



**African Centre for Women Information and Communications Technology v Ochieng  
(Appeal E176 of 2022) [2024] KEELRC 1929 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1929 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL E176 OF 2022**

**J RIKA, J  
JULY 26, 2024**

**BETWEEN**

**AFRICAN CENTRE FOR WOMEN INFORMATION AND  
COMMUNICATIONS TECHNOLOGY ..... APPELLANT**

**AND**

**JUDITH AKOTH OCHIENG ..... RESPONDENT**

*(An Appeal from the Judgment and Decree of the Learned Senior  
Resident Magistrate's Court at Nairobi [Hon. Mrs. S.N. Muchungi],  
delivered on 16th September 2022 in CMEL Suit No. 823 of 2019)*

**JUDGMENT**

**Representation:**

Court Assistant: Emmanuel Kiprono

Nchoe, Jaoko & Company Advocates for the Appellant

E.A. Ochieng & Company Advocates for the Respondent

1. The Respondent herein was an Employee of the Appellant.
2. She filed the Claim at the Trial Court against the Appellant, alleging that her contract of employment was terminated by the Respondent unfairly and unlawfully.
3. She sought compensation for unfair and unlawful termination, general damages for pregnancy discrimination, terminal benefits, costs and interest.
4. The Trial Court, in a Judgment delivered on 16<sup>th</sup> September 2022, granted her equivalent of 2 months' salary in compensation for unfair and unlawful termination at Kshs. 110,000; notice of 1 month at Kshs. 55,000; annual leave of 21 days at Kshs. 27,500; costs; and, interest.



5. The Appellant filed a Memorandum of Appeal dated 13<sup>th</sup> October 2022.
6. The Grounds of Appeal are repetitious: that, the decision of the Trial Court was plainly wrong; it was contrary to law; it was contrary to *Employment Act*; it was contrary to judicial precedent; it was contrary to the law of contract; it was contrary to the principle that fixed-term contracts carry no expectancy of renewal; there was no requirement for payment of notice; and the Judgment was illegal.
7. The Respondent filed a Cross-Appeal dated 18<sup>th</sup> November 2022. The Cross-Appeal is that the Trial Court erred, in declining the prayers for general damages for pregnancy discrimination, and 3 months' maternity leave.
8. Parties agreed that the Appeal is considered and determined on the strength of the Record of Appeal and Submissions. They confirmed filing and exchange of their Submissions at the last mention before the Court, on 4<sup>th</sup> April 2024.
9. The Appellant submits that: the Respondent was on 3 separate fixed-term contracts; the last was for 3 months; there was no obligation on the part of the Appellant to renew the contract; and there was no obligation to issue notice. The Appellant relies on E&LRC decisions, *Bernard Wanjohi Muriuki v. Kirinyaga Water and Sanitation Company Limited & Another* [2012] e-KLR; *Margaret A. Ochieng v. National Water Conservation and Pipeline Corporation* [2014] e-KLR; and Court of Appeal in *Trocaire v Catherine Wambui Karuno* [2018] e-KLR. The Respondent's contract expired in accordance with the terms, on 31<sup>st</sup> December 2017. The Trial Court was in error in concluding that it was terminated by the Appellant, and terminated unfairly and unlawfully.
10. The Appellant prays that the Appeal is granted, the Cross-Appeal dismissed, with costs to the Appellant.
11. The Respondent submits that she held a fixed-term contract. The period had not expired, at the time the Appellant terminated her contract. The contract had provisions on the mode of termination. She submits that in decisions cited by the Appellant above, the Courts gave exceptions to the general rule, that fixed-term contracts carry no expectancy of renewal: where the actions of the Employer give rise to legitimate expectation on the part of the Employee, that the contract would be renewed; and where the decision not to renew, is based on improper motives, or there is countervailing circumstances.
12. She submits that immediately her pregnancy became visible to the Appellant, her 1-year contract was terminated, and replaced with 3-months' contract. The Appellant denied her 3 months' maternity leave entitlement and got rid of her altogether, on account of her pregnancy. The Trial Court was in error, in declining the claims for pregnancy discrimination, and maternity leave. She relies on E&LRC decision, *V.M.K. v CUEA* [2013] e-KLR in pursuing general damages for pregnancy discrimination.
13. She urges the Court to dismiss the Appeal, grant the Cross-Appeal, with costs to her.

**The Court Finds: -**

14. The Trial Court, in its Judgment gave due attention to the decisions of the E&LRC and the Court of Appeal, cited by the Appellant above.
15. It correctly found that, although fixed-term contracts carry no expectancy of renewal, and no justification for termination beyond the fact that the fixed term has expired is required, there are exceptions to this general rule. The contract may create expectancy of renewal, as may the actions of the Employer. There are instances where, there are countervailing circumstances, or where the Employer is actuated by ill-motive, in not renewing the Employees' contract.



16. The Trial Court held that the Appellant, decided to extend the Respondent's contract covering the period 2<sup>nd</sup> November 2016 to 1<sup>st</sup> November 2017, for a further period of 3 months. The extension was made, before the subsisting contract expired.
17. The 3 months' contract was not automatically renewable. Neither was it automatically terminable. It stated that the decision to continue or discontinue with the contract, depended on the Respondent's performance, and availability of funds.
18. The Trial Court correctly held, that the Appellant had contracted to establish 3 things, to justify termination: that 3 months had ended; that the Respondent's performance was not satisfactory; and that the Appellant did not have the funds to continue employing the Respondent.
19. Beyond showing that the 3 months had expired, the Appellant did not establish the presence of the other 2 reasons, to justify termination, or non-renewal of the contract.
20. At page 6 of the Trial Court's Judgment, it is recorded that, " It was stated that her performance would be assessed at the end of the contract, through evaluation against set targets and in event of a discontinuation of contract, the decision and reasons thereof would be communicated to her, at least 30 days prior to the date of termination." The Appellant did not proffer evidence before the Trial Court, establishing that it satisfied this aspect of the mode of separation, under the fixed-term contract.
21. It is important that in reading and applying judicial precedents to disputes on fixed-term contracts, litigants read the disputed individual fixed-term contracts carefully. Not all contracts of employment and fixed-term contracts in particular, are worded similarly, so as to apply the principles of law developed by the Courts, across the board. The question must always be asked whether, beyond the expiry of the fixed-term, there are other terms and conditions prescribed under the contract, non-compliance of which, would taint termination or non-renewal.
22. The Trial Court did not err, in concluding that the Appellant failed to justify termination and non-renewal of the Respondent's contract. The Appellant failed the test of justification, under Sections 43 and 45 of the *Employment Act*.
23. The repetitious Grounds of Appeal, all challenge the reasoning of the Trial Court, in finding that termination of the Respondent's fixed-term contract was carried out unfairly and unlawfully. These Grounds have no merit and are declined.
24. Turning to the Counter-Appeal, the Respondent did not establish her claims, surrounding her pregnancy. At page 7 of the Judgment, the Trial Court found that the Respondent did not make an application for maternity leave, which was declined by the Appellant. The Appellant's witness testified that the Respondent did not apply for maternity leave, and did not notify the Appellant about the birth of her baby. The Trial Court found that this evidence was not rebutted by the Respondent. It was also found that the Respondent's last contract was for 3 months, and it would not make sense, to grant her a 3 months' maternity leave, extending beyond the date of the expiry of the contract.
25. There is no reason to fault the Trial Court's reasoning, in its refusal to grant the Respondent the prayers relating to her pregnancy. The Cross-Appeal is declined.

**It is ordered: -**

- a. The Appeal is declined.
- b. The Cross-Appeal is declined.
- c. No order on the costs.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,  
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT  
PRACTICE DIRECTIONS, 2020, THIS 26<sup>TH</sup> DAY OF JULY, 2024.

JAMES RIKA

JUDGE

