



Igar Restaurant Limited & another v Onyango & 2 others (Appeal E018 of 2022) [2022] KEELRC 12975 (KLR) (28 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 12975 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E018 OF 2022
J RIKA, J
OCTOBER 28, 2022**

BETWEEN

IGAR RESTAURANT LIMITED 1ST APPELLANT

BEIRUT INDO ARAB CUISINE LIMITED 2ND APPELLANT

AND

GEORGE OCHIENG ONYANGO 1ST RESPONDENT

JOSEPHINE NYABOKE ONDIEKI 2ND RESPONDENT

VARLINE MMWECHÉ MWAMBURI 3RD RESPONDENT

(An Appeal from the Judgment of the Hon. D.M. Kivuti [Mr.] [P.M.] at the Magistrate's Court Milimani Nairobi in CMEL No. E1437 of 2020 delivered on 17th February 2022)

JUDGMENT

1. In their statement of claim before the trial court, dated March 18, 2020, the respondents in this appeal, pleaded that they were employed by the appellants as chefs, in November 2018.
2. They pleaded that the appellants wrongfully and unlawfully terminated their contracts in January 2020. They asked for terminal benefits and compensation for unfair termination, totalling Kshs 1,110,452. They pleaded that termination was by way of redundancy.
3. The appellants filed their statement of response at the trial court, which is dated February 19, 2021. Their position was that indeed, they employed the respondents herein as chefs. Employment was under 1-year fixed term contracts, which expired on December 31, 2019. Termination was by lapse of fixed term contracts, not by way of redundancy.
4. Parties agreed at the trial court, on October 21, 2021, that the claim proceeds by way of documentary evidence and written submissions. Judgment as indicated above, was delivered on February 7, 2022.



5. The trial court awarded the respondents 4 months' salary each in compensation for unfair termination, and a month's salary each in notice. The trial court concluded that termination was through redundancy, and that the appellants had not acted in accordance with section 40 of the *Employment Act*, 2007.
6. The appellants challenge the judgment of the trial court on 4 grounds contained in the memorandum of appeal, dated February 10, 2022.
7. A summary of these grounds is that, the trial court failed to analyse the facts and issues before it, and in particular erred in concluding that the respondents' contracts were terminated by the appellants on account of redundancy.
8. Parties agreed to have the appeal considered and determined based on the record of appeal and submissions, which the parties confirmed to have filed and exchanged at the last mention before the court, on July 29, 2022.

The Court Finds: -

9. The record of appeal indicates that the respondents were employed on limited-term contracts.
10. The 1st respondent, was employed on January 1, 2019. He signed his contract on the same date. The term indicated on the contract was 1 year, ending December 31, 2019. The contract stated at clause 11 that, " unless otherwise agreed in writing, this agreement shall automatically lapse on December 31, 2019."
11. The 2nd respondent was employed on January 1, 2019. Her term would end on December 31, 2019. Clause 11 gave the date for automatic lapse, on December 31, 2019, unless otherwise agreed in writing.
12. The 3rd respondent was employed on the same date as the co-respondents, on similar limited-term contract.
13. These contracts were exhibited, and were not discussed in the judgment of the trial court. There was no reason given in the judgment, why it was concluded that termination was through redundancy and not expiry of the contracts. There were clearly drawn limited-term contracts, which lapsed on December 31, 2020. The appellants had no legal obligation to justify termination in any other way, other than that provided for under the respective contracts: lapse of the contractual period.
14. It was the duty of the trial court, based on the evidence placed before it, to explain why the contracts could not be relied upon, to justify termination.
15. The notices dated October 1, 2019, issued by the appellants to the respondents, advising that the bakery section where the respondents worked would be shutting down in 2 months, did not change the terms of the contracts executed on January 1, 2019. Whether the bakery section shut down or remained open beyond December 31, 2019, would have no effect, on the Effective Date of Termination [EDT], given under the respondents' contracts, unless there was an agreement in writing between the parties, for variation of the EDT, in accordance with clause 11 of the expiring contracts.
16. The court is persuaded that the trial court did not evaluate the evidence placed before it adequately, and failed to explain disregard of the limited-term contracts exhibited by the appellants.

It is ordered: -

- a. The appeal is allowed.
- b. Parties shall bear their own costs of the trial and the appeal.



DATED, SIGNED AND DELIVERED ELECTRONICALLY, AT NAIROBI, THIS 28TH DAY OF OCTOBER 2022.

James Rika

Judge

Rika J

Court Assistant: Emmanuel Kiprono

Abdulkakim & Company Advocates for the Appellants

Lemmy Regau & Company Advocates for the Respondents

