

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E275 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

ENG. ANTONY TAWAYI
WAMUKOTA.....PETITIONER

VS

THE KENYA ELECTRICITY TRANSMISSION
COMPANY LIMITED.....1ST
RESPONDENT

BOARD OF DIRECTORS OF KENYA
ELECTRICITY TRANSMISSION
COMPANY LIMITED.....2ND
RESPONDENT

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

RULING

- 1 The Petitioner filed a Notice of Motion dated 17th December 2025 seeking orders: -
1. *Spent.*
 2. *THAT this Honorable court be pleased to make an order staying the 5-month interdiction against the Applicant and order for his immediate resumption*

of duty pending inter parties hearing and determination of this application.

3. *THAT this Honorable court be pleased to make an order directing the Respondents to unconditionally lift the 5-month Interdiction against the Applicant and order for his immediate resumption of duty pending inter parties hearing and determination of this application.*
4. *THAT pending the hearing and determination of this application, this Honourable court do make an order suspending the Respondents' Letter of Interdiction of the Applicant dated 15th December 2025 referenced as KET/5/1A/10013/kk/lck.*
5. *THAT this Honourable Court be pleased to make an order directing the Respondents to unconditionally lift the 3-month compulsory leave against the applicant/petitioner and order for his immediate resumption of duty pending the hearing and determination of the petition.*
6. *THAT pending the hearing and determination of the petition, this Honourable court do make an order suspending the Respondents' Letter dated 15th December 2025 referenced as KET/5/1A/10013/kk/lck sending the applicant/petitioner on a 5-month interdiction.*
7. *THAT pending the hearing and determination of this application and petition, this Honourable Court do make an order suspending and/or staying the*

decision of the Respondents contained in their Letter dated 15th December 2025 referenced as KET/5/1A/10013/kk/lck.

8. *THAT pending the hearing and determination of this application and petition, this honorable court do make an order of injunction restraining the respondents either by themselves, employees, servants and/or agents from terminating the employment of the Applicant/Petitioner based on the illegal Interdiction.*
 9. *THAT the costs of this application be borne by the Respondents.*
- 2 Subsequently, the Respondents also filed a Notice of Motion Application dated 14th January 2026, seeking ORDERS:
- i. *Spent*
 - ii. *THAT this Honourable Court be pleased to set aside the exparte orders issued on 19th December 2025 by Hon. Lady Justice H. Wasilwa in ELRCPET/E275/2025.*
 - iii. *THAT this Honourable Court be pleased to strike out Petition No. ELRCPET/E275/2025 dated 17th December 2025 and the Notice of Motion Application dated 17th December 2025.*
 - iv. *THAT the costs of this application be borne by the Petitioner/Respondent.*

Petitioner's Case

- 3 The Petitioner in support of his application dated 17th December 2025 and in opposition to the application to the Respondents' application dated 14th January 2026, the Petitioner filed a further affidavit dated 5th February 2026.
- 4 It is the Petitioner's case that on 18th September 2025, the 2nd Respondent convened a Special General Meeting solely for a disciplinary session against the then Managing Director of the 1st Respondent, Eng. John Mativo, pursuant to express directions of the Public Service Commission following its judgment of 11th June 2025.
- 5 The Petitioner avers that despite the disciplinary process having no linkage whatsoever to him, the Respondents abruptly and without justification sent him on a three-month compulsory leave, arising from a process that neither concerned nor implicated him, in total violation of the law, procedure, and his constitutional rights.
- 6 Being aggrieved by the illegal and unconstitutional compulsory leave, the Petitioner approached this Court through Petition No. E185 of 2025, seeking a declaration that the compulsory leave infringed his right to fair administrative action and was unlawful. The Court heard the parties, directed filing of written submissions, and delivered judgment on 17th December 2025, revoking the compulsory leave and ordering the Petitioner's unconditional resumption of duty.

- 7 The Petitioner avers that maliciously, on 16th December 2025, just one day before delivery of the judgment, the Respondents issued him with a five-month interdiction, purportedly dated 15th December 2025, together with a show cause letter of the same date. He contends that he was never given reasons, never accorded an opportunity to be heard, and that the interdiction was imposed prior to any hearing, rendering it disgraceful, prejudicial, and unlawful.

- 8 It is the Petitioner's case that the interdiction is a veiled, choreographed, and predetermined scheme meant to frustrate him, defeat the Court's judgment, lock him out of office, and ultimately dismiss him before expiry of his contract in June 2026. He avers that the interdiction is malicious, illegal, unreasonable, irregular, un-procedural, and without any foundation.

- 9 The Petitioner contends that the Respondents acted in total disregard of the rules of natural justice, the rule of law, and the principle of fairness, as he was neither heard nor furnished with any investigation report allegedly forming the basis of the interdiction. He asserts that the interdiction is draconian, unconstitutional, and is being used as a semblance for dismissal.

- 10 The Petitioner further avers that the timing of the interdiction, a day before judgment, was deliberate and intended to circumvent the authority and decision of this Honourable Court. He maintains that the Board of the 1st Respondent deliberately overlooked and flouted its Human Resource Policy and Procedures Manual by immediately interdicting him without cause.

- 11 He avers that he was not allowed to show cause, that the interdiction was communicated to him via WhatsApp, and that he was away on an illegal compulsory leave at the time the interdiction was imposed. Unless the interdiction is stopped, the Petitioner fears grave prejudice, as the Respondents intend to ensure he never resumes office until his contract lapses.

- 12 The Petitioner asserts that the interdiction offends the rules of natural justice, violates the Human Resource Policy and Procedures Manual particularly paragraph 11.5(f) requiring investigations before disciplinary action and violates constitutional provisions on fair labour practices, fair administrative action, and fair hearing, rendering it null and *void ab initio*.

- 13 He avers that no investigation was ever conducted against him, no investigation team was constituted as required under the HR Policy, and no investigation report was prepared or supplied. A proper investigation, he asserts,

would have revealed that delays in the Kenya-Tanzania Interconnector Project were caused by wayleave acquisition challenges and landowner compensation demands beyond his mandate.

- 14 The Petitioner disputes all allegations relating to verification of contractor claims, availability of funds, acceleration costs, unlawful variations, expired guarantees, and alleged exposure to losses. He avers that claims verification is governed by an approved protocol involving the Project Steering Committee and Project Implementation Team, and that singling him out amounts to discrimination and victimisation.
- 15 The Petitioner avers that discrimination and victimisation against him has been perpetuated since 2023, beginning with an unlawful 12-month suspension imposed without a hearing, which this Honourable Court annulled. This was followed by the illegal compulsory leave of September 2025, also revoked by the Court. The current interdiction, he contends, is a continuation of this malicious pattern meant to defeat judicial authority.
- 16 He further avers that many of the projects cited by the Respondents were commenced and substantially completed before his appointment as General Manager, Design & Construction in July 2021, yet no action was taken against previous office holders. He maintains that

this selective targeting is discriminatory and unconstitutional.

- 17 The Petitioner asserts that the Respondents are conducting piecemeal, perpetual, and malicious disciplinary processes, contrary to fair labour practices, and that the current Board has demonstrated bias, malice, and unfairness and should be barred from sitting in any disciplinary proceedings against him.
- 18 On jurisdiction, the Petitioner avers that the interdiction and disciplinary actions violate his rights under Articles 41, 47, and 50 of the Constitution, and that the issues raised require constitutional interpretation beyond the mandate of the PSC. He asserts that this Honourable Court has exclusive original jurisdiction under Articles 22, 162(2), and 165(5)(b) of the Constitution and section 12 of the Employment and Labour Relations Court Act.
- 19 The Petitioner maintains that this Court is empowered to intervene where an employer's administrative process is unfair, breaches internal policy, violates the rules of natural justice, or is stage-managed toward dismissal. He reiterates that an unconstitutional decision is a nullity, incapable of conferring rights or imposing obligations.
- 20 The Petitioner avers that unless the Court intervenes urgently, he will suffer irreparable prejudice, while the

Respondents will suffer none if the orders sought are granted. He urges the Court to act swiftly to arrest the continued violation of his fundamental rights and freedoms.

Respondents' Case

- 21 In opposition to the Petitioner's application and in support to their application, the Respondents filed a further replying affidavit dated 14th January 2026.
- 22 The The Respondents' case is that prior to the filing of the Petition, the Petitioner was lawfully subjected to disciplinary action arising from serious and grave anomalies identified in the Multinational Kenya-Tanzania 400kV Power Interconnection Project, a strategic national infrastructure project implemented using public resources.
- 23 The Respondents aver that during the period when the Petitioner served as General Manager, Design & Construction, the Project experienced grave governance, contractual, financial and performance lapses, which exposed the 1st Respondent to substantial financial loss, operational delays and reputational risk. These lapses are attributed to failures in managerial oversight, breach of contractual obligations and neglect of duty by the Petitioner in his senior executive role.
- 24 The Respondents contend that the Petitioner was duly issued with a detailed Show Cause Letter setting out

specific acts and omissions constituting Negligence of Duty and Gross Misconduct, including failure to deliver the Project within approved timelines and budget, failure to exercise due diligence in verification of contractor claims, failure to confirm availability of funds before committing the Company to substantial expenditure, endorsement of unjustified acceleration costs amounting to Kshs. 849 million, unlawful contract variations beyond statutory thresholds, and failure to safeguard value for money, thereby occasioning or exposing the Company to loss of public funds.

- 25 Owing to the seriousness of the allegations and following preliminary internal inquiries, the Respondents aver that the Petitioner was lawfully issued with an interdiction letter as a precautionary administrative measure intended to safeguard the Company's interests and preserve the integrity of ongoing investigations, pending completion of the disciplinary process.

- 26 The Respondents state that instead of responding to the Show Cause Letter, participating in the disciplinary process, and invoking the appellate mechanisms prescribed by law, the Petitioner prematurely approached this Court through the present Petition and Application dated 17th December 2025, seeking to halt the disciplinary process midstream.

- 27 On 19th December 2025, the Petitioner obtained *ex parte* conservatory orders staying the disciplinary proceedings, thereby arresting lawful disciplinary action founded on grave allegations involving public resources and insulating the Petitioner from accountability through premature judicial intervention.
- 28 The Respondents aver that at all material times the Petitioner held the position of General Manager, Design & Construction, a senior management role vested with overarching managerial, fiduciary and supervisory responsibility over numerous strategic infrastructure projects implemented nationwide using public funds, and not merely the Kenya-Tanzania 400kV Project.
- 29 They further contend that several complaints of impropriety, audit queries and governance concerns have arisen in respect of other projects under the Petitioner's oversight, prompting ongoing and scheduled audits and investigations independent of the Kenya-Tanzania Project.
- 30 These include, inter alia, accumulation of demurrage costs at the Port of Mombasa for transformers under the Rabai - Bamburi - Kilifi Project; unlawful termination issues and exposure to massive financial liability in the Lessos - Tororo Project; avoidable contractor claims amounting to hundreds of millions of shillings in the Isinya - Konza Transmission Line Project; possession of contractor claims exceeding Kshs. 20 billion across multiple projects; and

exposure to loss of over Kshs. 2.6 billion arising from expired performance and advance payment guarantees in the Kamburu-Embu-Thika Transmission Line Project.

- 31 The Respondents contend that the *ex parte* conservatory orders, couched in broad and unqualified terms barring “any further disciplinary process,” have had the prejudicial effect of paralysing lawful audits, investigations and disciplinary processes across all projects under the Petitioner’s charge, including matters never pleaded before the Court, thereby undermining institutional accountability, public interest, and statutory mandates.
- 32 They assert that even if arguable, the conservatory orders ought to have been narrowly limited to the Kenya-Tanzania 400kV Project and not extended to unrelated projects. The Respondents maintain that they are a public body and the Petitioner a public officer within the meaning of the law, and that the grievance arises squarely from a disciplinary process governed by statute.
- 33 The Respondents rely on the doctrine of exhaustion, contending that where the Constitution or statute prescribes a dispute resolution mechanism, that procedure is mandatory and Courts are forums of last resort.
- 34 They aver that the Public Service Commission Act establishes a specialized and exclusive appellate framework for disciplinary grievances involving public

officers, including interdiction and suspension, and that under Section 74 of the Act and the relevant Regulations, disciplinary action is not deferred pending appeal.

- 35 The Respondents assert that the Petitioner failed to invoke the appellate jurisdiction of the Public Service Commission prior to filing the Petition, thereby prematurely and unlawfully invoking this Court's jurisdiction.
- 36 They contend that the Petition improperly elevates an ordinary employment and disciplinary grievance into a constitutional dispute, contrary to settled principles of constitutional avoidance.
- 37 They further aver that the interdiction was issued following Board deliberations, in good faith, pursuant to the Company's statutory mandate, the Human Resource Policy and Procedures Manual, the Petitioner's Employment Contract, and applicable labour laws.
- 38 The interdiction is described as a precautionary administrative safeguard, not a disciplinary sanction or final determination, and the Petitioner continues to receive half basic salary, house allowance and medical benefits.
- 39 The Respondents deny allegations that the Petitioner was condemned unheard or that the interdiction was malicious or intended to circumvent court orders. They maintain that the Petitioner was duly served with a Show Cause Letter,

accorded an opportunity to respond, and remains at liberty to participate in the disciplinary process and invoke lawful appellate mechanisms. The timing and mode of communication of the interdiction, they aver, do not vitiate its legality.

- 40 The Respondents contend that granting the orders sought would amount to premature determination of the substantive dispute, unlawfully interfere with their statutory disciplinary mandate, render ongoing investigations nugatory, and expose the institution to serious operational and governance risks.
- 41 They further state that no decision to terminate the Petitioner's employment has been made, and any apprehension of termination is speculative and unsupported.
- 42 The Respondents maintain that the continued subsistence of the *ex parte* orders unlawfully paralyses their disciplinary authority, undermines public accountability, and causes continuing prejudice.
- 43 They urge the Court to down its tools for want of jurisdiction, uphold the doctrine of exhaustion of administrative remedies, and dismiss the Petition and Application as premature, incompetent, an abuse of the court process, and devoid of merit, in the interest of justice and public interest.

Petitioner's Submissions

- 44 The Petitioner submitted on two issues: whether the interdiction was unprocedural, unlawful and unconstitutional; and whether the Applicant/Petitioner is entitled to the costs of the applications.
- 45 On the first issue, the Petitioner submitted that the interdiction imposed upon him vide the Respondents' letter dated 15th December 2025, placing him on a five-month interdiction, was illegal, irregular, unlawful and unconstitutional, and therefore incapable of standing in law.
- 46 It was submitted that the interdiction was effected without affording the Petitioner an opportunity to be heard, contrary to the rules of natural justice, the Respondents' Human Resource Policy and Procedures Manual, and the Constitution. Both the Show Cause Letter and the interdiction letter bear the same date, 15th December 2025, demonstrating that the decision to interdict him had already been made before any response could be given, thereby rendering the disciplinary process a mere formality.
- 47 The Petitioner submitted that the Respondents' action offends Article 47 of the Constitution, which guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally

fair, and is reinforced by the Fair Administrative Action Act, which obligates an administrator to give prior and adequate notice, reasons for the proposed action, and an opportunity to be heard before adverse action is taken.

- 48 It was submitted that the interdiction further violated Article 41 of the Constitution, which protects the right to fair labour practices, and Article 50(1), which guarantees the right to a fair hearing in any dispute capable of being resolved by the application of law. It cited **Wamukota v Kenya Electricity Transmission Company Limited & 2 others (Petition E213 of 2023) [2024] KEELRC 796 (KLR) (8 April 2024) (Judgment)**, this Court held that:

“The Court identifies the following pertinent constitutional and statutory provisions. Article 236 (b) on protection of public officers states that a public officer shall not be dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”

- 49 The Petitioner further submitted that the interdiction was imposed at a time when he was already away on a three-month compulsory leave, which leave had been declared unlawful and revoked by the Court. It was submitted that the Respondents’ conduct demonstrates a piecemeal and malicious disciplinary process, calculated to hold the Petitioner in perpetual disciplinary limbo, which the Court

has consistently frowned upon as an unfair labour practice.

- 50 It is the Petitioner's submission that the the Respondents flouted their own Human Resource Policy provisions in placing the applicant on the impugned interdiction hence the interdiction of the is illegal, unconstitutional and procedurally flawed as the same offends paragraph 11.5 (f) of the Respondents' Human Resource Policy and Procedures Manual which provides that:

“Thorough investigation of an alleged offence shall be undertaken before any disciplinary action is taken.”

- 51 The Petitioner submitted that no investigation was undertaken prior to the interdiction. He emphasized that the HR Manual sets out a structured investigation process, including the constitution of an investigation team by the Managing Director under Clause 11.9.15, and the preparation of an investigation report under Clause 11.10(f). The absence of any investigation, report or findings, renders the interdiction procedurally and substantively defective.

- 52 The Petitioner submitted that Clause 11.1.1 of the Respondents' HR Policy provides that: *“Disciplinary procedures shall be used as a corrective measure to foster improvement of individual conduct. It is expected that no punishment shall be inflicted on an officer if it would be*

contrary to any provision of the law.” Further, Clause 11.4 of the HR manual on the principles guiding the 1st Respondent’s disciplinary process provides that: “The company SHALL be guided by the following principles in handling disciplinary matters: The Rules of Natural Justice, Fair administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. AND every officer to whom disciplinary action is taken has a right to: Information, materials and evidence to be relied on in making a decision or taking a disciplinary action.”

53 He further submitted that Clause 11.5(a), (d) and (f) of the Respondents’ HR Manual provides that: “Disciplinary cases shall be processed through the company’s HRAC; and There should be proper framing of charges with full particulars of the case including the applicable provisions of the Constitution, legislation or code of conduct alleged to have been breached. Thorough investigation of an alleged offence shall be undertaken before any disciplinary action is taken.”

54 It is the Petitioner’s submission that the HR policy provides that investigations must be done before a disciplinary action is taken. Interdiction is a punishment, is a disciplinary action which in this case was taken before any investigation was done.

55 Therefore, he submitted that the Respondents have repeatedly violated their own Human Resource policy and

procedures manual by failing to accord him the right to a fair administrative action and fair hearing. He cited ***Mulwa Msanifu Kombo versus Kenya Airways Ltd and in Prof. Francis M Njeru versus Jomo Kenyatta University of Agriculture & Technology [2013] eKLR***, where the court held that although disciplinary control lies with the employer, the Court will intervene where there is illegality, procedural impropriety or constitutional violation.

56 It is the Petitioner's submission that once the process leading to the impugned interdiction has been found to be unlawful, procedurally flawed, and in contravention with the internal policies, constitution and other legal requirements, the entire process becomes *void ab initio* and inconsequential as was held 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)***.

57 The Petitioner further submitted that no person is to be condemned unheard unless that person has been given prior notice of the allegations against him and a fair opportunity to be heard as was held in ***Kenya Human Rights Commission v Non-Governmental Organisations Co-Ordination Board [2016] eKLR***.

- 58 On costs, the Petitioner submitted that the applications before Court were entirely precipitated by the Respondents' unlawful conduct, including disregard of the Constitution, statute and their own HR Manual. He submitted that he has suffered emotional distress, reputational harm and financial loss, and has been forced to repeatedly approach the Court to arrest unlawful disciplinary actions.
- 59 The Petitioner submitted that Section 27 of the Civil Procedure Act, which provides that costs follow the event unless the Court orders otherwise, and submitted that there exists no good reason to deny him costs. He further relied on ***Uap Insurance Company v Toiyoi Investment Limited [2020] eKLR*** , where the Court reaffirmed that costs are awarded at the discretion of the Court but should ordinarily follow the event, particularly where a party has been forced to incur expenses due to the conduct of the opposing party.

Respondents' Submissions

- 60 The Respondents' submitted on three issues: whether the exparte orders issued on 19th December 2025 by Hon. Lady Justice H. Wasilwa in ELRCPET/E275/2025 should be set aside; whether the application dated 14th January 2026 is merited; whether the Court should interfere with the 1st Respondent's Internal Disciplinary Process; Whether the

Petitioner has established a case for the grant of the injunctive relief; whether the orders sought amount to final relief at an interlocutory stage; and who should bear the costs.

- 61 On the first issue, the Respondents submitted that the ex parte conservatory orders issued on 19th December 2025 ought to be discharged pursuant to Rule 17(3) and (7) of the Employment and Labour Relations Court (Procedure) Rules, 2016, which empower the Court to vary, discharge or set aside *ex parte* injunctive orders upon sufficient cause being shown. They cited ***Samuel Mwinami v Social Service League & another [2016] KEELRC 16 (KLR)*** “The Respondent has relied on the provisions of Rule 16 of the Court Rules. With the publication of new Court Rules in 2016; Rule 17(7) provides that once an injunctive order is issued, a party can apply for the same to be discharged, varied or set aside. As held in *Enock O Kinara versus Postal Corporation of Kenya, Cause No.2202 of 2016*; Rule 17(7) [of the Employment and Labour Relations Court (Procedure) Rules, 2016] can be read together with Order 40(7) of the Civil Procedure Rules, 2010. Such orders of discharge, variation or setting aside can only be issued on good and sufficient grounds and upon application by a respondents for being dissatisfied with the same. The reasons for such dissatisfaction must be set out by an applicant for the Court to vary, discharge or set aside existing orders.”

- 62 It is the Respondent's submission that the rationale underpinning the grant and discharge of interlocutory injunctions was succinctly stated in ***Mobile Kitale Service Station versus Mobil Oil Kenya Limited & Another (2004) eKLR***. The court stated: *"An interlocutory injunction, being an equitable remedy, would be taken away (discharged) where is shown that the person's conduct with respect to matters pertinent to the suit does not meet the approval of the Court which granted the orders which is the subject matter. The orders of injunction cannot be used to intimidate and oppress another party. It is a weapon only meant for a specific purpose - to shield the party against violation of his rights or threatened violation of the legal rights of the person seeking it."*
- 63 The Respondents submitted that while the Petitioner made a passing reference to the existence of a Show Cause Letter, he deliberately failed to disclose its contents and critically, failed to annex the said Notice to Show Cause to his supporting affidavit, despite expressly admitting that he had received it. This omission was neither accidental nor immaterial.
- 64 The Petitioner submitted that the undisclosed Notice to Show Cause Letter which the Petitioner affirmed receipt of clearly identified the specific project that the anomalies in the NTSC arose and enumerated eight specific performance lapses by the Petitioner in line with his

obligations in his employment contract. However, the Petitioner to his advantage failed to attach the NTSC dated 15th December 2025, thus, the ex parte conservatory orders issued on 19th December 2025 cannot be sustained in law or equity.

- 65 The Respondents submitted that the Court of Appeal in ***Uhuru Highway Development Limited v Central Bank of Kenya & 2 others [1996] eKLR*** upheld the setting aside of an ex parte injunction where the applicant had failed to make full and frank disclosure of material facts, holding that concealment of material facts alone, whether innocent or deliberate, disentitles an applicant to the continuance of equitable relief and justifies immediate discharge of the orders without inquiry into the merits.
- 66 The Respondents submitted that the Petitioner failed to discharge the burden imposed upon a party seeking ex parte relief. The conservatory orders issued on 19th December 2025 were procured through material non-disclosure, have been employed to improperly arrest a lawful disciplinary process and cannot be sustained in law or equity. They therefore urge this Court to discharge and set aside the *ex parte* conservatory orders issued on 19th December 2025 with costs.
- 67 On the second issue, the Respondents submitted that jurisdiction is foundational and without it the Court must down its tools. They relied on ***Owners of the Motor***

Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR, where the Court held that “... Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority.”

68 They further submitted that a Court’s jurisdiction flows from either the constitution or statute. A court cannot arrogate itself jurisdiction and must abide by the authority circumscribed in law, as affirmed by the Supreme Court in **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR**. It follows therefore that the absence of jurisdiction automatically voids the suit entirely. A suit filed in a court without jurisdiction is not merely bad but incurably bad; it cannot be resuscitated, and neither can it seek shelter in equity with the only recourse available being its immediate dismissal.

69 The Respondents submitted that Section 11.2.3 of KETRACO’s Human Resource Policy and Procedures Manual, read together with Section 74 of the Public Service Commission Act, 2017 and Regulation 68 of the

Public Service Commission Regulations, 2020, establishes a mandatory appellate mechanism for disciplinary decisions involving public officers, vesting jurisdiction in the Public Service Commission in the first instance. The Petitioner, being a public officer, was obligated to exhaust this statutory appeal mechanism before invoking the Court's jurisdiction.

70 The Respondents submitted that the jurisdiction of this Court has been prematurely invoked contrary to the doctrine of exhaustion of administrative remedies by failing to pursue an appeal before the Public Service Commission. They cited ***Speaker of the National Assembly v James Njenga Karume [1992] eKLR***: “ *In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed*”. *This decision has been upheld as the law by all superior courts in Kenya.*”

71 It is the Respondents' submission that this Court lacks jurisdiction to entertain the Petition and Application dated 17th December 2025. The Petitioner's failure to exhaust the mandatory appellate process before the Public Service Commission renders the proceedings incompetent ab initio. Consistent with binding authority from the Supreme Court and the Court of Appeal, this Court must down its

tools. The Petition and Application are accordingly liable to be struck out with costs.

- 72 On the third issue, the Respondents submitted that it is now trite law that courts exercise great restraint in interfering with an employer's internal disciplinary mechanisms. Intervention is the exception and only arises where the disciplinary process is unlawful. They cited ***Rosemary Waitherero Mburu v Kenya Airways Limited [2020] eKLR***: *"Courts are reluctant to interfere with an employer's internal disciplinary process unless it is evidently flawed and in breach of the law and such interference will only be limited to putting the process to the right course."*
- 73 The Respondents submitted that the Petitioner has failed to demonstrate any exceptional circumstances warranting judicial intervention. The initiation of disciplinary proceedings followed a formal Board resolution arising from audit and governance concerns identified by the Board Audit & Risk Assurance Committee in respect of a strategic multinational project under the Petitioner's oversight. The Board was therefore acting squarely within its statutory and managerial mandate.
- 74 The Respondents submitted that the Petitioner was issued with a detailed Show Cause Letter specifying the allegations, contractual breaches and statutory provisions implicated, and was granted 14 days to respond, thereby

satisfying Section 41 of the Employment Act. At this stage, no disciplinary sanction had been imposed.

- 75 It was submitted that interdiction is a precautionary administrative measure, not a finding of guilt. The interdiction preserved the Petitioner's employment status, provided half salary, full house allowance and medical benefits. These features are wholly inconsistent with punitive or malicious intent claimed by the Petitioner.
- 76 The Respondents submitted that in the absence of illegality, procedural impropriety or exceptional circumstances, this Court is bound by settled jurisprudence to decline interference with the 1st Respondent's internal disciplinary process. To do otherwise would amount to judicial usurpation of managerial prerogative and would unjustifiably impede public sector accountability.
- 77 On the fourth issue, the Respondents submitted that the law on grant of temporary injunctions is settled. The conditions precedent are well set out under Order 40 of the Civil Procedure Act and in ***Giella v Cassman Brown (1973) E.A 358***, wherein the Court held: *"The conditions for a grant of an interlocutory injunction are now I think well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant must otherwise suffer irreparable*

injury, which would not adequately be compensated by an award for damages. Thirdly if the court is in doubt, it will decide an application on the balance of convenience.”

- 78 It was submitted that “*prima facie case*” was established by the Court of Appeal in ***Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR)***: “*So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.*”
- 79 The Respondents submitted that the Applicant has failed to establish a *prima facie* case with a probability of success. The evidence placed before this Court shows that the Applicant was lawfully subjected to an internal disciplinary process following the emergence of serious audit, governance and performance concerns relating to a strategic multinational infrastructure project under his oversight.
- 80 The Respondents submitted that in the absence of illegality, procedural impropriety or mala fides, it cannot be said that the Applicant has established a right that has been infringed or is under threat of infringement. Accordingly, the Applicant has failed to satisfy the first and

foundational limb in ***Giella v Cassman Brown (1973) E.A. 358.***

81 On irreparable harm, they submitted that in ***Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR***, the Court stated: *“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient.”*

82 The Respondents submitted that interdiction is temporary and administrative in nature. Any inconvenience, loss of earnings or reputational concerns arising therefrom are quantifiable and compensable should the Applicant ultimately succeed. Kenyan courts have consistently held that employment-related disputes ordinarily lend themselves to monetary compensation and do not, without more, constitute irreparable harm.

83 On the balance of convenience, the Respondents submitted that as observed in ***Amir Suleiman v Amboseli Resort Limited [2015] eKLR***, where competing risks exist, the Court should opt for the lower rather than the higher risk. In the present circumstances, the lower risk clearly lies in allowing a lawful, structured and ongoing disciplinary process to proceed unhindered.

84 On the fifth issue, the Respondents cited ***Sameja v Sal Tree Hotel Limited [2024] KEHC 14040 (KLR)***, the

court held: *“Making a final determination at an interlocutory stage is contrary to the settled principle that a court, at an interlocutory stage, is not expected to make a final determination of the issues that will be discussed at the trial.”* In the instant application, the Respondent submitted that unlike preservatory orders that merely maintain the status quo, the Applicant’s prayers seek to reverse and nullify an existing administrative and disciplinary decision. This is precisely the mischief condemned in the aforementioned case.

85 They further relied on ***Kenya Hospital Association Ltd v Rono & 9 others; Kambuni (Interested Party) [2024] KEHC 15844 (KLR)***, it was held: *“In making the final orders, I have also considered the broader implications of this court’s decisions. Interim orders that pre-emptively determine contentious issues or conclusively affect the rights of the parties must be avoided as this risk undermining the core objective of the substantive hearing.”*

86 They submitted that the net effect of the Applicant’s prayers is to grant the ultimate relief sought in the Petition under the guise of interim orders, thereby rendering the substantive hearing an academic exercise. This would offend the core objective of interlocutory proceedings, which is limited to assessing entitlement to temporary relief without venturing into the merits of the case.

- 87 On costs, the Respondents submitted that costs of the suit ordinarily follow the event and relied on ***PARTY OF INDEPENDENT CANDIDATE OF KENYA & another v MUTULA KILONZO & 2 others [2013] eKLR***, urging the Court to exercise its discretion in their favour.
- 88 I have considered all averments and submissions of the parties. The applicant has contended that the respondents action of putting him on a 5 month interdiction was illegal and irregular as he was not given any opportunity to be heard and so was condemned unheard. He avers that this was also contrary to the respondents HR policy and procedure manual.
- 89 I have looked at the respondents HR manual at clause 11.12 on interdiction which states that an officer may be interdicted to allow investigations to be conducted in a case where proceedings may lead to dismissal.
- 90 It is however stated during clause 11.9.9 where there is gross misconduct to warrant a dismissal the officer shall be issued with a show cause letter to show cause why severe disciplinary action should not be meted against him. Clause 11.9.12 indicates an officer should be given adequate opportunity to respond to the charges against him/her and the period within which he is to respond should be stated.
- 91 The petitioner applicant has indicated that he was sent on interdiction without being issued with any show cause letter. From the evidence before court, the applicant was

interdicted vide a letter dated 15/12/25 which stated that the interdiction was to be for a period of 5 months pending finalization of the investigation. The letter referred to another of 15/12/25 Ref KEY/5/1A/10013/KK/LCK which was a show cause letter. It is apparent that show cause letter and the interdiction letter were both dated the same day which means that the respondents did not give the applicant any time to respond to the show cause before making the decision to interdict him and then the show cause letter was a mere formality. The respondents in the circumstances breached rules of fair hearing and their own HR policy.

- 92 It is also curious to note that the interdiction was done when the applicant was on a 3 months compulsory leave which was later revoked by court as being unlawful. On the face of it, it is apparent that the action of the respondent point to the existence of a prima facie case against the respondents and which this court must correct.
- 93 Court would not normally interfere with internal disciplinary processes between an employer and employee but would normally do so to prevent miscarriage of justice and put the right procedure in place.
- 94 In the circumstances, I find the interdiction and show cause letter was issued without proper consideration of law and procedure and I accordingly suspend the interdiction and show cause letter and order immediate

resumption of duty pending hearing and determination of this petition. The application by the respondent is found without merit and is dismissed.

Dated, Signed and Delivered Virtually at Nairobi this 5th Day of March, 2026.

**HELLEN WASILWA
JUDGE**