

LEGAL ALERT

COURT OF APPEAL: LONG-SERVING "CASUAL" WORKERS MAY BE DEEMED PERMANENT EMPLOYEES

Kenya County Government Workers' Union v Embu County Government & another, Civil Appeal No. 178 of 2020 [2026] KECA 1481 (KLR) — delivered 24 July 2026

INTRODUCTION

The Court of Appeal has issued an important reminder that the substance of an employment relationship may prevail over the label placed on it by an employer. In *Kenya County Government Workers' Union v Embu County Government & another*, the Court considered the status of workers who had served for extended periods under successive short-term contracts and affirmed that, in appropriate circumstances, such arrangements may acquire permanent and pensionable status by operation of law.

KEY FINDINGS

- Where an employee is continuously engaged over an extended period on successive short-term or casual contracts, particularly in circumstances where the work is of a permanent nature, the law may deem the employment relationship to have acquired permanent and pensionable status under section 37 of the Employment Act, notwithstanding the contractual label.
- Repeatedly renewing 3-12-month contracts for staff performing permanent-nature duties is "a roundabout way of avoiding the provisions of the law on casual employment" and breaches the right to fair labor practices under Article 41 of the Constitution.
- Courts will look at the substance of the working relationship (duration, continuity, nature of duties), not just the wording of the contract or letter of engagement.
- Where an employee establishes an allegation of discrimination sufficiently to invoke the evidential burden under section 5 of the Employment Act, the employer may be required to demonstrate that the alleged discrimination did not occur. A failure by the employer to adduce evidence in response may leave the employee's evidence substantially unchallenged.
- A trade union is entitled to go directly to the Employment and Labor Relations Court on constitutional grounds; it need not first exhaust shop-floor or internal dispute channels.

OUTCOME

The Court of Appeal declared the employment relationship permanent and pensionable, ordered the County to regularize the affected workers' terms, and awarded costs against the County.

WHAT THIS MEANS FOR EMPLOYERS

- Review staff kept on repeated fixed-term or "casual" contracts for extended periods, especially where their duties are ongoing and not project-specific.
- Do not rely on contract labels alone; assess the real nature and duration of the engagement.
- Maintain clear, contemporaneous records of contract terms, renewals, and communications with staff to manage risk.
- Respond to and defend claims before the ELRC; failure to adduce evidence can be treated as leaving the opposing case unchallenged.

READ THE FULL JUDGMENT

- A copy of the full Court of Appeal judgment is attached to this alert for members of the public who wish to read the complete decision. It can also be accessed online at the link below:
- <https://new.kenyalaw.org/akn/ke/judgment/keca/2026/1481/eng@2026-07-24>

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