



Lunani v Cabinet Secretary, Roads and Transport & 2 others (Petition E181 of 2024) [2025] KEELRC 1223 (KLR) (30 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1223 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E181 OF 2024
HS WASILWA, J
APRIL 30, 2025**

BETWEEN

MARTYNE LURTHER LUNANI PETITIONER

AND

CABINET SECRETARY, ROADS AND TRANSPORT 1ST RESPONDENT

HON ATTORNEY GENERAL 2ND RESPONDENT

PUBLIC SERVICE COMMISSION 3RD RESPONDENT

JUDGMENT

Petitioner's Case

1. By a Petition dated 14th November 2024, the petitioner sought for the following reliefs; -
 - a. A declaration that the Respondent has infringed the Petitioner's rights under Article 27 of *the Constitution* which guarantees the Petitioner the right of equality and freedom from discrimination by discriminating against the Petitioner and offended Article 47 of *the Constitution* and the provisions of Fair and Administrative Act, 2015.
 - b. A declaration that the Respondent has infringed the Petitioner's right under Article 41 of *the Constitution* which provides that every employee has a right to fair labour practices and to fair remuneration and that the Respondent's continued services after the expiry of the contract amounted to renewal of the contract and created an implied contract of employment and legitimate expectation thereof.
 - c. A declaration that the complained actions of the Respondents have infringed Article 73 of *the Constitution* provides for responsibilities of leadership which include but not limited to a public trust to be exercised in a manner that brings honour to the nation and the dignity to the office and promotes public confidence in the integrity of the office.



- d. An injunction be and is hereby issued to prevent the Respondents from recruiting to replace the Petitioner for the positions of Director, Aircraft Accident Investigation, the Chief Investigator of Accidents and Accident Investigation Group Panel at Montreal, Canada until the Petitioner's contract is renewed and served thereof.
- e. An order of Certiorari be and is hereby issued to compel the 1st Respondent to forthwith reinstate and renew the Petitioner's contracts as Director, Aircraft Accident Investigation, the Chief Investigator of Accidents and Accident Investigation Group Panel at Montreal, Canada until the Petitioner's contract is renewed and served thereof.
- f. A mandatory injunction be and is hereby issued to compel the 1st Respondent to forthwith reinstate and renew the Petitioner's contracts as Director, Aircraft Accident Investigation, the Chief Investigator of Accidents and Accident Investigation Group Panel at Montreal, Canada with effect from 18th July 2024 for a term of 3 years with prevailing terms and conditions of rightful last position thereof.
- g. A mandatory injunction be and is hereby issued to compel the Respondents to forthwith pay the Petitioner dues; unutilised leave days; all unpaid allowances, salary arrears, allowances and other benefits.
- h. An order compelling the 1st Respondent to pay the Petitioner a sum of Kshs. 2,560,200 in lieu of 120 days in lieu of leave that he had not taken.
- i. An order compelling the 1st Respondent to pay the Petitioner salary arrears amounting to Kshs. 1,920,150 thereof.
- j. An order compelling the 1st Respondent to pay the Petitioner gratuity assessed at 31% of the salary of 36 months amounting to Kshs. 7,142,958 thereof.
- k. An order compelling the 1st Respondent to pay the Petitioner compensation equivalent to 12 months' pay amounting to Kshs. 7,680,600 thereof.
- l. An order compelling the 1st Respondent to pay the Petitioner 3 months in lieu of notice of termination of employment amounting to Kshs. 1,920,150 thereof.
- m. An order compelling the 1st Respondent to issue the Petitioner with a certificate of service.
- n. Any other or further orders that this Honourable Court may deem fit to grant hereof.
- o. The Respondents pay the Petitioner interest and costs of this Petition.

Petitioner's Case

2. The Petitioner avers that vide an employment contract dated 17th January 2010, he was employed by the 1st Respondent as an Investigator of Aircraft Accident for a period of 3 years with effect even date; which was renewable.
3. The Petitioner avers that on 17th July 2012, he was promoted by the 3rd Respondent to the position of Director, Aircraft Accident Investigation for a period 3 years renewable contract. Subsequently, he was appointed by the 1st Respondent to act Chief Inspector of Accidents effective from 18th August 2012 to 17th August 2015 vide Gazette Notice No. 12433 which was then renewed vide Gazette Notice No. 12607 dated 30th August 2013.



4. The Petitioner avers that vide Gazette Notice No. 6273 of 29th June 2018, he was appointed by the 1st Respondent as Chief Investigator of Aircraft Accidents effective 26th June 2018. This appointment had no time limit and he has not received any information revoking the same.
5. The Petitioner avers that by the 1st Respondent's recommendation to the International Civil Aviation Organisation, he was nominated to the Accident Investigation Group Panel at Montreal, Canada; which position he was entitled to serve during the existence of his contract with the 1st Respondent.
6. It is the Petitioner's case that he has rendered his services diligently as per the performance appraisal report and his employment contract regular renewal by the 1st Respondent. In view of this, he expected the 1st and 3rd Respondents discharge their roles in continuity because the aircraft accident investigation services will continue to be performed in Kenya as envisioned by the Civil Aviation Act and the International Aviation Organisation.
7. The Petitioner avers that pursuant to clause 1 of the employment contract with the 1st Respondent, he gave a written notice expressing his desire to remain in employment and initiated the renewal process as required by the 3rd Respondent and attached therein his latest performance appraisal report which indicated his exemplary performance.
8. The Petitioner avers that vide a letter dated 28th June 2024 from the 1st Respondent he was directed to proceed on leave immediately as his contract renewal matter was being looked into.
9. Subsequently, vide a letter dated 10th July 2024, the 1st Respondent informed him of its decision not to renew his contract in breach of the law; Mwongozo Code of Conduct, 2015; Public Service Regulations; the labour laws; the Constitution and under Schedule to Agreement as it came just a week before expiry of his contract despite the fact that he initiated the contract renewal process on 15th January 2024.
10. It is the Petitioner's case that the 1st Respondent's action not to renew the contract was ultra vires because there is no approval by the 3rd Respondent infringing Article 232 of the Constitution that grants the 3rd Respondent powers to recruit and terminate civil servants.
11. The Petitioner avers that when he was directed to proceed on terminal leave, the letter also directed that he hands over to the 1st Respondent's Director, Air Transport who was in job group S and himself was in job group T. The Petitioner was more senior and further the qualifications of the Director, Air Transport did not meet the qualifications under the Scheme of Service of Aircraft Accident Investigator.
12. It is further the Petitioner's case that the aircraft accident investigation functions are required to be separate from policy makers, service providers and oversight agencies in order to eliminate conflict of interest, therefore, appointing the Director of Air Transport to take charge of the two departments creates a conflict of interest compromising the safety of Kenyans, passengers, crew members, cargo and equipment in contravention of International Civil Aviation requirements.
13. The Petitioner avers that the Respondent did not inform him of its intention not to renew his contract within a reasonable period prior to expiry through he gave the Respondent sufficient notice of his willingness to renew the contract.
14. It is the Petitioner's case that the Respondent infringed his rights under Article 41 of the Constitution which provides employees the right to fair labour practices and fair remuneration. The continued services after expiry of the contract amounted to renewal of the contract and created an implied contract of employment and legitimate expectation.



15. The Petitioner avers that upon taking up employment with the 1st Respondent, he could not continue executing his career as a commercial pilot because it would amount to conflict of interest. Further, his commercial pilot licence expired on 2nd January 2014 therefore he cannot be employed as a result he has greatly suffered as a result of abrupt termination of his employment.
16. It is the Petitioner's case that the 1st Respondent had guaranteed a bank facility he had secured as the 1st Respondent had assured the bank continuity of his contract until he attains the retirement age of 60 years. The Petitioner applied for a mortgage of Kshs 10,376,612.07 from Housing Finance Limited which was repayable in 6 years and was to be fully repaid by 20th August 2028.
17. The Petitioner's action of failing to renew the Petitioner's contract, made the Petitioner cannot service the balance of the facility of Kshs 6,091,534.21 because he has no income thus putting his house at risk of being auctioned by the bank.
18. The Petitioner avers that the Respondent treated him unequally compared to other staff members of similar terms because the 1st Respondent renewed their contracts in the year 2022; this is in violation of his constitutional right against discrimination.
19. The Petitioner avers that to confirm that he worked beyond the contract term and had a constructive an implied contract, the 1st Respondent vide Gazette Notice No. 4494 dated 19th April 2024 extend his term for three months with effect from 19th April 2024 to 18th July 2024. Further, he has been working beyond his contract as the Investigator in Charge in the investigation of the aircraft accident involving a Cessna Skyhawk 172 aircraft that collided with Vuria hill, Voi on 31st May 2021 and 3 other separate accidents.
20. It is the Petitioner's case that the 1st Respondent's action affects public interest because the department was understaffed as per international civil aviation requirements. The Aircraft Accident Investigation Department (AAID) has 2 aircraft technicians, 3 aircraft engineers, 1 pilot and 1 aircraft operations personnel. The Petitioner was the only qualified commercial pilot, therefore, in the absence of a pilot in an investigation such investigations will be incomplete and lack credibility.

1st Respondent's Case

21. In opposition to the Petition, the 1st Respondent filed a Replying Affidavit dated 9th December 2024 sworn by Mohamed Daghar CBS, the Principal Secretary, State Department for Transport, Ministry of Roads and Transport.
22. The 1st Respondent avers that the Petitioner was engaged with it in its Aircraft Accident Investigation Department (AAID) on contractual fixed terms from time to time with his last contract running from 18th July 2021 to 17th July 2024.
23. The 1st Respondent avers that the Petitioner's 3-year employment contract dated 4th May 2021 indicated under clause 1 that the Petitioner shall where he desires seek to be engaged further by the government give notice in writing upon which the government shall decide whether it will offer him further employment.
24. The 1st Respondent avers that AAID being a going concern, an acting Director has been appointed to carry the functions and duties carried on by the Petitioner.
25. It is the 1st Respondent's case that the Petitioner's argument that Gazette Notice No. 6273 dated 29th June 2018 appointing him as Chief Investigator of Aircraft accidents did not provide for a time limit



- and he has not received revocation of the gazettement is baseless as one can only hold office based on his employment contract and not gazettement.
26. The 1st Respondent contends that the Petitioner's claim for reinstatement to the role of Chief Investigator of Accidents Investigation Group Panel at Montreal, Canada has been overtaken by events as a new representative has already been appointed: further, the position is not vested on the Petitioner, but can be held by gazetted investigators.
 27. The 1st Respondent avers that the Petitioner failed to attend meetings claiming there was no budget to facilitate attendance in Canada yet the Department was fully funded and some meetings were virtual requiring use of data bundles which the Petitioner received Kshs. 16,000 monthly airtimes.
 28. The 1st Respondent avers that the International Civil Aviation Organisation informed it of the Petitioner's failure to attend meetings it ought to have attended on behalf of Kenya vide a letter dated 14th June 2022.
 29. It is the 1st Respondent's case that the Petitioner lacks requisite qualification to continue holding the position of Director Aircraft Accident Investigation as he no longer holds a commercial or airline transport pilot licence; air traffic controller licence; or aircraft maintenance engineer's licence as required in the scheme of service for Aircraft Accident Investigators dated July 2014. Despite not renewing his commercial pilot licence in 2017, the Petitioner made misrepresentations to the Respondents that he had such qualifications for renewal, which contract was renewed, the Petitioner acted fraudulently.
 30. The 1st Respondent avers that the Petitioner was employed on a fixed term contract therefore the Respondents have no contractual obligations with him. Reliance is placed on *Samuel Chacha Mwita v Kenya Medical Research Institute* [2015] KEELRC 35 (KLR) in which the Court opined that a fixed term contract automatically expires once its term has lapsed.
 31. The 1st Respondent avers that the Petitioner's contract allowed him 30 leave days annually and, in a circular, dated 27th September 2023 referenced OP/CAB.2/1, the Head of Public Service directed all employees to utilize their leave days as and when desired. Further, there is a policy for non-commutation of leave days for cash, therefore, the Petitioner is not entitled to the claim of 120 leave day cash commutation as he failed to utilize his leave days.
 32. The 1st Respondent avers that the Petitioner comes to court with unclean hands based on the fact that the letter attached in the petition herein dated 6th May 2024 referenced 2010002101/135 in the name of the former Cabinet Secretary, Ministry of Roads and Transport purporting to communicate the request to renew the Petitioner's contract to the 3rd Respondent is a fraudulent document as it was not authored, served or signed by the former Cabinet Secretary, Ministry of Roads and Transport. The 1st Respondent has made a request to the Director of Criminal Investigations to institute investigations on the fraudulent letter presented by the Petitioner.
 33. Further, the Petitioner made a misrepresentation before this Court that his commercial licence lapsed on 2nd January 2014 whereas it lapsed on 22nd March 2017 as confirmed by KCAA in its letter dated 4th December 2024.
 34. The 1st Respondent avers that the Petitioner has not been estopped from applying to KCAA to be licenced as a pilot hence his claim is unfounded as he opted not to pursue his flying career to be an investigator.
 35. It is the 1st Respondent's case that the PSC Human Resource Manual, 2016 provides that if an authorised officer approves the renewal of a contract, it shall write to the 3rd Respondent. In the



petition herein, the 1st Respondent did not wish to renew the contract hence it did not write to the 3rd Respondent.

36. It is the 1st Respondent's case that the Petitioner's expectation is unreasonable and lacks legal basis as his contract terminated upon expiry and within his knowledge thus the Respondents have no contractual obligations with him.
37. The 1st Respondent avers that it absolved of any liability in the Petitioner's bank facility since there no evidence that it communicated to the bank that it shall not be liable in the event the Petitioner defaults in servicing the loan. Further, the Petitioner was aware he was on fixed contract before making full payment of the loan using his salary hence he can pay the loan by his own means.
38. The 1st Respondent avers the investigations into the aircraft accident involving Cessna Skyhawk 172 aircraft that occurred in Vuria Hill in Voi on 31st May 2021 had been completed and a final report prepared for publication by the 1st Respondent and the Petitioner's assertion that he was expected to work beyond the contract provisions are unfounded and lacks merit.
39. The 1st Respondent avers that the Petitioner was paid full salary for the months worked as shown in payslip therefore he is not entitled to pay in lieu of notice as the contract was of a definite period.
40. The 1st Respondent avers that the Petitioner has failed to provide proof that the department is understaffed and that in the absence of a pilot in an investigation such investigations will be incomplete and lack credibility. Additionally, the staffing of the department depends on available resources and currently the available staff deliver their mandate in time.
41. The 1st Respondent avers that the Petitioner has refused to hand over to the Acting Director and carry out necessary clearance to enable the 1st Respondent pay him his terminal dues of Kshs 2,489,811.68.
42. It is the 1st Respondent's case that the Petitioner failed to demonstrate the Respondents violated his constitutional rights in line with laid down precedents of this Court.

The 3rd Respondent's Case

43. In opposition, the 3rd Respondent filed a Replying Affidavit dated 19th February 2025 sworn by Paul Famba, MBS, the Secretary/CEO of the Public Service Commission.
44. It is the 3rd Respondent's case that pursuant to regulation 5 of the Public Service Regulations, it delegated its function to the Authorised officer at the 1st Respondent vide delegation instrument ref no. PSC/SEC/93/37 Vol.VI (31).
45. The 3rd Respondent avers that the Petitioner was appointed to public service as an Investigator of Aircraft Accidents effective 17th January 2010 for a 3-year contract renewable by the parties. The petitioner was subsequently promoted to Director, Aircraft Accident Investigation effective 17th July 2012 for renewable 3-year contract. The Commission has at all times renewed the Petitioner's contract upon receipt of the Petitioner's request through the Authorised Officer.
46. The 3rd Respondent avers that the Petitioner initiated the contract renewal process with the 1st Respondent vide a letter dated 15th January 2024 as required by the 3rd Respondent. However, the 1st Respondent through its letter of 10th July 2024, informed the Petitioner it opted not to renew the expired contract.



47. The 3rd Respondent avers that it did not receive the Petitioner’s request to renew his contract contrary to clause 7 (d) of the Delegation Instrument on the Exercise of Human Resource Powers and Functions in the Public Service which states:

The following guideline on appointment on contract terms shall apply (i) appointments on contract and renewals of contracts shall be made on authority of the Public Service Commission; (ii) all cases of appointment on contract terms which require renewal shall be forwarded to the Commission for approval at least 3 months before expiry and be supported by a performance review; (iii) an officer serving on contract shall express the wish to renew the contract at least 3 months before the expiry of the contract; and an officer serving on contract and whose services are still requires, will be informed in writing at least 3 months before expiry of the contract.

48. It is the 3rd Respondent’s case that it is its responsibility to appoint on contract and renewal of contract, therefore, the authorised officer had no power to decline to renew the Petitioner’s contract: the authorised officer ought to have forwarded the request together with the performance appraisal reports of the officer to the Commission for consideration and decision.

49. The 3rd Respondent avers that section 45 (3) of the [Public Service Commission Act](#) provides on extension of contracts as follows:-

“The extension of a term of contract may be allowed by the Commission or other appointing authority if— (a) the workload justifies further engagement;

(b) the performance of the public officer is satisfactory;

(c) the public officer has expressed, in writing, the willingness to engage for a further term of service;

(d) the decision shall in no way disadvantage any public officer employed on permanent terms; and (e) the decision is made at least three months before the expiry of the affected public officer’s term of contract.”

50. It is the 3rd Respondent’s case that contrary to section 45 (3) (b) of the [Public Service Commission Act](#) and Clause 7 (d) (ii) of the Delegation Instrument on the Exercise of Human Resource Powers and Functions in the Public Service there is no evidence that was presented to the Commission to show that the 1st Respondent undertook a performance appraisal before making the decision not to renew the contract.

51. The 3rd Respondent avers that the allegation that the Petitioner does not meet the requirements is not true as one is exempted from some requirements upon being appointed into public service. It is the 3rd Respondent’s case that at the Petitioner’s appointment, he met all the requirements including possession of a commercial pilot licence and for him to renew his licence, he is required to have flight hours and this would have meant he executes his career as a commercial pilot contrary to the Public Officer’s Ethics Act and the Code of Conduct for Public Officers.

52. The 3rd Respondent avers that it received a letter dated 6th May 2024 referenced 2010002101/135 in the name of the former Cabinet Secretary, Ministry of Roads and Transport requesting for renewal of the Petitioner’s contract, however, the Commission did not consider the same as it is subject of criminal investigation and it was not authored by the Commission’s authorised officer.



Petitioner's Submissions

53. In his submissions, the Petitioner relied on the content of his Petition, documents annexed to his verifying affidavit and several authorities by the superior courts.
54. The Petitioner submitted that the Respondents were obligated to communicate their intention of non-renewal of the contract at least 3 months to its expiry; failure to do so and considering the previous practice of renewal of contracts created a legitimate expectation in favour of the Petitioner.
55. The Petitioner submitted that he had no disciplinary issues and his appraisal was excellent; the Respondent had no cogent or valid reason to deny him renewal of his contract. Therefore, the circumstances of this case should evolve a legitimate expectation that his contract is renewed.

Respondents Submissions

56. The Respondents did not file any submission but relied on their replying affidavits filed.

Analysis and Determination

57. I have examined all evidence and submissions of the parties herein. The issues for determination are as follows:
 1. Whether the respondents breached the petitioner's rights under *the Constitution*.
 2. Whether the prayers sought by the petitioner should be granted.

