



**Kirubi v Regional Commissioner, Central Region & 2 others (Employment and Labour Relations  
Judicial Review E006 of 2024) [2025] KEELRC 232 (KLR) (4 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 232 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E006 OF 2024  
ON MAKAU, J  
FEBRUARY 4, 2025**

**BETWEEN**

**THOMAS MAINA KIRUBI ..... APPLICANT**

**AND**

**THE REGIONAL COMMISSIONER, CENTRAL REGION ... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY COMMISSIONER, MURANG'A COUNTY ... 2<sup>ND</sup> RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER, KANGEMA SUB-  
COUNTY ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. By Notice of Motion dated 5<sup>th</sup> June 2024, the applicant seeks orders that:
  - a. That the Honourable court be pleased to issue an order of certiorari quashing the decision of the 2<sup>nd</sup> Respondent through letter dated 19<sup>th</sup> January 2024 to interdict the Applicant.
  - b. That the Honourable court be pleased to issue an order of certiorari quashing the decision of the 1<sup>st</sup> Respondent through letter dated 8<sup>th</sup> April 2024 to interdict the Applicant.
  - c. That the Honourable court be pleased to issue an order of prohibition directed to the 3<sup>rd</sup> Respondent to prohibit her from engaging in abuse of power and harassing the Applicant herein with baseless and unsubstantiated claims against him.
  - d. That the Honourable court be pleased to stay any further disciplinary proceedings against the Applicant by the Respondents pending the hearing and determination of the instant application.
  - e. That the costs of the application be provided for.



2. The motion was supported by a statement of facts and on verifying affidavit dated 5<sup>th</sup> June 2024. The respondent opposed to the motion vide a Replying Affidavit sworn on 19<sup>th</sup> July 2024 by the 3<sup>rd</sup> Respondent. Each side also filed written submissions. The pleadings by the applicant are messy but time will not allow me to address myself to that save to warn litigants that they have an obligation to comply with the law of procedure.

### **Facts of the case**

3. The applicant's case is that he was appointed as chief, Kiruri Location Murang'a District on 17<sup>th</sup> May 2005 and has now served for 27 years. Since September 2022, the 3<sup>rd</sup> respondent has turned his life into a nightmare by harassing and intimidating him with numerous letters containing unsubstantiated accusations. The foregoing matters culminated in his interdiction vide letters dated 19<sup>th</sup> January 2024 and 8<sup>th</sup> April 2024.
4. By his long affidavits, the applicant contends that the interdiction was for no justifiable reason and it was unprocedurally and prematurely done before undertaking preliminary investigations as required. He is apprehensive that the respondents are determined to terminate his employment unfairly. Therefore, he prayed for the quashing of the interdiction and prohibition of the 3<sup>rd</sup> Respondent from harassing him with baseless claims.
5. The respondents on the other hand contended that they received many complaints against the applicant from his relatives and residents of his location; that they served the applicant with letters warning him of the allegations made against him and further served him with show cause letters and even invited him to conciliation meeting but he failed to cooperate and even disrespected the 3<sup>rd</sup> Respondent.
6. As a result of the foregoing matters, the case was referred to the County Human Resource Advisory Committee which discussed the report by the applicant's immediate supervisors and responses by him, and noted that his action amounted to insubordination, conflict of interest and gross misconduct. However, in order to confirm the offences, the committee formed a sub committee to carry out investigations and report in a subsequent meeting. In the meanwhile, the applicant was suspended pending the investigations.
7. The decision to interdict the applicant was done by letter dated 19<sup>th</sup> January 2024 and 8<sup>th</sup> April 2024 on behalf of the Cabinet secretary. The respondents maintained that the action taken against the applicant was grounded on justifiable reasons and fair procedure was followed.

### **Submissions**

8. It was submitted for the applicant that he has since his appointment, served diligently as a result of which he was promoted to Senior Chief 1 'CSG9'. It was further submitted that the allegations of misconduct against the applicant were made by the 3<sup>rd</sup> respondent without first doing investigations and as such they were malicious and amounts to harassment.
9. It was further submitted that the interdiction of the applicant was prematurely done before conducting preliminary investigations as required by clause 4.1.2 (a) (i) of the Discipline Manual of the Public Service, 2022. It was also submitted that the interdiction was unfair because it was based on grounds that were not substantiated through preliminary investigations. Consequently, it was contended that the applicant is entitled to the orders sought. For emphasis, reliance was placed on Ugandan case of Pastoli v Kabale District Local Government Council & others (2008) 2EA page 300-304 where the court discussed the basis upon which judicial Review orders can be issued.



10. On the other hand, it was submitted for the respondents that the impugned interdiction was procedurally made and it should not be quashed. It was argued that before the interdiction, the respondents established the grounds through warning letters, and show cause letters of which the applicant responded to. It was further argued that the interdiction was compliant with clause 4.1.2 (c) of the Discipline Manual for the Public Service and section 70 of the Public Service Commission Act, and therefore Article 47 of the Constitution was not violated.
11. For emphasis, reliance was placed on Hezekiah Chepkwony & 2 Others v Cabinet Secretary, Ministry of Health & 2 Others (2020) eKLR, Geoffrey Mworira v Water Resources Management Authority (2015) eKLR and Gachukia v Kenya Institute of Supplies Management (2024) KEELRC 1772 (KLR) where the court discussed the basis upon which a court of law can intervene in internal disciplinary process before conclusion.
12. In the instant case, it was submitted that the applicant has not laid any basis upon which the court can grant the order sought and therefore the court was urged to dismiss the application with costs.

### **Determination**

13. Having considered the Application, Affidavits and submissions filed, there is no dispute that the applicant is facing disciplinary hearing and has indeed been interdicted pending the finalization of the process. The issues for determination are:
  - a. Whether the applicant has demonstrated a good basis for the court to interfere with internal disciplinary process before conclusion.
  - b. What appropriate orders should be made.

### **Basis for the court to intervene**

14. The general legal principle emerging from our jurisprudence is that a court of law should not intervene in internal disciplinary proceedings until they are concluded. However, courts have developed some exceptions to the said general principle of non-interference.
15. In Geoffrey Mworira v Water Resources Management Authority, supra, Ongaya J, after seeking guidance from several court decisions, concluded that: -

“The court will very sparingly interfere in the employer’s entitlement to perform any of the human resource functions such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy or any other human resource function. To intervene, 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.”

16. I entirely agree with the foregoing holding which is very relevant to the facts of this case. The applicant has accused the employer of interdicting him before first conducting investigations as required by clause 4 of the Discipline Manual for Public Service. However, the respondents’ contended that the interdiction was lawfully done after preliminary investigations.



17. The disciplinary procedure for Job Group 8 and below is provided under Clause 4.1.2 (b) but for officers who have served for 15 years and above the procedure is under clause 4.1.2 (a) of the Manual. Clause 4.1.2 (a) of the Discipline Manual states that: -
- i. “Upon report of misconduct against an officer, or review of the persistent misconducts of which the officer has been warned severally but failed to reform, the authorized officer shall conduct preliminary investigations.
  - ii. If it is established that the misconduct occurred, the officer shall be issued with a show cause letter on the alleged misconduct (as per the sample letter provided in Appendix I). In the show cause letter, the officer shall be invited to state in writing the grounds, if any, on which he/she relies on to exculpate himself/herself.
  - iii. On expiry of the specified period for response to the show cause... the case shall be presented to the HRMAC for deliberation and recommendation.
  - iv. Where the HRMAC is of the opinion that the matter needs further investigations, the Authorised officer shall appoint a team to investigate the case within the time specified by the Authorised Officer.
  - v. The investigation report shall be presented to the HRMAC for deliberation and recommendation.
  - vi. In the event the investigations reveal further misconduct(s) against the officer, a fresh show cause letter shall be issued to him or her and steps (iii) to (iv) above shall apply.
  - vii. Where an officer requests to be heard in person, the HRMAC shall appoint a panel to hear the case and notice shall be issued to the relevant parties.
  - viii. The panel shall conduct the hearing and present a report to the HRMAC for deliberation and recommendation.
  - ix. The HRMAC recommendation shall be forwarded to the Authorised officer who shall submit the case to the commission with comments, recommendations, material evidence, records and other requirements as outlined in section 5.2 of this manual.
  - x. ...”
18. In this case, there are many letters written to the applicant by the 3<sup>rd</sup> Respondent about his conduct as a public officer. The complaints against him included land matters, intermeddling with estate of a deceased person, absence from duty and physical assault on someone. Initial investigations were done to verify the allegations by addressing letters to the applicant and even calling him for meetings. He was also served with show cause letters warning him about his persistent unethical conduct but he allegedly did not reform but rather became disrespectful to his seniors.
19. There is also no denial that after his response to the show cause letters the case was referred to the County HRMAC on 18<sup>th</sup> January 2024, and the County HRMAC deliberated on the report from the applicant’s immediate supervisor and his responses and noted that the applicant’s actions amounted to insubordination, conflict of interest and gross misconduct but recommended for a further investigation due to the magnitude of the cases. The committee also recommended for interdiction of the applicant. (See minutes marked “EDM 19”).



20. By a letter dated 19<sup>th</sup> January 2024, applicant was suspended by the Cabinet Secretary (Authorised Officer) pending investigation and finalization of the case. During the interdiction, the applicant would receive half basic salary, full house allowance and medical benefits.
21. Applying the foregoing facts to the procedure set out under clause 4.1.2 of the said Discipline Manual, I am satisfied that the interdiction of the applicant was justified by valid reasons and the procedure followed was proper. Consequently, I hold that the applicant has not laid before the court any basis upon which the court can intervene in the disciplinary proceedings before they are concluded.
22. He has not demonstrated that the employer is proceeding in a manner that violates *the constitution*, statute, contract of service, Discipline Manual for the Public Service or at all. Consequently, the court will eschew from interfering with the internal process and let the employer complete the whole process as provided under the said clause 4.1.2 (a) of the Discipline Manual for Public Service, 2022. The applicant will, after all, be at liberty to move to court after the internal process is exhausted if the need arises.

### **Appropriate orders**

23. In view of the foregoing, I find that the applicant is not deserving of the order of certiorari to quash the interdiction letters dated 19<sup>th</sup> January 2024 and 8<sup>th</sup> April 2024. The decision contained in the said letters was reached upon justiciable reasons and after following the proper procedure as set out under clause 4.1.2 (a) of the Discipline Manual for Public Service.
24. Likewise, the applicant is not entitled to the order of prohibition against the 3<sup>rd</sup> respondent because there is no evidence that she has engaged in abuse of power and harassment of the applicant with baseless claims. The truth about the applicant's allegations will await investigations by the employer which will either confirm or reverse the preliminary report of his immediate supervisors.

### **Conclusion**

25. I have found that the applicant has failed to demonstrate any basis for upon which this court should intervene in the internal disciplinary proceedings before they are exhausted. Consequently, I dismiss the Notice of Motion dated 5<sup>th</sup> June 2024 with costs to the respondents.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

