



REPUBLIC OF KENYA



KENYA LAW
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**Nguru v Buds and Blooms Limited (Cause 7 of 2018)
[2022] KEELRC 4007 (KLR) (20 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4007 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 7 OF 2018
HS WASILWA, J
SEPTEMBER 20, 2022**

BETWEEN

SAMUEL NGURU CLAIMANT

AND

BUDS AND BLOOMS LIMITED RESPONDENT

JUDGMENT

1. The claimant herein filed a Memorandum of Claim dated January 17, 2018 on the January 23, 2018 through the firm of Nyagaka S M & Co Advocates alleging to have been unfairly terminated and seeking compensation for the alleged unfair termination. He therefore sought for the following reliefs:-
 - i. A declaration that the termination was unlawful, untimely and,
 - ii. An order that the claimant be paid his benefits of Kshs 284,435 as foresaid.
 - iii. Costs of the claim and interest.
2. The claimant avers that he was employed by the respondent as a casual labourer on the November 10, 1997, a position which he held till his termination on the August 30, 2016, earning a salary of Kshs 12,650/= per month.
3. He alleged that he was verbally terminated after resuming duty from sick leave. That he was neither given notice of termination or subjected to disciplinary process.
4. He prayed to be paid gratuity for the 29 years worked, one-month salary in lieu of notices and maximum compensation for the unfair termination.
5. The respondent entered appearance and filed a response to claim on the January 16, 2020, admitting to employing the claimant though on fixed term contract that ranged from 6 months to one (1) year



and that they were renewed from time to time. He avers that the first contract commenced on August 1, 2001 and the last contract lapsed on the August 31, 2016.

6. It is the respondent's case that the claimant contract expired on the August 31, 2016, and its normally the employee that is required to make an application for renewal of contract and supply the respondent with certificate of health fitness which the claimant failed to supply or apply for renewal of contract as such the termination of employment arose out of expiry of contract.
7. Upon the expiry of the contract, the respondent states that it paid the claimant all his dues and the claimant having been unwell and frail left his employment without renewing the contract.
8. On gratuity pay relief, it was averred that the claimant was a NSSF paid up member therefore not entitled to any gratuity. In any case that the contract did not provide for gratuity.
9. In response to the defence, the claimant reiterated his claim and in addition stated that there was never contract of employment that expired on the August 31, 2016 and maintained that he was unfairly terminated.
10. This case was heard and concluded on the June 9, 2022.

Claimant's Case.

11. The claimant testified as CW-1 and stated that he is currently the Community Health Care Worker at Lanet Health Center. He testified that he worked for the respondent from 1997 to 2016 and adopted his statement dated January 17, 2018 then produced the documents as his exhibit 1 – 3 respectively.
12. He testified that when he resumed duty after sick leave in August, 2016, the respondent required him to take a medical certificate of his fitness. He stated that he requested for a copy from his doctor but the doctor requested for particulars required to be filled in the letter to enable him draft one. These particulars were not forwarded to him despite request.
13. He stated that he worked for the respondent for 19 years starting as a sprayer and climbed up the ranks till he became the factory supervisors. He admitted to receiving a warning letter dated April 10, 2008 though the same was not meant for him because the chemical burn that was the subject of the warning letter, were not under his docket. On the poor performance letter served on him he stated that there was a low season during the time.
14. He stated that upon termination he was only paid Kshs 12,650 being his August salary and nothing more. He thus prayed for the Court to allow his claim as prayed.
15. Upon cross-examination by Ekesa Advocate, the witness testified that he was employed in 1997 though he first signed his contract in 2001. He admitted that he signed several other contract and last one was to expire on August 31, 2016. He however contends that he was not given the option of renewing the contract this time round. He added that the company was to give the doctor a form or sample for the doctor to fill his health fitness details which documents was not given to him by the company.
16. Upon further cross-examination, the witness testified that he was not paid his terminal dues. He admitted being a NSSF member and also admitted to receiving his full salary under the contract that expired on the August 31, 2016.
17. On re-examination the witness testified that he was employed in 1997 and the NSSF statement shows that the deductions by the respondent were made as from 1998. On the medical certificate, he avers that there was no formal request made by the company and on the renewal of contract he states that the manager had informed him that his contract would not be renewed cause of his health status. On



gratuity he states that the same was payable to the other employees but the manager informed him that he would not be paid because he was a seasonal employee.

Respondent's Case

18. The respondent called three witnesses. The first was the respondent's account clerk, Friday Inyanji, who adopted her witness statement dated January 15, 2020 and produced the 12 documents as the respondent's exhibits 1 – 12 respectively.
19. Upon cross-examination by Daye Advocate, the witness testified that she has worked for the respondent from 1997 and that the claimant was employed in 2001 as per the contract exhibited herein but was initially a casual labourer from 1997. She stated that prior to renewal of contract there was declaration that must be filled by an employee which the claimant did not fill. She avers that employees who had posted good performance received automatic renewal of their contract. She however admitted that the company normally communicate their intention of non-renewing an employee's contract.
20. Upon further cross-examination, she testified that the claimant was unwell and never worked from August, 2016. She stated that the claimant was bedridden and could not even seek for permission, rather that his sick leave was sought by Gladys his wife.
21. The second witness was Alice Chepkirui, a nurse at the respondent. She adopted her witness statement dated January 15, 2020.
22. Upon cross examination by Daye Advocates, the witness testified that she is the one that wrote the letter dated July 23, 2016 indicating that the claimant was not fit to work and gave him 9 days sick leave. She testified that she examined him a second time on the September 1, 2016 and found out that he was still unfit then referred him to a doctor for a proper medical report.
23. The third witness Gladys Cherotich Sang, the claimant's wife and the respondent's employee, she testified that the claimant became sick and was on and off work in 2016 and in August he became so sick that he filed a leave form for him that was to commence on August 3, 2016.
24. Upon cross-examination by Daye Advocate, the witness testified that she is not legally married to the claimant and that they separated on August 1, 2016. She testified that she signed the said letter after separating from the claimant and did not know whether she had authority to apply for leave on his behalf. She also testified that she was not given permission by the claimant to sign the leave forms.

Claimant's Submissions

25. The claimant submitted on three issues; whether the claimant's termination was fair and lawful; whether the claimant's is entitled to the relief sought and who should pay costs of the suit.
26. On the first issue, it was submitted that the claimant was unfairly terminated in that the claimant was on leave that was to end on August 31, 2016. It is argued that upon the expiry of the leave, the claimant reported to work as usual and the respondent's nurse assessed him and referred him to a doctor for further examination to affirm his fitness. It was argued that the claimant's doctor required a forwarding letter and form to fill regarding the claimant fitness which was never forwarded by the respondent. It is the claimant's submissions that contracts were normally renewed automatically, a fact which was reinforced by the respondent first witness but subject to performance which none was produced to intimate that claimant's performance were wanting. It is the claimant's argument that having worked continuously for 19 years at the respondent's he had legitimate expectation to continue working for respondent as was held in *Oshwal Academy (Nairobi) & Another v Indu Vishwanath* (2015) eKLR where the Court of Appeal upheld the decision of the trial court that opinioned that despite the fixed



term contract lapsing by effluxion of time, the respondent had legitimate expectation of continuing working from the conduct of the parties having been in the course of employment for over 23 years and had developed bond as to expect work until retirement.

27. Similarly, that the claimant had legitimate expectation in this case, which coupled up with the fact that contracts were normally renewed automatically. Therefore, he argued that the termination of the claimant's services was terminated unfairly as per the provision of sections 41, 43, and 45 of the [Employment Act](#).
28. On the reliefs sought, the claimant submitted that having been terminated without any notice or being subjected to a disciplinary process, he prayed to be paid one month's salary in lieu of notice, 12 months' salary compensation for the unfair termination and to be awarded certificate of service for the 19 years worked for the respondent.

Respondent's Submissions.

29. The respondent on the other hand submitted on four issues; whether the claimant was under a fixed term contract, whether the claimant was unfairly terminated, whether the claimant is entitled to reliefs sought and who should bear costs of this suit.
30. On the first issue, it was submitted that the claimant was under a fixed term contract that came to an end by effluxion of time on August 31, 2016 and the respondent is not under any obligation to inform the employee of the contract coming to an end. To support its case, the respondent relied on the case of [Oshwal Academy \(Nairobi\) & Another v Indu Vishwanath](#) (2015) eKLR where the court relied on the decision in [Francis Chire Chachi v Amatsi Water Services Company Limited](#) (2012) eKLR where the Court held that: -

“This court has recently stated that the employers are under no obligation to give employees reasons for non-renewal of a fixed term contract unless there is such an obligation created in the expiring contract.”

31. To further reinforce his point that fixed term contract do not carry with it any right and obligation after expiry of the contract, it relied on several case including the case of the [Registered Trustees of the Presbyterian Church of East Africa & Another v Ruth Gathoni Ngotho Kariuki](#) (2017) eKLR, the case of [Fatuma Abdi v Kenya School of Monetary Studies](#) (2017) eKLR and the case of [George S Onyango OGW v Board of Directors of Numerical Machining Complex Limited, Minister for Industrialization & Attorney General](#).
32. Accordingly, that the claimant having had a contract that expired on August 31, 2016 was not dismissed as alleged but that the contract came to an end and the respondent was not mandated to give any reason for not renewing the contract. It was further argued that the claimant had never worked without signing a contract throughout his employment as such there were no legitimate expectation created by the respondent.
33. On the reliefs sought, the respondent relied on the case of [Stephen M Kitbeka v Kevita International Limited](#) (2018) eKLR and argued that having been released upon expiry of the contract, the services of the claimant were not terminated unfairly as such is not deserving of the reliefs sought.
34. In the end, the respondent urged this court to find in their favour and dismiss the claim with costs.
35. I have examined the evidence and submissions of the parties herein. I note that the claimant worked for the respondent over a period of time on fixed short term contracts ranging for months to a year.



36. The last contract is one dated September 1, 2015 and which was to run to August 31, 2016. As per this contract the claimant was to earn 12,650/= and house allowance of 2,875/=.
37. Under the contract, the party terminating the contract was to give 1 month notice or payment in lieu.
38. After this contract expired, it was not renewed and the claimant avers that he was not given any reason for the none renewal.
39. As noted above, this was a fixed term contract. The employer was under no obligation to renew it or even assign reason for the none renewal.
40. The contract having expired, the claimant was not terminated but his employment ended by effluxion of time.
41. The only obligation that the respondents had was to give claimant 1 month's salary or notice in lieu as per the contract and which they didn't.
42. I therefore find for claimant only as follows:-
 1. 1 month's salary in lieu of notice = 15,525/=
 2. Costs of this suit be paid by the respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 20TH DAY OF SEPTEMBER, 2022.

HON LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Bonareri holding brief for Nyagaka for the claimant - present

Konosi for the respondent – present

Court Assistant – Fred

