



**Gesami v Catholic University of Eastern Africa (Cause E437 of 2023)
[2024] KEELRC 1970 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1970 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E437 OF 2023**

SC RUTTO, J

JULY 26, 2024

BETWEEN

RACHEL GESAMI CLAIMANT

AND

CATHOLIC UNIVERSITY OF EASTERN AFRICA RESPONDENT

JUDGMENT

1. Through a Memorandum of Claim which was subsequently amended on 24th July 2024, the Claimant avers that she is a Professor of Economics and was initially engaged on a probationary basis by the Respondent as a Director, Quality Assurance in the School of Business with effect from 1st August 2018. That she was subsequently additionally appointed Associate Professor in the Respondent's School of Business vide a letter of 20th March 2019.
2. It is the Claimant's case that she was confirmed as Director, Quality Assurance and Professor with effect from 1st May 2019. She avers that the Director position is in the administrative division while that of Professor is in the academic division.
3. According to the Claimant, she served diligently and with utmost professionalism in her role and was subjected to a job performance evaluation in or around March 2019 for the period August 2018 to 25th March 2019. She was adjudged to have "Exceeded Expectations".
4. The Claimant further avers that with effect from 1st June 2020, she was appointed the Deputy Vice Chancellor Academic Affairs and Research for a period of three years.
5. It is apparent from the record that the dispute herein stems from failure by the Respondent to extend the Claimant's contract of employment. The Claimant contends that the Respondent did not comply with the provisions of its Human Resources Policies and Procedures Manual (HR Manual).



6. It is against this background that the Claimant has prayed for the following reliefs against the Respondent:
 - a. A declaration that the purported termination of the Claimant's employment as Deputy Vice Chancellor Academic Affairs & Research was unprocedural, unfair, illegal and unlawful.
 - b. A declaration that the purported termination of the Claimant's employment as Director, Quality Assurance and Professor in the School of Business was unprocedural, unfair, illegal and unlawful.
 - c. A permanent injunction do issue restraining the Respondent, its agents or servants from enforcing its letter dated 26th May, 2023 purporting to terminate the Claimant's contract, restrain the Respondent from advertising or shortlisting, interviewing candidates for the positions of Deputy Vice Chancellor, Academic Affairs & Research and Director of Quality Assurance and Professor in the School of Business.
 - d. The Honourable Court do order reinstatement of the Claimant to employment in the position of Deputy Vice Chancellor Academic Affairs & Research and compliance with the Respondent's provisions of Human Resource Policies and Procedures Manual on contract renewal.
 - e. The Honourable Court do order reinstatement of the Claimant to employment in the position of Director, Quality Assurance and Professor.
 - f. In the alternative to prayers (b) (c) and (cc), an order compelling the Respondent to pay the sums claimed in paragraph 24 of this Amended Memorandum of Claim.
 - g. In addition to prayer (d) the Respondent do issue a Certificate of Service to the Claimant.
 - h. Costs of the suit together with interest to be borne by the Respondent.
 - i. Any other relief the Honourable Court may deem just and fit.
7. Opposing the Claim, the Respondent avers that the Claimant's fixed-term contract was terminated by effluxion of time and its renewal was not pegged on any other contract. Consequently, the Respondent has asked the Court to dismiss the Claim in its entirety with costs.
8. The matter proceeded for hearing on 22nd February 2024 and 16th April 2024 during which both parties called oral evidence.

Claimant's Case

9. The Claimant testified in support of her case and from the onset, she adopted her witness statement, supplementary witness statement as well as her list and bundle of documents to constitute her evidence in chief.
10. It was the Claimant's evidence that her employment and appointment was governed by the Respondent's HR Manual.
11. That her three-year contract as Deputy Vice-Chancellor, Academic Affairs and Research was due to expire on 31st May 2023 and in terms of the Respondent's HR Manual, the Office for Human Resources was mandatorily required to write to her on the contract renewal on or about 30th November 2022. This was not done.



12. The Claimant further stated that on 24th April 2023, she was subjected to another job performance evaluation and was adjudged “Meets Expectations” or “Exceeds Expectations”. She therefore had legitimate expectation that her contract would be renewed.
13. It was her evidence that due to failure by the Respondent to act in accordance with its own HR Manual, she chose to write to the Staffing Committee of the Council on or around 14th March 2023, requesting for contract renewal with a copy to other relevant members of the Committee. She highlighted her strengths, achievements and current duties.
14. She never received a reply and instead, on 29th May 2023, she received a call from the Respondent’s staff member informing her that she was to pick up a letter addressed to her. She picked up the letter and was astonished to learn that the Respondent was not renewing her contract with only two days’ notice.
15. It was the Claimant’s contention that she was not accorded a fair hearing prior to termination and her dismissal was capricious and illegal as the Respondent failed to adhere to cherished constitutional principles of giving employees a fair hearing prior to dismissal.
16. That further, the Respondent choreographed her termination by failing to adhere to its own policies and misleading her that she was in a position to get an extension of her contract.
17. The Claimant contended that the terms of her appointment and the HR Manual gave rise to a legitimate expectation that if the Respondent had strictly observed the said terms, she would have received an offer of a new contract six months prior to expiry.
18. According to the Claimant, the Respondent’s failure to abide by the terms was unfair and there remained a legitimate expectation that the contract was up for renewal given the promotion.
19. She further averred that in its letter, the Respondent through the Vice Chancellor, shifted the duty of seeking the contract extension six months prior to contract expiry on her contrary to the clear provisions of the HR Manual. It was her contention that the Respondent is estopped from claiming that she did not abide by its terms of appointment and further, her non-renewal of contract meant that her leave entitlement was to be taken in concurrence with her notice period which, she believes is unlawful.
20. She further averred that the termination letter purported to also terminate her earlier appointment and employment as Director, Quality Assurance and Professor which posts were separate from that of Deputy Vice-Chancellor, Academic Affairs and Research in terms of the HR Manual.
21. The Claimant further contended that the Respondent’s action of not writing to her six months prior to contract expiry was deliberate and discriminatory as it wrote to other senior staff of the same cadre as her.
22. According to her, the illegal termination of her contract was a culmination of patently unfair actions by the Respondent’s Vice Chancellor during her tenure as Deputy Vice-Chancellor, Academic Affairs and Research.
23. That there was a legitimate expectation that had the Respondent by its own terms, conduct and undertakings followed the HR Manual, the contract would be renewed as the clause on renewal of contract is couched in mandatory terms and cannot be deviated from in any manner.
24. She believes that the termination of her contract was unfair and did not follow the statutory procedure.



Respondent's Case

25. The Respondent called oral evidence through Mr. Erick Omondi Njiri who testified as RW1. Mr. Omondi identified himself as the Respondent's Human Resource Manager. Equally, he adopted his witness statement, further witness statement as well as the list and bundle of documents filed on behalf of the Respondent to constitute his evidence in chief.
26. It was RW1's testimony that the Claimant was first engaged by the Respondent on a fixed-term contract of three years as a Director, Quality Assurance on 31st July 2018. The Claimant signed her job description on 30th January 2019 which clearly outlined her expected duties and responsibilities at the Respondent's institution. Her terms of service were amended vide the letter dated 24th September 2018.
27. The Claimant was appointed as Director, Quality Assurance with effect from 1st May 2019 and on 27th November 2019, she was appointed as the acting Deputy Vice Chancellor Academic Affairs and Research.
28. RW1 further stated that the Claimant through her letter of 19th December 2019, sought for correction of her terms of engagement noting that she had been appointed into the position of Director, Quality Assurance but had been placed at level 17-16 instead of level 18. The error was corrected and her dues paid.
29. She was later appointed by the University Council as the Deputy Vice-Chancellor Academic Affairs and Research for a fixed term of three years beginning 1st June 2020 and ending on 30th May 2023 vide letter dated 26th May 2020.
30. Due to the Claimant's appointment as the Deputy Vice-Chancellor Academic Affairs and Research on 1st June 2020, Dr. Mulwa was appointed to act and subsequently confirmed as the Director, Quality Assurance to take over from the Claimant who was then retained as the Deputy Vice-Chancellor Academic Affairs and Research.
31. According to RW1, the Claimant relinquished her position as the Director, Quality Assurance to Dr. Mulwa as the exigencies of the new position could not allow her to serve in the two demanding positions. In any event, her fixed term contract as Director, Quality Assurance would have terminated by effluxion of time on 1st May 2022 and was never renewed.
32. RW1 contended that the Claimant was never assigned teaching assignments as a Professor after her engagement as the Deputy Vice-Chancellor Academic Affairs and Research.
33. It was his contention that the University reserved the right to renew the Claimant's contract upon the same coming to an end.
34. He further stated that the tenure of the Claimant was greeted with a lot of dissatisfaction ranging from her workmanship, perfunctory performance, recruitment based on nepotism and favoritism, utter conflict of interest and various acts of insubordination.
35. That the Claimant exhibited wanton disregard for the duties and responsibilities of her office and would leave her assignment incomplete or unattended to the dissatisfaction of the Respondent.
36. RW1 averred that being a direct appointee of the University Council pursuant to Section 35 of the [Universities Act](#), No. 42 of 2012, the Claimant applied to the University Council for renewal of her contract of employment through the Chair of the University Council Staffing Committee vide a letter dated 14th March 2023.



37. RW1 further stated that the University Council under the *Universities Act* reserves the right of employment of University Staff and upon consideration of the Claimant's application for renewal, the same was not renewed.
38. According to RW1, the University is not mandated to renew any fixed-term contract. However, upon evaluation, the Respondent may request employees on fixed-term contracts whom it considers merited to apply for renewal. That it is not automatic as suggested by the Claimant that any employee on fixed term contract must receive the request for renewal.
39. In RW1's view, the Claimant has misinterpreted the clear provisions of Clause 2.13.1 of the HR Manual on the communication of renewal of contracts.
40. According to him, the Respondent is only required to communicate with staff whose services it believes shall be necessary and whose contracts it would like to renew and not any staff as purported by the Claimant.
41. That the Respondent did not write to the Claimant to apply for renewal of her contract because it never intended to renew her contract.
42. He contended that no legitimate expectation can arise in fixed-term contracts whose time is fixed at the date of execution.
43. RW1 further stated that the Claimant cannot allege that the Respondent discriminated against her when her contract terminated by effluxion of time.
44. That the Respondent is not mandated to write to the Claimant or any employee to request them to apply for renewal. In his view, the decision to renew a contract is purely pegged upon the need and the discretion of the Respondent's institution.
45. In his view, the Claimant has not approached this Honourable Court with clean hands and she is not deserving of the orders sought.
46. RW1 further averred that the Claimant being a direct University Council employee, the provisions under Clause 2.13 of the Respondent's HR Manual do not apply to the Deputy Vice-Chancellor. It contemplates lower cadre staff. That further, if the provision did apply then it is actually the Claimant who did not follow the procedure as outlined.
47. RW1 averred that termination of a fixed-term contract by effluxion of time does not equate to termination of disciplinary grounds to warrant a disciplinary hearing. The Claimant knew or was reasonably expected to know that her last date of employment would be 1st June 2023 pursuant to the contract she signed when she assumed the position of Deputy Vice-Chancellor.
48. The Claimant was given three (3) months' notice vide the letter of 26th May 2023. Upon non-renewal of her contract, the Claimant duly applied for separation and clearance from the Respondent University and thus cannot be heard to challenge the same.
49. The Claimant was paid all her terminal dues and there is nothing outstanding from the Respondent's side. That further, the Claimant utilized all her outstanding leave days between 29th May 2023 and 30th August 2023.

Submissions

50. It was the Claimant's submissions that the Respondent's reason for termination was not a fair reason. According to the Claimant, the plain and literal meaning of her contract is that her term of



employment was renewable once subject only to satisfactory performance. In her view, there was thus a legitimate expectation on her part that as long as her performance was adjudged satisfactory, her employment term of three (3) years would be renewed once.

51. The Claimant further submitted that the Respondent did not cite unsatisfactory performance in declining to renew her employment for one more term. She termed the reason given for the non-renewal of her contract as extraneous. It was the Claimant's position that even this purported and extraneous reason was itself not justified. In support of this position, the case of Joshua Motari Mongare v Madison Insurance Co Ltd & another [2022] eKLR was cited.
52. Referencing the case of Barclays Bank of Kenya & another v Gladys Muthoni & 20 others [2018] eKLR, the Claimant submitted that the Respondent did not discharge the onus on it to prove that the reason for termination of her contract was a fair reason.
53. The Claimant further submitted that she had a very legitimate expectation that having performed satisfactorily in her job, her contract would be renewed as contractually promised. In support of this argument, the Claimant cited the case of Keen Kleeners Limited v Kenya Plantation and Agricultural Workers Union (2021) KECA 352.
54. It was the Claimant's further submission that the termination of her employment as Deputy Vice-Chancellor, Academic Affairs and Research was not procedurally fair. To buttress this argument, the Claimant placed reliance on the case of National Bank of Kenya v Samuel Nguru Mutonya [2019] eKLR.
55. The Claimant further posited that the procedure that was supposed to be followed in the termination of her contract of employment is laid down in the Respondent's HR Manual and her letter of appointment. In her view, the Respondent's conduct was discriminatory in the renewal of her contract.
56. It was the Claimant's further submission that the position of Associate Professor and Professor are permanent appointments in the Respondent's staffing structure as per Clauses 2.12, 2.12.6 & 2.12.7 of the HR Manual.
57. In this regard, the Claimant's position was that a plain reading of the aforementioned clauses is that her earlier position of Professor which was tied to the Director, Quality Assurance existed in the background during her tenure as Deputy Vice-Chancellor, Academic Affairs and Research.
58. On its part, the Respondent submitted that there was no provision in the Claimant's contract for notice of non-renewal. That it however communicated its decision not to renew the Claimant's contract and did not have her work past the effluxion date vide its letter dated 26th May 2023. On this score, the Respondent referenced the case of Keen Kleeners Limited v Kenya Plantation and Agricultural Workers Union (supra).
59. In the same vein, the Respondent submitted that none of the beacons demarcating the limits of legitimate expectation have been established by the Claimant.
60. The Respondent further argued that the principle of legitimate expectation is highly dependent on the facts of each case. The Respondent's position was that legitimate expectation is created through regular practice, or through an express promise made by the employer, leading the employee to expect that her contract would be renewed.
61. It was the Respondent's further submission that there is no clause in the Claimant's contract dated 7th May 2019 that guaranteed her supposed right of fallback in the event of promotion or even appointment to another position. In the same breath, the Respondent submitted that the Claimant



was never appointed to the position of Professor, and neither did she teach any unit nor did the Respondent assign her any tasks other than those within her job description.

62. Citing the case of *Anne Wangari Mbatia v Kirinyaga Water & Sanitation Company (2023) KEELRC 3364 (KLR)*, the Respondent submitted that the Claimant's acceptance of her appointment as the Deputy Vice-Chancellor, Academic Affairs and Research, extinguished her previous fixed term contract as the Director, Quality Assurance.
63. It was the Respondent's position that the Claimant had failed to prove that her contract as Director, Quality Assurance was saved or held in abeyance pending the completion of her appointment as the Deputy Vice-Chancellor, Academic Affairs and Research. The Respondent further opined that it would have been absurd for the Claimant to hold three substantive positions yet there are other qualified persons competent to hold the other positions.
64. According to the Respondent, the Claimant has not demonstrated by cogent evidence that it infringed on her legitimate expectation as she failed to establish a basis for the said claim.

Analysis and Determination

65. Flowing from the pleadings, the evidentiary material placed before me, as well as the submissions on record, it is evident that the issues falling for the Court's determination are: -
 - a. Whether the Claimant was serving in two positions at the time of her exit from the Respondent's employment;
 - b. Whether non-renewal of the Claimant's contract of employment amounted to unfair termination;
 - c. Whether non-renewal of the Claimant's contract of employment was against her legitimate expectation; and
 - d. Is the Claimant entitled to the reliefs sought?

Whether the Claimant was serving in two positions at the time of her exit from the Respondent's employment

66. The record bears that the Claimant was initially appointed in the position of Director, Quality Assurance with effect from 1st August 2018. She was placed on probation for six months and was informed that she would sign a three-year renewable contract upon successful completion of the probation.
67. Upon evaluation of her performance during probation, the Claimant was confirmed with effect from 1st May 2019. Notably, her letter of confirmation indicated that she had been confirmed as "Director of Quality Assurance and Professor in the School of Business." The Claimant contends that these two positions are distinct.
68. It is worth noting that the contract of employment provided her designation as Director of Quality Assurance. It does not indicate that she was also Professor in the School of Business.
69. Further to the foregoing, the record bears that the Claimant addressed the Respondent's Vice Chancellor through her letter dated 19th December 2019 stating that following her appointment as the Director Quality Assurance, she had been placed academically at the level of Associate Professorship 17-16. In this regard, she sought revision of the terms of engagement to correct the anomaly so that she is placed administratively at level 18 as her counterparts in other directorates.



70. In essence, the Claimant was acknowledging that her appointment fell within the administrative docket.
71. In addition to the foregoing, the Claimant was appointed as the Acting Deputy Vice-Chancellor Academic Affairs and Research vide a letter dated 27th November 2019.
72. Subsequently, she was appointed substantively as the Deputy Vice-Chancellor Academic Affairs and Research on a three-year renewable contract with effect from 1st June 2020.
73. It is notable that at the time the Claimant was appointed as the Deputy Vice-Chancellor Academic Affairs and Research, her employment contract as the Director, Quality Assurance was still subsisting. Indeed, it would be illogical to state that she was now serving as Director, Quality Assurance and Deputy Vice-Chancellor Academic Affairs and Research simultaneously. These were two distinct contracts of employment and had no correlation at all.
74. As such, the Claimant's contract of employment as Director, Quality Assurance was extinguished upon her appointment as the Deputy Vice-Chancellor Academic Affairs and Research.
75. This is further confirmed by the fact that the Claimant's contract of employment as Director, Quality Assurance was to terminate on 30th April 2022 but she continued to serve the Respondent in her new capacity as Deputy Vice-Chancellor Academic Affairs and Research. There is no indication that she sought to renew her appointment as Director, Quality Assurance. This therefore means that the Claimant was also aware that the said appointment had been extinguished by her subsequent appointment as Deputy Vice-Chancellor Academic Affairs and Research.
76. Therefore, even if it was to be presumed that the Claimant had been appointed Professor in the School of Business through the letter dated 7th May 2019, it follows that such appointment was extinguished by her latter appointment as the Deputy Vice-Chancellor Academic Affairs and Research.
77. Indeed, the Claimant's letter of appointment as the Deputy Vice-Chancellor Academic Affairs and Research, does not indicate let alone suggest that she had been simultaneously appointed Professor, School of Business.
78. In light of the foregoing I am led to conclude that the Claimant was not serving under two distinct positions at the time she exited the Respondent's employment.
79. Indeed, as of 31st May 2023, she was only serving in one position, being that of the Deputy Vice-Chancellor Academic Affairs and Research, which is an administrative position.
- Whether non-renewal of the Claimant's contract of employment amounted to unfair termination
80. As stated herein, the Claimant was appointed to the position of Deputy Vice-Chancellor Academic Affairs and Research on a three-year renewable contract with effect from 1st June 2020. As such, the contract of employment was to lapse on 31st May 2023.
81. The record bears that through her letter dated 14th March 2023, the Claimant applied for renewal of her contract in the same capacity. Through a letter dated 26th May 2023, the Claimant was notified of the non-renewal of her contract on grounds that she had failed to apply for non-renewal six months prior to the end of the contract.
82. It is evident that the Claimant's contract of employment being a fixed term contract, had a start date and an end date.



83. 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. Such was the determination by the Court of Appeal in *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki* [2017] eKLR where the learned Judges reckoned 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.”

84. In the instant case, the Claimant’s contract was very explicit that its duration was for three years. Therefore, it followed that upon expiry of the three-year period, there were two possibilities, renewal or non-renewal. It could go either way and, in this case, the Respondent elected not to renew the contract. Therefore, the contract of employment terminated on its end date being 31st May 2023.

85. In the case of *Trocaire v Catherine Wambui Karuno* [2018] eKLR, it was held as follows: -

“16. It is clear from the evidence on record that the respondent’s employment was governed by fixed term contracts. As aptly observed by Lord Denning MR in *British Broadcasting Corporation vs Ioannou* [1975] 2 All ER 999 such a contract binds parties for the term stated in the agreement. In our view, the duration for the third contract was expressly stipulated therein, that is, for a period of four months running from 1st March, 2014 up to 30th June, 2014..... [19]It follows that the contract in question automatically lapsed on 30th June, 2014 by effluxion of time... Underlined for emphasis

86. Applying the above determination to the instant case, it is evident that the lifespan of the Claimant’s contract was already predetermined for three years. Therefore, at the end of the three years, the contract of employment was to terminate by effluxion of time subject to renewal.

87. I further find it imperative to underscore that being a fixed-term contract, the Respondent retained the discretion to renew or not renew the same. Accordingly, non-renewal of the Claimant’s contract did not amount to unfair termination as the contract of employment ran its course and terminated by effluxion of time.

The question of legitimate expectation

88. As to what amounts to legitimate expectation, the Supreme Court of Kenya had this to say in *Petition No 14 of 2014 Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR: -

“(265) An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. A party that seeks to rely on the doctrine of legitimate expectation, has to show that it has locus standi to make a claim on the basis of legitimate expectation.”

89. The Apex Court went on to cite with approval, the determination in the case of *South African Veterinary Council v Szymanski* 2003(4) S.A. 42 (SCA) at [paragraph 28], thus: -

“The law does not protect every expectation but only those which are ‘legitimate’. The requirements for legitimacy of the expectation include the following:



i.The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (op cit [Judicial Review of Administrative Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.

(ii) The expectation must be reasonable: Administrator, Transvaal v Traub (supra [1989 (4) SA 731 (A)] at 756I - 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037)..."

90. Turning to the case herein, the Claimant has argued that her contract of employment was renewable once subject to satisfactory performance thereby creating legitimate expectation that so long as her performance was satisfactory, the contract would be renewed.
91. In my view, the contract of employment was still subject to consideration by the Respondent and satisfactory performance was not a guarantee for renewal.
92. Indeed, by requesting for renewal, the Claimant was confirming that she was well aware that renewal of her contract was subject to many factors, including consideration by the Respondent.
93. On this issue, I wish to echo the sentiments of the Court of Appeal in the case of Transparency International Kenya v Teresa Carlo Omondi [2023] where it was held that: -
- “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.”
94. The total sum of my consideration is that 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 her contract would be renewed automatically.
95. As I conclude, I observe that the Claimant has stated that the Respondent breached clause 2.13.1 of the HR Manual as the Office of Human Resources did not write to remind her of the need to renew her contract at least six months before the date of expiry of her contract.
96. According to the Respondent, the provisions of clause 2.13 of the HR Manual did not apply to the Claimant as she was the Deputy Vice-Chancellor given that she was a direct University Council employee.
97. With due respect, the Respondent is speaking from both sides of the mouth. I say so because the Claimant was notified that her contract could not be renewed as she was required under the HR Manual to apply for the renewal of her contract six months in advance. In this regard, she was notified that she had applied for the renewal of her contract in less than two months. Therefore, and contrary to



its assertions now, the Respondent was essentially applying the HR Manual to the Claimant's contract of employment at that point in time.

98. Be that as it may, that issue alone does not negate the fact that the Claimant was serving on a fixed-term contract which had an end date hence terminated by effluxion of time.
99. In total sum, it is my finding that the Claimant's contract of employment was not terminated through non-renewal of her contract of employment, rather the same ended through effluxion of time.

Orders

100. In the final analysis, as the Court has found that the Claimant was not terminated unfairly she is not entitled to compensation to that extent. Accordingly, the claim is dismissed in its entirety with an order that each party bears its own costs.
101. As the employment relationship is not denied, the Claimant is entitled to a Certificate of Service in line with Section 51(1) of the *Employment Act*. This shall issue within 30 days from the date of this Judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY 2024.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Muthama instructed by Mr. Thiga

For the Respondent Mr. Situma

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

