



**Wafula v Koome & another (Employment and Labour Relations Petition
E146 of 2024) [2025] KEELRC 1385 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1385 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E146 OF 2024**

MN NDUMA, J

MAY 8, 2025

BETWEEN

ERICK NYONGESA WAFULA PETITIONER

AND

THE HONOURABLE CHIEF JUSTICE MARTHA KARAMBU

KOOME 1ST RESPONDENT

JUDICIAL SERVICE COMMISSION 2ND RESPONDENT

JUDGMENT

1. The Petitioner filed the petition together with a Notice of Motion application on 24th September 2024 seeking conservatory orders staying the disciplinary process against the Petitioner pending the hearing and determination of the petition.
2. The Petitioner sought for the following reliefs set out in the petition:
 - a. A conservatory order staying the disciplinary process pending the inter parties hearing and determination of the Notice of Motion filed herewith;
 - b. A conservatory order staying the disciplinary process pending the hearing and determination of the petition;
 - c. A declaration that the requirement that your Petitioner responds to the Notice to Show Cause issued against him within 14 days of the notice was a violation of Clause D.7.2.2(i) of the Judiciary’s Human Resource Policies and Procedures Manual (2014).
 - d. A declaration that the refusal to give your Petitioner the statement(s) of Complainant(s) and other relevant disclosures in the disciplinary process against him is a violation of his fundamental rights to a fair hearing and to access to information;



- e. A declaration that the fact that both the allegations contained in the Notice to Show Cause and the letter containing the charges were word-for-word and the letter by the Chief Justice containing the charges had already declared your Petitioner's response to the Notice to Show Cause to have "been found to be unsatisfactory" amounted to a violation of the fundamental right to a fair hearing, in particular the right to fairly defend himself against the allegations made;
- f. A further declaration that your Petitioner has been denied the fundamental right to a lawful, reasonable and procedurally fair administrative action;
- g. A declaration that the contemplated action against your Petitioner was therefore demonstrably unfair and inconsistent with procedures laid down in the Judiciary's Human Resource Policies and Procedures Manual (2014);
- h. A further declaration that the Respondents have failed to apply various national values and principles of governance in relation to your Petitioner's disciplinary process, in particular the following values and principles: the rule of law, good governance, transparency and accountability, sharing and devolution of power, human dignity, equity, social justice, inclusiveness, equality, human rights and non-discrimination;
- i. A declaration that the Hon. Justice Mabeya was not entitled to participate in meetings with the Petitioner and other members of Tax Appeals Tribunal relating to the Tribunal's functions and that a conflict of interest arose by reason of doing so, by virtue of the fact that appeals to and from the Tribunal are to the High Court, and specifically to the Commercial and Tax Division of which the Hon. Justice Mabeya is the Presiding Judge.
- j. A declaration that it was ultra vires for the Hon. the Deputy Chief Justice and the Presiding Judge of the Commercial and Tax Division of the High Court of Kenya at the Milimani Law Courts, Nairobi to have convened a meeting with your Petitioner and members of the Tribunal relating to its operations as section 9(1) of the *Tax Appeals Tribunal Act* in view of the clear stipulation that the legal responsibility for ensuring the orderly and expeditious discharge of the mandate of the Tribunal is on the Chairperson of the Tribunal;
- k. A further declaration that it was ultra vires for the Hon. the Deputy Chief Justice and/or the Presiding Judge of the Commercial and Tax Division of the High Court of Kenya at the Milimani Law Courts, Nairobi to have interfered with the determination of the procedure of the conduct of the business of the Tribunal as section 9(2)(c) of the *Tax Appeals Tribunal Act* places this responsibility squarely on your Petitioner and not on any other person;
- l. A further declaration that it was ultra vires for the Presiding Judge of the Commercial and Tax Division of the High Court of Kenya at the Milimani Law Courts, Nairobi the Hon. Alfred Mabeya, to have called the meeting of 27th May 2024 with your Petitioner and members of the Tribunal as he had no capacity to do so as such capacity lies in the hands of the Commission, of which he is not a member;
- m. A finding that section 29(1) of the *Tax Appeals Tribunal Act* gives your Petitioner as the Chairperson of the Tribunal a casting vote in addition to a deliberative vote in the making of decisions of the Tribunal;
- n. An order of certiorari to remove into this Honourable Court to quash the decision of the Honourable the Chief Justice requiring the Petitioner to respond to the Notice to Show Cause



dated 17th July 2024 and her subsequent decision declaring the Petitioner’s response on the Notice to Show Cause to have been “unsatisfactory”;

- o. A further order of certiorari to remove into this Honourable Court to quash the charges framed by the Honourable the Chief Justice against the Petitioner, and her decision requiring him to respond to the charges;
- p. An order of mandamus ordering the Judicial Service Commission to properly and correctly exercise its jurisdiction in respect of the Petitioner’s disciplinary process;
- q. An order of prohibition to order the Judicial Service Commission or anyone coming in the name of the Commission for prohibiting the Tax Appeals Tribunal, its Chairperson and Members of the Tribunal from performing their duties as provided for in sections 9(1), (2)(c), 29(1), 32(1) and 32(2) of the [Tax Appeals Tribunal Act](#) (Chapter 469A of the Laws of Kenya);
- r. An order for compensation for the violation of your Petitioner’s fundamental constitutional rights;
- s. A recommendation for the Judiciary and the Judicial Service Commission to urgently address issues of under-capacitation of the Tax Appeals Tribunal to enable it effectively perform and deliver on its statutory mandate;
- t. The parties do bear their costs of this petition, it being a matter in the public interest and
- u. Any further orders that this Honourable Court may deem fit to grant.

Facts of the petition

- 3. The petitioner is serving a five (5) year term as Chairperson of the Tax Appeals Tribunal (“the Tribunal”), with effect from 12th May 2020 and the term is due to end on 12th May 2025, a matter of four (4) days from the date of this judgment.
- 4. The Petitioner is facing two charges of misconduct in terms of notices of charge dated 30th August 2024, but received on 5th September 2024 from the Hon. the Chief Justice. The charges read as follows:

Charge 1

“That while carrying out your duties as the Chairman of the Tax Appeals Tribunal, you demanded for draft decisions from each panel for “Quality Control” and thereafter deliver all the judgment and rulings even for matters you have not heard. Further, after delivery, you send the decisions back to the panels for signature. This arrangement not only causes unnecessary delay in supply of the signed decisions but also comprises the exercise of judicial authority independently. Members of the tribunal are required to maintain independence of mind in the performance of judicial duties and to exercise the judicial function on the basis of the members’ own assessment of the facts of the case, in accordance with a conscientious understanding of the law, and without reference to any extraneous influences. Your actions are not anchored in any law, was done in bad faith and compromised the fair administration of justice.

Charge II

That despite invitations by the Registrar of Tribunals you neither attend Leadership Management Team (LMT) meeting nor send a representative to participate.

- 5. In terms thereof, the Petitioner was to respond to the charges within 14 days from the date of the letter.



