



Okoti v Ethics and Anti-Corruption Commission & 2 others; Cabinet Secretary, Ministry of Water, Sanitation and Irrigation & 18 others (Interested Parties) (Employment and Labour Relations Petition E214 of 2023) [2025] KEELRC 772 (KLR) (6 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 772 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E214 OF 2023**

**MN NDUMA, J
MARCH 6, 2025**

BETWEEN

OKIYA OMTATAH OKOITI PETITIONER

AND

**ETHICS AND ANTI-CORRUPTION COMMISSION 1ST RESPONDENT
CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE 2ND RESPONDENT
ATTORNEY GENERAL 3RD RESPONDENT**

AND

**CABINET SECRETARY, MINISTRY OF WATER, SANITATION AND IRRIGATION INTERESTED PARTY
CABINET SECRETARY, MINISTRY OF LABOUR AND SOCIAL PROTECTION INTERESTED PARTY
CABINET SECRETARY, MINISTRY OF PUBLIC SERVICE, PERFORMANCE & DELIVERY MANAGEMENT INTERESTED PARTY
CABINET SECRETARY, MINISTRY OF GENDER, CULTURE, THE ARTS & HERITAGE INTERESTED PARTY
INSPECTOR GENERAL OF POLICE INTERESTED PARTY
BOARD, HUDUMA CENTRE INTERESTED PARTY
BOARD, KENYA RURAL ROADS AUTHORITY INTERESTED PARTY
TRANSMISSION COMPANY LIMITED (KETRACO) INTERESTED PARTY
NATIONAL POLICE SERVICE COMMISSION INTERESTED PARTY
BOARD, BOMAS OF KENYA LTD INTERESTED PARTY**



BOARD, NATIONAL INDUSTRIAL TRAINING AUTHORITY .. INTERESTED PARTY

BOARD, NATIONAL MUSEUMS OF KENYA INTERESTED PARTY

ESTHER WANJIRU CHEGE INTERESTED PARTY

FREDRICK MWAMATI INTERESTED PARTY

STEPHENE OGENGA INTERESTED PARTY

ANTHONY WAMUKOTA INTERESTED PARTY

PETER GITAA KORIA INTERESTED PARTY

STANVAS ONG'ALO INTERESTED PARTY

BENJAMIN KATI CHILUMO INTERESTED PARTY

JUDGMENT

1. The petition filed on 20th November 2023 by Okiya Omtatah Okoiti against the Respondents and named Interested Parties challenges the constitutional and legal validity of the decision by the Ethics and Anti-Corruption Commission (EACC) to overlook the Board of Directors of State Corporations and deal directly with the line Cabinet Secretaries to suspend the Chief Executive Officers of the public entities.
2. The Petitioner states that the law vests those powers in the Board and not in the Cabinet Secretaries.
3. The Petitioner adds that with regard to the National Police Service, the EACC was wrong to address its letter to the Inspector General of the National Police Service instead of the National Police Service Commission, which is responsible for the human resources of the institution.
4. That even where the letters are addressed to the Board, EACC abused the powers under section 42(7) of the *Leadership and Integrity Act*, No. 19 (LIA) of 2012 and Regulation 25 of the Leadership and Integrity Regulations 2015 (LIR) by invoking them without reference to a court of concurrent jurisdiction.
5. That section 42(7) of the *Leadership and Integrity Act* No. 19 of 2012 and Regulation 25 of the Regulations are void laws to the extent that they are inconsistent with Article 24(2) (a) and (b) of the *Constitution*.
6. Finally, the Petitioner challenges the constitutional and legal validity of suspending public officials for twelve (12) months to allow for investigation into allegations of corruption and procurement irregularities with their respective institutions since this is inconsistent with Article 24(1) (e) as read with Article 236(b) and 259(8) of the *Constitution*.

