



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

(O N Makau J on 24th March, 2026)

ELRC NO. E220 OF 2026

**REUBEN
KHAMADI.....CLAIMANT**

NDINYA

-VERSUS-

**SIEMENS
LIMITED.....RESPONDENT**

(PROPRIETARY)

RULING

Introduction

1. This Ruling relates to the Claimant's Notice of Motion dated 3rd March 2026 brought under Section 12 of the Employment and Labour Relations Court Act and all other enabling provisions of the law. The Application sought the following orders: -

a) That the application be certified urgent and service thereof be dispensed with in the first instance.

b) That the Respondent by itself, its servants and/or agents be restrained from proceeding with the disciplinary proceedings against the Claimant scheduled on 6th March 2026 pending the hearing and determination of this application.

c) That the Respondent by itself, its servants and/or agents be restrained from proceeding with the disciplinary proceedings against the Claimant scheduled on 6th March 2026 pending the hearing and determination of this claim.

d) That the costs of this application be borne by the Respondent.

2. The Application was supported by the Claimant's Affidavit sworn on even date and was premised on the grounds set out on the body of the motion. In brief, he contended that the Respondent intends to subject him to an unprocedural, unjust, biased and illegal disciplinary proceedings with a

predetermined outcome and that unless the orders sought are granted, his constitutional right to fair labour practices shall be violated and occasion on him irreparable loss and damage.

3. The Respondent has opposed the Application through a Replying Affidavit sworn on 16th March 2026 by its Chief Financial Officer, one Mr. Timothy Rick O'Shea and through its Grounds of Opposition of even date. The Respondent contends that the application has been overtaken by events, that the Claimant has failed to discharge his duty of candour and that the disciplinary process was conducted fairly following the robust procedures in place.

Factual Background

4. The Claimant, Reuben Ndinya Khamadi, was employed by the Respondent as Tax Manager from 2013 based in south Africa. Subsequently, he became the Head of Tax for the Africa Cluster, based in Nairobi, Kenya in August 2016. His employment contract dated 18th November 2016 indicated that the applicable law to his contract was the Kenyan law. It

also referred to company policies which were available at the HR office. He was reporting to the Chief Financial Officer, and he was responsible for ensuring implementation of global and local taxation guidelines, policies and processes across all subsidiaries and associate companies of Siemens (Pty) Limited in Africa.

5. On 3rd February 2026, the Claimant's line manager, Mr. Timothy Rick O'Shea (the CFO), held a virtual meeting with the Claimant to discuss serious concerns regarding the Claimant's performance and leadership of the tax function. The meeting was witnessed by Mr. Simon Mosuwe (People & Organization Manager-Human Resources) and Mr. Christian Homering (the Claimant's line manager within the global Siemens Tax Team).
6. During this meeting, the CFO expressed dissatisfaction with various exposures that had impacted the company, which he attributed to the Claimant's missing leadership of the tax team. The concerns included failure to ensure timely identification and recovery of material VAT receivables

resulting in unclaimed VAT inputs exceeding approximately ZAR 20 million, overstatement of VAT receivables of approximately ZAR 15 million subsequently written off, failure to ensure timely registration and compliance with withholding tax obligations, failure to advise appropriately on tax implications of strategic transactions, and failure to ensure accuracy and reliability of tax calculations resulting in material overpayments.

7. The Claimant was informed that the CFO was contemplating initiating a disciplinary hearing into the matter owing to the pervasive nature of the shortcomings and their material impact on the company. Mr. Simon Mosuwe outlined the disciplinary process that would transpire in the event the hearing proceeded, in line with the company's policy.
8. By a letter dated 6th February 2026, Mr. Simon Mosuwe wrote to the Claimant giving him a summary of the topics discussed on 3rd February 2026 and requesting his response. The Claimant responded on 10th February 2026.

9. On 23rd February 2026, a Notice of Disciplinary Hearing was issued to the Claimant, charging him with gross negligence/failure to exercise duty of care, dereliction of duties and failure of managerial oversight, and conduct resulting in loss of trust and confidence. The notice indicated that given the Claimant's seniority, an external chairperson would preside over the hearing scheduled for 6th March 2026. The notice further stated that should the allegations be proven, the company might impose an appropriate sanction, which may include dismissal.

10. On 25th February 2026, the Claimant's advocates on record, Morara Apiemi & Nyangito Advocates, wrote to the Respondent notifying it that the Claimant would not participate in any disciplinary hearing stating that the procedure was alien to Kenyan law and the terms and conditions of his contract of employment. The counsel further noted that the disciplinary hearing was sham since the employer had already indicated that it had lost confidence and trust in the Claimant even before the hearing his defense.

11. The Respondent responded by letter dated 27th February 2026, reminding the Claimant that the disciplinary process was an internal company matter and that the Respondent would only engage in correspondence with the Claimant directly, not external individuals. The Respondent then advised the Claimant to attend the disciplinary hearing.
12. On 3rd March 2026, Mr. Simon Mosuwe sent the Claimant further documentation to be relied upon during the hearing of 6th March 2026, including the disciplinary procedures applicable to the process. However, on 4th March 2026, the Claimant communicated to the Respondent via email that he would not be attending the disciplinary proceedings scheduled for 6th March 2026 as he had initiated Court proceedings in Kenya and purported to serve his Statement of Claim, Application for Injunctive Relief and Court Order.
13. On 5th March 2026, the Respondent once again reminded the Claimant that he had an opportunity to file any response which he may wish to have considered at the hearing scheduled for 6th March 2026. The claimant attended the

hearing but only raised preliminary objection to the hearing citing the same reason he has raised in this case, and then left the meeting.

14. The external Chairperson, Mr. Michael Van As, an Advocate of the High Court of South Africa, dismissed the objection by the claimant proceeded with disciplinary hearing proceeded on the same day who was not an employee of Siemens. The CFO testified for the respondent and closed his case.
15. On 11th March 2026, the Chairperson found the Claimant guilty of all the charges levelled against him and communicated the findings to the Respondent and the Claimant. He further directed both parties file statements on aggravation or mitigation respectively of the sanction before 12.00hrs on Friday, 13th March 2026.
16. On 13th March 2026, the Claimant sought a period of 14 days to file his statement of mitigation, and the Respondent acceded to this request. Therefore, he has upto until 25th March 2026 to file his written submission on mitigation for a fair and appropriate sanction.

Hearing of the motion herein.

17. The motion was argued during a virtual court on 17th March 2026. Mr. Morara learned counsel urged the motion for the Claimant while Mr. Muchiri vehemently opposed it. Basically, the counsel highlighted on facts summarized above.
18. Mr. Morara observed that the court has dealt with matters similar to the instant one and intervened where the disciplinary process is marred with irregularities. He maintained that there is no fairness in the Claimant's case as the external chairperson of the disciplinary tribunal was appointed by the accuser (CFO); that the claimant is being subjected to South African law; and that the Respondent denied him the constitutional right to legal representation
19. Mr. Muchiri emphasized that both the Claimant's application and the suit are now moot and overtaken by events as the impugned disciplinary hearing took place on 6th March 2026 and the Chairperson rendered his findings on 11th March 2026. He contended that the claimant was part of the team reviewing the respondent's Employment Policy, being

followed in his case and therefore he knows that it applies to all employees of the company including himself. He contended that the policy allows for appointment of an external chairperson to preside of disciplinary hearing.

20. He submitted that the internal process is robust and it protects the interest of the claimant including right of appeal. He further submitted that the Claimant was invited to a hearing and he attended but the stated that he had filed a court case. He also submitted that the principle of exhaustion of internal remedies requires the Claimant to complete the internal disciplinary process, including appeal process, before seeking the intervention of the Court.

Issues for Determination and analysis

21. Having carefully considered the Notice of Motion dated 3rd March 2026, the rival Affidavits, Grounds of Opposition and oral submissions by counsel, the following issues fall for determination:-

- a) Whether the Application is overtaken by events and rendered moot;
- b) Whether the Claimant has met the legal threshold for the court to intervene in internal disciplinary process before exhaustion.
- c) What appropriate orders should the court award?

Moot case

22. The Respondent raised preliminary point that the Application herein and the suit have been overtaken by events and rendered moot. The Black's Law Dictionary, Tenth Edition describes moot case as:

“A matter in which controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights.”

