

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. E667 OF 2020

SYLVIA MWANGI.....CLAIMANT

VERSUS

**KENYA COMMUNITY DEVELOPMENT
FOUNDATION.....RESPONDENT**

JUDGMENT

The suit was filed vide a statement of claim on 3/11/2020 by the Claimant against the Respondent seeking the following reliefs: -

- (a) A declaration that the termination of the Claimant's employment was unlawful and unfair.
- (b) Equivalent of 12 months compensation for the unlawful termination.
- (c) Four months' salary in lieu of notice
- (d) Payment for days worked in May 2020.
- (e) Certificate of service
- (f) Costs and interest.

The Claimant CW1, adopted witness statement filed on 11/1/2023 as her evidence in chief. She testified that she was employed by the Respondent by a letter dated 30/10/2017 in the position of Team Leader Youth for Children. She was confirmed by a letter dated 16/4/2018. The initial employment was on 2 years fixed term contract to end on 30/10/2019. The Claimant served diligently and the contract was extended by a letter dated 7/11/2019 for a further period of six months effective 6/11/2019 and was due to end on 6th May 2020.

The Claimant received a letter dated 12/4/2020 notifying her that the extended contract was due to end on 6/5/2020. The Claimant was informed that her last day of work was 15/5/2020.

The Claimant responded to the notice of end of contract stating that the letter sent to her on 27/4/2020 was backdated to 14/4/2020. She sought clarification since the letter stated that the contract ends on 6/5/2020 at the same time the letter stated last day of work was 15/5/2020. The Claimant reminded the Respondent that in terms of the contract of appointment, she was entitled to 2 months' notice of termination or one month salary in lieu of notice. The Claimant wanted to serve the two months' notice.

The Claimant wrote a letter of demand to the Respondent, vide her advocates dated 7/5/2020 since the Respondent did not respond to her earlier letter. That the Respondent then responded directly to the Claimant inviting her to a meeting to discuss the issues without her advocate. The issues were not resolved hence the suit after a further demand note dated 31/8/2020.

CW1 states that the termination was unlawful and unfair.

Under cross-examination, CW1 said the work of the Respondent was not solely dependent on donor funds. That the budget was supported by external bodies and income generated by the Respondent itself. The Claimant said there was a gap between the date the 1st contract expired and the extended six months contract.

CW1 admitted that she received notice of the end of the contract dated 14/4/2020 but said she received it on 27/4/2020. That it was during the COVID-19 period. CW1 admitted that organizations faced financial difficulties at the time but stated that the Respondent did not face such financial difficulties. CW1 denied that the programme she served was no longer being funded by the donors. CW1 said she served multiple programmes and some were being funded.

CW1 said the termination was unlawful and unfair and she was entitled to 12 months compensation because contracts would roll over upon extension. CW1 said she was pursuing a donor at the time of the termination. CW1 said other employees' contracts were subsequently terminated following her claim.

Defence

The Respondent called RW1, Annabelle Karuri in defence of the case. RW1 said she was Corporate Affairs and Administrative Manager of the Respondent. She adopted a witness statement dated 3/5/2024 as her evidence in chief. She also produced exhibits '1' to '7' dated 25/6/2021 in support of the defence case.

RW1 stated that the Claimant served the Respondent on fixed term contracts which expired by effluxion of time. That the first two years contract dated 30/10/2017 expired on 30/10/2019 and was extended by a letter dated 7/11/2029 with effect from 6/11/2019 for a period of six (6) months which expired on 6/5/2020.

That the extension was granted based on expected funding since the Respondent was a donor funded organization. That in March 2020, the Respondent's donors pulled out due to the effects of COVID-19 pandemic on the Respondent's projects. That the Respondent notified the Claimant by a letter dated 7/5/2020 of the expiry of her contract and her dues were processed.

That the Respondent did not terminate the employment of Claimant but same ended by effluxion of time.

That the suit lacks merit and it be dismissed.

On cross-examination by the Advocate for the Claimant, RW1 said she was not employed by the Respondent at the time the Claimant left. That RW1 was presently in charge of the docket the Claimant served. RW1 admitted that the contract of Claimant provided for two months termination notice. RW1 admitted that the Respondent the Claimant to be accompanied by an advocate when the Claimant was invited to have discussions on an amicable settlement of the grievance raised by the Claimant in her letters.

RW1 said the Claimant was paid salary up to 26/5/2020 which included the notice period. The terminal benefits payable was notified by a letter dated 7/5/2020. RW1 said the Respondent was short of funds hence paid one month notice.

RW1 said all employees got end of contract notices at different times depending on their contracts. That the programme done by the Claimant

had not resumed until the date of hearing of the suit. That many staff in that programme left the Respondent.

RW1 was not aware if the Claimant got her certificate of service.

DETERMINATION

The parties filled written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. The issues for determination are: -

- (i) Whether the employment of the Claimant ended by effluxion of time or her employment was unlawfully and unfairly terminated by the Respondent.
- (ii) Whether the Claimant is entitled to the reliefs sought.

It is not in dispute that the Claimant earned Kshs. 265,804.00 salary per month and was initially employed by the Respondent on a two (2) year fixed term contract dated 30/10/2017 and the same expired on 30/10/2019.

The Respondent extended the contract for a period of six months by a letter dated 6/11/2019, a week after the expiry of the first contract.

In terms of clause 1 of the fixed term contract, the contract could be terminated upon giving two (2) months notice. Renewal of the contract beyond two years was said to depend on continued satisfactory performance and ability to raise funds for the work the Claimant was doing.

From the facts of this case, the extended contract of the Claimant for a period of six months ended on 6/5/2020 and the Claimant had been notified of the expiry by a notice of expiry dated 14/4/2020 on 27/4/2020, which was about 9 days to the date of expiry of the extended contract.

The fixed term contract, did not contain a clause requiring either party to notify expiry of the contract or for the employee to apply for renewal of the contract before its expiry.

It is therefore clear that the Claimant had no obligation to apply for the renewal of the six months contracts nor was there any obligation for the Respondent to notify the Claimant that it would not renew the contract of the Claimant.

The only issue that arises in this matter is whether the gap between the end of the 1st contract on 30/10/2019 and the renewal on 6/5/2020 changed the nature of the relationship between the Claimant and the Respondent.

This gap was inconsequential provided the Claimant and the Respondent subsequently entered into a second fixed term contract dated 7/11/2019 which letter of renewal/extension stated that the effective date of the new contract was 6/11/2019 and same was for six (6) months and due to end on 6/5/2020.

The notice of end of contract dated 14/4/2020 clearly stated that the end of the contract was on 6/5/2020 but also gratuitously offered the Claimant a further week to serve and make clearance up to 15/5/2020.

The extended expiry period did not prejudice the rights of the Claimant in any way.

Accordingly, the Claimant has failed to prove that the Respondent terminated her fixed term contract of employment at all. The same expired by effluxion of time on 6/5/2020.

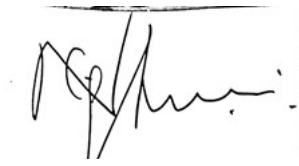
The Claimant has therefore failed to prove that the termination of her fixed term contract was premature, unlawful or unfair. She did not prove also that she was entitled to two-month termination notice of the expiry of the fixed term contract.

RW1 testified that the Claimant was paid salary up to 26/5/2020 which fact has not been traversed. The Claimant was indeed paid salary up to 26/5/2020. The Claimant is therefore not entitled to payment for days worked in May 2020 since she was effectively compensated for that period.

The claim for compensation for alleged unlawful and unfair termination is without merit and so is the claim for lost income for alleged unexpired term of contract.

Accordingly, the entire suit lack merit and is dismissed with no order as to the costs of the suit taking into account the good service the Claimant had given the Respondent for the period 2017 to May 2020.

Dated at Nairobi this 9th day of February 2026



Mathews Nduma

JUDGE

Dated, signed and delivered in open court at Nairobi this 16th day of February 2026

J. W. KELI

JUDGE

In the presence of:

Mr. Kinyanjui for Claimant

Mr. Kitche for Respondent

Mr. Kemboi – Court Assistant