



REPUBLIC OF KENYA



**Juma v Kenyatta National Hospital Board (Cause E082 of 2024)  
[2025] KEELRC 234 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 234 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E082 OF 2024  
SC RUTTO, J  
JANUARY 31, 2025**

**BETWEEN**

**IBRAHIM JUMA ..... CLAIMANT**

**AND**

**KENYATTA NATIONAL HOSPITAL BOARD ..... RESPONDENT**

**JUDGMENT**

1. It is common ground that the Claimant was employed by the Respondent as Manager, Information Communication and Technology (ICT) vide a letter dated 20<sup>th</sup> December 2017. The appointment which was for a fixed term of three years, was renewed for a further three years with effect from 1<sup>st</sup> February 2021 hence was due to expire on 31<sup>st</sup> January 2024.
2. It is the Claimant's case that at all material times, he discharged his responsibilities with utmost professionalism and fidelity to the Respondent. He avers that his appraisal reports for the years 2020/2021, 2021/2022 and 2022/2023 were satisfactory having scored over 90% in all of them.
3. The record bears that vide a letter dated 31<sup>st</sup> July 2023, to the Respondent's Director, Human Resources, the Claimant applied for the renewal of his contract of employment. The Claimant contends that despite complying with the requirement on renewal of the contract by applying for the said renewal six months prior to, the Respondent never communicated any resolutions from its Board of Management regarding the renewal. As it came to be, the Claimant's contract of employment was not renewed hence the suit herein. The non-renewal of contract was communicated to the Claimant through a letter dated 29<sup>th</sup> January 2024.
4. From the record there were intervening circumstances between the date the Claimant applied for the renewal of his contract and the date he was notified of the Respondent's decision not to renew his contract.



5. In this regard, the Claimant was sent on compulsory leave for a period of 30 days vide a letter dated 3<sup>rd</sup> October 2023. As per the said letter, the Claimant had been adversely mentioned in the Banking Fraud Investigation Department interim investigation report for being negligent in the performance of his duties leading to the loss of Kshs 42,275,517.45.
6. The Claimant was notified that the compulsory leave was meant to pave way for investigations into allegations of loss funds.
7. Vide a letter dated 7<sup>th</sup> November 2023, the Claimant was asked to proceed on his annual leave with effect from 15<sup>th</sup> November 2023 up to 5<sup>th</sup> December 2023 upon completion of his compulsory leave.
8. Subsequently, the Claimant was issued with a Notice dated 7<sup>th</sup> December 2023 through which he was asked to show cause why disciplinary action should not be taken against him for alleged gross misconduct.
9. The Claimant responded to the Notice to Show Cause and on 19<sup>th</sup> December 2023, he appeared before the Human Resource Management and Advisory Committee for a disciplinary hearing.
10. Through a letter dated 4<sup>th</sup> January 2024, the Claimant was informed that the charges leveled against him could not be fully established hence he was exonerated from the allegations.
11. Subsequently, vide a letter dated 29<sup>th</sup> January 2024, the Claimant was informed that his application for renewal of contract was not presented to the Board of Management for consideration on account of the disciplinary case that was underway. As such, the Claimant was informed that his contract would not be renewed upon expiry. He was also advised to submit his application upon declaration and subsequent advertisement of the same position for consideration.
12. As stated herein, it is that decision by the Respondent not to renew the Claimant's contract of employment that has triggered the instant Claim.
13. According to the Claimant, the actions of the Respondent contravene the *Employment Act* and the rules of natural justice.
14. It is against this background that the Claimant prays for the following reliefs:
  - a. A declaration that there is a Constructive renewal of Applicant's Contract of employment by virtue of his application dated 31<sup>st</sup> July 2023 for renewal and failure of the Respondent to duly process the application for the renewal of the contract.
  - b. A declaration that the Respondent has violated the Claimant's right to fair labour practice.
  - c. Twelve months' salary in accordance with the *Employment Act* being the statutory remedy for unlawful/ unfair termination of employment.
  - d. General Damages for discrimination, intimidation and harassment suffered by the Claimant while in serving his notice.
  - e. Payment in lieu of notice.
  - f. An order directing the Respondent to issue the Claimant with a Certificate of Service for the period worked.
  - g. Interest on (c) and (d) above at court rates.
  - h. Costs of this suit.



- i. Any further or other relief that this Honorable Court may deem just and fit to grant.
15. Opposing the Claim, the Respondent contends that renewal of the Claimant's contract was determinant on its sole discretion and was not based on performance. It is the Respondent's case that just as the Claimant had the option to apply for renewal, equally, it had the option not to renew notwithstanding the appraisal reports.
16. The Respondent further avers that presentation of the Claimant's application for contract renewal was held in abeyance due to the investigations that were ongoing and or disciplinary proceedings into his alleged misconduct.
17. According to the Respondent, the Claimant has no cause of action against it and opines that fixed term contracts carry no rights, obligations and or expectations beyond the expiry date. Consequently, the Respondent holds that the Claimant is not entitled to the reliefs sought and has asked the Court to dismiss the suit with costs.
18. During the trial which took place on 31<sup>st</sup> October 2024, both parties called oral evidence in support of their respective cases.

### **Claimant's Case**

19. The Claimant testified in support of his case and at the outset, sought to adopt his Memorandum of Claim, witness statement, Reply to the Response to Claim as well as his list and bundle of documents to constitute his evidence in chief.
20. It was the Claimant's evidence that under his contract of employment and as per the practice, the mandate to renew his contract falls under the Respondent's Board of Management.
21. The Claimant averred that the Respondent employed machinations during the pendency of his application to have his contract renewed to unprocedurally deny him a chance to serve in the said position in which he had excelled for six years. According to him, this was tantamount to unfair labour practice.
22. The Claimant further averred that since making the application for renewal of his contract, he continued to inquire on the progress of the same but was unsuccessful in getting any response.
23. The Claimant contended that this is despite the fact that the Respondent's Board of Management is tasked with the responsibility of making resolutions on employment and extension of his contract of employment.
24. It was the Claimant's assertion that due to the delays, the machinations by the Respondent in the lead up to the expiry of his contract, gave rise to a legitimate expectation on his part that there would be renewal of his contract of employment.
25. It was the Claimant's further testimony that the decision not to renew his contract was based on improper motives by the Respondent.
26. The Claimant further contended that the Respondent deliberately and with malice refused to present his application for renewal of contract before the Board of Management thus contravening his Constitutional and statutory rights to fair labour practices.
27. It is the Claimant's case that he has been subjected to untold suffering as a result of the Respondents' action which amounts to violation of his right to fair labour practices.



## Respondent's Case

28. On its part, the Respondent called oral evidence through Mr. Peter Ndirangu who testified as RW1. Mr. Ndirangu started by identifying himself as a Senior Human Resource Officer of the Respondent. Similarly, he adopted his witness statement and the list and bundle of documents filed on behalf of the Respondent to constitute his evidence in chief.
29. RW1 stated that the Claimant's application for renewal was not submitted to the Board for consideration, but rather, it was duly submitted to management for consideration and processing as required by the Human Resource Policies and Procedure Manual approved in September 2019 and supported by the hospital establishment approved in May 2021.
30. According to RW1, this was because the Claimant's previous Job Group, K-3 had been regraded to KNH 5 which was no longer under the ambit of a board position but a management position, hence consideration for renewal was placed upon the management. RW1 averred that as expected, the Claimant was well aware of this change.
31. RW1 further stated that owing to the fact that it was unclear as to how long the investigations would take, the Respondent, in a meeting held on 3<sup>rd</sup> November, 2023, resolved, that upon expiry of the Claimant's contract, the said position would be advertised. Additionally, management resolved that should the Claimant be cleared of any wrong doing, he may be considered for the same should he apply.
32. With respect to the investigations against the Claimant, RW1 averred that it was not the Respondent but an external and independent body, (the Banking Fraud Investigation Department) working in conjunction with the Directorate of Criminal Investigations that was tasked to carry out the said investigations and was yet to conclusively give their findings.
33. RW1 was categorical that the Respondent did not intimate, promise or induce any legitimate expectation for renewal of the Claimant's fixed-term contract whether expressly, impliedly or otherwise. It was his view that the decision for renewal of contract is not mandatory as it is at the sole discretion of the Respondent.
34. In RW1's view, the Claimant's insinuation of any purposeful delay and/or any delay whatsoever on the part of the Respondent is utterly misguided, uninformed and unsubstantiated, as investigations do not have preset timelines, they vary on a case-by-case basis dependent on a myriad of factors including but not limited to the number of people involved, complexities and nature of evidence to be obtained among others.
35. RW1 further averred that the Claimant was well aware of the commencement and expiry date of his fixed term contract, thus, allowing automatic or mandatory renewal in the guise of legitimate expectation, without any iota of evidence of the same to that effect, negates the very essence of fixed-term contracts.
36. RW1 further stated that the Respondent was not obligated whether expressly or otherwise, to give its decision not to renew and that the Claimant was aware that his contract carried a definite start and expiry date. That notwithstanding, the Respondent still went ahead to issue a notice of its intention not to renew the Claimant's fixed term contract.
37. RW1 stated in further evidence that the Respondent is an equal opportunity employer and strictly abides by the *Employment Act*, Fair Administrative Actions Act, Article 41 of *the Constitution* of Kenya, 2010 and international recognized and ratified legal instruments and hence, does not discriminate, intimidate or harass any of its employees to warrant an award of damages for the same.



38. In his view, the Claimant had not demonstrated or led any evidence or particularized how he was discriminated, intimidated and harassed.
39. It was RW1's further evidence that the expiry of a fixed-term contract does not amount to dismissal or any termination hence the issue of payment in lieu of notice is belated and a nonissue for consideration.

### **Submissions**

40. On his part, the Claimant submitted that the actions of the Respondent contravened the *Employment Act*, the right to fair labour practice under Article 41 of *the Constitution* and the rules of natural justice. According to the Claimant, the decision not to renew his contract shows ill motives on the part of the Respondent. The Claimant further posited that he was entitled to procedural fairness as dictated by Article 47 of *the Constitution*.
41. The Claimant stated in further submission that the machinations by the Respondent leading up to the expiry of his contract give rise to a legitimate expectation on his part that there would be renewal of his contract.
42. It was further posited by the Claimant that to date, the Respondent has not made any decision on his application for contract renewal as was expected by the terms of his employment contract.
43. In support of his submission, the Claimant placed reliance on the case of Robert Muriithi Ndegwa vs Minister for Tourism (2012) eKLR.
44. On its part, the Respondent submitted that allowing automatic or mandatory renewal in the guise of legitimate expectation negates the very essence of fixed term contracts expressly provided for under Section 10 3(c) of the *Employment Act*. To this end, the Respondent referenced the decision of the Court of Appeal in Transparency International vs Carlo Omondi (2023) eKLR.
45. It was further submitted by the Respondent that whereas performance is a key element in considering contract renewal unless it is an obvious factor for renewal of a contract, other factors ought to be considered over and above performance. In support of this position, the Respondent invited the Court to consider the determinations in Mbatia vs Kirinyaga *Water and Sanitation Company (KIRIWASCO) (Employment and Labour Relations Cause 851 of 2022)* (2023) KEELRC 3364 (KLR) (14 December 2023) and Nandwa vs National Communication Secretariat (Employment and Labour Relations Petition E235 of 2023) (2024) KEELRC 1889 (KLR) 12<sup>th</sup> July 2024).
46. The Respondent further argued that the Claimant was not dismissed from employment and that his contract terminated through effluxion of time. That as such, the issue of notice does not arise, and it was not bound to give any explanation or justification for not renewing the Claimant's contract. In support of this argument, the Respondent placed reliance on the cases of Registered Trustee's De La Salle Christian Brothers T/A St. Mary's Boys Secondary School vs Julius D.M Bains (2017) eKLR and Muchiri vs Caritas Microfinance Bank Limited (Cause E422 of 2021) (2024) KEELRC 2546 (KLR) (18 October 2024).

### **Analysis and Determination**

47. Flowing from the pleadings, the evidentiary material on record as well as the rival submissions, the following issues stand out for determination:
  - a. Whether the Respondent's failure to renew the Claimant's contract of employment amounted to unfair termination and breach of his legitimate expectation; and



- b. Whether the Claimant is entitled to the remedies sought.

**Unfair termination and breach of his legitimate expectation?**

48. It is not in dispute that the Claimant was employed by the Respondent on a fixed-term contract which was to run for a period of three years. In this case, the contract in question was with effect from 1<sup>st</sup> February 2021 hence was due to expire on 31<sup>st</sup> January 2024.
49. From the record, the Claimant applied for the renewal of his contract of employment vide a letter dated 31<sup>st</sup> July 2023.
50. Pending approval of the said application for contract renewal, the Claimant was taken through a disciplinary process which culminated in his exoneration from the allegations raised against him. The Claimant was advised as much on 4<sup>th</sup> January 2024. By then, close to five months had lapsed from the date the Claimant applied for the renewal of his contract of employment.
51. Subsequently, in a letter dated 29<sup>th</sup> January 2024, the Claimant was notified that his contract of employment would not be renewed as the same had not been presented to the Respondent's Board of Management on account of the disciplinary proceedings that were underway.
52. Notably, this position is at variance with the Respondent's evidence that its management had met and resolved that since it was unclear how long the investigations would take, upon expiry of the Claimant's contract, the position of ICT Manager would be advertised and if cleared of any wrongdoing, the Claimant could be considered if he applied.
53. Be that as it may, that issue is irrelevant as it is a fact that the Claimant was on a fixed-term contract and as has been held numerously by the Court of Appeal and this Court, fixed-term contracts ordinarily carry no obligation or expectation of renewal. See the case of Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki [2017] eKLR.
54. Being a fixed-term contract, the Claimant's contract of employment was for a pre-determined period of time and in the end, there were two options, renewal or non-renewal. Indeed, this was an option that could be exercised by either party at the end of the fixed term period. As it came to be, the Respondent opted not to renew the Claimant's contract of employment hence it stood terminated on its end date being 31<sup>st</sup> January 2024.
55. Therefore, failure to renew the Claimant's contract of employment cannot be construed to be unfair termination.
56. The Claimant has further averred that he had legitimate expectation that his contract of employment would be renewed due to the delays and machinations by the Respondent in the lead up to the expiry of his contract of employment. Respectfully, I disagree. The fact that the Claimant did not receive feedback on his contract renewal within the timeframe he was expecting, cannot be construed as a breach of his legitimate expectation.
57. If anything, the Claimant was well aware that there were pending investigations and thereafter, a disciplinary process between the date he applied for the contract renewal and the date his contract was due to expire. Therefore, it was not unusual that there was no feedback from the Respondent regarding the Claimant's contract renewal.
58. As such, failure to give feedback could not confer legitimate expectation on the Claimant.



59. Further to the foregoing, the Court is guided by the decision of the Court of Appeal in the case of Transparency International - Kenya vs Omondi [2023] KECA 174 (KLR), to the effect that, whether a contract with a renewal clause will be extended or not, is an issue that is at the discretion of the employer and it cannot create a legal right under the doctrine of legitimate expectation.
60. In the same breath, regardless of whether or not the Claimant's application for contract renewal was presented to the Respondent's Board of Management, he cannot claim constructive renewal of his contract of employment for the very reason that a fixed-term contract cannot be automatically renewed.
61. Further, and as I have stated herein, the Claimant's contract being fixed term in nature, was predetermined and had a definite commencement date and termination date. Therefore, to infer constructive renewal of the contract of employment is to defeat the essence of a fixed-term contract.

### **Orders**

62. In light of the foregoing reasons, the Court finds that the Claimant was not unfairly terminated from employment on account of non-renewal of his contract of employment and equally, there was no breach of his legitimate expectation. In the circumstances, the declaratory and monetary reliefs sought in the Memorandum of Claim do not lie.
63. To this end, the Claim is dismissed in its entirety with an order that each party bears their own costs.
64. As the employment relationship has not been disputed, the Claimant shall be entitled to a certificate of service in line with Section 51(1) of the Employment Act. This shall issue within 30 days from the date of this Judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY 2025**

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant Mr. Anam

For the Respondent No appearance

Court Assistant Millicent

### **ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

