

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT ELDORET
CAUSE NO. E058 OF 2025

**KENYA UNION OF COMMERCIAL FOOD
AND ALLIED WORKERS CLAIMANT/
APPLICANT**

VERSUS

**UNGA HOLDINGS LIMITED.....
RESPONDENT**

RULING

1. The Claimant filed an application dated 29th September 2025 seeking the following orders: -
 - i. Spent.
 - ii. Spent.
 - iii. That this Honourable Court do stay the proceedings and all consequential orders in Makadara Law Courts Miscellaneous Application No. E584 of 2025 pending the hearing and determination of the main suit.
 - iv. That pending the inter partes hearing, this Honourable Court do issue an order prohibiting the Respondent

from proceeding with the disciplinary hearing of the Grievants pending the hearing and determination of the main suit.

- v. That this Honourable Court do issue an order reinstating the Grievants to work unconditionally and with full pay pending the hearing and determination of the main suit.
- vi. That this Honourable Court do restrain the Respondent from undertaking any further disciplinary action, including termination, dismissal, or suspension of the Grievants, pending the hearing and determination of the main suit.
- vii. That the costs of the application be borne by the Respondent.

2. The application is supported by the grounds set out on its face and the affidavit of Peter Ngugi, the Claimant's Assistant General Secretary.

3. The application is premised on the following grounds:

- i. That the parties have a valid Recognition Agreement and a Collective Bargaining Agreement (CBA), the

relevant one being for the period July 2024 to 30th June 2026.

- ii. That on or about 15th September 2025, the Respondent suspended the three Grievants on allegations that a whistle-blower had reported financial transactions between suppliers, transporters, and employees.
- iii. That the Grievants demanded clarification on the identity of the whistle-blower and the manner in which their personal M-Pesa transaction data was obtained without their consent, but the Respondent failed or declined to disclose the whistle-blower and complainants.
- iv. That the parties' CBA contains no provision on whistle-blowing.
- v. That the disciplinary process under the CBA and the law requires disclosure of complainants, and failure to do so is unlawful.
- vi. That the Respondent's refusal to disclose the identity of the purported whistle-blower violates the Constitution of Kenya.

- vii. That no contractor or supplier has lodged any complaint against the Grievants, and the demand for incriminating evidence in the circumstances violates the Constitution and the rules of natural justice.
- viii. That there is no policy signed by unionisable employees permitting the Respondent to intrude into employees' private M-Pesa transactions.
- ix. That the Respondent has remained adamant despite the Grievants' request for vital information necessary to enable them prepare an adequate defence, in violation of the law.
- x. That denial of material particulars of the accusations against the Grievants is unlawful.
- xi. That the Respondent has commenced interviews to replace the Grievants before the conclusion of the disciplinary process, thereby demonstrating a predetermined and unfair outcome.
- xii. That the Respondent, being a private entity, may be difficult to compel to reinstate the Grievants should the

disciplinary process proceed to conclusion, thereby necessitating early court intervention.

xiii. That this Honourable Court has the power to intervene and halt disciplinary proceedings where the process is unfair and likely to occasion a miscarriage of justice, and this is a proper case for such intervention.

xiv. That the Respondent scheduled the Grievants' disciplinary hearing for 29th September 2025 notwithstanding that they were served with the disciplinary notices on the same date.

4. The application is opposed by the Respondent through a Replying Affidavit sworn on 3rd October 2025 by John Mwendwa, its Group Human Resource Director, who depones that under Rule 6(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024, this Court lacks territorial jurisdiction as the three Grievants, David Ngechu Karuri, Rophus Mulama, and George Njoroge Kinyanjui are residents of Nairobi and are employed by the Respondent in Nairobi, where the Respondent's head office is located.

5. It is further deponed that the matters raised in the application and the main suit arise from the Grievants' employment in Nairobi and that the suit ought to have been filed before the Employment and Labour Relations Court sitting in Nairobi, and not Eldoret.
6. The Respondent further states that in or about March 2025, it received a whistle-blower report alleging financial impropriety involving some of its employees and suppliers, and upon investigation, it was established that the three Grievants had received money from the Respondent's suppliers. That such receipt of funds constitutes a direct violation of the Respondent's Code on Conflict of Interest and the prohibition against acceptance of cash gifts under Clause 10(c) of the CBA, leading to the issuance of show-cause letters dated 15th September 2025.
7. Prior to the hearing of the application, the Respondent filed a Notice of Preliminary Objection dated 3rd October 2025 contending that this Court lacks jurisdiction to hear and determine the matter, which ought to be dealt with exclusively by the Employment and Labour Relations Court sitting in

Nairobi pursuant to Rule 6(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024.

