



**Nyanumba v British Broadcasting Corporation (Cause 13 of 2017)  
[2023] KEELRC 1589 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1589 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 13 OF 2017**

**J RIKA, J  
JUNE 30, 2023**

**BETWEEN**

**PHILIP MARUBE NYANUMBA ..... CLAIMANT**

**AND**

**BRITISH BROADCASTING CORPORATION ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim on January 9, 2017.
2. He states that he was employed by the Respondent as an Administrative Assistant, on July 12, 2013. He rose through the ranks, to become Business Development Coordinator.
3. He states that on December 31, 2016, the Respondent summarily dismissed him, for unstated reasons. His last monthly salary was Kshs 136,584.
4. He claims Judgment against the Respondent for: -
  - a. 1-month salary *in lieu* of notice at Kshs 136,584.
  - b. Unpaid leave for the year 2015-2016 at Kshs 273,168.
  - c. Service at 15 days' salary for each complete year of service at Kshs 204, 876.
  - d. 12 months' salary in compensation for unfair termination at Kshs 1,639,008.  
Total... Kshs 2,253,636.
  - e. Alternative to [d], reinstatement.
  - f. Declaration that termination was unfair and unlawful.
  - g. Costs and interest.



5. The Respondent filed its Statement of Response on January 30, 2017. It is conceded that the Claimant was employed by the Respondent. His contract commenced on July 12, 2013, and was subsequently extended. The last extension expired on December 31, 2016. The Claimant left employment upon expiry of his contract.
6. All the terms and conditions of service in the original contract, save for the salary, were incorporated in succeeding contracts. None carried the guarantee of permanent employment. The Claimant accepted the terms and conditions of each contract.
7. The Respondent did not therefore, summarily dismiss the Claimant as alleged. He was advised that his contract would expire on December 31, 2016, after he had applied to go on annual leave, and resume on January 2, 2017.
8. He was paid all his dues up to, and including, the 31<sup>st</sup> day of December 2016. This included the monthly salary and 6 pending annual leave days. He was issued the Certificate of Service. No notice is claimable; no service pay is due; and no compensation is payable.
9. He owes the Respondent Kshs 231,636 in respect of unused elements of cash advances granted to the Claimant for overseas travel. The total sum was Kshs 338,000. The Parties agreed that the Claimant would pay through salary check-off, a monthly sum of Kshs 25,000, and a one-off payment of Kshs 118,000 in November 2016. The Respondent counterclaims from the Claimant, the outstanding amount of Kshs 231,636.
10. The Respondent further states that the Claimant did not return upon termination, its laptop computer HP Elite Book; office keys; the RAS token; NBH and Nairobi staff identity cards; and a door card.
11. The Respondent in total counterclaims the sum of Kshs 231,636; return of its afore-stated tools of work; and interest on the sum of Kshs 231,636 from December 2016, at court rate. The Respondent prays for dismissal of the Claim, with costs to the Respondent.
12. The Claimant gave evidence and rested his Claim, on October 26, 2022. Deputy Managing Editor of the Respondent, Moses Rono, gave evidence on October 26, 2022, and December 14, 2022, when the hearing closed. The Claim was last mentioned in Court on March 2, 2023, when the Parties confirmed filing and exchange of their Closing Submissions.
13. The Claimant adopted his 2 Witness Statements on record, and 2 bundles of Documents, exhibited as number 1-16. He restated that he was employed by the Respondent as an Administrative Assistant and later, a Business Development Coordinator.
14. Cross-examined, he told the Court that he was placed on various fixed-term contracts. The nature of his contracts never changed. He was aware about the last contract which expired on September 30, 2016. Page 35 of the Respondent's Documents contains a contract document in the Claimant's name. He did not sign this one. It was not presented to him. There were discussions between the Parties, on renewal. He continued to work after September 30, 2016, without signing a renewal contract. There was no indication that the Claimant was going to be employed permanently. On September 26, 2016, he said he wished to take annual leave, to enable him think things over. He thought that the Respondent was considering renewing his contract for another 6 months.
15. He received the e-mail from the Respondent in December 2016. He was advised not to report to work. The e-mail did not say, that his employment had been terminated. It stated that his last working day was December 31, 2016. The Claimant wrote an e-mail enquiring why he was being issued a 3-month contract. He insisted he was not offered a fresh contract after September 30, 2016. He was working, but



without a contract. He continued to earn a salary. Wesley Maritim, who was the Claimant's Manager, referred to a contract which expired on December 31, 2016. The Claimant was not aware of such a contract. Maritim stated that it was a concern to everyone, that the Claimant was working without a contract. His e-mail was in October 2016. The Claimant did not receive any contract document after Maritim's e-mail.

