



Shabdin v Registered Trustees of the Sisters of Mercy (Kenya) t/a Mater Misericordiae Hospital (Petition E006 of 2025) [2025] KEELRC 2922 (KLR) (27 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2922 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E006 OF 2025
HS WASILWA, J
OCTOBER 27, 2025**

BETWEEN

DR KHADIJA ESSA SHABDIN PETITIONER

AND

**THE REGISTERED TRUSTEES OF THE SISTERS OF MERCY (KENYA) T/A
MATER MISERICORDIAE HOSPITAL RESPONDENT**

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 4th April 2025 seeking orders that: -
 1. The Court be pleased to discharge the Conservatory Order no. 1 granted in the Ruling dated 27th March 2025, “restraining the Respondent from effecting the transfer of the Petitioner from Mater Misericordiae Hospital in Nairobi to Thika Medical Centre pending the hearing and determination of the petition.”
 2. The Court be pleased to discharge the Order No. 2 granted in the Ruling dated 27.3.2025, directing the Respondent “to reinstate the Petitioner to her initial workstation and work schedule pending the hearing and determination of the petition.”
 3. Costs of and incidental to this application be in the cause

Respondent/Applicant’s Case

2. The Applicant avers that by a Notice dated 14th March 2025, the Deputy Registrar notified all advocates and litigants: “That the Hon. Lady Justice Hellen Wasilwa will be away on Leave from 17th March 2025 to 28th March 2025 both days inclusive. Matters listed before her for the said dates will be given new dates at the registry.”



3. Relying on the said notice, counsel for the Respondent did not anticipate the delivery of the ruling on 27th March 2025 thus its counsel did not appear on-line before the Court, to make any necessary application or representations after delivery of the said ruling.
4. It is the Applicant's case that together with its counsel, they were waiting to be given "new dates at the registry" for delivery of the same. However, its counsel became aware that the ruling had been published in the Judiciary Portal on 3rd April 2025, and informed the Respondent. Therefore, it implores the court that it is unable to comply with the ruling as the Petitioner/ Respondent was summarily dismissed from service on 4th February 2025 with effect from 31st December 2025.
5. The Respondent/Applicant avers that the letter or notice of summary dismissal alerted the Petitioner to her right of appeal within 14 days from the date of the letter to the Chief Executive Officer. However, the Petitioner did not exercise her right of appeal, and her summary dismissal from service is in situ.
6. It is the Respondent/Applicant's case that it has moved to court within reasonable time on becoming aware of the publication of the said ruling and orders. Unless this court graciously discharges the said orders, the Trustees of the Respondent are reasonably apprehensive that they will be impugned of disobedience of the same under prevailing circumstances beyond their control.

Petitioner/Respondent's Case

7. In response to the Application, the Petitioner/Respondent filed a replying affidavit dated 22nd April 2025.
8. The Petitioner/Respondent avers that the Respondent has not shown and/or demonstrated how they are unable to comply with the court ruling. Additionally, the Respondent has not shown and/or demonstrated how substratum of the ruling and orders issued has dissipated as the orders issued originate from a constitutional petition and they are valid and capable of being complied with.
9. It is the Respondent's case that the application is reactionary and has not been brought to court in good faith and it has also not been brought to court with clean hands. The Respondent never brought to the court's attention at the earliest stage when the ruling was yet to be issued that they had initiated dismissal proceedings against the Petitioner.
10. The Respondent avers that she made it very clear that since the transfer was unconstitutional and a violation of her constitutional right, she was aggrieved and that the disciplinary process was premature and intended to circumvent the court process.
11. It is the Respondent's case that constitutional matters takes precedent over any other matter including the respondents initiated disciplinary process which is administrative in nature.
12. The Respondent avers that the effect of the ruling dated 27th March 2025, was that the process of transfer up to the alleged dismissal have been declared unconstitutional. Thus, application herein for discharging of the reinstatement orders lacks merit, is malicious and has been brought in bad faith.

Respondent/Applicant Submissions

13. The Applicant submitted that it is common ground that both advocates did not appear on-line before the Court for delivery of the ruling. Therefore, its counsel did not make any necessary application or representations upon delivery of the same.
14. The Applicant submitted that the Petitioner was served with a Notice to Show Cause dated 16th January 2025 and she was required to give her explanation by Tuesday 21st January 2025 at 4:00 p.m. In



response, the Petitioner vide an e-mail dated 21st January 2025 explained to the Head, Human Resource that: “I have been updating you every step. The show cause letter was prompted by the court case as it was served after receiving court papers. Let's just await for the court case outcome.”

15. The Applicant submitted that the Petitioner's response to the show cause letter was found unsatisfactory and she was served with an invitation to a disciplinary hearing on 30th January 2025. However, the Petitioner vide an email dated 29th January 2025, made it clear that she had no intention of attending the disciplinary hearing. She stated that: “It is our believe therefore that your disciplinary action is premature and intended to pre-empt the court case, I do not therefore see the need of attending the disciplinary hearing.” Despite, this the Respondent/ Applicant proceeded with the disciplinary hearing in the absence of the petitioner culminating with her dismissal from service.
16. It is the Applicant's submitted that the Petitioner's dismissal from service dissipated the substratum of the ruling and order. The same were premised on the fact of her transfer from Nairobi and the petitioner in her replying affidavit has not controverted the occurrence of the said events or circumstances.
17. The Applicant submitted that the disciplinary process at workplace is a matter within the managerial mandate of the employer; it is distinct, and separate, from the judicial process. The Petitioner, and her advocate, knew that there was no order obtained from the Court, stopping the disciplinary hearing and the claimant failed to attend the hearing at the workplace.
18. The Applicant submitted that in *Gichora v Mater Misericordiae Hospital (Employment and Labour Relations Appeal E115 of 2023) [2025] KEELRC 211 (KLR) (31 January 2025) (Judgment)* the Court approved the decision of the trial court against an employee who had absconded duty and declined to attend a disciplinary hearing. The court held: “The appellant stated that the learned trial magistrate erred in fact and in law by making a finding that the Appellant was accorded a fair hearing whereas no Minutes or other evidence whatsoever was tendered to prove that the Respondent indeed held a disciplinary hearing in respect of the Appellant. The Court held that the challenge of procedural fairness for lack of minutes was a moot point as the appellant admitted to having failed to attend the disciplinary hearing. The minutes are not robotic. They are for the purpose of demonstrating hearing. She did not attend despite invitation.”
19. The Applicant submitted that it moved the court within reasonable time of becoming aware of the ruling and orders of the court and it has given a full honest narration of the events disabling its compliance.

Petitioner/Respondent's Submissions

20. The Respondent submitted that the court issued the orders based on a prima facie violation of Articles 41 (fair labor practices), 47 (fair administrative action), and 50 (right to fair hearing) of *the constitution*. The alleged disciplinary process conducted unilaterally and in defiance of the court process cannot form a valid basis for setting aside the court orders.
21. The Respondent submitted that in *Giella v Cassman Brown & co. Ltd [1973] EA 358*, interlocutory injunctions, and by extension conservatory orders, should not be discharged unless there is a material change in circumstances of fraud. No such material change has been shown here.
22. It is the Respondent's case that the orders remain capable of the compliance and the Applicant has not demonstrated that compliance with the conservatory orders is impossible. The substratum of the



petition remains intact as it is protecting her rights pending final determination remains intact and the orders are therefore enforceable.

23. The Respondent submitted that in *Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 others* [2015] eKLR, it was held that: “Conservatory orders are designed to preserve the status quo and the subject matter of the petition. They should only be discharged where compliance is impossible or there is compelling legal justification.”
24. It is the Respondent’s submission that the Applicant’s assertions do not meet this threshold. The application is misconceived and an abuse of the court process it is reactionary, aimed at frustrating the court’s orders. It lacks merit and contravenes the overriding objective of the court to deliver justice expeditiously and fairly.
25. I have examined all the averments and submissions of the parties herein. The applicant seek orders from this court to discharge order no 2 granted in the ruling of 27/3/25 directing the respondent to reinstate the petitioner to her initial work station and work schedule pending the hearing and determination of the petition.
26. The issues being sought in this application have however been overtaken by events considering the ruling of this court in the application dated 10th June 2025 where this court pronounced itself on the fact that there was no evidence that the petitioner was dismissed or notified of her dismissal by the respondent. The reversal of the said order of 27/3/25 cannot therefore hold. I find this application lacks merit and is therefore dismissed. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

