



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ouma v National Housing Corporation (Cause 2281 of 2017)  
[2025] KEELRC 157 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 157 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2281 OF 2017  
J RIKA, J  
JANUARY 31, 2025**

**BETWEEN**

**WILLIS ODHIAMBO OUMA ..... CLAIMANT**

**AND**

**NATIONAL HOUSING CORPORATION ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim, on 15<sup>th</sup> November 2017.
2. He states that he was employed by the Respondent State Corporation, as its General Manager, on 3<sup>rd</sup> June 2013.
3. He was employed on a 3-year contract.
4. The Respondent purported to terminate his contract on 7<sup>th</sup> March 2016, before his contract expired. The letter was withdrawn.
5. He states that subsequently, the Respondent denied him the opportunity to seek renewal of his contract. The Respondent perpetuated all manner of mischief and false allegations against him, to spoil any chance for renewal.
6. He cleared with all departments upon expiry of his contract. The Managing Director, who was supposed to authorize payment of his terminal benefits, however, did not clear him.
7. The Claimant therefore prays for: -
  - a. Certificate of Service.
  - b. Gratuity at Kshs. 3,176,125.
  - c. Salary for 2days worked in June 2016, at Kshs. 26,113.



- d. Unutilized leave at Kshs. 59,371.
  - e. Leave allowance at Kshs. 299,359.
  - f. Luggage allowance at Kshs. 25,000.
  - g. Transport allowance at Kshs. 538,846.
  - h. Interest accrued as at 29<sup>th</sup> September 2017, at Kshs. 794,829.
  - i. Damages on account of frustrated renewal of contract, equivalent of 12 months' salary at Kshs. 4,700,436.
  - j. General damages.
  - k. Any other suitable order.
  - l. Costs.
  - m. Interest.
8. The Respondent filed a Statement of Response and Counterclaim, on 13<sup>th</sup> December 2017. It is conceded that the Claimant was employed by the Respondent, on a 3-year contract. Renewal of his contract was not automatic.
9. He was surcharged a sum of Kshs. 13,483, on 20<sup>th</sup> June 2016, for irregular use of the Respondent's car. The letter dated 7<sup>th</sup> March 2016 was intended to notify the Claimant about the expiry of his contract. It was not a letter of termination which the Respondent later withdrew, as pleaded by the Claimant. He was supposed to notify the Respondent at least 3 months before the expiry of his contract, of his intention to renew his contract. This provision did not mean that his contract was automatically renewable.
10. He applied for renewal through a letter dated 25<sup>th</sup> February 2016. The Respondent replied, advising him that his contract would not be renewed. He was not frustrated by the Respondent in his search for renewal.
11. He declined to sign the minutes of the last meeting he presided over, as the chairperson of the tender committee, and the Managing Director could not therefore clear him. The Respondent is willing and ready to pay his terminal benefits, after the Claimant did a proper clearance.
12. Delay in release of his terminal dues is solely due to his failure to clear. He is therefore not entitled to interest as pleaded.
13. The Respondent counterclaims that the Claimant, was granted a car loan in the sum of Kshs. 3,141,000. It was recoverable from his monthly salary. He owed the Respondent loan balance of Kshs. 2,293,246 by the time his contract expired. He had not paid the surcharge amount of Kshs. 13,483. He was supplied with Samsung Galaxy valued at Kshs. 23,629 and Toshiba Laptop worth Kshs. 28,620. He did not surrender the items back, at the end of his contract.
14. He was issued a staff identity card, which he did not return.
15. The Respondent therefore prays the Court to render Judgment in its favour by: -
- a. Dismissing the Claim with costs.
  - b. Costs of the Claim to the Respondent.



- c. Kshs. 2,293,246 in outstanding loan as of 8<sup>th</sup> December 2017.
  - d. Interest of outstanding car loan at 5% p.a. as per the car loan agreement.
  - e. Kshs. 23,629 as value of the Samsung Galaxy.
  - f. Kshs. 28,620 as value of the Laptop.
  - g. Kshs. 13,483 as surcharge for irregular use of the car.
  - h. Kshs. 450 as cost of the staff identity card.
  - i. Costs of the Counterclaim.
16. The Claimant filed a Response to the Counterclaim dated 15<sup>th</sup> January 2018, which the Respondent replied to, through a Statement dated 7<sup>th</sup> September 2023. The Parties reiterate their respective positions in the additional pleadings, as set out in their primary pleadings.
  17. The Claimant testified, and closed his case, on 19<sup>th</sup> October 2023. Human Resource Officer, Mary Muasa, gave evidence for the Respondent, on 19<sup>th</sup> June 2024, closing the hearing. The Claim was last mentioned on 24<sup>th</sup> November 2024, when the Claimant confirmed filing and service of his closing submissions.
  18. He relied on his witness statement and documents [1-21], and supplementary documents [22 -29], in his evidence-in-chief. He informed the Court that he is a Quantity Surveyor, involved in consultancies, at the time of his giving of evidence. He restated his employment history and the terms and conditions of employment, as elaborated in the pleadings and his witness statement. He was entitled to gratuity under the contract and human resource manual. It was not paid. He had a separate car loan agreement. He repaid part of the loan. It was not secured on his terminal dues. He was willing to return the phone and the laptop. He applied for renewal of his contract. It was not renewed. He only received a response from the Respondent, after his contract had already expired. His role as chair of the tender committee, ended with his contract. He could not sign minutes of the committee meetings, after he ceased being an Employee. He did not have residual power to sign the minutes.
  19. Cross-examined, he confirmed that his contract was for a period of 3 years. He applied for renewal. He did not get a response immediately. He received a letter dated 3<sup>rd</sup> May 2016, informing him, that his contract would not be renewed. The letter corrected the earlier one, advising that the contract had been terminated. The contract expired on 2<sup>nd</sup> June 2016. He cleared, but it was not conclusive. The Managing Director did not clear him. He was told it was because he had not signed the minutes of a committee meeting which he chaired on 2<sup>nd</sup> March 2016. He did not refuse to sign the minutes while still in office. He did not have residual powers to sign after he left employment.
  20. He had a car loan, which attracted 5% interest p.a. He had not completed repaying, by the time he left employment, and by the time of giving evidence. The security was the car itself. He retains the car. The logbook is in the names of both parties. He did not pay for the laptop and phone, which items he retained. He returned the staff identity card, in 2016. He did not agree with the surcharge decision.
  21. Redirected, he told the Court that he had already been sent on compulsory leave, by the time he received the letter of termination dated 7<sup>th</sup> March 2016. He had been instructed to hand over. He was not the only member of the tender committee. The clearance form, did not indicate that there were minutes to be signed. He wished to buy the laptop and the phone. The car loan, did not allow the Respondent to withhold his terminal benefits.



22. Human Resource Officer, Mary, adopted her witness statement dated 18<sup>th</sup> September 2023 and documents filed by the Respondent [1-14], in her evidence-in-chief.
23. Cross-examined, she could not recall her professional registration number. She is an accredited practitioner. She had the authority of the Board to give evidence.
24. The Managing Director left before the Claimant's contract expired. The Claimant's contract was to expire in June 2016. He was placed on compulsory leave, in March 2016. He was issued a letter of termination dated 7<sup>th</sup> March 2016. He was advised that his contract would not be renewed, on 3<sup>rd</sup> May 2016. He had not requested to go on leave. He was then advised after the letter of termination, that his contract would not be renewed. Mary told the Court, that this is not the way non-renewal of contract, should be communicated. Non-renewal was discussed in a meeting of the Board, held in March. The minutes of the meeting were not exhibited. In May 2016, termination had already taken place. There was no document giving reasons for non-renewal. The Claimant did not sign the minutes of the tender committee. He cleared in other areas. He was not paid his terminal benefits. His membership of the tender committee terminated on 2<sup>nd</sup> March 2016. Mary did not have evidence, showing that the Claimant was presented with the minutes of the tender committee, and refused to sign. She did not know if the Managing Director was malicious, in his refusal to clear the Claimant.
25. The Respondent computed the Claimant's gratuity, salary for 2 days worked, leave, leave allowance, and luggage allowance, but did not pay out to him, what was computed. The allegation of wrong use of the company car, came after the Claimant left, on 20<sup>th</sup> June 2016. Mary did not have the work ticket on use of the car. It is over 7 years since the Claimant left employment. The Respondent did not pay in 7 years, even that, which was considered his rightful terminal dues.
26. Redirected, Mary told the Court that the Claimant used the car irregularly, in January 2016. His last day of work was 2<sup>nd</sup> June 2016. He was issued a letter clarifying the letter of termination dated 7<sup>th</sup> March 2016. He was on leave, between March and June 2016. He was paid salary to the end of his contract. The tender committee minutes, related to a period when the Claimant was the chairperson.
27. The issues are, whether the Respondent unreasonably declined renewal of the Claimant's contract; whether the Claimant's contract expired or was terminated fairly and lawfully; whether he merits the prayers sought; whether the Respondent has established its Counterclaim; and who should bear the costs of the Claim and the Counterclaim.

**The Court Finds: -**

28. The Claimant was interviewed for the position of General Manager- Technical Operations, on 5<sup>th</sup> February 2013. He was appointed through a letter dated 2013. The letter informed the Claimant, under clause 6, that, " Each contract period, which is renewable, normally lasts for a period of 3 years."
29. The contract provided for a probationary period of at least 6 months. Parties agree that the Claimant's period commenced on 3<sup>rd</sup> June 2013, and 3 years were to lapse, on 2<sup>nd</sup> June 2016.
30. Unreasonable refusal of renewal: There is nothing in the contract between the Parties, which bound the Respondent to give reasons, valid or otherwise, for not renewing the Claimant's contract. The agreement was that the contract was for 3 years, which could be renewed. It was not automatically renewable, and there was no obligation for the Respondent to give reasons for its decision.
31. There was no fixed term contract in the past, which had been renewed. There was no practice or pattern of invariable renewal of the contract, between the Parties, and there was nothing in the conduct of the Respondent, that would lead the Claimant to expect renewal.



32. He was issued a letter dated 3<sup>rd</sup> May 2016, a month to the expiry date, informing him that his contract would not be renewed. He applied for renewal on 25<sup>th</sup> February 2016 in accordance with his contract, and received a response declining renewal, on 3<sup>rd</sup> May 2016. The Court is persuaded that the Respondent did not unreasonably decline renewal.
33. Expiration of the contract, fair and lawful termination: The contract was to expire on 2<sup>nd</sup> June 2016. The Respondent issued the Claimant a letter of termination, dated 7<sup>th</sup> March 2016. He was advised that the Board met on 1<sup>st</sup> March 2016, and decided that his contract is terminated, with effect from 6<sup>th</sup> April 2016. It was a clear 2 months, before the end of the contracted period.
34. The Managing Director had placed the Claimant on what he termed as annual leave [the Claimant terms it compulsory leave], for a period of 42 days, beginning 2<sup>nd</sup> March 2016. The Claimant had not applied for annual leave.
35. The Respondent then issued the Claimant the letter of termination in quick succession, 5 days later, on 7<sup>th</sup> March 2016, when the Claimant was already on forced leave.
36. Termination took effect on the date communicated by the Respondent, the 6<sup>th</sup> April 2016, which was against the contract and the law.
37. The Claimant wrote to the Respondent, complaining about the abrupt termination.
38. The Respondent, without advising the Claimant that his contract, terminated on 6<sup>th</sup> April 2016 had been reinstated, issued him another letter, dated 3<sup>rd</sup> May 2016, purporting to clarify, that the letter of termination dated 7<sup>th</sup> March 2016, was intended to be a notice that the Claimant's contract, would not be renewed.
39. The letter dated 7<sup>th</sup> March 2016, did not state anywhere, that it was a notice of non-renewal. It was instead a notice of termination, giving the Claimant notice of 30 days, supported by clause 8 of the Claimant's contract.
40. About a week to the contractual date of expiry of the contract, on 23<sup>rd</sup> May 2016, the Managing Director, in a desperate bid to manage a process he had already irreparably mismanaged, wrote to the Claimant advising him that his leave of 42 days was over, and the Claimant was to resume duty immediately he received the letter.
41. The Claimant then left employment as expected under his contract, on 2<sup>nd</sup> June 2016. He cleared with all departments. His terminal dues were computed. The Managing Director declined to clear him and authorize payment of his terminal dues, ostensibly on the ground that the Claimant had not signed minutes of the tender committee which he chaired.
42. The clearance form did not have a slot, requiring the Claimant to sign minutes of a committee he chaired, while in employment. As stated by the Claimant, he was being asked to sign the minutes post-employment, and because he did not sign, he was denied his terminal benefits.
43. The Court is convinced that termination of the Claimant's contract, or the expiry of his contract, was not handled fairly and lawfully by the Respondent. There was no reason to terminate the contract before the expiry date. There was no reinstatement of the contract communicated to the Claimant. He was placed on annual leave between March and June 2016. Termination took place just about a week after he was compelled to take annual leave. He was denied terminal dues unfairly and unlawfully. Termination was unfair and unlawful.



