REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW NO. E383 OF 2025

REPUBLIC……APPLICANT

VERSUS

COMMISSION ON ADMINISTRATIVE JUSTICE……RESPONDENT

EX PARTE

KENYA REINSURANCE CORPORATION LIMITED AND HILLARY WACHINGA

JUDGMENT

1. The Motion herein, dated 5th June 2025, seeks the judicial review relief, of *certiorari*, to quash the notice of investigations, dated 25th April 2025 and the summons dated 13th May 2025, issued by the respondent and addressed to the *ex parte* applicants.

2. The grounds, upon which the Motion is premised, are set out on the face of the application, as well as on the statutory statement and the verifying affidavit. The grounds, on the face of the application, are really unnecessary, given that the Motion rides on the statutory statement, as filed at the leave stage, or as amended thereafter, and on the affidavit that verifies that statement, or any other filed thereafter with leave of court.

3. There is a statutory statement, dated 27th May 2025. It sets out the same prayers narrated in the Motion. It also sets out the grounds upon which those prayers are made. It is acknowledged that the respondent has power, under sections 8 and 26 of the Commission on Administrative Justice Act, Cap. 7J, Laws of Kenya. However, it is averred that the impugned notice was founded on matters that had been filed before the Nairobi ELRC Nos. 356 and 368 of 2025, by Gladys Jerop Some and Andrew Reagan Ongicha, respectively, against the 1st *ex parte* applicant and others. It is averred that the *sub judice* principle applies, on that account. It is argued that the matter was beyond the mandate of the respondent, for what it sought to

investigate was subject to the Public Procurement and Disposal Act, Cap. 412C, Law of Kenya, the National Cohesion and Integration Act, Cap. 7N, Laws of Kenya, and the Ethics and Anti-Corruption Act, Cap. 7H, Laws of Kenya.

4. It is also averred that whereas the mandate of administrative justice is to look at decision-making by administrative bodies, to ensure that such bodies act lawfully, reasonably and fairly, such bodies are still bound by Article 47 of the Constitution and the rules of natural justice, with respect to issuance of a notice, containing adequate particulars, to enable the person addressed to respond appropriately. It is averred, in respect of the instant case, that the impugned notice of did not contain any details at all. It is pointed out that the *ex parte* applicants raised issues on the validity of the impugned notice, whereupon the respondent issued the impugned summonses. When the *ex parte* applicants allegedly visited the offices of the respondent, to address the issues, they were ignored.

5. The statutory statement is supported by a verifying affidavit, sworn on 27th May 2025, by the 2nd *ex parte* applicant. It largely regurgitates the contents of the statutory statement, almost word for word, to the extent that it can be described as its replica.

6. Several documents are exhibited to the verifying affidavit, in support of the quest. There is the letter bearing the impugned notice, dated 25th April 2025. There are copies of pleadings and other documents from the proceedings in Nairobi ELRC Nos. 356 and 368 of 2025. There is a copy of the letter, dated 15th May 2025, from the Advocates for the *ex parte* applicants, addressed to the respondent, raising the issues the subject of the impugned notice and the impugned summons, together with the documents accompanying that letter. Finally, there are copies, of the 2 letters, which bear the impugned summonses, addressed to the Chairperson of the Board of the 1st *ex parte* applicant and the 2nd *ex parte* applicant.

7. Upon being served with the Motion, the respondent entered appearance, and responded to the application, by a notice of

preliminary objection, and a replying affidavit. The preliminary objection, dated 30th October 2025, raises issues around jurisdiction, on the basis that the matters, raised by the respondent in its notice of investigations, were anchored on Article 232 of the Constitution and the Commission on Administrative Justice Act; it challenges the manner the respondent executed its constitutional and statutory mandate; and it does not address issues around employment and labour relations, but touches on the oversight and investigatory mandate of the respondent.

8. The issues, raised in the preliminary objection, were addressed and disposed of. This matter had been initiated at the High Court, in Milimani HCJRMISC/E059/2025. It was placed before Chigiti J, on 29th May 2025, who was of the view that the court with jurisdiction, over the issues arising, was the Employment and Labour Relations Court, and directed that the matter be transferred to that court. Upon the transfer, the leave, to bring the Judicial Review proceedings, was granted by Ongaya J, on 5th June 2025, and the Motion of 5th June 2025 was filed. The issue of jurisdiction was then raised in the preliminary objection, whereupon an order was made, on 19th November 2025, that the court with jurisdiction was the High Court, and the matter was transferred back to the High Court. That is how it now falls upon me to dispose of it.

9. An issue could be raised, as to whether the Employment and Labour Relations Court has jurisdiction to order the return of the matter to the High Court, once the High Court, in the decision of 29th May 2025, had decided that it had no jurisdiction. I wonder whether I would have jurisdiction, once my colleague, at the High Court, in the decision of 29th May 2025, decided that there was no jurisdiction, and that the jurisdiction lay elsewhere. There would also be the issue as to whether the matter was borderline, capable of being handled by either court. The ruling, which made the orders of 19th November 2025, did not address itself to those questions. However, to avoid the parties being kicked about, back and forth, from one court to the next, I shall determine the matter.

10. The replying affidavit was sworn by the Secretary of the respondent. She avers that the respondent is a constitutional commission, having been established under Article 59 of the Constitution and section 3 of the Commission on Administrative Justice Act. It is asserted that under the Commission on Administrative Justice Act, the respondent has power and mandate to do that which the *ex parte* applicants were complaining against, carrying out of investigations and issuance of summonses. It is averred that complaints were received, against the *ex parte* applicants, and the respondent wrote to the *ex parte* applicants, concerning those complaints, but there was no response. Thereafter, a notice of investigations was issued, in accordance with the Commission on Administrative Justice Act, but there was no response to the notice. Staff from the respondent then visited the offices of the 1st *ex parte* applicant, but they were denied access and audience. It is asserted that that recalcitrance is what prompted the issuance of the summonses addressed to the officers of the 1st *ex parte* applicant.

11. On the matter of the investigations being *sub judice* Nairobi ELRC Nos. 356 and 368 of 2025, the respondent presents 2 reactions. It is averred that the investigations preceded the 2 court cases, which causes related to specific employment disputes, concerning specific employees. It is averred that the complaints, that the respondent was investigating, had been raised anonymously, hence they related to parties other than those in Nairobi ELRC Nos. 356 and 368 of 2025. On the matter of the respondent exceeding its mandate, it is argued that the respondent was not investigating corruption or procurement compliance, but maladministration, which is within the scope of its mandate. It is further argued that the existence of either regulatory body did not oust the jurisdiction of the respondent, rather it complemented it, for, upon completion of its investigations, the respondent could still refer the matter to those other entities.

12. On the issue of the notice of investigations lacking specifics, it is averred that its object is to notify, and not disclose the entire evidence or procedural strategy, for such full disclosure could compromise the integrity of the investigations. It is asserted that the

decision, by the *ex parte* applicants, not to honour the summons by the respondent, served to undermine the oversight mandate of the respondent. It is argued that the *ex parte* applicants were given an opportunity to appear before the respondent, respond to the allegations made and to be heard on them, but they chose to stay away. It is asserted that the letter from their Advocates, dated 15th May 2025, did not amount to compliance with the summonses, for it neither sought to respond substantively to the issues raised, nor to engage with the respondent, but rather to frustrate the efforts by the respondent. It is asserted that there was an opportunity to appear before the respondent, on 26th May 2025, but instead the *ex parte* applicants rushed to court.

13. It is argued that the application is premature, for no adverse findings were made against the *ex parte* applicants, as the matter was still at investigative stage. It is submitted that the proceedings are an attempt to curtail and subvert the constitutional powers and functions of the respondent, and that it would be a dangerous precedent, to grant the orders, as that would enable institutions and their executives to evade accountability by rushing to court.

14. Several documents are attached to the affidavit. There is a bundle of letters, and other papers, comprising the complaints received by the respondent, on the alleged goings on at the 1st *ex parte* applicant. There is a copy of a letter, dated 21st January 2025, addressed to the Chairperson of the respondent, bringing the matter of the complaints to the attention of the *ex parte* applicant, informing that an investigation could be conducted, and inviting a response to the issues, specifically highlighting the steps to be taken to resolve the matters raised. There is also a letter, dated 25th April 2025, addressed to the Principal Secretary of the National Treasury, notifying him of the intended investigation of the respondent, and highlighting the specific allegations made, which is copied to the *ex parte* applicants. Finally, there is a copy of the summons, dated 13th May 2025, addressed to the Chairperson of the 1st *ex parte* applicant, requiring her attendance at the respondent, on 26th May 2025, and pointing out what would happen in the event of default.

15. There is another affidavit, in response to the Motion of 5th June 2025, sworn on 29th October 2025, by Gladys Jerop Some, the claimant in Nairobi ELRC Nos. 356 of 2025, in her purported capacity as the 1st interested party. From the record before me, I note that the court had ordered, on 5th June 2025, that the instant matter be handled alongside Nairobi ELRC Nos. 356 and 368 of 2025, as the 2 sets of matters were related, directions were given on 9th June 2025, that the substantive Motion be served on those claimants, there were also directions, given on 21st July 2025, that the respondent and those claimants file submissions on the substantive Motion, and this affidavit is by one of those claimants. She avers that the investigations in question did not relate to her case in Nairobi ELRC No. 356 of 2025, asserting that she only became aware of them after she was served with the papers herein. She asserts that the said investigations were not based on her suit, hence they were not caught in the principle of *sub judice*, as she had since withdrawn the suit, after she was reinstated to her position. She avers that the respondent had power to investigate administrative actions, to determine whether they were expeditious, lawful, reasonable and procedurally fair. It is further averred that there was no proof that the impugned notice of investigations and the summonses were tainted by illegality, irrationality, unreasonableness and procedural impropriety.

16. The application was canvassed by way of written submissions, filed by the *ex parte* applicants and the respondent, based on directions that were given on 21st January 2026. I have not come across written submissions by the interested parties.

17. The written submissions by the *ex parte* applicants are dated 16th February 2026. They identify only 1 issue for determination, and that is whether the notice of 25th April 2025 and the summonses dated 13th May 2025 were unconstitutional, and ought to be quashed by an order of *certiorari*. The submissions turn on the matters of *sub judice* and the mandate of the respondent.

18. On *sub judice*, section 6 of the Civil Procedure Act, Cap 21, Laws of Kenya, is cited, to make the point that no court should assume jurisdiction over a suit in which there is a prior suit, between the same parties, turning on the same facts. Section 30 of the Commission on Administrative Justice Act is cited, to make the point that the respondent is expressly barred from investigating matters that were pending before a court of law. It is argued that the notice of 25th April 2025, sought to inquire into matters that were before a court of law, to wit Nairobi ELRC Nos. 356 and 368 of 2025.

19. The second limb of the submissions is that the notice of 25th April 2025, stretched the mandate of the respondent beyond what was prescribed in the Commission on Administrative Justice Act, and extended to matters that were governed by other statutes, such as the Public Procurement and Disposal Act, the National Cohesion and Integrity Act, the Ethics and Anti-Corruption Commission Act and the State Corporations Act, and that the issues raised around procurement, conflict of interest, ethnic bias and victimization, mismanagement of imprests and irregular payments governance should be addressed under those other statutes.

20. The third limb of the submissions turn on pure fair administrative action. It is averred that the respondent is an administrative body, with mandate on administrative justice, and, as such, it is bound to act lawfully, reasonably and fairly in its dealings with the public, by dint of Article 47 of the Constitution and the rules of natural justice. With regard to the facts of the matter, it is submitted that it was bound to issue a notice which contained adequate particulars for the person to whom it was addressed to respond appropriately. It is submitted that the notice of 25th April 2025 was inadequate, for it lacked particulars, and it did not meet the requirements of the Fair Administrative Action Act, Cap. 7L, Laws of Kenya.

21. Several decisions are cited in support. *Republic vs. CAJ & another ex parte Samson Kegengo Ongeri* [2015] eKLR and *Amarnath vs. CAJ (Office of the Ombudsman) & 2 others* [2022] KEELC 12650

(KLR), turned on exercise of jurisdiction by the respondent, over matters that were subject to litigation, and it was stated that there is a bar to investigations, where there is active litigation over the same subject-matter. *Municipal Council of Mombasa vs. Republic, Umoja Consultants Limited* [2002] eKLR ruled that *certiorari* would issue where the decision-making body had no jurisdiction to do what it purported to do.

22. The respondent, in its written submissions, identifies 4 issues for determination, around whether it had acted within constitutional and statutory mandate, whether the principle of *sub judice* barred the investigations, whether there was a violation of the rights of the *ex parte* applicants to fair administrative action, and whether the judicial review proceedings were premature and an abuse of the court process.

23. On the first issue, the respondent submits that it acted within constitutional and statutory mandate, to the extent of Article 59(4) of the Constitution, and section 3 of the Commission on Administrative Justice Act, which authorises it to investigate conduct or omission in State affairs or public administration, by a State organ or officer, in National or County Government, that may result in impropriety or prejudice. Section 8 of the Commission on Administrative Justice Act is also cited, with respect to the range of issues or complaints that may be investigated, which include abuse of power, unfair treatment, manifest administrative injustice, and oppressive unfair or unresponsive official conduct within the public sector.

24. It is also submitted that there is authority from the Constitution and the Commission on Administrative Justice Act for issuance of summonses, to require attendance of public officers and production of documents to aid in investigations. *National Land Commission* [2015] eKLR and *Republic vs. CAJ ex parte NSSF Board of Trustees* [2015] eKLR are cited. It is finally argued that the anonymous complaints turned on maladministration, abuse of power, unfair treatment, manifest injustice, and unlawful and unfair

official conduct, which brought them within the ambit of the mandate of the respondent.

25. On the *sub judice* principle, it is submitted that the investigations were not *sub judice* the suits in Nairobi ELRC Nos. 356 and 368 of 2025, for those suits were not before the High Court, but the Employment and Labour Relations Court; the investigations were commenced before those suits were filed; and the 2 cases were specific to the claimants in them, turning on matters relating to suspension, discipline and redeployment, while the investigations covered broader systemic issues around maladministration, unethical governance practices, non-compliance with administrative procedures and unresponsiveness to the oversight mandate of the respondent. It is further argued that the applicable law allows receipt of anonymous complaints; the parties in Nairobi ELRC Nos. 356 and 368 of 2025 and the parties, the subject of the complaints and investigations, were different; and the suits, in Nairobi ELRC Nos. 356 and 368 of 2025, are admittedly no longer pending. *ASL Credit Limited vs. Abdi Basid Sheikh Ali & another* [2019] eKLR and *Richard Kiplangat Sigei vs. Grace Sang* [2020] eKLR are cited in support.

26. On whether there was violation of the rights of the *ex parte* applicants to fair administrative action, it is submitted that section 37 of the Commission on Administrative Justice Act obligates issuance of a notice of investigation. However, it is argued, there is no requirement for exhaustive or specific particulars at that stage, for the requirement is to notify the affected party of the investigations, but not disclosure of the evidential basis or procedural strategy in advance, for disclosure of granular particulars could prejudice or undermine the investigations. It is argued that the *ex parte* applicants were afforded fair administrative action, for on 21st January 2025 an inquiry was made to them on the basis of the anonymous complaints, to which they did not respond; on 25th April 2025 they were given a notice of investigations, to which they did not respond; on 6th, 8th and 9th May 2025, the respondent reached out to them, but they declined to engage; whereupon summonses to appear were issued, for an appearance on 26th May 2025.

27. On whether these judicial review proceedings are premature and abusive of the court process, it is argued that a party cannot invoke jurisdiction of the court to restrain a constitutional commission from discharging its constitutional and statutory mandate, except where it is demonstrated that it acted *ultra vires*. It is submitted that no adverse findings had been made against the *ex parte* applicants, for the matter was just at the investigation stage, and they had been given a fair opportunity to respond, which they squandered. The court proceedings are said to be premature, for they are designed to derail the investigations.

28. The remit of a court, exercising Judicial Review jurisdiction, has been discussed in a number of cases, among them *Municipal Council of Mombasa vs. Republic, Umoja Consultants Limited* [2002] eKLR, where the court discussed what ought to be considered when judicial review orders are sought. It should be about the process leading up to the making of the impugned decision. That would naturally raise the issue of jurisdiction, to make the decision, as the first criteria. The next would be issues around natural justice, whether the parties affected had been given an opportunity to be heard prior to the decision-making. The issue of what was considered, and an assessment of whether what was considered was relevant. It would not be a review of the merits of the decision, but of the process of the decision-making.

29. *Pastoli vs. Kabale Local Government Council & others* [2008] 2 EA 300 brought into the matrix consideration of issues around illegality, irrationality and procedural impropriety. These summarise jurisdiction, natural justice and fair administrative action.

30. The *certiorari* order issues to quash a decision made without jurisdiction, or attended by or tainted with illegality, irrationality and procedural impropriety.

31. Only 1 order is sought, in the statutory statement and the Motion filed herein, namely *certiorari*. These proceedings are

premised on the Common Law remedy of Judicial Review, rather than the Constitution and the Fair Administrative Action Act, hence they were not commenced by way of a constitutional petition or an originating motion. The principal pleading, for the purposes of the Common Law Judicial Review, is the statutory statement.

32. The 1 order is sought on the argument that a decision was made on 25th April 2025, to notify the *ex parte* applicants of an investigation by the respondent, and another decision was made on 13th May 2025, to summon the Chairperson of the 1st *ex parte* applicant and the 2nd ex *parte* applicant, for an appearance before the respondent on 26th May 2025. The objection, to these 2 decisions or actions, is premised on 2 principal arguments, *sub judice* and *ultra vires*, and 1 secondary argument, violation of fair administrative action principles.

33. I will start with the *sub judice* argument. The *ex parte* applicants point at Nairobi ELRC Nos. 356 and 368 of 2025, to argue that the investigations ought not have been commenced as these 2 cases were pending against them, and they turned on the same issues that were the subject of the investigations. The contours of *sub judice* are not contested. They are notorious, as laid out in section 6 of the Civil Procedure Act. There ought to be pending court proceedings, that is proceedings that are yet to be concluded, and the objective, of *sub judice*, ought to be avoidance of discussion on matters around those cases, which are likely to influence the mind of the court or prejudice the proceedings one way or the other. In the context of section 6 of the Civil Procedure Act, a court ought not entertain a second suit, in circumstances where another suit, filed prior, is pending, where the parties are the same, and where the facts in the first suit are the same as those in the second suit, and the issues framed are the same or similar.

34. The issue, in this case, is not about 2 parallel suits, between the same parties, over the same issues or facts. Rather, it is about investigations being conducted over a matter which the *ex parte* applicants argue is between the same parties, over the same issues,

based on the same facts. It also emerges that the provisions of the Commission on Administrative Justice Act, at section 30, do bar investigations, if they relate to a matter that is already in court. That is to say that the respondent ought not investigate a complaint or an issue, if that same issue is already before the court. That presupposes that the issue before the court is between the same parties as are before the respondent, and the investigations by the respondent turn on the same issues and facts as are before the court.

35. The question then is whether the investigations, that the respondent was conducting on the *ex parte* applicants, were *sub judice* the cases in Nairobi ELRC Nos. 356 and 368 of 2025. The initial letter, from the respondent, on the matter, was written on 21st January 2025, addressed to the Chairperson of the 1st *ex parte* applicant, with respect to complaints that had been received anonymously, about 2 individuals, being the 2nd *ex parte* applicant, who is or was the managing director of the 1st *ex parte* applicant, and the human resource manager of the 1st *ex parte* applicant, concerning irregular transfers of female staff and discrimination. The suits, in Nairobi ELRC Nos. 356 and 368 of 2025, were commenced vide pleadings dated 25th April 2025.

36. The matter, between the respondent and the *ex parte* applicants, started in January 2025, and the suits were filed in court on or around 25th April 2025. The matter, in the hands of the respondent, preceded the suits. Section 30 of the Commission on Administrative Justice Act makes reference to pendency of suits, and it would appear that it would not matter when the suits are or were filed. If the suits are filed during the pendency of the investigations, they would serve to freeze the investigations, so that the respondent defers to the court, and awaits the outcome of the court process, before resuming the investigations, should the suits be dismissed, or are resolved in a manner that has no bearing on the investigations. If the suits are filed prior to the investigations commencing, the commencement of the investigations ought to be stayed, until the suits are resolved.

37. Did the investigations have a bearing on the suits, or, put differently, did the suits have a bearing on the investigations?

38. The letter of 21st January 2025 was on irregular departmental transfers of female staff and discrimination. At that time, the respondent was not yet conducting an investigation. It was merely notifying the 1st *ex parte* applicant of the complaints or allegations, so that they could be investigated, by the 1st *ex parte* applicant, in the first instance, and a report made to the respondent within 21 days, according to that letter. At that point, it was a mere inquiry, which, if adequately addressed, would have laid the matter to rest, without the necessity of investigations being carried out. The issue of the investigations commencing came up much later, after the 1st *ex parte* applicant apparently failed to act on the letter of 21st January 2025, by conducting the internal investigations proposed, to address the issues raised, and reporting on the remedial action that the respondent required, within the 21 days given.

39. The matter of the investigations into the complaints, to be conducted by the respondent, was first broached in the letter of 21st April 2025, written by the respondent, addressed to the Principal Secretary of the National Treasury, and copied to the *ex parte* applicants. The said letter was headed notification of intended investigation, of alleged maladministration. The complaint, in this second letter, appears to focus on the 2nd *ex parte* applicant, for it leaves out the human resource manager, who had been mentioned in the earlier letter. The list of complaints or key areas are expanded, beyond irregular departmental transfers of female staff and discrimination, to include such other matters as irregular recruitments and promotions, irregular procurement and conflict of interest, governance lapses, mismanagement of imprests and irregular payments of allowances, non-payment of bonuses to retired staff, implementation of unbudgeted activities, delayed payments to suppliers and claimants, and workplace harassment and intimidation. It is indicated, in the letter, that a team of investigators, from the respondent, would visit the head offices of the 1st *ex parte* applicant to interview staff and review relevant documentation. The

letter calls for support and cooperation, to facilitate access to documents and officers, who may assist the investigations.

40. As the letter of 21st April 2025 was being written, the claimants, in Nairobi ELRC Nos. 356 and 368 of 2025, were with their Advocates, swearing, on that 21st April 2025, the affidavits that verify their statements of claim, dated 25th April 2025. Both claimants were working as communication officers with the 1st *ex parte* applicant, and were redesignated as marketing and business development officers. They were both accused of working with bloggers and others to defame the 2nd *ex parte* applicant and the leadership of the 1st *ex parte* applicant, and they both were sent on compulsory leave. Their suits were anchored on defamation and the job redesignation, and they sought monetary compensation, among other reliefs.

41. The case by the respondent is that its officers visited the offices of the 1st *ex parte* applicant, on 6th, 8th and 9th May 2025, but they received no support and cooperation, with the investigations, for they were denied access to documents and the officers, hence the respondent changed tact, by way of issuing the summonses, dated 13th May 2025, addressed to the Chairperson of the 1st *ex parte* applicant, requiring attendance before the respondent on 26th May 2025. It would appear that the officers of the 1st *ex parte* applicant, who had been summoned, did not harken to the summonses, for they instead moved to court by the *ex parte* chamber summons, dated 27th May 2025, a day after the date that they were to appear before the respondent, according to the summons, and their matter was placed before the Judge on 28th May 2025.

42. Were the investigations *sub judice* the suits? It is not clear, as to when the suits were commenced, but their statements of claim are dated 25th April 2025. The letter, to the Principal Secretary, giving notification of commencement of the investigations, was issued on the same date the pleadings were drawn and probably filed. It would then appear that the suits were filed simultaneously with the commencement of investigations, and by 13th May 2025, when the summons were issued, and 26th May 2025, when the Chairperson of

the 1st *ex parte* applicant and the 2nd *ex parte* applicant were to appear before the respondent, the suits were already filed in court. The respondent does not contest the filing of the said suits at about that time; its argument is that the said suits were not *sub judice*.

43. Conceptually, the principle of *sub judice* has 2 aspects to it, one narrow, the other broad. The narrow meaning is that in section 6 of the Civil Procedure Act, where 2 or more suits are filed, between the same parties, raising the same issues and founded on the same facts. In this narrow sense, the courts seized of the later suits are barred from entertaining them, on account of the pendency of the first suit in time. It also bars parties from filing multiple suits, against the same parties, raising the same or similar issues, founded on the same or similar facts. The broader sense of *sub judice* affects the general public, that is apart from the courts seized of the matters and the parties in them. It bars the general public from commenting on or discussing matters or suits pending in court, in any fora, to obviate possible influence of or embarrassment to the court.

44. I could, perhaps, elaborate. The narrow aspect of *sub judice* is a procedural bar against parallel litigation. Its conditions are that there should be more than 1 suit, between the same parties or parties claiming under them, over the same issue or subject-matter, based on the same facts, and the previously instituted suit is pending before a competent court. The effect of *sub judice* is that the latter suit is not to be proceeded with, and it may be stayed or dismissed; and the aim is to prevent conflicting outcomes, wastage of judicial resources and harassment of parties. The underlying rationale, of the narrow aspect of *sub judice*, is to avoid multiplicity of proceedings, and to protect the finality and consistency of adjudication.

45. The broad aspect of *sub judice* is a policy against public discussion of pending court proceedings. Its scope extends beyond formal civil suits, to cover any pending judicial proceedings, be they civil, criminal or administrative; and it is often invoked in the context of contempt of court or media restrictions. Its effect is to restrict extra-judicial commentary, by way of public statements, media

reports or social media discussions, that could prejudice a fair trial or influence the court; and it protects the integrity of the judicial process. Its underlying rationale is to preserve the impartiality of adjudication, and to ensure that parties, including the court, are not pressured or prejudiced by public opinion before judgement.

46. *Sub judice*, for the purposes of this case, should be understood in both contexts, the broad and the narrow. Section 6 of the Civil Procedure Act does not apply here. There was no instance of a court handling a suit or suits that were parallel to Nairobi ELRC Nos. 356 and 368 of 2025, for the respondent is not a court, in the strict sense of section 6 of the Civil Procedure Act, but, in the discharge of its duties, with relation to administrative justice, is a quasi-judicial body. The investigations, by the respondent, could be seen as something akin to a suit, for it would arrive at an outcome which determines the rights and interests of the parties. If the outcome would be inconsistent with that of the court, then there would be embarrassment all round, hence the application of the *sub judice* principle, to obviate that.

47. So, in this case, the 2 processes, that is the 2 court cases and the investigations by the respondent, were running parallel to each other. Looked at broadly, it could be argued that the respondent ought to have refrained from pushing ahead with the investigations in view of the suits. However, when looked at narrowly, the *sub judice* principle would not apply, given that the claimants, in Nairobi ELRC Nos. 356 and 368 of 2025, have not been demonstrated to have been party to the complaint, although it affected them, for there is no evidence that they had anything to do with the generation of the anonymous complaints. More importantly, the Civil Procedure Act does not govern the proceedings conducted by the respondent, hence section 6 of the said Act would not apply to or affect them.

48. When the substance of those suits is considered, against the content of the investigations the respondent was conducting, some convergences would be observable. The 2 suits are about the issues flagged in the letter of 21st January 2025, about employment,

specifically on departmental transfers, one of which was of a female staff. The discrimination aspect is not explicit, save that the 2 interested parties do not appear to come from the same ethnic community with the 2nd *ex parte* applicant, going by their names. The suits raise issues around victimization, on grounds that the interested parties had allegedly, according to the 2nd *ex parte* applicant, based on the pleadings in Nairobi ELRC Nos. 356 and 368 of 2025, colluded with others, individuals and entities, to undermine the 2nd *ex parte* applicant and the general leadership of the 1st *ex parte* applicant. To that extent, therefore, it would not be far-fetched to argue that some of the aspects of the investigations were on matters that were before a court or courts of law, in Nairobi ELRC Nos. 356 and 368 of 2025.

49. However, there is need to examine the scope of section 30 of the Commission on Administrative Justice Act, to assess whether that provision should operate in the manner alluded to by the *ex parte* applicants, so as to extend the application of the principle of *sub judice*, with respect to Nairobi ELRC Nos. 356 and 368 of 2025.

50. Section 30 of the Commission on Administrative Justice Act is designed to limit the jurisdiction of the respondent, by identifying areas in which the respondent would have no jurisdiction. In its own terms, the provision says:

> *"30. Limitation of jurisdiction*
>
> *The Commission shall not investigate—*
>
> *(a) proceedings or a decision of the Cabinet or a committee of the Cabinet;*
>
> *(b) a criminal offence;*
>
> *(c) a matter pending before any court or judicial tribunal;*
>
> *(d) the commencement or conduct of criminal or civil proceedings before a court or other body carrying out judicial functions;*
>
> *(e) the grant of Honours or Awards by the President;*
>
> *(f) a matter relating to the relations between the State and any foreign State or international organization recognized as such under international law;*

(g) anything in respect of which there is a right of appeal or other legal remedy unless, in the opinion of the Commission, it is not reasonable to expect that right of appeal or other legal remedy to be resorted to; or
(h) any matter for the time being under investigation by any other person or Commission established under the Constitution or any other written law."

51. Section 30(b)(c) and (d) of the Commission on Administrative Justice Act is what should be of interest.

52. Section 30(b) of the Commission on Administrative Justice Act means that the respondent has no jurisdiction to investigate a criminal matter, which would mean that there is no jurisdiction over matters of a criminal nature. The respondent should not do what police detectives and investigators do, for investigation of crime is a matter within the sole mandate of the police.

53. Section 30(c) of the Commission on Administrative Justice Act means that there is no jurisdiction to investigate a matter that is pending in court. The provision is worded in a manner which limits it to a particular case or matter. The respondent has no jurisdiction to get involved in a matter that a court or tribunal is seized of. That provision is not general, but specific, so that where a specific civil case or cause is filed in court or at a tribunal, and complaints are raised over it, the respondent would have no mandate or jurisdiction to carry out investigations into the issues around the same matter. There ought not be parallel proceedings or inquiries, one in court and the other before the respondent, over the matter the subject of the suit. So that when a case goes to court, and a complaint is raised with the respondent, at the same time, over it, there would be no jurisdiction for the respondent to pursue the complaint.

54. Section 30(d) is related to section 30(c), but limited to how specific cases are commenced and conducted. The respondent would have no mandate over how criminal and civil cases are commenced and conducted. It cannot probe the police, or the prosecution, or the

courts, or the Advocates, or the litigants themselves, over how such cases are initiated in court, nor on how the cases are conducted in court, by either of those 4 cohorts.

55. It is discernible, from the reading of section 30(c) and section 30(d) of the Commission on Administrative Justice Act together, that they relate to judicial proceedings, and exhibit respect for judicial independence. The respondent may make enquiries into how administrative matters are handled, by administrative bodies, but the mandate or jurisdiction to do that does not extend to court cases. The respondent cannot probe into how the courts handle the cases that are filed before them, nor carry out investigations into matters that are already in court. These provisions relate to individual or specific matters. If Kamau, for example, files a matter in court, and another person files a complaint with the respondent, against Kamau, over the same matters or issues, in respect of which Kamau has moved to court, and which are the subject of inquiry by the court in that suit, the respondent ought not investigate that matter. Similarly, the respondent ought not investigate a complaint by Kamau over the same issue over which he is in court. The respondent, however, would have mandate to investigate complaints, by other individuals, on matters which may be related to the issue the subject of the litigation by Kamau, so long as the investigation has no bearing on the case in court.

56. Looking at the framing of section 30(c)(d) of the Commission on Administrative Justice Act, I am not persuaded that that provision applies to this case, to prevent the respondent from investigating the complaints made against the *ex parte* applicants. It has not been demonstrated that the investigations that the respondent was starting to conduct were on a specific matter that was in court. It was not demonstrated that the respondent was investigating the matter relating to Gladys Jerop Some and the litigation in Nairobi ELRC No. 356 of 2025, nor that relating to Andrew Reagan Ongicha and the litigation in Nairobi ELRC No. 368 of 2025. It would appear that the complaints might have been over the same subject-matter with the 2 suits, but there is no evidence that the investigations were to be into

the 2 cases that were in court, or about how the 2 cases were commenced or how they were being conducted. There is nothing before me, to establish that the investigations that the respondent was intent on conducting had anything to do with Nairobi ELRC Nos. 356 and 368 of 2025.

57. I must point out that I am not too clear about the role of the alleged interested parties in this cause, for they were never formally made parties to the suit. Their involvement was predicated on the order of 5th June 2025, by Ongaya J, that the judicial review proceedings were to be conducted together or simultaneously with the suits in Nairobi ELRC Nos. 356 and 368 of 2025, by Rutto J, who was seized of them, as the said suits were related to the instant cause. When Rutto J decided, on 19th November 2025, that the judicial review matter ought to be handled at the High Court, that predication lost is foundation. The judicial review cause was transferred to the High Court, minus Nairobi ELRC Nos. 356 and 368 of 2025, which were supposed to be heard simultaneously with it, going by the earlier direction. That then suggested that there was no longer foundation for the claimants, in Nairobi ELRC Nos. 356 and 368 of 2025, continuing to be party to the instant judicial review matter, as no joinder nor consolidation order had been made, by either Ongaya J or Rutto J, that would have made them parties, and the said claimants never moved the court, at any stage, for such joinder or consolidation.

58. On whether the respondent would act or acted *ultra vires*, its constitutional and statutory mandate, by investigating the issues listed in the letter of 25th April 2025, for those issues or areas are covered by other statutes, I would disagree with the position taken by the *ex parte* applicants. Upholding such a construction, of the Commission on Administrative Justice Act vis-à-vis the other statutes, would be to completely cripple the respondent, and render it impotent. The jurisdiction of the respondent emanates from the Constitution, at Article 59(4), and its mandate is set out in Article 59(2)(h)(i)(j). That constitutional mandate cannot be taken away by legislation, through creation of bodies dedicated to certain social and

economic sectors. The respondent discharges its mandate, despite existence of the other agencies, for each one of them has its own area of focus, and there is no overlap. The issue of the respondent, trespassing into mandates of other constitutional and statutory bodies, would not arise, so long as its activities are limited to issues around maladministration and administrative injustice.

59. Moreover, section 30 of the Commission on Administrative Justice Act, which delineates the jurisdiction of the respondent, states how the respondent is to relate to the other agencies, by providing, at section 30(h), that the respondent shall not investigate "*any matter … under investigation by any other person or Commission established under the Constitution or any other written law*." The *ex parte* applicants have not placed before me evidence that the matters, sought to be investigated by the respondent, were under active "*investigation by any other person or Commission established under the Constitution or any other written law*," to warrant the respondent staying clear of them.

60. On whether the respondent violated the rights to fair administrative action of the *ex parte* applicants, it would be noted that no action, adverse to the *ex parte* applicants, had or has been taken so far. There was an intent expressed, to carry out investigations, founded on anonymous allegations or complaints made. Receipt of anonymous complaints is permitted under the law under which the respondent operates, and investigations into such complaints is allowed. Upon receipt of those complaints, the respondent addressed a letter to the *ex parte* applicants, dated 21st January 2025, alerting them of the complaints, and inviting them to address them, and report to the respondent, within 21 days, of what they had done, with regard to the complaints. The *ex parte* applicants did not react to the replying affidavit by the respondent, hence the claim around that letter was not controverted. There is no evidence that that letter was ever responded to, by the *ex parte* applicants, one way or the other. The instructions or directions given in it, which were to be acted upon within 21 days, were also not complied with.

61. The respondent did not address the issue again, until 25th April 2025, when it wrote to the National Treasury, giving notice that it would be conducting investigations on the 1st *ex parte* applicant. That, of itself, gave more than adequate time to the *ex parte* applicants, between 21st January 2025 and 25th April 2025, to conclusively address the issues the subject of those complaints. That letter identified the areas that would have been covered by the investigations, and the modalities, in terms of interviewing officers of the 1st *ex parte* applicant, who would assist with the investigations, and reviewing the relevant documents. It was averred that the respondent despatched its officers to the head offices of the 1st *ex parte* applicant, on 3 occasions, in early May 2025, but those officers did not receive support or cooperation from the 1st *ex parte* applicant. The respondent then escalated the matter, by issuing the summonses to the top officers of the 1st *ex parte* applicant, which prompted or precipitated the instant court action.

62. The *ex parte* applicants only reacted after the matter was escalated, upon issuance of the summonses, which was too late. I am referring to the letter of 15th May 2025, from their Advocates. The prior correspondence, on the issues, inclusive of the notification of investigation, dated 25th April 2025, was ignored. It was only after the summonses, dated 13th May 2025, were served, that the *ex parte* applicants reacted. The letter of 15th May 2025 was not an expression of an intention to cooperate, but of a notification that the *ex parte* applicants would move to court, if the respondent persisted with the intent to investigate.

63. The complaint by the *ex parte* applicants is that the notice, in the letter of 25th April 2025, was insufficient, for it did not disclose adequate information to them, ahead of the investigations. This was a matter about intended investigations, it was not an intended trial, neither was it about an outcome of an investigation or trial, where detailed particulars would have been necessary. There was nothing to disclose by the respondent, and the particulars given were sufficient for the purpose of the intended investigations. There would be usually a minimal role, in the investigations, for the person being

investigated, besides availing themselves for interview, together with the documents and other material that they may be required to avail to the investigators. I am persuaded that the respondent gave adequate notice to the *ex parte* applicants, with sufficient detail and particulars, and afforded them time and opportunity to respond to the queries raised. They chose not to cooperate, which necessitated the escalation that followed.

64. In the end, in view of what I have discussed above, I am not persuaded that the application, for the Judicial Review order of *certiorari*, is substantiated or established, and I find and hold that it has no merit. It is hereby disallowed. The Motion herein, dated 5th June 2025, is disposed of in those terms. The respondent shall have the costs. Orders accordingly.

DELIVERED VIA CTS, DATED AND SIGNED IN CHAMBERS, AT MILIMANI, NAIROBI, ON THIS 11TH DAY OF MAY 2026.

W MUSYOKA
JUDGE

Mr. Abdirahman, Court Assistant.

Advocates
Mr. Najojo, instructed by Manyonge Wanyama & Associates LLP, Advocates for the *ex parte* applicants.
Ms. Kinyua, Advocate for the respondent.
Mr. Gachuba, Advocate for the presumed 1st interested party.