Cheruiyot & 6 others v Kericho Water & Sanitation Company Limited(KEWASCO) (Appeal E005 of 2022) [2024] KEELRC 660 (KLR) (13 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 660 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO

APPEAL E005 OF 2022

HS WASILWA, J

MARCH 13, 2024

BETWEEN

SILAS CHERUIYOT ..... 1ST APPELLANT

PHILEMON KOSKEI ..... 2ND APPELLANT

NICK MUTAI ..... 3RD APPELLANT

SAMMY CHEPKWONY ..... 4TH APPELLANT

ALBERT KIRUI ..... 5TH APPELLANT

DRUSILA CHEPKWONY ..... 6TH APPELLANT

KORIR ERIC ..... 7TH APPELLANT

AND

KERICHO WATER & SANITATION COMPANY LIMITED(KEWASCO) ..... RESPONDENT

(Appeal against Judgement and Decree issued by the Honourable E. K. Makori-CM on 3rd August, 2022 in Kericho Magistrates Court, under Employment cause number E017, E018, E029, E020, E021, E022 and E023 of 2021)

JUDGMENT

1. The Appellants instituted this suit Against the Respondent vide a Memorandum of claim dated 16th August, 2022. The Appellants are dissatisfied with Judgement and Decree issued by the Honourable E. K. Makori-CM on 3rd August, 2022 in Kericho Magistrates Court, under Employment cause number E017, E018, E029, E020, E021, E022 and E023 of 2021, where E020 of 2021 was earmarked as the lead file. The grounds of the Appeal are as follows; -

1. That the learned trial magistrate erred in law and in fact by finding that the employment contracts between the appellants and the respondent were illegal on the basis that the respondent failed to advertise the said positions, without considering that the claimants' employment were converted to permanent and pensionable ones as they were replacing retired and the deceased employees who were on permanent and pensionable contracts.

2. That the learned trial magistrate erred in law and in fact by finding that the employment contracts between the appellants and the respondent were illegal on the basis that there was no appraisal.

3. That the learned trial magistrate erred in law and in fact by relying on the case laws of the claimants who were hired under the county public service board yet the appellants were employed directly by the respondent which is an independent private limited liability company registered under the *companies act* and not in any way related to the County Public Service Board.

4. That the learned trial magistrate erred in law and in fact by disregarding and failing to consider the testimonies of the appellants' witnesses, documents and submissions.

5. That the learned trial magistrate erred in law and fact by declaring that the respondent is a statutory body yet it is Private Limited Company registered under the Company's Act Cap 486, Laws of Kenya and it is only owned by the County Government of Kericho.

6. That the learned trial magistrate erred in law and in fact in finding that the employment contracts between the appellants and the respondent is illegal on the basis that the contract was signed by the former Managing Director on his last day in office, yet on the said last day, the said Managing Director was still properly in office and authorized to transact and sign the said contracts as he did.

7. That the learned trial magistrate erred in law and in fact by declaring that the subject contracts were illegal on the basis that there was no budgetary allocation, yet the respondent had never reviewed or revoked the said contracts on that basis, neither had any redundancy been cited.

8. That the learned trial magistrate erred in law and in fact by awarding the respondent costs of the claim yet if indeed the contracts were illegal, it emanated from the respondent, thus awarding costs to the respondent is punitive to the appellants who are out of employment.

9. That the Learned Trial magistrate erred in law and in fact by finding that the appellants had not made a prima facie case yet the appellants proved that the employment contracts between themselves and the respondent were valid and met all elements of an employment thus failure to perform the contract amounts to breach as the contracts have never been terminated in accordance with its provisions.

2. The Appellant sought for the following reliefs;

   a. This Appeal be allowed.

   b. The Judgment delivered by Hon. Makori on the 3rd August, 2022 be set aside and a proper finding be made.

   c. Costs be provided for.

