



**Gaturu v Agriculture and Food Authority (Cause 1233 of 2015)
[2022] KEELRC 1500 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1500 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1233 OF 2015
SC RUTTO, J
JUNE 23, 2022**

BETWEEN

JOHN MWANGI GATURU CLAIMANT

AND

AGRICULTURE AND FOOD AUTHORITY RESPONDENT

JUDGMENT

1. The claimant avers that he was employed by the respondent sometimes in March, 2004 as an office assistant, on a three (3) year renewable contract. That on 1st August, 2013, he was informed that his services were no longer required. He states that his contract of employment was to come to an end on 30th August, 2013. It is on this basis that he now claims against the respondent, the sum of Kshs 459,008.00 being notice pay, compensatory damages, accrued leave days and service pay for the years worked.
2. In response to the claim, the respondent filed a statement response and counter claim. The respondent admits entering into a three (3) year renewable contract with the claimant with effect from March, 2004. Further, the respondent avers that renewal(s) of the claimant's employment contract was not automatic and that the same was subject to his performance as well as its human resource needs. That the claimant's employment ceased by effluxion of time and as per his contract of employment. In its counterclaim, the respondent seeks to recover against the claimant the sum of Kshs 35,931.79. Consequently, it denies owing any money to the claimant and has asked the Court to dismiss the claim with costs.
3. The claimant filed a reply to the statement of response and counterclaim, through which he denies owing the respondent the counter claimed sum of Kshs 35,931.79.
4. The matter proceeded for trial on 7th March, 2022 when both parties presented and closed their respective cases.



Claimant's case

5. At the commencement of the hearing, the claimant asked the Court to admit his documents as exhibits. It is the claimant's case that he was employed as an office assistant, by the Tea Board of Kenya, which was later merged with the respondent. That his contract of employment was for three (3) years and was renewable. That as such, the contract would lapse every February after three (3) years. That his last contract commenced on 1st March, 2013 and was to expire in 2015 after three (3) years. That he was not informed of any change in his contractual terms. That at the time of his dismissal, he had worked for nine (9) years.
6. In cross examination, he testified that he was not informed that his contract was for two and a half months (2 1/2). He further testified that he made enquiries regarding the status of his contract from the respondent, and he was informed by the human resource office, that the same was being worked on.

Respondent's case

7. The respondent called oral evidence through Ms. Nelly Mulema who testified as RW1. She adopted her witness statement dated 30th January, 2019 and the respondent's bundle of documents, to constitute part of her evidence in chief. RW1 testified that the claimant's contract was renewable subject to various conditions and at the discretion of the respondent. That the claimant was to request for renewal of the contract upon expiry. That the claimant's performance was not satisfactory in the second term, and was in fact, served with a warning letter. It was her further testimony that the claimant always proceeded on leave during his employment with the respondent. RW1 stated in further testimony, that the claimant had an outstanding loan with the National Bank of Kenya (NBK) and a staff welfare group within the respondent organisation. That the respondent had to offset the claimant's loan with the NBK and since his terminal dues were not sufficient to offset the loan, it paid off the balance from its own funds.
8. Upon cross examination, RW1 maintained that the claimant was not terminated as his contract was for a fixed term.

Submissions

9. It was submitted on behalf of the claimant that he was terminated unfairly and unlawfully, as he was not issued with notice and that further, there were no justifiable reasons for his termination. Reliance was placed on the case of *Walter Ogal Anuro vs Teachers Service Commission* (2013) eKLR. It was further submitted that the claimant is entitled to the reliefs sought.
10. On the other hand, the respondent submitted that the issue of termination does not arise where there is a set date for the lapse of the contract, unless the party intending to terminate, does so while it is still in effect. The respondent supported this position with the determination in the case of *Margaret A. Ochieng vs National Water Conservation & Pipeline Corporation* (2014) eKLR. That further, the employer ought not to give reasons for failure to renew a contract. The case of *Bernard Wanjohi Muriuki vs Kirinyaga Water and Sanitation Company Limited & another* eKLR, was cited in support of this argument. In further submission, the respondent stated that as per the determination in the case of *Registered Trustees of the Presbyterian Church of East Africa & another vs Ruth Gathoni Ngotho* (2017) eKLR, the claimant was not entitled to the reliefs sought.

Analysis and determination

11. Flowing from the pleadings on record, the evidentiary material placed before me, as well as the parties' submissions, it is evident that the issues falling for the Court's determination are: -



- a) Was the claimant terminated from employment?
- b) If the answer to (a) is in the affirmative, was the claimant's termination unfair and unlawful?
- c) Is the counterclaim justified?
- d) Whether the claimant entitled to the reliefs sought?

Was the claimant terminated from employment?

- 12. The claimant has alleged unlawful termination on account that his termination was without reason and that he was not issued with notice prior to. This position has been refuted by the respondent who maintain that the claimant's contract simply lapsed, hence ended by effluxion of time.
- 13. In view of these competing positions, it is imperative to review the claimant's last contract of employment in order to ascertain its true import. It reads in part:-

“Ref: Renewal Of Service Contract As Office Assistant

On behalf of the Tea Board of Kenya, I am pleased to inform you that the Board has renewed your contract as office assistant for two months and twenty two days. This follows expiry of your service contract on 28th February. Your contract covers the period 1st March to 22nd May, 2013.”

- 14. The claimant signed the contract in acceptance of its terms and conditions on 1st March, 2013.
- 15. It bears to note that the last contract on record between the parties, is for the period running between 1st March, 2013 to 22nd May, 2013. There is no contract of employment on record beyond that period.
- 16. It would thus seem that the claimant's contract of employment lapsed on 22nd May, 2013 and there is no evidence of renewal. The contract was very explicit that its duration was for two (2) months and twenty two (22) days. In this regard, clause 2 of the contract of employment provide as follows: -

“Duration Of Employment

You will be employed on two months twenty two days contract and if the board is satisfied with your performance, your contract will be renewed upon agreement by both parties.”

- 17. The claimant was therefore aware that the contract of employment was not to be renewed automatically as it was to be based on his performance and agreement by both parties. Upon expiry, there was no and there should have been no legitimate expectation of continued employment from the claimant's end. As was held in the case of Margaret A. Ochieng vs National Water Conservation and Pipeline Corporation [2014] eKLR, fixed-term contracts carry no expectation of renewal.
- 18. There being no evidence of renewal of contract, it is evident that the claimant's contract of employment, ran its course, expired and was not renewed hence, died a natural death. This discounts the claimant's assertion that he was terminated from employment.
- 19. In the circumstances, I find and hold that the claimant was not terminated from employment and the respondent was not bound to give reasons as to why the employment had ceased.



20. I am fortified by the determination in *Bernard Wanjobi Muriuki vs Kirinyaga Water and Sanitation Company Limited & another* [2012] eKLR, where Rika J, reckoned 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, is the same thing as demanding 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 more. ... Reasons, beyond effluxion of time, are not necessary in termination of fixed-term contracts, unless there is a clause in the contract, calling for additional justification for the termination.”

21. This position was reaffirmed by the Court of Appeal in *Keen Kleeners Limited vs Kenya Plantation and Agricultural workers' Union* (Civil Appeal 101 of 2019) [2021] KECA 352 (KLR) as follows: -

“The general position on the consequences of expiry of a fixed term contract, as can be gleaned from various decisions of this Court and that of the Employment and Labour Relations Court, is that once a fixed term contract is at an end, the employer has no obligation to justify termination on other grounds beyond the lapse of the fixed period.”

22. In the circumstances, the claimant cannot allege unfair termination and having found as such, the next issue for determination falls by the wayside as it cannot be logically determined.

Is the Counterclaim justified?

23. The respondent has counterclaimed against the claimant, the sum of Kshs 35,931.79 being outstanding loans it had to offset on his behalf.
24. It is notable that the loan contract between NBK and the claimant has not been presented before Court. There is also no evidence presented by the respondent that it repaid the loan on behalf of the claimant. There is also no evidence that the respondent settled the claimant's outstanding loan in respect of the staff welfare group. In absence of evidence that the claimant expended its own resources paying off the claimant's loans, the counterclaim fails.

Is the claimant entitled to the reliefs sought?

25. As the court has found that the claimant was not unfairly and unlawfully terminated, the claim in regards to notice pay and compensatory damages collapses.
26. The respondent admitted that the claimant was entitled to terminal dues in the sum of Kshs 145,473.64. It however stated that this money was not available as it had utilized the same in offsetting an outstanding loan the claimant had with the NBK and the staff welfare group.
27. First, the respondent did not justify why it was obliged to settle the claimant's outstanding loans if any. For instance, there was no evidence of demand from the NBK, requiring the respondent to settle the claimant's outstanding loan. There was also no evidence that the respondent had been identified as a guarantor to the said loan.
28. Second, if at all, the claimant had taken out a loan with the NBK, then such contract was exclusive of the respondent, and it was a stranger to the same, hence had no right enforcing it. This is where the principle of privity of contract comes in. The foregoing applies to the alleged loan from the staff welfare group.



29. Needless to say, the respondent had no business whatsoever settling the claimant's debts. It was upto the claimant to sort out his indebtedness with his creditors. In the event, the respondent was required by the claimant's creditors to offset the loans on his behalf, then the prudent thing to do was to refer to them to the claimant. It ought to have steered clear of the issue.
30. The upshot of the foregoing is that the respondent misapplied the claimant's terminal benefits and it is liable to pay him the same.

Orders

31. In the end, the claim is only allowed to the extent that the claimant is entitled to his terminal benefits being the sum of Kshs 145,473.64, which shall be subject to interest at court rates from the date of Judgement until payment in full.
32. The rest of the claims are dismissed.
33. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE, 2022.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Ms. Kamotho

For the Respondent Ms. Mbugua

Court Assistant Barille Sora

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 March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

