



REPUBLIC OF KENYA



**Aeja & 13 others v Migori County Government & another (Cause  
36 of 2020) [2023] KEELRC 3197 (KLR) (6 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3197 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 36 OF 2020  
S RADIDO, J  
DECEMBER 6, 2023**

**BETWEEN**

**KOBADO ERICK AEJA ..... 1<sup>ST</sup> CLAIMANT  
COLLINS OTIENO OKUMU ..... 2<sup>ND</sup> CLAIMANT  
CHARLES AKECH JOWI ..... 3<sup>RD</sup> CLAIMANT  
QUINTER ATIENO OTIENO ..... 4<sup>TH</sup> CLAIMANT  
MONICA ADHIAMBO AGWARO ..... 5<sup>TH</sup> CLAIMANT  
BENTER AUMA NYARUMBA ..... 6<sup>TH</sup> CLAIMANT  
GLADYS AYUGI OPAR ..... 7<sup>TH</sup> CLAIMANT  
ALICE ADHIAMBO OGUTA ..... 8<sup>TH</sup> CLAIMANT  
CATHERINE ACHIENG OKODE ..... 9<sup>TH</sup> CLAIMANT  
JANE ATIENO NYAMULO ..... 10<sup>TH</sup> CLAIMANT  
ELIDA ADHIAMBO OCHIENG ..... 11<sup>TH</sup> CLAIMANT  
MILKA AOKO ODHIAMBO ..... 12<sup>TH</sup> CLAIMANT  
THOMAS MEDA OKINYI ..... 13<sup>TH</sup> CLAIMANT  
SAMWEL OTIENO OWUOR ..... 14<sup>TH</sup> CLAIMANT**

**AND**

**MIGORI COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT  
MIGORI COUNTY PUBLIC SERVICE BOARD ..... 2<sup>ND</sup> RESPONDENT**



## JUDGMENT

1. The 14 claimants sued the respondents on 27 May 2020, alleging unfair labour practices.
2. The remedies sought by the claimants were:
  - i. The respondents have violated the applicants'/claimants' right to fair labour practices by employing them as casual workers for over 4 years.
  - ii. The respondents be compelled by orders of this Honourable Court to employ the applicants/claimants on permanent terms.
  - iii. Costs of this application (sic) be borne by the respondents.
3. On 31 January 2023 the Court directed the County Labour Officer to make inquiries into the dispute and file a report with the Court.
4. The respondents filed a Response to Claim on 7 February 2023, and the County Labour Officer filed the report on 15 June 2023.
5. The Cause was heard on 16 October 2023, when the 14<sup>th</sup> Claimant testified and the claimants closed their case.
6. The respondents did not present any witness and the Court declined an application for adjournment, prompting the respondents to close their case without leading evidence (the respondents had failed to file witness statements even after securing leave to file and serve the same out of time).
7. The claimants filed their submissions on 27 October 2023, and the respondents were not on record (should have been filed and served on or before 17 November 2023).
8. The Court has considered the pleadings, evidence and submissions.

### **Nature of the employment relationship**

9. The claimants asserted that the respondents had kept them as casual employees for over 4 years, and declined to convert their contracts into permanent terms despite paying them by the month.
10. Some of the claimants were engaged by the County Council of Migori on temporary appointments in 2005, 2010 and 2012 (the County Councils/local authorities were succeeded by County Governments).
11. It was not disputed and the claimants produced copies of Service Contracts they entered with the County Public Service Board of Migori on or around 1 July 2014 and 1 October 2014. The tenure of the contracts were 3-months.
12. When the claimants last formal contracts expired on 5 February 2022, they continued to serve the respondents without formal renewal of the contracts in writing (the claimants were still in employment by the time of hearing).
13. Under these circumstances, are the claimants casual employees?
14. A casual employee is an employee who is engaged for no more than 24 hours at a time, and is paid at the end of the day.



15. The claimants were on fixed-term contracts and were paid by the month. They have been in continuous service for over 3 months and are paid by the month.
16. The assertion by the claimants that they were or are casual employees is, therefore, not supported by the evidence placed before the Court.

### **Permanent employment**

17. Sections 10(2)(e) and 37 of the *Employment Act*, 2007 recognises fixed-term contracts, and the court does not find that the respondents are culpable for unfair labour practices for keeping the claimants on fixed-term contracts over the years.
18. The court is, therefore, unable to issue an order compelling the respondents to engage the claimants on permanent terms. It is germane to note here that the term permanent employment is a general term to denote employment up to an agreed retirement age.
19. Since the duration of this type of contract is fixed, some of the factors distinguishing it from other fixed-term contracts or contracts of a fixed duration are that a pension rather than gratuity accrues, and there is no need for renewal or extension from time to time.

### **County Labour Officer's report**

20. The court directed the County Labour Officer to make inquiries into the dispute. The County Labour Officer's report revealed pertinent facts which were within the knowledge of the claimants and respondents and which facts they failed to place before the court.
21. These facts include that the respondents conducted a suitability test in February 2021, only 3 of the claimants were found suitable to continue serving within the county public service, and that the 14<sup>th</sup> claimant was owed salary arrears over 43 months.
22. As an organ of public service, the County Public Service Board, Migori and the County Government ought to pay the 14<sup>th</sup> claimant his wages as they fall due and as contemplated by section 18 of the *Employment Act*, 2007.

### **Written contracts**

23. The County Labour Officer found during his inquiries that the claimants have been serving without written contracts from 5 February 2022. Such a state of affairs runs contrary to the letter and spirit of sections 9 and 10 of the *Employment Act*, 2007.
24. The respondents should issue the written contracts to avoid further needless litigation.
25. Before concluding, the court finds that the claimants did not prove discrimination.

### **Conclusion and Orders**

26. In light of the above, the court finds no merit in the cause and it is dismissed with no order on costs since the parties are still in an on-going employment relationship.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 6<sup>TH</sup> DAY OF DECEMBER 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

