



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Mugambi v Kenya Revenue Authority (Employment and Labour Relations Cause E144 of 2025) [2025] KEELRC 3144 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3144 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E144 OF 2025**

**HS WASILWA, J  
NOVEMBER 12, 2025**

**BETWEEN**

**PATRICK MWONGERA MUGAMBI ..... PETITIONER**

**AND**

**KENYA REVENUE AUTHORITY ..... RESPONDENT**

**RULING**

1. The Petitioner/Applicant filed a Notice of Motion dated 21<sup>st</sup> July 2025 seeking orders that: -
  1. Spent
  2. Pending hearing and determination of this Application interpartes this Honourable Court be pleased to issue restraining orders against the Respondents, their agents, servants and anybody from filing up the position held by the Petitioner/Applicant or interfering with the employment, benefits and opportunities of the Petitioner.
  3. Pending hearing and determination of this petition this Honourable Court be pleased to issue conservatory orders to preserve the Petitioner/Applicant's position in order to preserve the subject matter of the application herein through the interim conservatory order staying and/or suspending the implementation of the decisions dated 19<sup>th</sup> February 2025.
  4. Pending hearing and determination of this application, this Honourable Court be pleased to preserve the subject matter of the application herein through an interim conservatory order staying and/or suspending the implementation of the decisions by the Respondents to terminate the services of the Petitioner/Applicant vide a letter dated 19<sup>th</sup> February 2025.
  5. The costs of this application be provided for.



### **Petitioner/Applicant's Case**

2. The Petitioner/Applicant avers that he was initially employed as a Security Assistant on 3<sup>rd</sup> October 2006 and he subsequently rose through the ranks to the position of the Assistant Manager- Integrity Testing and Rapid Response as at the time of his termination from employment.
3. The Petitioner/Applicant avers that the termination of his employment as he considers that it was carried out in contravention of his constitutional right by, amongst others, Articles 21, 22, 23, 41, 47, 50(1) without a fair hearing, high handedly, oppressively and without any iota of evidence of or any allegation of any wrongdoing concerning his core duties.
4. It is the Petitioner/Applicant's case that it is just and equitable that the orders as prayed be granted on priority basis. Further, it is in the interest of justice that an injunctive order be issued to preserve the his former position pending the hearing and determination of the suit.

### **Respondent's Case**

5. In opposition to the Application, the Respondent filed a replying affidavit dated 28<sup>th</sup> October 2025 sworn by its Human Resources Division, Christine Nyanchera Maangi.
6. The Respondent avers that the application is grounded on the Petitioner/Applicant's termination from its organization and that if recruitment is not stopped then the same would be prejudicial to the present case.
7. The Respondent avers that the Petitioner seeks to be compensated a sum of Kshs. 11,423,668.00 for alleged un-procedural and unfair termination. However, the Petitioner has not prayed for reinstatement of his role in the Respondent organization.
8. It is the Respondent's case that the order sought has no grounding in the petition and is in no manner related to the subject matter of the petition or the prayers sought by the Petitioner.
9. The Respondent avers that even if this court was to grant the prayers sought by the Petitioner, the same would not amount to a reinstatement. It is therefore immaterial whether or not the Respondent recruits for the position of Assistant Manager- Integrity and Rapid Response as it bears no bearing on the Petitioner's case
10. The Respondent avers that as part of its Bottom-Up Economic Agenda, the government, in which the Respondent is an agency of, has undertaken to ensure massive recruitment of Kenyans. The Respondent will be highly prejudiced if it is not allowed to fulfil its part in enforcing the government's agenda if the Orders were to be granted. Innocent job seeking Kenyans will be prejudiced in the orders are granted noting that they do not in any way advance the Petitioner's case.
11. It is the Respondent's case that it is in public interest that the application is dismissed.

### **Petitioner/Applicant's Submissions**

12. The Petitioner/Applicant submitted on two issues: whether the Petitioner's services were procedurally terminated by the Respondents; and what remedies would be available to the Petitioner at this Interim Stage.
13. On the first issue, the Petitioner/Applicant submitted that the Respondent accused the Petitioner/Applicant of forgery of an Investigation Report through submitting a report inquiry No. KRA/IAD/146/2022 dated 25<sup>th</sup> November, 2022 that was submitted to the Commissioner | & SO on 6<sup>th</sup>



December, 2022 and approved on 19<sup>th</sup> January, 2023 which allegation is false and misleading because the Respondent has not identified the person it is alleged the Petitioner submitted the report to and further the said Report No. KRA/AD/146/2022 does not exist.

14. The Petitioner submitted that contrary to the Respondent's assertions that he was interdicted procedurally, the allegation is false owing to the fact that he was interdicted from performance of his duties on the 19<sup>th</sup> April, 2024 barely fourteen days upon reporting to Isiolo Station pending investigations on the alleged breach of the Respondent's code of conduct whose particulars were not specified.
15. The Petitioner submitted that he was subjected to a disciplinary committee hearing on 28<sup>th</sup> November, 2024, which disciplinary process was unfair, flawed and the same lacked impartiality since the charges levelled against him were flawed, baseless and unproven.
16. The Petitioner submitted that his contract was far from over and the Respondent's action was aimed at short changing him and threatening his career with serious but fictitious allegations of fraud and insubordination.
17. It is the Petitioner's case that this court should not allow innocent, long serving employee to suffer under the Respondent's malicious actions without proven valid reasons for such an action more so in light of the undisputable fact that the position of Assistant Manager - Integrity Testing and Rapid Response of the is unique, rare and unavailable in the Kenyan job market.
18. On the second issue, the Petitioner submitted that he seeks a remedy that will not deprive him of his hard-earned benefits as the Respondent's Assistant manager Integrity Testing and Rapid Response by seeking an order stopping the implementation of the termination letter and/or a preservation of his position pending the expeditious hearing and determination of the instant suit.

### **Respondent's Submissions**

19. The Respondent submitted on two issues: whether the application is merited and if the orders sought are available at this interim stage; and whether the Petitioner's employment was procedurally terminated by the Respondent.
20. On the first issue, the Respondent submitted that the orders as sought are untenable as they are final in nature capable of disposing of the entire petition before hearing thereby denying the Respondent the right to the due process of the law and the right to a fair hearing and equal protection of the law as enshrined in *the Constitution*.
21. It is the Respondent's submission that to invite this court to make such findings would amount to inviting the court to decide a substantive issue at an interlocutory stage in violation of sound legal principles. It placed reliance on the case of *Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 others* [2014] KECA 153 (KLR) and *Abwao v Teachers Service Commission* [2025] KEELRC 1162 (KLR).
22. The Respondent submitted that Petitioner is seeking orders restraining the Respondent from filling up his position of Assistant Manager, Internal Affairs Investigations, and to preserve the said position for his possible reinstatement which according to it are substantive prayers to be determined after hearing the main suit. As such, such orders are untenable at this interim stage.
23. The Respondent submitted that it is essential to delineate the threshold in determining if the application is merited as was set out in in *Giella v Cassman Brown & Co. Ltd* (1973) EA 358 and *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR) as follows; "In an



interlocutory injunction application, the applicant has to satisfy the triple requirements to; (a) establish his case only at a prima facie level, (b) demonstrate irreparable injury if a temporary injunction is not granted, and (c) allay any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”

24. The Respondent submitted that although the court is yet to determine whether the Petitioner has an arguable case, in addition to the fact that the orders as sought are substantive in nature and cannot be issued at this stage unless the court is apprised of the evidence of both parties.
25. It is the Respondent’s submission that the Petitioner/ Applicant has not demonstrated the irreparable harm he stands to suffer that would not be remedied by way of damages should the court not grant the orders sought.
26. The Respondent submitted that should this court find that the Petitioner was unfairly terminated, then the court has wide discretion to compensate him through an award of damages. On the other hand, if the court finds that the Respondent lawfully and fairly terminated the Petitioner’s employment, will the Petitioner, if granted conservatory orders at this point, be able to compensate the Respondent for loss of manpower/ productivity occasioned by orders restraining it from filing up the position? The answer is no.
27. The Respondent submitted the application has not met the threshold for grant of the orders sought and this court ought to dismiss it with costs to the Respondent. It cited *Joab Mehta Oudia v Coffee Development Board of Trustees* [2014] KEELRC 698 (KLR) wherein the court held: “There is no justification for interim reinstatement, stay of termination or orders barring the Respondent from proceeding to fill the position that was held by the Claimant. The law presumes that the wronged employee would be in a position to move the Court expeditiously on the merit, and if deserving, have the substantive orders of reinstatement or re-engagement. Nothing is lost to the Claimant as the law allows him to receive back wages in addition to these remedies.”
28. On the second issue, the Respondent submitted that the Petitioner’s invitation to this court to make a determination whether his employment was procedurally terminated at this interlocutory stage is grossly premature because the court is not properly seized of the material evidence from the Respondent to enable it make a determination on the same.
29. The Respondent submitted that the Petitioner’s averment to the effect that the termination of his employment was unfair or unlawful is a matter for determination after hearing evidence of the parties. The court cannot at this stage determine whether or not the termination was unfair. The law is explicit that it is only upon determining that termination was unfair that the court can order reinstatement.
30. The Respondent submitted that reinstatement is not automatic upon a finding that the termination of employment is unfair. The court must further consider all the factors in section 49(4) of the Act and must specifically find that there are exceptional circumstances justifying the grant of the prayer of reinstatement. It cited *Duke Oriku Machini v Regis School Runda & another* [2022] KEELRC 810 (KLR). Further, an employer should not be forced by this court to have in its service a party in which it has lost faith and trust in to serve as its employee.
31. It is the Respondent’s submission that the Petitioner has come to court with unclean hands, is guilty of material non-closure and deliberate distortion of facts with the intention of misleading the court hence undeserving of any equitable remedies.



32. I have considered the averments and submissions of the parties herein. The applicant sought to be granted orders reviewing his termination and also preventing the respondent from filing up the vacant position he held prior to the termination.
33. On issue of reviewing his termination, this is an order which this court cannot grant at this stage as this will be tantamount to determining the entire petition at this stage without considering the facts substantively. The order cannot therefore be granted at this stage.
34. As concerns the order not to fill up the vacant position the petitioner held pending the hearing and determination of the petition the petitioner seeks this order to preserve the substratum of the petition. The prayer sought indeed is fair in the circumstances in order to preserve the substratum of the petition. I will allow this prayer and indicate that in order to avoid miscarriage of justice, the court will proceed and determine the entire petition pronto. Costs in the petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12<sup>TH</sup> DAY OF NOVEMBER 2025.**

**HELLEN WASILWA.**

**JUDGE**

