



**Okumu & 2 others v Maasai Mara University & 4 others; Public Service
Commission & another (Interested Parties) (Petition E006 of 2025)
[2025] KEELRC 3307 (KLR) (21 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3307 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
PETITION E006 OF 2025
AN MWAURE, J
NOVEMBER 21, 2025**

BETWEEN

**ANACLET BIKET OKUMU 1ST PETITIONER
HASSAN ABDI NOOR 2ND PETITIONER
PROF. JOHN ALMADI OBERE 3RD PETITIONER**

AND

**THE MAASAI MARA UNIVERSITY 1ST RESPONDENT
THE COUNCIL OF MAASAI MARA UNIVERSITY 2ND RESPONDENT
THE LEGAL OFFICER, MAASAI MARA UNIVERSITY 3RD RESPONDENT
KENNEDY OLE KAREI 4TH RESPONDENT
THE ATTORNEY GENERAL 5TH RESPONDENT**

AND

**THE PUBLIC SERVICE COMMISSION INTERESTED PARTY
THE UNIVERSITIES ACADEMIC STAFF UNION (UASU) AND KENYA
UNIVERSITY STAFF UNION (KUSU) INTERESTED PARTY**

JUDGMENT

1. The Petitioner filed a Petition dated 7th April 2025 seeking the following orders that:
 - a. A declaration that the show cause notices of 2nd April 2025, are illegal, null and void, and be quashed accordingly.



- b. A declaration be made suspending, and permanently thereafter prohibiting show cause letter dated 2nd April 2025 over the same issues already determined by Justice Chemitei in his judgment of 21st March 2024.
- c. A declaration that the Respondents' show cause notices dated 2nd April 2025 are an act of double jeopardy, res judicata and sub judice present and former cases over the same subject matter.
- d. An order of certiorari removing into this court for quashing the show cause notice dated 4th April 2025.
- e. A declaration that the Respondents are vexatious litigants and be declared as such.
- f. An order be issued declaring the Respondent all unfit to hold public office for want of integrity and for being in contempt and breach of the law.
- g. An order of prohibiting barring the Respondents for any disciplinary measures in connection with the Petitioner's trial and eventual acquittal.
- h. General damages for loss and suffering at the instance of the Respondents.
- i. Compensation for loss, harm and injury upon the finding on constitutional violations.
- j. The Petitioners to be paid all their withheld salaries and allowances from the time they were suspended.
- k. Any other orders that this court deems fit to grant.
- l. Costs of the Petition.

Petitioner's case

2. The Petition is based upon the Petitioner's supporting affidavit hereto filed together with the petition and annexure thereto.
3. The Petitioners aver that, being employees of the 1st Respondent, they were suspended following criminal charges in the Nakuru Anti-Corruption Court Case No. E02 of 2020 Republic V Mary Khakoni Walingo & 4 Others.
4. The Petitioners aver that the charges preferred against them were conspiracy to commit an offence of corruption contrary to section 47A(3) as read with section 48 of the *akn ke act 2003 3 Anti-corruption and Economic Crimes Act*, abuse of office contrary to section 101 (1) as read with section 102A of the Penal Code, willful failure to comply with the law relating to management of public funds contrary to section 45(2) (b) as read with section 48 of Anti-corruption and Economic Crime, willful failure to comply with the law relating to management of public funds contrary to section 45(2) (b) as read with section 48 of Anti-corruption and Economic Crime Act, willful failure to comply with the law relating to management of public funds contrary to section 45(2)(b) as read with section 48 of the Anti-corruption and economic crimes against the 1st and 3rd Petitioner, stealing by persons employed in the public service contrary section 268 as read as section 280 of the Penal Code and fraudulent false accounting contrary to section 330(b) of the Penal Code.
5. The Petitioners aver that the charges levelled against them were declared unconstitutional and nullified on 21st March 2024 by Hon. Justice Hillary Chemitei in Nakuru Constitutional Petition No. E028 of



2022, with further discharge orders issued on 28th May 2024 following Criminal Revision Nos. E203 and E220 of 2024.

6. The Petitioners aver that despite these rulings and reinstatement directives from the Vice-Chancellor in June and September 2024, and a Parliamentary Committee on 19th November 2024, the 1st Respondent failed to reinstate them.
7. Instead, on 2nd April 2025, the Petitioners aver that they were served with new show cause letters alleging misconduct from 2016 to 2019, signed by the University Council Chairman, contrary to statutory procedure and without union notification.
8. The Petitioners aver that these allegations mirror the dismissed criminal charges and violate the principle of *res judicata*, especially since the 1st Petitioner was only employed in September 2017, making some claims factually impossible.
9. The Petitioners aver that this is a calculated effort to justify summary dismissal, undermining judicial authority and due process.
10. The Petitioners aver that the disciplinary proceedings in question are time-barred under the six-year limitation period, yet the Respondents are attempting to revive a matter already conclusively resolved in their favour by the Chief Magistrate Hon. Bildad Ochieng courts and High Court judges Justice Chemitei and Justice Ong'undi.
11. The Petitioners aver that according to section 63 of the *akn ke act 2003 3 Anti-Corruption and Economic Crimes Act*, an employee's suspension ends once the corruption case is determined.
12. Despite the allegations being found baseless by multiple judicial officers, including Hon. Bildad Ochieng, the Petitioners aver that the Respondents persist in keeping them suspended and are now irregularly seeking to terminate their employment through show-cause notices issued by the same parties who previously lost in court.

Respondent's replying affidavit

13. The Respondent opposed the petition vide a replying affidavit sworn by Alfred Nyabochwa, the Deputy Chief Legal Officer of the 1st Respondent, dated 7th April 2025.
14. The Respondent avers that the petition is legally flawed, factually distorted, and an abuse of court process.
15. The Respondent maintains that the Petitioners' suspension was lawfully executed under the University Charter and relevant statutes as a precautionary, not punitive, measure to safeguard institutional integrity during investigations.
16. The Respondent argues that the disciplinary process is distinct from prior criminal and constitutional proceedings, and thus claims of double jeopardy or *res judicata* are misplaced.
17. The Respondent emphasizes that due process has been observed, with the Petitioners afforded full opportunity to respond, and no adverse decision has yet been made.
18. The Respondent avers that the Petitioners' invocation of constitutional rights is deemed premature and speculative, lacking evidence of actual violations.
19. The Respondent avers that claims for full pay, damages, and declarations against them are described as baseless, unsupported by material harm, and beyond the Court's jurisdiction in an employment matter.



20. The Respondent avers that granting the Petition would undermine lawful disciplinary authority, encourage forum shopping, and erode institutional accountability.
21. Accordingly, the Respondent urges the Court to dismiss the Petition with costs and uphold its right to manage internal affairs within the bounds of natural justice and the law.

2nd interested party replying affidavit

22. The 2nd interested party also filed a replying affidavit sworn by Dr. Constantine Wasonga Opiyo, its National Security and the Chief Executive Officer, dated 19th May 2025.
23. The 2nd interested party avers that the 1st and 3rd Petitioners are members of the Universities Academic Staff Union (UASU) and were interdicted in 2020 following criminal charges related to alleged misappropriation of university funds between 2016 and 2019.
24. The 2nd interested party avers that these charges were quashed by the High Court in March 2024 in Nakuru Constitutional Petition No. E028 of 2022, which found the investigations unlawful and the charges defective.
25. Despite this, the 2nd interested party avers that the Respondents have issued fresh disciplinary notices replicating the same allegations, disregarding multiple court orders and directives from the National Assembly's Public Investment Committee.
26. The 2nd interested party argues that the renewed disciplinary actions are retaliatory, violate constitutional rights under Articles 10, 41, and 47, and amount to double jeopardy and contempt of court.
27. The 2nd interested party emphasizes that the Petitioners are entitled to reinstatement and warns of imminent harm if the application is not granted.

