



Loporna v Kapenguria Water and Sewerage Services Limited (Petition E010 of 2024) [2025] KEELRC 2680 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2680 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
PETITION E010 OF 2024**

MA ONYANGO, J

SEPTEMBER 25, 2025

**IN THE MATTER OF THE CONSTITUTION OF
KENYA, 2010, ARTICLES 2(1), 3(1), 10, 19, 20, 21, 23,
27(1), 41(1), 47, 50(1), 162(2), 253 & 258**

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT, NO. 4 OF 2015

AND

IN THE MATTER OF THE EMPLOYMENT ACT NO. 11 OF 2007

AND

IN THE MATTER OF THE INDUSTRIAL COURT NO. 20 OF 2021

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE CONSTITUTION OF
KENYA, 2010, THE EMPLOYMENT ACT AND THE PROVISIONS OF THE LAW**

BETWEEN

JAMES LOPORNA PETITIONER

AND

**KAPENGURIA WATER AND SEWERAGE SERVICES
LIMITED RESPONDENT**

JUDGMENT

1. The Petitioner herein filed the instant Petition dated 13th December 2024 seeking the following orders: -



- a. A declaration that the interdiction against the Petitioner by the Respondent via the letter dated 5th December 2024 was unconstitutional, illegal and an outright violation of the Petitioner's right to fair labour practices and fair administrative actions.
 - b. An order of judicial review in the manner of certiorari is issued forthwith to bring to this court the decision communicated by the letter dated 5th December 2024 by the Respondent to interdict the Petitioner and for the same to be quashed forthwith
 - c. An order of judicial review like prohibition is issued against the Respondent, restraining its board of directors from undertaking further disciplinary proceedings against the petitioner through a process in violation of fair administrative action and without due process being accorded to the Petitioner
 - d. Conservatory orders staying the taking of any further disciplinary procedure against the Petitioner while pending the hearing of the Petition.
 - e. An order be issued that the Respondent furnish the petitioner with the proceedings and decisions of the investigation panel, as well as the statements of all witnesses and documents presented in the case that culminated in his interdiction.
 - f. That any salaries and allowances that may be withheld by reason of the offensive interdiction be released to the Petitioner
 - g. In the alternative, the Petitioner be paid his salary for the remaining term of his unserved contract
 - h. Damages/Compensation for the wrongful interdiction
 - i. Costs
 - j. Interests
 - k. Any other relief that the court may deem fit to grant.
2. The Petition is supported by the affidavit sworn by the Petitioner on 13th December 2024 wherein he deposes that he was appointed as the Respondent's Managing Director on 25th January 2024 for a period of three years with effect from 1st February 2024.
 3. The Petitioner asserts that upon his appointment, he executed his duties with diligence and integrity until on 22nd October 2024 when he received a letter from the Chairperson of the Respondent's Board of Directors, Dr. Nelly C. Andiema, sending him on administrative leave for a period of 30 days.
 4. He asserts that he proceeded on the said leave and on 5th December 2024 when he was to resume work, he received an interdiction letter from the Respondent.
 5. It is the Petitioner's case that the letter interdicting him also invited him to submit a formal response to the charges in the letter of interdiction within 21 days from the date of receipt, which charges according to the Petitioner, were general allegations which bore no particulars to enable him respond to the same.
 6. The Petitioner contends that the letter of interdiction stated that the interdiction was intended to pave way for investigations, yet the Petitioner was the same time required to respond to the charges before the investigations were carried out.
 7. According to the Petitioner, the Respondent already assumed that he was guilty even before investigations were carried out and before he was called upon to defend himself.



8. The Petitioner also avers that before the interdiction notice, the petitioner was never served with any notice to show cause why he should not be interdicted.

The Respondents' case

9. In response to the Petition, the Respondent filed a Replying Affidavit sworn by Dr. Nelly C. Andieme, its Chairperson on 11th April 2025. Dr. Andieme deposes that upon the Petitioner's appointment as the Respondent's Director, the Petitioner was placed on probation, which he duly served, and was due for confirmation subject to satisfactory performance, in accordance with the terms of his letter of appointment.
10. The Respondent contends that information and allegations of a confidential nature were brought to the attention of the Board alleging that between April 2024 and October 2024, the Petitioner was involved in certain financial improprieties impacting his integrity and performance.
11. The Respondent maintains that during a Board meeting held on 22nd October 2024, a decision was made to place the Petitioner on administrative leave and interdiction to facilitate investigations into the allegations against him.
12. The Respondent asserts that the stay orders issued against it pursuant to an application in court by the Petitioner upon his interdiction has paralyzed its internal disciplinary process. It therefore seeks that such orders be lifted to enable the Board to lawfully address this matter, given the serious financial implications for the company.
13. The Respondent avers that it is of utmost importance for the Board to carry out the internal disciplinary process to its logical conclusion.
14. The Respondent further contends that during the disciplinary proceedings, the Petitioner will be accorded all rights, including the right to view any evidence that may be incriminating and the right to be represented in accordance with the disciplinary procedures.
15. The Respondent affirms its commitment to ensuring that the Petitioner is afforded due process in accordance with the Company's Internal Policies and the Public Service Disciplinary Procedure. It further contends that any further delay in finalizing the disciplinary process causes injustice to the Petitioner and may jeopardize the investigations by allowing other suspected culprits to evade accountability.
16. The Respondent also asserts that no process has been initiated towards filling the position of Managing Director, as the office is not vacant.
17. The Petition was disposed of by way of written submissions. The Petitioner filed his submissions on 9th June 2025, whereas the Respondent filed its submissions on 24th June 2025

The Petitioner's submissions

18. The Petitioner's submissions were premised on the allegation that the Respondents did not adhere to the law in interdicting him.
19. He submitted that the Respondent's Human Resource and Procedure Manual contains no provision for administrative leave as was imposed upon him by the Board.
20. The Petitioner further contended that he was not invited to the Respondent's Board of Directors meeting held on 5th December 2024, during which a decision was made to interdict him. He also submitted that there is no evidence that a financial report or audit report was presented at that meeting.



In addition, the Petitioner argued that the Replying Affidavit filed by the Respondent in court makes no reference to any financial report.

21. The Petitioner argued that the interdiction violated Articles 41(1), 47(1) and (2), and Article 50 of *the Constitution*, as well as clear provisions of the *Fair Administrative Action Act* and the rules of natural justice. In support of this position, the Petitioner cited ELRC Petition No. 15 of 2017, Geoffrey K. Lukorito v. Teachers Service Commission.
22. The Petitioner submitted that he has established the grounds raised in the Petition and is therefore entitled to the reliefs sought. He further prayed that the interdiction be lifted, with an order that he be paid all salary and allowances withheld from 5th December 2024. Alternatively, the Petitioner contended that his appointment was for a period of three years, and having served only ten months, he should be paid salary for the remaining unserved period of twenty-six months.
23. The Petitioner also prayed for costs and interest.

The Respondent's submissions

24. On its part, the Respondent crystallized the issues for determination as follows:
 - i. Whether the interdiction was lawful; and
 - ii. Whether the interim conservatory orders dated 17th December 2024 should be lifted.
25. On the first issue, the Respondent contended that interdiction is a disciplinary process recognized under the Public Service Commission Manual. It is submitted that interdiction serves as an interim measure taken by employers to carry out investigations on alleged misconduct by an employee, where the employee should not remain in office while investigations are ongoing.
26. The Respondent submitted that upon receipt of information raising concerns over the Petitioner's conduct in the discharge of his official duties, the Respondent initiated an internal process aimed at establishing the truth and determining culpability.
27. It is the Respondent's submission that the Board of Directors convened a meeting on 22nd October 2024, at which it was unanimously resolved that, in the interest of a credible and impartial inquiry, the Petitioner be required to step aside by way of administrative leave.
28. The Respondent contends that as a result, the Petitioner was issued with an interdiction letter which marked the commencement of the disciplinary process, whereby the Petitioner was required to show cause why disciplinary action should not be taken against him by responding to the allegations.
29. According to the Respondent, the letter outlined the charges against him and informed him that he had 21 days to respond and exonerate himself after which an oral hearing would follow.
30. It is the Respondent's submission that the decision to interdict the Petitioner was not intended as punishment but as an administrative measure to facilitate the ongoing investigations without interference.
31. The Respondent reiterated that interdicting the Petitioner was an interim cautionary measure, subject to the outcome of investigations, and that further disciplinary action would proceed in accordance with the law. It is also submitted that any delay in salary disbursement was not intentional, and the Respondent, through the Chair of the Board, has since resolved to reinstate the Petitioner's full salary and reimburse any amounts previously withheld.



32. In light of the foregoing, the Respondent submitted that the interdiction of the Petitioner was lawful, procedural, and consistent with the Public Service Commission Manual and internal policy.
33. On the issue of whether the interim conservatory orders dated 17th December 2024 should be lifted, the Respondent submitted that, prior to the Court granting such orders, the disciplinary proceedings were still at an early stage, and the Petitioner had been accorded an opportunity to respond.
34. It is the Respondent's submission that the Petitioner prematurely moved to Court, in violation of the doctrine of exhaustion of internal remedies.
35. The Respondent has submitted that disciplinary action is an administrative function of the employer, and barring the employer from exercising this prerogative constitutes judicial overreach.
36. It is submitted that the allegations against the Petitioner relate to financial impropriety which, if substantiated, pose significant risks to public resources and institutional integrity. Accordingly, the Respondent avers that it is in the public interest that the disciplinary process proceed to its logical conclusion without undue interference.
37. In conclusion, the Respondent asserted that the interdiction of the Petitioner was lawful, substantively justified, and procedurally fair

DETERMINATION

38. I have considered the Petition dated 13th December 2024, the supporting affidavit, the Replying Affidavit by the Respondent, the rival written submissions and the authorities cited by both parties. The issues that arise for determination are:-
 - i. Whether the interdiction of the Petitioner was lawful, procedural and in accordance with the Constitution and relevant statutes.
 - ii. Whether the Petitioner has demonstrated violation of his constitutional rights under Articles 41, 47 and 50 of the Constitution.
 - iii. Whether the Petition was prematurely filed in light of the doctrine of exhaustion.
 - iv. Whether the Petitioner is entitled to the reliefs sought.

Whether the interdiction of the Petitioner was lawful, procedural and in accordance with the Constitution and relevant statutes.

39. It is common ground that the Petitioner was appointed as the Respondent's Managing Director on 25th January 2024 for a renewable term of three years, subject to probation and confirmation. It is also not in dispute that on 22nd October 2024, he was sent on "administrative leave" and later interdicted by letter dated 5th December 2024.
40. The central question is whether the process of interdiction met the requirements of fairness, legality and constitutional compliance.
41. Section 70 of the Public Service Commission Act, 2017 authorizes interdiction of a public officer where disciplinary or criminal proceedings are contemplated. Interdiction is recognized as a temporary, precautionary administrative measure, not a disciplinary sanction.
42. The interdiction letter issued to the Claimant is reproduced as hereunder:

5th December 2024



James Loporna
The Managing Director
Kapenguria Water and Sewerage Service Ltd
SUBJECT: NOTICE OF INTERDICTION

Dear sir,

Following the Board of Directors meeting of Kapenguria Water and Sewerage Service Ltd (KAWASES) held on 19th November 2024, the Board has resolved to interdict you from your position as Managing Director effective 5th December 2024. This decision follows the serious misconduct allegations outlined below:

1. Professional misconduct (insubordination to the Board and employees)
2. Conduct that contradicts the spirit of Chapter 6 of *the Constitution*
3. Forgery and fraud
4. Misappropriation, mismanagement and embezzlement of public funds
5. Underperformance in your roles as Managing Director
6. Employment of workers without the Board's knowledge and approval

In light of these allegations, the Board invites you to make a formal written response within 21 days from the date of this letter.

During your interdiction:

You are required to vacate your office and refrain from visiting the company premises or contacting any member of staff.

You will receive 50% of your salary for the duration of the interdiction.

You are requested to provide your contact address, email address, and telephone number.

Please take note that this action is being taken to allow the Board to thoroughly investigate the said allegations and ensure fairness.

Yours faithfully,

Signed

Dr. Nelly C. Andiema (PhD)

Chair- KEWASES Board of Directors

(On behalf of the Board of Directors)

43. The Petitioner's issues are that the Respondent's HR. Manual does not have provision for administrative leave, and that in the letter sending him on administrative leave the Petitioner was not informed about any investigations against him. Further, that the petitioner was not availed any financial or audit report alluded to. That the charges were generalized and without particulars.
44. At paragraph 9(c) of the Petitioner's submissions he poses the following questions:

The allegations in the interdiction letter are all very generalized, no particulars whatsoever have been given. No indication of what the petitioner did that amounted to professional



misconduct. When did that happen? What conduct on the part of the petitioner contradicted the provisions of article 6 of *the constitution*? What did the petitioner forge? What did he do that amounted to fraud? What did the petitioner do that amounted to misappropriation, mismanagement or embezzlement of public funds? In what ways did the petitioner underperform? Yet there had never been such an issue since he undertook his job in February 2024? When did the petitioner employ without the Boards approval? Incidentally it was his mandate to employ as per his job description.

45. Relying on the decision of Fredrick Saundu Amolo v The Principal Namanga Day Secondary School and TSC, the Petitioner submits that the Respondent did not comply with the principles set out in the case being:

First, the employer must have a justifiable reason to believe the employee has engaged in serious misconduct to form what is commonly called a prima facie case.

Secondly, there is justifiable reason to day the employee access to the work place based on the integrity of any pending investigations into the alleged misconduct, or some relevant factor that would place the investigation or the interests of the affected parties in jeopardy: and

Thirdly, the employee is given the opportunity to state his case or be heard, before any decision to interdict is made.

46. As has been stated time and again by the courts, the general rule is that the employer enjoys the prerogative to manage the workplace. This function, which includes the power to manage the human resource element at the workplace, is not to be interfered with except for cogent reasons. Consequently, courts of law are required to exercise restraint whilst deciding whether to intervene in the exercise of this function by an employer as to do otherwise will be tantamount to usurping the employer's mandate to manage the workplace.

- a. In the case of Ndinda v Ethics and Anti- Corruption Commission (Petition E209 of 2021) [2022] KEELRC 4088 (KLR) (4 April 2022) (Ruling) expressed itself as follows: -

“Courts have exercised restraint when called upon to intervene and stop disciplinary processes. In MTM v KIE Limited and another (2020) eKLR, the court ruled that courts will interfere with the internal disciplinary action only when the process is #awed and the interference will be to put on truck the disciplinary process but not do away with it altogether. In Kenya Airline Pilots Association v Kenya Airways PLC [2021] eKLR the court held that courts cannot intervene in the employer's internal disciplinary proceedings until they have run their course, except in exceptional circumstances where grave injustice might result or where justice might not be by other means attained.”

47. In the instant case I would agree with the Petitioner that the charges against him are not capable of response by him unless the particulars thereof are given to him. The way the charges are framed are too general as to be vague. For instance in the first charge the petitioner is accused of Professional misconduct (insubordination to the Board and employees). No particulars are given as to the incidents that are deemed to be insubordinate. Further the persons whom he is alleged to have unsubordinated are not named neither the actions which constituted the insubordination or the dates the same occurred. Further, the Petitioner being the CEO, he was not capable of insubordinating employees who are his juniors by the very definition of insubordination which means disobeying lawful orders from a person or persons placed in authority over an employee by his employer.



48. On the second charge no particulars are given of the “Conduct that contradicts the spirit of Chapter 6 of *the Constitution*”. Chapter 6 of *the Constitution* is very wide and without particulars it is impossible to respond to such a charge.
49. On the charge of “Forgery and fraud” the Petitioner can only respond if he knows the particulars. The same applies to the charges of misappropriation, mismanagement and embezzlement of public funds.
50. On the charges of underperformance in his roles as Managing Director there is no appraisal or performance assessment given to the Petitioner nor is mention made of any assessment having been carried out or any cases of underperformance having been brought to his attention.
51. Again, on the charge of employment of workers without the Board’s knowledge and approval, no particulars are given of the employees engaged without approval of the board.
52. The sheer number of charges against the Petitioner and the manner in which the whole process was handled raise serious doubts about the integrity of the process as to lead to a conclusion that the Petitioner was unlikely to be subjected to a fair hearing by the Respondent’s Board.
53. Accordingly, the Court finds that the interdiction was unlawful, procedurally unfair and inconsistent with the principles of natural justice.

Whether the Petitioner has demonstrated violation of his constitutional rights under Articles 41, 47 and 50 of *the Constitution*.

54. The Petitioner alleges violation of Articles 41(1), 47(1)(2) and 50 of *the Constitution*. The Petitioner argued that Articles 41, 47, and 50 were violated.
55. As already stated above, there is evidence of unlawful bias, arbitrariness, and denial of natural justice. The Respondent acted in violation of the Petitioner’s rights to fair administrative action and fair disciplinary process by charging him with multiple cases of misconduct without giving particulars of the charges to enable him respond to the charges. Again as already

Whether the Petition was prematurely filed in light of the doctrine of exhaustion.

56. The Respondent contended that the Petition was premature, as the disciplinary process had not yet run its course and the Petitioner ought to have allowed the internal mechanisms to conclude before seeking judicial intervention.
57. As was stated in the cases *Ndinda v Ethics and Anti- Corruption Commission*, *MTM v KIE Limited* and another and *Kenya Airline Pilots Association v Kenya Airways PLC* cited above, the court is mandated to interfere in disciplinary process where it is proved that the process is unlikely to lead to a fair outcome, as has been demonstrated by the Petitioner herein. In my view, judicial intervention at this stage is necessary in the circumstances of this case, to ensure that no injustice is allowed to be suffered meted out by the Respondent upon the Petitioner following the trajectory the disciplinary process has taken.
58. I am satisfied that the Petitioner has proved that the Respondent has violated his constitutional rights as stated in the petition. In the circumstances, the Petition is allowed, and the letter of interdiction issued to the Petitioner is hereby quashed.
59. The Respondent is at liberty to commence fresh disciplinary process against the Petitioner that is compliant with the law and his terms of engagement. The Chairperson of the Board having been the author of the letter that is the subject of the disciplinary process, she may have to recuse herself from



the process and allow a more objective panel to carry out the disciplinary process against the petitioner, if there are valid grounds for the same.

60. The Petitioner is entitled to all salary withheld consequential upon the interdiction letter.

61. In view of the nature of the relationship between the parties and the orders herein, each party shall bear its costs.

DATED, DELIVERED AND SIGNED THIS 25TH DAY OF SEPTEMBER, 2025.

M. ONYANGO

JUDGE

