



**Mwangi v The Trustees of Premier Academy Charitable Trusr T/A Premier Academ
(Cause 2161 of 2017) [2022] KEELRC 1390 (KLR) (5 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1390 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2161 OF 2017**

JK GAKERI, J

JULY 5, 2022

BETWEEN

PATRICIA WAIRIMU MWANGI CLAIMANT

AND

**THE TRUSTEES OF PREMIER ACADEMY CHARITABLE TRUSR T/A
PREMIER ACADEMY RESPONDENT**

JUDGMENT

1. The Claimant initiated this suit by a statement of claim filed on November 1, 2017 alleging that the Respondent's action of non-renewal/termination was unfair and discriminatory, wrongful and unlawful.
2. The Claimant prays for;
 - (i) A declaration that the non-renewal of the contract was a termination/dismissal of employment which was unfair and or wrongful and/or malicious.
 - (ii) Kshs.1,200,936.00 being compensation equivalent to the Claimants 12 months gross salary. In the alternative severance payment of Kshs.1,200,936.00
 - (iii) Kshs.300,234 being compensation equivalent to 3 months' salary in lieu of notice of termination
 - (iv) General and exemplary damages
 - (v) Costs
 - (vi) Interest (ii) (iii) and (iv) above at court rates till payment in full.



Claimant's Case

3. The Claimant avers that she joined the Respondent's employment in early 2013 under a 2-year contract effective 27th August 2013 to August 2015 with prospects of renewal and the contract was renewed in 2015 for a further 2 years to July 2017 again with prospects of renewal.
4. That on March 28, 2017 the Respondent gave the Claimant a letter of intent to renew the contract for a further term of 2 years and the Claimant signed the letter but thereafter the Respondent served upon the Claimant a non-renewal notice dated June 16, 2017.
5. That the two had agreed that the Claimant would obtain a Teachers Service Commission Registration Number.
6. That the Respondent was required to provide a valid and fair reason for termination of the Claimant's employment or in the alternative that the letter of intent constituted a renewal contract of employment.
7. It is averred that the Respondent failed to pay the Claimant redundancy dues having declared her redundant.
8. That the Claimant had served the Respondent diligently and had excelled in performance which resulted in salary increment and had a genuine, reasonable and legitimate expectation that her contract would be renewed.
9. That the non-renewal amounted to a termination of employment and the law was not complied with.
10. That the termination caused the Claimant grave emotional and financial distress and psychological torture.
11. Finally, that her gross monthly salary was Kshs.100,078.00.

Respondent's case

12. The Respondent avers that it employed the Claimant on contract from time to time, the last of which was to lapse on July 31, 2017 and was not renewed.
13. The two contracts the Claimant entered into in August 2013 and September 2015 were independent of each other and had no renewal clauses.
14. It is the Respondent's case that it did not offer the Claimant any employment after the second contract lapsed.
15. It is averred that the letter of intent was not a letter of employment but an invitation to express an interest to be considered in the course of planning.
16. That the Claimant did not qualify to be a teacher as she was not registered with the Teachers Service Commission (TSC).
17. That her employment was unlawful by virtual of section 23(1) of the [Teachers Service Commission Act, 2012](#).
18. That the law required no notice of non-renewal of the contract since its expiry date was explicit.
19. That the non-renewal of the contract was occasioned by staffing needs of the Respondent and notice was given in good time.



20. That the Claimant was average and not exceptional in performance and the contract could only be extended by mutual consent and the Claimant's salary for July 2017 was Kshs.94,392/= per month.
21. The Respondent prays for dismissal of the suit with costs.

Claimant's Evidence

22. In the written statement which rehashes the contents of the statement of claim, the Claimant states that in April 2017, she had a meeting with Berajee Chimnoy, the Chief Executive Officer, Rebecca Kimani, Chief Human Resource Officer and Humphrey Luceno, Head of Secondary Section who informed her that the contract would be renewed on consultancy basis and the Claimant was to obtain the TCS Registration Number to facilitate future renewal of the contract. However, the contract was not renewed.
23. On cross-examination, the Claimant confirmed that both contracts had a beginning and end date.
24. That the contract had no renewal clause and thus not guaranteed.
25. As regards the letter of intent, the Claimant confirmed that she was being asked by the Respondent to show intent to have the contract renewed.
26. That there was no guarantee it would be renewed when the current ended on July 31, 2017.
27. That the letter of non-renewal of contract was received on June 16, 2017 and the Claimant was asked to leave the office and was not paid for the month of June 2017 but was given a certificate of service.
28. It was the Claimant's testimony that the letter of intent created some expectation that the contract would be renewed. On the alleged harassment the claimant stated that she would not call a witness to prove the allegations.
29. The Claimant admitted that she missed school for 4 days and was not paid for them.
30. On re-examination, the witness stated that she had not requested for the letter of intent and had hoped that the contract would be renewed as it had happened earlier.
31. That no reason was given for the non-renewal of the contract since the letter was given before the other contract lapsed and no three months' notice was given or benefits paid.
32. That the harassment took the form of being told to get off a seat in the office.

Respondent's Evidence

33. In the written statement, RW1 testified that the Respondent's school offered the IGCSE/British Curriculum in Kenya and employed staff on 2 year contract at the commencement of the school year ending at the end of the IGCSE school year and the Respondent was an equal opportunity employer.
34. That before the end of the contract staff were required to indicate an intention to renew the contract for purposes of planning.
35. That the letter of intent was not an offer of employment but an invitation to treat, an expression of interest only and staff were aware of it, as the contract had no renewal clause.
36. That no disciplinary hearing was necessary prior to the non-renewal of the contract.



37. On cross-examination RW1 confirmed that letters of intent were issued before expiry of the current contract and contractual letters would be issued after the letter of intent which was not obligatory as every contract was distinct from the previous one.
38. The witness confirmed that after the letter of intent Human Resource sent an email dated May 18, 2017 to all staff about processing of the contracts but not all received new contracts.
39. That non-renewal did not require a reason and the Claimant's position was not abolished. Another teacher was employed to replace her.
40. The witness testified that he imagined that the Claimant was qualified for the job. That she had no TSC Registration Number and did not qualify the number as she confirmed on July 5, 2015.
41. That consultants could be employed without a TSC number but he was unsure of the number the respondent had employed.
42. The witness testified that the Claimant was not given a 3 months' notice.
43. On re-examination, the witness stated that the letter of intent was nothing but an indication of willingness to be engaged but not binding on the employer to employ.
44. That employment on consultancy was different and involved roles such as career guidance, soccer and Taekwondo coaching payable as per time sheets.
45. That the Claimant was a fulltime teacher.
46. RW II, Tabitha Kimani testified that she joined the Respondent in 2006. That typically all employees were on one to 2 years contracts. The witness explained that after staff had expressed an interest to be engaged, a report was prepared and management decided whose contract would be renewed based on performance and other considerations.
47. The witness clarified that an employee who did not wish to renew the contract had to give a 3 months' notice to the Human Resource at the beginning of the term.
48. The witness confirmed that the email dated May 18, 2017 made reference to renewal of contract but a non-renewal followed about one (1) month later.
49. That the Claimant held a BA Degree in Psychology but was not registered by the T.S.C.
50. That the principal made the decision on who would be employed.
51. That about 4 to 5 teachers had no TSC number, that the Claimant's contract was not renewed.
52. The witness further confirmed that the Claimant's letter dated 20th June, 2017 was not responded to.
53. On re-examination, the witness stated that the latest date of the first contract was its termination date and the second contract ended on 31st July, 2017 and the Claimant was aware of the date of effluxion of the contract.
54. It was her testimony that non- renewal notices are issued in the event of non-renewal.
55. That employees were bound to give notice of non-renewal otherwise they would be held liable for breach of contract by the employer.
56. That contracts were issued on the first day of the term or when the earlier one ends.
57. That contract comes into existence when issued by the employer.



58. The witness testified that the Claimant was notified of the non-renewal on June 16, 2017 and the contract lapsed on July 31, 2017 about 1½ months later.
59. Further, it was RW II's testimony that when the email from Rebecca Kimani was done, the Human Resource Office was very busy and not all recipients of the email got new contracts.
60. That the Claimant had no TSC number and had no training in Education to be employed as a teacher. However, the witness was unaware of the parameter the principal considered so as not to issue contract to the Claimant.
61. Finally, the witness stated that the Claimants contract came to an end by effluxion of time and no other reason was needed.