16. The Claimant received the e-mail dated December 8, 2016, stating that his contract would expire on December 31, 2016. He was paid salary for December 31, 2016. No one works without a contract at the Respondent. There is an e-mail at page 44 of the Respondent's Documents from the Respondent, stating that there were ongoing consultations, to make the position held by Claimant, a permanent position. It was stated that if approved, the permanent position would require to be filled competitively through a job interview. This was in June 2016. The Claimant last worked on December 17, 2016.
17. The Claimant confirmed that he did not clear with the Respondent. He did not return the staff card. He had a computer. He did not have a laptop. He did not have a RAS token. He accessed the office through the staff card. He had keys to the office. He left the items in the office. He wrote an e-mail to the Respondent dated January 3, 2017, telling the Respondent that the Court would advise, how the items were going to be handed over to the Respondent. He did not write to say, that he did not have any of the items.
18. He had received travel advances, in the sum of USD 3,380 or Kshs 338,000. It covered travel to the UK for about 1 month, sometime in 2015. He accounted for the money. He was told he needed to repay, because his accounting was unsatisfactory. He wrote an e-mail to the Respondent, offering to pay Kshs 25,000 monthly, and top up repayment through a loan facility. He made this proposal. By end of employment, he had repaid Kshs 103,363. He confirmed that he owes the Respondent the balance. Page 17 of the Claimant's Documents contains his own computation of his dues. He states the sum of Kshs 231, 636, is owed to the Respondent.
19. Redirected, the Claimant told the Court that there was a plan, to repay his obligation to the Respondent. He intended to take a loan to repay in full. Termination did not let him take a loan to top up. He was not given an opportunity to clear.
20. Moses Rono adopted his Witness Statement and 6 Documents [exhibit 1-6] filed by the Respondent, in his evidence. He confirmed that the Claimant was employed under various fixed-term contracts by the Respondent. He was offered the last contract ending December 31, 2016. He did not execute the contract. His term ended. The Respondent did not terminate his contract. He was aware of the expiry date. He was reminded that the contract would lapse on December 31, 2016. There was no guarantee of renewal. The Respondent advertised short-term contracts, depending on particular projects and availability of finances. Permanent roles were preceded by written proposals. There was a proposal for restructuring of roles in the new year- 2017. Proposal was shared with the Claimant. He could not be offered a contract beyond December 2016.
21. He did not clear. He went away with Respondent's tools of trade, which included HP laptop, keys to the desk, security token that opens the Respondent's IT infrastructure, 2 staff cards for Nairobi and London, and door access card. The items have not been recovered. The Respondent made demand upon the Claimant for surrender of its items. The Claimant wrote back, saying recovery would be done through his Advocates. He did not deny that he owes the Respondent the sum of Kshs 231, 636.
22. Cross-examined, Rono told the Court that the Claimant was employed under fixed-term contracts. He executed all contracts, up to September 2016. He was given a hardcopy renewal contract. There was an e-mail from Maritim, requesting the Claimant to execute. This was on November 10, 2016. The previous contract expired on September 30, 2016. He continued working for more than a month,



without a valid contract. His contract was to lapse on December 31, 2016. This date was based on the unexecuted contract document. The Claimant said he was consulting before he could execute. The previous contract had a termination notice period of 30 days. There were instructions issued by the Respondent not to grant the Claimant access to the office, after December 2016. A new position was advertised in January 2017. There was business reorganization, with new positions. The Claimant was at the end of his contract. He had arranged to pay his debt in instalments. Deductions would have stretched to March 2017. The difference would have been paid through a SACCO loan. The Respondent is a kind Organization, and did not intend to recover the debt, from the Claimant's terminal dues. The Counterclaim is made, because the Claimant owes the Respondent the money. It was not made with the sole objective of getting back at the Claimant, on account of his having filed the Claim. The Claimant is not recorded to have received the items claimed by the Respondent. He however acknowledged withholding of the items, saying that the Court will direct him, on how to return the items.

23. Redirected, Rono told the Court that the contracts the Claimant signed, would cover the succeeding period, before he executed another contract. He was reminded on more than one occasion, to execute the last contract. He wrote to Maritim on November 15, 2016, alluding to execution of the new contract. The contract of 2015 was not in force, when he left employment. He was paid his salary to the end of December 2016. His contract expired. It was not terminated by the Respondent.
24. The issues, as the Court proposes to deal with them, are: whether the Counterclaim is merited; whether the Claimant's contract was terminated by the Respondent unfairly, at all, or lapsed at the end of a fixed term; and whether the Claimant merits the prayers sought.

### **The Court Finds**

25. It is common evidence that the Claimant was employed by the Respondent as an Administrative Assistant, on July 12, 2013. His contract was for a period of 6 months, running from July 1, 2013 to December 31, 2013.
26. For the next 3 years, the Respondent continued to employ the Claimant on short-term contracts. He was advised on July 21, 2015, that he would share his time and duties as an Administrative Assistant with the IBM team, as Business Development Coordinator with the Business Development team, based at the BBC East Africa Bureau.
27. The following month, on August 21, 2015, he was employed as a Business Development Coordinator. He continued to work on fixed-term contracts.
28. He was issued a month's contract from September 1, 2016 to September 30, 2016. In all the contracts, the terms and conditions of service remained the same, save for the job title, the period, and remuneration.
29. The dispute is rooted in the period between September 30, 2016 and December 31, 2016. The 1-month period contract expired. The Respondent states, it offered the Claimant a 3-month contract covering this period, which the Claimant did not execute. According to the Respondent, the Claimant was aware about this contract, which expired on December 31, 2016. The Respondent did not terminate the Claimant's contract; it expired in accordance with the terms and conditions of service applicable to the Parties.
30. The Claimant denies knowledge of a contract expiring on December 31, 2016. He pleads at paragraph 4 of his Statement of Claim that, on December 31, 2016, the Respondent unfairly and unlawfully



summarily dismissed him, for unknown reasons. There was no contract known to the Claimant, which expired on December 31, 2016. He was summarily dismissed.

31. Counterclaim. The monetary part of the Counterclaim was conceded by the Claimant, and nothing much turns on this item. He stated on cross-examination that he received advances for foreign travel, from the Respondent, in the sum of USD 3,380, equivalent of Kshs 338,000. He wrote a proposal to the Respondent, to deduct Kshs 25,000 from his salary monthly, to redress the debt obligation. He intended to apply for a loan from the SACCO, to top up the monthly instalment. By the time he left employment, he had repaid Kshs 103, 363. He stated unequivocally that, "I confirm there is a balance."
32. That balance is as counterclaimed by the Respondent, at Kshs 231,636. The sum counterclaimed is granted to the Respondent, at Kshs 231,636.
33. The Claimant was required to return Respondent's work tools, on leaving employment. The Respondent wrote an e-mail to the Claimant through Jill Wookey, asking him to return its laptop, keys to the desk, RAS token, NBH, Nairobi staff identity cards, and the door card, before the end of December 2016.
34. The Claimant wrote back on January 3, 2017. He did not deny having the items. He explained that because he did not have access to his office, he could not return the items. He stated that the Court will advise on how he will return the items.
35. The Claimant ought to have returned the items upon his departure. His position that the Court would advise on their return, was irrational. He left employment and had no reason to continue withholding his Employer's tools of trade. If there was any item left in his former office, he could have asked the Respondent to grant him access, to retrieve the items and hand over. He did not state that the items were at the office, and seek access to hand over. He instead adopted an irrational line of thinking, leaving it to the Court to decide how he should return the items. Why was it necessary, for the Claimant to create a dispute, over items he did not have a proprietary claim to?
36. The counterclaim for surrender by the Claimant to the Respondent, of the Respondent's laptop, keys to the desk, RAS token, NBH, Nairobi staff identity cards and door card, is allowed.
37. The Counterclaim is granted in whole as prayed, save for the prayer on costs.
38. Termination or expiry of the contract. The Claimant was employed under multiple fixed-term contracts, from July 12, 2013. The last written contract, signed by the Parties, was for 1 month, running from September 1, 2016 to September 30, 2016.
39. There is a draft fixed term contract extension, dated October 17, 2016. It offered to the Claimant extension of 3 months, beginning October 1, 2016, to December 31, 2016.
40. The Claimant denies he ever saw this document. This denial was made against the background of discussions between the Parties, on whether the Claimant's position would be converted from fixed short-term contract to regular, term-indefinite contract. The Claimant had written to the Respondent on September 26, 2016, wishing to be advised why his employment could not be converted to regular employment, instead of perennial fixed-term contracts. He was advised that Jill would write to him advising him on his inquiry.
41. On June 29, 2016, the Respondent had written to the Claimant, stating that its Human Resource Department was consulting on whether the Claimant's position should be converted to a continuing contract. He was told that if it was converted, the Respondent would have to advertise for the role.



