



Okinyo v Erubi Engineering Service & Supplies Limited (Cause E339 of 2020) [2025] KEELRC 2549 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2549 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E339 OF 2020
BOM MANANI, J
SEPTEMBER 25, 2025**

BETWEEN

CLEVER ALMBALE OKINYO CLAIMANT

AND

ERUBI ENGINEERING SERVICE & SUPPLIES LIMITED RESPONDENT

JUDGMENT

Background

1. Through the Memorandum of Claim filed on 28th July 2020, the Claimant challenges the Respondent's decision to terminate his contract of service. It is his case that the decision was unlawful.
2. The Claimant avers that the Respondent employed him as a Technician on an indefinite term contract with effect from 5th August 2016. He contends that his starting salary was agreed at Ksh. 32,700.00.
3. The Claimant contends that he served the Respondent with loyalty and dedication until 30th January 2020 when the latter terminated his contract on account of alleged redundancy at the workplace. He contends that on this day, he reported to work only for the Respondent to serve him with a letter of dismissal from employment.
4. The Claimant contends that the Respondent's decision was without justification. He further contends that the Respondent did not issue him notice as required in law. As such, it is his case that the Respondent's action was wrongful.
5. The Claimant alleges that as a result of the Respondent's decision, he suffered abrupt loss of income and was subjected to trauma. He avers that the loss of income meant that he could no longer meet his financial obligations as and when they fell due. Consequently, he prays for the various reliefs as set out in the Memorandum of Claim.



6. The Respondent does not admit the claim. Through its amended Response to the Memorandum of Claim, the Respondent admits that the Claimant was its employee but denies that he was engaged on indefinite terms.
7. The Respondent avers that the Claimant was initially hired on a three months contract as from 30th September 2016. It contends that the contract was renewable subject to good performance by the Claimant.
8. The Respondent avers that on 2nd January 2018, it renewed the contract for a term of one year. It further contends that it is at this juncture that it (the Respondent) promoted the Claimant to the position of Technician.
9. The Respondent avers that when the contract lapsed, it was renewed for a further one year from 2nd January 2019 up to 31st December 2019. The Respondent avers that the said contract lapsed on 31st December 2019 by effluxion of time and was not renewed.
10. The Respondent avers that it communicated to the Claimant in writing regarding the lapse of the contract through effluxion of time. It further avers that it paid him his terminal dues. As such, it contends that the contract was legitimately closed.
11. The Respondent denies that the Claimant is entitled to the various reliefs that he seeks in the Memorandum of Claim. It denies that he is entitled to compensation for unlawful termination of his employment since his contract expired through effluxion of time. It further denies that he is entitled to notice pay for the same reason. It also contests his claim for leave pay on account of the fact that he had utilized his leave days.

Issues for Determination

12. After evaluating the pleadings, evidence and submissions by the parties, the following issues emerge for determination in the dispute:-
 - a. What was the nature of the employment relationship between the parties?
 - b. Was the relationship lawfully terminated?
 - c. Is the Claimant entitled to the reliefs which he seeks through this action?

Analysis

13. The evidence on record shows that the Respondent offered the Claimant employment as an Electrician through its letter dated 5th August 2016. The engagement was expressed to be for a period of three months with effect from the date of the letter of offer (5th August 2016).
14. The record further shows that the contract of service between the parties was renewable. However, this was subject to the Claimant's good performance.
15. It is apparent from the evidence on record that the parties continued to engage in the employer-employee relationship after the fixed contract dated 5th August 2016 lapsed. On 2nd January 2018, they executed a new fixed term contract for a period of one year.
16. The latter contract was expressed to lapse at the close of December 2018. However, it was also renewable subject to good performance by the Claimant.



17. No documentary evidence was tendered to demonstrate that the contract was renewed after December 2018. However, the oral evidence by the parties confirms that it (the contract) was renewed.
18. The parties having previously engaged on the basis of fixed term contracts, it can only imply that renewal of the contract between them after the contract of 2nd January 2018 lapsed was on similar terms as the contract of 2nd January 2018. As such, I find that the contract was renewed on the same terms for a further one year up to close of December 2019.
19. Having regard to the above evidence, it is clear to me that the employment relationship between the parties was based on renewable fixed term contracts of service as averred by the Respondent. As such, the Claimant's contention that he was engaged on permanent or indefinite terms is misplaced.
20. The Claimant contends that the Respondent terminated the contract of service unfairly. It is his case that the reason that was offered to justify the Respondent's decision was absence of funds to sustain him in employment which implied a redundancy at the workplace. He contests the validity of this reason.
21. The Claimant further avers that the Respondent did not issue him with a redundancy notice in terms of section 40 of the *Employment Act*. He also contends that the Respondent failed to adhere to the redundancy selection procedure prescribed by the aforesaid provision of statute.
22. On the other hand, the Respondent denies that the Claimant lost employment on account of redundancy. It contends that his contract of service lapsed through effluxion of time on 31st December 2019 and was not renewed.
23. The Respondent's position is not supported by the evidence on record. According to the record, the Respondent issued the Claimant with a notice of termination of contract dated 30th January 2020 which reads as follows:-

“Dear Clever,

It is with regret to inform you that you are being laid off from your position as electrician effective 28th January 2020 due to lack of funds (and/or work) as discussed with you.

This layoff action is indefinite in duration and may be permanent. Should we require your services in the near future, we shall contact you.

We appreciate your contribution to Erubi Engineering Services and Supplies Limited and your current fiscal problems have led to this notice.

You will receive your severance pay for the period you have worked with us.

Our best wishes for success in your future endeavours.

Kind regards,

Catherine Bwire Mrs.

Director.”

24. From this notice, it is apparent that the Respondent terminated the Claimant's contract of service by a notice dated 30th January 2020. The termination was with effect from 28th January 2020.
25. It is also apparent that the Claimant's services were terminated for two reasons to wit: lack of funds and or work on the part of the Respondent; and the Claimant's fiscal problems.



26. As pointed out earlier, the contract of service between the parties dated 2nd January 2018 was renewed, albeit orally or by conduct of the parties, by a further one year. As such, it terminated on 31st December 2019.
27. Although the renewed contract terminated on 31st December 2019, it is apparent that the parties continued to engage in the employer-employee relation beyond this date. This reality is self-evident from the Respondent's letter to the Claimant dated 30th January 2020.
28. By this letter, it is clear that the parties continued to relate as employer-employee in January 2020 despite the fixed term contract between them having come to a close on 31st December 2019. In effect and by this conduct, they renewed the contract which had terminated on 31st December 2019 on the same terms.
29. The said contract having been renewed on the same terms, it would have terminated through effluxion of time after one year, that is to say 31st December 2020. However, the Respondent terminated it prematurely on 28th January 2020. As such, the contract between them did not close through effluxion of time.
30. If the Respondent desired the contract to lapse through effluxion of time, it ought not to have done anything to suggest that it (the contract) was still subsisting after 31st December 2019. But this is not what the letter dated 30th January 2020 suggests. The said letter implies that the contract was still alive as at 28th January 2020 but could not be sustained beyond this date owing to lack of funds and or work on the part of the Respondent and the Claimant's fiscal problems.
31. The aforesaid letter, albeit ambivalent, suggests that the Claimant's services were terminated on account of redundancy. If the Respondent was unable to sustain the Claimant's services because of lack of funds and or work as the letter purports, this means that the Claimant's services were no longer required because of the Respondent's operational requirements which essentially denotes a redundancy situation at the workplace.
32. Having opted to release the Claimant from employment on account of redundancy, the Respondent was duty bound to comply with the legal provisions on redundancy as set out under sections 40 and 45 of the *Employment Act*. It was required to:-
 - a. Issue the Claimant and or his trade union with a redundancy notice of at least one month before closure of his contract setting out the reasons for and extent of the proposed redundancy.
 - b. Issue a one month notice of the proposed redundancy to the local labour office.
 - c. Undertake selection of the employee(s) to be released from the establishment on account of redundancy based on their seniority, skill, reliability and ability.
 - d. Pay the affected employee(s) one month's salary in lieu of notice.
 - e. Pay the affected employee(s) severance pay.
33. There is no evidence that the Respondent issued the Claimant with a redundancy notice one month prior to termination of his contract. There is no evidence that the Respondent informed the Claimant of the extent of the purported redundancy. There is no evidence that the local labour office was notified of the purported redundancy. Similarly, there is no evidence which speaks to the selection procedure which the Respondent adopted to settle on the Claimant as the employee to be released from employment on account of redundancy. In effect, the process of release of the Claimant from



employment violated the procedure for declaration of a redundancy at the workplace (see *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] KECA 404 (KLR), *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] KECA 492 (KLR), and *Cargill Kenya Limited v Mwaka & 3 others* [2021] KECA 115 (KLR)). As such, the court finds that the Respondent improperly terminated the Claimant's services. It is so declared.

34. The Claimant seeks for compensation for the unfair termination of his contract of service. He also prays for accrued leave days, notice pay and service pay.
35. In determining the reliefs to grant for unfair termination of a contract of service, the court is to be guided by section 50 as read with 49 of the *Employment Act*. The provisions set out the reliefs which a court may grant. However, it (the court) is not bound to grant all or indeed any of the reliefs.
36. Having regard to the duration that the parties had been in the employment relation and taking into account that the Claimant's conduct did not contribute to the loss of his job, I am minded to award him compensation for the unfair termination of his contract which is equivalent to his salary for five (5) months, that is to say, Ksh. 32,700.00 x 5 = Ksh. 163,500.00.
37. The Claimant has prayed for pay in lieu of notice to terminate his contract. As has been stated above, the contract from 1st January 2020 between the parties was renewed by their conduct on the same terms as the contract dated 2nd January 2018. The contract of 2nd January 2018 entitled either party to terminate the employment relationship by giving the other two months' notice. As such, the Respondent was under obligation to give the Claimant two months' notice to terminate his contract.
38. The record shows that the Respondent did not issue the aforesaid notice to terminate the Claimant's contract. That being the case, the Claimant is entitled to claim salary in lieu of the notice, that is to say Ksh. 32,700 x 2 = Ksh. 65,400.00. Accordingly, the court awards him this amount.
39. This amount shall attract interest at court rates from the date of this decision.
40. The Claimant sought for pay in lieu of accrued leave days. However, during cross examination, he conceded that he had utilized his leave days. As such, the claim for pay in lieu of accrued leave days is declined.
41. The award is subject to the applicable statutory deductions.
42. The Claimant is awarded costs of the case.

Summary of the Findings and Award

43. After evaluating the pleadings and evidence on record against the applicable law, the court makes the following findings and attendant orders:-
 - a. The court finds that the parties had a fixed term employment relationship.
 - b. The court finds that the Claimant's employment was terminated during the currency of the fixed term contract between the parties. As such, it finds that the contract did not terminate through effluxion of time as asserted by the Respondent.
 - c. The court finds and declares that the Respondent improperly terminated the Claimant's services on account of an alleged redundancy at the workplace.
 - d. The court awards the Claimant compensation for unfair termination of his contract of service in the sum of Ksh. 163,500.00.



- e. The court awards the Claimant Ksh. 65,400.00 as pay in lieu of notice to terminate his contract of service.
- f. The court awards the Claimant interest on the award at court rates from the date of the judgment.
- g. The award is subject to the applicable statutory deductions.
- h. The court declines the Claimant's plea for pay in lieu of accrued leave days.
- i. The court awards the Claimant costs of the case.

DATED, SIGNED AND DELIVERED ON THE 25TH SEPTEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

