



Kale v Teachers Service Commission & 2 others (Miscellaneous Application E029 of 2024) [2025] KEELRC 703 (KLR) (7 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 703 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
MISCELLANEOUS APPLICATION E029 OF 2024**

**B ONGAYA, J
MARCH 7, 2025**

BETWEEN

KYAIMA TITUS KALE APPLICANT

AND

TEACHERS SERVICE COMMISSION 1ST RESPONDENT

SECRETARY, TESCHERS SERVICE COMMISSION 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The applicant filed the chamber summons dated 26.07.2024 through E.M.Maingi & Company Advocates. It was under order 53 rule 1(1), 2 and 4 of the Civil Procedure Rules, section 27 of the Employment and Labour Relations CXourt Act, section 3A of the *Civil Procedure Act* Cap 21, sections 8 and 9 of the *Law Reform Act*, sections 8 & 9 of the *Fair Administrative Action Act* of the Laws of Kenya and all other enabling provisions of law. The applicant prayed for orders as follows:
 - a. That the applicant be granted leave to apply for judicial review orders of certiorari and mandamus out of time against the decision of the respondents in disciplinary appeal case TSC/0255/02/2021/2022/9 being disciplinary case RC/055/10/2022/2023/18 in total violation of section 4 of the *Fair Administrative Action Act*.
 - b. That costs of the application be in the cause.
2. The application is based on the annexed affidavit of the applicant, the statutory statement and the following grounds:
 - a. The respondents acted in bad faith, with bias, procedurally unfair and against the rules of natural justice and sections 4(3) and 4(4) of the *Fair Administrative Action Act* in hearing the disciplinary case and appeal thereby occasioning miscarriage of justice against the applicant.



- b. The 2nd respondent at the appeal upheld the decision of the 1st respondent without following laid down procedures for hearing disciplinary cases such as not providing information, materials and evidence relied upon in making the decision, and, no investigation committee was formed. The right to legal representation was not conveyed by the 1st respondent occasioning an unfair trial per section 4(5) of *Fair Administrative Action Act*.
 - c. The applicant's salaries were unfairly withheld during the interdiction period.
 - d. The applicant had previously filed Judicial Review Application No. E004 of 2023 at the High Court in Kitui which was struck out for want of jurisdiction.
 - e. The respondents in determining the disciplinary case failed to consider that they equally lacked jurisdiction to make a determination on applicant's criminal liability. No criminal proceedings had been preferred against the applicant.
3. The respondents opposed the application by filing the replying affidavit of Evaleen Mitei sworn on 20.02.2025 and filed through Isaac Ochieng' Advocate. It was urged as follows:
- a. The respondent employed the applicant and worked in various stations. On 06.09.2021 a complaint was made against the applicant. Two more complaints were made alleging the applicant obtained money by false pretenses. Preliminary investigations were conducted. The applicant was thereafter interdicted and he replied to interdiction letter on 04.02.2022. He agreed to have received the funds and that it was a police case. The charge against the applicant was changed to that of the applicant being of infamous conduct.
 - b. The claimant was taken through the disciplinary process and was dismissed effective 15.07.2022. The applicant appealed against the dismissal decision and appeal was heard on 08.11.2022. by letter dated 21.11.2022 the dismissal was upheld.
 - c. The applicant filed Judicial Review Application No. E004 of 2023 at the High Court in Kitui which was struck out on 08.07.2024 for want of jurisdiction.
 - d. The instant application was filed outside the six months statutory period of limitation for seeking certiorari per section 9(2) and (3) of the *Law Reform Act* and order 53 rule 2 of the Civil Procedure Rules. The test for granting certiorari or mandamus has not been shown to have been satisfied.
 - e. Mandamus is prayed for with respect to a private duty and not a public duty.
 - f. The applicant was dismissed on 17.07.2022 and prohibition may not issue to stop a dismissal which issued conclusively.
 - g. The petitioner can file an ordinary suit to make claim of the alleged withheld monies.
4. The parties opted that the application is determined upon the material on record.
5. The Court has considered the material on record and returns as follows:
- a. The applicant seeks extension of time to file for the judicial review orders. By that prayer the applicant appears to concede that indeed time has lapsed for nature of prayers of judicial review he would be seeking in the proposed proceedings. While seeking extension of time, the applicant has not cited a provision of law permitting the Court to extent time as prayed for. In such circumstances the Court finds that the application was incurably misconceived and time



having lapsed as urged for both parties, the Court has not been shown to enjoy jurisdiction to extent time.

- b. If the applicant was indeed dismissed on 17.07.2022 and his predominant claim being payment of the withheld half pay during interdiction, it appears to the Court that while parties were in a public service contract with constitutional and statutory under pinning, nothing stopped the applicant from pursuing the claim in an ordinary suit.
- c. While seeking extension of time to apply for certiorari and mandamus, it appears that the scope and particulars of the reliefs as proposed is not spelled out in the prayers made. Such ambiguity will operate as bar to granting the application.
- d. The parties have urged matters that go to the merits on whether, if leave were granted, mandamus or prohibition would issue or not. The leave having been found not merited, the Court is obviously precluded from delving into such issues of merits.
- e. The Court has considered all circumstances of the case and each party to bear own costs of the application.

In conclusion the application for extension of time by the chamber summons dated 26.07.2024 is hereby dismissed with orders each party to bear own costs of the proceedings, and, the Deputy Registrar to forthwith return the case file to Machakos Sub-registry as closed.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 7TH MARCH, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

