



**Bakhwenya v International Institute of Rural Reconstruction (Cause E6478 of 2020) [2023] KEELRC 15 (KLR) (19 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 15 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6478 OF 2020  
L NDOLO, J  
JANUARY 19, 2023**

**BETWEEN**

**GABRIEL ALWANYI BAKHWENYA ..... CLAIMANT**

**AND**

**INTERNATIONAL INSTITUTE OF RURAL  
RECONSTRUCTION ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By his Memorandum of Claim dated November 19, 2020 and filed in court on November 20, 2020, the Claimant proceeds against the Respondent for unlawful and unfair dismissal. The Respondent filed a Statement of Response dated February 3, 2021, to which the Claimant responded on February 8, 2021.
2. At the trial, the Claimant testified on his own behalf and the Respondent called its Country Director, Eric Njoroge Mwaura. The parties further filed written submissions.

**The Claimant's Case**

3. The Claimant states that he was employed by the Respondent as an Assistant Finance Officer, from February 2, 1998. He claims to have worked continuously until June 30, 2020, when his employment was terminated. At the time of termination, the Claimant earned a monthly salary of Kshs 90,000.
4. The Claimant's case is that the termination of his employment was without justifiable cause and in violation of due process.
5. The Claimant now seeks the following from the Respondent:
  - a. One month's salary in lieu of notice.....Kshs 90,000.00



- b. Payment in lieu of untaken off days.....84,000.00
- c. 12 months' salary in damages for unlawful termination.....1,080,000.00
- d. Amount deducted from pension account.....162,182.83
- e. Certificate of service
- f. Cost plus interest

### **The Respondent's Case**

6. In its Statement of Response dated February 3, 2021, the Respondent admits having employed the Claimant on February 3, 1998, initially as a Guest House Caretaker, earning a gross salary of Kshs 8,000.
7. The Respondent avers that in the year 2004, there was a review and regularization of all staff contracts from permanent terms to periodical contracts. Towards that end, the Claimant and the Respondent entered into a contract beginning March 1, 2004 and terminating on February 28, 2006.
8. The Respondent further avers that from March 1, 2004 up to June 30, 2020, the Claimant, like all other staff, was on renewable contracts signed by both parties.
9. The Respondent denies terminating the Claimant's employment and states that the Claimant's contract came to an end. Due notice was given on May 21, 2020 to the effect that the contract ending on June 30, 2020 would not be renewed.
10. The Respondent asserts that the Claimant's last contract commencing January 1, 2020 came to an end and was not renewed.
11. The Respondent states that the Claimant exhausted his pending leave days from April 15, 2020 as resolved in a staff meeting convened on April 9, 2020 to discuss effects of the Covid-19 pandemic.
12. The Respondent further states that the Claimant had, at his request, been advanced a sum of Kshs 176,000 to pay for medical bills at Aga Khan Hospital, as he had exceeded his insurance limit. The Respondent points out that at the end of the Claimant's contract, a sum of Kshs 160,561 was still outstanding from the said advance and the Claimant authorised the Pension Manager, in writing, to recover the said sum from his pension.
13. The Respondent avers that upon the end of the contract on June 30, 2020, the Claimant executed the final document of release from the Organisation, indicating that he had no claims or demands against the Respondent.

### **Findings and Determination**

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

### **Unlawful Termination?**

15. On May 21, 2020, the Respondent wrote to the Claimant as follows:

“Dear Gabriel,



Re: Notification Of End Of Your Contract

I am writing to notify you that your current employment contract with International Institute of Rural Reconstruction expires on June 30, 2020 without renewal. As you are aware, our funding has generally declined with the recent closure of most of our projects, thus requiring us to scale down to be able to sustain basic operations. Should our situation improve, we will notify you and mutually explore the possibility of re-engagement.

We take this opportunity to thank you for your dedication to duty and the valuable contribution you have made in advancement of our work with poor communities in Kenya. We would like to encourage you to continue in the spirit of excellence in terms of efficiency and effectiveness, and wish you all the best in your future endeavors.

Yours Sincerely,

(signed)

Eric N. Mwaura

Ag. Country Director

IIRR-Kenya”

16. It is not in contest that at the time of leaving the Respondent’s employment, the Claimant was serving on a fixed term contract running from January 1, 2020 and terminating on June 30, 2020.
17. The law on fixed term contracts is well settled. In *Samuel Chacha Mwita v Kenya Medical Research Institute* [2014] eKLR and *Margaret Ochieng v National Water Conservation & Pipeline Corporation* [2014] eKLR it was held that a fixed term contract terminates on the end date and there is no automatic expectation of its renewal.
18. According to the evidence on record, the Claimant’s contract came to an end by effluxion of time and he was duly notified that the said contract would not be renewed. The claim for damages for unlawful termination is therefore without basis and is disallowed. For the same reason, the claim for notice pay also fails and is dismissed.

**Other Claims**

19. The claim for untaken off days was not proved and is dismissed.
20. Regarding the claim for the sum of Kshs 162,182.83 being money deducted from the Claimant’s pension account, the Respondent produced a letter dated August 3, 2020, by which the Claimant authorised the Pension Manager to deduct and transfer the said sum to the Respondent on account of funds advanced to the Claimant for medical expenses. This claim is therefore without basis and is dismissed.
21. In the end, the Claimant’s entire claim fails and is dismissed.
22. Each party will bear their own costs.
23. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF JANUARY 2023**

**LINNET NDOLO**

**JUDGE**



Appearance:

Mr. Kinyua for the Claimant

Mr. Ngeru for the Respondent

