



Charana v Independent Electoral and Boundaries Commission (IEBC); Kenya National Examination Council (Interested Party) (Employment and Labour Relations Petition E189 of 2024) [2025] KEELRC 1304 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1304 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E189 OF 2024**

HS WASILWA, J

MAY 8, 2025

BETWEEN

JOHN KENNEDY CHARANA PETITIONER

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(IEBC) RESPONDENT**

AND

THE KENYA NATIONAL EXAMINATION COUNCIL INTERESTED PARTY

RULING

1. The Petitioner/Applicant filed a Notice of Motion dated 9th October 2024 seeking orders that: -
 - a. Spent
 - b. pending the hearing and determination of this application, this Honourable Court be pleased to grant a temporary Order of stay of the Respondent's decision of instituting any further disciplinary proceedings against the Petitioner/Applicant and/or any action of dismissing and/or terminating the Petitioner/Applicant pending the hearing and determination of this Application.
 - c. pending the hearing and determination of this Application, the Honourable Court be pleased to issue an order directing the Respondent to unconditionally reinstate the Petitioner/Applicant to employment as Constituency Elections Co-ordinator without any loss of benefits, seniority and emoluments.
 - d. pending the hearing and determination of the Petition herein, the Honourable Court be pleased to issue an order directing the Respondent to unconditionally reinstate the Petitioner/



Applicant to employment as the Constituency Elections Co-ordinator without any loss of benefits, seniority and emoluments.

- e. pending the hearing and determination of this Petition, this Honourable Court be pleased to grant a temporary Order of stay of the Respondent's decision of instituting any further disciplinary proceedings against the Petitioner/Applicant and/or any action of dismissing and/or terminating the Petitioner/Applicant pending the hearing and determination of this petition with regards to the same facts herein.
 - f. this Honourable Court be pleased to grant the Petitioner/Applicant such further orders and/or reliefs the Honourable Court deems fit.
 - g. cost of this application be provided for.
2. The Application was brought pursuant Section 3, 12 (1), (2) (3) & (4) of the [Employment and Labour Relations Court Act](#) No. 8 of 2014, Rule 45(1)(2)(3)(5) Rule 68 (a-g) of The Employment and Labour Relations Court (Procedure) Rules, 2024

Petitioner/Applicant's Case

3. The Applicant avers that he has been an employee of the Respondent for 16 years.
4. The Applicant avers that vide a letter dated 22nd May 2023, the Respondent informed its staff it had been directed by the Public Service Commission to conduct an audit of all academic and professional certificates of all its newly appointed staff under its purview in the last 10 years and in accordance with the provisions of the [Public Service Commission Act](#); the Public Officers Ethics Act; and the [Leadership and Integrity Act](#), any officer found in possession with forged certificates be dismissed from service.
5. The Applicant avers that on 14th March 2024, he was interdicted by the Respondent's Director Human Resource and Administration and since then he has never received any notification from the Respondent.
6. The Applicant further avers that he did not fall within the category of the newly employed staff thus the purported investigations carried against him were illegal, null and void ab initio.
7. Further, the Respondent is currently without a Chairperson and Commissioners and the courts have ruled that the lack of commissioners renders the actions of the commission illegal as it is not legally constituted. Therefore, the purported disciplinary action was irregular and fatally defective.
8. The Applicant avers that he appeared before the disciplinary committee on 28th March 2024 where he was informed that his A level certificate was a forgery. That upon the Respondent's request for authentication of his A level certificate from the Interested Party, it was informed that the holder the KACE certificate was JOHN KENNEDY CHARANA Ali index No. 53008/501 of year 1986 Kapsengere secondary school but not JOHN KENNEDY CHARANA index no. 53008/501.
9. It is the Applicant's case that someone wants to add the name Ali to his certificate as a way of unfairly and unlawfully terminating his employment as he has never professed of the muslim faith as he is an ardent seventh day adventist.
10. The Applicant avers that contrary to clause 12.11.4 (Viii) of the Respondent's Human Resource and Administration Manual (Policies and Procedures) which provides that the Committee shall, if it conducts an investigation, supply to the employee facing the disciplinary action, with the entire report and evidence prior to a hearing, the Petitioner/Applicant was never provided with the entire report and evidence prior to the disciplinary hearing.



11. It is the Applicant's case that the disciplinary hearing was in violation of his right to fair administrative action provided under Article 47 of the Constitution and Section 4 of the Fair Administrative Action Act.
12. The Applicant avers he was admitted to Kapsengere secondary school in 1985 for his A-levels and thereafter in 1986, he registered for his Kenya Advanced Certificate of Education (KACE) which he did in the same year and was awarded the KACE certificate A102008 John Kennedy Charana Index No, 53008/501 dated November/ December 1986; scoring three principals and 1 subsidiary total 16 points.
13. He was further issued with a leaving certificate on 19th November, 1986 showing that he had enrolled to the school in 1985 in form Five, under the admission number 1479 and he left the school on 16th November 1986 having satisfactory completed Form Six (6).
14. It is the Applicant's case that he neither forged any certificate nor used any forged certificate to apply for the position as a Constituency Elections Coordinator or for the public office positions he held before.
15. The Applicant avers that the Respondent is in breach of his right to fair labour practices as he may lose his employment due to a lopsided disciplinary hearing.

Respondent's Case

16. In response to the Application, the Respondent filed a replying affidavit dated 15th December 2024 sworn by its Acting Director Human Resource and Administration, Abdalla Hassan.
17. The 1st Respondent avers that vide letters Ref. PSC/ADM/13 dated 19th October 2022 and PSC/ADM/13/ (42) dated 22nd May 2023, the Public Service Commission directed public institutions to undertake an audit of academic and professional certificates of all staff under their purview.
18. In compliance with the aforesaid directive, the Respondent shared the academic and professional certificates with the relevant institutions including the Interested Party vide a letter dated 26th September 2024.
19. The Respondent avers that the Interested Party vide its response letter Ref. No. KNEC/CONF/R&QA/ARCH/FORG/02/049 dated 13th February 2024, the Petitioner/Applicant 's KACE certificate attained under Index No. 53008/501 in 1986 from Kapsengere Secondary School was declared as not authentic contrary to the provisions of the Public Service Commission Act; the Public Officers Act; and the Leadership and Integrity Act.
20. Consequently, the Respondent issued the Petitioner with a show cause letter dated 19th February 2024 and he was subsequently interdicted vide a letter dated 19th March 2024.
21. The Respondent avers that it invited the Petitioner to appear before its Human Resource Management Advisory Committee on 28th March 2024 vide its letter dated 25th March 2024, which informed the Petitioner that he had the right to be accompanied by a person of his choice in accordance with the Respondent's Human Resource and Administration Policies and Procedures Manual, 2020.
22. The Respondent avers that the Committee in its meeting held on 28th March, 2024 recommended that the Respondent waits for a revised statement of results from KNEC before concluding the matter. Subsequently, KNEC provided an updated statement of examination results vide document Ref. No. KACE/24/012/001/017 dated 30th April 2024.



23. It is the Respondent's case that the Ethics and Anti-Corruption Commission (EACC) is clothed with power to investigate as one of its key functions under the *Ethics and Anti-Corruption Commission Act* and the Economic Crimes Act. Therefore, the Respondent requested feedback on the EACC investigations in order to conclude the matter vide its letter dated 17th May 2024. As of the date of filing the instant application, the Respondent was yet to get any feedback from EACC.
24. The Respondent avers that the Petitioner/Applicant has not stated any infringement of his constitutional rights to warrant invoking of this Court's jurisdiction especially noting that the implied dispute is not yet ripe for determination.
25. The Respondent avers that it has not withheld or declined to furnish the Petitioner with any information or evidence as alleged; once investigations are completed, the Petitioner shall be furnished with the information sought including evidence/findings of the investigations. Further, the Petitioner's right of access to information under Article 35 of *the Constitution* is not absolute and cannot override the functions of other constitutional commissions in the performance of their functions in law.
26. The Respondent avers that the Petitioner/Applicant has been accorded the right to fair hearing pursuant to Article 50 of *the Constitution* by allowing him to respond to the show case letter and inviting him to appear before its Human Resource Management Advisory Committee on 28th March 2024.
27. It is the Respondent's case that the Petitioner/Applicant stands to suffer no prejudice should the Respondent and EACC be allowed to finish the process of authenticating and verifying his certificates. Should the injunctive orders sought be issued, it would interfere with the ongoing investigations, culminating in an infringement of the Respondent's duty to ensure adherence to the rule of law in the conduct of its duties.
28. Further, public interest lies in allowing the conclusion of the investigation process initiated by the Respondent, through the EACC, by authority of the Public Service Commission.

