



REPUBLIC OF KENYA



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Omanwa v National Government Constituencies Development Fund (Cause 66 of 2018) [2022] KEELRC 1096 (KLR) (12 May 2022) (Judgment)

Neutral citation: [2022] KEELRC 1096 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE 66 OF 2018
ON MAKAU, J
MAY 12, 2022

BETWEEN

RELFE TOM MONGARE OMANWA CLAIMANT

AND

**NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT
FUND RESPONDENT**

JUDGMENT

1. The Claimant brought this suit on 5th July, 2018 and amended it on the 5th August, 2019. He alleges that the respondent dismissed him from employment on 25th November, 2016. Therefore, the suit seeks the following reliefs: -
 - a. A declaration that the claimant's dismissal from employment was unfair and unlawful hence null and void and thus an order do issue for reinstatement to his employment without loss of benefits.
 - b. An order of payment of loss of remuneration calculated at the rate of the claimant's remuneration per month from the month of August 2015 as per the tabulation in paragraph 10 herein above till the date of reinstatement and or full payment.
 - c. Compensation and damages for wrongful dismissal together with punitive and exemplary damages for the same.
 - d. Costs of the claim together with interest at Court rates.
 - e. Any other relief that this Honourable Court may deem fit and just to grant.



2. The Respondent filed a response to the Amended Claim on the 13th September, 2019, admitting that it dismissed the claimants after his contract term ended by effluxion of time. It is averred that the contract was not renewed because the claimant was found culpable of fraudulent activities while working for the respondent in Mbita Constituency, which activities led to loss of a colossal sum of money. The Respondent also contended that the claim herein is *res-judicata*, because the claimant filed Kericho JR No. 2 of 2017 against the Respondent seeking relatively similar Orders as in the instant suit. The said suit was fully determined by the Court. The Respondent wants this suit dismissed with costs like the previous one.
3. The suit was heard on 25th January, 2022 when both parties gave evidence and thereafter filed written submissions.

Claimant's Case

4. The claimant, Relfe Tom Mongare Omanwa, testified as CW-1. He told the court that he was employed by the respondent on 26th July, 2007 as a Funds Accounts Manager Mbita Constituency. He worked there continuously till 30th June, 2014 he was transferred to Teso North under the same terms of service.
5. On 29th July, 2015, he was interdicted on half pay until 25th November, 2016 when his contract was terminated on the basis that the Board did not consider renewing his contract.
6. The claimant testified that, interdiction was based on the allegation that there were fraudulent activities that took place in financial year 2012/2013 and 2013/2014 in Mbita Constituency involving 14 sampled projects that lead to loss of colossal amount of money. He denied being aware of the said allegation because he was not involved in the investigation or the audit and only learnt of the same after he was transferred.
7. While on suspension, the claimant was served with a letter dated 29th October, 2015 requiring him to respond to allegation of misappropriation of funds which he did vide the letter of 11th November, 2015. He was also invited to a disciplinary hearing that was scheduled to take place on the 6th November, 2015 but the same never took place.
8. After about a year later the claimant received a letter dated 25th November, 2016 informing him that his contract would not be renewed. The said development offended the claimant and contends that his employment was unfairly terminated after being placed on suspension for more than a year.
9. In support of his claim the claimant adopted the supporting affidavit annexed to his claim and the list of documents dated 16th November, 2019 as his exhibits. He added that his starting salary was Kshs 65,000 however by the time he was terminated his salary had risen to Kshs 199,872 per month.
10. He contended that the audit report that informed his termination was not accurate. He further testified that the audit process was not done according to the law. He then outlined the procedure for auditing, thus; the audit team is supposed to give 14 days' notice after which a meeting is convened where the rules of engagement are agreed upon. After that the audit team ought to inspect the specific projects in company of the officer in charge. While at the audit, the team is supposed to raise any questions and concerns which are to be answered by the officer in charge. A report is then drawn after the site visits and another meeting, called the exit meeting, is convened to discuss the finding of the site visit and the report. Subsequently the auditors write a managerial letter seeking further clarification if need be, before a final report is done.
11. He contended that none of these procedures were carried out by the audit team as he was never involved in any of the process if any. He also stated that he was not questioned by EACC as alleged by the



