

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E193 OF 2025
(Before Hon. Lady Justice Hellen Wasilwa, J)

WILLIAM **MBUGUA.....**
.....**PETITIONER**
VS
UNGA **LIMITED.....**
.....**RESPONDENT**

RULING

- 1 The Petitioner/Applicant filed a Notice of Motion dated 29th September 2025 seeking orders that: -
- 1) *spent*
 - 2) *pending the inter partes hearing of this Application, this Honourable Court be pleased to grant a temporary injunction restraining the Respondent, whether by itself, its servants, agents, or any persons acting on its behalf, from implementing and/or enforcing the purported decision contained in the letter dated 15th September 2025, which purports to suspend the Applicant from employment.*
 - 3) *pending the inter partes hearing of this Application, this Honourable Court be pleased to*

grant a temporary injunction restraining the Respondent, whether by itself, its servants, agents, or any persons acting on its behalf, from implementing and/or enforcing the show cause letter dated 15th September 2025, which purports to subject the Applicant to disciplinary action.

- 4) pending the hearing and determination of this Application and the substantive Petition, this Honourable Court be pleased to grant a temporary injunction restraining the Respondent, whether by itself, its servants, agents, or any persons acting on its behalf, from implementing and/or enforcing the purported decision contained in the letter dated 15th September 2025, purporting to suspend the Applicant from his employment.*
- 5) pending the hearing and determination of this Application and the substantive Petition, this Honourable Court be pleased to grant a temporary injunction restraining the Respondent, whether by itself, its servants, agents, or any persons acting on its behalf, from subjecting the Applicant to any disciplinary proceedings.*
- 6) this Honourable Court be pleased to make such further, other, or consequential orders as it may deem just, equitable, and expedient in the circumstances for the protection and preservation of the Applicant's rights.*
- 7) the costs of this Application be borne by the Respondent.*

Petitioner/Applicant's Case

- 2 The Applicant avers that he was employed as a Business Controller on 3rd January 2023. His employment was classified under Job Grade 7, with an initial gross monthly remuneration of Kshs. 349,792.
- 3 The Applicant avers that he discharged his duties diligently and has never been subjected to no warning or disciplinary action.
- 4 The Applicant avers that the Respondent issued him with a Show Cause Letter on 15th September 2025, requiring him to furnish a written explanation within forty-eight (48) hours, demonstrating why disciplinary action ought not to be taken against him. The letter was accompanied by an undated investigation report prepared at the instance of the Respondent, purporting to allege that the Applicant had improperly received Kshs. 560,144 from the Respondent's suppliers and transporters.
- 5 On the same date, the Respondent further issued to the Applicant a Suspension Letter purporting to suspend him from his employment, pending the conclusion of disciplinary proceedings.
- 6 It is the Applicant's case that the Respondent relied upon the said investigation report, which unlawfully intruded into his private affairs by accessing his M-pesa transaction

records without his knowledge, consent, or the sanction of a valid court order. This was in breach of his right to privacy, as protected under Article 31 of the Constitution.

- 7 The Applicant avers that through his lawyer, he requested for a copy of the court order authorizing the access to his sensitive financial data as well a full copy of the investigation report, vide a letter dated 25th September 2025. However, the Respondent declined to provide them but instead proceeded to issue a letter dated 26th September 2025 inviting him to attend the disciplinary hearing.
- 8 The Applicant avers that he was only accorded 72 hours to respond to the NTSC which was inadequate and in contravention of his constitutional right to fair administrative action as guaranteed under Article 47 of the Constitution.
- 9 It is the Applicant's case that without being supplied with the investigation report as well as the alleged court order, he is unable to adequately respond to the allegations or prepare a defence as required under Article 50 of the Constitution.
- 10 He avers that his purported suspension from duty on the basis of illegally obtained evidence is unlawful and further infringes his right to fair labour practices under Article 41 of the Constitution.

