

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
OF KENYA AT NAIROBI

PETITION NO. E179 OF 2025

**IN THE MATTER OF ARTICLES 1, 2, 3, 10, 22, 23, 27, 41, 47,
232 AND 258 OF THE CONSTITUTION OF KENYA, 2010**

-AND-

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

-AND-

**IN THE MATTER OF SECTION 62(1) OF THE ANTI-
CORRUPTION AND ECONOMIC CRIMES ACT**

BETWEEN

JOASH MOGAMBI OINDO..... PETITIONER

- VERSUS -

NATIONAL LAND COMMISSION..... RESPONDENT

AND

PUBLIC SERVICE

COMMISSION..... 1ST INTERESTED PARTY

ETHICS AND ANTI-CORRUPTION

COMMISSION..... 2ND INTERESTED PARTY

*(Before Hon. Justice Byram Ongaya on Wednesday 17th December,
2025)*

JUDGMENT

1. The petitioner filed the petition and supporting affidavit dated 11.09.2025 through Murunga Makau & Company Advocates. He prayed as follows:
 - a. A declaration that the dismissal of the petitioner by the 1st respondent, *vide* a letter dated 1st August 2025, is unlawful, unconstitutional, null and void *ab initio*, for contravening Articles 10, 28, 41, 47 and 232 of the Constitution of Kenya, 2010.
 - b. An order of *Certiorari* be and is hereby issued, quashing the decision of the respondent dismissing the petitioner as contained in the letter dated 1st August 2025
 - c. An order of Prohibition be and is hereby issued, restraining the respondent, whether by itself, its agents, servants or any person acting under its authority, from effecting, enforcing,

or otherwise giving effect to the dismissal of the petitioner, or from altering the contractual terms of his employment, pending the hearing and determination of *ACEC No. 6 of 2019, Republic v Prof. Mohammad Swazuri & Others*.

- d. An order of reinstatement, reinstating the petitioner to his position as a Deputy Director in the Directorate of Valuation & Taxation of the National Land Commission, together with all salary, benefits, privileges, and entitlements due prior to the unlawful and unconstitutional dismissal.
- e. An order directing the respondent to pay to the petitioner all arrears of salary, allowances, and benefits unlawfully withheld from the date of removal from the payroll to the date of reinstatement.
- f. Any such further or other orders, directions or reliefs as this Honourable Court may deem just and necessary in the circumstances.
- g. That the costs of this petition be borne by the respondents

2. The petitioner's case was as follows:

- a) On 01.08.2025, the respondent issued a letter terminating the petitioner's employment, which decision was communicated to him via email dated 01.09.2025. The respondent's said decision unlawfully dismissed him from employment and removed him from the payroll, thereby cutting off his source of livelihood and employment benefits. The action exposed him and his family to immediate and severe economic hardship, including loss of medical cover and the ability to meet essential financial and social obligations.
- b) Before the dismissal, he had been placed on lawful suspension on half pay pursuant to Section 62(1) of the Anti-Corruption and Economic Crimes Act (ACEC Act), following advice given by the 2nd interested party, through its letter dated 02.05.2019. The respondent disregarded this statutory framework by purporting to terminate his employment altogether, thereby acting illegally, outside its mandate and unlawfully.
- c) In dismissing him, the respondent further failed to heed the Judgment of this Honourable Court in **Petition No. E147 of**

2024: Joash Oindo Mogambi vs. National Land Commission & Another, wherein the Court held that as a public officer under suspension, the petitioner remained a member of the public service until the conclusion of the pending criminal proceedings in **ACEC No. 6 of 2019, Prof. Mohammad Swazuri & Others.**

- d) The impugned dismissal is premised on the criminal proceedings referenced in the respondent's notice to show cause letter dated 17.02.2022 issued to the petitioner. By relying on the said NTSC and determining the petitioner's culpability based on allegations pending trial court, the respondent effectively prejudged the criminal case, upheld the role of the trial court, and undermined his constitutional right to the presumption of innocence guaranteed under Article 50(2)(a) of the Constitution.
- e) The disciplinary process that culminated in his dismissal was procedurally unfair and incurably flawed, as the respondent consistently scheduled disciplinary hearings within its premises, even though his bail terms expressly barred him

from accessing the said offices. The said scheduling was deliberate and designed to ensure that he could not attend or be heard in his own defence, in violation of his right to fair administrative action under Article 47 of the Constitution of Kenya.

