Parsaloi & 90 others v MGM Muthu Keekorok Management Limited (Petition E013 of 2015) [2026] KEELRC 244 (KLR) (30 January 2026) (Ruling)

Neutral citation: [2026] KEELRC 244 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

PETITION E013 OF 2015

AN MWAURE, J

JANUARY 30, 2026

BETWEEN

YIAILE PARSALOI & 90 OTHERS & 90 OTHERS ..... APPLICANT

AND

MGM MUTHU KEEKOROK MANAGEMENT LIMITED ..... RESPONDENT

RULING

Introduction

1. The Petitioners/Applicants filed a Notice of Motion dated 1st October 2025 under Certificate of Urgency on the following orders that:

    1. Spent

    2. Pending the hearing and determination of this Application inter partes, an interim injunction be and is hereby issued restraining the Respondent, its agents, assignees, or any person acting under its instructions, from closing down Muthu Keekorok Lodge, declaring any or all of the Petitioners, redundant, terminating their employment or interfering in any manner with the Petitioners' current employment status.

    3. Pending the hearing and determination of this Petition, a mandatory interlocutory injunction be and is hereby issued restraining the Respondent, its servants, or agents from proceeding with the purported closure, redesign, refurbishment, or renovation of Muthu Keekorok Lodge based on the Notice dated 9th September 2025, until all statutory and constitutional rights of the Petitioners are fully protected and declared by this Honourable Court.

    4. The costs of this application.

2. The application is brought under Rule 45(1) of the Employment and Labour Relation Court (Procedure) Rules and sections 4 & 12 of the *Employment and Labour Relations Court Act*.

Petitioners/Applicants' supporting affidavit

3. The application is supported by the affidavit of Wilson Ledama Kapio Seitai, the 10th Petitioner/ Applicant.

4. The Petitioners/Applicants aver that since the Respondent assumed management over four (4) years ago, it has continuously breached labour laws by failing to issue written employment contracts.

5. The Petitioners/Applicants point to a notice issued on 1st February 2024 threatening closure for refurbishment, which was later suspended after a consultative meeting with the union committee on 20th February 2024, where the Respondent promised to maintain existing contracts and conduct a review in the first week of February 2025, a promise never honoured.

6. Despite intervention by the Ministry of Labour through letters dated 15th May 2025 and 9th September 2025, the Petitioners/Applicants aver that the Respondent remained unyielding in conciliation meetings held on 12th August 2025, 9th September 2025, and 22nd September 2025, and instead issued a redundancy notice on 9th September 2025.

7. The Petitioners/Applicants maintain that claims of economic hardship and urgent renovations are false, unsupported by permits, and contradicted by the lodge's operational state.

8. The Petitioners/Applicant further highlight discrimination evidenced in the Respondent's letter of 25th September 2025, which showed that some employees had contracts while others did not.

9. As a result, the Petitioners/Applicants aver that they face irreparable harm to their employment history and future prospects, and urge the court to grant urgent conservatory orders, stressing that the redundancy threat is retaliatory rather than genuine.

Respondent's replying affidavit

10. The Respondent opposed the application vide a replying affidavit sworn by Mihal Mihaylo, the Respondent's General Manager, dated 16th October 2025.

11. The Respondent avers that on or around the year 2022, it entered into a Management Agreement with the previous owners of Keekorok Lodge to manage and run the operations of the lodge, with the final intent being purchasing the lodge.

12. The Respondent avers that the previous owners of the lodge in the Maasai Mara had to sell due to prolonged financial difficulties, and under the governance of the Narok County Council, was obligated to renovate and upgrade the facilities to meet modern hospitality standards, especially after the COVID-19 pandemic hurt tourism.

13. The Respondent avers that the lodge had not been renovated for decades, leaving it uncompetitive compared to newer establishments. To address this, the respondent sought and obtained formal approval from the Narok County Government in late 2022 and early 2023 to carry out renovations, including constructing luxury tents and ancillary facilities. The approval, subject to statutory and environmental compliance, requires the works to begin within 36 months and be completed within five years, remaining valid until 2026.

14. The Respondent avers that it intends to begin renovations within the approved timelines and in compliance with county conditions. In February 2024, it issued a notice of temporary closure to start the works, but employees resisted through illegal strikes, guest lockouts, and even the eviction of the General Manager, forcing the suspension of the renovations to protect the business.

15. The Respondent avers that the renovations were retaliatory, emphasizing that approval had been granted earlier by the Narok County Government and that the decision was commercially motivated to restore competitiveness, improve guest satisfaction, and secure long-term profitability.

16. The Respondent avers that the deteriorated infrastructure and rising operational costs made refurbishment essential for sustaining the lodge.

17. The Respondent avers that the renovation project is an economic necessity due to rising administrative, staff welfare, and maintenance costs, as shown in audited financial statements for 2023 and 2024, alongside a drastic revenue decline in 2024.

18. The Respondent emphasizes that the decision is not retaliatory but essential for sustaining competitiveness and business continuity. Without renovations, the lodge risks closure from deteriorating infrastructure and declining viability.

19. To address this, the Respondent avers that it engaged a contractor who proposed a phased renovation plan lasting 18–24 months, making it clear that employees could not be retained during the renovation period.

20. The Respondent avers that due to the scale of renovations and occupational safety requirements, it was necessary to close the lodge and could not retain guests or employees during the works.

21. On 6th September 2025, the Respondent avers that the Narok County Government was formally notified of the renovation plans, and on 9th September 2025, staff and union representatives were issued a Letter of Intent outlining the redesign, refurbishment, and resulting redundancies.

22. The Respondent avers that it invited staff and union representatives to consultative meetings throughout September 2025 to discuss redundancy terms, but the petitioners and their representatives declined to participate, refusing any engagement on the matter.

23. The Respondent maintains that it has always been willing to engage the petitioners on fair redundancy terms, given that closure for renovations was unavoidable, but accuses the petitioners of obstructing the process by imposing unreasonable demands under the guise of collective bargaining.

24. The Respondent avers that when the business was acquired, all employee dues had been settled, and subsequent employment was on renewable annual contracts as renovations were being planned.

25. The Respondent avers that the minutes from July 2023 and February 2024 confirm settlement of dues and agreement on annual contracts. By February 2025, collective bargaining negotiations with the union were already underway, making individual contract reviews impractical since the Collective Bargaining Agreement(CBA) process was meant to harmonize employment terms for all staff.

26. The Respondent asserts that it has participated in the CBA negotiations in good faith and denies claims of being unyielding, emphasizing that it only resisted proposals that would impose unsustainable financial burdens given the lodge's fragile economic state after years of decline and the impact of COVID-19.

27. The Respondent dismisses the Petitioners' reliance on the lodge's website as proof of full operational viability, noting that online presence does not reflect actual infrastructure or financial conditions.

28. The Respondent reiterates that the renovations are genuine, necessary, and intended to restore competitiveness, and argues that the Petitioners/Applicants have not met the legal threshold for injunctive relief, as they have failed to demonstrate a serious case, irreparable harm, or that the balance of convenience favours them.

29. The Respondent urged the court to dismiss the application dated 1st October 2025 with costs.

30. Parties canvassed the application by way of written submissions.

Petitioner/Applicant's written submissions

31. The Petitioners/Applicants submitted that the Respondent has persistently violated statutory obligations by failing to issue written contracts for over four years, obstructing CBA negotiations, and using closure threats as retaliation against demands for fair labour practices. They contend that the purported redundancy is not genuine, given the respondent's profitability and evidence that renovations could proceed without full closure.

32. The Petitioners/Applicant relied on the case of Giella v Cassman Brown & Co. Ltd [1973] EA 358, which set out the three-principle test for injunctions, and Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] KECA 175 (KLR), which defined a prima facie case. The Petitioners/Applicants also relied on the case of Nguruman Limited V Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR), affirming that injunctions prevent actual, substantial, and demonstrable injury. In the case of Byran Chebii Kipkoech V Barnabas Tuitoek Bargoria & another [2019] eKLR as quoted in the case of Owuor V Ouma, Principal St Stephens Menara Secondary School & 2 others (Cause E055 of 2025) [2025] KEELRC 2819 (KLR), the court stated as follows:

> " The meaning of balance of convenience in favour of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favour of the plaintiff, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendant, if an injunction is granted but the suit ultimately dismissed.
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> ...In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it".

33. The Petitioners/Applicants submitted that the balance of convenience strongly favours them, as their constitutional right to livelihood and fair labour practices outweighs the respondent's commercial interest in renovations, which can be delayed without harm. The Petitioners/Applicants emphasize that constitutional rights must take precedence over commercial convenience.

34. The Petitioners/Applicants submitted that the threatened redundancy and closure are retaliatory, discriminatory, and unlawful, amounting to irreparable harm beyond monetary compensation.

35. The Petitioners/Applicants urge the court to grant the injunction to safeguard their constitutional rights under Articles 41, 47, and 50 of the *Constitution*, and to uphold fairness, dignity, and industrial harmony.

Respondent's submissions

36. The Respondent submitted that the Petitioners/Applicant have not satisfied the legal requirements for granting interim or conservatory orders. The Respondent relied on the case of East African Development Bank v Hyundai Motors Kenya Limited [2006] KECA 397 (KLR) and cited the case of Giella v Cassman Brown & Co Ltd (supra) which laid down the established principles of injunctions which set out that an applicant must demonstrate a prima facie case with a likelihood of success, show that damages would not adequately compensate the harm suffered, and, where doubt exists, the court should resolve the matter based on the balance of convenience.

37. On a prima facie case, the Respondent relied on the case of Mrao Ltd v First American Bank of Kenya Ltd & 2 others (Supra) is more than the mere existence of an arguable issue; it is a case which the evidence demonstrates an identifiable right that has apparently been infringed by the opposite party; thereby disclosing a probability of success at trial.

38. The Respondent submitted that the Petitioners/Applicants have no valid claim since no rights were infringed and thus no prima facie case exists. It is contended that the Petitioners/Applicants' allegations of unfair labour practices under Article 41 of the *Constitution* are misleading, as they were retained on annual contracts after the Respondent lawfully purchased the business and settled all prior employment dues.

39. The Respondent emphasizes that historical service under the former employer is irrelevant, and the Petitioners/Applicant knowingly accepted annual terms during operational changes and renovations, as recorded in a meeting with union representatives. By continuing to work under these agreed terms, the Petitioners effectively affirmed the employment relationship and cannot now repudiate or claim inconsistent rights.

40. The Respondent relied on the case of Kenya Airways Limited v Satwant Singh Flora [2013] KECA 545 (KLR), where the Court, citing Halsbury's Laws of England* (4th Edition, Vol. 16(1A), para. 15), held that:

> "In general, a contract of employment need not be in any particular form. A contract of employment may thus be inferred from conduct which shows that such a contract was intended although never expressed, as where there has in fact been service of the kind usually performed by employees."

41. Similarly, in Ali Abdi Mohamed v Kenya Shell & Company Limited [2017] KECA 590 (KLR), the Court of Appeal held that there existed an enforceable contract between the parties by reason of their conduct, emphasizing that a contract can be inferred from the parties' actions even in the absence of express words. The Petitioners/Applicants are therefore bound by the annual terms agreed upon through their conduct.

42. Furthermore, in Alfred Nyungu Kimungui v Bomas of Kenya [2013] KEELRC 235 (KLR), the Court declined to grant interim relief because, on the prima facie material before it, the employer had reasonable grounds for its decision, making interlocutory intervention unwarranted. Likewise, in the present case, the Respondent has demonstrated prima facie valid grounds for the intended redundancies, and therefore, no interim injunctive relief should issue.

43. The Respondent submitted that Petitioners/Applicants claim they were subjected to abrupt and unlawful termination, but the Respondent argues that no evidence has been provided to show non-compliance with the *Employment Act*, 2007, or any retaliatory intent. The Respondent maintains that all procedural requirements were followed, and without proof to the contrary, the Petitioners cannot reasonably assert that the process was unfair or unconstitutional. Consequently, the Petitioners have failed to establish a prima facie case with a likelihood of success.

44. The Respondent argued that the Petitioners/Applicants will not suffer irreparable harm since any lawful redundancy is fully compensable through monetary entitlements. The Respondent emphasizes that damages are sufficient to remedy the situation and highlights that the Respondent made genuine efforts to consult the Petitioners/Applicants about renovation plans, potential redundancies, and mitigation measures, ensuring they were aware of the process.

45. On irreparable injury, the Respondent contended that the Petitioners/Applicants cannot claim irreparable harm from the redundancy process, as they refused to participate in consultations meant to mitigate its effects, and any lawful redundancy is compensable through statutory and contractual payments under section 40 of the *Employment Act*, 2007. Courts have consistently declined to grant interim relief in employment disputes where damages suffice, as seen in Alfred Nyungu Kimungui v Bomas of Kenya(Supra), where the court stated as follows:

> " The court retains the remedial powers of reinstatement, re-engagement and compensation in event the claim succeeds... The employee suffers nothing which is irremediable."

