



**Muthoka v New Kenya Co-operative Creameries Limited (Cause E004 of 2024) [2024] KEELRC 1456 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1456 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E004 OF 2024**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN**

**MAGDALENE KOKI MUTHOKA ..... CLAIMANT**

**AND**

**NEW KENYA CO-OPERATIVE CREAMERIES LIMITED ..... RESPONDENT**

**RULING**

1. Through an application dated 2<sup>nd</sup> January 2024, the Claimant prays for orders *inter alia*, that pending hearing and determination of the Claim, the Respondent is restrained from acting on its letter dated 11<sup>th</sup> December 2023, declining renewal of the Claimant's contract; and that the Respondent is restrained from advertising, recruiting and/or appointing any other person to the position of Chief Manager, Human Resource & Administration, the position the Claimant held/ holds.
2. The application is founded on the affidavit of the Claimant, sworn on 2<sup>nd</sup> January 2024.
3. It is opposed through the Replying Affidavit of Nixon Sigey, Managing Director of the Respondent, sworn on 7<sup>th</sup> February 2024.
4. It was agreed before the Court on 8<sup>th</sup> February 2024, that the application is considered and determined on the strength of the Parties' affidavits and submissions.
5. When the Parties appeared before the Court on 14<sup>th</sup> March 2024 for mention, the Court was informed that the dispute had been escalated, the Respondent having advertised for the filling up of the disputed position, on 5<sup>th</sup> March 2024.
6. The Court encouraged the Parties to continue engaging in consultations which were underway, and restrained the Respondent from implementing its advertisement of the disputed position, as communicated in the press on 5<sup>th</sup> March 2023.
7. Parties confirmed the filing and exchange of their submissions at the last mention, on 4<sup>th</sup> April 2024.



**The Court Finds: -**

8. The record indicates that the Claimant's contract expired on 20<sup>th</sup> March 2023.
9. There was no obligation under the contract, on the part of the Respondent, to renew the contract.
10. On 10<sup>th</sup> March 2023, before the expiry date, the Claimant was advised by the Managing Director that her contract had been extended for 8 months, effective 21<sup>st</sup> March 2023, awaiting the deliberations and determination of the Respondent's Board.
11. The Respondent's Board members were freshly appointed by the relevant Cabinet Secretary, on 10<sup>th</sup> March 2023. It took time for the members to be inducted and to start formal sittings.
12. The Board sat on 4<sup>th</sup> December 2023, and resolved not to renew the Claimant's contract. This was communicated through a letter to the Claimant, dated 11<sup>th</sup> December 2023.
13. The Claimant is asking the Court to compel the Respondent to renew her contract for another 3 years.
14. There is no factual or legal basis for the Court to grant such a prayer. The Claimant's contract expired. It was renewed for 8 months to give the Respondent's Board some space for its inauguration, and deliberation on the Claimant's application for renewal. When the Board finally met and determined that the Claimant's contract should not be renewed, the decision was in accordance with the terms of the contract and the law. The Respondent was not contractually bound to renew the Claimant's contract.
15. If termination or non-renewal of the Claimant's contract is unfair and unlawful, she has recourse in the alternative remedies she seeks in the substantive Claim: 12 months' salary in compensation for unfair and unlawful termination; damages for constructive dismissal; severance pay; and costs.
16. She can always have these substantive remedies at the end of the full hearing, while granting her the provisional measures, would in effect result in the Court renewing or extending her contract, pending the hearing of the full Claim. It is noted that hearing of Claims take on average, over 3 years. It is even open to her, to claim reinstatement. She has an array of substantive remedies, which would adequately redress her grievances. There is no persuasive reason to grant interlocutory orders sought, which in effect will have renewed or extended her contract. Granting the provisional measures, would highly prejudice the Respondent's position, and go against the intention of the Parties, as expressed in the limited-term contract of employment.

**It is ordered: -**

- a. The interlocutory orders issued in favour of the Claimant on 14<sup>th</sup> March 2024 are set aside.
- b. They are replaced with an order dismissing the application dated 2<sup>nd</sup> January 2024 in its entirety.
- c. The Claimant to prosecute the main Claim.
- d. Costs in the cause.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

