

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT KERICHO**

**ELRC CAUSE NO. E021 OF 2025**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**LANGAT GEOFFREY..... 1<sup>ST</sup>**

**CLAIMANT**

**WINNIE CHEROTICH RONO..... 2<sup>ND</sup>**

**CLAIMANT**

**VERSUS**

**COUNTY GOVERNMENT OF BOMET..... 1<sup>ST</sup>**

**RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD..... 2<sup>ND</sup>**

**RESPONDENT**

**RULING**

**Introduction**

1. The Claimants/Applicants filed a Notice of Motion dated 2<sup>nd</sup> July 2025 under Certificate of Urgency seeking the following orders that:

***1. Spent***

***2. Pending the hearing and determination of this Application and Claim, there be a stay of the decision of the Respondent in revoking the advertisement dated 17<sup>th</sup> April 2025 until the matter is heard and determined.***

**3. Pending hearing and determination the conservatory order be issued to 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay lumpsum of Kenya Shillings Kshs.508,662/=, suit cost of Kshs.30,000/= and court rolling interest from 3<sup>rd</sup> April,2024 to the date of payment to the 2<sup>nd</sup> Claimant, faulu check off account pending hearing and determination bar small claims court from auctioning the Claimants/Applicants' property on overdue checkoff loan caused by Respondents' decline to remit instalment to the loan facility.**

**4. This court grants any further order that it deems fit**

2. The application is brought under **sections 1A, 1B, 3 and 3A of the Civil Procedure Act and Order 53 Rules (3) of the Civil Procedure Rules, 2010, the Constitution of Kenya and all other enabling laws.**

### **Claimant/Applicants' case**

3. The application is supported by both affidavits of the Claimants/Applicant, both dated even date as the application.

4. The Claimants/Applicants aver that they applied for an advertised youth member position under the County Policing Authority in March 2015, were successfully appointed, gazetted, and issued with an employment letter. Initially offered a two-year contract, they were asked to convert it into permanent and pensionable terms, but instead received a six-month contract on 15<sup>th</sup> March 2015, later renewed on 7<sup>th</sup> December 2015 into a five-year contract pending confirmation.
5. The Claimants/Applicant allege consistent service for over eight years with satisfactory performance, but faced salary delays, missed payments, and eventual displacement without consultation or valid termination letters.
6. In January 2019, the Claimants/Applicants lodged complaints with an ad hoc labour committee, which ordered confirmation of contract staff within 30 days, but respondents allegedly defied this.
7. The Claimants/Applicants claim threats of termination after regime change in 2022, salary stoppages in January 2023, and denial of key employment

documents, such as payslips and termination letters, which hindered alternative employment.

8. The Claimants/Applicants argue that the termination was politically motivated, unjust, and contrary to constitutional and statutory protections, causing financial loss, family hardship, and reputational damage, while expressing willingness to settle the matter amicably outside court.

### **1<sup>st</sup> Respondent's replying affidavit**

9. The 1<sup>st</sup> Respondent opposed the application vide a replying affidavit sworn by Simeon Langat, the 1<sup>st</sup> Respondent County Secretary, on 29<sup>th</sup> July 2025.
10. The 1<sup>st</sup> Respondent avers that the interim prayers sought in the Notice of Motion dated 2<sup>nd</sup> July 2025 are overtaken by events and based on personal grievances unrelated to the county's recruitment advertisement of 17<sup>th</sup> April 2025.
11. The 1<sup>st</sup> Respondent denies liability for debts or loans tied to the Claimants/Applicants, stressing they were not parties to such contracts and that the applicants were not employees of the county.

12. The 1<sup>st</sup> Respondent avers that they dispute the Claimant/Applicants' alleged appointments, noting the absence of supporting documents for their supposed appointment as Youth Coordinator on 14<sup>th</sup> March 2015, later renewed on 18<sup>th</sup> September 2015, and subsequent contracts, including a two-year term and a three-month extension issued on 30<sup>th</sup> September 2022, which lapsed in December 2022.
13. The 1<sup>st</sup> Respondent concluded by stating that the petition is defective, unsubstantiated, and incompetent, urging dismissal with costs.

