



**Munyekenye v Innovations for Poverty Action (Cause E020 of 2024)
[2024] KEELRC 1615 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1615 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E020 OF 2024**

**S RADIDO, J
JUNE 26, 2024**

BETWEEN

JAPHETH JUMA MUNYEKENYE CLAIMANT

AND

INNOVATIONS FOR POVERTY ACTION RESPONDENT

JUDGMENT

1. Japheth Juma Munyekenye (the Claimant) sued Innovations for Poverty Action (the Respondent) on 25 March 2024, alleging unfair termination of employment and breach of contract.
2. The Respondent filed a Response on 15 April 2024, and the Cause was heard on 14 May 2024. The Claimant and an Associate Finance Director with the Respondent testified.
3. The firm of S S Musembi & Co. Advocates filed a Notice of Change of Advocate on 27 May 2024, to come on record for the Respondent.
4. The Claimant filed his submissions on 1 June 2024 (should have been filed and served by 25 May 2024), and the Respondent on 7 June 2024.
5. The Court has considered the pleadings, evidence and submissions. **Unfair termination of employment or end of contract**
6. The Respondent sent the Claimant on suspension for 3 weeks through a letter dated 5 March 2024. The purpose of the suspension was to investigate alleged financial impropriety. The suspension letter requested the Claimant to cooperate with the independent investigations team and that he would be informed of the investigations outcome.
7. On 13 March 2024, the Respondent notified the Claimant that it would not renew his contract when it lapsed on 31 March 2024. The notice took the Claimant by surprise and he informed the Respondent that he would consult his advocates.



8. The Claimant then moved the Court to assert unfair termination of employment.
9. According to the Claimant, the Respondent had made a decision to terminate his contract before the suspension and the signs were that despite having scored 70% in the previous year's performance appraisal, his immediate supervisor decided to put him on a Performance Improvement Plan which was only withdrawn after he complained.
10. Another sign the Claimant contended amounted to unfair termination of employment was that he had made an anonymous complaint of suspicious financial transactions to the Respondent's independent retained whistleblower entity, Lighthouse at the beginning of March 2024.
11. The Claimant further asserted that the withdrawal of his access to the workplace, laptop and emails by the Respondent during suspension were signs of a plan to get rid of him.
12. The Claimant also drew the attention of the Court to the fact that he had served the Respondent for 13 years during which period he had been promoted several times, the contracts renewed and that he had no adverse disciplinary history to posit that there was a plan to terminate his contract without any justifiable reasons.
13. The Claimant also contended that due to the length of service, he had a legitimate expectation of the renewal of the contract.
14. The Respondent denied unfairly terminating the Claimant's contract. It asserted that the contract was for a fixed-term and it expired without being renewed.
15. The Claimant was on a fixed-term contract which was set to lapse on 31 March 2024. The Respondent informed the Claimant that the contract would not be renewed upon expiry.
16. The Claimant was of the view that the non-renewal was as a result of a plan to get rid of him.
17. Under section 47(5) of the [Employment Act](#), 2007, the employee has the burden of showing at the first instance that an unfair termination of employment occurred.
18. To discharge the burden, the employee may testify that a shorter notice than provided for was given or that the requirement of procedural fairness as demanded by section 41 of the [Employment Act](#) was not met.
19. None of the above essentials apply in the case of the Claimant since his contract was coming to an end and the Respondent merely alerted him that the contract would not be renewed.
20. The Court finds that the Claimant did not demonstrate that an unfair termination of employment occurred.

Legitimate expectation

21. The Claimant also made a case that he had a legitimate expectation that the contract would be renewed because he had served the Respondent for over 13 years without any adverse disciplinary history.
22. The place of legitimate expectation within the employment world in this country has not been firmly settled by the higher Courts.
23. What constitutes legitimate expectation was outlined by the Supreme Court of Kenya in Petition No. 14 of 2014, Communications Commission of Kenya & 5 Ors v Royal Media Services & 5 Ors where it held:



for the principle of legitimate expectation to be sustained, “there must be an express, clear, and unambiguous promise given by a public authority; the expectation itself must be reasonable; the representation must be one which it was competent and lawful for the decision-maker to make; and there cannot be legitimate expectation against clear provisions of the law or *the Constitution*.” The law does not protect every expectation, but only that which is legitimate.

24. The Supreme Court decision suggests an element of public authority or entity for the doctrine to apply.
25. The Court of Appeal dealt with the doctrine of legitimate expectation within the employment sphere in *Keen Kleeners Limited v Kenya Plantation and Agricultural Workers Union* (2021) KECA 352 (KLR).
26. This case did not involve a public authority or entity.
27. Nevertheless, the Court of Appeal stated:

There may, however, be instances where the unique circumstances of the employment relationship may create a legitimate expectation that a fixed term contract would be renewed. In the *Oshwal Academy Case* (supra), for instance, this Court upheld the trial court’s determination that despite the fixed term contract lapsing by effluxion of time, the respondent had a legitimate expectation of continuity from the conduct of the parties in the course of the employment relationship; and that the respondent was in employment for over 23 years and had developed a bond as to expect to work until retirement.

Regarding the considerations to be made when considering whether a legitimate expectation for renewal of a fixed term contract was created, the sentiments of Rika J. in *Teresa Carlo Omondi v Transparency International- Kenya* (2017) eKLR are particularly persuasive:

The burden of proof, in legitimate expectation claims, is always on the Employee. It must be shown that the Employer, through regular practice, or through an express promise, leads the Employee to legitimately expect there would be renewal. The expectation becomes legally protected, and ought not to be ignored by the Employer, when managerial prerogative on the subject is exercised. Legitimate expectation is not the same thing as anticipation, desire, or hope. It is a principle based on a right, grounded on the larger principles of reasonableness and fair dealing between Employers and Employees. The Employee must demonstrate some rational and objective reason, for her expectation. The representation underlying the expectation must be clear and unambiguous. The expectation must be induced by the decision maker. The decision maker must have the authority to renew. Repeated renewals, extended service beyond the period provided for in the fixed term contract, and promise of renewal, are some of the elements that would amount to objective reasons underlying expectation of renewal. The presence of these elements however, is not to be taken as conclusive proof of legitimate expectation.”

.....

The trial Court had a sound basis for reaching his conclusion that a legitimate expectation for renewal was created. The long-standing, uninterrupted and consistent practice of renewing or extending the grievants’ contracts would have surely led the grievants to believe that their last contracts would be renewed, more so in the absence of any reasonable notice to the contrary given to them by the appellant.

28. In a more recent judgment, *Heineken East Africa Import Company Limited & Ar v Maxam Limited (Civil Appeal E403 & E404 of 2020* (Consolidated)) (2024) KECA 625 (KLR), the Court of Appeal held:



There is little doubt that the doctrine of legitimate expectation is typically applicable in public law and would not apply where both disputants are private parties who are not seeking reliefs from a public body. Both the Supreme Court of Kenya as well as this Court have variously discussed the applicability of this doctrine, and in the Supreme Court decision in *Communication Commission of Kenya vs Royal Media Services & 5 Others* (supra) eKLR, which this court has on many occasions commented on and applied, elaborately established the applicability of this doctrine as the Appellants have correctly submitted.

These decisions are unequivocal in holding that for legitimate expectation to arise and be recognized, an established set of criteria must exist, most important of which is that the alleged representation must originate from a public body and concomitantly, the doctrine can only be applied against a public body

29. The Court has differing but binding precedent before and because the Court of Appeal has applied the doctrine of legitimate expectation to employment disputes more than once, the Court will apply the precedent from the Court of Appeal.
30. The Claimant had served the Respondent continuously since 2011. He had no adverse disciplinary history and he had risen through the ranks or had added responsibilities. His performance appeared to be good enough.
31. Just before the notice of non-renewal and up to early 2024, the Respondent and the Claimant had been discussing an enhanced or new job description.
32. The parties would not have been engaging in these discussions evinced through emails if there was a genuine intention not to renew the Claimant's contract.
33. The Court is, therefore, satisfied that the Respondent breached a legitimate expectation to renew the Claimant's contract, and finds that the Claimant is entitled to damages equivalent to 3 months' salary in that regard (salary was Kshs 325,051/-).

Breach of contract

Pay in lieu of notice

34. The Claimant's contract was coming to an end by the time the Respondent was informing him of non-renewal and considering the contractual agreement which did not contemplate notice in such circumstances, pay in lieu of notice would not be available to the Claimant.

Gratuity

35. Evidence placed before the Court indicated that the Respondent used to pay the Claimant gratuity at the end of each contract including the contract that lapsed on 31 March 2024.
36. Nothing, therefore, turns on this head of the claim.

Victimisation

37. The Claimant alleged that he was victimised for whistleblowing against financial transactions at the Respondent.
38. The Respondent retained an independent entity to receive anonymous reports. The Claimant did not provide any evidence to show that the Respondent or any of its employees was aware of his anonymous report to Lighthouse either before his suspension or before the notice of non renewal of the contract.
39. The Claimant failed to prove this head of the claim and the Court so finds.



Conclusion and Orders

40. Save for the finding that the Respondent breached the Claimant's legitimate expectation on the renewal of the contract, the other causes of action are found without merit.
41. The Court awards the Claimant Kshs 975,153/- as damages.
42. The Claimant to have interest on the award from date of judgment together with costs.

Delivered virtually, dated and signed in Kisumu on this 26th day of June 2024.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Oscar & Associates Advocates

For Respondent S S Musembi & Co. Advocates

Court Assistant Chemwolo

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