

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

CAUSE NO. E373 OF 2025

(Before Hon. Lady Justice Agnes Kitiku Nzei)

EVERLINE LILLIAN AUMA WANYAMACLAIMANT

VERSUS

NAIROBI CITY WATER

SEWERAGE COMPANY LIMITED.....RESPONDENT

AND

**KENYA NATIONAL EXAMINATION COUNCIL ..1ST INTERESTED
PARTY**

TECHNICAL INSTITUTE 2ND INTERESTED PARTY

RULING

1. The application for determination herein is the Claimant's Notice of Motion dated 29th April, 2025; whereby the Claimant/Applicant seeks the following Orders:-

- (a) That the application be certified urgent, heard ex-parte and service be dispensed with in the first instance as the subject of the application will be*

defeated unless the application is heard expeditiously.

- (b) That pending the **inter partes** hearing and determination of the application, the Court be pleased to issue orders staying the disciplinary proceedings against the Claimant by the Respondent, its agents, employees and/or any other person claiming through it.
- (c) That pending hearing and determination of the application herein, the Court be pleased to issue orders staying the disciplinary proceedings against the Claimant by the Respondent, its agents, employees and/or any other person claiming through it.
- (d) That pending the hearing and determination of the main suit, the Court be pleased to issue orders staying disciplinary proceedings against the Claimant by the Respondent, its agents, employees and/or any other person claiming through it.
- (e) Costs of the application.

2. The application sets out on its face the grounds on which it is brought, and is supported by the Claimant/Applicant's supporting affidavit sworn on 29th April, 2025. It is deponed in the said supporting affidavit, ***inter-alia:-***

(a) *that the Claimant was employed by the Respondent as a registry clerk (scale 8) on probationary basis vide an appointment letter dated **8th March, 2012**, was confirmed by the Respondent vide a letter of confirmation dated **11th December, 2012**; and was earning a basic salary of **Kshs.21,442/=**, a house allowance of **Kshs.10,000/=** and a commuter allowance of **Kshs.2,000/=**.*

(b) *that according to the appointment letter, any remuneration increment would be performance-based.*

(c) *that while employed by the Respondent, the Claimant enrolled as a student with the 2nd Interested Party in the year 2016 and pursued various courses and passed examinations administered by the 1st Interested Party.*

- (d) that on **5th February, 2025**, the Claimant received a Notice to Show Cause letter referenced **NCWSC/HRD/IR/VOL 18/015587/2025** from the Respondent indicating that after authentication and verification of the Claimant's **Diploma Certificate in Human Resource Management from the 2nd Interested Party**, the same was found to be a forgery.
- (e) that vide a letter dated **26th February, 2025** to the Respondent, **the 2nd Interested Party** narrated the timelines of the Claimant's enrollment in the 2nd Interested Party Institute **upto the issuance of a Diploma in Human Resource Management**; and guaranteed the Respondent that it would follow up with the 1st Interested Party to regularise the records to reflect the Claimant's credentials.
- (f) that on **15th April, 2025**, the Respondent suspended the Claimant from employment on account of **forged academics certificates**, and indicated that the Claimant's response to a Notice to Show Cause earlier issued was not satisfactory.

*That the Respondent further indicated that it would withhold the Claimant's **basic salary and commuter allowance, and that the Claimant would only be receiving her house allowance.***

*(g) that on **16th April, 2025** (the following day), the Claimant received summons to appear before the Respondent's disciplinary committee on **29th April, 2025**; and was apprehensive that the Respondent would terminate her employment on account of a non-existent forgery.*

(h) that the reason for the Claimant's suspension, being forgery of academic certificates, was a false charge.

3. The application was placed before me under a certificate of urgency on **30th April, 2025**; and upon considering the application, I certified the same as urgent and granted Interim Orders restraining the Respondent, its employees and/or any other person claiming through it, from conducting and/or continuing with disciplinary proceedings against the Claimant/Applicant, pending hearing and determination of the application. I further directed that both the application

and the orders so granted **be served within 3 days of the order, and that an affidavit of service be filed.**

4. The Court's record shows that the aforesaid order was duly extracted by the Court's Deputy Registrar, **and was duly uploaded on to the Court's CTS on 2nd May, 2025.**

5. The application is opposed by the Respondent vide a replying affidavit of **George Okech** sworn on 18th July, 2025. It is deponed in the said replying affidavit, ***inter alia***:-

(a) *that the Court's Order herein was **not** served upon the Respondent until **9th June, 2025**, by which time the Respondent's Corporate Disciplinary Committee had concluded the disciplinary hearing and **recommended** for the Claimant's dismissal on grounds of forgery and misrepresentation of academic credentials.*

(b) *that the application has been overtaken by events as the Respondent, acting on recommendations of its Corporate Disciplinary Committee, **dismissed the Claimant on grounds of forgery and false***

misrepresentation of her academic credentials.

(c) that being a subsidiary of the Nairobi City County, and its employees being public servants regulated by the Public Service Commission, the Respondent received guidelines on **“Authentication of Academic and Professional Certificates in the Public Service (dated 19/10/2022)”** from the Public Service Commission (PSC); and that in compliance thereof, the Respondent has been auditing its employees’ academic and professional certificates.

(d) that the Claimant’s Diploma in Business Studies (Human Resource Management Option), **allegedly obtained from the 2nd Interested Party and issued by the 1st Interested Party, and submitted to the Respondent by the Claimant**, was found by the 1st Interested Party to have been a forgery.

(e) that the Claimant was **lawfully** suspended and was, subsequently vide a letter dated **16th April, 2025**, required to appear before a disciplinary

committee on **29th April, 2025**; which date was changed to **22nd May, 2025** after the Claimant claimed to have been unwell on **29th April, 2025**.

(f) that the Claimant did not respond to subsequent summons nor attend the scheduled disciplinary proceedings on **22nd May, 2025**.

(g) that unbeknownst to the Respondent, the Claimant had on **29th April, 2025**, when she claimed to have been unwell, obtained interim orders restraining the Respondent from conducting and/or continuing with the disciplinary proceedings against her.

(h) that the current application has been **rendered moot by subsequent events**, constitutes an abuse of the Court's due process and represents a purely academic exercise that entails a waste of valuable judicial time.

6. The Claimant filed a further affidavit sworn by her on **13th November, 2025** and stated that by the time the (disciplinary) proceedings of **22nd May, 2025** were taken, the Orders issued on **30th April, 2025** had been properly

served via email on 16th May, 2025, and that the proceedings taken on 22nd May, 2025 were **illegal**. No evidence of the alleged service on 6th May, 2025 was, however, exhibited by the Claimant/Applicant.

7. One of the documents annexed to the Respondent's aforesaid replying affidavit is the Claimant's Advocates' email sent to the Respondent on **9th June, 2025 at 9.46 AM**. The said email states:-

"The above matter refers.

Kindly find attached a copy of a Statement of Claim and Accompanying Documents, an application dated 25th April, 2025 and orders issued on 30th April, 2025 for service upon yourselves.

This constitutes proper service in line with Order 5 Rule 22B of the Civil Procedure Rules, 2020.

Kindly confirm receipt."

8. The Respondent is shown to have **acknowledged receipt** of the aforementioned documents, **save for the statement of claim and accompanying documents, on 9th June, 2025 at 10.05 AM.**

9. It is to be noted that the Court had on **30th April, 2025** ordered that the interim orders issued on the said date, together with the application, **be served within 3 days of the said date (30th April, 2025).** It is amazing that service of the said interim orders is **not** shown to have been effected as ordered, and is shown to have been effected **well over one calendar month later**; by which time the Respondent **alleges** that the Claimant had already been dismissed upon completion of disciplinary proceedings against her.

10. It is **not clear why** Counsel for the Claimant/Applicant would move the Court, under a Certificate of Urgency, to issue interim orders in favour of the Claimant and then **fail to serve the orders**, leading to **alleged** dismissal of the Claimant. **I say alleged because none of the parties**

has exhibited the Claimant's termination/dismissal letter. Was she indeed dismissed, and if so when?

11. If a dismissal letter was **issued and was served on the Claimant** as she and/or her Counsel held onto interim orders issued in her favour by the Court, **but** which she and/or her Counsel on record did **not** serve, so be it; **at least for now.**
12. However, if a termination/dismissal letter has **not** issued **or** has issued and is **yet** to be served upon the Claimant, **then the status quo obtaining as at the time of** delivery of this Ruling shall continue obtaining, pending hearing and determination of the suit herein. That is, the Claimant shall remain suspended on the terms stated in her suspension letter pending hearing and determination of the suit herein.
13. I have noted the contents of the 2nd Interested Party's letter to the 1st Interested Party dated **26th February, 2025** (exhibited by the Claimant) whereby the 2nd Interested Party Institute gave **a chronology of the Claimant's training/enrollment in the 2nd Interested Party**

Institute, and denies and/or appears to deny the allegations of forgery levelled against the Claimant.

14. In view of the foregoing **conflicting positions**, evidence on the alleged forgery will have to be taken in a trial, and the Court will make a determination based on that evidence.
15. In view of the foregoing, the Notice of Motion dated 29th April, 2025 is hereby **determined** in terms of **paragraphs 11, 12, 13 and 14 herein above.**
16. The suit herein shall be fast-tracked, and shall be fixed for hearing.
17. Each party shall bear its own costs of the application.
18. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
29TH DAY OF APRIL 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Lemayian for the Claimant

Mr. Nyboma for the Respondent

No appearance for the 1st Interested Party

No appearance for the 2nd Interested Party