



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyakina v Style Industries Limited (Cause 2033 of 2017)  
[2022] KEELRC 1524 (KLR) (14 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1524 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2033 OF 2017  
JK GAKERI, J  
JUNE 14, 2022**

**BETWEEN**

**GLADYS KWAMBOKA NYAKINA ..... CLAIMANT**

**AND**

**STYLE INDUSTRIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant initiated this claim by a statement of claim filed on 11<sup>th</sup> October 2017 alleging unfair dismissal and non-payment of terminal dues.
2. The Claimant prays for –
  - a. The sum of Kshs.178,404.00
  - b. Certificate of service
  - c. Costs of this suit.
  - d. Interest on the amount awarded at Court rates.
3. The Respondent filed a memorandum of defence on 5<sup>th</sup> July 2019 alleging that the Claimant was employed on a fixed term contract and prays for the dismissal of the suit with costs.

**Claimant's Case**

4. The Claimant's case is pleaded as follows:
5. The Claimant avers that he was employed by the Respondent on 2<sup>nd</sup> February 2016, as a general worker at a gross salary of Kshs.12,599.00.



6. It is the Claimant's case that she signed a three months' contract when she was employed but after it lapsed. She did not sign any other contract, although she continued working for the Respondent.
7. The Claimant avers that she discharged her duties diligently as a consequent of which her salary rose to Kshs.14,867.00 per month.
8. The Claimant avers that on 30<sup>th</sup> June 2017 she reported to work and worked as usual until 2.00 pm when the Supervisor at Lunga Lunga told her to report to the Human Resources Manager's office which she did. At the office she found a queue and joined and found a form to sign. That they were told to sign the forms after which she removed her dust coat and cloaking card and was given a cheque and a termination letter.
9. It is the Claimant's case that she did not sign a contract due to expire on 30<sup>th</sup> June 2017. That the termination was invalid for want of notification and disciplinary hearing.

### **Respondent's Case**

10. The Respondent avers that the Claimant was employed under a fixed term contract effective 3<sup>rd</sup> April 2017 to 30<sup>th</sup> June 2017.
11. That the Claimant was notified that her contract had lapsed on 30<sup>th</sup> June 2017.
12. The Respondent further avers that a fixed term contract lapses on the last day of the contract and there is no legitimate expectation of renewal of the contract.
13. That the Claimant was not terminated and is thus not entitled to compensation.

### **Claimant's Evidence**

14. The Claimant adopted the written statement which rehashes the contents of the memorandum of claim.
15. On cross examination, the witness confirmed that she did not sign the contract on record dated 3<sup>rd</sup> April 2017 but admitted having signed the witness statement. The witness further confirmed her name was the signature.
16. That although payslips were issued every month, she filed only two.
17. The Claimant testified that her employment was terminated in June 2017 and did not proceed on leave but was paid for leave.
18. It was the Claimant's evidence that the letter handed over to her was a termination letter as opposed to a notice that the contract has ended.
19. On re-examination, the witness testified that after the first contract of three months, she did not sign any other contract.

### **Respondent's Evidence**

20. The Respondent opted to proceed by way of documentary evidence as set out in its list of documents dated 5<sup>th</sup> July 2019 and tendered no oral testimony.



## Claimant's Submissions

21. The Claimant identifies six issues for determination including whether copies of the written contract filed by the Respondent are admissible, validity of the contracts, nature of employment of the Claimant, termination and reliefs.
22. As regards the admissibility of the contracts allegedly signed by the Claimant's reliance is made on Section 35(1)(b) of the *Evidence Act* which provides for admissibility of documentary evidence. Further reliance is made on the decision in *Nation Newspaper Limited v Simon Muruchi Thing'a* [2016] eKLR for the proposition that parties must prove their cases.
23. The Court is urged to disregard the written contracts since the maker did not testify.
24. As regards the validity of the written contracts, it is contended that the contract on record does not tell the full story since the Claimant had worked since February 2016. That all contracts should have been produced.
25. That the contract was not genuine since the Claimant did not sign it.
26. It is the Claimant's submissions that the contract filed by the Respondent is not valid and should be disregarded.
27. As to whether the Claimant was employed on a fixed term contract or permanent, it is submitted that the Claimant's payslips on record dated February 2016 and June 2017 show that she worked for the Respondent for some time. That the Respondent was trying to deceive the Court by the contract on record.
28. Reliance is made on the provisions of Section 9 and 37 of the *Employment Act* to urge that the Respondent was bound to draw up the contract of service between the parties.
29. Section 37 of the *Employment Act* is relied upon to urge that the Claimant had transitioned from casual employee to permanent.
30. As regards termination of employment, it is submitted that the Respondent issued a termination letter yet the Claimant had not signed a contract due to expire on 30<sup>th</sup> June 2017.
31. It is the Claimant's submission since the contract on record is not genuine, the Claimant's employment was terminated by the Respondent without compliance with the relevant provisions of the *Employment Act*. Specifically, Sections 41 and 43.
32. The sentiments of Radido J. in *David Gichana Omuya v Mombasa Maize Millers Ltd* [2014] eKLR are relied upon to urge that termination of the Claimant's employment was substantively and procedurally flawed and thus unfair.
33. As to whether the Claimant is entitled to the reliefs sought, it is urged that the Claimant is entitled to one (1) month's salary in lieu of notice as ordained by Section 35(5) of the *Employment Act* 2007 and 12 months' compensation under Section 49.
34. The Respondent did not file any submissions.

