



**Mwanza v Kenya Broadcasting Corporation (Cause E430 of 2025)
[2025] KEELRC 2910 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2910 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E430 OF 2025
AK NZEI, J
OCTOBER 24, 2025**

BETWEEN

SAMUEL MULEMBA MWANZA CLAIMANT

AND

KENYA BROADCASTING CORPORATION RESPONDENT

RULING

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 15th May, 2025 and sought the following reliefs:-
 - a. A declaration that termination of the Claimant's employment was unfair, unprocedural, unlawful, irregular and illegal.
 - b. An order for reinstatement of the Claimant to his substantive position of Finance and Administration Manager without loss of status, salary, benefits, or seniority for the remainder of his contractual term.
 - c. In the alternative to prayer (b) above, an order of compensation for unfair termination equivalent to twelve (12) months' gross salary pursuant to Section 49(1)(c) of the [Employment Act](#).
 - d. General damages for breach of contract, loss of career progression and reputation harm.
 - e. Aggravated and exemplary damages for the malicious and high-handed manner in which the Respondent terminated the Claimant's employment.
 - f. Costs of the suit and interest thereon be awarded to the Claimant.
 - g. Any other relief that the Court may deem just and fit to grant.



2. The Memorandum of Claim was filed contemporaneously with an evenly dated Notice of Motion, vide which the Claimant/Applicant seeks the following Orders:-
 - a. Spent.
 - b. Spent.
 - c. That pending hearing and determination of the claim, the Court be pleased to issue an order staying the implementation and/or effect of the termination of service notice dated 14th May, 2025 issued by the Respondent to the Claimant.
 - d. That pending hearing and determination of the application, the Court be pleased to issue an order directing the Respondent to reinstate the Claimant/Applicant to his position as Finance & Administration Manager and continue to pay salary, benefits or privileges and/or maintain his employment status.
 - e. That pending hearing and determination of the claim, the Court be pleased to issue an order directing the Respondent to reinstate the Claimant/Applicant to his position as Finance & Administration Manager and continue to pay salary, benefits or privileges and/or maintain employment status.
 - f. That pending hearing and determination of the application, the Court be pleased to issue a temporary injunction restraining the Respondent from advertising and/or filling the Claimant/Applicant's position as Finance & Administration Manager.
 - g. That pending hearing and determination of the claim, the Court be pleased to issue a temporary injunction restraining the Respondent from advertising and/or filling the Claimant/Applicant's position as Finance & Administration Manager.
 - h. That costs of the application be in the cause.
 - i. Any other and/or further orders that the Court may deem just and fit to grant.
3. The application, expressed to be brought under Articles 47 and 50 of *the Constitution* of Kenya 2010, Sections 41, 43 and 45 of the *Employment Act*, Rule 17 of the *Employment and Labour Relations Court (Procedure) Rules* 2016 and all other enabling provisions of the law, sets out on its face the grounds on which it is brought, and is anchored on the Claimant's annexed supporting affidavit sworn by him on 15th May, 2025. It is deponed in the said supporting affidavit, inter-alia:-
 - a. that the Claimant was employed by the Respondent in the position of Finance and Administration Manager on a fixed term contract vide a letter of appointment dated 8th February, 2023, at a monthly salary and allowances of Kshs.268,829/=.
 - b. that according to the said letter of appointment, which stated the Claimant/Applicant's terms of employment, the Claimant's employment was effective from 1st March, 2023 to 28th February, 2026.
 - c. that the Claimant discharged his duties diligently and professionally to the satisfaction of the Respondent.
 - d. that upon reporting for duty, the Respondent's Board Chairman and the Chairman of Finance and Marketing Committee informed the Claimant that the Respondent was financially sick, and instructed him to identify areas of revenue leakages and expenditure flaws, and that the Claimant subsequently prepared a report to the Finance and Marketing Committee, outlining



that the Respondent had serious revenue leakages in the sales department and opportunity costs, and that internal control systems on loss prevention were wanting; and recommended steps that needed to be taken to address the issues.

