



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS CIVIL CAUSE NO. 131 OF 2011**

**IN THE MATTER OF: AN APPLICATION BY DR. PIUS WANJALA (“The Ex Parte Applicant”) FOR LEAVE TO APPLY FOR**

**JUDICIAL REVIEW FOR THE ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

**AND**

**IN THE MATTER OF: THE DECISION BY THE RESPONDENT TO INTERDICT THE EX PARTE APPLICANT FROM THE**

**FUNCTIONS OF HIS OFFICE ON 4<sup>TH</sup> MAY, 2011**

**AND**

**IN THE MATTER OF: THE SERVICE COMMISSIONS ACT (CAP. 185), LAWS OF KENYA**

**AND**

**IN THE MATTER OF: THE PUBLIC SERVICE COMMISSION REGULATIONS, 2005**

**AND**

**IN THE MATTER OF: THE CIVIL SERVICE CODE OF REGULATIONS, 2006**

**BETWEEN**

**REPUBLIC.....APPLICAN  
T**

**VERSUS**

**THE PERMANENT SECRETARY, MINISTRY OF MEDICAL SERVICES.....RESPONDENT**

**EX PARTE**

**JUDGMENT**

By an application dated 2<sup>nd</sup> June, 2011 **Dr. Pius Wanjala**, hereinafter referred to as “**the applicant**”, sought the following orders:

**“1. That this court be pleased to issue an order of certiorari to have the decision of the Permanent Secretary in the Ministry of Medical Services on 4<sup>th</sup> may, 2011 interdicting the ex parte applicant from his functions at the National Quality Control Laboratory removed into the High Court for purposes of its being quashed.**

**2. That this court be pleased to issue an order of mandamus to compel the 2<sup>nd</sup> respondent to release to the ex parte applicant the findings of the committee appointed to look into the disciplinary allocations contained in the 2<sup>nd</sup> respondent’s notice of 22<sup>nd</sup> June, 2010 and which conducted its session on 10<sup>th</sup> November, 2010 and such other date.**

**3. That this court be pleased to issue an order of mandamus to compel the respondent to reinstate the ex parte applicant forthwith to his office and to perform his functions at the National Quality Control Laboratory at full pay.**

**4. That this court be pleased to issue an order of prohibition against the 2<sup>nd</sup> respondent prohibiting the 2<sup>nd</sup> respondent from acting contrary to the Public Service Regulations 2005, 2006 Revised Code of Regulations and the circulars issued by the Head of Public Service from time to time.**

**5. That the costs of this application be provided for.”**

The application was supported by a statutory statement and a verifying affidavit sworn by the applicant. The verifying affidavit does not set out all the facts and the law relied upon by the applicant in bringing the application. The applicant merely stated that he had read the statement accompanying the Notice of Motion and perused all the documents attached thereto, which are all marked as exhibit “**PW1**” and believed that the same are true to the best of his knowledge and information. That notwithstanding, the applicant filed a further affidavit shortly before the respondent filed her replying affidavit. In the further affidavit the applicant made reference to some of the documents cited in his statutory statement.

The facts relied upon by the applicant in seeking the aforesaid prayers may be summarized as follows.

The applicant is a qualified and registered pharmacist pursuant to the provisions of **Sections 7 and 8** of

the **Pharmacy and Poisons Board Act**. He is a public servant working at the Pharmacy and Poisons Board. The Pharmacy and Poisons Board is established under the **Pharmacy and Poisons Board Act** to regulate and control the profession of pharmacy and the trade in drugs and poisons. Sometimes in the month of May 2009 the applicant and one **Dr. Hezekiah Chepkwony**, while on official assignment to the Coastal region, impounded containers of counterfeit medicines belonging to Dawa Pharmaceuticals from China and which had official import permit from Pharmacy and Poisons Board. In or around February 2010 the then Permanent Secretary in the Ministry of Medical Services, **Prof. J.O. Kiyiapi**, invited the Efficiency Monitoring Unit (**EMU**) to investigate suspected acts of corruption, including suspected importation of counterfeit medicines at the Pharmacy and Poisons Board. The applicant was identified by EMU as a whistle blower who would be key to assisting fulfill the mandate that had been placed upon it by the Permanent Secretary.

The identification of the applicant as a whistle blower was in line with **Circular OP/CAB.2/7A** of 8<sup>th</sup> February, 2010 Resolution Number 7 by the Permanent Secretary and the Head of Public Service worded **“recognize, reward and protect whistle blowers, anti-corruption reformers and officers of integrity”**.

