



REPUBLIC OF KENYA



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**Changalwa v Unga Limited (Cause 259 of 2017)
[2025] KEELRC 1389 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1389 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 259 OF 2017
MA ONYANGO, J
MAY 9, 2025**

BETWEEN
CHRISTOPHER SHABIRI CHANGALWA CLAIMANT
AND
UNGA LIMITED RESPONDENT

JUDGMENT

1. Vide a Statement of Claim dated 27th September, 2017, the Claimant avers that the Respondent unfairly terminated his employment.
2. It is the Claimant's case that he was first employed by the Respondent as a casual employee on 3rd April, 2004 and was issued with an employment contracts which was renewed every year until 4th July 2017 when the Respondent wrongfully, orally and unfairly terminated his employment.
3. The Claimant prays for the following reliefs:
 - i. Declaration that the claimant's termination from employment was unlawful, unprocedural and unfair and in the circumstance the Claimant is entitled to compensation as prayed for herein:-
 - ii. The sum of Ksh.2,3,37,492.14/= as set out herein below.
 - iii. Costs of this suit and interests at court rates from time of filing suit until payment in full.
Calculations
 - i. One month pay in leu of notice Ksh.38,239.11/=
 - ii. Unpaid travelling leave allowance Ksh.52,000/=
 - iii. Unpaid house allowance Ksh.1,252,680/=



- iv. Severance pay Ksh.414,257.03/=
 - v. Off days balance of 8 days Kshs.25,088/=
 - vi. Compensation for unfair terminations. Kshs. 555,228/=
- Total Kshs. 2,337,492.14/=
4. The Respondent filed a Response to the Claimant's Statement of Claim in which it states that the Claimant was employed by the Respondent in the year 2006 on a temporary basis as a Mechanical Fitter and the contract accrued continuous service. That during the tenure of the contract the Claimant was employed under a fixed term contract of one year period with effect from 1st July, 2016 and the contract was to terminate on 30th June, 2017.
 5. The Respondent denies that the Claimant's contract was wrongfully terminated orally or that it refused to pay the Claimant his dues. It is the Respondent's position that the contract lapsed by effluxion of time and renewal of the same was the discretion of the Respondent. That the Claimant could not therefore presume to have a legitimate expectation and presumption of renewal of the same. That the contract automatically terminated at the end of the contract period as provided under clause 11 of the contract.
 6. The Respondent prayed that the claim be dismissed with costs.
 7. At the hearing of the Claim the Claimant testified on his behalf while the Respondent called David Osapat, a maintenance supervisor of the Respondent at its Eldoret Branch. The parties thereafter filed and exchanged submissions.
 8. The Claimant adopted his witness statement and documents. During cross examination the Claimant stated that he started working for the Respondent as a casual on 3rd April, 2004 and his last working day was 4th July, 2017. That his last salary was paid up to 30th June, 2017. That he was not issued with copies of any documents relating to his employment which documents were under the custody of the Respondent. That his last salary was Kshs. 38,239 per month.
 9. The Claimant stated that his contract provided that if he failed to take leave it would be forfeited upon expiry of the contract.
 10. For the Respondent David Osapat testified that he had worked for the Respondent from 2012. He adopted his witness statement dated 12th April, 2023 and List and Bundle of Documents dated 25th May, 2028 as his evidence. He testified that he knew the Claimant and was supplied with the Claimant's employment records. He stated he was aware of the Claimant's contract.
 11. On cross examination Mr. Osapat stated that he was employed on permanent basis. He stated that during the period when the Claimant was working for the Respondent he was a miller and did not work with the Claimant in maintenance. He stated he did not know if the Claimant was working for the Respondent in 2006 because all he knew was in the contract. He emphatically repeated that he did not know anything other than what was in the contract.
 12. Mr. Osapat stated that employees joined the Respondent's gratuity scheme after becoming permanent employees. That he did not know how the Claimant joined the gratuity scheme in 2015. He stated it can be inferred that the Claimant joined the company on permanent basis based on the fact that he joined the gratuity scheme.



