



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.E043 OF 2021

(Before D.K.N.Marete)

ANN WANGARI MBATIA.....CLAIMANT/APPLICANT

VERSUS

KIRINYAGA WATER & SANITATION COMPANY (KIRIWASCO).....RESPONDENT

R U L I N G

This matter came to court by way of an application dated 29th July, 2021. It comes out as follows;

- 1. That the Honourable Court be pleased to certify this matter as Urgent and Hear prayer 2 and 3 here below exparte in the 1st instance due to its urgency.*
- 2. That the Honourable court be pleased to issue an interim order of injunction restraining the Respondent by itself, its agents and/or servants from advertising for, recruiting or filling the position of Procurement Manager pending the hearing and determination of this application interparties.*
- 3. That the Honourable court be pleased to issue an interim temporary order restraining the Claimant to her position as the Respondent's procurement manager pending the hearing and determination of this application interparties.*
- 4. That the Honourable court be pleased to issue an interim order of injunction restraining the Respondent by itself, its agents and/or servants from advertising for, recruiting or filling the position of Procurement pending hearing and determination of the main case.*
- 5. That the Honourable court be pleased to issue an interim temporary order reinstating the claimant to her position as the Respondent's procurement manager pending hearing and determination of the main case.*
- 6. That the costs of this application be provided for.*

The Respondent in a Replying Affidavit dated 1st November, 2021 oppose the application for being misconceived, scandalous, frivolous, vexatious and an abuse of process of court. It a case that the Applicant was employed on 2nd August, 2018 on a three (3) years fixed term contract which expired on 2nd August, 2021.

The contract of employment was executed by the claimant freely on 2nd August, 2018 and therefore the fixed term contract ran without an option for review. This comes out thus;

- 10. That no discussions have been held, whether formally or informally, to extend the Claimant's contract of employment for a period of one (1) year and any such discussions ought to have been sanctioned by its Board of Directors and a formal communication issued in that regard.*
- 11. That there was no obligation on the part of the Respondent to give reasons to the Claimant as to why her fixed term contract was not to be removed.*
- 12. That the instant Application has since been overtaken by events as the Claimant is no longer serving the Respondent as a procurement manager and the orders sought for injunction restraining the Respondent from recruiting or filling the position of procurement manager are wholly oppressive and only designed to forestall the operations of the Respondent and thus the Claimant*

has not met the threshold for granting such prayers in the nature of an injunction.

13. That the Claimant/Applicant's contract having come to an end by effluxion of time, cannot therefore seek orders of reinstatement as there was no unlawful or unfair termination of her contract of employment.

The Respondent seeks to rely in the authority of **Giella vs Cassman Brown & Co.Ltd (1973) EA 358**, where the court held thus;

- i) That an applicant must show a prima facie case with a probability of success;
- ii) That an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury;
- iii) When the court is in doubt, it will decide the application on the balance of convenience.

Further, she relies on the case of **Margaret A.Ochieng v Nairobi Water Conservation and Pipeline Corporation (2014) eKLR**, where the court held as follows;

“Courts have upheld the principle that fixed-term contracts carry no expectation of renewal, in a catena of judicial authorities. This court has done so in Industrial Court Petition No.35 of 2012 between George Onyango v The Board of Directors Numerical Machining Complex Limited & Others, (2014) eKLR and in the Industrial Court Cause No.1541 of 2010 between Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Limited & Others. The general principle is that fixed term contracts carry no expectation of renewal.....”

The Respondent's case overwhelms that of the Claimant/Applicant. This is because the Applicant has not demonstrated a case in satisfaction of the requirements of **Giella vs Cassman Brown & Co.Ltd (1973) EA 358** as is submitted by the Respondent. Again, her case is founded on the auspices of a fixed term contract which would be a complicated trial issue.

This Application therefore fails.

I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

Dated and delivered at Nyeri this 23rd day of March, 2022.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr.Magee instructed by Magee Law LLP Advocates for the Claimant/Applicant.
2. Mrs.Magua holding brief for Magua instructed by Magua & Mbatha Advocates for the Respondent.