



**Ajwang v Development Bank of Kenya Limited (Cause E398 of 2024)
[2025] KEELRC 10 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 10 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E398 OF 2024
L NDOLO, J
JANUARY 16, 2025**

BETWEEN

DEBRA ANDITI AJWANG CLAIMANT

AND

DEVELOPMENT BANK OF KENYA LIMITED RESPONDENT

RULING

1. On 27th May 2024, the Claimant filed a Memorandum of Claim, seeking relief for unlawful termination of employment.
2. Contemporaneously with the claim, the Claimant filed a Notice of Motion under Certificate of Urgency, seeking an order of injunction restraining the Respondent from filling the position of Company Secretary/Head of Legal previously held by the Claimant, pending the hearing and determination of the claim. It is this application that is the subject of this ruling.
3. The application is supported by the Claimant's own affidavit and is founded on the following grounds:
 - a. That the Claimant has prayed for reinstatement and the prayer may be overtaken by events if an injunction is not issued;
 - b. That the Respondent is a public entity, hence should be managed and governed within existing laws;
 - c. That a court of law should prevent impunity like the one exhibited by the Respondent and this can only be done by issuing conservatory orders;
 - d. That if conservatory orders are not issued, the Respondent will continue acting ultra vires.
4. The Respondent opposes the application by a replying affidavit sworn by its Head of Human Resources, Dorcas Namwendwa on 21st June 2024.



5. Namwendwa depones that the Claimant failed to submit her end of probation report, within the required period, pointing out that the report was shared on 23rd September 2023, about a month and a half after expiry of the probation period.
6. The Claimant is accused of intentionally frustrating her pre-confirmation appraisal. It is deponed that the Claimant was aware that the decision whether to confirm her or not was subject to review by the Board, through the Governance and Human Resource Committee.
7. Namwendwa states that the Board sat in November 2023 and considered the report submitted by the Claimant alongside the comments by her supervisor, who did not recommend the Claimant's confirmation. The Claimant was therefore issued with a letter dated 19th December 2023, terminating her probationary appointment.
8. The Respondent maintains that the Claimant's prayer for reinstatement is misconceived as she has since sought and obtained employment as Corporation Secretary at the Business Registration Service.
9. In her further affidavit sworn on 22nd July 2024, the Claimant states that her probation period lapsed on 15th September 2024, after which she was deemed to have been duly confirmed. The Claimant counters the Respondent's averment that she was required to submit a pre-confirmation report.
10. Regarding her engagement with the Business Registration Service, the Claimant depones that her employment is not permanent and the Respondent cannot take advantage of it to infringe on her rights.
11. The order sought by the Claimant falls within the purview of an interlocutory injunction. In their respective submissions, both parties cited the famous decision in *Giella v Cassman Brown Co. Ltd* [1973] EA 358, where the considerations for granting of such an order were established as follows:
 - a. That the applicant has established a prima facie case with a probability of success;
 - b. That if the order sought is not granted, the applicant stands to suffer irreparable harm, which cannot be compensated by an award of damages; and
 - c. If the court is in doubt, it will determine the application on the balance of convenience.
12. Regarding what constitutes a prima facie case, the Court of Appeal in its decision in *Mrao v First American Bank Kenya Limited & 2 others* [2003] KLR, 123 stated the following:

“A prima facie case in a civil application includes but is not confined to a genuine and arguable case. It is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
13. The Claimant bases her plea for an injunction on the fact that she has sought reinstatement in the main claim. However, a prayer for reinstatement, by itself, cannot be used as the basis for granting of an injunctive order against an employer. I say so because, this premiere remedy is to be granted in exceptional circumstances, to be determined in full trial (see *Alfred Nyungu Kimungui v Bomas of Kenya* [2013] eKLR).
14. By her application, the Claimant seeks to bar the Respondent from filling the key position of Company Secretary/Head of Legal. In its decision in *Shem Arthur Ogao v Kenya Forestry Research Institute* [2017] eKLR this Court held that there is no proprietary interest in a job. This would explain why Section 49 of the *Employment Act* makes provision for varied remedies available to employees whose



rights have been violated. Even as employment claims are litigated in court, employers ought not be curtailed from carrying on business.

15. In the present case, the Claimant has clearly moved on and obtained alternative employment. She cannot therefore be allowed to hold the Respondent at ransom. In any event, I am satisfied that if the Court eventually finds in her favour, a compensatory award would be adequate.
16. That said, I find and hold that the Claimant has failed to establish a case for an order in the nature of a prohibitive injunction against the Respondent.
17. The application dated 22nd May 2024 is therefore declined with costs in the cause.
18. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY JANUARY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Were for the Claimant

Mr. Kiunga for the Respondent

