



REPUBLIC OF KENYA



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Wahome v County Government of Laikipia & 2 others (Employment and Labour Relations Cause E013 of 2024) [2025] KEELRC 776 (KLR) (12 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 776 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E013 OF 2024
ON MAKAU, J
MARCH 12, 2025

BETWEEN

VIRGINIA NYAGUTHII WAHOME CLAIMANT

AND

COUNTY GOVERNMENT OF LAIKIPIA 1ST RESPONDENT

LAIKIPIA COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

COOPERATION ON PEACE AND DEVELOPMENT 3RD RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 22nd March 2024 the claimant sued the respondents for unlawful termination of her contract of employment on 29th January 2023 and sought the following reliefs:
 - a. A declaration that termination of the claimant's employment with the 1st Respondent which resulted into termination of her employment contract with the 3rd Respondent was unfair and she is therefore entitled to compensation in respect thereof.
 - b. An order for payment of Kshs.5,408,344.40 being compensation for lost salary, allowance and gratuity for the remainder of the claimant's term with effect from 1st September 2022 to 31st March 2024 together with damages for unfair termination of her employment contract with the 3rd Respondent.
 - c. Costs of the suit plus interest thereon at court's rate.
 - d. Any other or better relief deemed fit by the Honourable court.
2. The 1st and 2nd Respondent opposed the claim vide a statement of Response dated 31st May 2024 whereby they averred that the claimant's employment contract lapsed automatically after the term



of the appointing Governor ended on 30th September 2022. The 3rd Respondent never entered appearance and therefore never participated in the proceedings.

Facts of the case

3. The claimant was employed by the 1st and 2nd respondents as Director of Amaya Triangle Initiative a department in charge of Peace and Development in Laikipia County. The terms of employment were contained in the appointment letter dated 29th January 2018 which contract was for three years. Upon expiry, it was extended by letter dated 26th January 2021.
4. In the year 2019, the Governors of Laikipia, Baringo, Isiolo and Samburu Counties signed a Memorandum of Understanding (MOU) to establish the 3rd respondent, which is a body corporate. Under Article X1 of the MOU, the 3rd Respondent was to establish a secretariat which was to be its principle organ. The secretariat was to be headed by a Chief Executive Officer (CEO) and Deputy Executives appointed by the Governing council from persons heading a department in charge of Peace and Development in any of the member counties.
5. On 5th March 2021, the Governing council of the 3rd respondent, comprising Governors of the member counties, appointed the claimant as its CEO and authorized the chairperson to issue her with an appointment letter. The chairman issued the claimant with appointment letter dated 9th March 2021 indicating her term of office as three (3) years running from March 2021 to March 2024. Either party could terminate the contract by a notice of one month or payment of one month's gross salary in lieu of notice. Her salary and allowances were to be facilitated by 1st respondent until such a time when the 3rd respondent would raise enough funds to cater for her salary.
6. By a letter dated 12th March 2021, the Governor of the 1st respondent acknowledged the appointment of the claimant as the CEO of the 3rd respondent (Job Group 'R'). The letter undertook to pay her salary and allowances in accordance with the SRC guidelines but her salary entry scale was Kshs.140,440 per month. The letter also offered her service gratuity at the rate of 31% of the annual salary for every year served.
7. All was rosy until the County Secretary of the 1st Respondent served the claimant with a letter dated 17th January 2023 indicating that her contract of employment as the Director of Amaya Triangle Initiative (Job Group CPSB 03), extended by the letter of the Governor of the 1st Respondent dated 26th January 2021 had ended with the term of appointing Governor on 30th September 2022. The letter also informed her of her entitlement to payment of gratuity at 31% of her annual basic salary subject to clearance of any liabilities owed to the 1st respondent.
8. The above letter came after the claimant had written a letter dated 9th November 2022 to the 1st respondent's HR Director protesting the non-payment of her salary for September 2022. The deadlock in this case is whether the claimant's appointment as a Director in the 1st Respondent, and as the CEO of the 3rd respondent ended simultaneously after the term of office of the 1st respondent's Governor lapsed in September 2022.

Evidence

9. The claimant testified as CW1 and adopted her written statement dated 22nd March 2024 as her evidence in chief. She also produced 8 documents as exhibits to support her case. The written statement reiterates the above facts as captured in the pleadings and summarized above.



10. However, she clarified that her appointment to serve as CEO of the 3rd respondent was made by the council of the 3rd respondent vide minutes and no other minutes were passed by the same council to remove her from office. She therefore continued to serve until January 2023 when she received a letter from the 1st respondent stating that her contract was co-terminus with the Governor's term. She further stated that her salary was stopped and when she demanded for the same she was told that her contract ended in September 2022.
11. On cross-examination, she admitted that the MOU of the 3rd respondent required that a CEO had to be a Director in charge of Peace and Conflict in a member County. She further admitted that before her appointment as the CEO, she was Director of Peace and Conflict in the 1st respondent under a three years contract from February 2018. She confirmed that the said contract ended and it was extended by a letter dated 26th January 2021. She also confirmed that her claim is for salary for the unpaid salary plus terminal dues.
12. The 1st respondent's Director of HR and Development Mr. Gerald Mwangi Muturi, testified as RW1. He adopted his written statement dated 7th October 2024 as his evidence in chief and produced 6 documents as exhibits to fortify the defence case. The written statement echoes the facts summarized herein above.
13. However, he denied that the claimant's appointment was unfairly terminated. He stated that her contract of three years and the subsequent extension for two years vide letter dated 26th January 2021 was co-terminus with the Governor's term in office. Accordingly, the claimant's contract lapsed automatically after the Governor's term ended. She was also paid all her terminal dues for the period between January 2018 and September 2022 after being cleared all government liabilities.
14. He clarified that the claimant was in the payroll of the 1st respondent serving as Director Amaya Triangle which was about peace in the four (4) member countries.
15. On cross examination he admitted that he was unaware that claimant's appointment was by a resolution of the 3rd respondent's council of Governors. However, he admitted being aware of her letter of appointment dated 9th March 2021 which was never withdrawn. He admitted that the appointment letter by the 3rd respondent superseded the 1st respondent's appointment letter dated 26th January 2021.
16. He contended that the claimant's contract with the 1st respondent ended in September 2022 when she cleared as its employee. However, he admitted that he had no documentary evidence to prove that the claimant cleared as the CEO of the 3rd respondent. He confirmed that the claimant was both CEO of the 3rd respondent and Director of Amaya of the 1st respondent. He maintained that the claimant's contract ended in September 2022 and the 1st respondent's letter dated 17th January 2023 was just a reminder to her that her contract had lapsed. Therefore, he urged the court to dismiss the suit for lack of merits.

Submissions

17. It was submitted for the claimant that the 3rd respondent's Governing council, the appointing authority never terminated her contract after the General elections of 2022 and therefore the letter dated 17th January 2023 by the 1st respondent's County Secretary had no basis. It was further submitted that the appointment letter dated 9th March 2021 and resolution by Governing Council of the 3rd respondent superseded the letter dated 29th January 2021.
18. It was further submitted that the mandate of the court is only to enforce the employment contract between the claimant and the 3rd respondent and not to make a new contract for them. For emphasis,



reliance was placed on *Jiwaji & Others v Jiwaji & Another* (1968) EA 547 and *National Bank of Kenya Ltd v Pipelastik Samkolit (K) & Another* (2001) eKLR.

19. Finally, the court was urged to find that the claimant's fixed term contract of three years was terminated prematurely contrary to the termination clause of her appointment letter which provided for one-month prior notice in writing or payment of one-month gross pay in lieu of notice. Consequently, the court was further urged to enter judgment as prayed in the claim.
20. On the other hand, it was submitted for the respondents that the claimant has emphasized on the contract of employment as CEO of the 3rd respondent and forgot that her qualification to serve as the CEO of the 3rd respondent depended on her appointment as the 1st respondent's Director in charge of Peace and Development. It was further submitted that when she lost her position as Director of Peace and Development in the 1st respondent after the term of her appointing Governor ended, she was automatically disqualified from holding the position of the CEO of the 3rd respondent by operation of Article XII of the 3rd respondent's MOU.
21. It was further submitted that after the claimant's term lapsed in September 2022, she cleared with the 1st respondent in October 2022 and she was paid all her terminal dues up to September 2022. It was further submitted that the letters dated 9th March 2021 and 12th March 2021 engaging the claimant for three years up to March 2024 was illegal, null and void for violating the appointment letter dated 26th January 2021.
22. It was contended that appointments which are co-terminus with the term of the appointing Governor, ceases office upon the lapse of the Governor's term. Reliance was placed on several authorities including Court of Appeal decision in *Kisumu County Public Service Board & Another v Samuel Okuro & 7 Others* (2018) eKLR where the court dealt with the term of the office of executive committee members.
23. In view of the foregoing matters, the court was urged to dismiss the suit with costs, but should the court find that the claimant was a victim of unfair termination, then the 3rd respondent should bear the burden of compensating her since it is a body corporate.

Issues for Determination

24. There is no dispute that the claimant was employed by the 1st respondent as Director in charge of Peace and Development. It is also a fact that her appointment in that office was co-terminus with the term of her appointing Governor.
25. It is further a fact that the claimant was also appointed as CEO of the 3rd respondent for a term of three years from March 2021 to March 2024. The appointment was through a resolution by the Governing council of the 3rd respondent on 5th March 2021 followed by a letter issued by the chairman of the 3rd respondent. The Governor of the 1st respondent acknowledged the said appointment by the letter dated 12th March 2021.
26. Finally, it is a fact that the claimant ceased being Director of Peace and Development of the 1st respondent on 30th September 2022, cleared in October 2022 and she was paid her terminal dues for her service from 2018 to 30th September 2022.
27. The issues for determination are: -
 - a. Whether the exit of the claimant from the 1st respondent as Director of Peace and Development disqualified her from holding the office of the 3rd respondent's CEO.



- b. Whether the 1st respondent unfairly terminated the claimant's contract by the letter dated 17th January 2023.
- c. Whether the claimant is entitled to the reliefs sought.

Effect of the claimant's exit from the 1st respondent to her appointment by the 3rd Respondent

28. The controversy in this suit arises from Article XII of the 3rd Respondent's MOU which states that: -
- “ 1. The Chief Executive and Deputy Executives shall be appointed by the Governing Council and have to be heading a department in charge of Peace and Development of the Member Counties.
 - 2 ...”
29. The 1st and 2nd respondents have contended that for one to serve as CEO of the respondent, he/she had to head a department in charge of Peace and Development in a member county. They further contended that upon exiting the office of Director of Amaya Triangle in the 1st respondent, in September 2022 she became disqualified to continue serving as CEO of the 3rd Respondent. Therefore, they dismissed the appointment letter dated 9th March 2021 and 12th March 2021 as null and void.
30. However, the claimant maintained that her appointment as CEO of the 3rd respondent was done by a resolution passed by the Governing council pursuant to Article XII of the MOU and conveyed by the letters dated 9th March 2021 and 12th March 2021. She further contended that the contract was never terminated by the Governing Council of the 3rd respondent as provided in the termination clause of the appointment letter.
31. I have carefully considered the material before the court. As correctly submitted, the court does not have jurisdiction to rewrite a contract on behalf of the parties but rather to enforce it as agreed between them. I gather support from *National Bank of Kenya Ltd v Pipelastic Samkolit (K) & Another (2001) eKLR* where the Court of Appeal held that: -
- “ A court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was no remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge.”
32. Again, in *Jiwaji & Others v Jiwaji & Another (1968) EA 547* the Court of Appeal held as follows: -
- “ But where there is no ambiguity in an agreement, it must be construed according to the clear words actually used by the parties, and it would be quite wrong to adopt a different construction or imply a term to the contrary effect.”
33. In the instant case, there were two contracts vide which the claimant was engaged. The first and the oldest was the appointment letter by the 1st respondent dated 29th January 2018. It appointed her to the post of Director of Amaya Triangle Initiative (Job Group 'R') in the Governor's office for a renewable three years effective 1st February 2018. The contract would stand terminated if the Governor vacates office.
34. The contract was extended by the Governor's letter dated 26th January 2021 with effect from 1st February 2021 and it was co-terminus with the term of the governor on 30th September 2022. She



served the whole contract term and exited her office in the 1st respondent and cleared with the government in October 2022. Her terminal dues were also paid according to the RW1.

35. The second contract was the appointment by the 3rd respondent's Governing council as the CEO of the 3rd respondent on 5th March 2021. The appointment was conveyed by the chairperson of the 3rd Respondent vide the letter dated 9th March 2021 and acknowledged by the Governor of the 1st respondent. This contract had clear and unambiguous terms about who her employer was, her term of office, where her salary would come from and why, and above all how the contract could be terminated.
36. The letter states as follows: -

“Dear Ms Wahome

Ref: Appointment to Chief Executive Officer Position

Cooperation for Peace and Development through its Governing Council chairman is pleased to inform you of your appointment as the Chief Executive Officer starting in the month of March 2021 to March 2024 (3) years as stipulated in the cooperation for Peace and Development agreement.

As the Chief Executive of the Cooperation for Peace and Development your duties will include: -

1. Overseeing the functioning and development of Cooperation for Peace and Development;
2. Representation and promotion of cooperation for Peace and Development;
3. Strategic planning and day to day management of cooperation for Peace and Development;
4. Act as the central communication office for Cooperation for Peace and Development;
5. Developing strategies and work programme of Cooperation for Peace and Development for approval by the Governing Council;
6. Acting as the linkage and network for Cooperation for Peace and Development AND OTHERS;
7. Creating partnerships on behalf of Cooperation for Peace and Development;
8. Managing stakeholders in the Amaya region under the programme;
9. Managing financial and general administration of Cooperation for Peace and Development;
10. Budgeting preparation and implementation;
11. Mobilization of resources, coordination and harmonization of programs and projects with other partners;
12. Preparation and submission for approval such administrative regulations, standing orders and rules for the management of the affairs of Cooperation for Peace and Development;



13. Any other duties as may be assigned by the Governing Council from time to time.

Your performance will be appraised by the Chairman on an annual basis.

Your salary and any other allowances will be facilitated by Laikipia County Government until such a time when CBD will raise funds enough to cater for your salary in the near future.

You are entitled to thirty (30) days annual leave exclusive of weekends and public holidays and annual leave commensurate to your scale.

You will be subjected to employment laws and staff rules of *the Constitution* of Kenya, *Public Service Commission Act*, 2017, Human Resources Policies and Procedures Manual for the Public Service, May 2016 and relevant legislations that are currently in force or as may be amended from time to time.

Termination of service can be done by either party serving the other with one (1) months' notice in writing or pay one (1) months' gross salary in lieu of notice or if the Governing Council unanimously agrees to your termination of contract.

You will hold matters of Cooperation for Peace and Development in very high confidentiality and will not disclose any confidential matters to any unauthorized persons or entity. A confidentiality agreement will be signed concerning all your duties while in the service.

Congratulations to your new appointment.

H.E Stanley Kiptis

Baringo Governor

Cc

H.E Ndiritu Muriithi

H.E Moses Lenolkulal

H.E Mohammed Kuti”

37. There is nothing in the above letter to suggest that the claimant's appointment was depended on her continued appointment as head of a department in charge of Peace and Development in the 1st respondent. The contract was very specific to her engagement with the 3rd respondent for a term of three years unless it was prematurely terminated as stipulated in the appointment letter.
38. As admitted by RW1, the 3rd respondent never terminated the claimant's appointment and she continued discharging her mandate until 17th January 2023 when the 1st respondent's County Secretary wrote to her that she had ceased being an employee of 1st respondent from 30th September 2022 when the appointing Governor's term ended. The letter was a reaction to the claimant's demand for her salary from September 2022.
39. It seems that the claimant decided to leave the job after the 1st respondent, backed out of the undertaking to pay the CEO's salary and allowances until the 3rd respondent was able to pay her. My understanding of the facts of this case is that the CEO of the 3rd respondent was supposed to be



recruited from among the persons heading a department in charge of Peace and Development in any of the four-member Counties.

40. The said requirement was in my view only an entry requirement but not a continued requirement. After the appointment, the CEO's engagement with the 3rd respondent was governed by a separate contract from the initial contract between her and the 1st respondent. It follows that the separation between the claimant and the 1st respondent did not have any effect on her contract with the 3rd respondent. If the parties had a contrary intention, nothing stopped them from expressly indicating that in the MOU or the contract.
41. On the contrary, it is the appointment as CEO of the claimant that ought to have affected her contract with the 1st respondent. As a public officer she ought not to have held two jobs. She ought to have ceased working for the 1st Respondent to join the 3rd respondent. However, due to financial constraints on the part of the 3rd respondent, she continued serving both 1st and 3rd respondents, presumably drawing one salary from the 1st respondent, until her contract with the 1st respondent lapsed.

