



**Gakuo v Bomet University College (Petition E008 of 2025)  
[2025] KEELRC 2282 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2282 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
PETITION E008 OF 2025**

**J RIKA, J**

**JULY 31, 2025**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS UNDER ARTICLES 22,23 [3], 47, 50[2]  
AND 236 [B] OF THE CONSTITUTION OF KENYA**

**AND;**

**IN THE MATTER THE FAIR ADMINISTRATIVE ACTION ACT AND RULES**

**BETWEEN**

**DR. JOSEPH KARIUKI GAKUO ..... PETITIONER**

**AND**

**BOMET UNIVERSITY COLLEGE ..... RESPONDENT**

**JUDGMENT**

1. Bomet University College Don, Dr. Kariuki Gakuo, faces grave criminal charges, in Bomet Principal Magistrate's Court, Sexual Offence Number E052 of 2025.
2. The charges are: -
  - (i) Defilement, contrary to section 8[2] of the *Sexual Offences Act*, No.3 of 2006.

Particulars: On diverse dates of 15th December 2024, 17th December 2024, and 18th December 2024 at Bomet Township, in Bomet Central Sub-County, within the Bomet County, intentionally and unlawfully caused his penis, to penetrate the vagina and anus of F.A. a child aged 17 years and 7 months.



- (ii) Alternative charge: committing an indecent act with a child, contrary to section 11 [1] of the [Sexual Offences Act](#) Number 3 of 2006.

Particulars: On the diverse dates of 15th day of December 2024, 17th day of December 2024, and 18th day of December 2024, at Bomet Township, in Bomet Central Sub-County, within Bomet County, intentionally touched the vagina and anus of F.A. a child of 17 years and 7 months, with his penis.

3. The Petitioner is a Senior Lecturer, at the Respondent University.
4. He states that following the criminal charges, he was issued a letter to show cause by the Respondent, why he should not face disciplinary action based on the criminal charges. The letter is dated 6th January 2025.
5. He states that he was supposed to reply to the letter within 21 days, but was suspended prematurely, through a letter dated 20th January 2025.
6. His position is that he pleaded not guilty to the criminal charges, and is therefore, presumed innocent.
7. He submits that the criminal charges have no relation with his employment, and the complainant is not a student at the Respondent.
8. He complains that the Respondent has gone looking for evidence from the criminal proceedings, to use against him, in a disciplinary hearing, which was scheduled for 21st March 2025.
9. He holds that he is to be presumed innocent, and the disciplinary process would violate his constitutional right to fair hearing.
10. He applied under certificate of urgency, on 28th March 2025, that the Court stays the disciplinary hearing, pending hearing and outcome of the Petition.
11. He later abandoned the application, in favour of an accelerated consideration and determination of the full petition.

### **Petition.**

12. The Petition, founded on the Petitioner's affidavit sworn on 28th March 2025, adopts similar, but expanded arguments as the application, revolving around the apprehended violation of the Petitioner's fundamental rights.
13. He invokes multiple Articles of [the Constitution](#) including: 20 [mandating the Court to adopt the interpretation that most favours enforcement of the right or fundamental freedom]; 22 [right to institute proceedings]; 23 [constitutional remedies]; 27 [equal protection and benefit under the law]; 28 [human dignity and protection of that right]; 29 [right not to be subjected to violence by private or public sources, and not to be treated inhumanely]; 47 [fair administrative action]; 48 [access to justice]; and 50 [fair hearing].
14. He also anchors his expanded arguments, under Article 236 [b] of [the Constitution](#), which provides that a public officer shall not be dismissed, removed from office, demoted in rank, or otherwise subjected to disciplinary action without due process of the law.
15. His prayers are: -
  - a. Conservatory order in terms of the notice of motion application.
  - b. Declaration that initiation and continuation of the Respondent's disciplinary proceedings against the Petitioner, arising from the criminal case at Bomet Principal Magistrate's Court,



and all consequential orders thereunder, is irregular, unprocedural, illegal, unconstitutional, hence null and void.

