

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE NO. E053 of 2025

BARAKO DARO BARAKO.....CLAIMANT/APPLICANT

VERSUS

EQUITY

BANK

LIMITED

.....**RESPONDENT**

RULING

1. What is before this Court for determination is the Claimant/Applicant's Notice of Motion dated 5th November 2025, through which he seeks the following orders;

1. *Spent.*

2. *Spent*

3. *THAT pending hearing and determination of the main suit, the Respondent, by itself, its agents, servants, employees, or any person acting under its authority, be and is hereby restrained from issuing any negative report, reference, or statement to potential employers of the Applicant that may prejudice the Applicant's employment prospects.*

4. *THAT upon hearing and determination of the main suit, the Respondent be and is hereby ordered to refrain from publishing or communicating, in any manner whatsoever, any information, statement, or report that portrays the Applicant as having been involved in fraudulent activities or any misconduct related to his employment.*

5. *THAT the costs of this application be provided for.*

2. The Notice of Motion is premised on the grounds set out on its face and is supported by the Claimant's Affidavit sworn on 5th November 2025. The Claimant avers that he was employed by the Respondent on 9th February 2009 as a Relationship Officer–Operations and progressively rose to the position of Relationship Manager–Credit at the Respondent's Moyale Branch until 14th May, when his employment was terminated under circumstances he alleges were unlawful and unfair, forming the basis of the main suit.

3. The Claimant deposes that, based on prior statements attributed to the Respondent's General Executive Officer (*kukula pesa ya mama mboga*), he has reason to believe that the Respondent has issued, or intends to issue, statements

to third parties, including prospective employers, alleging that his termination was occasioned by fraudulent conduct.

4. He further avers that he had secured and accepted an offer of employment with Kenya Commercial Bank, which was subsequently withdrawn after the Respondent, his former employer, was contacted, thereby occasioning him substantial loss and prejudice.
5. The Claimant contends that the said statements are false, defamatory, and calculated to damage his reputation and impede his prospects of securing alternative employment, as evidenced by the withdrawal of the aforesaid job offer.
6. It is the Claimant's deposition that, as a direct consequence of the Respondent's actions, he has been rendered unable to provide for his family, who depend on him for financial support, thereby causing them considerable hardship and distress.
7. The Claimant further avers that he is actively seeking alternative employment but is apprehensive that the Respondent's conduct will continue to prejudice his prospects, exposing him to irreparable harm.

8. The Claimant maintains that he has established a *prima facie* case with a probability of success in the main suit, and that the balance of convenience favours the grant of the orders sought, as the Respondent stands to suffer no prejudice by refraining from issuing defamatory or adverse statements, whereas he is likely to suffer substantial harm if the orders are denied.

9. In opposition to the Notice of Motion, the Respondent filed Grounds of Opposition dated 25th November 2025 through its counsel on record, contending that:

- 1) *The Applicant has not established a prima facie case to warrant the grant of the injunctive orders sought.***
- 2) *The allegations of defamatory statements and interference with employment opportunities are speculative and not supported by evidence.***
- 3) *The orders sought are vague, overbroad, and unenforceable, as they seek to restrain the Respondent from making any statements whatsoever, including lawful and factual references.***
- 4) *The Applicant has not demonstrated irreparable harm that cannot be compensated by damages if proved.***
- 5) *The balance of convenience tilts in favor of the Respondent, as granting the orders would unjustifiably restrict its statutory and***

contractual obligations. The application does not meet the threshold for interlocutory injunction as set out in Giella v Cassman Brown principles.

6) Granting the orders would be contrary to public interest and would hinder the Respondent from fulfilling regulatory and governance duties.

10. In further opposition to the Notice of Motion, the Respondent filed a Replying Affidavit dated 8th December 2025. Notably, while the affidavit is sworn by **Mark Michele Bhakita** and the jurat bears his name, the introductory portion identifies **Emmanuel Wainaina Mwangi** as the deponent and describes him as the Respondent's Legal Officer. This inconsistency creates uncertainty as to the true deponent of the affidavit, raising doubt as to whom the depositions therein may properly be attributed and who bears responsibility for verifying the authenticity of its contents.

11. Given that Emmanuel Wainaina Mwangi did not execute the Replying Affidavit, it follows that he did not appear before a Commissioner for Oaths. Accordingly, if the depositions are attributable to him, they cannot constitute a valid affidavit in law.

12. Conversely, although Mark Michele Bhakita is indicated as the deponent by virtue of having sworn the affidavit, he fails to disclose his capacity within the Respondent, as well as his place of abode and postal address, contrary to the requirements of **Order 19 Rule 4 of the Civil Procedure Rules**. In the absence of such particulars, the document he executed cannot properly qualify as an affidavit.

13. In the circumstances, the Replying Affidavit relied upon by the Respondent is fundamentally defective.

14. While **Order 19 Rule 7 of the Civil Procedure Rules** vests the Court with discretion to admit an affidavit notwithstanding defects in form or technical irregularities, the deficiencies in the Respondent's Replying Affidavit dated 8th December 2025 are so fundamental and incapable of being cured under that provision.

15. Consequently, the Court finds that the Respondent's Replying Affidavit dated 8th December 2025 is incurably defective and hereby strikes it out.

Submissions

16.The Notice of Motion was canvassed by way of written submissions. Although the Claimant's submissions were uploaded on the online portal, the requisite filing fees were not paid, and consequently, the same were not duly filed.

17.The Court has nonetheless considered the Respondent's submissions, which were duly filed.

Analysis and Determination

18.The Court has considered the Notice of Motion, the Respondent's Grounds of Opposition, and the Respondent's submissions. From the foregoing, the single issue that falls for determination by the Court is whether the Claimant has met the threshold for the grant of an interlocutory injunction. Put differently, the question is whether the Court should restrain the Respondent, pending the hearing and determination of the main suit, from issuing any adverse reports, references, or statements to prospective employers that may prejudice the Claimant's employment prospects.

19.It is settled law that the grant of an injunction is a discretionary remedy to be exercised judiciously on the basis of evidence and established legal principles. The applicable principles are well settled, as enunciated in the celebrated case of *Giella v Cassman Brown & Co. Ltd (1973) E.A.*, thus: -

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

20. Applying the foregoing principles to the present case, the key question for determination is whether the Claimant has established a *prima facie* case with a probability of success, and whether he stands to suffer irreparable harm if the orders sought are not granted. In the alternative, and in the event of doubt, the Court must consider whether the balance of convenience tilts in his favour.

21. With regard to the first limb, the Court of Appeal in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR* defined a *prima facie* case as follows: -

“So, what is a “prima facie case” I would say that 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. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

22. And further, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR* held that:

"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...."

23. Drawing from the foregoing precedents, it is evident that the Claimant is required to demonstrate that his rights have been infringed, or are under threat of infringement, by the Respondent, upon which the evidential burden shifts to the Respondent to rebut the claim. It should also be appreciated that at this stage, the Court is not engaged in a mini-trial and will therefore not subject the evidence to a detailed or exhaustive analysis.

24. In the Motion, the Claimant deposes that his employment was terminated under circumstances he considers unlawful and which form the basis of the main suit. In the Statement of Claim, the Claimant asserts that he attended the disciplinary hearing without a witness, contrary to the law. He further contends that the decision to terminate his employment was predetermined and formed part of a mass termination exercise involving over 1,200 employees, undertaken without individualized assessment. Additionally, he alleges that the disciplinary panel convened by the Respondent denied him the opportunity to cross-examine the officer who purportedly investigated the allegations against him.

25. It is apparent that the Claimant's assertions call for interrogation by the Court and invite rebuttal by the Respondent.

26. It is notable that in its Response to the Claim, the Respondent maintains that the Claimant's termination was for a valid and lawful cause and that due process was followed. The Respondent further denies that the process was generalized or predetermined, and further avers that the Claimant was informed of his right to be accompanied by a fellow employee of his choice, but he opted to attend the hearing unaccompanied.

27. In view of these competing positions, it is clear that, at the hearing of the main suit, the Court will be required to evaluate the Claimant's allegations against the Respondent's defence, particularly in light of **Sections 41, 43, 45, and 47(5) of the Employment Act**, to determine whether the termination was substantively and procedurally fair.

28. Applying the principles set out in *Mrao Ltd v First American Bank of Kenya Ltd (supra)*, the Court is satisfied that the Claimant has established a *prima facie* case. Indeed, it cannot be said that the Claimant's case is frivolous.

29. It is trite that the establishment of a *prima facie* case alone is not sufficient to warrant the grant of an interlocutory injunction. The Court must, in addition, be satisfied that the applicant stands to suffer irreparable harm if the injunction is not granted.

30. In *Nguruman Limited v Jan Bonde Nielsen & 2 others [supra]*, the Court of Appeal, in addressing the question of what amounts to irreparable injury, expressed itself as follows:

“An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be an adequate remedy.”

31. In his Supporting Affidavit, the Claimant states that he had secured and accepted a job offer with the Kenya Commercial Bank, which was subsequently declined after the Respondent was contacted. He further avers that he is actively seeking alternative employment but remains apprehensive that the Respondent's actions will adversely affect his employment prospects.

32. In support of this assertion, the Claimant annexed to his Supporting Affidavit a copy of an email dated 29th May 2025 from the Kenya Commercial Bank indicating that he had been offered employment, which he accepted on the same date.

33. The Claimant avers that the said offer was subsequently withdrawn.

34.The Claimant having stated that he is actively seeking employment, the Court finds it more probable than not that the job offer from the Kenya Commercial Bank did not materialise.

35.It is common practice that prospective employers often contact former employers for references or background information regarding a potential employee under consideration.

36.In the present case, it is therefore more than probable that any prospective employer considering engaging the Claimant may seek information from the Respondent, being his former employer.

37.It is further evident that the parties did not part on amicable terms, the Claimant having been terminated on grounds which the Respondent considered as gross misconduct and contrary to the Respondent's Group Code of Conduct and Ethics.

38.In the circumstances, any reference or information provided by the Respondent regarding the Claimant's past employment is capable of having adverse implications on his employment prospects, particularly given that the legality and fairness of his termination is yet to be determined by this Court.

39. Therefore, a negative reference at this stage may have far-reaching and irreversible consequences, thereby occasioning irreparable harm that cannot be adequately remedied by an award of damages. Indeed, there is a risk that he may be rendered unemployable.

40. In view of the foregoing, the Court is satisfied that the Claimant's apprehension is not remote or far-fetched and that he stands to suffer irreparable loss if the injunctive relief sought is not granted.

41. On the other hand, the Respondent will not suffer any prejudice by being restrained from issuing negative references. Indeed, should the Court ultimately find that the Claimant's termination was lawful and fair, the Respondent would remain at liberty to issue accurate and factual information regarding his past employment.

42. In light of the foregoing and upon consideration of all the circumstances, the Court finds that the balance of convenience tilts in favour of the Claimant.

Orders

43. The total sum of my consideration is that the Claimant's Application dated 5th November 2025 is found to be with merit and the Court makes the following orders:

- a) **Pending the hearing and determination of this Claim, the Respondent is hereby restrained from issuing any adverse report, reference, or statement to prospective employers of the Claimant that may prejudice his employment prospects.**
- b) **The costs of this application shall be in the cause.**

DATED, SIGNED and DELIVERED at NYERI this 24th day of April 2026.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant/Applicant

Mr. Kingori instructed by Mr. Wangira

For the Respondent

Mr. Andiwo

Court Assistant

Ndati

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the

Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE