Kwale County Assembly Service Board & 6 others v Dzila (Civil Appeal E102 of 2022) [2024] KECA 945 (KLR) (26 July 2024) (Judgment)

Neutral citation: [2024] KECA 945 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT MOMBASA

CIVIL APPEAL E102 OF 2022

AK MURGOR, KI LAIBUTA & GV ODUNGA, JJA

JULY 26, 2024

BETWEEN

KWALE COUNTY ASSEMBLY SERVICE BOARD ..... 1ST APPELLANT

COUNTY ASSEMBLY OF KWALE ..... 2ND APPELLANT

SAMMY NYAMAWI RUWA ..... 3RD APPELLANT

OMAR KITENGELE ..... 4TH APPELLANT

ANTONY YAMA ..... 5TH APPELLANT

MWAKARIBU HAMISI ..... 6TH APPELLANT

CELINE LUSWETI ..... 7TH APPELLANT

AND

HAMISI BWENI DZILA ..... RESPONDENT

(Being an Appeal from the Judgment of the Employment and Labor Relations Court at Mombasa (B. Ongaya, J.) delivered on 25th February,2022 in Employment and Labor Relations Cause No. 21 of 2020)

Hearing an employee before suspension for investigations is not a mandatory requirement under the Employment Act

Reported by John Ribia

Statutes *– interpretation of statutory provisions - sections 22 and 23 of the County Assembly Service Act - what was the meaning of "suspend", and "remove" as used in section 22 and 23 of the County Assembly Service Act - whether the word "suspend", as used in section 22 of the County Assembly Service Act, meant to remove one from office and was not an interlocutory administrative measure that may be imposed pending investigations – County Assembly Service Act, 2017 (cap 265D) sections 22 and 23.*

Employment Law *– suspension – nature of suspension – types of suspension – holding suspension vis-à-vis a punitive suspension – legal implications and differences between a holding suspension vis-à-vis a punitive suspension - what was the difference between a holding suspension and punitive suspension? - what legal implications did each carry? - whether it was a mandatory requirement under thw Employment Act to accord an employee a hearing before suspending them to allow for investigations - whether the suspension imposed by the appellants against the respondent constituted a holding suspension (temporary administrative measure) or a punitive suspension (disciplinary action with penal consequences) - Constitution of Kenya articles 30(2), 41, 232, and 236; County Assembly Service Act, 2017 (cap 265D) sections 22 and 23; County Governments Act (cap 265) section 12(4); Employment And Labour Relations Court Act (cap 8E) section 12(3).*

Words and Phrases *– suspend – definition - to temporarily keep a person from performing a function, occupying an office, holding a job, or exercising a right or Privilege - Black's Law Dictionary, 7th Edition.*

Words and Phrases *– removal – definition – the immediate termination of an office holder's privilege to serve in that office, usually after a vote. - Black's Law Dictionary, 11th Edition.*

Brief facts

The respondent was employed as the Clerk of the County Assembly of Kwale in August 2019 and also served as Secretary to the Kwale County Assembly Service Board (the 1st appellant). Following allegations of gross misconduct, the respondent was issued a suspension letter on March 2, 2020, pursuant to section 22 of the County Assembly Service Act. The suspension was framed as an administrative measure, pending investigations.

The respondent contended that the suspension was unlawful and violated the principles of natural justice. He further alleged bias on the part of the appellants, claiming that they had prejudged the disciplinary process and initiated proceedings against him in bad faith. Additionally, he argued that the suspension amounted to removal from office without adherence to the procedural safeguards outlined in section 23 of the County Assembly Service Act.

The Employment and Labor Relations Court (trial court) at Mombasa issued a ruling in favor of the respondent, holding that "suspend" under section 22 equated to "remove" and that the suspension violated due process requirements. The trial court directed that the respondent's suspension and disciplinary proceedings be stayed and awarded him part of his outstanding salary and costs.

The appellants appealed the decision, arguing that the trial court misconstrued sections 22 and 23 of the County Assembly Service Act and failed to recognize the distinction between suspension (a temporary administrative action) and removal (a punitive measure requiring due process). The respondent cross-appealed, asserting that the appellants had violated his rights and that the trial court erred in apportioning costs.

Issues

i. Whether the word "suspend", as used in section 22 of the County Assembly Service Act, meant to remove one from office and was not an interlocutory administrative measure that could be imposed pending investigations.

ii. What was the difference between a holding suspension and punitive suspension; and what legal implications did each carry?

iii. Whether hearing an employee was necessary before suspending them to allow for investigations into allegations against the employee (holding suspension) was a mandatory requirement under the Employment Act.

iv. Whether the suspension issued by the appellants to the respondent constituted a holding suspension (temporary administrative measure) or a punitive suspension (disciplinary action with penal consequences).

Held

1. Being a first appeal, it was the court's duty to re-evaluate, re-assess and re-analyze the evidence on record and determine whether the conclusions reached by the trial court should be upheld. The first appellate

court should only interfere with the findings of the trial court where the decision was based on no evidence or on a misapprehension of the evidence, or where the trial court was demonstrably shown to have acted on wrong principles in reaching its findings.