46. The Respondent further argued that claims of irreversible harm due to age or proximity to retirement mischaracterize employment law, which does not permit forcing employees upon employers. Citing the case of Kenneth Karisa Kasemo v Kenya Bureau of Standards [2013] KECA 486 (KLR), the Respondent emphasizes the sanctity of freely negotiated contracts and the employer's managerial prerogative to restructure operations and lawfully terminate employment.

47. On the balance of convenience, the Respondent relied on the case of Paul Gitonga Wanjau v Gathuthi Tea Factory Company Ltd & 2 others [2016] KEHC 7263 (KLR), the court made a determination as to which party will suffer the greater harm with the outcome of the motion.

48. The Respondent submitted that granting an injunction would cause significant harm by halting essential renovations already approved by the County Government of Narok, leading to escalating financial losses, operational risks, and negative impacts on employment, guest satisfaction, and the wider Maasai Mara tourism economy. Audited financial statements for 2023 and 2024 demonstrate rising costs in maintenance and repairs, underscoring the urgent need for renovations. The Respondent maintains that these harms are real and irreversible, while any loss claimed by the Petitioners is compensable through damages, making the balance of convenience clearly favour the Respondent.

49. The Respondent submitted that the substantive justification and procedural fairness requirements for redundancy were fully met, as set out in section 40 of the *Employment Act* and in the case of Kenya Airways Limited V Aviation & Allied Workers Union, Kenya & 3 others [KECA] 404 (KLR), and the Petitioners/Applicants' allegations were without any legal basis.

50. The Respondent urged the court to dismiss the application with costs.

Analysis and determination

51. The court has considered the application before it and the issue for determination is whether the application is merited.

52. In Travel House Limited & another V Chase Bank [2024] KECA 602 (KLR), the Court of Appeal cited the case of Giella V Cassman Brown Co. Ltd (supra), which gives the principles for injunctions as follows:

> " The long- standing principles expressed in Giella vs. Cassman Brown Co. Ltd require that an applicant should establish a prima facie case with a probability of success; that the applicant stands to suffer irreparable loss which cannot be adequately compensated by an award of damages; and that if the court is in doubt, the application be determined on a balance of convenience."

53. The principles of granting interlocutory injunction are clear as set out in the case of East African Development Bank -vs- Hyundai Motors Kenya Limited (2006) KECA and cited the old age Giella -vs- Cassman Brown & Co. Ltd (Supra) which set the following as established principles of injunctions:-

    i. Demonstration by the Applicant of a prima facie with a likelihood of success.

    ii. Show harm suffered would not be capable of compensation by damages.

    iii. Court to consider balance of convenience.

54. The court finds the Petitioners rights have not been infringed and as for claim of unfair labour practice even if the Petitioners succeed even though the Respondent claim the Petitioners are fixed term contract employees the court can well compensate them with damages.

55. This is supported by the case of ALFRED KIMUNGU KIMUNGUI -VS- BOMAS OF KENYA (Supra) among others where court held: -

> " The court retains the remedial power of restructural re-engagement and compensation in the event the claim succeeds. The employee suffers nothing which is irremediable."

56. The court also considers that employers have right to restructure their operations and lawfully terminate employment as held in Kenneth Karisa Kasemo -vs- Kenya Bureau Of Standards (2013) KECA 486.

57. In this instant case, the Petitioners/Applicants are seeking this Honourable Court's intervention to grant interim and mandatory interlocutory injunctions to safeguard the Petitioners/Applicants' employment rights pending the hearing of the matter. The orders prayed are to restrain the Respondent, its agents, or assignees from closing Muthu Keekorok Lodge, declaring the Petitioners/Applicants redundant, terminating their employment, or interfering with their current status. Additionally, they pray the Respondent be barred from proceeding with the closure, redesign, refurbishment, or renovation of the Lodge based on the Notice dated 9th September 2025 until the Petitioners/Applicants' statutory and constitutional rights are fully protected and determined by the Court.

58. These reliefs are similar to those sought by the Petitioners/Applicants in the substantive Petition. Granting such interim orders at this stage would, in effect, amount to determining the very issues reserved for full hearing, thereby rendering the Petition nugatory and stripping the proceedings of their purpose. To do so would not only pre-empt the adjudication of the main dispute but also undermine the principle of judicial restraint, which requires that interlocutory applications should not usurp or predetermine the merits of the case before trial.

59. The court holds the application is not merited and the main petition should be set down for hearing with immediate effect.

60. Costs will be in the cause.

    Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF JANUARY 2026.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the *Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the *Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE