



**Kiiru v Mpala Research Centre (Constitutional Petition E012 of 2025)
[2025] KEELRC 2966 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2966 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CONSTITUTIONAL PETITION E012 OF 2025**

L NDOLO, J

OCTOBER 30, 2025

**IN THE MATTER OF ARTICLES 2,3,10,19,20,21,22,23,25(C),27,28,41,47
AND 50 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTIONS 4,5,6,7,10,11 AND
12 OF THE FAIR ADMINISTRATIVE ACTION ACT**

AND

IN THE MATTER OF SECTIONS 41,43,45 AND 46 OF THE EMPLOYMENT ACT

BETWEEN

WINFRED WANGUI GICHOHI KIIRU PETITIONER

AND

MPALA RESEARCH CENTRE RESPONDENT

RULING

1. By her Petition dated 7th October 2025, the Petitioner challenges an internal disciplinary process, initiated against her by the Respondent. Contemporaneously with the Petition, the Petitioner filed a Notice of Motion under Certificate of Urgency, seeking interim relief. It is that application that is the subject of this ruling.
2. By the application the Petitioner seeks the following:
 - a. A conservatory order restraining the Respondent, its agents, servants, officers or any other person acting under its authority, from commencing, proceeding with, concluding, implementing, or in any manner acting upon the impugned disciplinary process or any outcome or consequence thereof, including suspension, termination, demotion, harassment, or victimisation, pending the hearing and determination of the Petition;



- b. An order directing the Respondent to restore the Petitioner’s access to all communication, IT systems and privileges of her office as Chief Executive Officer, pending determination of the Petition.
3. The application is supported by the Petitioner’s own affidavit and is premised on the following grounds:
 - a. The Petitioner is the Chief Executive Officer of the Respondent, duly employed under a contract dated 23rd November 2022, effective 1st February 2023 and renewed for 4 years on 2nd August 2024;
 - b. By a letter dated 5th June 2025, the Respondent suspended the Petitioner, on allegations of performance concerns and gross misconduct, without furnishing her with evidence or disclosing the investigation report;
 - c. The Petitioner has been denied the right to legal representation, witness attendance and access to documents and evidence intended to be relied upon by the Respondent, contrary to Articles 41, 47 and 50 of *the Constitution* and Section 41 of the *Employment Act*;
 - d. The disciplinary committee as presently constituted is improperly composed and biased, undermining the Petitioner’s right to a fair and impartial hearing;
 - e. The intended disciplinary process is procedurally flawed, substantially unfair and unconstitutional;
 - f. Constitutionally, an aggrieved employee is entitled to legal representation where:
 - i. The employee has been accused of criminal offences like in the present case;
 - ii. The employee has been suspended prior to disciplinary hearing;
 - iii. The employer is consulting legal counsel for the purpose of equality like in this case;
 - iv. The employee finds that there is violation of administrative process.
 - g. Unless restrained, the Respondent will proceed with the hearing thereby violating the Petitioner’s rights to fair administrative action, fair hearing, and fair labour practices;
 - h. The Petitioner stands to suffer irreparable harm, reputational injury, and loss of employment, if the disciplinary hearing proceeds before the Petition is heard and determined.
4. The Respondent opposes the application, by a replying affidavit sworn by the Chairman of the Respondent’s Board of Trustees, Dr. Aly Remtulla on 14th October 2025. He terms the Petitioner’s application as premature, with the intention of scuttling an ongoing disciplinary process.
5. Dr. Remtulla concedes that the Petitioner was placed on suspension for an initial period of 30 days, effective 5th June 2025. He asserts that the suspension was imposed in strict compliance with the Respondent’s Human Resources Policies, to pave way for investigations into the Petitioner’s conduct and suspected serious breaches of her employment contract.
6. It is deponed that the suspension was never intended as a sanction or punishment, but was to allow fair and impartial investigations into suspected gross misconduct by the Petitioner.
7. The Respondent terms the investigations as complex in nature, and points to possible interference and intimidation of witnesses by the Petitioner, owing to her position as the Head of the Institution. The



Respondent therefore maintains that it was not only necessary but imperative for the Petitioner to stay away during the investigations and subsequently during the disciplinary proceedings.