44. The Claimant pleads his prayer for 12 months' salary in compensation, at Kshs. 4,700,436. The Court has not seen his last pay slip on record, but based on the pleadings, his last monthly salary, would be Kshs. 391,703. This was the rate indicated by the Respondent, in its computation of the Claimant's final dues.
45. He worked for 3 years. He was paid nothing at the end of his contract. As concluded above, there was no reason for him to reasonably expect renewal of his contract. Termination or expiry of his contract was however mishandled, warranting compensation. He is granted equivalent of 5 months' salary in compensation for unfair and unlawful termination, at Kshs. 1,958,515.
46. Gratuity was computed by the Respondent, as given in the contract, under clause 12, at the rate of 31% of the total basic salary paid on expiry of the contract. It is allowed at Kshs. 3,176,125.
47. The Respondent offered salary for 2 days worked in June 2016, and there is no reason for the Court to disallow the prayer, pleaded at Kshs. 26,113.
48. The prayer for unutilized leave, was computed by the Respondent at Kshs. 59,871, as pleaded by the Claimant. It is granted as prayed, at Kshs. 59,871. This is the same for leave traveling allowance, at Kshs. 299,359, and transport on retirement at Kshs. 538,846. These prayers are granted as prayed, having been computed by the Respondent, in exact sums as pleaded by the Claimant.
49. There is no support in fact and law, for the prayer for general damages, in addition to compensation granted, for unfair and unlawful termination.
50. The Respondent undertook to recover the car loan at Kshs. 2,258,217; the cost of staff identity card at Kshs. 450; the cost of its Samsung Galaxy phone at Kshs. 23,629; the laptop at Kshs. 28,620; and surcharge at Kshs. 13,483. This was in the computation of the Claimant's terminal dues, dated 25<sup>th</sup> May 2017.
51. It is illogical for the Respondent to put in a Counterclaim, having undertaken to deduct the same amounts claimed, from the Claimant's terminal dues. The Respondent held the Claimant's terminal dues, and the extent of its claim to those dues, was known at the time the Respondent filed its Counterclaim.
52. Although the Claimant appears to have disputed the surcharge, he did not dispute the other items, which form the core of the Counterclaim. The surcharge amount is insignificant and not worth haggling about, for over 7 years. The Court would find the surcharge amounts to a trifle, within the context of the larger dispute, and allow the Respondent to retain the Kshs. 13,483 in the spirit of the maxim *de minimis non curat lex*.
53. The Court finds the Counterclaim as needless, and notes on the record that the Respondent deducted:  
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  - a. Car loan at Kshs. 2,258,271.
  - b. Staff identity card at Kshs. 450.
  - c. Phone Kshs. 23,629.
  - d. Laptop at Kshs. 28,620.
  - e. Surcharge at Kshs. 13,483.Total ... Kshs. 2,324,453.



54. The Counterclaim was satisfied way back on 15<sup>th</sup> May 2017. It should never have been pleaded by the Respondent on coming to Court, on 13<sup>th</sup> December 2017. It would have sufficed for the Respondent to disclose to the Court, that it deducted the amounts claimed from the Claimant, way back on 15<sup>th</sup> May 2017. There was credit balance in favour of the Claimant after the Respondent made its computation, so what is the Counterclaim about?
55. Certificate of Service to be issued to the Claimant.
56. The dispute would have been avoided, had the Managing Director shown less malice towards the Claimant, and released the Claimant's dues, on 27<sup>th</sup> May 2017, when the Respondent computed those dues, deducting what the Respondent felt it was owed by the Claimant. There was absolutely no justification to withhold the Claimant's terminal benefits, after pursuit of his contract renewal was declined.
57. Interest allowed at court rate, from the 25<sup>th</sup> May 2017, when the Respondent computed and undertook to pay the Claimant's terminal benefits, but declined to pay on a frivolous ground.
58. Costs to the Claimant.

It is ordered: -

- a. It is declared that termination/ expiry of the Claimant's contract was handled by the Respondent unfairly and unlawfully.
- b. The Respondent shall pay to the Claimant, compensation for unfair and unlawful termination, equivalent of 5 months' salary at Kshs. 1,958,515; gratuity at Kshs. 3,176,125; salary for 2 days worked in June 2016 at Kshs. 26,113; annual leave at Kshs. 59,871; leave traveling allowance at Kshs. 299,359; and transport on retirement at Kshs. 538,846 – total Kshs. 6,058,829.
- c. Less the amount recovered by the Respondent of Kshs. 2,324,453 results in a total sum of Kshs. 3,734,376 in favour of the Claimant.
- d. Certificate of Service to be issued to the Claimant.
- e. Interest is allowed at court rate, from 27<sup>th</sup> May 2017, until payment in full.
- f. Costs to the Claimant.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31<sup>ST</sup> DAY OF JANUARY 2025.**

**JAMES RIKA**  
**JUDGE**

