

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI
ELRC PETITION NO. E161 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

FRANCIS MWENDA MUTHAMIA

ITUNGA ROBERT KOOME

SIKUKUU SAMUEL CHARO

KIPLANGAT ALFRED KORIR

CHRISPIN ERICK KILILO MWAKIO

DICKSON

MUINDU.....PETITIONERS

MUEMA

VS

KENYA TEA DEVELOPMENT AGENCY

(HOLDINGS)

RESPONDENT

LTD.....

JUDGMENT

Petitioner's Case

1 By a Petition dated 21st August 2025, the Petitioner sought for the following orders:

- a. A declaration that the Petitioner's disciplinary process particularly the Notice to Show Cause and subsequent processes having been initiated without adherence to the Respondent's human resource manual and Articles 41 & 47 of the Constitution is a nullity;*

- b. A declaration that any actions taken or decisions made pursuant to the illegal disciplinary proceedings are unconstitutional and thus be declared to have been void ab initio.*
- c. An Order for costs against the Respondent in the petition.*

Petitioners' Case

- 2 The Petitioners aver that they are employees of the Respondent and that their employment relationship has at all material times been governed by the Respondent's Group Human Resource Policies & Procedures Manual Issue 3 (hereinafter "the Manual"). The Manual was issued to them upon their employment and which forms the basis of the parties' interactions and disciplinary processes.
- 3 The Petitioners aver that at the beginning of the year, they were issued with Notices to Show Cause by the Respondent. The said notices violated the procedures laid down in the Respondent's Group Human Resource Policies & Procedures Manual Issue 3.
- 4 It is the Petitioners' case that under Clause 6.5.4(i) of the Manual, an employee who is alleged to have committed an offence must first be issued with a Notice to Show Cause, after which the employee is required to state their defence in writing.

- 5 The Petitioners aver that only after consideration of the written response and depending on the nature of the alleged offence may the employer decide whether the employee should be interdicted or suspended pending further disciplinary action.
- 6 The Petitioners aver that this procedure was not followed in their case. The Notices to Show Cause issued to them already contained dates requiring them to appear for disciplinary hearings, which in their view demonstrated that the Respondent had already made up its mind that they had committed the alleged offences.
- 7 The Respondent did not wait for their responses to the Notices to Show Cause before deciding that they should face disciplinary proceedings.
- 8 The Petitioners therefore contend that the disciplinary process was merely a formality and that the Notices to Show Cause were issued only to give the appearance of due process in what they describe as a predetermined disciplinary outcome by the Respondent.
- 9 The Petitioners aver that despite their concerns, they responded to the Notices to Show Cause, but were subsequently sent on leave by the Respondent. They

understood this to mean that the Respondent intended to conduct investigations into the allegations against them.

- 10 The Petitioners aver that the Respondent engaged a forensic auditor, Forvis Mazars, to undertake a forensic audit in relation to the issues under investigation.
- 11 The Petitioners state that although the initial disciplinary hearing date indicated in the Notices to Show Cause was later vacated, they were subsequently informed to appear for a disciplinary hearing on 20th August 2025.
- 12 They aver that they were required to attend the hearing without being supplied with the forensic audit report prepared by Forvis Mazars, thereby denying them the opportunity to adequately prepare their defence.
- 13 The Petitioners further aver that the disciplinary hearing held on 20th August 2025 took place at the Respondent's offices before the full members of the Board. This came as a surprise to them because Clause 6.7 of the Manual provides that disciplinary proceedings should be conducted by the Disciplinary Committee.
- 14 According to the Petitioners, the reason disciplinary matters are to be heard by the Disciplinary Committee is to allow an aggrieved employee the opportunity to appeal

to the full Board if dissatisfied with the decision of the Committee.

- 15 The Petitioners contend that by having the disciplinary hearing conducted directly before the full Board, the Respondent denied them the procedural safeguard of an appeal to the Board as contemplated under Clause 6.7 at page 67 of the Manual.
- 16 It is the Petitioners' case that, taken together with the discussions they allegedly heard among colleagues regarding the outcome of the process, the Respondent's actions reinforced their apprehension that the disciplinary outcome had already been predetermined and the Respondent was openly disregarding the due process and procedural guarantees provided in the Manual.

