



**Naitore v Board of Directors, Kenya Yearbook Editorial Board & 2 others;
Cabinet Secretary, Ministry of Information, Communications and the Digital
Economy (Interested Party) (Employment and Labour Relations Petition
E097 of 2025) [2025] KEELRC 3112 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3112 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E097 OF 2025**

HS WASILWA, J

NOVEMBER 6, 2025

BETWEEN

SUSAN NAITORE PETITIONER

AND

**BOARD OF DIRECTORS, KENYA YEARBOOK EDITORIAL
BOARD 1ST RESPONDENT**

**CHIEF EXECUTIVE OFFICER, KENYA YEARBOOK EDITORIAL
BOARD 2ND RESPONDENT**

ATTORNEY GENERAL 3RD RESPONDENT

AND

**CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATIONS
AND THE DIGITAL ECONOMY INTERESTED PARTY**

RULING

1. The Petitioner/Applicant filed a Notice of Motion dated 20th May 2025 seeking orders that: -
 1. spent
 2. pending the hearing and determination of the application, an order be issued suspending and/or setting aside the Employment Contract dated 6/12/2024 issued to the Applicant by the 2 Respondent.



3. pending the hearing and determination of the petition, an order be Issued suspending and/or setting aside the Employment Contract dated 6/12/2024 issued to the Applicant by the 2TM Respondent.
4. pending the hearing and determination of the application, an order be issued directing the 1st and 2nd Respondents herein to unconditionally permit the continuance of employment of the Petitioner as Assistant Manager Finance & Accounts after 31st May, 2025 without any loss of benefits, rank, seniority, salary, allowances and emoluments.
5. pending the hearing and determination of the petition, an order be issued directing the 1st and 2nd Respondents herein to unconditionally permit the continuance of employment of the Petitioner as Assistant Manager Finance & Accounts after 31st May, 2025 without any loss of benefits, rank, seniority, salary, allowances and emoluments.
6. pending the interpartes hearing and determination of the application, conservatory orders be issued restraining the Respondents, its employees, servants and/or agents from advertising, recruiting and/or appointing an Assistant Manager Finance & Accounts of the Respondent and/or any other position which affects the Applicants employment with Kenya Yearbook Editorial Board.
7. pending the hearing and determination of the petition, conservatory orders be issued restraining the Respondents, its employees, servants and/or agents from advertising, recruiting and/or appointing an Assistant Manager Finance & Accounts of the Respondent and/or any other position which affects the Applicants employment with Kenya Yearbook Editorial Board.
8. the costs of the application be borne by the Respondents.

Petitioner/Applicant's Case

2. The Applicant avers that she is employed by the Kenya Yearbook Editorial Board (hereinafter 'KYEB'), a State Corporation under the Ministry of Information, Communications and the Digital Economy as the Assistant Manager Finance & Accounts on a six-month contract dated 06.12.2024 from 01.12.2024 to 31.05.2025 following the expiry of her initial three-year term contract that commenced on 01.12.2021 and expired on 30.11.2024.
3. The Applicant avers that KYEB's Human Resource Policy and Procedures Manual provides that all officers at in Grade KYEB 3, such herself shall be engaged on contracts of up to five years renewable subject to performance and retirement age. The policy further provides that an employee serving under contract terms and wishing to be considered for a further term is required to notify the 2nd Respondent in writing six months before the expiry of their contract.
4. The Applicant avers that the 2nd Respondent shall consider any notification from an employee wishing to be considered for a further term and upon consideration, the employee will be advised of the decision to renew or not to renew or extend the employee's contract in writing three months before the expiry of the contract.
5. It is the Applicant's case that an employee who is dissatisfied with the decision of the 2nd Respondent may appeal to the 1st Respondent for reconsideration within fourteen (14) days of receipt of the decision. She contends that she timeously wrote to the 2nd Respondent on 16th May 2024 and again on 29th May 2024 seeking a renewal of her employment contract that is due to lapse on 30th November 2024.



6. The Applicant avers that in a letter dated 11th July 2024, the 2nd Respondent requested her to submit her most recent performance evaluation report so that the 1st Respondent could consider her request for renewal of her employment contract. Complying with this request, she attached two sets of appraisal reports while highlighting the services she had offered KYEB in the financial year 2023/2024 on 22nd July 2024.
7. It is the Applicant's case that she expected her performance to be appraised by the 2nd Respondent and if favourable and in furtherance of that satisfactory appraisal that her contract would be renewed in line with the requirements of Clause 2.5 & 2.6 of KYEB's Human Resource Policy and Procedures Manual of 2022.
8. However, the 2nd Respondent instead issued her with an Expiry of Contract Notice dated 14th October 2024 informing her that her request for renewal of her employment contract had been declined and that her contract would expire on 30th November 2024. The notice did not contain the results of her performance appraisal that had been earlier sought.
9. The Applicant avers that she never received any adverse appraisal on the performance of the roles assigned to her and she has zealously undertaken her work assignments with utmost seriousness and determination.
10. The Applicant avers that she appealed the 2nd Respondent's decision to the Board on 15th October 2024 for reconsideration of the decision not to renew her contract and requesting for reasons why her renewal application was declined.
11. The Applicant asserts that pursuant to the KYEB Human Resource Policy and Procedures Manual, 2022, she is eligible to renewal of her contract subject only to satisfactory appraisal of her performance which was not done before decision was made to decline her application.
12. The Applicant avers that to date, she has not been informed of the result of her performance appraisal requested for by the 2nd Respondent nor has she been given reasons why her application for renewal of her contract, whose only condition was the satisfactory review of her performance, was declined well beyond the set timeline for doing so under Clause 2.6.3 of the HR Manual, 2022.
13. It is the Applicant's case that she had a legitimate expectation that the Respondents would renew her employment contract subject to satisfactory performance appraisal was within the range of reasonable expectation objectively derived by the 1st Respondents' own Human Resource Policy and Procedures Manual, 2022 and the 2nd Respondent's conduct of initiating a performance evaluation of the Petitioner.
14. The Applicant avers that the 1st Respondent held a Special Board Meeting on 29th November 2024, where her appeal was considered. Subsequently, she received a letter dated even dated notifying her of a new employment contract for a period of six months effective 1st December 2024.
15. She avers that she later came across another letter from the 2nd Respondent also dated 29th November 2024 addressed to her but which she never received stating that her appeal had been reviewed and allowed and that her contract dated 25th November 2021 had been renewed.
16. She further discovered that there had also been two sets of minutes of the 1st Respondent's Special Board Meeting on 29th November 2024 with one set resolving to renew her contract for the full term of and the second set resolving to extend her contract for only six months. Both sets acknowledged that she had served KYEB for over eight years without any major performance issues being raised which was the only condition that she needed to fulfil to have her employment contract renewed.



17. It is the Applicant's case that the six months contract offered to her is unlawful, illegal, null and void as it violates Section 45(1) of the Public Service Commission Act, which provides that a person may be engaged on a term of contract for a period of at least twelve months.
18. The Applicant avers that the issuance of an unlawful employment contract for a period shorter than the statutory minimum period after her successful appeal for renewal, not only violated her legitimate expectation to having her contract renewed on similar terms to the expired one but also constituted an unfair labour practice.
19. The Applicant avers that the conduct of the Respondents has been without legal justification and the unlawful six-month contract is set to expire on 31st May 2025, prejudicing her rights unless this Court intervenes.
20. It is the Applicant's case that unless this matter is disposed on priority basis and conservatory orders sought are granted as prayed, the Respondents will continue to cause a grave travesty of justice to the Applicant who will suffer irreparable loss and harm.

