



**Mohamed v Garissa University (Cause E1103 of 2024)
[2025] KEELRC 1116 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1116 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1103 OF 2024**

**AK NZEI, J
APRIL 4, 2025**

BETWEEN
ABDULRAHMAN HAMO MOHAMED CLAIMANT
AND
GARISSA UNIVERSITY RESPONDENT

RULING

1. Vide a Memorandum of Claim dated 24th December, 2024, the Claimant/Applicant sued the Respondent University seeking the following reliefs:-
 - a. A declaration that the suspension letter dated 23rd December, 2024 is unlawful, null and void.
 - b. A permanent injunction restraining the Respondent, either by itself, its agents, servants or anybody claiming under them, from subjecting the Claimant to unlawful disciplinary process for reasons stated in the separation letter dated 23rd December, 2024.
 - c. An order that the Claimant is entitled to his full employment benefits prior, during and after the alleged suspension.
 - d. Damages for victimization and discrimination.
 - e. Costs of the suit and interest thereon.
2. The Claimant/Applicant pleaded:-
 - a. that he is a Lecturer at Garissa University School of Education, Arts and Social Sciences from 3rd January, 2023, and that on 27th November, 2024, he lodged a complaint to the Vice-Chancellor against a police officer who had threatened to shoot him while supervising a Continuous Assessment Test (CAT); the police officer having first hurled teargas canisters at the students within the University premises as they undertook the said examination.



- b. that the said police officer told the Claimant/Applicant “I hear you are not in good books with the Vice-Chancellor. I will fix you. We are also aware that you are a whistle blower for Garissa University. Please don’t try me.”
 - c. that the Claimant realized that he would, indeed, be victimized because he had been a witness for the EACC against corrupt practices by the management, including the Vice-Chancellor. That fearing for his life, the Claimant/Applicant immediately (on 27th November, 2024) wrote to, inter-alia, KNCHRE, Office of the Ombudsman and IPOA, quoting the police officer’s remarks and calling for an independent investigation.
 - d. that instead of investigating the matter, the Respondent’s Vice-Chancellor issued the Claimant with a notice to show cause on 29th November, 2024, accusing him (the Claimant) of holding exams in a protected area as reported by the police officer who had stated that he would fix the Claimant.
 - e. that the incident was mediated by the County Commissioner who, vide a letter dated 2nd December, 2024, informed the Vice-Chancellor that “the situation was misinterpreted and no breach of protocol occurred that would warrant action”, and that “. . . this matter has been amicably resolved and, after careful review, it is clear that the allegation made in the show cause letter regarding incitement, misconduct and security violations are unfounded and have been rendered null and void.”
 - f. that pursuant to the said mediation and amicable resolution, the Claimant withdrew his complaint against the police officer vide a letter dated 3rd December, 2024.
 - g. that vide a letter dated 23rd December, 2024, however, the Respondent’s Vice-Chancellor purported to suspend the Claimant/Applicant from duty over the aforesaid incident which the Claimant had reported to the Vice-Chancellor, and which had been resolved by the County Commissioner as aforestated.
 - h. that the Claimant was suspended “pending investigations” and yet there were no pending investigations, as investigations had been concluded amicably. That the Claimant’s suspension was one of clear victimization, retaliation, malice and discrimination.
3. The suit was filed contemporaneously with an urgent Notice of Motion dated 24th December, 2024 and filed under the Court’s Vacation Rules, seeking Orders:-
- a. That the application be certified urgent, and service thereof be dispensed with in the first instance.
 - b. That pending hearing and determination of the application, an order do issue staying the Respondent’s decision made on 23rd December, 2024 to suspend the Applicant from employment effective 2nd January, 2025.
 - c. That in the alternative, pending hearing and determination of the application, an order do issue directing that the Claimant be paid his full salary during the period of suspension.
 - d. That pending hearing and determination of the claim, an order do issue staying the Respondent’s decision made on 23rd December, 2024 to suspend the Applicant from employment effective 2nd January, 2025.
 - e. That in the alternative, pending hearing and determination of the Claim, an order do issue directing that the Claimant be paid his full salary during the period of suspension.



