



**Kenya Chemical Workers Union v Insight Management Consultants Ltd (Cause E359 of 2023) [2024] KEELRC 2344 (KLR) (30 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2344 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E359 OF 2023  
JK GAKERI, J  
SEPTEMBER 30, 2024**

**BETWEEN**  
**KENYA CHEMICAL WORKERS UNION ..... CLAIMANT**  
**AND**  
**INSIGHT MANAGEMENT CONSULTANTS LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant union filed the instant suit on 5<sup>th</sup> May, 2023 on behalf of the grievants alleging unfair summary dismissal of Rose Mumbua, Irene Mumbua, Jones Mutiso and Erick Bagwasi in February 2022.
2. It is the Claimant's case that the grievants were employed and dismissed as follows;



No.	Name	Date of employment	Salary	Date of dismissal
1	Rose Mumbua	13 <sup>th</sup> August, 2016	14,401.00	9 <sup>th</sup> February, 2022
2	Irene Mumbua	12 <sup>th</sup> April, 2012	16,462.00	9 <sup>th</sup> February, 2022
3	Jones Mutiso	28 <sup>th</sup> February, 2008	19,443.00	13 <sup>th</sup> January, 2022
4	Erick Bagwasi	17 <sup>th</sup> June, 2018	14,401.00	9 <sup>th</sup> February, 2022

3. It is the Claimant's case that on 31<sup>st</sup> August, 2021 when the grievants reported to work, they were called by Mr. Josphat Njuguna, the Departmental Manager and at the security office were asked to write about what had taken place at their work stations and then told to exit the place of work, were invited for a hearing on 7<sup>th</sup> February, 2022 and attended and received dismissal letters on 9<sup>th</sup> February, 2022 and the Claimant's efforts to resolve the matter fell through and the dispute was reported to the Cabinet Secretary and one Mr. Boaz Musando appointed Conciliator.
4. That conciliation failed and Mr. Boaz gave his recommendations dated 15<sup>th</sup> November, 2022 leading to the instant suit.
5. The Claimant prays for;
  - i. A declaration that dismissal of the grievants was unfair and unlawful.
  - ii. Reinstatement.
  - iii. In the alternative to (i) and (ii), payment of Kshs.1,736,029.00 tabulated in paragraph 18 of the claim.
  - iv. General damages.
  - v. Certificate of service.
  - vi. Costs and interest at court rates.
  - vii. Such other orders as the Court may deem fit, fair and just.

### **Respondent's case**

6. In its Reply filed on 23<sup>rd</sup> May, 2023, the Respondent denies having terminated the grievants employment but admits non-renewal of contract after expiry except for Jones Mutiso whose employment was terminated on 13<sup>th</sup> January, 2022.
7. It is the Respondent's case that contracts for Rose Mumbua, Irene Mumbua and Erick Bagwasi lapsed on 31<sup>st</sup> January, 2022 and were not renewed as it was not automatic.
8. That the grievants were taken through a disciplinary process before the non-renewal notices.



9. The Respondent avers that the grievants received and responded to the notices to show cause dated 24<sup>th</sup> December, 2021 and 31<sup>st</sup> January, 2022, and were invited for a hearing.
10. That the grievants took leave or were paid for any days due.
11. The Respondent prays for dismissal of the suit with costs.

### **Claimant's evidence**

12. Only three grievants testified, Irene Mumbua, Rose Mumbua and Erick Bagwasi.
13. CWI, Irene Mumbua confirmed on cross-examination that she filed the letter from the Ministry of Labour stating that she was serving under a one year fixed term contract of service but did not avail a copy of the contract and the contract on record stated one month from the beginning to the end of January 2022.
14. The witness admitted that copies of Leave Application Forms on record were hers (pages 66 – 80).
15. That her last working day was in January 2022, was given a notice to show cause and responded.
16. Puzzlingly, the witness denied having received the notice to show cause but changed her evidence when shown the letter with her signature.
17. CWI admitted having been invited for a hearing, attended alone and participated and received a letter of non-renewal and was paid Kshs.21,624.00 by cheque.
18. On re-examination, CWI testified that she was employed on 12<sup>th</sup> April, 2012 on casual basis and was not given a notice to show cause and her last day at work was 29<sup>th</sup> January, 2022 as she did not work on 31<sup>st</sup> January, 2022 and received a certificate of service.
19. CWII, Rose Mumbua confirmed that she worked for the Respondent for 6 years but had no evidence to prove the allegation.
20. That although she prayed for gratuity, she had no documentary evidence in support of the claim.
21. The witness confirmed that she did not proceed on leave but admitted that copies of Leave Application Forms on record were under her name.
22. That she was given a cheque of Kshs.23,566.00 but did not know its purpose.
23. That she signed the settlement agreement but the amount paid was not enough.
24. The witness admitted that the letter dated 9<sup>th</sup> February, 2022 made no reference to dismissal but was a non-renewal of contract.
25. The witness confirmed that the union's letter stated that she was serving under a one (1) year fixed term contract.
26. The witness admitted that she received a notice to show cause, responded, invited for a hearing, attended alone and received a letter of non-renewal.
27. On re-examination, the Claimant testified that she was employed on 13<sup>th</sup> August, 2016 as a casual and received a contract in 2018.
28. That by 17<sup>th</sup> January, 2022, she had 12 leave days outstanding.
29. That she was not given the letter dated 9<sup>th</sup> February, 2022.



30. CWIII, Mr. Erick Orangi Bagwasi confirmed that he was at work on the material and was dismissed on 9<sup>th</sup> February, 2022 and was chased away.
31. That guards told him that he had been dismissed.
32. The witness stated that he was not heard but admitted having received a notice to show cause, responded, was invited for a hearing and was heard on 7<sup>th</sup> February, 2022 and received the letter of non-renewal of contract which promised pay salary in lieu of notice, days worked and untaken leave.
33. That he was serving under a one (1) month fixed term contract which had expired and never proceeded on leave but admitted that the leave application forms on record were his.
34. That he had no evidence to prove gratuity or document showing that he worked for 4 years.
35. That he was unaware of what the labour officer found after the dispute was reported to the Cabinet Secretary.
36. On re-examination, CWIII testified that he was employed on 16<sup>th</sup> May, 2018 as a casual and applied for leave three times in 2021 and attended a hearing alone and received a letter of non-renewal of contract and no reason was given.

### **Respondent's evidence**

37. RWI, Mr. Jonathan Matata confirmed that he was the Respondent's Operations Officer, a Labour Outsourcing Company and the grievants worked at Orbit Chemicals. It was his testimony that Irene Mumbua, Rose Mumbua and Erick Bagwasi joined on 1<sup>st</sup> January, 2022 under a one (1) month fixed term contracts.
38. That Rose Mumbua's Leave Application Form at page 52 shows the date of employment as 18<sup>th</sup> December, 2020 while another indicated 30<sup>th</sup> September, 2018.
39. That the grievants were invited because there was a theft incident at the work place and were issued with notices to show cause and invited for a hearing and could be accompanied and subsequently issued with notices of non-renewal of contract of employment.
40. The witness confirmed that the Certificate of Service issued by the Respondent had the dates of employment and exit for Mr. Erick Bagwasi September 2018, Rose Mumbua September 2018 and Irene Mumbua February 2014.
41. That their employment contract lapsed on 31<sup>st</sup> January, 2022 and there was a matter under consideration before renewal.
42. On re-examination, the witness confirmed that the Respondent declined to renew the contract of employment and untaken leave days were paid for including salary in lieu of notice.
43. That the grievants served under fixed term contracts and were taken through a disciplinary hearing.

### **Submissions**

44. Directions on the filing and exchange of submissions were given on 16<sup>th</sup> May, 2024 when hearing was declared closed and parties were as requested, accorded 21 days to do so but by 10<sup>th</sup> July, 2024, none of the parties had complied and were accorded 7 and 21 days respectively to do so but by 19<sup>th</sup> August, 2024 when the Court retired to prepare this ruling, none of the parties had filed submissions.



## Analysis and determination

45. It is common ground that the grievants Irene Mumbua, Rose Mumbua and Erick Bagwasi were employees of the Respondent serving under fixed term contracts renewable by mutual consent. This is decipherable from the Conciliator's letter to the Claimant union and the Respondent's letter dated 15<sup>th</sup> November, 2022 contents of which none of the parties contested.
46. I will revert to this issue shortly.
47. As regards the date of employment, parties have provided conflicting dates, but from the documents availed by the Respondent, it is decipherable that the grievants were employed as follows;
  1. Rose Mumbua September 2018
  2. Irene Mumbua February 2014
  3. Erick Bagwasi September 2018
48. In the case of Rose Mumbua, the date on the Certificate of Service dated 9<sup>th</sup> February, 2022 is confirmed by the Leave Application Form dated 8<sup>th</sup> January, 2021 as 30<sup>th</sup> September, 2018.
49. In the case of Irene Mumbua, the date is confirmed by the Leave Application Form dated 5<sup>th</sup> January, 2021 as 2<sup>nd</sup> February, 2014.
50. In the case of Erick Bagwasi, although the Certificate of Service indicates September 2018, his Leave Application Form have numerous dates for instance 2<sup>nd</sup> April, 2020, 2<sup>nd</sup> February, 2017, 9<sup>th</sup> June, 2018 (twice), 10<sup>th</sup> February, 2018 and 1<sup>st</sup> August, 2015. It is difficult to discern the date of employment.
51. Since Erick Bagwasi did not contest date on his Certificate of Service, which he received, the same shall be deemed to be the date of employment as the eight (8) Leave Application Forms on record have different dates and only June 2018 is repeated.
52. In the Court's view, the forms are unreliable as the dates are unverifiable and borders guesswork.
53. It is not in contest that an attempted theft of products occurred at the grievants place of work on 29<sup>th</sup> January, 2022 and the grievants were suspected to have been part of those involved and all were at work on the material day.
54. Records reveal that despite initial denial, all the grievants were issued with and received a notice to show cause dated 31<sup>st</sup> January, 2022 and all responded in writing.
55. While both Irene Mumbua and Rose Mumbua returned to the changing room for different reasons, namely; keys and cloths, Mr. Erick Bagwasi did not, though at the hearing, he admitted that at around 1 pm he used the exit gate to see a friend and came back using the same exit.
56. Irene Mumbua admitted during the hearing that as she was leaving for the second time, she met Rose Mumbua who was coming in.
57. It is not in dispute the grievants were invited for a disciplinary hearing vide letters dated 2<sup>nd</sup> February, 2022 to be held on 7<sup>th</sup> February, 2022, 4 days (notices) and could bring witnesses of their choice and all attended and participated and signed the minutes of the meeting and all were issued with notices of non-renewal of contract, a fact all the grievants admitted and none of them provided evidence of a summary dismissal as alleged in the Memorandum of Claim.



58. As regards the terms of employment, Irene Mumbua, Rose Mumbua and Erick Bagwasi testified that they were initially employed as casuals in 2012, 2016 and May 2018 respectively but none of them had any scintilla of evidence to prove the allegation.
59. What however is decipherable is that they were employed under written contracts of service for a defined duration, though none provided a copy.
60. This is also surmisable from the fact that the grievants could proceed on maternity/paternity, annual and sick leave and had no probation clause, which would appear to discount the Respondent's contention, the grievants had always served under one (1) month's contract as the last contract shows.
61. However, none of the grievants contested the contracts dated 1<sup>st</sup> January, 2022 they executed on 10<sup>th</sup> or 11<sup>th</sup> January, 2022 and were effective from 1<sup>st</sup> January, 2022 to 31<sup>st</sup> January, 2022 but which were not renewed owing to the incident on 29<sup>th</sup> January, 2022 and none of the grievant worked after that date, till the notice of non-renewal was given on 10<sup>th</sup> February, 2022.
62. Copies of the contracts on record duly executed by the parties are explicit that they were fixed term contracts with a definite commencement and expiry date.
63. Was the grievants employment terminated unfairly or did the fixed term contracts lapse?
64. The principles that govern fixed term contracts are well settled.
65. It is trite law that a fixed term contract is a legitimate and lawful mode of employment.
66. Section 10(3)(c) of the *Employment Act* is unambiguous that;  
Where the employment is not intended to be for an indefinite period, the period for which it is expected to continue or if it is for a fixed term, the date when it is to end.
67. It follows that the contract of employment may prescribe the duration of its subsistence or the date on which it is to end in cases of contracts of employment not entered into for an indefinite duration.
68. In *Registered Trustees of the Presbyterian Church of East Africa & another V Ruth Gathoni Ngotho* (2017) eKLR the Court of Appeal held inter alia;  
“ . . . Bearing the foregoing in mind, we note that fixed term contracts carry no right, obligations or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the Respondent's contract ought not to have been maintained . . . ”
69. According to Rika J. in *Margaret A. Achieng V National Water Conservation & Pipeline Corporation*;  
“ Automatic renewal would undermine the very purpose of the fixed term contracts and the revert to indeterminate contract of employment. Courts have upheld the principle that fixed term contract carry no expectation of renewal, in a catena of judicial authorities . . . ”
70. See also *Francis Chire Chachi V Amatsi Water Services Company* (2012) eKLR where the Court held that;  
“ . . . employers are not under any obligation to give reasons for non-renewal of fixed term contract unless there is such an obligation created in the expiring contract ”.
71. See also *Registered Trustees De La Salle Christian Brothers T/A St. Marcy's Boys Secondary School V Julius DM Bainsi* (2017) eKLR on reasons for non-renewal.



72. Finally, in *Transparency International-Kenya V Omondi* (2023) KECA 174 KLR, the Court of Appeal cited its sentiments in *Francis Chire Chachi V Amatsi Water Services Company Ltd* (Supra) with approval and 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 a 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 appellants 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 . . .

It is old hat, that parties are bound by the terms of the contract they enter into . . . ”

73. The foregoing sentiments apply on all fours to the circumstances of the instant case. Having entered into a fixed term contract scheduled to lapse on 31<sup>st</sup> January, 2022, the Respondent was not bound to renew it or even take the grievants through a disciplinary process as they were not its employees after 31<sup>st</sup> January, 2022 and could have declined to be taken through the process.

74. The disciplinary process did not convert the expiry of the contract period to an unfair or unlawful dismissal from employment and none of the grievants produced a dismissal letter.

75. The Respondent provided copies of letter of non-renewal of the contract of employment which the grievants duly received.

76. As judicial authority shows, the Respondent was not bound to provide a reason for non-renewal, other than lapse of time.

77. See also *Keen Kleeners Ltd V Kenya Plantation and Agricultural Workers Union* (2021) eKLR, *Trocaire V Catherine Wambui Karumo* (2018) eKLR, *Oshwal Academy (NRB) V Indu vishwanath* (2015) eKLR and *Wanjohi V Kirinyaga Water & Sanitation Co. Ltd* (2012) eKLR.

78. In any case, the Respondent considered their explanation on the occurrences of 29<sup>th</sup> January, 2022 and deemed them unsatisfactory.

79. Significantly, among the documents filed by the Respondent vide its Supplementary List of Documents on 7<sup>th</sup> July, 2024 are copies of a document entitled “Settlement Acceptance Agreement” by which the grievants appear to have waived their right to prefer other or further claims against the Respondent. The documents were filed with leave of the Court.

80. All the grievants executed the document and inserted their Identity Card Number and name and additionally acknowledged receipt of the cheque on 14<sup>th</sup> August, 2023.

81. The Settlement Acceptance Agreement read as follows;

I ..... of ID No. .... certify having received the sum of Kenya Shillings ..... Kshs. .... being my full and final payment from IMCL & Orbit Products Ltd after my services came to an end.

I confirm having read and understood the terms of this Settlement Agreement, I have no further or whatsoever claims relating to my employment against both IMCL & Orbit Products Ltd.



Signature: .....

ID. Number: .....

Name: .....

82. The principles that govern settlement agreements and discharge vouchers have been clearly articulated by the Court of Appeal in several decisions.
83. In *Thomas De La Rue (K) Ltd V David Opondo Omutelema (2013) eKLR*, the Court stated as follows;
- “ . . . The Court has, in each and every case to make a determination, if the issue is raised, whether the discharge voucher was freely and willingly executed, when the employee was seized of all the relevant information and knowledge.”
84. In *Trinity Prime Investment Ltd V Lion of Kenya Insurance Co. Ltd (2015) eKLR*, the Court held;
- “The execution of the discharge voucher, we agree with the learned judge constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”
85. Finally, in *Coastal Bottlers Ltd V Kimathi Mithika (2018) eKLR* where the Claimant/Respondent had signed a settlement agreement and confirmed that he had no further claim against the appellant, the Court of Appeal held thus;
- In our minds, it is clear that the parties had agreed that payment of the amount stated in the settlement agreement would absolve the appellant from any further claims under the contract of employment and even in relation to the Respondent’s termination. It is instructive to note that the Respondent never denied signing the said agreement or questioned the veracity of the agreement.
- Further, from the record, we do not discern any misrepresentation on the import of the said agreement or incapacity on the Respondent’s part at the time he executed the same. It does not matter that the amount thereunder would be deemed as inadequate . . .”
86. The foregoing sentiments apply on all fours to the facts of the instant suit as the grievants confirmed having received payment by cheque and signed for the same.
87. Although they alleged that the amount was not enough, they nevertheless signed the settlement agreement and are therefore bound by its terms.
88. It is clear that the parties had agreed that payment of the sum would extinguish the Respondent’s liability under the contract of employment and its expiry.
89. The grievants actions against the Respondent is also unsustainable under the equitable doctrine of equitable or promissory estoppel as aptly captured by Denning L. J. in *Combe V Combe (1951) 2 K.B. 215* as the grievants made a promise or representation that they had no further claims against the Respondent and intended the promise or representation or assurance to be relied upon by the Respondent which it did and paid and thus believed that it had no further obligations to the grievants.
90. It is therefore inequitable for the grievants to conduct themselves as if there was no promise, representation or assurance to the Respondent.



91. The grievants are thus estopped from acting outside the promise or assurance they gave as it is unfair to the Respondent.
92. In a nutshell, it is the finding of the Court that the Claimant's suit against the Respondent herein is unsustainable and it is accordingly dismissed.
93. Having waived their right to pursue further claims against the Respondent, the instant suit ought not to have been instituted in the first instance.

### **Reliefs**

94. Having found as above, none of the reliefs grounded on unfair or unlawful termination of the grievants' employment is available or awardable as no action lay on the Respondent and the contract of employment ended by effluxion of time.
95. The claim for declaration, reinstatement, general damages, gratuity and compensation are unsustainable save for the Certificate of service if it has not been handed over to the grievants.
96. The claims for leave, gratuity and terminal dues lacked supportive evidence and are declined.
97. In the circumstances, parties shall bear their own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**DR. JACOB GAKERI**

**JUDGE**

**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 has 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.

**DR. JACOB GAKERI**

**JUDGE**