Backgrounds of facts

3. The Appellants herein, Claimants in the trial Court, were all employed by the Respondent between the year 2012 and 2017 on short term contract of 6 months that was renewable from time to time, each earning a consolidated salary of Kshs 14,000. That on 6th November, 2019, they were all issued with employment letters dated 8th October, 2019 on permanent and pensionable terms, all earning basic salary of Kshs 17,996 and House allowance of Kshs. 10,000 save for Sammy Chepkwony, the 4th Appellant herein whose basic salary was Kshs 19,808 and House allowance of Kshs 10,400.

4. It is stated that before the said employees were absorbed on permanent basis, the board sat and passed a resolution to absorb them on permanent basis. Consequently, the letters were signed by the then managing director of the Respondent, Eng. Joseph Terer on the 30th October, 2019.

5. One month after signing the employment contract, the Respondent's managing director was transferred and a new director by the name Eng. Kibii Siele assumed office.

6. On 9th November, 2019, the Appellants herein were summoned to the office of the Human Resource manager, Mr. Robert Korir and asked to fill their details on a sheet of paper and surrender the employment letter issued to them dated 8th October, 2019. Subsequently, on 5th August, 2020, the Appellants were forced to sign short term contracts running for 6 months that took effect immediately. The withdrawal of the employment letters of 8th October, 2019, caused the Appellants to raise a complaint with the labour officer and eventually, the primary suit was filed at the Magistrates Court.

7. In defence, the Respondent stated that the appellants had indeed been employed by the Respondent on short term contracts because their services were only required when need arose as such the employment was not continuous.

8. The Respondent admitted that the appellants herein were issued with employment letter dated 30th October, 2019, however that the same was withdrawn immediately as it was issued in err and out of flawed, irregular, unprocedural and illegal process.

9. The Respondent elaborated on the illegality and stated that the board of the Respondent had not sat to pass any resolution authorizing employment on permanent basis. That the process of recruitment including advertisement of the vacancy had not been made, the Respondent had not made any budget allocation to accommodate all these employees, the letters of employment were signed by the managing director a day before his exit from Respondent's employ, That the employment was discriminatory as several employees who had served the Respondent for more years than the appellants had not been absorbed on permanent basis, procedure for conversion of employment as indicated in the HR manual was not complied with and that the letters were issued to the employee directly without following any process therefore that there was likely bias and or corruption on the part of the outgoing managing director.

10. The Respondent maintained that based on the way in which the said employment letters were issued, the letters were issued illegally as such there was need to remedy the situation and they recalled them. That the issue was reported to the labour office and upon hearing, the conciliator found that the impugned employment letters were fraudulent and marred with irregularities.

11. After hearing both parties the trial Court also found in favour of the Respondent and dismissed the suit with costs to the Respondent. It's this dismissal that lead to the filling of this Appeal.

12. Directions were taken for the Appeal to be canvassed by written submissions, with the Appellants filling on 4th December, 2023 and the Respondent filed on 6th February, 2024.

Appellants' Submissions.

13. The Appellants submitted on the grounds of Appeal and with regard to the first ground, it was submitted that the Respondent had initially engaged the Appellants to serve as replacement for retired and deceased employees who were on permanent basis, as such the Absorption of the Appellants on permanent basis was not new but has been the modus operandi of the Respondent which overtime became synonymous to the practice of filling vacancies either through internal promotions or by recruiting candidates from within the organizations ranks. This fact was reiterated during hearing by Eng. Joseph Terer, the then managing director. Therefore, that the decision of the trial Court in finding these contracts illegal for failing to source the Appellants competitively, failed to consider the intricate context in which these employment contracts were conceived. Additionally, that the new employment terms align with the principles of equitableness, continuity and Respondent's own patterns of practice as such the Respondent ought to be estopped from denying this mode of operation.

14. The Appellants elaborated on the doctrine of estoppel as discussed by Justice A. B Shah in the case of Titus Muiruri V Kenya Canners Ltd [1988] eklr, where the Court held that; -

> " If a party is made so to believe in a certain state of facts and that party acts on those facts, to his detriment, and the other party stands by and does not stop him from so acting, that other party is estopped from changing his stand. If one says to A "go ahead, this is land, but you may build on it, spend money, we will go into formalities of transfer later' and A does all that the representor is estopped from denying the right accrued to and acquired by A".

15. Similarly, that the Respondent in hiring the Appellants to assume the position that were previously occupied by individuals under permanent and pensionable agreements, implicitly, conveyed a representation that the newly appointed persons could be subject of comparable terms and conditions, Consequently, it was untenable for the Respondent to assert illegality of these contracts on account of their non-publicized nature, given that the initial offer were unencumbered by any reservations.

16. To reinforce their arguments, the Appellants cited the case of Thomas Mugambi Nthiga V County Government of Embu & Another [2020] eklr in which the Court found that it was an abridgement of the petitioner's rights to bar him from assuming the office that had been promised in memos and internal communication and declared that the Petitioner had a legitimate expectation of being employed on permanent and pensionable basis, that the Petitioner ought to have been maintained as an employee of the County Government by virtue of *the Constitution*, *County Governments Act* and the *Urban Areas and Cities Act*, that the Constitutional rights of the Petitioner as provided for under Articles 27, 28, 29, 41 and 47 of *the Constitution* were violated by the Respondents and Awarded damages for the violation of his Constitutional rights assessed at Kshs. 1,000,000, General damages for the delay in appointing the Petitioner on permanent basis – Kshs. 1,000,000, together with costs of the petition and interests.

17. On the second ground of whether the Appellants were casual employees, it was submitted that contrary to decision made at paragraph 5 of the Judgement that the Appellants herein were casual/ seasoned employees, the Appellants were employed on short term contracts that were renewed from time to time as evidence by the employment contract tendered in evidence in the trial court.

18. On the finding that the contracts were illegal on the basis that there was no appraisal, it was submitted that the initial employment contracts were issued upon the Respondent's satisfaction that the Appellants herein were qualified for the job and after subjecting them to the requisite employment recruitment procedures. Further that the subsequent conversation was to fill in vacancies that had been

left by person that were doing similar jobs as the Appellants, therefore that the requirement of appraisal before absorption into these positions was not indicated and thus the trial Court erred in finding the new employment letters illegal on basis that appraisals had not be done.

19. The Appellants urged this Court to recognize the fluidity of the Employment relationship and stated that conversion of employment from one form to another is allowed by the Employment laws, as long as they are done in accordance with the law. To support this argument, they relied on the case of Gitonga V ABC Manufacturing Ltd [2015] eklr.

20. On relying on a case in which the claimants had been employed by County Public Service Board, the Appellant submitted that the trial Court erred in placing reliance on the said case and distinguished the same with the case at hand and argued that the Appellants herein were employed by the Respondent, a limited liability company, that is separate from the County Public Service Board.

21. The Appellant also took issue with the decision of the trial court and stated that the trial Magistrate failed to consider testimonies of their witnesses, disregarded documents tendered in evidence that could have swayed the Court to decide in their favour and neglected the submission made by the appellants, an issued that if the Court considered could have decided the case in their favour.

22. The Appellant also submitted that the trial Court erred in finding that the Respondent is a statutory body when in fact it is a private limited Company, registered under the *Companies Act*, which is owned by the County Government of Kericho. In any case that the Respondent does not have the typical characteristics of a statutory body such as; being a creature of statute, having specific power defined by law and enjoying financial independence.

23. On illegalizing the contract on basis that they were signed by a managing director on his last day, it was submitted that even though the said contract were signed on the last day, the same were signed by an officer who was authorized to do and who was still legitimately in employment with powers to sign documents on behalf of the Respondent.

