

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

ELRC CAUSE NO. 32 OF 2018

MATHEWS MUGENYA OLUM.....
.....CLAIMANT

VERSUS

KENYA NATIONAL PARALYMPIC
COMMITTEE.....RESPONDENT

JUDGEMENT

Background

1. The Claimant instituted the instant cause against the Respondent contending that the latter engaged his services as an Administrative Assistant in December 2014 but unlawfully terminated the contract in 2017. He contends that the Respondent's Chairperson and Secretary General approached him in 2014 with a request to work for the Respondent. He contends that he accepted the proposal pending approval by the Respondent's Executive Committee (EC).
2. The Claimant contends that despite the aforesaid engagement, the EC did not issue him with a formal contract of service. However, he contends that it (the EC) acknowledged his employment status by giving him various assignments to execute on its behalf.
3. The Claimant contends that according to the Respondent's Constitution, members of the EC work on voluntary basis.

However, he avers that the EC members may be remunerated if this is approved by the General Assembly.

4. The Claimant maintains that he did not serve as a member of the Respondent's EC between December 2014 and December 2015. He contends that he only served as the Respondent's employee during this period. He further avers that although he was initially engaged as an Administrative Assistant, the Respondent subsequently assigned him additional responsibilities of a Technical Officer on full time basis.
5. The Claimant contends that the Respondent's Constitution entrusts the EC with the task of setting the terms and conditions of service for employees. However, he contends that it (the EC) failed to discharge this mandate with respect to his engagement despite several reminders by him. As a result, he contends that he continued to work without clear terms and conditions of service and without being remunerated.
6. The Claimant contends that he helped the Respondent to set up its Secretariat in 2016. He avers that after setting up the Secretariat, the Respondent added him further responsibilities of serving as part of the staff at the Secretariat. He further contends that he used to execute his mandate under the direct supervision of the Respondent's Chairperson and Secretary General.
7. The Claimant contends that after he joined the Respondent's Secretariat, he was co-opted as a member of its (the

Respondent's) EC. As such, he asserts that he begun taking part in the activities of the EC from 2016.

8. The Claimant asserts that between January and May 2016, the Respondent paid him a weekly allowance of Ksh. 2,500.00 to cover his transport and lunch costs. He further contends that between June and August 2016, the Respondent paid him Ksh.26,000.00 per month as remuneration for his work at the Secretariat. However, he avers that the Chairperson of the Respondent withheld Ksh. 20,600.00 from the aforesaid salary for June, July and August 2016 without reason.
9. The Claimant contends that the Respondent paid him salary of Ksh. 35,000.00 per month for the period between January 2017 and April 2017 for the position of Technical Officer. However, he contends that in May 2017, the Respondent notified him that its Secretariat had been suspended indefinitely pending further deliberations. He contends that he subsequently wrote to the Respondent to inquire about the fate of his employment but received no response. He further avers that the Respondent did not pay him his outstanding dues.
10. The Claimant avers that the EC continued to hold meetings to which he was not invited. He further avers that the Respondent stopped assigning him work after April 2017. As such, he contends that the Respondent's actions constituted constructive termination of his services. He thus prays for the various reliefs set out in the Memorandum of Claim.

11. Although the Respondent entered appearance in the cause and filed a defense, it did not tender defense evidence in the cause. This is despite having been notified of the defense trial date.
12. During trial, the Claimant stated that the Respondent had denied having employed him. However, he reiterated that the two had an employment relationship. He maintained that the Respondent co-opted him into its Secretariat and also utilized his services as its Technical Officer and Administrative Assistant.
13. The Claimant relied on the Respondent's letter to him dated 4th April 2016 to assert that he was the latter's employee. He contended that in the letter, the Respondent described him as its Technical Officer and acknowledged that it had co-opted him into its Secretariat. He maintained that although the Respondent did not issue him with a written contract of service, he had an oral contract of service with it (the Respondent).
14. The Claimant stated that although the Respondent initially engaged him on part time basis, this arrangement was later converted into a full time engagement under which he was required to be at work from Monday to Friday of every week between 8 AM and 5 PM. He further contended that during his engagement, he used to report to the Chairperson and Secretary General of the Respondent.

15. The Claimant denied that the Respondent engaged him on voluntary basis. He insisted that he was supposed to be remunerated for his services.
16. During cross examination, the Claimant stated that he negotiated his salary at the rate of Ksh. 1,000.00 per day. He stated that the negotiations were oral but at a formal meeting. He further contended that in March 2017, the Respondent began paying him Ksh.35, 000.00 per month.

Issues for Determination

17. After evaluating the pleadings and evidence on record, the following issues arise for determination:-
 - a) Whether the parties had an employment relationship.
 - b) Whether the relationship was irregularly terminated.
 - c) Whether the Claimant is entitled to the reliefs which he seeks through this action.

Analysis

18. It is apparent that the parties did not have a written contract of service. Despite this, the evidence on record suggests that the two had an employment relationship. For instance, the Respondent's letter to the Claimant dated 4th April 2016 refers to the latter as the Respondent's Technical Officer. Further, the said letter affirms the fact that the Claimant was serving in the Respondent's Secretariat.
19. Clause 4.4.1 of the Respondent's Constitution provides that the Respondent's day to day activities are managed through the Secretariat. The clause further states that the Secretariat

comprises of staff who work under the supervision of the Secretary General.

20. This provision affirms that reality that the staff at the Secretariat are expected to be at the Respondent's premises on day to day basis in order to run its activities. Further, the said staff are to work under the directions and control of the Respondent's Secretary General.
21. This implies that the Respondent determines the place and hours of work for members of the Secretariat. Further, members of the Secretariat work under the control and directions of the Secretary General on behalf of the Respondent. As such, these members of staff are, for all purposes and intents, employees of the Respondent.
22. Consequently, by the Respondent retaining the Claimant's services at the Secretariat, it in effect engaged him as one of its employees. As such, the court is convinced that the Claimant served as the Respondent's employee.
23. The evidence on record further demonstrates that besides serving as a member of staff at the Respondent's Secretariat, the Claimant also served as the Respondent's Technical Officer. This affirms the fact that he was not engaged exclusively as a member of the Respondent's EC but also as its employee.
24. Having regard to the foregoing and taking into account the fact that the Respondent did not tender evidence to controvert the Claimant's position on the matter, the court

finds on a balance of probabilities that the parties had an employment relationship. It is so declared.

25. The next issue for determination is whether the contract between the parties was improperly terminated. The Claimant contended that the Respondent informed him in April 2017 that it had suspended activities of the Secretariat indefinitely and would communicate to him on the way forward in due course. However, he averred that he was not appraised of the matter as promised.
26. The Claimant averred that the Respondent also stopped paying his salary. He further contended that the Respondent stopped assigning him work. He averred that this amounted to constructive termination of his services.
27. The Respondent did not present evidence to controvert the Claimant's averments. As such, the Claimant's evidence on the matter remains unchallenged.
28. The Respondent's failure to continue remunerating the Claimant and allocating him work amounted to a fundamental breach of the contract of service between the parties. Such breach effectively but unlawfully terminated the employment relationship between the parties through repudiation of the contract of service. As such, the court declares that the Claimant's employment was unlawfully terminated.
29. The Claimant has prayed for compensation for unfair termination of his contract. Section 49 of *the Employment Act* entitles him to this relief. Having regard to the length of

service he had rendered to the Respondent before his contract was terminated, the court awards him compensation which is equivalent to his monthly salary for ten months.

30. The Claimant testified that the parties orally agreed on daily salary of Ksh. 1,000.00. However, he averred that in March 2017, the Respondent begun paying him Ksh. 35,000.00 per month. This evidence was not controverted by the defense. As such, the court finds on a balance of probabilities that the Claimant's monthly salary was Ksh. 35,000.00. That being the case, the compensation awarded to him for unfair termination of his contract is Ksh. 350,000.00.
31. The Claimant has also prayed for salary in lieu of notice to terminate his services. He is entitled to this relief by virtue of section 36 of *the Employment Act*. Accordingly, the court awards him Ksh. 35,000.00 as pay in lieu of notice.
32. The Claimant has prayed for: leave pay; unpaid salary from December 2014 to December 2015; and refund of Ksh. 20,600.00 allegedly irregularly deducted from his salary. However, he did not place before the court cogent material to enable the grant of the reliefs. As such, the prayers in this respect are declined.
33. The court awards the Claimant costs of the case.

Summary of the Findings and Orders

34. After evaluating the evidence on record against the applicable law, the court makes the following findings and consequential orders:-

- a) The court finds that the parties to the action had an employment relationship.
- b) The court finds that the Respondent unlawfully terminated the aforesaid relationship.
- c) The court awards the Claimant compensation for unfair termination of his contract of service in the sum of Ksh. 350,000.00.
- d) The court awards the Claimant the sum of Ksh. 35,000.00 as pay in lieu of notice to terminate his contract of service.
- e) Although the Claimant prayed for: leave pay; unpaid salary from December 2014 to December 2015; and refund of Ksh. 20,600.00 allegedly irregularly deducted from his salary, he did not place before the court cogent material to enable the grant of the reliefs. As such, the prayers in this respect are declined.
- f) The court awards the Claimant costs of the case.

Dated, signed and delivered on the 10th day of March, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI