



**Matete v Vice Chancellor (Administration) Kenyatta University & another
(Cause E015 of 2024) [2025] KEELRC 2252 (KLR) (25 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2252 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E015 OF 2024**

SC RUTTO, J

JULY 25, 2025

BETWEEN

JOHN KENNEDY MATETE CLAIMANT

AND

**THE VICE CHANCELLOR (ADMINISTRATION) KENYATTA
UNIVERSITY 1ST RESPONDENT**

KENYATTA UNIVERSITY 2ND RESPONDENT

JUDGMENT

1. The Claimant avers that on or about 22nd November 2015, he was appointed by the Respondent as a Tutorial Fellow in the Department of Accounting and Finance (Arusha campus). On 4th January 2021, the Claimant's contract was renewed for another year on condition that upon successful completion of one (1) year, the Respondent would pay him gratuity at the rate of 31% of his salary and all other allowances.
2. According to the Claimant, a Tutorial Fellow is a teaching position that is the second from the bottom of the teaching ranks' structure, equivalent to an assistant lecturer, and is covered by the national CBA and is a member of the teaching staff.
3. It is the Claimant's case that on 20th July 2023, the 2nd Respondent, through the office of the 1st Respondent, unlawfully and without any valid reason, terminated his contract of employment. That further, on 11th September 2023, the Respondent unilaterally and illegally ordered him to vacate the university residence.
4. It is on the basis of the foregoing that the Claimant has asked the Court to award him the following reliefs:



- a. A declaration that the termination of the Claimant's contract of service was illegal, unlawful and without a valid reason.
 - b. The Respondent be ordered to pay: -
 - i. Gratuity arrears from previous contract of Kshs. 1,200,000/=.
 - ii. Arusha per diem debt owing of USD 440,782.20.
 - iii. Unpaid salaries for unissued contract of June 2020 to December 2020 i.e. Kshs. 99,000/= per month x 7 months = Kshs. 693,000/=.
 - iv. Unpaid salaries for unissued contract or January, 2022 to date i.e Kshs 178, 918/= monthly salary till judgment date.
 - v. Unpaid 3DSUOL UNITS taught, examined and marked each dsuol unit @ Kshs. 52,500- Kshs. 157,500=.
 - c. Special damages for wrongful dismissal and unfair termination under Section 49 of the Employment Act i.e Kshs. 187,000/= per month x 12 months -Kshs. 2,244,000/=.
 - d. Exemplary damages for persons with disability whose mandatory retirement age for public servants being 80 years i.e. Kshs. 2,244,000/= x 35 yrs = Kshs 78,540,000/=.
 - e. Costs of the claim to be paid by the Respondent.
5. Opposing the Claim, the Respondents filed a joint Response in which they aver that the position of a Tutorial Fellow is a training position during which the appointee is supposed to do some teaching while at the same time working for a PhD degree. The Respondents are categorical that this position is in no way equivalent to the position of Assistant Lecturer and therefore not covered in the national CBA.
 6. The Respondents further aver that the Claimant exceeded the maximum allowable period of six (6) years to undertake and complete his PhD degree. According to the Respondents, the Claimant has refused and/or failed to complete his PhD Degree even upon being given a chance to do so as required by the Senate-approved course structure, which encompasses coursework, examination and thesis.
 7. In the Respondents' view, the termination of the Claimant's contract of employment was lawful and legal and in accordance with the University's Policies and the Claimant's terms of employment.
 8. The Respondents further contend that the Claimant is not entitled to any of the reliefs sought in the Memorandum of Claim and, consequently, has asked the Court to dismiss the Claim in its entirety with costs.
 9. During the hearing on 16th December 2024 and 24th April 2025, both parties called oral evidence in support of their respective cases.

Claimant's Case

10. The Claimant testified in support of his case and at the outset, sought to adopt his Memorandum of Claim, Verifying Affidavit, witness statement, as well as the list and bundle of documents filed on his behalf to constitute his evidence in chief.



