



Republic v African Banking Corporation Limited; Oluchina (Exparte Applicant) (Judicial Review Application E053 of 2024) [2025] KEELRC 825 (KLR) (13 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 825 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW APPLICATION E053 OF 2024**

**HS WASILWA, J
MARCH 13, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

AFRICAN BANKING CORPORATION LIMITED RESPONDENT

AND

SAMUEL OLUCHINA EXPARTE APPLICANT

JUDGMENT

1. The application before court is an application dated 2nd October 2024 filed by the Applicant who seeks judicial review orders of certiorari to quash the Respondent's disciplinary proceedings and the resulting First Warning Letter dated 27th August 2024, a prohibition order restraining the Respondent from taking further adverse action against the Applicant based on the impugned proceedings, a declaration that the said decision was unlawful, unreasonable, and procedurally improper, and an order for costs.
2. The Applicant, employed by the Respondent since November 2018 as a Dealer in the Treasury Department, alleges that the disciplinary process was flawed, having been initiated by a show cause letter dated 27th February 2024 regarding alleged unprofessional language used on 17th February 2024. The process culminated in the warning letter issued six months later, contrary to the Respondent's Human Resource Policy, which requires disciplinary matters to be concluded within sixty days.
3. The policy further mandates that the Security Department conduct investigations and generate a report before initiating disciplinary action, a step the Respondent allegedly failed to undertake. The Applicant cites Republic v Judicial Service Commission Ex parte Pareno and Council of Civil Service Unions v Minister for the Civil Service (1985) to support the argument that an employer is bound by its policies and procedures, and failure to adhere to them renders any resulting action unlawful and void ab initio.



4. The Applicant contends that the Respondent's actions violated the principles of natural justice and the right to a fair hearing, as guaranteed under the Fair Administrative Actions Act, the [Employment Act](#), and Articles 27 and 47 of [the Constitution](#) of Kenya, 2010. The Applicant further avers that the decision was arbitrary, irrational, and actuated by improper motives, subjecting him to unfair victimization and anxiety during the protracted process.
5. The issuance of the First Warning Letter, the Applicant argues, not only jeopardizes his employment but also risks the denial of bonuses, salary reviews, and creates grounds for future disciplinary action, including wrongful dismissal. The Applicant, therefore, prays for the court's intervention in the interest of justice, as supported by the verifying affidavit of Samuel Oluchina sworn on 27th September 2024 and further grounds to be adduced at the hearing.
6. The Applicant swore a further supporting affidavit dated 11th December 2024 in response to the Replying Affidavit of Lucy Wariara deposed on 25th November 2024 on behalf of the Respondent and in support of the application dated 2nd October 2024. The Applicant states that the Group Head of Human Resources at African Banking Corporation, Lucy Wariara, in paragraph 3(iv) of her replying affidavit, admitted to inferring that the Applicant had been "perennially rude, used a bad tone, often shouting, using demeaning language, and throwing insults" solely based on the complaint filed against him, without prior investigation or fact-finding, thereby demonstrating clear bias.
7. The Applicant further contends that the Respondent's assertion in paragraph 3(viii) of the replying affidavit, alleging that the Applicant's conduct had the potential to cripple the operations of a sensitive department within the bank, is an unfounded slippery slope fallacy. In response to paragraphs 4, 5, 6, 7, 8, and 9 of the replying affidavit, the Applicant confirms that he appealed the disciplinary committee's decision to the Group CEO, but the appeal yielded no results, thus justifying the current application for judicial review.
8. The Applicant asserts that he has exhausted all internal dispute resolution mechanisms, thereby granting this court jurisdiction under Section 15.12 of the Respondent's Human Resource Manual, which provides that findings by a disciplinary committee should be appealed to the Group CEO. Having exhausted that avenue, the court remains the only viable forum for justice.
9. The Applicant further avers, based on advice from his advocates, that the court has jurisdiction under Article 162 of [the Constitution](#) of Kenya, 2010, and Section 12 of the [Employment and Labour Relations Court Act](#). In response to paragraphs 3(vii) and 3(xii) of the replying affidavit, the Applicant submits that the disciplinary committee misinterpreted his statements, wrongly construing them as an admission of guilt, which formed the basis for the adverse finding against him.
10. The Applicant further states that the Respondent admitted to breaching its own Human Resource Manual during the disciplinary process, thereby rendering the entire process unprocedural, null, and void. According to the Human Resource Manual, complaints or misunderstandings between employees should be reported in writing to the immediate supervisor, who must call both parties, attempt to resolve the issue, and issue a ruling within five days.
11. This procedure was disregarded when the complaint by Bonnfance Olum was forwarded directly to HR by the General Manager upon receipt. The Applicant asserts that the failure to adhere to these procedural safeguards led to a miscarriage of justice, with no explanation provided for the departure from the established process.
12. The Applicant further states that the Respondent, in paragraph 3(xii) of the replying affidavit, admitted that the disciplinary committee found the Applicant guilty of a minor misconduct-level



offence. Section 15.5 of the Respondent's Human Resource Manual outlines the procedure for handling minor offences, which the Respondent failed to follow, instead employing a process applicable to misconduct or gross misconduct. The prescribed punishment for a minor offence under Section 15.5 is a verbal caution or reprimand. Therefore, the issuance of a First Warning Letter was not only excessive but also in contravention of the Respondent's Human Resource Policy. The documents referenced in paragraph 5 of the affidavit support this position.

13. The Applicant further avers that the complainant, Bonnfance Olum, has previously demonstrated bad faith in interactions with him, which likely motivated the filing of the complaint, including testimony allegedly riddled with false allegations and half-truths. Attached to the affidavit is a copy of the email correspondence between the Applicant and the complainant. The Applicant concludes by affirming that the contents of the affidavit are true to the best of his knowledge, save for matters deponed to on information and belief, the grounds and sources of which have been specified therein.

Applicant's Written Submissions

14. The Applicant filed written submissions dated 18th January 2025 in support of the Notice of Motion application dated 3rd September 2024, seeking to quash the disciplinary proceedings, findings, and decisions against him. The Applicant submits that the impugned disciplinary process was unfair, excessive, and unprocedural, contravening the principles of natural justice, the right to fair administrative action under Article 47(1) and (2) of the Constitution of Kenya, and the Respondent's Human Resource Policy.
15. The disciplinary case arose from allegations that the Applicant used inappropriate language toward a colleague. Without any prior investigation, the Respondent issued a show cause letter dated 17th February 2024, which the Applicant responded to, denying the allegations. Nevertheless, a disciplinary hearing was held on 8th April 2024, during which two complainants testified against the Applicant. The disciplinary committee found the Applicant guilty based on an alleged admission, which the Applicant contends was a misconstruction of his statements. Consequently, a First Warning Letter was issued on 27th August 2024.
16. The Applicant avers that the entire process contravened the Respondent's Human Resource Policy, specifically Regulation 16(3), which requires that complaints be resolved informally through the immediate supervisor, followed by escalation to the Head of Department and the Head of HR if unresolved. The HR office is required to investigate independently before the Human Resource Committee (HRC) makes a final ruling.
17. This process was entirely disregarded. Furthermore, Regulation 15.5 mandates that supervisors conduct investigations, consider whether the employee is a habitual or first-time offender, and avoid hasty actions not based on true facts. The Respondent admitted that the complaint was escalated to HR without any attempt at informal resolution or investigation. Additionally, Regulation 15.6(3) requires that all disciplinary matters be closed within 60 days. However, the complaint was lodged on 15th February 2024, with a second complaint on 23rd February 2024. A notice to show cause was issued on 27th February 2024, the disciplinary hearing was held on 8th April 2024, and the First Warning Letter was not issued until 27th August 2024, far exceeding the prescribed 60-day period, thus occasioning a miscarriage of justice.
18. The Applicant further submits that the disciplinary committee's findings were unfair, excessive, and unwarranted. The case of *Pastoli v. Kabale District Local Government Council & Others* [2008] 2 EA 300 was cited to emphasize that procedural impropriety arises from failure to observe the rules of natural justice or procedural fairness. In *Msagha v. Chief Justice & 7 others*, Nairobi HCMCA No.



1062 of 2004 (2006) 2 KLR 553, the court held that natural justice requires an adequate opportunity to present one's case, an unbiased decision-maker, and decisions based on logical proof.

19. The Applicant contends that he never admitted to the allegations during the hearing. According to the disciplinary hearing minutes of 8th April 2024, the Applicant stated, "I did not call Boniface silly and stupid; it's only that I highlighted that he has been making silly and stupid mistakes over and over again." This statement clearly referred to the complainant's actions, not his person, demonstrating that the committee misconstrued the Applicant's words.
20. The Respondent's Group Head of Human Resources admitted in the replying affidavit that the disciplinary committee found the Applicant guilty of a minor misconduct level offence. Under Regulation 15.5 of the Respondent's Human Resource Manual, the punishment for minor misconduct is a verbal caution or reprimand. However, the committee issued a formal warning letter, contrary to the policy, rendering the decision excessive and unwarranted.
21. In *Ridge v. Baldwin* (1963) 2 All ER 66, Lord Reid held that a decision made without observing natural justice is void. Similarly, in *Msagha v. Chief Justice & 7 others*, the court emphasized that depriving an affected party of the right to be heard renders a decision null, irrespective of whether the outcome would have been the same if due process had been followed.
22. The Applicant submits that the entire disciplinary process was flawed and should be quashed. In *Onyango Oloo v. Attorney General* [1986-1989] EA 456, the Court of Appeal held that natural justice applies to administrative action affecting rights and that denial of the right to be heard renders any decision null and void ab initio.
23. The Applicant maintains that the Respondent violated its own policies, acted unfairly, and cannot purport to rely on the same flawed process to justify its decision. Accordingly, the Applicant prays that this Honourable Court allows the application, quashes the disciplinary proceedings, findings, and decision, and grants the relief sought.

Respondent's Case

24. The Respondent, through Lucy Wariara, the Group Head of Human Resources, filed a Replying Affidavit dated 25th November 2024, stating that she is duly authorized and competent to depone the affidavit. She avers that she has read the Application for Leave to institute Judicial Review proceedings, the Verifying Affidavit, the Substantive Notice of Motion, and the Statutory Statement filed by the Ex Parte Applicant and has received legal advice, which she believes to be true.
25. The Respondent contends that the suit is based on falsehoods and suppression of material facts. The Applicant was employed by the Respondent as a Dealer in the Treasury Department through a contract dated 6th November 2018, earning a gross salary of Kshs. 425,000. As an employee, the Applicant was bound by the Human Resource Policy, which requires all staff to act diligently, uphold the integrity of the Bank, and adhere to dispute resolution mechanisms.
26. On 15th February 2024, the Respondent received a complaint from Bonnfance Olum, a Senior Dealer in the Treasury Sales Department, alleging that the Applicant had used abusive and derogatory language against him, referring to him as "stupid and silly." The complaint also indicated that the Applicant had been perennially rude, using a bad tone, shouting, and demeaning colleagues, thereby creating a hostile work environment.
27. Another complaint was received on 23rd February 2024 from Anthony Njenga of the Diaspora Department, alleging that the Applicant had used foul language and told him to advise his customer to seek services from a competitor bank. These actions were in breach of the Human Resource Policy.



- Consequently, a Show Cause Letter dated 27th February 2024 was issued, requiring the Applicant to provide a written explanation by 1st March 2024.
28. In his response dated 1st March 2024, the Applicant admitted to calling Bonnfance Olum "silly and stupid" in frustration over repeated mistakes but denied other allegations. Due to the severity of the allegations and their potential impact on the Bank's operations, the Applicant was invited to a Disciplinary Hearing via a letter dated 4th April 2024, scheduled for 8th April 2024.
 29. The hearing proceeded with the Applicant attending in person, alongside Bonnfance Olum and Anthony Njenga, who appeared virtually. The minutes of the hearing were forwarded to the Applicant on 19th July 2024 for review and acknowledgment, but he declined further engagement with the HR Department. The Respondent viewed this as a refusal to abide by Bank policies and disregard for dispute resolution mechanisms. Consequently, on 27th August 2024, a First Warning Letter was issued to the Applicant, warning that further misconduct would result in more severe disciplinary action.
 30. On 5th September 2024, the Applicant's advocates issued a Demand Letter seeking withdrawal of the First Warning Letter and the quashing of disciplinary proceedings. The Respondent replied on 12th September 2024, affirming that the Applicant was still an employee and had not exhausted internal dispute resolution mechanisms. The Applicant nonetheless proceeded to file suit.
 31. The Respondent asserts that at no point has the Applicant been dismissed and that he remains in active employment, earning his monthly salary. The Respondent argues that the suit is premature for want of exhaustion of remedies under Section 9(2) of the *Fair Administrative Action Act*, which bars courts from reviewing administrative decisions unless internal remedies have been exhausted. The Respondent further states that judicial review is not the appropriate remedy in this case and that the Applicant ought to have pursued remedies under the *Employment Act* instead.
 32. The Respondent asserts that the disciplinary process was lawful, fair, and in line with the Human Resource Policy. The Applicant was given an opportunity to respond in writing, appear before the Disciplinary Committee, and make oral submissions. He did not raise any complaints about the process. The delay in concluding the matter beyond the stipulated 60 days was necessitated by the need to observe fair hearing principles.
 33. The Respondent further contends that disciplinary measures, including written warnings, are standard practice and proportionate to the misconduct. Chapter 15 of the Human Resource Policy provides for disciplinary actions such as warnings, suspension, demotion, dismissal, and prosecution. Specifically, Rule 17 provides that the use of abusive language towards staff or customers attracts a first written warning for a first offense, a second written warning for a second offense, and termination for a third offense.
 34. The Applicant, having been found culpable, was issued with the minimum penalty of a first warning. There is no evidence of discrimination or bias in the disciplinary process. The Respondent maintains that the Applicant is attempting to circumvent the Respondent's right to manage its disciplinary processes while still remaining an employee.
 35. The Court should not allow such interference. The Respondent has acted lawfully and within its mandate as an employer. The affidavit concludes by stating that the contents therein are true to the best of the deponent's knowledge, information, and belief.



Respondent's Written Submissions

36. The Respondent filed written submissions dated 10th February 2025 in opposition to the Ex-Parte Applicant's substantive application dated 3rd September 2024, which challenges the disciplinary proceedings initiated against the Applicant. The Respondent, through its Replying Affidavit dated 25th November 2024, outlines the background of the dispute.
37. The Applicant was employed by the Respondent as a Dealer in the Treasury Department under a contract dated 6th November 2018, earning a gross salary of Kshs. 425,000. As an employee, the Applicant was subject to the Respondent's Human Resource Policy, which mandates professional conduct and provides mechanisms for dispute resolution and disciplinary measures.
38. The dispute arose from complaints lodged against the Applicant. On 15th February 2024, Bonnfance Olum, a Senior Dealer in the Treasury Sales Department, accused the Applicant of using abusive language, specifically calling him "stupid and silly." Additional complaints were raised, including an incident on 23rd February 2024, where the Applicant allegedly used foul language against Anthony Njenga from the Diaspora Department and suggested that a customer seek services from a competitor bank.
39. Consequently, the Respondent issued a Show Cause Letter on 27th February 2024, requiring the Applicant's response by 1st March 2024. In his response, dated 1st March 2024, the Applicant admitted to calling Olum "stupid and silly" in the heat of the moment but denied other allegations. Given the severity and repeated nature of the complaints, the Respondent invited the Applicant to a disciplinary hearing through a letter dated 4th April 2024.
40. The hearing was held on 8th April 2024, attended by the Applicant, Olum in person, and Njenga virtually. The Respondent later forwarded the minutes of the hearing, dated 12th April 2024, to the Applicant on 19th July 2024. The Applicant, however, refused to acknowledge receipt and declared he would no longer engage with the Human Resource Department on the matter.
41. In response, the Respondent issued a First Warning Letter on 27th August 2024, emphasizing that further misconduct would attract severe disciplinary action. Subsequently, the Applicant, through his advocates, issued a Demand Letter on 5th September 2024, seeking the withdrawal of the warning letter and nullification of the disciplinary proceedings. The Respondent responded on 12th September 2024, affirming that the Applicant was still in active employment and had not exhausted internal dispute resolution mechanisms. The Applicant, nevertheless, proceeded to file suit.
42. The Respondent submits that the issues for determination are whether the disciplinary proceedings met the legal threshold, whether the court should interfere with an employer's right to discipline employees, whether the suit meets the judicial review threshold, and who should bear costs. On the first issue, the Respondent argues that the Applicant's misconduct is evident, citing Section 14.2 of the Human Resource Policy, which mandates professional and respectful interactions among employees.
43. The complaints received from multiple colleagues and the Applicant's admission to using derogatory language substantiate the allegations. The Respondent contends that it had the right to discipline the Applicant, as upheld in *Miguna Miguna v Permanent Secretary, Office of the Prime Minister & the Attorney General* (2011) eKLR, where Justice Warsame held that an employer has a legitimate duty to initiate disciplinary proceedings if an employee's conduct is untenable.
44. The same principle was affirmed in *Joseph Mutuura Mberia & another v Council Jomo Kenyatta University of Agriculture and Technology (JKUAT)* [2013] eKLR. In *Miguna Miguna*, the court



- also held that the employer has the power to commence disciplinary mechanisms unless proven to be unreasonable or illegal. Further, in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, Justice Nduma emphasized that courts should not interfere with an employer's managerial prerogative to discipline employees.
45. On proportionality of the disciplinary action, the Respondent submits that the Applicant remains in active employment and was merely issued a First Warning Letter. The Court of Appeal in *Fredrick Oduor Lamba v Kenya Electricity Generating Company PLC (Civil Appeal E126 of 2021)* [2023] KECA 118 (KLR) held that proportionality requires assessing whether an employee's misconduct was so severe as to justify the imposed sanction. The court emphasized that punishment must correspond to the gravity of the offense, considering any mitigating, extenuating, or aggravating circumstances.
 46. The Respondent considered various factors before issuing the warning letter, including the repeated complaints against the Applicant, the severity of the allegations, the potential impact on the work environment, the disciplinary hearing proceedings, the Applicant's response to the minutes, and the Human Resource Policy. Section 15.11 of the Policy stipulates that the use of insulting language towards staff or customers warrants a first written warning, a second written warning upon repetition, and eventual termination upon further violations.
 47. The Respondent further submitted that on the first issue regarding the legality of its conduct, the answer is in the affirmative. On the second issue of whether this Court should interfere with an employer's right to discipline employees, the Respondent argued that by instituting the present suit, the Applicant is effectively challenging the Respondent's right to institute disciplinary proceedings against its employees.
 48. The Applicant has failed to provide any evidence to dispute the disciplinary process or demonstrate an infringement of the rules of natural justice but instead challenges the disciplinary outcome. The Respondent asserted that even if the Applicant had challenged the disciplinary process, this Court would still lack the power to intervene. In *Eckla Jesang Kirop & 3 others v Kenya Ports Authority* [2015] eKLR, the Court held that an employer has the right to subject employees to disciplinary proceedings under Section 44 of the *Employment Act* and the contract of employment, and that an employer has an unfettered right to discipline employees, provided that the rules of fairness under natural justice and the law are adhered to.
 49. The Respondent also cited ELRC No. 24 of 2015 *Kenya Plantation and Agricultural Workers Union v Finlays Horticulture Kenya Ltd* [2015] eKLR, where Radido J held that court intervention in a disciplinary process is only justified in exceptional cases where grave injustice would occur and the employee has no alternative means of attaining justice.
 50. Further, in *MTM v KIE Limited & Another* [2020] eKLR, the Court held that interference with internal disciplinary action is only warranted when the process is flawed and that such interference would be to put the process back on track rather than nullify it altogether. The Respondent contended that the present suit is a malicious attempt to oust its power to conduct disciplinary proceedings without any justifiable reason.
 51. The Applicant has not demonstrated any grave injustice or lack of alternative justice mechanisms. The misconduct of the employee is not in question, nor is the existence of a proper disciplinary process and a rational, proportional punishment. The Respondent cited *Geoffrey Mworira v Water Resources Management Authority* [2015] eKLR, where Ongaya J stated that courts should sparingly interfere with an employer's human resource functions unless there is contravention of *the Constitution* or legislation, breach of contract, manifest unfairness, or exhaustion of internal procedures.



52. The Respondent also relied on Alfred Nyungu Kimangui v Bomas of Kenya Limited [2013] eKLR, where Justice Rika cautioned against courts taking over managerial prerogatives in workplaces.
53. On the third issue, the Respondent submitted that the suit does not meet the threshold for judicial review. The employment relationship is governed by the *Employment Act*, and any remedies should be sought within that framework rather than through judicial review. Judicial review remedies are discretionary, and courts consider their efficacy in the circumstances.
54. The Respondent cited Republic v Kimeinyi Ex Parte Kenya Institute for Public Policy and Research Analysis (KIPRA) [2013] eKLR and Dickson Kiplagat Kasebe v National Police Service Commission [2020] eKLR, where it was emphasized that judicial review remedies in private law are limited. The Respondent further submitted that disciplinary action by an employer, particularly between private persons, does not amount to an administrative action and should not be subject to judicial review unless exceptional circumstances exist.
55. This position was upheld in Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR, where Justice Nduma Nderi held that disciplinary action is not an administrative action under Article 47 of *the Constitution*, as Article 41 and labour laws provide sufficient safeguards for employees facing disciplinary action. Additionally, the Respondent cited Municipal Council of Mombasa v Republic Civil Appeal No. 24 of 2001, where the Court held that judicial review does not apply to disputes arising from contractual relationships governed by the law of contract.
56. Similarly, in R v East Berkshire Health Authority, Ex-Parte Walsh [1984] 3 All ER 425, an employee whose contract was terminated sought judicial review but was denied, reinforcing that employment disputes should not be subjected to judicial review proceedings. The Respondent submitted that it is not a complex issue whether the Applicant approached the right forum or adduced sufficient evidence and urged the Court to dismiss the suit forthwith.
57. On the issue of costs, the Respondent submitted that costs follow the event. In Kay Construction Company Limited v Eco Bank Kenya Ltd & 6 others [2015] eKLR, the Court held that costs are discretionary but must be exercised judicially and are meant to compensate the successful party rather than punish the losing party. The phrase "the event" refers to the result of the entire litigation, and as the Respondent has been put to costs by the suit, recompense is in order. The Respondent therefore prayed for the dismissal of the unmerited suit with costs.
58. I have examined the averments and submissions of the parties herein. The gist of the complaint by the applicant is the alleged flawed disciplinary process and excessive punishment meted against him by the respondent.
59. The applicant contends that he was found guilty of a minor misconduct which the respondent confirm but issued with a 1st warning letter which was contrary to respondent's HR manual. He also contends that the respondent failed to follow their own HR policies.
60. I have looked at respondents HR Manual which at clause 15.4 state as follows:

15. 4. Counselling

The first stage of the disciplinary process is counselling in the case of minor offences. Where circumstances indicate that there is need to resort to the formal procedures, the Line Manager should talk the matter over with the employee.



If it becomes obvious that the matter is more serious, discussions should be adjourned and the formal disciplinary procedure invoked.

61. Clause 15.5 also indicate as follows:

5. 5. Informal Disciplinary Procedure for Minor Offences/Mis-Conduct

Step 1: Preliminary investigation

When an employee is deemed to have committed an offence in terms of the provisions of these regulations, his immediate supervisor shall institute an investigation, taking into account whether the employee is a habitual offender or a first time offender, or whether there were justifying circumstances that occasioned the commission of such an offence. In all cases the supervisor shall desist from taking a hasty action not based on the true facts of the case.

Step II: Discussion session

Here the supervisor's main objective of the discussion with the employee, who has breached the rules, is to help him improve on the noted undesirable conduct or meeting the established job standards. The supervisor shall in such cases refrain completely from use of abusive, scolding or intemperate language. If the discussion/counselling is not enough to change the attitude and behaviour of the employee, the supervisor shall necessarily have to resort to the next step;

Step III: Verbal caution or reprimand

When an employee has failed to respond positively to the discussion/counselling, then a verbal caution, or reprimand, shall be issued by the immediate supervisor. This shall be conveyed to the employee in a manner and tone that is firm but positive. This verbal caution is a valid disciplinary action. However, depending on the supervisor's assessment of the case, he may issue a written caution or reprimand, which though for local use, may be used for future disciplinary cases requiring submission to the HR office.

62. It is true that where an employee commits a minor infraction, the 1st step is handled by an employee's supervisor internally. A verbal caution or reprimand is only issued when an employee has failed to respond positively to the discussion/counselling.
63. In the case of the applicant, it is true that this important stage was omitted and after the complaint against him by a colleague, the applicant's supervisor referred the matter to the HR manager.
64. It is also true that punishment for a minor infraction is not a 1st warning. In the case of the applicant, the applicant was issued with a 1st warning. He appealed to the group CEO who did not consider his complaint hence this application.
65. It is indeed true that the respondent failed to adhere to their own HR Manual. It is also true that the respondents acted hastily and gave the applicant an excessive punishment not provided for in their own HR manual. The action by the respondent breached the Fair Administration Action act which provides at Section 7(2)(b) (c) and (d) as follows:
- (2) A court or tribunal under subsection (1) may review an administrative action or decision, if–
- (b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
 - (c) the action or decision was procedurally unfair;
 - (d) the action or decision was materially influenced by an error of law;



66. In view of this finding, I find the Judicial review merited. I allow the prayers sought and grant orders of certiorari quashing the respondent's disciplinary proceedings and the resulting first warning letter dated 27th August 2024. I also make an order that no further disciplinary action be taken against the applicant based on the impugned proceedings declaring the decision unlawful and procedurally unfair and improper.

Respondents will pay costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF MARCH, 2025.

HELLEN WASILWA

JUDGE

