



Kimoja v Rai Plywoods (K) Limited (Employment and Labour Relations Cause 32 of 2022) [2024] KEELRC 405 (KLR) (29 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 405 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE 32 OF 2022
MA ONYANGO, J
FEBRUARY 29, 2024**

BETWEEN

JOACHIM MULI KIMOJA CLAIMANT

AND

RAI PLYWOODS (K) LIMITED RESPONDENT

JUDGMENT

1. Vide a Statement of Claim dated 5th December 2022 and filed in court on 6th December 2022, the Claimant seeks the following orders against the Respondent:
 - a. A declaration that the orally and mutually negotiated and agreed terms of service set out in paragraph 4 of this Memorandum of Claim formed the terms of employment of the Claimant with the Respondent being;
 - b. The Claimant's basic monthly salary shall be Kshs 200,000 less statutory deductions;
 - c. The Respondent shall provide the Claimant with accommodation/housing;
 - d. The Claimant and his immediate nuclear family members shall benefit from a medical cover scheme operated by the Respondent's insurer
 - e. Upon termination of the Claimant's services, the Respondent shall pay the Claimant a Gratuity pay of Twenty One (21) days on the basis of the Claimant's daily rate pay for each year served;
 - f. That on the basis of the orally mutually agreed terms of service for the Claimant, the Respondent was to generate a written letter of appointment to be executed by both parties.
 - g. A Declaration that the letter of Appointment dated 31st May 2017, the Renewal of Contract dated 3rd August 2019 and Extension of Contract dated 3rd August 2021 are illegal and have no



force of law hence cannot form the basis of the employment relationship between the Claimant and the Respondent and the terms of service of the Claimant during his employment by the Respondent as its Human Resource Manager.

- h. A Declaration that the termination of the Claimant's employment by the Respondent on the basis of the Letter of Appointment dated 31st August 2017 as read with the Renewal of Contract dated 3rd June 2019 and Extension of Contract dated 3rd August 2021 was unfair, unlawful and illegal.
 - i. Payment to the Claimant a total sum of Kshs 3,048,128 as pleaded in the Memorandum of Claim.
 - j. The Respondent be compelled to issue a Certificate of Service to the Claimant as per the mandatory provisions of section 51 of the Employment Act.
 - k. Costs of this suit to be borne by the Respondent payable to the Claimant.
2. It is the Claimant's case that vide oral negotiations and an agreement reached on 5th June 2017, he was employed on permanent terms as the Respondent's Human Resource Manager working at the Respondent's Head Office based in Eldoret.
3. The Claimant avers that he worked for the Respondent until 31st October 2021 when his services were unfairly and illegally terminated on the basis of a non-existent Fixed Term Contract, a purported Renewal of Contract letter and a purported Extension of Contract letter. The Claimant states that at the time of the unfair and unlawful termination of his employment he was earning a basic salary of Kshs 200,000 translating to daily wage of Kshs 7,692.
4. The Claimant avers that prior to the termination of his employment he had on numerous appeals in writing via e-mail correspondences urged the Respondent to reduce the oral and mutually negotiated and agreed terms of service of his employment into writing for the Claimant's approval and execution but the same was in vain.
5. According to the Claimant, on 1st February 2021, the Respondent handed him an Employment Contract titled 'Letter of Appointment' signed solely by the Respondent and not by the Claimant to signify his acceptance of terms therein. The Claimant further avers that the said letter had been backdated to read 31st May 2017 and did not have the Claimant's name, National Identity Card number and a space for him to append his signature to signify acceptance of the terms therein.
6. The Claimant contends that the purported Appointment letter had several alterations on the oral and mutually negotiated and agreed terms of service being:
 - a. The gratuity clause was missing
 - b. The medical cover which the Claimant was enjoying together with his immediate nuclear family members at the time was missing
 - c. The purported Letter of appointment introduced a two (2) Fixed Term Contract aspect to the Claimant's employment despite him being employed by the Respondent on permanent basis terms.
7. The Claimant contends that on the basis of the purported Fixed Term Contract, the Respondent purportedly issued to him a Renewal of Contract letter backdated to read 3rd June 2019 which was again not executed by the Claimant to signify his acceptance of the terms of the renewal of the terms thereof.



8. The Claimant states that vide another extension of contract letter dated 3rd August 2021, the Respondent again purported to extend a non-existing Fixed Term Contract dated 31st May 2017. That this purported Extension of Contract dated 3rd August 2021 purported to extend the non-existent Fixed Term Contract to read 31st October 2021 while noting again that this Extension of Contract dated 3rd August 2021 was not executed by the Claimant to signify his acceptance of the terms set therein.
9. It is the Claimant's case that as a result of the events set out above, his employment with the Respondent as its Human Resource Manager was unfairly, unlawfully and illegally terminated on 31st October 2021 on the basis of expiry of both a non-existent Fixed Term Contract and Renewal and Extension of Contract Letters.
10. The Claimant states that the termination of his employment was unfair, invalid, unlawful and illegal and as such he is entitled to the relief set out under section 49(1)(c) of the *Employment Act*. The Claimant also states that he is entitled to a pay Gratuity as orally and mutually negotiated and agreed with the Respondent on 5th June 2017.
11. In opposition to the Claimant's claim, the Respondent filed a Statement of Response on 10th January 2023 denying the Claimant's Claim in toto.
12. According to the Respondent, the Claimant was employed as a Human Resource Manager for two fixed term contracts whose terms and conditions he accepted by signing.
13. The Respondent avers that the Claimant's fixed term contract was extended for another two year term after negotiations with the Claimant and that the same was communicated to the Claimant vide a letter dated 3rd June 2019.
14. It is the Respondent's case that on 14th April 2021, the Claimant wrote to the Respondent requesting for extension of his contract for 6 months which request the Respondent honoured and communicated its decision to the Claimant vide a letter dated 3rd August 2021 wherein he was informed that his contract would end on 31st October 2021.
15. According to the Respondent, a fixed term contract comes to an end on its own terms and this was the case for the Claimant's contract of employment which lapsed on 31st October 2021.
16. The Court was urged to dismiss the Claimant's claim with costs.
17. The Claimant filed his reply to the Respondent's Statement of Response on 20th January 2023 reiterating the contents of his Statement of claim. In addition, the Claimant contended that the purported letter of appointment dated 31st May 2017 is forged to suit the circumstances of this case as the Claimant was never issued with the said letter on 3rd May 2017 as alleged by the Respondent.

The Evidence

18. The Claimant testified on 20th March 2023 as CW1 and adopted his written statement dated 5th December 2022 which reiterates the facts set out in his pleadings. He also adopted his filed bundle of documents as part of his evidence.
19. In his testimony the Claimant stated that he was employed by the Respondent orally on 5th June 2017 as its Human Resource Manager. That the terms of service mutually negotiated and agreed on were that; he was employed on permanent terms; was to be paid a salary of Kshs. 200,000 per month; together with his immediate family members he was to benefit from a medical cover scheme operated by the



