



**Njuguna v Turkana Basin Institute (Cause E913 of 2023)
[2026] KEELRC 1231 (KLR) (8 May 2026) (Judgment)**

Neutral citation: [2026] KEELRC 1231 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E913 OF 2023**

**AK NZEI, J
MAY 8, 2026**

BETWEEN

DAVID NYORI NJUGUNA CLAIMANT

AND

TURKANA BASIN INSTITUTE RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent herein vide a Statement of Claim dated 8th November, 2023 and sought the following reliefs:-

- a. Twelve months' compensation (Kshs.149,031 x 12)
Kshs.1,788,372/=.
- b. Loss of future earnings up until age of retirement
Kshs.16,095,348/=.
- c. General damages for mental anguish and undue stress
Kshs.3,000,000/=.
- d. Gratuity pay (Kshs.74,515.50 x 13 years) Kshs.968,701.50/
=.

2. The Claimant pleaded, inter-alia:-

- a. that vide a letter of appointment dated 8th June, 2010, the Claimant was employed by the Respondent in the position of Filing/Archive Clerk, earning a gross salary of Kshs.40,000/=, with 6 months' probation.
- b. that the Claimant was issued with a confirmation letter dated 16th March, 2011, confirming him with effect from 1st November, 2010.



- c. that although the Claimant's initial contract was for a period of 2 years, he was never issued with a subsequent contract after confirmation until some times in the year 2019.
- d. that vide a letter dated 4th April, 2017, the Claimant was promoted to the position of Senior Archivist as a result of his exemplary performance, and his salary was reviewed upwards to Kshs.77,000/= per month. That the Claimant's salary was thereafter periodically increased to Kshs.113,764/= vide a letter dated 1st July, 2018 and to Kshs.149,031/= by June 2023.
- e. that sometimes in 2019, the Respondent through deceitful, mischievous and illegal means, threatened and coerced the Claimant to sign several back-dated documents and/or contracts without revealing the contents thereof beforehand or inviting the Claimant for discussions; all in a brazen attempt to convert the valid and decade-long permanent employment to employment on contractual basis without following due process. That the Respondent threatened to withhold the Claimant's salary should he refuse to sign the back-dated contracts.
- f. that due to numerous financial responsibilities that the Claimant bore and the fear of not receiving his salary, the Claimant signed the contracts involuntarily.
- g. that on 30th June, 2023, the Respondent issued a notice to the Claimant via email stating that the Claimant's "employment contract" that ran from 1st July, 2022 to 30th June, 2023 would expire on 30th June, 2023 and would not be renewed; and subsequently sent to the Claimant a letter of non-renewal dated 13th July, 2023, vide which the Claimant's employment was terminated.
- h. that both the notice dated 30th June, 2023 and the non-renewal letter dated 13th July, 2023 were invalid, null and void as they made reference to illegal, invalid and null and void back-dated contract of employment that was executed involuntarily by the Claimant.
- i. that the status of the Claimant's employment was that of permanent and pensionable; and was not based on temporary contracts.
- j. that vide a letter dated 1st September, 2015 and addressed to Prime Bank, Karen Branch, which had a bank-customer relationship with the Claimant, the Respondent confirmed that the Claimant was the Respondent's permanent and pensionable employee.
- k. that it is curious that the Respondent purportedly entered into a contract in the year 2012, purportedly commencing on 9th June, 2012 and ending on 30th March, 2019. That the date of 9th June, 2012 on the alleged contract is shown to have been written after the Claimant had written the date of 20th Ma, 2019, which is clearly crossed.
- l. that conversion of the Claimant's employment was contrary to Section 10(5) of the *Employment Act* as the Claimant was not consulted before particulars of his employment were changed.



