



**Ongwae v Kenya Civil Aviation Authority (Employment and Labour Relations
Petition E206 of 2024) [2025] KEELRC 2585 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2585 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E206 OF 2024
MN NDUMA, J
SEPTEMBER 25, 2025**

BETWEEN

VIVIAN NYAKERARIO ONGWAE PETITIONER

AND

KENYA CIVIL AVIATION AUTHORITY RESPONDENT

JUDGMENT

1. The petition dated 10/12/2024 supported by a verifying affidavit of the Petitioner Vivian Nyakerario Ongwae, seeks an order in the following terms:
 - a. That a declaration that the Respondent has infringed the Petitioner's rights under Articles 27 and 41 of the Constitution, which guarantees the Petitioner the right of equality and freedom from discrimination by discriminating against the Petitioner and offended the provisions of Fair and Administrative Action Act, 2015.
 - b. That a declaration that the Respondent has infringed the Petitioner's rights to legitimate expectation and her rights under Article 41 of the Constitution which provides that every employee has a right to fair labour practices and to fair remuneration thus the Respondent's continued services after expiry of the contract amounted to renewal of the contract and created an implied contract of employment and legitimate expectation by the Petitioner thereof.
 - c. That a declaration that the complained actions of the Respondent's Director General, one Mr. Emile Arao, has infringed Article 73 of the Constitution of Kenya which provides for responsibilities of leadership, which include but not limited to a public trust to be exercised in a manner that brings honour to the nation and dignity to the office and promotes public confidence in the integrity of the office



- d. That an injunction be and is hereby issued to prevent the Respondent from recruiting for the position held by the Petitioner of its Flight Operations Inspector until the Petitioner's contract is renewed hereof.
- e. That an order of Certiorari be and is hereby issued to quash the Respondent's decision vide a letter dated 12th January, 2024, purporting not to renew the Petitioner's employment contract that expired on 31st December, 2024.
- f. That a mandatory injunction be and is hereby issued to compel the Respondent to forthwith reinstate forthwith and renew the Petitioner's contract with effect from 1st January, 2024 for a term of 5 years with prevailing terms and conditions of his rightful next position; in accordance with section C12 of the Respondent's HR Manual which provides for a contract of 5 years for a subsequent contract thereof.
- g. That a mandatory injunction be and is hereby issued to compel the Respondent to forthwith pay the Petitioner salary arrears from 1st January, 2024 to date.
- h. That a mandatory injunction be and is hereby issued to compel the Respondent to forthwith pay the Petitioner all her remaining dues in respect of the services rendered by the Petitioner in respect of her expired contract.
- i. That an order for compensation of the Petitioner's equivalent to his 12 months' pay thereof.
- j. That the Respondent to pay the Petitioner the costs of this petition.

Facts

2. The Petitioner entered into employment contract with the Respondent as a Flights Operations Inspector from 5/9/2016 to 4/9/2017; second contract from 5/9/2017 to 4/9/2020; and third contract was to end on 31/12/2023. The Petitioner as at December 2023 earned Kshs. 370,184.00.
3. That by a letter dated 22/9/2023, the Petitioner wrote a letter to the Respondent expressing her willingness to have her contract renewed with effect from 1/1/2024. That the Respondent wrote a letter dated 12/1/2024 vide the Director General Mr. Emile N. Arao informing the Petitioner that the Respondent had opted not to renew the contract of employment that had expired on 31/12/2023. The Respondent did not give notice or reasons for the refusal to renew the contract.
4. The Petitioner states that the conduct by the Respondent was unreasonable by reason of delay and failure to give notice and reasons for non-renewal to the Petitioner.
5. That the Petitioner had an excellent performance evidenced by the appraisal; that she was servicing a loan guaranteed by the Respondent; that the Respondent is a public body governed by the principles and values contained in the *Constitution* of Kenya 2010 , and that the Petitioner had reasonable expectation that her contract would be renewed.
6. That the Petitioner's immediate supervisor and the Respondent's Human Capital Advisory Committee (HCMAC) had duly recommended the renewal of the contract as per the minutes of the committee.
7. That the letter notifying non-renewal came after the contract had already expired and many months from 22nd September 2023 which date the Petitioner had written indicating willingness to continue to serve.



8. That the Petitioner obtained a mortgage, guaranteed by the salary to the tune of Kshs. 10,271,730.07. That as at December 2024, the Petitioner had a balance of Kshs. 3,399,902.77. That the Petitioner has been unable to service the loan and is gravely prejudiced by the unlawful conduct of the Respondent. That this is occasioned by lack of adequate notice to prepare for the non-renewal of the contract.
9. That the Respondent has publicly advertised for the position calling for application to fill the position the Petitioner occupied among other positions in disregard of the excellent service the Petitioner rendered.
10. That the decision by the Respondent is capricious, irrational, unlawful, oppressive, unjust, unfair and unconstitutional. That the decision offends Articles 10(2) and (c); 21(1); 27, 35,41, 47(1), 50(1), 75 and 232(1) of the Constitution of Kenya 2010.
11. The Petitioner relies on the decision by Ongaya J. in *Alloice Odhiambo Lumutu versus Kenya Civil Aviation Authority 2024 eKLR* where the court held;

“...The Respondent has then advertised the same positions as those held by the Petitioner in the lapsed contract. What then would deny him the renewal. He is qualified and wishes to continue in the service of the Respondent. The court considers that on that account, despite the discretionary power to renew, the circumstances of this case evolve a legitimate expectation that the Petitioner’s contract is renewed. The finding is more so in view that the Petitioner has been appraised as meeting the performance expectations...”
12. The case of *Michael Kiptoo versus Kenya Medical Training College and another; Ethics and Anti-corruption Commission and another (Interested parties) [2021] eKLR* where Nduma J. held:-

“...the court must intervene to quash a decision if they consider it demonstratively unreasonable as to constitute irrationality or perversity on the part of the decision maker... an order of mandamus is issued directing the Respondent to reinstate the Petitioner to his employment as CEO of Kenya Medical Training College with full pay and without loss of benefits in terms of his contract of service...”
13. The case of *Okiya Omtatah Okoiti versus Attorney General and 2 others and Francis K. Muthaura and 5 others [2019] eKLR* where the court observed:-

“...the court finds that the chairperson and the members of the Board of KRA (just like the chairpersons and members of other state corporations or boards of other public bodies) are public officers bound by applicable constitutional and statutory provisions and lawful policies and practices that govern public employment. The court holds that in the constitutional framework under the Constitution of Kenya 2010, the public officers despite their designation or position held in the service, they are all in public or state service and governed by specific applicable constitutional and statutory provisions and lawful policies and practices – so that the variance in positions held or designation does not render any of the public or state officers to escape their being servants of the people, employed by the people, within such applicable constitutional and statutory provisions, and, lawful policies and practices. Thus, the provision of Article 73 as read with Article 80 (c) and Article 232 apply accordingly. In view of that finding, the dispute in the present petition is about employment within the complex framework of public service or public sector employment. The substantive law applicable to such employment ranging from declaration of vacancy, recruitment and selection procedures, appointment procedure and termination procedure



would be the applicable public service constitutional and statutory provisions and such other lawful polies and practices to the extent that they prescribe minimum or better terms and conditions of service than those envisaged in the *Employment Act*, 2007.”

Response

14. The Respondent opposed the petition vide a replying affidavit dated 8/5/2015 sworn to by Ms. Emile N. Arao, The Director General of the Respondent who deposes that the Respondent complied with all constitutional, statutory and regulatory of imperatives before declining to renew the contract of the Petitioner. That the contract came to an end by effluxion of time and the Petitioner has no recourse therefore.
15. The Respondent relies on the case of Rajab Barasa and 4 others versus Kenya Meat Commission [2021] eKLR that,

“once the event agreed to between the employer and its employee takes place or materializes, there would ordinarily be no dismissal. The law is that the expiry of the fixed term contract of employment does not constitute termination of the contract by any of the parties. There is an automatic termination of the contract by operation of law and not a dismissal or unfair termination of employment.”
16. The Respondent dispels allegation by Petitioner of the legitimate expectation in that the Petitioner was aware of the date her contract was coming to an end and was aware that the Respondent had no legal obligation to renew the same.
17. The Respondent relies on the case of Nguru versus Buds and Bloom Limited [2022] KEELRC 4007 (eKLR) where it was held

“Fixed term contract do not carry any expectation for renewal and that the employer is not obligated to explain the reasons for non-renewal.”
18. The Respondent further relied on the case of Francis Chire Chachi versus Amatsi Water Service Company Limited (2012) eKLR where the court held that...

“This court has recently stated that the employers are under no obligation to give employees reasons for non-renewal of a fixed term contact unless there is such an obligation created in the expiry contract.”
19. The Respondent denies violation of any of the cited provisions of the *Constitution* states that the petition lacks merit and prays that it be dismissed with costs.

DETERMINATION

20. The issues for determination are:-
 - 3i. Whether the Respondent violated any of the stated rights of the Petitioner.
 - ii. Whether the Petitioner acted unreasonably, capriciously, maliciously and irrationally in the circumstances of this case.
 - iii. Whether the Petitioner is entitled to the reliefs sought.



21. The contract of employment between the Petitioner and Respondent dated 5/9/2016 had termination clause no 19 as follows:-

“Notwithstanding the provision of termination provided for herein above, either party may terminate this agreement by giving the other party three (3) months prior written notice.”

Clause 20 on the other hand provided:-

“Notice of application for renewal of not more than six (6) and not less than (3) calendar months before the date of lapse of this agreement; the employee wishing to have her employment renewed shall apply in writing to the Director General for renewal and the Director General shall have the sole discretion to decline such renewal, approve the application subject to such amendments as to the terms thereof upon such condition as may be deemed necessary or approve the application on the same terms as in the previous agreement. Failure to apply as above shall be deemed to indicate the employee is not interested in any further employment by the authority.”

22. This agreement was renewed on 1/1/2021, for a period of 3 years which contract was to expire on 31/12/2023. Clause 21 on application for renewal remained the same. The Petitioner requested for renewal vide a letter dated 22/9/2023. The contract expired on 31/12/2023. By a letter dated 12/1/2024, the Respondent communicated to the Petitioner, the decision not to renew the contract.

This letter was done twelve (12) days after the contract had expired.

23. The Petitioner had requested for renewal three (3) months and eight days before the expiry of the contract.

24. It is not expressly stated under clause 20, within which time the employer is to notify intention to or not to renew the contract but it is to be reasonably implied that clause 21 bound both parties on the time lines to communicate renewal or non-renewal. The court giving purposive interpretation of clause 21 of the contract finds that the employer having received the notice of renewal more than three months from the date of expiry of the contract, was bound to respond to the said application for renewal before the expiry of three (3) calendar months before the expiry of the contract on 31/12/2024. This clause is not in the contract of employment for cosmetic reasons. The intention of the parties was to ensure that the employer had reasonable notice of the intention of the employee to renew the contracts and in a reciprocal manner, the employer was implicitly bound to give reasonable notice of the intention not to renew the contract to allow the employee time to prepare herself by looking for alternative employment especially in view of the loan obligations the Petitioner had with the bank which loan was guaranteed by the salary she earned from the Respondent.

25. It was unreasonable, irrational and malicious for the Respondent to await the expiry of the contract without communicating to the Petitioner, the intention not to renew the contract. Infact this conduct violated clause 21 of the contract of employment and in itself was an unfair labour practice in violation of Article 41 of the Constitution.

26. Furthermore, the decision violated Article 47 of the Constitution in that the administrative act not to renew the contract of employment of the Petitioner came 12 days after the expiry of the contract, it was not expeditious, efficient, lawful, reasonable and was not procedurally fair. The decision gravely prejudiced the Petitioner. She had no notice of the refusal to renewal. She had no time to prepare herself for the impending difficulties of looking for another source of income for personal and family upkeep



and to meet her future financial obligations including loan repayment which was in the knowledge of the Respondent.

27. The Respondent did not refute the contention by the Petitioner that the Human Resource Committee had recommended renewal of her contract. This fact obligated the Director General to provide reasons for the non-renewal in terms of Article 47(2) of the *Constitution* since a decision that overrode a legitimate recommendation by the applicable committee had to be explained for it to be legitimate. The decision therefore also violated the Human Resource Policy Manual of the Respondent and the right of the Petitioner to legitimate expectation for renewal based on the recommendation of the competent committee on contract renewal matters.
28. It is the court's considered decision that the Respondent acted unreasonably, capriciously, maliciously and irrationally in the circumstances of this case. The petition has merit and it is allowed accordingly.

Remedies

29. The Petitioner's contract ended on 31st December 2024. It is only a few months since the unlawful decision was made by the Respondent.
30. The Petitioner had legitimate expectation to continue serving the Respondent and it is not too late to return to work on renewed terms to be decided by the Respondent accordingly,
 - a. An order of certiorari be and is hereby issued to quash the Respondent's decision vide a letter dated 12th January 2024, purporting not to renew the Petitioner's employment contract that expired on 31st December 2024.
 - b. A mandatory injunction is issued to compel the Respondent to forthwith renew the contract of the Petitioner with effect from the date of this judgment for a term of three (3) years which is consistent with other previous contracts held by the Petitioner or on any other better terms, the Respondent may deem just and fit.
 - c. The court finds that the Petitioner is entitled to general damages equivalent to six (6) months salary for the violation of her constitutional rights under Articles 41(1) and 47(1) and (2) of the *Constitution* and violation of clause 21 of the contract of employment between the parties in the sum of Kshs. (370,184 x 6) = Kshs. 2,221,104.00.
 - d. Interest is payable on (c) above at court rates from date of judgement till payment in full.
 - e. The Respondent to meet the costs of the petition.

DATED AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Kurauka, Advocate for the Petitioner

Hon. Attorney General for Respondent; Mr. Kioko State Counsel

Mr. Kemboi – Court Assistant

