



Shieni v Alliance for a Green Revolution in Africa (Employment and Labour Relations Cause 55 of 2019) [2025] KEELRC 1522 (KLR) (22 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1522 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 55 OF 2019**

JW KELI, J

MAY 22, 2025

BETWEEN

BENSON LEMISO SHIENI CLAIMANT

AND

ALLIANCE FOR A GREEN REVOLUTION IN AFRICA RESPONDENT

JUDGMENT

1. The Claimant aggrieved with the termination of his employment filed a memorandum of claim dated 29TH January 2019 against the Respondent seeking the following reliefs:-
 - a. A declaration of the violation of the Claimant's right(s) to fair work practices, which occasioned unlawful dismissal triggered by the sole intolerable actions and or omissions of the Respondent;
 - b. A declaration of breach of contract in favour of the Claimant;
 - c. General damages for violation of the Claimant's right(s) to fair work practices and for breach of contract;
 - d. An Order directing payment to the Claimant of all the following terminal dues arising out of service to the Respondent;
 - a. Variance amounting from the wage discrimination = KShs.2,954,000.00;
 - b. April 2018 Salary = 116,840.00;
 - c. Medical Benefits = KShs.15,000,000.00;
 - d. Severance pay due at = KShs.8,460,000.00;Sub-total = KShs.26,530,840.00



- e. Compensation for wrongful dismissal
 - f. Issuance of Certificate of service
 - g. Cost of this suit
 - h. Any other relief this honourable court deems fit to grant in the circumstances.
2. The claimant in support of the claim failed his verifying affidavit, witness statement of the claimant dated 29th January 2019 and a list of documents of even date together with the bundle of documents. The claimant filed a reply to the statement of response on 20th June 2019.
 3. The claim was opposed by the respondent who filed a statement of response dated 18th April 2019 together with a witness statement of Pamela Abuoga and the respondent's list of documents dated 18th April 2019 together with the bundle of documents. The respondent on the 31st July 2023 filed a supplementary list of documents dated 31st July 2023.
 4. The claimant's case was heard on the 26th October 2022 before Justice Ocharo Kebira where the claimant testified on oath as CW1, and produced his filed documents and was cross-examined by counsel for the Respondent, Mr. Agwata and re-examined by his advocate, Mr. Waswa. The claimant called as his witness, Benson Kyalo Kilonzo(CW2)17th April 2023 who testified on oath and was cross-examined by counsel for the Respondent, Mr. Agwata and re-examined by his advocate, Mr. Waswa.
 5. The respondent's case was heard before me on the 14th November 2024 with Emelda Sebuufu as RW1. She testified on oath and adopted her witness statement dated 30th June 2022 as her evidence in chief and produced the respondent's documents under list dated 18th April 2019 as D-exhibits 1-26 and the supplementary documents under the list of 31st July 2023 as D-exhibits 27-28. She was cross-examined by Mr. Waswa advocate for the claimant, and re-examined by their advocate, Mr. Issa. The court issued directions on filing of written submissions, and both parties complied.

Claimant's case

6. The Claimant was an employee of the Respondent as a Temporary Assistant Finance Officer. On the 18 January, 2016 via a letter of engagement and a contract, the Claimant was offered a temporary appointment as Temporary Assistant Finance Officer (Treasury) from the period of 20 January, 2016 to 19th April, 2016; it was later extended from 19h May to 31 May 2016 via a letter dated 18th May 2016; the temporary employment contract was then extended from 3rd September 2016 to 28th February 2017 via a letter dated 14 September 2016.
7. On the 3rd March 2017, via a letter, the Claimant's temporary employment was extended to assume the responsibilities of a Finance Assistant from 1st March 2017 to 31st May 2017, while retaining the original terms and conditions captured by the 18th January 2016 letter aforementioned: Via letters dated 7th June 2017, 18th August 2017, 1st November 2017, 2nd January 2018, 29th March 2018, the Claimant temporary employment was extended on varying dates of 1st June 2017 to 31st July 2017-1st August 2017 to 31st October 2017-1 November 2017 to 31st December 2017-2nd January 2018 to 31st March 2018 -1st April 2018 to 30th April 2018 respectively; and via a letter dated 5th April 2018 the Respondent notified the Claimant of the non-renewal of his contract of employment.
8. The Responsibilities which were given to the claimant did not remain constant, and the Respondent added more responsibilities as the short-term contract continued to be renewed for a period of three (3) months. That, even with additional responsibilities, there was no corresponding salary increment in line with the job group.



9. The victimization was further manifested openly towards the claimant as manifested through salary disparities as compared to colleagues of a similar job group and the termination was selective as other temporary staff were not issued with termination letters and that they were even confirmed as permanent staff under different departments; the victimization by the Respondent included unfair labour terms, unfair treatment and frustration of the Claimant's good intentions.

Respondent's case in brief

10. The Claimant was offered employment with the Respondent on a temporary basis as a Temporary Assistant Finance Officer (Treasury) via a fixed-term contract dated 18th January 2016. Clause 8 of the contract specifically provided that the Claimant's employment was temporary and that the renewal of the contract would be based on the Respondent's needs. The initial contract period was from 30th January 2016 to 19th April 2016. The initial employment contract set out the Claimant's job description and responsibilities. The Respondent, with the Claimant's consent, continually renewed the fixed-term contract while maintaining the terms in the Employment Contract dated 18th January 2016. On 2nd June 2016, the Respondent changed the Claimant's job title from Assistant Finance Officer to Finance Assistant. However, the Claimant's roles and responsibilities were not altered. On 29th March 2018, the Respondent renewed the Claimant's contract for a fixed term of one (1) month from 30th March 2018 to 30th April 2018.
11. By a letter dated 5th April 2018, the Respondent notified the Claimant that his contract would not be renewed for a further term. Dissatisfied with the decision not to renew his contract, the Claimant filed the present claim.

Determination

Issues for determination

12. The claimant identified and addressed the following issues in the dispute:-
- 1) Did the Respondent discriminate the Claimant and also violate the Claimant's right to fair labour practices and right to fair administrative action under Articles 27, 41 (1), 41(2) and 47 of *the Constitution* of Kenya ?
 - 2) Whether the Respondent's dismissal amounts to unfair, wrongful and unlawful termination of the Claimant's employment?
13. The Respondent identified and addressed the following issues in the dispute:-
- i. What were the terms of the Claimant's employment and separation from AGRA?
 - ii. Whether there was a violation of the Claimant's rights and/or discrimination against the Claimant?
 - iii. Whether the Claimant is entitled to the remedies sought?
14. The court, taking into account the pleadings and issues identified by the parties, was of the opinion the issues placed before the court by the parties for determination in the dispute were
- a. Whether the terms of the Claimant's employment and separation from AGRA amounted to unfair labour practice
 - b. Whether there was discrimination against the claimant



- c. Whether the claimant was entitled to reliefs sought

Whether the terms of the Claimant's employment and separation from AGRA amounted to unfair labour practice

Claimant's submissions

15. The Claimant was dismissed via a letter dated 5th April 2018 and he was notified of his non-renewal of his contract of employment.
16. The Respondent further violated the Claimant's right to fair labour practices by intentionally victimizing the Claimant and created an intolerable working environment and thereafter with no valid reason unlawfully led to Claimant's contract not to be renewed and terminated. To this end, the frustrations meted against the Claimant at the particular instance violated his right to fair labour relations.
17. No reason whatsoever was given by the Respondent to the Claimant why he was being terminated. It is only after the termination that the Respondent created an unfounded narrative on redundancy. Faced with a similar situation, the Court of Appeal in *Kenfright(E.A) Limited v Benson K.Nguti*[2016]_eKLR held: "Looking at the pleadings, the correspondence between the parties, and the evidence on record no reason at all was given to the Respondent why his services were terminated .He was not informed of his transgression. Neither was he given an opportunity to explain himself"
18. According to Article 41 (1) and (2) (b) of *the Constitution* of Kenya 2010: Labour relations. '41. (1) Every person has the right to fair labour practices.
- (2) Every worker has the right-
- (a) To fair remuneration conditions;
 - (c) To form, join or participate in the activities and programmes of a trade union; and
 - (d) To go on strike"
19. Under the *Employment Act*, 2007 (Kenya), the procedure for terminating an employee's contract must adhere to Sections 41, 43, and 45 to ensure fairness. First, the employer must give the employee a valid reason for termination, which must be based on poor performance, misconduct, or operational requirements such as redundancy. Moreover, under Section 41, the employer is required to notify the employee in writing and allow them an opportunity to present their defense, often in the presence of a representative or union official, the employer must issue a written termination notice or pay the equivalent salary in lieu of notice. Upon termination, the employee is entitled to receive all due benefits, including accrued leave, severance pay (where applicable), and a certificate of service. Failure to follow this process renders the termination unfair and unlawful under Section 45 of the Act.
20. In reinforcing these employment principle the court in *Walter Ogal Anuro v. Teachers Service Commission* [2013] eKLR, where the court ruled that the employer had failed to follow due process in terminating the claimant's employment. The court held that procedural fairness is mandatory, and employers must follow the steps outlined in the Act to avoid wrongful termination claims.
21. In utter disregard of the import of Article 41 of *the Constitution* reiterated above, the Respondent discriminated the Claimant by singling him out for employment termination whereas, other employees, his colleagues to be precise (some of whom were in the same job group as him), were



- retained. Similarly, the failure by the Respondent to consult and or inform the Claimant about the purported redundancy question amounts to unfair labour practice and therefore unconstitutional. In *Aviation & Allied Workers Union v. Kenya Airways Ltd & 3 others* [2012] eKLR where the learned Judge opined that that the employer had not adhered to the procedural requirements set out in the *Employment Act*, 2007, particularly concerning consultation and notification. The court emphasized that failure to consult the affected employees or their union amounted to unfair labour practices and was thus constitutional, Consequently, the terminations were deemed unfair, and the court ordered remedies in favor of the affected employees.
22. The Claimant further submitted that the Respondent's acts of unilaterally effecting fundamental changes in the contract of employment between him and the Claimant amounts to acts of unfair dismissal, which is both unconstitutional and unlawful. The actions and omissions of the Respondent must at all times be within the confines of the law and not based on whims; and failure by the Respondent to pay the Claimant his contractual dues is a breach of both the contract and the law. The Respondent even failed to pay the April 2018 salary when the Claimant was dismissed despite the Respondent claimed through a bank statement that he paid Ksh 172,403 /= well aware that the same were a misrepresentation of the facts.
23. Article 47 (1) of *the Constitution* of Kenya provides;
- "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair" Article 47(2) of *the Constitution* of Kenya entrenches that;-'If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action"
24. It was observed in the case of *Judicial Service Commission v Mbalu Mutava & Another* [2015]eKLR that:-
- "The right to fair hearing under the common law is a general right, albeit, a universal one. It refers to the three features of natural justice identified by Lord Hodson in *Ridge v Baldwin* (supra). Although it is applicable to administrative decisions, it is apparently limited in the scope in contrast to right to fair administrative action under article 47(1) as the later encompasses several duties- duty to act expeditiously, duty to act fairly, duty to act lawfully, duty to act reasonably and, in the special case mentioned in article 47(26)give written reasons for the administrative action. The duty to act lawfully and duty to reasonably refers to the substantive justice of the decision whereas the duty to act expeditiously and by fair procedure refers, to procedural justice"
25. The Claimant further submitted that, never at any stage of where the Respondent was dismissing him did the Respondent give him written reasons for the action as it is required in Article 47(2) of *the Constitution* as it is underscored in the case of *Kenya County Government Workers Union v. County Government of Nyeri & another* [2015] eKLR. the petitioner argued that their dismissal violated their rights under Article 47 of *the Constitution*, which provides for fair administrative action. The court held that the respondents' actions were in violation of the petitioner's rights under Article 47, as they failed to provide written reasons for the dismissal.
26. That from the aforementioned authorities highlights the constitutional requirement for employers to furnish employees with written reasons when making decisions that adversely affect their employment status. Failure to do so constitutes a breach of the employee's right to fair administrative action under