- m. that the Respondent terminated the Claimant's employment without a valid reason, contrary to Section 43 of the [Employment Act](#); and that the termination was unfair and unlawful.
3. Documents filed alongside the Claimant's Statement of Claim included the Claimant's written witness statement dated 25th October, 2023 and a list of documents dated 8th November, 2023; listing 11 documents. The listed documents included the letter of appointment dated 8th June, 2010, a letter of confirmation dated 16th March, 2011, a letter dated 1st September, 2015, a letter of salary review dated 8th February, 2017, a letter (of salary review) dated 1st July, 2018, backdated contracts of employment dated 9th June 2012, 1st April 2019, 2nd July 2020 and 28th July, 2022 respectively. Also listed are a letter dated 13th July, 2023 (of non-renewal of a contract of employment), payslips, KRA Tax Deduction Card and a demand letter dated 31st July, 2023.
4. The Respondent entered appearance on 24th November, 2023 and subsequently filed a Response to Claim dated 15th December, 2023. The Respondent admitted having employed the Claimant. The Respondent however pleaded:-
 - a. that the Claimant having worked for 2 years, his contract was extended for 6 years and 9 months to 30th March, 2019 – vide a contract dated 9th June, 2012.
 - b. that upon the lapse of the contract dated 9th June, 2012 on 30th March, 2019, the Respondent entered into several other contracts of employment with the Claimant as follows:-
 - i. 1st April, 2019 to 30th June, 2020 (with a gross salary of Kshs.113,764/=).
 - ii. 1st July, 2020 to 30th June, 2021 (with a gross salary of Kshs.120,000/=).
 - iii. 1st July, 2021 to 30th June, 2022 (with a gross salary of Kshs.126,620/=; and
 - iv. 1st July, 2022 to 30th June, 2023 (with a gross salary of Kshs.135,483/=).
5. The Respondent further pleaded:-
 - a. that the Claimant executed the subsequent contracts willingly and was not threatened or coerced through deceit and illegal means.
 - b. that the Claimant was notified that his employment contract would not be renewed; and that the contract lapsed by effluxion of time.
 - c. that the Claimant was not constructively dismissed.
 - d. that the Respondent denied the Claimant's claim.
6. Documents filed alongside the Respondent's Response to Claim included witness statements of Francis Nasiye dated 9th February, 2024 and of James Ombaki Kirwa dated 23rd October, 2024.
7. The Respondent also filed a list of documents dated 9th February, 2024, listing 13 documents. The listed documents include copies of the Claimant's Letter of Appointment dated 8th June, 2010, letter



of confirmation dated 16th March, 2011, the contracts referred to in paragraph 4 of this Judgment, email dated 30th June, 2023, letter of non-renewal of contract dated 13th July, 2023, a cheque dated 8th January, 2024, a letter from Hania & Anzala Advocates dated 10th January, 2024, a demand letter dated 31st July, 2023 and response to the demand letter dated 3rd August, 2023.

8. Trial opened before me on 16th January, 2025. The Claimant testified and adopted his filed witness statement as his testimony in the case. He also produced in evidence the documents referred to in paragraph 3 of this Judgment. Cross-examined, the Claimant testified, inter-alia:-

- a. that the initial contract/letter of appointment dated 8th June was to last for an initial period of 2 years, and that the contract shown to have been signed on 9th June, 2012 was signed on 20th May, 2019; and was signed under coercion. That the Claimant was told to cancel the date 20/5/2019, and was given a date to write, being 9/6/2012; which was 6¹/₂ years back.
- b. that on 20/5/2019, the Claimant signed contracts, for 2019 to 2020, and was told to indicate on one 1/4/2019. That he signed another for 2/7/2020 under coercion; and signed another on 28/7/2022 for the period 1/7/2022 to 30/6/2023. That he was notified of the lapse of this contract, and was on 13/7/2023 given an evenly dated letter informing him that the contract would not be renewed.
- c. that the Claimant's letter of appointment, letter of confirmation and contracts did not provide for payment of gratuity. That the Respondent offered 3 months' salary as gratuity but did not pay. That the Claimant did not bank a cheque for Kshs.87,120/= which the Respondent's Advocates forwarded to his Advocates.

9. Re-examined, the Claimant testified:-

- a. that he was not issued with any contract after the one dated 8/6/2010, until 2019. That the contract dated 8/6/2010 was for a period of 2 years. That he continued working until 2019; and in-between was given promotions.
- b. that he was given a letter of confirmation on 16/3/2011. That the initial 2 years contract lapsed in 2012.
- c. that in 2019, the Claimant was given a contract indicating that he had worked on contract from 2012 to 2019. That on that date, he also signed another contract stating that he would work for 1 year upto 2020. That he did not sign those contracts voluntarily.
- d. that the Claimant had worked as a permanent employee upto 2019. That the Claimant's signature on the contracts given to him in 2019 was appended on 20/5/2019; which date the Claimant was told to cancel.
- e. that the date given to the Claimant to write on the said contract (9/6/2012) was a Saturday, which was not a working day according to Clause 4 of the Contract; as working hours were 8.00 a.m to 5.00 pm – Monday to Friday. That the Claimant was not at the place of work on 9/6/2012. That he did not sign any contract on 9/6/2012. That he signed the documents on 20/5/2019.



- f. that the salary of Kshs.113,764/= indicated on the contract dated 1/4/2019 was first paid to the Claimant on 1/7/2018; and that before the said contract, the Claimant had been promoted to the position of Senior Archivist on 8/2/2017.
 - g. that the amount of the cheque forwarded to the Claimant's Advocates (Kshs.87,120/=) did not amount to 3 months' salary as the Claimant was earning Kshs.149,039/= per month.
10. The Respondent called 1 witness, James Ombaki Kirwa (RW-1), who adopted his filed witness statement as his testimony and produced in evidence the Respondent's documents referred to in paragraph 7 of this Judgment. RW-1 further testified that employees of the Respondent could be called to the office on Saturdays, and especially when the Respondent's Directors, who operated between Kenya and the USA where the Respondent is headquartered, was in Kenya.
11. Cross-examined, RW-1 testified:-
- a. that he joined the Respondent in 2024, and that his testimony (evidence) was based on what a former HR had told him and the documents that he had read. That he did not keep employment records.
 - b. that he was not present on the Saturday that the Claimant signed contracts.
 - c. that the Claimant was the Respondent's permanent and pensionable employee as at the time of the letter dated 1/9/2015.
 - d. that the Respondent had not issued the Claimant with a certificate of service.
12. Having considered the pleadings filed herein and the evidence adduced thereon; issues that fall for determination, in my view, are:-
- a. Whether the Claimant worked for the Respondent on fixed term contracts.
 - b. Whether the Claimant's employment was terminated by the Respondent, and if so, whether the termination was unfair.
 - c. Whether the reliefs sought are merited.
13. On the first issue, it was a common ground that the Claimant was employed by the Respondent with effect from 1st May, 2010 vide a Letter of Appointment dated 8th June, 2010 and executed/signed on even date. The said letter of appointment states in part:-
- “This contract is for an initial period of two years and your position will be reviewed after this period”.
14. According to the evidence on record, the Claimant's appointment was confirmed by the Respondent vide its letter dated 16th March, 2011. The said letter, signed by the Respondent's Director (RE-Leakey, FRS) states in part:-
- “Further to my letter of appointment dated 8th June, 2011, I am pleased to write to you to confirm your appointment as Filing/Archive Clerk with effect from 1st November, 2010...”



15. It was the Claimant's testimony that his initial 2 years' employment contract was not renewed after the lapse of the 2 years, and that he continued working for the Respondent and even received both promotion and salary increment after the lapse of the said period. It was the Claimant's testimony that after the said initial two years of employment, the status of his employment became one of a permanent and pensionable employee. To that end, the Claimant produced in evidence a letter written by the Respondent to the Claimant's Bank (Prime Bank Limited – Karen Branch) on 1st September, 2015. The said letter states as follows:-

“David Nyori Njuguna Id No. 1097xxxx

This is to confirm that the above-named is a permanent employee of Turkana Basin Institute Office in Karen Office Park.

He resides in Nairobi, Harambee Estate, H95.

He would like to open an account with your Bank and any assistance given to him will be most appreciated

Thank You

(Signed)

Farida Bana

For: Director.”

16. The foregoing documentary evidence was never rebutted by the Respondent, and no witness was called by the Respondent to dispute its validity. The Respondent's witness (RW-1) testified that he joined the Respondent in 2024, long after the Claimant's termination.
17. The Claimant also produced in evidence a letter written to him by the Respondent on 8th February, 2017 reviewing his salary. The letter states in part:-

“Salary Review – Senior Archivist Grade 8

I am pleased to inform you that your salary will be increased by 21% (Kshs.64,217/=) effective 1st March, 2017. Your new salary shall be Kshs.77,703/=.

This increase is the result of your continuous contribution to the success of this company.

All other terms and conditions of your contract of employment remain unchanged.

Thank you for your commitment and dedication.

Yours sincerely,

Turkana Basin Institute

(signed)

Dr. Richard Leakey

DIRECTOR”.

18. Also produced in evidence by the Claimant was a salary review confirmation letter written to him by the Respondent on 1st July, 2018. The letter states as follows:-

“Re: Salary Review Confirmation



Dear David,

I am writing to confirm the outcome of the recent salary review that has been carried out across the organization.

I am pleased to inform you that effective 1st July, 2018, your salary will be increased to a Gross of Kshs.113,764/= per month. You have been promoted to the job titled of Senior Archivist.

Other conditions remain the same as per your appointment letter.

I wish to thank you for your continued service and dedication to TBI.

Yours sincerely

Turkana Basin Institute

Director

(Signed)

Dr. Louise Leakey

Executive Director”.

19. It is to be noted that the foregoing letter referred to the Claimant’s conditions of employment “as per his letter of appointment”. The only “letter of appointment” produced in evidence by both parties herein is the letter of appointment dated 8th June, 2010. Had there been a subsequent letter of appointment or a fixed term contract subsequently signed by the parties as at 1st July, 2018, the same would have been mentioned in the said letter; whose validity and/or authenticity was not questioned or rebutted by the Respondent. The Respondent’s witness (RW-1) apparently knew nothing about the said letter, having joined the Respondent in 2024.
20. The said letter, just like those dated 1st September, 2015 and 8th February, 2017 respectively, are written on the Respondent’s letter heads; and are signed by identifiable officials of the Respondent company. Those officials never testified in Court. The authenticity of those letters cannot, therefore, be doubted.
21. The content and creed of the said letters candidly corroborate the Claimant’s unrebutted pleading and evidence that he was on 20th May, 2019 threatened and coerced into signing a “contract” back-dated 9th June, 2012”, over 6¹/₂ years back; and others purportedly dated 1st April, 2019 and other future dates. Both parties produced in evidence copies of the said impugned purported “fixed term contracts signed” on 1st April 2019, 2nd July, 2020, 7th July 2021 and 28th July 2022 respectively.
22. The Claimant testified that his signature on the aforesaid “contracts” was obtained through threats and coercion by the Respondent. The Respondent did not present any evidence in rebuttal of the Claimant’s said evidence. The persons shown to have signed the said “contracts”, including the alleged back-dated “contract” purportedly “signed on 9th June, 2012”, on behalf of the Respondent were not called by the Respondent to testify. The only evidence on record regarding the signing of the said impugned contracts is the Claimant’s unrebutted evidence.
23. I say purported “contracts” because after the lapse of the first two years stated in the Claimant’s letter of appointment dated 8th June, 2010, the Claimant’s employment became one terminable by either party giving the other a termination notice pursuant to Section 35(1)(c) of the *Employment Act*, and for valid reasons, pursuant to Sections 43(1) and 45(1) & (2) of the *Employment Act*; or on account of redundancy pursuant to Section 40 of the said Act.



24. The Respondent could not legally change the Claimant's terms of service to fixed term contracts without complying with Section 10(5) of the Employment Act which provides as follows:-
- “(5) Where any matter stipulated in subsection (i) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.”
25. The Respondent is not shown to have complied with the foregoing mandatory provision of the statute, but rather is said to have coerced and threatened the Claimant into signing purported fixed term contracts with both back-dated and future dates. Such purported fixed term contracts were illegal and a nullity; and the Respondent's letter to the Claimant dated 13th July, 2023 purporting to inform the Claimant that “his contract would not be renewed” amounted to an unfair termination of employment as no valid reason was given for the termination, and no termination notice was given.
26. I find and hold that the Claimant was not on any fixed term contract after the initial two years stated in the letter of appointment dated 8th June, 2010, and that termination of the Claimant's employment in July 2023 was unfair. This determines the first and the second issues.
27. On the 3rd issue, and having made a finding that termination of the Claimant's employment was unfair, I award the Claimant the equivalent of seven months' salary being compensation for unfair termination of employment. The Claimant's payslip for August 2018 indicates his basic pay as Kshs.113,764/= . That amount is indicated in the Respondent's letter to the Claimant dated 1st July, 2018 and (reproduced in paragraph 18 of this Judgment) as having been the Claimant's gross pay. The equivalent of seven (7) months' salary is Kshs.796,348/=, which I award the Claimant.
28. The claim for gratuity is declined as the Claimant's letter of appointment dated 8th June, 2010 did not provide for or fix payment of gratuity pursuant to Section 35(5) of the Employment Act. Further, the Claimant is not shown to have been covered by any CBA that provided for the same.
29. The claim for future earnings until retirement is declined as it is not one of the reliefs provided for in Section 49(1) of the Employment Act. The claim for general damages for mental anguish and undue duress was not proved, and is declined.
30. The claim for issuance of a Certificate of Service is allowed pursuant to Section 51(1) of the Employment Act.
31. In sum, and having considered written submissions filed on behalf of both parties herein, Judgment is hereby entered for the Claimant against the Respondent for Kshs.796,348/= being compensation for unfair termination of employment. The awarded sum shall be subject to PAYE (Pay As You Earn) pursuant to Section 49(2) of the Employment Act.
32. The Respondent shall issue the Claimant with a Certificate of Service pursuant to Section 51(1) of the Employment Act, within 45 days of this Judgment.
33. The Claimant is awarded costs of the suit.
34. The Claimant is also awarded interest on the amount awarded herein, at Court rates from the date of this Judgment until payment in full.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MAY 2026

AGNES KITIKU NZEI

JUDGE



ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Musa for the Claimant

Mr. Edwin Otieno for the Respondent

