

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

CAUSE NO. E054 OF 2025

JOHN MBAYA
MATIRI.....CLAIMANT

VERSUS

NATIONAL CEREALS AND PRODUCE
BOARD.....RESPONDENT

RULING

Background

1. The Claimant has instituted these proceedings to challenge the refusal by the Respondent to renew his contract of service. He contends that the Respondent hired his services as its General Manager under a fixed term contract of service with effect 1st February 2019. He avers that the contract was subsequently renewed for three (3) years with effect from 1st February 2022.
2. The Claimant contends that the renewed contract was due to lapse on 31st January 2025. He contends that he applied for its renewal on 1st October 2024 but did not get the Respondent's response. Instead, he avers that the Respondent intends to advertise the position in order to recruit his replacement.

3. The Claimant contends that the Respondent's refusal to renew the contract was influenced by an ongoing anti-corruption case against him. He contends that because the case is yet to be determined, the Respondent should not use it to decline to renew his contract.
4. The Claimant avers that he has legitimate expectation for the contract to be renewed as he has had no performance issues against him. He contends that failure by the Respondent to renew the contract will be tantamount to terminating his employment unfairly. Consequently, he seeks the various reliefs which are set out in the Statement of Claim.
5. Together with the Statement of Claim, the Claimant filed the application dated 28th January 2025. Expressed to be filed under rule 45 of *the Employment and Labour Relations Court (Procedure) Rules*, the application seeks various reliefs to wit the following:-
 - a) Spent.
 - b) Spent.
 - c) That an order of temporary injunction be issued to restrain the Respondent from advertising or commencing the process of recruitment for the position of General Manager pending the hearing and determination of the suit.
 - d) That the court issues directions on costs of the application.

6. The application is reinforced by the grounds that are set out on the face thereof and the supporting affidavit sworn by the Claimant. The aforesaid grounds and affidavit basically reiterate the averments in the Statement of Claim which have been set out earlier in this ruling.
7. The Respondent is opposed to the application. It has presented a replying affidavit sworn by one James Theuri Munyua, its Deputy Human Resource Manager.
8. The Respondent contends that the Claimant was engaged on a fixed term contract for a period of three years as from 1st February 2019. It avers that the Claimant successfully applied for renewal of the contract for a further three years with effect from 1st February 2022.
9. The Respondent avers that the Claimant performed his duties until 2nd May 2024 when he was suspended from employment following a Board resolution to that effect. The Respondent contends that the suspension was to enable investigations against the Claimant on alleged fraud. The Respondent further avers that the investigations led to a decision to charge the Claimant with a corruption offense before the anti-corruption court.
10. The Respondent avers that whilst the Claimant was on suspension, he lodged a request to renew his contract. It contends that the said request was presented to its Board on 30th October 2024 after which it was resolved not to re-engage him.

11. The Respondent avers that the decision not to renew the Claimant's contract was prompted by a Government decision to streamline State Corporations by merging some and doing away with others. It contends that as a result of the aforesaid decision, there was a proposal to merge it (the Respondent) with the Kenya National Trading Corporation. Consequently, it avers that it ceased to undertake staff recruitment, including filling the Claimant's position, pending finalization of the process.
12. The Respondent avers that the Government indeed wrote to it (the Respondent) advising against undertaking new staff recruitments until the process was finalized. As such, it contends that it has not advertised the position that fell vacant after the Claimant's contract lapsed.

Analysis

13. The law which governs the grant of orders of interim injunction is now well settled. Before a court of law can grant an order of temporary injunction, it must satisfy itself that the applicant has satisfied the conditions for grant of the order as prescribed in the case of ***Giella v Cassman Brown 1973 EA***.
14. The applicant must demonstrate that:-
 - a) He has a *prima facie* case with a probability of success.
 - b) If the order of injunction sought is not granted, he will suffer irreparable damage.

- c) If the court is in doubt regarding the first two conditions, it should decide the application on a balance of convenience.
15. The first issue to consider is whether the Claimant has established a *prima facie* case with a probability of success. A *prima facie* case is not synonymous with a case which will ultimately succeed. Rather, it is a case which suggests infringement of the applicant's rights thus requiring further interrogation by the court (***Titus Mulwa Mbui v Mathew Mutunga Mulwa & 2 others [2018] KEHC 3587 (KLR)***).
 16. The evidence on record suggests that the parties to the action had a fixed term contract which was to expire on the last day of January 2025. The evidence further suggests that the Claimant applied for renewal of the contract on 1st October 2024.
 17. Clause three (3) of the contract between the parties dated 1st February 2022 stipulates that if the Claimant desired to have the contract renewed, he was to write to the Respondent at least three months before the lapse of the contract intimating this desire. As such, the Claimant's request for renewal dated 1st October 2024 satisfied this requirement.
 18. The same clause stipulates that once the Claimant lodged the request for renewal of his contract, the Respondent's Board was to consider it (the request) and decide whether to grant the renewal. Evidently and by this clause, the Board

was under no obligation to renew the contract upon receipt of the Claimant's request for renewal. It appears to me that it was left to its (the Board's) discretion to determine whether or not to renew the contract.

19. The position in law is that there is generally no expectation that a fixed term contract of service is to be renewed once it (the contract) gets to its sunset date (***Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki [2017] KECA 194 (KLR)***). As such, an employee is not entitled to anticipate renewal of his contract merely because he lodged an application for its renewal.
20. The Respondent contends that its Board of Directors declined to renew the Claimant's contract due to ongoing government restructuring of State Corporations. The Respondent has presented a letter dated 5th February 2025 from the National Treasury to the parent Ministry directing it to notify the State Corporations under it to suspend any recruitment of staff pending the restructuring exercise.
21. In the court's view, this preliminary material suggests that the Respondent was under no legal obligation to renew the Claimant's contract of service. Further, the material suggests that the Respondent declined the Claimant's request to renew his contract on account of the restructuring process in State Corporations, a factor which appears to have provided legitimate basis for the Respondent's decision.

22. Having regard to the foregoing, the court is not convinced that the Claimant has presented a *prima facie* case with a probability of success. In the premises, it is apparent that he has not satisfied the first condition for the grant of an interim injunction.
23. The Claimant having failed to satisfy the first condition for the grant of an interim injunction, it is not necessary for the court to interrogate the other conditions for grant of this order. As such, the application fails for this reason.

Determination

24. The upshot is that the application dated 28th January 2025 is devoid of merit.
25. Consequently, it is dismissed.
26. Costs of the application shall abide the outcome of the suit.

Dated, signed and delivered on the 28th day of November, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI