

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT  
ELDORET**

**APPEAL NO. E005 OF 2024**

*(Before Hon. Lady Justice Maureen Onyango)*

**THE COMMITTEE MEMBERS OF  
CENTRAL RIFT COMMUNITY  
DEVELOPMENT PROGRAMME:**

**THE CHAIRMAN-DAVID KIPTUI  
SECRETARY - GEORGE ROTICH  
TREASURER-SALINA KEITANY  
PROGRAM CO-ORDINATOR-ALFRICK**

**KIPTANUI.....1<sup>ST</sup>  
APPELLANT**

**THE CENTRAL RIFT COMMUNITY**

**DEVELOPMENT PROGRAM.....2<sup>ND</sup>  
APPELLANT**

**VERSUS**

**RAEL KENDAGOR CHEMJOR.....**

**RESPONDENT**

*(Being an appeal from the Judgment of the Chief Magistrate's  
Court at Kabarnet CMELRC NO. E004 of 2022 delivered by  
delivered by Hon. Edwin Mulochi on 30<sup>th</sup> January 2024)*

**JUDGMENT**

1. The Appellants herein were the Respondents in Kabarnet CMELRC No. E004 of 2022, where the Respondent (then Claimant) sued the Appellants via a Memorandum of Claim dated 27<sup>th</sup> June 2022, seeking compensation and terminal dues for alleged unfair termination of her employment.
2. After hearing the parties, the trial court delivered judgment on 30<sup>th</sup> January 2024 in favour of the Claimant, awarding Kshs. 359,370.20 as compensation for wrongful dismissal, payment for unutilized leave days and severance pay. The Claimant was also awarded costs and interest on the decretal sum.
3. Dissatisfied with the judgment, the Appellants filed the instant appeal via a Memorandum of Appeal dated 14<sup>th</sup> February 2024 on the following grounds:
  - a) The Learned Magistrate erred in law and in fact in failing to consider that the Respondent's contract was a fixed term contract hence terminated by effluxion of time
  - b) The learned Magistrate erred in law and in fact by holding that the Appellants' action of non-renewal of the Respondent's contract on account of redundancy was unlawful for want of substantive and procedural test

- c) The learned Magistrate erred in law and in fact by failing to consider that the Respondent was not declared redundant as she was not terminated during her employment but upon expiry of her employment contract
- d) The learned Magistrate erred in law and in fact by failing to consider the Respondent's evidence that she was aware that her employment contract was a fixed term contract that was expiring on 31<sup>st</sup> July 2021
- e) The learned Magistrate erred in law and in fact by failing to consider that a fixed term contract carries no legitimate expectation of renewal of the Respondent's contract as Appellants did not give the Claimant any promises guaranteeing renewal, prior to the termination
- f) The learned Magistrate erred in law and in fact by failing to consider the Appellants evidence that the Respondent's termination was not on account of redundancy but expiry hence Respondent is not entitled to severance pay pursuant to Clause 21(a) (b)(C) and (d) of the Employment Contract and Section 40(1)(g) of the Employment Act No. 11 of 2007.

g) The learned Magistrate erred in law and in fact by holding that the Appellants are liable to pay the Respondent Kshs. 359,370.

4. The Appellants pray for the following orders:

a) The Appeal herein be allowed with costs to the Appellant.

b) The above decision of the Magistrate Court at Kabarnet in CMELRC No. E004 of 2021 delivered on 30th January 2024 be set aside and the Appellants' appeal be allowed in its entirety

c) Such further orders se made as this Honourable court will deem just.

5. The appeal was disposed of by way of written submissions. Only the Appellants' filed their written submissions dated 27<sup>th</sup> January 2025.

### **Analysis**

6. This being a first appeal, this court is guided by the principles espoused in several decisions among them, ***Selle & Another v Associated Motor Boat Co. Ltd & Another (1968) EA 123***, to re-evaluate and re-examine the evidence adduced in

the trial court in order to reach its own finding, taking into account the fact that this court had no opportunity of hearing or seeing the parties as they testified.

7. Vide a Memorandum of Claim dated 27<sup>th</sup> June 2022, the Claimant (now the Respondent) averred that she was employed by the Appellants as a Cluster Office Administrator on 1<sup>st</sup> January 2006, a position she held until 1<sup>st</sup> July 2016. She further averred that by a letter dated 1<sup>st</sup> July 2016, she was re-engaged as an Administrative Assistant, a position she held until 1<sup>st</sup> July 2019 when she was terminated verbally at a sensitization meeting.
8. According to the Claimant, on 1<sup>st</sup> July 2019, the Chairman, in the presence of the Secretary and Treasurer, verbally terminated her at a sensitization seminar held at Cheptebo on the ground that there was lack of finances. She averred that she handed over the keys in her possession and proceeded home immediately.
9. The Claimant further averred that the Appellants drafted a letter and backdated it to 28<sup>th</sup> June 2019 stating that the contract of service would not be renewed, thereby purporting to terminate her services.

10. She maintained that the letter dated 28<sup>th</sup> June 2019 terminating her services was delivered to her residence by the project driver on 10<sup>th</sup> July 2019.
11. She averred that the termination of her employment was premeditated, unfair, and was not done in accordance with the provisions of the Employment Act, the Constitution, and the Fair Administrative Action Act.
12. The Claimant particularized the unfairness of her termination as follows:
  - i. Failure to properly communicate the reasons for termination,
  - ii. Verbal termination in the presence of colleagues, causing indignity and defamation,
  - iii. Selective redundancy while retaining colleagues in similar roles,
  - iv. Biased and wrongful decision-making,
  - v. Irregular and premature termination of her contract,
  - vi. Breach of natural justice and violation of Articles 41 and 47 of the Constitution,
  - vii. Improper computation of her terminal due.
13. The Claimant consequently sought the following reliefs:

- a. A declaration that the Claimant suffered unfair and unlawful termination of services by the respondent,
- b. General damages for unlawful dismissal and defamation,
- c. Payment for unutilized leave Kshs. 14, 268.80/=,
- d. Severance pay for 13 1/2 years worked Kshs. 282,268.80,
- e. Compensation for wrongful and unlawful dismissal,
- f. Costs of this suit,
- g. Interest on (a) to (g) above,
- h. Any other relief that this honourable court may deem fit to grant.

14. The Appellants filed a Memorandum of Response dated 7<sup>th</sup> November 2022 in which they denied the Claimant's averments, particularly the allegation that she was verbally terminated on 1<sup>st</sup> July 2019. They maintained that the Claimant's employment was for a fixed term and that she had been notified on 28<sup>th</sup> June 2019 of the expiry of her contract.
15. The Appellants prayed that the suit be dismissed with costs.

## **Evidence**

16. The Claimant testified as CW1 and adopted her witness statement dated 27<sup>th</sup> June 2022 as her evidence in chief. She also relied on the documents filed in support of her case. She testified that her contract was renewable every three years and that she was informed that her position had been declared redundant. She stated that there were seven administrative assistants and that she did not know the criteria used to retain the others and edge her out. She denied being served with the letter dated 28<sup>th</sup> June 2019 prior to the alleged verbal termination on 1<sup>st</sup> July 2019.
17. On cross-examination, the Claimant stated that her last appointment letter was dated 1<sup>st</sup> July 2016 and that it was her third term renewal. She confirmed that she signed the employment contract covering the period from 1<sup>st</sup> July 2016 to 30<sup>th</sup> June 2019 and that she was aware the contract was to end in 2019.
18. The Claimant testified that she received her gratuity but was not paid Kshs. 800 per month for 22 months as acting allowance for the position of Acting Assistant Accountant, while the previous accountant earned Kshs. 8,800. She admitted that she did not raise this issue with management.

She further testified that by a letter dated 17<sup>th</sup> September 2019, she was invited to collect a cheque for unutilized leave days but she did not collect it.

19. On re-examination, she stated that she was not paid the full acting allowance and that in 2016 the allowance was terminated and the acting appointment revoked. She stated that policy required confirmation if one acted for more than seven months. She maintained that her employment letter required written notice before termination and that she received the termination letter dated 28<sup>th</sup> June 2019 on 10<sup>th</sup> July 2019 after being verbally terminated on 1<sup>st</sup> July 2019. She stated that she had nine unutilized leave days out of the annual entitlement of twenty-four days and that the Respondents had under-quoted her dues.
20. She maintained that her contract was for three years but renewable and that her position was declared redundant.
21. The Respondents called Alfonse Kiptanui, the 2<sup>nd</sup> Respondent's Programme Coordinator, who testified as RW1. He adopted his witness statement dated 7<sup>th</sup> November 2023 as his evidence in chief and relied on the documents filed by the Respondents.

22. On cross-examination, RW1 maintained that the Claimant's employment ended on 30<sup>th</sup> June 2019. He stated that the letter dated 28<sup>th</sup> June 2019 was delivered to the Claimant on 10<sup>th</sup> July 2019. He further stated that the Claimant acted as Assistant Accountant for five months and was paid Kshs. 56,000 for the acting role. He maintained that the notice dated 28<sup>th</sup> June 2019 was not short and that the Claimant was paid one month's salary in lieu of notice.
23. Upon the close of the Respondents' case, the trial court delivered judgment in favour of the Claimant, awarding her Kshs. 250,905.60 as compensation for wrongful dismissal, Kshs. 14,374.80 as payment for unutilized leave days and Kshs. 94,089.80 as severance pay
24. This is the judgment that is the subject of the present appeal

### **Appellants' submissions**

25. In their submissions, the Appellants framed the issues for determination as follows:
  - i. Whether the Respondent is entitled to the awards made in the judgment dated 30<sup>th</sup> January 2024,

- ii. Whether termination of the Respondent's contract of service was fair and lawful.
26. On the first issue, the Appellants submitted that the Respondent's contract was a fixed-term contract which terminated by effluxion of time. They submitted that the Respondent admitted in her witness statement and on cross-examination that she was aware of the fixed-term nature of her contract and that the contract would expire on 30th June 2019.
27. The Appellants maintained that the Respondent's contract naturally expired, having run its agreed term from 1st July 2016 to 30th June 2019. They further submitted that during a sensitization meeting held on 1st July 2019, employees were informed that the organization would undergo restructuring due to insufficient funding.
28. They submitted that employees were to receive their June 2019 salaries together with one month's salary in lieu of notice.
29. The Appellants asserted that the Respondent was not terminated, that her contract came to its natural end.

30. They submitted that the expiry of the contract coincided with the organization's restructuring due to insufficient funds.
31. The Appellants submitted that the Learned Magistrate erred in concluding that the Respondent was declared redundant, while the termination resulted from the natural expiry of her fixed-term contract. In support of this position, the Respondents relied on decisions in ***Fatuma Abdi v Kenya School of Monetary Studies (2017) eKLR*** and ***Rajab Barasa & 4 Others v Kenya Meat Commission (2016) eKLR***.
32. On the second issue, the Appellants submitted that fixed-term contracts are not subject to the same protections as indefinite contracts unless termination occurs during the contract term. They argued that the Respondent failed to prove any breach of contractual or statutory obligations during the subsistence of the contract. They contended that there was no premature termination or violation of procedure, and that the Learned Magistrate erred in awarding Kshs. 250,905.60 as compensation for wrongful dismissal.
33. Regarding the award of severance pay, the Appellants stated that the Claimant was not entitled to the same placing

reliance on Clause 21(e) of the employment contract, which provided:

*“The parties hereby specifically agree that you shall not be deemed to have been made redundant if your services are terminated due to the completion of the project or due to lack of funding... and in any case you shall not be entitled to severance pay...”*

34. In conclusion, the Appellants urged this Honourable Court to allow the appeal with costs.

### **Determination**

35. I have considered the Appellants’ Record of Appeal and the submissions on record. The grounds of appeal may be summarized into the following issues for determination:
- i. Whether the Respondent’s fixed-term contract expired by effluxion of time or whether her employment was terminated
  - ii. Whether the Respondent was declared redundant
  - iii. Whether the Respondent was entitled to compensation for unfair termination
  - iv. Whether the Respondent was entitled to severance pay

v. What orders should issue?

*Whether the Respondent's fixed-term contract expired by effluxion of time or whether her employment was terminated*

36. It is not disputed that the Respondent was employed on a fixed-term contract running from 1st July 2016 to 30th June 2019. The Respondent admitted during cross-examination that she signed the contract and was aware of its expiry date.
37. The Court of Appeal decision in ***Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho [2017] eKLR*** pronounced itself on the issue of fixed term contracts as follows:

*"29. Bearing the foregoing in mind, we note that a fixed term contract carries 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 of the months 5<sup>th</sup> of April up to 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.”*

38. The Respondent did not produce evidence of any promise, representation, or established practice that created a legitimate expectation of renewal. Her assertion that the contract was renewable does not, in itself, create a legal obligation to renew.
39. The evidence on record shows that the Respondent’s contract ran its full term on 30<sup>th</sup> June 2019. The fact that the non-renewal letter was delivered on 10<sup>th</sup> July 2019 does not alter the legal position that the contract had already expired.
40. Consequently, this Court finds that the Respondent’s contract expired by effluxion of time.

*Whether the Respondent was declared redundant*

41. Redundancy is defined under Section 2 of the Employment Act as the loss of employment through no fault of the employee where services become superfluous.
42. The Respondent asserted that she was verbally informed her position was redundant due to lack of funds. However, as already mentioned, her contract had reached its expiry date.

Where a fixed-term contract expires, the issue of redundancy does not arise.

43. This Court therefore finds that the Respondent was not declared redundant; rather, her contract came to an end by effluxion of time.

*Whether the Respondent was entitled to compensation for unfair termination*

44. Compensation for unfair termination under Section 49 of the Employment Act arises where termination is found to be unfair.
45. Having found that the Respondent's contract expired by effluxion of time, there was no termination capable of being declared unfair.
46. The trial court therefore erred in awarding compensation for wrongful dismissal as the Respondent was not unfairly terminated from employment.

*Whether the Respondent was entitled to severance pay*

47. Severance pay is payable only in cases of redundancy under Section 40(1)(g) of the Employment Act. In view of this

court's finding that redundancy was not proved, there is no legal basis for severance pay. The award of severance pay by the trial court was therefore erroneous.

*What orders should issue?*

48. Having found that the termination of the Respondent's employment was not wrongful or unfair, there was no justification for the award of compensation for unfair termination or severance pay.
49. The only award remaining for consideration is Kshs. 14,374.80 awarded as payment for unutilized leave days. In her testimony, the Respondent stated that she was invited by the Appellants to collect the cheque for unutilized leave days but she did not collect the same. The Appellants in their submissions did not submit on the issue and therefore, I am of the considered view that the award is not disputed. The award for unutilized leave days is therefore upheld.
50. In the upshot, this Court finds that the appeal has merit and enters judgment in the following terms:
  - a. The appeal is hereby allowed.

- b. The judgment of the trial court awarding compensation for wrongful dismissal and severance pay is set aside.
- c. The award for payment of unutilized leave days is upheld.
- d. Each party shall bear its own costs of the appeal.

51. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY  
THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**M. ONYANGO  
JUDGE**