



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT KISUMU**  
**CAUSE NO. 313 OF 2016**

*(Before Hon. Lady Justice Maureen Onyango)*

**JUDITH MBAYAH TSISIGA.....CLAIMANT**

**- Versus -**

**TEACHERS SERVICE COMMISSION.....RESPONDENT**

**J U D G M E N T**

The Claimant is a teacher by profession and an employee of the Respondent Teachers Service Commission. The Commission is established under the Constitution with the mandate of registration of trained teachers, recruitment, deployment of teachers to public institutions of learning and exercising disciplinary control over teachers.

The Claimant states that she was employed on 24th June, 1994 and her station at the time of filing suit was Friends School Kaveye Girls (the school).

The Claimant states that during her employment with the Respondent she has maintained a clear disciplinary record and exemplary performance which earned her various promotions. At the time of filing suit she was principal of the school.

The Claimant states that some time in early 2016 she learnt of a video clip circulating on social and electronic media depicting corporal punishment being administered to students in the school by some teachers. She was surprised by the clip as she had warned the teaching staff against administering corporal punishment as it had been outlawed.

The clip raised public outrage and condemnation. On 25th February 2016 the Cabinet Secretary Hon. Matiangi visited the school on a fact finding mission and interviewed some students and teaching staff. The School Board also carried out investigations on the allegations of corporal punishment at the school. The investigations by the Board was undertaken with involvement and participation of Ministry of Education and representatives of the Respondent, the Commission. An assessment was further carried out by the Directorate of Quality Assurance and Standards who submitted a report to the Board 8th April, 2016. The Board's report was submitted to the Principal Secretary, Ministry of Education on 15th April, 2016.

It is the Claimant's averment that the recommendations of the Directorate of Quality Assurance and Standards were not shared with her on grounds that they were confidential. The Claimant states that she was tasked to communicate the Board's resolutions to teachers mentioned in the report but was not

required to take any other action.

The Claimant states that on 11th June, 2016 the school held its Annual General Meeting. At around 7.00 pm the parents of one form 3 student (name withheld to protect her identity) reported that the girl had been sexually molested by a male teacher, one Eric Toleni on 13th May 2016. The Claimant states that due to the seriousness of the allegation she advised the parents to take the student for medical examination in order to preserve evidence if any, and on 12th June 2016 she accompanied the girl and her parents to Mbale Referral Hospital where a medical examination was conducted on her. The Claimant, the parents and the girl thereafter proceeded to Kilingili Police Station to report the alleged sexual assault. The Claimant states she recorded her statement and left the matter in the hands of the police as the investigating authority.

The Claimant states that on 13th June 2016 she served Mr. Toleni with a show cause letter to respond to the allegations of sexual harassment and immediately informed the chairman of the school's Ethics, Discipline and Integrity Committee of the Board who convened a meeting to deliberate on the issue. The Claimant states that during the investigations she fully co-operated with the police by providing required information and access to the people the police wanted to interrogate.

The Claimant states that the committee of the Board interviewed different people including students independently and made its recommendations to the School Board in a meeting held on 30th June, 2016. The Board unanimously decided that it had not found any evidence incriminating the teacher and recommended that the teacher be issued with a warning as part of the administrative action besides any outcome of the police investigations. She states that as at the time of filing suit the matter was still pending with the police.

The Claimant states that on 7th September, 2016 she was surprised to receive a show cause letter from the Respondent accusing her of negligence of duty/cover up. The letter required her to respond to the following:-

- (i) Abetting administration of corporal punishment in your school contrary to the Basic Education Act 2013 Section 36(1).*
- (ii) Failing to offer technical advice to the BOM concerning discipline investigations procedure and action against the teachers involved in corporal punishment and immoral behaviour.*
- (iii) Failing to cooperate with the TSC County Director - Vihiga's Office during preliminary investigations.*
- (iv) Covering up administration of both corporal punishment in your institution and immoral behaviour by Eric Toleni - TSC/655471*

The Claimant submitted her response to the Respondent's letter on 9th September, 2016. On 14th October, 2016 the claimant states that she was again surprised to receive a letter of interdiction from the Respondent on grounds of insubordination and negligence of duty. The Claimant states that at no time had she been required to respond to the allegation of insubordination and that the letter of interdiction did not make any reference to the show cause letter or her response thereto.

The Claimant avers that by withholding vital information from her, the Respondent has prejudiced her defence and subjected her to an unfair administrative action in contravention of her rights under Article 35 and 47 of the Constitution. She states that she was required to respond to the letter of interdiction within 21 days yet she received it on 14th October, 2016 thus prejudicing the preparation of her defence.

The Claimant further avers that in total disregard to her innocence the Respondent demanded that she hands over the instruments of leadership to her deputy before she was heard on the allegations levelled against her. She further avers that the Ministry of Education has moved to dissolve the School's Board of Management, an action she alleges is an indication that the Respondent has determined her case further

prejudicing her right to fair hearing.

The Claimant contends that her interdiction is unfair, against the rules of natural justice and that the interdiction is damaging to her position and career.

The Claimant prays for the following remedies -

- (a) An order of injunction restraining the Respondent from acting on the contents of the letter of interdiction dated 6th October, 2016.
- (b) A declaration that the Respondent's decision to interdict the Claimant before being given a full hearing runs contra to the rules of natural justice and the Claimant's constitutional rights.
- (c) An order immediately reinstating the Claimant to her position as the Principal of Friends School Keveye Girls.
- (d) Costs of the claim.
- (e) Any other or further order that this Honourable Court may deem fit to grant.

The Claim was filed together with an application under certificate of urgency seeking the following orders -

1. **THAT** this application be certified as urgent and service be dispensed with in the first instance.
2. **THAT** a temporary order of injunction be and is hereby issued against the Respondent restraining the interdiction of the Applicant pending the hearing and determination of this application.
3. **THAT** a temporary order of injunction be and is hereby issued against the respondent restraining the Respondent from conducting a handing over/taking over of the instruments of leadership of Friends School Keveye Girls pending the hearing and determination of this application.
4. **THAT** this court be pleased to grant temporary conservatory orders reinstating the Applicant in her position as the Principal of Friend School Keveye Girls pending the hearing and determination of the main claim
5. **THAT** the costs of this application be provided for.

In the grounds and supporting affidavit, the Claimant reiterates the averments in the statement of claim .

When the application came up for interpartes hearing on 8th December 2016, the court consolidated it with the claim in view of the fact that the prayers in the claim and the application are similar.

The Respondent filed a replying affidavit sworn by MARY ROTICH, the Respondent's Acting Director in charge of Teacher Management, in response to both the claim and the application by the Claimant.

In the Replying affidavit Ms. MARY ROTICH states that this dispute emanates from information received by the Respondent at various times, that the Claimant breached the Basic Education Act and the Code of Regulations for Teachers in that as head educator or administrator at Friends School, Keveye Girls having been appointed by the Respondent to be responsible for implementation of education policy and professional practices, she abeted, failed, neglected and/or refused to deal with the rampant cases of corporal punishment in her school, contrary to section 36(1) of the Basic Education Act, 2013. It is further the Respondent's averment that the claimant failed, neglected and/or refused to render technical advice to the Board of Management of the School concerning the appropriate administrative action to be taken against teachers who were arbitrarily subjecting students at the school to corporal punishment and immoral behaviour. The Respondent further avers that the Claimant failed, neglected and/or refused to

co-operate and support investigations undertaken by the employer with regard to the corporal punishment and immoral behaviour.

Ms. Rotich states that the Respondent received similar complaints from other bodies being the Commission on Administrative Justice whose complaint letter dated 22nd June 2016 was received through the Principal Secretary, Ministry of Education, Science and Technology, and the Federation of Women Lawyers - Kenya.

Ms. Rotich states that consequent upon the reports the Respondent notified the Claimant of the allegations against her and accorded her an opportunity to respond, that she replied denying the allegations, that the Respondent thereafter conducted an inquiry, the report of which recommended disciplinary action against the Claimant for failing to carry out her administrative duties effectively or at all.

Ms. Rotich depones that the Respondent evaluated the circumstances of the case and reached a decision to interdict the Claimant for breach of the Basic Education Act and the Code of Regulations for Teachers. She depones that the Respondent's decision ought to be weighed against its obligation to promote, protect and safeguard both public interest and the rights of the child to access education, that the action taken against the claimant was justified, merited and lawful. She depones that the process leading to the interdiction was procedural and conformed to the tenets of natural Justice. She depones that should the prayers sought be granted at this preliminary stage of the disciplinary/administrative process, it will offend public policy and interest and encroach, diminish and usurp the constitutional, statutory and administrative mandate of the Respondent, perpetuate the narrow interests of the claimant, disrupt operations at the school and create a bad precedent. It is further the Respondent's position that such orders will promote impugny and provoke a trend where teachers deployed to public schools neglect their duties with impugny.

Ms. Rotich depones that the reliefs sought are premature as the Respondent's Disciplinary Committee is yet to convene to hear her case. She prays that the application and suit be dismissed with costs.

### **Claimant's Submissions**

In the submissions filed on behalf of the Claimant, it is submitted that the Claimant was interdicted without a hearing. It is submitted that it is through the papers filed in court by the Respondent that the Claimant learned the investigations undertaken on 2nd and 3rd August 2016, that she was never involved in the investigation and no one approached her to get her side of the story, thus she was condemned unheard. It is submitted that asking her to hand over and vacate her office immediately suggests that her fate has been decided with finality. It is submitted that the interdiction is unlawful and the court should intervene to avert great injustice that the claimant is likely to suffer.

The Claimant relied on the decision of this court by Mbaru J in FREDERICK SAUNDU v PRINCIPAL NAMANGA MIXED SECONDARY SCHOOL & 2 OTHERS eKLR wherein the court stated as follows

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*"Suspensions and interdictions are not administrative acts as the detrimental effect of it impacts on the employee's reputation, advancement, job security and fulfilment ....*

*Therefore before an interdiction can be found to be valid, the same must be based on fair reasons and must be implemented pursuant to fair procedure. This is what can be cited as the 3 dimension criteria;*

*First, the employer must have a justifiable reason to believe the employee has engaged in serious misconduct to form what is commonly called a prima facie case;*

*Secondly, there is some objectively justifiable reason to deny the employee access to the workplace based on the integrity of any pending investigation into the alleged misconduct, or some relevant factor that would place the investigation or the interest of the affected parties in jeopardy; and*

*Thirdly, the employee is given the opportunity to state his case of be heard before any final decision to interdict is made."*

It is submitted that the Claimant failed to consider the 3 dimensions as set out in the case.

It is further submitted for the Claimant that there was no prima facie case to warrant the interdiction of the Claimant. The claimant relied on the case of MRAO LTD v FIRST AMERICAN BANK OF KENYA LTD & 2 OTHERS [2003]eKLR whose reasoning was quoted in the case of GLADYS BOSS SHOLLEI v JUDICIAL SERVICE COMMISSION [2013]eKLR as follows -

*" It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter."*

It was submitted that the action of the Respondent of interdicting the Claimant while investigations are ongoing negates the principles of procedural fairness and amounts to unfair labour practice as was held in Industrial Court Cause No.1972 of 2012 ELIZABETH WASHEKE v AIRTEL NETWORK.

It is further submitted for the Claimant that there must be a clear reason for interdiction. The claimant relied on the case of FREDERICK SAUNDU AMOLO (Supra) where the court stated -

*" a suspension or interdiction is the employment equivalent of criminal trial arrest, with consequence that an employee suffers palpable prejudice to reputation, advancement and fulfilment. Thus a suspension or interdiction should only follow pending a disciplinary enquiry only in exceptional circumstances, where there is reasonable apprehension that the employee will interfere with any investigation that has been initiated, or repeat the misconduct in question. The purpose of such removal from the work place even temporarily must be rational and reasonable and conveyed to the employee in sufficient detail to enable the employee to defend himself in a meaningful way."*

It is submitted that the claimant was not accused of defilement or corporal punishment, that her case was a management issue which did not warrant such a drastic and embarrassing move by the Respondent.

It is submitted that the Claimant reported the defilement to the police and the Board of Management, that it is the Board that recommended punishment of the teacher with the claimant sitting only as secretary with the role of execution of the Board's decision. It is submitted that Regulation 146(6) of the Teachers Service Commission Code of Conduct provides that a teacher accused of any misconduct is entitled to a hearing, that the teacher is entitled to appear in person, be present when witnesses are being interviewed and further be given an opportunity to adduce and challenge the evidence. It is submitted that the claimant was never given an opportunity to appear or adduce evidence in the course of investigations and only learned of the same in the Respondent's replying affidavit.

It is submitted that the action of the Respondent offends Article 50(1) of the Constitution which provides as follows -

*"Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal and body."*

The Claimant further relied on the case of PATRICK LUMUMBA v BOARD OF MANAGEMENT KIAMBU INSTITUTE OF SCIENCE AND TECHNOLOGY [2015]eKLR.

On the issue whether the prayers in the Memorandum of Claim are warranted, it is submitted that the Claimant has demonstrated that the disciplinary process is flawed and violates the constitution, the Teachers Service Commission Code of Conduct and Rules of Natural Justice. It is submitted that she is seeking the court's intervention to declare her interdiction unlawful and restore her back to her former

position as principal. The Claimant relied on the case of ALFRED NYUNGU KIMUNGUI v BOMAS OF KENYA [2013]eKLR referred to on the case of REBECCA ANN MAINA & 2 OTHERS v JOMO KENYATTA UNIVERSITY OF SCIENCE & TECHNOLOGY [2014]eKLR where the court stated as follows -

*"...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..."*

The Claimant further relied on Mbaru J's decision in FREDERICK SAUNDU AMOLO (Supra) where she stated -

*"Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal and body."*

The Claimant prays that the prayers sought in the statement of claim be granted.

### **Respondent's Submissions**

It is submitted for the Respondent that the Claimant who was until 6th October, 2016 deployed by the Respondent as Principal, Friends School Kaveye Girls, was interdicted on allegations that she failed to stop the administration of corporal punishment by Teachers on learners contrary to section 36(1) of the Basic Education Act, she failed to offer technical advice to the Board of Management in the meetings held on 25th February, 2016 and 8th April, 2016 concerning investigations procedure and appropriate disciplinary action against teachers who had been adversely mentioned by students as having administered corporal punishment and that she facilitated the cover-up of teachers during investigations of alleged immoral behaviour by Erick Toneni despite having received incriminating evidence.

The Respondent submits that the prayers sought by the Claimant have been overtaken by events as the suit was filed on 24th October 2016 while the letter of interdiction was issued on 6th October, 2016. It is further the Respondent's submissions that a new principal has already taken charge of the school and orders made in regard thereto would be in vain.

Secondly, it is submitted that the Respondent is established under Article 237(1) of the Constitution with the mandate to among other functions, exercise disciplinary control over teachers. It is submitted that the allegations levelled against the claimant amounted to a fundamental breach of the provisions of the TSC Act, the Basic Education Act, the Code of Conduct for Teachers and the Teachers Service Code of Conduct and Ethics. It is submitted that in the exercise of its mandate, the Respondent commenced investigation into the allegations by notifying the Claimant in the show cause letter of 5th September, 2016 of the allegations against her and granted her an opportunity to respond. The Respondent submits that the claimant responded vide her letter dated 9th September, 2016.

It is submitted that the Respondent conducted an inquiry and the report that followed recommended disciplinary action against the claimant for failing to carry out her administrative duties effectively or at all.

It is the Respondent's submission that administration of corporal punishment is outlawed in this country and when it occurs, is a matter of public interest for parents, guardians and several stakeholders who are always on the lookout. That the commission on Administrative justice brought the matter to the attention of the Respondent through the Ministry of Education demanding further investigation to be conducted into the allegations of the Claimant's misconduct.

It is submitted that the Respondent's agent on the ground the principal, who is the claimant, had failed to conduct further investigations and it was therefore upon the Respondent to do so either on its own or through its agents. It is submitted that the Respondent commissioned three Senior Officers from the

Headquarters to investigate the matter further with a view to taking appropriate action against the Claimant if need be.

It is submitted that the Claimant and other witnesses were interrogated and a report compiled. It is submitted that from the report it is clear that the claimant failed in her administrative duties as the Principal.

It is submitted that upon evaluating the facts the Respondent reached a decision to interdict the Claimant for material breach of the TSC Act, the Basic Education Act and the Code of Regulations for Teachers. It is submitted that the Respondent observed the Rules of Natural Justice as the Claimant was given an opportunity to respond in writing.

The Respondent submits that Part XI of the Code of Regulations for Teachers provides for a disciplinary panel at which the teacher is given a chance to present his/her case and to question witnesses called by the Respondent. It is submitted that the Claimant's case is yet to be heard by the disciplinary panel and the claimant invoked the jurisdiction of this court prematurely.

The Respondent referred the court to the decision in the case of EVANS REES AND OTHERS v RICHARD ALFRED CRANE [1994] 2WLR as cited in NANCY MAKOKHA BARAZA v JUDICIAL SERVICE COMMISSION AND 9 OTHERS [2012]eKLR where the court stated -

*"In most types of investigation there is in early stages a point at which action of some sort must be taken and must be taken firmly in order to set the wheels of investigation in motion. Natural justice will seldom if ever at that stage demand that the investigator should act judicially in the sense of having to hear both sides. No one's livelihood or reputation is in danger ....*

*Where an act or proposal is only the first step in a sequence of measures which may culminate in a decision detrimental to a person's interest, the courts will generally decline to accede to that person's submission that he is entitled to be heard in opposition to this initial act, particularly if he is entitled to be heard at a later state ..... There are... no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth."*

The Respondent submitted that the claimant's interdiction is not in itself punishment but merely the beginning of a process for determination of the case, that the veracity of the case is to be determined by a disciplinary panel as established by statute. The Respondent submitted that the courts have held that -

*"It is not the duty of the Court to police an employee in their day to day relationship with their employees. This has been the holding in Cause No.1200/12 Prof Gitile Naituli vs. University Council, Multimedia University of Kenya where the Court observed that: "the prerogative of the employee in managing its business and administration of its staff should not be unduly stifled by judicial intervention through issue of provisional injunctive measures such as those sought by the Claimant. The Employment Act and the Industrial Court Act seek to protect the weakness of the two parties in an employment relationship, not to deprive the employer of the management prerogative altogether."*

The Respondent referred the court to NAIROBI ELRC NO.1607 OF 2016 ROSE KIRAGU V TSC[2016]eKLR where the court declined to interfere with the internal disciplinary process of the employer. The Respondent further referred the court to CAUSE NO.2244 OF 2014 NIXON BUGO V THE ALLIANCE FOR A GREEN REVOLUTION IN AFRICA where the court observed 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."*

The Respondent prayed that the case be dismissed.

## **Determination**

I have considered the pleadings and the written submissions of the parties.

From both the prayers in the notice of motion and in the statement of claim, the Claimant's issues with her interdiction appear to be that the letter of interdiction contained allegations that were not in her notice to show cause letter and which she therefore had not had an opportunity to respond to. She further complains that the letter of interdiction is based on generalised allegations that lack objective details that the applicant can respond to, that her rights under Article 35 and 47 have been infringed and that the contents of her response to the notice to show cause were ignored. The show cause letter issued to the claimant required her to respond to the following allegations -

- i. Abetting administration of corporal punishment in your school contrary to the Basic Education Act Education Act 2013 Section 36(1).*
- ii. Failing to offer technical advice to the BOM concerning disciplinary investigations procedures and action against the teachers involved in Corporal Punishment and Immoral Behaviour.*
- iii. Failing to cooperate with TSC County Director - Vihiga's office during Preliminary Investigations.*
- iv. Covering up administration of both Corporal Punishment in your Institution and Immoral Behaviour by Mr. Eric Toneri - TSC/655471.*

In the letter of interdiction, the claimant is accused of the following -

### **1. Insubordination**

*While you were the Principal of Friends School Keveye Girls in 2015, you failed to stop the administration of corporal punishment by teachers on learners contrary to the Basic Education Act 2013 Section 36(1).*

### **2. Negligence of Duty**

- i. You failed to offer technical advice to the Board of Management in meetings held on 25/2/2016 and 8/4/016 concerning the investigation procedures and appropriate disciplinary action against the teachers who had been adversely mentioned by students as having administered corporal punishment on them.*
- ii. During investigations into allegation of Immoral Behaviour against Mr. Erick Toneri - TSC/655471 with a student Sarah Chebet Mossin F. 3N in June/July 2016, you facilitated cover up by teachers and students which led to him being exonerated of the allegation, despite the fact that you had received incriminating evidence from the victim and witnesses while you were the Principal of Friends School Keveye Girls Secondary School.*

Both the show cause and interdiction letters are based on two issues being corporal punishment and immoral behaviour. In her response to the notice to show cause the Claimant respondent to all the issues raised in both the show cause and interdiction letters.

I therefore do not find any merit in the claimant's allegation that she was not given an opportunity to respond to some of the allegations in the letter of interdiction before the decision to interdict her was made.

The Claimant's other complaint is that the letter of interdiction is based on generalised allegations that

lack objectivity. In the written submissions filed on behalf of the claimant there is no elaboration of the nature of generalities. A perusal of the letter of interdiction gives a different position as each of the charges levelled against the claimant are specific citing names and dates and leaving no doubt on the nature of the charges. I therefore again find no merit in the allegation that the charges are generalised.

The Claimant further accuses the Respondent of withholding information upon which the decision to interdict her is based. In the written submissions of the claimant, it is submitted that she was not aware of the investigations carried out by the Respondent on 2nd and 3rd August 2016 which recommended her interdiction.

The Report which is annexed to the Respondent's Replying Affidavit as appendix AF 4 indicates that the claimant was interviewed by the investigating officers and she was therefore aware about the investigations. The show cause letter is dated 5th September 2016 and therefore was issued after the investigation report which was prepared on 2nd and 3rd August, 2016. In the response to the letter of interdiction she states that she cooperated with the investigators.

The letter of interdiction required the claimant to defend herself against the allegations therein within 21 days from the date of the letter. The interdiction letter informs her that she will be given an opportunity to be heard by the commission in person and to present any other evidence including documents in support of her case.

The letter of interdiction is thus very explicit of the fact that it is only part of a process that would be finalised after the claimant has been given an opportunity to present her evidence and to appear before the disciplinary committee in person. The Claimant's averments that the interdiction was effected without giving her a full hearing is not valid as the said letter is self explanatory of its purpose and further action to follow.

As was stated in the case of ALFRED NYUNGU KIMUNGUI this court should be cautious in exercising its jurisdiction so as not to appear to take over and exercise managerial prerogatives at work places. The court further stated that granting order with the effect of limiting genuine exercise by management of its rights at the work place must be avoided.

In this case there is no doubt that the Respondent has both constitutional and statutory power to exercise disciplinary control over the claimant. There is also no doubt that interdiction is part of the prescribed disciplinary process in the Code of Regulations for Teachers. In the written submissions filed on behalf of the Claimant, it is admitted that Regulation 146(6) of the Teachers Service Commission Code of Conduct mandatorily provides that a teacher accused of any misconduct is entitled to appear in person and be present when witnesses are being interviewed and further be given an opportunity to adduce and challenge any evidence. This is precisely what the Claimant has been notified about in the letter of interdiction.

The Claimant has not complained that the Respondent has no right to interdict her, she has further not complained that the prescribed procedure for interdiction has not been complied with, she only complains about a hearing which the interdiction assures her that she will be given an opportunity to do at the appropriate juncture.

### **Is the Claimant entitled to an injunction?**

This court has rendered its opinion regarding intervention in disciplinary cases in numerous decisions, among them those cited by the Claimant. These include the case of ALFRED NYUNGU, GLADYS BOSS SHOLLEI, GEORGE WEKESA v MULTIMEDIA UNIVERSITY and ROSE W. KIRAGU v TEACHERS SERVICE COMMISSION. In all these cases the court declined to interfere with the disciplinary process, on the basis that this is a function of the employer. As was stated in FREDERIC SAUNDU AMOLO's case, the courts will not intervene in any employer's internal disciplinary proceedings until it has run its course. The only circumstances when the court will interfere is in exceptional circumstances where great injustice might result or where justice might not be done by any other

means be attained. In the present case it has not been demonstrated that there are any exceptional circumstances or any danger of grave injustice. I find no reason to interfere with the claimant's disciplinary process at this stage as I find no proof of injustice or danger of injustice, or any other exceptional circumstances to warrant the court's intervention.

For these reasons, the claim is dismissed. There shall be no orders for costs.

**Dated, signed and delivered this 4th day of May, 2017**

**MAUREEN ONYANGO**

**JUDGE**