



**Tarmal Wire Production Limited v Shauri (Employment and Labour Relations Appeal E115 of 2023) [2024] KEELRC 2306 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2306 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E115 OF 2023**

**AK NZEI, J  
SEPTEMBER 26, 2024**

**BETWEEN**  
**TARMAL WIRE PRODUCTION LIMITED ..... APPELLANT**  
**AND**  
**MALANGA CHIRINGA SHAURI ..... RESPONDENT**

**JUDGMENT**

1. The Appellant herein was the Respondent (Defendant) in Mariakani Principal Magistrate's Court Employment Case No. E048 of 2022 whereby it had been sued by the Respondent herein seeking the following reliefs:-
  - a. One month salary being notice pay.....kshs. 17,234
  - b. Severance pay (17,234/2X6 years).....kshs. 51,702
  - c. Leave pay accrued for 6 years (21 days kshs. 17,234/26 x 6 years).....kshs. 83,518.62
  - d. Compensation for unfair termination of employment (17,234x12).....kshs. 206,808.
  - e. Certificate of service.
  - f. Costs of the suit and interest.
2. The Respondent had pleaded in his memorandum of claim dated 9/9/2022 and filed in the trial Court on 21/9/2022:-
  - a. That the Respondent had been employed in the Appellant as a Machine Operator in November 2015, earning a consolidated salary of kshs. 17,234, and worked until 25/2/2021 when his employment was unlawfully terminated.



- b. That the Respondent was not given a written employment contract, was not allowed to take annual leave, and was not paid in lieu thereof.
  - c. That on 25/2/2021 at around 4.00pm, the Respondent was summoned to the Personnel office whereat he was informed that his services were no longer needed due to reduction of work; and that termination of his services was effected immediately.
  - d. That the abrupt termination of the Respondent's employment was unlawful, and was in contravention of the Constitution of Kenya, rules of natural justice and International Labour Conventions and Declarations.
3. Documents filed alongside the Respondent's said pleadings included the Respondent's written witness statements and a list of documents dated 9/9/2022, listing 3 documents. The listed documents were a demand letter, an NSSF statement and pay slips(s).
  4. The Appellant entered appearance and filed a memorandum of Response, denying the Respondent's claim. The Appellant further pleaded:-
    - a. That the Respondent had been employed by the Appellant as a general labourer on various fixed term contracts, the last of which was from 1/1/2021 to 1/3/2021.
    - b. That upon expiry of the said contract by effluxion of time, the Respondent was not issued with a new contract, and thus there was no need of procedural termination.
    - c. That the Respondent's contract having been fixed in nature, and with an inbuilt termination date of which the Respondent was aware, there was no need of notice.
    - d. That the Respondent took leave during the period that he worked with the Appellant, and that no leave (pay) was payable.
    - e. That the Respondent was never declared redundant, but rather his contract ended by effluxion of time; hence the claim for severance pay was baseless and unfounded.
    - f. That the claim for compensation (for unfair termination) was baseless, the Respondent's contract of employment having ended by effluxion of time.
  5. Documents filed alongside the Appellant's memorandum of response included a written witness statement of Osman Yakub, the Appellant's Human Resource Officer, and a list of documents dated 4/11/2022 listing 3 documents. The listed documents were employment contracts, a payslip for February 2021 and leave forms.
  6. At the trial, the Respondent (being the claimant in the primary suit), adopted his filed witness statement as his testimony and produced in evidence the documents referred to in paragraph 3 of this judgment. The Respondent further testified and denied having signed any contract or leave forms. He denied having taken leave and stated that offs were sought and granted orally. That he was not declared redundant, but was fired.
  7. The Appellant called one witness, Osman Yakub (RW-1), who adopted his filed witness statement as his testimony and produced in evidence the Appellant's documents referred to in paragraph 5 of this judgment. RW-1 testified that all the Appellant's employees were employed on fixed term contracts with start and end dates. That the Respondent's last contract was between 28/2/2021 and 30/3/2021. That an employee taking leave signed and thumb printed a leave form; and that there had been no complain regarding this.



