



**Musa v Kenya Pipeline Company Limited (Cause E833 of 2022)  
[2024] KEELRC 1302 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1302 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E833 OF 2022**

**B ONGAYA, J  
MAY 29, 2024**

**BETWEEN**

**JACKSON MWONGELA MUSA ..... CLAIMANT**

**AND**

**KENYA PIPELINE COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit is in a series of 32 cases filed against the respondent for unfair and unlawful termination. on 28.03.2023 the Court ordered that the instant suit to proceed as the test suit for the rest of 31 cases before the Honourable Court.
2. The claimant's suit is based on the further amended statement of claim dated 11.05.2023 filed through C & K Advocates LL.P. The claimant prayed for judgment against the respondent for:
  - a. A declaration that by operation of the law the claimant was employed on permanent terms.
  - b. An order unconditionally reinstating the claimant to his position of employment with the respondent with back payment of all his benefits and allowances from the date of the unlawful termination.
  - c. In alternative to prayer (b) and without prejudice to the foregoing, the respondent be ordered to fully compensate the claimant for illegal, unfair, unlawful and wrongful termination of the employment services of the claimant with all attendant benefits at the rate of Kshs 9, 991, 977.14 pleaded under paragraph 32 in the further amended statement of claim.
  - d. Compensation at 12-months' gross salaries Kshs 109, 076.00 x 12 = Kshs 1, 308, 912.00 for unlawful termination and per under section 49(c) of the *Employment Act*, 2007.
  - e. Damages for breach of constitutional rights.



- f. Certificate of service.
  - g. Costs and interest of the suit.
  - h. Any other award as the Honourable Court deems fit to grant in the circumstances of the case.
3. At paragraph 32 the claimant particularized the claim as follows:
- a. 30-days' pay in lieu of notice Kshs 109, 076.00.
  - b. Holidays 2 times daily rate of payment x total holidays worked being  $86 \times 109, 076/26 \times 2 =$  Kshs 721, 579.69.
  - c. Gratuity 31% basic salary for the duration of employment for months worked Kshs 20, 353 x 60 = Kshs 1, 933, 569.20,
  - d. Hardship allowance Kshs 8,000.00 per month x total months worked in hardship areas = 35 months x 8,000 = Kshs 200,000.00.
  - e. Severance payment 15 days each completed year served =  $109, 076/26 \times 15 \text{ days} \times 3 \text{ years} =$  Kshs 188, 785.38.
  - f. Overtime dues for normal workdays 1.5 x hourly rate x total of overtime hours worked = Kshs 281, 881.48.
  - g. Overtime on rest days 2 times hourly rate x total hours worked 489 hours and 29 minutes = Kshs 382, 587.36.
  - h. Refund for puncture repair costs Kshs 1,200.00.
  - i. Unpaid meals allowance Kshs 5, 950.00.
  - j. Unpaid disturbance allowance 11% annual basic salary x number of transfers = Kshs 787, 872 x 11% x 15 = Kshs 1, 299, 988.80.
  - k. Unpaid transfer allowance at 4 months' basic salary for each transfer thus Kshs 65, 656 x 4 x 15 = Kshs 3, 939, 360.00.
  - l. Leave at 1,75 days per month  $109, 076/26 \times 1.75 \text{ days} \times 60 \text{ months} =$  Kshs 440, 499.23.
  - m. Unpaid commuter allowance at Kshs 12, 500.00 per month =  $12, 500 \times 39 =$  487, 500.
  - n. Total dues claimed Kshs 9, 991, 977.14.
4. The claimant pleaded and alleged as follows:
- a. The claimant was initially employed in respondent's Administration Department as a relief driver. It was in October 2015 and then retained on short term contracts at various stations of deployment as stated. The claimant worked as a driver and as assigned. He had a clean record of service.
  - b. He alleges that he was unfairly and unprocedurally terminated from service by the respondent on 30.06.2022 without notice, no lawful reason, and in violation of the *Employment Act, 2007*. At termination he earned Kshs 109, 976.00 being basic salary Kshs 65, 656.00, house allowance Kshs 30, 920.00 and commuter allowance Kshs 12, 500.00 per month. The respondent's human resource policies and procedures manual provided for 30-days' termination notice but which was not issued.



- c. The official working hours were 8.00 am to 5.00 pm but was required to work overtime from time to time and not paid for the work during overtime per the manual. He was denied leave throughout service and per section 28 of the Act. The short term contracts the respondent placed him over a long period of time was malicious, unfair, and unlawful amounting to discrimination and to deny him full benefits of permanent employment. By operation of law he earned permanent employment status and the claims made be granted.
  - d. He was transferred from station to station without prior notice and due transfer allowance and disturbance allowance per the CBA between the respondent and the Kenya Petroleum Oil Workers Union. He was posted to Makindu and not paid hardship allowance per the respondent's manual.
  - e. He offered service to the respondent on short term contracts cumulatively for about 7 years he be deemed an employee on permanent terms of service per Employment Act and the respondent's manual.
  - f. The termination was unprocedural, arbitrary, malicious, and unlawful for want of valid reason per section 45 of the Act; notice; warning, due procedure and fair reason per section 45 of the Act; no leave allowed or paid for; transfers every 3-months to new stations; subjecting him to short term contracts for over a long period of time; no payment for overtime or public holidays; no fair hearing prior to termination; and, failure to remit statutory deductions.
  - g. It was alleged that the respondent violated Article 27 on freedom from discrimination; Article 28 on the right to human dignity; Article 41 on fair labour practices; Article 47 on fair administrative action ; impeding access to justice contrary to Article 48; and, denial of a fair hearing per Article 50 (1) of the Constitution of Kenya, 2010.
5. The respondent filed the memorandum of response dated 08.06.2023 through the Federation of Kenya Employers (FKE) and Mr. Okeche appeared in that behalf.
  6. The respondent pleaded as follows:
    - a. The claimant's terms of service were guided by his employment contract, the respondent's human resource policy and procedures manual; and the collective agreement (CBA) between the respondent and the Kenya Petroleum Oil Workers Union.
    - b. Section 2.3 of the manual provides for permanent, contract, temporary, and, casual employment.
    - c. The claimant was employed on temporary terms of service each for a period of not more than three months. The temporary employment was to fill human resource gaps at the time he was engaged. The claimant was one of the temporary drivers hired to relief respondent's drivers who were on annual leave; sick leave; or undertaking short time roles assigned outside their duty stations. The relief drivers were required for short periods in those specific circumstances. The fixed term contracts were signed the last of which was dated 31.05.2022. It lapsed on 30.06.2022. The claimant accepted the terms of the appointment and acknowledged that the contract would end on 30.06.2022.
    - d. The parties separated on account of expiry of the 3-months' temporary and fixed term contract per clause 13.2 and 13. 2.1 (d) of the manual. No notice to terminate was required or prescribed.



- e. The claimant knew about the temporary employment. He knew the date of expiry of the employment. The claim for conversion to permanent and pensionable terms is unjustified.
  - f. The claimant was not engaged continuously but on need basis for broken periods per paragraph 12 of the statement of response.
7. On the prayers the respondent stated as follows:
- a. The contract lapsed upon end of agreed fixed term of three or one month(s) and the claimant being aware of the fact of lapsing as at signing of contract on 31.05.2023, the prayer for notice pay is unjustified.
  - b. The claimant has not pleaded particulars of the holidays worked and then provided evidence to show he worked and was not paid. The claim must fail.
  - c. Per clause 2.7.5 and 2.7.6 of the manual there is no entitlement to gratuity or other benefits except those in the CBA and expressly provided for in the contract.
  - d. The claim for hardship allowance must fail because it was paid at end month if applicable and is made after lapsing of three years of limitation under section 90 of *Employment Act*, 2007. Similarly, overtime claims lack particulars, evidence and were time barred under section 90 of the Act.
  - e. The claim of Kshs 1, 200 puncture repair expenses lacks particulars and has not been strictly proved.
  - f. Unpaid meal allowance not particularized and needed strict prove.
  - g. The claimant was never transferred but was employed on term contract at stations of need.
  - h. The pay slips show commuter allowance was paid.
  - i. There was no permanent office for the claimant and reinstatement would be to no established office.
  - j. The compensation for unfair termination cannot issue because the contract lapsed with effluxion of contractual short term of three months. No unfair termination established. Similarly alleged violation of constitutional rights as alleged not established at all.
8. The claimant testified to support his case. His counsel urged prior to the hearing that the claimants in the 32 cases served on term contracts of 1-month to 3 months. It was stated in opening remarks by counsel that the respondent employed other drivers on permanent and pensionable terms or one-year contracts with advantageous terms of service. It was urged that the 32 claimants were disadvantaged and the respondent subjected them to unfair labour practices. Further, the short term contracts were issued over a long period of time.
9. The claimant testified he was employed in 2019 on a one-year contract and thereafter continued signing short-term contracts. He confirmed they were paid salary, commuter allowance and safari allowances but no leave. They were members of NHIF. He confirmed he was paid overtime. He confirmed he was employed as a reliever but he did not know the person he was relieving. He testified that throughout service he did not raise the grievance that temporary employment was unfair. He also knew that the CBA provided for both temporary and permanent and pensionable contracts of service. He confirmed that since 2023 the respondent did not employ permanent and pensionable drivers. Further, for every term contract he worked in different stations.



10. The respondent's witness (RW) was Emily W. Thathi. She confirmed that claimants in the 32 cases were employed as reliever drivers. In 2020 to 2021 the COVID 19 situation set in . Most permanent drivers were over 58 years and were to keep away from work per COVID 19 situation. In the circumstances, for that period the claimants were re-engaged over the prolonged period. There were no transfers between the contracts. That there was no discrimination and NHIF was provided with emergencies handled at respondent's clinic. No grievances were reported by claimants alleging discrimination. From 2020 overtime stopped and any claim lodged needed to be approved There were no threats for the claimants not to lodge claims for overtime.
11. Final submissions were filed for the parties. The Court has considered all material on record and returns as follows:
- a. The mutual evidence is that the claimants in the series of 32 cases were employed as reliever drivers and short-term contracts of 1-3 months. The alleged violation of rights and unfair termination will collapse and respondent's submissions upheld in that regard. The Court finds that the contracts lapsed by effluxion of time ending the short term contracts.
  - b. The claimants have failed to establish the basis of converting their temporary service to permanent and pensionable. It is that the respondent instituted various categories for hiring employees and the claimant's were hired on short temporary contracts to suit the respondent's needs. The respondent did not act unconstitutionally or unlawfully to institute the various categories and designs of employing staff and suitable to its enterprise.
  - c. The reliefs sought have no contractual basis and have not been proved by relevant evidence. The respondent's case in that regard is upheld.
  - d. The Court has considered the nature of the parties' ended relationship and all circumstances and each party to bear own costs of the suits.
- In conclusion, the suit is determined with orders:
- a. The suit is dismissed with orders each party to bear own costs.
  - b. The same decree be issued for all the other 31 suits in the series as dismissed, with each party bearing own costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 29TH MAY 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

