



**Kinde Engineering Limited v Odhiambo (Appeal E123 of 2023)  
[2025] KEELRC 2453 (KLR) (17 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2453 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E123 OF 2023  
NJ ABUODHA, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**KINDE ENGINEERING LIMITED ..... APPELLANT**

**AND**

**JOHN ODHIAMBO ..... RESPONDENT**

**JUDGMENT**

1. Through the Memorandum of Appeal 3<sup>rd</sup> June, 2024 the Appellant appeals against the Judgement of Hon. J.A Agonda (PM) delivered on 20th June, 2023 in CMEL NO. E214 of 2022. The Appeal was based on the grounds among others that:
  - i. That the trial magistrate erred in law and in fact in awarding terminal dues at an inordinately high sum of Kenya shillings Eight Hundred and Sixty-Eight Thousand Nine Hundred and Five and Thirty (Kshs. 868,905.30/=) for the unfair termination of the Claimant's employment according to the Honourable Court.
  - ii. That the learned magistrate erred by failing to consider that the Respondent's contract was for a fixed term contract that expired by effluxion of time;
  - iii. That the learned magistrate erred by tying the non-renewal of tire contract to termination on redundancy as the letter dated 23<sup>rd</sup> of June,2020 was purely communicating non-renewal of the six months' contract and has not alluded redundancy anywhere.
  - iv. That the learned magistrate erred by holding that the Respondent was unfairly terminated by being declared redundant whereas in the judgment it was the Respondent's testimony that he had a contract from December,2019 to June,2020 when he received the letter of no-renewal of contract dated 23<sup>rd</sup> of June,2020.



- v. That the learned magistrate erred by awarding the Respondent 14 days' salary for the month of July,2020 whereas in the judgment the Respondent testified to have received the letter for non-renewal of contract on the 14<sup>th</sup> of July,2020 when he went to sign for his dues.
  - vi. That the learned magistrate erred by holding that the termination letter dated 23<sup>rd</sup> of June,2020 did not give tire reasons for termination whereas the same is expressly referenced as a "Notice for non-renewal of a contract" f and goes on to explain that the contract has expired by effluxion of time.
  - vii. That the trial magistrate erred in law and in fact in awarding damages which were not proved and were manifestly excessive.
2. The Appellant therefore prayed that the appeal be allowed and the awards made to claimant/ respondent in the judgment be set aside and or varied and decree made thereon be vacated and replaced by the orders of the Honourable Court.
  3. The Appeal was disposed of by written submissions.

### **Appellant's Submissions**

4. The Appellant's Advocate Mr. Mureithi submitted among others that it was clear that the respondent's contract was constructively renewed and or extended for a further six months from 1<sup>st</sup> December, 2019 which lapsed in June 2020. In this regard Counsel relied on the case of Registered Trustees of PCEA & Another vs. Ruth Gathoni Ngotho Karuiki [2017] eKLR where the court stated that fixed term contracts carry no rights, obligations or expectations beyond the date of expiry as was held in the case of Transparency International Kenya vs. Teresa Carlo Omondi. According to Counsel, at the hearing before the trail court, the respondent testified that as at his last day of work on 30<sup>th</sup> June, 2020 he was employed under the contract dated 19<sup>th</sup> June, 2019. The said contract had been renewed for six months and non-renewal of the contract was communicated to the respondent on 23<sup>rd</sup> June, 2020. Mr. Mureithi further submitted that Courts have held that their exists no remedy for claimants who claim unfair termination for contract that end by effluxion of time.
5. Counsel further submitted that the only remedy available at the expiry of a fixed term contract is the provision of a certificate of service as was held in the case of Willy Changwon vs. Laikipia University.

### **Respondent's Submissions**

6. Counsel for the respondent Mr. Mandela on the other hand submitted that the appeal before the Court was not proper since the appellant had not attached a decree with the record of appeal. In this regard counsel relied on the case of Elvis Sichenga vs. ODM [2016]eKLR and Tans Mara Sugar Co. Ltd v James Omondi Obudho [2020]eKLR where it was held that failure to attach a decree was fatal to the appeal.
7. On the issue whether the respondent's fixed contract was renewed by implied conduct, Mr. Mandela submitted that from facts and evidence by both parties, the respondent was initially employed by the appellant for a period of one year through a written contract dated 14<sup>th</sup> May, 2018. Upon the lapse of the one year contract, the respondent was hired for another six months through a contract dated 19<sup>th</sup> June, 2019 which took effect from 1<sup>st</sup> June. In the premises, the 6 months employment lapsed on 30<sup>th</sup> November, 2019. It was not contested that the respondent continued working for the appellant despite the expiry of the six month's contract. The contract was therefore renewed by the parties conduct. Counsel relied on the case of Kenya Airways Ltd vs. Satwant Singh Flora [2013] eKLR.



8. On the issue whether the respondent had proved his claim for unfair/unlawful termination beyond reasonable doubt, counsel submitted that the respondent worked for the appellant for six months and fourteen days in 2020 until 14<sup>th</sup> July, 2020. The appellant served him with a letter of termination without notice or explanation whatsoever and that he was never given an opportunity to mitigate his case neither was he taken through a disciplinary process. Counsel further submitted that the appellant's defense was that the respondent was terminated on account of redundancy yet even then due procedure for redundancy under section 40 of the Employment Act was not followed.
9. On whether the damages awarded were justifiable counsel submitted that it was trite law that the award for damages was discretionary however such discretion ought to be exercised judiciously and in line with the law. In this respect counsel relied on the case of Kenfreight (EA) vs. Benson K. Nguti. According to Counsel, the trial court in awarding six months' salary as compensation considered among others that the respondent had been dismissed from employment without notice and without being accorded an opportunity to be heard and that he had worked for the appellant for more than a year with no previous disciplinary case.
10. Concerning the award for 14 days worked, counsel submitted that the respondent testified that he worked for 14 days preceding his termination but was never paid for the days worked. This was buttressed by the terminal dues agreement executed on 3<sup>rd</sup> August, 2020 between the appellant and the respondent clearly showing that the said 14 days had not been factored.

#### **Determination.**

11. The principles which guide this court in an appeal from a trial court are now well settled. In *Gitobu Imanyara & 2 others v Attorney General* [2016] eKLR, the Court of Appeal stated that:

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect”
12. This appeal revolves around the question whether the trial court erred in finding that the respondent was unfairly terminated from the appellant's service and whether the trial court was justified in awarding the respondent the amount it awarded on account of termination of service. Whereas the respondent contended that his fixed term contract was constructively renewed when it expired hence his services ought to have been terminated in accordance with the provisions of the Employment Act including provisions on redundancy, the appellant contended that the respondent's service ended by effluxion of time being on a fixed term contract.
13. Whereas as aptly observed in the *Imanyara's* case cited above that an appeal to this Court from a trial by the lower court is by way of retrial and that the principles upon which this Court acts in such an appeal are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions however bearing in mind that it neither saw nor heard the witnesses and should make due allowances in that respect. The trial Court (Hon. J.A Agonda), had the benefit of listening to evidence and observing the demeanour of witnesses and came to the decision, the subject of the present appeal. In evaluating the evidence and reaching its own conclusion, the court must however guard against acting whimsically and replacing its view of the judgment it could have reached if it tried the matter in the first instance with the finding of the trial court. The decision of the trial court need not be perfect but provided it is in line with the operative law and a reasonable deduction of the evidence presented before it, this



court with not interfere simply because as an appellate court it is clothed with jurisdiction to reevaluate the evidence.

14. From the record, the respondent was initially employed as a Project Manager-Energy Sector for a period of one year by a letter of appointment dated 9<sup>th</sup> May, 2018. The contract was to commence on 14<sup>th</sup> May, 2018 implying it was to expire around 15<sup>th</sup> May, 2019. However by another contract dated 19<sup>th</sup> June, 2019, the respondent was appointed as a Safety Officer for a period of six months commencing from 1<sup>st</sup> June, 2019. Implying the contract was to expire around 2<sup>nd</sup> December, 2019. The contract provided for renewal at the discretion of the management and further that either party was to give one month's notice of termination in writing or payment in lieu. The respondent was issued with a non-renewal notice dated 23<sup>rd</sup> June, 2020 implying the six month's contract was renewed by conduct of the parties after its expiry on or about 1<sup>st</sup> December, 2019. Meaning the respondent was to work until about 2<sup>nd</sup> June, 2020. The notice of non-renewal however informed the respondent that his last working day would be 30<sup>th</sup> June, 2020. From the record the notice was however signed for by the respondent on 14<sup>th</sup> July, 2024. The respondent therefore worked for the appellant for a period of approximately one and a half months after expiry of his contract.
15. The contract dated 19<sup>th</sup> June, 2019 had provision for one month's notice of termination or payment in lieu. The contract further provided that it could only be varied in writing by consent of the parties. No such variation was presented before the trial court hence the parties until the contract was formally terminated remained bound by the terms thereof. The notice of non-renewal dated 23<sup>rd</sup> June, 2020 which informed the respondent that his last working day was 30<sup>th</sup> June, 2020 therefore was in breach of the terms of the six month's contract letter issued to the respondent on 19<sup>th</sup> June, 2019.
16. The respondent was not terminated for any disciplinary issue or misconduct hence the provisions of the Employment Act regarding reasons and procedure for termination would not apply. It is further noteworthy that the respondent was on a fixed term contract hence there was no guarantee or obligation that the same would be renewed upon expiry. The appellant however having allowed the respondent to continue working beyond the expiry of his contract, created in him a legitimate expectation that he was to work until the lawful expiry of his contract. To terminate his contract by about a week's notice which was received by him almost two weeks later was therefore unfair.
17. To this extent the trial magistrate erred in applying the principles governing termination of contract as stipulated in the Employment Act. The Court will reckon that the respondent signed for his terminal dues without raising any issues and that his contract may have come to an end by either party invoking the termination clause and further that the contract was only for six months, renewable. Taking the foregoing into account an award of three months' salary for breach of contract would be reasonable. The respondent was further entitled to payment in lieu of notice.
18. In conclusion, the Court will set aside the judgment of the trial court and substitute the same with judgment in favour of the respondent as follows:  
Kshs.
  - i. Three months' salary 405,000
  - ii. One month's salary in lieu 135,000
  - iii. 14 days salary for July, 2022 67,000subtotal 607,500
  - iv. Less: paid 143,595



Total payable 463,905

19. The appeal being partially successful, each party shall bear their own costs of the appeal.
20. It is so ordered.

**DATED AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

