



Mutonyi-Sakuda v Board of Governors, St Andrew's School, Turi (Cause E680 of 2020) [2024] KEELRC 2672 (KLR) (31 October 2024) (Judgment)

Neutral citation: [2024] KEELRC 2672 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E680 OF 2020
J RIKA, J
OCTOBER 31, 2024**

BETWEEN

IRENE NJOKI MUTONYI-SAKUDA CLAIMANT

AND

**THE BOARD OF GOVERNORS, ST ANDREW'S SCHOOL,
TURI RESPONDENT**

JUDGMENT

1. The Claimant filed her Statement of Claim on 28th October 2020.
2. She avers that, she was employed by the Respondent as a Finance Director, on 14th May 2018.
3. She earned a gross monthly salary of Kshs. 854,900.
4. She avers that the contract was for 2 years, effective from 15th June 2018 to 14th June 2020.
5. It was renewable at the end of the period, at the invitation of the Respondent, on annual basis.
6. Clause 2.2. of the contract stated: -

“In the second and subsequent years of employment, either party may terminate this agreement on giving the other, no less than 6 months’ notice in writing, to expire at the end of the school term.”

7. The Claimant received a letter from the Respondent’s Chair, informing her that the Respondent had decided to release her, at the end of her contract, as per clause 2.1 of the contract.
8. She avers that this amounted to unfair termination, under the *Employment Act*.
9. The Respondent had a contractual obligation to comply with clause 2.2. of the contract



10. Having joined the School on 15th May 2018, clause 2.2. of her contract became effective on 15th May 2019.
11. At the time her contract was terminated, she was entitled to notice of 6 months, under clause 2.2. of the contract.
12. There was no justifiable cause on termination of her contract. The Respondent acted in breach of contract. It was in violation of Section 44 [2] of the *Employment Act*. The Claimant was deprived of her right to fair labour practices, under Article 41 of *the Constitution*.
13. She legitimately expected that her contract would be renewed for at least 1 year.
14. It was the general practice of the Respondent, to issue a notice of non-renewal. Where the notice was not issued, the contract would be renewed.
15. The Respondent did not communicate non-renewal to the Claimant, in January 2020, 6 months before the expected date of termination.
16. The Claimant therefore legitimately expected that, her contract would be renewed.
17. In March 2020, she was deeply involved in planning for the Respondent, how to meet the challenges of Covid-19 at the School. She engaged staff on reduction of their salaries. She applied herself fully, including working on weekends to ensure the School continued running amidst the challenges of Covid-19.
18. She received a letter from the Respondent, informing her that salary reduction, was from 1st April 2020 to 31st August 2020. The date given by the Respondent, when her salary cut would come to an end, was 2 months after the contract was set to expire. She legitimately expected renewal.
19. Termination was carried out in the middle of Covid-19 pandemic. There was no notice. She could not secure alternative employment, while the Covid-19 storm was raging. She was subjected to untold suffering, having to relocate from Molo to Nairobi, with her 2 young children, while travel restrictions were in place.
20. Her children who were schooling at the Respondent's Institution, at concessionary staff school fees rates, could not continue schooling at the Respondent's Institution. The Respondent declined her request to retain her children at the school on concessionary fees. The older child was an IGSE candidate.
21. The Claimant avers that she experienced difficulties finding her children alternative schools. She suffered financial and emotional distress.
22. She prays for: -
 - a. Declaration that the Respondent's failure to issue a 6-month notice to the her, amounts to unfair termination, in contravention of Section 44 [2] of the *Employment Act*.
 - b. 6 months' salary in lieu of notice, at Kshs. 5,129,400.
 - c. 12 months' salary in compensation for unlawful and unfair termination at Kshs. 10,258,800.
 - d. Aggravated damages at Kshs. 6,000,000.
 - e. Costs.
 - f. Interest.



- g. Any other suitable relief.
23. The Respondent filed its Statement of Response, dated 13th November 2020. Its position is that the Claimant was employed on a fixed-term contract for 2 years. Clause 2.1 of the contract, granted the Respondent discretion, on renewal of the contract. It stated that “ thereafter, employment may be renewed...” The Claimant was alive to this clause.
24. Other forms of exit, under clauses 2.2. and 2.3, were not in issue. The Claimant makes a one-sided interpretation of clause 2.2., while ignoring that clause 2.1. granted the Respondent discretion, to renew, on not renew the contract. She mischievously imports clause 2.2. to clause 2.1.
25. The letter dated 9th May 2020 from the Respondent to the Claimant, informing her that her contract would not be renewed, was regular.
26. Clause 2.2. would only apply, if the Respondent, terminated the Claimant’s contract, before the end of the 2 years.
27. There was no breach of the contract by the Respondent. There was no legitimate expectation of renewal. Her devoted work during Covid-19 pandemic was not exceptional; it was part of her routine duties. Salary reduction affected all staff. The assertion that the letter communicating salary reduction referred to a date 2 months after the expiry of the contract, as the date reduction would come to an end, did not create any legitimate expectation of renewal. The Claimant had received communication that her contract would not be renewed, on 9th May 2020. The letter on salary reduction, dated 20th April 2018, did not vary the terms of the contract.
28. Everyone at the school was affected by Covid-19 pandemic. It was not only the Claimant who encountered challenges. Renewal would not be informed by the emergence of Covid-19. The Claimant had adequate notice, from 9th May 2020 when she was informed that her contract would not be renewed, to organize her exit. Any distress suffered by her was not of the Respondent’s making.
29. The Respondent cushioned the Claimant against a rushed exit. It offered to accommodate her to the end of June 2020, but she opted to leave earlier. It organized and paid for her transportation, from Molo to Nairobi. She was not left to her own devices as alleged.
30. The Respondent urges the Court to dismiss the Claim with costs.
31. The Claimant filed a Reply to the Statement of Response, dated 8th December 2020. She reiterates that giving of notice before an exit, was common practice at the school. Even children who left the school were required to give notice or 1-month to the school, or pay equivalent of 1-term school fees to the Respondent, in lieu of notice. She reiterates that clause 2.2. of her contract was valid and applicable to her exit. The Respondent ordinarily issued non-renewal notice, where it did not intend renew a contract. She obtained authority to travel from the Chief Turi, based at Nakuru, without the Respondent’s assistance. There was no formal communication from the Respondent that she could stay at the school, to the end of June 2020.
32. The Claimant gave evidence, and closed her case on 28th November 2023. The Respondent’s Human Resource Director, Janet Ndiho, gave evidence on 2nd July 2024, closing the hearing. The Claim was last mentioned on 20th September 2024, when the Parties confirmed filing and exchange of their final submissions.
33. The Claimant relied on her witness statement dated 9th October 2020, as her evidence-in-chief. She exhibited documents contained in 2 bundles [1-13 and 14-15]. She highlighted the terms and



- conditions of service, contained in her contract. She was responsible for all non-academic functions. The school had 3 terms in a year, January to April; May to August; and September to December.
34. A notice of termination would take effect, at the end of a school term.
 35. The Claimant did not receive a written notice of termination. She received a call from the Respondent's Chair, advising her that her contract would not be renewed.
 36. This was contrary to the contractual notice period of 6 months. She received communication on pay-cut. It was implemented from April to August 2020. Reduction went beyond the date her contract was to expire. She was persuaded by the Respondent's communication, that her contract would be renewed.
 37. She was devastated. She had been in engagement with over 200 Employee of the Respondent, particularly on finding ways to cope with the challenges of Covid-19 pandemic. She articulated the position of the school, during the difficult Covid-19 period. She had to relocate 200 km away to Nairobi. There was a Covid-19 lockdown. She had to get authority from the administration to travel.
 38. She did not secure alternative employment, until January 2021. She had 2 children at the school. One, 16 years old, was preparing for IGSE. She prayed the Respondent for time, to enable her son sit the examination. The Respondent declined her request. She had another child, 9 years old, at the school. The Claimant and her family was disrupted.
 39. Cross-examined, the Claimant told the Court that her contract was to expire on 14th June 2020. It was a fixed-term contract. She was aware about the expiry date. Renewal was at the discretion of the Respondent. Her Claim revolves around the interpretation of clause 2.2. of the contract.
 40. Notices issued in January, where there was no renewal. Clause 2.2. referred to the second and subsequent years. She was in her second year. Expiry would be at the end of the term.
 41. The Claimant told the Court that she was not employed as a Teacher. She did not rely on the contract of any Teacher. Clause 7.3. referred to her children. They were to be educated at the Respondent's school. She was not notified by the Respondent that her children would be discontinued. The education benefit, was attached to her contract.
 42. Her contract was ending 14th June 2020, in the middle of the term. She would have made provision for her children, if 6-month notice had issued to her, in January 2020.
 43. The Claimant authored the letters to staff on salary reduction, including one to herself. She wrote the letter on the instructions of the Board. There was general consensus and approval of the Board, of the salary reduction.
 44. She endured mental anguish. The school paid for her transportation to Nairobi. There was no other help. Even without Covid-19, the Claimant legitimately expected renewal of her contract.
 45. Redirected, she told the Court that she had enquired from the Respondent, about her children and annual leave balance, through e-mail. The letter on salary reduction to staff, was not her own letter, but a letter from the Respondent.
 46. Janet Ndiho adopted her witness statement dated 16th November 2020 as her evidence-in-chief. She relied on documents filed by the Respondent, marked [1-8]. She gave a summary of the Claimant's contract.
 47. 6-months' notice would only apply to subsequent contracts, not the first contract. It would only apply if there was renewal. The first contract did not have a specific notice period.



48. The Claimant wrote to the Board Chair, an e-mail dated 3rd May 2020. The Chair advised the Claimant that her contract lapsed after 2 years, and that notice of 6 months would only be applicable to subsequent contracts, if any. On 11th May 2020, the Claimant wrote to the Chair, stating that the Respondent was acting legally. She was aware about the expiry date. The Respondent wrote to her on 9th May 2020, advising her that her contract was expiring on 14th June 2020, and it would not be renewed. There was adequate notice of more than a month.
49. Ndiho told the Court that the Respondent had different contracts with various Employees. They were not in standard form. The notice periods were not the same. The Claimant wrote the letter on salary reduction to staff. She was aware about the expiry date of her contract when she wrote the letter dated 20th April 2020. Her gross salary upon termination was Kshs. 555,685. The Respondent procured, and paid the cost of transportation, for the Claimant.
50. Cross-examined, Ndiho told the Court that the Claimant sought clarification from the Chair, on her contract renewal. She was advised it would not be renewed. She asked for formal communication on non-renewal. The Respondent did not have formal communication on non-renewal. She insisted that her contract provided for notice period of 6 months. She asked the Respondent to address her concerns, including the concern for her children.
51. The school admission policy required parents to give 1-month notice, on withdrawal of their children from the school. The policy would not apply to staff children. Staff children were in the school, on the strength of their parents' employment contracts.
52. Ndiho told the Court that clause 2.2. provided for 6 months' notice. It applied after 1 year of service. 1 year ended in 2019. The second ended in 2020. The Claimant was not issued 6 months' notice, because her contract did not require so. It did not have any other notice period, other than the 6 months. Ndiho did not wish to admit, that 6 months' notice, applied to the Claimant.
53. The Claimant's e-mail of 11th May 2020 to the Chair, demanded for fair compensation of notice. She did not merely endorse the validity of termination. She emphasized that notices on termination issued to staff, and were discussed in January. She underscored that she was entitled to 6 months' notice.
54. Ndiho did not communicate to the Claimant, concerning non-renewal. It was not a human resource function. The Claimant reported to the Board. She wrote her letter on salary cut to staff, following a resolution of the Board. She was acting on the instructions of the Board. She secured travel permit from the administration on her own. Her contract lapsed in the middle of the second term. Her children were in the middle of the second term.
55. The notice period under the first contract was open-ended. Clause 2.2. must be read with clause 2.1.
56. The issues are whether the Claimant's contract was fairly and lawfully terminated by the Respondent; whether the clause 2.2. of the contract was applicable to the Claimant; whether there was legitimate expectation of renewal; and whether the Claimant merits the reliefs sought.

