



**Kanake v Kenya Film Commission & another (Employment and Labour Relations
Judicial Review E014 of 2023) [2025] KEELRC 1052 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1052 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS JUDICIAL REVIEW E014 OF 2023
AN MWAURE, J
APRIL 3, 2025**

BETWEEN

JOSYLINE KANAKE APPLICANT

AND

KENYA FILM COMMISSION 1ST RESPONDENT

**THE CHIEF EXECUTIVE OFFICER KENYA FILM COMMISSION 2ND
RESPONDENT**

JUDGMENT

Introduction

1. The Applicant commenced this substantive suit vide a Chamber Summons dated 29th March 2023. Alongside the Chamber Summons, it is accompanied by a supporting affidavit, a Statutory Statement, a verifying affidavit, and annexures thereto.

Applicant's case

2. The Applicant is a female adult of sound mind residing in Nairobi and a former employee of the 1st Respondent.
3. The 1st Respondent is a state corporate body established vide [Legal Notice No. 10 of 2005](#), and its functions were expanded under [Legal Notice No. 147 of 2015](#), and placed under the Ministry of Youth Affairs, Creative Economy and Sports.
4. The 2nd Respondent is an agent of the 1st Respondent.
5. The Applicant avers that she was employed as Human Resource and Administration Manager under Grade KSC 3 JOB R.



6. The Applicant avers that at the end of February 2023, she had received information to surrender her HP Elite Book laptop, which was supposed to be taken for repairs.
7. The Applicant avers that she complied and surrendered the said laptop for the necessary repairs on 3rd March 2023.
8. The Applicant avers that she received a letter from the 2nd Respondent dated 14th March 2023 requesting her to show cause why disciplinary action should not be taken against her on account of financial loss by disablement and or deletion of application and breach of set policies, procedures and regulation.
9. The Applicant avers that she was accused of having the initial software configuration application of the said laptop, including Microsoft, Window Operating System, Anti-Virus ESET and licensed operating system, Enterprise Resource Planning (EPR) System, and Virtual Private Network (VPN).
10. The Applicant avers that the allegations levied against her were vague and fabricated to frame her unfairly in support of the 2nd Respondent's illegal actions.
11. The Applicant avers that she responded to the Show Cause letter vide a letter dated 15th March 2023, and denied the allegations which were aimed at maligning her good name.
12. The Applicant avers that she was interdicted vide letter dated 21st March 2023 by the 2nd Respondent to pave way for and to facilitate investigations.
13. The Applicant avers that the interdiction was illegal, unfair and infringed on all the prescribed Human Resource Disciplinary Control Codes and Manuals of the Public Service Commission of Kenya and the Kenya Film Commission Resource Policy and Procedures Manual (2022).
14. The Applicant avers that the Respondents contravened the provisions of Article 47 of *the Constitution*, *Fair Administrative Action Act*, the *Legal Notice No. 147 of 2015*, the Kenya Film Commission Order 2015, and the Rules of Natural Justice.
15. The Applicant avers that the 2nd Respondent interdicted her for a non-existent case for which investigations could be done without interfering with her daily work.
16. The Applicant avers that the interdiction was hurried and fast-tracked and not based on any specified or known charges contrary to Article 50(2)(b) of *the Constitution*, making it a clear miscarriage of justice.
17. The Applicant avers that in an Internal memo dated 27th March 2023, a meeting was held to discuss her replacement as the Human Resource and Administration Manager as her position was appointed by the Respondent's Board and at that time there was no constitution of Board in place to do the said decision.
18. The Applicant avers that despite the foregoing, she had constantly faced intimidation, intolerance, prejudice and discrimination, prompting her to report to the police, where she was issued with an OB No: 30/17/03/2023.
19. The Applicant prays for:
 - a. Prohibition restraining the Respondents by themselves, their agents or authorized representatives from subjecting the Applicant to further unfair disciplinary action or attempting to dismiss, remove from office, demote in rank or even victimize the Applicant in any way.



