



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

PETITION NO 36 OF 2013

**IN THE MATTER OF ARTICLE 22(1) AND ARTICLE 23 OF THE CONSTITUTION OF THE
REPUBLIC OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL
FREEDOMS UNDER ARTICLES 3, 10, 20(1), 27, 28, 29(F), 31(D), 35, 41, 43, 47, 48, 50, 73(1)(A),
79 (AS READ TOGETHER WITH ARTICLE 250(1), 156, SECTION 31(1) AND (2) OF THE
SIXTH SCHEDULE OF THE CONSTITUTION OF THE REPUBLIC OF KENYA**

BETWEEN

NICHOLAS MWENDA MTWARUCHIU.....1ST PETITIONER

PETER MURITHI MOFFAT.....2ND PETITIONER

KIMWELE MUNEENI.....3RD PETITIONER

ENOCH KIMANZI NGUTHU.....4TH PETITIONER

SAMUEL T. WANJERE.....5TH PETITIONER

FRANCIS NJERU MWANIKI.....6TH PETITIONER

JOHNSTONE K. CHEPKWONY.....7TH PETITIONER

FREDRICK G. CHABARI.....8TH PETITIONER

AND

ETHICS AND ANTI CORRUPTION COMMISSION.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

IRENE KEINO.....1ST INTERESTED PARTY

PROF. JANE ONSONGO.....2ND INTERESTED PARTY

HALAKHE WAQO.....3RD INTERESTED PARTY

MICHAEL MUBEA.....4TH INTERESTED PARTY

JUDGMENT

Introduction

1. The Petitioners are all former employees of the Ethics and Anti Corruption Commission, the 1st Respondent herein having been employed on diverse dates between 23rd December 2004 and 26th April 2011. Their employment was terminated between 28th March and 30th April 2013 pursuant to a vetting process. By their Petition filed in Court on 4th November 2013, the Petitioners have challenged the termination of their employment by the 1st Respondent.

2. The 1st Respondent together with the 1st, 2nd, 3rd and 4th Interested Parties filed a replying affidavit and a further replying affidavit sworn by Halakhe Dida Waqo on 16th November 2013 and 4th April 2014 respectively. A Notice of Motion filed alongside the Petition seeking conservatory orders was dispensed with and the Petition heard on priority basis.

The Petition

3. The Petitioners submit that the 1st Respondent's action of terminating their employment was in violation of the following constitutional rights and freedoms:

- a. Equality and freedom from discrimination under Article 27 in as far as the Respondents and the Interested Parties treated the Petitioners with inequality as against other employees in the public service;
- b. Human dignity under Article 28 by the Respondents declaring that the Petitioners are unfit to hold public office on non established grounds;
- c. Article 29(f) on cruel, inhuman or degrading treatment exhibited in the manner and style of the termination of the Petitioners' employment;
- d. Article 31(c) and 31(d) on privacy by unnecessarily requiring disclosure of information relating to the Petitioners' private lives;
- e. Article 35 on right to information by the Respondents concealing material facts surrounding the termination of the Petitioners' employment and in particular, the reasons for the termination;
- f. Article 41 on labour relations by the Respondents engaging in unfair labour practices against the Petitioners;
- g. Failure and/or refusal to set up an appropriate vetting process;
- h. Article 43(2)(e) on right to social security by the Respondents exposing the Petitioners to joblessness;
- i. Article 47 on fair administrative action by exposing the Petitioners to an unfair and illegal vetting process.

4. The Petitioners further submit that the actions by the Respondents and the Interested Parties have denied them access to justice contrary to Article 48 and exposed them to an unfair hearing contrary to Article 50(1). Additionally, the Petitioners' rights under Articles 73(1)(a)

and 156 as read together with Section 31(1) and (2) of the Sixth Schedule have been violated. Article 79 as read with Article 250(1) regarding the status of the 1st Respondent has also been violated.

5. It is also the Petitioners' case that the Respondents' action violates the following international instruments:

- a) The Universal Declaration on Human Rights;
- b) The International Convention on Civil and Political Rights;
- c) The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- d) The African Charter on Human and People's Rights;
- e) Discrimination (Employment and Occupation) Convention, 1958 (No.111);
- f) Termination of Employment Convention, 1982 (No. 158);
- g) Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173);

6. The Petitioners seek the following orders against the Respondents and Interested Parties jointly and severally:

- a. A declaration that the Respondents' conduct amounts to discrimination and to that extent is discriminatory against the Petitioners under Article 27 of the Constitution;
- b. A declaration that the Respondents' conduct, acts of commission and/or omission are unlawful, illegal and/or unfair and are in violation of the Petitioners' fundamental rights and freedoms to human dignity, freedom and security of the person, privacy, right to information, fair labour practices, social welfare, right to administrative action and access to justice as encapsulated under Articles 20(1), 28, 29(f), 31(c), 31(d), 35, 41, 43, 47, 48 and 50 of the Constitution and that the said rights and freedoms have been violated, transgressed and trampled upon by the Respondents;
- c. A declaration that the process leading up to, including the decision, findings and recommendations of the Vetting Committee of the 1st Respondent was substantively unconstitutional, unprocedural, high handed, biased, lacking in independence, in breach of the rules of natural justice and the principles of judicial independence, *ultra vires* thus null and void *ab initio*;
- d. A declaration that the Petitioners are entitled to and as such have an indefeasible right of access to information from the 1st Respondent in terms of Article 35;
- e. A declaration that Section 34(2) (3) and (4) of the Ethics and Anti Corruption Act (No. 12 of 2011) is unconstitutional as they contravene the express provisions of Section 31(1) and (2) of the Sixth Schedule as read together with Article 2 of the Constitution;
- f. A declaration that the 1st and 2nd Interested Parties acted illegally and violated Article 79 as read together with Article 250 by carrying out the vetting exercise and undertaking substantive decisions contrary to the express provisions of the Constitution regarding the membership and formation of the 1st Respondent;

- g. A declaration that the 3rd and 4th Interested Parties are in office illegally as they were appointed by a non existing Commission and thus had no authority to vet the Petitioners;
- h. An order directing the 1st Respondent to properly fill the positions of the Secretary/Chief Executive Officer and the Deputy Director-Operations currently held by the 3rd and 4th Interested Parties;
- i. An order compelling the Respondents to unconditionally reinstate the Petitioners to their employment without loss of status, salary (including back pay), position or benefits;
- j. A finding and declaration that the employment services of the Petitioners were unprocedurally and unfairly terminated;
- k. An order that the Petitioners are entitled to compensation by way of damages for violation of their rights under Articles 23, 27(1), 27(2), 27(4), 28, 29(f), 31(c), 31(d), 35(1)(a), 35(1)(b), 41(1), 41(2)(a), 43(1)(e), 47(1), 48 and 50 of the Constitution taking into account damages for loss of office, career stagnation, injury to reputation and loss of future income;
- A declaration that the Petitioners are entitled to the benefits and special damages enumerated in paragraph 3(m) of the Petition;
- m. An order directing the 1st Respondent to issue certificates of service to the Petitioners;
- A declaration that the 1st Respondent acted illegally in purporting to vet and subsequently terminate the employment services of the 4th and 6th Petitioners who were on contract with the Public Service Commission through the Ministry of Justice, National Cohesion and Constitutional Affairs and the decision thereof was unlawful and of no legal effect;
- A permanent injunction do issue restraining the 1st Respondent by itself, or by its agents, servants, employees, officers or whomsoever so acting on its behalf from terminating the Petitioners' employment on the basis of the flawed vetting exercise;
- p. Costs and interest ;
- q. Any other relief the Court may deem just to grant.

The Respondents' and Interested Parties' Reply

7. In the replying affidavit sworn by Halakhe Dida Waqo on 16th November 2013, it is deponed that the Petitioners have no cause of action against the 2nd Respondent and the Interested Parties who had no employment relationship with the Petitioners.

8. Further, the Interested Parties are protected from personal liability under Section 20 of the Ethics and Anti Corruption Act, 2011 for anything done in good faith for the purpose of executing the powers, functions or duties of the Commission under the Constitution or the Act. Additionally, members of the Commission are protected under Article 250(9) of the Constitution.

9. With regard to the vetting of the Petitioners, Waqo depones that this was a legal requirement under Section 34(3) of the Ethics and Anti Corruption Commission Act, 2011. In this regard, the transition of the staff of the Kenya Anti Corruption Commission to the Ethics and Anti Corruption Commission was subject to Section 34(3) aforesaid.

10. It is further deponed that this Court lacks the jurisdiction to determine the constitutionality of this provision or of the Commission itself. According to the defence, the Court also lacks jurisdiction to determine whether the 3rd and 4th Interested Parties were legally recruited and

appointed to the positions of Secretary/Chief Executive Officer and Deputy Secretary, Operations respectively.

11. The defence contends that the issues of the constitutionality of the Commission and the legality of the secondment of employees of the Public Service Commission to the Ethics and Anti Corruption Commission were determined in *Ruth Muganda Vs Kenya Anti Corruption Commission and Director of Public Prosecutions (Nairobi High Court Misc. Application No. 288 of 2012)* and in *African Centre for International Youth Exchange (ACIYE) and 2 Others Vs Ethics and Anti Corruption Commission & Jane Muthaura (Nairobi High Court Petition No. 334 of 2012)*. These issues were therefore *res judicata*.

12. Additionally, the offices occupied by the Petitioners were not established either by the repealed Constitution or any other written law for the Petitioners to base their claims on the provisions of Section 31(1) and (2) of the Sixth Schedule of the Constitution, 2010. On the contrary, the positions previously held by the Petitioners were created administratively by the Commission.

13. With regard to the composition of the Commission, it is deponed that in conducting its affairs in the absence of a substantive chairperson, the Commission was guided by Sections 5 and 8 of the Ethics and Anti Corruption Commission Act, 2011.

14. Halakhe Dida Waqo swore a further affidavit on 4th April 2014 by which he states that that in response to public advertisements placed by the Commission several complaints against the Petitioners were received from members of the public as well as from within the Commission. The Petitioners were notified of the adverse reports made against them before the date of their respective vetting interviews to allow them opportunity to respond to these reports.

15. With regard to the 1st Petitioner, the Commission offered to postpone his vetting interview to give him time to respond to the complaints raised against him, an offer that the 1st Petitioner declined. The 4th Petitioner was also notified of adverse reports made against him. He however waived the extension of time offered to him and asked that his vetting interview proceeds as earlier scheduled.

16. The 2nd Petitioner did not make a full disclosure of his assets as required while the 5th Petitioner was found to have been untruthful in his responses during the vetting interview. The 5th Petitioner was notified of the issues he was required to address at his vetting interview while the 6th, 7th and 8th Petitioners were all notified of the adverse reports made against them.

Findings and Determination

17. Upon due consideration of the extensive pleadings and submissions before the Court, I have distilled the following issues for determination:

- a) Whether this Court has jurisdiction to grant the prayers sought by the Petitioners;
- b) Whether the constitutionality of the Commission and the legality of the secondment of employees of the Public Service Commission to the Ethics and Anti Corruption Commission was *res judicata*;
- c) Whether the 2nd Respondent and the 1st, 2nd, 3rd and 4th Interested Parties are properly joined in these proceedings;
- d) Whether Section 34 (2) (3) and (4) of the Ethics and Anti Corruption Commission Act 2011 is unconstitutional;

- e) Whether the vetting of the Petitioners was lawful;
- f) Whether the termination of the Petitioners' employment was substantively and procedurally fair;
- g) Whether the Petitioners are entitled to the reliefs sought.

Jurisdiction of the Industrial Court

18. The issue of the jurisdiction of the Court to entertain the prayers sought by the Petitioners featured prominently in the pleadings and submissions filed for the defence. In this regard, it was contended that this Court lacks jurisdiction to determine the legality of the recruitment and appointment of the 3rd and 4th Interested Parties.

19. According to the defence, this issue does not fall within the jurisdiction of the Court under Article 162(2) of the Constitution and Section 12 of the Industrial Court Act.

20. In support of its assertion, the defence relied on the decision of the **Supreme Court** in **Samuel Kamau Macharia and Another Vs Kenya Commercial Bank Limited and 2 Others [2012] eKLR** where it was held that jurisdiction is only conferred by either the Constitution or legislation and not by judicial craft or innovation. The Apex Court also affirmed that jurisdiction is not a matter of mere technicality but goes to the very heart of any matter before the Court.

21. In response, the Petitioners urge the Court to take a broad view of its mandate to interpret and enforce constitutional rights and freedoms. Citing the decision of **Majanja J** in **Moses Tompu Kuya and 5 Others Vs Attorney General and 2 Others (Petition No. 65 of 2008)**, Counsel for the Petitioners submitted that since the Petitioners have raised issues of violation of their constitutional rights, the Court should overlook the matters of jurisdiction raised by the defence.

22. The jurisdiction of the Industrial Court is anchored in Article 162(2) and (3) of the Constitution which provides as follows:

(162) (2) Parliament shall establish courts with the status of the High

Court to hear and determine disputes relating to-

(a) employment and labour relations and

(b) the environment and the use and occupation of, and title to land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2)

23. Pursuant to this constitutional provision, Section 12 (1) (a) the Industrial Court Act, 2011 details the jurisdiction of the Court as follows:

12(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including—

- (a) disputes relating to or arising out of employment between an employer and an employee;*
- (b) disputes between an employer and a trade union;*
- (c) disputes between an employer's organisation and a trade union's organisation;*
- (d) disputes between trade unions;*
- (e) disputes between employers' organisations;*
- (f) disputes between an employer's organisation and a trade union;*
- (g) disputes between a trade union and a member thereof;*
- (h) disputes between an employer's organisation or a federation and a member thereof;*
- (i) disputes concerning the registration and election of trade union officials and;*
- (j) disputes relating to the registration and enforcement of collective agreements.*

24. The Industrial Court as currently constituted enjoys the same status as the High Court and its jurisdiction to interpret and enforce the Bill of Rights in labour and employment matters is therefore not in doubt. This position was well put by **Majanja J** in the case of **United States University (USIU) Vs Attorney General [2012] eKLR** where he rendered himself in the following terms:

“Labour and employment rights are part of the Bill of Rights and are protected under Article 41 which is within the province of the Industrial Court. To exclude the jurisdiction of the Industrial Court from dealing with any other rights and fundamental freedoms howsoever arising from the relationship defined in section 12 of the Industrial Court Act, 2011 or to interpret the Constitution would lead to a situation where there is parallel jurisdiction between the High Court and the Industrial Court.”

25. This Court fully associates itself with the position taken by **Majanja J** in the **USIU Case** (Supra). It follows therefore that this Court has the jurisdiction to make any finding and issue any orders under the Constitution in as far as employment and labour rights are concerned. I must add however that this does not give the Court an open licence to issue all manner of orders that do not touch on the rights of an aggrieved party within an employment relationship.

26. With regard to the question whether a party may utilise constitutional as against employment provisions to redress issues arising out of an employment relationship, this Court is guided by the **Court of Appeal** decision in **Rashid Allogoh & Others Vs Haco Industries (Civil Appeal No. 498 of 2009)** where it was held that in considering a matter brought under the Constitution, the duty of the Court is to determine whether or not there is a violation of fundamental rights or freedoms and not whether the matter is contractual or otherwise.

27. I therefore agree with the Petitioners that it is well within their right to pursue a petition under the Constitution in spite of the fact that there might be alternative remedies available to them. We are living in the constitutional age and our application of every branch of law whether private or public must take a rights approach.

Res Judicata?

28. The defence submits that the constitutionality of the 1st Respondent and the legality of the secondment of employees of the Public Service Commission to the Ethics and Anti Corruption

Commission is *res judicata*, having been determined in ***Ruth Muganda Vs Kenya Anti Corruption Commission and Director of Public Prosecutions (Nairobi High Court Misc. Application No. 288 of 2012)*** and in ***African Centre for International Youth Exchange (ACIYE) and 2 Others Vs Ethics and Anti Corruption Commission & Jane Muthaura (Nairobi High Court Petition No. 334 of 2012)***.

29. The Petitioners disagree. They submit that the ***Ruth Muganda and ACIYE Cases*** (supra) did not address the issue whether the Commission was properly constituted at the time their vetting took place. While these cases dealt with the issue whether employees of the 1st Respondent were properly in office following expiry of their contracts, the Petitioners' case has to do with the legality of their vetting and the subsequent termination of their employment. Further, none of the Petitioners were party to any of these cases.

30. I agree with the Petitioners. In my view the cases above cited dealt with specific issues arising from the Plaintiffs' employment contracts and the Court did not find any issue raised by the Petitioners in this case to have been decisively determined in the previous cases.

Joiner of the 2nd Respondent and Interested Parties

31. The 1st, 2nd, 3rd and 4th Interested Parties contend that they are not properly joined in these proceedings since no orders can legally be sought against them. Further, the Petitioners do not have a cause of action against the 2nd Respondent and the Interested Parties as there was no employment relationship between them. Additionally, the 1st and 2nd Interested Parties are insulated from personal liability under Article 250(9) of the Constitution and Section 20 of the Ethics and Anti Corruption Commission Act.

32. The Petitioners submit that the 2nd Interested Party is joined in these proceedings in his capacity as the Attorney General of the Republic of Kenya and also for and on behalf of the defunct Ministry of Justice, National Cohesion and Constitutional Affairs as well as the Public Service Commission. He is also joined pursuant to Article 156 of the Constitution and in his capacity as the Principal Legal Advisor to the Government of the Republic of Kenya.

33. The Petitioners state that the Interested Parties are joined in their capacity as officers of the 1st Respondent. According to the Petitioners, their joiner is necessary since they may be affected by orders made by the Court. Further, it is their decisions that form the subject matter of the Petitioners' Petition.

34. While the necessity for joiner of the 2nd Respondent as the Principal Legal Advisor to the Government is clear, the Court did not find any legal basis for joiner of the Interested Parties who do not bear personal liability for actions taken in their official capacities.

35. While joiner of high ranking officials may create a measure of excitement and sensation, it creates an unnecessary overload leading to escalation of costs. It must therefore be discouraged. Consequently the Court finds the Interested Parties not properly joined in these proceedings and proceeds to strike out the Petitioners' case as against them at the very outset.

Section 34(2)(3) and (4) of the Ethics and Anti Corruption Act

36. The Petitioners submit that Section 34(2) (3) and (4) is in contravention of Section 31(1) and (2) of the Sixth Schedule of the Constitution as read together with Article 2 of the Constitution. In this regard, the Petitioners contend that they are entitled to the protection provided by the aforesaid constitutional provisions as the offices they previously occupied at the 1st Respondent Commission were established by law under Section 8(6) of the Anti Corruption and Economic Crimes Act, 2003.

37. I have looked at the provisions of Section 8(6) of the Anti Corruption and Economic Crimes Act and do not find any provision for a statutory office that could have been saved under Section 31(1) and (2) of the Sixth Schedule of the Constitution. To this extent, I agree with Counsel for the defence that Section 8(6) of the Anti Corruption and Economic Crimes Act merely gave power to the defunct Kenya Anti Corruption Commission to create managerial, administrative and operational offices. These offices did not enjoy the same privilege as that of the Director created under Section 8(1) of the Anti Corruption and Economic Crimes Act, 2003.

38. Section 34(1) of the Ethics and Anti Corruption Commission Act, 2012 provides that the staff of the defunct Kenya Anti Corruption Commission save for the Director and Deputy Director shall become staff of the Ethics and Anti Corruption Commission for the unexpired terms of their contracts.

39. Section 34(3) of the Act however requires that before a member of staff of the defunct Kenya Anti Corruption Commission is absorbed into the Ethics and Anti Corruption Commission such staff shall make an application for employment or appointment to the Commission and the Commission shall vet such staff in accordance with a criteria determined by the Commission.

40. Section 34(4) goes on to provide that an applicant who fails to meet the vetting criteria under subsection (3) shall not be employed or appointed by the Commission and the services of such applicant shall be terminated in accordance with the terms of the contract of employment.

41. In exercising its power to determine the constitutionality of legislation, the Court must begin from the presumption that legislation is constitutional and the party challenging the legislation must rebut that presumption.(see *Gideon Mwangangi Wambua and Another Vs Independent Electoral and Boundaries Commission and 2 Others [2013] eKLR.*) I have looked at the provisions of Section 34 of the Ethics and Anti Corruption Act and do not find any part of it that offends the provisions of the Constitution, 2010.

The Vetting

42. The Petitioners submit that their vetting was irregular because the Commission was not properly constituted to undertake such an exercise. First, the decisions were not signified under the hand of the Chairperson and the Secretary as required under Section 9 of Schedule 2 of the Ethics and Anti Corruption Act. Consequently, by writing the Petitioners' termination letters single handedly, the 3rd Interested Party flouted this provision of the Act.

43. Second, Article 250(1) of the Constitution provides that each Commission shall consist of at least three but not more than nine members including the Chairperson. At the time the vetting of the Petitioners and the subsequent termination of their employment took place, the Commission had only two members, the 1st and 2nd Interested Parties who are of the same gender, contrary to Article 250(11) of the Constitution. Further, there was no Chairperson in office at the time. The Commission was therefore not properly constituted at the time it took action against the Petitioners.

44. In reply, the 1st Respondent submits that Article 259(3)(b) of the Constitution recognises persons holding office in an acting capacity. With regard to the number of Commissioners, it is submitted that it is inconceivable that the framers of the Constitution did not contemplate that a vacancy in the membership of any constitutional commission would occur at any point in time.

45. The Court was referred to Section 53 of the Interpretation and General Provisions Act which provides that the powers of a board, commission, committee or similar body shall not be affected

by a vacancy in membership or a defect in the appointment of a member. Reference was also made to Sections 5 and 8 of the Second Schedule of the Ethics and Anti Corruption Commission Act which provide for quorum and validity of proceedings of the Commission.

46. Counsel for the defence asked the Court to adopt a purposive reading of the Constitution. However, whichever way I read, I find no other meaning of Article 250(1) of the Constitution other than that for a commission to be properly constituted, it must have at least three members. At the time the 1st Respondent undertook the vetting exercise upon which Petitioners' employment was terminated it had only two members and the fact that the 1st Interested Party donned two hats; that of Acting Chairperson and Vice Chairperson cannot cure this fundamental flaw.

47. The effect of my finding in this regard is that the vetting undertaken by the 1st Respondent that led to the termination of the Petitioners' employment was a nullity. It follows therefore that any decisions arising therefrom, including the termination of the Petitioners' employment were also a nullity.

48. I would have signed off this judgment at this stage. I however find it worthwhile to make a comment on vetting as a mode of employee exit. The Petitioners submit that contrary to the letter and spirit of the Constitution and the Ethics and Anti Corruption Act, the vetting rules were not subjected to any public participation and in particular, that of the Petitioners. The Petitioners add that the members of the vetting panels were handpicked by the Commission to serve ulterior motives.

49. No chance for appeal was provided in the vetting process as the same members served in the two panels created by the Commission. Even worse, no reason was given for the decision to terminate the Petitioners' employment and the Petitioners were not given the opportunity to test the veracity of the evidence given by their accusers.

50. It is also submitted on behalf of the Petitioners that the termination of their employment was in contravention of Section 41 of the Employment Act, 2007 which requires that an employer explains to an employee the reason for which termination of employment is under consideration. This Section also provides for due process to be followed prior to termination of the employment of an employee.

51. While vetting has recently become a common mode of determining suitability of persons to serve in the public service, this Court holds the view that in all cases where disciplinary action including termination of employment is in view, the affected employee must be subjected to due process as provided under Section 41 of the Employment Act, 2007.

52. In the case of *Rebecca Ann Maina and 2 Others Vs Jomo Kenyatta University of Agriculture and Technology*[2014] eKLR this Court held that:

“In order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”

53. In the instant case, the Court finds that the vetting process to which the Petitioners were subjected did not pass the procedural fairness test set out in Section 41 of the Employment Act. As a result, even if the Commission would have had the mandate to vet the Petitioners, the termination of their employment would have been unfair for want of due process.

Reliefs

54. In their Petition, the Petitioners have set out a catalogue of rights they claim the Respondents

and Interested Parties have violated. However, apart from general statements, the Petition failed to give particulars of breach to enable the Court make a determination. The prayers for declaration of violation of the Petitioners' rights and for damages therefore fail.

55. However, having declared the vetting process and the consequent decisions including termination of the Petitioners' employment a nullity, I direct that the Petitioners be paid their full salary and allowances for the period they would have served under their last contracts with the 1st Respondent. The 1st Respondent shall compute and pay the specific sums to the Petitioners within the next thirty days from the date hereof. The 1st Respondent is further directed to issue the Petitioners with Certificates of Service.

56. The Court considers the prayer for a declaration that the 3rd and 4th Interested Parties are in office illegally to be beyond the employment relationship between the Petitioners and the 1st Respondent and hence outside the jurisdiction of this Court.

57. As the Petitioners' Petition has succeeded only in part, each party will bear their own costs.

58. I am grateful to Counsels appearing in this case who put up a spirited fight for their clients and made submissions that were helpful to the Court.

DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF SEPTEMBER 2014

LINNET NDOLO

JUDGE

DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF SEPTEMBER 2014

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Enonda for the Petitioners

Mr. Waudu for the 1st Respondent and 1st, 2nd, 3rd and 4th Interested Parties

Ms. Mbilo for the 2nd Respondent