### **2<sup>nd</sup> Respondent's replying affidavit**

14. The 2<sup>nd</sup> Respondent also opposed the application vide a replying affidavit sworn by Emmy Chesang, the 2<sup>nd</sup> Respondent's Ag. Chief Executive Officer, dated 4<sup>th</sup> August 2025.
15. The 2<sup>nd</sup> Respondent avers that an order in the Kericho Petition has already stayed recruitment advertisements via Petition No. E009 of 2025, with a ruling set for 30<sup>th</sup> September, 2025.

16. The 2<sup>nd</sup> Respondent avers that the interim orders sought are not truly interim since they would effectively determine the entire suit.
17. The 2<sup>nd</sup> Respondent avers that conservatory orders are only applicable in matters of public interest, whereas this case is private.
18. The 2<sup>nd</sup> Respondent avers that it had previously advertised for a County Policing Authority member under the youth category in 2015, pursuant to section 41 of the National Police Service Act, which requires the Governor to appoint at least six members from specified categories of county residents especially from the business sector, community based organizations; women, persons with special needs, religious organization; and the youth.
19. The 2<sup>nd</sup> Respondent avers that members appointed by the Governor to the County Policing Authority serve two-year terms, renewable once, and that these positions are not part of the County Public Service. Recruitment was carried out competitively under section 41(2) of the National Police Service Act, resulting in three successful candidates being nominated to the County Secretary for appointment

letters. The 1<sup>st</sup> Claimant/Applicant was not among them, and appointments could only be issued by the Governor, not the Board.

20. The 2<sup>nd</sup> Respondent further avers that the County Executive Officer issues the appointment letters for County Public Service officers, and that the contracts allegedly given to the claimants were unlawful, having bypassed Section 59 of the County Governments Act. Finally, the 2<sup>nd</sup> Respondent stresses that Section 66 of the County Governments Act and constitutional provisions require positions to be advertised widely to ensure merit, fair competition, and experience are considered in recruitment.
21. The 2<sup>nd</sup> Respondent avers that the Claimants/Applicants' alleged appointments and contracts were irregular, illegal, and issued without its approval, making them null and void.
22. The 2<sup>nd</sup> Respondent avers that the Claimants/Applicants were complicit in these irregularities and therefore undeserving of equitable remedies.

23. The 2<sup>nd</sup> Respondent emphasizes that positions such as Youth Coordinator were never advertised or established, that no regime change occurred in 2022, and that it has no custody of the documents cited by the Claimants/Applicants.
24. The 2<sup>nd</sup> Respondent denies awareness of any political affiliations, rejects claims of contract extensions to 2031, and stresses that any engagements with the claimants were irregular.
25. The 2<sup>nd</sup> Respondent further avers that the April 2025 advertisement was open to all qualified applicants based on merit and fair competition, disclaims responsibility for loan remittances tied to the 2<sup>nd</sup> Claimant/Applicant, and denies any role in the traumatic events alleged.
26. The 2<sup>nd</sup> Respondent avers that on 6<sup>th</sup> August 2021, the Board issued an advisory to the 1<sup>st</sup> Respondent highlighting that several engagements had been carried out without consultation or approval. It directed that all such illegal contracts be terminated immediately.

27. Parties were directed to file their respective written submissions.

### **Claimants/Applicants' written submissions**

28. The Claimants/Applicants submitted that the Respondents unfairly terminated their employment and repeatedly displaced them through recruitment advertisements, in violation of **sections 35, 45, and 46 of the Employment Act, 2007 (referred herein as the Act)**. They denied confirmation and promotion contrary to **sections 10(5), 10(9), and 13 of the Act**, withheld annual and maternity leave in breach of **sections 28 and 29 of the Act**, and failed to pay allowances and entitlements in contravention of **sections 5(3), 5(5), and 6 of the Act**. The Respondents' actions also breached contractual obligations **under section 19(6) of the Act**, while undermining constitutional guarantees of fair labour practices, equality, dignity, and socio-economic rights under **Articles 41(2), 43, and 75(a) of the Constitution**. These violations have caused severe personal, financial, and professional harm, including loss of pregnancies, underpayment, and risk of

property auction necessitating urgent court intervention to restrain further recruitment and issuance of new contracts to prevent irreparable harm.

29. The Claimants/Applicant placed reliance **on Kenya County Government Workers Union v County Government of Bomet & Another [2026] KEELRC 328 (KLR)** and **Joel Kiprono Rop v County Secretary - County Government of Bomet, County Public Service Board-Bomet County & County Government of Bomet [2020] KEELRC 1431 (KLR)**, where the courts held that Respondents cannot terminate experienced employees politically to replace them, and must confirm employees before recruiting others.
30. The Claimant/Applicant further relied on **Rop v Unilever Kenya Limited [2023] KEELRC 1342 (KLR)**, where Justice Ocharo Kebira, referencing the case of **Ibrahim Haji Ali v Gulf African Bank [2020]eKLR**, found termination discriminatory and procedurally unfair, amounting to unfair labour practice.

31. Additionally, reliance is placed on **Joseph Kareko Gikonjo v County Government of Lamu (2021) KLR**, where the court cited **Hogg v Dover College [1990] ICR 39** and **Alcan Extrusions v Yates & Others [1996] IRLR 327**, affirming that employees may sue for breach of contract when employers unilaterally vary terms. The respondents' defiance of conservatory orders in ELRC/E016/2022 and violations of **sections 17, 18(7), 19, 21, 50, and 87(1-3) of the Act**, read with Sections 13 and 48 of the Small Claims Court Act, and **Article 251 of the Constitution**, establish a compelling case for reinstatement, confirmation, or termination benefits with full compensation for damages, losses, and injuries suffered.
32. The Claimants/Applicant urged the court to allow the application as prayed.

### **1<sup>st</sup> Respondent's written submissions**

33. The 1<sup>st</sup> Respondent submitted that the Claimants/Applicants' request for stay orders does not meet the required legal threshold. The 1<sup>st</sup> Respondent argued that their application has already been overtaken by events, since a separate court order in

Kericho Petition No. E009 of 2025 is in force. The 1<sup>st</sup> Respondent also argued that the Claimants/Applicants failed to provide evidence of employment with the respondents or show how the cancellation of the 17<sup>th</sup> April, 2025 advertisement affected them.

Furthermore, the Respondents were not parties to the small claims matter and should not be compelled to pay the decretal sum.

34. The 1<sup>st</sup> Respondent relied on Petition No. 005 of 2024 in Bungoma, where conservatory orders were denied due to insufficient evidence.

35. The 1<sup>st</sup> Respondent contended that the Claimant/Applicants have not established a prima facie case with a likelihood of success, as their notice of motion was unsupported by an affidavit or annexures, rendering it fatally defective under **Order 51 rule 4 of the Civil Procedure Rules, 2010**. The 1<sup>st</sup> Respondent further argued that failure to grant conservatory orders would not render the claim nugatory since the respondents were not parties to the contract or claim and cannot be compelled to pay a debt without being heard. The 1<sup>st</sup> Respondent relied on the case of ELRC Nairobi E072 of 2024, wherein

the court dismissed the application for conservatory orders, failing to meet the threshold of granting conservatory orders.

36. The 1<sup>st</sup> Respondent urged the dismissal of the application with costs for lack of merit.

### **2<sup>nd</sup> Respondent's written submissions**

37. The 2<sup>nd</sup> Respondent submitted that the Claimants/Applicants' application lacks merit and should be dismissed. The 2<sup>nd</sup> Respondent contended that conservatory orders are only available in matters of public interest, not private disputes, citing the Supreme Court decision in ***Munya v Kithinji & 2 others [2014] KESC 30 (KLR)***, which held:

***“Conservatory orders bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of***

***irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”***

38. The 2<sup>nd</sup> Respondent submitted that the Claimants/Applicants were not lawfully appointed by the County Public Service Board, which is the only body mandated under **sections 59, 63, and 65 of the County Governments Act** to make appointments. Any alleged appointments were therefore illegal, null, and void ab initio. The 2<sup>nd</sup> Respondent relied on the case of ***Kilelson Mutai v Governor County Govt of Bomet & 2 others [2021] KEELRC 1277 (KLR)***, where the court held:

***“It is therefore apparent that the appointment of the claimant by the***

***Governor on permanent and pensionable terms was irregular and illegal, and this court cannot be the source of sanctioning an illegality.”***

39. The 2<sup>nd</sup> Respondent concluded by stating that the Claimants/Applicants have not demonstrated an arguable case, nor that the substratum of the petition would be rendered nugatory without conservatory orders, and that no public interest is served.

40. Accordingly, the 2<sup>nd</sup> Respondent urged the court to dismiss the application with costs.

**Analysis and determination**

41. The court has considered the application, supporting affidavit, replying affidavits, together with the rival submissions on record; the issue for determination is whether the Claimant has proved a case to grant Conservatory Orders as prayed.

42. The court reiterates the case of **Munya v Kithinji & 2 others(supra)**, which has been referenced in the earlier part of this ruling on conservatory orders.

43. In ***Giella v Cassman Brown & Co Ltd [1973] EA 358***, the court emphasized that interim injunctions are meant to preserve the status quo, not to determine the substantive dispute. Similarly, in *Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] KECA 606 (KLR)*, the Court of Appeal cautioned that interim measures must not grant the very orders that would be issued if the suit succeeds, as this would effectively dispose of the case at the interlocutory stage.
44. In this instant case, the Claimants/Applicants are asking this Court to issue orders of stay and conservatory orders. Specifically, they seek to stay the Respondents' decision to revoke the job advertisement dated 17<sup>th</sup> April 2025 until the case is fully heard and determined. In addition, they request a conservatory order compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay a lump sum of Kshs.508,662/=, suit costs of Kshs. 30,000/=, and rolling court interest from 3<sup>rd</sup> April 2024 to the date of payment into the claimant's Faulu check-off account. Also, to prevent the Small Claims Court from auctioning their property due to overdue loan repayments, which arose because

the respondents failed to remit instalments to the loan facility.

45. The Claimants/Applicants averred that they were employed by the Respondents and they were duly appointed to youth members positions under the County Policing Authority in March 2015, served diligently for over eight years, but later suffered salary delays, stoppages, and eventual displacement without valid termination letters or consultation. Despite an *ad hoc* labour committee ordering confirmation of contract staff in 2019, the Respondents allegedly defied the directive. After a regime change in 2022, the Claimants/Applicants faced politically motivated threats of termination, denial of payslips, and stoppage of salaries in January 2023. They argue that the termination was unjust, discriminatory, and contrary to constitutional and statutory protections, causing financial loss, family hardship, and reputational damage, while also expressing readiness to resolve the matter amicably outside court.

46. The 1<sup>st</sup> Respondent argued that the prayers sought were overtaken by events, based on personal grievances, and that the Claimant/Applicants were

never employees nor entitled to loans, urging dismissal of the application. The 2<sup>nd</sup> Respondent, on the other hand, argued that the recruitment had already been stayed in Petition No. E009 of 2025, and that the orders sought are not interim but final, and conservatory orders apply only for the public interest cases. It emphasized that appointments under **section 41 of the National Police Service Act** are limited to two-year terms, are not part of the County Public Service, and that the Claimants/Applicants' alleged contracts were irregular, unlawful, and bypassed **sections 59 and 66 of the County Governments Act**. The 2<sup>nd</sup> Respondent denied regime change, political influence, or responsibility for loans, stressing the April 2025 advertisement was open to all qualified applicants.

47. The prayers by the Claimants in the Application are more or less the same to their prayers in main claim dated 4<sup>th</sup> July 2025 with just a few differences. The prayers in the claim would cover all the issues as in the application. The best thing is to proceed with the claim so they can be dealt with during trial.

48. The issues raised by the Claimants who are acting in person are best interrogated in a full hearing to get full clarity of the entire suit as the issues are not that clear from the application. It is trite that conservatory orders are meant to preserve the *status quo* and not to determine the main substantive dispute.

49. The issues raised by the Respondents in their submissions also are weighty and it is better they be interrogated during a full hearing.

50. Having analysed the pleading and submissions and the decisional laws the courts finds the grounds raised by the Claimants to support granting of conservatory orders as set out in the case of **GIELLA - VS- CASSMAN BROWN & CO. 1973 EA 358** have not been met.

These are establishment of a *prima facie* case with a probability of success and secondly, will the Applicant suffer injury which will not be sufficiently compensated with damages and finally, if the court is in doubt it will decide the application on a balance of convenience.

51. The above three weighty principals have not been proved in this application. The court therefore holds

the Claimants application has not been proved and is therefore dismissed.

52. Each party will bear their costs of this application.

It is so ordered.

**Dated, Signed and Delivered virtually at Nakuru  
this 12<sup>th</sup> Day of  
March, 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**