- Respondent. In fact, he discovered that EACC had cleared him of any wrong doing vide the letter dated 16th November, 2021 by which it responded to the special internal audit commissioned by NG-CDF board affirming that no money was lost. He further contended that a letter dated 23rd November, 2021 drawn by Edwin Onyango further affirmed that no money was lost in Mbita constituency. Therefore, the claimant maintained that the refusal by the respondent to renew his contract was without any basis.
12. On cross-examination, by Aringa Advocate, CW-1 admitted that he filed Kericho JR No. 2 of 2017 in this Court which suit was challenging his interdiction but the same was struck out. He distinguished the said case from the present case because present suit is challenging his termination.
 13. He further admitted that his appointment letter was for a period of three years' renewable as per clause 7 but the renewal was subject to discretion of the board upon request made 6 months before expiry of the contract. He then contended that he made his request to renew the contract on the 25.5.2016 which contract was to expire on 30th August, 2016. However, he contended that the request was within time because there was a memo extending the contract for a further 3 months.
 14. On further cross examination, the witness denied ever receiving the managerial letter dated 18th August, 2015. He stated that the said letter was not addressed to him because as at that time, he had been transferred to Teso North constituency. Never the less he stated that, he responded to the managerial letter but did not raise his protest that he did not participate in the audit process.
 15. He admitted that he was served with a show cause letter and also invited to disciplinary hearing on the 6th November, 2015. However, the meeting did not take place as scheduled or at all. He then testified that the reason for termination was due to expiry of contract as communicated by the Respondent in the letter of 25th November, 2016.
 16. With regard to the letter dated 10.6.2021 written by Suba MP one Milly Odhiambo, the witness testified that even if the letter was not on official letter head, it was drawn by the said MP and addressed to the respondent's CEO Yusuf Mbuno. The letter was also quoted by the respondent's legal officer Ms. Elizabeth Chesoni in the respondent's letter dated 6th September, 2021. Consequently, he said that said letters confirmed the genuineness of the said letter by the MP, and that the said letter was obtained in the respondent's headquarters office.
 17. The claimant further admitted that gratuity was not payable to employee who exited the respondent for gross misconduct, however he contended that the alleged misappropriation was never established by the respondent and therefore he is still entitled to gratuity.
 18. On re-examination CW-1 maintained that Kericho JR No. 2 of 2017 was not similar to this case and the same was not dismissed as alleged but only struck out. He then stated that the request for renewal was not out of time as the contract was extended by 3 months. On gratuity the witness maintained that he is entitled to the same since the allegation for misappropriation of funds were never proved. Additionally, that no charges, criminal or otherwise were ever preferred against him.

Respondent's Case

19. The Respondent's Corporate secretary, Simon Maina Ndweka testified as RW-1 and adopted his witness statement dated 11th February, 2019 and produced the bundle of documents dated 4th September, 2018 and supplementary bundle dated 17th January, 2022 as Respondent's Exhibits.
20. In summary the witness testified that he was employed by the Respondent in the year 2014 and found the claimant working there. He testified that the claimant was not dismissed but rather his contract expired on the 17th September, 2016.



21. Rw1 further testified that before the contract expired, there was an audit carried out in Mbita Constituency which revealed massive loss of funds during the period when the claimant was the Fund Account Manager. He stated that out of 14 projects audited, there was loss of Kshs 11 Million. He stated that this audit was carried out after the claimant had been transferred to Teso North Constituency.
22. He avers that the money was withdrawn from the Fund Account but never delivered for the projects. He gave example of two project being Mfangano Chief's Office where Kshs.1.8 Million was lost and the Otieno Kajwang Nyamaji Secondary school where 1 Million was allegedly used yet there was no such project on the ground.
23. The witness admitted that the claimant did not participate in the audit because he had already been transferred and as such it is the claimant's successor who took part in the auditing process. Therefore, RW-1 contended that the audit process followed was the one set out in the Public Audit Act.
24. The witness testified that after the audit, the final report was forwarded to the claimant through management letter for comments which he responded to, though the same was found to be inadequate. The claimant was then served with a Show cause letter which he also responded to. He testified that the claimant's contract came to an end by effluxion of time and not a termination as stated.
25. He admitted that the respondent had extended contract for all Fund Account Managers for 3 months to enable the Board to deliberate on their renewals. In the end the claimant's contract was not renewed on the basis that he had presided over massive misappropriation of funds which decision was communicated to the claimant vide the letter dated 25th November, 2016.
26. With regard to the further list of claimant's documents, RW-1 testified that he was privy to the letters by Edwin Onyango, who was an employee of Mbita Constituency and not the respondent's employee. The letter allegedly drawn by Milly Odhiambo was also rejected on the basis that it had no folio number neither was it stamped affirming that it was ever received in the office.
27. He contends that the claimant is not entitled to any of the reliefs sought since his contract just expired. He then added that the claimant has not cleared with the board to receive his terminal dues. He then stated that the claimant is not entitled to gratuity or any sum thereof.
28. On cross examination by Orina Advocate, RW-1 testified that the claimant was a signatory to the Fund Account together with, one committee member, secretary to the committee and District Accountant. He stated that the District Accountant must sign on all cheques. He denied being aware of any case against any committee member or signatories to the account.
29. He affirmed that the claimant was not in a position to issue a cheque alone. He confirmed that the audit was carried out after the claimant was transferred to Teso North Constituency and that the new manager in Mbita guided the auditors in carrying out their audit work. He then stated that he was not aware whether a disciplinary hearing was carried out though he was aware that an invitation was served upon the claimant.
30. On further cross examination RW-2 testified that the letter dated 6th September, 2021 written by Ms. Elizabeth Chesoni referred to the letter date 2nd July, 2021 written by Milly Odhiambo. He then stated that Chesoni was authorized by the Fund to write letters on its behalf. With regard to the JR 2 of 2017, the witness confirmed that the same was struck out for being bad in law.
31. On re-examination the witness testified that once a matter had been forwarded to EACC under section 56 of the CDF Act, there was no action required on the part of the respondent. He further stated



that section 45 of the [CDF Act](#) empowers the constituency to employ other employee and only the Fund Accounts Manager is an employee of the Board. He then stated that as much as there were other signatories to the account, the claimant who is the fund manager and the AIE holder must approve all cheques to be issued.

Claimants Submissions

32. The claimant submitted that he was unfairly dismissed from employment by being interdicted and never subjected to any disciplinary hearing before termination. He argued that as much as the respondent communicated the reasons for interdiction it ought to have subjected the claimant to disciplinary hearing to satisfy both procedural and substantive fairness as contemplated under Section 41 and 43 of the [Employment Act](#). For emphasis he relied on the case of [Mary Chemweno Kiptui v Kenya Pipeline Company Limited](#) [2014] eKLR.
33. The claimant further submitted that the respondent relied on an audit report to interdict him from service without offering him an opportunity to respond to the said allegation. The claimant further argued that due process in carrying out the alleged audit was not followed as provided for under Section 31 and 33 of the [Public Audit Act](#) 2015.
34. The claimant also submitted that his interdiction for an indefinite period from 29th July, 2015 amounted to a violation of his labour rights under Article 41 of [the Constitution](#). He then reinforced his argument by relying on the case of Paul [Maside Simidi v National Oil Corporation of Kenya and another](#) [2015] eKLR and the case of [Fredrick Saundu Amollo v Principal Namanaga Mixed Day Secondary School and 2 others](#) [2014] eKLR.
35. It was then argued for the claimant that he had legitimate expectation that his contract would be renewed as it had happened since the year 2007. To fortify this, he relied on the case of [Teresa Carlo Omondi v Transparency International Kenya](#) [2017] eKLR where the Court held as follows; -

“The burden of proof, in legitimate expectation claims, is always on the Employee. 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.”
36. On whether the claim herein is res-judicata, the claimant submitted, the case at hand deals with unfair termination while the JR 2 of 2017 dealt with the issue of interdiction which in any event was struck out and not dismissed. It was further argued that requirements of res-judicata as espoused in the case of [Lotta v Tanaki](#) [2003] 2 EA 556 were not met as such the doctrine of res judicata was not offended.
37. Further, it was submitted that Section 7 of the [Civil Procedure Act](#) does not apply to them Judicial Review matters because they are neither criminal nor civil, and their aim is to correct decisional errors. For emphasis the claimant relied on the case of [Commissioner of Lands V Hotel Kunste Ltd](#) [1997] eKLR and the case [Sanghani Investment Limited v Officers in charge Nairobi Remand and Allocation prison](#) [2007] 1 EA 354.
38. As regards the remedies sought, the claimant urged for reinstatement claiming that he has very limited chances of securing another comparable job and cited the case of [Kenya Power and Lighting Company v Aggrey Lukorito Wasike](#) [2017] eKLR. He then urged this Court to allow the claim as prayed.



Respondent's Submissions

39. The respondent on the other hand, submitted from that this suit is res-judicata for all intends and purposes by dint of under section 7 of the *Civil Procedure Act*. It was argued that the conditions enumerated in the case of *Uburu Highway Development Limited v Central Bank of Kenya* [1999] eKLR were met to warrant this case being struck out for being res judicata.
40. The respondent submitted that the facts and issues in JR 2 of 2017 were similar to facts and issue in this cause. It further submitted the said issues were fully determined on 11th December, 2017 when the suit was dismissed. It was then argued that, allowing the claimant to re-litigate these issues would amount to litigation in installments which must be frowned upon by this Court as was held in *Republic v City Council of Nairobi and 2 others* [2014] eKLR.
41. The respondent then submitted that the claimant Supporting Affidavit attached to the claim is inadmissible contending that Rule 4(1) & (2) of the *Employment and Labour Relations Court Procedure Rules* provides that a claim should be accompanied by an affidavit verifying the facts of the claim and not introducing any other fact. The Respondent argue that the supporting affidavit introduced issues which were not pleaded in the claim such as salary grades and attendances before the Ag. Regional co-coordinator marked RTMO 2 and 3 respectively.
42. On whether the claimant was unfairly terminated, it was submitted that the claimant's contract came to end by effluxion of time and not by termination. It was argued that clause on 7 of the contract provided for the employee to make a request for renewal of contract at least 6 months before the expiry of the contract. In this case the claimant made his request on 20th May 2016 which less than the require time.
43. It was then argued that the claimant being accused of misappropriation of funds was not considered for the renewal. In support of its argument the respondent relied on the case of *Arthur Njuguna Karogi v National Government Constituencies Fund Board* 2018] eKLR.
44. As regards the reliefs sought, the Respondent submitted reinstatement cannot be granted because the separation occurred in 2016 more than 3 years ago. Section 12(3)(vii) of the *Employment and Labour Relations Court Act* bars the court from reinstating an employee if 3 years have lapsed from the date of separation. It reinforced that argument by citing the case of *Charles Oyunge Onkware v Telkom Kenya Limited* [2016] eKLR, where the Court decline to reinstatement an employee and held that: -
- “The Claimant is seeking a reinstatement back to his employment. However, he was terminated on 13th October 2009 and it has been over 3 years since. Despite the Respondent not offering any evidence to challenge the defence, I take it that within such a long absence, there have been many changes within the Respondent and to allow a reinstatement would not be appropriate. Section 12 of the *Employment and labour Relations Court Act* also guide the Court in this regard that the order for a reinstatement should sparingly be considered after the lapse of 3 years since the termination took effect. Such will not be awarded but shall be put into account in the final orders”
45. With respect to the prayer for payment of alleged loss of remuneration from the date of interdiction till reinstatement, the respondent argued that such payment is without any basis and the same ought to be declined.
46. The respondent further submitted that the claim for gratuity is unmerited because the claimant's contract was not renewed on the basis of misappropriation of fund. For emphasis it relied the case of *Dickson Mwendwa Munuve v Oceanfreight (EA) Limited* [2013] eKLR.



47. Finally, the respondent submitted that the claim for compensation for unfair termination is also not merited because the claimant was let go after expiry of their contract and through unfair termination.

Analysis and Determination.

48. I have carefully considered the pleadings, evidence and the submissions presented by both parties. There is no dispute that the claimant was employed by the respondent up to 25th November, 2016. The issues for determination in this matter are as follows: -

- a. Whether this cause is res judicata.
- b. Whether the claimant was unfairly dismissed or the contract expired.
- c. Whether reliefs sought should issue.

Is this suit res judicata?

49. The doctrine of res judicata is set out in Section 7 of the [Civil Procedure Act](#) which reads as follows: -

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

50. The doctrine of res judicata ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title. A close reading of Section 7 of the [Civil Procedure Act](#) reveals that for the bar of res judicata to be effectively raised and upheld, the party raising it must satisfy the doctrine's five essential elements as held in the Court of Appeal case of *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR. The doctrine will apply only if it is proved that:

- i. The suit or issue raised was directly and substantially in issue in the former suit.
- ii. That the former suit was between the same party or parties under whom they or any of them claim.
- iii. That those parties were litigating under the same title.
- iv. That the issue in question was heard and finally determined in the former suit.
- v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.”

51. In this case the respondent argued that the claimant had instituted a similar suit before this Court between the same parties herein being JR 2 of 2017 seeking for similar relief as those sought in this claim. The claimant on the other hand maintains that the suit herein is different from JR 2 of 2017 because the latter sought to quash the respondent's decision in the letter of 25th November, 2016 and all subsequent proceedings, while the current claim is seeking for payment of damages for unfair termination. It was further argued by the claimant that the judicial review suit are not bound by the doctrine of Res judicata and in any event that JR 2 of 2017 was struck out and not dismissed as alleged.



52. I have perused through the JR application filed by the claimant. It is true that the parties in JR 2 of 2017 and this cause are similar. The issue in the JR application was to quash operation of the letter dated 25th November, 2016 which informed the claimant that his contract was not going to be renewed. The suit herein has an array of prayers including a finding that the termination was unfair, reinstatement to employment and in the alternative compensation for unfair termination. Are the issues in this suit then similar to the issue at JR 2 of 2017?
53. I have read through the Orders granted in JR 2 of 2017 in the judgment delivered by Justice Marete on 11th December, 2017. The judge stated as follows;
- “The Application for judicial Review dated 14th February, 2017 be and is hereby struck off for being incompetent and bad in law”
54. It is therefore true that the Judicial review no. 2 of 2017 was not dismissed as alleged by the respondent but rather struck out for being incompetent and bad in law. It means the issues raised by that suit were not conclusively determined on merits and therefore the parties could still return to the court for determination of the same issues plus others. Gathering support from the cited judicial precedent, I find and hold that this suit is not res judicata.

Was the claimant unfairly terminated or his contract expired?

55. The claimant submitted that he was unfairly terminated in that he was suspended on allegation of misappropriation of funds on the 29th July, 2015 which he remained interdicted till the expiry of his contract. He argued that he was not subjected to any disciplinary hearing to answer to the charges of misappropriation neither was he found guilty of the charges. He further submitted that the basis of the respondent declining to renew his contract was on the alleged misappropriation of funds which claim was never established.
56. The respondent on the other hand contends that as much as the claimant was facing disciplinary issue on the misappropriation of 11Million on 14 projects sampled by the auditors. His contract expired and he was let go upon the said expiry of contract and not on the alleged misappropriation of funds.
57. A reading of the claimant’s contract of employment dated 7th September, 2013, establishes that his employment contract was to take effect from 17th September, 2013 for a period of 3 years which period was to lapse presumably on 17th September 2016. The claimant was to request for a renewal 6 month before expiry which ought to have been on record around March 2016. However, he made his application for renewal on the 20th May, 2016 outside timelines.
58. It is common ground that the claimant had been interdicted on the 29th July, 2015 on allegation of misappropriation of funds. He was then served with a show cause letter and he responded in writing denying the allegations. He was invited to disciplinary hearing on the 6th November, 2015 but the hearing never took place. One year thereafter, the claimant was informed that his contract had come to an end and the Respondent was not considering renewal.
59. From the facts of this case it is true that the claimant’s employment came to an end in September, 2016. However, in order for the Respondent to deliberate on renewal of the contract they added the claimant and all other Fund Accounts Managers three months till 30th November, 2016 to finalize their deliberation. Since the contract of employment came to an end in September, 2016 the Respondent was not under obligation to renew the claimant’s contract.



