




THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (THIRD SESSION)
PUBLIC PETITIONS COMMITTEE

Approved
Shiboko
11/04/24

REPORT ON -
THE CONSIDERATION OF THE PUBLIC PETITION NO. 34 OF 2023 REGARDING THE
DEREGISTRATION AND DISMISSAL OF MR. JOSEPH KIMELI CHEBII BY THE TEACHERS
SERVICE COMMISSION (TSC)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 10 APR 2024	DAY: Thursday
TABLED BY:	Hon. Janet Sitheni (Nire Chairperson, Public Petitions Committee)
CLERK AT RE-TABLE:	Shiboko

Directorate of Legislative & Procedural Services
Clerk's Chambers
Main Parliament Buildings
NAIROBI

TABLE OF CONTENTS

ACRONYMS	2
CHAIRPERSON’S FORWARD	3
PART ONE.....	4
1. PREFACE.....	4
1.1. Establishment and Mandate of the Committee.....	4
1.2. Committee Membership.....	5
1.3. Committee Secretariat.....	6
PART TWO.....	7
2. PUBLIC PETITION NO. 34 OF 2023 REGARDING THE DEREGISTRATION AND DISMISSAL OF MR. JOSEPH KIMELI CHEBII BY THE TEACHERS SERVICE COMMISSION (TSC).....	7
2.1. INTRODUCTION.....	7
2.2. PETITIONER’S PRAYERS.....	8
PART THREE	9
3.1 SUBMISSIONS BY THE PETITIONER, MEMBER FOR MARAKWET EAST (THE HON. TIMOTHY KIPCHUMBA, MP).....	9
3.2 SUBMISSIONS BY THE TEACHERS SERVICE COMMISSIONS (TSC).....	10
PART FOUR	14
4.0 COMMITTEE OBSERVATIONS.....	14
PART FOUR	16
4.0 ANALYSIS OF ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION	16
ANNEXURES	Error! Bookmark not defined.

ACRONYMS

TSC	-	Teachers Service Commission
CBS	-	Chief of the Burning Spear
CEO	-	Chief Executive Officer
CORT	-	Cord of Regulations for Teachers

CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition No. 34 of 2023 regarding the de-registration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission. The petition was presented to the House pursuant to Standing Order No. 225 (2) (b) by the Member for Marakwet West, the Hon. Timothy Kipchumba Toroitich, MP on 27th July, 2023.

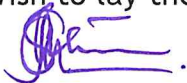
The Committee considered the Petition and observed that the petitioner prayed that the National Assembly through the public petitions committee among others inquire into the matter to secure the reversal of Mr. Chebii's dismissal and reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues 2x from the date of his dismissal. The Petitioner further prayed that there was a need to review and strengthen TSC's policies on disciplinary procedures and enact legislation or amend existing laws on disciplinary procedures to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations.

The Committee considered the Petition and observed that Mr. Joseph Chebii was a teacher registered and employed by the TSC until 4th June 2015 when he was dismissed and removed from the Register following accusations of immoral misconduct with his student (minor). The Committee further observed that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations before his dismissal by the Teachers Service Commission.

The Committee recommended that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations hence there are no grounds for reversal of the dismissal decision. Further, the aggrieved teacher could apply for reinstatement to the register of teachers under Section 31 of the Act and Regulation 36 of the Teachers Service Commission Code of Regulations for Teachers.

The Committee appreciates the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date.....11-04-2024.....

PART ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

The Public Petitions Committee is established pursuant to the provisions of Standing Order 208A and is mandated to -

- a) consider all public petitions tabled in the House;
- b) make such recommendations as may be appropriate concerning the prayers sought in the petitions;
- c) recommend whether the findings arising from consideration of a petition should be debated; and
- d) advise the House and report on all public petitions committed to it.

PART ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

The Public Petitions Committee is established pursuant to the provisions of Standing Order 208A and is mandated to -

- a) consider all public petitions tabled in the House;
- b) make such recommendations as may be appropriate concerning the prayers sought in the petitions;
- c) recommend whether the findings arising from consideration of a petition should be debated; and
- d) advise the House and report on all public petitions committed to it.

1.2. Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises of the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency
United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency
Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency
Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere North Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
Wiper Democratic Movement-Kenya (WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
Wiper Democratic Movement-Kenya (WDM-K)

1.3. Committee Secretariat

The Public Petitions Committee is facilitated by the following secretariat:

Lead Clerk

Mr. Ahmed Kadhi

Senior Clerk Assistant/Head of Secretariat

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Third Clerk Assistant

Ms. Anne Shibuko
First Clerk Assistant

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Mr. Roseline Ndegi
Principal Sergeant at Arms

Felistus Muiya
Public Communications Officer

Mr. Calvin Karingo
Media Relations Officer

Mr. Peter Mutethia
Audio Officer

PART TWO

2. PUBLIC PETITION NO. 34 OF 2023 REGARDING THE DEREGISTRATION AND DISMISSAL OF MR. JOSEPH KIMELI CHEBII BY THE TEACHERS SERVICE COMMISSION (TSC)

2.1. INTRODUCTION

1. The Petition was brought before the House by Hon. Timothy Kipchumba Toroitich, MP on behalf of Mr. Joseph Kimeli Chebii a resident of Marakwet West Constituency on 27th July, 2023.
2. The petitioner claims that Mr. Kimeli was wrongfully dismissed by the Teachers Service Commission for allegations of defilement of one of his students.
3. He stated that Mr. Chebii was interdicted on 14th May 2014 for having carnal knowledge with one of his pupils, he was then charged in Iten Magistrates Court on the 23rd of May 2014.
4. Further, the Teachers Service Commission conducted a disciplinary hearing for Mr. Chebii through their County Director at Eldoret, whereby he was later dismissed and de-registered on 13th July 2015. Mr. Chebii lodged an appeal on the disciplinary proceedings but was unsuccessful.
5. The petitioner claims that the Teachers Service Commission did not investigate the allegations and thus the dismissal of Mr. Chebii was a grave injustice, as the complainant or defiled minor gave birth to a child that was not Mr. Chebii's, as per the DNA analysis conducted on the 21st June 2017 by the Government Chemist.
6. Therefore, the court case was dismissed and Mr. Chebii was acquitted on the 18th of January 2018 despite that the Teachers Service Commission had declined to reinstate and re-register him.
7. To the best of the petitioner's knowledge, the matter presented in the petition was not pending before any Court of law or any constitutional or legal body.

2.2 PETITIONER'S PRAYERS

The Petitioner prayed that the National Assembly through the Public Petitions Committee: -

8. Investigate the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular;
9. Inquires into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal;
10. Reviews and strengthens Teachers Service Commission policies on disciplinary procedures and to ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manner; and
11. Considers enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing.

PART THREE

3.0 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 SUBMISSIONS BY THE PETITIONER, MEMBER FOR MARAKWET EAST (THE HON. TIMOTHY KIPCHUMBA, MP)

On Wednesday, 30th August, 2023, the Member for Marakwet West Constituency (Hon. Timothy Kipchumba, MP) accompanied by the petitioner, Mr. Joseph Chebii, appeared before the Committee and submitted as follows -

12. Mr. Chebii Joseph's petition revolved around his employment problems stemming from his appointment as Secretary to the Constituency Development Fund Committee (CDFC). His case centred on his alleged removal due to the discontent of his predecessor, Isabella Kaino.
13. The disciplinary proceedings against Chebii, initiated in 2014 and overseen by Kaino, raising suspicions of bias. Chebii contends that the charges brought against him were fabricated as a result of personal vendettas.
14. Mr. Joseph Chebii was dismissed in 2014 for allegedly having sexual relations with a pupil. Subsequently, Chebii's name was removed from the teacher's register on the same grounds despite various appeals on the decision of the Commission.
15. DNA evidence later indicated that Chebii was not the father of the complainant's child. He was acquitted by a Magistrate's Court in 2018, and an attempt to revise the case in the High Court was unsuccessful.
16. Chebii's petition asserts several violations of due process during the disciplinary proceedings which included denial of fair representation and cross-examination opportunities, which infringed upon his right to a fair hearing, charges against him were inconsistent. They lacked clarity, and the investigation process was generally flawed.
17. The Petitioner further averred that the Teachers Service Commission (TSC) shifted the burden of proof to Chebii, violating his constitutional rights and therefore called for the overturning of TSC's decision based on these grounds.
18. The petition recommends reforms to the disciplinary procedure for teachers, suggests a clear definition of "immoral conduct," the protection of human rights during proceedings, putting in place independent investigative panels to avoid bias, timely case resolution, an appeals mechanism, and a provision in the law for reviewing cases with new evidence.

19. Mr. Chebii also prays for the re-opening of the case to present DNA evidence, invoking the Court of Appeal's decision in **Teachers Service Commission vs Joseph Wambugu Nderitu (2016) eKLR**.

20. To the best of his knowledge, the matter was not pending before any court law, constitutional or legal body.

3.2. SUBMISSIONS BY THE TEACHERS SERVICE COMMISSIONS (TSC)

On Wednesday, November, 15, 2023, the Chief Executive Officer of the Teachers Service Commission (TSC), Dr. Nancy Macharia, appeared before the Committee and submitted as follows-

21. The Teachers Service Commission (TSC) was established under Article 237(1) of the Constitution as a Constitutional Commission with primary functions being to among others, register teachers, recruit and employ registered teachers, promote and transfer teachers, assign teachers for service in any public school or institution and exercise disciplinary control over teachers and terminate the employment of teachers engaged in public service.
22. The Commission is further mandated under Article 237(3) of the Constitution to review the standards of education and training of persons entering the teaching service, review the national demand and the supply of teachers and advise the National government on matters relating to the teaching profession.
23. The Commission is also bound by the provisions of Chapters 6, 10, and 232 of the Constitution that provide for the integrity of public officers, national values and principles of governance, and the values and principles of public service.
24. In discharging the mandate to discipline teachers, the Commission is guided by its duty under Article 53 to protect learners from any form of abuse including sexual abuse, and always consider the best interest of the learners.
25. Further the Commission is alive to the right of every learner to access basic education provided under Article 43 of the Constitution. To this end, the Commission has a role in ensuring the actualization of this right by creating a conducive and safe environment for learners.
26. To better execute its mandate, the National Assembly enacted the Teachers Service Commission Act, of 2012, and the Code of Regulations for Teachers (CORT) 2015. Part IX of the CORT extensively provides for discipline procedures that are in tandem with the principles of fair hearing as envisioned in the Constitution and the relevant legislation.
27. Under the Code of Regulations for Teachers, 2015, the TSC Act, 2012 and the Employment Act, the Commission has the power to institute disciplinary proceedings against any of its employees who has or is alleged to have violated

the terms and conditions of service as prescribed under the Code and may ultimately terminate the services of such employees after following the due process of law regardless of the employee's criminal proceedings.

28. Mr. Joseph Chebii was a teacher registered and employed by the Commission until 4th June 2015 when he was dismissed and removed from the Register following accusations of immoral misconduct in that he had sexual intercourse with M. J. who was a standard 6 pupil at Kibirech Primary School in Marakwet West Sub County.
29. Before dismissal from service, the Commission in line with its mandate undertook a fair and procedural disciplinary process that included -
 - a) Collection of statements from the victim and the teacher;
 - b) Conducting independent investigations;
 - c) Serving the teacher with an interdiction letter;
 - d) Granting the teacher an opportunity to respond to the allegations;
 - e) Granting the teacher an opportunity to be heard in person;
 - f) Granting the teacher an opportunity to cross-examine witnesses; and
 - g) Granting the teacher the right of Appeal.
30. During the disciplinary process, witnesses including the victim and her parents were consistent in their evidence that indeed Mr. Chebii had abused the victim. Mr. Chebii on the other hand, did not present any evidence/material to disapprove the allegations. The elaborate hearing culminated in the considered decision to dismiss and deregister him.
31. Mr. Chebii formally appealed the decision and subsequently, the Teachers Service Review Committee considered the appeal, evaluated the facts, and the circumstances of the case, and upheld the earlier decision to have him dismissed and deregistered.
32. Further, Mr. Chebii was charged in a criminal court with the offence of defilement contrary to the Sexual Offences Act and was acquitted based on the DNA test that showed he was not the biological father of the victim's child in **Criminal Case 862 of 2014: State vs. Joseph Kimeli Chebii.**
33. However, the Commission was not a party to the court process and neither participated in the criminal court case. The criminal proceedings were instigated and prosecuted by the police pursuant to the provisions of the Penal Code, the Sexual Offences Act, and the Police Act which were in no way to impact or oust the administrative action undertaken by TSC under the TSC Act and Employment Act.

34. On the allegations of acquittal by the criminal case, the Commission specifically states -

- a) *While at the court, Mr. Chebii was accused of a criminal offence of defilement under the Penal Code as read with the Sexual Offences Act, before the employer, he was accused of immoral behaviour as provided by the Teachers Service Commission Act and the Code of Regulations for Teachers;*
- b) *In the criminal matter the suit was subjected to a proof beyond “reasonable doubt” standard. This contrasts the scenario that followed the discipline process by the Commission under which the offence as crafted and prosecuted is a professional one and the expected standard of proof is on a “balance of probability”;*
- c) *The criminal charges against the teacher were inherently different and distinguishable from the charge of professional misconduct and/or immoral behaviour preferred by the Commission;*
- d) *The substance of the criminal charge was centred on “defilement” which was neither canvassed nor issued in the disciplinary case before the Commission;*
- e) *The Commission’s mandate to exercise disciplinary control over teachers is limited by law to the professional culpability of its employees and does not extend to criminal matters provided for under the Penal Code;*
- f) *Under Section 12 of the TSC Act Cap 212 the Commission is exempted from strict adherence to the conventional rules of evidence and procedural technicalities while discharging its administrative mandate;*
- g) *The threshold for the standard of proof in Criminal matters is not similar and/or comparable to the standard of proof expended in matters before tribunals exercising quasi-judicial functions such as that constituted under the TSC Act;*
- h) *The rigours of criminal trial and cases of professional misconduct are distinct and the findings of each cannot be used to determine and/or influence the other; and*
- i) *The Respondent’s principal objective is enforcement of the CORT and not punishment for criminal offences.*

35. In the circumstances, the findings of the criminal court could not salvage an employment contract which had inevitably been broken and the Commission being a public institution had a duty to maintain public morality, integrity and

nobility of the teaching profession and the decision meted on Mr. Chebii was proportionate to the offence committed.

36. Further, while the procedure employed in prosecuting the criminal matter was based on the strict rules and evidence, the administrative process by the Commission was on general evidence, statements and circumstances facts pursuant to **Regulation 139(1)(d) of the Code of Regulations for Teachers**.
37. From the foregoing, it is obvious on the grounds of law and facts that the administrative processes on discipline by quasi-judicial bodies such as the Commission are distinct from the criminal processes.
38. The refusal to review the disciplinary decision based on the Criminal Court's finding is neither isolated nor peculiar to Mr. Chebii's case. The Court of Appeal has equally held that employers are not bound by the findings of criminal courts in cases of professional misconduct for instance Civil Appeal 29 of 2016: Kenya Power & Lighting Company Limited
39. Therefore, it was the position of TSC that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there are no grounds for reversal of the dismissal decision.
40. Notwithstanding the above, Section 31 of the Teachers Service Commission Act allows Mr. Chebii to apply for reinstatement of his name to the Register of Teachers.

PART FOUR

4.0 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner and other witnesses, the Committee observed that -

41. Mr. Joseph Chebii was a teacher registered and employed by the TSC until 4th June 2015 when he was dismissed and removed from the Register following accusations of immoral misconduct in that he had sexual intercourse with M. J. who was a standard 6 pupil at Kibirech Primary School in Marakwet West Sub County. Subsequently, Chebii's name was removed from the teacher's register on the same grounds despite various appeals on the decision of the Commission.
42. Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there were no grounds for reversal of the dismissal decision against him.
43. During the disciplinary process, witnesses including the victim and her parents were consistent in their evidence that indeed Mr. Chebii had abused the victim. Mr. Chebii on the other hand, did not present any evidence/material to disapprove the allegations which culminated in the considered decision to dismiss and deregister him.
44. DNA evidence later indicated that Chebii was not the father of the complainant's child. He was acquitted by a Magistrate's Court in 2018, and an attempt to revise the case in the High Court was unsuccessful.
45. Before dismissal from service TSC in line with its mandate undertook a fair and procedural disciplinary process that included -
 - a) collection of statements from the victim and the teacher;
 - b) conducting independent investigations;
 - c) serving the teacher with an interdiction letter;
 - d) granting the teacher an opportunity to respond to the allegations;
 - e) granting the teacher an opportunity to be heard in person;
 - f) granting the teacher an opportunity to cross-examine witnesses; and
 - g) granting the teacher, the right to appeal.
46. Mr. Chebii formally appealed the decision and subsequently, the Teachers Service Review Committee considered the appeal, evaluated the facts, and the circumstances of the case, and upheld the earlier decision to have him dismissed and deregistered.

47. Mr. Chebii was charged in a criminal court with the offence of defilement contrary to the Sexual Offences Act and was acquitted based on the DNA test that indicated that he was not the biological father of the victim's child in **Criminal Case 862 of 2014: State vs. Joseph Kimeli Chebii.**
48. The aggrieved teacher did not lodge or institute an application for reinstatement of his name to the register of teachers within eighteen months from the date of removal of the name from the register in compliance with Section 31 of the TSC Act.
49. The aggrieved teacher could seek for reinstatement of his name to the register of teachers and secure employment elsewhere but he cannot be re-employed by the TSC.
50. TSC disregarded the decision of the court as the orders did not direct TSC on any matter unlike if the aggrieved teacher would have appealed to the Employment Court where such matters are resolved.

PART FIVE

5.0 ANALYSIS OF ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

Upon hearing from the Petitioners and other witnesses, the Committee makes a determination on prayers sought in the Petition as follows -

Prayer No. 1: *Investigate the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular;*

51. The Committee -

- a) summoned the CEO of the Teachers Service Commission (TSC), Dr. Nancy Macharia, who appeared before the Committee on Wednesday, November, 15, 2023 and apprised the Committee of the matter;
- b) notes that TSC is a Constitutional body bound by the provisions of Chapters 6, 10, and 232 of the Constitution that provide for the integrity of public officers, national values and principles of governance, and the values and principles of public service;

- a) notes that in discharging the mandate to discipline teachers, TSC is guided by its duty under Article 53 to protect learners from any form of abuse including sexual abuse, and always consider the best interest of the learners;
- b) further notes that Article 43 of the Constitution provides for the right to basic education to all Kenyan children. To this end, TSC has a role in ensuring the actualization of this right by creating a conducive and safe environment for learners;
- c) notes that the National Assembly enacted the Teachers Service Commission Act, of 2012, and the Code of Regulations for Teachers (CORT) 2015. Part IX of the CORT extensively provides for discipline procedures that are in tandem with the principles of fair hearing as envisioned in the Constitution and the relevant legislation;
- d) In the circumstances, notes that, the findings of the criminal court could not salvage an employment contract which had inevitably been broken and the Commission being a public institution had a duty to maintain public morality, integrity and nobility of the teaching profession and the decision meted on Mr. Chebii was proportionate to the offence committed.
- e) notes that in the Court of Appeal case of *Teachers Service Commission versus Joseph Wambugu Nderitu (2016) eKLR* a three-judge bench held as follows -

Turning to the applicable principles of law, there is no doubt that the learned Judge relied on the decision of a court of coordinate jurisdiction in the case of Mathew Kipchumba Koskei versus Baringo Teachers SACCO [2013] eKLR for the holding that where the employer has initiated and concluded disciplinary proceedings on account of misconduct which also has substantially been subject of a criminal process in which the employee is exculpated or found innocent, the employer is entitled to set aside or rescind any punitive administrative decision he may have taken against such an employee and in addition to the above meet all remedies available in law to such an employee to restore him to the position he would have been if the punitive administrative decision not been taken against him. The Mathew Kipchumba case (supra) was preferred amongst many others from the Industrial Court stating the contrary view. No reason was given by the learned Judge as to why he preferred the proposition in the Mathew Kipchumba Koskei case (Supra) over those of Daniel Kamei (Supra) Clement Mutiso Muiinde (Supra) and Joseph Wambugu Kimanju (Supra) among

numerous others on the same point all of which re-echoed the principle that professional disciplinary proceedings are distinct from the criminal proceedings even if they emanate from the same set of circumstances.

This Court has crystalized the above position in a number of its pronouncements. Waki JA in the case of the Hon. The Attorney General and another versus Maina Githinji & Another Nyeri Court of Appeal No. 21 of 2015 (UR) approved the reasoning of Okwengu JA in Judicial Service Commission versus Gladys Boss Shollei & Another (2014) eKLR, and the decision of the court in Kibe versus Attorney General Civil Appeal no. 164 of 2000.

In the Judicial Service Commission case (supra) the following observations were made by Okwengu JA.

"(61) The disciplinary process undertaken by the appellant was a quasi-judicial process as it involved the appellant in an adjudicatory function that required the appellant to ascertain facts and make a decision determining the respondent's legal rights in accordance with the Constitution and the Judicial Service Act, both of which provided for fair hearing. The disciplinary proceedings were anchored on a contractual relationship and the appellant was not empowered to provide penal sanctions. Notwithstanding the seriousness of the allegations made against the respondent, the disciplinary proceedings could not be treated like criminal proceedings, as the nature of the sanctions that could be applied in a criminal trial. Thus, the learned judge misdirected himself, in holding that the disciplinary proceedings were quasi-criminal. The Criminal Procedure Code which is an Act providing for the procedure in criminal cases had absolutely no application in the disciplinary proceedings, and the learned judge erred in applying the provisions of the Criminal Procedure Code."

In Kibe versus Attorney General Civil Appeal No. 164 of 2000 approved by Waki JA in the Hon. Attorney General & Another case (supra) this Court was categorical that:

"an acquittal in a criminal case does not automatically render an employee immune to disciplinary action by an employer for the reason that a criminal trial and an internal disciplinary proceeding initiated by an employer against an employee are two distinct processes with different procedures and standard of proof requirements. While an

employer may rely on the outcome of a criminal trial against an employee to make its decision on that employee going against the outcome does not by itself render the employer's decision wrongful or unfair".

Lastly in Geoffrey Kiragu Njogu versus Public Service Commission & 2 Others (2015) eKLR this Court approved the reasoning of the Industrial Court in James Mugeru Egati versus Public Service Commission of Kenya (2014) eKLR where it is stated that "there is nothing in the Public Service Commission Regulations which suggest that disciplinary process is tied to a criminal process that may arise from the same facts. There is no provision in the Public Service Commission Regulations which makes it necessary for employers to follow police investigations, or findings or indeed criminal court decisions in resolving employment disputes. The Public Service Commission Regulations do not merge disciplinary processes with criminal trials-----"

The above being the position, it is our view that this Court has made itself clear on the issue as to whether a successful outcome of a criminal process against an employee has primacy over an internal disciplinary process against such an employee arising from the same set of circumstances. The two processes are distinct from each other. The appellant having concluded its disciplinary process, accorded the respondent an internal opportunity to challenge them, which he failed to utilize and which had been fore-closed long before the pronouncement of the successful criminal decision. It is therefore our finding that the issue of the appellants concluded disciplinary process remains foreclosed in the absence of any plea by the respondent that these be reopened for re-interrogation on account of the alleged new and damning evidence.

- f) notes that despite the above, Section 31 of the TSC Act, 2012 allows Mr. Chebii to apply for reinstatement of his name to the Register of Teachers.

Therefore, the Committee finds that that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there are no grounds for reversal of the dismissal decision.

The Committee therefore rejected the first prayer for investigations to the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular; and, thus the Committee made no recommendation to it;

Prayer No. 2: *Inquires into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal;*

52. The Committee notes that -

- a) having been moved persuasively that the process leading to the dismissal of the teacher was procedural, fair and within the Constitutional framework, the Committee is therefore find that the same was without error;
- b) notes that TSC proposed that the aggrieved teacher can seek for reinstatement of his name to the register of teachers and secure employment elsewhere but he cannot be re-employed by the TSC; and
- c) notes that under 249(2)(b) of the Constitution, TSC is a Commission that is independent and not subject to direction or control by any person or authority. Therefore, the Committee proceeds not to interfere with the mandate of the Commission having complied with the law in reaching its decision. The aggrieved teacher hence can enforce his rights under section 31 of the TSC Act, 2012 and Regulation 36 of the Teachers Service Commission Code of Regulations for Teachers.

The Committee therefore rejected the second prayer for Inquiries into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal; the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular; and, thus the Committee made no recommendation to it;

Prayer No. 3: *Review and strengthen Teachers Service Commission policies on disciplinary procedures and ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manner.*

53. The Committee -

- a) having interrogated the Petitioner and TSC on this matter, the Committee notes that no material was placed before the Committee demonstrating cogent reason to interfere with the policies on disciplinary procedures.

The Committee therefore rejected the third prayer for reviewing and strengthening Teachers Service Commission policies on disciplinary procedures and ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manner; and, thus the Committee made no recommendation to it;

Prayer No. 4: *Considers enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing.*


54. The Committee notes that -

- a) The Constitution, the Teachers Service Commission Act, 2012; the Employment Act, 2007, the Teachers Service Commission (Code of Conduct and Ethics for Teachers) Regulations; and the Teachers Service Commission Code of Regulations for Teachers provide enough safeguards for teachers and ensures fair process and procedures; and
- b) At the same time, the same set of laws provides a balance that seeks to protect children while at school and ensure their rights under the Constitution are protected. Therefore, no evidence was provided that pointed to the unconstitutionality of the law.

The Committee therefore rejected the fourth prayer for considering enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing; and, thus the Committee made no recommendation to it;

Prayer No. 5: *makes any other recommendation that it deems fit in the circumstance of the petition.*

55. The Committee recommends that the aggrieved teacher, Mr. Joseph Chebii could apply for reinstatement to the register of teachers under Section 31 of the TSC Act, 2012 and Regulation 36 of the Teachers Service Commission Code of Regulations for Teachers.

Signed: 
THE HON. NIMROD MITHUKA MBATIA, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2024	DAY: _____
TABLED BY: _____	Date: 11-04-2024
COMMITTEE: _____	

ANNEXURES

- Annex 1:** The Adoption List
- Annex 2:** Public Petition No. 34 of 2023 regarding the de-registration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission
- Annex 3:** Minutes of the 57th Sitting held on Wednesday, 30th August, 2023
- Annex 4:** Minutes of the 79th Sitting held on Wednesday, 15th November, 2023
- Annex 5:** Minutes of the 15th Sitting held on Monday, 25th March, 2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

**ADOPTION OF THE REPORT ON THE CONSIDERATION OF A PUBLIC PETITION NO. 34 OF 2023
REGARDING DE-REGISTRATION AND DISMISSAL OF MR. JOSEPH CHEBII KIMELI BY THE
TEACHERS SERVICE COMMISSION (TSC)**

We, the undersigned Honourable Members of the Public Petitions Committee, today Monday, 25th March, 2024, do hereby affix our signatures to this Report on the consideration of Public Petition No. 34 of 2023 regarding the de-registration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission (TSC) to affirm our approval and confirm its accuracy, validity and authenticity: -

S/NO	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice-Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Ernest Ogesi Kivai, M.P.	Member	
5.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
6.	Hon. John Walter Owino, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	

