



REPUBLIC OF KENYA



**Mutira v Metropolitan National Sacco Ltd & another (Cause E708 of 2022)  
[2024] KEELRC 2360 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2360 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E708 OF 2022  
JK GAKERI, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**DENNIS NYAGA MUTIRA ..... CLAIMANT**

**AND**

**METROPOLITAN NATIONAL SACCO LTD ..... 1<sup>ST</sup> RESPONDENT**

**BENSON MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant commenced this suit by a Statement of Claim filed on 25<sup>th</sup> July, 2023 alleging unfair termination of employment and prays for;
  - i. A declaration that termination of the Claimant's employment was unfair.
  - ii. 3 months' salary in lieu of notice Kshs.1,113,000.00
  - iii. Salary for 5 years remainder Kshs.22,260,000.00
  - iv. 12 months' salary compensation Kshs.4,452,000.00
  - v. Severance pay Kshs.1,484,000.00
  - vi. Gratuity Kshs.4,578,488.00
  - vii. Superannuation Kshs.2,339,456.00
  - viii. Accrued leave days (33 days) Kshs.408,100.00
  - ix. Certificate of service
  - x. Damages for violation of constitutional rights Kshs.36,635,044.00
  - xi. Any other relief or Order the Honourable Court may deem fit and just to grant.



- xii. Costs of the suit.
2. The Claimant avers that he was employed by the Respondent as Deputy Finance Manager effective 1<sup>st</sup> September, 2014 at a consolidated salary of Kshs.171,000.00 and was by letter dated 14<sup>th</sup> October, 2019 appointed as Head of Human Resource Management on even date and served diligently and his employment was terminated on 31<sup>st</sup> August, 2022.
  3. It is the Claimant's case that by letter dated 22<sup>nd</sup> June, 2022, the Respondent requested him to confirm whether he was interested in serving the Respondent and he confirmed and was promised a contract which was never provided.
  4. That on 31<sup>st</sup> August, 2022, he was verbally requested to handover and not report to work on 1<sup>st</sup> September, 2022.
  5. The Claimant avers that the termination of his employment was unfair and unlawful as it was without notice and expected to work for 5 years.

### **Respondent's case**

6. The Respondent admits that the Claimant was its employee as the Human Resource Manager as at 31<sup>st</sup> August, 2022 when his contract expired.
7. It is the Respondent's case that all employees voluntarily agreed in writing to forgo the Superannuation Fund Benefit, gratuity, leave and other allowances and were asked to utilize their leave days by 30<sup>th</sup> June, 2022.
8. That the contract of employment was renewable by mutual consent and he advised the board of directors of the Respondent on modification of terms of employment of staff and was not exempted from the decision but declined to take up the one year contract.
9. According to the Respondent, the Claimant adduced no evidence of termination of his employment by the Respondent.
10. It is the Respondent's case that the Claimant was paid all his dues and agreed to offset his loans against the payment.
11. The Respondent prays for dismissal of the Claimant's suit with costs.

### **Claimant's evidence**

12. On cross-examination, the Claimant confirmed that he was the Respondent's Head of Human Resource and responsible for proposing human resource policies to the board of the Respondent.
13. The witness admitted that he signed the letter of willingness to continue in employment but it was not a contract.
14. According to him, his employment was guaranteed though the letter had no terms of engagement and renewal of the contract of employment was mutual and no offer of employment was made by the Respondent.
15. The witness testified that he had proposed renewal of the contract of employment for 5 years though the initial one was three (3) years.
16. That the Chief Executive Officer of the Respondent offered him a 5 year contract but had no evidence in support of the offer although he met the Chief Executive Officer on 31<sup>st</sup> August, 2022.



17. That he had no letter or email on termination of employment.
18. CWI confirmed that all renewals were consensual and was not paid anything other than the salary for August 2022.
19. The Claimant admitted that he had a staff development loan and wrote to the Respondent to deduct the amount from his dues but was unaware whether the Respondent did so.
20. That he was paid through his SACCO Account and accessed the same.
21. That he signed the letter on the Superannuation Fund Benefit under duress but admitted that he had no evidence of the coercion.
22. On re-examination, the Claimant testified that he signed the letter on willingness to continue and returned the same as requested and expected a renewal of the contract on similar terms but had no meeting with the C.E.O of the Respondent who asked him to handover.
23. The Claimant testified that he was not paid superannuation and gratuity and his shares were valued at Kshs.16 million.

### **Respondent's evidence**

24. RWI, Irene Nyambura Maingi, confirmed that the Claimant was her supervisor and reported to him and he handed over to her.
25. The witness confirmed that the Claimant signed the letter dated 22<sup>nd</sup> June, 2022 as requested and was given a new contract but the email on record makes no reference to a contract the Claimant allegedly refused to sign.
26. That the Claimant was paid his dues and tax deducted but not remitted and RWI had no evidence that the Respondent was facing financial challenges.
27. RWI testified that the Claimant was paid for 3 days leave only.
28. On re-examination, RWI testified that the 2<sup>nd</sup> Respondent was not an employee of the Respondent.
29. It was her testimony that the Respondent was facing challenges and the Claimant had a loan with the SACCO.
30. RWI testified, all employees of the Respondent were engaged under a one (1) or two (2) year contracts and required one (1) month's notice to terminate.

### **Claimant's submissions**

31. As to whether the Claimant's legitimate expectation was violated, counsel submits that it was as the Respondent promised a contract after the Claimant had accepted willingness to continue in employment.
32. Reliance was made on the decisions in *Dierks v University of South Africa* [1999] 4 BLLR 304, *Margaret A. Ochieng v National Water Conservation & Pipeline Corporation* [2014] eKLR, *Teresa Carlo Omondi v Transparency International Kenya* [2017] eKLR and *John Nduba v Africa Medical & Research Foundation* [2020] eKLR to urge that the Claimant had a legitimate expectation that his contract would be renewed for 5 years.



33. On termination and unfair labour practices, counsel cites the decision in *Interdependent Municipal & Allied Trade Union v Merafong City Local Municipality & others* [2017] 26 LC 64 on representations of the employee.
34. According to counsel for the Claimant, the conduct of the Respondents amounted to unfair labour practices and the Claimant is entitled to 12 months compensation.
35. On reliefs, counsel urges that the Claimant is entitled to certificate of service and compensation, 3 months' salary in lieu of notice, salary for the remainder of his contract, severance pay and 33 leave days and his shares.

### **Respondent's submissions**

36. Counsel for the Respondent submitted on the uncontested issue of whether there was an employment relationship between the parties.
37. As to whether the Claimant's employment contract was unfairly terminated or lapsed, counsel submits that there was no unfair termination of employment as the Claimant adduced no evidence of the alleged verbal termination of employment, that the parties merely failed to agree on the terms of the new contract.
38. On legitimate expectation, counsel urges that letter dated 22<sup>nd</sup> June, 2022 was categorical that the new contract would be mutually agreed and had no terms of employment.
39. That the Claimant was offered a one (1) year contract but demanded 5 years.
40. That the authority relied upon by the Claimant's counsel *Margaret A. Ochieng v National Water Conservation & Pipeline (Supra)* did not support legitimate expectation.
41. On the reliefs, counsel submits that the Claimant is not entitled to the same as his employment contract lapsed.
42. According to counsel, the parties did not agree on the terms of the new contract.
43. That the Claimant's dues were paid though he had denied having been paid but the Respondent's evidence showed otherwise.
44. That the three months' notice pay claimed by the Claimant had no basis.
45. Reliance was made on the decisions in *D.K. Marete v Teachers Service Commission* [2020] eKLR, *Abraham Gumba v Kenya Medical Supplies Authority* [2014], *Muthuuri v National Industrial Credit Bank Ltd* [2003] and *Wilber Opiyo Ogot v Wells Fargo Ltd* [2022] eKLR to urge that the Claimant is not entitled to salary for the remainder of the 5 year contract, termination or severance pay as the Claimant had not proved any unfair or unlawful termination of his employment contract.

### **Analysis and determination**

46. It is not in dispute that the Claimant was an employee of the Respondent from 1<sup>st</sup> September, 2014 under a 3 year fixed term contract and rose to the position of Human Resources Manager in 2019, a position he held until the parties separated on 31<sup>st</sup> August, 2022.
47. The bone of contention is how the parties separated and the ensuing consequences and payments.
48. The issues for consideration are;



- i. Whether the Claimant had a legitimate and reasonable expectation that his employment contract would be renewed.
  - ii. Whether termination of the Claimant's employment contract was unfair.
  - iii. Whether the Claimant is entitled to the reliefs sought.
49. On the 1<sup>st</sup> issue, counsel for the parties have adopted opposing positions with the Respondent's counsel urging that terms of the Respondent's letter dated 22<sup>nd</sup> June, 2022 were clear and no agreement was concluded between the parties.
50. Counsel for the Claimant relies on the public law principle of legitimate expectation.
51. The doctrine of legitimate expectation is well recognized in administrative law. (See *In re City Council* [1986] AC 668 at 692, *CCK & 5 others v Royal Media & 5 others* [2014] eKLR and *South African Veterinary Council v Szymanski* [2003] 4 S.A 42 (SCA).
52. For the doctrine to be effectively invoked, it must be proved that;
- a. there was an express, clear and unambiguous promise given by a public authority.
  - b. the expectation itself must be reasonable.
  - c. the representation must be one which it was competent and lawful for the decision maker to make and
  - d. there cannot be a legitimate expectation against clear provisions of the law or *the constitution*.
53. It is not in dispute that the Claimant's employment contract was due to lapse on 31<sup>st</sup> August, 2022.
54. The principles that govern fixed term contracts are well settled by the Court of Appeal in its decisions in *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho* [2017] eKLR, *Francis Chire Chachi v Amatsi Water Service Company Ltd* [2012] eKLR and *Registered Trustees De La Salle t/a St. Mary's Boys Secondary School v Julius D.M. Baini* [2017] eKLR that inter alia a fixed term contract lapses on expiry of the term and renewal or extension is the discretion of the employer.
55. However, on its own motion by letter dated 22<sup>nd</sup> June, 2022, the Respondent sought the Claimant's confirmation of whether he wished to continue in the Respondent's employment.
56. The Claimant signed the letter on 30<sup>th</sup> June, 2022 and returned the same as required.
57. The Court finds it necessary to reproduce the contents of the letter as they constitute the epicentre of the Claimant's case against the Respondent.

Dear Dennis,

Re: Expiry of Contract

The contract between yourself and Metropolitan National Sacco is due to expire on 31<sup>st</sup> August, 2022.

As per the SACCO's policy issuance of a new contract is based on mutual agreement.

In this regard, we seek your confirmation on whether you wish to continue serving Metropolitan National Sacco going forward. If so kindly sign this letter and return it to the undersigned by 30<sup>th</sup> June, 2022.



Upon receipt of a signed copy of this letter, indicating your interest to continue with your services at Metropolitan National Sacco, you shall be given a new contract.

Yours sincerely

Signed

Benson Mwangi

Chief Executive Officer

Confirmation or receipt

Employee Name: Dennis N. Mutira ID. No:13854661

Signature: Signed Date: 30<sup>th</sup> June, 2022

58. Contrary to the Claimant's counsel's submission that the Claimant signed the letter on 22<sup>nd</sup> June, 2022, the copy he provided reveals that he signed the letter on the last day 30<sup>th</sup> June, 2022.
59. It is not in dispute that there was no other written communication between the parties on the issue of renew of the contract until 31<sup>st</sup> August, 2022 when the Chief Executive Officer of the Respondent informed the Claimant by word of mouth that his employment contract would not be renewed as evidenced by the Claimant's email to the CEO dated 31<sup>st</sup> August, 2022 at 23.51 pm.
60. Although counsel for the parties disagree on the contents of the letter, a plain reading of the letter reveals that the Respondent in anticipation of the expiry of the Claimant's contract of employment wanted to know whether he was interested in a renewal of his employment contract and had to confirm the same by 30<sup>th</sup> June, 2022, more than 2 months before expiry, which did.
61. A reading of paragraphs 2 and 3 of the letter creates the impression that the Respondent was seeking the Claimant's consent or willingness to continue in employment.
62. The last paragraph of the letter leaves no doubt that once the Claimant had complied with the requirements of the letter, the Respondent would issue a new contract.
63. The letter is explicit that once the signed copy of the confirmation letter was received, the Respondent shall issue a new contract.
64. The Respondent's letter was unequivocal that a new contract would be issued.
65. The Respondent did not promise an offer or draft agreement for negotiation with the Claimant. It was resolute in its promise, a new contract, not an agreement.
66. As the Claimant's contract of employment was due to lapse in two months' time, the promise could not have come to a better time as it assured him employment after expiry of the contract he was serving under.
67. The promise of a new contract in the court's view, created a reasonable expectation on the part of the Claimant that the contract of employment would be renewed.
68. In *Transparency International Kenya v Teresa Carlo Omondi* [2023] KECA 174 (KLR) where the learned judge of this Court had relied on the legitimate expectation, in a dispute involving a fixed term contract, the Court of Appeal had this to say at paragraph 30.

“Concomitantly, the scenario would have been different if there was an indication, by act or omission from the appellant, to indicate renewal was forthcoming to wet the Respondent's



appetite, that her contract would be renewed and hence rely on the doctrine of legitimate expectation. In the instant case, there was no promise of any sort that was given to the Respondent to justify a claim based on legitimate expectation . . .”

69. The Court is in agreement with and bound by these sentiments, the import of which is that in the instant suit, the Claimant could rely on the doctrine of legitimate expectation.
70. By its letter dated 22<sup>nd</sup> June, 2022, the Respondent suo motu made a clear and unambiguous promise or representation to issue a new contract of employment to the Claimant which was exceedingly reasonable and logical as the Claimant’s employment contract was due to lapse in 2 months’ time.
71. Similarly, the Respondent was the only body competent to make the promise and it was patently lawful.
72. It requires no belabouring that by its unsolicited promise, the Respondent created a legitimate expectation that the Claimant’s employment contract would be renewed.
73. Having found that the Claimant had a legitimate expectation that his employment contract would be renewed, it is important to settle the issue of for how the contract would be renewed.
74. While the Claimant alleges 5 years, the Respondent alleged any renewal would have been for one (1) year, none of which is of the moment as none was proved evidentiary as no offer had been made to the Claimant.
75. In the Court’s view, as the Respondent’s letter is dated 22<sup>nd</sup> June, 2022 and the Claimant confirmed on 30<sup>th</sup> June, 2022 long before the subsisting contract of employment lapsed, the new contract promised by the Respondent could not have been on different terms than those of the subsisting contract.
76. Equally, the Respondent’s letter, as the Claimant confirmed on cross-examination, did not set out the terms of the new contract.
77. Finally, the Claimant confirmed that he expected a renewal on similar terms.
78. On termination of employment, while the Claimant contends that it was unfair and unlawful, the Respondent argues that the Claimant’s employment contract lapsed on 31<sup>st</sup> August, 2022.
79. The Claimant’s uncontroverted evidence is that the Respondent’s Chief Executive Officer, Mr. Mwangi notified him by word of mouth on 31<sup>st</sup> August, 2022 that, his employment contract would not be renewed and thus should not report to work from 1<sup>st</sup> September, 2022 as evidenced by the Claimant’s email dated 31<sup>st</sup> August, 2022.
80. The fact that the Respondent’s CEO found it necessary to tell the Claimant that his employment contract would not be renewed and he should not report to work on the following day is revealing.
81. Fixed term contracts terminate by effluxion of time and no notice or intimation by employer is necessary.
82. The Respondent, in this case found it necessary because it was aware of the representation it had made to the Claimant which it had not retracted in writing.
83. Having found that the Claimant had a legitimate expectation that his employment contract would be renewed, any act or omission of the Respondent contrary to the previous representation would constitute an unfair termination of the Claimant’s employment as happened in this case.



84. For the foregoing reasons, it is the finding of the Court that termination of the Claimant's employment by the Respondent was unfair within the meaning of Section 45 of the [Employment Act](#) as the Claimant legitimately expected a renewal of the contract.

### **Reliefs**

85. On the reliefs sought, the Court proceeds as follows;

86. Although the Claimant admitted that he was paid the salary for August 2022 only, evidence availed by the Respondent reveal that payments were made.

87. The Claimant admitted that he had a staff development loan with the Respondent and had authorised the Respondent to deduct any balance from his gratuity when it was payable.

88. The Claimant also admitted that he signed the letter dated 17<sup>th</sup> September, 2020 on change of terms of employment on salary, superannuation funds, gratuity, house allowance and job description. He signed on 22<sup>nd</sup> September, 2020.

89. Although he alleged that he signed the letter under duress, he equally confirmed that he had no evidence to prove the alleged duress.

### **i. Declaration**

90. Having found that termination of the Claimant's employment by the Respondent was unfair, a declaration to that effect is merited.

### **ii. 3 months' salary in lieu of notice**

91. The Claimant did not avail a copy of the employment contract which provided for a 3 months' notice of termination of his employment.

92. Consequently, the Claimant is awarded one (1) month's salary in lieu of notice, Kshs.371,000/=.

### **iii. Salary for remaining 5 years**

93. This is a claim for anticipatory earnings which the Claimant has laid neither a legal nor factual basis for award granted that his contract of employment had an exit clause at the instance of either party. See *D.K. Marete v Teachers Service Commission (Supra)*.

The claim is unproven and is declined.

### **iv. Severance pay**

94. As correctly submitted by the Respondent's counsel and as held in legions of decision of this Court, severance pay is only payable during a redundancy under the provisions of Section 40(1)(g) of the [Employment Act](#).

95. The claim is not sustainable in this case as the Claimant has not demonstrated that he was declared redundant.

The claim is declined.

### **v. Gratuity**

96. Under the contract of employment dated 17<sup>th</sup> September, 2020, which the Claimant signed on 22<sup>nd</sup> September, 2020, the Respondent was bound to pay 30% of basic pay and house allowance as gratuity.



97. Thus, gratuity was paid as per the Claimant's SACCO statement dated 28<sup>th</sup> October, 2022, Kshs.4,578,448.00 against a loan of Kshs.5,308,337.00.

The claim is declined.

**vi. Superannuation Kshs.2,339,456.00**

98. Following the variation of terms of employment vide letter dated 17<sup>th</sup> September, 2020, super annuity fund was transitioned to pension and recoverable as such from the pension scheme administrator which is beyond this Court's mandate in this case.

The claim is declined.

**vii. Accrued leave days (33)**

99. Neither the Claimant's written statement dated 30<sup>th</sup> September, 2022 nor the oral evidence adduced in court make reference to the 33 accrued leave days claimed.

100. Details as to when the leave days accrued are conspicuously missing.

101. Relatedly, the Claimant Sacco statement reveals that he was paid the sum of Kshs.30,500/= for leave days.

102. In the absence of relevant particulars and/or evidence, the prayer is declined.

**viii. Damages for violation of constitutional rights**

103. The Claimant tendered no evidence to prove the alleged violations of *the Constitution*, how or when and to what extent the violations were nor were the essential particulars disclosed.

104. The claim lacks particulars and is declined.

**ix. 12 months compensation**

105. Having found that termination of the Claimant's employment by the Respondent was unfair, the Claimant qualifies for the relief under the provisions of Section 49(1)(c) of the *Employment Act*, 2007.

106. The Court has taken into consideration that;The Claimant was an employee of the Respondent from 2014 to 2022, almost 8 years which is not long.The Claimant did not contribute to the termination of employment.The Claimant had looked forward to serving the Respondent for another 5 years but did not appeal the decision.The Respondent paid the Claimant's dues as evidenced by the Claimant's SACCO Account No. 4005020072321400, a fact the Claimant admitted on cross-examination, though he feigned ignorance of the fact.

107. RWI confirmed that the Claimant was paid though she admitted that she did not file the relevant documents which were filed pursuant to a court order vide its ruling on 6<sup>th</sup> March, 2024.

108. In the circumstances, the Court is satisfied that the equivalent of three (3) months' salary is fair, Kshs.1,113,000.00.

**x. Certificate of service**

109. The Claimant is entitled to a certificate of service by dint of Section 51 of the *Employment Act*, 2007.



110. A cursory reading of the Claimant's claim, witness statement and the evidence availed by the Claimant, it is discernible that the Claimant had no specific case against the 2<sup>nd</sup> Respondent and ought not to have been sued in any capacity as no specific allegation is made against him nor any relief sought against him.
111. In conclusion, judgment is entered in favour of the Claimant against the 1<sup>st</sup> Respondent in the following terms;
- a. Declaration that termination of the Claimant's employment by the Respondent was unfair.
  - b. One month's salary in lieu of notice Kshs.371,000.00
  - c. Equivalent of three (3) months' salary Kshs.1,113,000.00  
Total Kshs.1,484,000.00
  - d. Certificate of service.
112. In the circumstances of this case, parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30TH DAY OF SEPTEMBER 2024**

**DR. JACOB GAKERI**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**DR. JACOB GAKERI**

**JUDGE**

**DRAFT**

