

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER E660 OF 2020

RAPHAEL KIBAARA KINNGO'RICLAIMANT

VERSUS

KENYA CIVIL AVIATION AUTHORITY..... RESPONDENT

JUDGMENT

INTRODUCTION

1. This dispute is marked by a distinctive employment history. The Claimant was initially engaged by the Respondent on permanent and pensionable terms, but the relationship was subsequently reconstituted into a fixed -term contract. He contends that, throughout both phases of his service, the Respondent infringed his labour and contractual rights, as well as his constitutional guarantees, and he accordingly seeks declaratory orders alongside compensatory relief.

The Claimant's Case

2. It is the Claimant's case that he joined the Directorate of Civil Aviation [DCA] in September 1991 and was subsequently admitted to a three-year aviation training programme at the DCA's East African School of Aviation. He completed the course successfully in 1994. He was later appointed and confirmed in the position of Aeronautical Communications Officer III [ACOIII] on a permanent and pensionable terms of service.
3. Subsequently, as a result of his exemplary service and extensive training both locally and abroad, he rose through the ranks of flight operations inspectors to the position of Acting Manager, Flight Operations, which he held until 30th April 2016. He earned a monthly salary of KShs. 453, 496.
4. On 10th March 2010, he was appointed Acting Manager Flight Operations. As a result of the Respondent's malice and discriminatory actions, he remained in the position of Acting Manager Flight Operations for over 73 months. While other

officers in acting capacities continued to be promoted, the Respondent ignored him. His complaints elicited no favourable action from the Respondent.

5. The Director General, through a Memo dated 4th September 2015, proposed that he be confirmed in the position of Manager Flight Operations, which he had held in an acting capacity for six years. Instead of confirming him into the position on a permanent and pensionable terms, the Respondent chose to offer him the same position on a three-year fixed-term renewable contract. This contract was entered into through coercion and in complete disregard of the Respondent's own Human Resources Policies.
6. On 3rd August 2016, only three months into the fixed-term contract, he was maliciously suspended from work based on an allegation that was later proven to be unfounded and malicious. The suspension was punitive, without pay and without an opportunity to be heard, contrary to the tenets of natural justice.

7. Owing to malicious allegations, the Respondent subjected him to a disciplinary process that culminated in a decision to dismiss him from employment on 30th April 2019. However, following an appeal against that decision, it was overturned, and the Board ordered his reinstatement. In communicating the Board's decision, the Director General did not specify the position into which he was to be reinstated.
8. The stagnation in the acting capacity for 73 months was contrary to public service requirements for acting appointments, which are limited to six months of continuous service. He was treated unfairly and unequally compared to another officer who was confirmed for the DANS position. His confirmation was backdated to the time he started acting. The Respondent discriminatorily treated him.
9. His suspension from employment by the Director General was contrary to the procedure set out in Section H, Clause H2 of the KCCA HR Manual and a violation of his dignity and reputation.

10. After successfully challenging the decision to dismiss him from employment, the Board ordered his reinstatement. The Director communicated the decision to him by letter. However, the Director unjustifiably included a warning and a direction that he be subjected to a performance improvement plan. The Performance Improvement plan was to be under his junior's supervision.
11. He further states that he was entitled to a correct certificate of service reflecting the position he substantially held at the time of his exit from the Respondent's employment. The certificate issued to him incorrectly indicated that the position was Manager ANS and Aerodromes.
12. By reason of the premises, the Claimant holds that he is entitled to;
 - I. A declaration that he suffered an unfair and wrongful termination at the initiative of the Respondent.
 - II. An order reinstating him to his employment without any loss of benefits.

- III. Damages for discrimination.
- IV. Damages for unlawful retention of his dues.
- V. An order compelling the Respondent to immediately withdraw and consequently expunge the written warning and performance improvement program from his employment record.
- VI. In the alternative, he be awarded;
 - a) Pay in lieu of 10 months' leave due for the period of 10 years to retirement..... Kshs. 4,534,960.00
 - b) Payment of salary arrears for the post of Manager Operations as acting allowance, 73 months..... KShs. 1,045,185.00
 - c) Unpaid monthly incrementsKShs. 367,200.00.
 - d) Salary for 124 months, the period that remained until the mandatory retirement age.....KShs. 61, 111,912.00.
 - e) Shortfall of monthly incremental rate KShs. 1,500,400.00

f) Shortfall in gratuity payment on retirement at
60 years..... KShs. 19, 409,
816.00.

VII. Costs of the suit.

The Respondent's Case.

13. Despite having entered appearance and filed witness statements, the Respondent did not call any witness to testify on their case.

Analysis and Determination

14. As outlined in the introductory paragraph of this judgment, the Claimant's pleadings and evidence indicate that his causes of action ostensibly originated during two distinct periods of his employment with the Respondent: firstly, while he was engaged under a permanent and pensionable contract, and subsequently, during the three-year fixed-term contract.

15. Having said this, I now turn to distil the issues that arise for determination in this matter. I have carefully considered the

pleadings by the parties, the Claimant's evidence, and the respective submissions by the parties' Counsel. The following issues are for determination;

- a) Whether the Claimant's claim was filed out of the statutory period and, as such, time-barred.
- b) Was the Claimant's employment unfairly terminated?
- c) Is the Claimant entitled to the reliefs sought?

16. Section 80 of the Employment Act, 2007, provides;

“Notwithstanding the provisions of Section 4[1] of the Limitation of Actions Act [Cap 22], no civil action or proceedings based on or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect, or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof.”

17. Inarguably, the Claimant was employed by the Respondent under two distinct contracts of employment. Accordingly, any cause of action that might have arisen during the currency of either contract shall be considered from that perspective when determining the time of its accrual.
18. The Claimant contended that at all material times during the currency of the initial contract, which was under permanent and pensionable terms, the Respondent, by action, discriminated against him. He was kept in an acting position without confirmation in the substantive role for a full 73 months, while other employees who served in acting capacities in other roles were confirmed into substantive roles. He was unjustifiably ignored.
19. This Court takes the view that, as the initial contract came to an end on 1st of May 2016, when the Claimant and the Respondent entered into the fixed-term contract, and the suit herein was filed on 8th October 2020, any claim founded on a cause of action arising during the currency of the initial

contract, including the discrimination claim herein, was brought out of time under Section 89 of the Employment Act and, as such, time-barred.

20. Time and again, this Court has held that a cause of action can arise against the employer for the manner in which it handled a suspension process. The Claimant claimed that he was suspended on 3rd August 2016, pending the termination of disciplinary proceedings against him. According to him, the suspension was unlawful, unjustified, and an affront to the dictates of natural justice. Considering the date of the suspension and the fact that the suit herein was filed on the above-stated date, it is not difficult to conclude that the Claimant's claim based on the alleged illegality in the suspension process is time-barred.

21. Inarguably, the parties entered into a fixed-term employment contract on 1st May 2016. Like any other time-bound contract, it had an appointed date of expiry. Further, the Respondent served the full term of the contract. As

rightly submitted by the Respondent, the Contract was not terminated prematurely by the Respondent at any point. In my view, the contract lapsed by effluxion of time. There is no basis for the Claimant to assert unfair termination.

22. Judicial precedent holds that a fixed-term contract automatically terminates on the appointed date. It is therefore improbable that a claim for unfair termination or wrongful dismissal can be based on the expiry and attract the remedies contemplated under the Employment Act, 2007. See **Transparency International Kenya v Teresa Carol Omondi [2023] KECA 174[KLR]**.

23. The Claimant purports to challenge the fixed-term contract into which he entered and served out its full term. He asserts that it was entered into under threats and coercion. From the pleadings and his evidence, it is not difficult to conclude that nothing emerges that can provide a basis for this Court to find that there was coercion or threats inducing the Claimant to execute the contract. His allegations were bald, and a Court of law cannot rely on them to decide in his favour.

24. This Court has not lost sight of the fundamental principle that Courts of law do not revise or alter contracts entered into by parties, as aptly articulated by the Court of Appeal in *National Bank of Kenya Limited v Pipe Plastic SamKolit [K] Ltd & another* [2001] eKLR. To permit the Claimant to successfully evade the obligations of the fixed-term contract, which I hold him to be bound by, would result in a situation where it is concluded that he served the Respondent under only one contract—the initial one.

25. Furthermore, if the Claimant indeed intended to contest the validity of the fixed-term contract on the grounds of coercion and undue influence, the law, pursuant to section 89 of the Employment Act, mandates that he should have filed the relevant proceedings within three years from the date of the contract's execution, as that is when, in my view, the cause of action accrued.

26. I have carefully considered the reliefs sought by the Claimant, none of which are independent of the Claim for

unfair termination, unlawful suspension, discrimination, and invalidity of the fixed-term contract. Having found as I have hereinabove on these aspects, I am not hesitant to conclude that none of the reliefs can be availed to the Claimant.

27. Notwithstanding the foregoing conclusion [in paragraph 26, above], I deem it necessary to observe that some remedies sought by the Claimant as alternatives to the primary prayers are of an anticipatory nature. For example, the remedy sought for salary payments up to the retirement age. In my opinion, these remedies have been pursued without regard to the principle that the law does not envisage employment for life. Additionally, such remedies are not provided for under Section 49 of the Employment Act. See also the Supreme Court decision in **Francis Waithaka & 2 others vs Telkom Kenya Limited, SC Petition No. E009 of 2025.**

28. By reason of the foregoing premises, I find the Claimant's claim lacking in merit. It is hereby dismissed.

Read Signed and Delivered this 23rd April 2026.

OCHARO KEBIRA

JUDGE

ORIGINAL