

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

E.L.R.C PETITION NO.E054 OF 2026

IN THE MATTER OF ARTICLES 2, 19, 20(1-4), 21(1), 22(1), 23 (1) & (3), 24(1), 25(c) 28, 41(1), 47, 48, 50(1), 159, 162(2)(a), 232, 236(b), 258(1) AND 259(1) OF THE CONSTITUTION OF KENYA, 2010

=AND=

IN THE MATTER OF RULE 2, 4, 10, 11, 13 AND 14 OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

=AND=

IN THE MATTER OF CONTRAVENTION OF THE PETITIONER'S FUNDAMENTAL RIGHTS AND FREEDOM PROTECTED BY ARTICLES 28, 41, 47 AND 50 OF THE CONSTITUTION OF KENYA

=AND=

IN THE MATTER OF THE EMPLOYMENT ACT 2007

=BETWEEN=

BEATRICE WANGARI GICHINI.....PETITIONER

=VERSUS=

KENYA ELECTRICITY GENERATING

COMPANY LTD (KENGEN).....1<sup>ST</sup> RESPONDENT

KENYA NATIONAL EXAMINATION COUNCIL (KNEC).....2<sup>ND</sup> RESPONDENT

=AND=

RURII SECONDARY SCHOOL.....INTERESTED  
PARTY

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

RULING

1) The applicant filed application by way of Notice of Motion brought under Articles 19, 20, 21, 22, 23, 162(2)(b) of the Constitution, rules 4, 13, 19 & 23 of the Mutunga Rules; sections 12 of the Environment and Land Court Act, Cap 8D, Order 51 rule 1 of the Civil Procedure, Cap 21 Laws of Kenya together with all other enabling provisions of the law for Orders:-

a) SPENT

b) THAT pending the hearing of the Application inter-partes a conservatory Order be and is hereby issued suspending the implementation of the 1st Respondent’s decision vide a letter dated 29th January, 2026 purporting to dismiss the Petitioner/Applicant from gainful employment as the Principal Technician, Cartography on allegation of forgery.

c) THAT pending the hearing of the Application inter-partes, the Honourable Court be pleased to issue an interim order of injunction prohibiting the 1st Respondent by itself, its agents or any other person or entity acting of its behalf from advertising, recruiting, appointing or hiring any persons to occupy the position of Principal Technician, Cartography recently held by the Applicant herein.

d) THAT pending the hearing of the Application inter-partes, a conservatory order be and is hereby issued allowing the Petitioner/Applicant to resume her duties with the 1st Respondent.

- e) THAT pending the hearing of the Application inter-partes, an interim order do issue compelling the 2<sup>nd</sup> Respondent, Kenya National Examinations Council (KNEC), to forthwith furnish the Petitioner/Applicant with certified copies of her KSCE certificate, the corresponding examination transcript, and any correspondence exchanged between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that informed the decision to terminate the Petitioner's/Applicant's employment;
- f) THAT pending the hearing and determination of the Applicant's Petition, a conservatory order be and is hereby issued suspending and quashing the 1<sup>st</sup> Respondent's decision contained in the letter dated 29<sup>th</sup> January, 2026 dismissing the Petitioner/Applicant from gainful employment as the Principal Technician, Cartography on allegation of forgery.
- g) THAT pending the hearing and determination of the Applicant's Petition the Honourable Court be pleased to issue an interim order of injunction prohibiting the 1<sup>st</sup> Respondent by itself, its agents or any other person or entity acting of its behalf from advertising, recruiting, appointing or hiring any persons to occupy the position of Principal Technician, Cartography recently held by the Applicant herein.
- h) THAT pending the hearing and determination of the Applicant's Petition, a conservatory order be and is hereby issued allowing the Petitioner/Applicant to resume her duties with the 1<sup>st</sup> Respondent. 9. THAT the Honourable court be pleased to grant any other or further orders it deems fit, just and fair in the circumstances of this case in order to meet the ends of justice.
- i) THAT the costs of this Application be provided for.

## 2) Grounds of the application

- i. On or about 18th July 2008, the Petitioner/Applicant attended an interview with the 1st Respondent following her application for employment. During the interview, the Petitioner/Applicant was required to present original and certified copies of all her requisite academic and professional documents in support of her candidature which she did to the satisfaction of the interviewing panel.
- ii. By a letter dated 30th October 2008, the 1st Respondent offered the Petitioner/Applicant employment as a Cartographer III, which offer she formally accepted. Subsequently, the parties executed an employment agreement dated 1st December, 2008 which expressly set out the terms and conditions of service.
- iii. Clause 2 of the Employment Agreement stipulated that the Petitioner/Applicant will be subjected to a probationary period of six (6) months and may be reduced or extended in writing at the discretion of the 1st Respondent herein.
- iv. The Petitioner/Applicant successfully completed her probation period and was confirmed in employment by letter dated 29th April 2009.
- v. From confirmation in 2009 until December 2024, a period of approximately Fifteen (15) years, the Petitioner/Applicant served the 1st Respondent diligently, faithfully and without blemish. At no time was she reprimanded, warned, surcharged, or disciplined for misconduct or dishonesty.
- vi. On 11th December 2024, the Petitioner/Applicant was issued with a Notice to Show Cause alleging fraudulent misrepresentation, namely that she knowingly submitted a forged KCSE Certificate in which the Mathematics grade had allegedly been altered from a D Plain to a C Plain.
- vii. The allegation further cited breach of Clause 11.11(ii) and (iv) of the 1st Respondent's Human Resource & Administration Policy on Employee Discipline

and required the Petitioner to respond to the allegation within five (5) days of the letter.

- viii. By a detailed written response dated 17th December 2024, the Petitioner categorically denied forging her certificate and provided a comprehensive explanation regarding the condition of the certificate and prior engagements with the 2nd Respondent and the Ministry of Education regarding authentication of her KCSE certificate. She did not admit to any fraud or misrepresentation.
- ix. Notwithstanding the explanation, the 1st Respondent issued an invitation to disciplinary hearing dated 12th March 2025.
- ix. The Petitioner/Applicant attended the disciplinary hearing as required and reiterated her explanation, maintaining her innocence and willingness to provide any verification necessary.
- x. The disciplinary process remained inexplicably dormant for several months until 29th January, 2026 when the Petitioner/Applicant was shockingly issued with a dismissal from employment letter in circumstances that flagrantly violate her fundamental constitutional rights under Articles 28, 41, 47, 50(1) 232 and 236 of the Constitution, 2010 particularly since the dismissal was effected without adherence to due process, fairness, rationality or proportionality.
- xi. The allegation of fraud are out-rightly misinformed, inaccurate, unfounded and/or baseless for reasons that, the interested party herein being the Petitioner's alma mater, vide a letter dated 13th December, 2024 formally confirmed, verified and authenticated the Petitioner's /Applicant's examination results as per its records. This official confirmation effectively dismantled the substratum of the forgery accusation thus rendering the impugned dismissal unjustified.

- xii. Even assuming that the mathematics grade was altered (which allegation is refuted), there is no suggestion whatsoever that such alteration was tactful or beneficial to the Petitioner/Applicant since there is no suggestion that a grade C Plain in mathematics was mandatory or a pre-qualification requirement for the appointment of the Petitioner/Applicant to the position of Cartographer III. Therefore, the allegations lacked materiality and could not lawfully trigger a dismissal.
- xiii. Crucially, the Petitioner/Applicant undertook her professional training at The Kenya Polytechnic where she graduated in the year 2000 with a Diploma in Cartography. Prior to that, the Petitioner/Applicant had successfully completed a bridging course in Mathematics culminating in the award of a Certificate on 28th November, 1997 from the same institution. It was principally on the strength of these qualifications that the Petitioner/Applicant was first employed by the 1st Respondent as cartographer III on 30th October, 2008. Through diligence and exemplary service, she rose through the ranks to becoming a senior Technician-Cartography on 28th June 2019 and was subsequently promoted to her most recent position of a Principal Technician-Cartography.
- xiv. The Petitioner's/Applicant's career progression through the ranks was not only a reflection of her diligence, competent and satisfactory performance over the years, but was also partly occasioned by periodic reviews and restructuring undertaken by the Government through its Human Resource Instruments and Policies applicable to public service institutions.
- xv. In sum, the impugned dismissal is patently unreasonable and unlawful in that:
- a) At no point did the Petitioner/Applicant misrepresented her mathematics grade prior or during her employment with the 1st Respondent. In fact, she pursued a

bridging course in mathematics and excelled at it as evidenced by the Applicant's Certificate of merit dated 28th November, 1997 as well as her Diploma in Cartography Certificate issued in the year 2000;

b) The alleged irregularity occurred over Fifteen (15) years prior to the dismissal, yet the 1st Respondent had the opportunity to verify the certificate at recruitment in 2008 and at confirmation in 2009;

c) The Petitioner was confirmed in employment in 2009 after proper vetting and thereafter served for over sixteen (16) years without any disciplinary record, creating a legitimate expectation of security of tenure protected under Article 41 of the Constitution;

d) No forensic, expert, or KNEC verification evidence was provided to prove that the Petitioner knowingly committed fraud;

e) The purported disciplinary process was inordinately delayed, procedurally defective and appears to have been conducted with a predetermined outcome, contrary to the constitutional dictates of fair administrative action and fair hearing; and,

f) The sanction of dismissal was grossly disproportionate, punitive and irrational in view of the foregoing and partly in light of her long and unblemished service to the 1st Respondent.

g) The dismissal failed to consider rationality, the Petitioner's long service, and lack of any demonstrable fraudulent intent, rendering the sanction excessive, punitive, and unlawful. xvii. The Petitioner/Applicant has now been treated to an abrupt loss of income, reputational damage, professional stagnation, public ridicule, anxiety and/or severe psychological distress without lawful justification. The

continued existence of the dismissal gravely undermine her dignity and economic security thus necessitating prompt intervention by this Honourable Court.

- xvi. Additionally, there exists an imminent risk that the 1st Respondent may proceed to advertise, recruit, appoint, hire or otherwise fill the Petitioner's position during the pendency of this Petition. Should this occur, the substratum of the Petition and Application will be irreparably undermined rendering any favourable judgment nugatory.
  - xvii. The circumstances of the Petition and the Application disclose a clear case of constitutional transgression thus warranting urgent judicial intervention to preserve the status quo, prevent continued infringement of the Petitioner's/Applicant's fundamental rights and forestall a miscarriage of justice.
  - xviii. It is therefore of paramount importance that this Honourable court certifies this application as extremely urgent and grant the interim conservatory orders sought in the interest of justice.
  - xix. This Honourable Court is well suited with the requisite powers to grant the interim reliefs sought in order to meet the ends of justice. This Application is further supported on grounds deponed to in the Affidavit sworn by Beatrice Wangari Gichini and on other grounds to be adduced at the hearing thereof.
- 3) The application was further supported by affidavit of the applicant dated 13<sup>th</sup> February 2026 where she annexed her employment documents, notice to show cause dated 11<sup>th</sup> December 2024, response dated 17<sup>th</sup> December 2024, invitation to disciplinary process dated 12<sup>th</sup> March 2025 and letter of dismissal dated 29<sup>th</sup> January 2026. The applicant

produced letter by the interested party, her alma mater on the results and letter dated 10<sup>th</sup> February 2026 addressed to the 2<sup>nd</sup> respondent on the authentication of the impugned certificate.

- 4) The 2<sup>nd</sup> respondent filed replying affidavit sworn on the 23<sup>rd</sup> March 2026 by Jane Nabiki Kashu, who stated she was the head of section of archives and records in the research and quality assurance division of the 2<sup>nd</sup> respondent. The deponent confirmed having received the impugned certificate from the 1<sup>st</sup> respondent and responded vide letter dated 7<sup>th</sup> January 2025 and confirmed that the document was had grade of mathematics altered from D plain to C plain and thus not genuine. The deponent further confirmed receipt of the letter by the applicant's advocates and stated it responded vide letter dated 16<sup>th</sup> February 2026 and reiterated the certificate of the applicant was a forgery(JNK-5).

#### Decision

- 5) The applicant seeks grant of conservatory order of status quo ante to preserve position previously held with the 1<sup>st</sup> respondent pending the determination of the petition. During oral arguments the 1<sup>st</sup> respondent opposed the grant of the order stating it would affect their managerial operations and further relied on section 49(3) of the employment act to wit- '(3) Where in the opinion of a labour officer an employee's summary dismissal or termination of employment was unfair, the labour officer may recommend to the employer to—
  - (a) reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated; or
  - (b) re-engage the employee in work comparable to that in which the

employee was employed prior to his dismissal, or other reasonably suitable work, at the same wage.’’ The 1<sup>st</sup> respondent urged that the applicant could be reinstated to same or comparable work thus no basis of the status quo ante order.

- 6) In employment and labor relations, the conservation of position (or the "right to return") during a pending application for reinstatement is a principle designed to protect workers from permanently losing their livelihood while a legal dispute over their dismissal is being resolved. The primary legal basis is the restoration of the status quo ante, which is defined in the Black's Law Dictionary as the situation that existed before something else occurred (Garner, 10<sup>th</sup> ed). If a dismissal is found to be unjustified, the law views the employment relationship as never having been legally severed. Therefore, "conserving" the position ensures that the remedy of reinstatement remains physically and legally possible. The applicant relied on correspondence by the interested party and stated it cleared the issue of the validity of the certificate.
  
- 7) The court must establish a prima facie case is disclosed by the applicant for grant of the status quo ante order. In Kenya threshold for granting interlocutory injunction has not changed since the celebrated decision in **Giella v Cassman brown [1973] EA 358** where the following principles were set out:
  - a) That the applicant must establish a prima facie case with probability of success.
  - b) That the applicant must demonstrate that he stands to suffer irreparable harm if the order is withheld.
  - c) If the court is in doubt, it should determine the application on a balance of convenience.

### Prima facie case

8) Prima facie case was defined by the Court of Appeal in *Mrao Limited v First American limited & 2 others* [2003] e KLR as follows: -

“...in civil cases is a case in which on the material presented to the court a tribunal properly directed itself will conclude that there exists a right which apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.” The dismissal of the applicant from employment was pursuant to notice to show cause dated 11<sup>th</sup> December 2024 issued by the 1<sup>st</sup> respondent to the applicant as follows- ‘Following a due diligence exercise undertaken by Management on the academic and professional certificates of all employees, it is alleged that the Certificate you submitted purporting to have sat the Kenya Certificate of Secondary Education (KCSE) in 1994, Index No. 201312/17 at Rurii Secondary School is not a legitimate document. The particulars are that; 1. The Grade in Mathematics, Code (121) has been altered from Grade D (Plain) to C (Plain). Please note that submitting a certificate for purposes of securing employment or making the employer to rely on the same in reviewing your terms of service, when you know it to be legitimate amounts to gross misconduct and contravenes Claus- IL 4 (v) of Human Resource & Administration Policy on Employee Discipline. The Clause states as follows; "Dishonesty reflecting adversely on the honesty and moral integrity of the employee amounts to a major offence". In the circumstance, you are hereby required to show cause in writing within 5 days upon receipt of this letter, as to why disciplinary action (including dismissal) should not be taken against you for the gross misconduct. Please note that if we do not hear from you within the stipulated time, we shall proceed to institute the appropriate disciplinary measures against you without any further reference. ’

9) The 2<sup>nd</sup> respondent filed a replying affidavit and confirmed that the KCSE certificate held by the applicant was not genuine and annexed documents in support. The 1<sup>st</sup> respondent pursuant to letter by the Public Service Commission to authenticate certificates by its employees wrote to the 2<sup>nd</sup> respondent vide letter dated 17<sup>th</sup> July 2024 and sought for authentication of certificates of as follows- ‘certificate copies held by 315 KenGen staff indicate that the respective candidates undertook various courses with KNEC. As part of the company policy and procedures, it is a requirement that we conduct due diligence on our staff. This is to kindly request you to confirm whether the copies of certificates presented to you are genuine.’ In response vide letter dated 7<sup>th</sup> January 2025 the 2<sup>nd</sup> respondent confirmed the KCSE certificate held by the applicant was not genuine as follows-‘GICHINI BEATRICE WANGARI: YEAR 1994 KCSE EXAMINATION; RURII SECONDARY SCHOOL; INDEX NUMBER 201312/017. 10.1 A candidate by the name Gichini Beatrice Wangari registered and sat for the year 1994 KCSE examination at Rurii Secondary School under index number 201312/017. 11.0 12.0 10.2 However, the grade in Mathematics (code 121) has been altered from D (Plain) to C (Plain)’

10) The applicant was issued with a letter dated 29<sup>th</sup> January 2026 disclosing the reason for dismissal as follows- ‘it established that the certificate you submitted purporting to have sat for the Kenya Certificate of Secondary Education (KCSE) in 1994, (Index No. 201312/17) at Rurii Secondary School was not a legitimate document. Specifically, the score in Mathematics, Code 21) was altered from Grade D (Plain) to Grade C (Plain), as confirmed by the Kenya National Examinations Council (KNEC). As such, you violated Clause 11.11 (ii) (vi) of Human Resource Policy on Employee Discipline, which states as follows; - "Dishonesty reflecting adversely on the honesty and moral integrity of the employee

amounts to a major offence liable for dismissal". In arriving at the decision, the Committee considered your oral submissions as well as your response to the Notice to Show Cause. “

11) The 2<sup>nd</sup> respondent is the author of the impugned certificate and is the only one with authority to authenticate the validity of the certificate and not extraneous institutions like the interested party. The impugned dismissal arose from the said declared ‘not genuine KCSE certificate’ by the 2<sup>nd</sup> respondent, its author. Consequently, there is no prima facie case established to justify grant of Order of status quo ante.

12) The application is held to lack merit and is dismissed.

13) It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF MARCH, 2026.

J. W. KELI,

JUDGE.

IN THE PRESENCE OF:

Applicant – Mutua

1st Respondent-Mbabu

2<sup>nd</sup> Respondent -Absent

Interested Party-Absent