



**Ireri v AMREF Health Africa & another (Cause 187 of 2019)
[2023] KEELRC 2013 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2013 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 187 OF 2019
B ONGAYA, J
AUGUST 4, 2023**

BETWEEN

JANE WEVETI IRERI CLAIMANT

AND

AMREF HEALTH AFRICA 1ST RESPONDENT

AMREF INTERNATIONAL UNIVERSITY 2ND RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim on January 31, 2019 through Lehmann Associates Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the 1st and 2nd Respondents' termination of the claimant's employment was unfair illegal and irregular.
 - b. Damages calculated at 1 year's salary for unfair termination; the period of the employment contract.
 - c. Payment of her full salary and pension dues up to and including December 31, 2018 and cash in lieu of 23 outstanding leave days as assured by the 1st respondent in writing on October 30, 2018.
 - d. Compensation for the 1st and 2nd respondent's infliction of mental and emotional distress upon the claimant through their unfair termination of her services.
 - e. An order that the 1st and 2nd respondents issue her with a certificate of service.
 - f. Costs plus interest on b) and c) at court rates.
2. The response to the statement of claim was filed on February 25, 2019 through Mohammed Muigai LLP. The respondent prayed that the statement of claim be dismissed with costs.



3. The claimant stated that she was employed by the 1st respondent in 2018 under a service agreement dated January 1, 2018 for a period of 1 year extendable by mutual agreement of the parties.
4. That she was subsequently seconded to the 2nd respondent by the 1st respondent through a secondment letter dated June 13, 2018. She states that she performed her duties to the best of her abilities without complaint.
5. That on or about October 30, 2018 she received a letter from her employer titled “Non-renewal of Service Agreement (Employment Contract)” which informed her that her employment would be terminated on December 31, 2018 based on clauses 3.1 and 17.2 of her employment contract.
6. That upon closely reading her employment contract, she discovered that her employer aimed to terminate her contract for reasons related to incapacity for illness. It is the claimant’s case that she has never, during her employment been incapacitated by illness which has lasted more than 17 consecutive weeks or more than 120 days in a period of 52 weeks which would necessitate for termination of her employment under clause 17.2 of her employment contract.
7. It was the claimant’s case that she had never during her employment seen an AMREF health Africa recognized doctor or any other doctor to assess her health and give her employer, or anyone else, an opinion of her ill health allowing for termination of her employment under clause 17.2 of her employment contract.
8. On receiving the letter on non-renewal of her employment contract, she contacted the Human Resources Director, Angela Muchiru, and the then acting Vice Chancellor of the 2nd Respondent, Alice Lakiti via email on October 31, 2018 seeking clarification of the terms of non-renewal and the reasons for her termination.
9. That Angela Muchiru responded on November 1, 2018 via an email which read;

“Dear Jane,

Please see below responses to your email:

1. In response to your first query, if you choose to serve part of your notice and leave before serving the entire notice period, the remaining days (up to December 31, 2018) will be paid in cash in lieu subject to satisfactory handover. The same applies to your pension benefits. Whichever decision you take must be communicated to us within the period provided in the letter dated October 30, 2018 i.e seven days, otherwise we shall take it that you have opted to serve your notice period in full.
2. In response to your second query, Amref will continue to make decisions on its staffing requirements in accordance with its policies and organizational requirements.
3. In response to your third query, yes, it is correct that your contract of employment was a fixed term contract.

We trust that your queries are now fully answered. Correspondence on this matter is now closed and we look forward to receiving your signed letter with the selected option.

Best regards,

Angela.”



10. The claimant states that faced with no alternative at the time, she decided to comply with the instructions of the 1st respondent and prepared the handover notes to her line manager before December 4, 2018 as well as undertook the online clearance process. Counsel for the claimant via a letter dated December 13, 2018 wrote to the respondents, however, said letter was not responded to.
11. Despite her completion of handover to her line manager, the claimant states that she was not cleared by the respondents as at the time of filing suit and as a result she had not received her final dues which comprised of her salary and pension dues up to December 31, 2018 cash in lieu of outstanding leave days and had not been issued with her certificate of service.
12. On the part of the respondents it is argued that on account of human error, it mistakenly referred to clause 17.2 of the claimant's service agreement, rather than clause 17.1 of that agreement which referred to the notice period given by the 1st respondent in the non-renewal notice. That the content of the non-renewal notice, however, clearly referred to the contents of clause 3.1 and 17.1 of the service agreement.
13. That the error was discovered when the claimant sent a demand letter through her counsel, and the same was rectified by a letter dated December 14, 2018 which was to be forwarded by the 1st respondent's counsel.
14. That on or about December 5, 2019 when summons was served, it was discovered that the letter dated December 14, 2018 had inadvertently not been delivered to the claimant's counsel. Counsel for the respondents immediately forwarded said letter to the claimant's counsel.
15. It is argued for the respondent that the topic of ill-health did not arise during the meeting of October 30, 2018 at which parties discussed the non-renewal notice, and that the claimant was well aware of the reasons for the non-renewal notice, being the determination of her fixed term contract.
16. The 1st respondent denied that there was any expectation of renewal of the claimant's service agreement, and that the 1st respondent did provide a reason for the claimant's dismissal from employment being "the determination of her fixed term contract" which reason the 1st respondent maintains is valid and fair.
17. The 1st respondent maintains that the claimant has been paid her terminal dues in full, however her pension dues are with a third party being AMREF health Africa provident scheme. It was stated that she may engage them as necessary to access her dues.
18. It is the respondents' case that the claimant's employment was not terminated on account of illness; rather, her service agreement was terminated as a result of its determination.
19. The Claimant filed her submissions. The court has considered the parties' respective cases and makes finding as follows.
20. To answer the 1st issue, the claimant confirmed in her testimony that she had since received the certificate of service, the terminal dues promised in the contract and termination notice, and she was to process the pension dues. The Court returns that those claims and related prayers have been settled between the parties.
21. To answer the 2nd issue, the Court returns that the material before the Court shows that indeed the termination letter referred, in error, to the clause 17.2 on termination on ill-health instead of the clause 17.1 on termination notice period. The error was belatedly rectified by the letter dated December 14, 2018 and had not been forwarded by the time the summons to enter appearance were served on February 5, 2019 and the suit having been filed on January 31, 2019. The claimant confirmed she had attended the meeting on October 30, 2018 at which the non-renewal of her contract was discussed.



The Court considers that the claimant knew the exact circumstances of the separation per the meeting of October 30, 2018. To confirm that understanding, the claimant wrote the email dated October 31, 2018 addressed to Angela Muchiri confirming she had been given an option at the meeting of October 30, 2018 to either serve her full notice period or to be paid cash in lieu subject of the handover process being completed satisfactorily. She requested a confirmation that if she opted for leave during the notice period her salary would be paid up to December 2018 including pension benefits till the same date. In that e-mail the claimant did not raise the issue of the termination notice referring to grounds of ill-health. By the e-mail dated November 1, 2018 addressed to the claimant by the said Angela Muchiru, it was confirmed that the remaining days up to December 31, 2018 would be paid in cash in lieu subject to satisfactory handover and whatever option the claimant took had to be communicated within the time lines in the termination notice dated October 30, 2018 being 7 days thereof and failing it be taken she had opted to serve the entire notice period – and the same applied to the pension benefits. It was confirmed that the contract had been a fixed term contract. The Court has considered the correspondence and returns that the parties were separating per clause 17.1 on termination notice period. The termination notice reference to clause 17.2 on ill-health was in error and did not apply as duly corrected. The allegations of unfair termination are found a mere afterthought that was misguided on the part of the claimant. The suit will therefore collapse as unjustified.

In conclusion the suit is hereby determined with orders each party to bear own costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 04TH AUGUST, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

