



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Leoit & 59 others v Nairobi City County & 3 others (Cause  
E572 of 2023) [2024] KEELRC 101 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 101 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E572 OF 2023  
L NDOLO, J  
FEBRUARY 1, 2024**

**BETWEEN**

**JOSEPH SEMPELE LEOIT ..... 1<sup>ST</sup> CLAIMANT**  
**FRANCIS SWAN LEDONYO ..... 2<sup>ND</sup> CLAIMANT**  
**SITOLE LEKARKAR ..... 3<sup>RD</sup> CLAIMANT**  
**BENSON SAITORE ..... 4<sup>TH</sup> CLAIMANT**  
**KELVIN MWENDA ..... 5<sup>TH</sup> CLAIMANT**  
**EDWIN NJOROGE KARANJA ..... 6<sup>TH</sup> CLAIMANT**  
**RICKSON KIPNG'ENO ..... 7<sup>TH</sup> CLAIMANT**  
**EMMANUEL KIPKOECH ..... 8<sup>TH</sup> CLAIMANT**  
**VINCENT MUTU ..... 9<sup>TH</sup> CLAIMANT**  
**CHRISPINUS KONG'ANI ..... 10<sup>TH</sup> CLAIMANT**  
**JAVAN EKASIBA ..... 11<sup>TH</sup> CLAIMANT**  
**RODGERS SHIKOKOTI ..... 12<sup>TH</sup> CLAIMANT**  
**CHARLES OGUTU ..... 13<sup>TH</sup> CLAIMANT**  
**MOSES NYAMBABE ..... 14<sup>TH</sup> CLAIMANT**  
**JURIAH MWINYI ..... 15<sup>TH</sup> CLAIMANT**  
**CATHERINE ONYANGO ..... 16<sup>TH</sup> CLAIMANT**  
**SHADRACK KORIR ..... 17<sup>TH</sup> CLAIMANT**  
**JUMA ABDULLAHI MUSA ..... 18<sup>TH</sup> CLAIMANT**  
**EUNICE SEDA ..... 19<sup>TH</sup> CLAIMANT**



EVANS NGUGI .....	20 <sup>TH</sup> CLAIMANT
KEITH JONES MAINA .....	21 <sup>ST</sup> CLAIMANT
TARUS MARK KIPRONO .....	22 <sup>ND</sup> CLAIMANT
LUCAS MAROA MWITA .....	23 <sup>RD</sup> CLAIMANT
KIMUNGE GIDEON TOROITICH .....	24 <sup>TH</sup> CLAIMANT
BRIAN CHEPTUMO KIPROP .....	25 <sup>TH</sup> CLAIMANT
RAYMOND MUNENE MUSYOKA .....	26 <sup>TH</sup> CLAIMANT
LTANAPOA LOLMODOONI .....	27 <sup>TH</sup> CLAIMANT
CHERUIYOT OBED .....	28 <sup>TH</sup> CLAIMANT
ABDIKADIR ISSA MOHAMED .....	29 <sup>TH</sup> CLAIMANT
MOHAMED HUKA WAKO .....	30 <sup>TH</sup> CLAIMANT
JOTHAM LUCHESI MUYEYA .....	31 <sup>ST</sup> CLAIMANT
EVA WANJIKU KAMAU .....	32 <sup>ND</sup> CLAIMANT
KAVUVI JOSPHINE NZOKI .....	33 <sup>RD</sup> CLAIMANT
SAITOTI KIPOS NAADOKILA .....	34 <sup>TH</sup> CLAIMANT
MALCOLM XAVIER MAROKKO .....	35 <sup>TH</sup> CLAIMANT
RITTA WANJIRU WANGU .....	36 <sup>TH</sup> CLAIMANT
JUDY MANGA WANGUI .....	37 <sup>TH</sup> CLAIMANT
SALOME NJERI WANGUI .....	38 <sup>TH</sup> CLAIMANT
ALLY MOHAMED ASAAK .....	39 <sup>TH</sup> CLAIMANT
VINCENT ASENSIO .....	40 <sup>TH</sup> CLAIMANT
JOEL BAKIRA IKAPESI .....	41 <sup>ST</sup> CLAIMANT
MARY DIANA NJERI .....	42 <sup>ND</sup> CLAIMANT
DORIS KATUNGO KILELE .....	43 <sup>RD</sup> CLAIMANT
JANE WANJIRU .....	44 <sup>TH</sup> CLAIMANT
OMAR SULEIMAN .....	45 <sup>TH</sup> CLAIMANT
RUKIA AWUOR OGUTU .....	46 <sup>TH</sup> CLAIMANT
COLLINS KIPNG'ENO .....	47 <sup>TH</sup> CLAIMANT
GILBERT MAINA KARIUKI .....	48 <sup>TH</sup> CLAIMANT
KELVIN NDUNG'U KAIRU .....	49 <sup>TH</sup> CLAIMANT
EUGENE JOSHUA OUMA .....	50 <sup>TH</sup> CLAIMANT
PETER LEJALON .....	51 <sup>ST</sup> CLAIMANT



KENNEDY KISEIYA .....	52 <sup>ND</sup> CLAIMANT
KAREN IMMACULATE NYAMBURA .....	53 <sup>RD</sup> CLAIMANT
ELIJAH KIPSIGEI LANGAT .....	54 <sup>TH</sup> CLAIMANT
DENNIS MUCHIRI .....	55 <sup>TH</sup> CLAIMANT
MICHAEL OUMA .....	56 <sup>TH</sup> CLAIMANT
ALFRED KIPNG'ENO KOROS .....	57 <sup>TH</sup> CLAIMANT
MARY NJOKI MAINA .....	58 <sup>TH</sup> CLAIMANT
MARCYLINE NALIAKA WATOLO .....	59 <sup>TH</sup> CLAIMANT
THOMAS JAPANESE LENGOS .....	60 <sup>TH</sup> CLAIMANT

**AND**

NAIROBI CITY COUNTY .....	1 <sup>ST</sup> RESPONDENT
PUBLIC SERVICE COMMISSION .....	2 <sup>ND</sup> RESPONDENT
THE ATTORNEY GENERAL .....	3 <sup>RD</sup> RESPONDENT
NAIROBI CITY COUNTY PUBLIC SERVICE BOARD .....	4 <sup>TH</sup> RESPONDENT

**RULING**

1. What falls for determination is the Claimants' Notice of Motion dated 21<sup>st</sup> July 2023, seeking the following orders:
  - a. That the Claimants be granted leave to represent another 580 enforcement officers whose contracts were terminated by the 4<sup>th</sup> Respondent;
  - b. That timelines be set within which the 580 enforcement officers are allowed to file a schedule of their names, addresses, description and details of wages due or the particulars of any other breaches and reliefs sought by each Claimant;
  - c. A temporary order of injunction compelling the 1<sup>st</sup> and 4<sup>th</sup> Respondents to pay the Claimants seven months' unpaid salary for services rendered to Nairobi City County Government;
  - d. A temporary order of injunction suspending the advertisement for one thousand enforcement officers published by the Nairobi City County Public Service Board on 18<sup>th</sup> July 2023;
  - e. A temporary order of injunction restraining the 4<sup>th</sup> Respondent from shortlisting, interviewing, recruiting or in any other way filling the positions of the enforcement officers.
2. The Motion is supported by an affidavit sworn by the 1<sup>st</sup> Claimant, Joseph Sempele Leoit and is based on the following grounds:
  - a. That the Claimants were employed by the Public Service Commission (PSC) and deployed to work for the defunct Nairobi Metropolitan Services (NMS). The defunct NMS was performing the functions of the Nairobi County Government under a Deed of Transfer;



- b. That two months before the defunct NMS handed back the functions to Nairobi City County Government, both the PSC and the Nairobi City County Government committed to either absorb the Claimants in Nairobi City County Public Service Board or deploy them to National Government Ministries and Agencies under the Public Service;
  - c. That seven months lapsed after the defunct NMS handed the transferred functions back to Nairobi City County Government, the Claimants continued to work for Nairobi City County Government, but they have not been paid their monthly salary for seven months;
  - d. That from 16<sup>th</sup> June 2023, Nairobi City County Public Service Board started to issue notices of expiry of contract to the Claimants;
  - e. That although Nairobi City County Public Service Board issued the notices for expiry of contract to the Claimants, the Claimants were employed by PSC on three year contracts;
  - f. That under the framework for the handover of transferred functions back to Nairobi City County Government, the commitment by PSC and Nairobi City County Government that the Claimants would be absorbed into Nairobi City County Public Service Board or be deployed to National Government Ministries did not limit the term of the Claimants' contracts of employment to seven months after the lapse of the tenure of the defunct NMS;
  - g. That on 18<sup>th</sup> July 2023, Nairobi City County Public Service Board advertised for a thousand enforcement officers. Neither Nairobi County Government or Nairobi City County Public Service Board has paid the Claimants' unpaid salary or terminal dues, nor have they indicated when they will be paid.
3. The 1<sup>st</sup> Respondent filed Grounds of Opposition dated 8<sup>th</sup> August 2023 stating:
- a. That the Claimants admit that they were not employed by the 1<sup>st</sup> Respondent;
  - b. That the Claimants admit that they were employed by NMS that is now defunct;
  - c. That the 1<sup>st</sup> Respondent was not under any legal obligation to retain or employ the Claimants upon the lapse of the tenure of the defunct NMS;
  - d. That the Claimants' engagement by the defunct NMS was as a result of an illegality that should not be sanitized by the Court;
  - e. That the 2<sup>nd</sup> Respondent (PSC) has no mandate to recruit or confirm employees on behalf of the 1<sup>st</sup> Respondent except in certain circumstances, as devolution has created a clear demarcation;
  - f. That the 1<sup>st</sup> Respondent should not be forced to pay salary arrears for employees it did not recruit;
  - g. That there is no budgetary allocation within the 1<sup>st</sup> Respondent to pay salary arrears to the Claimants who it did not recruit;
  - h. That there is no discernible case against the 1<sup>st</sup> Respondent;
  - i. That the Claimants seek injunctive relief against the 1<sup>st</sup> Respondent but fail the 3-tier test for grant of such relief;
  - j. That based on the material presented, the prayers sought are incapable of being granted against the 1<sup>st</sup> Respondent.



4. The 2<sup>nd</sup> Respondent's response is by way of a replying affidavit sworn by its Secretary/Chief Executive Officer, Dr. Smokin K. Rotich on 14<sup>th</sup> September 2023.
5. He depones that pursuant to Article 5.7 of the Deed of Transfer, the PSC and Nairobi City County Public Service Board developed an instrument to facilitate the seconding and/or deployment of officers from the Nairobi City County Government to NMS.
6. Dr. Rotich further depones that PSC, guided by the above provision, on diverse dates and upon request by NMS, recruited the Claimants as enforcement officers to support in executing the mandate pursuant to Gazette Notice dated 25<sup>th</sup> February 2020, which transferred some functions from the Nairobi City County Government to the National Government.
7. According to Dr. Rotich, the Claimants were engaged on local agreement terms in the defunct NMS, during the remainder of the tenure of the Deed of Transfer, with effect from the date each of them assumed duty. He asserts that the Claimants were aware that their contracts would terminate upon the end of the tenure of NMS.
8. Dr. Rotich avers that as far as PSC is concerned, the Claimants' contracts of employment came to an end upon the expiry of the Deed of Transfer.
9. The 4<sup>th</sup> Respondent filed a Replying Affidavit sworn by its Acting Chief Executive Officer, Nyamwaya Nyagara on 12<sup>th</sup> September 2023. He challenges the legal efficacy of the Claimants' suit and application on account of lack of prior consent from all the persons the Claimants seek to represent.
10. Nyagara maintains that the Claimants have not met the threshold for grant of the orders of injunction sought in the application.
11. In response to the Respondents' Responses, Lesoit swore a further affidavit on 28<sup>th</sup> October 2023, reiterating his earlier position.
12. In my view, the issue of inclusion of parties who are not presently before the Court is a matter to be addressed separately from the subject of the current application. Further, the Court was informed that the Claimants had been paid their salary arrears. The only surviving prayer therefore is the one seeking a temporary order of injunction restraining the 4<sup>th</sup> Respondent from recruiting enforcement officers.
13. The conditions under which such an order may be granted were established in *Giella v Cassman Brown & Co. Ltd* (1973) E.A 358 as follows:

“First, 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 a balance of convenience.”
14. In *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR it was held that:

“the three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”



15. A *prima facie* case was defined by the Court of Appeal in *Mrao v First American Bank of Kenya & 2 others* [2003] eKLR in the following terms:

“ A *prima facie* case in a civil application includes but is not confined to a genuine and arguable case. It is a case 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.”
16. The Claimants’ application is premised on their understanding of their employment status after the tenure of the Nairobi Metropolitan Services, where they had been deployed.
17. Reading from the parties’ pleadings and submissions, this is a matter that does not lend itself to a straightforward determination on the face of it. Indeed, according to the Claimants, their terms of engagement were changed midstream. This is a matter that can only be determined after the taking of evidence in a full trial.
18. That said, I find and hold that the Claimants have failed to establish a *prima facie* case as defined in law.
19. Regarding the second condition, a party is required to demonstrate that they will suffer substantial injury that cannot be compensated by an award of damages. In the *Nguruman Case (supra)*, it was held that such an injury must not be speculative; it must go beyond an unfounded fear or apprehension.
20. The Claimants argue that because damages in employment matters are controlled by statute, they cannot be fully compensated by an award of damages. Even if this were true, the first thing to establish is that there is a real injury in the first place, which threshold the Claimants have not achieved.
21. In light of the foregoing findings on the first two conditions, I have reached the conclusion that the balance of convenience does not tilt in the Claimants’ favour.
22. In the end, the Claimants’ application dated 21<sup>st</sup> July 2023 is declined with costs in the cause.
23. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 1<sup>ST</sup> DAY OF FEBRUARY 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Rakweri for the Claimant

Mr. Migele for the 1<sup>st</sup> Respondent

Ms. Wangeci for the 2<sup>nd</sup> Respondent

Ms. Mbilo for the 3<sup>rd</sup> Respondent

Ms. Chepkoyo for the 4<sup>th</sup> Respondent