2. In interpretation of statutes, the starting point was to construe the text and context behind the impugned statutory provisions. The purpose and intent of the statute needed to be identified.
3. When the text and context of the phrase "to suspend or remove" in section 22 as read with section 23 of the County Assembly Service Act (the Act) were construed, the wording of the provisions were clear and unambiguous. Suspend meant to temporarily keep a person from performing a function, occupying an office, holding a job, or exercising a right or privilege. Removal meant the immediate termination of an office holder's privilege to serve in that office, usually after a vote. To suspend was therefore with reference to a temporary deprivation of a person's powers or privileges, especially of office or profession; it also included temporary withdrawal from employment, as distinguished from permanent severance as in the case of removal.
4. The intention of the impugned provision was to provide for disciplinary action that could be taken against the Clerk of the Assembly. Although section 22 of the Act specified two forms of disciplinary action, that was, suspension on the one hand or removal on the other, no procedure was laid down for imposition of a suspension, unlike removal, where section 23 of the Act prescribed an elaborate procedure for removal of the Clerk. The Act, having set out a specific procedure for removal, but none for suspension, meant that the two disciplinary processes were separate and distinct, and not one and the same.
5. Reference in section 22 of the Act was made to suspend or remove. In its plain form, the word 'or' was a disjunctive article that created an alternative option. The drafters intent was to make available two different forms of disciplinary action that could be instituted by the employer in addressing disciplinary infractions.
6. The trial court misconstrued the meaning of section 22 as read with section 23 and came to the wrong conclusion that suspend in section 22 of the County Assembly Service Act meant to remove and, by so finding, wrongly held that the respondent was unlawfully removed from office. It was necessary for the instant court to interfere with the decision. Suspending the clerk was available to the Board as a disciplinary measure.
7. There were two types of suspensions, a holding suspension and punitive suspension. It could be imposed as a holding operation, pending the investigation of the complaint. Such a suspension did not imply that there had been a finding of any misbehaviour or breach of rules by the suspended person, but merely that an allegation of some such impropriety or misconduct had been made against the member in question. On the other hand, a suspension could be imposed not as a holding operation pending the outcome of an inquiry, but as a penalty by way of punishment of a member who had been found guilty of misconduct or breach of rules. Where a suspension was imposed by way of punishment, it followed that the body in question had found its member guilty of significant misconduct or breach of rules.
8. The nature of a suspension could be twofold. Firstly, a suspension could result in, *inter alia*, a punishment that required notice so as to provide the employee with an opportunity to defend themselves against the allegations of misconduct. Secondly, it could result in a suspension pending enquiries, the latter being an administrative action taken against an employee or officer for a distinct period on full pay pending enquiries into the allegations arising in the work place.
9. Section 22 of the Act did not indicate whether, by imposing a suspension a preliminary step was being taken towards removal, or whether it would amount to a temporary measure pending investigations, that was, a holding suspension, or whether it was with reference to a punitive sanction. Unlike section 23 which prescribed an express procedure for removal, section 22 was silent on the procedure leading to a suspension *to wit*, how it should be initiated, the duration of the suspension, the effect of the

suspension, the payment of remuneration and other benefits, and whether the clerk was to be offered an opportunity to respond or not.

10. The contents of the suspension letter construed that the suspension was a holding suspension where the administrative action taken was intended to allow the appellants the opportunity to conduct investigations into the allegations of misconduct. Nothing in the letter pointed to the respondent as having been adjudged as guilty, or showed that the suspension was intended as punishment for any employment offence. Subject to section 22 of the Act, notwithstanding the absence of a prescribed procedure leading to a suspension, what was contemplated under section 22 of the County Assembly Service Act was not a punitive suspension in the form of a penalty that would otherwise have necessitated a disciplinary hearing. Rather, the appellants' actions were specifically with reference to a holding suspension comprising a temporary separation in the context of good administration pending investigation and or inquiry into the allegations of misconduct whereupon, dependent on the outcome of the investigations, the suspension would either be lifted or the process of removal commenced under section 23.
11. A holding suspension did not require that the respondent be subjected to the rules of natural justice. A letter of suspension as an administration action pending investigations was at that stage of the process unnecessary and impractical.
12. A suspension from employment was not a termination. It was in essence a temporary separation from day-to-day duties of an employee suspected of committing a disciplinary offence. It was usually handed out to allow for investigations into the allegations against the employee concerned. It was as it were, quite a preliminary stage in the disciplinary process where the evidence in support of the allegations was subject to further investigations and the employee subject to suspension could not conveniently continue to work when they were going on. To require an employer to hear an employee in such a preliminary stage before imposing the suspension was not practical. Whereas in some organizations or employment contracts, hearing before suspension could be provided for but was not a mandatory requirement under the Employment Act. An employee proceeding on suspension was usually called upon to react to the preliminary charges which was usually considered vis-à-vis the final investigations report before escalating the issue to a disciplinary hearing.
13. A hearing at the point of issuance of a holding suspension was not necessary, particularly since no procedure was spelt out by the County Assembly Service Act for the issuance of such suspension.
14. The respondent did not demonstrate how provisions of the Constitution were violated, or how the appellants failed to follow due process.
15. In determining real or apparent bias, the first step was the ascertainment of the circumstances upon which the allegation of bias was anchored. The second step was to use the ascertained circumstances to determine objectively the likely conclusion of a fair minded and informed observer, on the presence or absence of reasonable apprehension of bias. It was one thing to allege facts and another to establish the facts. The perception of bias could only be based on established facts. In the absence of any demonstration of bias by the individual members of the 1st appellant, the allegations were unmerited, and the trial court rightly dismissed them.
16. The trial court's apportionment of costs at 50:50, finding it reasonable given the partial success of both parties. The trial court's discretion was exercised judiciously, reflecting the mixed outcomes and aligning with established principles that costs follow the event but could be adjusted in the interests of justice.

Appeal partly allowed.

Orders

i. *The declaration by the trial Judge that "suspend" means "remove" (and was not an interlocutory administrative measure that may be imposed pending investigations) and "suspend" under the section*

shall not be imposed by the County Assembly Service Board unless in accordance with and after conclusion of the due process prescribed under section 23 of the Act" was set aside.

ii. *The cross appeal was without merit and was dismissed.*

iii. *Costs of the appeal and cross appeal were awarded to the appellants.*

Citations

Cases

Kenya

1. *County Government of Nyeri & another v Ndungu* Civil Appeal 2 of 2015; [2015] KECA 1011 (KLR) - (Explained)
2. *Dzila v County Assembly of Kwale & another* Cause 99 of 2019; [2020] KEELRC 1537 (KLR) - (Mentioned)
3. *Judicial Service Commission v Shollei & another* Civil Appeal 50 of 2014; [2014] KECA 334 (KLR) - (Explained)
4. *Kiptui v Kenya Pipeline Company Ltd* Cause 435 of 2013; [2014] KEELRC 905 (KLR) - (Explained)
5. *Korir v Moi Teaching and Referral Hospital* Cause 207 of 2017; [2022] KEELRC 14700 (KLR) - (Explained)
6. *Munya v Dickson Mwenda Kithinji & 2 others* Petition 2 of 2014; [2014] KESC 49 (KLR) - (Explained)
7. *Mwanasokoni v kenya Bus Services Ltd* Civil Appeal 35 of 1985; [1985] KECA 82 (KLR) - (Mentioned)
8. *Odinga & another v Independent Electoral and Boundaries Commission & 2 others* Election Petition 1 of 2017; [2017] KESC 32 (KLR) - (Mentioned)
9. *Rai & 3 others v Rai & 4 others* Petition 4 of 2012; [2014] KESC 31 (KLR) - (Explained)
10. *Shollei v Judicial Service Commission & another* Petition 34 of 2014; [2022] KESC 5 (KLR) - (Mentioned)