- e. that the forgoing got the Claimant into an antagonising and hostile environment from some management quarters, culminating in frustrations and threats of dismissal from some of the Managers.
 - f. that on 8th September, 2023, the Claimant was issued with a show cause notice, alleging that written and verbal complaints against the Claimant had been received from various senior management staff; and that after the Claimant responded to the show cause notice and a hearing was conducted, the Respondent's Board found no wrong doing on the part of the Claimant, and accordingly cleared him.
 - g. that the Claimant was subsequently served with another show cause letter dated 6th May, 2024, claiming that the Respondent having undertaken a reference check from the Claimant's former employer (the Judiciary), it had been revealed that the Claimant had provided incorrect information on his CV.
 - h. that the Claimant responded to the show cause letter, but before the matter could be heard, the Claimant was interdicted vide a letter dated 3rd June, 2024, and a disciplinary hearing was held on 3rd December, 2024.
 - i. that vide a letter dated 27th February, 2025, the Respondent's Board resolved to conclude the disciplinary matter regarding the allegations of providing incorrect information during the recruitment process, and lifted the Claimant's interdiction; but in a blatant breach of the Claimant's contract unilaterally deployed the Claimant to the Internal Audit, Risk and Compliance Department (Risk Management) for the remainder of his contract.
 - j. that the Claimant wrote a formal protest dated 3rd March, 2025, protesting the redeployment despite having been cleared of all allegations by the Board, and as the Audit Department was an area in which the Claimant had no prior professional experience as he had not practiced auditing during his career.
 - k. that on 14th May, 2025, the Claimant was issued with a termination notice dated 14th May, 2025 terminating his employment effective 16th May, 2025 and giving no reasons for the termination.
 - l. that failure to give reasons for termination was a clear breach of Sections 41 and 45 of the Employment Act, and that the Claimant stands to suffer irreparable damage which cannot be compensated by an award of damages, unless the Court intervenes and grants a temporary injunction restraining the Respondent from advertising and/or filling the Claimant's position of Finance and Administration Manager as sought.
4. The foregoing is the application before me, and on being placed before me under a Certificate of Urgency on 16th May, 2025, I declined to certify the same as urgent, and instead directed that the application be served on the Respondent. When the matter was mentioned before me on 22nd May, 2025, I gave time lines on filing of response to the application, a further affidavit by the Claimant if need be, and written submissions on the application. I also granted an interim order restraining the Respondent from advertising and/or filling the Claimant's position, in the meantime.
 5. The Respondent filed a replying affidavit sworn by Agnes Kalekye Nguna, the Respondent's Managing Director, on 21st July, 2025. It is deponed in the said replying affidavit; inter-alia:-



- a. that the application is frivolous, bad in law and lacks merit, both in law and in fact; that the orders sought are drastic and some are final in nature, and should not be granted at an interlocutory stage.
- b. that the Claimant/Applicant was appointed on a three (3) years fixed-term contract, effective from 1st March, 2023 to 28th February, 2026 pursuant to a Letter of Appointment dated 8th February, 2023, and that the appointment was governed by express terms and conditions, including the right of either party to terminate the contract subject to issuance of a one (1) month notice or payment of one (1) month's basic salary in lieu of notice.
- c. that as demonstrated by the record [herein], the Claimant was in two separate instances subjected to structured and procedural disciplinary process, which included issuance with show cause letters, an interdiction letter and two different disciplinary hearings, all undertaken in compliance with the *Employment Act* and the Respondent's internal policies.
- d. that events leading to the first disciplinary hearing were that sometime between July and August 2023, the Respondent's management received multiple written and verbal complaints from heads of department regarding the Claimant's poor interpersonal relations, lack of cooperation and acts of intimidation and threats through private WhatsApp messages. That these issues warranted investigation, and a disciplinary issue duly convened.
- e. that the second disciplinary action stemmed from a routine reference check with the Claimant's former employer, the Judiciary; which revealed a discrepancy in the Claimant's employment history as he had misrepresented his title as a Senior Accountant/Finance Manager, a position he had not held. That this raised concerns about his (the Claimant's) integrity and suitability for the role, and that an objective inquiry was done and the discrepancy was confirmed, leading to a reasoned decision to interdict the Claimant pending further investigation.
- f. that the Claimant's assertion that he was unfairly targeted at work is entirely inaccurate.
- g. that upon conclusion of the disciplinary process, the Respondent's Board uplifted the interdiction against the Claimant/Applicant and opted to laterally redeploy him to the position of Risk Manager in the Internal Audit, Risk and Compliance Department, an action that was well within the employer's prerogative as the Respondent had lost trust and confidence in the Claimant/Applicant as a Finance and Administration Manager, but offered him an opportunity to continue in employment under equivalent terms.
- h. that redeployment is a standard tool used in both public and private sector management, especially in instances where professional relationships have become strained or untenable. That the Respondent acted within its managerial discretion and in line with accepted public service practice in redeploying the Claimant/Applicant.
- i. that Finance and Audit functions fall within overlapping disciplines and the Claimant's qualifications and experience are adequate for the said position.
- j. that the Claimant's rejection of the redeployment was not based on an objective incapacity, but rather a personal preference to return to a post he no longer held the confidence of the management to occupy.
- k. that the Claimant/Applicant was subsequently issued with a Termination Notice dated 14th May, 2025, in accordance with Clause 10 of his employment contract; pursuant to



