



**Adipo v Teachers Service Commission (Civil Appeal 143 of 2019)  
[2024] KECA 1591 (KLR) (8 November 2024) (Judgment)**

Neutral citation: [2024] KECA 1591 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL 143 OF 2019  
M NGUGI, PO KIAGE & JM NGUGI, JJA  
NOVEMBER 8, 2024**

**BETWEEN**

**SARAH ADIPO ..... APPELLANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

*(Being an appeal from the judgment of the Employment and Labour Relations Court at Kisumu (Mathews N. Nduma J.) dated 14th March 2019 in CAUSE NO. 306 of 2016)*

**JUDGMENT**

**Judgment of Mumbi Ngugi, JA**

1. In her statement of claim before the Employment and Labour Relations Court (ELRC), the appellant, Sister Sarah Adipo, prayed for a permanent injunction suspending the contents of a letter of interdiction dated 6<sup>th</sup> October 2016 issued to her by the respondent.
2. In its judgment dated 14<sup>th</sup> March 2019 dismissing the claim with costs to the respondent, the ELRC (Nduma J.) held as follows:
  9. The court is not persuaded such a prayer is capable of grant upon final determination of the suit on the merits.
  10. Interdiction is one of the disciplinary measures that the respondent lawfully takes pending finalization of intended disciplinary action against an employee or teacher.
  11. The letter of interdiction dated 6<sup>th</sup> October 2016 discloses various offences of alleged breach of clause b (vi), c (iii) and (d) of the third schedule to the *Teachers Service Commission Act*.
3. Dissatisfied with the decision, the appellant filed the present appeal, raising eleven grounds in her memorandum of appeal dated 17<sup>th</sup> July 2019. These grounds are somewhat prolix, contrary to the



provisions of rule 88(1) of the Rules of this Court which provides that “A memorandum of appeal shall concisely set forth under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against”.

4. Summarised as best I can, however, these grounds are that the judgment delivered by the trial court is no judgement in law as envisaged in Order 21 Rule 4 of the Civil Procedure Rules, 2010; that the court: erred in finding that the respondent had commenced a disciplinary process provided for by the law and regulations; misdirected itself in not appreciating that in interdicting the appellant, the respondent had acted in flagrant breach of section (sic) 146 of the Regulations for Teachers, 2015; erred in law in not finding that the respondent did not comply with the provisions of section 146 of the Regulations; erred in: holding that the respondent had satisfied the criteria for interdiction of a head of institution; failed to address the appellant's responses and rebuttals to the allegations in the letter of interdiction; and erred in dismissing the appellant's application by not considering the other and substantive grounds upon which the appellant's suit was based.
5. As a first appellate court, we are under a duty to reappraise the evidence before the trial court and reach our own conclusions. Briefly, the facts presented before the trial court by the appellant were that she was employed by the respondent as a teacher and was deployed as the Principal, Ahero Girls Secondary School. By a letter dated 6<sup>th</sup> October 2016, the respondent served her with a letter of interdiction, citing several grounds against her, to wit: insubordination, infamous conduct and forgery/corrupt deals.
6. Pursuant to this letter, the appellant lodged a memorandum of claim dated 17<sup>th</sup> October, 2016 against the respondent in the ELRC, seeking a permanent injunction to restrain the respondent from suspending and interdicting her. It was her case that the decision to interdict her was made unilaterally and unprocedurally, and that no notice to show cause why she should not be interdicted was served upon her. She further alleged that she was condemned unheard, and that the decision to interdict her was arbitrary and unfair.
7. The respondent filed a replying affidavit in opposition to the claim sworn by Mary Rotich, the Acting Director in charge of Teacher Management at the respondent. Its case was that the appellant, on numerous occasions, breached the *Basic Education Act* and the Code of Regulations for Teachers; that it had informed the appellant by a letter dated 10<sup>th</sup> February 2016 of the allegations against her; that she was accorded an opportunity to rebut the said allegations, and that she replied to the notice to show cause by a letter dated 15<sup>th</sup> July 2016. The respondent further averred that an inquiry was held and upon evaluating the circumstances of the case, it reached the decision to interdict the appellant for breach of the *Basic Education Act*, the *Teachers Service Commission Act* and the Code of Regulations for Teachers.
8. I note that simultaneously with the statement of claim, the appellant filed an application of the same date in which she reiterated the contents of her statement of claim and sought conservatory orders with respect to the interdiction letter dated 6<sup>th</sup> October 2016 in the same terms as in the statement of claim. In a ruling dated 18<sup>th</sup> October 2016, the trial court found that it was inappropriate to interdict disciplinary proceedings, and it directed that inter partes hearing of the application proceeds on 24<sup>th</sup> October 2016. The record indicates, however, that the parties hereto consented to the issuance of interim orders pending the hearing and determination of the suit. They subsequently agreed to dispense with oral evidence and entered into a further consent on 17<sup>th</sup> September 2018 to have the matter disposed of by way of written submissions, on the basis of which the trial court rendered the judgment the subject of this appeal.
9. In its decision, the trial court identified the issues for determination as being whether the memorandum of claim, as filed, disclosed a prayer capable of being granted by the court; and if the answer was in



the positive, whether the suit had merit. The court noted that the appellant had only sought interim orders in her statement of claim. Further, that the charges in the interdiction letter met the threshold set by Mbaru J. in *Fredrick Saundu v Principal Namanga Mixed Secondary School and 2 others* 2014 eKLR in which the court stated that:

“Suspensions and interdictions are not administrative acts as the detrimental effect of it impacts on the employee’s reputation, advancement, job security and fulfilment ....

Therefore, before an interdiction can be found to be valid, the same must be based on fair reasons and must be implemented pursuant to fair procedure. This is what can be cited as the 3-dimension criteria’.”

10. The trial court further held, in dismissing the appellant’s claim, that it was “loath to interfere unjustifiably on the managerial prerogative of employers unless there are compelling reasons to do so.”
11. At the hearing of the appeal, learned counsel, Mr. Odhiambo and Mr. Sitima, appeared for the appellant and the respondent respectively. It transpired that counsel for both parties had not filed submissions on their respective positions on the appeal, though Mr. Odhiambo stated that he had filed submissions dated 28<sup>th</sup> April 2023. The submissions were, however, not in the Court record. The Court accordingly directed the parties to make oral submissions on the appeal.
12. Mr. Odhiambo submitted that at the heart of the appellant’s appeal is the letter of interdiction dated 6<sup>th</sup> October, 2016 that made grave allegations against the appellant. He submitted that the appellant was convinced that apart from the allegations in the letter, which she denied, the procedure through which the letter was issued was non-existent, based on the Teachers Service Commission (TSC) Act and Regulations, particularly, the TSC Code (The Teachers Service Commission Code of Regulations for Teachers, 2015, hereafter referred to as ‘the Regulations’) which provides for the disciplinary procedures of the TSC.
13. Counsel submitted that regulation 146 of the Regulations provided for the process leading up to interdiction, while regulation 146(6) specifically, provides that an investigating panel will hear a person against whom allegations have been made; that the person will be given 7 days to put in a defence, allowed to be present while witnesses are interviewed before the investigating panel, and be presumed innocent. The appellant’s submission was that these procedures were not followed; that she was never invited before any investigating panel; and was not afforded a chance to be present while witnesses were being interviewed or to present a defence before the investigating panel. It was her submission that when she received the letter of interdiction on 6<sup>th</sup> October, 2016, it was the first time she was aware that allegations had been made against her.
14. Counsel further submitted that when the trial judge issued its judgment, no reference was made to the TSC Regulations which have the provisions that determine what the procedure for interdiction should be; that the learned judge only made reference to the fact that the allegations that were made against the appellant were given in law; that the issue before the learned judge was not whether those allegations breached the law, but whether the letter of interdiction was issued procedurally. Counsel submitted that the procedure for interdiction was not considered at all by the trial court, and to that extent, the impugned judgment could not have determined the dispute correctly.
15. It was submitted further that the respondent had not, at any point, adduced any evidence that it adhered to regulation 146(6) of the Regulations; that in ruling that it was satisfied that the respondent had lawfully issued the letter of interdiction, the trial court did not state what provisions the respondent had adhered to, and what evidence it had adduced to prove such adherence; and that in



- framing the matter as one in which the allegations existed or not and whether the procedure leading to interdiction had been followed or not, the learned judge failed to consider the facts adduced before him.
16. Regarding the question whether the appellant had sought a prayer that was incapable of being granted, counsel submitted that it was a typographical error that did not prejudice the respondent; that in its submissions, the respondent framed what it believed the case it was answering was, and the prayer that the appellant was seeking, was that a permanent injunction do issue suspending the letter of interdiction. The appellant's submission was that no-one was misled or under any misapprehension as to the kind of prayer the appellant was seeking; and that the learned judge did not consider prejudice as a factor in determining what was being prayed for before him.
  17. Counsel for the appellant submitted further that the prayer for suspension of the letter of interdiction 'pending the hearing and determination of this suit' was 'a copy paste error' by the advocate who had prepared the memorandum of claim, and that the advocates might have, in the 'copy paste process', attached letters or words that should not have been attached. According to Mr. Odhiambo, there was no confusion and the respondent was not prejudiced by the wording of the prayer in the memorandum of claim.
  18. It was further submitted that the appellant had not received the letter referred to by the respondent, issued prior to the letter of interdiction, in February, 2016, informing her of the allegations against her.
  19. To the question whether regulation 147 did not imply that sometimes an interdiction can be direct, that an interdiction seems to be only an intermediate process in the disciplinary process, and that an interdicted teacher still has an opportunity to answer to the charges levelled against her, learned counsel submitted that the letter of interdiction comes with penal consequences; that immediately it is served on the appellant, she is denied her salary; and if it is issued without following regulation 146(6), the implication is that she has been heard, given a chance to defend herself, and is unable to do so. He submitted, therefore, that given the gravity of the allegations that were being made, in a way, the letter of interdiction was in itself a decision and a statement regarding her. With regard to regulation 147, learned counsel submitted that the idea was that even when allegations were being investigated, it does not take away the imperative to hear and give the persons accused a chance to defend themselves.
  20. In his submissions in reply, learned counsel, Mr. Sitima, submitted that the respondent has a mandate and functions under the *Constitution* and the law that includes teacher management; and that within teacher management as a broad function is the discipline function over teachers or employees as a whole. Mr. Sitima submitted that in matters such as this, the primary question was whether the employer acted lawfully when it interdicted the appellant, and whether there were valid reasons for the administrative action that it took. Mr. Sitima submitted that there exists an elaborate legal framework for the disciplinary process for teachers, the manner in which it commences, is sustained, and is determined; and that one way, if not the most fundamental way, of commencing the disciplinary process against an employee in circumstances such as this is through a letter of interdiction.
  21. Counsel submitted that under regulation 147, the process for interdiction has been elaborated; that what the letter of interdiction serves to do is to notify the employee of the allegations against her; that it serves to give particulars of the offence and, more fundamentally, to give the employee notice to respond to the allegations against her. Learned counsel submitted that with respect to the appellant, the respondent did this in 2016 or thereabouts; that as the process commenced by the respondent was a stillbirth, it was not appropriate for the appellant to argue with respect to the procedure, or that the trial judge left out a few aspects of what ought to have been done. He submitted further that since the procedure was a still birth as the appellant did not allow it to commence, she cannot speculate on what its outcome would have been, as the intermediate step of interdiction had been stopped in its tracks.



22. Mr. Sitima submitted that the process ought to have been allowed to commence and to continue in the normal way, as only then could the issues that the appellant was aggrieved by have crystallized, when questions such as whether the process had been fair or lawful could have been addressed. Counsel urged this Court to dismiss the appeal to allow the disciplinary process to proceed. According to Mr. Sitima, the question to ask in this case was what prejudice the appellant had suffered in the process, and in his view, she had suffered none.
23. In his submissions in reply, Mr. Odhiambo maintained that regulation 147 follows from 146; and that the respondent should have commenced with regulation 146 before proceeding with the provisions of regulation 147. Counsel further reiterated that the appellant would suffer prejudice because there were penal consequences, and indeed, the letter of interdiction provides that her annual leave will be taken away. Counsel submitted that the appellant's right to fair administrative action under Article 47 of the *Constitution* had been violated, and this Court should so rule.
24. I have considered the record of appeal and the oral submissions of the parties. I believe that the crux of the appellant's case before this Court is that the trial court erred as it did not consider that the respondent had not adhered to the provisions of regulation 146(6) of the TSC Regulations. This regulation provides that:
- (1) The Commission shall upon receiving an allegation touching on a teacher's professional misconduct institute investigations either directly or through its agents.
- ...
6. The Investigating Panel shall, upon investigation, accord the head of institution or a teacher a fair hearing during the investigation process which shall include being-
- a. presumed innocent until proven that he has a case to answer;
  - b. informed of the allegation, with sufficient details to answer it;
  - c. given at least seven days to prepare a defence;
  - d. given an opportunity to appear in person before the Investigation Panel, unless his conduct makes it impossible for the investigation to proceed in his presence;
  - e. present when the witnesses are being interviewed by the Investigation Panel;
  - f. warned that any incriminating evidence may be used against him during the disciplinary proceedings; and
  - g. given an opportunity to adduce and challenge any adverse evidence.
  - h. serve the teacher with a letter of interdiction specifying the actual allegations made against him; ...
25. On its part, the respondent submitted that it had complied with the requirements of regulation 146(6). Its view, however, was that even if it had not, it was entitled to rely on the provisions of regulation 147. This regulation provides that:
147. The Commission or the Board of Management shall-
- (I) serve the teacher with a letter of interdiction specifying the actual allegations made against him;



2. ensure that the interdicted teacher or head of institution clears and leaves the educational institution within forty eight hours upon receiving the letter of interdiction;
  3. where the Board of Management issues a letter of interdiction, it shall deliver two copies of the letter to the county director for onward transmission to the Commission's headquarters;
  4. the Commission may avail to the teacher upon application and at the teacher's cost, any documents that the Commission may use against him during the hearing of the discipline case; and
  5. The Commission shall reserve the right to amend the letter of interdiction constituting the charge.
26. I have considered the above provisions, the appellant's averments, and the response filed by the respondent to the appellant's claim. In the replying affidavit sworn by Mary Rotich, it is averred that the respondent received information that, among other things, on numerous occasions, the appellant breached the Basic' Education Act and the Code of Regulations for Teachers in imposing extra levies of Kshs. 2,000 for form one admission fee and Kshs. 3,000 for form four examination fee without the approval of the Cabinet Secretary or County Education Board; failed to issue official receipts for the money received contrary to section 29 (b) and (c) of the *Basic Education Act*, 2013; and recruited one Sylvester Okello as a Board of Management teacher without confirming the authenticity of his academic and professional certificates, including the TSC Registration Certificate, contrary to regulations 19 and 20 of the Regulations. As a result, officers from the respondent visited the school on 13<sup>th</sup> and 14<sup>th</sup> September 2015 to undertake an inquiry.
27. The respondent averred that it sent the appellant a show- cause letter dated 10<sup>th</sup> February 2016 setting out the allegations against her, to which she replied by her letter dated 17<sup>th</sup> July 2016. The respondent avers that thereafter, it carried out an investigation and a report was produced, before it sent the interdiction letter dated 6<sup>th</sup> October 2016 to the appellant. It is averred that these documents are annexed to the affidavit sworn by Mary Rotich filed before the trial court. I have perused the record of appeal and while Ms. Rotich's affidavit is included in the record, the annexures thereto have been omitted.
28. Nonetheless, the above averments by the respondent, which were not controverted by the appellant, show that the respondent had a basis for its actions against the appellant. It received information regarding conduct, indicated in the interdiction letter, which the trial court found disclosed various offences of alleged breach of clause b (vi), c(iii) and (d) of the third schedule to the *Teachers Service Commission Act*.
29. That being the case, I find that the trial court made no error in reaching the conclusion that the appellant's claim was without merit. First, notwithstanding the spirited submission by counsel for the appellant that the wording of her prayer was a result of a 'copy paste' error, the prayer before the court was not one that could be granted 'upon final determination of the suit on the merits'. I agree with the finding of the trial court that there was a sound basis for the letter of interdiction. The appellant had been sent a letter requiring her to show cause. She had responded. An investigation had been carried out, then the letter of interdiction had been sent. The disciplinary process had just started, and at this early stage, there was no evidence or a basis to argue that the procedural safeguards that the appellant



was entitled to in the disciplinary process as provided under regulation 146(6) had been infringed or in danger of being infringed. As the trial court found:

- “ 14. The respondent has demonstrated that it has commenced a disciplinary process provided by the relevant law and regulations.
15. The claimant has failed to prove a case of unjust and unfair treatment at this early stage of the process on a balance of probabilities.
16. Therefore, the court finds that the prayer sought in the memorandum is misconceived and secondly, there is no merit in issuing a permanent injunction against the intended disciplinary process.” (Emphasis added).

30. In light of the above matters, I find no merit in this appeal. I would dismiss it with costs to the respondent.

**Judgment of Kiage, JA**

1. I have had the benefit of reading in draft the judgment of Mumbi Ngugi, J.A and I am in full agreement with her reasoning, the conclusion she reaches, and the order she proposes.
2. As Joel Ngugi, JA is in agreement, the appeal is dismissed with costs to the respondent.

**Judgment of Joel Ngugi, JA**

1. I have had the benefit of reading the Judgment of Hon. Lady Justice Mumbi Ngugi, JA. in draft. I entirely concur with her findings and conclusions and I have nothing useful to add.

**DATED AND DELIVERED AT KISUMU THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**MUMBI NGUGI**

.....  
**JUDGE OF APPEAL**  
**P.O. KIAGE**

.....  
**JUDGE OF APPEAL**  
**JOEL NGUGI**

.....  
**JUDGE OF APPEAL**

I certify that this is a true copy of the original.  
Signed  
**DEPUTY REGISTRAR**

