



**Ndolo v Catholic University of Eastern Africa (Cause 829 of 2019)  
[2024] KEELRC 2500 (KLR) (17 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2500 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 829 OF 2019  
L NDOLO, J  
OCTOBER 17, 2024**

**BETWEEN**

**DR URBANUS MWINZI NDOLO ..... CLAIMANT**

**AND**

**THE CATHOLIC UNIVERSITY OF EASTERN AFRICA ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This dispute was triggered by the following letter dated 20<sup>th</sup> September 2019, addressed to the Claimant by the Respondent:

“Dear Dr. Ndolo,

Re: End of Employment Contract

Reference is made to the employment contract which expired on 14<sup>th</sup> August 2019.

I regret to inform you that the aforementioned contract will not be renewed. This letter serves as notice to allow you to handover all that appertains to your office and clear with all departments by 31<sup>st</sup> October 2019. The clearance form is available at the Office of Human Resources. Please note that your October 2019 salary will be paid after clearance.

You will get your terminal dues from CUEA Staff Provident Fund in accordance with the Fund’s regulations.

I take this opportunity to thank you for the service you have rendered to the Faculty of Arts and Social Sciences and the entire University and wish you well in your future endeavours.

Yours sincerely

(signed)



Very Rev. Prof. Stephen Mbugua Ngari  
Rector/Vice-chancellor”

2. The Claimant was employed by the Respondent, initially as a part time lecturer, and subsequently as a full time lecturer, working on renewable contracts of three (3) years each.
3. In his Memorandum of Claim dated 11<sup>th</sup> December 2019, the Claimant challenges the Respondent’s decision to bring his employment to an end, as communicated by letter dated 20<sup>th</sup> September 2019. The Respondent opposes the claim by its Reply dated 3<sup>rd</sup> February 2020.
4. The matter went to full trial where the Claimant testified on his own behalf, with the Respondent calling Eric Omondi Njiri. Thereafter, both parties filed final submissions.

### **The Claimant’s Case**

5. The Claimant states that he was employed by the Respondent in the year 2000 as a part time lecturer. He claims to have been absorbed as a full time lecturer, upon which he served on three year renewable contracts, from 14<sup>th</sup> August 2001 until 20<sup>th</sup> September 2019, when his employment was terminated.
6. The Claimant avers that on 1<sup>st</sup> April 2019, the Respondent wrote to him, inviting him to apply for renewal of his contract, which was due to expire in August 2019. The Claimant states that he duly applied for renewal of his contract and the staff evaluation committee recommended renewal. According to the Claimant, as at the date of expiry of his contract, he had not received any notice of non-renewal.
7. On 20<sup>th</sup> September 2019, the Respondent terminated the Claimant’s employment, stating that the contract which had surpassed the renewal date, would not be renewed. The Claimant asserts that because the Respondent continued to allocate him duties after the expiry date of his contract, the said contract was automatically renewed effective 15<sup>th</sup> August 2019.
8. The Claimant lays a claim of unlawful and unfair termination of employment against the Respondent and therefore claims the following:
  - a. Salary for 3 years (15.8. 2019-15.8.2022).....Kshs. 4,382,820.00
  - b. 3 months’ salary in lieu of notice.....404,697.00
  - c. Unremitted Waumini Sacco dues & penalties.....382,785.44
  - d. Annual salary increment for 4 years
  - e. Leave allowance for 3 years
  - f. All dues and benefits for 3 years
  - g. General damages
  - h. Costs plus interest

### **The Respondent’s Case**

9. In its Reply dated 3<sup>rd</sup> February 2020, the Respondent states that the Claimant’s claim is premature as the internal disciplinary processes have not been exhausted. The Respondent claims to have paid the Claimant all his terminal dues upon expiry of his contract of employment.



10. The Respondent denies the Claimant's claim of unlawful and unfair termination of employment, stating that the employment contract came to an end by effluxion of time.

### **Findings and Determination**

11. There are two (2) issues for determination in this case:
  - a. Whether the Claimant has proved a case of unlawful termination of employment;
  - b. Whether the Claimant is entitled to the remedies sought.

### **Unlawful Termination?**

12. In denying the Claimant's claim that his employment was unlawfully terminated, the Respondent states that the employment contract came to an end by effluxion of time. It is not in contest that the Claimant's last written contract was to run from 15<sup>th</sup> August 2016 until 14<sup>th</sup> August 2019.
13. The Claimant claims to have applied for renewal of his contract upon invitation by the Respondent. While this piece of evidence could not be verified, it is on record that the Respondent continued to allocate work to the Claimant after the set date for expiry of his contract. In fact, the letter notifying him that his contract would not be renewed came after the expiry date. This begs the question, as to which contract the Respondent sought not to renew.
14. The law is clear that where an employer continues to employ an employee after the expiry date of a written contract, such an employee is deemed to be employed on the basis of an open ended contract, running from month to month. In [\*Sandra Waswa v Article 19 Global Campaign for Free Expression\* \[2022\] eKLR](#) it was held that such an employee is entitled to the procedural fairness requirements set out in Section 41 of the [\*Employment Act\*](#), in addition to establishment of a valid reason required by Section 43 of the [\*Act\*](#). This position was affirmed in [\*Lucy Wambui Ndungu v Mount Kenya University\* \[2024\] eKLR](#), a decision relied upon by the Respondent.
15. In the instant case, the Respondent sought to take cover under an expired contract to deny the Claimant his rights secured under Sections 41 and 43 of the [\*Employment Act\*](#). The unassailable finding is that the Respondent violated the law and the ensuing termination was unlawful and unfair.

### **Remedies**

16. Pursuant to the foregoing findings, I award the Claimant twelve (12) months' salary in compensation. In arriving at this award, I have taken into account the Claimant's long service, the fact that he did not contribute to the termination and the slim chances of him securing an alternative employment of similar stature. I have further considered the Respondent's violation of both substantive and procedural law on termination of employment.
17. There is evidence that the Claimant was paid salary for all the days worked. The claim for salary for 3 years is therefore without basis and is disallowed.
18. Riding on the finding that after the expiry of his written contract, the Claimant was engaged on a month to month basis, I hold that the applicable notice period was 1 month, which was duly issued. The claim for 3 months' salary in lieu of notice is therefore dismissed.
19. The claims for unremitted Waumini Sacco dues, salary increments, leave allowance and general damages were not proved and are also disallowed.



20. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 1,618,788 being 12 months' salary in compensation for unlawful and unfair termination of employment.
21. This amount will be subject to statutory deductions and will attract interest at court rates from the date of judgment until payment in full.
22. The Claimant will have the costs of the case.
23. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF OCTOBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Muvindye for the Claimant

Mr. Situma for the Respondent

