



**Bwanga v Anti Counterfeit Authority & 4 others (Employment and Labour Relations  
Petition E037 of 2024) [2025] KEELRC 396 (KLR) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 396 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E037 OF 2024  
AN MWAURE, J  
FEBRUARY 14, 2025**

**BETWEEN**

**MARTIN LUTHER BWANGA ..... PETITIONER**

**AND**

**THE ANTI COUNTERFEIT AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**ROBI MBUGUA NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**LINDSAY KIPKEMOI ..... 3<sup>RD</sup> RESPONDENT**

**YUSUF AHMED ..... 4<sup>TH</sup> RESPONDENT**

**MARY MWINGA ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioner filed a Petitioner dated 14<sup>th</sup> March 2024.

**Petitioner’s case**

2. The Petitioner avers that he was employed by the 1<sup>st</sup> Respondent as a Chief-Anti Counterfeit Inspector Grade ACA 7 vide an appointment letter dated 21<sup>st</sup> September 2015.

3. The Petitioner avers that he was issued with a Notice to Show Cause letter dated 31<sup>st</sup> January 2024 on allegations of gross misconduct.

4. The Petitioner avers that the gross misconduct includes:

- i. Disrespecting, not following lawful instructions and abusing his supervisors when requested to provide regional performance report which is contrary to section 44(c & e) of the [Employment](#)



Act and section 11, III(iv) of the AntiCounterfeit Authority(ACA) Human Resource Policy and Procedural Manual 2021;

- ii. Failing to adhere to deadlines on submitting performance, incident reports and other reports amounting to gross misconduct; and
  - iii. On 8<sup>th</sup> September 2023 he went against a directive on vehicle movement restriction, by authorizing vehicles for inspection/enforcement activities without adherence to the issue directive and revised enforcement manual
5. The Petitioner avers that his rights were breached under Articles 47, 50 and 236 of the Constitution and Fair Administrative Actions Act 2015.
  6. The Petitioner avers that he responded to the Notice to Show Cause letter through his advocates vide a letter dated 5<sup>th</sup> February 2024 requesting to be furnished with more details about his accusers, specific reports alleged to have been submitted late, specific instructions that he allegedly disobeyed, specific emails that contained abusive language, negligence of his duties and alleged authorizations non-compliant with the revised enforcement manual.
  7. The Petitioner avers that the Respondent did not furnish the requested documents which he intended to use during the disciplinary process.
  8. The Petitioner avers that the Respondents acted with severe malice and personal vendetta, which is harmful to the proper functioning of a public office.
  9. The Petitioner avers that the Respondents have already constructively expressed their intention not to subject the Petitioner to due process but to put him through a contradictory and alien process.
  10. The Petitioner avers that the Respondents have unlawfully attempted to initiate an illegal disciplinary process by issuing a notice that is both irregular and lacking any factual or evidentiary basis. This action violates the Petitioner's rights and fundamental freedoms as guaranteed by the constitution which includes:
    - a. The right to fair administrative action under Articles 47 and 236 of the Constitution
    - b. The national values and principles of governance under Article 10 of the Constitution.
    - c. Infringement of the rights and fundamental freedom under Article 24 of the Constitution by denying the Petitioner a hearing and condemning him unheard.
    - d. Infringement of the Petitioner's rights and freedom under Article 35 of the Constitution.
  11. The Petitioner avers that the Respondents are discriminatory and are acting contrary to the tenets of democracy principles of the rule of law and entitlement to the constitutionally enshrined tenets to wit: -
    - a. Inherent human dignity and the right to have that dignity respected and protected, as enriched under Article 28 of the Constitution
    - b. Right not to be subjected to any form of violence, psychological torture, or treated or punished in a cruel or degrading manner and to be subjected to servitude.
  12. The Petitioner avers that the Respondents' actions undermine the principles of good governance and National values and constitution, for denial of a fair hearing, by an independent and impartial tribunal or forum, contrary to the Constitutional safeguard.
  13. The Petitioner prays for:



- a. A declaration that the acts and letters of the Respondents' complained of above are and were unlawful and infringed upon the Petitioner's rights and fundamental freedom and so are null and void.
  - b. An order of Certiorari to bring to this Honourable court to quash the Respondents' show cause letter dated 31<sup>st</sup> January 2024 and referenced 201510102/41
  - c. An order of prohibition directed to the Respondents jointly and severally restraining them from taking or continuing any action against the Petitioner based on the unlawful, illegal, unknown and opaque generalized allegations against the Petitioner
  - d. Costs
  - e. Any other reliefs or order that this Honourable court may deem just and appropriate.
14. The Petitioner was initially represented by the firm of Okoth & Company Advocates but subsequently appointed the firm of Ameli Inyangu & Partner Advocates to represent him vide a notice of change of advocates dated 30<sup>th</sup> April 2024.

### **Respondents' replying affidavit**

15. In opposition to the Petition, the Respondent filed a replying affidavit dated 19<sup>th</sup> July 2024.
16. The Respondents aver that its disciplinary procedures are stipulated in the Human Resource Policy and Procedures Manual 2021.
17. The Respondents aver that the manual establishes the Human Resource Management Advisory Committee (HRMAC) under paragraph 2.15 on page 29 which is responsible for advising the CEO, on all human resource management issues including the discipline officers under ACA Grade 3 which category the Petitioner fall in.
18. The Respondents aver that HRMAC under sub-paragraph 11.8.5 on page 131 of the Manual is authorized to:
  - a. Hear charges brought against any employee
  - b. Summon and hear any witnesses or consider any documents produced as evidence
  - c. The employee charged to attend before it, to give his/her defence in relation to the charges made against him/her
  - d. Consider and determine, after the conclusion of the hearing, whether or not each charge has been proved
  - e. Recommend any penalties
  - f. Hear and consider pleas and mitigation; and
  - g. Review appeals from disciplinary measures taken against an employee.
19. The Respondents aver that no disciplinary decision has been made after the issuance of the Notice to Show Cause letter to the Petitioner.
20. The Respondents aver that they have engaged the Petitioner by furnishing the necessary information and documents he had requested.



21. The Respondents aver that the Petitioner has been subjected to procedures that are fair, legal and reasonable and consistent with the provisions of the Constitution of Kenya, Fair Administrative Action Act and the 1<sup>st</sup> Respondent is manual.
22. The Respondents aver that they are not attempting to terminate and/or issue a summary dismissal of the Petitioner's employment as the actions taken against the Petitioner are not based on malice but inspired by the need to hold him accountable.
23. The Respondents aver that the employees should be subject to the Human Resource Policies and procedures that are applicable to their employment contract and the courts should allow such processes to apply as provided.
24. The Respondents aver that the Petitioner rushed to court without exhausting the entire disciplinary procedure contravening the 1<sup>st</sup> Respondent Human Resource Manual and policies.
25. The Respondents aver that the Honourable Court would be acting in excess of its jurisdiction by stopping a process initiated by another competent body.
26. The Respondents aver that the Petition is ill-conceived, premature, an abuse of the court process and without merit therefore should be dismissed with costs.
27. The Petition was canvassed by way of written submissions. The Respondents filed their submissions dated 11<sup>th</sup> October 2024 while the Petitioner did not file any submissions.

### **Respondent's submissions**

28. The Respondents submitted that the Petitioner was not terminated as he was only issued with a notice to show cause letter to allow him an opportunity to defend himself against the allegations. The Respondent relied on the case of Republic V National Employment Authority & 3 others Ex-Parte Middle East Consultancy Services Limited [2018] KEHC 9449 (KLR) where Mativo J held as follows:

“Ripens refers to the readiness of a case for litigation: “a claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all. The final decision was yet to be made, hence, there is no decision to be quashed. The goal of ripeness is to prevent premature adjudication; if a dispute is insufficiently developed, any potential injury or stake is too speculative to warrant judicial action.”
29. In Republic V County Secretary and Head of Public Service, Bomet County & Another Ex parte Bernard Sowek [2017] eKLR the court held that it recognizes that it should not interfere with internal disciplinary processes unless they are flawed. The court's role is to ensure these processes follow established procedures, preventing undue interference in disciplinary matters.
30. The Respondents submitted that their actions demonstrate their commitment to conducting a fair hearing and the issuance to the notice to show cause letter to the Petitioner, inviting him to respond to the allegations, in accordance with audi alteram parte principle. The Respondents also submitted that the issuance of the notice was simply the beginning of the disciplinary process.
31. The Respondents relied on the case of Aviation and Allied Workers Union V Kenya Airways Limited [2012] KEELRC 53 (KLR) the court stated that it is reluctant to intervene in an employer's disciplinary process unless it is unfair. Intervention is rare and only in cases where the process is likely to result in unjust punishment. The court will step in if the procedure violates fairness, due process, or natural justice, breaches agreed or legal standards, or would lead to manifest injustice. The court



typically avoids intervention if internal mechanisms for appeal or review are available and have not been exhausted.

32. The Respondents submitted that it followed the laid down procedure in its Human Resources Manual therefore this Honourable Court should allow it to exercise its mandate and the Petitioner has failed to show how his constitutional rights have been violated.
33. The Respondent relied on the case of *Rosemary Waitherero Mburu V Kenya Airways Limited* [2020] eKLR where Wasilwa J held that courts are reluctant to interfere with an employer's disciplinary process unless it is clearly flawed and unlawful. Such interference is limited to correcting the process. In this case, the court found no reason to interfere and dismissed the application.
34. In conclusion, the Respondents submitted that the Petitioner has failed to demonstrate his case which is not merited and should be dismissed with costs.

### **Analysis and determination**

35. The court has considered the petition, the replying affidavit as well as the submissions on record, the issue of determination before this Honourable court is whether the petition is merited.
36. In *Rosemary Waitherero Mburu V Kenya Airways Limited*(supra) the court held as follows:

“Courts are reluctant to interfere with an employer's internal disciplinary process unless it is evidently flawed and in breach of the law and such interference will only be limited to putting the process to the right course.”
37. In *Kenya Plantation and Agricultural Workers Union V James Finlay (K) Limited* [2013] e KLR where the court stated as follows:

“The court considers that the employer is entitled to undertake redundancy just like the other human resource functions like recruitment and selection, appointment and promotion, training and development and termination of the contract of service including dismissal on disciplinary grounds. The general principle is that the court shall not interfere in the employer's entitlement to undertake these functions and interference by the court shall be exercised very sparingly. The court's rare intervention can be justified on account of obvious breach by the employer of the statutory or agreed due process or such other manifest injustice and in circumstances whereby the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer's internal process....”
38. In this instant case, the Petitioner was issued with Notice to Show Cause letter dated 31<sup>st</sup> January 2024. The Petitioner instructed his advocates to respond to the show cause letter which they did so. There was constant communication between the Petitioner's advocates and the Respondent.
39. The Petitioner filed the present petition on 14<sup>th</sup> March 2024 which is barely two months after the notice to show cause and the Respondent had not commenced the disciplinary proceedings on the allegations against the Petitioner.
40. The Petitioner contravened the Respondent's Human Resource Manual by not allowing the Respondent to follow the disciplinary procedure laid out in the said Human Resource Manual and prematurely filed this present petition.
41. The Respondent in the notice to show cause letter dated 31<sup>st</sup> January 2024 set out the grounds in which they have reckoned the Petitioner had violated and the sections by the Human Resources Policy and



Manual that the Petitioner was accused of having breached. The Petitioner was given 10 days to file a response of the said notice to show cause.

42. The Petitioner through his Advocate Okoth and Company Advocates wrote to the respondents by their letter dated 5<sup>th</sup> February 2024. They asked to be provided with some information which is contained in that letter.

43. The Respondent filed a response dated 20<sup>th</sup> February 2024 and stated they had provided the requested information to the Petitioner's advocates.

The counsel for the Petitioner wrote again to the Respondent demanding more information and by 14<sup>th</sup> March 2024 the Petitioner filed this suit.

44. The court is not keen to interfere in an employer/employee relationship on disciplinary process.

That is the internal process in every organisation as to how to discipline the employee.

Frankly if the court involved itself in all disciplinary processes the employers' rights will also be interfered with and the courts will not be in a position to entertain all such disciplinary cases.

The Petitioner should have subjected himself to disciplinary proceedings and only to come to court if dissatisfied with the process both on the substantial justification and the procedure. He came to court prematurely.

45. In the case of Aviation and Allied Workers Union -VS- Kenya Airways Limited where the court stated. "Thus, similarly this court would be reluctant to involve itself in a disciplinary process commenced by the employer unless in an appropriate case it is established that the disciplinary process commenced or is continuing unfairly. The intervention in disciplinary process by employers will be entertained by the court rarely and in clear cases where the process is likely to result into unfair imposition of a punishment against the employee. The court will intervene in an administrative disciplinary procedure if it is established that the procedure relied on by the employer offends fairness or due process by not upholding the rules of natural justice, or, if the procedure is in clear breach of the agreed or legislated or employer's prescribed applicable policy or standards, or, if the disciplinary procedure were to continue it would result into manifest injustice in view of the circumstances of the case. The court will normally not intervene if it is established that there exist mechanisms between the employer and the employee such as appeal or revision that the employee could invoke internally to remedy the dissatisfaction that would otherwise justify the court's intervention and, the employee has not exhausted such internal mechanisms."

46. It would not be right for the court to stop disciplinary process which has not even commenced. The court will not result to such as it is uncalled for.

47. The Petition is not warranted and it is therefore dismissed.

48. The court orders each party to meet their respective costs of the petition.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