- c. A declaration that the Respondent has violated the Petitioner's constitutional rights [under the specified Articles above].
  - d. A declaration that the Respondent has violated Section 6 of the Civil Procedure Act, as the criminal case is pending and the Petitioner has pleaded not guilty.
  - e. An order quashing the Respondent's decision to initiate and continue disciplinary proceedings against him, arising from the criminal case, and consequential orders thereunder, be set aside or reviewed accordingly.
  - f. Costs.
  - g. Any other orders.
16. The Respondent relies on grounds of opposition dated 15th April 2025, and a replying affidavit sworn by its Deputy Registrar, Dr. Henry Cheruyiot, on 28th May 2025.
  17. The Respondent concedes to have employed the Petitioner as a Senior Lecturer, from 28th December 2020. He accepted his terms of service.
  18. His terms stipulated that he was subject to the code of conduct and ethics, for the duration of service.
  19. There were reports in the media, in the month of December 2024, that a Lecturer working for the Respondent, was involved in defilement.
  20. Subsequently, the Petitioner was arrested and charged at the Principal Magistrate's Court Bomet, with defilement.
  21. He was issued by the Respondent, a letter to show cause in accordance with the Employment Act and the Respondent's Human Resource Manual, 2018.
  22. He was charged by the Respondent under the Human Resource Manual, of engaging in conduct which brought the Respondent into disrepute; and engaging in a criminal offence to the substantial detriment of the Respondent.
  23. He replied that he did not wish to discuss the criminal case, as it was pending in Court, and that he had pleaded not guilty. He offered that he should be presumed innocent, until proved guilty.
  24. He was suspended in accordance with the Respondent's Human Resource Manual and the Public Service Commission's Disciplinary Manual for Public Service, 2022. These instruments provide for suspension where an Employee is charged with a serious offence, to pave way for investigations.
  25. The Respondent investigated and was satisfied that the Petitioner had not given an adequate explanation for his conduct. He was invited for disciplinary hearing.
  26. The Petitioner approached the Court seeking to restrain the Respondent from going on with the disciplinary process. The restraining orders, were not issued.
  27. The disciplinary hearing went on. The Petitioner and representatives from his trade union were heard. The Respondent was satisfied that the charges against the Petitioner, communicated through the letter to show cause, constituted gross misconduct.
  28. A decision was made to dismiss the Petitioner. A letter of dismissal issued.



29. Due process was followed. Dismissal was justified under section 44 [4] [g] of the *Employment Act*. There is no basis for grant of conservatory orders, the disciplinary process having concluded.
30. Dr. Cheruyiot submits that the conduct by the Petitioner, utterly destroyed the image and reputation of the Respondent. His conduct was highlighted in the media. Parents, students and the general public had access to the media reports. The Petitioner's conduct was to the detriment of the Respondent.
31. The Respondent submits that the double jeopardy rule applies to criminal processes, not to administrative ones. The Respondent took administrative action against the Petitioner which was unaffected by his criminal case. The disciplinary process is distinct from the criminal process, and it is the prerogative of an Employer, to discipline its Employee. Even an acquittal in the criminal proceedings, does not result in absolution from an employment offence.
32. The Respondent underlines that the Petition is frivolous, vexatious and devoid of merit.
33. The Petitioner filed a further affidavit sworn by himself on 14th May 2025. He reiterates that the disciplinary process was unconstitutional, and that the Respondent went on with the process to conclusion, despite his application at the disciplinary hearing, for adjournment. He had asked the Respondent to adjourn disciplinary hearing on the ground that he needed more time to prepare, and that he was expecting a ruling from the High Court at Bomet, relating to an application he had lodged there, which sought stay of the criminal proceedings at the Principal Magistrate's Court.
34. He also states that he had appealed internally against the decision to summarily dismiss him, but no decision had been communicated to him, in accordance with the Human Resource Manual.
35. He reiterates that he was suspended prematurely, 7 days before the 21 days given under the Human Resource Manual had expired.
36. He was given 12 days' notice of the disciplinary hearing, instead of the 14 days' notice provided under the Human Resource Manual.
37. He urges the Court to find that the Respondent acted against its own Human Resource Policy.
38. Parties agreed that the Petition is considered and determined on the strength of their pleadings, affidavits and submissions. The Petition was last mentioned on 15th May 2025, when the Parties confirmed/ undertook filing and exchange of submissions.

#### **Submissions.**

34. The Petitioner relies on various decisions of Superior Courts, in urging the Court to uphold the Petition. They include: *Shitsama v. Kenya Meat Commission* [2025] KEELRC 192 KLR, [that lack of response to an internal appeal is in breach of Section 4 of the *Fair Administrative Action Act*]; *Onchwari v. NACADA* [2022] KEELRC 60 KLR [breach of Human Resource Manual by the Employer demonstrates lack of good faith]; *Odira v. Egerton University & 2 Others* [2025] KEELRC 593 KLR [ repeats the principle that Employers must follow the dictates of their Human Resource Manuals]; *Mwangi v. Daystar University & Another* [2024] KEELRC 13497 KLR [ where letters to show cause, and of suspension, were declared illegal and unconstitutional]; *Adan v. IEBC* [2024] KEELRC 13491 KLR [ where procedure was found to be in violation of the Petitioner's right to fair administrative action]; and High Court decision *International Centre for Policy and Conflict & 5 Others v. Attorney-General & 5 Others* [2013] KEHC 5367 KLR [ where it was held that the 3rd and 4th Respondents were presumed innocent under Article 50 of *the Constitution*, despite the grave charges facing them at the International Criminal Court].



35. The Respondent relies on Charles Musungu Odana v. Kenya Ports Authority [2019] e-KLR and Court of Appeal in Reuben Ikatwa & 17 Others v. Commanding Officer British Army Training Unit Kenya & Another [2017] e-KLR [expounding valid reason to justify termination, under Section 43 of the Employment Act]; Court of Appeal in Gabriel Mutava v. Managing Director KPA & Another [2016] e-KLR [the contract of employment is the first port of entry, and the Constitution should not be turned into a thoroughfare for resolution of every kind of grievance]; Hosea Akunga Ombwori v. Bidco Oil Refineries Limited [2017] e-KLR [on need to issue charges through a clear letter to show cause, to meet procedural demands under Section 41 of the Employment Act]; and some decisions from other jurisdictions such as Re Application by Bahadur [1986] LRC 297 [the Constitution is not a substitute for the normal procedures of invoking judicial control of administrative action. Where infringement of rights can found a claim under substantive law, the proper cause is to bring the claim under that law, and not the Constitution]; and SA Naptosa & Others v. Minister of Education Western Cape & Others [2001] BLLR 338 at 395 [an Employee ought to first look for a remedy in the Labour Relations Act. If there is no remedy, the Act would come under scrutiny, for not giving adequate protection to a constitutional right].
36. The issues, as understood by the Court are whether: the Petition is validly before the Court; the Respondent erred by proceeding with the disciplinary proceedings, and by dismissing the Petitioner before the criminal proceedings against him were concluded; and whether the remedies sought are merited.

**The Court Finds: -**

37. The Petitioner was employed by the Respondent University as a Senior Lecturer, through a letter dated 28th December 2020.
38. He was advised in the letter of appointment that other terms and conditions of employment, shall be defined by the relevant Bomet University College and the National Government Policies, Regulations, Standards and Guidelines.
39. He was suspected of defilement, an offence which allegedly took place within Bomet Town, between 15th December 2024 and 18th December 2024.
40. He was charged for the offence, under the Sexual Offences Act No. 3 of 2006, at Principal Magistrate's Bomet. He pleaded not guilty.
41. He applied before the High Court at Kericho, in Miscellaneous Criminal Application No. E009 of 2025 for stay of proceedings, on the sexual offence prosecution. The High Court called for the Trial Court file, to determine whether to stay the proceedings, in a ruling dated 2nd April 2025.
42. At the workplace, the Respondent received reports of the alleged defilement against its Senior Lecturer, and commenced its own internal investigations.
43. There were reports in the press, specifically Daily Nation of 25th December 2024, about the alleged defilement. The newspaper screamed, "Bomet Lecturer arrested for defiling 17 year-old girl in Bomet." The Respondent submits that these reports occasioned the Respondent reputational damage, in the eyes of students, parents and the general public.
44. Its Head of Security made an incident report, addressed to the Respondent's Principal. He reported that he was called by Police Officer Noor, from Bomet Police Station, and informed of allegations against the Petitioner.



45. The Head of Security rushed to the Police Station, took note of the OB report, and also noted that the complainant had been examined by a doctor, who authenticated that she had been penetrated. The Petitioner was arrested and charged.
46. Head of Security recommended that the Respondent takes appropriate action against the Petitioner, in accordance with the Human Resource Manual.
47. The Respondent wrote to the Petitioner, a letter to show cause, dated 6th January 2025. He was suspended on 20th January 2025.
48. He wrote to the Respondent on 22nd January 2025, stating that he had been arraigned before the Court and pleaded not guilty, and should therefore be presumed innocent.
49. He stated that he would not discuss the matter because it was actively before the Court. He also complained, which he has repeated in this Petition, that the letter dated 6th January 2025 granted him 21 days to respond, but shockingly, he was suspended on 20th January 2025, before the 21 days had lapsed. He demanded that the suspension is lifted.
50. The suspension letter dated 20th January 2025, invoked section 4.2.2.[1] of the Public Service Commission Discipline Manual for the Public Service, which provides for suspension where an officer is charged with a serious criminal offence, in a Court of law. It also invoked Respondent's Human Resource Manual, section 9.3.3. which states that the University reserves the right, to suspend an Employee from employment, pending investigations into alleged offences.
51. The letter did not give a specific period of suspension, but indicated that suspension was pending finalization of the criminal case.
52. On 10th February 2025, the period of suspension was extended. Again there was no specific period mentioned, but the extension letter stated that it served as a formal notice of extension to the Petitioner, pending further developments relating to the criminal case.
53. On 21st March 2025, the Respondent invited the Petitioner to disciplinary hearing, to be held on 2nd April 2025. The Respondent invoked the Public Service Commission Human Resource Manual, and disciplinary procedures in UASU Collective Bargaining Agreement. The Petitioner applied to the Court unsuccessfully, to stay the disciplinary hearing.
54. He was heard on 2nd April 2025, and summarily dismissed on 4th April 2025.
55. His 1st prayer in the Petition, is for a conservatory order. There is nothing to conserve, the Petitioner having been heard and summarily dismissed. The 1st prayer is declined.
56. Whether dispute raises constitutional issues. The conventional position as enunciated in decisions such as Re Bahadur [1986] LRC 297; SA Naptosa & Others v. Minister of Education Western Cape & Others [2001] BLLR 338 at 395; and Gabriel Mutava & 2 Others v. Managing Director KPA & Another [2016] e-KLR, is that *the Constitution* should not be turned into a thoroughfare, for resolution of every kind of common grievance. Under this puritan principle, *the Constitution* must only be invoked in disputes which are clearly of a constitutional nature. Other disputes ought to be resolved through the mechanisms prescribed by the applicable statutes, and contractual clauses.
57. There is however no clear legal criteria, to determine what is a common grievance, a statutory or contractual grievance, and how that grievance, differs from a constitutional grievance.
58. *The Constitution* of Kenya does not classify disputes into common grievances and constitutional grievances. The overriding objective of *the Constitution* of Kenya [Protection of Rights and



Fundamental Freedoms] Practice and Procedure Rules, 2013, stated under Rule 3[2], is to facilitate access to justice for all persons, as required under Article 48 of *the Constitution*.

59. *The Constitution* is receptive to a wide range of disputes and disputants, and even to Petitions initiated orally, under Rule 10[3]. Aggrieved persons are seldom turned away by the Courts, in exercise of their constitutional mandate.
60. Rule 10 of the Employment & Labour Relations Court [Procedure] Rules, 2024, governs filing of Petitions and Applications for Judicial Review. Rule 10 [3] renders insignificant, the line drawn between Claims and Petitions, providing that a person may seek the enforcement of any constitutional right, and freedom, or any constitutional provision, in a Statement of Claim or other suit filed before the Court.
61. The Court does not think therefore, that there is much weight in the Respondent's submission on the principle of constitutional avoidance. Persons approaching the Court have the discretion on the nature of the pleadings, and it hardly occurs that a party is turned away from accessing justice, on the ground that his dispute is a common grievance, rather than a constitutional grievance.
62. The Petitioner has brought the Petition within Article 22 of *the Constitution* and the enabling Constitution of Kenya [Protection of Rights and Fundamental Freedoms] Practice and Procedure Rules, 2013, and the E&LRC [Procedure] Rules, 2024.
63. The Petition is well-founded and is validly before the Court, and raises identifiable constitutional issues.
64. Disciplinary process vis-a-vis the criminal process. The Petitioner seems to have misapprehended, from the outset, the effect of his criminal case, on the disciplinary process initiated against him by the Respondent.
65. He declined to respond to the specific charges of defilement communicated in the letter to show cause, on the ground that he had been criminally charged for the offence, and pleaded not guilty before the Principal Magistrate. He told the Respondent that he would remain silent, having pleaded not guilty at the criminal trial. He underscored that he was to be presumed innocent.
66. That is the correct presumption in the criminal proceedings, but the Respondent was under no obligation to take no disciplinary action, based on the presumption of innocence, in the criminal trial.
67. The Criminal Court was not undertaking disciplinary proceedings, and conversely, the Respondent was not undertaking a criminal prosecution of the Petitioner.
68. The criminal process is a public process, initiated by the State, against criminal suspects. The disciplinary process is a private process, initiated by an Employer, against an Employee who is suspected of committing employment offences, based on the contract of employment and the applicable human resource instruments.
69. The processes are different. The evidential threshold in a criminal trial is -beyond reasonable doubt. In establishing employment offences, Employers are required to prove, that the reason, or reasons, justifying termination, are matters that they genuinely believe to exist [Section 43 of the *Employment Act*].
70. The Respondent was not required to prove that the Petitioner was guilty of defilement beyond reasonable doubt, or wait for the Prosecutor to prove so in the criminal trial; it was only supposed to establish that it genuinely believed the Petitioner was involved in acts of gross misconduct, warranting summary dismissal.



71. Because the processes are separate and independent, the Petitioner would be wrong to submit that the Respondent exposed him to double jeopardy. There was nothing in the contract of employment, or the PSC and the Respondent's Human Resource Policies, binding the disciplinary process, to the outcome of the criminal trial.
72. The distinction between the processes has been underscored in a catena of judicial authorities, including by the Court of Appeal of Kenya in *Teachers Service Commission v. Joseph Wambugu Nderitu* [2016] e-KLR; *Geoffrey Kiragu Njogu v. Public Service Commission & 2 Others* [2015] e-KLR; and *Clement Karuri v. Kenya Ports Authority* [2018] e-KLR.
73. The Principal Magistrate's Court which is trying the criminal case against the Petitioner, is itself not bound by the findings and outcome of the disciplinary committee which heard the Petitioner, leading to his summary dismissal by the Respondent.
74. As held in the High Court decision, *Jeremiah Gitau Kiereini v. Capital Markets Authority & Attorney-General* [2013]e-KLR, double jeopardy rule strictly applies to criminal offences and not disciplinary proceedings or proceedings of an administrative nature.
75. The Court is of the view that the Respondent proceeded fairly, guided by the *Employment Act*, the contract between the parties and the applicable human resource instruments. It established valid reasons. The Petitioner is facing grave defilement criminal charges. The charges reached the press, and were widely dispersed, occasioning the Respondent reputational damage.
76. It was a misconception of disciplinary law, and unfortunate, for the Petitioner to submit, at ground [c] of his application dated 28th March 2025, that defilement is not in any way connected to his employment, because the complainant is not a student of the Respondent.
77. Disciplinary law is in general, an initiative of the organization. The organization is able to conceptualize disciplinary rules, normally codified in Human Resource Manuals. It is able to control their observance, which leads them to cumulative administrative and jurisdictional functions. The jurisdiction in implementation of disciplinary rules is therefore with the Employer, who originates the rules. Criminal laws are enacted by Parliament and implemented by state agencies.
78. The Respondent would not be expected to wait for the outcome of a defilement trial, which it is not a party to, and which it does not have control over, to determine if the Petitioner, should continue teaching its students, including girl-child students, for the duration of the criminal trial. Will the students at Bomet University be comfortable being taught by a Lecturer who has a cloud of defilement hovering over his head? Will the University be comfortable to continue entrusting its students to the Petitioner, as he fights to clear his name in the criminal trial? Criminal trials in Kenya can last many years, while the ideal time to conclude disciplinary hearings under the PSC Human Resource Manual, is 6 months. To tie down the disciplinary process to the outcome of the criminal trial, is likely to deprive the Respondent of its managerial prerogative, to exercise disciplinary control over its staff.
79. Was the Respondent only entitled to take disciplinary action if defilement allegations, related to Respondent's students? The Human Resource Manual allows the Respondent to initiate disciplinary proceedings against Employees engaged in among others, crimes against, or to the detriment of the Respondent; breach of the code of conduct; and any other matters the Respondent deems weighty enough, to warrant disciplinary action.
80. Once the Petitioner was charged with defilement, the Respondent had an obligation to act in its own best interest, and protect its name. Among its students are other girls, and the Petitioner's continued presence at the University, would be disruptive.



81. The Petitioner submits that his right not to be subjected to violence, under Article 29 of *the Constitution*, has been violated. He overlooks the right of the complainant child not to be subjected to sexual violence, under Articles 29 and 53 [2] of *the Constitution*, and the Respondent's mandate to uphold the best interest of the child. He overlooks that a child has complained against him, of sexual violence, a grave violation of the child's constitutional protections.
82. His submission founded on Article 232 [b], on his right not to be removed from office, or subjected to disciplinary process without due process, is misplaced. He was subjected to a disciplinary process, which he was reluctant to submit himself to, and which he implored the Court to halt, at its very inception.
83. Equally misplaced is his submission on section 6 of the *Civil Procedure Act*. This law relates to proceedings pending in two Courts, not where there is a disciplinary process at the workplace, and a related criminal process before the Court. If the matter is pending in two different Courts, it must be between the same parties. There is no matter pending between the Petitioner and the Respondent in two different Courts. The criminal case is between the Republic and the Petitioner. As stated before, the subject matter in the disciplinary proceedings is not the same, as in the criminal trial. Resort to section 6 of the *Civil Procedure Act*, is misplaced.
84. The best recourse, was that taken by the Respondent: to take the Petitioner through a disciplinary process, a fair administrative process; establish ground to warrant dismissal; and dismiss him.
85. Peripheral to the submission that the Petitioner was unfairly subjected to a disciplinary hearing, while the criminal case was pending, is the submission that he was suspended prematurely.
86. Section 9.3.3 of the Respondent's Human Resource Manual, reserves the Respondent's right to suspend an Employee, pending investigation into an alleged offence. It does not set the period of suspension, but requires the Respondent to within 21 days of suspension, inform the Employee as to the position of suspension.
87. The Petitioner complains that the letter to show cause granted him 21 days to respond. The letter is dated 6th January 2025. The letter of suspension issued on 20th January 2025, before the end of 21 days.
88. The Court does not think that the letter of suspension could be viewed as comprising breach of the Petitioner's right to fair administrative action.
89. Clause 9.3.1 [e] of the Respondent's Human Resource Manual provides that an Employee shall be given adequate time to show cause, why disciplinary action should not be taken against him. It does not give any specific period. The Petitioner was advised to respond within 21 days. He was availed adequate time to respond.
90. The only flaw discernible from the suspension letter, and the extension letter, was that suspension period was indefinite, only tied down to finalization of the criminal case. This defect would create the impression that the Respondent had pegged its disciplinary process, to the outcome of the criminal process.
91. However, the Court would attribute this to inelegance of communication, noting that the Human Resource Manual, does not merge the processes. Appendix V of the PSC Discipline Manual for The Public Service, 2022, which is a model suspension letter, does not include a statement such as made by the Respondent, that suspension was until the criminal case is finalized. Administrative suspension ordinarily ends with the internal investigations, paving way for the disciplinary hearing. The Petitioner



