



**Mukuha v Judicial Service Commission (Cause E718 of 2025)
[2025] KEELRC 2954 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2954 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E718 OF 2025
ON MAKAU, J
OCTOBER 30, 2025**

BETWEEN

GRACE GATHONI MUKUHA APPLICANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

RULING

1. This Ruling relates to the Claimant’s Notice of Motion dated 29th July 2025 seeking the following orders:-
 - a. That on hearing interparties, this honourable court deem it fit to order the Respondent to renew the applicant’s appointment as a Member of Tax Appeal Tribunal (legal) Grade E2 and reinstate her in her position for the period contained in the applicant’s letter of appointment dated 7th July 2022.
 - b. That this honourable court do make such other or alternative orders as would meet the interests of justice.
 - c. That the Respondent be ordered to pay costs of this application.
2. The motion is supported by the Claimant’s own Affidavits dated 29th July 2025 and 30th September 2025. It is opposed by the Respondent vide a Replying Affidavit sworn by one J. M. Wamaasa on 12th September 2025.

Background.

3. The Claimant’s case is that she was appointed by the Respondent to serve as a member of the Tax Appeals Tribunal (Legal) by a letter dated 7th July 2022. The employment was for a three years contract renewable once.



4. By a letter dated 6th February 2025, the Respondent notified her of the end of her contract and invited her to express her interest in the renewal. She responded by a letter dated 18th March 2025 formally accepting the “offer” for renewal.
5. However, on 26th June 2025 she was surprised to receive a letter from the Respondent stating that her contract would not be renewed on grounds of retirement policies, without citing any legal basis or contractual provision. She named Japheth Keringo Njagi, Bernadete Mutiva Gitari and Delilah Kadzo Ngala as having been recruited at the age 60, 65 and 62. She contended that using age as reason for non-renewable amounted to discrimination.
6. She contended that the Tax-Appeals Tribunals Act under which she was appointed does not prescribe any retirement age. Besides she is 59 years which is below the statutory retirement age for public servants.
7. She contended that she had legitimate to to serve for a second term of three years and earn Kshs. 18,954,864 as income and Kshs. 6,318,288 as gratuity. She averred that if the order sought is not granted she stands to suffer loss of the above sums of money which she expected to earn during the second term of service.
8. The Respondent’s case, on the other hand, is that the letter dated 6th February 2025 only initiated the discretionary review review process but did not amount to an offer of renewal. It further averred that the Claimant’s expression of interest in renewal of the contract vide the letter dated 18th March 2025 did not guarantee any renewal. It further averred that the Commission in a meeting held on 18th June 2025, resolved not to renew the Claimants contract and conveyed that decision to her vide the letter dated 20th June 2025. Therefore it denied the allegation that the Claimant’s contract was validly renewed but subsequently unlawfully rescinded.
9. It is the Respondents case that the said decision was based on its mandate under section 3 of the Tax Appeals Tribunals Act, and the retirement age policy under section 25(1) of the *Judicial Service Act* which provides that Judiciary Officers shall retire at the mandatory age of 60 years. It denied that several members of the Tribunal are well over the age of 60 years.
10. It further averred that legitimate expectation does not arise where there a clear cut-off/time-line on terms of service. Pegged on retirement age, nor can she claim loss of income for 3 years as she does not qualify to serve for that period based on her age. Besides, it averred that the Claimant was not entitled to an automatic renew since the appointment letter reserved renewal of the contract to the commission’s discretion.
11. It stated that the it adhered to the procedures provided under *the constitution, Employment Act*, Judicial Service Code of Conduct and Ethics, and the Human Resource Policies and Procedures Manual (2014) as envisaged in Part 10 of the Claimant’s contract. Therefore it maintained that fairness was upheld and the alleged violations lacks supporting evidence.
12. Finally, the Respondent averred that if the injunction sought is withheld, the suit will not be rendered moot since the alleged loss would be adequately compensated by damages. Further that the contract has since lapsed and as such the Claimant ceased being an employee.

Submissions

13. It was submitted that the failure to renew the Claimant’s contract was unfair and discriminatory as she was singled out of members who were aged between 60 and 68 years old yet she was 59 years old.



The above submission was anchored on Article 22(4) and (5) of the Constitution and section 45 of the Employment Act. Several judicial precedents were also cited to fortify the submissions.

14. On the other hand, it was submitted for the Respondent that fixed term contracts expire through effluxion of time and a renewal clause does not create any legitimate expectation for renewal. It was argued that renewal clauses that preserve discretion to the employer to renew cannot be read down into automatic entitlement. Besides, where a statutory or policy cut-off governs capacity to serve, legitimate expectation cannot override that framework.
15. As regards the failure by the Tax Appeals Tribunal Act to specify the retirement age, it was submitted that the said lacuna does not immunise the appointee's from the Judicial Service Commission application of the adopted Human Resource Policies, including retirement rules consistent with the Judicial Service Commission Act. It was argued that the Judiciary Human Resource Policies and Procedures Manual were implicitly incorporated in the contractual terms and conditions of service of all judicial staff, including the Claimant, .
16. It was submitted that the Applicant has not met the high threshold for granting mandatory interim injunction including prima facie case, high degree of probability of success, and that the damages would not be adequate remedy. Several authorities were cited in support of the above submissions, and to urge the court to dismiss the Motion since the failure to renew Claimant's contract was substantively and procedurally fair and lawful.
17. I have carefully considered the material presented to the court by both sides. There is no dispute that the Claimant's fixed term contract expired on the due date and it was not renewed by the Respondent. The only issue for determination is whether the court should compel the Respondent to renew the Claimant's appointment as a member of Tax Appeals Tribunal (Legal) Grade E2 pending trial of the suit.

Analysis

18. Interlocutory injunction is granted at the discretion of the court if the applicant:-
 - a. establishes a prima facie case with high probability of success.
 - b. demonstrates that he will suffer irreparable harm if the order is withheld.
 - c. If the court is in doubt, to determine the application on a balance of convenience.
19. The above principles were discussed in *Giella v. Casman Brown* [1973] EA 358 with respect to prohibitory injunctions. However, when it comes to interlocutory mandatory injunction, the same would not normally be granted unless, in addition to the said principles, the Applicant demonstrates exceptional and unique circumstances. In *Kenya Breweries Ltd & another v. Washington Okenyo* [2002] eKLR, the Court of Appeal held that:-

“The test whether to grant mandatory injunction or not is correctly stated in Vol. 24 Habsbury's Laws of England 4th Edition paragraph 948 which reads:

“ A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff.....a mandatory injunction will be granted on an interlocutory application”.



20. I will now proceed to consider whether the claimant has met the aforesaid thresholds to warrant granting of the interlocutory mandatory injunction.

Prima facie case

21. As regards the question of prima facie, the applicant is required to prove that a legal right has been violated or is threatened with violation. I gather support from *Mrao Limited v. First American Bank of Kenya Ltd & 2 others* [2003]eKLR where the Court of Appeal defined prima facie case, thus:-

“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”.

22. There is no doubt that the contract of employment for the Claimant lapsed by effluxion of time before the suit was filed and it was not mutually renewed or extended. The issue whether the Claimant was entitled to a renewal will be decided after the trial. At this interlocutory stage, the court is only mandated to consider whether on the face value, the material presented demonstrates that the applicant’s legal right has been breached by the non-renewal of her contract.
23. The Claimant alleged that she had legitimate expectation that the contract would be renewed but the Respondent unlawfully failed to do so by discriminating her on grounds of her age. However, the Respondent contended that it acted with the law and was guided by statutory policy on mandatory retirement age in public service. It denied the alleged discrimination and breach of the right to legitimate expectation.
24. Having considered the material before the court, I am not satisfied, on the face value, that the applicant has demonstrated that any of her legal rights were violated by the Respondent’s failure to renew her contract for three years after the lapse of the initial contract on 1st July 2025.

Irreparable harm

25. Irreparable harm is one which cannot be adequately remedied by an award of damages. In the instant case, the Claimant has fully quantified the loss she stands to suffer in paragraph 9 of the statement of claim if the contract is not extended. The loss is tabulated as income for 3 years Kshs. 18,954,864 and gratuity of Kshs. 6,318,288 at the rate of one third (1/3) of the 3 years salary.
26. In *Ngurumani Ltd v. Jan Bonde Nielsen & 2 others* [2014]eKLR the Court of Appeal held that:-
- “the court must be satisfied that 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”.
27. The Claimant has by her own pleadings quantified the loss she would suffer if the contract of employment is not renewed. There is no evidence that the Respondent is not capable to paying the same. It follows that the loss she stands to suffer will not be irreparable.



Exceptional circumstances

28. Finally, I would say that the materials presented by the parties neither proves special and exceptional circumstances, nor do they paint the Respondent as an employer trying to steal a match on the Claimant. On the contrary, the evidence adduced show that the Respondent acted within its contractual rights and never breached the lapsed contract of employment.

Conclusion

29. I have found that the Applicant has not met the threshold for granting mandatory interlocutory injunction. She has failed to prove a prima facie case with high probability of success; that she will suffer irreparable loss if injunction is declined; and that special and exceptional circumstances exists to warrant a positive injunction against the Respondent. Consequently, I dismiss the Notice of Motion dated 29th July 2025 with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30TH DAY OF OCTOBER, 2025.

ONESMUS MAKAU

JUDGE

Appearance:

Mbigi for the Claimant

Owiti for the Respondent