Respondents/ Interested Party's Case

21. In response to the Application, the Respondents and Interested Party filed a replying affidavit dated 17th July 2025 sworn by the Chief Executive Officer of the Kenya Yearbook Editorial Board, Lilian Kimetto.
22. The Respondents aver that the Petitioner joined KYEB on 2nd August 2016 as a Senior Procurement Officer on a temporary contract of 3 months. On 21st October, 2016 she applied for renewal of a further term and was granted another term of 3 months from 1st November, 2016 to 31st January, 2017. On 24th January, 2017 the Petitioner again applied for renewal of the contract and she was granted a contract of 6 months as an Accountant on KYEB Scale 6 with effect from 6th February, 2017 to 31st July, 2017.
23. The Respondents aver that on 8th November, 2016 the Petitioner applied for appointment as an Accountant on permanent and pensionable terms and on 31st July, 2017, the 1st Respondent appointed her as an Accountant on KYEB Scale 5 on permanent and pensionable terms with effect from 1st August, 2017 and confirmed on 24th October 2017.
24. In 2018, the Petitioner applied for appointment as a Finance Manager and which according to the Human Resource Policy and Procedures Manual, 2017 that was in force at the time this was a contractual position.
25. The Respondents aver that on 16th November 2018, the 1st Respondent appointed the Petitioner as a Finance Manager on a contract for 3 years with effect from 1st December, 2018 to 30th November, 2021 and hence the Petitioner transitioned from a permanent and pensionable term of employment to a contractual term of employment. Clause 13 of the letter of appointment provided that if the Petitioner was desirous of renewing the said contract, the Petitioner would make a written request 6 months before the expiry of the said contract.
26. Upon expiry of the contract, the Petitioner on 21st May, 2021 applied for its renewal as per the aforesaid Clause and on 25th November, 2021 the 1st Respondent renewed the contract for a second 3-year term from 1st December, 2021 to 30th November, 2024.
27. The Respondents aver that the contract dated 25th November, 2021 did not envisage a renewal as there was no renewal clause in the said contract and the employment contract between the Petitioner and the 1st Respondent terminated on 30th November, 2024.



28. The Respondents aver that on 16th May, 2024 and 21st May, 2024 the Petitioner applied to the 1st Respondent for the renewal of the contract for a third term. On 11th October 2024 the 1st Respondent deliberated on the application for renewal of the contract by the Petitioner during its Full Board Meeting but the 1st Respondent at Minute 09/10/2024 rejected the application on the basis that the expired contract did not envisage a renewal of the term as there was no renewal clause.
29. The 1st Respondent's decision was communicated vide a letter dated 14th October 2024 and the Petitioner being aggrieved preferred an appeal against the said decision on 15th October, 2024.
30. The Respondents aver that on 29th November 2024, the 1st Respondent held a Special Board Meeting which was attended by a section of the Board membership and deliberated on the Petitioner's appeal and resolved to renew the contract. However before the Special Board Meeting was held, the State Corporations Advisory Committee (SCAC) had on 22nd November, 2024 declared that the proposed Special Board Meeting was irregular and should not have been held as the concurrence of the State Corporations Advisory Committee had not been sought and/or granted. This is as provided by Circular No. OP/CABS/1A dated 11th March, 2020 on Management of State Corporations, Section A (3) on Board Meetings which provides that approvals for any extra Board meetings including Special Board Meetings require the concurrence of the State Corporations Advisory Committee.
31. The Respondents aver that SCAC in its letter dated 22nd November, 2024 advised the 1st Respondent that since the meeting was irregular the same ought not to proceed and that the membership of the 1st Respondent who would attend the said meeting would be rendered personally and severally culpable. Despite this, the meeting proceeded.
32. The Respondents aver that on learning of the said renewal, the Government gave guidance that the 1st Respondent grants the Petitioner a six-month contract from 1st December, 2024 to 31st May, 2025 pending the tabling of the Report from the Inspectorate of State Corporations where the Petitioner had been adversely mentioned. The Petitioner earnestly started to serve on the new Six- Month Contract pending the discussion of the Report by the Inspectorate of State Corporations by the 1st Respondent.
33. The Respondents aver that KYEB has had 3 sets Human Resource (HR) Instruments as follows: The 1st HR Instruments dated July & September, 2017; The 2nd HR Instruments dated January & March, 2022; and The 3rd HR Instruments dated November, 2024. The terms of the Petitioner's contract that is subject of this suit falls between the Human Resource Policies and Procedures Manual for September, 2017 and that of March, 2022 which were approved by SCAC.
34. The Respondents aver that the Public Service Commission (PSC) went to court over the issue of development and review of Human Resource Management Instruments for State Corporations and Public Universities and as a result of various decisions by the courts on the matter.
35. On 8th August, 2023, PSC issued guidelines on development and review of Human Resource Management Instruments for State Corporations and Public Universities. In the said Circular, PSC stated that any Human Resource Management Instruments released for implementation by State Corporations and Public Universities without its prior approval would be considered null and void.
36. The Respondents aver that the Petitioner served as the Ag. Chief Executive Officer of KYEB in the year 2023 and in compliance with the above directive, she the Petitioner wrote a letter Ref: KYEB/HR/01/2023/24 (01) dated 24th July 2023 to the Public Service Commission submitting the HR Documents approved by the State Corporations Advisory Committee for compliance and concurrence with the aforesaid Circular and hence the Petitioner is aware of the same.



37. On 11th September, 2024 the 2nd Respondent wrote a follow-up letter Ref KYEB/PSC/CEO/PSC/5C (10) to the Public Service Commission seeking guidance in view of the aforesaid guidelines provided in the Circular to enable KYEB make sound human resource decisions. PSC approved KYEB Human Resource (HR) Instruments dated November, 2024 vide its letter dated 20th November, 2024 that was received by KYEB on 21st January, 2025 and hence the same are not applicable in this case.
38. The Respondents aver that in January, 2025 the Cabinet identified State Corporations that were to be reformed through mergers, dissolution, restructuring and declassification and KYEB was one of those State Corporations.
39. Vide a letter dated 5th February 2025 from the Principal Secretary, National Treasury and Economic Planning Ref: DGIPE/A/1/85 "A" (55) 2025 titled "Implementation of State Corporations' Reforms as Approved by the Cabinet", KYEB was directed to: Put on hold implementation of any approved new organization structure and new terms and conditions of service for staff for the respective Corporations; Suspend any new recruitment, confirmation of new appointments as well as any promotions; and Not to commence implementation of new projects, whether the Corporation has all the necessary approvals and budgetary resources or not.
40. The Respondents aver that the Petitioner was amongst the Officers who accompanied me as the Head of Finance during the meeting with the Multi Agency Technical Committees responsible for implementing the State Corporations' Reforms as approved by the Cabinet held on 12th February, 2025 at the Kenya School of Government.
41. By a Circular Ref. No. OP/CAB.9/1 dated 16th May, 2025 titled "Suspension of Renewal of Contracts for Officers Serving in State Corporations Earmarked for Reforms" the Cabinet issued a moratorium prohibiting any changes to staff organization, salary structures, or roll out of any new capital projects in the affected State Corporations and this included KYEB.
42. The Respondents aver that from the above Circular, KYEB is among 16 State Corporations which the Cabinet found have outdated mandates or the goods and services that they provide can be supplied by the private sector and the said State Corporations are proposed for divesture/dissolution. The said Circular also directed that measures be undertaken in the State Corporations identified for reform and which include: A moratorium on recruitment and renewal of contracts for Chief Executive Officers or any other officers serving on contract terms, at the lapse of their current tenure; That any ongoing recruitment process of staff in any cadre was halted forthwith; and Any implementation or approval of new human resource policies, personal emoluments and benefits of any kind, staff organization, salary structures, or roll out of any new capital projects was suspended.
43. The Respondents aver that on 27th May 2025, KYEB received a letter from the Principal Secretary, State Department for Broadcasting and Telecommunications dated 23rd May, 2025 in which the Principal Secretary brought to the attention of KYEB the Circular dated 16th May, 2025 from the Chief of Staff and Head of Public Service which directed the immediate compliance.
44. The Respondents aver that they wrote to the Petitioner on 27th May 2025 and informed her about the aforesaid directives from the Cabinet and that as a consequence of the said directives that the 6 months' contract that took effect on 1st December, 2024 would come to an end on 31st May, 2025. She was further required to commence the separation process with KYEB and which included completing all necessary clearance procedures from KYEB and preparation of a detailed handing over report.



