



**Karino v Maa Trust & another (Cause 141 of 2019)
[2023] KEELRC 3009 (KLR) (27 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3009 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 141 OF 2019
B ONGAYA, J
NOVEMBER 27, 2023**

BETWEEN

EZEKIEL METEINE KARINO CLAIMANT

AND

THE MAA TRUST 1ST RESPONDENT

OLARE OROK CONSERVANCY TRUST 2ND RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim on 04.03.2019 through Bakari & Company Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the dismissal of the claimant by the 1st respondent herein was unfair, unlawful and in violation of the *Employment Act, 2007*
 - b. Terminal dues in such sums as shall be assessed by the Honourable Court.
 - c. A certificate of service pursuant to section 51 of the Employment Act Cap 266 of the laws of Kenya.
 - d. An order requiring the respondents to furnish an account for all PAYE taxes deducted from the claimant's salary.
 - e. The respondents be and hereby ordered to issue the claimant with a duly completed and certified form F9A for the year 2018.
 - f. Costs of the suit
 - g. Interest on (b) and (f) above
 - h. Any other or further relief that this Honourable Court may deem fit to grant.



2. The 1st respondent's memorandum of reply was filed on 18.06.2019 through Oraro & Company Advocates. The 1st respondent prayed that the suit be dismissed with costs.
3. The claimant's case was that whereas he was employed by the 1st respondent, the 2nd respondent was listed as the claimant's employer in his respective databases at the NHIF and the NSSF, and he urges that the respondents be held jointly and severally liable for the claim herein.
4. The claimant states that he first met the Chief Executive Officer of the 1st respondent, one Dr. Crystal Courtney Mogensen along with a trustee of the 1st respondent sometime in September 2017 while he was working at the Lewa Wildlife Conservancy in Isiolo. That the CEO had visited to benchmark the management of the claimant's health programme at Lewa.
5. The CEO informed the claimant of an upcoming hiring of a Project Manager for the 1st respondents health programme in Narok and encouraged him to apply. They exchanged contacts and thereafter forwarded to her a copy of his CV via email In November of 2017.
6. In January 2018 the CEO of the 1st respondent contacted the claimant and confirmed the vacancy at the respondent's Narok office, named 'Aitong Health Project Coordinator' and sent him the job advertisement via email, to which the CEO told him to indicate his salary expectation in the cover letter.
7. The claimant states that the CEO was absent from the interview even though she personally received the candidates at the venue on the eve of the interview day. During the interview the claimant states that he cross checked with the interviewing panel regarding the initially available position of project manager for the programme, and their feedback was that they resolved to start with a project coordinator who will be upgraded to a project manager in due course.
8. The claimant states that he had demanded a gross salary of Kshs.220,000/= due to his impressive credentials and also because he was expecting progress from the previous post in which he was earning more than Kshs.110,000/= and from which he had gained massive experience.
9. The CEO inquired and consulted the claimant's former employer regarding his salary and other employment terms and thus the respondent was well aware of the claimant's previous salary before employing him.
10. Upon appointment the CEO of the 1st respondent assured the claimant that he would be paid a basic salary of Kshs.110,000 plus allowances but the amount would be reviewed upwards considering the fact that the claimant was already earning more than this sum in his previous post.
11. The claimant states that accepting his employment with the respondent and the sacrifice made by taking a lower salary was predicated on a legitimate assurance and expectation that at a future date his pay and position would eventually be enhanced.
12. Upon reporting and taking up duties, the claimant states he was not given any induction into the organisation, neither was he issued with an employment contract.
13. That during the entire period of his employment the claimant states that he was never issued with a formal letter of appointment and was only issued with one payslip. In said payslip, he noted that his net pay after deductions was Kshs.66,504/=.
14. On 02.10.2018 while the claimant was away on official duty, the CEO sent the claimant an email purporting to terminate his employment despite the claimant terming his performance as having been stellar.



15. That thereafter the CEO requested the claimant to resume work for a few days while being paid on a day to day basis in order to complete crucial tasks that were still pending, essentially turning the claimant into a casual employee.
16. The respondent continued to maintain the claimant's profile and credentials on its website, and only pulled it down when the claimant threatened to take legal action.
17. The claimant states that 1st respondent's board chairman ignored the efforts and advise of the PSC nominated counsel (Anjarwalla & Khanna) whom the claimant had been engaging with and the legal processes that were on course.
18. The claimant states that the 1st respondent had contracted a private surveyor to carry out survey work and had authorised and commenced architectural work on a site or land that it was yet to acquire. The claimant states that he raised concerns about this issue and he believe that this may have instigated the hostility towards him.
19. In an email of 05.10.2018 the CEO stated that the aforesaid firm was inexperienced, and the claimant presumes that this was to justify the sourcing of a different firm without the endorsement of the PSC. The claimant states that the PSC nominated firm has a dedicated conveyancing department and thus the issue of inexperience was not accurate.
20. On 19.10.2108 the board chairman of the 1st respondent wrote an email stating that the claimant had signed a six-month fixed term employment contract.
21. The claimant contends that he knew and understood his assignment to be long term in nature and therefore he legitimately expected that his employment would continue well into the distant future.
22. The claimant states that his employment involved challenging tasks, that he conducted extensive research, developed high quality fundraising proposals, business plans and sourced hospital architectural design pertaining to the project among other duties all for the benefit of the 1st respondent.
23. That the face value of the proposed and business plans he drew for the 1st respondent was in excess of USD 5 million, an amount which he had already started to mobilise from various donors towards the project at the time of his unexpected dismissal.
24. The claimant maintains that the respondent exploited his skills and exemplary performance without any regard for his rights as an employee.
25. The claimant states that the termination of his employment by the 1st respondent was irregular for reasons that he was not issued with a notice or warning prior to the termination of his employment, that he was not given fair hearing or any at all prior to the termination, that the respondent did not issue him with a termination letter subsequent to his termination, and, there was no payment of terminal dues.
26. The claimant alleges that the respondents consistently deducted PAYE from his salary but failed to remit the same to Kenya Revenue Authority, and has failed and neglected to issue him with a form P9A for purposes of filing his returns. Thus, he is unable to obtain a tax compliance certificate thereby hindering him from securing employment with government and other reputable organisations.
27. On the part of the respondents it was pleaded that the 1st respondent was previously referred to as Olare Okor Conservancy Trust but is now known as the Maa Trust following a change of name.



28. The respondent states that the claimant was employed by the 1st respondent as a health project manager for a fixed term period of 6 months and at a basic salary of Kshs.110,000/=. The claimant's terms of employment were set out in the email of 19.03.2018 which constituted his letter of appointment.
29. That the claimant collected from the 1st respondent a contract of employment and was to return a signed copy of the same to the 1st respondent. However, the claimant never returned a signed copy of the employment contract to the respondent.
30. The respondent states that it is in fact the claimant who brought to the attention of the 1st respondent that his contract was about to lapse in an email dated 21.09.2018 where he acknowledged that his contract was coming to an end in 10 days. The claimant thereafter proceeded to go on leave knowing his contract was about to expire and the same had not been renewed.
31. The respondent maintains that the termination of the claimant was neither unfair or unlawful and that the separation between the claimant and 1st respondent was as a result of the expiry of the claimant's fixed term contract and the 1st respondent's CEO by asking the claimant to resume work for a few days was trying to facilitate a neat handover.
32. The respondent stated that it was always clear that the extension of the claimant's contract was dependent on the funding of the project and satisfactory performance on the part of the claimant. Further, the claimant left work after the lapse of 6 months without an official hand over and clearing with the respondent.
33. The respondent maintains that it remitted PAYE as required by law and has never been unwilling to issue the claimant with a form P9A.
34. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
35. To answer the 1st issue, the claimant and 1st respondent were in agreement that they were in a contract of employment. The claimant earned a monthly salary of Kshs.110,000.00. The claimant wrote the email of 19.03.2018 confirming that he was happy to have emerged as the best candidate and accepted the offer. The CEO's email dated 19.03.2018 was the offer and the claimant confirmed in his testimony that the email was the offer he had accepted. While the claimant disputes the draft contract document that the respondent has exhibited, the parties are in agreement that they were in a contract of employment. The payslips exhibited for the respondent are for payment of the agreed salary for April, May, June, July, August and September 2018. The claimant worked as a health project coordinator.
36. To answer the 2nd issue, the claimant confirmed in his testimony that the understanding was that the contract was for six months. The offer email he accepted and issued by the 1st respondent's CEO was express that it was for a fixed period of 6 months. He also testified that the continuation of the contract per the email was subject to performance; funding; project dynamic (i.e. if Amref wish to take over management of project at any point). The claimant also testified that he wrote the email of 21.09.2018 to the CEO Crystal Courtney confirming that time had moved very fast and he realised that he had only 10-days to the end of 6-months fixed term employment and wanted to know if the consortium wished to continue with him for the next phase of the programme. While he wrote as much, he testified that he did not mean that the 6-months' contract was ending by effluxion of time. He also confirmed receiving the CEO's email dated 02.10.2018 stating that as the claimant knew, his 6-months' contract finished at the weekend and the claimant was to send a list of pending work. He was also informed that if it was possible, he could come back for a couple of days for a full debrief and for a debrief with the clinic committee before he left the 1st respondent. As submitted for the respondent the evidence is



plain that it was a 6-months' fixed term contract of service that lapsed by effluxion of time. Nothing on record suggests that the claimant was not fully aware of that fact. The termination was not unfair at all.

37. The Court finds that as submitted for the respondent, the claimant has failed to establish any of the remedies as prayed for. The respondent has indicated it is willing to provide Form P9A and certificate of service per section 51 of the Act.

In conclusion the suit is hereby determined with orders:

- a. The respondent to issue the Form P9A in issue and the claimant's certificate of service forthwith.
- b. Each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 27TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