- Article 47(2) of *the Constitution* and tying down to his case there was no written reasons submitted to the Claimant at any stage vide to the letter he was issued to him for non-renewal of his contract.
27. The claimant submitted that his employment with the Respondent was running so smooth and the respondent always gave the Claimant commendations and promises that he demonstrated hard work, delivering and the Claimant thought he was going to be confirmed soon but instead the Respondent was just extending the contract without any allowance and benefits attached to him. That the Respondent was never forthcoming and honest to him and the temporary (3) months extension for the 3 years was a clear violation to his rights; Section 37 of the *Employment Act*, 2007 stipulates that if a casual employee works continuously for a period exceeding one month, or performs work that cannot reasonably be completed within three months, their employment is automatically converted to a term contract where wages are paid monthly. To buttress his case the claimant relied on the case *Kenyatta University v Esther Njeri Maina* (Civil Appeal No. 261 of 2020) [2022] KECA 1201 (KLR) (4 November 2022). In this case, Esther Njeri Maina was employed by Kenyatta University as a secretary on a casual basis starting in 2009. Despite working continuously for nearly a decade, she remained under casual or fixed-term contracts without the benefits accorded to permanent employees. The Court of Appeal upheld the Employment and Labour Relations Court's decision, declaring that her employment had effectively converted to permanent and pensionable status by virtue of Section 37 of the *Employment Act*. The court emphasised that maintaining an employee on casual terms for an extended period violated their right to fair labour practices.
28. From the aforementioned it is clear that the Respondent was in clear violation by failing to convert the temporary employee status to Permanent status and this was unfair and unlawful under Section 37 of the *Employment Act*, and in the 3 years the Claimant was in the organization there was never a conversation about him being a Permanent Employee. That he reported to work at 8.00 am to 5.00 pm and attended both staff and departmental meetings and received instruction from his supervisor similar to other permanent staff members and was involved in extra hours of working(overtime); and his rights have been trampled with in the course of employment and that an unfair employment environment was created by the company a state of affairs whose net effects was to ultimately lead to my unlawful and unfair termination.
29. In conclusion, based on the aforementioned and the evidence on record before this Honourable Court, It is therefore, the Claimant's case that the Respondent discriminated him and violated the Claimant's right to fair labour practices under Article 41(1), 41(2) and 47 of *the Constitution* of Kenya.

Respondent's case

30. Section 10 (3) (c) of the *Employment Act* provides for the employer and employee the right to execute an employment contract for a defined period in the event that the employment is not intended to be for an indefinite period. The contract ought to contain the period for which employment is expected to continue and/or the date when it is to end. The Claimant admitted that what he was offered via the Employment Agreement dated 18th January 2016 was employment as a Temporary Assistant Finance with the Respondent for an initial period of four (4) months.
31. The Claimant confirmed that Clause 8 of the contract provided that he was employed on temporary basis. This Employment Contract was renewed on various occasions. While it was not in dispute that the Claimant's temporary contract(s) were renewed with the consent of both parties, it is the Claimant's contention that in view of the numerous renewals and pursuant to the Respondent's Human Resources Policies and Procedures Manual, he had a legitimate expectation that he would be offered and was entitled to what he referred to as employment on permanent and pensionable terms.



32. Ms. Emelda Sebuufu clarified that Clause 4.6 of AGRA's Human Resources Policies Manual, version 1.4 that provided that all appointments are done on the basis of fixed-term contracts subject to renewal upon AGRA receiving funding. The Respondent submits that there was therefore no option to offer the Claimant employment on permanent and pensionable terms. There was therefore no basis to claim a legitimate expectation of employment on permanent and pensionable terms. This notwithstanding, the Respondent submitted that the decision to renew a fixed term contract(s) and the terms of renewal are at the discretion of an employer.
33. In support of this submission, the Respondent relied on the decision of this court in *Mbatia vs. Kirinyaga Water & Sanitation Company (KIRIWASCO)* where the court held as follows: "Unless a fixed term contract has a specific clause that obligates the employer to renew it, the decision to renew such contract is at the discretion of the employer. This discretion is unfettered. Indeed, this reality is informed by the age-old doctrine of employer prerogative." The Court of Appeal, in *Transparency International Kenya vs. Omondi* held that fixed term contracts does not carry a legitimate expectation of renewal. The court overruled the trial court's holding that constant renewals of fixed-term contracts create a legitimate expectation of further renewals. The court held that renewal of a fixed term contract ought to be expressly communicated. The court held as follows; "[27]. The court is in agreement with these sentiments. 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 [30]. Concomitantly, the scenario would have been different if there was an indication, by act or omission from the appellant, to indicate renewal was forthcoming to whet the respondent's appetite, that her contract would be renewed and hence rely on 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."
34. The Respondent's witness, Emelda Sebuufu, testified that the Claimant was engaged by AGRA to undertake specific tasks. She confirmed that the renewal of the contract(s) was offered to the Claimant as these tasks had not been completed by the time the initial contract had expired. Her testimony was in tandem with the provision of Clause 8 of the contract, which provided that an extension of the contract would be offered subject to AGRA's needs and donor funding. While on 29th March 2018, the Respondent renewed the Claimant's contract for a fixed term of one (1) month from 30th March 2018 to 30th April 2018, by a letter dated 5th April 2018, the Respondent notified the Claimant that his contract of service would not be renewed for a further term.
35. The Respondent submitted that it did not at any point guarantee the Claimant that it would continuously renew his contract or offer him employment on permanent terms as alleged. The Claimant did not set out any provision in his contract or AGRA's Human Resources Policies and Procedures Manual that guaranteed a renewal of his contract. While it was the Claimant's position that Clause 4.10.2 of AGRA's Human Resources Policies and Procedures Manual provided for a one (1) year extension of his contract. Ms, Sebuufu testified that this clause was not applicable to the Claimant as he was not employed on a short-term appointment to provide specialised professional services. AGRA could therefore not offer him the one (1) year extension alluded to in the clause. The Claimant was submitted as temporary staff and his employment was subject to the terms of the Employment Contract dated 18th January 2016. 26. The Respondent does not convert temporary contracts to long-term fixed-term contracts. Further, the Respondent did not make any guarantee or promise to the



Claimant to induce the reasonable expectation that his contract of service would be renewed and/or converted to a long-term fixed contract. The Claimant merely relied on the anticipation and hope of a renewal of their fixed-term contracts. In view of the foregoing, the Respondent submitted that there was no legitimate expectation that was created that the contract would be continuously renewed and/or the Claimant would ever be retained beyond the expiry date. The Claimant, in his submissions dated 6th February 2025, posited that in view of the numerous renewals of his contract(s), he was allegedly employed on casual basis and was entitled to a conversion of have his employment converted into employment for an indefinite period under the provisions of section 37 of the Employment Act.

36. In support of this position, the Claimant relied on the decision of the Court of Appeal in *Kenyatta University vs. Maina*. The Respondent submitted that the facts in the *Kenyatta University*(supra) case are distinguishable from the present case. The Respondent therein had been employed as a typist on a casual basis from August 2009 to July 2018. On 19th July 2018, the Respondent was coerced into signing a seasonal contract. The execution of the initial seasonal contract and subsequent contracts was made under duress. Further, whilst in the employment of the Appellant, she was not entitled to sick leave or maternity leave. The Court of Appeal upheld the finding that the Respondent's constitutional rights were infringed. AGR never employed the Claimant on a casual basis. He confirmed that he was employed on a fixed-term contract at all times, and he consented to the renewal of his contract. Further, his Employment Contract provided for 1.7 leave days per month. This Court in *East Africa Sea Food Limited vs. Mwazito* held that there was a distinction between casual employment and employment for a fixed term. Further, the provisions of section 37 of the Employment Act on conversion of casual employment do not apply to fixed term contracts. The court held as follows: "The gist and purpose of parties being regulated under a written contract of employment is that, the terms and conditions regulating such relationship and employment are agreed upon. Whether the employment is clustered under an erroneous title of being probationary or full term but the term is fixed in time and duration, as set out above, Section 10(3) (c) of the Act allow such an employment contract to issue and is lawful and cannot be re-written by the court to mean otherwise. In *Amatsi Water Services Company vs. Francis Shire Chachi* [2018] eKLR the court held that a fixed term contract will terminate on the sunset date unless extended in terms stated in the contract. A fixed-term contract cannot automatically be converted to full time employment or under the provisions of Section 37 of the Act on the grounds that it has been renewed severally and it became the practice and hence a legitimate expectation was created that renewal would be automatic. Each fixed-term contract starts and ends on its terms and unless it is renewed, there is no expectation that employment would continue as held in *Keen Kleeners Limited v Kenya Plantation and Agricultural workers' Union* (Civil Appeal 101 of 2019) [2021 eKLR." In *Mwangi vs. African Wildlife Foundation* the Claimant therein was first employed by the Respondent as the Administration and Finance Assistant on a fixed term contract on 22nd July 2002 and the contract was renewed severally, in intervals of between six (6) months, until 31st January 2015 when her services were terminated. The Claimants case as that in view of the several renewals, she had a legitimate of further renewals of the contracts. The court held as follows on this issue; "[63]. In the instant case, it is not in dispute that the respondent renewed the claimant's employment on several occasions until January 2015 and all the contracts were for a fixed term and non-renewal and the last renewal was for 6 months. Does the fact that an employer has renewed a fixed term severally create an obligation to continue renewing the contract until the employee resigns, dies or attains retirement age? Would that not destroy the essence of fixed term contract? [64]. In the absence of a renewal clause, the employer, in this case had no obligation to renew the claimant's contract of employment. It is not alleged that the respondent by word or conducted intimated that it would renew the last contract. The claimant did not question the shorter duration of last contract of 6 months. Perhaps because she was aware that the respondent had no obligation to renew the contract that ended on July 31, 2014. [66]. Weighing the claimant's evidence against that of the respondent, it is the finding of the



court that the consistent renewals of the contract of employment by the respondent over the years notwithstanding, the claimant had no reasonable and objective reason to legitimately expect renewal of the contract for another months. In the court's view, the several renewals of the contract per se was not a firm basis to find that the claimant had a legitimate expectation that the contract of employment would be renewed."

37. That it was the Claimant's contention that his employment was unlawfully and unfairly terminated. It was the Claimant's position that no reasons were given for the failure to renew his employment contract. The Respondent submitted that it is trite law that where a fixed term contract expires, there is no duty upon the employer to offer a renewal of the contract or to confirm an employee on permanent terms and the contract stands terminated on account of effluxion of time. In support of the above submission, the Respondent relied on the decision of the Court of Appeal in Trocaire vs. Catherine Wambui Karuno where the court held:" The Claimant confirmed that he was aware that his employment contract was for a fixed term. Further he confirmed that the extension of his fixed term contract was consensual. The allegation that decision to offer the Claimant employment on a fixed term contract and the subsequent renewal of his contract violated his right to fair labour practices under Article 41 is therefore a red-herring. "
38. The Claimant further contended that the decision to exclude the application of AGRA's Human Resources Policies and Procedures Manual to his employment was discriminatory. Clause 1.5 of AGRA's Human Resources Policies and Procedures Manual provides that temporary staff and consultants, whether IRS or NRS, are not AGRA full-time regular staff. They are hired to complete a specific task or activities limited in time and scope. Clause 2.1 provides that the policies do not apply to short term international staff, consultants and temporary staff. 36. Ms. Sebuufu clarified that Clause 2.1 that excluded the application of the Human Resources Policies and Procedures Manual to short-term international staff, consultants and other temporary staff was not discriminatory to the Claimant. She confirmed that this clause applied to all temporary staff without distinction and all temporary staff were governed by the terms of their respective employment contracts.
39. The Respondent submitted that human resource policies and guidelines do not automatically form part of an employment contract. The guidelines ought to be specifically incorporated as part of an employee's contract for the same to be applicable. The claim that the failure to incorporate the provisions of the Human Resources Policies and Procedures Manual is discriminatory is legally unfounded. This court in Banking, Insurance and Finance Union [Kenya] vs. Access Bank PLC [Kenya] Limited where the court held as follows; "[44]. The Claimant submits that the Grievants were paid severance, at the rate 1- month gross salary for every complete year of service, and 1-month salary in lieu of notice, which benefits were inferior to the promise of the Human Resource Policy. [45]. One problem with this submission, is that the Claimant did not establish, that the Human Resource Policy was a contractual instrument, enforceable between the Parties. [46]. It is not mentioned in the Grievants' contracts. It is not alluded to in the individual contracts or the collective agreement. It is not incorporated as part of their contracts of employment. They did not sign the Human Resource Policy. They are not recorded to have signified their consent to be bound by the Human Resource Policy, for it to be deemed as part of their binding contracts. [48]. A Human Resource Policy is a guidebook. It guides Policy and Practice. A contract on the other hand is a legally binding agreement between the Parties, outlining their rights and obligations. Human Resource Policies are not automatically considered contractual. 1491. To be considered contractual, Human Resource Policy must unambiguously indicate that it is contractual, and leave no room for misinterpretation. The Employee must be shown to have received, and acknowledged, the Human Resource Policy. Ideally, the Employee must sign the Human Resource Policy expressing his consent to be bound, in terms of the law regulating employment contract making, under Section 9[31 of the *Employment Act*. [51].



The Respondent's evidence that it acted in accordance with the HR policy, is immaterial. The Human Resource Police was never a binding contract." In *Kenyatta Maita Mwawashe vs. Plan International Kenya* the court held as follows; "In the Industrial Court of Kenya at Nairobi, Cause Number 746 [N] of 2009 between Kenya Union of Journalists v. The Standard Group Limited [unreported], this Court held that human resources manuals are not in themselves contracts of employment. They are quotidian aspects of human resources management, which are generated by Senior Management. To be considered as terms and conditions of employment, they must be adopted as part of the contract of employment. Adoption means they are received, acknowledged, read, understood and signed by the Employee."

Decision

40. The claimant was employed by the respondent on 20th January 2016 as a Temporary Assistant Finance Officer staff. The letter was titled temporary employment and expired on 19th April 2016. The salary was Kshs. 5842 daily for the days worked. He was entitled to leave of 1.7 days per month. The clause of contract renewal stated that he was hired on a temporary contract basis and continued employment depended on performance and AGRA needs. The contract was renewed vide letter dated 18th May 2016 for the month and thereafter for three months or one month. The respondent vide letter dated 5th April 2018 gave notice to the claimant of non-renewal of the temporary contract which was set to expire on 30th April 2018. The claimant produced his payslips, which indicated the pay was monthly with overtime, pension and NSSF.
41. The Claimant further submitted that nowhere at any stage when the Respondent was dismissing him did the Respondent give him written reasons for the action as it is required in Article 47(2) of *the Constitution* as it is underscored in the case of *Kenya County Government Workers Union v. County Government of Nyeri & another* [2015] eKLR. Whereby, the petitioner argued that their dismissal violated their rights under Article 47 of *the Constitution*, which provides for fair administrative action. The court held that the respondents' actions were in violation of the petitioner's rights under Article 47, as they failed to provide written reasons for the dismissal. That from the aforementioned authorities highlights the constitutional requirement for employers to furnish employees with written reasons when making decisions that adversely affect their employment status. Failure to do so constitutes a breach of the employee's right to fair administrative action under Article 47(2) of *the Constitution* and tying down to our case this is no written reasons submitted to the Claimant at any stage vide to the letter he was issued to him for non-renewal of his contract.
42. The claimant submitted that his employment with the Respondent was running so smooth and the respondent always gave the Claimant commendations and promises that he demonstrated hard work, delivering and the Claimant thought he was going to be confirmed soon but instead the Respondent was just extending the contract without any allowance and benefits attached to him. That the Respondent was never forthcoming and honest to him and the temporary (3) months extension for the 3 years was a clear violation to his rights; Section 37 of the *Employment Act*, 2007 stipulates that if a casual employee works continuously for a period exceeding one month, or performs work that cannot reasonably be completed within three months, their employment is automatically converted to a term contract where wages are paid monthly. He relied on the decision in *Kenyatta University v Esther Njeri Maina* (Civil Appeal No. 261 of 2020) [2022] KECA 1201 (KLR) (4 November 2022). In this case, Esther Njeri Maina was employed by Kenyatta University as a secretary on a casual basis starting in 2009. Despite working continuously for nearly a decade, she remained under casual or fixed-term contracts without the benefits accorded to permanent employees. The Court of Appeal upheld the Employment and Labour Relations Court's decision, declaring that her employment had effectively converted to permanent and pensionable status by virtue of Section 37 of the *Employment Act*. The



court emphasized that maintaining an employee on casual terms for an extended period violated their right to fair labour practices.

43. Conversely the Respondent submitted that the facts in the *Kenyatta University*(supra) case are distinguishable from the present case. The Respondent therein had been employed as a typist on casual basis from August 2009 to July 2018. On 19th July 2018, the Respondent was coerced into signing a seasonal contract. The execution of the initial seasonal contract and subsequent contracts was made under duress. Further whilst in the employment of the Appellant, she was not entitled to sick-leave nor maternity leave. The Court of Appeal upheld the finding that the Respondent's constitutional rights were infringed. 29. AGRA never employed the Claimant on casual basis. He confirmed that he was employed on a fixed term contract at all times and he consented to the renewal of his contract. Further, his Employment Contract provided for 1.7 leave days per month. This Court in *East Africa Sea Food Limited vs. Mwazito*²³ held that there was a distinction between casual employment and employment for a fixed term. Further, the provisions of section 37 of the *Employment Act* on conversion of casual employment do not apply to fixed term contracts. The court held as follows: "The gist and purpose of parties being regulated under a written contract of employment is that, the terms and conditions regulating such relationship and employment are agreed upon. Whether the employment is clustered under an erroneous title of being probationary or full term but the term is fixed in time and duration, as set out above, Section 10(3) (c) of the Act allow such an employment contract to issue and is lawful and cannot be re-written by the court to mean otherwise. In *Amatsi Water Services Company vs. Francis Shire Chachi* [2018] eKLR the court held that a fixed term contract will terminate on the sunset date unless extended in terms stated in the contract. A fixed-term contract cannot automatically be converted to full time employment or under the provisions of Section 37 of the Act on the grounds that it has been renewed severally and it became the practice and hence a legitimate expectation was created that renewal would be automatic. Each fixed-term contract starts and ends on its terms and unless it is renewed, there is no expectation that employment would continue as held in *Keen Kleeners Limited v Kenya Plantation and Agricultural workers' Union (Civil Appeal 101 of 2019)* [2021 eKLR." The Court finds that the claimant was on continuous fixed-term contracts and was paid consolidated pay (under employment contract) charged at 5842 daily for days worked and paid end month. The contract was for a specified period, hence not casual engagement. Section 37 of the *Employment Act* on conversion of casual engagement to term contracts is not applicable to fixed term contract. The court finds that the facts in *Kenyatta University v Esther Njeri Maina (Civil Appeal No. 261 of 2020)* [2022] KECA 1201 (KLR) (4 November 2022) are distinguished.
44. The Court of Appeal in *Trocaire vs. Catherine Wambui Karuno* held:" The Claimant confirmed that he was aware that his employment contract was for a fixed term. Further he confirmed that the extension of his fixed term contract was consensual. The allegation that decision to offer the Claimant employment on a fixed term contract and the subsequent renewal of his contract violated his right to fair labour practices under Article 41 is therefore a red-herring. " The Court of Appeal further held there was no legitimate expectation for renewal of fixed term contracts in *Transparency International Kenya vs. Omondi* held that fixed term contracts don't carry a legitimate expectation of renewal. The court overruled the trial courts holding that constant renewals of fixed term contracts create a legitimate expectation of further renewals. The court held that renewal of a fixed term contract ought to be expressly communicated. The court held as follows; "[27]. The court is in agreement with these sentiments. 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 [30]. Concomitantly, the scenario would have been different if there was an indication, by act or omission from the appellant, to indicate renewal was forthcoming to whet the respondent's appetite, that her contract would be renewed and hence rely on 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." The foregoing decisions of the Court of Appeal are binding on this court. The claimant was given notice of non-renewal on 5th April 2018 for contract expiring on 30th April 2018. There was no case of a promise given by the respondent of renewal to justify the claim for legitimate expectation to arise as stated in the Omondi case (supra). The court returns in the negative in the circumstances and holds that there was no case of unfair labour practice. Further, the court holds that section 41 of the Employment Act was not applicable in the termination, which was by effluxion of time.

Whether there was discrimination against the claimant

Claimant's submissions

45. In utter disregard of the import of Article 41 of the constitution reiterated above, the Respondent discriminated the Claimant by singling him out for employment termination whereas, other employees, his colleagues to be precise (some of whom were in the same job group as him), were retained. Similarly, the failure by the Respondent to consult and or inform the Claimant about the purported redundancy question amounts to unfair labour practice and therefore unconstitutional. In *Aviation & Allied Workers Union v. Kenya Airways Ltd & 3 others* [2012] eKLR where the learned Judge opined that the employer had not adhered to the procedural requirements set out in the Employment Act, 2007, particularly concerning consultation and notification. The court emphasised that failure to consult the affected employees or their union amounted to unfair labour practices and was thus unconstitutional.
46. Consequently, the terminations were deemed unfair, and the court ordered remedies in favour of the affected employees. The Claimant further submitted that the Respondent's acts of unilaterally effecting fundamental changes in the contract of employment between him and the Claimant amounts to acts of unfair dismissal, which is both unconstitutional and unlawful. The actions and omissions of the Respondent must at all times be within the confines of the law and not based on whims; and failure by the Respondent to pay the Claimant his contractual dues is a breach of both the contract and the law.

Respondent's submissions

47. It was the Claimant's further allegation that he was discriminated through a pay disparity. He claimed that other employees undertaking similar tasks as he was were offered better remuneration than he was. The Respondent denies the allegation that it subjected the Claimant to discrimination in the form of a pay disparity and submits that no proof of the alleged pay disparity was adduced. The Supreme Court in *Gwer & 5 others vs. Kenya Medical Research Institute & 3 Others*²⁹ where the court determined as follows: "[47] It is a timeless rule of the common law tradition 4 Kenya's juristic heritage 3/4 and one of fair and pragmatic conception, that the party making an averment in validation of a claim, is always the one to establish the plain veracity of the claim. In civil claims, the standard of proof is the "balance of probability". 1481 The petitioners' case is set around the constitutional right of freedom from discrimination (Constitution of Kenya, 2010, Article 27). It is already the standpoint of this Court, as regards standard of proof, that this assumes a higher level in respect of constitutional safeguards, than in the case of the ordinary civil-claim balance of probability. The explanation is that, virtually all



constitutional rights-safeguards bear generalities, or qualifications, which call for scrupulous individual appraisal for each case. This is the context in which the rights-claim in the instant case, founded upon racial discrimination, is to be seen.

(51) In the foregoing context, it is clear to us that the petitioners, in the instant case, bore the overriding obligation to lay substantial material before the Court, in discharge of the evidential burden establishing their treatment at the hands of 1st respondent as unconstitutional. Only with this threshold transcended, would the burden fall to 1st respondent to prove the contrary. In the light of the turn of events at both of the Superior Courts below, it is clear to us that, by no means, did the burden of proof shift to 1st respondent."

48. Similarly, the Court of Appeal in *OI Pejeta Ranching Limited vs. David Wanjau Muhoro* set out the criteria that ought to be met for a claim of discrimination on the basis of pay disparity can be sustained. The court held as follows; "In claims of this nature, where the claimant invokes the principle of equal pay for equal work the claimant must establish that the unequal pay is caused by the employer discriminating on unlawful grounds. It was observed in *Louw vs Golden Arrow Bus Services (Pty) Ltd [1999] ZALC166* that discrimination on a particular 'ground' means that the ground is the reason for the unequal treatment complained of by the claimant. As discussed by the writer, Adolph A. Landman in his article *The Anatomy of Disputes about Equal Pay for Equal Work*, "The mere existence of disparate treatment of people of, for example, different races is not discrimination on the ground of race, unless the difference in race is the reason for the disparate treatment. Put differently, it must be shown that the difference in salaries is because of sex, gender, race, and so on." The respondent had to establish that the unequal pay was caused by the employer discriminating on impermissible grounds."

49. In support of the claim for pay disparity, the Claimant adduced the payslip of Mercy Nthenya Kisilu for the month of April 2018. The Respondent submitted that the pay slip is inadmissible as evidence as it was procured in violation of the provisions of section 35 of the *Evidence Act* and Clause 9.1.4, 9.1.9 and 9.3.1 of the Employment Contract dated 18th January 2016. Further the pay slip is of no probative value as relates to the alleged pay disparity. The Claimant confirmed that the pay slip of Mercy Nthenya Kisilu, was produced in breach of Clause 9.1.4 of the Employment Contract that provided that information relating to AGRA employees, including but not limited to the terms of their employment, was confidential. Clause 9.1.9 on the other hand prohibited divulging of confidential during and after the Claimant's separation from AGRA. No authorization and/or consent was sought from Ms. Kisilu to adduce her pay slip as evidence. Contrary to the provisions of section 35 (2) of the *Evidence Act*, the Claimant confirmed that Ms. Kisilu was not a witness in this matter. As relates the probative value of pay slip, the Respondent submits that Ms. Kisilu would not be a suitable comparator as the pay slip does not set the terms of her employment, and the nature of the roles and duties she undertakes at AGRA. Ms. Kisilu was not a temporary staff at AGRA and is therefore not a suitable comparator to determine the claim of alleged discrimination. Mr. Lemisio confirmed that he did not adduce the employment contract of any temporary staff as proof of discrimination. The Respondent relied on the decision of the Supreme Court in *Muthuuri & 4 others vs. Attorney General & 2 Others*³² in support of the foregoing submissions, where the court while dealing with a similar claim for discrimination and pay disparity held as follows; "70. The pay slips on record belong to three different officers: Joash Rotich stationed at Nakuru Provincial Police Office; Esther Chepkemai Chebus of Kirinyaga OCPD; and Patrick Ovongo of Nairobi Embakasi OCPD. Without full terms of employment, particulars of the owners of the pay slips, and in the absence of their involvement in the proceedings as witnesses or by way of express authority in the form of affidavits or other depositions, the pay slips were of no evidential significance. Further, the pay slips were not certified as true copies of the original by the 2nd respondent who is the employer of all police officers and custodian of the pay slips. In terms of section 35 of the *Evidence Act*, the pay slips were inadmissible. Although generated and kept by the



2nd respondent, a pay slip is the personal property of the employee to whom it belongs. It contains sensitive confidential personal information. If evidence of a pay slip is not properly obtained, there may be a violation of the owner's right to privacy and a violation of data protection laws. In *Njonjo Mue & another v Chairperson of Independent Electoral and Boundaries Commission & 3 others, Petition No 4 of 2017* [2017] 1 eKLR, that a party intending to present a document in evidence must satisfy the requirements of the *Evidence Act*. We also stated that if the document belongs to a third party, then it is imperative that the source of the document and how it was obtained be explained." The renewal(s) of the Claimant's temporary employment with the Respondent was at all consensual and did not amount to a violation of the Claimant's right to fair labour practices as alleged. The Respondent submitted that no proof was tendered by the Claimant to show that the Respondent subjected him to discriminatory treatment and victimisation. The allegations of discrimination are baseless and unfounded. The court cannot issue compensatory or declaratory reliefs on the basis of inadmissible documents.

50. The claimant in pleading stated that the termination of his contract and or refusal to renew was selective and discriminatory as other temporary staff were not issued with termination. That the respondent did not give reasons for non-renewal or appointment to permanent terms. That the remaining staff were confirmed to permanent positions and that the wages paid to him were not the same as other assisting finance officers discharging the same duties in the organisation. During the cross-examination, the claimant told the court that on the discrimination claim, he had not placed any other employee's contract for the purpose of comparison. That he had placed on record a payslip of Mercy Kisilu but not her contract. He admitted that from the payslip, the terms of employment might have been different. CW2 stated that the claimant was reporting to him. He told the court that the claimant was not enjoying benefits under the employer policy like WIBA, Medical cover, airtime, and education allowance for staff and their children. That he was aware of the practice of termination of contracts. That temporary employees after 3 months of work would be confirmed and were confirmed.
51. RW1 told the court the Human Resources policy stated that it did not apply to temporary staff. That the contracts were for specific task and time. The contract further stated no other benefits were applicable. That on medical, the staff submitted receipts for reimbursement. The contract expired and there was no case of redundancy. On alleged discrimination and salary variance, RW1 said it was not true as the claimant was paid overtime and other staff were not. This the court confirmed from the claimant's payslips that overtime was paid regularly. RW1 told the court clause 4.10.2 of the policy was on short term employment and the claimant was temporary staff under clause 4.53.
52. The court, having considered the case, found no evidence of a comparable employee treated differently from the claimant. The payslip of Mercy Kisilu notwithstanding the admissibility issue, was on face value not of a comparable employee as she was paid basic salary and transport which was not the case of the claimant who was paid basic pay and overtime. Further, the contract held by Mercy was not produced for comparison of tasks. The claimant signed contracts knowing the terms, and even if he could have got a better deal, it is not for the court to rewrite the contracts of the parties. The claimant was paid for extra hours as overtime, which was not paid to the other cadre of employees. That meant his employment was unique. The court found no evidence of discrimination as per the cited authorities by the parties.

Whether the Claimant is entitled to the remedies sought?

53. The claimant sought the following reliefs from court:-
- a. A declaration of the violation of the Claimant's right(s) to fair work practices, which occasioned unlawful dismissal triggered by the sole intolerable actions and or omissions of the Respondent;



- b. A declaration of breach of contract in favour of the Claimant;
 - c. General damages for violation of the Claimant's right(s) to fair work practices and for breach of contract;
 - d. An Order directing payment to the Claimant of all the following terminal dues arising out of service to the Respondent;
 - i. Variance amounting from the wage discrimination = KShs.2,954,000.00;
 - j. April 2018 Salary = 116,840.00;
 - k. Medical Benefits = KShs.15,000,000.00;
 - l. Severance pay due at = KShs.8,460,000.00;
 Sub-total = KShs.26,530,840.00
 - m. Compensation for wrongful dismissal
 - n. Issuance of Certificate of service
 - o. Cost of this suit
 - p. Any other relief this honorable court deems fit to grant in the circumstances.
54. Having held that the contract terminated by effluxion, having found no proof of unfair labour practice nor proof of discrimination, the only outstanding issue is the claim for terminal dues arising out of service to the Respondent. The prayer for severance pay payable under section 40 of the [Employment Act](#) was not available as the termination of the contract was vide effluxion following expiry of the contract and not a case of redundancy.
55. The claimant sought for the following terminal benefits :-
 April 2018 Salary = 116,840.00;
 Medical Benefits = KShs.15,000,000.00;
56. On the claim for April 2018 Salary = 116,840.00; At hearing the claimant told the court he was not paid salary for month of April 2018 when his contract terminated. He was not cross-examined on the issue. RW1 told the court the bulk items report came from the bank on the payment of Kshs. 172,403 but the bank did not certify the document. That the document was not signed by the author and was pulled from the schedule. RW1 stated that the money was remitted to the claimant's bank account comprising of basic pay of Kshs. 116,840 plus overtime total sum of Ksh. 172,403 paid. The court perused the demand letter issued by the claimant as a precursor to the suit. The claimant only demanded 3 items being variance for discrimination, medical benefits and severance pay. The court noted that the bulk items report produced by the Respondent was generic for several employees, and the name of the claimant and the pay were indicated. The claimant, on being served with the document, did not file his bank statement as evidence that he had not received the money. The claimant did not object to the production of the bulk items report. The court taking into account the foregoing concluded, on balance of probabilities, that the salary was paid as per the bank statement.
57. The claim for medical was not supported by documents. RW1 testified that the temporary staff were reimbursed for medical claims.
58. The certificate of service is a statutory right and ought to be issued if not issued under section 51 of the [Employment Act](#). The court noted the certificate of service was not an issue under the demand letter.



Conclusion

59. The court found no merit in the entire claim, and the same is dismissed with costs to the respondent.

60. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF MAY, 2025.

J.W. KELI,

JUDGE.

In the presence of:

Court Assistant: Otieno

Claimant: Obuli

Respondent:-Chege h/b Issa

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