



REPUBLIC OF KENYA



KENYA LAW
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**Ochieng v Agricultural Development Corporation (Cause
119 of 2020) [2025] KEELRC 1335 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1335 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 119 OF 2020**

B ONGAYA, J

MAY 9, 2025

BETWEEN

JOHN WERE OCHIENG CLAIMANT

AND

AGRICULTURAL DEVELOPMENT CORPORATION RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim dated 26.02.2020 through Okweh Achiando & Company Advocates. He prayed for judgment against the respondent for the following orders:
 - a. That the Court do issue an order that Sections 5 and 41 of the *Employment Act*, 2007 and Articles 10, 27, 28, 41, 47 and 50(1) of *the Constitution* have been violated by the respondent in its actions against the claimant thus the respondent's actions are null and void.
 - b. A mandatory order of injunction directed to the respondent to pay the claimant his dues for the remainder of his contractual period of Kshs. 1,572,672/= (65,528*24 months) and any amount that may become due to the claimant.
 - c. An order compelling the respondent to renew the claimant's contract term for a further term of three (3) years as provided for under clause 3.5.3 of the respondent's Human Resources Policy Manual and other enabling provisions of the law.
 - d. Alternatively, and without prejudice to prayer (c) above, an order that the claimant's contract of service was constructively renewed for three (3) years with effect from 01.03.2020.
 - e. A permanent order prohibiting or restraining the respondents, their servants, officials, representatives, and agents from advertising or having so advertised from acting thereupon, interviewing, recruiting or otherwise in any other manner replacing the claimant in his position as the Complex Manager, Japata Farm of the respondent.



- f. General damages for the constitutional violations of the claimant's fundamental rights.
 - g. Alternatively, and without prejudice to prayer (f) above, an order for maximum compensation for unlawful termination of the claimant's contract.
 - h. The Honourable Court do issue any other Orders and give such directions as it may deem fit to meet the ends of justice.
 - i. Any other and further relief the Honourable Court may deem fit and grant.
 - j. Cost of this suit with interest.
2. The claimant's case was as follows:
- a. The claimant received a letter of probationary appointment on or about 16.07.2015 that was subject to a six-months probationary period, within which his performance would be evaluated against set targets.
 - b. Through a letter dated 13.08.2015, he was redeployed to ADC Namandala Complex in the same capacity as the Complex Manager. His diligence and zeal occasioned a marked improvement in the yield at the said complex, as attested by records.
 - c. On 03.03.2016, the claimant was confirmed to the position of Complex Manager and subsequently offered a contract agreement for the period commencing 01.03.2016 and ending 28.02.2019. According to him, the respondent confirmed his continued employment with it when it addressed him on the issue of accumulated leave days in a letter dated 18.03.2019.
 - d. The claimant was transferred from ADC Namandala Complex to ADC Japata through a letter dated 13.05.2019 as a result of his excellent performance, and in the same capacity as Complex Manager. In the process of relocating, a lorry ferrying maize that was his property was impounded at the Namandala Complex and thereafter held at Endebess Police Station.
 - e. On 21.05.2019, the claimant received a letter of suspension from employment to allow for investigation of the confiscated maize. He subsequently received a letter of even date that extended his suspension by a further two (2) months. The respondent later issued him a show cause letter dated 05.08.2019, raising particular queries that required the claimant's response by 08.08.2019. The claimant gave a comprehensive response to the allegations within time and then received a letter dated 08.08.2019 from the respondent notifying him of a disciplinary hearing.
 - f. The disciplinary hearing was held on 15.08.2019 at the ADC Head Office in Nairobi. However, the claimant was shocked when he received a letter dated 13.09.2019 addressing him on the issue of backdating his contract and sending him on leave, instead of addressing the substance of his disciplinary hearing. The letter of 13.09.2019 did not consider that he had a prior employment contract agreement.
 - g. The respondent found the claimant's conduct unethical and in conflict and contravention of the conduct of a public officer, without specifying the said sections of the *Leadership and Integrity Act*, 2012, and the Corporation's Human Resource Policy Manual that he had breached.
 - h. According to the claimant, the respondent's actions subjected the claimant to a life where no other employer would hire, employ or engage him in any meaningful employment,



thus denying him a means of livelihood. He appealed against the respondent's decision on 25.11.2019, but the respondent never responded.