Unlawful termination

42. The claimant contended that the letter by the 1st and 2nd respondents stopped her salary as CEO of the 3rd respondent without prior notice. When she demanded payment of the salary, the County Secretary of the 1st respondent wrote letter dated 17th January 2023 telling her that she had ceased being an employee of the 1st respondent from 30th September 2022. She told this court that she continued serving as Chief Executive of the 3rd respondent and therefore she was entitled to salary and allowances from the 1st respondent as earlier promised in the Governor's letter dated 12th March 2021.
43. However, RW1 was of the view that the letters dated 9th March 2021 and 12th March 2021 were illegal for contradicting the letter dated 26th January 2021. It was therefore 1st and 2nd respondents' case that the letter dated 17th January 2023 did not terminate the claimant's employment but only a reminder that her term as an employee of the 1st respondent ended on 30th September 2022.
44. I have already made a finding of fact that the claimant's contract with the 1st respondent did not affect her contract with the 3rd respondent save in matters of salary and allowances. The two contracts were separate and parallel and when one lapsed on 30th September 2022, the other remained until she left after the 1st respondent indicated that it would not pay her salary after 30th September 2022.
45. It follows that the 1st respondent did not terminate the claimant's employment as CEO of the 3rd respondent but merely communicated that, since she was no longer its employee, it would no longer pay her salary on behalf of the 3rd respondent. It is clear in my mind that the termination was through resignation by the claimant as pleaded in her statement of claim and her witness statement. Consequently, the issue of unfair termination does not arise although a case of constructive dismissal is evident. Since the claimant did not plead constructive dismissal, I will not say more.

Reliefs

46. I have already found that the claimant's contract with the 1st respondent lapsed upon the exit from office by the appointing Governor. Accordingly, the claimant is entitled to gratuity accruing from that contract and as admitted by the County Secretary vide the letter dated 17th January 2023.
47. As regards her contract with the 3rd respondent, I have found that the same was never terminated by the 3rd respondent for whatever reason until the claimant left office after receiving the letter dated 17th January 2023. She was therefore lawfully in office discharging a lawful mandate as the CEO of the 3rd



respondent until she resigned. She is therefore entitled to salary for the month of October 2022 to January 2023. Hence Kshs.140,440 x 4 =Kshs.561,760.

48. The said award is justified because the claimant continued in office, discharging her mandate without any notice from either the 3rd respondent that her services were no longer required. Further, the 1st respondent who by the letter dated 12th March 2021 undertook to pay her salary until the 3rd respondent was able to pay her, never notified her in advance that it would no longer pay her salary on behalf of the 3rd respondent. Consequently, I hold that the 1st respondent was bound to continue paying the claimant's salary until she ceased employment or until it revoked the letter dated 12th March 2023 or until the 3rd respondent was able to pay her.
49. The claim for salary and gratuity after the claimant left office in January 2023 has no legal or contractual basis and it is declined. Future contractual benefits are not payable to an employee upon premature termination of the contract unless the contract expressly stipulates otherwise.
50. I have already made a finding of fact that unfair termination did not occur in this case and therefore the claims for salary in lieu of notice and compensation for unfair termination are declined.

Conclusion

51. I have found that the claimant's contract of employment with the 1st respondent ended upon the exit of the appointing Governor while with respect to her contract with the 3rd respondent she resigned. Accordingly, I have found that she is not entitled to the reliefs founded on the alleged unfair termination of her contract of employment.
52. I have further found that she is not entitled to the claim to any contractual benefits in respect of the unserved contract period after she resigned in January 2023. However, I have found that she is entitled to the salary for the four months worked from October 2022 to January 2023. Consequently, I enter judgment for the claimant against the respondents, jointly and severally as follows: -
 - a. Unpaid salary.....Kshs.561,760.00
 - b. Costs and interest at court rates from the date of filing the suit.
 - c. The award is subject to statutory deductions.

DATED, SIGNED AND DELIVERED AT NYERI THIS 12TH DAY OF MARCH, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

