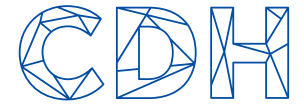


Employment Law

ALERT | 16 October 2025



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ELRC's stand on casualisation of labour



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When the rubber meets the road: ELRC's stand on casualisation of labour

Repeatedly renewing short-term contracts over a long period of time, without transitioning an employee to a more secure employment arrangement, may amount to a violation of their constitutional right to fair labour practices. In a significant judgment, the Employment and Labour Relations Court (ELRC) in *Gichuki v Kenya Power & Lighting Company Plc* (Petition E021 of 2024) [2025] KEELRC 2578 cautioned employers against the casualisation of labour.

Case summary

The petitioner, a meter reader, was engaged by KPLC in 2015 on an initial three-month contract. This contract was repeatedly renewed, almost exclusively in three-month blocks, for over eight years. The work was continuous and integral to KPLC's operations.

In July 2023, she was summarily dismissed for allegedly aiding in the installation of an illegal electricity line.

Aggrieved, the petitioner moved to court seeking declarations of, among other things, wrongful dismissal and constitutional violations of her rights.

The court held that:

- The dismissal was fair under sections 41, 43, and 45 of the Employment Act.
- However, the rolling contract system, applied over eight years for core functions, was constitutionally impermissible under Article 41. As a result, the court awarded KES 450,000 in general damages but declined costs.

Key takeaways for employers

Prolonged rolling contracts can breach constitutional rights

Repeatedly renewing short-term contracts over a long period of time, in this case an eight-year period, without transitioning the employee to a more secure employment arrangement, constitutes a violation of the employee's constitutional right to fair labour practices.

Public sector employers face stricter standards

For state corporations and public bodies, the court applied the Public Service Commission Act, 2017 (PSC Act) and the PSC Regulations, 2020, which:

- prescribe minimum contractual periods of 12 months (extendable to five years) for public officers under section 45 of the PSC Act; and
- limit "temporary" appointments to exceptional, short-term, or seasonal needs.

The court underscored that public sector employers should not use short fixed-term contracts to "casualise" what are essentially permanent roles.

Casualisation of labour

Section 37 of the Employment Act discourages the casualisation of labour. Drawing parallels to the situation, the court was adamant that offering short-term contracts to employees, for prolonged periods, is casualisation of labour, which deprives employees of job security and terminal benefits due to permanent and pensionable employees. Notably, under section 37, casual employment converts into term employment where:

- the work continues for at least one month, or
- the work cannot reasonably be completed within a period amounting to three months or more.

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This signals a strong shift in jurisprudence toward substance over form when assessing employment relationships.

Constitutional damages are available even if dismissal is lawful

While the court in this case declined to award remedies such as reinstatement or compensation for unfair termination, it awarded KES 450,000 in general damages for the breach of Article 41, together with interest at court rates.

This underscores that employers may be financially liable for constitutional breaches, even when they have complied with statutory termination processes.

Why this matters

The court was clear that calling a contract “temporary” does not absolve the employer of scrutiny where the nature of work is:

- continuous and long-term,
- central to the organisation’s functions, and
- deployed in a serial, rolling manner.

This means human resources and legal teams must audit beyond terminology.

Relying on the Supreme Court’s decision in *Kenya Ports Authority v. Joseph Makau Munyao and Four Others* (Petition No. E008 of 2023), the ELRC reiterated that any employer conduct that offends any law governing relations between parties may be deemed an “unfair labour practice.”

The decision continues a growing line of jurisprudence interpreting section 37 of the Employment Act to convert short-term engagements into permanent employment or indefinite contracts where continuity and nature of work so demand.

Your organisation may be at risk if you have:

- Back-to-back short-term contracts (months) renewed for more than a year, especially for recurring functions.
- “Temporary” staff assigned supervisory or acting roles over long periods.
- Staff excluded from benefits or progression due to artificial contractual breaks.



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What employers should do now

- Conduct an audit across departments or business units that rely on rolling short-term contracts.
- Prioritise conversion of such roles into longer or open-ended terms.
- Adopt a fixed-term contract policy that:
 - Ensures that employees' prospects for career growth and advancement are realised without sacrificing the genuine needs of the business.
 - Periodically reviews whether certain roles remain temporary or have evolved into continuous functions warranting a more permanent engagement.
 - Adopts performance evaluations aligned with equal opportunity for career progression.
 - Records justification aligned to project scope or time-bound need.

For public institutions and utilities, it is critical to benchmark against PSC Act and PSC Regulations, and proactively close gaps before litigation risk materialises.

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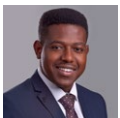
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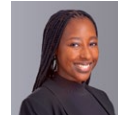
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