



Njuguna v Policy Holders Compensation Fund (Statutory Manager, United Insurance Company) (Cause E065 of 2022) [2024] KEELRC 1673 (KLR) (28 June 2024) (Judgment)

Neutral citation: [2024] KEELRC 1673 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E065 OF 2022**

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

BETWEEN

GEOFFREY NJOGU NJUGUNA 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 29th January 2022, in which the Claimant avers that he was employed by United Insurance Company Limited on 9th March 2020 as an Administrative Assistant for his 6th year. The Claimant further states that he served his employer diligently for six years before he was unlawfully, unfairly and summarily dismissed by being told “to go home and not come back” along with his coworkers. It is the Claimant’s contention that the termination was instituted by the Respondent whereas his 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 1,020,000.00 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 he was employed by United Insurance Company and contends that the contract entered into was between the Claimant and the Statutory Management on 15th July 2005. That the Claimant’s last contract was for a period of one year effective from 9th March 2020 to 8th March 2021. The Respondent 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 27th February 2024, both parties called oral evidence in support of their respective cases.

Claimant's Case

5. The Claimant testified in support of his case and at the outset, sought to adopt his witness statement together with the list and bundle of documents filed alongside the Memorandum of Claim to constitute his evidence in chief.
6. It was the Claimant's evidence that United Insurance Company which is under the statutory management of the Respondent, was his employer. That he was on a contract which was renewable subject to ongoing court proceedings.
7. The Claimant further stated that his last contract was renewed in March 2020.
8. He further stated that after 9th March 2021, he was expecting a renewal of contract.
9. He further averred that he was never afforded an opportunity to be heard prior to the termination of his employment contract.
10. That further, he was not given prior notice pursuant to clause 9 of his employment contract.
11. According to the Claimant, he protested against the termination by a letter dated 5th March 2021 and requested his employer to reconsider the termination. Tragically, his 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 15th 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 30th September 2014, the Commissioner of Insurance appointed Mr. Evanson Munene Waruhiu as the Statutory Manager of the company effective 1st October 2014.
16. Upon expiry of the term of Mr. Evanson Munene Waruhiu on 25th June 2015, the Commissioner of Insurance appointed the Policyholders Compensation Fund, the Respondent herein as the company's Statutory Manager effective 26th 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 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 Administrative Assistant and his last contract with the Respondent was for a fixed term of one year, effective 9th March 2020 to 8th March 2021.
22. Since the Company was placed under statutory management on 15th 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 6th 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 his employment.
24. That further, the Claimant cannot legitimately claim as he has done that his employment with the Company is allegedly still in existence since it was not the Company but the Respondent who wrote the letter dated 26th 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 26th February 2021. According to him, the letter simply notified the Claimant that his contract was not going to be renewed by the Respondent once its term expired on 8th March 2021.
27. RW1 further stated that the Claimant was aware that upon executing the letter of appointment dated 6th March 2020, he had become an employee of the Company for one year effective 9th March 2020 to 8th March 2021.
28. It was his further evidence that the employment contract between the Claimant and the company would terminate by effluxion of time on 8th March 2021 whether or not the Respondent notified the Claimant of the expiry of the same.
29. That the letter of the Respondent dated 26th February 2021 cannot therefore be construed or interpreted as a termination letter.
30. RW1 contended that the Claimant's averment that he was unfairly terminated from employment by the Respondent vide the letter dated 26th 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 his submissions, the Claimant stated that his 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 v Kanyenje Karangaita Gakombe & another [2015] eKLR, the Claimant submitted that the mere fact that he was required to report to the Respondent doesn't make it his employer and a party to the contract of service between him and the company. He 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 he was aware that the company was undergoing statutory management, it was not cited as the cause for his 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 his position that he 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 v Kenya Airways Limited [2017] eKLR and Joseph Mwaniki Nganga v United Millers Limited [2022] eKLR.
38. The Claimant further posited that his termination was for all intents and purposes on 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 he was a long-serving employee of the Respondent having worked continuously as an Administrative Assistant for six years hence he had a legitimate expectation that his contracts of employment would be renewed.
40. Placing reliance on the case of Teresa Carlo Omondi v Transparency International Kenya [2017] eKLR and Keen Kleeners Limited v Kenya Plantation and Agricultural Workers Union (2021) KECA 352 (KLR), the Claimant submitted that he had a reasonable expectation that his contract would be extended or renewed owing to regular, continuous, repeated, extension of contracts for six years by the Respondent.
41. According to the Claimant, the Respondent's failure to renew his contract amounted to unfair termination for being in breach of his 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 6th March 2020, lapsed by effluxion of time. The Respondent buttressed their submissions with the case of Enid Nkirote Mukire v Kenya Yearbook Editorial Board [2022] eKLR and Registered Trustees of the Presbyterian Church of East Africa & another v 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 v Samson Kipkoech* [2019] eKLR and *Communications Commissions of Kenya & 5 others v 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 six years, his 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 his 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:
 - i. Whether the Respondent had a role to play in the management of the Claimant's contract of employment;
 - ii. Whether the non-renewal of the Claimant's contract amounted to unfair termination;
 - iii. 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 he 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 15th July 2005. It is common ground that with effect from 25th 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 power 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 5th January 2015 was issued by the then Statutory Manager. From his narration of events, he proceeded to serve for another six years as his contract of employment was renewed six 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 6th March 2020 was issued by the Statutory Manager. He 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 his employment contract and had no right to terminate the said contract yet he 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 his contract of employment, where does that leave his Claim? As a matter of fact, his denial of the employment relationship with the Respondent is akin to admitting that he 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 his 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 6th March 2020.
58. The record bears that vide a letter dated 26th February 2021, the Claimant was notified by the Managing Trustee that the Compensation Fund Board of Trustees had resolved not to renew his contract. In this regard, he was informed that his contract was to terminate on 9th 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 9th 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 he was not given reasons for non-renewal of his 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 v Indu Vishwanath [2015] eKLR which



quoted with approval Rika, J.’s sentiment in Bernard Wanjohi Muriuki v 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 his contract amounted to unfair termination for being in breach of his legitimate expectation. With tremendous respect, I hold otherwise. The mere fact that his contract had been renewed for six 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 v 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 his part that his 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 for 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 28TH DAY OF JUNE 2024

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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 15th March 2020 and subsequent directions of 21st 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