- i. That the respondent's failure to accord him a fair hearing and appeal process thereto amounts to a denial of a basic human right and violation of the constitutional right to a fair labour practice and fair administrative action under Articles 41 and 47, respectively. The violation is injurious to his image, profession and self-pride, and causes immense emotional anguish. The disciplinary process was essentially unfair and malicious.
 - j. That in breach of contract, the respondent has, unlawfully and without any justifiable cause and reason, varied the claimant's employment contract in disregard of the terms and conditions of service contained in the employment contract. It has failed to provide him with reasonable grounds upon which its decision is predicated. Its conduct is oppressive and prejudicial to the claimant. Furthermore, it owed the claimant a duty of care that if and when the terms of service would be varied and terminated, such would be done according to the implied and actual employment contract and under the law. It did not issue him with notice as per sections 10 and 41 of the Employment Act, 2007.
 - k. The claimant had a legitimate expectation that the respondent had committed to him that the contract of employment would be renewed. When the initial contract of employment expired, the claimant continued in employment with the respondent and was entitled to all benefits accruing prior. Further, transferring him to another farm and addressing his outstanding leave days was within the range of reasonable expectations.
3. The respondent's statement of response dated 09.04.2020 was filed through Limo & Njoroge Advocates. The respondent prayed that the claimant's claim be dismissed with costs to the respondent. Their case was as follows:
- i. The claimant was not transferred to Namandala Complex due to excellent performance. Further, addressing the claimant regarding his accumulated leave days was not confirmation of his continued employment with the respondent.
 - ii. On or about 17.05.2019 at approximately 9:30 pm, a lorry ferrying 70-75 bags of maize belonging to the claimant was intercepted leaving Namandala Complex. The respondent consequently took the claimant through a disciplinary process. Its letter of 13.09.2019 communicated to the claimant his unethical conduct, offered him a one-year non-renewable contract, and advised him to utilize his accumulated leave days.
 - iii. The respondent did not vary the alleged contract as there was no existing contract at the time capable of being varied as alleged. The claimant misconstrued and misunderstood the factors in question.
 - iv. According to the respondent, it responded to the letter requesting for appeal through a letter dated 19.12.2019. The claimant had tried to appeal out of the time frame given in the Human Resource Manual thereby making the purported appeal void.
4. The parties gave their testimonies before the Court and filed their respective submissions. The Court has considered the material on record and returns as follows.
5. To answer the 1st issue the Court finds that parties were in a contract of service. The claimant was initially employed on probationary service for six months per the letter dated 16.07.2015. It appears he successfully served the probationary period and was confirmed in appointment by the letter dated 03.03.2016. By that letter and in line with the prevailing policy, he was emplaced on contractual



terms of service effective 01.03.2016. The letter stated that it was a term contract for the period 01.03.2016 to 28.02.2019 – being three (3) years’ (36 months) tenure. The agreement (local staff) made on 01.03.2016 was attached on that letter of confirmation. The agreement which the claimant set out the terms and conditions of service. Throughout his service he was designated as the Complex Manager at the stations he was deployed to serve. The claimant served the three years’ contract successfully.

6. The 2nd issue is whether the contract of service was constructively renewed after lapsing of the three years’ tenure on 28.02.2019. it is not in dispute that the three years’ contract lapsed and thereafter the claimant continued to work for the respondent for a further over 8 months until he received the letter dated 13.09.2019 addressed to the claimant thus:

“Dear John,

RE: ONE-YEAR CONTRACT AND NOTICE OF NON-RENEWAL

Reference is made to your suspension from duty and subsequent disciplinary hearing.

