



Ongili v Kansai Plascon Kenya Limited (Employment and Labour Relations Cause E832 of 2025) [2026] KEELRC 362 (KLR) (12 February 2026) (Ruling)

Neutral citation: [2026] KEELRC 362 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E832 OF 2025
BOM MANANI, J
FEBRUARY 12, 2026**

BETWEEN

SUZANNE AKINYI ONGILI CLAIMANT

AND

KANSAI PLASCON KENYA LIMITED RESPONDENT

RULING

Background

1. The Claimant has instituted this action seeking an order to bar the Respondent from processing her disciplinary case simultaneously with the ongoing criminal case against her. She contends that doing so will be unconstitutional, unlawful and unfair. It is her case that the disciplinary case should await the conclusion of the criminal case.
2. The Claimant prays for an order to restrain the Respondent from terminating her contract of service until the criminal trial is concluded. She also prays for general damages for violation of her constitutional rights.
3. According to the Statement of Claim, the Claimant contends that the Respondent hired her services as a Sales Representative with effect from 10th January 2023. She contends that the Respondent subsequently instituted a disciplinary case against her and scheduled it for hearing on 3rd September 2025.
4. The Claimant avers that the allegations in the disciplinary case are the same as those in the pending criminal case number MCCR/E3884/2025 where she is the accused person. She contends that if the two cases are allowed to proceed simultaneously, her rights to fair trial, fair labour practices and fair administrative action will be violated.



5. The Claimant contends that if the disciplinary hearing is processed during the pendency of the criminal case, she will be forced to disclose her defense prematurely. Further, she contends that the disciplinary case may lead to the loss of her employment based on unproven matters.
6. The Claimant asserts that although the Respondent has scheduled the disciplinary hearing severally, it has never proceeded. She contends that this has caused her emotional distress and resulted in uncertainty about her employment status.
7. Contemporaneous with the Statement of Claim, the Claimant lodged the application dated 1st September 2025 through which she seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. Pending trial and determination of the suit, the court issues an order of temporary injunction to restrain the Respondent from terminating her employment and or conducting disciplinary proceedings against her which arise from the same facts as the pending criminal case.
 - d. The court to issue any other order it deems fit and just.
 - e. The court to give directions on costs of the application.
8. The application is premised on the grounds on the face thereof and the supporting and supplementary affidavits by the Claimant dated 1st September 2025 and 5th November 2025 respectively. The grounds and affidavits essentially reiterate the averments in the Statement of Claim.
9. The Respondent is opposed to the application. It has filed a replying affidavit dated 17th September 2025 to anchor its response to the motion.
10. The Respondent contends that the Claimant obtained her employment on the basis of falsified academic documents. It contends that the institution which allegedly issued her with the documents has denounced them thus affirming the reality that the documents are indeed forgeries.
11. The Respondent avers that when it realized that the Claimant had obtained employment through falsified documents, it referred the matter to the police for investigations. It contends that after the police concluded their investigations, they arraigned the Claimant in court to face criminal charges.
12. The Respondent avers that notwithstanding that the Claimant was charged with a criminal offense, it (the Respondent) decided to take disciplinary action against her. Hence the decision to issue her with a notice to show cause letter.
13. The Respondent avers that this decision was informed by the fact that the Claimant is holding a position within its rank and file based on falsified papers. As such, it contends that it is paying salary to an individual whose qualifications are in question which is irregular.
14. The Respondent avers that the disciplinary process it proposes to undertake against the Claimant is distinct from the criminal trial she is facing. Thus, it contends that the two can proceed simultaneously as there is nothing in the law to suggest the contrary.

Analysis

15. At the heart of this application is the issue of the employer's managerial prerogative to manage the workplace. This is the power vested in the employer to make decisions relating to: hiring of staff;



running of the workplace; discipline of employees among others (Otoch v Muthaura & another [2022] KEELRC 13564 (KLR)).

16. It is now widely acknowledged that an employer has the right to manage the workplace in the way he considers best and that third parties, including the court, should exercise restraint in interfering with the exercise of this mandate (Alfred Nyungu Kimungui v Bomas of Kenya [2013] KEELRC 235 (KLR)). The court may only intervene in the exercise of this right if it is demonstrated that the employer's actions are contrary to the law, some internal rule, the contract between the parties or is inimical to the rights of the affected employee and that the employee's rights cannot be vindicated in any other way (Wanjala v Majid Al-Futaim Limited [2024] KEELRC 780 (KLR) & Mutuku v Teachers Service Commission [2025] KEELRC 2285 (KLR)).
17. Even then, where there is intervention, this should not be with the intention of stalling the exercise of the power all together. Rather, it should be with the intention of requiring the employer to address the anomaly in the process so that it (the process) can be conducted in accordance with the law (Waruhiu v Directline Assurance Company Ltd [2025] KEELRC 1940 (KLR)).
18. The Respondent certainly enjoys this prerogative and is entitled to manage its workplace without undue interference by the court. The court may only interfere with this mandate in the circumstances alluded to earlier.
19. The Claimant invites the court to interfere with the exercise of the Respondent's disciplinary process against her on the grounds that allowing the process to go on will subject her to double trial given that she is already facing a criminal charge based on the same set of facts. She contends that allowing the process to go on will force her to disclose her defense prematurely, a matter which she says is likely to affect her right to fair trial. She also contends that if the disciplinary case proceeds, she may be found culpable based on unsubstantiated accusations.
20. Do the issues which the Claimant speaks to entitle the court to interfere with the right of the Respondent to exercise disciplinary control over her? Respectfully, I do not think so.
21. Jurisprudence from this court and the Court of Appeal in this area underscores the reality that a disciplinary process at the workplace is distinct from court proceedings (see David Kemei v Energy Regulation Commission [2013] KEELRC 496 (KLR) & Teachers Service Commission v Joseph Wambugu Nderitu [2016] KECA 678 (KLR)). Consequently, the outcome of either of the two processes need not be dependent or impact on the other (see Ismail Hassan Abdullahi v Kenya Ports Authority [2013] KEELRC 845 (KLR)). As such, the two processes ought not to be conflated.
22. That being the case, the general thinking is that the two processes can be conducted simultaneously. The fact that an employee is facing a criminal charge in court is not a bar to him being subjected to a disciplinary process at the workplace and vice versa (see David Kemei v Energy Regulation Commission (supra)). As such, the Claimant's contention that the Respondent should not undertake disciplinary action against her because she has a pending criminal trial which arises from the same set of facts is misguided.
23. The court has considered the decisions which the Claimant relies on to contend that the disciplinary process should be stopped. In Mathew Kipchumba Koskei v Baringo Teachers Sacco [2013] KEHC 3584 (KLR), the learned Judge was of the view that where an employer has referred a workplace infraction to the criminal justice system, he should await the results of the criminal case before he can open disciplinary proceedings against the affected employee because the results of the criminal trial may impact on the disciplinary case. A similar view was expressed in the case of Joshua Muindi Maingi v National Police Service Commission & 2 others [2015] KEELRC 1036 (KLR). However, the Court



of Appeal disagreed with this proposition in its decision in *Teachers Service Commission v Joseph Wambugu Nderitu* (supra) underscoring the reality that the two processes are mutually exclusive.

24. To further underscore this fact, George Ogembo in his publication titled "Employment Law Guide for Employers" 2nd edition, (pg 351) states that there is no legal requirement that an employer awaits the outcome of a criminal case against an employee before he can institute disciplinary proceedings against him based on the same set of facts. The author points out that this is a matter which is left to the discretion of the employer. All that is required of him (the employer) is to ensure that this discretion is exercised fairly.
25. The Claimant contends that she is currently undergoing medical treatment and has sought for accommodation from the Respondent but to no avail. As such, she urges the court to intervene in the matter on this account.
26. The fact that the Claimant has a medical challenge is not a valid ground to warrant the court's intervention to freeze the disciplinary case against her. She cannot expect the employer to hold the disciplinary process in abeyance to her convenience. She can only engage the Respondent directly on the matter with a view to seeking some accommodation. The Respondent is not bound to accede to the request if it considers it unreasonable.
27. Before a court can grant an order of interim injunction, it is obligated to satisfy itself that the applicant has met the conditions for the grant of the order as set out in the case of *Giella v Cassman Brown* [1973] EA 358. The applicant must demonstrate:-
 - a. that he has a prima facie case with a probability of success;
 - b. that if the order sought is not granted, he will suffer irreparable loss;
 - c. If the court is in doubt, it should decide the application on a balance of convenience.
28. Having regard to the earlier analysis in the decision, the court is not convinced that the Claimant has established a prima facie case to entitle her to the relief sought in the application. She seeks to stop the Respondent from subjecting her to disciplinary process until the criminal trial she is facing is concluded. Yet, these two processes are mutually distinct.
29. In any event, should the Respondent improperly process the disciplinary case and terminate her services without justification, she will be entitled to the reliefs which are prescribed under sections 12 and 49 of the *Employment Act* which include reinstatement. As such, she cannot contend that if her services are improperly terminated, she has no recourse in law and that she will suffer irreparable loss.

Determination

30. Having regard to the foregoing, the court is not convinced that it should grant the orders sought in the application dated 1st September 2025.
31. As such, the motion is declined.
32. Costs of the motion to be in the cause.

DATED, SIGNED AND DELIVERED ON THE 12TH DAY OF FEBRUARY, 2026

B. O. M. MANANI

JUDGE

In the presence of:



.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