On 25<sup>th</sup> March, 2010 the applicant was physically assaulted by a colleague for having written a memo to the Registrar of the Pharmacy and Poisons Board in which he had stated that there was rampant corruption within the office and felt that measures were required to be put in place to fight the same. On or about 18<sup>th</sup> June, 2010 **Professor J.O. Kiyiapi** was transferred from the Ministry of Medical Services and was replaced by **Miss Mary Ngari** as the Permanent Secretary. Following the said transfer, by a letter dated 2<sup>nd</sup> June, 2010 the applicant was transferred from the Pharmacy and Poisons Board. Several charges had been laid against him. The applicant was further required to show cause why he should not be dismissed from the public service on grounds of insubordination and misuse of office. The charges that had been laid against him included the following:

- (i) That on 28<sup>th</sup> April, 2010 the applicant had insulted the Chairman of the Kenya Pharmaceutical Distributors Association.**
- (ii) That in mid November 2009 a Director of Ripple Pharmaceutical Company had complained that he had applied for an import authorization permit on behalf of the Nairobi Hospital which the applicant denied to authorize unless he was given some inducement.**
- (iii) That in a memo to the Registrar dated 15<sup>th</sup> February 2010 and 12<sup>th</sup> March 2010 the applicant had given unfounded allegations against his colleagues and issued threats to the Registrar.**
- (iv) That on 10<sup>th</sup> February, 2010 the applicant approved the importation of 10mgs of Nisoldipine with a short expiry period contrary to the Pharmacy And Poisons Board donation guidelines and government policy.**
- (v) That on 10<sup>th</sup> March, 2009 the applicant approved the importation of Omoso CCAC60, a wood preservative which was not a registered product for use in the country.**

The applicant made a detailed response to the said charges on 28<sup>th</sup> June, 2010 within the stipulated period of 14 days. That notwithstanding, there was general unwillingness on the part of the respondent and/or concerned officers to conclude or expedite the disciplinary case, the applicant stated. The applicant further stated that under the provisions of **Service Commissions Act, Public Service Commission Discipline Manual of 2008** and Circulars in relation thereto the procedure that ought to be followed in his case entailed the following steps:

**Step 1 – carry out preliminary investigations and consultation as to the circumstances surrounding the act of misconduct.**

**Step 2 – issue the officer with a statement of alleged offences and the charges framed against him and invite him to state in writing, within a specified period, the grounds, if any and which he relies to exculpate himself. The case is then presented to the Ministerial Human Resource Advisory Committee for deliberation and recommendation.**

The Committee stated hereinabove is required to complete investigations within one month.

The applicant lamented that despite the seriousness of the charges preferred against him the respondent refused, failed and/or otherwise neglected to constitute the relevant Committee as required under the disciplinary procedure despite numerous correspondences from himself. The applicant had to appeal to the Public Service Commission before a Committee was constituted. While the Committee was appointed on 9<sup>th</sup> September, 2010 with the express mandate to urgently conduct investigations within two weeks from the date thereof it was not until two months later on 10<sup>th</sup> November, 2010 after the applicant appealed to the Head of Public Service that Committee heard him. However, it refused to grant him an opportunity to be represented by an advocate of his own choice.

The applicant wrote to the committee to inform him of his findings but they did not do so. A similar demand from the applicant's advocate did not elicit any response.

The applicant further lamented that he had been subjected to acts of victimization including unlawful withholding of his salary for two months between August 2010 and September 2010 as well as backdating of important correspondence by the Registrar of Pharmacy and Poisons Board aimed at justifying adverse action being taken against him.

In view of all the foregoing, the applicant wrote to the respondent on 12<sup>th</sup> March, 2011 and the respondent responded vide a letter dated 20<sup>th</sup> April, 2011 in which she informed the applicant that in the event that he felt there was corruption at the Pharmacy and Poisons Board he was at liberty to report the same to the Kenya Anti-Corruption Commission and record a statement with the Criminal Investigation Department.

The applicant decided to forward his complaints to the Kenya National Commission on Human Rights. He also reported the issues of corruption to the Kenya Anti-Corruption Commission. The Kenya Anti-Corruption Commission conducted investigations and recommended specific actions to be implemented at the Pharmacy and Poisons Board by both the Permanent Secretary and the Minister for Medical Services.