This is to advise that Management found your conduct unethical and in conflict of interest in contravention of conduct of a Public Officer per *Leadership and Integrity Act* 2012 and Corporation’s Human Resource Policy Manual.

In view of your conduct, the Management has given you one year non-renewable Contract with effect from 1st March, 2019 to 28th February, 2020.

Pending the expiry of the Contract, you are advised to proceed on leave with effect from 1st March, 2019 to 28th February, 2020.

Be advised that you will be expected to hand over any Corporation properties such as Medical cards by the expiry of your contract.

Yours Sincerely,

Signed

MUGARURO(Ms.)

FOR: MANAGING DIRECTOR”

7. It is urged and submitted for the claimant that the one-year contract was unlawful. In the circumstances, the claimant protested and left employment. His further case was that he should have been given a renewal of the contract for a further 36 months. He filed the instant suit on 26.02.2020.
8. Clause 3.5.3 of the Manual on contract terms stated as follows:
- i. Employees appointed under contract terms of service shall execute a contract stating the mutually agreed terms and conditions under which they will serve. The contract will be for a duration of three (3) years.
 - ii. At the expiry of the contract period, employees on contract terms shall be eligible for contract gratuity at the rate of (thirty one) 31% of the annual basic salary or as may be reviewed.
 - iii. Employees on contract will be expected to apply for the renewal of the contract six (6) months prior to the expiry date of the current period.
 - iv. Only senior staff on job group J and above will be employed on contract terms of service.
9. Further, clause1(b) of the agreement (local staff) concluded between the parties and attached to the confirmation letter of 03.03.2016 stated thus, “The Contract of service shall be for a period of Thirty



Six (36) working months and thereafter, the corporation shall at its discretion consider whether or not to renew the contract, having regard to continuity of the past and the performance of the officer.

10. The claimant testified that he had not applied for renewal of his initial contract six months prior to the expiry date of that initial contract. Further, the contractual provisions are that renewal was in the respondent's discretion based on the claimant's performance and past record of service. The Court observes that there was no contractual or policy provision that the respondent must renew for a further term contract of three (3) years. It appears to the Court that the initial term contract, if term contract was preferred mode of employment, would be for a term of three years. However, renewal was in the respondent's discretion based on claimant's performance and service record. It appears to the Court that the discretion to renew included the respondent's discretionary determination of tenure of a renewal contract especially that the contract and policy were silent on tenure of a renewed contract.
11. The Court finds that the claimant failed to apply for a renewal six months prior to the expiry of the initial term contract of three years. Second, the respondent enjoyed the discretion to renew and such discretion included determination of the term of a renewal contract. Third it is established on record that indeed, the reason for denial of three years renewal and imposition of a one year renewal with a terminal leave were valid, genuine and fair because the reason existed and was fair, relating to the claimant's misconduct and the respondent's operational systems, namely, conflict of interest. The claimant testified admitting that he had planted maize in the respondent's land without a written or other authority. While he testified that he was not communicated to on the outcome of the disciplinary process, it appears to the Court that being culpable of the conflict of interest and as admitted in Court, the respondent had adopted a fair procedure by finding culpability and then granting a soft landing through the one-year renewal contract. In any event, the claimant confirmed that he had an option to appeal the decision but he opted not to appeal. It is that the respondent issued a letter to show cause, the claimant replied, he attended the hearing, he was found culpable, and in view of the outcome, a soft landing of one-year renewal was imposed for a smooth separation of the parties. The claimant also testified that after he received the letter on one-year renewal, the respondent's Managing Director advised him to write a letter for the respondent to reconsider terms of his continued employment but the claimant appears not to have submitted such letter because none was exhibited.
12. In the circumstances, the Court finds that the claimant's initial three years' contract never became constructively renewed because the claimant has not established any reasonable basis upon which a legitimate expectation for such constructive renewal would become founded upon. The Court upholds the submission for the respondent that the claimant's contract was a fixed term contract running for 36 months from 1st March 2016 to 28th February 2019 and the wording of the contract and applicable policy did not in any manner present a legitimate expectation for the renewal of the contract.
13. To answer the 3rd issue, the Court finds that the claimant was not terminated from employment but he was given a one-year renewal. He protested by unilaterally leaving employment, failing to appeal or request for a review as was per policy or advisory by the Managing Director, and, instead proceeded to file the instant suit. The initial three year contract had lapsed by effluxion of time and the one year renewal contract was running and nothing before the Court has established a termination of contract on the part of the respondent as was alleged or urged for the claimant. In the circumstances, the Court finds that in absence of termination, the alleged unfair termination does not even begin to emerge.
14. The claimant purported to urge a case of discrimination because as he alleged, respondent's staff who had similarly been involved in conflict of interest, namely planting maize on the respondent's land without authority, had their contracts renewed for three years. The Court finds that the material circumstances of such renewals, if at all they took place, were not established before the Court to have



