



THE SUPREME COURT OF KENYA
JUDITH NYAGOL VS. JUDICIAL SERVICE COMMISSION & ANOTHER
SC PETITION NO. E015 OF 2024

DATE OF JUDGMENT: 22ND NOVEMBER, 2024

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Supreme Court or any member of the Court.

Orders: The Court allows the Appeal in part.

Background

Judith Nyagol (the Appellant) was employed by the Judicial Service Commission (JSC) (1st Respondent) as a Resident Magistrate in June 2012. On 20th August 2015, she was arrested by officers from the Ethics and Anti-Corruption Commission (EACC) on allegations of corruption and subsequently arraigned in court. As the criminal proceedings were ongoing, the 1st Respondent served the appellant with two letters dated 4th September 2015: one suspending her from employment and the other preferring disciplinary charges against her which the appellant denied in writing.

Subsequently, the Anti-Corruption Court acquitted the Appellant of all charges while her co-accused was convicted. The Appellant presented proof of her acquittal to the 1st respondent who in turn served her with a letter dated 22nd August 2017 titled ‘*Commencement of Fresh Charges Against You*’. After conducting a disciplinary hearing on 5th March 2018, the 1st Respondent dismissed the Appellant from employment by a letter dated 24th August 2018 on the grounds that her conduct during the events leading to the corruption case was improper.

Aggrieved, the Appellant filed a constitutional petition at the Employment and Labour Relations Court (ELRC) against the Respondents (JSC and the Chief Registrar of the Judiciary). The ELRC held that the Appellant was subjected to double jeopardy since the disciplinary charges were commenced during the pendency of the anti-corruption case; and further, for instituting fresh charges dated 22nd August 2017 during the pendency of the September 2015 charges. In addition, that the Appellant was not afforded fair administrative action because she was tried for the charges of 22nd August 2017 but dismissed on account of the charges dated 4th September 2015. In conclusion, the ELRC determined that the Appellant’s dismissal was unfair. The Court allowed the petition, awarded the Appellant compensation for unfair dismissal, payment of all her withheld salary, as well as costs and interest of the suit.

On appeal, the Court of Appeal allowed the Respondents' appeal and dismissed the cross-appeal on reinstatement. It held that the Respondents were justified to commence disciplinary proceedings against the Appellant because an acquittal in a criminal action did not necessarily bar the institution of a disciplinary case based on the same facts and that it was clear that the Appellant was tried and dismissed based on the charges dated 22nd August 2017.

The Appellant then filed an appeal before the Supreme Court and the following issues arose for determination:

- i. *Whether the Supreme Court had jurisdiction to hear and determine the appeal;*
- ii. *Which legislation applies to employment matters of judicial officers: the Judicial Service Act or the Employment Act?*
- iii. *Whether the Appellant's right to a fair trial under Article 50 of the Constitution was violated, and if so how; and*
- iv. *If the answer to (iii) above is in the affirmative, whether the remedy for reinstatement is available to the appellant.*

Upon consideration, the Supreme Court partially allowed the appeal for the following reasons:

1. **Issue 1:** This Court found that it had jurisdiction since the appeal involved the interpretation and application of the Constitution.
2. **Issue 2:** The Judicial Service Act, being a specific law for employment matters of judges, judicial officers and staff, was applicable to the matter and the Employment Act was applicable only where there are gaps in the Judicial Service Act.
3. **Issue 3:** The Respondents violated the appellant's right to a fair trial in drawing an inference of guilt against the appellant without sufficient circumstantial evidence; in drawing charges against the appellant with the same ingredients as those before the criminal court for which she was acquitted, which amounted to double jeopardy; and trying the Appellant for the charges dated August 2017 but subsequently dismissing her on the basis of the charges dated September 2015.
4. **Issue 4:** The remedy of reinstatement was not available to the Appellant since 3 years had lapsed from the date of her dismissal.

Accordingly, the Court issued the following orders:

- (i) The amended appeal dated 15th May 2024 is allowed in part.**
- (ii) The judgment of the Court of Appeal dated 23rd February 2024 in Civil Appeal E097 of 2024 is hereby set aside.**
- (iii) The decision of the Employment and Labour Relations Court is hereby reinstated in relation to**
 - 1. A declaration that the dismissal of the appellant was unfair and unjustified;**
 - 2. The 1st respondent shall pay the appellant for the unfair and unjustified dismissal;**
 - 3. The 1st respondent shall pay the appellant all withheld salary from the time of interdiction.**
 - 4. The 1st respondent shall pay the costs of the suit.**
- (iv) For the avoidance of doubt, all other prayers in the appeal are dismissed.**