



**Everflora Ltd v Odera & 2 others (Appeal E008 of 2023)  
[2024] KEELRC 1211 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1211 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E008 OF 2023  
DKN MARETE, J  
APRIL 24, 2024**

**BETWEEN**

**EVERFLORA LTD ..... APPLICANT**

**AND**

**GEORGE OMONDI ODERA ..... 1<sup>ST</sup> RESPONDENT**

**DUNCAN SIMIYU WAMBWILE ..... 2<sup>ND</sup> RESPONDENT**

**JAMES OMETE JAMES ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1 This matter was originated by way of a Memorandum of Appeal dated 8th February, 2023. It comes out thus;

1. The learned Magistrate erred in law and in fact in rendering that the Respondents' were unfairly and unlawfully terminated.
2. The learned Magistrate erred in fact that in law in disregarding the Appellant's evidence on the court record showing that the Respondents' were not terminated but their contract which was on a fixed term had expired and not renewed.
3. The learned Magistrate erred in law and in fact in awarding the Respondents' 12 months compensation for unfair termination in spite of the evidence on record that the Respondents' contract were never renewed upon expiry and that they
4. That the learned Magistrate erred in law and in fact in awarding the Respondents' one month salary in lieu of notice in spite of evidence on record that the Respondents had been notified vide a letter dated 24<sup>th</sup> July, 2019 of their end of contract.



5. That the learned Magistrate erred in law and in fact in awarding the Respondent's service pay when it was clear from the record and evidence that the Respondents' salary were deducted and remitted to NSSF and other statutory bodies.
  6. That learned Magistrate erred in law and in fact by failing to consider that the Respondents' terminal dues had been computed and paid to them as final settlement upon expiry of their contract as evident in the Certificate of Payment dated 3/8/2019.
  7. The learned magistrate totally misdirected herself in delivering this Judgement in favour of the Respondents, failing to consider and appreciate the evidence on record, thus reaching a wrong and unfair conclusion that the Appellant unfairly, wrongfully and unlawfully terminated the Respondents.
2. Prayers;
- a. That the appeal herein be allowed.
  - b. That the judgement of the Honourable Court made on the 31<sup>st</sup> day of January, 2023 in Ruiru CMCC ELRC No E17 of 2022 - George Omondi Odera and 2 others v Everflora Limited be set aside in entirety and be substituted by appropriate orders of this Honourable court.
  - c. That this Honourable Court do dismiss the Respondents' case in Ruiru CMCC ELRC No E17 of 2022 - Geroge Omondi Odera and 2 others v Everflora Limited with costs to the Appellant.
  - d. Without prejudice to the foregoing, an order that the terminal dues computed and paid to the Respondents as per certificate of payment of terminal dues dated 3/8/2019 be subtracted from the awarded terminal dues by the trial court.
  - e. Costs of the Appeal be granted to the Appellant against the Respondent.
3. The Appellant faults the learned Magistrates' finding that the Respondents were ever issued with a termination notice and even subjected to the requisite termination process.
4. Further, she picks issue with the assertion that the that the Respondents were paid less service pay and therefore were entitled to it and were also not issued with a certificate of service. In all, she also fault that their termination of employment was pre-determined.
5. It is the Appellant's further case and submission that the Respondents were employed on a fixed term of contracts that were anchored on availability of work. In the instant case, they were issued with a notice of non renewal of the contract. Their contract of service therefore lapsed on effluxion of time.
6. The Appellants in support of their case seek to rely on the authority of *Margaret A. Ochieng v National Water Conservation & Pipeline Corporation* [2014] eKLR where the court held thus;
- “Automatic renewal would undermine the very purpose of the fixed-term contract, and revert to indeterminate contracts of employment..... Courts have upheld the principle that fixed-term contracts carry no expectancy of renewal, in a catena of judicial authorities .....The Court is persuaded that the Claim has no merit. The fixed term contract had its own in-built termination notice, in that the date of termination was advised to the Claimant on execution of the three-year contract in December 2008. She knew termination would be upon the lapse of the three years in 2011...”
7. To this end, a case of termination of employment does not suffice.



8. I also agree with the Appellant that the learned magistrate disregarded evidence attached in response to the claim in arriving at the decision of unfair termination. This is because the Respondents were issued with end of contract letters dated 24th July, 2019 informing them that their contract would be renewed upon their lapse. A lapse of a fixed term contract does not amount to termination and the Appellant was not obligated to give further reason for non renewal. The ground of effluxion of time was adequate in the circumstances.
9. The Respondents in their written submissions dated 2nd January, 2024 reiterate their case in opposition to the appeal. They pose a case procedural and substantive fairness and submit a breach of section 43 and 45 of Employment Act, 2007 stipulating the need for reasons for termination and also questioning the validity of such termination.
10. In all, the Respondents' submission in opposition to the appeal amounts to nought. This is because the Appellant has brought out an overwhelming case of a fixed term contract for the Respondents. This is in documentary evidence and formed the bedrock of the Appellant's case before the learned magistrate. This contract lapsed on its own motion on effluxion of time. The issue of termination or even unlawful termination of employments therefore becomes a non issue and irrelevant. No amount of be labouring would spice life into it.
11. I am therefore inclined to allow the appeal with orders that each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 24TH DAY OF APRIL 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

1. Miss Wairimu holding brief for Wachira instructed by Agricultural Employers Association for the Appellant.
2. Miss Oketchi holding brief for Miss Kogai instructed by Kogai & Company Advocates for the Respondents.

