



**Mulewa v Women Enterprise Fund (Cause E945 of 2025)
[2026] KEELRC 1124 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1124 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E945 OF 2025
ON MAKAU, J
APRIL 30, 2026**

BETWEEN

PAUL JEFWA MULEWA CLAIMANT

AND

WOMEN ENTERPRISE FUND RESPONDENT

RULING

Introduction

1. This ruling relates to the Claimant’s Notice of Motion dated 29th September 2025 brought under Rule 45 (1), (3) and (4) of the Employment and Labour Relations Court (Procedure) Rules 2024, and Article 27, 41 (1) and 47 (1) and (2) and 50 of *the Constitution*. The Motion seeks the following orders:-
 - a. That the Respondent, its servants, agents and/or any other persons acting on its behalf be restrained from harassing, intimidating, threatening to terminate and/or terminating the Claimant/Applicant’s employment pending the hearing and determination of this Suit.
 - b. That the Applicant’s Disciplinary determination by the Respondent be stayed and or set-aside pending the hearing and determination of this Suit.
 - c. That the costs of this Application be provided for.
2. The Motion stands on the grounds set out its body of motion and affidavits sworn by the Applicant on 29th September 2025 and 23rd October 2025. It is opposed by the Respondent through the Replying Affidavit sworn on 15th October 2025 by its Deputy Director Human Resource Department, Amos Odhiambo.



Facts of the case

3. The Claimant was employed by the Respondent in the year 2017 as Senior ICT Officer Job Group 5 a position he holds till now. By a letter dated 16th July 2025, the Deputy Director, ICT & E- Services Mr. Nilton Mutungi, made a formal complaint raising several issues of insubordination, unprofessional conduct and disrespectful engagements. The letter cautioned the Claimant against repeating the said misconduct or else the matter would be escalated through “ the appropriate channels” for further action.
4. Subsequently, the Claimant was served with a show cause letter dated 31st July 2025 raising 22 charges including those raised in the complaint letter OF 16th July 2025. The show cause letter was authored and signed by the Deputy Director ICT and E- Services Mr. Nilton Mutungi.
5. The Claimant responded by his letter dated 12th August 2025, within the 14 days period given. On 11th September 2025 he received a notice to attend a disciplinary hearing on 18th September 2025 before a Disciplinary Committee to defend himself of the charged in the show cause letter. The letter notified him of his right to attend the hearing in the company of a fellow employee of his choice.
6. The hearing was rescheduled to 23rd September 2025 when the Claimant objected to the hearing demanding recusal of the Deputy Director and Head of ICT from sitting in the Disciplinary Committee because he was the complainant. He also faulted the composition of the committee because Twelve (12) members were invited which exceeded the Nine (9) provided for under the Human Resource Policy. He also objected to the hearing because the committee members were given only two days’ notice and they were not provided with the details of the charges, evidence and the parties involved which compromised the entire disciplinary process.
7. Finally, he contended that the disciplinary process against him was in breach of Respondents Human Resource Policy Manual, *the Constitution* of Kenya and the rules of National Justice and urged the court to grant the orders sought.
8. The Respondent contended that several allegations were made against the Claimant including insubordination, unprofessional language, emotional outbursts, and resistance to supervision contrary to the standards required of an officer in his position. After carrying out investigations, the Claimant was served with a show cause letter dated 31st July 2025 setting out the allegations against him and he was invited to make a written response.
9. The Respondent further averred that the Claimant responded to the show cause letter on 12th August 2025 and he was invited to a disciplinary hearing before a Disciplinary Committee in line with the Human Resource Policy Manual. Therefore, it Maintained that the disciplinary process was within its managerial prerogative considering allegation of misconduct, and it was initiated and conducted in accordance with the Human Resource Policy Manual.
10. Finally, it averred that the Application is premature, frivolous and intended to pre-empt a lawful and fair process. Therefore, it prayed for the dismissal of the Motion and the suit with costs, and allow the disciplinary process to be concluded.

Submissions

11. It was submitted for the Applicant that the Respondent deviated from its own Human Resource Policy Manual and grossly violated the Claimants right to fair hearing and fair administrative hearing. It was submitted that the disciplinary process was initiated contrary to Section 13 of the Respondent’s Human Resource Policy Manual, Article 27, 41 (1), 47 (1) and (2) and 50 of *the Constitution* of Kenya.



12. It was argued that no thorough investigations were conducted and the Claimant's objection to the composition of the Disciplinary Committee was ignored. It was further argued that there was open bias against the Claimant and there was indication that he would not get fair hearing before the committee.
13. It was submitted that a prima facie case has been established that warrants interlocutory injunction. It was argued that the disciplinary process is and it should be allowed to proceed to the end. Several cases were cited to show that courts have intervened internal process before exhaustion.
14. On the other hand, it was submitted for the Respondent that the disciplinary process against the Claimant is lawful, fair and compliant with the *Employment Act* and Human Resource Manual. It was argued that the Claimant was served with show cause letter citing the allegations against him and thereafter he was invited to a hearing before a disciplinary committee.
15. It was further submitted that the Motion is prematurely before court as the Applicant has not met the threshold for judicial intervention before the exhaustion of the internal disciplinary process. Several cases were cited to fortify the above submissions and to urge the court to dismiss both the Motion and the Claim because they are intended to frustrate a legitimate process initiated to address a serious violation of work place discipline.

Issues for determination and analysis

16. Having considered the Motion, Affidavits, pleadings and the submissions, it is clear that the Claimant is facing disciplinary process and what is pending is a final decision. The main issue for determination is whether the applicant has met the legal threshold for judicial intervention.

Threshold for judicial intervention

17. Courts in the country have shied away from interfering with employers managerial prerogatives in human resource functions. However, in special circumstances the courts have intervened in internal disciplinary process, not to stop the process altogether but only to put the process on the right track.
18. In the case of *Mulwa Msanifu Kombo v Kenya Airways* [2013] eKLR the court held that:-

“... this court would be reluctant to involve itself in a disciplinary process commenced by the employer unless in appropriate cases it is established that the disciplinary process has been commenced or is continuing unfairly. The intervention in disciplinary process by employers will be entertained by the court rarely and in clear cases where the process is likely to result in unfair imposition of a punishment against the employee. The court will intervene ... if it is established that the procedure relied on by the employer offends fairness or due process by not upholding the rule of natural justice or, if the procedure is in clear breach of the agreed or legislated or employer's prescribed applicable or policy standards, or if the disciplinary proceedings were to continue it would result into manifest injustice in view of the circumstances of the case.”

19. In *Rebecca Ann Maina & 2 Others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, the court held as follows regarding court's intervention in disciplinary process at the shop floor:-

“... the Court will intervene not to stop the process altogether but to put things right.”



20. Again, in *Geoffrey Mworira v Water Resources Management Authority* [2015] eKLR the court held as follows:-

“The court will sparingly interfere in the employer’s entitlement to perform any human resource functions such as ... disciplinary control ... To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of *the constitution* or legislation; or in breach of the agreement between the parties; or in manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer’s internal process.”

21. The legal principle emerging from the above decisions is that the court will interfere with the employer’s administrative discretion if the employer’s actions are actuated with illegality, procedural impropriety and unreasonableness. However, it will not muzzle the employer altogether, but it will put him/her back on right track.

22. In the instant case the Claimant contends that his right to fair hearing and fair administrative action have been compromised because the employer has deviated from the procedure set out in Clause 13 of its Human Resource Policy Manual and *the Constitution*. However, the Respondent maintains that the process is grounded on genuine allegations and appropriate process has been followed in strict compliance with the Human Resource Policy Manual and the *Employment Act*.

23. The Respondent filed copy of its Human Resource Policies and procedures manual approved by the Public Service Commission and dated April 2024. Clause 13 of the Human Resource Manual deals with employee discipline. Clause 13.7 provides for the guiding principles in handling disciplinary matters:-

- “ a) a) Rules of national justice.
- b. Procedural fairness including adequate opportunity to the employee to prepare his/her case.
- c. The deciding authority must be impartial when hearing and making decisions.
- d. Decisions to be based on logical proof.
- e. Fair administrative action lawful and procedurally fair.
- f. Right to notice of reason for the disciplinary action taken.
- g. Opportunity to be heard.
- h. Right to attend alone or in company of another employee, and to Cross examine witnesses.
- i. Right to legal representation where applicable.
- j. Notice of right to appeal or review.
- k. Right to information, materials and evidence to be relied upon to decide.”

24. The power to take disciplinary action against employees in Job Grade 5 -12 is given to the Chief Executive Officer by Clause 13.5.4 and 13.9.1 (b) of the Manual. The Chief Executive Officer exercise that power through a committee (the HRMAC). The procedure of instituting disciplinary process is



set out under Clause 13.8 of the Manual. Clause 13.8.3 provides that the Head of Functional Areas (HOFA) reports an employee's misconduct to the Head of Human Resource Manager.

25. Section 13.8.4 then provides that:-

“The Head of HRM's shall :-

- a. Evaluate the reported misconduct and issue a notice to show cause where necessary;
- b. Provide information on the employees previous history and give guidance consistent and fair disciplinary processes;
- c. He/she is the Secretary to the HRMAC and provides technical advice;
- d. Analyses the misconduct and commences the disciplinary action by issuing a show cause letter;
- e. Summarizes the cases upon receipt of the employees representatives, if any, and submits the case to the HRMAC;
- f. Implements the decisions of the Board of Directors/Managing Director/HRMAC.” [emphasis added]

26. Having carefully considered the above sections of the HR Manual, it is clear that for disciplinary process to pass muster, the employee's supervisor (HOFA) must make a report to the Head of Human Resource, who considers the case and if satisfied, commences the disciplinary process by issuing a show cause letter.

27. In the instant case, the disciplinary process was not commenced by the Head of HR in the manner provided above. It was commenced by the Claimant's supervisor when he issued him with a show cause letter dated 31st July 2025. The said officer lacked jurisdiction to commence the impugned disciplinary process as that was function was belonged to the Head of the HR under Clause 13.8.4 (d) of the HR Manual.

28. Without going to the merits of the suit, it appears on the face value that the employer has commenced and is proceeding with the disciplinary process in breach of express provisions of its HR Manual, and especially clause 13.8.4(d). Consequently, I find merits in the request for judicial intervention before exhaustion of the impugned proceedings. The request is further fortified by the fact that the Claimant's supervisor is both the complainant and also sitting as a judge in his own case, which violates the rules of natural justice. It is also in the public interest and public policy that employers should not subject employees in disciplinary processes that violate contracts, internal regulations and the constitution.

Conclusion

29. I have found that the disciplinary proceedings against the Claimant were commenced, and they are continuing contrary to express provision of clause 13 of the Respondent's HR Manual of 2024. Consequently, I make the following orders:-

- a. The Respondent is restrained from terminating the Claimant's employment or rendering any decision that is prejudicial to the Claimant's contract of employment under the impugned proceedings pending hearing and determination of the suit herein.



- b. For avoidance of doubt, the respondent is free to rectify the procedural flaws highlighted above within 14 days of this ruling and proceed with the disciplinary process in compliance with its HR Manual, the law and Rules of Natural justice.
- c. In the meanwhile, the parties are directed to take a mention date for pretrial conference.
- d. Since the Motion is successful, I award costs to the Applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30TH DAY OF APRIL, 2026.

ONESMUS MAKAU

JUDGE

Appearance:

Ashiruma for Claimant/Applicant

Okello for Respondent

