



Kipsang v Kenya Revenue Authority (Employment and Labour Relations Cause E666 of 2022) [2025] KEELRC 2836 (KLR) (21 October 2025) (Judgment)

Neutral citation: [2025] KEELRC 2836 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E666 OF 2022**

**HS WASILWA, J
OCTOBER 21, 2025**

BETWEEN

FRANCISCA JEPNG'ETICH KIPSANG CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide an Amended Memorandum of Claim dated 20th February 2025 praying for judgment against the Respondent for: -
 - a. A declaration that that the Respondent's conduct, communication, actions, practices, policies and/or representations created a valid and enforceable legitimate expectation that the Claimant's employment contract which was on fixed-term basis would be converted to permanent and pensionable terms before its effluxion.
 - b. A declaration that the Claimant fulfilled all the requirements set by the Respondent through its conduct, communication, actions, practices, policies and/or representations and was thus entitled to have her fixed-term contract of employment converted to permanent and pensionable terms.
 - c. A declaration that the failure by the Respondent to convert the Claimant's employment terms to permanent and pensionable basis and/or the non-renewal of the Claimant's contract to pave way for the conclusion of the process of conversion was a termination/dismissal of her employment which was discriminatory, un-procedural, unfair and/or wrongful and/or unlawful and/or malicious.
 - d. Kshs. 1,404,000.00 being compensation for unlawful termination equivalent to the Claimant's 12 months gross salary.



- e. Kshs. 117,000.00 being 1 month's gross pay in lieu of notice of termination.
- f. General and exemplary damages for discrimination, unfair administrative action and unfair labour practices.
- g. Costs of the suit.
- h. Interest on (d)(e) and (f) above at Court's rates from the date of filing suit until payment in full.
- i. Any other appropriate relief that this Honourable Court may deem fit and just to grant.

Claimant's Case

2. The Claimant states that she was employed by the Respondent as a Block Management Strategy Staff-Central Region Vide a fixed term contract of service dated 5th June 2018. The initial contract term was six months which commenced on 6th June 2018 and ended on 30th November 2018 and her initial salary was Kes.48,000.
3. Her contract was later extended for a further period 3 months commencing on 1st December 2018 and ending on 28th February 2019. As a result of her exceptional skills, diligence and determination, the Respondent vide a letter dated 27th February, 2019, and promoted her to a Clerk and extended her employment for a further period of 3 years effective from 1st March 2019.
4. The Claimant states that she executed her duties diligently and zealously and as a result, she was issued with letters of commendation for exceeding her tax collection targets on numerous occasions. Additionally, her salary was increased to Kshs. 117,000.
5. The Claimant states that despite her diligence, zeal and exceptional performance the Respondent vide a letter dated 28th February 2022 informed her of the non-renewal of her contract on grounds of unsatisfactory performance.
6. It is the Claimant's case that the non-renewal of her contract was in fact a termination as she was not under performance watch or performance improvement plan. Additionally, she was denied an opportunity to defend herself against any claim of poor work performance and the termination was done on the last day of the said contract and was most cruel and inhuman. This violated her right to fair administrative action provided under Article 47 of *the Constitution*.
7. The Claimant states that she had legitimate expectation that her contract would be converted to permanent and pensionable terms before its effluxion and/or that the same would be renewed in the interim for such an appropriate period of time pending upon its effluxion the completion of the conversion process.
8. The Claimant states that her legitimate expectation was founded on grounds that the Respondent automatically converts contracts of its employees permanent and pensionable terms before their effluxion unless there are disciplinary grounds for not doing so. Moreover, the Claimant was an exceptional employee who exceeded her tax collection targets by wide margins; and there were no disciplinary proceedings against her.
9. The Claimant states that the Respondent's Board approved the conversion of fixed term contract staff to permanent and pensionable terms. This was confirmed by the Respondent's Commissioner General at the material time, Mr. Githii Mburu, who communicated the same vide the Respondent's NewsFlash Publication of 13th November, 2020, Issue No. 20.



10. The Claimant states that as per the publication, the conversion exercise was to be done and is still being done as hereunder:
 - a. Period served – only staff who have served for two (2) years and above should be considered.
 - b. Performance – only staff who have achieved the required performance threshold should be considered. Any employee with a score of 90% and above and who had fulfilled (a) above was recommended for conversion. Any employee with a score of between 80 – 89% was placed under Performance Watch which was to last for six (6) months. Those who progress to 90% and above would be considered for conversion.
 - c. Integrity – only staff who have no record of unethical conduct including ongoing investigations should be considered.
 - d. The exercise of conversion be undertaken twice a year and be aligned with the half year and end of year performance validation cycle.
11. The Claimant states that vide a further publication by the Respondent through its NewsFlash Publication of 13th May 2021, Issue No. 45, the Respondent’s Commissioner for Corporate Support Services, Dr. David Kinuu, confirmed that the first batch of conversion had taken place and that the leadership was planning to undertake the second cycle of conversion of staff based on each officer’s performance and integrity record.
12. In the said publication, the Respondent confirmed that staff on fixed term contract who had served KRA continuously for two years and above as at 30th May 2021 would be eligible for conversion to permanent and pensionable terms of service. It further confirmed that all eligible staff including fixed term contract staff who were at the time on performance watch and performance improvement plan would undergo performance validation by independent validation panels that would consequently submit their validation reports to Commissioner CSSD.
13. It is the Claimant’s case that the Respondent vide a letter vide the dated 10th December, 2021, vacated her from performance watch as she had attained the requisite performance threshold to be confirmed on permanent and pensionable terms. The Claimant had also served the Respondent for more than two years as at the time and there being no disciplinary cases against her nor any integrity issues, she had the legitimate expectation that her employment would be converted.
14. The Claimant states that the Respondent’s actions were as well discriminatory in nature since all the other employees who were in the same bracket as the Claimant and who were vacated from performance watch were all confirmed on permanent and pensionable terms save for her. This was in breach of Article 27 of the Constitution as read with Section 5(3) of the Employment Act which mandates the Respondent to promote equal opportunity in employment and to strive to eliminate discrimination in any employment policy or practice
15. The Claimant states that the Respondent’s action was unfair, malicious and without valid or fair reason to warrant her termination or dismissal or the purported non-renewal of her contract violating her right to fair labour practices enshrined under Article 41 of the Constitution.
16. The Claimant states that the Respondent was in breach Sections 41, 43, 45 and 46 of the Employment Act so far as the proper procedure was not followed prior to the termination of her employment.
17. It is the Claimant’s case that the termination of her employment caused her grave emotional and financial distress and psychological torture.



Respondent's Case

18. In opposition, the Respondent filed an Amended Memorandum of Response dated 14th March 2025.
19. The Respondent states that the Claimant's initial fixed term contract was renewed for a period of six months effective 1st December 2018 to 31st May 2019. The contract the fixed term contract was further extended for three years effective from 1st March 2019 to 28th February 2022 vide a letter dated 27th February 2019.
20. The Respondent states that the Claimant was placed on performance watch for a period of six months vide a letter dated 24th November 2020 and was later vacated from it vide a letter dated 10th December 2021.
21. It is the Respondent's case that the Claimant fixed term contract expired on 28th February 2022 and she was notified vide a letter dated 28th February 2022 that her fixed term contract of employment would not be renewed.
22. The Respondent states that the Claimant appealed its decision vide a letter dated 2nd March 2022, however, she did not adduce any new grounds to warrant review of the earlier decision the appeal was declined in line with the provisions of clause 9.1.2 of the Respondent's Code of Conduct. This decision was communicated to the Claimant vide the letters dated 7th March, 2022 and 20th April 2022.
23. It is the Respondent's case that it separated from the Claimant upon expiry of her contract of employment on 28th February, 2022 and not termination and/ or dismissal as alluded as her contract was for a definite period of 3 years which ended on 28th February, 2022.
24. The Respondent states that there is no statutory obligation for the Respondent to notify an employee of intention not to renew a fixed term contract as alluded by the Claimant.
25. It is the Respondent's case that Newsflash publication dated 13th November 2020, issue No. 20 states that the conversion criteria explicitly excluded employees with a record of unethical conduct (including ongoing investigations) and the expected performance threshold. As at the time of expiry of her contract the Claimant had unsatisfactory performance record and was under active investigations for allegations of abuse of office during her tenure at the Thika TSO.
26. The Respondent states that the said investigations established that the Claimant accepted rewards for services rendered to members of the public in her official capacity as an officer of the Respondent and disciplinary action was recommended against her. The Claimant was well aware of the investigations as she recorded statements dated 14th October 2021 and 7th December 2021 with the investigators to answer to the allegations against her.
27. The Respondent states that the disciplinary case was closed upon expiry of the Claimant's fixed term employment contract as she was no longer its employee.
28. It is the Respondent's case that the Claimant cannot seek to rely on the Respondent's Approved Human Resources Policies dated 1st July 2023 yet her fixed term contract ended on 28th February 2022 before it came in force. As at the time of the Claimant's employment tenure, the Respondent's 2018 Recruitment and Selection Policy was applicable and the same did not expressly provide for conversion of fixed term contracts to permanent.
29. It is the Respondent's case that legitimate expectation does not arise as there was no express or implied representation made by the Respondent to the Claimant for conversion of her fixed term contract to permanent and pensionable.



30. The Respondent states that the Claimant was not discriminated against as she was under active investigations for integrity as at the time her contract of employment expired as indicated in the investigation reports.
31. The Respondent states that the Claimant cannot allege that she suffered any emotional and financial distress or psychological torture as it was not an abrupt decision and neither was her contract terminated but it expired on the defined date.
32. It is the Respondent's case that extension of the Claimant's fixed term contract of employment was at the Respondent's discretion and there was no commitment given to her that it would be extended. The extension was subject to various considerations among them her conduct and performance. The Claimant was put on performance watch due to poor performance during her contract period and it took close supervision by the management for her to perform as evidenced by the letter placing her on performance watch.
33. The Respondent states that the Claimant is not entitled to any compensation as her separation with the Respondent was lawful and upon expiry of the fixed term contract of employment which she duly signed.
34. The Respondent asserts that the Claimant was served and paid for the full term of her fixed term contract of employment thus she is not entitled to one month notice or pay in lieu of notice.

Evidence in Court

35. The Claimant (CW1) adopted her witness statement dated 20th September 2022 as her evidence in chief and produced her bundle of documents dated 20th September 2022 and 20th February 2025 as her exhibits 1-21.
36. During cross examination, CW1 testified that there was no clause in her fixed term contract that promised her renewal. The conditions of all the three contracts she signed during her employment remained the same and only amended the remuneration.
37. CW1 testified that the Commissioner General communicated that there would be conversion of contracts to permanent and pensionable, however, her contract had not been amended to reflect this.
38. CW1 testified that the qualifications for varying of contracts was given which included integrity. She confirmed that she recorded a statement dated 14th October 2021 in relation to her integrity but not for an investigation.
39. CW1 testified that the Respondent never communicated to her the findings of its report in which she submitted her statement.
40. The Respondent's witness, Jackson Kyalo (RW1) stated that he is the Respondent's Human Resources Manager. He adopted his amended witness statement dated 19th March 2025 as his evidence in chief and produced the Respondent's list of documents dated 12th November 2024 and further list of documents as his exhibits 1 to 14.
41. Upon cross-examination, RW1 testified that he has no evidence that the Claimant's performance was below expectation and there is no record of unethical conduct.
42. RW1 testified that the Claimant was not served with a show cause letter to answer to any charges as her contract had lapsed.



43. RW1 testified that the Respondent's reports dated 1st December 2021 and 6th April 2022 state that the investigation was prompted by allegations of bribery by the Claimant. However, there is no evidence of the same and the investigation findings report was also not produced in court.

