

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO. E219 OF 2025**

**MERCY KALONDU WAMBUA.....PETITIONER**

**- VERSUS -**

**COMMISSION ON ADMINISTRATIVE**

**JUSTICE.....RESPONDENT**

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

**RULING**

1. The petitioner is Mercy Kalondu Wambua. She filed a petition dated 23.10.2025 through Mbeneka Advocates LLP and who acted together with Muma & Kanjama Advocates. She also filed an application alongside the petition. The petitioner has pleaded that at all material times she is the Secretary and Chief Executive Officer of the respondent, an independent constitutional commission established under Article 59 (4) of the Constitution and operationalised by the Commission on

Administrative Justice Act Cap.7 Laws of Kenya. She stated that her appointment was per Article 250(12) of the Constitution and effective 28.02.2022 for a renewable tenure of 5 years. It is her case that the recruitment was transparent, merited and competitive. The respondent's Chairperson addressed to the petitioner a letter dated 15.10.2025 as follows:

RE: INTERDICTION LETTER

We refer to the above matter.

Pursuant to clause 4.47.3 (1) of the Commission on Administrative Justice Human Resource Policies and Procedures Manual, 2<sup>nd</sup> Edition, 2022, this letter serves as formal notice of your interdiction from duty effective 15<sup>th</sup> October, 2025.

This administrative action arises from allegations of gross misconduct and incompetence which warrant investigations. The interdiction period shall run for Fourteen (14) days, commencing 15<sup>th</sup> October, 2025. During the period, you are required to refrain from accessing the Commission's premises, facilities and official platforms unless expressly authorized in writing.

You are also required to immediately hand over all assignments, documents and official items in your possession to the Director Corporate Services who has been appointed as the Acting Commission Secretary.

Kindly note that during the interdiction period, you shall receive your benefits and entitlements as provided under clause 4.47.3 of the Commission on Administrative Justice Human Resource Policies and Procedures Manual, 2<sup>nd</sup> Edition, 2022.

This action does not constitute a finding of guilt and is undertaken in line with the Commission's commitment to procedural fairness, accountability and institutional integrity.

Yours Sincerely,

Signed

CHARLES DULO

CHAIRPERSON OF THE COMMISSION”

2. Clause 4.47.3 (i) of the respondent's Human Resource Policies and Procedures Manual, 2<sup>nd</sup> Edition, 2022 (hereinafter, the Manual” on interdiction provides thus, “ An employee may be interdicted where gross misconduct which is likely to lead to

dismissal is reported and requires investigations or a report that an employee has been charged in a criminal proceeding is received.”

3. In the petition and application the petitioner claimed that the interdiction was unconstitutional, unlawful, and arbitrary warranting the Court’s intervention. It was the petitioner’s case that the “...allegations of gross misconduct and incompetence which warrant investigations...” In the interdiction letter fell short of “...gross misconduct which is likely to lead to dismissal is reported and requires investigations.” As is stated in clause 4.47.3 of the Manual. It was her case that “incompetence” was not among the grounds for interdicting an employee by the respondent. Further, she stated that breach of the clause showed that the respondent had an ill and malicious design to arbitrarily remove the petitioner from the office she held. Further, the respondent had not provided the particulars of the alleged gross misconduct and incompetence as was alleged in the interdiction letter. Thus, she urged that the interdiction was based on malice and bad faith as was as well manifested in the hand over

directives. The petitioner's case was that no report had been made as prescribed in clause 4.47.3. She stated in the application thus "(k) The decision was not preceded by any lawful investigation, notice, or opportunity for the petitioner to respond to specific allegations, as required under Article 236(b) of the Constitution and Section 21 of the Commission on Administrative Justice Act, Cap 7 laws of Kenya." The petitioner urged that the respondent had unlawfully usurped powers that are constitutionally circumscribed and had acted ultra vires its statutory powers.

4. The petitioner prayed that her application filed together with the petition be certified urgent and at the first instance pending the inter partes hearing of the application:

- a) an order to be given suspending the implementation or continued implementation of the applicant's purported interdiction as communicated in the respondent's letter of 15.10.2025; and

b) the respondent is directed to immediately reinstate the petitioner to her substantive position with full terms of employment as they existed prior to 15.10.2025;

5. The petitioner also made a prayer thus, “4. A conservatory order be and is hereby issued restraining the Respondent and/or its agents, servants, or employees from interfering with the Petitioner’s work, job status, dignity, designated work parameters, and terms and conditions of employment pending the hearing and determination of this Petition.” The further prayer was thus, “6. Pending the hearing and determination of this Petition, the Respondent is hereby restrained from publishing, disseminating, or issuing any internal memos, circulars, or communications that are derogatory, defamatory, or prejudicial to the Petitioner’s character, reputation, or employment status, thereby safeguarding the Petitioner’s right to privacy and dignity at work.”

6. The application dated 23.11.2025 and supported with the petitioner’s affidavit thereto was allocated before Wasilwa J on 27.10.2025 and it was ordered, “The application be served upon

the respondents and be heard inter partes on the 30<sup>th</sup> October 2025.” At the hearing, the parties were represented by their respective Counsel. Counsel addressed the Court and notably, Dr. Arwa Advocate for the respondent pointed out that the interdiction subject of the petition had been for 14 days and had expired the previous day on 29.10.2025. The Court then ruled thus, “I have heard the parties’ submissions. I do agree that the prayer to stay interdiction has been overtaken by events. In the meantime, the position of the petitioner should not be interfered with by the respondent pending hearing and determination of this application. Status quo at this stage be maintained. Respondent has 14 days to file and serve their responses to application and the petition. The petitioner to file a reply and submissions in 7 days and respondent to file submissions in 7 days. The issues in application and petition be handled together. Mention on 24.11.2025 for confirmation of submissions.”

7. On 10.11.2025 the parties’ advocates attended Court before Wasilwa J. The respondent had filed the application dated

06.11.2025 seeking recusal of Wasilwa J and the application was allowed as the judge recused forthwith.

8. Against that background, the matter came up for mention on 11.11.2025. There were two pertinent applications subject of the instant ruling as follows:

a) The application for the respondent dated 31.10.2025 seeking stay and setting aside of the order of 30.10.2025.

b) The application of 05.11.2025 seeking to hold the Chairperson of the respondent for contempt in relation to orders given on 30.10.2025.

9. The Court directed parties to file replying affidavits and submissions on the two applications to be heard and decided contemporaneously.

10. The application for contempt filed for the petitioner was under Articles 159 and 162 (2) (a) of the Constitution of Kenya 2010, sections 3 and 5 of the Judicature Act, sections 12, 13 and 20(7) of the Employment and Labour Relations Court Act and all the other enabling provisions of law. The substantive prayers were as follows:

- a) That summons to issue to the respondent's chairperson Charles Dulo to appear before the Court on a date to be set by the Court to explain why orders issued on 30.10.2025 have been breached and show cause why he should not be held in contempt of court for wilful disobedience of those orders.
- b) The respondent's chairperson Charles Dulo be cited for contempt of court for disobeying the orders of the court issued on 30.10.2025.
- c) That in default of prayers (a) and (b) above, warrants of arrest do issue against the respondent's chairperson Charles Dulo and that he be committed to civil jail for six months or any other sanction as the Honourable Court may deem appropriate.
- d) That in order to ensure compliance and implementation of the Court Order issued on 30.10.2025 the Honourable Court be pleased to issue an order directed to the officer commanding station (OCS) Muthangari Police Station or any other relevant police station within the jurisdiction to

provide adequate security, assistance, and necessary enforcement support to the applicant or their agents, to facilitate the full and expeditious implementation of the said Court order.

e) Pending the hearing and determination of the application or subsequent to a finding of contempt, the Honourable Court to be pleased to issue a mandatory order compelling the respondent to forthwith comply with the terms of the Court order issued on 30.10.2025.

11. The application was based on the petitioner's supporting and supplementary affidavits and upon the following grounds:

a) The Court has the necessary jurisdiction to hear and determine the application and to grant the orders as prayed for.

b) That on 30.06.2025 (read 30.10.2025) Wasilwa J issued orders restraining the respondent from further interfering with the petitioner in the performance of her normal duties and from obstructing her resumption of official duties.

