



**Chepkonga v Kenya Airways PLC (Cause E549 of 2023)
[2023] KEELRC 2186 (KLR) (20 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2186 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E549 OF 2023
NZIOKI WA MAKAU, J
SEPTEMBER 20, 2023**

BETWEEN

VIVIAN JEROTICH CHEPKONGA CLAIMANT

AND

KENYA AIRWAYS PLC RESPONDENT

RULING

1. Before this Honourable Court for determination are the Claimant's Applications dated July 11, 2023 and July 19, 2023. In the Notice of Motion Application dated July 11, 2023, the Claimant/Applicant sought the following Orders:
 - a. Spent.
 - b. That pending the hearing and determination of this application and the Claim, a temporary Conservatory Order of injunction do issue restraining the Respondent and or anyone claiming under them from proceeding with any disciplinary action against the Claimant and/or terminating the Claimant's employment or dismissing the Claimant from employment based on the matters set out in the Respondent's letters dated May 22, 2023 and May 31, 2023.
 - c. That a declaration does issue that the Respondent's suspension of the Claimant for more than 45 days, undertaking disciplinary hearing after 14 days from the date of the investigations and continued disciplinary process after the lapse of 45 days from the date of the Claimant's suspension are illegal, irregular and in violation of Clause 40 (b), (e) and (g) of the Collective Bargaining Agreement between the Respondent and Kenya Aviation Workers Union (KAWU) ("the CBA") and Clause 17.10 of the Respondent's Human Resource Policies Manual and violates the Claimant's rights to fair labour practices, fair administrative action, fair hearing and legitimate expectations.



- d. That a declaration does issue that by the Respondent having failed to undertake disciplinary hearing after the lapse of 14 days from the date of the investigations or conclude the disciplinary process against the Claimant and to make a decision thereof within 45 days from the date of the suspension pursuant to Clauses 40 (b), (e) and (g) of the CBA and Clause 17.10 of the Respondent's Human Resource Policies Manual, the Claimant ought to be cleared of the charges as set out in the Respondent's letters dated May 22, 2023 and May 31, 2023 and reinstated to her place of work to the same position she held and with the same terms, conditions of service and benefits she enjoyed prior to her suspension pursuant to Clause 40(g) of the CBA.
 - e. That pending the hearing and determination of this Application and the Claim, the Honourable Court be pleased to revoke the Claimant's suspension and order the Respondent to unconditionally reinstate the Claimant to the same position she held with the same terms, conditions of service and benefits that she enjoyed prior to her suspension pursuant to Clause 40(g) of the CBA.
 - f. That in the alternative to (5) above, the Honourable Court be pleased to maintain status quo ante as at the date of the instant application, and in particular that pending the hearing and determination of this Application and the Claim, there be a stay of disciplinary proceedings against the Claimant and that the Respondent shall not in any way adversely alter the Claimant's benefits, terms and conditions of service or withhold her remuneration.
 - g. That a declaration that the Respondent violated the Claimant's rights to fair labour practices, fair administrative action, fair hearing and legitimate expectation and breached the Claimant's employment contract and the terms of the CBA by illegally and irregularly suspending the Claimant from employment for more than 45 days, failing to conclude disciplinary action within the said 45 days from the date of the suspension, failing to undertake a disciplinary hearing within 14 days from the date of the Respondent's investigation report and failing to furnish the Claimant with the investigation reports, witness statements and all documents and records that the Respondent intends to rely on in undertaking the disciplinary action against the Claimant.
 - h. That pending the hearing and determination of this Application, an order of mandatory injunction be issued compelling the Respondent to furnish the Claimant with all investigation reports, witness statements, print-out of the telephone conversations between the Claimant and the crew tracking caller number 0741xxxx on the 6th day of May 2023 between 11.44PM - 11.45 PM and between 11.45PM and 11.49PM of the same date and all other documents and records that the Respondent intends to rely on in undertaking the disciplinary action against the Claimant.
 - i. Any other Orders appropriate orders that the Court may be pleased to grant.
 - j. That costs of this application be borne by the Respondent.
2. The Motion dated July 11, 2023 was premised on the grounds outlined on the face of the motion and was supported by the Claimant's Affidavit. The Claimant/Applicant averred that the Respondent negotiated, executed and registered a Collective Bargaining Agreement (CBA) with Kenya Aviation Workers Union (KAWU) on December 19, 2014, which was to remain in force until another CBA was agreed upon by the parties. That she is a member of KAWU and thus a beneficiary of the benefits, terms and conditions of service contained in the CBA and that on average, her gross salary exceeds Kshs. 166,000/- that is within the jurisdiction of this Honourable Court.



3. She further averred that the Respondent suspended her on May 22, 2023 to pave way for investigations into an alleged misconduct. That thereafter by a letter dated May 31, 2023, the Respondent notified her that it had conducted investigations on her alleged misconduct, required her to show cause why disciplinary action should not be taken against her and further required her to tender a written response by June 6, 2023. That despite the Respondent neglecting to serve her with a copy of the said investigation report, witness statements and or other documents relied on in the conduct of its investigations, she gave in her response as demanded by the Respondent. That however, the 14 and 45 days within which the Respondent was required to undertake disciplinary hearing and make a determination thereof respectively pursuant to the provisions of clause 40(b) and (e) of the CBA had since lapsed without its required action and plausible explanation. That in essence, the Respondent has no authority both under its own Human Resources Policies Manual (hereinafter "the Respondent's HR Manual") and the CBA to extend the said periods other than where an employee has sought and obtained a postponement of the disciplinary hearing, which in this case she has not.
4. It was the Applicant's averment that since she had been on suspension for more than 45 days, she was thus entitled to be cleared of all the charges levelled against her forming the basis of her suspension and further entitled to be reinstated back to her place of work at the same position she held and with the same benefit she enjoyed prior to her suspension, pursuant to clause 40(g) of the CBA. That however, the Respondent had instead illegally and irregularly extended her suspension by a further 14 days with effect from July 6, 2023, with the intention of concluding the disciplinary case against her. That she would consequently have been suspended in excess of 45 days without being consulted, contrary to the CBA and the Respondent's HR Manual and in violation of her rights to fair labour practices, fair hearing, fair administrative action and legitimate expectation. She contended that she risked being subjected to unconstitutional, illegal, irregular and unprocedural disciplinary action with the risk of being summarily dismissed summarily or her employment terminated unless the conservatory orders sought are granted.
5. In the Notice of Motion Application dated July 19, 2023, the Claimant/Applicant sought for Orders restraining the Respondent and or anyone claiming under them from proceeding with the disciplinary hearing against her. In addition, that if the Respondent proceeded with the said disciplinary hearing, the said proceedings and resultant decisions be set aside and that costs of the Application be borne by the Respondent. The Applicant averred, in her Supporting Affidavit sworn on July 19, 2023, that she had obtained an Order dated July 13, 2023 issued on July 14, 2023 restraining the Respondent from dismissing her pending inter partes hearing of her Motion Application dated July 11, 2023 on July 31, 2023. That the said Order, Notice of Motion, Claim and Hearing Notice together with the letter from her Advocates on record were served on the Respondent on July 17, 2023 and that on July 13, 2023, the Respondent served her with a letter of even date inviting her for a disciplinary hearing on July 19, 2023. That thereafter on July 18, 2023, despite the Respondent having been served with the said Order of this Court, it sent to her a further letter of even date at 16.58 hours, requiring her to attend the disciplinary hearing on July 19, 2023. That the Respondent proceeded with the disciplinary hearing as scheduled in her absence and thereafter served her with a letter dated July 19, 2023 requiring her to attend another disciplinary hearing on July 25, 2023. The Applicant thus sought for the Court to grant the prayers sought in the interest of justice.
6. Respondent's Case
In response to the Applications, the Respondent filed a Replying Affidavit sworn by Moses Ombokh on July 28, 2023. Mr. Ombokh averred that on the morning of May 8, 2023, a report was received from the Respondent's Mumbai station regarding the detention of one of the Respondent's cabinet crew on flight KQ202 that had departed Jomo Kenyatta International Airport ('JKIA') on May 7,



2023. That the report indicated that an inflight crew member identified as the Applicant herein had been found carrying three gold chains and that the air intelligence officers and customs authorities had started their investigations. That the Applicant thereafter recorded her statement with the investigating team wherein she acknowledged that her failure to declare the gold chains in the declaration form as required was an oversight, leading her to pay a fine of 50,000 Indian Rupees (about Kshs. 86,671.90). That upon her arrival back to Kenya on May 10, 2023, the Applicant was interviewed by a multi-agency team and whereas she promised to bring the receipts for the three gold chains on May 11, 2023 as proof of ownership, she did not produce any evidence or receipts to prove the source of the gold chains. That the Respondent's investigation team thus concluded that the Applicant attempted to smuggle three gold chains into Mumbai and that she had engaged in an impropriety against the Respondent that warranted disciplinary action against her.

7. It was the Mr. Ombokh's averment that given the Applicant was under investigation on alleged irregularity, it became necessary to suspend her pending conclusion of the investigation. He averred that the initial letter inviting the Applicant to the disciplinary hearing was sent to her via email on July 13, 2023 at 2:49 pm and that she was requested to collect the hardcopy the following day. He confirmed that the Respondent was served with the Court Order issued on July 14, 2023 and asserted that the Order was clear that the Applicant should not be subjected to any dismissal pending inter partes hearing on July 31, 2023. That contrary to the Applicant's assertions, the said Court Order did not direct the Respondent not to proceed with the disciplinary hearing scheduled for July 19, 2023. He believed that a reading of the Order indicated that the Respondent could proceed with the disciplinary hearing. Mr. Ombokh also confirmed that the Respondent was served with the subsequent Orders issued by the Court on July 21, 2023 and averred that the depositions of the Applicant confirm she was served with the Disciplinary Hearing Notice on July 13, 2023, long before the Respondent was served with the order on July 17, 2023. Mr. Ombokh averred that since the Claimant's Union had requested for more time to engage its member and obtain additional documentation, the Respondent engaged the Union's official member, Mr. Bernard Owiti, for an extension of time for the hearing and conclusion of the case, which they consented to. That this was followed with a formal request through a letter dated July 5, 2023 which the Union formally responded to and the extension of the suspension was then communicated to the Applicant on July 5, 2023 via a telephone call by her manager. He asserted that the Recognition Agreement between the parties encourages such mutual agreement on a hearing date and extension of suspension where necessary. He further averred that the Respondent denies the allegations that it has violated the Applicant's constitutional rights as pleaded. Furthermore, that the Applicant's apprehension that she risks being dismissed summarily or her employment terminated is misplaced and unsubstantiated as an outcome is yet to be determined.
8. It was Mr. Ombokh's averment that the Applicant has never made a request to be furnished with the investigation report and any other documents as alleged. That in view of the grave findings by the investigation team and the Applicant's admission in her statement recorded with the investigating team, it is in the interest of justice for the Respondent to be afforded an opportunity to conclude its internal procedure. He averred that the Respondent had justified the extension of the 45 days suspension period but that if this Court finds that the process is marred with irregularities, the Court is at liberty to correct the process on course and grant the Respondent an opportunity to rectify the same. He further averred that the Applicant had sought final substantive orders which this Court should refrain from granting at an interim stage. That notably, the orders sought in the Application are similar to the orders sought in the Statement of Claim.
9. In response, the Claimant/Applicant filed a rejoinder through her Further Affidavit sworn on August 5, 2023. She averred that it was not for this Honourable Court to venture into the merits or demerits of the disciplinary process and that its sole consideration at this stage ought to be whether the said



process complies with the applicable law, the CBA, the Respondent's HR Manual, and whether it is procedurally fair. She denied having been detained in Mumbai, asserting that she was only required to pay the equivalent of the taxes payable and then allowed to proceed from the airport. It was her stance that no complaint had ever been filed by the Mumbai Authority with the Respondent or any other government agency regarding the alleged smuggling and no criminal charges were preferred against her by the Indian authorities. The Claimant/Applicant further averred that the Respondent had not produced any evidence to support its allegations that the delay in concluding the disciplinary action was occasioned by the Union. That no annexure was appended to the Respondent's Replying Affidavit to show it sought and obtained the Union's approval for extension of time to conclude the disciplinary hearing as alleged. That in any event, the duty to undertake disciplinary action against her rests squarely on the Respondent and not KAWU and that she did not appoint KAWU to represent her in the matter or sought them to engage the Respondent on her behalf. That the Respondent could not thus unilaterally determine to deal with the Union or involve it without her consent and proceed to make decisions adverse to her rights and which would impact the outcome of her disciplinary case. That the purported conspiracy between the Respondent and the Union to undertake the disciplinary process against her amounts to an irregular amendment of the CBA contrary to the process established under paragraph 58 of the CBA and that the Respondent cannot hide under the allegation that disciplining suspected errant employees is an internal managerial process.

10. Claimant/Applicant's Submissions

The Claimant/Applicant submitted that the following are the issues for determination:

- i. Whether the Court has jurisdiction to intervene in the disciplinary process against the Claimant pending conclusion by the Respondent;
- ii. Whether the Respondent can suspend the Respondent for more than 45 days or undertake disciplinary hearing after 14 days from the date of the investigations or proceed with disciplinary action after 45 days from the date of the suspension;
- iii. Whether the Respondent is required under Clause 40(g) of the CBA to clear the Claimant and reinstate her after the lapse of 45 days of suspension;
- iv. Whether the Respondent was justified in engaging KAWU in the disciplinary process to the exclusion of the Claimant in the disciplinary process without the approval of the Claimant and without the Claimant's appointment; and
- v. Whether the Claimant has satisfied the conditions for granting interim injunction.

11. It was the Applicant's submission that pursuant to section 12(3) of the *Employment and Labour Relations Court Act*, the Honourable Court's jurisdiction can be invoked at any stage of a disciplinary process, and not merely after the dismissal of an employee. She relied on the case of *Naomi Aching Oketch & 3 other v Seeds of Place Africa International [SOPA] & another* [2021] eKLR cited with approval in the case of *Ian Changamu v Co-operative University of Kenya* [2022] eKLR, in which the Court expressed itself that this Court has jurisdiction to grant injunctive reliefs and stay for suspension from employment. She urged the Court to further concur with the finding of the Court in the case of *Rosemary Waitherero Mburu v Kenya Airways Limited* [2020] eKLR that the Honourable Court may interfere with a disciplinary process if there is evidence that it is flawed. That in Industrial Court at Nairobi Cause No. 1012 of 2013; *Mulwa Msanifu Kombo v Kenya Airways*, cited with approval in the case of *Prof. Francis M. Njerub v Jomo Kenyatta University of Agriculture & Technology* [2013] eKLR, it was held that the Industrial Court will descend into the arena of a disciplinary process if it is shown that an unlawful and unfair disciplinary process is about to take place or is in fact taking place.



12. According to the Applicant, the Respondent has not demonstrated existence of an actual appeal mechanism where an employee is aggrieved by its decisions, actions or omissions before the conclusion of the disciplinary case. That be as it may, the Respondent has no jurisdiction to determine issues of violations of her constitutional rights or grant the remedies sought, which is an exclusive reserve of this Court. She urged this Court to consider the foregoing authorities and grant the interim orders sought. The Applicant submitted that since the Respondent's HR Manual and the CBA with KAWU form part of her employment contract, this Honourable Court is bound to enforce them and cited the case of *Amos Kioko Musyoka & 7 others v CMC Motors Group Limited* [2020] eKLR for this support. She submitted that any purported discussions between the Respondent and KAWU officials cannot therefore be an excusable reason to justify its failure to adhere to the CBA timelines. Further, that under paragraph 17.10 of the Respondent's HR Manual, disciplinary action for minor and major cases should be concluded within 7 and 30 working days respectively. That the Respondent has admitted having not concluded the disciplinary process within the 30 days set out in the HR Manual or the 45 days set out in the CBA, from the date of her suspension. She urged the Court to stop the Respondent on its heels from continuing with the impunity of subjecting its employees to unfair labour practices through extension of timelines during disciplinary processes.
13. It was submitted by the Applicant that the Respondent had not denied that clause 40(g) of the CBA requires that if a disciplinary case is not concluded within 45 days from the date of suspension, the employee shall be reinstated to their place of work and their record cleared. That with the purported extension of her suspension, the Respondent sought to suspend her for a total of 59 days contrary to the provisions of the CBA and the HR Manual. That this Court should not sanction an illegality in allowing the Respondent to proceed with the disciplinary hearing. She further submitted that the Respondent's failure to reinstate her and clear her of all charges means that she is subjected to an illegal suspension, is still condemned to defend a disciplinary case illegally and further condemned to retain a disciplinary record illegally. That she ultimately risks being summarily dismissed and may never secure similar employment. The Applicant further submitted that the Respondent was not justified to engage KAWU on the disciplinary process without her approval. That according to clause 40(b) of the CBA, the Union can only represent a member if such member appoints it to do so, and such appointment is communicated to the Respondent. That the Respondent's actions thus amounted to it illegally making a choice for her on whether to be represented by KAWU and which of the KAWU officers to appoint. That the Respondent was hence conflicted and equally, all clandestine decisions made by the Respondent and KAWU on the disciplinary process are not only illegal but also invalid and void. On this submission, the Applicant relied on the case of ELRC Cause No. 1982 of 2013, Banking Insurance & Finance Union (K) v Cooperative Bank of Kenya Limited in which Mbaru J held that as a right-holder, it is the employee to make a choice of his representative in a disciplinary process, and not for an employer to make such choice on behalf of the employee.
14. As regards whether she had satisfied the conditions for granting interim injunction, the Applicant referred to the celebrated case of *Giella v Cassman Brown Co. Ltd* [1973] EA. 358 where the conditions were espoused. She submitted that she had first established a prima facie case that her rights to fair labour practices, to fair administrative action and to fair hearing under Articles 41, 47 and 50 of *the Constitution* had been violated and she set out in her submissions various authorities where the Court asserted the said constitutional rights. She further submitted that she had demonstrated that the Respondent did not have capacity to proceed with the disciplinary process against her because 14 days since the conclusion of investigations and 45 days since the suspension had lapsed. That Article 25(c) of *the Constitution* of Kenya declares that the right to a fair trial cannot be limited and this right to fair trial applies to disciplinary process as espoused in the decision of the Supreme Court in *Gladys Boss Shollei v Judicial Service Commission* [2022] KESC 5 (KLR).



15. She further submitted that she had secondly demonstrated she would suffer irreparable injury that cannot adequately be compensated by an award of damages. That the Respondent on the other hand had not shown what damage or loss, if any, it could incur if the orders sought herein are granted. She thus urged the Court to find that the Claimant/Applicant shall suffer loss which cannot be adequately compensated by damages unless the orders sought are granted. On the third condition, the Applicant submitted that the balance of convenience tilts in her favour as the Respondent to protect her from being subjected to an illegal and irregular disciplinary hearing, continued illegal suspension, bearing a disciplinary record and denial to earn a living. It was the Applicant's submission that having satisfied the conditions for granting the orders sought, the Honourable Court ought to allow the Applications as prayed.
16. Respondent's Submissions
- According to the Respondent, the central issue for determination by this Honourable Court is whether the Court should interfere with the disciplinary process of the Respondent at this juncture, at an interlocutory stage. The Respondent submitted that primary principle is to the effect that it is not for the courts to prescribe how organs entrusted with disciplinary matters such as the employer should operate and cited the decision of the Court of Appeal in *Kenya Revenue Authority v Menginya Salim Murgani* [2010] eKLR in aid. The Respondent submitted that although the Court has jurisdiction to grant a wide range of interim reliefs and remedies, it must exercise caution and draw a distinction between workplace disciplinary process, and the judicial process as per Rika J. in *Alfred Nyungu Kimungui v Bomas of Kenya* [2013] eKLR. That for the Court to interfere with an employer's disciplinary control, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of *the Constitution* or legislation; or in breach of the agreement between the parties; or in a manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer's internal process as held in the case of *Geoffrey Mworira v Water Resources Management Authority & 2 others* [2015] eKLR.
17. It was the Respondent's submission that it reserved its right and the Union consented to the Respondent to engage, promote, demote, or otherwise discipline or terminate employees pursuant to clause (c) of the Recognition Agreement. That clause 40(b) of the CBA is clear that it is the prerogative of the Union and the Respondent to determine a hearing date and extend the time through consensus between them. That the requests for extension of time in disciplinary hearings is not unreasonable and has happened in the past where the Union and the Respondent agree on the need to extend due to more time being required to get the documentation requested by the Union or due to the time taken in the investigations. That the Applicant had the right to pursue the grievance handling procedure set out under clause E of the Recognition Agreement as she was concerned with the length of time in respect of her disciplinary hearing. The Respondent submitted that the extension of the period was not unjustified and that there was thus no justifiable reason for interference by this Honourable Court. That in any event, the Applicant is enjoying her full remuneration while on suspension. Without prejudice to the foregoing, the Respondent submitted that if this Court however finds that the process is marred with irregularities, it is at liberty to correct the process and put it back on course and grant an opportunity to the Respondent to rectify the same per the decision in *MTM v KIE Limited & another* [2020] eKLR. It submitted that the Court should not accept the invitation to invalidate the Respondent's duty to discipline its employees. The Respondent submitted that it had demonstrated to this Court that the CBA mandated the Union and the Respondent to determine a hearing date and for the same to be extended by consent of the two parties. That it further placed material before this Court that justified the extension of the period and that it is presumed in law that if the applicant is a member



