

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

CAUSE NO. E780 OF 2023

GODWIN MUTURI MWANGI.....
.....CLAIMANT

VERSUS

NATIONAL ORGANIZATION OF
PEER EDUCATION (NOPE).....
RESPONDENT

JUDGMENT

Introduction

1. For determination is the Claimant's Statement of Claim dated 26th September, 2023 and filed on 28th September, 20223, wherein the Claimant seeks the following reliefs as against the Respondent: -
- i. An equivalent of 12 months' gross salary as compensation for unfair termination of employment.
 - ii. Alternatively, severance pay at the rate of 30 days per year for every year worked
 - iii. Unremitted pension dues plus interests from the year 2014/- to date;
 - iv. Deducted and unremitted PAYE;
 - v. Withheld portion of the salary for the months of October and November 2022;
 - vi. Cost of the suit; and

vii. Interests at court rates.

2. The Respondent filed a Reply to the Statement of Claim dated 26th April, 2024, in response to the Claimant's claim.
3. The Claimant's case was heard on 4th February, 2025, and further on 28th May, 2025, when the Claimant (CW1) testified in support of his case. He adopted his witness statement dated 26th September, 2023, and produced his list and bundle of documents of even date as exhibits in the matter and were marked as Claimant's exhibits Nos. 1-15.
4. The Respondent's case was heard on 26th November, 2025, when the Respondent's witness (RW1), Mr. Philip Waweru Mbugua, testified in support of the Respondent's case. He adopted his witness statement dated 12th December, 2023, and produced his list and bundle of documents dated 26th April, 2024, as exhibits in the matter and were marked as Respondent's exhibits Nos. 1-2.
5. Submissions were received from both parties.

The Claimant's case

6. The Claimant's case is that he was first engaged by the Respondent as an intern in the Finance and Administration Department on 14th February 2005, and upon successful completion of the internship, he was employed and confirmed as a Finance and Administration Assistant by letter dated 30th June 2005.

7. He states that he diligently served the Respondent and rose progressively through the ranks, having been promoted to Program Assistant in 2006, Finance Officer in 2009, and ultimately Finance Manager from 2017 until 26th October 2022, when his employment was terminated after 17 years of service.
8. The Claimant avers that his termination was unlawful, wrongful, and unfair. He contends that by a letter dated 26th October 2022, misleadingly titled “non-extension of your employment contract,” the Respondent effectively summarily dismissed him on alleged grounds of funding constraints and donor demands relating to compliance and internal controls.
9. He further states that prior to the termination, the Respondent had indicated, through a letter dated 31st August 2022, an intention to revise his salary effective 1st October 2022 and promised to issue a revised contract, which was never provided. It is his case that he reasonably expected to continue working under the existing terms.
10. The Claimant maintains that throughout his employment, he was never issued with any warning letter nor subjected to any disciplinary process.
11. It is the Claimant’s assertion that at the time of termination, he was not accorded a hearing and no fair procedure was followed, rendering the termination procedurally unfair. Additionally, the Claimant avers that the Respondent failed

to provide valid and justifiable reasons for the termination, rendering it substantively unfair.

12. The Claimant further states that at the time of termination, the Respondent had deducted but failed to remit statutory dues, including pension contributions amounting to Kshs. 1,608,058 and PAYE of Kshs.419,958. He avers that as a result of the unremitted PAYE, he has been unable to obtain a tax compliance certificate from KRA, thereby hindering his ability to secure alternative employment.

13. He further claims that the Respondent unlawfully reduced his salary for October and November 2022 from Kshs.289,000 to Kshs.250,000, resulting in an underpayment of Kshs.78,000.

14. On cross-examination, the Claimant testified that his employment was contract based having a start and end date and was renewable subject to availability of funds. Further, he indicated that the letter dated 31st August, 2022, proposed a revision of the contract and was not a new contract.

15. The Claimant stated that his contract ended in September 2022, and he was paid a month's salary in lieu of notice. He stated that his last day of employment was on 26th October, 2022, and he cleared with the Respondent on 10th January, 2023.

16.The Claimant further confirmed that no contract was issued after 30th September, 2022.

17.On re-examination, the Claimant stated that he had been informed that his contract was being revised and not terminated, but despite that, he received a termination letter in October, 2022.

18.It is the Claimant's prayer that the Court grant him the relief sought in the Claim.

The Respondent's Case

19.In Response to the claim, the Respondent admits employing the Claimant under diverse, separate, and independent fixed-term contracts which lapsed automatically upon effluxion of time and upon attainment of donor-driven objectives and targets.

20.The Respondent denies that the Claimant's employment was unlawfully terminated and avers that the parties merely separated when the Claimant's last contract expired.

21.The Respondent further avers that although there had been an intention to offer the Claimant another contract, donor funding models were revised, leading to recommendations that affected the Claimant's department and ultimately resulted in the withdrawal of funding.

- 22.The Respondent asserts that the non-renewal of the Claimant's contract was influenced by third-party donors, for which it should not be held liable.
- 23.The Respondent denies terminating the Claimant and reiterates that no disciplinary process was required since the contract simply came to an end.
- 24.It is the Respondent's case that the Claimant, being in charge of finance, was responsible for deducting and remitting pension contributions and PAYE. It alleges that he failed to remit these funds and could not account for them, further claiming that investigations revealed similar issues affecting other employees. The Respondent argues that the Claimant cannot benefit from his own wrongdoing.
- 25.The Respondent denies the allegations relating to salary reduction, loss, and damages and seeks the Court to dismiss the claim with costs.
- 26.On cross-examination, RW1 stated that the letter dated 31st August, 2022, indicated that the contract would continue and the revised contract would be shared. It further states that the revised contract was not shared owing to a change of circumstances with the donors.
- 27.RW1 further stated that instructions to pay payroll are usually done by two signatories, of which the Claimant is not a signatory but merely an initiator of payments.

28. On payment of severance pay, RWI confirmed that the HR Manual provides payment of severance pay at the rate of 30 days for every year of service.

The Claimant's Submissions

29. It is the Claimant's submission that his employment did not come to an end by effluxion of time, but was unlawfully and unfairly terminated. He submits that the termination letter dated 26th October 2022, which stated that his contract would not be extended beyond 31st October 2022, amounted in effect to a summary dismissal without justification, contrary to Section 45 of the Employment Act, 2007.

30. The Claimant further submitted that the Respondent failed to prove valid and fair reasons for termination as required under Sections 43 and 45 of the Employment Act.

31. The Claimant submits further that there was no evidence of a fixed-term contract with an end date of 31st October 2022, and that a prior letter dated 31st August 2022 had indicated that his employment was continuing, subject only to revision of terms.

32. The Claimant also challenged the Respondent's allegations that donor funding constraints or restructuring justified the termination, submitting that no evidence was tendered to substantiate these claims. Similarly, allegations regarding failure to remit pension and PAYE were termed unfounded, particularly as the Claimant was not a signatory to the

relevant accounts and had no control over remittances. The Claimant argued that these were mere afterthoughts and unsubstantiated excuses that did not meet the legal threshold for a valid reason for termination.

33. On procedural fairness, the Claimant submitted that no fair procedure was followed, as he was not issued with any notice, show cause letter, or invited to a disciplinary hearing prior to termination.

34. The Claimant submitted that he is entitled to the reliefs sought. He urged the Court to award twelve (12) months' gross salary as compensation for unfair termination, taking into account his long service of over 17 years, the abrupt manner of termination, and the difficulty of securing comparable employment.

35. In the alternative, the Claimant submitted that if the Court were to find that the termination was based on restructuring or lack of funds, then the same amounted to redundancy, and the Respondent failed to comply with the procedural requirements for redundancy, including notification to the Claimant and the Labour Officer, and consideration of fair selection criteria.

The Respondent's submissions

36. The Respondent submitted that, in law, fixed-term contracts terminate automatically upon expiry and do not impose any obligation on the employer to renew unless there exists a legitimate expectation.

37. It was further submitted that the Claimant did not demonstrate any assurance or representation guaranteeing renewal, and therefore his employment was not unlawfully terminated but rather came to an end by effluxion of time. In support of this position, reliance was placed on ***Nyamai v David Engineering Limited (Nairobi ELRC No. 2040 of 2016)***.

38. The Respondent further submitted that there existed valid and justifiable grounds for non-renewal of the Claimant's contract, emphasizing that as a donor-funded organization, its operations depend on strict financial compliance and audit integrity.

39. It submits that audit reviews revealed serious financial management failures under the Claimant's leadership, including non-remittance of statutory deductions, weak internal controls, delayed audits, salary overpayments, and poor record keeping. These findings, which informed a restructuring process, coupled with instances of misconduct such as unauthorized salary payments and exposure of the organization to legal and reputational risk, rendered the Claimant unsuitable for continued engagement. The Respondent therefore argued that the decision not to renew the contract was lawful, reasonable, and justified.

40. The Respondent further submitted that the Claimant's allegation of unfair termination was misplaced, as the

matter concerned non-renewal of a fixed-term contract rather than dismissal.

41. On entitlement to reliefs, the Respondent submitted that the Claimant is not entitled to compensation for unlawful termination under Section 49 of the Employment Act, as no unfair termination was established.

42. The Respondent also opposed the claim for severance pay, submitting that severance is only payable in cases of redundancy under Section 40 of the Employment Act.

43. In conclusion, the Respondent urges the Court to find the claim misconceived and dismiss it in its entirety.

Analysis and Determination

44. Upon careful consideration of the pleadings herein, the parties' testimony, and the rival submissions, the following issues crystallize for determination: -

- i. Whether the Claimant's employment was terminated by effluxion of time or whether he was unfairly terminated.
- ii. Whether the Claimant is entitled to the reliefs sought
- iii. Who bears responsibility for the alleged unremitted statutory deductions.

Whether the Claimant's employment was terminated by effluxion of time or whether he was unfairly terminated

45. The Claimant's position is that his termination was unlawful, wrongful, and unfair. He contends that by a letter dated 26th October 2022, misleadingly titled "non-extension of

your employment contract,” the Respondent effectively summarily dismissed him on alleged grounds of funding constraints and donor demands relating to compliance and internal controls.

46. It is his assertion that prior to the termination, the Respondent had indicated, through a letter dated 31st August 2022, an intention to revise his salary effective 1st October 2022 and promised to issue a revised contract, which was never provided. It is his contention that he reasonably expected to continue working under the existing terms.

47. On its part, the Respondent argues that the Claimant’s employment ended automatically upon expiry of a fixed-term contract, and denies that the Claimant’s employment was unlawfully terminated, contending that the parties merely separated when the Claimant’s last contract expired.

48. The law on fixed-term contracts is well settled. In ***Registered Trustees of the Presbyterian Church of East Africa & Another v Ruth Gathoni Ngotho [2017] eKLR***, the Court of Appeal held that a fixed-term contract terminates automatically upon expiry unless there is evidence of legitimate expectation of renewal. Similarly, in ***Bernard Wanjohi Muriuki v Kirinyaga Water & Sanitation Company Ltd & Another [2012] eKLR***, the court emphasized that renewal is not automatic unless the employer’s conduct creates expectation.

49. In my view, where the employer's conduct leads an employee to reasonably expect renewal, failure to renew may amount to unfair termination. In ***Transparency International Kenya v Omondi [2017] eKLR***, the Court recognized that representations by the employer can create such expectation.

50. It is not disputed that the Claimant served the Respondent continuously for 17 years, albeit under successive contracts. The Respondent does not also deny that it issued the Claimant a letter dated 31st August 2022 indicating the intention to revise salary effective October 2022, and a promise to issue a revised contract to this effect.

51. Further, the Respondent's own witness admitted that the intention was to continue the contract, but changed due to donor issues and, to what it terms as changed circumstances.

52. It is thus evident that the Claimant was not issued with a revised contract before his subsisting contract expired, but was instead issued with a termination letter dated 26th October 2022 giving notice of non-extension.

53. These facts, in my view, go beyond a simple lapse of time. The Respondent actively represented continuity, thereby creating legitimate expectation of renewal. This position aligns with the decision in ***Transparency International***

Kenya v Omondi (Supra), where such representations converted non-renewal into actionable unfair termination.

54. Further, the issuance of a termination letter suggests a positive act by the employer, and once an employer elects to terminate, the provisions of Sections 41, 43, and 45 of the Employment Act apply.

55. In the circumstances, I reach the conclusion that the Claimant's employment contract did not end by effluxion of time, but was instead terminated.

Whether the Termination Was Fair

56. Under Section 43 of the Employment Act, the employer must prove valid reasons for termination. The Respondent advanced two main grounds for the termination, namely donor funding constraints and the Claimant's financial mismanagement.

57. The Respondent has, however, not led documentary evidence of donor withdrawal, and neither were the allegations of misconduct against the Claimant subjected to any disciplinary process. The Respondent's witness further admitted that the Claimant was not a signatory to the Respondent's accounts. The Court of Appeal in the case of **Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR** held: -

“..... The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair

(section 45); prove that the grounds are justified (section 47 (5), amongst other provisions.”

58.The reasons for termination must thus, by law, be proved and not merely alleged. I thus conclude that the Respondent failed to discharge its burden under Section 43.

59.On procedure, it is uncontested that no show cause letter was issued to the Claimant and no hearing was conducted on the allegations of misconduct. It is now settled that even where termination arises from operational reasons, procedural fairness is mandatory. In ***Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR***, the Court of Appeal affirmed that failure to adhere to Section 41 renders termination unfair.

60.In light of the foregoing, I hold that the termination of the Claimant’s employment was both substantively and procedurally unfair.

Whether the Claimant is entitled to the reliefs sought Compensation for Unfair Termination

61.The finding that the termination of the Claimant’s employment was unfair entitles him to compensation pursuant to Section 49(1)(c) of the Employment Act, 2007(See ***Benjamin Langwen v National Environment Management Authority (2016) eKLR***).

62. Considering his 17 years of service, his clean record, the abrupt termination, and further considering that his last contract had actually ended, and were it not for the termination notice, the same would have been considered to have ended by effluxion of time, I deem an award of four (4) months' salary sufficient compensation for the unfair termination.

Severance Pay (Alternative Claim)

63. Under Section 40 of the Employment Act, severance pay is only payable in redundancy cases. The Claimant's case was not a case of redundancy, hence severance pay is not payable.

64. The claim fails and is dismissed.

Unremitted Pension and PAYE

65. As a general rule, employers bear statutory responsibility for remittance. In ***Bank of Africa Kenya Ltd v Put Sarajevo General Engineering Co. Ltd [2018] eKLR***, the court emphasized that statutory deductions must be remitted by the employer.

66. RW1 admitted that the Claimant was not a signatory to the Respondent's accounts and that the responsibility to deduct and remit statutory deductions lay with the authorized officer.

67.It therefore follows that the Respondent remains liable for unremitted pension and PAYE, and the blame on the Claimant is unsustainable.

68.This claim is thus found to have merit and is allowed as prayed.

Salary Underpayment (October-November 2022)

69.Unilateral and unexplained salary reduction is unlawful. The Claimant's termination letter was issued in October 2022, indicating that he did not provide any services in November, 2022.

70.For lack of proof of consent or contractual basis for the salary deduction, the Claimant is entitled to the withheld amount for the month of October 2022, and the same is hereby awarded.

71.In conclusion, the Claimant's Claim succeeds in terms of the following orders:-

- i. That the Claimant's employment was unfairly terminated.
- ii. That the Respondent shall pay the Claimant four (4) months' salary as compensation for the unfair termination at Kshs. 1,156,000/-
- iii. That the Respondent shall pay the Claimant all the deducted but not remitted pension dues in the sum of Kshs. 1,608,058/- and the PAYE deducted shall be remitted to the Kenya Revenue Authority.

- iv. That the Respondent shall pay the Claimant deducted/withheld salary for October 2022 at Kshs. 33,000/-
- v. The Respondent shall bear the costs of the suit and interests thereon from the date of this judgment until payment in full.

72.It is so ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16TH DAY OF APRIL, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Kiganka present for the Claimant
Ms. Githinji present for the Respondent
Ms. Esther S- C/A