

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E1142 OF 2025**

**ANNA WANJIRU**

**ITHONG'O.....CLAIMANT/APPLICANT**

**VERSUS**

**INKOMOKO KENYA LIMITED.....**  
**RESPONDENT**

**RULING**

- 1.** This ruling relates to the Claimant/Applicant's Amended Notice of Motion application dated 9<sup>th</sup> December, 2025, brought pursuant to Rule 17 of the Employment & Labour Relations Court (Procedure) Rules, and Section 12(3), (i), (ii) and (iii) of the Employment and Labour Relations Court Act. The Claimant/Applicant seeks the following orders: -
- i. Spent
  - ii. Spent
  - iii. THAT pending the hearing and determination of this suit, the Respondent be and is hereby restrained from terminating the Claimant's employment contract.
  - iv. THAT pending the hearing and determination of this application and the suit generally, the Respondent be and is hereby ordered to give the Claimant sufficient time to respond to the fresh allegations in the invitation

letter dated 18<sup>th</sup> November 2025 and to expunge the illegally obtained voice recording from their evidence.

- v. Spent
- vi. THAT pending hearing and determination of this suit, the court be pleased to issue a conservatory order restraining and prohibiting the Respondent from recruiting another person to fill the position of Director of Communications.
- vii. Spent
- viii. THAT pending the hearing and determination of this suit, the Respondent be and is hereby compelled to reinstate the Claimant/Applicant forthwith to her role as the Director of Communications without any loss of salary, benefits, and any other consequent rights.
- ix. THAT pending the hearing and determination of this application and the suit generally, the Respondent be and is hereby restrained from harassing, intimidating, bullying, frustrating, or interfering with the Claimant.
- x. THAT the costs of this application be awarded to the Claimant.

2. The application is supported by grounds on the face, the supporting and further supporting affidavit of **Anna Wanjiru Ithong'o**, the Applicant herein. The Applicant avers that she received a show cause letter dated 2<sup>nd</sup> October 2025, which she responded to on 9<sup>th</sup> October 2025, but did not receive any further communication regarding the disciplinary process until 19<sup>th</sup> November 2025, when she

was invited to a disciplinary hearing scheduled for 20<sup>th</sup> November 2025.

- 3.** She avers that the invitation letter introduced new allegations that had not been included in the original show cause letter and attached a secretly recorded voice recording obtained without her knowledge or consent, and which the Respondent indicated would be used as evidence.
- 4.** The Applicant states that on 19<sup>th</sup> and 20<sup>th</sup> November 2025, she requested 14 days to respond to the new allegations raised in the invitation letter and questioned the admissibility of a voice recording that did not comply with the Respondent's policy. She avers that the Respondent declined the request and insisted that the disciplinary hearing must proceed on 21<sup>st</sup> November 2025, thereby denying her an opportunity to respond to the new allegations.
- 5.** It is the Claimant/Applicant's position that the disciplinary process was initiated with the intention of unfairly and unlawfully terminating her employment. She states that unless the Court intervenes, she risks losing her job unfairly, as the decision to terminate her employment appears to have been predetermined.
- 6.** The Applicant further avers that the Respondent proceeded with the disciplinary hearing in the Claimant's absence and issued a termination letter on 28<sup>th</sup> November 2025. She

avers that there is a risk that the Respondent may fill her former position, thereby prejudicing her and undermining her livelihood, given that the termination is unlawful and unfair.

- 7.** The Claimant finally seeks that the court grant her appropriate orders in the interest of justice.
- 8.** The Respondent opposed the application vide a replying affidavit sworn by one Barbara Mutoni on 21<sup>st</sup> January, 2026.
- 9.** The Respondent states that the Claimant's employment was terminated on 28<sup>th</sup> November 2025 for gross misconduct, including harassment, intimidation, and wrongful confinement of a subordinate, as detailed in the termination letter. The deponent further states that the termination followed a disciplinary process initiated after a complaint by the Claimant's subordinate, named Maureen.
- 10.** The Respondent states that during a meeting, the Claimant harassed, intimidated, bullied, and wrongfully confined her subordinate, ignoring her distress and causing a mental breakdown, which facts the Respondent claims were acknowledged by the Claimant.
- 11.** The Respondent avers that a Notice to Show Cause was issued on 2<sup>nd</sup> October 2025, and the Claimant responded on 9<sup>th</sup> October, denying the allegations but asserting the

matter had been resolved, but the subordinate later confirmed that the issue was not settled and alleged retaliation by the Claimant, including the removal of direct reports.

**12.** The Respondent states that it cautioned the Claimant against retaliation and offered support due to the strained relationship. It states that, before the disciplinary process was concluded, the Claimant proceeded on sick and annual leave, which the Respondent approved, and that the disciplinary process was placed on hold during her absence, and that the disciplinary process was to resume upon the Claimant's return from leave.

**13.** It is its case that after reviewing the allegations, the Claimant's response, and further claims of retaliation, the Respondent found her explanations unsatisfactory and invited her to a disciplinary hearing on 18<sup>th</sup> November 2025, warning that it could proceed in her absence if she failed to attend. The Respondent asserts that it provided the Claimant with all relevant evidence, including a recording of the meeting, and ensured transparency throughout the process.

**14.** The Respondent avers that the Claimant raised several concerns, including requests for additional time, clarification of allegations, and questions about the evidence, and that in response, it clarified that there were no new allegations,

only further details, and granted the Claimant additional time, rescheduling the hearing to 21<sup>st</sup> November 2025.

- 15.** The Respondent avers that the Claimant indicated that she would attend the hearing, but limit her response to issues in the original notice, which the Respondent accepted, maintaining that she was free to present her case as she deemed appropriate.
- 16.** It states that the Claimant failed to attend the disciplinary hearing on 21<sup>st</sup> November 2025, informing it shortly before that she would not attend until her demands were met. The Respondent states that it considered this refusal unreasonable, noting that the hearing had been properly convened and that the Claimant had previously confirmed her attendance; hence, the disciplinary panel proceeded in her absence, found her guilty of gross misconduct, and recommended termination.
- 17.** The Respondent further asserts that the Claimant had already initiated court proceedings before refusing to attend the hearing, indicating a lack of intention to participate in the disciplinary process.
- 18.** The Respondent argues that the Claimant's application is procedurally defective, as it seeks interim remedies, such as reinstatement and restraining recruitment, that are not part of the main claim. It maintains that reinstatement is a

substantive remedy only available after a full hearing and that granting it at this stage would be unjust and prejudicial.

- 19.** Additionally, the Respondent contends that restraining recruitment would interfere with its business operations, and that the Claimant's losses, if any, are compensable by damages, meaning no irreparable harm has been demonstrated, hence the application does not meet the threshold for granting injunctive or conservatory relief.
- 20.** The Respondent states that the balance of convenience favours it, as the Claimant will not suffer prejudice, as her losses, if any, are compensable by monetary damages, while restraining recruitment or granting reinstatement would cause severe operational disruption and potentially compromise the safety and rights of employees.
- 21.** The Respondent finally avers that, for reason that the Claimant's termination was for gross misconduct, it prays that the Amended application be dismissed with costs and that the matter proceed to a full hearing on the main claim.
- 22.** Parties urged the Motion by oral evidence on 17<sup>th</sup> February, 2026. Counsel for the Claimant/Applicant urged the court to allow the motion on the basis that the Claimant/Applicant had satisfied the three grounds in *Giella v. Casman Brown*.
- 23.** Counsels further reiterated their pleadings on the Motion.

## **Analysis and Determination**

**24.** I have considered the Motion, the grounds and affidavits in support, the replying affidavit in opposition, and the oral submissions by both counsels. The singular issue for determination is whether the Claimant has met the threshold for grant of interlocutory or conservatory reliefs.

**25.** The Court, in determining whether this threshold has been met, considers firstly, whether the Claimant has shown a prima facie case or serious question to be tried, secondly, is whether the balance of convenience favours the grant of the interim reliefs, and finally, whether the Claimant has demonstrated irreparable harm that cannot be remedied by monetary compensation. (See ***Giella v. Casman Brown [1983] KLR 45***).

**26.** On the question of whether the Claimant has established a prima facie case, I will start by citing the case of ***Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] eKLR***, where the Court defined a Prima facie case as: -

***“So, what is a prima facie case? I would say in civil cases, it is a case in 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.”***

27. Further in ***Jan Bonde Nielsen Nguruman Limited & 2 Others [2016] eKLR***, the court opined thus:

***“We adopt that definition, save to add the following conditions by way of explaining it. The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected, which is directly threatened by an act sought to be restrained; the invasion of the right has to be material and substantive, and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini-trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it, the person applying for an injunction has a right which has been or is threatened with violation. Positions of the parties are not to be proved in such a manner as to give a final decision in discharging a prima facie case. The Applicant need not establish title, it is enough if he can show that he has a fair and bona fide question***

***to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance of probabilities, or, otherwise put, on a preponderance of probabilities. This means no more than that the Court takes the view on the face of it, the applicant's case is more than not to ultimately succeed."***

- 28.** The Claimant raises procedural irregularities concerning the disciplinary process and alleges unfair termination. The Respondent, on its part, contends that the Claimant was issued with a proper Notice to Show Cause and that she received adequate time and opportunity to respond.
- 29.** The Respondent further asserts that the Claimant/Applicant was warned that proceedings could continue in her absence, and even had the hearing rescheduled to accommodate her concerns.
- 30.** In my considered view, while there are serious questions to be tried regarding the fairness of the disciplinary process, the Claimant has not demonstrated that this warrants immediate reinstatement or restraining recruitment at this interlocutory stage.
- 31.** This leads me to the conclusion that the Claimant has not established a prima facie case warranting the grant of conservatory orders.

**32.** On whom is the balance of convenience, the Claimant seeks reinstatement and a freeze on recruitment. In my considered view, granting such a relief would disrupt the Respondent's business operations, compromise employee safety, and may predetermine the outcome of the substantive suit.

**33.** Further, the Claimant's potential losses are monetary in nature and therefore compensable by damages.

**34.** In the premise, I find and hold that the balance of convenience tilts in favour of the Respondent.

**35.** On whether or not irreparable harm has been established, as already found in the foregoing paragraphs, the Claimant has not demonstrated harm that cannot be remedied by financial compensation.

**36.** Conversely, reinstatement or the imposition of a restraining order on recruitment would no doubt cause operational harm to the Respondent, affecting more employees than just the Claimant/Applicant.

**37.** The Court further notes that the Claimant seeks reinstatement and an order restraining recruitment, which are substantive remedies that are not pleaded in her Statement of Claim.

**38.** I return that no irreparable harm has been shown.

**39.** On protection from harassment, it is evident that the Claimant is currently not reporting to work, and no ongoing harassment by any other means has been established.

**40.** In light of the above findings, I conclude that the Claimant has not satisfied the test under ***Giella v. Casman Brown***. The Amended Notice of Motion dated 9<sup>th</sup> December 2025 is dismissed in its entirety with costs in the cause.

**41.** Orders accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Ms. Kogai present for the Claimant/Applicant

Ms. Okimaru present for the Respondent

Ms. Esther S-C/A