of the union, the union is acting on behalf of its members on a representative capacity. It further submitted that the Applicant has not demonstrated that she has a prima facie case, does not stand to suffer any harm that cannot be compensated by way of damages and that the balance of convenience tilts in the Respondent's favour as it is in the interest of justice for the Respondent to be afforded an opportunity to conclude its internal procedure. That the Applicant still had an opportunity to approach the court for remedies including reinstatement and full restitution if the disciplinary process was allowed to proceed and her employment terminated per the case of [Kenya Airline Pilots Association v Kenya Airways PLC](#) [2021] eKLR. The Respondent's stance remained that the Applicant had sought final substantive orders, which the Court should refrain from granting at an interim stage. It submitted that the Applicant is underserving of the orders issued on 14th and July 20, 2023 and urged the Court to vacate those orders and allow the Respondent to discharge its function of disciplining its employee.

18. The Claimant has sought the suspension of the disciplinary process against her on account of the Respondent not having concluded the process within the stipulated timelines in the CBA between her Union (KAWU) and the employer (the Respondent). Primarily, the CBA is intended to guide the parties in their engagements at the workplace and it is apparent there is contention as to whether the Respondent has applied the CBA as it ought, in the ongoing disciplinary process. The Claimant has set out issues for determination to be
 - i. Whether the Court has jurisdiction to intervene in the disciplinary process against the Claimant pending conclusion by the Respondent;
 - ii. Whether the Respondent can suspend the Respondent for more than 45 days or undertake disciplinary hearing after 14 days from the date of the investigations or proceed with disciplinary action after 45 days from the date of the suspension;
 - iii. Whether the Respondent is required under Clause 40(g) of the CBA to clear the Claimant and reinstate her after the lapse of 45 days of suspension;
 - iv. Whether the Respondent was justified in engaging KAWU in the disciplinary process to the exclusion of the Claimant in the disciplinary process without the approval of the Claimant and without the Claimant's appointment; and
 - v. Whether the Claimant has satisfied the conditions for granting interim injunction.
19. As to the first issue, the Claimant asserts the Court has every justification to descend into the arena of the disciplinary process due to the flouting of the process by the Respondent. On its part, the Respondent asserts that on the basis of *Alfred Nyungu Kimungui v Bomas of Kenya* (supra), courts should refrain from descending into the arena. The Court is guided by the case *Alfred Nyungu Kimungui v Bomas of Kenya* (supra) to the extent that as a rights holder, the Claimant is entitled to enjoy the protections set out in [the Constitution](#), the [Employment Act](#) and the Respondent's HR manual as well as the CBA between the parties. Where there is infraction, a court when appropriately moved, descend into the arena – so to speak – to correct the injustice. This is always mindful of the imperative that the Court should not step on the employer's managerial prerogatives. In this regard, the court must weigh the matter to ascertain whether the incursion into the arena is justified or not.
20. The provision of the CBA said to be at play is clause 40(g) of the CBA that requires that if a disciplinary case is not concluded within 45 days from the date of suspension, the employee shall be reinstated to their place of work and their record cleared. Additionally, the Claimant argues that paragraph 17.10 of the Respondent's HR Manual provides that disciplinary action for minor and major cases should be concluded within 7 and 30 working days respectively. It is thus the argument of the Claimant that the provisions in the HR manual as well as in the CBA have not been complied with.



21. The other issues for determination articulated by the Claimant are subsumed into this – whether the Claimant is entitled to the relief sought – a determination as to whether the Respondent has flouted the provisions of the CBA and HR manual in the disciplinary case and whether the Court can grant the relief sought and order reinstatement to her position in terms of the CBA.
22. As much as the Court is permitted in appropriate circumstances to descend into the arena and correct infarctions of the law or policy in place, the orders sought by the Claimant in the interlocutory applications before the Court are in effect final orders and would amount to determination of her suit on the basis of the motions before me. Whereas the court can interdict a process, it would not be justified to determine the suit at this preliminary stage. The order that commends itself for this Court to make is to set a hearing date so that the issues at play can be articulated in full and a determination made on the merits. The Court will therefore set a date for hearing of the suit after this Ruling. Both the Applications before me are disallowed with an order that each party bears their own costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2023

NZIOKI WA MAKAU

JUDGE

