

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
ELDORET
CAUSE NO. E060 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

PETER K. BIWOTT
CLAIMANT

VERSUS

ELDORET WATER AND SANITATION
SERVICE 1ST RESPONDENT
DAVID SING’OEI.....2ND
RESPONDENT

JUDGMENT

1. The Claimant instituted this suit vide an Amended Memorandum of Claim dated 27th November 2024 seeking the following orders against the Respondents: -
 - i. A declaration that the 1st Respondent’s action of failing to undertake evaluation or proper evaluation of the Claimant’s performance and subsequently failing to renew his contract of employment is a violation of the Claimant’s right of legitimate expectation.

- ii. A declaration that failing to afford the Claimant adequate time to prepare for performance evaluation despite his reasonable request for the same has violated his right to fair administrative action as guaranteed under Article 47 of the Constitution of Kenya.
- iii. A declaration that the advertisement of the vacancy of the Managing Director of the Eldoret Water and Sanitation Services was irregular, illegal and violated the provisions of the Constitution and is therefore null and void ab initio.
- iv. That the Respondents acted illegally in the whole proceedings leading to the refusal to renew the Claimant's contract of employment as the Board of Directors was not properly in office.
- v. That the Claimant be compensated General damages and exemplary damages.
- vi. That the current managing director is in office through a tainted and an illegal recruitment process and that employment(sic) be declared a nullity.
- vii. That a fresh recruitment process be ordered which involves the participation of the Claimant.

- viii. The Respondent's do pay the Claimant costs of the suit and interest.
- ix. Any other or further order that this honourable court may deem it fit to grant.
2. The Claimant avers that he was appointed as the 1st Respondent's Managing Director pursuant to a Contract of Employment dated 3rd October 2021 for a term of three (3) years, running from 18th October 2021 to 17th October 2024. He avers that the contract contained a renewal clause providing for renewal by mutual consent subject to either party issuing six (6) months' notice of intention to renew or terminate.
3. The Claimant pleads that on 16th April 2024, he addressed a letter to the 2nd Respondent expressing his intention to renew his contract pursuant to Clause 12 of the Contract of Employment.
4. He states that on 5th July 2024, the 2nd Respondent unlawfully issued a notice convening a special Board meeting scheduled for 10th July 2024 to consider his application for renewal and in response, on 8th July 2024, he wrote to the 2nd Respondent

requesting an extension of time to enable him adequately prepare for the Board evaluation.

5. The Claimant asserts that on the same date, the 2nd Respondent responded by granting only seven (7) additional days to prepare his self-evaluation report and rescheduled the meeting to 15th July 2024 via an addendum.
6. The Claimant maintains that by a letter dated 9th July 2024, he informed the Board that a statutory notice period of fourteen (14) days was necessary for proper preparation. The Claimant avers that on 11th July 2024, he issued a notice convening a special full Board meeting for 26th July 2024 to consider his self-evaluation and performance reports as well as his application for renewal of contract. He avers that notwithstanding the foregoing, the 2nd Respondent issued a notice on 15th July 2024 convening a Board meeting for 17th July 2024 to consider his evaluation and renewal application.
7. It is the Claimant's case that on 15th July 2024, he was subjected to threats and intimidation by an agitated group of employees, allegedly acting with the support of senior officials whose intention was to coerce him into resigning.

8. He further states that on 16th July 2024, he wrote to the 1st Respondent expressing concerns about possible violence and requesting postponement of the meeting to ensure a fair hearing. He states that he also indicated that the events of 15th July 2024 had affected his health and that he had been placed on bed rest from 15th July 2024 to 24th July 2024.
9. The Claimant avers that, notwithstanding his request for a postponement an irregular and unlawful Board meeting was convened on 17th July 2024 where the Board resolved that the Claimant had applied for renewal of his contract outside the stipulated period, failed to submit a self-evaluation report and did not appear for the evaluation. That the Board further concluded that the Claimant's performance during his tenure was unsatisfactory.
10. The Claimant maintains that his application for renewal was declined and he was consequently directed to proceed on terminal leave. He further avers that, on the same day, the Respondents convened a press conference and publicly announced that his contract would not be renewed.

11. The Claimant maintains that the Board's decision was unlawful, as his contract remained valid until 17th October 2024.
12. In addition, the Claimant asserts that his application for renewal was conducted by a Board that had not been duly gazetted and was therefore not properly constituted thereby denying him a fair hearing and violating his legitimate expectation. In this regard, the Claimant maintained that the proceedings of 17th July 2024 were irregular, unlawful and procedurally improper. He contends that a fresh evaluation ought to be conducted in accordance with the law.
13. The Respondents filed a Response to the Claimant's Amended Memorandum of Claim dated 20th February 2025 denying the averments made by the Claimant in his claim. It is contended that the terms of the Claimant's contract of employment provided that it was renewable by mutual consent of the parties and upon meeting all the conditions as set out on the contract of employment among them, the requirement by the Claimant to submit an application for extension of the contract to the Board 6 months before the expiry of his contract.

14. According to the Respondents, the Claimant, having been employed on 3rd October 2021, his contract was to expire on 3rd October 2024. He was therefore expected to submit his application for extension of the contract to the 1st Respondent's Board by 3rd April 2024. The Respondents aver that, notwithstanding the express provisions of the employment contract regarding the timeline for submission of renewal of contract applications, the Claimant inordinately delayed in submitting his application, only doing so on 24th June 2024, long after the deadline had lapsed without providing any reasons for the delay.
15. The Respondents' maintained that the Claimant's employment contract provided that the renewal of his contract was to be by mutual consent and there was no guarantee from the beginning that the Claimant's contract would automatically be renewed upon its expiry. That as such, the issue of legitimate expectation as averred by the Claimant does not arise as the Board could either endorse or decline the applications for extension of the contract.

16. According to the Respondents, the Board issued a notice to the Claimant on 5th July 2024 informing him of the special board meeting to be held on 10th July 2024 whose agenda was to consider his application for renewal subject to the Board's evaluation of the Claimant's performance, that the Claimant was required to prepare and submit a self-evaluation report to the Board on 10th July 2024.
17. In response to the allegation made by the Claimant that the 2nd Respondent illegally convened the meetings for his evaluation, the Respondents asserted that the 2nd Respondent as the chair of the Respondent's Board was mandated to convene meetings of the Board to deliberate on issues including consideration of the Claimant's application for renewal of contract. In addition, the Respondents stated that the meeting could not be convened by the Claimant due to a conflict of interest in the agenda of the meeting.
18. The Respondents maintained that since Claimant's application for renewal of contract was made on 16th April 2024 and the board evaluation meeting was scheduled for 10th July 2024, the Claimant had almost three months to prepare the reports and

other necessary documents for his evaluation as he was aware of the procedure and requirements for renewal of his contract.

19. In denying the allegation made by the Claimant that he was not accorded reasonable time to prepare and submit the self-evaluation report, the Respondents contended that upon the Claimant being issued with the notice to appear before the Board on 10th July 2024, the Claimant requested for an extension of time to prepare and submit the self-evaluation report and other sectoral reports which request was granted and the meeting was postponed to 15th July 2024 and later to 17th July 2024.
20. It is the Respondents case that despite the Claimant being granted more time, he failed to submit the reports as directed and further refused to appear for the meeting held on 17th July 2024 which meeting was specifically to consider his application for renewal of his contract of employment.
21. Regarding the Claimant's averment that he was threatened and intimidated by an angry mob of employees on 15th July 2024, the Respondents denied that the incident happened and contended that the 1st

Respondent's senior staff members were present on the material day and it was not possible for the 1st Respondent's employees to stage such threats, insults and intimidation against a chief officer such as the Claimant.

22. It is therefore the Respondents' case that despite being invited for the Board evaluation meeting on 17th July 2024, the Claimant failed to avail himself. That the Board convened the meeting in his absence and resolved that the Claimant's contract of employment would not be renewed based on his performance during his tenure as the Managing Director of the 1st Respondent which decision was communicated to the Claimant vide a letter dated 17th July 2017. They further state that the decision was informed by compelling reasons which rendered the renewal of his contract untenable.

23. The Respondents aver that the 1st Respondent and the Board of Directors fully complied with the provisions of the Claimant's employment contract, the Mwongozo Guidelines for Public Servants and the Corporate Guidelines for the Water Services Sector.

24. With regard to the Claimant's assertion that the Board of Directors was not properly in office and did not have the mandate to deliberate on his issue, the Respondents maintained that the appointment of the 1st Respondent's Board of Directors in December 2023 clothed the directors with authority and mandate to preside over the affairs of the 1st Respondent fully. The Respondents stated that up until the termination of the Claimant's contract, he continued to participate in Board meetings, implemented Board decisions, wrote letters to the Board (including the letters requesting for extension of time to prepare evaluation reports), received remunerations and continued to work with the Board as the same was legitimate.
25. The Respondents asserted that the 1st Respondent complied with all the provisions of the WASREB Corporate Governance Standards for Water Service Sector, 2024 in all aspects during the discharge of the 1st Respondents' mandates and that the Claimant's performance was duly evaluated and found that he did not meet the required threshold of performance.

26. It is contended that the Claimant was sent on terminal leave with full benefits as per his contract of employment and has no outstanding claims against the 1st Respondent.
27. In the end, the court was urged to dismiss the Claimant's suit with costs.

The Evidence

28. The Claimant testified that he worked for the 1st Respondent from 18th October 2021 to 17th October 2024. He stated that he performed his duties above expectations and in his last assessment achieved a score of 80% in his performance evaluation. The Claimant stated that a new Board was constituted and assumed office in 2023, that he went on leave and submitted his application for renewal of contract via email while on leave on 15th April 2024.
29. He further stated that the letter communicating that his contract would not be renewed cited operational management issues relating to a disciplinary issue rather than termination based on non-performance.

30. It was the Claimant's testimony that he requested that the meeting scheduled for 10th July 2024 for his evaluation be rescheduled to enable him prepare which request was declined and instead, a meeting was convened on 15th July 2024.
31. He further testified that the Board proceedings were undertaken before gazettelement of the Board and that he nonetheless appeared before the Board on 15th July 2024 before withdrawing from the meeting due to security concerns. The Claimant stated that on 17th July 2024, he was informed that he had been placed on terminal leave. He further stated that although he was given 7 more days to prepare his self-evaluation reports, the days were not sufficient to enable him finalize the reports.
32. The Claimant maintained that his contract was effectively terminated on 17th July 2024 on disciplinary grounds and that his evaluation ought to have been undertaken six (6) months prior in accordance with the terms of his employment contract.

33. He testified that he served the full term of his contract and was paid all dues up to the end of his contract period.
34. The Claimant sought compensation equivalent to six (6) months' salary for unlawful termination and damages for reputational harm arising from media publications arguing that due process was not followed by the Respondents in terminating his employment contract.
35. On cross-examination, the Claimant confirmed that he was employed by the 1st Respondent for a three-year term, renewable by mutual agreement of the parties and that he served the full term of his contract. He also confirmed that he was paid all dues for the duration of the contract.
36. The Claimant stated that the Board was appointed in December 2023, commenced work after appointment and received allowances for meetings attended.
37. It was his testimony that although he submitted his renewal application in April via hand delivery while on leave and it was received, the Respondents had already resolved not to renew his contract.

38. On re-examination, the Claimant stated that he expected his contract to be renewed as his performance had been assessed at 80%. He also stated that the Board derived legitimacy upon gazette of the members and not the letters of appointment. He stated that since the gazette notice was published on 31st July 2024, the 1st Respondent's Board as constituted did not have the legal authority to deliberate on his application for renewal of contract.
39. The Claimant stated that his reputation was damaged following media reports announcing the non-renewal of his contract. He further testified that he was never shown his detailed performance evaluation and that the letter communicating non-renewal of his contract did not disclose the criteria used in assessing his performance.
40. The Respondent called David Kiptoo Singoei, the 2nd Respondent herein who testified as RW1. He adopted his witness statement and the documents filed on behalf of the Respondent as his evidence in chief.

41. On cross-examination, RW1 stated that he was nominated to the Board of the Respondent in November 2023 and was appointed by a letter dated 2^{1st} December 2023 issued by the County Secretary, Uasin Gishu County. He testified that his appointment was subsequently confirmed through a Gazette Notice dated 24th December 2023. RW1 testified that at the time he issued the letter dated 5th July 2024 convening the Special Board meeting, the Gazette Notice dated 30th August 2024 had not yet been published.
42. He further testified that the Claimant's request for extension of time to complete the evaluation report was declined on the basis that he had sufficient time from April 2024 to prepare. He stated that the Claimant was required to undertake a self-evaluation covering the periods 2021/2022 and 2022/2023, but failed to do so or to submit the same to the Board. RW1 maintained that the Board relied on existing company performance records relating to the Claimant's tenure in assessing his performance. It was his evidence that the Claimant was found unsuitable for renewal on 17th July 2024.

43. On re-examination, RW1 maintained that he was appointed together with other Board members on 24th December 2023. He clarified that the Gazette Notice dated 30th August 2024 was a second one, that the initial gazette notice appointing the members of the Board had been issued earlier and the 2nd gazette notice served the purpose of replacing a member who had exited the Board. He further stated that the Board had been conducting its business since December 2023.
44. He testified that on 17th July 2024, the Board considered all performance reports relating to the Claimant's three-year tenure, that the only missing document was the self-evaluation report, which he maintained was not binding on the Board.
45. The Respondent's witness further stated that the Claimant's employment contract was for a fixed term of three (3) years from 3rd October 2021 to 3rd October 2024 and that the Claimant proceeded on a three-month compulsory terminal leave.
46. At the close of the Respondents' case, parties were directed to file written submissions. The Claimant's submissions are dated

16th September 2024 while the 1st and 2nd Respondents submissions are dated 9th December 2025.

47. By and large, the submissions reiterated the positions taken by the respective parties.

Determination

48. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are: -

- i. Whether the Claimant had a legitimate expectation that his contract of employment would be renewed*
- ii. Whether the Board of Directors of the 1st Respondent was properly constituted and had the legal mandate to deliberate on and determine the Claimant's application for renewal.*
- iii. Whether the decision not to renew the Claimant's contract amounted to unlawful termination or was in accordance with the terms of the contract.*
- iv. Whether the Claimant is entitled to the reliefs sought*

Whether the Claimant had a legitimate expectation that his contract of employment would be renewed

49. The Claimant's case is that he had a legitimate expectation that his employment contract would be renewed upon its expiry, on the basis that he had performed his duties satisfactorily and attained a performance rating of 80% in his last evaluation. He further contends that having duly expressed his intention to renew the contract within the stipulated period the Respondents were under an obligation to fairly consider and renew his contract.
50. The Respondents have, however, disputed this claim and maintained that the renewal of the Claimant's contract was not automatic but was subject to mutual consent of the parties and fulfillment of the conditions set out in the contract, including the requirement for timely application and satisfactory performance. They contended that the Claimant failed to submit his application for renewal on time and further failed to meet the performance threshold upon evaluation. That as such, no legitimate expectation could arise in the circumstances.

51. The Supreme Court pronounced itself on the doctrine of legitimate expectation in Petition No. 14 of 2014, ***Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR*** as follows:

“Legitimate expectation” is a doctrine well recognized within the realm of administrative law, as is clear from the English case, In re Westminster City Council, [1986] A.C 668 at 692(Lord Bridge): “...

the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation”.

An illuminating consideration of the concept of “legitimate expectation” is found in the South African case, South African Veterinary Council v Szymanski 2003(4) S.A 42 (SCA) at [paragraph 28]: the court held as follows:“

The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation include the following:

- i. The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (op cit [Judicial Review of Administrative Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.*
- ii. The expectation must be reasonable: Administrator, Transvaal v Traub (supra [1989 (4) SA 731 (A)] at 756I - 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037).*

- iii. *The representation must have been induced by the decision-maker: De Smith, Woolf and Jowell (op cit at 422 para 8-050); Attorney-General of Hong Kong v Ng Yuen Shiu [1983] 2 All ER 346 (PC) at 350h - j.*
- iv. *The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: Hauptfleisch v Caledon Divisional Council 1963 (4) SA 53 (C) at 59E - G.”*

This was also referred to with approval in Walele v City of Cape Town and Others; 2008 (6) S.A 129 (C.C.) paragraph 41.

The emerging principles may be succinctly set out as follows:

- a. *there must be an express, clear and unambiguous promise given by a public authority*
 - b. *the expectation itself must be reasonable*
 - c. *the representation must be one which it was competent and lawful for the decision-maker to make;*
- and*

d. there cannot be a legitimate expectation against clear provisions of the law or the Constitution.

De Smith, Woolf & Jowell, in “Judicial Review of Administrative Action cited in Republic v Kenya Revenue Authority Ex Parte M- Kopa Kenya Limited thus:

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”

52. It therefore follows that legitimate expectation arises where an employer through an express promise or consistent past practice creates an expectation that a benefit will accrue to an employee.

53. From a perusal of the Claimant's contract of employment, the contract expressly provided that renewal was subject to mutual consent and compliance with stipulated conditions including timely application and satisfactory performance. It does not provide for automatic renewal but rather, that renewal was discretionary and dependent upon evaluation by the Board.
54. Although the Claimant contended that he applied for renewal in April 2024, there is no evidence that the Respondents made any representation assuring him that the contract would be renewed.
55. In the absence of such representation or a binding past practice, the Court finds that no legitimate expectation arose in favour of the Claimant.

Whether the Board of Directors of the 1st Respondent was properly constituted and lawfully in office at the material time, and the legal effect, if any, of any irregularity in its constitution

56. The Claimant challenged the Board's authority in making the decision not to renew his contract on the basis that it was not duly gazetted at the material time and therefore lacked legal

capacity to undertake the evaluation process and make decisions affecting his employment.

57. In their defence, the Respondents maintained that the Board was duly appointed in December 2023, assumed office and carried out its functions in accordance with its mandate. The Respondents further argued that the Claimant participated in Board processes without objection and cannot now challenge its legitimacy.

58. The evidence shows that upon assumption of office by the Board, the Claimant continued to engage with the Board, attended meetings, implemented its decisions, and corresponded with it without raising any objection as to its legality. Further, as the Managing Director it was his responsibility to ensure the Board was legitimately in office. It is only after the decision not to renew his contract that he questioned the Board's legitimacy. In these circumstances, the doctrine of estoppel applies to prevent the Claimant from approbating and reprobating.

59. Accordingly, the Court finds that the Board was a de facto lawful authority and its actions in relation to the Claimant were not invalidated by any alleged irregularity.

Whether the decision not to renew the Claimant's contract amounted to unlawful termination or was in accordance with the terms of the contract

60. The Claimant contended that the decision not to renew his contract was irregular, procedurally unfair as it was influenced by a flawed evaluation process.

61. The Respondents on the other hand maintained that the Claimant's employment contract was a fixed-term contract and was only renewable by mutual consent subject to performance evaluation and compliance with set procedures.

62. It is trite law that a fixed-term contract expires by effluxion of time and does not automatically renew unless expressly agreed.

63. The Court of Appeal when dealing with a similar issue in ***Registered Trustees of the Presbyterian Church of***

East Africa & another v Ruth Gathoni Ngotho [2017]

eKLR held:

“29. Bearing the foregoing in mind, we note that fixed term contract carries no rights, obligations, or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the respondent’s contract ought not to have been maintained. This is in relation to the salary of the months 5th of April up to May,2010. Similarly, since the respondent’s contract came to an end by effluxion of time any claim for wrongful termination could not be maintained.”

64. Further, in ***Registered Trustees De La Salle Christian BrothersT/A St. Mary’s Boys’ Secondary School v Julius D M Baini [2017] eKLR***, the Court of Appeal held as follows:

“In the view of the court, there is no obligation on the part of an employer to give reasons to an employee why a fixed-term contract of employment should not be renewed. To require an employer to give reasons why the contract should not be renewed, is the same thing as demanding from an employer to give reasons why, a potential employee should not be

employed. The only reason that should be given is that the term has come to an end and no more.”

65. Being guided by the foregoing decisions and the established principle that the non-renewal of a fixed-term contract does not amount to termination unless it is attended by a legitimate expectation, the non-renewal of the Claimant’s contract was lawful and in accordance with the terms of the contract. The non-renewal of the contract did not constitute an unlawful termination of the Claimant’s contract.

Whether the Claimant is entitled to the reliefs sought

66. Having carefully considered the pleadings, the evidence on record, and the submissions by the parties, and in light of the Court’s findings on the preceding issues, the question that arises is whether the Claimant is entitled to the reliefs sought in the Amended Memorandum of Claim.
67. The Claimant sought a range of declaratory orders including declarations that the Respondents violated his right to legitimate expectation and fair administrative action; that the recruitment process for the Managing Director was irregular

and unlawful and that the current office holder occupies the position through an illegal process. He further prayed for general and exemplary damages and a fresh recruitment process involving his participation.

68. Having found that the Claimant did not establish a legitimate expectation of renewal of his contract and that his contract lapsed by effluxion of time, there is no legal basis upon which the Court can issue a declaration that the Respondents acted unlawfully or unconstitutionally.
69. Similarly, the claim challenging the recruitment and appointment of the current Managing Director was not supported by evidence independent of the Claimant's grievance regarding the non-renewal of his own contract. The Court is not persuaded that any illegality has been demonstrated in the recruitment process capable of warranting the drastic orders sought, including nullification of the appointment and an order for fresh recruitment.
70. The Claimant further prayed for general and exemplary damages. Such reliefs are only available where breaches of rights or unlawful conduct are established. The Court having

found that the Respondents acted within the terms of the contract and in accordance with the applicable legal and procedural framework, no basis has been laid for an award of damages.

71. The prayer for an order directing a fresh recruitment process involving the Claimant is equally unsustainable. Such an order would only be justified where the initial process has been shown to be unlawful or procedurally flawed, which is not the case herein.
72. In the circumstances, the Court finds that the Claimant has failed to establish entitlement to any of the reliefs sought in the Amended Memorandum of Claim. The suit is therefore without merit and is dismissed. There shall be no order for costs.
73. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 23RD DAY OF APRIL, 2026**

**MAUREEN ONYANGO
JUDGE**

