

**PROCEDURE TO BE FOLLOWED IN DISCIPLINARY PROCEEDINGS AGAINST A JUDICIAL OFFICER OR
OTHER STAFF OF THE JUDICIARY**

- Disciplinary proceedings mean any proceedings, including investigations, before any entity, or entities, established by constitutional provision, statute, regulation, or court rules to investigate, review or impose sanctions for charges of misconduct.
- Under **section 12** of the **Employment Act**, employers with **more than fifty (50) employees** are empowered to make their own guidelines on disciplinary rules, which guidelines shall:
 - a) specify the disciplinary rules applicable to the employee or refer the employee to the provisions of a document which is reasonably accessible to the employee which specifies the rules;
 - b) specify the person to whom the employee may apply:
 - i. if dissatisfied with any disciplinary decision relating to the employee; and
 - ii. for the purpose of seeking redress of any grievance relating to his employment and the manner in which an application shall be made; and
 - c) where there are further steps to be taken consequent to any such application, explain the steps or refer the employee to the provisions of a document which is accessible to the employee which explains the steps.
- “Judicial Officer” is defined under **article 260** of the **Constitution** to mean: ***a Registrar, Deputy Registrar, Magistrate, Kadhi or the Presiding Officer of a Court established under Article 169(1)(d) of the Constitution.***
- “Judicial Staff” is defined under **section 2** of the **Judicial Service Act** to mean: ***persons employed in the Judiciary but without power to make judicial decisions, and includes the staff of the Commission;***
- The mandate to receive complaints against, investigate and remove from office or otherwise discipline Registrars, Magistrates, other Judicial Officers and other staff of the Judiciary is given to the Judicial Service Commission (JSC). (**see article 172(1)(c)** as read with **section 32** and the **Third Schedule of the Judicial Service Act**). In carrying out the said mandate, the JSC is governed by **Section D** of the **Judiciary Human Resource Policies and Procedures Manual 2014**.
- In the case of **Karani v Judicial Service Commission (Petition 3 of 2021) [2022] KESC 37 (KLR) (8 July 2022) (Judgment)**, the Supreme Court (MK Ibrahim, SC Wanjala, NS Ndungu, I Lenaola & W Ouko, SCJJ) affirmed its decision in the case of **Gladys Boss Shollei Vs. Judicial Service Commission & Another [2022] eKLR** where it outlined the principles to guide the Courts in considering matters concerning disciplinary proceedings before the JSC:
 1. The JSC shall comply with the procedure set out in article 47 of the and the Fair Administrative Actions Act.
 2. The JSC shall always give an employee reasonable time to defend himself or herself.
 3. An employee had to be informed the basis of complaint(s) or who his or her accusers to enable the employee defend themselves.
 4. The JSC shall furnish an employee with details of allegations against him or her.
 5. The JSC must always be clear from the start whether the administrative action against an employee was of an investigatory nature or of a disciplinary nature. Should an investigatory process turn into a disciplinary one, an employee must be accorded fresh notice to prepare his/her defence.
 6. An employee should be accorded a public hearing if he/she desired to have one. A decision to decline such a request had to be accompanied with reasons which should be given to the employee.
 7. An employee shall be given detailed reasons for any administrative action/decision by the JSC. An employee should access and receive any relevant documents relating to his/her matter. Any decision to the contrary had to be accompanied by a written reason.
 8. An employee shall be accorded opportunity to attend proceedings, in person or in the company of an expert of his/her choice.
 9. An employee undergoing disciplinary proceedings shall be given an opportunity to call witnesses, be heard; cross examine witnesses; and request for an adjournment of the proceedings upon providing good reasons and where necessary to ensure a fair hearing.