



Ashton Apparels (EPZ) Limited v Mwoni & 15 others (Appeal E055 of 2022) [2023] KEELRC 1201 (KLR) (11 May 2023) (Judgment)

Neutral citation: [2023] KEELRC 1201 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E055 OF 2022**

**M MBARŪ, J
MAY 11, 2023**

BETWEEN

ASHTON APPARELS (EPZ) LIMITED APPELLANT

AND

MOKI MWONI & 15 OTHERS RESPONDENT

(Being an appeal from the judgment of Hon. Mutuku delivered on 29th July, 2022 in CM ELRC No.848 of 2019)

JUDGMENT

1. On August 17, 2022 the appellant filed the appeal herein and served the respondents. There was no attendance for hearing. Returns were filed to confirm service.
2. The respondents did not participate in these proceedings despite being served with the appeal. The appellant attended court on March 22, 2023 and directed to serve the respondents again but there was no attendance.
3. Following judgment in CM ELRC No 848 of 2019, aggrieved, the appellant filed the instant appeal on two grounds that
 1. The learned magistrate erred in law and fact in finding that the claimants [respondents] were entitled to a one (1) month notice despite the evidence on record.
 2. The learned magistrate erred in fact and law in holding that the claim had no merit and thereby dismissing the same while at the same time holding that the claimants ought to have been issued with a one (1) month notice.
4. The appeal is that the judgment of the lower court should be set aside with costs.



5. The appellant attended and filed written submissions that the claim by the respondents before the trial court was that they were employed by the appellant as machine operators, helpers and checkers but on June 25, 2019 their employment was terminated without notice or due process and claimed notice pay, leave pay, redundancy dues, service pay and allowances and compensation for unfair termination of employment.
6. In response, the appellant's case was that the respondents had been employed under fixed term contracts with effect from January 2, 2019 to June 25, 2019 and for the entire duration of the term contracts the respondents were aware of their individual seasonal contracts ending on June 25, 2019 pursuant to Section 10(3) (c) of the *Employment Act*. Before the term contracts ended, the appellant issued the respondents with notice that the term contract would not be extended which was lawful and the claims made should be dismissed.
7. The learned magistrate heard the parties and made findings that the respondents were under fixed term contracts and there was no unfair termination of employment and that their claims are hereby dismissed with no order as to costs save for the 20 days' salary in lieu of the termination.
8. The appellant submitted that a term contract has a start and end date and the employer is not bound to issue notice to the employee but in this case, the appellant informed the respondents that their term contracts would not be extended after the end date on June 25, 2019. A term contract is lawful and legitimate as held in the case of *Samuel Chacha Mwita v Kenya Medical Research Institute* [2014] eKLR and this appeal should be allowed by setting aside the judgment of the trial court awarding the respondent notice pay which is not justified.
9. Without the attendance of the respondents in these proceedings, the appeal is not challenged. This being a court of record, the appeal shall be addressed on the merits taking into account this being a first appeal the court is required to re-evaluate the record of the trial court and make own findings and conclusions.
10. The learned magistrate in CM ELRC No 848 of 2019 analysed the evidence and made a finding that the respondents were employed under fixed term contracts with a start and end date on June 25, 2019 but the appellant issued termination notice dated June 15, 2019 a period of 10 days instead of 30 days contrary to Section 35 of the *Employment Act*, 2007 and hence were entitled to pay for 20 days.
11. On the admission that the respondents were employed under fixed term contracts starting on January 2, 2019 and ending on June 25, 2019 the parties to the employment contract had agreed on the start and end date. Section 10(3) (c) of the *Employment Act*, 2007 allow parties to an employment contract to be regulated under a fixed term contract;
 - (c) where the employment is not intended to be for an indefinite period, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;
12. The employment has a start and end date which is lawful and legitimate.
13. A fixed term contract does not create any legitimate expectation of renewal. In the case of *Transparency International Kenya v Teresa Carlo Omondi* Civil Appeal No.81 of 2018, a fixed term contract does not create any legitimate expectation of renewal. It has a start and end date and unless otherwise agreed mutually by the parties, the employment relationship terminates by effluxion of time.



14. The Court of Appeal in the case of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR in addressing the issue of legitimate expectation held that;

Legitimate expectation” is a doctrine well recognized within the realm of administrative law, as is clear from the English case, *In re Westminster City Council*, [1986] AC 668 at 692(Lord Bridge):

“...the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation”.

15. In this case, the parties to the employment contract were bound by a fixed term contract and before the lapse, the appellant took the liberty to inform the respondents that the same would not be extended. Notice of end of contract had been agreed upon by the parties, such was binding and lawful.
16. The findings by the learned magistrate that there was need for notice for 30 days or payment in lieu thereof was in error. No notice is due where parties are bound in a fixed term contract.
17. Accordingly, the appeal herein is found with merit and is hereby allowed and the judgment in Mombasa CM ELRC No 848 of 2019 allowed as prayed. The appellant is awarded costs of the appeal.

DELIVERED IN OPEN COURT AT MOMBASA THIS 11TH DAY OF MAY, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and

