



**Ndinda v Ethics and Anti- Corruption Commission (Petition
E209 of 2021) [2022] KEELRC 4088 (KLR) (4 April 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4088 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E209 OF 2021**

M MBARŪ, J

APRIL 4, 2022

BETWEEN

DAMARIS NDINDA PETITIONER

AND

ETHICS AND ANTI- CORRUPTION COMMISSION RESPONDENT

RULING

1. Spent.
2. Spent;
3. Pending the hearing and determination of the petition conservatory orders so issue restraining the respondent, its agents, servants or any other person acting for and or on their behalf from commencing, proceeding, concluding or otherwise conducting any intended disciplinary action against the petitioner. In particular, disciplinary action including compulsory leave, suspension, termination or denial of benefits or loss of advancement of opportunity in respect to proceeding over the issued charge sheet dated December 14, 2021 or any other complaint relating to the show cause letter dated October 8, 2021 or the subject matter of the petition herein.
4. Spent.
5. Pending the hearing and determination of the petition conservatory orders so issue restraining the respondent, its agents or any other person acting for and or on their behalf from taking any action against the applicant in interfering with her employment or failing to consider her for promotion or advancement or as retaliation, threats, reprisals, or victimisation on account of filing this applicant and instant petition.
6. The respondent be directed to produce before this court, any and all complaints contained in the applicant's human resource file and the minute of the human resource advisory committee constituted



to address the applicant's complaint, reports of the investigation teams constituted by the CEO on September 27, 2021 an August 28, 2021 and any other document relating to and/or communicating the outcome of the complaint.

7. This court issue any other or further order or relief that it may deem appropriate and expedient to meet the ends of justice.
8. Costs occasioned by this application be borne by the respondent.
9. The application is supported by the petitioner's affidavit and on the grounds that she is an advocate and employee of the respondent as a legal officer II where she worked diligently but in the year 2021 her appraisal score for the year 2019/2020 was altered from 82% to 73% prompting her to lodge a complaint to the respondent. The petitioner was eligible for promotion but this was withheld because her supervisor had informed the human resource office that she had a pending disciplinary case.
10. The petitioner lodged an appeal on her promotion and a formal complaint in respect of the altered appraisal and the respondent constituted a committee to investigate the complaints and she was invited to record her statement on September 9, 2021. The petitioner was invited to record a statement over allegation of negligence in handling her duties.
11. On October 4, 2021 she recorded the statement despite being denied an opportunity to review her human resource file containing the allegation which violated her right to information under article 35 of the Constitution. She was denied fair administrative action upon being directed to record her statement within 10 minutes contrary to article 47 of the Constitution.
12. The respondent issued the petitioner with a notice to show cause dated October 8, 2021 contrary to clause 14.3.4 of the corporate services policies and procedures manual (the policy) as it was issued by her former supervisor. The notice is unlawful and malicious as it raises allegations presumed to have occurred in the year 2019 and violates clause 14.3.5 of the Policy which requires that if an employee's conduct falls below the required standards then it should be brought to her attention at the earlier opportunity. The allegations in the charge sheet are barred by the doctrine of laches as they are alleged to have occurred 2 ½ and 1 ½ years before they were reported.
13. Further grounds in support of the application are that the respondent's action of conducting investigation against her is actuated by malice and retaliatory over matters that had not been raised by the supervisor until she filed complaints to the respondent. This was in retaliation, reprisal and threats by her former supervisor in contravention of clause 13.9.3 of the Policy. The altering of the petitioner's appraisal and denial of promotion violate section 34 of the Leadership and Integrity Act and clause 12.30 of the Policy which protects an employee from bullying, humiliation, vindictive actions or malice by another employee.
14. The decision to withhold the petitioner's promotion on the basis clause 14.7.8 of the policy provides for the same for an employee undergoing a disciplinary process is unconstitutional and draconian and clause 14.14.2 which states that an employee who has a court case against the respondent is not eligible for training or loans is unconstitutional and contrary to article 41 of the Constitution.

The complaint made by the petitioner to the respondent as not addressed for more than 3 month as it should be resolved within 30 days or referred to the CEO.

15. The charge sheet issued to the petitioner dated December 14, 2021 was referred to the staff disciplinary resolution committee but the petitioner was not given time to prepare. In a letter dated December 20, 2021 the respondent invited the petitioner to a disciplinary hearing scheduled for 29h and December



30, 2021 to address allegations made against her. Such violated article 41 of the Constitution by failing to comply with the policy.

In her supporting affidavit and supplementary affidavits, the petitioner avers that she has been an employee of the respondent since November 16, 2016 deployed at the lower eastern regional office in machakos where she worked until march, 2020 when she was transferred to upper eastern regional office in Isiolo. The transfer was deferred to May, 2020 on medical grounds and she reported to Isiolo in June, 2020 and was then transferred to North Eastern Region, Garissa office.

16. She has been of good performance and her appraisal outstanding with 90.6%, 84.9% and 82% for the years 2017, 2018 and 2019 respectively.

On January 27, 2021 the petitioner received letter from the respondent that she as among the offices due for promotion and one criteria for promotion was that the subject officer should not have a pending disciplinary matter but the letter also indicated that her supervisor had informed the committee that she had a pending disciplinary matter and was therefore not eligible for promotion. The petitioner responding seeking clarification on the disciplinary matter pending against her since she was not aware of any and in response the respondent noted that they had confidential report from her supervisor touching on various disciplinary issues such as being constantly late, backlog of cases, negligence in handling matters and insubordination.

17. Such matters had never been addressed with the petitioner. She was therefore surprised that these never arose in her performance appraisal. The petitioner decided to follow up on her appraisal while at Machakos and Isiolo offices which had initially been done by the regional manager at Isiolo and who noted the manager at Machakos had raised concerns and when she made enquires there was no response. She was forced to travel to Machakos and was appraised on 12th and May 13, 2021 and given a score of 82% but was later informed that the same was being reviewed.

On January 27, 2021 the petitioner wrote a memo to the human resource office seeking clarification on the allegations made against her and there was no response on August 12, 2021 she wrote an appeal on her promotion and a complaint on her altered appraisal and in a letter dated August 30, 2021 the respondent noted that it had constituted a committee to investigate the matter and would be informed of the outcome.

18. On August 12, 2021 the CEO constituted an investigative team and on September 7, 2021 the petitioner was invited to record a statement which she did on 9th September, 2021 in relation to her complaint on her promotion and altered appraisal that was under investigations

On September 28, 2021 the CEO constituted another investigations team to deal with allegations against the petitioner and she was invited to record a statement regarding allegations of negligence in handling a matter on behalf of the respondent.

On October 4, 2021 the petitioner appeared before the investigations committee and was informed that there was an adverse report against her but this had not been brought to her attention and she requested to have it. These reports were not availed.

19. On October 25, 2021 the petitioner was issued with a notice to show cause dated October 8, 2021 in relation to the adverse reports and relating to a matter she had handled and responded and indicated that she had diligently conducted her duties. The allegations made were false and with malice.

On December 14, 2021 the petitioner was issued with notice of referral to the staff disciplinary conflict resolution committee thereby commencing disciplinary proceedings against her and on December 20, 2021 she was invited to the hearing and is apprehensive that if such proceedings are not stopped she will suffer adverse action based on an exercise based on retaliation.



In response, the respondent filed the replying affidavit of Ben Murei and Elly Jo Bundi the deputy director in charge of lower eastern region and an advocate and assistant director in charge of human resources of the respondent respectively.

20. Mr Bundi avers that in December, 2019 the respondent sent out forms to be filled by supervisors indicating employees recommended for promotion and the petitioner was one such officer listed. Mr Ben Murei was the supervisor and he noted that he was not satisfied with the petitioner's performance in certain aspects save he recommended her for promotion. Mr Murei then sent memo dated April 22, 2020 advising the withholding of promotion pending conclusion of an inquiry relating to a series of cases for recovery of land for Machakos Prison.

Mr Bundi also avers that Mr Murei then sent memo dated September 3, 2020 and changed his recommendation for promotion to 'not recommended'. The petitioner was informed of the matter and the reasons why she was not promoted. The petitioner appealed against such decision which she termed to have resulted from alteration of her appraisal form by the supervisor and the CEO constituted an investigations committee to investigate the matter and make recommendation.

- 21 There was a basis for the recommendation given and there was no alternation as alleged. The committee recommended that the petitioner be investigated over matters relating to Machakos prison land and Makueni ELC 39 of 2018 and the petitioner was issued with a notice to show cause and a charge sheet was drawn. The appeal and disciplinary matters are separate and the petitioner's rights have not been violated as alleged.

Mr Murei avers that following a special investigations team on October 8, 2021 the petitioner was issued with a notice to show cause and she responded on October 25, 2021. He analysed the response and prepared a report to human resource on November 3, 2021.

The notice to show cause covered 4 specific areas of;

- i. Mishandling of Machakos prison matters
- ii. Misconduct during handover,
- iii. Misconduct pursuant to a call made to me on 8h July, 2020, and
- iv. Scandalous and defamatory posts in whatsapp forum for 'EACC lawyers'.

22. These matters were already subject of a report to the director; legal services sent in a memo of September 3, 2020 and incorporated a response from the petition dated May 22, 2020 and response of Legal officer Ms Regina Jemutai dated August 20, 2020. These were not new matters to the petitioner as alleged.

Mr Murei also avers that whatever grievances the petitioner has against the special investigations team of the process has no bearing to the notice issued and the intended disciplinary proceedings. In any event, the investigations is not a condition precedent to the commencement of a disciplinary process by an employer.

23. The petitioner has not responded to the substantive issues raised in the notice to show cause and the charge sheet.

At the time the petitioner was issued with notice and charge sheet she had been issued with two amended defences and counterclaims filed in Makueni ELC 39 of 2018. In her response, it occurred that there may have been other amended defences and counterclaims received by the petitioner but not responded to and he directed the legal clerk, Evans Misigo to scrutinise all files and give a report.



24. Mr Misigo reported that he had discovered two more amended defences and counterclaims and which were received by the petitioner on May 6, 2019 and were never responded to.

Mr Murei avers that the petitioner in her response stated that she had delegated the task of drafting responses to the amended defences and counterclaims to Ms Regina Jemutai.

The respondent filed application dated September 2, 2020 seeking to set aside consent recorded on June 17, 2019 in which Mr Murei deponed that the petitioner did not have instructions to record the same.

25. The intended disciplinary proceedings has proper factual foundation and is not funded on malice or retaliation as alleged by the petitioner.

The petitioner's appraisal for the year 2019/2020 was first appraised by Gideon Rukaria and the deponent and he explained the circumstances under which the draft was reviewed and amended with notice to the petitioner. Whatever grievances the petitioner had did not excuse her misconduct addressed in the notice to show cause and the application and petition should be dismissed.

26. The applicant submitted that from the actions of the respondent it is evident that the entire process against her is and will be manifestly unfair, contrary to the rules of justice and is incapable of being remedied. The respondent has already taken a position regarding her complaint, and regarding the purported disciplinary process against her and she has a reasonable apprehension of bias arising from this. She has not been supplied with adverse reports against her and that it is evident that there is a pre-determined outcome, arising from a retaliatory process, in relation to alleged disciplinary complaints vitiated by inordinate delay and lapse of time.

The processes taken by the respondent constitute violations of various provisions of its corporate services policies and procedures manual, the Constitution of Kenya, the *Fair Administrative Action Act* and other acts of parliament. clause 14.3.5 and 14.5.2 of the manual provides that the supervisor will ensure that where an employee's conduct is below par, the same is brought to the employee's attention at the earliest time and where the misconduct is not a gross misconduct the employee shall be verbally warned. The *Fair Administrative Action Act* at section 4 (1) requires administrative action to be expeditious, efficient, lawful, reasonable and procedurally fair. Pursuant to clause 14.3.4 and 14.6.2 of the respondent's manual, a supervisor is responsible for the conduct of staff and in cases of gross misconduct; a notice to show cause is issued by a supervisor to the employee. The petitioner was issued with her notice to show cause by her former supervisor who according to the human resources office did not have the capacity to institute disciplinary proceedings against her as he was no longer her supervisor. the respondent has violated article 25, article 27, article 28, article 29, article 35, article 41, article 47 and article 50 of the constitution.

The applicant urged the court to intervene in the respondent's disciplinary process.

27. In *John Mburu Kamau v Kenya Accreditation Service* [2021] eKLR the court cited the South African case of *Booyesen v The Minister of Safety and Security and OR* (2011) 1 BLLR 83 (LAC) and held that courts will intervene in an administrative disciplinary procedure if it is established that the procedure relied on by the employer offends fairness, or due process by not upholding the rules of natural justice, or if the procedure is in breach of the agreed or legislated or employer's prescribed applicable policy, or standards, or if the disciplinary procedure were to continue, it would result into manifest injustice in view of the circumstances of the case.

In *Geoffrey Mworira V Water Resources Management Authority & 2 Others* [2015] eKLR the court held it will intervene in an administrative disciplinary procedure if it is established that the procedure relied on by the employer offends fairness or due process by not upholding the rules of natural justice,



or if the procedure is in clear breach of the agreed or legislated or employer's prescribed applicable policy or standards, or if the disciplinary procedure were to continue it would result into manifest injustice in view of the circumstances of the case. In the South African case of *Nimrod Llewellyn Mortiment v Municipality of Stellenbosch* the court held that where a person in truly extraordinary circumstances approaches the labour court on the basis that a disciplinary inquiry was about to commence or was conducted in the hands of a biased or unqualified presiding officer, or on another factual basis so serious as to vitiate in law the enquiry, the labour court would in law exercise these powers to stop it.

28. The petitioner also submitted that the intended proceedings are actuated by malice and bias. She was charged over issues that were raised by her former supervisor that occurred two years and one and a half years ago respectively. She was also denied an opportunity to prepare for her defence through denial of particulars of charges and refusal of representation by a person of her choice. She urges that the principles applicable to delays in criminal prosecutions are equally applicable in disciplinary cases. In *Cyrus Shakhbalanga Khwa Jirongo v Soy Developers Ltd & 9 others* [2021] eKLR the Supreme Court cited with approval the case of *Githunguri v Republic* (1986) KLR 1 and *Republic v Attorney General & Another Ex Parte Ng'eny* (2001) KLR612 where the Court stated as follows:

In this instance the delay is said to have been nine years, six years and four years. The court has not been told why these offences have been unearthed after they remained buried for so long. What caused turning up the soil! It is too long, too much of delay. The attorney-general is not bound to tell the court the reason but it would have made us knowledgeable if told....

29. Based on the above, the applicant urges the court to intervene and stop the unfair process from running its course.

The respondent submitted that the petitioner has failed to prove that the disciplinary process is indeed in retaliation to the complaint she had raised on her appraisal and promotion. It had just commenced the disciplinary process when the court issued an interim order stopping the process. Contrary to the averments by the petitioner, the investigation into her complaint, dated August 12, 2021, and the ongoing respondent's internal disciplinary process are two distinct processes. The notice to show cause dated October 8, 2021 and the subsequent charge sheet dated December 14, 2021 she is charged of mishandling of Machakos Prison matters, misconduct during handover, misconduct pursuant to a call the Petitioner made to her supervisor on July 8, 2020 and scandalous and defamatory posts in whatsapp forum for 'EACC lawyers'. The respondent had valid reasons to institute disciplinary action against the applicant who should not be allowed to run away from responding to the valid issues raised against her.

30. Having proved that it had valid grounds to institute the disciplinary process, and that the allegations of retaliation are unfounded the respondent urged the court to decline the applicant's invitation to the court to substitute and usurp the powers of the respondent for subjecting the Petitioner to disciplinary process that is yet to be concluded.

Courts have exercised restraint when called upon to intervene and stop disciplinary processes. In *MTM v KIE Limited and another* (2020)eKLR), the court ruled that courts will interfere with the internal disciplinary action only when the process is flawed and the interference will be to put on truck the disciplinary process but not do away with it altogether. In *Kenya Airline Pilots Association v Kenya Airways PLC* [2021] eKLR the court held that courts cannot intervene in the employer's internal disciplinary proceedings until they have run their course, except in exceptional circumstances where grave injustice might result or where justice might not be by other means attained.

31. The respondent urged the court to take note that the petitioner herein is not seeking orders compelling the respondent to follow the Constitution and the law in undertaking the disciplinary case involving



her. She seeks to take away the power to do so altogether. On the allegation that the disciplinary matter arose in 2019 the reiterates that the acts were concealed by the petitioner and only came to light in 2020. Further that some of the acts against which the petitioner has been charged occurred in August, 2021. The applicant will have an opportunity to challenge the supervisor on the reports during the disciplinary hearing.

The respondent reiterated that it is now trite that the court should sparingly interfere in internal disciplinary process. The same has been cited in numerous decisions, including the *George Wekesa v Multimedia University of Kenya* [2016] eKLR, *Rosemary Waittherero Mburu v Kenya Airways Limited* (2020)eKLR, *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014]eKLR and others. In *George Wekesa*, cited above the court stated that the court must be cautious in exercising jurisdiction so as not to appear to take over and exercise managerial prerogatives at work places.

32. In *Nixon Bugo v The Alliance for a Green Revolution* in Africa the court stated as follows: -

Courts of law should be very slow to interfere in the internal disciplinary process at work place unless it is manifestly clear that the action by the employer derogates materially from the internal disciplinary process and the law

33. On whether the petitioner has met the test for grant of conservatory orders as sought in the application the respondent submits in the negative. The petitioner's failed to establish a prima facie case to the effect that the disciplinary process amounts to retaliation. The application herein is premature as the procedure in the hr manual had not been exhausted at the time of filing of the application. The test for grant of conservatory orders was thus not met. In *Lipisha Consortium Ltd & Ar. v Safaricom Ltd* [2015] eKLR the court must establish whether;

Applicant has demonstrated an arguable prima facie case with likelihood of success and in the absence of the conservatory orders; he is likely to suffer prejudice. The court should also consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory and whether public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.

34. in the instant case, the petitioner has failed to establish a prima facie case and as such the other limbs need no consideration as was stated by the Court of Appeal in *Lucy Wangui Gachara v Minundi Okemba Lore* [2015] eKLR where the court held that if prima facie case is not established then irreparable injury and balance of convenience need no consideration. That nevertheless, the Petitioner has not demonstrated that she will suffer irreparable harm which cannot be compensated by an award of damages if the orders sought are not granted and which damages may be awarded upon determination of the issues, if any, on hearing of the main suit. The respondent on the other hand, will suffer the greatest harm if the orders sought are granted as it will be unable to exercise its statutory mandate to discipline its officers/employees.

The respondent concluded its submissions by urging the court to be guided by the holding in the case of *Amos Omollo vs. County Government of Kisumu and Others* [2018] eKLR where the court stated as follows:

The role of courts in disciplinary cases can now be said to be settled, that courts should not intervene unless there are exceptional circumstances. The court is not expected to enter into boardrooms of the employer to micro manage its affairs. The court would only interfere if there is proof of the violation of the law or the process of the respondent...the applicant has not proved any exceptional circumstances to warrant interference by the court at this



investigative stage of the disciplinary process. The applicant has not demonstrated any violation of his rights. As all that has been done is to ask him to show cause. This being a preserve of the employer, it would be interference by the court in administrative functions of the employer to stop the process and shield the applicant from investigation even before he responds to the notice to show cause.

Determination

35. As correctly submitted by the respondent, the employer has the prerogative to discipline the employee for good cause. The employee has on the other hand a legitimate expectation to have her grievance addressed by the employer on the merits.

Aware that the court should be slow to interfere with the internal disciplinary process at the shop floor, such prerogative can be stopped by the court where it is evident that the process is flawed and in breach of the law and there is need to right the process. The employer must ensure the due process and the court will only intervene where it is clear and apparent that the process applied is marred with irregularities as held in *Anne Wambui Kamuiru v Kenya Airways Limited* [2015] eKLR.

The aim and purpose of the court in interfering with the disciplinary process is not to replace the same with its own decision but to put things right. In *Alfred Nyungu Kimungui v Bomas of Kenya Cause No 620 of 2013* the court held that it is not the role of the Court to take over and exercise managerial prerogatives at the work place.

In the case of Aviation and *Allied Workers Union v Kenya Airways Limited* [2012] eKLR thus;

Thus, similarly this court would be reluctant to involve itself in a disciplinary process commenced by the employer unless in an appropriate case. It is established that disciplinary process has been commenced or is continuing unfairly. The intervention in disciplinary process by employers will be entertained by the court rarely and in clear cases where the process is likely to result into unfair imposition of a punishment against the employee. The court will intervene in an administrative disciplinary procedure if it is established that the procedure relied on by the employer offends fairness or due process by not upholding the rules of natural justice or if the procedure is in clear breach of the agreed or legislated or employer's prescribed applicable policy or standards or if the disciplinary procedure were continue it would result into manifest injustice in view of the circumstances of the case.

36. In *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR that;

However, in cases where an employee facing disciplinary action legitimately feels that the process is marred with irregularities or is stage managed towards their dismissal, the court will intervene not to stop the process altogether but to put things right. ...

37. The respondent has a detailed policy which regulates relations at the shop floor.

The policy has provisions for disciplinary procedures and grievance handling mechanisms. See clause 14 of the Policy.

Part of the respondent's policy is that an employee who is subject to a promotion following an appraisal can be denied the same if she has an on-going disciplinary case.

Following a complaint lodged by the petitioner dated August 12, 2021 being an appeal on her appraisal, on August 23, 2021 the respondent's CEO constituted a special investigation team to undertake investigations. This team was referenced as subject: appointment To Undertake Special Investigation.



on an appeal for promotion. ...

You are hereby appointed and constituted as a team to undertake the investigation. the terms of reference included the following;

1. ascertain if the performance appraisal was undertaken and its outcome
2. verify if there exists any report and its content from the supervisor on the officer's performance and conduct.
3. Ascertain whether the officer was eligible for promotion and whether she met the criteria.
4. Identify if there were any breaches and persons involved.
5. Any other appropriate action that will aid the investigations.
6. Make appropriate findings and recommendations.

The team is required to submit the investigation report to my office on or before September 17, 2021.

38. The outcome thereof would therefore comprise a report on or before September 17, 2021 addressing the questions whether the petitioner was appraised and the outcome, whether there was a report by the supervisor on the petitioner's performance and conduct, whether the petitioner was eligible for promotion and if she met the criteria. The committee was to also establish whether there were any breaches, what action to be taken to aid investigations and finally make findings and recommendations.
39. There is a report dated September 27, 2021 referenced inquiry into allegations of change of appraisal form And Appeal For promotion by Ms. Damaris Ndinda Kinyili Upon deliberations and conduct of investigations, the team made the following recommendations;
 - i. Damaris Ndinda Kinyili be informed that investigations established that her appraisal form for FY 2019/2020 was not altered but reviewed by the second appraiser as mandated and she was aware of the changes made.
 - ii. Further investigations be conducted on handling of the machakos prison file by Damaris Ndinda Kinyili to establish the following among others and to inform further action;
 - iii.
 - a. ... b.
 - iv. The commission to consider amending the corporate service policies and procedures manual, 2020 to provides for;
 - a. Circumstances where the supervisor may not recommend an officer for promotion.
 - b. A process for appeal of promotion.
40. On the terms of reference, the committee well addressed items (1), (5) and (6).

Fundamentally, the issue of whether the petitioner was eligible for promotion and whether she met the criteria and whether there were any breaches involving her were not addressed.

The petitioner's appeal on her promotion was mixed up with other exterior matters. This process was incomplete.



Upon the report to the CEO, there is no action and to response back to the petitioner on her appeal and promotion. This matter is outstanding and without management action following the special investigation.

On the same day, September 27, 2021 the CEO appointed the same team for a special investigation. The only addition was Ms Wairimu Kiigi as member.

The team was appointed to:

... you are hereby appointed to undertake further investigations a recommended on how Damaris Ndinda Kinyili handled the Makueni ELC No.39/2018. specifically, the team should;

1. Ascertain if the officer entered into a consent allowing parties to amend pleadings without consulting the regional manager lower eastern officer – Machakos,
 2. ...
41. Was the respondent aware of such matters before such date? were these matters brought to the attention of the petitioner before her appeal on promotion?

Without going into the merits of the main petition, As noted above, even where the employer has the right to discipline the employee, the subject employee has a

legitimate expectation that her grievance lodged with the employer should be addressed on the merits.

The process of addressing the petitioner’s appeal on her promotion is already in motion and pending. Such shall conclude and the CEO shall address following constitution of the Special Investigations Team on August 23, 2021 and the Team report on September 27, 2021. Whether the emerging issues are intertwined or interlinked with the next Special investigation team formed on September 27, 2021 independent actions addressing the substantive issue at hand in imperative.

Orders sought by the petitioner shall not issue in the nature outlined save;

- a. Pending the hearing and determination of the petition herein, the respondent shall conclude the grievance(s) lodged by the petitioner first and before commencing the disciplinary process initiated through a charge sheet dated December 14, 2021;
- b. For (a) above to conclude, the petitioner’s employment is hereby preserved unless otherwise lawfully terminated;
- c. For the petitioner to enjoy (b) above, she shall submit herself to the lawful directions and instructions of the respondent and avail herself as required;
- d. The court brings to the attention of the respondent the provisions of section 46(h) of the [Employment Act](#), 2007;
- e. Costs shall abide the outcome of the petition.

DELIVERED IN COURT AT NAIROBI THIS 4TH DAY OF APRIL, 2022.

M. MBARÚ JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

