



REPUBLIC OF KENYA



**KENYA LAW**  
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**Munga v Kenya Maritime Authority & another (Cause E110 of 2024)  
[2025] KEELRC 599 (KLR) (23 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 599 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E110 OF 2024  
K OCHARO, J  
JANUARY 23, 2025**

**BETWEEN**

**ENGINEER MARTIN DZOMBO MUNGA ..... CLAIMANT**

**AND**

**KENYA MARITIME AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY AND  
MARITIME AFFAIRS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before this Court is the Claimant's / Applicant's application dated 11<sup>th</sup> November 2024, wherein he seeks the following orders; -
  - a. That the application be certified urgent and service be dispensed with in the first instance.
  - b. That pending the hearing and determination of this application, there be a temporary injunction restraining the 1<sup>st</sup> & 2<sup>nd</sup> Respondents from taking any disciplinary action whatsoever against the Claimant on the basis of any of the matters referred to or arising from the 1<sup>st</sup> Respondent's letters dated 20<sup>th</sup> September 2024 and 23<sup>rd</sup> October 2024, and notice to show cause dated 23<sup>rd</sup> October 2024.
  - c. Pending the hearing and determination of this application, there be a temporary injunction restraining the 1<sup>st</sup> & 2<sup>nd</sup> Respondents, their agents or servants from implementing the 1<sup>st</sup> Respondent's letters dated 20<sup>th</sup> September 2024 and 23<sup>rd</sup> October 2024, and the notice to show cause dated 23<sup>rd</sup> October 2024.
  - d. Pending the hearing and determination of this application, there be a temporary injunction restraining the 1<sup>st</sup> & 2<sup>nd</sup> Respondents from assigning any of the Director General's duties to the



- 2<sup>nd</sup> Interested Party and restraining the 2<sup>nd</sup> Interested Party from exercising any of the functions that rest with the 1<sup>st</sup> Respondent's Director General.
- e. Pending the hearing and determination of this suit, there be a temporary injunction restraining the 1<sup>st</sup> & 2<sup>nd</sup> Respondents from taking any disciplinary action whatsoever against the Claimant on the basis of any of the matters referred to or arising from the 1<sup>st</sup> Respondent's letters dated 20<sup>th</sup> September 2024 and 23<sup>rd</sup> October 2024.
  - f. Pending the hearing and determination of this suit, there be a temporary injunction restraining the 1<sup>st</sup> & 2<sup>nd</sup> Respondents, their agents or servants from implementing the 1<sup>st</sup> Respondent's letters dated 20<sup>th</sup> September 2024 and 23<sup>rd</sup> October 2024, the notice to staff dated 20<sup>th</sup> September 2024 and the notice to show cause dated 23<sup>rd</sup> October 2024.
  - g. Pending the hearing and determination of this suit, there be a temporary injunction restraining the 1<sup>st</sup> & 2<sup>nd</sup> Respondents from assigning any of the Director General's duties to the 2<sup>nd</sup> Interested Party, and restraining the 2<sup>nd</sup> Interested Party from exercising any of the functions that rest with the 1<sup>st</sup> Respondent's Director General.
  - h. The 1<sup>st</sup> Interested Party be directed to investigate the affairs of the 1<sup>st</sup> Respondent in line with section 18 Cap 446 and to table a report to the court within 120 days from the date of the order.
  - i. The costs be awarded against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.
2. The application is anchored on the grounds set out on the face of the application and his supporting affidavit sworn on the 11<sup>th</sup> November 2024.
  3. The Respondents opposed the application by first filing grounds of opposition dated 18<sup>th</sup> November 2024, and subsequently a replying affidavit sworn on 18<sup>th</sup> November 2024, by Jessica Mbae, the 1<sup>st</sup> Respondent's Corporation Secretary, Legal Services.
  4. The Claimant filed a supplementary affidavit sworn on 20<sup>th</sup> November 2024, to address matters raised in the Respondent's replying affidavit.

### **The Application**

5. The Claimant/Applicant was appointed as the 1<sup>st</sup> Respondent's Director General effective 15<sup>th</sup> December 2023, for three years.
6. By a letter dated 20<sup>th</sup> September 2024, the Chairperson Respondent's Board of Directors conveyed the Board's decision to send him on compulsory leave. Subsequently, by another letter of the even date, the Chairperson conveyed the Board's decision to appoint Eng. Julius Koech as the Director General in an acting capacity with immediate effect, to the employees of the 1<sup>st</sup> Respondent.
7. Aggrieved by this action by the 1<sup>st</sup> Respondent, the Claimant/Applicant filed Mombasa ELRC Petition No. E 014 of 2024, challenging the action. By a retaliatory action, the 1<sup>st</sup> Respondent withdrew the compulsory leave through their letter dated 18<sup>th</sup> October 2024 but interdicted under the letter dated 23<sup>rd</sup> October 2024 and issued him with a notice to show cause of the even date.
8. According to the Applicant, the letter dated 20<sup>th</sup> September 2024, the notice to staff dated 20<sup>th</sup> September 2024, the interdiction letter and the notice to show cause as well as the decision they purport to convey, are unlawful and a violation of *the Constitution* and statute law.
9. Soon after his appointment and completion of the administrative process such as being an authorized bank signatory, he received numerous requests to approve payments whose payments were not clear



to him. Some of the requests, unfortunately for him, came from the very people who were supposed to be protecting public funds. His refusal to authorize such payments very often didn't sit well with the 1<sup>st</sup> Respondent's Board. His insistence on compliance with the law birthed an orchestrated move to pump him out from his position of control, with the Respondents hoping to give the position to somebody they would control.

10. He stated further that under clause 4.4.9 of the 1<sup>st</sup> Respondent's Human Resource Manual, acting appointments are not to be made unless the substantive holder of the office is going to be away for thirty [30] days. The 1<sup>st</sup> Respondent has seemingly predetermined that he will be away for more than thirty days whatever the case.
11. Under Clause 4.4.10 of the HR Manual, appointments in acting capacity are permitted based on a recommendation and only if the law stipulates that the functions of that office can only be discharged by a person appointed in acting capacity. The appointment of Engineer Julius Koech was without any recommendation to, and consideration of the same by the Board.
12. The letter dated 20<sup>th</sup> September 2024 referred to a Board meeting held on 20<sup>th</sup> September 2024 at Pride Inn Flamingo Hotel. Under paragraph 3[4] of the Second Schedule to Cap 370, Board meetings are held after notice of not less than fourteen [14] days. No such notice was issued.
13. Additionally, under Section 8[1][c] of Cap 446 Laws of Kenya, Board meetings must be held at the 1<sup>st</sup> Respondent's offices. If they are to happen elsewhere, the approval of the State Corporations Advisory Committee must be obtained. There, the meeting of 20<sup>th</sup> September 2024 was held contrary to the law and cannot give rise to any lawful resolution.
14. The letter dated 20<sup>th</sup> September 2024 made two allegations thus; over-expenditure by KShs. 321, 481,872.00 in the 2023/2024 financial year, and failure to appraise a total of eighty [80] employees of the 1<sup>st</sup> Respondent during the 2023/2024 financial year.
15. The Claimant further stated that Clause 11.4.2 of the 1<sup>st</sup> Respondent's HR Manual binds it to ensure its disciplinary decisions are based upon logical proof or evidential material and are expeditious, efficient, lawful, reasonable and procedurally fair.
16. The allegations of over-spending under my watch are unreasonable and actuated by malice, for the following reasons;
  - a. He assumed the functions of his office in March 2024. It is illogical for him to be blamed for the expenditure of over 12 months when he presided over the 1<sup>st</sup> Respondent's expenditure of approximately three months.
  - b. The Head of Finance who had been with the 1<sup>st</sup> Respondent prior to his appointment, explained each item where there was overspending.
  - c. Part of the overspend, being KShs. 46, 487,096.00 was because of the 1<sup>st</sup> Respondent's Board, and its various committees, holding more sittings than permitted, the same Board got aggrieved by the expenditure.
  - d. Another KShs. 54, 345,017 was spent on items such as campaigns for the IMO Secretary-General position and IMO Council meeting attendances, all of which are events that happened in 2023.
  - e. A further KShs. 54,183,002.00 was spent on foreign travel and accommodation to attend various IMO Assembly or Council meetings and campaign for Kenya's re-election bid to the



IMO Council. Again, these events happened in 2023 or early 2024 before he assumed control of the 1<sup>st</sup> Respondent's budget.

17. The Claimant/ Applicant further contends that the allegations that he failed to appraise the 1<sup>st</sup> Respondent's employees are unreasonable and malicious. The duty to appraise performance of all the employees of the 1<sup>st</sup> Respondent doesn't fall on him. He only supervises holders of four positions [Maritime safety, Maritime Education Training & Labour, Maritime Trade and Development, and Corporate Services and Regional Administration]. All other positions, save for Corporation Secretary & Legal Services & Internal Audit & Risk who report directly to the Board, all the other positions are appraised by their respective supervisors in accordance with the procedure set out in Clause 8.11 of the 1<sup>st</sup> Respondent's Human Resource Manual. His role is to endorse the end-year appraisal that had been approved by the respective Heads of Department.
18. The 1<sup>st</sup> Respondent's Human Resource Manual does not provide for compulsory leave. Moreover, the compulsory leave was for an indeterminate period and didn't disclose his entitlements, if any, during that indefinite period.
19. It was further asserted that it is an affront on the national values of the rule of law, good governance, integrity, transparency, and accountability for the 1<sup>st</sup> Respondent to make up allegations against him, convene meetings contrary to the law and mete out disciplinary action not provided for in its Human Resource Manual. Further, the 1<sup>st</sup> Respondent's actions were violative of the provisions of Article 232[1] which sets out the principles of public service.
20. Article 41 of *the Constitution* guarantees him the right to fair labour practices. The 1<sup>st</sup> Respondent violated this right by victimising him for refusing to give in to demands to approve suspect transactions and to send him on indefinite compulsory leave. Contrary to section 46[h], the 1<sup>st</sup> Respondent undertook the retaliatory action of sending him for compulsory leave simply because he had decided to challenge its action[s] in court.
21. He asserts that if the orders sought aren't granted, it will be impossible to redress the mental torture and anguish will undergo for as long as the unlawful acts continue, it will be difficult to restore him to the position of Director General if it is ultimately found that the 1<sup>st</sup> Respondent's actions were unlawful, and the public funds may be withdrawn or disbursed under unclear and unlawful circumstances. The possibility of recovering such funds would be near impossible, visiting prejudice on the general public

### **The Respondent's Response**

22. The Respondent asserted that the Applicant is guilty of misrepresentation and material non-disclosure.
23. By a letter dated 2<sup>nd</sup> August 2024, the Authority sought approval from the Principal Secretary, State Department of Shipping and Maritime Affairs, to hold a Board Retreat from 26<sup>th</sup> to 30<sup>th</sup> August 2024 and a Board Meeting during the retreat.
24. Through a letter dated 5<sup>th</sup> August 2024 the Principal Secretary, State Department of Shipping and Maritime Affairs granted approval to hold a Board Retreat and a Board Meeting during the Retreat.
25. It was further stated that on 15<sup>th</sup> August 2024, the Principal Secretary, State Department of Shipping and Maritime Affairs wrote and informed the board through the Applicant, that the ground-breaking ceremony for the Kisumu Maritime Regional Coordination Centre would take place on Tuesday, 20<sup>th</sup> August 2024.



26. During an e-board training meeting for Board Members held on August 27th, 2024, the Board resolved to postpone the retreat and Special Board meeting that was to be held in August, to September 18th—20th, 2024, to enable Board members and Management to organize and attend the ground-breaking ceremony on August 31st, 2024.
27. The ground-breaking ceremony had been postponed to the 31<sup>st</sup> of August 2024 to accommodate the president of the Republic of Kenya, who was scheduled to officiate the ground breaking thus necessitating the postponement of the Retreat and Board Meeting.
28. It was further stated that by a letter dated 9<sup>th</sup> September 2024 members of the Board, Kenya Maritime Authority Board were notified of, and invited to, attend a Board retreat and Board Meeting on 18<sup>th</sup> to 19<sup>th</sup> and 20<sup>th</sup> September 2024 respectively. The Board Retreat was subsequently held from 18<sup>th</sup> to 20<sup>th</sup> September 2024.
29. During the retreat the Board considered and deliberated on the Annual Financial Report and Financial Statements for the year 2023/2024 and Performance Appraisal Report for the year 2023/2024 and established the following:
  - a. there was an over-expenditure by the Authority of Kshs. 321,481,872.00 against the *Public Finance Management Act*.
  - b. only sixty-four (64) employees were appraised out of one hundred and forty-four (144) total staff, being 31% of the Authority staff, raising concerns of lack of leadership from the Claimant.
30. As a result, the Board resolved to send him on compulsory leave with immediate effect, to allow for a special audit to be conducted by the Director, Internal Audit and reports tabled to the Board through the next Human Resource Environment and Social Governance Committee and Audit and Risk Assurance Committee Meetings to be held in October, 2024.
31. The Board further resolved to appoint the Director, Maritime Safety, Eng. Julius Koech as the Acting Director General from 20<sup>th</sup> September, 2024 until further direction of the Board after the Committee and full Board Meeting in October, 2024.
32. The special audit reports were prepared and tabled at the Human Resource Environment and Social Governance Committee on 9<sup>th</sup> October 2024 and the Audit and Risk Assurance Committee on 8<sup>th</sup> October 2024. Thereafter the reports were tabled by the Committees of the Board at the full Board Meeting held on 23<sup>rd</sup> October, 2024 for its consideration.
33. It was further averred that following deliberations of the Full Board on 23<sup>rd</sup> October 2024 a resolution was reached that a Notice to Show Cause be issued to the Claimant for him to Show Cause why disciplinary action should not be taken against him. The Board further resolved that the Claimant be interdicted. The Claimant /Applicant was issued with a show because letter dated 23<sup>rd</sup> October 2024, in line with the Board Resolution.
34. By a letter of the even date, the Claimant was informed of the Board's decision to interdict him.
35. By his letter dated 13<sup>th</sup> November 2024 the Claimant responded to the Notice requiring him to show cause why disciplinary action should not be taken against him.
36. Subsequently, the Board considered the Claimant's response to the Notice to Show Cause letter dated 13<sup>th</sup> November 2024 during its sitting at a Special Board Meeting held on 14<sup>th</sup> November 2024 and reached a decision to invite the Claimant to a disciplinary hearing on 22<sup>nd</sup> November 2024. The



Claimant was informed of this through a letter dated 14<sup>th</sup> November 2024 which was sent to him via email on 15<sup>th</sup> November 2024.

37. The Respondents have not violated any of the claimant's rights during the process, the subject matter of this suit, to warrant interference with the disciplinary process.
38. The Claimant has a right of appeal to the Public Service Commission, from any decision of the Kenya Maritime Authority Board, pursuant to Section 74 of the [Public Service Commission Act](#). As such, the instant application has been filed contrary to the doctrine of exhaustion and ought to be dismissed ab initio.
39. The balance of convenience tilts against the grant of the orders sought.

### **Rejoinder by the Claimant**

40. In reaction to the Respondents' response, the Claimant averred that the 1<sup>st</sup> & 2<sup>nd</sup> Respondents do not answer any of the allegations of mismanagement of public funds and the violations of Articles 10 & 232 of [the Constitution](#). It should be held that they had none.
41. The approval to conduct a Board meeting outside the 1<sup>st</sup> Respondent's premises can only be granted by the State Corporations Advisory Committee. The purported approval by the Principal Secretary is plainly illegal.
42. Further, assuming, arguendo, that the Principal Secretary could grant that approval, the approval had been granted for 26<sup>th</sup> to 30<sup>th</sup> August 2024, and not 18<sup>th</sup> to 20<sup>th</sup> September 2024 when the meeting was supposedly held.
43. Further, under Paragraph 3(4) of the Second Schedule to Cap 370, notice of the meeting needed to be sent at least fourteen (14) days prior to the meeting. The notice is dated 9<sup>th</sup> September 2024. The meeting couldn't be held earlier than 25<sup>th</sup> September 2024.
44. Furthermore, the agenda circulated for the meeting indicated that the Board meeting would only deal with "Human Resource Matters and Succession Planning". Over-expenditure to the tune of Kshs. 321,481,872.00, which is the key allegation against the Claimant is not a human resource or succession planning issue. It ought not to have been discussed at all.
45. This patently illegal meeting put in motion all the subsequent events the subject of this suit. Given the illegality of the foundation, every other action taken thereafter is tainted with illegality and cannot be upheld.
46. Apart from the illegalities in convening the Board meeting, the 1<sup>st</sup> Respondent is studiously silent on the provision that permitted it to send him on "compulsory leave", as it did on 20<sup>th</sup> September 2024.
47. Despite the requests to be supplied with the documents that the 1<sup>st</sup> Respondent intends to rely on, through letters dated 29<sup>th</sup> October 2024 and 17<sup>th</sup> November 2024, the Respondent has failed and neglected to supply the same. This is contrary to Clause 11.4.2 of the 1<sup>st</sup> Respondent's HR Manual which requires that the documents be provided.
48. He asserted that the foregoing is indicative of the fact that the 1<sup>st</sup> Respondent is so determined to dismiss him from employment that it is prepared to ignore even its own procedures.



## Claimant's Submissions.

49. Counsel for the Claimant/Applicant submitted that it is trite that in employment matters, the courts have held that they will interfere with the employer's prerogative in certain circumstances. To support this point reliance was placed on the case of *Geoffrey Mworira v Water Resources Management Authority, James Ambuso & Philip J, O/um* [20151 KEELRC 1124 (KLR)] where the Court stated;
- “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 a 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.”
50. The circumstances of this case it can be concluded safely that this Court's interference is necessary. First, considering the various instances of illegality in the 1<sup>st</sup> Respondent's conduct as regards the manner they held the Board meeting[s] that birthed the events leading to the Claimant's interdiction as brought out in the supporting, and supplementary affidavit.
51. The Board meeting of 20<sup>th</sup> September 2024 provided the basis for every other action that the Claimant complains of, which meeting the Claimant has ably shown was illegal. As such, subsequent actions flowing therefrom lacked legitimacy. An illegality begets an illegality. To buttress this submission Counsel placed reliance on the case of *Republic v Institute of Certified Public Accountants of Kenya ex parte Joy Vipinchandra Bhatt T/A JV Bhat & Company* [2008] KEHC 3231 (KLR).
52. Second, the 1<sup>st</sup> Respondent inexplicably breached its own procedure. The 1<sup>st</sup> Respondent's HR Manual provides that the employee is entitled to be furnished with all documents supporting the charge, The Claimant made specific requests on 29<sup>th</sup> October 2024 and 17<sup>th</sup> November 2024. He was not been availed the documents nor given any reason why they were not being availed.
53. From the documents presented by the Board it can be discerned that some Kshs. 46,487,096.00 was overspent by Board; Kshs. 54,345,017.00 was spent campaigning in 2023; and another Kshs. 54,183,002.00 in other events in 2023. Sight shouldn't be lost that Claimant joined the employment of the 1<sup>st</sup> Respondent on 18<sup>th</sup> December 2023. How logical could it be that the Board can accuse the Claimant for overspending that happened in 2023, long before he joined?
54. The Board also accused the Claimant of failing to evaluate the 1<sup>st</sup> Respondent's employees. Quite apart from the fact that the Claimant does not evaluate those employees, the report supplied to the Claimant by the Board shows that, in fact, a total of 133 out of 144 were evaluated. Even in the face of such evidence, the Board persists in its accusation. It is doubtful that any fair-minded person would say that the Board is acting reasonably in the circumstances.
55. Third, the Claimant asserted that the Respondents acts of omission and commission were violative of the stipulations. The Respondents did not discount the allegation. The unchallenged allegations should be sufficient justification for this Court to interfere in the disciplinary process. Fortification for this point was sought in *Geoffrey Mworira* (supra).
56. At an interlocutory stage, the court is not required to conclusively determine issues. It just needs to be satisfied that prima facie, the Claimant has a right that has apparently been infringed or threatened with infringement.



57. If the orders sought aren't granted, the Claimant will suffer irreparable injury. The damage to reputation that comes with a high-profile dismissal cannot be gainsaid. That reputation, once tarnished, can never be adequately compensated by any award of damages. To buttress this submission, the decision in *JMK v MWM & MFS* [20151 KECA 524 (KLR)] was cited.
58. Further reliance was placed in the holding in *Thomson Smith Aikman, Alan Malloy & others v Bernard Kimani Muchoki & others* [19821 KECA 5 (KLR)] that;
- “the court ought never to condone and allow to continue a flouting of the law. Those who flout the law by infringing the rightful title of others, and brazenly admit it, ought to be restrained by injunction, If I am adding a new dimension for the grant of an interlocutory injunction, be it so.”
59. It is no answer to the Claimant that he may, after suffering the injury, be compensated by an award of damages. A brazen violation of the law, such o as is the case here, must be nipped in the bud if Article 10 of *the Constitution* is to ever mean anything.

### **The Respondent's Submissions**

60. Counsel for the Respondent, Mr. Makuto reiterated in detail the events that preceded the Board meeting that was held on 20<sup>th</sup> September 2024, as were brought forth in the replying affidavit filed herein.
61. It was submitted that a representative from the State Corporation Authority attended the meeting to undertake an evaluation. As such, the issue as to whether or otherwise, there was the necessary approval for the Board to sit outside the office of the 1<sup>st</sup> Respondent in a none issue.
62. It is discernible from the Board minutes of 27<sup>th</sup> August 2024, that the meeting was moved to the 18<sup>th</sup> September 2024. Therefore, the notice of 9<sup>th</sup> September 2024 was just but a reminder to the members.
63. The documents that the Claimant had sought were forwarded to him under cover of the letter dated 31<sup>st</sup> October 2024, with a reminder that the documents were confidential. The reminder shouldn't be misread to mean that the document couldn't be released on the reason of confidentiality.
64. He further submitted that on the ERP budget monitoring module, the 1<sup>st</sup> Respondent was categorical that it didn't operate such a module on the ERP system. They couldn't therefore provide that which they didn't have.
65. The ERP System is not entirely in the control of the 1<sup>st</sup> Respondent. It is operated as Kenya Commercial Bank's quick pay system. Counsel indicated that a request had been made to the Bank for the budget and he was certain that the same could be furnished before the end of the day, 21<sup>st</sup> November 2024. The Claimant had requested for the document on 17<sup>th</sup> November 2024.
66. Counsel submitted that the Claimant is guilty on non-disclosure of material facts and therefore, undeserving of the orders sought in the instant application. Contrary to his assertion that no Board meeting was held on the 20<sup>th</sup> September 2024, there are minutes demonstrating that there was.
67. The Claimant is a public officer and therefore, the stipulations of the Public Service Act and the Regulations thereto, apply to him. The Regulations allow an authorised officer, to send an employee on compulsory leave. This position as affirmed in the case of *Benard Mwaura Mbuthia vs. Nyahururu Water & Sanitation Company & Others* [2019] KEELRC 613 [KLR] [17 October] [Ruling].



68. The Claimant was called back from compulsory leave after the investigations were complete, and thus there was no reason of his continued exclusion from the place of work.
69. The Respondent shall provide the Claimant with the documents he had sought. The Court should allow the disciplinary process to proceed as the law has provided safeguards for the Claimant specifically section 43 of the Employment Act, which commands that an employee cannot be dismissed from employment, without cause.

### **Analysis and Determination**

70. The purpose of the instant application is to prevent the disciplinary process already commenced by the 1<sup>st</sup> Respondent against the Claimant from continuing pending the hearing and determination of the suit herein. Put in another way, the Claimant seeks for an interim interdict against the process.
71. The prime question that calls for an answer is whether a court will intervene in incomplete disciplinary proceedings. In my view, yes. However, I should hasten to state that, such is a power not readily exercised. This Court has held that it will not easily interdict the holding of a disciplinary hearing and will do so only where exceptional circumstances are established.
72. Remembering that this Court is dealing with an interlocutory application, I will be cautious and measured in rendering myself on the application so that a wrongful impression isn't formed that the Court has a predetermined mind.
73. The requirements in an application for an interlocutory injunction like the instant, are trite. The Applicant has to demonstrate a prima facie case, a well-grounded apprehension of irreparable harm if the interim relief isn't granted, and the balance of convenience tilts in favour of the Applicant.
74. It is not in dispute that through his letters dated 29<sup>th</sup> October 2024, and 17<sup>th</sup> November 2024, the Claimant requested for documents that the Respondent intended to rely on in the disciplinary process. The purpose of the disciplinary hearing that was slated for 22<sup>nd</sup> November 2024 was to accord the applicant an opportunity to prepare to present his case and answer the charges brought against him. Answering a charge [s]ufficiently requires that the affected employee is allowed an adequate opportunity to prepare for that. Certainly, allowing adequate opportunity to prepare for a defence against charges will include availing documents requested for by the employee, readily, not unless there is a compelling and reasonable reason not to.
75. As can be discerned from the Respondent's submissions, admittedly, not all the documents were availed to the Claimant even up to the post-filing of the instant suit. As Counsel for the Claimant rightly submitted, this violated the 1<sup>st</sup> Respondent's Human Resource Manual.
76. The Claimant asserts that unreasonably and maliciously he is being accused of things that happened before he came into the employ of the 1<sup>st</sup> Respondent. The Court notes that the Respondents have neither addressed this in the replying affidavit nor in submissions by their Counsel.
77. The Claimant asserted that in the structure of the 1<sup>st</sup> Respondent, the task of appraising employees didn't fall on him. He was specific as regards whom it did. The Respondents didn't find it necessary to discount the assertion, yet an alleged failure to appraise employees formed the 2<sup>nd</sup> ground of accusation against him.
78. The foregoing premises are expressive of the fact that the Claimant has prima facie case, that the disciplinary process initiated is; unreasonable, in violation of the 1<sup>st</sup> Respondent's own Human Resource Manual, afflicted by ill faith, a threat to his right to a fair hearing and fair labour practice. In



my view, these are exceptional circumstances to warrant the Court's intervention in the disciplinary process.

79. By reason of the foregoing premises, I am persuaded that an order interdicting the commenced disciplinary process is merited. Consequently:
- a. Pending the hearing and determination of this suit, a temporary injunction is issued restraining the Respondents from proceeding with any disciplinary process, and or taking any disciplinary action against the Claimant based on any of those matters referred to or arising from the 1<sup>st</sup> Respondent's notice to show cause dated 23<sup>rd</sup> October 2024.
  - b. For clarity of record, the Claimant shall remain under interdiction, pending the hearing and determination of this matter.
  - c. The Claimant shall be retained in his employment on full pay with due benefits.
  - d. Considering the nature of this matter, the suit herein shall be heard on a priority basis.
  - e. Costs of the application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN MOMBASA THIS 23<sup>RD</sup> DAY OF JANUARY 2025.**

**OCHARO KEBIRA**

**JUDGE**

in the presence of

Mr. Kongere for the Claimant

Kemei for the 1<sup>st</sup> & 2<sup>nd</sup> Respondent