South Africa

MEC for Education, North West Provincial Government v Gradwell (JA58/10) [2012] ZALAC 8; [2012] 8 BLLR 747 (LAC); (2012) 33 ILJ 2033 (LAC) (25 April 2012) - (Explained)

United Kingdom

1. *Furnell v Whangarie High Schools Board* [1973] 1 All ER 400 - (Mentioned)
2. *John v Rees* [1969] 2 All ER 274 - (Mentioned)
3. *Lewis v Heffer* [1978] 3 All ER 354 - (Mentioned)

India

Reserve Bank of India v Peerless General Finance & Investment Co Ltd & others [1987] 1 SCC 424 - (Mentioned)

Regional Court

Kenya Ports Authority v Kuston (Kenya) Limited [2009] 2 EA 212 - (Mentioned)

Ireland

1. *Deegan v Minister for Finance* [2000] ELR 190 (SC) - (Explained)
2. *Quirke v Bord Luthchleas na hEireann* [1988] IR 83 - (Mentioned)

Texts

1. Garner, BA.,(Ed) (1999), *Black's Law Dictionary* St Paul Minnesota: West Group 7th Edn
2. Garner, BA.,(Ed) (2019), *Black's Law Dictionary* St Paul Minnesota:Thomson Reuters 11th Edn

Statutes

Kenya

1. Constitution of Kenya, articles 30(2); 41(1); 41(2)(b); 232; 236; 236(b) - (Interpreted)

2. County Assembly Service Act (cap 265D) sections 5(1); 5(2)(b); 5(2)(c); 5(2)(d); 5(2)(e); 6(2)(a); 6(2)(b); 6(2)(c); 6(2)(d); 6(2)(m); 16; 17(1)(b); 17(1)(c); 17(1)(d); 17(1)(g); 17(1)(h); 22; 23; 23(1); 23(d); 27(1) - (Interpreted)
3. County Governments Act (cap 265) section 12(4) - (Interpreted)
4. Employment and Labour Relations Court (Procedure) Rules, 2016 (cap 8E Sub Leg) rule 17 - (Interpreted)
5. Employment and Labour Relations Court Act (cap 8E) section 12(3) - (Interpreted)
6. Public Finance Management Act (cap 412A) sections 3, 102, 103, 148, 149, 156- (Interpreted)

Advocates

None mentioned

JUDGMENT

1. The respondent, Hamisi Bweni Dzila, filed a claim against the 1st, 3rd, 4th, 5th, 6th, and 7th appellants (the appellants) seeking Judgment against them for:

    1. A declaration that the suspension of the respondent from his office as clerk of the Kwale County Assembly by the letter dated 2 March 2020 is a violation of the values and principles of public office as provided for in article 232 and 236 of the *Constitution of Kenya, 2010*.

    2. A declaration that the undated notice to show cause why removal proceedings should not be commenced against the respondent are also a violation of the values and principles of public office as provided for under articles 232 and 236 of the *Constitution of Kenya, 2010*.

    3. An injunction against the appellants restraining them from suspending the respondent from his office as clerk of the County Assembly of Kwale on the basis of the issues raised in these proceedings.

    4. An injunction against the appellants restraining them from proceeding with the notice to show cause why removal proceedings should not be commenced against the claimant on the basis of the issues raised in these proceedings.

    5. An injunction against the 2nd appellant, the County Assembly of Kwale to restrain it from receiving, discussing, debating and or resolving any motion brought to it by the appellants seeking the removal of the respondent from his office as a clerk of the County Assembly of Kwale on the basis of the issues raised in these proceedings.

    6. An order that the 1st or 2nd appellant do immediately pay the respondent his outstanding salary from December, 2019 to the date of filing this claim or the date of the judgment herein.

    7. Costs of the claim.

2. The respondent was employed by the 2nd appellant and appointed as Clerk of the County Assembly effective August 1, 2019 in terms of section 12(4) of the *County Government Act, 2012*. He also became the Secretary to the 1st appellant, but claimed that he was not allowed to take and sign the Board minutes; that, after appointment in August 2012, he started receiving phone calls that there was a dossier against him from his previous service and, despite asking for the dossier, it was not presented to him. He reported the matter to the police under OB no 18/25/09/2019. The matter is pending investigation.

3. He claimed that when the 3rd respondent sought to terminate his employment on 11 December 2019, he challenged the termination in a suit filed on 17 December 2019 being *Hamisi Bweni Dzila v County Assembly of Kwale and Kwale County Assembly Service Board*, ELRC Cause 99 of 2019 at Mombasa. In a ruling delivered a on 28 February 2020, the court ordered that:

    a. The respondent be reinstated with immediate effect to his position as the Clerk to the County Assembly of Kwale.

    b. His back salary be paid from the date of termination, December 11, 2019, to-date.

    c. The appellants refrain from interfering with the respondent's discharge of mandate as the Clerk, provided that any steps taken by the appellants to remove him from office, in accordance with the law, shall not be deemed to amount to interference with discharge of mandate.

    d. No order on the costs.

    e. This ruling shall be adopted as the judgment of the court within 30 days, and the file closed, unless the parties demonstrate to the court there are triable issues pending; Mention on March 31, 2020.

4. Pursuant to that decision, the respondent reported to work on 2 March 2020 and claimed that he was not allowed to enter the office as police had been deployed to prevent his entry. Prior to leaving the premises, he was given a notice of administrative suspension pending investigation. The respondent further claimed that the 1st appellant resolved to issue the notice comprising 8 allegations of gross misconduct on Sunday 1 March 2020 thus:

    a. Failed to exhaust internal disciplinary mechanism in handling allegations against an officer of the service and opted to explore external disciplinary mechanism without involving the Board.

    b. Have refused or failed to implement several decisions or resolutions of the Board.

    c. Have on various occasions undertaken programs without seeking the Board's approval.

    d. Have written to sources external to the service seeking advice without the knowledge or approval of the Board.

    e. Have authorised or approved payments from the Assembly's account without the approval of the Board and contrary to financial procedures and guidelines.

    f. Have misrepresented information to the Board and presented minutes that do not capture the true deliberations and decisions of the Board.

    g. Have been insubordinate to the Board.

    h. Have refused or failed to subject himself to the attendance control systems set by the Assembly to check time-keeping and attendance.

5. According to the respondent, the notice stated that pursuant to section 22 of the *County Assembly Service Act, 2017*, he was suspended with immediate effect for a period of 60 days. It further stated that the suspension was not disciplinary, but intended to pave way for thorough investigations and, thereafter, to determine the appropriate action to be taken; and that if investigations were not completed within the 60 days, the 1st appellant reserved the right to extend the suspension as necessary.

6. The respondent further claimed that he received an undated notice to show cause signed by one Hon Sammy N Ruwa, Chairman of the 1st appellant. The notice conveyed that investigations had been completed and the details of the allegations were set out in that notice. The notice concluded thus:

> " Consequently, we write to you and give you a seven (7) days' notice (the notice Period) from the date of your receipt of this letter to submit to the undersigned a written response to the issues raised in this letter. Thereafter, the Board shall proceed in accordance with section 22 and 23 of the *County Assembly Services Act, 2017*."

7. By a letter dated 23 March 2020, the respondent replied that he was saddened and shocked by the contents of the notice to show cause; and that the allegations were motivated by malice, authoritarianism, abuse of office and disregard of the rule of law, hence the suit.

8. The appellants filed a joint defence where they opposed the respondent's prayer for reinstatement to the position of Clerk to the County Assembly of Kwale; that, after the ruling was delivered by the court on 28 February 2020, the 1st respondent convened on Sunday 1 March 2020 to deliberate on the ruling, whereupon it was resolved that the suspension letter of 2 March 2020 be issued against the respondent.

9. The appellants went on to claim that, on March 2, 2020, the respondent did not report on duty as alleged, but reported on 3 March 2020, and that it was not true that he was prevented from accessing the office; that, after adjourning the County Assembly's sitting of 3 March 2020, the Speaker summoned the respondent in the presence of the Deputy Speaker and, explained to him the Board's decision and handed him the suspension letter; that the respondent declined to subject himself to the daily attendance biometric register, and that, in any event, they were not responsible for the respondent's subsequent arrest and preferred charges. They claimed that the DCI had written to the County Assembly vide a letter of 17 March 2020 advising that two of the Assembly's employees being the respondent and one, Janet Mulwa had been charged, and that the case was fixed for mention on 2 April 2020 at Kwale Law Courts for further directions, and that the letter sought to notify the Assembly to take appropriate administrative action.

10. The appellants claimed that they completed the investigations and, in terms of sections 22 and 23 of the *County Assembly Services Act, 2017* framed charges against the respondent in the notice to show cause of 17 March 2020 giving him 7 days' notice to respond; that he responded through his Advocates in a letter dated March 23, 2020. Further, under section 23(d) of the *County Assembly Service Act*, he was to be invited to appear before the 1st appellant either personally or with an Advocate to explain himself. However, due to Covid 19 situation restricting movement and gathering, the 1st appellant had not convened awaiting lifting of restrictions on inter-county movement.

11. They alleged that on 27 April 2020, the court (Ndolo J) suspended the disciplinary process against the respondent, but extended his administrative suspension for 60 days (as per letter dated 30 April 2020) with full pay in line with sections 22 and 27(1) of the Act as read with article 236(b) of the *Constitution*, and withdrew the Deputy Clerk's duties of accounting officer designated under section 17(b) of the Act. The appellants' further case is that, by replying to the notice to show cause, the respondent thereby submitted himself to the disciplinary process. It was asserted that if he did not wish to submit to the disciplinary process, he ought to have declined to reply to the notice to show cause.

12. In the course of the proceedings, the respondent filed a notice of motion on 31 March 2020 under rule 17 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* section 12(3) of the *Employment and Labour Relations Court Act*, seeking an order of injunction against the appellants to restrain them from suspending him from his office as Clerk of the County Assembly of Kwale, and also

from proceeding with the notice to show cause removal proceedings. He also sought orders to restrain it from discussing, debating and or receiving any motion brought to it by the appellants pending the hearing and determination of the claim. Also sought was an order for the 1st or 2nd appellants to immediately pay his outstanding salary from December 2019 to the date of filing the claim.

13. The application proceeded by way of submissions and the trial Judge, upon considering the dispute in a ruling dated 12 March 2021, allowed the application in the following terms:

    a. "Pending the hearing and determination of the main suit, there be a stay of the suspension and the administrative disciplinary proceedings initiated by the 1st, 3rd, 4th, 5th, 6th and 7th respondents against the respondent following the letter of administrative suspension pending investigation ref No KWL/CA/BD/VOL 1(53) dated 2 March 2020.

    b. Pending the hearing and determination of the main suit, the 1st and 2nd appellants pay the respondent outstanding salary from December 2019 to date and to continue paying him accordingly.

    c. Pending the hearing and determination of the main suit, the respondent to serve upon the Attorney General this ruling in 7 days for consideration of appropriate measures towards correcting the apparent mix up in section 23(1) of the *County Assembly Service Act* No24 of 2017 referring to "section 20" instead of "section 22" thereof, and in section 23(3)(a) to "section 21" instead of "section 22" thereof.

    d. Pending the hearing and determination of the main suit, the parties are at liberty and are encouraged to negotiate a compromise towards amicable resolution of the dispute herein and taking into account the findings in this ruling - and with a view of recording a consent in court as may be appropriate.

    e. Parties to take steps towards the expeditious hearing and determination of the suit, or, compromise of the dispute.

    f. Costs of the application in the cause."

14. When the petition came up for hearing, upon consideration of the parties' submissions, the trial Judge allowed the claim and ordered that:

    a. The injunction hereby issued against the 1st , 3rd , 4th , 5th , 6th , and 7th respondents restraining them by themselves or by their agents or servants from, suspending the respondent from his office as clerk of the County Assembly of Kwale on the basis of the issues raised in these proceedings or other disciplinary proceedings commenced as the case may be, unless, as the respondent may be found culpable in accordance with section 23 of the *County Assembly Service Act, 2017* and in accordance with other applicable law.

    b. The declaration hereby issued that "suspend" in section 22 of the *County Assembly Service Act* means "remove" (and is not an interlocutory administrative measure that may be imposed pending investigations) and "suspend" under the section shall not be imposed by the County Assembly Service Board unless in accordance with and after conclusion of the due process prescribed under section 23 of the Act.

    c. The 1st respondent to pay 50% of the claimant's costs of the suit.

15. The appellants were aggrieved by the Judgment of the trial Judge and filed an appeal to this court on grounds that: the trial Judge was in error both in law and in fact when he ignored the doctrine of stare decisis to wrongfully hold that the appellants were legally obligated to accord the respondent a

hearing on principles of natural justice before administratively suspending him; in misconstruing the import and meaning of section 22 as read together with section 23 of the *County Assembly Service Act*; in holding that the appellants could not suspend the respondent without following the procedure prescribed in section 23; failing to appreciate the facts before the court and instead proceeding to re-state his own version of facts in a complete departure from the pleadings before him; and in ordering the appellants to pay half of the respondents' costs.

16. The respondent also filed a Notice of cross appeal dated April 3, 2023 on the grounds that: the learned judge was wrong in failing to declare that the undated Notice to show cause why removal proceedings should Not be commenced against the respondent was a violation of the values and principles of public office as provided for under articles 232 and 236 of the *Constitution* despite the overwhelming evidence tendered by the respondent; in failing to find that the appellants had already made up their minds against the respondent and that, therefore, the intended disciplinary proceedings would be unfair as the appellants were already biased against the respondent; in misapprehending the law in holding that the appellants were properly vested with the statutory authority to exercise disciplinary control over the respondent under sections 22 and 23 of the *County Assembly Service Act*, and in failing to be guided by section 156 of the *Public Finance and Management Act* thereby occasioning a miscarriage of justice against the respondent; in misapplying the Supreme Court decision in *Gladys Boss Shollei v Judicial Service Commission and 2 others*, Petition No 34 of 2014 as the facts in that authority were distinct and dissimilar to the facts in this case; and in granting the respondent half of the costs of the suit instead of full costs, that is, 100% costs.

17. Both the appellant and the respondent filed written submissions. When the appeal came up for hearing on a virtual platform, learned counsel for the appellant Mr Kibara highlighted the submissions, and submitted that the appellants, who had a disciplinary mandate over the respondent initiated disciplinary process against him in accordance with the procedure encapsulated in sections 22 and 23 of the *County Assemblies Services Act*; and that the appellants sought to preserve the integrity of the disciplinary process, and that this informed the Board's decision to send the respondent on administrative suspension with full pay to allow them an opportunity to conduct investigations into the charges that were levelled against him, and to protect the evidence and witnesses who were to testify against the respondent.

18. It was further submitted that the trial Judge was wrong in construing the administrative suspension of the respondent as a final decision of the Board to remove the Clerk, while disregarding the extensive 3 tier procedure specified under section 23 of the Act for removal; that, pursuant to the ruling of the trial court, the appellants proceeded with the disciplinary action against the respondent, which was conducted to conclusion whilst adhering to the procedure outlined in section 23 of the Act, and that the respondent successfully defended the claim before the trial court. It was argued that there was no basis whatsoever for the learned trial judge to have directed the appellants to pay half of the respondents' costs.

19. For their part, learned counsel for the respondent, Mr Aboubakar, submitted that the Judge properly analyzed both sections 22 and 23 of The *County Assembly Service Act*, including the text, the intent and purport as well as the spirit and context of the provisions and arrived at a decision that conformed to the provisions of article 236(b) of the *Constitution*. On costs, counsel submitted that the learned judge rightly awarded costs to the respondent, which was within the principle of costs follow the event because the respondent was half successful.

20. In support of the cross appeal, counsel for the respondent submitted that the learned judge did not analyse the evidence before him and make a finding of fact and law on whether the Board having considered and rendered a decision in respect of the issues for determination and taken steps towards

implementing its decision meant that it was already prejudiced against the respondent and could not be impartial or fair against him; that, as a result, the Board will reach a similar decision once again; that, further, the disciplinary process was a violation of the respondent's fundamental rights under article 30(2) and 41(1) and 2(b) of the *Constitution*, and that the disciplinary proceedings were initiated against the respondent after he refused to be forced by his employers to carry out an illegal task; that the appellants were in breach of article 232 and 236 of the *Constitution*; that the Board, which is mandated to take disciplinary proceedings against the respondent under sections 22 and 23 of the *County Assembly Service Act*, was itself biased and incapable of conducting a fair and just process and that, therefore, this court should take over the proceedings; that the appellants violated sections 5(1) and (2) (b), (c), (d), (e), 6(2) (a), (b), (c), (d), (m), 16 and 17(1) (b), (c), (d), (g), (h), 22 and 23 of the *County Assembly Service Act*, and sections 3, 102, 103, 148, 149 and 156 of the *Public Finance Management Act, 2017*. Counsel submitted that, if the Board was dissatisfied with the respondent's refusal to approve the payment of the Certificate, it ought to have notified the County Executive Committee Member for him to satisfy himself that the respondent conducted himself in an improper manner.

21. We have considered the appeal, the submissions of both counsel and the law. This being a first appeal, it is our duty to re-evaluate, re-assess and re-analyze the evidence on record and determine whether the conclusions reached by the learned Judge should be upheld. See *Kenya Ports Authority v Kuston (Kenya) Limited* [2009] 2 EA 212.

22. In addition to the outlined edicts, we are cognisant that this court should only interfere with the findings of the trial court where the decision is based on no evidence or on a misapprehension of the evidence, or where the trial court is demonstrably shown to have acted on wrong principles in reaching its findings. See *Mwanasokoni v Kenya Bus Service* [1985] KLR 931.

23. Having analysed the grounds of appeal, the cross appeal, and the parties' submissions, we discern that the issues for determination are whether the learned judge was right in construing section 22 as read together with section 23 of the *County Assembly Service Act* as referring to one and the same sanction against employees of the County Assembly Service Board; whether the respondents rights were violated; and whether the learned judge rightly apportioned the costs at 50:50 between the parties.

24. In so far as the first issue is concerned, in the judgment, the learned judge held that:

> " ...suspend" in section 22 of the County Assembly Service Act means "remove" (and is not an interlocutory administrative measure that may be imposed pending investigations) and "suspend" under the section shall not be imposed by the County Assembly Service Board unless in accordance with and after conclusion of the due process prescribed under section 23 of the Act."

25. It is this conclusion that has aggrieved the appellants in that the judge misconstrued the true import and meaning of section 22 as read together with section 23 of the *County Assembly Service Act* and found that the appellants were legally obligated to accord the respondent a hearing based on the principles of natural justice before administratively suspending him, and in holding that the appellants could not suspend the respondent without following the procedure enshrined in section 23, and in concluding that the words "suspend" or "remove" under sections 22 and 23 meant "remove".

26. As to whether the learned judge correctly interpreted the impugned provisions requires that we apply the principles applicable to interpretation of statutes. In this regard, the starting point is to construe the text and context behind the impugned statutory provisions. The Supreme Court of India aptly

described the nature of text and context in *Reserve Bank of India v Peerless General Finance & Investment Co Ltd & others* [1987] 1 SCC 424 when it stated that:

> " Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual."

27. Discerning the importance of establishing the intention of an enactment, this Court in the case of *County Government of Nyeri & another v Cecilia Wangechi Ndungu* [2015] eKLR held that:

> " Interpretation of any document ultimately involves identifying the intention of Parliament, the drafter, or the parties. That intention must be determined by reference to the precise words used, their particular documentary and factual context, and, where identifiable, their aim and purpose. To that extent, almost every issue of interpretation is unique in terms of the nature of the various factors involved. However, that does not mean that the court has a completely free hand when it comes to interpreting documents; that would be inconsistent with the rule of law, and with the need for as much certainty and predictability as can be attained, bearing in mind that each case must be resolved by reference to its particular factors."

28. Additionally, when construing statutes, it is also necessary for the purpose and intent of the statute to be identified. As opined by the Supreme Court in the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others*, Supreme Court Petition No 26 of 2014 [2014] eKLR , a purposive interpretation should be given to the statute so as to reveal its purpose and intent as follows:

> " In *Pepper v Hart* [1992] 3 WLR, Lord Griffiths observed that the "purposive approach to legislative interpretation" has evolved to resolve ambiguities in meaning. In this regard, where the literal words used in a statute create an ambiguity, the court is not to be held captive to such phraseology. Where the court is not sure of what the legislature meant, it is free to look beyond the words themselves, and consider the historical context underpinning the legislation. The learned Judge thus pronounced himself:
>
> > "The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted."

29. Before applying the foregoing guidelines to the impugned provisions, we will, for good order, reproduce them here below.

Section 22 states:

> " The Board may suspend or remove from office, the Clerk for-

a. inability to perform the functions of the office, whether arising from infirmity of body or mind;

b. gross misconduct or misbehaviour;

c. incompetence;

d. bankruptcy;

e. violation of the provisions of the Constitution, including Chapter Six of the Constitution; or

f. violation of the provisions of this Act".

30. Section 23 of the Act goes further to provide for the removal of the Clerk of the Assembly. It states that:

" 1. Where the Board considers it necessary to remove the Clerk under section 20, the Board shall-

a. frame a charge or charges against the Clerk;

b. forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the charges; invite the Clerk to respond to the allegations in writing setting out the grounds on which the Clerk relies to exculpate himself or herself; and invite the Clerk to appear before the Board, either personally or with an advocate as he or she may opt, on a day to be specified, to exculpate himself or herself.

2. If the Clerk does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the Board the Clerk fails to exculpate himself or herself, the Board shall submit a notice of a motion to the Speaker seeking that the county assembly revokes the appointment of the Clerk.

3. A motion under subsection (1) shall specify-

a. the grounds set out in section 2t in which the Clerk is in breach; and

b. the facts constituting that ground.

4. Upon notice of the motion under subsection (2), the Speaker shall refer the matter to a select committee of the assembly consisting of eleven members and established in accordance with the Standing Orders of the assembly to investigate the matter within ten days of receipt of the motion.

5. The select committee shall, within ten days, report to the assembly whether it finds the allegations against the Clerk to be substantiated.

6. The Clerk shall have the right to appear and be represented before the select committee during its investigations.

7. The assembly shall consider the report of the select committee and resolve whether to approve the motion.

8. If the assembly approves a motion filed under this section, the Clerk against whom the motion was filed shall be deemed to have been removed from office from the date the motion was approved".

31. When the text and context of the phrase "...to suspend or remove" in section 22 as read with section 23 are construed, it cannot be doubted that the wording of the provisions are clear and unambiguous. In *Black's Law Dictionary*, 7th Edition the word "suspend" is defined as '...to temporarily keep a person from performing a function, occupying an office, holding a job, or exercising a right or Privilege.'

32. While in *Black's Law Dictionary*, 11th Edition, "removal" is defined as the immediate termination of an office holder's privilege to serve in that office, usually after a vote. To "suspend" is therefore with reference to a temporary deprivation of a person's powers or privileges, especially of office or profession; it also includes temporary withdrawal from employment, as distinguished from permanent severance as in the case of "removal".

33. In construing the intent and purport of the provision, it can be discerned that the clear intention was to provide for disciplinary action that could be taken against the Clerk of the Assembly. Although section 22 specifies two forms of disciplinary action, that is, suspension on the one hand or removal on the other, it is worthy of note that no procedure is laid down for imposition of a suspension, unlike "removal", where section 23 of the Act prescribes an elaborate procedure for removal of the Clerk. The Act having set out a specific procedure for removal, but none for suspension, would lead us to conclude that the two disciplinary processes are separate and distinct, and not one and the same.

