



**Patrick Kagiri Nguru v Apex Steel Limited (Cause 1737 of 2017)
[2022] KEELRC 3835 (KLR) (19 August 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3835 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1737 OF 2017
SC RUTTO, J
AUGUST 19, 2022**

BETWEEN

PATRICK KAGIRI NGURU CLAIMANT

AND

APEX STEEL LIMITED RESPONDENT

JUDGMENT

1. It is the claimant's case that he was employed by the respondent with effect from August, 2009 to October 11, 2016 as a boiler attendant. He avers that he worked continuously with due diligence and to the respondent's satisfaction. That he was unilaterally terminated on October 11, 2016. As a consequence, the claimant prays for notice pay, unpaid leave, unpaid service when NSSF was not remitted, unpaid holiday, unpaid off days and compensatory damages all totaling the sum of Kshs 439,556/=.
2. Opposing the claim, the respondent avers that the claimant was employed on a fixed term contract and that he last reported to work on December 11, 2014. That the claimant was required to apply for renewal of the contract. That his last fixed term contract was for the period between January 9, 2014 until November 30, 2014 and that the same expired by effluxion of time. That as such, the claimant was not unfairly and unlawfully terminated. Subsequently, the respondent has asked the Court to dismiss the claim with costs.
3. The matter proceeded for trial on April 27, 2022 when both parties presented and closed their respective cases.

Claimant's case

4. At the commencement of the hearing, the claimant asked the Court to adopt his witness statement and bundle of documents filed together with his claim, to constitute his evidence in chief. He also sought



the Court's leave through his Advocate, to amend his witness statement in regards to the date he was terminated from employment. He proceeded to produce the said documents as his exhibits.

5. The claimant opened his testimony by informing the Court that he worked for the respondent at the boiler section for a period of five years. That every year, he would sign a form of employment. That the last form he signed was in January, 2014. That he continued to work until December 11, 2014 when he was informed that there were no raw materials hence his work had ended. That he never signed another contract. It was his testimony that he was not given any notice or hearing and there was no reason for his termination. He thus regarded his termination as unfair.

Respondent's case

6. The respondent called oral evidence through Mr Abraham Ondara who testified as RW1. He identified himself as the Human Resource Manager of the respondent. He proceeded to adopt his witness statement and the respondent's bundle of documents, to constitute his evidence in chief. The said documents were also produced as exhibits before Court.
7. RW1 testified that the respondent closes its plant from December 15, every year. That on December 11, 2014, the respondent closed its plant and all employees went for Christmas holidays. He denied the claimant's assertion that he was dismissed from employment. It was his testimony that the claimant never reported to work on January 3, 2015.
8. In further testimony, RW1 stated that the claimant was expected to apply yearly for the renewal of his contract. That had the claimant reported to work in January, 2015, he would have signed a new employment contract. That he tried to call the claimant but he did not state whether he wanted to continue working for the respondent. That since the claimant was on a fixed term contract, the respondent assumed that he had gotten employment elsewhere. That the claimant's contract of employment therefore expired by effluxion of time.
9. RW1 referred the Court to the respondent's pay sheet which he stated, captures the number of hours worked on a mandatory clocking system where every employee clocks in and out of duty. That since the claimant did not apply for employment in January, 2015, the pay sheets for the period ending December, 2015 do not contain his name.

Submissions

10. Citing the provisions of sections 43 and 45 of the *Employment Act*, the claimant submitted that he was not informed of any reason as to why his services were terminated.
11. On its part, the respondent submitted that the claimant had not produced evidence to support his version of events. That the claimant was never terminated from employment having been on a fixed term contract. In support of its submission, the respondent cited the cases of *Registered Trustees of the Presbyterian Church of East Africa & another vs Ruth Gathoni Ngotho* (2017) eKLR and *Registered Trustees De La Salle Christian Brothers t/a St. Mary's Boys Secondary School vs Julius D. Baini* (2017) eKLR.

Analysis and determination

12. Arising from the pleadings on record, the evidence presented by both sides and the opposing submissions, the issues falling for the Court's determination can be distilled as follows: -
 - 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. Whether the claimant is entitled to the reliefs sought?

Was the claimant terminated from employment?

13. The claimant has alleged that he was summarily dismissed and that he was not given any plausible reason for the same. He further testified that he was not issued with notice prior to being dismissed from employment. The respondent has refuted this position and contend that the claimant's contract of employment expired by effluxion of time as his last fixed term contract was for the period beginning January, 2014 and ending on November, 2014.
14. It is common ground that the claimant was employed on a one year renewable contract and that his last contract commenced on January 9, 2014 and ended on November 30, 2014. The contract reads in part: -
- “Ref: Temporary Employment
2. of engagement
- From 9/1/2014 to 30/11/2014
3. Your employment may be renewed at the discretion of management...”
15. The claimant signed the contract in acceptance of its terms and conditions on January 9, 2014.
16. It bears from the record that that was to be the last contract of employment the claimant executed with the respondent. There is no contract of employment on record beyond that period.
17. It is therefore evident that the claimant's contract of employment lapsed on November 30, 2014 there being no evidence of renewal. The contract was very explicit that its duration was from January 9, 2014 until November 30, 2014.
18. The claimant was therefore aware that the contract of employment was not to be renewed automatically as he had signed similar contracts of employment since January, 2012. 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.
19. The claimant's contract of employment having not been renewed for the year, 2015, 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.
20. Against this background, I find and hold that the claimant was not terminated from employment and the respondent was not bound to give reasons or notice as his contract had ended by effluxion of time.
21. In arriving at this position, I am fortified by the determination in the case of *Bernard Wanjohi 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.”

22. 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.”

23. In light of the foregoing determinations which I reiterate and apply to the case herein, the claimant’s assertion that he was unfairly dismissed, do not hold water.

24. Having found as such, the next issue for determination falls by the wayside as it cannot be logically determined.

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 claim as regards service pay for the period the respondent did not remit the claimant’s National Social Security Fund (NSSF) dues is declined, as the respondent has demonstrated through the schedule of remittances and payment receipts from the NSSF that it made the contributions in favour of the claimant. No contrary evidence was presented by the claimant to rebut this piece of evidence.

27. As regards the claim for unpaid leave, the respondent has produced evidence to show that the same was paid. The claimant has submitted that the amount paid is less than what he ought to have received. Nonetheless, he has failed to give better particulars as to the portion that he claims was not paid or what ought to have been paid. In the premises, the claim is denied.

28. With respect to the claim for off days and public holidays, it is notable that the same have not been particularized. In this regard, the claimant has not stated the period he worked whilst he was supposed to be off duty and/or during public holidays. On this account, the claim flops.

Orders

29. In the end, the claim is dismissed in its entirety.

30. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF AUGUST, 2022.

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STELLA RUTTO

JUDGE

Appearance:

For the Claimant Ms Alividsa

For the Respondent Ms Kariuki

Court Assistant Abdimalik Hussein



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

