



**Bukasu v Diakonia - Sweden - Africa (Cause E315 of 2023)
[2025] KEELRC 2291 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2291 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E315 OF 2023
BOM MANANI, J
JULY 31, 2025**

BETWEEN

HEPHAIBAR VICKY BUKASU CLAIMANT

AND

DIAKONIA - SWEDEN - AFRICA RESPONDENT

JUDGMENT

Introduction

1. The Claimant has instituted these proceedings alleging that the Respondent unfairly terminated her contract of service. She also claims that she served the Respondent in acting capacity in the position of Regional Communication Officer but was not compensated. She further claims that she suffered injuries and lost some items whilst on a work related trip in Ghana but is yet to be compensated. As such, she claims the various reliefs that are set out in the Statement of Claim.
2. The Respondent does not admit the claim. It contends that the Claimant's internship contract lapsed through effluxion of time. It further denies that the Claimant ever held the position of Regional Communication Officer in acting capacity as she claims since she was on an internship program. The Respondent avers that the Claimant should pursue compensation for the injuries and loss she suffered in the work related accident from her travel insurance company.

Claimant's Case

3. In her Statement of Claim, the Claimant avers that she was engaged by the Respondent as a Communication Intern starting from 21st August 2022. She contends that the program was to terminate on 20th November 2022 but was apparently extended. However, during her oral testimony in court, she asserted that she was engaged as an intern from February 2022 until August 2022.



4. The Claimant contends that she worked diligently and with dedication and that in June 2022 (August 2022 as per her oral testimony in court), she assumed the responsibilities of head of communications department after her supervisor left the organization. She avers that despite taking up this role, the Respondent continued paying her Ksh. 30,000.00 yet the previous holder of the office used to earn Ksh. 350,000.00.
5. The Claimant avers that in October 2022, she travelled to Ghana on a work related trip where she was involved in an accident from which she sustained bodily injuries. She avers that she was first treated in Ghana before she traveled back to Kenya to continue with the treatment.
6. The Claimant contends that she resumed duty in late November 2022. She avers that on 13th February 2023, the Respondent's management informed her that her services were no longer required. She contends that this communication was followed with a decision to terminate her contract as from 20th February 2023.
7. The Claimant avers that the Respondent did not give her the letter of termination of her services despite her request to be given the letter. She contends that the decision to terminate her services was unfair and unlawful.
8. The Claimant also accuses the Respondent of subjecting her to discriminatory treatment during the currency of her engagement with it. She alleges that the Respondent: hurriedly and unfairly terminated her contract of service before she had recovered from her injuries; paid her salary of Ksh. 30,000.00 instead of Ksh. 350,000.00 which her immediate supervisor was earning; violated her constitutional rights; and failed to replace her dysfunctional laptop computer. It is her case that these acts subjected her to differential treatment at the workplace.
9. The Claimant further contends that she has suffered damage to her professional career as a result of the abrupt and unjustified termination of her employment. She also contends that the decision to terminate her services caused her mental stress and emotional anguish. And hence this suit.

Respondent's Case

10. On its part, the Respondent avers that it engaged the Claimant as an intern from 21st February 2022. It avers that the engagement was initially for a period of six months but was extended twice at the instance of Claimant until 20th February 2023. It further asserts that the Claimant's remuneration was Ksh. 30,000.00 per month during the currency of the program.
11. The Respondent avers that the Claimant was engaged as an intern and no more. It denies that she was recruited to serve in the position of Regional Communication Officer in acting capacity as she contends. It avers that she only served as a Communication Intern under the supervision of its senior staff. It further avers that she was given a Job Description which clearly set out her roles.
12. The Respondent avers that the internship program automatically lapsed on 20th February 2023. It avers that it was under no obligation to either extend the program or offer the Claimant employment.
13. The Respondent admits that the Claimant suffered injury whilst on official assignment in Ghana. However, it contends that it had taken out travel insurance cover for her and that the insurer is responsible for settling her medical expenses and compensation for any items she may have lost during the accident.

Issues for Determination

14. After analyzing the pleadings and evidence on record, the following issues present for determination:-



- a. Whether the parties had an employment relationship.
- b. If yes, whether the relationship was indefinite or fixed term.
- c. Whether the Respondent terminated the relationship unfairly.
- d. Whether the Claimant is entitled to the reliefs which she seeks through these proceedings.

Analysis

15. Black's Law Dictionary defines the term "intern" to mean:-

"An advanced student or recent graduate who is apprenticing to gain practical experience before entering a specific profession."

16. From the definition, it is clear that a person who is on internship is deemed to be on apprenticeship. Under the law, a person who is engaged on apprenticeship or internship is categorized as an employee. This is apparent from section 3 of the [Employment Act](#) which defines the term "employee" as follows:-

"employee" means a person employed for wages or a salary and includes an apprentice and indentured learner."

17. In the case of *Forum for Good Governance and Human Rights v Teachers Service Commission (TSC) & 2 others* (Petition E223 of 2023) [2024] KEELRC 795 (KLR) (17 April 2024) (Judgment), the court expressed itself on the subject as follows:-

".....interns are employees for purposes of the law of employment and labour relations."

18. In the case of *Michael Ouma Odero on his own behalf and on behalf of 506 others v Public Service Commission & 2 others* [2021] KEELRC 1609 (KLR), the court observed on the subject as follows:-

".....the claimants as interns as pleaded amounted to employees and, again as pleaded, the relationship amounted to employment, within the meaning assigned under the [Employment Act](#), 2007....."

19. Commenting on the subject, George Ogembo in his publication, "Employment Law Guide for Employers, 2nd Edition, pg 120, states as follows:-

"An employment contract commences from the date an employee is engaged as an intern for wages or salary...It is immaterial the terminology the employer may choose to give an intern in the workplace. Provided he pays salary or wages, the intern shall be deemed an employee and the employer is bound to prepare a written contract of employment."

20. In the instant case, there is evidence that the Respondent engaged the Claimant as an intern under three successive contracts whose total duration was one year. The contracts show that the Claimant was receiving payment of Ksh. 30,000.00 per month. Whether the Respondent elected to term this payment as a stipend or an allowance or a wage is immaterial. The bottom-line is that the payment was a reward for the Claimant's efforts under the internship contracts. In the premises, the court finds that the parties had an employment relationship even though the Claimant was under training.

21. The evidence on record shows that the parties executed three different but successive internship contracts. The first of the contracts was entered into on 21st February 2022. Under this contract, the Claimant was to serve the Respondent for six months until 20th August 2022. The second contract was



executed on 21st August 2022 and was to run for three months until 20th November 2022. The final contract was entered into on 21st November 2022 and was to run until 20th February 2023.

22. From the above evidence, it is apparent that the parties had fixed term internship contracts the last of which was to terminate on 20th February 2023. As such, they did not have an indefinite employment relationship.
23. The general position in law is that a fixed term contract expires on its sunset date through effluxion of time. Unless the contract has an express provision for renewal, the employee cannot entertain legitimate expectation that it will be renewed after its sunset date. Similarly, the employer will have no obligation to renew such contract or to justify his decision not to renew it.
24. The foregoing position has been spoken to in a series of judicial pronouncements. I will refer to just a few of them to underscore the point.
25. In *Amatsi Water Services Company Limited v Francis Shire Chachi* [2018] KECA 255 (KLR), the Court of Appeal observed that a fixed term contract expires by effluxion of time on its last day. In effect, the lapse of such contract through effluxion of time does not imply unfair termination of the employee's services.
26. In *National Water Conservation & Pipeline Corporation v Mwanza* [2017] KECA 797 (KLR) the Court of Appeal commented on the subject as follows:-

“The general principle, as we understand it, is that a fixed term contract will terminate on the sun set date unless it is extended in terms stated in the contract. A court cannot rewrite the terms of a contract freely entered into between the parties. Once there is a written contract, the court will seek to give meaning to such contract giving ordinary meaning to its terms in determining any issue that may arise.”
27. From the evidence that has been tendered in court, the last internship contract between the parties was for a fixed term of three months running from 21st November 2022 to 20th February 2023. The contract does not provide for its extension. As such, the Respondent was under no obligation to extend it beyond its sunset date. Neither did the Claimant have legitimate expectation that it will be extended.
28. The Claimant contends that the Respondent notified her on 13th February 2023 that her services were no longer required. She further contends that this communication was followed by the decision to terminate her services as from 20th February 2023.
29. The Claimant accuses the Respondent of having unlawfully ended the employment relation between them. She avers that the Respondent's decision was hurried and un-procedural. She avers that the Respondent did not give her an opportunity to recover fully from the injuries she had suffered in the accident in Ghana before it terminated her services. In her view, the Respondent did not have valid reasons to terminate her contract.
30. This contention by the Claimant is clearly misplaced. As mentioned earlier, she was serving on a fixed term contract whose tenure was to expire on 20th February 2023, the very day that the Respondent informed her that her contract had come to an end.
31. The Respondent did not terminate the contract between the parties. It only informed the Claimant that the contract was to close on the date that the two had agreed on as early as 21st November 2022. As such, the contention by the Claimant that the contract was illegally terminated is incorrect.



32. The foregoing being the case, the Claimant is not entitled to: a declaration that her contract of service was unfairly terminated; notice pay; damages for premature termination of her contract; and compensation for unfair termination of her contract. All these prayers are declined.
33. The Claimant has claimed salary for the month of February 2023. In response, the Respondent has presented documents demonstrating that this amount was paid to the Claimant. First, there is the document at page 34 of the Respondent's bundle dated 12th September 2023 showing that the Claimant had taken a salary advance of Ksh. 17,280.08. There is then the pay slip for February 2023 appearing at page 33 of the same bundle which shows that after applying deductions to the Claimant's gross pay for the month, the net pay due to her was Ksh. 5,060.00. There is then the payment advice at page 35 of the same bundle showing that the Claimant's account was credited with Ksh. 5,060.00 on 7th March 2023.
34. Having regard to the foregoing, it is apparent that the Claimant's salary for February 2023 was settled. As such, the claim for salary for this month fails.
35. The Claimant asserts that during the term of her service, she was forced to take up the role of Regional Communication Officer. She contends that this happened after her supervisor, who was holding the position, left the Respondent's employment.
36. The Claimant avers that she was forced to single handedly run the docket notwithstanding that she had joined the Respondent as an intern. She further contends that despite discharging the role of Regional Communication Officer, the Respondent continued to pay her Ksh. 30,000.00. According to her, the Respondent ought to have been paying her an acting allowance that was equivalent to the salary of a Regional Communication Officer, that is to say, Ksh. 350,000.00. As such, she claims for underpayments.
37. In response, the Respondent denies that the Claimant ever served as its Regional Communication Officer. The Respondent wonders how the Claimant could have achieved such a feat when she had just joined the organization as an intern and had hardly served for five months at the time she alleges she took over the position.
38. The Respondent refers to the three internship contracts to demonstrate that throughout the Claimant's engagement, she worked under supervision of its senior employees. As such, it contends that it cannot be possible that she was holding such a senior position in the organization at the same time.
39. I have considered the contrasting positions expressed by the parties on the subject. I note that the relation between them was regulated by the three contracts that they entered into to wit: the contract of 21st February 2022; the contract of 21st August 2022; and the contract of 21st November 2022. None of these contracts suggests that the Claimant was to serve the Respondent in a position other than that of a Communication Intern.
40. The Claimant did not present in evidence any document through which the Respondent appointed her to act as its Regional Communication Officer. On the contrary, the Respondent tendered in evidence emails which demonstrate that most discussions regarding her (the Claimant's) position were in the context of her internship and not otherwise (see for instance the email trail dated 16th August 2022 to 18th August 2022 at pages 4 & 5 of the Respondent's bundle dated 12th September 2023).
41. The Claimant relies on some email exchanges between her and the Respondent's officers to anchor her proposition that she was performing functions that are connected to the role she contends she was acting in. However, these emails ought to be construed in the context of her job description (page 6 of



the Respondent's bundle dated 12th September 2022). According to the instrument, some of her roles as an intern, under the guidance of the Respondent's Regional Communicator, were to:-

- a. Develop social media strategies to enhance visibility for the Respondent's work.
 - b. Create high quality digital content to promote the Respondent's new brand and highlight its work.
 - c. Keep track of online mentions and events of the Respondent.
 - d. Keep track of the Respondent's draft responses to third parties.
 - e. Support proofreading and design of communication materials.
 - f. Support the Respondent's team to edit photos and produce brief digital videos.
 - g. Produce progress reports on all platforms by using analytical tools.
 - h. Plan, schedule and execute social media campaigns.
 - i. Support the Respondent's team in any other communication assignments.
 - j. Compile stories of change from country offices to be posted on social media.
 - k. Provide ad-hoc advisory and digital support to country offices.
42. An analysis of the above job description demonstrates that what the Claimant was executing during her term with the Respondent was really part of her assignment as a Communication Intern. As an intern, the Claimant's role was essentially supportive of the staff in the Respondent's Communication Department. For instance, the email dated 24th November 2022 at page 102 of the Claimant's trial bundle appreciates the visibility the Respondent was getting through the activism by the communications department with the support of the Claimant. The writer then says "my kind request is to make sure that Vicky (our comms intern) is included as she was supporting us from this end." In the email dated 15th September 2022 at page 106 of the Claimant's bundle, Natacha V states thus, "towards this project, Vicky, our regional communications intern will support me."
43. These emails demonstrate that the Respondent always understood and considered the Claimant as an intern. As such, her contention that she was elevated to act in the position of Regional Communication Officer is misleading.
44. To further push her argument that she had been elevated to the position of acting Regional Communication Officer, the Claimant tendered in evidence: a procurement tender document for September to December 2022; handover notes prepared on 16th February 2023; a pro-forma invoice dated 23rd August 2022; a quotation for branding dated 26th August 2022; a quotation dated 20th September 2022; and similar other documents.
45. The intention was to demonstrate that: she signed some documents which were to ordinarily be signed by the Regional Communication Officer; some of the documents were addressed directly to her; and she handed over the docket at some point before she left.
46. I do not think that the court can infer the fact that the Claimant was performing the functions of Regional Communication Officer in acting capacity or otherwise from the aforesaid documents. The fact that some documents that were meant to have been addressed to the Regional Communication Officer were addressed to her does not, ipso facto, imply that she was acting in that position. For instance, although the quotation dated 20th September 2022 was addressed to her, the writer clearly



- acknowledged that she (the Claimant) was being addressed in her capacity as Communication Intern (see page 3 of Claimant's bundle dated 8th August 2023).
47. On her appointment to the position of the Respondent's Communication Intern, the Claimant was assigned some responsibilities in that position. As such, it is expected that she was to do a handover report as she left the Respondent organization.
 48. The mere fact that she prepared handover notes which spoke to what she had been doing during her tenure with the Respondent (under supervision as per her contracts) does not, ipso facto, mean that she was serving as the Respondent's acting Regional Communication Officer. As a matter of fact, in the aforesaid handover report appearing at page 7 of her bundle dated 22nd March 2024 she described herself as a "Regional Communication Intern" underscoring the reality that she was an intern and not an acting Regional Communication Officer as she now purports.
 49. The Claimant has also sought to rely on the handover report by her supervisor, one Lameck, when he was leaving the Respondent organization to contend that she assumed the role of acting Regional Communication Officer. She contends that in the report, the departing supervisor, who was also the Respondent's Regional Communication Officer, specifically assigned her some of his responsibilities. As such, she avers that she assumed his position in acting capacity. However, this contention is flawed for two reasons.
 50. First, it has not been demonstrated that Lameck had the Respondent's authority to act as its agent in recruitment of staff. As such, the fact that he asked the Claimant to oversee some tasks (if indeed he ever did) which he had been undertaking did not amount to appointing her to the position of acting Regional Communication Officer.
 51. Second, a perusal of the handover report does not support the Claimant's contention that Lameck handed over some functions of Regional Communication Officer to her. All that he did was to acknowledge that she had been working with him on some of the projects mentioned in the report as indeed was expected of him and the Claimant under the Claimant's internship contract which required her to work under supervision of the Regional Communication Officer.
 52. For the foregoing reasons, I arrive at the conclusion that the Claimant did not serve as the acting Regional Communication Officer for the Respondent. Accordingly, her claim for payment of acting allowance for the aforesaid position is declined.
 53. The Claimant also claims for compensation for the injuries which she sustained whilst on duty in Ghana. In addition, she claims for Ksh. 500,000.00 to cover future treatment expenses for the injuries.
 54. However, the court does not possess the requisite jurisdiction to entertain this claim. This is because the *Work Injury Benefits Act* vests jurisdiction over work injury claims in the Director of Occupational Safety and Health Services.
 55. Section 16 of the Act obligates employees to process all work injury claims (including claims for provision of future medical care) in accordance with the Act. Under Part IV of the Act, the employee is required to take up such claims with the Director of Occupational Safety and Health Services and not the court. As such and on this account, the court declines to delve into the claim.
 56. The Claimant has claimed for Kshs. 378,500.00 being the value of the phone and camera which she lost in the accident in Ghana. In the court's view, these are special damage claims. As such, they required to be specifically proved by production of receipts to show the acquisition cost for the phone and camera (see *Kosgei v Mutisya (Civil Appeal 4 of 2023)* [2024] KEHC 156 (KLR) (19 January 2024))



(Judgment) & George & another v Babu (Civil Appeal E130 of 2023) [2024] KEHC 5986 (KLR) (24 May 2024) (Judgment)).

57. The Claimant did not tender documents to specifically establish the value of the camera and phone. As such and for this reason, this claim is declined.
58. As I wind up, I will comment on two other matters which were raised by the Claimant: discrimination; and casual employment.
59. The Claimant alleges that she was a victim of discrimination at the workplace. To support this claim, she gave particulars of the alleged discrimination as enumerated earlier in the judgment. However, the court does not think that the matters which she contends were episodes of discrimination, in fact and law, constitute discrimination against her.
60. For instance, she accuses the Respondent of having continued to pay her Ksh. 30,000.00 when she was purportedly acting as its Regional Communications Officer. She alleges that the Regional Communication Officer whom she allegedly replaced in acting capacity was earning Ksh. 350,000.00. As such, she contends that the fact of paying her less salary amounted to discrimination.
61. However, she did not provide evidence to demonstrate that the Regional Communication Officer who left the organization had been earning Ksh. 350,000.00. Further and as has been demonstrated earlier, she did not take up the position of Regional Communication Officer in acting capacity or otherwise. As such, she cannot claim discrimination on this account.
62. The Claimant has also accused the Respondent of discrimination because it allegedly unlawfully and hurriedly terminated her contract before she had healed from her injuries. She contends that this violated her constitutional right not to be discriminated against and the right to fair labour practice. Yet and as has been demonstrated earlier, her contract legitimately ended through effluxion of time.
63. During the trial and through her final submissions, the Claimant tried to introduce a new ground to support her assertion of discrimination which does not appear either in her Statement of Claim or written witness statement. She contended at the trial and in her submissions that the Respondent treated her differentially when it declined to allow her to benefit from the rehabilitation program in terms of its policies. She contended that to the extent that the program was available to other employees but she was not allowed to utilize it, she was discriminated against.
64. As observed earlier, the issue of refusal to allow the Claimant to benefit from the Respondent's rehabilitation program was neither pleaded by the Claimant nor alluded to in her written witness statement. She only sought to introduce the matter at the trial. This, as would be seen later in the judgment, offends the principle that parties should not seek to establish their cases on the basis of unpleaded matters.
65. Having regard to the foregoing, it is apparent that the Claimant's allegations of discrimination are without valid basis. Thus, they are rejected.
66. In his final submissions, the Claimant's counsel sought to convince the court that the Claimant had been engaged as a casual and that her contract was converted into a permanent one by virtue of section 37 of the *Employment Act*. Yet, this was not the Claimant's case if her Statement of Claim and evidence in court are anything to go by.
67. Parties are bound by their pleadings. They are not entitled to urge a case or defense that is not founded on what they had pleaded (Muchiri v Boresha Maisha Self Help Group (Civil Appeal 48 of 2022) [2024] KEHC 2488 (KLR) (11 March 2024) (Judgment) & Mururu v Lintari (Environment and Land Appeal E032 of 2021) [2024] KEELC 3687 (KLR) (22 February 2024) (Judgment)). As such,



counsel's attempts to digress into the debate regarding whether the Claimant's contract was initially a casual engagement and whether it was subsequently converted into an indefinite term contract by operation of law does not arise.

Determination

- 68. The upshot is that the court finds that the instant claim lacks merit.
- 69. Consequently, the suit is dismissed.
- 70. Costs of the case are granted to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 31ST DAY OF JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