- f. That costs of the application be provided for.
4. The application was placed before the Court's Duty Judge on 24th December, 2024, but was not certified urgent, and no interim orders were granted. The Duty Judge directed that the application be served and response thereto and written submissions thereon be filed and served within specified timelines, which has since been done. Prayers (a), (b) and (c) in the application as set out in paragraph 3 of this Ruling have, therefore, been since spent. Prayers (d), (e) and (f) are what remains of the application for determination.
5. The application, which is now before me for determination, is anchored on the grounds set out on the face of the application, and which are amplified in the Claimant/Applicant's supporting affidavit sworn on 24th December, 2024. The supporting affidavit basically replicates the averments made in the statement of claim and reproduced in this Ruling, only adding:-
- a. that prior to 3rd January, 2023, the Claimant/Applicant was the Acting Registrar Administration and Planning, and Chairman of the Interview Committee at the Respondent University, where he had a significant role in overseeing and facilitating recruitment processes.
 - b. that during his tenure as the Chairperson of the Interview Committee, the Claimant/Applicant raised legitimate concerns about the integrity of the Respondent's recruitment process, especially regarding the appointment of Mr. Kevin Ng'ang'a, who was allegedly the nephew of the Respondent's Deputy Vice-Chancellor for Finance, Administration and Planning, Prof. Irura Ng'ang'a; questioning the fairness and transparency of the process as candidates had allegedly been issued with appointment letters before the interview process.
 - c. that in retaliation, the Vice-Chancellor had, without any cause and justification, immediately transferred the Claimant/Applicant from the said position of Acting Registrar Administration and Planning to a Lecturer position in the School of Education.
 - d. that the Claimant/Applicant, nonetheless, escalated the matter to the Ministry of Education and the Commission for Higher Education because of favouritism in staff promotion and irregularities in the recruitment process. That investigations by the EACC are ongoing.
6. Documents annexed to the supporting affidavit include copies of the Respondent's letter dated 20th December, 2022 deploying the Claimant/Applicant to the School of Education, Arts and Social Sciences as a Lecturer with effect from 3rd January, 2023, a letter dated 20th December, 2022 requiring the Claimant/Applicant to hand over to a Mr. Salah A. Farah, letters dated 16th April, 2023 and 14th June, 2023 respectively by the EACC asking the Respondent's Vice-Chancellor to facilitate the appearance of the Claimant/Applicant and other named staff to appear (before the EACC) for interview and recording of statements, the Claimant/Applicant's letter of complaint to the Respondent's Vice-Chancellor dated 27th November, 2024 complaining against an Administration Police Inspector (a Mr. Hassan) who had on the said date threatened the Applicant while the Applicant was supervising a test at the University.
7. Also annexed to the Claimant's supporting affidavit are copies of the Claimant/Applicant's written complaint against the said Administration Police Inspector to the Independent Policing Oversight Authority (IPOA), Kenya National Commission on Human Rights, and Office of the Ombudsman, among other offices; a show cause letter dated 29th November, 2022 issued to the Claimant by the Respondent, a letter by the County Commissioner (Garissa) to the Respondent's Vice-Chancellor dated 2nd December, 2024, the Applicant's letter dated 29th November, 2024 withdrawing his complaint against the said Administration Police Inspector (Hassan), and a letter of suspension dated



23rd December, 2024 suspending the Claimant/Applicant from duty with effect from 2nd January, 2025.

