

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

PETITION NO. E024 OF 2025

FREDRICK TITO MWAMATI.....PETITIONER

VERSUS

TANAATHI WATER WORKS
DEVELOPMENT AGENCY.....1ST RESPONDENT

HON. REGINAH MUTUA NDAMBUKI.....2ND RESPONDENT

JUDGMENT

The petition dated 14/2/2025 was filed seeking the following reliefs: -

1. A declaration that interdiction and dismissal of the Petitioner was irregular, un-procedural, illegal, unconstitutional hence *null and void ab initio*.
2. A declaration that the dismissal letter issued to the Petitioner dated 7th February 2025 by the 2nd Respondent was also irregular, illegal, unconstitutional, *null and void ab initio*.
3. An order reinstating the employment services of the Petitioner within his terms of contract of employment.
4. An order directing the 2nd Respondent to unconditionally facilitate immediate resumption of office with payment of all outstanding salary arrears from 13th November 2024 upon the interdiction.
5. An order for the 2nd Respondent to take personal responsibility and pay the Petitioner damages for failure to accord him procedural fairness in the process leading to the interdiction and dismissal.

6. An order restraining the Respondents either by themselves; employees, servants and/or agents from harassing, arresting; intimidating or terminating the employment of the Petitioner on the basis of the illegal dismissal.
7. Costs of this petition be borne by the Respondents.

Facts of the case

The Petitioner was the Chief Executive Officer of the 1st Respondent appointed on a three (3) years contract from 1/7/2020 which contract was renewed for a 2nd term with effect from 1/7/2023 and was due to end on 30/6/2026.

That the Petitioner served the Respondent diligently and was highly rated in the performance reviews and earned a commendation for exemplary performance in the financial years of 2022 and 2023 from the Principal Secretary, Ministry of Water Sanitation and Irrigation Dr. (Engineer) Joseph Njoroge, CBS on 4/5/2022 and the Cabinet Secretary Hon. Alice Wahome on 16/1/2023.

That despite the above, on 22/11/2023, the Respondent, suspended the Petitioner from employment which suspension was declared to have been irregular, unconstitutional, *null and void ab initio* by the court in Petition E221 of 2023 vide judgment of Ongaya J dated 9/5/2024.

Despite the suspension being set aside by the court, the Respondents subverted the court order by compelling the Petitioner to proceed on 45 days compulsory leave from 9th January to 20th February 2024.

That upon completion of the compulsory leave, the 2nd Respondent suspended the Petitioner from office by a letter dated 3/7/2024 for a second time, the Petitioner having been arrested and charged in Kitui Law Court vide Criminal Case MCAC No. 003 of 2024 to face economic crime charges.

The Petitioner was in terms of the Anti-Corruption and Economic Crimes Act, 2003, section 62, entitled to half pay with effect from the date of the charge until conclusion of the case provided the case shall be determined within twenty-four months. The officer is entitled to receive full amount of any allowances payable.

On 2/10/2024, the Chief Magistrate, David Mburu, delivered a ruling in MCAC E003 of 2024, discharging the Petitioner alongside other co-accused who are also employees of the 1st Respondent pursuant to section 87(a) of the Criminal Procedure Code.

The Petitioner resumed duty with fellow employees but the Respondent continued to keep the Petitioner on suspension. The Petitioner requested the suspension to be lifted by a letter dated 3/10/2024.

However, the Respondents lifted the suspension of the Petitioner by a letter dated 14/11/2024; by a letter dated 13/11/2024, interdicted the Petitioner and by a 3rd letter dated 13/11/2014, notified the Petitioner to show cause in respect of 10 allegations of misconduct set out for actions/omissions that allegedly took place between January 2023 and September 2024, a period when the Petitioner was under suspension.

The Petitioner states that the alleged misconduct was imaginary and the Respondents were on a pure fishing expedition. That these issues had not been raised in the period when the Petitioner was suspended twice.

The Petitioner sought interim orders to stop the disciplinary process in which interim stay orders were initially issued but in the ruling after inter-parties hearing the court allowed the Respondent to conclude the disciplinary process.

The Petitioner wrote to the 2nd Respondent on 20/12/2025 requesting for evidence and/or documents which supported alleged misconduct within 7 days. Requested documents are set out at paragraph 35 of the petition.

That vide a letter dated 13/1/2025 and received on 20/1/2025, the Respondent only provided a few of the requested documents and declined to provide minutes of board meetings, evidence on alleged violation of confidentiality, parameter used by the board in the evaluation to arrive at the score of 49.42% on the performance of the Petitioner and evidence on

alleged violation of sections 7, 8, 9 and 10 of the Leadership and Integrity Act.

The Petitioner made a comprehensive response to the notice to show cause by letter dated 20/1/2025 in which the Petitioner added that without evidence to the allegations, no disciplinary action should be taken against him.

The Petitioner was invited to a disciplinary hearing on 24/1/2025 but the meeting did not proceed at the behest of the Respondents. The Respondents on 24/1/2025 provided the Petitioner with some minutes of the board listed at paragraph 39 of the petition.

The Petitioner was invited to a disciplinary hearing on 7/2/2025. The disciplinary hearing proceeded with no witness being called by the Respondent to justify the charges made against him and by a letter dated 7/2/2025, the same date, received by the Petitioner on 10/2/2025, dismissed the Petitioner from employment.

Violation

The Petitioner posits that the false charges levelled against him and the refusal to provide the petitioner with requested evidence to substantiate the same, violated the Petitioner's rights under Articles 41, 42, 50 and 236 of the Constitution of Kenya 2010 and section 103 and 10.4.2(16) and 18 (v)

of the Human Resource Management and Procedural Manual 2021 of the Respondent.

In particular the Petitioner points out that section 10.4.2.16 and 17(b) of the Human Resource Management and Procedural Manual provides *inter alia*:-

“In respect of employees in: job group TAWWDA 3 and above (where the Petitioner belongs) “if the employees fail to respond within the specified period or if in the opinion of the Board the explanation given is not satisfactory, he shall forward the case with copies of charges and employee’s reply if any with his comments to the Public Service Commission for decision.”

That it is clear the manual did not grant the board the power to make a final disciplinary decision in respect of officers in job group TAWWDA 3 and above and therefore acted *ultra vires* the 1st Respondent’s manual by taking a decision to dismiss the Petitioner from employment.

That for the aforesaid reasons, the Petitioner be granted the reliefs sought.

Response

The 1st and 2nd Respondents filed replying affidavit to the petition sworn to on 24/6/2025 by Ongaya, Ronald Nyakwabe, the Corporation Secretary of the Board of the 1st Respondent.

The deponent invites court to disregard any deposition by the Petitioner Under paragraphs 24 to 34 of the petition and paragraphs 5 to 16, in the supporting affidavit to the extent that he makes reference to matters heard and determined in Petition E229 of 2023 which matters are *res judicata* and this court is *functus officio* in respect of the same.

That the reliefs sought are incapable of grant, as the Petitioner is inviting the court to usurp the powers of the Board.

That the Petitioner was employed by the Board and any disciplinary action including dismissal could only be taken by the Board and not by the Public Service Commission as alleged by the Petitioner. That reference is made to the contract of employment under clause 25, where termination of the appointment by the Board was contemplated.

That under clause 26, the contract superseded all other agreements and/or arrangements.

That clause 21 of the contract incorporates the application of the Human Resource Policy and Manual of the Respondent on all employees, which included the CEO.

That clauses 10.3.2, 10.3.3 and 10.3.4 of the said manual are applicable to the disciplinary process against the Chief Executive Officer.

That clause 10.3.2 provides –

“(a) The discipline of members of staff in Grades TAWWDA 1-TAWWDA 3 shall fall under the purview of the Board.

(b) 10.3.3 – All appeals on disciplinary matters falling under the purview of the Board shall lie to the Public Service Commission (PSC) or as otherwise delegated.

(c) 10.3.4 – Any such appeal to the Board or Public Service Commission shall be in writing within six (6) weeks from the date of the letter conveying the disciplinary decision.”

The deponent admits that the Board issued the Petitioner with notice to show cause on 3/11/2024 with 10 charges.

That by a letter dated 10/2/2024, Petitioner sought to be provided with documents.

That by a letter dated 13/1/2025, the Respondent forwarded the requested documents to the Petitioner. That on 24/1/2025, the Petitioner came to the disciplinary hearing with his Advocate and protested that he had not received minutes of the Board requested. That this is despite that all the minutes had been forwarded to him.

That the hearing was postponed based on the protest by the Petitioner and by a letter dated 28/1/2025, the Respondent forwarded the requested minutes to the Petitioner.

The disciplinary hearing was rescheduled from 7/2/2025 and the Petitioner appeared with his Advocate. The Petitioner gave his detailed explanation and the Board made its decision on that day and found the Petitioner guilty of:

- (i) Failure to implement Board Resolutions
- (ii) Failure to protect the Agency's property
- (iii) Failure in the implementation and management of execution of contract no. TAWWA/017/2019-2020 VIMA Contractors Limited case.
- (iv) Authorization of payments, to a contractor for the Kitonyini Borehole project, one MIS MAF (K) Limited and as a consequence of the foregoing, the Board found the Petitioner as having violated Articles 10 and 20 of the Constitution, the PPADA Act, and section 7, 8, 9 and 10 of the Leadership and Integrity Act.

That the decision of the Board dismissing the Petitioner from employment was communicated on 10/2/2025.

That the decision to dismiss the Petitioner from employment was for a valid reason and the Respondents followed a fair procedure.

That the petition lack merit and it be dismissed.

DETERMINATION

The parties filed written submissions which the court has carefully considered together with the evidence adduced by the parties. The issues for determination are:-

- (a) Whether the Respondent violated the rights of the Petitioner in dismissing him from employment.
- (b) Whether the Petitioner is entitled to the reliefs sought.

For the record, supplementary documents filed by the Petitioner after the Respondents had filed their final submissions were struck off the record on 13/10/2025. The parties highlighted their submissions on 16/12/2025.

At the outset, the court finds that reference by the Petitioner in paragraphs 24 to 34 of the petition and paragraphs 5 to 16 in the supporting affidavit to matters canvassed in petition E229 of 2023 involving the Petitioner and the Respondents heard and determined before this suit was filed, does not offend the *res judicata* principal.

That information constitutes relevant background information to this matter and underline the history of harassment by the Respondents against the Petitioner. The Petitioner did not seek the court to determine those matters afresh but urged the court to take that history into account in determining this matter. The application to strike out the aforesaid content is misconceived and is dismissed for want of any merit.

The admission by the Respondent at paragraph 11 of the replying affidavit to the effect that clause 21 of the contract between the parties

“incorporates the application of the Human Resources Policy and Manual on all employees as defined therein; and this included the Chief Executive Officer”, places the Petitioner and the Respondent, on the same belief that the Human Resource and Policy Manual was a part and parcel of the contract of employment between the parties.

The issue for determination therefore is whether it was the Board of the Respondent or the Public Service Commission that had the power to conduct a first disciplinary hearing in respect of the CEO or not. The Petitioner contends that section 10.4.2.16 and 17(b) of the Human Resource Management and Procedural Manual provide that the original disciplinary process against the employees in job group TAWWDA 3 and above (where the Petitioner belongs) shall be conducted by the PSC whereas the Respondent has deposed at paragraph 12 of the replying affidavit that the Human Resources Policy and Manual when disciplining the CEO and in this case the Petitioner relies on clause 10.3.2, 10.3.3 and 10.3.4 and in particular clause 10.3.2 provides that,

“That discipline of members of staff in Grades TAWWDA 1 – TAWWDA3 shall fall under the purview of the Board whereas clause 10.3.3 provides for all appeals for the disciplinary decisions of the Board shall lie to the PSC or as otherwise delegated.”

The court has considered firstly *“The code of Governance for State Corporations.”* Known as Mwongozo which was jointly issued by the PSC

and State Corporation Advisory Committee (SCAC) in January 2015 and provides with regard to appointment of the CEO that

“That Board should:

(a) Appoint and remove the CEO.

(b) Ensure that the CEO is recruited through a competitive process”
inter alia

This is to date the blue print that governs the recruitment, performance, renewal of contract and removal of CEOs of State Corporations.

The court is also satisfied, contrary to the allegations by the Claimant, the applicable disciplinary clause of the manual to the disciplinary process of the CEO is as stated by the Respondents to be clause 10.3.2 and this gives the Board the mandate to conduct a disciplinary hearing against the CEO contrary to the evidence by the Petitioner that the clause applicable is clause 10.4.2.16 and 17(6) of the Human Resource Manual.

Accordingly, the Board did not act *ultra vires* the HR Manual nor did it violate the contract of employment of the Petitioner in instituting the disciplinary process against the petitioner.

The pertinent issue is whether the Respondents had a valid reason to commence the process and whether the process was fairly done, to give a fair opportunity to the Petitioner to defend himself against the charges laid against him and if the Board arrived at a fair and valid decision in finding that the Petitioner had committed gross misconduct to warrant the summary dismissal that was meted on him by a letter dated 7/2/2025.

The court is satisfied that the Petitioner was served with a notice to show cause dated 13/11/2024 in which 10 charges were set out against him.

The court is satisfied that the Petitioner responded to the show cause letter by a letter dated 20/12/2024 in which the Petitioner asked for 12 items to be supplied to him in order to be able to respond sufficiently to the charges laid against him. The documents included minutes of the Board meetings for TAWWDA between the Period 1st January 2023 to 1st December 2024; HR, Board paper on conversion of staff in job group 2 and 3 from permanent and pensionable to contract; HR Board paper on recruitment of M. Kinyua Martin and Daniel and all related documents including the contract of employment; all correspondence between TAWWDA and County Government of Kitui on vacation of agency premises especially TAWWDA letter dated 18/5/2023. Copy of contract between TAWWAD and Vima Contracts Ltd and details of CMCC No. 093 of 2022; copy of police report and OB number in the alleged loss of engine for motor vehicle Registration No. KBS 070K; copy of the contract between TAWWDA and contractor for Kitonyoni borehole payment documents together with accompanying approval/payment certificates; Salaries and Remuneration Commission letter on the remuneration structure for TAWWDA for the cycle 2021/2022-2024/2025; provide evidence on the alleged violation of confidentiality; provide parameters used in the evaluation and how the Board arrived at a score of 49.42% and evidence of the alleged violation of section 7, 8, 9 and 10 of the Leadership and Integrity Act.

The Respondent replied to the Petitioner's request by a letter dated 13/1/2025 and informed him that they had checked and confirmed that;

1. Duly signed minutes of the meetings held before 1st January 2023 to 1st December, 2024, were done when the Petitioner was the CEO and all the minutes for the period were given out at the CEO's instance and were sent to the CEO himself. That all are in the email of the Petitioner and the CEO could retrieve them.
2. The HR board paper on conversion of staff in Job Group 2 and 3 from permanent and pensionable was sent to him.
3. The HR Board paper on recruitment of M, Kinyua Martin and Daniel Ouma and all related documents were sent to him.
4. All correspondence between TAWWDA and the County Government of Kitui on vacation of Agency premises and letter dated 18/5/2023 were sent to him.
5. Copy of contract between TAWWDA and Vima contracts and detail of CCWCC No. 093 of 2022 were sent to him.
6. Copy of police report and OB number in respect of the alleged loss of engine for motor vehicle Reg. No. KBS 070K were sent to him.
7. Copy of contract between TAWWDA and contract for Kitonyini borehole payment documents together with approval and payment documents were sent to him.
8. SRC letter on the remuneration structure for TAWWDA for cycle 2021/2022 – 2024/2025 were sent to him.
9. Petitioner was informed that Respondent had no written evidence that the CEO called various politicians on diverse dates on a number of

issues that came to the Petitioner's knowledge in his capacity as CEO and a member of the Board.

10. The details of the evaluation parameters and how the Board arrived at score of 49.42% were available in the SLAC Portal and the Petitioner could access it.
11. Evidence for alleged violation of section 7, 8, 9, and 10 of the Leadership and Integrity Act, 2012 were cross cutting and are well within the knowledge of the Petitioner and no particular document was available.

Furthermore, by a letter dated 24/1/2025, the Respondent sent 12 sets of Board minutes to the Petitioner for the period 27/1/2023 to 12/12/2024.

On 7/2/2025 the disciplinary hearing took place in which the Petitioner was given opportunity to defend himself. By this time, the Petitioner was in possession of all relevant documentation he had requested for and/or explanation why specific document requested could not be provided.

The Petitioner defended himself verbally against the charges made against him. The Board thereafter found the Petitioner guilty of six (6) charges set out in the letter of dismissal dated 7/2/2025.

The court is satisfied that the Respondent gave the Petitioner a fair chance to defend himself against the various serious charges set out against him. The court is satisfied that the charges were not malicious or fabricated as the Petitioner badly alleges. The court is satisfied that

the Respondent established that there were valid grounds to dismiss the Petitioner from employment following a fair procedure.

In *Walter Ogal Anuro v Teachers Service Commission 2013 KEELRC 386 KLR* it was held that;

“However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness”.

The Court of Appeal in ***Benson K Nguti v Kenfreight [E A] Limited [2014] eKLR*** held that;

“Section 41 of the Employment Act provides that before an employer terminates the employment of an employee on ground of misconduct, poor performance or incapacity, the employer must explain to the employee the reason for the intended termination. The said explanation must be in a language of the claimant's understanding and the claimant must be given the option of being accompanied by a fellow worker or shop floor union representative of his choice. The said provision further requires in mandatory terms that the employee and his companion must be accorded an opportunity to air their case in defence before a final decision is made to terminate the employment

.....In addition, Section 45(2) (a) and (b) of the Employment Act provides that an employer shall not terminate the employment of an employee except on ground of a fair and valid reason. A fair reason is defined by the said Section 45(2) (a) and (b) as one that relates to the

employee's conduct, capacity and compatibility, or based on the operational requirements of the employer. Section 43 (a) and 47(5) of the Employment Act puts on the employer the burden of proving the reason for termination in a claim arising out of the termination of employment as it is herein”.

Accordingly, the court finds that the Respondent did not violate the provisions of section 41, 43, 44 and 45 of the Employment Act nor did they violate the provisions of Article 35, 27, 41, 47 and 236 of the Constitution of Kenya 2010.

The period of suspension before the disciplinary process was concluded, of about 40 days, was not inordinate in the circumstances of the case and the allegation made by the Petitioner against the Board members and chairperson of the Respondent have not been substantiated by sufficient credible evidence. The same do not constitute sufficient rebuttal to the charges of gross misconduct the Petitioner faced.

The petition lacks merit and is dismissed in its entirety

Considering the service rendered by the Petitioner to the Respondent and the history of the case which entailed the Petitioner coming to court to compel the Respondent to treat him fairly and justly, in the disciplinary process, each party shall bear their costs of the case in this matter.

Dated at Nairobi this 20th day of April 2026



Mathews Nduma

JUDGE

Dated, signed and delivered in open court at Nairobi this 22nd day of April 2026

Dr. Gakeri J.

JUDGE

Appearances:

Mr. Toage Yoya for Petitioner

Ms. Nyaencha for Respondent

Mr. Kemboi – Court Assistant