23. The purpose of the above concept is to save judicial time and ensure that a court does not act in vain. In this case the Claimant filed the instant motion on 3rd March 2026 seeking to stop the disciplinary hearing scheduled for 6th March 2026. No interim orders were issued and the hearing proceeded to conclusion on the scheduled date. A decision was rendered

on 11th March 2026 and what remains is parties submissions on the sanction to be meted against the claimant. The orders sought in the motion were specific on the date of the proceedings intended to be restrained, that is, 6th March 2026 and not any other date thereafter.

24. The impugned proceedings took place and a decision was rendered. Nothing remains to be done with respect to the proceedings scheduled for 6th March 2026. Parties are bound by their pleadings whether elegantly drawn or not. As matters stand now, the orders sought in the Notice of motion dated 3rd March 2026 are overtaken by events. Therefore, I find that motion is moot and otiose.

Threshold for court intervention

25. The jurisprudence emerging from our courts is that, a court of law will not interfere with the internal disciplinary proceedings until the process is exhausted. However, a court may intervene if the employer is conducting the proceedings

in manner that violates an employee's rights as guaranteed by the law or his contract of employment. The effect will not muzzle the employer altogether, but will put him/her back on right track.

26. In **Mulwa Msanifu Kombo v Kenya Airways [2013]**

eKLR the court held that: -

“... this court would be reluctant to involve itself in a disciplinary process commenced by the employer unless in appropriate cases it is established that the disciplinary process has been commenced or is continuing unfairly. The intervention in disciplinary process by employers will be entertained by the court rarely and in clear cases where the process is likely to result in unfair imposition of a punishment against the employee. The court will intervene ... if it is established that the procedure relied on by the employer offends fairness or due process by not upholding the rules of natural justice or, if the procedure is in clear breach of the agreed or legislated or employer's prescribed applicable or policy standards, or if the disciplinary procedure were to continue it would result into manifest

injustice in view of the circumstances of the case.”

27. In **Rebecca Ann Maina & 2 Others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR**, the court held as follows regarding court’s intervention in disciplinary process at the shop floor: -

“... the Court will intervene not to stop the process altogether but to put things right.”

28. Again, in **Geoffrey Mworira v Water Resources Management Authority [2015] eKLR** the court held as follows: -

“The court will sparingly interfere in the employer’s entitlement to perform any human resource functions such as ... disciplinary control ... To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of the constitution or legislation; or in breach of the agreement between the parties; or in manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible

to deal with the breach through the employer's internal process."

29. In this case, the Claimant accuses the employer of subjecting him to alien disciplinary procedures and law that do not apply to his contract of employment. However, the respondent has, prima facie, demonstrated that the disciplinary procedures adopted applies to all employees of the company and that, in fact, the Claimant was in the team of managers that reviewed the same. I have perused the Employment Policy filed as an exhibit and I am satisfied that it protects the Claimant's right to fair hearing and also to file an appeal.

30. The procedure allows for appointment of an external Chairperson at the discretion of the employer. The employee is allowed to attend the hearing with another employee and witnesses. He has a right to cross examine the witnesses called by the employer to testify against him and he can apply to be allowed to have legal representation.

31. I have further perused the correspondences produced as exhibits and found that the claimant was notified of the

charges against him and he was invited to a disciplinary hearing with another employee of his choice and witnesses, if any. None of the said correspondences indicated that South African law would to apply to him. In fact, the procedure adopted by the Respondent was in consonance with the Employment Act of Kenya. Section 41 of the Act provides that: -

“ (1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”

32. Having carefully considered the materials presented before this court, the judicial precedents cited and the above statutory provision, I must hold that the Claimant has failed to establish the legal threshold for the court to interfere with his internal disciplinary process before it is exhausted. In the circumstances I see no need of proceeding to consider whether interlocutory injunction is merited.

Conclusion

33. I have found that the Motion dated 3rd March 2026 is overtaken by events and rendered moot case. I have further found no merits in the motion as the applicant has failed to established any legal basis for the court to intervene in his internal disciplinary proceedings before they are exhausted. Consequently, I dismiss the Motion with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 24TH DAY OF MARCH, 2026.

ONESMUS N MAKAU

JUDGE

Appearance:

Mugambi for Morara for the Claimant

Muchiri for the Respondent