45. It is the Respondents' case that the Petitioner's contract of employment with KYEB dated 21st November, 2021 was naturally, lawfully and procedurally expired as per the said contract which was explicit that it would come to an end on 30th November, 2024.
46. The Respondents aver that the Petitioner's application for another contract was properly, lawfully and procedurally declined by the 1st Respondent as the Petitioner's contract of employment with KYEB dated 21st November, 2021 had no renewal clause and therefore the said contract did not envisage a renewal.
47. The Respondents aver that the Petitioner knew or ought to have known when she transited to a contractual term of employment that her employment with KYEB was strictly in accordance with the contract she entered into with her employer and the Petitioner cannot now seek through orders of this Court to have her contract renewed in perpetuity. Contracts have a beginning and an end.
48. The Respondents aver that there is a conflict of interest as the Petitioner is now holding the position of Finance & Accounts Assistant Manager through a court order whereas the Petitioner has no employment contract in existence her contract having expired on 31st May, 2025 and as a result the Petitioner is now holding KYEB hostage by making decisions that are negatively affecting the smooth flow of operations.
49. The Respondents aver that this state of affairs has caused great prejudice to the 1st and 2nd Respondents as they are being held hostage from steering KYEB which is undergoing reforms and also facing serious financial constraints. The Petitioner's continued employment as a Finance & Accounts Assistant Manager through a court order has caused difficulties in making of crucial decisions by KYEB as she has usurped the role of the Accounting Officer.

Petitioner/Applicant's Submissions

50. The Applicant submitted on two issues: whether the Applicant has met the threshold for the grant of conservatory orders; and who bears the costs of the suit.
51. On the first issue, the Applicant placed reliance in Centre for Rights Education and Awareness (Creaw) & Another -vs- Speaker of the National Assembly & 2 Others (2017) eKLR which defined the purpose of conservatory orders in the following terms: "the purpose of granting conservatory orders is to prevent violation of rights and fundamental freedoms and preserve the subject matter pending the hearing and determination of a pending petition."
52. It is the Applicant's submission that the instant case meets the threshold for the grant of conservatory orders as highlighted in the case of Wilson Kaberia Nkunja vs. The Magistrate and Judges Vetting Board and Others Nairobi High Court Constitutional Petition No.154 of 2016 (2016) eKLR, where the court held that an applicant must demonstrate the following: "That a prima facie case with a likelihood of success has been established; That unless the conservatory order is granted, the Petition will be rendered nugatory; and That the public interest lies in favour of granting the conservatory orders."
53. The Applicant submitted that a prima facie case in this context is not one that must succeed, but one that discloses arguable issues worthy of full hearing and determination by this Court, as enunciated in Mrao Ltd v First American Bank of Kenya Ltd & 2 others (Civil Appeal 39 of 2002).
54. It is the Applicant's submission that she was employed as the Assistant Manager Finance and Accounts on a three-year term contract running from 1st December 2021 to 30th November 2024. The contract was subject to the [Employment Act](#), the terms of KYEB's Human Resource Policy and Procedures



- Manual (2022) and any other law that is in place regarding public servants, notably the [Public Service Commission Act](#).
55. She submitted that she formally expressed her interest in contract renewal in May 2024, six months before expiry in accordance with Clause 2.6 of the KYEB HR Manual, and Section 45 of the [Public Service Commission Act](#) (PSC Act). This triggered an expectation, backed by law and policy, that the 1 and 2nd Respondent would conduct a performance appraisal, notify her of the outcome, and make a decision on renewal at least three months before the contract's expiry, by 31st August 2024.
 56. She submitted that on 22nd July 2024, she submitted her performance appraisal. Despite her diligence, she received no feedback, and was not informed of any performance concerns. Instead, on 29th November 2024, she received a letter of notification of a new employment contract and was offered a six-month contract effective 1st December 2024 to 31st May 2025.
 57. It is the Applicant's submission that the 1st and 2nd Respondents' actions contravenes the requirements of Section 45(3) of the PSC Act, which mandates that the appointing authority must make a decision on renewal at least three months before the expiry of the contract. It further violates Section 45(1) of the same Act, which prohibits contractual engagements for a period less than twelve (12) months.
 58. The Applicant submitted that a contract is void ab initio if it offends law or public policy, no Court including this Court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal.
 59. The Applicant submitted that her case demonstrates compliance with the conditions set in Section 45(3) of the Public Service Commission which provides that: "The extension of a term of contract may be allowed by the Commission or other appointing authority if; (a) the workload justifies further engagement; (b) the performance of the public officer is satisfactory; (c) the public officer has expressed, in writing, the willingness to engage for a further term of service; (d) the decision shall in no way disadvantage any public officer employed on permanent terms; and (e) the decision is made at least three months before the expiry of the affected public officer's term of contract."
 60. The Applicant submitted that the mere fact that the 1st and 2nd Respondent offered her a new contract, albeit an unlawful six-month one, for the position of Assistant Manager Finance & Accounts after the expiry of her initial three-year term, inherently indicates that the position itself was not redundant and the workload justified continued engagement. Had the workload not justified further engagement, no contract, lawful or otherwise, would have been offered. The continued existence of her role implies the necessity of her services.
 61. It was submitted that the Applicant expected her performance to be appraised and, if favourable, her contract renewed for the full term in line with Clause 2.5 & 2.6 of KYEB's Human Resource Policy and Procedures Manual of 2022. The fact that the Expiry of Contract Notice dated 14.10.2024 did not contain the results of the Applicant's performance appraisal, further highlights the Respondent's procedural failure in denying renewal based on performance, which was stipulated as the only condition.
 62. The Applicant submitted that she had expressed, in writing, the willingness to engage for a further term as she timeously wrote to the 2nd Respondent on 16th May 2024 and on 29th May 2024 seeking a renewal of her employment contract. This written expression of willingness, made well in advance of her contract expiry, clearly meets the statutory provision.



63. The Applicant submitted that the requirement that the decision shall in no way disadvantage any public officer employed on permanent terms is not contested because if it were, the Respondent should have received communication to support the same.
64. It is the Applicant's submission that her constitutional rights under Articles 41 on fair labour practices, Article 47 on fair administrative action and Article 236 on protection of public officers have been infringed. These violations including the issuance of a defective or unlawful contract, failure to appraise and communicate outcome, and disregard for renewal timelines, establish a prima facie case with a likelihood of success.
65. The Applicant submitted that her unlawful six-month contract has since expired as of 31st May 2025. If the Court does not intervene urgently and grant interim relief, she is apprehensive that the Respondents may proceed to terminate her services, thereby foreclosing the Applicant's central prayer that her three-year contract be renewed in accordance with the law and the Respondent's policy.
66. The Applicant submitted that it is trite law that a petition challenging the legality of a decision or an order becomes academic where the decision or the order is acted upon before the Court can pronounce itself. In most instances, once the impugned decision is acted upon, the substratum of the petition shall be lost.
67. The Applicant submitted that while she is still on duty, she is apprehensive that without the interim relief sought, she will lose her job without due process, and the remedy of constructive renewal will be rendered impractical and unenforceable, as she would no longer be in service.
68. The Applicant submitted that there is no prejudice to be suffered by the 1st and 2nd Respondents in the event the conservatory orders which guarantee the Applicant's continued employment are issued to preserve the substratum of the Petition. She cited *Cheruiyot v Board of Trustees, Commodities Fund. & 2 others* [2022] eKLR where the court granted conservatory orders to preserve the substratum of the petition on account of the fact that there would be no prejudice occasioned to the Respondents and the Interested Party.
69. It is the Applicant's submission that this court should intervene to preserve the status quo ante by restraining the Respondents from acting on the impugned contract or terminating the Applicant's employment pending the hearing and determination of the petition.
70. It was submitted that the Applicant holds a critical finance role in the 1st Respondent's institution, a public office. The 1st and 2nd Respondents' own conduct of offering the Applicant a further term despite having denied her a proper renewal, demonstrates that she remains a valuable resource, and her continued presence is both beneficial and nondisruptive to the public entity. Therefore, public interest favourably supports the grant of conservatory orders sought by the Applicant.
71. On cost, it was submitted that the case meets the threshold for the grant of conservatory orders, thus, the Applicant is entitled to costs of this Application.

Respondents' Submissions

72. The Respondents submitted on two issues: whether the 6 months' contract dated 6th December, 2024 is unlawful, illegal, null and void as it violates Section 45 (1) of the *Public Service Commission Act, 2017*; and whether the Applicant is entitled to the orders sought in the application.
73. On the first issue, the Respondent submitted that the 1st Respondent clearly indicated in the minutes of 11th October, 2024 that the Applicant's contract dated 21st November, 2021 could not be renewed as there was no renewal clause. Further, even if there was a renewal clause the request for renewal of



- the contract was not automatic as the 1st Respondent is required to consider the same taking various considerations such as the performance of the Applicant, the provisions of the Human Resource Policy and Procedures Manual obtaining at the time, the [Employment Act](#) and other relevant laws and regulations, the conduct of the Applicant including any misfeasance of disciplinary matters involving the Applicant.
74. The Respondents submitted that the 6 months' contract was an extension of the earlier contract dated 21st November, 2021 and this was to allow for determination of the adverse findings against the Applicant contained in the Report of the Inspector General of State Corporations dated 21st November, 2024 as stated in the letter dated 29th November 2024 by the Chairman of SCAC. The 2nd Respondent's letter of 29th November, 2024 to the Applicant stated as follows: "Following the Special Board Meeting held today, 29th November 2024 the Board through State Corporations Advisory Committee (SCAC) guidance has granted you a new contract for a period of six (6) months effective 1st December 2024."
 75. It was submitted that Respondents and other Government agencies were required to consider the Report by Inspector General of State Corporations and take the necessary action as per the recommendations contained therein. Therefore, the extension of the contract was for the said purpose and the same did not amount to a renewal of the contract dated 21st November, 2021.
 76. The Respondents submitted that section 45 (1) of the [Public Service Commission Act](#), does not apply and the said contract was valid and lawful.
 77. The Respondents submitted that the Applicant's assertion that she was not aware of the role of the State Corporations Advisory Committee and the Inspector General of State Corporations in the issuance of the contract 6th December, 2024 is not true. The Report is clear that due to the actions of the Applicant together with other staff of KYEB named therein public funds were lost and which the 1st Respondent was required to determine the actual loss suffered by KYEB.
 78. The Respondent submitted that application was filed on 26th May, 2025 just 5 days before the expiry of the contract. It is clear that it is not made in good faith as it was brought after the Applicant had served the entire term of the contract. This application is therefore intended to prolong the Applicant's tenure as the Assistant Manager Finance and Accounts without any employment contract between her and KYEB. The Respondents contend that this is illegal and unlawful especially taking into account that the Applicant is still earning salaries and other emoluments after the expiry of the contract from public funds contrary to Article 201 (d) and (e) of [the Constitution](#) on principles of public finance.
 79. The Respondents submitted that they did not discriminate against the Petitioner by granting her a 6 months' contract as this was to enable KYEB act on the Report of the Inspector General of State Corporations. This was for the benefit of KYEB as the employer as well as the country as a whole since through the said process any loss that may have been suffered by KYEB in the flawed procurement process would be determined and the culprits surcharged for the same. They cited *Songole v Nairobi City Water & Sewerage Co. [2023] KEELRC 2801 (KLR)*.
 80. On the second issue, the Respondents submitted that the Petitioner signed the 6 months' contract and was aware of the date of its expiry. The Petitioner only rushed to court at the eve of its expiry. The contract came to an end on 31st May, 2025 and there is no employment contract that exists between the parties. The orders sought cannot therefore be granted as the contract has since expired as there is nothing to suspend or set aside.



81. It is the Respondents' case that they did not provide express, clear and unambiguous promise to the Petitioner that the 2021 contract would be renewed since that was no renewal clause in the said contract. The Petitioner has not proved the doctrine of legitimate expectation as provided in *Keroche Industries Ltd v Commissioner General of Kenya Revenue Authority & Others* (2007) eKLR 240 and *Communication Commission of Kenya & 5 Others v Royal Media Services & 5 Others S.C.* Petition Nos. 14, 14A 148 and 14C of 2014 in which the Supreme Court provided the requirements that a party must meet before relying on the doctrine of legitimate expectation. These are:
- “(a) That there was express, clear and unambiguous promise and that the promise was not kept;
 - (b) That as a result, the decision made in breach of that promise affected him by depriving him of some benefit or advantage which either;
 - i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do and until there has been communicated to him some rational grounds for withdrawing It on which he has been given an opportunity to comment; or
 - ii) he has received an assurance from the decision maker that they will not be withdrawn without giving him first an opportunity of advancing reason for contending that they should not be withdrawn.
 - (c) The expectation must itself be legitimate, reasonable and not contrary to the express provisions of the law.”
82. The Respondent submitted that the Petitioner has not proved that the Respondent applied unfair labour practices in failing to renew the contract and in issuing a 6 months' contract. The Respondent simply adhered to the terms of the 2021 contract and the Human Resource Policy and Procedures Manual, March 2022 that was In force at the time. Clause 2.3.1 of the Manual provided that appointments at KYEB shall be based on permanent, contract and casual terms of service. KYEB was therefore not unfair in failing to renew the contract and in issuing a 6 months' contract.
83. The Respondents further submitted that parties are bound by the terms of the contract that they have executed and cannot seek the Court's intervention to rewrite the contract.
84. It is the Respondents' submission that the orders sought cannot be granted in view of the moratorium made vide the Circular by the Chief of Staff and Head of Public Service dated 16th May, 2025 halted any recruitment and renewal of contracts for Chief Executive Officers or any other officers serving on contract terms at the lapse of their current tenure.
85. The Respondent submitted that the accountable and confidential public documents that the Applicant has attached to her supporting and supplementary affidavits being the Board Minutes and Decisions, the KYEB'S Organizational Structure, Grading and Staff Establishment and KYEB'S Human Resource Policy and Procedures Manual, 2022 and copies of Elijah Muli's contracts were irregularly and illegally obtained. The Applicant has not disclosed the source of the said documents and/or how she obtained them and which is contrary to the provisions of the *Evidence Act* and the *Access to Information Act*. The said documents should therefore be expunged from the record.



86. They submitted that in *Kenya Railways Corporation & 2 others v Okoit & 3 others* [2023] KESC 38 (KLR) wherein the Supreme Court held the *Access to Information Act* was enacted to give effect to Article 35 of *the Constitution* and sets out procedures to be followed when requesting information from public bodies and that these provisions enable citizens to access information by first requesting for the information from the relevant State Agency. The Court held that the right to institute an action in court could only crystallize once a citizen has requested the information from the State and the request had been denied or not provided. The Petitioners did not request to be provided with the information they relied on.
87. They continued to cite the court's holding which read: "To admit illegally obtained documents was detrimental to the administration of Justice and the provisions of Article 50 (40 of *the Constitution*. Allowing such documents was akin to sanitizing illicit actions of the 1st, 2nd and 3rd Respondents of irregularly obtaining evidence in violation of Article 31 of *the Constitution* on the right to privacy of communication. Further, such documents adduced by the 1st and 3rd Respondents were of utmost confidentiality and related to communication within Government circles, between civil servants, relating to Government engagement and operations.
- "Even if the authenticity of the documents was not questioned by the appellants, the production of such documents as evidence must be by law. The documents were inadmissible for not having been obtained and adduced in the manner set out under section 80 and 81 of the *Evidence Act* or requested for under Article 35 of *the Constitution*."
88. It is the Respondents' case that the Applicant has not met the requirements for the grant of the orders sought and the application is devoid of any merit.
89. I have considered the averments and submissions of the parties herein. The applicant herein seek orders to suspend and set aside the employment contract dated 6/12/24 which contract was a 6 month contract commencing on 1/12/24 to 31/5/2025.
90. She also sought orders to order the respondents to unconditionally permit continuance of her employment after 31/5/25 without loss of benefits, rank, seniority, salary, allowances and emoluments.
91. In the main petition, the applicants seeks a declaration that the 6 month contract from 1/12/24 to 31/5/25 is unfair, unlawful and constitutes a breach of her rights to legitimate expectation and fair labour practices. She also seeks orders to compel the 1st respondent to review her employment contract beyond May 2025. My reading of the orders sought in the application and in the petition are similar. In essence if this court allows the application, the entire petition will be determined.
92. In the circumstance, I do find that it would not be prudent to determine the petition now and also in view of the fact that the orders asking court to declare the 6 month contract null and void shall be in vain the same having been served and already overtaken by events.
93. I find no reasons to grant any orders at the time. I dismiss the application accordingly and direct the parties to proceed with the main petition. Costs shall be in petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF NOVEMBER 2025.

HELLEN WASILWA
JUDGE

