

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI

APPEAL NUMBER. E181 OF 2025

SHADRACK KIMUYU NZIOKA.....APPELLANT

VERSUS

H YOUNG & CO [E.A] LIMITED.....RESPONDENT

*(Being an Appeal from the Judgment and Decree of the Hon. T.M. Orlando (PM)
delivered on 9th May 2025 in Nairobi CMELR No. E1312 of 2023)*

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Appellant herein, being dissatisfied with the Judgment and Decree of the Hon. T.M. Orlando (PM) delivered on 9th May 2025 in Nairobi CMELR No. E1312 of 2023 between the parties filed a Memorandum of Appeal dated the 8th June 2025 seeking the following orders: -
 - a) The Appellant's Appeal be allowed with costs.
 - b) The Judgement and Decree of the Lower Court be set aside and substituted with an award for Kshs. 460,895 to the Appellant for wrongful, unfair and unlawful termination of his employment.

GROUND OF THE APPEAL

2. The Honourable Magistrate erred in law and fact in finding that the Appellant did not prove his case on a balance of probabilities despite clear evidence tendered showing that his employment contract was extended.

3. The Honourable Magistrate showed extreme prejudice by ignoring evidence that emerged during cross-examination thereby arrived at an erroneous decision.

4. The Honourable Magistrate showed extreme prejudice by ignoring the submissions of the Appellant's Advocates on issues of law and fact thereby arrived at an erroneous decision.

BACKGROUND TO THE APPEAL

5. The Claimant/Appellant filed a claim against the Respondent vide a memorandum of claim dated the 17th of July 2023 seeking the following orders: -

a) The Respondent pays the Claimant dues as tabulated below:

i) Compensation for wrongful, unlawful and/or unfair termination of employment [12 Months x
Kshs 33,641] Kshs 403,704

ii) One Month's Salary in lieu of Notice Kshs 33,642

iii) Pay in lieu of annual leave Kshs 23,549

TOTAL Kshs 460,895

iv) Interest on (i), (ii) and (iii) above from the date the same became due until payment in full;
and

v) Costs of the Suit

b) Any other relief this Honourable Court may deem fit to award under the circumstances.

(pages 3-5 of the Appellant's ROA dated 21st August 2025).

14. The Claimant filed his list of witnesses dated 17th July 2022; witness statement of even date; and list of documents of even date with the bundle of documents attached (pages 7-18 of ROA).

15. The Respondent entered appearance and filed a defence dated 11th August 2023, later amended and dated 15th August 2023 (pages 20-26 of ROA). In support of their defence, the Respondent filed a list of witnesses dated 16th April 2024; witness statement of DUNCAN NYABUTO of even date; and a list of documents of even date with the bundle of documents attached (pages 27-38 of ROA).

16. The Claimant/Appellant's case was heard on the 9th of October 2024 where the claimant testified in the case, relied on his filed witness statement as his evidence in chief, and produced his documents as exhibits. The Claimant was cross-examined by counsel for the Respondent, Ms. Oduor (pages 40-42 of ROA).

17. The Respondent's case was heard on the same day with DUNCAN NYABUTO testifying on behalf of the Respondent. He relied on his filed witness statement as his evidence in chief, and produced the Respondent's documents as exhibits. The witness was cross-examined by counsel for the Claimant, Mr. Maina (pages 42-44 of ROA).

18. The court gave directions on filing of written submissions after the hearing, and both parties complied.

19. The Trial Magistrate Court delivered its judgment on the 9th of May 2025, dismissing the Claimant/Appellant's claim in its entirety, with an order that each party bears their own costs (judgment at pages 123-125 of ROA).

DETERMINATION

20. The appeal was canvassed by way of written submission. Both parties complied.

Issues for determination

21. The court on perusal of the grounds of appeal and the stamen of claim discerned the issues for determination in the appeal to be:-

- a) Whether the trial court erred in fact and law failing to find the employment contract of the Claimant was unfairly terminated.
- b) Whether the Appellant is entitled to relief sought

Whether the trial court erred in fact and law in failing to find the employment contract of the Claimant was unfairly terminated

22. The grounds of appeal were:-

- 1) The Learned Magistrate erred in law and fact in finding that the Appellant did not prove his case on a balance of probabilities despite clear evidence tendered showing that his employment contract was extended.

- 2) The Learned Magistrate showed extreme prejudice by ignoring evidence that emerged during cross-examination thereby arrived at an erroneous decision.
- 3) The Learned Magistrate showed extreme prejudice by ignoring the Submissions of the Appellant's Advocates on issues of law and fact thereby arrived at an erroneous decision.

APPELLANT'S SUBMISSIONS

23. This Appeal arises from the Judgment and Decree of Hon Tom Mark Orlando [PM] [DR], rendered on 9th May, 2025 in Nairobi CMELRC No. E1312 of 2023; Shadrack Kimuyu Nzioka-vs- H Young & CO [EA] Limited. The Claimant in that Suit, who is the Appellant herein, had instituted proceedings against the Respondent herein seeking Damages for unlawful termination.

24. A brief summary of the facts giving rise to the Suit in the Lower Court is that on 1st July, 2022, the Respondent employed the Claimant as a Pickup Driver. On 13th June, 2023, the Respondent without any reasonable cause terminated the Claimant's employment. A copy of the Memorandum of Claim is at Pages 3 to 18 of the Record of Appeal. In the Lower Court, the Respondent entered Appearance and filed a Response to the Memorandum of Claim. The Respondent averred that the Claimant's termed Contract concluded as a result of expiry. A copy of the Appellant's Amended Response to the Memorandum of Claim is at Pages 24-26 of the Record of Appeal.

25. At the Trial, the Appellant testified and closed his Case. The Respondent called One [1] Witness and closed its Case.

26. We invite your Lordship's attention to the Lower Court Judgment. It is at Pages 123 to 125 of the Record of Appeal. At Page 124 line 25-26, the Learned Magistrate found that the Claimant did not prove that he was terminated, the Contract lapsed and the same was not renewed. At lines 4043, the Learned Magistrate found that since the Claimant's Contract lapsed, he is not entitled to salary in lieu of notice and damages for wrongful termination. The Court proceeded to dismiss the Claimant's Suit.
27. We invite your Lordship's attention to the Memorandum of Appeal. It is at Pages 1 and 2 of the Record of Appeal. In the lower Court, the Appellant adopted his Witness Statement dated 17th July, 2023 S Co as his evidence in chief. It is at Pages 8 and 9 of the Record of Appeal. He testified that on or about 1st July, 2022, he was employed by the Respondent as a Pick up driver. Despite the long hours, grueling work and difficult environment accorded to him by the Respondent, he continuously discharged his duties diligently, throughout the period of his employment.
28. On 8th June, 2023, the Appellant was instructed to take Mr. Patrick who deals with GPRS gadgets in the Respondent Company to Muhoroni site. They worked well until Saturday, 10th June 2023, when the Appellant was instructed to take Mr. Patrick to Chemilil. The Appellant testified that normal working hours on Saturday are until 1:00pm. However, on this particular Saturday, he worked at Chemilil until past 1.00pm. At around 1.30 pm the Appellant started his journey back to Nairobi. The Motor Vehicle, KAY 135X, which they were using experienced some mechanical problems. They arrived in Nairobi at around

9.30pm. The Appellant dropped Mr. Patrick at his home and went to Industrial Area Police Station where he parked the Motor Vehicle and went home.

29. The Appellant testified that he had no choice but to park the Motor Vehicle at Industrial Area Police Station because the Respondent's Yards were closed. He could not find anybody to open the Respondent's yards for him at that time. On 12th June, 2023, the Appellant took the vehicle from the police station where he had parked it and went to the Respondent's Industrial Area plot where he usually works from. He reported the mechanical problem he experienced to his superiors. The Claimant was told to take the Motor Vehicle to the workshop for repairs.
30. On 13th June, 2023, the Appellant clocked into work. He was called by the Transport Manager, Mr. Michael, who informed him that he had a case to answer regarding the Muhoroni trip and Motor Vehicle KAY 135X. The Appellant was taken to the head of security, Mr. Mutua, who he found with the Human Resource Manager, Mr. Dancun Nyambuto. They enquired about the Appellant's journey and where he parked the Motor Vehicle after the trip. The Appellant explained to them the situation and challenges he had experienced. Mr. Nyambuto instructed him to get out of the office and wait until he is called.
31. At around 12.45pm on the same day [13th June, 2023] Mr. Nyambuto called the Appellant to his office and informed him that his employment with the Respondent had been terminated. He handed me a clearance form and a Termed Contract expiry Letter dated 13th June 2023. The Appellant produced the Termed Contract expiry Letter as exhibit 4. It is at

Page 18 of the Record of Appeal. The Appellant testified that the termination of his employment by the Respondent was baseless, unfair, unlawful, unilateral, without any prior warning, and in complete disregard to the procedure expressly set out in the Employment Act, 2007.

32. The Respondent alleged that the Appellant's employment was not terminated. It alleges that the Appellant's employment Contract expired on 31st May, 2023. We invite your Honour's attention to the Termed Contract expiry letter dated 13th June, 2023. It is at page 18 of the Record of Appeal. The Letter indicates that the Claimant's employment contract is expiring on 31st May, 2023. A date that had already passed. We humbly submit that if the Appellant's employment Contract had expired on 31st May, 2023 and had not been renewed, he would not have continued working for the Respondent until 13th June, 2023. The fact that the Respondent retained the Appellant after expiry of his Contract created a legitimate expectation that his Contract had or would be renewed. We humbly submit that there was a reason leading to the termination of the Appellant but the Respondent used the easier way out to avoid scrutiny and failed to renew the contract. We rely on the decision of the Employment and Labour Relations Court at Nairobi in ELRC No. 1405 of 2018; Tom Ukiru Kamaliki -vs- Centres for International Programs Kenya. The Court stated as follows at Page 3, Paragraph 6:-6. ... *The Claimant submitted that the principle of legitimate expectation for renewal of contract and the attendant rights was applicable in his case. He cited the case of Teresa Carlo Omondi v Transparency International- Kenya [2017] eKLR in which the Rika J. observed and set the following preconditions;*

(a) Where there is a promise to renew

- (b) *Where the actions of the employer lead the employee to believe the contract would be renewed.*
- (c) *Where the decision not to renew is based on improper motive.*
- (d) *Where there are countervailing militating against non-renewal.*

The Claimant submitted that the above principles clearly illustrate that for the principle to find life, the contract of employment must in itself make a promise for renewal over and above the employers conduct and custom. He submitted that Rika J. stated:-

"The burden of proof, in legitimate expectation claims, is always on the Employee. It must be shown that the Employer, through regular practice, or through an express promise, leads the Employee to legitimately expect there would be renewal. The expectation becomes legally protected, and ought not to be ignored by the Employer, when managerial prerogative on the subject is exercised. Legitimate expectation is not the same thing as anticipation, desire or hope: It is a principle based on a right, grounded on the larger principles of reasonableness and fair dealing between Employers and Employees. The Employee must demonstrate some rational and objective reason, for her expectation. The representation underlying the expectation must be clear and unambiguous. The expectation must be induced by the decision maker. The decision maker must have the authority to renew. Repeated renewals, extended service beyond the period provided for in the fixed term contract, and promise of renewal, are some of the elements that would amount to objective reasons underlying expectation of renewal. The presence of these elements however, is not to be taken as conclusive proof of legitimate expectation."

33. We urge the Court to find that the Appellant's employment Contracts were repeatedly renewed. Both Parties testimonies confirm the same. The Appellant continued working for the Respondent beyond the period provided for in the fixed term contract. The Appellant's testimony that he was still working after 31st May, 2023 was not controverted. We urge the Court to find that the Appellant had a legitimate expectation that his employment Contract had been renewed.

34. We humbly submit that the employment was terminated after he experienced technical difficulties with the Motor Vehicle assigned to him and for parking the Motor Vehicle at a Police station instead of the Respondent's yard. This explains why the termed contract expiry letter was issued to the Claimant a day after he had parked the Respondent's Motor Vehicle at a Police Station. Your Ladyship, Section 41 of the Employment Act, 2007 creates a statutory obligation on an Employer who is desirous of terminating the services of an Employee to first explain to the Employee the reasons for the termination and to listen to any explanations by the employee. The employee is also entitled to have a Representative present whilst the Employee is presenting the explanation.

35. It is therefore our humble submission that Your Ladyship, has first to determine whether the Appellant's employment was terminated. Secondly, your Ladyship has to determine whether the Respondent complied with the requirements of section 41 of the Employment Act before terminating the Appellant's employment. For that proposition, we rely on the following exposition by the Court in the course of its Judgment in Mombasa ELRC Cause No 146 of 2012; Alphonse Maghanga Mwachanya -vs-Operation 680 Limited:-

13. *"Section 41 of the Employment Act, 2007 has now created a statutory obligation on an employer before terminating the services of an employee on the grounds of misconduct, poor performance or physical incapacity to explain to the employee the reasons for the termination and to listen to any explanations by the employee. The employee is also entitled to have a representative present. This is what is now referred to in employment law and practice as procedural fairness.*

36. We urge your Ladyship to find that prior to terminating the Appellant's employment, the Respondent did not inform and/or explain to the Appellant, in a language he understood, the reasons why it was considering the termination. The Claimant was not issued with a Notice to Show Cause. We urge your Ladyship to find that the Respondent did not accord the Appellant any hearing whatsoever. For the foregoing reasons, we urge Your Ladyship to find that the Respondent's termination of the Appellant's employment was unlawful and unfair. We urge your Ladyship to find that the Appellant is entitled to compensation as prayed in his Memorandum of Claim. The prayers are at Page 4 of the Record of Appeal. We reiterate the Appellant's submissions in the Lower Court, Specifically at Page 49, line 40 to Page 50 of the Record of Appeal.

RESPONDENTS SUBMISSIONS

37. These written submissions are respectfully tendered on behalf of the Respondent in firm opposition to the Appeal preferred by the Appellant, challenging the Judgment and Decree of the Honourable Principal Magistrate delivered on 9th May 2025 in CMELRC Cause No. E1312 of 2023. In that well-reasoned decision, the learned trial court rightly dismissed the

Claimant's suit in its entirety. The present Appeal is therefore devoid of merit, is a clear invitation to this Honourable Court to disturb sound findings of fact and law, and ought to be dismissed with costs.

38. The Appeal is predicated upon a fundamentally flawed and legally unsustainable premise that the Appellant's fixed-term contract was somehow "extended," and that its natural lapse consequently constituted an unlawful termination. The Respondent submits that this contention is wholly unsupported by the evidence on record, is misconceived in law, and betrays a deliberate distortion of the contractual framework governing the parties' relationship. In essence, the Appeal is a thinly veiled entreaty for this Honourable Court to impermissibly rewrite a contract freely and deliberately executed by the parties, in blatant defiance of settled principles of employment and contract law.

39. It is trite law that a first appellate court will not lightly disturb findings of fact made by a trial court unless it is clearly demonstrated that the learned court acted in the absence of evidence, fundamentally misapprehended the evidence placed before it, or proceeded on the basis of erroneous principles of law. This principle was succinctly and authoritatively enunciated by the Court of Appeal in the celebrated decision of *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123, which remains the locus classicus on the scope and limits of a first appellate court's mandate.

40. The apex court has likewise underscored the doctrine of appellate restraint, affirming that an appellate court must accord due deference to findings of fact by a trial court and ought not to interfere therewith unless such findings are plainly perverse. This enduring principle was

articulated in *Peters v Sunday Post Limited* 119581 EA 424, a decision that has since been cited with approval and applied by the Supreme Court of Kenya. The Appellant has conspicuously failed to identify, let alone demonstrate, any misdirection in law or in fact on the part of the Learned Principal Magistrate that would justify this Honourable Court's interference with the impugned Judgment.

41. The pivotal question for determination is whether the Appellant's fixed-term contract lapsed by operation of law upon effluxion of time, or whether it was unlawfully and prematurely terminated as alleged. The Court of Appeal has conclusively pronounced itself on this issue in *National Water Conservation & Pipeline Corporation v Jayne Kanini Mwanza*. Civil Appeal No. 178 of 2014 (UR), where it emphatically held that a fixed-term contract comes to an end automatically upon the effluxion of the agreed term and neither notice nor justification is required, save where such obligations are expressly stipulated in the contract itself. The foregoing position was once again reaffirmed by the Court of Appeal in *Amatsi Water Services Company Limited v Francis Shire Chachi* 120181 CKLR (Court of Appeal at Kisumu), where the Court reiterated that the effluxion of time brings a fixed-term contract to a lawful and automatic end, absent any express contractual provision to the contrary. The Learned Magistrate therefore arrived at the correct conclusion in law and in fact, properly finding that the Appellant's contract came to an end by operation of law upon effluxion of time, and was neither terminated nor unlawfully interfered with in the manner alleged.

42. Continued service does not amount to renewal-The Appellant advances the contention that the alleged continuation of service beyond the contractual end date ipso facto amounted to a

renewal of the contract, a proposition that is legally untenable and unsupported by the evidentiary record. That proposition was firmly and unequivocally rejected by the Court of Appeal in *Registered Trustees of the Presbyterian Church of East Africa y Ruth Gathoni Neothe Kariuki* 2017) eKLR (Court of Appeal at Nyeri), where the Court held that the renewal of a fixed-term contract must be express, deliberate, and unequivocal, and cannot be implied or inferred merely from the fact of continued service beyond the contractual end date. In the present matter, no letter of renewal, contractual addendum, or fresh agreement was ever executed between the parties, thereby rendering the Appellant's contention wholly unsustainable in law and devoid of any contractual foundation.

43. Legitimate expectation must be clear, express, and proved-The doctrine of legitimate expectation does not confer a free standing or automatic entitlement. It is a narrowly tailored and carefully circumscribed principle, invoked only to restrain abuse of power where a public authority or employer has made a clear, unambiguous, and lawful representation upon which a party has reasonably and legitimately relied to their detriment. The Supreme Court of Kenya comprehensively and authoritatively expounded the doctrine of legitimate expectation in *Communications Commission of Kenya & 5 Others y Royal Media Services Ltd & 5 Others* 2014 eKLR, holding that the doctrine arises only in the clearest of cases namely, where a public authority makes an express, clear, and unambiguous promise, devoid of any relevant qualification, upon which a person reasonably relies to their detriment. The Supreme Court further issued a clear and emphatic caution that the doctrine of legitimate expectation is strictly delimited in scope and application. It cannot override express statutory provisions, cannot be anchored on mere wish, hope, or subjective anticipation, and cannot be deployed as a device to rewrite contracts freely entered into by

parties or to unlawfully fetter the proper exercise of lawful discretion. This position was once again affirmed by the Supreme Court in *Kenya Revenue Authority v Darasa Investments Limited* (2018) eKLR, where the Court underscored that any claim founded on legitimate expectation must strictly satisfy three indispensable thresholds; it must be lawful, reasonable, and induced by a decision-maker acting within the scope of lawful authority. Within the employment sphere, the Court of Appeal has consistently and unequivocally held that the doctrine of legitimate expectation cannot be invoked to defeat or override the well-established principle of effluxion of time governing fixed-term contracts. In *Kenya Revenue Authority v Mencinya Salim Murcani* (20101 cKLR (Court of Appeal at Nairobi) the Court of Appeal firmly held that a claim of legitimate expectation must be anchored in a specific, clear, and demonstrable representation or promise made by the employer, and cannot be founded upon an employee's unilateral assumptions, hopes, or subjective belief. The Court expressly cautioned that permitting alleged expectations to override clear and express contractual terms would be inimical to certainty in employment relations and would undermine the very foundation of contractual discipline.

44. Distinguishing the authority relied upon by the appellant-The Appellant places reliance on authorities in which courts considered the doctrine of legitimate expectation in the context of repeated renewals or express assurances. With respect, those decisions are plainly distinguishable on both factual and legal grounds and offer no assistance to the Appellant in the circumstances of the present case. The Court of Appeal confronted and decisively clarified this distinction in *Registered Trustees of the Presbyterian Church of East Africa v Ruth Gathoni Neetho Kariuki*. where it held that "legitimate expectation cannot be inferred merely from past renewals of a contract. Each renewal constitutes a distinct, conscious, and

deliberate act, and any alleged expectation must be firmly grounded in an express promise or a binding and consistent practice, not conjecture or assumption. "Crucially, the Court went on to underscore that prior renewals do not vest an employee with a perpetual or automatic right to further renewal, nor do they, by implication or otherwise, transmogrify a fixed term engagement into permanent or pensionable employment. Similarly, the Court of Appeal emphatically reaffirmed this position in *Transparencx International Kenya v Teresa Carlo Omondi* (2018) eKLR where the Court overturned the High Court's reliance on the doctrine of legitimate expectation and held that a fixed term contract carries no guarantee of renewal unless such guarantee is expressly stipulated. The Court categorically stated that legitimate expectation cannot arise in the face of clear and finite contractual timelines and cannot be employed as a substitute for an absent renewal clause.

45. Why the appellant's reliance on legitimate expectation fails-Applying the foregoing binding principles to the present Appeal, it becomes immediately apparent that the Appellant's case is devoid of any legal or evidentiary foundation, in that:

- a) No express, clear, or unequivocal promise of renewal was either pleaded or proved;
- b) The contract contained no clause express or implied providing for renewal;
- c) No representation of any nature was made by an officer vested with lawful authority to bind the Respondent; and
- d) On the contrary, the contract unequivocally stipulated that it would lapse automatically upon effluxion of time. The Appellant's reliance on the alleged continuation of service beyond the

contractual expiry date is legally untenable. The Court of Appeal has consistently and unequivocally held that mere administrative convenience, transitional arrangements, or short-term continuity of work cannot, in law, give rise to enforceable rights or legitimate expectations capable of overriding clear contractual terms. To accede to the Appellant's argument would be to engage in the very mischief against which the Supreme Court has expressly cautioned namely, the impermissible rewriting of contracts through judicial sympathy, in clear violation of settled constitutional and contractual principles, as emphatically stated in *Samuel Kamau Macharia & Another Kenya Commercial Bank Limited & 2 Others* (2012) KLR.

46. Section 41 of The Employment Act does not apply to lapsed contracts-The Appellant further advances the contention that he was entitled to a disciplinary hearing pursuant to Section 41 of the Employment Act, a submission that is fundamentally misconceived both in law and on the facts of this case. This argument is legally unsound. Obligations relating to procedural fairness arise only where an employer is taking steps to terminate a subsisting employment relationship, and not where a fixed-term contract has run its full course and lapsed by operation of law. The Court of Appeal drew this distinction with unmistakable clarity in *Rift Vallex Textiles Limited v Edward Onvanco Ovanda*. Civil Appeal No. 27 of 1992 (CA) where it held that the expiry of a fixed-term contract by effluxion of time does not constitute termination or dismissal, and therefore does not attract the procedural safeguards attendant to disciplinary action. Similarly, the Court of Appeal reached the same conclusion in *Bank of India x Amritlal Khetshi Shah* 120011 KLR, where it held that procedural safeguards are engaged only where an employer actively invokes termination, and do not arise where an employment relationship comes to an end through the natural

expiry of a fixed-term contract. Since the Appellant's contract had already lapsed by effluxion of time, the provisions of Section 41 of the Employment Act were plainly inapplicable and could not, in law, be invoked to found any claim of procedural unfairness.

47. Courts cannot rewrite contracts-To accede to the Appellant's prayers would, in effect, be to judicially transmogrify a time-bound contractual engagement into a perpetual one an outcome wholly inconsistent with both the express terms of the contract and settled principles of employment law. The Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others 120121 KLR decisively cautioned against such judicial overreach, underscoring that courts are enjoined to uphold rather than rewrite the sanctity of contracts freely and consciously executed by parties acting at arm's length.

48. Damages are unavailable where no unlawful termination is proved-Relief under Section 49 of the Employment Act is neither automatic nor presumptive; it is triggered solely upon a demonstrable finding of unfair termination duly established in law.

10.2. The Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya) [2017] eKLR authoritatively reaffirmed this position, holding that remedies under Section 49 of the Employment Act are contingent upon a prior and positive finding of unfair termination, and do not arise in the absence of such proof.

Decision

49. This being first Appellate court, its role is as stated in *Selle & Another v Associated Motor Boat Co. Ltd & Others* [1968] EA 123.

Re-evaluation of evidence

50. The Claimant pleaded his employment contract dated 1st July 2022 was unfairly terminated on 13th June 2023 (page 3-4 of ROA was statement of claim).

The statement of witness by the Claimant explained how the termination occurred stating it was unfair. (page 8 of ROA).

51. The Claimant produced a letter of termination was dated 8th June 2022 and stated in part, “This is to inform you that your services have been terminated with effect from 8th June 2022 due to completion of works”. (page 15 of ROA).

52. Another letter was filed by the Claimant dated 13th June 2023 (page 18 of ROA) entitled “Termed contract expiry”. It stated in part, “As you are aware your termed contract is expiring on 31st May 2013 (refer to clause 5 and clause 10 of your contract of employment. Kindly note we do not intend to renew.” Your final dues shall be calculated and paid as follows:-

Salary up to and including 31st May 2023, outstanding leave days, less any company liability.

Please clear with the stores before you leave. Our final dues will be processed and prepared for collection” (page 18 of ROA).

53. In defence the Respondent admitted the employment of the Claimant. The Respondent denied unfair termination based on disciplinary and stated the employment concluded as a result of expiry of his termed contract expiry on 31st May 2013 and the Claimant was aware.

54. The Respondent further stated the gross salary was Kshs.29,282 as per termed contract and leave was taken and outstanding paid. The Respondent denied owing the Appellant.
55. In support of the response, letter employment dated 16th June 2022) renewal notices with last dated 31st May 2023 (page 34 of ROA), final dues computation slip dated (page 35).
56. The certificate of service was produced indicating date of leaving on 13th June 2023 (page 38 of ROA).

Hearing before Trial Court

57. The Claimant during cross-examination confirmed his last contract was extended to 31st May 2023. The Claimant was referred to letter dated 13th May 2023 and the Respondent had no intention of renewal the Claimant told the trial court he was sacked because he parked the vehicle (he was employed as a driver) at the police station. The claimant confirmed that he had no document stating that the same was terminated for having parked at police station and his demand did not have such allegations.
58. Conversely the Respondents witness Duncan Nyabuto during cross-examination he confirmed the letter of 8th June 2022 was on a previous contract. The witness denied having questioned the Claimant on the incidents of parking. He told the court the letter of 13th June 2023 was expressive the contract had expired. He did not dispute the letter of termination (see proceedings at pages 41 – 43 of ROA).

59. The trial court held that the termination was on account of expired contract. The court further stated “I don’t agree with the Claimant that the fact that he worked upto 13th June 2023 his contract was automatically.”
60. The court finds that this conclusion was the gist of the appeal. The letter of termination of 13th June 2023 was not in dispute. It was also not in dispute the claimant services were terminated vide the said letter. There is no cross-appeal on conclusion by the trial court that the Claimant worked upto 13th June 2023. It was also not in dispute the contract expired on 31st May 2023.
61. The respondent submitted that continued service after expiry of contract does not amount to renewal. That the Appellant advances the contention that the alleged continuation of service beyond the contractual end date ipso facto amounted to a renewal of the contract, a proposition that is legally untenable and unsupported by the evidentiary record. That proposition was firmly and unequivocally rejected by the Court of Appeal in Registered Trustees of the Presbyterian Church of East Africa vs Ruth Gathoni Neothe Kariuki 2017) eKLR (Court of Appeal at Nyeri), where the Court held that the renewal of a fixed-term contract must be express, deliberate, and unequivocal, and cannot be implied or inferred merely from the fact of continued service beyond the contractual end date. In the present matter, no letter of renewal, contractual addendum, or fresh agreement was ever executed between the parties, thereby rendering the Appellant's contention wholly unsustainable in law and devoid of any contractual foundation. The court noted at paragraph 24 the Court of Appeal observed- '24. We also do not think that the appellants’ conduct implied that the said contract was renewed. Firstly, it is clear that the respondent was informed by a letter dated 31st March, 2010 that her contract had expired and further communication in respect

of the same would come from the Head Office. Secondly, the respondent in her own evidence testified that she had been removed from the payroll once her contract expired. This was a clear indication of the appellants' position. Moreover, the decision to continue working in the hospital after the expiry of the contract was entirely on the respondent's own motion. She did not tender any evidence to the effect that she had been directed to continue working by the hospital's administration. It is trite that the function of a court is to enforce a contract as agreed by the parties.(emphasis given). In the instant case there was no communication on termination vide expiry of contract till on the 13th day after expiry of the contract and the appellant continuing to work. The facts are not similar. In the Court of Appeal decision, the employee received timely communication and was removed from payroll immediately. In the instant appeal the employee took leave for 2 days post the date of end of contract(page 37 of ROA) and received certificate of service stating he served to 13th June 2023. The court has to rely on documents by the employer on the employment. The court holds the contract was automatically extended and the employee was thus deemed to be holding a term contract similar to the expired one. The court finds and holds that the Respondent by agreeing to continue receiving services of the Claimant post 31st May 2023, date due for expiry of last renewal of contract, by conduct it was deemed the Respondent renewed the contract and any termination after the said expiry date was required to be in compliance with section 41 and 45 of the Employment Act. The witness told the court the termination was not on account of disciplinary. The trial court erred in failing to find that the renewal was automatic after 31st May 2023 for continued service by the Claimant and on conduct of employer who admitted vide certificate of service that the appellant served 13 extra days after date of expiry of contract. The appeal is allowed and the termination held as unfair.

Whether the Appellant is entitled to relief sought

62. The entire claim was dismissed. The court held the termination was unfair and thus the court is to consider remedies under section 49 of the Employment Act.

63. Compensation – The court on finding unfair termination the court is to consider and award all or any of the remedies under section 49 of the Employment Act. The court in determination of remedies is obliged to apply factors in Section 49(4) to wit- ‘A labour officer shall, in deciding whether to recommend the remedies specified in subsections (1) and (3), take into account any or all of the following—(a)the wishes of the employee;(b)the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and(c)the practicability of recommending reinstatement or re-engagement;(d)the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances;(e)the employee's length of service with the employer;(f)the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination; (g)the opportunities available to the employee for securing comparable or suitable employment with another employer;(h)the value of any severance payable by law; (i)the right to press claims or any unpaid wages, expenses or other claims owing to the employee;(j)any expenses reasonable incurred by the employee as a consequence of the termination;(k)any conduct of the employee which to any extent caused or contributed to the termination;(l)any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and(m)any compensation, including *ex-gratia* payment, in respect of termination of employment paid by the employer and received by the employee.’

The Appellant was first employed on 1st July 2022 and the last contracts renewed to 31st May 2023. Thereafter he served without issuance of contract till termination letter issued on 13th June 2023. The employment was thus of approximately a year. The Claimant did not contribute to the termination. There was no basis to find he could not get another job in the market. He was not deducted NSSF as per payslip before court (page 35) have no social security. The court for the foregoing reasons awards compensation equivalent of 3 months gross salary plus notice pay of 1 month gross salary. The Claimant pleaded salary of Kshs.33,642 while the Respondent stated it was Kshs.29,282 as per termed contract. The court on perusal of documents before court finds the Claimant reliance on overtime allowances as part of salary was misplaced. The court find the sum pleaded by the Respondent was consistent with the term contract and payslips produced by the parties thus Kshs.29,282 pleaded in amended defence is adopted as the gross salary in awarding compensation equivalent of 3 months gross salary and 1 month notice pay.

64. Leave - There was evidence of payment leave encashment and travel allowances in payslips produced before the trial court. The court found that was evidence on balance of probabilities the Appellant had been paid for pending leave days.

Conclusion

65. In the upshot the appeal is allowed. The judgment and decree of Hon. Tom Mark Orlando (Principal Magistrate) in Milimani Law Courts dated 9th May 2025 is set aside and substituted as follows. Judgment is entered for the Claimant against the Respondent as follows:-

- a) The contract is held to have been extended automatically from 31st May 2023 thus unfairly terminated on 13th June 2023.
- b) Compensation award for unfair termination equivalent of 3 months gross salary thus Kshs.29,282 x 3 KShs.87,846.
- c) 1 month Notice pay Kshs.29,282
- d) Interest at court rate on total sum(b and c above) of Kshs.117,128 from date of judgment.
- e) Costs of the suit.

66. The Appellant is awarded costs on appeal.

67. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF FEBRUARY, 2026.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant: Maina

Respondent: absent