8. The application is opposed by the Respondent vide a replying affidavit sworn by Salah Farah, the Respondent's Acting Head of Administration and Planning, sworn on 14th January, 2025. It is stated in the said affidavit, inter-alia:-
- a. that the Applicant was part of the team that interviewed Mr. Ng'ang'a, and never complained about the integrity or fairness of the process, before or after the process.
 - b. that the Applicant never complained to the Respondent's Vice-Chancellor, the Public Service Commission or any other agency of being victimized, discriminated against or unfairly treated by the Respondent.
 - c. that regarding the incident that resulted in the Applicant's suspension, it is common knowledge that on 2nd April, 2015, the Respondent suffered a ghastly, horrific and unprecedented terror attack, which led to the loss of about 148 people, and scores seriously injured. That consequently, the Respondent advised its employees, including the Applicant, to observe and promote safety measures. That lecturers must ensure that students comply with security protocols and policies within the institution.
 - d. that on 27th November, 2024, in total disregard of the institution's safety policy, practices and directives, and in a careless and unprofessional manner, the Applicant instructed about 148 students to sit for their Continuous Assessment Test (CAT) at a restricted area (Memorial Garden), a security sensitive area where heavy security machinery is mounted; this despite the area being clearly marked as "a security sensitive zone" and earmarked with the "scene of crime do not cross" police yellow tape.
 - e. that the Police Inspector Incharge of Garissa Police Post, Mr. Hassan Adan, requested the Applicant to relocate the students to another safe place or room, to which the Applicant shouted at the said Police Officer, "this is a University, not a police station." That the police officer informed the Respondent's Chief Security Officer (CSO) for possible escalation to the Respondent's Management.
 - f. that on 27th November, 2024, the Respondent received complaints from the Inspector of Police (Mr. Hassan Adan) and CSO, accusing the Applicant of breaching the security protocol by instructing students to write exams in a security sensitive area, thus jeopardizing the student's safety and that of other staff in the institution.
 - g. that the Respondent issued a Notice to Show Cause to the Applicant on 29th November, 2024, to which he responded on 5th December, 2024.
 - h. that to give room for a thorough investigation, the Applicant was suspended effective from 23rd December, 2024, for three months; in line with the Respondent's Human Resource Manual Section 6.23 (ii). That under Section 6.27 of the Respondent's Human Resource Manual, the Applicant is entitled to a half pay during the three months' suspension.
 - i. that the County Commissioner, in an attempt to usurp the role, duties, and responsibilities of the Vice-Chancellor, wrote a letter to the Vice-Chancellor purporting to nullify the notice to show cause that the Vice-Chancellor had issued.
 - j. that the Applicant's decision to withdraw his complaint regarding alleged threats, harassment and abuse of power by the police officer was his personal choice which does not affect



investigations into accusations made in the notice to show cause letter dated 29th November, 2024.

- k. that it is settled law that a court of law should not interfere with the internal disciplinary processes of an employer, except in exceptional circumstances.
9. Documents annexed to the said replying affidavit are copies of a letter dated 20th December, 2022 deploying the Applicant to the School of Education, Arts and Social Sciences as a lecturer, a letter of Applicant's promotion dated 1st September, 2022, minutes of interviews held on 2nd September, 2022, a letter of complaint by IP Hassan Adan dated 27th November, 2024, a letter of complaint by the Respondent's Chief Security Officer (Dekow Mohamed Diis), a show cause letter and the Respondent's Human Resource Policies and Procedural Manual (May 2021).
 10. Issues that fall for determination, in my view, are:
 - a. Whether the Claimant/Applicant breached any law, policy, rule or regulation to warrant institution of a disciplinary process against himself and eventual suspension by the Respondent.
 - b. Whether the orders sought by the Claimant/Applicant are deserved.
 11. On the first issue, the Respondent alleges that on 27th November, 2024, it received two complaint letters against the Claimant/Applicant from:-
 - i. Inspector of Police (IP) Hassan Adan.
 - ii. The Respondent's Chief Security Officer (CSO) Dekow Mohamed Diis.
 12. IP Hassan Adan's letter (complaint) titled "security breach within the University/complaint against Mr. Abdirahman Mohamed," states as follows, in part:-

"This is to forward a complaint against Mr. Abdirahman Mohamed, a lecturer at the University on the above subject matter.

On 27th November, 2024 at around 1600 hrs, the above lecturer had approximately 150 students to sit for Continuous Assessment Test in a clearly marked restricted area near the main gate with police yellow tape labelled "Do not cross".

The place has been restricted to any unauthorised person since it hosts support weapon and other sensitive equipment.

. . . the lecturer was very disrespectful and uttered words that were meant to undermine the security of the University . . .

. . . Mr. Hamo also incited the students against the police officers manning the main gate by telling them that Inspector and his team are planning to use teargas against them, which was a misleading information aimed to create disharmony between the students and police officers. He went ahead and threatened officers that he will mobilise the students to engage violence against the police officers . . ."

13. It is to be noted that the alleged complainant, IP Hassan Adan, is shown to be an Administration Police Inspector incharge of Garissa Police Post within Garissa University. Had the Claimant/Applicant incited his students to violence, and threatened police officers, hence committing an offence known in law, the said Inspector of Police would have arrested him, and possibly had him prosecuted in a Court of law. In the contrary, it is the Claimant/Applicant who is shown in the pleadings herein to



have reported an alleged threat to himself by the Police Inspector to Garissa Police Station vide OB No. 21/29/11/2024 and to IPOA, to the Ombudsman and to the Kenya National Commission on Human Rights, prompting the County Commissioner (Garissa County) to mediate over the matter and to obtain an amicable settlement of the matter between the Claimant and the said Police Inspector. The Claimant/Applicant withdrew his complaint against the said Police Officer thereupon. These facts have not been disputed by the Respondent.

14. Further, under the Respondent's Human Resource Policies and Procedures Manual (May 2021) Clause 6.23(2), formal complaints are categorised into 4:-
 - i. Vertical (up to down) – complaints initiated by a superior against a junior.
 - ii. Vertical (down to up) – complaints made by juniors against a superior.
 - iii. Horizontal – complaints made by one employee against another of the same rank.
 - iv. External – complaints made by a person who is not part of the Respondent Organization (a client, a contractor, a supplier or a service provider).
15. The foregoing categorization does not include “complaints by police officers” against employees of the Respondent University. Police officers are law enforcement officers and are by law expected to take appropriate legal action against law breakers, but not to write civil complaints to alleged law breakers’ employers reporting them. The present case is one of its own kind. Any “complaint” purportedly written to the Respondent by Administration Police Inspector Hassan Adan did not fall within the purview of the Respondent’s HR Manual, and was, therefore, not a complaint on the basis of which disciplinary proceedings could be lawfully initiated against the Applicant.
16. The written complaint by the Respondent’s Chief Security Officer (Dekow Mohamed Diis) states as follows, in part:-

“Today, 27th November, 2024 at exactly 17.29 hours, I received a call from IP Hassan Aden incharge of GaU Police Post that he is at the main gate and require my assistance for an intervention. I immediately rushed to the area and found student(s) undertaking CAT at security protected area despite clearly marking as a security area with a police scene of crime yellow tape, for its where support weapon is mounted.

The Inspector reported that when he found the situation, he approached the lecturer . . . however, he created a scene by inviting another lecturer, Dr. Njoka, who was within the garden equally administering CAT and started shouting that this is a University and not a police station with sole motive of inciting students against police officers who are manning the main gate, hence jeopardizing operations of the University.

Such moves not only amount to security threat but also a remedy to anarchy and require an urgent intervention, therefore I wish to recommend your immediate administration action.”
17. The Chief Security Officer’s foregoing purported complaint was clearly founded on what IP Hassan Adan “reported” to him about the Claimant/Applicant’s “incitement of students against the police.” He did not witness the alleged incident. He, the Chief Security Officer, clearly stated in his purported complaint that there was another lecturer, Dr. Njoka, equally administering an examination (CAT) to students at the Memorial Garden at the same time as the Claimant/Applicant. The Respondent has not told the Court why no disciplinary proceedings were commenced against the said Dr. Njoka,



if really administering CATs (examinations) at the Respondent's Memorial Garden was wrong/was a misconduct.

18. The Claimant/Applicant is not shown to have breached any regulation or policy of the Respondent by administering an examination (CAT) at the Respondent University's Memorial Garden. No such regulation, or even a circular instructing lecturers against administering examinations (CATs) in the said place has been placed before the Court.
19. The fact that the Respondent's Memorial Garden was a place routinely used for academic purposes in the University is clearly stated in the County Commissioner's letter dated 2nd December, 2024, which states in part:-

“Additionally, in light of the recent incident, we kindly urge the University administration to issue a memo to all staff and students, advising them not to use the Memorial Garden for academic or private study purposes. The Memorial Garden has increasingly been used by students for learning and study, which, while commendable, is not suitable given its proximity to sensitive areas and the need for security. We recommend that the University identify and designate a more appropriate location to accommodate the growing number of students needing space for learning and private study. This will not only ensure the safety and security of all individuals on campus, but will also help alleviate potential congestion in areas that are not equipped to handle large groups.

We trust that these recommendations will be given due consideration to help maintain a secure and conducive learning environment for all. The County Security Committee remains committed to supporting Garissa University in maintaining the safety and well-being of its community.”

20. The Respondent's assertion that the County Commissioner was “attempting to usurp the Vice-Chancellor's role, duties and responsibilities” does not appear to be founded, either in law or in fact, as facts presented to this Court demonstrate the presence of a Police Post and Administration Police Officers within the precincts of the Respondent University. These officers and any mounted or stored weapons that may be under their charge cannot in law be said to be under the command of the Respondent's Vice-Chancellor, hence the involvement of the area County Commissioner and his County Security Committee in matters security within the Respondent University and advise to the Respondent's Vice-Chancellor on such matters, as the County Commissioner rightly did in the present case.
21. The Claimant/Applicant cannot be said to have breached his employer's rules, policies and/or regulations not shown to have existed as at the time of the alleged breach.
22. Any disciplinary process initiated without any legal and/or valid basis cannot be allowed by the Court to continue. The present case is one of those exceptional cases where this Court must intervene in an internal disciplinary process by an employer.
23. Suspension of an employee by his employer, which is a disciplinary action, should never be effected without justifiable grounds/reasons. A disciplinary action is defined in the Black's Law Dictionary (10th Edition) as:-

“A measure taken by someone in authority to punish or curb behaviour that does not meet or conform to communicated and expected standards of performance.”



24. An employee should never be suspended from his or her employment unless he or she is in breach of communicated policies and regulations, and set or expected standards based on the said communicated policies and regulations.
25. In their written submissions filed herein, Counsel for the Claimant/Applicant referred the Court to the persuasive decision of the South African Labour Court in *Mogothle – vs – Premier of North West Province and Another* [2009] BLLR 331 (LC) where the Court observed that:-
- “Suspension is the employment equivalent of arrest, with consequence that an employee suffers palpable prejudice to reputation, advancement and fulfilment.
- . . . employers tend to regard suspension as a legitimate measure of first resort to the most groundless suspicion of misconduct, or worse still, to view suspension as a convenient mechanism to marginalise an employee who has fallen from favour.”
26. An employer who suspends his employee from employment has a duty, if the suspension is challenged in Court, to demonstrate a justifiable reason or reasons to deny the employee access to the work place, and validity or objectivity of any alleged pending investigations into the employee’s misconduct. The employer must also demonstrate that the employee’s continued access to the work place will prejudice the pending investigations.
27. The fact that suspension exists in an employer’s Human Resource Manual as a disciplinary measure is not a valid and/or lawful reason for such an employer to unleash it on his employees without a justifiable reason.
28. The Claimant/Applicant has alluded to discrimination against himself by the Respondent in commencing disciplinary proceedings against himself. In the complaint by the Respondent’s Chief Security Officer dated 27th November, 2024, the said officer clearly stated that Dr. Njoka was also at the Memorial Garden administering an examination (a CAT) at the same time as the Claimant/Applicant (on 27th November, 2024). The Claimant/Applicant was singled out for disciplinary proceedings and subsequent suspension from duty, the fact that the Memorial Garden was “increasingly being used by students for learning and private study due to the increasing number of students” notwithstanding. Discrimination of the Claimant was a violation of his fundamental freedom that is guaranteed under Article 27(1) of *the Constitution* of Kenya 2010. Section 5(1) of the *Employment Act* also outlaws discrimination at the work place.
29. The Black’s Law Dictionary (10th Edition) defines discrimination as:-
- “Differential treatment, failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured.”
30. On the second issue, and having considered written submissions filed on behalf of both parties herein, I allow the Notice of Motion dated 24th December, 2024 in the following terms:-
- a. The Claimant/Applicant’s suspension effected by the Respondent vide the Respondent’s letter dated 23rd December 2024 is hereby lifted, and is stayed pending hearing and determination of the suit herein.
 - b. The Respondent shall pay the Claimant/Applicant his full monthly salary from the date of the lifted suspension until the suit herein is heard and determined.
 - c. Costs of the application are awarded to the Claimant/Applicant.



31. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4TH DAY OF APRIL 2025

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Abdulahi for the Claimant/Applicant

Mr. Obayi for the Respondent

