



REPUBLIC OF KENYA



**KENYA LAW**  
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**Dock Workers Union v Kenya Ports Authority (Cause E088 of 2021)  
[2022] KEELRC 12847 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12847 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E088 OF 2021  
AK NZEI, J  
OCTOBER 13, 2022**

**BETWEEN**

**DOCK WORKERS UNION ..... CLAIMANT**

**AND**

**KENYA PORTS AUTHORITY ..... RESPONDENT**

**RULING**

1. Vide a Statement of Claim dated 14<sup>th</sup> September 2021 and filed in this Court on 15<sup>th</sup> September 2021, the Claimant Trade Union sued the Respondent on behalf of twelve of its members (hereinafter referred to as the grievants) who are employees of the Respondent, and pleaded, inter-alia:-
  - a. that upon being charged in Court with offences alleged to have been committed by the grievants in their line of duty between 23<sup>rd</sup> December 2009 and 17<sup>th</sup> July 2019, the grievants were suspended from duty pending the outcome of the Court cases.
  - b. that some of the grievants' cases are at advanced stages before Courts.
  - c. that on 24<sup>th</sup> August 2021, the Respondent commenced inquiries into the grievants conduct, and issued notice to show cause on the grievants without giving copies to the claimant Union.
  - d. that the said show cause letters were issued pursuant to Section K.4(n) of the Respondent's Human Resource Manual 2017, yet most of the offences alleged to have been committed by the grievants were alleged to have been committed between 2009 and 2016 before the said Manual came into force, and yet laws do not operate in retrospect.
  - e. that Section K.7(n) of the Respondent's Human Resource Manual provides that disciplinary cases should be dealt with and finalized within six (6) months, and that where it is found impracticable to do so, the committee shall report individual cases to the appointing authority explaining the reason for the delay. That Section K.7(n) bars the Respondent



from commencing disciplinary proceedings after six months, except as provided under same provision.

- f. that by subjecting the grievants to criminal jurisdiction of the Courts, the Respondent waived its right to institute disciplinary hearings and is estopped from commencing any disciplinary hearings.
  - g. that the Respondent shall be bound by the outcome of the Court cases.
  - h. that the Respondent's practice has been that whenever an employee is charged in a Court of law with a criminal offence, the employee is suspended pending determination of that case and if the employee succeeds in his case, the suspension is lifted.
  - i. that the Respondent's decision to initiate parallel disciplinary procedure against the Claimants is discriminatory.
2. The Claimant sought the following reliefs:-
- a. a declaration that the Respondent is bound by the disciplinary procedure adopted in the Human Resource Manual.
  - b. a declaration that the show cause letters issued long after the period of initiating disciplinary action had lapsed are illegal and unlawful, and amount to procedural unfairness.
  - c. a permanent order of injunction restraining the Respondent, its servants and agents from constituting a hearing panel to hear the grievants on the alleged offences committed.
  - d. costs of the suit.
3. The suit was filed contemporaneously with an urgent Notice of Motion dated 14<sup>th</sup> September 2021, seeking an interlocutory order of injunction restraining the Respondent from commencing disciplinary proceedings against the grievants pending hearing and determination of the suit.
4. On 29<sup>th</sup> September 2021, I issued an interim order restraining the Respondent, its servants and/or agents from commencing disciplinary proceedings against the grievants and from taking any action prejudicial to the subject matter herein pending hearing and determination of the application.
5. The application was opposed by the Respondent vide a Replying Affidavit of one Mary Wangari, sworn on 29<sup>th</sup> October 2021 and filed in Court on even date.
6. I have perused the suspension letters issued to the grievants by the Respondent, copies whereof are annexed to the affidavit sworn in support of the application. The suspension letters contain the following clause:-
- “in view of the seriousness of the offence committed, it has been decided that you be suspended from duty immediately in accordance with Section K.7(f) of the Disciplinary Handbook 2015, pending the matter in Court.”
7. The Court was not told that any of the Court cases against the grievants has been finalized. The Respondent remains bound by the terms of the grievants' letters of suspension from duty, which terms are shown by the Respondent to be anchored on the Respondent's disciplinary rules and procedure (Disciplinary Handbook) as at the time of suspension.



8. The show cause letters issued to the grievants by the Respondent on 24<sup>th</sup> August 2021 state in part:-

“...your action is a gross Misconduct justifying summary dismissal in accordance with Section K.1(1) of the Human Resource Manual 2017 which states...”

9. The grievants cannot be subjected to disciplinary procedure under two separate regimes of the Respondent’s disciplinary rules and procedures which have been in force at different times during the currency of the grievants’ suspension. By dint of the suspension letters, the grievants’ suspension shall remain in force pending the outcome of the Court cases against each one of them. Anything short of this will be prejudicial, and will amount to injustice on the part of the grievants. I am satisfied that the Claimant/Applicant has established a prima facie case with a probability of success as stated in the celebrated case of *Giella -vs- Casman Brown Ltd* [1973] EA 358.

10. The Notice of Motion dated 14<sup>th</sup> September 2021 succeeds in terms that the Respondent, its servants and/or agents are hereby restrained from commencing disciplinary proceedings against the grievants herein, or taking any action which is prejudicial to the subject matter in the suit herein, pending hearing and determination of the suit.

11. Costs of the application will be the main cause.

12. The suit will be fast tracked and fixed for pre-trial directions within sixty days of this Ruling.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 13<sup>TH</sup> DAY OF OCTOBER 2022**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

N/A for Claimant/Applicant

Mr. Njuguna for Respondent

