



**Daniel v Sadoline E.A Limited (Cause 1677 of 2017)
[2022] KEELRC 1528 (KLR) (14 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1528 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1677 OF 2017
AN MWAURE, J
JUNE 14, 2022**

BETWEEN

NICHOLAS MUTISO DANIEL CLAIMANT

AND

SADOLINE E.A LIMITED RESPONDENT

JUDGMENT

1. Before Court is the Claimant's memorandum of claim dated the 9th of June 2017 and filed on the 25/8/2017. The Claimant prays for;
 - a. A declaration that the Claimant was wrongly and unfairly terminated from his employment
 - b. Unpaid dues totalling Kshs. 12,600/=
 - c. Notice- Kshs. 12,600/=
 - d. 12 months' salary as compensation for wrongful termination Kshs. 12600x 12 = 151,200.00/=
 - e. Punitive and Aggravated Damages for breach of the Claimant's Constitutional Rights.
 - f. Costs Incidental to this suit.
2. The Claimant avers that he was employed on or about the 1st January 2011 at a salary of Kshs 12,600/= per month. The Respondent on the 3/1/2017, without any colour of right wrongfully and unlawfully terminated the Claimant from his employment. The Claimant says that there was no notice of termination of his employment and he was not paid salary in lieu of notice nor outstanding wages owed to him or severance pay.
3. The Claimant says that the Respondent was aware of the terms of the employment contract and its obligations and when the employment contract would terminate. He faults the manner in which



- they terminated the employment contract which he says was unlawful and constituted an intentional interference with economic relations between the Claimant and the Respondent.
4. The Claimant says his fundamental expectation was that the Respondent had made a commitment to him namely that they would maintain employment with him and that should their employment terminate, it would be done in accordance with the employment contract or alternatively the *Employment Act*. The expectation of such commitment was within the range of reasonable expectations objectively aroused by the conduct of the Respondent.
 5. The Claimant states that the conduct of the Respondent was high handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, actuated by malice and was with intentional disregard of the Claimant, indifferent to the consequences and motivated by economic considerations. He says that because of the Respondent's conduct referred to, the case is appropriate for award of punitive damages.
 6. The Claimant says by the time of termination the company had failed to pay his dues as required. The dues comprised of one month salary in lieu of notice, unpaid leave and service pay.

The Respondent's Case

7. The Respondent entered an appearance through the firm of C.K Chege & Company Advocates on the 27/4/2018. In the statement of defence dated 10th May 2018, the Respondent states that the Claimant was employed on a six-month contract which commenced on 1/7/2016 and terminated on 31/12/2016 and upon affluxion of the contract the Claimant was paid his final dues which he acknowledged receipt and confirmed that he had no other claim whatsoever against the Respondent. The said contract was fixed term and when it expired it was never renewed. The Claimant stopped working for the Respondent on 31/12/2016 and so from January 2017 he was not working with them.
8. In relation to Notice pay, the Respondent says that the Claimant is not entitled to the same since his employment was not terminated as alleged and therefore the issue of Notice does not arise. The Respondent was paid all his accumulated leave days upon expiry of his contract and therefore the claim for unpaid leave is baseless and unfounded.
9. The Respondent contends the Claimant is not entitled to service pay as it is not provided in the contract of employment and he was a member of the NSSF and therefore was not entitled to the service pay. The Respondent says the Claimant is not entitled to the 12 months salary compensation since the employment was not terminated as alleged.

Claimant's evidence

10. Claimant's witness Nicholas Daniel gave sworn testimony and adopted the witness statement dated the 9th June 2017 as his evidence in chief. He also adopted the list of documents dated the 9th June 2017 as exhibits Nos. 1- 4.
11. He testified that he worked for the Respondent from January 2011 to December 23/2016. They were given contracts in 2013 but before then there were no contracts. He had no contract in his possession as they were being kept by Respondent.
12. On 3/1/2017 he went back to work and was told to go away as work was low. They were told they would be called back but have never been called back. Contracts were usually for 6 months and the contracts were from 2013 to 2016. He does not know why he was not recalled back to work. He says he had a good relationship with the employer. He also says he was not given a hearing as to why his employment was to be terminated.



