



**Adipo v Performers Rights Society of Kenya (Cause 1464 of 2018)
[2025] KEELRC 943 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 943 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1464 OF 2018
L NDOLO, J
MARCH 27, 2025**

BETWEEN

OTIENO ADIPO CLAIMANT

AND

PERFORMERS RIGHTS SOCIETY OF KENYA RESPONDENT

JUDGMENT

Introduction

1. By his Memorandum of Claim dated 11th October 2018 and amended on 26th October 2022, the Claimant proceeds against the Respondent, seeking compensation for unfair termination of employment.
2. The Respondent denies the Claimant's claim by way of a Statement of Response as amended on 28th March 2023.
3. The matter went to full trial where the Claimant testified on his own behalf, with the Respondent calling its Human Resource Manager, Leah Macharia. Thereafter, the parties filed written submissions.

The Claimant's Case

4. The Claimant states that he was employed by the Respondent on 1st August 2014, in the position of Head of Licensing. He worked until 3rd August 2017, when his employment was terminated.
5. The Claimant adds that prior to the termination, he had been suspended on 7th November 2016, on allegations of high handedness and fraud. The Claimant was recalled to resume duty on 25th November 2016.



6. The Claimant's case is that the Respondent terminated his employment without notice or any lawful justification. He accuses the Respondent of violating its own Human Resource Manual, by failing to give him notice of non-renewal of his employment contract or pay him in lieu of notice.
7. The Claimant points to a public notice dated 21st September 2017, containing his photograph and national identity card number, placed by the Respondent, in the Daily Nation Newspaper, alongside field agents who the Claimant claims had been dismissed for misconduct.
8. The notice informed the public that the named individuals were no longer authorised to transact business on behalf of the Respondent. The Claimant complains that the photograph in the notice was obtained from his private Facebook account, rather than his Human Resource file. According to the Claimant, this was a breach of his right to privacy.
9. The Claimant claims that the aforesaid publication was malicious and well calculated to injure his reputation and portray him as a dishonest person of questionable integrity, involved in unethical and unprofessional conduct.
10. The Claimant asserts that the publication was needless, reckless and malicious, causing him great distress and contempt in the eyes of the public, thus injuring his character and reputation.
11. The Claimant seeks a declaration that the termination of his employment was unlawful and unfair and tabulates his claim as follows:
 - a. 12 months' salary as damages for unfair termination.....Kshs. 1,281,516
 - b. 3 months' salary in lieu of notice.....323,382
 - c. Unpaid leave for 36 days.....147,867
 - d. Severance pay for 3 complete years.....1,937,599
 - e. General damages for unlawful and unfair termination
 - f. General damages for defamation
 - g. General damages for breach of privacy
 - h. Certificate of service
 - i. Costs plus interest

The Respondent's Case

12. In its Statement of Response as amended on 28th March 2023, the Respondent states that the Claimant's contract of employment was for a 3-year fixed term, running from 1st August 2014 to 31st July 2017.
13. The Respondent maintains that the employment contract ran its natural course and the Claimant was issued with a notice of non-renewal of contract on 31st July 2017.
14. The notice required the Claimant to hand over and clear with the Respondent in order to collect his terminal dues, including one month's pay in lieu of notice and pay for 30 leave days accrued and not taken.



15. The Respondent avers that the Claimant was suspended from work with full pay on 7th November 2016 and was reinstated on 2nd December 2016. According to the Respondent, the Claimant continued in his employment up to and including 31st July 2017, when his contract came to an end.
16. The Respondent denies the Claimant's claim that his employment was unlawfully terminated, and reiterates that the employment contract came to an end by effluxion of time.
17. The Respondent claims that the Claimant was not a senior staff as defined in the Human Resource Manual and cannot therefore rely on the terms of the manual for non-renewal of contract. The Respondent asserts that the terms of the Claimant's contract were clear that he was entitled to one month's notice or pay in lieu thereof.
18. Citing Clause 8.1.12(f) of the Human Resource Manual, the Respondent states that it was under no obligation to give reasons for non-renewal of contract.
19. The Respondent denies the allegations of breach of the Claimant's privacy and states as follows:
 - a. The notice to the general public in the Daily Nation did not state the reasons why any of the individuals were no longer employees of the Respondent;
 - b. The image of the Claimant used in the notice was obtained from his public profile as there was no picture in his HR file;
 - c. The picture used had already been placed in the public domain by the Claimant, through his social media handles;
 - d. The image was not used for any commercial or promotional purpose but merely to inform the public that the Claimant was no longer an employee of the Respondent;
 - e. The image was not distorted or manipulated.
20. The Respondent points out that the Claimant has neither specified nor set out the actual words that he alleges are defamatory nor shown that the words were actuated by malice or that the publication was based on false assumptions.
21. The Respondent avers that the Claimant's job required him to deal with the general public and collect payments on behalf of the Respondent. The Respondent was therefore obliged to inform the public that the Claimant was no longer authorised to bind it nor collect payments on its behalf.
22. The Respondent maintains that the publication which appeared in the Daily Nation on 21st September 2017 was not false nor malicious and did not contain defamatory statements.
23. The Respondent concludes that the publication was justified as it was made in the public interest as a cautionary measure.

Findings and Determination

24. There are three (3) issues for determination in this case:
 - a. Whether the Claimant has made out a case of unlawful termination of employment;
 - b. Whether the Claimant has proved breach of the right to privacy and defamation against the Respondent;
 - c. Whether the Claimant is entitled to the remedies sought.



Unlawful Termination?

25. As regards the claim of unlawful termination of employment, the Respondent's line of defence is that the Claimant's employment contract ran full course and terminated by effluxion of time.
26. The letter communicating the termination is dated 31st July 2017 and states as follows:

“Dear Adipo,

RE: Non Renewal Of Employment Contract

The above mentioned subject refers.

We regret to inform you that we will not renew your contract as Head of Licensing-Key Accounts, with Performers Rights Society of Kenya as of 31st July 2017. Please consider the aforementioned date as your last day of work.

As with all employees you are bound by our confidentiality and data protection policy. You are required to return all of the Society's property that was generated or obtained during your employment with PRISK. These include;

1. Laptop with all passwords
2. Keys to office drawers in your possession
3. Job ID badge
4. Business cards
5. Staff medical card
6. Tape measure
7. Invoice and receipt books etc.
8. Any other office property in your possession

You will receive one month's pay in lieu of notice up to 31st August 2017 in line with your contract dated 1st August 2014, including compensation for 36.25 days which are the leave days owed to you.

We would like to thank you for your continued contribution and wish you all the best for the future.

Yours faithfully,

For and on Behalf of:

Performers Rights Society Of Kenya

(signed)

Board Of Directors”

27. My reading of the Claimant's employment contract signed by him on 14th August 2014, reveals that the Claimant was employed on a 3-year fixed term contract, running from 1st August 2014.
28. The distinguishing feature of fixed term contracts is that they do not guarantee employment beyond the stated term. In its decision in Registered Trustees of the Presbyterian Church of East Africa &



another v Ruth Gathoni Ngotho-Kariuki [2017] eKLR the Court of Appeal affirmed that fixed term contracts carry no rights, obligations or expectations beyond their expiry date.

29. In the subsequent decision in Trocaire v Catherine Wambui Karuno [2018] eKLR the Appellate Court cited with approval the holding by Lord Denning MR in British Broadcasting Corporation v Loannou [1975] All ER 999 that fixed term contracts do not bind the parties beyond the stated term.
30. In its written submissions dated 3rd March 2025, the Respondent cited the decision in Transparency International-Kenya v Teresa Carlo Omondi [2023] eKLR where the Court of Appeal referred to an automatically renewable fixed term contract as a contradiction in terms, as it would subject the parties to an indeterminate employment contract. The Appellate Court went further to state that extension of a contract with a renewal clause is at the discretion of the employer.
31. The Respondent also cited the decision in Mbatia v Kirinyaga Water & Sanitation Company (KIRIWASCO) [2023] KEELRC 3364 (KLR) where it was held that unless a fixed term contract has a specific clause obligating the employer to renew it, the decision to renew such a contract remains the employer's prerogative.
32. In the present case, while the Claimant may have had past disciplinary issues, it is clear that his final exit from the Respondent's employment was on account of expiry of his fixed term contract. The procedural fairness requirements established under Section 41 of the *Employment Act* were therefore inapplicable, and the claims for compensation for unlawful termination and 3 months' salary in lieu of notice are without basis.

Breach of Right to Privacy and Defamation?

33. I will now address the related claims of breach of the right to privacy and defamation. The Claimant's claim under this head arises from a publication placed by the Respondent in the Daily Nation Newspaper on 21st September 2017. In particular, the Claimant takes issue with the use of his photograph obtained from his Facebook account.
34. In response, the Respondent states that the Claimant himself had placed the photograph in his public profile. The Respondent adds that it had neither distorted nor manipulated the photograph.
35. The Claimant did not adduce any evidence to contradict the explanation offered by the Respondent in this regard and the Court did not find any fault with the choices made by the Respondent. The claim for breach of privacy therefore fails and is dismissed.
36. The Claimant terms the subject publication defamatory. He however did not specify the actual words he alleges were defamatory. The ingredients of defamation were set out in John Ward v Standard Limited [2006] KEHC 2628 (KLR) as follows:
 - a. The statement must be defamatory;
 - b. The statement must refer to the Plaintiff;
 - c. The statement must be published by the Defendant;
 - d. The statement must be false.
37. Having failed to specify the words he alleges to be defamatory, the Claimant did not establish any of the ingredients of the tort of defamation. This claim therefore also fails and is dismissed.
38. No basis was established for the claim for severance pay, which is consequently disallowed.



39. The claim for leave pay is admitted and is therefore payable.
40. Save for the admitted claim of leave pay and a certificate of service as required by Section 51 of the *Employment Act*, the Claimant's claim fails and is dismissed.
41. Each party will bear their own costs.
42. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF MARCH 2025

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JUDGE

Appearance:

Ms. Kimiti for the Claimant

Mr. Gichuhi for the Respondent