- Respondent's insurer and lastly, that upon termination of his services, the Respondent shall pay the Claimant gratuity at the rate of twenty-one (21) days on the basis of the Claimant's daily rate pay for each year served.
20. The Claimant told the Court that he discharged all his official assigned duties in his capacity as the Respondent's Human Resource Manager and even received the benefits and other entitlements as per the oral agreement.
 21. He testified that he took up employment with the Respondent on the understanding that the oral agreement would be documented by the Respondent. That this was never done despite his numerous requests to be given a contract of employment.
 22. He told the court that on 1st February 2021, he received a purported employment contract signed unilaterally by the Respondent's Director. That the appointment letter had been backdated to 31st May 2017 and had several alterations to the orally agreed terms of service between the parties. That it did not have the gratuity clause, had no clause on the medical cover which the Claimant was enjoying and the terms of engagement had been changed from permanent to two (2) fixed term contracts.
 23. It was the Claimant's testimony that he protested against the said change of terms vide an email and a letter to the Respondent. In support of his claim the Claimant referred the court to Exhibit 18 dated 8th July 2010, a document that employers are statutorily required to submit to the National Employment Authority. According to the Claimant, in that document, he was listed on the employee grouping section as an employee on permanent terms and the date of his employment was captured as 5th June 2017.
 24. The Claimant denied the allegation by the Respondent in its defence that he received and accepted the letter of appointment dated 31st May 2017 upon being appointed. He stated that the said letter did not contain an acceptance clause by the person accepting the terms.
 25. The Claimant stated that he was constructively dismissed from employment. He stated that his claim for gratuity is based on the agreement he entered into with the Respondent that he would be paid the same as it was a practice by the Respondent to pay gratuity to senior staff.
 26. On cross examination, the Claimant maintained that the terms of his employment were agreed upon with one Dilip and the Claimant when he was being recruited and that he started working immediately so there was no time to write the contract.
 27. CWI further stated that the Respondent implemented the terms of the oral agreement. He confirmed that the all employees of the Respondent had written contracts save for him for the sole reason that he could not have written his own contract.
 28. The Respondent in furtherance of its case called Henry Aggrey Okola who testified as RW1. Mr. Okola introduced himself as the current Human Resource Manager of the Respondent. He told the court that the employment contract dated 31st March 2017 that formed part of the Respondent's documents was signed by both the Respondent's Director and the Claimant.
 29. On cross examination by Mr. Chanzu, counsel for the Claimant, RW1 admitted that it is the duty of the employer to reduce a contract into writing. He also stated that he was not present when the Claimant signed the employment contract.
 30. On being referred to the employment contract dated 31st May 2017, RW1 stated that the said letter indicated that it was signed by the Claimant on 3rd May 2017. RW1 confirmed that the letter was



authored on 31st May 2017 and it is accepted on 3rd May 2017. According to RW1, the disparity on the dates was an oversight.

31. RW1 in his testimony confirmed that from the Respondent's returns and employee data submitted to the Ministry of Trade and Industry, the Claimant's name was listed as one of the senior staff of the Respondent employed on permanent terms.
32. At the close of the Respondent's case, parties were directed to file written submissions.

The submissions

33. In his submissions filed on 4th July 2023, the Claimant framed the issues for determination to be:
 - i. Whether the Claimant's employment was founded on the mutually agreed terms as per the oral agreement between the Claimant and the Respondent;
 - ii. Whether the purported backdated employment contract entitled Letter of Appointment backdated to read 31st May 2017 is a valid letter of Appointment;
 - iii. Whether the termination of the Claimant's services was illegal and unfair;
 - iv. Whether the Claimant is entitled to the reliefs sought.
34. On the first issue, it is the Claimant's submission that he was duly employed by the Respondent as a senior staff member in the capacity of Human Resource Manager on permanent terms vide an oral agreement between himself and the Respondent on 5th June 2017. The Claimant further submitted that after his oral agreement with the Respondent, he discharged all his official assigned duties in his capacity as the Respondent's Human Resource Manager and even received benefits and other entitlements as per the oral agreement. It is submitted by the Claimant that the law contemplates both oral and written agreements within the meaning of section 8 of the *Employment Act*.
35. The Claimant further submitted that he had demonstrated to court vide several email extracts that he made efforts to communicate with the Respondent to have his contract of employment drafted but the Respondent never reduced the Claimant's contract into writing. The Claimant submitted that the duty to reduce oral contracts of employment into writing rests on the employer as per section 9(2) of the *Employment Act*.
36. The Claimant urged the court to find that he was employed on permanent basis by the Respondent vide the oral agreement dated 5th June 2017.
37. On the issue of whether the purported employment contract letter of appointment backdated to read 31st May 2017 is a valid letter of employment, the Claimant submitted that he was issued with the said employment contract on 1st February 2021 and the letter did not contain a section indicating the Claimant's name or other personal particulars or a space for him to append his signature. The Claimant further submitted that the said letter did not have a gratuity clause and medical cover clause. That the terms of employment had been altered from permanent to a two fixed term contract, contrary to what the parties orally agreed on 5th June 2017.
38. It is therefore the Claimant's submission that he did not sign or accept the purported letter of appointment dated 31st May 2017 and that the Respondent did not offer any explanation why the Claimant was receiving benefits as per the oral agreement until the day his services were illegally and unfairly terminated.



39. According to the Claimant, the purported written contract of service dated 31st May 2017 and purportedly received by the Claimant on 3rd May 2017 and the subsequent purported renewal of contract letters not having been received or executed by the Claimant, did not alter the provisions of the oral agreement between the Claimant and the Respondent. In support of this position, the Claimant cited the cases of *Duncan Hastin Liech v Sameer Agricultural & Livestock (K) Limited (WOW) Devyan Food Industries (K) Limited* (2022) eKLR and *Maxwell Miyawa & 7 other v Judicial Service Commission* (2017) eKLR.
40. On the third issue, the Claimant submitted that he was employed by the Respondent as its Human Resource Manager on permanent basis vide the oral agreement made on 5th June 2017, and that at all material times, he was enjoying the benefits as per the terms of the oral contract which benefits included a monthly salary of Kshs 200,000, housing and medical insurance cover.
41. The Claimant maintained that on 1st February 2021, he was issued with a contract which had been backdated to 31st May 2017 that indicated the Claimant had been employed on two fixed term contracts. That the Respondent purportedly issued a Renewal of Contract letter backdated to 9th June 2019, and another one dated 3rd August 2021 which were all not executed by the Claimant to signify acceptance.
42. The Claimant submits that on the basis of these purported letters, on 31st October 2021, his services were unfairly and illegally terminated based on a non-existent fixed term contract.
43. According to the Claimant, he never accepted the terms of the purported letter of appointment dated 31st May 2017 nor the subsequent purported letters of extension of contract. He further submitted that no evidence was adduced by the Respondent to prove that the Claimant indeed accepted and executed the said contracts thereby signifying the termination of the oral agreement and signalling the coming into effect of the new purported fixed term contract.
44. The Claimant further submitted that he had a legitimate expectation that his employment with the Respondent would continue unhindered since he was engaged on a permanent basis. The Claimant submitted that the Respondent indeed demonstrated that up until 21st October 2021, he was still enjoying the benefits and entitlements as per the oral contract agreed between him and the Respondent due to the permanent nature of his contract.
45. It is submitted that the Claimant had legitimate expectation that his tenure would continue to run until terminate determined with reason. To buttress this point, the Claimant cited the case of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* (2014) eKLR.
46. Lastly as to whether the Claimant is entitled to the reliefs sought, it is the Claimant's submissions that he has proved that the termination of his employment was illegal and unfair. The court was therefore urged to grant the reliefs sought.
47. The Respondent's submissions were filed on 11th July 2023. In those submissions, the issues for determination were identified as;
- i. Whether there exists a written contract between the Claimant and the Respondent and whether the parties are bound by the same
 - ii. Whether the Claimant is entitled to payment of gratuity
 - iii. Whether the Claimant is entitled to the prayers sought.



48. On the issue whether there exists a written contract between the Claimant and the Respondent, the Respondent submitted that the Claimant has not expressly denied the existence of a fixed term contract between him and the Respondent and that at paragraph 9 of his Statement of Claim, he acknowledged the existence of such a contract though he disputes the date the same was entered into.
49. The Respondent further submitted that the fixed term contract of service was conclusive on the terms and conditions of the Claimant's employment and that the Claimant accepted to be bound by it by appending his signature.
50. It is the Respondent's submission that even if an oral agreement existed, the same cannot override the terms of a written agreement. The Respondent maintained that the contract executed by the Claimant and the Respondent was lawful as it complied with sections 9 and 10 of the *Employment Act*. In support of this position, the Respondent cited the cases of *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd & Another* (2001) eKLR and *Pius Kimayo Langat v Co-operative Bank of Kenya Ltd* (2017) eKLR.
51. The court was urged to find that there existed a fixed term contract of service that is binding between the Claimant and the Respondent.
52. On the second issue, the Respondent submitted that the Claimant is not entitled to gratuity under the letter of appointment dated 31st May 2017.
53. It is the Respondent's case that contracts give the intentions of parties and the court is bound to uphold those intentions when disputes arise.
54. The Respondent further submitted that the payment of gratuity by an employer is gratis and that its basis is on the practice of an employer or as agreed under the contract of service. Reliance was placed in the case of *Bamburi Cement Limited v William Kilonzi* (2016) eKLR.
55. On the issue whether the Claimant is entitled to prayers sought, the Respondent submitted that the termination of Claimant by the Respondent was fair, reasonable and lawful both in substance and procedure as the contract between the parties came to its natural end.
56. The court was urged to dismiss the Claimant's claim.

Determination

57. I have considered the pleadings, oral testimonies and witness statements herein. I have further considered the submissions and authorities cited. I have framed the following issues for determination:
 - i. Whether the Claimant was employed on a fixed term contract or permanent terms by the Respondent;
 - ii. Whether the Claimant was unfairly terminated from employment or his fixed term contract lapsed;
 - iii. Whether the Claimant is entitled to the reliefs sought.

a. Whether the Claimant was employed on a fixed term contract or permanent terms

58. The Claimant avers that he was employed on permanent terms orally by the Respondent under certain agreed terms of service on 5th June 2017 and that he discharged his duties until the 1st of February 2021 when the Respondent allegedly issued him with a backdated appointment letter with alteration to the orally agreed and negotiated terms.



59. It is the Claimant's case that that the alterations were that;-
- i. The gratuity clause was missing
 - ii. The medical cover which the Claimant was enjoying with his nuclear family was missing
 - iii. The terms of employment had been changed from permanent terms to a two year fixed term contract
60. The Claimant further avers that the said letter did not contain a section indicting the Claimant's name, national Identity card number and a space for his signature to be appended to signify acceptance of the terms set therein.
61. The Claimant contends that his termination from employment was on the basis of the appointment letter which indicated that he was to serve on a two fixed term contract contrary to the orally agreed terms that he was to serve the respondent as an employee on permanent terms.
62. On the other hand, the Respondent confirms that it employed the Claimant but maintains that the Claimant was appointed subject to the terms and conditions set out in his appointment letter dated 31st May 2017 issued to him upon appointment.
63. The Respondent alleges that the Claimant's employment as per the Appointment letter dated 31st May 2017 was a two fixed term contract which came to end after his contract lapsed on 31st October 2021.
64. Ordinarily, where the parties give inconsistent positions on the terms and conditions of an employment relationship, the Court is called to examine the employment contract and other secondary material to determine exactly what the terms are.
65. The disputed appointment letter is reproduced hereunder:-

Rai Plywoods(kenya) LTD

Our Ref: PV/72292 31st May 2017

Mr Kimoja Joachim Muli

Box 3272, Thika

Dear Kimoja,

Letter of Appointment

We are in receipt of your application for the post of Human Resources Manager and are glad to appoint you in our Company on the following terms and conditions:-

1. Designation: Human Resources Manager
2. Duties: Your basic duties include but not limited to
Ensuring of proper execution of Raiply woods
Approved strategy on human resource and the

Job entails overseeing the duties that involve establishing basic operating policies and procedures, coordinating and/or developing new and revised procedures and methods for a specialized area or areas of human resource administration such as employment, compensation, talent management, classification, employee relations, benefits and/or training. Your duties also



include to ensure reducing unproductive labour forces and ensuring smooth labour relations.

3. Salary: KES 200,000(Kenya Shillings Two Hundred thousand only) per month subject to PAYE. Overtime not applicable in view of the responsibility of the job. You shall not receive any other allowances or other benefits which are not enumerated in this contract of employment.
4. Leave: You would be entitled for 30 (thirty days) of annual leave for every 12 months of service completed. All leave are to be taken at the sole discretion and prior approval of the management.
5. Accomodation: Accommodation will be provided rent free.
6. Posting: You would be posted at the Company's office at Eldoret. May be transferred to any of the Company's establishments without prior notice.
7. Validity of Contract: Minimum two years (renewable) subject to probation period of six months. In view of the responsibility of the job, the renewal of contract will be communicated to both parties three months before the completion of the contract.
8. Termination: This contract of employment will be terminated by the company upon infringement of any of the conditions of employment forthwith. In normal circumstances, contract will be terminated by one month's notice or salary in lieu thereof from either party.
9. Commencement: From the date of your joining, but not later than 5th June 2017.
10. Standing orders: You are requested to make yourself familiar with and abide by such standing orders as shall from time to time be issued by the company.
11. General: a. You will not engage in any other duties or employment which would conflict with your routine duties as a full time employee.
 - b. You will not disclose any business secrets or confidential matters to anyone, not authorised to receive them, through your spoken or written word.
 - c. The Company reserves the right to terminate your services summarily without payment of any compensation, due to your negligence, disobeying and lawful orders, directions or instructions from the management.

Please confirm your acceptance on the duplicate copy of this letter.

We welcome you to Raiply woods(Kenya)Ltd

Signed

Philip Varghese

Director



66. The Claimant has denied that he was issued with the above appointment letter at the time he was employed and maintained that the same was backdated and issued to him on 1st February 2021.

67. The Claimant has attached email correspondence between him and the Respondent regarding the said contract. In one of the emails at page 19 of the Claimant's Documents he wrote:

“Going through the copy of the contract you left with me yesterday, 1st Feb 2021 at 5.00pm in the evening, I noticed that there are provisions that are substantially different from what we agreed when I joined the company almost 4 years ago.

1. Gratuity clause is missing
2. The medical clause which I am enjoying with my family is missing
3. You have also introduced employment on 2 years renewal contract terms, which has never been the case and was never discussed.

You do recall that I had sent you a draft copy of the terms and conditions of employment of what we agreed upon. Kindly refer to your mail on the same dated 26th, Feb. 2020-reminder (see attached copy above)

68. Again in another email dated Thursday, August 05, 2021 under the title Extension of Contract, the Claimant wrote

“I am in receipt of letter dated 3rd August 2021 extending a term referred as ...(not legible), however as I have always reminded you as vividly as it is in your mind sir: -

The terms of employment on contract was never part of my engagement with Raiply Woods k LTD, and you very well know this because we negotiated between me and you, and on mutual trust between ourselves, I decided to start working, in hope that you will formalize my engagement with you.

I kept reminding you to formalize my terms which as your HR I drafted and forwarded to you.”

69. From the above correspondence I am persuaded that the Claimant did not sign a contract of service when he joined the employment of the Respondent and that his terms of employment were negotiated but never reduced into a written contract. It is further clear that the contract that the Respondent has relied on dated 31st May 2017 was issued to the Claimant on 1st February 2021 and he immediately contested the contents thereof.

70. Further, from the Respondent's employment returns for the calendar year ending 31st December 2018 submitted to the National Employment Authority, the name of the Claimant appears at entry no. 22 and his employee group is indicated as a senior staff on permanent terms.

71. It is therefore my finding that the contract between the Claimant and Respondent was oral and that the Claimant tried unsuccessfully to get the Respondent to draw up the contract for signature by the parties as agreed upon at the time of engagement.

72. Execution of employment contracts is provided for under section 9 of the [Employment Act](#) as follows:

- (1) A contract of service—



- (a) for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or
 - (b) which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.
 - (2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3).
 - (3) For the purpose of signifying his consent to a written contract of service an employee may—
 - (a) sign his name thereon; or
 - (b) imprint thereon an impression of his thumb or one
73. The Respondent having been the one responsible for drawing up the contract and ensuring that it is signed by the Claimant, it cannot hide behind the lack of the contract. Section 10(6) as read with 10(7) of the Employment Act shifts the burden of proof in employment disputes to the employer. In this case I find that the Respondent as the employer has failed to satisfy its burden of proof and I accordingly hold that the terms of contract between the Claimant and the Respondent are as averred by the Claimant.
74. Flowing from the above, I find that the Claimant has proved on the evidence before the court that he was employed orally by the Respondent on permanent terms.
75. Having found that the Claimant was employment on permanent terms, it follows that the termination of the Claimant's employment was not due to effluxion of time as alleged by the Respondent, but rather, that the Claimant's employment was terminated without valid reason or fair procedure as provided in sections 41, 43 and 45 of the Employment Act. The termination was therefore unfair.
76. The last issue is whether the Claimant is entitled to the prayers sought. The Claimant in his Statement of Claim seeks for the following;
- a. A declaration that the orally and mutually negotiated and agreed terms of service set out in paragraph 4 of this Memorandum of Claim formed the terms of employment of the Claimant with the Respondent.
 - b. A Declaration that the letter of Appointment dated 31st May 2017, the Renewal of Contract dated 3rd August 2019 and Extension of Contract dated 3rd August 2021 are illegal and have no force of law hence cannot form the basis of the employment relationship between the Claimant and the Respondent and the terms of service of the Claimant during his employment by the Respondent as its Human Resource Manager.
 - c. A Declaration that the termination of the Claimant's employment by the Respondent on the basis of the Letter of Appointment dated 31st August 2017 as read with the Renewal of Contract dated 3rd June 2019 and Extension of Contract dated 3rd August 2021 was unfair, unlawful and illegal.
 - d. Payment to the Claimant a total sum of Kshs 3,048,128 as pleaded in the Memorandum of Claim.



- e. The Respondent be compelled to issue a Certificate of Service to the Claimant as per the mandatory provisions of section 51 of the *Employment Act*.
 - f. Costs of this suit to be borne by the Respondent payable to the Claimant.
77. Having found that the Claimant has proved that he was employed orally on permanent terms and was terminated unfairly, it is my finding that he is entitled to compensation.
78. The Claimant sought for the following remedies:-
- a. Compensation for unfair and unlawful termination
Basic pay for a twelve for a period of 12 months..... Kshs 2,000,000
 - b. Gratuity pay of Twenty One (21) days on the basis of the Claimant's daily rate pay for each year served on the basis of the orally negotiated and agreed terms of service.....Kshs 646,128.00
79. On the prayer for an award of 12 months compensation, In *Kenya Broadcasting Corporation v Geoffrey Wakio* [2019] eKLR the Court of Appeal pointed out that an award of the maximum of 12 month's pay must be based on sound judicial principles, and that the trial judge must justify or explain why a Claimant is entitled to the maximum award.
80. The Claimant was employed by the Respondent from 5th June 2017 until the 31st October 2021 when his employment was terminated on account of a non-existent fixed term contract. During the period the Claimant was employed, he had a legitimate expectation that he would serve the Respondent until the age of retirement on the basis of the permanent terms of employment or that any premature termination of his employment would be for valid reason and by fair procedure. Having considered the circumstances of the termination of his employment and all the relevant factors under section 49(4) of the *Employment Act*, it is my considered opinion that compensation equivalent to 6 months' salary is reasonable and I accordingly award him the same. The Claimant's salary was Kshs. 200,000. I thus award him Kshs. 1,200,000 as compensation.
81. The Claimant also prayed for gratuity. He avers that in the oral agreement between himself and the Respondent, it was an agreed term that the Claimant was to be paid gratuity at the rate of 21 days' pay for each year worked. The Claimant produced documentary evidence to prove that the Respondent as a practice paid gratuity to its staff when they left its employment. The documents supporting this position are at pages 17, 21, 39-41 of Claimant's Documents.
82. Consequently, judgment is entered in favour of the Claimant against the Respondent in the following terms:
- i. A declaration be and is hereby made that the orally and mutually negotiated and agreed terms of service set out in paragraph 4 of this Memorandum of Claim formed the terms of employment of the Claimant with the Respondent.
 - ii. A Declaration be and is hereby made that the termination of the Claimant's employment by the Respondent on the basis of the Letter of Appointment dated 31st August 2017 as read with the Renewal of Contract dated 3rd June 2019 and Extension of Contract dated 3rd August 2021 was unfair.
 - iii. The Claimant is awarded the following:
 - a. 12 months' compensation for



unlawful termination Kshs 1,200,000

b. Gratuity at 21 days per year Kshs 646,128

Total Kshs 1,846,128

iv. The Respondent to issue the Claimant with a Certificate of service.

83. The Respondent shall pay the Claimant's costs

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 29TH DAY OF FEBRUARY 2024

MAUREEN ONYANGO

JUDGE

