



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT  
NAIROBI**

**CAUSE NO. E743 OF 2025**

**NELSON WANYONYI.....**

**.....CLAIMANT**

**-VERSUS-**

**RIARA UNIVERSITY.....**

**....RESPONDENT**

**RULING**

**Introduction**

1. This Ruling relates to two applications. The first one was Notice of Motion by the Claimant dated 19<sup>th</sup> August 2025 seeking the following orders:

*a) That pending the hearing and determination of the Claim filed herewith, This Honourable Court be pleased to issue*

- a temporary injunction order against the Respondent, their agents, servants, employees and/or any other person acting on their behalf from terminating, removing, ejecting out of the office and/or interfering in any manner with the Claimant/Applicant's employment.*
- b) That this Honourable Court be pleased to issue prohibitory and injunctive orders stopping the Respondent from victimizing the Claimant/Applicant through unfair, unjustified, unprocedural terminations, dismissals, redundancies, retrenchments due to having filed the instant matter until this case is fully heard and determined.*
- c) That any other order relief that the court may deem fit to grant in the interest of justice.*
- d) That costs of the application be borne by the Respondent.*
2. The motion is supported by the Affidavits sworn on 19<sup>th</sup> August 2025 and 8<sup>th</sup> September 2025. The duty court, on 20<sup>th</sup> August 2025 granted interim order “restraining the respondent from taking any adverse action that may interfere with the applicant’s employment”.
3. The Respondent opposed the motion by the Replying Affidavit sworn on 25<sup>th</sup> August 2015 by it’s Vice Chancellor, Professor Robert Gateru.

4. The second application was the Respondents Notice of Motion dated 25<sup>th</sup> August 2025 seeking the following orders:

*a) That this Honourable court be pleased to set aside the Order issued on 20<sup>th</sup> August 2025 restraining the Respondent from taking any adverse action that may interfere with the Claimant's employment.*

*b) That the Respondent/Applicant be awarded the costs of this Application.*

5. The motion was supported by the Affidavits sworn by the said Vice Chancellor on 25<sup>th</sup> August 2025 and 23<sup>rd</sup> September 2025. It was opposed by the Claimant vide his Replying Affidavit sworn on 8<sup>th</sup> September, 2025.

### **Factual background**

6. The Respondent employed the Claimant as an intern Research Assistant in the Department of International Relations and Diplomacy effective from 13<sup>th</sup> January 2020. The appointment was vide a letter dated 5<sup>th</sup> December 2019 and it was the period from 31<sup>st</sup> January 2020 to 10<sup>th</sup> April 2020. The contract was renewed from 1<sup>st</sup> January 2021 to 31<sup>st</sup> December 2021 and further from 1<sup>st</sup> January 2022 to 31<sup>st</sup> December 2022. Upon expiry the contract was never renewed.

7. During the said employment as an intern, the Claimant also entered other contracts of teaching duties with the respondent as adjunct Lecturer from 11<sup>th</sup> January 2021. The appointment

as adjunct Lecturer was based on fixed term contracts setting out the specific units to be taught and the required hours per week. The last contract was dated 10<sup>th</sup> June 2025 for the period 12<sup>th</sup> May 2025 to 22<sup>nd</sup> August 2025.

8. It was the Claimant's case that he was given more duties without corresponding review of his salary and when he wrote emails requesting for the review of his terms of service, the respondent never responded instead he was threatened with termination. He was also victimized by his staff number being changed from 683 to 492 and his status changed from full-time to adjunct lecturer without notice, consent or valid explanation. He was also excluded from the University's Health Insurance Cover which only covers full-time staff and not adjunct staff.
9. The Respondent's case was that the Claimant's contract as an Intern Research Assistant lapsed on 31<sup>st</sup> December 2022 and it was never renewed. It was further Respondent's case that the Claimant was at all material times an adjunct lecturer and his last contract lapsed automatically on 22<sup>nd</sup> August 2025. It denied the alleged victimization and violation, and maintained that there is no longer a subsisting employment relationship upon which the Claimant's motion can be sustained. Therefore it averred that the motion is overtaken by events.

10. The Respondent further averred that the court lacks jurisdiction to entertained the application as it was brought under the wrong provision of the law being Rule 17 of the Employment and Labour Relations Court. Rules which deals with cross-appeals.
11. As regards the second motion dated 25<sup>th</sup> August 2025, The Respondent averred that the interim orders should be discharged because they were obtained through misrepresentation of fact by falsely alleging unlawful withdrawal of benefits and victimization. It averred that there is no credible evidence to support the said allegation and it asserted that it had fully and lawfully discharged all financial and contractual obligations due to the Claimant. It further averred that the Claimants abused judicial process by material non-disclosure of the fact that he was engaged under a fixed term contract which was about to expire.
12. In response to the said motion, the Claimant contended that he has since his employment as Research Assistant been earning a basic salary in addition to payment for part-time lecturing. He further contended that his basic role was Research Assistant with additional roles such as lecturing student. He deposed that his status was indicated as a faculty member in the Respondents website until May 2025 when his status in the payslips was doctored to read “ adjunct” instead of “partime lecturing allowance”

13. The motions were disposed of by written submissions and for the Claimant it was submitted that his application meets the legal threshold established ***in Giella Vs. Casman Brown & Co Limited [1973]EA358*** namely, prima facie case with probability of success; irreparable harm not capable of remedy by damages; and that balance of convenience favors granting the interlocutory injunction order.
14. It was reiterated that the Respondent published in its website that it engaged the Claimant as a Faculty who are permanent employees but unilaterally changed his terms to adjunct staff who are temporary without following the Rules of Natural justice. It was argued that such change was unlawful and it contravened his rights to fair administrative action as guaranteed under Article 47 of the Constitution and Section 4 of the Fair Administrative Actions (FAA) Act. For emphasis reliance was placed on ***Jeremiah Ngari Githinji Vs. County Public Service Board, Embu County & another [2023] KEELRC 2775 (KLR)***.
15. As regards the Respondent's motion, it was submitted that the same has not met the threshold for review of the interim order issued herein on 20<sup>th</sup> August 2025, as set out under Rule 33(1) of the Employment and Labour Relations Court Rules. It was further submitted that the Respondent is in contempt of the said order as it has since victimized him by denying him work and access to his official email address. Therefore the

court was urged to allow the Claimant's motion dated 19<sup>th</sup> August 2025 and dismiss the Respondent's motion dated 25<sup>th</sup> August 2025 with costs.

16. On the other hand, it was submitted for the Respondent that the Claimants motion has not met the threshold for granting interlocutory injunction as he has not established a prima facie case, and also demonstrated that he will suffer irreparable harm should the order sought be withheld. It was submitted that the Claimant was employed under a fixed term contract which expired on 22<sup>nd</sup> August 2025 and therefore the motion for injunction was a moot case. To buttress the forgoing submissions.
17. Reliance was placed on **East Africa Sea Food Limited V. Mwazito [2023]KEELRC 1257 (KLR)** where the court held that non-renewal of a contract does not amount to unfair termination. Further reliance was placed on **Mwao Limited V First American Bank of Kenya Ltd & 2 others [2003] KLR 125** where the court defined prima facie case and case of **Ngurumani Ltd V. Jan Bonde Nielsen & 2 others [2014] eKLR** where the court discussed irreparable harm.
18. Finally, it was submitted that the balance of convenience tilts in favour of withholding the injunction sought since there is no evidence of a renewal of the Claimant's contract after it expired on 22<sup>nd</sup> August 2025. Further that, the court should be

not compel parties to perform non-existence contracts or to engage in relationships without mutual consent.

19. As regards the Respondent's motion dated 25<sup>th</sup> August 2025. It was submitted that the Claimant obtained the interim order through material non-disclosure and deliberate mischaracterization of facts which amounts to abuse of the judicial process. It was argued that, had the Claimant made full disclosure, particularly regarding the eminent expiry of his contract, the court would not have granted the impugned interim orders. Further that the Claimant has not adduced evidence of his contract of employment as a Research Assistant.

20. Reliance was placed on **Republic V. Kenya Medical Training College & another, Exparte Kenya Universities and Colleges Central Placement Services [2015] eKLR** and **Bahadurali Shamji V. Al Noor Jamal & 2 others [1998] eKLR** where the court held that the court is entitled to discharge exparte relief obtained without disclosure of material facts.

21. Having considered the pleadings, affidavits, and submissions by both parties, the following issues fall for determination:

*a) Whether the Claimant's application dated 19th August 2025 meets the legal threshold for grant of interlocutory injunctions.*

- b) *Whether the interim orders issued on 20th August 2025 should be set aside as sought in the Respondent's application dated 25th August 2025.*
- c) *Who should bear the costs of the two applications.*

## **Analysis**

### **Threshold for granting interlocutory injunction.**

22. The principles regulating granting of interlocutory injunction has not changed since the decision in **Giella v Cassman Brown & co Limited (1973) EA 358**. In brief the Applicant has to:-

- a) establish a prima facie case with probability of success.
- b) show that irreparable harm will be suffered if the order is withheld.
- c) If the court is in doubt, the application should be determined on a balance of convenience.

### **Prima facie case**

23. The Court of Appeal defined prima facie case in **Mrao Limited v First American Bank of Kenya & 2 others [2003] eKLR**.

