



**Muhammad v Technical University of Mombasa (Cause E075 of 2023)
[2024] KEELRC 912 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 912 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E075 OF 2023
M MBARŪ, J
APRIL 18, 2024**

BETWEEN

SWALAHIDIN ABUD MUHAMMAD CLAIMANT

AND

TECHNICAL UNIVERSITY OF MOMBASA RESPONDENT

JUDGMENT

1. The claimant was employed by the respondent university from 1st October 2016 as a tutorial fellow. He was issued with contract appointments with several renewals up to his last contract which lapsed on 31st March 2023.
2. The claim is that on 20 December 2023, the claimant had an altercation with one Justin Ombui from the finance department who threatened him that he would show him who was his senior within the institution. After the lapse of his contract on 31st March 2023, the claimant was allocated duties by the respondent under the directions of the chairman of his department. This went on until May 2023 when the claimant noted that his salaries for April and May 2023 were not paid.
3. The claim is that despite sending several emails to the respondent regarding his employment status, there was no response. The claimant had a legitimate expectation that his contract would be renewed in the year 2023. The non-renewal was separation initiated by the respondent. At the time he was earning Ksh.196, 541 per month. At the time, the claimant had not been paid his overtime dues for September to December 2022 and January to April 2023. There was payment for all annual leave save for the period of 2022/2023.
4. The claimant is seeking the following dues;
 1. Notice pay inclusive of house allowance Ksh.196,541;
 2. Overtime September to December 2022 Ksh.120,000;



3. Overtime October 2022 to February 2023 Ksh.300,000;
 4. Overtime January to April 2023 Ksh.30,000; 5. Gratuity Ksh.983,458.26;
 6. Leave pay 2022/2023 Ksh.103,740;
 7. Unpaid salaries for April and May 2023 Ksh.393,082;
 8. Certificate of service;
 9. Costs.
4. The claimant testified that he was employed by the respondent under a written contract dated 1st October 2016 which would be renewed over the years. His last contract lapsed on 31st March 2023 but under his chairman of the department, he continued to be allocated work through the exam timetable to invigilate, administer, mark, process, and upload results in the exam processing portal. This process extended his employment until the end of May 2023 when he noted that his salary for April and May 2023 had not been paid.
 5. The claimant testified that he had a legitimate expectation that his employment contract would be renewed by the respondent upon allocation of duties beyond the lapse of his contract. He had enjoyed repeated renewals over time and this had become the practice. Before his employment was terminated, the claimant was not afforded a hearing and the claims made should be paid.
 6. Upon cross-examination, the claimant testified that he had been employed on a contract basis. The contract had a start and end date of 31st March 2023. There was no renewal. The respondent had no obligation to renew the contract. The claimant did not clear with the respondent at the end of his contract. He wrote to the respondent to be given another contract on 5 June 2023. This was an email to the Vice-Chancellor and the contents are a complaint, a follow-up to non-payment of salary.
 7. The claimant testified that his request for another contract was through the appraisal system. For one to get a new contract, a request should have been to the head of the department and chairperson. The claimant was required to have his PhD proposal and to submit progress reports but these records are not filed to confirm compliance. Beyond 31st March 2023, he had no contract renewed and had no workload or timetable. Previously the respondent had renewed his contract on condition that he should finalise his PhD or be registered with a recognized university. No admission letter is filed to confirm such a matter.
 8. The claimant also testified that he is aware of a letter dated 5 September 2022 for part-time teaching. He got this letter but did not accept the offer for part-time teaching but he did teach as allocated. Once he was allocated work, the department knew he was working.
 9. However, there are no worksheets for teaching part-time. The letter of offer was never accepted or returned to the respondent. The classes taught or the student's lists are not filed. There is no proof of teaching but there is a claim to be paid for part-time teaching. There is no claim submitted for teaching from October 2022 to April 2023.
 10. The claimant also testified that he has not cleared with the respondent since the lapse of his contract. His gratuity has not been paid and a Certificate of Service was not issued.
 11. In response, the respondent admitted that the claimant was employed under a term contract that expired on 31st March 2023. The alleged incident that took place between the claimant and the finance officer was never reported to the respondent and there is no evidence of such matter. The respondent has well-established and structured grievance mechanisms.



12. The response is that despite the claimant's contract expiring on 31st March 2023 it was not extended. There have been several communications with the claimant but not for an extension of his contract. There was no dismissal from employment as alleged but a contract expired through effluxion of time. He was paid his gross salary until the end of the contract.
13. No annual leave pay was due as alleged.
14. The claim for gratuity pay is premature. The claimant understands the procedures required before staff benefits are paid upon expiry of the contract. There was no disciplinary case and the claimant was only maintained until the end of his term contract. He was on a defined contract with a start and end date and the claims made are without merit and should be dismissed with costs.
15. In evidence, the respondent called David Mwakidimi the head of the human resources department who testified that the claimant was employed as a tutorial fellow in mechanical and automotive engineering at Mombasa campus. His employment was on a term contract from 1st April 2021 to 31st March 2023. The claimant was expected to clear with the respondent at the end of his contract to be facilitated in payment of his dues as per the contract terms.
16. Mr. Mwakidimi testified that he has on several occasions advised the claimant to initiate the clearance process to assist the respondent in processing his dues but the claimant refused to comply. The claims raised by the claimant are premature and self-inflicted and he is not willing to follow the correct procedures to get this terminal dues.
17. At the end of the hearing, both parties filed written submissions.
18. The claimant submitted that it is not denied that he was an employee of the respondent earning Ksh.196, 541 per month as his gross salary. His employment was terminated unfairly by the respondent. The records demonstrate that the respondent had created a legitimate expectation of renewal of his contract when it stated that his contract would not be renewed without proof of finalization of his PhD studies or presentation of acceptable PhD work milestones approved by his supervisor. Through an email of 5 June 2023, the claimant confirmed that he had submitted his PhD progress report but there was no response.
19. The claimant submitted that in *Teresa Carlo Omondi v Transparency International – Kenya* [2017] eKLR the court held that the employee had a legitimate expectation that the contract would be renewed at the end. Separation of employment was forced and hence the claimant is entitled to compensation. In the case of *Keen Keeners Limited v Kenya Plantation and Agricultural Workers Union* [2021] eKLR the court held that the employees had a genuine and legitimate expectation that their employment contracts would be renewed.
20. In this case, the claimant is entitled to 12 months compensation and notice pay of one pone. He worked overtime but was not paid. This is not denied and should be awarded as held in *Meshack Kiio Ikulume v Prime Fuels Kenya Limited* [2013] eKLR.
21. The claim for gratuity is not denied. Leave pay is a right and should be awarded. For work done in April and May 2023, the pay is due. The issue raised by the respondent that there is no clearance was not officially communicated to the claimant and is only applied to deny him his employment dues hence the claims should be awarded with costs.
22. The respondent submitted that the claimant was employed under a fixed-term contract from 1st April 2021 to 31st March 2023 which is admitted in the Memorandum of Claim. He was not allocated any duties after the end of the contract as he failed to submit the offer of part- time work. In the case of



Rajab Barasa & 4 others v Kenya Meat Commission [2021] eKLR the court in this case held that the general principle is that fixed-term contracts carry no rights, obligations, or expectations beyond the date of expiry. In the case of Amatsi Water Services Company Limited v Francis Shire Chachi [2018] eKLR the Court of Appeal held that;

... a fixed term contract will terminate on the sun set date unless it is extended in terms stated in the contract. A court cannot rewrite the terms of a contract freely entered into between the parties. Once there is a written contract, the court will seek to give meaning to such contract giving ordinary meaning to its terms in determining any issue that may arise.

..., there is no obligation on the part of an employer to give reasons to an employee why a fixed-term contract of employment should not be renewed. To require an employer to give reasons why the contract should not be renewed, is the same thing as demanding from an employer to give reasons why, a potential employee should not be employed. The only reason that should be given is that the term has come to an end and no more. ... Reasons, beyond effluxion of time, are not necessary in the termination of fixed-term contracts unless there is a clause in the contract, calling for additional justification for the termination.

23. In the case of Cleopatra Kama Mugenyi v Aidsplan [2019] eKLR the court addressed the legality of a fixed-term contract and held it was legitimate and that;

... it is imperative to note that the Claimants were on fixed term contract, which came to term. As opined by my learned colleague in Fatuma Abdi vs Kenya School of Monetary Studies (2017) eKLR above and in Rajab Barasa & 4 others vs Kenya Meat Commission (2016) eKLR, a fixed term contract cannot be renewed automatically. There must have been an indication by act or omission from the employer to indicate renewal was forthcoming to wet the Claimant's appetite that their contracts would be renewed and hence submit legitimate expectation.

24. Without any legitimate claim for employment beyond the written contract, the claimant has no case of unfair termination of his employment. His burden of proof under Section 47(5) of the Act was not discharged. This then left the respondent with no reason to justify termination of employment as a fixed term contract starts and ends on its terms as held in Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki [2017] Eklr that;

25. Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the respondent's contract ought not to have been maintained. This is in relation to the salary for the months of April up to 5th May, 2010. Similarly, since the respondent's contract came to an end by effluxion of time any claim for wrongful termination could not be maintained.

26. In the case of Francis Odero Okello v Kenya Power and Lighting Company [2019] eKLR the court held that;

With regard to the claim for one month salary in lieu of notice, the fixed term contract dated 29th February 2012 had under paragraph (d) indicated that the last working day for the claimant was 30th April 2012. There was no need to further give any more notice to the claimant or pay in lieu of notice.

27. On this basis, the claim is without merit and should be dismissed with costs. Determination



28. The issues that emerge for determination are whether there was a legitimate expectation created by the respondent that there would be a renewal of the contract; whether the remedies sought should be issued; and who should pay costs.
29. The concept of legitimate expectation with regard to the renewal of a contract of employment is extensively addressed by the Court of Appeal in the case of Kenya Revenue Authority & 2 others vs Darasa Investments Limited [2018] eKLR, the Court held that legitimate expectation refers to the principle of good administration or administrative fairness. If a public authority leads a person or body to expect that the public authority will, in the future, continue to act in a way it has regularly acted in the past, then, the public authority should not without an overriding reason in the public interest, renege from that representation and unilaterally cancel the expectation of the person.
30. However, even though a public body can create legitimate expectations, there has to be an express, clear, and unambiguous promise given. The expectation itself has to be reasonable as held in the case of Nairobi Civil Appeal No. 58 of 2015: Kenya Revenue Authority & Commissioner of Domestic Taxes v Republic (Ex parte) Kenya Nut Company Limited.
31. The Supreme Court in the case of Kenya Revenue Authority v Export Trading Company Limited, Petition 20 of 2020 held that;

A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by authority, including an implied representation, or from consistent past practice.

...

legitimate expectations may take many forms. It may take the form of an expectation to succeed in a request placed before the decision maker or it may take the objective form that a party may legitimately expect that, before a decision that may be prejudicial is taken, one shall be afforded a hearing.

31. In Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others, SC Petitions No. 14, 14A, 14B and 14C of 2014; [2014]eKLR the court outlined the principles governing this concept of legitimate expectation as to include the following;

... the emerging principles on the legitimate expectation to be that;

- a. there must be an express, clear, and unambiguous promise given by a public authority;
- b. the expectation itself must be reasonable;
- c. the representation must be one which it was competent and lawful for the decision-maker to make; and
- (d) there cannot be a legitimate expectation against clear provisions of the law or *the Constitution*.

Are these principles present in the claimant's case?

32. Clarity is built by the Court of Appeal that, in employment and labour relations, in Civil Appeal No. 18 of 2018 Transparency International Kenya v Teresa Carlo Omondi [2023] eKLR a fixed-term employment contract does not create a legitimate expectation of renewal. Further, the non-renewal of



a fixed-term employment contract does not amount to unfair termination of employment warranting compensation. No notice is required as the term contract has a start and end date.

33. In this case, the claimant had the condition that the contract would be renewed upon presentation of proof of finalization of the PhD studies or presentation of acceptable PhD work milestones approved by the supervisor not addressed by the claimant until his letter dated 5 June 2023. This is after the end of his contract on 31st March 2023. He has not filed any proof of finalization of his PhD. studies or presented any acceptable work milestones approved by his supervisor. In any event, this being post his contract, the respondent had the discretion not to renew his contract.
34. As a diligent employee who appreciated that the renewal of the contract ending 31st March 2023 was conditional and attached to his PhD, the claimant should and ought to have addressed such matter beforehand. To wait until the contract term lapsed and then two months later on 5 June 2023 move to seek renewal, the claimant failed to address a key issue. The letter dated 1st April 2021 was specific;

Take notice that the University shall not consider a renewal of your contract without the finalization of your PhD Studies or presentation of acceptable PhD work milestones approved by your supervisor.
35. This condition is unambiguous and unequivocally stated. Renewal of the contract was not automatic. The respondent did not create any legitimate expectation that his contract would be automatically renewed at the end.
36. There is no proof of the claimant abiding by the conditions granted to claim a legitimate expectation.
37. Employment terminated with lapse of contract on 31st March 2023. Compensation or notice pay are remedies not available to the claimant.
38. On the claim for overtime worked, the claimant in his testimony admitted that he did not sign the letter issued for part-time teaching. He received the letter but failed to return the offer in acceptance.
39. Further, the claimant admitted that for any part-time teaching duties, there is a given procedure to take worksheets and students' schedules and these should be submitted to the respondent as proof of teaching. He did not do as required.
40. Was there part-time teaching? There is no evidence to support such a claim. Fundamentally, without accepting the letter of offer to teach part-time, the claimant cannot justify a claim out of such a letter.
41. On the claim for gratuity, this is admitted by the respondent, save the condition is for the claimant to clear and his dues shall be processed accordingly. The response that this claim is premature is admitted by the claimant when he testified that he had not attended at the shop floor to go through clearance procedures. At the end of such clearance, a Certificate of Service under Section 51 of the [Employment Act](#), 2007 should be issued.
42. On the claim for leave pay for 2022/2023, leave is a right under Section 28 of the Act. The respondent has not addressed how leave was to be addressed under the term contract.
43. There is no record filed that the claimant was allowed to enjoy this right and the attendant benefits. However, when annual leave is not taken, the payment in lieu thereof is based on the basic pay. A claim of Ksh.103, 740 is hereby justified.
44. On the claim for payment of salaries for April and May 2023, without any employment relationship being established beyond 31st March 2023, there are no worksheets of any proof of teaching, these claims are not justified.



45. On the issue of costs, the only claims that are justified relate to leave pay. For gratuity, the claimant shall attend for clearance and the same shall be processed accordingly. In this regard, each party bears its costs.

46. Accordingly, the claimant is awarded Ksh.103,740 in leave pay only. Each party is to bear its costs. The claimant shall clear and his due gratuity shall be processed.

DELIVERED IN OPEN COURT AT MOMBASA THIS 18 DAY OF APRIL 2024.

M. MBARŪ JUDGE

In the presence of:

Court Assistant: Japhet

..... and

The Judiciary of Kenya

