



**Mulwa v Marist International University College (Cause
E760 of 2024) [2025] KEELRC 830 (KLR) (14 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 830 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E760 OF 2024
SC RUTTO, J
MARCH 14, 2025**

BETWEEN

MULI CLEOPHAS MULWA CLAIMANT

AND

MARIST INTERNATIONAL UNIVERSITY COLLEGE RESPONDENT

RULING

1. What comes up for determination is the Claimant/Applicant's Notice of Motion dated 5th September 2024 in which he seeks the following orders;
 1. Spent.
 2. Spent.
 3. That pending the inter-partes hearing and determination of this Application and the Petition (sic) herein the Honourable Court be pleased to issue an interim order suspending the letter dated 29th July 2024 issued by the Respondent.
 4. That pending the inter-partes hearing and determination of this Application and the Petition (sic) herein the Honourable Court be pleased to issue an interim order of injunction prohibiting the respondents or any of their agents from implementing in any way whatsoever the letter dated 29th July 2024 issued by the respondent.
 5. That consequent to the grant of the prayers above the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.
 6. That the costs of this application be provided for.



2. The Application is premised on the grounds on the face thereof and the Supporting Affidavit of Muli Cleophas Mulwa, the Claimant/Applicant herein. Grounds in support of the Motion are That the Applicant was employed by the Respondent on 1st May 2009 and served on probation for three months. He was subsequently confirmed as a full-time staff member of the academic staff on 1st August 2009. It was an express term of the contract That it was for three years and That the same was renewable at the option of the parties. That due to the Applicant's exemplary performance the contract was renewed in 2012, 2018 and 2021.
3. The Applicant avers That on or about 20th May 2024, he received a letter from the Respondent's Human Resource Officer That his contract was to expire and That he was required to indicate whether he was keen on renewing it. On 24th May 2024, he wrote back and indicated his willingness and readiness to extend his contract. In early July 2024, he was interviewed with a view to renewing his contract.
4. The Applicant avers That on or about 29th July 2024, to his utter shock and disbelief, he received a copy of a letter from the Respondent indicating That they had decided not to renew his contract and That his last day of work would be 31st July 2024. The said letter has caused the Applicant extreme anxiety.
5. It is further averred That the impugned letter was subjectively created through an irregular, hurried, arbitrary and opaque process That did not involve the Applicant and violated express provisions of *the Constitution* and legislation.
6. That further, the impugned letter was malicious and discriminatory, and was issued by the Respondent to unfairly target the Applicant.
7. It is the Applicant's further assertion That he has been subjected to undue financial hardship due to the Respondent's action.
8. The Applicant avers That due to his legitimate expectation That his contract would be renewed, he had taken a loan with Waumini Sacco Ltd which he is still repaying and now risks defaulting.
9. Further, the Applicant has a young family with school-going children who now risk dropping out of school due to lack of school fees.
10. That it is totally unreasonable and procedurally unfair for the Applicant who has not been subjected to disciplinary action to be summarily terminated.
11. In response to the Application, the Respondent filed a Replying Affidavit sworn on 2nd September 2024 by Lukong Francis Yufenyu, who describes himself as the principal of the Respondent.
12. Mr. Lukong avers That the Applicant has not been in continuous employment and That at the expiry of each contract, he has been applying for its renewal on different terms without any guarantee for making it permanent.
13. That the latest contract the Applicant entered with the Respondent was on 1st August 2021 and the same was for three years up to 31st July 2024. The Applicant signed it on 16th September, 2021, signifying to be bound by all the terms and conditions contained thereon.
14. The Applicant was aware from the onset of the contract That the Respondent was not bound to automatically renew the contract upon expiry and the allegations of violations of the constitutional rights are ill advised, uncalled for and unfounded. That it was a clear term of the contract dated 1st August, 2021 That either party shall be entitled to terminate the contract before its expiry period.



15. Mr. Lukong further avers That the Respondent had no malafide intention or bad intention for failing to renew a mutually agreed contract after its expiry period since its renewal or extension was not guaranteed by the Respondent.
16. That the Respondent has further demonstrated clearly That it was very kind to the Applicant by writing a non-renewal of contract letter and proceeded to issue a letter of appreciation to the Applicant acknowledging his great contribution to the institution over the years. That it further paid the Applicant his last salary for July, 2024, and cleared him from the institution with his head high.

Submissions

17. On 12th November 2024, the Court directed That the Application be canvassed by way of written submissions. Both parties complied and the Court has considered their respective submissions.

