



**Muturi v Water Resources Management Authority (Cause  
E486 of 2020) [2025] KEELRC 1666 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1666 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E486 OF 2020**

**B ONGAYA, J**

**JUNE 5, 2025**

**BETWEEN**

**MICHAEL MURIUKI MUTURI ..... CLAIMANT**

**AND**

**WATER RESOURCES MANAGEMENT AUTHORITY ..... RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Thursday 5th June, 2025)*

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 01.09.2020 through M’Njau & Mageto Advocates. He prayed for judgment against the respondent as hereunder:
  - a. A declaration that the disciplinary proceedings against the claimant commenced on 26.06.2020 after more than one year after show cause are illegal, unfair, wrongful, unconstitutional, null and void.
  - b. A permanent injunction to restrain the respondent and or its agents and or servants and or employees from victimizing and or harassing and or coercing and or proceeding with the illegal disciplinary proceeding and or dismissing and or terminating the claimant’s employment.
  - c. The interdiction meted against the claimant on 11.06.2020 be lifted, the claimant be reinstated into employment and be paid the half salary withheld during interdiction.
  - d. Costs and interest of the cause at court rates.
  - e. Any other relief which the Court deems fit, just and expedient to grant.
2. The claimant’s case was as follows:



- a. The claimant was initially employed by the Ministry of Water & Irrigation until 12.06.2012, when water services were transferred from the Ministry to the respondent herein, which is a State Corporation. He was therefore absorbed into the service of the respondent authority.
- b. Before the transfer of water services from the Ministry, the claimant was stationed at the respondent's Nyeri Sub-regional Office before he was transferred to the Muranga Sub-regional Office.
- c. On 01.09.2011, the respondent issued him with a letter of appointment and he was posted as a Surface Water Officer – Kibwezi Sub-regional Office, earning a gross salary that increased to Kshs. 122,061.25/= including allowances.
- d. Consequently, he was transferred from the Muranga Station to the Kibwezi Station where he reported on 03.10.2011. He was later transferred from Kibwezi to the Mombasa Sub-station Regional Office, from Mombasa to the Malindi Coastal Athi Sub-station, and later back to Mombasa, from Mombasa to Nairobi Sub-regional Station, and lastly to Isiolo.
- e. On 03.02.2016, he appealed to the respondent's Chief Executive Officer (CEO) against the decision to transfer him to the Isiolo Station, but he never received any response or decision reversing the said transfer.
- f. The claimant filed ELRC Cause No. 230 of 2016 because of the multiple and unwarranted transfers, and the Court subsequently issued Orders of injunction against the transfers. The subject matter in the said suit was different from the instant suit.
- g. On 26.05.2016, the respondent received a Report from its Technical Co-ordination Manager, Nairobi Sub-region, for implementation by the Multi-Sectoral Agency Consultative Committee (M-SACC) and Nairobi Regeneration Programmes constituted by the President of the Republic of Kenya.
- h. On 19.07.2018, as per the Report dated 26.05.2018, the respondent's CEO issued directives to all regional and sub-regional managers to implement the said Report by approaching land owners and property developers to issue them with Water Resources Authority Orders with clear timelines and conditions.
- i. On 12.10.2018, the office facilitated the claimant to go issue an Order No. 30665 to Ederman Properties Limited, the developers of Seefar Apartments, identified in the Report of 26.05.2016.
- j. Despite performing his duties and functions as required by the CEO, the claimant received a letter dated 31.10.2018 asking him to show cause the basis on which he issued the riparian restoration order.
- k. The claimant responded to the show cause on 05.11.2018, but on 20.11.2018, the CEO wrote him a letter dated 16.11.2018 asking him to explain why he was avoiding addressing his issuance of Order No. 30665.
- l. The CEO's conduct was malicious as the decision to issue an order was made in line with the CEO's letter dated 25.10.2018 to the Governor of Nairobi County, and the letter dated 30.10.2018 confirming a meeting between the CEO and Seefar Apartments home owners, in which meeting the order was not lifted. Instead, the orders had been extended severally and remained in force at the instigation of the CEO, and confirmed in the letters dated 17.10.2018 and 30.10.2018.



- m. To look for reasons to terminate the claimant's employment because of his filing ELRC Cause 230 of 2016 against the respondent, the CEO issued several contradictory directives through his letters dated 19.07.2018, 06.11.2018 and 04.11.2019, and NEMA's Precautionary Notice dated 30.10.2019.
  - n. On 15.06.2020, after one and a half years, the claimant received a letter of interdiction dated 11.06.2020 for allegedly contradicting a letter dated 17.04.2015 that was never brought to his attention and had been authored three years before the CEO's directive of 19.07.2018.
  - o. The letter of interdiction indicated that the claimant would remain on half salary plus allowances, including medical cover.
  - p. On 29.06.2020, the claimant received a Notice dated 26.06.2020 to appear before the disciplinary committee on 03.07.2020. The notice did not indicate the charges or offences he was facing, and he was not allowed to be accompanied by a fellow employee or his union. He was also not allowed to tender any evidence at the disciplinary hearing.
  - q. The claimant's interdiction and subsequent disciplinary proceedings are unlawful, illegal, unconstitutional, unreasonable, unfair labour practice, and contrary to the rules of natural justice. The respondent's Human Resources Policy Manual (W1/5/1/1) does not provide for a disciplinary committee, and stipulates that interdiction shall not exceed two months.
  - r. It is fair and just that the Court issues the orders as sought against the respondent, including reinstating the claimant into employment without loss of benefits.
3. The respondent's memorandum of response dated 04.05.2021 was filed through Prof. Albert Mumma & Company Advocates. The respondent prayed that the claimant's claim be dismissed with costs. The respondent's case was as hereunder:
- a. The claimant and the Authority only entered into an employer-employee relationship from 01.09.2011 when he accepted the terms of the letter of appointment to report to the Kibwezi Sub-station.
  - b. Contrary to his assertions, the claimant has only been transferred twice since he first joined the Authority: from Kibwezi to Mombasa Station, and from Mombasa to Nairobi Station. The only other time he was transferred was from Nairobi to Isiolo, but that transfer was the subject of a suit before the Honourable Court.
  - c. The claimant's response dated 05.11.2018 to the show cause letter was unsatisfactory, thereby necessitating the respondent to serve him another letter dated 16.11.2018 requiring further information, in compliance with the respondent's Human Resources Policy Manual.
  - d. The notice inviting the claimant to appear before the disciplinary committee referred to the letter of interdiction dated 11.06.2020, which in certain and clear terms informed him of the reasons for the disciplinary proceedings.
  - e. The disciplinary committee was legal and constituted according to the respondent's Human Resources Policy Manual. The correct procedure was followed in the interdiction and institution of disciplinary proceedings against the claimant.
  - f. The respondent denies that the claimant was not allowed to be accompanied by a fellow employee or his union, and further denies that he was not allowed to tender evidence before the disciplinary committee.



- g. The instant suit was ill-advised, premature and an abuse of the process of the court, as the claimant rushed to court to stop the respondent from continuing with the disciplinary proceedings instead of waiting for completion of the said proceedings. He should have waited for the decision of the committee and exercised his right of appeal if dissatisfied.
4. The claimant's reply to the respondent's memorandum of response dated 11.08.2023 sought that the response to the claim be struck out with costs. He asserted as follows:
- i. The Honourable Court comprehensively addressed the issue of the number and validity of his transfers in its judgment dated 28.01.2022 in ELRC Cause No. 230 of 2016.
  - ii. The disciplinary process was illegal as the interdiction period exceeded two months contrary to the provisions of section 10.17.5 iii of the Human Resource Policy Manual.
  - iii. The notice to show cause was written by the Chief Human Resource Manager contrary to the provisions of section 10.17.4 i of the Human Resource Policy Manual, which requires that such a letter be written by the head department.
  - iv. The said notice to show cause was also never copied to the CEO, contrary to section 10.17.4 ii of the Human Resource Policy Manual.
  - v. The respondent had no reason or valid reasons to commence a disciplinary hearing against the claimant as the Back to Office Report dated 16.04.2015, which was the subject matter of the disciplinary hearing, was based on the earlier findings, report and recommendations from NEMA and the Authority.
  - vi. The respondent maliciously presented the claimant's name in Parliament where he was adversely mentioned and blamed for the decision of Multi-sectoral Agencies, and thus referred to the DCI for investigations and to find grounds to dismiss him from employment.
5. The parties tendered their evidence before the Court and thereafter filed their respective submissions. As at the hearing and filing of submissions, the claimant was acting in person. The Court has considered the material on record and the testimonies by the claimant and the respondent's witness (RW) one Festus Gitonga Rungu, Chief Human Resource Officer. The Court returns as follows:
- a. There is no dispute that the respondent employed the claimant sometimes in 2011 and parties are in a contract of service.
  - b. The claimant received the letter of interdiction dated 11.06.2020. The letter was by the Chief Executive Officer of the respondent and it was addressed to the claimant as follows:  
Mr. Michael Muriuki Muturi  
Thro  
The Sub Region Nairobi  
Nairobi Sub Region  
Nairobi  
Re: Interdiction  
  
Reference is made to letters dated 31<sup>st</sup> October 2018 Ref. No. WRA/P/NO.00573 and Ref. No. WRA/P/NO.00573/31 respectively.



In the letters you were asked to explain why you issued an order number 30365 on 12<sup>th</sup> October 2018 to Edermann Property Ltd which contracted a letter dated 17<sup>th</sup> April 2015 by the ATCM Nairobi Sub Region confirming compliance with Riparian areas and your back to office report dated 16<sup>th</sup> April 2015 done by yourself that indicated tha Edermann Property Ltd had observed both the Nairobi Dam and Ngong River riparian reserve.

Further your order of 12<sup>th</sup> October 2018 was in contradiction of a stop order of 20<sup>th</sup> July 2011, order 6062 of March 2012 and a report of July 2011 on Nairobi Dam/Ngong River riparian marking that had recommended that pegged riparian area of 22 metres from the highest water mark for Ngong river should be observed by the developer.

Note that your explanation is not satisfactory and for that matter you are hereby interdicted from exercising the duties of your office from the date of this letter to pave way for investigations.

You are required to hand over all WRA assets in your custody and any pending work to your immediate supervisor.

During your interdiction you will be required to report to your immediate supervisor at intervals that you will agree on. You will receive half salary, full house allowance, other allowances and medical cover.

Mohamed M. Shurie

Chief Executive Officer”

- c. Further to that letter the respondent issued the letter dated 26.06.2020 inviting the claimant to appear before the respondent’s Disciplinary Committee on Friday 3<sup>rd</sup> July 2020 at 11.00am for a hearing to enable the respondent’s management to determine the matter. The claimant attended the disciplinary hearing. Prior to a decision by the respondent by the respondent, the claimant filed the instant suit on 03.09.2020. On 04.09.2020 the Court issued an interim order staying the disciplinary proceedings.
- d. The claimant’s case is that the disciplinary proceedings were commenced as victimization on account of ELRC 230 of 2016 the claimant previously instituted against the respondent to challenge unfair transfers and which suit had been heard and determined. The Court returns that the evidence does not suggest such position because the show cause letter and the interdiction letter levelled against the claimant particularised allegations and which do not include matters of transfer or the previous suit between the parties.
- e. While parties have extensively submitted on the merits or otherwise of the allegations levelled against the claimant, the Court is alert and has warned itself that the merits of the allegations are pending determination before the respondent in exercise of the employer’s prerogative to exercise disciplinary control over the claimant. The Court will not therefore delve into the merits of the levelled allegations as to decide the merits of the disciplinary case and which role, in the first instance, is properly left for the respondent as the employer. The Court declines the claimant’s invitation to determine the merits of the pending administrative disciplinary case pending before the respondent.
- f. The claimant’s case is that the interdiction letter introduced new charges not subject of the earlier letter to show cause. It is submitted that in the circumstances the interdiction letter and the entire disciplinary process is unlawful and illegal. The claimant submits that the respondent has failed to prove the reason for the contemplated termination of employment. The Court



returns that the claimant has not established that the respondent would, by contract or law, be precluded from increasing or decreasing or, in any manner varying the nature and particulars of the allegations in a disciplinary case. What is crucial is that for every levelled allegation, the respondent must give the claimant an opportunity to defend himself towards self – exculpation. Further, the disciplinary case is still pending before the respondent and it should be possible to raise the objections about the allegations and it is only when the respondent fails to take a fair corrective measure that the Court may intervene. Needless to state, the instant suit is interlocutory to the pending disciplinary case and it would only be after conclusion of the disciplinary case that, in a proper suit commenced in that respect, the Court may determine if the reasons for the conclusive disciplinary action was based upon a genuine and fair reason per sections 43, 45 and 46 of the Employment Act, 2007. At the instant stage, it appears that it would be premature for the Court to delve into the lawfulness and unfairness of reasons for termination, whereas, the relevant disciplinary proceedings have not been concluded. Similarly, the Court declines to delve into whether the hearing of 03.07.2020 was procedurally fair in view that the respondent has not exercised its first instance prerogative to determine the issues as urged for the claimant in the pending disciplinary case. It is that the pending disciplinary case be allowed to conclude prior to the Court’s intervention especially that the claimant has not shown that the existing respondent’s disciplinary and grievance procedures are unavailable to remedy his concerns.

- g. In the circumstances, the Court returns that granting the orders as prayed for will amount to unjustified chaining of the respondent’s prerogative to conclude the commenced disciplinary action. The submission made for the respondent in that respect is upheld. The prayer for the Court to find the interdiction and the entire disciplinary proceedings as unlawful and unfair is declined. The respondent should expeditiously conclude the pending disciplinary case. The parties are in a continuing employment relationship and the Court considers that each will bear own costs of the suit.

In conclusion the suit is hereby dismissed and each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 5<sup>TH</sup> JUNE, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