8. Cross-examined, the Appellant (RW-1) testified that the Respondent had been on various fixed term contracts prior to the last one that commenced on 28/2/2021; hence the Appellant's evidence showing that the Respondent had taken leave in the year 2018, 2019, 2020 and 2021. That the Respondent never raised any claim regarding the previous fixed term contracts.

9. The trial Court delivered its judgment on 13/10/2023 and rendered itself thus:-

“ 22 .....I find that the claimant was not on a fixed term contract and that the period of employment is between 2015 to February 2021. Reliance is placed on the case of *Silas Mutwiri -vs- Haggai Multi Cargo Handling Services Ltd* [2013] eKLR:-

23. Having established the period of employment was 2015 and with no proper evidence from the Respondent on the averments of fixed term contracts and taking the admission of the Respondent as per its Memorandum of Response that since the claimant was on fixed term contract there was no requirement to issue notice, this Court finds that the termination of the employment without notice and without reasons was unfair.

24. Even if the Court was to accept the explanation given by the Respondent as to why there was no need to issue notice and reasons for termination, the Court notes that the Respondent stated that the claimant was on a fixed term contract from January to 1<sup>st</sup> March. The claimant's services were terminated on 25/2/2021, a few days short of the alleged contract with no explanation. The Court thus finds that the claimant was wrongfully terminated.....

27. Based on the above reasons, the Court thus finds merit in the claimant's claim and makes the following determination:-

- a. The Respondent failed to issue the claimant with proper notice and awards kshs. 17,324.
- b. The claimant's employment was wrongfully terminated and awards an equivalent of 8 months salary in compensation kshs. 17,234x8 months.....kshs. 137,872.
- c. An order compelling the Respondent to issue the claimant with a certificate of service is hereby issued.
- d. The claimant is awarded costs of the suit.”

10. Aggrieved by the said judgment, the Appellant preferred the present appeal and set forth the following grounds of appeal:-

- a. The learned Honourable Magistrate erred in law and in fact in holding that the claimant was unfairly terminated in total disregard of the law, the facts and the evidence on record.
- b. The learned magistrate erred in law and misdirected himself in holding that the claimant was entitled to notice.

11. The Appellant sought the following reliefs on appeal:-

- a. That the judgment of the Honourable Magistrate delivered on 13/10/2023 be set aside.



- b. The Appellant be awarded costs of the appeal.
12. This is a first appeal. As stated in *Selle & Another -vs- Associated Motor Boat Co. Ltd & Anotehr* [2968] EA 123 and in *Peters -vs- Sunady Post Ltd* [2995] EA 424, and restated in *Mursal -vs- Manesa* [2022] eKLR:-
- “A first appellate Court is mandated to re-evaluate the evidence before the trial Court as well as the judgment and to arrive at its own independent judgment on whether or not to allow the appeal. A first appellate Court is empowered to subject the whole of the evidence to fresh and exhaustive scrutiny and to make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.”
13. Having considered the pleadings filed in the trial Court by both parties herein and the evidence presented thereon, issues that fall for determination, in my view, are as follows:-
- a. Whether the Respondent was employed by the Appellant on fixed term contracts.
- b. Whether the Respondent’s employment was terminated by the Appellant, and if so, whether the termination was unfair.
- c. Whether the Respondent was entitled to the reliefs given by the trial Court.
14. On the first issue, the Respondent pleaded in the primary suit that he had been employed by the Appellant as a Machine Operator in November 2015 but was not given a written contract. The Appellant on the other hand pleaded that it had employed the Respondent as a general labourer on various fixed term contracts, with the last contract being from 28/1/2021 to 1/3/2021. The Appellant produced in evidence a written fixed term contract for the duration on 28/1/2021 to 1/3/2021, duly executed/signed by the Respondent and a witness on 28/1/2021. The Respondent is shown to have signed and thumb-printed each of the six pages of the fixed term contract. At the trial, the Respondent denied having signed the said fixed term contract, but stated that the signature thereon looked like his signature. He did not, however, deny having thumb-printed the said agreement. The Respondent did not deny knowing the person shown to have witnessed his signing of the fixed term contract.
15. Perusal of the said fixed term contract shows that the Respondent’s basic salary was kshs. 14,986 and a house allowance of kshs. 2,248; making a total of kshs. 17,234. The Respondent had pleaded that he was earning a consolidated salary of kshs. 17,234. Further, the said contract states that the Respondent was employed as a Machine Attendant. The Respondent pleaded that he had been employed as a Machine Operator.
16. Among the documents produced in evidence by the Appellant was the Respondent’s payslip for the month of February 2021; which is shown to have been duly signed and thumb-printed by the Respondent. The Respondent did not deny or challenge the authenticity or validity of the signature and thumb-print on the said document, which are shown to be his.
17. At the trial, the Appellant’s witness (RW-1) testified that all the Appellant’s employees were on fixed term contracts which stated both the start and end dates, and that the Respondent was on such a contract.
18. Having considered all the evidence on record, I make a finding that the respondent was indeed on a fixed term contract which he duly signed in the presence of a witness on 28/1/2021, and which terminated by effluxion of time on 1/3/2021. The fact that the Appellant did not produce in evidence the Respondent’s previous fixed term contracts did not, in my view, negate the foregoing fact. Indeed,



the Respondent did not avail any evidence in support of his assertion that he did not work on fixed term contracts as demonstrated by the Appellant.

19. In the case of *Registered Trustees of Presbyterian Church of East Africa -vs- Ruth Gathoni Ngotho* (cited in *Transparency International Kenya -vs- Teresa Carlo Omondi* (2023) eKLR, the Court of Appeal stated as follows:-

“29. Bearing the foregoing in mind, we note that a fixed term contract carries no rights, obligations, or expectation beyond the date of expiry. Accordingly, any claim based after the expiry of the Respondent’s contract ought not to have been maintained.

This is in relation to the salary of the months of 5<sup>th</sup> of April upto May 2010. Similarly, since the Respondent’s contract came to an end by effluxion of time, any claim for wrongful termination could not be maintained.

20. Still on the same issue, the Court of Appeal stated as follows in the case of *Registered Trustees De La Salle Christian Brothers t/a St. Mary’s Boys Secondary School -vs- Julius M.d. Bainin* [2017] 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.....”

21. The Respondent’s fixed term contract of employment came to an end by effluxion of time. The trial Court fell into error by appearing to suggest that the Respondent’s fixed term contract was terminated on 25/2/2021, a few days to the contractual termination date of 1/3/2021. There is no evidence on record to support this position. I have looked at the Respondent’s payslip for the month of February 2021, and I have noted that the Respondent was paid his full salary and house allowance, amounting to kshs. 17,234. He is also shown to have been paid for his leave days, and a deduction is shown to have been made regarding a company loan. The Respondent is shown to have signed and thumb printed the said payslip, a fact he did not dispute at the trial. The trial Court’s finding that the Respondent’s employment was unfairly terminated without notice is hereby set aside.

22. The second and third issues as set out in paragraph 13 of this judgment cannot be considered, in view of the foregoing finding.

23. In sum, and having considered written submissions filed on behalf of both parties herein, I find merit in the Appellant’s appeal, and the same is hereby allowed.

24. The trial Court’s judgment delivered on 13/10/2023 is hereby set aside in its entirety, and is hereby substituted with an order dismissing the primary suit, being Mariakani Principal Magistrate’s Court ELR Case No. E048 of 2022.

25. Each party will bear its own costs of the appeal and of proceeding in the trial Court.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26<sup>TH</sup> SEPTEMBER 2024**

**AGNES KITIKU NZEI**

**JUDGE**

Order



This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....Appellant

.....Respondent

