



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
PETITION NO. 8 OF 2018

(Before Hon. Lady Justice Maureen Onyango)

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

**IN THE MATTER OF ARTICLES 2, 3, 10, 19, 20, 21, 22,
23, 27, 41, 47 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF SECTIONS 7, 22, 23 AND THE FOURTH
SCHEDULE TO THE NATIONAL LAND COMMISSION ACT**

AND

IN THE MATTER OF SECTION 13 OF THE EMPLOYMENT ACT

AND

**IN THE MATTER OF CONVERSION OF TERMS OF
EMPLOYEES FROM PERMANENT TO CONTRACT**

AND

**IN THE MATTER OF ABUSE OF POWER BY THE
CHAIRPERSON OF THE NATIONAL LAND COMMISSION**

BETWEEN

DR. SALOME MUNUBI.....1ST PETITIONER

DR. FIBIAN LUKALO.....2ND PETITIONER

FRANCIS MUGO.....3RD PETITIONER

LEONARD OMULLO.....4TH PETITIONER

VERSUS

PROFESSOR MUHAMMAD SWAZURI.....1ST RESPONDENT

CHAIRMAN, NATIONAL LAND COMMISSION....2ND RESPONDENT

VICE CHAIRPERSON,

NATIONAL LAND COMMISSION.....3RD RESPONDENT

AND

EMMANUEL BUSERA.....INTERESTED PARTY

AS CONSOLIDATED WITH

CAUSE NO. 1643 OF 2018-2

LEONARD OMULLO.....1ST CLAIMANT

MERCY NJAMWEA.....2ND CLAIMANT

PROF. DAVID KURIA.....3RD CLAIMANT

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE VICE CHAIRMAN,

NATIONAL LAND COMMISSION.....2ND RESPONDENT

AND

EMMANUEL BUSERA.....INTERESTED PARTY

JUDGMENT

The petitioners were prior to 2013 employees of different Government Agencies and found their way into the National Land Commission (NLC) courtesy of secondment as directors. The Petitioners were employed on contractual terms in the year 2013. Prior to expiry of their contracts they received letters in May, 2018 that converted their terms of employment from fixed term contract to Permanent and Pensionable terms with effect from 1st June, 2018. As such the Petitioners did not move back to their previous Government employments after the period of their secondment lapsed as they were now permanent and pensionable employees of the NLC following conversion of their terms of engagement.

This was however short-lived as by internal memo dated 4th December 2018 all Directors of NLC including the Petitioners were informed of the withdrawal of the permanent and pensionable terms and the renewal of their contracts for a further term of five (5) years on grounds that the Commission at its special meeting held on 8th May 2018 approved renewal of the contracts for directors and not the conversion of their contracts to permanent and pensionable terms.

The 1st, 2nd and 3rd Petitioners were aggrieved by the decision to revert their terms of contract from permanent and pensionable to fixed term and filed the instant Petition in which they seek the following reliefs:-

- a) A declaration that the Petitioners are and remain Permanent and Pensionable employees of the National Land Commission.
- b) A declaration that change of the Petitioners' and other directors' terms of employment from Permanent and Pensionable to Contract constitutes an unfair labour practice, is unlawful, illegal and void *ab initio*.
- c) A declaration that subjecting the 2nd Petitioner to disciplinary proceedings in a bid to force her to accept the contractual terms of employment is unfair and illegal.
- d) Any other order that this Court shall deem fit to grant.
- e) Costs of the Petition be borne by the Respondent.

The 4th Petitioner Leonard Omullo filed together with Mercy Njamwea and Prof. David Kuria filed a Statement of Claim in Cause No. 1643

of 2018 as 1st, 2nd and 3rd Claimants respectively. The Respondents in the Claim were named as The National Land Commission was named as the 1st Respondent, the Vice Chairman National Land Commission as the 2nd Respondent and Emmanuel Busera as 3rd Respondent. The second and Third Claimants however withdrew their claims wholly by Notice of Withdrawal dated 28th January 2019 leaving Leonard Omullo as the only Claimant in the suit. By an order of 5th February 2019, the Claim was consolidated with this petition with Omullo becoming the 4th Petitioner. The prayers in the Claim were as follows:

- a) A declaration that the Applicants employee status reversion is unconstitutional and goes against the principles of employee legitimate expectation.
- b) An Order for the Respondent to withdraw the Memo informing the Claimants of the reversion of the employment status from permanent and pensionable to contractual.
- c) Costs of this Cause and interest on all monetary payments at Court rates.

The Claimants also urged the Court to award them any other orders and/or reliefs that the Court may deem fit and in the interest of justice to grant.

In Response to the Petition the 1st Respondent filed a Replying Affidavit sworn by the said 1st Respondent on 18th February, 2019 and filed in Court on the same date in which the 1st Respondent concedes to the prayers in the petition herein. He avers that through the Petition herein he is being sued in his personal capacity having offered the petitioners Permanent and Pensionable employment. He avers that there has been infighting between him (Professor Swazuri, the first Respondent) and the 3rd Respondent, (the Vice Chairperson to the Commission) who had proclaimed herself as the acting Chairperson of the 2nd Respondent.

He contended that upon being served with the petition he instructed his Counsel on Record Merses Okubasu and Munene Advocates to negotiate for a consent with the Petitioners' Advocate, which consent was later adopted as an Order of this Court.

He further contends that the transition of the directors' terms of engagement from contract to Permanent and Pensionable was valid and regular and due process was followed. That the Human Resource Committee of the 2nd Respondent prepared a justification report for the conversion of the said terms from contract to Permanent and Pensionable.

The 1st Respondent contends that through all the processes of conversion the Public Service Commission was informed and involved. He further avers that subsequently a budget for the commission was prepared which included salaries for directors in view of their status and that the said budget was approved by Treasury for the year 2018/2019. He avers that no concerns were raised by any commissioner over the conversion of the petitioners and all directors from 1st June, 2018 when it was effected, till November/December 2018 when there was a claim that the process was irregular. That pension contributions had been remitted for the petitioners from the date of their conversion.

The 1st Respondent further contends that the attempted process of re-converting the terms of employment from Permanent and Pensionable to Contracts was initiated following the filing of Constitutional Petition No. 31 of 2018 by the 1st Petitioner herein on 24th October, 2018 challenging the proceedings against her in Milimani ACC. No. 33 of 2018 in the Milimani Chief Magistrates Anti-Corruption Criminal Court.

The 1st Respondent concludes that he is not opposed to the Petition and urged the Court to grant the reliefs as sought therein.

The Respondents through the Federation of Kenya Employers (FKE) filed a Memorandum of Defence in response to the Claimants' Statement of Claim in Cause No. 1643 of 2018, in which they aver that the terms of engagement for the directors' were illegally and unlawfully converted to permanent and pensionable terms by the then Chairman to the Commission, the 1st Respondent herein, vide the Memo dated 9th May, 2018 addressed to the Secretary/CEO instructing him to convert the said contracts effective 1st June, 2018.

It was contended that the aforesaid decision by the Chairman to NLC were illegal and was ultra vires and against the resolution of the commission contrary to the provisions of the Constitution and the National Land Commission Act.

The commission through its Secretary prepared a Memo directed to all directors of the Commission that the Commission was withdrawing the Permanent and Pensionable terms for the directors. Further, that the Claimants failed to apply for renewal of their contracts upon expiry on 14th January, 2019 despite being advised to apply for the same, prompting the 1st Respondent (NLC) to disengage the Claimants' Services.

The Respondents urged the Court to dismiss the Claim with costs to the Respondents for lack of merit.

This Petition was scheduled for hearing on 14th February, 2019 when the parties recorded a Consent in the following terms that:

1. *By Consent the consent dated 24th January, 2019 is set aside and the Petition is reinstated.*
2. *Petition No 8 of 2019 and Cause No. 1643 of 2018 are consolidated and will be heard under Petition 8 of 2019.*
3. *The 1st Claimant in Cause 1643 of 2018 will now be the 4th Petitioner.*

4. The notices of termination of the Petitioners are temporarily stayed pending housekeeping.

5. The National Land Commission is the 2nd Respondent and the Vice Chairperson the 3rd Respondent and Emmanuel Busera the Interested Party.

It was on the basis of the above consent that the Federation of Kenya Employers (FKE) on record for the 2nd and 3rd Respondent filed an Application under Certificate of Urgency dated 22nd February, 2019 seeking the following orders that:-

1. This Application be certified as Urgent, Service of the same to be dispensed with and it be heard *ex parte* in the first instance.
2. Pending hearing and determination of this Application *inter partes*, this be pleased to review and set aside the Orders issued on 14th February, 2019 in the first instance.
3. The Suit against the Vice Chairperson of the National Land Commission be struck off for lack of merit.
4. The Court be pleased to issue such further orders as it may deem fit to do so.
5. Costs of the Application be provided for.

The Application is supported by the Affidavit of ABIGAEL MBAGAYA MUKOLWE which relied on the grounds on the face of the Notice of Motion Application.

In response to the Application the 1st Respondent filed Grounds of Opposition, in which he opposes the Application on account that the said Application is fatally incompetent and defective as it contravenes the provisions of the Oaths and Statutory and Declaration Act. It is further the 1st Respondent's position that the instant Application serves no substantive purpose as hearing of the main Petition has concluded.

The 1st Respondent further contended that the 3rd Respondent has no authority to swear an affidavit on behalf of the 2nd Respondent after 19th February, 2019.

In further response to the instant Application the 4th Petitioner filed his Grounds of Opposition, in which he contends that the Application has been brought at an advanced stage when the issues in the Petition have already been canvassed and the hearing concluded. Further that the Order consolidating the matters was issued in the presence and with participation of all counsels on record.

Submissions by the Parties on the Application dated 22nd February 2019

It is the 2nd and 3rd Respondents'/Applicants submission that they object to the consolidation of the 2 matters (Petition No. 8 of 2019 and Cause No. 1643 of 2018 and they sought to rely on the provisions of Article 50(1) of the Constitution, Sections 12(3), 16 and 20 of the Employment & Labour Relations Court Act, Rules 17(1), 33 and 34 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and Order 45 Rule 1 of the Civil Procedure Rules, 2010 to demonstrate this Court's jurisdiction to hear and determine the instant Application.

The 2nd and 3rd Respondent further submitted they are aggrieved by the Court's Order as they did not consent to the following:

- a) The consolidation of Petition No. 8 of 2019 and Cause No. 1643 of 2018. Their position was that the matter be heard together.
- b) They did not consent to the 1st Claimant being the 4th Petitioner under Petition No. 8 of 2019 as he had sued different parties.
- c) They did not consent to the stay orders pending housekeeping
- d) They did not consent to the Respondents herein being the 2nd Respondent and the 3rd Respondent as they had not been sued by the three Petitioners at all.

The 2nd and 3rd Respondent contend that they stand prejudiced by the Consent Orders as they are now parties to a suit in which they were not invited to. Further, that no formal request was made for the consolidation

of the matters thereby denying them their right to respond accordingly.

The 2nd and 3rd Respondents urged the Court to set aside the Orders of 14th February, 2019 and cause the proceedings to reflect the correct and accurate position. They cited and relied on the cases of *Peter G.N. Nganga & Another Vs Kenya Finance Bank Limited (In Liquidation, Liquidating Agent The Deposit Protection Fund) & 3 Others (2014) eKLR*, *Kenya Medical Laboratory Technicians and Technologists Board & 6 Others Vs Attorney General & 4 Others (2017) eKLR* and *Republic Vs Isiolo County Public Service Board Exparte Isiolo County Government (2016) eKLR*.

The 2nd and 3rd Respondents further contend that the suit against the Vice Chairperson of the National Land Commission (the 3rd Respondent) ought to be struck off for lack of merit and relied on the provision of Article 253 of the Constitution of Kenya. They further submitted that the Commission is a corporate body capable of suing and being sued in its own name and is governed by the National Land Commission Act No. 5 of 2012 Laws of Kenya. To fortify this position the Respondents cited the Authority of **Anthony Francis Wareheim T/A Wareheim & 2 Others Vs Kenya Post Office Savings Bank, Civil Application No. Nai 5 & 48 of 2002**.

With regard to the stay Orders of the termination letters, it is the submission of the 2nd and 3rd Respondents that there were no termination letters and that the letters dated 21st January, 2019 merely informed the Petitioners that the employer, National Land Commission (NLC) would not renew their employment contracts. It is further averred that the employment contracts and the HR Manuals and Procedures of the employer (NLC) required the Petitioners to apply for renewal of their contracts upon expiry, which the Petitioners failed to do. The 2nd and 3rd Respondent cited the case of **CA No. 3 and 11 of 2016, Olive Mwihi Mugenda and Another Vs Okiya Omutata & Others** where it was held as follows:

“A trial Court cannot impose its own procedure for recruitment of the Vice Chancellor and we find that the learned judge erred in law in formulating its own and new procedure for recruiting the Vice Chancellor of Kenyatta University.”

The 2nd and 3rd Respondent urged this to allow the Application dated 22nd February, 2019.

The 4th Petitioner submitted that this Court acted within its jurisdiction to consolidate ELRC Cause No. 1643 of 2018 and Petition No. 8 of 2019 as the power is discretionary and is provided for under Order 11 Rule 3 (1) (h) as well as Section 1A of the Civil Procedure Act. The 4th Petitioner cited the Authority of Case of **183 of 2015 New Kenya Cooperatgve Creameries Ltd Vs Hassan Ali Mboga and 34 Others** where Komingoi J, held that consolidation would advance overriding objective as envisaged under Section 1A and 1B of the Civil Procedure Act.

Similarly, the 4th Respondent relied on the case of **Nyati Security Guards & Services Limited Vs Municipal Council of Mombasa (2004) eKLR** where the Court set out the principles that guide a Court in consolidation of two or more suits as follows:

“The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same Court where:

- a) Some questions of law or fact arises in both or all of them; or*
- b) The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or*
- c) For some other reason it is desirable to make an order consolidating them.”*

The 4th Petitioner further contended that it is in the interest of justice that **Petition No. 8 of 2019** and **ELRC Cause No. 1643 of 2018** remain consolidated since there are common questions of law and fact thus warranting the matters to be determined and/or disposed of at the same time.

The 4th Petitioner averred that the instant Application has no reasonable cause of action and that the same is aimed at embarrassing this Court as well as delay the hearing of the 4th Petitioner's case. The 4th Petitioner cited the case of **Trust Bank Limited Vs Amin Company Ltd & Another (2000) KLR 164**.

The Court reserved the ruling in the application to be delivered with the Judgment herein.

Submissions on the Petition filed by the 1st, 2nd and 3rd Petitioners

The 1st, 2nd and 3rd Petitioners submitted the Respondents action of changing the terms of employment is in breach of the principle of legitimate expectation. It is further submitted that the 1st Respondent created an expectation towards the Petitioners and other directors. To fortify this argument the 1st, 2nd and 3rd Petitioner relied on the Authority of **Diana Kethi Kilonzo & Another Vs Independent Electoral & Boundaries Commission & 10 Others (2013) eKLR** where it was held that:

“At its core, and in its broad sense, the doctrine of legitimate expectation is said to arise out of a promise made by a public body or official which the person relying on anticipates will be fulfilled. It is also said to arise out of the existence of a repeated or regular practice of the public body or official which could reasonably be expected to continue. Essentially, once made, the promise creates an estoppel against the public body or official, so that the person benefitting from the promise or practice would continue to so benefit, and that the promise or practice would not be withdrawn without due process or consultation.”

It was further submitted that the decision was also contrary to the provisions of Article 47 of the Constitution as the same is not fair as the decision to revert their contract from Permanent and Pensionable was made in May 2018, but it was not until November, 2018 that the decision to recall the Permanent and Pensionable terms was made.

In conclusion the Petitioners urged the Court to find that the Respondents decision to alter the terms of employment was unlawful, in breach of the principle of legitimate expectation, is in bad faith and is contrary to Article 47 of the Constitution as read with Article 41. They urged

the Court to allow their Petition as prayed.

4th Petitioner's Submissions

It is the 4th Petitioner's submission that the Memo dated 4th December, 2018 is unlawful and goes against the principles of employee expectation. He further submitted the same was also in violation of the provisions of Article 41 of the Constitution of Kenya. The 4th Petitioner cited and relied on the Authority of *Peter Kisilu Mutua Vs Panal Freighters Ltd (2015) eKLR*.

It is further submitted the 2nd Respondent issued a letter of appointment dated 9th May, 2018 to the 4th Petitioner and is therefore bound by the contents therein. The 4th Petitioner further submitted that his employment can only be terminated and or changed upon proper consultation with him by the Respondent.

The 4th Petitioner contends that he is on permanent and pensionable status as the same was offered to him, which offer he duly accepted and that any attempt to unilaterally withdraw the said offer is against the provision of Section 10 (5) of the Employment Act which makes it mandatory for the employer to consult an employee where there is any change to the particulars of employment. To fortify his argument the 4th Petitioner relied on the Authorities of *Ronald Kampa Lugaba vs Kenol Kobil Limited (2016) eKLR* and *Dorothy Nchabira Bernard Vs Solution Sacco Society (2015) eKLR*.

The 4th Petitioner further contends that upon conversion of his employment terms to Permanent and Pensionable he did terminate his employment from the parent ministry which was the Ministry of Mining and as a result his pension was transferred to the 2nd Respondent's scheme and therefore failure to extend the contract would render him jobless. the 4th Petitioner cited the case of *Mary Nyangasi Ratemo & 9 Others Vs Kenya Police Staff Sacco Limited & Another (2013) eKLR*.

The 4th Petitioner further urged the Court to find that the letter of disengagement purporting not to renew the 4th Petitioner's contract was unlawful. He further submitted that no notice or hearing was accorded to him prior to the letter of disengagement was issued to him which was contrary to the provisions of Sections 41 and 45 of the Employment Act, 2007. He proceeded to cite the cases of *Shankar Saklani Vs DHL Global Forwarding (K) Limited (2012) eKLR*, *Kenya Union of Commercial Food and Allied Workers Vs Meru North Farmers Sacco Limited (2014) eKLR* and *Jared Aimba Vs Fina Bank Limited (2016) eKLR*.

In conclusion the 4th Petitioner urged the Court to allow the payers as sought in the Statement of Claim.

The 1st Respondent on the other hand supported the Petition herein and urges the Court to allow the same as drawn.

The Interested Party submitted that the Petitioners herein were appointed on a five-year contract and that the Commission was duly constituted under Section 7 of the National Land Commission Act. It is further his submission that the commission never resolved to convert the terms of the Petitioners from Contract to Permanent and Pensionable as alleged and that the action taken by the 1st Respondent vide the Memo dated 9th May, 2018 was unjustifiable, ultra vires, null and void *ab initio*.

In conclusion he urged the Court to find that the Petitioners cannot rely on the doctrine of legitimate expectation and as such urging the Court to dismiss the Petition in its entirety.

Determination

Having considered the pleadings, evidence, submissions and authorities cited by the parties, the following are the issues for determination:

1. Whether the change of the Petitioners terms of employment as communicated vide the Memo dated 4th December, 2018 is lawful
2. Whether the Petitioners are entitled to the reliefs sought.

On Issue No. 1

The Petitioners argue that the change of the terms of employment is in breach of the principle of legitimate expectation and relied on several authorities to justify that the Commission's action of reverting the terms was in total disregard to the provisions of fair labour practice and against the principle of legitimate expectation.

The Memo dated 9th May, 2018 from the then Chairman of the Commission (the 1st Respondent herein) to the Commission Secretary/CEO on conversion of staff terms from contract to Permanent and Pensionable Terms in which it states in part "...In view of the foregoing delineations, the lengthy deliberations on the same by various other stakeholders and having consulted relevant government agencies, this is to instruct you to convert all staff terms from contract to Permanent and Pensionable terms with effect from 1st June 2018 including Directors, Heads of Departments, Deputy Directors and County Coordinators."

The Respondent and the Interested Party contend that the Chairman in issuing the aforesaid Memo lacked the capacity to issue the same and that he acted ultra vires and as such was not authorised to make the communication on behalf of the commission.

Further, it was argued that the 1st Respondent's instruction were contrary to what was agreed and/or resolved at the Special meeting of the

Commission as was held on 8th May, 2018 in which meeting the commission renewed the employment contracts of all directors and the Chief Executive Officer/Secretary to the commission, and placed all other staff on Permanent and Pensionable terms. It was as a result of this that the Commission directed communicating anything contrary to this be withdrawn vide the Memo dated 4th December, 2018.

To determine this issue it is important to look at the issue of capacity and whether the 1st Respondent had the capacity to communicate the conversion of the terms from contractual to Permanent and Pensionable.

I have perused the minutes of the Special meeting of the NLC held on 8th May 2018. At minute MIN. NO. 1/2018 the following resolution was made:

MIN. NO. 1/MAY/2018: RENEWAL OF THE CONTRACT FOR THE CHIEF EXECUTIVE OFFICER OF THE COMMISSION

The Chairman informed the meeting that the Chief Executive Officer's contract was expiring on 18th June 2018 and that in line with the Law, the CEO had written to the Chairman in November 2017 to seek a renewal of the contract for a further term of 5 years. The Chairman then sought to hear from the members views on the above matter.

MIN. NO. 2/MAY/2018: CONTRACTS FOR STAFF

The Commission received a report from the Director HR that showed the various members of staff of the Commission and the time their contracts are expiring for discussion.

After some deliberations it was resolved that:

- i) All Contracts for Directors of the Commission be renewed for a further term of 5 years, subject to them attaining 60 years of age.*
- ii) Contracts of employees of the Commission from the position of Deputy Director and below be converted to the Permanent and Pensionable and be entered into the Permanent and Pensionable Scheme that was procured by the Commissions.*

Further at the Special Meeting of the NLC held on 13th December 2018 the following resolutions were made on the said issue:

MIN. NO. 5/DECEMBER/2018: PRESENTATION ON THE JUSTIFICATION FOR PERMANENT AND PENSIONABLE TERMS FOR DIRECTORS

.....

Pursuant to the foregoing, members deliberated on the matters and noted the following;

.....

In light of the foregoing, members resolved that;

The proposal and recommendation as contained in the Chairman, HRMC report to convert Directors terms to Permanent and Pensionable be declined. However, it was agreed that the report should be noted.

The conversion of Directors terms to Permanent and Pensionable was null and void and that the Commission decision made on 8th May, 2018 on the matter stands.”

The evidence is overwhelmingly in support of the 2nd Respondent in that the 1st Respondent clearly acted in excess of his powers while directing the CEO of the NLC to issue letters to the Petitioners converting the terms of their engagement from contractual to Permanent and Pensionable. No such resolution was made by the Commission and the 1st Respondent as Chairman of the Commission had no such powers. Such directions were not only in excess of his powers but were also irresponsible and in deliberate defiance of the decision of the Commission. Section 19 of the National Land Commission Act provides that the business of the Commission shall be conducted in accordance with the Fourth Schedule. Paragraph 4 of the Fourth Schedule provides as follows:

Voting

4. A question before the commission shall be decided by a majority of the members.

It is therefore evident that the Petitioners cannot therefore rely on the letters converting their terms of engagement from contractual to permanent and pensionable as the decision to do so was not a decision of the Commission but rather that of the Chairperson which he made while in the knowledge that it was not a decision of the Commission. No legitimate expectation can arise out of an illegitimate contract or promise. As was stated in the case of Royal *Media Services Limited & 2 Others Vs Attorney General & 8 Others (2014) eKLR* :

“...legitimate expectation, however strong it may be, cannot prevail against express provisions of the Constitution. If a person or a statutory body promises a certain relief or benefit to a Claimant or undertakes to do something in favour of the Claimant but in a

way offends the Constitution, the Claimant cannot purport to rely on the doctrine of legitimate expectation to pursue the claim or promise.”

In the instant Petition the Petitioners may have been beneficiaries of an illegality as the then Chairman to the Commission and 1st Respondent in the Petition acted in excess of his powers and contrary to the commission’s resolutions while directing that the Petitioners’ terms be converted from contractual to Permanent and Pensionable.

The NLC is governed by the Constitution of Kenya, The National Land Commission Act as well as the Human Resource Manual which all provide for the terms of engagement as Contractual even for its Commissioners.

In conclusion the communication of the conversion of the Contracts from Permanent and Pensionable back to contractual vide the Memo dated 4th December, 2018 is lawful.

Having said that I am of the view that this Petition stands dismissed.

However, there was a resolution of the Commission to renew the contracts of the Petitioners as demonstrated in the extracts of the minutes referred to above. The court further notes that the petitioners are not to blame in the theatrics that they benefitted from and they cannot be punished for having believed that they had permanent contracts. They failed to report back to their permanent jobs on the understanding and belief that they had permanent and pensionable jobs at NLC and thus acted to their detriment based on the impugned letters for which they are not blameworthy.

I will therefore order and do hereby order, that the contracts of all the petitioners be renewed according to the resolution of the Commission at its meeting of 8th May 2018, and the subsequent special meeting of the commission held on 13th December 2018 so that they do not become victims of the infighting among the Commissioners of the NLC.

These orders will not interfere with the administrative actions taken by the National Land Commission in respect of the 1st and 3rd petitioners pursuant to Anti-Corruption Criminal Case No. 33 of 2018.

It is the opinion of the court that the decision herein adequately addresses the application 22nd February 2017, by the 2nd and 3rd respondent.

Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 24TH DAY OF MAY 2019

MAUREEN ONYANGO

JUDGE