Facts of the petition

7. That on 16th November, 2023, the State House Spokesperson issued a press release titled, “war on corruption.” The press release, which was widely circulated on social media, informed the public that, following recommendations by the Ethics and Anti-Corruption Commission (EACC) for the suspension of some public officers, who were currently under investigation by the Commission, the Chief of Staff and Head of Public Service Felix Koskei had directed the suspension of six Chief Executive Officers for alleged involvement in corruption and procurement irregularities within their



respective institutions. Additionally, he had directed the suspension of 67 police officers and an accountant at the Kenya Rural Roads Authority (KeRRA). Further and in particular, the EACC wrote to:

- i. The Cabinet Secretary for the Ministry of Water, to suspend, for twelve (12) months, Eng. Fredrick Mwamati, the Chief Executive Officer of the Tanathi Water Works Development Agency, who is under investigation for procurement irregularities in the award of a tender for the construction of a Leather Industrial Park Water Supply Project.
 - ii. The Cabinet Secretary for the Ministry of Labour and Social Protection, to suspend, for twelve (12) months; Mr. Stephen Ogenga, the Director General of the National Industrial Training Authority (NITA), for alleged procurement irregularities in the award of a tender for supplies at NITA.
 - iii. The Board of the National Museums of Kenya to suspend, for twelve (12) months, Stanvas Ong'alo, the Acting Director-General, for alleged embezzlement of Kshs. 490 million through irregular payments.
 - iv. The Cabinet Secretary for Public Service, Performance and Delivery Management, to suspend, for twelve (12) months, Mr. Benjamin Kai Chilumo, the CEO of Huduma Centre Secretariat, who is under investigation for corruption allegations when he served in the County Government of Kilifi as the Chief Finance Officer.
 - v. The Cabinet Secretary for Gender, Culture, the Arts and Heritage, to suspend, for twelve (12) months, Mr. Peter Gitaa Koria, the CEO/GM of Bomas of Kenya, for allegations of procurement irregularities in supplies for the institution.
 - vi. The Managing Director of the Kenya Electricity Transmission Company limited (KETRACO), to suspend, for twelve (12) months, Eng. Anthony Wamukota, General Manager of Design and Construction at the company, for alleged procurement irregularities related to the construction contract of the 400KV Loiengalani Power Project.
 - vii. The Director-General of KeRRA, to suspend, for twelve (12) months; Esther Wanjiru Chege, an accountant at the institution, for alleged conflict of interest and possession of unexplained wealth.
 - viii. The Inspector-General of Police, to suspend 67 police officers implicated in corruption-related malpractices.
8. The further depositions by the Petitioner is that the said suspension was immediately leaked to the social media stating that continued stay of the said officers would interfere with investigations. While issuing the directive, the Chief of Staff and Head of Public Service emphasized that the Government remained firm in its commitment to eradicating corruption which undermined its development agenda.
 9. EACC also emphasized that the officers needed to be suspended so that they did not interfere with investigations by interfering with documents and witnesses. EACC invoked section 42(7) of the *Leadership and Integrity Act*. No. 19 of 2012 and Regulation 25 of the Leadership and Integrity Regulation 2015 to justify its request that each of the indicted officers be suspended for twelve (12) months.
 10. The Petitioner deposes that suspension for 12 months was untenable under the law since acting appointments last for a maximum of six (6) months after which the person acting in the office is eligible for confirmation.



11. The Petitioner further posits that the 12 months suspension is inconsistent with Article 24(1) (e) of the Constitution to the extent it does not take into account the relationship between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
12. That it is unreasonable and waste of public funds to suspend a public officer for 12 months, where they have not been charged in court.
13. That investigations ought to be done and concluded in lesser period.
14. The Petitioner adds that the letters ought to have been addressed to the Boards of State Corporations and not to Cabinet Secretaries since authority to discipline is with the Boards and not with the Cabinet Secretaries.
15. That section 3, 5 (1) and (3) of the State Corporations Act, CAP 446 Laws of Kenya vests the power to appoint and dismiss the CEOs in the Boards and not in the Cabinet Secretaries.
16. That the investigation have been dragging for years and the CEOs and their Boards have cooperated all along. That these suspensions are for ulterior motives and not in good faith. That indeed EACC is acting corruptly or with improper motives in taking the said collective measures all of a sudden.
17. That Article 236 (b) of the Constitution of Kenya 2010 provides:-

“A public officer shall not be – (h) dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.”
18. The Petitioner therefore posits that neither the EACC nor the Cabinet Secretary can suspend the CEO without following the law, which includes Articles 25(c), 41, 47, and 50(1) and (2) (d) of the Constitution.
19. That under the law if EACC wishes to invoke section 42(7) read together with section 52(1) of the Leadership and Integrity Act No. 19 of 2012 and Regulation 25 of the Leadership and Integrity Regulations 2015, against public officials, it must receive approval of a court of competent jurisdiction first.
20. That these provisions were enacted after the effective date of the coming into operation of the Constitution of Kenya 2010 and so must meet the criteria set out under Article 24(2) (a) and (5) of the Constitution of Kenya 2010. That same does not specifically express the intention to limit the rights every person has to fair labour practices under Article 41(1) and to property under Article 40 and the nature and extent of the limitation are not clear and specific about the right or freedom to be limited and the nature and extent of the limitation.
21. That the court finds it proper and fit to intervene as prayed in the petition.
22. The Petitioner prays for the following reliefs:-
 - a. A declaration be and is hereby issued that the 1st and 2nd Respondents violated the Constitution of Kenya by, respectively, authoring and endorsing the impugned letters the EACC wrote recommending the suspension of public officials in the manner they did.
 - b. A declaration be and is hereby issued that section 42(7) of the Leadership and Integrity Act, No. 19 of 2012 and Regulation 25 of the Leadership and Integrity Regulations 2015 can only be applied with the supervision of a court of competent jurisdiction.



- c. A declaration be and is hereby issued that section 42(7) of the *Leadership and Integrity Act*, No. 19 of 2012 and Regulation 25 of the Leadership and Integrity Regulations 2015 are unconstitutional and, therefore, invalid, null and void.
 - d. A declaration be and is hereby issued that the 1st Respondent's decision to bypass Boards of State Corporations and recommend to line Cabinet Secretaries to suspend CEOs of those institutions, and to overlook the National Police Service Commission and ask the Inspector-General of the National Police Service to suspend 67 police officers implicated in corruption-related malpractices, and the 2nd Respondent's endorsement of the same, via a press release, was unlawful and unconstitutional and, therefore, invalid, null and void.

A declaration be and is hereby issued that the 1st Respondent's impugned letters, and the 2nd Respondent's impugned press release, which endorsed the EACC's recommendation to suspend public officials under investigation for corruption and procurement irregularities within their respective institutions are unlawful and unconstitutional and, therefore, invalid, null and void.
 - e. A declaration be and is hereby issued that each party should bear its costs of the petition
 - f. The honourable court be pleased to issue and hereby issues an order permanently prohibiting the respondents and the 1st to 12th interested parties from suspending, dismissing, removing from office, demoting in rank or otherwise subjecting to disciplinary action the indicted public officers, without due process of law, including that any suspensions, arising from criminal investigations, must be supervised by a court.
 - g. The honourable court be pleased to issue and hereby issues an order quashing the EACC's letters to Cabinet Secretaries and others recommending the suspension of public officials.
 - h. The honourable court be pleased to issue and hereby issues an order ordering each party to bear its costs of this petition.
 - i. Consequent to the grant of the prayers above, the Honourable Court be pleased to issue any other or further remedy (directions and orders) that the honourable court shall deem necessary to give effect to the foregoing orders, and/or favour the cause of justice.
23. The petitioner posits that Article 236(b); 153(4)(a) 249(1) and 2(a) and Articles 1 (1), 2, 3(1), 4(2), 10 and 47 of the *Constitution* have been violated and section 42(7) of the *Leadership and Integrity Act* No. 19 of 2012 and Regulation 25 of the Leadership and Integrity Regulation 2015 are inconsistent with Article 24(2)(a) and (b) as stated above.
24. The petition is founded on Articles 1 , 2, 3, 4(2), 10, 19(1) and (3)(a), 20(1), 20(2), 20(4)(a), 21(1), 22, 23, 24, 27(1) and (2), 35(3), 40, 41(1), 47, 48, 50 (1) and 58 of the *Constitution* and the provisions are set out in the body of the petition.

Responses

25. The 1st Respondent filed Notice of Preliminary Objection dated 4th December 2023 as follows:
- 1. The Petitioner has failed to demonstrate that there exists a dispute relating to or arising out of employment contrary to section 12 of the *Employment and Labour Relations Court Act*.



2. That the foundation of the advisory letters by the 1st Respondent recommending suspension of the 13th – 19th Interested Parties are from allegations relating to corruption and economic crimes under the *Anti-Corruption and Economic Crimes Act*.
 3. That the impugned suspension of the 13th-19th Interested Parties is not pursuant to the *Employment Act* but is a mandatory requirement in the enforcement of section 42 of the *Leadership and Integrity Act*.
 4. That the petition and applications are an abuse of court process and incompetent in law for failing to establish a breach of employment in the employer-employee relationship as the impugned suspension is a temporary measure against persons under investigation.
 5. That the petition and application have been filed before this court against the directives of the Chief Justice Hon. D. Maraga issued on 26th June 2018, vide Gazette Notice No. 7262(“Maraga Directions”) directing that all petitions on claims of infringement or the threatened infringement of constitutional rights relating to corruption and/or economic crimes related matters shall be heard by the Anti-corruption and Economic Crimes Division of the High Court.
 6. That the petition and applications herein ought to be heard by the Anti-corruption and Economic Crimes (ACEC) Division of the High Court.
26. The 1st Respondent states it is an independent commission established under section 3 of EACC Act 2011 with power to investigate corruption and economic crimes.
 27. That EACC received report of allegations of malpractices related to corruption and economic crimes against 13th – 19th Interested Parties.
 28. That the Commission commenced investigation and wrote advisory letters dated 10/11/2023 to the heads of various Government entities recommending the suspension of the said Interested Parties pursuant to the provision of section 42(7) of LIA and Regulation 25(3) of LIR, 2015.
 29. The deponent sets out the particulars of irregular activity by the Interested Parties under paragraphs 10(i) to (viii).
 30. The deponent states that the said officers hold positions of trust and are subject to section 42(7) of LIA by virtue of section 52(1) of LIR which applies to all public officers as though they were state officers.
 31. That in view of the above, suspension of the 13th to 19th Interested Parties and the 67 police officers was extremely necessary due to the potential to interfere with investigations including tampering with evidence and intimidation of witnesses.
 32. That there are colossal sums involved in the alleged crimes as set out in the affidavit and continued holding of office by said officers, offends the spirit and letter of Article 73 and 232(1) of the *Constitution* and section 8 of LIA read together with the General Code of Conduct and Ethics under part III of the Public Officers Ethics Act.
 33. That the alleged conduct runs counter to chapter six of the *Constitution* which mandates that the conduct of public officers should be above reproach.
 34. That the State Corporation Act and Mwongozo averred by the Petitioner in paragraph 59 to 63 of the petition is completely unfounded as the recommendations for suspension is in accordance with statutory provisions cited herein and that the presumption of innocence is not a finding of innocence and investigations are therefore part of the due process.



35. That section 42(7) of LIA are not inconsistent with Article 24(2)(a), (b) and (e) and (5) as alleged by the Petitioner or at all.
36. That the petition has no merit and it be struck out and or dismissed.

Determination

37. As guided by the Court of Appeal decision in Owners of the Motor Vessel Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1 where the Court held that;

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

38. The court has to first dispose of with a Preliminary Objection if it meets the criteria set out in the Mukisa Biscuits Manufacturing Co. Ltd Vs West End Distributors Ltd (1969) EA 696 where the Court held that: -

So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

39. This court, the Court of Appeal and the Supreme Court have variously determined the Preliminary Objection raised by the Respondents.
40. In Kenya Tea Growers Association *Et 2 others v The National Social Security Fund Board of Trustees Et 13 others (Petition E004 Et E002 of 2023* (Consolidated)) [2024] KESC 3 (KLR), the Supreme Court held that;

For the avoidance of doubt, and so as to stop the pendulum of jurisdictional re-jigging that has characterized this case from the beginning, we hereby restate that the ELRC has jurisdiction to determine the constitutional validity of a statute in matters employment and labour. Suffice it to say that the statute in question must be in focus and at the centre of the dispute in question. Having so declared, there remains the question as to whether the ELRC rightly and judiciously, exercised its jurisdiction in declaring the NSSF Act 2013, unconstitutional. It is no longer a question whether the Court had or lacked jurisdiction to so do, but whether it correctly exercised its jurisdiction in declaring the Act unconstitutional. Had the Court of Appeal not found to the contrary, it would have answered this question comprehensively when the appeal came up for hearing before it. But having found that in declaring the NSSF Act 2013, unconstitutional, the ELRC had acted without jurisdiction, the appellate court could not pronounce itself on the merits of the trial court’s findings. It had to down its tools and remit the matter to the court that had jurisdiction, in this case, the High Court. However, instead of remitting the matter as aforesaid, the appellate court went on to determine the merits of one issue, while leaving the others in abeyance. It is this scenario that brings us to the next issue for determination’.



the Supreme Court made it abundantly clear that for this court to have jurisdiction over a dispute in terms of section 12 of the Employment and Labour Relations Court Act, as read with Article 162(2) (a) of the Constitution, the parties need not be an employee against an employer and vice versa. The pertinent issue is that the cause of action must disclose an employment or labour related dispute be it application of or interpretation of a statute or constitutional provision that governs relationships between an employee and an employer.

41. Where the cause of action is interpretation or application of such law, the Petitioner need not be an employee of the Respondents. Indeed Article 22 of the Constitution provides for parties who may bring a constitutional petition before courts for the interpretation or implementation of provisions of the Constitution, be it be found in the bill of rights or in other general provisions of the Constitution.
42. In this particular matter the court has been called upon to determine the lawfulness and fairness of application of section 42(7) of the Leadership and Integrity Act and Regulation 25(2) and (3) of the Leadership and Integrity Regulation 2015 which provide:

A plain reading of the provisions of section 42(7) and Regulation 25(2) and (3) above clearly shows that the statutory provision and the Regulation govern employment relationship between public servants and their employer pending investigations into misconduct relating to corruption, economic crimes and unethical conduct.

Section 42. Lodging of complaints and investigations

- (7) subject to the Constitution and any regulations for the enforcement of the code made under this Act, a state officer may be suspended from office pending the investigation and determination of allegations made against the state officer whereas such suspension is considered necessary.

Regulation 25: Suspension pending investigations

1. subject to paragraphs (2) an officer who is under investigation may:-
 - a. ..
 - b. ..
 - c. If the Commission conducts the investigations, be suspended on the recommendation of the Commission.
2. the provisions of paragraph (1) shall apply where the officer is likely to
 - a. conceal, alter, remove records, documents or evidence,
 - b. intimidate, threaten or otherwise interfere with the witnesses
 - c. interfere with investigation in any other manner.
- (3) An officer under suspension shall be on half pay pending investigations and determination of the allegation made against the officers.”

43. This subject matter falls squarely within the jurisdiction of ELRC and no other court is better suited to interpret, apply and or enforce the aforesaid provisions.



44. Furthermore, any constitutional issue that arises from the interpretation, application or enforcement of the provisions is best handled by ELRC, in terms of Article 165(5) as read with Articles 22 and 23 of the Constitution.
45. It follows that the question as to whether section 42(7) of LIA and Regulation 25(2) and (3) of LIR are constitutional falls within the jurisdiction of this court.
46. Accordingly, the Preliminary Objection is misconceived and is dismissed accordingly.
47. With regard to the objection that this court has no jurisdiction over this matter since the Hon. Chief Justice Maraga issued a directive on 26/6/2018 via Gazette Notice No. 7202 (“Maraga Directions”) that all petitions on claims of violation or threatened violation of constitutional rights relating to corruption and/or economic related matters shall be heard by the Anti-corruption and Economic Crimes Division of the High court, the court notes that jurisdiction of courts is derived from the Constitution or statute and cannot be conferred otherwise as was stated by the Supreme Court in the case of Samuel Macharia & Another versus Kenya Commercial Bank Ltd and 2 others (Application No 2 of 2011 (2012) KESC 8 KLR where the Court held that;
- A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceeding’
48. Provided that the matters in issue in this petition are related to Employment and Labour Relations, section 12(1) read with Article 162(2) grants jurisdiction over the matter to this court. It could not have been the intention of the Hon. Chief Justice to deprive this court of that jurisdiction without seeking amendment of these relevant provisions which confer jurisdiction over this matter on ELRC. Accordingly, the Preliminary Objections raised by the 1st Respondent and 8th Interested Party in the grounds of opposition lack merit and are dismissed.

Merit

49. The parties filed written submissions which the court has carefully considered together with depositions by the parties and the issues for determination are:-
- i. Whether the letters of suspension for a period of 12 months issued to the Interested Parties by the EACC and that issued by CEO KETRACO and publicized by the State House Spokesperson in a communique dated 16/11/2023 violated the rights of the Interested Parties as set out in the petition.
 - ii. Whether section 42(7) of the Leadership and Integrity Act No. 19 of 2012 and Regulation 25 of the Leadership and Integrity Regulation 2015 are unconstitutional.
 - iii. Whether 1st Respondent’s decision to bypass Boards of State Corporations and recommend to the line Cabinet Secretaries to suspend CEOs of these institution was unlawful and unconstitutional.
 - iv. Whether decision of 1st Respondent to bypass the National Police Service Commission and direct the Inspector General of the National Police Service to suspend 67 police officers



implicated in corruption related malpractices and 2nd Respondent endorsement of the same via a press release was unlawful and unconstitutional.

v. Whether the 1st Respondent's impugned letters and 2nd Respondent's impugned press release which endorsed EACC recommendation to suspend public officials under investigations for corruption and procurement irregularities within their respective institutions was unlawful and unconstitutional.

vi. What remedies should the court grant in the matter.

The court will deal with the issues collectively.

50. The court has already set out the provisions of section 42(7) of LIA, No. 19 of 2012 and Regulation 25 of LIR, 2015. The court has also noted the provisions of section 52(1) of LIA which provides that the above provision of LIA and LIR shall apply to all public officers, as if they were state officers.

51. The provisions of section 42(7) in particular subject expressly the provision to the *Constitution* and any Regulation for enforcement of the code of conduct (made under LIA). Section 25(3) of LIA provides that an officer under suspension shall be on half pay pending investigation and determination of the allegations made against the officer.

52. The specific recommendation made to the organizations that employed the targeted officers was similar in respect of all affected persons.

53. The consideration for electing to suspend an officer or not is set out under Regulation 25(2) and for clarity states in mandatory terms that,

The provisions of paragraph (1) shall apply where the officer is likely to:

- a. Conceal, alter, destroy, remove record, documents or evidence.
- b. Intimidate, threaten or otherwise interfere with witness; Or
- c. Interfere with investigation in any other manner.”

54. It is perfectly clear that these are specific considerations to be made by each employer in determining whether or not to subject the particular official to suspension and for how long that suspension should take place. It is also pertinent since the suspension is on a half pay, the particular employer must take into account that the officer will during that period be receiving public funds for no work done and that necessarily ought to go into consideration of the period of suspension suitable in the circumstances of the case.

55. It is also not farfetched to consider the complexity of investigating the particular alleged offence in determining appropriate period of suspension.

56. In the present matter, there was a blanket recommendation by EACC in respect of all the officers for suspension for a period of 12 months. There is no evidence before court whether the recommendations were implemented and what considerations were made by each employer.

57. Section 26(1) of LIR provides:-

Where an officer is suspended under Regulation 25(1), investigation shall be concluded within twelve (12) months of lodging of the complaint and the findings and the reasons thereof communicated to the complainant and the officer complained against within seven days from the date of the decision.”



58. Whereas Regulation 26(2) provides:-

Despite provision of paragraph (1), in the event an investigation against an officer who has been suspended has not been concluded within 12 months, the public entity or the commission may on reasonable grounds seek for an extension to conclude the investigation from the High Court with notice to the officer.”

59. In this respect, the court notes that the impugned directive to suspend took place in November 2023. More than fifteen (15) months have elapsed since then and the court has not been apprised of the present status of the investigations and suspensions.

60. It is apparent that the intention of the legislature was to have each case targeted for suspension pending investigations to be considered on merit in determining the reasonable period within which investigations were to be concluded and therefore determine the period of suspension which could be less than 12 months and could only extend the suspension after 12 months upon application to the court of competent jurisdiction which is ELRC in the present case.

61. It is important to note that the statute under section 47(2) does not prescribe the maximum period within which investigation in respect of an officer who has been suspended ought to be completed. The period has been prescribed under Regulation which is subsidiary legislation.

62. The court first moves to debunk submission by the Petitioner that EACC is expressly obliged under section 42(7) of LIA as read with Regulation 25 of LIR to only communicate with the Boards of Directors of State Corporation and not directly with the line Cabinet Secretaries and to address the National Police Service Commission and not the Inspector-General of the National Police Service. However, this supposition by the Petitioner may be logical in that EACC ought to communicate the recommendation under Regulation 25(1)(c) to the entity that is vested with the authority to suspend and not otherwise.

63. The court has not however found any mandatory Regulatory provision which anchors that reasoning by the Petitioner. The court finds that provided the recommendation by EACC is eventually placed before the employer, then the route through which the recommendation took cannot invalidate that process.

64. The Petitioner has further submitted that sections 42(7) of LIA as read with Regulation 25(1) (a), (b) and (c) of LIR are inconsistent with Article 24(2) (a) (b) and (e) of the Constitution for:-

- i. Not specifically expressing the intention to limit the rights every person has to fair labour practices under Article 41(1) and to property (salary) under Article 40 and the nature and extent of the limitation and
- ii. Not being clear and specific about the right or freedom to be limited and the nature and extent of the limitation.

65. A plain reading of section 42(7) of LIA discloses the following:-

- i. The provision is subjected to the Constitution
- ii. The provision is to be enforced vide enabling regulations
- iii. The provision provides for suspension of a state officer from office pending investigations in permissive language by use of that word “may” pending investigations.



66. The court finds that section 42(7) has been enabled by Regulation 25 and 26 of LIR. Relevant to this matter is Regulation 25(2) (c) which enables EACC where it conducts investigations as in this matter to recommend the suspension of the public officer to his/her employer. In the present case, EACC invoked the provision of Regulation 25(2)(c) by recommending to each of the employers of the public officers it was investigating to suspend them for a period of 12 months. This maximum period in respect of which investigation should be completed is provided under Regulation 26(1). Regulation 26(2) subjects any extension of 12 months period to supervision by the court by seeking leave to extend beyond the 12 months period. It is therefore only the extension which is subjected to a court process and not the initial suspension as is submitted by the Petitioner.
67. The court having considered the express and clear meaning of section 42(7) and Regulation 25 and 26 aforesaid finds that the statutory and Regulatory provisions specifically express the intention to limit the right of a public officer to work and remain at the workplace by being suspended to allow investigations into his conduct to take place.
68. The provision also expressly limit the right of an employee to earn a full salary during the period of suspension by expressly providing that the suspension during the period of investigation shall be on half pay. The measures are of course to be preceded by due consideration by respective employer of the circumstances of each to warrant invocation.
69. Furthermore, to ensure that the period of 12 months during which investigation are to be concluded is respected by the employers, the provision of Regulation 26(2) provide that the period may only be extended with leave of the court.
70. Accordingly, the Petitioner has failed to demonstrate that the Respondents violated Articles 41(1); 47(1) 153(4)(b); 249(1) and 2(a), 1(1), 2, 3(1), 4(2), 10, 41, 47, 153(4)(b), 249(1) as alleged in the paragraphs 59 to 63 of the petition or at all.
71. Furthermore, the Petitioner has failed to demonstrate that section 42(7) of LIA and Regulation 25 and 26 of LIR are inconsistent with Article 24(2)(a) and (b) and (e) read with Articles 40 and 41(1) of the Constitution of Kenya 2010.
72. Whereas the publicity given to the interim measures taken against the public officers may have been unwarranted, the Petitioner did not prove specific violation of rights or freedom of the persons mentioned in the press release. The court takes judicial notice that some of the interested persons have come to court in person to deal with specific circumstances that are unfolding in their respective cases. This is a relevant consideration in this matter brought in a blanket manner.
73. Accordingly, the petition lacks merit and is dismissed with no order as to costs since it is a public interest litigation.

DATED AT NAIROBI THIS 6TH DAY OF MARCH 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Omtata for Petitioner

Ms. Akuno for 1st, 2nd and 3rd Respondents and 1st to 6th Interested Parties

Mr. Lutta for 8th Interested Party

Ms. Rwenji for 9th Interested Party



Ms. Wendy for 13th Interested Party

Mr. Macharia for 19th Interested Party.

Mr. Sikuta for 16th Interested Party.

Mr. Kemboi – Court Assistant

