



**Obonyo v Nyanchwa Adventist Mission Hospital Board (Appeal
E006 of 2025) [2025] KEELRC 1535 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1535 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII
APPEAL E006 OF 2025
NZIOKI WA MAKAU, J
MAY 28, 2025**

BETWEEN

DAVISON KIRIOBAS OBONYO CLAIMANT

AND

NYANCHWA ADVENTIST MISSION HOSPITAL BOARD RESPONDENT

RULING

1. For determination is the Claimant/Applicant's application dated 21st February 2025. In the application the Applicant seeks reinstatement as the Respondent's Chief Executive Officer and Medical Director; payment of salaries and contractual statutory dues, orders stopping recruitment and filling of his position, and an injunction restraining the Respondents from implementing his suspension and continuing with disciplinary proceedings, all pending hearing and determination of the suit. The Applicant also seeks costs of the application.
2. The application is supported by the grounds apparent on its face and the Applicant's sworn supporting affidavit. The Applicant avers that the Respondent's hurriedly convened a Zoom meeting of the 19th February 2025 for purposes of getting rid of him was inhumane. He further avers that he was unjustifiably sent on compulsory leave without any reason, contravening fair labour practices and constituting breach of contract as no notice or reasons were advanced. The Applicant also asserts that no charges were levelled against him, he was not given the opportunity to respond and that the meeting of 19th February 2025 was irregular.
3. In response, the Respondent, through a replying affidavit dated 14th March 2025 sworn by Mr. Paul Gwaro, its board member, defended its actions. The Respondent maintained that the Applicant's suspension was necessary to allow for investigations. It averred that the Applicant had illegally renewed workers' contracts without authorization, and preliminary inquiries had confirmed that he had personally signed those contracts. The Respondent also averred that the Applicant had inappropriately released confidential documents, including employment contracts and a contract with the Social



Health Authority (SHA), which were later attached to Kisii Constitutional Petition No. E005 of 2025. Given the gravity of these accusations, the Respondent argued that the Applicant's conduct amounted to a serious breach of his contract and bordered on criminality. It asserted that suspending him was crucial to preserve the integrity of the investigative process and prevent interference with witnesses. Moreover, the Respondent avowed that the application offended the exhaustion doctrine, having been filed before the internal dispute resolution mechanisms outlined in the suspension letter had been exhausted.

4. In rejoinder via a further affidavit dated 26th March 2025 the Applicant maintained that the allegations of illegal contract renewal were false. He explained that the renewal process had followed due procedure—initiated by the Administration Committee's recommendation on 31st December 2024 that all contracts be renewed followed by the Human Resource Committee's approval on 5th January 2025 that all audited and verified employees' contracts be renewed. He emphasized that the requirement for board approval only applied to senior-level appointments. The Applicant also dismissed the claim that he had signed the contracts, noting that the board meeting scheduled for 16th February 2025 to approve the appointments had been stopped by a court order in Kisii ELRC Petition No. E005 of 2025. As for the sharing of the SHA contract the Applicant contended that it was a public document, and in any case, it was not one of the reasons for his suspension. In respect of validation of contracts, the Applicant maintained that no evidence of such validation had been provided. Furthermore, he countered that there were, in fact, no ongoing investigations, as all employees referenced by the Respondent remained in active employment.
5. With the agreement of both parties, the court directed that the application be determined through written submissions.

Claimant/Applicant's Submissions

6. In support of the application, the Applicant submitted that suspension should never be indefinite. He asserted that subjecting an employee to an open-ended suspension exposed them to undue mental anguish and operated as a form of indirect punishment. While acknowledging that the power to suspend was the employer's prerogative, the Applicant submitted such powers should be exercised sparingly, only in the clearest of cases, for the shortest duration possible and as a measure of last resort. He further asserted that a suspension that extends for an unreasonably long period may be interpreted as an intention by the employer to abandon its contractual obligations, thereby amounting to a repudiation of the employment contract. In support of this position, he cited the case of *Kabucho v Kamuthi Housing Co-operative Society Ltd* [2024] KEELRC 536 (KLR). To further bolster his argument, the Applicant relied on the decision in *Bryan Mandila Khaemba v Chief Justice and President of the Supreme Court of Kenya & another* [2019] eKLR, where the court held that indefinite suspension constitutes constructive dismissal. In light of these submissions, he urged the court to allow the application.

Respondent's Submissions

7. In response, the Respondent identified two issues for determination;
 - a. whether the Claimant complied with the doctrine of exhaustion; and
 - b. whether the application is merited.
8. On the issue of exhaustion, the Respondent submitted that the Applicant contravened the doctrine by prematurely approaching court before the disciplinary process had been concluded. It asserted that the Applicant was afforded an opportunity to defend himself in the suspension letter, but



instead chose to invoke the court's jurisdiction merely two days later, before that opportunity was exercised. It highlighted the fact that the *Employment Act* clearly outlined the procedure for dismissal on grounds of misconduct—specifically under section 41, which requires an employer to explain the reasons for contemplated dismissal, and section 44, which defines gross misconduct to include improper performance of work and conduct detrimental to the employer. It also drew attention to the Applicant's action of signing the contracts illegally which justified his suspension. In support of its position that the Applicant failed to comply with the exhaustion doctrine, the Respondent cited Article 159(c) of *the Constitution*, which promotes the use of alternative dispute resolution mechanisms. The Respondent also relied on the decision in *William Odhiambo Ramogi & 3 others v Attorney General & 4 others Muslims for Human Rights & 2 others (Interested Parties) [2020] eKLR* and *Geoffrey Muthiga Kabiru & 2 others v Samuel Munga Henry & 1756 others [2015] eKLR*, where the courts underscored the importance of pursuing the available remedies before the primary agency responsible for the action complained of, before invoking the court's jurisdiction. Additionally, the Respondent referred to section E.50 of the Working Policy of the General Conference of Seventh-Day Adventists East-Africa Division, which authorizes the executive committee of any employing body under the SDA Church to remove an employee who is unable to discharge their duties effectively, even before the end of their term.

9. As to the merits of the application, the Respondent submitted that it failed to establish a prima facie case justifying the grant of the mandatory injunctions sought. The Respondent maintained that the Applicant's disregard for the exhaustion doctrine, the serious nature of the allegations against him, and the fact that he had been given an opportunity to present his defence, all weighed against the granting of the prayers sought. In support, the Respondent cited the case of *Malier Unissa Karim v Edward Oluoch Odumbe [2015] eKLR*, which held that the threshold for granting mandatory injunctions is higher than that for prohibitory injunctions, and that mandatory injunctions should only be issued in exceptional circumstances—not for actions that can be remedied or where a party seeks to gain an unfair advantage. The Respondent also cited the decision in *Sharriff Abdi Hassan v Nadhif Jama Adan CA 121/2005 [2006] eKLR*, where the court held:

“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standard spelt out in law as stated above that a party against whom a mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for the full hearing of the entire case. That position could be taken by the courts in such cases as those of alleged trespass to property.”

10. In conclusion, the Respondent urged the Court to dismiss the application for lack of merit.

Disposition

11. The Court has been invited to make a determination on the suspension of the Claimant. It is trite that the power to suspend an employee is the prerogative of the employer. Suspension must be for a defined period of time as suspension is a means to effect either a cooling off or facilitating the investigative process and prevent interference with witnesses by a suspended employee. The Court notes that the Claimant moved Court within days of being suspended. Such a move, it was argued, offended the exhaustion doctrine especially as the motion was filed before the internal dispute resolution mechanisms outlined in the suspension letter had been exhausted. Courts are wary of interfering with managerial prerogatives except where there is a breach of the law or the human resource policies of the employer. In my considered opinion, the Claimant ought to have sought remedial action through the



channels in his workplace and only then seek intervention of the Court. Motion is dismissed with an order that each party bears their own costs.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF MAY 2025

Nzioki wa Makau, MCIArb.

JUDGE

