REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E992 OF 2025

SYMON KAMORE……

……..CLAIMANT

-VERSUS-

SMEP MICHROFINANCE BANK

PLC……..RESPONDENT

RULING

Introduction

1. This Ruling relates to the Claimant's Notice of Motion dated 13th October 2025 seeking the following orders:-

    a) That pending inter-parties hearing and determination of this suit the Honourable court be pleased to issue an order of stay of the

Respondent's decision contained in the letter dated 1st October, 2025 requiring the Claimant to show cause why he should not be dismissed for gross misconduct.

b) That pending inter-partes hearing and determination of this suit the Honourable Court be pleased to issue an order of injunction to restrain the Respondent from undertaking disciplinary proceedings against the Claimant pursuant to the Notice to Show Cause dated 1st October, 2025.

c) That the Honourable court be pleased to issue such directions as may be necessary to hear and determine this suit within 90 days from the date of filing this suit .

d) That the costs of this application be borne by the Respondent.

2. The Motion was supported by the Claimant's Affidavit and it was opposed by the Respondent through its Amended Grounds of Opposition dated 28th October 2025 and Replying Affidavit sworn on even date by one Gideon Maniragaba. The Motion was then disposed of by written submission which were highlighted by counsel on 6th November 2025.

Factual background.

3. The Claimant was employed by the Respondent as a Junior Management staff on 3rd October 2003 and rose through the ranks to become the Chief Executive Officer on 1st April 2015. He attributed the said rise in the ranks to his Steller performance in the bank.

4. All was well until he received a memo from the Respondents Chairman, dated 12th February 2025 informing him that, upon evaluation of his 2024 performance on 31st January 2025 he was ranked 2/5 (below expectation). The memo placed him on a Performance Improvement Plan (PIP) until the end of May 2025.

5. The following concerns were highlighted in respect of the Performance Improvement Plan:-

    a) **failure to observe the credit risk appetite threshold PAR>30 days remains SMEP's biggest challenge and highest risk SMEP faces as at now.**

    b) **Symon and his business team have missed 100% of the weekly targets they set for**

themselves for portfolio and PAR> 30 from 12 October 2024 through 31 January, 2025. This is more than 16 weeks of projections where zero targets were met or exceeded. This is completely unacceptable.

c) Compliance (anti-fraud) & credit culture. Controls in branches are weak, fraud is rampant – but Symon doesn't seem to take these issues seriously.

d) Symon allowed the contractual payments for a key vendor (Maxteak) to be verted outside the organization without any plan of how to recover those funds and get paid back. This demonstrates poor management and stewardship.

e) **Declining loan portfolio – As at end of November, 2024, the gross loan portfolio declined by over 34% since March, 2024 hence negatively impacting on revenue.**

6. The memo warned him that failure to meet or exceed or display of gross misconduct will result in further disciplinary action as per the Respondent's Human Resource Policy of December 2023 Edition. The Claimant failed to meet or exceed

expectation and the Performance Improvement Plan was extended to 31st July 2025 by a memo dated 19th June 2025. The memo was done after a meeting held between the Claimant, Respondent's Chairman and director Gideon Maniragaba where it was agreed that the Claimant had not met three performance targets.

7. Again the Claimant did not meet the agreed targets by the close of the extension period of the 2025 Performance Improvement Plan and on 18th August he wrote to the Respondent proposing a mutual separation and seeking an exit package of Kshs. 95,572,938. As a result the Respondent halted the contemplated disciplinary process to consider the Claimant's proposed mutual separation. The parties exchanged proposals on without prejudice basis but failed to reach any settlement.

8. On 1st October 2025, the Respondent served the Claimant with a show cause letter of even date requiring him to explain why disciplinary action should not be taken against him for poor performance. This did not go down well with the Claimant and he brought this suit and the instant motion seeking to bar the

Respondent from subjecting him to the disciplinary process initiated by the said show cause letter.

9. In brief the Claimant's case was that the Performance Improvement Plan was unlawful, and it was meant to achieve a predetermined aim of terminating his employment. He contended that three out of the four items or areas of concern leading to the Performance Improvement Plan related to matters of governance, structural issues and operational inefficiencies of the Bank which required the Board and the staff including himself to address or seek appropriate redress.

