



Kang’ethe v Oriel Limited (Employment and Labour Relations Cause E685 of 2023) [2024] KEELRC 312 (KLR) (20 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 312 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E685 OF 2023
BOM MANANI, J
FEBRUARY 20, 2024**

**BETWEEN
JANE ANYANGO MARGARET KANG’ETHE CLAIMANT
AND
ORIEL LIMITED RESPONDENT**

RULING

1. The Claimant avers that she has been in an employment relation with the Respondent which was terminated through the Respondent’s letter dated 31st July 2023. According to the Claimant, the Respondent’s aforesaid decision was without valid basis. The Claimant believes that the decision was motivated by the fact that she was expectant.
2. As a consequence, the Claimant perceives the impugned decision as discriminatory. She prays that it (the decision) be nullified.
3. On its part, the Respondent argues that the Claimant’s employment came to a close on account of effluxion of time. The Respondent contends that after evaluating the Claimant’s performance under the preceding contract, a decision was taken not to renew the employment relation between the parties. Therefore, the decision to end the relation was lawful.
4. Accompanying the Statement of Claimant is an amended Notice of Motion application dated 13th September 2023. In the application, the Claimant has prayed for an order for her reinstatement to her position pending resolution of the instant dispute. The Claimant has also prayed for an order to restrain the Respondent from recruiting her replacement until the instant case is heard and determined.
5. The application is opposed. The Respondent contends that the prayer for reinstatement ought not to issue because the Claimant’s contract lapsed through effluxion of time. According to the Respondent, the Claimant’s contract having come to a close as from 31st August 2023 due to effluxion of time, her



prayer to bar it (the Respondent) from recruiting her replacement is overtaken by events and should not issue.

Analysis

6. The relief of reinstatement is in every respect a final remedy. Ideally, it should only issue at the tail end of a substantive trial (*Alfred Nyungu Kimungui v Bomas of Kenya* [2013] eKLR). Although the court can issue this remedy at the interlocutory stage, this should only be in the clearest of cases (*Anthony Omari Ongera v Teachers Service Commission* [2017] eKLR).
7. In the instant case, the preliminary evidence before the court suggests that the parties had a fixed term contract of service. There is indication that the contract was to run up to 31st May 2023. The record also suggests that the contract could be renewed through mutual agreement.
8. The Claimant contends that come 31st May 2023, the Respondent allowed her to continue working. She contends that the Respondent continued paying her salary beyond May 2023.
9. The Claimant contends that when she notified her line manager about her pregnancy in July 2023, she was notified that her contract which had expired in May 2023 would not be renewed. This was followed by a letter notifying her that her last working day was 31st August 2023.
10. According to the Claimant, the circumstances leading to her release from employment were informed by her pregnancy. Thus, she contends that the decision to send her home was discriminatory.
11. For the Respondent, it is argued that the decision to terminate the employment relation between the parties had nothing to do with the Claimant's pregnancy. On the contrary, the decision was informed by the fact that her (the Claimant's) contract had lapsed by effluxion of time.
12. The Respondent argues that the delay in communicating its decision not to renew the contract between the parties was occasioned by the evaluation it (the Respondent) had to undertake on the Claimant's performance. This process is indicated to have taken between June 2023 and July 2023.
13. The above set of facts demonstrates that the circumstances that led to the termination of the contract between the parties are contested. They do not present an open and shut case regarding whether the impugned decision was regular or irregular. As such, the court needs to evaluate the evidence that will be presented by the parties in order to arrive at its final decision, one way or the other.
14. Having regard to the foregoing and in view of the fact that as an interim remedy, reinstatement should only issue in the clearest of cases, I am not inclined to issue the prayer for reinstatement at this stage of the case.
15. I note from the preliminary evidence on record that the parties had a fixed term contract which was to lapse on 31st May 2023. Therefore and assuming that it (the contract) was impliedly renewed as asserted by the Claimant, it would only have run for an equivalent period of two years.
16. In the circumstances, if there is loss that the Claimant will suffer, it is for the anticipated duration of the purported new contract. In my view, this loss is quantifiable and capable of compensation through an award of damages. In effect, breach of such contract cannot occasion the Claimant irreparable loss.
17. Thus, the Claimant has not satisfied all the ingredients for the grant of an order for interim injunction as prescribed under the case of *Giella v Cassman Brown & Co. Ltd* [1973] EA 358. If she will suffer any loss as a result of the Respondent filling the disputed position, such loss will be compensable by an award of damages.



Determination

18. The upshot is that the application dated 13th October 2023 is disallowed.

19. Costs shall abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED ON THE 20TH DAY OF FEBRUARY, 2024.

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.

B. O. M. MANANI

