



REPUBLIC OF KENYA



**Karithi v Karumo Technical Training Institute (Cause E020 of 2021)  
[2024] KEELRC 218 (KLR) (9 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 218 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
CAUSE E020 OF 2021  
ON MAKAU, J  
FEBRUARY 9, 2024**

**BETWEEN**

**MITHIKA GEORGE KARITHI ..... CLAIMANT**

**AND**

**KARUMO TECHNICAL TRAINING INSTITUTE ..... RESPONDENT**

**JUDGMENT**

1. The claimant brought this suit on 17<sup>th</sup> June 2021 alleging unfair termination and prayed for the following reliefs: -
  - a. A declaration that the claimant's termination was un procedural, unfair and unlawful.
  - b. The respondent to pay the claimant terminal dues as tabulated in paragraph 8 above.
  - c. An order that the Respondent issues the claimant with a certificate of service for the period worked.
  - d. Costs and interest in prayer b above.
  - e. Any other relief that this Honorable court deems fit.
2. The respondent denied the alleged unfair and unlawful termination of the claimant's employment. It further denied liability to pay the dues sought by the claimant and prayed for the suit to be dismissed with costs.

**Factual background**

3. The claimant was employed by the respondent as a trainer/tutor for a monthly gross salary of Kshs.25,000.00. His engagement was based on fixed term contracts of one year. The last contract produced in court ran from 1<sup>st</sup> February 2019. On 15<sup>th</sup> March 2020 the Government closed all schools



and colleges due to Covid-19 Pandemic. On 5<sup>th</sup> May 2020, the respondent wrote to all the BOG trainers to apply for renewal of contracts for any further engagement. The claimant wrote an application on 7<sup>th</sup> May, 2020.

4. The schools and colleges remained closed longer than expected. The reopening was done on 1<sup>st</sup> November 2020 and the respondent wrote to all the BOG trainers informing them that renewal of their contract would be effective from 1<sup>st</sup> November 2020. Allegedly all the BOG trainers signed their contracts but the claimant declined and left. Hence this suit.

## Evidence

5. The claimant testified that he worked for the respondent until November 2020 when the principal summoned him and told him not to report the following day because his employment had been terminated with immediate effect. He was required to handover all the institute's property in his possession the following week on Monday. He contended that the last payment he received from the respondent was Kshs.11,800.00 paid on 2<sup>nd</sup> May 2020.
6. On cross examination he stated that he was employed on 1<sup>st</sup> July 2015 on probation and on 1<sup>st</sup> February 2016 he was given an appointment letter after completing six months' probation. He confirmed that his appointment was on fixed contract basis.
7. He admitted that his last contract lapsed in 2020 and he was not given any other contract from 1<sup>st</sup> February 2020. He further confirmed that from 15<sup>th</sup> March 2020 the institute was closed due to Covid-19 pandemic. However, he contended that he was teaching students online.
8. He contended that he never applied for renewal of his contract and put the record clear that it was not his duty to apply. He confirmed that he wrote a letter dated 7<sup>th</sup> May 2020 in response to the respondent's letter dated 5<sup>th</sup> May 2020. He contended that after the contract dated 1<sup>st</sup> February 2020 lapsed on 31<sup>st</sup> January 2020, he continued working and his last pay was in April 2020.
9. He stated that the respondent never responded to his letter dated 7<sup>th</sup> May, 2020 but in November 2020 he was given another contract to sign and he declined after the respondent refused to pay his salary for April-October 2020. He maintained that his claim is merited.
10. Ms. Flora Njura Kinyua, respondent's Principal testified on behalf of the institute. She contended that the claimant was employed under fixed term contracts of one year. The first one was in a letter dated 1<sup>st</sup> December 2017 and it was renewed on 1<sup>st</sup> February 2019.
11. The last contract lapsed on 31<sup>st</sup> January 2020 but it was not renewed after the institution was closed on 15<sup>th</sup> March 2020 due to Covid-19 pandemic. However, on humanitarian grounds, the BOG trainers including the claimant were given half salary in April and asked to apply for renewal of contracts.
12. RW1 stated that there was no learning taking place until the institute reopened in November 2020 and offered new contracts to all the BOG trainers. All BOG trainers signed the new contracts except the claimant who declined and went away. As such the alleged redundancy did not arise.
13. She contended that the claims by the claimant are unmerited because his contract lapsed on 31<sup>st</sup> January 2020, and he never rendered any services thereafter. Also, the institute never collected any fees since the institute was closed.
14. On cross examination, she admitted that the claimant was paid salary of Kshs.22,207.00 on 28<sup>th</sup> February 2020 and 27<sup>th</sup> March 2020. On 2<sup>nd</sup> May 2020 he was paid Kshs.11,800 as half salary and then he was notified to apply for renewal of his contract. She admitted that from 31<sup>st</sup> January 2020 the



claimant was working without a contract. However, by letter dated 5<sup>th</sup> May 2020 he was called to apply for renewal and he applied on 7<sup>th</sup> May 2020. The offer of renewal was eventually given in November 2020 after the institute reopened but he declined.

### **Submissions**

15. The claimant submitted that his employment was terminated by the respondent on account of redundancy without complying with section 40 (1) of the *Employment Act*. He contended that the redundancy was not preceded by one month notice and payment of terminal benefits. He further contended that his evidence was not rebutted by the respondent and consequently, he prayed for award of the reliefs sought in his pleadings.
16. The respondent, on the other hand submitted that the claimant has not proved that he was declared redundant or unfairly dismissed from employment. He has not produced any termination letter issued by the institute. It further submitted that it has demonstrated by evidence that the claimant left employment voluntarily after he was offered a letter for renewal of his contract on 9<sup>th</sup> November 2020. Reliance was placed on the case of *Douglas Omunyiri Otungu v Board of Trustees, Redeemed Christian Church of God* [2022] eKLR.
17. In view of the foregoing, the respondent submitted that the claimant is not entitled to the reliefs sought. It contended that the claimant was not in employment from May to January 2021. It further contended that after the lapse of the contract of employment on 31<sup>st</sup> January 2020, the claimant continued as an at-will-employee while waiting for renewal of his contract. Unfortunately, the institute closed down due to Covid-19 pandemic in mid-March 2020.
18. It was further submitted that its RW1 confirmed that the claimant was requested to apply for renewal of his contract on 5<sup>th</sup> May, 2020 and he applied on 7<sup>th</sup> May 2020. However due to the Lock-down the renewal was offered on 9<sup>th</sup> November 2020 after the lifting of the lock down. As such the respondent submitted that the claimant is not entitled to salary for the said period.
19. Finally, the respondent submitted that the claim for severance pay is not merited since the claimant was not declared redundant. It also contended that the claim for general damages for breach of contract is unmerited because it is the claimant who walked away from an offer to renew his contract.

### **Analysis and Determination**

20. The issues for determination are: -
  - a. Whether or not the claimant was unlawfully laid off
  - b. Whether he is entitled to the reliefs sought.

### **Unlawful redundancy**

21. The claimant contended that his employment was terminated on account of redundancy without complying with section 40(1) of the *Employment Act*. The said section requires that before terminating an employee's employment on account of redundancy, the employer shall serve one month notice to the employee or his trade union (if a member of union), and also serve the area labour officer. Thereafter he must pay the employee one-month salary in lieu of notice, accrued leave and severance pay.
22. The respondent denied the alleged redundancy and maintained that the claimant's contract of employment lapsed on 31<sup>st</sup> January 2020 and before formalizing renewal, the Government closed all learning institutions due to Covid-19 pandemic. It was further defence case that in the hope of the



lifting of the lockdown in May 2020, the respondent wrote to all the BOG trainers to apply for renewal of their contracts and the claimant applied on 7<sup>th</sup> May 2020. When the lock down was extended, the respondent delayed the renewal of the contracts until November 2020 when the lock down was lifted and then issued renewal offers to all the BOG trainers.

23. The claimant admitted that he was offered renewal in November 2020 and declined because he was denied salary for the period of the lockdown. I find the evidence by the respondent convincing. The burden of proving redundancy is on the claimant but in my view the evidence on record does not point to that. His contract lapsed on 31<sup>st</sup> January 2020 and before renewal, covid-19 set in and a lock down was declared by the Government. All learning institutions remained closed until November 2020.
24. The respondent invited claimant to apply for renewal of his contract and indeed the claimant made his application on 7<sup>th</sup> May 2020. Why did he apply if at all he was still in employment? The answer is obvious. His contract had since lapsed. He was offered a chance to renew his contract in November 2020 and he declined. Consequently, I am satisfied that the claimant was not laid off by the respondent. His contract just lapsed and when he was offered a renewal he declined. That is the end of the story.

### **Reliefs**

25. In view of the finding that the claimant was not a victim of redundancy, the claim for damages for unlawful redundancy must fail. Likewise, the claim for salary arrears for April 2020 to January 2021 must also fail because the claimant was not in employment. However, the claim for certificate of service is merited and I grant it as prayed. Since the suit has substantially failed, I will not award him costs of the suit.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 9TH DAY OF FEBRUARY, 2024.**

**ONESMUS N MAKAU**

**JUDGE**

### **Order**

This judgment has been delivered to the parties via Teams video conferencing with their consent, 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.

**ONESMUS N MAKAU**

**JUDGE**

