

- 2 The Claimant/Applicant avers that by a letter dated 10th February 2026, the Respondent placed him on interdiction on allegations of gross misconduct. The Claimant avers that the said interdiction is unlawful, unconstitutional and procedurally flawed.

- 3 It is the Claimant's case that the letter of interdiction is premised on a Human Resource Policy and Procedures Manual which has not been approved by the Public Service Commission, contrary to Article 234(2)(g) of the Constitution as read together with section 56 of the Public Service Commission Act, and is therefore unconstitutional and illegal.

- 4 The Claimant further avers that he never consented in writing to the said Manual as required under section 9(2) and (3) of the Employment Act, nor was there any prior consultation as envisaged under section 10(5) of the Act.

- 5 The Claimant contends that the impugned Manual does not form part of his contract of service as required under section 9(1) of the Employment Act, section 54 of the Public Service Commission Act and Regulation 47 of the Public Service Commission Regulations, 2020.

- 6 He avers that the interdiction letter seeks to implement a code of conduct which, under Article 234(2)(f) of the Constitution, can only be effected upon review and recommendation of the Public Service Commission.

- 7 It is the Claimant's position that the interdiction is predicated on an unconstitutional and illegal foundation, thereby necessitating the intervention of this Court. The Claimant avers that the letter relies on the provisions of the Public Officer Ethics Act, a statute which he states was repealed in 2025 by the Conflict of Interest Act, thus rendering the reliance thereon illegal.
- 8 The Claimant contends that the allegations of professional misconduct under the Advocates Act fall within the jurisdiction of the Law Society of Kenya, the Advocates Complaints Commission and the Advocates Disciplinary Tribunal, and not the Respondent, thus rendering the Respondent's actions unlawful.
- 9 The Claimant avers that the issues raised in the interdiction letter had previously been resolved and communication made officially in writing on 18th December 2025, and that the Respondent's decision to revisit the same issues violates his rights and legitimate expectation.
- 10 It is the Claimant's case that this Court ought to determine whether the unapproved Human Resource Policy and Procedures Manual can lawfully form the basis of adverse administrative action against a public officer or constitute part of a contract of service.

- 11 The Claimant further avers that whereas the interdiction letter invokes the Conflict of Interest Act, which requires investigations to be concluded within ninety days under section 41(3), while the letter of 10th February 2026 refers to six months, the same is clearly illegal and overboard, *ultra vires*.
- 12 The Claimant maintains that the application is grounded on violations of the Constitution and statute, and that unless this Court intervenes, he will suffer prejudice by being subjected to an unlawful process. He therefore contends that the interim orders sought are necessary to preserve the subject matter of the claim and to prevent the issues raised from being rendered nugatory.
- 13 The Claimant/Applicant further avers that the investigation process initiated by the Respondent is fundamentally flawed, opaque and conducted in violation of the law and principles of fair administrative action.
- 14 It is the Claimant's case that the Respondent constituted an investigation committee which invited him to appear before it vide a letter dated 4th March 2026 for a session scheduled on 13th March 2026. At the material time, this suit and application were pending before this Court, raising substantive constitutional and legal issues.
- 15 The Claimant states that owing to bereavement, he instructed his Advocate to appear before the committee

strictly on a without prejudice basis and to raise preliminary objections regarding the legality of the proceedings. It is his position that his Advocate brought to the attention of the committee the pendency of this matter and urged the committee to defer its proceedings based on the guidance by the Supreme Court that when a matter is before the Court, inferior tribunals or Courts should await the decision of the higher court.

- 16 The Claimant avers that his Advocate sought disclosure of the names of persons who had given adverse evidence against him, together with the proceedings of the committee, to enable proper preparation and participation. Although the committee initially declined and later verbally agreed to provide the same, it ultimately failed to do so, thereby violating his right to access evidence and to examine and cross-examine witnesses.

- 17 It is the Claimant's case that his Advocate requested to be furnished with all documents produced before the committee by witnesses. However, the committee indicated that no such documents existed beyond those already supplied, which the Claimant disputes as contrary to law, as he is entitled to rely on the material presented before the committee.

- 18 The Claimant avers that his Advocate further sought adequate time to prepare upon receipt of the proceedings, including time to cross-examine witnesses, but the request was declined and the matter was fixed for 16th March 2026 despite counsel having prior prescheduled matters.
- 19 He further avers that although there had been an agreement for virtual attendance, confirmed through email correspondence dated 15th March 2026, the committee failed to honour the arrangement, did not respond to correspondence, and unilaterally changed the venue to Gelian Hotel on 16th March 2026 without facilitating virtual participation. Despite repeated requests for a virtual link, including an email sent at 12:19 PM on the material day, the committee remained unresponsive.
- 20 The Claimant contends that the conduct of the committee demonstrates a deliberate intention to proceed in a manner that would portray him as having declined to participate, thereby producing a predetermined and adverse outcome. He avers that he has been denied access to proceedings, denied the opportunity to examine and cross-examine witnesses, and denied adequate time to prepare, all in violation of the law and principles of fairness.
- 21 It is the Claimant's position that this Court has jurisdiction to intervene where an ongoing administrative process is

conducted illegally or unfairly, and that the actions of the committee are geared towards achieving a pre-determined outcome.

- 22 The Claimant further challenges the legality of the composition of the investigation committee, contending that one of its members, Jane Wanjiru Ndiba, is disqualified under Section 69(4)(d) of the Public Service Commission Act on account of being a State Counsel/Deputy Solicitor General and thus a representative of the Attorney General, who sits on the Respondent's Board, that is a member of the board of directors of the Respondent.
- 23 The Claimant avers that under Section 69(4)(d) of the Public Service Commission Act, any person who has participated in the matter as a complainant, witness or interested party is precluded from participating in the investigation. He contends that the Attorney General, being a member of the Respondent's Board which made adverse decisions against him, and by extension his representatives including the said committee member, are directly or indirectly involved and therefore disqualified. He relied on the decision of this Court in ***Gikenyi B & 2 others v Attorney General & 4 others; Mwangi & 225 others (Interested Parties) [2025] KEELRC 1575 (KLR)*** where the said Jane Wanjiru

Ndiba. a state counsel/deputy solicitor general appears as 2nd interested party.

- 24 It is the Claimant's case that the investigation committee is opaque and is tainted with illegality for the reason that when his Advocate raised this issue on 13th March 2026, the members including Jane Wanjiru Ndiba declined to properly identify themselves so that he could ascertain that they meet the legal threshold.
- 25 The Claimant maintains that his participation in the proceedings, through counsel, was not a submission to the jurisdiction of the committee but was undertaken without prejudice, and under duress arising from threats contained in the committee's correspondence, particularly the letter dated 13th March 2026.

Respondent's Case

- 26 In opposition to the application, the Claimants filed a replying affidavit dated 14th March 2026, sworn by Nelson Ributhi Gaichuhie, its current Chairperson.
- 27 The Respondent avers that it is a statutory body established under Section 3 of the Anti-Counterfeit Act, mandated to combat trade in counterfeit goods and enforce intellectual property rights both locally and globally.

- 28 It is the Respondent's position that the Claimant's Notice of Motion and Statement of Claim are premature, bad in law and incompetent, and that this Court lacks jurisdiction to entertain the same. The Respondent avers that the Claimant has failed to exhaust the mandatory statutory dispute resolution mechanisms, particularly the right of appeal to the Public Service Commission under Section 74(1) of the Public Service Commission Act as read together with Regulation 68 of the Public Service Commission Regulations.
- 29 The Respondent relies on Section 74(1) of the Public Service Commission Act which provides that any person dissatisfied with a disciplinary decision may appeal to the Commission, and Regulation 68 of the Public Service Commission Regulations, 2020 which similarly provides for appeals and reviews in disciplinary matters. It is contended that the Claimant has not invoked these mechanisms and has instead prematurely approached the Court.
- 30 The Respondent avers that the interdiction of the Claimant by letter dated 10th February 2026 was lawful, procedural and undertaken to facilitate investigations into the allegations facing the Claimant. Interdiction in employment law is not punishment but a temporary administrative measure to allow investigations without interference.

- 31 It is the Respondent's case that the Court of Appeal and this court have recognized that interdiction is a legitimate management tool where misconduct is alleged and investigations are required. Further, Section 70(1) of the Public Service Commission Act empowers an authorised officer to interdict a public officer where proceedings that may lead to dismissal are being undertaken or contemplated.
- 32 The Respondent avers that the Claimant, through counsel, was invited by a letter dated 4th March 2026 to appear before an Independent Investigation Committee on 13th March 2026. The Applicant did not appear personally but sent his advocate a Mr Kenyatta Oduor who requested for an adjournment on the basis that the Applicant is bereaved. The adjournment was granted and vide the Investigation Committee letter dated Friday, 13th March 2026, the applicant was informed that further proceedings will be on 16th March, 2026. Additionally, he was furnished with the interdiction letter and supporting evidence.
- 33 The Respondent contends that this demonstrates that the interdiction process has commenced, and expected to be concluded after Claimant moment with the committee and court should allow it proceed to its conclusion.
- 34 The Respondent asserts that the the Claimant/Applicant has failed to appeal to PSC over any grievance he may

hold concerning the interdiction process as is required by statute an indication and a confirmation that the substratum of the application and claim is to defeat the investigation process commenced against him on allegations of misconduct through interdiction.

- 35 It is the Respondent's case that the Claimant/Applicant's action of elevating his grievance to this honorable court without appealing to Public Service Commission offends a Court of Appeal finding in ***Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] eKLR*** where Court of Appeal held that where a statute provides a specific dispute resolution mechanism, it must be exhausted before approaching the court. The court stated that the respondent filed judicial review proceedings without first appealing to the Public Service Commission, as required by statute, making the proceedings premature.
- 36 The Respondent contends that the application improperly invites this Court to usurp the employer's managerial prerogative contrary to the holding in ***Judicial Service Commission v Gladys Boss Shollei & another [2014] eKLR***, and violates the principle of judicial restraint as espoused in ***County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 others [2015] eKLR***, which discourages premature judicial interference with ongoing administrative processes.

- 37 The Respondent avers that the Claimant/Applicant's failure to elevate the grievances to Public Services Commission as stipulated under section 74 (1) of Public Service Commission Act as well as section 68 of Public Service Commission Regulations (2020) is in itself a violation of the law and a manifestation that he intends to use this Court to avoid the investigation process where he has been called upon to appear and answer to allegations of misconduct levelled against him.
- 38 It is the Respondent's position that this Court lacks jurisdiction to entertain this suit by failure to comply with the internal dispute resolution mechanism provided under PSC Act and Human Resource Manual.
- 39 On the legality of the disciplinary process, the Respondent avers that the recruitment, appointment, promotion and discipline of its staff is guided by the Constitution of Kenya, the Anti-Counterfeit Act, the Public Service Commission Act, the Public Service Commission Regulations, the Employment Act, the Statutory Corporations Act, the Public Service Commission Human Resource Policy and Procedure Manual and the Anti Counterfeit Authority Human Resource Policy and Procedures Manual (Revised,2021) (ACA HR Manual).
- 40 The Respondent avers that the interdiction letter dated 10th February 2026 expressly cited these legal frameworks, including Article 47 of the Constitution, and

was followed by a letter dated 16th February 2026 outlining the terms of interdiction.

- 41 It is the Respondent's case that Sections 69(3) and 69(4) require that an officer be notified of allegations in writing, be accorded an opportunity to respond, and that investigations be conducted by impartial and competent officers. The Respondent avers that the Claimant has been duly notified and will be given an opportunity to respond and appear before the Investigations Committee.

- 42 The Respondent affirms that the officers appointed to undertake the investigations have no prior involvement in the matters under investigation and have not previously participated in the consideration of the allegations, thereby ensuring compliance with the statutory requirements of independence, impartiality and procedural fairness in strict compliance with section 69(4)(a) and (b), of Public Service Commission Act.

- 43 It contends that the role of the Investigations Committee is limited to factfinding and making recommendations. Section 69(8) of the Public Service Commission Act provides that a person or committee investigating a disciplinary case shall make findings and recommendations only, while the authority to determine the matter and impose any disciplinary penalty remains vested in the Commission, the authorized officer, or another lawful authority a procedural requirement which

the Respondent keenly observes and will strictly comply with once the investigation process is complete.

- 44 Further, Section 69(9) reinforces the requirement of procedural fairness by providing that a person who may impose a disciplinary penalty shall not participate in the investigation of the matter. The current process fully observes this statutory separation between investigative and decision-making roles. Therefore, the allegations by the Claimant/Applicant that the investigations committee as constituted is illegal and not proper is false and not supported in law and fact.
- 45 The Respondent contends that the ACA HR Manual, 2021 is valid, operative and has been consistently applied. Although, the reviewed and approved HR instruments were approved in April 2025, their implementation was halted by a circular dated 16th May 2025 issued by the Head of Public Service imposing a moratorium on HR reforms for state corporations earmarked for merger, thereby leaving the 2021 Manual in force.
- 46 The Respondent further avers that the Claimant was at all material times a beneficiary of the said HR framework, having been appointed and re-designated as Director of Legal Services under the same regime, and having previously applied the same policies in disciplinary processes against other staff without objection. It is

therefore contended that the present challenge is an afterthought intended to evade disciplinary proceedings.

47 It is the Respondent's case that there is no vacuum in the law for processing of the Claimant/Applicant's disciplinary proceedings. Disciplinary proceedings in public service are regulated under the Public Service Commission Act and the Public Service Commission HR Policy and Procedure Manual which the Respondent replicated in its ACA HR Manual which was approved in 2021.

48 The Respondent also refers to correspondence exchanged between the parties, including the Claimant's advocate's letter dated 19th February 2026 raising concerns on impartiality and strict adherence to the law of the interdiction process; and the Respondent's response dated 9th March 2026 clarifying the applicable legal and procedural framework.

49 It thus contends that this Court should not grant the prayers sought by the Claimant/Applicant and should instead allow the Respondent proceed with the disciplinary proceedings which is still at the interlocutory stage where the Respondent's investigation Committee is still investigating the allegations levelled against the Applicant.

50 On the issue of interim relief, the Respondent contends that the Claimant has failed to meet the threshold set out

in ***Giella v Cassman Brown & Co. Ltd [1973] EA 358.***

The Applicant has failed to establish a prima facie case with a probability of success as the interdiction was undertaken pursuant to the applicable legal and regulatory framework governing the Respondent.

51 Further, any alleged injury arising from interdiction is therefore, capable of being remedied by monetary compensation or restoration of benefits, and thus, does not meet the legal threshold of irreparable harm contemplated under the principles in ***Giella v Cassman Brown & Co. Ltd.***

52 On the balance of convenience, the Respondent maintains that it tilts in its favour, as granting the orders sought would halt a lawful investigative process and interfere with its statutory mandate, whereas allowing the process to proceed would not prejudice the Claimant who will be afforded an opportunity to respond to the allegations in accordance with the applicable procedures and the rules of natural justice.

53 Additionally, the grant of interim orders at this stage would unduly interfere with the Respondent's statutory mandate to investigate allegations of misconduct and maintain discipline within the institution.

54 It is the Respondent's case that the application is misconceived, incompetent and an abuse of the Court

process, and urges the Court to dismiss the same with costs and allow the disciplinary process to proceed to its logical conclusion.

55 The Respondent further filed supplementary submissions dated 25th March 2026.

56 The Respondent avers that subsequent to the filing of its Replying Affidavit and submissions, there arose a material development which it urges this Court to consider.

57 It is the Respondent's case that by a letter dated 6th March 2026, the Public Service Commission addressed all Chief Executive Officers of State Corporations and expressly sanctioned the continued use of existing Human Resource Manuals that had not yet received formal approval by the Commission. The said letter authorized the use of such manuals for a transitional period of six (6) months from the date thereof, on condition that the manuals be submitted to the Commission for approval within that period, failing which they would lapse and become null and void.

58 The Respondent contends that at the time of filing its pleadings and submissions, the contents of the said letter had not been brought to its attention.

59 It is further the Respondent's position that the Claimant's application is fundamentally premised on the argument

that the interdiction letter dated 10th February 2026 is anchored on the Respondent's Human Resource Manual which had not been approved by the Public Service Commission, and is therefore invalid and unlawful.

60 The Respondent thus avers that in light of PSC's dated 6th March 2026 from the Public Service Commission, its Human Resource Policy and Procedures Manual is, by express authority of the Commission, valid, lawful and operational for the duration of the six-month transitional period.

61 The Respondent contends that the substratum of the Claimant's case, being the alleged invalidity of the Human Resource Manual for want of approval, has been overtaken by events and effectively extinguished. Consequently, the Claimant's application is devoid of merit and ought to be dismissed with costs.

Claimant/Applicant's Notice of Preliminary Objection

62 In opposition to the Respondent's supplementary submissions, the Claimant/Applicant filed a Notice of Preliminary Objection dated 30th March 2026 on the following grounds:

a) The said supplementary submissions offend the mandatory rules of evidence under Rules 32(4), 40(1) (c), 48 & 65(2) & (6) of the Employment and Labour Relations Court (Procedure) Rules, 2024, that

evidence before the Court must be on oath, either orally or by way of affidavit.

b) The said supplementary submissions offend the mandatory and settled legal principle that submissions are not evidence.

c) The said supplementary submissions offend the doctrine of finality of submissions under Rules 50, 51 & 52 of the Employment and Labour Relations Court (Procedure) Rules, 2024.

d) In the alternative and without prejudice to the above, the said supplementary submissions are irrelevant and inapplicable.

63 On jurisdiction, the Claimant submitted that this Court has jurisdiction to intervene at the interlocutory stage where good cause or exceptional circumstances are demonstrated. He submitted that the present application discloses such exceptional circumstances, warranting this Court's intervention in the ongoing disciplinary process.

64 The Claimant submitted that it is now settled law that this Court may intervene in pending disciplinary proceedings where issues of legality arise, where the employer acts in contravention of the Constitution or statute, where the process breaches contractual terms or employer policy, where it offends the rules of natural justice, or where it is manifestly unfair or stage-managed towards dismissal.

Reliance was placed on ***Kamau v Kenya Accreditation Service [2021] KEELRC 8 (KLR)***: “Flowing from the foregoing persuasive decisions, the grounds upon which the court would intervene in an employer’s disciplinary process include:(a)where an employee establishes that the employer is proceeding in a manner that contravenes the provisions of the Constitution or legislation, or(b)in breach of agreed term of contract or employer’s policy, or(c)If the process is manifestly unfair and offends the rule of natural justice.”

- 65 The Claimant submitted that he has demonstrated, through affidavit evidence, that the Respondent is acting in contravention of the Constitution by seeking to implement a human resource instrument that is unconstitutional, null and void for want of approval by the Public Service Commission contrary to Article 234(2)(f) of the Constitution.
- 66 On the validity and operability of the Respondent’s human resource policy and procedures manual, the Claimant argued that the said Manual is invalid, inoperable and cannot be the basis of any adverse action as it was never approved by the Public Service Commission under Article 234(2) (f) of the Constitution as read together with section 56 of the Public Service Commission Act.
- 67 He cited ***Consumers Federation of Kenya (COFEK) suing through its officials namely Stephen Mutoro,***

Ephraim Kanake and Henry Ochieng v National Social Security Fund Board of Trustees & another; Cabinet Secretary, Ministry of Labour and Social Protection (Interested Party)

[2022] KEELRC 248 (KLR): “120. In nutshell, these constitutional and statutory provision demonstrate that the Public Service Commission is the only body with constitutional authority to approve human resource instruments of state corporations and other state bodies..... Having found that the 1st Respondent had legal mandate to originate the human resource instruments but were not approved by the Public Service Commission, the instruments are ineffectual until approved by the Commission.”

68 The Claimant argued that the Respondent’s Human Resource Manual, having been approved only by its Board of Directors and the State Corporations Advisory Committee, is a nullity. The position of this Court in ***Consumers Federation of Kenya (COFEK) (Supra)*** is that human resource instruments not approved by the Public Service Commission are null and void and inoperable and cannot be implemented. That is the position that should obtain in the instant case.

69 He submitted that the power to approve human resource instruments is vested in the Public Service Commission and that only those human resource instruments approved

by the Public Service Commission are implementable or imposable in the public service.

70 On whether the claim is premature and barred by the doctrine of exhaustion, the Claimant submitted that the claim and instant application are not premature as he has a right of access to this Court when issues of the application and interpretation of the Constitution are raised as those are not matters that can be addressed and resolved by the Public Service Commission. He cited ***Benjamin v Attorney General & 55 others [2026] KESC 5 (KLR)***: “..the availability of an alternative remedy does not necessarily bar an individual from seeking constitutional relief. This is because the act of seeking constitutional relief is contingent upon the adequacy of an existing alternative means of redress. If the alternative remedy is deemed inadequate in addressing the issue at hand, then the court is not restrained from providing constitutional relief.”

71 He further relied on ***Kamau v Kenya Accreditation Service [2021] KEELRC 8 (KLR)***: “[62] In the instant case, there is no decision by Board which is capable of being appealed to the PSC. The petitioner is basically challenging disciplinary proceedings and unilateral change of his contract of service by the respondent’s CEO in violation of his rights and fundamental freedoms as

enshrined under the Constitution and Employment Act. He has set out the provisions of the Constitution and the [Employment Act](#) that have been breached and how violations have been done. Consequently, the petition meets the competency threshold for a constitutional pleading as set out by the case of [Anarita Karimi Njeru v Republic](#) and the court has jurisdiction to entertain the same, notwithstanding the existence of the said internal appeal mechanism.[71] In this case there is no internal appeal mechanism available for the petitioner to question the constitutionality of his disciplinary proceedings before a decision by the Board, or to agitate for his right to legitimate expectation under the Constitution. Further, until a final decision is made by the Board, the petitioner has no right of appeal under the respondent's HR Manual. Consequently, the jurisdiction of this court has been properly invoked."

- 72 The Claimant submitted that the Respondent has failed to appreciate that the matters to do with interpretation and application of the Constitution are an exception to the exhaustion doctrine, thus, section 74 of the Public Service Commission Act is inapplicable.
- 73 It is the Claimant's submission that section 74(1) of the Public Service Commission Act uses the word "may" and so it is permissive rather than mandatory. Further, there is no decision of the Respondent capable of being appealed to the Public Service Commission.

74 On whether the legality of the administrative disciplinary proceedings has been raised requiring this court's intervention, the Claimant submitted that claimant has raised serious constitutional and statutory issues that touch on the legality or lawfulness of the entire administrative disciplinary process and these are issues that can only be resolved by this Court. This calls for this Court's intervention. He cited **Aviation and Allied Workers Union V Kenya Airways Limited [2012] KEELRC 53 (KLR)**: *"Questions relating to legality and other disputes of administrative disciplinary proceedings or actions pending before employers properly fall within the boundaries of this court as established in accordance with the provisions of the Constitution. The disputes relating to pending administrative disciplinary actions by employers fall within the jurisdiction of the court as provided for under section 12 of the Employment Act, 2007."*

75 On whether the entire process is in violation of the provisions of the Constitution and the Public Service Commission Act, the Claimant submitted that the Human Resource Policy and Procedures Manual, 2021, is the foundational basis of the disciplinary action which is unconstitutional for not having been approved by the Public Service Commission under the provisions of Article 234(2)(f) of the Constitution as read together with section

56 of the Public Service Commission, therefore, it is invalid under Article 2(4) of the Constitution.

76 The Claimant further submitted that an employer is prohibited from victimizing or purporting to discipline an employee for lodging a complaint or initiating legal proceedings under section 46(h) of the Employment Act. He argues that the Respondent bases the impugned interdiction, on the fact that the he had indicated that he will initiate legal proceedings and also make formal complaints which is allowed under section 46(h) of the Employment Act, thus, this makes the impugned interdiction illegal.

77 He further argued that the process violates Sections 9(1), (2) and (3) and 10(5) of the Employment Act, as the Human Resource Manual, 2021 does not form part of his contract of service dated 17th October 2011, has never been signed by him, and was never introduced through consultation. Reliance was placed on ***Thande v National Environment Trust Fund (Netfund) [2025] KEELRC 2572 (KLR)***: *“The fact that an employer has a Human Resource Manual does not imply that the terms of the Manual are automatically incorporated into the individual employment contracts between him (the employer) and his employees. For the terms of the Manual to form part of the terms and conditions of service of an individual employee’s contract, the parties ought to include a term in the contract of service which expressly*

incorporates the provisions in the Manual in the employment contract.”

- 78 The Claimant submitted that Article 234(2)(g) of the Constitution vests the power to review and recommend code of conduct for use in the public service in the Public Service Commission. Whereas Regulation 47(2) prohibits any state corporation or body in the public service from implementing or imposing any code of conduct that has not been reviewed and recommended by the Public Service Commission.
- 79 It is the Claimant's submission that the Respondent's Code of Conduct is part of its human resource policy and procedures manual that was never reviewed and recommended by the Public Service Commission but by the State Corporations Advisory Committee which this Court, the High Court and the Court of Appeal have held has no power to approve any such human resource instruments for state corporations. Therefore, the same is unconstitutional and illegal document and this Court should stop the same
- 80 The Claimant further submitted that the process violates Article 47 of the Constitution and Section 4(4)(c) of the Fair Administrative Action Act, as he has been denied access to evidence, denied the opportunity to cross-examine witnesses, and denied adequate time to prepare, particularly following the invitation letter dated 4th March

2026, the proceedings of 13th March 2026, and the scheduled session of 16th March 2026.

81 It was submitted that the process violates his legitimate expectation, as it seeks to revisit matters previously resolved through alternative dispute resolution, contrary to Article 159 of the Constitution. Reliance was placed on ***Kamau v Kenya Accreditation Service (supra)*** where the Court held: *“Consequently, this court must intervene in the said proceedings by barring the respondent from revisiting the performance and surcharge issues which were settled as per the said letter. Allowing the respondent to go against its own word would be violating the petitioner’s right to legitimate expectation that the settled matters would not be revisited.”*

82 It was also argued that the process is marred with illegality and malice, being founded on unconstitutional instruments and involving allegations under a repealed statute and matters falling within the jurisdiction of other bodies. Reliance was placed on ***Miguna Miguna V Permanent Secretary, Office Of The Prime Minister & Another [2011] KEHC 4250 (KLR)*** where the Court held: *“It is the duty of the court to stop a process started with ulterior motive or one based on outright illegality or one which is defective ab initio.”* He thus submitted that the illegalities and unconstitutionality that precede or attend the impugned disciplinary process calls for this

Court's intervention by interdicting the process until the claim is heard and determined.

- 83 The Claimant submitted that the investigation committee is opaque and illegally constituted, particularly due to the participation of a member allegedly disqualified under Section 69(4)(d) of the Public Service Commission Act, and failure by the committee to disclose its composition.
- 84 It was the Claimant's submission that the respondent's action is a flawed process that springs from an unconstitutional and illegal foundational document, the human resource policy and procedures manual and absence of a contract of service that incorporates the same and this Court ought not to allow it to proceed. Reliance was placed on **Muthama & 5 others v Kenya Tea Development Agency Holdings Limited [2025] KEELRC 3020 (KLR)** and **Kaloki v Kenya Pipeline Company Limited [2024] KEELRC 1834 (KLR)**.
- 85 On the reliefs sought, the Claimant submitted that he is seeking a stay of the decision of the Respondent so that this Court can determine the constitutional and statutory issues raised in the claim thereby preserving the subject matter from dissipating. This Court is empowered under section 12(3) of the Employment and Labour Relations Court Act to grant broad interim preservation orders that includes stay.

86 He further submitted that it is not the constitutional or statutory duty of the claimant to prepare and approve for the Respondent its human resource instruments. That is the constitutional and statutory function of the Public Service Commission. The fact that the human resource instruments are invalid for want of approval by the Public Service Commission cannot operate as estoppel against the Claimant.

87 It is the Claimant's submission that an order of stay is one of the interim preservation orders that this Court can grant. The statement of claim herein seeks, inter alia, judicial review remedies and other constitutional remedies. The claim herein is also a judicial review claim. In such a scenario, this Court has vast and unlimited powers with regard to any relief that it can grant including fashioning an appropriate relief not prayed for.

88 The Claimant submitted that he has established a prima facie case, and that unless the stay is granted, the ongoing disciplinary process, already scheduled through letters dated 4th March 2026, proceedings of 13th March 2026, and the session fixed for 16th March 2026, will be concluded, thereby rendering the claim nugatory.

89 It is the Claimant's submission that the application is merited, that the disciplinary process is unconstitutional, illegal and procedurally unfair, and urged the Court to

grant the interim orders sought to preserve the subject matter pending determination of the claim.

90 In support of its preliminary objection, The Claimant submitted that the Respondent's supplementary submissions are procedurally incompetent and inadmissible, as they seek to introduce evidence contrary to the mandatory provisions of Rules 32(4), 40(1)(c), 48 and 65(2) & (6) of the Employment and Labour Relations Court (Procedure) Rules, 2024, which require that evidence be tendered on oath, either orally or by affidavit. It was argued that the Respondent's letter dated 6th March 2026, not having been introduced through a replying affidavit (the Respondent having already filed one on 14th March 2026), is improperly before the Court and ought to be struck out.

91 It was further submitted that, as a superior court of record under Article 162(1) of the Constitution, this Court is bound by strict rules of evidence, and cannot admit documents irregularly introduced through submissions. The Claimant argued that the Respondent's conduct amounts to treating the Court as if it were not bound by evidentiary rules, which is impermissible.

92 The Claimant also argued that the supplementary submissions offend the settled principle that submissions are not evidence, relying on ***Moi v Muriithi & another [2014] KECA 642 (KLR)*** where the Court of Appeal held:

“Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law and we are unable to countenance it. Submissions are generally parties’ “marketing language”, each side endeavouring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed there are many cases decided without hearing submissions but based only on evidence presented. In any event all the 1st respondent would claim and prove as loss could only relate to the shares in the companies and not the properties of the companies. And even that he did not do.”

- 93 It is the Claimant’s submission that submissions of a party do not constitute evidence and the respondent is in error to purport to introduce evidence before this Court in supplementary submissions and worse still when the Rules of this Court do not allow the respondent to file any supplementary submissions but only the applicant.
- 94 Further reliance was placed on ***Tropical Treasure Limited v. Mangi & 3 Others [2023] KECA 1187 (KLR)*** and ***Weche v. Imara Steel Limited [2022] KEELRC 1674 (KLR)*** to emphasize that evidence introduced through submissions must be disregarded. Accordingly, the Claimant urged the Court to prevent such

irregular and illegal way of adducing evidence before this superior court by striking the said supplementary affidavit from the record and not relying on the evidence it purports to introduce.

95 On procedure, the Claimant submitted that the Respondent's supplementary submissions violate Rules 50, 51 and 52 of the Court's Rules, which provide for the sequence of filings and reserve the right to file supplementary submissions exclusively to the applicant. It was argued that principle that litigation must come to an end is well settled, and reliance was placed on **Akshar Logistics Limited v Ekasiba [2024] KEELRC 943 (KLR)** where the Court stated: *"Litigation somehow must come to an end and for the applicant, the end came when she applied for review and appealed the decision made on the review application. Litigation cannot be conducted on the basis of trial and error. That is why there are provisions of the law and the procedure to be adhered to."*

96 It is the Claimant's submission that Rule 52 of the Rules of this Court is meant to ensure finality of filing responses, rejoinders and submissions which must come to an end and cannot continue ad infinitum at the pleasure of the respondent.

97 The Claimant thus submitted that the Respondent's filings are an abuse of the Court process, violate the doctrine of

finality, and defeat the Claimant's legitimate expectation that the matter had reached the close of pleadings and submissions.

98 In the alternative and without prejudice, the Claimant submitted that even if the impugned material were admitted, the letter dated 6th March 2026 does not aid the Respondent's case. It supports his entire claim, that the human resource policy and procedure manual, 2021, was never approved by the Public Service Commission and is therefore null, void, ineffectual, unconstitutional and invalid and cannot be imposed or implemented against the claimant.

99 He further submitted that the does not purport to grant retrospective approval of the Respondent's human resource instruments as the respondent seeks to mislead this Court in the impugned supplementary submissions. To the contrary, the letter dated 6th March 2026 is prospective and takes effect from 6th March 2026.

100 The Claimant submitted that the impugned actions against the Claimant were taken on 10th February 2026, and the claim filed on 16th February 2026, thus falling outside the scope of the letter; The Claimant therefore argued that the letter confirms the illegality and invalidity of the Respondent's Human Resource Manual at the material time.

- 101 It is the Claimant's submission that the Public Service Commission in its impugned letter has clearly not received and considered the respondent's human resource instrument that it purports to approve. The purported approval is therefore clearly illegal and contrary to the decision of the High Court and is in itself a nullity.
- 102 It was further submitted that the Public Service Commission letter of 6th March 2026 does not even purport to have consulted employees of State Corporations before making the irregular approval for six months. The PSC is itself operating contrary to its own guidelines in issuing the letter of 6th March 2026. Public participation or participation of the people is a mandatory constitutional imperative under Article 10 of the Constitution and one of the functions of the Public Service Commission under Article 234(2)(c) of the Constitution.
- 103 It was further submitted that the sections 9(1) (2) & (3) and 10(5) of the Employment Act requires a contract of service to be in writing and any changes must be with prior consultation and a new contract of service entered in writing. Therefore, the letter dated 6th March 2026 from the Public Service Commission cannot constitute a revised contract of service as to be able to bind the claimant and in a retrospective manner. The letter is thus inapplicable and irrelevant to the claim herein and should be treated with the contempt it deserves.

104 It is the Claimant's submission that as far as the Court cannot rely on the impugned supplementary submissions, in the alternative and without prejudice to the preliminary objections, the said letter dated 6th March 2026 is not only unconstitutional but also illegal and cannot be relied on in these proceedings but if it were to be relied on it will be to the extent that it supports the claimant's case.

Respondent's Submissions

105 The Respondent submitted on six issues: Whether the claim and the notice of motion are premature and incompetent for failure to exhaust the statutory appeal mechanism to the public service commission before approaching this Honourable Court; Whether the disciplinary process initiated against the Claimant! Applicant is lawful; Whether the disciplinary process complies with Article 47 of the Constitution; Whether the Investigations Committee is lawfully constituted; Whether the Respondent's HR Manual is valid and operational; Whether the Applicant has met the threshold for grant of interim orders.

106 On the first issue, the Respondent submitted that the Claim and the Notice of Motion are premature and incompetent for want of exhaustion of the statutory dispute resolution mechanism. It submitted that the Applicant has challenged his interdiction and the ongoing

disciplinary process before invoking the appellate jurisdiction of the Public Service Commission as expressly required by statute.

107 The Respondent submitted that Section 74(1) of the Public Service Commission Act, 2017 provides that: *“Any person who is dissatisfied or affected by a decision made by an authorized officer or other authority in exercise or purported exercise of disciplinary control against any public officer under this Act may appeal to the Commission.”* Further, Section 74(4) provides that: *“disciplinary action shall not be deferred or suspended pending the determination of the appeal.”*

108 It was submitted that the statutory scheme establishes two concurrent principles: first, that disputes relating to disciplinary control must be escalated to the Commission in the first instance; and secondly, that such disputes do not halt the disciplinary process.

109 The Respondent further submitted that Regulation 68 of the Public Service Commission Regulations, 2020 expressly permits appeals against both the disciplinary process and decision, thereby negating the Applicant’s contention that he could approach the Court directly on procedural grounds.

- 110 It was submitted that the Respondent, being a statutory body established under Section 3 of the Anti-Counterfeit Act, falls within the definition of a “public body” under Section 2 and Section 3 of the Public Service Commission Act, and is therefore subject to the Commission’s disciplinary and appellate regime.
- 111 It is the Respondent’s submission that it does not matter whether or not the Applicant disputes the pedigree or validity of the Respondent's internal Human Resource Manual. The disciplinary and appellate regime under the Public Service Commission Act applies to him by force of statute. The Applicant cannot escape the Public Service Commission appellate framework merely by attacking the status of the Respondent's Human Resource Manual. The obligation to appeal to the Commission does not arise from the ACA Human Resource Manual but arises directly from statute.
- 112 The Respondent submitted that the Applicant has not demonstrated that he lodged any appeal under Section 74 or Regulation 68, and instead moved to Court while investigations remained ongoing, contrary to the doctrine of exhaustion. Reliance was placed on ***Speaker of the National Assembly v James Njenga Karume [1992] eKLR***, where the Court held: “...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.”

113 The Respondent submitted that exhaustion doctrine serves the purpose of postponing judicial consideration until the mechanism chosen by Parliament has first been utilized. That is precisely the position here: the jurisdiction of this Court is not extinguished, but it is deferred until the statutory process has first been invoked and exhausted.

114 It was submitted that the Applicant was required by Section 74 of the Public Service Commission Act, 2017 and Regulation 68 of the Public Service Commission Regulations, 2020 to first challenge the interdiction process or decision before the Public Service Commission. He did not do so. Instead, he approached this Court while the disciplinary process remained ongoing. Therefore, Claim and the Notice of Motion are premature, misconceived and incompetent for want of exhaustion of the statutory remedy before the Public Service Commission.

115 On the second issue, the Respondent submitted that the disciplinary process is firmly grounded in a comprehensive constitutional, statutory and regulatory framework governing public service employment. This framework includes the Constitution of Kenya, the Public Service Commission Act, 2017, the Employment Act, 2007, the Statutory Corporations Act, the Public Service Commission

Regulations, 2020, the Public Service Commission Human Resource Policy and Procedures Manual, and the Respondent's Human Resource Policy and Procedures Manual (2021).

- 116 It was submitted that Section 69 of the Public Service Commission Act establishes the procedural safeguards governing disciplinary action against public officers. In particular, Section 69(3) and (4) requires that an officer be notified in writing of the allegations, be afforded a reasonable opportunity to respond, and that the allegations be investigated by competent and impartial officers.
- 117 The Respondent submitted that it has strictly complied with these statutory requirements. The Applicant was formally notified of the allegations through the interdiction letter dated 10th February 2026, which set out the particulars of gross misconduct and the applicable legal framework.
- 118 It was further submitted that the Applicant was invited to appear before an Independent Investigations Committee through a letter dated 4th March 2026, scheduling the hearing for 13th March 2026. Upon a request for adjournment by the Applicant's counsel on account of bereavement, the Respondent granted the request and

rescheduled the hearing to 16th March 2026, thereby demonstrating procedural fairness and reasonableness.

119 The Respondent submitted that the Applicant was supplied with all documents and evidence relied upon in support of the allegations, thus enabling him to prepare his defence adequately.

120 It was therefore submitted that the Applicant has been accorded all procedural safeguards required under the law, and that the disciplinary process is lawful, fair and compliant with the principles of natural justice.

121 The Respondent argued that courts are slow to interfere with internal disciplinary processes where the employer has complied with the law. Reliance was placed on ***Rosemary Waitherero Mburu v Kenya Airways Limited [2020] eKLR***, where the Court held: “Courts are reluctant to interfere with an employer’s internal disciplinary process unless it is evidently flawed...” The Respondent therefore urged the Court to decline the invitation to interfere with a lawful ongoing disciplinary process.

122 On the third issue, the Respondent submitted that Article 47 of the Constitution guarantees every person the right to administrative action that is lawful, reasonable and procedurally fair. This provision entrenches the constitutional duty placed upon public bodies and

administrative authorities to ensure that any decision or process affecting the rights, interests or legitimate expectations of a person adheres to the principles of fairness, transparency and accountability. This constitutional guarantee is operationalized through the Fair Administrative Action Act, 2015, which elaborates the procedural safeguards that must guide administrative decision-making, in particular, Section 4 of the Act,

123 The Respondent submitted that the disciplinary process initiated against the Claimant/Applicant fully complies with these constitutional and statutory safeguards. The Applicant was given prior and adequate notice of the allegations through the interdiction letter dated 10th February 2026, which outlined the nature of the allegations and the applicable legal framework.

124 It was further submitted that the Applicant was invited to appear before the Investigations Committee through the letter dated 4th March 2026, and upon his request, the hearing was adjourned and rescheduled to 16th March 2026. The Respondent argued that this demonstrates that the Applicant has been afforded a fair opportunity to be heard.

125 The Respondent also submitted that the Applicant was provided with all relevant documentation and evidence,

thereby enabling him to prepare and present his case effectively.

126 It is the Respondent's submission that the courts have consistently affirmed that compliance with the procedural safeguards under Article 47 does not require the Court to prematurely intervene in ongoing administrative or disciplinary processes where the affected party has been afforded an opportunity to be heard. He cited ***Bwanga v Anti Counterfeit Authority & 4 others [2025] KEELRC 396 (KLR)***.

127 It submitted that it complied with the constitutional standards governing administrative action. The Applicant has been informed of the allegations against him, supplied with the relevant information supporting the allegations, and invited to present his defence before an independent Investigations Committee. The disciplinary process is therefore being conducted in a manner that is consistent with the requirements of Article 47 of the Constitution, the Fair Administrative Action Act, and the broader principles of natural justice.

128 It was submitted that the Applicant has failed to demonstrate any breach of Article 47, and that the disciplinary process meets the constitutional threshold of fairness, reasonableness and lawfulness.

- 129 On the third issue, the Respondent submitted that the Investigations Committee is lawfully constituted in accordance with Section 69(4)(c) and (d) of the Public Service Commission Act, which requires that investigations be conducted by competent officers who are not interested parties.
- 130 It was submitted that the members of the Committee are senior, competent and independent officers who have no prior involvement in the matter as complainants or witnesses. Their role is limited to fact-finding and making recommendations pursuant to Section 69(8) of the Act.
- 131 The Respondent further submitted that Section 69(9) ensures separation between investigators and decision-makers, thereby guaranteeing impartiality and due process. It cited **AVIATION AND ALLIED WORKERS UNION V KENYA AIRWAYS LIMITED [2012] KEELRC 53 (KLR)**: *“The court will intervene in an administrative disciplinary procedure if it is established that the procedure relied on by the employer offends fairness or due process by not upholding the rules of natural justice, or, if the procedure is in clear breach of the agreed or legislated or employer's prescribed applicable policy or standards, or, if the disciplinary procedure were to continue it would result into manifest injustice in view of the circumstances of the case.”*

132 It was submitted that the Applicant has not demonstrated that the Investigations Committee was constituted in violation of any statutory provision, nor has he established that the members of the Committee are interested parties or otherwise disqualified from undertaking the investigative process. Equally, there is no evidence to suggest that the disciplinary procedure adopted by the Respondent offends the rules of natural justice, violates statutory requirements, or is otherwise unlawful.

133 The Respondent submitted that the allegation that the Investigations Committee is illegal or improperly constituted is without merit and does not provide any lawful basis for the intervention of this Court in the ongoing disciplinary process.

134 On the fourth issue, the Respondent submitted that its Human Resource Policy and Procedures Manual (Revised 2021) remains valid, lawful and operational. It was submitted that the Manual was duly approved by the Respondent's Board and continues to govern disciplinary processes within the institution.

135 It was further submitted that although updated HR instruments were approved in April 2025, their implementation was halted by a circular dated 16th May 2025 issued by the Head of Public Service imposing a moratorium on HR reforms for certain state corporations. The effect of the said circular was to suspend the

implementation of newly developed human resource instruments pending further direction from the relevant authorities. Consequently, although updated HR instruments had been approved by the Board, their implementation could not proceed due to the moratorium imposed by the Head of Public Service

136 The Respondent argued that there exists no Act of Parliament, statutory directive, administrative order or court decision suspending, invalidating or otherwise rendering the 2021 ACA Human Resource Manual inoperative. In the absence of any such legal instrument, the manual remains valid and binding within the Respondent institution. Therefore, the Applicant's challenge to the validity of the HR Manual is misplaced and without legal foundation.

137 It is the Respondent's submission that the disciplinary process currently underway is being conducted in strict compliance with the applicable human resource framework governing the institution, and there is no basis upon which this Court should question the validity or applicability of the Respondent's Human Resource Policy and Procedures Manual (Revised 2021).

138 On the final issue, the Respondent submitted that the Applicant has failed to satisfy the principles for grant of interlocutory injunctions as set out in ***Giella v Cassman Brown & Co Ltd (1973) EA 358***, where it was held that

an applicant seeking such relief must satisfy the following cumulative requirements: First, the Applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.

- 139 On prima facie case, the Respondent submitted that the interdiction issued vide the letter dated 10th February 2026 was lawful and undertaken pursuant to Section 70(1) of the Public Service Commission Act, which authorises interdiction where disciplinary proceedings are contemplated. It was submitted that interdiction is an administrative, non-punitive measure. Reliance was placed on ***George Wekesa v Multimedia University of Kenya [2016] eKLR***: *“The prerogative of the employer in managing its business and administration of its staff should not be unduly stifled by judicial intervention through issue of provisional injunctive measures such as those sought by the Claimant. The Employment Act and Industrial Court Act seek to protect the weakness of the two parties in an employment relationship, not to deprive the employer of the management prerogative altogether.”*
- 140 On irreparable harm, the Respondent submitted that the Applicant remains in employment and any alleged loss is

purely financial and compensable. Reliance was placed on ***Gabriel Mukuria Muturi v Kenya Forestry Research Institute [2021] KEELRC 1067 (KLR)***, where the Court held: *“It is now trite law that irreparable harm refers to some injury which cannot be quantified in monetary value or one which cannot be adequately compensated by an award of damages. It also refers to harm which cannot be cured or reversed.”*

- 141 On balance of convenience, the Respondent submitted that it tilts in favour of allowing the disciplinary process to proceed, as halting it would undermine the Respondent’s statutory mandate and public interest in maintaining accountability.
- 142 It was submitted that the Applicant was invited to appear before the Committee on 13th March 2026, adjourned at his request, and rescheduled to 16th March 2026, and therefore suffers no prejudice.
- 143 The Respondent argued that granting the orders would set a dangerous precedent allowing employees to circumvent disciplinary processes through premature litigation.
- 144 The Respondent submitted that the Applicant has failed to establish a prima facie case, irreparable harm, or that the balance of convenience is in his favour, and therefore the

application for interim orders should be dismissed with costs.

145 I have examined the averments and submissions of the parties herein. In determining this application, this court needs to examine if a prima facie case with a likelihood of success has been established by the applicants, whether the applicant would suffer irreparable harm if the orders sought are not granted and if on the balance of convenience, it would be in favour of allowing or disallowing the orders sought.

146 The applicant's main contention is that he is being subjected to a flawed disciplinary process which infringes on his rights. He contends that he was unfairly placed on interdiction vide a letter dated 10th February 2026 and which he avers was unlawful, unconstitutional and procedurally flawed due to the fact that it is premised on a HR policy and procedures manual not approved by the PSC contrary to article 234(2) (g) of the constitution as read with section 56 of the PSC.

147 I have looked at the impugned interdiction letter and note that it is premised on gross misconduct as set out in section 44(4) of the Employment Act 2007, the PSC Act 2017 (Disciplinary Control Over Public Officers on Grounds Including Gross Misconduct And Breach Of Constitutional and Statutory Standards) and sections 11.11(iii) of the Anti Counterfeit Authority HR policy and procedures manual

(2021) on gross misconduct offences. The interdiction was vide section 44 of the Employment Act 2007 and section 11.16.1 of the Anti Counterfeit Authority HR manual.

- 148 The letter placed the claimant on interdiction for 6 months with half basic salary. The claimant avers that the alleged Anti counterfeit Authority HR manual has not been approved by the PSC.
- 149 In answer to this averments the respondents submitted that that the implementation of HR instruments were approved in April 2025 but this implementation was halted by a circular dated 16th May 2025 issued by the Head of Public Service imposing a moratorium on HR reforms for certain State Corporations.
- 150 This is indeed an admission that the HR instruments are not in force and cannot therefore apply to a disciplinary process against any staff member. With that confirmation, the petitioner has established a *prima face* case and respondents cannot be allowed to proceed with a disciplinary process on a non-existent policy document.
- 151 I therefore find that the applicant has established his case on a balance of convenience and it tilts in his favour not to allow the disciplinary process to proceed in this flawed manner. I allow the application and stay the respondent's interdiction letter of 10th February 2026 pending the hearing and determination of this claim.

152 It is also true that this court will not normally interfere with an internal disciplinary process between an employer and employee and only interferes to put the correct process on course. In the circumstances, whilst halting the existing process, the respondents can only initiate a proper disciplinary process if need be based on proper procedures and the law. Costs in the cause.

**Dated, Signed and Delivered Virtually at Nairobi this 9th
Day of April, 2026.**

**HELLEN WASILWA
JUDGE**