- b. Mandamus compelling the Respondents to with immediate effect reinstatement the administration section functions which had been illegally transferred to the directorate of Strategy and Planning.
- c. Declaration that the process of punishing and disciplining the Applicant and the interdiction was fatally flawed, unlawful and procedurally unfair for violating *the Constitution*, the *Fair Administrative Action Act*; therefore, a nullity.
- d. Declaration that the procedure followed to punish and interdict the Applicant violated her right to a fair hearing, access to information, right to fair administrative action as well as principles of natural justice as guaranteed under *the Constitution* and the *Fair Administrative Action Act*.
- e. Declaration that further punishment imposed on the Applicant after lifting the interdiction was illegal, unfair, unprocedural and was not based upon logical proof or evidential material.
- f. Mandamus directing the Respondents to give written reasons for the disciplinary action and punishment they imposed against the Applicant and to furnish the Applicant with the Investigation Report, relevant documents and material evidence relating to the matter.
- g. Mandamus compelling the respondents to with immediate effect reinstatement of the Applicant's half salary withheld from the date of interdiction.
- h. Declaration that the amounts of Applicant's salary unlawfully withheld amounted to arbitral denial of access to her income and the same be refunded to the Applicant with interest.

Respondent's case

20. The Respondents opposed the substantive suit through a replying affidavit dated 10th April 2023, sworn by Timothy O. Owase, the Chief Executive Officer of the 1st Respondent, and in his capacity as the 2nd Respondent.
21. The Respondents aver that the ICT department requested the Applicant to surrender her old laptop by 28th February 2023, after a grace period of 3-4 months, as per the KFC ICT policy. Despite being assigned a new laptop on 13th October 2022, the Applicant transferred the old laptop to another officer, who removed it from the office premises. She disregarded the request, only returned the laptop on 3rd March 2023, after work hours, without signing the surrender form.
22. The Respondents aver that upon conducting a routine ICT assets inventory, it was discovered that essential software configurations on the laptop had been removed without authorization, in violation of the Kenya Information Communications Act. The laptop had configurations such as Microsoft Office, Windows OS, antivirus, ERP system, and VPN, which were all tampered with.
23. The Respondents aver that the Applicant was alleged to have failed her duty of care under Section 15 of the Public Officers Ethics Act, which requires ensuring the laptop was returned without defects or unauthorized alterations and reporting any changes promptly to the Respondent. The Respondent denies any intent to frame the applicant and requests proof of such claims.
24. The Respondents aver that the 2nd Respondent issued the Applicant a show cause letter on 4th March 2023, and gave her 21 days to respond. Instead of addressing the charges, the Applicant accused others of witch-hunting, framing her, and endangering her life.



25. The Respondents aver that following a dissatisfactory response, the 2nd Respondent issued an interdiction letter on 21st March 2023, in line with the KFC Human Resource Policy and Procedure Manual, to facilitate an investigation into the alleged misconduct.
26. The Respondents argued that the interdiction was a procedural step as per the Public Service Discipline Manual 2022 and KFC HR policies to ensure a fair investigation without interference, especially since the Applicant held a senior position. The Respondents clarified that the interdiction is not considered punishment but a temporary measure pending investigation. If the Applicant is cleared, the interdiction would be lifted, while if culpable, disciplinary procedures would follow in accordance with the HR Manual and labour laws.
27. The Respondents aver that the Applicant's claim of being denied a fair hearing is baseless since the disciplinary process has not yet started and clarified that the Applicant's salary for March 2023 was processed before her interdiction, thus refuting her claim that it was withheld.
28. The Respondents aver that the Applicant's allegations of discrimination, bullying, harassment, and threats to her life by the 2nd Respondent are serious and need to be investigated, not suppressed. Both the Applicant and the 2nd Respondent deserve justice, and the investigation seeks to establish the truth of these claims.
29. The Respondents urged this Honourable Court for protection against the Applicant's alleged attempts to harm their reputations for personal gain.
30. The Respondents aver that the application is premature, speculative, and an abuse of court processes, denying the allegations and requesting that the Application be dismissed with costs.
31. This Honourable Court directed parties to file their written submissions and the same were duly considered.

Applicant's written submissions

32. The Applicant submitted as per her submissions dated 20th September 2023 that she had met the principles for granting judicial review and relied on the case of Council of Civil Service Unions and others V Minister for the Civil Service [1984] 3 ALL ER 935; [1985] AC 375, where Lord Diplock laid down the said principles which comprise of illegality, irrationality and procedural impropriety.
33. The Applicant submitted that the actions of the 2nd Respondent were done without authority-illegally and relied on the case of Republic V National Land Commission & Another Ex-parte Farmers Choice Limited (2020) eKLR where the court stated that:

“It is trite that judicial review is more concerned with the manner in which a decision is made than the merits of the decision. The court is concerned with the lawfulness of the process by which the decision is made. The grounds upon which an order of judicial review can issue include where the decision is made. The grounds upon which an order of judicial review can issue include where the decision complained of is tainted with illegality, irrationality, and procedural impropriety (where there is failure to act fairly on the part of the decision-making authority in the process of taking a decision) or where the rules of natural justice are not complied with. It may also be issued where the decision is made without or in excess of jurisdiction.”

34. The Applicant submitted that the 2nd Respondent's unilateral initiation of disciplinary proceedings was illegal, irrational, procedurally improper, and exceeded their authority. The Applicant further



- contended that the 2nd Respondent's actions in assuming the roles of complainant, investigator, prosecutor, and judge were illegal from the outset, unprocedural, and beyond their legal powers, asserting that the interdiction should not proceed.
35. The Applicant submitted that the allegations against her were unreasonable, vague, and fabricated to frame her unfairly and lead to her dismissal. She responded to the Show Cause letter by vehemently denying the claims, stating that her limited computer skills made it impossible for her to perform the changes alleged. She also described the allegations as unsupported and based on unproven theories meant to incriminate her unjustly.
 36. The Applicant also submitted that despite providing an explanation in response to the Show Cause letter, the Applicant was indefinitely interdicted, ostensibly to allow for investigations. She emphasized that there were no reports, accusers, or complaints implicating her in any breach of the Code of Conduct or ethics, and the inventory "TO1" neither incriminated her nor demonstrated any misuse or damage to the commission's property, as alleged by the 2nd Respondent. The Applicant relied on several authorities including Republic V Commissioner of Co-operatives ex-parte Kirinyaga Tea Growers Cooperative Savings & Credit Society Ltd CA 39/97 119991 EALR, Nairobi High Court Miscellaneous Application No. 1769 of 2003 Republic V Ministry of Planning and another ex-parte Professor Mwangi Kaimenyi, Republic V Kenya Revenue Authority ex-parte Aberdare Freight Services Limited [2004] eKLR and Republic V Commissioner of Customs ex-parte Mulchand Ramji & Sons Limited [2010] eKLR in support of that proposition.
 37. The Applicant submitted that the disciplinary actions taken against them were illegal, unfair, and procedurally flawed. They argue that no proper charges or specific allegations were presented, violating constitutional provisions, procedural fairness, and principles of natural justice.
 38. The Applicant also submitted that the interdiction was indefinite and based on petty, unsubstantiated accusations without initiating proper investigations as required by law and the Kenya Film Commission's policies. Furthermore, the Applicant asserts that the Respondents acted ultra vires, imposing an unjust punishment without evidence or adherence to due process.
 39. The Applicant urged this Honourable Court to allow the substantive suit as prayed by granting appropriate remedies together with the costs of the suit.

Respondents' written submissions

40. The Respondents argue that the Applicant resigned from her position through a letter dated 22nd January 2024, which was accepted on 23rd January 2024, and this was communicated to this Honourable Court via a letter from the Attorney General on 2nd February 2024. The Respondents submitted that the resignation renders the motion moot and urged this Honourable court to dismiss the proceedings. However, the Applicant insists that this Honourable Court should still give its determination on the substantive motion.
41. The Respondents submitted that resignation by an employee from employment, is basically termination of employment at the instance of the employee as held in Edwin Beiti Kipchumba V National Bank of Kenya Limited [2018] eKLR.
42. In Kennedy Obala Oaga V Kenya Ports Authority [2018] eKLR, the court held that if an employee resigns before the disciplinary process is finished, the employment is effectively terminated. In such cases, the resignation takes precedence, and the employer cannot require the employee to participate in the process afterwards. In Stephen Michuki V African Safari Air Express Limited & another [2022]



eKLR, the court held that an employee who resigns to circumvent the disciplinary process cannot claim there was unfair termination of employment.

43. The Respondents submitted that the Applicant resigned from employment; her resignation rendered the substantive motion has been overtaken by events and relied on the case of *The Cabinet Secretary for the National Treasury and Planning & 4 Others v Okoiti & 52 Others; Bhatia (Amicus Curiae)* [2024] KESC 63 (KLR) in support of that proposition.
44. The Respondents urged this Honourable Court to find that the substantive motion has been overtaken by events as the Applicant resigned from her job. It was not possible to pursue the original claim on totally different facts and expect to be reinstated to the Respondents establishment.

Analysis and determination

45. The court has considered the pleadings as well as the submissions; the issue for determination is whether the suit is merited.
46. In the cases of *Ntarangwi M'ikiara V Jackson Munyua Mutuera* [2020] KECA 81 (KLR) and *Kenya Council of Employment and Migration Agencies V Attorney & 2 Others State Department for Public Service & 3 Others Interested Parties* (2021) KECA the court held that in both cases the appeals had been overtaken by events.
47. In this instant case, the Applicant was employed as Human Resource and Administrative Manager, and it was discovered that she had breached some ICT policy and, thereafter, she was interdicted. Being a Human Resource and Administrator Manager, she is supposed to be acquainted with the Respondents' disciplinary process. When one is placed under interdiction, it does not automatically result in termination but placed in purgatory awaiting a final verdict on whether such an employee is culpable of wrongdoing as charged or not. The Applicant being a human resource manager was well acquainted with the Respondent's Human Resource Manual for the said guidance.
48. She was placed on interdiction to enable the Respondent to carry out its investigation and she was still on half salary. She was also entitled to all other allowances. She did not exercise patience to enable the investigations be under taken so that the Respondent would advise her on the way forward. She received her interdiction letter on 21st March 2023 and filed the suit on 29th March 2023.
49. In the Respondent's Human Resource Manual an employee can be interdicted to allow for investigations to be carried out. This is articulated in Clause 11.16 of the said Human Resource Manual.

The interdicted officer is eligible to half their salary and other allowances.

The policy further provides that if the interdicted officer is not dismissed or otherwise punished their withheld salary is restored upon termination of these proceedings and the salary withheld is restored from the date of interdiction.

50. The Applicant in her submissions avers the 2nd Respondents unilateral invitation of disciplinary proceedings was irrational and unprocedural and exceeded his authority. The 2nd Respondent was however not the employer of the Petitioner but was also an employee of the 1st Respondent.

Further the court noted the Applicants submissions were filed long before she voluntarily resigned from her employment. So there was no issue of curtailing the disciplinary proceedings when she had already resigned.



In any event the court is not obliged to interfere with disciplinary proceedings of an employer unless there is clear and obvious violations of constitutional rights of an employee.

51. The court has no evidence that the investigations took place. In any event there were several applications filed in court before investigations could take place and the court had halted disciplinary proceedings pending the hearing of the main motion vide the ruling dated 9th August 2023.
52. The prayers sought in the main suit being Prayers 2 a – h and 3 are all overtaken by events since they sought to stop the Respondent from taking the Applicant through the disciplinary process and to reinstate the Applicant to the administration section functions which she claimed were transferred to the Directorate of Strategy and Planning. She seeks inter alia to have her interdiction lifted and her withheld salary to be restored to her. All these are overtaken by events as she is no longer an employee of the Respondent.
53. Upon the Applicant's resignation on 22nd January 2024 these prayers are no longer tenable and cannot be effected in any event.

Even her withheld half salary cannot be restored since the investigations were not carried out to determine if she was culpable of the charges levelled against her or not.

54. The court is persuaded by several authorities that an employee who resigns before disciplinary process is finalised renders the disciplinary process nugatory. In the case of Kennedy Obala Oaga -VS Kenya Ports Authority (2018) eKLR the court held: -

“If an employee resigns before the disciplinary process is finished, the employment is effectively terminated.

Equally in the case of Stephen Michuki -Vs- African Safari Air (Supra) the court held that an employee who resigns to circumvent the disciplinary process cannot claim there was unfair termination of employment.”

55. The court has considered the pleadings and the submissions of the Respondent and the Applicant alongside the authorities and holds the suit filed on 29th March 2023 is no longer tenable and has been overtaken by events. The same is dismissed accordingly.
56. Each party will meet their respective costs of the suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 3RD DAY OF APRIL, 2025.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