6. The Petitioner did not immediately respond to the charges but wrote a letter to the Hon. Chief Justice dated 11/9/2024 seeking an extension of time with which to respond to the charges. The Petitioner further complained that the statement of charge had charges identical to those earlier levelled against him in a notice to show cause letter by the Hon. the Chief Justice dated 7/7/2024 to which the Petitioner had responded to by a letter dated 30/7/2024, but the Chief Justice had stated that the response by the Petitioner was unsatisfactory and the Petitioner was apprehensive that the charges contained in the letter dated 30th August 2024 had already been prejudged.
7. The Petitioner further sought to be provided with statement(s) from the complainants and all relevant documents to enable him to adequately respond to the charges. Furthermore, the Petitioner had indicated that he was scheduled to travel to Mexico during the period of the said 14 days' notice, which travel had been approved by the Hon. the Chief Justice and so this was a further reason to seek extension of time to respond to the charges.
8. The Petitioner received a response to his letter dated 11th September 2024 from the Chief Justice dated 20th September 2024 in which the Chief Justice extended the time for the Petitioner to respond to the charges dated 30th August 2024 by 14 days, from 20th September 2024.
9. The Chief Justice also attached to the said letter dated 20th September 2024 a statement by Ann Asugah, Registrar, Tribunals dated 1st July 2024 in which the Registrar of Tribunal stated that the Judicial Service Commission established the office of Registrar Tribunals in February 2017 to oversee the operations of Tribunals. The Registrar indicates in the statement that all tribunals were to be centrally managed through Tribunals Secretariat establishment by the commission on a shared services model in which the Tribunals share infrastructure, human and financial resources. That in that regard, the tribunals were run through an LMT comprised of all chair persons and Administrative Secretary of Tribunals then execute and report back to the Leadership Management Team (LMT).
10. That communication to the LMT meetings are sent by the Registrar through a WhatsApp group for chair persons formed in October 2019 and which has been very effective in disseminating information on Tribunals. That the Petitioner joined the WhatsApp group on 11th July 2022. The Registrar stated that since joining the group the Petitioner had not attended any administrative meeting convened by the Registrar nor sent any representative from the Tax Appeals Tribunal (TAT) to represent him hence the 2nd charge preferred against the petitioner.
11. The Petitioner responded to the letter by the Chief Justice dated 20th September 2024, by an undated letter in which he states that he had received the response by the Chief Justice on 25th September 2024 in which the Chief Justice had extended time in which the Petitioner was to respond to the charges within 14 days.
12. The Petitioner noted that the letter by the Chief Justice was silent on the requested statements of complainants and inquiry statement referring to the first charge which the Petitioner said was the most fundamental charge against him.
13. The Petitioner therefore requested again for:
 - i. Statements of complainants relating to the 1st charge on "quality control" with clear particulars on the matter and of the action termed as "Quality control" and of the specific incidents on the same.
 - ii. The notices convening meetings of chairpersons of Tribunals held since July 2022 to date and the attendance schedules for the same period.



- iii. The minutes of the JSC of 12th February 2018 setting up the office of the Registrar Tribunals and
 - iv. The minutes and resolutions of the meetings of chairperson of Tribunals held since 2022 to date.
14. The Petitioner requested to be furnished with the aforesaid information by close of business on 27th September 2024 to facilitate the Petitioner to appropriately respond within the enhanced time line.
 15. The Petitioner wrote a further letter dated 4th October 2024, to the Chief Justice in which he referred to the letter of extension dated 20th September 2024. The Petitioner indicated that the 14 days extension period ended on 4th October 2024 and had not yet received the requested disclosure to enable him to fairly and fully respond to the allegations against him.
 16. The Petitioner noting that he had already filed this petition reiterated his response contained in his response to the notice to show cause dated 30th July 2024 and added the following response to the statement by Hon. Ann Asugah:
 - a. That upon being invited to the WhatsApp forum for the Chairperson of Tribunal he was not informed of the existence of any leadership management team and of any regular meetings by that group.
 - b. That he has never at any material time been informed of the leadership structure and functions of the leadership management team
 - c. That at no material time did he receive any formal notice of any intended meeting of such leadership management team
 - d. That he has not at any material time seen any minutes or resolution forwarded to the WhatsApp forum or separately brought to his attention.
 - e. That the Chief Registrar of the Judiciary who is his otherwise immediate supervisor has not at any time drawn to his attention of the existence of such a team and of the requirements of his attendance of meetings for the team.
 17. The Petitioner further stated that he was unable to respond further to the charge alleging ‘Quality Control’ until such time as the Respondents furnish him with documents requested in the letter and further particulars and disclosure on the said charge including but not limited to the statement by the person(s) who made the complaint and the Petitioner therefore reserved the right to make an additional response to both charges.
 18. The Petitioner in the petition filed on 24th September 2024, before most of the aforesaid correspondence had taken place alleges denial, violation and infringement of his fundamental rights and issues of loss of employment under paragraph 10 of the petition as follows:
 - i. The fundamental right to a fair hearing as guaranteed in Article 50(2)(b), (c) and (j) of *the Constitution*;
 - ii. The fundamental right to expeditious, efficient, lawful, reasonable and procedurally fair administrative action as guaranteed in Article 47(1) of *the Constitution*
 - iii. The fundamental right to fair labour practices and to reasonable working conditions as guaranteed in Article 41(1) and 41(2)(b) of *the Constitution*; and



- iv. The fundamental right to access information held by the state and information held by another person and required for the exercise or protection of any right or fundamental freedom as guaranteed in Article 35(1)(a) and (b) of *the Constitution*.
19. In addition, the Petitioner alleges failure by the Respondents to adhere to national values and principles of governance set out in Article 10 of *the Constitution*.
20. Furthermore, the Petitioner pleads that the respondents had violated various provisions of the Tax Appeal Tribunal (TAT) Act and the JSC Act in the manner the Respondents proceeded to conduct the disciplinary process against him. In particular, the Petitioner states that timelines for responding to notice to show cause and charges in terms of Clause D.7.2.2.(i) of the Judiciary's Human Resource Policies and Procedure Manual 2014 was 14 days from the date of service of the letter but not from the date of the said notice.
21. The Petitioner pleaded that he had difficulties with the Registrar, Deputy Registrar Tribunals countermanding his administrative and operational decisions and those of the members of the tribunal hence creating disaffection at the Tribunal. The Petitioner pleaded that the conduct by the two Registrars amounted to overreach.
22. The Petitioner further questioned the legitimacy of a meeting held between the Petitioner, members of the Tribunal and the Hon. Deputy Chief Justice which meeting had been called by Hon. Justice Mabeya. The Petitioner posits that Justice Mabeya had no legitimate authority to convene such a meeting and that there was a conflict of interest in that appeals from the Tribunal are ultimately ordinarily heard before the Commercial and Tax Division of the High Court where the Hon. Justice Mabeya is a Presiding Judge and the issues raised during the said meeting would actually and potentially impact on any tax appeal filed.
23. Furthermore, since the Hon. Deputy Chief Justice attended the meeting in a delegated capacity by the Chief Justice as the Head of the Judiciary, then the Deputy Chief Justice could not further delegate that role to Justice Mabeya since that was in violation of the administrative law principle of delegatus non potest delegare. To this extend the meeting of 27/5/2024 was not properly convened.
24. Further, it was improper for Hon. Ann Asugah, Registrar Tribunals and Hon. Grace Omolo, the Deputy Registrar of the Tribunal to sit in the said meeting of 27/5/2024 as it was intended to be a meeting between the Deputy Chief Justice, the Petitioner and members of the Tribunal to discuss the performance of the Tribunal.
25. That the said meeting of 27/5/2024 was therefore improperly used as a basis for instituting the ensuing disciplinary process against the Petitioner. That it is clear that the Tribunal operated in an extremely unfriendly environment as set out in the petition. That under section 9(1) of TAT it was the clear mandate of the chairperson to ensure orderly, and expeditious discharge of the mandate of the Tribunal and the Deputy Chief Justice and Presiding Judge of the Commercial and Tax Division acted ultra vires in convening the meeting of 27/5/2024 to discuss the performance of TAT and for Hon. Mabeya to issue a letter of reprimand to the Petitioner. That the said letter is a nullity ab initio.
26. The Petitioner further pleads that as recently as July 2024, TAT was presented with a certificate by the Judiciary as a Recognition Award for "Best performing Tribunal – case load category of above 500 filed cases 2022/2023". That the certificate was signed under the hand of the Chief Justice. The Petitioner states that the aforesaid excellence was despite very constrained budgetary allocation to the tribunals.
27. The Petitioner concludes that disciplinary process contemplated could only be brought for failure to perform his duties and responsibilities and his contract of employment and/or for a violation or



infringement of *the Constitution*; *Employment Act*, 2007, the JSC Act, the Judicial Code of Conduct and Ethics, the Human Resource Policies and Procedure Manual (2014) and the TAT Act.

28. The Petitioner denies having violated any of the said instruments.
29. In this respect Petitioner denies that he has violated Chapter 10, Article 73(2)(b) of *the Constitution* and Regulations 34, 35 and 36 of the Judicial Service Code of Conduct and Ethics which have been cited in the letter containing charges. The Petitioner concludes further that the disciplinary process is in any event barred by section 35 of TAT Act, which provides that no proceedings shall be instituted against the chairperson or member of the Tribunal in respect of act done or omitted to be done in good faith in the discharge of the functions under the Act except where all acts are done or omitted to be done willfully or dishonestly, or are attributable to the negligence of such offence or are done or omitted to be done by such officer in contravention of any provision of the act or the regulations.
30. The Petitioner states that he had responded to the allegations against him in his response dated 30th July 2024 to the best of his ability, despite not having been furnished with disclosures in violation of his right for a fair hearing.
31. That the notice to show cause and the notice of charges are based on acts and omission by Judges and Judicial Officers, that were ultra vires, illegal, unreasonable, irrational, procedurally improper and unfair and which amount to undue interference with the independence of the Tribunal and the Petitioners function as the chairperson of the Tribunal as set out in the TAT Act.
32. Wherefore the Petitioner prays that the petition be allowed and the petitioner be granted the reliefs sought.

Responses by the Respondents

33. The 1st and 2nd Respondents filed 3 replying affidavits to the Petition which can be summarized as follows:

That the 1st Respondent issued the Petitioner with a Notice to show cause dated 17/7/2024 to answer to the allegations against him of demanding draft decisions from panels for ‘quality control’ and thereafter delivering all the judgments and rulings even for matters that the Petitioner has not heard. Further, after delivery the Petitioner sending back to the panel the decisions for signature. That the Petitioner was also charged with failure to attend the Leadership Management Team Meetings and cascading the information and resolutions to the members of Tax Appeal Tribunal.
34. It is deposed that the Petitioner responded vide a letter dated 30/7/2024 whereby he stated, inter alia, that there were no complaints to precipitate the issuance of the show cause letter and he denied the allegations against him. That the Petitioner’s response was deemed unsatisfactory and a statement of charge was issued against him by the 1st Respondent. The Petitioner was given 21 days to respond to the charge through the letter dated 11/9/24.
35. The Petitioner requested for more time to respond and the statements relating to the inquiry of the alleged misconduct. The 1st Respondent approved the extension by 14 days. He was additionally issued with the statement of Registrar on the non-attendance of the meetings. The Petitioner then wrote requesting for the statements relating to the complaint or charge of ‘quality control’ with particulars of the statements, incidents, and also for notices, minutes, attendance sheets and resolutions of MLT meetings.



36. That the Petitioner having already instituted the Petition herein provided a holding response to the charges vide a letter dated 4/10/2024 as he awaited the requested documents. The Petitioner responded to the Registrar's statement and denied any knowledge of MLT meetings.
37. The Respondent maintains that the Petitioner was invited via WhatsApp to the MLT meetings but failed to attend
38. That the petition calls for the Court to delve into the merits of the charges which is an internal administrative affair. The grant of conservatory orders would violate the Respondents constitutional mandate.

Supplementary Affidavit

39. The Petitioner joined issues with the deponents in the replying affidavits stating that the letter dated 29/5/2024 which was issued by the Hon. Justice Alfred Mabeya under instruction from the Hon. Deputy Chief Justice Philomena Mwilu which purported to be a severe reprimand to the Petitioner was in fact and essence an usurpation of power that the said judge did not have in law since those powers only vested in the JSC in the ("the Third Schedule") in which the *Judicial Service Act*, provided that disciplinary powers to interdict, suspend or issue a severe reprimand or a reprimand a Judicial Officer vested in the JSC and were delegated to the Hon. the Chief Justice. That based on the administrative law principle of delegatus non potest delegare, the Hon. the Chief Justice could not delegate such powers to other Judicial Officers.
40. The Petitioner relies on the provision of the Third schedule to the JSC Act to assert his right to be furnished with a statement of charges together with written statements and all relevant documents to enable him respond adequately to the charges. In particular he cites paragraphs 23(1); 25(1) in the Third schedule.
41. The Petitioner stated he was not in position to respond to the charges up at the time of filing the supplementary affidavit due to non-disclosure by the Respondents.
42. The Petitioner states that he was not in receipt of a complaint from a member of the public with regard to the two charges facing him. That he had also not received statements from Judicial Officers who purportedly complained against him. That this was therefore not a matter in purview of the office of Judiciary Ombudsman (OJO) as alleged by the deponents in the replying affidavits or at all.
43. That allegations made by Hon. Bidali regarding complaints made regarding the efficient delivery of services at the Tax Appeals Tribunal to the OJO were first heard by the Petitioner in the court proceedings. That any such complaints or allegations made against Petitioner should form part and parcel of the statements and other documents that are supposed to accompany the charges framed against the Petitioner and which the Petitioner had been denied access up to the time of coming to court.
44. The Petitioner states that he has no problem or objection to being investigated but is strange that these allegations are being made in court for the first time.

Petitioner's Written Submissions

45. The Petitioner submits that pursuant to paragraph 15 of the Third Schedule of the *Judicial Service Act*, the disciplinary powers to interdict, suspend or issue a severe reprimand or a reprimand to a judicial officer is vested in the Judicial Service Commission. The Petitioner submits that these powers cannot further be delegated, based on the administrative law principle of delegatus non potest delegare . The



Petitioner cites the case of Republic versus Kenya Institute of Supplies Management ex parte Mwaniki Gachuba (2019) e KLR in support of this proposition

46. The Petitioner submits and reiterates that the Honourable the Deputy Chief Justice and the Honourable Justice Mabeya could not lawfully hold the meeting in question as part of an inquiry in the name of the Judicial Service Commission on account of the fact that neither the Deputy Chief Justice Mwilu nor Justice Mabeya was- or even now is- a Member of the Commission. The power to hold any such meeting could only be delegated to the Honourable the Chief Justice as a Member of the Judicial Service Commission and could not be delegated any further, based on the principle of *delegatus non potest delegare*.
47. The Petitioner submits that the refusal by the Respondents to provide a Statement of Allegations relating to the allegation of “quality control” to date can respectfully only be said to be in bad faith given that no explanation has even now been given, eight (8) months after the Notice to Show Cause was served on the Petitioner.

Respondents Submissions

48. The Respondent, inter alia, argues that the Petitioner has not demonstrated denial, violation and/ or infringement of Article 47(1) of *the Constitution*. The Petitioner is unreasonably apprehensive that a preconceived decision has been made to condemn him through disciplinary proceedings and terminate his employment. The Respondent submits that the actions taken by the 1st Respondents are preliminary and do not amount to substantially affecting the Petitioner’s legal rights or interests in finality as he alleges.
49. The Respondents argue that the Petitioner’s right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair has not been violated. That the petitioner was given prior and adequate notice of the nature and reasons of the disciplinary action, an opportunity to be heard and respond to the Show Cause and Charge as well as access to information, materials and evidence relating to the Show Cause Letter.
50. The Respondents argues that the Respondents did not delegate any of their powers and functions under paragraph 15 of the Third Schedule of Judicial Services Act and no evidence has been shown to that effect. Furthermore, that the Respondents have not even exercised their powers and functions against the Petitioner who remains in office.
51. That the meeting held on the 27/5/2024 and the subsequent letter of 29/5/2024 was part of an ongoing enquiry as per Para 25(1)-3rd Sch on the performance of the Tribunal and did not amount to the Respondents delegating any of their disciplinary powers and functions, in particular issuing a reprimand which does not make reference to any provisions of the JSA and Manual. The Respondents retained their decision-power. The Respondents rely on the case of *Judicial Service Commission & Another v Onyango (Civil Appeal E082 of 2022)* (2023) (2023) KECA 1109 (KLR) (22 September 2023) where the Court of Appeal considered section 14 and Para 25(3)- 3rd Schedule of the *Judicial Service Act* and it observed that the Commission may delegate its functions but retains the decision-making power.

Determination

52. The court has carefully considered the depositions and documentary evidence presented by the parties. The court has further considered the submissions and authorities placed before court by the parties. the issues for determination are: -



- i. Whether this petition was filed prematurely and should await the conduct of the ensuing disciplinary process.
 - ii. In the event, the answer to (i) is in the negative whether the Petitioner has proved that his constitutional rights have been violated by the Respondents.
 - iii. What reliefs if at all is the Petitioner entitled to.
53. In answer to issue number one, the court notes that the petition and notice of motion application were filed on 24th September 2024 and the disputes was crystalized by the Petitioner to constitute violation of:
- i. The right to a fair hearing
 - ii. The right to lawful, reasonable and procedurally fair administrative action;
 - iii. The right to fair labour practices and to reasonable working condition and
 - iv. The right to access information.
54. These complaints are elaborated in summary of facts set out in the judgment. From the documents filed by both parties it is clear that even upon filing the petition and notice of motion application, the Petitioner continued to participate in the ensuing disciplinary process as evidenced by the correspondence between the Petitioner and the Hon. the Chief Justice with regard to the statement of charge; the extension of time and request for documents and information deemed necessary by the Petitioner to fully and comprehensively respond to the two charges levelled against him.
55. The Petitioner for instance received the letter dated 20th September 2024, from the Chief Justice on 26th September 2024 after he had filed the petition on 24th September 2024.
56. The Petitioner responded to the said letter by the Chief Justice on the said 26th September 2024, requesting for further and better particulars upon acknowledging receipt of the information provided to him by the Hon. the Chief Justice.
57. The Petitioner wrote a further response to the Chief Justice on 4th October 2024, in which upon expressing his misgivings on failure by the Chief Justice to provide him with all necessary information and documentation to answer especially the 1st charge of ‘Quality Control’ the Petitioner went ahead to respond to the 2nd charge of failure to attend LMT meetings without any or any reasonable excuse and or provide representation; Indicated that he was still unable to respond to the 1st charge on ‘Quality control’ and most importantly reserve the right to file additional response to both charges as follows:
- “For the avoidance of doubt, I reserve the right to make an additional response to both charges.”
58. The parties were not able to have the notice of motion heard in a timely manner as earlier scheduled by the court.
59. Upon realizing time was not on their side, parties conceded to have the notice of motion and the petition dealt with together and agreed to have status quo orders granted to the Petitioner on 14th October 2024.
60. It is clear, as the court was reminded by Senior Advocate Kanjama at the time, that status quo meant that the disciplinary process by the Respondent against the Petitioner on the two framed charges was underway and that the Petitioner was yet to file a comprehensive response to both charges and the



Petitioner still waited for the requested disclosure to be furnished by the 1st Respondent before he could do that.

61. It is therefore apparently clear that as we write this judgment, the disciplinary process has not been concluded and the same was still at the preliminary stage before actual hearing of the disciplinary case had been scheduled.
62. These being the facts not in dispute can it be said that the Petitioner has proved on a balance of probability as mandated under section 107 and 108 of the *Evidence Act* Cap 80 Laws of Kenya that the Respondents have violated the Petitioner's right to a fair hearing; a fair administrative action; fair labour practices; access to information? The facts presented before court by the petitioner did not demonstrate such violation of the Petitioner's rights in the manner alleged or at all in that the procedural aspects of the disciplinary process were still underway and both parties were in the process of attending to the same. This is the factual position, the Chief Justice having extended the period within which the Petitioner was to provide response to the charge by a further 14 days and also provided statement by the Registrar Tribunals; the Petitioner having provided a response to the charges on 26th September 2014, with reservation that as and when provided with the remaining documents he was ready and willing to provide a further response to both charges. The Petitioner had further reiterated his response contained in the letter dated 30th July 2024 written in response to notice to show cause.
63. It is the court's considered finding that provided the Petitioner continued to participate in this disciplinary process even upon filing the petition he has been unable to prove on a balance of probability his right to a fair hearing has been violated by the Respondents. The process of disciplinary action of 30th August 2024 up to the date of filing this suit on 24th September 2024, is not inordinately slow as to be judged irrational, unreasonable or capricious within the meaning placed to it in administrative law decisions to constitute a violation of Article 47(1) of *the Constitution*.
64. The Court in *Mulwa Msanifu Kombo vs Kenya Airways* (2013) KEELRC 747 (KLR) held that;

“The court will intervene in 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 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 exists mechanisms between employer and employee such as appeal or revision or review 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.”
65. Accordingly, the court finds that, the petition ought to have been avoided in favour of continuation of the process which the Petitioner was willingly participating in and the Respondents were in the process of complying with the requirements for provision of necessary information to enable the Petitioner to fairly defend himself.
66. The Petitioner did not prove that the Respondents had issued the 14 days timelines for responses to be made in bad faith. To the contrary, the Respondents had not indicated any unwillingness to further extend the time within which to receive responses by the Petitioner to the charges.
67. It is clear that the various information contained in the replying affidavits by the Respondents comprise partly the statement, by complainants the Petitioner had requested for but now had to be filed in court in response to the petition. This fact is not in favour of the Petitioner but to the contrary is indicative



of premature filing of the petition in order to avoid and/or pre-empt a lawful internal process that was underway.

68. The Court in *John Mburu Kamau v Kenya Accreditation Service* (2021) KEELRC 8 KLR held that;
- ‘Flowing from the foregoing persuasive decisions, the grounds upon which the Court would intervene in an employer’s disciplinary process include;
- a. Where and employee establishes that the employer is proceeding in a manner that contravenes the provisions of *the constitution* or legislation, or
 - b. In breach of agreed term of contract or employer’s policy
 - c. If the process is manifestly unfair and offends the rules of natural justice’
69. In *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture & Technology* the Court held that;
- ‘As held in the case of *Alfred Nyungu Kimungui Vs Bomas of Kenya (Industrial Court Cause No 620 of 2013)* the Industrial Court should not take over and exercise managerial prerogatives at the work place. However, in cases where an employee facing disciplinary action legitimately feels that the process is marred with irregularities or is stage managed towards their dismissal, the Court will intervene not to stop the process altogether but to put things right’.
70. The Petitioner has not demonstrated that the employer proceeded with the disciplinary process in a manner that contravenes the provisions of *the constitution* or legislation, or in breach of agreed terms of contract or employer’s policy and that the process is manifestly unfair and offends the rules of natural justice.’

Prayers Sought

Conservatory orders

71. As regards the prayers sought, in the petition, the court has carefully considered the prayers sought by the Petitioner and in particular an order for conservatory order staying the disciplinary process pending the hearing of the notice of motion and this petition and reiterates that these two prayers were overtaken by events in favour of a status quo order that preserved the ensuing process pending the hearing and determination of the petition. Indeed, the Petitioner had by his own action of continued participation in the disciplinary process as demonstrated in this matter, compromised possibility of grant of this prayer.

Declarations sought

72. All declaration sought in prayers c, d, e, f, g and h have been prematurely sought and the reasons for which they are sought have not been proved to the required standard on a balance of probability.

Declarations in (i), (j), (k), (l)

73. These declarations sought against the Hon. the Deputy Chief Justice and the Presiding Judge of the Commercial and Tax Division of the High Court are misconceived in that firstly the cited Judges have not been named as Respondents in the petition; the alleged facts arise from the ensuing disciplinary action which is sought to be pre-empted by the petition and therefore constitute abuse of court process.



The Petitioner also failed to prove that the said judicial officers violated his constitutional rights set out in the petition to warrant any orders made against the said officers.

74. The duties of the chairperson as elaborated under section 29(1) of the Tax Appeals Tribunal is a subject of interpretation and application in the disciplinary process underway. The Petitioner has not proved that the Respondents have in any way violated his constitutional rights related to this statutory provision. The prayer sought that the Petitioner as the Chairperson of the Tribunal has a casting role in addition to a deliberate vote in the making of decision of the Tribunal is misconceived in the circumstances of this case.

Certiorari, mandamus and prohibition under order n, p and q

75. The orders sought to quash the decision of the Chief Justice requiring the Petitioner to respond to the notice to show cause and the framed charges have been prematurely sought and are not merited the Petitioner having failed to prove any violation of Articles 35, 41, 47 and 50 of *the Constitution* of Kenya 2010

Compensation (f)

76. The Petitioner having failed to prove denial or violations of his rights, this prayer lack merit and is dismissed.

Recommendation orders

77. Similarly, this prayer is designed to pre-empt matters that are underway in the disciplinary process and is dismissed for lack of merit.

Costs

78. The petition bears aspects of public interest and therefore parties to bear their own costs of the petition.

DATED AT NAIROBI THIS 8TH DAY OF MAY 2025

Mathews Nduma

Judge

Appearance:

Nderitu & Partners, Advocates for the Petitioner

Muma & Kanjama Advocates for the Respondent

Mr. Kemboi – Court Assistant