34. Our conclusion is fortified by the fact that reference in section 22 is made to suspend 'or' remove. In its plain form, the word 'or' is a disjunctive article that creates an alternative option. See the Supreme Court of Kenya in the case of *Raila Amolo Odinga v Independent Electoral and boundaries Commission & 42 others* [2017] eKLR. This would infer that what the drafters intended was to make available two different forms of disciplinary action that could be instituted by the employer in addressing disciplinary infractions.

35. Based on our interpretation of section 22, we come to the conclusion that the learned Judge misconstrued the meaning of section 22 as read with section 23 and came to the wrong conclusion that "...suspend" in section 22 of the *County Assembly Service Act* means "remove..." and, by so finding, wrongly held that the respondent was unlawfully removed from office. In the circumstances, it becomes necessary for us to interfere with that decision.

36. Having found that suspending the Clerk was available to the Board as a disciplinary measure, next, we are called upon to discern whether, in suspending the respondent, section 22 required that he be subjected to the rules of natural justice; and, further, whether by suspending him, the appellants, in effect, removed him from employment without following the procedure set out in section 23.

37. Addressing the nature of a suspension in the case of *Quirke v Bord Luthchleas na hEireann* [1988] IR 83 (Lord Barr J), two types of suspensions were discussed, that is, a holding suspension and punitive suspension thus:

> "The suspension of a member by a body such as BLE or a trade union or professional association may take two different forms. On the one hand, it may be imposed as a holding operation, pending the investigation of the complaint. Such a suspension does not imply that there has been a finding of any misbehaviour or breach of rules by the suspended person, but merely that an allegation of some such impropriety or misconduct has been made against the member in question. On the other hand, a suspension may be imposed

not as a holding operation pending the outcome of an inquiry, but as a penalty by way of punishment of a member who has been found guilty of misconduct or breach of rules. The importance of the distinction is that where a suspension is imposed by way of punishment, it follows that the body in question has found its member guilty of significant misconduct or breach of rules."(emphasis ours)

38. In the case of *Member of the Executive Council for Education, North West Provincial Government v Gradwell* (2012) 33 ILJ 2033 (LAC), (25th April, 2012) the South Africa Labour Appeals Court dealt with the question of the purpose of holding suspension and observed:

> "... When dealing with a holding operation suspension, as opposed to a suspension as a disciplinary sanction, the right to a hearing, or more accurately the standard of procedural fairness, may legitimately be attenuated, for three principal reasons. Firstly, as in the present case, precautionary suspensions tend to be on full pay with the consequence that the prejudice flowing from the action is significantly contained and minimized. Secondly, the period of suspension often will be (or at least should be) for a limited duration.
>
> ... And, thirdly, the purpose of the suspension - the protection of the integrity of the investigation into the alleged misconduct - risks being undermined by a requirement of an in-depth preliminary investigation."

39. We also take to mind the decision of the Supreme Court of Ireland in the case of *Deegan v The Minister for Finance* [2000] ELR 190 (SC) in which Keane CJ stated as follows (at p 198):

> "It is clear that the suspension of a person from their employment for a specified period because of irregularities or misconduct on his or her part can constitute a form of disciplinary action which would entitle the person affected to be afforded natural justice or fair procedures before the decision to suspend him or her is taken. The consequences of such suspension can be extremely serious for the person concerned, involving not merely their right to earn a livelihood but also their right to have their good name protected. In *John v. Rees* [1969] 2 All ER 274 at 305, Magarry J, in a passage cited by the learned High Court judge said:-
>
> > "... in essence a suspension is merely expulsion pro tanto. Each is penal, and each deprives the member concerned of the enjoyment of his rights of membership or office. Accordingly, in my judgment the rules of natural justice prima facie apply to any process of suspension in the same way that they apply to expulsion."
>
> However, that was not a case in which the suspension was being imposed so that an inquiry could be undertaken as to whether disciplinary action should be taken against the person concerned and, if so, the nature of such a sanction.
>
> That distinction was emphasised by Lord Denning MR in *Lewis v Heffer* [1978] 3 All ER 354, a decision to which the attention of the learned High Court judge does not appear to have been drawn. Having cited the passage from the judgment of Magarry J., Lord Denning went on to state at p 364:-
>
> > "These words apply, no doubt, to suspensions which are inflicted by way of punishment, as for instance when a member of the Bar is suspended from practice for six months, or when a solicitor is suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending enquiries.

> Very often irregularities are disclosed in a government department or in a business house; and a man may be suspended on full pay pending enquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply: see *Furnell v Whangarie High Schools Board* [1973] 1 All ER 400."

40. Similarly, closer home, in the case of *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* [2014] eKLR, this court held:

> " A suspension therefore is ultimately a right due to an employer who on reasonable grounds suspects an employee to have been involved in misconduct, of poor performance or physical incapacity and wishes to remove such an employee from the work place to enable further investigation without subjecting the employee to further commission of more acts of misconduct, underperformance or the conditions leading to incapacity. The suspension period is a time available to an employer to control as the employee can be summoned back to work any time to undertake disciplinary proceedings or upon terms and given by an employer."

41. What becomes apparent from the above cited authorities is that the nature of a suspension may be twofold. Firstly, a suspension may result in, *inter alia*, a punishment that requires notice so as to provide the employee with an opportunity to defend themselves against the allegations of misconduct. Secondly, it may result in a suspension pending enquiries, the latter being an administrative action taken against an employee or officer for a distinct period on full pay pending enquiries into the allegations arising in the work place.

42. It is clear from the provision that section 22 does not indicate whether, by imposing a suspension a preliminary step is being taken towards removal, or whether it would amount to a temporary measure pending investigations, that is, a holding suspension, or whether it is with reference to a punitive sanction. Unlike section 23 which prescribes an express procedure for removal, section 22 is silent on the procedure leading to a suspension to wit, how it should be initiated, the duration of the suspension, the effect of the suspension, the payment of remuneration and other benefits, and whether the Clerk is to be offered an opportunity to respond or not.

43. It therefore begs the question as to whether the suspension issued by the appellants to the respondent was a holding suspension or a punitive suspension. To reach a finding would require that we consider the facts that were before the trial Judge. According to the appellants, the Board resolved that the respondent be issued with the suspension letter of 2 March 2020; that, after the County Assembly's sitting of 3 March 2020 was adjourned, the Speaker summoned the respondent in the presence of the Deputy Speaker and explained to him the Board's decision, whereafter he was handed the suspension letter. A consideration of the suspension letter discloses that the respondent was informed of the reasons for suspension and the period of suspension of 60 days with full pay pending investigations and enquiry into the allegations.

44. When the appellants' actions leading to the issuance of the suspension letter, and the contents of the suspension letter construed, it may be concluded that the suspension was a holding suspension where the administrative action taken was intended to allow the appellants the opportunity to conduct investigations into the allegations of misconduct. nothing in the letter pointed to the respondent as having been adjudged as guilty, or showed that the suspension was intended as punishment for any employment offence. Our interpretation of section 22 is that, notwithstanding the absence of a prescribed procedure leading to a suspension, what was contemplated under section 22 of the *County Assembly Service Act* was not a punitive suspension in the form of a penalty that would otherwise have necessitated a disciplinary hearing. Rather, the appellants' actions were specifically with reference to a holding suspension comprising a temporary separation in the context of good administration pending investigation and or inquiry into the allegations of misconduct whereupon, dependent on the outcome of the investigations, the suspension would either be lifted or the process of removal commenced under section 23.

45. As to whether a holding suspension required that the respondent be subjected to the rules of natural justice, the foregoing authorities are clear that a hearing to issue a letter of suspension as an administration action pending investigations was at that stage of the process unnecessary and impractical.

46. Whilst considering whether a hearing for issuance of a suspension letter was necessary within the context of the Employment Act in the case of *Luka Korir v Moi Teaching Referral Hospital* [2022] eKLR, Abuodha, J. had this to say:

> " A suspension from employment is not a termination. It is in essence a temporary separation from day-to-day duties of an employee suspected of committing a disciplinary offence. It is usually handed out to allow for investigations into the allegations against the employee concerned. It is as it were, quite a preliminary stage in the disciplinary process where the evidence in support of the allegations is subject to further investigations and the employee subject to suspension cannot conveniently continue to work when they are going on.
>
> 23. To require an employer to hear an employee in such a preliminary stage before handing the suspension does not sound practical. Whereas in some organizations or employment contracts, hearing before suspension may be provided for but is not a mandatory requirement under the Employment Act. An employee proceeding on suspension is usually called upon to react to the preliminary charges which is usually considered vis-a-vis the final investigations report before escalating the issue to a disciplinary hearing."

47. We agree and would adopt this observation for the purposes of section 22 of the *County Assembly Service Act* that a hearing at the point of issuance of a holding suspension was not necessary, particularly since no procedure is spelt out by the Act for the issuance of such suspension.

48. Turning to the cross appeal. The respondent was aggrieved by failure of the trial judgeto find that the undated notice to show cause why removal proceedings should not be commenced against the respondent was not a violation of the values and principles of public office as provided for under article 232 and 236 of the *Constitution*.

49. Article 236 provides that:

> " A public officer shall not be--

a. victimized or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or

b. dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law."

50. A consideration of the pleadings and proceedings does not show that the respondent demonstrated how the provisions of the Constitution were violated, or how the appellants failed to follow due process. As such, we find that this ground is unfounded.

51. Concerning whether the respondent proved that the intended disciplinary proceedings would be unfair as the appellants were already biased against the respondent raises the question of reasonable apprehension of bias.

52. In the case of *Judicial Service Commission v Shollei & another* (Civil Appeal 50 of 2014) [2014] KECA 334 (KLR), this court held:

> " Thus it is crucial in determining real or apparent bias, that the first step be the ascertainment of the circumstances upon which the allegation of bias is anchored. The second step is to use the ascertained circumstances to determine objectively the likely conclusion of a fair minded and informed observer, on the presence or absence of reasonable apprehension of bias....
>
> However, it is one thing to allege facts and another to establish the facts. The perception of bias can only be based on established facts." (emphasis ours)

53. It was the appellant' case that the members of the 1st appellant were biased and therefore not impartial or capable of fairly and objectively determining the disciplinary case against him. However, save for alleging bias, the appellant did not in any way establish bias or the inference of bias in the conduct of the members of the 1st appellant. According to the evidence, the respondent had yet to appear before the 1st appellant for the removal hearings. In the absence of any demonstration of bias by the individual members of the 1st appellant, the allegations are unmerited, and the trial Judge rightly dismissed them.

54. Finally, on costs, it is trite law that costs follow the event. In this regard, the Supreme Court laid down guiding principles for the exercise of discretion in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others*, SC Petition No 4 of 2012; [2014] eKLR, thus:

> " ...It emerges that the award of costs would normally be guided by the principle that "costs follow the event": the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference is the judiciously- exercised discretion of the court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, before, during, and subsequent to the actual process of litigation.... Although there is eminent good sense in the basic rule of costs– that costs follow the event – it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings – a position well illustrated by the considered opinions of this court in other cases."

55. In the findings reached in the judgment, part of the respondent's claim was allowed while the appellants also succeeded in part. As a consequence, the learned judge cannot be faulted for awarding half of the cost to the respondent and half to the appellants. This ground is therefore dismissed.

56. In an upshot, the appeal succeeds with regard to the import and meaning of section 22 as read with section 23 of the *County Assembly Service Act*. Consequently, the declaration by the trial Judge that "... suspend" means "remove" (and is not an interlocutory administrative measure that may be imposed pending investigations) and "suspend" under the section shall not be imposed by the County Assembly Service Board unless in accordance with and after conclusion of the due process prescribed under section 23 of the Act", be and is hereby set aside, while the cross appeal is without merit and is hereby dismissed.

57. Costs of the appeal and cross appeal to the appellants.

It is so ordered.

DATED AND DELIVERED AT MOMBASA THIS 26TH DAY OF JULY 2024.

A. K. MURGOR

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA C.Arb, FCIArb

.....

JUDGE OF APPEAL

G. V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR