



Omondi v Mathare Youth Sports Association & another (Employment and Labour Relations Cause 1049 of 2018) [2025] KEELRC 1158 (KLR) (24 April 2025) (Judgment)

Neutral citation: [2025] KEELRC 1158 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1049 OF 2018**

K OCHARO, J

APRIL 24, 2025

BETWEEN

BONFACE OMONDI CLAIMANT

AND

MATHARE YOUTH SPORTS ASSOCIATION 1ST RESPONDENT

BOB MUNRO 2ND RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 22nd June 2018, the Claimant sued the Respondent seeking;
 - a. A declaration that the termination of the Claimant's employment was wrongfully, maliciously, and or unfairly terminated.
 - b. A declaration that the termination was in violation of the Claimant's constitutional rights, in particular Article 27[5] and 41[1] of *the Constitution* of Kenya.
 - c. A declaration that the termination of the Claimant's employment was a violation of sections 45 and 46[a] of the *Employment Act* and therefore unfair.
 - d. An order that the Claimant be compensated as follows;
 - I. Two months' salary in lieu of notice at Kshs. 59,800.
 - II. General damages equivalent to twelve months' salary, being compensation for wrongful termination at KShs. 358, 800.
 - III. Aggravated damages for defamation and character assassination at KShs. 3,000,000.
 - IV. Twenty-Four days' payment in lieu of leave days earned Kshs. 23, 920.



- e. Costs and Interest.
2. In response to the Memorandum of Claim dated, the Respondents filed a Response dated 3rd October 2018, denying the Claimant's cause of action against it and entitlement to the reliefs sought.
3. By its ruling dated 29th September 2021, this court [Justice Nzioki Wa Makau] struck out the name of the 2nd Respondent from the proceedings as he found him not a necessary party to the suit.

The Claimant's case

4. The Claimant was employed by the 1st Respondent as a Mathare United Women Head Coach and FFT Centre Manager between 2007 and 2017. He first came in as an employee under an annual contract, which was subsequently renewed at the end of each subsequent year.
5. The 1st Respondent terminated his employment in 31st December 2017. At the time of separation, his salary was Kshs 29,900 per month.
6. On 16 October 2017, he was suspended for two weeks over what was indicated as the 1st Respondent's policy on sexual harassment. Details were not supplied. He was asked to hand over his docket to his immediate supervisor and submit a written statement to answer the allegations.
7. On 23rd October 2017, while still on suspension, he received an email from the 1st Respondent's Executive Director alleging that he was threatening staff. This wasn't untrue as he had been excluded from the workplace through the suspension.
8. On 24 October 2017, the CEO called him to his office, where he was given a letter asking him to explain whether he had ever taken any Mathare United Women FC member to a pub contrary to work ethics. He responded to the letter denying the allegations.
9. Two weeks lapsed, and the Claimant was not informed about the investigations carried out on the allegations. This prompted him to write an email dated 8 November 2017 to the 1st Respondent, inquiring about the state of the inquiry.
10. On November 15, 2017, the CEO called him to his office to collect a letter. He went for it. Surprisingly, the letter informed him that he had been put on compulsory leave until 31 December 2017, and thereafter, the 1st Respondent wouldn't renew his contract.
11. The non-renewal of the contract without any genuine reason advanced when he had worked for the 1st Respondent for 10 years on annual contracts, where the 1st Respondent had created a legitimate expectation that his contract would be renewed, amounted to unfair termination.
12. The claimant was having inappropriate relationships with the team's women players, and taking them out for drinking severely, contrary to the 1st Respondent's policy.
13. He was not provided with any evidence of inappropriate relationships and was never given a chance to explain himself, challenge the evidence, and face his accusers. His accusers remained unknown.
14. He was defamed. Information about his alleged relationships with underage girls at the 1st Respondent's was shared in the Kenya Premier League [KPL] Chat and the Mathare Youth Sports Association's [MYSA] Facebook pages. The membership of these social media platforms comprises nearly all stakeholders in the football world. The information was pulled down after the Claimant lodged a complaint with the administrators of the respective media.



