



**Kenya Broadcasting Corporation v Siboko (Employment and Labour Relations Appeal E072 of 2020) [2023] KEELRC 505 (KLR) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 505 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E072 OF 2020**

**J RIKA, J**

**FEBRUARY 28, 2023**

**BETWEEN**

**KENYA BROADCASTING CORPORATION ..... APPELLANT**

**AND**

**SELESTINE NAKHUMICHA SIBOKO ..... RESPONDENT**

*(An Appeal from the Judgment of the Hon. Senior Resident Magistrate, Miss E.N. Wanjala, in CMEL Cause Number 242 of 2018)*

**JUDGMENT**

1. The Respondent filed a Claim against the Appellant State Broadcaster at the Trial Court, on September 24, 2018.
2. She claimed to have been unfairly dismissed, and sought compensations and terminal benefits.
3. In its Judgment delivered on October 15, 2020, the Trial Court awarded the Respondent: -
  - a. 1-month salary in lieu of notice at Kshs 33,924.
  - b. Severance pay at the rate of 15 days' salary for 5 complete years of service.
  - c. 5 months' salary in compensation for unfair termination at Kshs 162,620.
  - d. Certificate of Service to issue.
  - e. Costs.
4. The Appellant filed the Memorandum of Appeal dated November 8, 2020, setting out 9 Grounds of Appeal, which are: -
  - I. The Judgment of the Trial Court was against the weight of evidence.



- II. The Appellant's evidence was disregarded.
  - III. The Trial Court erred in finding that the Respondent's contract was unfairly terminated.
  - IV. The Trial Court erred by concluding that the Respondent's contract was terminated unfairly on account of redundancy, while it expired by effluxion of time.
  - V. The Trial Court failed to consider that Parties are bound by their contract.
  - VI. The Trial Court attempted to rewrite the Parties' contract.
  - VII. The Trial Court erred by awarding severance pay, while the contract was not terminated on account of redundancy.
  - VIII. The Trial Court erred in finding that the Respondent was entitled to notice pay.
  - IX. The Trial Court erred in finding that the Respondent's contract was converted from casual to contractual employment, meriting all terminal benefits under the *Employment Act*.
5. It was directed by the Court on July 19, 2022, that the Appeal is considered on the strength of the Record of Appeal, and Closing Submissions, which the Parties confirmed to have filed and exchanged at the last appearance in Court on November 9, 2022.
  6. The Appellant submits that the Trial Court erred by failing to conclude that the Respondent was a temporary Employee. Her contract was fixed-term. The term ended and was not renewed due to the Appellant's operational needs. Section 37 of the *Employment Act* regulates casual employment. The Respondent was in temporary employment, under 3 –months fixed-term contracts which were renewable. Citing the case of *Teresa Carlo Omondi v. Transparency Internation-Kenya [2017] e-KLR*, the Appellant submits that fixed-term contracts carry no rights, obligations or expectations beyond the date of expiry. Non-renewal was due to the Corporation's needs. It was not on account of redundancy. The Appellant urges the Court to allow the Appeal, and set aside the Judgment of the Trial Court in its entirety.
  7. The Respondent submits that she was initially employed on casual terms. She was subsequently employed on 3- months' contracts, which were renewed automatically. The Trial Court applied Section 37[1] of the *Employment Act* correctly, in finding that the Respondent's contract was converted to a regular contract. The Respondent invokes Court of Appeal decision in *Keen Kleeners Limited v Kenya Plantation and Agriculture Workers Union, KECA 352[KLR] [December 17, 2021]*, which upheld the doctrine of legitimate expectation in renewal of fixed-term contract. The Respondent's contracts had automatically been renewed, over a period of 5 years.

**The Court Finds: -**

8. The Appellant's complaint, that the Trial Court disregarded its evidence, is not supported by the proceedings of the Trial Court. Page 205 and 206 of the typed proceedings are devoted to the Respondent's oral and documentary evidence. Page 210 to 2012 is a summary of the Appellant's Submissions, complete with Judicial Authorities cited by the Appellant. The Court does not think that the Trial Court failed to consider the position taken by the Respondent, at the hearing of the Claim.
9. The Trial Court did not err in finding that the Respondent's contract had been converted from casual to regular employment. The Trial Court correctly adopted the Court of Appeal decision in *Keen Kleeners* [citation above] The Respondent had worked for 5 years. Her 3-month fixed-term contracts were renewed automatically. She was placed on 16, 3 –month fixed term contracts between June 1, 2013 to May 31, 2017. 16 fixed- term contracts of 3 months' period each, can hardly pass for temporary



employment. The law does not accept that there can be a ‘permanently temporary’ Employee. 16 fixed-term contracts, over a period of about 5 years? How can this be temporary? Section 37 of the *Employment Act* ensures that this form of abuse, the casualization of labour, does not take root at the employment place.

10. The Respondent worked continuously over the years. She was paid a monthly salary. She was a Telephone Operator, a position which was not shown by the Appellant to be of a temporary nature, so as to be held by temporary staff. She was a skilled Employee, having been trained and certified in Telephone Operation & Reception at Nairobi Institute of Business Studies.
11. Short-term employment in the Public Service must conform to general and specific principles in existing policies and legislation.
12. The Trial Court did not err in concluding that the Respondent had reasonable and legitimate expectation that her contract would be renewed. It had been renewed on 16 occasions, over a period of 5 years. Why would she not expect renewal on the 17<sup>th</sup> occasion and beyond? The decisions cited by the Appellant on renewal of contracts, such as *Teresa Carlo Omondi v Transparency International* [2017] e-KLR, recognize the concept of reasonable and legitimate expectation of renewal of a fixed-term contract. The Court held that the Claimant Teresa, had legitimate expectation that her contract would be renewed. Like Teresa, the Respondent herein had reasonable and legitimate expectation of renewal. It was not merely a wish, a hope or a desire for continuity; it was reasonable and legitimate expectation, rooted on the Parties’ past conduct, and a tradition spanning over 5 years and 16 contracts.
13. The Appellant submitted that renewal, depended on the Respondent’s performance. The Respondent was not shown to have performed poorly to have warranted non-renewal.
14. The second limb was that the Respondent’s continued employment depended of the Appellant’s business needs. Specifically, the Appellant advised the Respondent that it was necessary to reduce the number of contracted Employees, and reduce the number of departments which were not handling core functions.
15. Having reached the conclusion that the Respondent was a regular Employee, who had legitimate expectation of renewal, the Trial Court was entitled to enquire whether beyond the assertion that the contract expired, there were other reasons proffered by the Appellant in justifying termination, and whether such reasons, amounted to fair and valid reasons.
16. From the Appellant’s explanation on non-renewal/ termination of the Respondent’s contract, captured at paragraph 14 of this Judgment, the other reason proffered by the Appellant was that a redundancy situation had arisen. Reduction of staff, and phasing out of certain roles, is a redundancy situation. Certain roles were deemed superfluous. The Appellant’s ground, that there was no redundancy is not supported by evidence. The Trial Court did not make a wrong finding, in concluding that the Appellant justified termination on redundancy, beyond alleging that a fixed-term contract, with no prospect of renewal, had come to an end.
17. Once the Appellant invoked redundancy as a justification for termination, it was bound to follow redundancy law under Section 40 of the *Employment Act*. Ultimately, there was an obligation to pay the Respondent redundancy due, and the Trial Court cannot be faulted for imposing the obligation on severance pay.
18. Notice was similarly merited, because the Respondent was found to be a regular Employee, with reasonable and legitimate expectation of renewal, whose contract was terminated without notice or just cause.



19. The Court does not find any fault with the Judgment of the Trial Court. The Judgment was well-founded in evidence and the law. It was a reasoned Judgment, based on the decision of the Court of Appeal, in *Keen Kleeners Limited v Kenya Plantation and Agricultural Workers Union* [citation above] as well as the decision of the E&LRC in *Teresa Carlo Omondi v Transparency International –Kenya* [citation above]. The Trial Court correctly interpreted and applied Section 37 of the *Employment Act*.
20. The Appellant has not established any ground, to warrant interference by this Court, with the Judgment of the Trial Court.

**IT IS ORDERED: -**

- a. The Appeal is declined.
- b. Costs to the Respondent.

**Dated, signed and released to the Parties electronically, at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 28<sup>th</sup> February 2023.**

**James Rika**

**Judge**

