



**Mulli v Airlines (Cause E604 of 2025) [2025] KEELRC 2470 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2470 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E604 OF 2025  
SC RUTTO, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**SUSAN AKWESI MULINYA MULLI ..... CLAIMANT**

**AND**

**SAUDI ARABIAN AIRLINES ..... RESPONDENT**

**RULING**

1. The Claimant/Applicant moved this Court by way of a Notice of Motion dated 26<sup>th</sup> June 2025, through which she seeks the following orders;
  1. Spent.
  2. Spent
  3. This Honourable Court be pleased to suspend the operation and/or effect of the Respondent's Letter of Termination dated 19<sup>th</sup> June 2025, purporting to terminate the Claimant's employment, pending hearing and determination of the suit.
  4. The costs of this Application be provided for.
2. The Motion is premised on the grounds appearing on its face and the Claimant's Supporting Affidavit, sworn on 26<sup>th</sup> June 2025. Grounds in support of the Motion are that the Claimant is a person living with a disability. That vide a letter dated 19<sup>th</sup> June 2025, the Respondent purported to summarily terminate the Claimant's employment with effect from 30<sup>th</sup> June 2025 due to her inadvertent failure to respond to a Notice to Show Cause dated 29<sup>th</sup> April 2025.
3. It is averred that the inadvertence arose from the Claimant's failure to see the Notice to Show Cause, which was emailed to her inbox, and the Respondent's inexplicable failure to use any other normal means of bringing the Notice to Show Cause to the Claimant's attention, including physical delivery.



4. The Claimant avers that had she seen the said Notice to Show Cause, she would have readily and comprehensively responded to the same in good time.
5. She further states that at no point prior to the abrupt service of the Letter of Termination dated 19<sup>th</sup> June 2025 was she aware of any formal disciplinary proceedings against her. That whereas the Claimant had previously been placed under a performance improvement plan, the same had not escalated to a disciplinary issue that would warrant her summary dismissal.
6. It is the Claimant's assertion that during this period, her home internet connection had been disconnected due to nonpayment. That given that the Respondent does not facilitate her internet expenses while she works remotely, exclusive reliance on email to serve the Notice to Show Cause is unreasonable considering that its Human Resources Department Policy Manual provides for multiple communication channels.
7. It is the Claimant's contention that having not been heard on the allegations levelled against her in the Notice to Show Cause as required under the Employment Act and the Respondent's Human Resources Department Policy Manual, she now effectively stands condemned unheard, a most draconian act that would deprive her of any source of income and other employment benefits, including the medical care which she depends on given her disability.
8. The Claimant holds that the Respondent's actions are inhumane and unconscionable and have caused her to suffer severe harm and prejudice, more so given that she belongs to a vulnerable group of people who deserve protection, patience and latitude, rather than high-handedness and oppression.
9. The Respondent opposed the Application through a Replying Affidavit sworn on 9<sup>th</sup> July 2025, by the Respondent's Regional Cargo Director, Africa Kenneth Mbogoh.
10. Mr. Mbogoh avers that the Claimant has been poor and negligent in the performance of her duties, leading to her being put under performance improvement plan between 13<sup>th</sup> May 2024 - 12<sup>th</sup> June 2024 and 1<sup>st</sup> September 2024 - 30<sup>th</sup> November 2024.
11. That due to non-improvement of her performance and/or negligence of her duties as she habitually failed to generate requisite reports, leading her to be issued with a Notice to Show Cause, which raised several complaints against her.
12. Mr. Mbogoh further deposes that the Claimant is philosophical on truth and, as an afterthought, feigned and/or concocted a lie that she did not see the Notice to Show Cause.
13. Mr. Mbogoh avers that contrary to the allegations by the Claimant, in her Supporting Affidavit, she was served with the Notice to Show Cause on 29<sup>th</sup> April 2025 at 6:10 PM.
14. According to Mr. Mbogoh, the insinuation that the Claimant's failure to see the notice was inadvertence' clearly depicts the character of a staff who has been allowed due to her condition to work remotely to 'fail' to see an email of her employer forwarding the Notice to Show Cause sent on 29<sup>th</sup> April 2025 and one month and 21 days later come to allege not to have seen to same and allege to be an inadvertence or otherwise an oversight not deliberate. In Mr. Mbogoh's view, this reconfirms the Respondent's complaint of the Claimant's negligent performance of duties.
15. Mr. Mbogoh further avers that the Claimant is assigned an office laptop computer HP Pavilion DV 6-6105ei/5CH1361R51 for her day-to-day usage in her duties as Supervisor, Customer Service Kenya. That further, she has been assigned an official mobile number +254 733915758 under the account of the Respondent with provision of unlimited voice/Data for her day-to-day usage in her duties as the Supervisor Customer Service Kenya.



16. That further, the Claimant is getting a transport allowance of Kshs. 24,024/- and the same has never been withdrawn as the Claimant has not been physically attending or accessing the office since April 2024 being a period of about 15 months.
17. In Mr. Mbogoh's view, the allegation that the Claimant has been discriminated and/or not accommodated on account of her disability is not only untrue but a concocted lie.
18. According to Mr. Mbogoh, the Respondent has shown compassion to the Claimant on account of her disability and as a consequence, accommodated her. Mr. Mbogoh adds that there is a contract of Employment as between the Claimant and the Respondent, that the Claimant has been negligent and/or poorly performed despite being put under a performance improvement plan.
19. Mr. Mbogoh has further stated that the Claimant was properly served with the Notice to Show Cause dated 29<sup>th</sup> April 2025, but negligently chose to ignore it. He is advised by the Respondent's Advocates on record that the Respondent discharged its statutory obligation of notifying the Claimant of the disciplinary complaints and providing evidence thereof, which the Claimant chose not to respond and thus cannot now wake up from her slumber and allege having been condemned unheard.
20. In Mr. Mbogoh's view, the termination of employment is lawful, and no statutory or constitutional provisions have been breached.
21. Mr. Mbogoh holds that the Claimant has come to a court of equity with unclean hands seeking equitable injunctive orders premised on willful misrepresentations, specifically that she was served with a Notice to Show Cause and not accorded accommodation due to her disability and thus fails to meet a basic threshold for the injunctive orders that an applicant has to satisfy.
22. Mr. Mbogoh avers that in case the Claimant is not granted the substantive orders being sought at the interlocutory stage and is successful at the main hearing (which he denies), damages are adequate to compensate any alleged injury that she may have incurred.
23. According to Mr. Mbogoh, the Claimant's application is not merited and should be dismissed with costs.
24. The Claimant swore a Further Affidavit on 30<sup>th</sup> July 2025 in which she deposes that in the entirety of 13 years of dedicated service to the Respondent, she was never issued with a warning letter or subjected to any formal disciplinary proceedings. That the performance improvement plan was a measure aimed at facilitating an improvement of her performance, given her disability, of which she was actively addressing prior to being abruptly served with the Letter of Termination.
25. The Claimant further avers that her termination on account of poor performance or negligence does not excuse the Respondent from adhering to the rules and procedures set out in the *Employment Act* and the dictates of *the Constitution* of Kenya.
26. The Claimant is categorical that she did not see the Notice to Show Cause. She adds that her relationship with her direct supervisor, Mr. Kenneth Mbogoh, during the 13-year period has been one where a follow-up call is made in case of a slow response or no response to an important email or work task. She contends that no such follow-up call was made in regard to the Notice to Show Cause despite the grievous repercussions that could result from non-compliance.
27. According to the Claimant, during the period she worked remotely, the Respondent would deliver various documents to her residence for signature or any other appropriate action, just as it did in the case of the Termination Letter.



28. In the Claimant's view, nothing would have been easier than for the Respondent to use the myriad of communication channels at its disposal to serve the Notice to Show Cause, considering that it served her with the Termination Letter physically.
29. The Claimant further avers that while working remotely, she has been using her personal laptop to undertake the tasks assigned to her by the Respondent. That even though the Respondent issued her with a mobile phone number and airtime, the same only allowed her to make voice calls, send text messages and use the internet on her mobile device and did not extend to facilitating internet access on her personal laptop.
30. According to the Claimant, the Replying Affidavit, read holistically, does not answer the complaints raised in regard to the purported termination of her employment by the Respondent in that she has not been heard on the allegations levelled against her in the Notice to Show Cause. That she now stands condemned unheard, leaving her without any source of income and other employment benefits, including the medical care she depends on.
31. She further avers that she depends on the income and other employment benefits to obtain life-long medications and therapies as well as sustain herself and her two minor children. That in the absence of this Court's protection, the Respondent will, with immediate effect, stop remitting her salary and revoke access to medical insurance benefits. Therefore, should she succeed at trial, an award of damages would not alleviate the implications of the Respondent's unlawful and unconstitutional act.

### **Submissions**

32. The Notice of Motion was canvassed by way of written submissions. On her part, the Claimant has submitted that given the Respondent's failure to hear her on the Notice to Show Cause, it has violated her rights guaranteed under *the Constitution* of Kenya and the *Employment Act*. According to the Claimant, she has demonstrated that her suit is a prima facie case with probability of success, which she wishes to ventilate at trial. It is the Claimant's view that she has satisfied the first limb of the test for the grant of an injunction as set out in *Giella v Cassman Brown* [19731] E.A. 358.
33. With respect to irreparable harm, the Claimant placed reliance on Halsbury Laws of England, 3<sup>rd</sup> Edition, Volume 21 at paragraph 764, and submitted that an award of damages would not adequately remedy the loss she would likely suffer in the absence of this Court's intervention.
34. Still on this issue, the Claimant has further submitted that she will be unable to obtain life-long medications and therapies, which will exacerbate her disability and affect her ability to fend for herself and her two minor children. According to her, such harm cannot be compensated by damages.
35. On the balance of convenience, the Claimant posits that she will endure a significantly greater harm if the injunction is not granted. She further argues that the Respondent faces no prejudice if it is restrained from enforcing the Letter of Termination pending the hearing and determination of this suit.
36. On its part, the Respondent has submitted that it acted in accordance with the *Employment Act* 2007, particularly Section 41. The Respondent has further contended that the Claimant cannot now turn around and seek the Court's protection under equitable relief while her own conduct shows she failed to meet the basic obligations of her job, even after being accommodated.
37. The Respondent has further argued that the Claimant has failed to demonstrate a prima facie case with a probability of success, as required under the principles established in *Giella v Cassman Brown*



& Company Ltd [1973] EA 358 and clarified in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR.

38. The Respondent has further submitted that it went beyond legal obligations in providing reasonable accommodation on account of her disability. The Respondent argues that this accommodation is not only sufficient but reflective of a supportive employer.
39. The Respondent has further posited that the Claimant has not identified any statutory or contractual right that has been breached, nor has she produced any evidence to rebut the detailed facts and annexures in the Respondent's Replying Affidavit. According to the Respondent, the Claimant has shown no such right, no real chance of success, and no evidence of procedural unfairness or unlawful conduct by the Respondent.
40. On the aspect of irreparable harm, the Respondent has submitted that it is a globally recognised and financially stable international airline with the capacity to satisfy any award of damages that may be issued. That there is no risk that the Claimant, should she succeed at trial, would be unable to recover what is lawfully due to her.
41. The Respondent maintains that the Claimant has not shown that the termination will cause her personal hardship that is beyond compensation. In the Respondent's view, the Claimant has not demonstrated any unique, non-pecuniary interest that would elevate her claim to the level of requiring urgent equitable protection. The Respondent opines that the Claimant's Application simply seeks to preserve employment at all costs, regardless of the merits or fairness of the termination which is not a purpose recognised in law for injunctive relief.
42. To this end, the Respondent holds that the alleged harm is neither irreparable nor incapable of being adequately remedied.
43. On the balance of convenience, the Respondent has submitted that the Claimant has equally failed to demonstrate that the balance of convenience tilts in her favour. The Respondent posits that on the contrary, the prevailing circumstances, including the support, accommodation, and procedural safeguards extended to the Claimant, strongly indicate that the balance tilts in its favour.

### **Analysis and Determination**

44. Having considered the Notice of Motion, the Response by the Respondent, the Claimant's Further Affidavit, as well as the rival submissions it is evident that the singular issue that arises for determination by the Court is whether the Claimant has satisfied the requirements for grant of an interlocutory injunction effectively suspending the Claimant's letter of termination dated 19<sup>th</sup> June 2025 pending the hearing and determination of the main suit.
45. In light of the nature of the injunctive relief sought by the Claimant, it is imperative to analyse the facts herein against the principles established in the celebrated case of *Giella v Cassman Brown & Co Ltd* (1973) E.A, in which it was held as follows:-

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”



46. In a nutshell, for the Claimant's application to succeed, she must demonstrate that she has a prima facie case with a probability of success and that she will suffer irreparable injury should the orders be denied. Further, in the event of doubt, the balance of convenience tilts in her favour.
47. As to what constitutes a prima facie case, the Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, held as follows: -
- “So, what is a “prima facie case” I would say that in civil cases it is a case in 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. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”
48. The crux of the Claimant's case is that she was unaware of the disciplinary proceedings initiated against her by the Respondent hence was condemned unheard. According to the Claimant, she was at the material time working from home remotely, having been unable to access the Respondent's physical office premises, which is not fitted with elevators. That as such, she did not see the Notice to Show Cause that was emailed to her inbox hence the reason she did not respond to the same. The Claimant has termed this omission as inadvertent.
49. The Claimant has further taken issue with the manner in which the Notice to Show Cause was delivered to her. In her view, the Respondent's action of serving the Notice to Show Cause exclusively via email was unreasonable as its Human Resources Department Policy Manual provides for multiple communication channels.
50. In this regard, the Claimant has further contended that while she worked remotely, the Respondent would deliver various documents to her residence for signature or any other appropriate action, just as it did in the case of the Termination Letter.
51. Countering the Claimant's Application, the Respondent has maintained that the Claimant was served with the Notice to Show Cause on 29<sup>th</sup> April 2025 at 6:10 PM. In the Respondent's view, the Claimant's assertion of inadvertence to see the Notice to Show Cause reconfirms its complaint of the Claimant's negligence in the performance of duties.
52. According to the Respondent, it discharged its statutory obligation having properly served the Claimant with the Notice to Show Cause but she negligently chose not to respond to the same.
53. Fundamentally, the contention herein is whether the Claimant was sufficiently made aware of the allegations levelled against her through the Notice to Show Cause but waived her right to be heard by not responding to the same. Differently expressed, did the Claimant squander her opportunity to be heard?
54. Accordingly, it is apparent that at the hearing of the main suit, the Court will be required to interrogate and apply its mind to the parties' respective assertions in light of the inalienable right to be heard, the provisions of Section 41 of the *Employment Act* and the Respondent's Human Resources Department Policy Manual.
55. In light of the principles set out in *Mrao Ltd v First American Bank of Kenya Ltd* (supra), this Court is satisfied that the Claimant has proved that she has a prima facie case.



56. Over and above establishing a prima facie case, an applicant seeking an injunctive relief as the one herein, must further demonstrate to the satisfaction of the Court that the injury to be suffered in the event the injunction is not granted will be irreparable.
57. In the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, the Court of Appeal considered what constitutes an irreparable injury, and in this regard, held as follows: -
- “An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be an adequate remedy.”
58. In her submissions, the Claimant has posited that she will be exposed to undue hardship that cannot be cured by monetary reliefs in the event the Court does not grant an injunctive relief in her favour. On this score, the Claimant has argued that in the absence of an injunction pending hearing and determination of the suit, she stands to lose her income and medical insurance benefits with immediate effect. In her view, a post-facto award of damages in the event she succeeds at trial would do little to alleviate the implications of being unlawfully, illegally, and discriminatorily stripped of employment, especially given that she is a person living with a disability and the sole and primary provider to her two minor children.
59. On this issue, the Respondent holds that the Claimant’s assertion that she will suffer irreparable harm if the termination is allowed to stand pending trial is wholly unsubstantiated and legally untenable.
60. In the Respondent’s view, the Claimant’s argument that she is the sole provider for herself and her children is not the legal standard for irreparable injury in employment disputes. The Respondent maintains that the Claimant’s alleged harm is purely economic in nature, a temporary loss of income which, if found unlawful upon trial, can be fully remedied through compensatory damages under Section 49 of the *Employment Act* 2007. The Respondent has further argued that the Claimant has not shown that the termination will cause her personal hardship that is beyond compensation.
61. The Court has weighed the parties’ rival arguments on this issue, and evidently, it all boils down to what is at stake in the event the injunctive relief is not granted. As things stand, should the Court decline to grant the injunction sought by the Claimant, the letter of termination dated 19<sup>th</sup> June 2025 will take effect and the Claimant will stand terminated. In addition to the loss of income from her employment, the Claimant has further cited the potential loss of her medical benefits with the Respondent. According to the Claimant, she is on lifelong medications and therapies on account of her disability, which was occasioned by a stroke she suffered in 2020.
62. In light of the Claimant’s argument that the Respondent’s decision to terminate her employment was arrived at without being accorded a hearing and bearing in mind that the Claimant stands to lose more than just monetary benefit from the discontinuation of her employment, this Court is of the view that should the Claimant’s suit succeed upon full hearing of the matter, the loss suffered will be irreparable and cannot be adequately compensated by way of damages.
63. Consequently, the Court finds that the Claimant has established that she will suffer irreparable loss in the event the injunctive orders are not granted.
64. Indeed, the Claimant will not enjoy these benefits for free. She will continue to render her services to the Respondent and should the Court ultimately find that her termination was procedural and that she squandered the opportunity to be heard, her termination will be allowed to take effect.
65. All things considered, it is apparent that the balance of convenience tilts in favour of the Claimant.



## Orders

66. In sum, the Claimant's Application dated 26<sup>th</sup> June 2025 is found to be with merit and the Court makes the following orders:
- a. Pending the hearing and determination of this Claim, the letter of termination dated 19<sup>th</sup> June 2025, is hereby suspended.
  - b. The costs of this application shall be in the cause.
67. Further, in view of the interim orders issued, time shall be of essence and the suit shall be disposed of expeditiously hence the following directions are hereby issued:
- a. The Respondent shall file and serve its Response, witness statements and list and bundle of documents within 21 days hereof.
  - b. The Claimant shall within 14 days upon service, file and serve any Reply to the Response to the Claim.
  - c. Thereafter, pleadings shall close and parties shall take a suitable hearing date.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER 2025.**

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**STELLA RUTTO**  
**JUDGE**

In the presence of:

For the Claimant/Applicant Mr. Mbaluto

For the Respondent Mr. Okoth

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**  
**JUDGE**