***“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.”***

24. The question that arises is whether in this case the claimant has demonstrated that there exists a right which has apparently been infringed or is about to be infringed. The Claimant contended that the respondent unilaterally altered the terms of his contract to his detriment. He further contended that he was employed as a Research Assistant on permanent basis and as evidenced by the Respondent publishing his name among its Faculty members in its website. He accused the respondent of altering his status to that of an adjunct staff which was temporary and without medical cover among other benefits.

25. The Respondent denied the Claimant's contention and averred that it employed the claimant on contract basis as a Research Assistant until 31<sup>st</sup> December 2022 when the contract lapsed and it was not renewed. It further averred that it also employed the claimant as part time lecturer on fixed term contracts between 11<sup>th</sup> January 2021 and 22<sup>nd</sup> August 2025 when the last contract dated 10<sup>th</sup> June 2025 lapsed and it was also not renewed. It produced copies of the said contracts as exhibits duly signed by the claimant to fortify its case that it employed the claimant on temporary basis.

26. I have carefully considered the evidence presented by the Claimant and it is clear that he did not adduced any written contract to support his allegation that he was employed on

permanent basis. In the circumstances, I find, that the claimant has not proved that there exists a right based on a contract between him and the respondent which has been violated or is about to be violated by the respondent to his detriment.

27. On the face value, the material presented to this court supports the respondent's case that both the contract to serve as a Research Assistant and an Adjunct Lecturer were temporary and they lapsed automatically by effluxion of time on 31<sup>st</sup> December 2022 and 22<sup>nd</sup> August 2025 respectively. The alleged change of status from part time lecturer to Adjunct lecturer does not make sense since they all mean the same thing. Consequently, I hold that the claimant has not established a prima facie case with probability of success since the employer's failure to renew a fixed term contract after expiry, *per se*, does not amount to infringement of the employee's rights.

28. I gather support from **East Africa Sea Food Limited V. Mwazito**, *supra*, where the Court held that:

***“Further, the non-renewal of a fixed-term contract does not amount to unfair termination of employment warranting compensation. Section 10(3)(c) of the Act then lifts the obligation on an employer to explain reasons for termination of employment in fixed-term contracts as the same***

***lapses by effluxion of time without creating a right of legitimate expectation of renewal.”***

### **Irreparable harm**

29. The Claimant contended that he stands to suffer irreparable harm if injunction is denied pending trial because his employment will be terminated and the suit will be rendered nugatory. As already noted above, the contracts were for fixed terms and they all automatically lapsed on the dates mutually agreed by the parties. It follows that the allegation that the claimant will suffer irreparable harm if the order is denied, is without merits because he voluntarily signed contracts for fixed terms. For the same reason the alleged breach of his right to fair administrative action and Rules of Natural Justice is not factual.

30. Even if the claimant was on a permanent contract, which has not been proved, termination of the same pending trial, *per se*, would not amount to irreparable harm which cannot be remedied by damages. The Claimant is required to demonstrate irreparable harm, but he has failed to do.

In **Ngurumani Ltd V. Jan Bonde Nielsen & 2 others [2014] eKLR** the court of Appeal held that:

***“... the court must be satisfied that the the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable.***

***In other words, if the damages recoverable in law are 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."***

31. Having found that the Claimant has not established a prima facie case, and demonstrated that he will suffer irreparable harm if interlocutory injunction is withheld, I proceed to hold that his application does not meet the threshold for granting injunction and fails.
32. The prayer of prohibition order is also without merit and it is declined because the claimant has not proved by evidence that the respondent unlawfully terminated or was about to terminate the contract of employment. On the contrary, the respondent has demonstrated that the contracts lapsed automatically upon the lapse of the agreed contract term.

### **The Respondent's motion dated 25<sup>th</sup> August 2025**

33. The Respondent prayed for the interim order issued on 20<sup>th</sup> August 2025 to be recalled and or set aside because it was obtained through material non-disclosure and misrepresentation of facts, particularly the failure to reveal to the court the fact that his fixed contract of employment was about to expire. It was argued that, had the said fact been

disclosed to the court, the impugned interim orders would not have been granted.

34. Having found no merits in the claimant's motion, the impugned interim order stands discharged automatically and the respondent's motion rendered a moot case. The Black's Law Dictionary, Tenth Edition describes moot case as:

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

35. The essence of the above concept is that the court should not act in vain. The impugned interim orders having ceased to exist, there no need of proceeding to consider the respondent's motion.

### **Disposition**

36. For the reasons stated above,

- a) The Claimant's Notice of Motion dated 19<sup>th</sup> August 2025 is dismissed with costs.
- b) The Respondent's Notice of Motion dated 25<sup>th</sup> August 2025 has been overtaken by events.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT  
NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

**ONESMUS MAKAU  
JUDGE**

**Appearance:**

Museve for the Claimant

Ngonde for the Respondent

ORIGINAL