

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

CAUSE NO. E061 OF 2025
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

DAVID GITHENGA

KIHARA.....CLAIMANT/APPLICANT

VERSUS

ALLIANCE LEASING LIMITED.....

RESPONDENT

RULING

Introduction

1. The Claimant/Applicant filed a Notice of Motion dated 30th September 2025 under a Certificate of urgency seeking the following orders that:

1. Spent

2. Pending the hearing and determination of the application, this Honourable court be pleased to suspend the purported unlawful termination letter dated 10th September 2025, effective 22nd September 2025, and compel immediate payment of full salary for the month of August 2025 and reinstate the Claimant to his position of Assistant Manager-Credit with full salary and benefits.

3. Pending the hearing and determination of the claim, this Honourable court be pleased to suspend the purported unlawful termination letter dated 10th September 2025, effective 22nd September 2025, and compel immediate payment of full salary or the month of August 2025, and reinstate the Claimant to his position of Assistant Manager-Credit with full salary and benefits.

4. The Respondent be restrained from recruiting or filling the Claimant's position pending the determination of the application.

5. The Respondent be restrained from recruiting or filling the Claimant's position pending the determination of the claim.

6. The costs of this Application be provided for.

2. The application is brought under **section 12(3) of the Employment and Labour Relations Court Act, sections 41, 42, 45, 49 & 50 of the Employment Act, Articles 41, 47 & 50 of the**

Constitution, and Rule 45 of the Employment and Labour Relations Court (Procedure) Rules.

Claimant/Applicant's supporting affidavit

3. The application is supported by the affidavit of David Githenga Kihara, the Claimant/Applicant, dated the same date as the application.
4. The Claimant/Applicant avers that he was employed by the Respondent in July 2020, rose to the position of Assistant Manager–Credit in March 2024, and earned a gross monthly salary of Kshs.133,587/= at the time of his suspension in July 2025.
5. The Claimant/Applicant avers that although the suspension letter assured him of continued pay and was signed by an outsider, Ruth Muthusi of TATA Africa Holdings Ltd, he was only paid Kshs.17,000/= in August 2025.
6. The Claimant/Applicant further contends that he was never issued with the Respondent's Human Resource policy until after the disciplinary hearing, and that the disciplinary process was conducted by external persons, including foreigners, who were neither employees nor directors of the Respondent.

7. Despite his protests, the Claimant/Applicant avers that the hearing proceeded without witnesses or documentary evidence, and he was summarily dismissed through a letter signed by another non-employee, Krupa Joshi.
8. The Claimant/Applicant argued that the process was predetermined, procedurally flawed, and in breach of sections 41, 43 and 45 of the Employment Act and Articles 41, 47 and 50 of the Constitution.
9. Unless the court intervenes, the Claimant/Applicant avers that he will suffer irreparable harm, loss of livelihood, and reputational damage, with the balance of convenience favouring preservation of his employment pending determination of the claim.

Respondent's replying affidavit

10. The Respondent, through its HR & Administration Manager, Ruth Muthusi, swore a replying affidavit dated 14th October 2025, opposing the Claimant/Applicant's application.
11. The Respondent avers that it and Tata Africa Holdings Kenya Limited are wholly owned subsidiaries of Tata Holdings (SA) Pty Limited,

operating under the umbrella of Tata International Limited.

12. The Respondent avers that the Claimant/Applicant's position of Assistant Manager-Credit was lawfully abolished following a group-wide restructuring communicated in May-June 2025.

13. The Respondent avers that the Claimant/Applicant's dismissal on 10th September 2025 was for lawful cause after investigations revealed he had submitted altered CRB and fraudulent M-Pesa statements.

14. The Respondent maintains that the disciplinary process was properly conducted by duly authorized officers, that the Claimant/Applicant was aware of Muthusi's Human Resource role, and that the termination documents were validly signed by the Group Chief HR Officer, Krupa Joshi.

15. The Respondent further avers that the August salary error arose from the payroll system linked to biometric attendance, with arrears to be settled upon clearance.

16. The Respondent therefore argues that reinstatement is overtaken by events, due process

was followed, and the Claimant/Applicant's application should be dismissed with costs.

Claimant/Applicant's further affidavit

17. The Claimant/Applicant opposed the Respondent's Replying Affidavit and disciplinary process as fundamentally flawed, arguing that Ruth Muthusi, who is neither a director nor employee of the Respondent, lacked authority to swear the affidavit or participate in disciplinary matters.
18. The Claimant/Applicant avers that shared HR functions within the Tata Group, insisting his contract was solely with Alliance Leasing Limited and that external involvement compromised fairness and legality.
19. The Claimant/Applicant contends the alleged redundancy decision was made by another entity, and when that process failed statutory requirements under **sections 40 and 45 of the Employment Act**, the Respondent resorted to an unlawful disciplinary process devoid of evidence or witnesses.
20. The Claimant/Applicant avers that the inclusion of non-employees in the panel, and the dismissal letter signed by Krupa Joshi, a foreign national with no

nexus to the Respondent, were ultra vires and invalid.

21. Further, the Claimant/Applicant avers that issuance of an October 2025 payslip after alleged termination, including unlawful Sacco deductions, demonstrates inconsistency and procedural impropriety.

22. In conclusion, the Claimant/Applicant avers that his dismissal was unlawful, procedurally unfair, and substantively unjustified, urging this Honourable Court to reinstate him as both the redundancy and dismissal were tainted with illegality and breach of constitutional safeguards.

23. Parties canvassed the application by way of written submissions.

Claimant/Applicant's written submissions

24. The Claimant/Applicant relied on **Rule 45(5) of the ELRC (Procedure) Rules 2024**, which provides as follows:

“In a suit where an injunction is sought, an applicant may at any time in the suit, apply to the court for interim or temporary injunction to restrain the respondent from committing a breach of contract or an injury complained of, or any injury of a like

kind arising out of the same contract or relating to the same property or right which provides that an interlocutory injunction may only be sought where an injunction has been prayed for in the main suit.”

25. The Claimant/Applicant relied on principles to grant interlocutory injunctions in ***Giella V Cassman Brown [1973] EA 358***, namely:

- i. The Applicant must show a prima facie case with probability of success;***
- ii. That he stands to suffer irreparable harm; and***
- iii. That if the court is in doubt, it shall determine the matter on a balance of convenience.***

26. In ***Mrao Ltd V First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR)***, where ***the Court of Appeal*** held that;

“...[A prima facie case] is a case in which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exist a right which has apparently been infringed by the opposite

party as to call for an explanation or rebuttal from the latter.”

27. The Claimant/Applicant submitted that he is seeking interim injunctive orders restraining the Respondent from enforcing his dismissal, arguing the termination was unlawful, procedurally flawed, and effected by unauthorized persons. He contends that the disciplinary process involved individuals from Tata Africa Holdings and Tata International Ltd, who had no authority over his employment, and that the termination letter was signed by a non-employee, rendering the dismissal null as held in ***Freeman & Lockyer V Buckhurst Park Properties [1964] 2 QB 480***, and ***Judicial Service Commission V Gladys Boss Shollei [2014] eKLR***.

28. The Claimant/Applicant submitted that the court has the power to preserve the employment relationship or position pending hearing, where dismissal is challenged, and there exists a risk of replacement before determination. The Claimant/Applicant relied on the case of ***Hedwig Nyalwal V Kenya Institute of Supplies Management [2020] KEELRC 402***, the court stated as follows:

“The fact that the Claimant would be entitled to the remedy of compensation

alone should not be a consideration not to grant the orders, as a remedy of compensation is inferior to a reinstatement taking into account the manner the termination was executed and the reasons advanced in support thereof.”

29. In ***Ndalo V Consolidated Bank [2024] KEELRC 2221*** and ***Mutira V ICPAK [2024] KEELRC 408***, the courts emphasized that reinstatement can only be a meaningful remedy in employment disputes if conservatory orders are issued to preserve the employee’s position pending resolution of the case. Without such preservation, reinstatement risks becoming a mere “paper remedy,” as damages alone cannot adequately protect an employee’s rights, especially where the employer could simply replace the employee and later pay compensation. Both decisions underscore that once a *prima facie* case is established and reinstatement is sought as the primary remedy, the interests of justice demand that the disputed position be safeguarded until final determination, thereby ensuring reinstatement retains practical effect.

30. The Claimant/Applicant submitted that redundancy claims were a facade, that damages alone would

not suffice, and that preserving his employment status is necessary to protect his constitutional right to fair labour practices under **Article 41 of the Constitution**.

31. The Claimant/Applicant urged this Honourable Court to allow the application as prayed.

Respondent's submissions

32. The Respondent submitted that the position of Assistant Manager-Credit was abolished following group-wide restructuring and thus reinstatement would be futile. The Respondent contended that reinstatement is a substantive remedy, not interim relief, citing the case of **Lindah Anyona Saleh v Co-operative Bank of Kenya Ltd [2022] KEELRC 402** where the court held that reinstatement is generally a final, substantive remedy in employment disputes, not a temporary or interim measure, and should only be granted after a full hearing where both employer and employee have been heard. In **Anthony Omari Ongera V Teachers Service Commission [2017] eKLR** and **Abwao V Teachers Service Commission [2025] KEELRC 1162**, the courts emphasized reinstatement is only after a full hearing and in exceptional circumstances.

33. The Respondent further submitted that the Claimant/Applicant was dismissed for misconduct involving falsified CRB and M-Pesa statements, undermining trust and confidence, and that Human Resource personnel and group structures were properly authorized.

34. The Respondent submitted that the Claimant/Applicant had not met the threshold to grant of interlocutory injunction, like establishing a prima facie case as set in the cases of ***Mrao Ltd V First American Bank(supra)***, and ***Rose Sang V Siginon Group Ltd [2020] eKLR***. For irreparable harm, the Respondent relied on the case of ***Nguruman Ltd V Jan Bonde Nielson [2014] eKLR***, where the Court of Appeal stated that:

“If the applicant establishes a prima facie case that alone is not a sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable. In other words, if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory

order of injunction should normally be granted, however strong the applicant's claim may appear at that stage."

35. The Respondent also rely on ***Alfred Nyungu Kimungui V Bomas of Kenya [2013] eKLR***, the court stated as follows:

"The court retains the remedial powers of reinstatement, re-engagement and compensation in the event the claim succeeds. The Claimant may be reinstated with back wages, and without the loss of privileges and seniority, at the end of the full hearing. The employee suffers nothing which is irremediable. The employer would be forced into an employment relationship during the trial period. The employee would continue drawing salaries, and restricting severely, the right of the employer to recruit an employee whom the employer can enjoy the cornerstone values of mutual trust and confidence with."
(Emphasis added).

36. The Respondent submitted that the balance of convenience favours the employer, urging dismissal of the application with costs.

Analysis and determination

37. The court has considered the application, supporting affidavit, replying affidavit, further affidavit, together with rival submissions by both counsels; the issue for determination is whether the application is merited for reinstatement of the Claimant.

38. The court reiterates the case of ***Giella V Cassman Brown (Supra)*** as stated in the earlier part of this ruling.

39. In this case, the Claimant/Applicant seeks interim injunctive orders to stop the Respondent from enforcing his dismissal, asserting that the termination was unlawful, procedurally defective, and carried out by unauthorized persons. The Respondent, on the other hand, argued that the Claimant's role as Assistant Manager-Credit was legitimately abolished during a group-wide restructuring communicated in mid-2025, and further maintains that his dismissal on 10th September 2025 was justified after investigations

revealed he had submitted falsified CRB and M-Pesa statements.

40. The issues raised by the Claimant/Applicant in his application for interlocutory application were that there was no evidence to support the respondent's case against Claimant and secondly, the termination documents were signed by persons not employed by the Respondent and strangers were present to the disciplinary hearing.

41. The Claimant was accused of providing a falsified CRB report for one BENROJAS BONIFES KALANI who was declared default of 2% whereas his actual default rate was 67%. She was accused of presenting falsified M-Pesa statements to support loan application of one JOSEPH MWANGI MWAI.

42. The Respondents aver that the various companies alluded are intertwined and one KRUPA JOSHI who was Group Chief Human Resources Officer of the Companies and was mandated to sign employment documents.

43. The averments by the Claimant that his termination was unfair and unlawful should be determined in a hearing. In the case of **ABWAO -VS- TEACHERS SERVICE COMMISSION (2025) KEELRC**

1162(KLR) the court held that *“the court cannot at this stage determine whether or not termination was unfair. “The law is explicit that only upon determining that termination was unfair that the court can order reinstatement.”*

44. The threshold for granting of interim orders being proof of a *prima facie* case is not proved in this case. The Claimant was dismissed by a letter dated 10th September 2025 and reinstatement cannot be ordered at this interim stage unless there are really explicit compelling reason.

45. Furthermore, the Claimant has not proved irreparable harm incapable of compensation with awards of damages.

46. In the case of **SHADRACK MUSYOKA -VS- MIDDLE EAST BANK KENYA LIMITED (2021) eKLR** the court held that: *“A Claimant did not prove he would suffer irreparable loss because he had quantified compensation that would be awardable to him in the event the court found termination unfair.*

In this case the Claimant has prayed for payment of his salary and also compensation for unfair

termination and so clearly the harm is not irreparable.

47. The court is reluctant to grant reinstatement orders as the same are usually granted on merits after a full hearing. Reinstatement awards can only be granted in very rare circumstances like where there is outright discrimination.

48. Looking at the application, the court is persuaded that the Claimant/Applicant is essentially seeking interim reliefs which, in substance and effect, mirror the very same remedies that have already been pleaded and set out in the substantive claim dated 30th September 2025. In other words, the interlocutory prayers sought are not distinct or ancillary but rather overlap with the final reliefs that the court is ultimately called upon to adjudicate in the main suit. Consequently, if the Court were to grant the interim orders at this stage, it would, in practical terms, amount to a premature determination of the substantive suit, thereby rendering the entire claim nugatory and concluded without the benefit of a full hearing on the merits from both parties.

49. The court is therefore convinced the Claimant has not established the principles requisite to grant interlocutory injunction as well laid down in the iconic case of **GIELLA -VS- CASSMAN BROWN (1973) EA 358.**

The application is not found merited and is dismissed.

50. Costs will be in the cause.

Orders accordingly.

Dated, Signed and Delivered virtually at Nakuru this 23rd Day of January 2026.

ANNA NGIBUINI MWAURE
JUDGE

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 15th March 2020 and subsequent directions of 21st 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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE