Ngetich & 3 others v County Service Board Bomet & another (Civil Appeal 20 of 2018) [2022] KECA 575 (KLR) (28 April 2022) (Judgment)

Neutral citation: [2022] KECA 575 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CIVIL APPEAL 20 OF 2018

HM OKWENGU, A MBOGHOLI-MSAGHA & KI LAIBUTA, JJA

APRIL 28, 2022

BETWEEN

ROBERT KIPKIRUI NGETICH ..... 1ST APPELLANT

JOSEPH BERNARD SIGEI ..... 2ND APPELLANT

BERNARD KIPNGENO TONUI ..... 3RD APPELLANT

KIPRONO CHIRCHIR PETER ..... 4TH APPELLANT

AND

COUNTY SERVICE BOARD BOMET ..... 1ST RESPONDENT

CHAIRMAN, COUNTY SERVICE BOARD BOMET ..... 2ND RESPONDENT

(Being an appeal against the Ruling and Orders of the Employment and Labour Relations Court at Kericho (D. K. Njagi Marete, J.) delivered on 15th December 2017 in E.L.R.C Case No. 46 of 2017)

JUDGMENT

1. By a Statement of Claim dated 21st September 2017, the appellants (Robert Kipkirui Ng'etich, Joseph Benard Sigei, Benard Kipng'eno Tonui and Kiprono Chirchir Peter) sued the respondents (the County Public Service Board Bomet (the Board) and the Chairman of the County Public Service Board Bomet) in the Industrial Court of Kenya at Kericho Civil Suit (now ELRC Cause) No. 46 of 2017 claiming on their own behalf and on behalf of 350 others –

> "(a) A declaration that the intended termination of the claimants' would be unlawful and against the rules of natural justice and contrary to the provisions of *the Constitution* and the *Employment Act*, 2007.

(b) A mandatory order against the 1st and the 2nd respondents to issue confirmation letters to the claimants.

(c) In the alternative, the respondent be ordered to pay monetary compensation to the claimant equivalent to 25 years salary.

(d) The Court to appoint a conciliator to mediate the process.

(e) Any other relief this Honourable Court may deem fit to grant and in accordance to equity and on principles of natural justice.

(f) Costs of the claim be provided for."

2. The appellants' case was that they were employees of the 1st respondent serving as community and area administrators, having been allegedly appointed in writing on diverse dates between 15th October 2015 and 18th April 2017. They claimed to have earned salaries well within the respondents' knowledge.

3. According to the appellants, the 1st respondent had published an advertisement on 5th March 2015 for the posts of community and area administrators thereby calling upon qualified persons to make applications; that it shortlisted qualified persons to be interviewed; that it delegated its responsibility to the Human Resource Department to aid them in the process; and that it issued the claimants with appointment letters indicating their respective roles and remuneration.

4. In response to the appellants' claims, the respondents contended that, if the appellants had been appointed as alleged, the respondents played no role in their recruitment; that they did not participate in or render any decision relating to their alleged employment; that, if there was such delegation, the delegated authority did not include the formal appointment of the selected candidates; that such appointment was exclusively reserved for the 1st respondent pursuant to section 59(1) (b) of the *County Governments Act*, 2012; that delegated authority would only have covered the processing of the recruitment while final appointment rested with the 1st respondent; that the respondents were not involved in the recruitment of the appellants; that the appellants' claim was an afterthought, ill-conceived, pre-mature and brought in bad faith; and that their suit was fatally defective for non-joinder of parties and, in particular, failure to join the County Secretary. They denied the particulars of loss and damage pleaded in the Statement of Claim.

5. The appellants' suit proceeded to full hearing at the conclusion of which the Employment and Labour Relations Court (D. K. Njagi Marete, J) delivered its judgment on 15th December 2017 dismissing the appellants' claim on the grounds that there was no lawful employment of the appellants by the 1st respondent; that their case was founded on intended termination, which had not taken place; that the appellants had not established any sustainable cause of action; and that their employment was void ab initio. The learned Judge directed that each party bears their own costs.

6. Aggrieved by the decision of Njagi Marete, J. the appellants filed this appeal praying that –

(a) This appeal be allowed.

(b) The judgment, decree and any other subsequent orders issued in Case No. 46 of 2017 be set aside, and that judgment be entered as prayed.

(c) "Costs of this appeal as well as the trial court" [sic].

7. The appellants fault the learned Judge's decision on the following 11 grounds on which their appeal is anchored. According to them –

> " 1. The learned Judge erred in law and in fact in failing to consider all the evidence presented before him and facts relevant to this matter.
>
> 2. The learned Judge erred in law and fact in not adjudicating upon the principle of legitimate expectations which the appellants had raised.
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> 3. The learned judge erred in fact and in law in showing open bias if not prejudicing the appellants when he mentions in the 1st paragraph of the judgment that the case doesn't disclose any issue in dispute on its face.
>
> 4. The learned trial judge erred in fact in holding that the appellants had not demonstrated a cause of action, when the appellants had appeared before him for orders restraining the respondents from an intended dismissal and he the judge granted orders on the same apprehension.
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> 5. The learned judge erred in fact and in law in not allowing the claimants to fully prosecute their case by providing evidence viva voce and only allowing written submission and thereby prejudging the appellants.
>
> 6. The learned trial judge erred in law and in fact for not applying the principle audi alteram patem in not allowing the respondents from serving their submissions on the appellants, and therefore limited the appellants prosecuting their matter conclusively.
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> 7. The learned judge erred in fact and in law in failing to appreciate the process of employment which the 1st respondent had delegated, he never cited the law that the appellants breached and instead mentioned in broad terms 'responsiveness and adherence' and thereby arriving at the wrong conclusion.
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> 8. The learned trial judge erred in fact and in law in failing to appreciate the rights of the employee, when the 1st respondent proceeded to sack the employees when there was a court order in force.
>
> 9. The learned trial judge erred in fact and in law in failing to appreciate the contradiction in the respondents case when they never cited the employment being void ab initio but only contended that they had been hired competitively but only the County Secretary never submitted back the list for recruitment yet they had delegated.
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> 10. The judge erred in law and fact in failing totaling to give a ruling on the contempt proceedings which were before him.
>
> 11. The judge erred in law and fact in dismissing the entire case on the 15th December 2017 without giving reasons thereto and later on the 9th January 2018 delivered judgment which fraudulently backdated the same as if he read on the 15th December 2017."

8. Having examined the record of appeal and the grounds on which it is founded, we are of the considered view that the appeal stands or falls on our findings on the following issues of law and fact in respect of which learned counsel filed written submissions:

(a) Whether the appellants were at all material times lawfully employed by the 1st respondent.

(b) Whether the appellants had a legitimate expectation to be retained in the 1st respondent's employment on permanent basis on expiry of their contractual terms of service.

(c) Whether the appellants had a sustainable cause of action against the respondents.

(d) What orders ought we to make in this appeal.

(e) Who bears the costs of this appeal.

9. In support of their respective cases, parties filed written submissions. At the hearing, learned counsel for the appellants (Mr. Shadrack Omondi, holding brief for Mr. Peter Wanyama) adopted their written submissions and list of authorities dated 22nd November 2021 while learned counsel for the respondents (Mr. Kirwa) adopted his written submissions dated 14th February 2022. In addition, learned counsel for the appellants and learned counsel for the respondents made oral highlights of their submissions at the hearing of the appeal.

10. We need to point out at the onset that this being a first appeal, it is also our duty, in addition to considering submissions by learned counsel, to analyze and re-assess the evidence on record and reach our own conclusions in the matter. This approach was adopted by this Court in *Arthi Highway Developers Limited v West End Butchery Limited and 6 others* [2015] eKLR citing the case of *Selle v Associated Motor Boat Co.* [1968] EA p.123.

