



**Nzuki v South Eastern Kenya University & another (Cause E032 of 2024) [2025] KEELRC 1609 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1609 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
CAUSE E032 OF 2024**

**B ONGAYA, J  
MAY 29, 2025**

**BETWEEN**

**JOSHUA MUMO NZUKI ..... CLAIMANT**

**AND**

**SOUTH EASTERN KENYA UNIVERSITY ..... 1<sup>ST</sup> RESPONDENT**

**DIRECTOR, FACILITIES MANAGEMENT & ADMINISTRATION, SOUTH  
EASTERN KENYA UNIVERSITY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The application for the claimant is dated 27.03.2025 filed through Odhiambo Ogutu & Company Advocates. It is under Articles 2(6), 22, and 47(1), and 48 of *the Constitution* of Kenya 2010, Article 25 of the Universal Declaration of Human Rights (UDHR), section 49(3) of the *Employment and Labour Relations Court Act*, section 50(1) of the Civil Procedure Rules and all other enabling provisions of law. The applicant prays for an order that a temporary injunction do issue restraining the 1<sup>st</sup> respondent from advertising or filling up the position of Assistant Director, Facilities Management & Administration, South Eastern Kenya University pending the hearing and determination of the main cause herein; and, costs of the suit.
2. The application was based upon the attached applicant's supporting affidavit and upon the following grounds:
  - a. The applicant filed the suit seeking reinstatement to the position subject of the instant application and suit. He alleged the suspension was unfairly handled.
  - b. Subsequently and while the suit was pending, the disciplinary process continued resulting in the applicant's summary dismissal by the letter dated 03.02.2025. His administrative appeal was disallowed and the dismissal upheld on 19.03.2025. His case is that the suspension leading



to his dismissal was unfair and the summary dismissal was an afterthought, calculated to defeat the pending suit.

- c. That the minutes of proceedings of his appeal against his dismissal exemplify bias.
  - d. The respondents are likely to advertise the vacancy flowing from the summary dismissal and fill the same. In that event, his case for an order of reinstatement will be defeated. If the Court finds reinstatement order should issue, it will be cumbersome to remove the person appointed in the office. It would be unlawful and unconstitutional to so remove the innocent third party appointed to the position. An acting appointment to the position should be a fair position to the parties and pending hearing and determination of the suit.
  - e. The respondents will not suffer prejudice if the temporary injunction is issued.
3. The respondents opposed the application by filing the replying affidavit of Professor Francis Wachira, Deputy Vice Chancellor, sworn on 30.04.2025 and filed through Nicole K. Nyamai. It was urged that the matters raised in the application are premature and can only be resolved by the Court after the full hearing of the main suit.
  4. Submissions on the application were filed and served. The Court has considered the material on record for and against the application and returns as follows:
    - a. As submitted for the parties the principles for grant of a temporary injunction per *Giella – Versus- Cassman Brown & Company Limited (1973) EA 358* are that the applicant must establish a prima facie case with a probability of success at trial; demonstrate irreparable injury which cannot be adequately remedied with money if the injunction is declined; and, if in doubt, show the balance of convenience is in the applicant’s favour.
    - b. In the instant case, the applicant alleges that the suspension was unfair and then the summary dismissal was unfair as per biased administrative appeal minutes. The court finds that indeed, there appears to be no apparent or obvious evidence of the allegations which as urged for the respondents are premature and can only be resolved one way or the other after the full hearing of the suit. To that extent, it appears that the applicant has not demonstrated a prima facie case with probability of success.
  5. Further, the suit as pleaded challenged the suspension and not the summary dismissal. The applicant has not taken prompt steps to amend the suit as would be necessary to anchor the temporary injunction as prayed for upon a proposed final order of reinstatement after full hearing of the suit, as would be appropriate or necessary to urge for the applicant. In such circumstances the court considers that upon balance of convenience, it would be seriously prejudicial to the respondents for the injunction to issue as prayed for and while, at the end of hearing of the suit as pleaded, no potential relief would be served as being aided by the temporary injunction. In other words, the applicant has not demonstrated the ends of justice that will be served after full hearing of the suit and if the temporary injunction is granted as prayed for.
  6. In the circumstances, the Court considers that the application is amenable to dismissal with costs in the cause.
  7. In conclusion, the application for the claimant for a temporary injunction is hereby determined with orders as follows:
    - a. The application is dismissed with costs in the cause.
    - b. The Deputy Registrar to return the case file to the Machakos sub registry forthwith.



- c. Parties to take a convenient mention date for further orders and directions towards the expeditious hearing and determination of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 29<sup>TH</sup> MAY, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

