

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E862 OF 2025**

**JOSEPH GUSINO MUGENI.....1<sup>ST</sup>**

**CLAIMANT/APPLICANT**

**JAMES MURIUKI ISAAC.....2<sup>ND</sup>**

**CLAIMANT/APPLICANT**

**VERSUS**

**PARLIAMENTARY SERVICE COMMISSION.....**

**RESPONDENT**

**RULING**

1. This ruling relates to the Claimants/Applicants' motion application dated 9<sup>th</sup> September 2025, brought pursuant to Section 12 of the Employment and Labour Relations Court Act, Article 159 of the Constitution of Kenya, Sections 1A, 3, 3A of the Civil Procedure Act, and Order 51 of the Civil Procedure Rules. The Applicants seek the following reliefs: -
  - i. Spent
  - ii. Spent
  - iii. THAT pending the hearing and determination of this suit, the Respondent, whether by itself or any person acting under its authority, be restrained from terminating, dismissing, or otherwise interfering with the Applicants' employment on the basis of the allegations contained in the Notice to Show Cause dated 5<sup>th</sup> April, 2024 and subsequent disciplinary

proceeding and subsequent dismissal proceedings commenced by the letter dated 7<sup>th</sup> October 2024, given the inordinate delay and procedural irregularities in the handling of the disciplinary process.

iv. Spent

v. THAT pending the hearing and determination of this suit, the Respondent be compelled to restore the Applicants to the full exercise of their duties, responsibilities, privileges, and access to the Parliamentary precincts, and pay them their full salaries, allowances, and benefits without deduction, lift the irregular compulsory leave imposed on the Applicants.

vi. THAT the Respondent be compelled to furnish the Applicants forthwith with certified copies of the typed proceedings, audio and transcribed Hansard report, minutes and the final report of the hearing at the Disciplinary Committee held on 20<sup>th</sup> December 2024, 24<sup>th</sup> January, 2025 and 3<sup>rd</sup> March 2025 relating to the allegations against them.

vii. THAT the Respondent be compelled to supply the Applicants with all documents, records, and information requested in the Applicants' letters dated 15<sup>th</sup> November 2024, including all records relevant to the disciplinary process.

viii. Costs of this application be provided for.

**2.** The application is supported by grounds on the face and the supporting affidavit by both Applicants, sworn on 9<sup>th</sup>

September, 2025. The Applicants aver that they are employees of the Respondent, the 1<sup>st</sup> Applicant having been employed as Security Supervisor I by letter dated 27<sup>th</sup> March 2014, and the 2<sup>nd</sup> Applicant as Security Supervisor I by letter dated 28<sup>th</sup> November 2014.

- 3.** It is the Applicant's assertion that throughout their nearly 10 years of service, they diligently and faithfully performed their duties. They state that on 9<sup>th</sup> April 2024, they received a Notice to Show Cause dated 5<sup>th</sup> April 2024, alleging gross misconduct for allegedly facilitating unauthorized access by members of the press to Bunge Towers and disclosing confidential project information. The Applicants state that they were subsequently interdicted on 9<sup>th</sup> April 2024 to allow for investigations.
- 4.** It is their case that they responded to the Notice through a letter dated 23<sup>rd</sup> April 2024, but despite responding to the issue, the Respondent subjected them to irregular and unlawful disciplinary actions through interdiction, extension of interdiction for an additional 30 days without justification via letter dated 9<sup>th</sup> July 2024, and forcing them to take 60 days' leave orally on 15<sup>th</sup> August 2024 without valid reason.
- 5.** It is their case that while still on the 60 days' leave, they received another letter dated 21<sup>st</sup> August 2024, directing them to proceed on compulsory leave for 30 more days. They aver that on 7<sup>th</sup> October 2024, they were summoned to appear before the Staff Disciplinary Committee for dismissal

proceedings, which formally began on 20<sup>th</sup> December 2024; nine months after the initial Notice to Show Cause dated 5<sup>th</sup> April 2024.

- 6.** They aver further that the final hearing took place on 3<sup>rd</sup> March 2025, but no determination or report has been communicated to date.
- 7.** It is their position that the dismissal proceedings were premeditated, unfair, and intended only to validate a predetermined decision to terminate them, that the proceedings violated the Respondent's Human Resource Manual by being initiated nine months after the notice and finally, that the issues raised during the hearing, were outside the scope of the original Notice to Show Cause, thereby prejudicing their defense.
- 8.** The Applicants aver that their requests for vital documents and records to prepare for the hearing were ignored, including the committee's recorded proceedings.
- 9.** The Applicants state that they remain barred from accessing Parliament premises since 21<sup>st</sup> August 2024, leading to financial loss, reputational harm, and denial of the right to work.
- 10.** Finally, the Applicants argue that the prolonged and unfair disciplinary measures violated their constitutional rights to fair labour practices and the right to work under Article 41 of the Constitution of Kenya (2010).

- 11.** The Respondent opposed the application through grounds of opposition dated 6<sup>th</sup> October, 2025, wherein, it argues that the orders sought in the application, if granted, would unlawfully interfere with its right as an employer to discipline employees, a right guaranteed under Section 12 of the Employment Act, Cap 226 and Article 127(6)(b) of the Constitution.
- 12.** The Respondent further states that it has legitimate grounds to discipline the Claimants for misconduct; specifically, allowing unauthorized persons to access and record videos within Bunge Tower without permission.
- 13.** It avers that the disciplinary process is ongoing, and no adverse decision has been made; therefore, the application is premature, speculative, and intended to obstruct lawful disciplinary proceedings.
- 14.** It is the Respondent's case that the court should not interfere with internal disciplinary processes unless the final decision is shown to be arbitrary, malicious, or irrational.
- 15.** The Respondent states that granting the injunction would effectively determine the disciplinary case prematurely and violate the employer's constitutional and statutory prerogative to enforce discipline.
- 16.** On the test for an injunction, the Respondent argues that the Claimants have not demonstrated a prima facie case, as

due process was followed and no evidence supports allegations of hostility, discrimination, coercion, or denial of pay. It avers that the Claimants have not shown irreparable injury, as damages can compensate any harm suffered if they succeed at trial.

- 17.** It states that the balance of convenience is in its favours, since granting the orders would unjustly interfere with the employer's management prerogative and undermine workplace discipline.
- 18.** The Respondent finally prays that the application be dismissed for being premature, unmerited, frivolous, vexatious, and an abuse of the court process.

### **Analysis and Determination**

- 19.** Having considered the application, the Supporting Affidavit, and the Grounds of Opposition, the main issue for determination is whether the Applicants have met the threshold for the grant of the orders sought.
- 20.** In determining an application for injunctive orders such as this, the court is guided by the principles established in ***Giella v Cassman Brown & Co. Ltd [1973] EA 358***, and reaffirmed in the case of ***Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR***, which principles demand that the court determines whether the Applicant has established a prima facie case with a probability of success; whether the Applicant will suffer irreparable harm not compensable by damages if the injunction is not

granted; and if in doubt, whether the balance of convenience tilts in favour of granting or denying the injunction.

- 21.** The Applicants' position is that the disciplinary process initiated by the Respondent was marred by procedural irregularities, including delay of over nine months between the Notice to Show Cause and the hearing, expansion of allegations beyond the initial charges, denial of access to key documents, and prolonged interdiction and compulsory leave without justification. They contend that these acts and omissions violated their right to fair administrative action and fair labour practices under Article 41 of the Constitution.
- 22.** The Respondent, on the other hand, asserts that it has the statutory and constitutional right to discipline its employees under Section 12 of the Employment Act, and Article 127(6) (b) of the Constitution. It maintains that due process was observed and that the disciplinary process has not been concluded; hence, the application is premature.
- 23.** At this interlocutory stage, the court is not to make final findings on the merits of the disciplinary process. The question is whether, on the face of it, there is evidence of an infringement or threatened violation of a right.
- 24.** There is no doubt that the Applicants' allegation of procedural unfairness and delay is apparent, seeing that the Applicants have been going through disciplinary action for close to 18 months. The Respondent has, however,

demonstrated that the process is ongoing and that the Applicants have been accorded opportunities to respond and have even recently resumed their duties.

**25.** In light of the foregoing, the court is not persuaded that the Applicants have established a prima facie case that warrants judicial interference at this stage. Internal disciplinary proceedings are, by law, primarily within the employer's prerogative, and courts have consistently cautioned against intervention before conclusion (See ***Alfred Nyungu Kimungui v Bomas of Kenya [2013] eKLR***).

**26.** It is also not prudent at this juncture to compel the Respondent to supply the Applicants with documents relating to the disciplinary process when the said process is still ongoing.

**27.** Accordingly, I find and hold that the Application dated 9<sup>th</sup> September 2025 is devoid of merit and is hereby dismissed.

**28.** Costs shall be in the cause.

**29.** Orders accordingly.

**SIGNED, DELIVERED, AND DATED BY VIDEO-LINK AND IN  
COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF NOVEMBER,  
2025.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Ms. Akinyi Omolo h/b for Ms. Kariuki for the  
Claimants/Applicants

Ms. Mwaura present for the Respondent

Ms. Esther Sakwanda -C/A