



**Gichia v Policy Holders Compensation Fund (Statutory Manager, United Insurance Company) (Cause E064 of 2022) [2024] KEELRC 1661 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1661 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E064 OF 2022**

**SC RUTTO, J  
JUNE 28, 2024**

**BETWEEN**

**VIOLET GICHIA ..... CLAIMANT**

**AND**

**POLICY HOLDERS COMPENSATION FUND (STATUTORY MANAGER,  
UNITED INSURANCE COMPANY) ..... RESPONDENT**

**JUDGMENT**

1. The suit herein was commenced by way of a Memorandum of Claim dated 29<sup>th</sup> January 2022, in which the Claimant avers that she was employed by United Insurance Company Limited on 9<sup>th</sup> March 2020 as a Manager for Life. The Claimant further states that she served her employer diligently for sixteen years before she was unlawfully, unfairly and summarily dismissed by being told “to go home and not come back” along with her coworkers. It is the Claimant’s contention that the termination was instituted by the Respondent whereas her contract of employment was with United Insurance Company Limited. It is on account of the foregoing that the Claimant is claiming against the Respondent a sum of Kshs 3,080,000.00 being unpaid salary, notice pay, service pay, compensatory damages for unfair termination and general damages.
2. Opposing the Claim, the Respondent avers that the Claimant entered into a fixed-term contract which was renewed from time to time with the then Statutory Manager of United Insurance Company (under Statutory Management) with each contract independent of each other. The Respondent has further denied the Claimant’s averments that she was employed by United Insurance Company and contends that the contract entered into was between the Claimant and the Statutory Manager on 15<sup>th</sup> July 2005. That the Claimant’s last contract was for a period of one year with effect from 9<sup>th</sup> March 2020 to 8<sup>th</sup> March 2021. The Respondent further avers that at all material times herein, the Statutory Manager of United Insurance Company Limited was and still is the Policy Holders Compensation Fund.



3. The Respondent further avers that the contract being a fixed term contract, was terminated by effluxion of time. Consequently, the Respondent has asked the Court to dismiss the claim with costs.
4. During the trial which took place on 27<sup>th</sup> February 2024, both parties called oral evidence in support of their respective cases.

### **Claimant's Case**

5. The Claimant testified in support of her case and at the outset, sought to adopt her witness statement together with the list and bundle of documents filed alongside the Memorandum of Claim to constitute her evidence in chief.
6. It was the Claimant's evidence that United Insurance Company which is under the statutory management of the Respondent, was her employer. That she was on a contract which was renewable subject to ongoing court proceedings.
7. The Claimant further stated that her last contract was renewed in March 2020.
8. She further stated that after 9<sup>th</sup> March 2021, she was expecting a renewal of the contract of employment.
9. She further averred that she was never afforded an opportunity to be heard prior to the termination of her employment contract.
10. That further, she was not given prior notice pursuant to clause 9 of her employment contract.
11. According to the Claimant, she protested against the termination by a letter dated 5<sup>th</sup> March 2021 and requested her employer to reconsider the termination. Tragically, her employer did not even bother to respond.

### **Respondent's Case**

12. The Respondent called oral evidence through Mr. Christopher Onyango, who testified as RW1. Mr. Onyango averred that he was retained by the Respondent as the Operations Manager.
13. Similarly, RW1 sought to adopt his witness statement and the list and bundle of documents filed on behalf of the Respondent to constitute his evidence in chief.
14. RW1 stated that commencing 15<sup>th</sup> July 2005, the Kenya Reinsurance Corporation Limited was the Company's Statutory Manager.
15. That upon expiry of the term of the Kenya Reinsurance Corporation Limited on 30<sup>th</sup> September 2014, the Commissioner of Insurance appointed Mr. Evanson Munene Waruhiu as the Statutory Manager of the company effective 1<sup>st</sup> October 2014.
16. Upon expiry of the term of Mr. Evanson Munene Waruhiu on 25<sup>th</sup> June 2015, the Commissioner of Insurance appointed the Policyholders Compensation Fund, the Respondent herein as the company's Statutory Manager effective 26<sup>th</sup> June 2015.
17. That the current appointed Statutory Manager of the Company is the Policyholder's Compensation Fund, the Respondent herein.
18. RW1 further stated that the term of the Statutory Manager has been extended from time to time by the Court in Nairobi High Court Miscellaneous Case No. 67 of 2012 which extension subsists to date as well as the declaration of Moratorium by the Statutory Manager.



19. That the terms of reference for the said Statutory Manager include tracing, preserving and securing all the assets and properties of the Company as well as the general management of the Company under statutory management.
20. It was his evidence that the Statutory Manager's duties include managing employees, whether employed before or after the Company was placed under statutory management.
21. That the Claimant was working for the Respondent as a Manager and her last contract with the Respondent was for a fixed term of one year, effective 9<sup>th</sup> March 2020 to 8<sup>th</sup> March 2021.
22. Since the Company was placed under statutory management on 15<sup>th</sup> July 2005, the Statutory Manager was thus the one managing the Company for the relevant period between the years 2005 to 2021.
23. The Claimant's letter of appointment dated 6<sup>th</sup> March 2020 was executed by the Respondent in its capacity as the Statutory Manager of the Company. The Claimant having executed the Letter of Appointment aforesaid was bound by the same and cannot question the capacity of the Statutory Manager to make decisions touching on her employment.
24. That further, the Claimant cannot legitimately claim as she has done that her employment with the Company is allegedly still in existence since it was not the Company but the Respondent who wrote the letter dated 26<sup>th</sup> February 2021.
25. RW1 maintained that the Statutory Manager had every legal and contractual right to engage the Claimant and transact over the affairs of the company.
26. RW1 denied that the Respondent terminated the services of the Claimant vide the letter dated 26<sup>th</sup> February 2021. According to him, the letter simply notified the Claimant that her contract was not going to be renewed by the Respondent once its term expired on 8<sup>th</sup> March 2021.
27. RW1 further stated that the Claimant was aware that upon executing the letter of appointment dated 6<sup>th</sup> March 2020, she had become an employee of the Company for one year effective 9<sup>th</sup> March 2020 to 8<sup>th</sup> March 2021.
28. It was RW1's further evidence that the employment contract between the Claimant and the company would terminate by effluxion of time on 8<sup>th</sup> March 2021 whether or not the Respondent notified the Claimant of the expiry of the same.
29. That the letter of the Respondent dated 26<sup>th</sup> February 2021 cannot therefore be construed or interpreted as a termination letter.
30. RW1 contended that the Claimant's averment that she was unfairly terminated from employment by the Respondent vide the letter dated 26<sup>th</sup> February 2021 is therefore not factual. In RW1's view, the Claimant's claim for 12 months' compensation arising from alleged unfair termination cannot therefore be sustained.

### **Submissions**

31. In her submissions, the Claimant stated that her employer was United Insurance Company Ltd and the Respondent was a Statutory Manager. That the only and rightful person who would have caused the termination of his employment is the Company and not the Policy Holder's Compensation Fund which was merely a Statutory Manager.
32. The Claimant further submitted that his contract of service was unlawfully terminated by the Policy Holders Compensation Fund which was not a party to the contract of service.



33. In the Claimant's view, Section 67(C) of the *Insurance Act*, CAP 487 provides for the responsibilities of a Statutory Manager and doesn't include termination of employment contracts entered between the Company and its employees.
34. Referencing the case of Savings & Loan (K) Limited vs Kanyenje Karangaita Gakombe & another (2015) eKLR, the Claimant submitted that the mere fact that she was required to report to the Respondent doesn't make it her employer and a party to the contract of service between her and the company. She maintained that based on the doctrine of privity of contract, the rights and obligations under that contract would only be conferred upon the parties therein.
35. In further submission, the Claimant stated that the mere fact that the Respondent alleged that the Company was undergoing financial challenges doesn't hold since the same was not cited as the reason for termination. That even if she was aware that the Company was undergoing statutory management, it was not cited as the cause for her termination.
36. It was the Claimant's further submission that the termination of his contract without reasons, giving less than 30 days' notice and failing to pay one month's salary in lieu thereof amount to unfair summary dismissal.
37. It was her position that she was entitled to be given reasons for termination and decisions not to extend the contract as usual as required and failure to do so amounts to unfair termination. To this end, the Claimant cited the case of Alex Wainaina Mbugua vs Kenya Airways Limited (2017) eKLR and Joseph Mwaniki Nganga vs United Millers Limited (2022) eKLR.
38. The Claimant further posited that her termination was for all intents and purposes for redundancy reasons and the same was unlawful and unfair for being contrary to Section 40 of the *Employment Act*.
39. The Claimant further submitted that she was a long-serving employee of the Respondent having worked continuously as Manager for sixteen years hence she had legitimate expectation that her contracts would be renewed.
40. Placing reliance on the case of Teresa Carlo Omondi vs Transparency International Kenya (2017) eKLR and Keen Kleeners Limited vs Kenya Plantation and Agricultural Workers Union (2021) KECA 352 (KLR), the Claimant submitted that she had a reasonable expectation that her contract would be extended or renewed owing to regular, continuous, repeated, extension of contracts for sixteen years by the Respondent.
41. According to the Claimant, the Respondent's failure to renew her contract amounted to unfair termination for being in breach of her legitimate expectation.
42. On the Respondent's part, it was submitted that the claim of unfair termination has no place in this case since the facts cannot allow it to exist. In the same vein, the Respondent posited that the facts unequivocally demonstrate that the contract dated 6<sup>th</sup> March 2020, lapsed by effluxion of time. The Respondent buttressed its submissions with the case of Enid Nkirote Mukire vs Kenya Yearbook Editorial Board (2022) eKLR and Registered Trustees of the Presbyterian Church of East Africa & another vs Ruth Gathoni Ngotho Kariuki (2017) eKLR.
43. The Respondent further submitted that the issue of legitimate expectation cannot be anchored on speculation.
44. It was the Respondent's position that the alleged legitimate expectation of the Claimant runs contrary to its terms of reference under statute which inter alia includes preserving, administering the assets



and liabilities of the fund in such manner and for such purposes as best promote the interest of policy holders.

45. The Respondent further submitted that its statutory role which is exercised in the public interest cannot be fettered by allegations of legitimate expectation which if recognized, would prevent it from fulfilling its functions and objects under statute. On this issue, the Respondent placed reliance on the case of *Richard Erskine Leakey & 2 others vs Samson Kipkoech* (2019) eKLR and *Communications Commissions of Kenya & 5 others vs Royal Media Services Limited & 5 others* (2014) eKLR.
46. It was further submitted that the Claimant's employment with the Respondent was simply one of speculation and a lot of doubt as opposed to one filled with hope and expectation. That despite the fact that the Claimant worked for the Respondent for sixteen years, her relationship was always subject to factors beyond the control of both contracting parties. The Respondent maintained that no day would be guaranteed to start and end the same due to legal battles which has the capability to end her contract without notice.

### **Analysis and Determination**

47. Arising from the pleadings, the evidence on record as well as the opposing submissions, the following issues stand out for determination:
  - a. Whether the Respondent had a role to play in the management of the Claimant's contract of employment;
  - b. Whether the non-renewal of the Claimant's contract amounted to unfair termination;
  - c. Whether the Claimant is entitled to the remedies sought.

### **Whether the Respondent had a role to play in the management of the Claimant's contract of employment**

48. The Claimant has contended that she was an employee of the United Insurance Company (Company) and not the Respondent herein. That the Respondent was only the Statutory Manager of the Company. According to the Claimant, the only rightful person who could have caused the termination of his employment contract is the Company.
49. In its Response to the Memorandum of Claim, the Respondent averred that part of the duties of the Statutory Manager included managing employees whether employed before or after the Company was placed under statutory management.
50. From the record, the Company was placed under statutory management with effect from 15<sup>th</sup> July 2005. It is common ground that with effect from 25<sup>th</sup> June 2015, the current Statutory Manager of the Company is the Respondent herein.
51. It is not in doubt that the appointment of the Respondent as the Statutory Manager of the Company had the effect of rendering its Board of Directors *functus officio*. In this regard, the Statutory Manager had the powers ordinarily vested in the Board of Directors. This power includes entering into contracts of employment with employees and extension of such contracts.
52. Indeed, it is notable that the Claimant's contract of employment dated 8<sup>th</sup> August 2005 was issued by the then Statutory Manager. From the Claimant's narration of events, she proceeded to serve for another sixteen years as her contract of employment was renewed sixteen times. As it is, all these contracts were renewed by the Statutory Manager.



53. As a matter of fact, the Claimant's last contract of employment dated 6<sup>th</sup> March 2020 was issued by the Statutory Manager. She accepted the terms of the said contract and then proceeded to serve for the entire duration of the said contract.
54. Therefore, one wonders why the Claimant would turn around and contend that the Statutory Manager was not a party to her employment contract and had no right to terminate the said contract yet she executed the very same contract with the Statutory Manager.
55. Further to the foregoing, the Claimant has sued the Respondent as opposed to the Company and to that end, has sought against the Respondent, reliefs that ordinarily accrue following termination of an employment contract. This being the case and in view of the Claimant's averments that the Respondent is a stranger to her contract of employment, where does that leave her Claim? As a matter of fact, her denial of the employment relationship with the Respondent is akin to admitting that she has no claim against the Respondent.
56. The total sum of my consideration is that having been appointed as the Statutory Manager of the Company, the Respondent had a role to play in the management of the Claimant's contract of employment. This included the decision to renew or not to renew her contract of employment.

#### **Whether non-renewal of the Claimant's contract amounted to unfair termination**

57. It is common ground that at the time of the separation, the Claimant was serving on a fixed-term contract of one year with effect from 6<sup>th</sup> March 2020.
58. The record bears that vide a letter dated 26<sup>th</sup> February 2021, the Claimant was notified by the Managing Trustee that the Compensation Fund Board of Trustees had resolved not to renew her contract of employment. In this regard, she was informed that her contract of employment was to terminate on 9<sup>th</sup> March 2021.
59. As stated herein, the Claimant was engaged on a fixed-term contract. This being the case, the contract of employment had a start date and an end date.
60. As has been held in numerous decisions by the Court of Appeal and this Court, fixed-term contracts ordinarily carry no obligation or expectation of renewal. Case in point is *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki* [2017] eKLR in which the learned Judges of the Court of Appeal expressed themselves on the issue as follows: -  

“[29]. Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.”
61. In the instant case, the Claimant's last contract of employment was very explicit that its duration was for one year. Thereafter, the same could either be renewed or not. Put another way, after one year, the employment relationship could go either way. In this case, the Respondent opted not to renew the contract. Therefore, the contract stood terminated on its end date being 9<sup>th</sup> March 2021.
62. That said, the issue of a hearing pursuant to Section 41 of the *Employment Act* does not arise. Equally, the Claimant's contention that she was not given reasons for non-renewal of her contract of employment does not hold water. I say so because the Respondent was not obliged to give reasons for



the non-renewal of the contract of employment. Such was the determination in the case of Trocaire vs Catherine Wambui Karuno [supra] where it was held that:

“Once a fixed term contract is at an end, the employer has no obligation to justify termination on other grounds beyond the lapse of the fixed period. This much was appreciated by this Court in Oshwal Academy (Nairobi) & another vs. Indu Vishwanath [2015] eKLR which quoted with approval Rika, J.’s sentiment in Bernard Wanjohi Muriuki vs. Kirinyaga Water And Sanitation Company Limited & another [2012] eKLR:-

“In the view of the Court, 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 termination of fixed-term contracts, unless there is a clause in the contract, calling for additional justification for the termination.”

63. The Claimant has further submitted that non-renewal of her contract of employment amounted to unfair termination for being in breach of her legitimate expectation. With tremendous respect, I hold otherwise. The mere fact that her contract of employment had been renewed for sixteen years did not create a legal right under the doctrine of legitimate expectation. The Claimant knew all along that the contract of employment was for one year and in the end, it could be renewed or not renewed.

64. Besides, the circumstances under which the parties were operating were not ordinary. There were many factors in play that could affect the continuity of the Claimant’s employment. As such, the issue of the Claimant’s contention with respect to legitimate expectation is quite far-fetched in my view.

65. On this issue, I am fortified by the determination of the Court of Appeal in the case of Transparency International Kenya vs Teresa Carlo Omondi (2023), in which it was held as follows: -

“We dare say that an automatically renewable fixed-term contract is a contradiction in terms, as it would subject the parties to an indeterminate employment contract. The respondent was under fixed-term contract with a definite commencement date and termination date. There was no ambiguity created to create an expectation of contract renewal by the appellant’s issuance of a fixed-term contract. The contract terminated automatically when the termination date arrived. Whether a contract with a renewal clause will be extended or not, is an issue that is at the discretion of the employer and it cannot create a legal right under the doctrine of legitimate expectation... In the instant case, there was no promise of any sort that was given to the respondent to justify a claim based on legitimate expectation.”

66. In sum, I have not discerned any factor in the Claimant’s contract of employment and circumstances attendant to this case that can be construed as conferring legitimate expectation on her part that the contract of employment would be renewed automatically.

67. Having so found, the Court returns that the Claimant’s contract of employment was not unfairly terminated through non-renewal of his contract, rather the same ended through effluxion of time. Consequently, a claim of unfair termination does not lie.



## Orders

68. In the final analysis, it is the Court's finding that the Claimant was not unfairly and unlawfully terminated from employment hence is not entitled to the reliefs sought. Accordingly, the Claim is dismissed in its entirety with an order that each party bears its own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF JUNE 2024**

.....  
**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant No appearance

For the Respondent Mr. Ngethe

Court Assistant Millicent Kibet

## ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

