



Mugiira v National Biosafety Authority; Inspectorate of State Corporations (Interested Party) (Cause E524 of 2024) [2025] KEELRC 1149 (KLR) (9 April 2025) (Ruling)

Neutral citation: [2025] KEELRC 1149 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E524 OF 2024**

SC RUTTO, J

APRIL 9, 2025

BETWEEN

DR ROY B MUGIIRA APPLICANT

AND

NATIONAL BIOSAFETY AUTHORITY RESPONDENT

AND

INSPECTORATE OF STATE CORPORATIONS INTERESTED PARTY

RULING

1. What is before this Court for determination is the Claimant/Applicant’s Notice of Motion dated 12th July 2024, seeking the following orders: -
 1. Spent.
 2. Spent.
 3. Spent
 4. Spent
 5. Spent
 6. That pending the hearing and determination of the suit, an order of injunction do issue restraining the Respondents whether by themselves, their agents, employees or otherwise howsoever, from suspending the Claimant/Applicant and/or commencing disciplinary proceedings against him based on the findings of the impugned report.
 7. That this Honorable Court be pleased to make such an order as it deems mete and just.
 8. That the costs of and incidental to this Application and Claim be in the cause.



2. The Application is premised on the grounds on the face thereof and the Supporting Affidavit of Dr. Roy B. Mugiira, the Claimant/Applicant herein.
3. Grounds in support of the Motion are that on 5th July 2024, the Respondent's Board of Directors directed the Claimant's suspension from office for a period of three (3) months at half pay of basic salary, allowances and medical benefits.
4. It is the Claimant's assertion that the process leading to his suspension was marred by glaring irregularities and his rights to fair administrative action were violated.
5. That upon review of the reasons for suspension and the process followed, the parent Ministry through the Principal Secretary, State Department for Agriculture, vide a letter dated 9th July 2024, noted the flaws in the process and directed that the Claimant's suspension be put on hold pending further consultations.
6. The Claimant contends that the Respondent's Board, in utter disregard for the law and the directives by the parent Ministry, insisted on implementing his suspension from office despite the glaring irregularities, thereby necessitating these proceedings.
7. Recounting the reasons that led to his suspension, the Claimant avers that the Respondent's Board of Directors on 25th April 2024 appointed an ad hoc committee to interrogate an internal audit report on budget implementation for the financial years 2022/2023 and 2023/2024 and advise the Board on any further action.
8. It is his assertion that neither he nor the management team was heard or interviewed during the period of the audit, and in the premise, they were not afforded any opportunity to respond to the adverse findings before the publication of the final report and presentation to the Board.
9. The Claimant has further averred that there was no consensus in the ad hoc Committee as to the contents of the final audit report, which resulted in some members of the committee failing to append their signatures on the final copy.
10. According to the Claimant, the foregoing glaring irregularities notwithstanding, the Board deliberated on the impugned report and vide its letter dated 14th June 2024, issued him with a Notice to Show Cause based on the findings of the audit report. He duly responded to the Notice to Show Cause vide his letter dated 27th June 2024.
11. The Claimant avers that upon receipt of his response, the Respondent's Corporation Secretary on 29th June 2024, hastily proceeded to issue a notice for a Special Board meeting to be held on 5th July, 2024 with the only agenda being "to consider the response by the Chief Executive Officer and give a way forward in the matter".
12. The Claimant contends that the said notice did not attach or contain the relevant board papers, including inter alia his response, which was to be considered at the meeting.
13. In the Claimant's view, the failure to attach the said documents for consideration at the Board meeting and/or supply the Board members with advance copies was meant to stifle due consideration by the Board and further deny him a fair hearing.
14. The Claimant further averred that the Interested Party which has the statutory mandate of oversight on all state corporations noted the irregularities of the notice calling for the Special Board meeting and vide its letter dated 4th July, 2024 brought to the attention of the Board its lapses in calling for the meeting and advised that the same be cancelled.



15. That notwithstanding the irregularities cited by the Interested Party in their letter dated 4th July 2024 and further reiterated orally at the commencement of the said Special Board meeting, the Chairman of the Board utterly disregarded the said binding opinion of the Interested Party and instead proceeded to deliberate on the agenda.
16. Following its deliberation at the impugned meeting, the Board of Directors resolved to suspend the Claimant for a period of three (3) months with half pay of his basic salary, allowances and medical benefits.
17. At the same meeting, the Respondent's Board proceeded to appoint Nehemiah Ng'etich to act as the Chief Executive Officer during the Claimant's suspension.
18. The Claimant avers that the grounds relied upon for his suspension was that he had allegedly continued to actively interfere with the Board composition in order to frustrate the disciplinary process against himself.
19. In the Claimant's view, his suspension and the ensuing disciplinary proceedings have been marred by irregularities and illegalities and the same ought not to be sanctioned by this Honourable Court.
20. The Application has been strongly opposed by the Respondent through the Replying Affidavit of its Corporation Secretary, Mr. Moses Sande sworn on 7th August 2024.
21. Mr. Sande avers that the Claimant's suspension was lawful, fair and in line with the Respondent's Human Resource Policy and Procedures Manual, 2022, which allows the suspension from duty of an officer of the Respondent where disciplinary proceedings have been instituted that may lead to serious punishment, including dismissal.
22. With respect to the Claimant's assertion that the Respondent disregarded the directive of the parent Ministry through the Principal Secretary State Department of Agriculture to put on hold his suspension pending further consultation, Mr. Sande deposes that the letter by the Principal Secretary was delivered to the Respondent on Wednesday, 10th July 2024 long after the Respondent's Board meeting which suspended the Claimant had taken place. That the meeting took place on 5th July 2024 and the Claimant was suspended on the same day.
23. According to Mr. Sande, the request could only be considered by the Board of the Respondent in a subsequent meeting and not by any individual member or the Chairman of the Board as contemplated by the Claimant.
24. Mr. Sande avers that due process and fair administrative action was undertaken. That the Respondent prepared a comprehensive internal audit report for financial year 2022/2023 and 2023/2024 which was availed to the Claimant and Management for their response and input before it was submitted to the Board audit committee.
25. That management, including the Claimant's input, was incorporated in the audit report before it was submitted to the Board audit committee on 17th April 2024.
26. The audit committee deliberated and made recommendations to the Board on 25th April 2024. Some of the recommendations included disciplinary action to be taken against any officers found to have been implicated in any malpractice.
27. During the 53rd meeting held on 25th April 2024, the Board, in which the Claimant was in attendance, resolved to appoint an ad hoc Committee to interrogate the recommendations of the audit committee and make recommendations to the Board.



28. The ad hoc Committee conducted its proceedings from 24th May to 5th June 2024 and compiled its report upon hearing several officers of the Respondent, including the Claimant, and submitted its report to the Board for further action as set out in the terms of reference.
29. Mr. Sande avers that the ad hoc Committee was mandated to consider the audit report and advise the Board and not the Claimant as there is no legal obligation to furnish the Claimant with the ad hoc committee report prior to submission to the Board.
30. He further avers that there was consensus among the members of the ad hoc Committee and the report was signed by the chair of the ad hoc committee as is the practice.
31. Mr. Sande further deposes that the Board considered the ad hoc Committee report and established that there was glaring financial impropriety on the part of the Claimant as the Accounting Officer. The Board unanimously adopted the report of the ad hoc Committee and resolved to issue the Claimant with a Notice to Show Cause arising from issues noted in the audit report.
32. He further avers that the notice was issued in accordance with the Code of Governance for State Corporations, 2015 and the same was done following consultations that involved the Claimant in his capacity as the Chief Executive Officer. He avers that the notice and the meeting that followed on 5th July 2024 were well planned and in furtherance to a process that started way back on 25th April 2024 during the 53rd Full Board Meeting.
33. He avers that the notice and Board papers for the meeting of 5th July 2024 were circulated in accordance with the Code of Governance for State Corporations to all Board members, including the Claimant, on 29th June and 2nd July 2024, respectively.
34. Mr. Sande further avers that the Respondent comprehensively responded to the Interested Party's letter dated 4th July 2024 and during the Board Meeting of 5th July 2024, discussions on the issues raised were held and it was agreed by all members present including the representative of the Interested Party that the meeting was lawful and could proceed.
35. That during the Respondent's 48th Special Board Meeting, the Board considered the response to the Notice to Show Cause by the Claimant dated 27th June 2024 and resolved to commence disciplinary proceedings against him.
36. Further, the Board noted that the conduct of the Claimant on the misrepresentation of facts to the appointing authorities leading to the removal of alternate Board members without the knowledge and authority of the Board went against the directive in the Notice to Show Cause issued against him which required the Claimant to maintain confidentiality and safeguard the integrity of the disciplinary process.
37. That the Board of the Respondent was apprehensive that if the Claimant is allowed to continue operating from his office while the disciplinary process against him is ongoing, he would continue to interfere with the process. The Board thus resolved to suspend the Claimant from duty for a period of three (3) months to protect the integrity of the disciplinary process.
38. Mr. Sande is categorical that the actions of the Respondent's Board are and have been fair, justifiable, regular and lawful and there are valid reasons why the Claimant was suspended and should remain on suspension until his administrative disciplinary case is heard and determined.
39. That the Board of the Respondent afforded the Claimant time, facilities and resources as demonstrated in the Notice to Show Cause to conduct his case.



40. It is Mr. Sande's deposition that the appointment of Mr. Nehemiah Ng'etich as Chief Executive Officer in acting capacity was done procedurally and within the confines of the law.
41. In response to the Respondent's Replying Affidavit, the Claimant filed a Further Affidavit sworn on 19th February 2025, in which he has contended that the Interested Party is on record as supporting his contention as to the impropriety of the decision to place him on suspension.
42. That the position set out in the letter of the Interested Party is in consonance with the position of the Respondent's parent ministry, which was communicated vide the letter dated 9th July 2024.
43. It is the Claimant's view that it behooves the Respondent's Board of Directors to accord him the full benefit of the law and ensure that any proceedings commenced against him as CEO are conducted fairly and procedurally.
44. The Claimant contends that the process leading to his suspension was irredeemably flawed. In his view, he cannot be accorded due process and a fair hearing. That the ad hoc Committee passed judgment against him.
45. The Claimant has further averred that whereas the Respondent's Board of Directors purported to "suspend" him on the basis of the "Internal Audit Report for the financial year 2022/2023 and 2023/2024", he was not given an opportunity to be heard on the matters raised therein hence he was condemned unheard.
46. That despite the serious conclusions made by the ad hoc committee which were supposed to be presented to the full Board and considered in a neutral and impartial manner, when the Board sat on 6th June 2024 (only hours after the report had been prepared) the very same members of the ad hoc committee sat to deliberate on and vote on the report they themselves had authored and presented to the Board.
47. According to the Claimant, the members of the ad hoc committee comprised the majority of the members of the Board, being five (5) out of eight (8) members. That two of the remaining three (3) members are members of the audit committee that authored the report which was the subject of the ad hoc committee.
48. In the same vein, the Claimant has contended that he was being presented with *fait accompli* in so far as his suspension was concerned because the very same people who came up with the accusations against him are the same people who investigated, charged, prosecuted and condemned him without the benefit of due process.
49. The conduct and composition of the Board, be it as the audit committee or the ad hoc committee, offended the Government Circular OP/CAB.9/1A of 11th March 2020 on the management of State Corporations.
50. That he cannot get a fair trial or consideration by the Respondent's Board of Directors in respect of the matters set out in the Notice to Show Cause and Suspension letter served upon him.
51. Whilst admitting that the Respondent is at liberty to conduct disciplinary proceedings against its employees, himself included, the Claimant opines that where the process is devoid of impartiality and the outcome is manifestly pre-determined, an employee such as himself cannot have any expectation of fairness.
52. In a rejoinder, the Respondent filed a Further Affidavit sworn 4th March 2025, by Mr. Moses Sande who avers that the issues that had been raised by the Interested Party were also considered and discussed by



- the Respondent's Board at its 48th Special Board meeting held on 5th July 2024 in which the Interested Party was represented and had the issues raised discussed and resolved, paving the way for the meeting that suspended the Claimant to continue.
53. Mr. Sande has averred that the disciplinary case against the Claimant is yet to commence and this Court should allow the Respondent to carry out its mandate.
 54. He has further averred that the Claimant, as an Ex-offio member of the Board of the Respondent, participated in all deliberations of the Board save for matters that required a vote. He was therefore bound by all the resolutions of the Board including a resolution to establish an ad hoc committee to review the in-depth Internal Audit Report dated 16th April 2024 and the recommendations of the 31st audit committee meeting presented to the 53rd Full Board meeting held on 25th April 2024 and make recommendations to the Board on the need for any further action.
 55. He has further averred that the ad hoc committee was formed by the Board and in accordance with Mwongozo, to interrogate the recommendations of the audit committee and make recommendations to the Board. That the composition of the ad hoc committee was as prescribed by the law.
 56. Mr. Sande has further averred that the Claimant is aware that before his suspension on 5th July 2024, two Board members, Mr. Abduba Dabbasa and Dr. Roselida Owuor, had been replaced by their respective appointing authorities. That two other Board members, Mr. Archibald Munyi and Ms. Caroline Mweni have since left the Board.
 57. According to Mr. Sande, when the Claimant eventually appears before the Board, he will face substantially new Board members who are not privy to the disciplinary case against him and the issue of perceived biases will not arise.
 58. That Circular referenced by the Claimant does not apply to ad hoc committee meetings which are regulated by Mwongozo.
 59. Mr. Sande further deposes that it is in the great public interest that where it is suspected a public official has violated and breached the public trust, it would only be fair that such an officer be made to account for his or her actions.
 60. He further contends that the Claimant herein is only apprehensive and no cause of action has crystallized to enable this Court intervene.

