



**Wamukota v Kenya Electricity Transmission Company Limited & 2 others (Petition  
E185 of 2025) [2025] KEELRC 3647 (KLR) (17 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3647 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION E185 OF 2025  
B ONGAYA, J  
DECEMBER 17, 2025**

**BETWEEN**

**ENG. ANTONY TAWAYI WAMUKOTA ..... PETITIONER**

**AND**

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED .... 1<sup>ST</sup>  
RESPONDENT**

**BOARD OF DIRECTORS OF KENYA ELECTRICITY TRANSMISSION  
COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**THE ACCOUNTING OFFICER/CHIEF EXECUTIVE OFFICER OF KENYA  
ELECTRICITY TRANSMISSION COMPANY LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner filed the petition and supporting affidavit dated 22.09.2025 and through Sikuta & Associates Advocates. The petitioner prayed for reliefs as follows:
  1. A declaration that the 3-month compulsory leave against the Petitioner was irregular, unprocedural, illegal, unconstitutional hence null and void ab initio.
  2. An order directing the respondents to unconditionally revoke the 3-month compulsory leave against the petitioner and order for his immediate resumption of duty.
  3. An order revoking the Respondents' letter dated 19th September 2025 referenced as KET/5/1A/10013/kk/lck sending the petitioner on a 3-month compulsory leave.
  4. An order revoking the decision of the respondents contained in their letter dated 19<sup>th</sup> September 2025 referenced as KET/5/1A/10013/kk/lck.



5. An order restraining the respondents either by themselves, employees, servants and/or agents from terminating the employment of the petitioner based on the illegal compulsory leave.
  6. The costs of this petition be borne by the respondent.
2. It was urged and pleaded for the petitioner as follows:
- a. On 10<sup>th</sup> July 2023, contract for transportation of two transformers technically described as 90/110MVA weighing 90 tons and 18/23MVA weighing 40 tons was awarded to M/S Elsogom Company Limited, at a Contract Sum of KShs 9,538,500. 16. THAT on 11<sup>th</sup> July 2023, Elsogom Company Limited accepted the contract.
  - b. On 7<sup>th</sup> August 2023, Elsogom safely delivered the 23MVA transformer from Mombasa to Ortum Substation, in West Pokot County, a distance of about 450km.
  - c. On 11<sup>th</sup> August 2023, while transporting the 90MVA transformer from Mombasa on the route to Kitale, Trans-Nzoia County, an accident occurred at Kamara, about 70Km from Nakuru, causing the transformer to fall off the low bed carrier truck. This accident rendered the transformer not fit for purpose.
  - d. On 4<sup>th</sup> December, 2023, the petitioner received a show cause letter dated 1<sup>st</sup> December 2023. The letter required of him to explain why he should not be summarily dismissed for gross negligence causing loss of company asset.
  - e. On 10<sup>th</sup> January 2024, the applicant received a letter from the CEO then Eng. John Mativo through Mr. Godfrey Imanene, Head of Security Services, requiring him to submit a statement on his handling of the ill-fated transformer.
  - f. On 18<sup>th</sup> January 2024, the petitioner submitted the statement as was required through the Head of Security Services.
  - g. On 24<sup>th</sup> April 2024, the petitioner received a letter from the CEO then Eng. John Mativo inviting him to appear before the Special Board Meeting to explain himself on the show cause letter.
  - h. On 30<sup>th</sup> May 2024, the petitioner submitted a written brief to the Board of Directors, distancing himself from any mishandling processes on the ill-fated transformer.
  - i. On 2<sup>nd</sup> May 2024, the petitioner appeared in person before the Special Board Meeting where he intensively distanced himself from any wrong doing.
  - j. On 7<sup>th</sup> June 2024, the petitioner received a letter from the CEO, then Eng JohnMativo communicating the decision of the Board of Directors to clear the petitioner from any wrong doing and/or mishandling of the ill-fated transformer thereby exonerating the petitioner.
  - k. In a surprising turn of events, the 2<sup>nd</sup> respondent on 18th September 2025 at its Special General Meeting, called ONLY for a disciplinary session against the then Managing Director of the 1<sup>st</sup> respondent one Eng. John Mativo, under the express direction of the Public Service Commission pursuant to the judgment of the Commission dated the 11<sup>th</sup> June 2025, made a decision to abruptly send the petitioner on a 3-month compulsory leave without any justifiable cause and arising out of a disciplinary process not linked, associated and/connected with the applicant.



- l. The order of the Public Service Commission required the Managing Director (MD) then Eng John Mativo to undergo a disciplinary process following his role in awarding a tender in Contract No. KETRACO/ST/043/2019/21 Lot -1A in which he awarded a tender to a contractor to transport the ill-fated transformer to M/S Elsogom Company Limited without any contract in place as required under the procurement law. The basis for Eng. Mativo's disciplinary process was as ordered by the Public Service Commission because he was the only one who had been curiously exempted from the disciplinary process by the 2<sup>nd</sup> respondent as all other concerned officers of the 1<sup>st</sup> respondent had undergone the disciplinary process regarding the impugned tender process.
- m. The petitioner though deliberately ignored by the then Managing Director Eng John Mativo and never involved in the said tender process, he was however taken through a disciplinary process by the 2<sup>nd</sup> respondent regarding the impugned tender and absolved of any blame.
- n. It was therefore surprising, in a show of impunity, ulterior motive and malice, on the part of the 2<sup>nd</sup> respondent that while undertaking a disciplinary process against Eng. John Mativo, as directed by the Public Service Commission, over the impugned tender, the 2<sup>nd</sup> respondent decided to turn someone else's disciplinary meeting in the absence of the petitioner, by arriving at a decision to abruptly send the petitioner on a 3-months compulsory leave without any lawful cause, and with no show cause letter issued at all.
- o. The 2<sup>nd</sup> respondent apparently decided to use a meeting meant to undertake a disciplinary process against the then Managing Director to severely punish the petitioner by sending him on a 3-month compulsory leave arising out of a process he had already undergone and cleared of any blame. That amounted to nothing but double jeopardy and prejudicial to the petitioner.
- p. The veiled provision on full pay while on a compulsory leave falls foul of the constitutional principles on public finance and prudent use of public financial resources taking into account that the applicant had already been heard and cleared over the same subject matter.
- q. Consequently, the 3-month compulsory leave is illegal, unreasonable, irregular, procedurally unfair and without any foundation or basis.
- r. In any case compulsory leave in public service is capped at 30-working days.
- s. The 2<sup>nd</sup> respondent chose to abruptly send the petitioner on compulsory leave in total disregard of the rules of natural justice, rule of law and the principle of fairness on the basis that the applicant had already been through the disciplinary process and cleared. To again send him on a compulsory leave over the same subject matter is nothing but draconian, illegal and is being used as a guise for dismissal of the applicant as the same lacks any valid reason.
- t. The 2<sup>nd</sup> respondent is now circumventing their own decision of having absolved the applicant from any blame through the purported new information to send the petitioner herein on compulsory leave without any justifiable cause and in a very draconian manner and are now seeking to try the same case twice as against the petitioner in total contravention of the law.
- u. The illegal compulsory leave as against the Petitioner is a planned, and predetermined decision influenced by ulterior motives hence the 1<sup>st</sup> respondent's Board deliberately deciding to overlook and flout its Human Resource Policy and Procedures Manual and the law by taking the most abhorrent decision of illegally and immediately sending the petitioner on compulsory leave for no known or justifiable cause.



- v. The petitioner was not allowed to show cause before the immediate and draconian compulsory leave was handed down on him hence contravening his right to fair administrative action and the rules of natural justice.
  - w. The 2<sup>nd</sup> respondent is using the unlawful compulsory leave as a veil in the name of new evidence to commence a crooked disciplinary process and dismiss the petitioner for their own selfish-interest.
  - x. The petitioner was illegally sent on a compulsory leave, when he was away on a two-day annual leave which was to end on 23<sup>rd</sup> September 2025.
  - y. . The petitioner was never given an opportunity to be heard and the decision of his compulsory leave was only communicated to him through a WhatsApp message on the night of 19<sup>th</sup> September 2025 at 8.04pm.
  - z. Unless the illegal action to send the petitioner on a 3-month compulsory leave is stopped by the Honourable Court, the petitioner will be greatly prejudiced.
  - aa. The 3-month compulsory leave as against the petitioner offends the rules of natural justice, flouts the Public Service Commission Regulations on compulsory leave in public service, 1<sup>st</sup> respondent's Human Resource Policy and Procedures Manual, falls foul of the constitutional provisions on fair labour practices, relevant laws and regulations fundamentally rendering the same illegal, unconstitutional, unlawful hence null and void ab initio.
  - ab. An unconstitutional decision is not a law, it confers no rights, it imposes no duties, it affords no protection, creates no office and it is in legal contemplation as in operative as though it had never been passed. That, is the only fate that must befall the decision of the 2nd respondent in the instant case.
  - ac. The decision of the 2nd respondent to immediately, abruptly and disgracefully send the petitioner on a 3 - month compulsory leave without any valid reason is tainted with illegality, completely malicious and choreographed to defeat the ends of justice
  - ad. The petitioner is apprehensive that the respondents have a predetermined decision and are keen on locking him out from the seat and wheel of justice and that the compulsory leave is being used as a guise for his dismissal.
  - ae. Unless the Honourable Court moves with speed, the interest of justice and the petitioner will be greatly prejudiced.
  - af. The respondents will not suffer any prejudice if the orders prayed herein are granted.
3. The petitioner claimed that the respondents had violated the petitioner's right to fair administrative action by outrageously sending him on a 3-month compulsory leave without any notice to show cause and in blatant violation of the public service commission regulations more particularly regulation 62, as well as the 1<sup>st</sup> respondent's Human Resource Policy and Procedure Manual. It was urged that The 1<sup>st</sup> respondent disregarded its own Human Resource and Procedures Manual and the provision of compulsory leave is not set out anywhere in the Human Resource Manual and particularly the petitioner having already undergone a disciplinary process hence subjecting him to a 3-month compulsory leave over the same subject matter amounted to nothing but double jeopardy.



4. The respondents opposed the petition by filing the replying affidavit of Eng. Kipkemoi Kibias, the Acting Managing Director of the 1<sup>st</sup> respondent and filed through Mwaniki Gachoka & Company Advocates. It was urged and stated as follows:
- a. The respondent pleaded that sometimes in 2023 a letter of intent to award a tender was issued as communicated to Elsogom Limited by the letter of intent dated 10.07.2023 subject to acceptance by Elsogom Limited and conclusion of the contract within 14 days. It was an award for provision of lon-haul transport services and heavy-duty handling equipment for transportation of two transformers 90/110MVA and 18/23MVA from the port of Mombasa to Kitale and Ortum respectively.
  - b. The 1<sup>st</sup> respondent gave express applicable instructions but the petitioner approved a memo dated 10.07.2023 authorizing officers to travel to Mombasa to supervise the loading of the two transformers thereby initiating their transportation and Elsogom Limited proceeded to load the two transformers at Mombasa CFS Console Base at Terminal 2 operated by Kenfreight Limited for transport to the two destinations but in circumstances that a formal contract had not yet been duly executed and prior to expiration of 14 days stipulated in the letter of intent to award – as required in section 135(4) of the Public Procurement and Asset Disposal Act, 2015.
  - c. The entire procurement procedures and processes in that transaction were investigated. The then Managing Director was subjected to a disciplinary process per the show cause letter dated 21.11.2023 and the allegation by the petitioner that the Managing Director unlike other officers had not been so subjected is not correct.
  - d. As pleaded for the petitioner he was indeed subjected to a disciplinary process in that respects. Upon consideration of the petitioner's written and oral responses, the Board decided that the petitioner be cautioned. The petitioner was cautioned by the letter dated 07.06.2024 upon the infractions that he had approved staff to travel to Mombasa prior to lapsing of the 14 days while the contract had not been signed and if he had not so approved, the entire premature transportation process would have been mitigated. It is the respondents' case that in such circumstances it was not correct that the petitioner was absolved of any blame in that regards.
  - e. At the board meeting of 18.09.2025 new information emerged about the transportation of the two transformers specifically implicating the petitioner with respect to procurement and transportation process of the two transformers. Concerns were thereby heightened with more serious allegations against the petitioner which compelled the respondents to initiate a forensic investigation to ascertain the facts surrounding the matter, hence, the petitioner was placed on compulsory leave per the letter dated 19.09.2025 to enable the investigations to proceed unhindered to safeguard the integrity of evidence and to maintain a safe, orderly, and professional work environment. It was also aimed at preserving the sanctity of the investigations to establish the facts surrounding the procurement and transportation process in view that the petitioner held a senior management position as General Manager, Design & Construction. Accordingly, it is the respondents' case that the 1<sup>st</sup> respondent through its board complied with the laid down procedures.
  - f. The three months' compulsory leave was justified in view of the complexity of the investigations in issue and the compulsory leave was imposed per board resolution at the meeting of 18.09.2025. It was not a decision tainted with malice and illegality as urged for the petitioner. In the circumstances it is not true that the petitioner had been subjected to double jeopardy as is legally untenable. Regulation 62 (2) of the Public Service Regulations expressly



provides that an officer placed on compulsory leave is entitled to full pay and benefits and which the respondents complied with.

- g. If the petitioner is immediately allowed to resume duty then the on-going forensic investigations may be prejudiced because the petitioner may interfere.
  - h. The petition is without merit and it should be dismissed.
5. The Court has considered the pleadings, affidavits, the submissions and the positions taken for the parties and returns as follows.
  6. To answer the 1<sup>st</sup> issue, the Court returns that the petitioner has established that he has been subjected to double jeopardy. The mutual evidence for the petitioner and the respondents is that the petitioner was subjected to initial disciplinary process which the petitioner states he was absolved and the respondents say he was cautioned. Be it as it may, that initial disciplinary process was initiated, continued on its merits and then fully and completely concluded with the impact or outcome the petitioner continued in employment. The further mutual evidence is that after the conclusion of the initial and concluded disciplinary case, a fresh disciplinary processes has been commenced and is being continued upon the same set of allegations as it obtained in the initially concluded disciplinary process. The Court finds that the second disciplinary process being continued as per the compulsory leave conveyed by the letter dated 19.09.2025.
  7. The Court finds that the petitioner's predicament herein amounted to a classical situation of double jeopardy as a fundamental procedural defence that prevents a person from being prosecuted or punished more than once for the same crime after a valid acquittal or conviction. The defence of double jeopardy aims at assuring finality of legal judgments or decisions. By that principle, there cannot be a second prosecution after an acquittal, a second prosecution after a conviction, or, two or multiple punishments for the same offence.
  8. The Court finds that the petitioner has established that he had already been taken through a disciplinary process by the 2<sup>nd</sup> respondent about the same impugned tender process and he was absolved or as the respondent says, cautioned. What is material and pertinent is that the petitioner underwent the full regime and motions of the applicable administrative process and upon merits, the case was determined as closed. Thus the Court finds that the compulsory leave imposed for three months effective 19.09.2025 as against the petitioner was unfair, unlawful and unconstitutional.
  9. The Court also finds for the petitioner that in any event a compulsory leave was capped at 30 working days as provided under regulation 62 of Public Service Commission Regulations legal notice No.3 of 2020, which provides as follows:
    - (1) The authorised officer of a public body may, with the written approval of the Commission, send on compulsory leave for a period not exceeding thirty working days a public officer in a public body in which an investigation is being conducted, where it is feared that the officer may influence or interfere with the investigation.
    - (2) The authorised officer shall notify in writing the officer being sent on compulsory leave of the reasons for the decision and the duration of the compulsory leave.
    - (3) An officer on compulsory leave shall be entitled to full pay and benefits.
    - (4) Compulsory leave shall not be counted as part of an officer's annual leave.
  10. The Court observes that the regulation is under Part IX of the Regulations on "Disciplinary Control" and the imposition of the compulsory leave in effect amounted to initiation of a second disciplinary



process upon the same set of levelled allegations which the petitioner has underwent a disciplinary process and the process conclusively determined.

11. To answer the 2<sup>nd</sup> issue, the Court finds that the petitioner has indeed established violation of his right to fair administrative action. Article 47 provides,

“47.

- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
- (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—
  - (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and,
  - (b) promote efficient administration.”

12. As submitted for the petitioner, the compulsory leave was imposed beyond the regulatory period of 30 days. Further, the respondent failed to consider the double jeopardy impact of recommencing a disciplinary process upon the same set of allegations for which the petitioner had been investigated, subjected upon a disciplinary process and on merits, the matter determined as closed. In other words, in such circumstances, the respondents acted unreasonably by failing to take into account the matters they were obligated to take into account prior to imposing the impugned compulsory leave. The Court returns that it amounted to unreasonableness in violation of Article 47 and per Lord Green in *Associated Provincial Picture Houses Limited –Versus- Wednesbury Corporation* (1947) 2ALL ER 680 at 682-683 thus,

“It is true the discretion must be exercised reasonably. What does that mean? Lawyers familiar with the phraseology commonly used in relation to the exercise of statutory discretions often use the word ‘unreasonableness’ in a rather comprehensive sense. It is frequently used as general description of the things that must not be done. For instance, a person entrusted with discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey these rules he may truly be said, and often is said, to be acting ‘unreasonably’. Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head.”

13. As submitted for the respondents, it is correct that in *Ezra Chiloba v Wafula Wanyonyi Chebukati & 7 others* [2018] KEELRC 1739 (KLR) the Court held that the decision to send an employer on compulsory leave is a unilateral decision necessitated by the need to allow investigations to proceed



without disruption of evidence. The Court in that case held, “60. Coon sense would dictate that it may be necessary at times to remove an employee from the workplace pending the outcome of a personnel / human resource investigation.” It was further submitted for the respondents that in *Thomson Kerongo & 2 others v James Omariba Nyaoga & 3 others* [2017] KEELRC the Court held, “My opinion in respect thereof would be that there is no law prohibiting an employer from sending an employee on compulsory leave where the circumstances warrant it and provided it is an interim measure.” Further, in *Mutwol v Moi University* (Civil Appeal 118 of 2019) [2022] KECA 537 (KLR) (28 APRIL 2022) (Judgment) the Court of Appeal (DK Musinga, SG Kairu & F Sichale, JJA) it was held thus, “23. We associate ourselves with the position taken by Onyango, J. in the Thomson Kerongo case (supra). In our view, we are not persuaded that there must be provision in the contract of employment providing for compulsory leave before an employee can be sent on such leave. The flip side of it is that there is no law that prohibits the placement of an employee on compulsory leave. It is our further view that it was necessary to have the appellant sent on compulsory leave to enable the respondent to carry out meaningful investigation. It is not possible for an employer to carry out effective investigations against an employee who, in spite of accusations of wrong doing, continues to occupy her/his office. In any case, looking at the circumstances of this matter, the appellant was informed and understood that she was being placed on compulsory leave to allow for investigations and she was given the opportunity to show cause why disciplinary action should not be taken against her. We do not find any good grounds to impugn the decision of the respondent which in our view was fair, reasonable and justifiable.”

14. However, while the principles as enunciated in the cases cited above for the petitioner declare the correct position generally in imposition of compulsory leave, in the instant case the Court has found that the imposition of the compulsory leave was unreasonable as it was burdened and chained by the provisions of the cited regulation 62 of the Public Service Commission Regulations legal notice No.3 of 2020, and, the principle of double jeopardy as found herein. Thus, in view of the cases cited for the respondents, the petitioner’s case that the Human Resource Procedures and Policies Manual did not provide for compulsory leave would collapse. The evidence is that in fact the cited regulation 62 prescribed imposition of a compulsory leave only that in the instant dispute, the imposition was free from the safeguard of a maximum of 30 days limit in the regulation and therefore unreasonable as found. The Court has already found that the said regulation 62 was under Part IX of the Regulations on “Disciplinary Control” so that it was a step in commencement of a disciplinary process about allegations that the petitioner had earlier faced and the matter determined as settled. The submission for the respondents that the imposed compulsory leave, albeit at the commencement of a disciplinary process, was not a disciplinary action will collapse. By the material before the Court, it was an adverse decision against the petitioner and therefore amounted to a disciplinary action or step or decision as envisaged in the said regulation 62. Further the Court has considered the submission for the respondent that in *Humphrey Makokha Nyongesa & Another v Communications Authority of Kenya & 2 others* [2018] KEELRC 2485(KLR) the Court held that the sending of an employee on compulsory leave was not disciplinary action but the beginning of an investigation process. However, in the present petition the Court finds that in view of the findings of double jeopardy, the imposed compulsory leave was not a procedural preliminary investigative step, but it was a substantive disciplinary step, a disciplinary action (one imposed outside the rules of the game), namely, subjecting the petitioner on repeated investigations for a matter that had been considered and determined and thereby stale or decayed, the impact being, the respondents were functus officio. In other words, the respondents had no valid to embark upon what they say was a preliminary step in the face of the already concluded case.
15. The Court therefore holds that an employer cannot generally reopen a disciplinary case that has been determined on its merits because the initial decision (like in the instant case) is considered final (functus



- officio). The Court further holds that the most crucial and basic principle is that all disciplinary action must be fair and it amounts to unfair labour practice in violation of Article 41 of *the Constitution* on the right to fair labour relations and fair labour practices for an employer to reopen a disciplinary case already determined with a view of reinvestigating and continuing disciplinary process for second or multiple times in that respect. In such situations, the Court holds that after the initial determination the employer thereby becomes functus officio.
16. The Court further finds that the respondents in the manner they imposed the compulsory leave that amounted to the double jeopardy thereby violated the petitioner's right to fair hearing and generally the tenets of fairness or principles of natural justice as they are known. Article 50 (2) (o) enshrines the principle of double jeopardy by providing that every accused person has the right to a fair trial, which includes the right not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted.
17. While making the foregoing finding, the Court has considered that in Gladys Boss shollei –Versus- Judicial Service Commission & Another Petition No. 34 of 2014 [2022]KESC5(KLR) (17 February 2022) (Judgment) the Supreme Court (Koome CJ &P, Mwilu DCJ, &V-P, Ibrahim, NS Ndungu, & W Ouko, SCJJ),held inter alia,
- “ 19. Article 50(1) of *the Constitution* referred to the right to a fair hearing for all persons, while article 50(2) accorded all accused persons the right to a fair trial. Article 25(c) of *the Constitution* listed the right to a fair trial as a non-derogable fundamental right and freedom that could not be limited. Often the terms fair hearing and fair trial were used interchangeably, sometimes to define the same concept, and other times to connote a minor difference.
20. Although the right to a fair trial was encompassed in the right to a fair hearing in *the Constitution*, a literal construction of article 50(1) and 50(2) of *the Constitution* could be misconstrued in some quarters to mean that article 50(1) dealt with the right to fair hearing in any disputes including those of a civil, criminal or quasi criminal nature whereas article 50(2) was limited to accused persons thereby arguing that the protection of such right only related to criminal matters. That was not an acceptable interpretation or construction within the parameters of articles 19 and 20 of *the Constitution* on the Bill of Rights, which called for an expansive and inclusive construction to give a right its full effect.”
18. Accordingly, the Court is guided that Article 50(2) applies to both criminal proceedings and civil or other proceedings such as administrative disciplinary proceedings as was in the cited Supreme Court decision and like in the instant administrative disciplinary proceedings initiated and manifested in the impugned compulsory leave.
19. To answer the 3<sup>rd</sup> issue and in view of the Court's findings earlier in this judgment, the petitioner has established the violation of the Bill of Rights as found and is entitled reliefs as prayed for. An order will as well issue to restrain the respondents permanently from pursuing the petitioner on account of the allegations for which he was subjected to a disciplinary process and which was determined with finality upon merits. It is not said that the respondents invoked any internally agreed, contractual or statutory mechanisms to challenge that final merit determination. The Court has found that the respondents are functus officio in that respect and the matters must now rest accordingly. While making that finding the Court has been guided by the holding in Chief Justice and President of the Supreme Court of Kenya & another v Khaemba (Civil Appeal 522 of 2019) [2021] KECA 322 (KLR) (17 December



2021) (Judgment) where the Court of Appeal (MSA Makhandia, S ole Kantai & P Nyamweya, JJA) held thus,

“ 36. Were there circumstances in this appeal that justified an intervention by the court? It has been demonstrated and found that the disciplinary process by the 1<sup>st</sup> appellant against the respondent was marred from the start with illegality and procedural irregularity. It is also evident that the Chief Justice had already made a finding in the letter dated 13<sup>th</sup> June 2019 that the respondent’s actions amounted to gross misconduct, and therefore, as regards the respondent’s culpability. Lastly, the respondent was also subjected to extreme hardship having been illegally and indefinitely suspended with nil pay. Continuing with the disciplinary process in the circumstances would essentially have been an exercise in futility, and aid in the continued violation of the respondent’s rights, as was similarly noted by this court in *Judicial Service Commission & Another vs Lucy Muthoni Njora* [2021] eKLR.

37. In conclusion, this court also finds that the impugned disciplinary process, having been irregular and illegal ab initio, meant there were no valid proceedings that could be remitted back to the appellants for consideration. In the circumstances, the trial Judge also did not err in granting orders to restore the respondent to the status he was before the impugned disciplinary proceedings.” The findings and holding therein fully apply to the instant petition.

20. The petitioner has succeeded in his claims and reliefs and the respondents will jointly and severally pay his costs of the petition.

In conclusion judgment is hereby entered for the petitioner against the respondents with orders as follows:

1. The declaration that the 3-months compulsory leave against the petitioner was irregular, unprocedural, illegal, unconstitutional, as found herein, hence null and void ab initio.
2. The order hereby issued directing the respondents to unconditionally revoke the 3-months compulsory leave against the petitioner and order for his immediate resumption of duty.
3. The order hereby issues revoking the respondents’ impugned letter dated 19<sup>th</sup> September 2025 referenced as KET/5/1A/10013/kk/lck purporting to send the petitioner on a 3-month compulsory leave.
4. The order hereby issued revoking the decision of the respondents contained in their impugned letter dated 19<sup>th</sup> September 2025 referenced as KET/5/1A/10013/kk/lck.
5. The order hereby issued restraining the respondents either by themselves, employees, servants, or, agents from terminating the employment of the petitioner based on the illegal compulsory leave or the matters found amounting to double jeopardy for which the respondents are functus officio, accordingly.
6. The costs of this petition be paid to the petitioner by the respondents jointly and severally.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 17<sup>TH</sup> DECEMBER, 2025.**

**BYRAM ONGAYA,**



**PRINCIPAL JUDGE**