- c) The order was issued in presence of Counsel for both parties and the respondent was aware of the existence of the order as given by the Court.
- d) That on 31.10.2025 at 09.17 am the respondent issued the petitioner with a suspension letter effectively barring her from accessing her office and frustrated her from performing her statutory duties. Earlier on 30.10.2025, the respondent had disobeyed the Court order by issuing a letter to show cause dated 30.10.2025 at 13.25 hours and the petitioner urged that the notice was intended to intimidate her and undermine her lawful authority and ability to discharge her duties as commission secretary.
- e) On 31.10.2025 the respondent issued a widely circulated memorandum and press statement declaring that the petitioner had been suspended from employment. It is stated that the statement and publication was made in total disregard of the Court order as it was calculated to embarrass, demean and discredit the petitioner in the eyes

of the public and peers and at also blatantly shoeing contempt of the Court's authority.

- f) On 31.10.2025 the applicant reported at work but she was locked out by police officers from Muthangari Police Station who prevented her from accessing or entry to respondent's premises.
- g) The respondent had appointed Mr. D.M. Karomo to act in the position of Commission Secretary but a role lawfully held by the petitioner per the subsisting Court order and the respondent had thereby disobeyed the Court order.
- h) The respondent had recalled the official motor vehicle allocated to the petitioner to perform her official duties.
- i) The respondent also blocked the petitioner from accessing her official email address [M.wambua@ombudsman.go.ke](mailto:M.wambua@ombudsman.go.ke) cutting her off from her official communications channel and preventing her from performing her statutory duties. The respondent also barred the petitioner's access and management to the official email [info@ombusman.go.ke](mailto:info@ombusman.go.ke) vesting it to the chairperson.

- j) Despite the order of 30.10.2025 being validly in place, without appeal, revocation or variation, the respondent through the Chairperson Charles Dulo had disregarded and disobeyed the order. The chairperson was at all material times aware of the order and whose terms were clear but he wilfully disobeyed.
- k) The court should grant the prayers to ensure the rule of law which is fundamental in the administration of justice is safeguarded and preserved.
- l) The court order issued ex cathedra is compulsive, peremptory and expressly binding

12. The respondent opposed the application by filing the further replying affidavit of Charles Dulo, the Board Chairperson sworn on 17.11.2025, amended affidavit sworn on 17.11.2025, supplementary affidavit of 25.04.2025 and filed through Rachier & Amolo Advocates. The opposition were to the following effect:

- a) On 30.10.2025 Dr. Arwa for the respondent expressed to the Court that an order restraining the respondents from

interfering was overly broad and would paralyze the respondent's statutory functions. Thereafter the Judge clarified (per exhibited video clip of the proceedings and which is not rebutted or disputed) that interference only affected actions not mandatorily required by law and not carried out strictly in accordance with law and further that if there was anything that must be done, the respondent had to do it in the right way, the way the law demanded it be done.

b) The Court should not stop the respondent from performing its statutory or contractual duty to exercise disciplinary control over the petitioner as provided in the Constitution, the Commission for Administrative Justice Act, the Leadership and Integrity Act, Public Finance Management Act, the Public Officer Ethics Act, the Employment Act, and the respondent's policies in the Manual.

13. The respondent's application dated 31.10.2025 was filed through Rachier & Amolo Advocates and Dr. Jotham Arwa

Advocate, Mr Nelson Havi SC and Mr. Edwin Mukele appeared in that behalf. The respondent prayed for orders as follows:

- a) A stay of the orders issued by the Honourable Court on 30.10.2025 pending the hearing and determination of the application inter partes.
- b) Review and setting aside of the said orders in their entirety.
- c) Costs of the application be provided for.

14. The respondent's application was based upon the following grounds:

- a) As at date of giving the orders on 30.10.2025, the Court acknowledged that the interdiction subject of the petition had been for 14 days which had lapsed thus, the interdiction had lapsed.
- b) Nevertheless, the Court had proceeded to issue broad and unrestrained impugned order restraining interference which was undefined in scope and ambiguous as freezing post interdiction actions and beyond or outside the application that had been made for the petitioner.

c) The orders of 30.10.2025 exposed the respondent to adversity as manifested in the contempt application and defeated or undermined the respondent's exercise of statutory power to investigate allegations against the respondent per section 8 of the Commission on Administrative Justice Act, 2011 and it undermined public interest by risking evidence tampering.

15. The Court has considered the parties' respective positions. The two applications run into each other. The issues are therefore considered together and findings made accordingly. The Court has considered the material on record, the written and oral submissions by parties' counsel and the Court returns as follows:

a) As submitted for the petitioner, the respondent and particularly the respondent's Chairperson knew about the court order of 30.10.2025. The application for setting aside and one for recusal are more than enough to establish the notice and knowledge of the order on the part of the

respondent and the Chairperson. The submissions for the petitioner in that regard are upheld.

b) As submitted for the petitioner, there was no discrepancy or ambiguity in the order given by the Court on 30.10.2025. The order was that the interdiction had lapsed, the respondent was not to interfere with the petitioner's position pending inter partes hearing, and, status quo at that stage was to be maintained. The Court has reproduced the orders as given and as was written on the Court file by the Judge. The extracted order read in part as follows "a) That the prayer for stay of interdiction has been overtaken by events. b) That the position of the petitioner should not be interfered with by the respondent pending hearing and determination of the application. Status quo at this stage be maintained. c) ...."

c) As submitted for the respondent, the Court finds that the terms of the order were indeed clarified by the Court to mean that "interference" did not bar the respondent from doing all that was lawful within its mandate but it barred

the respondent from moving against the petitioner as an employee in a manner that was unlawful. To that extent, the Court further returns that the respondent was misconceived in urging and submitting that the order of 30.10.2025 was ambiguous and spreading as to stop the respondent from exercising its lawful mandate. It appears to the Court that the misconception was indeed unfounded in view of the undisputed and unrebutted video clip of the Court's proceedings and at which the Court clarified as much. It would appear to the Court that interference in the order of 30.10.2025 by the terms of the order and also as was clarified by the Judge per exhibited clip was not as a term of art but plain English that the respondent would not involve itself in the petitioner's employment or service in a manner that was not per the terms and conditions of service and more so, outside the respondent's contractual, statutory or constitutional authority.

d) Further, as related to the terms of the order of no interference, the Court order by its own terms stated that

status quo was to be maintained at that stage. So what was the status quo? The Court considers that it was that parties were in a running contract of service to continue as such without the respondent involving itself as to unfairly or unlawfully distract the petitioner from due performance therefrom. In that sense, each party was entitled to due rights and obligations evolving from the contract of service.

- e) Turning to the core issue, the Court therefore finds that the order of 30.10.2025 was that parties continue in their employment relationship strictly per the terms and conditions applicable per contract, statute and constitution. As submitted for the respondent, the respondent as an employer was entitled to exercise the employer's prerogatives such as assigning work, promotion or salary increment, and even exercise of disciplinary control or powers. Thus, in the instant case, in exercise of the powers of disciplinary control, the respondent issued a show cause letter and then a suspension. It is not said that such

exercise of disciplinary power was outside the contractual, statutory or constitutional provisions governing the parties' employment relationship. In other words, the Court finds that the issuance of the show cause letter and then the suspension, in so far as were within the terms and conditions of service, the same were within the no interference and maintenance of status quo at that stage as was enshrined in the terms of the Court order.

- f) It therefore emerges that the order of 30.10.2025 had no ambiguity and it did not spread or mushroom as to bar the respondent from exercising lawful employer's prerogative such as initiating disciplinary control as was done. Such initiation of disciplinary control, unless otherwise established, cannot be said to have amounted to an act of breach of contract, unwarranted, unlawful or unconstitutional manipulation of the employment relationship on the part of the respondent as to amount to disobedience of the terms of the order of 30.10.2025, and

therefore, contempt of Court, as was urged for the petitioner.

g) The outcome is that there was no established contempt, the impugned order was not ambiguous, no ground for review was established, and accordingly, both applications must fail as unjustified and based upon misconception as already found. For avoidance of doubt, the terms in the order of no interference and maintenance of status quo at that stage and being consequential to the lapsed interdiction effectively meant the parties to continue in the employment relationship strictly in conformity with the prevailing contractual, statutory and constitutional provisions applicable.

h) The Court has considered the margins of success and each application herein will be dismissed with orders each party to bear own costs.

In conclusion the application for contempt for the petitioner and the application for setting aside for the respondent with reference to the order given herein on 30.10.2025 are both hereby dismissed and each

party to bear own costs; and, parties to take directions towards further steps for expeditious hearing and determination of the dispute.

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

**BYRAM ONGAYA,  
PRINCIPAL JUDGE**