



REPUBLIC OF KENYA



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**Anditi v Frodak Kenya Limited & another (Cause 109 of 2018)  
[2025] KEELRC 2776 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2776 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 109 OF 2018  
MA ONYANGO, J  
OCTOBER 9, 2025**

**BETWEEN**

**ASBORN SONGA ANDITI ..... CLAIMANT**

**AND**

**FRODAK KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**BUTALI SUGAR MILLS ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant instituted the suit herein vide a Memorandum of Claim dated 5<sup>th</sup> February 2018 seeking the following orders against the Respondents: -
  - a. A declaration that the termination process as carried out by the Respondent is unlawful and that during his employment with the Respondent, he was not remunerated as required by law
  - b. Payment of sums of money claimed in the Memorandum of Claim.
  - c. Costs and interests
  - d. Any other relief that the Court may deem fit and just to grant
2. The Claimant averred that he was employed by the Respondent from 2<sup>nd</sup> September 2015 until 2<sup>nd</sup> May 2017 when his employment was unfairly terminated by the Respondent without any justifiable reasons.
3. The Claimant particularized the unlawfulness of the termination of his employment as follows:
  - i. The termination was without any fair valid reason
  - ii. The termination was not in accordance with fair procedure
  - iii. No leave pay was given



- iv. No one months' salary in lieu of notice was paid
  - v. No overtime dues were paid
  - vi. No compensation for unfair termination was paid.
4. The Claimant contended that owing to the unfair and unlawful termination, he is entitled to terminal benefits which he itemized to be:
- i. One month pay in lieu of notice ..... Kshs. 6,325
  - ii. Compensation for unfair termination ..... Kshs. 66,000
  - iii. Unpaid house allowance ..... Kshs 16,500
  - iv. Service pay/Gratuity ..... Kshs 4,125
  - v. Unpaid public holiday worked ..... Kshs 572.9
  - vi. Underpayment..... Kshs. 1,373.325
  - vii. Accrued leave earned but not taken ..... Kshs. 12,000
- Total ..... Kshs. 103,146.225
5. In response, the 1<sup>st</sup> Respondent filed a Reply to the Statement of Claim dated 3<sup>rd</sup> May 2018 denying the averments made by the Claimant in his claim particularly, that he was the Respondents' employee. It is the 1<sup>st</sup> Respondent's case that since there existed no employment or contractual obligation binding the Claimant and the 1<sup>st</sup> Respondent, the claim herein is misconceived and unwarranted.
6. The 1<sup>st</sup> Respondent however stated that if the Claimant was dismissed from employment, it was because he participated in an illegal strike.
7. The 1<sup>st</sup> Respondent urged the court to strike out the Claimant's case.
8. The 2<sup>nd</sup> Respondent entered appearance on 25<sup>th</sup> June 2019 through the firm of L.G Menezes & Company Advocates but did not file any pleadings.

**The Evidence**

- 9. The suit was heard on 4<sup>th</sup> November 2024 when the Claimant testified as CW1 in furtherance of his case. The Claimant adopted his witness statement filed with his claim as part of his evidence in chief. He also relied on the documents he filed in support of his case as his evidence.
- 10. He averred that he was employed by the Respondents on 9<sup>th</sup> September 2015 and worked until 2<sup>nd</sup> May 2017 when his employment was terminated without any notice.
- 11. He stated that on the said date, he reported to work as usual but was denied access to the Respondents' premises at the gate. According to the Claimant, the reason for his termination from employment was because he asked for salary increment, off days, house allowance and remittance of statutory deductions.
- 12. He further averred that during the course of his employment, he was not paid overtime dues despite working every day of the week, including public holidays. He also claimed that he was not paid a house allowance and that statutory deductions for NSSF and NHIF were not remitted. He urged the court to award him the reliefs he tabulated in his Memorandum of Claim.



13. The Claimant denied participating in a strike and maintained. He further testified that he was never invited to a disciplinary hearing nor issued with a termination letter.
14. On cross-examination by Counsel Achieng, the Claimant stated that he was employed by the 2<sup>nd</sup> Respondent as a loader and was paid according to tonnage at the rate of Kshs. 14 per tonne.
15. The Claimant denied participating in a strike. He denied any knowledge that there was no strike. He admitted that he was paid Kshs 11,000 at the Kakamega Labour Office after leaving employment.
16. On re-examination, the Claimant stated that at the labour office, he was not paid overtime, leave dues and house allowance.
17. At the close of the Claimant's case, counsel for the 1<sup>st</sup> Respondent sought orders that the evidence of the 1<sup>st</sup> Respondent's witness in Cause No. 105 of 2018 be applied to the present suit. The Court allowed the application, and the said evidence was accordingly adopted as part of the record in this matter.
18. Parties were then directed to file written submissions. The Claimant's submissions are dated 21<sup>st</sup> February 2025 while the 1<sup>st</sup> Respondent's submissions are dated 3<sup>rd</sup> February 2025. The 2<sup>nd</sup> Respondent did not file its submissions.
19. In his submissions, the Claimant asserted that he testified that he was sent away from work without being told the reason and without being accorded any hearing. The Claimant submitted that the purported invited to attend disciplinary hearing does not meet the requirements laid down by section 41 of the *Employment Act*.
20. On this basis, the Claimant urged the court to make a finding that he had discharged the burden of proving unfair termination of his employment by the Respondents.
21. The Claimant sought for an award as prayed for in his claim, costs and interests.
22. On its part, the 1<sup>st</sup> Respondent submitted that it was the Claimant and not the 1<sup>st</sup> Respondent who terminated the employment service, when the Claimant, towards the end of his contract willingly and without notice left his employment and only came back to sue the 1<sup>st</sup> Respondent in 2018. The 1<sup>st</sup> Respondent submitted that it had no reason to terminate the Claimant's contract as the same had already automatically terminated.
23. Further, the 1<sup>st</sup> Respondent submitted that the Claimant in his testimony stated that he had a contract with the 1<sup>st</sup> Respondent for a period of 6 months. According to the 1<sup>st</sup> Respondent, no evidence in the form of NHIF statements or contracts was presented by the Claimant to show that he continued to work for the 1<sup>st</sup> Respondent after his contract had lapsed or that he even made a request for renewal to the 1<sup>st</sup> Respondent.
24. On whether the Claimant is entitled to the reliefs sought, the 1<sup>st</sup> Respondent submitted that the Claimant acknowledged and confirmed the non-renewal of his contract and further received all his dues in a timely manner without disputing the authenticity of the payroll cash listing produced by the 1<sup>st</sup> Respondent. Consequently, the 1<sup>st</sup> Respondent contends that nothing is owed to the Claimant.
25. In the end, the 1<sup>st</sup> Respondent prayed for the dismissal of the Claimant's suit with costs.

### **Determination**

26. Upon considering the pleadings herein, the evidence of the parties, the submissions and the authorities cited, I find that the issues for determination are: -



- i. Whether the Claimant was an employee of the 1<sup>st</sup> Respondent or the 2<sup>nd</sup> Respondent
  - ii. Whether the Claimant's contract lapsed by effluxion of time
  - iii. Whether the reliefs sought should be issued
27. On the first issue, the 1<sup>st</sup> Respondent in its reply to the Statement of Claim denied that the Claimant was its employee. However, from the documents filed by 1<sup>st</sup> Respondent, particularly the engagement contracts from pages 2 to 8 of the Respondent's documents and the payroll cash listings at page 10 of its list and bundle of documents, it is clear that the 1<sup>st</sup> Respondent had engaged the Claimant as a loader.
28. It therefore follows that the Claimant was the 1<sup>st</sup> Respondent's employee.

#### **Whether the Claimant's contract lapsed by effluxion of time**

29. The Claimant in his testimony and in the witness statement he adopted in court as part of his evidence stated that he was terminated from employment on 2<sup>nd</sup> May 2017 without notice.
30. On the other hand, the 1<sup>st</sup> Respondent has maintained that the Claimant's contract lapsed by effluxion of time.
31. In the 1<sup>st</sup> Respondent's list of documents at page 2, the 1<sup>st</sup> Respondent attached a six-month engagement contract which indicates that the Claimant's employment contract was to lapse on 1<sup>st</sup> May 2017. This therefore means that the Claimant was not an employee of the 1<sup>st</sup> Respondent as at 2<sup>nd</sup> May 2017 when the events giving rise to this claim are alleged to have occurred.
32. It is trite law that fixed-term contracts terminate automatically by effluxion of time. The Court of Appeal in the case of Francis Chire Chachi v Amatsi Water Services Company Limited, [2012] eKLR the court stated as follows: –
- “ This court has recently stated that employers are not under any obligation to give employees reasons for non-renewal of fixed term contracts, unless there is such an obligation created in the expiring contract.”
33. Similarly, in the case of The Registered Trustees De La Salle Christian Brothers T/A St. Mary's Boys' Secondary School v Julius D. M. Bains [2017] eKLR, the Court of Appeal observed as follows:-
- “ It is our finding that the respondent's contract ended on 31<sup>st</sup> December, 2014. There was no obligation on the appellant to give notice of expiry or information that it would not be renewed. We find no firm evidence that there was either an extension of the expired contract or a commencement of a new one. Nor is there firm evidence that the respondent worked for one week in January 2015. There was therefore no question of unfair termination of employment. The claim had no basis and ought to have been rejected.”
34. The Claimant's employment having lawfully lapsed by effluxion of time on 1<sup>st</sup> May 2017, there was no subsisting employer-employee relationship between him and the 1<sup>st</sup> Respondent as at 2<sup>nd</sup> May 2017. Accordingly, any claim founded on events that occurred after the expiry of the contract lack merit. The Claimant's suit is accordingly dismissed in its entirety.
35. There shall be no orders as to costs.

**DATED, DELIVERED AND SIGNED THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

**M. ONYANGO**



**JUDGE**

