



**Hussein v Garissa University (Cause E002 of 2025)
[2025] KEELRC 1025 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1025 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E002 OF 2025
BOM MANANI, J
APRIL 2, 2025**

BETWEEN

DR. ADAN MAALIM HUSSEIN CLAIMANT

AND

GARISSA UNIVERSITY RESPONDENT

RULING

Background

1. The parties to this dispute have an employment relationship. As the record demonstrates, the Respondent hired the Claimant as a lecturer in its Department of Education as from 21st January 2021.
2. From the preliminary material presented to court, the parties appear to have disagreements over a number of matters. It is these disagreements that have triggered the filing of this suit.
3. According to the Claimant, on 27th June 2019, the Respondent advertised the position of Senior Lecturer in the Department of Education. He contends that he applied and was interviewed for the position. However, the Respondent appointed him to the position of Lecturer.
4. The Claimant contends that the Respondent ought to have appointed him to the position of Senior Lecturer and not Lecturer since the interview he attended was for Senior Lecturer. He avers that he wrote to the Respondent to review its decision and move him to the position of Senior Lecturer but the Respondent ignored the request.
5. The Claimant avers that the Respondent subsequently appointed him as Head of the Department of Education. However, he lost the position when the Respondent appointed another person to take it over.



6. The Claimant contends that the decision to remove him from the position of Head of the Education Department was a demotion. He contends that the Respondent did not give him reasons to justify the decision.
7. The Claimant further avers that the Respondent appointed him as the coordinator of its Nuria College. However, it (the Respondent) subsequently removed him from the position without offering reasons for the decision.
8. The Claimant further contends that his letter of appointment entitled him to free medical services at the Respondent's expense. However, he avers that when his spouse suffered injury following an accident, the Respondent declined to settle her medical bills
9. The Claimant further avers that on 13th November 2023, the Respondent advertised internally for the position of Senior Lecturer which he applied for. He contends that when the Respondent promoted some of the applicants for the position, his name was omitted from the list. Yet, he met the prerequisites for promotion to the position of Senior Lecturer.
10. The Claimant contends that these series of events signify a pattern of unfairness against him. He contends that in view of the foregoing, he wrote to the Respondent's Vice Chancellor on 9th August 2024 raising a complaint about what he perceived as unfair treatment.
11. The Claimant contends that despite writing to the Respondent as aforesaid, it did not respond to his letter. As a result, he wrote to the Commission on Administrative Justice to seek its intervention in the matter.
12. The Claimant contends that his letter to the Commission on Administrative Justice triggered more adverse action from the Respondent against him which he perceives as a form of victimization. He contends that the Respondent's officers wrote to him accusing him of having made false statements against the Respondent and members of staff and demanded that he explains the impugned statements. Further, he avers that the Respondent allegedly discontinued him from serving as a teaching practice assessor without offering reasons for the decision. He contends that in the meanwhile, the Respondent set up a committee to review the complaints which he had raised.
13. The Claimant avers that the Respondent invited him to appear before the committee for a review session that was scheduled for 18th December 2024. He contends that when he appeared before the committee, he realized that a majority of its members had participated as panelists in his interview for promotion to the position of Senior Lecturer. As such, he had reason to believe that the committee will be prejudiced against him.
14. The Claimant avers that he objected to the committee as constituted and demanded that it be reconstituted to exclude the persons who had sat as panelists in his interview. However, the Respondent did not respond to his request.
15. The Claimant contends that instead of addressing his aforesaid request, the Respondent issued him with a show cause letter dated 23rd December 2024. He contends that after he responded to the aforesaid letter, the Respondent issued him with a letter of suspension dated 6th January 2025.
16. The Claimant contends that the suspension is unfair and unlawful. He avers that the Respondent has not demonstrated that his presence at work will jeopardize investigations against him. It is his view that the Respondent can still conduct its investigations against him without suspending him from duty.



