



**Mutua v Bahari Forwarders Limited (Employment and Labour Relations Cause E164 of 2021) [2025] KEELRC 1355 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1355 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E164 OF 2021**

**MN NDUMA, J**

**MAY 8, 2025**

**BETWEEN**

**MUSAU MUTUA ..... CLAIMANT**

**AND**

**BAHARI FORWARDERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit by the Claimant against the Respondent filed on 23/2/2021 is premised on a contract of employment between the parties initially given on 3<sup>rd</sup> June 2013 for a period of six (6) months until 30<sup>th</sup> November 2013. In terms of the contract the Claimant was paid a monthly salary of Kshs. 22,000.00. The said contract was renewed for a further period of six months and the relationship continued in this manner until the last contract of six months that ended on 31<sup>st</sup> May 2019 was not renewed.
2. The Claimant testified that the Respondent did not give one month notice of termination, notifying him of the intention not to renew the contract in terms of section 37 of the *Employment Act*, 2007. The Claimant claims Kshs. 36,000.00 in lieu of notice the amount he earned in 2019. The Claimant claims one month salary for each year served between 2013 and 2019, for seven (7) years in the sum of Kshs. 252,000.00 and maximum compensation for unlawful termination in the sum of Kshs. 432,000.00. The Claimant produced a demand letter dated 26/5/2020 which he states was not responded to.
3. The Claimant produced a letter dated 3/5/2019 from the Respondent informing the claimant that the contract of service issued on 1/12/2018, was to expire on 31/5/19, the date of the said letter in terms of clause 8 of the contract.
4. The Claimant also produced the employment contract dated 1/12/2018 whose expiry date was 31/5/2019. In the said letter, the salary paid to the Claimant as a Heavy Commercial Driver was Kshs. 36,000.00. The contract also provided for one month notice of intention to terminate or payment in lieu of one month salary.



5. The contract did not have a clause regarding notice for non-renewal of the contract by either party hence this dispute. The Claimant said he was aggrieved by failure by the Respondent to provide him with a reason for non-renewal of the contract. Claimant said he was expecting the contract to be renewed.
6. RW1 Shadrack Kwalo testified for the Respondent and adopted a witness statement dated 8/2/2023 as his evidence in chief. He also produced exhibits '1' to '5' in support of Respondent's case. RW1 confirmed that the Claimant worked for the Respondent as a commercial vehicle driver on six-month contract from 3/6/2013. RW1 stated that the Claimant served for a period of six (6) years. RW1 said that the six (6) month contracts were not continuous. That each new contract had a starting and end date. That the last one ended on 31/5/2019. That the contracts were renewed eleven (11) times. RW1 said no reason was given for the non-renewal. That there was no hearing on non-renewal because the contract just ended and a letter was issued on the last date of the contract to the Claimant. That the Claimant was aware that the contract was coming to an end and so he was not unfairly dismissed.
7. The court has carefully considered the evidence before court and has found that the Claimant served the Respondent between the year 2013 up to May 2019. That the Claimant was issued with eleven (11) six months contracts between the period and each one of them was renewed upon expiry. That the said contracts did not have a clause with regard to notice of renewal or non-renewal by either party. There is no evidence that the Claimant had any complaint regarding the contracts for the six (6) years he served the Respondent.
8. There is no dispute that the Claimant was paid Kshs. 36,000.00 per month at the time his last contract came to an end. In terms of the pay as you earn (PAYE) records produced before court, there was no gap between one six month contract to the other in terms of PAYE remittance. It follows that though the Claimant served on separate six months contract, his service with the Respondent, was continuous for purpose of statutory deductions. The pay slip produced by the Claimant shows that the Respondent paid NSSF dues in respect of the Claimant.
9. The court finds that the employment of the Claimant by the Respondent came to an end by effluxion of time. The claimant did not challenge the continuous grant of short-term contracts as unfair labour practice in the statement of claim. The Claimant is bound by his own pleadings. The fact of the matter is that the Respondent did not terminate the employment of contract but the employment came to an end by application of the law of contract.
10. That the contract having not provided for a notice of renewal or non-renewal to be provided by either party, the Respondent was not obligated to provide any such notice to the Claimant upon expiry of his contract on 31<sup>st</sup> May, 2019.
11. The contract also did not provide for notice pay upon expiry of the contract or payment in lieu of notice. The court finds that the Respondent was not obliged to provide any such notice or payment in lieu of notice in the circumstance of the case. The Claimant has demonstrated that the Respondent provided social security to him by contributing to the NSSF for the period the Claimant served the Respondent. The Claimant is therefore not entitled to payment of service pay as claimed or at all.
12. In the final analysis, the Claimant has failed to prove that he is entitled to any reliefs sought in this suit and the suit is dismissed in its entirety.
13. It is however evident that the Respondent did not treat the Claimant fairly by subjecting him to short term contracts in a period of about six (6) years. This is a practice that undermines career development and welfare of an employee and is discouraged by this court. Indeed, the court has found this practice



to constitute unfair labour practice unless same is dictated by availability of work and would in a case where there has been pleading in that respect award damages.

14. For the above reasons the court finds this an appropriate case for each party to bear their own costs of the suit

**DATED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MAY 2025**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Wafula for Claimant

Mr. Okanga for Respondent

Mr. Kemboi – Court Assistant