11. In Selle's case (ibid), the Court held:

> " An appeal to this Court from a trial by the High Court is by way of retrial, and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence, or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

12. This Court clarified the circumstances under which it would be constrained to interfere with the decision of a superior court in *Alfarus Muli v Lucy M Lavuta & Another* [1997] eKLR where the learned Judges held that:

> " The appellate Court interferes only if it is shown that there was absolutely no evidence or that the evidence that was there could not possibly support such a finding...Even if a Judge does not give his reasons for his finding the appellate Court can find the same in the evidence."

13. The critical issue in this appeal is whether the appellants were lawfully employed by the 1st respondent and, if so, on whose behalf. This raises yet another question as to who ought to have been joined in the appellants' suit as the principal respondent in the trial court. In other words, did the 1st respondent have statutory power to employ the appellants, or any other person for that matter, on its own behalf? Could such power be subdelegated so as to bind the respondents in contracts of service with the appellants or any of them?

14. Section 59(1) of the *County Governments Act*, 2012 sets out the functions and powers of a County Public Service Board. The section reads:

> " 59 Functions and powers of a County Public Service Board
>
> (1) The functions of the County Public Service Board shall be, on behalf of the county government, to—
>
> (a) establish and abolish offices in the county public service;
>
> (b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
>
> (c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part;
>
> (d) prepare regular reports for submission to the county assembly on the execution of the functions of the Board;
>
> (e) promote in the county public service the values and principles referred to in Articles 10 and 232;
>
> (f) evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;
>
> (g) facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;
>
> (h) advise the county government on human resource management and development;
>
> (i) advise county government on implementation and monitoring of the national performance management system in counties;
>
> (j) make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employees."

15. In addition to the foregoing, Boards have additional powers to make appointments in county public service pursuant to section 63(1) of the Act, which reads:

> " 63. Powers of the County Public Service Board to make appointments

(1) Except as provided for in *the Constitution* or legislation, the County Public Service Board has the power to make appointments including promotions in respect of offices in the county public service."

16. The appellants' case was that they were recruited by the Human Resource Department of the 1st respondent following an advertisement "... to fill the posts of community and area administrators". They contend that they were issued with letters of appointment on contract for a term of one (1) year in each case, and beginning on different dates. According to them, the HR Department was acting in discharge of powers delegated by the 1st respondent.

17. In its defence, the 1st respondent denied ever delegating power to the HR Department to undertake the recruitment in issue. According to them, the Board did not participate in or make any decision in the matter. It is noteworthy from the record, though, that the appellants served in the employment of the Bomet County Government for the respective contractual terms of one year, which was subsequently renewed, the last of such renewal being 5th January 2017.

18. It was in anticipation of the expiry of the term of service under their respective contracts that the appellants filed suit sometime in September 2017 seeking inter alia a declaration that the impending termination of service was unlawful; orders to compel the respondents to issue them with confirmation letters; in the alternative, an award of compensation equivalent to 25 years of service; and costs of the suit.

19. Upon hearing the parties, the learned Judge considered the following among others to be the main issues in contention at the trial court: whether the appellants were lawfully employed by the respondents; whether there was an intended termination of the appellants' employment by the respondents; and whether the respondents were obligated to issue the appellants with letters confirming their employment. Put differently, whether the appellants had legitimate expectation to be retained in employment on permanent terms upon expiry of their respective fixed-term contracts of service. In our considered view, the issues that arose for determination by the trial court are essentially the same as those in contention on appeal before us.

20. As to whether the appellants' recruitment in service of Bomet County Government was lawful, we take cognizance of the Board's power under section 59(1) (b) of the Act to "appoint persons to hold or act in offices of the County Public Service, including in the Boards of cities and urban areas within the county and to confirm appointments." In effect, the exercise of this power by the 1st respondent would ordinarily be in its capacity as the statutory agent of the Bomet County Government.

21. From the record of appeal as filed, it is evident that the initial appointments of the appellants were undertaken by "the County Government of Bomet Human Resources". To our mind, this is a department of the County Government of Bomet and not a unit of the 1st respondent. It is also noteworthy that the renewal of the appellants' contracts of service were undertaken by "Office of the County Secretary". That office is undoubtedly an office in the county executive and not an office in the 1st respondent. Clearly, neither the 1st or 2nd respondent had a hand in the recruitment of the appellants or renewal of their fixed-term contracts of service. To our mind, the recruitment of the appellants and subsequent renewal of their fixed-term contracts were acts of County Government of Bomet, who were not joined as party to the suit before the trial court.

22. Be that as it may, the appellants continued to serve and draw salaries for the duration of their respective fixed-term contracts of service. But that is not to say that their de facto recruitment was in accordance with statute law, which requires either recruitment by a Board or by an officer expressly empowered by

the Board in writing to do so pursuant to section 86(1). In the circumstances, we find nothing to fault the learned Judge in concluding that the appellants' contractual engagement was contrary to statute law. In effect, it was irregular and, therefore, could not found a sustainable claim or right to continue in service on expiry of their contracts.

23. The question then arises as to whether the appellants were recruited by the HR Department of the County Government of Bomet and their contracts subsequently extended by the County Secretary in exercise of authority delegated by the 1st respondent. While the 1st respondent had power under section 86(1) to delegate their power, such delegation is required to be in writing to a specific person or office, as the case may be. In this regard, section 86(1) reads:

> " 86. Delegation by County Public Service Board
>
> (1) The County Public Service Board may delegate, in writing, any of its functions to any one or more of its members and the county secretary, county chief officer, sub-county or Ward administrator, village administrator, city or municipal manager and town administrators.
>
> (2) The provisions of this Part shall apply to the person to whom the powers are delegated under this section."

24. We find no evidence of such delegation on record and, accordingly, draw the conclusion that the appellants' contractual recruitment by the HR Department of the County Executive and the subsequent renewal by the County Secretary were irregularly conducted and contrary to statute. However, in so far as the appellants' terms of engagement, whether or not properly contracted, were for fixed terms of service, it was within the 1st respondent's power under section 74 of the *County Governments Act* to regulate such contracts, including power to bring them to an end. Section 74 of the Act provides:

> " 74. County Public Service Board to regulate appointment of persons on contract
>
> The County Public Service Board shall regulate the engagement of persons on contract, volunteer and casual workers, staff of joint ventures and attachment of interns in its public bodies and offices."

25. Having carefully considered the appellants' case and the defence raised by the respondents, we form the considered view that the learned Judge was correct in holding that the appellants' recruitment was unlawful; that the same were on fixed-term contracts whose renewal was for the 1st respondent to determine. In effect, the appellants had no legitimate expectation of such renewal or conversion of their previous fixed-term contracts to permanent employment confirmed in writing as prayed by the appellants.

26. In *George S. Onyango vs. Board of Directors of Numerical Machining Complex Limited and 2 Others* [2014] eKLR, the Industrial Court upheld the general rule that fixed-term contracts, as was the case here, carry no expectation of renewal. Accordingly, the appellants cannot be said to have a legitimate expectation of having their fixed-term contracts renewed or converted to permanent employment in the absence of an express promise or regular practice to that end (see *Teresa Karlo Omondi vs. Transparency International Kenya* [2017] eKLR). Neither had the trial court power to stand in the way of their disengagement at the end of the respective fixed terms for which they were contracted or otherwise direct the respondents to employ them on any particular terms.

27. In view of the foregoing, we form the considered view that the appellants had no cause of action against the respondents to warrant interference with the learned Judge's decision. We form this view, first, on account of non-joinder in that the appellants ought to have joined their employer, the county government or the County Secretary in the suit in the trial court and, secondly, for want of any right of claim against the respondents.

28. Finally, we take the liberty to lend clarity to the often-cited doctrine of

> "legitimate expectation" in just about every claim that comes to this Court on appeal from decisions of the ELRC as was the case here. The appellants' case was that they had a legitimate expectation to be issued with confirmation letters at the expiry of their respective fixed-term contracts so as to constitute them employees of the Bomet county government on permanent terms.

