



**Railways Workers Union (K) v Africa Star Railway Operation Company Limited (Employment and Labour Relations Cause E478 of 2022) [2025] KEELRC 2301 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2301 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E478 OF 2022**

**BOM MANANI, J**

**JULY 31, 2025**

**BETWEEN**

**RAILWAYS WORKERS UNION (K) ..... CLAIMANT**

**AND**

**AFRICA STAR RAILWAY OPERATION COMPANY LIMITED .. RESPONDENT**

**JUDGMENT**

**Claimant's Case**

1. The Claimant is a Trade Union registered and having its operations in the Republic of Kenya. As its name suggests, it represents unionizable workers in the railway sector.
2. The Claimant avers that at the time that is material to this action, Calvin Osoro (hereafter referred to as the Grievant) was its member. The Grievant gained this membership by reason of his employment with China Road & Bridge (Kenya) and subsequently the Respondent both of whom are investors in the railway sector.
3. The Claimant contends that the Grievant was employed by China Road & Bridge Corporation (Kenya) in the position of Assistant Shunting Locomotive Driver with effect from 9<sup>th</sup> July 2018. It contends that this contract was for a fixed term of one (1) year running up to 10<sup>th</sup> July 2019 or thereabouts.
4. The Claimant avers that when the aforesaid contract lapsed, China Road & Bridge Corporation (Kenya) issued the Grievant with another three (3) year fixed term contract with an effective date of 10<sup>th</sup> July 2019. It contends that this new contract was to have run until 10<sup>th</sup> July 2022
5. The Claimant avers that whilst the aforesaid contract was still active, the Respondent issued the Grievant with a one (1) year fixed term contract whose effective date was 22<sup>nd</sup> May 2020. It contends



that on 8<sup>th</sup> July 2021, the Respondent issued the Grievant with a notice for non-renewal of the latter contract.

6. The Claimant contends that the Grievant appealed the decision not to renew the contract. However, it contends that the Respondent rejected the appeal.
7. The Claimant avers that it reported a trade dispute to the Ministry of Labour whereupon a conciliator was appointed to arbitrate on the dispute between the parties. It contends that despite the conciliator recommending that the Grievant be paid for breach of his contract, the Respondent refused to comply with the recommendation.
8. The Claimant believes that the Grievant was in the employment of the Respondent since July 2018 and that the contracts that were issued to him by China Road & Bridge Company (Kenya) and the Respondent were issued by one and the same group of employers. It contends that the decision by the Respondent to issue the Grievant with the contract dated 22<sup>nd</sup> May 2020 was illegitimate since it irregularly cut short the three (3) year term which the Grievant had been granted under the contract dated 10<sup>th</sup> July 2019.
9. The Claimant claims that the Grievant is entitled to be compensated for disruption of his three (3) year term which was meant to have run up to 10<sup>th</sup> July 2022. It also prays for several other reliefs including: reinstatement; pay in lieu of notice; leave pay; withheld salary; and service pay.

### **Respondent's Case**

10. The Respondent avers that it engaged the services of the Grievant on 22<sup>nd</sup> May 2020. It contends that the engagement was for one (1) year which was to run until 10<sup>th</sup> July 2021.
11. The Respondent avers that the contract between the parties clearly stipulated the emoluments for the Grievant. These included: basic salary of Ksh. 31,800.00 per month; house allowance of Ksh. 5,300.00 per month; transport allowance of Ksh. 3,000.00 per month; and performance pay with a base rate of Ksh. 7,100.00 per month. It contends that some of the benefits were later enhanced.
12. The Respondent contends that the contract with the Grievant automatically lapsed on its sunset date on 10<sup>th</sup> July 2021. As such, the employment relation between them closed through effluxion of time.
13. The Respondent avers that it notified the Grievant of the fact that his contract was coming to a close and that it (the Respondent) was not going to renew it. As such, it contends that the contract closed on account of non-renewal.
14. The Respondent avers that because the impugned contract lapsed automatically through effluxion of time, the Grievant did not have a right to challenge its closure on appeal. Nevertheless, it contends that it accepted his appeal which was subsequently rejected for want of merit.
15. The Respondent admits that the matter was referred to conciliation. However, it contends that the conciliation process failed to resolve the dispute.
16. The Respondent reiterates that the Grievant was all along aware that his contract was fixed term for a period of one (1) year. It further contends that the said contract (the contract on 22<sup>nd</sup> May 2020) had an express clause stating that it superseded all previous contracts which the Grievant might have entered into.
17. The Respondent avers that on closure of the contract between the parties, it (the Respondent) paid the Grievant all his terminal dues. It further avers that it issued the Grievant with a Certificate of Service thereby closing the employment relation between them.



## Issues for Determination

18. After evaluating the pleadings and evidence on record, it is apparent that the following are the issues that fall for determination:-
  - a. Whether the contract of service between the Grievant and the Respondent was terminated unlawfully.
  - b. Whether the Grievant is entitled to the reliefs which he seeks through these proceedings.

## Analysis

19. In addition to the written witness statements which the parties adopted as their evidence in chief, they gave oral testimony in support of their respective cases. Their oral testimony, in large part, reiterated their respective cases as set out in their pleadings and witness statements.
20. Whilst giving his oral testimony, the Grievant clarified that he was initially an employee of China Road & Bridge Corporation (Kenya). He stated that this however changed when the Respondent took over the operations of China Road & Bridge Corporation (Kenya). He averred that the Respondent engaged him under the contract of 22<sup>nd</sup> May 2020.
21. The Grievant stated that the contract he signed with the Respondent was at cross purposes with the contract he had entered into with China Road & Bridge Corporation (Kenya). According to him, when the Respondent took over the operations of China Road & Bridge Corporation (Kenya), it ought to have granted him employment on the same terms as his initial contract with China Road & Bridge Corporation (Kenya).
22. The Grievant contended that he tried to raise the matter with the Respondent but the Respondent refused to change the new contract in order to align it with the previous contract he had with China Road & Bridge Corporation (Kenya). He stated that when he realized that the Respondent was unwilling to align the two contracts, he went ahead and signed the new contract with the Respondent.
23. The Grievant told the court that he worked under the new contract until it lapsed. However, the Respondent refused to renew it.
24. From this evidence, it is clear to the court that the Grievant was aware that China Road & Bridge Corporation (Kenya) and the Respondent were distinct entities even though he tried to insinuate that they were one and the same. He was also aware that he was initially an employee of China Road & Bridge Corporation (Kenya) and that he subsequently entered into a new contract with the Respondent when it (the Respondent) took over the operations of China Road & Bridge Corporation (Kenya). As such, the assertions by the Claimant in the Statement of Claim that the Grievant was under the impression that he was working for the same employer under one continuous contract are misleading.
25. The Grievant admitted that he signed the contract dated 19<sup>th</sup> July 2019 with China Road & Bridge Corporation (Kenya) granting him a three (3) year term. He further admitted that he later signed the contract dated 22<sup>nd</sup> May 2020 with the Respondent granting him a one (1) year term.



26. The contract of 22<sup>nd</sup> May 2020 between the Grievant and the Respondent had a clause which provided as follows:-

“All terms and conditions in this employment contract supersede any other employment contract issued before.”

27. At the time the Grievant appended his signature on the above contract with the aforesaid clause, he was aware that he had a subsisting contract with China Road & Bridge Corporation (Kenya) which had granted him a three (3) year term. In effect, the Grievant must have understood that the effect of signing the contract dated 22<sup>nd</sup> May 2020 with the Respondent was to extinguish all other employment contracts he had, including the one dated 19<sup>th</sup> July 2019 with China Road & Bridge Corporation (Kenya).

28. The consequence of the foregoing is that the moment the Grievant signed the contract dated 22<sup>nd</sup> May 2020 with the Claimant, he extinguished the three (3) year employment term he had been granted by China Road & Bridge Corporation (Kenya) under the previous contract dated 19<sup>th</sup> July 2019. As such, he is not entitled to claim the balance of the term under the contract dated 19<sup>th</sup> July 2019.

29. Since the Claimant extinguished the contract dated 19<sup>th</sup> July 2019 by appending his signature on the contract dated 22<sup>nd</sup> May 2020, the only contract that he can invoke to pursue his employment claim is the one dated 22<sup>nd</sup> May 2020. And this contract gave him a one (1) year term effective 22<sup>nd</sup> May 2020 until 10<sup>th</sup> July 2021.

30. That said and as the Respondent’s witness stated in his evidence under oath, China Road & Bridge Corporation (Kenya) and the Respondent are distinct legal entities. As such, absent cogent evidence of novation and or assignment of obligations between the parties, the Respondent cannot be saddled with the liabilities of China Road & Bridge Corporation (Kenya) associated with the contract dated 19<sup>th</sup> July 2019.

31. The fact that a company is a subsidiary of or has business dealings with another company does not make the two companies one and the same in law. They remain distinct legal entities responsible for their own liabilities. Commenting on this in the case of *Mosi v National Bank of Kenya Limited* [2001] eKLR, the court observed as follows:-

“The law is clear that a holding company is a distinct legal entity from its subsidiary and it cannot be sued for any breach of contract by its subsidiary.”

32. I agree with the Respondent’s submissions that it was not party to the contract dated 19<sup>th</sup> July 2019 between the Grievant and China Road & Bridge Corporation (Kenya). Consequently and by virtue of the doctrine of privity of contract, it (the Respondent) has no role to play in respect of the aforesaid contract. As such, the Grievant cannot invoke the terms of the contract between him and China Road & Bridge Corporation (Kenya) to pursue reliefs against the Respondent despite the reality that the two (the Grievant and the Respondent) had a separate contract which was distinct from the contract between the Grievant and China Road & Bridge Corporation (Kenya).

33. The contract between the Grievant and the Respondent had a clause which states as follows:-

“This appointment is effective 22<sup>nd</sup> May 2020 and will last till 2021-7-10.”

34. By this clause, the parties agreed on the start and end dates for their relation. There is no clause in the contract to indicate that the term agreed on was to be extended once it lapsed. As such, the contract lapsed by effluxion of time on its sunset date. The Respondent had no obligation to renew it.



35. This reality has been restated in a plethora of court decisions. I will refer to just a few of them to elucidate the point.
36. In *Amatsi Water Services Company Limited v Francis Shire Chachi* [2018] eKLR, the Court of Appeal held that a fixed term contract terminates on its sunset date. In effect, the court was merely restating the fact that such contract automatically closes on its last day without the need for further action by either of the parties to it.
37. In *East Africa Sea Food Limited v Mwazito (Appeal E013 of 2020)* [2023] KEELRC 1257 (KLR) (20 April 2023) (Judgment), the learned Judge stated as follows regarding fixed term contracts:-
- “An employer is allowed the prerogative to employ an employee under a fixed term contract with a start and end date. The self-executing contract is lawful and valid in employment and labour relations. The Court of Appeal in Civil Appeal No. 18 of 2018 *Transparency International Kenya v Teresa Carlo Omondi* [2023] eKLR held that a fixed-term employment contract does not create a legitimate expectation of renewal. Further, the non-renewal of fixed-term employment does not amount to unfair termination of employment warranting compensation. Section 10(3) (c) of the [Employment] Act then lifts the obligation on an employer to explain reasons for termination of employment in fixed-term contract as the same lapses by effluxion of time without creating a right of legitimate expectation of renewal.”
38. In *Margaret A Ochieng v National Water Conservation & Pipeline Corporation* [2014] eKLR, the court commented on the subject as follows:-
- “Automatic renewal would undermine the very purpose of the fixed-term contract, and revert to indeterminate contracts of employment..... fixed-term contracts carry no expectancy of renewal...”
39. In *National Water Conservation & Pipeline Corporation v Mwanza (Civil Appeal 178 of 2014)* [2017] KECA 797 (KLR) (26 May 2017) (Judgment), the Court of Appeal observed as follows:-
- “A general principle that a fixed term contract will continue if not terminated would be a contradiction to the very definition of a fixed term. There is a definite start date and an end date. The contract would logically end automatically without more otherwise it would no longer be a fixed term contract.....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.”
40. In *Bernard Wanjohi Muriuki v Kirinyaga Water And Sanitation Company Limited & another* [2012] eKLR, the trial Judge observed as follows:-
- “.... there is no obligation on the part of an employer to give reasons to an employee why a fixed- term contract of employment should not be renewed..... The only reason that should be given is that the term has come to an end and no more.”
41. From the plethora of case law cited above, it is clear that unless a fixed term contract is renewed by the parties to it, it (the contract) terminates on its sunset date without any expectation for its renewal. That remains the law.



42. As pointed out earlier, the contract between the Grievant and the Respondent was fixed term with a start and end date. At the same time, it did not have a renewal clause. As such, the contract automatically terminated on 10<sup>th</sup> July 2021, its sunset date.
43. As I pen off it is important to point out that whilst filing its final submissions, the Claimant purported to place on the court record a document titled “Africa Star Railway Operations Ltd Notice on Staff Contract Transfer”. This document was not presented in evidence during the hearing of the case. As such, it cannot be admitted through submissions.
44. However, assuming that I am wrong on this point and that the Claimant is entitled to introduce the impugned document, I would still arrive at the conclusion that the document is of no evidentiary value in the cause. As such, it is unhelpful to the Claimant’s case.
45. The belated endeavor to place the document on record was meant to demonstrate that the parties had a separate arrangement under which the Respondent was to take over the obligations of China Road & Bridge Corporation (Kenya). However, such endeavor is unhelpful to the Claimant’s case.
46. The law, as I understand it, is that parties are bound by the terms of their contracts. They are not entitled to rely on extraneous evidence to alter the meaning and terms of their contract. As such, the Claimant cannot invoke extraneous documents which are not expressly recognized as addendums to the contract between the Respondent and the Grievant to vary the meaning of their contract.
47. Section 97 (1) of the *Evidence Act* Cap 80 Laws of Kenya speaks to this matter in the following terms:-  
“When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.”
48. As was seen earlier, the Grievant and Respondent signed the contract dated 22<sup>nd</sup> May 2020 which expressly stated that it superseded any other arrangements and contracts which the Grievant may have had. As such, the Claimant cannot rely on the belated notice to show that the parties intended otherwise than is captured in the aforesaid contract.
49. The Grievant had initially claimed that he was not paid his terminal dues. However, during cross examination, he conceded that he was paid the dues. To quote him verbatim on this, he stated as follows as appears from the court record:-  
“I was paid Ksh. 82,578 net. I confirm I received this amount. The Respondent settled dues as per contract of 22.5.2020.”
50. The foregoing affirms that the Respondent paid the Grievant all his terminal dues under the contract dated 22<sup>nd</sup> May 2020 between the parties. As such, the claim for terminal dues as set out in the Memorandum of Claim must fail.

### **Determination**

51. Ultimately, the court finds and orders as follows:-
- a. The contract between the Grievant and the Respondent terminated lawfully through effluxion of time.



- b. The Grievant was paid his terminal dues upon closure of the contract between him and the Respondent.
- c. Consequently, the instant claim by the Claimant is devoid of merit
- d. As such, the suit is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED ON THE 31<sup>ST</sup> 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 12<sup>th</sup> 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.

