475 that the court must apply an objective standard which leaves the deciding authority with a range of choices as presumed to have been intended by Parliament. The Respondent further submits that administrative bodies operate within acceptable limits of flexibility and may not conduct their proceedings such as Courts of law and that their overall requirement is to frame the charges sufficiently, notify the accused and give them an opportunity to be heard fairly and communicate the decision arrived at. That administrative bodies being the masters of their own procedure, need not hold a hearing as they can do everything in writing and that they can give the substance only, as was held by Lord Denning in *Selverajan –v- Race Relations Board* [1976] 1 ALL ER 12 at 19 which is quoted in *Lydia Wanjiru Matamba & 26 Others –v- Kenya Revenue Authority & 2 Others* [2016] eKLR.
21. It is submitted by the Respondent that its disciplinary process in relation to the Petitioner indeed met the test for legality, rationality, procedural propriety and observance of rules of natural justice in accordance with Articles 41, 47 and 50 of the Constitution, the Judicial Service Act and the Fair Administrative Action Act. That this is demonstrated when it gave the Petitioner sufficient notice of the charges she was facing and an opportunity to appear and be heard before reaching a decision as an independent and impartial tribunal as was also observed by the Court of Appeal in the *Gladys Boss Shollei* case. As regards cross-examining the auditor on the audit findings, it is the Respondent’s submission that this right was waived when the Petitioner admitted to the charges. It cites the Supreme



Court of Philippines in *People of the Philippines –v- Adones Abatayo* affirmed in *Ruperto Fulgado & Others –v- Hon. Court of Appeals & Others* G.R. No. L-61570 February 12, 1990 that:

...The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived, expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination.

22. The Respondent finally submits that the Petitioner took an oath to administer justice and perform her role in accordance with the law and that she was expected to respect her office and inspire confidence to members of the public being an adjudicator of disputes. That it is in public interest and in accordance with Article 10 and Chapter 6 of the Constitution that she is held accountable for her actions and the Respondent's decision left to stand considering the nature of charges and her own admission. That the Petition should be dismissed with costs but if the court is to find in favour of the Petitioner, it cannot substitute its decision with that of a decision maker and that this being an administrative action, the matter should be sent back to the decision maker as was held in *Nkatha Joy Faridah Mbaabu –v- Kenyatta University* [2016] eKLR.

Determination

23. The first issue for determination is whether this Court has jurisdiction to hear and determine this Petition. The second issue for determination is whether the Respondent followed due procedure before summarily dismissing the Petitioner. The third issue for determination is whether the Petitioner has pleaded with precision how her fundamental rights were breached. The fourth issue for determination is whether the Petitioner should be granted the reliefs and orders sought in her Petition.
24. This court has jurisdiction in this matter as was observed in the case of *United States International University of Africa –v- The Attorney General & 2 others* [2012] eKLR where the Court stated in paragraph 44 that:

...The Industrial Court is a specialist court to deal with employment and labour relations matters. By virtue of Article 162(3), section 12 of the Industrial Court Act, 2011 has set out matters within the exclusive domain of that court. Since the court is of the status of the High Court, it must have the jurisdiction to interpret the constitution and fundamental rights in Article 41 and freedoms is incidental to the exercise of jurisdiction over matters within its conclusive domain. In any matter falling within the provisions of section 12 of the Industrial Court Act, then the Industrial Court has jurisdiction to enforce not only Article 41 rights but also all fundamental rights ancillary and incidental to the employment and labour relations including interpretation of the Constitution within a matter before it.”

23. Further, this position was reiterated in the case of *International Centre for Insects Physiology and Ecology (ICIPE) –v- Nancy McNally* [2018] eKLR when the Court of Appeal again stated in paragraph 27 that:

“There cannot be any argument that the ELRC is clothed with jurisdiction to hear and determine such constitutional issues as and when they arise from employment and labour relations. Any doubts on that jurisdiction were settled in the case of *United States International University (USIU) vs Attorney General* [2012] eKLR which was upheld by this Court in *Daniel N. Mugendi vs Kenyatta University & 3 Others* [2013] eKLR...”



24. The Petitioner has argued that she was not furnished with any documentary evidence prior to her disciplinary hearing including the Audit Report relied upon by the Respondent and that the hearing was an ambush to her as she was not given the mandatory 14 days' notice. She also argued that she was not allowed to cross-examine the Auditor which is contrary to Section 4(4) (c) of the Fair Administrative Action Act and that all these constituted an unfair procedure leading to the termination of her employment.
25. The procedure adopted by the respondent in disciplining the petitioner was not compliant with Section 25(4) and (5) of the Judicial Service Act, Third Schedule Section 24(4) which provides as follows –
- (4) The Committee or Panel shall give the officer a written notice of not less than fourteen days specifying the day on which they may be required to appear before it to answer to the charges made against them.
26. The respondent does not deny the petitioner's evidence that she was called on 23rd January 2017 and directed to attend her disciplinary hearing on 24th January 2017. The respondent further does not deny that the letter inviting the petitioner for disciplinary hearing is dated 24th January 2017, which was the date of hearing, and was delivered to the Chief Magistrate Milimani on 27th January 2017, three (3) days after the disciplinary hearing.
27. Further the respondent does not deny that the petitioner wrote to the respondent on 26th August 2016 seeking particulars of the charges against her following receipt by her of the interdiction dated 15th August 2016, but she did not receive any response. The minutes of the disciplinary hearing show that the petitioner severally referred to lack of documents that were not supplied to her. To pick just a few, the last paragraph page 7 stated –
- Sorry. Thank you, Mr. Chairman. I tried to look for the vouchers when I got this query because the first thing I did, I tried and wrote a letter asking for particulars of the charge and the specific amount I was I did not manage to get the same.
28. I went to go to the District Accountant to try and see whether I could get the vouchers to see what they were really applying to because I do remember to the best of my knowledge during that time, on few occasions when I visited, I could visit following up on the issue of mobile courts. When we wanted to start a mobile court at Songhor because people were suffering and after several attempts to follow it up I remember I personally made a visit to go and see the Registrar Magistrates' Courts and explain the situation on the ground. That is also when I presented some issues to do with the human resource because we also had shortage of clerks and we had called for them and we had not received them.
29. Maybe during that occasion that is when maybe those work plans could have come with me but mostly I never made a trip specifically only for delivering work plans because that is something which could even be done by somebody else or even if it was not necessary to send for somebody else they could even be sent by courier. However, I remember making a trip just on occasions like when I could follow up on issues concerning the station.”
30. At paragraph 2 and 4 of page 16 and paragraph 10 page 24 of the disciplinary proceedings, the petitioner stated –
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- Hon. Ms. Beatrice Mosiria: Thank you so much, Commissioner. In my response when I responded I did not attach the evidence for those items but they are available. Given an



opportunity I can avail them because they are with the District Accountant and I am sure even the Court keeps a register of the vouchers and what the money is for.

.....

Hon. Ms. Beatrice Mosiria: Thank you, Commissioner. When I read the charges, which were facing me, according to my understanding I was seeing the issue was that money was withdrawn for office use against the Government regulations. It was not supposed to have been withdrawn. However, all the same, Commissioner, that is why I am requesting that if need be I can be able to avail the documents for what the money was used for.

.....

Hon. Ms. Beatrice Mosiria: Maybe one thing. I just wanted to say on the issue of how the money was used, this evidence is available. If I am given a chance I can go and dig the archives and request from the Court and the District Accountant. They can be able to give us this vouchers showing how the money was used.”

31. It is further evident from the proceedings and the entire bundle of the respondent that one Ronald Wanyama, Acting Director of Audit and Risk Management gave evidence against the petitioner in her absence. She was thus denied the opportunity to cross-examine him, yet it was his evidence that was used to dismiss her from service.
32. Besides the procedural flaws, the petitioner testified that she had never been made aware of the Government Financial Regulations and Procedures which she was accused of breaching. According to her, the borrowing of money from deposit account was on the advice of the District Accountant and was for running initial services in the office such as fuel for running station vehicle to take officers for mobile court, stationery, cleaning detergents, sugar and milk for staff tea. . She submitted the letter of authority to withdraw the money. She testified at the disciplinary hearing that all she did was request for a loan from the District Treasury. It was the District Accountant’s idea that the money be borrowed from the deposit Account.
33. In the case of County Assembly of Kisumu & 2 others –v- Kisumu County Assembly Service Board & 6 others [2015] eKLR where the Court of Appeal at Kisumu upheld this court’s decision that the removal of the 2nd Respondent from office was null and void since due procedure in impeaching the 2nd Respondent was not followed, the Court of Appeal also observed at paragraph 90 that:
34. In this case, as we have demonstrated, in the impeachment of the 2nd respondent, the 1st appellant flagrantly disregarded every rule in the book. In a nutshell, we find that no valid notice was served upon the 2nd respondent and we agree with counsel for the respondents that contrary to Articles 47, 50(1) and 236(b) of the Constitution, the rules of natural justice and this Court’s decision in County Government of Nyeri & Another v. Cecilia Wangechi Ndungu, she was denied an opportunity to defend herself. In the circumstances, whatever sins the 2nd respondent may have committed which we are not concerned with in this appeal as we are not reviewing the merits of the case, we have no option but to uphold the trial court’s decision quashing the impeachment of the 2nd respondent.”
35. Further, the charges against the petitioner were not specific. She was charged with –
 1. “Between 7th July 2014 and 1st April 2015 during your tenure as the head of station at Kapsabet Law Court, Kshs.541,000 was withdrawn from deposits bank account between 7th July, 2014 and 1st April, 2015, for office use contrary to section 8.6 of the Government Financial Regulations and procedures. The cheques withdrawing the money were signed by the District accountant and yourself/or the executive officer.



2. During the 2014/2015 financial year, you were paid subsistence allowance totalling Kshs.333,000 on diverse dates to attend meetings in Nairobi and the payment vouchers were not supported by invitations to attend the meetings. In addition there was no communication on the said meetings with Chief Registrar of Judiciary and Registrar Magistrates Court.”
36. The charges did not give a breakdown of the block figures. As submitted by the claimant, she could not get vouchers to get the particulars of the charge and specific amounts. She further stated that part of the period covered in the charges was after she left the station following her vetting.
37. The submission by the respondent that the particulars were clear and she did not need particulars is not evident from the charges and from the proceedings of the hearing.
38. The submission that the petitioner admitted the charges and did not require to cross examine the Auditor is also not borne by the proceedings of the hearing. The proceedings did not mention the Auditor or the report by the auditor and the petitioner was never asked to waive her right to cross examine the auditor, who in any event should have testified before her so that she could have a chance to respond to the issues raised by the auditor.
39. The fact that the hearing was 5 months after charges were preferred against the petitioner did not deny her the statutory right of 14 days’ notice before a hearing, especially taking into account that she sought particulars that were never provided to her. Finally, there was no unequivocal admission by the petitioner during the disciplinary hearing.
40. In employment matters, the employer has to prove both valid reason and fair procedure. Having found that the respondent disregarded its own mandatory statutory procedures that provide for the right of the petitioner to a fair hearing. I find the whole process was so flawed as was any outcome of the flawed process with the result that the decision to dismiss the petitioner cannot stand the test of both Article 47 of the Constitution and Section 7 of the Fair Administrative Actions Act.
41. I have considered the prayer sought and the rejoinder by the respondent. From the proceedings, I find that the omissions were so great as to render any outcome of the disciplinary proceedings a nullity. For the foregoing reason, I make the following orders –
 1. I declare the disciplinary proceedings conducted by the respondent’s Human Resource Management Committee leading to the decision to summarily dismiss the petitioner from service of the judicial service on 9th February 2017 – irregular, unprocedural, unfair and a violation of the petitioner’s fundamental rights and mandatory provisions of the disciplinary procedure under the Judicial Service Act and the Regulations made thereunder.
 2. I declare the summary dismissal of the petitioner null and void and of no effect in law.
 3. I order the reinstatement of the petitioner to her position as Principal Magistrate in the judicial service with immediate effect with no loss of salary and benefits.
 4. The respondent shall pay the petitioner’s costs of the petition.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6TH DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE

