



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

PETITION NO. 15 OF 2017

(Before Hon. Lady Justice Maureen Onyango)

IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010, ARTICLE NOS. 2(1), 3(1), 10, 19, 20, 21, 27(1), 41(1), 50(1), 162(2), AND 237 AND 253

AND

IN THE MATTER OF: FAIR ADMINISTRATIVE ACTIONS ACT 2015

AND

IN THE MATTER OF: TEACHERS SERVICE COMMISSION ACT CHAPTER 212

AND

IN THE MATTER OF: THE CODE OF REGULATIONS FOR TEACHERS 2015

AND

IN THE MATTER OF: THE EMPLOYMENT ACT 2007

AND

IN THE MATTER OF: THE INDUSTRIAL COURT ACT 2011

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE CONSTITUTION OF KENYA 2010, THE EMPLOYMENT ACT 2007, THE CODE OF REGULATIONS FOR TEACHERS 2015 AND OTHER PROVISIONS OF THE LAW

BETWEEN

GODFREY KHALITABA LUKORITO.....PETITIONER

VERSUS

TEACHERS SERVICE COMMISSION.....RESPONDENT

JUDGMENT

The petitioner was at the time of filing the petition herein the Principal of Boma Boys High School, Trans Nzoia County. He filed this petition against the Teachers Service Commission (TSC), a body established under the Constitution and the Teachers Service Commission Act, with a mandate to–

- a) To register trained teachers;
- b) To recruit and employ registered teachers;

- c) To assign teachers employed by the Commission for service in any public school or institution;
- d) To promote and transfer teachers;
- e) To exercise disciplinary control over teachers; and
- f) To terminate the employment of teachers.

The Petition

The petitioner accuses TSC of violating his rights under Article 47 of the Constitution, Section 4 of the Fair Administrative Actions Act and Regulation 2 and 146 of the Teachers Service Commission Act.

The petitioner avers that on 10th July 1990, he was registered as a teacher in the register kept by the TSC, and his registration No. is TSC//313159. On the 23rd June 1993 he was given a letter of permanent appointment by the TSC. Vide a letter of 28th November 2011, the petitioner was transferred to Boma Secondary School with effect from 19th November 2011.

The 2016 KSCE Examination was due to commence on 7th November 2016 and a Mr. Patrick Ambani Ongoro was posted to Boma Boys High School as a Supervisor. Mr. Patrick Ambani Ongoro did not attend the briefing for Head Teachers and supervisors on the 28th October 2016 at Kitale School.

When Patrick Ambani Ongoro went to the school and addressed the candidates on 4th November 2016, the petitioner got concerned about how he spoke to the students and on 4th November 2016, he wrote to the TSC County Director, Trans-Nzoia requesting for another Supervisor in place of Mr. Patrick Ambani Ongoro.

On 6th November 2016 the petitioner talked to the TSC County Director Mr. Ibrahim H, Adan, as well as Mr. Okal the Sub-County TSC Director over his written request of 4th November 2016. According to the petitioner, Mr. Okal upon consultation with Ibrahim H. Adan the TSC County Director Trans-Nzoia assured the petitioner that another supervisor would be posted to Boma Boys High School on the 7th November 2016.

On the morning of 7th November 2016 when Mr. Patrick Ambani Ongoro went to Boma Boys High School, the petitioner informed him that another supervisor was expected at the school, and requested Mr. Ambani to call the TSC Sub-County Director Mr. Okal for further instructions.

The petitioner avers that a little later, both the TSC County Director and the Sub-County TSC Director Mr. Okal went to the school with Mr. Patrick Ambani and on the instruction of the two, Mr. Patrick Ambani supervised the examination in the school on that 7th November 2016. But with effect from 8th November 2016 another supervisor was posted to Boma Boys High School.

That on the afternoon of 7th November 2016, both the TSC Director Mr. Ibrahim H. Adan and Mr. Okal the Sub-County Director went to the school and requested the petitioner to write a further report on 'Mr. Patrick Ambani covering the period up to the morning of 7th November 2016. The petitioner obliged and wrote a further report dated 8th November 2016 and the same was submitted to TSC Director on that 8th November 2016.

That in the afternoon of 8th November 2016, the petitioner was handed an interdiction letter which intimated that the petitioner had breached clause (b) (vi) of the 3rd Schedule of the Act, in that he had intentionally locked the schools 2016 KSCE Supervisor Mr. Patrick Ambani Ongoro TSC No. 469158 out of the school gate on 7th November 2016 at around 7.20 a.m. preventing him from carrying out his assigned duties contrary to the 2016 Kenya National Examination Guidelines while being the principal of Boma Boys High School, Trans-Nzoia Sub-County, Trans-Nzoia County. The interdiction was with effect from 7th November 2016.

The petitioner was required to vacate office and to write a defence to the commission within 21 days.

Vide Kitale HC Judicial Review Application No. 8 of 2016, the petitioner challenged the legality of the interdiction of 7th November 2016. The case was referred to the Employment and Labour Relations Court at Kisumu and was allocated a new number in Kisumu, Employment and Labour Relations Court at Kisumu, Judicial Review No. 2 of 2017.

The petitioner opted to withdraw the Judicial Review application in favour of the petition herein.

Vide a letter dated 6th January 2017 the Teachers Service Commission served the petitioner with another letter of interdiction similar to the one of 8th November 2016 but this second letter changed the interdiction date to take effect from 8th November 2016.

He prays for the following remedies –

- (a) A declaration that the interdiction of the petitioner by the respondent and vide letters dated 8th November 2016 and 6th January 2017 was unconstitutional and illegal and the same be lifted and set aside together with any consequential actions that may be taken by the respondent pursuant to the interdiction of the petitioner.

(b) An order reinstating the petitioner to his position prior to the 7th November 2016.

(c) An order that the respondent do forthwith release the withheld salary and other allowances with effect from 7th November 2016 or 8th November 2016.

(d) Damages/compensation for the wrongful interdiction.

(e) Costs.

(f) Interest

(g) Any other relief that the court may deem fit to grant.

The Response

The respondent filed a replying affidavit of IBRAHIM H. ADAN, its County Director, Trans Nzoia County and another replying affidavit of ISAAC OKAL, the Sub-County Director, Trans Nzoia County in response to the petition.

Mr. Adan deposes that in exercise of its mandate, the respondent is bound by the Public Officers Ethics Act, the Code of Regulations for Teachers 2015 (The CORT) and the Code of Conduct and Ethics for Teachers 2015 (the COCE). That while supervising national examinations, the respondent is further bound by the provisions of Section 44 of the Kenya National Examination Council Act, 2012 and the Code of Conduct, guidelines and regulations developed under the Kenya National Examinations Council from time to time. He deposes that a teacher who infringes any of these provisions is subject to punishment by the respondent.

That for the smooth running of the 2016 national examinations, the Kenya National Examinations Council (KNEC) developed and issued Guidelines dated 22nd September 2016 to regulate the conduct of the said examinations. The Guidelines outline, *inter alia*:

(a) The role of the Head Teachers/Principals which includes, *inter alia*, handing over the question papers to the supervisor on arrival at the school for the administration of the examinations in the presence of the security officer ensuring that the accountability documents are duly signed.

(b) The role of the Supervisor, which includes, *inter alia*, ensuring that he/she is at the examination centre by 7.00 a.m. in order to get adequate time to inspect the examination rooms and search the candidates before the start of the examination.

(c) The procedure for recruitment of supervisors and invigilators which, *inter alia*, vests the exclusive authority on the TSC Sub-County Staffing Officer to appoint and assign examination personnel to various examination centres within the sub-County from the list provided by KNEC and guided by the instructions given by KNEC

He deposes that he was informed by Mr. Patrick Ambani Ongoro that following Mr. Ongoro's appointment and assignment by the TSC Sub-County Director, Trans Nzoia West, as Supervisor for Boma Boys High School, he commenced his supervisory duties at Boma Boys High School by attending a rehearsal session for candidates of the school on 4th November 2016, then reported to the school on 7th November 2016 at 7 am for supervision of exams which were starting on that day. That Mr. Ongoro further informed him that –

(a) On 28th October 2016 at around 5.00 p.m. the Petitioner called Mr. Patrick Ambani Ogoro, TSC/469158, on his mobile phone to seek a private meeting with him;

(b) On 4th November 2016, the Petitioner arranged for Madam Hellen W. Ngige, TSC/524055, the private candidates' supervisor at Boma Boys' High School, to meet Mr. Patrick Ambani Ongoro, TSC/469158, over "some matter" in the school computer laboratory; which "small matter" was to the effect that Mr. Ambani Ongoro, TSC/469158, does accept to compromise the KNEC rules with a view to assisting the candidates to cheat in the exams; and

(c) On 7th November 2016, the Petitioner herein blocked Mr. Ambani Ongoro, TSC/469158, from accessing the Boma Boys' High School compound for the purpose of supervising the KNEC exams for the reason that Mr. Patrick Ambani Ongoro, TSC/469158, had refused/declined to accept to compromise his integrity.

That on 6th November 2016, the petitioner called him at around 6.30 pm on his mobile number to report that the petitioner had a problem with Mr. Ongoro, the 201676 KCSE Supervisor at the school and demanded that Mr. Adan instruct Mr. Okal, the Sub County Director to replace Mr. Ongoro. That he advised the petitioner to table his concern with Mr. Okal who was in his company at the time, as Mr. Okal was the one authorised to appoint Supervisors.

That on Monday, 7th November 2016 at 7.10 am he received a call from the Ministry of Education Sub-County Director, Trans Nzoia West, Mr. Kalenda Simiyu, who informed him that the petitioner had locked out the supervisor. That he immediately called Mr. Okal and together with Mr. Kalenda, the three of them went to Boma Boys High School where they found Mr. Ongoro locked outside the gate. That following their intervention the petitioner allowed Mr. Ongoro in and he proceed to supervise the exams on that day.

That after Mr. Ongoro left he informed the petitioner that he was under investigation and asked the petitioner to prepare a report. That he left with Mr. Okal but Mr. Kalenda remained at the centre.

That in view of the sensitivity of the matter he decided against holding a full Board of Management meeting to conduct the investigation as it was likely to jeopardise the smooth administration of the national examinations. That he thus constituted an Investigation Committee of four (4) officers who immediately embarked on investigating the reasons why the petitioner locked out the KCSE Supervisor, Mr. Ambani. He chaired the Investigation Committee, which discreetly interviewed identified witnesses without causing a stir at the examination centre. Oral testimonies which were reduced into writing were taken from the petitioner, the TSC Sub-County Director, Trans Nzoia, Mr. Isaack O. Okal, the Boma Boys High School Gatekeeper, Mr. Michael Kimagut, the Boma Boys High School Centre Supervisor for private candidates, Ms Hellen Ngige, Mr. Rueben Naibei and Mr. Augustine Lule. Mr. Naibei and Mr. Lule were security officers deployed at Boma Boys High School. After considering the testimonies from the witnesses the investigation team made the following recommendations –

“RECOMMENDATION

i. The panel recommends that appropriate disciplinary action be

taken against the principal Mr. Lukorito Godfrey for wittingly locking out the supervisor officially appointed and assigned to his examination centre.

ii. Mr. Patrick Ambani - Supervisor, Boma Boys centre be replaced to allay attendant hostility emanating from any disciplinary decision meted on the principal.

iii. Hellen Ngige Supervisor for the private centre be written a show cause letter for insisting to resign from National exams after the interview session as well as masquerading as link person to negotiate examination logistics for the two independent centres and supervisors”

That due to the nature of the allegations levelled against the petitioner, it was in the public interest that the petitioner be interdicted urgently to maintain the integrity of the 2016 KSCE national examinations and thereafter be afforded a chance to clear his name.

He denied that the petitioner was not given a hearing before his interdiction as alleged in the petition and deposes that the interdiction complied with Regulation 146 and Section 4 of the Fair Administrative Actions Act.

Mr. Okal in his replying affidavit reiterated the facts as narrated in the affidavit of Mr. Adan. The affidavit of Patrick Ambani Ongoro that is appended to the replying affidavit of Mr. Adan also reiterates the facts as set out in Mr. Adan’s and Mr. Okal’s affidavits.

Submissions of the Petitioner

In the submissions filed on behalf of the petitioner it is argued that before being handed the interdiction letter, the petitioner had not been informed of an investigation team having been constituted to investigate him, he had not been formally charged and requested to defend himself, he had not been told of witnesses who had recorded statements against him nor had such statements been availed to him, he never challenged or tested the credibility of such witnesses through cross examination, he was not informed of his right to representation, and nor was he given time to prepare his defence. It was further submitted that the chairman of the investigation panel (Ibrahim H. Adan) was also the decision maker, contrary to the law. He is the one who interdicted the petitioner and signed the interdiction letter.

It is submitted that the respondent did not comply with Regulation 146(1), (6), (8), (10), (12) as he was never informed of the allegations before interdiction with sufficient details to answer the charges, he was not given at least 7 days to prepare his defence, that the petitioner was never informed of any offence against him and the issue of defending himself before the panel did not arise, that he was not present when witnesses were being interviewed, that he was never given an opportunity to adduce and challenge any adverse evidence as he was not aware of any complaint against him, that Regulation 146(8) was not complied with as Mr. Adan was the Chair of the Investigation Panel and that the petitioner was handed the interdiction letter without the process and procedure being complied with. Further that Mr. Adan participated in the investigation and again presided over the disciplinary panel in violation of Regulation 146(12).

It is submitted that the process was in violation of Article 47 of the Constitution and Section 4(3) of the Fair Administrative Action Act as no notice was given to the petitioner of the proposed interdiction, and he was not given an opportunity to be heard or to appear before the panel, was not given a right to legal representation, he did not cross examine witnesses and was not given information, material and evidence against him.

The petitioner relies on the decision of the court in **Board of Governors, Our Lady of Victory Girls School Kapnyeberai and Another –V- Ex Parte Korir Kipyego Joseph and Another (2015) eKLR** where the court stated –

“It is my view as enunciated above, that at whatever stage of the interdiction process, one thing must be observed. That an accused must be given an opportunity to be heard. The two applicants were yet to undergo the second stage of interdiction process, which would have been conducted by the TSC as laid down by regulation 66(4). At the T stage the process was carried out by the commissions agent, that is the B.O.G (1st respondent) in a flawed manner. This means that the second stage could not commence as the same too would have been founded on a non-starter process. Accordingly I find that the two ex parte applicants grievances are founded on good reason as they are hinged on lack of a fair process of being denied a hearing as envisaged by Regulations 66(3)(b) which requires that an accused person be given a hearing by being interviewed.”

The petitioner further relied on the decision in **Patrick Wanyonyi Khaemba –V- Secretary, TSC and Another (2014) eKLR** and **Onyango Oloo –V- Attorney General (1986 – 1989) EA 456**.

That the TSC County Director Ibrahim H. Adan and the TSC Sub-County Director Mr. Akal were both involved in the matter that led to the

interdiction of the petitioner. It was to the duo that the petitioner had made the request for another supervisor other than Mr. Ambani. They were well aware of the request which they discussed with the petitioner, who believed that the request had been granted. That it was the two who did not respond to the petitioner's request in writing, who were championing his interdiction. That they were obviously interested parties and the positions now taken by them could only be intended to protect their positions.

That the participation of the TSC County Director, as the Chairman of the investigating panel and also the Chairman of the decision making panel, makes him the complainant, the investigator and the decision maker. That he acted as a Judge in his own cause, and justice cannot be seen to have been done.

That the interdiction of the petitioner was premised on Clause (b)(vi) of the Third Schedule which is an offence of insubordination.

That in the replying affidavit of Ibrahim H. Adan he intimates that the petitioner was interdicted on public interest and public policy which were not the grounds for the petitioner's interdiction according to the letter of interdiction

That in the affidavit of Patrick Ambani Ongoro, issues of compromise and corruption are alluded to, yet they do not form the basis of the interdiction. Nor do they find support in the statement of M/s Hellen Ngige. That it was apparent that Mr. Patrick Ambani Ongoro was out to revenge over the attempt by the petitioner to have him removed as the supervisor in Boma Boys High School.

It is submitted that the petitioner suffered damage by reason of the violation of his constitutional right to fair hearing as envisaged by articles 47 and 50 of the constitution. That an award of Kshs.1,000,000 is reasonable in addition to granting the reliefs sought in the petition.

Submissions by the Respondent

For the respondent it is submitted that it had reasonable cause to interdict the petitioner and the same was anchored on Sections 33(1) and 34(2) of the Teachers Service Commission Act and Section 44 of the Kenya National Examinations Act.

It is further submitted that the petitioner's interdiction was constitutional, lawful and procedurally fair. It is submitted that the petition has fundamentally misinterpreted the spirit and tenor of the provisions of Section 4 of the Fair Administrative Actions Act as the section does not apply where a person under investigations has admitted upfront the allegations against him, that the general rule is that where an accused person has admitted the allegations against him his admission is fool proof evidence that suffices subsequent decisions against him. The respondent relies on the decision in **Anarita Karimi Njeru –V- Republic (1979) eKLR** where the court held –

“The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The tribunal that has to construe an Act of a Legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand these words it is natural to enquire what is the subject matter with respect to which they are used and the object in view.”

It is submitted that the petitioner submitted himself to the investigation panel and admitted having locked Mr. Ongoro out of the school, an admission that he reduced into writing on 8th November 2016 as he has again admitted in the affidavit filed in court in support of the petition, that the witnesses only corroborated the facts as admitted by the petitioner and cross examination of witnesses would not have served any useful purpose.

The respondent submits that the provisions of Regulation 146 of the CORT are largely representative of the provision of Section 4 of the Fair Administrative Actions Act, which it complied with. It is submitted that Mr. Adan did not record a statement and was not a witness, and therefore was not divested of the powers conferred upon him as County Director under Regulation 46(10)(c) of the CORT and that Mr. Adan did not act as complainant, investigator and judge as alleged by the petitioner.

On the orders sought the respondent submitted that the same have been overtaken by events as the petitioner has since been subjected to a disciplinary hearing by the respondent and has been dismissed from service of the respondent, thus the court ought not to grant orders in vain. The respondent relies on the case of **Joccinta Wanjiru Raphael –V- William Nangulu – Divisional Criminal Investigation Officer, Makadara and 2 Others (2014) eKLR** where the court held –

“The court does not issue orders in vain even where it has jurisdiction to issue the prayed orders.”

The respondent further relied on the decision in **Republic –V- Chairman, Evurore Land Disputes Tribunal and 2 Others Ex-parte Njeru Kirimo (2014) eKLR** where the court held –

“Assuming that this court was to issue an order of certiorari directing that the award of the Evurore Land Disputes Tribunal be quashed, this court will be issuing an order in vain. The reason for this is that Evurore Land Disputes Tribunal is no longer in existence.”

The respondent urged the court to dismiss the petition.

Determination

I have considered the pleadings and submissions filed by the parties. The facts are not in dispute. What is in dispute and what is therefore the issue for determination by the court is whether the procedure in Regulation 146 of the respondent's Code of Regulations for Teachers (CORT) was complied with in the petitioner's interdiction. Specifically he is aggrieved that the respondent did not comply with Regulations

146(1), (6), (8), (10) and (12).

Regulation 146 comprehensively provides for discipline of teachers. The Regulations referred to by the Petitioner are reproduced below –

(1) The Commission shall upon receiving an allegation touching on a teacher's professional misconduct institute investigations either directly or through its agents.

(2)

(3)

(4)

(5)

(6) The Investigating Panel shall, upon investigation, accord the head of institution or a teacher a fair hearing during the investigation process which shall include being-

(a) presumed innocent until proven that he has a case to answer;

(b) informed of the allegation, with sufficient details to answer it:

(c) given at least seven days to prepare a defence;

(d) given an opportunity to appear in person before the Investigation Panel, unless his conduct makes it impossible for the investigation to proceed in his presence;

(e) present when the witnesses are being interviewed by the Investigation Panel;

(f) warned that any incriminating evidence may be used against him during the disciplinary proceedings; and

(g) given an opportunity to adduce and challenge any adverse evidence.

(7)

(8) The Investigation Panel shall, upon completing the investigation compile a written report in regard to the teacher's disciplinary status and shall present the report to the Board, the County Director and the Secretary.

(9)

(10) Where the report of the investigation panel discloses that an offence has been committed, the Board of Management or the county director or the Secretary shall-

(a) where necessary, issue an administrative warning in writing;

(b) where a teacher's misconduct is as result of a medical condition, recommend to the Commission Secretary for approval of any leave or further direction as the case may be; or

(c) interdict the teacher using the Letter of Interdiction set out in the Thirty Fourth Schedule .

(11)

(12) An officer who undertakes or participates in an investigation of an offence, shall neither preside nor sit as a member of the disciplinary panel determining the same.

From the facts on record, there was a complaint against the Petitioner by Mr. Patrick Ambani Ongoro, the Supervisor who complained that the Petitioner had locked him out of the examination centre where he was a Supervisor. This was a serious issue that was likely to jeopardise the examinations as Supervisors were required to arrive at the examination centre at 7 am in order to have adequate time to inspect the examination rooms and search the candidates before the start of the exams, brief invigilators before the examinations, receive the packets containing examinations and carry out all other roles as set out in the instructions dated 22nd September 2016 for KNEC, a copy of which has been attached to the respondent's bundle as Exhibit "IHA1".

I however find that Regulations 146(6) was not complied with as the report of the investigations does not specifically state that the petitioner was informed of the allegations against him.

According to the report, the incident occurred on the 7th November 2016, the investigation was conducted on the same date and the report is signed on 8th November 2016, the very day that the petitioner was interdicted. According to Regulation 146(6)(c) the teacher was required to have at least 7 days to prepare his defence after being informed of the allegation with sufficient details to enable him respond. The two letters written by the petitioner to the County Director on 6th and 8th November 2016 were actually the Petitioner reporting Mr. Ambani, the Supervisor. From the tone of the two letters, the petitioner was complaining that Mr. Ambani was the one who had breached the KNEC Examination guidelines. There is no indication that he was made aware that he was under investigation or that he had committed any offence for which he was required to defend himself. Regulation 146(6)(b) require that the teacher is “**informed of the allegation, with sufficient details to answer to.**”. No charges were framed against the petitioner. The petitioner was never asked to respond or defend himself against any charges. The first letter on 6th November 2016 was the petitioner’s letter of complaint against the Supervisor. The second letter was as stated in Mr. Adan’s affidavit, a verbal request to write a further statement covering events up to 7th November 2016

The petitioner complained that the County Director was a witness and at the same time the Investigator and presided over the investigation panel. This is true. The petitioner complained to Mr. Adan about the supervisor and requested for a replacement. He was again present at the school when the supervisor was locked out by the petitioner. He then again sat as the Chair of the Investigation Panel. Regulation 146(12) is explicit that the person who investigates shall not preside over the disciplinary hearing.

The letter of interdiction was issued to the Petitioner even before he became aware that he was under investigation. Under Regulation 146(6) (c) he was entitled to be charged and given 7 days to respond to the charges before the hearing.

From the foregoing reasons, the petitioner was denied a right to a fair hearing as envisaged in Regulation 146 of the Code of Regulations for Teachers and by extension, the Fair Administrative Actions Act and Article 47 of the Constitution. In effect, he was never accorded a hearing as he was interdicted even before he was informed of the charges against him and given an opportunity to respond.

Counsel for the respondent submitted at length that the Petitioner has since been taken through the disciplinary process and was eventually dismissed during the pendency of this suit. He submitted that courts do not act in vain.

I agree with him only to the extent that courts do not act in vain. However in this case, this position in law is not applicable. The disciplinary process under Regulation 146 of the respondent’s Code of Regulations for Teachers starts from the investigation, then interdiction as provided under Regulation 146(1) and ends with the disciplinary hearing by the Commission.

Counsel seems to suggest that because the petitioner has been heard by the Commission and has been dismissed, it does not matter if the interdiction that led to the disciplinary hearing was irregular. He seems to suggest that the disciplinary hearing sanitized any irregularity during the interdiction process. I do not agree. The interdiction forms a very important and integral part within the disciplinary process as it is the foundation upon which the disciplinary hearing is anchored.

The court further notes that when the respondent proceeded with the disciplinary hearing, it was aware that this petition was pending and that it might be either successful or unsuccessful. The respondent should therefore have anticipated that there was a chance that this petition may succeed.

The petitioner specifically prayed for orders that this court declares that his interdiction by the respondent vide letters dated 8th November 2016 and 6th January 2017 was unconstitutional and illegal and the same be lifted and set aside together with any consequential actions that may be taken by the respondent pursuant to the interdiction of the petitioner.

Having found that the petitioner was never subjected to a fair hearing as provided under the Regulation 146 of the Code of Regulations for Teachers, 2015, I declare the interdiction irregular and unlawful to the extent that the Petitioner was never given a hearing as anticipated under Regulation 146 and was thus condemned and interdicted without a valid hearing. I thus lift the interdiction and any consequential action by the respondent arising out of the interdiction and order the reinstatement of the Petitioner.

I further order the release of the petitioner’s salary and allowances withheld from 7th November 2016.

The respondent shall pay the petitioner’s costs.

DATED AND SIGNED AT NAIROBI ON THIS 11TH DAY OF JUNE 2019

MAUREEN ONYANGO

JUDGE

DATED AND DELIVERED AT KISUMU ON THIS 16TH DAY OF JULY 2019

MATHEWS NDERI NDUMA

JUDGE