Respondent's Case

- 17 In opposition to the Petition, the Respondent filed a replying affidavit dated 25th November 2025, sworn by Dr. Charles Kireru (PhD), the Respondent's Group General Manager (Human Resources).
- 18 It is the Respondent's case that the Petition is misconceived, bad in law and an abuse of the court process for the reasons set out in its pleadings.

- 19 The Respondent avers that the 1st Petitioner, Francis Mwenda Muthamia, has not demonstrated that he had authority to institute the Petition on behalf of the other Petitioners. Therefore, the claims by the other Petitioners were filed without authority and without any legal basis, and ought to be dismissed on that ground alone.
- 20 The Respondent further avers that with regard to the 2nd Petitioner, Irungu Robert Koome, the Show Cause Letter and the letter sending him on leave produced in Court were issued by Chai Trading Company Ltd, which is a separate legal entity from the Respondent.
- 21 The Respondent contends that since Chai Trading Company Ltd has not been joined as a party to the proceedings, the Petition is fatally defective.
- 22 It is the Respondent's case that other than the 1st Petitioner, none of the other Petitioners had a contract of employment with the Respondent, and that their claims are therefore directed against an entity that was not their employer.
- 23 The Respondent avers that no material has been presented in relation to the 3rd , 4th and 5th Petitioners that would demonstrate any cause of action capable of warranting the issuance of any orders in their favour.

- 24 The Respondent further avers that the Petition has been overtaken by events, serves no useful purpose, and its continued prosecution would only amount to a waste of the Court's time.
- 25 The Respondent states that the Petitioners were all serving under Chai Trading Company Ltd, which, although a subsidiary of the Respondent, is nonetheless a separate legal entity that has not been made a party to the proceedings. The Respondent maintains that the non-joinder of Chai Trading Company Ltd renders the Petition fatally defective.
- 26 It is the Respondent's case that Chai Trading Company Ltd has the primary goal of marketing the Respondent's high-quality tea products globally and offering world-class logistics services for the benefit of stakeholders and tea farmers.
- 27 The Respondent avers that due to massive losses suffered by Chai Trading Company Ltd, investigations were undertaken which established that the Petitioners, who were senior officers within Chai Trading Company Ltd, had recklessly, negligently and knowingly authorised illegal payments amounting to Kshs. 117,006,425, thereby occasioning the loss of the said sum. In support of this position, the Respondent relied on the Forensic Audit Report prepared by Forvis Mazars LLP.

- 28 The Respondent states that in accordance with the KTDA Group Human Resource Policies & Procedures, the Petitioners were issued with respective Notices to Show Cause, requiring them to provide written explanations and to appear before disciplinary panels on the dates indicated in the notices.
- 29 The Respondent avers that all the Petitioners submitted responses to the Show Cause letters and, after failing to obtain *ex parte* orders in the present proceedings, they subsequently appeared before disciplinary panels on 20th August 2025 to answer the allegations against them.
- 30 The Respondent states that after hearing the Petitioners, the disciplinary panels found them culpable of the charges levelled against them, and they were consequently dismissed from service.
- 31 The Respondent avers that following their dismissal, the Petitioners lodged Appeals against their termination in accordance with the KTDA Group Human Resource Policies & Procedures.
- 32 It is the Respondent's case that the said Appeals are still pending determination, primarily due to the existence of the present court proceedings.

- 33 The Respondent avers that the Petitioners pursuing the instant petition in court while at the same time pursuing internal appeals before the Respondent, amounts to an abuse of the court process.
- 34 The Respondent therefore contends that it would have been more appropriate for the Petitioners to first exhaust the available internal remedies before approaching the Court.
- 35 The Respondent avers that prayer (a) of the Petition relates primarily to the issuance of Notices to Show Cause, yet the disciplinary process progressed beyond the show cause stage, culminating in the dismissal of the Petitioners and the lodging of appeals, which are presently pending.
- 36 According to the Respondent, since the disciplinary process has already been concluded and the ultimate findings have not been directly challenged, the Petition has been overtaken by events, and hearing it would serve no useful purpose.
- 37 The Respondent further contends that the dispute raised by the Petitioners relates to ordinary employer-employee disputes arising from alleged breaches of employment contracts, which ought to have been pursued through a Memorandum of Claim rather than through a Constitutional Petition, particularly because the

Respondent is not a public body against whom public law remedies would ordinarily be sought.