Issue No 1

58. The petitioner through his evidence demonstrated that he was employed under the Ministry of Roads and Transport. His employer was basically the PSC the 3rd respondent herein and he was employed on various local agreements and the one dated 26th June 2018 was open ended as per Kenya gazette notice no 6273 of 26th June 2018 wherein he was appointed as Chief Investigator of Aircraft Accidents.
59. The term of the agreement made on 23/7/2018 show that the contract was for a period of 3 years. Under the agreement it was indicated that:

“SUBPARA (1)

(subject to the provisions of the *Employment Act*, the Government may at any time determine the engagement of the employee by giving him/her two months' notice in writing or paying him/her two months' salary in lieu of notice.
60. If the employee also wished to continue with the engagement then 6 months notice was to be given and not less than three (3) months before the date on which the service were to terminate.
61. The contract was to terminate on 17/7/2024. As per the contract, on 15/1/2024, the petitioner gave notice of his desire to have the contract renewed again for a further period of 3 years. Vide a letter dated 28th July barely 3 weeks before the contract terminated, the petitioner was informed that he should proceed on annual leave as per the HR procedures. The length of annual leave was not indicated. Vide a letter of 10th July 2024 the petitioner was now informed that his contract wont be renewed. The petitioner has averred that the respondents failed to give him the requisite notice of 2 months as envisaged under the contract of their failure to renew his contract.



62. He also averred that his performance was excellent as per the appraisal conducted on him. The petitioner avers that he was a serving civil servant and that the 1st respondent had no authority to terminate his services whose mandate is in the 3rd respondent the PSC.
63. As indicated above the notice not to renew the contract of the petitioner was not given. The petitioner had served the respondents since 2012 and had served excellently and diligently and therefore he had a legitimate expectation to continue serving further. There was no disciplinary case against him. In fact the petitioner was allowed to work beyond the contract term as per gazette notice no 4494 of 19/4/2024 and another investigation he was involved in on 31/5/2024 and 3 Others.
64. The respondent aver that the petitioner was serving on contract which contract came to an end and the contract was not based on a gazette notice. They aver that the application for reinstatement has been overtaken by events and so should not be allowed.
65. The 3rd respondent on their part supported the petitioner's case averring that the petitioner imitated the contract renewal process with 1st respondent vide a letter of 15th January 2024 as required by the 3rd respondent and the 1st respondent only responded on 10th July 2024.
66. The 3rd respondent aver that under clause 7(d) of the delegated instrument on the exercise of human resource powers and functions in the Public Service the guidelines that apply are stated. The guidelines show that a request must be made to the commission before 3 months to the time of termination of the contract. The 3rd respondent submitted that it is the 3rd respondents who have the duty to appoint on contract or renewal therefore and the authorised officer has no power to decline to renew the petitioner's contract. That the authorised officer ought to have submitted the request together with the performance appraisal reports of the officer to the commission for consideration and decision making.
67. The 3rd respondent also referred to section 45(3) of the PSC Act which indicate how contracts may be made and the decision must be made at least 3 months before the expiry of the said contract.
68. They also aver that the averment that the petitioner lacked the due qualifications is not true as the petitioner was not to keep working as a commercial pilot when serving in public service.
69. In view of the submissions by the 3rd respondent, it is clear that the 1st respondent is not the employer of the petitioner but the PSC the 3rd respondent. It is the 3rd respondent who have the mandate under the constitution to appoint, suspend, interdict or even terminate or dismiss a public servant. The duties of the 1st respondent do not extend to appointments of public servants and it is evident that all other previous contracts between the petitioner and respondents were signed by the petitioner and 3rd respondent.
70. In view of this, it is evident that the 1st respondent erred in deciding not to refer the request of the petitioner to the 3rd respondent for consideration. This breaches the petitioner's labour rights under the Constitution which subjected him to unfair treatment in face of his request for extension of his contract.

Remedies

71. Having considered this scenario and in view of the remedies sought by the petitioner, I render the following remedies for the petitioner.
1. A declaration that the petitioner's rights under the constitution article 41 were infringed upon by the 1st respondent.



2. An order is issued that the petitioner be re-engaged by the 3rd respondent in a position commensurate with his services in the PSC since the position has since been filed.
3. The petitioner is entitled to payment of his salaries and dues with effect from the date of 1/7/24 to date.
4. The 1st respondent to pay the petitioner damages equivalent to 3 million for breach of his contractual rights.
5. There shall be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH OF APRIL, 2025.

HELLEN WASILWA

JUDGE

