



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

NAIROBI

(ON Makau J on 30th April, 2026)

CAUSE NO. E892 OF 2024

BRIAN OTIENO.....DONALD CLAIMANT

OMINDO

-VERSUS-

H YOUNG & CO LIMITED.....RESPONDENT

(EA)

JUDGMENT

Introduction

1. The Claimant was employed by the Respondent as a civil and Structural Engineer under a six (6) months contract from 1st August 2023 to 29th February 2024. His basic salary was Kshs. 142,382.11. House allowance of Kshs. 35,595.53 and transport allowance of Kshs. 3000. He served the entire contract term and continued until 14th August 2024 when he

was served with a termination letter citing reduction of work as the reason for the termination.

2. By a statement of claim dated 16th October 2024 the Claimant sued the Respondent for unfair termination contending that he was laid off without following the mandatory procedure set out in Section 40 of the Employment Act. Therefore he prayed for:-

a) A declaration that the Claimant was unfairly and unlawfully terminated by the Respondents.

b) 12 months salary compensation for unfair and constructive dismissal termination pursuant to section 49 of the Employment Act @ 184,898 x 12 months....Kshs. 2,218,776.

c) 1 year severance pay pursuant to section 40 of Employment Act (7,111.5 x 15 days x 1 year).... Kshs. 106,672.5

d) 1 month salary in lieu of notice...Kshs. 184,898

e) Unpaid Salary for August 2024....Kshs. 99,561

f) Unpaid annual leave.....Kshs. 184,898

g) Interest at court rates on b), c), d), e) and f) above from the date of unlawful termination (14th August 2024) till payment in full

h) Cost of the suit.

i) Any other relief that this Honourable Court may deem fit and just to grant

3. The Respondent filed a Response dated 30th November 2024 denying any wrong doing. It contended that after the expiry of the contract on 29th February 2024, the parties extended the same to 31st July 2024 on mutual agreement. It denied that the continued engagement post-contract was purely on mutual understanding to facilitate the seamless completion of ongoing project and it never constituted any intention to establish an indefinite employment relationship.
4. It further averred that the decision to terminate on ground of reduction of work did not constitute redundancy under Section 40 of the Employment Act but in reference to the amount of work remaining to complete the project. Therefore, it maintained that the termination was for a just cause and the procedure provided in the contract was followed by offering to pay one month salary in lieu of notice plus leave.
5. It averred that, it responded to the demand letter undertaking to pay the sum of Kshs. 246,025 being notice pay plus leave, but the Claimant declined to collect the cheque. Therefore, it prayed for the suit to be dismissed with costs for lack of merits.

Evidence

6. The Claimant testified as CW1 and adopted his written statement dated 16th October 2024 as his evidence in chief.

He further produced nine (9) documents as exhibits. He then reiterated that after the expiry of his contract he continued working until 14th August 2023 when his services were terminated. The termination letter cited the reason as reduction of work. He Maintained that the termination was unfair and unlawful since Section 40 of the Employment Act was not complied with.

7. He contended that his salary for 14 days worked in August 2023 was not paid plus 30 days annual leave. He contended that he could not go for his leave because the construction project was time bound. He was also not paid severance pay for one years worked finally he prayed for compensation of 12 months as compensation for unfair termination and one month salary in lieu of notice.
8. On cross examination, he reiterated that he was the Site Manager/Agent under a fixed term contract and it was never extended after expiry. He maintained that he was never given any extension but he confirmed working and receiving payment until the termination on redundancy. He admitted that he would not be needed if the project ended.
9. He admitted that he signed the letter in his supplementary list as Site Manager/Agent and sent them via email. He further admitted that he went for Christmas break from 23rd December 2023 to 2nd January 2024 and the company was

closed. He also admitted that he took 16 leave days in different dates which he could not confirm.

10. I re examination he reiterated that he never signed contract renewal after the initial one expired on 29th February 2024. However he confirmed working in the same capacity.
11. The Respondent called its Manager Mr. Ernest Kipkurui Rutto as RW1 who adopted his written statement dated 30th November 2024 as his evidence in chief. He also produced 8 documents as exhibits to support his case. Finally, stated that the Claimant was employed on a fixed term contract which expired on the agreed date.
12. On cross examination, he confirmed that the Claimant's contract expired on 29th February 2024 but he continued working until 14th August 2024. He contended that the Claimant was given contract extension dated 6th June 2024 (Document 4). He further confirmed that the termination letter cited the reason as reduction of work.
13. He contended that the contract extension was issued via email which he did not produce as exhibits. He further confirmed that the Claimant never signed the contract extension and acknowledged that a contract should be signed by the employee. He further admitted that the termination letter did not refer to lapse of contract.

14. He admitted that the Respondent owes the Claimant leave days. He further admitted that the Respondent never gave notice to the Labour Officer and the Claimant, that there was reduction of work. No selection criteria was followed since the Claimant was the only one affected. He contended that Claimant's gross salary was Kshs. 177,000.
15. In re examination he confirmed that the contract had a start and end date but it never provided for prior notice. He confirmed that public holidays are not counted as leave days.
16. He clarified that as at the time of the termination there was no existing contract as it had lapsed on 31st July 2024. Finally he stated that he was not sure whether Claimant's salary was Kshs. 177,000 as the same could be Kshs. 184,000 inclusive of allowances.

Submissions

17. It was submitted for the Claimant that no evidence of extension of his fixed contract after expiry and therefore his employment had converted to a month-to-month employment. Accordingly it was submitted that the contract was subject to Section 40 of the Employment Act in case of termination on account of redundancy.

18. For emphasis, reliance was placed on **Caroline Kwamboka Kinyulusi v. National Environment Trust Fund [2020] eKLR** where an employee confirmed to work for 4 months after the contract term expired and the court held that the contract had converted to a month- to - month contract terminable by reasonable notice. Further reliance was placed on **Justin Beswick v. Local Ocean Conservative (LOC) Kenya Limited [2022] eKLR** where the court held that there was implied renewal of contract where the employer allows the employee to continue working after expiry of the fixed term contract.

19. It was further submitted that the failure to comply with the procedure of redundancy under Section 40 of the Employment Act rendered the termination unfair and unlawful within the meaning of Section 45 of the Act. For emphasis, reliance was placed on **Rift Valley Railways (K) Limited v. Kiya Kalakhe Boru [2015] eKLR** where the Court of Appeal held that any departure from requirements of Section 40 of the Employment Act would attract the wrath of Section 45 of the Act and the remedies under Section 49.

20. Finally, it was submitted that the Claimant is entitled to the reliefs sought in his pleadings plus costs.

21. On the other hand, it was submitted for the Respondent that the alleged redundancy does not arise since the extended contract merely expired on 31st July 2024 by effluxion of time. It was further submitted that the Claimant has not proved that he was entitled to an automatic renewal. For emphasis, reliance was placed on **Transparency International Kenya v. Mengich t/a Mengich & Co. Advocates [2017] eKLR** where the Court of Appeal reaffirmed that the ending of contract by effluxion of time does amount to unfair termination as the employer is not to blame for the same.
22. Further reliance was placed on **Benard Wanjohi Muriuki v. Kirinyaga Water & Sanitation Company Limited & another [2012] eKLR** where the Court of Appeal held that a fixed term contract terminates automatically upon expiry unless the parties mutually agrees to renew it. It was further held that the mere failure to renew does not constitute termination but natural conclusion of the parties original agreement.
23. It was further submitted that continued engagement after expiry of the fixed term contract does not automatically convert the relationship into a permanent employment. For emphasis, reliance was placed on **Margaret A. Ochieng v. National Water Conservation & Pipeline Corporation [2014] eKLR** where the court held that continued

engagement after expiry of fixed term contract does not automatically transfer the engagement into permanent employment. It emphasized that such conversion depends on the surrounding circumstances, operational realities and the intention of the parties.

24. Further reliance was placed on **Registered Trustees of the Kenya Methodist University & another v. Kanyiri & 2 others [2021] eKLR** where the Court of Appeal held that continued service after expiry for fixed term contract does not give rise to permanent employment unless there is evidence of renewal or a demonstrated mutual intention by the parties to vary the original agreement.
25. As regards the alleged redundancy it was submitted that the Claimant was employed under a fixed term contract and project based contract that expired on 31st July 2024. The contract term and the project ended and the alleged redundancy was a misconception. For the same reason it was submitted that there was no unfair termination under Section 45 (2) of the Employment Act as there was no employer-initiated termination but an expiry of a time of bound contract.
26. In view of the foregoing matters it was submitted that the Claimant is entitled to the reliefs sought save for the Kshs. 246,025 that he declined to receive and filed suit.

Issues for determination and analysis

27. Having considered the pleadings, evidence and submissions, there is no dispute that the Claimant was employed by the Respondent under a fixed term contract of six months lapsing on 29th February 2024. There is further no dispute that the Claimant worked until 14th August 2024 when he was served with a termination letter citing reduction of work as the reason for the separation. The issues in controversy are:-
- a) Whether the termination amounted to redundancy.
 - b) Whether the redundancy was unlawful.
 - c) Whether the reliefs sought are merited.

Redundancy or Termination

28. The termination was by the letter dated 14th August 2024 which stated that:-

“Due to reduction of works at the company, the management has terminated your services effective 14th August 2024.

Your final dues will be as follows:-

salary upto and including 14th August 2024, notice pay, outstanding leave, less any company liability.

Please clear with the stores before you leave.

Your final dues will be processed and prepared for collection.”

29. The Claimant's case was that his contract expired on 29th February 2024 and he continued working and receiving salary until he received the above termination letter. He never received any extension of the contract and as such his contract converted to a contract for infinite period. Therefore he maintained that the termination by the Respondent on 14th August 2024 amounted to redundancy.
30. On the other hand the Respondent's case was that it employed the Claimant under a fixed term contract that was tied to a construction project. It maintained that the contract ended on 29th February 2024 but it was mutually extended to 31st July 2024 when it expired. It produced copy of letter dated 6th June 2024 notifying the Claimant that his contract had been extended till 31st July 2024 when it would end automatically.
31. The letter dated 6th June 2024, which was heavily relied upon by the Respondent, was written more than three months after the expiry of the fixed term contract and there is no evidence that it was ever delivered to the Claimant to give his consent. In fact the Claimant denied the same and maintained that after expiry of the contract on 29th February 2024, his employment converted to a month-to-month contract.

32. I have carefully considered the evidence, there is no evidence that the Respondent extended the fixed term contract after it expired on 29th February 2024. There is also no evidence that any other fixed term contract was signed as from 1st March 2024 to 14th August 2024 when the employment relationship was terminated

33. In **Caroline Kwamboka Kinyulusi v. National Environment Trust Fund [2020] eKLR** Onyango J held:-

“The foregoing notwithstanding, the general rule is that when an employee holds over after expiry of a fixed term contract, the contract converts to a month on month contract, so that, should the employer wish to terminate the same, there ought to be reasonable notice.”

34. I agree with the above decision because where a renewal or extension is not expressly agreed upon after expiry of a fixed term contract, the parties can no longer purport to be under a fixed term contract. I say so because a fixed contract must expressly provide for a start date and an end date or at least a formula to ascertain the fixed term.

35. In the instant case the Claimant is not saying that his contract was renewed. His case is that the contract lapsed

and he began another contract for an infinite period. The Respondent is the one alleging that there was extension of the initial contract, but it has failed to discharge the burden of proof of the said extension by mutual agreement as required by the law of evidence.

36. Having found that the contract of employment was never extended formally, I further find that from 1st March 2024, the Claimant was not employed under a fixed term contract but a contract for an indefinite period terminable only for a valid reason and in accordance with a fair procedure contemplated by the Employment Act.
37. In this case the termination was through redundancy because the reason cited for termination was reduction of work in the company and not for any fault on the part of the Claimant. I say so because Section 2 of the Act defines redundancy as follows:-

“..... the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment.”

Unlawful Redundancy

38. For redundancy to be lawful it must comply with Section 40 of the Employment Act which provides as follows:-

“(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—

(a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

(b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

(d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the

employee at a disadvantage for being or not being a member of the trade union;

(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

(g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days' pay for each completed year of service."

39. In this case the Respondent admitted that it never complied with the above law because the contract merely expired and that since it was tied to a construction project, it is implied that it is for limited period. The foregoing contention is obviously not factual because my reading of entire contract dated 1st August 2023 is clear that the Respondent employed the Claimant as civil and structural Engineer for a contract term of six (6) months starting 1st August 2023 to 29th February 2024.
40. Paragraph 6 was clear that his employment was not tied to one project. It stated:-

“ Your initial place of work will be Galana and you are liable to transfer and secondment to any of the other company’s sites and/or company affiliates during the course of your employment as may be required as per the transfer policy.”

41. It follows that the Respondent was not right is contending that the Claimant was employed for a time bound project only. The above paragraph is clear that he was transferrable to other projects of the Respondent which means that the parties did not intend to tie their relation to one project. In fact the termination letter never stated that the reduction of work was in respect of the said project but the company. Therefore I find that the redundancy herein was not justified as the Respondent did not prove that there was no work available in other projects of the company.
42. In addition RW1 admitted that no notice of intention to declare redundancy was served upon the Claimant and the area Labour Officer. In **Rift Valley Railways (K) Limited v. Kiya Kalakhe Boru [2015] eKLR**, the Court of Appeal held:-

“Redundancy, although is a proper and valid ground for termination of employment, it must always be fashioned along the requirements of Section 40 of the Employment Act. Any departure

therefrom would attract the wrath of Section 45 with the consequence that the retrenchment would be characterized unfair and invocation of section 49 for appropriate remedies.”

43. In the instant case, the Claimant was subjected to a redundancy process that was not fashioned along Section 40 of the Employment Act and therefore it amounted to unfair termination of employment within Section 45 of the Act which provides as follows:-

“(1). No employer shall terminate the employment of an employee unfairly.

“(2) A termination of employment by an employer is unfair if the employer fails to prove-

a) That the reason for the termination is valid;

b) That the reason for the termination is a fair reason-

(i) Related to the employees conduct, capacity and compatibility; or

(ii) Based on the operational requirements of the employer; and

c) That the employment was terminated in accordance with fair procedure.”

Reliefs

44. In view of the foregoing conclusion, I find that the Claimant is entitled to declaration as prayed, that his employment was unfairly and unlawfully terminated by the Respondent. For the same reason he is entitled to reliefs under Section 49 of the Act including salary in lieu of notice plus compensation for unfair termination.
45. I award him Kshs. 184,898 being one month salary in lieu of notice plus another one month salary as compensation for unfair termination. In awarding the compensation, I have considered that he worked for a short period of one year and also that he never contributed to the termination through misconduct.
46. The Claim for severance pay under Section 40 of the Act is decline because the unlawful termination has been compensated by the compensation made under Section 49 of the Act.
47. The Claim for salary for August 2024 is merited and I award the same for 14 days worked being Kshs. 86,285.73 I also award him the claim for leave. He prayed for 30 days leave earned but the Respondent produced leave records showing that he took 16 days leave leaving a net of 14 days leave which it valued at Kshs. 84,886. The Claimant did not adduce any evidence to rebut the said leave records. Consequently, I award the assessment by the employer.

Conclusion

48. I have found that the Claimant was subjected to unlawful redundancy which amounted to unfair termination within the meaning of Section 45 of the Employment Act. I have further found that he is entitled to terminal dues plus compensation under Section 49 of the Act. Consequently, I enter judgment for him against the Respondent as follows:-

a) Declaration that the Respondent unfairly and unlawfully terminated Claimant's employment.

b) Notice Kshs. 184,898/-

c) Compensation Kshs. 184,898/-

d) Salary Kshs. 86,285.73/-

e) Leave Kshs. 84,886/-

Total Kshs. 540,940.73

f) The award is subject to statutory deductions.

g) The Claimant is awarded costs and interest from the date of the judgment.

DATED SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30TH DAY OF APRIL 2026.

**ONESMUS MAKAU
JUDGE**

Appearance

Osiemo for Claimant

Mwenda for Respondent