- 38 The Respondent avers that the Petition offends the principle of constitutional avoidance, arguing that there was no justification for instituting a Constitutional Petition when the dispute could have been addressed through the normal employment dispute resolution mechanisms.
- 39 It is the Respondent's case that the Petition does not meet the threshold established in **Anarita Karimi Njeru v Republic (1976) KLR 1272**, as reaffirmed in **Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others (2013) eKLR**, which require a petitioner to clearly specify the constitutional provisions allegedly violated and the manner of violation.
- 40 The Respondent avers that the Petition fails to identify any specific constitutional violations attributable to the Respondent.
- 41 The Respondent contends that no justiciable issue arises to warrant the intervention of the Court, noting that the Petitioners were merely issued with Notices to Show Cause, to which they responded, and were thereafter afforded an opportunity to defend themselves during disciplinary proceedings.

- 42 The Respondent avers that the Petition was founded on unfounded apprehensions and conjecture, and that the Respondent had no intention of disregarding due process, but rather observed due process throughout the disciplinary proceedings.
- 43 The Respondent disputes the Petitioners' claim that they were not supplied with the Forensic Audit Report by Forvis Mazars, stating that the Petitioners have not demonstrated that they requested the report and that such request was declined.
- 44 The Respondent avers that the Petitioners were terminated for good cause, having engaged in negligent and deliberate conduct that led to the loss of substantial sums of money, and therefore maintains that the Petitioners have failed to establish a proper basis for the Petition or for the grant of the declarations and reliefs sought.
- 45 The Respondent concludes that in light of the circumstances, public interest militates against the grant of the orders sought in the Petition.

Petitioners' Submissions

- 46 The Petitioners submitted that the Respondent violated both the KTDA Group Human Resource Manual and the

Constitution, and that the disciplinary process undertaken against them was procedurally flawed, unlawful and unconstitutional.

- 47 The Petitioners submitted that the disciplinary process is governed by the Human Resource Manual, particularly Section 6.5.4 (1) which provides that a formal disciplinary procedure starts with a show cause letter citing the nature of the offence and requiring an employee to show cause why disciplinary action should not be instituted.
- 48 The Petitioners submitted that the Respondent vide the show cause letters had summoned them to defend themselves, thus breaching Section 6.5.4 (1) of its manual that requires issuance the show cause letter first, waiting for the Petitioners to respond to the same and thereafter make a decision to proceed with disciplinary action as required under Section 6.5.5.6, and such decision shall be communicated in writing to the employee with copies to his union and to the Human Resource Department.
- 49 The Petitioners submitted that 1st Petitioner's Notice to Show Cause dated 23rd July 2025, issued by the Chief Executive Officer, Wilson Muthaura, required the Petitioner to appear before the Board while at the same time purporting to be a show cause letter. This demonstrates that the Respondent did not first wait for the Petitioner's

response before deciding to initiate disciplinary proceedings.

- 50 The Petitioners further submitted that the said show cause letter dated 23rd July 2025 was not copied to the employee's union or to the Human Resource Department, as required under the Human Resource Manual.
- 51 The Petitioners submitted that the Respondent also violated Section 6.4.7 of the Human Resource Manual, which directs that a disciplinary committee shall be convinced to hear the allegations levied against an employee. In respect of the Petitioners, no such disciplinary committee was convened, instead they were taken directly before the full KTDA Holdings Board to answer the allegations.
- 52 The Petitioners submitted that the Respondent's action of taking them through a full KTDA Holdings Board meant that any decision made would be final. This denied them the right of appeal provided under Section 6.8 of the Human Resource Manual that an employee dissatisfied with the decision of the Staff Disciplinary Committee may appeal to the Staff Appeals Committee.
- 53 The Petitioners further submitted that they were not provided with the materials and documentation relied upon by the Respondent when issuing the Notices to Show

Cause and during the disciplinary proceedings. The Respondent relied on a Forensic Audit Report prepared by Forvis Mazars, which report was not supplied to them to enable them prepare their defence.

- 54 The Petitioners submitted that paragraph 19 of the Replying Affidavit sworn by Dr. Charles Kireru (PhD) on 12th September 2025, confirms that the Petitioners did not have the forensic audit report when they were issued with the show cause letters or when they appeared before the disciplinary board.
- 55 The Petitioners submitted that the charges were levelled against the 1st Petitioner relate to events that occurred before he became an employee of the Respondent. They refer the Court to page 42 of the Respondent's affidavit, which indicates that the transactions in question occurred between 20th March 2024 and 4th April 2024, while the 1st Petitioner's letter of appointment shows that he was appointed on 3rd June 2024. This made it impossible for the 1st Petitioner to have been involved in the charges levied against him.
- 56 On the Respondent's contention that Francis Mwenda Muthamia had no authority to institute the Petition on behalf of the other Petitioners, the Petitioners submit that the Petition is properly before the Court.

- 57 It is the Petitioners' submission that Article 22 (1) (2) allows any person the right to institute court proceedings on his behalf, and of another person(s) claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or intimidated or is threatened. The Petition is thus proper before the Court as the said Francis Mwenda Muthamia has stated he has the authority to bring the said Petition on his behalf and that of the other Petitioners and nothing has been placed before this court by the Respondent to show the contrary.
- 58 In response to the Respondent's assertion that the 2nd to 5th Petitioners were not employees of the Respondent, the Petitioners submitted that if that were indeed the case, then the Respondent acted illegally by subjecting them to a disciplinary process, as their employer was Chai Trading Company Ltd and not KTDA Holdings Ltd.
- 59 It is the Petitioners' submission that due to this illegal disciplinary process the Respondent has gone ahead to fire the Petitioners and to stop payment of their salary thus further violating their rights as they were subjected to psychological torture, inhuman treatment and unfair labour and administrative practices in violation of the Constitution.
- 60 The Petitioners submit that the Respondent's actions subjected them to grave injustice and breached their own

Human Resource manual. Additionally, the Respondent's actions amount to violations of Article 41 of the Constitution, which guarantees the right to fair labour practices, and Article 47 of the Constitution, which guarantees the right to fair administrative action that is lawful, reasonable and procedurally fair.

- 61 On damages, the Petitioners submitted that they are entitled to damages upon prove that indeed their rights as enshrined in the Bill of Rights were violated by the Respondent. The violation of their rights does not require proof of damages or loss suffered. They cited the finding of the Supreme Court in ***Charles Muturi Macharia & 6 Others v Standard Group & 4 Others, Supreme Court Petition No. 13 (E013) of 2022.***

Respondent's Submissions

- 62 The Respondent submitted on six issues: whether the 1st Petitioner has authority of the Co-Petitioners; whether the non-joinder of Chai Trading Company Ltd renders the Petition fatally defective; whether the Petition has been overtaken by events; whether a Constitutional Petition is appropriate in the circumstances; whether the Respondent observed the procedural and substantive requirements in the disciplinary process against the Petitioners; and whether the Respondent's Group CEO is in contempt of court

63 On the first issue, the Respondent submitted that under Kenyan law, where there are multiple claimants, a single claimant cannot act on behalf of others without their express, written authority. Without this written authority, the lead Claimant would lack *locus standi* to act on behalf of the rest. This provided under Rule 23 of the Employment and Labour Relations Court (Procedure) Rules, 2025.

64 The Respondent further cited ***Abdulla Abshir & 38 others v Yasmin Farah Mohamed [2015] eKLR*** wherein the court held:

“From the foregoing, it is quite clear that a party in a proceeding cannot purport to appear, plead and act on behalf of others until and unless he is so authorized to do so in writing and the authority is led in such a proceeding. To my mind therefore, a statement in an affidavit that one has the authority of the complaints or co-defendants is not enough. Such an authority, properly signed by the party giving the authority, must be led in the proceeding.”

65 The Respondent submitted that the Petitioners filed the present Petition without filing any letter of authority signed by the 2nd to 6th Petitioners authorizing the 1st Petitioner to institute the proceedings on their behalf.

- 66 It is therefore the Respondent's submission that the 1st Petitioner lacks authority to represent the other Petitioners, and that the Petition, insofar as it purports to be filed on behalf of the 2nd to 6th Petitioners, is invalid and ought to be struck out for lack of authority.
- 67 On the second issue, the Respondent submitted that the Petition is defective for failure to join Chai Trading Company Ltd, which is the actual employer of the Petitioners. The evidence on record demonstrates that the Petitioners were performing their duties and receiving remuneration from Chai Trading Company Ltd. The letters of employment produced in court show that the employment contracts of the Petitioners were issued by Chai Trading Company Ltd, except for the 1st and 2nd Petitioners.
- 68 The Respondent submitted that vide the 1st Petitioner's letter of appointment, he was to report to the Board of Chai Trading Company Ltd. Similarly, the 3rd Petitioner's "Transfer and Placement Letter" indicates that he was to report to the Managing Director of Chai Trading Company Ltd.
- 69 The Respondent therefore submitted that Chai Trading Company Ltd is an indispensable party in any dispute concerning the Petitioners' employment. As a matter of law, this Court is clothed with jurisdiction to hear such

matters only when it is demonstrated that there was an employer - employee relationship between the parties. It doesn't matter that the employer is a subsidiary or a member of a group of related companies. The actual employer especially where reinstatement is sought must be a party to the proceedings.

70 It is the Respondent's submission that the Petitioners are in the Application for Contempt of Court orders seeking payment of alleged salaries. This payment if allowed can only emanate from Chai Trading Company Ltd which is not a Party to these proceedings. Chai Trading Company Limited is, in law, a distinct legal entity notwithstanding that it is a wholly owned subsidiary of the Respondent. Its main objective under its Memorandum and Articles of Association is exporting and sale of Tea on behalf of over 606,000 small scale Tea Farmers.

71 The Respondent therefore submitted that the issue of joinder of Chai Trading Company Ltd is not a mere technical issue but goes to both substance of the Petition as well as the jurisdiction of the Court; the non-joinder renders the entire Petition mute. It cited **Odongo v Clerk, Nakuru County Assembly & 5 others [2023] KECA 1554 (KLR)**, where the Court of Appeal held that without an employer - employee relationship, the Employment & Labour Relations Court would have no jurisdiction to hear a matter.

- 72 On the third issue, the Respondent submitted that the Petitioners approached the Court immediately after receiving their respective Notices to Show Cause and simultaneously filed an Application dated 21st August 2025 seeking conservatory orders to restrain the Respondent from dismissing them. They failed to obtain ex parte orders, therefore, the disciplinary process continued and culminated in their dismissal on or about 25th August 2025, which was before the Court delivered its ruling on 30th October 2025.
- 73 The Respondent submitted that the Court in the ruling delivered on 30th October 2025 stayed any disciplinary process through a flawed process pending the hearing and determination of the Petition. However, at the time the ruling was delivered, the court was unaware that the disciplinary process had been completed which is what prompted the Respondent to file the Application dated 25th November 2025 seeking that the Petition be struck out for having been overtaken by events.
- 74 The Respondent submitted that the Petition was framed on the assumption that the disciplinary process was ongoing and that the prayers sought, particularly prayers 1 and 2, were directed at the Notices to Show Cause. However, the disciplinary process proceeded beyond the show cause stage and the Petitioners were dismissed from

employment, after which they lodged internal appeals with the Respondent challenging the dismissal. These appeals remain pending due to the existence of the present proceedings and the orders issued by the Court.

- 75 The Respondent submitted that the Petitioners ought to have amended the Petition to reflect these developments or withdrawn the Petition and pursued their appeals, and thereafter filed fresh claims if necessary.
- 76 It is the Respondent's submission that the Petition as framed has been overtaken by events. The Petition fails to capture the developments that occurred upon the hearing of the show cause. The Petition thus fail to disclose material facts that the Petitioners have since been dismissed and of most importance, that they have all lodged Appeals which remain pending.
- 77 On the fourth issue, the Respondent submitted that the KTDA Group Human Resource & Policy Manual indeed provides for an Appeal on a decision to terminate. The Petitioners are aware about that and have actually decided to exercise that option voluntary.
- 78 It is the Respondent's position of the law is that where there exists internal or other remedies, then those should be exhausted first before the Court can entertain a Constitutional Petition. It cited ***Maggie Mwauki Mtalaki***

v Housing Finance Company Of Kenya [2015] eKLR

where the Court stated that if there is a parallel remedy, constitutional remedy should not be sought.

- 79 The Respondent submitted that the issues raised by the Petitioners concern employment rights governed by the Employment Act and the Respondent's Human Resource Manual, and not constitutional interpretation. It thus argues that there is no constitutional question and the court should avoid the Petition so that the Petitioner can seek an appropriate remedy under a normal Memorandum of Claim instead of trying to transform the dispute into a constitutional one.
- 80 The Respondent further submitted that the Petition does not comply with the rule in ***Anarita Karimi Njeru v The Republic (1976-1980) KLR 1272*** which prescribes that a party seeking a constitutional remedy is required to set out with reasonable precision that which is complained of, noting to stipulate which constitutional provisions have been infringed and how they have been infringed.
- 81 The Respondent submitted that the Petition merely cites general constitutional provisions without demonstrating how they were violated. The Petition refers to Article 42 of the Constitution, which relates to the right to a clean and healthy environment, and incorrectly describes it as relating to economic rights which absolutely have nothing

to do with employment. There is no mention of Article 41 or 47 of the Constitution in the body of the Petition.

82 The Respondent submitted that the Petition does not cite Articles 41 or 47 of the Constitution within the body of the Petition, and therefore fails to establish any nexus between the alleged violations and the constitutional provisions relied upon.

83 It is the Respondent's submission that no effort is made to demonstrate how any of those provisions have been violated. There is absolutely no nexus between alleged violation and the Constitutional Provisions cited. There is no precision in the Petition on how the Petitioners rights have been violated as required in the **Anarita Karimi Njeru** doctrine which was upheld in the **Mumo Matemu** Court of Appeal decision. Accordingly, there is no conduct from the Respondent which warrants issuance of the orders sought

84 On the fifth issue, the Respondent submitted that in **Walter Ogal Anuro V Teachers Service Commission [2013] eKLR** the Court held that;

"... For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid

reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”

85 The Respondent submitted that a Forensic Audit commissioned at Chai Trading Company Ltd revealed that a sum of Kshs. 117,006,425 had been lost through embezzlement. The Petitioners were senior managers responsible for initiating, processing and approving financial transactions, and the Forensic Audit Report demonstrated their involvement in the transactions leading to the loss. Therefore, it had substantive justification for initiating disciplinary proceedings.

86 The Respondent submitted that the 1st Petitioner’s Letter of Appointment dated 3rd June 2024 states that the appointment superseded an earlier letter dated 14th October 2021, demonstrating that the 1st Petitioner had been working with Chai Trading Company Ltd prior to the appointment letter relied upon. Further, the argument that the 1st Respondent was not an employee of Chai Trading Company Ltd was raised for the first time during the cross examination of the Respondent’s witness. It is thus an afterthought since the 1st Petitioner never mentioned it in his response to Show Cause.

87 The Respondent submitted that the 1st Petitioner admitted to having been the authorizer of the subject payments in

his response. Further vide his letter dated 6th August 2025 titled 'Further clarification on authorized transaction', he once again admitted having been involved in the authorization of the suspect transactions.

- 88 The Respondent also submitted that the 1st Petitioner admitted involvement in the authorization of the transactions in his response to the Notice to Show Cause appearing at pages 61-63 of the Replying Affidavit and again in his further clarification appearing at pages 66-67.
- 89 On procedural fairness, the Respondent submitted that the Petitioners: received Notices to Show Cause, responded to those notices, received letters requesting further clarification, responded to the clarification requests, and appeared before the full Board where they were heard. The disciplinary procedure therefore complied with the Constitution, the Employment Act and the Respondent's Human Resource Policies.
- 90 The Respondent further submitted that the disciplinary process could not be conducted by the Disciplinary Committee of Chai Trading Company Ltd because the Petitioners themselves were members of that committee, making it impractical for the committee to sit in judgment over its own members.

- 91 The Respondent also submitted that there is no illegality in having a Show Cause Notice having a date when an oral hearing for it will be conducted. That does not necessarily mean that a decision has been made. The suggestion by the Petitioners is therefore lacking in merit. In law, a show cause doesn't even have to be heard viva voce. Had the Petitioners been complaining of being denied an oral hearing, that would be a different case. But in this case, they are complaining of being given an opportunity for an oral hearing, which it argues is absurd.
- 92 On the final issue, the Respondent submitted that contempt of court is a very serious matter that even the threshold of proof is one above balance of Probabilities. It cited [Salome Munubi & 3 others v Muhammad Swazuri & 2 others; Emmanuel Busera \(Interested Party\); Kabale Tache Arero \(Contemnor\) \[2019\] KEELRC 703 \(KLR\)](#)

*“The standard of proof in cases of contempt of Court is well established. In the case of **Mutitika v. Baharini Farm Limited [1985] KLR 229, 234** the Court of Appeal held that: “In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to*

be quasi-criminal in nature.” The rationale for this standard is that if cited for contempt, and the prayer sought is for committal to jail, the liberty of the contemnor will be affected. As such, the standard of proof is higher than the standard in civil cases. This power, to commit a person to jail, must be exercised with utmost care, and exercised only as a last resort. It is of utmost importance, therefore, for the respondents to establish that the alleged contemnor’s conduct was deliberate, in the sense that he or she wilfully acted in a manner that flouted the Court Order.”

- 93 It is the Respondent’s submission that the Court order issued on 30th October 2025 of a flawed process. As at that time, the process which to us was not flawed had already been completed by the Respondent’s Board. It is for that reason that an Application for striking out the Petition was filed.
- 94 The Respondent further submitted that the Court order did not direct a reinstatement or payment of salaries as the Petitioners seek to portend. There was nothing then that Wilson Muthaura cited as contemnor did or did not do in violation of the Court Order that would have him punished for contempt.

95 The Respondent asked the Court to take judicial notice that Wilson Muthaura has since retired from service at the Respondent which is a matter that has been widely published in the mass media.

96 I have examined all the averments and submissions of the parties herein. The issues for this court's consideration are as follows:

(1) Whether the petitioners were subjected to an unfair and unjust disciplinary process by the respondents.

(2) Whether the petitioner's rights under the constitution were infringed upon.

(3) What remedies if at all the petitioners are entitled to.

ISSUE NO 1

97 The petitioners have averred that they were being subjected to a flawed disciplinary process in that the respondents failed to follow their own HR manual. They aver that the notice to show cause letters issued to them also indicated the date for the disciplinary hearing demonstrating that the respondent had already made up its mind to subject them to a hearing without taking into consideration their response to the notice to show cause.

98 The disciplinary hearing date was subsequently vacated and they were invited to a hearing on 20th August 2025 without being supplied with the forensic audit report

prepared by Forvis Mazars then denying them an opportunity to adequately prepare their defence.

99 The petitioners also aver that they were invited for a disciplinary hearing and they appeared before the full board contrary to clause 6.7 of the respondent's manual. Thereafter the petitioner aver that they were subsequently dismissed from the service. They lodged an appeal against their termination and the appeals are still pending hearing.

100 The respondents oppose this petition and aver that the 1st petitioner does not have authority to pursue this petition on behalf of the other petitioners. The respondents aver that the other petitioners have no contract of employment with the respondents.

101 The respondents also aver that the petitioners were serving under Chai Trading Company Ltd which is a subsidiary of the respondent with a separate legal entity and which is not a party to these proceedings.

102 From the documents on record, the 1st petitioner indeed swore an affidavit indicating that he had authority to file this petition on behalf of the other petitioners. It is unfortunate however that the said authority from the other petitioners has not been filed before this court. That notwithstanding, it is also apparent that the 1st petitioner

was employed by the respondent as the MD of Chai Trading Company Limited. The show cause letter to the petitioner was signed by CEO of the respondent. All documents of show cause to the petitioners were signed by the CEO of KTDA. Some of the dismissal letters to the petitioners were however signed by the MD of Chai Trading company Ltd. The HR of the respondent appeared before this court for cross examination and he stated that the 2 companies i.e the respondent and Chai Trading Company Ltd are 2 separate legal entities.

103 From the record, the show cause letter to Robert Koome came from Chai Trading Ltd head of HR. This means that even from the petitioner, the service of their disciplinary process was done by the respondent and Chai Trading Company Ltd who are not parties to this petition.

104 In view of the 2 omissions, the lack of authority by the other petitioners for the 1st petitioner to present this petition on their behalf and in absence of Chai Trading Company Ltd as a party to this petition, bearing in mind the role played by the disciplinary process against the petitioners, the petition cannot stand as it is.

105 In the absence of a key respondent to this petition, I find the entire petition cannot stand. I proceed to strike it out accordingly. There will be no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi this 11th
Day of March, 2026.**

**HELLEN WASILWA
JUDGE**