24. On the issue that the Respondent did not have any budgetary allocation to employ Appellants on permanent basis, it was submitted that no evidence was tendered before court justifying this fact. In any event that this issue was never raised by the Respondent before the revocation of the contracts were undertaken therefore that there was no justification.

25. The Appellants also took issue with the award of costs given to the Respondent and submitted that even if the said contract were indeed illegal, the same emanated from the Respondent, therefore that the Appellants are being punished for the mistakes made by the Respondent.

26. On the substance of the case at the trial court, the Appellants submitted that the trial Court erred in failing to acknowledge that their new contracts had been issued legally and that the Respondent breached the said contract in terminating them without following proper channels of termination of contracts of employment as provided for under the *Employment Act*.

27. On costs of this Appeal, it was argued that Cost follow event as provided for under Section 27(1) of the *Civil Procedure Act*, therefore that the Respondent should bear costs of this Appeal.

Respondent's Submissions.

28. The Respondent submitted on Five issues; whether the record of Appeal as presented is fatally and incurably defective, whether the the trial Court erred in fact and in law in finding that there did not exist a valid contract between the parties that is capable of being enforced by the Court since the alleged contracts/ appointments letters were voidable for want of legality, whether the prayer for conversion of

the claimants' services from casual employment to permanent and pensionable was articulated before the trial Court/ or at all, whether the the trial Court erred in law and fact to find that the Respondent is a statutory body rather than a private company and who should bear costs of both the Appeal and the trial Court.

29. On the first issue, it was submitted that the record of Appeal is defective, for lacking a certified copy of the Judgement and the decree upon which the Appeal lies, contrary to the provisions of section 65(1) (b) of the *Civil Procedure Act* and Order 42 Rule 2 of the Civil Procedure Rules. Therefore, that the Appeal is fatally defective and cannot be salvaged. In support of this, the Respondent relied on the case of Bwana Mohamed Bwana V Silvano Buko Bonaya & 2 others [2015] eklr and the case of Kilonzo David t/a Silver Bullets Bus Company V Kyalo Kiluki & Another [2018] eklr where the Court held that;-

> "Despite the provisions of Article 159 (2) (d) of *the Constitution* of Kenya, 2010 that mandates courts to administer justice without undue regard to procedural technicalities, this court took the firm view that omission to include the decree or order to be appealed from in the Record of Appeal was not a procedural technicality for the reason that the word "shall" in Order 42 Rule 2 of the *Civil Procedure Act* contemplates that the furnishing of the decree or order is mandatory and cannot be wished away... It was very clear that the Appellant's omission to seek leave to file a Supplementary Record of Appeal to attach a copy of the decree he was appealing from rendered his Appeal incompetent. Having said so, whereas in the cases of Ndegwa Kamau t/a Sideview Garage vs Isika Kalumbo [2016] (Supra), Kulwant Singh Roopra vs James Nzili Maswii [2014] (Supra) and Joseph Kamau Ndungu vs Peter Njuguna Kamau [2014] (Supra) Ngaah J struck out the appeals therein because the decrees that were being appealed from had not been annexed in the respective records of Appeal, this court took a different position that it would be too draconian to strike out the Appeal herein. This court's thinking was informed by the fact that it inadvertently admitted the Appeal herein before it had satisfied itself that the decree the Appellant was appealing from had been filed and it would thus be unfair to visit its omission on the Appellant herein for no fault of his own... For the foregoing reasons, the upshot of the court's decision was that although the Appellant's Petition of Appeal that was lodged on 27th July 2017 was incompetent for want of annexing of the certified copy of the decree to his Record of Appeal, he is hereby directed to file and serve a Supplementary Record of Appeal annexing the necessary documentation by 26th June 2018."

30. This position was reiterated by the Court in the case of Paul Karenyi Leshuel V Ephantus Kariithi Mwangi & Another [2015] eklr, where the Court held that;-

> "the Court of Appeal .... In Civil Appeal No. 7 of 1998, Municipal Council Of Kitale – versus- Fedha (1983) eKLR held that failure to include the decree appealed from in the record of appeal rendered the appeal incompetent ..... One may ask why so much importance is attached to this document: the answer appears to me that an appellate court can only uphold or overturn what has been demonstrated to exist ..... much as this requirement is contained in the rules, it is not, in my humble view, a requirement that can merely be dismissed as a procedural technicality that maybe swept under the carpet; the question whether or not there is indeed an appeal which calls for the appellate court to exercise its jurisdiction in that respect goes to the root of the appeal itself for without an appeal, properly so called, any attempt to invoke and exercise that jurisdiction would be in vain."

31. Accordingly, that the omission to include a certified Judgement and decree cannot be cured by Article 159 of *the Constitution*, and therefore the Appeal ought to be dismissed on this ground.

32. On the second issue, it was submitted that from the judgement at paragraph 11, 12 and 13, it is clear that the trial Court perused the documents presented by the Appellants and analysis rendered itself that the contracts were marred with illegalities from its inception because the employment was not preceded by advertisements, appraisal of work done, no budgetary allocation set aside and that the letters of employment were signed by the outgoing managing director on his last day at work, making the contracts suspect. In any event that there was no explanation on how only 26 employees were picked out of the 47 casual employees.

33. It was argued further that illegally procured contract do not have any sanction of the law and reiterated that the illegality of the contracts was established to the required standard by the Respondent's witnesses who testified for instance, RW-1. Respondent's finance manager, confirmed that in all previous meeting held by the board for the financial year 2019/2020, the issue of conversion of casual employees' to permanent basis and budgetary allocation thereof was not raised. This position was corroborated by RW-2, a board member.

34. The Respondent submitted also that appraisals are normally done before its employees are promoted, a fact that RW-3, Human Resource manager, informed the trial Court. Therefore, that the trial Court was correct in confirming that the contracts were illegal and therefore the Respondent was justified in recalling the impugned contracts. To support this position, the Respondent relied on the case of Mustafa Hamesa Dase & 7 Others V County Government of Tana River & Another [2022] eklr where the Court held that;-

> " The various contracts of service having been so processed, it is easily discernible that they were irregular from inception for want of compliance with the law. But the Claimants argue that these contracts were renewed and thus graduated into permanent positions. This may suggest that the Claimants' position is that despite the initial irregularity in their engagement, there was some form of ratification of the initial contracts or acquiescence by the 1st Respondent in relation to their irregularity thereby clothing them with some element of legality.... hat then is the position of the parties in respect of enforcement of rights under such contract whether donated by agreement or by statute such as the *Employment Act*? In my view, a contract that is tainted by illegality yields no rights that are capable of protection. A quote from the Law of Contracts by Cheshire, Fifoot and Furmston, 8th edition at page 334 on the subject quoted in the Kenya Airways v Satwant decision aforesaid states as follows:
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> > "No person can claim any right or remedy whatsoever under an illegal transaction in which it has participated. The court is bound to veto the enforcement of a contract once it knows that it is illegal, whether knowledge comes from the statement of the guilty party or from outside sources".
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> The Court further takes extracts from Halsbury's Laws of England (4th edition), volume 16 (1A) page 29 particularly on contracts of employment and states as follows: -
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> > "A finding of illegality means, however, not only that no common law claim may be maintained on the contract, but also that the employee subject to the contract, loses any statutory employment rights which rely on his having been an employee under a contract of employment, in particular the right to claim unfair dismissal."

In a nutshell, parties cannot enforce rights purportedly accruing from such contract. And it is improper for the court to aid in enforcement of the contract once its attention is drawn to the illegality afflicting it."

35. The Respondent then quoted a plethora of case in explaining its argument above. These case the Court of Appeal in the case of Kenya Airways limited V Satwant Singh Flora[2013] eklr, the case of Jackson Cheruiyot Rono V County Secretary Bomet & Another[2017] eklr, Trans Mara Sugar Co. Ltd& Another V Ben Kangwaya Ayiemba & Another[2020] eklr and the Court of Appeal case of David Sironga Ole Tunai V Francis Arap Muge & 2 Others [2014]eklr where the Court held that;-

> " Ex turpi causa non oritur action. This old and well known legal maxim is founded in good sense, and expresses a clear and well recognized legal principle, which is not confined to indictable offences. No court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations alleged to arise out of a contract or transaction which is illegal, if the illegality is duly brought to the notice of the court, and if the person invoking the aid of the court is himself implicated in the illegality. It matters not whether the defendant has pleaded the illegality or whether he has not. If the evidence adduced by the plaintiff proves the illegality the court ought not to assist him."

36. On the third issue, it was submitted that the trial Court did not address the issue of whether the Appellants were casual employees and the alleged conversion of their employment contracts, because the employment letters issued were found to be illegal from the onset, and thus there was no need for the Court to address the issue. In any event that the issue was not also argued by the Appellants. He added that the Appellants focused in addressing the legality of the employment letters and not on conversion. In this they relied on the case of Kenya Plantation and Agricultural Workers Union V Kenya Cuttings Limited [2013] eklr where the Court held that;-

> " The claim as outlined does not give facts as relating to the period the seasonal contracts were running to enable the court assess for how long these seasonal contracts were running. No ambiguity has been cited with regard to the seasonal contracts. The general statement that the grievants were engaged for the period of 2004, 2006 and 2009 falls short of an outline as to exactly how long the terminated contracts were running and if this period went beyond what had been agreed as under Clause 27 of the CBA and hence allow and court to make a finding an convert these contracts within the powers granted to this court."

37. The Respondent also relied on the case of Angeline Musali Mutua V Vegro(K) Ltd [2020] eklr where the Court held that;-

> " In this case like in the said precedent, the claimant has failed to prove by evidence that he worked for the respondent on casual basis continuously for an aggregate period of more than one month. Consequently, the court cannot convert her casual employment to permanent employment. On the other hand, I agree with the respondent that the claimant did not invite the court to make such conversion in her statement of claim. Although, the court exists to do justice, pleadings are pivotal in civil litigations and the court cannot fish outside the perimeter wall constructed by the parties' pleadings. The foregoing view is fortified by Independent Electoral and Boundaries Commision & another v Stephen Mutinda Mule & 3 others [2014] eKLR, where the Court of Appeal held that;
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> > "as parties are adversaries, it is left to each on to formulate his case in his own way, subject to the basic rules of pleading... for the sake of certainty and finality, each

> party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party that knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves... indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties."
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> The foregoing binding precedent resonates with precedents cited above by the respondent. Consequently, I find that even if the claimant had proved the requisites for conversion of his casual employment to regular contract of service under the Act, the court declines to order the conversion because that prayer was not pleaded."

38. On whether the Respondent is a statutory body, it was submitted that notwithstanding that the Respondent is a private Limited company, it is a statutory body because section 65 of the *Water Act* creates Nine(9) water works development agencies, which include Lake Victoria South Water Works Development Agency(LVSWDA) that operates in Eight (8) Counties such as; Bomet, Homabay, Kisii, Kisumu, Migori, Nyamira and Siaya , where in the Respondent is covered as such the Respondent is a creature of the statute by dint of the fact that it emanates from LVSWDA. Furthermore, that the Respondent provides water and sanitation services to the entire Kericho County and its budget allocation comes from the County Government of Kericho.

39. On costs of this Appeal, the Respondent submitted that the Appellants have dragged them through litigation process, when the issues raised in the trial court had been settled, firstly in their offices and secondly, at the labour office. Therefore, that they deserve costs of the trial Court case and costs of this Appeal.

40. This is the first appeal over this matter and therefore this court is mandated by law to reevaluate the evidence afresh and make a finding on the same.

41. From the evidence of the Claimants, the appellants herein, they had been working for the Respondents for a cumulative period of 5 years on short term contracts, but that on November 2019, they were issued with appointment letters converting their engagement from casual to permanent terms.

42. I have looked at the record of the Lower Court and I note that this matter proceeded for hearing on 24/5/2022 in the presence of both counsels on record.

43. The 1st witness Sammy Chepkwony testified that he worked for the Respondent and that he was issued with an appointment letter by the Respondent on 6/11/2019. He indicated that he was appointed on permanent and pensionable terms. On 9/11/2019, the appointment letter was taken away from him and he was told to sign another contract which denied him his permanent and pensionable term. That is what he now seeks before this court.

44. He told court that he had previously been on contract terms from 2017. He indicated that he was a pump attendant and meter reader and was appraised before conversion to permanent terms.

45. The 2nd witness who worked as a Managing Director of the Respondent from 1/4/2016 to 30/10/2019 when he left to work for Bomet County. He indicated that the conversion of casual employment to permanent and pensionable was sanctioned under his watch. This was on the 2nd week of October 2019. He indicated that a total of 26 employees were converted to Permanent and Pensionable to replace retirees and those sacked and on account of attrition.

46. He indicated that he signed the letters in October but were to be effected in January 2020.

47. He also indicated that the Board never sat and said that there was no budget. He also indicated that 2/3 of 9 board members make a quorum and in this matter there was no quorum and there was no County representatives then. He also indicated that the letters of conversion were recalled.

48. The trial court heard all the Claimant's witnesses. The Defence indicated that the budget was never approved for conversion of the staff. DW 1 also indicated that there was no board paper tabled for conversion and the Managing Director resigned on 16/10/2019 but left on 30/10/2019. He further indicated that the conversion was recalled after the board discussed it later.

49. That the employees were disgruntled with the recall and the matter was escalated to the Labour Officers for conciliation. That it was thereafter agreed that the conversion letters were illegal.

50. DW1 indicated that there was no quorum to deliberate on conversion. The other Defence witnesses all testified that there was no proper conversion done.

51. In his judgment, the Hon Magistrate made a finding that the conversion was not legally done. He indicated that the contracts of employment were to take effect in future and were recalled before the time. That the procedure in the Respondent's manual was also not followed and there was no advertisement, no internal appraisals by the Human Resource, there was no budgetary allocation or monies set aside for this exercise and that the board had not deliberated on it at all.

52. The learned Magistrate found the contract discriminative too as there was no explanation as to how the current appellants were picked and others left.

53. I have considered the evidence and the judgment as rendered by the lower court. It is evident that the learned Magistrate in determining the illegality of the conversion contract, considered the evidence adduced as opposed to the submissions of the appellant's herein.

54. It is also true that the Claimant witness No 2 also agreed with the evidence of the Respondent in part that there was no budget approval for the conversion of these Claimants. He admitted that there was no quorum for a board sitting to sanction the said conversion.

55. The contracts were signed in October 2021 and were to be effective in January 2022. It is however true that the conversion letters were recalled in November 2021, before they crystalized and so there was no proper contract which was revoked illegally.

56. I do agree with the learned trial Magistrate that there was indeed no sanctioning of the conversion by the board of the Respondent since it had no quorum. It is also true that the criteria used to choose the claimants as opposed to other casual workers is not clear and is therefore discriminatory.

57. It is my finding that there is no proper submission before me that would warrant my disturbance of the judgment of the lower court. I find the appeal lacks merit and is dismissed accordingly.

58. There will be no orders of costs.

JUDGMENT DELIVERED VIRTUALLY THIS 13TH DAY OF MARCH, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the Presence of: -

Malel holding brief for Gode for Appellants – Present

Mwita for Respondent – Present

Court Assistant - Fred