the Respondent's contractual right to end the employment relationship for just cause, and following due process.

- l. that the legal threshold for granting interlocutory injunctive relief as established in the locus classicus case of *Giella – vs – Cassman Brown & Co. Ltd* [1973] EA 358 requires the applicant to establish a prima facie case with a high probability of success, demonstrate that he will suffer irreparable harm and show that the balance of convenience tilts in his favour.
 - m. that the Claimant/Applicant's main claim does not show a prima facie case with any probability of success, neither has the Claimant demonstrated that he stands to suffer irreparable harm that cannot be compensated in monetary terms if orders sought are not granted.
 - n. that the Claimant's claim relates to employment which is by nature contractual, and the law provides for remedies in damages where termination is found to be unfair or unlawful. That if the Court ultimately finds in favour of the Claimant, he may be awarded compensation in accordance with Section 49 of the *Employment Act*.
 - o. that the Claimant has not demonstrated that the balance of convenience tilts in his favour. That the Claimant/Applicant is no longer in office and the position he previously held remains vacant and the Respondent, as a public institution, must fill that post to ensure continuity in financial management and compliance with statutory obligations.
 - p. that the prayer for stay of termination of service notice is misplaced; as there is nothing left to stay, the notice having taken effect on 16th May, 2025.
6. Parties filed written submissions on the application pursuant to the Court's directions in that regard. Having considered the application and all the material placed before me, the single issue that falls for determination, in my view, is whether the orders sought are merited.
 7. Prayers (a), (b), (d) and (f) in the application (as set out in paragraph 2 of this Ruling) are spent, and the determination herein only relates to prayers (c), (e), (g) and (h).
 8. The prayer for stay of implementation and/or taking effect of the Termination of Service Notice dated 14th May, 2025 pending hearing and determination of the suit herein is outrightly frivolous; as termination of the Claimant/Applicant's employment took effect on 16th May, 2025. There is absolutely nothing to stay. The prayer is declined.
 9. The prayer for an order directing the Respondent to reinstate the Claimant/Applicant to the position of Finance & Administration Manager and to continue paying him salary, benefits or privileges and to maintain his employment status is not capable of being granted. It is a common ground that the Claimant/Applicant was employed on a three years fixed term contract commencing on 1st March, 2023 and terminating on 28th February, 2026 by effluxion of time. Indeed, the Claimant's contract states as follows, in part:-

“ 1. Effectivity

The appointment is effective from 1st March, 2023 upto 28th February, 2026. . . .

4. Terms Specific To The Holder



You will be on a fixed-term contract hence not eligible to permanent and pensionable terms of service during the period of engagement. In the event of termination before the expiry period, Clause 10 below will suffice . . .”

10. The contractual termination/expiry date of the Claimant’s employment is slightly over four months away, and an order for reinstatement would serve no logical purpose even if it was to be established that the Claimant’s employment was unfairly and unlawfully terminated, or that the Respondent breached the Claimant’s contract of employment. An award of compensation for unfair termination and/or damages for breach of contract would suffice.
11. Further, allegations of lack of trust and confidence in the Claimant/Applicant has been alleged by the Respondent/the employer regarding the post of the Respondent’s Finance & Administration Manager. Under Section 49(3)(b) & (c) the circumstances in which a termination took place and the practicability of recommending reinstatement or re-engagement are to be considered before ordering a reinstatement. In the present case, reinstatement is not practical, in view of the aforesaid fixed-term nature of the Claimant’s employment and the remainder period thereof. Further, the apparent fall-out between the Claimant and the Respondent and the resultant incompatibility cannot be ignored. The prayer for reinstatement is declined.
12. Regarding the prayer for an order of interlocutory injunction restraining the Respondent from advertising and/or filling the Claimant/Applicant’s position as a Finance & Administration Manager, the established principles governing grant of interlocutory injunctive orders must be called in aid. It was held in the celebrated case of *Giella – v – Cassman Brown & Co. Ltd* [1973] E.A. 358 that a person seeking interlocutory orders of injunction:-
 - “ a. must show a prima-facie case with a probability of success.
 - b. demonstrate that he might suffer an irreparable injury.
 - c. when the court is in doubt, it will decide the application on a balance of convenience.”
13. On establishment of a prima-facie case, the Claimant’s contract of employment was specific as to what position the Claimant had been recruited, the position of Finance and Administration Manager. The contract states as follows, in part:-

“I am pleased to inform you that you have been appointed as Finance and Administration Manager SS BE 1 on contract by Kenya Broadcasting Corporation . . .

. . . You will be stationed under Finance and Administration Department, Broadcasting House, Nairobi.”
14. The contract does not provide for transfer of the Claimant/Applicant to a different position or department. Further, Section 10(5) of the Employment Act provides as follows:-
 - “(5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and shall notify the employee of the change in writing.”
15. The Respondent is not shown to have consulted the Claimant/Applicant before moving him to the position of Risk Manager in the Internal Audit, Risk and Compliance Department. The Claimant/Applicant has deponed that he was not consulted.



16. The Claimant's contract dated 8th February, 2023 and elaborately setting out the Claimant's job description and specific duties, is not shown to have been revised in accordance with the aforesaid statute. The Claimant is shown to have been given a letter lifting his interdiction and deploying him to the Internal Audit, Risk and Compliance Department (Risk Management) for the remainder of his contract. This was unlawful, and amounted to a breach of the Claimant's contract of employment by the Respondent.
17. Under Section 45(2)(a) of the *Employment Act*, termination of employment is unlawful if the employer fails to demonstrate/prove that the reason for the termination was valid. The Claimant has denied wrong doing, and the Respondent has not shown that the Claimant breached his contract of employment or violated any particular regulation or policy of the Respondent which formed part of the Claimant's contract of employment.
18. Further, the Claimant's termination of service letter dated 14th May, 2025 does not state the reason for termination.
19. This Court stated as follows in my Judgment in *Kagai - vs - Kenga Equatorial Hotels Limited t/a Mombasa Continental Resort* [2024] KEELRC 2641 (KLR):-
 20. It is worthy noting that the foregoing letter did not state the reason for terminating the Claimant's employment. The fact that Clause 18 of the Claimant's employment contract provided that either party could terminate the contract by giving the other a one month notice or by paying one month pay (salary) in lieu did not mean that the Respondent could terminate the Claimant's employment without a valid reason. The said clause could only be invoked by the Respondent if it had a valid reason to terminate the contract of employment.
 21. ...
 22. ...
 23. Section 43(2) of the *Employment Act*, 2007 provides as follows:-
 - “(2) The reason or reasons for the termination are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
 21. The import of the foregoing, in my view, is that where a letter of termination of employment is issued by an employer, the reason or reasons for terminating the employee's contract must be stated in that letter. It is that reason or reasons whose validity the employer would be required to prove in any claim arising out of the termination of contract.”
20. The Claimant has demonstrated that he has a prima facie case with a probability of success.
21. On whether the Claimant stands to suffer an irreparable injury and/or damage if the injunctive order sought is not granted, it is to be noted that the Claimant has, in his Memorandum of Claim filed herein, prayed to be paid twelve months' gross salary as compensation for unfair termination of employment



pursuant to Section 49(1)(c) of the *Employment Act* and general damages for breach of contract. He does not stand to suffer any injury or loss that cannot be compensated by way of payment of damages.

22. The balance of convenience tilts in favour of the Respondent. The Claimant's employment as the Respondent's Finance & Administration Manager stands terminated; and his former position remains vacant. As deponed on behalf of the Respondent, the Respondent, which is a public institution, needs to fill that post to ensure continuity in financial management and compliance with statutory obligations. A greater inconvenience would arise to the Respondent from granting the injunctive order sought than to the Claimant from withholding it.
23. In view of all the foregoing, and having considered written submissions filed on behalf of both parties herein, the Notice of Motion dated 15th May, 2025 cannot succeed, and is hereby dismissed.
24. Each party shall bear its own costs of the application.
25. The suit herein shall be fast-tracked, and shall be fixed for hearing.
26. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER 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.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Mwangi for the Claimant

Mr. Mwangi for the Respondent

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