11. It was the Claimant's evidence that on 9th October, 2017, the 1st Respondent redeployed him as a Tutorial Fellow, Department of Accounting and Finance (main Campus) following the closure of Arusha Campus.
12. That further, he was admitted to the Doctor of Philosophy (PhD Course Provisional) 2016/2017 Academic year.
13. It was the Claimant's evidence that on 20th July 2023, the 2nd Respondent, through the 1st Respondent, terminated his contract of service. According to him, the termination was substantively and procedurally unfair, as the reason cited for termination was not valid.
14. The Claimant added that he is a person with disability, hence, he was to retire at the age of 80.
15. In closing, the Claimant asked the Court to allow his claim as prayed.

Respondent's Case

16. The Respondent called oral evidence through Dr. Daniel Muindi who testified as RW1. Dr. Muindi identified himself as the Registrar (Administration) at the 2nd Respondent University. Similarly, he adopted his witness statement and the list and bundle of documents filed on behalf of the Respondents to constitute his evidence in chief.
17. RW1 stated that in his letter of appointment, the Claimant was required to register for a PhD Degree immediately. That his Appointment was tenable for a period of one (1) year in the first instance and was renewable annually up to a maximum period of three (3) years, subject to satisfactory reports from the Chairman, Department of Accounting and Finance and reasonable progress towards the attainment of the PhD Degree.
18. According to RW1, the Claimant exceeded the maximum allowable period of six (6) years to undertake and complete his PhD Degree.
19. RW1 further averred that the Claimant wrote to the University several times asking to be allowed to undertake his PhD Studies by thesis only and in several responses by the Respondents, the Claimant was advised and allowed to finish his PhD Course in compliance with the Senate-approved course structure.
20. RW1 further averred that the Claimant requested for renewal of his contract of employment and/or change of terms and promotion to Assistant Lecturer or Lecturer position. The university responded to the Claimant vide an internal memo dated 20th July, 2023, explaining to him that the reasons for non-renewal of his contract was because it is not supported by policy.
21. According to RW1, the University further explained to the Claimant vide an internal memo dated 10th February, 2022, that his request for change of terms was untenable and would only be considered upon completion of his PhD studies.
22. That the Claimant's request for promotion to Assistant Lecturer or Lecturer position was responded to vide an internal memo dated 31st October, 2022, informing him that he does not meet the University's criteria for promotion and that the University no longer employs staff to the Assistant Lecturer position. Further, the Claimant was informed that Tutorial Fellows are only promoted to Lecturer positions upon attainment of a PhD Degree, which he was yet to attain.
23. According to RW1, the Claimant was admitted vide a letter dated 18th August, 2016, to Kenyatta University to study a PhD Degree Course in Doctor of Philosophy (Finance) that consisted of



- coursework, examination and thesis for a duration of three (3) years. That the contention that the Claimant was admitted by the University to undertake a PhD Degree by thesis only is false.
24. RW1 further averred that the Claimant was issued with notice to vacate the University premises, which he acknowledged receipt of and asked for extension of time which was granted to him by the Respondents.
 25. The Claimant however, refused to pay his rent arrears and instead instituted a suit against the Respondents at the Rent Restriction Tribunal, where he was ordered by the Rent Restriction Tribunal to pay arrears, which are pending to date.
 26. In RW1's view, the prayers sought by the Claimant have no basis.

Submissions

27. On his part, the Claimant submitted that the Respondents failed to provide a valid reason for his termination and accord him due process as required under Sections 41 and 43 of the *Employment Act*. In the same vein, the Claimant posited that the Respondents failed to consider his status as a person with disability, contrary to Article 54 of *the Constitution* and the *Persons with Disabilities Act*.
28. According to the Claimant, the dismissal letter was arbitrary and devoid of any prior notice, warnings, or disciplinary hearing. In his view, the procedure adopted was therefore in violation of natural justice and statutory safeguards.
29. In support of the Claimant's submissions, the Court was invited to consider the cases of *Kibeti v New Embu Garage Ltd* [2024] KEELRC 58 (KLR), *Adan v Ole Naishu (2000) Ltd* (ELRC Cause E008 of 2024) and *Wambui & 4 others v Kenya Utalii College* (ELRC Cause 595, 345 & 266 of 2016).
30. On the other hand, the Respondents submitted that the contract between the 2nd Respondent and the Claimant and the subsequent extensions thereof were for a fixed term and notice of their termination was not required, unless it was terminated prematurely.
31. The Respondents further submitted that a fixed-term contract will terminate on the sunset date unless extended in terms stated in the contract and that a court cannot rewrite the terms of a contract freely entered into between the parties. To this end, the Respondents urged that 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.
32. In the Respondents' view, reasons beyond effluxion of time are not necessary in the termination of fixed-term contracts, unless there is a clause in the contract calling for additional justification for the termination. In support of this position, reference was made to a number of cases, including *Amatsi Water Services Company Ltd v Francis Shire Chachi* [2018] eKLR, *Rajab Barasa and others v Kenya Meat Commission* [2016] eKLR, *George S. Onyango OGW v Board of Director Numerical Machining Complex Limited and 2 others* [2012] eKLR and *Margaret A. Ochieng v National Water Conservation & Pipeline Corporation* [2014] eKLR.
33. According to the Respondents, the decision not to renew the Claimant's contract of employment was made as a matter of policy and which grounds of non-renewal thereof were exacerbated by the Claimant's failure to comply with his PhD requirements.
34. The Respondents further posited that the Claimant's own conduct diminished his chances of renewal of his last employment contract, and he could not have legitimately expected to have his contract renewed under the circumstances.



35. It was the Respondents' position that the requirements under Section 45 (2)(c) of the [Employment Act](#), to prove that the employment was terminated in accordance with fair procedure, do not apply to the cause herein.

Analysis and Determination

36. Flowing from the pleadings, the evidentiary material on record as well as the rival submissions, the following issues stand out for determination:
- a. Whether the Claimant was unfairly and unlawfully terminated from employment; and
 - b. Whether the Claimant is entitled to the remedies sought.

Whether the Claimant was unfairly and unlawfully terminated from employment

37. As can be discerned from the Claimant's letter of appointment dated 23rd November 2015, his appointment was for a period of one (1) year in the first instance and was renewable annually up to a maximum of three (3) years, subject to satisfactory reports from the Chairman, Department of Accounting and Finance and reasonable progress towards the attainment of a PhD degree.
38. What manifests from the record is that the Claimant was serving on a fixed-term contract. The record bears that the Claimant's contract was renewed a number of times, with the last renewal being on 4th January 2021. In this regard, the Claimant's contract was renewed for one (1) year and was to commence on 16th December 2020 and end on 15th December 2021 or thereabout.
39. Vide a letter dated 3rd November 2021, the Claimant requested the 2nd Respondent to change his terms of appointment to permanent and pensionable and, in the alternative, to renew his contract of employment.
40. Seemingly, the Claimant's application for change of terms and renewal of contract was not successful, seeing that vide a letter dated 11th September 2023, the Claimant was advised to vacate the University residence as his contract had expired on 15th December 2021, yet he had continued to occupy the residence.
41. In the intervening period, it is apparent that the Claimant had applied for promotion to the position of Lecturer, hence, he was notified by the 2nd Respondent vide a letter dated 10th February 2022 that his request for promotion could only be considered after he had completed his PhD studies. He was further advised that the University did not have any other vacancy that matched his qualifications. Through another letter dated 31st October 2022, the Claimant was advised that tutorial fellows are only promoted to Lecturer positions upon attainment of a PhD degree.
42. Ultimately, the Claimant's contract of employment was not renewed and his request for a change of terms did not receive favourable consideration by the 2nd Respondent.
43. In light of the foregoing circumstances, the question that this Court must answer is whether the Claimant was unfairly and unlawfully terminated from employment.
44. It is not in dispute that the Claimant was appointed by the 2nd Respondent to serve in the position of a Tutorial Fellow on a fixed-term basis. In the case of *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki* [2017] eKLR, the learned Judges of Appeal held that fixed-term contracts ordinarily carry no obligation or expectation of renewal. Indeed, this position has been consistently upheld in numerous decisions emanating from the Court of Appeal and this Court.



