



**Kavanagh v Braeburn Schools Limited (Cause E568 of 2024)
[2025] KEELRC 37 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 37 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E568 OF 2024
SC RUTTO, J
JANUARY 17, 2025**

BETWEEN

HELEN KAVANAGH CLAIMANT

AND

BRAEBURN SCHOOLS LIMITED RESPONDENT

RULING

1. What comes up for determination is the Claimant/Applicant's Notice of Motion Application 24th July 2024 in which she seeks the following orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. Pending the hearing and determination of this Suit, this Honourable Court be pleased to grant an interlocutory injunction restraining the Respondent from recruiting or employing a substantive Chief Executive Officer.
 5. Pending the hearing and determination of this Suit, this Honourable Court be pleased to grant an order reinstating the Claimant herein to employment as the Chief Executive Officer of the Respondent with absolutely no loss of income, benefits or seniority.
 6. Costs of the application be provided for.
2. The Application is premised on the grounds on the face thereof and the Supporting Affidavit of Ms. Helen Kavanagh the Claimant/Applicant herein. Grounds in support of the Motion are that: -
 1. The Claimant was employed by the Respondent as the Chief Executive Officer (CEO) of the Respondent by a contract dated 21st November 2023.



2. The Claimant's termination by the Respondent by way of summary dismissal was bereft of substantive or procedural fairness.
3. The circumstances giving rise to the claim unfolded in February 2024 when four students, including the grandson of the school founder and son of a school group Chief Education Officer, Mrs. Joanna Garner (Childs), engaged in inappropriate behavior on a school bus.
4. These students received varying punishments, with Mr. Childs' grandson receiving a lighter penalty.
5. From thereon, the Claimant's decision strained the relationship between her, the Respondent and the Childs/Garner family leading to a difficult work environment for her.
6. The Respondent's Chairman, Mr. Shah, subsequently offered the Claimant one month's salary in lieu of notice and, enhanced his offer to three months' salary as a settlement amount on the condition that the Claimant resigned as the CEO of the Respondent with immediate effect.
7. The Claimant declined the offer and on 12th April 2024, she wrote a letter to Mr. Mukesh Shah, expressing her concern on Mr. Terry Childs' unilateral termination of her employment as well as the latter's use of threats and intimidation to force her into leaving employment.
8. Mr. Shah responded to the Claimant's letter on 15th April 2024 and highlighted some of her positive traits, such that the Claimant was hardworking and determined, that she had considerable experience and knowledge in her role as the CEO and that there was some feeling amongst the Respondent's staff that things are getting done.
9. However, in his letter Mr. Shah also stated that there was a concern regarding the Claimant's compatibility and culture fit and suggested that given the concerns raised, a separation was a probable outcome for all parties.
10. Following the Claimant's refusal to accept Mr. Shah's offer, and notwithstanding his positive remarks on her performance, the Respondent suspended her on 19th April 2024 based on various allegations of misconduct.
11. During the period of suspension, the Claimant was directed by Mr. Shah to present herself for an interview in relation to investigations by the Respondent into the alleged misconduct.
12. On 22nd May 2024, the Claimant attended an interview before the investigations panel. Thereafter, she received a Notice to Show Cause letter dated 7th June 2024.
13. The Claimant responded to the Show Cause Letter and refuted the allegations of misconduct and demonstrated why the allegations did not necessitate a disciplinary hearing.
14. The Claimant's response to the Show Cause Letter was not considered by the Respondent prior to the disciplinary hearing or that it was of no consequence in view of the decision by the Respondent to call for a hearing even before the Claimant could respond to the allegations.
15. On 18th June 2024, the Claimant attended the disciplinary hearing where a panel had been constituted by the Respondent.
16. After the hearing, the Claimant requested for a copy of the minutes of the meeting to confirm the accuracy of her representations but was denied an opportunity to review the same and was simply informed that the minutes would be sent to her.



17. Subsequently, the Respondent summarily dismissed the Claimant without any fair or valid reasons on 21st June 2024 and included a copy of the minutes that did not reflect the content of the Claimant's representations at the disciplinary hearing.
 18. The totality of the circumstances suggests the Claimant's termination was predetermined and was carried out in a manner that violated principles of fairness and legality and disregarded the Respondent's obligation to support the Claimant during her probationary period.
 19. The Claimant has a well-founded apprehension of irreparable harm and the Respondent may proceed with a full-fledged CEO recruitment process. This would render the Claimant's lawsuit meaningless, resulting from suffering irreparable harm due to loss of employment.
 20. The Claimant, who is a foreigner also risks deportation and limitation from re-entry to the country as the Respondent has threatened to write to the immigration offices requesting the cancellation of her work permit.
3. In response to the Claimant's Application, the Respondent filed a Replying Affidavit sworn on 10th September 2024 by Mr. Mukesh K. R. Shah, a Director and the Chairman of the Respondent's Board of Directors. Mr. Shah avers that:
1. The allegations by the Claimant to the effect that the circumstances giving rise to her claim originate from an incident in February 2024 involving a number of students in one of the Respondent's Schools are completely false and malicious.
 2. The February 2024 Incident is completely irrelevant to this case and forms the subject of a petition filed against the Respondent in the High Court against a number of parties including the Claimant and the Respondent.
 3. During a meeting held on 11th April 2024, the Claimant disclosed for the very first time that prior to being appointed by the Respondent, she had worked as the CEO of Vietnam Australia International School ("VAS")
 4. When the Claimant was asked why she had not disclosed this on her curriculum vitae or during her interview process prior to her appointment, she responded by saying that VAS had asked her to do something that she considered unethical and, when she refused, her employment was ended, and a non-disclosure agreement was signed that prohibited her from saying more. It was noted that the foregoing was a serious omission of fact.
 5. That in the said meeting, the Claimant made it known that in relation to the advertisement of some senior positions within the Respondent's structure, she had taken a unilateral decision to advertise these positions on her personal LinkedIn profile. It was noted that this was contrary to the Respondent's practice of advertising in the Times Educational Supplement and local media;
 6. The Claimant further acknowledged that she had included performance-related pay in the official letters of appointment of two Executive Principals while she knew that performance-related pay was a proposal that required (but had not received) the approval of the Respondent's Board.
 7. He (Mr. Shah) expressed concern that there was a fundamental disconnect between the Claimant's view of the CEO role and the expectations that the Respondent had of a CEO, particularly the approach that the Claimant was taking to bring about change.



8. In response to his comments, the Claimant stated, “What then?” which led to a discussion around separation being a possible outcome.
9. The Claimant then posed a specific question about possible settlement terms, which triggered discussions around the termination provisions of the Employment Contract and mutual separation as an alternative.
10. At the end of the meeting, the Claimant requested time to reflect and consult. They (Mr. Shah and Mr. Childs) agreed to the request and a further meeting was fixed for 15th April 2024.
11. The Claimant sent him an email on 12th April 2024 with a letter dated 12th April 2024 attached thereto. Through the said letter, the Claimant gave what she alleged to be a recap of the meeting held on 11th April 2024 and her views thereon.
12. He responded to the Claimant’s email through a letter dated 15th April 2024, which he sent by email.
13. The Claimant met him and Mr. Childs on 15th April 2024 and during that meeting; The Claimant was calm and composed and her demeanor was natural; she did not say or even suggest that she was uncomfortable participating in the meeting; She, of her own accord, verbally proposed certain mutual separation terms for consideration by the Respondent.
14. The Claimant’s proposed terms were discussed but not accepted.
15. On behalf of the Respondent, he (Mr. Shah) verbally proposed certain mutual separation terms for consideration by the Claimant;
16. The Claimant, of her own accord, stated that she needed to consult on the Respondent’s proposed terms. Accordingly, it was agreed that the Claimant would revert to him on 16th April 2024 to state her position after consultation.
17. The Claimant called him on 16th April 2024 and informed him that she had consulted extensively on the Respondent’s proposed mutual separation terms, and she had decided to decline them for a number of reasons. At the end of the call, it was agreed that he would contact the Claimant on 17th April 2024.
18. The Claimant later sent him a written note on 16th April 2024 as an email attachment in which she requested enhanced mutual separation terms while at the same time threatening legal action if a “fair offer” was not made.
19. On 17th April 2024, the Claimant sent him an email by which she insinuated that the Respondent had verbally terminated her employment. In the email, she pretended to seek guidance on the continued performance of her tasks.
20. He (Mr. Shah) called the Claimant and informed her that the Respondent had considered the contents of her written note of 16th April 2024 and was unable to make a different offer hence considered the discussions on mutual separation closed. He further clarified that the Claimant’s employment had not been terminated and nobody had told her not to go to work.
21. By a letter dated 19th April 2024, the Respondent suspended the Claimant from duty on full salary. This was to enable the Respondent to conduct an investigation into three specific allegations against the Claimant.



22. Despite the contents of the Suspension Letter and the Respondent's letter dated 3rd May 2024, the Claimant contested her suspension and the reasons and duration thereof.
23. Whilst the Claimant took issue with the length of her suspension, she only made herself available for an interview with the Investigation Team three weeks after the commencement of the Investigation.
24. He is aware that a number of the Respondent's representatives, himself included, were interviewed by the Investigation Team.
25. On 5th June 2024, the Investigation Team submitted to the Respondent an Investigation Report dated 4th June 2024.
26. In view of the findings in the Investigation Report and the provisions of the Respondent's Disciplinary Process, on 7th June 2024, the Respondent prepared a letter dated 7th June 2024 and as Chairman of the Respondent, he issued it by email to the Claimant.
27. On 7th June 2024, the Respondent's Board appointed a disciplinary committee comprising three members, Dr. David Kinuu, Mr. Kim Martin and Ms. Nyawira Miano to handle the Claimant's disciplinary hearing.
28. The Claimant responded to the Show Cause and Invitation to Disciplinary Hearing through her letter dated 12th June 2024.
29. The Claimant attended the disciplinary hearing on 18th June 2024 and the same was handled by the Disciplinary Committee.
30. Following the Disciplinary Hearing, the Disciplinary Committee prepared and sent to the Respondent a written and signed decision dated 20th June 2024 together with signed minutes dated 20th June 2024.
31. The Disciplinary Committee unanimously found that the two charges against the Claimant had been proved.
32. Pursuant to the Disciplinary Committee Decision, the Respondent prepared and issued the Claimant with a letter dated 21st June 2024 through which it terminated her employment. The Termination Letter was sent to the Claimant together with the Disciplinary Committee Decision and the Minutes of the Disciplinary Committee.
33. He denies the Claimant's statement to the effect that the Respondent terminated her employment without any fair reasons.
34. On 26th June 2024, the Claimant sent him an email, as Chairman of the Respondent, constituting her appeal.
35. In accordance with clause 5.7 and Appendix D of the Respondent's Disciplinary Process, on 28th June 2024, the Board Directors of Braeburn Limited appointed an appeals committee comprising two members, Mr. Ralph Diaper and Mr. Kigen Kandie to handle the Appeal.
36. On 2nd July 2024, the Appeals Committee prepared a letter dated 2nd July 2024 to the Claimant which he sent to her by email.
37. On 8th July 2024, the Appeals Committee prepared and issued a written and signed decision dated 8th July 2024 which he sent to the Claimant by email on the same day.



38. The Appeals Committee found that the two charges against the Claimant were adequately proved and unanimously upheld the decision of the Disciplinary Committee.
 39. The Claimant's suspension was fair, lawful and in accordance with the Respondent's Disciplinary Process and Kenyan employment law.
 40. The Claimant was afforded five separate opportunities to provide explanations, offer defences, make representations and challenge a disciplinary decision.
 41. The Claimant has taken up an engagement/appointment as a partner with CODA Search hence she should not use this Honourable court to unjustly curtail the Respondent's operations including its ability to appoint a CEO.
4. In response to the Respondent's Replying Affidavit, the Claimant swore a Further Affidavit dated 17th September 2024 in which she avers that;
1. Following her suspension, the Respondent's Disciplinary Policy was edited by the Respondent to suspend her after the fact. That this was the aim of sanitizing its ultimate decision to terminate her.
 2. The Respondent also amended the Disciplinary Policy to allow it to concurrently issue her with a notice to show cause and an invitation to a disciplinary hearing to justify its decision to terminate her and to deny her an opportunity to rebut the allegations that were raised against her conduct in the show cause letter.
 3. While Mr. Shah informed her that the meeting rescheduled for 11th April 2024 was informal and intended to be a preparation for the upcoming Board meeting, there were no discussions between Mr. Terry Childs, Mr. Shah and herself on the Board meeting.
 4. Because she did not report to or answer to Mr. Terry Childs per the terms of her contract of employment, there was no valid reason why he was present at a discussion of her performance as CEO of the Respondent other than to personally pass on the message that he no longer wanted her as the Respondent's CEO.
 5. Mr. Shah was not at the hearing, and he cannot claim to be aware of the representations she made at the disciplinary hearing.
 6. She is not an employee of CODA. Her association with CODA is solely as a shareholder and this status does not in any way disqualify her from pursuing the reliefs sought in her Claim and this Application.
5. In rejoinder, the Respondent filed a Further Affidavit sworn by Mr. Shah on 22nd October 2024, in which he avers that:
1. The Respondent did not edit its Disciplinary Policy to allow it to concurrently issue the Claimant with a notice to show cause and an invitation to a disciplinary hearing.
 2. The Respondent did not edit its Disciplinary Policy to justify a decision to terminate the Claimant and to deny her an opportunity to rebut the allegations that were raised against her conduct in the Show Cause Letter.
 3. It is disconcerting that the Claimant is questioning the role of Mr. Childs who is the Chairman of the Respondent company of Braeburn Schools Limited and as such, has oversight authority on the appointment of the CEO and on matters arising within Braeburn Group, while at the



same time insisting that she is absolutely and unquestionably entitled to a position within the Braeburn Group.

4. The post made by CODA Search on LinkedIn and CODA Search's brochure, do not identify the Claimant as a shareholder in CODA Search. Rather they describe her as an executive staff member.

Submissions

6. On 31st October 2024, the court gave directions on filing of written submissions. Both parties complied and the court has given due consideration to the said submissions.

Analysis and Determination

7. The court has considered the Application, the grounds in support thereof, the Respondent's Replying Affidavit, the parties' Further Affidavits as well as the rival submissions and has isolated the following issues for determination;
 - a. Whether the Claimant should be reinstated to employment as the Chief Executive Officer of the Respondent with no loss of income benefits or seniority in the interim pending hearing and determination of the main suit;
 - b. Whether the Respondent should be restrained from recruiting or employing a substantive Chief Executive Officer pending hearing and determination of the main suit;

Reinstatement in the Interim

8. The Claimant has asked this Court to reinstate her to employment as the Chief Executive Officer (CEO) of the Respondent pending hearing and determination of the main suit.
9. It is the Claimant's submission that the position of the CEO of the Respondent has not been substantively filled and the Respondent has not produced any evidence that the position has been filled.
10. The Claimant has further submitted that the facts of this case and the Respondent's malice merit the grant of an order of reinstatement based on the decision in Alfred Nyungu Kimungui vs Bomas of Kenya (2013) eKLR.
11. Arguing against the order of reinstatement, the Respondent has submitted that the same is a remedy issued at the discretion of the court as a substantive remedy, not an interim relief because it is an order with a final effect. In support of the Respondent's argument, the court was invited to consider the determination in the case of Kenya Union of Domestic Hotels Educational Institutions and Hospital Workers vs Social Service League MP Shah (2014) KEELRC 249 (KLR) as well as Francis Kisavo Kanyao vs Africa Coffee Roasters (EPZ) Ltd & another (2019) eKLR.
12. At the outset, it is worth pointing out that the reinstatement order sought by the Claimant is in the form of a mandatory injunction as it compels the Respondent to perform a specific action.
13. In the case of New Ocean Transport Limited & Another v Anwar Mohamed Bayusuf Limited [2014] eKLR, the Court of Appeal, considered the various types of injunctions and had this to say: -

“We appreciate that an injunction is an order of the Court directing a party to the proceedings to do something or refrain from doing a specified act. It is granted in cases in which monetary compensation does afford an inadequate remedy to an injured party. See Halsbury's Laws of England 3rd edition, vol. 21 at pg.343. Basically there are 2 types of injunctions; positive and



negative. The positive injunction would direct a party to do something whereas a negative one will restrain such a person from doing something. Among the positive injunctions will be mandatory injunction. This injunction orders some act to be done...Then there is the mandatory injunction per se which compels a party to carry out some positive act to remedy a wrongful omission.” Underlined for emphasis.

14. It is thus clear from the foregoing precedent that the order sought by the Claimant at this juncture, falls under the category of mandatory injunctions. With that being said, the next logical question to ask is, under what circumstances can a mandatory injunction be issued?
15. The principles applicable in cases of mandatory injunctions were aptly captured in *Locabail International Finance Ltd vs Agro. Export and Another* (1986) ALL E.R 901 thus: -

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the court thought that the matter ought to be decided at once or where the injunction was directed at simple and summary act which could easily be remedied or where the defendant had attempted to steal a match on the Plaintiff. Moreover, before granting a mandatory injunction, the court had to feel a high sense of assurance that at the trial, it would appear that the injunction had rightly been granted, that being a different and higher standard that was required for a prohibitory order.” Underlined for emphasis
16. This position was reiterated by the Court of Appeal in *Kenya Breweries Ltd & Another vs Washington O. Okeya* [2002] eKLR and *Nation Media Group & 2 Others vs John Harun Mwau* [2014] eKLR.
17. Fundamentally, a Court ought to only grant a mandatory injunction at an interlocutory stage, in clear cases and where special circumstances exist.
18. Turning to the case herein, the Claimant has averred that the Respondent summarily dismissed her without any valid or fair reason and that her termination was predetermined. To this end, she has laid out a number of grounds to impeach the Respondent’s decision to terminate her employment.
19. The Claimant’s position has been refuted by the Respondent who avers that it has demonstrated the reasons for terminating the Claimant’s employment together with the procedure followed. On this score, the Respondent has gone to a great extent highlighting what it holds as the reasons for the Claimant’s termination as well as the process it applied in arriving at the decision to terminate the Claimant’s employment.
20. In light of the foregoing, it is clear that the issues raised by the Claimant in her application and in the main suit are quite contentious and can only be resolved upon hearing and evaluation of the evidence presented by all parties. Differently expressed, this is not a clear case and cannot be termed as straightforward.
21. Further, it is noteworthy that no special and exceptional circumstances have been proved to exist to warrant the issuance of a mandatory injunction at this interlocutory stage.
22. I must also mention that the Claimant has sought an order of reinstatement in the main suit, hence if granted at this stage, the order would be final and would defeat the essence of hearing and determining the matter on its merits. It is court’s view that prudence requires that such an order only issues at the time when the matter is finally heard and determined.



23. In addition, pursuant to the provisions of Section 12(3) of the *Employment and Labour Relations Court Act*, this court may grant a wide range of orders ranging from award of damages; reinstatement; prohibitory orders; orders for specific performance and declaratory orders.
24. As such, the Claimant stands to be granted either of the remedies set out above, in the event her Claim succeeds ultimately.
25. It is also worth noting that at the time of filing the Claim and the instant Application, the Claimant had been terminated from employment hence what she is now asking from the Court is to undo what has already been done. This can only happen in the ultimate and not at this stage.
26. To this end, the court finds that the Claimant has not laid out a basis for the grant of the order of reinstatement at this interim stage.

Injunction against the employment of a substantive Chief Executive Officer by the Respondent

27. The threshold for grant of injunctive orders was set out in the celebrated case of *Giella vs Cassman Brown & Co Ltd (1973) E.A.* In this regard, an applicant seeking an injunctive order has to establish a prima facie case, and that if the orders are denied, he or she will suffer irreparable injury. Further, and in case of doubt, the issue in contention ought to be decided on the scale of a balance of convenience.
28. Fundamentally, the Claimant in this case ought to demonstrate an arguable prima facie case with a likelihood of success and that in the absence of the orders, she is likely to suffer irreparable injury.
29. I will proceed to consider the aforementioned limbs under separate heads.

