



**Sande v Senaca International Limited (Cause 1761 of 2017)
[2022] KEELRC 12993 (KLR) (28 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12993 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1761 OF 2017
SC RUTTO, J
OCTOBER 28, 2022**

BETWEEN

MOSES SANDE CLAIMANT

AND

SENACA INTERNATIONAL LIMITED RESPONDENT

JUDGMENT

1. The claimant avers through his claim filed on September 5, 2017, that he was employed by the respondent on a contractual basis, as a field officer. That his employment was effected through two contracts. That the first contract was dated January 4, 2016, and was for a period of three months, during which time he was on probation. The second contract was dated April 1, 2016 and was after confirmation of his appointment. That the said contract was to commence on May 1, 2016.
2. Through a letter dated May 22, 2017, the respondent informed the claimant of its intention not to renew the contract. Effectively, his last date of employment was to be on May 31, 2017. It is that letter that has provoked the instant suit as the claimant regards the same as amounting to termination of his employment.
3. Consequently, the claimant has termed the termination of his contract as unfair, unprocedural, against the principles of natural justice, fair administration and the basic tenets of fair labour practices. It is on this account that the claimant is seeking against the respondent the sum of Kshs 420,000/= being compensatory damages equivalent to 12 months of his gross salary.
4. In answer to the claim, the respondent filed a statement response through which it averred that the claimant's contract of employment dated April 1, 2016 was for one year renewable. That it did not renew the claimant's contract after experiencing business losses and that in any event, the said contract had lapsed.



5. The respondent further contended that the claimant was not entitled to any pay *in lieu of* notice after his contract had ended. That the decision not to renew the claimant's contract was lawful and justified. The respondent thus urged the court to dismiss the suit with costs.
6. The matter was scheduled for hearing on June 21, 2022 but the respondent was absent in court and was not represented. In view of the fact that the hearing date had been taken mutually in court on March 24, 2022 and pursuant to rule 22(1) (b) of the [*Employment and Labour Relations Court \(Procedure\) Rules, \(2016\)*](#), the court directed that the matter proceeds, the respondent's absence notwithstanding.

Claimant's Case

7. At the commencement of the hearing, the claimant asked the court to adopt his memorandum of claim, verifying affidavit, witness statement and bundle of documents, all dated October 21, 2017, to constitute his evidence in chief.
8. He testified that he was employed as a field officer and was in charge of the respondent's security guards. That on March 3, 2016, he was involved in an accident and the respondent was notified. That consequently, he was in the house for two months as he recuperated. That he was later allowed to resume work and two weeks thereafter, he was issued with a letter dated May 22, 2017 by the respondent's human resource officer. That the letter stated that his contract would not be renewed for the period that had already begun. That the reason given for the non-renewal of his contract was that the respondent was going through a period of low business hence his services were no longer needed.
9. In further testimony the claimant stated that the non-renewal of his contract came up when he started pursuing compensation related to his motorcycle accident. That following his accident, he had filled a form for compensation for work injury, and despite the respondent promising to follow up on the same, had failed to do so.
10. He further disputed the respondent's assertions that it was running low on business, hence the non-renewal of his contract. In this regard, he testified that he was a supervisor in charge of security guards and it did not make sense that business was going down as there were guards in all the respondent's stations. Concluding his testimony, the claimant asked the court to grant him compensation for work injury and for wrongful termination.
11. As stated herein, the respondent did not tender evidence hence its case is as per its statement of response.

Submissions

12. It was submitted on behalf of the claimant that the respondent did not cite any fair reason for his dismissal. That he was terminated without just cause and was not accorded a chance to defend himself. It was further argued that the claimant's dismissal was done without prior notice. In support of the claimant's submissions, reliance was placed on the following authorities amongst others, [*Pius Machafu Isindu v Lavington Security Guards Limited*](#) (2017) eKLR, [*Betha Chizi Katana v Richard Lewa*](#) (2014) eKLR and [*Moi Teaching Referral Hospital v James Kipkonga Kendagor*](#) (2019) eKLR.

Analysis And Determination

13. Flowing from the pleadings on record, the evidentiary material placed before me, as well as the submissions on record, it is evident that the issues falling for the court's determination are:
 - 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. Is the claimant entitled to the reliefs sought?

Was the claimant terminated from employment?

14. It is imperative to dispose off this issue at the outset as the other issues are riding on its determination. It is trite that the terms of engagement between an employer and an employee flow from the contract of employment. Essentially, it is the contract of employment that govern the relationship between the parties.
15. In the instant case, the parties' employment relationship was commenced through a contract of employment dated April 1, 2016. The claimant acknowledged the terms and conditions of employment by appending his signature on the same on May 12, 2016.
16. Clause 4 of the contract which is key in determining this issue, provides as follows:

“Duration

Your employment with the company is one year renewable contract and commences with effect from May 1, 2016. The company retirement age is 60 years; subject to the legislation and the company policy in force at the time.”
17. It is therefore evident that pursuant to the said clause 4, the contract was fixed for one year, with effect from May 1, 2016. In other words, its life was only for one year, subject to renewal.
18. As it would be, the contract of employment was not renewed and the claimant was informed as much through a letter dated May 22, 2017 which is couched as follows:

“Re: Non renewal of contract

Reference is made to your appointment letter dated April 1, 2016 in which you were given one (1) year employment contract. However the management will not renew your contract due to loss of business, however the management may consider recalling you back once the business pick up.

Consequently, your last day of employment with the company will be May 31, 2017.

Kindly handover all company property in your possession to your supervisor and upon clearance collect your terminal dues from finance department.

 1. Days worked
 2. Accrued leave (if any)
 3. Less any company loan (if any)...”
19. The claimant was aggrieved by that letter and has termed the non-renewal of his contract as amounting to unfair termination. The question thus, is whether the non-renewal of the claimant's contract amounted to unfair termination.
20. The contract was very explicit that its duration was for one year subject to renewal. Therefore, it followed that upon expiry of the one year, there were two possibilities, renewal or non-renewal. In this case, the respondent opted not to renew the contract and stated its reasons for not doing so. Whether the said reasons were valid or not is another story altogether.



21. By their very nature and name, fixed term contracts are just that. They are fixed and carry no expectation of renewal. Such was the determination by the Court of Appeal in the case of *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotbo- Kariuki* [2017] eKLR, where it was determined that:

“[29. Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.”

22. Therefore, there should have been no legitimate expectation of continued employment from the claimant’s end, upon expiry of his contract. The life of the contract was only one year. It ran its course during that one year, expired and was not renewed hence, died a natural death. Therefore, the claimant’s assertion that he was terminated from employment does not hold water.

23. In the circumstances, I find and hold that the claimant was not terminated from employment.

24. I also find it imperative to comment on the claimant’s assertions that the reason given by the respondent for the non-renewal of his contract, was untrue.

25. In fixed term contracts, an employer is not bound to give reasons for non-renewal since the life of the contract is already predetermined. My position is buttressed by the determination in the case of *Bernard Wanjohi Muriuki v 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.”

26. This position was reaffirmed by the Court of Appeal in *Keen Kleeners Limited v 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.”

27. In light of the foregoing, the claimant cannot allege unfair termination. Having found as such, the next issue for determination falls by the wayside as logically, it cannot be determined.

28. The claim for compensatory damages therefore collapses as there has been no finding of unfair termination. This is also in consonance with the determination of the Court of Appeal in the case of



Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho- Kariuki [supra], where it was held as follows:

“ Accordingly, any claim based after the expiry of the respondent’s contract ought not to have been maintained... Similarly, since the respondent’s contract came to an end by effluxion of time any claim for wrongful termination could not be maintained.”

29. I wholly apply and reiterate the above determination to the case herein.

Orders

30. In conclusion, I find that the claimant was not terminated hence is not entitled to compensatory damages for unfair termination. The claim is therefore dismissed in its entirety with an order that each party bears its own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 28th day of October, 2022.

.....

STELLA RUTTO

JUDGE

Appearance:

For the Claimant Mr. Rabala

For the Respondent No appearance

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

5