The Court Finds: -

57. Parties agree that the Claimant was employed by the Respondent as a Finance Director, on 14th May 2018.
58. Her salary under contract was Kshs. 854,900. The contract was for 2 years, running from 15th June 2018 to 14th June 2020.



59. It is common evidence that the Respondent's Chair wrote to the Claimant on 9th May 2020, informing her that her contract would not be renewed.
60. The main issue revolves around clauses 2.1. and 2.2. of the contract. Parties do not dispute the contents of these clauses, but differ on their interpretation and application to the Claimant's exit.
61. The Claimant also holds that the Respondent's conduct, created in her reasonable and legitimate expectation that her contract would be renewed.
62. The Claimant argues that non-implementation of clause 2.2. and non-renewal of her contract, amounted to unfair termination, warranting compensation, and payment of 6 months' salary in lieu of contract.
63. Tied to this is that there were other serious breaches of her contract, extending to her 2 children, who were pupils at the Respondent's Institution, by dint of their mother, the Claimant herein, being a member of the Respondent's staff. She complains too, that she was subjected to untold sufferings by the Respondent, through the rushed termination, which was carried out in the midst of the Covid-19 pandemic. She pleads that she was denied her constitutional right to fair labour practices, under Article 41 of *the Constitution*.
64. Clause 2.1. of the contract, sets the period of service at 2 years. It further states that after expiry, the contract may be renewed at the invitation of the Board of Governors, on annual basis.
65. The Respondent submits that the Claimant's contract lapsed at the end of the 2 years, in accordance with clause 2.1. and was not renewed. She was notified on 9th May 2020, by the Chair, that there would be no renewal upon expiry, on 14th June 2020.
66. There was no specific clause on notice, the Respondent submits, but the letter of 9th May 2020 afforded the Claimant more than 1-month notice of termination. The letters specifically informed the Claimant that, the agreement dated 14th May 2018 lapses upon expiry [sic] as per clause 2.1. of the contract."
67. The Respondent argues therefore, that the Claimant left under clause 2.1. of her contract, and there is no reason to import clause 2.2. to clause 2.1. and demand notice of 6 months.
68. Clause 2.2. states that, in the second and subsequent years of employment, either party may terminate this agreement, on giving to the other, no less than 6 months' notice in writing, to expire at the end of the school term.
69. The Claimant's position is that she was in her second year of service. She was employed in 2018, and Clause 2.2. would be applicable after 1 year, from 2019. By the time of termination in June 2019, the clause was applicable.
70. The Court would agree with the Claimant. A plain reading of clause 2.2. is that it applied from the second year [2019], and in subsequent years.
71. It is illogical to argue that the clause was intended to apply in subsequent contracts, after the first 2 years.
72. The existing contract, regulated an existing employment relationship. The contract was to be read within its 4 corners. If the Claimant's contract was renewed, there would be a fresh contract, with its own contractual details. It is hard to see how notice period of 6 months, would have been included in the existing 2-year contract, while it was intended to apply after the 2 years had lapsed.



73. The contra proferentem [Latin for ‘against the offeror’] doctrine, applies to ambiguous contracts prepared by the Employer. The doctrine is that, where a contract is ambiguous, it will be construed most strongly, against the party preparing it.
74. An employment contract is in essence, a contract of adhesion. It is a contract in which the Employer, is presumed to have superior bargaining power. This power requires the Employee to adhere to the contract, or reject it. The Respondent drew the contract dated 14th May 2018. The Claimant was required to adhere to it, or reject it, but was not allowed to bargain over its terms and conditions. It was a contract of adhesion, authored by the Respondent, with the Respondent exercising superior bargaining power.
75. An ambiguity in that contract, must therefore be resolved, against the draftsman.
76. In *Steven v. Fidelity & Casualty Co.* [1962] 58 Cal. 2d 862 [18th December 1962], the California Supreme Court explained that the rule of resolving ambiguities against the drafter, does not serve as a mere tie-breaker; it rests upon fundamental considerations of policy.
77. In a more recent decision from the British Columbia Supreme Court, *Kenny v. Weatherhaven Global Resources Limited* [2017] B.C.J No. 1510 [SC], the Court granted the Employee significant bonus payments, upon finding that a clause invoked by the Employer, as having given discretion to the Employer in determining if bonus was payable, was ambiguous. The Canadian Court laid down important principles, in the interpretation of employment contracts. Among them: -
- a. The goal of a contract of employment is to determine the mutual intention of the parties.
 - b. The Court will consider the plain language and ordinary meaning of the words used, having regard to the context of the contract as a whole.
 - c. Where it is of assistance, the Court may examine the circumstances, whether the parties knew, or ought to have known, at the time the contract was formed, the objective meaning of the words they used in the contract.
 - d. Every clause should be given a meaning, and a contract will not be interpreted in such a way, as to make one or more of its provisions ineffective.
 - e. Any ambiguity should be resolved so as to achieve a result consistent with commercial efficacy and good sense, as informed by the consideration of reasonableness and fairness. This may include the protection of vulnerable Employees, in their dealings with their Employers.
 - f. If a contract remains ambiguous after review of the above principles, the Court may apply the doctrine of contra proferentem, and resolve the ambiguity in favour of the Employee.
78. The contract drawn by the Respondent was ambiguous. A contract is considered ambiguous, if it is capable of more than one interpretation. It may be unclear on what the parties’ intention was, or a specific phrase, word, definition or term is unclear or vague.
79. The test of reasonableness applies, in resolving ambiguity. It is unlikely that a fixed-term contract, would include a clause on notice of termination, to regulate future contracts, executed after the fixed-term contract has expired, while the current fixed-term contract is itself, devoid of any notice period. Parties in fixed-term contracts are first concerned, with the terms and conditions of service, lasting for the specified term. Future contracts would define their own terms and conditions of service.
80. In the E&LRC decisions *Mwangi Ngumo v. Kenya Institute of Management* [2012] e-KLR and *Kidero & 7 others v. Shurie & 2 others* [Cause 893 of 2017] KEELRC 539 [KLR] [8th March 2024], the



Court underscored that any ambiguities in the contract of employment, should be construed against the party who drew the contract. It was elaborated that Section 9[2] of the *Employment Act*, 2007, imposes an obligation on the Employer to draw up the contract. Section 10 requires the Employer, to give the details of employment.

81. The Claimant told the Court: -The contract was not terminated in accordance with the notice period of 6 months.I was in the second year.I was eligible for 6 months’ notice.
82. Contrast this, with Janet Ndiho, the Human Resource Director’s evidence: -
 - a. The 6 months’ notice applied only to subsequent contracts.
 - b. The contract was lapsing on 14th June 2020, and the Claimant was informed on 9th May 2020, that her contract would not be renewed.
 - c. There was sufficient notice of more than a month.
 - d. The Claimant told the Respondent that her contract gave her 6 months’ notice of termination.
 - e. Clause 2.2. provided for notice of 6 months.
 - f. It applied after 1 year of service.
 - g. 1 year ended in 2019, the second in 2020.
 - h. The contract did not have any other notice period, other than the 6 months.’
 - i. I do not wish to admit that 6 months’ notice, applied to her.
83. While the Claimant was clear in her mind, that she understood the contract to confer on her a notice period of 6 months, the evidence of the Human Resource Director above, was ambiguous, irresolute, contradictory and evasive. The ambiguity can only be resolved in favour of the Claimant.
84. There was other evidence, supporting the Claimant’s prayer for 6 months’ notice. It was her position that it was the practice at the school, that in cases, of non-renewal, there would be consultation with the Respondent, in January of the relevant year. A notice of non-renewal would issue. This never happened. Pupils at the school who were discontinuing, would be required to give notice of 1 month, that they were leaving the school. In default, they would be penalised. The Claimant’s contract was expiring in the middle of the second term, while notice would ordinarily, become effective, at the end of the term. The Claimant would require adequate notice, and 6 months’ notice would suffice, in transitioning her work, residence and family, from Molo to Nairobi.
85. The Court is satisfied that clause 2.2. applied to the Claimant. It extended to her a notice period of 6 months. It applied after 1 year of service. She was in her second year. She is awarded 6 months’ salary in lieu of notice, at Kshs. 5,129,400.
86. The applicable salary, as given under the contract executed by both parties, was Kshs. 854,900 monthly. The salary reduction was a temporary adjustment, applicable to all staff, to help the school, in mitigating the emerging challenges of Covid-19 pandemic. It was not intended to be a lasting variation, of the contractual monthly salary.
87. The next issue, is whether the Respondent gave the Claimant any reason, to legitimately expect renewal of her contract, and whether the circumstances of termination or non-renewal, amounted to unfair and unlawful termination, warranting compensation. Was the Claimant subjected to unfair labour practices?



88. The Respondent holds onto clause 2.1. of the contract, in its submission, that the Claimant was on a limited-term contract of 2 years, which ended on 14th June 2020. There was nothing said or done by the Respondent, to create the thinking in the Claimant's mind, that her contract would be extended beyond 14th June 2024.
89. The Claimant invites the Court to find and hold, that there were circumstances, which led her to believe, that her contract would be extended.
90. The Court has examined the contract and evidence surrounding the Claimant's exit on 14th June 2024 carefully, and is convinced that the Claimant had reasonable and legitimate expectation of renewal.
91. The Respondent from the outset, included a clause on notice of termination of 6 months. The inclusion of clause 2.2. on notice, applicable to contracts outside the initial 2 years, would lead the Claimant to believe, that she would serve beyond the 2 years.
92. The Board instructed the Claimant to issue a notice to all staff, including herself, informing them that a salary reduction of 35% would be in place, from 1st April 2020, to 31st August 2020.
93. If the Respondent intended that the Claimant's contract would not be renewed, after 14th June 2020, why extend her salary reduction to 31st August 2020?
94. Other evidence that would lead the Claimant to expect renewal, was that there was no notice of non-renewal, issued in January 2020. She continued to work very hard, leading the response to the challenges of Covid-19, from March 2020. Her children went on schooling, and the first child, was an IGSE candidate. Their schooling was incorporated in the Claimants' terms and conditions of service.
95. That the Respondent did not find it necessary to engage the Claimant on her impending departure, in January 2020, in accordance with the school policy and practice, seen against backdrop of clause 2.2. of the contract, could only encourage the Claimant to believe, that her contract would be renewed.
96. The Respondent invokes the decision of the Court of Appeal in *Transparency International Kenya v. Omondi [Civil Appeal No. 81 of 2018]* [2023] KECA 174 [KLR] [17th February 2023], where it was held that the doctrine of legitimate expectation, does not arise in the renewal of fixed-term contract, and that its non-renewal cannot constitute unfair termination of employment.
97. The Respondent also invokes the Court of Appeal decision, *Keen Kleeners v. Kenya Plantation and Agricultural Workers Union [Civil Appeal No. 101 of 2019]* [2021] KECA 352 [KLR] [17th December 2021], which held that circumstances may arise, creating reasonable expectation in the mind of the Employee, that a fixed-term contract would be renewed.
98. Keen Kleeners endorsed the position of the Trial Court in *Transparency International*, that there can be legitimate expectation, on renewal of fixed-term contracts.
99. The Court of Appeal in *Keen Kleeners*, underlined the possibility of legitimate expectation in fixed term contracts, relying on comparative jurisprudence from South Africa in *Dierks v. University of South Africa* [J399/98] zalc 126 para 133 and *Mediterranean Woollen Mills [Pty] Limited v. South African Clothing and Textile Workers Union* [143/96] [1998] ZASCA 11. The common thread in these decisions is that reasonable and legitimate expectation could arise, where assurances made by the Employer, and other conduct by the Employer, leads the Employee to believe that the contract would be renewed.



100. The Court of Appeal decision in *Transparency International*, is not to be read at face value, and in isolation from other decisions of the Court of Appeal, and in disregard of persuasive comparative jurisprudence.
101. The *Employment Act* 2007, Section 45 [5] [d] for instance, would allow the Court to find there is legitimate expectation of renewal of a fixed-term contract, by taking into account the previous practice of the Employer, in dealing with the type of circumstances leading to termination.
102. The Court of Appeal in *Keen Kleeners* emphasized that previous practice of renewal, would create reasonable and legitimate expectation of renewal. This reasoning finds statutory support in Section 45 [5][d] of the *Employment Act*. It is not true that fixed-term contracts are incapable of accommodating the doctrine of legitimate expectation.
103. The E&LRC in *Muthee v. Italiana [Cause 2244 of 2015]* [2023] KEERC 1825 [KLR] [28th July 2023] [Judgment], concluded that there was legitimate expectation for renewal of a fixed-term contract, where that contract had previously been renewed on no less than 9 different occasions, over a period of 5 years. The Court anchored its reasoning on Section 45 [5] [d] of the *Employment Act*.
104. In *Margaret A. Ochieng' v. National Water Conservation and Pipeline Corporation* [2014] e-KLR, and in the United Nations Appeals Tribunal [UNAT] Case No. 2010-125, *Frenchon v. The Secretary-General, United Nations*, it was held that as a general rule, fixed-term contracts carry no expectancy of renewal, but evidence may be led, imposing an obligation on the Employer to renew the contracts.
105. In the present Claim, there was no history of renewal. The Claimant was on her first contract. Other evidence however, was led, to show that the Claimant expected renewal. The Respondent issued a letter to the Claimant notifying her that her salary would be reduced, from 1st April 2020 to 31st August 2020. Her contract was expiring on 14th June 2020. The Claimant reasonably expected that she would be working beyond 14th June 2020, because the Respondent informed her that she would go on earning a reduced monthly salary, until 31st August 2020. Clause 2.2. of the contract made reference to other contracts, beyond the 1st year of service. It included notice period of 6 months. There was no notice of non-renewal issued in January 2020. There was no discussion between the parties in January 2020 on renewal or non-renewal of the contract, as was the practice and policy of the school. The Claimant's children went on schooling and the Claimant was not alerted, to start looking for alternative school for them, by the Respondent. The older child was an IGSE candidate at the school. There was more than sufficient reason, for the Claimant to expect renewal.
106. The Court is satisfied that the Claimant had legitimate expectation of renewal.
107. Was termination/non-renewal unfair? It most definitely was. The Claimant had children at the school, one who was a candidate. Their schooling was incorporated in the Claimant's contract. She was not given adequate notice to secure alternative schools for her children. They were in the middle of the second term. There was reason why the Respondent stipulated that notices of termination would only take effect at the end of the term. It was to cushion the school, pupils and parents, against disruption midstream. The Respondent opted to terminate the Claimant's contract abruptly, and decline renewal, in total disregard of her and her family's needs.
108. Termination took place in the middle of the Covid-19 storm, and the Claimant had to transfer her family to Nairobi, at a time when, there was a nationwide lockdown and travel restriction. She was compelled to travel to Nakuru, to search for a travel permit from the Chief, Turi.



109. She wrote to the Board Chair, enquiring about her children and notice. There was no clear response, and no notice was forthcoming. The only form of assistance given by the Respondent to the Claimant, was in procuring a truck to take her, her bags and baggage, back to Nairobi.
110. It was stated by the Respondent that it offered the Claimant an unwritten offer, to remain in the school residence, to the end of June 2020. How would a 2-week extended residency, assist the Claimant?
111. The concept of unfair and unlawful termination extends to termination that violates employment law, and includes termination in circumstances that are deemed unjust. Unfair and unlawful termination, is not just about examining if an Employer has satisfied procedural requirements, and shown valid reason, under Sections 41 and 45 of the *Employment Act*.
112. Section 45[4] [b] calls on the Court to examine, in all circumstances of the case, if the Employer acted in accordance with justice and equity, in terminating the employment contract. The way an Employer deals with its Employee, and the Employee's family on termination, may be interpreted as unfair, or unfair labour practice, warranting compensation. Although the concept of unfair labour practice has not been defined in Kenyan legislation, it is defined in comparison, under Section 186 [2] of the South African *Labour Relations Act*, to comprise any unfair act or omission that arises between an Employer and an Employee. The principles of justice and equity are much broader, than merely granting the Employee a hearing; communicating to the Employee that a fixed-term contract has ended and the Employee must therefore pack and leave the workplace; and establishing valid reason in justifying termination. Equitable justice obligates the Court to examine the full circumstances of termination, and establish if the Employer engaged in conduct that is unjust and unequitable, or in constitutional parlance, in unfair labour practices.
113. Employers and their Employees have an implied obligation to act honestly and in good faith. They must not act in bad faith, in breach of the covenant of good faith and fair dealing. There is always an implied covenant of fair dealing in contracts of employment. The duty of good faith and fair dealing requires that neither party will do anything that will destroy, or injure the right of the other party, during or at the end of the contract. The Court is satisfied that the Respondent did not deal with the Claimant fairly, in its treatment of her, and her children. Employers must treat their Employees, especially those who are young mothers, and their children, fairly, respecting the needs and expectations of the family unit.
114. In remedying this, the Court has taken into account that it has already granted the Claimant 6 months' salary under the contractual notice. She expected to work for at least another 1 year. She and her children were subjected to considerable difficulties by the Respondent. She served her term diligently. She secured alternative employment, in January 2021, 6 months after she left the Respondent.
115. The Court grants her compensation, equivalent of her 6 months' salary at Kshs. 5,129,400, for unfair and unlawful termination; unmet reasonable and legitimate expectation of contract renewal; breach of the implied covenant of good faith and fair dealing; and violation of her right to fair labour practices.
116. There is no justification for aggravated damages, pleaded at Kshs. 6 million.
117. Costs to the Claimant.
118. Interest granted at the rate of 14% per annum from the date of Judgment, till payment is made in full.



In Sum, It Is Ordered: -

- a. It is declared that termination and non-renewal of the Claimant's contract was unfair, unlawful, and in violation of the implied duty of good faith and fair dealing, and of the Claimant's right to fair labour practices.
- b. The Respondent shall pay to the Claimant notice of 6 months at Kshs. 5,129,400 and compensation equivalent of 6 months' salary at Kshs. 5,129,400 – total Kshs. 10, 258, 800.
- c. Costs to the Claimant.
- d. Interest allowed at the rate of 14% per annum from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS 31ST DAY OF OCTOBER 2024.

JAMES RIKA

JUDGE

