



- c) *AN ORDER OF COMPENSATION directed against the Respondent to compensate the Applicant general and aggravated damages for reputational damage, emotional distress and psychological harm and violation of the Applicant's constitutional rights under the Bill of Rights.*
- d) *Any further relief that this Honourable Court may deem fit and just to grant in the circumstances.*
- e) *Costs of this Application.*

2 The Applicant further filed a subsequent application staed 22<sup>nd</sup> August 2026, seeking orders THAT:-

- 1. *Spent*
- 2. *pending the hearing and determination of the Application and the main suit, the Honourable Court be pleased to issue temporary injunctive orders restraining the Respondent from implementing or proceeding with the transfer of the Applicant from her current workstation unless it is a promotion.*
- 3. *this Honourable Court be pleased to review and/or vary its orders issued on the 22<sup>nd</sup> day of July, 2025, to the extent of granting a temporary injunction restraining the Respondent, their agents, servants, or anyone claiming under them or any other person acting on their instructions from effecting any form of punitive administrative action against the Respondent by harassing, terminating, transferring, dismissing, suspending and/or in any way whatsoever interfering with the employment rights of the*

*Applicant to her detriment pending the hearing and determination of the Application and the main suit.*

*4. The costs of this application be in the cause.*

### **Applicant's Case**

- 3 The Applicant avers that vide a letter dated 1<sup>st</sup> April 2025, one Abigael Ngetich, an employee of the Respondent bearing Service No. 17086, lodged a complaint with the Respondent's Regional Coordination General Manager alleging false accusation and workplace misconduct against her.
- 4 The complainant alleged that on Sunday 23<sup>rd</sup> March 2025, the Applicant assaulted and threatened her at Java Hotel, Eldoret thereby causing her distress and reputational harm, however, these allegations were not substantiated by any evidence.
- 5 The Applicant avers that following the complaint, the Respondent vide a letter dated 14<sup>th</sup> July 2025 invited her to attend a disciplinary hearing scheduled for 24<sup>th</sup> July 2025.
- 6 Prior to the said hearing, the Applicant states that she sought clarification from the Respondent's Regional Manager, North Rift, through an email dated 14<sup>th</sup> April 2025 requesting for the investigative report, minutes and recommendations of the disciplinary committee forming the basis of the intended disciplinary action.

- 7 The Applicant further wrote a letter dated 12<sup>th</sup> May 2025 requesting for further information including any investigation report conducted by the Respondent regarding the allegations and any evidence gathered such as witness statements, video, audio or other material relied upon.
- 8 It is the Applicant's position that the Respondent ignored the said requests and failed to supply the disciplinary committee minutes, investigative report and evidence relied upon, yet proceeded to schedule the disciplinary hearing for 24<sup>th</sup> July 2025 in violation of the rules of natural justice and her right to a fair hearing.
- 9 The Applicant contends that the documents, information and evidence allegedly relied upon by the Respondent as the basis of the disciplinary action have never been supplied to her to date. She avers that without access to the said evidence she cannot adequately defend herself or respond to the allegations levelled against her.
- 10 The Applicant further states that she later learnt that the disciplinary action was based on an alleged incident that occurred on Sunday 23<sup>rd</sup> March 2025 at around 1930 hours at Java Hotel, Eldoret, which was outside the workplace.
- 11 It is the Applicant's position that there is no nexus between the alleged incident and her employment with the Respondent and therefore the matter falls within the mandate of the National Police Service under Article 244

of the Constitution and not the disciplinary jurisdiction of the Respondent.

- 12 The Applicant states that she consequently sought the intervention of this Court by filing a Chamber Summons application dated 19<sup>th</sup> July 2025 seeking leave to commence Judicial Review proceedings. The Court granted leave on 22<sup>nd</sup> July 2025 with the effect of staying any disciplinary proceedings against the Applicant until 23<sup>rd</sup> September 2025.
- 13 The Applicant avers that but for the Court's intervention stopping the disciplinary hearing scheduled for 24<sup>th</sup> July 2025, she would have been subjected to an unjust, illegal and unlawful disciplinary process in violation of her constitutional rights. She further expresses apprehension that despite the Court's intervention the Respondent may still initiate further unlawful disciplinary proceedings without supplying her the requested evidence.
- 14 It is the Applicant's case that the Respondent's actions amount to violation of several constitutional rights including the right to fair administrative action, fair labour practices, right to a fair hearing, the right to privacy, and protection against intimidation, discrimination and workplace harassment.
- 15 She avers that the Respondent has persistently failed to accord the Applicant written reasons and particulars for the adverse administrative action prior to initiating disciplinary proceedings, contrary to Section 4(3)(b) and

4(4)(a) of the Fair Administrative Actions (FAA) Act and Rule 8(1) of the Fair Administrative Action Rules, 2024.

- 16 She further argues that the failure to disclose the investigative report, disciplinary committee minutes and evidence relied upon denied her a fair opportunity to prepare a defence contrary to Section 4(3)(g) of the FAA Act and Article 47(2) of the Constitution.
- 17 The Applicant avers that the failure to conduct independent investigations and instead rely on purported police records obtained through unlawful means amounts to procedural unfairness, contrary to Section 4(1), 4(3), and 4(6) of the FAA Act.
- 18 It is the Applicant's case the Respondent's actions violate Sections 6 and 7 of the FAA Act in that the Respondent exercised disciplinary jurisdiction in excess of its lawful mandate contrary to Section 7(2)(a)(i) and 7(2)(f) since the alleged incident occurred outside the official workdays and premises of the Respondent.
- 19 She further contends that the disciplinary process was grounded on unsupplied CCTV footage allegedly obtained without lawful authority contrary to Section 26(a) of the Data Protection Act and unsupplied police statements obtained during ongoing criminal investigations contrary to Sections 7(2)(b), (c) and (e) of the FAA Act and Rules 9 and 27 of the Fair Administrative Action Rules, 2024.
- 20 The Applicant also argues that the Respondent failed to act within the principles of legality, reasonableness and

proportionality as required under Sections 6 and 7(2)(j) of the Fair Administrative Action Act.

- 21 It is the Applicant's case that despite various demands the Respondent has failed and/or declined to provide the investigative report and minutes of the disciplinary committee forming the basis of the intended disciplinary action and has equally failed to provide written notice, explanation or justification for the intended disciplinary action or the evidence relied upon prior to issuing the show cause letter or hearing notice contrary to Sections 10(1) and 10(2) of the Fair Administrative Action Act.
- 22 The Applicant maintains that she has demonstrated a *prima facie* case for review under Section 11 of the Fair Administrative Action Act on the basis that the Respondent's conduct is procedurally unfair, irrational and illegal and that she stands to suffer irreparable harm to her career and dignity unless the disciplinary process is quashed. She therefore seeks orders of certiorari to quash the unlawful disciplinary process and orders of mandamus to compel the Respondent to observe fair administrative practices including disclosure of evidence and cessation of intimidating conduct.
- 23 The Applicant further avers that following the Court's orders issued on 22<sup>nd</sup> July 2025 restraining the disciplinary proceedings and listing the matter for mention on 23<sup>rd</sup> September 2025, the Respondent halted the disciplinary process but instead resorted to victimization and harassment.

- 24 She states that on or about 18<sup>th</sup> August 2025 she was served with a transfer and re-designation letter dated 14<sup>th</sup> August 2025 taking effect immediately which moved her from the position of County Business Manager in charge of Elgeyo Marakwet managing over 100 staff across two depots serving approximately 60,000 customers to the position of Chief Engineer at the Central Office in Nairobi.
- 25 According to the Applicant, the said transfer significantly altered her role from an operational managerial position to a liaison position and diminished her professional standing and responsibilities.
- 26 The Applicant contends that the transfer was effected without consultation and was clearly linked to the present proceedings and the complaint she had raised, thereby amounting to retaliation, constructive punishment, victimization and harassment.
- 27 She avers that the transfer was undertaken after the issuance of the Court order and was intended to circumvent the Court's injunctive orders and render the proceedings nugatory
- 28 It is the Applicant's case that if the transfer is effected, it will alter her responsibilities and terms of employment and negatively affect her career trajectory. She therefore urges the Court to intervene to preserve the *status quo*, restrain the Respondent from further victimization and protect her constitutional and employment rights pending the hearing and determination of the main suit.

29 The Applicant contends that unless the Court urgently intervenes and grants the orders sought, the Respondent will continue to frustrate, harass and undermine her employment rights and the authority of the Court thereby exposing her to irreparable harm and rendering the suit nugatory.

### **Respondent's Case**

30 In opposition application, the Respondent filed a Notice of Preliminary Objection dated 18<sup>th</sup> September 2025 on the ground that this Honourable Court lacks jurisdiction to hear and determine this application as the same offends the provisions of sections 5 and 6 of the Civil Procedure Act. The applicant has an active court case in ***Eldoret ELRC Case No. E026 of 2025, Winnie Tarus vs. Kenya Power & Lighting Company Limited*** which is yet to be determined.

31 The Respondent further filed a replying affidavit dated 17<sup>th</sup> November 2025, sworn by Joseph Muchai, a legal officer at Kenya Power and Lighting Company PLC.

32 It is the Respondent's case that the present suit and the applications filed by the Applicant constitute an abuse of the Court process.

33 The Respondent contends that this Court is bereft of territorial jurisdiction since the cause of action arose in Eldoret, within Uasin Gishu County.

- 34 The Respondent states that the jurisdiction of this Court is barred by the common law doctrine of *res judicata* since the Applicant had previously instituted a similar suit against the Respondent in ***Eldoret ELRC Case No. E026 of 2025, Winnie Tarus vs. Kenya Power & Lighting Company (KPLC)*** on the same subject matter. This matter was heard, disposed of and subsequently withdrawn on 4<sup>th</sup> November 2025.
- 35 The Respondent states that in the said Eldoret matter, the Applicant moved the Court through an application dated 19<sup>th</sup> May 2025 seeking orders similar to those sought in the present applications. On 30<sup>th</sup> June 2025, its counsel notified the Applicant's counsel that it had complied with the Court orders issued on 27<sup>th</sup> May 2025 which required the Respondent to provide the Applicant with information and documents.
- 36 The Respondent avers that during the pendency of the application dated 19<sup>th</sup> May 2025 in *Eldoret ELRC Case No. E026 of 2025, Winnie Tarus vs. KPLC*, the Applicant filed a subsequent application dated 8<sup>th</sup> July 2025 seeking similar reliefs to those sought in the earlier application.
- 37 It is the Respondent's position that on 8<sup>th</sup> July 2025, the Court in *Eldoret ELRC Case No. E026 of 2025* issued orders dated 9<sup>th</sup> July 2025 granting the Respondent an opportunity to proceed with the disciplinary hearing against the Applicant. The Court further held that the issue as to whether the evidence against the Applicant was

illegal was a matter of law that could only be considered if the outcome of the disciplinary process was solely based on the said evidence and consequently declared the Applicant's application premature.

38 The Respondent contends that instead of appealing against the orders issued on 9<sup>th</sup> July 2025, the Applicant opted to file a similar suit and application before this Court seeking the same reliefs.

39 According to the Respondent, the Applicant deliberately failed to disclose to this Court that she had previously filed a similar suit in *Eldoret ELRC Case No. E026 of 2025*, thereby approaching the Court without clean hands.

40 It is the Respondent's case that the filing of the present suit immediately after the Applicant's application dated 8<sup>th</sup> July 2025 was declared premature in *Eldoret ELRC Case No. E026 of 2025, Winnie Tarus vs. KPLC* was malicious, frivolous, scandalous and vexatious and amounts to abuse of the Court process.

41 It contends that the Applicant's subsequent withdrawal of *Eldoret ELRC Case No. E026 of 2025* immediately after the Court granted the Respondent the liberty to proceed with the disciplinary hearing and declared the application premature constitutes a clear act of forum shopping which should not be entertained by this Court.

42 It is therefore the Respondent's position that the Applicant's suit and application are misconceived as the

Respondent has not yet proceeded with the disciplinary hearing.

- 43 The Respondent further avers that the Applicant has failed to make full and candid disclosure and that the suit lacks *bona fides*, is founded on material falsehoods and amounts to a violation and abuse of the Court process.
- 44 The Respondent contends that the suit is embarrassing, prejudicial, frivolous and vexatious and is incapable of attracting any equitable relief from this Court.
- 45 The Respondent maintains that the present suit is incompetent, bad in law, lacks merit, is incurably defective and irregular and constitutes an unmitigated abuse of the Court process. The Respondent therefore urges the Court to dismiss the suit and the applications herein with costs.

### **Applicant's Submissions**

- 46 It was submitted that the question of jurisdiction has been widely canvassed and the applicable parameters were clearly set out in ***Trusted Society of Human Rights Alliance v Nakuru Water and Sanitation Services Company & another [2013] eKLR***, where the Court stated that: *"The court further holds that in mapping out the boundaries to determine jurisdiction, the court must consider the four crucial traditional elements of jurisdiction namely parties, territory or geographical area, remedies that may issue and subject matter in dispute. The court holds that the authority to decide will relate to*

*the parties, the territory or geographical area of the dispute, the remedies that may issue and the subject matter involved. Depending on the authority to decide as may be conferred, all the four parameters may be pertinent or one or two of them may apply. In the opinion of the court, unless any of the four results into a bar to jurisdiction in the given case or circumstance, presence of any of the four as permitting jurisdiction will be sufficient for the court to assume jurisdiction and proceed to entertain and determine the case at hand.*

*In the present case, there is no dispute on territorial or the geographical jurisdiction. It is given that constitutionally; this court exercises territorial jurisdiction throughout the Republic of Kenya. The court finds that on that parameter, the court has jurisdiction in the instant petition.”*

- 47 The Applicant submitted that applying the above principles, this Court is properly seized of jurisdiction since the parameters of parties, subject matter and remedies are satisfied.
- 48 It is the Applicant’s submissions that the Respondent is a nationwide company with offices across the country and with its headquarters in Nairobi, while the disciplinary investigations and hearings complained of were conducted at Stima Plaza in Nairobi. Additionally, she was transferred and re-designated to Nairobi as a result of the impugned disciplinary process.
- 49 The Applicant therefore submitted that the convenience of the parties and their advocates, who are all based in

Nairobi, together with the location of the Respondent's disciplinary organs, makes this Court the most appropriate forum to determine the dispute. Consequently, the Respondent's objection on territorial jurisdiction is untenable and ought to be dismissed.

- 50 On the issue of *res judicata*, the Applicant submitted that the Respondent had wrongly invoked the doctrine in relation to *Eldoret ELRC Case No. E026 of 2025, Winnie Tarus v Kenya Power & Lighting Company Limited*. The Supreme Court in **Kenya Commercial Bank Limited v Muiri Cofee Estate Limited & another [2016] eKLR**, where the Court outlined the essential elements that must exist before a matter can be deemed *res judicata*, namely: The matter in issue must be identical in both suits; The parties must be the same; The title or claim must be the same; There must be concurrence of jurisdiction; and There must be a final determination of the matter.
- 51 It is the Applicant's submissions that although the parties in the present case and *Eldoret ELRC Case No. E-026 of 2025, Winnie Tarus vs. Kenya Power & Lighting Company Limited* are the same, the remaining elements necessary to sustain the plea of *res judicata* have not been satisfied. The Eldoret matter was commenced through a Statement of Claim dated 19<sup>th</sup> May 2025 together with an application of the same date, while the present proceedings were initiated through Chamber Summons dated 21<sup>st</sup> July 2025 seeking leave to commence judicial review proceedings which subsequently led to the filing of the substantive

Judicial Review application and the present applications dated 8<sup>th</sup> August 2025 and 22<sup>nd</sup> August 2025.

- 52 While the Applicant acknowledged that the parties in both matters are identical, it was submitted that the issues raised in the two proceedings are comparatively different, though founded on the broader premise of violation of the Applicant's labour rights.
- 53 The Applicant submitted that in the Eldoret suit challenged the Respondent's administrative conduct in the disciplinary process, particularly that she had been summoned to attend a disciplinary hearing without being furnished with all the evidence to be relied upon, some of which she contended was inadmissible. The applications filed in that suit sought interim orders to stay the disciplinary hearings scheduled for 20<sup>th</sup> May 2025 and 9<sup>th</sup> July 2025 in order to forestall irreparable harm and injustice pending regularization of the disciplinary process.
- 54 It was submitted that the Eldoret Court issued directions on 27<sup>th</sup> May 2025 requiring that the Applicant be supplied with the relevant information, and subsequently, on 8<sup>th</sup> July 2025, allowed the disciplinary hearing to proceed while observing that any violations arising in the course of the disciplinary process could subsequently be addressed if necessary. The Court therefore found the application premature and the issues raised were effectively held in abeyance pending the outcome of the disciplinary process.

- 55 The Applicant further submitted that subsequent developments gave rise to a new cause of action which had not arisen at the time of the Eldoret proceedings. A letter from the Respondent's Manager, Security Services to the General Manager, Regional Coordination, purportedly indicated that investigations had been conducted and conclusions drawn finding the Applicant culpable and recommending her transfer as a disciplinary sanction. She was thereafter served with a transfer and re-designation letter addressed to the Chief Engineer which effectively diminished her responsibilities and salary as compared to her previous position as County Manager.
- 56 It was submitted that the transfer constituted a punitive administrative action arising solely from an internal investigation in which the Applicant had not been accorded her non-derogable right to a fair hearing before a disciplinary committee, which hearing had been slated for a later date but ultimately did not take place.
- 57 The Applicant submitted that the transfer effectively pre-empted the disciplinary process that had been represented before the Eldoret Court as the proper forum for determining the allegations against her. According to the Applicant, the transfer "jumped the gun" by imposing punitive consequences before the disciplinary process had run its course, thereby rendering illusory the Court's earlier observation that any violations arising from the disciplinary process could subsequently be challenged. The Applicant argued that the harm had already been

imposed through the transfer and re-designation, thereby creating a new and substantive grievance.

58 It was submitted that as a consequence of the transfer, the Applicant relocated to Nairobi and consequently instructed a different firm of advocates to come on record. She therefore instituted judicial review proceedings together with the incidental applications seeking to review and stay the transfer decision, which she contends was made without adherence to due process.

59 It is the Applicant's submission that the nature and character of the reliefs sought in the two matters are fundamentally different. While the Eldoret proceedings were instituted through a Statement of Claim seeking declarations regarding the violation of the right to fair labour practices and interim intervention to regularize the disciplinary process, the present proceedings are judicial review proceedings seeking the public law remedies of mandamus, certiorari and prohibition to challenge the administrative decision already taken to transfer the Applicant without following due process. According to the Applicant, the Eldoret case sought to forestall a threatened violation of rights, whereas the present proceedings challenge an administrative decision that had already been made and implemented.

60 The Applicant submitted that the claims in the two matters arise from different factual circumstances and seek different remedies, demonstrating that the alleged violations by the Respondent evolved over time.

Consequently, the present proceedings address a later and distinct administrative action which could not have been litigated in the Eldoret matter because it had not yet occurred.

- 61 On the question whether the Eldoret Court rendered a final determination capable of triggering the doctrine of *res judicata*, the Applicant submitted that the orders issued on 8<sup>th</sup> July 2025 did not conclusively determine the dispute on its merits. Those orders merely allowed the disciplinary hearing to proceed while observing that if the ultimate decision were based solely on the impugned evidence, the issue could later be revisited.
- 62 The Applicant therefore submitted that the Court declined to grant interim relief because the application was considered premature, and that the issues raised were left open rather than finally determined.
- 63 The Applicant submitted that the doctrine of *res judicata* does not apply in the present circumstances because the issues raised in the instant suit were neither present nor capable of being litigated in the Eldoret proceedings. In particular, the transfer decision had not yet occurred and could not therefore have been anticipated or challenged at that stage.
- 64 The Applicant further submitted that instant suit challenges the legality of the transfer process, an issue that was never raised before the Eldoret Court and which

could not reasonably have been raised since the transfer had not yet been effected.

- 65 The Applicant submitted that the doctrine of *res judicata* also seeks to prevent different courts from rendering contradictory judgments, thereby safeguarding public confidence in the judicial process. However, such a risk does not arise in the present case because the orders issued in the Eldoret matter were interlocutory in nature and the issues were not heard or determined on their merits. Moreover, the Eldoret case has since been withdrawn, eliminating any possibility of conflicting determinations between the two courts.
- 66 The Applicant therefore submitted that the Respondent's reliance on the doctrine of *res judicata* is misplaced and ought to fail. The Eldoret case having been withdrawn, the present suit remains the only subsisting suit between the parties. Dismissing this suit would the Applicant from the seat of justice despite the Court having concurrent jurisdiction over the dispute and there being no risk of contradictory decisions.
- 67 Finally, the Applicant submitted that considerations of convenience and the interests of justice favour the continuation of the present proceedings before the Nairobi Court, noting that the Respondent's headquarters, the disciplinary committee, the Respondent's advocates and the Applicant herself are presently domiciled in Nairobi. The Applicant therefore urged the Court to proceed with the matter rather than dismiss it, as doing so would

unnecessarily occasion further delay and compel the re-filing of the dispute in another court despite the issues already being properly before the Court.

- 68 On whether the Preliminary Objection meets the legal threshold, the Applicant submitted that whenever the issue of *res judicata* is raised, the Court must examine the pleadings, record and decision of the previous case alongside the pleadings in the current suit in order to determine whether the issues are indeed identical. Such an examination reveals that the issues in the present case are distinct from those raised in the Eldoret proceedings and that the Respondent has therefore failed to satisfy the requirements necessary to sustain the plea of *res judicata*.
- 69 On the issue of costs, the Applicant submitted that the Respondent improperly raised the Preliminary Objection and thereby unnecessarily increased costs and complicated the proceedings. Reliance was placed on ***Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696***, the Court held that: *“The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”*
- 70 It is the Applicant’s submission that the general rule is that the costs of an action or proceeding shall follow events; the Respondent has not discharged the requisites of raising a Preliminary Objection, they ought to bear the costs.

## **Respondent's Submissions**

- 71 The Respondent submitted that the suit and the applications before the Court are barred by the doctrine of *res judicata* and that this Court equally lacks territorial or geographical jurisdiction to hear and determine the matter.
- 72 It was submitted that the issues raised by the Applicant had already been adjudicated and determined through orders issued on 9<sup>th</sup> July 2025 in ***Eldoret ELRC Case No. E026 of 2025, Winnie Tarus vs. Kenya Power & Lighting Company Limited*** , therefore, the Court is divested of jurisdiction to entertain the present proceedings.
- 73 The Respondent further submitted that the issue of jurisdiction was raised at the earliest opportunity through a Preliminary Objection and that the Court ought to determine the same before delving into the merits of the suit.
- 74 It was submitted that the law on preliminary objections is well settled in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EALR 696 Ltd as cited by the Court of Appeal in ***Attorney General & another v Andrew Maina Githinji & another [2016] eKLR***: “....A *Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may*

*dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”*

- 75 It was submitted that the Respondent’s objection squarely falls within the parameters of a valid preliminary objection as it raises pure questions of law touching on jurisdiction and res judicata which, if upheld, would dispose of the suit. The Respondent urged the Court to first dispense with the preliminary objection before delving into the merits of the suit and the applications.
- 76 On jurisdiction, the Respondent submitted that it is trite law that the Court derives its jurisdiction from the Constitution or statute and as such it must be slow to arrogate itself jurisdiction. It cited ***Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR*** *“Jurisdiction is everything. Without it a court has not 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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”*
- 77 The Respondent submitted that Section 5 of the Civil Procedure Act limits courts in exercise of their jurisdiction. The limitations of jurisdiction can either be express or implied.

- 78 On *res judicata*, the Respondent submitted that Section 7 of the Civil Procedure Act expressly bars courts from trying a matter that has already been directly and substantially in issue in a former suit between the same parties and which has been heard and finally determined by a competent court.
- 79 The Respondent submitted that the issues raised in the applications herein had been adjudicated and determined by the orders of 9<sup>th</sup> July 2025 in *Eldoret ELRC Case No. E026 of 2025, Winnie Tarus vs. Kenya Power & Lighting Company Limited*. Thus, the jurisdiction of this Court is consequently barred by Section 7 of the Civil Procedure Act
- 80 The Respondent further submitted that the cause of action arose in Eldoret within Uasin Gishu County and the Applicant herself admitted in her pleadings that she resides within the said county. Therefore, the dispute ought to have been filed before the Employment and Labour Relations Court sitting in Eldoret.
- 81 The Respondent submitted that the objection is anchored on constitutional principles including Article 48 which guarantees access to justice, Article 50 which guarantees the right to a fair hearing, and Article 159(2)(e) which requires courts to promote the purposes and principles of the Constitution when exercising judicial authority.
- 82 It was further submitted that the Employment and Labour Relations Court Act 1 provides the statutory framework

governing the Court's jurisdiction. In particular, Section 3 mandates the Court to facilitate the just, expeditious, efficient and proportionate resolution of labour disputes, Section 12(1) grants the Court exclusive jurisdiction over employment disputes pursuant to Article 162(2) of the Constitution, while Section 29 requires the Court to ensure reasonable and equitable access to judicial services across counties.

- 83 The Respondent submitted that the preliminary objection is founded on Rule 6 of the Employment and Labour Relations Court (Procedure) Rules 2024, which governs the place of suing and hearing and provides that proceedings should be instituted in the Court station within the county where the claimant resides or works for gain or where the cause of action arose. Both conditions in this case point to Eldoret since the Applicant resides there and the cause of action arose there.
- 84 It is the Respondent's submission that the Claimant opted to remove a matter from where the cause of action arose and file it in this Court' negating the provisions of Rule 6 of the Employment and Labour Relations Court (Procedure) Rules, 2024. The Claimant has not provided any reasonable justification for taking the dispute out of the jurisdiction of the ELRC at Eldoret. For access to justice and to secure the overall objectives of the court pursuant to Section 3 of the Employment and Labour Relations Court Act, 2011, this Court ought to down its tools for want of geographical/territorial jurisdiction. It cited **Law**

***Society of Kenya Nairobi Branch v Malindi Law Society & 6 others [2017] eKLR and AVC Management Limited v Emmanuel Mwamunye Jilani [2022] KEELRC 353 (KLR).***

- 85 It was therefore submitted that the Applicant has engaged in forum shopping by removing the dispute from Eldoret where the cause of action arose and filing it in Nairobi without any reasonable justification. The Respondent argued that the ELRC in Eldoret is a court of equal jurisdiction and the appropriate forum for the dispute.
- 86 On the issue of costs, the Respondent submitted that Section 27(1) of the Civil Procedure Act provides that costs follow the event unless the Court for good reason orders otherwise. It cited ***Joseph Nzyoki Mwanthi v Kenya Power & Lighting Co. Ltd [2017] eKLR.***
- 87 I have considered the averments and submissions of the parties herein. The respondents raised a preliminary objection which this court considers the 1<sup>st</sup> issue to address.
- 88 It has been contended that the applicant herein filed a case in Eldoret ELRC No E026 of 2025 with similar parties as this one. The applicant admits filing such case in Eldoret and avers that it was a claim and the orders sought were different.
- 89 I have considered this admission and noted that indeed the applicant sought orders before the ELRC in Eldoret and sought orders similar to the one sought herein. The ELRC

Eldoret heard the application and granted her orders requiring that the applicant be supplied with the relevant information and on 8<sup>th</sup> July 2025 allowed the disciplinary process to proceed while observing proper procedure.

90 It is therefore true that a court of competent jurisdiction has proceeded to address the issue of the disciplinary process. What remain herein is the issue of transfer which the respondent as an employer has latitude to enforce based on the requirements of the job and organization. I find that in the circumstances the application by the applicant cannot stand being res judicata before ELRC Eldoret.

91 I proceed to strike out the judicial review application with no order of costs.

**Dated, Signed and Delivered Virtually at Nairobi  
this 17<sup>th</sup> Day of March, 2026.**

**HELLEN WASILWA  
JUDGE**