



THE SUPREME COURT OF KENYA

ERIC KAMANDE VS. JUDICIAL SERVICE COMMISSION

SC PETITION NO. E005 OF 2025

DATE OF JUDGMENT: 15th August, 2025

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.

Background

The appellant was employed by the Judicial Service Commission (JSC) as a Principal Administration Officer in the Human Resource Directorate on permanent and pensionable terms. On 24th November 2016, he was appointed, to the Tender Evaluation Committee to consider Tender No. Jud/028/2016-17 on the provision of security services for the Judiciary. The committee awarded the tender to Lavington Security Services Limited, but one unsuccessful bidder, Eric Okeyo t/a Bedrock Security Services Limited, challenged the award of the tender before the Public Procurement Administrative Review Board (the Board), alleging bribery by the appellant. The Board recommended that the Judiciary re-advertise the tender and conduct investigations against two officers, including the appellant, who were alleged to have met one of the bidders, Eric Okeyo during the tendering process. Subsequently, the Chief Justice issued a charge and interdiction against the appellant on two counts of gross misconduct: meeting with one of the bidders at a restaurant contrary to Article 227 of the Constitution and Section 65 of the Public Procurement and Assets Disposal Act; and failing to disclose this meeting to the other members of the Tender Evaluation Committee. The appellant denied the allegations. Disciplinary proceedings were conducted, and he was found culpable. Consequently, his employment was terminated on 27th March 2019.

The appellant moved to the Employment and Labour Relations Court (ELRC) to challenge the disciplinary process leading to his dismissal. The ELRC found the JSC's process deficient, particularly for failing to secure the attendance, testimony, or sworn written statement of the principal complainant, Eric Okeyo and other key witnesses, leading the court to conclude that the charges against the appellant were unsupported by evidence. Ultimately, the ELRC declared that the proceedings against and dismissal of the appellant violated Sections 41, 43, and 45 of the Employment Act; paragraph 25 of the Third Schedule to the Judicial Service Act (JS Act); the Fair Administrative Action Act; and Article 47 of the Constitution. The court ordered reinstatement of the appellant without loss of benefits, allowances, or salary.

On a first appeal, the Court of Appeal overturned the High Court's decision, finding that the disciplinary hearing was conducted fairly and in accordance with the Constitution and the law; and that the appellant had exemplified gross misconduct by meeting a bidder during the tendering

process. By doing so and failing to disclose this information to the Procurement Evaluation Committee presented a lawful and fair ground for the termination of his employment, the appellate court ruled.

The appellant, aggrieved by that decision, appealed to the Supreme Court.

The Supreme Court delineated the following four issues for determination:

- i) Whether the Court has jurisdiction to determine the appeal under Article 163(4)(a) of the Constitution;*
- ii) Whether the termination of the appellant's employment was substantively and procedurally fair in accordance with the Constitution and the law;*
- iii) Whether the Court of Appeal erred in introducing and determining the issue of judicial bias, which was not pleaded or argued by the parties; and*
- iv) Whether the appellant was entitled to both reinstatement and compensation.*

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

Issue 1: The Court finds that it has jurisdiction under Article 163(4)(a) to determine the appeal. From the trial court to the Supreme Court, the complaints by the appellant revolve around whether the disciplinary process by JSC breached Articles 47 and 50 of the Constitution and strike at the core of how constitutional fair trial guarantees are applied in quasi-judicial proceedings.

Issue 2: The Court finds that JSC fell short of its mandate set out in Article 172(1)(c) of the Constitution, Section 32 of the JS Act, and the relevant paragraphs under the Third Schedule to the JS Act. The appellant was condemned without an opportunity to confront his accuser. Moreover, the JSC violated the appellant's right to fair administrative action under Articles 47(1) and 50(1) of the Constitution on account of 23 months delay without justification.

Issue 3: The Court finds that the Court of Appeal did not err in raising the issue of bias nor in applying principles of judicial bias to a non-judicial officer. Its intervention was consistent with constitutional principles and common law doctrines of fairness and natural justice, which are the central questions in the dispute.

Issue 4: The Court Orders that the appellant be reinstated to the position of Principal Administrative Officer, Human Resource Directorate, or an equivalent position, without loss of benefits, allowances and salary. Having reinstated the appellant, an award of compensation would be superfluous in the circumstances.

The Judgment of the Court of Appeal is therefore set aside, in respect of its findings that the appellant was properly, fairly and lawfully terminated from employment.

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