42. The 1-month contract executed between the Parties for the period September 1, 2016 to September 30, 2016 appears to have been a stop-gap measure, aimed at providing the Parties an opportunity to exhaust the discussion, on whether the fixed-term contracts offered to the Claimant from the year 2013, should come to an end, and be replaced by open-ended contracts.
43. The Respondent was not able to give the Claimant a firm answer concerning his continued short-term contracts, and the Claimant was reluctant to append his signature to another short-term contract, beginning October 1, 2016 to December 31, 2016.
44. The Parties however, continued their employer-employee relationship, post- September 30, 2016. There was no written contract over this period. The document exhibited by the Respondent, covering the period, is not signed by either Party, and is not a valid contract of employment, under Section 9 [3] of the Employment Act. It is neither signed, nor dated.
45. In the respectful view of the Court, there was no contract accepted by the Claimant, which bound him to work for 3 months for the Respondent, ending on December 31, 2016.
46. There was no contract exhibited by any of the Parties, binding the Claimant to work for the Respondent until December 31, 2016.
47. An invalid contract document does not have the force of law. December 31, 2016, cannot have been the Effective Date of Termination. It had not been agreed as such by the Parties.
48. The last written and executed contract of employment between the Parties, expired on September 30, 2016. After this the Parties continued in an employer-employee relationship, without a valid written contract. The Claimant continued to render his labour, and the Respondent continued to remunerate him.
49. The Respondent alleged to end its relationship with the Claimant on December 31, 2016. Since there was no valid contract concluded between the Parties, with December 31, 2016 as the effective date of termination, the position by the Respondent that the Claimant's contract expired on December 31, 2016, and was not terminated by the Respondent, is unsound.
50. Wesley Maritim wrote to the Claimant on December 8, 2016, advising the Claimant that he may take annual leave from December 23, 2016 to December 30, 2016, and that the Claimant's contract would expire on December 31, 2016. In effect, the Respondent advised the Claimant not to return to work after his annual leave. The Claimant had applied to return on January 2, 2017. In his mind, he expected to continue working, until he was explicitly advised by the Respondent, that the fixed-term contract tradition, going back to 2013, would or would not be continuing post September 30, 2016.
51. The Respondent terminated the oral agreement under which the Claimant was working, from October 1, 2016 to December 31, 2016.
52. Termination was at the instance of the Respondent. There was no written contract of employment, which lapsed on December 31, 2016. The Parties had an oral agreement after September 30, 2016, which the Respondent terminated, on December 31, 2016.
53. Was termination carried out fairly? It was not. The Respondent had placed the Claimant on multiple fixed-term contracts, over a period of 3 years. Paragraph 5 of the Statement of Response details the various contracts. There were no less than 8 contracts. Each expired on a given date and was invariably renewed. The Claimant sought advice from as early June 2016, whether he would be converted to regular employment. The Respondent did not give a clear answer, advising that there were consultations going on within its Human Resource Department. This state of flux persisted, with the



- Claimant placed on a 1-month contract, the last written contract he executed on September 1, 2016. The Respondent let the Claimant to continue working after this contract expired on September 30, 2016. It alleges to have offered another 3-month contract, which the Claimant did to sign, and which the Court has concluded was not a valid contract.
54. Having continued to employ the Claimant after September 30, 2016, the Respondent had a legal obligation to justify termination, on December 31, 2016. The Parties were working under an oral contract of employment, after September 30, 2016, which is a recognized form of contract of employment under Section 8 of the [Employment Act](#). The provisions of the [Employment Act](#) apply to oral and written contracts of employment.
  55. It was therefore for the Respondent to justify its decision, to terminate the Claimant's contract on December 31, 2016. The last contract expired on September 30, 2016, but the Claimant went on working, until December 31, 2016, when the Respondent advised him not to return to work, while the Claimant intended to return on January 2, 2017 to continue serving under the oral contract.
  56. The explanation that the contract expired on December 31, 2016, is not a valid termination reason, under Sections 43 and 45 of the [Employment Act](#) 2007, because there was no contract, written or oral, with the expiry date of December 31, 2016.
  57. There was no valid reason or reasons advanced by the Respondent, why the Claimant was stopped from working, after December 31, 2016.
  58. Termination was unfair
  59. Remedies to the Claimant. It is declared that termination was unfair and unlawful.
  60. An order of reinstatement is not practicable, reasonable or legal. The Claimant left employment in December 2016, over 6 years ago. Section 12 [3] [viii] of the [Employment and Labour Relations Court Act](#), Cap 234B the Laws of Kenya, limits grant of the remedy of reinstatement to within 3 years, from the date of dismissal. The Parties have moved on; the Respondent reorganized its business; the Parties were for most part engaged in fixed-term contracts; and reinstatement in the circumstances, is not reasonable, practicable, or within the confines of the applicable law.
  61. The Claimant did not establish his prayer for annual leave. He applied for and was granted annual leave from December 23, 2016 to December 30, 2016. What is his prayer for a sum of Kshs 273,168 in annual leave based on?
  62. His pay slips show that he was subscribed to the NSSF. He was not eligible for service pay, under Section 35 [6] of the [Employment Act](#). His last contract, which was an oral contract, was not shown to have provided him with service pay as claimed.
  63. He worked for 3 ½ years from July 2013, to December 2016. He was taken through a disciplinary process in October 2016, close to the date of termination, over allegations of financial impropriety. This included the allegation that the Claimant failed to account for Kshs 338,000 advanced to him by the Respondent. The outcome of the disciplinary process is not clear from the record, but the allegation about failure to account for Kshs 338,000 advance, has been dealt with by the Court through the Counterclaim. Other than this allegation, the Court has not seen any other allegations against the Claimant by the Respondent, based on discipline or performance. The Claimant intended to continue working after December 31, 2016, as shown in his e-mail to the Respondent, expressing his wish to return to work on January 2, 2017. He expected to be taken in on regular terms, rather than continue to work under peripatetic terms of service. He did not contribute to the Respondent's decision, to



terminate his employment. He is granted equivalent of 3 ½ months' gross salary in compensation for unfair termination, at Kshs 478, 044.

64. The prayer for 1-month salary *in lieu* of notice is allowed, at Kshs 136,584.
65. Interest allowed at court rate from the date of Judgment till payment is made in full.
66. Parties shall bear own costs of the Claim and the Counterclaim.

**In Sum It Is Ordered**

- a. The Counterclaim is granted as follows-
  - I. The Claimant shall pay to the Respondent Kshs 231,636, with interest calculated from December 31, 2016, at court rate, till payment is made in full.
  - II. The Claimant shall immediately return to the Respondent its laptop; keys to the desk; RAS token; NBH and Nairobi staff cards; and the door card.
- b. It is declared that termination of the Claimant's contract by the Respondent, was unfair and unlawful.
- c. The Respondent shall pay to the Claimant equivalent of 3 ½ months' salary in compensation for unfair and unlawful termination at Kshs 478,044; and notice at Kshs 136,584 – total Kshs 614, 628.
- d. Interest on the sum in [c] allowed at court rate, from the date of Judgment till payment is made in full.
- e. Parties shall bear own costs of the Claim and the Counterclaim.

**Dated, signed and released to the Parties electronically via e-mail, at Nairobi, under Practice Direction No. 6[2] of the Electronic Case Management Practice Directions, 2020, this 30<sup>th</sup> day of June, 2023.**

**JAMES RIKA**

**JUDGE**