Claimant's Submissions

13. In the Claimant's submissions he states that he had legitimate expectation that his contract would be renewed as it has been renewed from the first contract he signed in 2006. He relied on the decisions in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (Petition 14, 14A, 14B & 14C of 2014 (Consolidated)) [2014] KESC 53 (KLR) (29 September 2014) (Judgment) "Legitimate expectation would arise when a body, by Representation or by past practice, has aroused an expectation that is within its power to fulfil. Therefore, for an expectation to be legitimate, it must be founded upon a promise or practice by public authority that is expected to fulfill the expectation."
14. The Claimant further relied on the decision in *Teresa Carlo Omondi v Transparency International Kenya* [2017] eKLR where the court stated:

It must be shown that the employer, through regular practice, or through an express promise, leads the employee to legitimately expect there would be renewal. The expectation becomes legally protected, and ought not to be ignored by the employer, when managerial prerogative on the subject is exercised. Legitimate expectation is not the same thing as anticipation, desire or hope. It is a principle based on a right, grounded on the larger principles of reasonableness and fair dealing between employers and employees."
15. The Claimant submitted that the Respondent having renewed his contracts every year in the past it caused the Claimant to have legitimate expectation that the same would be done this time round too.
16. It was the Claimant's submission that he was entitled to leave and gratuity. That paragraph 8 of his contract provided for leave while paragraph 10 provided for gratuity which he was not paid despite him being a member of the gratuity scheme. It was submitted that the Claimant was never paid leave due.
17. It was further the submission of the Claimant that the termination of his employment was unfair as there was no valid reason for the same as required under section 43 of the *Employment Act*. He submitted that having joined the gratuity scheme which was for permanent staff only he must be treated like a permanent staff.
18. It was the Claimant's submission that his last contract, though dated 24th June, 2016 and commencing on 1st July, 2016, was executed on 14th July, 2016. That this was the case even in prior contracts from 2006.
19. It was submitted that although in the Defence the Respondent pleaded that the Claimant had been on contract from 2006 the Respondent's witness stated that the only contract signed with the Claimant was the one for 1st July 2016 to 30th June, 2017. That this was not true because even the contract document acknowledged that the Claimant had joined the gratuity scheme which was for permanent staff only. That the Respondent declined to produce records for all the years the Claimant was in its employment.
20. It was submitted that allowing the Claimant to work until 3rd July, 2017 confirmed his expectation that he would be issued with another contract. That the termination was therefore unfair in terms of section 45 of the *Employment Act*.
21. The Claimant prayed for orders as sought in the claim.



Respondent's Submissions

22. For the Respondent it was submitted that the contract between the Claimant and Respondent was for a fixed term and notice was not required unless it was terminated prematurely. That in the instant case the contract came to an end in accordance with paragraph 11 thereof.
23. The Respondent submitted that the Claimant admitted signing the contract. The Respondent relied on the decision in *Rajab Barasa and others v Kenya Meat Commission* [2016] the court held that a fixed term contract has a start and end date and lapses on its provision. That notice to terminate is not required as the end date is given.
24. The Respondent further relied on the case of *George S. Onyango OGW v Board of Director Numerical Machining Complex Limited and 2 others* [2012] eKLR where the court held that even without the letter communicating non-renewal the Petitioner was aware of the expiry date of his fixed term contract and that there was reasonable chance that he would not have a second term.
25. On the terminal dues sought by the Claimant the Respondent submitted that the Claimant had sufficient notice and the issue of payment in lieu of notice does not arise.
26. On unpaid travel allowance claim the Respondent submitted that the contract was clear on what was to be paid and no award can issue on this head.
27. With respect to the prayer for unpaid house allowance the Respondent submitted that the contract expressly states the salary was consolidated.
28. On the claim for severance pay the Respondent submitted that the Claimant was not declared redundant and the issue of severance pay cannot arise, relying on the decision in *Hassanath Wanjiku v Vanela House of Coffees* [2018] eKLR.
29. With respect to the prayer for 8 off days the Respondent submitted that no employee of the Respondent works on a rest day. Further, that it was an express provision of the Claimant's contract that leave not taken shall be forfeited. The Respondent relied on the decision in *Mbara Adulqadir Abdalla v County Government of Lamu and Lamu County Public Service* [2022] eKLR where the court stated that parties are bound by their contract.
30. Regarding the prayer for compensation the Respondent submitted that all dues to the Claimant were to be handled under the specified terms of the contract and the claim for compensation does not arise. The Respondent relied on the decision in *Ronald Ongori Gwako v Syroplast Limited* [2022] eKLR where the court stated that the Claimant who was on a fixed term contract was not entitled to compensation.
31. The Respondent further relied on the decision in *Jeremiah Wachira Ichaura v Kenya Power and Lighting Co. Ltd* [2012] eKLR where the court stated that parties are bound by their pleadings and the court cannot award that which is not pleaded.

Analysis and Determination

32. I have considered the pleadings, evidence and submissions of the parties. It is my considered view that the issues arising for determination are the following:
 - a. Whether the Claimant had legitimate expectation of renewal of his contract
 - b. Whether the termination of the Claimant's employment was unfair,



- c. If the Claimant is entitled to the reliefs sought.

Legitimate expectation

33. Legitimate expectation is defined in Black's Law Dictionary Tenth Edition as:

Expectation arising from the reasonable belief that a private person or public body will adhere to a well-established practice or will keep a promise.

34. In *Teresa Carlo Omondi v Transparency International Kenya* [2017] eKLR the court stated that it must be shown that the employer, through regular practice, or through an express promise, leads the employee to legitimately expect there would be renewal. That it is a principle based on a right, grounded on the larger principles of reasonableness and fair dealing between employers and employees.
35. It would however be remiss of me not to point out that the decision in *Teresa Carlo Omondi* case was overturned on appeal in *Transparency International - Kenya v Omondi* (Civil Appeal 81 of 2018) [2023] KECA 174 (KLR) (17 February 2023) (Judgment) Neutral citation: [2023] KECA 174 (KLR). The authority as cited is however a statement of a principle of law that was not dependent on the outcome of the case.
36. The Claimant's position in the instant case is however different from all the cases cited above. It is not disputed that the Claimant worked for the Respondent as a "casual" from 2004 to 2006 after which he was issued with one-year contracts continuously without a break in service, until July, 2017 when without any notice, the Respondent failed to renew his contract. The Claimant's position is that from its practice over the years, the Respondent had led him to legitimately expect that his contract would be renewed. That this expectation was fortified by the fact that the Claimant was enrolled into the Respondents staff gratuity scheme which was a preserve of the Respondent's permanent staff.
37. The Respondent admitted in paragraph 2 of the Response to the Claimant's Statement of Claim that: ... the Respondent avers the Claimant was employed by the Respondent in the year 2006 on a temporary basis as a Mechanical Fitter and the contract accrued continuous service.
[Emphasis added]
38. This is an express admission that in fact the Claimant had been admitted into the continuous service of the Respondent which as pleaded in paragraph 3 of the Response to Statement of Claim, was reduced into continuous one-year contracts.
39. The contract dated 1st July, 2016 which is expressed to end on 30th June 2017 was one in a continuous series of one-year contracts which by the admission of the Respondent in paragraph 2 of its Response, had accrued continuity.
40. The Claimant testified that all the contracts were retained by the Respondent who did not issue a copy of the same to him. This is confirmed that in the proceedings the copy of contract was not filed by the Claimant but by the Respondent.
41. The Respondent who was under a duty to keep and produce employment records in a dispute between it and the Claimant did not produce any of the previous contracts even after admitting that the Claimant was under continuous one-year contracts from 2006.
42. The submission by the Respondent that the Claimant failed to apply for renewal of the contract is not borne out of the evidence on record. No evidence was produced by the Respondent that in any of the



previous 13+ years that the Claimant worked for it he was ever required to apply for or did apply for renewal of his contract.

43. The Claimant further stated that the contracts were not renewed on the date on which they ended or before they ended. That he was allowed to continue working without a contract which was issued to him later. He gave the example of the contract for the period 1st July 2016 to 30th June, 2017 which is dated 24th June, 2016 but was signed by the Claimant on 14th July, 2016, well into the contract term.
44. The Respondent submitted that there is a general principle that there is no expectation of renewal of a fixed term contract. That is true as has been held in several cases, among them *Rajab Barasa and others v Kenya Meat Commission* and *George S. Onyango OGW v Board of Director Numerical Machining Complex Limited* and 2 others. However, none of the facts of those other cases are similar to the instant case.
45. *De Smith, Woolf & Jowell*, in “Judicial Review of Administrative Action as cited in *Republic v Kenya Revenue Authority Ex Parte M- Kopa Kenya Limited* states that: “A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”
46. I find in the instant case that any reasonable person in the Claimant’s position would have expected a renewal of contract, or at least notification of non-renewal before the contract term came to an end, based on the previous conduct of the Respondent over more than 13 years that the Claimant worked for the Respondent.
47. I accordingly find and hold that the Claimant had legitimate expectation of renewal of his contract which the Respondent breached to his detriment by failing to either renew the contract or to notify him in advance of the intention not to renew the contract.

Whether the termination of the Claimant’s employment was unfair

48. Having found that the Claimant had legitimate expectation of renewal of his contract, he acquired a right that is legally protected, to the renewal of her contract or the termination thereof in the manner provided for in the contract or by law. The Claimant’s contract provided for termination at Clause 11 thereof as follows:
 11. Termination of Service

This contract shall stand terminated at the end of the contract period without the need for either party giving notice to the other. No employee shall report to work without a valid contract. The contract may however be terminated by either party giving the other one month’s notice or pay in lieu.
49. The foregoing, coupled with the fact that the Claimant had been admitted into the gratuity program that was exclusive to the permanent staff of the Respondent, entitled the Claimant to be treated in the same manner as the permanent staff. The failure of the Respondent to do so amounted to discrimination and unfair labour practice.



50. Section 45(4) of the *Employment Act* provides:

- (4) A termination of employment shall be unfair for the purposes of this Part where—
 - (a) the termination is for one of the reasons specified in section 46; or
 - (b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee.

51. Section 45(5) further provides:

- (5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour officer, or the Industrial Court shall consider—
 - (a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;
 - (b) the conduct and capability of the employee up to the date of termination;
 - (c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;
 - (d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and
 - (e) the existence of any previous warning letters issued to the employee. it would follow that legitimate expectation she was entitled to either.

51. Taking into account the foregoing, it is my finding that the non-renewal of the Claimant's contract amounted to unfair termination of his employment, especially because he had been enrolled in to the Respondent's staff gratuity scheme which was a preserve of permanent staff.

Is the Claimant is entitled to the reliefs sought

52. The termination of the Claimant's employment having been unfair, he is entitled to certain remedies. The Claimant prayed for several orders which I consider below:

- (i). A declaration that the Claimant's termination from employment was unlawful, unprocedural and unfair and in the circumstance the claimant is entitled to compensation as prayed for.

I have already determined above that the termination of the Claimant's employment amounted to an unfair termination. I declare accordingly.

- (ii). One month's pay in lieu of notice

The Claimant is entitled to pay in lieu of notice which I award him at Kshs. 38,239.11



(iii). Unpaid travelling leave allowance

The Claimant's contract did not provide for leave allowance and he did not adduce any evidence to justify payment of the same. The prayer is declined.

(iv). Severance pay

The Claimant was not declared redundant. He is thus not entitled to severance pay.

(v). Off days balance of 8 days

The Claimant's contract provided for annual leave of 21 days. The Respondent did not provide for the leave records of the Claimant. Section 10(3) of the Employment Act provides that an employer shall keep records including:

(3) The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the instalment containing them, is given of—

(a) any terms and conditions relating to any of the following—

(i) entitlement to annual leave, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated)

Section 10(7) further provides that if in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.

The Respondent having failed to produce the Claimant's employment records or to disprove his prayer under this head, I award him 8 off days at Kshs. 11,765.88

(vi). Compensation for unfair termination

Having found that the Claimant's employment was unfairly terminated, he is entitled to leave. Taking into account all the circumstances of his case as already articulated above, the differential treatment that was discriminative and the fact that he was unfairly treated as a temporary employee for 13 years, as well as all the relevant factors in section 49(4) of the Employment Act, I award the Claimant maximum compensation at Kshs. 458,869.32.

53. The Respondent shall pay the Claimant's costs of this suit.

54. Interest shall accrue at court rates till payment in full.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 9TH DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

