

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR  
RELATIONS COURT AT KERICHO  
APPEAL NUMBER E002 OF 2025**

**BETWEN**

1. SIMBA CHAI SAVINGS AND CREDIT COOPERATIVE SOCIETY LIMITED
2. CHIEF EXECUTIVE OFFICER SIMBA CHAI SAVINGS AND CREDIT SOCIETY LIMITED
3. OPERATIONAL MANAGER, SIMBA CHAI SAVINGS AND CREDIT COOPERATIVE SOCIETY LIMITED
4. BOARD OF DIRECTORS SIMBA CHAI SAVINGS AND CREDIT COOPERATIVE SOCIETY .....APPELLANTS

**VERSUS**

1. CHERUYIOT BII
2. ROBERT MARITIM .....RESPONDENTS

[An Appeal from the Judgment and Decree of Hon. J.M. Munguti, S.P.M. in Kericho C.M.E.L.R.C No. E009 of 2023, consolidated with No. E010 of 2023, delivered on 6th February 2025]

*Rika J*

*Court Assistant: Emmanuel Kiprono*

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*M/S Bett & Company Advocates for the Appellants*

*M/S Ogaro Orayo & Company Advocates for the Respondents*  
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**JUDGMENT**

1. The Respondents are former Employees of the 1st Appellant.
2. It is not clear why they joined the 2nd , 3rd and 4th Appellants, to their Claims, which were Claims for unfair and unlawful dismissal.

3. The 1st Respondent was the Employer, solely responsible for any Claims lodged by its Employees.
4. A CEO and Operations Manager, in the understanding of the Court, are themselves Employees of the company. Unless the company is unknown, there is no justification in joining them to a Claim, as Employers.
5. The 1st Appellant is a legal entity, capable of suing and defending claims, in its own name.
6. The 1st Respondent was employed as a Credit Officer on 4th December 2014. The 2nd Respondent was employed on 4th December 2014 as a Marketing Officer.
7. The 1st Respondent worked until 13th December 2022, when the 1st Appellant suspended/ dismissed him without reason. The same decision was made against the 2nd Respondent on 11th December 2022.
8. Upon hearing the consolidated Claims, the Trial Court granted declaration that the Appellants' failure to renew the Respondents' contracts, was unlawful and discriminatory; it was declared that the Appellants had the option to reinstate the Respondents; and that if the Appellants were not ready to reinstate the Respondents, they would pay the Respondents damages equivalent of 12 months' salary and notice of 2 months, totalling Kshs. 615,891 each.

9. The Appellants filed Memorandum of Appeal dated 4th March 2025. They raise 9 Grounds of Appeal, which are related, and which may be summarized as follows: -

- a. The Trial Court erred in finding the Respondents' contracts were unfairly and unlawfully terminated, while the Respondents had conceded that they were on fixed-term contracts, which lapsed by effluxion of time.
- b. The Trial Court disregarded the Respondents' position that they voluntarily left employment.
- c. The Trial Court erred by concluding that non-renewal was unlawful and discriminatory, while the Respondents offered no evidence of discrimination.
- d. The award of damages and notice, were extraneous, without reasonable basis.
- e. The Respondents' Claims had no reasonable cause of action.
- f. The Trial Court erred by disregarding the Appellants' case.

10. The Appellants propose that: -

- a. Judgment and Decree of the Trial Court, dated 6th February 2025, be set aside and the Claims before the Trial Court dismissed in their entirety.

- b. Appellants are awarded costs of the Claim and the Appeal.
11. Parties agreed that the Appeal is considered on the strength of the Record of Appeal, and submissions. They confirmed filing and exchange of submissions at the last appearance before the Court, on 13th February 2026.
  12. The Appellants submit that it was common ground, that the Respondents were on fixed-term contracts. The 1st Respondent's last contract lapsed on 13th December 2022, the 2nd on 11th December 2022.
  13. The Appellants invoke the decision of the Court of Appeal in **Transparency International -Kenya v. Omondi [2023] KECA 174 [KLR]**, holding that the doctrine of legitimate expectation does not arise in the renewal of fixed-term contracts, and non-renewal cannot constitute unfair termination or dismissal.
  14. E-mails broadcast to Employees after December 2022, and the inclusion of the Respondents in those e-mails, and in the minutes of staff meetings held after December 2022, did not show that they were Employees, or legitimately expected renewal.
  15. The Appellants submit that the Trial Court went against the principle that Parties are bound by their pleadings, by finding that the Respondents were discriminated against by the Appellants, and by awarding damages for discrimination, without pleading by the Respondents that there were

discriminated against. They rely on the Court of Appeal decision in **Commission & Another v. Stephen Mutinda Mule & 3 Others [2014]** holding that a Court does not have a licence to traverse issues not raised in the pleadings.

16. None of the remedies granted, were pleaded, particularized or sought.
17. The Respondents submit that it is not true that they left work voluntarily, upon lapse of their contracts.
18. The 1st Respondent's contract was to lapse on 13th December 2022. He however applied for annual leave of 9 days, which was approved, ending 29th December 2022. The understanding of the Parties was that the Claimants, were still in employment, after their contracts had lapsed.
19. In addition to leave approval, extending beyond the fixed period, the 1st Claimant states that he was compelled to sign an apology letter by the CEO in the new year 2023. He would not be signing an apology letter, if he was no longer an Employee.
20. The Respondents submit further that they were advanced loans by the Respondents, mid-2022. The loans were repayable in 5 years. They would not have been advanced the loans, if their employment was not expected to go beyond 2022.
21. Minutes of a meeting held by the 1st Appellant on 18th May 2023, clearly indicates that the Respondents were absent with apology. The

Appellants acknowledged that the Respondents were still in employment, as of 18th May 2023.

22. On discrimination, the Respondents submit that the Trial Court did not err. They pleaded for declaration that termination was unlawful, unfair and invalid. There was evidence of discrimination, and the Trial Court did not go beyond the pleadings and the evidence.
23. Page 61 of the Record of Appeal, has records of performance appraisal. Renewal of employment contracts was based on performance. The Respondents' performance was good.
24. Co-Employees Esther Jeruto Chebet, Clarkson Kiptum and Marck Rono Langat performed below the Respondents. Their contracts were renewed. The Appellants' witness, Patrick Kipngetich Bett, told the Trial Court that the Respondents were denied renewal of the contracts, on account of their character.
25. If the Respondents' employment ended in December 2022, why appraise them in March 2023?
26. Relying on the decision of the Court of Appeal in **Civil Appeal No. 31 of 2015, Kenfreight [E.A.] Limited v. Benson Nguti**, the Respondents submit that discrimination is a form of unfair termination.

### The Court Finds: -

27. Did the Respondents plead notice, equivalent of their 2 months' salary?  
The Court has not seen any pleading, evidence or prayer for notice of 2 months.
28. The Respondents have not addressed this Ground of Appeal, concerning award of notice.
29. The Court would agree with the Appellants that award of notice pay, equivalent of the Respondents' 2 months' salary, was wrong, as there was no prayer for notice. It was an award that was made contrary to the rules of pleading, enunciated in **Commission & Another v. Stephen Mutinda Mule & 3 Others [2014] e-KLR**. Courts have been cautioned in this decision, not to traverse issues that have not been raised by the Parties.
30. The Court does not find the conclusion by the Trial Court, that termination was discriminatory; and award of damages for discrimination; to have been in error.
31. The Respondents pleaded that they were unfairly dismissed, and that the entire process disregarded principles of good governance, good industrial relations and fair labour practices.
32. Under Section 45 [4] of the Employment Act, termination is unfair if based on any of the grounds stated under Section 46 of the Employment

Act, or if found out that in all circumstances, of the case, the Employer did not act in accordance with justice and equity, in terminating the employment of the Employee.

33. Section 5[3] of the Employment Act requires that no Employer shall discriminate against an Employee, on among other grounds, terms and conditions of employment, and termination of employment.
34. The circumstances of the Respondents' termination of employment, suggested that the Appellants did not act in accordance with justice and equity, and discriminated against the Respondents.
35. Operations Manager Patrick Bett, gave evidence at the Trial Court, stating that Respondents' Co-Employees, Kibet and Rono, performed lower than the Respondents on appraisal, but had their respective contracts renewed.
36. At the heart of the evidence was a Claim for unfair termination, based on a discriminatory decision by the 1st Appellant, and the Trial Court cannot be faulted, in characterizing damages awarded, to have been on account of discrimination.
37. The Respondents submit that discrimination can amount to unfair termination, relying on the Court of Appeal decision in **Kenfreight [E.A] Limited v. Benson K. Nguti** [supra]

38. The Respondents prayed rather inelegantly, for “ general loss and damages caused by unfair dismissal.”
39. They were granted equivalent of 12 months’ basic salary and benefits equivalent of 25% of the basic salary, described by the Trial Court as “damages for discrimination.” There was no other form of damages awarded, and the Court does not see how the description of damages by the Trial Court, would place what was awarded outside the prayer for damages for unfair dismissal.
40. The Court does not think that the Trial Court erred in awarding damages for discrimination. That award, was an award of damages that had been pleaded and sought under the head of unfair dismissal.
41. Did the Appellants unfairly and unlawfully dismiss the Respondents, or did the Respondents leave voluntarily, on expiry of their fixed-term contracts?
42. The Appellants argue vehemently that there was no expectation of renewal, and that the Appellants did not have any obligation to the Respondents, beyond the dates of expiry, in December 2022. They cite the decision of the Court of Appeal in **Transparency International v. Omondi** [supra].
43. The Respondents could not therefore argue, and the Trial Court was wrong in holding, that non-renewal of their contracts after December 2022, amounted to unfair termination.

44. The Respondents were employed on 4th December 2014, as credit officer and marketing officer, respectively.
45. They worked under different 6-month contracts, over a continuous period of 8 years.
46. Their last 6-month contracts commenced 10th June 2022, and were intended to lapse, on 10th December 2022.
47. The Appellants state that the contracts ended on 10th December 2022, and they were not renewed. There was no reasonable or legitimate expectation of renewal.
48. The Respondents' position is that the Trial Court did not err, in finding that there was expectation of renewal, and that non-renewal was discriminatory, amounting to unfair and unlawful termination.
49. The Court is inclined to agree with the Respondents on this ground.
50. The conduct and practice of the Appellants, would create reasonable and legitimate expectation in the minds of the Respondents, that they would continue working, after 10th December 2022.
51. Practice was, for 8 continuous years since the Respondents were employed, that they would be placed on 6-month contracts.

52. They had not served just one fixed-term contract. like Omondi in the Transparency International decision, which came up for renewal consideration; they had been working under multiple 6-month fixed-term contracts for over 8 years.
53. Until December 2022, these contracts had been renewed without fail. Even when the contract expired, the Respondents went on working, waiting for the next written contract of 6 months. Renewal was unailing.
54. This was the practice and pattern, over 8 years.
55. Parties agree that the only consideration for renewal was good performance.
56. The Respondents were appraised, and performed well above their peers, whose contracts were renewed.
57. If there were disciplinary lapses on the part of the Respondents, as was suggested by the Appellants at the Trial Court, that would be subject to disciplinary hearing, and termination, pursuant to the clause on termination, and in accordance with Sections 41, 43 and 45 of the Employment Act.
58. The clause on period of the contract, under the contracts executed by the Parties, was that contract renewal, was subject only to performance appraisal.

59. Mr. Patrick Bett, Operations Manager confirmed that renewal was based on previous performance, and that performance report availed to the Trial Court, did not include an Employee's character, as part of the evaluation matrix.
60. The Respondents were asked to write apology letters by the CEO. The request was made, and letters written on 9th March 2023, about 3 months from the date the Respondents' last contracts expired.
61. Why would an Employer demand an apology letter from a stranger?
62. On 18th May 2023, the 1st Respondent held a staff meeting at the main conference room.
63. Attendees, and those Employees who were absent with apology, are listed in the minutes recording the meeting.
64. Both Respondents are listed as Employees who were absent with apology. This is about 6 months, after their last 6-month contracts, expired. Why again, would strangers be listed as Employees, who were absent with apology?
65. Other aspects of conduct on the part of the Appellants, that betray an intention to have the Respondents continue working beyond 10th December 2022, include the annual leave of 9 days, extended to the 1st Respondent.

66. He applied for annual leave from 13th December 2022, to 29th December 2022.
67. The 1st Respondent approved leave. Why would an Employer grant annual leave to a stranger? It was logically expected, that the 1st Respondent would be a continuing Employee of the Appellants, for the period of leave.
68. The last aspect of the Appellants' conduct indicating their intention to continue employing the Respondents, beyond 10th December 2022, is that in mid-June 2022, the Respondents were advanced loans by the 1st Respondent, repayable within 6 years.
69. The presumption was that the Respondents would remain in the payroll of the 1st Respondent. Loan would be recovered through payroll check-off.
70. The Court of Appeal, in **Keen Kleeners v. Kenya Plantation and Agricultural Workers Union [2021] KECA 352 [KLR]**, established that there can be legitimate expectation on renewal of fixed-term contracts. Legitimate expectation could arise where there were assurances of renewal by the Employer; where the conduct of the Employer creates expectation of renewal; and where previous practice of the Employer, was to renew the contract.

71. This interpretation has statutory support under Section 45 [5][d] of the Employment Act, which requires the Court, in determining if it was just and equitable for an Employer to terminate an Employee's contract, to consider "the previous practice of the Employer, in dealing with the type of circumstances which led to termination..."
72. The 1st Appellant had for over 8 years, terminated the Respondents' 6-month contracts, and renewed them on each occasion, subject only to favourable performance appraisal. During intervals after a contract expired, the Respondents would go on working without formal contracts, but would subsequently be issued written contracts for another 6 months, as they continued working.
73. In this Court's **Muthee v. Italiana [2023] KEERC 1825 [KLR]** the Court adopted the decision in **Keen Kleeners v. Kenya Plantation and Agricultural Workers Union [supra]**. In **Muthee v. Italiana**, the Employee worked on 9 different fixed-term contracts, over a period of 5 years. Legitimate expectation of renewal was found to exist, at the end of the last contract, when the Employer declined renewal, advancing the reason that the contract had lapsed through effluxion of time.
74. The prevailing law on renewal of fixed term contracts, is that established by the Court of Appeal in **Keen Kleeners**.
75. This position has been embraced in other decisions, such as **Margaret A. Ochieng' v. National Water Conservation and Pipeline Corporation [2014] e-KRL; United Nations Appeals Tribunal [UNAT] Case No. 2010-**

**125, Frenchon v. The Secretary-General, United Nations; and Mutonyi-Sakuda v. Board of Governors, St. Andrews School. Turi [2024] KEELRC 2672 [KLR].**

76. In public service litigation, the Court in **Gichuki v. Kenya Power and Lighting Company PLC [2025] KEELRC 2578 [KLR]**, was faced with a situation where the Employee, had been working for 8 years and 2 months, on separate fixed-term contracts of 3-months each. The Court accepted the Employee's submission that these 3-month fixed-term contracts were in breach of right to fair labour practices.
77. Although the Trial Court from which the Appeal herein emanates, did not make a specific finding on the subject, the Respondents had pleaded that termination was in breach of their fair labour practices rights.
78. As a general rule, fixed-term contracts carry no expectancy of renewal, but evidence may be lead, imposing obligation on the Employer to renew.
79. This general rule was restated by the Court of Appeal in **Transparency International v. Omondi**, which is frequently misinterpreted in legal commentary, as having shifted from the earlier decision, **Keen Kleeners v. Kenya Plantation and Agricultural Workers Union**.
80. At paragraph 30 of the **Transparency International** Appeal, the Court acknowledged that an Employee on fixed-term contract, could legitimately expect renewal, if an Employer has indicated renewal is

forthcoming. The Court stated that the Employer must be shown to have whetted the appetite of the Employee for renewal. Evidence of whetting the appetite, according to the Court of Appeal, would be established from the acts or omissions of the Employer.

81. There is no decision, among the decisions filed by the Parties in this Appeal, or any other known to this Court, which holds that legitimate expectation in renewal of fixed-term contracts, is non-existent. The common thread in all the decisions, is that fixed-term contracts carry no expectancy of renewal, but evidence can be led, to establish the presence of legitimate expectation.
82. Legal commentators who advance the position that the 2 Court of Appeal decisions are inconsistent, appear to selectively read the latter decision. It was not in departure to the general rule, stated in a catena of other decisions on the subject, that as a general rule, fixed-term contracts carry no expectancy of renewal, and that evidence may be led, imposing an obligation on the Employer to renew.
83. The Court does not think therefore, that there was an error, in the Trial Court's finding, that the Respondents had reasonable expectation that their respective contracts would be renewed, and that failure to renew, amounted to unfair and unlawful termination, over which they were compensated by the Trial Court.

84. There was sufficient evidence placed before the Trial Court, to establish that the Parties intended to continue in their employer-employee relationship, beyond 10th December 2022.
85. Unfair termination, as defined under Section 45 [4] [b] of the Employment Act, goes beyond the mere right of hearing under Section 41 and establishment of valid reason, under Section 43 of the Employment Act. The provision calls on the Court, to consider if, in all circumstances of the case, in terminating an Employee's contract, the Employer acted in accordance with justice and equity.
86. There was clear evidence that the Respondents' contracts did not quietly lapse on 10th December 2022. There was evidence that the Parties intended to renew their employment relationship as they had always done, over the past 8 years. There was evidence that the Appellants considered the Respondents as their Employees, in May 2018, when they were marked as absent with an apology, in a meeting convened by the 1st Appellant. They expressly referred to them as their Employees, after December 2022.
87. The Court does not think that reference by the Appellants to the Respondents as Employees, after their last contracts lapsed, was an administrative mix-up, as submitted by the Appellants. It was actionable conduct, and intention, on the part of the 1st Respondent, informed by over 8 years of an employer-employee relationship, to continue employing the Respondents.

88. The rate adopted by the Trial Court in computing compensatory award, was founded on the contracts executed by the Respondents. This comprised basic salary of Kshs. 32,847.57, and sundry allowances, at 25% of the basic salary.

**IT IS ORDERED: -**

- a. The appeal succeeds on the Ground concerning award of notice pay.***
- b. That award is set aside.***
- c. The other Grounds of Appeal are rejected.***
- d. No order on the costs of the Appeal.***

Dated, signed and delivered electronically at Nakuru, under Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 31st day of March 2026.

James Rika  
Judge

