



**Gisore v Aga Khan University Hospital (Cause E413 of 2024)
[2025] KEELRC 273 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 273 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E413 OF 2024
S RADIDO, J
FEBRUARY 6, 2025**

BETWEEN

DR EDNAH KEMUNTO GISORE CLAIMANT

AND

AGA KHAN UNIVERSITY HOSPITAL RESPONDENT

RULING

1. Dr Ednah Kemunto Gisore (the applicant) sued Aga Khan University Hospital (the Respondent) on 30 May 2024, alleging breach of contract (irregular cancellation of clinical privileges).
2. Filed together with the Memorandum of Claim was a Motion dated 29 May 2024 seeking orders:
 - i. ...
 - ii. This Honourable Court be pleased to suspend the letter from the Respondent herein dated 23rd May 2024 to the extent it purports to cancel the clinical privileges of the Claimant on the 31st May 2024 pending the hearing of this application inter-partes.
 - iii. This Honourable Court be pleased to suspend the letter from the Respondent herein dated 23rd May 2024 to the extent it purports to cancel the clinical privileges of the Claimant on the 31st May 2024 pending the hearing and determination of the Memorandum of Claim herein.
 - iv. That costs of this application and Petition (sic) be provided for.
3. The main grounds in support of the Motion were that the Respondent had granted the applicant clinical privileges in 2012 after she became part of the full-time faculty; the clinical privileges were renewed in 2018 for 3 years; the applicant resigned in 2019 and the Respondent terminated the clinical privileges; the applicant challenged the termination in Nairobi ELRC Petition No. 105 of 2019, and the Court quashed the termination and thus the clinical privileges were to expire in 2021; that the Respondent renewed the clinical privileges in 2021 for 3-years and that on 23 May 2024, the



Respondent wrote to the applicant to notify her of the non-renewal of the clinical privileges without complying with chapter 4 of the Medical Staff By-Laws, 3rd Edition, 2017.

4. When the Motion was placed before the Court, it granted an interim order suspending the letter dated 23 May 2024 and further directed that the Respondent be served.
5. Upon service of the Motion, the Respondent filed a replying affidavit in opposition to the Motion and it also raised a Preliminary Objection contesting the Court's jurisdiction. The Objection was dismissed in a Ruling delivered on 29 July 2024, paving the way for the determination of the Motion in this Ruling.
6. In the replying affidavit, the Respondent deponed the 2017 By-Laws had been revised and updated to a 4th edition; the applicant's clinical privileges had been renewed from time to time until 2019 when the applicant resigned and was informed of the lapse of the privileges; the applicant challenged the lapse and the Court found in her favour in 2020; that in good faith and acting on the basis of the Court judgment and on application, the applicant's clinical privileges were renewed up to 2021; that upon the lapse of the privileges in 2021, the Respondent mistakenly renewed the clinical privileges up to May 2024 and that on 23 May 2024, the applicant was informed that the clinical privileges would not be renewed upon lapse on 31 May 2024.
7. When the parties appeared before this Court on 6 November 2024, the Court directed them to file and exchange submissions.
8. The applicant's submissions were not on record by the agreed timeline (should have been filed and served on or before 22 November 2024), and the Respondent's submissions were also not on record (should have been filed and served on or before 13 December 2024).
9. The Court has considered the Motion, affidavits and made the following determinations.
10. One, the test an applicant should meet to secure the injunctive orders sought was set out in *Giella v Cassman Brown* (1973) EA 358. The test is the demonstration of a prima facie case, irreparable injury if orders are not granted and balance of convenience in cases of doubt.
11. Two, the letter dated 23 May 2024 notified the applicant of a decision not to renew her clinical privileges upon lapse on 1 June 2024.
12. Whether such a decision did not comply with the Respondent's policies in place or was irregular is a contested fact that the Court cannot examine at this interlocutory stage.
13. The Court has keenly examined the material placed before it and come to the view that the applicant has not satisfied the test for grant of the injunctive orders sought at this stage.

Orders

14. Flowing from the above, the Motion dated 29 May 2024 is dismissed.
15. Since the applicant did not abide by the timelines for filing and service of submissions, the Respondent is awarded costs of the Motion.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 6TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCI Arb

JUDGE



Appearances

For applicant Teddy & Co Advocates

For Respondent NBMA Advocates LLP

Court Assistant Wangu