45. In this case, the Claimant's contract of employment, being fixed-term in nature, was for a pre-determined period of time and on the end date, there were two options, renewal or non-renewal. If I may add, this was an option that was open to both parties at the end of the fixed term period. Indeed, by making the application for the renewal of his contract on 3rd November 2021, the Claimant was acknowledging this fact. As such, the Claimant was well aware that his application for the renewal of his contract was subject to consideration by the 2nd Respondent and could go either way. Renewal of the contract of employment was not automatic.
46. Therefore, since the 2nd Respondent declined to extend the Claimant's contract of employment, the same stood terminated on 15th December 2021 by effluxion of time.
47. Consequently, the Court finds that the 2nd Respondent's refusal to extend the Claimant's contract cannot be construed to be unfair termination of his employment. I hasten to add that this finding would have been different had the Claimant's contract of employment been terminated prior to the end of the fixed term period.
48. It is also worth noting that the Claimant's assertion that he was still rendering services to the 2nd Respondent after expiry of his contract was not supported by any evidence. Indeed, his last contract on record was the one ending on 15th December 2021. There is no evidence that he was issued with another contract of employment after 15th December 2021.
49. To this end, a claim for unfair termination does not lie and the provisions of Sections 41, 43 and 45 of the *Employment Act* do not come into play.
50. That said, I now turn to consider whether the Claimant is entitled to the reliefs sought in the Memorandum of Claim.

Reliefs?

51. As the Court has found that the Claimant was not unfairly terminated from employment, the claim for compensation under Section 49 of the *Employment Act* cannot be sustained. In the same vein, the claim for exemplary damages collapses.
52. The claim for unpaid salaries for unissued contract is declined as the Claimant did not prove that he rendered services to the 2nd Respondent during the period in question and that he was not remunerated accordingly. This applies to the claim for unpaid units, which the Claimant claims he taught, examined and marked. In any event, it is notable that the Claimant did not specify the period in question.
53. Similarly, the Claimant's claim for per diem (Daily Subsistence Allowance) while he was stationed in Arusha is declined. Here is why. As per the Claimant's letter of appointment dated 23rd November 2017, he was posted to perform teaching duties at the 2nd Respondent's campus in Arusha. Therefore, the Claimant's duty station was Arusha. As such, he was not entitled to Daily Subsistence Allowance, which is ordinarily paid to employees when they travel for official assignments away from their duty stations within or outside the country. In this case, the Claimant was in his official duty station, hence was not in Arusha for a specific official assignment. He was therefore not eligible for Daily Subsistence Allowance. In any event, the Claimant has not indicated, let alone suggested, that he was not paid salary during his posting in Arusha.
54. With respect to the claim for gratuity, the Claimant has sought to be paid the sum of Kshs 1,200,000.00. Notably, the Claimant has not specified the contract period under which the said gratuity falls. The record bears that through a letter dated 6th November 2021, the Claimant was notified that the sum of Kshs 338,484/= owing to him from the 2nd Respondent would be utilised in settling his rent arrears



amounting to Kshs 261,619/= and the balance remitted to him after clearing water and electricity bills. The Claimant has not disputed that he had outstanding rent arrears and that indeed, the same was settled using the sums owing to him.

Orders

55. For the foregoing reasons, the Court finds that the Claim is without merit and consequently, the same is disallowed with an order that each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025

.....

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Wachakana

For the Respondents Mr. Muturi instructed by Mr. Kibe Mungai

Court Assistant Millicent

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