been substantially similar to the claimant's case. Allegations of discrimination in the circumstances will collapse for want of due comparator.

1. The Court has found that in the instant case soft landing was justified because after due investigations, disciplinary process and as confirmed by the claimant's own testimony in Court, the claimant had been found culpable, and thereafter, the one-year renewal was imposed in lieu of a separation one way or the other, in view of the culpability. The Court has also considered its opinion against the principle of soft landing and applicable principles in *Malachi Ochieng Pire – Versus- Rift Valley Agencies, Industrial Cause No. 22 of 2013 at Nakuru [2013]eKLR* where in the judgment it was stated thus, "The court has considered the submission and evidence of a soft landing to conceal the alleged poor performance and finds that it is not open for the employer to waive its authority to initiate disciplinary action in appropriate cases and in event of such waiver, nothing stops the employee from enforcing the entitlement to fair reason and fair procedure in removal or termination. The court holds that where the employer is desirous of waiving the disciplinary process or due process in event of poor performance, misconduct or ill health for whatever grounds, it is necessary to enter into an agreement such as a valid discharge from any future liability to the employee in view of the otherwise friendly or softer or lenient termination. Whereas, such soft landing is open to employer's discretion, it is the court's considered view that in an open and civilized society, employers hold integrity obligation to convey truthfully about the service record of their employees and swiftly swinging the allegations of poor performance or misconduct never raised at or before the termination largely serves to demonstrate that the employer has failed on the integrity test thereby tilting the benefit of doubt in favour of the employee in determining the genuine cause of the termination.

The Court returns that in the instant case it was not open for the respondent to conceal the alleged poor performance by invoking the cited termination clause 8 by paying in lieu of notice - but the respondent ought to have subjected the claimant upon a disciplinary process and in event of culpability, considered the soft landing as appropriate. Thus, the termination by payment in lieu of notice is found to have been improperly invoked on account of soft landing as was urged for the respondent."

16. In the instant case, it was at the end of the disciplinary process that the respondent opted to give the one-year renewal and it was explained in the letter as much. The claimant appears to say that the respondent was obligated to impose a punishment in view of the culpability, if any, flowing from the concluded disciplinary process. However, the Court considers that at the end of a disciplinary process, the employer retains a wide discretion and prerogative ranging from imposition of a punishment, granting a soft landing like an early retirement or in the current case, a non-renewable term contract, and, the employer may as well pardon the employee in favour of a continued contract of employment. The soft landing in the instant case was justified in view that all disciplinary steps had returned culpability but the claimant in his unilateral decision, rejected the soft landing. It appears to the Court that he is undeserving of the Court's intervention in the manner he has claimed and prayed for.
17. To answer the 4th issue, the Court returns that in view of the findings, the claimant has failed to establish a justification for grant of any of the remedies as prayed for. The Court has considered all the circumstances of the case and each party will bear own costs.

In conclusion the suit is dismissed and each party to bear own costs of proceedings.

Signed, dated and delivered by video-link and in court at Nairobi this Friday 9th May, 2025

BYRAM ONGAYA



PRINCIPAL JUDGE