Claimants' Submissions

44. The Claimants submitted on two issues: - whether the Respondent's conduct, communication, actions, practices, policies and/or representations created a valid and enforceable legitimate expectation that the Claimant's employment contract which was on fixed-term basis would be converted to permanent and pensionable terms before its effluxion; whether the Claimant fulfilled all the requirements set by the Respondent through its conduct, communication, actions, practices, policies and/or representations and was thus entitled to have her fixed-term contract of employment converted to permanent and pensionable terms; whether the failure by the Respondent to convert the Claimant's employment terms to permanent and pensionable basis and/or the non-renewal of the Claimant's contract to pave way for the conclusion of the process of conversion was a termination/dismissal of her employment which was discriminatory, unprocedural, unfair and/or wrongful and/or unlawful and/or malicious; whether the Claimant is entitled to the prayers sought as per prayers (d), (e) (f) and (h) in the Amended Statement of Claim; and who should bear the costs of the claim.
45. On the first issue, the Claimant submitted that the Respondent vide its publications dated 13th November 2020 and 13th May 2021, confirmed that it unilaterally, freely, willingly, clearly and unambiguously communicated to its employees, the Claimant included, that their fixed-term contracts of employment would be considered for conversion to permanent and pensionable terms upon the Claimant meeting certain conditions. RW1 in his testimony confirmed the authenticity of the publications.
46. The Claimant submitted that from the publications, it is clear that by the Respondent's own express communication, a legitimate expectation was created for the conversion of the Claimant's terms of employment from fixed-term contract to permanent and pensionable terms on condition that she fulfills the terms set.
47. The Claimant placed reliance on the decision of the Supreme Court of Kenya in *Petition No. 14 of 2014, Communications Commission of Kenya & 5 Others v Royal Media Services & 5 Others* where it was stated that for the principle of legitimate expectation to be sustained; "there must be an express, clear, and unambiguous promise given by a public authority; the expectation itself must be reasonable; the representation must be one which it was competent and lawful for the decision-maker to make; and there cannot be legitimate expectation against clear provisions of the law or *the Constitution*."
48. It is the Claimant's submission that the Respondent's communication was in the form of a conditional offer of employment on permanent and pensionable terms, which if the Claimant fulfilled the conditions, a binding contract of employment on permanent and pensionable terms would have been created. Thus, the Respondent's conduct, communication, actions, practices, policies and/or representations created a valid and enforceable legitimate expectation.
49. On the second issue, the Claimant submitted that only staff who had served for two years and above were to be considered for the contract variation. The Claimant was employed effective 6th June 2018 and first conversion was done on 1st December 2020 at a time, the Claimant had already been an employee for more than two years. The Claimant was thus qualified on this ground.
50. The Claimant submitted that for the first conversion of 1st December 2020, the Claimant produced performance appraisals for July to December 2020 which proved that her performance had surpassed



the required standard. However, she was maliciously placed on performance watch for six months which was to terminate on 24th May 2021.

51. The Claimant submitted that for the second conversion announced on 13th May 2021, she was on performance watch. Her performance ought to have been validated for consideration for conversion effective 1st July 2021 but was not; she only received the letter vacating her from performance watch on 10th December 2021 which was supposed to be done before 1st July 2021.
52. It is the Claimant's submission that her performance appraisal for the period December 2020 to May 2021 reveal that her all-round performance averaged 333%.
53. The Claimant submitted that she did not have any record of unethical conduct and there were also no ongoing investigations against her. From the Respondent's documents, they allegedly received the first whistle complaint on 18th June 2021 and another on 27th June 2021. A perusal of the investigation report reveals that the very first statement to be recorded was by the Claimant on 14/10/2021 which was beyond the effective date of conversion on 1st July 2021. The Respondent did not adduce any evidence whatsoever that before 1st July 2021, they had commenced any investigations against the Claimant.
54. It is the Claimant's submission that by operation of the Respondent's own communication, her employment stood converted to permanent and pensionable terms effective 1st July 2021 having fulfilled all the requirements by then, however, the Respondent deliberately avoided communicating the same and effecting the same. Her performance met the threshold for confirmation during the third conversion at the end of 2021, save for her automatic conversion effective 1st December 2020 and even 1st July 2021.
55. The Claimant submitted that the alleged investigation report failed to prove any of the objectives of the investigations to wit, whether the Claimant was a beneficiary of proceeds of corruption, cases of under/misdeclaration as alleged and breach of the alleged KRA Code of Conduct which was never presented in court.
56. The Claimant submitted that the consideration for conversion as to integrity was that one ought not to have a record of unethical conduct and she had none. One also needed not have ongoing investigations. The sham investigations against her were only presumably commenced on 14th October 2021 and concluded on 21st December 2021 vide the investigation report. There were thus no ongoing investigations after the said date that would have prevented the Claimant's conversion.
57. It is the Claimant's submission that the alleged receipt of Iwhistle complaints by the Respondent, the first being on 18th June 2021, and others following in quick succession, was highly malicious and suspect. This is also considering some of the alleged people who submitted the same disowned such reports. Further, no single complaint was made against the Claimant from 6th June 2018 until 18th June 2021 conveniently when she had overqualified and due for conversion.
58. The Claimant submitted that the second investigation report was conveniently and maliciously drawn and dated 6th April 2022 to create the illusion that she was under active investigations as at the time her contract of employment expired. A perusal of the said report reveals that there were no ongoing investigations whatsoever; and there were no new Iwhistle complaints. Therefore, the report is a sham and calculated at tricking the court into believing that there was an ongoing investigation whereas there was none.
59. The Claimant submitted that the alleged Iwhistle complaints which have been attached to the report as forming the basis of the investigations are strikingly different from the Iwhistle complaints that



- allegedly informed the “first” investigation. Whereas the complaints in the first report were complete with information as to the date, day of the week and time up to the second, the alleged complaints in the second report lack this information and are strikingly dissimilar in format. No evidence was given to explain the disparity.
60. The Claimant further submitted that all the other “supporting documents” including the statements that formed part of the first investigation are the very same documents that allegedly inform the investigations in the second report. The Respondent did not collect any new statement or document to demonstrate that an investigation was ongoing. The Claimant contends that this shows that the second report was only prepared to advance a false narrative that she was under active investigations at the time her contract expired on 28th February 2022, which is not true.
 61. The Claimant submitted that the report also recommended that the Respondent should profile five taxpayers who allegedly sent money to the Claimant for possible tax evasion given the huge amounts they sent her. The huge amounts allegedly sent were not disclosed. During the hearing, RW1 failed to produce any evidence that indeed, there was any tax evasion.
 62. The Claimant submitted that the alleged whistle complaints were a sham, malicious, and only meant to disenfranchise her. To date, no single piece of evidence has been produced to substantiate any of the allegations. Moreover, the Claimant’s then supervisor confirmed that those alleged taxpayers were not in her region’s data set.
 63. It is the Claimant’s submission that since she had no record of unethical conduct or ongoing investigations at the time, the Respondent knew too well that if they released the performance validation, she would have automatically had a place in the conversion list. To avoid the same, the Respondent through its responsible officers at the Claimant’s level chose to first deliberately delay her performance validation, and further, fabricate allegations of abuse of office which have been unsubstantiated to date.
 64. The Claimant submitted that she passed the integrity test, save for the Respondent’s crafty and malicious manipulation of the process to disadvantage and deny her a chance to be converted to permanent and pensionable terms of employment.
 65. On the third issue, the Claimant submitted that the failure by the Respondent to convert the Claimant’s employment terms to permanent and pensionable basis and/or the non-renewal of the Claimant’s contract to pave way for the conclusion of the process of conversion was a termination/dismissal of her employment which was discriminatory, un-procedural, unfair and/or wrongful and/or unlawful and/or malicious.
 66. The Claimant submitted that the Respondent’s conduct was in fact an unlawful termination of her employment, wrongly passed off as non-renewal of her contract and which breached her right to fair labour practices and fair administrative action enshrined under Articles 41 and 47 of *the Constitution*.
 67. The Claimant further submitted that the Respondent’s actions towards her was in breach of Sections 41, 43, 45 and 46 of the *Employment Act* in so far as the proper procedure was not followed prior to her dismissal or the termination of her employment; The Respondent’s own Staff Regulations Practices and Procedures Manuals and also its previous conduct; and International labour laws, conventions.
 68. The Claimant submitted that Article 27 of *the Constitution* as read with Section 5(3) of the *Employment Act* mandates the Respondent to promote equal opportunity in employment and to strive to eliminate discrimination in any employment policy or practice. The Respondent violated this right by selectively failing to convert the Claimant’s employment to permanent and pensionable terms as it did the Claimant’s colleagues all of whom were retained on permanent and pensionable terms.



69. On reliefs, the Claimant submitted that by virtue of the fact that her employment stood automatically converted as at 1st July 2021, it ought to have been terminated following the procedure that would apply to an employee employed under permanent and pensionable terms. Notice of intended termination and valid reasons ought to have been given but one was given, thus she prays for notice pay of Kshs. 117,000.
70. The Claimant submitted that her terms of employment were automatically converted to permanent and pensionable terms as at 1st July 2021. As such, any termination ought to have been as per the new terms of employment and not as per the fixed-term contract of employment. She therefore prays for compensation for unlawful termination disguised as expiry of contract being Kshs. 1,404,000 the equivalent of 12 months' salary.
71. It is the Claimant's submission that the evidence tendered supports the award of general and exemplary damages for discrimination, unfair administrative action and unfair labour practices. The Claimant missed out on a lifetime opportunity of being employed on permanent and pensionable terms after investing more than three years working and toiling for the Respondent and posting exemplary results; thus, an award of general and exemplary damages in the sum of Kshs. 10,000,000 is merited in the circumstances.
72. On cost, she submitted that having proved her case on a balance of probability, costs of the claim be awarded to be borne by the Respondent.

Respondent's Submissions

73. The Respondent submitted on four issues: whether the non-renewal of the Claimant's fixed term employment contract was a termination of employment; whether there was legitimate expectation for renewal of the Claimant's contract of employment; whether the Claimant is entitled to any relief; who should bear the costs of the suit.
74. On the first issue, the Respondent submitted that the Claimant was on a fixed term contract that expired on 28th February 2022. The Claimant separated from the Respondent upon expiry of her contract of employment and not termination and/or dismissal as her contract was for a definite period of 3 years which ended on 28th February 2022.
75. The Respondent submitted that Section 2 of the [Employment Act](#) defines a contract of service as an agreement, whether oral or in writing and whether expressed or implied to employ or to serve as an employee for a period of time. It further placed reliance *Margaret A Ochieng v National Water Conservation & Pipeline Corporation* [2014] KEELRC 573 (KLR) where the court held: "Automatic renewal would undermine the very purpose of the fixed-term contract, and revert to indeterminate contracts of employment. The Respondent changed its policy, to suit its operations, and the Claimant did not protest at the time the policy shifted in 2008. She instead embraced the change, applied for the new position and executed a contract for a period of three years. She went on to serve the period, and was at all times aware of the expiry date. She wrote to the Respondent on several occasions, acknowledging that her three years would expire or expired on 16th December 2011."
76. The Respondent submitted that at the expiry of the Claimant's contract, she had unsatisfactory performance record and was under active investigations for allegations of abuse of office during her tenure at Thika TSO as illustrated in the investigation reports dated 21st December 2021 and 6th April 2022. The investigations established that the Claimant accepted rewards for services rendered to members of the public in her official capacity as an officer of the Respondent and disciplinary action was recommended against her.



77. The Respondent submitted that it is misleading and false for the Claimant to claim that her performance was satisfactory for conversion of her fixed contract to permanent yet she was on performance watch as per the letter dated 24th November 2020 which she received and signed upon. Additionally, the letter indicates that the Claimant was validated for two financial years namely 2018/2019 and 2019/2020.
78. It is the Respondent's submission that the Claimant having failed to meet the integrity threshold and performance cannot allege that there was legitimate expectation in the conversion of her fixed term employment contract to permanent and pensionable as she did not meet the laid-out criteria for conversion.
79. The Respondent submitted that the Claimant cannot seek to rely on its Approved Human Resources Policies dated 1st July 2023 yet her fixed term contract of employment ended on 28th February 2022 before the said policy came in force. At the time of the Claimant's employment tenure, the 2018 Recruitment and Selection Policy was applicable and the same did not expressly provide for conversion of fixed term contracts to permanent.
80. The Respondent submitted that courts have on several occasions decided that there is no obligations for the employer to renew fixed term employment contracts. One of the cases being, Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki [2017] KECA 194 (KLR) where the Court of Appeal held: "Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the respondent's contract ought not to have been maintained. This is in relation to the salary for the months of April up to 5th May, 2010. Similarly, since the respondent's contract came to an end by effluxion of time any claim for wrongful termination could not be maintained."
81. On the second issue, the Respondent submitted that the Supreme Court in Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] KESC 53 (KLR) laid out the doctrine of legitimate expectation as follows: "The emerging principles may be succinctly set out as follows: (a) there must be 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*."
82. The Respondent submitted that legitimate expectation does not arise as there was no express or implied representation made by the Respondent to the Claimant for conversion of the Claimant's fixed term contract to permanent and pensionable.
83. It is the Respondent's submission that its Newsflash publication dated 13th November 2020 explicitly excluded employees with a record of unethical conduct (including ongoing investigations) and the expected performance threshold.
84. The Respondent submitted that the Claimant was under active investigations for integrity as at the time her contract of employment expired as indicated in the investigation reports and legitimate expectation cannot thus arise as he was exempted from the said conversion.
85. The Respondent submitted that the Claimant's disciplinary case was closed upon expiry of her fixed term employment contract as she was no longer an employee of the Respondent.
86. It is the Respondent's submission that it has proved that the Claimant failed to meet the threshold for conversion of the fixed term employment contract to permanent and pensionable as per the



- Respondent's requirements. It reiterates that the burden of proof is upon the employee to prove legitimate expectation as held in *Teresa Carlo Omondi v Transparency International- Kenya* [2017] KEELRC 1624 (KLR).
87. The Respondent submitted that the Claimant having failed to meet the required threshold on integrity and performance for fixed term employment contract to be converted to permanent and pensionable then legitimate expectation cannot arise.
 88. On the third issue, the Respondent submitted that the Claimant's contract of employment was not terminated but ended on 28th February 2022 after the Claimant served her full term thus she is not entitled to any damages under Section 49 of the *Employment Act*.
 89. The Respondent submitted that the letter of non-renewal of the contract stated that the Claimant was entitled to consolidated salary up to and including 28th February 2022 as well as 15 days severance for every year worked accrued from 1st January 2020 and would be issued with a certificate of service as provided under Section 5(1) of the *Employment Act*.
 90. The Respondent further submitted that the Claimant is not entitled to any further payments as she completed her fixed term contract on 28th February 2022 and was paid her consolidated salary. Therefore, the claim for damages is unsubstantiated as the Claimant has already been paid her legally entitled dues.
 91. The Respondent submitted that the Claimant's contract of employment dated 5th June 2018 stated that the notice period for termination of the employment contract was 7 days. Additionally, the employment contract was not terminated but ended on 28th February 2022, thus the Claimant is not entitled to any damages.
 92. On the final issue, the Respondent submitted that the Claimant's contract of employment was not terminated but ended on 28th February 2022 after the Claimant served her full term. Thus, it follows that this suit was instituted by the Claimant without a valid reason and costs should thus be awarded to the Respondent.
 93. The Respondent submitted that it is entitled to costs of this suit as the Claimant was well aware of the basis for non-conversion of her fixed term contract to permanent and pensionable.
 94. I have examined all the evidence and submissions of the parties herein. The factual parts of the claimant's evidence of the record of her employment are true and that she was on fixed term periodic contracts from 5th June 2018 to 28th February 2022 a period of over 4 years.
 95. The claimant has averred that despite working for the respondent as stated, her contract was not renewed by the respondent on ground of poor performance. The respondents on their part aver that the contract ended by effluxion of time and so was not renewable.
 96. To understand the workings of the employees serving on contract, the claimant has referred to the periodic bulletins issued by the respondents management where I have had occasion to consider. From the onset, I wish to indicate that the claimant was not terminated because of affluxion of time. If this were so the respondent would have had no reason to communicate the same to her. In the letter that terminated the claimant's contract, the respondents stated as follows:

Ms. Francis Jengetich Kipsang Fixed Term Contract Domeshe Taxes Department

Dear Francisca.

Re: Nonrenewal Of Contract



This is to notify you that your contract ending 28.02.2022 will not be renewed owing to your unsatisfactory performance.

You are hereby required surrender any Authority's property that may have been into your possession by virtue of your employment including Staff Identification card and Medical Smart Cards.

You will be paid consolidated salary up to and including 28 February, 2022 as well as fifteen (15) days severance for every year worked accrued from January 2020. Further and pursuant to Section 27(5)&(6) of the Public Officer Ethics Act, you will be required to complete and submit a final Declaration of Income and Liabilities for the period from 1st November, November, 2021 to 28th February 2022 for onward transmission to Public Service Commission of Kenya (declaration form attached)

A certificate of service will be issued as provided for under Section 51(1) of [Employment Act, 2007](#).

We wish you success in your future endeavours

Yours sincerely

For: Deputy Commissioner Human Resource

97. The letter is clear that the contract was not renewed because of unsatisfactory performance. This leads to the next issue on whether indeed the claimant was performing unsatisfactorily to warrant that non renewal. The claimant has confirmed that she was an exceptional employee and she submitted various documents indicating that she had been commended for exceeding her targets as per the commendations dated 27th April 2021, 19/5/2021, 14/12/2021 and 7th February 2022. It is however indicated in the letter of 28/2/22 that the contract was not being reviewed to unsatisfactory performance.
98. The claimant also submitted the letter dated 10th December 2021 which indicated that reference was being made to the letter ref: Con /1772 of 21st November 2020 which placed her on performance watch (PW) for a period for 6 months and which had now been vacated and she was commended for her good work.
99. The upshot of this evidence is that the claimant did not have any problem on performance and she was an excellent worker and was commended accordingly. The issue of non-renewal of her contract for unsatisfactory performance does not therefore arise.
100. Having dismissed the issue of unsatisfactory performance was there then a legitimate expectation of the renewal of the claimant's contract which the claimant failed to adhere to? In this respect, the claimant referred court to the respondent's bulletin released on 30th May 2021. In the bulletin the respondent management stated as follows:

The leadership is planning to undertake the second cycle of conversion of staff serving under fixed term contract to permanent and pensionable terms of service based on each officer's performance and Integrity record.

Therefore, staff on fixed term contract who have served KRA continuously for two years and above as at 30th May 2021 will be eligible for conversion to permanent and pensionable terms of service.



All eligible staff including fixed term contract staff currently on Performance Watch and Performance Improvement Plan will undergo performance validation by independent validation panels that will consequently submit their validation reports to Commissioner CSSD.

Staff who will have met the expected performance threshold will have to undergo integrity vetting as well. Conversion date will be effective 1st July 2021 for staff who will be successful.

101. In the bulletin the commission for corporate support was clear that the respondent was planning to undertake a 2nd cycle of conversation of staff serving under fixed term contract to permanent and pensionable terms. The criteria to be employed is also indicated. The claimant averred that she met this criterion i.e she had been on contract for over 2 years as at 30/5/2021 and she was not on performance watch.
102. The respondents have averred that the news flash of 13/11/2020 No 20 excluded employees of unethical conduct. They aver that the claimant was under investigation on unethical conduct and even recorded statements on 14/10/21 and 7/12/21. The respondent however failed to exhibit the said statements and their averment that the claimant was under investigation for unethical conduct is not proved.
103. In any case even if the renewal was being withheld for the unethical conduct this should have been indicated in the letter which notified the claimant that her contract was not going to be renewed.
104. The upshot is that the non renewal of the claimant's contract was done contrary to the respondents own express communication. The claimant met the requirement for the renewal of her contract and had a legitimate expectation that this would be done as held by Supreme Court in petition no 14 of 2014 Communications Commission of Kenya & 5 Others vs Royal Media Services & 5 Others (supra).
105. Failure to renew her contract for reasons that were non extent was therefore a wrongful termination. It was indeed the prerogative of the respondents not to renew the contract but they could not rely on falsehood for the said purpose.
106. My finding is that the claimant was unfairly terminated. She was not given an opportunity to be heard and was therefore unfairly and unjustly treated. I find for the claimant in the circumstances and I award her as follows:
 1. Given the inhumane manner of informing her of the non renewal at the tail end and the expiration of the contract and for nonexistence reason I find 10 month's salary as compensation for the unfair termination adequate which I grant her being 10 x 117,000= kshs 1,117,000/-.
 2. I also award her 1 month's salary in lieu of notice= kshs 117,000/-
Total Kshs 1,234,000/- less statutory deductions.
 3. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF OCTOBER 2025.

HELLEN WASILWA
JUDGE

