



REPUBLIC OF KENYA

THE SUPREME COURT OF KENYA

JUDICIAL SERVICE COMMISSION & ANOR v. LMN

(Coram: Koome, CJ & P; Wanjala, Njoki, Lenaola & Ouko, SCJJ)

SC PETITION NO. E040 OF 2024

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.

Final Orders: *The Court allows the appeal in this appeal.*

Background

The respondent was appointed by the Judicial Service Commission (JSC) as a District Magistrate II (Prof.) on 14th May 2001 and rose to the rank of Senior Principal Magistrate. On 22nd May 2014, she was directed to compile and submit a report on all pending judgments and rulings from stations she had previously served in, and to proceed on 30 days' leave. She complied, submitting the report on 30th May 2014. Nearly two years later, on 22nd August 2016, the Chief Registrar of the Judiciary (CRJ) issued her two letters: one charging her with having 204 files pending judgments or rulings, and the other interdicting her and placing her on half salary with a requirement to report weekly to the CRJ. Subsequently, she received a one-day telephone call notice to attend a disciplinary hearing before a JSC panel on 25th January 2017, which recommended her dismissal. Her request for review of the decision was rejected, and the dismissal was confirmed by a letter dated 13th July 2017.

Aggrieved by her dismissal, the respondent moved to the Employment and Labour Relations Court (ELRC), challenging the JSC's decision. The court examined the scope of the CRJ's authority in disciplining judicial officers and held that such disciplinary control is vested in the Chief Justice, as delegated by statute, with no provision for the CRJ to act in the Chief Justice's absence. The trial court, therefore, found that the CRJ acted *ultra vires* in interdicting the respondent and framing charges. Consequently, the court declared the entire disciplinary process void *ab initio*, directing that a fresh process be initiated within 60 days, and awarded the respondent costs.

Dissatisfied with the ELRC's decision, the appellant appealed to the Court of Appeal, while the respondent lodged a cross-appeal. On the main appeal, the court, relying on Paragraph 25 of the Third Schedule to the Judicial Service Act (JSA), Cap 8A, upheld the finding by the trial court that only the Chief Justice is empowered to frame charges against or interdict a judicial officer, and that the CRJ's initiation of disciplinary proceedings was *ultra vires*, amounting to a usurpation of the Chief Justice's powers. It further held that the respondent was denied adequate time to prepare her defence, contrary to Article 50 of the Constitution. On the cross-appeal, the court found the disciplinary process fundamentally flawed and ordered the respondent's reinstatement with full pay and benefits, but declined to award general, exemplary, or punitive damages, noting that the respondent would recover the withheld half of her salary for the four years she was out of work, which sufficed as compensation. As a result, the appeal was dismissed with costs and the cross-appeal partially succeeded with half costs.

In the second appeal, the Supreme Court delineated the following issues for determination:

- i. *Whether this Court is properly seized of jurisdiction under Article 163(4)(a) of the Constitution*
- ii. *Whether JSC has inherent powers to discipline judicial officers pursuant to Article 172(1)(c) of the Constitution*
- iii. *Whether the proceedings against the respondent violated Articles 47 and 50 of the Constitution*
- iv. *Whether the superior courts below engaged in judicial overreach*
- v. *What reliefs are available to the respondent, if any?*

Upon considering the appeal, the Supreme Court unanimously dismissed the appeal, holding that:

Issue 1: The Court was properly seized of jurisdiction under Article 163(4)(a) of the Constitution.

Issue 2: Article 172(1)(c) of the Constitution empowers the JSC to receive complaints against, investigate, and discipline registrars, magistrates, and other judicial officers and staff, as prescribed by law. This authority is operationalized in the JSA through the Third Schedule, pursuant to Section 32. Paragraph 15 of the Schedule delegates certain disciplinary powers to the Chief Justice. These include the authority to interdict, suspend, and reprimand judicial officers in specified circumstances. These initial disciplinary powers are therefore conferred directly by statute on the Chief Justice and are not capable of further delegation. Although the powers are delegated to the Chief Justice by the JSC, the latter, in the circumstances of this appeal, had no inherent powers to delegate the authority to the CRJ, and no such authority was demonstrated to have been granted.

Issue 3: The procedure adopted by the appellants violated Articles 47 and 50 of the Constitution and went against the guidelines in *Shollei Vs Judicial Service Commission & another* [2022] KESC 5 (KLR).

Issue 4: It was unwarranted for the two superior courts below to grant the JSC the option of initiating fresh disciplinary proceedings, having already found that the CRJ acted *ultra vires* and that the disciplinary process was fundamentally flawed from the outset.

Issue 5: The respondent is reinstated to her former position as Senior Principal Magistrate with accrued salary and benefits from the date of interdiction, which was 22nd August 2016.

The costs of this appeal are awarded to the respondent.