Submissions

61. The Notice of Motion was canvassed by way of written submissions. Both parties complied and the Court has considered their respective submissions.
62. The Claimant submitted that he had demonstrated to the Court that he was not accorded an opportunity to address the accusations leveled against him and that the Respondent's audit committee proceeded to present the same to the Respondent's Board without obtaining any explanation from him. In the same vein, the Claimant submitted that the ad hoc committee that was subsequently formed and which was chaired by Prof. Jenesio Kinyamario proceeded to condemn him and to sit in judgment over him in the sitting of the full Board.
63. According to the Claimant, the composition of the audit committee, the ad hoc committee vis-à-vis the Respondent's Board is very telling in that the very same persons who leveled accusations against him are the same people who sat to investigate the same and thereafter sat to pass judgment upon him.



64. It was the Claimant's further position that he was subjected to an unfair process and charged, prosecuted and judged by the very same people. In this regard, he contended that his accusers were the Prosecutor, Judge and Jury in his cause.
65. The Claimant further submitted that although the refrain from the Respondent is that this Court's hands are tied and cannot interfere with the disciplinary process, his position is that where there is a manifest flaw in the process, then the Court will intervene in the interests of fairness and justice. In support of this position, reliance was placed on the case of *Carditor Wanjiru Muchoki v Nakuru Water and Sanitation Services Co. Ltd.*
66. The Respondent and the Interested Party filed joint submissions. It was their position that contrary to the Claimant's assertions, due process was observed throughout the process. On this score, it was submitted that the Claimant was issued with a Notice to Show Cause on 14th June 2024, to which he submitted written representations on 27th June 2024. That the notice for the Special Board meeting of 5th July 2024 was issued to all Board members, including the Claimant, with the agenda including to consider the response to the notice to show cause hence the meeting was thus duly constituted.
67. That further, the suspension was effected after deliberation by the Board and was necessary to protect the integrity of the ongoing disciplinary process, particularly in light of the Claimant's actions regarding Board composition.
68. The Respondent further submitted that under Section 92, as read with Sections 74 and 75 of the *Public Service Commission Act*, 2017, the Claimant is required to appeal any adverse decision to the Public Service Commission before approaching the Court. Referencing the case of *Aviation and Allied Workers Union v Kenya Airways Limited* [2012] KEELRC 53 (KLR), it was the Respondent's and Interested Party's position that the Claimant has not exhausted the available internal administrative remedies if he felt that the disciplinary process commenced and was continuing unfairly or unlawfully.
69. It was further submitted that the Claimant has not demonstrated any irreparable harm that cannot be adequately remedied through compensation. In the Respondent's view, the suspension was for a definite period of three (3) months with half pay, allowances, and medical benefits.
70. Placing reliance on the case of *Rosemary Waitherero Mburu vs Kenya Airways Limited* [2020] eKLR, it was the Respondent's and Interested Party's position that the Claimant has failed to demonstrate that the procedure followed was flawed or that the Respondent breached the law or the Human Resource Manual hence this Court's intervention is unwarranted at this stage.
71. Citing the case of *Gatirau Peter Munya vs Dickson Mwenda Githinji & 2 Others* [2014] eKLR, the Respondent and Interested Party further posited that it would be in the great public interest that the conservatory orders sought are not granted in this matter. To this end, the Court was urged to allow the Respondent to proceed and conclude the internal disciplinary process in order to uphold the public trust.

Analysis and Determination

72. Flowing from the Application, the Claimant's Further Affidavit, the Respondent's Affidavits, and the rival submissions, the singular issue that stands out for determination at this juncture is whether the Applicant is entitled to an order of injunction prohibiting the Respondent from continuing with disciplinary proceedings against him pending the hearing and determination of the main suit.
73. The general principle is that the court will not interfere with any of the employer's rights to perform internal human resource functions, such as disciplinary control.



74. In *Aviation and Allied Workers Union vs Kenya Airways Limited* [2012] eKLR, the learned Judge opined that the court, in exercising the jurisdiction to intervene in an administrative disciplinary procedure, must proceed with caution so as to protect the employer's right to terminate the employment relationship fairly.
75. The learned Judge proceeded to find as follows:
- “..... 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 has been 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.”
76. Similarly, in *Geoffrey Mworira v Water Resources Management Authority & 2 others* [2015] KEELRC 1124 (KLR), the court reckoned as follows:
- “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 interfere, 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.”
77. In the present case, the Claimant has contended that his suspension was marred by irregularities and illegalities. In support of his position, the Claimant has placed reliance on letters dated 4th July 2024 and 9th July 2024 by the Interested Party and the parent Ministry of the Respondent through the Principal Secretary. According to the Claimant, the Respondent disregarded the directives in the two letters and insisted on implementing his suspension.
78. Countering the Claimant's position, the Respondent has averred that the issues that had been raised by the Interested Party were considered and discussed by the Board of the Respondent at its 48th Special Board meeting held on 5th July 2024 in which the Interested Party was represented. That the said issues were discussed and resolved, paving the way for the meeting that suspended the Claimant to continue.
79. Annexed to the Further Affidavit of Mr. Sande, is a copy of the minutes of the meeting of the Respondent's Board held on 5th July 2024, which indicate that the concerns raised by the Interested Party were deliberated upon in the presence of the Interested Party's representative who advised the



- Respondent's Board to ensure strict compliance with the law and procedure. This being the case, the Court takes the view that the issues raised by the Interested Party were put to rest at that point.
80. The other issue raised by the Claimant is with respect to the impartiality of the Respondent's Board. Specifically, the Claimant has averred that the members who sat in the ad hoc committee on 5th June 2024 passed judgment against him in their recommendations. That when the report was presented to the Board on 6th June 2024, the members of the ad hoc committee were the same members who sat to deliberate on the report.
 81. The Respondent has averred that before the Claimant's suspension on 5th July 2024, two Board members, Mr. Abduba Dabbasa and Dr. Roselida Owuor, had been replaced by their respective appointing authorities while two other Board members Mr. Archibald Munyi and Ms. Caroline Mweni have since left the Board hence when the Claimant eventually appears before the Board, he will face substantially new Board members who are not privy to the disciplinary case against him and the issue of perceived biases will not arise.
 82. From the record, it is evident that five members of the Respondent's Board sat in the ad hoc committee. Notably, the Respondent did not dispute the Claimant's assertions that two of its Board members belong to the audit committee that had authored the audit report.
 83. Based on the foregoing, the Court takes the view that it was not prudent for the Respondent to have a considerable number of its members (five (5) out of eight (8)), sit in the ad hoc Committee, bearing in mind that some members may have been required to sit in the disciplinary committee in the event the matter progressed to that point. I say so on account of the fact that it would not be fair and just to have the members who sat in the audit committee and the ad hoc committee sit in the disciplinary committee. That would be against the principles of natural justice, noting the sentiments expressed by the ad hoc committee during its deliberations in the meeting of 5th June 2024.
 84. The Court has however noted the Respondent's assertions that four (4) of the Board members have since left the Board and that presently, there are new members of the Board.
 85. In light of the foregoing and being cognizant of the principle that the court's intervention to interdict a disciplinary action before it is concluded should only be undertaken in exceptional cases, this court will not be inclined to stop, in the interim, further disciplinary proceedings against the Claimant.
 86. In this regard, the court adopts the position taken in the case of *Rebecca Ann Maina & 2 others vs Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR, that where an employee facing disciplinary action legitimately feels that the process is marred by irregularities or is stage managed towards their dismissal, the court will intervene not to stop the process altogether but to put things right.
 87. In the circumstances, the Court will not hinder the Respondent's prerogative to discipline the Claimant. Be that as it may, the Respondent should undertake the disciplinary process in strict compliance with the statutory procedural fairness safeguards. Specifically, the composition of the committee of the Board that may be appointed to sit in the disciplinary committee to handle the Claimant's case should be as neutral as possible and should not include members who either sat in the audit committee or the ad hoc committee.
 88. Further, seeing that the employment relationship is still subsisting while the suit herein is pending, it is imperative for the Respondent to bear in mind the provisions of Section 46(h) of the *Employment Act*, which provide that an employee's initiation or proposed initiation of a complaint or other legal proceedings against his employer, except where the complaint is shown to be irresponsible and without



foundation shall not constitute a fair reason for dismissal or for imposition of a penalty or adverse decision.

Orders

89. In the premises, the Court declines to grant the orders sought in the Application dated 12th July 2024 and consequently, the Application is disallowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF APRIL 2025

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Osamba instructed by Mr. Marete for the Claimant/Applicant

Ms. Mochoge instructed by Ms. Mbilo by the Respondent and the Interested Party

Millicent Court Assistant

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 15th March 2020 and subsequent directions of 21st 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 had 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 *Civil 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.