Claimant's submission

62. The Claimant identifies two (2) issues for determination namely;
 - i) Whether termination of the Claimant's employment was unfair;
 - ii) Whether the Claimant is entitled to the reliefs sought.
63. As regards termination of employment, the Claimant relies on the provisions of section 43 and 45 of the Employment Act as well as Article 41 and 47 of the *Constitution of Kenya*, 2010 on the burden of the employer and the requirement of procedural fairness in termination of employment and administrative actions.
64. As to whether the Respondent was obliged to comply with the provisions of section 45 of the *Employment Act*, it is submitted that the Respondent was obligated to accord the Claimant a valid and fair reason for the termination of employment. That before expiry of the Claimant's contract on July 31st 2017, the Claimant was given a letter of intent and later an email to the effect that the contracts were being finalised and would be issued for signature in a weeks' time and a collection schedule would be sent. That a non-renewal notice followed thereafter worth no reason for non-renewal based on the Respondents practice of renewing short term contracts. It is submitted that the Respondent gave no reason for non-renewal yet it had indicated that it was finalizing the contracts for signature and issuance.
65. It is further submitted that the Claimant had a legitimate expectation of a new contract or reasons for the change of position by the Respondent.
66. That the Respondent violated the Claimants right to legitimate expectation. The decision in *Oyatsi v Judicial Service Commission* (Petition E111 of 2021) [2022] KEELRC 3 (KLR) (Employment and Labour) (10 March 2022) (Judgment) is relied upon to buttress the submission, as is the decision in *Teresa Carlo Omondi v Transparency International- Kenya* [2017] eKLR, where the court held that there was a legitimate expectation of renewal of the contract.
67. It is further submitted that the Respondent's conduct left no doubt in the Claimant's mind that a new contract would be issued.
68. The Claimant urges that justice and equity demands that the Claimant be given valid and fair decision(s) for the breach of Section 43 and 45 of the *Employment Act* in addition to Article 47 of the *constitution* which explains the Claimants letter dated 20th June, 2017.
69. As regards notice, it is urged that the Respondent violated the Claimants right to fair labour practices, fair administrative action and legitimate expectation.



70. That the Claimant's employment was terminated without regard to procedural fairness Reliance is made on Clause 9 of the contract 2013 – 2015 on termination notice as well as Clause 18 of the Terms and Conditions of service.
71. It is submitted that the Respondent did not accord the Claimant sufficient notice as required by the contract of employment.
72. It is submitted that owing to the non-renewal of contract, the Claimant had to embarrassingly withdraw her daughter from the school.
73. That the Respondent failed to observe its contractual duty towards the Claimant.
74. That RW II was explicit that if employee did not wish his/her contract renewal, they had to give 3 months' notice at the beginning of the term otherwise it would amount to a breach of contract.
75. It is the Claimant's submission that such a requirement on the part of the employee but not availing the employee a similar duration was an unfair labour practice under Article 41 of the Constitution of Kenya and section 45 (4) of the Employment Act.
76. As to the Claimant's entitlement to the reliefs prayed for, the decision in Mark Wafula v Board of Management Friends Secondary School Kibisi [2018] eKLR and George Ndiritu Mueithi v Premier Academy Charitable Trust (being sued through Trustees Mukesh Manubhai, Vijay Parsooram Patel & Prafulchandra Chandubhai Patel [2015] eKLR are relied upon to urge that the Claimant be awarded 12 months compensation based on the manner of termination of employment.
77. As regards the 3 months' salary in lieu of notice, it is urged that the Respondent failed to abide by the terms of the contract on notice and should be held liable for the breach.
78. Finally, as regards general damages and exemplary damages, it is urged that the Respondent's conduct was laced with it will and malice and the sum of Kshs.1,000,000/= should be awarded in damages Reliance is made on the decision in Mokaya v Kithure Kindiki t/a Kithure Kindiki & Associates (Petition 62 of 2019) [2021] KEELRC 1 (KLR) (Employment and Labour) (30 September 2021) (Judgment).

Respondent's submission

79. The Respondent identifies for (4) issues for determination, namely;
 - (i) When does a fixed term employment contract end?
 - (ii) Does the doctrine of legitimate expectation apply in employment law? If it does, does it apply to the instant case?
 - (iii) Was the Respondent obligated to give the Claimant notice and reasons for non-renewal of contract?
 - (iv) What is the legal effect of the signed letter of intent? Was a contract thereon created?
80. As regards the first issue, it is the Respondents position that the Claimants contract was a fixed term engagement with an end date. The decision in Bernard Wanjohi Muriuki v Kirinyaga Water and Sanitation Company Limited & another [2012] eKLR is cited to urge that the Respondent was under no obligation to give reasons for the non-renewal of contract.
81. The decisions in Julius Okang'a Omulando v Tradewinds Aviation Services Limited [2022] eKLR, Savings and Loan Kenya Limited v Mayfair Holdings Limited [2012] eKLR as well as Registered



Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho-Kariuki [2017] eKLR and others are relied upon to urge that fixed contracts carry no expectation of renewal.

82. It is submitted that the Claimants contract lapsed on July 31, 2017 and could only be renewed by mutual consent.
83. As regards legitimate expectations, it is submitted although the doctrine applied in employment contracts as courts have held, it would not apply in the instant case because;
 - (i) The Claimant had worked for a short period of time having had only one renewal.
 - (ii) Not all contracts were renewed.
 - (iii) Had no qualification to be appointed as a teacher.
 - (iv) The Claimant did not prove that she had a legitimate expectation.
84. The decision in *Kipkebe Limited v Peterson Ondieki Tai* [2016] eKLR is relied upon to urge that the Claimant did not prove that she had a legitimate expectations.
85. It is urged that the doctrine of legitimate expectations cannot apply in if is contract to an unclear provision of a statute.
86. It is submitted that under the provisions of the *Teachers Service Commission Act, 2012*, the Claimant was not a trained teacher and the Respondent was bound to observe the law.
87. As regards notice and reasons for non-renewal of contract, it is submitted that the Respondent had no such obligation since the contract had a beginning and end date but it gave notice as a manifestation of magnanimity. The decision in *Julius Okang'a Omulando v Tradewinds Aviation Services Limited (supra)* is relied upon. That the contract was not subsisting it lapsed.
88. Finally, on the legal effect of the signed letter of intent, it is submitted that for a contract to come into existence, there must be consensus or agreement, consideration, capacity and the same must be lawful.
89. That the letter of intent was just that not even an offer, a mere expression of interest, no consensus ad idem and thus not a contract.
90. It is the Respondent's case that the Claimant did not prove her case and was paid all her dues.

Analysis and determination

91. The issued for determination are:
 - (i) Whether the Claimant had a legitimate expectation of renewal of his employment for a further period of 2 years;
 - (ii) Whether the failure to renew the contract for 2 years amounted an unfair termination of employment;
 - (iii) Whether the Claimant is entitled to the reliefs sought.
92. As to whether the Respondents contract created a legitimate expectation of renewal of the contract, the starting point is the doctrine of legitimate expectations.



93. In the first instance, the court is in agreement with the sentiments of Onesmus Makau J. in *John Nduba v African Medical and Research Foundation (Amref Health Africa)* [2021] eKLR as follows:
- “I agree with the jurisprudence emerging from this court that there is no legitimate expectation of renewal of fixed term contract.
- However, in my view, the foregoing is just but the general rule which is subject to exceptions like the practice by the employer, previous renewal, promise by the employer in the contract that the contract will be reviewed upon fulfilment of certain conditions by the employee and the employee fulfils the conditions and the conduct of the employer that leads the employee to expect a renewal”
94. The principle was earlier explained in *Teresa Carlo Omondi v Transparency International- Kenya* [2017] eKLR as follows:
- “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 or reasonableness and fair dealing between employers and employees”.
95. The Court is in agreement with these sentiments.
96. In the instant case, there is no dispute that the Respondent employed the Claimant under a two (2) year fixed contract which it renewed once. The contract dated 31st March, 2015 effective September 2015 to July 2017, the subject matter of the suit herein had no renewal clause. It was for a duration of two (2) years.
97. It is also not in dispute that on by letter dated 28th March, 2017, the Respondent required the Claimant to indicate her intent to renew the employment contract. The Claimant responded in the affirmative.
98. Contrary to the Claimant’s submission that the Claimant’s expression of interest or intent constituted a contract, it was a mere invitation to treat which the Respondent could respond to by way of an offer of employment.
99. Be that as it may, the fact that the Respondent requested the Claimant to “indicate whether you intend to renew your contract or not” was an early indication to the Claimant the there was a possibility of renewal of the contract. It created an expectation which was buttressed, reinforced and heightened by the email from Rebecca Kimani dated 18th May, 2017 at 11.48 am which read as follows:
- “We are in the process of finalizing your contract renewal, I will be issuing the new contract for signing next week. I will share with you a schedule on when you can collect the contract.”
100. Although the contract of employment did not promise a renewal, the conduct of the Respondent was a clear indication that the contract would be renewed. By reaching out the Claimant to express her intent to renew the contract, the Respondent created an expectation which the email above undoubtedly confirmed.
101. The email is personal to the Claimant and intimates that a new contract would be issued for her signature in accordance with a schedule to be shared.



102. It is the finding of the court that the email dated May 18, 2017 was a promise for renewal of the contract for another two (2) year term.
103. Having renewed the contract previously, and made the above promise to the Claimant, the Claimant had a legitimate expectation that the contract would be renewed.
104. The Respondent's submission that doctrine of legitimate expectation does not apply where it would be contrary to statutory provisions though the correct positions in law, would in the courts view not apply to this case for the simple reason that the Claimant had previously served the Respondent from 2012 and the Respondent was aware of the fact that she had no TSC certificate. This issue did not arise at the time the earlier contract was entered into, during the currency of contract or non-renewal of contract.
105. In other words, it was never an issue and the Claimant was not the only one in this category. The issue only arose when the suit herein was filed, a perfect scenario of approbation and reprobation. See *Sonko & Another v Patel & Another* (1955) 22 EACA 23.
106. Having enjoyed the services of the Claimant for almost four years, the Respondent cannot turn round to argue that the Claimant was not registered as a teacher. The Respondents letter dated 26th August, 2012 which confirmed the Claimant's appointment was unequivocal that she had "been confirmed as a full time teacher..." The law abhors approbation and reprobation by parties
107. In light of the foregoing, the court is satisfied that the Claimant has discharged the burden of proving that she had a legitimate expectation that the contract of employment would be renewed for a further 2 years. Evidence on record shows that the unexpected notice of non-renewal destabilised the Claimant. She had made arrangements to have her daughter enrolled at the school in nursery school, but had to discontinue the process by letter dated June 28, 2017.
108. As to whether the non-renewal of contract for 2 years amounted to unlawful termination, the starting point is the foregoing finding that the Claimant had a legitimate expectation that the employment contract would be renewed for a further 2 years.
109. Clause 6 of the contract dated 31st March, 2015 is clear that after confirmation of appointment the contract was terminable by either party giving three calendar months written notice or three months' salary in lieu of notice from the first day of any given term.
110. The Claimant's appointment was confirmed by the Respondent by letter dated August 26, 2013 which stated *inter alia*
- "... I am pleased to inform you that you have been confirmed as a full time teacher with effect from September 1, 2013..."
111. The salient issue is whether the Respondent complied with the law on termination of employment as regards valid and fair reason and fair procedure as ordained by the provisions of Section 45(2)(a), (b) and (c) and section 41 of the *Employment Act*, 2007.
112. The Claimant submits that the provisions of the *Employment Act* were not complied with and relies on two decisions to reinforce the submission.
113. The Respondent did not address the issue of termination having submitted that the contract in question was fixed term and terminated by effluxion of time and the Respondent was under no obligation to give any reason but lapse of time.



114. RW1 confirmed on cross-examination that the non-renewal of a contract does not require a reason. RWII was also categorical on the absence of an obligation to give reasons for non-renewal of the contract of employment. Since the requirements of the provisions were not complied with in the termination of the Claimant's employment, it is the finding of the court that it was unfair and unlawful.

(a) Reliefs

Having found that the Respondents non-renewal of the Claimant's employment for a period of two years amounted to an unfair and unlawful termination of employment, a declaration to the effect is hereby issued.

(b) 3 months' salary in lieu of notice

115. Clause 6 of the contract of employment between the Claimant and the Respondent gave the parties the option to terminate the contract by either three months' written notice or three months' salary in lieu of notice from the first day of any given term.

116. The Respondent did not comply with this requirement thus entitling the Claimant to notice pay. It is unclear how the sum of Kshs.300,234.00 claimed by the Claimant as notice pay was arrived at as the payslips provided have a gross salary of Kshs.94,392/= as pleaded by the Respondent. In the absence of other documentary evidence, the court shall proceed on the basis of the payslips on record.

117. Accordingly, the Claimant is awarded the sum of Kshs.283,176/= as notice pay.

(c) 12 months compensation for unlawful termination

118. Having found that the non-renewal of the Claimant's contract of employment by the Respondent amounted to unfair termination of employment, the Claimant is entitled to the discretionary relief provided by section 49 (1) (c) of the *Employment Act*.

119. In determining the quantum of compensation, the court has considered the following:

(i) The Claimants wished to continue serving the Respondent either as a teacher or as a consultant as she secured TSC registration in the case of the latter as evidenced by confirmation of intention to renew the contract before 31st March, 2017.

(ii) The Claimant did not contribute to the termination of employment and had no previous warnings.

(iii) The Claimant was a diligent employee of the Respondent for 4 years.

120. In the circumstances the court is satisfied that the equivalent of 3 months' salary is fair Kshs.283,176/=.

(d) General and exemplary damages

121. Particulars of the alleged discrimination and harassment were neither pleaded nor proved by evidence. The prayer for general and exemplary damages was not proved and is accordingly dismissed.

Conclusion

122. Having found that the Claimant had a legitimate expectation of renewal of her fixed term contract for 2 years and having further found that the non-renewal of the contract by the Respondent amounted



to unfair termination of employment, judgement is entered for the Claimant against the Respondent in the sum of Kshs.566,352/= plus costs.

123. Interest shall accrue at Court rates from date of judgement till payment in full.

124. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF JULY 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 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 [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

