



**Ayodi v Jacqueline Achieng Mugo Executive Director FKE & 4 others (Employment and Labour Relations Petition E149 of 2024) [2025] KEELRC 2754 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2754 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E149 OF 2024**

**MN NDUMA, J  
OCTOBER 9, 2025**

**BETWEEN**

**ALLAN PEREZ AYODI ..... PETITIONER**

**AND**

**JACQUILINE ACHIENG MUGO EXECUTIVE DIRECTOR  
FKE ..... 1<sup>ST</sup> RESPONDENT  
PRESIDENT BOARD OF MANAGEMENT FEDERATION OF KENYA  
EMPLOYERS(GILDA ODERA, MARGARET OLOO, KENNETH ODIRE,  
STEPHEN GITAGAMA, WILLY SIELE, RACHEL MONYONCHO, OPUDO  
OWELLE, JOSEPH OBUYA, JOHN KARANJA, ASYM DOSSA, PATRICK  
TUMBO, COSMOS MUTAVA, THOMAS GICHUHI) ..... 2<sup>ND</sup> RESPONDENT  
FEDERATION OF KENYA EMPLOYERS ..... 3<sup>RD</sup> RESPONDENT  
REGISTRAR OF TRADE UNIONS ..... 4<sup>TH</sup> RESPONDENT  
MINISTRY OF LABOUR AND SOCIAL SECURITY ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. (Gilda Odera, Margaret Oloo, Kenneth Odire, Stephen Gitagama, Willy Siele, Rachel Monyoncho, Opudo Owelle, Joseph Obuya, John Karanja, Asym Dossa, Patrick Tumbo, Cosmos Mutava, Thomas Gichuhi)  
Federation Of Kenya Employers.....3<sup>Rd</sup> Respondent  
Registrar Of Trade Unions.....4<sup>Th</sup> Respondent  
Ministry Of Labour And Social Security.....5<sup>Th</sup> Respondent  
Judgment



2. The Petitioner was employed by the Federation of Kenya Employers (FKE), the 3<sup>rd</sup> Respondent as an Industrial Relations Officer vide a two-year fixed term contract dated 1/8/2021. Upon expiry of the contract, it was renewed on 1/8/2021 for a fixed term of one year.
3. Upon expiry of the one-year fixed term contract, on 30<sup>th</sup> July 2024, the contract was not renewed.
4. That the Petitioner appealed to the 1<sup>st</sup> Respondent, the Executive Director FKE, against the decision not to renew the contract based on a favourable work record, when almost all her colleagues suffered illness, the 1<sup>st</sup> Respondent, acknowledged that the Petitioner had performed very well and had a clean record but informed the Petitioner that FKE had decided not to renew her contract for no valid reasons assigned.
5. The Petitioner pleaded with the 1<sup>st</sup> Respondent to consider that he suffered high blood pressure and diabetes and his children attended college in Australia and United Kingdom and desperately needed an income to support those causes. The Petitioner states that her plea was not heeded and the 1<sup>st</sup> Respondent shortly thereafter advertised the position held by the Petitioner and involved applications from outside suitable candidates.
6. That other officers, who had handled less workload than the Petitioner during the year by fact of being based outside Nairobi stations which were less busy and by fact of various illnesses had their contracts renewed.
7. That the Petitioner had expected renewal of his contract based on his good performance.
8. That the 1<sup>st</sup> Respondent had attained the age of 68 years and the Petitioner envisaged to compete for the position of Executive Director, held by the 1<sup>st</sup> Respondent upon his retirement.
9. That the 1<sup>st</sup> Respondent praised the work performance of the Petitioner but flatly declined to renew his contract.
10. That the 1<sup>st</sup> Respondent has put in place the practice of employing all officers on short fixed term contracts with a view to get rid of them at will and stunt their career progression in violation of ILO Convention 58 which discourages use of fixed term contracts for permanent and continuous jobs and guides that short-fixed term contracts should not be used to violate employment rights of employees and ought to be reserved for short term chores.
11. The Petitioner states that the Respondents have violated sections 5(1), 41, 43, 44 and 45 of the [Employment Act](#), by discriminating against him and terminating his employment unlawfully and unfairly.
12. The Petitioner further pleads that there is patent imbalance in the FKE secretariat in favour of one ethnic group as set out at paragraph 22 of the petition as follows:-



Position	Name	Ethnicity
Chairman/President	Luo	
Executive Director	Luo	
Head of Legal Industrial Relations & Membership	Luo	
Advocacy and Consultancy Manager	Luo	
IT Manager	Luo	
HR Manager	Meru	
Regional Manager – Western	Luo	
Regional Manager – Coast	Luo	
Regional Manager – Rift Valley	Luo	
Financial Controller	Kikuyu	
Projects Manager	Luo	
Business Africa Manager	Luo	

13. That the said list demonstrate that out of twelve (12) senior positions of FKE, ten (10) were held by officers from the Luo community which the FKE, Executive Director belongs.
14. The Petitioner pleads that his rights under Article 10, 19, 20, 27, 41 and 47 of *the Constitution* of Kenya 2010 have been violated in the manner detailed in the petition.
15. In addition, the Respondents have violated sections 4, 7(1), 26(2), 28, 34, 42 of *Labour Relations Act* of 2007.
16. The Petitioner alleges gross violation of employees' rights at the hand of the 1<sup>st</sup> Respondent and under the watch of the Board of Directors of FKE. That there was urgent need to relook the policies of FKE so as to restructure the same to protect the employees from continuous abuse and psychological torture perpetuated vide short term contracts used deliberately to violate the rights of employees at FKE.

The Petitioner prays for the following reliefs:-

- a. Reinstatement to his position.
- b. Equivalent of 12 months' salary in compensation.
- c. Payment in lieu of three (3) months' notice.
- d. Payment of ten (10) years pay the Petitioner would have earned upto retirement age of 68 years.



17. That the Petitioner earned a monthly salary of Kshs. 181,562.00 inclusive of house allowance as per the contract that commenced on 1<sup>st</sup> August 2023 that was due to expire on 31<sup>st</sup> July 2024.
18. The Petitioner also was paid Kshs. 2,000.00 monthly communication allowance and was a member of FKE provident fund scheme to which the Petitioner contributes 10% of his consolidated salary and the FKE an equal share of 10%. The Petitioner was also placed under a medical scheme managed by Old Mutual Medical Services.
19. The Petitioner was entitled to 25 working days leave to be taken at a time or times convenient to the management.
20. The contract, under clause 10 was subject to three months' termination notice upon completion of probation period in writing or payment of three months' salary in lieu of the notice.
21. Under clause 16, the Petitioner was to request renewal of the contract at least three months before the expiry date of the contract. This was said to "allow adequate time for the Federation to review your request to revert before the contract expiry date."
22. The Petitioner requested for the renewal of the contract as provided and by a letter dated 24<sup>th</sup> June 2024, the Respondents notified the Petitioner that the contract due to end on 31<sup>st</sup> July 2024 would not be renewed.

### **Replying Affidavit**

23. The Respondent filed a replying affidavit to the petition dated 24<sup>th</sup> February 2025. The Respondent vide the affidavit of Jacqueline Mugo, the Respondent's CEO avers that there were no promises or assurances by the 3<sup>rd</sup> Respondent or herself that the Petitioner would work for the 3<sup>rd</sup> Respondent until he attained the retirement age because the relationship between the Petitioner and the 3<sup>rd</sup> Respondent was governed by a written contract at any given time and that the contract did not create any obligations or legal rights that the Respondent would offer reasons for failure to renew the contract.
28. That the Executive Director is appointed by the Management Board of the 3<sup>rd</sup> Respondent and the deponent cannot handpick or influence the appointment of her successor. That the diversity of the membership of the 3<sup>rd</sup> Respondent makes it impossible for Executive Director, or the 3<sup>rd</sup> Respondent or anybody to conveniently conspire to entrench tribalism or ethnicity in the organization as alleged.
29. The Petitioner filed supplementary affidavit in response to the replying affidavit in which he traverses the contention by the Respondents with regard to the violations set out in the petition and joins issue with the Respondents and puts the Respondents to strict proof thereof.
30. The Petitioner and the Respondents filed written submission dated 9<sup>th</sup> June 2025 and 21<sup>st</sup> July 2025 respectively.
31. The court has carefully considered the evidence adduced and the written submissions placed before court.

### **Determination**

#### **The issues for determination are as follows:-**

- i. Whether the Respondents violated statutory and contractual rights of the Petitioner set out in the petition.
- ii. Whether the Petitioner is entitled to the reliefs sought.



32. A litigant is bound by the reliefs sought in the primary pleading, that is, the position that appertains in this case.
33. The Petitioner in this matter has made extensive pleadings regarding various violations of statutory and constitutional provisions by the Respondents. The Petitioner however in the final prayers only sought to be awarded specific reliefs as set out herein before. No declarations of violation of rights or specific statutory or constitutional provisions are sought. The court is also not sought to find that the Respondents violated the contract of employment between the Petitioner and the Respondents.
34. The court notes that the Petitioner prepared and filed the petitions in person. The Petitioner having worked for the Respondents' in the position of Industrial Relations Officer is well exposed to Employment and Labour rights law, instruments at the national and international level and definitely ought to have done better in his pleadings before court.
35. The many averments and depositions made in the body of the petition and supporting affidavits remain just that without any specific remedies sought pursuant to the said documents and depositions. Accordingly, the court will say no more about that and proceed to make a determination based on the reliefs sought in the petition.
36. The Petitioner served a one-year fixed term contract dated 1<sup>st</sup> August 2023 which expired on 30<sup>th</sup> July 2024. The Petitioner complied with the contract provisions to request for a renewal of the contract which renewal request was refused by the Respondents. An appeal against the refusal was also refused by the Respondents and the contract therefore came to an end by effluxion of time.
37. In *Tracaire versus Catherine Wambui Karuno* {2018} KECA 709 KLR, the court held:

“It is clear from the evidence on record that the Respondent’s employment was governed by fixed term contracts. As aptly observed by Lord Denning MR in *British Broadcasting Corporation versus Loannou* [1975] 2 ALLER 999 such a contract binds parties for the term stated in the agreement. In our view the duration for the third contract was expressly stipulated herein, that is, for a period of four months running from 1<sup>st</sup> March, 2014 upto 30<sup>th</sup> June, 2014. To us the fact that there were earlier expressions by the Appellant to extend the contract for a further period of at least two years did not give rise to a legitimate expectation that the contract would be extended for such duration as suggested by the Respondent. This is because as this court expressed in *Registered Trustees of the Presbyterian Church of East Africa and another versus Ruth Gathoni Ngotho – Kariuki* [2017] KLR fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.”
38. The Petitioner therefore was under a fixed term contract with definite commencement date and termination date. The contract terminated automatically by effluxion of time.
39. The Petitioner has made profound allegations of abuse by the Respondents of fixed term contracts to the loss and detriment of the employees of the 2<sup>nd</sup> Respondent.
40. A commentary on the allegations without any specific reliefs sought by the Petitioner is but an academic exercise, which the court cannot delve into.
41. The court acknowledges the provisions of ILO Convention No. 158 on termination of employment which Kenya has ratified and its provision have been domesticated under the *Employment Act*, 2007.



The Convention provides at Article 2(2) as follows:

“A member may exclude the following categories of employed persons from all or some of the provisions of this Convention:

- a. Workers engaged under a contract of employment for a specified period of time or a specified task;
- b. workers serving a period of probation or a qualifying period of employment determined in advance and of reasonable duration;
- c. workers engaged on a casual basis for a short period 3 Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.” (Emphasis added)

42. The court has noted the evidence by the Petitioner that majority of employees of FKE are on short term contracts when the business of FKE is continuous, not piece meal or casual in nature. The court has also noted evidence by the Petitioner that as at the time he left the employment of FKE, there was no ethnic balance with regard to senior officers of FKE and 10 out of the 12 named positions were held by officers from one ethnic community. FKE denies these allegations. This is damning evidence if true against the foremost employment organization representing the rights and interests of employees in the country and which organization being one cog of the national tripartite that represents Kenya at the ILO conference and all other relevant organs should avoid by all means possible.
43. As indicated earlier, however, no specific reliefs have been sought with regard to this specific evidence and there has not been made sufficient nexus between these allegations and the non-renewal of the fixed term contract of the Petitioner.
44. The court notes that section 5(2) of the *Employment Act*, 2007, provides against any manner of discrimination by an employer in the recruitment, retention and termination of employment of its employees.
45. The *Employment Act*, pursuant to Convention 158 has provided comprehensive safeguards towards protection of the rights of employees in Kenya with regard to recruitment, retention and termination under part II General Principles Part III Employment Relationship; part VI protection of wages and part V Rights and duties in employment.
46. In the present matter, the Petitioner has not sought any declaratory reliefs on alleged violation of his statutory and constitutional rights on which the substantive reliefs sought may be based. The court finds that the petition lack proper basis upon which the reliefs sought may be granted.
47. The court finds that the contract of employment between the Petitioner and the Respondents was not unlawfully and or unfairly terminated, the same having expired by effluxion of time.
48. Accordingly, this petition lack merit and is dismissed in its entirety.
49. The court makes no order as to costs.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER 2025.**

**MATHEWS NDUMA.**

**JUDGE.**



Appearance:

Petitioner in person

Mr. Kiarie Mungai for Respondent

Mr. Kemboi – Court Assistant