8. In response to the Preliminary Objection, the Claimant filed a Replying Affidavit sworn on 23rd October 2025 by Mike O. Oranga, its National Organising Secretary. He depones that the Respondent, Unga Holdings Limited, operates five milling plants two in Nairobi, two in Nakuru (Unga Mineral Plant and Unga Feeds Limited), and one in Eldoret for the processing of human consumption products where the Chief Shop Steward, Mr. Hezron Onzere, is based facts which the Respondent failed to disclose to the Court.
9. He further depones that the Claimant operates three litigation regions Coastal, Nairobi, and Western with the Western region comprising Nakuru, Eldoret, Kisumu, Kitale, Bungoma, and Kisii. That Unga Holdings Limited falls under the Western region, with membership returns filed through the Eldoret Branch, hence the filing of this suit in Eldoret by the Claimant's officer, Mr. Tacko.

10. It is further deponed that the Grievants instructed the Claimant to file the suit in Eldoret due to apprehension that they would be terminated before obtaining interim relief.
11. In addition, the Claimant contends that courts now are digitized and parties appear virtually, and that as such the Respondent has the capacity to participate in virtual proceedings. The Claimant maintained that the Grievants have permanent residences within the Western region, including Nakuru, Turbo, and Burnt Forest.
12. In a rejoinder, the Respondent filed a supplementary affidavit sworn on 28th October 2025 maintaining that the Grievants have worked exclusively in Nairobi for over 30 years and that the impugned disciplinary process was initiated and conducted at the Respondent's Nairobi office. It is averred that the Grievants remain employed in Nairobi and will suffer no prejudice should the Preliminary Objection be upheld.
13. The Preliminary Objection was canvassed by way of written submissions. The Claimant's submissions are dated 23rd October 2025, while the Respondent's submissions are dated 25th October 2025. The parties substantially reiterated their

respective positions, which I have considered, and I find no need to reproduce them herein.

Determination

14. From the Notice of Preliminary Objection dated 3rd October 2025, the rival affidavits and the submissions filed, the issue that arises for this Court's determination is whether the preliminary objection is merited.
15. What constitutes a preliminary objection was discussed in the celebrated case of *Mukisa Biscuits Manufacturing Company Ltd v West End Distributors*, (1969) EA 696, where the court observed as follows:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of Law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

16. At Page 701 Sir Charles Newbold, P added:

“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”

17. The Respondent’s Preliminary Objection is anchored on Rule 6(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 which provides that:

a. Proceedings before the Court shall be instituted at the Court’s registry or sub-registry with respect to the county where—

1. the claimant, petitioner or applicant, at the time of commencement of the proceedings, actually and voluntarily resides or carries on business or personally works for gain; or

2. the cause of action, wholly or in part, arises

18. While prosecuting the instant preliminary objection both parties filed additional evidence through affidavits. As stated by Newbold J, a preliminary objection is raised *on the assumption*

that all the facts pleaded by the other side are correct. That a preliminary objection cannot be raised if any fact has to be ascertained.

19. Further, a preliminary objection is raised only where if it is argued successfully, the point should be capable of disposing of the entire suit or a significant part of it.
20. In the instant preliminary objection, the only issue raised is with regard to territorial jurisdiction of the court in which the suit was filed. The rules provide that in such a case the party raising the objection to the territorial jurisdiction can only seek the transfer of the suit to the court with the appropriate geographical jurisdiction. A suit can therefore not be dismissed or struck out on grounds that it was filed in a court which does not have geographical jurisdiction but which is otherwise competent to hear and determine the suit.
21. The foregoing is the import of section 6(2) of the Employment and Labour Relations Court (Procedure) Rules, 2024 which provides that the Court may, on its own motion or upon application, for recorded reasons, transfer any proceeding to

the most convenient court station for hearing and determination.

22. The same position obtains even for cases filed under the Civil Procedure Act which at section 18(1) provides that:

a. On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

1. transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same

23. This therefore means that a preliminary objection is not the correct mode to approach the court in a matter where the only issue raised is that the suit has not been filed in the most convenient station. The subject or issue ought to have been raised vide an application by way of a motion to have the suit transferred from this court to the court which, in Respondent's view, has the appropriate geographical jurisdiction to hear and determine the suit.

24. The preliminary objection is accordingly declined for reason that the grounds raised therein are not appropriate for a preliminary objection. There shall be no order for costs of the preliminary objection.

**DATED, SIGNED AND DELIVERED VIRTUALLY
THIS 22ND DAY OF JANUARY, 2026.**

**M. ONYANGO
JUDGE**