

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT  
MOMBASA**

**CAUSE NO. E009 OF 2026**

**FLORENCE KATUSHABE ..... CLAIMANT**

**VERSUS**

**JOHN DENG DING ..... 1<sup>ST</sup> RESPONDENT**

**PERMANENT SECRETARY OF THE NORTHERN CORRIDOR TRANSIT AND  
TRANSPORT COORDINATION AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

The claimant filed an application dated 29 January 2026 under the provisions of section 12 of the Employment and Labour Relations Court Act, Rule 45(5) of the Employment and Labour Relations Court (Procedure) Rules seeking orders:

1. *Spent.*
2. *Spent.*
3. *Pending the hearing and determination of the claim, there be a temporary injunction staying the implementation of the suspension contained in the letter dated 27 January 2026 and any ensuing action flowing from the suspension letter.*
4. *Costs of this application be provided for.*
5. *Any other relief that the court may deem fit and just to grant in the circumstances.*

The claimant filed her Supporting Affidavit, in which she avers that she is an employee of the 2nd respondent. By letter dated 27 January 2026, the 1st respondent purported to indefinitely suspend her, an act that is illegal, null and void. The 1<sup>st</sup> respondent acted unilaterally and without legal right or justification. The indefinite suspension amounts to an unfair termination of the claimant's employment, without affording the claimant the right to be heard or to confront any allegations. The suspension procedure was fundamentally flawed, as it is indefinite, and the claimant has been denied natural justice.

The claimant avers that she falls within the professional category and that the appointing authority is the executive committee of the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent is not the appointing authority and, as such, has no power to suspend her; hence, his letter is patently illegal and should be rendered null and void. The suspension letter does not indicate whether the claimant will be paid in full during the indefinite period, and she is apprehensive that she will not be. This is because she has since been blocked from accessing the 2<sup>nd</sup> respondent's premises and her emails deactivated, and the 1st respondent wrote to all other employees of the 2nd respondent about the suspension until the executive committee takes action.

The claimant avers that she will suffer substantial loss and damage if the stay order is not granted and the suspension is allowed to continue indefinitely. Such suspension has not been sanctioned by the executive committee of the 2nd respondent, and there are no reasonable grounds for the same.

The suspension is punitive rather than investigative. This is evidenced by the 1st respondent's letter, which is actuated by malice and stems from bad blood between them. The claimant lodged a complaint against the 1st respondent on 10 April 2025, regarding financial mismanagement and continued violations of the NCTTCA financial, procurement, and human resources and procedures manual. There was harassment, victimisation, intimidation and defamation. The claimant's complaint to the executive committee and appeal were on 19 November 2025.

In reply, the respondents filed the Replying Affidavit of the 1st respondent, who avers that he is the executive secretary of the 2nd respondent and has the authority to respond herein. He avers that the instant application is premature and an abuse of court process and of the 2nd respondent's internal procedures. The averments by the claimant demonstrate that the issues addressed are due to internal processes and procedures.

The 2<sup>nd</sup> respondent, as an organisation, adopts policies guiding parties, including the human resources policy and procedures manual (HR Policy). Clause 7.9 of the HR policy provides for the suspension of any 2nd respondent's employee and gives authority to the executive secretary to undertake such a mandate.

All activities relating to the claimant were carried out in consultation with the executive committee as outlined in the letter of suspension. The suspension is a tool available to the employer to conduct investigations before taking disciplinary action against the employee. The HR policy permits suspension during an inquiry.

In this case, Deng avers that the claim was informed of all the steps to be taken during the suspension period. She will be paid her salary in accordance with clause 7.3.4 of the HR policy. The policy also provides for an appeal under clause 7.10 within 14 days of the executive committee's decision. In this regard, the application is without merit and should be dismissed with costs.

The respondents also filed Grounds of Objections to the application by the claimant on the basis that:

- 1. A diplomatic agent within the meaning assigned by the Privileges and Immunities Act, Cap 179, Laws of Kenya, enjoys immunity from the criminal, civil and administrative jurisdiction of the receiving state.*
- 2. The claimant, having instituted a civil claim against the 1st respondent, contravenes the above provisions.*
- 3. In view of the above, the application dated 29 January 2026 against the 1<sup>st</sup> respondent lacks merit and ought to be struck out.*

The claimant filed a Further Affidavit and avers that the 1st respondent has not tendered evidence to prove that he is a diplomat, and even if he is one, it does not empower him to trample on other people's rights or to violate the 2nd respondent's HR policy regarding internal disciplinary procedures. If there is any diplomatic immunity, the same can be addressed during the hearing of the claim. In the Replying Affidavit, there is no averment of Deng being a diplomat. Such cannot be introduced after such a fact.

The parties attended and filed written submissions, which were highlighted in court. These are analysed and the issues which emerge for determination are whether the objections by the respondents with regard to application of Privileges and Immunities Act, Cap 179, Laws of Kenya apply to the 1<sup>st</sup> respondent; whether pending the hearing and determination of the claim, an order of injunction should issue staying the implementation of the suspension letter dated 27 January 2026 and any ensuing action flowing from the suspension letter.

On the application of the Privileges and Immunities Act on the 1<sup>st</sup> respondent, indeed, as submitted by the claimant, in his Replying Affidavit, Deng does not refer to himself as a diplomat. Even in a case where he was, which is without evidence, in Civil Appeal No. 103 of 2018 **Cyriaque Havyariamana v Permanent Secretariat of the Transit and Transport Co-ordination Authority of the Northern Corridor & another [2019] KECA 900 (KLR)**, which arose from the ruling of this court in **Cyriaque Havyarimana v Permanent**

**Secretariat of Transit and Transport Co-ordination Authority of Northern Corridor & another [2017] KEELRC 509 (KLR)**, the Court of Appeal set aside the ELRC ruling on the basis that there was no plea of diplomatic immunity. The nature of employment and the 1<sup>st</sup> respondent's specific duties fell within the exceptions to the rule that immunity cannot be invoked in a proceeding relating to a contract of employment between the state, or, in this case, the Secretariat, and the appellant, as the employee.

On this basis, the claim against the 1<sup>st</sup> respondent is proper, and the court has jurisdiction. See **Nancy McNally v International Centre of Insect Physiology and Ecology; Attorney General (Interested Party) [2019] KEELRC 1791 (KLR)**.

The objections by the respondent to this extent are without merit.

In respect of the respondents' suspension of the claimant, the claimant has produced her contract of employment dated 30 October 2020, for 4 years, running from 1 February 2021 to 31 January 2025.

Under paragraph 4 of the Supporting Affidavit, the claimant has attached the 58<sup>th</sup> meeting of the executive committee of the 2<sup>nd</sup> respondent, which extended the contract by 4 years, ending on 31 January 2029.

The claimant was employed as the Director of Finance and Administration.

By letter dated 27 January 2026, the 1<sup>st</sup> respondent, as the executive secretary, addressed the claimant, stating that following a meeting with her, the executive secretary and the chief accountant discussed a response to the development partner, UNEP. During the meeting, the discussions related to the UNEP disbursement to the 2<sup>nd</sup> respondent that required audit reports, including:

1. Management response.
2. The management plan
3. Implementation status.

The letter noted that the 1<sup>st</sup> respondent asked the claimant, as the director of finance and administration, to prepare an explanatory note to UNEP explaining the issues highlighted by the auditors that had not been clarified, for example, the former executive secretary's salary.

The letter to the claimant noted her defiance, insubordination, and the prior administrative steps taken by the executive secretary to address her continued insubordination, non-performance, violations of institutional confidentiality, and poor interpersonal relations.

On this basis, the respondents invoked clause 7.9 of the HR Policy. The respondents noted that:

*... the chairman of the Executive Committee, copied herein, shall institute a committee of inquiry and shall advise you on the next course of action. Clause 7.3.4 of the HR Policy and Procedures Manual shall apply.*

An employer, such as the 2nd respondent, through its delegated officer and executive secretary, has the prerogative and the administrative decision to suspend an employee from duty to allow an inquiry into the stated matters. In this case, the claim was suspended to facilitate an inquiry into the matters addressed in the letter dated 27 January 2026, including the failure to report audit queries affecting UNEP disbursements to the 2nd respondent. This conduct was viewed as an act of defiance and insubordination, and it included other administrative steps taken against the claimant.

Without going into the merits of these assertions that are pending inquiry, before the claimant can be given a hearing by the committee to be appointed by the chairman, the respondents are allowed to suspend the claimant for the given reasons. In **Stephen Maigwa Wachira v Kenyatta University [2020] KEELRC 1382 (KLR)**, the court held that a suspension must carry with it a justification. In **Jane Jerotich Sirma v Postal Corporation of Kenya [2017] KEELRC 456 (KLR)**, the court emphasised that Suspension of an employee, within the employment relationship, generally under the common law, must have a contractual basis. Absent contractual authority, the employer's unilateral suspension, with or without pay, would constitute a breach of contract. See **Kenya Plantation & Agricultural Workers Union v Finlays Horticulture Kenya Ltd (2015) eKLR**.

In this regard, the 2<sup>nd</sup> respondent has the HR Policy and clause 7 details the disciplinary procedures, including suspension under clause 7.4.

Under the HR Policy, pending investigations, the employer may suspend an employee. Where the employee is found innocent upon the investigations, resumption of duty is allowed. If found guilty, appropriate action will be taken as outlined in the HR Policy.

This thus gives the parties herein a wide latitude of engagement under the HR Policy. The claimant's assertions that her rights have been violated by the suspension issued in the letter dated 27 January 2026 are premature. The purpose of the suspension is well noted in the letter.

Under clause 7.9 of the HR Policy, the purpose of suspension is reiterated. It is not indefinite as alleged. Suspension can only suffice for 3 months unless there are exceptional reasons that must be stated. See Chrispus Ileli Kunuva v County Government of Kitui & another [2020] KEELRC 15 (KLR), where the court held that suspension should be addressed within a reasonable time to avoid anxiety, and in **Samson Omwoyo versus Maasai Mara University & Another Cause No.2367 of 2016**, the court held as follows;

*... the employer has the prerogative to discipline its employees. However, a prolonged suspension of an employee that is not addressed within a reasonable time only results in anxiety and is bound to raise concern. ...*

A period of three (3) years of suspension was found excessive and unreasonable in **Victor Sammy Mutiso v TSC [2016] eKLR**.

In any event, an interdiction or a suspension, like in this case, should only be interim to allow for investigations and should not take long, as held in **Peter Gaitho Ng'ang'a v Board of Management Banita School and another [2015] eKLR**

*Interdiction is a preliminary step in the disciplinary process. The petitioner may as well be vindicated by the investigations and that could be the end of the matter. Any pecuniary loss he may have suffered during the interdiction **can be restored as provided for in the regulations.***

**Accordingly, the orders sought in the application dated 29 January 2026 shall not issue in the interim. On 18 February 2026, the court issued measures to ensure the claimant had access to the workplace to collect her personal items. Such shall suffice. Costs to abide by the outcome of the main claim.**

Delivered in open court at Mombasa on this 26th day of February 2026.

M. MBARŨ

JUDGE

In the presence of:

Court assistant: Omar

..... and .....