

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC PETITION NO. E208 OF 2024

JACKLINE NJERI.....PETITIONER

VERSUS

NEW KENYA CO-OPERATIVE CREMARIES
LTD.....RESPONDENT

JUDGMENT

The suit is premised on the amended petition dated 31/1/2025 in which the Petitioner seeks the following reliefs:-

- a) Damages for unfair termination in the sum of Kshs. 14,016,096.00.
- b) Kshs. 12,069,416.00 being the income the Petitioner would have earned over the remainder of the contract period.
- c) Payment in lieu of three (3) months' notice at Kshs. 1,168,008.00.
- d) Leave pay in the sum of Kshs. 1,727,630.00
- e) Gratuity in the sum of Kshs. 3,675,389.76.
- f) Damages for emotional and psychological trauma.
- g) Interest on (a), (b), (c), (d) and (e) above at court rates until payment in full.
- h) Costs of the petition
- i) Any other orders and/or reliefs as the court may deem fit to grant.

The facts of the petition are that the Petitioner was employed as Chief Manager, Human Resource Administration on 24/6/2024. On 12/12/2024, the Respondents Acting Managing Director issued the Petitioner with a letter dated 12/12/2024 terminating the employment of the Petitioner with immediate effect

The Petitioner had occupied the position following an open competitive public recruitment exercise the Position having fallen vacant in December 2023 and advertisement of the position on 29/2/2024. The Petitioner had applied for the position and was invited to attend interview on 30/4/2024 and 3/5/2025.

Meanwhile on 14/3/2024, the court issued an order in ELRC No. E004 of 2024 Dr. Magdalene Koki Muthoka versus New Kenya Co-operative Creameries Limited barring the Respondent from filling the said position of Chief Manager, human Resource and Administration. The order of the court barring recruitment dated 14/3/2024 was vacated by the court on 14/6/2024, hence the Respondent was at liberty to continue with the recruitment exercise.

The Respondent by a letter dated 24/6/2024, appointed the Petitioner to the post of Chief Manager, Human Resource and Administration which employment continued on 1/7/2024.

The Acting Manager Director, without lawful cause purported to terminate the Petitioner's employment with immediate effect on 13/12/2024 on the pretext that her appointment as Chief Manager, Human Resource and Administration was carried out irregularly in contempt of an allegedly subsisting court order issued on 14/3/2024.

That this arbitrary conduct by the Respondent violated the Petitioner's rights guaranteed under Article 27, 28, 41 and 47 of the constitution read with section 4 of the Fair Administrative Action Act.

That the said termination was without notice, notice to show cause, or any opportunity to be heard. That that was an affront to section 5(3) of the Employment Act 2007 which echoes the words of Article 27(3) of the Constitution of Kenya 2010 against any form of discrimination and equality in employment below the law. That the conduct amounted to unfair labour practice and was also unfair, unlawful and unreasonable administrative action.

Wherefore the Petitioner prays for the reliefs set out in the amended petition.

Replying Affidavit

The Respondent filed a replying affidavit of Samuel Ichua, the Acting Manager Director of the Respondent who admits that the Petitioner was employed by the Respondent on 18/10/2023 as the Head of Employee Relations with effect from January 2024.

Meanwhile, the position of Chief Manager, Human Resource and Administration fell vacant and the Petitioner was appointed to the position in Acting capacity on 2/1/2024.

The previous holder of the position moved court in ELRC E024 of 2024 (Supra) and obtained interim injunction from Rika J. on 14/3/2024.

That the Respondent's company secretary and Chief Manager Legal Affairs did not inform the Respondents Board of Directors of the court order and as a result of the lapse the Board carried out interviews to fill the vacant position of Chief Manager Human Resource and

Administration between 30/4/2024 and 3/5/2024 during the pendency of the court order.

That subsequently the order was set aside by the court on 14/6/2024.

The former Managing Director by a letter dated 24/6/2024 appointed the Petitioner to the substantive position with effect from 7/5/2024.

Meanwhile, the former Managing Director's term came to an end in August 2024 together with the term of the Board. A new Board was appointed and upon reviewing the matter, the Board concluded that the recruitment and appointment of the Petitioner was irregular in that it was done in contravention of a court order. The Board held an urgent meeting on 10/12/2024 and resolved to revoke the Petitioner's appointment by a letter dated 13/12/2024.

That the appointment of the Petitioner was null and void and the petition lacks merit and it be dismissed accordingly.

Further Affidavit

The Petitioner filed further affidavit traversing the replying affidavit and placing the Respondent to strict proof thereof. The Petitioner reiterates the invitation to apply for the vacant position took place on 29/4/2024. Interview took place at 30/4/2024 and 3/5/2024; court order was brought to the Respondent's attention on 9/5/2024 and the Respondent halted the recruitment process. The results of the recruitment process as announced on 24/6/2024 and the Petitioner was duly appointed by a letter dated 24/6/2024 after the court order of 14/3/2024.

The activities done before the issuance of the court order were proper. Once the court order was received, the process was halted. It is clear therefore, invitation; shortlisting and interviews were done before the issuance of the court order and the appointment was done upon vacation of the court order.

That the termination lack any basis and the petition be allowed.

DETERMINATION

The parties filed written submission, which the court has carefully considered with together with the deposition by the parties.

In the court's ruling in respect to the interlocutory notice of motion dated 18/12/2024, the court had found as follows:-

“The court has determined that the appointment letter of the Petitioner for the position of Chief Manager Human Resource and Administration is dated 24/6/2024. That the orders of the court stopping filing of this position were issued on 14/3/2024 and the said orders were vacated on 14/6/2024. The court is satisfied that the recruitment process in which the Petitioner had participated had commenced on 29/2/2024 when this position was advertised before the court order was issued.”

The court goes further to make a finding of fact that the invitation to apply for the position and the interviews including that of the Petitioner in respect of the subject position happened before the court order was issued and the process was halted once the court order was notified to the Respondent on 9/5/2024. That once the court order was lifted on

14/6/2024 the letter of appointment was issued by the outgoing Managing Director on 24/6/2024.

Clearly, the Acting Managing Director, upon assuming office misled the whole situation and clearly misled the new Board to terminate the appointment of the Petitioner without notice, opportunity to be heard and on a completely false premise for reasons best known to the Acting Managing Director. The decision to terminate the appointment of the Petitioner, who was at before then, Acting in that position was arbitrary, unreasonable, unlawful and ill informed.

In the Ruling of the court dated 27/2/2025, the court had equally found as follows:-

“The Respondent has not contested that it did not follow any due process in terminating the appointment of the Petitioner and was not contested with that the termination was for no fault by the Petitioner.”

The position remains after the full consideration of the petition on the merits. The court had in the interim invited the Respondent to review its position and consider reinstating the Petitioner to the position of Chief Manager, Human Resource and Administration for the termination was based on an error of judgment on the part of the Acting Manager Director and the new Board.

The court finds that the Respondent has persisted in its erroneous position that the recruitment of the Petitioner was done in violation of a court order of this court.

The court finds that the Petitioner has proved her case on a balance of probability. The Respondent violated her constitutional rights as guaranteed under Articles 27, 41(1) and 47(1) read with section 4 of the Fair Administrative Action Act 2015 and section 5 of the Employment Act 2007 and allows the petition as against the Respondent.

The court finds that the Petitioner was removed from her position for no fault at all based on misjudgment and/or malice on the part of the Acting Manager and the new Board of Management.

The matter is recent and the court finds impediment for reinstating the Petitioner to the position she had been recently appointed to. This court on 27/2/2025 enjoined the Respondent from that position until the petition is heard and determined. The Claimant had passed a competitive interview and lawful appointment to the position. The Petitioner has legitimate expectation to be reinstated to the position which she held..... to in an Acting capacity and there is no evidence before court that she was in any way unable to discharge her duties in that capacity. No evidence has been placed before court by the Respondent which would hinder the smooth assumption by the Petitioner to the position she was legitimately, appointed to.

The Petitioner would suffer great prejudice were the court to hold otherwise.

The court has relied on the Court of Appeal decision in Cargill Kenya Ltd versus Mwaka and 3 others [2021] KECA 115 (KLR) where the court stated:

“Employers fell within the category of persons whose action, commission of decision affected the legal rights or interest of employees” while elaborating the need for fair administrative action under Article 47(1) of the Constitution.

The court would be remiss to allow a public body to treat the Petitioner differently in pursuit of an unexplained cause. The Petitioner is entitled to the impugned appointment met in equal measure as any other Kenyan failure to reinstate her would aggravate the violation by the Respondent of the Petitioner's rights under Articles 27, 41(1) and 47 of the Constitution of Kenya 2010.

In the final analysis judgment is entered in favour of the Petitioner against the Respondent as follows:-

- (a) An order directing the Respondent to reinstate the Petitioner to the position of Chief Manager, Human Resource and Administration without any loss of termination due to her by fact of the appointment from the date of termination.
- (b) The arrear salary and benefits payable to the Petitioner will serve as general damages in compensation and vindication of the Petitioner in respect of the violation of the Petitioner's rights guaranteed under Articles 27, 41 and 47 of the Constitution of Kenya 2010.
- (c) Interest at court rates from date of judgment till payment in full.
- (d) Costs to follow the outcome.

Dated at Nairobi this 2nd day of March 2026



Mathews Nduma

JUDGE

Dated, signed and delivered in open court at Nairobi this 11th day of
March 2026

J.W KELI

JUDGE

In presence of:

Mr. Olao for Petitioner

Mr. Wataka for Respondent

Mr. Kemboi – Court Assistant