



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

PETITION NO. 17 OF 2013

GILBERT MWANGI NJUGUNA.....PETITIONER

-VERSUS-

THE ATTORNEY GENERALRESPONDENT

Dr. Kamau Kuria, senior counsel for the Petitioner.

Mr. Mwimbo for the Respondent.

JUDGMENT

Mr. Gilbert Mwangi Njuguna filed Petition No. 267 of 2009 before the High Court on 5th May, 2009 seeking various reliefs outlined in paragraph 22 (a) – (n) of the petition dated 4th May, 2009.

Subsequently, an application to amend the petition was granted pursuant to which additional prayers for medical benefits, per diem and transfer allowance were made.

The Petition is opposed by the Attorney General who is sued on behalf of the Judicial Service Commission hereinafter (JSC) established under **Section 68** of the erstwhile constitution of Kenya.

Cause of action.

The JSC retired the Petitioner in public interest on 23rd June, 2008 in purported exercise of its powers under **Regulation 28** of the Judicial Service Commission Regulations made under the **Judicial Service Commission Act Cap 185** hereinafter (JSC Act) of the Laws of Kenya.

At the time of retirement, the Petitioner worked as an Acting Senior Principal Magistrate at Chuka in Meru District. The Petitioner is a graduate of the Nairobi University where he graduated with a Degree of Bachelor of Laws in 1984 and is a holder of a Diploma in Law from Kenya School of Law and an advocate of the High Court of Kenya having been admitted as such in 1985.

Terms of service.

Under his service contract the Petitioner received a salary and various benefits to wit; house allowance; medical cover; entertainment allowance; responsibility allowance; transport allowance; non-practicing allowance; transfer allowance and airtime allowance.

The Petitioner was by law entitled to retire at the age of 60 years.

Protection.

The Petitioner avers that his employment was governed by **Section 69** of the Constitution and under **Section 77 (9)** of the Constitution as read with Regulations 14, 17, 26 and 28 of the JSC Act was entitled to a fair hearing before any adverse administrative decision was taken against him.

Furthermore he claims under **Sections 71, 73 and 74** of the erstwhile constitution he was protected against being subjected to inhuman or degrading treatment and was guaranteed enjoyment of the right to life and not to be held to servitude or be deprived of the means of livelihood arbitrarily.

The Petitioner states that these rights were violated by the Respondent when on 27th October, 2006 he was placed on interdiction on half pay and directed not to leave his duty station without knowledge of the Resident Judge Meru to whom he would report until instructed otherwise. The reporting was to be done every Friday.

Petitioner states that these directives held him to servitude within the meaning of the Rule in **Marete v Attorney General (1987) 1 KLR at 690.**

The Petitioner further relies on the principle of the independence of the judiciary components of which are security of tenure, administrative independence and financial security of the judicial officers.

The particulars of contravention of the Petitioner's Right under **Section 77(9)** of the Constitution were outlined as follows;

- i. *The petitioner was not under regulation 14 or 26 or 28 of the JSC Regulations informed of the alleged wrongs he had done to merit retirement in public interest;*
- ii. *The retirement issued under Regulation 17 merely conveyed a decision and not a statement of alleged accusations and he was not required to prepare a defence in terms of Regulations 14, 26, 27 or 28.*
- iii. *The letter of interdiction anticipated a hearing which did not materialise.*

Particulars of breach of Regulations 14, 17, 26 and 28 of JSC Regulations were set out as follows;

- i. *The Petitioner was not called under Regulation 14, before a Medical Board appointed by the Chief Medical Officer to ascertain if the Petitioner was incapable, by reason of any infirmity of mind or body of discharging the functions of his office;*
- ii. *No criminal proceedings had been taken or were anticipated in terms of Regulation 17;*
- iii. *No disciplinary proceedings were commenced in terms of Regulation 26 on grounds of his conduct nor was any charge preferred against the Petitioner before or after the interdiction and subsequent retirement;*
- iv. *No complaints were notified the Petitioner in terms of Regulation 28.*

The Petitioner contents that the retirement in public interest is *ultra vires* **Section 69** of the erstwhile constitution, under which JSC is empowered to exercise disciplinary control over the Petitioner and thus unconstitutional and null and void.

That the same is a violation of his rights under **Sections 73, 74 and 77 (9)** of the Constitution and the Petitioner is thus entitled to relief under **Section 84 (2)** of the Constitution.

The Petitioner in the main prays that;

- a. *It be declared that the purported interdiction of the Petitioner from the Judicial Service on 27th October, 2006, is illegal, and null and void;*
- b. *It be declared that the purported retirement in the public interest of the Petitioner from Judicial Service on 23rd June, 2008 is illegal and null and void;*
- c. *It be declared that the conduct by the Respondent was in violation of the rights of the Petitioner under Sections 71, 73, 74 and 77 (9) of the Constitution and the court orders that;*
 - a. *The Petitioner is entitled to his pension as of the age of retirement which is 60 years;*
 - b. *An order that the Petitioner be paid his pension;*
 - c. *The Judicial Service Commission do reinstate the Petitioner to employment in the Judicial Service with full salary from 27th October, 2006 until the date of judgment.*

In the alternative it be ordered to pay the Petitioner his full salary as from 27th October, 2006 to the date of retirement. Further the Respondent do pay the Petitioner exemplary damages for unconstitutional conduct and that in making the orders for arrear payment the court considers not just the remuneration earned at the time of retirement but also consider annual salary increments and curtailed career advancement prospects as outlined in paragraph 22 n(i) – (vi) and as contained in the amended petition and further the Respondent do pay the Petitioner general damages for contravention of his fundamental rights and costs of the suit.

Respondent's case.

It is the Respondent's contention that during his tenure with the Judiciary, the Petitioner involved himself in several cases of gross misconduct hence the retirement in public interest as follows:-

- a. *On 12th October, 1984, the Principal Magistrate at Mombasa Law Courts reported to the Judicial Service Commission that the Petitioner's performance was unsatisfactory on the grounds that he appeared disorganized, unco-operative and unwilling to take advice;*
- b. *That on 28th August, 2003, the Chief Magistrate Kiambu Law Courts reported that he was always complaining about his career progression, he was an average worker, did not attend court in the afternoons and could not work under pressure. That on 10th April, 2006, he wrote a protest against a senior magistrate being posted to Kiambu Law Courts to supervise him.*
- c. *That on 13th October, 2006, the Permanent Secretary Ministry of Justice and Constitutional Affairs forwarded to the Honourable Chief Justice various complaints lodged against him by the National Security Intelligence Service as follows;*
 - i. *That he did not take his work seriously and made technical appearances at the court;*
 - ii. *That he was reluctant to take pleas resulting in congestion at Tharaka Police Station;*
 - iii. *That he was committing persons to jail late in the evening thus risking the lives of the officers escorting them to Meru Prison;*
 - iv. *That the local DCIO and OCPD had threatened to boycott his court and present cases elsewhere;*
 - v. *That he had poor interpersonal relation with colleagues and;*

vi. *That his conduct had slowed down the wheels of justice and reflected the judiciary in bad light.*

Disciplinary process.

That he was given a notice to show cause why disciplinary action including retirement in public interest should not be taken against him for gross misconduct pursuant to interdiction on half pay.

That on 11th November, 2006, he filed a defence and his case was placed before the JSC.

That the JSC after their meeting held on 13th June, 2008 retired him from the Judicial Service on grounds of public interest and the decision was conveyed to him on 23rd June, 2008.

That the Petitioner did not appeal the decision of the JSC but instead filed this petition.

Regarding violation of specific rights protected under the repealed constitution, the Respondent states as follows;

a. Section 71 – protection of right to life.

The Petitioner's right to life was not violated at all by the lawful and procedural termination of his employment. The Claimant has therefore failed to prove any breach of the constitution. – See **Nrb. H. C. Misc. Application No. 279 of 2008 Benjamin Wachira Ndiithi vs. Attorney General.**

b) Section 73 – Protection from slavery and forced labour.

The Respondent states that the Petitioner has completely failed to demonstrate how he was subjected to slavery and or servitude or forced labour. It is common cause that he was interdicted on half pay pending conclusion of the disciplinary case against him in terms of the JSC Act, and the relevant regulations.

c) Section 74 – Protection from inhuman treatment.

The Respondent further submits that the Petitioner has adduced no evidence whatsoever to demonstrate how he was inhumanly treated and this claim should be dismissed.

d. Section 77 – right to equal protection of the law and grant of fair hearing.

It is the Respondent's case that the retirement of the Petitioner in public interest was preceded by a fair inquiry into the matter and the Petitioner was afforded opportunity to defend himself against the notice to show cause issued to him. That he proceeded to file a defence on 23rd June, 2009 and the matter was duly and fairly considered by the JSC in terms of the relevant law and regulations.

The Petitioner has therefore failed to demonstrate how he was denied due protection of the law and refused a fair hearing as alleged or at all.

Analysis of facts and law applicable

In the High Court at Nairobi **Judicial Review Misc. Application NO. 279 of 2008 Benjamin Wachira Ndiithi v. The Attorney General** the court observed the following;

“It is trite law and the courts have repeatedly held that one moving the court under the constitutional provisions alleging contravention of his rights must plead with particularity, the section allegedly contravened, the nature and the manner of the contravention. The court stated this in Anarita Karimi Njeru v. Rep (No1) (1979) 1 KLR

154 where Traveyan and Hancox JJ said as follows;

“We would however again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the constitution it is important (if only to ensure that justice is done to his case) that he should set out with reasonable degree of precision that of which he complains the provisions said to be infringed and the manner in which they are alleged to be infringed.”

Section 71 of the repealed Constitution reads as follows:

“(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he was convicted.

(2). Without prejudice to any liability for a contravention of any other law with respect to the use of force in those cases hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such an extent as is reasonably justifiable in the circumstances of this case”

Counsel for the Petitioner has urged the court to interpret this provision liberally so as to find;

“Life does not mean merely physical existence but it also includes the use of every line or faculty through which life is enjoyed and here is also implicit in the right to live with basic human dignity because without basic human dignity life would not be worth living.”

The court has no difficulty whatsoever to imply the right to human dignity in the interpretation of the right to life even under the very restrictive provisions of the old constitution.

This is because, the provision in the constitution cannot be read in isolation but the entire document must be read and construed as a whole with neither of the provisions nullifying the other.

In this regard, **Section 71** in which the right to life is protected must be construed together with **Sections 73** and **74** which guaranteed the Petitioner the right against inhuman treatment and forced labour and the right to secure protection of the law guaranteed under **Section 77**.

The court further notes that the repealed constitution had grave draw back clauses against each of the specific rights guaranteed by the same constitution so that the ground has considerably shifted with the promulgation of the Constitution of Kenya 2010 which unfortunately is not applicable retroactively.

Having said that, the burden is on the Petitioner to prove that the treatment he received was so gross as to be construed to amount to actual deprivation of life and human dignity by fact of subjecting him to defined cruelty, servitude and forced labour.

The court is unable to arrive at the conclusion that the interdiction of the Petitioner on half pay, the requirement to remain at his duty station and the requirement to regularly report to the Resident Judge, Meru station amounted to subjecting him to servitude and forced labour.

Furthermore the Petitioner invokes the provisions of **Section 77** as having been contravened in that his right to a fair hearing was violated by the Respondent. The section reads thus;

“77 (1) If a person is charged with a criminal offence, then unless the charge is withdrawn, the case should be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

2. Every person who is charged with a criminal offence –

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty.

(b) Shall be informed as from a reasonably practicable in a language that he understands and in detail of the nature of the offence which he is charged.

(c) Shall be given adequate time and facilities for the preparation of his defence.

(d)

(e)

(f)

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(9) A court or other adjudicating authority prescribed by law from the determination of the existence or extent of a civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such determination are instituted by a person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.”

As was observed in the *Benjamin Ndiithi* case supra, “under the above section, a fair hearing in a criminal case is provided for under S. 77(2) whereas fair hearing in a civil case is provided for under S.77 (9).” The Petitioner has sought to enforce **Section 77 (9)**.

It is opportune to note that the cause of action in this matter arose in 2008 after the enactment of the Employment Act 2007. However the Constitution of Kenya 2010 had not been enacted and thus its provisions are inapplicable in this matter.

A perusal of Part IV of the JSC Regulations under Cap 185 discloses the following;

Under Regulation 16(1), JSC is vested with powers which are delegated to the Chief Justice to;

a. Interdict an officer under regulation 17.

Under Regulation 17 (2) an officer who is interdicted shall receive such salary, not being less than half of his salary as the Chief Justice shall think fit.

Regulation 17 (5) provides that an officer who is under interdiction may not leave his station without the permission of the Chief Justice or any officer who is empowered to give permission on behalf of the Chief Justice.

It would appear these regulations were followed to the letter with regard to the Petitioner.

However, even though a notice to show cause was given to him to which he wrote a memorandum in defence to the JSC in terms of Regulations 26 (1) and (2), it is apparent that the provisions of Regulation 26 (3) to appoint a sub-committee to investigate the matter (to which the Chief Justice should not be a member);

Regulation 26(4) pursuant to which the Petitioner should have been notified to appear before the sub committee; and Regulation 26 (5) pursuant to which the Petitioner would have been given a hearing with opportunity to cross examine witnesses of the Respondent and call his own and to be given and to

produce documentary evidence relevant to the case were not adhered to at all by the JSC to the loss and detriment of the Petitioner.

It is noteworthy that Regulation 28 provides as follows;

“28 (1) if the Chief Justice, after having considered every report in his possession made with regard to an officer is of the opinion that it is desirable in the public interest that the service of such an officer should be terminated on grounds which cannot suitably be dealt with under any other provision of these Regulations, he shall notify the officer in writing specifying the complaints by reason of which his retirement is contemplated together with the substance of any report or part thereof that is detrimental to the officer.”

In terms of Regulation 28 (2) the Chief Justice is to give such an officer notice to show cause why he should not be retired in public interest, and if the Chief Justice is satisfied that the officer should be required to retire in public interest, he shall lay before the Commission a report on the case, the officer's reply and his own recommendation, and the Commission shall decide whether the officer should be required to retire in the public interest.

It would appear that this provision is to be relied upon where proceedings for specific offences against the officer are not feasible. This at the discretion of the Chief Justice.

It is the court's considered view that the Respondent in electing not to prefer charges against the Petitioner under Regulation 26, aforesaid and instead hide under Regulation 28 to retire him in public interest without giving him opportunity to appear before a tribunal to ventilate his case grossly violated the rights of the Petitioner to a fair hearing contrary to **Section 77 (9)** which obliges an adjudicating authority when exercising its disciplinary powers under **Section 69** of the Constitution to give a judicial officer a fair hearing within a reasonable period.

The Court of Appeal has in **Republic v. Commissioner of Co-operatives (1998) 1 EACA, 245** at page 249 held that;

“It is axiomatic that statutory powers can only be exercised validly if they are exercised reasonably. No statute ever allows anyone on whom it confers a power to exercise such power arbitrary, capriciously or in bad faith.”

In the present case, the JSC relied wholly on reports from the Executive Arm of the Government against the Petitioner namely, the Intelligence Service and the Permanent Secretary Ministry of Justice without availing the Petitioner, those reports and opportunity to appear before the JSC or any committee constituted by JSC for the purpose of according him a fair hearing.

The court is of the considered view that JSC did not make proper election of the regulation that suited the circumstances of the case, in an informed and judicious manner to meet the ends of justice in the circumstances of the case, especially taking into account that JSC was dealing with a case of an officer who is protected by law to work independently of any external influences and not to be victimised for decisions made within the course of his judicial work.

It is submitted by the Petitioner that the expression under Regulation 28, “*should be terminated on grounds which cannot be suitably be dealt with under any other provision of these regulations*” refers to Regulation 26 and 27 under which case gross and minor misconduct should be ventilated.

In the **Nairobi High Court Miscellaneous Application No. 920 of 2005 Joyce Manyasi v. Evan Gicheru, Charles K. Njai, the Judicial Service Commission and the Honourable Attorney General,**

while interpreting Regulation 28, Retired Judge Gacheche stated at page 6 of her decision;

“(a) that the Regulation is couched in mandatory terms and consequently if any of its terms is not complied with the decision of the Judicial Service Commission is null and void;

(b) A person who is sought to be retired in public interest under it must be served with a notice of intention to retire him or her in public interest.

c. Such a person must be supplied with a substance or substances of any reports or parts thereof in the possession of the Honourable the Chief Justice which are detrimental to him or her;

d. Such a person must be given an opportunity to show cause why he or she should not be retired in the public interest.

e. Where the procedure is not followed, the decision coming from it is null and void.”

Evidence before court.

The detailed petition dated 4th May, 2009 contains a comprehensive history of the service by the Petitioner in various stations as a judicial officer. Specifically the court notes the following;

1. On 1st December, 1989, the Petitioner was promoted to the position of Resident Magistrate and Deputy Registrar with effect from 1st December, 1988 by JSC.
2. By a letter dated 18th June, 1996, the Petitioner was promoted to the position of Senior Resident Magistrate by JSC with effect from 1st June, 1996.
3. On 29th June, 2001, the Senior Principal Magistrate Kiambu, the supervisor of the Petitioner, recommended the Petitioner for promotion describing him as *“very competent, hardworking and responsible.”*
4. By a letter dated 16th April, 2004, the Petitioner was promoted by JSC to the post of Principal Magistrate after a successful interview.
5. On 27th September, 2006, the Petitioner was appointed Acting Senior Principal Magistrate by JSC with effect from 21st September, 2006.

On 28th November, 2005, he had requested to be transferred from Kiambu station for personal reasons, which request was approved by the Chief Justice, and he posted him to Chuka Law Courts.

The Petitioner was not happy with his new station due to his health situation which required specialist treatment only available in Nairobi.

On 10th April, 2006, he wrote another letter to the Chief Justice requesting transfer to a new station. The Chief Justice did not take this kindly and declined the transfer.

The Petitioner has attached comprehensive medical records showing the specialist treatment he received from specialists based in Nairobi. The Petitioner also attached records of treatment and hospitalisation during the time preceding his interdiction, absences which led to various complaints by court users.

The Petitioner in his petition has provided a comprehensive explanation of those absences, and the steps he had taken to inform his superiors in Meru to make interim measures to avoid undue hindrance to the administration of justice.

He has also in detail explained the peculiar difficulties experienced at the Chuka Law Courts due to the fact that he was the only one who could handle capital offences and the difficulties therefore presented by his absence while attending to treatment and during hospitalisation.

The Replying Affidavit by the Registrar of the High Court, Hon. Lydia Achode barely responded to the detailed petition especially with regard to specific allegations that apparently led to the Petitioner's interdiction and eventual retirement in public interest.

In paragraph 3 of the affidavit, the Registrar makes a general accusation that during his tenure with the Judiciary as a Judicial Officer, the Petitioner involved himself in several cases of gross misconduct in various courts. No documentary evidence was attached to the affidavit in respect of this allegation. To this extent the accusation is bare and unsupported.

The Registrar went ahead to make allegations without any documentary support that on 12th October, 1987, while serving at Mombasa Law Courts, the Petitioner's work performance was wanting according to the head of the station.

That on 28th August, 2003, while serving at Kiambu Law Courts as a judicial officer, the Petitioner was always complaining about his career progression and was not attending court sessions in the afternoons. Again no evidence was tendered at all in support of this allegation. Placed against the recommendations by the Petitioner's supervisors at the time, which led to the various promotions of the Petitioner, the allegations by the Registrar borders on the absurd.

The Registrar further alleges that on 10th April, 2006 while still at Kiambu Law Courts, the Petitioner sought to be transferred because a junior magistrate had been posted there to supervise him.

This is not denied by the Petitioner and indeed the Chief Justice obliged him. This cannot be an offence at all. Furthermore, and what appears to the Registrar to be the last nail on the coffin of the Petitioner, the National Security Intelligence Service (NSIS) complained through the Permanent Secretary Ministry of Justice and Constitutional Affairs to the Chief Justice that;

- i. *The Petitioner did not take his work seriously and only made technical appearances in court;*
- ii. *That he was reluctant to take pleas resulting in congestion at Tharaka Police Station;*
- iii. *That he committed prisoners to jail late in the evening thus risking the lives of officers escorting them to Meru Prison;*
- iv. *That the Local DCIO and the OCPD had threatened to boycott his court;*
- v. *That he had poor inter personal relation with colleagues; and*
- vi. *That his conduct had slowed the wheels of justice at Chuka Law Courts and this reflected badly on the Judiciary.*

The Hon. the Chief Justice in his letter interdicting from service the Petitioner which also doubled up as the Notice to show cause dated 27th October, 2006, relied entirely on the six (6) allegations contained in the letter of the Permanent Secretary dated 13th October, 2006.

The Petitioner made a comprehensive response to the Notice to show cause consisting of 18 pages of a blow by blow explanation of the allegations made against him. The Petitioner had requested in the response that he be accorded an oral hearing so that he could clarify any aspect of the case that was not clear.

That did not materialise, but the Petitioner only received a letter of retirement in public interest.

It is noteworthy that the Replying Affidavit by the Registrar on behalf of JSC did not canvass at all the gallant defence put forth by the petitioner, did not mention at all the Petitioner's good record as demonstrated in the various recommendation letters and promotions; did not attach any evidence of

disciplinary action; any warning letter or reprimand against the Petitioner relating to the period preceding the interdiction or at all and more importantly did not consider the records of treatment and hospitalisation that at the time affected the work of the Petitioner.

The evidence before court comprehensively portrays the Petitioner as a good worker until he was ambushed by a letter of interdiction and notice to show cause on matters that had hitherto not been brought to his attention if they were reality, at all.

It is the court's considered decision that **Sections 69 and 77 (9)** of the repealed constitution read together with the relevant Judicial Service Regulations made it mandatory for the JSC to accord the Petitioner a fair hearing before terminating his employment.

In **Winrose Gathigia Mbutia v. Kenyatta University H.C. Petition No. 1029 of 2007**, the court interpreted **Section 77 (9)** as imposing a duty on the employer to afford a fair hearing to the Petitioner therein before retiring him in public interest.

This court has no hesitation to find that the right of the Petitioner to a fair hearing under **Section 77 (9)** of the erstwhile constitution was violated by the Respondent.

The result of this omission, as often is the case, resulted in an unlawful and unfair termination contrary to **Section 45** of the Employment Act, 2007.

This is clearly demonstrated by the failure by the Respondent to show that it had a fair reason to retire the Petitioner in public interest. Not an iota of evidence save for bare allegations has been placed before court in terms of **Section 47 (5)** of the Employment Act, 2007 to justify the decision of the Respondent.

On the contrary, the Petitioner has placed overwhelming evidence before court to dispel wild allegations made against him.

As earlier said, the court is of the view that the case of violation of **Sections 71, 73 and 74** has not been made out. Therefore, for the purpose of determining appropriate remedy, the court will restrict itself to the violation of **Section 77 (9)** which has been sufficiently proved.

In terms of **Section 84 (2)** of the erstwhile constitution, the court's duty is to give appropriate remedies for the purpose of enforcing or securing enforcement of any of the provisions of sections 70 – 83 inclusive.

This was stated by the Privy Council in **Appeal No. 13 of 2004 Attorney General of Trinidad Tobago vs. Ramawop** as follows;

“The function that the granting of relief is intended to serve is to vindicate the constitutional right. In some cases a declaration on its own may achieve all that is needed to vindicate that right. This is likely to be so where the contravention has not yet had any significant effect on the party who seeks relief.

But in this case, the contravention was as the judge said, calculated to affect the appellant's interests and it did so.

On the judge's findings, it was a deliberate act in violation of the constitution to achieve what the time consuming procedures of the commission could not achieve. He rejected the submission that it was an innocuous administrative act. The desire was to get rid of the appellant quickly”

In *casu*, the JSC took a short cut to determine a complex matter with many issues that needed to be ventilated to ease its burden of getting rid of a judicial officer that it had pre-determined as undesirable. This only relying on a report of invisible intelligence officers. There was no attempt at all to verify the

veracity of the accusations made *vis a vis* a comprehensive explanation of each allegation by the Petitioner tendered before the JSC and this court.

The Privy Council in **Angela Innis v. A.G. Of St. Christopher and Nevis, Appeal No. 29 of 2007**, found that the remedy or redress has a number of components namely damages under the contract of service and vindicatory damages which are damages to vindicate one's constitutional right which is contravened. The third component constitute costs.

The Petitioner was born in 1959 and was 49 years on 23rd June, 2008, when he was retired in public interest. His retirement age was 60 years. His monthly salary as at November, 2006 was Kshs.66,971/= and was paid Kshs.33,485/= per month upon interdiction until 23rd June, 2009 when he was retired. The payslips from November, 2006 and April, 2008 indicate this position.

The Petitioner projects what would have been his earnings had he continued to work and also predicts possible promotions that would have come his way. In short, his future earnings and career development were brought to a halt prematurely.

The Petitioner lost other benefits attached to his position including medical cover.

He also was condemned to pension at a lower rate than he would have otherwise earned had he retired at 60 years. The court is asked to consider these factors in the remedy it awards the Petitioner.

The court in the final analysis orders as follows;

- a. The purported interdiction of the Petitioner from the Judicial Service on 27th October, 2006, is illegal and null and void.
- b. The purported retirement in public interest of the Petitioner from the judicial service on 23rd June, 2008 is illegal and null and void.
- c. The Petitioner be paid the arrear salary including allowances due to him from the date of purported interdiction on 27th October, 2006 to the date of purported retirement on 23rd June, 2008.
- d. That the Petitioner be paid general damages for contravention of his right under Section 77 (9) of the Constitution in the sum of Kshs.2million.
- e. That the Judicial Service Commission do re-engage the Petitioner at a level not lower than Senior Principal Magistrate with effect from the date of this judgment without loss of his accrued pension with respect to the past service.
- f. That the Respondent pay to the Petitioner costs of this suit.

Dated and delivered at Nairobi this 28th day of January, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE