



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**

**PETITION NO. 37 OF 2013**

**JUDGMENT**

**MR. MWATATA JUMA MWANGALA**

**VERSUS**

**M/S ANNE WAIGURU**

**ENG. PETER OGANGA MAGITI**

**MR. EVANS GOR SEMELANG'O**

**PROF. MARGARET KOBIA PhD**

**MR. JOSEPH KINYUA**

**PROF. GITHU MUIGAI**

**DELIVERED BY**

**HON. LADY JUSTICE MAUREEN ONYANGO**

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**VERSUS**

**M/S ANNE WAIGURU .....1<sup>ST</sup> RESPONDENT**

**ENG. PETER OGANGA MAGITI .....2<sup>ND</sup> RESPONDENT**

**MR. EVANS GOR SEMELANG'O.....3<sup>RD</sup> RESPONDENT**

**PROF. MARGARET KOBIA PhD.....4<sup>TH</sup> RESPONDENT**

**MR. JOSEPH KINYUA.....5<sup>TH</sup> RESPONDENT**

**(Chief of Staff & the Head of the Public Service)**

**PROF. GITHU MUIGAI.....6<sup>TH</sup> RESPONDENT**

**(The Attorney General)**

**JUDGMENT**

The Petition herein was originally filed at the Constitutional and Judicial Review Division of the High Court at Nairobi as Petition No. 521 of 2013 on 30<sup>th</sup> October 2013. The Petition was transferred to this court by an order made by Justice Lenaola on 31<sup>st</sup> October 2013 to the effect that the matter falls within the purview of Article 162(2)(a) of the Constitution. It was then registered in this court under the present petition.

The Petitioner appeared before me for directions on 1<sup>st</sup> November 2013 when I directed him to serve the Respondents and fixed the petition for mention on 14<sup>th</sup> November 2013. The petition was thereafter mentioned on 14<sup>th</sup> November 2013, 30<sup>th</sup> January, 5<sup>th</sup> and 28<sup>th</sup> March, 2014 when directions were taken and the matter fixed for hearing on 17<sup>th</sup> July 2014. On the hearing date the parties agreed to proceed by way of written submissions.

The Petitioner acted in person. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents were represented by the Attorney General's Office while the 3<sup>rd</sup> Respondent was represented by Mr. Wanga instructed by the firm of Waweru Gatonye & Co Advocates.

The Petitioner is a former Chief Executive Officer of the Youth Enterprise Development Fund. He has filed this petition against the Cabinet Secretary, Ministry of Devolution and Planning (1<sup>st</sup> Respondent), the Principal Secretary, Ministry of Devolution and Planning (2<sup>nd</sup> Respondent, the Chairman, Youth Enterprise Development Fund (3<sup>rd</sup> Respondent), the Chairperson, Public Service Commission (4<sup>th</sup> Respondent), the Head of Public Service (5<sup>th</sup> Respondent and the Attorney General, (6<sup>th</sup> Respondent).

The Petitioner alleges that the Respondents violated his constitutional rights under Articles 2(1), 2(4), 3(1) 10(1), 10(2), 19, 20, 21(1), 22, 23, 27, 134(1)(a) and 134(2) (b), 155(1) and (2), 232 (1) (a) (c) and (e), 232 (2) (a) and (b), 156 (1) and (4), 236(a) and (b), 259 (1) and (3) (a) and (11).

The facts of the case are that the Petitioner was employed by the Youth Enterprise Development Fund by letter dated 10<sup>th</sup> March 2011 signed by the Minister (then) responsible for Youth Affairs and Sports. He accepted the offer by signing the officer of appointment. His appointment was gazetted in Gazette Notice Number 3258 in the Special Issue of the Kenya Gazette reference No. Vol.CX111-No.29 of 25<sup>th</sup> March 2011. The appointment was for a fixed term of 3 years from 23<sup>rd</sup> March 2011.

In the letter of appointment the Petitioner was to be responsible to the Board of Directors of the Youth Enterprise Development Fund. His functions, duties and responsibilities were as set out at page 2 of the letter. The contract was renewable. His basic salary was Kshs.285,000.000. He was entitled to a house allowance of Kshs.70,000.00, per month, remunerative allowance of Kshs.45,000.00 per month, medical benefits according to the rules of the medical scheme, annual leave of 30 days per year, leave allowance of Kshs.50,000.00 or one third of basic salary (whichever is less) whenever he took more than half of his annual leave, Group life and Group accident scheme membership, club membership and gratuity, among other benefits set out in the letter of appointment. His employment was subject to the Employment Act 2007. The contract was terminable by 3 months notice or 3 months basic salary in lieu of notice.

On 5<sup>th</sup> March 2013 the Petitioner was suspended from duty for implementing a hatcheries project costing

Kshs.208,530,000 without Board approval and authorization. It was alleged that the hatcheries were purchased at an inflated price and in disregard of the Public Procurement and Disposal Act 2005.

According to the letter of suspension this was among other irregularities revealed in audit reports presented to the Board. The suspension was to give way for further investigations.

By letter dated 27<sup>th</sup> August 2013 the Petitioner was invited to appear before the Board on 5<sup>th</sup> September 2013 at 9.30 am to answer to the allegations made in a report, a copy of which was forwarded with the letter.

By letter dated 9<sup>th</sup> September 2013 the Petitioner's contract was terminated. The letter of termination gave reasons for the termination as implementation of the hatcheries project without Board's approval. The letter of termination further states that the Petitioner was given an opportunity to defend himself at the Inspectorate of State Corporations which he declined and that he also declined an opportunity to defend himself before the Board on 5<sup>th</sup> September 2013 and that the Petitioner therefore failed to provide information that may possibly have exonerated him from the allegations made against him.

In his petition the Petitioner alleges that the 1<sup>st</sup> to 6<sup>th</sup> Respondents violated his rights through abuse of power and responsibility, unfair treatment, manifest injustices, unlawful acts, oppressive and unfair or unresponsive official conduct. According to the Petitioner his employment is covered by Section 5 of the Youth Enterprise Development Fund Order (L.N. No.63 of 2007), as read together with Section 5(3), and 27 (1) (c) of the State Corporations Act, Chapter 446 and Section 69 of Interpretation and General Provisions Act.

The Petitioner states that the 3<sup>rd</sup> Respondent as Chairperson of the Youth Enterprise Development Fund and the Board of the Fund had no powers to suspend and terminate his contract or declare his position vacant and advertise the position. That his appointing authority is the Cabinet Secretary responsible for Youth Affairs and it is the appointing authority in whom the power to suspend, dismiss or revoke the appointment is vested. The Petitioner urges the court to find that the termination of his contract was usurpation of the power of the Cabinet Secretary and is unconstitutional.

The Petitioner argues that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are guilty of failing to intervene when the Petitioner complained of the illegal actions of the 3<sup>rd</sup> Respondent, while the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents failed to protect him. The Petitioner further submitted that as a public servant he was entitled to protection under the Employment Act, Public Service Commission Act, 2012 and administrative circulars and guidelines made under Section (7)(1) of the State Corporations Act on management of State Corporations, appointment of Chief Executive Officers, Chairman and Board Members of State Corporations.

The Petitioner referred to the following circulars:

1. National Government Circular Ref. No. PMO/CIRC (A)/3 dated 7<sup>th</sup> April, 2011 to the Chairmen of State Corporations on their Legal and Administrative Roles as provided in the existing applied Laws, Regulations and Kenya Government Circulars issues from time to time, governing the Management of State Corporations.
2. National Government Circular Ref. No., OP/CAB.9/1 dated 9<sup>th</sup> May 2008 to all Cabinet/Permanent Secretaries, on Recruitment and Appointment of Chief Executive Officers (CEO's) in State Corporations.
3. National Government Circular, Ref. No. OP/CAB.1/9A, dated 28<sup>th</sup> June 2006, to the Attorney General and all Permanent Secretaries/Accounting Officers, bring to their attention to the existing applied Law governing the procedure for appointments of Chairmen, Chief Executives, and Board Members of State Corporations.
4. National Government Circular, Ref. No. OP/CAB.9/21/2A, dated 3<sup>rd</sup> March 2006, to the Attorney General, All Permanent Secretaries and Accounting Officers, on the interpretation and application

of clause 6 Annex V (B) of the Guidelines dated November 2004.

5. National Government Circular, Ref. No. OP/CAB.9/21/2ALII/43, dated 23<sup>rd</sup> November 2004, to the Attorney General, All Permanent Secretaries/Accounting Officers and the Registrar, High Court of Kenya, on terms and conditions of service for State Corporations' Chief Executive Officers, Chairmen and Board Members, Management Staff and Unionisable Staff.
6. National Government Circular, Ref. No. OP/CAB.9/1A, dated 5<sup>th</sup> November 2004, to the Attorney General, All Permanent Secretaries/Accounting Officers and the Controller and Auditor General on the amendments of the Guidelines on procedures for the appointment of Chief Executives of State Corporations and Statutory Boards.
7. National Government Circular, Ref. No. OP/CAB.9/1A, dated 23<sup>rd</sup> November 2010, to all Ministers and Assistant Ministers, All Permanent Secretaries, the Attorney General and the Controller and Auditor General on the procedure for re-appointment of Serving Chief Executive Officers in State Corporations.

The Petitioner seeks the following reliefs:

- i. The Constitutional Court makes a finding that my fundamental rights as envisaged in Articles (1), 2(4); 3(1), 10(1), (2); 19; 20; 21 (1) (3); 22(1) and (2) (a); 23(1) (3); 27, 43; 47 (1) (2); 73(1) (a); 129, 131, 134 (1) (a) and (2) (b); 155 (1) (2); 236 (a) and (b); 259 (1) and (3) (a) of the Constitutional Order of Kenya 2010, have been breached by the unconstitutional and illegal termination of my service contract.
- ii. A declaration by the Court that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, the state officers responsible for this matter have violated the provisions provided, by not respecting, upholding and protecting my rights in accordance to Articles 2(1), 2(4); 3(1), 10(1) (2); 19, 20, 21 (1) (3); 22(1) and (2) (a); 23(1) (3); 27, 43; 47 (1) (2); 73(1) (a); 129, 131, 134 (1) (a) and (2) (b); 155 (1) (2); 236 (a) and (b); 259 (1) and (3) (a) of the Constitutional Order of Kenya.
- iii. Determine the Constitutional and Legal validity of the letters issued to the Petitioner on suspension, termination of the service contract, and the subsequent illegal notification and advertisement of the nonexistent vacant position in the office of the Chief Executive Officer of the Youth Enterprise Development Fund by the "Artificial Appointing Authority", Mr. Evans Gor Semelang'o.
- iv. A declaration that the decision to suspend and terminate the service contract of the Petitioner, by the 3<sup>rd</sup> Respondent is unconstitutional, illegal and invalid as it is in violation of the Constitutional rights of the Petitioner.
- v. The Court orders the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to stop the recruitment of the Chief Executive Officer of the youth Enterprise Development Fund which was advertised (Ref. No. YEDEF/CEO/10/20/2013) on 10<sup>th</sup> October 2013 and is ongoing until this petition is heard and determined by this Honourable Court.
- vi. The Court orders the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents to reinstate the Petitioner as the Chief Executive Officer of the Youth Enterprise Development Fund Corporation.
- vii. The Court order the 1<sup>st</sup>, 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents to release the full salary, allowances and benefits of the Petitioner.
- viii. The Court orders the 1<sup>st</sup>, 2<sup>nd</sup> Respondents to take legal and administrative actions to facilitate the resumption of office by the Petitioner.
- ix. The Petitioner also seeks the cost of this petition.
- x. Any other such orders as this Honourable Court shall deem fit.

In response to the petition the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents raised the following grounds of opposition:

1. That the Youth Enterprise Development fund is a body corporate established under Section 3(1) of the State Corporations Act Cap 446, Laws of Kenya and confirmed as such under Clause 5(1) of the Youth Development Fund Order 2007 as a Legal entity with perpetual succession and capable of suing and being sued on its own.

2. That under Section 5(3) and Clause 5(3) of the Youth Enterprise Fund Order of 2007, the engagements and employment of the Chief Executive Officer and other staff and general decisions of the Fund is done by the Board.
3. That the above Respondents are not party to the contract between the Petitioner and Fund hence no cause of action against them.
4. That the Petitioner's Notice of Motion and petition do not disclose how the various Articles of the Constitution and other laws quoted in the same are violated.
5. That the above Respondents are constitutional office holders with definite mandate and duties and the Petitioner's Notice of Motion and Petition do not disclose how they failed to perform their constitutional duties or violated the same.
6. That the Petition is unmeritorious due to non-disclosure of constitutional violations in precise and specific manner.
7. That the Petition is an abuse of court process and the same be dismissed with costs.

Mohamed Adow Deiss of the Attorney General's office on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents in his written submissions submitted that the non-joinder of the Youth Enterprise Fund renders the Petition fatally defective as the appointment of the Chief Executive Officer cannot be complete without involvement of the Youth Development Fund.

Mohamed further submitted that the Petitioner has failed to specify the constitutional rights that he alleges to have been violated and the manner in which they have been violated or threatened to be violated, that the Petition is misconceived and the prayers sought cannot be granted. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents prayed that the Petition be dismissed. They relied on the principle set down in the case of *Anarita Karimi Njeru v. the Republic* (1976 – 1980) KLR 1272 and the case of *Meme V. Republic & Another* (2004) eKLR in which it was held that *“where a person is seeking redress from the High Court on a matter which involves a reference to the constitution, it is important that he should set out with a reasonable degree of precision that of which he complains, the provisions said to have been infringed and the manner in which they are alleged to have been infringed and that the applicant's instant application had not fully complied with the basic test of constitutional references; as it was founded on generalized complaints without any focus on fact, law or constitution. Hence it had nothing to do with constitutional rights of the appellant”*.

The 3<sup>rd</sup> Respondent filed a replying affidavit of EVANS GOR SEMELANG'O, then the Chairman of Youth Development Fund (but had at the time of hearing of the petition ceased to be the chairman). In the affidavit sworn on 16<sup>th</sup> December 2013, Mr. Semelang'o, set out the circumstances leading to the suspension of the Petitioner and subsequent termination of the Petitioner's contract as already summarized herein above. Of relevance is annexure 10 of the said affidavit which is a letter dated 29<sup>th</sup> August 2013 from the Petitioner in response to the letter dated 27<sup>th</sup> August 2013 requiring him to appear before the Board. The letter summarizes the Petitioner's case and is reproduced below:

*Mwatata Juma Mwangala*

*P.O. Box 4485-00200*

**NAIROBI.**

*Thursday, 29 August, 2013*

[Mwangala76@yahoo.com](mailto:Mwangala76@yahoo.com) 0722979529.

*MY REF: MJM/CEO/YEDF/29/08/13-13*

*Mr. Evans Gor Semelango, HSC*

*Chairman*

Youth Enterprise Development Fund

P.O. Box 48610-00100

NAIROBI.

Dear Evans,

**RE: APPEARANCE BEFORE THE BOARD**

This is in reference to your letter of 27<sup>th</sup> August 2013, Ref: EGS/YEDF/016/2013 that I received on 28<sup>th</sup> August 2013, regarding the above captioned matter, that **you strangely signed while you were physically in the USA between the 21<sup>st</sup> – 29<sup>th</sup> August 2013.**

I would like you to note and appreciate that I have complained to the competent and authorized authorities to investigate your civil and criminal acts of omission and commission in your conduct of the state of affairs of the Your Enterprise Development Fund by the Board, directed to me in my person as the Chief Executive Officer of the Fund.

My complaint and request to the competent and authorized authorities was to investigate and ascertain my complaints against you in person and the Board of Directors, of your possible abuse of power, unfair treatment, manifest injustice, unlawful acts, oppressive and unfair or unresponsive official conduct on the matter in question. I have also indicated in my various correspondences to their offices that I have not received any communication **before and after the purported suspension**, with evidence and facts, proceedings of the Board or any report by any competent authorities investigating my alleged civil and criminal acts of omission and commission, to support the suspension order.

Without prejudice, I humbly request you to be constrained by the rule of law to enable you to be successful with good reason and be satisfied with your concerted efforts to remove me from the office illegally.

In this regard I am still waiting for the response to my complaints against you in person and the Board of the Directors by the competent and authorized authorities, to legitimize or illegitimize your administrative actions on this matter.

Therefore, I decline to respond or take action on your request to appear before a purported Board of Directors of the Youth Development Fund meeting, until I get the concurrence of the competent and authorized authorities that your past and present administrative actions, although I consider them illegal, they are legitimate.

By copy of this letter I humbly request all the competent authorities to respond to my complaints and provide your with the necessary statutory and administrative guidance for possible immediate resolution of the matter.

For ease (sic) of reference, I have enclosed a copy of a letter Ref: CAJ/M.YOU/031/31/13/VOL.1 P.S of 22<sup>nd</sup> July 2013, addressed to the immediate competent and authorized authority, on the subject matter, Eng. Peter Oganga Magiti, the Principal Secretary, Ministry of Devolution and Planning, Nairobi and copies to among others.

I would like to take this earliest opportunity to thank you for your continual understanding on this matter.

Best Regards,

Mwatata Juma Mwangala

*Chief Executive Officer*

*Youth Enterprise Development fund*

It was submitted on behalf of the 3<sup>rd</sup> Respondent that the Petitioner's case is an ordinary employment/labour dispute that has been elevated to a constitutional platform.

The 3<sup>rd</sup> Respondent submitted that the Petitioner was accused of involvement in corruption, mismanagement and irregular procurement resulting in loss estimated at over Kshs.208,530,000. That other irregularities in which the Petitioner was involved in the following reports:

- a. The Internal Audit Report revealed that the Petitioner as the Chief Executive Officer of the Board proceeded to purchase 22 tyres from M/s Kingsway Tyres Limited vide a cheque No. 520 for Kshs.766,500/= in clear breach of public procurement procedures and without objective inspection and acceptance certificate making the Fund incur a loss of Kshs.130,000/=.
- b. The Human Report Management Audit report of November, 2012 also revealed that there were instances where NSSF and NHIF balances payable as per payroll varies with the balances as per the returns meaning that deductions on staff could have been made but the deduction not remitted to the Funds thus exposing the Board to avoidable penalties. The audit further revealed that the NSSF and NHIF returns receipts did not have stamped list supporting the documents as required by best practices which facilitates ease of verification and make reconciliation at a glance possible.
- c. The Human Report Management Audit Report of November, 2012 also revealed that no annual and/or quarterly returns have ever been filed by the Fund since inception contrary to Section 37(2) of the Income Tax Act. This exposes the Fund to a penalty of 25% of the tax amount or Kshs.10,000/= whichever is higher under that provision of the law.
- d. An audit report by the Ministry of Youth Affairs and Sports dated 15<sup>th</sup> February, 2014 also implicated the Petitioner for having unilaterally entered into a contract for purchase of motorcycles and without the approval of the MTC thus making the Fund to incur additional costs of Kshs.13,300,000/=. The same report also implicated the CEO for enhancing per diem payments of Kshs.20,005,800/= without the approval of the board resulting to additional expenditure.
- e. A report on the Investigation and Mismanagement at the Youth Enterprise Development Fund (YEDF), dated December, 2012 following investigations carried out by the Efficiency and Monitoring Unit previously under the Office of the Prime Minister also implicated the Petitioner and recommended that appropriate action should be taken against the Petitioner for failing to adhere to the requirements of the PPDA (2005).

The 3<sup>rd</sup> Respondent submitted that there is no cause of action against him as he was merely conveying the decision of the Board to which he was Chairman, that the Petitioner's contract was with the Youth Enterprise Fund which is not a party to the suit and against whom no orders can be made. The 3<sup>rd</sup> Respondent further submitted that the Petitioner is not entitled to the reliefs sought. The 3<sup>rd</sup> Respondent relied on the following authorizes:

1. Gladys Boss Shollei v Judicial Service Commission (2013) eKLR
2. Dr. Anne Kinyua v Nyayo Tea Zone Development Corporation & 3 Others (2012) eKLR
3. Tom Otieno Odongo v Cabinet Secretary Ministry of Labour Social Security Services & Another (2013) eKLR
4. Dennis Nyuagaka Ratemo v Kenya Film Commission & Another (2014) eKLR
5. Muslims for Human Rights (MUHURI) and 2 Others v Attorney General & 2 Others (2011) eKLR.
6. Edward Kiragu & Anotehr v SHELL & BP (Malindi) Kenya Ltd (2009) eKLR

Having set out the facts of the case and the arguments of the parties, the issues for determination in my opinion would be the following:

1. Whether the Petitioner has demonstrated that his fundamental rights were violated by the Respondents and
2. Whether the Petitioner is entitled to the reliefs sought.

From the outset, I must commend the Petitioner who although acted in person has put up a very bold and comprehensive argument in support of his case. Thanks to **Article ,,,,** of the Constitution. There is no risk of his petition being summarily determined on the basis of want of forum.

Having stated this, I must agree with the Respondent's arguments that this is a simple employment matter which has been elevated to the pedestal dispute. The Petitioner has however redeemed the case by praying for all the reliefs he would be praying for if this matter was filed as an ordinary labour dispute.

I now consider the issues for consideration:

**1. Whether the Petitioner has demonstrated that his fundamental rights were violated by the Respondents.**

The Petitioner has alleged violation of his rights under numerous sections of the constitution. Apart from naming the Articles under which he alleges his rights have been infringed he has not stated how the rights have been infringed, or by whom they have been infringed. He has filed this petition against 6 Respondents. None of the Respondents was his employer. The first Respondent is the Cabinet Secretary, Ministry of Devolution and Planning. The 2<sup>nd</sup> Respondent is the Principal Secretary in the same Ministry as the 1<sup>st</sup> Respondent while the 3<sup>rd</sup> Respondent was the Chairman of Youth Enterprise Development Fund, the employer of the Petitioner. The 4<sup>th</sup> Respondent is the Chairperson of the Public Service Commission, the 5<sup>th</sup> was the Head of Public Service while the last is the Attorney General. He alleges that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> 5<sup>th</sup> and 6<sup>th</sup> Respondents failed to prevail upon the 3<sup>rd</sup> Respondent not to carry out any illegal and administrative actions against him.

The Petitioner further accuses the 2<sup>nd</sup> Respondent of failing to provide administrative advise and guidance while the 6<sup>th</sup> Respondent is accused of failing to provide constitutional and legal advise and guidance on solutions to the Petitioner's complaints.

I find that these accusations do not amount to a violation of the Petitioner's fundamental rights. He has not shown that any of the Respondents had a duty as alleged that is capable of founding legal liability. He has not shown that there was a relationship between him and the 6 Respondents that created duties whose breach would be capable of a justiciable claim by the Petitioner.

As stated by the Petitioner, he was employed by the Youth Enterprise Development Fund Board, which is a body corporate. His complaint is that his contract was terminated by persons who had no authority to terminate the contract and that the whole process was a nullity. Unfortunately, that employer has not been made a party and being a body corporate, none of the Respondents can be liable for the liabilities of the body corporate. Apart from the 3<sup>rd</sup> Respondent who was the Chairman of the Youth Enterprise Development Fund Board, none of other Respondents were involved in the disciplinary process and subsequent termination of the employment contract of the Petitioner. The orders sought by the Petitioner are against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respodnents. No orders have been sought against the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respodnents.

Having failed to specify how his fundamental rights have been infringed under each of the sections of the constitution cited and by which party, I find that the Petitioner has failed to establish that his fundamental rights have been violated as alleged.

**2. Whether the Petitioner is entitled to the reliefs sought**

The Petitioner has prayed for several reliefs which I will now consider.

1. A finding that the Petitioners constitutional rights as envisaged in Articles 1, 2(4), 3(1), 10(1) (2); 19, 20 , 21 (1) (3); 22(1) (2) (a); 23(1) (3); 27, 43; 47 (1) (2); 73(1) (a); 129, 131, 134 (1) (a) (2) (b); 155 (1) (2); 236 (a)(b); 259 (1) (3) (a) have been breached by unconstitutional and illegal termination of his service contract.

As I have already stated above, the Petitioner's contract was terminated by the Youth Enterprise Fund Board which is not a party to these proceedings. Apart from the 3<sup>rd</sup> Respondent who was the Chairman of the Board at the time and signed all the letters relating to the disciplinary proceedings and termination of the contract, none of the other Respondents participated in the process. For this reason the Respondents did not breach the Petitioner's constitution rights.

Orders accordingly.

Dated in open court this 7<sup>th</sup> day of November, 2014.

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

**In the presence of:**

Mwatata Juma Mwangala Petitioner present in person

Wanga for 3<sup>rd</sup> Respondent

Mr. Mohammed for 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents