



**David & 187 others v Governor, County Government of Kilifi & 2 others
(Petition E003 of 2023) [2023] KEELRC 2416 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2416 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
PETITION E003 OF 2023**

AK NZEI, J

OCTOBER 5, 2023

IN THE MATTER OF: THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: ARTICLES 41(1) OF THE CONSTITUTION 2010

AND

**IN THE MATTER OF: ARTICLES 229(1), 23(1), 23(3),
258(1) AND 259(1) (B) OF THE CONSTITUTION 2010**

AND

**IN THE MATTER OF: ENFORCEMENT OF FAIR LABOUR
PRACTICES WITHIN THE COUNTY GOVERNMENT OF
KILIFI IN RELATION TO EMPLOYEES ENGAGED AS CASUALS**

BETWEEN

EMMANUEL MAITHA DAVID 1ST PETITIONER
FESTUS BARAKA 2ND PETITIONER
EVE KAFRO MNENE 3RD PETITIONER
GRAHAM KATANA MWERI 4TH PETITIONER
JONATHAN KITHI KAZUNGU 5TH PETITIONER
VICTOR KOMBE NZAI 6TH PETITIONER
SAMWEL MAITHA JONATHAN 7TH PETITIONER
MILLICENT KHAYANGA NASIMIYU & 180 OTHERS 8TH PETITIONER

AND

GOVERNOR, COUNTY GOVERNMENT OF KILIFI 1ST RESPONDENT



COUNTY SECRETARY, KILIFI COUNTY 2ND RESPONDENT

KILIFI COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

RULING

1. Before me is the petitioners' notice of motion dated 25/4/2023, filed contemporaneously with the Petition herein on 25/4/2023. Orders sought in the application are as follows:-
 - a. that the application be certified as urgent, service be dispensed with at the first instance, and the application be heard *ex-parte* at the first instance.
 - b. that pending hearing and subsequent determination of the application inter-partes, the Court be pleased to issue an order of temporary injunction restraining the Respondents from jointly and severally, either through themselves, their agents or servants from terminating, advertising or conducting any recruitment process of the Petitioners'/applicants' positions and/or rehiring any employee whose services have been terminated for no reason at all, but being a casual employee.
 - c. that pending hearing and determination of the entire suit, the Court be pleased to issue an order of temporary injunction restraining the Respondents from jointly and severally, either through themselves, their agents or servants from terminating, advertising or conducting any recruitment process of the Petitioners'/Applicants' position and re-instating any employee whose services have been terminated as a casual employee.
2. The application, which is expressed to be brought under article 3(3), rule 17 of the [Employment and Labour Relations Court \(procedure\) Rules 2016](#) and all other enabling provisions of the law, is based on the supporting affidavit of Emmanuel Maitha David, the 1st Petitioner/Applicant, sworn on 25/4/2013. It is deponed in the said affidavit:-
 - a. that the Petitioners are casual staff engaged by the 3rd Respondent (Kilifi County Public Service Board) earning a gross salary of ksh. 18,188 upto Ksh. 24,648 pursuant to contracts of service, some starting on 1/7/2013.
 - b. that the [Employment Act](#) has provided an elaborate process of conversion of casual employment to term contract under Section 37, which conversion criteria has been met by the Petitioner/Applicants.
 - c. that the Respondents have hatched a pre-determined elaborate scheme to relieve the Petitioners of duty, which action lacks any substantive justification and procedural fairness.
 - d. that without due regard to the Petitioners' employment status, the Respondents are intending to engage in a recruitment process to fill the positions, hence the need for the Court's intervention and issuance of appropriate interim orders against the Respondents.
 - e. that the Petitioners stand to suffer irreparable loss and damage.
 - f. that further, Article 41 of the [Constitution of Kenya](#) 2010 on the rights of the Petitioners has been infringed, denied, violated or threatened by the Respondents.



3. The Petition and the application documents filed herein name eight (8) Petitioner/applicants and 180 others, and documents annexed to the supporting affidavit filed herein include the Petitioners' and/or some of the Petitioners' contracts of employment issued by the Respondents on various dates.
4. The application was first placed before me under a certificate of urgency on 27/4/2023, and I directed that the same be served, and be mentioned on 11/5/2023 for directions and/or further orders. On 11/5/2023, Counsel for all the parties appeared before me, and I gave the 1st, 2nd and 3rd Respondents 45 days to file and serve responses to both the Petition and the Notice of Motion dated 25/4/2023. Further, and in the interim, I issued an order of injunction restraining the Respondents, jointly and severally, either through themselves, their agents or servants, from terminating, advertising or conducting any recruitment process of the Petitioner/applicants' positions and/or re-hiring any employee whose services had been terminated for no reason at all, but being a casual employee.
5. The Respondents never complied with the order dated 11/5/2023 regarding filing of responses to the Petition herein and to the Notice of Motion dated 25/4/2023. On 27/6/2023, I gave them 15 more days to file responses as earlier ordered, but again no response was filed; and none has been filed to date.
6. Consequently, the notice of motion dated 25/4/23 stands unopposed, and I allow the same in the following terms:-
 - a. Pending hearing and determination of the Petition/suit herein, an order of injunction is hereby issued restraining the Respondents, jointly and severally, either by themselves, their agents or servants, from terminating, advertising or conducting any recruitment process on the Petitioners'/Applicants' positions, and from re-instating any employee whose service has been terminated as a casual employee.
 - b. Costs of the application shall be in the Petition.
7. The Petition herein shall be fast-tracked, and shall be fixed for hearing on priority basis.
8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 5TH OCTOBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....for Petitioner

.....Respondent

