



**Mutema v Kenya Methodist University (Cause 1887 of 2016)  
[2023] KEELRC 1594 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1594 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1887 OF 2016  
SC RUTTO, J  
JUNE 30, 2023**

**BETWEEN**

**PROF. ALFRED MWONGERA MUTEMA ..... CLAIMANT**

**AND**

**KENYA METHODIST UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The claimant was employed by the respondent as a Vice Chancellor on a five-year renewable contract with effect from 25<sup>th</sup> March, 2010. He avers that prior to his appointment, he served as Deputy Vice chancellor Academic Affairs. He further states that he was eligible for reappointment for a further one term of five years. That the respondent's Chairman informed him of the University Council's decision not to renew his contract of employment vide a letter dated 5<sup>th</sup> February, 2015. The claimant further states that he is aggrieved by the respondent's refusal, neglect or failure to issue him a six months' notice notifying him of termination of employment. It is against this background that the claimant seeks the following reliefs against the respondent: -
  - (a) A sum of Kshs.27,715,240/- being the total unpaid Gratuity.
  - (b) A declaration that the Respondent's decision contained in its letter dated 5<sup>th</sup> February, 2016 amounted to an unfair dismissal of the Claimant's contract of employment and he is entitled to compensation taking the form of twelve months pay under the *Employment Act*, 2007.
  - (c) In the alternative to (b) above, a declaration be issued to declare that the Claimant was entitled to a six months' notice on the ground of non-renewal of the contract of employment.
  - (d) A sum of Kshs.9,100,000/- being compensation for the sum the Claimant would have earned by way of salary, allowances and benefits for the five months' notice the termination by way of non-renewal of contract of employment.



- (e) As an alternative to prayer (d) above the Claimants prays for a sum of Kshs.21,840/- being compensation for 12 months pay the unfair termination or dismissal.
  - (f) Interest at bank rates on (a) and (d) or (e) above from 24<sup>th</sup> March, 2015 to date of payment.
  - (g) Compensation for violation of the Claimant's rights and freedoms protected under Articles 27, 28, 29, 30, 40, 41 and 47 of *the Constitution*.
  - (h) A declaration be issued to declare that the Respondent's decision contained in its letter dated 5<sup>th</sup> February, 2015 constitutes a violation of the Claimant's legitimate expectation that his contract of employment would be renewed.
  - (i) General damages for breach of the Claimant's legitimate expectation of renewal of his contract of employment.
  - (j) Costs of the suit.
  - (k) And any other relief(s) in the circumstances.
2. Opposing the claim, the respondent avers that the claimant's contract of employment was not renewable. The respondent further denies that the contract of employment provided for a six months' notice of its decision to renew or not to renew his contract of employment for another term of five years. It avers that the claimant was paid his salary and leave days save for gratuity. It however denies that the claimant is entitled to compensation for unfair termination. Consequently, the respondent has asked the Court to dismiss the claimant's suit with costs.
  3. The matter proceeded for hearing on 17<sup>th</sup> November, 2022 and on 1<sup>st</sup> February, 2023 during which both sides called oral evidence.

#### **Claimant's case**

4. The claimant testified in support of his case and for starters, he adopted all his witness statements to constitute his evidence in chief. He further produced his initial bundle of documents and supplementary bundle of documents as exhibits before Court.
5. It was the claimant's evidence that under Clause 12.0 of his contract of employment, either party could terminate the appointment by giving a six months' notice. Further, the respondent was obliged to determine and communicate to him its decision on renewal of his contract six months before expiry of the contract, that is by 24<sup>th</sup> September, 2014.
6. The claimant stated that by a letter dated 15<sup>th</sup> December, 2014 he submitted a request for renewal of his contract. Owing to the satisfactory manner in which he carried out his duties, he had a legitimate expectation that the respondent would renew his employment contract upon its expiry on 24<sup>th</sup> March, 2015. The foregoing notwithstanding, by a letter dated 5<sup>th</sup> February, 2015, the Chairman of the respondent's University Council informed him that the Council had made a decision not to renew his contract. However, the said letter did not specify the grounds upon which his contract could not be renewed and more importantly did not impugn or vitiate his performance.
7. According to the claimant, the communication of the decision not to renew his contract of employment on 5<sup>th</sup> February, 2015 was a breach of Clause 12 of his contract of employment obliging the respondent to communicate its decision six months before the expiration of the contract.



8. He further averred that the respondent's decision not to renew his contract was not occasioned by any failure or misconduct on his part as attested by the fact that he was subsequently cleared by the University and issued with a Certificate of Service.
9. The claimant further averred that he was aggrieved by the refusal, neglect or failure of the respondent to issue him with a six months' notice notifying him of termination of employment on account of non-renewal of his contract of employment. That he was given one month's notice of termination in contravention of his right under the contract of employment.
10. He further stated in evidence that the respondent only made contributions to his National Social Security Fund (NSSF) in 2010 and 2011 and none were made for the remaining years of his employment with the respondent. He termed this as a scheme by the respondent to force him into retirement prematurely without any social security.
11. The claimant further stated that during his tenure as Vice Chancellor, he fulfilled his fidelity and fiduciary responsibilities to the University in carrying out his duties and responsibilities. He further stated that the financial crisis at the University has a historical perspective and started in 2001 when it got the first overdraft and the request for overdraft continued up to the year 2013 when it had risen to Kshs. 200 million.
12. It was the claimant's further evidence that he transformed the University by doing what was stipulated in his job description in line with the University Charter and Statutes. He outlined his achievements which included development of a strategic plan, development and implementation of over 40 academic programmes which were approved by the Commission of University Education (CUE), increased student enrollment and repayment of bank loans.

### **Respondent's case**

13. The respondent called oral evidence through Mr. Michael Mugo and Ms. Njeri Mbugua who testified as RW1 and RW2 respectively. Mr. Mugo who was the first to go, identified himself as an Assistant Accountant at the respondent University. He started by adopting his witness statement to constitute his evidence in chief. He proceeded to produce the respondent's bundle of documents as exhibits before Court.
14. It was his testimony that the claimant's contract which was fixed term, ended on 24<sup>th</sup> March, 2015 and though not explicitly stated, the renewal was automatically pegged on performance of his duty.
15. That as a Vice Chancellor and the Accounting Officer of the respondent, the claimant owed the respondent a fidelity and fiduciary responsibility to protect its interests and carry out sound judgment in the dispensation of his duties. He averred that the claimant failed to do so by exposing the respondent to a heavy financial burden.
16. It was RW1's evidence that generally, during the claimant's term, the respondent was not in a good financial standing due the actions or inactions attributed to him. In this regard, he referred to the extracted reports from the respondent's audited accounts analysed as expense to revenue ratio, staff cost to total revenue, low liquidity, financial losses and shrinking revenues, growth in current liabilities and increase in long loans liability and heavy borrowing.
17. He further stated that during the years 2010 to 2014, the respondent experienced increased staff costs when the revenues were reducing significantly. Consequently, the general expenses continued to grow despite slow revenue growth. Fee income had grown significantly before the claimant took over office but reduced significantly over the period he was in charge. That during this period, the respondent



operated below the recommended expense to Revenue Ratios of at least 60%-80%. That despite the reduction in student Revenue over the period, the claimant as the Vice Chancellor continued to arbitrarily increase staff costs and completely ignored the matching principle in accounting whereby available revenues are supposed to be matched with expenses. The high staff costs could not be sustained and the University had to undertake the painful process of staff retrenchment in the year 2017. That further, the high staff costs have strained the respondent's operational budget over the years. Further, uncontrolled staff costs have continuously affected its ability to break-even.

18. RW1 further stated that the respondent's profitability reduced from a profit of Kshs 377 million in Year 2009 to a loss of Kshs 208 million in year 2014. Retained earnings recorded a negative trend from positive 42% in year 2009 to negative 12.57% in year 2014. This was the worst performance in the history of the respondent. He stated that financial losses are an indication that the claimant as the Chief Accounting Officer was unable to prudently allocate and manage resources under his care.
19. He further stated that between 2010 and 2013, there was a notable increase in current liabilities at an average of Kshs 205 Million per annum. This is an average of 50% increase in current liabilities which was the highest in the respondent's history. That an average increase of current liabilities of over Kshs 200 million is a sign of poor management of current liabilities and misplaced spending priorities. As a result, of heavy borrowing, during the period covering year 2010 to year 2014 the respondent operated below the recommended debt to asset ratio of at least 30%.
20. It was RW1's further evidence that in the Year 2013-2014, the student population reduced by 1,413 students which was the highest reduction of student numbers in the history of the respondent. Given that the respondent is highly dependent on student revenues, it was at a high risk of revenue crunch and exposed it to high operational deficits.
21. It was his further testimony that an audit was carried out in September 2014 to December 2014 by the Competence Development Center on behalf of the respondent and it showed that during the period the claimant was in office, stewardship over the respondent's finances did not meet the generally accepted accounting standards.
22. RW2 identified herself as a Legal Officer of the respondent. Similarly, she adopted her witness statement to constitute her evidence in chief.
23. It was RW2's evidence that Clause 12.0 of the claimant's letter of appointment contemplated termination at the instance of either the employee or the employer but not termination due to expiry of the term period. The claimant was aware that the contract for employment was to automatically terminate on 24<sup>th</sup> March, 2015.
24. She further stated that the contract of employment under Clause 1.0 on terms of employment stated that the appointment was to be on a five-year contract and the claimant was to be "eligible" for re-appointment for a further five-year final term. That this indicates that the contract was a fixed term contract of employment running from 25<sup>th</sup> March, 2010 to 24<sup>th</sup> March, 2015 upon which automatically terminated due to expiry or effluxion of time. On this, she contended that fixed term contracts carry no expectancy of renewal. That although Clause 1.0 of the employment stipulated that the claimant "shall" be eligible for re-appointment for another term of five years the same cannot be automatic.
25. She further stated that there is no express provision in the letter of appointment that obligated the respondent to communicate its decision on renewal of the contract six months before the expiry of the contract.



26. She added that during the claimant's tenure, the University was not doing well yet he was the accounting officer and the one in charge as the Vice Chancellor, the University experienced sharp reduction in Revenue by 11.87% in year 2014 and further recorded a sharp drop in revenue by Ksh.256 Million in the same year. That the general expenses continuously grew from the year 2010 to 2014 despite a slow revenue growth in the respective years. Further, the university experienced reducing liquidity levels of 1.27 in 2012 to 0.91 in 2014 which implies that it was continuously having cash flow downtimes which compromised its ability to pay financial obligations as and when they fell due.
27. RW2 stated in further evidence that the claimant upon receiving the letter of non-renewal of contract, accepted that the contract of employment was to expire on the 24<sup>th</sup> March, 2015. He handed over the office and filled a Clearance Liability Certificate without raising any complaint with the respondent. That the claimant therefore did not have any expectation to have the contract of employment renewed by the respondent.
28. She further contended that Clause 12.0 of the contract of employment did not create a legitimate expectation that by 24<sup>th</sup> September, 2014, if the respondent did not notify the claimant of its decision not to renew his contract then his request for renewal, would be accepted.
29. It was her further evidence that the letter dated 5<sup>th</sup> February, 2015 did not in any way terminate the contract of employment but reaffirm the position that the contract was to automatically expire on 24<sup>th</sup> March, 2015. Further, the letter communicated the decision not to renew the contract of employment which was to expire on the 25<sup>th</sup> March, 2015. The communication neither breached any provision of the contract of employment nor was it a letter of dismissal.
30. RW2 was further categorical that Clause 12.0 of the Letter of Appointment was to be invoked in case where either party would have wished to pre-maturely terminate the contract before its expiry of time. In no way did the communication not to renew the contract prematurely terminate the said contract.

### **Submissions**

31. It was submitted on behalf of the claimant that there was a legitimate expectation on his part that the respondent would renew his term of contract to a further and final term of five years and failure do so resulted in violation of this expectation. That the wording of the Charter and the contract of employment are very clear that the contract was to be renewed automatically. In support of this argument, reliance was placed on the cases of Teresa Carlo Omondi v Transparency International-Kenya [2017] eKLR and Francis Njeru Kariuki v Crown Paints Kenya Limited [2022] eKLR.
32. It was further submitted that it is in fact normal, accepted and best practice in Universities in Kenya, both public and private, that Vice Chancellors serve for two terms after their first is automatically renewed. That in this case, the position of a Vice Chancellor was always available and had not been abolished hence creating a legitimate expectation on the claimant's part that his contract would have been renewed.
33. In further submission, it was submitted on behalf of the claimant that the respondent did not give him any or reasonable notice of non-renewal of his contract. Citing the case of Linda Ndenengo Mwakungu v Open Society Institute Company Limited [2020] eKLR, it was the claimant's position that lack of reasonable notice on renewal in this case created a legitimate expectation of renewal of the fixed term contract.
34. It was the claimant's further submission that the events of December, 2014 amounted to a constructive dismissal as the respondent effectively ended his service at the University. That this happened when the initial contract of five years had not lapsed.



35. In conclusion, the claimant posited that even if it is not taken that he was not entitled to a renewal of his term, his initial employment of five years was unfairly terminated in December 2014; first without a hearing and secondly without notice. To this end, he urged the Court to find that he is still entitled to damages for unfair termination and pay in lieu of notice.
36. On the part of the respondent, it was submitted that whether a contract with a renewal clause will be extended or not, is an issue that is at the discretion of the employer and it cannot create a legal right under the doctrine of legitimate expectation as was held in Civil Appeal 81 of 2018, Transparency International vs Teresa Carlo Omondi. It was further argued that the non-renewal of a fixed term contract does not amount to unlawful/wrongful termination and a claim of unlawful termination cannot be maintained.
37. The respondent further argued that the claimant's reliance on the decision in the case of Teresa Carlo Omondi v Transparency International (supra) which upheld legitimate expectation in renewal of a fixed term contract was overturned, hence its application as it is now is bad law.
38. It was further submitted that no evidence has been produced to show that the respondent or the council members whetted the claimant's appetite that his contract would be renewed and hence he cannot rely on the doctrine of legitimate expectation albeit his being a fixed term contract.
39. It was the respondent's further submission that the allegations that the claimant was sent on terminal leave cannot amount to unlawful dismissal. That it is a normal, acceptable, common and best practice in Universities and in Government for senior employees and Government officials to proceed on terminal leave before expiry of their term in office and in no way is it unlawful termination.
40. In further submission, the respondent maintained that the claimant being on a fixed term contract, was not entitled to be given reasons why his contract was coming to an end pursuant to the catena of judicial decisions of this Court.

### **Analysis and determination**

41. Flowing from the pleadings, the evidentiary material placed before me, as well as the submissions on record, it is evident that the issues falling for the Court's determination are: -
  - a) Whether non-renewal of the claimant's contract of employment amounted to unfair termination;
  - b) Whether non-renewal of the claimant's contract of employment was against his legitimate expectation; and
  - c) Is the claimant entitled to the reliefs sought?

### **Whether non-renewal of the claimant's contract of employment amounted to unfair termination**

42. The record bears that the claimant was appointed to serve as the respondent's Vice Chancellor on a five-year contract with effect from 25<sup>th</sup> March, 2010. The dispute herein stems from the decision of the respondent not to renew the claimant's contract after the end of five years. The non-renewal of the employment contract was communicated by Rev. Joseph Ntombura, the Chairman of the University Council as follows: -

“Reference is made to the above and your letter of 15<sup>th</sup> December, 2014 requesting for the renewal of your contract which commenced on 25<sup>th</sup> March, 2010 and expires on 24<sup>th</sup> March, 2015. The content(sic) of the letter was noted and presented before Council on 30<sup>th</sup> January,



2015 for consideration. Upon deliberation of Council, a decision was made not to renew the contract....”

43. A perusal of the claimant’s employment contract reveals that it was fixed for five years as it had a start date and an end date. In essence, it was a fixed term contract.

44. As has been held in numerous decisions by the Court of Appeal and this Court, fixed term contracts ordinarily carry no obligation or expectation of renewal. Case in point is the determination by the Court of Appeal in Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki [2017] eKLR where the learned Judges reckoned thus: -

“[29]. Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.”

45. In the instant case, the claimant’s contract was very explicit that its duration was for five years. Therefore, it followed that upon expiry of the five year period, there were two possibilities, renewal or non-renewal. It could go either way and in this case, the respondent opted not to renew the contract. Therefore, the contract terminated on its end date being 24<sup>th</sup> March, 2015.

46. On this issue, I will follow the determination by the Court of Appeal in the case of Trocaire vs Catherine Wambui Karuno [2018] eKLR where it was held that: -

“ 16. It is clear from the evidence on record that the respondent’s employment was governed by fixed term contracts. As aptly observed by Lord Denning MR in British Broadcasting Corporation vs Ioannou [1975] 2 All ER 999 such a contract binds parties for the term stated in the agreement. In our view, the duration for the third contract was expressly stipulated therein, that is, for a period of four months running from 1<sup>st</sup> March, 2014 up to 30<sup>th</sup> June, 2014.....[19]It follows that the contract in question automatically lapsed on 30<sup>th</sup> June, 2014 by effluxion of time. That being the case the reason given by the appellant in its letter to the Ministry of labour for its decision not to renew the respondent’s contract and the payment of what was termed as a redundancy package in our view, has no relevance to this dispute...”

47. Applying the above determination to the instant case, it is evident that the lifespan of the claimant’s contract was already predetermined for five years. Therefore, at the end of the five years, the contract was to terminate by effluxion of time subject to renewal through the claimant’s reappointment.

48. Accordingly, it is my finding that non-renewal of the claimant’s contract did not amount to unfair termination as the contract of employment ran its course and terminated by effluxion of time.

### **The question of legitimate expectation**

49. As to what amounts to legitimate expectation, the Supreme Court of Kenya had this to say in Petition No 14 of 2014 Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR: -

“(265) An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. A party that seeks to rely on the doctrine of legitimate



expectation, has to show that it has locus standi to make a claim on the basis of legitimate expectation.”

50. The Court went on to cite with approval, the determination in *South African Veterinary Council vs Szymanski* 2003(4) S.A. 42 (SCA) at [paragraph 28], thus: -

“The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation include the following:

- (i) The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification': *De Smith, Woolf and Jowell* (op cit [Judicial Review of Administrative Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.
- (ii) The expectation must be reasonable: *Administrator, Transvaal v Traub* (supra [1989 (4) SA 731 (A)] at 756I - 757B); *De Smith, Woolf and Jowell* (supra at 417 para 8-037).
- (iii) The representation must have been induced by the decision-maker: *De Smith, Woolf and Jowell* (op cit at 422 para 8-050); *Attorney-General of Hong Kong v. Ng Yuen Shiu* [1983] 2 All ER 346 (PC) at 350h - j.
- (iv) The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: *Hauptfleisch v. Caledon Divisional Council* 1963 (4) SA 53 (C) at 59E - G.”

51. Turning to the case herein, the claimant has argued that the circumstances of his case are unique and that there was legitimate expectation on his part that his contract would be renewed. On this issue, the claimant placed reliance on several factors one of them being the wording of his contract of employment and Clause 16(2) of the respondent's University Charter. He argues that it is clear that the use of the words "shall" in the contract of employment and the University Charter means that the contract was to be renewed automatically.

52. To put the issue in context, I find it imperative to revisit the claimant's contract of employment which provides in part; your appointment will be on a five year contract and you will be eligible for reappointment for a further five years final term.

53. Further, Clause 16(2) of the University Charter provides as follows: "The vice chancellor shall hold office for a period of five years and shall be eligible for reappointment for another five years."

54. With due respect, I disagree with the claimant's interpretation of the foregoing two clauses. Indeed, the use of the term "shall be eligible" cannot and does not connote automatic reappointment. It simply means that the claimant was to be among those to be considered for reappointment when the time comes. If at all his reappointment was to be construed as being automatic, then the same would have been clear to that effect.

55. It is also noteworthy that prior to the respondent's letter communicating non-renewal of the claimant's contract of employment, he had requested for renewal of his contract of employment through his letter



of 15<sup>th</sup> December, 2014. He highlighted his achievements and concluded his letter in the following manner: -

“In this regard, I wish to request for the renewal of my employment contract for a further term five years final term with effect from 26<sup>th</sup> March, 2015 in accordance to Article 16 of the University Charter.”

56. What manifests from the claimant’s letter, is that had the renewal of his contract of employment been automatic, he would have not have made the application for its renewal as he did. Indeed, by requesting for renewal, the claimant was confirming that he was well aware that his reappointment was subject to many factors, including consideration by the respondent.
57. The claimant has further pegged his legitimate expectation on the notice period given prior to communication on the non renewal of his contract. According to him, he was entitled to six months notice while the respondent disagrees and argues that the six months’ notice was only to apply where the contract is terminated prematurely. The notice period of six months is provided for under Clause 12 of the contract of employment as follows: -

“Either party may terminate this appointment by giving six months’ notice”

58. My interpretation of the above provision is that the six months’ notice was not in respect of renewal or non renewal of the employment contract. Rather, it was to apply to instances where a party was desirous to terminate the contract of employment during its pendency. Therefore, the fact that the claimant was given one month’s notice cannot be termed as being in breach of the employment contract. In the same vein, I find that failure by the respondent to give the claimant six months’ notice cannot be construed as conferring legitimate expectation on him.
59. The claimant has further termed the one months’ notice given to him as unreasonable and in this regard, has argued that lack of a reasonable notice created a legitimate expectation of renewal of the fixed term contract. Pursuant to Section 35(1) (c) of the *Employment Act*, the termination notice prescribed for employment contracts as the one herein is twenty-eight days. In the circumstances, a notice of one month cannot be termed as unreasonable in my view.
60. Taking all factors into consideration, it is my finding that there is nothing on record to suggest that there was legitimate expectation that the claimant’s contract would be renewed. Concluding on this issue, I wish to echo the sentiments of the Court of Appeal in the case of *Transparency International Kenya vs Teresa Carlo Omondi (2023)* where it was held that: -

“We dare say that an automatically renewable fixed-term contract is a contradiction in terms, as it would subject the parties to an indeterminate employment contract. The respondent was under fixed-term contract with a definite commencement date and termination date. There was no ambiguity created to create an expectation of contract renewal by the appellant’s issuance of a fixed-term contract. The contract terminated automatically when the termination date arrived. Whether a contract with a renewal clause will be extended or not, is an issue that is at the discretion of the employer and it cannot create a legal right under the doctrine of legitimate expectation...In the instant case, there was no promise of any sort that was given to the respondent to justify a claim based on legitimate expectation.”

61. The total sum of my consideration is that I have not discerned any factor in the claimant’s contract of employment and circumstances attendant to this case that can be construed as conferring legitimate expectation on his part that his contract would be renewed automatically.



62. Before I pen off, I need to address an issue raised by the claimant with regards to his handing over in December, 2014 to Prof Mageto. In this respect, the claimant has urged that the same amounted to termination of his employment contract. From the record, on 30<sup>th</sup> December, 2014, the claimant handed over office to Prof. Mageto who had been appointed by the respondent to serve as the acting Vice Chancellor. In the handing over report dated 30<sup>th</sup> December, 2014, the claimant addressed Prof Mageto in part: -

“I am writing with reference to Council decision on your appointment as the Acting Vice chancellor of the University. During the same meeting, a decision was made for me to take my annual leave and also all the accumulated leave days. In this regard, I wish to take this opportunity to congratulate you and wish you well in your new appointment.”

63. It is therefore apparent that the claimant was proceeding on leave. I must say that there is nothing on record to suggest that he was being terminated from employment. I say so because it is not contested that the claimant was on full pay upto the time his fixed term contract officially ended. It cannot therefore be said that he was terminated from the respondent’s employment in December, 2014.

64. In total sum, it is my finding that the claimant’s contract of employment was not terminated through non-renewal of his contract, rather the same ended through effluxion of time. Consequently, a claim of unfair termination cannot lie.

#### DIVISION - Orders

65. In the final analysis, it is the Court’s finding that the claimant was not terminated hence is not entitled to compensation on account of unfair termination. Accordingly, the claim is dismissed in its entirety with an order that each party bears its own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF JUNE, 2023.**

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**STELLA RUTTO**

**JUDGE**

**Appearance:**

**For the Claimant Mr. Gacheru**

**For the Respondent Ms. Inyanje**

**Court Assistant Abdimalik Hussein**

**ORDER**

**In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to**



**use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.**

**STELLA RUTTO**

**JUDGE**

