



**Mackins v West Nairobi School & another (Cause E407 of 2024)
[2024] KEELRC 2668 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2668 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E407 OF 2024
L NDOLO, J
OCTOBER 31, 2024**

BETWEEN

JANETTA MACKINS CLAIMANT

AND

WEST NAIROBI SCHOOL 1ST RESPONDENT

**NETWORK OF INTERNATIONAL CHRISTIAN SCHOOLS 2ND
RESPONDENT**

RULING

1. This ruling disposes of the Notice of Motion dated 28th May 2024, by which the Claimant seeks the following orders:
 - a. A permanent injunction restraining the 1st Respondent, either by itself, its directors, servants, agents and/or employees from cancelling the Claimant’s work permit until the two-year term of her employment is determined. The Claimant seeks an alternative order compelling the 1st Respondent to reinstate the work permit, in the event that it has been cancelled;
 - b. An order prohibiting the 1st Respondent either by itself, its directors, servants, agents and/or employees from terminating the Claimant’s employment, until determination of her two-year fixed term employment contract.
2. The application is supported by the Claimant’s own affidavit in which she depones that she was employed by the 1st Respondent in the position of Elementary Chaplain, on a fixed term employment contract dated 1st July 2023, which is set to expire on 30th June 2025.
3. The Claimant further depones that upon her employment by the 1st Respondent and subsequently obtaining a work permit, she enrolled her son at Daystar University. The Claimant adds that she was undertaking training at a flying school.



4. The Claimant points out that her work permit was due to expire on 25th September 2025, while her son's pass was valid until 23rd November 2025.
5. The Claimant claims to have been summoned by the 1st Respondent's Director Thomas Krol, to an impromptu meeting on 17th April 2024, where she was informed of a discussion about her release from her two-year fixed term contract, before its expiry.
6. Thereafter, the 1st Respondent is said to have sent two emails dated 18th April 2024 and 19th April 2024, informing the staff and parents that the Claimant would be leaving the School.
7. The Claimant depones that on 27th April 2024, she was informed that her work permit would be cancelled effective 30th June 2024.
8. The Respondents oppose the Claimant's application by a replying affidavit sworn by the 1st Respondent's Director, Thomas Krol on 18th June 2024. Krol concedes that the Claimant was employed by the 1st Respondent in the position of Elementary Chaplain on a two-year fixed term contract. He adds that the 1st Respondent procured a Class D (Employment) work permit for the Claimant. He asserts that under Kenyan immigration law, a work permit is restricted to the purpose for which it is issued.
9. Krol sets out concerns regarding the Claimant's performance, her interpersonal skills and lack of ideological alignment with the ethos of the 1st Respondent.
10. According to Krol, the meeting of 17th April 2024, which he refers to as a follow up meeting, was held to give the Claimant an opportunity to respond to the concerns raised. He adds that in follow up deliberations, the Claimant's exit was discussed and agreement reached that the staff and students be informed of the Claimant's departure. The Claimant is said to have announced to the students that she was leaving.
11. Regarding cancellation of the work permit, Krol states that upon termination of an expatriate's employment, the 1st Respondent is mandated to inform the Immigration Department to facilitate cancellation of the work permit. According to the 1st Respondent, the Claimant left employment on her own volition.
12. The Claimant swore a further affidavit on 11th July 2024, reiterating the contents of her supporting affidavit. She maintains that her employment was unlawfully and unfairly terminated, and adds that no allegations of poor performance or misconduct were ever brought to her attention.
13. The orders sought by the Claimant fall within the province of injunctions, and the conditions upon which such orders may be granted were set out in *Giella v Cassman Brown & Co Ltd* (1973) EA, 358 as follows:
 - a. That the applicant has a *prima facie* case with a probability of success;
 - b. That the applicant has demonstrated that if the order sought is not granted, they will suffer irreparable damage that cannot be compensated by an award of damages;
 - c. That in case of doubt, the balance of convenience tilts in favour of the applicant.



14. A *prima facie* case was defined by the Court of Appeal in *Mrao v First American Bank of Kenya Limited & 2 others* (2003) KLR 125 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. A *prima facie* case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. That is clearly a standard which is higher than an arguable case.”
15. In *Nguruman v Jan Bonde Nielsen & 2 others* [2014] eKLR it was held that the equitable remedy of injunction is granted to prevent injury that is actual, substantial and demonstrable.
16. In their pleadings in this application, the parties went into great detail regarding the mode of the Claimant’s exit from the 1st Respondent’s employment. Significantly, the parties took diametrically divergent positions, meaning that the issues raised in this regard are not amenable to determination at the interlocutory stage. Rather, they can only be ventilated and canvassed at a full trial.
17. In light of the foregoing, the Claimant’s application dated 28th May 2024 is declined with costs in the cause.
18. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OCTOBER 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Kwega for the Claimant

Mr. Mbugua for the Respondent

