



Bitutu v Riley Services (Cause 173 of 2018)
[2023] KEELRC 2757 (KLR) (24 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2757 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 173 OF 2018
DKN MARETE, J
OCTOBER 24, 2023

BETWEEN

HYLINE BITUTU CLAIMANT

AND

RILEY SERVICES RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated 13th February, 2018. The issue in dispute is therein cited as;Unfair termination
2. The Respondent in a Memorandum of Response dated 16th November, 2018 denies the Claim and prays that it be dismissed with costs.
3. The Claimant’s case is that until September, 2017, he served as a security guard with the Respondent. He earned Kshs.13,000.00 per month.
4. The Claimant’s further case is that on 15th September, 2017, he received a letter from the Respondent’s management informing him that the contract would lapsed on 25th September, 2017.
5. His further case is that the Respondent abruptly terminated the Claimant’s contract of employment without prior notice and without providing any reasons thereof. There was no disciplinary case pending against the Claimant or notice to leave. Prior to the termination of the Claimant’s services, there had never been any complaints whatsoever from the Respondent as to the workmanship, competence or diligence of the Claimant carrying out her duties.
6. It is his further case that in terminating the Claimant’s employment, the Respondent was and/or is in breach of the express and/or implied terms of contract of employment and the demand notice has been issued to the Respondent but it has not elicited any response hence the current claim.
7. She cites the following as particulars of Base of contract;



a. That the Claimant would be treated fairly and in accordance with the provisions of the Employment Act.

b. That the employment contract would not be terminated unfairly.

Her particulars of statutory breach are;

a. Terminating the contract of employment without any or reasonable cause and/or failing to providing reasons for the termination.

b. Terminating the contract without regard to fair procedures.

c. Failing to act in accordance with justice and equity in the circumstance.

She prays thus;

a. A Declaration that the termination of employment was unfair.

b. Payment of the equivalent of months' salary for such aggregate period as the court may consider reasonable.

c. Compensation equivalent to twelve (12) month's salary for unfair termination.

d. Payment for exemplary damages for unfair termination.

e. Payment of all dues owing to the claimant as of the date of termination particularized as follows:

i. Salary arrears for June 2015 Kshs.8,637/=

ii. Salary arrears for July 2015 Kshs.11,458/=

iii. Salary arrears for August 2015 Kshs.4,685/=

iv. Salary arrears for December 2015 Kshs. 6,635/=

v. Leave allowance for September 2015(part) Ksh.4,423/=

vi. Unpaid annual leave prorata 2017 (270/21/362) Kshs.15,700/=

vii. Severance pay Kshs. 45,500/=

viii. NSSF not submitted for July & August 2015 Kshs.800/=

ix. Leave allowances for 4 years i.e. 2010-2014 Kshs.35,000/=

x. Maternity leave allowances Kshs.36,000/=

xi. Underpayment for years 2011-2013 Kshs.35,686/=

xii. Uniform refund Kshs. 8,400/=

xiii. Premium contribution Kshs.11,600/=

xiv. RIFA contribution Kshs.9,200/=

Total Kshs.248,424/=

(f) Costs of this suit

(g) Interest at the court rates



(h) Any other and further remedy as the court may deem expedient.

8. The Respondent's case is a denial of the claim.
9. She basis her defence on the facts that the claimant's contracts of service was variously fixed term and only lapsed on the date of the alleged termination. The claimant's employment therefore came to an end through effluxion of time by virtue of its basic nature.
10. The issues for determination therefore are;
 1. Whether there was a termination of employment of the claimant by the Respondent.
 2. Whether the termination, if at all was wrongful, unfair and unlawful.
 3. Whether the claimant is entitled to the relief sought.
 4. Who bears the costs of this cause.
11. The 1st issue for determination is whether there was a termination of employment of the claimant by the Respondent. The claimant in his written submissions dated February 17, 2023 buttresses his case by relying on authority of *John Nduba v Africa Medical and Research Foundation (AMREF Health Africa)* [2020] eKLR where the court cited the case of *Tessa Carlo Omondi v Transparency International Kenya* [2017] eKLR which held as follows in relation to employment fixed term contracts stated that;

‘It must be shown that the employer, through regular practice, or through an express promise, leads the employee to legitimately expect there would be renewal. The expectation becomes legally protected and ought not to be ignored by the employer, when managerial prerogative on the subject is exercised. Legitimate expectation is not the same thing as anticipation, desire or hope. It is a principle based on a right grounded on the larger principles of reasonableness and fair dealing between employers and employees.

12. He therefore build and submits his case on the principle of legitimate expectation and posits that the Claimant at all times had some expectation of renewal of his contract.
13. The Respondent on the other hand refutes the claimant's submissions.
She elaborately submits thus;

3.

4. Be as it may, the Respondent was under no obligation whatsoever to furnish the Claimant with reasons for non-renewal of his contract as was aptly captured in the case of *National Water Conservation & Pipeline Corporation vs Jayne Kanini Mwanza*, Civil Appeal No. 178 of 2014 (UR) which was cited with approval in the case *Amatsi Water Services Company Ltd versus Francis Shire Chachi* [2018] eKLR where the Court stated as follows:

The general principle, as we understand it, is that a fixed term contract will terminate on the sum set date unless it is extended in terms stated in the contract. A court cannot rewrite the terms of a contract freely entered into between the parties. Once there is a written contract, the court will seek to give meaning to such contract giving ordinary meaning to its terms in determining any issue that may arise. The principle has been considered by several judges of the Industrial court (now the Employment and Labour



Relations Court) and they are generally in agreement. Indeed this court was in agreement in the Oshwal Academy (Nairobi) case (Supra) when it decided as follows;

“Termination of fixed term contracts has received judicial consideration by the Industrial Court. In *Bernard Wanjohi Muriuki vs Kirinyaga Water KAnd Sanitation Company Limited & Another* [2012] eKLR, Rika, J. Held as follows;

“in the view of the court, there is no obligation on the part of an employer to give reasons to an employee why a fixed-term contract of employment should not be renewed. To require an employer to give reasons why the contract should not be renewed, it the same thing as demand in from an employer to give reasons why, a potential employee should not be employed. The only reason that should be given is that the term has come to an end, and no employed. The only reason that should be given is that the term has come to an end, and no more ... reasons, beyond effusion of time, are not necessary in termination of fixed-ter contracts, unless there is a clause in the contract, calling for additional justification for the termination.”

14. A part from alleging that she was furnished with insufficient notice, the claimant also alleges that she legitimately expected that her contract will be renewed hence the nonrenewal of her contract was unfair. This is denied.
15. On legitimate expectation she answers as follows;

...we wish to submit that the doctrine of legitimate expectation does not arise in the renewal of a fixed term contract as was affirmed in the court of appeal case of *Registered Trustees of the Presbyterian Church of East Africa (PCEA) & another* [2017] eKLR where the court stated as follows;

“Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the respondent’s contract ought not to have been maintained. This is in relation to the salary for the months of April up to 5th May, 2010. Similarly, since the respondent’s contract came to an end by defluxion of time a claim for wrongful termination could not be maintained.” (emphasis ours)

16. Again, a similar view was espoused in the recently decided court of Appeal case of *Transparency International Kenya versus Teresa Carlo Omondi* Civil Appeal No. 81 of 2018 (unreported) where the court held as follows;

“Indeed, the doctrine of legitimate expectation does not arise in the renewal of a fixed-term contract and its non-renewal cannot constitute unfair termination or dismissal. Having noted that the respondent was in employment under a fixed term contract and that the contract came to an end at the appointed time, we are of the view that any relief sought by



the respondent on basis of her assertion that her employment was unfairly terminated was automatically not available to her.”

17. Further, in the authority of *Margaret A Ochieng v National Water Conservation & Pipeline Corporation* [2014] eKLR the court held as follows;

“Fixed-term contract had its own in-built termination notice, in that the date of termination was advised to the claimant on execution of the three year contract in December 2008. She knew termination would be upon the elapse of the three years in 2011. The respondent has no obligation to pay her notice pay as there was no premature termination of the fixed-term contact.

18. The Respondent’s case and submissions tell the tale. A fixed term contract is a contract sui generis. It comes on its terms and expectations. It does not offer anyone an aura of legitimate expectations as is known in law. The Claimant’s case therefore fails. I therefore find that there was no termination of the employment of the Claimant by the Respondent. It lapsed by effluxion of time. And this answers the 1st issues for determination.
20. On finding of no termination for the Claimant, all the other issues fall by the way side.
20. And therefore inclined to dismiss the claim with orders that each party bears the costs of the same.

DELIVERED, DATED AND SIGNED THIS 24TH DAY OF OCTOBER 2023.

D. K. Njagi Marete

JUDGE

Appearances:

1. Mr. Kelvin Mogeni instructed by Mogeni & Company Advocate for the Claimant.
2. Mr Otieno instructed by Obura Mbeche & Company Advocate for the Respondent.

