



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. E809 OF 2021

BETWEEN

DR. CHARLES KIRIMI MBUI.....CLAIMANT

VERSUS

KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED.....RESPONDENT

RULING

1. The Claimant obtained an order of interim injunction, on 29th September 2021, restraining the Respondent from terminating the Claimant's contract as the Managing Director of the Respondent, ' which was renewed on 8th June 2021, '
2. Pending hearing *inter partes*, the Respondent was barred from recruiting a new Managing Director.
3. The Application is supported mainly by the Minutes of Respondent's Board Nomination and Remuneration Committee Meeting, held on 8th June 2021. Min: 08/2021 indicates the subject of the Claimant's contract renewal was discussed at length, with the recommendation that:
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§ The Claimant will attain mandatory retirement age of 60 years on 15th September 2025.

§ In light of this it is hereby recommended that his contract be renewed for a further period of 3 years and 11 months [1st October 2021 to 15th September 2025]. His terms and conditions of employment remain the same.

4. The Respondent immediately filed an Application under Certificate of Urgency on 18th October 2021 asking the Court to set aside the *ex parte* orders issued on 29th September 2021. The Respondent also filed a Replying Affidavit, sworn by Group Company Secretary Patrick Ngunjiri, on 18th October 2021.
5. The Application by the Respondent, and the Replying Affidavit are essentially a response to the initial Application by the Claimant.
6. The Court directed that the Parties file Written Submissions, with a Ruling to be delivered on 18th February 2022.
7. Submissions are confirmed to have been filed and served.

The Court Finds: -

8. There was no renewed contract executed between the Parties, at the time the Claimant obtained the orders on 29th September 2021, alleging the contract was renewed on 8th June 2021.
9. There was only in place, a recommendation of the Board Nomination and Remuneration Committee, dated 8th June 2021, for renewal of the contract for a further period of 3 years and 11 months.
10. The Claimant was aware there was no renewal at the time he came before the Court, but only a recommendation for renewal. On 6th September 2021, about 2 weeks before he approached the Court, he wrote an Internal Memo to the Respondent's Chair, stating that the Nomination and Remuneration Committee, had considered and approved renewal of his contract. He asked the Chair, to have contract

renewal documents processed and availed to him for his execution. Quite clearly, no renewal had been granted, at the time the Claimant claimed it had been, 8th June 2021.

11. He was aware at time of writing his Internal Memo of a letter dated 3rd September 2021 from the Respondent to him, advising that the full Board met on 31st August 2021, and resolved not to renew his contract. He was advised that his contract dated 2nd August 2018, would expire on 31st September 2021, and that he would be paid his dues, up to and including this date.

12. The Claimant was aware that the Board, did not go by the recommendations of the Nomination and Remuneration Committee. He has not shown that the Board was bound by those recommendations. He was not offered a contract document on renewal and did not execute any such document.

13. At most the recommendations would found a Claim for legitimate expectation of renewal. It is one thing to legitimately expect renewal of a contract, and quite another, to have renewal of a contract. The Claimant gives particulars of legitimate expectation at paragraph 11 of his Statement of Claim. He pleads special loss and damages. These are avenues he can pursue, without seeking to impose fresh contractual obligations on the Parties, or restraining the Respondent from moving on, and filling the crucial docket of its Managing Director.

14. Why a Committee comprising top echelons of the Respondent's Board, would recommend renewal of the contract, only to be overruled by the full Board, is indicative of internecine strife within the Respondent. Wilson G. Muthaura for example, sat in the Nomination and Remuneration Committee on 8th June 2021, which recommended renewal of the contract, and is the same Officer who wrote to the Claimant on 13th September 2021, advising the Claimant that his contract would not be renewed. The Respondent appears to be in the grip of internecine strife, but this is not for the Court to adjudicate for now.

15. The Court is satisfied that the orders of 29th September 2021, issued against the background of failure by the Claimant to make full disclosure of material facts.

IT IS ORDERED: -

a. The Application by the Claimant filed on 29th September 2021 is declined and the orders issued on 29th September 2021 discharged.

b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS
18TH DAY OF FEBRUARY 2022.**

JAMES RIKA

JUDGE