29. We hasten to observe that, in principle, contracts of service which are entered into irregularly could not, and cannot, be validly extended; that any subsequent employment could only be undertaken by the 1st respondent in accordance with the *County Governments Act*, 2012; that the appellants have no legitimate expectation to be retained in employment of the county government; and that such retention was not for the trial court, or this Court for that matter, to order and direct.

30. The term "legitimate expectation" is a technical term of profound doctrinal basis. It is not the expression of wishful thinking or desire capable of translation into a legal right. Arvind Thapliyal enunciates the doctrine of legitimate expectation in 2006 (8) SCJ p.721 thus:

> "What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. The term 'established practice' refers to a regular, consistent predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established."

31. We agree with the learned author that legitimate expectation is not a legal right, but "... an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice". From the record before us, we find no evidence of a promise or established practice on the part of the respondents or any of them to convert the fixed-term contracts of service to employment on permanent terms in favour of the appellants whose employment on contract was, in any event, in contravention of statute law. In so far as their employment was irregular, its invalidity could not, and cannot, be the basis of legitimate expectation of continued service on any terms. To our mind, such expectation is not tantamount to a right capable of enforcement in courts of law.

32. In *Jitendra Kumar vs. State of Haryana & Others* 2012 (78) ACC 70, the Supreme Court of India explained that –

> "A legitimate expectation is not the same thing as anticipation. It is distinct and different from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring

regularity, predictability and certainty in the Government's dealings with the public, and the doctrine of legitimate expectation operates both in procedural and substantive matters."

33. The doctrine is essentially a creature of administrative law, having been evolved by the courts for the purpose of regulating the exercise of power by administrative authorities so as to provide effective safeguards from arbitrariness or abuse of power. It belongs to the domain of constitutional and administrative law. It cannot be read into or transplanted root-and-branch into the domain of the law of contract, or into our comprehensive and meticulously drafted employment laws for that matter, such as the extant statutory regulation of contracts of employment in county public service as is the case here.

34. As already stated, the Doctrine of "Legitimate Expectation" is not a legal right in itself embedded in some statute or Code readily available for its inference and applicability. However, it is a right to be treated fairly and the same has been fashioned by judicial precedents of various courts in common law jurisdictions over a period of time, and is still in its evolving stage. As was observed by the Supreme Court of India in the case of *National Buildings Construction Corporation vs. S. Raghunathan & Others* AIR 1998 SC 2779, the doctrine has its genesis in the field of administrative law. Under the doctrine, "... the Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion." See also *Republic vs. Attorney-General and Another Ex Parte Waswa and 2 others* [2005] 1 KLR p.280.

35. The evolution of the doctrine of Legitimate Expectation in the Common law jurisdiction may be traced to the *obiter dictum* of Lord Denning, MR in *Sehmidt vs. Secretary of Home Affairs* (1969) 1 All ER p.904 where he observed:

> " The speeches in Ridge v Baldwin show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest or I would add, some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say ..."

36. The Supreme Court of India also addressed itself to the concept of "legitimate expectation" in *M/S. Sethi Auto Service Station vs. Delhi Development Authority & Others* AIR 2009 SC p.904. While dealing with the question of allotment of a plot by the DDA, the Court held:

> "(19) The protection of legitimate expectations, as pointed out in De Smith's Judicial Review (Sixth Edition) (para 12-001), is at the root of the constitutional principle of the rule of law, which requires regularity, predictability, and certainty in government's dealings with the public. The doctrine of legitimate expectation and its impact in the administrative law has been considered by this Court in a catena of decisions but for the sake of brevity we do not propose to refer to all these cases. Nevertheless, in order to appreciate the concept, we shall refer to a few decisions. At this juncture, we deem it necessary to refer to a decision by the House of Lords in Council of Civil Service Unions & Ors. Vs. Minister for the Civil Service, a locus classicus on the subject, wherein for the first time an attempt was made to give a comprehensive definition to the principle of legitimate expectation. Enunciating the basic principles relating to legitimate expectation, Lord

Diplock observed that for a legitimate expectation to arise, the decision of the administrative authority must affect such person either –

(a) by altering rights or obligations of that person which are enforceable by or against him in private law; or

(b) by depriving him of some benefit or advantage which either: (i) he has in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until some rational ground for withdrawing it has been communicated to him and he has been given an opportunity to comment thereon or (ii) he has received assurance from the decisionmaker that they will not be withdrawn without first giving him an opportunity of advancing reasons for contending that they should be withdrawn."

37. Explaining the nature and scope of the doctrine of legitimate expectation in *Food Corporation of India vs. Kamdhenu Cattle Feed Industries* (1993) 1 SC p.71, a three-Judge Bench of the Supreme Court of India observed:

> " The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

38. Likewise, the High Court in *Republic vs. Kenya Revenue Authority, Ex Parte Shake Distributors Limited* [2012] eKLR had this to say on the matter:

> " a legitimate expectation arises where there is demonstration that: a decision maker led a party affected by the decision to believe that he would receive or retain a benefit or advantage including a benefit that he/she/it would be accorded a hearing before the decision was taken;
>
> a promise was made to a party by a public body that it would act or not act in a certain manner and which promise was made within the confines of the law; the pubic authority whether by practice or promise committed itself to the legitimate expectation; the representation was clear and unambiguous; the claimant fell within the class of person(s) who were entitled to rely upon the representation(s) made by the public authority; the representation was reasonable and that the claimant relied upon it to its detriment; there was no overriding interest arising from the decision maker's action and representation; the representation was fair in the circumstances of the particular case and that the same arose from actual or ostensible authority of the affected public authority to make the same; the promise related either to a past or future benefit; its main purpose is to challenge the decision

maker to demonstrate regularity, predictability and certainty in their dealings with persons likely to be affected by their action in the discharge of their public mandate."

39. Our citation of the foregoing judicial decisions serve to demonstrate the proper place for the application of the doctrine of legitimate expectation for which there is little or no room in contractual engagements, such as the fixed-term contracts between the appellants and County Government of Bomet. We consider it necessary to pronounce ourselves on the matter in light of frequent claims in employment disputes erroneously founded on, inter alia, the belief that the doctrine applies on equal terms in contracts of service the same way as certain terms may be implied in commercial transactions. To hold otherwise so as to interfere with the logical termination of fixed-term contracts the subject of the appeal before us, solely on the ground of avoiding the disappointment of the perceived legitimate expectations of the individual appellants, would be to set the Courts adrift on what the High Court in *Attorney General for New South Wales vs. Quinn* referred to as "a featureless sea of pragmatism" (see Attorney General for New South Wales vs. Quinn [1990] HCA 21, 170 CLR 1).

40. From the afore-cited authorities and the respective submissions of learned counsel for the parties hereto, we reach the inescapable conclusion that the appellants did not, at the trial, and have not established to our satisfaction that they had a legitimate expectation to be retained in service of their county government as claimed. Neither do we find any evidence of abuse or misuse of administrative power by the instrumentalities or agencies of the respondents, or of the County Government of Bomet, that call for our intervention by invoking the doctrine of legitimate expectation in the appellants' favour. In our considered judgment, the appellants' case before the trial court and on appeal before this Court falls outside the scope of this doctrine. Accordingly, nothing can be done in the name of "legitimate expectation" to breath life into fixed-term contracts whose expiry brought each of them to a dead end.

41. Having carefully considered the record of appeal, the supplementary record of appeal, the impugned judgment, the written and oral submissions of learned counsel for the appellants and counsel for the respondents together with statutory and the afore-cited judicial authorities, we find that the appellants' appeal has no merit and, accordingly, hereby order and direct that –

    (a) the appellants' appeal be and is hereby dismissed;

    (b) The judgment of the Employment and Labour Relations Court at Kericho (D. K. Njagi Marete, J) delivered on 15th December 2017 in ELRC Cause No. 46 of 2017 be and is hereby upheld;

    (c) each party bears their own costs.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF APRIL, 2022

HANNAH OKWENGU

.....

JUDGE OF APPEAL

A. MBOGHOLI MSAGHA

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR