



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

PETITION NO. E014 OF 2025

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE PROVISIONS OF ARTICLES 2, 3, 10, 19, 20, 21, 22, 23, 27, 28, 41, 47, 50 AND 258 OF THE CONSTITUTION OF KENYA, 2010.

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS OF THE MEMBERS OF THE COUNTY GOVERNMENT WORKERS UNION (VIHIGA BRANCH).

AND

IN THE MATTER OF SECTIONS 12 AND 20 OF THE EMPLOYMENT AND LABOUR RELATIONS COURT ACT, SECTIONS 19, 41, 43 AND 45 OF THE EMPLOYMENT ACT, SECTION 74 OF THE LABOUR RELATIONS ACT, SECTIONS 75 AND 76 OF THE COUNTY GOVERNMENT ACT AND SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT.

AND

IN THE MATTER OF UNFAIR, UNLAWFUL, AND UNCONSTITUTIONAL DISCIPLINARY PROCEEDINGS AND INTENDED MASS TERMINATION OF EMPLOYMENT BY THE COUNTY GOVERNMENT OF VIHIGA AND THE VIHIGA COUNTY PUBLIC SERVICE BOARD AGAINST MEMBERS OF THE COUNTY GOVERNMENT WORKERS UNION (VIHIGA BRANCH)

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION (VIHIGA BRANCH).....
PETITIONER/APPLICANT

AND

HON. DR. WILBER OTTICHILO, GOVERNOR COUNTY GOVERNMENT OF VIHIGA.....**1ST RESPONDENT**

COUNTY SECRETARY, COUNTY GOVT. OF VIHIGA.....**2ND RESPONDENT**

COUNTY GOVERNMENT OF VIHIGA.....**3RD**

RESPONDENT

VIHIGA COUNTY PUBLIC SERVICE BOARD.....**4TH RESPONDENT**

COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE, COUNTY GOVT. OF VIHIGA.....**5TH RESPONDENT**

RULING

1. The Petitioner instituted these proceedings by way of a Petition dated 7th November 2025, challenging the manner in which the disciplinary process against its members was

being conducted. It contends that the process violates several constitutional provisions, including Article 47 on fair administrative action, Article 27 on equality and freedom from discrimination, Article 28 on the right to dignity, Article 41 on fair labour practices, and Article 50 on the right to a fair hearing. On that basis, the Petitioner seeks the various declaratory reliefs set out in the body of the Petition. Contemporaneously, the Petitioner filed an application of even date under certificate of urgency seeking injunctive orders to halt the ongoing disciplinary process pending the hearing and determination of the Petition.

2. In opposition, the Respondents raised a Notice of Preliminary Objection dated 2nd December 2025 directed at both the Petition and the application. They contend that the proceedings offend the doctrine of exhaustion. In particular, they argue that the dispute falls within the dispute resolution framework established under Article 234(1) and (2)(i) of the Constitution, section 77 of the County Governments Act, and sections 86 and 87 of the Public Service Commission Act, which designate the Public Service Commission as the

primary forum for disputes arising from county public service employment. The Respondents further assert that this Court lacks territorial jurisdiction, contending that the matter ought properly to be filed before the ELRC at Bungoma or Kakamega. The Respondents additionally assert that the Petition improperly interferes with the disciplinary mandate of the County Public Service Board as conferred by section 59 and 59A of the County Governments Act, thereby offending Article 189(1) of the Constitution. They further contend that the recovery of public funds from an employee found culpable, coupled with dismissal from employment, does not constitute double punishment, as such measures are sanctioned under section 156 of the Public Finance Management Act read together with Regulation 145 of the Public Finance Management Regulations. On these grounds, they urge the Court to dismiss the Petition for failure to disclose a justiciable cause of action and for being frivolous, vexatious, and an abuse of the court process.

3. On 15th December 2025, the Court directed the Respondents to file and serve their written submissions, after which the

Petitioner was to have twenty-one (21) days to respond. Despite those directions, neither party has complied.

Disposition

4. The issue for determination herein is whether the Petitioner has surmounted the hurdles for grant of injunctive relief. On the premise of case law and precedents on the matter, in order to succeed in this application, the Petitioner needed to satisfy the principles of granting an injunction which were set out in the celebrated case of **Giella v Cassman Brown & Co. Ltd [1973] E.A 358**. Those principles are as follows:-

- a. An applicant must show a *prima facie* case with a probability of success.
- b. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury.
- c. When the court is in doubt, it will decide the application on the balance of convenience.

5. These principles were further elaborated in the case of **American Cyanamid Co (No 1) v Ethicon Ltd [1975] UKHL 1 (05 February 1975)** also reported as **[1975] 1 All ER 504, [1975] UKHL 1, [1977] FSR 593, [1975] AC**

396, [1975] 2 WLR 316 where the House of Lords set out the guidelines to establish whether an applicant has an adequate case for the granting of an interlocutory injunction.

The House of Lords held that the guidelines consider are:

- i. Whether there was a sufficiently serious/substantial matter to be tried.
- ii. Whether damages were an adequate remedy for the claimant if an injunction was not granted.
- iii. If damages would not be an adequate remedy, whether the claimant would be able to give an undertaking in damages to the defendant.
- iv. If it was considered that there was any difficulty regarding the availability of damages on either side, the court should consider the balance of convenience between the parties.
- v. If these factors were evenly balanced, the court should consider maintaining the status quo.

6. These guidelines are the parameters a Court will have to view the application for grant of injunctive relief. Whereas there is a *prima facie* case in as far as the apprehension of

the dispute goes, the Petitioner herein woefully failed to show that an irreparable injury would otherwise be suffered by it should the Respondents act as the Petitioner asserts they will. There is no purpose for the Court to consider whether the balance of convenience applies as there is no doubt in the mind of the Court that damages would be an adequate remedy, should the Petitioner prevail in this suit against the Respondents. The order that commends itself for me to make, is one dismissing the application, albeit, with no order as to costs. There will be directions on the matter of compliance with regard to the Petition proper immediately after this Ruling.

It is so ordered.

Dated and delivered at Kisumu this 17th day of February

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**