Petitioner/Applicant's Submissions

29. The Applicant relied on the case of *Giella v Cassman Brown & Company Limited (1973) EA* which laid down the principles for grant of orders of temporary injunction pending determination of a suit as: -
 - a. An applicant must show a prima facie case with a probability of success;
 - b. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages; and
 - c. If the court is in doubt, it will decide the application on the balance of convenience."
30. On whether he established a prima facie case, the Applicant submitted that clause 12.5.1 of the Respondent's Human Resource and Administration Manual (Policies And Procedures) under clauses 12.5 to 12.5.3 provides that the Commission Disciplinary Committee shall handle cases involving officers in IEBC Grades 1 to 4 and 5 (CECs only); clause 12.5.3 defined the membership of the Committee shall comprise members of the Commission and the Secretary shall be the Director, Human Resource and Administration.



31. The Applicant submitted that fell within job group 5 but he was be subjected to a Disciplinary Committee that had no commissioners in contravention of the Respondent’s HR Manual. Therefore, any disciplinary action taken against him is null and void ab initio.
32. It is the Applicant’s submission that any administrative action by the Respondent in the absence of the Commissioners lacked any legality and thus a violation of the right to fair administrative action under Article 47 of *the Constitution*. Further, it violated its own HR Manual which provides that the disciplinary hearing shall be conducted expeditiously, efficiently, lawfully, reasonably and in a procedurally fair.
33. The Applicant submitted that he did not fall within the category of those whose certificates were to be authenticated as per the said letter dated 19th October 2022. Further, the audit was not sanctioned by law contrary to Article 47 of *the Constitution* and Section 4 of the *Fair Administrative Action Act*.
34. The Applicant submitted that in violation of the right to fair labour practices under Article 41 of *the Constitution* of Kenya 2010 and the Respondent’s HR Manual provides under Clause 12:11:4 (viii) that: - “The Committee shall, if it conducts an investigation, supply to the employee facing the disciplinary action, with the entire report and evidence prior to a hearing.” The Applicant was never supplied with the certificate that had the names JOHN KENNEDY CHARANA ALI index No. 53008/501 of Year 1986 Kapsengere secondary and no investigation report was ever availed to him.
35. It is the Applicant’s submission that there has been inordinate delay in concluding the matter contrary to the Respondent’s HR Manual which provides that all disciplinary cases should be concluded within 6 Months. The Respondents have not tabled any follow up correspondence to the Ethics and Anti-Corruption Commission on why it would take 12 Months to conclude authentication of his certificate. Further, clause 12:11:2(iv) of the Manual provides that all interdictions should not exceed 6 months.
36. On irreparable harm, it is the Applicant’s submission that he will suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction and reinstatement.
37. The Applicant submitted that at this stage, reinstatement is the appropriate remedy that can issue as he has 2 years to retirement. Simply because the Respondent is moneyed does not justify dismissing employees unfairly as stated in *Amir Suleiman v Amboseli Resort Limited* [2004] KEHC 2624 (KLR) the court was categorical that an employee should not be denied justice simply because the Respondent is moneyed and can pay damages.
38. It is the Applicant’s submission that it will be unjust if he will be subjected to termination of his employment when the Respondent has violated its own guidelines for interdictions and disciplinary action. Any decision rendered will not have any legal standing as the Respondent will be acting outside its jurisdictional timelines; and this cannot be cured by way of award of damages.
39. On balance of convenience, the Applicant submitted that since the Respondent has violated its own Human Resource Manual, *the Constitution* and the employment laws, the balance of convenience favours restraining it from completely defeating this Application.
40. Further, there are also special circumstances that warrant grant of the orders sought such as the Applicant’s age as securing alternative employment at the same level will be impossible; and the position is filled his prayer for reinstatement will be defeated. The balance of convenience therefore tilts in favour of the Petitioner/Applicant.



Respondent's Submissions

41. The Respondent submitted on two issues: Whether the Court should interfere with the disciplinary process; and whether the Applicant is entitled to the prayers sought in the application.
42. On the first issue, the Respondent submitted that in compliance with the Public Service Commission directives, it undertook an audit of its employees academic and professional certificates. Upon receipt of the feedback from the Interested Party on the authenticity of its employees' academic certificates, the Respondent initiated disciplinary proceedings against the employees whose academic certificates were classified as not authentic and in accordance with Respondent's Human Resource and Administration Policies and Procedures Manual, 2020.
43. The Respondent submitted that Section 7(e) of the [*Independent Electoral and Boundaries Commission Act*](#) provides that the role of the Commission Secretary includes ensuring staff compliance with public ethics and values. Further, Clause 12.4 of its HR Manual gives the Commission Secretary powers to constitute the Human Resource Management Advisory Committee for the purpose of deliberating on disciplinary matters which comprises of the Company Secretary as the chair, Director Human Resource Management and Administration.
44. The Respondent submitted that in compliance with its HR Manual, the Respondent submitted that through its Human Resource Management Advisory Committee, it issued the Applicant with a show cause letter informing him of the nature of complaint and requiring him to explain the circumstances in which he acquired his academic certificates within 14 days which lapsed on 4th March 2024, however, the Applicant responded on 27th March 2024.
45. Having not received a response as at 19th March 2024, in line with the procedure under Clause 12.11.2 of the HR Manual, the Respondent issued the Applicant with an interdiction letter dated 19th March 2024 pending investigations and determination of the case noting that it constituted a criminal offence and gross misconduct. Further, the Applicant vide a letter dated 25th March 2024 was invited to appear before the Committee in the company of any person of his choice.
46. It is the Respondent's case that the disciplinary proceedings is incomplete on grounds that during the meeting, the Committee recommended awaiting a revised statement of the results from the Interested Party before concluding the matter. Additionally, upon receipt of the revised result and noting the discrepancies in the grading system, the Respondent referred the matter to EACC vide a letter dated 17th May 2024 to inquire into the forgery case noting that matters investigations into allegations of forged academic documents falls within the ambit EACC as provided under derived from Articles 79 and 252 of [*the Constitution*](#). As the time of filing the application, the Respondent was yet to receive the investigations report from EACC to enable it conclude disciplinary hearing against the Applicant.
47. On the second issue, the Respondent submitted that the orders sought are incompetent and offend the doctrine of ripeness which prohibits the Court from entertaining hypothetical cases or abstract arguments. It relied on the reasoning in *MTM v KIE Limited and Another* (2020) eKLR, where the court ruled that courts will interfere with the internal disciplinary action only when the process is flawed and the interference will be to put on truck the disciplinary process but not do away with it altogether.
48. It is the Respondent's case that as at the filing the application herein, it had not received the EACC investigations report to supply the same to the Applicant before concluding the disciplinary proceedings. Were it not for the status quo issued, the Respondent would have summoned the Applicant to issue the outcome of the investigations. Reliance was made to Kenya Airways Limited



v. Aviation & Allied Workers Union Kenya & 3 Others [2014] eKLR, where the Court of Appeal underscored that reinstatement should not be granted where an employer's decision-making process has not yet been concluded.

49. I have examined all the averments and submissions of the parties. The only issue for this court's determination is whether the applicant has established a prima facie case with probability of success to warrant issuance of orders sought.
50. The contention by the applicant is that he has been on interdiction since March 2024 and since then he has not received any report from the respondents. He avers that the disciplinary hearing is also in violation of his right to fair administrative action as he has not even been supplied with any report or evidence against him.
51. The respondents contend that after the applicant appeared before its committee in March 2024, the committee recommended that he awaits a revised statement from KNEC before conducting the matter. KNEC provided an updated statement of examination vide document reference no KIACE/24/012/001/017 dated 30th April 2024. The respondent also aver that they are still authenticating and verifying the applicants certificates and should be allowed to do so.
52. Having considered these averments, it is indeed true that the applicant was undergoing some internal disciplinary process by the respondent since 2024. The respondents last communicated to him in March 2024 and they aver that they are still authenticating and verifying the applicants' certificates over one(1) year down the line as the applicant remains on interdiction.
53. This court had made a determination in the past that the court will not interfere with the employer's disciplinary measures unless necessary and would do so to correct the anomaly. That being the case having considered the averments of the parties, I do find that there seems to be triable issues raised by the applicant and especially so the time factor taken in handling the complaint and lack of communication thereof.
54. I therefore find that the applicant has established a prima facie case to warrant issuance of the orders sought which I grant as follows:-
 - a. That the disciplinary process underway is flawed and should not proceed. The respondent is however free to institute a fresh and credible disciplinary process against the applicant following all due process and regulations established. Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH OF MAY, 2025.

HELLEN WASILWA

JUDGE