## Analysis and Determination

35. The issues for determination are whether: -
  - i. The Claimant was employed under a fixed term contract or permanently;



- ii. The Claimant's employment was terminated by the Respondent or the contract lapsed by effluxion of time;
  - iii. The Claimant is entitled to the reliefs sought.
36. As to whether the Claimant was employed on a fixed term contract or permanently, the home port is the evidence on record.
  37. The Claimant testified that when she first joined the Respondent's employment in February 2016, she signed a three (3) months' contract but after it lapsed, she did not sign any other contract but continued serving the Respondent until she received the letter of termination dated 30<sup>th</sup> June 2017.
  38. On cross examination, the witness denied having signed the contract dated 3<sup>rd</sup> April 2017 but admitted having signed the witness statement. More significantly, the witness confirmed that her name was her signature.
  39. In the Court's view and to the naked eye, the two signatures are identical, a perfect match.
  40. On payslips, the witness confirmed that though they were provided by the Respondent on a monthly basis, she had filed only two, the first and the last.
  41. The Respondent led no oral evidence to contradict the Claimant's oral testimony but relied on the written contract on record. It did not query the Claimant's evidence on dates of employment, nature of contract or salary or the payslips on record.
  42. Before delving in to this issue further, it is essential to address the Claimant's twin submission that a copy of the written contract is in admissible and invalid.
  43. The Claimant urges that the written contract on record should be disregarded since it is not spoken to by a witness and is thus not admissible and relies on the *Evidence Act*. Although Section 35(1)(b) of the *Evidence Act* provides for oral evidence where a document is relied upon to establish a fact, its provision does away with this requirement in certain circumstances such as death, inability to give evidence or if attendance would occasion delay or expense. The Respondent indicated that would not call any witness but would rely on the documents on record.
  44. In the instant case, the Claimant did not raise any issue on its admissibility or the need to have a witness for purposes of cross examination at which point the Respondent would have responded and an agreement between the parties arrived at or a determination made by the Court.
  45. Relatedly, the Claimant did not raise the issue of validity or genuineness of the contract on record before or during the hearing and did not apply for its expunction from the record.
  46. Needless to emphasise, Rule 21 of the Employment and Labour Relations Court (Procedure) Rules, 2016 confer upon this Court authority to determine a suit before it on the basis of pleadings, affidavits, documents and submissions made by the parties.
  47. It is the finding of the Court that the written contract dated 3<sup>rd</sup> April 2017 is properly on record and valid, its probative value notwithstanding.
  48. The written contract dated 3<sup>rd</sup> April 2017 offered the Claimant a three months' contract from 3<sup>rd</sup> April 2017 to 30<sup>th</sup> June 2017 at a consolidated salary of Kshs.14,867/-.
  49. The contract did not expressly provide for renewal but did so impliedly particularly with regard to leave.



50. The Claimant's signature is appended on page 2 of the employment contract. The contract is a signed for and on behalf of the Respondent.
51. The Claimant's signature on the document is her first name "Gladys" in capital letters.
52. Although on cross examination the Claimant denied having signed the contract, she admitted that she had signed the witness statement dated 10<sup>th</sup> October 2017 and more importantly, the Claimant confirmed that her name was indeed her signature.
53. Both documents have the name "Gladys" on the signature page and the signatures appear identical. Relatedly, the Claimant did not allege that her signature had been forged.
54. In the premises, it is the finding of the Court that the Claimant indeed signed the employment contract dated 3<sup>rd</sup> April 2017.
55. On cross examination, the Claimant confirmed that she signed a three months' contract in February 2016 and did not sign any other but documents on record show otherwise.
56. From the evidence on record, it is the finding of the Court that the Claimant was employed on a three months' contracts which the Respondent gave periodically.
57. There is no evidence on record to show that their employment changed from fixed term contract to any other type of employment.
58. The Claimant's Counsel relies on Section 37 of the *Employment Act* to urge that the Claimant's employment was permanent. This issue did not arise since the Claimant did not allege that she was permanent employees of the Respondent for the duration served.
59. It is the Respondent's case that the Claimant was employed on a fixed term contract which lapsed on 30<sup>th</sup> June 2017.
60. In addition, Section 37 of the Act which is relied upon by the Claimant addresses conversion of causal employment to term contract. The Claimant was not a causal employee.
61. The Court finds the provisions of Sections 37 of the *Employment Act* in applicable to the circumstance of this case.
62. As to whether the Claimant's employment was terminated by the Respondent or the contract lapsed by effluxion of time, the starting point is the nature of fixed term contracts.
63. In the *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gatboni Ngotho-Kariuki* [2017] eKLR the Court of Appeal stated:

"Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry. Accordingly, any claim based after the expiry of the respondent's contract ought not to have been maintained. This is in relation to the salary for the months of April up to 5<sup>th</sup> May, 2010. Similarly, since the respondent's contract came to an end by effluxion of time any claim for wrongful termination could not be maintained."
64. Similarly in *Stephen M. Kitbeka v Kevita International Limited* [2018] eKLR Onyango J.

"Further, that as held by Rika J in *Margaret A. Ochieng v National Water Conservation and Pipeline Corporation* [2014] eKLR, Courts have upheld the principle that fixed-term contracts carry no expectation of renewal, in a catena of judicial authorities. That this



Court has done so in Industrial Court Petition No. 35 of 2012, *George Onyango vs The Board of Directors Numerical Machining Complex Limited & Others*, [2014] eKLR and in Industrial Court Cause No. 1541 of 2010, *Bernard Wanjohi Muriuki v. Kirinyaga Water and Sanitation Company Limited & Others*.”

65. The Court is in agreement with these sentiments.
66. In the instant case, although the Claimant testified that she executed one three months’ contract in February 2016 when she joined the Respondent as an employee, her attempt to disown the signature on the employment contract dated 3<sup>rd</sup> April 2017 fell through as were the submissions that the contractual document was inadmissible and not valid. See the sentiments of Onguto J. in *Peeush Premlal Mahajani v Yashwant Kumari Mahajan* HCCC 571 of 2015 on the function of a signature.
67. In a similar vein, even though the letter dated 30<sup>th</sup> June 2017 is referenced as termination of employment contract, its first sentence make reference to the contract slated to expire on 30<sup>th</sup> July 2017 and provides no other reason for the termination other than effluxion of time.
68. The letter intimated that a detailed schedule of the payments would be ready for collection on or after Friday 30<sup>th</sup> June 2017 at 2.00 pm, the Claimant did not file the same.
69. Be that as it may, a copy of the payslip on record show that the Claimant was paid notice pay, annual leave pay and arrears. The notice pay is equivalent to one month’s basic salary.
70. In the written statement the Claimant states that the letter of termination stated that the reason for termination of the contract was lapse of time which she did not agree with. The Claimant led no evidence of acrimony between the parties nor performance related queries.
71. The Court is not persuaded that the fact that the letter dated 30<sup>th</sup> June 2017 was referenced as “Termination of Employment contract” constituted the separation or termination. The letter is explicit on the basis of the termination.
72. For the foregoing reasons, it is the finding of the Court that the Claimant has on a balance of probabilities failed to demonstrate that her contract of employment was terminated by the Respondent unfairly.
73. Further, the Court is satisfied that the Claimant’s employment with the Respondent terminated by reason of effluxion of the term agreed upon by the parties.
74. Puzzlingly, the Claimant did not allege that she had a legitimate expectation that the contact would be renewed.
75. As to whether the Claimant is entitled to the reliefs sought, the Court proceeds as follows:
  - a. One month’s salary in lieu of notice
76. Despite the fact that the Claimant submitted that she was entitled to the one (1) month’s salary in lieu of notice, pursuant to Section 36 of the *Employment Act*, the same was neither pleaded nor proved. In addition, the payslip for June 2017 has an entry for notice pay of Kshs.12,928.00. The claim is dismissed.
  - b. 12 months’ salary compensation for unlawful termination of employmentThis is the only monetary relief claimed by the Claimant in her statement of claim. Having found that the Claimant has failed to demonstrate that termination of the contract of employment on 30<sup>th</sup> June 2017 was unlawful or unfair, the prayer for compensation is accordingly declined.



77. In the end, the suit is dismissed save for the prayer for certificate of service which the Respondent is directed to issue within 30 days of today's date.
78. Each party to bear own costs.
79. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 14<sup>TH</sup> DAY OF JUNE 2022**

**DR. JACOB GAKERI**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 *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.

**DR. JACOB GAKERI**

**JUDGE**