Analysis and Determination

18. The Court has considered the Application, the Respondent's Replying Affidavit and the rival submissions and finds That the singular issue for consideration is whether the Applicant has satisfied the requirements for grant of an injunction at this interim stage. Differently expressed, should the Court issue an order prohibiting the Respondent from implementing in any way, the letter dated 29th July 2024 pending the hearing and determination of the main suit?
19. It is trite law That an injunction is a discretionary remedy, granted on the basis of evidence and sound legal principles. Principles That guide the Court in an application of this nature now form a well-trodden path. This is taken from the celebrated case of *Giella v Cassman Brown & Co Ltd* [1973] E.A. In this regard, the principles to be considered are: -

“Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”
20. Applying the above principles to the case herein, the pertinent question That ought to be determined at the outset is whether the Applicant herein has established a prima facie case with a probability of success.
21. A prima facie case was defined by the Court of Appeal in the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 others* [2003] eKLR, as follows: -

“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. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case.”



22. Further, the Court of Appeal in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR held That:

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage That may result from the invasion. We reiterate That in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All That the court is to see is That on the face of it the person applying for an injunction has a right which has been or is threatened with violation....”

23. Fundamentally, the Applicant herein is required to show That his right has been violated or is threatened with violation by the Respondent, in which case, the burden would shift to the Respondent to explain or rebut the Applicant’s claim.

24. Submitting on this issue, the Applicant has argued That the abrupt and unexplained termination of his contract of employment by the Respondent has shown That he has a prima facie case with a probability of success.

25. On the other hand, the Respondent has argued That the issue of fixed term contracts vis a vis unfair termination has been litigated countless times and jurisprudence is very solid That when a fixed term contract reaches its expiry date it is done. That the expiry of a fixed term contract cannot be equated to unfair termination or unfair labour practice. In the Respondent’s view, the Applicant has not demonstrated a prima facie case with a probability of success.

26. According to the Applicant, he had a legitimate expectation That his contract would be renewed as had been the norm for 14 years.

27. It is common ground That the employment relationship between the Applicant and the Respondent commenced on 1st May 2009. From the Applicant’s standpoint, his contract of employment was renewed in 2012, 2018 and 2021 hence creating a legitimate expectation That it would be renewed once again in 2024.

28. It is apparent at this point That at the hearing of the main suit, the Court would be required to interrogate and determine the Applicant’s contention That the Respondent’s previous action of renewing his contract of employment, created a legitimate expectation on his part That the said contract would be renewed once again in 2024.

29. Therefore, applying the principles set out in *Mrao Ltd v First American Bank of Kenya Ltd* (supra), I find That the Applicant has proved That he has an arguable prima facie case.

30. It is trite That establishing a prima facie case is not an end in itself and cannot form a sufficient basis to grant an interlocutory injunction, hence the court must further be satisfied That the injury to be suffered by an applicant in the event the injunction is not granted, will be irreparable.



31. The Court of Appeal in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR, had this to say with respect to irreparable injury:
- “An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature That monetary compensation, of whatever amount, will never be adequate remedy.”
32. On this issue, the Applicant has submitted That his rights cannot be adequately compensated by an award of damages and he would be greatly prejudiced since he stands to lose his job, put his children’s education in serious peril by losing a livelihood and suffer anxiety on account of employment.
33. On the other hand, the Respondent has posited That the Applicant’s alleged predicament can be adequately compensated by an award for damages if at all he will be successful in convincing the Court to rule in his favour after trial.
34. Revisiting the dicta in the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* (supra), the Court finds That the Applicant does not stand to suffer irreparable injury in the event he is not granted the orders he seeks at this stage.
35. I say so for the reason That pursuant to Section 12(3) of the *Employment and Labour Relations Court Act*, this Court is clothed with powers to grant a wide range of orders for instance; award of damages; reinstatement; prohibitory orders; orders for specific performance and declaratory orders.
36. Indeed, as can be discerned from the Memorandum of Claim, the Applicant has sought inter alia, an order of reinstatement and salary arrears for the entire period he has been out of employment. In the alternative, the Applicant has sought damages for unfair termination, damages for violation of his constitutional rights and exemplary damages.
37. Therefore, in the event the Applicant’s Claim succeeds ultimately, he will stand to be granted either of the remedies sought. As such, the Applicant will not suffer irreparable loss if the orders sought at this juncture are not granted.
38. This Court adopts the position taken in the *Nguruman* case (supra) That, “if damages recoverable in law is an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at That stage.”
39. In the circumstances, I will decline to grant an order prohibiting the Respondent from implementing the letter dated 29th July 2024 which in any event, is now past. It is noteworthy That a relief of this nature cannot act retrospectively and undo what has already been done.

Orders

40. In light of the foregoing reasons, the Court declines to grant the orders sought in the Application dated September 5, 2024. Consequently, the Application is disallowed with an order That costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2025.

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STELLA RUTTO

JUDGE

In the presence of



Mr. Momanyi for the Claimant/Applicant

Ms. Ariga instructed by Mr. Getange for the Respondent

Millicent Court Assistant

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 15th March 2020 and subsequent directions of 21st 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 had 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.

STELLA RUTTO

JUDGE

