



Republic v Tourism Regulatory Authority; Ogwel (Exparte Applicant) (Judicial Review E032 of 2022) [2023] KEELRC 998 (KLR) (19 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 998 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
JUDICIAL REVIEW E032 OF 2022**

NZIOKI WA MAKAU, J

APRIL 19, 2023

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW
ORDERS UNDER ORDER 53 OF THE CIVIL
PROCEDURE RULES**

AND

**IN THE MATTER OF: ARTICLES 41, 47 & 50 OF THE
CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF: FAIR ADMINISTRATIVE ACTIONS ACT, 2015

AND

IN THE MATTER OF: PUBLIC SERVICE COMMISSION ACT, 2017

BETWEEN

BETWEEN

REPUBLIC APPLICANT

AND

TOURISM REGULATORY AUTHORITY RESPONDENT

AND

SAMSON TABU OGWEL EXPARTE APPLICANT



RULING

1. Pursuant to leave granted by the Court on 17th November 2022, the Ex Parte Applicant, Samson Tabu Ogwel, filed a Notice of Motion Application dated 7th December 2022 supported by his affidavit and further supplementary affidavit, seeking for Orders:-
 - a. That an order of certiorari do issue to remove into the Employment and Labour Relations Court and quash the entire decision of the respondent made through the letter dated 13th day of October 2022, summarily terminating the services of the Applicant.
 - b. That The Employment and Labour Relations Court makes such other and further orders as are necessary and expedient in the circumstances of this case.
 - c. That Costs of this application be in favour of the Applicants.
2. The Application is premised on the grounds that the Ex Parte Applicant (hereinafter “the Applicant”) is a Civil Servant under the ambit of the Public Service Commission (PSC) having been appointed as a Procurement Officer on 16th April 2004 and his pensionable services having been transferred to the Respondent on 1st June 2017 in the capacity of Chief Supply Chain Management Officer under Job Group or Salary Scale TRA 4 (Equivalent to Grade “P”). The Applicant asserts that by a letter dated 13th October 2022, the Respondent purported to unlawfully terminate his services and acted ultra vires and in blatant contravention of statutory underpinning as he had worked for a period exceeding 15 years and any disciplinary action to be undertaken against him by the Respondent had to be forwarded to the PSC for determination. That the decision of the Respondent contravenes Articles 41 and 47 of *the Constitution* of Kenya 2010 on fair labour practices and fair administrative actions as well as section 65 of the *Public Service Commission Act* 2017 which charges the PSC with the mandate to undertake disciplinary measures against the Applicant. That the decision further contravenes regulation 61 and 62 of the Public Service Commission Regulations 2020 and section K.4 (iii) of the Human Resource Policies and Procedures Manual of the PSC.
3. The Ex parte Applicant further asserts that the Respondent’s decisions and actions are unfair, discriminatory and arbitrary and is marred and tainted with illegality, irrationality and procedural impropriety, in that the due process was not followed and hence any decision thereto should be quashed by an order of certiorari. Furthermore, that the decision was made without or in excess of jurisdiction since the power to undertake disciplinary measures against the Ex parte Applicant is vested in the PSC. That the decision was also arrived at and made in contravention of the Ex parte Applicant’s legitimate expectation not to be dismissed without adherence to due process of the law. It is the Applicant’s assertion that this Court has supervisory jurisdiction over the Respondent and power to make any such orders or give any direction appropriate to ensure the fair administration of justice. That this Honourable Court should protect the Ex parte Applicant’s rights under *the Constitution* and that it is just and fair that the judicial review orders herein be granted.
4. The Respondent filed a Replying Affidavit sworn on 21st February 2023 by its Legal Officer, Ms. Carolyne Sein Litoro, who avers that the Ex parte Applicant is an employee of the Respondent herein and is subject to the Respondent’s Human Resource Policy and Procedures Manual. She annexes the Ex parte Applicant’s Letters of Appointment dated 10th September 2004 and 18th May 2007 and the Deployment Letter dated 10th January 2017 deploying the Ex parte Applicant to the Respondent. She further avers that when the Respondent gained operational independence on or about 2017, it undertook its first recruitment exercise by absorbing those deployed staff who were willing to be



employed by the Authority. That by a letter dated 22nd February 2017, the Ex parte Applicant applied for the position of Chief Supply Chain Management Officer TRA 4, which application was accepted after he was interviewed and the same was communicated to him through a Letters of Appointment dated 24th May 2017. That the Ex parte Applicant was subsequently appointed to the said position by an Appointment letter dated 5th June 2017 and consequent to this, his pensionable service was transferred from the Ministry of Tourism to the Respondent as conveyed by the Ministry of Tourism's letter dated 19th September 2017. That the import of this was that the Ex parte Applicant was no longer a civil servant under the Ministry of Tourism but an employee of the Respondent as he had accepted his appointment as the Respondent's Chief Supply Chain Management Officer. Further, the Respondent was now responsible for paying the Ex parte Applicant's salaries, allowances and pension and not the PSC.

5. It is Ms. Leitoro's averment that the Ex parte Applicant's assertion that the Respondent contravened section 65 of the PSC Act 2017 when it terminated his employment is a misrepresentation of the law and facts. That section 2 of the said Act defines an "authorized officer" to mean any officer, body or authority appointed by the Commission to perform its delegated functions in a Ministry or State department, or any member of the Commission. That the said proviso only applies to civil servants working in Ministries and State Departments and since the Ex parte Applicant transferred his service from the Ministry of Tourism to the Respondent Authority, he does not fall under the ambit of section 65 of the PSC Act. She avers that the Ex parte Applicant's only issue is that the Respondent did not have power to institute the disciplinary processes and he has neither challenged the reason for his termination nor has he adduced evidence to show that the disciplinary process was unfair and unprocedural. That in any event if that was the case, the Ex parte Applicant should have sought joinder of the PSC as a party to this suit. She reiterates that based on the foregoing, they have demonstrated that the Ex parte Applicant is subject to the Respondent's internal disciplinary processes and not PSC as alleged by him.
6. She further avers that a yearly audit of the Respondent's procurement process conducted in 2021 revealed among other things that the Ex parte Applicant, being the Head of Procurement, recommended the approval for irregular awarding of tenders. That in depth, the Audit and Risk Management Unit report on the procurement process for the financial year 2020-2021 raised issues of: irregular procurement process; falsification of procurement records; and mismanagement of contracts and the procurement process. That subsequently in an email dated 29th September 2021, the Ex parte Applicant was asked to respond to the said issues and he responded with an explanation vide his email dated 5th October 2021. That however as noted by the Audit Unit, his response was not satisfactory and was defensive rather than corrective. That the Audit & Risk Management Board Committee then escalated the Report to the Respondent's Acting Director General for a response by the management. That the Acting Director General again wrote to the Ex parte Applicant seeking an explanation for the issues raised in the audit report and the Ex parte Applicant responded to the same vide his letter dated 20th January 2022 and the Acting Director General then responded to the Audit Committee's Report also noting that the unsatisfactory responses to the queries raised and undertook to institute disciplinary action against the employees responsible.
7. Ms. Leitoro avers that subsequently, the Respondent initiated its internal disciplinary procedure in accordance with the law and its HR Policy and the Ex parte Applicant was issued with a Show Cause Letter dated 7th February 2022 to give an explanation for contravening procurement regulations and falsifying records and he responded to the same on 11th February 2022. That on 17th February 2022, the Respondent convened a Special Human Resource Administration Committee Meeting to discuss the issues that had been raised by the Audit Unit on the procurement processes and the explanations



or responses proffered by the Ex parte Applicant, which Committee recommended that the Ex parte Applicant be interdicted for three months pending the conclusion of the disciplinary proceedings against him. That the Ex parte Applicant was thereafter interdicted by a letter dated 18th February 2022, which interdiction was extended for a further three months before he was issued with an Invitation for Disciplinary Hearing dated 8th September 2022 before the Human Resource and Administration Committee on 21st September 2022. That the Ex parte Applicant was also informed of his right to be accompanied by a representative or witness to the hearing and on the scheduled hearing date, he was fairly heard. That upon considering the matter, the Audit Report, the response to the Show Cause and all the materials on record, the Respondent found the Ex parte Applicant liable for gross negligence, abuse of office and flagrant breach of the Public Procurement & Asset Disposal Act No. 33 of 2015 (hereinafter "the PPAD Act"). That the Respondent consequently terminated the Ex parte Applicant's contract of employment vide a termination letter dated 13th October 2022 wherein he was informed of his right to appeal against the decision to terminate his employment. That while the Ex parte Applicant appealed against the decision to terminate his employment to the Board, the same was not concluded as he filed the suit herein against the Respondent.

8. It is Ms. Leitoro's averment that the Respondent lost trust and confidence in the Ex parte Applicant to handle its procurement department which is a very sensitive department and that the Ex parte Applicant's contract of employment was in the circumstances lawfully and justifiably terminated. That the Ex parte Applicant has on his part not demonstrated how the termination of his employment violated his rights and thus not proven the allegation of breach of principle of fair labour practice, which ought to be dismissed. She believes that on a whole, the Application hereof is an abuse of the Court process, vexatious, premature, incompetent and unfounded and that the same should be dismissed with costs to the Respondent in the interest of justice.

9. The Application was disposed of by way of written submissions.

10. Ex-Parte Applicant's Submissions

The Ex parte Applicant submits that the Respondent is a State Corporation established under section 4 of the *Tourism Act* No. 28 of 2011 as a body corporate to be administered by a Board. That the Respondent was operationalized in April 2014 and gained financial independence in September 2016 and that its principal activity is to regulate the tourism sector in Kenya, including all activities listed under the Ninth Schedule of the *Tourism Act* No. 28 of 2011. He submits that a body corporate established under an Act of Parliament is a state corporation within the meaning of that Act and therefore subject to *the Constitution*. That all state corporations have national outreach by nature and design and fall squarely under the auspices of the National Government. Further, that the Board Members of the Respondent are remunerated as guided by Government Guidelines and Circulars from time to time in line with section 9(3) of the *Tourism Act* that provides for Board Members to be paid allowances as determined by the Cabinet Secretary. That the Auditor General is responsible for the Statutory Audit of the Respondent in accordance with Article 229 and the *Public Audit Act* and in this regard, he urges the Court to consider the Report of The Auditor General on Tourism Regulatory Authority. That in fact, section 219(2) of the Public Finance Management Regulations 2015 mandates regulatory bodies like the Respondent to submit 90% of its surplus reported in the audited financial statement into the Consolidated Fund's account. Further, that under section 11 of the *State Corporations Act*, state corporations are required to prepare and submit to the line Minister and the Treasury for approval, yearly estimates of their revenue and expenditure accompanied by proposals for funding of the projects they are to undertake or implement during the financial year. That state corporations and parastatals generate their own revenue for expenditure and their funding is not necessarily wholly provided for by Parliament and that state corporations are agencies of the



government. It is the Applicant's submission that having established that the Respondent is a state corporation, it follows that the employees of the state corporation are public officers under the auspices of Article 260 of *the Constitution* of Kenya.

11. In support of its foregoing submission, the Ex parte Applicant cites the case of Anthony v Communications Authority of Kenya & 3 others (Petition E161 of 2021) [2022] KEELRC 1117 (KLR) (25 January 2022) (Judgment) in which Mbaru J. held that PSC is the entity given constitutional authority to employ, issue terms and conditions of service, review, audit and advice with regard to public service and that employees in the service of the respondent Authority were subject to the constitutional mandate of the PSC. The Ex parte Applicant submits that relating this to the current facts, it surmounts that he being a state officer is subject to the Public Service Commission Rules and Regulations.
12. As to whether he has met the threshold for issuance of the writs sought, the Ex parte Applicant submits that section 65(1) and (3) of the *Public Service Commission Act* 2017 provide as follows:

Section 65(1) - "The power to exercise disciplinary control within the public service shall vest in the Commission."

Section 65(3) - "Where a public officer, at the time of the proceedings for dismissal or reduction in rank or seniority, has served for an aggregate of fifteen years or more, the authorized officer shall not exercise the delegated power of dismissal or reduction in rank or seniority but shall, after the investigations, forward the case to the Commission for determination."
13. The Ex parte Applicant disagrees with the Respondent's assertion that section 65(3) of the PSC Act 2017 only applies to civil servants working in Ministries and State Departments and that he does not fall within that ambit by virtue of his transfer to the Respondent. He submits that as captured under section 65(1) of the PSC Act 2017, the power to exercise disciplinary control over the public service vests in the Commission. That the meaning of public service as under section 2 of the PSC Act is "the meaning assigned to it in Article 260 of *the Constitution*" and that Article 260 of *the Constitution* defines the same as "the collectivity of all individuals, other than State officers, performing a function within a State organ". It is the Ex parte Applicant's submission that Article 260 of *the Constitution* clearly waters down the Respondent's position and affirms that public service does not only involve the Ministries and State Departments but involves any function performed within all state organs. That Article 260 further defines state organ as a commission, office, agency or other body established under *the Constitution* and public office as an office in the national government, a county government or the public service, if the remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament. (Emphasis by the Ex parte Applicant) For the foregoing, the Ex parte Applicant further relies on the cases of Anthony v Communications Authority of Kenya & 3 Others (Petition E161 of 2021) (supra) and John Mburu Kamau v Kenya Accreditation Service [2021] eKLR; Neutral citation: [2021] KEELRC 8 (KLR).
14. He further submits that with Article 260 on the definition of public office in mind; section 16(1) and (2) (a) of the *Tourism Act* No. 28 of 2011 (under which the Respondent is established), states that there shall be a general fund of the Authority which shall vest in the Board of the Authority and monies appropriated by Parliament for the purposes of the Authority shall be paid into the general fund of the Authority. That consequently, his position at the Respondent is captured under section 65(3) of the PSC Act and remuneration for the position was being paid from the fund (which has monies appropriated by Parliament). That he was thus holding a Public Office, was a Public Officer in the public service, and that to that extent, section 65(3) of the PSC Act applies to him. That he did



not quit being a public officer and just moved from one office to another within the public service and that by the time he transferred his services to the Respondent in 2017, he had a solid and continuous 13 years of service as a public officer. That having worked for the Respondent for five (5) years, he had in aggregate served in continuous public service for a total of eighteen (18) years. That this therefore does not land any issue of dismissal squarely on section 65(3) of the PSC Act which provides for “an aggregate of fifteen years” and that the only powers the Respondent had over him are as contained under section 65(2) (a) of the PSC Act which provides that:

“(2) The Commission may subject to this Act and to such instructions as it may determine, delegate the following disciplinary powers to its authorized officers

-
- (a) in respect of all public officers the power—
 - (i) to interdict any public officer;
 - (ii) to suspend any public officer;
 - (iii) to stop, withhold or defer a normal increment of any public officer;
 - (iv) to reprimand a public officer; or
 - (v) to stop a public officer's pay or salary.”

15. The Ex parte Applicant submits that section 65(2) (a) of the PSC Act does not grant the Respondent any dismissal powers and having been interdicted for a cumulative six months, he was essentially sent on compulsory leave with half pay. He refers this Court to Regulation 62 of the Public Service Regulations 2020 which states that:

“The authorised officer of a public body may, with the written approval of the Commission, send on compulsory leave for a period not exceeding thirty working days a public officer in a public body in which an investigation is being conducted, where it is feared that the officer may influence or interfere with the investigation.” (Emphasis by the Ex parte Applicant)

16. It is the Ex parte Applicant's submission that the Respondent has not provided this Court with any written approval of the PSC that allowed it to send him on a compulsory leave as required by the Regulations. That in addition, the Respondent breached the said Regulation when it issued a compulsory leave totalling six (6) months contrary to the provided period of not more than thirty (30) working days. That the Respondent thus acted outside the law and the said actions are null and void ab initio. He further submits that the Respondent failed to follow the proper procedure and divested him of the right to a fair administrative action and ultimately a fair hearing as espoused under Article 50 of *the Constitution*. Further, the Respondent acted ultra vires as per the common law principle and that the courts have held that the doctrine of ultra vires is now a constitutional provision anchored under Article 47 of *the Constitution* which provides for the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The Ex parte Applicant urges this Court to consider the Court of Appeal's observations in the case of *Judicial Service Commission v Mbalu Mutava & another* [2015] eKLR that Article 47(1) now subjects the administrative actions of public officers, state organs and other administrative bodies to the principle of constitutionality rather than to the doctrine of ultra vires from which administrative law under the common law was developed.



17. The Ex parte Applicant relies on the decision of the Court of Appeal in the case of *Okoti & 3 others v Anne Waiguru, the Cabinet Secretary, Devolution and Planning & 5 others* (Petition 42 & 27 of 2014 (Consolidated)) [2021] KEELRC 2306 (KLR) (30 July 2021) (Judgment) that in order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety. The Ex parte Applicant asserts that the Respondent failed to correctly understand the law that regulates its decision-making and consequently failed to give effect to the said law. That the purported decision to terminate his employment is illegal, unreasonable and filled with procedural impropriety and that he has therefore shown that his Application for Judicial Review for an order of certiorari is merited in the circumstance. He urges the Court to find so.
18. He further submits that section 8(2) of the *Law Reform Act* (Cap 26) Laws of Kenya grants this Honourable Court the power to issue the sought order of certiorari. That Nyamweya J. (as she then was) stated thus in the case of *Republic v Chief Magistrate Makindu & another Ex-Parte Bernard Masau Mailu & 2 others* [2016] eKLR that certiorari can only be issued where the court considers that the decision under attack was reached without or in excess of jurisdiction or in breach of the rules of natural justice; or contrary to law. It is the Ex parte Applicant's submissions that he has clearly shown that the Respondent, in undertaking a decision to terminate his employment, misunderstood the law; misapplied the law; acted outside the law and was therefore in excess of its powers and that consequently, that decision is ripe for quashing by way of an order of certiorari from this Honourable Court.
19. The Ex parte Applicant finally submits that it is trite law that costs ought to follow the event as provided for under section 27(1) and (2) of the *Civil Procedure Act*, Cap 21 and prays that the costs of this Application be granted to him.
20. Respondent's Submissions

The Respondent submits that it acknowledges the Ex parte Applicant is a public servant as are all government employees, but denies that the disciplinary process applicable to him is that enshrined in the PSC Act, 2017. The Respondent submits that the disciplinary process enshrined in the PSC Act is applicable to civil servants, that is, public servants employed directly by PSC and serving in Ministries and state departments and that the Ex parte Applicant's subsequent appointment by the Respondent marked cessation of his status as a civil servant in the strict sense enshrined in the PSC Act. That PSC retains the oversight power to hear appeals from disciplinary processes and decisions determined by state corporations. That the Public Service Commission (State Corporations and Public Universities Disciplinary Appeals Procedures) Regulations, 2022 clearly elaborate the distinction between public officers in state corporations and government ministries/departments by providing guidelines on the hearing of appeals by the PSC in respect of disciplinary control decisions of a State Corporation or a Public University, pursuant to the provisions of sections 74 and 75 of the PSC Act.
21. The Respondent cites the case of *Kenya Union of Domestic, Hotels, Education and Allied Workers (Kudhehia Workers) v Salaries and Remuneration Commission* [2014] eKLR in which the Court held that the criteria for determining whether one is a public officer is quite clear and requires no more than a literal interpretation; that the person must first hold an office either in the national government, county government or public service and secondly, the remuneration and benefits of that officer must be payable directly from the Consolidated Fund or directly out of money provided by Parliament. The Respondent further cites the case of *Fredrick Otieno Outa v Jared Odoyo Okello & 3 Others* [2014] where the Court noted that the definition of "public officer" cannot be strictly confined to the singular definition clause in Article 260 because there are other constitutional stipulations, and statutory and



common law provisions that speak to the definitions, values, principles and institutional framework of public service that must apply, which therefore calls for *the Constitution* to be read in a holistic manner when it comes to interpretation of any one clause.

22. It submits that having established that the Ex parte Applicant is not a civil servant as alleged, the Ex parte Applicant was subject to the Respondent's internal disciplinary measures. That the Respondent being a corporate body capable of suing and being sued in its name as per section 3 of the *State Corporations Act*, 2015, it has the autonomy to carry out its affairs separately and distinctly from the PSC as long as the said affairs are conducted in a fair and just manner and within the confines of the law. Further, section 5(3) of the *State Corporations Act*, 2015 provides that a state corporation may engage and employ such number of staff, including the chief executive, on such terms and conditions of service as the Minister may, in consultation with the Committee, approve. That based on the foregoing, it acted well within its authority in initiating and subjecting the Ex parte Applicant to its internal disciplinary process, which process the Ex parte Applicant accepted and submitted himself to. It further submits that the Ex parte Applicant's allegation that it is the PSC that has power to institute disciplinary proceedings against him and not the Respondent, on grounds that the Respondent draws its funding from the Exchequer and audited by the Auditor-General, is ridiculous because all state corporations draw their funds from the public and are audited by the Auditor General and it is the Respondent that pays the Applicant's salaries and other benefits and not the Ministry of Tourism or PSC.
23. It is the Respondent's submission that subsequently, the termination of the Ex parte Applicant's employment was fair and lawful having fulfilled both substantive justification and procedural fairness as under section 45(2) of the *Employment Act*. On this submission it relies on the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR where the Honourable Court held that for a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. It also relies on the case of *Janet Nyandiko v Kenya Commercial Bank Limited* [2017] eKLR cited with approval by the Court of Appeal in the case of *National Bank of Kenya v Anthony Njue John* [2019] eKLR, in which the Court explained that the parameters for determining whether the employer acted in accordance with justice and equity in determining the employment of the employee are inbuilt in section 45 of the Act and that the conduct and capability of the employee up to the date of termination and the extent to which the employer has complied with the procedural requirements under section 41 should also not be overlooked. It is the Respondent's submission that sections 10.17.1 and 11.15 of the Respondent's Human Resource Policy Manual provide for grounds for summary dismissal and dismissal respectively where an employee is found guilty of acts or omissions amounting to a serious offence. That in this case, the Ex parte Applicant's actions amounted to misconduct. That based on the circumstances of the instant case, the decision to terminate the Ex parte Applicant's employment fell within the band of reasonable responses which a reasonable employer might have adopted. That it has demonstrated that it had justifiable and compelling grounds to do so as the Ex parte Applicant neglected to perform his duties as Head of Procurement and further failed to exercise the duty of care expected of him in performing his duties including ensuring compliance with the PPD Act of 2015 and the Respondent's policies on procurement. That by failing to diligently carry out his duties, the Ex parte Applicant contravened the Respondent's values, integrity, rules and guidelines and also compromised the Respondent's assets and property. That it has also demonstrated that it followed due procedure before terminating the Ex parte Applicant's employment.
24. The Respondent submits that the Ex parte Applicant is not entitled to any of the orders or reliefs sought in the Notice of Motion Application as his termination of employment was procedurally and substantially fair. That the Ex parte Applicant should have rightfully sought joinder of the PSC as a party to this suit if indeed PSC had the power to discipline him as alleged in his pleadings. That in view



of the foregoing, it prays that the instant Application be dismissed with costs to the Respondent as costs follow the event. The Respondent further submits that that item 15, to wit, the Report of the Auditor General on Tourism Regulatory Authority, in the Applicant's List and Bundle of Authorities dated 14th March 2023 be expunged from record as it has not been produced properly before this Court, either by way of affidavit or a list of documents. The Respondent concludes that the Ex parte Applicant has failed to demonstrate that the Respondent did not have the authority to subject him to its internal disciplinary process and that his employment was unfairly and unlawfully terminated.

25. The Ex parte Applicant has moved the Court to obtain orders of certiorari to quash the decision of the Respondent in terminating his services. Judicial review applications are to ordinarily be confined to reviewing the legality and procedural regularity of decisions made by public bodies, such as government departments, local authorities, and regulatory agencies. This means that the court will only consider whether the decision was made lawfully and in accordance with the correct procedures, rather than examining the merits of the decision itself. In other words, judicial review is a way for citizens to hold public bodies accountable for their actions and ensure that they act within the scope of their powers and in compliance with the law. In doing what he did, the Ex parte Applicant confined himself to the technical aspects of the decision made by the Respondent. As such, the merits of the decision will not be subject of this Ruling.
26. The Ex parte Applicant has challenged the Respondent's action of summarily terminating the services of the Ex parte Applicant vide the letter dated 13th October 2022. The letter was under the hand of Mr. Norbert Talam the Director General of the Respondent, the Tourism Regulatory Authority (TRA). In the letter, the Director General communicated the findings of the investigations into various allegations against the Ex parte Applicant. The TRA is established under section 4 of the [Tourism Act, 2011](#). It provides as follows:

4. Establishment of Authority

- (1) There is established an authority to be known as the Tourism Regulatory Authority.
 - (2) The Authority shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of—
 - (a) suing and being sued;
 - (b) taking, purchasing and disposing of movable and immovable property;
 - (c) borrowing money;
 - (d) entering into contracts; and
 - (e) doing or performing all other things necessary for the proper discharge of its functions under this Act, which may be lawfully done or performed by a body corporate.
27. The above provision as read with section 14(5) which grants the board of the Tourism Regulatory Authority with the power to hire staff means that the TRA had the capacity to contract with the Ex parte Applicant to the exclusion of the Public Service Commission and as such, being an entity that is not under the PSC able to initiate and conclude a disciplinary process including dismissal without reference to PSC. As such, the Ex parte Applicant was misguided in imagining that his contract was subject to the dictates or direction of the PSC. The Court therefore returns that an order of certiorari



cannot issue in regard to the letter of summary dismissal of the Ex parte Applicant as his claim lies elsewhere. Application is struck out albeit, with no order as to costs.

28. Top of Form

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF APRIL 2023

NZIOKI WA MAKAU

JUDGE