Petitioners' supplementary affidavit

28. The Petitioners aver that the Respondents have acted in bad faith and with disregard for court orders by continuing disciplinary proceedings despite the termination of criminal charges confirmed by Justice Ongudi and CM Ochieng in EACC Criminal Case No. 002 of 2020.
29. The Petitioners argue that the institutional consultations cited by the Respondents are contemptuous, having exceeded a reasonable timeframe and violated explicit judicial directives barring further prosecution.
30. The Petitioners allege malice and procedural impropriety in the issuance of identical show cause letters, despite their distinct roles and responsibilities, and claim that the respondents' actions, including continued suspension, withholding of salary, and scheduling of disciplinary meetings in defiance of court orders, have caused them irreparable harm, financial vulnerability, and public humiliation.
31. The Petitioners contend that the Respondents' affidavits lack factual rebuttal and are merely generic recitals intended to obscure the unlawful nature of their conduct.
32. The Petitioners aver that the Respondents have effectively admitted to unlawfully continuing their suspension, withholding benefits, and attempting to justify these actions through an illegitimate disciplinary process, despite prior court orders and acquittals.



33. The Petitioners argue that the respondents' conduct reflects contempt of court, a misreading of legal thresholds for injunctive relief, and a deliberate attempt to undermine judicial authority by asserting institutional processes over court rulings.
34. The Petitioners emphasize that their grievances are valid, constitutionally grounded, and supported by prior court decisions, including ELRC Petition No. E023 of 2024.
35. The Petitioner contend that the Respondents' actions are self-inflicted, unlawful, and cannot be used to justify further harm or claim public interest.
36. The Petitioner seeks judicial intervention to uphold his rights under Article 41 of *akn ke act 2010 constitution the Constitution* and Section 90 of the *akn ke act 2007 11 Employment Act*, citing the respondents' breach of Section 63 of the *akn ke act 2003 3 Anti-Corruption and Economic Crimes Act* and violations of Chapter Six of *akn ke act 2010 constitution the Constitution*.
37. Parties canvassed the Petition by way of written submissions.

Respondent's submissions

38. The Respondent submitted that the Petition does not meet the constitutional threshold as set out in the case of *Anarita Karimi Njeru v Republic* [1979] eKLR, which requires petitioners to clearly state the constitutional provisions allegedly violated, detail the nature of the violations, and explain how the Respondent's actions caused those violations. In *Commission for Human Rights and Justice V Land Settlement Board of Trustees & 5 Others* [2021] eKLR, the court held as follows:

“The principles of drafting constitutional petitions were clearly captured in the case of *Anarita Karimi V Republic* [1979] eKLR. Trevelyan J (as he then was) and Hancox J (as he then was) stated as follows:

“We would however, again stress that if a person is seeking redress from High Court on a matter which involves a reference to *akn ke act 2010 constitution the Constitution*. It is important (if only to ensure that justice is done to his/her case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

Restated the principles established in *Anarita Karimi* case require the Petitioner to:

- i. Specifically set out the provisions in the Bill of Rights that have been allegedly violated;
- ii. Provide the particulars of the alleged violations;
- iii. Provide particulars in which the Respondent has purportedly infringed the rights.

In this suit the Petitioner has presented an omnibus Petition. They cite Article 1, Article 2, Article 3 and Article 10 of *akn ke act 2010 constitution the Constitution* but does not say how a dispute of ownership of land has threatened the said provisions. The petitioner also mentions that Article 40 has been violated but has failed to evidentially and on a factual basis show how this right has been violated or threatened.”



39. In *Sisilia Nyakoe & Another v Attorney General & 4 Others* [2021] KEHC 8043 (KLR) the court held as follows:

“Counsel for the Petitioners completely became evasive and did not provide any substantive argument as to whether the Petitioners had met the threshold elaborated hereinabove and whether the issues raised were within the private law purview hence could be instituted in an ordinary way. He submitted only on Article 22 and 258 of *akn ke act 2010 constitution the Constitution*, 2010 that gives every party a right to file a Petition in court where his rights as well as rights of others have been infringed or threatened to be infringed. He however failed to recognize that in as much as the said articles would ordinarily give the Petitioners a chance to come to court, they were required to ensure that they stated with a reasonable degree of precision their complaints against the Respondents, the provisions of *akn ke act 2010 constitution the Constitution* that the Respondents had infringed, and the manner in which the said provisions were infringed. From paragraph 24 to 27 of the Petition, the Petitioners highlight the provisions of *akn ke act 2010 constitution the Constitution* that they claim to have been violated by the Respondents but they fail to elaborate on the manner in which the said provisions were violated. I therefore agree with counsel for the Respondent that the Petitioners’ Petition does not meet the threshold of what constitutes a Constitution Petition.” (Emphasis mine).

40. The Respondents submitted that courts should generally refrain from interfering with internal disciplinary processes of employers. The Respondent acknowledge that judicial intervention is only warranted under exceptional circumstances. In this case, the Respondents contend that the Petitioners have mischaracterized the disciplinary notices as double jeopardy, which they claim is legally unfounded. The disciplinary proceedings are distinct from prior criminal and constitutional cases, differing in subject matter, facts, and remedies. The Respondents assert that the Petitioners are attempting to evade legitimate disciplinary action by seeking refuge in court, which could undermine workplace order.

41. In *Joseph G. Naituli V Egerton University & Another* [2007] eKLR, where the court stated as follows:

“In the present application, if this court issued the injunction to restrain the council Disciplinary Committee from conducting the disciplinary hearing in respect of the alleged breach of terms and conditions of service by the Plaintiff, it would amount to the court’s interfering with the internal management of the 1st defendant. As stated earlier in this ruling, the plaintiff and the 1st defendant entered into a contract for personal service which either party is at liberty to terminate at any time. This court cannot interfere with the disciplinary mechanism established under the statutes of the 1st defendant unless it is alleged that there would be breach of the rules of natural justice. In such circumstances an aggrieved party would be at liberty to apply for judicial review and not seek an order of injunction to stop the said disciplinary proceedings from taking place.

In the premises therefore, it is clear that the plaintiff has not established a prima facie case that he is entitled to the order of injunction sought. This court does not have jurisdiction to stop the council of the 1st defendant from disciplining its employees. The court lacks any powers to direct or order parties who have entered into a service contract to perform the said service contract or to perform it in a particular manner. (Emphasis mine).



42. The Respondent submitted that the courts have consistently held that they should not interfere with an employer's internal disciplinary proceedings until such processes are concluded, as affirmed in *Judith Mbayah Tsisiga V Teachers Service Commission* [2017] eKLR, which cited *Alfred Nyungu, Gladys Boss Shollei, George Wekesa V Multimedia University*, and *Rose W. Kiragu V Teachers Service Commission*. In *A S L V National Bank of Kenya & Another* [2018] eKLR, the court emphasized that interference is only warranted if the process is flawed, and even then, only to correct its course. Similarly, in *James Ambuso Omondi v Mohamed Shurie & Another* [2017] eKLR, the court upheld the employer's prerogative to discipline employees, noting that any financial loss during interdiction can be remedied through internal regulations citing the case of *Samson Omworo v Maasai Mara University & 7 Others*, Cause No. 2367 of 2016, which reinforced that disciplinary matters are best resolved at the workplace, where primary evidence is most accessible, and that seeking court injunctions prematurely undermines fair employment relations.
43. The Respondent submitted that the courts should refrain from intervening in an internal disciplinary process that is lawful and procedurally proper. The Respondent emphasized that the Petition fails to demonstrate any legal breach, constitutional violation, or exceptional circumstances justifying judicial involvement. Accordingly, the disciplinary proceedings should proceed to completion under the Respondent's authority, with any grievances addressed through the appropriate legal channels afterwards.
44. The Respondent submitted that the Petitioners' challenge to the show cause notice letters and suspension lacks merit and is misguided. The Respondent also submitted that the disciplinary process is legally sound, aligned with institutional policy, and adheres to the principles of natural justice, stating that the Petitioners were properly informed of the allegations, given a chance to respond, and notified of an upcoming hearing before a duly constituted panel fulfilling all legal requirements. The Respondent relied on the case of *Mercy Oyugi V Kenya Port Authority* [2018] eKLR, where the court emphasized that it is in the Claimant's best interest to participate in the disciplinary process and clear her name before the Respondent's committee. It affirmed the Respondent's right to investigate and discipline its employees, noting that the Claimant had not demonstrated a strong prima facie case or the likelihood of suffering irreparable harm that could not be remedied by damages. The court further observed that, should the disciplinary process result in an unlawful or unfair termination, the Claimant would still have access to legal remedies such as compensation, reinstatement, or re-engagement under the *akn ke act 2007 11 Employment Act*.
45. Still in *Mercy Oyugi V Kenya Port Authority*(supra), the court cited the case of *Jeff Milton O. Odongo V Kenya Ports Authority* [2016] eKLR, where the court stated that an employer is legally entitled to discipline employees, provided the process respects established legal procedures. Courts generally refrain from intervening in internal disciplinary proceedings unless the employment is governed by statute and the employer oversteps legal boundaries or acts unlawfully. In this case, the court allowed the disciplinary committee to proceed, noting that the employee could later contest the outcome if it proves to be unjust or illegal.
46. The Respondent relied on the case of *Gregory Otieno Owouth v Mumias Sugar Co. Ltd* [2016] eKLR where the court stated that suspension is appropriate where gross misconduct is suspected and further investigation is needed, making a pre-suspension hearing impractical. The Respondent dismissed the Petitioners' reliance on *res judicata* and double jeopardy, asserting that the disciplinary notices are a separate administrative process, not a re-litigation of prior judicial decisions.



47. The Respondent contended that the Petitioners are attempting to evade scrutiny by mischaracterizing a routine inquiry as a constitutional crisis, undermining the University's duty to uphold staff accountability.
48. The Respondent maintained that the suspensions were lawful and procedurally sound, and granting the requested relief would improperly alter employment contracts and restrict managerial discretion.
49. The Respondent urged the court to preserve institutional autonomy and dismiss the Petition with costs.

2nd interested party submissions

50. The 2nd interested party submitted that the Petitioners satisfied the threshold for a constitutional petition as set out in the case of *Anarita Karimi Njeru V Republic (Supra)*.
51. The 2nd interested party argue that, contrary to the Respondents' claims, the Petitioners' petition clearly and precisely outlines the constitutional violations alleged, specifically under Articles 41, 47, and 50 of *akn ke act 2010 constitution the Constitution of Kenya, 2010*. These violations stem from continued suspension, disregard of court orders, breach of legitimate expectations, and initiation of repetitive disciplinary actions. The 2nd interested party emphasize that the rule in *Anarita Karimi Njeru V Republic (supra)* must be interpreted within the current constitutional framework, which promotes access to justice without undue technical barriers. In the case of *Frosted Society of Human Rights Alliance V Attorney General & 2 Others [2012] KEHC 2480 (KLR)*, the court highlighted that while sufficient notice of alleged violations is necessary, the required precision is substantive rather than mathematical.
52. The 2nd interested party maintain that the Petitioners' pleadings meet the threshold and that the Respondents have not shown any difficulty in understanding or responding to the claims. Furthermore, under Rule 10 of the "Mutunga Rules," even informal applications are acceptable if they disclose a violation of rights, reinforcing the sufficiency of their petition.
53. The 2nd interested party submitted that it has been almost 10 years since the commission of the alleged disciplinary offence the Respondent did not take any disciplinary action against the Petitioners. The 2nd interested party argued that the Petitioner's interdiction was solely based on criminal charges that were later quashed by the High Court in Nakuru for violating their rights, rendering the basis for their suspension legally void. The 2nd interested party highlighted that the Respondents failed to initiate any internal disciplinary proceedings for nearly a decade and only did so after the acquittal, which they claim is a bad faith attempt to justify continued suspension and circumvent statutory obligations under sections 70 and 71 of the *akn ke act 2017 10 Public Service Commission Act*. These provisions mandate reinstatement and restoration of withheld benefits upon termination of criminal proceedings if no punishment follows.
54. The 2nd interested party submitted that the refusal to reinstate the Petitioners or pay their dues violates their legitimate expectation and right to fair administrative action under Article 47 of *akn ke act 2010 constitution the Constitution*. The 2nd interested party relied on the case of *Communications Commission of Kenya & 3 Others V Royal Media Services Ltd & 3 Others [2014] KESC53 (KLR)*, the Supreme Court emphasized that a legitimate expectation arises from clear promises or consistent practices by public authorities, and any deviation results in unfairness and abuse of power. The 2nd interested party conclude that the Respondents' actions are an afterthought designed to evade legal obligations and defeat the Petitioners' legitimate expectations.



55. The 2nd interested party argued that this Court has the authority to intervene in the disciplinary proceedings due to the exceptional prejudice and injustice they face, as recognized in *Judith Mbayah Tsisiga V Teachers Service Commission*(supra), where the court held that intervention is warranted in extraordinary circumstances.
56. The 2nd interested party contended that the notices to show cause letters mirror previously quashed criminal charges and were issued nearly a decade after the alleged misconduct, indicating retaliatory intent. The 2nd interested party also contended that the Respondents' failure to act promptly during the suspension period and their disregard of a National Assembly directive recommending reinstatement further demonstrate bad faith. The High Court in Nakuru Petition No. E028 of 2022 not only quashed the criminal proceedings but also prohibited further investigations into the same allegations, which were deemed unsubstantiated.
57. The 2nd interested party submitted that the Respondents' actions violate Article 47 of *akn ke act 2010 constitution the Constitution*, infringing on their legitimate expectations, and amount to an abuse of power. Given the prolonged delay, lack of fresh charges, and disregard for judicial and statutory obligations, they seek reliefs under Article 23(3) of *akn ke act 2010 constitution the Constitution*, including reinstatement and restoration of withheld benefits as provided under the *akn ke act 2017 10 Public Service Commission Act*.
58. The 2nd interested party urged the court to find that the petition has merit and should be allowed as prayed.
59. At the time of writing this judgment, the Petitioners did not put in the written submissions.

Analysis and determination

60. The court has considered the petition, the replying affidavits, supplementary affidavit, together with the rival submissions by the parties. The issue for determination is whether the petition before this Honourable court is merited.
61. In *Anarita Karimi Njeru V Republic*(supra), the court held that constitutional violations must be pleaded with sufficient precision. The judge emphasized that a petitioner must clearly state the specific constitutional provisions alleged to be violated and the manner in which those rights were violated.
62. In this instant case, the Petitioners are seeking redress, stating that their constitutional rights were violated. The Petitioners have stated that they were charged in several charges in Nakuru Anti-Corruption Court Case No. E02 of 2020 Republic V Mary Khakoni Walingo & 4 others which nullified the charges levelled against them and were declared unconstitutional as ruled on 21st March 2024 by Hon. Justice Hillary Chemitei in Nakuru Constitutional Petition No. E028 of 2022, with further discharge orders issued on 28th May 2024, following Criminal Revision Nos. E203 and E220 of 2024, respectively.
63. Thereafter, the Respondent lifted the suspensions and notice to show cause letters by the Respondents. Section 41(1) of the *akn ke act 2007 11 Employment Act* provides as follows:

“Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”



64. In the case of *Postal Corporation of Kenya V Andrew K. Tanui* [2019] KECA 489 (KLR), the Court of Appeal clarified that a show-cause letter is part of the statutory requirement under Section 41. The court is of the view that the Respondent did not violate the Petitioner's rights and it had followed process in terms of issuing a notice to show cause letter and given the Petitioners 10 days to respond to the said allegations of gross misconduct.
65. In the instant case the Petitioners had been arrested and charged in criminal court. They contested the charges vide Constitutional Petition 028 2022 – *Mary Khakoni Walingo -VS- Directorate of Criminal Investigations & 4 Others* and Justice Chemitei delivered Judgment on 21st March 2024. He quashed all the charges and an order was issued prohibiting agents from investigating or recommending the prosecution of the Petitioners.
66. Since 2019 the respondents have not commenced disciplinary proceedings against the Petitioners and so is not clear why now?
- It is provided in Section 45(5) of the *akn ke act 2007 11 Employment Act* that an employer is allowed to take into account previous employee's misconduct while addressing current workplace misconduct. There is no new or current misconduct in this case to the Notice to show-cause letter referring to alleged misconducts committed between 2016 to 2019.
67. Even though there is no time limitation in the law on disciplining an employee BUT should the employer intend to file a case he will be barred by Section 89 of the *akn ke act 2007 11 Employment Act*.
68. The case of *Mathew Kipchumba Koskei -VS- Baringo Teachers Sacco* cause 11 of 2012 is relevant to this particular case. In the aforementioned case court stated: -

However, in employment disciplinary cases where the criminal element exists in the opinion of the employer, the employer has an election to conduct the investigations using the internal administrative systems or to report to the relevant criminal justice agency and in which event the agency's findings would be binding upon the employer in that matter as was held to be the position in the judgment in the case of *Patrick Njuguna Kariuki – Versus- Del Monte (K) Limited*, Cause No. 9523 of 2011, where this court stated, "The memo of suspension dated 9.11.2009 had the effect of the Respondent electing to have the allegations against the Claimant investigated by the state through the criminal case number 1134 of 2009 in which the Claimant was one of the accused persons. By making the election, the Respondent was thereby precluded from internally concluding the Claimant's disciplinary case and the Claimant had a legitimate expectation that the Respondent would determine his fate taking into account the outcome of the proceedings in the criminal case. The criminal case found that the Claimant was innocent as charged and the judgment was delivered on 24th February, 2011 long after the Respondent had dismissed the Claimant with effect from 12.11.2009 and by the letter dated 12.11.2009. The court finds that on 12.11.2009 the Respondent did not have the benefit of the state's investigation report or findings as was to be determined in the criminal case so that the test for gross misconduct as founded on the pending investigations was not capable of being proved by the Respondent at the time of the termination. The Respondent having failed to prove the reason for dismissal of the Claimant on 12.11.2009, the court finds that the termination was unfair under the provisions of Section 43 of the Act; the reason for termination of the contract of employment at the time of the termination cannot be matters that the Respondent can be said to have genuinely believed to exist to justify the termination of the employment."



Nevertheless, such circumstances have never ceased to occasion complex considerations that must be taken into account to ensure that justice is done in every individual case. It is the opinion of the court that the following general principles would apply in assessing the individual cases:

- a. Where in the opinion of the employer the employee's misconduct amounts to a criminal offence, the employer may initiate and conclude the administrative disciplinary case and the matter rests with the employer's decision without involving the relevant criminal justice agency.
- b) If the employer decides not to conclude the administrative disciplinary case in such matters and makes a criminal complaint, the employer is generally bound with the outcome of the criminal process and if at the end of the criminal process the employee is exculpated or found innocent, the employer is bound and may not initiate and impose a punishment on account of the grounds similar to or substantially similar to those the employee has been exculpated or found innocent in the criminal process."

69. Finally, I would be hypocritical not to refer to my recent judgment Petition E020 2024 Hassan Abdi Noor -VS- Maasai Mara University delivered on 24th October 2025 where I ruled in part as follows: -

"An order prohibiting the Respondent from any disciplinary measures against the Petitioner in connection with the Petitioner's trial and eventual acquittal is granted though this seems to be overtaken by events."

70. Having considered the pleading, submissions, law and case laws and facts, the court is persuaded that the Petitioners have established a case that they should not be recalled for disciplinary allegations for misconduct purported to have taken place between 2016-2019 and furthermore various courts had made orders prohibiting further disciplinary measures and or investigations being taken against the Petitioners.

71. Under the circumstances, the court is convinced the Petitioners have made a case for their petition. The following prayers are granted: - a, b, c, d and g of the petition.

However, prayers e and f are not granted as are not merited and prayer h, i, j and k are already provided in other cases related to the same parties and so will not be granted in this case.

72. Costs of the Petition are granted to the Petitioners.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 21ST DAY OF NOVEMBER, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all



judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *akn ke act 2010 constitution the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *akn ke act 2010 constitution the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

