



**Owade v Jesuit Refugee Service – Eastern Africa Region (Cause
16 of 2019) [2023] KEELRC 1048 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1048 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 16 OF 2019
NJ ABUODHA, J
APRIL 28, 2023**

BETWEEN

FREDRICK OCHEING OWADE CLAIMANT

AND

JESUIT REFUGEE SERVICE – EASTERN AFRICA REGION RESPONDENT

JUDGMENT

1. By a memorandum of claim filed on 2nd My, 2019 the Claimant pleaded that:
 - i. At all material times to this cause, the Claimant was contractually employed by the Respondent, as a Counselling Coordinator in Kakuma from January 7, 2019. As at the time of termination from employment, the Claimant was earning gross salary of Kshs 86,000/- per month.
 - ii. The Claimant served the Respondent dedicatedly and without any warning and/or lawful warning in his employment records; until the date of his unfair termination from service by the Respondent on April 10, 2019 without any lawful reason and/or justification.
 - iii. The Respondent unlawfully and unprocedurally terminated the employment of the Claimant based on an undisclosed and incomplete Appraisal Report by the Supervisor.
 - iv. That the aforesaid termination was unfair, unprocedural and unlawful as the Respondent out rightly breached the terms of the employment contract between the Respondent and the Claimant.
 - v. The Claimant avers that the non-renewal of his Employment Contract was as per the Employment Contract Subject to;
 - a. In case of non-renewal of the project or lack of funding to run the office.



- b. In case of redundancy during or at the end of a contract year.
 - c. In case you have committed major misconduct resulting to summary dismissal, such dismissal could be reduced to normal termination
- vi. The Claimant avers that the project and the department he worked under is fully funded, up and running to date.
- vii. The Claimant further avers that during his employment period he has never breached his Employment Contract and the Code of Conduct. He diligently worked in accordance with the Human Resource Manual of the Respondent.
2. The Respondent on its part pleaded that:
- i. In response to paragraph 3 of the Claimant's claim, the Respondent avers that the Claimant was employed by the Respondent as a Counselling Coordinator under a fixed term contract with a definite commencement date and termination date.
 - ii. The Respondent further avers that the tenure of the aforementioned contract was three (3) months with effect from January 7, 2019 and the contract was to lapse on April 7, 2019. The import of this, is, the contract would terminate automatically on April 7, 2019.
 - iii. The Respondent denies the contents of paragraphs 5 and 6 of the Claimant's claim and more particularly denies that:
 - a. It unlawfully and unprocedurally terminated the Claimants services
 - b. It out rightly breached the terms of the employment contract between the Claimant and the Respondent and the Claimant is put to strict proof thereof.
 - iv. The Respondent avers that the contract being of a fixed term in nature, it automatically lapsed by effluxion of time and to renew or not to renew the contract was at the discretion of the Respondent, The Claimant could not therefore presume to have a legitimate expectation and presumption of continuity of employment in the absence of non - renewal of his contract of employment.
 - v. The Respondent further avers that by accepting and signing the contract agreement, the Claimant accepted to be governed by the contract of employment relationship and any legitimate expectation on the part of the Claimant to continue employment is not admitted and the Claimant is put to strict proof thereof.
 - vi. The Respondent denies in its entirety the contents of paragraphs 7, 8 and 9 of the Claimant's claim and states that the contract automatically terminated at the end of the contract period and this is well documented in Clause 3.1 of the contract of employment agreement. The contract which was in existence between the parties was a fixed term contract and under the very Clause 3.1 of the contract of employment, it was provided that "the contract may be renewed by agreement or simply terminated." This in essence meant that, unless renewed, the contract had come to an end.
3. At the hearing the Claimant testified in the main that he recorded a witness statement on May 2, 2019, which he sought to adopt as his evidence in chief. According to the Claimant, he was employed by the Respondent twice. First in 2014 October and called back in 2017. He then left in 2019 March. It was his evidence that the clause 5:2:3 of the contract of employment provided for termination. According



- to him, he was never given a notice of termination. He further stated that there were funds before termination and that his performance at work was good.
4. In cross examination he stated that his contract was to run from January 2, 2019 to April, 2019. He further stated that the contract was for three months and that there was no provision for notice.
 5. According to the Claimant he worked from January, 2019 and his contract got terminated before April 7, 2019. There was no notice of termination. It was further his evidence that he did not apply for the renewal of his contract.
 6. The Respondent's witness Ms Maryline Chepng'eno stated that she worked for the Respondent as Country Human Resource Officer for the Respondent. She recorded a statement on October 31, 2022 which she relied on as her evidence in chief. She also relied on the documents filed with the claim.
 7. According to her, the Claimant was employed as counselling coordinator on a fixed term contract from January 7, 2019 to April 7, 2019. The period was specified in the contract. It was clause 3.1. The Claimant's contract expired on April 7, 2019 and was not renewed due to unavailability of funds and Claimant's appraisal.
 8. According to the witness, the Claimant delayed in the delivery of reports and lacked team work. A decision was therefore made not to renew his contract. She denied that the Claimant was unlawfully terminated.
 9. In cross examination, she stated that she was not there when the Claimant was terminated and that she was employed on October 13, 2022 after the Claimant had left. She reiterated that the Claimant was employed on a fixed term contract. The contract provided for review for renewal or termination. A notice for review was issued via email dated March 13, 2019. It was her evidence that 13th March – 7th April were more than 25 days.
 10. It was further her evidence that she did not have the minutes for the sitting for the review of the Claimant's contract and further she did not have before the Court financial statements showing there were no funds.
 11. Clause 3.1 of the Claimant's contract attached to his bundle of documents provided that the contract was for three months starting from January 7, 2019 to April 7, 2019. It further provided that ten (10) days before the expiry of the contract, it will be reviewed and subject to the availability of funds and performance as discussed at the close of the project year 2018 or otherwise of the employee, the contract may be renewed by agreement or simply terminated. Clause 5.2 further provided that the contract could be terminated for reasons among others non-renewal of the project or lack of funding to run the office.
 12. By an email dated April 10, 2019, the Claimant was informed that after internal consultation, the organization would not renew/extend his contract.
 13. This Court has made several decisions regarding fixed term contracts of employment and it is now more or less settled that unless the contract provides to the contrary or the parties mutually agree, there is no guarantee that a fixed term contract will be renewed upon expiry. The logic behind this thinking is that most of fixed term contracts concern projects or seasonal employment which make it unsustainable to retain the relationship beyond a season or upon expiry or conclusion of a project.
 14. The Claimant herein was hired on a fixed term contract for three months. That is from 7th January to April 7, 2019. The contract at clause 3.1 thereof provided that upon review the same could be renewed



or simply terminated. The Respondent opted to exercise its option of terminating the contract by nonrenewal. It could therefore not be faulted for exercising an option which the contract allowed.

15. In conclusion, the Court finds and holds that the allegations of unfair termination of contract are unfounded and without merit. The suit is therefore dismissed with costs.

16. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 28TH DAY OF APRIL 2023

ABUODHA JORUM NELSON

JUDGE

In the presence of:-

.....for the Claimant

..... for the Respondent