Prima facie case

30. The Court of Appeal in the case of *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others [2003] eKLR* defined a prima facie case in the following terms: -

“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.”
31. Therefore, the main consideration ought to be whether the Claimant has established the existence of a right that has been apparently infringed by the Respondent as to require a rebuttal. It is also worth noting that a prima facie case is not a case which must succeed at the hearing of the main suit.
32. In the instant case, the Claimant avers that her termination by way of summary dismissal was bereft of substantive or procedural fairness. To this end, she has cited what she considers as infringements of her rights for instance, forced negotiations, prejudiced investigations, a sham show cause letter and an unfair disciplinary hearing.
33. According to the Claimant, the totality of the circumstances is overwhelmingly indicative that her termination was predetermined. She further avers that her termination was carried out in a manner that violated the principles of fairness and legality and disregarded the Respondent's obligations to support her during her probationary period.
34. On the other hand, the Respondent has maintained that the reasons for the termination of the Claimant's employment were valid, fair, lawful and provable as required under Section 45 of the



Employment Act. The Respondent has further submitted that the process leading up to the termination of the Claimant's employment was fair and lawful.

35. In light of the foregoing issues which I have considered against the evidence on record, albeit in a cursory manner and upon applying the decision in the *Mrao Ltd vs First American Bank of Kenya Ltd & 2 others* [supra] I am satisfied that the Claimant has proved that she has an arguable prima facie case.
36. I hasten to add that establishing a prima facie case is not an end in itself and cannot form sufficient basis to grant an interlocutory injunction. It is for this reason that the Court must undertake a further enquiry so as to be satisfied that the injury to be suffered by a Claimant in the event the injunction is not granted, will be irreparable.

Irreparable injury

37. As to what constitutes irreparable injury, the Court of Appeal in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 others* [2014] eKLR, had this to say: -

“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 adequate remedy.”

38. In essence, the main consideration should be whether the Claimant herein will suffer irreparable injury in the event she is not granted the injunctive orders she is seeking at this stage.
39. In support of her Application, the Claimant has averred that she has a well-founded apprehension of irreparable harm. According to the Claimant, if the court does not grant her the interim orders, the Respondent may proceed with a full-fledged CEO recruitment process. It is the Claimant's position that this would render her suit meaningless resulting in her suffering irreparable harm due to loss of employment and the inability to implement the court order.
40. The Claimant has urged the court to grant the interim injunction to prevent the Respondent from proceeding with the recruitment process in order to mitigate the risks that would be caused by the Respondent's recruitment of a substantive CEO.
41. On the Respondent's part, it has been submitted that the Claimant has not demonstrated any injury that she might suffer if an interlocutory injunction restraining the Respondent from employing a substantive CEO pending hearing and determination of this suit is not granted. The Respondent has further submitted that should the Claimant suffer injury of any kind as a result of this court declining to grant the interim injunction, such injury would be capable of being compensated by damages.
42. Thus, the question that begs an answer is whether the Claimant will suffer irreparable injury in the event she is not granted the injunctive orders she is now seeking. The answer to this question lies in the nature of the remedies available to the Claimant in the final determination of the claim.
43. As stated herein, Section 12(3) of the Employment and Labour Relations Court Act, has clothed this court with powers to grant a wide range of orders ranging from the award of damages; reinstatement; prohibitory orders; orders for specific performance and declaratory orders.
44. In this respect, the Claimant may be granted either of the said remedies in the event her Claim ultimately succeeds.



45. Accordingly, it is this court's finding that the Claimant does not stand to suffer irreparable injury in the event she is not granted the injunctive orders she is seeking at this stage. I am further guided by the decision in the *Nguruman Limited vs Jan Bonde Nielsen & 2 others* (supra), where it was held that: -

“If damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage.”

46. Having weighed the parties' rival positions, I cannot help but conclude that the Claimant on a prima facie basis, has not persuaded this Court that there is a basis to issue orders preserving the position of the Chief Executive Officer of the Respondent and that failure to do so, will result in her suffering irreparable injury that cannot be compensated by damages.

47. Indeed, and as I note, the Claimant has sought declaratory orders and an award of general damages in her Memorandum of Claim.

48. In the circumstances, I will decline to grant the injunctive orders as sought by the Claimant in the instant Application and direct that parties move to fast-track the hearing of the main suit.

Orders

49. The total sum of my consideration is that the Application dated July 24, 2024, is declined with an order that costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JANUARY 2025.

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STELLA RUTTO

JUDGE

In the presence of

Ms. Bundi instructed by Mr. Ndung'u for the Claimant/Applicant

Mr. Omondi for the Respondent

Millicent Court Assistant

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