10. He contended that the court has jurisdiction to annul a Performance Improvement Plan whose objective is premeditated to terminate the Claimants employment. He further averred that he cannot secure fair hearing in respect of the show cause letter as the Respondent's directors are conflicted adversely by the facts in contention and self-interest in passing off governance problems of the Respondent as matters of under performance by him.

11. The Claimant further averred that the disciplinary process should not be allowed to proceed as it would result to injustice since the remedies for unlawful termination would be grossly inadequate to redress his grievances. He further averred that since the parties had expressed keenness on the earliest resolution of this dispute, the scale of justice should tilt in favor of allowing his Motion.

12. On the other hand, the Respondents case was that the Claimant has not established a prima facie case with probability of success since there is evidence of his poor performance both in the year 2024 and during the period of Performance Improvement Plan in 2025; Claimant did not protest against the review and the subsequent Performance Improvement Plan and he is therefore using this court to compel the employer to negotiate an exit package favorable to him. Consequently it averred that the suit has no probability of success.

13. The Respondent further contended that the Claimant was served with show cause letter and has since responded to the

same. The Claimant will subsequently be accorded a fair hearing in accordance with the Employment Act to defend himself of the charge of failure to meet his agreed performance targets.

14. The Respondent also contended that the Claimant will not suffer irreparable harm if the orders sought are denied since the Employment Act provides adequate and effective remedies including compensation and reinstatement. It maintained that any damage suffered will be possible to quantify in monetary terms and payment be made. Besides, it observed that the suit seeks a money settlement and therefore damages would be adequate remedy.

15. Finally, the Respondent averred that the balance of convenience tilts in its favor as granting an injunction would prejudice it by paralyzing its managerial prerogative to supervise, evaluate and discipline its staff. The said functions are, in its view, very essential to maintain performance standards, especially in the banking industry.

16. It averred that, the Claimant being the Chief Executive Officer, occupies a critical position of trust and responsibility and failure to hold him to account through performance evaluation would undermine the Respondents governance structures, efficiency of the bank and potentially have a ripple effect on the banks operations, staff and customers.

17. It averred that the Claimant will not suffer any prejudice by responding to the show cause letter and appearing before the disciplinary panel if the response to the show cause is found to be unsatisfactory. He will also have the liberty of challenging the outcome of the disciplinary process in court upon exhaustion. It therefore deemed the suit to be premature and urged the court not to interfere with the internal disciplinary process since there is no demonstration of illegality or breach of rules of natural justice.

18. Having considered the pleadings, Motion, Affidavits, Grounds of Opposition, written and oral submissions presented by both sides, the following issues fell for determination:-

a) Whether the court has jurisdiction to interfere with the internal disciplinary process before exhaustion.

b) Whether an injunction order should be awarded as prayed.

Analysis

Jurisdiction to intervene

19. The Jurisprudence emerging from our courts is that an employer has the inherent administrative discretion in managing his/her business. However the said discretion is not absolute and the court has jurisdiction to intervene upon certain thresholds. In **Mulwa Msanifu Kombo v. Kenya Airways [2013] eKLR** the Court held that: -

> ***"…this court would be reluctant to involve itself in a disciplinary process commenced by the employer unless in appropriate cases it is established that the disciplinary process has been commenced or is continuing unfairly. The intervention in disciplinary process by employers will be entertained by the court rarely and in clear cases where the process is likely to result in unfair imposition of a punishment against the employee. The court will intervene … if it is established that the procedure relied on by the employer offends fairness or due process by not upholding the rule of natural justice or, if the***

procedure is in clear breach of the agreed or legislated or employer's prescribed applicable or policy standards, or if the disciplinary procedure were to continue it would result into manifest injustice in view of the circumstances of the case."

20. In **Geoffrey Mworia v. Water Resources Management Authority [2015] eKLR** the Court held as follows: -

"The court will sparingly interfere in the employer's entitlement to perform any human resource functions such as … disciplinary control … To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of the constitution or legislation; or in breach of the agreement between the parties; or in manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer's internal process."

21. In **MTN v. KIE Limited [2020]eKLR** the court held that:-

" The Courts have held over and over again that Courts will not interfere with the internal

disciplinary action by the employer against their employees. Courts have held that Courts will interfere with internal disciplinary action only when the process is flawed. The interference will thus be to put back on track the disciplinary process but not to do away with it altogether."

22. In **Rebecca Ann Maina & 2 Others v. Jomo Kenyatta University of Agriculture and Technology [2014] eKLR**, the court held as follows regarding court's intervention in disciplinary process at the shop floor: -

"… the Court will intervene not to stop the process altogether but to put things right."

23. The legal principle emerging from the above decisions is that the Court will not micro- manage employers by interfering with their administrative discretion especially with respect to Human Resource functions. Courts will only intervene in internal disciplinary process when the employer adopts a procedure that violates the procedure set out in the law, Collective Bargaining Agreement, contract, Human Resource policies and the rules of natural justice. Even then, the Court will intervene to put the process back on track but not to end

the same altogether. The said principles are derived from Article 41 and 47 of the Constitution are amplified by the Employment Act, Employment and Labour Relations Court Act and the Fair administrative Action Act.

Interlocutory injunction

24. The threshold for granting interlocutory injunction was laid by the Court **in Giella v. Cassman Brown & Co. Limited [1973]eKLR**

a) Applicant must establish a prima facie case with probability of success.

b) Applicant must demonstrate that he will suffer irreparable harm if injunction is withheld.

c) If there is doubt about the nature of harm, the court will consider the balance of convenience.

Prima facie case

25. A prima facie case was defined by the Court of Appeal in **Mrao Ltd v. First American Bank of Kenya Ltd & 2 others [2003] eKLR** where the Court of Appeal defined prima facie case, thus:-

" 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."

26. In this case the Claimant alleging that the disciplinary process commenced by the impugned show case letter are contrary to the law and unfair. He does not expect fairness in the process and believes his goose has already been cooked. He believes that the Performance Improvement Plan imposed on him was intended to achieve a predetermined end.

27. However, the Respondent averred that the Claimant performed poorly and failed to meet agreed targets necessitating his placement on the

Performance Improvement Plan. That he never protested against the Performance Improvement Plan or raised any grievance from the start to the end. Again he failed to meet the agreed targets at the close of the Performance Improvement Plan but before disciplinary process kicked in, he

wrote a proposal for mutual separation demanding a huge exit package. It was the Respondent's case that the suit is being used to force it to agree to the Claimant's demand for a favorable exit package.

28. At this stage I am not allowed to go to the merits of the suit, but to merely consider the grievances on its face value. The claimant has been served with a show cause letter and he has since responded to the same. The employer is considering the response and possibly invite him to a disciplinary hearing if the response is not satisfactory. There is no indication that the employer is proceeding unfairly or in breach of the law, contract, Human Resource policy or rules of natural justice.

29. There is also evidence that the Claimant failed to meet agreed performance targets during the year under review and also during the Performance Improvement Plan. As to whether the said targets were not about his personal role, I believe those matters which can be discussed during the internal process. This court is satisfied that the Claimant has been given a fair chance to defend himself against the charge of

poor performance. Consequently, the Court finds that Claimant has not on the face value demonstrated that the employer is proceeding contrary to the law, contract, Human Resource policy or rules of natural justice and that his legal rights will be breached.

Irreparable harm.

30. The Respondent averred that the Claimant will not suffer irreparable harm since the Employment Act has provided adequate remedies for unlawful termination. The Claimant beliefs that the remedies under the Act are inadequate. There is no doubt that section 49 of the Employment Act and section 12 of the Employment and Labour Relations Court Act provides a variety of reliefs for employees whose employment is terminated unlawfully including damages where reinstatement is not practicable.

31. In **Ngurumani Ltd v. Jan Bonde Nielsen & 2 others [2014] eKLR** the Court of Appeal held that:-

> ***" the court must be satisfied that the injury the Respondent will suffer, in the event the injunction is not granted, will be irreparable.***

In other words, if the damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicants claim may appear at that stage."

32. In the instant case, the Claimant has sought compensatory damages for violation of his rights to fair labour practices, among others as guaranteed under the Bill of Rights in our Constitution. Therefore, I find that the Claimant will not suffer irreparable harm if the disciplinary process is not suspended by injunction.

33. Having found that the Applicant has failed to prove a prima facie case with probability of success, and that he will suffer irreparable harm if injunction is declined, I now hold that the legal threshold for granting interlocutory injunction has not been met. Consequently, I dismiss the Claimant's Notice of Motion dated 13th October 2025 with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 16TH DAY OF DECEMBER,

2025.

ONESMUS MAKAU

JUDGE

Appearance:

Kibe for the Claimant/Applicant

Waiyaki for Gatwiri for the Respondent