



REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI**

ELRC CAUSE NO E868 OF 2022

**MARYANNE THANDE.....
.....CLAIMANT**

VERSUS

**NATIONAL ENVIRONMENT TRUST FUND (NETFUND)
.....RESPONDENT**

JUDGMENT

Background

1. The Claimant instituted this case to challenge the Respondent's decision not to renew her contract of service. She contends that the decision was unlawful.
2. The Claimant contends that the Respondent hired her as its Communication Manager as from 1st June 2016. She avers that she was later deployed to various other positions including that of Linkage and Partnership Manager.
3. The Claimant contends that all this while, she served the Respondent on fixed term contracts which were renewed from time to time. It is her case that the Respondent's Human Resource Policy and her contracts provided that if she wished to renew her contract, she was to signify this intention by writing to the Respondent on the subject at least six (6) months prior to the lapse of the subsisting

contract. She avers that her last contract was for a period of three (3) years from 1st June 2018 up to 30th May 2021.

4. The Claimant avers that on 26th January 2021, she wrote to the Respondent's Chief Executive Officer (CEO) requesting for renewal of the contract. She contends that the request was in conformity with the terms of her expiring contract and the Respondent's Human Resource Policy.
5. The Claimant avers that the CEO acknowledged receipt of her request and informed her that the Respondent's Board of Trustees was going to consider the matter and communicate to her. She contends that despite this assurance, there was no immediate decision that was taken on her request.
6. The Claimant avers that on 27th May 2021, the Respondent issued her with a fixed term contract of service for six (6) months until 30th November 2021. She avers that this arrangement was to facilitate renewal of her earlier contract of service.
7. The Claimant contends that the Respondent's decision to issue her with the six (6) months' contract was made about three (3) days before her contract was to expire. It is her case that this was in contravention of *the Public Service Commission Act* which obligated the Respondent to respond to her request to renew her contract at least three (3) months before her contract expired.
8. The Claimant avers that the Respondent's Board of Trustees held a meeting on 17th September 2021 during which it considered her request to renew her contract. She contends

that she learned through the Respondent's letter dated 20th September 2021 that the said Board declined to renew the contract.

9. The Claimant contends that the Board decision not to renew her contract was made on the last day of the Board's tenure. As such, she avers that she was not briefed about the decision.
10. Nevertheless, the Claimant contends that she lodged an appeal against the decision through her letter dated 5th October 2021. She contends that the manner in which her request for renewal of contract was handled contravened the Respondent's policy and procedure on renewal of contracts of service.
11. She contends that the policy stated that renewal of contracts of service was subject to good performance. It is her case that her performance had been stellar. She further contends that the policy requires an employee who desires to renew her contract to make the request at least six months before the lapse of her contract which she contends she complied with.
12. The Claimant avers that the Respondent's Board had no valid reason to reject her request. She contends that the said Board gave vague reasons to justify its decision.
13. The Claimant avers that the Respondent's Board was driven by malice in rejecting her request. She relies on the fact that the decision to reject her request was made on the last day

of the tenure of the Board to anchor her contention that the said Board acted with malicious intent. She avers that the Respondent could not process her appeal after the Board's term expired since the replacement Board was not constituted immediately.

14. The Claimant contends that in view of the foregoing, she lodged another appeal with the Principal Secretary, Ministry of Environment and Forestry vide her letter dated 6th December 2021. She contends that the Principal Secretary reviewed the Board's decision not to renew her contract and directed the Respondent to reinstate her into employment with effect from 9th December 2021.
15. She contends that despite this directive from the parent Ministry, the Respondent did not reinstate her back to her position. She avers that she has made every effort to be reinstated but to no avail. And hence this suit.
16. She contends that the Respondent's actions were malicious and arbitrary and hence unlawful. She further avers that the actions contravened articles 10, 27, 28, 41, 47, 73, 75, 232 and 236 of *the Constitution*, section 4 of *the Fair Administrative Action Act*, section 22 of *the Public Officer Ethics Act*, section 45(3) of *the Public Service Commission Act*, *the Employment Act*, the Mwongozo Code of governance for State Corporations and infringed her legitimate expectation to have her contract renewed.
17. In response, the Respondent avers that it employed the Claimant to the position of Manager, Resource Mobilization

on a two (2) year contract with effect from 1st June 2016. It avers that her contract was renewed for a term of three (3) years as from 1st June 2018.

18. The Respondent avers that the Claimant's employment was to lapse through effluxion of time on 31st May 2021. However, it contends that the contract was renewed for six (6) months until 30th November 2021 pending conclusion of a skills audit that was ongoing at the time her contract was to lapse.
19. The Respondent contends that during the skills audit, all members of staff who did not have all the requisite academic papers in their personal files were asked to submit the missing documents. In line with this, the Respondent contends that the Claimant was asked to submit her 'O' Level Certificate which was missing from her file but did not comply with this directive despite several reminders.
20. The Respondent contends that on 24th August 2021, its CEO wrote to the Claimant requesting for the missing certificate and warned her that failure to provide the certificate could result in disciplinary action against her. It contends that on 26th August 2021, the Claimant responded to the letter of 24th August 2021 informing its CEO that her certificate had been lost and that she was pursuing a replacement from the issuing authority.
21. The Respondent avers that on 16th September 2021, the Claimant submitted a results slip showing that she attained grade D+. It contends that she did not provide evidence to

demonstrate that she had attained the academic qualifications for the position which she was holding.

22. The Respondent avers that during its Board's meeting of 17th September 2021, a decision was made not to renew the Claimant's contract. It contends that the Board's tenure came to an end shortly thereafter on 20th September 2021.
23. The Respondent avers that the Claimant wrote to its CEO on 26th October 2021 to appeal against the decision not to renew her contract. It contends that the CEO responded to her letter and informed her that her case could only be handled by the Board which was yet to be reconstituted.
24. The Respondent avers that it received a letter from the Principal Secretary, Ministry of Environment and Forestry dated 9th December 2021 directing it to reinstate the Claimant. It contends that its CEO wrote back to the Principal Secretary on 21st January 2022 stating its position on the matter and seeking further guidance but the letter did not receive a response.
25. The Respondent admits that it received the Claimant's letter dated 24th February 2022 asking that she be reinstated to her position in line with the directive that had been issued by the Principal Secretary. It contends that it informed her that it had since written to the Principal Secretary on the matter and was awaiting his response.
26. The Respondent contends that the law does not empower parent Ministries to make appointments of staff or renew staff contracts for State Corporations. It contends that this

power vests in the Boards of the various State Corporations. As such, it contends that the Principal Secretary had no power to renew the Claimant's contract.

Issues for Determination

27. After evaluating the pleadings, evidence and submissions by the parties, the following issues emerge for determination:-
 - a) Whether the Claimant's employment was terminated unfairly.
 - b) Whether the Claimant is entitled to the reliefs which she seeks through these proceedings.

Analysis

28. The parties tendered in evidence three contracts of service which anchored their employment relationship. The first one is dated 3rd May 2016. It ran up to 30th May 2018.
29. The second contract is dated 2nd May 2018. Through it, the Respondent granted the Claimant a term of service which ran from 1st June 2018 up to 30th May 2021.
30. The final contract is dated 27th May 2021. It granted the Claimant a further term of service which ran from 1st June 2021 until 30th November 2021.
31. None of the three contracts provided for renewal of the Claimant's employment term. Further, none of the contracts contained a clause which either expressly or impliedly adopted the provisions of the Respondent's Human Resource Manual as part of the Claimant's terms and conditions of service.

32. In any event, the contract dated 3rd May 2016 preceded the said Human Resource Manual which came into force in June 2018. As such, it cannot be said that the terms in the Manual were incorporated into the said contract.
33. The fact that an employer has a Human Resource Manual does not imply that the terms of the Manual are automatically incorporated into the individual employment contracts between him (the employer) and his employees. For the terms of the Manual to form part of the terms and conditions of service of an individual employee's contract, the parties ought to include a term in the contract of service which expressly incorporates the provisions in the Manual in the employment contract.
34. Speaking to this matter, George Ogembo states as here-below in his publication titled "*Employment Law Guide for Employers*", 2nd Edition, pg 29:-
- "The terms of employees' contracts may be guided by their individual contracts of employment or the provisions of the manual. While the former expressly governs the contract of employment, the same cannot be said of the latter. Since the manual represents quotidian aspects of human resources management, it does not ordinarily change the individual contracts of employment. Instead, it expounds on workplace policies which are not automatically incorporated into the individual employees' contracts of employment. By virtue of not being impliedly incorporated, an individual*

employee's contract must have a clause expressly adopting the contents of the manual."

35. The fact that the parties to the instant dispute did not expressly incorporate the terms of the Respondent's Human Resource Manual of June 2018 into the Claimant's contracts means that the terms in the Manual did not form part of the Claimant's contracts of service. As such, it is doubtful that she can invoke the contents of the Manual to anchor her case.
36. However, assuming that the terms in the Manual applied to her contracts of service, did the said terms obligate the Respondent to renew the contract between the parties? According to the Claimant, the Manual created such obligation on the Respondent. She relies on clause 2.6.1 of the Manual to make this proposition. And hence her contention that she had legitimate expectation that her contract was to be renewed.
37. Clause 2.6.1 of the Manual, inter alia, provides as follows:-
"An employee serving under contract terms and wishing to be considered for a further term is required to notify the CEO in writing six (6) months before the expiry of the contract."
38. My understanding of the clause is that it places an obligation on an employee who wishes to have his contract renewed to notify the Respondent of this desire in writing at least six (6) months before his contract lapses. However, there is no corresponding obligation on the Respondent to

grant the request. It remains within the discretion of the Respondent to either grant or decline it (the request).

39. The evidence on record shows that when the Claimant's second contract was drawing to a close, she notified the Respondent of her desire to have it renewed. She did so on 26th January 2021, approximately four (4) months prior to the expiry of her contract on 31st May 2021. Therefore, she did not lodge her request for renewal of the contract at least six (6) months before the date for its expiry as required by the Manual.
40. The record shows that the Respondent granted the Claimant an extension of her term but for six (6) months running from 1st June 2021 until 30th November 2021. However, it declined to extend the term beyond this period.
41. Clearly, the Claimant's request for renewal of the contract was made outside the timelines that are set in the Respondent's Human Resource Manual. Further, the said Manual did not place an obligation on the Respondent to renew the contract once the Claimant lodged the request for renewal.
42. Having regard to the fact that the Respondent's Human Resource Manual did not obligate it (the Respondent) to renew the Claimant's contract beyond 30th November 2021, it was within its (the Respondent's) right to decline the request to extend her term beyond this date. As such, I find no merit in her contention that the Respondent acted

unlawfully when it declined to grant her a fresh term of service.

43. The Claimant has invoked section 45(3) (e) of *the Public Service Commission Act* to argue that the Respondent was under obligation to act on her request to renew her contract within three (3) months of the request. With respect, I do not agree that this is what this provision of law implies.
44. Section 45(3) of the Act recognizes that appointments in public service require the concurrence of either the Public Service Commission or some other authority that is mandated to grant such concurrence. I understand section 45(3) (e) of the Act to be stating that a contract of service for an employee in public service may only be validly extended by the appointing agency if the entity which is required to signify its concurrence to the proposed extension (the Public Service Commission or such other authorized entity) does so at least three (3) months before the employee's contract lapses.
45. What comes to mind with regard to appointments to and extension of contracts by State Corporations is the concurrence that is required from the parent Ministries in terms of section 5(3) of *the State Corporations Act*. I do not understand section 45(3)(e) of *the Public Service Commission Act* as obligating the appointing State Corporation (in this case the Respondent's Board) to respond to an employee's request for renewal of contract within three (3) months of the employee making the request. Rather, the provision requires that any proposal to extend a

contract of service for an employee by a State Corporation must receive the concurrence of the Public Service Commission or the parent Ministry (where appropriate) at least three (3) months before the contract lapses. As such, the provision does not assist the Claimant's case.

46. The Claimant avers that after she lodged her request for renewal of her contract with the Respondent's Board, the latter failed to act on the request until its last day in office. Further, she contends that the Respondent did not act on her appeal as there was no Board to do so. Consequently, she avers that she lodged an appeal with the Principal Secretary of the parent Ministry who wrote to the Respondent directing it to reinstate her but the latter did not act on the directive.
47. The Claimant contends that the Principal Secretary of the parent Ministry had powers to issue the impugned directive in his capacity as the Ministry's accounting officer. On the other hand, the Respondent avers that the Principal Secretary of the parent Ministry had no powers to issue the directive regarding reinstatement of the Claimant into employment. The Respondent maintains that only its Board of Trustees was mandated to extend the Claimant's contract.
48. The law on appointment of employees for State Corporations is encapsulated in *the State Corporations Act* read together with *the Public Service Commission Act* and *the Constitution of Kenya 2010*. Section 5 (3) of *the State Corporations Act* empowers individual State Corporations to appoint their own members of staff including their CEO's.

This power is exercised by the Boards of the State Corporations established under section 6 of the Act.

49. The only clog on the power of the Boards to appoint staff for the Corporations is that they can only do so based on the terms and conditions of service that have been approved by the parent Ministry. It is in this context that the parent Ministry may perhaps assert its role in the appointments process. Otherwise, it (the parent Ministry) has no power to make direct appointments on behalf of the Corporations.
50. It is essential to point out that the letter by the Principal Secretary which the Claimant invokes to anchor her case was written on 9th December 2021 long after *the Constitution of Kenya 2010* had been promulgated. With the enactment of the new *Constitution*, the power to formulate terms and conditions of service for individuals in the service of State Corporations was removed from the State Corporations Advisory Committee and the parent Ministries and vested in the Public Service Commission (see article 234(2)(f) of *the Constitution*). As such, section 5(3) of *the State Corporations Act* ought to be read with the necessary modifications to give meaning to this paradigm shift as dictated by section 7 of the Sixth Schedule to *the Constitution*.
51. It is thus expected that if the Claimant's contract was to be validly extended, the Public Service Commission ought to have been involved in order to craft her new terms and conditions of service, if at all. The Principal Secretary did not have the mandate to determine the terms and conditions upon which the Claimant's contract could be extended.

Absent this power, it is doubtful that he (the Principal Secretary) had the authority to direct the Respondent to renew the impugned contract.

52. Further, the evidence on record shows that the Principal Secretary was represented on the Respondent's Board. The Claimant admitted in evidence that the parent Ministry's representative was present when the Board made the decision not to renew her contract.
53. In effect, the Principal Secretary was involved in the Board decision that declined the Claimant's request to extend her contract. It is therefore paradoxical that he would attempt to turn around and countermand the decision.
54. To reiterate the law on the subject, a fixed term contract of service expires on its sunset date through effluxion of time. Such contract does not create any expectancy for its renewal unless the parties have expressly agreed that they will renew it.
55. The employer has no obligation to justify the refusal to renew such contract. All that he may do, in his absolute discretion, is to inform the employee that the contract will not be renewed (see ***East Africa Sea Food Limited v Mwazito (Appeal E013 of 2020) [2023] KEELRC 1257 (KLR) (20 April 2023) (Judgment)***).
56. In the instant case, there was no express agreement between the parties that the Claimant's contract was to be automatically renewed. Similarly, there was no promise by the Respondent that once the Claimant lodged her request

for renewal of the contract, the Respondent would grant it. The discretion to renew the contract was left with the Respondent as the Claimant's employer.

57. As such, the Claimant cannot contend that she had legitimate expectation that the contract will be renewed merely because the Respondent's Human Resource Manual informed employees who wished to have their contracts renewed to signify such intention in advance. The fact that the Respondent set out such requirement did not constitute a promise by it to renew the contracts.
58. Notwithstanding the fact that the employer has no obligation to justify the decision not to renew a fixed term contract of service, the Respondent stated that it did not renew the Claimant's contract because it was discovered that she did not meet the academic qualifications for the position she held. The Respondent further stated that the Claimant did not furnish it with her High School certificate despite several reminders to do so.
59. The Claimant conceded in cross examination that the position she held within the Respondent's establishment required the holder thereof to have attained a degree from a University. Whilst she claimed that she had attained this qualification, she did not provide proof of her degree certificate.
60. As such, even though the Respondent was under no obligation to state the reasons why it did not renew the Claimant's contract, it nevertheless explained that its

decision was informed by the fact that the Claimant lacked the requisite qualifications for the position. It further explained that the Claimant had failed to populate her personal file with her High School certificate.

Determination

61. Having regard to the foregoing, I find that the Claimant's contract lapsed through effluxion of time and the Respondent was under no obligation to renew it.
62. I further find that the Principal Secretary of the Respondent's parent Ministry had no authority to direct the Respondent to reinstate the Claimant back into her position. The power to reinstate the Claimant vested in the Respondent through its Board of Trustees with the concurrence of the Public Service Commission.
63. As such, I find no merit in the Claimant's case.
64. Accordingly, the suit is dismissed.
65. However, the Respondent is directed to issue the Claimant with a Certificate of Service in terms of section 51 of *the Employment Act*.
66. Each party to bear own costs of the suit.

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.

B. O. M MANANI