



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT KISII**

**PETITION NO. E007 OF 2025**

IN THE MATTER OF VIOLATION OF ARTICLE 10, 19, 22, 23, 27,  
28, 35, 41, 47, 77(1), 73 OF THE CONSTITUTION

**AND**

IN THE MATTER OF DISCRIMINATION, INHUMANE AND  
DEGRADING TREATMENT, SLAVERY AND SERVITUDE, DENIAL OF  
ACCESS TO INFORMATION, UNFAIR LABOUR PRACTICE AND  
UNFAIR ADMINISTRATIVE ACTION IN PROMOTIONAL  
APPOINTMENTS AND BREACH OF KISII NATIONAL POLYTECHNIC  
HUMAN RESOURCE MANUAL, 2021

**AND**

IN THE MATTER OF THE KISII NATIONAL POLYTECHNIC CAREER  
PROGRESSION GUIDELINES

**AND**

IN THE MATTER OF CONTRAVENTION OF CLAUSE 2(1)(2) OF THE  
SECOND SCHEDULE OF THE TVET ACT

**AND**

IN THE MATTER OF VIOLATION OF SECTIONS 6, 7, 8, 9, 10, 12, 25, 28, 32, AND 33 OF THE LEADERSHIP AND INTEGRITY ACT 2012

**AND**

IN THE MATTER OF DENIAL OF SECTION 5 OF THE ACCESS TO INFORMATION ACT, 2016

**AND**

IN THE MATTER OF A DETERMINATION OF THE VALIDITY OF THE PETITIONER'S REMOVAL FROM OFFICE, APPOINTMENTS OF INDIVIDUALS IN ACTING CAPACITY BY THE KISII NATIONAL POLYTECHNIC GOVERNING COUNCIL AND AS TO WHETHER PARAGRAPH 8 OF THE KISII NATIONAL POLYTECHNIC LEGAL ORDER, CLAUSE 2 OF THE SECOND SCHEDULE OF THE TECHNICAL AND VOCATIONAL EDUCATION TRAINING (TVET) ACT, 2013 IS INCONSISTENT WITH SECTION 36(1) AND 37 OF THE PUBLIC SERVICE ACT AND ARTICLE 232(1)(a)(b)(e) and (g) OF THE CONSTITUTION AND AS TO WHETHER SECTION 30(1) OF THE TVET ACT 2013 IS INCONSISTENT WITH ARTICLE 234(2)(A) (II) OF THE CONSTITUTION OF KENYA

**BETWEEN**

RONALD ATURA OMESA.....

....**PETITIONER**

**VERSUS**

AKOLA JOHN OTIENO, THE PRINCIPAL  
KISII NATIONAL POLYTECHNIC.....**1<sup>ST</sup>**

**RESPONDENT**

JANET MONGINA ACTING HUMAN RESOURCE OFFICER,  
KISII NATIONAL POLYTECHNIC.....**2<sup>ND</sup> RESPONDENT**

THE CHAIRMAN KISII NATIONAL  
POLYTECHNIC GOVERNING COUNCIL.....**3<sup>RD</sup>**

**RESPONDENT**

**RULING**

1. The Petitioner/Applicant vide an application dated 11<sup>th</sup>

**September** 2025 seeks the following orders:-

(a) *Spent.*

(b) That the Petitioner's salary be reinstated with immediate effect pending the hearing and determination of the current suit.

(c) The Honourable court be pleased to issue interim conservatory orders prohibiting the 1<sup>st</sup> and 4<sup>th</sup> Respondent from making any appointments or advertisement for the position of procurement and/or Deputy Procurement officer pending the hearing and determination of this application.

(d) The Honourable court be pleased to issue interim conservatory orders prohibiting the 1<sup>st</sup> and 4<sup>th</sup> Respondent from making any appointments or advertisement for the position of procurement and or Deputy Procurement officer pending the hearing and determination of this Petition.

(e) The Honourable court be pleased to issue interim conservatory orders prohibiting the 1<sup>st</sup> and 4<sup>th</sup> Respondent from evaluating, award and signing of contracts from the advert dated 10<sup>th</sup> June 2025 until this application is heard and determined.

(f) The Honourable court be pleased to issue interim conservatory orders prohibiting the 1<sup>st</sup> and 4<sup>th</sup> Respondent from evaluating, award and signing of contracts from the advert dated 10<sup>th</sup> June 2025 until this Petition is heard and determined.

(g) The Honourable court be pleased to issue conservatory orders prohibiting the 1<sup>st</sup> and 4<sup>th</sup> Respondent from making any appointments or advertisement for the position of procurement and or Deputy Procurement officer until this application is heard and determined

(h) Costs of this application.

2. The motion was premised on the grounds on its face as well as supported by the affidavit of the Petitioner.

3. The application was to be canvassed by way of submissions and despite accommodation made by the Court, the parties did not comply with the directives of the Court on filing submissions or with Rule 24(1) of the Employment and Labour Relations Court (Procedure) Rules 2024. Be that as it may, the Court has considered the law and applicable legal precedent in coming to the decision herein.

#### Disposition

4. The Petitioner was dislodged from his perch as the procurement officer at Kisii Polytechnic. He sought injunctive relief from this Court vide his motion and therefore it behoves the Court to enumerate and consider the factors a court has to assess in reaching a determination as to whether there can be orders staying the decision of the 1<sup>st</sup> - 4<sup>th</sup> Respondents.

5. When a court is contemplating the grant or denial of injunctive relief, the case of **Giella v Cassman Brown & Co Ltd [1973] EA 358** is instructive. The oft cited case of **Giella v Cassman Brown** (*supra*) sets a 3-tier test for a court to consider. An applicant must:

- (a) establish a *prima facie* case with a probability of success;
- (b) show they will suffer irreparable injury not compensable by damages; and
- (c) prove the balance of convenience favours them.

6. The Court discerns there is a serious matter to be decided in as far as the position of procurement officer at Kisii Polytechnic is concerned. This discharges the *prima facie* element of the case. The second limb is somewhat problematic as when the Court considers whether damages are an adequate remedy, it returns an answer that is in the positive. The Petitioner moved the Court in August and September 2025 after the Kisii Polytechnic made moves to replace him in June 2025. By the time the Petitioner moved the Court, a lot of water had passed under that bridge of halting the recruitment and therefore whitling his chances at obtaining injunctive relief. If he is successful in the petition, will damages be an adequate remedy? I hazard to say yes. As such the Petitioner is unable to surmount the second tier in the **Giella v Cassman Brown** case.

7. Who does the balance of convenience favour? The balance tilts towards the maintenance of *status quo* as upsetting the present and obtaining circumstances will not be ideal. Should the Petitioner succeed here, there will be remedies available to him upon the determination of the Petition including damages or even reinstatement. As such the order that clearly commends itself is to decline the invitation to grant injunctive relief. Since the parties declined to abide the instructions of the Court, the motion is dismissed with no order as to costs.

It is so ordered.

**Dated and delivered at Kisii this 26<sup>th</sup> day of February**

**2026**

**Nzioki wa Makau, MCI Arb.  
JUDGE**