



**Kenya County Workers Union v Nairobi City County Government & another
(Cause E185 of 2021) [2022] KEELRC 3776 (KLR) (9 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3776 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E185 OF 2021**

K OCHARO, J

MAY 9, 2022

BETWEEN

KENYA COUNTY WORKERS UNION PETITIONER

AND

NAIROBI CITY COUNTY GOVERNMENT 1ST RESPONDENT

NAIROBI CITY COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

RULING

1. Through a notice of motion application dated November 18, 2021, the petitioner/applicant has sought: -
 1. That this application be certified as extremely urgent and therefore be heard on priority basis and ex-parte in the 1st instance.
 2. That pending the hearing and determination of this application herein, the honourable court be pleased to issue a temporary order of injunction against the respondents, their agents, officers or persons under this instructions and/or directions from proceeding with any advertisement, interviews, and/or employment of any new Early Childhood Development Education [ECDE] teachers without first promoting the existing, long serving ECDE teachers with relevant qualifications, skills, and experience needed to fill in the advertised positions in higher job groups, in breach of the return to work formula dated October 14, 2021.
 3. That pending the hearing and determination of the petition herein, the Honourable court, be pleased to issue temporary order of injunction against the respondents, their agents, officers, or persons under their instruction and or directions from proceeding with any advertisements, interviews, and/or employment of any new Early Childhood Development Education [ECDE] Teachers without first promoting the existing, long-serving ECDE teachers with the relevant qualifications, skills, and experience needed to fill up the advertised



positions to higher job groups, in breach of the return to work formula dated October 14, 2021.

4. That the costs of this application be provided.
2. The application is anchored on the grounds obtaining on the face of the application and those obtaining in the supporting affidavit sworn by Joyce Wamuhu Gichuhi.
3. The respondent opposes the application on the grounds obtaining on the replying affidavit sworn on the December 20, 2021, by Erick Obisao, the County Solicitor.
4. Following the directions that the court gave regarding filing of written submissions, on the application, the parties did comply.
5. I have carefully considered the application, the grounds which it is premised, the affidavit in support of the application, the replying affidavit by the respondent, and the submissions by the parties. One order commends itself to me, that justice shall be best served by having the substantive petition heard conclusively on a priority basis.
6. Consequently, pursuant to the principal objective of this Court, as set out in section 3 of the *Employment and Labour Relations Court Act*, I give the following orders: -
 - a) That the parties herein do proceed to address the court on the substantive petition, by way of written submissions.
 - b) The petitioner to file and serve its submissions on the petition within 14 days of today.
 - c) The respondent to serve and file their submissions within 14 days of service of the petitioner's submissions.
 - d) The status quo obtaining to maintain pending judgment on the petition, so that the substratum of the matter is preserved.
 - e) Judgment shall be delivered on the July 28, 2022.

READ AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF MAY, 2022.

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Ocharo Kebira

Judge

In presence of

Mr. Odinga for the Petitioner/Applicant.

Ms. Ndugire for the Respondent.

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this



Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

OCHARO KEBIRA

JUDGE

3| *RULING ELRC NAIROBI PETITION NO. E185 OF 2021*

