

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. E765 OF 2021

MOHAMED BAYAAN ADAN..... CLAIMANT

-VERSUS-

**KENYA MEAT COMMISSION.....
RESPONDENT**

JUDGMENT

1. The Claimant through his amended statement of claim dated 13th August, 2024 pleaded *inter alia* as follows: -

- a. *The Claimant was competitively sourced and employed on 1st September, 2006 as the IT Administrator for the Respondent, a position he held diligently as manifested in the performance appraisals and review forms.*
- b. *That sometime in 1st July, 2012 he was appointed as an ICT Manager following a vacancy that was internally advertised as per the Human Resource Manual; he successfully applied and got the job a position he accepted and duly performed the duties required of him under the contract*
- c. *That he got the position as a result of his good performance which was demonstrated by various positive performance reviews, promotions and various added responsibilities granted to him by the Respondent.*
- d. *That in a letter dated 2nd August, 2019 he was appointed as the acting Sales and Marketing Manager for the remainder of his contract with the*

Respondent, duties that he faithfully and diligently carried out and was entitled to an acting allowance.

- e. That sometime in the year 2020 the Respondent received a letter from the Ethics and Anti-Corruption (EACC) to facilitate investigations in to allegations of irregular recruitment of staff at the Respondent subject to section 11 of the EACC Act and requested the Claimant to visit the EACC's office for interviews.*
- f. That he honoured the summons to the EACC where he attended and gave his version of events specifically that the vacant position of the ICT Manager was internally advertised, he applied and attended the interview, was successful and his appointment later ratified by the board.*
- g. That in the letter dated 11th March, 2021 the EACC wrote a letter to the Respondent following a follow up on the investigation and stated that the Claimant has always been on short term contracts whilst the position ought to have been competitively filled; the EACC then proceeded to direct the Respondent to advertise the position.*
- h. That the position taken by the EACC which the Respondent later relied on was not only malicious but erroneous since it was clear violation of the Respondent's Human Resource Manual which provides clause 3.4.1.2 that vacant positions shall be filled competitively from internal sources where applicable. External Sources will be considered in circumstances where such positions cannot be filled internally.*
- i. That the above letter did not give any finding to the effect that the Respondent had been favourably or illegally hired, hence there can be no valid reason why the contract was not renewed. That the Respondent's actions of failing to give 3-year contracts as provided for in the Human Resource Manual was unfair, unlawful and amounted to a breach of the Claimant's rights to fair labour Practices.*
- j. That if anything any short-term contracts granted prior to and during the investigations by EACC were not only unfair but illegal and contrary*

to the Respondent's Human Resource Manual. That the Claimant's efforts to appeal the decision by the Respondent's board went unheard and the Respondent upheld its earlier decision of not extending the Applicant's employment contract while giving no valid reasons and totally ignoring the grounds of appeal raised by the Claimant.

- k. That his rights to fair hearing and fair administrative actions were severely affected and infringed upon. That the Claimant had reasonable expectation for renewal of the contract having worked hard and diligently for the Respondent as indicated in his performance appraisal.*
- l. That nonrenewal of the contract was contrary to inherent human dignity especially in view of values and principles of public service pursuant to Article 232 of the Constitution and failure to accord proper and legitimate reasons for terminating this contract.*
- m. That the Respondent acted unfairly and in excess of the administrative powers by failing to provide proper reasons for the non-renewal of the contract considering it was the one that duly appointed him to that position and its board ratified the same. That if anything the Claimant held a permanent and pensionable position prior to his appointment as ICT Manager, a position which in all fairness he should be reinstated to.*

2. The Claimant in the upshot prayed for the following against the Respondent;

- a) A declaration that the non-renewal of the Contract was not based on any valid grounds hence unfair and illegal to that effect.
- b) A declaration that the Claimant's right to legitimate expectation has been breached more so in view of the finding of no fault on his part either by the Respondent or EACC.
- c) An order that the recommendation contained in the letter dated 11th March 2021 by EACC are null and void since they contravened and ignored the provisions of clause 3.4.1.2 of the Respondent's Human Resource Manual.
- d) . An order that the Respondent does renew the Claimant's contract for a period of 3 years.
- e) . In the alternative, an order for damages equivalent to the 3-year contract period, to include:

- i) Compensation for basic salary under section 49 at Kshs. 5,710,500/-
 - ii) House allowance at Kshs. 1,080,000/-.
 - iii) Annual leave allowance at Kshs.90,000/-.
 - iv) Responsibility allowance at Kshs. 1,080,000/-.
 - v) Gratuity at Kshs. 2,354,760/-.
- f. An order that the Respondent pays the Claimant Kshs 120,000/- being acting allowances owed to him for the 4 months' period he was appointed as the acting Sales Manager from August 2019
- g. An order that the Respondent pays the Claimant underpaid wages and house allowance for the period from Feb 2017 to September 2018 amounting to Kshs. 2,294,964/-.
- h. An order that the Respondent pays the Claimant Kshs. 332,628/- which was erroneously deducted by the Respondent in the months of May 2020 and July 2020.
- i. An order that the Respondent issues the Claimant with a Certificate of Service.
- j. Further in the alternative, and without prejudice to the above, an order directing the Respondent to absorb back the Claimant to his previous position prior to appointment as ICT Manager.
- k. Cost of the suit.

3. The Respondent filed its Amended Statement of Response dated 4th September, 2024 and averred inter alia as follows:

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- a. *That the Claimant was employed by the Respondent under a mutually agreeable contract of employment. That he was not entitled to acting allowance.*
- b. *That the sole purpose of investigations conducted by the Ethics and Anti-Corruption Commission (EACC) was to ensure that the Respondent adhered to Section 11 of the EACC Act which forbid irregular recruitment of staff at the Respondent's offices in instances where the Respondent had vacant positions and or when the Respondent intends to promote its staff.*
- c. *That it requested for investigations by the EACC on the authenticity of the academic certificates of the Claimant and*

irregular recruitment in December 2020 and the EACC based on their investigations advised the Respondent to have the Claimant's position advertised and competitively filled in accordance with the HR Manual.

- d. *That as a result of the poor historic performance of the Commission, the Respondent's Ministerial responsibility was transferred to the Ministry of Defence through Executive Order Number 3 of 2020 and a new management of the Kenya Defence Forces Officers were embedded with the civilian management of the Respondent.*
- e. *That the alleged malicious acts by the Claimant at paragraph 10 of the claim are untrue, superfluous and meant to mislead the interests of justice since from the time the Claimant was employed by the Respondent, he never raised any complaints and that the Claimant's position of ICT Manager could not be renewed solely due to the Respondent's Board of Commissioners meeting which resolved that the same should not be renewed and that the position of the ICT Manager be advertised for competitive recruitment of which the Claimant was also advised to apply.*
- f. *That the Board's resolution was not based on any report by the EACC as the decision was arrived at and based on the lapse of the Contract period. The EACC only advised and encouraged the Respondent on the need for regular recruitment and competitiveness.*
- g. *That the Respondent is bound by the decisions and regulations issued by the EACC and that they are required to abide by the findings of the EACC after conducting investigations. Furthermore, upon transfer of the Respondent's ministerial responsibility to the Ministry of Defence, the Kenya Defence Forces officers were seconded to work under the Respondent and*

appointed as deputies to all managers. That the Claimant's position was automatically deputized by a military officer who took up the duties of the ICT Manager upon non-renewal of his contract.

h. That the Claimant was well aware of the short and/or fixed term contracts and the alleged non-renewal of the Claimant's contract was therefore lawful.

i. That the Claimant herein ceased to be an employee of the Commission upon expiry of his contract particulars which are well within the knowledge of the Claimant. That under a fixed term contract and when the period of the contract expires by effluxion of time, no legal relationship can exist between the Respondent and the Claimant.

j. That the Claimant was aware of the official policy of the Respondent that upon re-opening in 2006, all persons holding managerial positions would be employed on contract terms for a maximum of three (3) years. That this was informed by the myriad challenges facing the Respondent at the time.

k. That the Claimant was made aware of the short-term contracts as evident at paragraph 13 of the claim where the Claimant admits " ... that if anything, any short-term contract granted prior to the and in during the investigation ... " and that the Claimant was well aware that the short-term contracts were non-renewable. The Claimant cannot claim the same to be unlawful and/or unfair thereof.

l. That the alleged non-renewal of the said contracts was lawful since a fixed term contract can only be renewed by the consent of all parties and being contractual there is no legitimate expectation to renewal of the same.

m. That there are numerous authorities at the Court of Appeal that a fixed term contract lapses with its term and the employer

cannot be forced to renew or extend it upon expiry by effluxion of time.

- n. That the Respondent had no malice against the Claimant nor did it intentionally fail to renew the Claimant's contract. The Respondent treated the Claimant with due respect and care.*
- o. That a grant of the prayers sought by the Claimant would occasion it great economic hardship which could lead to its collapse to the detriment of its employees. Consequently, this claim if granted will not serve the interest of Justice as the truth of facts as they are, have not been disclosed by the Claimant.*
- p. That contrary to the allegations by the Claimant in the claim, it promoted the Claimant's progression in his career and profession. That the Claimant was well aware that the short-term contracts were non-renewable which meant that he could no longer be reinstated. That the allegation by the Claimant of being treated with malice during the investigations by the EACC is therefore unfounded hence no compensation for non-renewal of his contract as the same was lawful.*
- q. The Respondent denied the Claimant's allegations that its decision not to renew his contract was based on the EACC findings and contends that the decision not to renew the Claimant's contract was solely based on the contract having matured and exercised its powers by not renewing the contractual relationship.*
- r. The Respondent denied that it maliciously failed to renew the alleged 3 year contract and stated that the alleged non-renewal was lawful and was bound by the findings of the EACC.*
- s. That the Claimant is not entitled to compensation under section 49, house allowance, annual leave allowance, responsibility allowance, acting allowance and gratuity. That the Claimant is not entitled to the alleged underpaid wages and house allowance*

for the period from February 2017 to September 2018 and alleged erroneous deductions in the months of May 2020 and July 2020.

t. That prayers (e), (ii), (f), (g) and (h) sought by the Plaintiff are statute

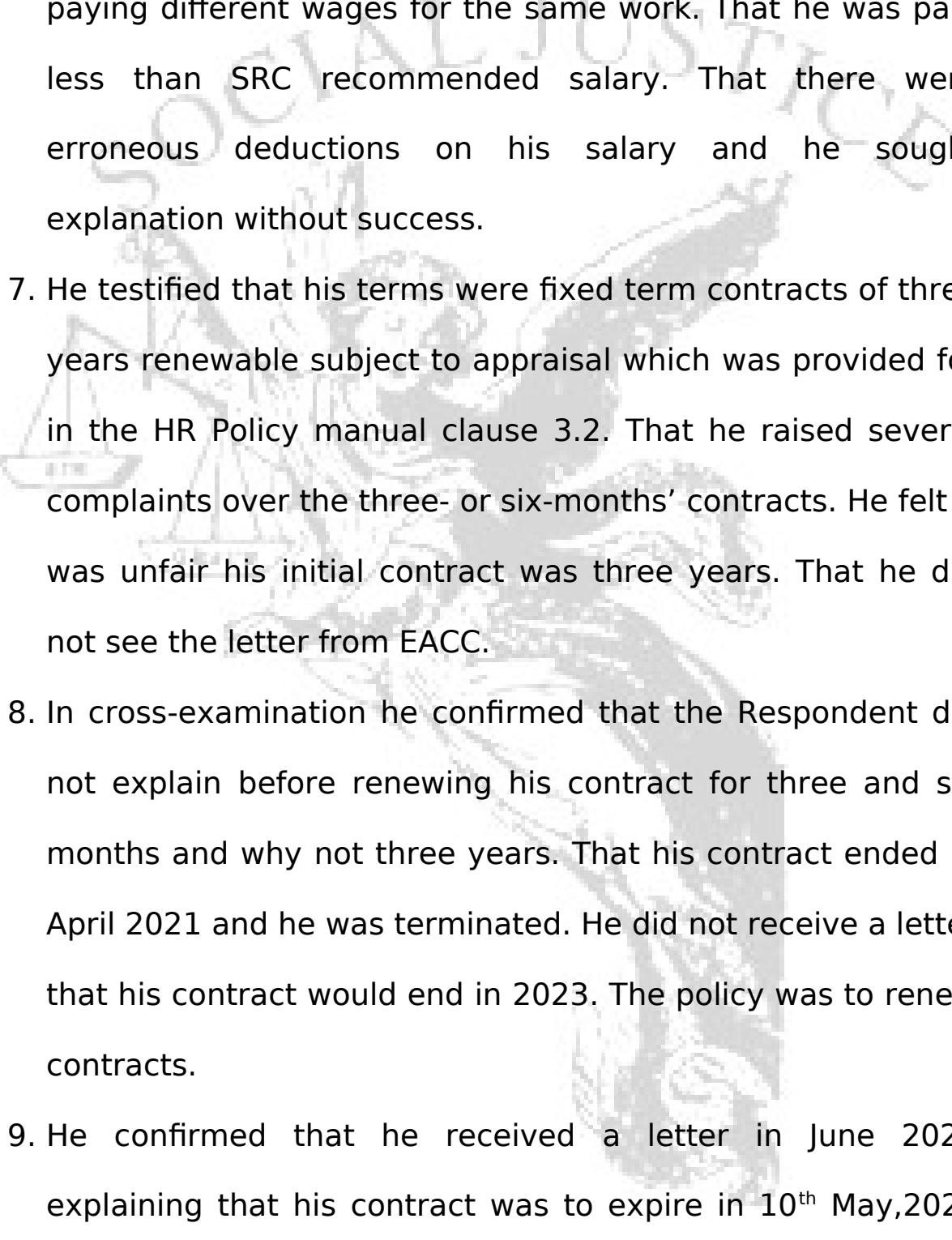
barred as the same have been sought after the expiry of the mandatory limitation periods provided under section 90 of the Employment Act. That the Claimant has not come to court with clean hands and that his demands are outrageous.

u. The Respondent prayed that the Claimant's suit be dismissed with costs on a higher scale for being an abuse of the court process.

EVIDENCE

4. The Claimant's case was heard on 30th January, 2025 where the Claimant herein (CW1) testified in court. He adopted his witness statement dated 14th August, 2024 together with the documents filed in court in support of his claim as his evidence in chief.

5. He testified that he served as acting Sales and Marketing Manager and he deserved to be paid 15% of his basic salary as acting allowance. That the same was provided for in the Respondent's HR Policy manual.

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6. He Claimed he was underpaid wages as Respondent was paying different wages for the same work. That he was paid less than SRC recommended salary. That there were erroneous deductions on his salary and he sought explanation without success.
 7. He testified that his terms were fixed term contracts of three years renewable subject to appraisal which was provided for in the HR Policy manual clause 3.2. That he raised several complaints over the three- or six-months' contracts. He felt it was unfair his initial contract was three years. That he did not see the letter from EACC.
 8. In cross-examination he confirmed that the Respondent did not explain before renewing his contract for three and six months and why not three years. That his contract ended in April 2021 and he was terminated. He did not receive a letter that his contract would end in 2023. The policy was to renew contracts.
 9. He confirmed that he received a letter in June 2020 explaining that his contract was to expire in 10th May,2020 and salary would be paid up to May, 2020. That he was not

in employment after his contract expired. That he was claiming leave and allowances for the balance of the contract as per clause 6.2.1 of the HR manual on annual leave.

10. He confirmed that he did not have his payslips for 2017 before the court and he did not produce any sample of his payslip for 2017 and 2018. That he was claiming for salary and allowances for the period that was left out.

11. In Re-examination CW1 clarified that he claimed for underpayment and that the HR acted on advice of CEO to harmonize his salary. That he could not claim if he had been paid. That it was never explained to him why his contracts were renewed for three and six months and not 3 years. That he was not notified three months before expiry of the contract.

12. CW1 clarified that he was initially appointed as ICT Manager for 3 years renewable. That the policy did not have 3- or 6-months contracts as it only has 3 years contracts.

13. The Respondent's case on the other hand was heard on 14th May, 2025 where Anthony Ademba RW1 herein

testified as the Respondent's Chief Legal Officer. He adopted his witness statement dated 19th March, 2025 as his evidence in chief.

14. He testified that the Claimant's contract lapsed and his position had since been filled and the Respondent was currently run by KDF.

15. In cross-examination RW1 confirmed that the Respondent requested for EACC investigations. That the Claimant's position was not vacant at time of EACC investigations. That the Claimant was employed in 2012 and the issue was whether the recruitment was procedural in accordance with the law.

16. He confirmed that the authenticity of the Claimant's certificates was one of the issues under investigation by EACC. That the Respondent was yet to get a response from EACC on the issue. That the Claimant's position was not competitively sourced and the EACC advised the Respondent to do a competitive recruitment of the position.

17. He confirmed that the Claimant had a three-year contract. That renewal of 31/5/2017 was for three years.

That investigations by EACC begun in 2020 and the Claimant was issued short-term contracts pending outcome of EACC investigations.

18. RW1 confirmed that without the outcome of the EACC the was nothing to guide the Respondent over the Claimant. That there was extension of contract of ICT Manager held on 7/7/2020 while the EACC investigations were ongoing. That it was recommended to be unfair to deny an employee employment on a matter still under investigations. That the contract was extended for a further 3 years.

19. He confirmed that it was a mere recommendation and it had be adopted by the board before action. That the Respondent continued to issue the Claimant with the 3 months' contract and it was not against HR policy. That nothing in the HR policy prohibits appointment on short term contracts of 3 months.

20. He confirmed that under clause 3.2.3.2 appointment was for a maximum of three years renewable. That the decision not to renew was made in 2021. That the board's decision not to renew the contract was based on the lapse

not EACC letter. That the Respondent saw it not fit to renew and the notice of nonrenewal was issued on 8/4/2021 which concerned the 3 months contract.

21. RW1 confirmed that the Claimant always met his target and one of the factors for renewal of contract was meeting targets and not the sole reason. That the position was advertised subsequently.

22. In re-examination he confirmed that the position has been filed and the Claimant was asked to reapply when the position was advertised. That as per clause 3.2.3.2 renewal was for maximum of 3 years and extension could not be beyond 3 years. That the Respondent could give lesser period.

23. He confirmed that the Claimant's benefits were paid and it was around Kshs. 2.5 Million.

CLAIMANT'S SUBMISSIONS

24. The Claimant's Advocates Ngira Advocates LLP filed written submissions dated 10th June, 2025 and on the issue of whether the non-renewal of the Claimant's employment contract was based on valid grounds and fair counsel

submitted that the Claimant had had a good run in the Respondent Commission until someone decided that his time was up. This is evidenced by the letter from the EACC dated 11th March, 2021. The letter clearly read that “the Commission had received allegations that Mr. Mohammed Bayan was favoured and irregularly recruited as the ICT Manager.”

25. Counsel submitted that so as to ascertain the same, the Respondent reached out to EACC to carry out investigations on the issue of irregular recruitment and favouritism. This was confirmed by the Respondent’s Witness, Mr. Ademba, who testified that the sole purpose of the investigations conducted was to ensure that the Respondent had adhered to Section 11 of the EACC which forbid irregular recruitment of staff at the Respondent’s offices. The investigations were also to establish further whether the Claimant’s academic certificates were authentic.

26. Counsel submitted that at the time these investigations were being carried out, the Claimant had

worked for the Respondent Commission for a period of 14 years in total since he was first employed by the Commission. Within that period, the Claimant had worked for eight (8) years as the ICT Manager of the Respondent, a position that he had competitively applied for and successfully got the position based on his series of good performance.

27. It was, therefore, surprising to the Claimant why the Respondent would want to check the authenticity of his certificates 14 years later since he joined the Commission. Even so, he still subjected himself to the due process of the law and honoured the summons of the EACC and availed his academic certificates and responded to further questions asked.

28. Counsel further submitted that while that was at play, and for the Respondent to find good grounds to decline renewal of the Claimant's contract for a further 3 years as had been the norm and also as provided by the Human Resource Policy, the Claimant had been told on the other hand that the Board was still deliberating on the renewal of

his contract. The first letter communicating the same was dated 4th February,2020.

29. That the second letter from the Respondent dated 4th May, 2020 also informed the Claimant that the Board had not yet finalized on the Claimant's extension of the contract and would communicate its decision once the matter was concluded. The said letters confirmed that the Board was still deliberating on whether to renew the Claimant's contract for a further 3 years as had been the norm but since they had not concluded discussions, they kept extending the Claimant's contracts for a period of three months and six months.

30. Counsel submitted that to ascertain what the Board was deliberating about all that time, counsel drew the court's attention to the minutes by the HR & Administration Committee of the Kenya Meat Commission Board held on 7th July,2020 wherein the extension of the Claimant's Contract as ICT Manager was extensively discussed. That the Committee members were members of the Board with delegated powers of the Board. The Respondent's witness

did indeed confirm that the Board members sit in that committee. The Managing Commissioner who was issuing letters to the Claimant for extension of the contract, one James Ole Seriani, was also present in that particular meeting.

31. That the Committee first confirmed that the Claimant's academic certificates were authentic and even noted that "it was unfair to deny the employee employment on the basis of unconcluded investigations. The Committee further stated that if the officer was found culpable after conclusion of the investigations then his services would be terminated. The Committee then recommended that the contract be extended for a period of 3 years based on the employee's competence performance and willingness to work.

32. That despite the HR Committee's recommendation to renew the Claimant's contract for a period of 3 years, the Respondent still proceeded to extend the contract for six months to be safe as they awaited the conclusion of investigations from EACC. When the six months were about

to lapse, the Commission decided to write to the EACC to expedite on the investigations vide letter dated 23rd December,2020.

33. That the letter from EACC finally came in on 11th March,2021 advising that the position be advertised and competitively filled. This led to the letter issued to the Claimant on 8th April,2021 finally informing him that the Board had resolved that his contract shall not be renewed.

34. Counsel submitted that it was crystal clear that the Claimant had to be given a bad name so that his service to the Commission could be terminated. The same was done in the form of allegations as to whether his certificates were authentic and the issue of irregular recruitment. None of the allegations were, however, confirmed in the affirmative and so they pulled the last straw indicating that the Claimant had been given short term contracts ranging between 3 months and one year since 2012. A fact that was clearly false as the Claimant's last contract prior to the issue of EACC was for a period of three years as exhibited in the letter dated 31st May, 2017.

35. Counsel submitted that a reading of the aforementioned letter showed that the previous contract was for a period of three years and so the Respondent was renewing it for a further period of three years. The Claimant never dictated the terms of employment but he performed his duties diligently knowing that renewal of his contract would be based on the same as highlighted by the HR and Administration Committee of KMC Board.

36. Counsel submitted that this was not a normal case of a contract lapsing by effluxion of time as it had been put out by the Respondent and urged the court to delve into the circumstances that led to the non-renewal. For if that was the case then the Respondent Board would have outrightly communicated its decision for non-renewal to the Claimant three months before his contract lapsed on 10th February, 2020. Based on the letters produced in court, the Respondent kept extending the contract indicating that the Board was still deliberating on the renewal of the Claimant's contract. This gave the Claimant hope that the contract would be renewed for a further three (3) years based on performance. The said board

deliberations as shown throughout these submissions and evidence provided, were based on the investigations that were being carried out by EACC and when EACC finally responded, the Respondent informed the Claimant that his contract could not be renewed.

37. Counsel submitted that the Claimant was also informed that the position would be advertised and that he was at liberty to apply knowing that the advertisement would not happen. The Respondent's witness, in cross-examination, confirmed that the position was automatically deputized by a military officer who took over the duties of the Claimant upon non-renewal of his contract.

38. Counsel submitted that the Respondent had indicated that the contract was a fixed term and therefore lapsed automatically and its renewal was subject to the Respondent's discretion. As such it was not supposed to give reasons for non-renewal. Counsel submitted that the non-renewal was based on improper motive which amounted to unfair labour practice as was held in **Margaret A Ochieng v National Water Conservaion & Pipeline Corporation [2014] KEELRC 573**

(KLR) the learned Judge in highlighting actions which gave rise to legitimate expectation relied on the ICTR decision.

39. Counsel submitted that failure to renew the Claimant's contract for a further period of three (3) years was based on improper motive as had been demonstrated above and via the evidence presented before the Honourable Court, particularly the minutes of the HR committee, which showed that the decision was based on the investigations that were being carried out by EACC as per the request of the Respondent. Failure to renew was therefore unfair and amounted to unfair termination as per section 49 of the Employment Act.

40. On the issue of whether the Claimant's right to legitimate expectation was breached more so in view of the finding of no fault on his part either by the Respondent or EACC counsel relied on the case of **Republic v Kenya Revenue Authority Ex Parte M-Kopa Kenya Limited [2018] KEHC 9059 (KLR)** on legitimate expectation.

41. Counsel submitted that the general principle, as held by courts in a number of judicial authorities, is that fixed term contracts do not create any legitimate expectations of renewal

while relying on the case of **Transparency International - Kenya v Omondi [2023] KECA 174 (KLR)**. That there are, however, exceptions to the general principle above though limited. Justice Rika while sitting as the trial court in **Teresa Carlo Omondi v Transparency International- Kenya [2017] KEELRC 1624 (KLR)** held that there are exceptions to the general rule as to expectation of renewal of fixed term contracts.

42. Counsel submitted that in the instant case, the Claimant's legitimate expectation was aroused by several elements or factors. First element was the condition for continued employment as provided in his initial letter of appointment. Paragraph 7 in the said letter provided that the Claimant's continued employment would be determined by his level of performance. The condition was further captured in the letter of renewal of contract dated August 30, 2010 at paragraph 3.

43. Counsel submitted that as such, the Claimant had a legitimate expectation that future renewals would be based on clear given targets and appraisals and he strived to meet the

condition as evidenced in his performance appraisals. Counsel relied on the case of **Kirigo v Othaya Mukurwe-Ini Water Services Limited (Cause E016 of 2024) [2025]** on contract of employment creating a legitimate expectation for renewal if the Claimant fulfilled the said conditions.

44. Counsel submitted that the second element was the issue of repeated renewals of his employment contract. The Claimant was later redeployed as ICT Manager and his contracts would periodically be renewed for a further period of three years based on performance and appraisal and as per the Human Resource Policy and Manual. The HR Policy, at clause 3.2.3.2, provided that appointment on contract terms would normally be for a maximum renewable period of three (3) years. Meaning that an employee's contract could be renewed for a further three (3) years contrary to what the Respondent's Witness indicated in court. That Clause 3. 2.3.5 of the Respondent's HR Policy further provided that the employee shall communicate to the employer in writing the intention to renew or not to renew the contract at least three (3) months

before and not more than 6 months to the expiry of the contract.

45. Counsel submitted that a reading of the above clauses shows that the drafters of the said policy envisaged that the short-term contracts would normally be for a period of 3 years so as to even allow an employee to express their intention to renew or not to renew within 3 months prior to the expiry of the contract.

46. Counsel submitted that the Claimant adhered to the conditions given and would submit his performance appraisal forms and inform the Respondent of his willingness to renew his contract and his contracts would normally be renewed for a period of three (3) years. His last contract before the EACC issue arose had also been for a period of three (3) years and he had indicated his willingness to renew his contract, which was to expire in February 2020, three months earlier. The Respondent did not, however, communicate their response in time and later on 4th February 2020, he was informed that his contract would be renewed for a period of three months pending deliberations of the Board.

47. The Claimant, therefore, had a legitimate expectation that his contract which lapsed in February 2020 would be renewed for a further period of three (3) years only for the EACC issues to arise and the Respondent started granting him short 3 months and 6 months contracts as they deliberated on the extension of his employment contract amounting to unfair labour practice.

48. On the issue of whether the Claimant is entitled to the reliefs sought counsel submitted that on compensation under Section 49 the Claimant has sought that the court declares that the non-renewal was not based on any valid grounds and as such the Claimant be reinstated or alternatively awarded compensatory damages under section 49 of the Employment Act.

49. That the Claimant had laid out the compensatory damages for the remaining 2 years and 3 months period he would have worked to add up to the 3-year contract. The Claimant's basic pay, at the time, his contract was not renewed was Kshs. 211,000/-. The Claimant produced several payslips to show his basic salary. The Claimant was

also receiving several allowances including house allowance, leave allowance and responsibility allowance as per the Human Resource Policy and has set out the total amount he would have received for the remaining 2 years and 3 months period. The Claimant would have also received gratuity for the remaining period amounting to Kshs. 2,354,760/-.

50. On the award of acting allowance for period he was appointed as the acting sales manager counsel submitted that the Claimant, via a letter dated 2nd August 2019 was appointed to be in-charge of the Sales and Marketing Department on acting capacity. As per clause 5.2.1 of the Human Resource policy, an employee was entitled to an acting allowance at the rate of 15% of one's substantive salary. The Claimant had previously acted as a Sales Manager in 2012 and was paid his allowances at the time. The amount of Kshs.120,000/- as sought by the Claimant had not been disputed neither had the Respondent provided proof to show that the Claimant was paid the same.

51. On the award of underpaid Wages and House Allowance for the period from February 2017 to September

2018 counsel submitted that the Claimant had sought for the sum of Kshs. 2,294,964/- being underpaid wages and house allowance for the given period. The Claimant's contract was renewed for a period of three years in 2017, however, the Claimant's salary was not instantly reviewed to be in line with his current job group. He, therefore raised concerns over the same and followed up further via a letter dated 5th March,2018. The Managing Commissioner even noted that he had already made a recommendation for his salary to be reviewed so as to match that of his colleagues as per the Respondent's Human Resource Policy.

52. Counsel submitted that the Claimant was later issued with a change of advice informing him that his salary was reviewed and that his basic salary would be Kshs. 200,000/- and house allowance would be Kshs. 40,000/- The change of advice even noted the variance in the amounts the Claimant was being paid.

53. Counsel submitted that the amount sought under this limb was not disputed by the Respondent neither was the claim for underpaid wages. The Respondent made no explanations as

to why there was a variance at the time in the salary the Claimant was receiving from that of his colleagues within the same job group. Further, the Respondent did not provide proof to show that the amounts were paid.

54. On the award of erroneous deductions counsel submitted that the Claimant has sought for the sum of Kshs. 332,628/- which was erroneously and unfairly deducted by the Respondent in the months of May 2020 and July 2020. He attached payslips showing the deductions captured as “unpaid days”. The Claimant lodged a complaint over the same via letter dated 13th August, 2020 but never received a response as to why deductions were made on his salary. The deductions were unfair as no communication had been made in advance to the Claimant to prepare him for the eventualities. The Respondent did not provide any proof to show that the amount sought was ever paid or give any explanation or valid grounds as to why the amounts were deducted for the Claimant’s salary.

55. On the issue of whether reliefs or prayers e (ii), (f), (g) and (h) above were time barred counsel submitted that the Respondent indicated that the prayers as sought were statute

barred having been sought after the expiry of the mandatory limitations period provided under section 90 of the Employment Act. Counsel relied on Section 90 of the Employment Act and the case of **Chongwony v County Government of Bungoma (Cause 14 of 2019) [2022] KEELRC 3833 (KLR)** where the court in determining the issue of whether the claim for housing allowance was statute barred held that the same could not be defeated by statute limitations so long as the claim was filed within stipulated time.

56. Counsel urged the Honourable court to find as in the above precedents that the reliefs sought by the Claimant herein were not statute barred given that the Claim was filed within 3 years since the contract was for non-renewal. The Statement of Claim was also amended within three (3) years since the non-renewal and the Claimant was thus entitled to the reliefs as sought.

RESPONDENT'S SUBMISSIONS

57. The Respondent's Advocates Koceyo & Company Advocates filed its written submissions dated 12th December,

2025 and on the issue of whether non-renewal of the Claimant's contract amounted to unfair termination counsel submitted that the Claimant was aware of the official policy of the Respondent that upon re-opening in 2006, all persons holding managerial positions would be employed on contract terms for a maximum of three (3) years. That this was informed by the myriad challenges facing the Respondent at the time.

58. That on 1st September 2006, the Claimant was offered a fixed term contract as an IT Administrator for a period of twelve (12) months. On 24th July 2012, the Claimant was re-deployed as ICT Manager with effect from 1st July 2012. That the above position was still subject to fixed term contracts which were subsequently renewed up to 14th April 2021 when the Claimant's contract expired and was not renewed.

59. Counsel submitted that vide letter dated 8th April 2021, the Respondent informed the Claimant that the contract set to expire on 14th April 2021 was not going to be renewed and the position was to be advertised for competitive recruitment whereby the Claimant could apply.

That the Claimant submitted an appeal letter dated 12th April 2021 to the Respondent which was considered and responded to vide letter dated 30th July 2021 upholding the decision of Respondent's Board of Commissioners.

60. That the Claimant remained in employment until 14th April 2021 when his contract expired. That the Claimant's employment being a fixed term contract was not terminated but expired by effluxion of time. The letter dated 8th April 2021 from the Respondent to the Claimant was not a letter of termination but a letter communicating the Respondent's intention not to renew the contract.

61. Counsel relied on the case of **REGISTERED TRUSTEES OF THE PRESBYTERIAN CHURCH OF EAST AFRICA & ANOTHER - VS- RUTH GATHONI NGOTHOKAR/UK/ (2017) eKLR** where the Court of Appeal held that where the contract ends by effluxion of time the employee cannot claim wrongful termination.

62. Counsel submitted that the Claimant's averment that it was unlawful to renew his contract for three (3) months as opposed to three (3) years was misleading as Clause 3.2.3.2

of the Respondent's Human Resource Manual provided that three (3) years was the maximum period that a contract could be renewed. Moreover, the Claimant did not have a right to legitimate expectation that his contract was going to be renewed for another period.

63. Counsel relied on the case of **TROCAIRE -VS- CATHERINE WAMBUI KARUNO (2018) eKLR** where the Court of Appeal discussed at length this position that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.

64. Counsel submitted that Respondent's non-renewal of the Claimant's contract did not amount to unfair termination. Counsel urged this Honourable Court to hold that the Claimant's contract expired by effluxion of time and decline to grant the Claimant's prayers arising from the alleged unfair termination.

65. On the issue of whether the Claimant was entitled to the reliefs sought counsel submitted that the Claimant was not entitled to prayers a, b, c, d, e and j of the Amended Statement of Claim dated 13th August 2024 as the Claimant's

contract was not terminated but expired by effluxion of time and did not raise any right of legitimate expectation for the Claimant.

66. In addition, the resolution by the Respondent's Board of Commissioners was not based on any report by the EACC as the decision was arrived at and based on the lapse of the contract period. The EACC only advised and encouraged the Respondent on the need for regular recruitment and competitiveness.

67. Counsel submitted that the Respondent was under no legal obligation to give reasons to the Claimant why his contract could not be renewed. That this was espoused in the among others the case of **KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS, HOSPITALS AND ALLIED WORKERS V EGERTON UNIVERSITY INDUSTRIAL CAUSE NUMBER 208 OF 2013 (ONGAYA J ON 12 JULY 2013)** that Employers are under no obligation to give employees reasons for non-renewal of fixed term contracts unless there is such an obligation created in the expiring contract.

68. With regard to prayer (e) being damages equivalent to 3 year contract period, counsel submitted that the court should not entertain this claim since this would be tantamount to granting orders for services not rendered. That this was espoused in the case of **GRACE AKINYI SEWE BOARD OF DIRECTORS NYASARE WATER SUPPLY ASSOCIATION INDUSTRIAL CAUSE NUMBER 55 OF 2013; [2013] LLR 303(/CK) (WASILWA, J ON 30 APRIL 2013)**

69. Counsel submitted that the position that was held by the Claimant was automatically deputized by a military officer who took up the duties of the ICT Manager upon non-renewal of the Claimant's contract and subsequently the position was advertised. The Claimant's contract with the Respondent, being a fixed term contract, did not carry any rights after the date of expiry. It is therefore impossible for the Respondent to renew the Claimant's contract for a period of three (3) years. Counsel relied on the case of **REGISTERED TRUSTEES OF THE PRESBYTERIAN CHURCH OF EAST AFRICA & ANOTHER -VS- RUTH**

GATHONI NGOTHO- KAR/UK/ (2017) eKLR on above on this assertion.

70. Counsel submitted that the Claimant was not entitled to the payers (f) and (g) as the same were time barred. That the Claimant sought to amend his Statement of Claim vide an application dated 19th January, 2024. This was four (4) years after the allegations in prayer no.(f), and five (5) years after the allegations in prayer no. (g). That this was against section 90 of the Employment Act. That prayers (f) and (g) emanated from a fixed contract that ended during the period stated and formed different causes of action. It therefore followed that time started running at the end of each contract. For instance, the cause of action for the acting allowance under prayer no. (f) was attached to the Claimant's contract of three (3) years from 11th February 2017 to 10th February 2020. When the contract expired on 10th February 2020, the cause of action for the allowances claimed arose. This cause of action became time barred on 11th February 2023 before the Application dated 19th January 2024 was instituted.

71. Counsel further submitted on prayer (g) for underpaid wages and house allowance was also attached to the contract for three (3) years from 11th February 2017 to 10th February 2020 that was issued to the Claimant vide letter dated 31st May 2017. That this cause of action became time barred on 11th February 2023 after three (3) years from the date the contract ended.

72. Counsel submitted that the Claimant was not entitled to prayer No. (h) as the amount of Kshs. 332,628/= sought as erroneous deductions by the Respondent in the months of May 2020 and July 2020 were excess monies paid to the Claimant during the end of his contract on 10th May 2020 which was renewed on 14th July 2020. That the Claimant was not entitled to a whole month's Pay during these months as they were affected by the end of the contract on 10th May 2020 and the commencement of another contract on 14th July 2020. That the Claimant was not working from 10th May, 2020 when his contract ended to 14th July 2020 when another contract commenced.

DETERMINATION

73. The court has reviewed and considered the pleadings by both parties, the testimony, the submissions and authorities relied on by both parties and has come up with two main issues: -

- a. *Whether the non-renewal of the Claimant's contract amounted to unfair termination*
- b. *Whether the Claimant is entitled to reliefs sought.*

Whether the non-renewal of the Claimant's contract amounted to unfair termination.

74. It was not in dispute that the Claimant was employed by the Respondent in 2006 as Assistant IT Manager and in 2012 he was promoted to ICT Manager. The Claimant was employed on short term contracts to a maximum of three years. The last substantive contract was between 11th February 2017 to 10th February, 2020. From there the Claimant was given three or six months contracts while the Respondent awaited the investigations from EACC on the authenticity of the Claimant's academic documents and irregular recruitment of the Claimant.

75. The Claimant alleged that he was terminated unfairly by the Respondent when the Respondent refused to renew his contract for further three years. That the short-term contracts of three- and six-months pending investigations by the EACC were unfair and illegal. The Respondent on the other hand alleged that the Claimant was on short fixed term contracts with the last fixed term contract expiring in April 2021 and there was no legitimate expectation to renew them.

76. Whereas this court notes that the Claimant's contracts were fixed term contracts the last one being for three months running from 15th January, 2021 to 14th April, 2021 the same were renewable at the option of the employer which depended on among other factors performance of the Claimant. It was not disputed that the Claimant was performing well as per the performance appraisals attached herein.

77. This court notes that when the three year contract ended in February 2020 the Claimant was given three to six months contracts while awaiting investigations from EACC on the

ethnicity of the Claimant's academic documents and the irregular recruitment. Whereas the Claimant has alleged that the said contracts were illegal and unfair the court notes that the Respondent's under clause 3.2.3.2 provided for a maximum of three years contract and there was no minimum.

78. In the case of **REGISTERED TRUSTEES OF THE PRESBYTERIAN CHURCH OF EAST AFRICA & ANOTHER VERSUS RUTH GATHONI NGOTHO KARIUKI 2017 eKLR** held as follows:-

'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'

79. In the case of **East Africa Sea Food Limited v Mwazito (Appeal E013 of 2020) [2023] KEELRC 1257 (KLR) (20 April 2023) (Judgment)** the court had this to say:-

Whether to issue a fixed term contract or not is regulated under the provisions of Section 10(3) (c) of the Act. An employer is allowed the prerogative to employ an employee under a fixed term contract with a start and end date. the self-executing contract is lawful and valid in employment and labour relations. The Court of Appeal in Civil Appeal No. 18 of 2018 [Transparency International Kenya v Teresa Carlo Omondi](#) [2023] eKLR held that a fixed-term employment contract does not create a legitimate expectation of renewal. Further, the non-renewal of fixed-term employment does not amount to unfair termination of employment warranting compensation. Section 10(3) (c) of the Act then lifts the obligation on an employer to explain

reasons for termination of employment in fixed-term contract as the same lapse by effluxion of time without creating a right of legitimate expectation of renewal.

80. In addition, in the case of [Margaret A Ochieng v National Water Conservation & Pipeline Corporation \[2014\] eKLR](#) the court while dealing with the question of whether there is automatic need for notice of renewal of a fixed-term contract held that;

Automatic renewal [of a fixed-term contract] would undermine the very purpose of the fixed-term contract, and then revert to indeterminate contracts of employment..... Courts have upheld the principle that fixed-term contracts carry no expectancy of renewal, in a catena of judicial authorities..... The Court is persuaded that the Claim has no merit. The fixed term contract had its own in-built termination notice, in that the date of termination was advised to the Claimant on execution of the three-year contract in December 2008. She knew termination would be upon the lapse of the three years in 2011 ...

81. In this case the Claimant's contract terminated by effluxion of time and the Respondent was not bound to give any reasons for failure to renew his contract. Whereas the Claimant alleged that the non-renewal was based on improper motives the same were not properly pleaded by the Claimant for this court to delve in to the same. In any case EACC vide the letter dated 11th March, 2021 advised that the Claimant's position be competitively filed by advertisement.

82. The Respondent vide the letter dated 8th April, 2021 notified the Claimant that it will not be renewing his position and that the same would be advertised and he was at liberty to apply. This was in compliance with section 11 of the EACC Act which forbids irregular recruitment and the Respondent was bound to adhere to the EACC guidelines. Once the EACC recommended that the Respondent ought to competitively fill the position by advertising the Respondent communicated this position to the Claimant.

83. It is therefore clear that the Claimant was never terminated, the Respondent had no obligation to issue termination notice so long as it notified him that it will not be renewing his contract hence his contract terminated by effluxion of time. In any event the Respondent ministerial responsibilities were taken over by the Ministry of defence in 2020 and the Claimant's position deputized by Military officer.

Whether the Claimant is entitled to reliefs sought

84. The court has established that the Claimant was never terminated and that his contract terminated by effluxion of

time. He was notified of the intention not to renew his contract and therefore was not entitled to any legitimate expectation. The Respondent's witness confirmed that he was also paid his final dues which included his leave pay and gratuity. The Claimant was therefore not entitled to any compensation for unfair termination.

85. Whereas by consent parties amended the statement of claim in August, 2024 to include the prayers for house allowance, annual leave, underpayments, responsibility allowance, gratuity, underpayments, acting allowance and erroneous deductions. This court notes that going by the last contract which expired in April, 2021 and the claim was amended in August 2024 this was past three year limitation period for employment matters as per reading of section 90 of the Employment Act. The consent of the parties could not sanitize the illegality. In any event the issue of limitation is a point of law and no estoppel can lie on a point of law.

86. **In conclusion the Claim is found unmerited and is hereby dismissed with costs.**

87. **It is so ordered.**

Dated at Nairobi this 16th day of February, 2026

Delivered virtually this 16th day of February, 2026

Abuodha Nelson Jorum

Presiding Judge-Appeals Division