60. I rely on the case of *Rajab Barasa & 4 Others v. Kenya Meat Commission* 2016] eKLR, where the court held that a fixed term contract will not be renewed automatically even when there exists a clause allowing for such renewal. Besides, the claimant did not make his request for renewal within 6 months before the expiry date of his contract as observed above.
61. Accordingly, I am inclined to agree with the respondent that the claimant's contract lapsed automatically in September, 2016 subject to the short extension of three months given to enable the Board finalize its consideration of the requests for contracts renewal. Consequently, I find that the claimant has failed to prove on a balance of probability that his contract of employment was unfairly terminated by the respondent.

Remedies Sought

62. The claimant's main prayer is to be reinstated to his employment without loss of benefits. However, having found that his contract was not terminated unfairly, that prayer is decline. In any case the claimant has been out of employment for more than 3 years now and as such the prayer for reinstatement is not tenable in light of provisions of Section 12 (3)(vii) of the *Employment and Labour Relations Court Act*.
63. The other prayer is for payment of salary withheld during the period of interdiction. It is not in dispute that the claimant was interdicted on the 29th July, 2015 on an alleged misappropriation of Kshs.11.5 Million during the 2012/2013 and 2013/2014 financial year when he was the Fund Accountant manager. The Respondent alleged that they referred the matter to EACC to carry out investigation and prefer charges on the issue since the matter was criminal in nature. However, no charges were preferred against him.
64. The respondent also served the claimant with a Notice to show cause and even invited him to a disciplinary hearing that never took place. It is therefore clear that the alleged misappropriation of fund by the claimant was never established. Without any conviction or dismissal for the alleged misconduct it means that the claimant is entitled to the salary withheld during the whole period of interdiction.
65. The Respondent has indicated that it paid the claimant half salary during the time of interdiction and the claimant admitted as much in his evidence. However, in written submissions he contends that the money was not paid to him.
66. The court finds that besides the said admission of the payment by the claimant during the hearing, there are payslips filed before this court for the duration of interdiction till August, 2016 showing that the claimant was paid half salary. The claimant averred during hearing that he was earning a gross salary of Kshs 199,872 as at the time of his interdiction. The respondent opposed the same but did not prove his pay.
67. The Pay slips in the claimant's bundle shows that the claimant was earning a gross salary of Kshs. 188,310. The court has however taken notice of the fact that the pay slips produced are for the duration when the claimant was receiving half salary pay. I will thus calculate the claimant pay using salary of Kshs. 188,310. The pay will thus be calculated as pleaded from September, 2015 to October 2016 being half salary of Kshs 94,155 x 14 = Kshs 1,318,170.
68. I will also grant the prayer for November, 2016 salary being Kshs.188,310 because the Respondent extended contracts for all Fund Account Managers till 30th November, 2016.
69. The claim for leave allowance for the year 2015, 2016 and 2017 lacks particulars and no evidence was tendered in support. Consequently, the same is declined.



70. The prayer for payment of salary from December 2016 to February, 2018 based on court Order of 16th February, 2017 is decline since the claimant only rendered his services to the Respondent from July 2017 to October, 2017 and was duly paid for the same. This was captured in paragraph 10(vii) of the Amended claim where the claimant alluded to payment from July 2017 to October, 2017, which is the duration in which the claimant rendered his services to the Respondent before the Court discharge its Order on 11th December, 2017.
71. As regards the claim for Gratuity, the respondent argued that the claimant is not entitled to the same because he was terminated for gross misconduct. The claimant on the other hand submitted that the allegation of misappropriation of funds were not proved. The court has already made a finding of fact that the separation was due to expiry of the contract term. Consequently, the claimant is entitled to gratuity as provided in clause 13 of his employment contract dated 7th September, 2013 being annual basic salary x 31% x the 3 years $45596.50 \times 12 \times 3 \times 31\% = 508,856.94$.
72. The prayer for damages for unfair termination together with punitive and exemplary damages are declined for the reason that the claimant's contract lapsed automatically after its term expired.

Conclusion

73. In conclusion I enter judgment for claimant as against the respondent in the following terms:
1. Withheld half salary Kshs. 1,318,170
 2. Salary for November, 2016 Kshs. 188,310
 3. Gratuity Kshs. 508,856. 94
 4. Total Kshs.2,015,336.94
74. The award is subject to statutory deduction but in addition to costs and interest at court's rate from the date of filing the suit.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 12TH DAY OF MAY, 2022.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