13. Upon cross-examination he said he was employed in 2011 but have no contract as they are with the employer. This relates also to 2013 contracts. He said the only contract he signed is in Court, is the one of 1/7/2016 to 31/12/2016 and he also signed the letter with his final dues dated 4th January 2017 which is in Court. He said the statement indicates he had no claim against the Respondent. He said he signed it on the understanding that he would be re-employed.
14. The Claimant received a cheque for Kshs.11,380/= which amount was indicated to be his final dues. He says his contract had not expired at termination and he also prays for the unpaid leave for 6 years since 2011 upto 2016.
15. The Claimant avers he signed the letter declaring he had received his final dues without understanding what he was signing for.

Respondent's evidence

16. Respondent witness Duncan Njaramba gave sworntestimony and said that he works as the Human Resource manager of the Respondent. He adopted his witness statement dated the 25/5/2018. He adopted his documents in the list of the Respondent's documents as exhibits Nos. 1-4. He testified that the Claimant was employed by the Respondent for six (6) months from 1/7/2016 to 31/12/2016 and upon expiry of the contract he was paid his dues. He stopped working for the Respondent on Dec 2016. He was on a fixed term contract and it was not renewed.
17. The Respondent witness says that the Claimant signed that he received his dues on 24/1/2016 but should be 17/1/2017. He says the same was wrongly dated. Claimant was paid by a cheque dated 17/1/2017 for Kshs. 11380/= and he received it and acknowledged it. He says he was given time to read the document and he signed it.
18. On cross-examination, the witness said that he (the witness) was employed by the Respondent in 1999 as HR officer. He is the one who dealt with the Claimant when he signed for his final dues. There is no signature on the documents of the final dues. The document read 4/1/2017. It says those are the dues for the 31 /1/2016 and Claimant says those are not errors but Respondent says they are errors from cashier. The Court can confirm the error because of the date on the cheque. The final dues were for the 6 months he worked for them. They have the muster roll showing record of their employees but did not have it in court.
19. The contract expired after the 6 months and Claimant could not expect the contract to be renewed.
20. On re-examination he said that the Respondent did not terminate the Claimant's contract as it was a fixed term contract which was not renewed.

Claimant's written submissions.

21. No Submissions in the file.

Respondent's written submissions

22. The Respondent submitted that the Claimant was engaged by the Respondent on a fixed contract from 1/7/2016 and terminated on 31/12/2016. The Respondent says that this is confirmed by the Claimant's letter of appointment which is attached to the Respondent's list of documents.
23. The Respondent further submits that the statement of final dues the Claimant confirmed that his dues as at 31/12/2016 have been paid and that he has no further claim against the Respondent. That during the hearing the Claimant admitted that he signed the statement of final dues and he also collected the



- cheque for Kshs. 11,380/= being his final dues. The Respondent urged the Court to find that the Claimant was employed on a fixed term contract and upon expiry of the same he was paid all his final dues.
24. The Respondent submitted that there was no termination of the Claimant's contract of employment. The contract was for a fixed term and upon expiry it was not renewed. The contract itself did not provide for renewal. The Claimant cannot therefore allege that non-renewal of the contract amounted to unfair and wrongful termination of his employment.
25. On the reliefs, the Respondent submits that the Claimant is not entitled to the same since his employment was not terminated as alleged and therefore the issue of notice pay does not arise. On the issue of unpaid leave, the Respondent submits that the Claimant was paid all his final dues. The claim for unpaid leave is therefore baseless and unfounded.
26. The Respondent says that as per the provisions of Section 35 of the Employment Act the Claimant is not entitled to service pay since he was a member of the NSSF.

Analysis and Determination

27. The issues for determination are;
- a. Was Claimant employed on a fixed contract.
 - b. Was there a legitimate expectation that the contract of employment would be renewed.
 - c. Was Claimant's termination unfair.
 - d. Was the Claimant entitled to reliefs sought.
28. The Respondent aver the Claimant was on a six (6) month's fixed contract. The appointment letter produced in Court deduce the same. In the case of Margarete A Ochieng versus National Water Conservation and Pipeline [2014] eKLR the Court held:
- “That the general principle is that fixed term contracts carry no expectancy of renewal. Exceptions to this rule are limited. The expiring contract may contain a clause giving expectancy of renewal as discussed by Hon Justice Byram Ongaya in Ruth Gathoni Ngotho Kariuki versus the Presbyterian Church of East Africa Limited [2012] eKLR In this case the employer was obliged to give the employee notice, 3 months' notice before expiry of her fixed term contract, indicating whether her contract would be renewed or not. It was the employer rather than the Claimant in the present case who would express the intention on renewal. The employer failed to do so, and the Court found that the employee was justified in legitimately expecting there would be renewal, and two, where the decision not to renew is based on improper motives or there are countervailing circumstances.”
29. In the above case there was no direct provision for notice. If there is no such provision the contract automatically expires by the effluxion of time. In Cleopatra Kama Mugenyi versus Aidsplan [2019] eKLR the Court stated that:-
- “There must be an indication by act or omission from the employer that renewal was forthcoming.”
30. In the present case there was no express promise of renewal. None of the Respondent's actions indicate a clear and unequivocal representation that would lead the Claimant to expect renewal. The Claimant asserts that there were previous renewals but there is no evidence to corroborate



the same. The Respondent cannot be under obligation to produce documentations relating to the previous employment when there is no indication that there was indeed such employment which the Respondent denies.

31. In *Teresa Carlo Omondi versus Transparency International Kenya* (2017) eKLR the Court of Appeal said that:

“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. The Employee must demonstrate some rational and objective reason, for her expectation. The representation underlying the expectation must be clear and unambiguous.”

32. The payslip provided is for the month of December 2016 which is well within the contractual period of 6 months. The Court accepts the Respondent’s explanation that the indication of the date for final dues stated to be 24/1/2016 to be an error as the cheques shows that the Claimant was paid by the cheque dated the 17/1/2017.
33. The Claimant did not demonstrate that the Respondent was driven by any ill motive in refusing to grant the Claimant automatic renewal. There were no countervailing circumstances or that the Respondent was motivated by ill motive. The fixed term contract on its true construction had its own inbuilt mechanisms for termination. The contract provided that it could be terminated by the giving of 7 days’ notice or 7 days’ pay in lieu of notice if terminated before the expiry of the term contract.
34. In the statement of final dues, 7 days’ pay in lieu of notice was not given and the Respondent contends it was not necessary as the contract was fixed term. There is no proof that Claimant worked for the Respondent since 2011. The only contract produced in court is for six months from 1/7/2016 to 30/12/2016. 35. The payslip for the December 2016 shows that there were NSSF deductions from the Claimant’s salary. There is no allegation that the Respondent never remitted the NSSF deductions as required. In the circumstances the court finds the claim for service pay is misconceived. The Court finds that the Claimant was paid the accumulated leave days as shown in the subject statement of final dues which was acknowledged by the Claimant and he confirmed he had no other dues from the respondent.
36. In the final analysis, the claim fails as the facts and law in lieu support the fact that the Claimant was employed under fixed contract and it automatically expired by effluxion of time. The prayers by the Claimant therefore fail in total.
37. Looking at the circumstances of the Claimant, I find it fair to order each party bear its own costs.
It is so ordered.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 14TH DAY OF JUNE, 2022.

ANNA NGIBUINI MWAURE

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 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 has 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 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.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE

