

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E307 OF 2024

GEOFFREY KIPYEGON

KOECH.....CLAIMANT

VERSUS

**NATIONAL GOVERNMENT CONSTITUENCY
DEVELOPMENT FUND.....
RESPONDENT**

JUDGMENT

Introduction

1. The Claimant lodged this suit vide a Memorandum of Claim dated 24th April, 2024, and filed on 26th April, 2024. He seeks the following reliefs:
 - i. A declaration that the prolonged interdiction without subjecting him to a disciplinary process, the withholding of half his salary, and the failure by the Respondent to afford him an opportunity to defend himself amounts to unfair administrative action and unfair labour practices.
 - ii. A declaration that the prolonged interdiction without a disciplinary process until the Claimant's contract lapsed by effluxion of time amounts to unfair, wrongful, and unlawful dismissal.

- iii. Damages for wrongful termination equivalent to 12 months' gross salary at Kshs. 212,752.00 per month, amounting to a total of Kshs. 2,553,024.00.
 - iv. One month's gross salary in lieu of notice amounting to Kshs. 212,752.00.
 - v. Kshs.1,045,264 being accumulated withheld salary and allowances for the period March 2022 to November 2022.
 - vi. Kshs.14,000/= being unpaid leave allowance for the year 2022.
 - vii. Kshs.108,397/= being the unpaid Transfer Allowance
 - viii. Kshs.7,659,072/= being compensatory award for unfair treatment.
 - ix. General damages.
 - x. Certificate of service.
 - xi. Costs of the suit.
 - xii. Interest on items iii, iv, v, vi, vii, & viii above.
2. The Respondent entered an appearance and subsequently filed a Statement of Response to the Claim dated 7th June, 2024, denying the Claimant's allegations of unfair termination, and asserting that his contract lapsed by effluxion of time.
3. The suit was heard on 12th May, 2025, when the Claimant testified in support of his case, adopted his witness statement, and produced his documents as exhibits in the case. The Respondent's case was subsequently heard on 7th October, 2025, when one Mr. Duncan Emuron Eker testified

in support of the Respondent's case, adopted his witness statement, and produced the Respondent's documents as exhibits in the case.

4. Submissions were received from both parties and have been duly considered.

The Claimant's Case

5. The Claimant states that he was employed by the Respondent as a Fund Account Manager in Scale 8 of the Constituencies Development Fund and was subsequently promoted to Scale 6 and later to Senior Fund Account Manager in Scale 5 due to good performance and excellent appraisals. He avers that during his 15 year service, he worked in several constituencies, including Nakuru Town, Mogotio, Eldama Ravine, and Nandi Hills.
6. He avers that he was initially appointed on 28th August 2007, confirmed on 20th June 2009, and had his contract renewed four times (2010, 2013, 2016, and 2019).
7. The Claimant states that in March 2022, he was interdicted and put on half pay (with full house allowance and medical benefits) through a letter dated 25th February 2022. He avers that the interdiction was based on an Internal Audit Report dated 4th March 2022 concerning funds allocated to Eldama Ravine Constituency for the 2018/2021 financial years.

8. It is his case that an audit had been conducted between 14th and 23rd December 2021, after he had already been transferred to Nandi Hills, and that he was not involved in the audit process, as auditors did not invite him to entry or exit meetings, or give him an opportunity to respond to the issues raised, despite the report addressing matters from his tenure as Senior Fund Account Manager.
9. The Claimant states that the special audit was instigated by individuals known to him, nine months after he had left Eldama Ravine Constituency, despite several prior internal and external audits during his tenure having been conducted with the Respondent's knowledge. He states that he conducted two formal handover meetings with the Regional Coordinator and Treasury officials on 3rd May 2021 and 28th June 2021, during which the issues later raised in the audit were extensively discussed and addressed.
10. It is his case that following his interdiction, he responded in detail to the Investigative Audit Report through a letter dated 5th March 2022, attaching a comprehensive rebuttal, but he received no response despite verbal and physical follow ups.
11. The Claimant states that on 25th May 2022, he submitted further clarifications and supporting documents, and later provided another detailed response dated 4th November 2022. He avers that throughout, he communicated via email, including a message on 6th October 2022 to the Chief

Manager, Internal Audit, requesting an update, noting that his contract was due to lapse on 30th November 2022 after eight months of interdiction, but his communications were not answered.

12. The Claimant states that he remained on interdiction until his contract lapsed in November 2022, and was not renewed. He contends that he was never summoned for a hearing, given prior notice of investigation, or afforded an opportunity to defend himself before interdiction. He maintains that he had a legitimate expectation that the allegations would be resolved through a fair hearing before his contract expired.
13. The Claimant avers that the Respondent's failure to communicate, conclude investigations, or accord him a disciplinary hearing violated his right to fair and expeditious administrative action and amounted to unfair labour practices, particularly due to the prolonged interdiction and withholding of half his salary without due process.
14. The Claimant contends that the Respondent violated Section 41 of the Employment Act by failing to follow due process in handling his case. He states that he was neither issued with a formal notice nor given an opportunity to be heard before adverse action was taken against him, resulting in financial loss and prolonged uncertainty.
15. It is his case that the interdiction and withholding of half his salary amounted to a disguised disciplinary action that

should only have followed proper procedure, including issuing formal charges, granting him a hearing in line with the rules of natural justice, allowing him to be accompanied by a shop steward or colleague of his choice, and ultimately delivering a formal decision either dismissing the charges or terminating his employment.

16. The Claimant maintains that the prolonged interdiction without any substantive administrative action subjected him to humiliation and indignity, and effectively amounted to a premeditated dismissal, with the expiry of his contract on 30th November 2022 serving as the intended exit point. He avers that the Respondent's failure to address the audit issues despite his numerous written responses, supporting documents, calls, and follow ups reinforces this claim.
17. He further states that even after his contract lapsed, the Respondent failed to resolve the matter despite several demand letters sent in 2023 and March 2024.
18. The Claimant further states that on 6th January 2023, he received a letter informing him that the Board had decided not to renew his contract due to alleged misappropriation of funds at Eldama Ravine Constituency. He avers that the Respondent unlawfully and arbitrarily removed him from employment while avoiding payment of his terminal dues under the guise of interdiction, causing him severe stress and reputational damage.

19. The Claimant states that his prolonged and indefinite interdiction denied him employment benefits, including paid leave for 2022, for which he claims Kshs.14,000 as payment for untaken leave. He further alleges that after being transferred from Nandi Hills Constituency to the headquarters on 27th January 2022, he was not paid a transfer allowance of Kshs.108,397, which he now claims.

20.The Claimant contends that the Respondent's failure to expedite and conclude the disciplinary process led to the non-renewal of his contract. He argues that had the matter been heard and finalized, he would have been cleared and his contract renewed. Consequently, he seeks a compensatory award equivalent to 36 months' salary for unfair treatment resulting in the non-renewal of his contract, totaling Kshs. 7,659,072.

21.He maintains that the Respondent's actions were unlawful, illegal, and contrary to the Employment Act and the Constitution.

22.On cross-examination, the Claimant told this court that, according to the Respondent's Human Resources Policy, an interdiction period should not exceed one year/12 months. He avers that the response he got from the Respondent was one issued in May 2023.

23.It is his testimony that he could not be taken through a disciplinary process after November 2022 since his contract

had lapsed. He states that his contract expressly provided for leave allowance, which was not paid.

24.The Claimant confirmed that during the interdiction period, he was on half salary. He states that he was on interdiction for 8 months.

25.The Claimant urges the court to allow his claim as prayed.

The Respondent's Case

26.The Respondent's case is that the Claimant applied for the position of Fund Account Manager on 15th February 2007 and was appointed on 28th August 2007 for a three year term. It avers that he subsequently applied for and was granted several contract renewals, the last of which took effect on 1st December 2019, also for a period of three.

27.The Respondent states that on 25th February 2022, the Claimant was interdicted, and on 6th January 2023, the Respondent informed him that his contract would not be renewed, as he did not apply for renewal of his contract prior to its lapse.

28.The Respondent states that although the Claimant's job scale was upgraded under its Human Resource Manual, this upgrade did not amount to a promotion as alleged. The Respondent further denies that the Claimant diligently served as claimed and admits that the Claimant's contract ultimately lapsed by effluxion of time.

29. The Respondent admits that the Claimant received both the interdiction letter dated 25th February 2022 and the investigative audit report dated 4th March 2022, which he acknowledged in his letter of 5th March 2022. It also confirms that the audit was conducted between 14th and 23rd December 2021.

30. It maintains that the Claimant was given an opportunity to respond to the investigation and that his challenge to the audit process is misplaced. It avers further that the internal audit report of 4th March 2022 arose from complaints regarding the Claimant's tenure as Fund Manager at Eldama Ravine, including allegations of embezzlement, misappropriation, and conversion of funds.

31. The Respondent avers that the audit established that over Kshs.90 million was lost through illegal bulk cash withdrawals, failure to allocate funds to priority and approved projects, and fraudulent activities during the 2018/2019 to 2021/2022 financial years, resulting in the decision to interdict the Claimant pending further action.

32. The Respondent further asserts that the Claimant was not entitled to prior notice before interdiction and that no legitimate expectation could override applicable laws and policies. It also denies that the Claimant was unfairly deprived of pay, stating that during interdiction, he received half his basic salary and all applicable allowances as reflected in his payslips.

33. The Respondent argues that since the Claimant admits his contract ended by effluxion of time, it is contradictory for him to allege entitlement to notice, formal charges, or a disciplinary hearing. It contends that, given his long service, the Claimant was aware of the maximum permissible period for interdiction and has not demonstrated that this period was exceeded.

34. The Respondent further states that throughout the interdiction period, the parties remained in communication through letters, emails, and verbal exchanges concerning the audit queries. It avers that due to the seriousness of the allegations, it resolved to interdict the Claimant pending investigations, and asserts that he has not cited any policy or regulation requiring formal notice prior to interdiction.

35. The Respondent states that at interdicted an employee remains in employment, subject to limitations specified in the interdiction letter, until a final decision is reached.

36. It is the Respondent's position that upon concluding its investigations and being satisfied that serious economic crimes had been committed, the Respondent resolved not to renew the Claimant's contract and communicated this decision on 6th January 2023. It avers that it also reported the matter to the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) in January 2023, pursuant to the relevant statutory

provisions, and states that those agencies are conducting independent investigations.

37.The Respondent states that the Claimant was never dismissed as alleged, but that his contract lapsed by effluxion of time.

38.The Respondent further states that terminal dues are payable only upon clearance, and asserts that the Claimant has failed, neglected, or refused to clear with the relevant departments even after his contract ended. It argues that while on interdiction, the Claimant could not expect to enjoy full contractual privileges, as his status was limited by the terms of the interdiction letter.

39.The Respondent further contends that the Claimant's allegation of indefinite interdiction disregards applicable laws, policies, and regulations, and that he has not demonstrated that he applied for or proceeded on leave. It also avers that the Claimant was paid his full transfer allowance in his January 2022 payslip.

40.The Respondent states that after communicating the decision not to renew his contract on 6th January 2023, its Human Resources department requested the Claimant to complete clearance procedures, but he declined or failed to do so.

41.The Respondent asserts that the Claimant was not dismissed but that his contract simply ended by effluxion of

time, a fact it says was well within his knowledge. It further contends that the Claimant failed to apply for renewal of his contract in accordance with the HR Manual, which required an application six months before expiry, notwithstanding that he was on interdiction at the time.

42.The Respondent argues that any delay in concluding the matter was caused by the Claimant's failure to provide satisfactory responses to the audit findings despite repeated requests and reminders. It maintains that the Claimant has not established any violation of rights or due process.

43.The Respondent contends that the interdiction was carried out in accordance with applicable laws and policies, and therefore any declarations sought by the Claimant are not justified and should be rejected.

44.It further argues that the Claimant is not entitled to 12 months' compensation for a contract that naturally expired, and that no notice was required from the Respondent before the contract's expiry. Instead, it was the Claimant's responsibility to apply for renewal, which he failed to do.

45.RW1 confirmed on cross-examination that the Claimant was not paid for leave in the year 2022, as the pay month for leave is December, and that his contract lapsed in November. It is further evidence that the transfer allowance is paid upon proper handover.

46.The Respondent prays that this suit be dismissed with costs.

Analysis and Determination

47. From the pleadings, the evidence adduced, and the parties' submissions, the dispute crystallizes into the following issues: -

- i. Whether the Claimant's prolonged interdiction amounted to an unfair and unlawful termination.
- ii. Whether the Claimant is entitled to the remedies sought.

Whether the Claimant's prolonged interdiction amounted to an unfair and unlawful termination

48. The Claimant was undisputedly interdicted on 25th February 2022, and he remained on interdiction for about eight (8) months until 30th November 2022, when his contract expired by effluxion of time. It is also not in dispute that, while on interdiction, he received half of his basic salary and full allowances, and that he was never invited to a disciplinary hearing during the eight (8) months he was away.

49. Interdiction per se is not termination, but a holding measure pending investigations, and which usually is effected where proceedings that may lead to dismissal of an employee are being taken or are about to commence.

50. This said, however, interdiction must be exercised reasonably, within policy limits, and must not be used to defeat due process. The right to fair administrative action under Article 47 of the Constitution and the duty to accord

procedural fairness under Section 41 of the Employment Act require that once investigations are completed, the employee is given a hearing before any adverse action is taken against them.

51. In ***Kenfreight (E.A) Limited v Benson K. Nguti [2016] KECA 409 (KLR)***, the Court of Appeal emphasized that procedural fairness under Section 41 is mandatory where an employer contemplates termination on grounds of misconduct.

52. In the instant case, the Respondent asserts that investigations revealed a loss of over Kshs. 90 million, and for which reason, it ultimately resolved not to renew the Claimant's contract.

53. There is no denying that the Respondent did not convene any disciplinary hearing before the expiry of the Claimant's contract. It is also evident that no notice to show cause was issued on the issues against the Claimant, and the decision not to renew his contract was communicated on 6th January 2023, after the said contract had already expired.

54. Further, the non-renewal was expressly tied to the alleged misappropriation of funds for which the Claimant was not accorded a hearing in accordance with Section 41 of the Employment Act.

55. Although the interdiction lasted eight months, the Claimant testified that under the Respondent's Human Resources

Policy, interdiction should not exceed 12 months. On the face of it, the period did not exceed the policy ceiling, and on this account, the issue, in my view, is not the timing, but rather the fact that the Respondent relied on an alleged misconduct as the reason for non-renewal, without subjecting the Claimant to a disciplinary hearing during the subsistence of his contract.

56. In my considered view, an employer cannot avoid procedural safeguards by allowing a contract to lapse while holding unresolved misconduct allegations over an employee's head. Where non-renewal is founded on allegations of misconduct, fairness demands that the employee be heard.

57. In the upshot, I find and hold that while the interdiction was not in itself unlawful, the failure to conclude the disciplinary process and accord the Claimant a hearing before grounding the decision not to renew his contract on misconduct amounts to an unfair administrative action and an unfair labour practice, and which renders the termination unfair.

58. It then follows that his exit from the service of the Respondent was unlawful and unfair.

Whether the Claimant is entitled to the reliefs sought

Damages for wrongful termination

59. Although the Claimant's contract evidently ended by effluxion of time, the Respondent's decision to base the non-renewal of his contract on misconduct that has not been

proven leads me to the conclusion that he was actually terminated and unfairly so.

60. The court, having found the termination unfair, no doubt entitles the Claimant to compensation pursuant to Sections 49 and 50 of the Employment Act.

61. The Claimant was in the service of the Respondent for a long period of time. It is evident from the record that, though the Claimant's contract was renewable, he did not show that he applied for renewal as he had previously, and the fault on the part of the Respondent is premised solely on not granting the Claimant an opportunity to be heard before declining to renew his contract on charges that were not put to him to answer.

62. In light of the foregoing, I reach the conclusion that an award of six (6) months' salary is sufficient compensation for the unfair termination.

One Month's Salary in lieu of notice

63. The Claimant was not issued notice nor paid for the unceremonious exit. I find his claim for one month's pay in lieu of notice merited and is awarded as prayed.

Accumulated Salary

64. The Claimant was paid half basic salary and full allowances upon interdiction as required under the Respondent's Human Resource Policy and Procedure Manual. Although Courts have consistently upheld such measures where

anchored in policy and pending investigations, the Respondent did not carry the investigation to its ultimate conclusion and cannot therefore say that the Claimant was guilty of the acts of misconduct that were the subject of the investigations.

65. For reason that the Respondent neglected to conclude the process and the Claimant's culpability cannot be confirmed, I find the claim merited and is awarded as prayed.

Unpaid Leave

66. The Claimant did not render service in most of the year subject of this claim. This claim is therefore not justified and is dismissed.

Transfer Allowance

67. The Respondent admitted that the Claimant was entitled to a transfer allowance for his last transfer, and has not shown that the same was paid. The claim is allowed.

Compensatory award for unfair treatment

68. There is no statutory basis for the claim of 36 months' compensation. Section 49(1)(c) of the Employment Act caps compensation at 12 months, and the Claimant has already been awarded compensation.

69. The claim lacks merit.

70. In whole, the Claimant's claim partly succeeds as follows: -

- a) A declaration that the Claimant was unfairly terminated.

- b) That the Respondent shall pay the Claimant 6 months' salary as compensation for the unfair termination at Kshs. 1,276,512/=
- c) That the Respondent shall pay the Claimant the withheld salary for the period March 2022 to November 2022.
- d) That the Respondent shall pay the Claimant a transfer allowance at Kshs. 108,397/=.
- e) The Respondent shall issue the Claimant with a certificate of Service within 14 days of this judgment.
- f) The Respondent shall bear the costs of the suit.

71. It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2026.**

**C. N. BAARI
JUDGE**

Appearance:

Ms. Mukundi h/b for Mr. Abidha for the Claimant

Ms. Ondieki h/b for Mr. Langat for the Respondent

Ms. Esther S- C/A