8. Dr. Remtulla states that on 2nd July 2025, he forwarded a copy of the draft investigation report to the Petitioner, with a request for her input by 7th July 2025. The forwarding letter also extended the Petitioner's suspension by another 30 days.
9. By return emails dated 3rd July 2025 and 7th July 2025, the Petitioner sought extension of timelines to 11th July 2025, which request was granted.
10. By an email dated 11th July 2025, the Petitioner asked for some documentation, which according to Dr. Remtulla was supplied on 15th July 2025 with a request to the Petitioner to review the documentation and respond by 22nd July 2025.
11. It is deponed that by 22nd July 2025, the Petitioner had not submitted her comments on the draft investigation report.
12. Dr. Remtulla states that due to the Petitioner's request for extension of time, coupled with demands made by her Advocates, it became necessary to extend the suspension period by a further 30 days, as the investigations had not been completed.
13. On 7th August 2025, the Petitioner submitted her comments on the draft investigation report, upon which she was issued with a show cause letter dated 21st August 2025, citing allegations of breach of procurement policies; breach of implied terms of honesty, fidelity, integrity and fiduciary duty; and financial mismanagement. Alongside the show cause letter, the Petitioner was supplied with a copy of the final investigation report dated 20th August 2025.
14. The Petitioner was required to respond to the show cause letter by 25th August 2025 but she sought extension of time until 27th August 2025, which was allowed. Upon further request for extension of time until 5th September 2025, the Petitioner was allowed only 3 days' extension to 31st August 2025. The Petitioner eventually responded to the show cause letter on 5th September 2025 and her suspension was extended for another 30 days.
15. By an email dated 26th September 2025, the Petitioner was invited to a disciplinary hearing on 2nd October 2025. The Petitioner was informed that the documents to be relied upon had been uploaded on a Google Folder and a link was provided.
16. On 29th September 2025, the Petitioner requested that the disciplinary hearing be rescheduled to 7th October 2025 or 8th October 2025, as she wished to be represented by Counsel, who would cross examine the witnesses based on statements provided. The Petitioner's Advocates wrote a letter dated 6th October 2025, confirming the Petitioner's demand to be represented by Counsel.
17. By an email dated 2nd October 2025, the Petitioner was informed that her request to be accompanied by Counsel at the disciplinary hearing had been declined.
18. The Respondent accuses the Petitioner of scuttling the disciplinary process, while continuing to receive full salary during the entire period of suspension.
19. Regarding the Petitioner's objection to the composition of the disciplinary committee, Dr. Remtulla depones that, in his capacity as the Petitioner's Line Manager, his attendance is required by the Respondent's policies and local best practice. In this regard, Dr. Remtulla acknowledges having investigated the matter but states that he needs to be present to listen to the Petitioner's defence and provide any clarifications that the disciplinary committee may require.



20. The Petitioner swore a further affidavit on 14th October 2025, in which she depones that the Respondent had notified her that Dr. Ally Kassam-Remtulla and Kevin Licciardi, who were directly involved in the investigations leading to the allegations levelled against her, would be present throughout the disciplinary proceedings, in their capacities as the Petitioner’s Line Manager, and Respondent’s Legal Counsel.
21. The Petitioner further states that the exclusion of her Counsel from the disciplinary proceedings was in violation of her rights under Articles 41, 47 and 50(2)(g) of *the Constitution*, as well as Section 4(5) of the *Fair Administrative Action Act*.
22. In addition to filing written submissions, the parties urged their respective positions orally before me. The Petitioner’s case is that the disciplinary proceedings initiated against her, are marred with serious procedural and substantive breaches, to her detriment. On its part, the Respondent accuses the Petitioner of scuttling the disciplinary proceedings.
23. The orders sought by the Petitioner fall within the province of interlocutory injunctions, and the conditions under which such orders may be granted were set in *Giella v Cassman Brown Co. Ltd* [1973] EA 358 as follows:
 - a. That the applicant has established a prima facie case with a probability of success;
 - b. That if the orders sought are not granted, the applicant stands to suffer irreparable harm, which cannot be compensated by an award of damages; and
 - c. If the court is in doubt, it will determine the application on the balance of convenience.
24. A prima facie case was defined by the Court of Appeal in *Mrao v First American Bank Kenya Limited & 2 others* [2003] KLR, 123 in the following terms:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
25. I am fully aware of the general principle that courts ought not to interfere with internal disciplinary proceedings at the workplace, save in exceptional cases where there is imminent injustice through an irregular process that is stage- managed to achieve an unlawful disciplinary action.
26. In *Ann Wambui Kamuiru v Kenya Airways Limited* [2016] eKLR it was held that:

“...courts on their part will not interfere with proper internal disciplinary processes unless the court is satisfied that the process is marred with irregularities or it is stage managed towards dismissal.”
27. A similar conclusion was drawn in *Fredrick Saundu Amolo v Principal Namanga Secondary School & 2 others* [2014] eKLR where it was held that courts ought to allow internal disciplinary processes to run their full course, except in cases where grave injustice might result.
28. In *Mulwa Msanifu v Kenya Airways* [2013] eKLR it was held that a court will intervene in an administrative disciplinary process if it is established that the procedure adopted offends due process or is in breach of the employer’s internal policy.



29. The Petitioner challenges the subject disciplinary proceedings on three scores; first, that she was denied access to crucial documents plus an opportunity to confront witnesses; second, that her Advocates were locked out of the proceedings; and third, that the disciplinary panel was improperly constituted.
30. In her written submissions dated 14th October 2025, the Petitioner cites the decisions in *Geoffrey Mworira v water Resources Management Authority* [2015] eKLR and *John Mbaru Kamau v Kenya Accreditation Service* [2021] eKLR where it was held that a court will interdict a disciplinary process, if it is established that the procedure adopted by the employer contravenes *the constitution* or legislation; or is in breach of the parties' agreement; or offends fairness or due process.
31. The Petitioner further cites the Supreme Court decision in *Gladys Boss Shollei v Judicial Service Commission & another* [2018] eKLR where it was affirmed that an employee facing disciplinary proceedings is entitled to access all relevant documents and to be accompanied by an expert of their choice, in addition to being afforded an opportunity to call witness and cross examine the employer's witnesses.
32. In advancing her case for representation by Legal Counsel, the Petitioner relies on the decision in *Ratemo v Kenya Film Corporation & another* [2014] KEIC 3 (KLR) where it was held that allowing lawyers to participate in disciplinary proceedings, particularly in complex cases, poses no significant prejudice to employers.
33. In objecting to participation by the Petitioner's Legal Counsel in the disciplinary proceedings, the Respondent expressed the fear that this would transform an internal process into a courtroom drama. I disagree with the Respondent on this account; any trained lawyer will be aware that internal disciplinary proceedings, being quasi-judicial in nature, requires a different approach from a court room litigation. That is all I will say on this issue.
34. On the matter of documentation and witnesses, the Respondent made general statements that all necessary documents had been availed and that it could not compel witnesses to attend.
35. In its decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR this Court stated the following:
- “...in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”
36. I need to add that any witness whose word is relied upon by the employer to indict an employee, must be availed for cross examination by that employee.
37. Regarding the composition of the disciplinary panel, the Petitioner's complaint is that Dr. Ally Kassam-Remtulla and Kevin Licciardi, who were directly involved in the investigations leading to the allegations levelled against her, could not be impartial arbiters in the disciplinary process.
38. In his replying affidavit in opposition to the application, Dr. Remtulla while acknowledging having investigated the matter, asserts that his presence in the disciplinary hearing is required. He even goes further to suggest that in his absence, the Petitioner could well mislead the disciplinary committee.



39. The stance taken by Dr. Remtulla in this regard, discloses his desire to control the disciplinary proceedings and their outcome. With this disclosure, the Petitioner's fears that she will not get justice from the disciplinary panel as constituted, are well founded.
40. In its decision in *Kulundu v Chief Executive Officer, Independent Electoral and Boundaries Commission & 9 others* [2023] KEELRC 114 (KLR) this Court annulled disciplinary proceedings where a single individual played the roles of complainant, judge and executer. For internal disciplinary proceedings to pass muster, there must be demonstrable objectivity and impartiality.
41. Flowing from the foregoing findings, I find and hold that the Petitioner has established a prima facie case for grant of interlocutory injunctive relief.
42. As to whether the Petitioner would suffer irreparable harm if the orders sought are not granted, I have this to say; if the impugned disciplinary proceedings are allowed to progress, they could result in disciplinary action, including termination of employment. The loss of employment in such circumstances, cannot in my view, be remedied by an award of damages.
43. Regarding the limb of balance of convenience, I am guided by the decision in *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR where the following rendition was offered:
- “The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendant if an injunction is granted but the suit is ultimately dismissed.”
44. I have carefully considered the balance of convenience in this matter and my finding is this; that in light of the verdict that the disciplinary process initiated against the Petitioner is manifestly unfair and that she would suffer irreparable harm if it is allowed to continue, the balance of convenience tilts in her favour.
45. I have said enough to dispose of this application in the Petitioner's favour. I however find it necessary, even if only for jurisprudential value, to deal with the question whether the *Fair Administrative Action Act* applies to the Respondent, which is a private employer.
46. Section 3 of the *Fair Administrative Action Act* defines its application in the following terms:
3. Application.
- (1) This Act applies to all state and non-state agencies, including any person-
- a. exercising administrative authority;
- b. performing a judicial or quasi-judicial function under *the Constitution* or any written law; or
- c. whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.
47. With this wide application, there can be no doubt that employers, whether in the public sector or the private sector, are bound by the provisions of this law.
48. Section 4 of the Act provides as follows:
4. Administrative action to be taken expeditiously, efficiently, lawfully etc.



1. Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. Every person has the right to be given written reasons for any administrative action that is taken against him.
 3. Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-
 - a. prior and adequate notice of the nature and reasons for the proposed administrative action;
 - b. an opportunity to be heard and to make representations in that regard;
 - c. notice of a right to a review or internal appeal against an administrative decision, where applicable;
 - d. a statement of reasons pursuant to section 6;
 - e. notice of the right to legal representation, where applicable;
 - f. notice of the right to cross-examine where applicable; or
 - g. information, materials and evidence to be relied upon in making the decision or taking the administrative action.
 4. The administrator shall accord the person against whom administrative action is taken an opportunity to-
 - a. attend proceedings, in person or in the company of an expert of his choice;
 - b. be heard;
 - c. cross-examine persons who give adverse evidence against him; and
 - d. request for an adjournment of the proceedings, where necessary to ensure a fair hearing.
 5. Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.
 6. Where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the administrator may act in accordance with that different procedure.
49. On the whole, I find and hold that the Petitioner has made out a proper case for grant of interlocutory relief and therefore make the following orders:
- a. The disciplinary process commenced against the Petitioner is stayed pending rectification of the flaws identified in the body of this ruling;
 - b. The disciplinary process may resume and be continued subject to the Respondent availing the Petitioner the rights to an impartial disciplinary panel, legal representation, access to documentation that is necessary for her defence and an opportunity to cross examine witnesses;
 - c. The costs of the Motion will be in the Petition.
50. These are the orders of the Court.



DELIVERED VIRTUALLY THIS 30TH DAY OCTOBER 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Kanjama, SC with Mr. Leakey for the Petitioner

Ms. Wachira for the Respondent