does not submit, that he understood the suspension letter to have merged the disciplinary process with the criminal trial. Legally, as explained above, the processes ordinarily are mutually exclusive.

92. When the Petitioner finally responded, it was to inform the Respondent, that he could not respond to the letter to show cause, because the matter was in the Criminal Court, where he had pleaded not guilty, and was to be presumed innocent. Was it necessary to have a whole 21 days, to write back that he would not respond, because he was presumed innocent?
93. The Court can discern no prejudice occasioned to the Petitioner, by the Respondent not holding out for his response, until 21 days were over. He was asked to respond within 21 days and need not have waited to the end of those days, to write back saying he had no response, with regard to defilement allegations.
94. He would have aided his cause at the workplace, if he had attempted an explanation on the specific allegations of defilement, which had been reported in the press, instead of stonewalling all possible explanation, under the guise of presumption of innocence. Did he penetrate the child; did he at any time meet the child; was there medical evidence suggesting he had defiled a child; was he arrested over the allegations; and were there reports in the press, about the incident? These are some of the substantive issues the Petitioner should have addressed at the earliest, to save his job.
95. He is presumed innocent, until proved guilty in the criminal jurisdiction. He has however been found guilty of acts of gross misconduct at the workplace, over which the Respondent properly exercised its disciplinary control.
96. If the accusations in the criminal trial are in the end thrown out, the Petitioner can pursue appropriate remedies against the complainant and the state, but that process does not involve the Respondent herein.
97. There was no major departure from the standards of procedural fairness, prescribed under the Human Resource Manual, the *Employment Act* and *the Constitution*. Fair hearing was not compromised.
98. The belated complaint concerning the Petitioner's internal appeal, is extraneous to the Petition. He filed the Petition ostensibly to stay the disciplinary proceedings. Once stay was not granted, he perhaps ought to have amended his Petition to take into account the new realities. He cannot suitably pick new grievances as they occurred subsequent to presentation of the Petition, and demand remedy for new grievances. The Court does not have adequate material, to review the internal appeal process, and make an informed decision, whether it was in breach of the Petitioner's right to procedural fairness.
99. Ultimately, the Petition fails.
100. No order on the costs.  
It Is Ordered: -
  - a. The Petition is declined.
  - b. No order on the costs.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY, PURSUANT TO RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, AT KERICHO, THIS 31ST DAY OF JULY 2025.**

**JAMES RIKA**  
**JUDGE**