- f) Although the respondent later purported to change the venue to an external location, the Kenya Bankers Association Conference Room, the same was a calculated manoeuvre intended to create an appearance of fairness, which could not cure the illegality or the initial procedural injustice.
- g) Further, although the respondent, in its letter dated 01.08.2025, advised him to appeal to the “Commission” within 21 days, the applicable code of conduct lacks any such appellate mechanism. This procedural lacuna compounded the injustice against the petitioner, necessitating the filing of this petition.
- h) Unless this Honourable Court intervenes and quashes the respondent’s unlawful dismissal decision, he will continue to suffer grave injustice, and the respondent will be emboldened

to disregard constitutional and statutory safeguards that protect employees.

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

- (i) The petitioner's dismissal by the respondent violated Article 10. The respondent acted in bad faith and outside the rule of law by *inter alia*, prejudging matters that are sub-judice before the Anti-Corruption Court, thereby undermining judicial integrity and the presumption of innocence. Its actions are antithetical to the constitutional values of fairness, transparency, accountability, and human dignity.
- (ii) The respondent's decision to unlawfully dismiss the petitioner from employment and remove him from the payroll has led to the abrupt loss of salary, medical cover and other employment benefits, which has undermined his dignity as a human being, contrary to Article 28.
- (iii) The respondent has violated the petitioner's right to fair labour practices under Article 41 by conducting his dismissal in disregard of Section 62(1) of the ACEC Act. By grounding

the dismissal on allegations that are the subject of pending criminal proceedings, the respondent effectively prejudiced the trial's outcome and undermined his right to fair treatment. Additionally, the disciplinary hearings were deliberately scheduled at the respondent's premises, contrary to the petitioner's bail terms, making his attendance impossible. Moving the venue to an external location later on created only an illusion of fairness, which actions violated the petitioner's rights to reasonable working conditions and fair treatment under Article 41(2)(b).

(iv) The disciplinary process leading to the dismissal was neither lawful, reasonable, nor procedurally fair in violation of Article 47. The petitioner was denied a genuine opportunity to be heard, and the respondent acted *ultra vires* by ignoring the lawful suspension under ACECA. Further, the respondent's reliance on its internal disciplinary code of conduct to override constitutional safeguards is itself unreasonable and unlawful.

4. The respondent filed a replying affidavit, sworn by Guyo Sora on 10.11.2025, through its Director Legal Affairs and Dispute Resolution. It was urged as follows:

(a) The respondent is an independent constitutional commission whose officers are bound by the Commission's Code of Conduct and Ethics, HR Manual and the Disciplinary Code, all of which are brought to the attention of every officer of the Commission. Further, the respondent has the power to initiate administrative action against any of its officers and finalize such cases separately from the courts.

(b) The petitioner is facing criminal charges in court following his involvement in economic crime activities. Since the respondent is not a court of law, the disciplinary process undertaken against the petitioner is independent of the court process, and both should be allowed to execute their respective mandates without undue interference.

(c) The petitioner was required to show cause why disciplinary action should not be brought against him for allegedly committing certain irregularities that border on gross

misconduct, as provided under the respondent's Code of Conduct.

- (d) The Court declined to interfere when the petitioner challenged the notice to show cause against him in **Nairobi ELRC Petition E137 of 2022 – James Oindo vs. The National Land Commission**, which the Court dismissed and held that the respondent followed the law in initiating the disciplinary process by issuing the letter dated 17.02.2022.
- (e) Subsequently, the respondent issued several invitations for the petitioner to appear before its disciplinary committee at its premises, but he failed to attend as required. Instead, the petitioner filed *Nairobi ELRC Petition E147 of 2024: Joash Mogambi Oindo vs. The National Land Commission & Another*, challenging the disciplinary proceedings and his continued suspension. The Court reiterated that it was satisfied the respondent had followed due process in initiating the disciplinary proceedings.
- (f) Consequently, the respondent reached a determination that sufficient grounds existed for the petitioner's removal, and the

decision was communicated to him. When he was afforded an opportunity to appeal against the said decision, the petitioner instituted the present suit without exhausting the administrative and statutory remedies available to him before invoking the jurisdiction of this Court.

(g) The instant petition does not meet the required threshold for issuance of certiorari and prohibition orders. Further, the petitioner has not adduced evidence to prove that the respondent's proceedings and decision were unlawful. The petition is an abuse of the court process.

5. The petitioner then filed a supplementary affidavit, sworn on 19.11.2025. He argued that what had been circulated internally was only a draft code that has neither been adopted nor operationalized and cannot form the basis of lawful administrative action. That the annexure marked "GS-1" is an extract from an unverifiable and unauthenticated document, and its reliance is prejudicial to him. The respondent's failure to annex any actual code of conduct confirms there was no legitimate basis for the powers it purports to exercise. He further

argued that the Court confirmed in its Judgement of 11.10.2023 that the petitioner's suspension was statutory, and its termination depended on the outcome of the criminal case. That the respondent's subsequent disciplinary process, anchored on allegations identical to those before the trial court, was irrational and improper. He pointed out that his non-attendance at the scheduled disciplinary hearings was therefore in compliance with a valid court order. The petitioner denied that the respondents had or provided for any internal appeal mechanism.

6. The 1st respondent did not enter appearance and did not participate in the matter. The 2nd interested party filed grounds of opposition dated 22.10.2025 and urged that it be struck out as a party because it has no employer-employee relationship with the petition, it played no role in the disciplinary process and, no relief had been prayed for against it.
7. The petitioner and the respondent filed their respective written submissions.
8. To answer the **1st issue**, the Court find that the dismissal of the petitioner did not offend Articles 10, 28, 41, 47 and 232 of the

Constitution. The evidence was that he received a notice to show cause dated 17.02.2022,. The notice levelled that the petitioner had committed an act calculated to embarrass the Commission, negligence of duty and dishonesty reflecting adversely on the honesty and moral integrity of his duties as an employee thereby tainting the image of the respondent through negative publicity. The notice also reminded the petitioner about the criminal proceedings about the economic crime activities as initiated and being continued against the petitioner. It was then communicated in the notice that that in that regard the respondent was contemplating to dismiss the petitioner from employment but prior to that, he was being called upon to show cause why intended disciplinary proceedings action should not be taken. He was invited to make his representation, if any within 21 days from the date of the notice and failing the contemplated action would be taken without further reference to the petitioner.

9. The evidence is that the petitioner failed to respond to the notice to show cause and equally failed to attend the scheduled

disciplinary hearings to which he was given a chance more than once to so attend.

10. The Court finds that the petitioner was the author of his own predicament. He alleges that the bond terms in the pending criminal case were that he could not enter the respondent's premises but while admitting that he was given a chance to attend at a venue outside the premises, he appears to have failed to attend. He also offers no explanation why he never made the written representation as he was invited to do. In view of that conduct, the Court has found that the petitioner was the captain of his fate being his impugned dismissal. The respondent's submissions in that respect are upheld.
11. While the basis of asking the petitioner to appeal to Public Service Commission has not been established, that the opportunity to so appeal was availed was not disputed.
12. Taking all the circumstances into account, the Court finds that the petitioner was uncooperative and he failed to submit to the disciplinary process on merits of the levelled case as well as an avenue of ventilating his procedural grievances about his

dissatisfaction in the manner the respondent was handling the entire process. The respondent is found to have been entitled to proceed in absence of the petitioner and impose the dismissal. The Court returns accordingly.

13. To answer the **2nd issue** , the Court finds that in the earlier *Petition E147 of 2024: Joash Mogambi Oindo vs. The National Land Commission & Another*, the Court already held that suspension under section 62 of Anti-Corruption and Economic Crimes Act did not adjourn the initiation, continuation and conclusion of disciplinary proceedings by an employer against the employee. The Court specifically held thus, “The Court returns that indeed, as urged for the respondents the petitioner was suspended on account of the commenced and pending criminal case and as envisaged in section 62 of ACECA. The petitioner acknowledges that the criminal proceedings are pending hearing and determination. Section 62 of ACECA does not provide that if two years lapsed and the criminal case had not been determined, then the suspension would lapse or get lifted. Instead the section provides that ensuing criminal proceedings be

determined within 2 years. It appears to the Court that the Director of Public Prosecutions, the trial Court, and other persons or agencies involved in the pending criminal case would be in a better position to explain the delay. In any event, the 2nd respondent has explained the circumstances of the delay and the petitioner has not rebutted the explanation.”

14. The petitioner appears to revisit that issue, that in light of the said section 62, the respondent was barred from proceeding with the disciplinary process. However, in view of the earlier finding in the earlier petition between the parties, the Court cannot revisit the matter on account of the barring by the doctrine of res judicata. In other words and to that extent, the Court returns that the instant petition was partially res judicata as found.
15. To answer the 3rd **issue**, it is now generally settled and evolved trite law that criminal proceedings and employer’s administrative disciplinary proceedings are parallel or distinct and unless expressly barred by statute, applicable service regulations or terms and contract of service between the parties, nothing precludes an employer from exercising powers of disciplinary

control against an employee accused in pending disciplinary case.

For instance, in **Teacher Service Commission v Kibe (Civil Appeal 5 of 2018) [2025] KECA 32 (KLR) (17 January 2025) (Judgment)**

Neutral citation: [2025] KECA 32 (KLR) the Court of Appeal (J Mohammed, LK Kimaru & AO Muchelule, JJA) held thus,

“28.This Court in **Teachers Service Commission v Joseph Wambugu Nderitu (supra)** stated as follows: “This Court has crystalized the above position in a number of its own pronouncements. Waki JA in the case of the **Hon. The Attorney General and another versus Maina Githinji & Another Nyeri Court of Appeal No. 21 of 2015 (UR)** approved the reasoning of Okwengu JA in **Judicial Service Commission versus Gladys Boss Shollei & Another (2014) eKLR**, and the decision of the court in **Kibe versus Attorney General Civil Appeal no. 164 of 2000**.In the Judicial Service Commission case (supra) the following observations made by Okwengu JA.

“(61)the disciplinary process undertaken by the appellant was a quasi-judicial process as it involved the appellant in an

adjudicatory function that required the appellant to ascertain facts and make a decision determining the respondent's legal rights in accordance with [the Constitution](#) and the [Judicial Service Act](#), both of which provided for fair hearing. The disciplinary proceedings were anchored on a contractual relationship and the appellant was not empowered to provide penal sanctions. Notwithstanding the seriousness of the allegations made against the respondent, the disciplinary proceedings could not be treated like criminal proceedings, as the nature of the sanctions that could be applied in a criminal trial. Thus the learned judge misdirected himself, in holding that the disciplinary proceedings were quasi-criminal. The Criminal Procedure Code which is an Act providing for the procedure in criminal cases had absolutely no application in the disciplinary proceedings, and the learned judge erred in applying the provisions of the Criminal Procedure Code."

29. The appellant having conducted and concluded its disciplinary process and accorded the respondent an opportunity to be heard, we find that the appeal has merit and is bound to succeed. Having so found, we find that we need not interrogate

the lawfulness or otherwise of the remedies accorded to the respondent by the ELRC. With the success of the appeal, they fall by the wayside.”

16. In **Anand Kumar vs Union Of India And Another on 17**

October, 2025, **Ajay Bhanot J** of Allahabad High Court analysed extensively the position of the Supreme Court of India on the effect of pending criminal case on employer’s exercise of disciplinary powers over the employee who is charged and held that the decided cases by the Supreme Court of India do not set applicable hard rules and that each case ought be considered on its own merits. In that case the Court had been asked to stay a disciplinary process pending conclusion of a criminal case against the employee. On 17.10.2025, the Court held as follows:

“49. The question which now requires consideration is whether the imperative of continuing the enquiry outweighs the consequences of staying the departmental enquiry.

50. Departmental enquiry is integral part of the disciplinary structures of the government/institution which in the instant case

is the India Government Mint. The India Government Mint exercises very critical functions which have a direct bearing on the economy of the country. Fair enquiry proceedings will permit transparency in the organization and instil confidence in the employees. Expeditious conclusion of the enquiry by adopting fair proceedings will ensure probity in the individual conduct of the employees and accountability in the overall institutional functioning. The efficacious disciplinary proceedings conducted in consonance with established norms of natural justice and fairness are critical to institutional morale, strengthening the institutional disciplinary framework and achieving institutional efficiency and purpose.

51. In this wake interdicting the impugned departmental enquiry at this stage will have grave consequences. The petitioner is charged with the misconduct of theft of government money from the Government of India Mint. Permitting the petitioner to continue who charged with serious misconduct to function as if it was business as usual instead of exposing him to expeditious departmental procedures will not be conducive to institutional

interests of the Government of India Mint, and rule of law in the department.

52. Staying on departmental enquiry in the facts of this case will promote a culture of lack of accountability, and create a sense of immunity in the delinquent official who has prima facie committed gross acts of departmental misconduct.

53. Evil consequences flowing from the stay of departmental proceedings will far outweigh gains of stalling the departmental proceedings on ground of pendency of criminal case.

54. Considering the fact that the India Government Mint is engaged in very sensitive transactions, it will not be conducive in the interest of justice to permit the enquiry to be held in abeyance or delayed in any manner. It is both desirable and advisable to hold departmental enquiry and prosecute the criminal trial simultaneously.

55. In light of the preceding discussion the writ petition is dismissed.

56. The enquiry shall be completed within a period of three months from the date of receipt of a certified copy of this order.

57. The petitioner is directed to cooperate in the enquiry proceedings.”

17. One of the holdings by the Supreme Court of India cited in the foregoing case by **Ajay Bhanot J** and with a bearing to the instant petition was as follows,

“33. Examining the justification of staying an ongoing disciplinary proceedings being the conclusion of the trial court in the criminal case, the Supreme Court in **Stanzen Toyotetsu India P. Ltd. vs. Girish V. and Ors.**¹⁸ reiterated the distinction between a criminal trial and a departmental enquiry and the need to balance the demand for a fair trial to the accused and the requirement of an expeditious conclusion of a disciplinary enquiry by holding:

8. The only question that falls for determination in the above backdrop is whether the courts below were justified in staying the ongoing disciplinary proceedings pending conclusion of the trial in the criminal case registered and filed against the respondents. The answer to that question would primarily depend upon whether there is any legal bar to the continuance of the

disciplinary proceedings against the employees based on an incident which is also the subject-matter of criminal case against such employees. It would also depend upon the nature of the charges in the criminal case filed against the employees and whether the case involves complicated questions of law and fact. The possibility of prejudice to the employees accused in the criminal case on account of the parallel disciplinary enquiry going ahead is another dimension which will have to be addressed while permitting or staying such disciplinary enquiry proceedings. The law on the subject is fairly well settled for similar issues and has often engaged the attention of this Court in varied fact situations. Although the pronouncements of this Court have stopped short of prescribing any straitjacket formula for application to all cases, the decisions of this Court have identified the broad approach to be adopted in such matters leaving it for the courts concerned to take an appropriate view in the peculiar facts and circumstances of each case that comes up before them. Suffice it to say that there is no short-cut solution to the problem. What is, however, fairly well settled and was not disputed even

before us is that there is no legal bar to the conduct of the disciplinary proceedings and a criminal trial simultaneously.”

18. That there is no short-cut solution to disciplinary cases at work which have a criminal element and that there possibly exist no general applicable rule is what I meant in **Mathew Kipchumba Koskei V Baringo Teachers Sacco [2013] KEHC 3584 (KLR)**

when it was opined,

“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.

c) If the employer has initiated and concluded the disciplinary proceedings on account of a misconduct which also has substantially been subject of a criminal process for which the employee is exculpated or found innocent, the employee is thereby entitled to setting aside of the employer's administrative punitive decision either by the employer or lawful authority and the employee is entitled to relevant legal remedies as may be found to apply and to be just.

d) To avoid the complexities and likely inconveniences of (a), (b) and (c) above, where in the opinion of the employer the employee's misconduct amounts to a criminal offence, the employer should stay the administrative disciplinary process pending the outcome of the criminal process by the concerned

criminal justice agency. In event of such stay, it is open for the employer to invoke suspension or interdiction or leave of the affected employee upon such terms as may be just pending the outcome of the criminal process.”

19. The emerging jurisprudence is that Courts both in Kenya and India have consistently held that an employer's disciplinary process is entirely distinct from criminal proceedings, operating in different spheres with different objectives and standards of proof. The effect is that an acquittal in a criminal case doesn't automatically end departmental action and a pending criminal case does not necessary adjourn employer's disciplinary process. An employee who considers that continuing a disciplinary process will prejudice his access to justice in a pending criminal case is at liberty to seek appropriate reliefs through the Court's intervention. In making the intervention, the court will consider each case upon its own merits but the overriding balance will be whether the employee will suffer likely to suffer injustice if the two proceedings run concurrently on the one hand and on the other, whether the employer's enterprise or productivity and

service delivery will be unfairly hampered if the disciplinary process is stayed. The courts ought therefore to balance simultaneous proceedings for fairness, preventing indefinite delays. The critical difference between the criminal process and disciplinary process appear to include the purpose being punishment against service discipline; rules of evidence which are strict in criminal proceedings and lenient in disciplinary process; and, burden of proof being beyond reasonable doubt in criminal process and upon a a balance of probabilities in disciplinary process.

20. In the instant case the Court has found that the petitioner avoided the disciplinary process for no good reason and was thereby uncooperative. He designed not to offer explanations to the respondent about the levelled allegations or even to explain how he thought continuing the disciplinary process while the criminal case was pending would otherwise be prejudicial to his access to justice or prejudicial howsoever. In such circumstances the Court declines to find that the petitioner's rights were violated as alleged.

21. While making that finding the Court has as well considered the holding of the Supreme Court of India as cited by **Ajay Bhanot J** in **Anand Kumar vs Union Of India And Another on 17 October, 2025** thus, _

“19. Milestone in the law occurred when the Supreme Court propounded the law on the issue of concurrent continuance of disciplinary enquiry and criminal prosecution in **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.**⁷ by observing:

22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”

22. To answer the **4th issue**, the Court returns that the petition is liable to dismissal. It is reckoned that the petitioner is still facing the

criminal case and which has taken considerably long and as well as taking into account the winding history of the dispute, there will be no orders on costs.

In conclusion the petition is hereby dismissed with no orders on costs.

**Signed, dated and delivered by video-link and in court at Nairobi
this Wednesday 17th December, 2025.**

**BYRAM ONGAYA
PRINCIPAL JUDGE**