



REPUBLIC OF KENYA



**KENYA LAW**  
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**Baringo Human Rights Consortium v Nyayo Tea Zones Development Corporation  
(Petition E011 of 2024) [2025] KEELRC 906 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 906 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
PETITION E011 OF 2024**

**MA ONYANGO, J**

**MARCH 21, 2025**

**IN THE MATTER OF: ARTICLES 3(1), 22, 23, 48, 50,(1),  
162(A), 165(5), 258 AND 259(1)  
OF THE CONSTITUTION OF KENYA**

**2010**

**IN THE MATTER OF: THE ALLEGED VIOLATIONS OF  
ARTICLES 1, 2, 3, 10, 19, 20, 21,  
22, 24, 27, 41(1), 47, 73, 75, 129,  
153(4)(A) 232 AND 259(1) OF THE  
CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF: THE ALLEGED VIOLATION OF  
SECTION 37(1) & (4)(E) OF THE  
PUBLIC SERVICE COMMISSION  
ACT, 2017; MWONGOZO; THE  
GOVERNMENT CIRCULAR.**

**OP/CAB.9/1A; AND THE  
GUIDELINES ON TERMS AND  
CONDITIONS OF SERVICE FOR  
STATE CORPORATIONS 2004.**

**IN THE MATTER OF: THE CONSTITUTIONAL AND LEGAL  
VALIDITY OF THE BOARD'S  
ONGOING PROCESS OF  
RECRUITING OF BOTH THE CHIEF**



**ELD ELRC PET NO. E011 OF 2024 RULING**  
**EXECUTIVE OFFICER AND OTHER**  
**OFFICERS OF THE NYAYO TEA**  
**ZONES DEVELOPMENT**  
**CORPORATION.**

**BETWEEN**

**BARINGO HUMAN RIGHTS CONSORTIUM ..... PETITIONER**

**AND**

**NYAYO TEA ZONES DEVELOPMENT CORPORATION ..... RESPONDENT**

**RULING**

1. Vide an application dated 14<sup>th</sup> August, 2024 filed under certificate of urgency and Rule 2(2) and 3 of the High Court (Practice and Procedure) Rules and section 10 of the *Judicature Act* and sections 3 and 3A of the *Civil Procedure Act*, the Petitioner prays for the following orders:
  - a. Spent.
  - b. This Honourable Court be pleased to issue Temporary Injunction to stay the recruitment process of the Chief Executive Officer and the 164 other positions pending the hearing and determination of this Application inter-partes.
  - c. This Honourable Court be pleased to issue Temporary injunction to stay the recruitment process of the Chief Executive Officer and the 164 other positions pending the hearing and determination of the Petition.
  - d. That costs be awarded to the applicants.
2. The application is supported by the grounds on the face thereof being:
  - a. Respondent is a state corporation registered through gazette notice LN265/1986 and amended by gazette notice GN30/2002 as a parastatal in the Republic of Kenya.
  - b. The Respondent is carrying out recruitment without following the guidelines for the State Corporation Mwongozo-Code of Governance for State Corporations.
  - c. The Respondent has undertaken the process of recruitment under secrecy and contrary to constitutional guidelines to carry out the recruitment of the Chief Executive Officer.
  - d. The recruitment process is underway while the current Chief Executive Officer is still in office which will cause conflict of interest.
  - e. It is in the interest of justice that these orders be granted.
3. The application is further supported by the affidavit of Dr. Samson K. A. Tim, who describes himself as a human rights champion and leader of the Respondent.



4. In the affidavit sworn on 14<sup>th</sup> August, 2022 (sic) he deposes that the Respondent has advertised a vacancy in the office of the Chief Executive Officer (CEO) when there is a substantive CEO in office whose term was expiring in the month of November, 2024 but had not taken terminal leave. That this is against the aspirations in Mwongozo Code of Governance for State Corporations and a conflict of interest.
5. It is deponed that the Respondent has further recruited 164 employees in the sunset of the CEO's term in office, against a backdrop of Government rationalization of salaries to stem runaway wage bill and freeze in employment for one year from July, 2024, as was communicated by the Minister of Public Service, Performance and Delivery Cabinet Secretary.
6. It is further the averment of the Petitioner that there has been no public participation in the recruitment as envisioned in the Constitution. That the Respondent as a public corporation has a fiduciary duty to exercise prudence in the management of public funds and actions taken ought to be in the interest of the nation since the Respondent is a key custodian of National vital resources being forest cover.
7. The affiant states that the purpose of the application is to save the public from further expenditure of an otherwise illegal and irregular recruitment process.
8. The Respondent opposed the application through the replying affidavit of Joseph Gitonga, the Chairman of the Board of Directors of the Respondent sworn on 5<sup>th</sup> September, 2024.
9. He states that the application does not specify with reasonable precision the provisions of the Constitution of Kenya, 2010, statute or Mwongozo Code of Governance for State Corporations or any other regulations that the Respondent is alleged to have infringed. That the Petitioner merely quotes Articles of the Constitution without demonstrating what rights have been violated.
10. Mr. Gitonga deposes that the whole process of filling the position of CEO and 164 vacant positions was within statutory and constitutional provisions. He deposes that the Respondent's Human Resource Department is guided by three instruments recently approved by the Public Service Commission.
11. The affiant explains that since 2019 the Respondent has been understaffed as it could not initiate any recruitment process without the human resource instruments that were recently approved.
12. The affiant states that the staffing level of the Respondent was further impacted by the commissioning of Gatitu Tea Factory in May, 2022 without any new recruitment of staff. That two factories, Kipchabo and Gatitu Tea Factories have therefore had to share workforce, a situation that has negatively affected operations and hindered the Respondent from successfully implementing its mandate.
13. The affiant further deposes that the Respondent has not filled vacancies created through resignations, retirement and demise of staff over the past 6 years.
14. The affiant deposes that the Respondent wrote to the Principal Secretary, Ministry of Agriculture and Livestock Development seeking approval to recruit staff which authority was granted by letter dated 22<sup>nd</sup> July, 2024.
15. Mr. Gitonga deposes that the Respondent consequently advertised the 164 positions in print media and online website.
16. In response to the Petitioner's averment that the CEO was in office at the time of advertisement Mr. Gitonga states that the Respondent's Board comprise 10 members of different expertise including the Chairman who presides over board meetings. The CEO sits as an ex officio member with no



voting rights. That this composition ensures the public is well represented while also complying with parameters of Mwongozo and section 6 of the [State Corporations Act](#). That the recruitment of the CEO is a full board task.

17. It is deposed that the CEO is not a pensionable employee but serves on a two-year contract. That renewal of the contract is subject to expression of interest at least 6 months before expiry of the contract in compliance with the Respondent's HR Policy and Procedures Manual. That the CEO had not expressed interest for renewal of his contract and there was thus no conflict of interest by him sitting in office until expiry of his contract term.
18. It is the deposition of Mr. Gitonga that neither the [Constitution](#) nor Mwongozo bar the CEO from serving his term to the last day. Further, that it was incumbent upon the Respondent to recruit a new CEO before expiry of the contract of the outgoing CEO for continuity purposes.
19. It is the deponent's averment that the quest by the Applicant to the court lack any basis in law, and the suit is filed with the sole intention of frustrating, impeding and/or delaying the recruitment process that is fair, open, competitive, merit based and inclusive.
20. The application was disposed of by way of written submissions. the Petitioner's submissions are dated 7<sup>th</sup> November, while the Respondent's submissions are dated 29<sup>th</sup> November, 2024.
21. The Petitioner submits that it has met the threshold for grant of the orders sought as was stated in *Giella v Casman Brown (1973) EA 358* as reiterated in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others CA No. 77 of 2012* (2014 where the court of Appeal held:

In an interlocutory injunction application, the applicant has to satisfy the triple requirements to:

- (a) establish his case only at a prima facie level,
- (b) demonstrate irreparable injury if a temporary injunction is not granted, and
- (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour.

These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.

22. The Petitioner further submits that prima facie case was defined in *Mrao Ltd v First American Bank Kenya Limited (2003) eKLR* where the court stated:

So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.

23. The petitioner submitted that the petition discloses arguable issues. That the recruitment process should be stopped because the process is flawed and contravenes laws including Mwongozo Code of Governance for State Corporations.
24. On irreparable injury the Petitioner submitted that the recruitment should be stopped because if it is not suspended the shortlisted candidates will be interviewed and appointed thereby defeating the main prayers sought in the petition.



25. The Petitioner relied on the decision in Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR irreparable harm was defined as:

Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury. The defendant has been collecting rent since the year 2005 and therefore the issue of irreparable harm if injunction is not granted should not arise so long as the matter is fast-tracked for hearing.

26. On balance of convenience the Petitioner submitted that it was defined in the case of Pius Kipchirchir Kogo v Frank Kimeli Tenai as where the court defined balance of convenience as:

The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the balance of inconvenience and it is for the plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the plaintiffs who suffer. In other words, the plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.

27. It is submitted that balance of convenience tilts in favour of suspending the recruitment process pending the determination of the petition. That it will also be in the interest of the shortlisted candidates to await the outcome of the petition to avoid participating in a recruitment process that may be nullified.

28. For the Respondent it is submitted that in an application like this one the Applicant must meet the threshold set in the cases of Kenya Small Scale Farmers Forum v Cabinet Secretary Ministry of Education, Science and Technology and 5 others HCCP No. 38 of 2015 (2015) eKLR where the court stated:

30. I would state the principles which govern a court considering an application for interim or conservatory relief to be the following: The applicant ought to demonstrate a prima facie case with a likelihood of success and that he is likely to suffer prejudice as a result of the violation or threatened violation if the conservatory order is not granted:

29. The Respondent further relied on the decision in Mary Arivisa and another v Attorney General of Kenya and another, East Africa Court of Justice, Application N. 3 of 2010 where the court stated as follows:

“The grant or refusal of a temporary injunction, which is an interlocutory order is an exercise of judicial discretion which, must be exercised judiciously.”

30. The Respondent submitted that in Mary Arivisa case the court went further to enumerate the principles applicable as follows:

- a. An applicant must show a prima facie case with a probability of success.



- b. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer an irreparable injury, which would not adequately be compensated by an award of damages.
  - c. If the court is in doubt, it will decide on a balance of convenience.
31. The Respondent submitted that the Applicant has not met the principles for grant of interlocutory orders relying on *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR and *Wilson Kabeia Nkunja v The Magistrates and Judges Vetting Board & other* [2016] eKLR. It was submitted that the Petitioner has not demonstrated a prima facie case, a likelihood that if the orders are not granted the petition shall be rendered nugatory and that public interest favours the granting of the orders.
32. It is submitted that the recruitment process is in compliance with the *Constitution* and legal imperatives, that the advertisement complies with section 37 of *Public Service Commission Act* and further that the Chief Executive Officer only sits as an ex officio member of the Board with no voting rights.
33. The Respondent further submitted that the principles guiding this court in interfering with the exercise of the employer's human resource prerogatives or functions and powers are well established by case law. That in the case of *Geoffrey Mworira v Water Resources Management Authority and 2 others* [2015] eKLR the court held:

“The principles are clear.

The court will very sparingly interfere in the employer's entitlement to perform any of the human resource functions such as recruitment, appointment, promotion, transfer, disciplinary control, redundancy, or any other human resource function. To interfere, the applicant must show that the employer is proceeding in a manner that is in contravention of the provision of the *Constitution* or legislation; or in breach of the agreement between the parties; or in a manner that is manifestly unfair in the circumstances of the case; or the internal dispute procedure must have been exhausted or the employer is proceeding in a manner that makes it impossible to deal with the breach through the employer's internal process.”

### **Analysis and Determination**

34. I have considered the application, the replying affidavit and the submissions of the parties. The issue for this court's determination is whether the Petitioner qualifies for grant of the orders sought in its application.
35. Both parties have articulated the principles that govern the grant of injunctive orders in the nature sought by the Petitioner.
36. The general principles were set in the case of *Giella v Cassman Brown*. An applicant who seeks injunctive orders must-
- a. An applicant must demonstrate that he has a prima facie case with a probability of success.
  - b. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer an irreparable injury, which would not adequately be compensated by an award of damages.



- c. If the court is in doubt, it will decide on a balance of convenience.
37. In the instant case the Petitioner has not demonstrated that he has a prima facie case. The Petitioner did not state the provisions of the Constitution and Mwongozo that have been violated or any threatened violation by the Respondent.
38. A reading of the Petition shows that the only mention of the Constitution in the body of the Petition is at paragraphs 10, 12 and 13 where the Petitioner pleads:
10. That involvement of the current Chief Executive Officer in participating in the recruitment process and subsequent the appointment of the next Chief Executive officer is ultra vires as the Board of Management is required to independently recruit and appoint one as a CEO through a process that is fair, transparent and impartial his actions undermines the provisions of Articles 73(2)(a)(b) and 232(1)(g) OF the Constitution of Kenya, 2010 and also the Provisions of State Corporation Act.
12. the Current Chief Executive Officer action of participating in the recruitment process of the CEO, undermines Articles 73(2)(a) and 232(g) of the Constitution of Kenya, 2010 on personal integrity, competence, suitably, fair competition and merit as the basis of appointment and promotion in the public service as his participation will likely lead to the irregular recruitment in the public service as his participation will likely lead to the irregular recruitment and subsequent appointment of a CEO through a product of favouritism, improper motive, or corruption.
13. that the impugned recruitment process does not constitute fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair as provided under Article 47(1) of the Constitution.
39. Article 73(2)(a) and (b) provide:
- (2) The guiding principles of leadership and integrity include—
- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
40. Article 232(1)(g) provides:
1. The values and principles of public service include— (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
41. Article 47(1) provides:
47. Fair administrative action
- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
42. The Petitioner failed to demonstrate how the cited provisions of the Constitution have been violated or threatened. The only complaint the Petitioner has expressed in the petition is that the CEO is still in office and his participation in the recruitment of his successor will lead to the irregular recruitment and subsequent appointment of a CEO through favouritism, improper motive and corruption, none of which have been substantiated.



43. On the contrary the Respondent has demonstrated that the CEO is an ex officio member of the Board and does not have any voting rights, that he had not applied for renewal/extension of his contract and that there is no law that bars him from sitting in office until the last day of his contract.
44. Having not passed the very first principle to be met in an application for grant of injunctive orders, I need not look into the other two as the applicant ought to
45. As was stated in *Nguruman Limited v Jan Bonde Nielsen & 2 others*,  

If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.
46. For the foregoing reasons I find that the Petitioner does not meet the principles for grant of the orders sought.
47. The application dated 14<sup>th</sup> August, 2024 is accordingly dismissed. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 21<sup>ST</sup> DAY OF MARCH 2025.**

**MAUREEN ONYANGO**

**JUDGE**

