

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT KERICHO
JUDICIAL REVIEW APPLICATION NO.E001 OF 2026**

BETWEEN

1. DAVID K. KEMEI
2. SIELE LEONARD TOWETT
3. MERCY CHEROTICHPETITIONERS

AND

TEACHERS SERVICE COMMISSION
RESPONDENT

RULING

1. The Petitioners are Teachers, employed by the Respondent Commission.
2. They have been charged at Bomet Chief Magistrate's Court, MCCR/E105/2026, with the offences of obtaining money by false pretences, and acquisition of proceeds of crime.
3. They have pleaded not guilty and are out on bond.
4. They are scheduled to appear at the Bomet Court on 23rd February 2026 for mention.

5. While they are facing the criminal trial, the Respondent has issued them letters to show cause why disciplinary action should not be taken against them.
6. They have been summoned to appear before an investigations panel on 24th and 25th February 2026.
7. Their complaint, is that they are exposed to double jeopardy. They state that the Respondent is a party to the criminal case. They submit that they are likely to suffer irreparable damages, and parallel proceedings may embarrass the Court.
8. They submit further, that disciplinary proceedings violate their constitutional right to fair hearing and fair administrative action.
9. Through their application dated 18th February 2026, filed under certificate of urgency, they pray for the following interim orders : -
 - a. Stay of the summons issued by the Respondent to the Petitioners, for investigations meeting on 24th and 25th February 2026.
 - b. Restraining the Respondent from initiating or proceeding with any disciplinary matter, or requesting the Petitioners to provide documents or information related to the ongoing criminal case.

10. The application is founded on the affidavit of the 1st Petitioner David K. Kimei, sworn on 18th February 2026.

The Court Finds: -

11. The interim orders sought by the Petitioners cannot be granted *ex parte*.
12. Decisions made by various Superior Courts, have consistently established that disciplinary and criminal proceedings, emanating from the same set of facts, are different processes.
13. The Teachers Service Commission Act, which is applicable to the Petitioners, has Regulations, which adopt this approach on disciplinary proceedings and criminal proceedings against Teachers.
14. Regulation 139 [1] [e] of The Teachers Service Commission Code of Regulations For Teachers, 2015, states that, “ *any disciplinary action or punishment under this Regulation, shall not be a bar to a criminal charge or process under any written law.*”
15. Regulation 139 [3] states that, “ *The Commission may take disciplinary action against a Teacher whose criminal proceedings are pending before a Court of Law, or who has been acquitted by a Court of Law, for an offence which the Commission is handling.*”

16. Lastly, Regulation 139[4] states that, “ *The Commission shall in arriving at its decision regarding a Teacher’s disciplinary case, not be bound by the finding of any Court in criminal proceedings relating to the Teacher’s disciplinary case.*”

17. In light of these Regulations, the Court is of the view that interim *ex parte* orders cannot be granted. There is need to serve the pleadings upon the Respondent, and thereafter, hold a hearing, with the participation of all the Parties. The Court needs the assistance of both Parties, through legal argumentation, in understanding these Regulations and the Laws that have been invoked by the Petitioners, before it can issue the orders sought.

IT IS ORDERED: -

- a. ***The application filed by the Petitioners dated 18th February 2026, and the rest of the pleadings shall be served upon the Respondent.***

- b. ***The Respondent shall file and serve its response to the notice of motion within 14 days of service.***

- c. ***Mention on 17th March 2026.***

Dated, signed and delivered electronically at Kericho, this 20th day of February 2026.

James Rika
Judge

