

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

CAUSE NO. E764 OF 2025

KISEMEI
MUTISYAAPPLICANT

-VERSUS-

RIARA
UNIVERSITYRESPONDENT

RULING

Introduction

ORIGINAL

1. This Ruling relates to the Notice of Motion Application dated 11th December 2025, as subsequently amended, seeking the following primary orders:-

a) That the application be certified as urgent.

b) That conservatory/interim orders be granted to maintain the Claimant's employment status pending determination of the main claim.

c) That the non-renewal letter issued by the Respondent on 2nd October 2025 be quashed.

d) A declaration that the Respondent engaged in unfair labour practices in failing to renew the Claimant's contract.

e) Compensation or special damages for the alleged retaliatory and unfair non-renewal.

f) An order that the amended statement of claim be deemed properly on record.

g) Any other relief the court deems just.

2. The Application is supported by the Affidavit of the Claimant/Applicant, Kisemei Mutisya, sworn on 11th December 2025 and further elaborated in his Replying Affidavit sworn on 30th December 2025. The application is vehemently opposed by the Respondent through the Replying Affidavit of its Vice-Chancellor, Prof. Robert Gateru, sworn on 14th December 2025. The claimant urged the application virtually on 22nd January 2026 and Ms. Ngonde for the respondent opposed it.

Background

3. The Applicant was employed by the Respondent University as a Lecturer in the Department of International Relations and Diplomacy under a three-year fixed-term contract, effective 1st January 2023 to 31st December 2025. The contract was contained in an offer letter dated 6th December 2022. Clause 1 of the contract, stipulated that renewal was not automatic, but was conditional upon the Claimant submitting a formal application for renewal at least three months prior to the expiry date.

4. A history of dispute precedes the current application. The Claimant avers he was unlawfully dismissed in November 2023 but later he was reinstated following legal intervention. He further claims unpaid allowances for 32 months when he served as the Departmental Examination Coordinator without a formal contract or remuneration. The Respondent contests the said claim, stating it only became aware of the said role in July 2025.

5. The catalyst for the present application is a letter from the Respondent's Vice-Chancellor dated 2nd October 2025 titled "END OF CONTRACT NOTIFICATION". It informed the Claimant that his contract would expire on 31st December 2025 and would not be renewed. The letter provided no reasons for the non-renewal.
6. The Claimant filed the instant urgent application on 11th December 2025, contending that the non-renewal decision was retaliatory, procedurally unfair, violated his legitimate expectation of renewal, and that it was issued while related disputes were active before this Court. He argues that without conservatory orders, he will suffer irreparable harm including loss of employment, academic standing, and professional continuity, rendering the main suit nugatory.
7. The Respondent's case, as crystallized in its affidavits and submissions, is straightforward, that is, the contract expired by effluxion of time. It was categorical that the obligation to initiate renewal lay squarely with the Claimant under Clause 1, which he failed to do by not applying within the stipulated

period. Consequently, the Respondent maintained that it was under no obligation to renew the contract or provide reasons for non-renewal. It denied all allegations of retaliation, victimization, and procedural unfairness, framing the non-renewal as a natural, contractual consequence.

Issues for Determination

8. Having carefully considered the Notice of Motion, the affidavits and written submissions, the issue for determination is whether orders sought should be granted.

Analysis and Findings

Conservatory Orders to keep the claimant in employment

9. The grant of conservatory orders is an equitable and discretionary remedy, guided by well-established principles. As enunciated in a legion of cases including, **Board of Management of Uhuru Secondary School vs City County Director of Education & 2 Others [2015] eKLR**

and **Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others [2014] eKLR**, the applicant must demonstrate:-

- i. An arguable prima facie case with a likelihood of success.
- ii. That he will suffer irreparable harm which cannot be compensated by damages if the orders are not granted.
- iii. That the balance of convenience tilts in his favour.
- iv. That the grant of the order will not prejudice public interest.

ORIGINAL

10. A Prima Facie Case is very key in interlocutory application like the one before the court. the court of appeal defined a prima facie case in **Mrao Limited v First American Bank of Kenya & 2 others [2003] eKLR** thus:-

“It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party

as to call for an explanation or rebuttal from the latter.”

11. The question that arises is whether in this case the claimant has demonstrated that there exists a right which has apparently been infringed or is about to be infringed. He argued that his continued performance of substantive duties beyond the purported renewal deadline, coupled with the Respondent’s silence and lack of prior warning about his failure to apply, created a legitimate expectation that his contract would be considered for renewal.

12. The Respondent, relying heavily on the express terms of Clause 1 of the contract and Section 10(3)(c) of the Employment Act, posited that there is no prima facie case. It argues that in fixed-term contracts, the employer has no duty to give reasons for non-renewal upon expiry. It asserts that the doctrine of legitimate expectation cannot override clear, unambiguous contractual terms, especially where the employee’s own inaction (failure to apply) triggers the non-renewal.

13. There is no dispute that the claimant's contract of employment was for a fixed term of three years. clause 1 of the contract provided that:-

"1. Contract period:

You have been contracted to serve the University for an initial term of three (3) years, renewable, with effect from 1st January 2023. Three (3) months to the expiry of the employment contract, you may apply for renewal consideration which shall be effected on mutual agreement between the parties."

14. The Claimant admitted that he did not apply for renewal three months before the expiry date as required in the above clause but by a letter dated 2nd October 2025, the employer served him with a non-renewal notice. The letter stated that:-

***“This letter serves as formal notification that your employment contract with Riara University is due to expire on 31st December 2025 and the University has no intention of renewing it. In this regard, be advised that the contract will lapse on the stated date and shall not be renewed.*”**

Kindly ensure that all the pending responsibilities, including teaching and examination obligations, are completed and submitted before the contract end date, after which normal process will follow.”

15. There can be no doubt that the Claimant’s contract of employment lapsed on 31st December 2025 and the conservatory order sought cannot issue. The court cannot compel parties to continue in a contract after the mutually agreed termination date has come. Besides, a court of law does not have the jurisdiction to rewrite contracts for the parties. It can only give effect to the terms negotiated by the parties in exercise of their freedom of contract.

16. As regards the issue of irreparable harm and adequacy of damages, the Applicant contended that loss of employment in these circumstances, tainted by alleged constitutional violations, retaliation and damage to his academic career, is not a mere contractual breach compensable by damages. He argues that his professional standing, continuity in academia, and the very subject matter of the suit; his employment will be extinguished.

17. The Respondent counters that loss of employment upon the expiry of a fixed-term contract is precisely the contingency contemplated by the parties and is adequately remediable through damages, should liability be proven. It emphasizes that the Applicant remained employed and received all benefits until the contract's natural expiry on 31st December 2025.

18. I have already observed that the court does not exist to rewrite contracts between parties but to give effect to the

terms of the contract as voluntarily negotiated between the parties. The failure by the employer to renew the contract does not in any way violate the Claimant's constitutional or other terms of the contract. The contract lapsed automatically by effluxion of the time as mutually agreed by the parties in their contract dated 6th December 2022.

19. As the notice of the non-renewal stated, other processes would follow after the end date. By the said statement, the employer acknowledged that there were obligations incidental to the contract coming to an end. I have also perused the Statement of Claim, and it is clear that the claimant has quantified the reliefs sought in monetary terms. In **Ngurumani Ltd v. Jan Bonde Nielsen & 2 others [2014]eKLR** the Court of Appeal held that:-

“ the court must be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, will be irreparable.

In other words, if the damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage".

20. Having found that the claimant has voluntarily agreed that his contract term would lapse on 31st December 2025, and that he has quantified his claim into monetary terms, I hold that failure to grant the interlocutory orders sought would not occasion on him irreparable harm.
21. Since the Claimant has not established a prima facie case and that no irreparable harm will be suffered if interlocutory orders sought are withheld, I see no point of considering the issue of balance of convenience and public interest. The said consideration would have been necessary if the court was in doubt about the injury to be suffered or if the orders sought would transcend the interest of the parties to the suit.

22. Prayer (c), (d), and (e) in the motion are not available for consideration at this stage since they are final in nature. The purpose of an interlocutory application is to preserve the subject matter, not to grant final relief. Consequently, I decline to address them in this ruling.

23. Prayer (f) in the motion asks to deem the amended statement of claim annexed as being properly on record and if necessary, to grant leave to amend. The request is vague, I appreciate that the Claimant did not have the benefit of counsel. Having said that, I must hold that the alleged amended pleading is defective and it does not meet the legal threshold of an amended pleading. The same is therefore not admitted on record but I give the claimant 14 days to amend his pleadings if he so desires.

24. In conclusion, the I make the following orders:-

- a. The notice of motion dated 11th December 2025 is dismissed with costs to the respondent.

- b. The claimant is granted leave of 14 days to amend his Statement of Claim and serve the respondent.
- c. The respondent is granted a corresponding leave to amend its Response if the need arises.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 19TH DAY OF FEBRUARY, 2026.

ONESMUS MAKAU

JUDGE.

Appearance:

The Claimant/Applicant present in person.

Mutinda for the Respondent