17. The Claimant further alleges that the disciplinary proceedings against him offend the Respondent's Human Resource Manual. He avers that the Respondent is conducting the process under both clause 6.23(1) and 6.23(2) thereby jeopardizing his right to be heard.
18. The Claimant further contends that the disciplinary process was commenced without a formal complaint against him contrary to clause 6.23 of the aforesaid Human Resource Manual. As such, he avers that the process offends *the Constitution* and other statutes as set out in the Memorandum of Claim and his affidavits on record.
19. Accompanying the Memorandum of Claim is the application dated 14th January 2025 for interim reliefs. In the application, the Claimant prays for a number of orders. These include:-
 - a. An order lifting the suspension imposed on him pending the hearing and determination of the suit.
 - b. An order of temporary injunction barring the Respondent from terminating his employment based on the allegations contained in the Respondent's letter dated 6th January 2025.
20. The application is supported by an affidavit of even date sworn by the Claimant. The affidavit reiterates what has been set out earlier in the ruling.
21. The Respondent is opposed to the application. It has sworn an affidavit dated 4th February 2025 through one of its officers to respond to the motion.
22. The Respondent confirms that the parties have an employment relationship. It contends that although the Claimant applied for the position of Senior Lecturer, he did not qualify for it. For example, it points out that he had not supervised any postgraduate student at the time of the application, a key requirement for the position.
23. The Respondent avers that although the Claimant did not qualify for the position of Senior Lecturer, he qualified for the position of Lecturer. As such, it (the Respondent) contends that it offered him this latter position which he accepted by appending his signature on the letter of offer.
24. The Respondent contends that it later confirmed the Claimant's position on permanent and pensionable terms. In addition, the Respondent avers that it assigned the Claimant other administrative roles in a bid to strengthen his leadership and professional exposure. As such, the Respondent denies that it has treated the Claimant with spite as he insinuates.
25. The Respondent contends that when new positions were advertised within its rank and file, the Claimant applied for the position of Senior Lecturer. It (the Respondent) avers that the Claimant was interviewed for the position alongside other applicants and was successful.
26. The Respondent avers that due to budgetary constraints, it took a decision to promote the qualified candidates in two tranches. The Claimant fell in the second tranche who were to report to their new positions in January 2025 subject to availability of funds. As such, it denies the Claimant's assertion that he was denied promotion to the position of Senior Lecturer or that he was treated unfairly.
27. The Respondent contends that despite the aforesaid reality, the Claimant wrote to it raising complaints about failure to be promoted and unfair treatment. It contends that in the complaint, the Claimant made a number of allegations which had the potential of ruining its name and besmirching the character of other employees in the institution. As such, it resolved to investigate the matter internally before reverting to him.



28. The Respondent avers that before it could act on the complaint, the Claimant wrote to the Commission on Administrative Justice making further damaging allegations against it and members of staff. The Respondent contends that as a result of the foregoing, it dawned on it that the Claimant was on a mission to destroy its image and the image of his colleagues.
29. The Respondent avers that upon this realization, it set up a committee to verify the Claimant's allegations with a view to getting to the bottom of the matter. The Respondent further avers that although the Claimant was invited to the review session, he refused to be interviewed. Instead, he wrote objecting to the composition of the review committee.
30. The Respondent avers that although the Claimant accused some members of the committee of being conflicted, he did not flag the specifics of the purported conflict. As such, his request was not granted.
31. The Respondent contends that after the Claimant failed to submit to the committee to substantiate the allegations he had made, it (the Respondent) issued him with a letter of show cause. The Respondent further states that after considering the Claimant's response to the letter of show cause, it opted to carry out further investigations into the case. As such, it suspended the Claimant from his duties for a period of three months.
32. The Respondent avers that the Claimant's suspension was necessary to protect the integrity of the investigations by ensuring that he did not interfere with the process. It avers that the suspension was anchored on its policy instruments.
33. The Respondent denies that it has undertaken the impugned exercise in violation of the law or its internal rules. As such, it (the Respondent) implores the court not to interfere with the process by issuing adverse orders.

Analysis

34. It is not in doubt that a court of law has the power to intervene in an ongoing disciplinary process by an employer against an employee. However, the rule of the thumb is that it (the court) should refrain from interfering with the process unless it is apparent that the proceedings are being conducted in breach of the law, an internal rule or policy, the contract between the parties or that the proceedings are manifestly unjust.
35. And where it (the court) intervenes, this should only be to the extent of requiring the employer to redress the anomalies that have been observed in the process but not to bar it (the process) altogether. As such, the employer retains the liberty to proceed with the process subject to addressing the anomalies that may have triggered the court's intervention.
36. The foregoing has been affirmed in a plethora of court decisions. In *Judith Mbayah Tsisiga v Teachers Service Commission* [2017] eKLR, for instance, the learned Judge expressed herself on the subject as follows:-

“This court has rendered its opinion regarding intervention in disciplinary cases in numerous decisions, among them those cited by the Claimant. These include the case of *Alfred Nyungu, Gladys Boss Shollei, George Wekesa v Multimedia University and Rose W. Kiragu v Teachers Service Commission*. In all these cases the court declined to interfere with the disciplinary process, on the basis that this is a function of the employer. As was stated in *Frederic Saundu Amolo's* case, the courts will not intervene in any employer's internal disciplinary proceedings until it has run its course. The only circumstances when the court



will interfere is in exceptional circumstances where great injustice might result or where justice might not by any other means be attained. ”

37. In *Onsongo & 2 others v Naivasha Water Sewerage & Sanitation Company Limited (Petition E020 of 2023)* [2024] KEELRC 76 (KLR) (25 January 2024) (Ruling), the learned Judge expressed herself on the matter as follows:-

“ This court has restated (see Joseph G. Naituli Case) (Supra) & Judith Mbayah Tsisiga (Supra) that courts cannot interfere with the disciplinary process unless it is alleged that the process is flawed.

And in any case where the process is as appears flawed, the court’s duty is not to stop the process altogether but to direct a proper fair process to proceed.”

38. Does the Claimant’s case satisfy the parameters that warrant intervention by the court? Has he demonstrated that the Respondent’s decision to commence disciplinary action against him has contravened the law or an internal rule or the contract between the parties? And if he has, is there grave danger that if the proceedings are allowed to run their full course, he will suffer injustice which cannot be redressed by any other means? Has he established that there are exceptional reasons why the court should interfere with the process?
39. The Claimant alleges that the disciplinary process against him has infringed clauses 6.23(1) and 6.23(2) of the Respondent’s Human Resource Manual. These provisions set out the procedure that should be followed whilst processing disciplinary cases against employees accused of gross misconduct and general misconduct.
40. Clause 6.23(1) deals with gross misconduct. It requires a disciplinary process for this offense to commence with the lodging of a formal complaint against the affected employee. This should be followed by: the suspension of the employee; institution of investigations; convening of a disciplinary hearing; and issuance of a verdict.
41. It is noteworthy that the clause does not speak to the need to issue the affected employee with a notice to show cause. However, it is sensible to issue this notice since it is the one which notifies the employee of the accusations against him and provides him the first opportunity to offer his response to the accusations.
42. Clause 6.23(2) deals with general misconduct. The clause requires a disciplinary process in respect of this offense to commence with the lodging of a formal complaint against the affected employee. This is to be followed by: issuance of a letter of show cause to the employee; investigations; processing of the disciplinary hearing; and issuance of a verdict.
43. The Claimant is accused of making false statements against the Respondent and its employees. He is also accused of engaging in damaging criticism of the Respondent and his colleagues. As such, the nature of the offenses appear to fall in what comprises general misconduct (see clause 6.21 of the Manual).
44. As indicated earlier, the procedure for processing disciplinary cases involving general misconduct does not require that the officer under investigations be placed on suspension (see clause 6.23(2) of the Manual). As such, there is a sense in which the suspension that was meted on the Claimant may appear to have contravened the Respondent’s Manual.
45. However, it is noted that instead of the Respondent anchoring the second offense against the Claimant under clause 6.21(xvi) of the Manual, it opted to rely on clause 6.5(e) of the instrument which also



prohibits an employee from intentionally injuring the professional image of his colleagues. The offense of injuring the professional image of one's colleagues is not explicitly included in either clause 6.21 or 6.22 of the Manual. But it can find its way into clause 6.22 of the instrument by reason of clause 6.22 (ix) thereof. In this sense, it will constitute gross misconduct which entitles the Respondent to suspend the affected employee in terms of clause 6.23 (1) of the Manual.

46. The Claimant's advocates contend that an employee cannot be subjected to a disciplinary process under clauses 6.23(1) and 6.23(2) of the Manual simultaneously. This argument presupposes that one cannot commit acts of gross misconduct and general misconduct in one transaction or in a series of interconnected transactions.
47. I do not think that this is factually correct. One may simultaneously commit acts of general and gross misconduct. If this happens, there is nothing in the Manual which prohibits the Respondent from pursuing the two cases simultaneously by fusing the procedure under clauses 6.23(1) and 6.23(2) of the instrument.
48. Having regard to the foregoing, it is the court's view that the Respondent did not violate its policy instruments when it opted to consider the alleged second infraction by the Claimant under clause 6.5(e) of its Manual. As seen earlier, this has the potential of bringing the infraction within the purview of gross misconduct by virtue of clause 6.22 (ix) of the Manual. This would attract suspension from duty by virtue of clause 6.23 (1) of the Manual.
49. As such, I am not convinced that the Respondent conflated clauses 6.23 (1) and 6.23 (2) of the Manual whilst deciding on whether to suspend the Claimant. In the premises, I do not agree that the Respondent acted in contravention of its internal rules in suspending the Claimant.
50. That said, the court notes that the suspension, which was issued under clause 6.27 of the Manual, was to run for three months from 9th January 2025. As such, it will terminate on 9th April 2025, a few days after issuance of this ruling. In the premises, I will let it die a natural death.
51. The Claimant has accused the Respondent of initiating the disciplinary process against him without a formal complaint in contravention of clause 6.23 of the Manual. However, there is evidence that the Respondent issued him with a notice to show cause letter dated 23rd December 2024 setting out the grievance it has against him. To my mind, this letter served as the formal complaint by the Respondent against him. As such, the assertion that the disciplinary process was commenced without a formal complaint is erroneous.
52. In their submissions, the Claimant's advocates insinuate that because there was no complaint from a third party against the Claimant (including from his colleagues), there was no formal complaint against him. By this, I understand counsel to imply that the Respondent could not be the originator of the formal complaint. This argument is erroneous. A formal complaint could stem from any person including the Respondent.
53. In this case, the Respondent raised a formal complaint against the Claimant when it accused him of making false statements against it and his colleagues. This complaint was subsequently incorporated in the letter of show cause that was issued to the Claimant.
54. The Claimant contends that the Respondent has violated his article 42 and 47 rights to fair labour practices and fair administrative action and section 46 of the *Employment Act* by instituting the impugned disciplinary process against him. He alleges that the disciplinary case is a form of victimization by the Respondent after he complained about his unfair treatment.



55. The aforesaid contention is not supported by cogent evidence. A look at the letter of show cause suggests that the Respondent had reason to believe that the Claimant made unsubstantiated allegations against it and his colleagues. The Respondent holds this view because even after it asked the Claimant to substantiate the claims by providing the names and particulars of the individuals who were allegedly promoted without having met the minimum qualifications, the Claimant did not do so. His response to the notice to show cause did not speak to these specifics. As a result, the Respondent decided to subject him to further disciplinary action.
56. The foregoing implies that the Respondent's decision to pursue the disciplinary case against the Claimant was not informed by ulterior reasons. Rather, it was informed by what the Respondent perceived as the Claimant's unsatisfactory response to the notice to show cause that had been issued to him.
57. As the Respondent's counsel contend in their submissions, it is the Claimant who alleged that his colleagues were promoted without the requisite qualifications. Therefore, it behooved of him to back the claims with specific evidence in his response to the show cause. Having failed to do so, the Respondent was entitled to institute a disciplinary inquiry into the matter. As such, the court is not convinced that the impugned process has, prima facie, violated articles 41 and 47 of the Constitution and section 46 of the Employment Act.
58. In the context of the foregoing, the court is not convinced that the Claimant has presented a prima facie case that he is a victim of victimization by the Respondent. As such, the court is not convinced that he has satisfied the conditions for grant of an order for interim injunction as set out in the celebrated case of *Giella v Cassman Brown and Co Ltd* [1973] EA 358.
59. For the above reasons, the court declines to fetter the Respondent's hands in exercising its managerial prerogative to continue with the impugned disciplinary process pending resolution of this case. The court sees no exceptional circumstances that warrant its intervention in the disciplinary process at this stage.
60. At the same time, the court is not convinced that the process will visit grave injustice on the Claimant that cannot be redressed in any other way. If the outcome of the disciplinary process turns out to be unfair and unlawful, the Claimant has recourse to the judicial process for redress. However, the court will not scuttle the process at its infancy without compelling reasons.

Determination

61. The upshot is that the court finds that the application dated 14th January 2025 is unmerited.
62. As such, it is dismissed.
63. Costs of the application shall abide the outcome of the case.

DATED, SIGNED AND DELIVERED ON THE 2ND DAY OF APRIL, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant/Applicant

.....for the Respondent

Order



In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

