



REPUBLIC OF KENYA



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**Muturi v Consolidated Bank of Kenya & another (Employment and Labour Relations
Petition E183 of 2025) [2025] KEELRC 2758 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2758 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E183 OF 2025**

MN NDUMA, J

OCTOBER 9, 2025

BETWEEN

SAMUEL MUTHEMBA MUTURI PETITIONER

AND

CONSOLIDATED BANK OF KENYA 1ST RESPONDENT

**CABINET SECRETARY NATIONAL TREASURY & ECONOMIC
PLANNING 2ND RESPONDENT**

RULING

1. The Petitioner/Applicant filed a Notice of Motion application dated 21st September 2025 seeking an order in the following terms: -
 1. Spent
 2. Spent
 3. Pending hearing and determination of the petition, the 1st Respondent's Board of Directors be restrained from discussing, advertising, recruiting, hiring or otherwise appointing the 1st Respondent's new Chief Executive Officer;
 4. Any other relief the court deems fit to grant;
 5. Costs of this application be in the cause.
2. The application is premised on grounds (a) to (n) set out in the body of the notice of motion whose content may be summarized that the 1st Respondent is a bank fully owned by the Republic of Kenya with a majority of its share holding being held by the National Treasury. That the 2nd Respondent is the Cabinet Secretary in charge of National Treasury (CS).



3. That the Petitioner is the 1st Respondent's Chief Executive Officer (CEO) having been appointed for an initial 3-year renewable term vide a contract of employment dated 19th July 2022.
4. That the initial 3-year term of the contract is set to lapse on 11th October 2025 and in line with the guidelines for re-appointment of CEOs in parastatals and other government entities the Petitioner sought for the renewal of his term on 19th January 2025, which is six (6) months before the lapse of his first term contract.
5. That on 3rd April 2024 and 28th January 2025, the State Corporation Advisory Committee (SCAC) carried out the annual board evaluation which included the evaluation of the CEO for the years 2023 and 2024 and the CEO was rated at 79.6% and 91% respectively.
6. That the 1st Respondent's board, separately evaluated the performance of the Petitioner for the period of 2023 and 2024 and scored him 61.9% and 74.6 which is rated as a good performance.
7. That the 1st Respondent's board together with the CEO had managed to bring down the losses of the bank by 70% from Kshs. 435 million recorded as at 31st December 2022 to Kshs. 133 million on 31st December 2024 with the bank's balances sheet growing by 13% from Kshs. 15.5 billion at 31st December 2022 to Kshs. 17.5 billion as at December 2024, a level which the bank has not achieved for the last 12 years.
8. That the 1st Respondent's Board of Directors wrote to the 2nd Respondent on 21st March 2025 and recommended an extension of the Petitioner's contract for a further term of 3 years based on the Petitioner's good performance as above stated.
9. That despite the board's recommendation to the CS, Treasury for the renewal of the Petitioner's term in line with the guidelines on the procedure for appointment/re-appointment of CEOs of state corporations and other entities, the CS, Treasury has without any legal basis declined the re-appointment of the Petitioner and directed that the board commences the process of recruitment of a new CEO.
10. That the board sought to engage the CS further on the matter on grounds that the Petitioner is suitable for re-appointment as CEO, but the CS declined the request.
11. That the CS is acting outside the scope of his authority and contrary to the law for the following reasons:
 - i. The Petitioner sought renewal of his term 6 months before the lapse of his initial term as stipulated in circular Ref. No: OP/CA.9/IA/ dated 23rd November 2010;
 - ii. The renewal of a CEO's contract is subject to performance and subject to a two-term limit. In this case the Petitioner's performance has been rated as a "good performance" a rating which is acknowledged by the CS.
 - iii. The position of CEO is to be declared vacant only when the board of directors has no intention to renew the appointment of the incumbent CEO.
 - iv. By allowing the CS to direct the re-appointment of the CEO of 1st Respondent, contrary to the board recommendation, the CS would be usurping the role of the board.
12. That the Chairman of the board has written to the Petitioner on 12th and 18th September 2025, informing him of the end of his contract and seeking a hand-over report;



13. That it is imminent that the 1st Respondent will commence the process of recruiting a new CEO hence the conservatory orders sought restraining the 1st Respondent's board of directors from commencing the process of recruiting a new CEO to avoid this application and petition rendered nugatory and moot.
14. The grounds are buttressed in the supporting affidavit of the Petitioner in which deposition aforesaid facts are set out in detail and providing justification for the orders sought.
15. In the petition, the Petitioner seeks for a declaration that the Petitioner is eligible for renewal of his term for a further 3 years as the CEO of the 1st Respondent after the lapse of his term on the 11th October 2025 and an order of mandamus to compel the Respondents to renew and confirm the re-appointment of the Petitioner as the 1st Respondent's CEO based on his performance.

Replying Affidavit

16. The 1st Respondent vide the replying affidavit of Albert Anjichi, the acting Company Secretary and Head of Legal, deposes that based on the strength of the evaluation reports for the Petitioner, the 1st Respondent's board wrote to the 2nd Respondent vide a letter dated 21st March, 2025, recommending the extension of the Petitioner/Applicant's contract for a further term of three (3) years.
17. That in response to the letter, the 2nd Respondent vide a letter dated 15th April, 2025 requested for the terms and conditions upon which Petitioner/Applicant's contract would be renewed. It is deposed that the 1st Respondent recommended to the 2nd Respondent that the Petitioner/Applicant's contract should be renewed under the same conditions and terms of employment with an option of review based on performance and turnaround of the 1st Respondent. The 2nd Respondent whilst acknowledging the response proceeded to request the board to commence the process of recruitment of a new CEO.
18. That the Board thereafter wrote to the 2nd Respondent on 12th September, 2025 requesting him to reconsider his decision recommending recruitment of a new CEO and instead endorse the renewal of the Petitioner/Applicant's contract for a further period of three (3) years.
19. The 1st respondent deposes that the 2nd Respondent, however, wrote to the Board of the 1st Respondent affirming the earlier decision asking the 1st Respondent to recruit a new CEO. The 2nd Respondent also directed that the Petitioner/Applicant do take leave for the remaining leave days before the expiry of his contract. That the 1st respondent has acted at all material times in accordance with applicable laws and regulations including adherence to Mwongozo Code of Governance for State Corporations and has not violated the rights of the petitioner as alleged or at all.

Grounds of Opposition

20. The 2nd Respondent has filed grounds of opposition to the application dated 6th day of October 2025 to wit that the instant application has not met the threshold for grant of conservatory orders as enunciated by the Supreme Court in the case of Martin Nyaga Wambora & 2 others versus Attorney General & 5 others (2014) Eklr and Mumo Matemu versus Trusted Society of Human Rights Alliance (2013) e KLR which requires Applicants to demonstrate
 - i. Prima facie arguable case with probability of success;
 - ii. No irreparable harm or prejudice will be occasioned to the public; and
 - iii. Balance of convenience favours the granting of the relief sought.



Issues for determination

21. The parties made oral submissions which the court has considered together with the depositions filed by the parties.
22. The singular issue for determination in this application is whether the applicant has satisfied the requisites for grant of conservatory orders sought in public law domain.
23. The locus classicus on the principles applicable in granting conservatory orders that have a bearing on operations of a public institution were succinctly pronounced by the Supreme Court in the case of *Gatirau Peter Munya versus Dickson Mwenda Githinji and 2 others* [2014] KLRC, where the Court held that;

“...Conservatory orders bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies as well as to uphold the adjudicatory authority of the court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private party issues as the prospects of “irreparable harm” occurring during the pendency of a case: or “high probability of success” in the Applicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes and priority levels attributable to the relevant courses.”

See also the ELRC case of *Mwamati versus Tana Athi Works Development Agency & Another* (Petition E024 of 2025 KEELRC 1466) Per Nduma J

24. In *Board of Management of Uhuru Secondary School versus City County Director of Education and 2 others* (2015) KEHC 2174 KLR Onguto J held that;

“Once the applicant has established to the court’s satisfaction a prima facie case with a likelihood of success, the court is then to decide whether a grant or a denial of the conservatory relief will enhance the Constitutional values and objects of the specific right or freedom in the Bill of rights: see *Patrick Musimba v The National Land Commission & 4 Others* HCCP 613 of 2014 (No. 1) [2015] eKLR and also *Satrose Ayuma & 11 Others v Registered Trustees of Kenya Railways Staff Retirements Benefits Scheme* [2011] eKLR.”
25. Thirdly, flowing from the first two principles, is whether if an interim Conservatory order is not granted, the petition or its substratum will be rendered nugatory. It is indeed the business of the court to ensure and secure so far as possible that any transitional motions before the court do not render nugatory the ultimate end of justice. In these respects, the case of *Martin Nyaga Wambora v Speaker of the County Assembly of Embu & 3 Others* CP No. 7 of 2014, is relevant, especially paragraphs [59] [60] and [61] thereof.
26. The fourth principle which emerges from the various cases and is well captured by the Supreme Court of Kenya in the case of *Gatirau Peter Munya versus Dickson Mwenda Githinji and 2 others* [2014] e.KLR is that the court must consider grant of conservatory orders also in the face of the public interest dogma.
27. Finally, the court is to exercise its discretion in deciding whether to grant or deny a conservatory order.
28. The court must consequently consider all relevant material facts and avoid immaterial matters. The court will consider the applicants credentials, the prima facie correctness of the availed information, whether the grievances are genuine, legitimate and deserving and finally whether the grievances and



allegations are grave and serious or merely vague and reckless: see Centre for Human Rights and Democracy & 2 Others v Judges and Magistrates Vetting Board & 2 Others CP No. 11 of 2012 as well as Suleiman v Amboseli Resort Ltd [2004] 2 KLR 589”

29. In the present application, the applicant does not seek any interim relief to be temporarily retained in the CEO position upon expiry of his contract on 11th October 2025, two days away, or any other lawful stop gap measure to be ordered by the court pending hearing and determination of the petition. Instead, the petitioner seeks to stop the filling of the CEO position by the respondents pending the hearing and determination of the petition. The principles enunciated in the case law above must be viewed in this prism which presents a likely vacuum or lacuna in the highest office of the 1st respondent bank without certainty as to the period the petition is likely to take to be heard and determined.
30. To this extent, despite the prima facie evidence with probability of success on legitimate expectation established by the applicant grounded on a valid recommendation by the board of the 1st respondent to the CS, Treasury to have his contract renewed for one more term of 3 years, which request was refused by the CS, public interest considerations enunciated in Gatirau Munya case (supra) militate against the grant of an order purely aimed at stopping recruitment of a CEO of the 1st respondent in the manner sought in this application which does not conserve anything but purely is aimed to injunct a future process.
31. The justice of the case is in favour of not granting the interim orders sought. The substratum of the petition will not be defeated by the refusal to exercise the discretion in favour of the applicant since there are other available remedies, if sought, that may be granted to the petitioner if successful in his suit.

Accordingly, the application is refused for lack of merit

DATED AT NAIROBI THIS 9TH DAY OF OCTOBER 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Malenya & Ms. Karue for Petitioner

Mr. Mbogo for 1st Respondent

Mr. Kioko for 2nd Respondent

Mr. Kemboi – Court Assistant

