Waruhiu v Directline Assurance Company Ltd (Cause E1057 of 2024)
[2025] KEELRC 1940 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1940 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E1057 OF 2024

BOM MANANI, J

JUNE 30, 2025

BETWEEN

PAULINE NYAMBURA WARUHIU ..... CLAIMANT

AND

DIRECTLINE ASSURANCE COMPANY LTD ..... RESPONDENT

RULING

1. The Claimant avers that she is employed by the Respondent as the Head of Claims and Legal. She contends that prior to June 2010 when the Respondent changed its management, she worked in peace and quiet. However, she avers that this suddenly changed after June 2010 when the Respondent's new management begun interfering with her work.

2. The Claimant contends that the Respondent's management begun giving her instructions to execute her tasks in a manner which she considered irregular. She contends that when she resisted these attempts, the said management tried to take over some of her functions before it eventually sent her on compulsory leave and invited her for a disciplinary hearing. She perceives the Respondent's actions as a scheme to justify the irregular attempts to terminate her contract of service.

3. The Claimant contends that the decision to send her on compulsory leave was irregular. She contends that the letter purporting to communicate the decision was signed by two of the Respondent's non-executive directors in contravention of the Respondent's Human Resource Manual and Policy.

4. The Claimant further avers that besides the Respondent's new management sending her on compulsory leave, they disabled her official email address, barred her from accessing her office and confiscated her work laptop computer which contained vital material that are useful for her defense in the intended disciplinary process against her. She contends that the aforesaid conduct by Respondent's officers violated her rights to information and fair labour practices.

5. The Claimant avers that on 4th December 2024, the Respondent issued her with a notice to show cause letter accusing her of infractions which she contests. She avers that she responded to the said show cause letter by close of business on 5th December 2024 as had been directed.

6. The Claimant avers that on 6th December 2024, the Respondent's officers issued her with a letter inviting her for a disciplinary hearing on 13th December 2024. She contends that the invite contained new charges that had not been set out in the show cause letter. She further contends that the Respondent accused her of not having responded to the show cause letter notwithstanding that she had responded to it.

7. The Claimant contends that the purported invite to the disciplinary hearing is a travesty of justice and a violation of her constitutional rights. It is her case that the invite was anchored on falsehoods. She further contends that the invite did not accord her sufficient time to prepare her defense.

8. The Claimant also contends that the Respondent's decision to confiscate her work laptop computer and disable her office email address effectively deprived her of access to material that were critical to her defense. As such, she seeks the court's intervention to prevent the Respondent from trampling on her rights.

9. Contemporaneous with the Memorandum of Claim, the Claimant filed the application dated 11th December 2024 seeking the following interim reliefs:-

    a. Spent.

    b. Spent.

    c. That pending the hearing and determination of the cause, the Respondent and or its agents and or servants be restrained from processing the disciplinary trial against her which was initially scheduled for 13th December 2024 (erroneously indicated as 13th December 2014) or howsoever interfering with the discharge of her duties and to unconditionally reinstate her to the position of Head of Claims and Legal and restore her work privileges including access to her official email and company systems.

10. The application is supported by an affidavit sworn by the Claimant on even date and a further affidavit dated 5th February 2025. Whilst the affidavit dated 11th December 2024 reiterates the averments set out earlier in this ruling, the supplementary affidavit dated 5th February 2025 responds to matters which the Respondent raised in its response to the application.

11. The Respondent has opposed the application through a replying affidavit dated 21st January 2025. In the affidavit, the Respondent contends that the orders sought by the Claimant cannot issue since they seek to stop disciplinary proceedings purported to have been scheduled for 13th December 2014 yet the disciplinary proceedings it was to conduct were to have taken place on 13th December 2024.

12. The Respondent further contends that the purported disciplinary hearing is yet to even commence since it is still at the investigation stage. As such, it contends that the Claimant's plea to stop her dismissal from employment is premature and an abuse of the court process.

13. The Respondent avers that it has commissioned a forensic audit of its operations and the results of this audit will determine whether the Claimant will be subjected to a disciplinary hearing. As such, it contends that the Claimant should await this process before taking action on the matter. Consequently, it avers that the Claimant's decision to move to court was premature.

14. The Respondent avers that it enjoys the prerogative to send an employee on compulsory leave in order to conduct investigations at the workplace. It contends that this right is protected by clause N in its Human Resource Manual.

15. The Respondent denies that its new management has attempted to force the Claimant to act in an irregular manner whilst discharging her duties. It further denies that members of the new team attempted to take over some of the Claimant's roles as she alleges.

16. The Respondent avers that it retained the Claimant's workplace laptop computer and disabled her official email address because they contain material that are the subject of the forensic audit that it has been conducting. As such, it contends that allowing the Claimant access to the aforesaid items will interfere with the audit process.

17. The Respondent avers that it disclosed to the Claimant the possible charges she was to face. It contends that the Claimant has alluded to this fact in her affidavit in support of the application. As such, it contends that the assertion by the Claimant that she was not informed of the charges she was to face is misleading.

18. The Respondent reiterates that the Claimant remains its employee and on full salary until a decision is made to the contrary. As such, it avers that her request to be reinstated to her position at the workplace is misconceived. It further contends that any disciplinary process it will undertake against the Claimant will be conducted strictly in accordance with its policies.

19. In response to the above averments, the Claimant avers that the disciplinary proceedings against her were to have been conducted on 13th December 2024 and not December 2014 as erroneously stated in her earlier affidavits and pleadings. She further contends that the proceedings were subsequently rescheduled to 16th January 2025 before they were eventually put on hold following orders by the court.

20. The Claimant avers that the forensic audit that was ordered by the Respondent's regulator was against the Respondent and not her. As such, she wonders why the Respondent targeted her and a few other officers for the impugned disciplinary action.

21. The Claimant further contends that the decision by the Respondent's regulator to investigate the Respondent did not warrant her being send on compulsory leave since there was no evidence that she was going to interfere with the investigations. She contends that the Respondent's regulator had previously conducted similar investigations without sending the Respondent's officers on compulsory leave or suspension. As such, she contends that the decision to send her on compulsory leave was informed by factors other than the alleged forensic audit by the Respondent's regulator.

22. The Claimant reiterates her position that the Respondent did not provide her with clear particulars of the accusations against her. She contends that as a result of this, she wrote to the Respondent on 10th December 2024 threatening to move to court unless this was done.

23. The Claimant asserts that the Respondent's Human Resource Manual does not provide for compulsory leave pending investigations in a disciplinary process. As such, she contends that the purported compulsory leave that was handed to her is irregular.

24. The Claimant further contends that under the aforesaid Manual, an employee can only be interdicted or suspended after a disciplinary hearing has taken place. As such, she contends that the purported compulsory leave is unlawful.

25. The Claimant contends that her workplace laptop computer was not required for the forensic exercise. She argues that the laptop was a tool she only used to access the Respondent's servers where the material

required for the audit are stored. As such, she contends that there was no reason to confiscate it. In her view, all that the Respondent ought to have done is to disable her access to its servers.

26. The Claimant further contends that disabling her official email address has interfered with her ability to attend to her ancillary functions related to her employment with the Respondent. For instance, she asserts that she serves as a trustee of the Staff Pension Fund of the Respondent and as a Board member of the Directline SACCO and cannot discharge these functions after her official work email address was disabled.

27. The Claimant further avers that after her email address was disabled, she can no longer access her pay slips. As such, she avers that she is not able to verify the deductions made to her salary.

Analysis

28. The principle of managerial prerogative refers to the inherent right and authority of the employer to direct and control his workforce and business operations in the way that he considers best. By this principle, the employer is entitled to make various decisions at the workplace including exercising disciplinary control over employees without undue interference from third parties including the court.

29. Whilst the employer enjoys this power, he must exercise it in accordance with the law, the internal workplace rules and the agreement between the parties (the employer and employee and or their representatives). As such, although a court of law should not be quick to intervene in workplace decisions by an employer, it (the court) will be obligated to intervene when it is demonstrated that the employer's actions are in contravention of the law, the internal workplace rules and policies or the agreement between him and the worker.

30. With respect to disciplinary action against an employee, the rule of the thumb is that a court should not intervene in the process unless it is demonstrated that the employer is conducting it (the process) in breach of the law or his own internal policies or the terms of the contract of service with the employee. And even where it has been demonstrated that the employer's action has infringed on some rule or policy, the court should intervene in the matter only for purposes of requiring the employer to redress the infringement but not to stop the process altogether.

31. The justification for the foregoing is the recognition of the fact that the right to manage the workplace belongs to the employer. As such, courts of law must avoid issuing orders which may be deemed to be allowing them to take over this mandate. This position has been restated in a series of judicial pronouncements.

32. InOtoch *v Muthaura & another (Cause E 697 of 2022*) [2022] KEELRC 13564 (KLR) (15 December 2022) (Ruling), the trial Judge observed on the subject as follows:-

> "As has been stated often times, employers enjoy managerial prerogative to manage human resource issues within their organizations in the manner that they deem fit. They are at liberty to make decisions that they deem necessary for the general wellbeing of the enterprise (see Anne Wairimu Kimani v Kenya Agricultural Livestock Research Organization (KALRO) [2017] eKLR). This power entitles the employer to hire, transfer, re-designate, deploy and discipline staff as appropriate.
>
> The general position in law is that courts should exercise utmost restraint in interfering with the exercise of this power. To do otherwise is tantamount to the court taking over the position of the employer at the workplace (see Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR).

Notwithstanding the aforesaid, the exercise of the employer's managerial prerogative must not be abused by the employer to the detriment of employees. The power must not be exercised in a manner that is contrary to the law and the internal regulations that govern the relationship between the parties.

Where there is evidence of manifest abuse of this power, the court will intervene to ensure observance of due process. In Thomson Kerongo & 2 others v James Omariba Nyaoga & 3 others [2017] eKLR, the court observed as follows on the subject:-

''The court will only interfere where there is breach of the process and even so, only with a view to setting the process right."

33. In Dock Workers Union v Kenya Ports Authority [2015] eKLR, the trial Judge had this to say on the subject:-

> " The Employer retains the managerial prerogative to run its business, as held in the cases of Miguna Miguna v Permanent Secretary, Office of the Prime Minister and Samuel Muchiri Gikonyo v. Henkel Chemicals Limited cited in the Respondent's submissions. This managerial prerogative includes the right to investigate employment offences and to impose disciplinary sanctions. This was the same holding in Industrial Court at Nairobi, Cause Number 1200 of 2012 between Professor Gitile G. Naituli v The University Council, Multimedia University College of Kenya & Another, where the Court concluded that Employment Law merely seeks to protect the weaker Party in the employer-employee relationship, and not to deprive the Employer the power to run its business altogether. In the Industrial Court at Nairobi, Cause Number 1567 of 2011 between Kenya Game Hunting and Safaris Workers Union v Lewa Wildlife Conservancy Limited, the Court upheld the managerial prerogative, stating this is a fundamental principle in capitalist production, which must be protected, and not consumed, in the liberal slide into egalitarian anarchy."

34. In Alfred Nyungu Kimungui v Bomas of Kenya [2013] eKLR, the trial court expressed itself on the subject as follows:-

> " The Industrial Court should be cautious in exercising its jurisdiction, so as not to appear to take over and exercise managerial prerogatives at workplaces. Grant of interim orders that have the effect of limiting genuine exercise by management of its rights at the workplace, should be avoided. Termination of employment, and initiation of disciplinary processes at the workplace, are presumed to be management prerogatives. The Court should be slow in intervening, particularly at interlocutory stages, otherwise the Court would be deemed to be directing the employers in regulation of their employees."

35. In Evans Wafula Makokha v Uasin Gishu County Public Service Board [2015] eKLR, the trial Judge expressed himself on the subject as follows:-

> " .....the Court has the jurisdiction to intervene in a disciplinary process, but such intervention must be in very exceptional cases where compelling reasons have been given to justify the Court's intervention. The compelling reasons would include the fact that grave injustice would be occasioned to the employee and that the employee had no alternative means of attaining justice or remedies."

36. In Rebecca Ann Maina & 2 Others v Jomo Kenyatta University of Agriculture and Technology (2014) eKLR, the learned trial Judge observed on the subject as follows:-

> " .....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."

37. What emerges from the foregoing is that whilst a court may intervene in disciplinary proceedings commenced by an employer, it should do so only in exceptional cases where there is evidence that the proceedings are being conducted in breach of some rule or policy or are otherwise outrightly unjust. Even then, the court's role should not be to terminate the process altogether. Rather, it should be to require the employer to conduct the process in accordance with the law and the internal rules or agreement between the parties.

38. In the instant case, the Claimant's case is that the Respondent's decision to place her on compulsory leave is not founded on the law or its internal policies or the contract between them. As such, she contends that the decision is unlawful and renders the entire disciplinary process a sham.

39. A perusal of the *Employment Act* shows that it does not provide for compulsory leave. Similarly, the Respondent's Human Resource Manual and the Claimant's contract of service do not speak to this form of leave. The question which the court is invited to grapple with is whether the Respondent was entitled to send the Claimant on this form of leave in the face of the reality that it is neither sanctioned by statute nor the Respondent's policies nor the contract between the parties.

40. After analyzing a number of decisions in the case of Mutwol *v Moi University (Civil Appeal 118 of 2019*) [2022] KECA 537 (KLR) (28 April 2022) (Judgment), the Court of Appeal was of the view that an employer in Kenya is entitled to send and employee on compulsory leave notwithstanding that this form of leave is not anchored on the *Employment Act* or the contract between the parties. In taking this position, the court referred to the case of Thomson Kerongo & 2 others v James Omariba Nyaoga & 3 others [2017] eKLR where the trial Judge had observed on the matter as follows:-

> " My considered opinion in respect thereto would be that there is no law prohibiting an employer from sending an employee on compulsory leave where the circumstances warrant it and provided it is an interim measure. Compulsory leave has the effect of only removing an employee from the workplace temporarily without interfering with his terms of service. An action is only illegal if it is prohibited by law. Not all lawful matters are prescribed by law. On the contrary it is only that which is prohibited by law that is illegal or unlawful."

41. The learned Judges of the Court of Appeal then went ahead to state as follows:-

> " We associate ourselves with the position taken by Onyango, J. in the Thomson Kerongo case (supra). In our view, we are not persuaded that there must be provision in the contract of employment providing for compulsory leave before an employee can be sent on such leave. The flip side of it is that there is no law that prohibits the placement of an employee on compulsory leave. It is our further view that it was necessary to have the appellant sent on compulsory leave to enable the respondent to carry out meaningful investigation. It is not possible for an employer to carry out effective investigations against an employee who, in spite of accusations of wrong doing, continues to occupy her/his office. In any case, looking at the circumstances of this matter, the appellant was informed and understood that she was being placed on compulsory leave to allow for investigations and she was given the

opportunity to show cause why disciplinary action should not be taken against her. We do not find any good grounds to impugn the decision of the respondent which in our view was fair, reasonable and justifiable."

42. The upshot is that although the Respondent's Human Resource Manual and the contract between the Claimant and the Respondent do not speak to compulsory leave, it was not unlawful for the Respondent to have sent the Claimant on this kind of leave in order to conduct investigations on the alleged infractions by her. The leave was only intended to facilitate unhindered investigations on the matters under inquiry. As long as the compulsory leave was a temporary measure, it was within the Respondent's prerogative to ask the Claimant to take it (the leave).

43. The Claimant has contended that the decision to send her on compulsory leave in effect constituted an act of constructive dismissal from employment. Conversely, the Respondent contends that constructive dismissal can only be construed where an employee has resigned in reaction to an intolerable work environment. The Respondent denies that this is what has happened in the instant matter. As such, it contends that the Claimant's assertions of constructive dismissal are unfounded.

44. I agree with the Respondent's contention that constructive dismissal only arises where an employee has resigned from employment in reaction to an intolerable work environment. The concept cannot be waved to resist attempts by an employer to exercise disciplinary control over an employee.

45. In addressing this matter, the trial Judge in Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR expressed herself as follows:-

> " It is the Claimants' case that the Respondent's action of instituting disciplinary proceedings against them amounts to constructive dismissal. The Respondent denies the Claimants' allegation in this regard and Counsel referred the Court to the case of Emmanuel Mutisya Solomon Vs Agility Logistics (Industrial Court Cause No 1448 of 2011) where Mbaru J defined constructive dismissal as:
>
> " a situation in the workplace which has been created by the employer, and which renders the continuation of the employment relationship intolerable for the employee to such an extent that the employee has no other option available but to resign."
>
> The right of the employer to discipline employees as acknowledged by the Claimants remains firmly grounded and I do not agree that institution of disciplinary proceedings by itself would amount to constructive dismissal."

46. The Claimant has also impugned the Respondent's actions on the ground that it (the Respondent) confiscated her laptop computer and disabled her official email address as it sent her on compulsory leave. She contends that this action infringed on her right to access information. It is her case that the laptop computer and email address contain vital information which she requires to prepare for her defense.

47. On the other hand, the Respondent contends that the laptop computer and email address are part of the implements that are necessary for its investigations. As such, it was necessary that it takes the impugned action in order not to disable its investigations.

48. The laptop computer and Claimant's work email address are both properties of the Respondent. They were availed to the Claimant only for purposes of enabling her to execute her duties under her contract of service with the Respondent (see Chris Oanda v Kenya Airways [2018] eKLR, Terrry Muringo

Muchiri v K-Rep Group Limited [2021] eKLR,Angela Wokabi Muoki v Tribe Hotel Limited [2016] eKLR andMargaret Wairimu Gacheru v Beta Healthcare International Limited [2019] eKLR).

49. The foregoing being the case, the Claimant cannot demand to be granted these items as this would be tantamount to demanding that she be granted property which belongs to the Respondent. The Respondent has the absolute discretion to determine when to grant her the implements and take them back from her. She is however entitled to information which is contained in the aforesaid tools which she considers necessary to assist her in preparing her defense.

50. The procedure for accessing such information is provided for under the *Access to Information Act*, Cap 7 M Laws of Kenya. As such, the court will not intervene in the matter unless it is demonstrated that the Claimant has exhausted the mechanism for access to the information sought as set out under the aforesaid legislation.

51. That said, the court must caution the Respondent that access to information is a protected constitutional right. As such, an employee who is facing disciplinary action is entitled to all material in possession of the employer which he (the employee) considers necessary for his defense.

52. The employer bears the constitutional duty to provide the employee with such information in time for the disciplinary process. Failure to comply with this constitutional requirement opens up the disciplinary process to challenge.

53. The Claimant has further contended that even if the Respondent had the right to send her on compulsory leave, it (the Respondent) has not demonstrated that this was necessary. She contends that the Respondent's regulator has conducted previous audits without the need to send employees on suspension, interdiction or compulsory leave.

54. As mentioned earlier, the decision to suspend or send an employee on compulsory leave falls within the employer's prerogative. As long as it is not demonstrated that the decision was rendered in breach of the law or the contract between the parties, the court should be hesitant to interfere with it if the compulsory leave is for a temporary period and expressed to facilitate the conduct of investigations. As was observed in the case of Mutwol *v Moi University (Civil Appeal 118 of 2019*) [2022] KECA 537 (KLR) (28 April 2022) (Judgment), it is sometimes not possible for an employer to carry out effective investigations against an employee who, in spite of accusations of wrong doing, continues to occupy her/his office.

55. This court appreciates the fact that sending an employee on administrative suspension from duty or on compulsory leave should only be for a limited period that is necessary to conduct investigations against him. As such, although the Respondent has the right to place the Claimant on suspension or compulsory leave, it ought to ensure that such leave or suspension is for a limited period meant to enable it to finalize investigations against her. Placing the Claimant on indefinite compulsory leave or suspension or on compulsory leave or suspension that is unreasonably elongated will result in breach of her rights to fair administrative action and fair labour practice. As such, it is up to the Respondent to take steps to ensure that the compulsory leave it handed to the Claimant is for a reasonable and predictable duration, taking into account the fact that she has been on the said leave since December 2024.

56. Speaking to the foregoing, George Ogembo in his publication titled ''Employment Law Guide for Employers'' 2nd Ed, (pg 324) states as follows:-

> " The *Employment Act* does not provide statutory timelines an employee should be on suspension.....Generally, the period should be reasonable to facilitate conclusion of any

relevant investigations. The employee must be expressly informed of the period of suspension, which should be stated in the suspension letter. There is need for the contractual timelines to be reasonable lest they are declared unconstitutional for violating the employee's right to fair administrative action. Subjecting an employee to a prolonged suspension is akin to taking disciplinary action against him without following due process."

57. It must further be noted that the Respondent's Human Resource Manual provides that an interdiction or suspension from employment should ordinarily be for a period that does not exceed three (3) months. However, the Respondent's Chief Executive Officer is empowered to extend this period in exceptional circumstances. Even then, such extension must not exceed four (4) months during which the disciplinary case against an employee must be processed to conclusion (see page 58 of the Manual).

58. The Claimant also asserts that the Respondent has accused her of not responding to the show cause letter despite the fact that she had responded to it. She contends that even if it is demonstrated that she did not respond to the show cause letter, the Respondent's Human Resource Manual obligated the Respondent to give her a further seven (7) days to respond to the letter before her case could be escalated to the Disciplinary Committee. She contends that in contravention of this rule and after ignoring her response to the show cause dated 5th December 2024, the Respondent issued her with an invite to a disciplinary hearing through its letter dated 6th December 2024.

59. I have considered the Claimant's contention in this respect against provisions of the Respondent's Human Resource Manual. Clause N in the Manual on disciplinary procedures (see pages 55 to 56 of the Manual) provides in part as follows:-

> "The Head of HR shall carry out a preliminary enquiry and where it is deemed fit the concerned officer shall be issued with a show cause letter requiring the officer to explain the allegations leveled against them.....The officer shall be given a maximum of seven (7) days within which to respond to the allegations specifying any ground upon which their defense shall be based. In the event where the officer does not respond to the allegations within the required period, the Head of HR shall issue a final notice of seven (7) days failure of which the matter shall then be referred to the Disciplinary Committee for further deliberations."

60. If it is indeed true that the Claimant did not respond to the show cause letter of 4th December 2024 by 5th December 2024 as had been directed by the Respondent, this provision in the Manual obligated the Respondent to grant her a second opportunity of seven (7) days to respond to it (the notice to show cause letter). Instead of doing this, the Respondent wrote to the Claimant on 6th December 2024 inviting her for a disciplinary hearing.

61. This action by the Respondent contravened its internal rules on the conduct of a disciplinary case against its employees. As such, the court is entitled to intervene in the process in this respect and require the Respondent to rectify the error before purporting to carry on with the impugned disciplinary process.

62. The Respondent's Human Resource Manual further requires the Respondent to constitute a Disciplinary Committee comprising of the Head of Department, Legal Counsel or his equivalent and Head of HR to hear disciplinary cases against employees. The Committee is permitted to co-opt two other officers of the Respondent to sit as members.

63. According to the Respondent's letter dated 6th December 2024, the Claimant was asked to appear before its Board for her case. Under the aforesaid Human Resource Manual, the Respondent's Board is not entitled to sit as a Disciplinary Committee. As such, the attempts by the Respondent to process the

Claimant's case before its Board is in contravention of its internal rules and policies. As such, the court is entitled to intervene in the matter on this account and require the Respondent to act in accordance with its rules in this regard.

64. The Claimant has prayed that the court makes an order requiring the Respondent to reinstate her to her position of Head of Claims and Legal. However, the Respondent contends that such order cannot issue since the employment relation between the parties has not been terminated and the Claimant remains its employee.

65. In her affidavits, the Claimant challenges the Respondent's decision to place her on compulsory leave. This essentially implies that she acknowledges that she is still in the Respondent's employment but on compulsory leave.

66. Sending an employee on compulsory leave does not amount to termination of his contract of service. It only results in the temporary disruption of the employment relation to enable investigations into a matter that touches on the employee's docket or conduct.

67. Reiterating this position, the court in the case ofBernard Mwaura Mbuthia v Nyahururu Water & Sanitation Company Limited, County Government of Laikipia (Interested Party) [2019] eKLR, stated as follows:-

> " .....sending of an employee on compulsory leave where the circumstances warrant it and provided it is an interim measure is within the purview of the employer. Such action only removes the employee from the workplace temporarily without interfering with his terms of service."

68. The foregoing being the position, it is apparent that the Respondent's decision to send the Claimant on compulsory leave did not amount to her removal from the position of Head of Claims and Legal within the Respondent institution. As such, her prayer for reinstatement is not well founded.

69. The Claimant contends that the decision to send her on compulsory leave was in any event contrary to the Respondent's Human Resource Manual. She contends that the Manual provides that a decision to suspend or interdict an employee from employment should be preceded with a disciplinary hearing.

70. I have looked at the clauses on interdiction and suspension from employment in the Manual and they do not suggest what the Claimant posits. My understanding of those provisions is that where the Respondent's Disciplinary Committee has taken a preliminary view that the infraction which the employee is accused of requires further investigations, the employee may be interdicted from employment pending such investigations. This does not mean that the employee should have been subjected to a disciplinary hearing at this stage.

71. Finally, the Respondent contends that these proceedings have since been overtaken by events. As such, it beseeches the court to issue a declaration in this regard and order the case as closed.

72. This request is resisted by the Claimant. According to her, the impugned process which aims to unfairly terminate her employment is still in-situ. As such, the proceedings are still alive.

73. The court is alive to the fact that the process which triggered the disciplinary process against the Claimant is still alive. This is evidenced by the fact that she remains on suspension and or compulsory leave as at the date of writing this ruling. As such, it is not correct to suggest as averred by the Respondent that the suit has been overtaken by events.

74. There may be matters which the Claimant requires to be addressed relating to the ongoing suspension or compulsory leave. As such, the court considers the request to declare the proceedings as spent misplaced at this stage.

75. It is up to the Claimant to determine whether, on the basis of this ruling, she still desires to set down the suit for trial or to withdraw it. I will say no more on the subject.

Determination

76. The upshot is that the court finds that although the Respondent is entitled to exercise disciplinary control over the Claimant, its attempts to subject her to a disciplinary hearing on 13th December 2024 which was later postponed indefinitely was flawed for the following reasons:-

    a. The Respondent did not accord the Claimant a second chance to respond to the notice to show cause which had been issued to her in contravention of its own policy.

    b. The Respondent did not constitute a Disciplinary Committee to hear the Claimant's case in accordance with its policies. Instead, it sought to improperly remit her case to its Board.

77. In the premises, the court issues an order of injunction to restrain the Respondent from processing the impugned disciplinary hearing on the basis of the flawed disciplinary process.

78. However, in recognition of the Respondent's right to exercise disciplinary control over its employees, the court reiterates that the Respondent is at liberty to institute fresh disciplinary proceedings against the Claimant on the basis of cogent grievances it may have against her (if at all) in strict compliance with the law, its Human Resource Manual and the contract between the parties.

79. The court declines to issue an order declaring the instant suit as overtaken by events.

80. The costs of the application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF JUNE, 2025.

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....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.

B. O. M MANANI