



**Sayi v Muthaura & another (Employment and Labour Relations Cause E696 of 2022) [2024] KEELRC 2587 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2587 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E696 OF 2022  
BOM MANANI, J  
OCTOBER 24, 2024**

**BETWEEN**

**ENG. JAPHETH SAYI ..... CLAIMANT**

**AND**

**WILSON MUTHAURA ..... 1<sup>ST</sup> RESPONDENT**

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LTD .. 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Background**

1. The parties to this action had an employment contract which terminated on 30<sup>th</sup> November 2022. Whilst the Claimant contends that the contract was unfairly terminated, the Respondents aver that it terminated lawfully through effluxion of time.

**Claimant's Case**

2. The Claimant filed an amended Statement of Claim dated 26<sup>th</sup> July 2023 through which he contends that the 2<sup>nd</sup> Respondent employed him in the position of Field Mechanical Engineer as from 16<sup>th</sup> June 2003. He avers that he was later promoted to the position of Regional Engineer in 2006.
3. The Claimant contends that he was subsequently deployed to the 2<sup>nd</sup> Respondent's subsidiary, KTDA Power Company, in 2012 where he held the position of Maintenance Engineer before he was promoted to the position of General Manager of the said subsidiary. He contends that this latter position placed him in the rank of an executive staff of the 2<sup>nd</sup> Respondent.
4. The Claimant contends that according to the 2<sup>nd</sup> Respondent's Group Human Resource Manual (HR Manual or manual), a person could only be engaged as an executive member of staff on a time bound contract. As such, his contract was converted from indefinite to fixed term status. He contends that the



parties executed a contract for three years which was to run from 1<sup>st</sup> December 2019 to 30<sup>th</sup> November 2022.

5. The Claimant avers that his contract with the 2<sup>nd</sup> Respondent incorporated provisions of the 2<sup>nd</sup> Respondent's HR Manual. He contends that the said manual provided for continuity of fixed term contracts for executive staff with the consequence that unless the contracts were brought to an end on their sunset date in accordance with the continuity clause, they were deemed as automatically renewed.
6. The Claimant contends that if the 2<sup>nd</sup> Respondent did not wish to renew a contract of service for an executive member of staff, the continuity clause in the manual obligated it to issue such member of staff with a six months' notice of non-renewal of the contract before it lapsed. He further contends that if the reason for non-renewal of the contract related to the employee's unsatisfactory performance, the 2<sup>nd</sup> Respondent was required to take the employee through a personal improvement process before his contract could be closed on account of effluxion of time.
7. The Claimant contends that the 2<sup>nd</sup> Respondent did not comply with these requirements when it refused to renew his employment. He contends that the Respondent's notice declining to renew his contract was issued on 24<sup>th</sup> October 2022 approximately one month to 30<sup>th</sup> November 2022 when the contract was to expire. He further contends that the 2<sup>nd</sup> Respondent did not subject him to performance evaluation to justify the decision not to renew the contract.
8. The Claimant avers that after the 2<sup>nd</sup> Respondent appointed him as General Manager of its subsidiary, he served the company without blemish. It is his case that for the duration of his service, there was no disciplinary issue against him.
9. The Claimant contends that the flawless relationship between him and the 2<sup>nd</sup> Respondent was interrupted on 27<sup>th</sup> September 2022 when the 1<sup>st</sup> Respondent issued him a letter asking him to explain his interaction with some of the 2<sup>nd</sup> Respondent's former directors. According to the Claimant, there was nothing untoward about his interaction with the individuals in question since he understood them to be serving directors of the 2<sup>nd</sup> Respondent.
10. The Claimant contends that the 1<sup>st</sup> Respondent wrote the aforesaid letter purporting to be the 2<sup>nd</sup> Respondent's Group Chief Executive Officer, a fact which he (the Claimant) contests. According to him, the 1<sup>st</sup> Respondent was the 2<sup>nd</sup> Respondent's General Manager – Human Resources and Administration.
11. The Claimant contends that as the 2<sup>nd</sup> Respondent's General Manager – Human Resources and Administration, the 1<sup>st</sup> Respondent was not his supervisor. As such, he was not entitled to institute disciplinary proceedings against him under the 2<sup>nd</sup> Respondent's HR Manual. Consequently, it is the Claimant's case that the 1<sup>st</sup> Respondent's action against him was unlawful.
12. The Claimant further contends that on 26<sup>th</sup> September 2022, the 2<sup>nd</sup> Respondent's Board of Directors extended his contract of service beyond 30<sup>th</sup> November 2022. In the premises, he contends that the Respondents' subsequent decision purporting not to renew the same contract was illegitimate since the contract had already been renewed. As such, the Claimant believes that he was entitled to remain in office until his retirement age.

### **Respondents' Case**

13. On their part, the Respondents contend that on 26<sup>th</sup> September 2022, the Claimant, acting in cahoots with former directors of the 2<sup>nd</sup> Respondent, attempted an illegal takeover of the 2<sup>nd</sup> Respondent. They contend that on the said date, the Claimant together with the former directors purported to hold a



meeting at the 2<sup>nd</sup> Respondent's premises during which they passed an illegal resolution purporting to inter alia, renew his (the Claimant's) contract of service.

14. The Respondents however contend that this illegitimate endeavor failed. In their view, the Claimant's conduct constituted gross misconduct for which disciplinary action was taken against him.
15. At the same time, the Respondents contend that the Claimant's contract expired on 30<sup>th</sup> November 2022 but was not renewed. As such, the contract lapsed through effluxion of time.

### **Issues for Determination**

16. The issue relating to the disciplinary action that was commenced against the Claimant following the events of 26<sup>th</sup> September 2022 appears to me to be a sterile debate. Nothing turns on it in relation to the continuity of his contract of service.
17. I hold this view because it is clear from the record that as the disciplinary process was underway, the Claimant's contract of service came to a close on 30<sup>th</sup> November 2022. As such, the true dispute between the parties relates to whether the said contract was renewed before its expiry date or whether the Claimant had legitimate expectation that it would be renewed. The answers to the foregoing issues will determine the reliefs to issue.

### **Analysis**

18. There is no dispute that the parties to the action had an employment relationship. The relation is captured in the letter by the 2<sup>nd</sup> Respondent to the Claimant dated 22<sup>nd</sup> November 2019.
19. According to the letter, the 2<sup>nd</sup> Respondent offered the Claimant employment as a General Manager – KTPC for a period of three years. The effective dates for the contract were 1<sup>st</sup> December 2019 to 30<sup>th</sup> November 2022.
20. KTPC is described as a subsidiary of the 2<sup>nd</sup> Respondent. From the evidence on record, this company was set up to manage the energy requirements for the 2<sup>nd</sup> Respondent's tea factories.
21. Clause 18 (g) of the Claimant's letter of appointment incorporated provisions of the 2<sup>nd</sup> Respondent's HR Manual into the contract between the parties. This manual was tendered in evidence.
22. The Claimant contends that according to the HR Manual, his position fell in the category of executive staff of the 2<sup>nd</sup> Respondent whose contracts were time bound. He contends that under the continuity clause in the manual, such contracts were deemed as renewed on their sunset date unless the 2<sup>nd</sup> Respondent issued notice for their non-renewal at least six months before their expiry.
23. Further, the Claimant contends that the only justification for non-renew of such contract was poor performance by the affected employee. For this to happen, the employee's performance evaluation for the preceding year would have been rated as unsatisfactory and the employee accorded at least six months to improve his output but to no avail. In such case, the 2<sup>nd</sup> Respondent would be entitled to issue such employee with a notice of intention not to renew the contract at least six months before the closure date for the contract.
24. The evidence on record shows that the 1<sup>st</sup> Respondent wrote to the Claimant on 24<sup>th</sup> October 2022 intimating the 2<sup>nd</sup> Respondent's decision not to renew his contract. The 1<sup>st</sup> Respondent contended that the 2<sup>nd</sup> Respondent's Board had resolved in its meeting of 18<sup>th</sup> October 2022 not to renew the contract which was due to lapse on 30<sup>th</sup> November 2022.



25. In my view, the only issue which the court is to consider is whether the Respondents' aforesaid decision met the threshold set in the 2<sup>nd</sup> Respondent's HR Manual regarding renewal of contracts for executive staff. If it did not, the action by the Respondents will be illegitimate.
26. The 2<sup>nd</sup> Respondent's HR Manual describes executive staff as: the 2<sup>nd</sup> Respondent's Group Chief Executive Officer; and the Managing Directors, the Executive Directors and General Managers of the 2<sup>nd</sup> Respondent's subsidiaries. The evidence on record shows that the Claimant was serving as a Managing Director of the 2<sup>nd</sup> Respondent's subsidiary. As such, he qualified as an executive staff of the 2<sup>nd</sup> Respondent.
27. The 2<sup>nd</sup> Respondent's manual provides that all such staff can only serve on time bound contracts for a period of three years. However, their contracts are renewable.
28. According to the manual, renewal of the contracts is pegged on the employee's performance. For the renewal to be granted, the employee's performance must have been rated by the 2<sup>nd</sup> Respondent as satisfactory.
29. The HR Manual provides that before the 2<sup>nd</sup> Respondent decides not to renew a contract of service for an executive staff member on account of poor performance, it should have placed the employee on an improvement plan for at least six months. Further, it should have notified the employee of the decision not to renew the contract at least six months before the sunset date for the contract.
30. In effect, the process leading to non-renewal of the contract must commence at least twelve months prior to the sunset date for the contract. In the first six months, the employee will be notified of his poor performance and given the opportunity to improve. If he fails to improve, he will then be issued with a six months' notice of the intention not to renew the contract.
31. Evidently, the procedure for renewal of fixed term contracts for executive members of staff for the 2<sup>nd</sup> Respondent gives these individuals legitimate expectation that their contracts would be renewed unless they: have been rated as poor performers; have been placed on a performance improvement program for six months but have failed to improve; and have been issued with a six months' notice for non-renewal of their contract as a result.
32. It is true as argued by the Respondents that fixed term contracts do not carry with them the right of renewal. As a consequence and without more, these contracts ordinarily lapse on their sunset dates.
33. However, where the employer has raised legitimate expectation in the employee that the contract would be renewed, the employee is entitled to expect that the contract would be renewed. As such, it would be unlawful not to renew the contract without legitimate reason.
34. Legitimate expectation arises when an employer makes an express or implied promise to an employee that his contract will be renewed and the employee relies on the promise to entertain the hope that the contract will be renewed. In such case, the employer is bound by his promise to renew the contract. As such, the employee will be entitled sue on the promise.
35. In the instant case, the continuity clause in the 2<sup>nd</sup> Respondent's HR Manual created legitimate expectation in staff serving on executive terms that their contracts would be renewed unless the procedure in the clause was exhausted and they were found unsuitable to continue in service. As such, the clause constituted a promise by the 2<sup>nd</sup> Respondent to this cadre of staff that their contracts would be renewed except for poor performance.



36. The evidence on record does not suggest that the Claimant was subjected to performance evaluation in the year preceding the closure of his contract. And if this was done, there is no evidence that his performance was found unsatisfactory.
37. If the Claimant's performance was rated as unsatisfactory, there is no evidence that he was placed on a performance improvement plan as required by the HR Manual. Further, there is no evidence that the Respondents notified the Claimant of the decision not to renew his contract at least six months before the sunset date for his contract.
38. In effect, the 2<sup>nd</sup> Respondent's decision not to renew the Claimant's contract violated its HR Manual. As such, the decision violated the Claimant's legitimate expectation that his contract would be renewed unless the procedure in the manual had been followed and his performance rated as irredeemably unsatisfactory. In the premises, I find that the 2<sup>nd</sup> Respondent's decision in this respect illegitimately terminated the Claimant's employment.
39. The Claimant has argued that his contract had in any event been renewed by the 2<sup>nd</sup> Respondent during its Board meeting of 26<sup>th</sup> September 2022. As such, the Respondents' subsequent attempts to deliberate on it counted for nothing and were thus illegal.
40. I do not agree with this contention. As will become clearer later in this decision, the legitimacy of the meeting that was held on 26<sup>th</sup> September 2022 has been put to question. As such, the court doubts that resolutions from the said meeting could have validly renewed the Claimant's contract.
41. Having arrived at the foregoing conclusions, the next question to consider is whether the Claimant is entitled to the reliefs that he seeks in this action. The record shows that the parties had a tumultuous relationship just before the Claimant's contract came to a close on 30<sup>th</sup> November 2022.
42. There is evidence that the Claimant teamed up with other individuals in a bid to gain control of the 2<sup>nd</sup> Respondent. It is this struggle that triggered the events of 26<sup>th</sup> September 2022 when the Claimant joined a group of the 2<sup>nd</sup> Respondent's former directors in a bid to wrestle its (the 2<sup>nd</sup> Respondent's) management from its current directors.
43. The court is alive to the fact that this dispute was referred to the High Court where a consent was eventually recorded between the parties on 18<sup>th</sup> January 2024. A copy of the consent order was placed before this court.
44. From the consent, it is apparent that the High Court did not nullify the current directorship of the 2<sup>nd</sup> Respondent. The Respondents tendered an official search from the Registrar of Companies showing the current directorship of the 2<sup>nd</sup> Respondent (see item 4 in the Respondents' Trial Bundle dated 31<sup>st</sup> January 2023). No evidence was tendered to suggest a contrary position. Therefore, the court holds that the directorship of the 2<sup>nd</sup> Respondent remains as reflected in the CR 12 that was produced by the Respondents.
45. Therefore, the individuals who staged a takeover of the 2<sup>nd</sup> Respondent on 26<sup>th</sup> September 2022 with the assistance of the Claimant were not directors of the 2<sup>nd</sup> Respondent at the time. This remains the position to date. As such, these individuals had no authority to make decisions on behalf of the 2<sup>nd</sup> Respondent including appointing its employees.
46. In view of the foregoing, the Respondents had legitimate grounds to accuse the Claimant of misconduct when he decided to entangle himself in the events of 26<sup>th</sup> September 2022. The events of that day cast a shadow of doubt on the Claimant's loyalty to the 2<sup>nd</sup> Respondent.



47. Taking these matters into consideration, I take the view that the Claimant's conduct greatly contributed to the 2<sup>nd</sup> Respondent's decision not to renew his contract. Although the 2<sup>nd</sup> Respondent acted outside its HR Manual in refusing to renew the contract, it nevertheless did so because of loss of confidence in the Claimant on account of his actions.
48. Consequently and taking these factors into account, I award the Claimant minimal compensation that is equivalent to two months of his gross salary as damages for the failure by the 2<sup>nd</sup> Respondent to consider his request for renewal of his contract in accordance with its HR Manual thus violating his legitimate expectation that the contract would be renewed. This works out to Ksh. 1,107,080.00.
49. The above award attracts interest at court rates from the date of this decision and is subject to the applicable statutory deductions.
50. I award the Claimant costs of the case.

### **Summary of the Award**

51. After evaluating the evidence on record, the court finds that the Respondents failed to uphold the procedure in the 2<sup>nd</sup> Respondent's HR Manual when they made the decision not to renew the Claimant's contract of service.
52. Consequently, it is declared that the Respondents' decision not to renew the contract violated the Claimant's legitimate expectation that the contract would be renewed.
53. The Claimant's actions on 26<sup>th</sup> September 2022 contributed to the Respondents' decision not to renew his contract.
54. In view of this, the Court awards the Claimant compensation for the irregular termination of his employment in the sum of Ksh. 1,107,080.00.
55. This award attracts interest at court rates from the date of this decision and is subject to the applicable statutory deductions.
56. The Claimant is awarded costs of the case.

**DATED, SIGNED AND DELIVERED ON THE 26<sup>TH</sup> DAY OF OCTOBER, 2024**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M. MANANI**