Following the sustained silence from the respondent the applicant sought an appointment with the Secretary to the Public Service Commission on 3<sup>rd</sup> March, 2011 and requested the Commission to take over his pending case since the Ministry had failed to conclude the same. However, on 4<sup>th</sup> May, 2011 the applicant received the respondent's letter dated 20<sup>th</sup> April, 2011 informing him of his interdiction on grounds that:

**“1. The applicant in his letter dated 12<sup>th</sup> April, 2011 stated that the office of the respondent was protecting and receptive of corrupt individuals.**

**2. That the applicant had indicated that EMU had been compromised on issues relating to his employment.**

**3. That on Friday 8<sup>th</sup> April, 2011 the applicant was on record via undisclosed telephone conversation as having said of the Permanent Secretary that she was “useless and corrupt and would soon be embarrassed”.**

The applicant stated that the decision to interdict him before the conclusion and/or disclosure of the findings regarding the charges of 22<sup>nd</sup> June, 2010 which were deliberated upon on 10<sup>th</sup> November, 2010 manifested procedural unfairness.

**Ms Mary Ngari**, Permanent Secretary in the Ministry of Medical Services, filed a replying affidavit. She stated, *inter alia*, that on diverse dates in 2009 and 2010 her office received various complaints against the applicant including those of abuse of office and insubordination. As a result her office wrote a letter dated 22<sup>nd</sup> June, 2010 to the applicant asking him to show cause why disciplinary action could not be taken against him. Again following the applicant's absence from duty, by a letter dated 8<sup>th</sup> August, 2010 her office issued a notice to show cause against the applicant. The explanations tendered by the applicant were unsatisfactory and by a memo dated 9<sup>th</sup> of September, 2010 a Committee was appointed to investigate into the applicant's conduct and make recommendations, the deponent stated.

The Committee submitted its report on 10<sup>th</sup> of November, 2010. The Committee's recommendations were as follows:

**“1. Dr. Wanjala's over correspondences undermined the due process followed in handling disciplinary cases. He therefore deserves a stern warning.**

**2. He wishes to continue working in PPB, however he has worked for 11 years in the same station, but his actions depict him unsuitable and should be deployed elsewhere.**

3. **Dr. Wanjala's absence/sickness in 2007 for a period of 24 days is supported by sick sheets. However, he should be reminded to read the C.O.R. since he expressed ignorance of the same.**

4. **Having perused through all correspondences we recommend KACC and other arms of the government to undertake further investigations on Dr. Wanjala and Pharmacy and Poisons Board to ascertain the allegations."**

The Committee's report was tabled before the Ministerial Human Resource Management Advisory Committee which deliberated on the issue on 23<sup>rd</sup> February, 2011. The Advisory Committee noted that the allegations tabled against the applicant were true and made several recommendations. The Permanent Secretary approved the recommendations as tabled by the Committee after scrutiny on 6<sup>th</sup> of April, 2011 for implementation by Human Resource Department. The Advisory Committee recommended that the applicant be served with a stern warning and be referred to the Chief Counselor for counselling. They further recommended that the Chief Counsellor's findings be tabled in the Committee within two months.

The Permanent Secretary further stated that while the process of implementation of the Advisory Committee's recommendations were being effected, the applicant continued to commit acts of insubordination by resulting to unsolicited correspondences with her office and other Government Agencies. She therefore interdicted the applicant on the basis of powers given to her as the authorized officer under the Public Service Commission Code of Regulations.

The respondent added that in interdicting the applicant her office took the necessary measures and followed the right procedures. The applicant was then given an opportunity to show cause why he should not be dismissed from service but he did not abide by the requirements set out under the Public Service Commission Code of Regulations on Disciplinary Proceedings. Instead he opted to commence these proceedings in court.

The deponent added that the issues that were raised by the applicant against her are defamatory in nature and as such must be repudiated as per the provisions of **Section 39** of the **2006 Revised Code of Regulations**. She therefore urged the court to allow the disciplinary proceedings to take place in the interests of justice.

I have carefully considered the submissions that were filed by counsel for the parties herein. From the contents of the parties' affidavits it is apparent that the applicant's interdiction vide the respondent's letter dated 4<sup>th</sup> May, 2011 was triggered by the applicant's letter to the Permanent Secretary dated 12<sup>th</sup> March, 2011, although in the interdiction letter the date of the applicant's letter was cited as 12<sup>th</sup> April, 2011. In the applicant's letter of 12<sup>th</sup> March, 2011 he made reference to serious issues of corruption in the Ministry of Medical Services which had been subject of investigations for some time. The applicant stated, *inter alia*:

**“As the most qualified pharmaceutical regulation officer in the Ministry, I have submitted sufficient documentary evidence of official importation of counterfeit medicines to your office but no apparent action has been taken.**

.....

**My respectful conclusion, which is factual, is that your office is protective and receptive to corrupt individuals within pharmacy department, including sanctioning of illegal activities even after being advised otherwise. At the same time, it is hostile to diligent officers within the department.”**

In his further affidavit, the applicant annexed the finding of the EMU which confirmed existence of corruption in the Pharmacy and Poisons Board and made various recommendations to check the situation. The applicant further complained about the delay in conclusion of disciplinary charges that had been recommended against him.

In respect of the prayer for an order of mandamus to compel the respondent to release to the applicant the findings of the Committee that was appointed to look into the disciplinary allegations made against the applicant, the same held its meetings on 10<sup>th</sup> of November and finished its work on 30<sup>th</sup> November, 2010 or thereabout. That is as per annexure “MN5” in the respondent’s affidavit. I have already summarized the Committee’s recommendations.

It is important to note that the Committee, having perused all the relevant correspondences relating to the issue of alleged corruption in the Ministry, recommended that KACC and other arms of the Government do undertake further investigations on the applicant and the Pharmacy and Poisons Board. Those recommendations were subsequently reviewed by Human Resource Advisory Committee in a meeting held on 23<sup>rd</sup> February, 2011.

However, it appears that the contents of the applicant’s letter of 12<sup>th</sup> March, 2011 to the Permanent Secretary was the last straw that broke the camel’s back. The Permanent Secretary was not amused by the allegations of corruption made against her office by the applicant, whether they had any basis or not. The Permanent Secretary instructed a Mr. A.A. Nyanchoga to write the impugned interdiction letter.

The Permanent Secretary stated in paragraph 12 of her replying affidavit that she decided to interdict the applicant pursuant to powers given to her as the authorized officer under the Public Service Commission Code of Regulations on the ground of gross misconduct and indiscipline. The powers delegated to authorized officers include the power to interdict any public officer under **Regulation 23** of the **Public Service Commission Regulations**. That regulation provides as hereunder:

**“23(1) If in any case an authorized officer is satisfied that the public interest requires that a public officer should cease office to exercise the powers and functions of his public office, he may**

**interdict the public officer from the exercise of those powers and functions, provided proceedings which may lead to his dismissal are being taken or are about to be taken or that criminal proceedings are being instituted against him.”**

The question that must be determined is whether the applicant’s interdiction was necessary in the **“public interest”** or whether the respondent acted subjectively. It is also necessary to determine whether at the time of the applicant’s interdiction there were any proceedings which could have led to his dismissal being undertaken or about to be taken.

The Human Resource Advisory Committee had made three observations and made a similar number of recommendations as hereunder:

#### **“COMMITTEE’S OBSERVATIONS**

- 1. That Dr. Wanjala undermined the due process of handling discipline cases as observed through his numerous correspondences.**
  
- 2. He has served at the PPB for 11 years and should therefore be considered for transfer to another station.**
  
- 3. He failed to respond to official correspondence concerning absence in 2007.**

#### **COMMITTEE’S RECOMMENDATIONS**

- 1. The officer be served with stern warning.**
  
- 2. The officer be referred to the Chief Counsellor for counselling.**
  
- 3. The Chief Counsellor’s findings to be tabled in the Committee within two months.”**

Those recommendations were made on 5<sup>th</sup> April, 2011 and the interdiction letter is dated 4<sup>th</sup> May, 2011.

In my view, the respondent did not demonstrate that the applicant required to be interdicted in the “**public interest**”. It is evident that the reasons for the interdiction were the allegations of corruption that had been made by the applicant against the respondent’s office.

Secondly, as at 4<sup>th</sup> May, 2011 when the applicant was interdicted there were no proceedings which could have led to his dismissal which were being undertaken or were about to be taken and neither were there any criminal proceedings being instituted against him. It follows therefore that the basis of the applicant’s interdiction was contra statute.

The applicant sought an order of mandamus to compel the respondent to release to him the findings of the Committee appointed to look into the disciplinary allegations which conducted its session on 10<sup>th</sup> November, 2010 because as at the date of commencing these proceedings, that is, 26<sup>th</sup> May 2011, the applicant had not been made aware of the Committee’s findings. The respondent had breached the express provisions of **Regulation 32** of the **Public Service Commission Regulations, 2005** which state that:

**“Where proceedings have been taken against a public officer under this Act, he shall be informed by the authorized officer –**

- (a) of the findings on each charge which has been preferred against him;**
- (b) of the punishment, if any, to be inflicted upon him; and**
- (c) that an appeal may be lodged within forty two days from the conclusion of such proceedings:**

**Provided that failure to communicate such right of appeal shall not invalidate the said findings or punishment.”**

The respondent did not deny that she had not informed the applicant of the Committee’s findings prior to commencement of these proceedings. The respondent had earlier denied vide a letter dated 20<sup>th</sup> April, 2011 that she had received the findings of the Committee. Although **Regulation 32** does not stipulate the specific time within which a public officer ought to be informed of such findings, **Section 58** of the **Interpretation and General Provisions Act** states that:

**“Where no time is prescribed or allowed within which anything shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.”**

The respondent should have notified the applicant of the Committee’s findings without unreasonable delay but she did not notify him at all.

From the foregoing, it appears to me that the decision to interdict the ex parte applicant was actuated by malice, bad faith and personal vendetta. The interdiction was not based on the recommendations of the Committee made on 30<sup>th</sup> November, 2010. Furthermore the respondent constituted herself a judge in her own cause and equity frowns upon such conduct.

To the extent that the interdiction was contrary to the provisions of **Regulation 32** of the **Public Service Commission Regulations, 2005**, the same was unprocedural, unreasonable and amounted to abuse of discretion. In **ASSOCIATED PROVINCIAL PICTURE LIMITED vs. WEDNESBURY CORPORATION [1947] 2 All ER 680**, it was held:

**“... a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from consideration matters which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting ‘unreasonably’.”**

In **REPUBLIC vs. COMMISSIONER OF CO-OPERATIVES, ex parte KIRINYAGA TEA GROWERS CO-OPERATIVE SAVINGS AND CREDIT SOCIETY LIMITED [1999] 1 EA 245** at **page 249**, the Court of Appeal stated:

**“...it is axiomatic that statutory powers can only be exercised validly if they are exercised reasonably. No statute ever allows anyone on whom it confers a power to exercise such power arbitrarily, capriciously or in bad faith....”**

In addition, the rules of natural justice demand that a party should never be condemned unheard. This is a well known principle in administrative law, see **RIDGE vs. BALDWIN [1963] 2 All ER 66**. The respondent did not give any opportunity to the applicant to respond to the allegations contained in the interdiction letter before she took the disciplinary action against him.

**Article 10** of the **Constitution of Kenya, 2010** stipulates national values and principles of governance that bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution, enacts, applies or interprets any law or makes or implements public policy decisions. These national values and principles include the rule of law, equity, social justice, good governance, integrity, transparency and accountability. The respondent’s act of interdicting the applicant in a manner that was contrary to the Public Service Commission Regulations and apparently for alleging that there was corruption in the Pharmacy and Poisons Board and in the respondent’s office did not demonstrate the aforesaid values.

Further, **Article 236** of the **Constitution of Kenya** provides for protection of public officers in the exercise of their public duties. It provides as follows:

**“236. A public officer shall not be –**

**(a) victimized or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or**

**(b) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”**

While the court cannot condone indiscipline in public service, it must also defend public officers who may be unduly victimized by their superiors because of acting as whistle blowers against corruption in their places of work.

Transparency demands that if a public officer makes allegations of corruption against his superiors those allegations be thoroughly investigated and appropriate action taken, depending on the outcome of the investigations. It would be unconstitutional to subject a public officer to disciplinary action simply because he made allegations of corruption against his senior without first carrying out appropriate investigations. The report on Management Systems Audit of Pharmacy and Poisons Board by the Efficiency Monitoring Unit compiled in March 2011 seems to have given credence to some of the allegations of corruption that had been cited by the applicant.

In the respondent’s letter to the applicant dated 20<sup>th</sup> April, 2011 the respondent stated, *inter alia*:

**“These being serious allegations against public officer/agencies you should go ahead and record a statement with Kenya Anti-Corruption Commission (KACC). In addition you should urgently contact the Criminal Investigation Department (CID) and also record a statement on the issue of counterfeit drugs that you allege are being imported into the country.”**

Having advised the applicant to take the aforesaid actions the respondent ought to have waited for the outcome of the investigations before taking any disciplinary action against the applicant.

The respondent justified her decision to interdict the applicant on what she termed as “defamatory allegations” contained in his letter of 12<sup>th</sup> March, 2011 by citing the provisions of **Regulation G39** of the **Code of Regulations** but I do not think that regulation could justify her action. The regulation states:

**“G39 (1) Where an officer has been defamed in matters**

**arising out of his official position, e.g. in the press or at a political meeting, it may be that the Government is also defamed by implication, and may, therefore, agree to give legal aid to the officer. Where such a case occurs, the officer should apply for legal aid through the Permanent Secretary/Head of Department to the Attorney General. Legal aid will not be granted unless:**

- (i) the Government has substantial interest in seeing the defamatory statement is repudiated;  
and
- (ii) there is, in the opinion of the Attorney General, good prospect of success in the action.

(2) The consent of the Attorney General must be obtained before proceedings are commenced. A private advocate and not a State Counsel, will normally be employed, and the Attorney General will select, in consultation with the officer, the advocate or firm of advocates, to be employed....”

That regulation recognizes that issues of defamation against a public officer may not be competently dealt with by Public Service Commission Disciplinary Processes and permits public officers who have been defamed to take legal action through a court of law. The regulation does not empower a public officer who believes that he has been defamed by his or her junior to take a disciplinary action of interdicting that junior officer.

In her submissions, the respondent through **Ms Mbilo, Litigation Counsel**, told the court that the orders sought by the applicant cannot be granted because the issues in question arise from an employer/employee relationship and therefore judicial review remedies are not applicable. She cited, *inter alia*, this court’s decision in **R vs. KENYA WILDLIFE SERVICE ex parte JOACHIM W. KAGIRI [2011] eKLR**, where the court held:

“.....the ex parte applicant is still an employee of the

respondent. The respondent is yet to carry out full investigations into the issues that may have caused the ex parte applicant’s interdiction. Interdiction of an employee for purposes of carrying out investigations relating to issues that touch on such an employee is a normal practice in any institution. It is doubtful whether it can be the basis of court intervention by way of judicial review orders except where it is sufficiently demonstrated that the interdiction is contra statute.”

In the same case the court had referred to the well known case of **R vs. EAST BERSHIRE HEALTH AUTHORITY ex parte WALSH [1984] 3 ER 425**, where it was held that:

“Whether a dismissal from employment by a public authority was subject to public law remedies depended on whether there were special statutory restrictions on dismissal which underpinned the employee’s position and not on the fact of employment by a public authority per se or the employee’s ability or the interests of the public in the functions of the authority. Where the authority was required by a statute to contract with its employees on specified terms with a view to employees acquiring private law rights a breach of contract was not a matter of public law and did not give rise to any administrative law remedies, it was only if the authority failed or refused to contract on specified terms that the employee had public law rights to compel the authority to comply with its statutory obligations.”

In **R v KENYA WILDLIFE SERVICE (Supra)** the ex parte applicant had been properly interdicted. Secondly, his employment was purely governed by a private contract of employment between him and his employer.

The applicant in this case is not an employee of the respondent. He is a public officer employed by the Government of the Republic of Kenya through the Public Service Commission. Secondly, his employment and terms of service including disciplinary actions that may be taken against him have statutory underpinning. I have already referred to the **Public Service Commission Regulations** that were made pursuant to the provisions of **Section 13** of the **Service Commissions Act Cap 185 Laws of Kenya**. Where it is shown that a public servant has been disciplined outside the express provisions of statute and contrary to the rules of natural justice the court can intervene by issuing appropriate judicial review orders. This is one such case.

In view of the foregoing, I am satisfied that the orders of certiorari, mandamus and prohibition sought by the applicant in his application dated 2<sup>nd</sup> June, 2011 are well merited and hereby grant the same as prayed. The respondent shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF OCTOBER, 2011.**

**D. MUSINGA**  
**JUDGE**

**In the presence of:**

**Muriithi – Court Clerk**

**Mr. Echesa Werimo for Mr. Njuguna for the Applicant**

**Mr. Kuria for Miss Mbilo for the Respondent**