



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAKURU

PETITION NO. E 3 OF 2020

IN THE MATTER OF CONTRAVENTION OF ARTICLES 10, 19 (2), 20 (2), 21 (1), 22, 23, 27, 41, 47, 50 (1), 159, 162 AND 258 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 41 & 47 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

PROF. THOMAS EKAMAIS AKUJA.....PETITIONER

VERSUS

TURKANA UNIVERSITY COLLEGE COUNCIL.....RESPONDENT

RULING

BACKGROUND:

1. The application before this court is Notice of Motion application dated 2nd day of November 2020 and filed pursuant to Article 22, 23, 41 and 159 of the Constitution of Kenya, 2010, section 49 (3), (4) and Section 12 (3) of the Employment Act, 2007, Section 1A, 1B and 3A of the Civil Procedure Act, Order 51 Rule 4 of the Civil Procedure Rules and other enabling provisions of the law. The applicant seeks the following orders from the Court:

- a. THAT the Application be certified urgent and heard ex-parte.*
- b. THAT The Honourable Court be pleased to grant leave to the Petitioner to serve the Petition together with the Notice of Motion and/or the orders herein upon the Respondents through substituted service in a daily newspaper of wide circulation.*
- c. THAT pending the inter parties hearing of this Application, a conservatory order be and is hereby issued staying the entire disciplinary process communicated by the Respondent vide the letters dated 16th September 2020 and 26th October 2020.*
- d. THAT pending interparties hearing of the Application, the Respondent be and is hereby ordered to reinstate the Petitioner back to work and vacate the letter dated 29th January, 2020 sending the Petitioner on an indefinite compulsory leave*
- e. THAT pending the hearing and determination of the Petition, the Respondent be and is hereby directed to unconditionally lift the indefinite compulsory leave against the Petitioner and reinstate the Petitioner to work without loss of status, benefit or rank*
- f. THAT the cost of this Application to abide the outcome of the Petition.*

2. The Application is based on the following grounds:

- a. The Petitioner was appointed by the Cabinet Secretary of Education Amb. Dr. Amina Mohamed as the Principal of Turkana University College vide a letter of Appointment dated 27th June 2018 for a period of 5 years.
- b. The Petitioner executed his role, responsibilities and duties diligently and faithfully in accordance with the contract of employment, the University Statute, Human Resources Manual and the University Act No. 42 of 2012

c. Unfortunately, on the 29th of January 2020, the Respondent met and in its special full Council meeting, passed a resolution in the absence of the Petitioner who seats as the Secretary to the Respondent, to unilaterally illegally put the Petitioner on an indefinite compulsory leave effective immediately

d. The Petitioner has since been on the indefinite compulsory leave since January 2020 to date against section D of the Turkana University College Human Resources Manual and section 63 of the University Act No. 42 of 2012

e. The Human Resource Manual of the Turkana University College under section D 5.2.2 (c) dictates that any such process ought to be concluded within six months in the absence of which, the affected member of staff has a right to be reinstated unconditionally

f. The University Act No. 42 of 2012 under section 63 enjoins the Respondent to provide procedural and substantial fairness to employees when conducting any disciplinary action and ensure the process is completed in 6 months.

g. The Respondent sent a Notice to Show Cause dated 16th September 2020 to the Petitioner which was well out of the provisions of the Human Resources Manual of Turkana University College

h. The Petitioner responded vide his letter dated 25th of September 2020 and categorically sought clarification from the Respondent and further respondent to the allegations raised in the Show Cause

i. In contravention of the Section D of the Human Resource Manual, Articles 41 and 47 of the Constitution of Kenya, 2010 and Section 63 of the Universities Act, 2012, the Respondent proceeded to invite the Petitioner for a disciplinary hearing on the 22nd of October 2020.

j. On the 22nd of October 2020 the Petitioner obliged and appeared before the Respondent's disciplinary Committee. The Respondent's Committee deliberately declined to furnish the Petitioner with necessary documentation for his defence hence the hearing was called off

k. In totality the decision to place the Petitioner on an indefinite compulsory leave since January 2020, and the purported planed decision to conduct a disciplinary hearing outside the ambit of the provision of the law is unlawful and violates the Petitioner's rights to fair labour practices.

l. The indefinite compulsory leave is not a fair disciplinary process contemplated by section 43 and 45 of the Employment Act, Section D of the Turkana University College Human Resources Manual, Section 63 of the University Act, 2012 and that the action by the Respondents was therefore unprocedural, unfair, unjust, unlawful, null and void ab initio contravening the Petitioner's right to fair labour practices contrary to Articles 41 (1) & (2) (a) and 47 (1) and (2) of the Constitution of Kenya.

m. There is a real and imminent danger that unless this Honourable Court immediately intervenes, issues an order directing the Respondent to reinstate the Petitioner back to work and declares the intended disciplinary illegal, the Petitioner will suffer prejudice

n. The decision of the Respondent was substantively unfair and a breach of the Petitioner's right to fair administrative action under Article 47 of the Constitution of Kenya, 2010.

o. The Court has supervisory jurisdiction over the actions of the Respondent and to grant the prayers sought in order to safeguard proper exercise of statutory power within the parameters of the law to prevent abuse of power.

p. The Honourable Court ought to intervene as a matter of urgency in order to avoid the law of the jungle from taking precedent at Turkana University College.

3. The Application is supported by the Affidavit of Prof. Thomas Ekamais Akuja, the Petitioner herein sworn on the 2nd of November 2020. He swore that he was appointed the Principal of Turkana University College by Amb. Dr. Amina Mohamed, the then Cabinet Secretary of Education, vide a letter dated 28th of June 2018 annexed to his bundle marked PTA appearing at page 1 and 2. The Respondents met on the 29th of January 2020, in its Special Full Council Meeting where they passed a resolution to send him on an indefinite compulsory Leave. The letter is exhibited in his bundle at page 3 to 5. The letter to Show Cause is exhibited in his bundle at pages 6 to 10. His response letter dated 26th of February 2020 to the Notice to Show Cause letter is exhibited in his bundle at pages 11 and 12. The Notice to Show Cause dated 17th of September 2020 is exhibited in his bundle at pages 13 to 17.

4. He further exhibited at page 30 and 31 of his bundle, the letter dated 12th of October that invited him to attend a hearing scheduled for the 22nd of October 2020. On 15th October 2020 he wrote back to the disciplinary committee of the Respondent. The letter is exhibited at page 32 to 36 of his bundle. He swore that the Chairperson undertook to provide him with documentation in her letter dated 16th October 2020 exhibited at page 37 and 38 of his bundle. In his letter dated 19th of October 2020 exhibited at page 39 to 41, he wrote to the chairperson and elaborated on the issues of recusal of a member of the committee. He exhibited letters in his bundle at pages 42 to 53 sowing various correspondences.

5. On the 3rd of November 2020, the Honourable lady Justice H. Wasilwa ordered as follows:

a. THAT Application be certified urgent and heard ex-parte.

b. THAT The Honourable Court is pleased to grant leave to the Petitioner to serve the Petition together with the Notice of Motion and/or the orders herein upon the Respondents through substituted service in a daily newspaper of wide circulation.

c. THAT pending the inter parties hearing of this Application, a conservatory order is hereby issued staying the entire disciplinary process communicated by the Respondent vide the letters dated 16th September 2020 and 26th October 2020.

d. THAT the Application should be served upon the Respondents and be heard *interpartes* on the 16th of November 2020

6. The Respondent's through their Replying Affidavit sworn on the 13th of November 2020 by Dr. Solomon J. Munyua, the Chairperson of the Council of the Respondent, stated that the Petitioner's Motion is not fit for grant of Conservatory orders linked to such private-party issues as there were no prospects of irreparable harm occurring during the pendency of a case or high probability of success in the Applicant's case for orders of stay. They list the reasons for which the conservatory orders should not be granted as follows:

a. The Petitioner is a staff member of the 1st Respondent as per section 16 (1) of the Turkana University College Order, 2017 therefor subject to the general authority of its Council.

b. The Council of the 1st Respondent placed the Petitioner of compulsory leave pursuant to Section 16 (8) (a) of the Turkana University College Order, 2017. This is annexed and marked A

c. The Petitioner's response to the Respondent's was received on the 10th of March 2020 which he forwarded to the Chairperson on the said date via email at 2:15:20pm EAT. This is annexed and marked as a B.

d. The Respondent's Council Disciplinary Committee members composition had come to an end including the Chairperson and they have exhibited the Kenya Gazzette notice constituting the inaugural Council and marked it C

e. They further state that the University Act, 2012 should be read holistically and the six months cannot run when there is no duly constituted Council of a university as the case was. The full Council was constituted on 19th May 2020 by the Cabinet Secretary pursuant to Kenya Gazette Notice No. 3646 of 2020. The same is exhibited as D and E.

f. They swore that with the Petition's going to Court on the 4th February 2020 vide Eldoret ELRC Cause no. 10 of 020 in Prof. Thomas Ekamias Akuja v Turkana University College, Chairman and Turkana Univerisity College Council exhibited and marked F. the Court order in place the Respondent could not proceed with disciplinary proceedings. The Respondents managed to get clearance from the Court on 26th June 2020 when the interlocutory motion was dismissed by Hon. Justice Abuodha annexed and marked H.

g. The Respondent was again hampered by COVID -19. When the pandemic restrictions and measures were slightly de-escalated in the month of September 2020 the Respondent undertook to expeditious dispose the disciplinary process and served the Petitioner with a notice to Show Cause dated 16th September 2020. The Respondent realized that there were other matters the Petitioner ought to have responded to. The Petitioner responded on the 25th of September 2020 and an acknowledgement on the 28th of September 2020.

h. The Petitioner was invited to appear before the Disciplinary Committee of the Council by the letter dated 12th October 2020, on 22nd October 2020 in Lodwar. The Petitioner took issue with the Disciplinary process on the 15th of October 2020 which they addressed. The Committee heard the objection to be devoid of merit. The Respondents swore that they could not reinstate the Petitioner who was in the process of undergoing a disciplinary process in the employment framework. A letter to this effect is annexed marked M.

i. They further stated that it was not the first time the Petitioner was demanding resume duty. As he had written to the Ministry of Education vide a letter dated 27th of April 2020 he was informed he ought to wait for a report from the Directorate of Criminal Investigations annexed and marked N and O respectively.

j. They further stated that they continued to pay the Petitioner as an employee despite being on compulsory leave. This is evidenced by their annexure marked P.

7. The Respondent swore that the Petitioner's case in Eldoret, in ELRC No. 10 of 2020, denied him conservatory orders as it was not in public interest to grant such reliefs. They further state that the motion is predicated on a petition that is incompetent and the Court lacks jurisdiction to entertain it and the alleged violations have not been established. They give the following reasons:

a. The matters raised over section 63 of the University Act ought to be taken by the Petitioner in Eldoret ELRC No. 10 of 2020. The Respondent states that the Learned Judge in arriving at his decision concluded that it had not been established that the Respondent was in violation of the rules of natural justice and ad acted illegally in dealing with the Petitioner.

b. They further state that the Petitioner moved to Court with a Statement of Claim instead of a Constitutional Petition.

c. They state that the Petitioner having sought to enforce Article 47 of the Constitution of Kenya, 2010 was duty bound to demonstrate that he had exhausted the internal judicial review mechanisms of appeal and review. They further state that the Court is barred by section 9 (2) of the Fair Administration Action Act, 2015.

d. The Petitioner has not satisfied the Court that it ought to interfere with the managerial prerogative vested in the employer.

e. The Respondent states that it cannot be faulted when it followed its own procedures. They base this on section 4 (6) of the Fair Administrative Action Act.

8. On the 16th of November 2020, the Honorable Judge, ordered that the parties file submissions.

9. The Petitioner filed a supplementary affidavit sworn on the 19th of November 2020. Therein he reiterated what he had sworn in the supporting affidavit sworn on the 2nd of November 2020 save for the following:

a. He was to serve on a contract period of five years. As it stands now three years is expended.

b. The Respondent is contradicting itself. They have misapprehended the Petition and Motion so as to create its own set of events and facts and obtain a material advantage.

Parties' Submissions

Petitioners

10. The Petitioner in their submissions dated 19th of November 2020 stated as follows:

a. the issues for determination are as follows:

i. Whether the disciplinary process was initiated and being conducted by the Respondent violates/ is in breach of the law, HR Manual and the Petitioner's contract of Employment.

ii. Whether the prayers sought should be granted.

11. The Petitioners make reference to Section 63 of the Universities Act and place emphasis on subsection 3. They state that the he expected and was guaranteed under the Universities Act, 2012 that his disciplinary process would be concluded in 6 months. The Respondent cannot seek refuge under the flimsy excuse that its predecessor's terms expired hence time stopped running.

12. He also draws Court's attention to the case of **Rebecca Ann Maina, Monica Nyambura Wainaina & Joshua Patrick Macharia v Jomo Kenyatta University of Agriculture and Technology [2015] eKLR**. Where the court held as follows; *"The gist of the case was that disciplinary proceedings hanging over the head of an employee amounts to unfair labour practice within the meaning of Article 41 (1) of the Constitution. The result is that the Respondent's right to discipline the Claimant on account of the charges forming the subject matter of the aforesaid proceedings is conclusively extinguished"*.

They conclude that the time set by statute cannot be extended by implication or any other reason as genuine or otherwise.

13. On the Conduct of the disciplinary process/investigations;- They quote section D 5.3 on conduct of investigations. They state that from the time of the first Show Cause on the 26th of February 2020 no investigations were ever carried out as provided under the section quoted and no Investigation Report provide per the HR manual. They admit the right of the employer to discipline his/her employees. They further admit that the Court rarely interferes with disciplinary process. They refer to **Rebecca Ann Maina & 2 others V JKUAT (Supra)**. They also refer to the decision by Ndolo J. in **Aviation & Allied Workers Union v Kenya Airways Limited**. They state that the Court may intervene and ensure the disciplinary process is adhered to. They make reference to the case of Anne **Wambui Kamuiru v Kenya Airways [2016] eKLR** where the court found that;- *"the Courts on their part will not interfere with proper internal disciplinary processes unless the Court is satisfied that the process is marred with irregularities or it is stage managed towards dismissal"*. They invite Court to intervene and declare the process null and void.

Indefinite compulsory leave

14. The Petitioner was served with a 5 year contract. He only served one and a half years of his contract. The effect of this indefinite leave is that it prejudices his career advancement. They state that the Respondent did not conduct the investigations and invite Court to declare that the indefinite compulsory leave was unlawful and a violation of the Petitioner's right to fair labour practice. They refer Court to the case of **Timon Otieno Mboga v Kenya Forest Service [2015] eKLR**. Where the court found that;- *"indefinite suspension was unlawful for failure to conform to the timelines provided under the HR Manual and/ or policy"*. They also make reference to the case of **Elias Omolo Oyoo vs Mumias Sugar Co LTD [2016] eKLR** the gist of the case being that *"suspension was unlawful because it did not comply with the HR manual"*.

Violation of the Constitution

15. They rely on Nairobi **ELRC Cause no 1789 of 2013** where the Court addressed Article 47 of the Constitution and found that *"disciplinary action against an employee is not an administrative action as defined under Article 47. Article 41 and the applicable labour laws provide adequate safeguards to an employee facing disciplinary action"*.

16. They conclude that the Court has supervisory powers and can therefore grant the prayer sought.

Respondents Submissions

17. The Respondents filed their submissions dated 27th of November 2020. Therein they state as follows:

Jurisdiction

18. They argue that the Court lacks jurisdiction and make reference to the case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd (1989) KLR 1**

19. They further state that the matters raised over section 63 of the Universities Act, 2012 involving compulsory leave and the disciplinary process were taken up by the Petitioner or ought to have been so taken in Eldoret ELRC No. 10 of 2020-**Prof. Thomas Ekamais Akuja v Turkana University College & another** which rendered its ruling on the 26th of June 2020 dismissed the same with costs to the Respondent. They further state that filing a constitutional petition cannot act as an avenue to reinvent the wheel over a matter that has been the subject of litigation or ought to have been. They refer the Court to the following cases:

a. **Kamunye & others V the Pioneer General Assurance Society LTD (1971) EA 263 at 265**. The gist of the case being that the *test of Res Judicata is the Plaintiff in the second suit trying to bring before the Court, in another way and in the form of a new cause of action, a transaction which he already put before Court.*

b. **Independent Electoral & boundaries Commission V Maina Kiai & 5 others [2017] eKLR** the gist of the case being that *the doctrine of red judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court.*

Failure to file a statement of claim.

20. The Petitioner ought to have moved to Court through the fiat of a statement of claim as provided in the Employment and Labour Relations Court Act CAP 234 B and the Employment and Labour Relations Court (Procedure) Rules as opposed to a Petition. They rely on **Republic v Kerio Valley Development Authority Exparte David Kimosop [2019] eKLR**. The gist of the case being that *it is not disputed that employment and labour rights have been given constitutional underpinning... the manner of approaching the Court is through a statement of Claim or memorandum of claim. The Court may be moved through a petition if the threshold is met.*

Exhaustion of internal Mechanisms of appeal and review

21. The Petitioner is duty bound to demonstrate that he had exhausted the internal mechanisms of appeal and review before resorting to judicial review. He makes reference to Sections D 5.7 (b), D 5.7.1, D 5.8 and D 5.9 of the Turkana University College Human Resources Manual. They further state that the jurisdiction section 9 (2) and (3) of the Fair Administrative Action Act, 2015.

22. They refer to

a. **Speaker of the National Assembly v James Njenga Karume [1992] eKLR** the gist of the case being that *where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.*

b. **Secretary, County Public Service Board & another v Hulbhai Gedi Abdille [2017] eKLR** the gist of the case being that *where there exists other sufficient and adequate avenue or forum... such party ought to seek redress under the other regime*

The application of the law

23. The Petitioner has instituted an interlocutory motion for conservatory orders and based on the law the same bear a more decided public law connotation for they are orders to facilitate ordered functioning within public agencies. The Respondent further states that being conscious of its legal duty as an employer at common law that whereas no obligation to provide work exists but duty to pay the agreed remuneration to the employee as and when it falls due subsists, has continued to pay the Petitioner his due remuneration despite being kept away on compulsory leave thus he has no basis to complain or insist that the employer must keep him at work place. They refer to the case of **Thomson Kerongo and 2 others v James Omariba Nyaoga and 3 others [2017] eKLR** the gist of this case being that *there is no law prohibiting an employer from sending an employee on compulsory leave where the circumstances warrant it and provide it as an interim measure*

24. They further submit that the Petitioner's claim is without merit. They state that the Respondent's council was not fully constituted until 19th of March 2017 vide a gazette notice number 2353 of 2017. They make reference to the case of **The Engineer Board of Kenya v Jesse Waweru Wahome & others Court of Appeal Civil Appeal No. 240 of 2013**. The gist of the case being that *an act of parliament should be read as a whole, the essence being that a proposition in one part of the Act is by implication modified by another proposition elsewhere in the Act.*

25. They state that the Petitioner rendered the application of the statutory timeline under Section 63 of the University Act, 2012 to be in operational by moving the Employment and Labour Relations Court on the 4th February 2020 vide Eldoret ELRC Cause No 10 of 2020 Prof. Thomas Ekamias AKuja v Turkana University College Chairman and Turkana University College they sought nine prayers. The Respondent could not proceed with any disciplinary action against the Petitioner as it had first to undertake its defence in Court which related to the same matter raised in this Petition, and were to be subject of the intended disciplinary hearing for removal of the Petitioner from office. The

Respondent only managed to obtain clearance from the Court on the 26th of June 2020 when the interlocutory motion was dismissed with Costs.

26. They further added there were allegations that the Petitioner had not responded to. The Council of the Respondent evaluated the response of the Petitioner and accorded a hearing on the matter of misconduct raised against him. The Disciplinary Committee heard the objection and found the same to be devoid of merit. The Respondent Council could not reinstate the Petitioner who was in the process of undergoing a disciplinary process.

27. They make reference to the case of;

a. **Geoffrey Mworira v Water Resources Management Authority and 2 others [2015] eKLR**, where the court found that *Courts will very sparingly interfere in the employer's entitlement to perform any of the human resources functions, 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.*

b. **James Omariba Nyaoga & another v Speaker of the County Assembly Kisii & 2 others [2016] eKLR** where it was held that *conservatory orders should be granted on the inherent merit of the case, bearing in mind, public interest, the constitutional values and proportionate magnitudes and priority levels attributable to the relevant causes.*

They state that the Respondent having in place its staff disciplinary procedure as provided for in the Turkana University College Statute, 2019 and the Turkana University Human Resources Manual has its own procedures which it has duly followed and it cannot be faulted based on Section 4 (6) of the Fair Administrative Action Act, 2015

28. They conclude that the Petitioner's case was concluded in Eldoret while denying him conservatory orders as it is not in public interest to grant relief that shield an employee of a public institution like the Petitioner protection from scrutiny that seeks to uphold the national values and principles of governance, integrity, transparency and accountability bearing in mind the public interest in the said Constitutional values.

29. I have examined all the averments of the parties and the submissions filed herein. The issues for this court's determination are as follows:-

- a. Whether this court has jurisdiction to handle this petition
- b. Whether the disciplinary process instituted against the applicant was flawed
- c. Whether the remedies sought by the applicant can be granted by this court.

Issue no 1

30. The respondents have submitted that this court lacks jurisdiction to handle this matter because the issues sought to be prosecuted by the applicant were also the subject of **Eldoret ELRC No. 10 of 2020-Prof. Thomas Ekamais Akuja v Turkana University College & another** in which the court rendered its ruling on the 26th of June 2020 and dismissed the same with costs to the Respondent. I have considered the pleadings in Eldoret ELRC 10 OF 2020 where indeed the applicant herein sought various orders amongst them orders quashing the letter sending the applicant on compulsory leave issued against him dated 29th January 2020.

31. In the current application the applicant seeks a similar order amongst others. The respondents have submitted that the Eldoret ELRC considered this application and dismissed it. The ruling of the ELRC in Eldoret was placed before this court and I noticed that my brother Hon. J Abuodha considered whether or not to grant orders quashing the letter of suspension issued to the applicant. He found no merit in the prayer and dismissed the application accordingly.

32. To that extent a court of concurrent jurisdiction has considered the issues raised in this application and found no merit in allowing interim reliefs. That being the position, it is true as submitted by the Respondents that the application is already *res Judicata* and therefore this court cannot revisit the same.

33. In the case of **Kamunye and others V The Pioneer General Assuane Society Ltd (19710 E. A 263 at page 265** the court held as follows:-

“The test whether or not a suit is barred by res judicata seems to me to be – is the Plaintiff in the second suit trying to bring before the court, in another way and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res judicata applies not only to points upon which the court was actually required to adjudicate but to every point which properly belonged to the subject of and which parties, exercising due diligence, might have brought forward at the time. Green-halgh Vs Mallard, (1947) 2 All E.R 255. The subject matter in the subsequent suit must be covered by the previous suit, for res judicata to apply Jadua Karsan Vs Harnam Singh Bhogal (1953), 20 E.A.C.A 74.”

34. Also in the case of Independent Electoral and Boundaries Commission v Maina Kiai and 5 others (2017) Eklr JJA Makhandia Ouko and Kiage held as follows:-

“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and

respite from the specter of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and for a, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice. There is no dearth of learning or authority surrounding this issue, and this court has expressed itself on it endless times.”

35. Indeed that is the correct position of the law and in the case of this application, a court of concurrent jurisdiction having rendered itself on the issue of the applicant’s compulsory leave and disciplinary process, this court cannot revisit the same at this point. This court therefore lacks jurisdiction to handle the application and I will therefore I will rest this application at this point.

36. In view of the fact that I have no jurisdiction to handle this application, I will not go any further and consider the other issues raised in this application. I therefore find this application without merit and I dismiss it accordingly. Costs in the Petition.

DATED and DELIVERED in open court this 10th day of December, 2020.

Hon Lady Justice Hellen Wasilwa

Judge

In the presence of:-

Wambua Kigamwa for respondent present

Matunda for claimant present