



**Mwenda v Smep Microfinance Bank Limited (Cause E256 of 2025)  
[2025] KEELRC 1586 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1586 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E256 OF 2025**

**AK NZEI, J  
MAY 23, 2025**

**BETWEEN**

**EZRA KIRIMI MWENDA ..... CLAIMANT**

**AND**

**SMEP MICROFINANCE BANK LIMITED ..... RESPONDENT**

**RULING**

**Background**

1. This Ruling determines the Claimant’s Notice of Motion applications dated 28<sup>th</sup> March, 2025 and 23<sup>rd</sup> April, 2025 respectively, which the Court, on 5<sup>th</sup> May, 2025 directed be heard together. It is necessary to state herein the full background of the said two applications, which I proceed to do. The Claimant/Applicant sued the Respondent vide a Statement of Claim dated 28<sup>th</sup> March, 2025 and filed in this Court on even date, and pleaded, inter-alia:-
  - a. that the Claimant/Applicant (the Applicant) is an employee of the Respondent, having worked for the Respondent for over 16 years and currently serving as the Respondent’s Head of Finance and Strategy, a senior managerial role.
  - b. that on 4<sup>th</sup> January, 2025, the Respondent served the Applicant with a Notice to Show Cause (NTSC) raising 7 procurement related allegations against the Applicant that were based on the Respondent’s understanding of its Procurement Policy 2009, an Internal Audit Special Report issued in August 2024 and a Grant Thornton Audit Report dated 6<sup>th</sup> November, 2024.
  - c. that on receipt of the Applicant’s response to the NTSC on 11<sup>th</sup> January, 2025, the Respondent issued the Applicant with a Notice of Suspension of even date, suspending the Applicant for 45 days until 24<sup>th</sup> February, 2025 to facilitate further investigations into the matter, and therein citing clause 10.6 of the Respondent’s Human Resource Manual (December 2023) on withholding of 50% of the Applicant’s basic salary during suspension.



- d. that in breach of the aforementioned policy, the Respondent withheld the 50% of the Applicant's salary which the Applicant was entitled to receive, and further and irregularly froze the Applicant's accounts held in the Respondent bank, which included the salary account, savings account and fixed deposits account; this despite the letter of suspension stating that only the fixed deposit account was to be frozen. That the Respondent further withdrew the Applicant's Medical Cover entirely, of which the Applicant learnt during a medical emergency involving his son.
- e. that the Respondent's highly irregular, unlawful and inhumane actions were meant, under the guise of disciplinary proceedings, to completely debilitate the Claimant financially and to undermine his right to be treated in a dignified manner. This despite the Applicant being his family's bread winner, and in breach of his right to be presumed innocent until proven guilty.
- f. that in further escalation of the matter, the Respondent, vide a letter dated 20<sup>th</sup> February, 2025, extended, the Applicant's suspension for a further 45 days.
- g. that on 6<sup>th</sup> March, 2025, the Respondent issued the Applicant with a Further Notice to Show Cause raising 6 additional allegations, including allegations of fraud and forgery, against the Applicant which were completely unrelated to the initial NTSC, and which stemmed as far back as 2023.
- h. that in addition to the Further NTSC, the Respondent requested the Applicant to submit a supplementary response to the initial NTSC as the Applicant's response thereon was "unsatisfactory."
- i. that the Respondent declined the Applicant's request for 14 days' extension of time (on medical grounds) to respond to the 13 allegations against him. That the Respondent also declined the Applicant's request to be furnished with key documents to inform his responses to both the NTSC and Further NTSC.
- j. that upon receipt of the Applicant's supplementary response to the NTSC and response to the Further NTSC under protest, both dated 24<sup>th</sup> March, 2025, the Respondent issued the Applicant with a Disciplinary Hearing Invitation dated 26<sup>th</sup> March, 2025; inviting the Applicant to attend a Disciplinary Hearing scheduled for Wednesday 2<sup>nd</sup> April, 2025 at 9.30 a.m.
- k. that the Applicant was informed that he was entitled to be accompanied by a colleague of his choice.
- l. that considering the sheer nature, gravity and number of allegations against the Applicant and the attendant implications of an adverse finding, and considering the manner in which the Respondent had been conducting the disciplinary process, the Applicant advised the Respondent that denying him an opportunity to attend the disciplinary hearing with an independent legal representative would not accord him a fair hearing.
- m. that the Respondent has failed and/or refused to oblige the Applicant's request despite the Applicant advancing compelling grounds.
- n. that unless this Court urgently intervenes, the Applicant's constitutionally anchored non-derogable right to a fair hearing will be in imminent risk of being violated. That on the other hand, the Respondent stands to suffer no prejudice.

2. Reliefs sought in the suit are as follows:-



- a. A declaration that the Claimant's disciplinary process as conducted by the Respondent is procedurally irregular and in breach of the *Employment Act*.
  - b. A declaration that the Respondent's actions during the Claimant's disciplinary process violated the Claimant's constitutional rights to dignity, a fair hearing, fair labour practices and fair administrative action.
  - c. A declaration that the Claimant is entitled to be furnished with the documentation listed in his letter to the Respondent dated 10<sup>th</sup> March, 2025, within 7 days of the Orders hereof.
  - d. A declaration that the Claimant is entitled to attend his Disciplinary Hearing with his chosen legal representation, which hearing should be conducted 14 days of the orders hereof.
  - e. An injunction barring the Respondent from in any way withholding the Claimant's accrued and unpaid salary.
  - f. An injunction barring the Respondent from in any way unlawfully withholding the Claimant's family medical insurance cover.
  - g. Full reinstatement of the Claimant's family medical insurance cover, within 7 days of orders herein.
  - h. Release of all the Claimant's accrued and withheld salary, within 7 days of orders herein.
  - i. Kshs.5,016,000/= representing 12 months' salary for the Respondent's unfair, unlawful and irregular conduct of the Claimant's disciplinary proceedings.
  - j. Exemplary damages.
  - k. Costs of the cause.
  - l. Interest on the sums in prayers (h) to (k) above until payment in full.
3. The Applicant's aforesaid suit was filed contemporaneously with a Notice of Motion (application) dated 28<sup>th</sup> March, 2025, which is one of the applications now before me for determination.
  4. The Application dated 28<sup>th</sup> March, 2025

The application, expressed to be brought under Articles 40, 47, 48 and 50 of *the Constitution* of Kenya 2010 and Sections 3 and 12(3) of the *Employment and Labour Relations Court Act*, was presented to this Court under a Certificate of Urgency. Orders sought in the application are as follows:-

- a. That the application be certified as extremely urgent, and [be] heard ex-parte in the first instance.
- b. That pending hearing and determination of the application, the Court be pleased to issue an order of injunction restraining the Respondent either by itself, its servants, employees, agents and/or any other person acting for it and/or on its behalf from proceeding with any further disciplinary proceedings against the Claimant, including the disciplinary hearing slated for 2<sup>nd</sup> April, 2025.
- c. That pending the hearing and determination of the application, the Court be pleased to issue a mandatory injunction compelling the Respondent either by itself, its servants, employees, agents and/or any other person acting for it and/or on its behalf to release the Claimant's accrued salary to him from the beginning of the year 2025 onwards, within 7 days of the orders hereof, and continue to pay the Claimant's salary in the usual manner as and when it falls due.



- d. That pending hearing and determination of the application, the Court be pleased to issue a mandatory injunction compelling the Respondent either by itself, its servants, employees, agents, and/or any other person acting for it and/or on its behalf to fully reinstate the Claimant's family medical insurance cover, within 7 days of the orders hereof.
  - e. That pending the hearing and determination of the suit, the Court be pleased to issue an order of injunction restraining the Respondent, either by itself, its servants, employees, agents, and/or any other person acting on its behalf, from proceeding with any further disciplinary proceedings against the Claimant, including the disciplinary proceedings slated for 2<sup>nd</sup> April, 2025.
  - f. That pending hearing and determination of the suit, the Court be pleased to issue a mandatory injunction compelling the Respondent either by itself, its servants, employees, agents, and/or any other person acting for it and/or on its behalf, to release the Claimant's accrued salary to him from the beginning of the year 2025 onwards, within 7 days of the orders hereof, and continue to pay the Claimant's salary in the usual manner as and when it falls due.
  - g. That pending hearing and determination of the suit, the Court be pleased to issue a mandatory injunction compelling the Respondent either by itself, its servants, employees, agents, and/or any other person acting for it and/or on its behalf to fully reinstate the Claimant's family medical insurance cover, within 7 days of the orders hereof.
  - h. Any further orders this Court deems just.
  - i. Costs of the application.
5. The application sets out on its face the grounds on which it is anchored, which are amplified in the Claimant/Applicant's supporting affidavit sworn on 28<sup>th</sup> March, 2025. The affidavit basically replicates the averments made in the statement of claim set out in paragraphs 1 and 2 of this Ruling. Documents annexed to the said affidavit include a notice of the Applicant's suspension from duty dated 11<sup>th</sup> January, 2025, among others documents.
  6. The application was presented before this Court on 1<sup>st</sup> April, 2025, and I certified the same as urgent and granted an interim order in terms of prayer (b) as set out in paragraph 4 of this Ruling. Prayers (c) and (d), which are couched in interim terms, were not granted, and are thus spend. Prayers (e), (f), (g) and (i) are the only articulated prayers that remain for determination.
  7. The application is opposed by the Respondent vide a replying affidavit of Rose Chepkemoi Bii sworn on 9<sup>th</sup> April, 2025. It is deponed in the said affidavit; inter-alia:-
    - a. that the Claimant/Applicant (the Applicant) as the Respondent's Head of Finance and Strategy Department, is expected to be responsible for the effective strategic and operational financial planning, monitoring, reporting and ensuring compliance with local and international reporting and accounting standards and procedures, amongst other functions.
    - b. that in the last quarter of 2024, the Respondent identified an apparent non-compliance with its procurement policy and other policy and operational manual, thereby necessitating urgent commissioning of an internal audit to assess the extent and nature of the non-compliance.
    - c. that the audit revealed an elevated risk in the Respondent's procurement process, including weaknesses in internal controls, procedural lapses and possible breaches of established procurement framework.



- d. that in light of the findings of the internal audit, the Respondent commissioned an independent external audit by the firm of Grant Thornton; and findings of the audits indicated concerns about compliance with the Respondent's procurement policy and other policies and procedure manuals of the Respondent.
- e. that following a meeting between the Applicant and the Respondent's Board of Directors on 11<sup>th</sup> December, 2024, the Applicant was issued with a Notice to Show Cause on 4<sup>th</sup> January, 2025 detailing the allegations against him and inviting him to show cause why disciplinary actions could not be taken against him.
- f. that the Applicant responded to the show cause letter vide a letter dated 11<sup>th</sup> January, 2025.
- g. that the Respondent found the response unsatisfactory, and saw the need to conduct further investigations into various matters under review; and the need to suspend the Applicant from duty in accordance with its HR Policy to facilitate fair, impartial and comprehensive investigations. That the Applicant was suspended from duty vide a letter dated 11<sup>th</sup> January, 2025.
- h. that the Respondent updated the Applicant on the progress of the disciplinary process vide a letter dated 6<sup>th</sup> February, 2025, and informed him that as investigations had found that funds in the Applicant's fixed deposit accounts held with the Respondent originated from the Applicant's float account, the Applicant's fixed deposit accounts would be temporarily frozen, though the Applicant would be allowed to have access to other accounts in the Respondent.
- i. that vide a letter dated 21<sup>st</sup> February, 2025, the Respondent informed the Applicant that investigations had uncovered more potential irregularities, and that the discovery necessitated further scrutiny, and therefore extension of the Applicant's suspension from duty from 24<sup>th</sup> February, 2025 to 31<sup>st</sup> March, 2025.
- j. that the Respondent concluded its internal investigations and subsequently issued an investigation report dated 28<sup>th</sup> February, 2025; which report identifies various instances of fraud, financial irregularities and false claims, among other instances of misconduct.
- k. that freezing of the Applicant's fixed deposit accounts is meant to ensure that the Respondent mitigates any financial loss that it could be exposed to as a result of the Applicant's conduct; and that this is permitted under the [Microfinance Act](#) and the Prudential Guidelines.
- l. that while the suspension letter indicated that the Applicant would not be entitled to any additional benefits from the Respondent (including medical cover) during the suspension period, the medical cover issue has since been resolved; and the Applicant and his dependants are currently fully covered by the Respondent's medical scheme, and any expenses incurred by the Claimant and his family members will be covered under the medical scheme.
- m. that grant of the orders sought would cripple the disciplinary process and render its objectives moot and inconsequential. That the Applicant is seeking blanket immunity, as the orders sought would shield him from further scrutiny and disciplinary action.
- n. that this Court's intervention in the Respondent's internal process would result in the Respondent being exposed to financial losses, which are way more than the exposure that the applicant would want to claim for himself.
- o. that further investigations having found that several other issues required clarification, the Respondent wrote to the Applicant the letter dated 6<sup>th</sup> March, 2025, requiring him to further



show cause (by 13<sup>th</sup> March, 2025) why disciplinary action could not be taken against him as further investigations had unearthed further incidents of misconduct, which were set out in the said letter.

- p. that the Applicant wrote to the Respondent on 10<sup>th</sup> March, 2025 requesting for more time (14 days) to respond to the notice to show cause and further notice to show cause, and annexed to the letter a prescription dated 17<sup>th</sup> March, 2025 indicating that he had been given a one week off-duty.
  - q. that the Respondent wrote to the Applicant on 20<sup>th</sup> March, 2025 and allowed him to submit his response to the notice to show cause and further notice to show cause not later than close of business on 24<sup>th</sup> March, 2025. That the Respondent further informed the Applicant that all the document's requested [for] by him (to the extent that the same were in the Respondent's possession), were available for review at the Respondent's office under supervision.
  - r. that vide letters dated 24<sup>th</sup> March, 2025, the Applicant gave supplementary response to the notice to show cause and responded to the further notice to show cause, purportedly under protest.
8. It is further deponed in the said replying affidavit:-
- a. that the Applicant cannot claim that the Respondent denied him an opportunity to review the requested documents.
  - b. that having found the Applicant's response unsatisfactory, the Respondent decided to conduct a disciplinary hearing, and vide a letter dated 26<sup>th</sup> March, 2025 invited the Applicant for a disciplinary hearing on 2<sup>nd</sup> April, 2025, and informed him of his right to be accompanied by a colleague of his choice during the disciplinary hearing.
  - c. that in an attempt to frustrate the disciplinary process, the Applicant on 31<sup>st</sup> March, 2025 forwarded a medical note to the Respondent which appeared to indicate that the Applicant should not work for another 7 days.
  - d. that unaware that the Applicant had filed an application seeking stay of the disciplinary proceedings, the Respondent wrote to the Applicant on 1<sup>st</sup> April, 2025 informing him that the disciplinary proceedings had been rescheduled to 9<sup>th</sup> April, 2025, in view of the medical note.
  - e. that the Applicant has not demonstrated any breaches of contract or any prejudice that he stands to suffer by attending the disciplinary hearing without his legal representation.
  - f. that the Applicant's salary during suspension was fully paid, in accordance with the Respondent's HR Policy; and that the Applicant is on full salary with effect from 1<sup>st</sup> April, 2025 pursuant to the expiry of his suspension period.
  - g. that given that the applicant had accrued and accumulated a substantial number of leave days for the period until 31<sup>st</sup> December, 2024, the Respondent directed that the Applicant to utilise the said leave days following the expiry of his suspension period on 31<sup>st</sup> March, 2025; and that accordingly, the Applicant would from 1<sup>st</sup> April, 2025 proceed on leave and utilise his 48 days. That the decision was made in good faith and in line with prudent human resource management practices, and specifically to manage accrued leave liability.



- h. that some of the grounds of suspicion and which require response in the disciplinary proceedings go into the issue of trust of an officer entrusted with financial matters in a bank; hence the necessity that such issues be cleared before the Applicant can resume work.
  - i. that it would not be in the interest of Justice to grant injunctive orders against the Respondent as it is still in the process of conducting the disciplinary process that would enable it to make an informed decision on the matter; and that such order will impair the Respondent's ability to exercise its managerial prerogative to discipline its employee, and particularly where the employee's conduct is in breach of their employment and employment contract.
  - j. that the Applicant will have an opportunity to challenge any outcome of the disciplinary process in Court if he deems the entire process unfair; hence the application herein is unnecessary.
9. Documents annexed to the Respondent's foregoing replying affidavit include copies of the Respondent's Human Resources Policy Manual (2023) which incorporates the Applicant's job description, the Respondent's internal and external audit reports, show cause letters and responses thereto, suspension letter, investigation report, confirmation of existing medical cover, the Respondent's letter dated 10<sup>th</sup> March, 2025, the Applicant's letter dated 17<sup>th</sup> March, 2025, a prescription dated 17<sup>th</sup> March, 2025, the Applicant's letter dated 24<sup>th</sup> March, 2025 expressing refusal to review the documents that he had requested for, the Respondent's letter dated 26<sup>th</sup> March, 2025, the Applicant's letter dated 27<sup>th</sup> March, 2025, the prescription dated 31<sup>st</sup> March, 2025 and the applicant's letter dated 1<sup>st</sup> April, 2025, among others.
10. The Claimant/Applicant filed a further affidavit sworn by himself on 29<sup>th</sup> April, 2025. The Applicant admitted having had 48 accrued leave days, but stated that the said annual leave had been imposed on him against his wishes.
11. Parties filed written submissions on the application pursuant to the Court's direction in that regard, which I have considered.
12. As I have preceded to demonstrate in this Ruling, the Applicant is seeking injunctive orders against his employer, the Respondent. From the facts and evidential documents placed before this Court, the Respondent is not shown to have breached either the Applicant's employment contract, the Respondent's Human Resource Policy/disciplinary policy or the law in its quest to subject the Applicant to the Respondent's internal disciplinary process for alleged misconduct. The suspension period that the Applicant has already served is not shown to have been outside the Respondent's HR Policy.
13. The Applicant is shown to have been duly served with two sets of show cause letters setting out the charges levelled against him by the Respondent, and is shown to have been given time to respond to those charges/accusations in writing. Further, the Applicant is shown to have been invited by the Respondent to view documents that he had requested to be furnished with. The Applicant's request for more time to respond to all the charges levelled against him, and for pushing forward of the date initially set by the Respondent for disciplinary hearing, are shown to have been granted by the Respondent. Disciplinary hearing is yet to be conducted. The Applicant remains an employee of the Respondent, and therefore beholden to the terms and conditions of his employment contract, and the Respondent's HR policies and regulations to which the Respondent's employees are subject.
14. It is deponed in the Respondent's replying affidavit that the Applicant is on full salary with effect from 1<sup>st</sup> April, 2025 following expiry of his suspension period, and that his medical cover has since



been restored as issues touching on it were resolved. These depositions have not been either denied or rebutted by the Applicant.

15. The only issue for determination in the application herein, in my view, is whether the Orders sought by the Applicant are merited, and in particular whether an order of injunction should issue restraining the Respondent from proceeding with further disciplinary proceedings against the Claimant/Applicant, including a disciplinary hearing.
16. According to Kerr on Injunctions (6<sup>th</sup> Edition) Chapter X (Section 2), a Court of equity has jurisdiction to issue an injunction pending suit. Whether or not the Jurisdiction will be exercised depends on the special circumstances of each case. If there are clear undisputed facts advanced by the Applicant, an injunction will issue. But if the facts of the case are disputed, unclear or in the case of a contract, the validity of the contract is open to doubt, the question of whether or not an injunction will issue pending suit becomes a question of comparative convenience or inconvenience. If greater inconvenience would arise to the plaintiff from withholding the injunction than to the defendant from granting it, an injunction will issue.
17. If, on the other hand, greater inconvenience would arise to the defendant from granting the injunction than to the plaintiff from withholding it, an injunction will not be granted.
18. In the present case, the Claimant has not demonstrated what damage and/or inconvenience he will suffer if the ongoing disciplinary proceedings against him are conducted and concluded. If, on conclusion of the disciplinary proceedings, the Claimant/Applicant is aggrieved by the outcome, he will be at liberty to challenge such outcome in court as by law provided. This Court will be reluctant to give orders, given the facts and circumstances of the case, whose effect will be to injunct the Respondent/the employer from undertaking key human resource functions of conducting disciplinary proceedings against an employee alleged to have breached the terms of the contract of employment and the employer's internal policies, procedures and regulations. The general principle is that the Court will not, without a good reason, interfere with an employer's right and prerogative to undertake such functions.
19. The Claimant/Applicant has not, at this stage, met the requirements for granting of injunctions, as set out in the case of *Giella – vs – Cassman Brown and Company Limited* [1973] EA 358.
20. It was stated as follows in the case of *Nguruman Limited – vs – Jan Bonde Nielsen & 2 Others* [2014] eKLR:-

“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.”
21. In the present case, the Claimant/Applicant has not demonstrated what irreparable damage he stands to suffer if the ongoing disciplinary proceedings against him are conducted and concluded. As already stated in this Ruling, no breach of the law, the Applicant's contract of employment or the Respondent's HR policies, regulations and procedures has been demonstrated by the Applicant.
22. Indeed, the Applicant's allegation of having been denied the right to attend the disciplinary proceedings accompanied by his chosen legal representation appears to contravene Section 41(1) of



the Employment Act which provides that an employee shall be accompanied by a fellow employee or a union official (shop floor representative). Section 41(1) of the said Act provides as follows:-

“(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.”

23. Regarding the 48 paid leave days that the Applicant alleges to have been forced to take, no illegality was demonstrated to have been committed by the Respondent by requiring the Applicant to utilize his accrued 48 paid leave days. The Applicant admits to have had the said number of pending leave days. Annual leave is a statutory entitlement of an employee pursuant to Section 28 of the Employment Act.

24. In view of the foregoing, and having considered written submissions filed on behalf of both parties herein, I find no merit in the application dated 28<sup>th</sup> March, 2025, and the same is hereby dismissed with no orders to costs.

25. The application dated 23<sup>rd</sup> April, 2025

During the pendency of the foregoing application, the Claimant/Applicant filed another application, dated 23<sup>rd</sup> April, 2025. The said application is expressed to be brought under Articles 10, 40, 43 and 159(1) of the Constitution of Kenya 2010 and Section 5 (1) of the Judicature Act; and in it the Claimant/Applicant seeks the following Orders:-

a. That pending hearing and determination of the suit, the Court do find, hold and declare that the Respondent's Chief Executive Officer, Symon Kamore and Directors, are in contempt of the Court Orders dated 1<sup>st</sup> April, 2025.

b. That on granting prayer (a) above pending hearing and determination of the Claimant's suit, this Court do commit the Respondent's Chief Executive Officer, Symon Kamore and Directors, to Civil Jail for contempt of Court and to severally fine them the sum of Kshs.200,000/= or such higher amount each.

c. Costs of and incidental to the application be borne by the Respondent.

26. The application sets out on its face the grounds on which it is based, and is supported by the Claimant/Applicant's supporting affidavit sworn on 23<sup>rd</sup> April, 2025. It is deponed in the said supporting affidavit:-

a. that this Court issued restraining orders on 1<sup>st</sup> April, 2025, and that despite service of the same by email on the Respondent's Chief Executive Officer (Symon Kamore) on the same date, the Respondent persists in treating the Claimant/Applicant as guilty until proved innocent.

b. that vide a letter dated 29<sup>th</sup> March, 2025, the Contemnor placed the Applicant on compulsory leave effective from 31<sup>st</sup> March, 2025 to 9<sup>th</sup> April, 2025, which leave the Respondent stated could be extended at the Respondent's discretion.

c. that upon the Applicant challenging the basis of the compulsory leave as the same was not contained in either the Respondent's HR policy or the employment contract, the Respondent wrote to him on 4<sup>th</sup> April and warned him that he would be denied access to the premises if he attempted to report to the office.



27. Documents annexed to the Applicant's said supporting affidavit include the Respondent's letter to the Applicant dated 28<sup>th</sup> March, 2025, which states in part:-
- “ . . . You will be required to proceed on part of your annual paid leave from Wednesday 1<sup>st</sup> April, 2025 to Wednesday 9<sup>th</sup> April, 2025. The leave period may be extended at the discretion of the company.”
28. Also annexed to the said application is the Respondent's letter to the Applicant dated 4<sup>th</sup> April, 2025, which states in part:-
- “ . . . Take note that being directed to proceed on accumulated annual leave is not a disciplinary action. The company has an obligation to manage its leave liability as it finds reasonable, and you do not have a right to accumulate earned but untaken leave.”
29. The application is opposed by the Respondent vide a replying affidavit of Rose Chepkemoi Bii sworn on 25<sup>th</sup> April, 2025. It is deponed on behalf of the Respondent that on being served with this Court's Order on 1<sup>st</sup> April, 2025 at 6.33 pm, the Respondent put on hold the disciplinary proceedings against the Applicant in compliance with the Court Orders; and did not hold the disciplinary proceedings slated for 2<sup>nd</sup> April, 2025 or 9<sup>th</sup> April, 2025, to which it had been postponed vide a letter of 1<sup>st</sup> April, 2025. That the Respondent has done nothing further in relation to the said Order, and is in full and total compliance thereof.
30. It is further deponed on behalf of the Respondent that the Respondent had, prior to 1<sup>st</sup> April, 2025, directed the Applicant to proceed on his paid annual leave in view of his suspension coming to an end on 31<sup>st</sup> March, 2025, before disciplinary proceedings could be concluded. That the Applicant wrote back to the Respondent on 1<sup>st</sup> April, 2025 and protested the direction to proceed on leave; and the Respondent wrote to him on 7<sup>th</sup> April, 2025 and directed him to use his accrued 48 leave days at the time, which would come to an end on 3<sup>rd</sup> June, 2025.
31. It is clear from the foregoing facts that the Applicant was on paid annual leave as on 1<sup>st</sup> April, 2025 when the Court issued interim restraining Orders; and that all what the Respondent did after 1<sup>st</sup> April, 2025 was to direct the Applicant to utilise his earned but untaken accumulated paid leave days. The Applicant has not denied and/or disputed having had accumulated but untaken leave days. He has admitted in the proceedings herein to having had such days.
32. The wording of this Court's interim order dated 1<sup>st</sup> April, 2025 is as follows:-
- “In the interim, an order is hereby issued restraining the Respondent, either by itself, its servants, employees, agents and/or any other person acting for it and/or on its behalf, from proceeding with any further disciplinary proceedings against the Claimant, including the disciplinary hearing slated for 2<sup>nd</sup> April, 2025.”
33. Under Section 28(1) of the *Employment Act*, paid annual leave is an entitlement of an employee, usually taken at such times and in such intervals as the employer and employee may agree. Section 28(1)(a) of the Act provides as follows:-
- “(1) An employee shall be entitled –



- a. After every consecutive twelve months of service with his employer to not less than twenty-one working days leave with full pay.”

34. Section 28(2) of the Act on the other hand provides as follows:-

“An employer may, with the consent of the employee, divide the minimum annual leave entitlement under Sub-section (1)(a) into different parts to be taken at different intervals.”

35. In the present case, facts and documents presented to this Court show that the 48 accumulated paid leave days that the Applicant was on 28<sup>th</sup> March, 2025 directed by the Respondent (his employer) to utilize had been carried over from the previous year. The Court agrees with the Respondent’s assertion that it was obligated to manage its leave liability. It is to be noted that the direction to the Applicant to utilize his accumulated paid leave days was given by the Respondent days before this Court’s interim orders dated 1<sup>st</sup> April, 2025 were given. The Applicant has not demonstrated disobedience by the Respondent of this Court’s said Orders; either to the required standard or at all.

36. It was held as follows in the case of *Gatharia K. Mutitika – vs – Baharini Farm Limited* [1985] KLR 227:-

“A contempt of Court is an offence of a criminal character. A man may be sent to prison. It must be proved satisfactorily . . . It must be higher than proof on a balance of probabilities, almost but not exactly beyond reasonable doubt. The standard beyond reasonable doubt must be left where it belongs, to wit criminal cases. It is not safe to extend it to offences which can be said to be quasi-criminal in nature . . .”

37. Having considered written submissions filed by both parties, I find no merit in the Claimant/Applicant’s application dated 23<sup>rd</sup> April, 2025, and the same is hereby dismissed.

38. Each party shall bear its own costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF MAY 2025**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Miss Rutvi Shah for the Claimant/Applicant

Mr. Kipkurui for the Respondent

