



**Torutt v Coast Water Works Development Agency & another; Commission
for Human Rights and Justice (Interested Party) (Civil Appeal
E059 of 2021) [2024] KECA 469 (KLR) (26 April 2024) (Judgment)**

Neutral citation: [2024] KECA 469 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MOMBASA
CIVIL APPEAL E059 OF 2021
AK MURGOR, KI LAIBUTA & GV ODUNGA, JJA
APRIL 26, 2024**

BETWEEN

JACOB KIMUTAI TORUTT APPELLANT

AND

STATE CORPORATIONS ADVISORY COMMITTEE 1ST RESPONDENT

COAST WATER WORKS DEVELOPMENT AGENCY 2ND RESPONDENT

AND

COMMISSION FOR HUMAN RIGHTS AND JUSTICE INTERESTED PARTY

*(Being an appeal against the Judgement of the Employment and Labour
Relations Court of Kenya at Mombasa (Byram Ongaya, J.) dated 21st May
2021 in Employment and Labour Relations Petition No. E004 of 2021)*

JUDGMENT

1. Jacob Kimutai Torutt, the appellant herein, filed a Petition before the Employment and Labour Relations Court in Mombasa against the respondents, Coast Water Works Development Agency and State Corporations Advisory Committee, on 12th April 2021 being Employment and Judgement MSA Civil Appeal No. E059 of 2021 Labour Relations Petition No. E004 of 2021) in which he (the appellant) sought:
 1. A conservatory order staying the decision of the 1st respondent dated 24.03.2021 not to extend the appellant's contract and requesting the appellant to hand over office and proceed on terminal leave.



2. A conservatory order directing that the status quo before the 1st respondent's letter of 24.03.2021 where the appellant is the 1st respondent's Chief Executive Officer (CEO) be maintained.
 3. A conservatory order directing the 1st respondent not to advertise the position of the 1st respondent's CEO until hearing and determination of the petition.
 4. A declaration that the appellant's renewal of contract by the 1st respondent on 05.05.2020 as CEO for one (1) year term is ultra vires, null and void.
 5. A declaration that the appellant's renewal of contract as the 1st respondent's CEO made on 05.05.2020 is for three (3) year term.
 6. Costs of the petition.
 7. Any other order that the Court deems fit and just to grant in the circumstances.
2. On 4th May 2021, the party named herein as the interested party, the Commission for Human Rights and Justice, was joined in the proceedings in the same capacity.
 - 3.. The gist of the petition was that, on 5th May 2017, the 1st respondent openly and competitively recruited the appellant and appointed him as its Chief Executive Officer (the CEO) for a term of three (3) years vide a letter of appointment dated 25th April 2017; and that, at the expiry of the said term on 4th May 2020, the appellant, in exercise of his option in clause 6 of the letter of appointment, applied for the renewal of appointment.
 4. The respondents then evaluated the appellant's performance and proposed that his term be renewed for 3 years. A recommendation was made to the Cabinet Secretary, Water, Sanitation and Irrigation (the Cabinet Secretary) that the appellant's term be renewed for only one year, a recommendation which the Cabinet Secretary approved. This decision was communicated to the appellant who signified his acceptance of the terms thereof on 7th May 2020. However, by a letter dated 12th December 2020 addressed to the 1st respondent's Chairman of the Board of Directors, the appellant sought clarification referring to the Mwongozo, the Code of Governance for State Corporations (the Mwongozo Code) issued jointly by the Public Service Commission (PSC) and the State Corporations Advisory Committee (SCAC) in January 2015 which provided that the Chief Executive Officer shall hold office for a three year term or as otherwise provided under any other written law renewable once, subject to performance evaluated by the board. In the circumstances, the appellant urged that his appointment be regularized to be in line with the Mwongozo Code.
 5. By a letter dated 4th February 2021, the appellant addressed the 1st respondent's Chairman referring to his request for extension dated 12th December 2019 and the subsequent one-year extension from 5th May 2020 to 5th May 2021. He requested for extension for a further two (2) years up to 4th May 2022 in line with the aforesaid Mwongozo Code provisions. However, by a letter dated 24th March 2021 from the 1st respondent's Chairman, it was explained that the Board at its meeting held on 24th March 2021 considered the request for extension as per the appellant's letter of 4th February 2021 and resolved not to extend the contract. The appellant was directed to immediately handover to one Engineer Martin Tsuma, and to proceed on terminal leave.
 6. It was this decision that provoked the petition. The appellant's case was that the renewal was for one year instead of 3 years as specified in the Mwongozo Code and that, as a Kenyan, his entitlement to



equal protection and benefit of the law guaranteed by Article 27(1) and (2) of the Constitution had been violated; that his right to fair labour practices under Article 41 of the Constitution had been thereby violated; that, when he sought a clarification by his letter dated 12th December 2020, he received no reply, and that his right to be given reasons pursuant to Article 47(2) to protect his rights was thereby violated; that the rules of natural justice were also violated when no explanation was given after request for clarification in the letter dated 12th December 2020; that he was removed from office in a procedure that was contrary to law and in violation of Article 236(a) and (b) of the Constitution on protection of public officers from victimization for lawful performance of duty and removal only in due process; that his right to human dignity under Article 28 of the Constitution as read with Article 1 of the Universal Declaration of Human Rights had been violated when he was required to leave office, handover, and go on terminal leave despite his exemplary service; that his legitimate expectation to a three (3) years renewal under the Mwongozo Code was thereby breached; and that the 2nd respondent was guilty of dereliction of duty because it failed to advise the 1st respondent of the appellant's entitlement to a renewal of contract for 3 years as specified in the Mwongozo Code.

7. In response to the petition, the respondents admitted that the appellant successfully served the first term and was given one-year renewal as pleaded and urged by the appellant; that the letter for renewal addressed to the parent Ministry clearly requested for a one-year renewal;

that the minutes of the 1st respondent's special board meeting held on 13th March 2020 resolved that, as the appellant's contract of service was coming to an end on 4th May 2020, there be recommendation to the Cabinet Secretary for renewal of the appellant's contract as CEO of the 1st respondent for one year; that the appellant signed the minutes in his capacity as CEO on 31st May 2020; that, by a letter dated 24th April 2020, the Cabinet Secretary wrote to the 1st respondent's Chairman directing him to extend the term of the CEO by one year and to ensure that the recruitment of a new CEO is done within six months of the one-year extension.

8. According to the respondents, the contents of the letter were conveyed to the appellant prompting the appellant to prepare progress reports pursuant to the letter from the Cabinet Secretary. It was noted that the first schedule to the Act provides that the Chief Executive holds office for such term not exceeding three years as may be specified in the instrument of appointment, and are eligible for reappointment for one further term. Since the CEO is an ex officio member of the Board, he falls under the ambit of the said provision. Since the appellant voluntarily signed the contract for renewal of his service for one year, it was the respondents' case that the appellant's rights were not violated as alleged or at all.
9. In his judgement, the learned Judge found that the applicable policy was set out in the Mwongozo Code; that in the part relating to the tenure of a CEO of a state corporation, such as the 1st respondent, a three-year term or as otherwise provided under any other written law renewable once subject to performance evaluated by the Board was prescribed; that the Mwongozo Code does not state that the renewal must be for a tenure of three years; that sections 14(4) and 17(5) of the Act which apply the Water Resources Authority was not applicable as the 1st respondent was a water works development agency; and that the 1st schedule to the Act applied only to the appointment of the 1st respondent's board Chairperson and members, and not the CEO. The learned Judge relied on this Court's decision in *Ben Chikamai & Another vs. Peter Muchai & 2 Others* [2020] eKLR where it was held that the appointment of a CEO is distinct from appointment of other board members, and that the CEO is an employee and a member of the Board by virtue of his/her office.



10. According to the learned Judge, the appellant did not establish the alleged breach of his contract of service in the manner in which his contract was renewed for a further term of one year; that the evidence was that the 1st respondent's Board and the Cabinet Secretary considered the issue and resolved to grant the appellant a one-year renewal within which the 1st respondent would initiate the recruitment of a new CEO; and that the appellant was well aware of the decisions made and signed the relevant minutes in that regard as the CEO. It was therefore held that the appellant did not establish statutory, policy or contractual provision that entitled him to a renewal of the contract of service for a further term of three years and, therefore, he was not so entitled as claimed.
11. In view of the foregoing, the learned Judge found that the appellant failed to establish the alleged violations of human rights and the basis of the alleged legitimate expectation that the renewal ought to have been for three years; that, whereas the 1st respondent recommended to the Cabinet Secretary that the appellant's contract of service be renewed for a further 3 years, the Cabinet Secretary acceded to a renewal for only one year and not three years; that the appellant did not fault the consultations between the 1st respondent's board and the Cabinet Secretary, and that the Cabinet Secretary's decision that the renewal be for a term of one year was as voluntarily concluded between the parties. Consequently, the learned Judge declined to grant the reliefs sought and dismissed the petition with each party bearing own costs.
12. Dissatisfied with the said decision, the appellant lodged the instant appeal which he urged us to allow on the grounds that the learned Judge erred: in finding that the Mwongozo Code did not provide for renewal of the term of the appellant as the 1st respondent's Chief Executive Officer for three (3) years; in finding that the appellant invoked section 17 (5) of the Act to support his petition, and yet the appellant's main reliance was on the provisions of the Mwongozo Code; in finding that the appellant did not fault the consultations between the Cabinet Secretary and the 1st respondent's Board; in upholding the role of the Cabinet Secretary in the appointment of the 1st respondent's Chief Executive Officer, a role solely reserved for the 1st respondent's Board; in failing to find that the appellant's contract could only be renewed for a term of three (3) years as provided for by the Mwongozo Code once the appellant was successfully evaluated by the 1st respondent's Board at the end of his first term;; and in finding that the appellant's constitutional rights had not been violated by the 1st respondent.
13. We heard the appeal on the Court's GoTo virtual platform on 5th December 2023 when learned counsel, Mr. Timothy Njeru, appeared for the appellant while learned counsel, Ms. Nimwaka Kiti, appeared for the respondents. No appearance was made for the interested party despite due service. Both learned counsel relied on their written submissions which they briefly highlighted.
14. In the appellant's submissions dated 12th May 2022 filed by M/s. Njeru & Company, it was submitted that a plain reading of the provisions of the Mwongozo Code reveals that the renewed term is contemplated to be of equal length with the initial term; that, upon completion of the initial term, a Chief Executive Officer is evaluated rigorously and, in the appellant's case, he was evaluated by both the 1st and 2nd respondents; that, upon successful evaluation, which is akin to a new job interview, it would not make sense thereafter to appoint the appellant for a term other than the initial term; that, since the issue of renewal has not been determined by any other court in our jurisdiction, an interpretation that creates certainty as opposed to confusion would further the rule of law, corporate governance and continuity of operations should be adopted by the Court; that the Court should find that the renewed term ought to be a three (3) year term, as is clearly discernible from a plain reading of the Mwongozo Code; that, contrary to the findings by the learned Judge, the appellant never invoked section 17(5) of the Act to support his petition, but mainly relied on the provisions of the Mwongozo Code; that, from the letter dated 24th April 2020 by the Cabinet Secretary to the 1st respondent's Chairman, it could be



- discerned that the 1st respondent had recommended to the Cabinet Secretary renewal of the appellant's term for three (3) years, a recommendation that the Cabinet Secretary countermanded and instead directed a renewal of one (1) year; and that this Court should take a grim view of the 1st respondent's attempt to deny that it recommended the renewal of the appellant's term for another three (3) years.
15. According to the appellant, the Cabinet Secretary had no role to play in the appointment of the 1st respondent's Chief Executive since the Mwongozo Code was clear that the role of appointing the 1st respondent's Chief Executive Officer was the singular mandate of the 1st respondent's Board. In this regard, the appellant cited the case of *George Omondi vs. Cabinet Secretary, Ministry of Water, Sanitation & Irrigation & 2 others; Boaz Okoth Akello & 2 others (Interested Parties)* [2021] eKLR where the Court held that the Mwongozo Code does not give the Cabinet Secretary the role of appointing a Chief Executive Officer of a State Corporation and, more specifically, a water development agency, and that the power to appoint the Chief Executive Officer was the mandate of the Board. The appellant also relied on the case of *Paul Kipsang Kosgei vs. National Industrial Training Authority & Another, Cabinet Secretary, Ministry of Labour & Social Services (Interested Party)* [2020] eKLR, contending that once the Board renewed the appellant's term, it had no basis for rescinding the decision contrary to Article 41 and 236(b) of the *Constitution* as read with section 4(3) of the *Fair Administrative Actions Act*. It was submitted that the clear and unequivocal provisions of the Mwongozo Code that provide for a three (3) year term during appointment or renewal of contract were not followed, thus violating the appellant's constitutional right to fair labour practices; and that the 1st and 2nd respondents violated the appellant's constitutional right to fair procedure as enshrined in Article 47 when they failed to respond to the appellant's enquiry of 12th December 2020 on the apparent conflict as between the term of one (1) year and the three (3) years provided by the Mwongozo Code.
 16. The appellant submitted that he had made out a case deserving of the orders it sought in its Memorandum of Appeal and prayed that the appeal be allowed with costs, and the judgment of the Employment and Labour Relations Court dismissing his suit be substituted for a judgment of this Court allowing the petition.
 17. The respondents' submissions dated 22nd July 2022 were filed by Ms. Nimwaka Kiti, Principal Litigation Counsel. According to the respondents, the learned Judge properly found that, based on the Mwongozo Code, the renewal of the appellant's term was discretionary as it was not expressly stated that the renewed term was to be for three years as was the initial term; that section 17(5) of the Act only dealt with Chief Executive Officer for the Water Resources Authority and not Water Works Development Agencies; that, in paragraph 1.2 of Chapter 1 of the Mwongozo Code, the Board is empowered to hire the CEO on such terms and conditions of service as may be approved by the relevant government organ(s), which in this case is the Ministry of Water, Sanitation and Irrigation (the Ministry); that, from the correspondence on record, the renewal of the appellant's tenure was done in consultation with the Cabinet Secretary as contemplated by the Mwongozo Code; that the Mwongozo Code did not set a time limit for the renewed term, but instead gives a discretionary power to the Board based on an evaluation; and that the judgement of the Employment and Labour Relations Court was fair and just, and that there was no legal basis for interfering with it.
 18. We have considered the submissions made by the respective parties. We must point out, as we have done before, that Forms A and C in the First Schedule to the Court of Appeal Rules, 2022, respectively describe the parties in applications and appeals before this Court. These are applicant(s) and respondent(s) for applications and appellant(s) and respondent(s). Before this Court there is no room for introduction of other parties, such as interested parties" unless the Court directs otherwise. Once the matter comes to this Court, the parties who were before the court below are either applicants/



appellants or respondents. In this case, it was improper for the appellant to have named one of the parties to the proceedings as interested party”. We urge counsel to take heed of this procedural imperative in future.

19. In this first appeal, we are enjoined, as held in the decision of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, to reconsider the evidence, evaluate it and draw our own conclusion of facts and law. However, we will only depart from the findings by the trial Court if they were not based on evidence on record; where the said Court is shown to have acted on wrong principles of law as was held in *Jabane vs. Olenja* [1968] KLR 661; or where its discretion was exercised injudiciously as held in *Mbogo & Another vs. Shah* [1968] EA 93.
20. The issues that fall for our determination are as to the tenure of the renewed term of the appellant as the 1st respondent’s Chief Executive Officer; the roles played by the Cabinet Secretary and the 1st respondent’s Board in the appointment of the 1st respondent’s Chief Executive Officer; and whether the appellant’s constitutional rights had not been violated by the 1st respondent.
21. According to the appellant, the 1st respondent’s Chief Executive Officer’s renewed term under the Mwongozo Code is contemplated to be of equal length with the initial term since, upon completion of the initial term, a Chief Executive Officer is evaluated rigorously and that, in the case of the appellant, he was evaluated by both the 1st and 2nd respondents. His submission was based on the fact that such evaluation is akin to a new job interview, and hence it would not make sense to thereafter appoint the appellant for a term other than the initial term.
22. It is agreed by all the parties to this dispute that the instrument which guides the renewal of the appellant’s term was the Mwongozo Code. That Code provides that:

“The Chief Executive Officer shall hold office for a three year term or as otherwise provided under any other written law renewable once subject to performance evaluated by the board.”
23. It is not in doubt that the appellant had completed his first three-year term. His eligibility for renewal depended on the results of the evaluation by the Board. However, the Code does not expressly provide for the period for which the renewed term is to run. In the appellant’s view, for the purposes of certainty, it ought to run for a similar period as the initial term of 3 years. In our view, since the decision whether to renew the term is discretionary on the part of the Board, it would amount to interference with that discretion if the Court was to hold that the Board’s discretion is only as regards the decision to renew and does not extend, for example, to the period of the renewed term. The decision to renew and under what terms is a policy decision that may be guided by certain considerations. Unless the law expressly prescribes the period of the renewed term, the same must be left to the discretion of the Board. Therefore, in deciding whether to interfere or not, the Court must distinguish between policy and operational decisions. In the Canadian case of *Just vs. R in Right of B.C.* (Vancouver No. C822279), Justice McLachlin of the Supreme Court of British Columbia observed:

“In general, policy refers to a decision of a public body at the planning level involving the allocation of scarce resources or balancing such factors as efficiency and thrift. The operational function of government, by contrast, involves the use of governmental powers for the purpose of implementing, giving effect to or enforcing compliance with the general or specific goals of a policy decision...one hallmark of a policy, as opposed to an operational, decision is that it involves planning A second characteristic of a policy decision as opposed to an operational function is that a policy decision involves allocating resources and balancing factors such as efficiency or thrift.”



24. The Board may, for a myriad of reasons, be of the view that it is prudent to renew the term of the CEO for a lesser period than the initial term based, for example, on its resources and efficiency of both the institution and the CEO. In this case, the Cabinet Secretary, in setting out the terms and conditions of the extension of the appellant's tenure was categorical that:

“Having perused the contents of the report, the undersigned accedes to the resolution of the Board for an extension of the term of the current CEO by one year and not the 3 years as per your earlier evaluation report forwarded vide a letter dated 13th March 2020. You are hereby directed to ensure that the recruitment of a new CEO is done within six months of one year extension.”

25. It would appear that the decision by the Cabinet Secretary to approve the extension was informed by the need for continuity while the new CEO was being recruited. To require the 1st respondent to extend the term of the appellant for a longer period than that deemed necessary by the Cabinet Secretary would, in our view, amount to interference with the policy decision of the Cabinet Secretary, a matter entirely within the discretion of the Board and the Cabinet Secretary.

26. The next issue for determination is the respective roles played by the Cabinet Secretary on the one hand and the 1st respondent's Board on the other. Paragraph 1.2 of the Mwongozo Code deals with the role and functions of the Board. At clause (k), one of the functions of the Board is to:

Hire the CEO, on such terms and conditions of service as may be approved by the relevant government organ(s) and approve the appointment of senior management staff.

27. Clearly, the mandate of hiring the CEO is the preserve of the Board. However, it is the relevant government organ that sets the terms and conditions of service for the CEO. The appellant does not contest that, in this case, the relevant government organ is the relevant ministry, which is the Ministry of Water & Sanitation and Irrigation. That does not mean that, in all cases, that role must be performed by the Cabinet Secretary. Where there is specific provision describing the relevant government organ(s), then it is that organ that would be clothed with the powers to set out the terms and conditions of the CEO. It is to this extent that we agree with the position in *George Omondi vs. Cabinet Secretary, Ministry of Water, Sanitation & Irrigation & 2 others; Boaz Okoth Akello & 2 others (Interested Parties)* [2021] eKLR where the Court held that the Mwongozo Code does not give the Cabinet Secretary the role of appointing a Chief Executive Officer of a State Corporation

28. At the end of the three-year term, both respondents evaluated the appellant's performance. In the 1st respondent Chairman's evaluation and the overall Board evaluation, it was recommended that the appellant be given another term of 3 years. However, according to the minutes of the Board meeting held on 13th March, 2020 in which the issue of the imminent end of the appellant's term was discussed and resolved that the Chairman be mandated to recommend to the Cabinet Secretary to renew the appellant's contract for another one year.

29. In its letter dated 15th April 2020 addressed to the Cabinet Secretary in charge of the said ministry under the hand of its chairman, the Board informed the Cabinet Secretary that:

“The Board with the assistance of SCAC carried out an assessment of the CEO and rated performance of 82%. The Board considered the CEO renewal for one-year renewable based on the above performance and our letter ref. CWSB/CONF/104/VOL Dated 15th April 2020.”



30. The appellant was informed of this position by a letter from the 1st respondent's Chairman dated 4th May 2020 in which it was stated that:

“This is therefore to inform you that the Board deliberated on your request and resolved to extend your contract by one (1) year with effect from 5th May, 2020 under previous terms and conditions. However, your salary will be reviewed once the HR tools are approved and implemented. All other conditions of employment remain the same.”

31. The contract of extension of appointment was accompanied by another letter setting out detailed terms and conditions of service dated 4th May 2020 in which it was expressly stated that:

“The extension of the contract period will be one (1) year starting from 5th May, 2020. The Board may renew your contract subject to performance.”

32. From the above-mentioned correspondence, it was clear that the appellant's term was renewed for a period of 1 year, and that this was clearly understood by the appellant when he accepted the extension of contract on 7th May 2020. However, the appellant's case is that the Board must have resolved to renew his term by three years based on the letter by the Cabinet Secretary dated 24th April 2020 addressed to the 1st respondent's Chairman, as mentioned above.

33. While this communication suggests that there may have been a report in which it was resolved that the appellant's term be renewed for three years, the foregoing correspondence clearly show that what the Board did was to make recommendations to the Cabinet Secretary as regards the appellant's extended tenure. The Board did not, and could not, make a decision regarding the CEO's tenure since that was a decision reserved by the Mwongozo Code for the relevant government organ(s). *Black's Law Dictionary 10th Edition* at page 1464 defines “recommendation” as:

“A specific piece of advice about what to do, esp. when given officially. A suggestion that someone should choose a particular thing or person that one thins particularly good or meritorious.”

34. Accordingly, the Cabinet Secretary was not bound by the advice or suggestion by the 1st respondent's Board that the appellant's term be extended for three (3) years. As we have stated, the final decision as to the terms and conditions of the renewed tenure rested, not with the Board, but with the Cabinet Secretary. There was nothing wrong with the Board making a recommendation but the ultimate decision rested with the Cabinet Secretary. There was no legal representation that the Board could make to the appellant in those circumstances that could give rise to legitimate expectation since the Board had no mandate to set the terms and conditions of renewal of the appellant's engagement. De Smith, Woolf & Jowell, *“Judicial Review of Administrative Action” 6th Edn. Sweet & Maxwell page 609* states that:

“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.” [Emphasis added].

35. In the same vein, it was held in *South Bucks District Council vs. Flanagan* [2002] EWCA Civ. 690 [2002] WLR 2601 at [18] that:

“Legitimate expectation involves notions of fairness and unless the person making the representation has actual or ostensible authority to speak on behalf of the public body,



there is no reason why the recipient of the representation should be allowed to hold the public body to the terms of the representation. He might subjectively have acquired the expectation, but it would not be a legitimate one, that is to say it would not be one to which he was entitled.” [Emphasis ours].

See also *Rowland vs. Environment Agency* [2002] EWHC 2785 (Ch); [2003] ch 581 at [68]; CA [2003] EWCA Civ 1885; [2005] Ch 1 at [67].

36. The Supreme Court in *Communications Commission of Kenya and Others vs. Royal Media Services and Others* Petition No. 14, 14A, 14B and 14C of 2014 set out the principles guiding the application of the doctrine as follows;

“(269) 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*.” [emphasis ours]

37. It is clear as appreciated in the South African decision of *South African Veterinary Council vs. Szymanski* 2003(4) S.A. 42 (SCA) at [paragraph 28] that:

“The law does not protect every expectation but only those which are 'legitimate'.”

38. To our mind, it is a requirement that, for the doctrine of legitimate expectation to be successfully invoked, the expectation must in the first place be legitimate “in the sense of an expectation which will be protected by law”. See *R vs. Department for Education and Employment, ex p Begbie* [2000] 1 WLR 1115, 1125C-D.

39. We find that there was no wrongdoing on the part of the respondents in implementing the decision by the Cabinet Secretary to renew the appellant’s tenure for one year.

40. In light of the foregoing, we agree with the learned Judge’s conclusion expressed thus:

“petitioner has failed to establish the alleged violations of human rights and further failed to establish the basis of the alleged legitimate expectation that the renewal ought to have been for three years.”

41. As regards the issue as to whether the appellant’s constitutional rights were violated by the 1st respondent, we find as did the learned Judge that the appellant failed to prove that his constitutional rights were violated.

42. In the premises, we find no merit in this appeal, which we hereby dismiss with costs to the respondents.

43. Orders Accordingly.

DATED AND DELIVERED AT MOMBASA THIS 26TH DAY OF APRIL, 2024.



A. K. MURGOR

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JUDGE OF APPEAL

DR. K. I. LAIBUTA

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JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is the true copy of the original

Signed

DEPUTY REGISTRAR