15. As a result of the circulated false information about the termination of his employment, getting placement in another women's Football Team has become a daunting task. As a result, he has remained unemployed.
16. In dismissing him, the Respondent didn't act in accordance with the principles of natural justice, fundamental human rights principles and equity. The grounds, the basis for his dismissal, were vague and unfounded.
17. Cross-examined by Counsel for the Respondent, the Claimant testified that he was employed on annual contracts and that the contract for 2017 was to run from 1st January to 31st December 2017. The contract embodied a promise for renewal. The nature of the contracts[annual] was informed by the fact that the 1st Respondent was a non-governmental organisation that depended on donor funding and, as such, would not want to commit itself to long-term contracts.
18. He admitted that he was paid his November and December 2017 salary.
19. The email dated 23rd October 2017 sent to him was not factually correct, as he had already handed over the docket and had been suspended from his place of work. After the suspension, he didn't go back to the 1st Respondent's Premises.
20. His contract was terminated through the compulsory leave letter cum termination letter dated 15th November 2017. He was placed under compulsory leave pending the expiry of his contract period.
21. Though he asserts that the information concerning his alleged conduct and the termination was shared on the various platforms, he had not placed any documentary proof before the court. He had not presented evidence to show who shared the information.
22. He admitted that he took leave from November to December 2017. However, he claims leave pay because he was forced to take it.
23. He called one witness, Cryspine Odour, who testified in support of his case. He testified that he had volunteered for the 1st Respondent since 2000. At the material time, the Claimant was a Coach, and he [the witness] was a referee instructor.
24. The Claimant was dismissed on allegations that he had inappropriate relationships with women players of the Respondent's Team.
25. According to how he knew the Claimant, the allegations were untrue. He was such a strict Coach to an extent that ladies never wanted to interact with him.
26. Cross-examined by Counsel for the Respondent, the witness testified that sometimes, as a team, they would have celebrations, and the Claimant's role in such occasions was to ensure that things were in order and then leave. One such event was held in a bar.
27. Due to his engagements as a referee, he couldn't always be with the Claimant.
28. The allegations against the Claimant were widely shared on social platforms. He could not name who shared them.

The Respondent's Case

29. The 1st Respondent presented Ms. Maqulate Onyango to testify in support of its case. The witness admitted that the Claimant was employed by the 1st Respondent on an annual contract sometime in



2007. Subsequently, he was issued other contracts, the last of which was to expire on 31 December 2017.
30. On 14 September 2017, the Chairman of the 1st Respondent's Board of Trustees received an anonymous email from a whistleblower regarding an alleged misconduct by the Claimant. This information was communicated to the witness for the purpose of carrying out investigations.
 31. Unfortunately, word reached the Claimant before the investigations commenced. He consequently convened a meeting with the team with the intent to subvert the investigations. In the meeting, he urged all the players not to cooperate in the investigations.
 32. She spoke to half of the team members, who confirmed the allegations against the Claimant as accurate. However, due to the nature of the matter, none of them were willing to give a statement or even reveal her identity. She further met with four girls in an undisclosed venue in town, who confirmed that the Claimant had been socializing with some of the girls and that this had led to division in the team, jeopardizing its performance.
 33. After the investigations, she submitted a report to the Chairman.
 34. The Claimant was sent on suspension and required to respond to the allegations levelled against him.
 35. On 20 October 2017, the then-acting Human Resource Manager reported that the Claimant was in the office, intimidating him and other staff. She was forced to report the incident to the CEO, who issued a letter reminding him that he was on a two-week suspension and that he should stay away from the 1st Respondent's premises while investigations were going on.
 36. On 31 October 2017, the Senior Executive Committee mandated an ad hoc committee to meet, review, and decide on the matter regarding the Claimant's alleged misconduct. After considering the investigation's material, including the audio recording that she had obtained, the committee concluded that the Claimant had been socialising with some of his players more than twice. In addition, the committee noted that he had convened a meeting with the team and urged them not to cooperate with the investigations.
 37. This, coupled with the fact that on 20th October 2017, the Claimant had threatened the 1st Respondent's staff, amounted to gross misconduct which would attract a summary dismissal against him. However, the Committee noted that his contract was coming to an end in about one and a half months and decided to send him on terminal leave pending the expiry of his contract. He was sent on compulsory terminal leave and remained on the payroll until 31st December 2017, when his contract expired.
 38. While the Respondent issued the Claimant successive annual contracts, it never created a legitimate expectation of renewal. The Respondent could issue all its employees strictly fixed-term contracts, as it is entirely donor-dependent and would not guarantee longevity of service.
 39. The Claimant's last contract was a fixed-term contract that ended with time expiration. The contract did not create any obligation to renew, and also did not require any party to give justification for non-renewal. As such, the Claimant's employment was not unfairly terminated but came to an end by time expiration.
 40. The information relating to the investigations against the Claimant was only shared with members of the Respondent who were involved in the investigations and decision-making on a need-to-know basis. The 1st Respondent didn't post any information on social media, which would render them culpable for defamation. The Claimant's claim for general damages for defamation is unfounded.



41. Cross-examined by Counsel for the Claimant, the witness asserted that the Claimant's employment was not terminated. He was given compulsory leave pending the expiry of his contract.
42. He was suspended under a letter dated 16 October 2017 to pave the way for investigations. The reasons for the suspension were expressly set out in the letter. The investigations were to focus on the allegations against him of sexual harassment.
43. The investigations started two weeks after the anonymous email was received. The suspension letter required him to explain himself regarding the allegations.
44. Though the Claimant wasn't given an opportunity to be heard physically, he was accorded an opportunity to defend himself in writing.
45. The audio recording mentioned in her report was not presented to the Claimant at any time. It was not placed before this court as evidence.
46. Pauline Njeri was involved in the investigations; as such, it was surprising to note that she had given a witness statement in favour of the Claimant's case, denying that she was involved.
47. In her evidence in re-examination, the witness stated that the Claimant was not called to a hearing in person because he had threatened the girls and the matter was sensitive.
48. All the team members were under 18 years and school-going. The Respondent was paying their school fees.

Analysis and Determination

49. I have carefully considered the pleadings, the evidence and submissions by the parties, and the following issues emerge for determination;
 - I. How did the separation between the Claimant and the Respondent occur?
 - II. Is the Claimant entitled to the reliefs sought?
50. There was no agreement regarding how the Claimant separated from the Respondent. The Claimant took the position that his employment was unfairly terminated, while the Respondent took the position that the Claimant's contract of employment came to an end by effluxion of time.
51. It was a common cause that, because of how the 1st Respondent was funding its operations and activities, the Claimant's employment contracts were annually fixed-term. There had been almost ten successive annual contracts at the time of separation.
52. On 15th November 2017, the 1st Respondent wrote to the Claimant;

Re: Compulsory Leave

The ad hoc Committee on MYSA staff misconduct met and reviewed the evidence provided on the accusation levelled against you having inappropriate relationship with some Mathare United Women FC players by taking them on drinking, the committee concluded beyond and reasonable doubt that this happened more than once.

This action warranted a warning letter, but as you had also tried to interfere with the investigations and intimidating potential witnesses which are not actions of an innocent person, it has been decided that your contract will not be renewed upon expiry and that you immediately proceed on compulsory leave until December when your contract expires."



53. Despite alluding to the fact that, according to the ad hoc committee, the Claimant had been found guilty of having committed infractions that would warrant a disciplinary sanction against him, the 1st Respondent allowed the contract of employment that the Claimant was serving under and which had an appointed lapse date of 31st December 2017 to run its full course and thus come to an end by expiration of time. As admitted by the Claimant, the Respondent paid him his salary up to the last date of the contract.
54. In my view, the fact that the Claimant's one-year fixed term contracts had been renewed successfully for almost ten times, didn't change the nature of them or any of them from being fixed term to term contracts or mean that the state of affairs could continue forever, without any one of the renewed contracts bringing the employer -employee relationship between the Respondent and the Claimant to an end completely at its appointed end date. To think otherwise could render the purpose for which the parties opted for one-year fixed-term contracts, nonsense.
55. By reason of the foregoing premises, I conclude that the Claimant's contract of employment ended by lapse of time. His employment was not terminated on account of the infractions that had been alleged against him. He wasn't summarily dismissed from employment for the alleged misconduct.
- By opting to allow the last contract of service to run its full course, the 1st Respondent successfully sidestepped the rigors of sections 41, 43, 45, and 47[5] of the *Employment Act*. They would not be a basis for a claim against it by the Claimant.
56. It is trite that once a fixed-term employment contract expires, neither the employer nor the employee has any further rights or obligations beyond the agreed-upon term. The contract comes to an end, and there is no requirement for the employer to justify non-renewal or for the employee to expect automatic renewal.
57. In the case of *Trocaire vs Catherine Wambui Karuno* [2018] eKLR, the Court of Appeal held as follows: - "16. It is clear from the evidence on record that the respondent's employment was governed by fixed-term contracts. As aptly observed by Lord Denning MR in *British Broadcasting Corporation vs Ioannou* [1975] 2 All ER 999, such a contract binds parties for the term stated in the agreement. In our view, the duration for the third contract was expressly stipulated therein, that is, for a period of four months running from 1st March, 2014 up to 30th June, 2014... [19] It follows that the contract in question automatically lapsed on 30th June, 2014 by effluxion of time..."
58. I further echo the sentiments by the court of Appeal in *Transparency International Kenya v Teresa Carlo Omondi* (2023) where it was held that: - "We dare say that an automatically renewable fixed-term contract is a contradiction in terms, as it would subject the parties to an indeterminate employment contract. The respondent was under a fixed-term contract with a definite commencement date and termination date. There was no ambiguity created to create an expectation of contract renewal by the appellant's issuance of a fixed-term contract. The contract terminated automatically when the termination date arrived. 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...In the instant case, there was no promise of any sort that was given to the respondent to justify a claim based on legitimate expectation."
59. The Claimant's case was presented as a claim for unfair termination. Having found as I have, I find it not necessary to delve into the aspects of substantive and procedural fairness raised by the Claimant.
60. The reliefs sought by the Claimant were anchored on the alleged claim for unfair termination of employment. As the claim has failed, so shall the plea for the reliefs.



61. Before I pen off, it is imperative to state this Court is aware of Justice Rika's decision, in Daniel Mwaure Njihia v- Mathare Youths Association and Another – [Cause No. 1048 of 2018] [2024] KEELRC 1435 [KLR]. Though the facts in that case appear to be the same as those in the instant case, there is a single pivotal fact that differentiates the two. In the case that was handled by Justice Rika, and as he held, the Claimant's employment came to an end under a summary dismissal letter. Thus, unlike this case, where neither a summary dismissal letter nor a termination letter was issued, the dispute could be adjudicated through the lens provided under the sections of the *Employment Act* mentioned above.
62. In the upshot, the Claimant's case herein is dismissed. Each party shall bear its own costs.

READ SIGNED AND DELIVERED THIS 24TH DAY OF APRIL 2025.

OCHARO KEBIRA

JUDGE

