



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**PETITION NO. 8 OF 2018**

**(Formerly Nairobi ELRC Petition No. 74 of 2018)**

**IN THE MATTER OF: THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM AS ENSHRINED UNDER ARTICLES 3, 10, 19, 20, 21, 22, 23, 28, 29, 41, 47, 258 AND 259 OF THE CONSTITUTION OF THE REPUBLIC KENYA**

**BETWEEN**

ELIJAH MURIITHI MUCHIRI.....1<sup>ST</sup> PETITIONER  
JAMES NDIRITU KABABU.....2<sup>ND</sup> PETITIONER  
JECINTA WANJUGU WACHURA.....3<sup>RD</sup> PETITIONER  
ASKA MORAA OYARO.....4<sup>TH</sup> PETITIONER  
JACOB MAKOKHA MUTHEE.....5<sup>TH</sup> PETITIONER  
ANN WAITHIRA MAINA.....6<sup>TH</sup> PETITIONER  
LUCY WAMBUI NDUNGU.....7<sup>TH</sup> PETITIONER  
MARY WAMBUI NGATIA.....8<sup>TH</sup> PETITIONER  
JULIAH WANGUI NGARI.....9<sup>TH</sup> PETITIONER  
SOLOMON KARANJA MINAI.....10<sup>TH</sup> PETITIONER  
JOSEPH NDUNGU NYARUAI.....11<sup>TH</sup> PETITIONER  
CATHERINE NYAWIRA MUTURI.....12<sup>TH</sup> PETITIONER  
SABINA NYAMBURA MUIRURI.....13<sup>TH</sup> PETITIONER

**VERSUS**

COUNTY GOVERNMENT OF LAIKIPIA.....1<sup>ST</sup> RESPONDENT  
COUNTY PUBLIC SERVICE BOARD, LAIKIPIA.....2<sup>ND</sup> RESPONDENT

**RULING**

1. The Petitioners were employees of the 1<sup>st</sup> Respondent employed on 7<sup>th</sup> January 2014 as casual workers save for the 10<sup>th</sup> Petitioner who was employed on 27<sup>th</sup> June 2002 by the defunct Municipal Council of Nanyuki as a general worker. The Petitioners/Applicants seek the

grant of interim orders staying the letters dated 19<sup>th</sup> and 25<sup>th</sup> July 2018, an order restraining the Respondents from replacing the Petitioners in employment pending the hearing and determination of the Petition and an order of reinstatement pending the hearing and determination of the petition herein. The application is made on the annexed affidavit of the 1<sup>st</sup> Petitioner Elijah Muriithi Muchiri and on the grounds appearing on the face of the motion dated 31<sup>st</sup> July 2018. The Petitioners assert that they were not given reasons for the termination and that they had no disciplinary cases with the Respondents. They aver that if the Respondents proceed to terminate their employment they will be rendered destitute with no source of income to support their families and that their termination was grossly unfair as they were described as casual workers. In the affidavit, the 1<sup>st</sup> Petitioner deponed that save for the 10<sup>th</sup> Petitioner, the Petitioners had a duration of employment of 1 month subject to renewal monthly and the daily wage was Kshs. 432.40 paid cumulatively at the end of the month. This sum had risen to Kshs. 571.45 as at the time of the termination aggregating to Kshs. 11,960/- a month. The affiant asserts that the dismissal was unfair and unlawful as there was no notice and no severance pay was made. There were no pending disciplinary cases and there was no reason given for the termination.

2. The application is unopposed. However, the remedies the Petitioners seek are final in nature as far as the suit is concerned. In **Olive Mwihaki Mugenda & Another v Okiya Omtata Okoiti & 4 Others [2016] eKLR**, the Court of Appeal applying the decisions of the Court in **Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 Others [2015] eKLR** and **Stephen Kipkebut t/a Riverside Lodge and Rooms v Naftali Ogola [2009] eKLR** restated that it has often been stated that an order which results in granting of a major relief claimed in the suit ought not to be granted at an interlocutory stage.

3. The humble Petitioners before me have sought what amounts to final orders at the interlocutory stage. In addition to the final nature of the order sought, the Petitioners have to satisfy the threshold for grant of injunctive relief. These principles that govern the grant of injunctive relief are well stated in the case of **East African Industries v Trufoods [1972] EA 420** which was cited with approval in the oft cited case of **Giella v Cassman Brown & Co. Ltd. (1973) E.A. 358**. The 3 guiding principles laid out are that an applicant who seeks a temporary injunction must show; firstly, a *prima facie* case with a probability of success; secondly, that failure to grant the temporary injunction sought would expose such an applicant to irreparable injury which injury would not be adequately compensated by an award of damages; and thirdly, that where a court is in doubt, it would decide the application on a balance of convenience. This threshold was not met as the Petitioners remedies in the event they are successful include reinstatement and orders for compensation *inter alia*. The order that commends itself for me to make in respect of the motion is to dismiss it with no order as to costs.

It is so ordered.

**Dated and delivered at Nyeri this 13<sup>th</sup> day of December 2018**

**Nzioki wa Makau**

**JUDGE**