- 11 The Respondent, in so doing, also violated Clause 5 of its own Data Protection Policy, by failing to respect and safeguard the Applicant's right to privacy and by failing to provide a lawful justification for processing his personal information.
- 12 The Applicant further avers that the Respondent acted in breach of Clause 11.1 of its Disciplinary Policy, which expressly requires that an employee be afforded no less than 3 calendar days within which to respond to a Show Cause Letter.
- 13 The Applicant avers that he is likely to be prejudiced, including but not limited to loss of employment, would be irreparable and incapable of being adequately compensated by way of damages should the injunctive relief sought not be grant.
- 14 It is the Applicant's case that the right to a fair hearing in Petitions of this nature inherently includes the right to an order staying injurious administrative actions that violate or threaten to violate constitutional rights, pending the determination of the Petition challenging such actions.
- 15 The Applicant avers that the Respondent's actions Respondent are manifestly malicious, unlawful, irregular, and are calculated to unjustly exclude him from his place of work without any lawful foundation.

Respondent's Case

- 16 In opposition, the Respondent filed a replying affidavit dated 16th October 2025, sworn by its Group Human Resource Director, John Mwendwa.
- 17 The Respondent avers that the Petitioner has not come to court with clean hands noting that he has admitted that he has indeed received funds from the suppliers/transporters of the Respondent in breach of the express provisions of the Code of Conduct which he did not disclose to this.
- 18 In view of this, the Petitioner should not benefit from the exercise of the discretionary powers of this court by enjoying interim orders that were improperly obtained. These are therefore an abuse of the process of the court and an attempt to use the court to evade a legitimate internal disciplinary process.
- 19 The Respondent avers that these proceedings pre-empt the outcome of the internal disciplinary process which has not been determined. The Court has held on numerous occasions that where an internal disciplinary process is fair and lawful, the court will not curtail the Respondent's managerial prerogative to discipline the employee.
- 20 It is the Respondent's case that it is necessary for the disciplinary process involving the Petitioner to be concluded through the internal mechanisms available under the Respondent's policies and procedures. The

Respondent is greatly and irreparably prejudiced by the current state of affairs as it has been restrained from concluding the disciplinary process noting that the Petitioner has admitted that he violated the Code of Conduct.

- 21 The Respondent avers that the Petitioner was employed by the Respondent as Business Controller vide a contract dated 5th February 2025. Part of his duties include ensuring that the dealings between the Respondent and its suppliers are in compliance with the Respondent's policies and procedures and that the Respondent's business processes are in compliance with the law and proper ethical business practices.
- 22 The Respondent avers that Clauses 12 and 14 of the Petitioner's contract provides that the Code of Conduct and HR Manual apply to his terms and conditions of employment. The Code of Conduct provides: all employees have the obligation to uphold the Code, and any breaches thereto will not be tolerated; accepting gifts of more than a nominal value or having a financial relationship with a supplier of the Respondent constitutes a conflict of interest on the part of an employee of the Respondent; cash gifts from suppliers are prohibited; receiving money or benefits from suppliers for any activity is prohibited; and that the Respondent promotes transparency and accountability in its business practices and therefore encourages whistle blower reports on violation of the Code and will protect whistle blowers.

- 23 The Respondent avers that sometime in March 2025, it received a whistle blower report that there had been some financial impropriety involving some of its employees and suppliers. Consequently, it reported the matter to the police at Industrial Police Station under OB Number 70/07/04/2025.
- 24 This led to some investigations by the police and the Office of the Director of Public Prosecutions applied to the court for an order to access certain financial statements relating to transactions by the suppliers/transporters of the Respondent.
- 25 The Respondent avers that by an order dated 8th April 2025, the court sitting at Makadara Law Courts issued an order in *Miscellaneous Application E584 of 2025* allowing access to these statements for purposes of the investigations. These investigations revealed that on diverse dates, the Petitioner had received a total of Kshs.449,000 from various suppliers/transporters of the Respondent.
- 26 In view of this serious violation of the Code, the Respondent issued him with a notice to show cause dated 15th September 2025, requiring him to show cause why disciplinary action should not be taken against him.
- 27 The Respondent avers that the show cause letter was issued together with the investigation report detailing the various transactions in which the Petitioner received cash

totalling Kshs.449,000 from suppliers/transporters of the Respondent.

- 28 The Respondent avers that the investigations were still ongoing, therefore, by letter dated 15th September 2025, the Petitioner was also placed on suspension in accordance with the Respondent's Disciplinary Policy which provides under Clause 12.3.1 that the Respondent may place an employee on suspension for a period of 90 days but reserves the right to extend this period.
- 29 The Respondent avers that the Petitioner in his response to the NTSC dated 16th September 2025, admitted that he received from the Respondent's supplier Kshs. 450,000. This was on violation of the Code of Conduct as he had a financial relationship with a supplier which he did not disclose prior to the disciplinary process.
- 30 The Respondent avers that the Petitioner received monies from another supplier for alleged tax advisory services. This constituted a breach of the Code of Conduct as it creates a financial relationship with a supplier of the Respondent.
- 31 It is the Respondent's case that even if the Petitioner's alleged explanations were true, he would still be in violation of the Code of Conduct as he did not disclose these financial relationships with the suppliers of the Respondent that constitute conflict of interest.

- 32 The Respondent avers that vide a letter dated 23rd September 2025, it explained to the Petitioner that there has been no breach of data protection or data privacy rights as alleged or at all. The letter explained that there is a legal basis for the investigations that revealed the Petitioner received monies from its suppliers/transporters.
- 33 It is the Respondent's case that Sections 28(1)(f), 51(2)(b) and (c) and Section 30(1)(b)(i) and (vii) of the Data Protection Act allows it to process the Petitioner's personal data without his consent as this was necessary for investigating the suspected serious in the course of his employment. It was also necessary for the Respondent to assert its legal right and management prerogative to discipline its employees. Consequently, there has been no breach of the data protection or data privacy rights of the Petitioner as alleged or at all.
- 34 The Respondent further avers that under Clause 29 (c) of the Contract, the Petitioner specifically consented to the collection and processing his personal data in connection with any matter having a bearing on his employment.
- 35 The Respondent avers that it provided a further explanation to the Petitioner regarding the source of the information in the show cause letter and invited him to a disciplinary hearing scheduled for 30th September 2025. The invitation letter dated 26th September 2025 further informed him of his right to be accompanied by a colleague of his choice.

- 36 The Respondent avers that vide a letter dated 16th October 2025, it informed the Petitioner that he would remain on suspension in compliance with the status quo order issued by this court. At the time the said order was issued, the Petitioner was on suspension. The Respondent's Disciplinary Policy under Clause 12.3.1 allows it to place an employee on suspension for a period of 90 days with an option for extension. The Petitioner continues to receive his full salary during the suspension period.
- 37 The Respondent avers that it has a managerial prerogative to discipline employees engaged in misconduct and/or breach of the terms of their employment that led to financial losses. Additionally, there is a wider interest in protecting its financial position which has been compromised by a few employees to ensure continuity and sustainability for the benefit of the hundreds of other employees.

Petitioner/Applicant's Submissions

- 38 The Applicant submitted on three issues: whether the Respondent's reliance on the Applicant's private MPesa transaction records, derived from a criminal investigation tool (Court Order), constitutes an unlawful and disproportionate infringement of the right to privacy under Article 31 of the Constitution and the Data Protection Act, 2019; whether the Respondent's entire disciplinary process is rendered null and void ab initio due to the

reliance on illegally procured evidence and the failure to adhere to principles of Fair Administrative Action (Article 47) and Fair Hearing (Article 50); and whether the Applicant has satisfied the legal threshold for the grant of the interlocutory injunction.

- 39 On the first issue, the Applicant submitted that Article 22 (1) of the Constitution provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.
- 40 The Applicant submitted that he does not wait for termination to occur as the Constitution anticipates and empowers him to act pre-emptively. The disciplinary process, founded on unlawfully obtained evidence and conducted in breach of procedural fairness, constitutes a live and imminent threat to his rights under Articles 31, 41, 47 and 50 of the Constitution.
- 41 It is the Applicant's submission that Article 31 of the Constitution guarantees every person the right to privacy, including the right not to have information relating to their family or private affairs unnecessarily required or unlawfully revealed. Financial data, especially personal mobile money transactions, is the bedrock of an individual's private life. This Court has repeatedly held that private financial dealings fall squarely under the protection of Article 31. The Respondent, a private entity,

cannot claim the same wide investigative powers as the State.

- 42 The Applicant submitted that in employment contexts, this right is not extinguished by the existence of a contract. It is not privilege granted by the employer, it is a constitutional guarantee. The employer's managerial prerogative must yield to constitutional supremacy.
- 43 The Applicant submitted that the Respondent's reliance on M-Pesa transaction data accessed without his knowledge, consent, or a court order constitutes a grave intrusion into his private financial affairs.
- 44 The Applicant placed reliance in ***Abinayo v House & Farm Company Limited [2024] KEELRC 2832 (KLR)*** wherein the court held that before an employer can process or disclose private employee data, there must be in compliance with strict legal and procedural thresholds, notably those outlined in the Data Protection Act, 2019 and grounded on constitutional rights. It emphasized the non-negotiable need for employers to obtain informed consent or have a lawful basis for processing such information, stating that failure to follow due process before extracting or sharing private employee data constitutes a violation not only of statutory but also constitutional rights to dignity and privacy.
- 45 It is the Applicant's submission that the Respondent's attempt to sanitize the illegality by retrospectively relying

on a court order issued for a criminal investigation by the DCI is an abuse of process. Additionally, the Respondent's attempt to sanitize this intrusion by citing the mentioned court order for supplier records, not his personal data, does not cure the breach. The principle of legality requires prior and informed consent or clear judicial sanction.

- 46 The Applicant submitted that court order purported to be issued by Makadara Law Court on 8th April 2025 (*Miscellaneous Application E548 of 2025*) (*the Makadara Court Order*) following a Notice of Motion (*Exparte*) Application dated 10th April 2025 by the ODPP (the ODPP's Application), reveals that the DCI investigation was strictly limited to the period 1st June 2024 to 5th April 2025.
- 47 It is the Applicant's submission that the Respondent knowingly relied on data obtained completely outside the mandated legal scope, confirming that a significant portion of the evidence is illegally acquired, rendering the entire evidence-gathering process a nullity. The tool of criminal investigation cannot be co-opted for internal human resource purposes, especially when the limits of the order are disregarded.
- 48 The Applicant submitted that the Respondent cites various sections of the Data Protection Act as justification, including Section 30 (1) (b) (Legitimate Interest) and Section 29 (c) of the Employment Contract (Consent). The general contract consent in Clause 29 (c) must be interpreted restrictively and cannot constitute a waiver of

the fundamental constitutional right to privacy regarding a deep dive into an employee's M-Pesa history. An employer's "legitimate interest" in investigating misconduct does not automatically override the employee's fundamental right to privacy. The action must be proportional and necessary.

49 It is the Applicant's submission that the Respondent's intrusion into his M-Pesa transactions to find evidence of alleged conflicts of interest is grossly disproportionate to the legitimate aim of the employer. The employer's Code of Conduct cannot stand above Article 2 of the Constitution.

50 On the second issue, the Applicant submitted that the doctrine of proportionality requires that any administrative action that limits a constitutional right must be: pursuant to a legitimate aim; necessary in a democratic society, and the least restrictive means available.

51 The Applicant submitted that even if the evidence were deemed admissible, the disciplinary process is procedurally unfair, demanding the Court's intervention under Article 47. The Respondent's initial 48-hour deadline was a deliberate strategy to deny the Applicant an effective opportunity to respond.

52 The Applicant submitted that Clause 11.1 of the Disciplinary Policy mandates a minimum of 3 calendar days. The initial notice was a clear breach of the

Respondent's internal contract with its employee. Subsequent attempts to cure this procedural defect after intervention by counsel do not cleanse the original manifest bad faith and procedural malice.

- 53 The Applicant submitted that the Respondent's refusal to provide him with the full investigation report and the alleged court order upon request severely hampered his ability to formulate a defence, a direct violation of his right to fair hearing under Article 50 (1) of the Constitution.
- 54 The Applicant submitted that the Constitution reigns supreme thus Clause 29 (c) of the employment contract cannot override Article 31 of the Constitution. Contractual clauses must be interpreted in a manner that promotes constitutional values, not undermines them.
- 55 On the final issue, the Applicant submitted that the manifest breach of his constitutional right to privacy by using illegally procured evidence, coupled with clear procedural breaches of the Respondent's own policy, presents a grave constitutional matter that warrants full judicial interrogation. He thus has a high probability of successfully challenging the entire disciplinary action as being null and void *ab initio*.
- 56 The Applicant submitted that if the disciplinary proceedings are allowed to proceed, he risks loss of employment, reputational damage, emotional distress and a *fait accompli* that renders the petition nugatory. This

Court has often noted that employment, dignity and reputation are not adequately compensable by damages alone. The dignity afforded by Article 28 of the Constitution is destroyed the moment a termination is executed based on an unlawful and procedurally flawed process.

- 57 On balance of convenience, the Applicant submitted that if the injunction is denied and he is wrongly terminated, he suffers the ultimate prejudice of job loss and reputational damage which, if later vindicated, would necessitate the expensive and lengthy remedy of reinstatement or compensation. Thus, stopping the current unlawful action is the most judicious, proportionate and equitable course.

Respondent's Submissions

- 58 The Respondent submitted that the test for grant of an interim injunction is now well settled in Kenya as set out in ***Giella v Cassman Brown & Co Ltd [1973] EA 358 at 360 E*** where the court set out the mandatory requirements for grant of an interim injunction as follows: The applicant must show that there is a prima facie case with chances of success; The applicant must show that he will suffer irreparable harm that cannot be compensated by an award of damages if the orders sought are not granted; If in doubt, the court will consider and determine the matter on a balance of convenience.
- 59 The Respondent submitted that the Applicant does not have a prima facie case with chances of success. The

entire basis of the application is that the Respondent accessed information confirming that the Petitioner had seriously violated the terms of his employment by receiving cash totaling Kshs.449,000 from suppliers of the Respondent in direct contravention of the Respondent's Code of Conduct which forms part of the terms of the Petitioner's employment. This constitutes valid grounds for dismissal from employment under Section 44 (3) of the Employment Act.

- 60 The Respondent submitted that its Code of Conduct specifically provides that all employees are prohibited from receiving cash or from having any financial relationship with its suppliers. This provision ensures an arm's length and fair dealing between suppliers and the Respondent in a competitive business environment and maintain a profitable financial position which has a ripple effect on its operations and hundreds of employees.
- 61 The Respondent submitted that the Petitioner has admitted that he received the Kshs.449,000 from its suppliers as shown in the letter dated 17th September 2025. Therefore, the Petitioner has admitted that he has violated the terms of the Respondent's Code of Conduct which forms part of the terms of his employment.
- 62 The Respondent submitted that a violation of the policies, rules and regulations of employment forms a valid reason for dismissal of an employee from employment. This is more so where such violation is by a managerial level

employee such as the Petitioner who is employed as the Respondent's Business Controller responsible for, inter alia, ensuring integrity of the Respondent's business process and therefore is required to ensure compliance with the Code of Conduct as part of performance of his day-to-day duties. It cited **Mark T. Mwangi v Gateway Insurance Company Limited [2013] eKLR** (Mbaru J) held that the employer was justified in summarily dismissing an employee for breach of the employer's policies.

63 The Respondent submitted that the Petitioner's contravention of its Code of Conduct has an adverse effect on its business, including compromising the competitiveness of its engagements with its suppliers and violates the requirements of arm's length dealings with suppliers.

64 The Respondent further submitted that by receiving cash from its suppliers, the Petitioner has also created a potential conflict of interest as it creates a situation where the suppliers have financial relationships with the Petitioner as well as the Respondent in contravention of the express provisions of the Code of Conduct. The Petitioner has a duty to prevent conflict of interest and to act in the best interests of the Respondent particularly in view of his senior position. He cited **Ochuodho v Intercontinental Hotel Limited (Cause 2127 of 2014) [2021] KEELRC 2208 (KLR) (Makau J)** held that conflict

of interest is a valid basis for summary dismissal of an employee.

- 65 It is the Respondent's submission that it has a fair and valid reason for instituting disciplinary proceedings against the Petitioner which was done in accordance with Section 41 of the Employment Act. The Respondent issued him with a notice to show cause letter dated 15th September 2025; the Petitioner in his response admitted that he has received cash from the suppliers.
- 66 The Respondent submitted that it received a whistleblower report regarding financial impropriety involving some of its employees and suppliers/transporters. This led to the Respondent reporting the matter to the police who then applied to the court for orders to access certain bank accounts of the suppliers. This was necessary for purposes of investigating the extent of reported financial impropriety.
- 67 The Respondent submitted that the criminal court is empowered by Section 28 (1) (f) and Section 51 (2) (c) of the Data Protection Act, to make orders for access information such as bank account statements for purposes of investigations by the police. In that regard, there was no violation of the Petitioner's data protection and privacy rights as alleged or at all. The courts must be allowed to make orders for access of bank account records to facilitate investigations without consent of the data subject because if consent were required before

investigations into malfeasance, misconduct or criminal activity is carried out this would never happen and would effectively handicap investigative agencies.

- 68 The Respondent submitted that it was the complaint in *Makadara Criminal Miscellaneous Application E584 of 2025*, where investigations were carried out by the police and was therefore collaborating closely with the police. In the course of the investigations pursuant to the court order, it was discovered that there had been several financial transactions between suppliers/transporters of the Respondent and its employees including the Petitioner. This informed the basis for the show cause letter issued to the Petitioner which also provided an extract of the transactions confirming that he received cash from suppliers.
- 69 It is the Respondent's submission that contrary to the Petitioner's assertions, consent is not the only lawful basis for processing of personal data relating to a data subject. Under the DPA other lawful basis for processing personal data include situations where such processing is necessary for purposes of investigating misconduct by the data subject and for purposes of asserting a legal or equitable claim by the data processor/controller. These exemptions are necessary and are provided for by the law.
- 70 The Respondent submitted that Section 30 (1) (b) (i) and (vii) of the DPA provide that personal data may be processed without consent of the data subject if such

processing is necessary for the performance of a contract to which the data subject is a party or for purposes of pursuing a legitimate interest of the data controller or data processor. In this case, the Petitioner has an employment contract with the Respondent who had the legitimate interest of investigating the extent of his involvement in transactions with the Respondent's suppliers and take appropriate action as employer. Therefore, the express consent of the Petitioner was not required.

71 The Respondent submitted that Section 51 (2) (b) of the DPA provides that processing of personal data is exempt from the provisions of the Act where it is necessary for public interest. Regulation 55 (a) of the Data Protection (General) Regulations provides that public interest includes a general permitted situation and Regulation 56 (b) and (c) sets out situations that constitute public interest to include investigation of suspected serious misconduct and asserting a legal or equitable claim.

72 The Respondent submitted that it accessed the information showing that the Petitioner received cash from the suppliers for purposes of asserting and pursuing its right to discipline by him by virtue of the employment contract. As an employer, it has a managerial prerogative to discipline employees who are in breach of the terms of their employment. He cited ***Wanjala v Majid Al-Futaim Limited (Cause E675 of 2022) [2024] KEELRC 780 (KLR)***.

- 73 The Respondent submitted that this Court should not impede its prerogative to conduct an internal disciplinary process noting that the employer is best placed to make the right decisions affecting its business including decisions regarding discipline of employees. He cited the Court of Appeal in **Lake Victoria North Water Services Board & Another v Alfred Odongo Amombo [2018 eKLR]** which took the position that the best decision maker in disciplinary proceedings is the employer and not the court.
- 74 The Respondent submitted that the disciplinary process is subject to the Employment Act which requires that an employee be given an opportunity to be heard before a decision is made. In this case, the process has only progressed to the stage of the response to the show cause by the Petitioner. The Petitioner has not yet been heard and a decision has not yet been made. Further, he has an opportunity to appeal should he be aggrieved by the disciplinary process.
- 75 It is the Respondent's submission that the Petitioner has not shown that he has a *prima facie* case with chances of success and thus has not met the mandatory threshold for grant of an injunction to stop the disciplinary process as sought.
- 76 The Respondent submitted that the Petitioner has recourse to this Court which has jurisdiction to award

damages for unfair termination where this is established by the court. Therefore, he cannot argue that he will suffer irreparable harm if the orders sought are not granted because damages for unfair termination are available to the Petitioner should this be the case.

77 The Respondent submitted that if the orders sought are granted, it will be forced to continue employing the petitioner with its power to discipline him for admitted wrongdoing having been taken away; this will cause immeasurable harm to its operations and finances. The Petitioner on the other hand has access to the safeguards of the internal disciplinary and appeal processes as well as the court process thereafter. The Respondent will suffer more harm, prejudice and loss if the orders sought are granted as compared to the Petitioner.

78 I have considered the averments and submissions of the parties herein. The issue for this court's determination is whether the applicant has established a prima facie case with the probability of success to warrant issuance of the orders sought.

79 The applicant contends that he is being vilified by the respondents unfairly who have since suspended him from duty without following due process. He contends that he was not given adequate time to respond to allegations against him given that he was asked to respond to the show cause letter and also appear within the disciplinary panel within 48 hours contrary to the respondents HR

manual. He also avers that the respondents are seeking to rely on illegally obtained evidence obtained without his consent nor a court order which is a violation of his rights.

80 The respondents on their part aver that the applicant admitted that he received kshs 449,000/- from suppliers of the respondent as per the letter dated 11/9/25 and so he violated the respondent's code of conduct and so he seeks equity but tainted with dirty hands. At this juncture, this court is not really concerned with the validity of the disciplinary process but with the process itself. The applicant has averred that he has not been granted adequate time to address issues raised against him.

81 From the correspondence between the applicant and the respondents, applicant was issued with a suspension letter and show cause letter on 15/9/25 pending conclusion of investigations. He was required to respond to the allegations therein within 48 hours. The applicant averred that under the respondents HR policy he should have been given 3 days to respond. This is indeed true as clause 12.3.3(ii) of the respondent's HR manual provide that

"an employee shall be required to submit his/her written submissions/explanation or statement in defence to the immediate supervisor or management representative within three(3) days of the date of the show cause letter or such extended period as may be requested by the employee in writing and allowed by management in writing."

- 82 It is therefore true that the respondents were in breach of their own manual when they gave the applicant 48 hours to respond. That notwithstanding, the applicant wrote to the respondents seeking extension of time to respond to the show cause letter and this request was denied vide the letter of 26/9/2025 and he was asked to appear for a disciplinary hearing on 30/9/2025 at 11 am.
- 83 The manner the respondents handled this disciplinary process was indeed an indication of failure to follow their laid down processes and the law. With this position, the applicant has established the existence of a prima facie case with probability of success.
- 84 The courts will however not interfere in the employers internal disciplinary process unless the process is flawed as indicated above. The interference will also be limited to ensuring the process convened and carried out is fair in the circumstances.
- 85 Having established as above, I find that the application is merited and I direct that the disciplinary process started by the respondents be halted forthwith. The respondents are free to initiate proper processes based on the law and their own HR manual.

Dated, Signed and Delivered Virtually at Nairobi this 17th Day of December 2025.

HELLEN WASILWA

JUDGE

ORIGINAL