

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
OF KENYA AT NAIROBI
PETITION NO. E212 OF 2025

**IN THE MATTER OF CONTRAVENTION OF THE
CONSTITUTION**

AND

**IN THE MATTER OF VIOLATION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 19, 22, 23, 27,
28, 29(d), 41, 47, AND 162(2) (a) OF THE CONSTITUTION**

AND

**IN THE MATTER OF CLAUSE 11.6.1 OF AERC'S HUMAN
RESOURCES POLICY AND PROCEDURE MANUAL 2025**

AND

**IN THE MATTER OF THE SUSPENSION OF LORIAN
VINCENT EGESA**

-BETWEEN-

LORIAN VINCENT EGESA..... PETITIONER

- VERSUS -

AFRICAN ECONOMIC RESEARCH

CONSORTIUM..... RESPONDENT

*(Before Hon. Justice Byram Ongaya on Thursday 20th November,
2025)*

JUDGMENT

1. The petitioner filed the petition and supporting affidavit dated 16.10.2025 through KOK Advocates LLP and prayed for the following orders:
 - a) A declaration that the indefinite suspension of an employee without pay violates Article 41 of the Constitution and is therefore unlawful.
 - b) A declaration that the respondent’s suspension of the petitioner is unconstitutional, and therefore, null and void *ab-initio*.
 - c) A declaration that the petitioner’s fundamental rights as prescribed under Article 41 of the Constitution have been breached.
 - d) An order of *certiorari* to bring into this court and quash the directive by the respondent’s Board Chair as contained in the

letter dated 13.10.2025 indefinitely suspending the petitioner without pay.

- e) An order of prohibition to prohibit the respondent from irregularly and unlawfully frustrating and/ or terminating the petitioner's employment contract dated 09.10.2024.
- f) General damages for unfair, unprocedural and unlawful treatment.
- g) Cost of this suit.

2. The petitioner's case was as follows:

- a. The respondent appointed him as its Chief Finance Officer (CFO) *vide* a contract of employment dated 09.10.2024, for a period of three years ending 08.10.2027. He took up his responsibilities and has since helped the respondent achieve various milestones in a stellar track record.
- b. Regardless of the foregoing, his operations at the respondent were brought to a halt on 13.10.2025, when the respondent issued him with a letter of even date purporting to suspend him without pay indefinitely and with immediate effect.

- c. The petitioner's suspension is premised on contrived allegations of impropriety and an alleged ongoing forensic investigation. However, the purported accusations of impropriety and/ or the particulars of the alleged investigations have never been brought to his attention.
- d. The petitioner's purported suspension also contravenes the provisions of clause 11.6.1 of the respondent's internal Human Resource Policy and Procedures Manual, to the effect that employees can only be suspended for a period not exceeding one month. Further, the decision to indefinitely suspend him was made unilaterally by the respondent's Board Chair in contravention of the respondent's Human Resource Policy Manual. Such a decision can only be made under the recommendation of the respondent's disciplinary committee, with the approval of the Executive Director.
- e. From the respondent's letter dated 13.10.2025, the alleged investigations into the petitioner's supposed impropriety are still ongoing, and the respondent is yet to be furnished with a

substantive report. Consequently, the petitioner's suspension is premature, speculative and without any basis, thus illegal.

f. The above respondent's illegal and unconstitutional actions have subjected the petitioner to immense psychological torture and risk exposing him to financial embarrassment and disrepute, which injustice this Honourable Court cannot idly countenance.

g. The petitioner is apprehensive that he is the subject of a malicious campaign of witch hunt and blackmail aimed at unlawfully terminating his services before the lapse of his employment contract. He therefore seeks the protection of this Honourable Court for the continued violation of his constitutional rights.

3. The petitioner particularised the violation of the Constitution of Kenya as follows:

(i) In purporting to indefinitely suspend the petitioner without pay, the respondent has violated the petitioner's right to fair labour practices enshrined under Article 41 of the Constitution.

- (ii) In un-procedurally suspending the petitioner contrary to the provisions of Clause 11.6.1 of its Human Resource Policy and Procedure Manual, the respondent has infringed on the petitioner's right to equal protection and benefit of the law, as enshrined under Article 27(1) of the Constitution.
- (iii) In purporting to indefinitely suspend the petitioner without pay, the respondent has subjected the petitioner to psychological torture contrary to Article 29(d) of the Constitution.
- (iv) In proceeding to indefinitely suspend the petitioner without informing him of the allegations against him, the respondent has infringed on the petitioner's right to fair administrative action as enshrined under Article 47(2) of the Constitution.

4. The respondent filed its replying affidavit, sworn by Ms. Esther Mbaka on 27.10.2025, through Chiuri Kirui & Rugo (CKR) Advocates. They urged as follows:

- a) The impugned suspension of the petitioner from service is plainly or simply an employment dispute premised on his contract of service and the applicable employment

legislations. It is an inchoate preliminary step, lawfully taken by the employer under the terms of the contract of service. The one-month contractual period of suspension has not lapsed.

- b) As an official of AERC, the petitioner is bound by the terms of the Host Country Agreement. First, he is to refer his dispute to the Ministry of Foreign and Diaspora Affairs and thereafter approach this Court if no redress is given after six (6) months.
- c) As the respondent's CFO, the petitioner had oversight over the Finance, Human Resources, Administration and Procurement functions. The CFO's mandate included providing strategic guidance to the Executive Director and the AERC Board on matters relating to finance operations and institutional governance.
- d) The petitioner made some key contributions to the respondent between October 2024 and June 2025, including the revision of the Host Country Agreement between the respondent and the Government of Kenya that was executed in April 2025.

Therefore, he was fully conversant with the respondent's governance and disciplinary procedures, including the requirements of the HCA and the HR Policy on suspension and disciplinary procedure.

- e) Clause 11.6.1 of the respondent's HR Policy empowers the employer to suspend an employee pending completion of investigations. A suspended employee is not to earn a salary during the suspension period, which shall not exceed one month. Given that the CFO is a core member of the disciplinary committee as constituted in the said clause 11.6, any disciplinary action involving the CFO cannot be handled by that committee due to a conflict of interest.
- f) During the First Quarter of the 2025/2026 Financial Year (April-June 2025), the respondent's internal auditors conducted a review of the Finance, HR and ICT departments. The audit report thereafter raised allegations of unethical conduct on the part of the CFO. The internal auditors' findings were presented to the meeting of the Executive Committee of the Board in July 2025, which Meeting resolved

to commission a forensic investigation on the allegations made against the petitioner.

- g) The Board decided to suspend the petitioner pending completion of the investigation. A determination on his suspension was expected by 12.11.2025 in accordance with the HR Policy.
- h) The petitioner was aware that suspension may be warranted where continued access to the office could interfere with investigations, and it would not exceed one month. The petitioner's suspension was deemed necessary to protect the integrity of the ongoing forensic audit, to safeguard staff under his oversight from potential retaliation, and to prevent any possible compromise of the respondent's financial systems or institutional data, given the sensitivity of the CFO's roles and position as a bank signatory.
- i) In the circumstances, it is the respondent's stand to suffer irreparable loss that cannot be compensated by an award of damages, if the interim prayers sought are granted.

5. Further, the respondent filed a notice of preliminary objection dated 27.10.2025 on the following grounds:

(i) The respondent invokes the principle of “constitutional avoidance” against the petition.

(ii) The petition as pleaded does not disclose a cause of action anchored on the Constitution and has not laid any proper constitutional issue before the Court.

(iii) The challenged suspension from service is plainly and simply a contractual employment dispute properly instituted by a statement of claim anchored on the provisions of the Employment Act and/or any other relevant labour legislation.

(iv) It is not permissible for the petitioner to directly make the Constitution the foundation of his cause or action without impugning the Employment Act or any relevant labour legislation enacted to give effect to constitutional labour or employment rights.

6. The petitioner then filed a supplementary affidavit, sworn on 28.10.2025, averring that the averments made in the respondent’s

replying affidavit are unfounded and misconceived. Contrary to the respondent's assertions, the petition questions whether the respondent can indefinitely suspend him without pay and what procedure it ought to follow. The respondent has failed to prove that the disciplinary committee recommended and approved the petitioner's suspension for implementation by the Executive Director, as stipulated under clause 11.6.1. The disciplinary committee is by nature designed to hear disciplinary proceedings against both managerial and non-managerial staff. In his case, the committee still has a quorum to sit and deliberate on his conduct, but it evidently neither convened nor recommended his suspension. The petitioner denied being a signatory for any of the respondent's bank accounts, which is the exclusive preserve of the board of directors and the executive director. He noted that article 10(6) of the HCA provides that no privileges or immunity shall extend to the respondent concerning employment disputes. He argued that a petition raising issues pertaining to constitutional rights and human freedoms cannot be referred to

any other forum for determination apart from this Honourable Court in compliance with Article 165 of the Constitution.

7. The parties filed their respective written submissions. The Court has considered the parties' respective positions and material on record and returns as follows.
8. The 1st issue for determination is whether the petition is trapped by the constitutional avoidance doctrine and that the petitioner ought to have filed an ordinary case. It is submitted for the respondent that in **Communications Commission of Kenya and 5 others –Versus- Royal Media Services Ltd and 5 Others (2014)eKLR** held that the principle of constitutional avoidance entails that a Court will not determine a constitutional issue where a matter may properly be decided on another basis. Further, where it is possible to decide any case, civil or criminal, without reaching a constitutional issue, then that is the course which should be followed. It was submitted that the Court of Appeal held as much in **Gabriel Mutava & Another –Versus- The Managing Director of Kenya Ports Authority & Another (2016)e KLR** where the Court held that the constitutional

jurisdiction ought not be trivialised by bringing actions that could very well and effectively be dealt with in another forum that offers other sufficient and adequate avenue to resolve the dispute.

9. It is submitted for the respondent that the impugned suspension from service is plainly and simply a contractual employment dispute properly instituted by a statement of claim anchored on the provisions of the Employment Act and other labour legislation. Thus, it was not permissible for the petitioner to directly make the Constitution the foundation of his cause of action without impugning the Employment Act and other labour legislation. It is submitted that the pleaded constitutional violations are alien and unrelated to the plain contract of employment claim in issue. It was urged that the petition should therefore be dismissed with costs.

10. For the petitioner it was submitted that in **Chief Justice and President of the Supreme Court of Kenya & Another –Versus Khaemba (2021) KECA 322 (KLR)** the Court of Appeal held thus,

“34. Exhaustion of alternative remedies is now a constitutional and legal imperative under article 159(2) (c) of the Constitution and section 9(2) and 3 of the Fair Administrative Action Act. The doctrine of exhaustion of remedies was first embodied by this court in **Speaker of National Assembly v Karume (1992) KLR 21**. The said court further clarified the doctrine under the current constitutional dispensation in **Geoffrey Muthinja Kabiru & 2 others v Samuel Munga Henry & 1756 others (2015) eKLR**.

35. This position notwithstanding, courts still retain the residual jurisdiction to intervene in exceptional circumstances despite the existence of an alternative remedy, as was explained by this court in **Fleur Investments Limited v Commissioner of Domestic Taxes & another, [2018] eKLR**:

“Whereas courts of law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the Constitution and other legislations for

protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”

36. Were there circumstances in this appeal that justified an intervention by the court? It has been demonstrated and found that the disciplinary process by the 1st appellant against the respondent was marred from the start with illegality and procedural irregularity. It is also evident that the Chief Justice had already made a finding in the letter dated 13th June 2019 that the respondent’s actions amounted to gross misconduct, and therefore, as regards the respondent’s culpability. Lastly, the respondent was also subjected to extreme hardship having been illegally and indefinitely suspended with nil pay. Continuing with the disciplinary process in the circumstances would essentially have been an exercise in futility, and aid in the continued violation of the respondent’s rights, as was similarly noted by this

court in **Judicial Service Commission & Another vs Lucy Muthoni Njora [2021] eKLR.**

37. In conclusion, this court also finds that the impugned disciplinary process, having been irregular and illegal ab initio, meant there were no valid proceedings that could be remitted back to the appellants for consideration.

In the circumstances, the trial Judge also did not err in granting orders to restore the respondent to the status he was before the impugned disciplinary proceedings.”

11. It is submitted that the respondent cannot purport to hide behind its Host Agreement dated 28.04.2025 and use it to impede the petitioner’s right to enforce petitioner’s right to fair labour practices. Further, it was submitted that the petition was not premature for want referral of the dispute to the Ministry of Foreign Affairs for mediation and petitioner to approach Court only after six months of giving of the relief in mediation. In particular it was submitted for the petitioner that the Article 10 (6) of the subject Host Country Agreement states that no privilege or immunity shall extend to the respondent with regard to

employment disputes like in the instant case. It is the petitioner's case that the serious constitutional violations as pleaded cannot be subject of referral to the Ministry of Foreign Affairs. Thus, in **Abidha Nicholas –Versus- Attorney General & 7 others; National Environmental Complaints Committee and 5 others (Interested Parties) (Petition E007 of 2023) [2023] KESC 113 (KLR)** the Supreme Court held that the jurisdiction to determine alleged violations of the Constitution is vested in the Court and the right to access the Court for redress of alleged constitutional violations, should not be impeded or stifled in the manner that frustrates the enforcement of fundamental rights and freedoms. It was submitted that the petitioner had pleaded violations of the Bill of Rights as well as the operational statutory provisions upon which the petition was founded.

12. The Court has considered the rival submissions. The Court finds that the relief for alleged violation of labour rights as protected in the Bill of Rights vests in the Court. The Court further finds that such alleged illegality and unconstitutionality or violation of rights and fundamental freedoms falls for determination by the

Court and not mediation process as urged for the respondent. Looking at the allegations by the petitioner, the Court finds that the petition is not defeated by the doctrine of constitutional avoidance or want of exhaustion of alternative dispute resolution by way of mediation as urged for the respondent.

13. The 2nd **issue** for determination is whether the respondent has established violation of rights as pleaded. The Court returns as follows:

a) There is no dispute that clause 11.6.1 of the respondent's internal human resource policy and procedure manual provides that the period of suspension without pay shall be for a period of one month. The letter of suspension without pay dated 13.10.2025 suspending the petitioner did not state or indicate the period of suspension. The letter stated that it was a suspension pending the finalization of forensic investigation into the conduct and the period the investigation will take is not stated at all. As submitted for the petitioner, the Court finds that the suspension was in breach of clause 11.6.1. The suspension letter dated

13.10.2025 further stated that the investigators had submitted a summary report to the respondent's Board Chair and who had shared and discussed the contents with members of the Executive Committee. Further the letter stated thus, "...The Executive Committee will initiate the necessary disciplinary proceedings against you once it receives the full report." By that assertion, it appears to the Court that the respondent or at least the Board Chairperson had predetermined that disciplinary process would issue against the petitioner, in any event and disregard the outcome of the purported full investigations, the purpose of the suspension.

b) The 30 days allowed for suspension were lapsing on 13.11.2025. The petition was filed on 21.10.2025. It is the respondent's case that the petitioner ought to have known that the suspension was for the prescribed 30 days and should not have rushed to file the petition prior to lapsing of the 30 days. The Court observes that the 30 days lapsed and the petitioner's suspension was not lifted. The Court finds

that the petitioner was entitled to promptly file the petition to protect his rights in that regard because in any event, justice will not aid the indolent.

c) The Court finds that as submitted for the petitioner the respondent has confirmed that the forensic investigations had been initiated in July 2025 and if not completed by time of suspension, then it was not reasonable for the petitioner to presume that the same would be completed within 30 days as alleged for the respondent.

d) It is also established by the petitioner that his suspension had not been imposed following a recommendation of the disciplinary committee and approval of the executive committee per clause 11.6.1 of the Manual. Instead, the suspension letter shows that the suspension was by the Board Chair without involvement of the disciplinary committee. The Court finds that the disciplinary committee could not be bypassed on account that the petitioner was a member and hence the disciplinary committee was thereby conflicted. The Court finds that as urged for the petitioner,

his exclusion could not have impaired the disciplinary committee's quorum and independence or objectivity.

e) The Court has considered the suspension letter and finds that it amounts to a predetermined position that the Board chair had the summary report (suggesting the full report as source of the summary was already available) and then asserting that once the "full" report was ready, the disciplinary process would be initiated. There is no objective process anticipated in the letter that investigations would exculpate or implicate the petitioner with the consequence that the disciplinary process may or may not issue. It appears to the Court that the failure to involve the disciplinary committee appears to have subjected the petitioner to no objective process.

f) The Court therefore finds that the suspension letter as issued and the design to initiate disciplinary proceedings as stated in the letter amounted to a perfect abuse of discretion by the respondent through the Board Chairperson where arbitrariness, malice, capriciousness and disrespect of the

rules of natural justice are manifest. The injustice was manifested through disregard of the procedural safeguards on the purpose of a suspension, how it should be processed and imposed through recommendation of the disciplinary committee with approval of the executive committee, and, it should be an objective process and not one in which imposition of disciplinary proceedings is predetermined.

g) As submitted the petitioner has established violation of his right to fair labour practices as protected in Article 41 of the Constitution; and, the violation of the right to equal protection and benefit of the law as per Article 27(1) of the Constitution. As well, the Court finds that the indefinite suspension without pay amounted to unfair psychological torture and anguish of the petitioner contrary to Article 29(d) of the Constitution.

h) As submitted for the petitioner, in **Khaemba v Chief Justice and President of the Supreme Court of Kenya & another (Petition 100 of 2019) [2019] KEELRC 917**

(KLR) (30 August 2019) (Judgment) this Court held as thus,

“38.The Court further follows the holding by Rika J in **Peterson Ndung’u & 5 Others –Versus- Kenya Power and Lighting Company Limited [2014]eKLR** that the withholding of an employee’s pay during the period of suspension has no basis and validity under the Employment Act, 2007. That principle applies as the minimum term and condition of service under the Employment Act, 2007. Needless to state, it is a principle within the purview of Article 41 of the Constitution on fair labour practices. Further, the Court considers that the minimum terms and conditions of service under the Employment Act, 2007 constitute such rights that are incorporated in the Bill of Rights when the Constitution provides in Article 19 (3) (b) that the rights and fundamental freedoms in the Bill of Rights do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law, except to the extent that they are

inconsistent with the Chapter 4 of the Constitution on the Bill of Rights.”

- i) In the instant case the petitioner has not attacked the provisions in the human resource manual on suspension without pay for 30 days as unconstitutional. While parties are bound by the terms of the manual as incorporated in the contract of service, the Court finds that the suspension without pay was unfair in terms of the cited authority because as already found earlier in this judgment, it was imposed unlawfully and unconstitutionally.
- j) In finding for the petitioner that the Bill of Rights was violated as already found herein, the Court has as well found that the suspension letter amounted to predetermination that disciplinary process would issue and also pretended to state that the suspension was upon preliminary inquiry or investigations, while at ago acknowledging that a summary report was already in possession of the Board Chairperson – suggesting the purportedly anticipated full report was already concluded as

the source of the summary report already in the Board Chairperson's possession. Of such predetermined disciplinary process the Court follows as is bound by the Court of Appeal holding in **Khaemba v Chief Justice and President of the Supreme Court of Kenya & another (Petition 100 of 2019) [2019] KEELRC 917 (KLR) (30 August 2019) (Judgment)** thus,

“36...Lastly, the respondent was also subjected to extreme hardship having been illegally and indefinitely suspended with nil pay. Continuing with the disciplinary process in the circumstances would essentially have been an exercise in futility, and aid in the continued violation of the respondent's rights, as was similarly noted by this court in **Judicial Service Commission and Another –Vs- Lucy Muthoni Njora [2021] eKLR.**

37. In conclusion, this court also finds that the impugned disciplinary process, having been irregular and illegal ab initio, meant there were no valid proceedings that could be remitted back to the appellants for consideration. In the

circumstances, the trial Judge also did not err in granting orders to restore the respondent to the status he was before the impugned disciplinary proceedings.”

k) The Court returns that the findings by the Court of Appeal in the foregoing cited case squarely apply to the instant case as urged for the petitioner.

14. The **3rd issue** is on reliefs prayed for. The Court returns as follows:

a) The petitioner is entitled to a declaration that the indefinite suspension of an employee without pay violates Article 41 of the Constitution and is therefore unlawful.

b) The petitioner is entitled to a declaration that the respondent’s suspension of the petitioner is unconstitutional as found herein, and therefore, null and void ab-initio.

c) The petitioner is entitled to a declaration that the petitioner’s fundamental rights as prescribed under Article 41 of the Constitution have been breached.

d) The petitioner has prayed for an order of certiorari to bring into this court and quash the directive by the respondent’s Board

Chair as contained in the letter dated 13.10.2025 indefinitely suspending the petitioner without pay. The respondent appears to be in the nature of a public body enjoying certain immunities and the order will issue.

e) The petitioner is entitled to an order of prohibition to prohibit the respondent from irregularly and unlawfully frustrating and/ or terminating the petitioner's employment contract dated 09.10.2024.

f) No submissions were made for the petitioner on the prayer for general damages for unfair, unprocedural and unlawful treatment. In absence of such submissions to guide the Court, the relief is deemed abandoned.

g) The petitioner has succeeded and is entitled to cost of the suit.

In conclusion judgment is hereby entered for the petitioner against the respondent for:

- 1) The declaration that the indefinite suspension of an employee without pay violates Article 41 of the Constitution and is therefore unlawful.

- 2) The declaration that the respondent's suspension of the petitioner is unconstitutional as found herein, and therefore, null and void *ab-initio*.
- 3) The declaration that the petitioner's fundamental rights as prescribed under Article 41 of the Constitution have been breached as found herein.
- 4) The order of certiorari hereby issued to bring into this court and quashing the directive by the respondent's Board Chair as contained in the letter dated 13.10.2025 indefinitely suspending the petitioner without pay, with the consequence that the withheld remuneration and benefits be released to the petitioner forthwith and to peacefully continue in respondent's employment until the contract of service between parties terminates lawfully.
- 5) The order of prohibition hereby issued to prohibit the respondent from irregularly and unlawfully frustrating and unfairly or unlawfully terminating the petitioner's employment contract dated 09.10.2024.
- 6) The respondent to pay petitioner's costs of the petition.

**Signed, dated and delivered by video-link and in court at Nairobi
this Thursday 20th November, 2025.**

**BYRAM ONGAYA
PRINCIPAL JUDGE**