REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

COMM. CASE NO. E430 OF 2025

BETWEEN

CENTRIC LIMITED……

……PLAINTIFF

AND

SAP EAST AFRICA LIMITED……

….DEFENDANT

RULING

Introduction and Background

1. By a Notice of Motion dated 23rd June 2025, the Plaintiff seeks to stay the implementation of the Suspension Notice dated 30th April, 2025, and subsequent Termination Notice issued by the Defendant on 17th June, 2025, terminating the Partnership Edge Agreement between the parties ("Agreement") pending the hearing and determination of this suit. It further seeks an order directing the parties to continue operating on the terms contained in the Agreement together with subsequent agreements signed in accordance with the Agreement.

2. The application is supported by affidavit of the Plaintiff's Managing Director, MOSES MUNENE, sworn on 23rd June 2025 and opposed by the Defendant through the replying affidavit of its Finance Manager, REUBEN CHEBII, sworn on 9th July 2025. The application was canvassed by way of written submissions which are on record and I will be making relevant references to the same in my analysis and determination below.

Analysis and Determination

3. In its response and submissions, I note that the Defendant has taken issue with the court's jurisdiction and submitted that this Court does not have jurisdiction to hear and determine this suit on the basis that the dispute before it, as disclosed in the Plaint dated 23rd June 2025, relates solely to agreements between the parties. That these agreements oust the jurisdiction of the Courts of Kenya and provide that the Courts of Johannesburg have the exclusive jurisdiction to determine disputes arising therefrom.
4. In response, the Plaintiff submitted that it has pleaded at paragraph 15 of the Plaint that the cause action arose within Nairobi hence, this Court has the requisite jurisdiction to hear and determine both the main suit and this application. That the jurisdiction of a court, especially, a court of record such as the High Court cannot be taken

away by the discretion of parties exercising their contractual autonomy by inserting exclusive jurisdiction clauses in contracts or agreements.

5. It is not in dispute that **Article 12** of the Agreement provides in part that "*1. This Agreement and any claims (including any non-contractual claims) arising out of or in connection with this Agreement and its subject matter are governed by the laws of the Republic of South Africa...2. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement) ('Dispute') is Johannesburg. The Parties agree that the courts of Johannesburg, South Africa are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary*."
6. The Master Partner Agreement, annexed by the Defendant, defines "Agreement" broadly to include all schedules, models, and incorporated documents and appears to encompass the jurisdiction clause to all contractual relationships between the Defendant and its partners such as the Plaintiff. As submitted by the Defendant, the Court of Appeal, in ***Raytheon Aircraft Credit Corporation & another v Air Al-Faraj Limited*** **[2005] eKLR** restated the general rule that where parties have bound themselves by an

exclusive jurisdiction clause, effect should ordinarily be given to that obligation unless the party suing in the non-contractual forum discharges the burden cast on him of showing strong reasons for suing in that forum. In ***Karachi Gas Co. Ltd v Issaq*** **[1965] EA 42**, the predecessor of the Court of Appeal held that the proper law ought to be that which the transaction had the closest and most real connection. This court, in ***Barakat Exploration Inc v Taipan Resources*** **[2014] eKLR** held that it has discretion, on being satisfied of strong grounds, to decide the applicable law in favour of the party that proves that the Kenyan High Court is *forum conveniens*.

7. The Plaintiff submits that it instituted the current suit and application before this Court because the Agreement was executed here in Kenya, both parties to the Agreement and dispute reside and conduct their business in Kenya, subsequent contracts and agreements arising out from the Agreement were executed and are meant to be performed here in Kenya, the subject matter of the Agreement and services arising therefrom are to be offered in Kenya, the cause of action arose in Kenya, the evidence and witnesses are in Kenya, the affected services are in Kenya and above all, services arising from the contracts were meant to serve Kenyan public entities.

8. In my view, the aforementioned grounds, which have not been denied, are cogent and provide sufficient reasons for the court to assume jurisdiction in this matter as the *forum conveniens*, notwithstanding the exclusive jurisdiction clause. It is clear that the chosen forum of South Africa has no real connection to the parties and it will be convenient to the parties to have the dispute solved by the court at least as a matter of commercial reality.
9. Turning to the substance of the application, the Plaintiff essentially seeks an injunctive relief from the court. The parties agree that for such injunctive orders to be granted, the Plaintiff must satisfy that the conditions set out in the case of **Giella v Cassman Brown & Co., Ltd. [1973] E.A. 358**. It is required to demonstrate a prima facie case with a probability of success, that it will suffer irreparable injury which would not adequately be compensated by an award of damages and that if the Court is in doubt, it should decide the application on the balance of convenience. These conditions are to be applied as separate, distinct and logical hurdles which the Plaintiff is expected to surmount sequentially which means that if the Plaintiff does not establish a *prima facie* case then irreparable injury and balance of convenience do not require consideration (see **Nguruman Limited v Jan Bonde Nielsen& 2 others [2013] KECA 347 (KLR)**.

10. The parties also agree that what constitutes "a prima facie case" was set out by the Court of Appeal in **Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR)** as follows:

> *A prima facie case in a civil application includes but is not confined to a "genuine and arguable case." 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.*

11. A prima facie case flows from what has been pleaded in the plaint. The Plaintiff states that the parties entered into the Agreement around 26th August 2022, along with various service agreements which formed a single integrated agreement. Relying on this partnership, the Plaintiff contends that it secured contracts to provide IT services to several major Kenyan public entities, including Kenya Ports Authority, Kenya Railways Corporation, National Social Security Fund and the Energy and Petroleum Authority. The Plaintiff accuses the Defendant of unilaterally suspending the Agreement without prior notice or reason, stopping all quotes and support and that it subsequently terminated the agreement on 17th June 2025,

allegedly without justification. That the suspension and termination were unilateral, without reasonable notice or justifiable cause, constituting a breach of the Agreement.

12. The Plaintiff contends that it cannot fulfill its contracts with government agencies, leading to reported IT system failures for these entities, that it faces a loss of business worth approximately Kshs. 500 million, that it risks business closure, employee job losses, and legal actions from its customers and that the suspension affects essential public services provided by the mentioned government agencies, causing wider public harm. The Plaintiff asserts it is not in breach of any agreement terms and was given no reason for the termination and the immediate operational crisis and risk of irreversible damage necessitates urgent court intervention.

13. In response, the Defendant depones that it suspended the Agreements pending an audit, as permitted under the Agreement, that a formal termination notice was issued on 17th June 2025, in accordance with the contractual right to terminate "for convenience" with three months' notice and that the Plaintiff was aware of the suspension, as evidenced by its advocates' letter of 18th May 2025. That granting an injunction to stay termination would effectively rewrite the parties' agreement and force them to

continue a relationship that has already been lawfully terminated. It urges that courts should respect the commercial expectations and contractual freedom of the parties and avers that the Plaintiff has not demonstrated a clear legal right that has been infringed and any alleged harm from termination is quantifiable as damages, not irreparable loss. The Defendant further states that there is no evidence that the public will suffer, as end-users can still access SAP products through other partners. For these reasons, the Defendant urges the court to dismiss the Plaintiff's application and discharge the interim orders.

14. The Plaintiff's case is in respect of breach of contract and loss of business. I agree with the Defendant that these are quantifiable prayers and even if the Defendant is said to have been in breach of the parties' existing agreements or that it terminated the same unlawfully, an injunction is still not available to the Plaintiff. The only redress available to it is an award of damages for the alleged breach (See **Esso Kenya Ltd v Mark Makwata Okiya [1992] KECA 53 (KLR)**]. I am in further agreement that the Defendant terminated the Agreements under a clear "termination for good cause" clause and an injunction would effectively compel continuation of a terminated contract and essentially re-write the parties contract and force continued performance, something this

court cannot do (see **National Bank of Kenya Ltd vs Pipe Plastic Samkolit (K) Ltd [2002] 2 E.A. 503)**

15. It is also my finding that the Plaintiff's right is purely contractual and that no

proprietary or unique interest is claimed, the harm claimed is commercial and financial and it is exactly the kind remediable by damages. The balance of convenience favors Defendant as forcing it to continue business with a partner under audit or suspicion could cause reputational, compliance, or operational risks. To this end, I find that the prayers sought by the Plaintiff cannot be granted.

Conclusion and Disposition

16. In the foregoing, the Plaintiff's application dated 23rd June 2025 is dismissed with costs. The interim orders in place are hereby discharged.

DATED SIGNED AND DELIVERED virtually at NAIROBI this 19TH DAY OF FEBRUARY 2026

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J.W.W. MONGARE
JUDGE

IN THE PRESENCE OF

1. Mr. Owino holding brief for Mr. Wafula for the Plaintiff/Applicant

2. Mr. Kahura for the Respondent

3. Amos- Court Assistant